

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

Defendant in Error,

vs.

BARON M. ROSENBAUM,

Plaintiff in Error.

ON ERROR TO SUPREME COURT.

BRIEF OF THE STATE.

Baron M. Rosenbaum, late of the city of Camden, was tried and convicted in the Court of Quarter Sessions of Camden county upon an indictment which charged that on the twenty-seventh day of August, nineteen hundred and four, at the city of Camden, he was the agent of Abbie C. Doughten, and as such agent was entrusted by her with the care of \$6,700, and that he fraudulently and unlawfully converted such money to his own use.

It was proved that on different days between the twenty-seventh day of August, nineteen hundred and four, and the fifth day of December, of the same year, Abbie C. Doughten gave to the defendant several sums of money, amounting in the aggregate to \$6,700, with instructions

to invest in Chicago, St. Paul & Milwaukee Railroad shares, and in cotton and wheat (pages 11 to 18), and that all of said money, with the exception of \$2,600, was given to the defendant in the city of Camden. (Pages 23 and 25.)

It was also proven that instead of investing such money in accordance with his instructions, defendant placed it in St. Paul Railway stock and in Steel Preferred, cotton and other miscellaneous stocks (pages 34 and 37), and, according to defendant's own testimony, all the investments were made by him under an assumed name. (Page 39.) A demand was made by Abbie C. Doughten of the defendant (pages 13 and 15) for the return of either the money or the securities. In reply to this demand defendant delivered to her an obligation (page 17) by which defendant's wife agreed to pay her the sum of \$4,900 and defendant himself agreeing to repay the balance of \$1,800 at a future day. (Page 16.) He also by another agreement promised to pay her the sum of \$10 per week as interest until the principal and profits were returned (page 16); both of which agreements were legally of no value whatever. These payments of \$10 per week were made by defendant for a short time (page 16), when he fled and remained a fugitive from justice for several months until arrested at Brooklyn. (Page 28.) And when requisition proceedings were instituted, defendant contested in every possible way his return to this jurisdiction. (Pages 31 and 32.)

At the close of the State's case defendant asked that a verdict of acquittal be directed (page 32), and renewed the application at the close of the whole case. (Page 66.)

The case comes before this Court on writ of error and exceptions, and not upon a certificate from the Court of the entire record, under the act of 1898, and therefore no objection not taken at the trial can be made here.

The assignments of error will be found on page 81 of the state of the case, and raise no questions of error other than those stated in the assignment of errors before the Supreme Court as found on page 74 of the state of the case.

1. It is alleged that error was committed by the Trial Court in admitting the testimony of one Smith, the object of which was to prove that defendant became a fugitive from justice, and the circumstances attending his arrest and return to this jurisdiction.

(a) It is respectfully submitted that such evidence was clearly admissible on the ground that flight or concealment of a person charged with crime is a circumstance which the jury may take into consideration in determining his guilt; and, to show flight and secretion of the accused, it is proper to prove by the officers of the law what steps were taken by them to locate and arrest the accused, and in the same connection and for the same purpose, evidence touching the manner, conduct and expressions of the accused and what occurred at the time of his arrest is admissible.

State vs. Jagers, 42 Vr., 282.

Commonwealth vs. Annis, 15 Grey (Mass.), 197.

People vs. Fine, 77 Cal., 147.

People vs. Shem Ah Fook, 64 Cal., 380.

People vs. Burns, 67 Mich., 537.

Vol. 14, American Digest, C. 1375, sec. 779.

objection however was not
made on the ground of
its relevancy (see p 31-)

(b) In connection with the testimony of Smith the further objection was made that the only competent way to prove the nature of the proceedings taken by defendant to prevent his extradition and the result of the same, was by a production of the record itself. It is respectfully submitted that a sufficient answer to this objection is that witness testified only to such matters as occurred in open court and in the presence of defendant; and further, that it did not appear that there was any record of the proceedings which could be produced, but, on the contrary, the presumption is that where a writ of habeas corpus is denied there is no record.

2. In answer to the assignment of error alleging that the Court erred in permitting the State to recall a witness for further examination after having closed its case and a motion made on behalf of defendant to direct a verdict, it is submitted that the rule is well settled that the conduct of the trial and the general course of the examination of witnesses rests very much in the sound discretion of the Judge, and does not constitute a ground of error. Our practice in this respect has not been strict; and, where either party has accidentally overlooked or omitted material evidence, it is usual and proper, in the discretion of the Court, to permit the omission to be supplied, even after the adverse party has rested.

Donnelly vs. State, 26 N. J. L., 610 (Ct. Er. & Ap.)

State vs. Fox, 25 N. J. L., 602.

State vs. Murphy, 9 Nevada, 394.

Comm. vs. Brown, 130 Mass., 279.

Comm. vs. Meaney, 151 Mass., 55.

Cases cited, Vol. 14 American Digest, Col. 2319-2326.

3. A further allegation of error was the refusal of the Court at the close of the State's case to direct the jury to acquit defendant. In justification of the refusal of the Trial Court to so order, it is respectfully submitted that the State had made out a complete case against defendant for the conversion of the moneys to his own use; and furthermore that until the evidence was wholly closed the defendant had no standing to make such a motion, and if he did have such a right, an exception to the Court's denial to so instruct was waived by the defendant when he proceeded with his defence. It is further submitted that such a motion was addressed to the discretion of the Court, and the action of the Court is not reviewable on error.

State vs. Jagers, 42 Vroom, 283.

Bindernagle vs. State, 31 Vroom, 310.

Bennett vs. State, 33 Vroom, 512.

4. It is further submitted, and in reply to the contention of the defendant that the Court should have charged that the State must prove a conversion affirmatively, that there is no such obligation resting upon the State, but that it is sufficient to prove such acts and circumstances as will raise a presumption and from which the jury might infer a conversion. The crime of embezzlement can seldom, if ever, be proved by affirmative proof, because whether or not certain acts constitute a conversion depends very largely upon the intent which actuated them. An act may become criminal because the intent with which such act is committed is criminal, though the act itself, when not coupled with such criminal intent, is lawful.

State vs. Baumhayh, 28 Minn., 226.

Reynolds vs. State, 65 N. J. L., 424.

Thus the fact of conversion or embezzlement consists, in a certain sense, in a mere act of the mind without any outward and visible trespass, and the fact that this mental act of fraudulent appropriation has taken place has to be inferred from the conduct of the defendant rather than from proof of overt acts of conversion. But were this not the case it is respectfully submitted that the state of the evidence at the close of the whole case was abundantly sufficient to prove a conversion, and that the Trial Court was justified in refusing to charge as requested; and that the jury in ascertaining whether or not a conversion has actually taken place were entitled to take into consideration the proofs submitted on behalf of defendant and which testimony supported and re-enforced that which had been introduced upon the part of the State.

5. A further exception was taken to the refusal of the Trial Court to direct a verdict of acquittal at the close of the whole case. It is respectfully submitted in answer to this objection that an exception and assignment of error based upon such refusal has no place in the criminal practice of this State and error cannot be assigned on trial of an indictment upon the refusal of the Court to direct an acquittal.

Bindernagle vs. State, 31 *Vroom*, 310.

State vs. Hand, 58 *Atlantic Reporter*, 642.

State vs. Johnson (1906), 63 *Atlantic Rep.*, 13.

Assuming, however, the regularity of the motion, the state of the evidence at the close of the case did not warrant such a direction, for an examination of the evidence submitted to the jury shows the receipt of the \$6,700 by the defendant from the complaining witness for a specific

purpose; his failure to invest in accordance with his instructions; his denial of the receipt of a portion of the moneys; the use of a fictitious name in making the investments instead of using the right name of the owner; his failure to render an account; his failure to deliver either securities or money upon demand being made; his attempt to relieve himself from criminal prosecution by the giving of obligations which however were of no legal value, and for the giving of which no reason existed nor any legal duty demanded, if his testimony were true; his subsequent flight, and the circumstances surrounding his arrest and return to this jurisdiction were all circumstances that so clearly indicated a fraudulent conversion that to have charged as requested by defendant would have been obviously improper.

It was further urged on behalf of defendant that the Court should direct a verdict because there was no proof that the alleged conversion was committed within the jurisdiction of the Court. The answer to this is that if defendant refused to account for the money, with fraudulent intent, in the county of Camden, or if in that county he conceived an intent to convert the money to his own use, and had possession with such intent, the offence of embezzlement was complete although defendant actually expended or disposed of the money elsewhere. The fallacy of the position taken by defendant is in the assumption that the only act of embezzlement is in the paying out of the money by the defendant for his own use. And furthermore the contention of defendant, that because the moneys were invested in another jurisdiction that therefore no conversion could have occurred in the jurisdiction of the Trial Court, is without weight, for the act of fraud-

ulent conversion wherever committed may be taken as evidence of an intention existing at the time of its reception in the county of Camden to commit the crime.

Burnett vs. State, 60 N. J. L., 255.

Fitzgerald vs. State, 50 N. J. L., 475.

State vs. Small, 26 Kansas, 209.

Spalding vs. People, 172 Ill., 40.

Campbell vs. State, 35 Ohio St., 70.

State vs. Haskell, 33 Maine, 127.

The further reason urged in behalf of the motion for a direction of acquittal, that the moneys were all invested in stock speculation and lost, is answered by the fact that they were not invested as directed; but, assuming that they were so invested, if it were true as was alleged by the State that it was done with a felonious intent, then the fact that defendant had been given authority to do the act relied upon as a conversion is no defense. As heretofore said, an act may become criminal because the intent with which such an act is committed is criminal, though the act in itself, when not coupled with such criminal intent, is lawful.

10 Am. & Eng. Enc. of Law, 995.

State vs. Baumhayer, 28 Minn., 226.

6. It is further alleged that there was error in that portion of the Court's charge (at the bottom of page 68) commencing: "Now, if you believe, &c.," to end of paragraph. A reading of this part of the charge reveals that the Court considered intent as the essential element of the offence. And it is submitted that in view of the fact that defendant claimed the moneys had been used as directed,

whether or not he was guilty of the offence charged, depended upon the presence or absence of an intent to convert to his own use. The real question in the case, therefore, was the intent with which the money had been held and expended by defendant. It was the specific criminal element that made the retention fraudulent. And unless the jury were satisfied of its existence, beyond a reasonable doubt, the State had not legally established the defendant's guilt.

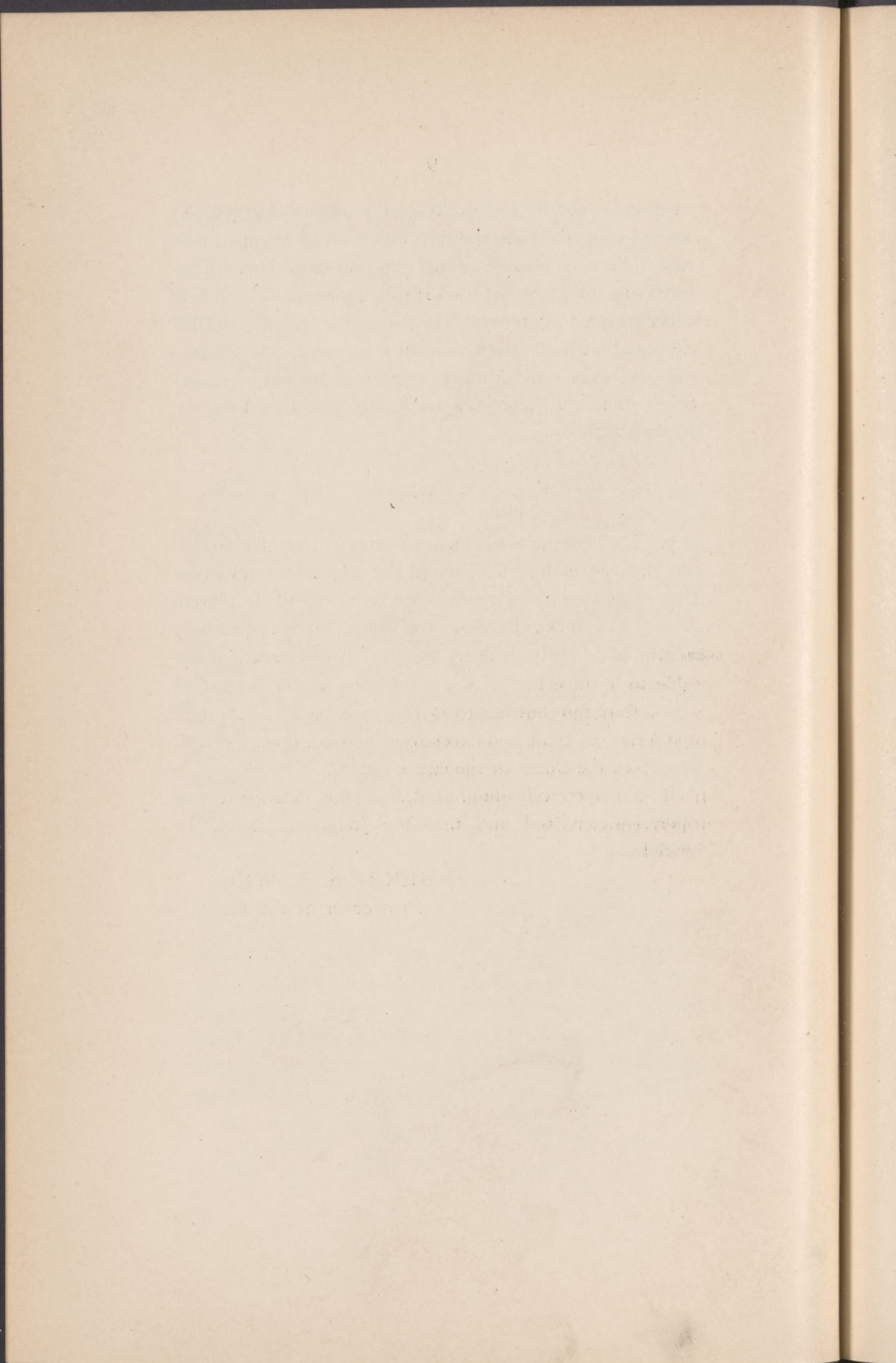
State vs. Temple, 63 N. J. L., 375.

10 Am. & Eng. Enc. Law, 996.

7. The general assignment of error is that the defendant suffered manifest injury in the admission and rejection of testimony, whether objection was made thereto or not, and in the charge of the Court. It is respectfully submitted in reply to this that such an assignment is applicable to a review of the whole case under the act of 1898, section 136, but not to this case, which is brought up on writ of error and exceptions, and not upon a certificate from the Court of the entire record.

It is respectfully submitted that the defendant was properly convicted and that the judgment should be affirmed.

HENRY S. SCOVEL,
Prosecutor of the Pleas.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE,	}	On Error to
Defendant in Error,		Supreme Court
vs.		Brief for Plaintiff
BARON M. ROSENBAUM,		in Error.
Plaintiff in Error.		

This is an indictment under the 184th Section of the Crimes Act, P. L., 1898, p. 844, charging the defendant Rosenbaum, as agent of Abbie C. Doughten with fraudulently and unlawfully converting the sum of \$6,700 to his own use.

At the trial the only proofs offered by the State in support of the indictment was the testimony of Abbie C. Doughten, that she entrusted to the care and custody of Rosenbaum the sum of \$6,700, for the purpose of investing in C. M. & St. P. R. R. stock and in cotton and wheat, and that he was to use his own discretion as to the amount to be put in each (p. 11).

Exhibit P. 1, (p. 16) produced by Miss Doughten states that \$4,900 was given by her "for the purpose of speculating on stocks, cotton and grain, at his own discretion."

Miss Doughten testifies (p. 13) that on November 5th, 1904, she made a demand for the moneys or the securi-

ties, but that Rosenbaum said "he could not take it out and return it to me without throwing it as a drug on the market and losing the whole amount."

Up to the close of the State's case, no other attempt was made to prove either demand and refusal or conversion in any form by Rosenbaum.

On cross-examination, Miss Doughten admitted that she intended that the moneys should be carried out of this State by Rosenbaum and invested at the Bourse Building in Philadelphia, Pa. (p. 18).

At the conclusion of the State's case, a motion was made to direct an acquittal upon the ground that there was no proof of conversion, and if any conversion had been proved, it occurred in the State of Pennsylvania, and without the jurisdiction of the Trial Court. At the conclusion of this motion, the prosecutor made the following statement: "I think there is some substance in it (the defendant's motion for a directed verdict of acquittal) which I have overlooked in the production of the evidence, and I will therefore ask leave to recall the witness for the purpose of proving it."

The Court thereupon permitted the State to re-open its case and Abbie C. Doughten was recalled to supply the deficiency in proof. Miss Doughten then testified (p. 34) that the defendant had stated to her that "he had put it (the money in question) in St. Paul Railway stock and in Steel Preferred."

The State then rested.

It is too palpable for argument that if the State had failed to prove its case prior to recalling Miss Doughten, then her supplemental testimony failed to establish proof of conversion. So that we have the admission of the

prosecutor at the close of the State's case that there is some substance in the motion for a directed verdict and ineffectual attempt to supply the admitted deficiency of proof.

If it be conceded, as it must, that when the State finally rested, after recalling Miss Doughten, and the admission of her supplemental testimony, it had failed to make out a case against the defendant, the sole question remaining so far as the proofs are concerned is: Did the testimony of Rosenbaum supply such additional evidence as would warrant a conviction? It therefore becomes important to scrutinize the testimony of Rosenbaum with the utmost care. A careful analysis of Rosenbaum's testimony discloses the following facts: The defendant (p. 35) testified that Miss Doughten had entrusted him with the sum of forty-nine hundred dollars to be used in speculating in railroad stocks, cotton, wheat and anything pertaining to speculation, and that he speculated with the money exactly as was agreed upon; the defendant thereupon produced a bundle of 138 receipts of the Brown Commission Company, stock brokers, marked collectively Exhibit D, 2 (p. 63) for sums aggregating \$6,995, which represented the moneys of Miss Doughten lost in speculation.

Rosenbaum further testified (p. 38):

Q. Will you state how much of the moneys of Abbie Doughten you invested?

A. Every dollar of it.

Q. And are the receipts here for the moneys or other moneys?

A. The receipts are there for those moneys. But in

speculation you get in and get out and those are for the accrued profits as well.

Rosenbaum further testified (pages 38 and 39) that all of the moneys was taken to the City of Philadelphia, Pennsylvania, and there invested.

It is important to note that not only is Rosenbaum's testimony uncontradicted, but it is corroborated by Ryan, the manager of the Brokerage Company, who testified that all of the receipts in question represented losses by Rosenbaum in stock speculation at the office of the Brown Commission Company (pages 62, 63 and 64).

The legal proposition therefore presented to the Court for discussion is: Where moneys are entrusted to the defendant for purpose of investment in stock speculation at the discretion of the defendant, and the latter testifies that he has invested the moneys in the manner directed and has lost the same in speculation, and produces in corroboration receipts from the brokers covering the amount so claimed to be lost, and his testimony is not only uncontradicted, but is corroborated by that of the broker's manager, who testifies that the receipts produced by the defendant represent moneys lost in stock speculation with the brokerage house, with which the manager is connected, and to the amount respectively appearing on the face of such receipts is there any evidence from which a jury would be warranted in finding a verdict against the defendant, even where the wife of the defendant gives her personal obligation to pay to the cestui que trust, the sum so advanced, and where the defendant resists requisition proceedings in a foreign jurisdiction.

We think it must be conceded that there is absolutely

nothing in the above proposition, which would warrant a conviction, unless it would be in the two supposedly suspicious circumstances, that the wife of the defendant gave her personal obligation to the cestui que trust to pay a sum of money which neither the wife, nor the defendant were legally liable to pay—and the circumstance that the defendant resisted requisition, which latter the prosecutor in the brief below characterized as a “flight.” Considering these two circumstances in connection with all of the other evidence have they any probative force, when the defendant shows an exact compliance with the terms of his trust?

If there was a question before the jury as to whether or not the defendant had complied with the direction of the said ceteque trust, then these two facts might be considered as a make-weight, but as full compliance has been shown, they cannot be accorded this slight degree of consideration. The giving of the wife's obligation was not the act of the defendant and was done out of motives of sympathy proceeding from defendant's wife.

With regard to resistance of the requisition proceedings we do not believe that any deduction unfavorable to the defendant can be justly drawn from this circumstance. The defendant may have been confident of his own innocence, and therefore loath to go into a foreign jurisdiction, where he was a stranger, and unable to get bail in order to face a baseless charge. Indeed, the defendant was compelled to remain in the county jail for months waiting a trial because of his inability to furnish bail, and it may well have been this prospect that led him to resist requisition proceedings.

It must be borne in mind that the Court in deciding

this case does more than determine the merits of this particular controversy, but fixes the law of the entire state, and it seems to us that the decision of the Supreme Court is fraught with great peril to all persons who are required to handle trust funds for others if they are not to be protected by showing that they have disposed of the funds in exact accordance with the direction of the cestui que trust, and if it be left to a jury to conjecture that even though they have so complied there may have been in the mind of the trustee an intent to convert the moneys or some other ulterior purpose—not proved, or disclosed, of making an ulterior profit out of the transaction.

We have elaborated on the facts at some length, because of the great importance thereof, and because the Supreme Court in its opinion entirely disposed of the facts by the following sentence: "Our examination of the evidence satisfied us that the case was properly one for the jury, both on the question of fraudulent conversion, and of the place of conversion."

At the conclusion of the case the defendant moved for a directed verdict of acquittal on the whole case on the following grounds:

First: That there was no proof of conversion;

Second: Because there was no proof that the alleged conversion was committed within the jurisdiction of the Trial Court;

Third: Because the uncontradicted testimony shows that all of the moneys were invested in stock speculation in the City of Philadelphia, Pennsylvania; hence no conversion within this State.

Fourth: Because the uncontradicted testimony showed that the moneys were all invested in stock speculation and lost.

JUDGE'S CHARGE.

The third paragraph of the charge of the learned Judge contains the startling proposition that *mere intent* to convert unaccompanied by any other act will warrant a conviction for embezzlement under the indictment in this case (page 68).

The Trial Judge emphasizes this very erroneous exposition of the law by twice repeating the same proposition in subsequent parts of the charge.

It was upon this sole exposition of the law that the case was submitted to the jury. In other words, the jury were told, in effect, that mere intent unaccompanied by any conversion constitutes the offence charged in the indictment.

The defendant was further prejudiced by the following portion of the charge:

"Now if you believe, from the testimony in this case, that the defendant received of Abbie C. Doughten moneys in the City of Camden with the intent, at that time, to convert the same to his own use, even though he did invest the same in stock, if his intent was to invest in

stocks, for his own use and for his own purposes, then you may rightfully convict him of the offense charged against him."

The section above referred to is erroneous and works a gross injustice to the defendant because it assumes that there is at least some testimony or proof in the case from which a jury might rightfully draw the inference that at the time Rosenbaum received the moneys in the City of Camden he had an intent to convert the same to his own use.

A jury is only warranted in drawing inference from the testimony or proofs and cannot be permitted to invade the realms of mere conjecture.

What facts are there in this case that would, by the most strained construction, warrant such a deduction?

The proofs are that Abbie Doughten gave the defendant a sum of money said by her to be sixty-seven hundred dollars and said by the defendant to be forty-nine hundred dollars to be invested in stock speculation at the discretion; that he so invested "every dollar" of the moneys. There was some conflict of testimony as to whether the amount furnished by Miss Doughten was forty-nine hundred dollars or sixty-seven hundred dollars. Miss Doughten was testifying from memory alone; every receipt given by or to her in this matter was expressed to be in the sum of forty-nine hundred dollars. At any rate, be the amount what it may, Rosenbaum testified that he invested every dollar of the money in the manner directed by Miss Doughten.

These proofs stand not only absolutely uncontradicted but are corroborated by the disinterested testimony of the stock broker.

The crime here appears to be that Rosenbaum, instead of winning, lost.

It may be contended by the State that as Miss Dough-ten testified that she had given Rosenbaum sixty-seven hundred dollars for investment, while he denied having received more than forty-nine hundred dollars, there was a fair question for the jury as to whether the sum of eighteen hundred dollars had been converted by him.

• However, the answer of Rosenbaum that he invested *every dollar* of the moneys so entrusted to him completely meets this charge.

But even if we concede that Rosenbaum had in his hands the sum of eighteen hundred dollars *uninvested*, this would not support a conviction in the absence of any proof of conversion.

Upon the State's theory, the bare fact stands alone that Rosenbaum lawfully received eighteen hundred dollars and has not accounted therefor.

"Mere neglect to pay over will not justify a conviction for fraudulent conversion where funds have come lawfully into the hands of the defendant." *State v. Reynolds*, 36 Vr. at page 430.

"Intent to convert money is an essential part of the State's case." *Ibid* at page 431. *State v. Temple*, 34 Vr. 375.

Upon an indictment framed under the supplement to the Crime's Act, approved March 17, 1844, (Rev. p. 262 Section 201) as fraudulent conversion to his own use by an agent entrusted with personal property to sell, of said property, or of the proceeds of the sale thereof, is an essential ingredient of the crime charged and evidence

merely of neglect to pay over the proceeds of such a sale will not justify a conviction." *Fitzgerald v. State*, 21 Vr., 475. *Burnett v. State*, 31 Vr., 255.

"Ordinarily a servant, agent or bailee who receives property in one State and converts the same to another is not guilty of embezzlement and cannot be prosecuted in the former State." 10 A. & E. Ency. of Law, 2nd Ed., page 1027.

The opinion of the Supreme Court reads in part as follows: "The only other assignment is directed to the charge of the jury. It is said that the effect of the instruction was that the mere intent to convert, unaccompanied by any overt act, will warrant a conviction for embezzlement under the indictment." We do not so read the instructions. The charge was: "Now, if you believe from the testimony that the defendant received of Abbie C. Doughten moneys in the City of Camden, and with intent at that time to convert the same to his own use, even though he did invest the same in stocks, if his intent was to invest in stocks for his own use, and for his own purposes, then you may convict him of the offence charged against him. If you believe that when he received these moneys in the City of Camden from Miss Doughten, that at that time he received them with the intent of using them for his own purpose, then you will be justified in finding him guilty of the crime charged against him." The exception is directed to the latter sentence in this excerpt; but the whole of the instruction upon this point must be taken together; and, read together it is not fairly to be construed as an instruction that mere intent to convert, unaccompanied by any overt act, will warrant a conviction.

Is the portion of the charge, quoted in the opinion of the Supreme Court so clear and ambiguous as to convey to the minds of the jury the fact that there must be not only an intent to convert but an actual conversion before they may lawfully find a verdict of guilty?

A careful re-reading and consideration of this portion of the charge satisfies us that from the charge they would be warranted in believing that the offence consisted solely in the intent and that proof of conversion was unnecessary.

May not this charge be properly read as follows: "Now, if you believe from the testimony that the defendant received from Abbie C. Doughten moneys in the City of Camden with an intent at that time to convert the same to his own use, *even though he did invest the same in stocks in the manner directed by Abbie C. Doughten*, if his intent was to invest in stocks for his own use and for his own purposes, then you may convict him of the offence charged against him." It will be recalled, that the testimony as to the actual investment in stocks proceeded not from Abbie C. Doughten but from the defendant himself and was offered for the purpose of showing a compliance with the conditions of the trust.

It cannot be supposed that the Trial Court used the phrase "even though he did invest the same in stocks as synonymous with the word conversion," but on the contrary used it in the following sense: "Even though there was an apparent compliance with the terms of the trust," so that with the single phrase "even though he did invest the same in stocks" eliminated the whole charge, deals with the question of intent, and nowhere with the question of conversion.

If the charge is fairly susceptible of two constructions one of which is prejudicial to the defendant, it is improper, and there should be a reversal on this ground alone.

Respectfully submitted,

HARVEY F. CARR,

FRANCIS D. WEAVER,

Attorneys for Defendants in Error.

EXHIBIT D. I.

Phila., Dec. 5th, '04.

Received of Mrs. B. M. Rosenbaum note for 4½ months, four and half months from date for the sum of Four Thousand Nine Hundred Dollars, (\$4,900,) which sum is in full of all demands and claims upon Mr. & Mrs. B. M. Rosenbaum.

ABBIE C. DOUGHTEN.

EXHIBIT D. 2.

10

Up-Town Office, 507 and 508 BETZ BUILDING.

No. 9945. THE BROWN COMMISSION CO.
BROKERS AND DEALERS

—IN—

STOCKS, COTTON, GRAIN AND PROVISIONS

31 SOUTH FIFTH STREET

Mr. Ross

Philadelphia, Pa., 9, 9, 1904

Stocks Delivered and Receivable on three days' notice 20
in New York

GRAIN AND PROVISION IN CHICAGO, ILL.

It is agreed that whenever the Deposit is exhausted, all Stocks, Bonds, Grain and Provisions sold to or by us for you, or held as collateral security, may be bought without further notice, and without incurring any liability for differences in value after such sale.

NOT TRANSFERABLE.

SOLD TO THE BROWN COMMISSION CO.

AMOUNT	ARTICLE	PRICE	RECEIVED ON ACCOUNT	
20	St. P.	15718	20	
		9 9	20	30
		9 10	20	

(And 137 in similar form.)

NEW JERSEY SUPREME COURT.

THE STATE,
 vs.
 BARON M. ROSENBAUM.

10

ON ERROR TO CAMDEN QUARTER SESSIONS.

Argued before Gummere, Chief Justice, and Justice Hendrickson.

For Plaintiff in Error, Francis D. Weaver and Harvey F. Carr.

For the State, Frank T. Lloyd, Prosecutor of the Pleas.

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PER CURIAM.

The defendant was convicted on an indictment charging him as agent of one Abbie C. Doughten, with fraudulently and unlawfully converting to his own use the sum of \$6700, which had been entrusted to him by her. The case comes up on strict bill of exceptions, and not under the 136th Section of the Criminal Procedure Act.

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The first assignment of error is based upon the refusal of the trial judge to direct a verdict for the defendant at the close of the State's case. This affords no ground for reversal, the motion being directed to the discretion of the Court.

State vs. Jagers, 42 Vr. 283.

The second assignment of error is based upon the refusal of the trial court to direct an acquittal on the whole case. Our examination of the evidence satisfied us that the case was properly one for the jury, both on the question of fraudulent conversion, and of the place of conversion.

Another assignment of error challenges the correctness of the ruling of the trial judge in admitting the testimony of a detective who arrested the defendant on the charge contained in the indictment, while the latter was in Brooklyn. The witness, after stating that the defendant was held on requisition papers, proceeded to say that "The case was then taken into court, and they wanted him released on a writ of habeas corpus;" whereupon counsel for the defendant objected, saying, "The record itself is the best evidence of what they wanted, not what Mr. Smith says they wanted." The trial judge overruled the objection, saying that he would permit the witness to state what had occurred in open court, if he heard it. The witness thereupon proceeded as follows: "They applied for a writ of habeas corpus, and it was denied." The objection urged to the admission of this testimony is that the proper way to prove the record of a judicial proceeding is by the production of the record itself. But in this case there is nothing to show that there was any record of this proceeding, and the presumption is that there was not; for a habeas corpus proceeding is not made a matter of record, unless the writ is allowed. The testimony of the witness was competent to show the conduct of the defendant after his arrest. It has somewhat the same relevancy as proof of the flight of a defendant after the commission of a crime.

The only other assignment is directed at the charge of the jury. It is said that the effect of the instruction was

that the mere intent to convert, unaccompanied by any overt act, will warrant a conviction for embezzlement under the indictment. We do not so read the instructions. The charge was: "Now, if you believe from the testimony that the defendant received of Abbie C. Doughten moneys in the City of Camden, with intent at that time to convert the same to his own use, even though he did invest the same in stocks, if his intent was to invest in stocks for his own use, and for his own
10 purposes, then you may convict him of the offence charged against him. If you believe that when he received these moneys in the City of Camden from Miss Doughten, that at that time he received them with the intent of using them for his own purpose, then you will be justified in finding him guilty of the crime charged against him." The exception is directed to the latter sentence in this excerpt; but the whole of the instruction upon this point must be taken together; and, read
20 together, it is not fairly to be construed as an instruction that mere intent to convert, unaccompanied by any overt act, will warrant a conviction.

The judgment under review will be affirmed.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE OF NEW JERSEY, Defendant in Error. vs. BARON M. ROSENBAUM, Plaintiff in Error.	}	On Error to Supreme Court. Assignment of Errors.	10
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And now, at this day, the plaintiff in error assigns the following causes of error:

First:—Because the Supreme Court decided that the Trial Court did not admit illegal evidence over the objection of defendant's counsel. 20

Second:—Because the Supreme Court decided that the Trial Court's refusal to charge the jury as requested by defendant's counsel was not error.

Third:—Because the Supreme Court decided that the Trial Court did not misdirect the jury upon both law and fact.

Fourth:—Because the Supreme Court decided that it did not appear that there was error in the record and proceedings aforesaid or in giving of judgment and passing of sentence aforesaid by reason of which the said judgment and sentence should be reversed and set aside 30

Fifth :—Because the Supreme Court decided that there was no error in the Trial Court's refusal to direct a verdict of acquittal in favor of the defendant, upon request of defendant's counsel.

Sixth :—Because the Supreme Court decided that the judgment of the Trial Court should be affirmed.

Seventh :—Because the Supreme Court refused to reverse the Trial Court on account of, and by reason of the
10 several assignments of error appearing in the record aforesaid.

F. D. WEAVER,
Attorney for and of Counsel for Plaintiff in Error.

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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,	}	On Error to	
Defendant in Error.		Supreme Court.	
vs.		Joinder	10
BARON M. ROSENBAUM,		in Error.	
Plaintiff in Error.	}		

And now comes the defendant in error and says there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid, and therefore it prays that the said judgment may be affirmed and that its costs may be adjudged to it, &c.

FRANK T. LLOYD,
Attorney of Defendant in Error.

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NEW JERSEY SUPREME COURT.

JUNE TERM, 1906.

	THE STATE OF NEW JERSEY,	}	
	Def't. in Error.		In Error.
10	vs.		Affirmance and
	BARON M. ROSENBAUM,		Remittitur.
	Pl't'ff in Error.	}	

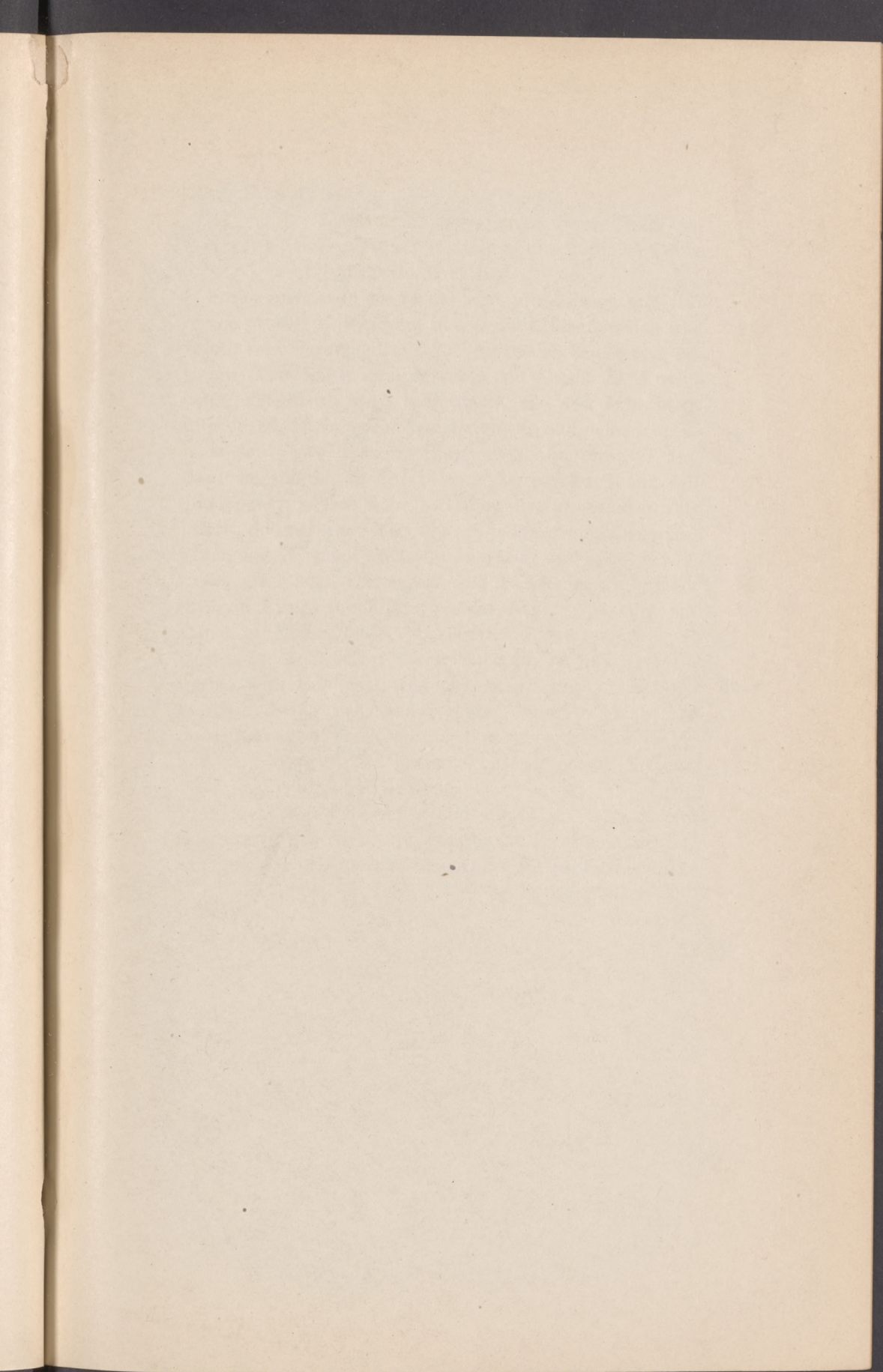
The court having heard the argument of counsel, and inspected the judgment removed by the writ in this cause, and duly considered the causes assigned for error,—

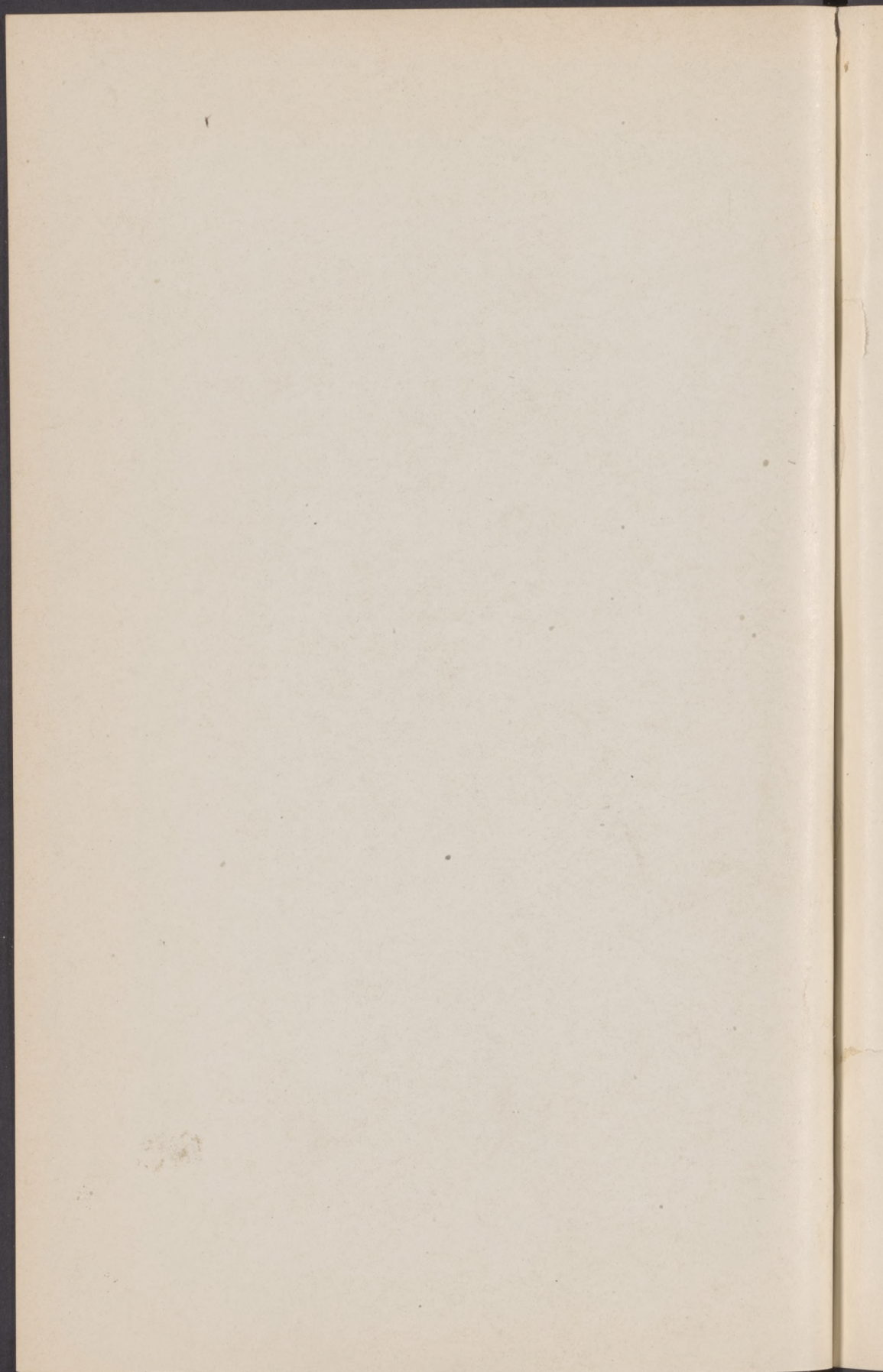
20 It is ordered that said judgment be in all things affirmed, and that the record be remitted to the Court of Quarter Sessions of Camden County to be proceeded in according to law.

Entered June 19, 1906.

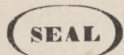
On motion of

FRANK T. LLOYD, Pros. etc.





NEW JERSEY, ss.



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

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between The State, complainant, and Baron M. Rosenbaum, defendant, upon indictment, manifest error hath intervened, to the great damage of the said defendant, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly 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 seventh day of July next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that 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 17th day of June, one thousand nine hundred and six.

S. D. DICKINSON,
Clerk.

F. D. WEAVER,
Attorney.

B

RETURN.

The answer of William S. Gummere, Esquire, Chief Justice of the Supreme Court of the State of New Jersey within named.

10 The record and proceedings of the plea whereof mention is within named, with all things concerning the same to the Court of Errors and Appeals in the last resort in all causes, within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

WILLIAM S. GUMMERE,
C. J.

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NEW JERSEY, ss.



The State of New Jersey to Charles V. D. Joline, Esquire, Judge of the Court of Common Pleas of the County of Camden, constituting the Court of Quarter Sessions in and for such County, holden at Camden, in and for the County of Camden, of the Term of September, in the year of 10
our Lord, one thousand nine hundred and five.

Because in the record and process, and also in giving of judgment upon a certain indictment against Baron M. Rosenbaum, late of the City of Camden, in the County of Camden, alleging that said Baron M. Rosenbaum as the agent of Abbie C. Doughten was entrusted by the said Abbie C. Doughten with the care of certain moneys of her the said Abbie C. Doughten, to wit, the sum of sixty-seven hundred dollars; and that the said Baron M. Rosenbaum being so entrusted as aforesaid, fraudulently and unlaw- 20
fully did take and convert the said sum of sixty-seven hundred dollars to his own use, the said Abbie C. Doughten being then and there the rightful owner of said moneys (*pro ut* the said indictment and the several counts therein; whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Baron M. Rosenbaum, as it is said, manifest error hath intervened to the great damage of the said Baron M. Rosenbaum, as from his complaint we have received in- 30
formation, 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 Baron M. Rosenbaum, 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 Supreme Court to be held at Trenton, on the second day of January next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court aforesaid, the thirteenth day of
10 December, one thousand nine hundred and five.

WM. RIKER, JR.,
Clerk.

F. D. WEAVER,
Attorney.

(Endorsed)

20

New Jersey Supreme Court.

The State of New Jersey	}	On Error.
vs.		
Baron M. Rosenbaum.		

Writ of Error.

30

Returnable January 2, 1906.

F. D. WEAVER,
Att'y.

The answer of Charles Van Dyke Joline, Esq., Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions of the Peace within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

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C. V. D. JOLINE,
Judge.

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STATE OF NEW JERSEY, }
CAMDEN COUNTY. }

Court of Quarter Sessions, holden before Charles Van
Dyke Joline, Judge.

The State

September Term, 1905.

vs.

\$41.12

Sur Indictment

10

Baron M. Rosenbaum.

Embezzlement.

Frank T. Lloyd, Esq.

Francis D. Weaver, Esq.

Camden County, To Wit:

Be It Remembered, That at a Court of Quarter
Sessions, holden at Camden, in and for the County of
Camden, on the second Tuesday of December, in the
year of our Lord one thousand nine hundred and four,
before the Honorable Charles V. D. Joline, Judge of the
said Court and of the Court of Common Pleas in and for
20 said County, no Justice of the Supreme Court of the State
of New Jersey being present in the Court House, and the
Grand Jury being desirous of making presentment of
sundry bills of indictment, according to the form of the
statute in such case made and provided, by the oath of
Henry B. Chew, William A. Chamberlain, Theodore B.
Davis, Herbert C. Felton, John Gill, John Hood, Paul
Heggan, Charles Irle, Richard S. Justice, Ferdinand Ket-
terer, George Leathwhite, Joseph S. Middleton, J. Watson
Matlack, Charles E. W. Moore, Isaac Pennypacker, An-
drew B. F. Smith, Francis F. Steinback, John C. Temple,
30 Raymond L. Warren, Kettridge Wheeler, Jesse S. White,
Richard H. Warrick and Henry J. West (Foreman), good
and lawful men of the said County of Camden, duly sum-
moned, and then and there sworn, affirmed and charged
to inquire for the State of New Jersey, in and for the
body of the said County of Camden;

It Is Presented, in manner and form following, that is to say:

The bills herewith presented are true bills.

HENRY J. WEST, Foreman.

Filed Feb. 27, 1905,

F. F. Patterson, Jr., County Clerk.

In the Court of Quarter Sessions of Camden County,
December Term, in the year of our Lord one thousand
nine hundred and four.

10

Camden County, To Wit:

The Grand Inquest of the State of New Jersey and
for the body of the County of Camden, upon their respec-
tive oath and affirmation, those who affirmed having first
alleged themselves conscientiously scrupulous of taking
an oath,

Present, that Baron M. Rosenbaum, late of the City of
Camden, in the said County of Camden, on the twenty-
seventh day of August, in the year of our Lord one
thousand nine hundred and four, at the city aforesaid, in
the county aforesaid, and within the jurisdiction of this
Court, was the agent of one Abbie C. Doughten, and as
the agent of the said Abbie C. Doughten was entrusted
by the said Abbie C. Doughten with the care of certain
moneys of her the said Abbie C. Doughten, to wit, the
sum of sixty-seven hundred dollars; and that the said
Baron M. Rosenbaum being so entrusted as aforesaid,
fraudulently and unlawfully did take and convert the
said sum of sixty-seven hundred dollars to his own use,
the said Abbie C. Doughten being then and there the
rightful owner of said moneys; to the evil example of all
others in like case offending, contrary to the form of the
statute in such case made and provided, and against the

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

FRANK T. LLOYD,
Prosecutor of the Pleas.

A true bill, Henry J. West, Foreman.
Filed Feb. 27, 1905,
F. F. Patterson, Jr., County Clerk.

10

CAMDEN SESSIONS.

State	}	Sur Indictment
vs.		
Baron M. Rosenbaum		

To the Honorable Charles V. D. Joline,
Judge of Camden Sessions:

Dear Sir—You are hereby requested to call
upon the stenographer of the Circuit Court to attend
20 either in person or by proxy upon the trial of the said
Baron M. Rosenbaum before the Camden Court of Quar-
ter Sessions, to exactly and truly take notes and record
verbatim all the evidence and proceedings of said trial.
The defendant has deposited with the Clerk of said Court,
the sum of ten dollars, according to the statute in such
case made and provided.

Yours truly,
F. D. WEAVER,
Attorney for Defendant.

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Which said indictment, with sundry other indictments,
was, to wit, on the twenty-seventh day of February, in
the year of our Lord one thousand nine hundred and five,
at the Court of Quarter Sessions, holden at Camden, in
and for the County of Camden aforesaid, before Charles
V. D. Joline, Judge of the said Court of Quarter Sessions

and of the Court of Common Pleas of said County, holden at Camden, in and for the County of Camden (no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the Grand Jury being desirous of making presentment of sundry bills of indictment according to the form of the statute in such case made and provided), duly delivered here in Court by the Grand Jurors aforesaid in and by said presentment, in due form of law to be determined.

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Whereupon, on this sixteenth day of November, in the year of our Lord one thousand nine hundred and five, before the Court of Quarter Sessions aforesaid, the defendant, Baron M. Rosenbaum, was ordered to be placed at the bar to plead, and on being charged by the Prosecutor plead not guilty, the trial of the cause was moved, whereupon the Court ordered the Sheriff to return the Venire Facias to him directed and delivered in this case with the following panel of Jurors, who being duly sworn took their seats in the box, to wit:

20

William H. Swope, s.	Benjamin W. Davis, s.
George Willnauer, s.	William P. Snyder, s.
Howard S. Justice, s.	Howard Andrews, s.
William W. Kitson, s.	Charles Githens, s.
William P. Toomey, s.	Levi C. Vanhart, s.
Kirby Garwood, s.	Colin A. Norcross, s.

and having heard the testimony of Abbie C. Doughten, s., Isaac Doughten, s., John S. Smith, s., Abbie C. Doughten, Rec., in behalf of the State, and having heard the testimony of Baron M. Rosenbaum, s., and John P. Ryan, s., in behalf of the defendant, and having heard the testimony of John S. Smith, Rec., and Abbie C. Doughten, Rec., in behalf of the State in rebuttal.

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The evidence being closed and counsel having summed up the cause to the Jury, the Jury retired after being charged by the Court, with Constable Carlin, sworn to

attend them, after an absence they returned into Court, and being called, all appear, and say they have agreed upon their verdict, and by their foreman, upon their oath do further say they find the defendant, Baron M. Rosenbaum, guilty as charged, and so say they all.

And afterwards, to wit, on the sixth day of December, in the year of our Lord one thousand nine hundred and five, before the Court of Quarter Sessions, at Camden
 10 aforesaid, cometh the said Baron M. Rosenbaum, and having been brought to the bar in his proper person to receive the judgment of the law.

Frank T. Lloyd, Esquire, Prosecutor of the Pleas, then moved for the judgment of the law.

Whereupon, on the said sixth day of December, in the year of our Lord one thousand nine hundred and five, at Camden, in the County of Camden, aforesaid all and singular the premises being seen by the Court herefully understood, it is considered and adjudged by the Court that
 20 the said defendant be confined in the State Prison at Trenton, N. J., at hard labor for a term of two years and six months and from thence until the costs of prosecution are paid.

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

I, Francis F. Patterson, Jr., Clerk of the County of Camden, do hereby certify that the foregoing is a true
 30 copy of the records in the case of the State vs. Baron M. Rosenbaum, filed and recorded in the Clerk's Office of the County of Camden.

In Testimony Whereof, I have hereunto set my hand
 and affixed my official seal, at Camden, this
 [SEAL] twenty-ninth day of December, A. D. 1905.

F. F. PATTERSON, JR.,
 Clerk.

BILL OF EXCEPTIONS.

CAMDEN COUNTY QUARTER SESSIONS.

THE STATE	}	On Indictment for Embezzlement.	10
v.			
BARON M. ROSENBAUM			

SEPTEMBER TERM, 1905.

20

Appearances:

For the State, FRANK T. LLOYD, ESQ., Prosecutor.

For the Defendant, FRANCIS D. WEAVER, ESQ., and
WILSON, CARR & STACKHOUSE.

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Before JOLINE, J., and a Jury.

THE CASE FOR THE STATE.

ABBIE C. DOUGHTEN, sworn.

By the Prosecutor:

- 10 Q. Miss Doughten, where do you live?
A. 639 Market street, Camden, New Jersey.
Q. How long have you lived in Camden?
A. Since 1892, this last time, but previous to that all
the rest of my life with the exception of nine years I
lived in Philadelphia.
Q. You were born here?
A. I was.
Q. Do you know the defendant, Rosenbaum?
A. I do.
- 20 Q. Where did you first see him?
A. At the West Jersey Hotel.
Q. When?
A. Some time the latter part of last August, last August a year, 1904, I think about the 24th of August.
Q. Under what circumstances did you meet him?
A. Simply met him as a guest at the same hotel.
Q. Were you stopping there at that time?
A. I was.
Q. Did you have any conversation with him about
- 30 securities or investments at the hotel?
A. You mean previous to this transaction?
Q. Yes.
A. No.
Q. Now, when, if at any time, did you place in his hands any money?
A. On the 27th of August, 1904.

Q. And for what purpose?

A. For the purpose of investing money in Chicago, Milwaukee & St. Paul Railroad stock.

Q. Chicago what?

A. Chicago, Milwaukee & St. Paul.

Q. Anything else?

A. The remainder of the money was given to him to invest in cotton and wheat.

Q. When was this?

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A. When was the first money given?

Q. Yes.

A. The 27th of August, 1904.

Q. How much?

A. \$200.

Q. And then subsequent to that how much was given?

A. Well, the balance of \$6,700; I don't remember just the amount; I think the second amount was \$300 and the other amounts were \$800 and \$1,000 and \$2,000.

20

Q. Making a total of how much?

A. \$6,700.

Q. And paid to him within what period of time?

A. From the 27th of August to the 5th of December, 1904.

Q. Within practically a little over three months?

A. Yes.

Q. Now, what were his instructions respecting the whole of this money, as to its investment?

A. His instructions?

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Q. What were your instructions to him as to what he was to put it in?

A. Put it in Chicago, St. Paul & Milwaukee Railroad shares and in cotton and wheat.

Q. The whole of it?

A. Yes; to use his own discretion as to the amount

he put in each. That amount was given him for that purpose.

Q. Did he say to you what his business was?

A. He told me he was a broker and speculated in the Bourse, Philadelphia.

Q. Do you know whether he had any office in the Bourse Building?

A. I do not; he didn't tell me he had any office, simply said he would invest my money.

Q. That he speculated there?

A. Yes.

Q. When was it, if at all, that you became uneasy about your property?

A. About the 5th of November.

Q. What occurred then?

A. Well, he had told me that he would draw my money out, the money that I put in, and \$10,000 profit on the 10th of November, and I became uneasy and asked him about the money, and he said that the money was all right, that it was not lost, but I would have to put more money up to protect what I had already there. I asked if he could draw the money out; he said he could not without great loss.

Q. When had he said to you that it would be worth \$10,000 at that time?

A. Oh, he told me that in the first place when I put the money in; that was the profit I was to make.

Q. \$10,000 on \$6,700?

A. Yes.

Q. Well, what happened then?

A. Well, I continued to get the interest.

Q. Was anything done in pursuance of that? Did you make any demand on him then?

A. I asked him whether the money was safe; he said it was.

Q. When did you first make a demand on him for the return of either the moneys or the securities?

A. On the 5th of November. He said he could not take it out and return it to me.

Q. He said what?

A. He said he could not without throwing it as a drug on the market and losing the whole amount.

Q. Did you receive from him any papers?

A. I received from him those two papers you hold in your hand. 10

(Said papers are marked for identification Exhibits P. 1 and P. 2.)

Q. I show you a paper dated Philadelphia, Pa., September 1, 1904, marked Exhibit P. 1. Under what circumstances did you receive that from him?

A. I received both of these papers in Philadelphia.

Q. I am asking about that one at this time.

A. I received them both at the same time.

Q. Oh, you received them both at the same time? 20

A. Yes.

Q. When did you receive them?

A. Received them in Philadelphia on the 5th day of September, 1904.

Q. When you say "Both these papers," you mean what,—P. 1 and P. 2?

A. I do; I mean both of them were given me at the same time.

Q. The other paper is dated December 5, 1904. I understand you to say both of them were given to you on the 5th of December in Philadelphia? 30

A. No, they were given to me in Camden, but they were written after an agreement to give them to me was written at his place where he was boarding, 1908 Master street, Philadelphia.

Q. And they were handed to you by whom?

A. By Baron M. Rosenbaum.

Q. The defendant?

A. Yes, sir.

Q. Miss Doughten, when did you last see Rosenbaum?

A. On the 5th day of December.

Q. Where was he then living?

A. He was living at 1908 Master street, Philadelphia.

Q. Do you know where he moved to from there?

10 A. Afterwards he boarded, I don't know how long, at the Hotel Hanover, 13th & Arch.

By the Court:

Q. What city?

A. Philadelphia.

Q. Then where?

A. Then afterwards he left Philadelphia.

By the Prosecutor:

20 Q. Didn't he go somewhere else from there? Didn't he go somewhere else in Philadelphia from the Hotel Hanover?

A. Not that I know of.

Q. How long did he remain there?

A. I can't tell you that; I don't know. I think he left there on the 17th of January, as far as I know.

The Prosecutor: I offer in evidence these two agreements.

30 By the Court:

Q. You spoke in your testimony of the West Jersey Hotel; where is that?

A. Down at the corner of Market and Delaware avenue, Camden.

Q. Camden, N. J.?

A. Yes, sir.

Mr. Carr: We have no objection to the agreements.

Q. Did you ever receive any of the principal of the moneys which you turned over to Rosenbaum?

A. I never did unless you count the interest as principal.

Q. Well, I am not talking about interest; I am talking about principal. 10

A. No, I never did.

Q. Did you ever receive any securities in response to your demand?

A. None but those two papers.

Q. And those are the only papers you received?

A. Yes, sir.

By the Court:

Q. By that you mean Exhibit P. 1 and P. 2? 20

A. Yes, sir.

By the Prosecutor:

Q. Who is Jennie M. Rosenbaum?

A. The wife of Baron M. Rosenbaum.

Q. What conversation, if any, did you have with Rosenbaum concerning the amount of \$4,900, and how did that come to be fixed in this paper?

A. It came to be fixed—on the Saturday Mr. Rosenbaum asked me if I would meet him relative to the business and I was not able to do so. On Sunday morning, I think it was, at half-past ten on the 4th of December, at 1908 Master street, he told me that my money was safe, but that it required protection, and if I would put up \$800 more to protect what I had already given him, that he would induce Mrs. Rosenbaum to 30

give me her note for \$4,900, he would pay the remaining amount himself on the 15th of February, and it was under those circumstances that that note was given me.

Q. Was anything said as to why—Why wasn't the amount of \$6,700 put in there, in this note?

A. Simply his reason was that he had promised Mrs. Rosenbaum not to ask me for any more money; he did so without her knowledge.

10 Q. And what did the \$1,800 represent, the difference? Had Mrs. Rosenbaum any knowledge of the \$1,800 that he had secured from you?

A. He said not, told me she had not.

Q. Now, you say he last lived, so far as you know, at the Hanover Hotel in Philadelphia. How late was that?

A. Well, I understood he left there the 17th of January.

Q. Of this year?

20 A. No, last year.

Q. 1905?

A. Yes, certainly, 1905.

Q. Up to what time, if at all, did you receive any interest on this note?

A. I received the interest, \$10 a week, up until the Saturday previous to the 17th of January.

Q. And from whom did you receive it?

A. I received it, excepting, I think, on one or two occasions, from Mr. Rosenbaum; and the first interest
30 came from his wife, from both of them.

(The two papers heretofore marked for identification, Exhibits P. 1 and P. 2, are now offered in evidence and read as follows: Exhibit P. 1. "Philadelphia, Pa., September 1, 1904. This is to certify that I this day agree to pay to Miss Abbie Doughten the sum of Ten Dollars per week as interest on the sum of Forty-nine Hundred

Dollars, money given to Mr. B. M. Rosenbaum by said Miss Doughten for the purpose of speculating on stocks, cotton and grain at his own discretion, such interest at Ten Dollars a week to be given to said Miss Doughten until the principal and profits are returned."

Exhibit P. 2. "Philadelphia, Pa., December 5, 1904. Four and one-half months from date I promise to pay to Miss A. Doughten the sum of Four Thousand Nine Hundred Dollars, money given to Mr. B. M. Rosenbaum 10 for speculative purposes on her account. This note is subject to renewal.

\$4,900.00.

JENNIE M. ROSENBAUM.")

Cross-examination:

By Mr. Carr.

Q. Miss Doughten, you spoke of Mr. Rosenbaum's representation that he was a stock-broker in the Bourse. that, do you mean the Bourse Building in the City of Philadelphia, Pa.? 20

A. I do.

Q. And you understood that he was to take this money to Philadelphia, or to the Bourse, and there speculate with it in the manner that you had requested.

A. I did.

Q. Your understanding was that it was to be invested in Philadelphia, is that true?

The Prosecutor: I object to the character of the question. It is not the witness's understanding, but it was the conversation that took place. 30

The Court: I sustain the objection; the rule of law is that you must elicit facts, not understanding.

Q. It was your purpose that Mr. Rosenbaum should invest this in the City of Philadelphia, wasn't it?

The Prosecutor: I object; the whole question, I submit, is what was the agreement between these people. Now, there were either words or writings to effect this agreement.

10 The Court: I think you must ask her what the agreement was.

Mr. Carr: Does the Court rule adversely?

The Court: Yes.

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL.]
Judge.

20

Q. What was Rosenbaum to do with the moneys entrusted to him?

A. He was to invest them in St. Paul Railroad stock, wheat and cotton.

Q. And where was he so to invest it?

A. Well, he was to invest it in those securities. I don't understand what you mean by "where." Do you mean the place?

Q. Yes.

30 A. Why, I suppose where such investments are made.

Q. Which is where?

A. I presume at the Bourse, Philadelphia; that is what I understood.

Q. Now you loaned Mr. Rosenbaum no moneys after December 5, 1905, did you?

A. I beg your pardon; I didn't hear that.

(Question repeated.)

A. I did not.

Q. I show you a paper dated Philadelphia, December 5, 1904, signed "Abbie C. Doughten" and ask you whether or not that is your signature. This paper is marked for identification Exhibit D. 1.

A. That is my signature.

Q. I call your attention to the following statement contained in Exhibit D. 1: "Received of Mrs. B. M. Rosenbaum note for four and one-half months (4½ mos.) from date for the sum of four thousand nine hundred dollars, which sum is in full of all demands and claims upon Mr. and Mrs. B. M. Rosenbaum. (Signed) Abbie C. Doughten." I ask you whether your former statement that you loaned sixty-seven hundred dollars is correct? 10

A. My former statement is correct. This was—

Q. That is all— 20

A. Yes, but I did not understand this when it was signed. My understanding of this—

Q. That is all, I think.

The Witness: Can I explain this?

The Court: Yes, you may; you may explain it.

The Witness: It was signed under very peculiar circumstances. This note, after I had given Mr. Rosenbaum the \$800 he handed me this to sign, and I signed it. My understanding of it when I read it was— 30

Mr. Carr: I object to your understanding.

The Prosecutor: I take it that a different principle of law comes in here. It is the condition of her mind that

induced her to sign that paper, and she has a right to say what was the condition of her mind when that paper was signed. It may be she was under a misapprehension or she believed it to contain other figures; therefore her condition of mind at this time is pertinent.

The Court: She has the right to state that, of course.

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL.]
Judge.

The Court: As I understand the law, the witness has a right to explain what led her to sign that paper.

20 The Witness: I signed this paper, reading it, and it was read in such a hurry that I did not realize what I was signing, and I came home and spoke of it afterwards and thought—

Mr. Carr: I object to what you said at home.

30 The Witness: My understanding when this paper was signed was that after the payment of the \$4,900 to me on Mrs. Rosenbaum's note, my claim on her ceased. It had nothing, in my understanding, to do with the money that already was owing to me, the balance of the \$6,700. I didn't read the note right, didn't understand it when it was signed, because I asked Mr. Rosenbaum, tried to see him afterwards, and I have a letter in my bag here. He told me it was a receipt for the note of Mrs. Rosenbaum. I had a lawyer to see him, and never was able to have any interview with him afterwards.

The Court: Madam, you cannot go too far. You have explained what occurred there on that day.

Mr. Carr: I now ask that the witness's answer, so far as her understanding is concerned, be stricken out, because it does not appear that that understanding was induced by the act of the defendant.

The Court: I will not strike it out, because the understanding as stated by her, is nothing more than the condition under which she signed, and the belief that she had at the time as to what she was signing.

10

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL.]

Judge.

Q. These moneys that you gave to Mr. Rosenbaum, were drawn out of bank, were they?

A. They were.

Q. Were they paid by checks?

20

A. No, they were paid in cash.

Q. Have you here your bank book?

A. I have not, no; it is at the Camden Trust and Safe Deposit Company. I was not notified to have it, so I didn't bring it.

Q. You did not bring it?

A. I did not; it is there.

Q. Now, can you say specifically the sums that you advanced to Mr. Rosenbaum and when?

A. I can say that the first sum of money was \$200 and the last was \$800 and there were no sums exceeding, I think \$2000; that was the largest sum given at any one time.

30

Q. Can you say specifically the amounts given and the times given?

A. I cannot say the exact time, but my bank book

will show that, the book that is at the bank. The first was given on the 27th of August; I gave him \$1,000 on the 24th of October, gave him \$800 on the 5th of December, and I gave him \$800, I think, sometime the latter part of September; I don't just remember the day.

Q. And that is all you can recall?

A. Well, it is not all I can recall; I know the amount given, but I can't remember the dates unless I had the book.

Q. And you can't recall how that amount is made up?

A. You mean the sums given on the different dates? I cannot, unless I have my bank book.

Q. Now can you recall any other sums given at any date?

A. How much have you there that I have already told you?

Q. No, I am asking you the question; can you recall any other amounts than those you have named?

A. I have told you \$1,000, \$200, \$300—

Q. When was the \$300 given?

A. One was \$200, the first.

Q. When was \$300 given?

A. One was \$300, one was \$1,000, another was \$800, and another was \$800, another was \$2,000. Have I the right to ask how much you have there? Mr. Lloyd, can I ask that?

The Prosecutor: I guess he won't answer you.

Q. Do you recall any other sums?

A. I recall the entire sum, but I cannot give the dates.

Q. Can you give the date of the \$300 transaction?

A. It was between the 27th of August, and I think the last of September. It was given in Camden, I know that.

Mr. Carr: I ask that the latter part of that answer be stricken out as not responsive.

The Court: I will let it remain.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]

Judge.

10

Q. And when was the \$2,000 transaction?

A. Why, it was in Camden, I gave the money to him.

Q. No, when?

A. You mean the date of it?

Q. Yes.

A. It was either the latter part of August or September; I don't remember the exact day. I know where it was given to him; I know where the money was taken from.

Q. Do you recall anything else?

20

A. I recall that all the amount of \$6,700 with the exception of \$2,600 was given to him in Camden and taken in cash from the Camden Trust & Safe Deposit Company.

Q. Now, Miss Doughten, isn't it true that you only actually loaned the defendant the sum of \$4,900, and that you stated to Mrs. Rosenbaum that you would have to account to relatives for the additional \$1,800 that they did not know you had expended,—isn't that true?

A. I did not; he had the whole amount given to him, every dollar of it. 30

Q. Is it not true that every receipt that you have from any of the Rosenbaums is expressed to be in \$4,900,—isn't that true?

A. Do you mean in the three papers that have been shown here?

(Question repeated).

A. Do you mean that I only have evidence—

(Question repeated).

A. In writing, yes.

Q. And you understand that some of them were for \$4,900, didn't you?

(Objected to). (Objection withdrawn).

10 A. Why, I understand from this paper, but it was not my understanding when I signed this.

By the Court:

Q. Which paper do you refer to now? See the back of it.

A. D. 1.

By Mr. Carr:

Q. But the other papers, notes, &c., you knew were \$4,900, didn't you?

20 A. I knew they were, but Mr. Rosenbaum promised me—

Mr. Carr: I object.

The Court: No, madam. You knew that they were?

The Witness: Certainly, I knew they were.

By Mr. Carr:

30 Q. And you never got any statement in writing for any other sum than \$4,900, did you?

A. I never did.

By the Prosecutor:

Q. Miss Doughten, how were these moneys paid to the defendant; in what form were these moneys turned over to Rosenbaum?

A. In cash.

Q. Any checks given at all?

A. Never.

Q. Where were they paid over to him or turned over to him?

A. They were paid to him, most of them, outside of with the exception of three payments, one of \$800, a second one of \$800, and a third one of \$1,000, in front of the Camden Trust & Safe Deposit Company in Camden.

Q. And where were those that you have mentioned paid? 10

A. In Philadelphia.

Q. Do you remember?

A. In Philadelphia.

ISAAC DOUGHTEN, sworn.

By the Prosecutor:

20

Q. Mr. Doughten, you are a brother of Miss Doughten, who has just been on the stand?

A. I am.

Q. Did you at any time learn of the possession of this property of your sister by Rosenbaum?

A. I did.

Q. When?

A. Some time the latter end of the year 1904.

Q. What did you do in consequence of that?

A. I endeavored to locate Mr. Rosenbaum. 30

Q. Where did you go to locate him?

A. I wrote him a letter to the Hotel Hanover where I understood he was located. I got no answer from that.

The Court: Where is the Hotel Hanover?

The Witness: Thirteenth and Arch, Philadelphia.

Q. When was it you wrote him a letter there?

A. Sometime in January, the early part of January, as I recall it.

Q. When?

A. The early part of January, as I recall it.

Q. Was it before the 17th?

10 A. Yes.

Q. Did you get any response?

A. No.

Q. Then what did you do?

A. I called down at the Hotel Hanover and endeavored to see what became of his mail. The clerk there told me—

Mr. Carr: I object to what the clerk told you.

20 Q. You say you got no answer; was your letter delivered.

A. It came back to me regularly through the post-office authorities afterward.

Q. Then what did you say you did?

A. I went to the Hotel Hanover to endeavor to find his address.

Q. Did you find him there?

A. I did not.

Q. Did you find his address?

30 A. I did not.

Q. Did you make inquiries concerning his address?

A. I did.

Q. Did you go anywhere else to find him?

A. In Philadelphia?

Q. Yes, or elsewhere.

A. No; I then endeavored to locate him at other

points, and ascertained that he was at a town down in New Jersey somewhere, I cannot recall the name of it, and we endeavored to locate him there, and for some reason we couldn't, and then I received a communication from a gentleman who said he thought he could locate him.

Q. Never mind what he said; what further effort did you individually make to get him?

A. When I got this latter information?

10

Q. Yes.

A. I gave it to the authorities here, the information I had.

Q. To whom?

A. Either to you or Mr. Smith, the detective.

Q. Do you know what was done in consequence of that?

A. He was arrested at or about the place that I designated at that time.

Q. How shortly after that information was given to my office?

20

A. Less than a week, I think.

Q. Do you know where? You were not present?

A. No, I was not there.

Q. Did you at any time see him? Did you ever see Rosenbaum?

A. This is the first time I have ever seen him.

No cross examination.

30

JOHN SMITH, sworn.

By the Prosecutor:

Q. Mr. Smith, you are one of the county detectives?

A. Yes, sir.

Q. Connected with what?

A. With the Prosecutor's office.

Q. Will you state when, if at any time you learned the whereabouts of the defendant in this case?

A. Around the latter part of May, about the 17th or 18th I think.

Q. What did you do in consequence of information you received?

10 A. Went to Brooklyn and arrested him in Brooklyn, New York.

Mr. Carr: I object to this; it seems to me wholly immaterial what this detective did when he arrested him.

The Court: I will let the answer stand.

The Prosecutor: If your Honor please, I intend to go into it fully. I propose to show that this man, as soon as he got this money skipped off.

20 Q. Under what circumstances was he arrested there, just tell the jury.

(Objected to. Objection over-ruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL.]
Judge.

30 A. Well, I looked for Rosenbaum from about the 1st of January up until the 20th of May, I think it was the 20th he was arrested, on a Saturday. We searched everywhere for him; went to Brooklyn in the company of two Brooklyn officers, and we covered an apartment house there where he lived, and on Saturday afternoon about half-past two or three o'clock he came out of the house, and we locked him up.

Q. How did you identify him?

Mr. Carr: In order to save these frequent objections, may I understand that there is a continuing objection to this line of testimony and an exception allowed? I do not want to waste the time of the Court, nor do I want to interrupt, but we do want the benefit of the ruling.

The Court: I think it would be much better to object to the questions, because it may be there will be some that are not objectionable. 10

Mr. Carr: My present motion then is to strike all of this answer out.

The Court: The objection is over-ruled.

(Whereupon, the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL] 20
Judge.

A. We were furnished a description of him by Miss Doughten, that he was a little lame in one of his legs, and that he invariably carried a cane, and we had an idea,—we didn't know just exactly the house where he lived—

(Objected to.)

Q. Never mind your ideas.

A. And we covered the whole block, and after being there part of the night and the biggest part of the day, we saw somebody come out of one of these houses that answered the description that Miss Doughten gave us, and we went a block below the way he was going, and I walked up to him, and I said, "Hello Rosenbaum," and he said, "Why, I don't know you; I never saw you 30

before in my life." I said, "That is funny; Mr. Irwin introduced me to you at the West Jersey Hotel."

Mr. Carr: I must object to these long statements.

The Court: I will over-rule the objection. This occurred in the presence of Mr. Rosenbaum; it is a conversation with him.

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. V. D. JOLINE, [SEAL]

Judge.

The Witness: He said, "I don't know you, I never saw you before." I said, "That is funny; Mr. Irwin introduced me to you at the West Jersey Hotel."

By the Court:

20 Q. Is the man about whom you are speaking the defendant in this case, who is present here to-day?

A. Yes, sir, he is the one I was talking to.

By the Prosecutor:

Q. The question I want to get is what was his attitude, what did he say to you as to his identity?

A. He said he was Rosenbaum.

Q. Then what happened?

30 A. Well, we had him held waiting requisition papers, and the requisition papers were issued out of both Governors' offices. They raised an objection; they had a lawyer there—

(Objected to.)

Q. Were you present?

A. I was; Mr. Rosenbaum was present at all of this.

Q. Did you hear it?

A. Yes, sir.

Q. Go on, tell what occurred in Court.

A. The case was taken into Court, and they wanted him released on a writ of habeas corpus.

Mr. Carr: I object; the record itself is the best evidence of what they wanted, not what Mr. Smith thinks they wanted

The Witness: His lawyer said—

10

The Court: Wait a moment. Were you present, and did you hear what occurred?

The Witness: The whole thing, yes, sir.

The Court: I will let you state what occurred in open Court, if you heard it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]

20

Judge.

A. Our interest was looked after by the Assistant District Attorney in Brooklyn. The question was not raised on the charge. Mr. Rosenbaum's lawyer went into Court and admitted—

Q. Just one moment; I haven't asked you what questions were raised; I have asked you simply the point as to what was done in Court so far as this defendant or his counsel was concerned.

30

The Court: Not what was not done, but what was done, so far as the Court was concerned.

The Prosecutor: No, I simply want to find out from you what he did or his counsel did in his presence to prevent his being brought back to Camden.

A. They applied for a writ of habeas corpus, and it was denied.

Mr. Carr: I object to that for the same reason, that the record itself is the best evidence.

The Court: Did you hear the Court deny it?

10 The Witness: Yes, sir.

The Court: The objection is over-ruled.

Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.

C. V. D. JOLINE, [SEAL]
Judge.

No cross examination.

20 State rests.

30 Mr. Weaver: We ask that a verdict of acquittal be directed upon the failure of the State to prove its case. The proofs thus far adduced by the State are that a sum of money said to be \$6,700 was entrusted to Mr. Rosenbaum for the purpose of investing in Chicago, Milwaukee, and St. Paul Railway stock and in cotton and grain, that Mr. Rosenbaum was to have absolute discretion as to the amounts respectively invested in each. There is also in evidence the Exhibits of the State, one of which states that Mr. Rosenbaum was advanced the sum of \$4,900 for the purpose of speculating in stocks, cotton and grain at his absolute discretion. The only proof on the part of the State is that the amount of money advanced by Miss Doughten has not been returned, nor have any tangible securities been returned in its place.

There must be in this case proof of a fraudulent conversion, and the proof must be that that fraudulent conversion occurred within the jurisdiction of the Court, in other words, in the State of New Jersey. We insist that even if there were proof of conversion, there is no proof that the conversion took place within the limits of the State of New Jersey; that the mere delivery of the property in the State of New Jersey is no proof of conversion within this State and that the mere retention of property is not in itself a conversion. 10

The Prosecutor: If the Court please, with respect to the point made in the first instance, I think there is some substance in it which I have overlooked in the production of the evidence, and I will therefore ask leave to recall the witness for the purpose of proving it.

Mr. Carr: I object as strongly as I know how to the proposition to reopen this case after the State has closed. It is manifestly unfair to this defendant after the State has closed its case, when any deficiency in evidence is pointed out to attempt to supply it. 20

The Court: Without further argument I will give the State an opportunity to do as it suggests and I will decide this motion after hearing that evidence.

Mr. Carr: On that point, we will be permitted to have an exception? 30

The Court: Certainly.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]
Judge.

MISS ABBIE C. DOUGHTEN, recalled.

By the Prosecutor:

Q. In answer to questions of mine you stated that your instructions to the defendant were to invest it in Chicago, Milwaukee and St. Paul Railroad stock, and in cotton and wheat. Did you ever have any conversation with the defendant as to what he had actually done with this money?

10 A. When I asked him at 1908 Master street, he told me that—

Q. No, the answer to that is yes or no.

The Court: You can answer the first question yes or no.

The Witness: He told me, certainly.

Q. What did he tell you he had done with the money?.

A. He had put it in St. Paul Railway stock and in Steel Preferred.

20 Q. Did he say in what proportions?

A. He did not.

Cross examination.

By Mr. Carr:

Q. He told you he had invested it in those two stocks?

A. He did.

30 Mr. Carr: The motion is renewed.

The Court: It is refused.

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]
Judge.

THE CASE FOR THE DEFENDANT.

(Mr. Carr opens the case for the defendant.)

BARON M. ROSENBAUM, SWORN.

By Mr. Carr:

10

Q. Mr. Rosenbaum, are you the defendant in this action?

A. Yes, sir.

Q. You know Miss Abbie Doughten?

A. Yes, sir.

Q. Did she ever entrust you with any moneys of hers?

A. Yes, sir, for speculative purposes.

Q. What sum or sums of money did she advance you altogether?

20

A. \$4,900.

Q. What were her instructions with regard to the use of the money?

A. To speculate with the money and use my own judgment in it? I could use the money in anything I saw fit in the way of speculation, railroad stocks, cotton, wheat, anything pertaining to speculation; I used the money accordingly, and the market went against me—

Q. Now what, in fact, did you do with the moneys?

A. I speculated with the money precisely as was agreed upon; I speculated with the money in St. Paul Railroad stock, United States Steel Preferred, cotton and Reading—

30

The Prosecutor: One moment; I object to your reading anything.

Q. Have you made a summarization of your investments in this matter?

A. I have.

Q. And made from what source?

A. From the slips, the speculation papers, the receipts of the speculation.

Q. Are these the receipts to which you refer? (Showing witness a bundle of papers marked collectively Exhibit D. 2 for identification). Are these the papers to which you refer?

A. Yes, sir, those are the marginal receipts. Those are the papers, those are all the speculative—

The Prosecutor: Just one moment; you are asked the question whether those are the papers?

Q. I now ask you, Mr. Rosenbaum, to state what Exhibit D. 2 for identification is?

The Prosecutor: I object; the papers must speak for themselves.

The Court: I will take the answer if this witness undertakes to say what they are.

(Question repeated.)

The Court: Now, you are not to enter into an explanation of those papers; you are to simply state what they are.

A. These are the receipts and the exhausted money of the speculation.

Q. Given to you by whom?

A. By the broker for the money.

M. Lloyd: I object to this; this is not the way to prove it. These papers are not provable in any such form; in

the first place they are not in the name of the defendant; they are in the name of a man named Ross. They don't even say what they are, and don't call anybody to prove what they are.

Mr. Carr: We propose to show that these are the moneys of Miss Doughten which were invested in this way, and that these are receipts from brokers; therefore I think it is perfectly proper and just that he should be allowed to exculpate himself by showing that he did invest the money. 10

The Court: I have permitted the witness to answer the question, and I will rule on each question as it occurs.

Q. Now, Mr. Rosenbaum, will you say what, if anything, these receipts have to do with the moneys advanced to you by Miss Doughten?

The Prosecutor: I object to this question, as not being the proper way to prove the papers, and also that the papers are irrelevant. 20

(Objection over-ruled.)

(Question repeated.)

A. Well, the money that was advanced to me I invested in these stocks, and these are the receipts for this money. In there you will find St. Paul slips, money speculated in St. Paul, United States Steel Preferred, cotton, and whatever miscellaneous stocks the money was put into. And there is a summarization there I have got which shows the entire thing. There are, I think, 620 shares of Chicago, Milwaukee & St. Paul Railroad shares. 30

Q. Did you make the summarization?

A. I did.

Q. I ask you whether this is the summarization that

you have made? (Handing witness paper.)

A. Yes, sir; that is it.

(Objected to.)

The Court: The papers must speak for themselves. The receipts you have put in and a summarization made by this witness, I think, is not admissible.

10 Q. I ask you, Mr. Rosenbaum, what the total of the receipts here produced show. You have made a calculation?

The Prosecutor: I object to that. I haven't any objection to the witness stating what he did with this money, but I object to any figuring by this witness on these receipts.

The Court: It is for the jury to determine from those papers. He can state how much he invested of this money.

20

Q. Will you state how much of the moneys of Abbie Doughten you invested?

A. Every dollar of it.

Q. And are the receipts here for these moneys or other moneys?

A. The receipts are there for those moneys. But in speculation you get in and get out, and those are the accrued profits as well, showing—may I say a word further?

30

The Prosecutor: I object to the witness volunteering anything.

Q. Now I ask you whether or not you invested any of this money in the State of New Jersey?

A. Not one cent.

Q. After the physical money was handed to you where was it taken?

A. To Philadelphia.

Q. Pennsylvania?

A. Pennsylvania.

Q. Is that true of all of it?

A. All of it, sir.

Q. I call your attention to the fact that the receipts, Exhibit D. 2, appear to be in the name of Ross. What explanation have you to make of that fact?

A. Well, in speculation one does not want his own name in it. Professional people, doctors, lawyers, and a good many people speculate— 10

The Court: You were asked the reason why these were in the name of Ross.

The Witness: For the same reason. I never have my own name in any kind of speculation.

Q. Will you say whether or not these receipts were in fact given to you? 20

A. They were given to me personally, handed to me for the money. You can't get those receipts unless you turn over the money for them.

Q. Now, what became of the moneys that Miss Doughten gave you? What ultimately became of them?

A. I beg your pardon.

Q. What ultimately became of the moneys entrusted to you by Miss Doughten?

A. I sold stocks with that money, that is, going short, and the market had a buoyant move, and exhausted the money. The market went against me. I am very sorry I lost the money; I couldn't help it. 30

Q. Won't you explain what you mean by the market going short,—that is what you mean by it?

A. Well, going short is a term meaning you want to play a market to go down. I expected a downward

move in the market last year, as it had had a terrific rise, there has been a big boom on. Of course, when stocks are going up, naturally there is a top sometime, and I thought I was striking the top.

Q. What do you mean by the market being buoyant?

A. That is, the market going up, an upward market, a market that has an upward tendency, and going down is what is called going short. I went short of the
10 market.

The Court: You were not asked to answer what you did; you were asked to answer what you meant by a buoyant market?

The Witness: Your Honor, it is a market that is an advancing market, that goes up with leaps and bounds.

Q. Now, the stocks that you purchased, were they
20 affected by this market condition?

A. They were, sir.

Q. And in what way were they affected?

A. The market, as I said, was in a buoyant mood; it went up, it advanced when I wanted the market to go down. I was playing for the market to go down.

Q. Will you say whether or not this money was invested in marginal speculation?

A. In marginal speculation.

Q. And when the market would go up after you had
30 bought short, what effect would that have upon your margin?

A. Exhausted the margins; you would either have to put up more money or lose those stocks.

Q. In other words, the money invested would be lost.

A. Yes, sir; the money would be lost.

Q. Did you ever make any use whatever of this money within the State of New Jersey?

A. No, sir, none whatsoever.

Cross-examination:

By the Prosecutor:

Q. Mr. Rosenbaum, you received from Miss Dough-
ten how much money, all told?

A. \$4,900, sir.

Q. And that was all?

10

A. That was all.

Q. Did you ever see this gentleman before? (Indi-
cating Detective Smith.)

A. I did, sir.

Q. When and where?

A. In Brooklyn, N. Y.

Q. And where else?

A. Well, he brought me here.

Q. Brought you back?

A. Yes.

20

Q. Did you talk to him about the amount of money
that you had gotten from Miss Doughthen?

A. I don't remember that I did.

Q. Didn't you say to him that you had gotten \$6,700,
but that you had lost it?

A. No, sir, I did not.

Q. Didn't your counsel say in your presence in the
hearing of the Court when the habeas corpus was ap-
plied for in Brooklyn that you made no point on the
amount, that that was correct, but that you should not
be brought back for other reasons? Didn't that occur?

30

A. I beg your pardon; I was in the back part of the
court room; I don't know one word that was said in the
court room. All I know is what the result was. I
couldn't hear a word; I was away back in the court room.

Q. You received this money in what form?

A. In cash.

Q. Did you receive any in checks?

A. No, sir.

Q. Not a cent?

A. Not a cent, sir.

Q. You received this whole \$4,900 in actual money?

A. In actual money, yes, sir.

Q. Where did you receive it?

10 A. The major portion of it was given to me in Philadelphia; a part of it was given to me here.

Q. You have stated you used the name of Ross in these papers because you did not want to have your own name appear?

A. Exactly, sir.

Q. Was that the same reason you wouldn't take checks, that you didn't want to have your name appear on them by way of endorsement?

(Objected to.)

20 A. No, sir; checks were never tendered to me.

Mr. Carr: I object; that is no part of the cross-examination at all; I object to it.

The Court: All the circumstances of this case may be gone into. I regard that as one, as part of the *res gestae*.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]

30

Judge.

Q. What is your answer? My question is whether your getting all of this money in money instead of checks, the usual course of business, was done so that your name would not appear on the back of those checks?

A. No, sir; the money was never tendered to me in any other way but cash.

Q. You always or usually went with Miss Doughten to the Bank and drew the money there, didn't you?

A. No, sir; not always.

Q. Usually, I asked you?

A. I think on two occasions I did.

Q. Of course, you showed these papers to Miss Doughten?

10

A. I beg your pardon?

Q. You showed these papers to Miss Doughten?

A. Well, I don't remember whether I showed them to her or not. I think she has seen them.

Q. You gave her the brokers' accounts, didn't you, that were being transacted on her behalf?

A. Oh yes, I showed her; she knew what I was doing with the money.

Q. Yes, you showed her the accounts, didn't you?

A. I showed her an account every week how the the money was being speculated. She knew exactly how I stood every week; she came to see me once a week.

20

Q. And you told her continuously that the money was being used to make up the margins to save the things that had been invested in?

A. It was for further speculation, sir, and used for further shares also, as well as margins. All our business was margin.

Q. Didn't you say to her that it was for the protection of that that you had already bought for her, that the market was running down?

30

A. No, sir; I did not.

Q. Did you make no effort whatever to protect the stocks you had bought on her behalf on a falling market?

A. Yes, as much as possible I protected her.

Q. Then with the market falling, and these things

coming out from under, you still used the moneys you got from her for further speculation in the same direction?

A. Further margins and further speculation. When the market would move—

Q. Won't you please answer the question?

(Question repeated.)

A. Yes, sir; for further margins and also for further speculation.

Q. Well, in spite of the use of it for the protection of that which was invested, the moneys were all lost, were they?

A. Yes, sir; they were all lost.

Q. Now, didn't you say to Miss Doughten that you wanted these moneys to protect that which she already had?

A. No, sir; I did not.

Q. Now, were, in point of fact, all of these moneys lost?

A. Yes, sir; every dollar of it lost.

Q. And up to what time was it lost? When was it all lost?

A. Well, that would be a very hard thing to tell; between the months of September and December. You see, you can't tell; one day—

Q. And that was the reason, was it, that this receipt was given marked P. 1 and P. 2 and B 1?

A. The reason that that—

Q. Won't you answer yes or no, whether it was the reason or not? I am asking you if that was the reason, because the thing had been closed out, the loss was ascertained, and you were then fixing the responsibility and giving these receipts?

A. To answer honestly, I would have to go into a little detail.

Q. Give your answer without going into detail at all.

A. No, sir.

Q. What were they given for?

A. These were for the purpose—. Miss Doughten came to my wife; she knew the money was lost; my wife is a very tender hearted woman, and she told her she would reimburse her for all this money. Furthermore, until the time she could reimburse her for the money, she would give her a weekly allowance of \$10 a week. That is the reason these papers were given. Miss Doughten came to my wife and plead with her to make her out a paper to that effect, so she could have it all right. 10

Q. But at the time these papers were given, the loss was ascertained, and the money was all gone?

A. Oh, the money was gone; she knew the money was being exhausted from the start, because the market went—

Q. Well, I say, at that time when these papers were given it was understood by both of you that the money was lost in the speculative movement? 20

Mr. Carr: I object; he cannot say what the other party understood.

Q. Well, in point of fact, the money was lost when these papers were given, wasn't it?

A. I don't know about that.

Q. What were they given for then? 30

A. I didn't give her these papers.

Q. You got your wife to do it, didn't you?

A. I didn't get my wife to do it at all, sir; in fact, Miss Doughten came to my wife unbeknownst to me in the first place, and they talked the matter over.

Q. Didn't you in person hand these papers, Exhibit P. 1 and P. 2 to Miss Doughten?

A. I gave them to Miss Doughten, I handed them to Miss Doughten per my wife, per my wife's request. It was arranged between those two.

Q. Whose transaction was this, yours or your wife's?

A. These transactions were my wife's.

Q. And your wife, of her own accord, did she, without any suggestion from you, put her name to a responsibility for a debt of \$4,900 for which neither you or she
10 is liable; is that correct?

A. Yes, sir; she did it without my responsibility.

Q. But at that time the money had disappeared and the stocks had been wiped out?

A. No, they hadn't all been wiped out at that time; they hadn't all been exhausted at that time.

Q. Did you ever produce to Miss Doughten any certificates of stock?

A. I did, sir.

Q. When?

A. She came up every week. I couldn't tell you the
20 numerous times when she saw these slips.

Q. Now, I thought you said all of these things were on margin?

A. They are margin.

Q. Then what were you doing with the stock?

A. That is what I am speaking about.

Q. I said a certificate of stock.

A. In marginal speculation, we don't have certificates—

Q. Can't you answer my questions without making
30 a speech? Certificates of stock,—did you ever show them to Miss Doughten?

A. I did not.

Q. Did you ever have any?

A. I did not; no, sir.

Q. I ask you again, at the time when you fixed this

amount or your wife fixed this amount of \$4,900 in this obligation that was given to Miss Doughten, it had been ascertained that this money was lost?

A. No, sir; the money was not all exhausted at that time, sir.

Q. Then when I asked you a few moments ago between what times this money was lost and you said between September and December 5th, that was not correct?

A. I didn't say any specified date, between September and December. 10

(The former testimony of the witness on this point was read by the stenographer.)

Q. Now, do you want to modify your answer?

A. Between the months of September and December; the money was lost between the months of September and December. You see, the fluctuations of the market every day would wipe out some stock. You see, when the market has risen, I can't follow every slip individually. 20

Q. I didn't ask you about that. When did you get the last money from Miss Doughten?

A. Some time the first part of December.

Q. And did you invest it right away?

A. I invested it in December, sir.

Q. I say, did you invest it right away after you got it—did you invest it right away?

A. I can't tell you the exact day; I invested it as soon as I saw the market was right to put it in. I think you will find some of these slips there, I think you will find some of them in December. 30

Q. How much money did you get from her about the 1st of December?

A. I don't remember the amount, sir.

Q. Can't you tell me about how much money you got from her in December, the 1st of December?

A. No, I can't tell you exactly; I don't remember.

Q. Was it \$500?

A. No, sir; it was more than \$500 I got.

Q. Was it \$1,000?

A. I don't remember, sir; the amount. May I say a word to your Honor?

The Court: If it relates to this case you can.

10

The Witness: I want to say something to the Prosecutor.

Q. Have you any books of account, Mr. Rosenbaum?

A. I haven't now; sir.

Q. Did you ever have any?

A. I did; sir.

Q. What did you do with them?

A. They were stolen out of my trunk.

Q. Where?

20

A. At 1908 Master street, where I was living.

Q. How much compensation were you getting for your services to Miss Doughten?

A. None; sir.

Q. Doing it as a friendly act?

A. Exactly; sir.

Q. And giving your wife's obligation for a debt that you did not owe as a friendly act?

Mr. Carr: I object; it is not shown he gave it.

30

Q. Well, then, I will put it in that form.

A. No, sir; I didn't hand her the obligation. Shall I go into detail, your Honor, about it?

The Court: You must not appeal to me, sir. The questions are asked you.

A. Well, I didn't give my wife's obligation.

Q. Did you know at the time you gave your wife's obligation that it was of no earthly account in this State?

Mr. Carr: I object; he said he did not give his wife's obligation.

The Prosecutor: Well, the witness has said he did. Now, I have a right to assume that he is telling the truth in the place that I prefer it. 10

The Court: The witness has stated he handed the obligation over to Miss Doughten.

Mr. Carr: The question is framed unfairly. It sounds as though he himself had given the obligation or had his wife do it. He merely handed over a piece of paper.

The Court: I think the Prosecutor should change the question to read, "Handed the obligation." 20

(Question repeated as follows:) Did you know at the time you handed your wife's obligation that it was of no earthly account in this State?

A. No, sir; I did not know it was of no earthly use.

Q. You understood then that you were giving a genuine obligation on which your wife was liable, or handing it over?

A. Exactly; sir.

Q. An obligation on which she was obligating herself to pay \$4,900? 30

A. Yes; sir.

Q. Now, that in face of the fact that you were getting nothing for your services, this money had been lost through speculation according to her direction, and yet your wife gives an obligation for the entire amount as you say, put into your hands?

A. Yes; sir.

Q. Now, I show you expenditures according to the slips, in December aggregating \$1,530.

A. These figure up \$1,530 you say?

Q. I understand they figure up \$1,530.

Mr. Carr: If the witness is in doubt as to the correctness of the calculation, he may compute it himself.

10

The Prosecutor: I would prefer that he would.

Q. Have you any doubt there was \$1,530?

A. I have no doubt at all; I presume there is that much here.

Q. And did that \$1,500 come in to the \$4,900 that was given in the form of a note by your wife?

A. All this money comes in the \$4,900, every dollar of it, sir.

20 Q. So that your wife gave a note for these moneys, \$4,900 with many hundreds of dollars still in your hands uninvested? Is that correct?

A. Not uninvested, sir; invested.

Q. Weren't they uninvested on the 5th of December? Wasn't every dollar of that money uninvested on the 5th of December?

A. No, sir; the market had a break in December, went my way in December and I drew out and reinvested, sir, and those are reinvestments as you will observe from the dates.

30

Q. You said you got the money from her?

A. You asked me when was the last time I got money from her; I said about the first of December. I invested that money and there was a break came in the market.

Q. Now, Mr. Rosenbaum, if the stocks that you had bought were all lost between September and December,

as you have testified, there were no profits—a rising market, I think you say?

A. You see the fluctuations; the same day the market has a drop—

Q. Won't you answer my question without undertaking to make an address?

A. Well, ask the question again, please.

(Question repeated.)

10

Mr. Carr: Now, I ask that the answer be repeated. It is a perfectly fair and proper answer.

(Answer repeated.)

A. Well, that is a very difficult question to answer.

Q. When this amount of \$4,900 was fixed, it was intended to cover the entire amount that Miss Doughten had invested, to close out the transaction, wasn't it?

A. The \$4,900?

Q. Yes.

20

A. That was for that purpose.

Q. Now, will you tell me then why you have lugged into this case \$1,530 of moneys lost in the month of December, after this settlement that you speak of took place?

A. I have not lugged anything into it, sir; what I have done is this: The market broke during the first week in December and naturally these slips I still held, which were almost valueless, came to the surface again; they were worth money. I drew out what I got out of that. You see they were worth money at the time, the first week in December. I drew the money out and made these reinvestments with that money.

30

Q. Whose money were you investing? You had gotten an acquittance from Miss Doughten and gave an obligation to her?

A. There were still some slips left.

Q. This was not on her account?

A. It was all the same account; I wasn't through with it.

Q. Did you make money on that?

A. No, sir; I didn't; you can see, there is the money exhausted.

Q. Did you make any money on it?

A. Any time I made any money—in the accrued
10 profits and pyramiding was done with that money. There are the slips.

Q. Did you in December, after the 5th of the month, make any money on Miss Doughten's account?

A. I made and I lost.

Q. What did you do with the profits?

A. They are there.

Q. They are put in these slips?

A. Yes.

Q. Then why did you charge them up to her if, in
20 point of fact, you closed out your balance with her December 5th and took a receipt from her in Philadelphia?

Mr. Carr: I object. The defendant does not charge her up with anything; he brings here the slips which show the whole investment transaction.

The Court: Proceed with your answer; sir.

Mr. Carr: I now ask that the question be ruled out on that ground.

30 (Objection over-ruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]

Judge.

A. These stocks, some stocks were not exhausted yet, as I told you before, some of these stocks were not

exhausted and the break came the first week of December, which put all these into life again. You take 10 shares of stock, we will say—

Q. I am not asking you for examples.

Mr. Carr: He has a perfect right to fully reply to your question. Go on, Mr. Rosenbaum.

The Prosecutor: I object to it.

10

The Court: The witness started to give an example, as I understood it, something which had no connection with this case. He can explain anything about this case, but he has no right to go outside of it and give an example in regard to something not connected with it.

By the Prosecutor:

Q. Mr. Rosenbaum, where are your account sales of these things?

A. What do you mean by the account sales?

20

Q. I mean the account between you and the broker.

A. That is the account.

Q. That is all the account you ever got?

A. Yes, sir; that is all you get in these broker shops.

Q. What sort of a broker shop is this, that you get nothing but this, don't get an account of sales and a statement of account?

A. All the bucket shops are alike, sir.

Q. This was a bucket shop, was it?

A. All bucket shops, brokerage shops, are all alike. 30

Q. This was a bucket shop, was it?

A. Yes, sir.

Q. What is your business?

A. I am in the portrait painting business, sir.

Q. Have you been dealing in the market?

A. Yes, sir; I have dealt in the market.

Q. That was your business part of the time?

A. Part of the time it was, sir.

Q. Had you abandoned the portrait business when you commenced to deal in the market?

A. No, sir; I never abandoned the portrait business.

Q. Did you invest moneys for anybody else?

A. No, sir; I have not invested money.

Q. For yourself?

10 A. For myself, I have invested money.

Q. Much?

A. Oh, yes, sir.

Q. During what time, Mr. Rosenbaum?

A. I presume I have been dealing with the stock market for the past 15 years, sir.

Q. Constantly?

A. No, sir; not constantly; on and off.

Q. Did you keep a separate account of Miss Dough-
ten's money?

20 A. Yes, sir.

Q. Kept it in Bank?

A. No, sir.

Q. Where did you keep it?

A. It was usually in the market; the money was usually up.

Q. You say you had to use it from time to time, didn't invest it right away; you did something with it?

A. Yes, sir; invested it right away.

Q. Didn't you say a while ago that you did not invest
30 it right away?

A. It may have been a day or so; had to wait for the market.

Q. What did you do with the money in the meantime, when she gave you \$1,000 or \$2,000?

A. Put it in my pocket and went down to the market and invested it.

- Q. Did you carry it around in your pocket?
- A. Yes, sir.
- Q. Won't you show me the account you kept of this money?
- A. They are contained in these slips.
- Q. I am not asking you about somebody else; you say you kept an account. Where is it?
- A. I didn't quite catch that.
- Q. You say you received so much money from Miss Doughten? 10
- A. Yes, sir.
- Q. And you kept a memorandum of it?
- A. Yes, sir.
- Q. Where is that memorandum?
- A. Moneys I received from her?
- Q. Yes.
- A. Well, I received it in this way—
- Q. I didn't ask you how you received it. I say, where is the memorandum of the money you received, that you kept? 20
- A. I had it in a book.
- Q. Where is that book?
- A. I told you it was stolen.
- Q. Did you make any effort to get from these brokers an account of sales, or a statement of account?
- A. Whose account do you mean?
- Q. Of whoever Ross is,—I don't know.
- A. That is the account, sir, you have got right there; there is no other account to be gotten. 30
- Q. I ask you if you ever got a statement of account from your brokers?
- A. No, sir; they didn't give me any statement, sir.
- Q. Do you mean to say the brokers did not give you an account of sales or a statement of the account showing the respective debit and credit side?

A. When you speculate that way, they do not.

Q. And this is all you get to know what has become of your money?

A. Yes, sir; that is all you get.

Q. Suppose you want to know how your account stands, what you have invested it in, how do you find out?

A. Figure it out by that.

10 Q. That is all you get from them?

A. Yes.

Q. They don't give you a statement of their expenditures and receipts on your behalf?

A. No, sir.

Q. And you never had anything of that kind to produce to Miss Doughten?

A. No, sir.

Q. How long was the \$10 a week paid on this transaction?

20 A. I don't know, sir.

Mr. Carr: I object. That is not part of the cross-examination. It was not developed in the main case for the defendant.

The Court: You may proceed; I will over-rule the objection.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

30

C. V. D. JOLINE, [SEAL]

Judge.

Q. How long was the interest or this amount of \$10 a week paid on this \$4,900 on Exhibit D. 1?

A. I believe until sometime in January.

Q. And then what happened?

A. Nothing; sir.

Q. Didn't you go away then?

A. Oh, yes; we went away.

(Objected to as not part of the case and not cross-examination.)

The Court: He is the defendant, and it is part of the *res gestae* of this case, and I will admit it.

10

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]
Judge.

Q. Where did you go?

(Objected to; objection over-ruled.)

(Whereupon the defendant, by his counsel prays a bill of exceptions which is allowed and sealed accordingly.)

20

C. V. D. JOLINE, [SEAL]
Judge.

A. We went East.

Q. Well, that is a big place; where did you go?

A. Went to Brooklyn; sir.

Q. Of course you gave Miss Doughten your address, didn't you?

(Objected to as before; objection over-ruled.)

30

(Whereupon, the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]
Judge.

Q. You let Miss Doughten know where she could find you?

A. My wife was in correspondence with her.

Q. When?

A. Up to the time; I am sure I couldn't tell you up to when, I don't know.

Q. Did either of you tell Miss Doughten where you were going?

10 A. She knew we were going away.

Q. Did she know where you were going?

A. Yes sir; she did.

Q. You knew that the officers hunted for you until May, from January to May, didn't you?

(Objected to as not cross-examination and immaterial; objection over-ruled.)

20 Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.

C. V. D. JOLINE, [SEAL]
Judge.

A. No, sir; how could I know, that the officers were hunting me?

Q. When you were arrested, did you voluntarily come back, or were you brought back under proceedings?

30 (Objected to as immaterial and irrelevant. Objection over-ruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is allowed and sealed accordingly.)

C. V. D. JOLINE, [SEAL]
Judge.

A. I came back under proceedings.

Q. Did you resist the application to have you brought back?

(Objected to as before. Objection over-ruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. V. D. JOLINE, [SEAL] 10
Judge.

A. Will you kindly explain to me that question?

Q. I will repeat it; I can't make it any plainer. Did you resist the application to have you brought back?

A. I don't know how you mean to construe that.

Q. Did you have it opposed; did you resist it?

A. Do you mean did I resist requisition?

Q. Yes.

A. Yes. 20

Q. Why didn't you say that? You knew what I meant.

A. No, sir; I didn't know how to construe it; didn't know what construction to put upon it.

Q. Why didn't you want to come back here and answer this case?

A. Because I had done nothing out of the way.

Q. You knew there was an indictment pending against you here, charging you with this crime, then?

A. After I was arrested, I knew it. 30

Q. And didn't you think it important that you should come here and clear your good name?

A. Well, certainly, I should think it would be important to clear my good name.

Q. Mr. Rosenbaum, who is the agent with whom

you had your dealings in the Brown Commission Company, and where can he be found?

A. He can be found at Fifth street, right near Chestnut.

Q. And what is his name?

A. Ryan.

Q. What is his first name?

A. I think it is John; I think it is; I am not sure.

10 Q. And where is his address?

A. 5th near Chestnut.

Q. Where? In what building?

A. On 5th street; it tells you the number there on those slips.

Q. 31 South 5th street?

A. Yes, sir.

Q. Is he there now?

A. I couldn't tell you, sir.

Q. Have you seen him lately?

20 A. I have not.

Q. When were these stocks all finally closed out?

A. In December.

A. When was your last communication with Mr. Ryan about them?

A. Well, somewhere thereabout, the latter part of December or perhaps the first of January.

Q. And did you get a statement then from him?

A. No, sir; there was no statement necessary; sir.

Q. Did the transaction then show a profit or a loss?

30 A. They exhausted this.

Q. Everything was cleaned out?

A. Everything was wiped out; sir.

Q. Have you totalled this up?

A. Yes, sir.

Q. What do they amount to?

Mr. Carr: I object; they speak for themselves.

The Court: It can be admitted to test the witness' recollection.

Q. They amount to \$6,995; don't they?

A. No, sir; they amount to more than that.

Q. More than that?

A. Yes, sir.

Q. And they are all Miss Doughten's?

A. Yes, sir.

10

By Mr. Carr:

Q. Mr. Rosenbaum, what is your first name?

A. Baron.

Q. That is not a title; is it?

A. No, sir.

Q. Your Christian name?

A. Yes, sir.

Defendant rests.

20

STATE'S REBUTTAL.

JOHN SMITH, recalled.

By the Prosecutor:

Q. Mr. Smith, did the defendant say to you at the time of being brought back on this requisition that he had received this \$6,700 from Miss Doughten?

30

A. He did.

No cross examination.

ABBIE C. DOUGHTEN, recalled.

By the Prosecutor:

Q. Miss Doughten, it has been stated by the defendant that he showed you this alleged account of sales, marked Exhibit D. 2. Is that true?

A. That is not true.

10 Q. Did you ever see them before?

A. I never saw them before.

Q. It was also stated by the defendant that he knew nothing about this receipt or agreement marked P. 1, and signed by Jennie M. Rosenbaum, except to hand it to you. Will you state whether he did know of its contents and whether it had been discussed between you?

20 A. It had been discussed between Mrs. Rosenbaum and myself on Sunday afternoon in their room at 1908 Master street. It was understood between us, that when I gave the last \$800, which was given on Monday to him, December 5th, that these notes should be given me. It was arranged on Sunday and they were given to me on Monday.

Q. And was he present and a party to that arrangement?

A. He was. We were all present, the three of us.

No cross-examination.

30 (By consent of Counsel, the defendant is permitted to call John F. Ryan; a witness in behalf of the defendant.)

JOHN P. RYAN, sworn.

By Mr. Carr:

Q. Mr. Ryan, what is your business, please?

A. Stock brokerage business.

Q. Where are you located?

A. 507 and 508 Betz Building and 31 S. 5th street, Philadelphia.

Q. Pennsylvania?

A. Yes.

Q. Are you connected in any way with the Brown Commission Company?

A. As an employee. 10

Q. And what is your position?

A. Manager of the 5th street office.

(The defendant is asked to stand up.)

Q. Do you know Mr. Rosenbaum, this gentleman here?

A. I know the gentleman; I don't know him by the name of Rosenbaum.

Q. By what name did you know him?

A. By the name of Ross.

Q. Did he have any dealings with your concern? 20

A. Yes, with our concern; yes, sir.

Q. And what was the nature of those dealings?

A. He bought and sold stocks on a margin.

Q. Did he, from time to time, obtain receipts from your Company?

A. He did.

Q. And those receipts were made out in the name of whom?

A. The name of Ross.

Q. I show you Exhibit D. 2, consisting of 138 papers bearing the name of the Brown Commission Company, and I ask you to say whether or not they are papers given to Mr. Rosenbaum, the defendant in this action. Just take your time and look them over. 30

A. They are papers made in my office, contracts

made in my office, yes, sir; or made in the office of the Brown Commission Company.

The Court: You haven't answered the question, sir.

(Question repeated.)

A. Yes, sir.

Q. Will you say whether or not they represent payments of money by Mr. Rosenbaum to your Company?

A. Yes, sir.

Q. And can you say whether or not they represent profits or losses sustained by Mr. Rosenbaum?

A. These contracts show losses. The contracts that show profits were retained.

Q. Do I understand that all of these papers represent losses by Mr. Rosenbaum?

A. They do.

Cross examination.

By the Prosecutor:

Q. Did you ever render,—I suppose you did—to Mr. Ross, as he was known to you, accounts or statements of his—

A. No, sir.

Q. Never did?

A. No, sir.

Q. How does a customer know what position his account is in?

A. He has his contracts to show for it and knows the amount of margins that is on them.

Q. This was wholly a marginal transaction?

A. Yes, sir.

Q. No legitimate business at all?

A. I don't know what you mean by that; the contract reads that if a man deposits the balance of the

money for a certificate, he can get his certificate made out in his name, sir; he simply pays the balance of the money.

Q. Did you buy certificates with these moneys?

A. We were not called upon for them; sir.

Q. You didn't do that?

A. No, sir.

Q. Did you render accounts to him of the profits that had been made?

10

A. He received his profit when he made it, sir.

Q. What was the condition of the market during the Fall of 1904, a rising or falling market?

A. That is a question that I cannot answer without referring to market reports.

Q. What is your best recollection, from September 1 to December 1?

A. It would only be guess-work, any answer I could give you, sir.

Q. Don't you recollect the general trend of the market a year ago?

20

A. Well, the market backs and fills every day, sir; not every day, but from week to week. Last week stocks dropped five or six points yesterday, and to-day they recovered those five or six points; so you see they fluctuate from day to day.

Q. Was it the same condition last year?

A. The same condition every year; yes, sir.

Q. It was not a constantly falling market last Fall?

A. I don't think it was.

30

Q. No, I didn't think so, either. How long was Ross transacting business with you?

A. Well, I guess—me, individually, my office? I don't know; I have seen him on the street for two or three years; that is the best of my knowledge.

Q. How long has he been doing business with your concern?

A. Well, he did some trading in the Broad street office before he came to my office.

Q. And when did he come to your office?

A. That I couldn't say without referring to my books.

Q. Well, about?

A. About two years ago, say, as near as I can judge.

10 Q. Have you brought with you your book accounts, showing the condition of his account?

A. No, sir.

Q. Have you been asked to bring that?

A. No, sir.

Q. You have such accounts, of course?

A. I think we have them. You see, our business is settled from day to day and the books are really sheets, you understand. Those sheets will accumulate, you know, in great number and after a certain time those
20 sheets are disposed of, more in order to make room than anything else.

Q. He was known to you under the name of Ross?

A. Yes, sir.

Both sides rest.

Mr. Weaver: Now, if your Honor please, our motion is for a direction of acquittal at this time, on not only the proof as adduced by the State but on the proof as
30 it now stands before the Court, for the reason, first, that there is no proof of conversion; second, because there is no proof that the alleged conversion was committed within the jurisdiction of this Court; third, because the uncontradicted testimony shows that all of the moneys were invested in stock speculation in the City of Philadelphia, Pa.; hence no conversion within this State;

fourth, because the uncontradicted testimony shows that the moneys were all invested in stock speculation and lost.

The Court: (After argument) I think I should refuse the motion.

(Whereupon the defendant, by his counsel prays a bill of exceptions which is allowed and sealed accordingly.) 10

C. V. D. JOLINE, [SEAL]
Judge.

(The papers heretofore marked by respective Counsel are now offered and admitted in evidence.)

DEFENDANT'S REQUESTS. (Not charged.)

8. The State having failed to affirmatively show a 20
fraudulent conversion within this State, the jury must acquit.

STATE V. ROSENBAUM.

CHARGE OF THE COURT.

JOLINE, J.

Gentlemen of the Jury: The indictment in this case charges that Baron M. Rosenbaum, late of the City of Camden, on the 27th day of August, 1904, at the city
10 aforesaid, was the agent of one Abbie C. Doughten, and as her agent was entrusted by the said Abbie C. Doughten with the care of certain moneys of her, the said Abbie C. Doughten, to wit, the sum of \$6,700; and that said Baron M. Rosenbaum, being so entrusted, did fraudulently and unlawfully take and convert said sum of sixty-seven hundred dollars to his own use, said Abbie C. Doughten being then and there the rightful owner of said moneys, in violation of the law of this State.

20 The 184th Section of the Crimes Act enacts, so far as it relates to this case, that any agent "entrusted with the collection or care of any moneys, who shall fraudulently take or convert the same, or the proceeds of the sale of the same, or any part thereof, to his own use, or to the use of any other person or persons whatsoever, except the rightful owner thereof, shall be guilty of a misdemeanor."

30 You will observe that the indictment is that this man, as the agent of Abbie C. Doughten, having received certain moneys from her hands, converted the money to his own use. Now, if you believe from the testimony in this case that the defendant received of Abbie C. Doughten moneys in the City of Camden with the intent at that time to convert the same to his own use, even though he did invest the same in stocks, if his intent was to invest in stocks for his own use and for his own purposes, then you may rightfully convict him of

the offense charged against him. Understand me; if you believe that when he received these moneys in the City of Camden, from Miss Doughten,—and it is admitted that he received certain moneys from her here—if at that time, he received them with the intent of using them for his own purposes,—to his own use, as the statute reads—then you will be justified in finding him guilty of the crime charged against him.

Now, there are certain facts in this case that are undisputed. One of them is that Miss Doughten did give him certain moneys in the City of Camden, that she did not give them to him by way of check, but that she drew the money and handed it over to him. It is admitted in the case that he did deal in stocks. It is proven, and not denied, by the broker that he had been dealing with him for two years. It is admitted that he received at least forty-nine hundred dollars from Miss Doughten. He produces here certain papers showing the moneys that he invested, the State claiming that he received sixty-seven hundred dollars from her, and the sum total, the footing up of these papers being, I believe, some sixty-nine hundred dollars. The State claims from that, that this was a part of this man's constant dealing with the firm in Philadelphia, and also that the fact that the papers show sixty-nine hundred dollars is an indication that he was dealing on his own account, and not on Miss Doughten's account. Miss Doughten certainly let him have forty-nine hundred dollars for the purpose of investing in stocks for her benefit, the agreement being, as she says, that they were to be invested in Chicago, Milwaukee & St. Paul, in cotton and in wheat. She says that he told her afterwards that he had invested this money in Chicago, Milwaukee & St. Paul and in Steel Preferred. The papers will show you whether he did invest it in those stocks, that is, the receipts which he

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has here. In considering the case you have got to take his testimony into consideration also with regard to how he was to invest this money? He tells a story which is different from that of Miss Doughten in regard to the investments. The State contends, gentlemen, from the fact that these things foot up sixty-nine hundred dollars, from the fact that he has said he was doing this gratuitously, and from the fact that he received from Miss Doughten a
 10 release from all claim when, as he alleged, there could be no claim against him on account of the gratuity which he was rendering her, from the fact that his wife gave a note for this claim of hers, from the fact that he went away from the State, and resisted a return to the State when requisition papers were issued against him, and from the fact, as they contend, that he did not let them know where he was going or his whereabouts, that there is evidence of guilt upon his part. I narrate a few of the facts that the state contends indicate evidence of
 20 guilt upon his part.

The defendant, on the other hand, alleges that Miss Doughten asked him to invest moneys for her in stocks, to speculate; that he did speculate and that all the money was lost; that he speculated upon margins with the Brown Commission Company, I think it is, the parties named in the papers marked Exhibit D. 2; that he lost all the moneys; that he did just what she asked him to do with regard to the investments, namely speculate, and that, for that reason, he is not liable.

30 Now, gentlemen, if you believe that to be true, that he received these moneys, from Miss Doughten to speculate with, that he did speculate with them and that he lost all of the moneys, of course there could be no criminality in his act; and you must take the case upon all the evidence that there is, and giving it the consideration of your best judgment, you must decide whether or not he

received these moneys with the intent to convert them to his own use, or whether he received them from Miss Doughten for the purpose named by him, namely, to speculate with, that he did honestly speculate as directed and lost them all.

In doing this you must give the defendant the benefit of every reasonable doubt, and if upon the whole case, you are satisfied, beyond a reasonable doubt of his guilt, you should convict him, but if you are not satisfied of it beyond a reasonable doubt you should acquit him. 10

I am requested to charge you as follows:

1. In order to justify a conviction in this matter, the State must prove a fraudulent conversion by the defendant to his own use of the moneys or property entrusted to him by his principal, and the evidence merely of neglect to pay over the proceeds of such a sale will not justify a conviction. 20

I will charge you that.

2. If the moneys were converted by the defendant anywhere else than in the State of New Jersey, there can be no conviction and the jury must acquit.

I charge you that.

3. If an agent, bailee or servant does with the property only what he has been authorized to do and has no felonious intent, he is not guilty of embezzlement.

That is true; I charge you that. 30

4. An agent who receives property in one State and converts the same in another is not guilty of embezzlement and cannot be prosecuted in the former State.

I charge you that, in connection with what I have already charged.

5. The receipt of the property constitutes no part of the offense unless accompanied by the intent at the time upon the part of the defendant to fraudulently convert the property to his own use and in the absence of such an intent, the offense was committed in the State where the property was converted.

I charge you that; I think I have charged it substantially.

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6. If a reasonable doubt exists in the mind of the jury as to whether the alleged conversion took place in the State of Pennsylvania or in the State of New Jersey, they must acquit the defendant.

I charge you that.

7. If the defendant invested the moneys in stocks pursuant to Miss Doughten's directions, and lost the said moneys in such speculation, the jury must acquit the defendant.

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I charge you that. The last request, No. 8, I decline to charge, therefore I will not read it.

You may retire.

The jury were afterwards called back and addressed by the Court as follows:

30 Counsel has stated to me that I called your attention to it as a fact that those papers footed up sixty-nine hundred dollars. All I meant to say was that the State claimed that they footed up sixty-nine hundred dollars, and it is for you to ascertain whether they do or not; the State merely making the argument, that, if they did foot up sixty-nine hundred dollars as claimed, that was an indication that he was speculating on his own account with these moneys. Counsel has asked me also to charge you that you should consider the testimony of

the defendant to the effect that the amount that he speculated with beyond the forty-nine hundred dollars was in a large measure made up of profits that he made out of moneys of Miss Doughten prior to that time. I so charge. The State requests me to call your attention with respect to this to the fact that he testified there were no profits made before December. I call your attention to this fact, gentlemen.

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DEFENDANT'S EXCEPTIONS.

The defendant, by his counsel, prays a bill of exceptions to the charge of the Court in each of the following particulars, viz:

1. To the refusal of the Court to charge the 8th request of the defendant; and a bill of exceptions is allowed and sealed accordingly.

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C. V. D. JOLINE, [SEAL]
Judge.

2. Also to that part of the charge of the Court which begins, "If you believe that he received the money with the intent of using it for his own purposes" and that which follows to the words, "Now there are certain facts in this case which are undisputed," and a bill of exceptions is allowed and sealed accordingly.

C. V. D. JOLINE, [SEAL] 30
Judge.

Filed December 29, 1905.

F. F. PATTERSON,
County Clerk.

NEW JERSEY SUPREME COURT

10	THE STATE OF NEW JERSEY, Defendant in Error, VS. BARON M. ROSENBAUM, Plaintiff in Error.	} ASSIGNMENT OF ERRORS.
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20 Afterwards, that is to say, on the third Tuesday of February, in the year of our Lord, one thousand nine hundred and six, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, comes the defendant, Baron M. Rosenbaum by Francis D. Weaver, his attorney, and says, that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

30 (1) Because the Court before whom, etc., at and upon the aforesaid trial of the issue joined between the parties aforesaid, permitted John Smith, a witness produced on behalf of the State, to testify, under what circumstances the defendant was arrested, what occurred in Court upon the defendant's arrest, and what the defendant did to prevent his return to Camden, and because the said Court refused to strike out such testimony when thereunto afterwards requested.

(2) Because the Court permitted the State to reopen its case, and thereupon admitted additional evidence, in

behalf of the State of New Jersey, to the prejudice of the said defendant.

(3) Because the Court refused, at the close of the State's case, to direct the jury to acquit the defendant.

(4) Because the Court, after both sides had rested, upon the request of defendant's counsel refused to direct a verdict in favor of the defendant.

(5) Because the Court declined when thereunto requested by counsel, to charge the jury the defendant's eighth request. 10

(6) Because the Court charged the jury "If you believe that when he received these moneys," and that which follows including, "then you will be justified in finding him guilty of the crime charged against him."

(7) Because the defendant suffered manifest injury in the admission and rejection of testimony, whether objection was made thereto or not, and in the charge of the Court.

Therefore, the said Baron M. Rosenbaum prays that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that the said Baron M. Rosenbaum may be restored to all things he has lost on occasion of the said judgment, and that the Prosecutor of the Pleas, in and for the County of Camden, on behalf of the State of New Jersey, may rejoin to the said errors, etc. 20

FRANCIS D. WEAVER,
Attorney for Plaintiff in Error. 30

Due and legal service acknowledged.

FRANK T. LLOYD,
Attorney of Defendant in Error.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, Defendant in Error, VS. BARON M. ROSENBAUM, Plaintiff in Error,	} SUR INDICTMENT. JOINDER IN ERROR.
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20 And now comes the Defendant in Error and says that
 there is no error in the record and proceedings aforesaid,
 or in giving judgment aforesaid, and therefore it prays
 that the said judgment may be affirmed and that its costs
 may be adjudged to it, etc.

FRANK T. LLOYD,
 Attorney of Defendant in Error.

