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# New Jersey Supreme Court

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## Writ of Error.

(*March 10, 1925*)

The State of New Jersey, ss:

The State of New Jersey to our Court of Oyer and Terminer, of the County of Morris.

(Seal)

GREETING: Because in the record and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey against James H. Bolitho for malfeasance and etc., said indictment being Number 49 of the January Term, 1925, of the Elisor Grand Jury of the County of Morris, which indictment was found in our Court of Oyer and Terminer, and in and for said County heard and determined, manifest error hath intervened to the great damage of him, the said James H. Bolitho, as and from his complaint we have received information, we being willing in that behalf to correct the error in due manner, if any there shall be, and that speedy justice to him, the said James H. Bolitho, do command you that if judgment be thereon given that then you do send the record and proceedings aforesaid together with all things touching and concerning the same, to us under your seal, distinctly and openly and this writ so that we have them before our Supreme Court of Judicature at Trenton, on the 29th day of October, 1925, that inspecting the record and proceedings aforesaid we may further do there-

upon for correcting the error that which of right and according to law shall be fit to be done.

Witness, William S. Gummere, Chief Justice of our said Supreme Court at Trenton, this Ninth day of October, in the year of our Lord Nineteen Hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

JNO. A. MATTHEWS,
Attorney for Jas. H. Bolitho.

State of New Jersey,
County of Morris, to wit.

Be it Remembered, That at a Court of Oyer and Terminer holden at Morristown, and in said County of Morris, on the second Tuesday in March in the year of our Lord Nineteen Hundred Twenty-five by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, in and for the said County of Morris, by the oath of D. Farrand Sturgis, Warren H. Barton, Chester Bayliss, John D. Budd, William F. Comly, Homer W. Dixon, J. Willard Farrow, Elwood B. Houser, William D. Jardine, George Jennings, Lewis K. Larrison, Edward H. Lum, Gilbert H. Lunger, Charles L. Mandeville, Francis H. McCue, William C. Spargo, Francis E. Stults, George S. Thompson, William H. Tonking, Fred Van Duyne, Joseph E. Walsh and Robert B. Ward, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:



## Indictment for Malfeasance.

(*Filed May 11, 1925*)

IN THE COURT OF OYER AND TERMINER OF MORRIS COUNTY, JANUARY TERM, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWENTY-FIVE.

Morris County, to-wit:

The GRAND INQUEST of the State of New Jersey, in and for the body of the County of Morris, upon their respective oaths, present that

JAMES H. BOLITHO,

late of the Town of Morristown, in the County of Morris aforesaid on the Twenty-ninth day of May, in the year of our Lord one thousand nine hundred and twenty-three, was, and for a long time theretofore had been, and still is, Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said Office, and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris and to prosecute all persons who should violate any of the criminal laws of this State within the said County of Morris, and to perform the duties of said office of Prosecutor of the Pleas with diligence and energy to the best of his understanding and ability; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present

that on the Twenty-ninth day of May, in the year of our Lord one thousand nine hundred and twenty-three, there were pending in the Court of Quarter Sessions of the County of Morris two certain indictments, to-wit, First, an indictment found against Joe Bodjodan, Michael Arkie and John Doe (the said John Doe being later identified and impleted as John Hudock, alias Haydock) by the Grand Inquest for the State of New Jersey and for the body of the County of Morris, at the October Term, Nineteen Hundred and Twenty-one, of the Court of Oyer and Terminer of the County of Morris and received and filed in the Court of Quarter Sessions of the County of Morris on the Twenty-seventh day of October, Nineteen Hundred and Twenty-one, wherein the said Joe Bodjodan, Michael Arkie and John Doe (the said John Doe being later identified and impleted as John Hudock, alias Haydock) were charged with the criminal offenses of larceny of, and the receiving of stolen goods, the property of one Charles Palko, at the Town of Morristown, in the County of Morris, on the Twenty-fifth day of August, Nineteen Hundred and Twenty-one; the second indictment being found against Peter Kisik, John Hudock and John Korvach, by the Grand Inquest for the State of New Jersey, in and for the body of the County of Morris, at the October Term, Nineteen Hundred and Twenty-two, of the Court of Oyer and Terminer of the County of Morris and received and filed in the Court of Quarter Sessions of the County of Morris on the Eleventh day of October, Nineteen Hundred and Twenty-two, wherein the said Peter Kisik, John Hudock and John Korvach were



charged with criminal offenses of attempted robbery from and attempt by false pretenses to obtain the property of, one Bertha C. Harmon, in the Township of Passaic, in the County of Morris on the Sixth day of October, Nineteen Hundred and Twenty-two; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law in this behalf, and to enable the said John Hudock, alias Haydock, otherwise known and designated as John Doe, to escape the just punishment which according to the law of this State should have been imposed upon him, did, on the Twenty-ninth day of May, in the year of our Lord, one thousand nine hundred and twenty-three, at the Town of Morristown, in the County of Morris and within the jurisdiction of this Court, unlawfully, maliciously, wilfully, corruptly and knowingly, under color of his office as Prosecutor of the Pleas of the County of Morris aforesaid, take, accept and received from the said John Hudock, alias Haydock, otherwise known and designated as John Doe, a large sum of money, to-wit, the sum of Three Hundred Dollars, as a gift, gratuity, bribe and pecuniary reward and in consideration of said sum of money, to-wit, the said sum of Three Hundred Dollars, then and there received by him, the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, did refrain from prosecuting the said John Hudock, alias Haydock,

otherwise known and designated as John Doe, for the offenses charged to him in said indictments, with the diligence, energy, ability and understanding required of him, the said James H. Bolitho, as Prosecutor of the Pleas as aforesaid, and did so manage and dispose of said indictments that the said John Hudock, alias Haydock, otherwise known and designated as John Doe, did escape the just punishment which according to law and justice should have been imposed upon him, and did mislead and deceive in the Court of Quarter Sessions of the County of Morris respecting the true facts and evidence of the offenses then and there pending and charged against the said John Hudock, alias Haydock, in the indictments above mentioned in order that the said Court might thereby be induced to impose a less onorous sentence upon the said John Hudock, alias Haydock, than the said Court might impose, were the true facts and evidence fairly and rightly presented to the said Court, contrary to the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said

James H. Bolitho

late of the Town of Morristown, in the County of Morris aforesaid, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, was and still is,



Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris, and to prosecute all persons who should violate any of the criminal laws of this State within the said County of Morris, and to present the evidence against such violators of the criminal laws to the proper Grand Jury and Court of the County of Morris aforesaid; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, at the Town of Morristown aforesaid, in the County of Morris aforesaid, and within the jurisdiction of this Court, the said James H. Bolitho, Prosecutor of the Pleas of the said County of Morris, as aforesaid, then and there had knowledge that on or about the Fifteenth day of October, Nineteen Hundred and twenty-three, one Pasquale Mutarella had, in said County of Morris, sold, delivered and furnished intoxicating liquor in violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State; and the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, then and there well knew that the said Pasquale Mutarella was guilty of a misdemeanor and violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act,"

in that he, the said PASQUALE MUTARELLA, had, at the time and place aforesaid, unlawfully and in violation of said "Prohibition Enforcement Act," sold, delivered and furnished intoxicating liquor in said County of Morris, and it then and there became the duty of the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, to prosecute the said PASQUALE MUTARELLA, for the offense aforesaid, so committed by the said PASQUALE MUTARELLA as aforesaid, and to use all reasonable and lawful diligence for the arrest, indictment and conviction of the said PASQUALE MUTARELLA for the offense aforesaid, so committed by the said PASQUALE MUTARELLA as aforesaid; and the GRAND INQUEST aforesaid, on their respective oaths aforesaid, PRESENT that the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him, and intending to pervert and obstruct justice and the due administration of the law in this behalf, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, and from that day to the day of the taking of this inquisition, in the County of Morris aforesaid, has unlawfully, maliciously, wilfully, corruptly and knowingly failed and neglected to prosecute the said PASQUALE MUTARELLA for the violation of the laws of the State of New Jersey aforesaid, to wit, the "Prohibition Enforcement Act" of this State so committed by the said PASQUALE MUTARELLA as aforesaid, as according to his duty as Prosecutor of the Pleas as aforesaid, and the laws of this State, he ought to have done, but he, the said JAMES H. BOLITHO,



Prosecutor of the Pleas as aforesaid, in breach and violation of the duty of his office as such Prosecutor of the Pleas, has suppressed, concealed and stifled the evidence of such violation of the laws of the State of New Jersey by the said PASQUALE MUTARELLA so committed as aforesaid, contrary to the form of the statute in such case made and provided, to the evil example of all others in like case offending and against the peace of this State, the government and dignity of the same.

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that the said

JAMES H. BOLITHO

late of the Town of Morristown, in the County of Morris aforesaid, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, was and still is, Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris aforesaid, and to use all reasonable diligence to prevent the commission of crimes in said County of Morris aforesaid by causing and procuring the arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris aforesaid; and the GRAND IN-

QUEST aforesaid, upon their respective oaths aforesaid do FURTHER PRESENT that on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, at the Town of Morristown aforesaid, in the County of Morris aforesaid and within the jurisdiction of this Court, the said JAMES H. BOLITHO, Prosecutor of the Pleas of said County of Morris, as aforesaid, then and there had knowledge that on or about the Fifteenth day of October, Nineteen Hundred and Twenty-three, one PASQUALE MUTARELLA had, in said County of Morris, sold, delivered and furnished to Charles Bright and Anne C. Winship, or one of them, intoxicating liquor in violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State, and that the said Anne C. Winship had on said Fifteenth day of October, Nineteen hundred and twenty-three, in payment of said intoxicating liquor so unlawfully sold, delivered and furnished as aforesaid, drawn, uttered and delivered to the said PASQUALE MUTARELLA a certain check and order for the payment of money, drawn upon the National Union Bank of Dover, New Jersey, in the amount of Three Hundred Twelve Dollars and dated the Fifteenth day of October, Nineteen hundred and twenty-three, and that the said check upon its presentation to the said PASQUALE MUTARELLA to the Bank aforesaid had not been paid and that the said PASQUALE MUTARELLA had not recovered thereon the said sum of Three Hundred Twelve Dollars, the purchase price of the intoxicating liquor so unlawfully sold by the said PASQUALE MUTARELLA as aforesaid; and the GRAND INQUEST aforesaid, on their respective



oaths aforesaid, PRESENT that the said JAMES H. BOLITHO, Prosecutor of the Pleas aforesaid, well knowing the premises, and not regarding the duties of his said office but perverting the trust reposed in him and intending to pervert justice and the due administration of the law in this behalf, and to aid and assist the said PASQUALE MUTARELLA in the commission and perpetration of his said offense against the laws of the State of New Jersey, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, at the Town of Morristown aforesaid, in the County of Morris aforesaid and within the jurisdiction of this Court, unlawfully, maliciously, wilfully, knowingly and corruptly did counsel and advise the said PASQUALE MUTARELLA to subscribe and swear to a certain criminal complaint before one Henry H. Schroer, a Justice of the Peace of said County of Morris, wherein it was charged that on the Fifteenth day of October, A. D., Nineteen Hundred and twenty-three, at the Town of Dover, in the County of Morris, one Anne Winship of said Town of Dover, with intent to defraud, did draw and deliver a check in the amount of Three Hundred Twelve Dollars to the said PASQUALE MUTARELLA, said check being drawn upon the National Union Bank, Dover, New Jersey, and the said Anne C. Winship, at the time of the drawing and delivering said check, did not have sufficient funds in or credit with the said National Union Bank at Dover, New Jersey, contrary to the form of the statute in such case made and provided and to thereby procure the issuance of a warrant by the said Henry H. Schroer, Justice of the Peace as

aforesaid, for the arrest of the said Anne C. Winship on said complaint, with intent thereby to oppress the said Anne C. Winship and thereby cause and induce the said Anne C. Winship to pay to the said PASQUALE MUTARELLA the said sum of Three Hundred Twelve Dollars, then and there well known to the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, to be the purchase price of the said intoxicating liquor so sold, delivered and furnished by the said PASQUALE MUTARELLA in violation of the laws of the State of New Jersey as aforesaid, and the said PASQUALE MUTARELLA did then and there acting under the counsel and advice of the said JAMES H. BOLITHO, Prosecutor of the Pleas aforesaid, subscribe and swear to the complaint aforesaid and procure the issuance of a warrant thereby for the arrest of the said Anne C. Winship as devised and intended and a warrant for the arrest of the said Anne C. Winship was thereupon issued by the said Henry Schroer, Justice of the Peace aforesaid, and the said Anne C. Winship was thereupon arrested under and by virtue of said warrant and upon the arrest of the said Anne C. Winship, she, the said Anne C. Winship, did thereupon pay to the said PASQUALE MUTARELLA the said sum of Three Hundred Twelve Dollars as and for the purchase price of the intoxicating liquor so unlawfully sold, delivered and furnished by the said PASQUALE MUTARELLA in violation of the laws of the State of New Jersey as aforesaid, and the said JAMES H. BOLITHO, Prosecutor of the Pleas aforesaid, did then and there, well knowing the premises and in breach and violation of the duty of his office as Prosecutor of the Pleas of said County of Morris and with the corrupt intent aforesaid, aid and assist the said PASQUALE MUTARELLA in the making of the criminal complaint aforesaid and in the procuring of the warrant aforesaid and arrest of the said Anne C. Winship as aforesaid, contrary to the form of the statute in such case made and provided, to the evil example of all others in the like case offending and against the peace of this State, the government and dignity of the same.



AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that the said

JAMES H. BOLITHO

late of the Town of Morristown, in the County of Morris aforesaid, in the State of New Jersey aforesaid, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, was and still is Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris aforesaid, and to use all reasonable diligence to prevent the commission of crimes in said County of Morris by causing and procuring the arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris aforesaid; and the GRAND INQUEST aforesaid, upon

their respective oaths aforesaid, do FURTHER PRESENT that on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, at the Town of Morristown aforesaid, in the County of Morris aforesaid, and within the jurisdiction of this Court, the said JAMES H. BOLITHO, Prosecutor of the Pleas of said County of Morris as aforesaid, then and there had knowledge that on or about the fifteenth day of October, Nineteen Hundred and twenty-three, one PASQUALE MUTARELLA had, in said County of Morris, sold, delivered and furnished to Charles Bright and Anne C. Winship, or one of them, intoxicating liquor in violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State and that the said Charles Bright on the Second day of November, Nineteen hundred and twenty-three in payment of said intoxicating liquor so unlawfully sold, delivered and furnished as aforesaid, had drawn, uttered and delivered to the said PASQUALE MUTARELLA a certain check and order for the payment of money, drawn upon the Newton Trust Company of Newton, New Jersey, in the amount of Three Hundred Fifteen Dollars, dated the Second day of November, Nineteen Hundred and Twenty-three, and that said check upon its presentation by the said PASQUALE MUTARELLA to the Bank aforesaid, has not been paid, and that the said PASQUALE MUTARELLA had not recovered thereon the said sum of Three Hundred Fifteen Dollars, the purchase price of the intoxicating liquor so unlawfully sold by the said PASQUALE MUTARELLA as aforesaid; and the GRAND INQUEST aforesaid on their respective oaths aforesaid,



PRESENT that the said JAMES H. BOLITHO, Prosecutor of the Pleas aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him, and intending to pervert justice and the due administration of the law in this behalf, and to aid and assist the said PASQUALE MUTARELLA in the commission and perpetration of his said offense against the laws of the State of New Jersey, on the Twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-three, at the Town of Morristown aforesaid, in the County of Morris aforesaid and within the jurisdiction of this Court, unlawfully, maliciously, wilfully, knowingly and corruptly did counsel and advise the said PASQUALE MUTARELLA to subscribe and swear to a certain criminal complaint before one Henry H. Schroer, a Justice of the Peace of said County of Morris, wherein it was charged that on the Second day of November, A. D., Nineteen hundred and twenty-three, at the Town of Dover, in the County of Morris, one Charles D. Bright, of the said Town of Dover, with intent to defraud, did draw and deliver a check in the amount of Three hundred Fifteen Dollars to the said PASQUALE MUTARELLA, said check being drawn upon the Newton Trust Company, Newton, New Jersey, and that the said Charles D. Bright, at the time of drawing and delivering said check did not have sufficient funds in or credit with the said Newton Trust Company, Newton, New Jersey, contrary to the form of the statute in such case made and provided, and to thereby procure the issuance of a warrant by the said Henry H. Schroer, Justice of the Peace as aforesaid, for

the arrest of the said Charles Bright on said complaint, with intent thereby to oppress the said Charles Bright and thereby cause and induce the said Charles Bright to pay to the said PASQUALE MUTARELLA the said sum of Three Hundred Fifteen Dollars, then and there well known to the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, to be the purchase price of the said intoxicating liquor so sold, delivered and furnished by the said PASQUALE MUTARELLA in violation of the laws of the State of New Jersey aforesaid, and the said PASQUALE MUTARELLA did then and there, acting under the counsel and advice of the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, subscribe and swear to the complaint aforesaid, and procure thereby the issuance of a warrant for the arrest of the said Charles Bright as devised and intended and a warrant for the arrest of the said Charles Bright was thereupon issued by the said Henry H. Schroer, Justice of the Peace as aforesaid and the said Charles Bright was thereupon arrested under and by virtue of said warrant and upon his said arrest did thereupon pay to the said PASQUALE MUTARELLA the said sum of Three Hundred Fifteen Dollars as and for the purchase price of the intoxicating liquor so unlawfully sold, delivered and furnished by the said PASQUALE MUTARELLA in violation of the laws of the State of New Jersey, as aforesaid, and the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, did then and there, well knowing the premises, and in breach and violation of the duty of his office as Prosecutor of the Pleas of the said County of Morris, and with the corrupt intent



aforesaid, aid and assist the said PASQUALE MUTARELLA in the making of the criminal complaint aforesaid and in procuring of the warrant aforesaid and the arrest of the said Charles Bright under and by virtue of the warrant aforesaid, contrary to the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of this State, the government and dignity of the same.

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that the said

JAMES H. BOLITHO

late of the Town of Morristown, in the County of Morris aforesaid, on the Tenth day of September, in the year of our Lord one thousand nine hundred and twenty-four, was and still is, Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of his said office, and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris; and the GRAND INQUEST aforesaid upon their respective oaths aforesaid, do further PRESENT that on the Tenth day of September, in the year of our Lord one thousand nine hundred and twenty-four at the Town of Morristown, in the said County of Morris, and within the jurisdiction of this Court, the

said James H. Bolitho, Prosecutor of the Pleas of the County of Morris as aforesaid, well knew that one Peter Dolimpio had on two several occasions been complained of in due form of law for violation, in the Town of Dover, in the County of Morris aforesaid, of the provisions of an act of the Legislature of the State of New Jersey, known as the "Prohibition Enforcement Act," to-wit, on the Nineteenth day of August, Nineteen hundred and twenty-four before R. Percy Rolston, a Police Justice of the Town of Boonton, in said County of Morris and on the Ninth day of September, Nineteen hundred and twenty-four, before William Gardner, Police Justice of the Town of Dover, in the County of Morris aforesaid; and the said James H. Bolitho, Prosecutor of the Pleas of the County of Morris aforesaid, then and there well knew that the said Peter Dolimpio was guilty of a misdemeanor and violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State as theretofore complained of against the said Peter Dolimpio as aforesaid; and it then and there became and was the duty of the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, to prosecute the said Peter Dolimpio to his said offenses theretofore committed, yet the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, well knowing the premises and not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law in this behalf, and to enable the said Peter Dolimpio to escape with impunity and without punishment for the aforesaid offenses



theretofore committed by the said Peter Dolimpio and complained of as aforesaid, on the Tenth day of September, in the year of our Lord one thousand nine hundred and twenty-four, at the Town of Morristown, in the County of Morris, and within the jurisdiction of this Court unlawfully, maliciously, wilfully, corruptly and knowingly under color of his office as Prosecutor of the Pleas of the said County of Morris did exact, charge, take and receive from the said Peter Dolimpio, a certain sum of money, to-wit, Four Hundred Dollars, as and for a reward for suppressing the aforesaid offense and not to prosecute the said Peter Dolimpio for the said offenses theretofore committed in violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State and complained of as aforesaid, and from presenting the evidence thereof against the said Peter Dolimpio to the proper Grand Jury and Court of the said County of Morris; and the Grand Inquest aforesaid, upon their respectice oaths aforesaid, Present that the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, on the said Tenth day of September in the year of our Lord one thousand nine hundred and twenty-four, and from that day to the day of the taking of this inquisition, has unlawfully, maliciously, wilfully, corruptly, and knowingly failed, neglected and refused to prosecute the said Peter Dolimpio for his said offenses theretofore committed and complained of as aforesaid and has unlawfully, maliciously, wilfully, corruptly and knowingly failed and neglected to present the evidence thereof against the said Peter Dolimpio to the proper

Grand Jury and Court of said County of Morris as according to his duty as Prosecutor of the Pleas as aforesaid, and the laws of this State he ought to have done, but has on the contrary suppressed the same, in violation of his duty as such Prosecutor of the Pleas as aforesaid, contrary to the form of the statute in such case made and provided to the evil example of all others in like case offending and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said

James H. Bolitho

late of the Town of Morristown, in the County of Morris aforesaid, on the Fourteenth day of May, in the year of our Lord one thousand nine hundred and twenty-four, was and still is Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey, in said County of Morris; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that on the Fourteenth day of May, in the year of our Lord one thousand nine hundred and twenty-four, at the Town of Morristown, in the said County of Morris and within the jurisdiction of this Court,



the said James H. Bolitho, Prosecutor of the Pleas of the County of Morris as aforesaid, well knew that one Christian Deimegard, otherwise known as Antonio Mingardi, had been complained of in due form of law for violation, in the Town of Morristown, in the County of Morris aforesaid, of the provisons of an Act of the Legislature of the State of New Jersey, known as the "Prohibition Enforcement Act," to-wit, on the Twenty-second day of February, Nineteen Hundred and twenty-four, before William Gardner, a Police Justice of the Town of Dover, in said County of Morris; and the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, then and there well knew that the said Christian Deimegard, otherwise known as Antonio Mingardi, was guilty of a misdemeanor and violation of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" as theretofore complained of as aforesaid; and it then and there became and was the duty of the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, to prosecute the said Christian Deimegard, otherwise known as Antonio Mingardi, for his said offenses theretofore committed and complained of as aforesaid, yet the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, well knowing the premises and not regarding the duties of his said office, but perverting the trust reposed in him and intendnig to pervert and obstruct justice and the due administration of the law in this behalf, and to enable the said Christian Deimegard, otherwise known as Antonio Mingardi, to escape with impunity and without punishment for the aforesaid offense theretofore committed by

him and complained of as aforesaid, on the Fourteenth day of May, in the year of our Lord one thousand nine hundred and twenty-four, at the Town of Morristown, in the County of Morris and within the jurisdiction of this Court, unlawfully, maliciously, willfully, corruptly and knowingly, under color of his office as Prosecutor of the Pleas of the said County of Morris, did exact, charge, take and receive from Daniel A. Marinaro and Pasquale Mutarella, then and there acting on behalf of the said Christian Deimegard, otherwise known as Antonio Mingardi, a certain sum of money, to-wit, Two Hundred Dollars, as a reward for suppressing the aforesaid offense and not to prosecute the said Christian Deimegard, otherwise known as Antonio Mingardi, for the said offense theretofore committed by him and complained of as aforesaid; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, Present that the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, on the Fourteenth day of May, in the year of our Lord one thousand nine hundred and twenty-four, and from that day to the day of the taking of this inquisition has unlawfully, maliciously, wilfully, corruptly, and knowingly failed, neglected and refused to prosecute the said Christian Deimegard, otherwise known as Antonio Mingardi for his said offense theretofore committed by him and complained of as aforesaid, as according to his duty as Prosecutor of the Pleas as aforesaid and the laws of this State he ought to have done, but has on the contrary suppressed the same in violation of his duty as such Prosecutor of the Pleas as aforesaid, contrary to the



form of the statute in such case made and provided, to the evil example of all others in the like case offending and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said

James H. Bolitho

late of the Town of Morristown, in the County of Morris aforesaid, on the Twenty-second day of April, in the year of our Lord one thousand nine hundred and twenty-four, was, and for a long time theretofore and thereafter was and still is, Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey, in said County of Morris, and to prosecute all persons who should violate any of the criminal laws of this State within the said County of Morris and to perform the said duties of said office of Prosecutor of the Pleas with diligence and energy to the best of his understanding and ability; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that on the Twenty-ninth day of April, in the year of our Lord one thousand nine hundred and twenty-four, two several complaints in due form of law were made before Henry H. Schroer,

a Justice of the Peace in and for the County of Morris, wherein, in each one of said complaints, it was charged that on the Twenty-second day of April, Nineteen Hundred and twenty-four, at the Borough of Kinnelon, in the County of Morris aforesaid, John Doe, of the City of Newark, in the County of Essex, State of New Jersey, did break and enter into a certain house and building in Kinnelon, Borough of Kinnelon, County of Morris, and did take and carry away a quantity of merchandise against the peace of this State, the said John Doe in the first complaint mentioned being later identified as one Joseph Juliano, and the John Doe mentioned in the second of said complaints being later identified as Angelo Grande; and the Grand Inquest aforesaid, upon their respective oaths aforesaid did further Present that the said Joseph Juliano and Angelo Grande having later been apprehended and brought to the County of Morris aforesaid to answer for their said offenses so as before complained of, and while said complaints were still pending in said County of Morris against the said Joseph Juliano and Angelo Grande, the said James H. Bolitho, Prosecutor of the Pleas aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law, and to enable the said Joseph Juliano and Angelo Grande, to escape with impunity and without punishment for the aforesaid offenses theretofore committed by the said Joseph Juliano and Angelo Grande and complained of as aforesaid, on the Ninth day of May,



in the year of our Lord one thousand nine hundred and twenty-four, at the Town of Morristown, in the County of Morris aforesaid and within the jurisdiction of this Court, unlawfully, maliciously, wilfully, corruptly, and knowingly, under color of his said office as Prosecutor of the Pleas as aforesaid and in breach and in violation of the duties of his said office, did take, receive, exact, and extort from the said Joseph Juliano and Angelo Grande a large fee and reward and sum of money, to-wit, the sum of Six hundred Dollars to refrain and forbear from prosecuting the said Joseph Juliano and Angelo Grande for the said offenses theretofore respectively committed by them and from prosecuting the said Joseph Juliano and Angelo Grande, with the diligence, energy, ability and understanding required of him as Prosecutor of the Pleas aforesaid, contrary to the form of the statute in such case made and provided to the evil example of all others in the like case offending, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said

James H. Bolitho

late of the Town of Morristown, in the County of Morris aforesaid, on the Seventeenth day of August, in the year of our Lord one thousand nine hundred and twenty-three, was and continuously from thence hitherto has been, Prosecutor of the Pleas of said County of Morris, duly and

legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris; and the GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do FURTHER PRESENT that on the Seventeenth day of August, Nineteen hundred and twenty-three, one Stewart Bettens was employed by the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, as an officer for the detection of crime and the arrest and prosecution of offenders against the criminal laws of this State within said County of Morris and that in the performance of his said duties as aforesaid, the said Stewart Bettens did ascertain that intoxicating liquor was unlawfully possessed, stored, furnished and sold in, upon and from the premises of one Charles Fleming in the Township of Chester, in the County of Morris aforesaid in violation of an Act of the Legislature of the State of New Jersey known as the "Prohibition Enforcement Act" and the said Stewart Bettens in the performance of his duties as aforesaid, on the Nineteenth day of August, Nineteen hundred and twenty-three, did make complaint thereof in due form of law before one Henry H. Schroer, Recorder of the Borough of Rockaway, in said County of Morris and on said last mentioned day, pursuant to said complaint the said Henry H. Schroer, Recorder as aforesaid did execute and issue under his hand as such



Recorder a search warrant authorizing and directing that the aforesaid premises of Charles Fleming be entered and diligent search made for intoxicating liquors and manufacturing utensils and to bring such liquor and utensils as should be found, and also the body of the said Charles Fleming, before him, the said Henry H. Schroer, Recorder as aforesaid, to be dealt with according to law; and the GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do FURTHER PRESENT that JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid, on the Nineteenth day of August, Nineteen hundred and twenty-three, at the Borough of Rockway, in the County of Morris, then and there had personal knowledge of the aforesaid violation of the "Prohibition Enforcement Act" so committed by the said Charles Fleming as aforesaid, and so complained of as aforesaid, and also of the issuing of said search warrant by the said Henry H. Schroer, Recorder as aforesaid; yet the said JAMES H. BOLITHO. Prosecutor of the Pleas as aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law in this behalf, and to enable the said Charles Fleming to escape search, arrest, prosecution, conviction and punishment for the said offense so by him permitted as aforesaid and so complained of as aforesaid, on the Nineteenth day of August, Nineteen hundred and twenty-three, at the Borough of Rockaway, in the County of Morris aforesaid and within the jurisdiction of this Court, wilfully, knowingly and contemptuously did mis-

behave and misconduct himself in his said office of Prosecutor of the Pleas of the County of Morris aforesaid, in that he, the said James H. Bolitho, unlawfully, wilfully, corruptly and knowingly, with evil intent, under color of his said office as Prosecutor of the Pleas as aforesaid, did order, direct and require the said Stewart Bettens to desist and refrain from making search of the premises of the said Charles Fleming and from further executing said warrant and from arresting or taking into custody the said Charles Fleming and did then and there order, direct and require the said Stewart Bettens to deliver over unto him, the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, the said search warrant, as well as all intoxicating liquors theretofore purchased from the said Charles Fleming in violation of the "Prohibition Enforcement Act" and then and there being held by the said Stewart Bettens in his possession as evidence of the unlawful sale of liquor by the said Charles Fleming, and the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, did then and there take from the said Stewart Bettens the said search warrant issued as aforesaid and the intoxicating liquors so held by the said Stewart Bettens as evidence as aforesaid, to the end and with the evil and corrupt intent that the said Charles Fleming might then and thereafter go unapprehended, without search, arrest, prosecution, conviction and punishment for the offense by him so committed as aforesaid, and that the evidence of his said violation of the "Prohibition Enforcement Act" be suppresed; in breach and violation of the duty of the said James H. Bolitho as



Prosecutor of the Pleas of the County of Morris aforesaid, to the evil example of all others in the like case offending and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said

James H. Bolitho

late of the Town of Morristown, in the County of Morris aforesaid, on the Twenty-ninth day of December in the year of our Lord one thousand nine hundred and twenty-four, was and continuously from thence hitherto has been Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in the said County of Morris; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law in this behalf, on the Twenty-ninth day of December, in the year of our Lord one thousand nine hundred and twenty-four, at the Town of Morristown, in the County of Morris aforesaid, and within the juris-

diction of this Court, wilfully, knowingly and contemptuously did misbehave and misconduct himself in his said office of Prosecutor of the Pleas of the County of Morris aforesaid, in that he, the said JAMES H. BOLITHO unlawfully, wilfully, corruptly and knowingly, with the evil intent aforesaid, under color of his said office as Prosecutor of the Pleas as aforesaid, did directly and indirectly solicit and propose to receive from one John Weber a large amount of money, to-wit, the sum of One Hundred Dollars, as a gift, gratuity, fee and reward for the said JAMES H. BOLITHO to prostitute and betray the duties of his said office of Prosecutor of the Pleas as aforesaid and refrain from detecting, arresting, prosecuting and convicting the said John Weber for and because of any violations of the "Prohibition Enforcement Act" of this State that might thereafter be permitted by the said John Weber and to suffer and permit the said John Weber to possess, sell and furnish intoxicating liquor in the County of Morris in violation of the "Prohibition Enforcement Act" free from complaint, arrest, prosecution and conviction on the part of the said JAMES H. BOLITHO, Prosecutor of the Pleas as aforesaid and to protect and keep immune, so far as in him lay, the said John Weber in such violations, of the "Prohibition Enforcement Act" of this State in said County of Morris, from detection, complaint, arrest, prosecution and conviction by or on the part of the officers and detectives attached to and employed in the office of the Prosecutor of the Pleas of the County of Morris aforesaid by the said JAMES H. BOLITHO, in breach and violation of the duty of his said office as such



Prosecutor of the Pleas as aforesaid, contrary to the form of the statute in such case made and provided to the evil example of all others in the like case offending, and against the peace of this State, the government and dignity of the same.

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that the said

JAMES H. BOLITHO

late of the Township of Montville, in the County of Morris aforesaid on the Twenty-sixth day of June, in the year of our Lord one thousand nine hundred and twenty-four, was and still is, Prosecutor of the Pleas of the said County of Morris, duly and legally appointed and qualified to discharge the duties of said office and as such Prosecutor of the Pleas of the County of Morris, aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the arrest, detection, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris; and the GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do FURTHER PRESENT that on the Twenty-sixth day of June, in the year of our Lord one thousand nine hundred and twenty-four, at the Township of Montville, in the County of Morris aforesaid, and within the jurisdiction of this Court, the said JAMES H. BOLITHO, Prosecutor of the Pleas of the said County of Morris, then and there had personal knowledge that one Florence Rice, late of the Township of Montville, in the County of Morris aforesaid, on the

Twenty-sixth day of June, Nineteen hundred and twenty-four, did unlawfully and in violation of the "Prohibition Enforcement Act" of this State, keep, occupy and maintain in her hotel in the Township of Montville aforesaid, a room or place where intoxicating liquor was sold, kept, stored, transported, bartered and otherwise disposed of; yet the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, well knowing the premises and not regarding the duties of his said office, but perverting the trust reposed in him, and intending to pervert and obstruct justice and the due administration of the law in this behalf and to enable the said Florence Rice to escape arrest, prosecution, conviction and punishment for her offense so committed by her as aforesaid and such violations of the said "Prohibition Enforcement Act" as she might then and thereafter commit in said County of Morris, on the Twenty-sixth day of June, in the year of our Lord one thousand nine hundred and twenty-four, in the Township of Montville, in the County of Morris aforesaid and within the jurisdiction of this Court, wilfully, knowingly and contemptuously did misbehave and misconduct himself in his said office of Prosecutor of the Pleas of the County of Morris aforesaid, in that he, the said James H. Bolitho, unlawfully, wilfully, corruptly and knowingly, with the evil intent aforesaid, under color of his said office as Prosecutor of the Pleas as aforesaid, did directly and indirectly solicit and propose to receive from the said Florence Rice certain goods and chattels of great value, to-wit, two certain cases with bottles containing whiskey and intoxicating liquors, as a gift, gratuity and



reward for the said James H. Bolitho to prostitute and betray the duties of his said office of Prosecutor of the Pleas, as aforesaid, and to refrain from arresting, prosecuting and convicting the said Florence Rice for the offense so committed by her as aforesaid and to suffer and permit the said Florence Rice to violate the provisions of the "Prohibition Enforcement Act" in the County of Morris free from complaint, arrest, prosecution and conviction on the part of the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, in breach and violation of the duty of his office as such Prosecutor of the Pleas as aforesaid, contrary to the form of the statute in such case made and provided to the evil example of all others in the like case offending and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further

Present that the said James H. Bolitho late of the Town of Morristown, in the County of Morris aforesaid, on the Eighteenth day of October, in the year of our Lord one thousand nine hundred and twenty-three, was and still is, Prosecutor of the Pleas of the County of Morris aforesaid, duly and legally appointed and qualified to discharge the duties of said office, and as such Prosecutor of the Pleas of the County of Morris aforesaid, it then and there became and was his duty to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in the said County of Mor-

ris; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that on the Eighteenth day of October, Nineteen hundred and twenty-three, one Joseph Q. Smith, late of the Borough of Madison, in the County of Morris aforesaid, did, on said day in the Borough of Madison aforesaid, unlawfully possess and transport intoxicating liquor in violation of the "Prohibition Enforcement Act" of this State and was then and there apprehended and taken into custody by certain officers of the police department of the Borough of Madison aforesaid and the intoxicating liquors so being then and there unlawfully possessed and transported by the said Joseph Q. Smith were then and there seized by said officers; and the Grand Inquest aforesaid, upon their respective oaths aforesaid, do Further Present that the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, well knowing the premises, and not regarding the duties of his said office, but perverting the trust reposed in him and intending to pervert and obstruct justice and the due administration of the law in this behalf and intending to enable the said Joseph Q. Smith to escape arrest, prosecution, indictment and conviction for the offense so by him then and there committed as aforesaid, on the Twentieth day of October, in the year of our Lord one thousand nine hundred and twenty-three, at the town of Morristown, in the County of Morris and within the jurisdiction of this Court, did unlawfully, wilfully, corruptly, knowingly, falsely and fraudulently, under color of his said office as Prosecutor of the Pleas as aforesaid, order, direct and require the Police Officers of the Borough of



Madison so holding the said Joseph Q. Smith under arrest and custody to release and discharge the said Joseph Q. Smith without prosecution for the offense by him so committed as aforesaid and to forthwith deliver to him, the said James H. Bolitho, Prosecutor of the Pleas as aforesaid, the intoxicating liquors transported by the said Joseph Q. Smith and seized by the said Police Officers as aforesaid, intending thereby to suppress, conceal and destroy the evidence against the said Joseph Q. Smith of the offense so committed by him as aforesaid and to permit the said Joseph Q. Smith to escape arrest, prosecution, indictment and conviction for the offense so by him committed as aforesaid, in breach and violation of the duty of the said James H. Bolitho, as Prosecutor of the Pleas of the County of Morris aforesaid, contrary to the form of the statute in such case made and provided to the evil example of all others in the like case offending and against the peace of this State, the government and dignity of the same.

WILFRED H. JAYNE, Jr.,
Assistant Attorney General
of New Jersey.

Indictment for Malfeasance

*Endorsed on back:*

Received and Filed in the Court of Oyer and Terminer, May 11, 1925.

E. BERTRAM MOTT,
Clerk.

MORRIS OYER AND TERMINER

January Term, A. D. 1925

THE STATE,
vs.
JAMES H. BOLITHO.

INDICTMENT FOR MALFEASANCE

WILFRED H. JAYNE, Jr.,
Assistant Attorney-General.

A True Bill.

D. FARRAND STURGIS,
Foreman.

Filed
Arraigned
Plea
Bail
Trial Day
Verdict
Sentence



**Recognizance.**

(*Filed May 22, 1925*)

IN THE MATTER OF BAIL
MORRIS COUNTY COURT OF OYER &
TERMINER

THE STATE,
vs.
JAMES H. BOLITHO,
Defendant.
} Sur Indictment for Malfeasance

*To the Clerk or the Sheriff of the County of Morris:*

I do hereby authorize, empower and direct you to hold the said defendant to bail for his appearance before the Court of Oyer and Terminer of the County of Morris to be holden at Morristown, on the 22nd day of May A. D. 1925, in the sum of One Thousand Dollars with good and sufficient sureties.

C. W. PARKER,
President Judge.

Recognizance

MORRIS COUNTY COURT OF OYER & TERMINER

| | |
|---|---|
| THE STATE,<br>vs.<br>JAMES H. BOLITHO. | Sur Indictment for Malfeasance |

State of New Jersey, County of Morris. } ss:

Be it remembered, that on this 22nd day of May A. D., nineteen hundred and twenty-five, personally appeared before the Clerk of the Court of Oyer & Terminer Sessions, holden at Morristown, in and for said County of Morris, and State of New Jersey, James H. Bolitho and did severally acknowledge himself to be indebted to the State of New Jersey in the sum of One Thousand Dollars each, to be levied and made of their respective goods and chattels, land and tenements, if default be made in the following conditions, to wit:

THE CONDITION of this Recognizance is such that if the said defendant, James H. Bolitho shall personally be and appear before the next Court of Oyer & Terminer to be holden at Morristown, in and for the said County of Morris, on the 22nd day of May, inst. next at 10 o'clock in the forenoon, and thereafter from day to day (then and there to traverse the indictment preferred against him), and in case of conviction to abide any sentence the Court may impose upon him; and not depart the said Court without leave; then the



Plea

above recognizance to be void, but this recognizance shall remain in full force and virtue until this cause shall be finally determined or the recognizance discharged by order of the Court.

JAMES H. BOLITHO.

Taken and acknowledged in open Court the day and year first above written.
Susan O. Nixon,
Special Deputy Clerk.

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**Plea.**

At a Court of Oyer & Terminer Sessions holden at the Court House in Morristown, in and for the County of Morris, on Friday the 29th day of May, A. D. Nineteen hundred and twenty-five.

Present Hon. Charles W. Parker, Judge, etc.

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|---|---|
| THE STATE,<br>vs.<br>JAMES H. BOLITHO,<br>Defendant. | No. 49. January Term, 1925. On Indictment for Malfeasance. |

The defendant James H. Bolitho, being set to the bar, and charged on this Indictment, pleads thereto NOT guilty.

## Trial and Conviction.

(*Filed* )

At a Court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Monday, the 14th day of September, A. D., Nineteen Hundred and Twenty-five.

Present, Hon. Chas. W. Parker,
Judge, etc.

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|---|---|
| The State<br>vs.<br>James H. Bolitho,<br>Defendant. | No. 49 January Term, 1925. On Indictment Malfeasance Plea of Not Guilty. |

Attorney for State, Wilfred H. Jayne, Jr.

Attorney for Defendant, John A. Matthews.

This Indictment being moved, the following Jury was called and sworn (defendant having used ten challenges and the State eight in the selection of the same:

| | |
|---|---|
| 1. Charles McPeak | 7. Harry A. Graham |
| 2. William Burroughs | 8. Ethel Freeman |
| 3. Lillian Doremus | 9. William Stewart |
| 4. Elizabeth L. Voegeli | 10. Ruth Cramer |
| 5. Reta Anderson | 11. Robert Dalglish |
| 6. Sarah Bott | 12. Robert Davenport |

Motion to withdraw Plea in Order to make Motions.

Granted.

Defendant enters plea of not guilty.



Trial and Conviction

Witnesses

State

1. Edwin W. Orr
2. John M. Mills
   Edwin W. Orr, re-called
3. Daniel Marinaro
   Edwin W. Orr, re-called
4. Piser
5. Robert Schenck.

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Court adjourned to Tuesday, Sept. 15, at 10 a. m.

At a Court of Oyer and Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Tuesday the 15th day of September, A. D., Nineteen Hundred and tweny-five.

Present, Hon. Chas. W. Parker,
Judge, etc.

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|---|---|
| The State<br>vs.<br>James H. Bolitho,<br>Defendant. | No. 49, January Term, 1925. Malfeasance Plea Not Guilty. |

Attorney for State, Wilfred H. Jayne, Jr.

Attorney for Defendant John A. Matthews.

Trial Continued.

Trial and Conviction

Witnesses

6. R. Percy Rolston
7. William A. Gardner
8. Peter D'Olimpio
9. Louis Marinaro
   Edwin W. Orr, re-called
10. George Bettens
11. Warren Eagles
   George Bettens, re-called
   Edwin W. Orr, re-called
12. Patsy Mutarella
   William Gardner, re-called
13. Antonio Mingardi
14. Christina Mingardi
   Anthony Cattano, Intpt'er
   Patsy Mutarella, re-called
   Louis Marinaro, re-called
   Edwin Orr, re-called
15. Victor Brown
16. Daniel Allen
   Edwin Orr, re-called
17. Henry Schroer
   Edwin Orr, re-called
   Daniel Marinaro, re-called
18. Joseph Juliani
   Patsy Mutarella, re-called
19. Wm. J. Ryan
20. Louis O. Darling
   Edwin Orr, re-called
   Daniel Marinaro, re-called
21. William H. Hegarty.

Court adjourned to Wednesday, Sept. 16th, 1925.



Trial and Conviction

At a Court of Oyer and Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Wednesday, the 16th day of September, A. D., Nineteen hundred and twenty-five.

Present, Hon. Chas. W. Parker, Judge, etc.

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|---|---|
| The State,<br>vs.<br>James H. Bolitho,<br>Defendant. | No. 49 January Term, 1925. On Indictment Malfeasance Plea of Not Guilty. |

Attorney for State, Wilfred H. Jayne, Jr.

Attorney for Defendant, John A. Matthews.

Trial Continued.

Witnesses, continued

22. Richard J. Doney
23. Bruno Schubert
   Wm. Hegarty, re-called
24. George W. Downs
25. Florence Rice

On recommendation of Prosecutor, Counts, Nos. 2, 3, 4, and 9 of Indictment No. 49, would not be moved as the Witness had left the State, and the Court ordered a direction of Acquittal.

Openings by Defendant's Counsel.

Trial and Conviction

Witnesses

1. Edwin W. Orr
2. George W. Downs
3. Elmer Estler
4. Chas. W. Bodine
5. Fred'k Hubert
6. James H. Bolitho
   Edwin W. Orr, re-called
   Elmer Estler, re-called
7. Emil Heller
8. Albert H. Holland
9. Margaret Repp
   James H. Bolitho, re-called
10. Richard O'Connor
    Henry Schroer, re-called
    James H. Bolitho, re-called
11. Joseph Thomas
12. Max Reidler
    Albert H. Holland, re-called

Court is adjourned to meet on Thursday, Sept. 17, 1925.



Trial and Conviction

At a court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Thursday, the 17th day of September, A. D., Nineteen hundred and twenty-five.

Present, Hon. Chas. W. Parker, Judge, etc.

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|---|---|
| The State vs. James H. Bolitho, Defendant. | No. 49 January Term, 1925. On Indictment Malfeasance Plea of Not Guilty. |

Attorney for State, Wilfred H. Jayne, Jr.

Attorney for Defendant, John A. Matthews.

Trial Continued.

Witnesses, continued

13. Bert Flemming
    Edwin W. Orr, re-called
    Frederick Hubert, re-called
    Albert H. Holland, re-called
    James H. Bolitho, re-called
14. Raymond Matthews
    James H. Bolitho, re-called
15. William Tunnison
16. Ralph B. Dunham
    Richard O'Connor, re-called
    James H. Bolitho, re-called
17. Maurice Weiss
    Fred'k Hubert, re-called

Trial and Conviction

Rebuttal

1. Chas. A. Rathbun.

Matthews summing for Deft. started at 1:35 p. m.

Jayne summing for State started at 2:35 p. m.

Judge's Charge 3:45 p. m.

Officers sworn—F. E. Cook and S. J. Beaumont.

The evidence in this case being closed, the Jury, after argument of Counsel, and a charge from the Court, retired to a private room to consider their verdict with two Constables sworn to attend them. After being out four hours and thirty-five minutes (4 hrs. and 35 min.) they returned into Court, saying they have agreed upon their verdict, and by their Foreman say they find the defendant guilty on 1st, 5th, 6th, 7th, and 10th counts and not guilty on 8th and 11th counts.

The Jury was polled, and all stated their verdict to be as recorded above.

Bolitho was in Court and the Judge continued his Bail.



## Sentence.

At a Court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Friday, the Ninth day of October, A. D., Nineteen Hundred and Twenty-five.

Present, Hon. C. W. Parker,
Presiding Judge.

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|---|---|
| The State,<br>vs.<br>James H. Bolitho,<br>Defendant. | No. 49. January Term, 1925.<br>Malfeasance.<br>Plea Not Guilty-<br>On Trial, Conviction. |

The Prisoner, James H. Bolitho, being sent to Bar, the Court on motion of Wilfred H. Jayne, Jr., Assistant Attorney-General, order judgment and sentence the defendant as follows:

Under the 1st Count in said Indictment for Malfeasance, to be confined in the States Prison of this State at hard labor for a Maximum Term of three (3) years and minimum term of two (2) years.

Under the 5th Count in said Indictment for Malfeasance, to be confined in the States Prison of this State at hard labor for a Maximum Term of three (3) years and minimum term of two (2) years to begin at the same time and to run concurrenty with the sentence of the Maximum term of three (3) years and Minimum term two (2) years this day imposed upon the said Defendant under the 1st Count in said Indictment No. 49, January Term, 1925 for Malfeasance.

Sentence

Under the 6th Count in said Indictment for Malfeasance, to be confined in the States Prison of this State at hard labor for a Maximum Term of three (3) years and Minimum term of two (2) years to begin at the same time and to run concurrently with the sentence of the Maximum term of three (3) years and Minimum term of two (2) years this day imposed upon the said Defendant under the 1st Count in said Indictment No. 49, January Term, 1925 for Malfeasance.

Under the 7th Count in said Indictment for Malfeasance, to be confined in the States Prison of this State at hard labor for a Maximum Term of three (3) years and Minimum term of one (1) year to begin at the same time and to run concurrently with the sentence of the Maximum term of three (3) years and Minimum term of two (2) years this day imposed upon the said Defendant under the 1st Count in said Indictment No. 49, January Term, 1925 for Malfeasance.

Under the 10th Count in said Indictment for Malfeasance, to be confined in the States Prison of this State at hard labor for a Maximum Term of three (3) years and Minimum term of one (1) year to begin at the same time and to run concurrently with the sentence of the Maximum term of three (3) years and Minimum term of two (2) years this day imposed upon the said Defendant under the 1st Count in said Indictment No. 49, January Term, 1925, for Malfeasance.



## Recognizance to Prosecute Writ of Error.

MORRIS COUNTY COURT OF OYER AND TERMINER

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|---|---|
| The State<br>vs.<br>James H. Bolitho,<br>Defendant. | Recognizance |

State of New Jersey, County of Morris. } ss:

Be it Remembered, that on this 9th day of October, A. D., Nineteen Hundred and Twenty-five, personally appeared before the Clerk of the Court of Oyer and Terminer, holden at Morristown in and for said Court of Morris, and State of New Jersey, James H. Bolitho, the above named Defendant, and did acknowledge himself to be indebted to the State of New Jersey in the sum of One Thousand Dollars to be made and levied of his respective goods and chattels, lands and tenements, if default be made in the following conditions:

And Whereas, the said Defendant James H. Bolitho has sued out of the Supreme Court of the State of New Jersey, a Writ of Error, directed to the Court of Oyer & Terminer in and for the County of Morris, to review the conviction of the said James H. Bolitho for the crime of Malfeasance.

And Whereas, upon application, bail has this day been fixed in the said sum of One Thousand Dollars.

Recognizance to Prosecute Writ of Error

The condition of this recognizance is such that if the said Defendant, James H. Bolitho shall prosecute the said Writ of Error with the effect and shall stand to and abide the Judgment of the Court and not depart the said Court without leave, then the above recognizance shall be void, but this recognizance shall remain in full force and virtue until this case shall be finally determined or the recognizance discharged by order of the Court.

JAMES H. BOLITHO.

Taken and acknowledged in open
Court the day and year first
above written.
Edwin W. Orr,
Deputy Clerk.



## Clerk's Certificate.

State of New Jersey, } ss:
County of Morris. }

I, E. Bertram Mott, Clerk of the County of Morris and also Clerk of the Court of Oyer and Terminer, holden in and for said County, Do Hereby Certify, that the foregoing are full, true and correct copies of the Indictment, and caption thereto, Recognizance, Plea, Trial and Conviction, Sentence and Recognizance to prosecute Writ of Error, as fully and entirely as the same remain on file in my office and of record on the minutes of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said
(Seal) Court and County at Morristown, this 27th day of October, A. D., Nineteen Hundred and Twenty-five.

E. BERTRAM MOTT,
Clerk.

## Testimony.

MORRIS COUNTY COURT OF OYER AND TERMINER

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|---|---|
| THE STATE,<br>vs.<br>JAMES H. BOLITHO,<br>Defendant. | On Indictment for Malfeasance. |

Morristown, N. J., September 14, 1925.

BEFORE: HONORABLE CHARLES W. PARKER,
Justice of the Supreme Court, and a Jury.

Appearances:

For the State, Hon. Wilfred H. Jayne, Jr., Deputy Attorney General.

For the Defendant, John A. Matthews, Esq.

The Court: Mr. Jayne, have you any indictment to move?

Mr. Jayne: I desire to move the trial of an indictment which, for convenience, has been designated as indictment number 49 found by the Elisor Grand Jury at the January Term, 1925, against James H. Bolitho.

Mr. Matthews: Your Honor please, I desire at this time to ask for permission to withdraw the plea in order to make motions to the indictment.

The Court: 49. Very well. That will be granted. You may proceed with your motion.

Mr. Matthews: I take it, if your Honor please, that at the outset of the trial of these cases, there were certain motions made for all of the defendants, including the motion to the interest of the Court. Your Honor will remember we filed a plea to that effect, and it was filed in Bolitho's name. Now, if the record does not show that that plea is filed in Bolitho's name, I would also like to have that motion to the Court on the record of this case. Your Honor will remember it; it was made in Bolitho's name.



The Court: I do not remember very much about it, except there was a pretty long discussion and a great deal said on the subject. I suppose you have looked up the record and found out what the situation is in that regard?

Mr. Matthews: Yes. That is in the record, and at the time it was made in Bolitho's name.

The Court: Well, what is your motion now?

Mr. Matthews: My motion is to have the record of this trial of indictment 49 show that that motion has been made in behalf of Bolitho to the interest, we will call it, with respect to the Court. That is the way the statute reads. Your Honor remembers you said you would not appoint triers and that it was traversed by the Prosecutor, and the plea was denied.

The Court: There were certain motions made with regard to the first indictment to which a plea was called for and then, with regard to the later ones, the motion was that it was made on the same grounds as the first, or something of that kind. Mr. Jayne, are you willing to have that read into the record at this time?

Mr. Jayne: I am.

The Court: Very well. That disposes of that.

Mr. Matthews: That was called the challenge of Justice Charles W. Parker, and headed, The

State vs. James H. Bolitho. A written challenge was filed, and I understand it is stipulated that that is filed in this case.

(The proceedings in question on the Challenge of Justice Charles W. Parker are as follows):

**Challenge.**

MORRIS COUNTY COURT OF OYER AND TERMINER

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|---|---|
| STATE OF NEW JERSEY, vs. JAMES H. BOLITHO. | Challenge Of Justice Charles W. Parker sitting in the above entitled court. |

And whereupon, the defendant James H. Bolitho by John A. Matthews, Esq., his Attorney, comes and challenges Hon. Charles W. Parker, Justice of the Supreme Court of Judicature of the State of New Jersey, holding the Morris County Court of Oyer and Terminer, because he says that the interest of the said Charles W. Parker as shown by the following enumerated acts of the said Charles W. Parker, is such as to indicate a state of mind and an opinion contrary to the impartial administration of justice towards this defendant; to-wit:

1. Without authority in law, he ordered an investigation upon a petition signed by a less number of tax payers and freeholders of the County of Morris than required by law, said petition not setting up any facts constituting reason for such investigation, and containing merely a conclusion, namely, that there were "deplorable conditions" in the County of Morris;



2. That the said Justice Parker without authority in law appointed one Wilfred Jayne, Jr., to prosecute said investigation and allowed the said Wilfred Jayne, Jr., to conduct said investigation without authority in law, and advised and approved the said investigation thus conducted by the said Wilfred Jayne, Jr., without authority in law, and later to-wit; on the 19th day of February, 1925, purported to legalize said heretofore illegal investigation by the request of the said Charles W. Parker, to Edward L. Katzenbach, Esquire, for the appointment according to law, of the said Wilfred Jayne, Jr.,

3. That, having knowledge of the conditions, circumstances and reasons for the passage of the law of May 29, 1913 known as "The Chancellor-Sheriff Jury Act" and knowing that the intention of the people of the State of New Jersey, by their vote upon the same, and the Legislature of 1913 in passing the same was to abolish Elisor Grand Juries in the State of New Jersey, and make it impossible for Grand Juries to be drawn by choice and not by chance, nevertheless, said Justice Parker, ordered and directed that the Sheriff of the County of Morris be removed as one of the Jury Commissioners, and without any charges of interest or misconduct or otherwise against William C. Sweeney, the other Jury Com-

missioner of the County of Morris, prevented the said William C. Sweeney from acting as Jury Commissioner in the said County of Morris, and ordered and directed that two (2) Elisors, namely, Victor A. Weiss and Joshua R. Salmon select and impanel as Elisor Grand Jury for the purpose of continuing and terminating the said investigation which he had permitted and ordered to be put in operation;

4. That by law said William C. Sweeney, Jury Commissioner as aforesaid was appointed by the Chancellor of the State of New Jersey, who alone had the power and authority to remove him from his said office as Jury Commissioner;

5. That, although the said "Chancellor-Sheriff Jury Act" of 1913, provided that no person licensed to practice law in the State of New Jersey shall be appointed Commissioner of Jury, said Justice Charles W. Parker appointed as one of the Elisors to draw the Elisor Grand Jury the aforesaid Joshua R. Salmon, who is a person licensed to practice Law in the State of New Jersey.

6. That said Charles W. Parker was interested in, and took part in the selection of the Elisor Grand Jury aforesaid, in that he furnished to Elisor Joshua R. Salmon, three different lists of names of Grand Juries previously selected at previous times in this court, and otherwise assisted the said Elisor in the selection of the said Elisor Grand Jury.

7. That the list supplied or given by the said Justice Charles W. Parker to the said Elisors for



the purpose of selecting the said Elisor Grand Jury was not the list from which a Grand Jury could legally be drawn according to the said Chancellor-Sheriff Jury Act;

8. That the said Elisors, selected and appointed by said Charles W. Parker first selected the names of Twenty (20) or more different persons, added them to the list which had been given to the said Charles W. Parker, and then chose the said names which they had added to the said list as the Elisor Grand Jury aforesaid;

9. That said Justice Charles W. Parker requested the Clerk of the Grand Jury, Nathaniel C. Toms, to resign as Clerk of the said Grand Jury of the County of Morris, said Nathaniel C. Toms, being a resident of the said County of Morris and under civil service, and after said Justice Charles W. Parker had secured the resignation of the said Nathaniel C. Toms, as Clerk of the Grand Jury for the aforesaid County of Morris, appointed as temporary clerk of the Grand Jury one J. Donald Masterton, who was not a resident of the County of Morris nor selected from the civil service list of those eligible for such appointments, nor an employee of the office of the Prosecutor of Morris County;

10. That said Justice Charles W. Parker with the appointment of the said J. Donald Masterton, as Clerk and not as assistant to the Clerk of said Grand Jury, ordered and permitted the said J. Donald Masterton to be present at all the sessions of the said Elisor Grand Jury, and to take stenographically the testimony of the witnesses be-

fore the Elisor Grand Jury and transcribe the same, and by reason of the said appointment of the said J. Donald Masterton there was no legal clerk of the said Elisor Grand Jury to record the vote of the same in proper manner on any complaint which the said Elisor Grand Jury heard;

11. That the said Justice Charles W. Parker, on the day when he swore in the said Elisor Grand Jury knew that there were but Twenty-two (22) persons, sworn in as a Grand Jury, that the laws of the State of New Jersey require that the Grand Jury shall consist of twenty-three (23) persons;

And this the defendant is ready to verify, wherefore he prays judgment, and that the said Justice Charles W. Parker may not sit in judgment upon the argument or trial of the above entitled case depending in the said Morris County Court of Oyer and Terminer.

JOHN A. MATTHEWS,
Att'y of Defendant.



## Demurrer.

MORRIS OYER AND TERMINER

| | |
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| The State, v. James H. Bolitho. | On Challenge of His Honor Charles W. Parker, Presiding Judge, etc. |

And Wilfred H. Jayne Jr., Assistant Attorney General of New Jersey, who prosecutes for the said State in this behalf, as to the said challenge of the Honorable Charles W. Parker, Justice of the Supreme Court of Judicature of the State of New Jersey, Presiding Judge of the Morris County Court of Oyer and Terminer, by the said defendant, James H. Bolitho interposed, comes and says that the same and the matters therein contained, in manner and form as the same are in said challenge alleged and set forth, are not sufficient in law to bar, disqualify and preclude the said Charles W. Parker from sitting in judgment upon the argument and trial of the indictment against the above named defendant.

Wherefore, he, the said Wilfred H. Jayne Jr., prosecuting for the State prays judgment, etc.

WILFRED H. JAYNE, JR.,
Assitant Attorney General
of New Jersey.

**Reply.**

MORRIS COUNTY COURT OF OYER AND TERMINER

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| STATE OF NEW JERSEY, | |
| vs. | |
| JAMES H. BOLITHO. | |

And the said JAMES H. BOLITHO, by his said Attorney, John A. Matthews, ESQUIRE, says, that the said Justice Charles W. Parker, did show by his said enumerated acts that the state of his mind and his opinion are contrary to the impartial administration of justice towards the defendant, as the said defendant hath alleged, and the said defendant, James H. Bolitho, prays judgment, &c.,

JOHN A. MATTHEWS,
Attorney of Defendant.



Argument

"MORRIS COUNTY OYER & TERMINER

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| THE STATE, | Challenge Of Justice Charles W. Parker sitting in the above-entitled Court. |
| vs. | |
| JAMES H. BOLITHO, *et als.*, Defendants. | |

Morristown, N. J., May 23, 1925.

Before: HON. CHARLES W. PARKER,
Justice of the Supreme Court.

Appearances:

For the State, Hon. Wilfred H. Jayne, Jr., Deputy Attorney General.

For the Defendants, John A. Matthews, Esq.

"The Court: Mr. Jayne, I suppose you have some arraignments today?

"Mr. Jayne: Yes. I am going to arraign as many as are here.

"The Court: Anything we can do in the absence of Clerk, Mr. Jayne?

"Mr. Jayne: I think we might proceed to consider the matter of challenge. Your Honor please, as the prosecuting official in behalf of the State, I have determined to file a demurrer to the challenge of your Honor as Presiding Judge of the Court of Oyer and Terminer and, likewise, a demurrer to the challenge made to the array of petit jurors of the present May Term.

"Mr. Matthews: I therefore suppose, your Honor please, that that takes as admitted all the facts alleged in the challenge, and puts upon us the duty of arguing the challenge and the demurrer.

"The Court: I suppose it does, so far as the State is concerned. Whether the demurrer interposed by the State admits all the facts, so far as I personally am concerned, is another matter; but perhaps it may be as well to say that, while I do not admit generally all the alleged allegations of fact that are set up in your different challenges that you were kind enough to give me the other day, perhaps, for present purposes, we may as well consider them as conceded for the purpose of argument.

"Mr. Matthews: Of course, I have nothing before me except the following demurrer:

'And Wilfred H. Jayne, Jr., Assistant Attorney General of New Jersey, who prosecutes for the said State in this behalf, as to the said challenge of the Honorable Charles W. Parker, Justice of the Supreme Court of Judicature of the State of New Jersey, presiding Judge of the Morris County Court of Oyer and Terminer, by the said defendant, James H. Bolitho, interposed, comes and says that the same and the matters therein contained, in manner and form as the same are in said challenge alleged and set forth, are not sufficient in law to bar, disqualify and preclude the said Charles W. Parker from sitting in judgment upon the argument and trial of the indictment against the above named defendant.

'Wherefore, he, the said Wilfred H. Jayne, Jr., prosecuting for the State, prays judgment,' and



so forth; and he makes that demurrer on challenge of his Honor.

"The Court: Well, it is a demurrer in spite of the fact that, so far as Mr. Jayne is concerned, that admits everything in behalf of the State; but, I say that so far as I personally am concerned, I am willing to say at this time that they are admitted for the purpose of argument.

"Mr. Matthews: But if they were not going to be admitted in toto, I do not see the distinction of your Honor not admitting them and of the State admitting them; but if they were not going to be admitted, then I would like to have them answered because I cannot meet the answer unless it is admitted.

"The Court: Very well, the State admits them. Did you ever hear of a plea of non vult?

"Mr. Matthews: Your Honor says, very well, the State admits them, and your Honor for the moment pleads non vult?

"The Court: Yes.

"Mr. Matthews: May I then be heard? Taking the reasons seriatim—your Honor has a copy—the first allegation is that your Honor did, without authority in law order an investigation upon a petition signed by a less number of tax payers and freeholders of the County of Morris than required by law, said petition not setting up any facts constituting reason for such investigation, and containing merely a conclusion, namely, that there were deplorable conditions in the County of Morris.

"If the State has admitted that you did not have authority in law to order this investigation, I submit that that in itself ought to be a full ad-

mission and, therefore, if your Honor acted without authority, your Honor would be disqualified from acting. In order that I might argue the point itself, I would like to say to your Honor that an investigation of the law shows that whatever authority is in your Honor to order an investigation as a Supreme Court Justice comes to your Honor by statute.

(Citing and quoting from Statutes of 1879, 1898, 1907; Compiled Statutes, Sec. 246, 1080, and cases.)

"Mr. Matthews: We claim that your Honor has done it without authority in law, and we set that up as the first reason; also, that your Honor would be interested, using the word 'interested' in the sense that your Honor would have an opinion that would interfere with the impartial administration of justice in this matter.

"The Court: Well, Mr. Matthews, we may as well deal with these several matters as they come along. And if you have finished what you have to say on that point, it may be proper for me to say at this time that if this is an investigation under what I call the twenty-five freeholders act, why, it might very well be so, that such an investigation conducted in the way in which this is conducted, is without warrant of law under the twenty-five freeholders act. But I do not understand that the appointment of elisors in the selection of a grand jury by those elisors and the investigation by that grand jury has anything to do with the 25 freeholders act. It rests on other grounds. Consequently, I think that the first point is irrelevant and, therefore, overrule it.



"Mr. Matthews: I take an exception.

"The Court: You may take your exception. Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: The second point is, that the said Justice Parker without authority in law appointed one Wilfred Jayne, Jr., to prosecute said investigation and allowed the said Wilfred Jayne, Jr., to conduct said investigation without authority in law, and advised and approved the said investigation thus conducted by the said Wilfred Jayne, Jr., without authority in law, and later, to wit, on the nineteenth day of February, 1925, purported to legalize said heretofore illegal investigation by the request of the said Charles W. Parker, to Edward L. Katzenbach, Esquire, for the appointment according to law of the said Wilfred Jayne, Jr.

"That second reason looks to the fact that, so far as the records show, and, of course the demurrer admitting that that is so, whenever it was your Honor appointed Mr. Jayne, he was appointed without legal authority; and that, thereafter on the 19th of February at the time your Honor did call the elisors, your Honor then did not proceed according to the laws by appointing them.

"Now, a search of the records of this County by counsel disclosed no such appointment on record in the County of Morris except the appointment dated the 19th of February, 1925, and the facts of the matter are that the investigation was conducted from—to be as accurate as I can—

probably the June previously; that, therefore, the machinery of this investigation was set in motion without warrant in law, and the attempt to legalize it on the 19th of February is fatal and, therefore, the investigation was illegally conducted.

"The Court: I cannot see there is any legal sufficiency in that point, so far as relates to my capacity to sit on the trial of the cases. It may be certain errors of law were committed, and if there were, they may be rectified at the proper time and in the proper way; but as to personally disqualifying me, I am unable to see it, and I overrule that.

"Mr. Matthews: Exception. Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: The third point, that having knowledge of the conditions, circumstances and reasons for the passage of the law of May 29, 1913, known as 'The Chancellor-Sheriff Jury Act,' and knowing that the intention of the people of the State of New Jersey by their vote upon the same, and the Legislature of 1913, in passing the same was to abolish Elisor Grand Juries in the State of New Jersey, and make it impossible for Grand Juries to be drawn by choice and not by chance, nevertheless, said Justice Parker ordered and directed that the Sheriff of the County of Morris be removed as one of the Jury Commissioners, and without any charges of interest or misconduct or otherwise against William C. Sweeney, the other Jury Commissioner of



the County of Morris, prevented the said William C. Sweeney from acting as Jury Commissioner in the said County of Morris, and ordered and directed that two elisors, namely, Victor A. Weiss and Joshua R. Salmon select and impanel an Elisor Grand Jury for the purpose of continuing and terminating the said investigation which he had permitted and ordered to be put in operation.

(Argument and citing cases.)

"The Court: I do not want to take up time on that branch of the argument, although it might very well be said that a demurrer admits only such facts as are well pleaded and that are not admitted conclusions of law. Now then, what the intention of the Legislature was in passing the Chancellor-Sheriff Act is something that I think you will agree with me is settled by a number of decisions, and has to be gathered only from the language of the act itself, just like a will, and that apparently I do not agree with the proposition that you now state as to what the Chancellor-Sheriff Jury Act means or what its effect may be, and that having a different view of the law in that regard, I concluded to call elisors. Now, that may be an error in law; I think perhaps it would be a very decided error in law; but we have come back to the same proposition that seemed to be controlling in your mind on number two, and that is, what has that to do with the eligibility of the judge that made the appointment of the elisors? I say it has nothing to do and it is irrelevant. But be it as wrong as you please, it may be a proper ground of challenge to the array of the Grand Jury. Whether that challenge may be

made now is another matter. It might have been a proper ground of challenge to the array of the Grand Jury when the Grand Jury were brought into court, and they were about to be sworn in. But as for saying that the judge is wrong because he committed what you claim to be an error in law in having the Grand Jury selected through elisors, I consider to be untenable and, therefore, overrule it.

"Mr. Matthews: Exception. Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Matthews: The fourth reason set up is, that by law the said William C. Sweeney, Jury Commissioner as aforesaid, was appointed by the Chancellor of the State of New Jersey, who alone had the power and authority to remove him from his said office as Jury Commissioner.

"There is no order in the proceedings whereby your Honor removed Mr. Sweeney as Jury Commissioner, but the appointment of elisors was equivalent thereto, as it seemed to me. Since that is so, the point, if I might argue that to your Honor, is that there was present one who had been appointed by the Chancellor of the State of New Jersey, who was fit to draw this jury, and your Honor virtually disqualified him by turning over his duties to another. I do not think I need to argue that further, because if your Honor's argument as to this, or your Honor's opinion is true, as we take it to be true, why, then it does not need to be argued further.

"The Court: I think it is controlled by what



has already been said and, moreover, I cannot understand what authority the Jury Commissioner has to act alone if the Sheriff is disqualified.

"Mr. Matthews: Except that the act provides the Undersheriff in the absence of the Sheriff.

"The Court: After all, the Undersheriff is nothing but an alter ego of the Sheriff, and if the Sheriff is disqualified, it would seem that the Undersheriff would be as his appointee. That is the way I feel about that; but, of course, it will go to the broader proposition I have just stated.

"Mr. Matthews: Exception. Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Matthews: Number five is that, although the said Chancellor-Sheriff Jury Act of 1913 provided that no person licensed to practice law in the State of New Jersey shall be appointed Commissioner of Jury, said Justice Charles W. Parker appointed as one of the elisors to draw the Elisor Grand Jury the aforesaid Joshua R. Salmon, who is a person licensed to practice law in the State of New Jersey.

"That, I think, if your Honor please, would stand or fall upon the particularities that were enumerated under the reasons given for the Chancellor-Sheriff Act.

"The Court: Of course, if the Chancellor-Sheriff Act was affected in this regard, why, Judge Salmon was manifestly ineligible, provided that is what it says. I have not taken the trouble to

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look at it; but I do not think there is anything in the point, and overrule that.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Number six, that said Charles W. Parker was interested in and took part in the selection of the Elisor Grand Jury aforesaid, in that he furnished to Elisor Joshua R. Salmon, three different lists of names of Grand Juries previously selected at previous terms of this court, and otherwise assisted the said Elisor in the selection of the said Elisor Grand Jury.

"The Court: I do not know what the 'otherwise assisted' means.

"Mr. Matthews: But to be specific about it, now, in the testimony before Supreme Court Commissioner Holland, now Prosecutor of the County, Joshua Salmon testified that your Honor gave him the October and some other month list of the Grand Jury previous to the January Term.

"The Court: Yes.

"Mr. Matthews: And that you gave him the January Term list of the Grand Jury, or a list minus the January drawn Grand Jury. He testified further he did not use those names to get his 24 men; that he took those men—I better quote him right, because I do not want to offend your Honor or the Judge in the matter.

Reading testimony of Joshua R. Salmon.

Q. Judge Salmon, you are one of the elisors appointed by Justice Parker to pick a grand jury



for the County of Morris, are you? A. Yes. Q. You are an attorney and counselor at law of the State of New Jersey, are you? A. Yes. Q. After your appointment as elisor what was the first thing you did to carry out the duties of this appointment as you understood them? A. Following our taking of the oath we immediately conferred, proceeded to confer on the matter several days. Q. You say we, who is we? A. I mean Mr. Weiss and myself. Q. Your co-elisor? A. Yes. Q. After several days' conference what did you do next? A. Then we came to the result of these conferences by determining the names of the actual individuals to comprise the list of the twenty-four persons. Q. What did you first do with reference to getting the names from which you drew the twenty-four persons? A. We procured what I believe to be the current list of three hundred names captioned "Grand Jurors for service in the January Term, 1925." Q. When did you procure these names? A. The names were given to us in the list by Justice Parker. This list appeared to be a carbon copy of what purported to be the current grand jury list. Q. Do I understand you Judge Salmon, that it was a carbon copy of the grand jury list that was on file in the County Clerk's Office that had been prior thereto drawn by Mr. Sweeney and the Sheriff as Commissioners? A. As to that, yes, my understanding is that it was a carbon copy of the current list, of the grand jury panel of January, 1925. Q. It was in other words the grand jury list that was on file in the Clerk's Office and which list had been filed by the Sheriff and by Mr. Sweeney, grand jury commissioners?

A. That is my understanding, exactly, but I have no confirmation whatever. Q. When you were handed that list by Justice Parker, what next did you do, you and your co-elisor? A. We proceeded to confer and to work upon the subject of the selection of the twenty-four names. Q. You told me on that conference you drew twenty-four names from that list, tell me why you decided to do so? A. I must correct you there because of having told you that, and the fact was that we did not select the twenty from this list. It was merely a memoranda, and to which so far as my recollection is concerned we took, no recourse whatsoever. I recollect that for the reason that I was surprised later to find that of the twenty-four list as we had concluded it should be there was in the list of three hundred, perhaps two or three names that we had decided upon. The list itself I would say freely was of no material assistance in creating the twenty-four name list that we decided upon. Q. Then where did you get the names from which you decided upon, the twenty-four? A. So far as I am concerned twenty-three of these names came out of personal acquaintance. By that I mean speaking acquaintance with twenty-three and possibly the twenty-fourth as well. One person I recall I could not visualize, he was suggested by my co-elisor. The remaining twenty-three names, as to twenty-two of them I recall that I remember personally so that I could visualize those persons, and had with them a speaking acquaintance. As to that remaining one of the twenty-three, I later re-called having met him, and upon seeing his face later, I knew that I knew him. Q. So that



Judge Salmon, despite the fact that you had received a list of three hundred names from Justice Parker, you nevertheless, with your co-elisor, have chosen twenty-four men who were to serve, and really have not used the list, but those twenty-four men were those whose acquaintanceship you had or whose qualifications you felt you knew? A. That is absolutely correct. Q. There was no lot selection of a jury, was there? A. None. Q. The names were taken by you, that is the method you employed and their qualifications were confirmed by you? A. That is true. Q. Mr. Wiss was there selecting at the time? A. He was. Q. And of the twenty-four names he had acquaintanceship with one? A. He had the acquaintanceship with the one with whom I had not, but with many of those with whom I also was acquainted; just what number I cannot say, but considerable. Q. After having prepared the list of twenty-four names what did you do? A. We next established what we called ourselves a panel of three hundred names, and in that three hundred we made it a point that the twenty-four selected should be included therein. Q. That is to say after you had already determined upon the grand jury, you then made up the panel of three hundred names which you called the grand jury panel? A. Yes. Q. You made that up with the twenty-four names selected were included in the panel of three hundred? A. Yes. Q. From whence and in what manner did you compile or get these three hundred names? A. We took as a foundation the list here of three hundred marked P-1 and made some changes therein. Q. When you say you made some changes, do you

mean you struck some names from the list and added some others? A. We did, exactly. Q. Do you know how many names you struck from the panel? A. I would say twenty. Q. Then I understand you, that you struck twenty from the list P-1 and put twenty names in the place of them? A. That is my belief. Q. These twenty were twenty of the twenty-four added? A. Yes. Q. Then it would seem that of the original three hundred list P-1 there were four in the original list you had already selected in the twenty-four list you had complied? A. I doubt that to be the fact, an examination of P-1 would show, we, as I recall excised all names on the current January panel that had actually been sworn, by that panel I mean, the commission drawn jury; we then made substitution of those whom we had selected in the place and stead for the most part, in place of those who had been excised, and there would be at least one odd name, because there was twenty-three sworn in the regular panel, and one more that we would select. I notice offhand two names, in the P-1 list which were not our selection. There is another name that had been there which had been considered by us, that also had been put in the three hundred list being P-1. I should say now before we had already subscribed our twenty-four list we had actually made up this panel of three hundred, and I am clear in my recollection that the process of selection was not yet exhausted nor finished, and that when the list of the typewriting establishing the twenty-four and which we finally created was accomplished, and following which we attached our signatures the three hundred panel had been determined as



the panel of three hundred which we might very properly create; therefore, as I have stated the list of twenty-four were purely selections and irrespective of the list being P-1 referred to here. Q. In other words, Judge Salmon, before you subscribed your list of twenty-four which you have subscribed as rather the personal selection of the elisors, you say that P-1 which was the jury drawn list has excised from it, the January drawn jury, the Commissioner drawn grand jury, and in the place and stead of the twenty-three thus excised you had added twenty-four others, does not that about state your process? A. It does generally, but I observe not specifically, for Juror No. 11 drawn in the January term and Juror No. 20 as found in P-1 were not excised nor excluded, and 18 as well, as I can say. Q. So that mentioning three now of the January Term which had been discharged they were still allowed to remain in your new three hundred list? A. I think that is correct. Q. When you had finally compiled in the manner you have described this three hundred list what did you do with it? A. Personally I placed both lists, that is the list of twenty-four, then in final shape and duly subscribed by myself and co-elisor, and the three hundred panel, as I will call it, duly subscribed by both of us, as I remember, in the custody of my fellow elisor, late on Saturday, I think February 28th. Q. Have you that three hundred list as finally determined upon by you? A. No. Q. Where is it? A. My personal knowledge does not go beyond my placing these papers in the hands of my fellow elisor, making arrangements with him to deliver the two jury lists to the Court

with notice to the coroner for service, it being my intention which I carried out, to leave on Monday morning early for Washington, D. C. Q. And you left Monday morning early, the second of March? A. Correct. Q. And you were not in Morris County from the second of March until when? A. I was in Morris County on the evening of the third of March. Q. After you gave the list of the three hundred and of the twenty-four to Mr. Wiss, you, of course, do not know what Mr. Wiss did with it, except from hearsay? A. I have no personal knowledge. Q. When the return of the list of twenty-four into Court was made you were not present? A. That is correct. Q. This was on the second of March, I think? A. Yes, I cannot say about the Court record. Q. So that the end of your acting was when you handed the list to Mr. Wiss, and since then you have done nothing further? A. That is substantially correct, that I made it clear to Mr. Wiss that from that time on I felt that he was acting for himself and for me, and I delegated to him the business of speaking for me in the presentation of these papers to the Court and to the Coroner. Q. Do I understand you to say that you gave the papers to the coroner or directed Mr. Wiss to give them to the coroner for service. A. That is correct. I had made arrangements with Mr. Wiss in company with him for the coroner to make this service on Monday and Tuesday following in order to get the six days notice to the selected persons. Q. Had there been special appointment of the coroner for this purpose? A. No there had not been; to the best of my knowledge. Q. Who was the Coroner? A. His name



is Horace A. Babbitt of Morristown. Q. When had you made arrangements with Mr. Babbitt, you and Mr. Wiss for the service of the panel? A. My best recollection is that it was on Saturday forenoon, February 28th. Q. Did you meet Mr. Babbitt in conference with Mr. Wiss and tell him you wanted him to serve them? A. Exactly so. Q. Did you hand him the service papers at that time? A. No they were not then prepared. Q. Who prepared them? A. I did. Q. When? A. During Saturday, prior to leaving my office between five and six o'clock that afternoon. Q. When did you hand them to Mr. Babbitt? A. I did not hand them to Mr. Babbitt. They are the papers together with the two jury lists that I delivered to Mr. Wiss, left them in his custody to be delivered Monday morning following. Q. Prior to this time you had told Mr. Babbitt to hold himself in readiness for the service of these papers? A. That is true. Q. I have in my possession the oath of H. A. Babbitt, sworn before Justice Parker on the second day of March, have you any knowledge of that paper? A. No, I have no knowledge of that paper, that is the paper of which that is a copy, although we had signed a formal written appointment of Mr. H. A. Babbitt to act as the serving coroner. Q. When had you signed that? A. We signed that on the 28th day of February. It bore date and was to take effect March 2d according to understanding between Mr. Wiss and myself. Q. Have you a copy of that? A. Yes. Q. Is the original on file in the County Clerk's Office? A. I don't know, but it may well be. Mr. Wiss and I concluded that that paper should be delivered to Mr. Babbitt as

the basis of his authority, and delivered to him with the notices to the respective grand jurors selected. Q. Then the fact remains as a deduction, does it not, that in the twenty-four names that are now on file selected by you and Mr. Wiss there is no name that was on the list, the original P-1 list that you say you got from Justice Parker? A. No, that is not correct because inspection tells me that at least the names of Messrs. Dickerson and Hanse, which are on the selected list are also on the list known as P-1, and there may be more, but not many, perhaps one or two. I should say further that as a means of facilitating our work, I procured at the same time as I procured P-1 Exhibit, a list of the grand jury of October 1924 and the struck jury of 1924, purely for information as to names of possible material, and as respects the location of their residence and other facts and the like. Q. Where did you get this list from? A. These lists were handed to me at my suggestion from Judge Parker, together with P-1, all of which I happened to see on his desk in Chambers at the County Court house in Morristown.

"Mr. Matthews: From that, I say this, in setting forth this sixth reason: that your Honor, in giving the October and other month list to Elisor Salmon and furnishing the list of the Sheriff, or the list of the January Term that had been drawn by the Sheriff, had been interested to this extent, that you had advised and consulted with the Elisors, and that that advice would make your Honor interested. The other point, your Honor please, is that they in all probability took your advice and acted upon it.



"The Court: However the Elisors proceeded, I do not know, except from what you have read to me. No doubt Judge Salmon's statement of the matter is correct. If it is of any interest to hear from me as to how he got those lists, I am willing to state at this time that Judge Salmon, or both Elisors, asked whether they could not utilize some previous lists of persons eligible for jury service. I forget whether it was grand or petit. It may have been a Grand Jury as made up by the Commissioners from time to time. Those, of course, were matters of public record in the County Clerk's Office. I have no doubt the County Clerk has those lists for many terms past, and, as it happened, I think I probably said 'there is no objection to using the old lists as a sort of a reminder;—why, here are a couple of them right here in the desk in the judge's room.'

'Mr. Matthews: That was the testimony.

"The Court: That is about as I recollect it.

"Mr. Matthews: Your Honor had them on your desk. You said, 'You might take these.'

"The Court: Well, I hardly think that ought to disqualify me, and I overrule that.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Seven, that the list supplied or given by the said Justice Charles W. Parker to the said Elisors for the purpose of selecting the said Elisor Grand Jury was not the list from which a Grand Jury could legally be drawn according to the said 'Chancellor-Sheriff Act.'

"Now, if that, of course, stands in the other category, as I understand the Chancellor-Sheriff Act, if a new Grand Jury is to be drawn from the old list, it must be drawn from the balance of the list. To give those Elisors the three lists to make up the list, was not according to the procedure of the Chancellor-Sheriff Act.

'The Court: You mean it ought to have come from the list for the term?

"Mr. Matthews: Yes.

"The Court: Well, assuming, for the present, that was an error in law, the Court at this time does not think that that disqualifies it to deal with the case.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Eight: That the said Elisors, selected and appointed by said Charles W. Parker first selected the names of twenty or more different persons, added them to the list which had been given to the said Charles W. Parker, and then chose the said names which they had added to the said list as the Elisor Grand Jury aforesaid.

"That has to do with the *minutiae* of the detail of selection, and stands or falls on the legal principle your Honor has enunciated.

"The Court: So it does. And I confess I was unable to see it at the time and am unable to see it now, why, if the selection of Elisors were proper, the Chancellor-Sheriff Act was applicable. I do not see why the Elisors should not



have gone out and picked their Grand Jurors out of a clear sky and returned them; but that is a question on my view of the law. You may have your exception.

"Mr. Matthews: Yes.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Number nine, that said Justice Charles W. Parker requested the Clerk of the Grand Jury, Nathaniel C. Toms, to resign as Clerk of the said Grand Jury of the County of Morris, said Nathaniel C. Toms being a resident of the said County of Morris and under civil service, and after said Justice Charles W. Parker had secured the resignation of the said Nathaniel C. Toms as Clerk of the Grand Jury of Morris County, said Justice Charles W. Parker, contrary to law, appointed a temporary clerk of the Grand Jury for the aforesaid County of Morris, namely, J. Donald Masterton, who was not a resident of the County of Morris, nor selected from the civil service list of those eligible for such appointments, nor an employe of the office of the Prosecutor of Morris County.

"Now, in this reason, if your Honor please, I want to give your Honor specifically the law that I got, but I do not want to talk from memory. I looked into that point particularly because of the fact that if Mr. Toms was not a properly authorized person that, therefore, in the Grand Jury room, he would be an unauthorized person, and therefore would be a legal *faux pas,* which probably would vitiate the indictments. That was the

first purpose in looking it up. I found, if your Honor please, that the statute in force under which your Honor attempted to appoint the Clerk of the Grand Jury to take the place of Mr. Toms is Section 37, 1st Sup. Compiled Statutes, and reads as follows: (Reading Statute).

"Now, there is no provision in this State, as I can find, your Honor please, for the appointment of a temporary clerk, and your Honor's appointment is, if I may read a copy of it to your Honor, for a temporary Clerk of the Grand Jury.

"The Court: Does it say temporary?

"Mr. Matthews: Yes, if I have got my copy right. Of course, I am depending upon the copy.

"The Court: That may be so. My recollection was it was a straight out appointment. How about that, Mr. Jayne? What is your recollection?

"Mr. Jayne: My recollection is it was a straight appointment.

"The Court: What do you say? Do you say it was temporary? You say I appointed a temporary clerk?

"Mr. Matthews: Yes, your Honor.

"The Court: Well, all right. That seems to be admitted by the demurrer, so perhaps you do not need it.

"Mr. Matthews: (Reading appointment referred to, as follows):

Morris County, ss:

There being at present a vacancy in the office of Clerk of the Grand Jury in and for the County of Morris, I, Charles W. Parker, Justice of the



Supreme Court assigned to said County, do hereby appoint temporarily as Clerk of the Grand Jury for said County, John Donald Masterton, pursuant to the statute in such case made and provided.

"The Court: Very well.

"Mr. Matthews: Now, it is our contention that there is no provision, as I said before, in the statute for the appointment of a temporary clerk of the Grand Jury and, moreover, the statute specifies that the clerk of the Grand Jury must be appointed under the seal of the Court for a term not exceeding three years. (Citing Chap. 24, Laws 1923, p. 84; Vol. 3, C. S. Sec. 20, p. 3204; Chap. 134, Laws 1924, p. 310; and argument).

"Now, the question is whether or not the presence of Mr. Masterton before the Grand Jury was such as to make your Honor interested.

"The Court: Well, Mr. Toms resigned, didn't he?

"Mr. Matthews: Yes. The record that I got from the office of the County here shows that he sent a letter to your Honor that he resigned to take effect within ten days. It was within that ten days that your Honor appointed temporarily Mr. Masterton.

"The Court: I think it was filed. I know there was such a letter.

"Mr. Matthews: On March 6, 1925.

(Further argument).

"The Court: There is something under the Civil Service Act about temporary appointments being excepted, whatever that exception may be.

It was considered at the time, and I may say that I think that this ninth point was admitted by the demurrer, and that the facts therein set up are entirely correct with respect to the demurrer. Now, it may have been erroneous in law for Mr. Masterton to attend the sessions of the Grand Jury. If is even conceivable, although at present I do not pass on it, that the Grand Jury itself was turned into an illegal body, and that this indictment was vitiated; but that is another matter. And the question is whether it makes me interested, and it may seem a little bit odd for a judge to be sitting on the question as to whether he is interested or not. You have not raised that at all. It will not be out of place to say that under the old, old statute in New Jersey, that runs back over one hundred years, if there was a challenge to a judge, he could either sit and hear the challenge himself or else he could appoint a trior, and in the old case in Pennington that you were good enough to cite to me the other day, it appeared, as I recollect it, that the three Judges of the Supreme Court were challenged. They appointed triors and the triors went out and tried the matter, and they brought back what might seem to me to be sort of a special verdict. They said the facts were so and so, but whether the judges were disqualified in view of those facts, they did not know, and they put it up to the judges; but Chief Justice Kirkpatrick thought he was disqualified, but the other two judges thought that they were not; so they overruled the Chief Justice and held it was all right. But under the statute, which was modified very shortly afterwards, and which has come down to



this day and is now Secs. 260 to 264 of the Act to regulate the practice of courts of law, why it has always been considered the correct course for the judge that is challenged to have to try the matter himself, or to appoint triors in his discretion. If there had been disputed questions of fact here, he probably would have appointed triors to thrash them out; but there did not seem to be any substantially disputed questions of fact, and as it would probably be up to me in any case to decide on the law, why, I am going to handle it myself.

"Mr. Matthews: I did not desire the appointment of triors, or did not move, your Honor—

"The Court: No. You did not suggest that. I do not think that those facts have made me such an interested party that I am incapable of properly sitting on the trial of these indictments, if they are tried, and so that is overruled.

"Mr. Matthews: At this point, I forgot to say to your Honor that your Honor requested the resignation of Mr. Toms.

"The Court: That is correct. I think it says so here.

"Mr. Matthews: Yes, sir. Exception, your Honor please.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Number ten is, that said Justice Charles W. Parker, with the appointment of the said J. Donald Masterton, as clerk and not as assistant to the Clerk of said Grand Jury, ordered and permitted the said J. Donald Mast-

erton to be present at all the sessions of the said Elisor Grand Jury, and to take stenographically the testimony of the witnesses before the Elisor Grand Jury and transcribe the same, and by reason of the said appointment of the said J. Donald Masterton, there was no legal clerk of the said Elisor Grand Jury to record the vote of the same in proper manner or any complaint which the said Elisor Grand Jury heard.

"The Court: You have been all over that. You mentioned those facts.

"Mr. Matthews: Yes. Well, the same argument would prevail for that as prevailed for the other.

"The Court: The same disposition.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Number eleven is that the said Justice Charles W. Parker on the day when he swore in the said Elisor Grand Jury knew that there were but twenty-two persons sworn in as a Grand Jury, that the laws of the State of New Jersey require that the Grand Jury shall consist of twenty-three persons.

"The Court: Well, yes; I do not know about the law; but I knew that there were only twenty-two. Do you wish to go into that?

"Mr. Matthews: Except to say, if your Honor please, that your attitude upon the matter was that that was your impression of the law and that was the law at that time, therefore, it would not be interest, but it would be your misinterpretation of the law.



"The Court: I do not think it is the law. I would not like to say. That is overruled.

"Mr. Matthews: Exception, insofar as it does me any good.

"The Court: Very well.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: Number twelve, that said Justice Charles W. Parker will be subpoenaed as a witness at the trial of said case by the defendant.

"Your Honor will appreciate I have 45 indictments to go over, and I have been going over them, and, of course, I have not been preparing them for trial; I have been preparing them for motions. In consulting with the different clients, there are emergencies of testimony that would require the calling of your Honor as the case is planned, and the representation is made with respect to your Honor that we would so desire. I find the law to be that where a Justice is to be called and the Court is to be, so to speak, denuded or destroyed thereby, of course, one cannot call the Justice; but if your Honor sits in the Oyer with another Justice or another judge, and your Honor were called, that would not destroy the court and, therefore, your Honor could be called. If your Honor could be called as a witness, it seems to me your Honor would be an interested person.

"The Court: You have not said I am going to be called. You said I am going to be subpoenaed.

"Mr. Matthews: Well, if that is a technicality

of your Honor's interpretation, I want to change it and say subpoenaed and called.

"The Court: You might subpoena every Justice in the Supreme Court and every County Judge in the State of New Jersey.

"Mr. Matthews: That would not be a kind of practice I would like to do.

"The Court: You may as well go to the merit of the thing, and as to that, I think your difficulty is this: that the Court of Oyer is not a Court of Oyer unless the Supreme Court Justice presides in the proceedings. If these indictments were sent down to the Sessions, why, very possibly your point would be good. The County Judge could then go on and try the indictment, notwithstanding the absence of the Supreme Court Justice. But these indictments are in the Oyer, and therefore you destroy the Court if the Presiding Judge, made so by the statute, is called as a witness. Of course, the case that you have referred to is the case of the State v. Denio in 69th Law 590, and there is also some law I have found in 33 C. J.

"Mr. Matthews: I did not know that Denio case.

"The Court: Having had these challenges in mind for some days, I looked at the law on the subject, and I found that; so that will be overruled.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



Mr. Matthews: Also, if your Honor please, the written challenge to the array of petit jurors that was filed in Bolitho's name previously, and I desire to have the same challenge to the array filed in this cause now as to this indictment, so that there will be no doubt that the record will show the benefit to Mr. Bolitho of that plea.

The Court: You are entitled to all those matters. (The previous proceedings in regard to challenge to the array of petit juors, had at Morristown, N. J., May 22, 1925, are as follows):

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**Challenge.**

MORRIS COUNTY COURT OF OYER AND TERMINER

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|---|---|
| STATE OF NEW JERSEY,<br><br>vs.<br><br>JAMES H. BOLITHO. | Challenge To the Array of Petty Jurors drawn for service at the May Term, 1925, of the Courts of the County of Morris, including the court of Oyer and Terminer. |

And now at this day, to-wit, on the eleventh day of May, nineteen hundred and twenty-five comes as well Wilfred Jayne Jr., representing the State of New Jersey, and the defendant, James H. Bolitho, by John A. Matthews, Esquire, his attor-

ney, and the jurors of the Petty Jury empaneled for service at the May, 1925 Term of the Morris County Court of Oyer and Terminer.

And hereupon the said defendant, James H. Bolitho, by John A. Matthews, Esquire, his attorney, challenges the Array of the said panel of Petty Jurors, because he says that;

(1) That the said Petty Jurors were purported to be drawn by Charles E. Estler, Sheriff of the County of Morris, who heretofore by the order of Justice Parker has been disqualified as Jury Commissioner for Morris County, and while so disqualified, participated in drawing of said Petty Jury, and because the said Charles E. Estler, Sheriff as aforesaid is interested in the outcome of several of the causes to be tried by said Petty Jury, including that of defendant above mentioned.

(2) That the aforesaid Petty Jurors by reason of the wide publicity given to the criminal proceedings which will be brought before it, is prejudiced and biased; and this defendant is ready to verify. Wherefore he prays judgment, that the said panel of Petty Jurors may be quashed.

JOHN A. MATTHEWS,
Attorney for Defendant.



## Demurrer.

MORRIS OYER AND TERMINER

| | |
|---|---|
| THE STATE<br>v.<br>JAMES H. BOLITHO | On Challenge to the Array of Petit Jurors, May Term 1925. |

And Wilfred H. Jayne Jr., Assistant Attorney General of New Jersey, who prosecutes for the said State in this behalf as to the challenge of the array of petit jurors empanelled for service at the May 1925 Term of the Morris County Court of Oyer and Terminer by the said defendant, James H. Bolitho interposed, comes and says that the same and the matters therein contained, in manner and form as the same are in said challenge alleged and set forth, are not sufficient in law to disqualify and quash the said panel of petit jurors.

WHEREFORE he, the said Wilfred H. Jayne Jr., prosecuting for the State, prays judgment, etc.

WILFRED H. JAYNE, Jr.,
Assistant Attorney General
of New Jersey.

"The Court: Now, about this petit jury business, Mr. Jayne, I do not know whether you want to go into that at this time. Perhaps it would be as well to suggest to Mr. Matthews that, while I have no objection to considering the matter at this time, that seems to be a lot of surplusage, because we have not got to a petit jury, and irrespective of the sufficiency of the particular challenges to the array,—these are really challenges to the array?

"Mr. Matthews: Yes, your Honor.

"The Court: —why, the time for making a challenge to the array is when your jury is about to be called.

"Mr. Matthews: Your Honor will remember last week we were rather informal about the presentation of this. I put them both together so as to inform the Court and the Prosecutor.

"The Court: I am asking you now whether you want to go into that at this time, because we may never have a jury. There might be a plea of *non vult,* even, or a plea of guilty, you know.

"Mr. Matthews: Yes, your Honor.

"The Court: I do not think it is pertinent, under present circumstances. What shall we do about it?

"Mr. Matthews: It is to be sure of my position that I must proceed *in limine* on my motion to the array.

"The Court: I do not want you to lose any rights. I have no objection. Mr. Jayne, what do you want to do, decide it now?

"Mr. Jayne: I am prepared to proceed.

"Mr. Matthews: It is very short. The reason is, number one, that the said petit juries were



purported to be drawn by Charles E. Estler, Sheriff of the County of Morris, who heretofore by the order of Justice Parker has been disqualified as Jury Commissioner for Morris County, and while so disqualified, participated in drawing of said petit jury, and because the said Charles E. Estler, Sheriff as aforesaid, is interested in the outcome of several of the causes to be tried by said petit jury, including that of defendant above mentioned.

"Now, that is demurred to. If that is so, he is interested, and if he was disqualified as jury commissioner, and those facts are true, it seems to me the challenge should be allowed.

"The Court: Had been disqualified as jury commissioner for Morris County; that is a conclusion, isn't it?

"Mr. Matthews: Your Honor please, I should say it is not a conclusion, because the orders of your Honor forbade him to act, and it is only another way of calling it a disqualification, it seems to me.

"The Court: He was disqualified to draw a Grand Jury, wasn't he? Then you say that he is interested in the outcome of several of the causes. Well, that may well be; but what about the other causes? That, of course, would not permit a challenge to the entire array on every cause, and that is what this amounts to. I suppose you will agree about that.

"Mr. Matthews: My challenge to the array has to do with the defendants with the exception of Mr. Hegarty.

"The Court: But you say several of the cases to be tried. Well now, that does not specify any-

thing. If you want to name the cases, why, then I should probably say to you, there is time enough for you to interpose this challenge to the array when the cases are called.

"Mr. Matthews: I haven't anything further to say on that reason.

"The Court: I think I will have to overrule that.

"Mr. Matthews: Exception.

"The Court: Yes.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Matthews: The second reason is, the aforesaid petit jury by reason of the wide publicity given to the criminal proceedings which will be brought before it, is prejudiced and biased; and this defendant is ready to verify. Wherefore, he prays judgment, that the said panel of petit jurors may be quashed.

"Now, if your Honor please, I think it goes without saying that the jury here have knowledge of the entire proceeding, and it has become such a matter of discussion that opinion is bound to have been formed; primarily, it is a matter of the investigation of this County; it is a matter that has received publicity not only in your local press, but in the press as far as the metropolitan area, and there is scarcely a juror in the community, I suppose, who has not an opinion one way or another, or a citizen; and, if so, it looks to me that interest is such that it would be enough to predicate a challenge to the array.

"The Court: In the first place, I do not think



the second reason is specific; and, in the second place, if it were, it would seem that you ought to apply for a foreign jury, and how far you have to go to get your foreign jury so as to get out of the metropolitan area, I do not know. You may have to apply for a foreign jury from the County of Cape May.

"Mr. Matthews: That would not be the metropolitan area, of course, Cape May.

"The Court: I think I will overrule that.

"Mr. Matthews: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Then I would like to move to quash the indictment in behalf of Bolitho on the following grounds:

Because the Elisor Grand Jury which found the indictment was not a grand jury authorized by law under the laws of the State of New Jersey, because of the provisions of the law of May 29, 1913, known as the Chancellor-Sheriff jury act.

And because Justice Charles W. Parker ordered and directed that the Sheriff of the County of Morris be removed as one of the jury commissioners without any definite interest or misconduct, or otherwise, against William C. Sweeney, the other jury commissioner of the County of Morris.

The Court: Mr. Matthews, what is this, a motion to quash the indictment?

Mr. Matthews: Yes.

The Court: Wasn't it made already?

Mr. Matthews: I thought so, but I wanted the

record to show that we have the advantage of it in this particular indictment.

The Court: Well, if it does not take too long.

Mr. Matthews: I would rather have it all stipulated. Cannot we do that and save a lot of time?

The Court: I think so.

Mr. Matthews: May we have it stipulated on the record, then, that all of the motions made to the indictment of Reidler prior to the trial of the indictment, that is, all motions that were made to the face of the Reidler indictment, shall be considered as having been made to this indictment in behalf of Bolitho?

The Court: Any objection to that? I think not. They may be so considered, and that they have been denied.

Mr. Matthews: Exception.

The Court: An exception has been entered. Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



(The proceedings on the motions to quash the indictment against Max Reidler are as follows):

"Morris County Court of Oyer and Terminer.

| | |
|---|---|
| THE STATE,<br>vs.<br>JAMES H. BOLITHO, JOHN JOSEPH CANTY and MAX REIDLER,<br>Defendants. | On Indictment for Conspiracy. |

Morristown, N. J., June 23, 1925.

Before: HON. CHARLES W. PARKER,
Justice of the Supreme Court, and a Jury.

Appearances:

For the State, Hon. Wilfred H. Jayne, Jr., Deputy Attorney General.

For the Defendants, John A. Matthews, Esq.

"The Court: Mr. Jayne, the Court of Oyer is in session. Have you any indictments to move?

"Mr. Jayne: Your Honor please, I am presently concerned with the indictment found at the January Term by the Elisor Grand Jury against James H. Bolitho, Max Reidler and Joseph Canty, and I most respectfully apply to your Honor for a severance in this case of Joseph Canty and James H. Bolitho that the State may prosecute the defendant Max Reidler.

"Mr. Matthews: I have no objection to the severance. I desire at this time to make a motion

to the face of the indictment, with the permission of the Court to withdraw the plea because, if your Honor will remember, I was not here the last day the motions were made to the indictment, and at that time—

"The Court: All right. Are you moving for Reidler?

"Mr. Matthews: Yes, for Reidler.

"The Court: Very well, Mr. Matthews. Proceed.

"Mr. Matthews: I desire to move to quash the indictment, your Honor please. I shall state my grounds at the beginning in order that the record may have them succinctly, and make my argument afterward. I shall address the motion to the first count first, which is a conspiracy count. And my motion is as to the second count that the indictment for conspiracy is duplicious.

"The Court: You mean the count is?

"Mr. Matthews: The count for conspiracy is duplicious. The second count alleges, after reciting the qualifications of the Prosecutor and of Mr. Reidler, county detective, says that 'Bolitho, Reidler and Canty, evil-minded persons, conspired, and so forth, to obstruct justice and the due administration of the law, to wit, the Prohibition Enforcement Act, by unlawfully selling, bartering, transporting, importing, delivering, furnishing, manufacturing and possessing intoxicating liquor in, into and within said County of Morris, to wit, at said Borough of Kinnelon, and by aiding, abetting, counselling and procuring the unlawful sale, barter, transportation, import, delivery, furnishing, manufacture, and possession of intoxicating liquor at said Borough of Kinnelon, in the County of Morris aforesaid, and by the said James H. Bolitho and Max Reidler protecting so far as in them lay, the said Joseph Canty from prosecution by reason of any violation of said Prohibition Enforcement Act.'



"Now, if your Honor please, there are distinctly two conspiracies in that count. The first, a conspiracy between Reidler, Canty and Bolitho to violate the enforcement act, and the second, the conspiracy between Bolitho, Reidler and Canty, the recipient of the bounty, Reidler and Bolitho, to protect so far as in them lay the said Canty from prosecution; so that insofar as that part of the count goes, it looks to me to be entirely duplicious, and, therefore, bad.

"Moreover, and as a second ground, with reference to Reidler, he is alleged in the overt act—Canty is alleged to have, in the overt act, possessed and sold intoxicating liquor, and does not add 'fit for use for beverage purposes.' As I understand the case in 119 Atlantic, 787, Justice Kalisch's opinion, where an indictment alleging violation of the Prohibition Enforcement Act fails to recite that the liquor, which is the *corpus delicti,* so to speak, of the indictment, is not said to be fit for use for beverage purposes, that the indictment is false.

"The Court: The statute says the word 'liquor' is sufficient.

"Mr. Matthews: It is sufficient on proof to prove that if a man goes up to whatever we shall call it, whether it be a barrooom or a speak-easy or a hotel and said, 'I want liquor or whiskey,' and they give him grape juice, even though it is grape juice, it has been held it is liquor. I have seen that, I think, in Judge Rellstab's decision.

"The Court: Well, I guess we will have to send for the act. My recollection is specific that it is enough to use the word 'liquor' in the indictment. We will take that up.

"Mr. Matthews: That is 119 Atlantic. If I might have that, maybe that would settle the difficulty immediately.

"I think at this time I should add the further ground for Reidler's advantage, even though there is a severance, that in the accusation of the conspiracy that the Prosecutor failed to prosecute the case involved against Canty, the indictment is faulty in that it does not say within the time required by law.

"The Court: About what?

"Mr. Matthews: I will read it to your Honor. The conspiracy count said they conspired, and so forth, and did refrain from prosecuting the said Canty on the complaint aforesaid, and presenting the evidence as aforesaid against the said Canty to the Grand Jury, the point being, it does not state within the time required by law, and I think, being a conspiracy count, it should be urged as to the severed defendant on trial, Reidler, the same motions I have made to the second count, and the same grounds I ask and respectfully urge as to the third count.

"The Court: Now, as to that first ground, it does not seem to me they charge any more than if, let us say, it was a conspiracy to rob, and the arrangement was that A was to do the robbing, B was to stand guard, and C was to get the proceeds of the robbery and run away with them, each one doing a separate act; but I fail to see that, so that I do not think that that is a good



ground for saying that the indictment is illegally defective, and that it ought to be quashed.

"Now, as to this second and third, that seems to be the 119 Atlantic proposition.

"Mr. Matthews: Yes, your Honor. Does your Honor want me to read it?

"The Court: Well, I want to look at it. What about this allegation of liquor, Mr. Jayne?

"Mr. Jayne: Your Honor please, the case to which counsel has invited your attention, if it is the case that I have in mind, suggested the point that the defendant was entitled to know through the indictment whether he was called upon to answer an alleged violation of the beverage act or the non-beverage act; therefore, the Court indicated that the indictment should use the words, 'fit or used for beverage purposes,' to acquaint the defendant with the act of the Legislature, the violation of which he was charged to have committed. Your Honor will notice in this indictment a conspiracy is alleged, a conspiracy to violate the Prohibition Enforcement Act. And in the latter part of this count to which your attention is now specially directed, is the language that, in execution and furtherance of said agreement and conspiracy, namely, an agreement and conspiracy to violate the Prohibition Enforcement Act, in furtherance of that conspiracy and in execution of it, the defendant Canty did manufacture and transport intoxicating liquor; so I respectfully submit this count in the indictment is very thoroughly in form, and of the nature of the violation of the particular act, for the violation of which this conspiracy was laid.

"The Court: Well, that is only one of a number of overt acts charged, isn't it?

"Mr. Jayne: Yes.

"The Court: The sale, the so-called sale, is charged as an overt act, isn't it?

"Mr. Jayne: Well, the manufacture of it, and the transportation and sale.

"The Court: I do not think that is enough to vitiate the indictment, as far as that is concerned. The motion will be denied. Was there another ground? I forget.

"Mr. Matthews: The third ground was the proposition that the allegation of conspiracy with reference to the failure to present the matter is faulty in that it does not charge there was a failure within the time required by law, the statute saying that if he fails to prosecute within the time required by law, he shall be declared—

"The Court: What does it mean by the time required by law, a limitation, or something of that kind?

"Mr. Matthews: I so construe it.

"The Court: I also deny that.

"Mr. Matthews: Your Honor will allow me an exception?

"The Court: You may take whatever you are entitled to.

"Exception prayed by the counsel for the defendant to the above rulings of the Court, which is allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



(The following proceedings were had on the entering of pleas to indictments found by the Elisor Grand Jury, and on motions to quash the indictment):

"MORRIS COUNTY COURT OF OYER AND TERMINER

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|---|---|
| "The State,<br><br>vs.<br><br>James H. Bolitho, *et als.*,<br>Defendants. | On Pleas to Indictments found by Elisor Grand Jury. |

Morristown, N. J., May 29, 1925.

Before: Hon. Charles W. Parker,
Justice of the Supreme Court.

Appearances:

For the State, Hon. Wilfred H. Jayne, Jr., Deputy Attorney General.

For some of the defendants, Richard J. O'Connor, Esq., and Anthony A. Calandra, Esq.

"The Court: Mr. Jayne, the Court of Oyer is in session and ready to take up any business.

"Mr. Jayne: I have notified all of the defendants against whom indictments were found by the Elisor Grand Jury to appear in the Court of Oyer today, at which time they would be re-

quested to enter pleas to the indictment. Counsel are here representing some of the defendants.

"Mr. O'Connor: If your Honor please, as a preliminary matter, I would like to make an application to your Honor for a writ of certiorari to review the proceedings. In support of the writ which I have prepared, I would like to read, with the permission of the Court, the following affidavit; it is entitled 'James H. Bolitho, Prosecutor, vs. Charles W. Parker, Judge of the Court of Oyer and Terminer of the County of Morris, and E. Bertram Mott, Clerk.'

(Reads affidavit.)

"The Court: You want a certiorari to the overruling of the challenge?

"Mr. O'Connor: Yes.

"The Court: Do you want to argue it?

"Mr. O'Connor: Attached thereto is the record of the challenge. I do not care to argue it further, your Honor, then to enumerate—and I do not think, since the challenge is all on the record, it is necessary to go into that in any detail. However, I wish to urge the same reasons set forth in the challenge which are on the record in making this application to your Honor.

"The Court: Yes. This is an application for a certiorari of that proceeding, and that application will be denied. Now, any proper certificate of denial, Mr. O'Connor, which you wish, of course, I shall be ready to sign.

"Mr. O'Connor: Might I then ask your Honor for a rule to show cause why a writ should not issue?

"The Court: You can ask me for anything that



you choose. It is a question whether you will get it.

"Mr. O'Connor: I will make that application to your Honor now. I will ask for a rule to show cause why a writ of certiorari should not issue to review the ruling on the challenge as presented last week.

"The Court: Your rights are fully protected by a direct appeal to the Supreme Court *en banc.* That can be made next Monday. The Court of Errors will be in session at that time, and you can make your application on next Monday. That is what you ought to do, if you ought to do anything, make your application, notwithstanding my denial.

"Mr. O'Connor: And your Honor also refuses to grant me a rule—

"The Court: Yes, sir.

"Mr. O'Connor: —returnable next Monday?

"The Court: Yes, sir. Make your application to the Court.

"Mr. O'Connor: Your Honor please, I have a second application for a writ of certiorari. The cause is entitled the same, and the affidavit is submitted by Mr. Bolitho. (Reading affidavit.)

"The Court: Mr. O'Connor, that is the same that was in the challenge; all that was in the challenge.

"Mr. O'Connor: Yes, all that was in the challenge.

"The Court: What are you asking me for now?

"Mr. O'Connor: For a writ to review the legality of the Grand Jury, the constitution.

"The Court: Just read the last part as to what you want and see what that says as to all of those facts that have all been stated before.

"Mr. O'Connor: Mr. Bolitho informs me there are some matters contained in this affidavit that—

"The Court: That are not in the challenge?

"Mr. O'Connor: Yes.

"The Court: I do not want to be understood as admitting at the present time, or at any time, for the purpose of argument, that Mr. Jayne's investigation is wholly on my appointment. That is not so; but never mind about that, because I will have to hear your affidavit.

"Mr. O'Connor: (Reading affidavit.) And on this affidavit, your Honor, I have also prepared a writ which we would ask the Court to grant.

"The Court: Well, that writ will also be denied. I think that the application was made before at the instance of Mr. Sweeney and afterwards withdrawn. That is about the same, isn't it? However, I do not know that that is at all material. The writ will be denied.

"Mr. O'Connor: I will also now ask your Honor to allow a rule to show cause.

"The Court: That is also denied.

"Mr. O'Connor: The third writ which I had prepared asked for a review of the particular indictments. It is also entitled the same, and it is made by Mr. James H. Bolitho. (Reading affidavit.)

"The Court: What are you asking for?

"Mr. O'Connor: For a writ to review the form of the indictments.

"The Court: Well, that writ will be denied.

"Mr. O'Connor: I will make the customary application for a rule to show cause.

"The Court: The rule is denied.

"Mr. O'Connor: Your Honor please, you will



recall last week, when Mr. Matthews was here, he informed your Honor that—I believe he said Thursday, he would be engaged in a condemnation proceeding, unavoidably and through no fault of Mr. Matthews, he was called upon to attend with the jury a viewing of the property today, because the trial is to be held Monday, and the commissioners whom he represents insisted on his being there today, and Mr. Calandra, an associate of Mr. Matthews, is present in court with me, and in view of the fact that neither one of us have had sufficient time to prepare the motion that will be made to the indictments, we would like to ask if your Honor could defer the taking of pleas until such time as we can make an application to the Supreme Court for the writs of certiorari that have been denied here, and also to permit Mr. Matthews to be present to make the necessary motions to the indictments.

"The Court: No. I do not think I can do that, Mr. O'Connor. There was a rather ample day given to Mr. Matthews in the first instance to plead, I thought, when the matter first came up, but the matter was set down for the 22d, which was a week ago today, upon which the arraignments were to be had, and any motions Mr. Matthews wanted to make were to be made. Then, at the request of Mr. Matthews, who pleaded that he had been overworked, as I think a good many of us are, and that he wanted a little time to read this large number of indictments for which he claimed to be representing the defendants, or Mr. Bolitho, the matter was laid over until today. We talked about Thursday, I think; but no matter what we did, it was arranged that today, defi-

nitely, these indictments should be brought up and the defendants should be arraigned and should plead, or make any other motions that they might want to make. Now, this matter will drag on all summer if we keep on this way, and it is important that these proceedings should be moved ahead. They have been very much delayed in the first place; it took a long while to get the facts out with the Grand Jury; it took quite a while to draw the indictments, and it is now taking a long time to get pleas taken. We ought to know today whether these defendants that are challenged on these indictments are going to plead guilty or not guilty.

"Mr. Jayne: Your Honor please, with your Honor's permission, I will call these indictments and call upon the defendants to plead. For the purposes of convenience, I will call the indictments in their numerical order as they are numbered by the clerk. This may occasion the calling up of the same defendant at different times.

"The Court: Well, I suppose the stenographer will be in a position to take down the numbers and the general purport of the indictments.

"Mr. Jayne: Indictment found at the January Term of the last Grand Jury against James H. Bolitho for bribery, against Mingardi.

"Mr. Bolitho: Your Honor please, I am willing to waive the reading of these indictments, because I have read them and gone over them personally; but in entering a plea, I should like it entered with the right to withdraw it for the purpose of making a motion to quash the indictment.

"The Court: Well, that is always usual practice for the Court to permit that as a matter of



grace afterward; but I do not know that I want to make any contract about it.

"Mr. Bolitho: If that is not understood, we ought to make our motion now.

"The Court: You have a right to make your motion to quash now, if you wish to do so. I may say, so far as I know, there should be no objection; but I cannot make any promises about it. That is the usual practice, isn't it?

"Mr. Jayne: It is the usual practice to permit the withdrawal of the plea of not guilty for motions to quash at the trial.

"The Court: The Court is not going to be bound by any promises.

"Mr. O'Connor: Your Honor please, then, before pleading to this first indictment, I want to move to quash the indictment on the following grounds:

"The grounds will be practically the same, with the exception of the particular indictments which we will move to when called, as were urged by Mr. Matthews last week in the challenge which he submitted to your Honor's right to sit, and which your Honor said at that time were not properly matters of challenge; but some of the matters are really challenges to the indictments.

"The Court: Yes.

"Mr. O'Connor: The first ground that we wish to urge is to move to quash this indictment number one, that your Honor had no authority or right in law to order an investigation of the affairs of Morris County in the manner that your Honor did.

"The Court: Yes.

"Mr. O'Connor: It is on the record, I believe,

that your Honor ordered this investigation on the petition signed by ten mayors, not setting forth whether they were freeholders or not. And I believe that last week your Honor said that, in answer to Mr. Matthews' argument on that, you proceeded on the theory that the Elisor Grand Jury was still a proper Grand Jury.

"The Court: Well, that ground, as I understand it, is that the original investigation was not a proper investigation to make under the twenty-five freeholder act, because there were not twenty-five freeholders.

"Mr. O'Connor: That is correct.

"The Court: All right.

"Mr. O'Connor: The second ground that I wish to urge on my motion to quash this indictment is, that there is no authority in the law for the calling of an Elisor Grand Jury. With that proposition, your Honor is also familiar with the arguments that were used last week when we referred particularly to the passage of the Chancellor-Sheriff Jury Act of 1913, which we maintain and contend abolished the elisor system of drawing juries.

"The Court: Yes. Was that fully specified in the challenge at the time, Mr. O'Connor?

"Mr. O'Connor: It was set forth in the challenge merely as a statement that you had no authority in law for the calling of the Grand Jury, and on the argument, the argument depended upon the construction that your Honor placed on the Chancellor-Sheriff Jury Act. At that time we urged, and we urge now, that the passage of that act has done away with both coroners and elisors drawing a grand jury, and that that act



provides a specific manner in which a grand jury must be drawn, and that in calling the Elisor Grand Jury, the act was not conformed with in that the grand jurors were drawn, not by chance but by choice. Their names were selected by the elisors and added to the list that had been submitted to them, I believe by your Honor, and then withdrawn again, constituting the grand jury, and that in doing that, that they did not conform with the provisions of the Chancellor-Sheriff Jury Act.

"The Court: Yes, all right. That is your second ground.

"Mr. O'Connor: The third reason which we wish to urge on this motion is that—and it seems to be a repetition of what I have said already—the jury is not drawn according to law, and I refer to the statements I have already made as to the manner in which the elisor jury was drawn, as the reason for holding that the manner of drawing the jury was illegal.

"The fourth point was that one of the elisors, Joshua R. Salmon, was not qualified to be a jury commissioner by virtue of Section 1 of the Chancellor-Sheriff Jury Act.

"The Court: That was mentioned in the challenge.

"Mr. O'Connor: Yes. And I also wish to urge that as a reason.

"The Court: All right.

"Mr. O'Connor: Number five is the reason which has already been urged on the challenge, that there was present in the grand jury room an unauthorized person in the presence of J. D. Masterton, who acted as clerk of the Grand Jury, our

contention being that your Honor had no right to remove—I will withdraw that—not that you had no right to remove Mr. Toms, but that Your Honor should have appointed a clerk for a definite period; and, further, that he should have been selected from the civil service list, the office being under the civil service law of the State.

"The Court: That point was made before, I think.

"Mr. O'Connor: The sixth reason that we wish to urge is somewhat of a reflex of the fifth, that because of the fact that there was no authorized clerk of the grand jury by reason of the illegal appointment of J. D. Masterton, that the grand jury was not a properly constituted body, and that there was no one present to record the vote on any of the indictments.

"The Court: That would be an interesting proposition to discuss on its merits; but I guess we won't stop on that now.

"Mr. O'Connor: The seventh is, at least two of the Grand Jurors were over the legal age of sixty-five.

"The Court: That is a new one, isn't it?

"Mr. O'Connor: I believe that is. I have not heard it before. We refer particularly to the foreman, D. Farrand Sturgis and Gilbert Lunger of Netcong.

"The Court: Yes.

"Mr. O'Connor: And also we say that D. Farrand Sturgis was not legally capable of acting as a Grand Juror by reason of the provision in the Chancellor-Sheriff Jury Act that no member of a grand jury shall be chosen from the list within one year, and that Mr. Sturgis had served within



a year's time to serving on this Elisor Grand Jury.

"The Court: That is a new one, too, I think.

"Mr. O'Connor: Then, our last reason is, that the grand jury was not legally constituted in that it consisted of only 22 grand jurors who were sworn in; that Mr. Hanlon, who was the 23d juror, was never sworn in, and never served in a capacity as a grand juror.

"The Court: That, I think, was mentioned before.

"Mr. O'Connor: Now, I wish to add to my motion, or make the further motion that, with reference to indictment number one, that the charges—

"The Court: Is this number one?

"Mr. Jayne: Yes.

"The Court: Yes, addressed to this particular indictment.

"Mr. O'Connor: This motion is addressed—I think Mr. Jayne and I, in discussing the motion that I have made to this indictment, generally, or all the indictments, rather, will apply to each indictment as they are called up.

"The Court: Yes, I understand; and later on, the other indictments, I suppose you expect to challenge on the same grounds you have just urged.

"Mr. O'Connor: All the indictments in the cases in which—

"The Court: In which you appear?

"Mr. O'Connor: Yes.

"The Court: Very well.

"Mr. O'Connor: Now, specially, with reference to indictment number one, I want to move to

quash it on the ground it charges bribery, extortion, conspiracy and malfeasance, all committed at the same time and place, and growing out of the same transaction with reference to Mingardi, and that there are several other indictments on the same charge.

"The Court: Do I understand you to say that indictment number one charges four different crimes?

"Mr. O'Connor: Yes. It is also charged in indictments number 2, 18 and 13, the same offenses that I have just said are shown in number one.

"The Court: I want to get the thing straight. Does the item in number one charge conspiracy?

"Mr. O'Connor: Extortion and malfeasance, and that same charge with reference to the same case growing out of the same transaction.

"The Court: How many counts are in it, in indictment number one?

"Mr. O'Connor: We haven't a copy of it here before us.

"The Court: Well, Mr. Jayne?

"Mr. Jayne: Counsel misunderstands the inquiry that you addressed to him. This indictment only charges the crime of bribery. The point of counsel is that there are other indictments relating to the same act.

"The Court: I have got that point in his previous application for a certiorari; in other words, that there are four different indictments charging four different crimes committed at the same time and place and with reference to the same transaction.

"Mr. O'Connor: Yes, that is right.



"The Court: As I understand it, indictment number one is bad because there are three other indictments charging three other crimes committed at the same time and place with reference to the same transaction. Is that right, Mr. O'Connor?

"Mr. O'Connor: That is correct.

"The Court: That is your objection to this indictment?

"Mr. O'Connor: Yes, sir.

"The Court: If you have said all that you want to say, the motion to quash the indictment will be overruled.

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number two, against James H. Bolitho, for extortion, which may be distinguished from the Mingardi indictment.

"Mr. O'Connor: For the purpose of the record, might I say that counsel for the defendant makes the same motion as made with reference to indictment number one, generally and, further, moves specifically that this indictment be quashed for the reason that it charges bribery, extortion—it is one of the same—

"The Court: That it is tied up to other indictments?

"Mr. O'Connor: It is tied up to numbers 1, 8 and 13.

"The Court: Yes.

"Mr. O'Connor: Alleging the same time and place and the same transaction.

"The Court: The motion will be denied.

"Mr. O'Connor: I take an exception, and I neglected to take an exception on the first.

"The Court: You may have an exception in every case.

"Exceptions to the above rulings of the Court allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number three, James H. Bolitho, charges extortion alleged in the Dolimpio case.

"Mr. O'Connor: I wish to make the same motion generally, and specifically that this indictment is linked up with indictments six and seven, twenty-nine and thirty-one, charging different offenses, but the same transaction at the same time and place.

"The Court: Motion denied. Enter your exception.

"Mr. O'Connor: Allow me an exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number four, against James H. Bolitho, for assault and battery upon one—

"Mr. O'Connor: I want to make the same general motion that I made, no specific motion.

"The Court: Very well, Mr. O'Connor. Motion denied. Take your exception.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)



"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number five, James H. Bolitho, defendant, charging assault and battery on one James Griffin.

"Mr. O'Connor: I wish to make the same general motion.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number six, against James H. Bolitho, charging bribery.

"Mr. O'Connor: I wish to—

"Mr. Jayne: Dolimpio, relating to the Dolimpio case.

"Mr. O'Connor: I wish to make the same general motion, and specifically, the same special motion that I made with reference to indictment number three. Exception.

"The Court: Yes. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 7, against James H. Bolitho, for malfeasance, relating to the Dolimpio case.

"Mr. O'Connor: I wish to make the same general motion, and specifically, the same motion that was made with reference to indictment number 3 and 6.

"The Court: Well, that motion will be denied. You may enter your exception. I do not quite understand the theory of the defense in saying that there cannot be four indictments found on account of the same transaction at the same time and place for various crimes. Cannot a man commit four crimes at once? What is your idea?

"Mr. O'Connor: There is some law on that, your Honor please.

"The Court: No. I do not want to waste time on it.

"Mr. O'Connor: The same offense, the same evidence having to be used, after the first trial, the trial of the first indictment, a man might plead to former jeopardy.

"The Court: Suppose, Mr. O'Connor, there were two indictments for assault and battery in this list here, committed on the same person at the same time and place. Do you think that either of them ought to be quashed?

"Mr. O'Connor: Yes, your Honor please. I say we have some law for that proposition.

"The Court: Well, I do not agree with you about it; but we won't stop now.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"The Court: Very well.

"Mr. Jayne: Indictment number nine, against James H. Bolitho, for malfeasance—number eight, James H. Bolitho, malfeasance, relating to the Mingardi case.



"Mr. O'Connor: I wish to make the same general motion and the same special motion that was made with reference to indictments one and two.

"The Court: Very well. Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number nine, against James H. Bolitho, for malfeasance, relates to the Bright check business.

"Mr. O'Connor: I wish to make the same general motion, and with reference to this indictment, especially that the indictment is linked with numbers 11 and 12, charging extortion, conspiracy and malfeasance, all committed at the same time and place and arising out of the same transaction.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number ten, against James H. Bolitho, for bribery, relating to the Hudock case.

"Mr. O'Connor: I wish to make the same general motion and the same special motion that I have heretofore made on the charges that the offense was committed, and there are three other indictments, numbers 16, 55 and 65, all growing out of the same transaction.

"The Court: Motion denied. Take your exception.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number eleven, against James H. Bolitho, malfeasance. Relating to Winship check.

"Mr. O'Connor: The defendant wishes to make the same general motion, and the same special motion made with reference to indictment number nine.

"The Court: Take your exception.

"Mr. O'Connor: Yes.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number twelve, James H. Bolitho, malfeasance, relating to both the Bright and Winship checks.

"Mr. O'Connor: The same general motion, and the same special motion made with reference to indictments number nine and eleven.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number thirteen, for conspiracy against James H. Bolitho, Pasquale Mutarella and Marinaro, relates to the Mingardi case.

"Mr. O'Connor: I wish to make the same general motion and the same special motion as made in number one, two and eight.

"The Court: Do you appear for all those?

"Mr. O'Connor: Mr. Bolitho and Mutarella.

"The Court: Then you are making the motion now as to Mr. Bolitho and Mr. Mutarella.

"Mr. O'Connor: Mutarella.

"The Court: The same general motion?

"Mr. O'Connor: The same general motion and the same special motion made with reference to indictments number one, two and eight.

"The Court: All right. Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"The Court: What does Mr. Mutarella plead?

"Mr. Jayne: Pasquale Mutarella?

"The Court: Where is Marinaro? Is he here in court?

"A Voice: Yes, sir.

"Mr. Jayne: Pasquale Mutarella, to this indictment, how do you plead?

"Mr. Mutarella: Not guilty.

"The Court: Marinaro?

"Mr. Marinaro: The defendant pleads not guilty.

"Mr. Jayne: Indictment number fourteen, against James H. Bolitho, Pasquale Mutarella and Daniel A. Marinaro, for conspiracy, relating to the Bright and Winship check.

"Mr. O'Connor: We wish to make the same general motion, your Honor please, and the same special motion made to the charge of bribery in this case.

"The Court: In whose behalf?

"Mr. O'Connor: On behalf of the defendant James H. Bolitho, Pasquale Mutarella.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Pasquale Mutarella?

"Mr. Marinaro: The defendant pleads not guilty, your Honor.

"Mr. Jayne: Indictment number fifteen against James H. Bolitho, William A. Hegarty, Frederick Hubert, conspiracy relating to the Stroh case.

"Mr. O'Connor: I make the same general motion on behalf of the defendants Hubert and Mutarella.

"The Court: Is Mutarella in this?

"Mr. Jayne: No.

"Mr. O'Connor: Pardon me. Bolitho and Hubert.

"The Court: The defendant Bolitho and the defendant Hubert, is that right?

"Mr. O'Connor: Yes, that is right.



"The Court: All right. That motion will be denied.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"The Court: Bolitho pleads not guilty.

"Mr. Hubert: Hubert pleads not guilty.

"Mr. Hegarty: Mr. Hegarty pleads not guilty.

"Mr. Jayne: Indictment number sixteen, James H. Bolitho, Frederick Hubert, Daniel A. Marinaro; relates to the Hudock case.

"Mr. O'Connor: Representing the defendant James H. Bolitho and Frederick Hubert, I wish to make the same general motion as made on the previous indictments, and the same special motion made on indictment number ten.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Hubert: Frederick Hubert pleads not guilty.

"Mr. Marinaro: The defendant Marinaro pleads not guilty.

"Mr. Jayne: Indictment seventeen against James H. Bolitho, Frederick Hubert, Daniel A. Marinaro and Pasquale Mutarella, conspiracy relating to the Untermeyer case.

"Mr. O'Connor: Your Honor please, represent-

ing the defendant James H. Bolitho and Frederick Hubert and Pasquale Mutarella, I wish to make the same general motion and the specific motion that this is linked with indictments number 32, 39 and 56, charging other crimes all committed at the same time and place and arising out of the same transaction.

"The Court: Motion denied. Enter your exception.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Hubert: Hubert pleads not guilty.

"Mr. Mutarella: Pleads not guilty.

"Mr. Marinaro: Pleads not guilty.

"Mr. Jayne: Indictment number eighteen against James H. Bolitho, Arthur McDonnell, Joseph Feldman.

"Mr. O'Connor: Representing the defendant Bolitho and McDonnell, I wish to make the same general motion and the special motion that this indictment does not contain the names or the amounts or the places from whom the money was collected.

"The Court: Well, that will be denied for the present, but I will give you the right of further consideration to it.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



"Mr. Bolitho: The defendant pleads not guilty. I would like to say that Mr. McDonnell, he is out of town today, but—

"Mr. Jayne: I relieved him of coming today for special reasons which concerned the public business.

"The Court: Can a plea be entered for him in his absence?

"Mr. O'Connor: Yes. I represent Mr. McDonnell. I plead him not guilty.

"The Court: Do you think any harm will come of that?

"Mr. Jayne: I do not think any harm will come of it in this instance.

"Mr. O'Connor: Mr. McDonnell pleads not guilty.

"Mr. Jayne: Feldman, how do you plead?

"Mr. Feldman: Not guilty.

"Mr. Jayne: Indictment number nineteen, against Frederick Hubert, bribery, in the Hudock case.

"Mr. O'Connor: I wish to make the same general motion that was made in the other cases, your Honor.

"The Court: Motion denied. Note your exception.

"Mr. O'Connor: Allow me an exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

* * * * * *

"Mr. Jayne: Indictment number 29 against James H. Bolitho and Peter Dolimpio, conspiracy.

"Mr. O'Connor: Representing both defendants, I wish to make the same general motion and the same special motion that was made in the indictments 3, 6 and 7.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Next is indictment number 30, against James H. Bolitho, Max Reidler, Jacob Pink, conspiracy.

"Mr. O'Connor: Representing the defendants James H. Bolitho and Max Reidler, I wish to make the same general motion.

"The Court: Yes. Motion denied. Take your exception.

"Mr. Reidler: I plead not guilty.

"Mr. O'Connor: May I say to your Honor before having the defendants plead, I overlooked the fact that this also linked up with indictment number 49, and I wish to make the same special motion I have made with reference to the other case.

"The Court: Yes. Very well. Motion denied.

"Exceptions prayed to the above rulings of the Court, allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"The Court: What about Pink?

"Mr. Pink: Not guilty.

* * * * * *



"Mr. Jayne: Indictment number 31, against James H. Bolitho, Peter Dolimpio and Daniel A. Marinaro.

"Mr. O'Connor: Representing the defendants Bolitho and Dolimpio, I wish to make the same general motion and the same special motion I have made on indictments 3, 6, 7 and 29.

"The Court: Motion denied.

"Mr. O'Connor: Allow me an exception.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Marinaro: The defendant pleads not guilty, your Honor.

"The Court: Dolimpio pleads not guilty?

"Mr. Dolimpio: Yes, sir.

"Mr. Jayne: Indictment number 32, against James H. Bolitho, individually, for bribery.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and the same special motion that I made to indictment number 17.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

* * * * * *

"Mr. Jayne: Indictment number 39, against James H. Bolitho, for extortion.

"Mr. O'Connor: I wish to make the same general motion and the same special motion made in indictments number 17 and 32.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

* * * * * *

"Mr. Jayne: Indictment number 41, against Frederick Hubert, extortion.

"Mr. O'Connor: I wish to make the same general motion, your Honor please.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Hubert: Not guilty.

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 42, against James H. Bolitho, Max Reidler and Joseph Canty.

"Mr. O'Connor: As representing the defendants Bolitho and Reidler, I wish to make the same general motion.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Reidler: The defendant pleads not guilty.

"Mr. Jayne: The defendant Canty pleads not guilty?



"The Court: All plead not guilty.

"Mr. Jayne: Indictment number 43, against James H. Bolitho, assault and battery.

"Mr. O'Connor: I wish to make the same general motion on that, your Honor please, and especially to move that this indictment be quashed because it charges the defendant with assault and battery, but does not allege the date on which the assault and battery occurred. An assault and battery not being a continuing offense, and the date being of the essence of the offense, the date must be alleged when the assault and battery occurred.

"The Court: Well, Mr. Prosecutor, what have you to say to that?

"Mr. Jayne: I won't controvert that, but the 33rd Section of the Criminal Procedure Act answers that (reading Section 33 of the Criminal Procedure Act).

"The Court: Yes.

"Mr. Jayne: It states the month and year, and the exact date is—

"The Court: Oh, well, that motion will be denied.

"Mr. O'Connor: Allow me an exception to that, your Honor.

"The Court: Yes.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 44, against James H. Bolitho, malfeasance.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please.

"The Court: Motion denied; take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. O'Connor: I want to add as a special motion, your Honor please, that this indictment is linked with indictments 45 and 73, charging malfeasance and conspiracy with reference to the same subject-matter, and failed with certainty and particularly to charge a criminal offense.

"The Court: I do not know anything about that. I have not read it, but, for the present, the motion will be overruled.

"Mr. O'Connor: Allow me an exception.

"The Court: Yes.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment 45, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please.

"Mr. Jayne: That is Schroer.

"Mr. O'Connor: And the same special motion, your Honor please, as in 44.

"The Court: Tied up to another indictment?

"Mr. O'Connor: Tied up with 44.

"The Court: All right. Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 46, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and the special motion that this indictment does not with certainty and particularity charge the commission of a criminal offense.

"The Court: All right. I will look at that later. For the present, that motion will be denied.

"Mr. O'Connor: Exception.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 47, against James H. Bolitho, malfeasance, the Smith case.

"Mr. O'Connor: I want to make the same general motion and the special motion that it is linked up with indictment number 49, alleging the commission of the same offense at the same time and place and circumstances.

"The Court: Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: 48, Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion, and the special motion that this indictment does not allege that defendant wilfully

refused or wilfully neglected to present the defendant's name in this indictment to the proper court or grand jury within the time required by law.

"The Court: The motion will be denied for the present, with the right to apply later on. Take your exception.

"Mr. O'Connor: Allow me an exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 49, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I make the same general motion in this case, if your Honor please, and the special motion that it is linked with indictment number 54, for the reasons that I have already alleged in the other indictments, and also that it is a general indictment in which all of the above-mentioned cases, referring to all the cases that we have been called to plead to, excepting the assault and battery, are included and referred to in the same place and time, and also that there are a number of indictments among the forty-seven that we have heretofore pleaded to which are included in the Bright and Winship cases, charging bribery, extortion, malfeasance, at the same time and place, and growing out of the same transaction.

"The Court: Is this an indictment for malfeasance?

"Mr. O'Connor: Yes.

"The Court: Motion denied.



"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 50, against James H. Bolitho, for bribery.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and also the special motion that it is linked with indictment number 52 and 49.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 51, against James H. Bolitho, accepting a bribe, Weber.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and also the special motion that it is linked with another indictment, number 51.

"The Court: Motion denied. Enter your exception.

"Mr. O'Connor: Allow me an exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 52, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion, your Honor please, and the special motion that this indictment is linked with number 50, charging the same time, place and circumstances.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 53, against James H. Bolitho, malfeasance.

"Mr. O'Connor: I wish to make the same general motion on this, your Honor please, and the same motion that was made on indictment number 49.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 54, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general objection and also the same motion that was made as to indictment number 41.

"The Court: Motion denied. Take your exception.

"Mr. O'Connor: Exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: 55, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion and the same special motion that I made with reference to indictments number 10 and 16.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 56, James H. Bolitho, malfeasance.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and a special motion that was made on indictments number 17, 32 and 39.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 57, against James H. Bolitho, malfeasance.

"Mr. O'Connor: I wish to make the same general motion, if your Honor please, and the special motion that was made in the other indictments, this case being linked up with 58, 66, 67, 68, 69 and 70; and further, that the indictment does not allege that the time for which the bills for work

were approved by the deponent was not for work actually done, or that the expenses for which this deponent approved bills were not necessary and incurred by deponent as Prosecutor of the Pleas of the County of Morris in using all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws, and said indictment does not with certainty and particularity plead and allege a crime.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"The Court: As to this, the motion may be renewed later as to this particular matter.

"Mr. Jayne: Indictment number 58, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion that has been made in all the other cases, and the same special motion that I made with reference to indictment number 57.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 66, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to enter the same general motion and the special motion urged in indictments number 57 and 58.



"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 67, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: I wish to make the same general motion and the same motion I made in the previous indictment 56.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Indictment number 68, against James H. Bolitho, for malfeasance.

"Mr. O'Connor: The same general motion and the same special motion made in 57, 58, 66 and 67.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Jayne: Number 69, against James H. Bolitho, malfeasance.

"Mr. O'Connor: The same general motion, and the special motion made in indictment number 57.

"The Court: That this is coupled with 57?

"Mr. O'Connor: Yes. Not coupled, your Honor please. The motion in 57 was that it did not allege the time at which the bills for work were approved.

"The Court: Oh, well, I see. I guess you better repeat it, because I thought it was coupled.

"Mr. O'Connor: May I say that that applies to indictments which are 58, 66, 67 and 68, to which we have already pleaded?

"The Court: Well, as to all those where you are alleging as to some matter which I do not recall at this time, specially, why, those motions have been denied, with the statement of the Court that the motion may be renewed later on. The motion will be denied. You may take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: Not guilty.

"Mr. Jayne: Indictment number 70, against James H. Bolitho, malfeasance.

"Mr. O'Connor: The same motion, if your Honor please, and this is the same special motion that I have made in the indictments number 57, 58, 66, 67, 68, 69.

"The Court: Some omission in the indictment?

"Mr. O'Connor: Yes.

"The Court: Some omission in the indictment?

"Mr. O'Connor: That it does not allege the time for which the bills for work were approved by defendant, and was not for work actually done,



nor that the expenses for which deponent—the same motion.

"The Court: It will be the same disposition as in those cases. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: Not guilty.

"Mr. Jayne: Indictment number 71, against James H. Bolitho, Frederick Hubert, Pasquale Mutarella and Joseph Reese.

"Mr. O'Connor: Representing all of the defendants, your Honor please, I wish to make the same general motion as in the other cases.

"The Court: Motion denied. Take your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Hubert: The defendant pleads not guilty.

"Mr. Mutarella: Not guilty.

"Mr. Joseph Reese: I plead not guilty.

* * * * * *

"Mr. Jayne: 73, against James H. Bolitho and Henry H. Schroer.

"Mr. O'Connor: As representing both defendants, I wish to make the same general motion and the same motion that was made on indictments number 44 and 45.

"The Court: What was that?

"Mr. O'Connor: That the indictment charges malfeasance and conspiracy with reference to the

same subject-matter, and failed with certainty and particularly to charge a criminal offense.

"The Court: Motion denied. Enter your exception.

"Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

"Mr. Bolitho: The defendant pleads not guilty.

"Mr. Schroer: The defendant pleads not guilty.

"Mr. Jayne: I think that concludes the arraignment."

Mr. Matthews: There is one other motion that is not to the face of the indictment that I wish to make to the indictment number 49, and that is a motion to quash on the ground that my distinguished opponent, Mr. Jayne, was in the grand jury room at the time this evidence was presented to the grand jury, the evidence upon which this indictment was predicated, and that Mr. Jayne's presence in the grand jury room was unauthorized and illegal, the ground being that Mr. Jayne then was the Prosecutor of the County of Ocean, and that his appointment as Assistant Attorney General was not according to law, because, as I understand the statute, the Attorney General is entitled to designate, not to appoint, a second Assistant Attorney General, and at the time of the functioning of Mr. Jayne in this county, the Attorney General had all of the assistants that he was entitled to by law, that they were in existence in the office of Assistant Attorney General; therefore, the Attorney General did not attend in person, nor did he designate one of his Assistant



Attorneys General authorized and appointed by law to attend in Morris County; and, therefore, if such were the case and the statute was violated, Mr. Jayne became an unauthorized person in the grand jury room.

The Court: And then what?

Mr. Matthews: That vitiates the indictment.

The Court: Are the facts settled?

Mr. Matthews: The facts are settled. I offer the affidavit if you want the facts.

The Court: Have you shown it to Mr. Jayne? It may be that that can be stipulated into the record, providing it is correct. Is that satisfactory, Mr. Jayne?

Mr. Jayne: For the consideration of this phase of the present motion, I am willing to stipulate that in accordance with a communication handed to me, addressed to Mr. Bolitho, the defendant, by the Attorney General, there was an Assistant Attorney General in February, 1924, holding such office, whose name was Harry R. Coulomb. Do you want anything further than that?

Mr. Matthews: Are the Attorney General's records here?

Mr. Jayne: Provided certain other matters are also included in my stipulation. I have not concluded my remarks.

The Court: All right.

Mr. Matthews: The Attorney General's office has been subpoenaed here this morning with records. Is the Attorney General's office here?

The Court: Is anyone present from the Attorney General's office?

(No response.)

Mr. Jayne: What is it, Mr. Matthews, you want?

Mr. Matthews: To show that there was another Assistant Attorney General appointed at that time, or Second Assistant Attorney General appointed.

Mr. Jayne: On what date?

Mr. Matthews: He was in office at the time you were appointed to Morris County.

Mr. Jayne: I am willing to further stipulate that, pursuant to the statute, there was an office known as Second Assistant Attorney General of the State of New Jersey in February 1924, and that Mr. Richman was the occupant of that office at that time.

The Court: I do not know whether Richman was. Of course, he has been second assistant.

Mr. Matthews: And that all of the assistant attorney general to which the Attorney General is entitled by law were in office under the statute?

Mr. Jayne: I cannot stipulate that. That is an argument, not the fact.

The Court: Well, that is a matter of law, Mr. Matthews.

Mr. Matthews: Yes.

Mr. Jayne: I further wish to stipulate that on May 19, 1924, your Honor as Justice of the Supreme Court addressed to Edward L. Katzenbach, Attorney General of the State of New Jersey, a request to attend personally or by such assistant or assistants as he might designate in the County of Morris, State of New Jersey, for the purpose of prosecuting the criminal business of the State therein, including the investigation of



alleged crimes and misdemeanors, and attending before the criminal courts and grand juries of the County, preparing the indictments for crimes and misdemeanors. That pursuant to your Honor's request as Justice of the Supreme Court, the Attorney General, Edward L. Katzenbach, on the same date, May 19, 1924, appointed and designated as his assistant to perform and carry out the duties mentioned and set forth in your Honor's request in the County of Morris, myself, Wilfred H. Jayne, Jr. This request and designation was filed in the office of the Clerk of the County of Morris on May 21, 1924.

The Court: Those are documents which, I suppose, might be marked in evidence.

Mr. Matthews: No objection to that stipulation, and to those documents going in the record.

Mr. Jayne: And thereafter, a similar request, under date of February 19, 1925, was made by your Honor to the Attorney General.

The Court: 1925?

Mr. Jayne: 1925.

The Court: Yes.

Mr. Jayne: Followed by a designation of Wilfred H. Jayne, Jr., by the Attorney General as his assistant to carry out and perform your Honor's request, which latter designation was filed in the office of the Clerk of the County of Morris on February 21, 1925, both of which I now desire to offer.

Mr. Matthews: We consent.

(Three letters marked Exhibits S-1, S-2 and S-3 in evidence.)

The Court: Mr. Matthews, if you want to put

in that letter, I suppose that letter about Mr. Coulomb may go in.

Mr. Matthews: Yes.

The Court: I do not want to force anything in you do not want.

Mr. Matthews: I just want to get the facts before your Honor. There is a statute providing for the Attorney General's appointments, and I thought I had it.

The Court: Of course, the statute is a public statute, and you do not need to put that in evidence.

Mr. Matthews: That is Section 234 of the Laws of 1918 with reference to the Attorney General's authority to appoint.

The Court: Chapter 234?

Mr. Matthews: Section 234, page 844.

The Court: Section 234?

Mr. Matthews: Well, that is the way I am reading it. I do not want to mislead you.

The Court: You are probably wrong, and you better get the statute and find out.

Mr. Matthews: While we are waiting, I might continue with my motions to the face of indictment number 49.

The Court: I would rather wait and get the law settled. What page of 1918, Mr. Matthews?

Mr. Matthews: 844, if your Honor please.

The Court: 844. Chapter 234 is right. That authorizes the appointment of a second Assistant Attorney General.

Mr. Matthews: And also Chapter 23 of the Law of 1919.

The Court: That seems to be an amendment of the Assistant Attorney General act.



Mr. Matthews: For the purposes of this motion, those are the three sections of the statute, that is, the designation, that section of the statute.

The Court: It also cites Chapter 1 of the Laws of 1922.

Mr. Matthews: So that our stipulation would show those three chapters that we have just cited?

The Court: All right.

Mr Matthews: Your Honor will deny that?

The Court: Yes. That is denied.

Defendant's counsel prays an exception to the above ruling of the Court, which is allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: I would like to make the following motions to the face of indictment 49 for the purpose of having it quashed, and I will deal with it by counts.

We allege that count one is ambiguous, duplicitous and contradictory in terms because it charges the Prosecutor accepted a bribe of $300, and in consideration of the bribe, that he did three contrary things: First, that he refrained from prosecuting Hudock with the diligence, energy, ability and understanding required of him. Second, that he so managed and disposed of the indictments that Hudock escaped just punishment which, according to law and justice, should have been imposed upon him. Third, that he misled and deceived the Court of Quarter Sessions respecting the true facts and evidence of the of-

fenses pending against Hudock in the said indictment, in order to induce the Court to give him a less onerous sentence. It is our contention that this ambiguity and duplicity and contradiction in terms nullifies count one of the indictment; and, further, the ground stated that count one states a conclusion of law and of fact, particularly where it says that he enabled to escape just punishment, and thereafter says that he misled the Court with respect to the true facts and evidence of the charge pending against Hudock in order to induce the Court to give him a less onerous sentence.

As to count two, we move to quash, alleging that the count is bad because it states a conclusion both of law and of fact, and does not sufficiently allege a crime. It charges that Bolitho as Prosecutor had knowledge that Mutarella sold liquor on the 15th of October, 1923, in violation of the Prohibition Enforcement Act. The only knowledge that a prosecutor may have under Sec. 38 of the Hobart Act is knowledge brought to him by a complaint in writing, whereupon he is required to do certain things. There is no allegation in the count in the indictment; it does not say whether this knowledge was hearsay or according to the requirements of the statute that a written complaint should be given to the Prosecutor. It charges that Bolitho was Prosecutor and knew that Mutarella was guilty of a misdemeanor. This is certainly a conclusion of law, because if he knew he was guilty, there was no evidence for grand jury, court or anybody else. It charges he was guilty of a violation of the Prohibition Enforcement Act, which is a conclusion



of law again, precluding the necessity for any other steps of a criminal procedure. It is the merest conclusion. How could he know that he was guilty? Then it says that because of this alleged knowledge, it became his duty to prosecute Mutarella, to arrest, indict and convict him, but that he stifled the complaint. It seems to us that does not state a crime that is in the purview of the statute, and it is bad because it is really a conclusion of law as well as of fact.

The Court: Is it your view that Prosecutor is powerless to act under the Hobart Act unless and until he receives a complaint?

Mr. Matthews: Yes, if your Honor please.

The Court: All right.

Mr. Matthews: (Reading Section 38 of the Hobart Act.)

Count three we allege is bad because it states also a conclusion of law and fact, and does not sufficiently allege a crime. This charges that Bolitho as Prosecutor had knowledge on October 15 that Mutarella had sold liquor to one Winship and one Bright in violation of the Prohibition Enforcement Act, and that Winship had drawn a check in payment of the liquor, and Mutarella had not recovered the sum of $312, the amount of the check, for the liquor, and that to assist Mutarella to get the money on the check, Bolitho advised Mutarella to make a complaint before a justice that Winship had drawn a check with insufficient funds in the bank, with intent to oppress Winship and induced her to pay the money to Mutarella which Bolitho knew was the purchase price of liquor, and Mutarella, under the advice of Bolitho, procured the arrest of Winship, and

Winship then paid $312 as and for the purchase price of the liquor. Now, if Winship had given a bad check, it was a crime. If she paid the check, it was not for the liquor, but to avoid conviction. How could he assist in the sale if it had already been made? We claim there was no allegation sufficient to allege a crime in count three, and the conclusions as to his knowledge are conclusions of fact.

And the same motion is made to count four, because that deals with the Bright bad check transaction, and it is predicated on the same reasons.

Count five, we allege to be bad because it states conclusions of law and of fact, and does not sufficiently allege a crime, because that count charges Bolitho knew that on two occasions one Dolimpio had been complained of before a justice of the peace, and that Dolimpio was guilty of a misdemeanor. Now, a mere complaint before a justice of the peace was not sufficient, and there is an allegation that he knew he was guilty of a misdemeanor, and we maintain that is entirely a conclusion. It says it became Bolitho's duty to prosecute; there is no evidence, your Honor please, or there is no allegation, your Honor please, in the indictment. Then it says further, perverting his trust, he took $400 for suppressing the aforesaid offense. It further alleges that he perverted his trust and took $400 for suppressing the aforesaid offense and presenting the evidence to the grand jury, and has suppressed and concealed the complaint.

The Court: For not presenting evidence to the Grand Jury?



Mr. Matthews: Yes. A mere complaint before a justice would not have been sufficient. The justice might have dismissed the complaint. It does not say he held him for the Grand Jury; in fact, all through the count, if your Honor please, it fails to show anything which would indicate that there had been any obligation on Bolitho. Moreover, if I understand the law right, the justice has no jurisdiction in a liquor complaint.

As to count six, we allege that it is bad because it states conclusions of law and of fact, and does not sufficiently allege a crime. It charges Bolitho as Prosecutor knew that Mingardi had been complained of in due form of law before a justice of the peace for a violation of the enforcement act, and that he was guilty of a misdemeanor and, therefore, it became the duty of Bolitho to prosecute him. Now, if your Honor please, we allege again that there is no evidence that the complaint was not dismissed. There certainly can be no knowledge on Bolitho's part that the man was guilty. It thereafter goes on to allege Bolitho took $200 to suppress and not prosecute the complaint and did so suppress and did not so prosecute. Again we allege that there is no statement that this complaint in due form and process had been sent to the Prosecutor's office, or that the steps necessary to put upon the Prosecutor the obligation of acting had been gone through.

As to count seven, we allege that count seven is bad because it does not sufficiently allege a crime. It says that Bolitho took $600 to refrain from prosecuting Grande and Juliano. It does not allege that he did not prosecute Grande and

Juliano; in fact, if your Honor please, as the count is read through, it would indicate that Grande and Juliano were prosecuted. So it simply is an allegation of taking $600 to refrain from prosecuting them, with no allegation that he did so do.

The Court: That is an accusation for bribery as an act of malfeasance, isn't it?

Mr. Matthews: I think under the requirements of the act of malfeasance, it must state what the specific act was. Now, it says he took $600 to do a certain thing, but it does not state that he did a certain thing.

The Court: Well, the malfeasance charged is accepting a bribe for a certain purpose, isn't it?

Mr. Mathews: If a purpose is shown.

Count eight, we allege to be bad because it states conclusions of law and facts, and does not sufficiently allege a crime. That states that an officer made a search, and that Bolitho had personal knowledge of the violation of the law by the man whose place was searched, but that he ordered the officer to desist and return the liquor. It is our contention that the officer, if he did make a search, and then told the Prosecutor about it, the Prosecutor had a right to tell him to desist and return the liquor under certain circumstances, and the count does not show that the officer in making the search and in doing what he did, had done such a thing that the Prosecutor would have no right to tell him to desist therefrom. We claim count eight simply shows the Prosecutor did his duty.

Count nine we allege to be bad because it does not sufficient allege a crime. It says he took



money from one Weber for an offense that Weber might commit in the future. It does not allege anything at all as to what Weber did or what Bolitho was to do, or did do.

Count ten we allege to be bad because it states a conclusion of law and fact, and does not sufficiently allege a crime. It says Bolitho had personal knowledge that one Rice kept a disorderly house, that is, where liquor was sold, and that he took two cases of liquor to enable this Rice person, either male or female, to escape arrest. It does not allege that Rice did escape arrest, or that the Prosecutor did anything to assist Rice in escaping arrest. It is a mere allegation that he took certain liquor for a purpose that is not stated, and we claim under the way the counts are drawn that they do not sufficiently allege a crime, particularly this last count does not sufficiently allege the crime of bribery. And added to that—

The Court: That is ten you have discussed?

Mr. Matthews: Eleven.

The Court: Did you discuss eleven?

Mr. Matthews: No, I did not. Count eleven we say is bad because it does not allege a crime; in fact, it charges that Bolitho knew that Smith was arrested, and ordered Smith's release. I have summarized that shortly, but the facts more fully are that one Smith was apprehended in Madison with liquor in his conveyance that he had, and it alleges Bolitho telephoned the Madison police and told them to release Smith, and thereafter sent for the liquor. We maintain, if your Honor please, that the allegations of that count do not state a crime, because the Prosecutor, as the en-

forsement officer of the County had a right to do what is alleged to have been done in that case.

In all of the counts I might add the additional reason, where failure to prosecute or the allegation of the suppression of evidence of crime is alleged, that they do not allege in that respect that he failed to prosecute within the time required by law.

The Court: I do not think I will ask Mr. Jayne to reply. I will overrule these motions.

Mr. Matthews: Exception.

The Court: You may take your exception with respect to each count.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

The Court: Does that bring us to the point of summoning a jury now?

Mr. Matthews: Yes, your Honor.

The Court: The Sheriff may return a panel. The Clerk reminds me that the plea of not guilty was withdrawn. I suppose it is re-pleaded?

Mr. Matthews: Re-pleaded, not guilty.

A jury was empanelled, accepted and sworn.

Mr. Jayne opens the case to the Jury on behalf of the State.

The Court: I would say to the jury that in view of the great importance of this case, I think it would be better if the jury were kept together during the lunch hour. Therefore, you will be attended by your officers and taken to a suitable place to get your lunch. Of course, you will be excused at the end of the day's session so that you



can go to your homes—this is not a murder case—and so you will not have to stay at a hotel; but I think during the lunch hour it would be better for you to all eat together under the charge of the officers.

(Two officers sworn.)

The Court: The jury will be excused in charge of the officers until half-past one.

(Recess.)

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After Recess. 1:30 o'clock p. m.

Mr. Jayne: I will call Mr. Edwin Orr.

EDWIN ORR, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, where do you reside? A. Rockaway, New Jersey.

Q. Do you hold some public office in this County? A. I do.

Q. What office? A. Deputy County Clerk.

Q. And how long have you held that office? A. Since January the 1st, 1923.

Q. Have you records in the office of the County Clerk showing who was Prosecutor of the Pleas of the County of Morris in the month of May and June, 1923? A. I have.

Q. Will you produce such records? A. I have sent to the office for that record. They used it

this morning. It is coming now. (The witness leaves the stand and procures record.)

Q. Who was Prosecutor, as disclosed by the records? A. James H. Bolitho.

Q. Now, during what term was he Prosecutor of the Pleas of the County of Morris? A. He was sworn in before the County Clerk on the 28th day of May—of March, 1923.

Q. March 28, 1923, yes. Does your record disclose when Mr. Albert H. Holland was Prosecutor, or became Prosecutor? A. It does.

Q. When is that date? A. He was sworn into office on the 19th day of May, 1925.

Q. Who, by the records, was Prosecutor of the Pleas of the County of Morris on March 28, 1923, until, let me say, the 1st of January, 1925? A. James H. Bolitho.

Mr. Jayne: I would like to offer the portion of the record relating to who was Prosecutor during that period. Any objection?

Mr. Matthews: No objection.

The Court: Let it be marked.

The Witness: It is a public document.

The Court: That is all right. It is considered marked. What are the pages?

The Witness: It is Docket Number 6, page 210.

(Designated Exhibit S-4 in evidence.)

Q. Now Mr. Orr, do the records of the office of the Clerk disclose who were the County Detectives in May 1923, and up to January 1st, 1925? A. They do.

Q. I ask you if Frederick Hubert was a County



Detective of this County as shown by the records in May 1923? A. They do show that he was.

Q. What was his term? A. He was sworn in on the 2d day of April, 1923.

Q. Do you know for what period of time he continued to be County Detective? A. Up to about the first of the present year, I think; I am not positive as to the date.

Mr. Jayne: I offer the records with respect to County Detective.

The Witness: That is page 215 of the Docket.

Mr. Matthews: I did not hear that, Mr. Orr.

The Witness: Page 215 of the Docket.

Q. Mr. Orr, have you in the records of the Office of the Clerk, indictments against John Hudock? A. Yes, sir.

Q. Will you produce those? A. I will. (Witness leaves stand and procures records).

Q. Are there more than one? Is there more than one? A. There is two indictments.

Mr. Jayne: I will offer these records. I suppose they are a part of the records of this court, however.

The Court: You mean you do not think it necessary that they should be specifically offered in evidence?

Mr. Jayne: Perhaps they should; but they are, as a matter of fact, records of the Morris Oyer and Terminer.

The Court: Well, to be brought to the attention of the jury, I guess it would be better if they are put in.

Mr. Jayne: I would like to offer an in-

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dictment filed in the Clerk's Office against Peter Kisik, John Hudock and John Korvach. This is an indictment—

The Court: You better show it to the other side before you read the contents of it.

Mr. Jayne: (After handing paper to counsel.) This is an indictment of the grand jury charging that Peter Kisik, John Hudock and John Korvach, late of the Township of Passaic, in the County of Morris, on the 6th day of October 1922, at the Township of Passaic, then and there did attempt to forcibly take from the person of Bertha C. Harmon $3600 lawful money of the United States, the property of Bertha C. Harmon, by Violence and by putting her in fear. It has the further count charging these same defendants with knowingly and designedly and falsely representing themselves to be persons other than they were, and by falsely representing that they intended to legitimately use and invest a certain sum of money, namely, $3,600, then on the person of Bertha Harmon, her property, for the benefit of Bertha Harmon, did then and there attempt by false pretenses to get possession of that sum of money. This indictment was filed in the Court of Quarter Sessions on October 11, 1922.

(Marked Exhibit S-5 in evidence.)

Mr. Jayne: And a further indictment filed in the Court of Quarter Sessions of this County on October 27, 1921, which



charges Joe Bojodan, Michael Arkie and John Doe, August 25th, 1921, of larceny of $925, property of one Charles Palco; and a further count of receiving this sum of money, knowing it to have been stolen.

Mr. Matthews: Your Honor please, I took it for granted that the defendant was named in it, but it seems to be a John Doe indictment.

Mr. Jayne: I did too.

Q. I asked you if you had an indictment against John Hudock. What have you to say about this indictment?

Mr. Matthews: I object to what he has to say. I think the record speaks for itself.

A. The records will show that John Doe was brought to court, into this court—

Mr. Matthews: I object to this.

The Court: Never mind. The record will show.

The Witness: Well, I was present at the time. I can testify—

Mr. Matthews: Now, we are dealing just directly with the indictment, I want to keep my record straight, and I understand the indictment is John Doe. If they want to prove that is a John Doe warrant, the record will show it.

The Court: Very well. Under those circumstances, perhaps the offer of it had beter be deferred until it is connected up.

Mr. Matthews: Yes, if your Honor please.

Q. Now, have you the record of the proceedings had upon both of these indictments? A. I have the record, yes.

Q. All right. Will you produce that? A. I think I haven't that book up here. It is in the office.

The Court: Well, can we go on and let him get that later, or do you want to wait until he gets it?

Mr. Jayne: Well, I wanted to offer the entire record of both of these cases in evidence, putting in the whole story of both cases.

The Court: Let us get it right.

Mr. Matthews: I want to cross-examine the story.

Mr. Jayne: You can have that.

The Court: Go ahead and get it, Mr. Orr, if you will.

(The witness leaves the stand to procure record.)

Q. All right, now? A. The records do not disclose anything against Hudock until May, or, until January 2, 1923.

Q. What do the records disclose as of that date? A. He was brought into this court to plead to the indictment.

Q. And did he plead? A. He did.

Q. What was the plea? A. The plea was, not guilty.

Q. Now, that is the plea to what indictment? A. To the indictment where he was named as John Doe.

Mr. Matthews: Well now, if your Honor please, I move that that be stricken out on



the ground that it states a conclusion, no evidence.

The Court: Where is the book that shows that, Mr. Orr?

The Witness: I have the record right there.

The Court: Well, that is what we want to see.

(The witness leaves the stand to procure record.)

The Court: Did you make a motion to strike something out?

Mr. Matthews: Yes; his last statement that this is the indictment.

The Court: Yes. That ought to be struck out.

(To the witness.) Well now, while we are waiting, take that indictment against John Doe; where is that? Have you got it there?

The Witness: Yes, sir.

The Court: Let me see it.

The Witness: (Hands paper to the Court.)

The Court: Now, there are two numbers on the top of the endorsement; I think one of them is in typewriter, and the other is in ink. What do they mean? Do not say what the numbers are, or anything; but just answer that question.

The Witness: That number nine is a number that the County Clerk puts on the indictment when it is received by him from the Grand Jury.

The Court: What is the typewriter number?

The Witness: That I do not know.

The Court: Now, when you find the record that you are looking for, let me see that also.

The Witness: (Refers to book.)

The Court: Have you got it?

The Witness: Yes, sir.

The Court: You haven't got the book yet, have you?

The Witness: I want Oyer and Terminer. They have got Quarter Sessions.

The Court: You mean the book you have is Quarter Sessions?

The Witness: Yes, sir.

The Court: When the indictment was found in the Oyer?

The Witness: The indictment was found in the Oyer, and the transaction took place in the Oyer at that time.

The Court: Well, we will wait here all the afternoon. We have to have that book.

The Witness: Your Honor, I haven't had any time to look this case up. I was subpoenaed—

The Court: I do not care anything about your time. Go downstairs with your indictment and find the book and the place in the book where that record is, and then you can come back with it; take your indictment with you so that you can identify it. Have you another witness that you can call, Mr. Jayne, while we are waiting for this thing to be straightened out?



Mr. Jayne: Well, I cannot examine them well unless the history of this, at least, the records of this case are in evidence. I will, at least, have to refer to events in the prosecution of those indictments.

The Court: Very well. Now, what appears up to date with regard to the indictment found against Hudock by name, nothing?

Mr. Jayne: That is the one, we are prepared to show, on which indictment he entered a plea subsequently of *non vult,* or guilty, and a fine was imposed.

The Court: That is the one found against Hudock by name?

Mr. Jayne: Yes.

The Court: Nothing was ever done; is that your claim?

Mr. Jayne: I just stated to you that on the indictment in which he was named—

The Court: Yes.

Mr. Jayne: —he subsequently came in and pleaded to that indictment.

The Court: You have not examined the witness on that yet.

Mr. Jayne: No. I endeavored to get the record history of these cases.

The Court: Yes.

Mr. Jayne: I can go on concerning those matters if your Honor would permit, and supply this documentary evidence of the records, or, at least, with the understanding that I will.

The Court: I do not see any great objection to it.

Mr. Jayne: This investigation of records might be made without holding up the jury and the Court and delaying the actual progress of the case.

The Court: Well, you say that you expect to prove this with regard to one of the indictments, and that with regard to the other, and then will call witnesses based on that?

Mr. Jayne: Your Honor, I need Mr. Orr back again on some of this other testimony. In order not to lose time, I will call Mr. John M. Mills.

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JOHN M. MILLS, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Mills, where do you live? A. Morristown.

Q. You are attorney and counsellor at law of New Jersey? A. Yes.

Q. Practicing where? A. In Morristown.

Q. Were you Prosecutor of the Pleas of the County of Morris? A. Yes.

Q. Were you such immediately preceding the appointment and term of the defendant, James H. Bolitho? A. Yes.

Q. Were you, as Prosecutor, concerned with a criminal complaint against one John Hudock? A. Yes.

Q. That is, during your term as Prosecutor? A. Yes.



Q. Did you make investigations of that case? A. Yes.

Q. Did you present the evidence to the grand jury? A. Yes.

Q. Were indictments, the indictment not here but marked S-5, found by the grand jury during your term as Prosecutor? A. Well, I haven't seen S-5, Mr. Jayne.

Q. I thought you were familiar with it. Perhaps Mr. Orr has it. A. I did not hear what you were asking Mr. Orr. I did not get the gist of it.

The Court: Well, that was an indictment against John Hudock, October 11, 1922, two counts, first for attempted robbery; and the second for an attempt to get money by false pretenses.

The Witness: October, 1922?

The Court: Yes.

The Witness: Well, there are two October indictments against him, one in October one year, and one in October another year. It is H-u-d-o-c-k?

Q. Yes. A. John H-u-d-o-c-k. Now, it is October one year and October the next year. One, the first year, appears as John Doe; the second time it appears as John Hudock. The Stirling case and the Rockaway case.

Q. Yes. Now, were those indictments found during your term— A. Yes.

Q. —as Prosecutor? Were they? A. Yes.

Q. Did you prosecute John Hudock upon the charges in these indictments during your term? A. No.

Q. And after the expiration of your term, did you discuss these cases with James H. Bolitho,

your successor in office? A. I cannot put—my answer to that would be no.

Q. Well, did you ever discuss— A. Yes.

Q. —these cases, indictments, against John Hudock, with Mr. Bolitho? A. Yes.

Q. And when? A. Just a few days before I went out.

Q. Yes. A. Or a few days before he went in; put it either way.

Q. Did you acquaint him with the evidence that you had secured during your term? A. I gave him an outline of it.

Q. And what did you say to him about the defendant; what you had ascertained about the defendant, if anything? A. Well, I—I gave him a list of the untried indictments—

Q. Yes. A. —and told him the reasons why.

Q. Well, my question relates more particularly to the Hudock case. A. That we had not been able to get Hudock over to New Jersey in time to try him.

Q. Had you investigated Hudock's previous record? A. Yes.

Q. What did you find?

Mr. Matthews: I object, your Honor please, as not binding upon this defendant what the former Prosecutor found with reference to the record.

Mr. Jayne: I cannot ask him all in one question.

The Court: I think at this stage it is not competent.

Q. Did you inform Mr. Bolitho of what you had learned of the previous record of John Hudock?



Mr. Matthews: I object to this as very leading, your Honor please. If he had a conversation with the Prosecutor, I think he is entitled to exhaust his recollection, first.

The Court: Well, I think that is not too leading to let in. That may be answered.

Mr. Matthews: Exception.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. What was that?

The Court: Did you tell him what you had learned, if anything, with regard to Hudock's previous record?

The Witness: Yes.

Q. What did you say to him? A. Well, I told him that Hudock was in the Rockaway case, in the Palco case, sometimes as we called it, indicted together with—oh, Charles Bogden and another, a fellow from Rockaway, and that he was in the Stirling case with a fellow by the name of Kisik and a fellow by the name of Kovach. Kisik and Kovach had been convicted and sentenced, but Hudock had not been tried because he was in a hospital in New York at the time and could not be brought over. When we tried the Bogden case, the Rockaway case, which was a year earlier, we did not at that time know that Hudock was the John Doe, and I told him that Hudock had a record in New York.

Q. You told who that? A. The Prosecutor.

Q. What do you mean by a record, so the ladies

and gentlemen of the jury— A. That he had been in another—other similar cases, hold-ups, robberies, crooked games.

Q. All right.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Mr. Mills, during your term as prosecutor, these complaints were made; is that right? A. Yes.

Q. One in October, 1922? A. The indictment was in October, 1922.

Q. Yes. And you presented that to the grand jury, did you? A. Yes.

Q. When did you go out of office? A. I went out—wasn't it May, 1923?

The Court: Wait one moment.

A. (Continuing.) May 17th, 1923, I think.

Q. May 17? A. Or April 17, I do not know which; it must have been April, the latter part of April, 1923.

Q. And when was the other indictment? A. October, one was in October; they were each in October. One was the October before, and the one the year before that.

Q. One was October, 1921? A. It must have been, yes.

Q. Yes. Well now, hadn't you tried this October, 1921, one? A. We tried the October, 1921; that was the Palco case from Rockaway, Charlie Palco; we tried Charles Bogden and convicted him.

Q. Yes. What did you do with him? A. He took an appeal. I think it went through the Court of Errors.



Q. It was set aside, wasn't it? A. No.

Q. The conviction was sustained by the Court of Errors? A. I am quite sure Kisik and Kovach were set aside.

Q. Now, are you sure Bogden took an appeal, Prosecutor? A. Well, we had a good many cases, you know.

Q. Yes. A. He served considerable time here in jail, and judgment was obtained against him for the amount of money, for the 915, with interest and costs, and I do not know whether he took an appeal or not.

Q. During your term as prosecutor, was Bogden sentenced? A. If he was convicted, he surely was. I should say yes, whatever—the record would show it, Mr. Matthews. I do not want to say yes or no. The record should show it.

Q. Well, you remembered so much about what you told Mr. Bolitho about Kovach that I thought you might perhaps remember that, Prosecutor. A. Do you want an answer? Is that a question, I mean?

Q. Yes. I say, I thought you might remember it because you jogged your memory to remember whether Bogden was ever sentenced during your regime. A. I wouldn't want to say sure.

Q. Was Hudock ever in this case with Bogden? A. Hudock was the John Doe in the Charlie Palco case at Rockaway.

Q. I am asking you about the first case in your regime. A. That is the first time.

Q. Hudock was the John Doe in that first case? A. Yes.

Q. And the other fellow besides Bogden and Hudock was who? Arkie, was it? A. Mike Arkie.

Q. All right. What became of Mike Arkie during your term? A. He was not tried.

Q. Can you tell us why? A. I did not think there was sufficient evidence against him to convict him.

Q. So on your proper judgment that there was not sufficient evidence, that charge was *nolle prossed,* was it? A. No.

Q. What happened? A. I do not think during my term; I think it is still open.

Q. It is still open of record against Arkie? A. We had not tried Hudock.

Q. Well— A. We had not tried Hudock and it was laying over with Hudock.

Q. Now, then, you found a second indictment against Hudock in your term; is that right? A. In the Stirling case.

Q. Now, is this the case that is Hudock or John Doe? A. He is Hudock in that one; he is Hudock.

Q. When was he brought in, do you remember, on the Hudock indictment? A. I could not tell you offhand. Not for a long time.

Q. Was it after you tried Bogden that he was brought in? A. He was indicted after Bogden was tried.

Q. Indicted? A. Bogden had been tried before the Stirling indictment was brought in.

Q. Are you sure of that, Prosecutor? A. Yes.

Q. Well, Hudock was in the Bogden case, wasn't he? A. In the Stirling case, yes. No, in the Stirling case.

Q. He was in both of them? A. Well, Bogden wasn't in the Stirling case.

Q. Wasn't Hudock in any case with Bogden? A. In the Rockaway case.



Q. Yes. A. Not the Stirling.

Q. Now, had that case been tried before Hudock was indicted in the second case? A. The Rockaway case was the first case.

Q. Yes. A. And it was Mike Arkie, Charles Bogden and John Doe.

Q. That was an indictment of October, 1921? A. Yes.

Q. Bogden was tried? A. Bogden was tried.

Q. Arkie was not tried? A. Arkie was a witness.

Q. And Hudock was not apprehended? A. We did not know then who Hudock was.

Q. Well, was he John Doe in the indictment, or Hudock? A. John Doe in the indictment.

Q. John Doe in the indictment. All right. Didn't you say he was sick in New York? A. Yes.

Q. You did not try to extradite him, did you? A. He had—now, wait. He was sick in New York, after being indicted in the Stirling case, and then, afterwards—

Q. Well, where was he? A. He was set down for trial; he came here and set trial, or set a date for trial; an attorney came and said he was sick-a-bed. I sent a man to New York, and sent a physician to the hospital to report whether or not he was in bed, and the report came back to me that he was. That is all. I did not see him sick-a-bed.

Q. Where did you get the information as to who he was in the Stirling case, Mr. Prosecutor? How did you find out he was Hudock? A. In the Stirling case?

Q. Yes. A. I went down to New York and saw him.

Q. Did you find him? A. Yes.

Q. Did you extradite him? A. No. He gave bail in New York, and later came here and gave bail.

Q. Didn't Palco go down to New York to recognize Hudock as being in the Bogden case? A. He did recognize him, yes.

Q. Yes. A. No. Yes, he did, too.

Q. When was that, Prosecutor? A. On a Saturday night.

Q. What year? A. Previous, before the 1922 October Term, just a short time before. Now, I cannot tell you the date.

Q. Before the October, 1922, Term? A. Yes.

Q. Do you remember where he found Hudock at that time? A. Thirty-first Precinct; is that 78th Street, or—I can go there, but I couldn't—

Q. He was under arrest there at that time? A. He was.

Q. You did not extradite him, then? A. No.

Q. You then came over and indicted him; is that right? A. They held him for us.

Q. Yes. A. He was indicted.

Q. Why didn't you bring him over then, on the Bogden case, Prosecutor? A. We didn't know it then.

Q. I thought you said Palco— A. Well, we knew it then, that night, yes.

Q. Yes. A. We knew it then, yes. Now, he shortly after that, came over and answered to the new indictment.

Q. Yes. But why didn't you extradite him right away? A. Because we were waiting to try him. We had tried the first fellow and we were holding Arkie as a witness against Hudock in



the second. Well, I wouldn't want to say for sure.

Q. All right, Prosecutor. A. He had been in bed for a long time.

Q. Yes. But he is at the precinct this night; he is not in bed, you know; we are talking of the night he is at the precinct. A. I know.

Q. Now, the fact is he was not tried during your term on that first indictment, was he? A. No. The trial was set for three or four different dates; every date an excuse would be given.

Q. And he was not tried on the second indictment during your term? A. No.

Q. And the first indictment was found during October, 1921; that is correct? A. I can tell you, and I think it is correct.

Q. Yes. In the October Term, anyway. And sometime shortly before the October Term, 1922, you found him at the precinct in New York; that is correct, isn't it? A. Yes.

Q. And he was identified as the man who was wanted in the 1921 indictment; that is correct, isn't it? A. Yes.

Q. And then you indicted him in the October, 1922, Term, again? A. Yes.

Q. And yet, during your term as Prosecutor, he was never brought to trial, was he? A. Well, that depends what you mean, brought to trial. We set three different dates to try him, and he didn't show up.

Q. Well, Prosecutor— A. He was not tried.

Q. —brought to trial— A. He was not tried.

Q. During that time, from the time you saw him at the precinct, after the 1921 indictment, and shortly before the 1922 indictment, was he put under bail? A. In New York.

Q. For what in New York? A. Well, for us, for extradition.

Q. Put under bail for you in New York; you are sure of that, aren't you, Prosecutor? A. Well, I didn't see the bail, but that was—

Q. Was he apprehended by your orders in New York? A. He was under arrest by our orders, when I saw him.

Q. Prosecutor, when you found him at the precinct, wasn't he arrested on a New York charge? Hadn't he been arrested on a New York charge? A. Yes and no. Well, do you want me to tell it?

Q. Certainly, Prosecutor. A. All right. They knew we wanted him.

Q. Yes. A. They held him as a disorderly person until we got down there and made a charge.

Q. How did they know you wanted him? A. Why, he was under a New York charge first.

Q. How did they know you wanted him? A. Because a little girl gave him away and she knew we wanted him. She told the police and they grabbed him and held him until we got there.

Q. Do you remember who that little girl was, Prosecutor? A. The name will appear in the charge. Bogden was a witness, in the Charles Bogden case.

Q. Wasn't it Bogden's own daughter? A. I—I do not know.

Q. And wasn't that why you had not sentenced Bogden, because Bogden's daughter — he had promised to prove to you that it was Hudock that had done this confidence work, and not him, Bogden? A. No.

Q. Well, was he on bail under the second charge? A. Who?



Q. During your administration? Hudock? A. In New York or here?

Q. In New Jersey? A. In New Jersey. I am under the impression he came here in January and gave bail and plead to the indictment.

Q. That is in your term? A. Yes. But the records ought to show that, I couldn't.

Q. Yes. But we are trying to get along without them, Mr. Prosecutor. A. I haven't looked at them.

Q. But that is your impression? A. Yes.

Q. You went out of office in April? A. Yes.

Q. He was not tried from January until April, was he? A. No.

Q. Neither on the first nor the second charge? A. No.

Q. Between January and April, meaning the January and April that marked the close of your official term, did you give any notice to the bondsman of Hudock to produce him for trial? A. No, I do not think we did.

Q. No. A. I am quite sure we did not.

Q. Did you give any notice to Hudock, or anyone in his behalf, that he should be tried during that time? A. We set trial dates three times between October and April.

Q. Well, when you set them, what do you mean by, "We set trial dates"? A. Got in touch with the attorney to produce him. We had our witnesses here to go to trial.

Q. Who was the attorney you got in touch with? A. I do not know that. He was going to bring a New Jersey attorney every time, and Mr. Romine represented him for a short time, but I do not know to what extent or how far.

Q. Did you notify Mr. Romine between October and the end of your term to produce him for trial? A. I do not know whether I did or whether I notified a Mr. Davis, I think, at one hundred and fifty something, Broadway, New York City. Several attorneys appeared for him at different times.

Q. And any New Jersey attorneys? A. I do not know the name. It was to be an attorney from Jersey City. I do not know the name.

Q. You do not remember him at all, eh? A. No.

Q. Romine represented Kisik and Kovach when you tried Kisik and Kovach, didn't he, Mr. Romine? A. Yes.

Q. Just one more question, Mr. Prosecutor. Now, when you had this conversation then with Mr. Bolitho before you left office, did you tell him the details that I have elicited from you now, that he had been apprehended in New York and that Palco identified him in New York, that you did not extradite him, but that you indicted him in October, and that he came in to plead on the 2nd of January, that you had not tried him up to then because the attorneys did not bring him in? Did you tell Mr. Bolitho that? A. I do not know as I used the term second of January. I told him that the evidence—who would identify him as being connected with the Rockaway case, to be the John Doe, Hudock. I told him that we had convicted Kisik and Kovach. I told him that we had had him up for trial several times, and every time he had plead sick, and that I believed it was so, that he was laid up, because I had sent down to find out.



Q. Well, when did you send down to find out if he was sick? A. On two different occasions when he came—was to show up for trial and did not show up.

Q. How long after you saw him in the 41st Street Police Station, New York, or the precinct? A. Well, the indictment was brought in in October. It may have been December; it may have been January or February or March.

Q. It may have been November or October? A. Well, the October Term, we wouldn't have gone to trial before November or December. I did not know until we were over to the precinct in New York that John Doe and Hudock were one and the same person.

Q. Yes. You told me that, Mr. Prosecutor. Is this your signature, Prosecutor? A. (Referring.) Yes, that is my signature.

By the Court:

Q. Mr. Mills, that case you have spoken of as the Stirling case, for my information, is that some sort of a charge of a confidence game? A. Yes. A charge of highway robbery and obtaining money under false pretenses.

By Mr. Matthews:

Q. The paper I just showed you, Mr. Mills, that you have identified by your signature, is a substitution of attorney to Bolitho as Prosecutor, is it not, in the Kisik-Kovach case? A. Yes.

Q. And do you see the date on that there? A. Yes.

Q. Now, the date is June 7th, 1923, isn't it? A. Yes.

Q. And wasn't that the time that you told Mr.

Bolitho about the Kisik and Kovach cases? A. I may have told him more about it. I may have talked about it. I probably did. I do not think we did, though. I think I sent them to Mr. Bolitho's office, at the request of one of the officers.

The Court: Well, is your question whether that was the first time?

Mr. Matthews: Yes, your Honor please.

The Witness: That was not the first time.

Q. Well, did you tell me a moment ago that the Kisik-Kovach conviction was set aside in the Court of Errors, the Supreme Court sustaining it? A. It was set aside, I am quite sure, yes. That is only hearsay evidence; I did not follow this.

The Court: Are you looking for facts in the matter, Mr. Matthews?

Mr. Matthews: Yes. That is, in order to establish when Mr. Bolitho got any knowledge of this Kovach case.

The Witness: On the charge of the Court.

The Court: I think I was personally concerned in that case.

Mr. Matthews: I was wondering. It was Chancellor Walker's opinion.

The Court: Oh, that was in the Court of Errors.

Q. Well, if the records show that the Court of Errors of the November Term, 1923, set that conviction aside, would that refresh your memory any as to whether, as a matter of fact, you remember that the conviction was set aside in the Kisik-Kovach cases? A. Why, it was set aside.

Q. It was? A. I—



Q. You remember now it was the November Term of 1923? A. In November, 1923?

Q. Yes.

The Court: When was that trial, Mr. Matthews? That may have gone over until March, 1924.

Mr. Matthews: May 19, 1924, it was filed.

A. They did not set it—when was the—

Q. It was filed May 19, 1924. A. Yes. That was after Hudock had plead.

Q. Mr. Mills, just one more question. A. Yes.

Q. In the Kisik-Kovach case that we have been discussing, and the one that Hudock was not apprehended in, the one he was John Doe in, the Stirling, and the one he was Hudock in— A. No, sir.

Q. —was there any money taken in that case, or was it an attempted larceny? A. It was an attempt.

Q. No money passed? A. They did not get any money away from the woman.

Q. Yes, all right.

Mr. Matthews: That is all, thank you, sir.

Mr. Jayne: That is all, Mr. Mills.

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EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Now, Mr. Orr, what minutes, if any, have you of the proceedings taken on the two indictments which you have produced? A. There is no

record of any proceedings with the exception of the indictment marked number one.

Mr. Matthews: Is that S-5?

Q. Where is the indictment? A. (Handing paper to counsel.)

Mr. Jayne: S-5, yes.

A. On June the 1st, 1923.

Q. Yes. And what is the record, and what does it state occurred? A. The records show on that day he plead guilty to attempted robbery.

Mr. Matthews: What is that?

The Witness: He plead guilty to attempted robbery, and was sentenced by C. Franklin Wilson, Judge, to pay a fine of $500.00.

Q. Now, have you in the records of the Clerk's office any recognizances or bails by John Hudock? A. I have.

Q. Will you produce those? A. (Producing papers.) There is a bail bond, taken before Charles W. Parker, Justice.

The Court: Is that so?

The Witness: Yes, sir.

The Court: What date?

The Witness: That was taken on January the second, 1923; and there is another bail bond taken before Charles W. Parker, Justice, and so forth, on the same day.

Mr. Jayne: I offer them.

Mr. Matthews: Has Mr. Mills gone? I would like to recall him.

(No response.)

Mr. Jayne: I offer the two recognizances.

The Court: No objection?



Mr. Matthews: No, your Honor; no objection.

Marked Exhibits S-6 and S-7 in evidence.

Mr. Jayne: I think, your Honor please, in view of the testimony of the Prosecutor at the time this other indictment was found, this indictment becomes now admissible.

The Court: Well, it seems to have been conceded on cross-examination.

Mr. Matthews: Yes, that is the October—

The Court: October Term, 1921.

Mr. Jayne: Yes.

The Court: There seems to be no objection to it. That will be marked S-8.

Marked Exhibit S-8 in evidence.

Q. Do the records of the Clerk's office disclose any further prosecution of one John Hudock under the indictment marked S-8?

The Court: That is John Doe?

Mr. Jayne: That is the John Doe indictment.

A. Nothing that I can find.

Q. Now, have you the record of any forfeiture of bail in this case, referring to the indictment marked S-8? A. On April the 7th, 1924, there was a motion made by Prosecutor James H. Bolitho to forfeit the bail of John Hudock.

Q. That is in the case under indictment S-8? A. That would be the indictment that I referred to as number nine.

The Court? Number nine?

The Witness: That is S-8; I think it is marked by the State S-8.

The Court: Yes, that is right; number nine.

Mr. Jayne: I offer that record.

Designated Exhibit S-9 in evidence.

Q. Have you in the files of the Clerk's office the original papers and complaints, warrants and so forth, issued against John Hudock in the Rockaway case? A. I am not positive as to that.

Q. You gave me two envelopes. I gave them both back to you, I think. A. There was a warrant and a complaint and a recognizance.

Mr. Matthews: What is that, please, sir?

The Witness: Warrant, complaint and recogngizance.

Q. No. This is the other case. Where is the other envelope? A. That is the John Doe; isn't that the one you want?

Q. Where is the other one? A. (Handing papers to counsel.)

Mr. Jayne: Any objection to these papers? Counsel does not seem to—we cannot agree, in other words, as to the admissibility of those. I asked the witness for the records, if he had the file in the Clerk's office, the preliminary papers in the proceedings which resulted in the finding of indictment S-5, and he produces a complaint, or what purports to be a complaint and warrant.

Mr. Matthews: I object to characterizing those two papers.

Mr. Jayne: Three papers, which I offer.

The Court: Well, I am wondering what the materiality of them is. The indictment was found.

Mr. Jayne: I am quite willing to say that I simply want to show the existence of an



original complaint having been made and a warrant issued for the arrest of these three individuals.

Mr. Matthews: I think we withdraw our objection to that entire file and consent to its admission.

The Court: Very well. Let it be marked.

Marked Exhibits S-10a and S-10b in evidence.

Mr. Jayne: That is all. Cross-examine.

I say this to your Honor and to opposing counsel, that in the presentation of the evidence in these several counts, I shall find it necessary, probably, in order to present the case in a comprehensive way, to re-call the witnesses after they have taken the stand and when I abandon them on direct-examination.

The Court: In other words, your idea is to keep the evidence on each count separate?

Mr. Jayne: That is it. I think we could not proceed otherwise.

The Court: Now, Mr. Matthews, I do not suppose you have any objection to that?

Mr. Matthews: So long as when he is through, he is through, for the defense.

The Court: Through with that part of the case?

Mr. Matthews: Yes.

The Court: Let us say on the second count, Mr. Orr will probably be re-called on that count?

Mr. Jayne: My present intention is to re-call him on this count again, but on an

entirely different aspect of the matter than a matter of records. I have confined my direct-examination of Mr. Orr now to purely a matter of production of records.

The Court: Yes. A different matter. In other words, you want to call him again on this count, on another phase of the count?

Mr. Jayne: Yes.

Mr. Matthews: I won't object to it.

CROSS-EXAMINATION by Mr. Matthews:

Q. May I have those records? A. What records do you want?

Q. I want all the records you have just offered from S-5 on. A. They are all there.

Q. Where is that book with the county detective list in it? A. That has been offered, but it has not been placed—

Q. Where is the record of the discharge of the bail in the Kovach case? A. (Hands papers to counsel).

Q. I will go along with what I have for a minute. I call your attention a moment to the State's exhibit, the docket, showing the list of the county detectives identified by you for the record at page 215. You were asked by Mr. Jayne, does your docket show who were the county detectives in the Bolitho regime, although he gave you the dates, and did not call it the Bolitho regime. Who else besides Mr. Hubert were detectives during Bolitho's regime? A. James C. Bellingham and Margaret Repp.

Q. Yes. Anybody else from the time he took



office until he ceased to function? A. Not that there is any record in the Clerk's office.

Q. And where else could there be a record? A. That I couldn't say.

Q. Pardon me, sir? A. I couldn't say.

Q. Who keeps the records of the Prosecutor's Office detectives? A. They keep their own records.

Q. Well, what is that book that you have there? A. That is a book where the oath of office is administered to each public officer that takes office in this County.

Q. And that book shows, during Bolitho's regime, no other detectives than those you have mentioned? A. No, sir; it does not.

Q. All right. Just another question. S-5, the indictment against Kisik, Hudock and Korvach— A. That is right there, Mr. Matthews. That is right there, Mr. Matthews.

Q. What record does the story of this indictment appear in, what book, what permanent record other than the indictment itself have you of S-5? A. I would not have any record except as to the indictment as they proceed along with it.

Q. This indictment, apparently, according to the indictment, is in the Morris Oyer and Terminer, isn't it? A. Yes, sir.

Q. Where are the records of the Morris Oyer and Terminer? A. We have the records.

Q. Will you turn to the page that contains the record of that indictment? A. There is no record of that indictment.

Q. Where is the record of the State vs. Peter Kisik, John Hudock and John Korvach in the

record book of the Oyer? A. There is some record (handing book to counsel) of the trial.

The Court: What was that book, the minutes of the Oyer?

The Witness: That is the minutes.

The Court: Kept from day to day, I suppose, Mr. Orr?

The Witness: That is the Quarter Sessions, yes.

The Court: It is kept from day to day?

The Witness: Kept from day to day; yes, sir.

The Court: Now, have you in the Clerk's office any docket showing the proceedings from the beginning to the end of the criminal prosecution on one page?

The Witness: Yes, we have.

The Court: You have a docket?

The Witness: I think we have.

Mr. Matthews: Yes; that is what I want, your Honor. (Book produced).

The Court: It is S-5 you are looking for?

Mr. Matthews: S-5, your Honor, yes.

The Court: All right, yes. This seems to be carried along in columns, really, on one line to a case. All right.

Q. May I just look at it? A. (Handing book to counsel.)

Q. We are now looking at pages— A. There is no page to it; it is just the October Term; it is the proceedings on indictments.

Q. We are looking at a book, proceedings on indictments, showing the progress of the Hudock Kovach and Kisik case from beginning to end,



as far as the docket goes? A. Yes, sir; as far as the docket goes.

Q. And under the heading "pleas", what does that show with reference to Hudock? A. It shows a plea of— on June the first, 1923, of guilty.

Q. What is this October 11th? A. That is the plea of Peter Kisik.

Q. And what is "not guilty"; that is Kisik's plea? A. That is the plea he entered on that day.

Q. And on the retraxit, June 4, 1924, is that Kisik's retraxit? A. Yes, sir.

Q. And Kisik's non vult? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And what is this conviction, November 27th? A. That was the date he was convicted in the court here on November 27, 1922, of that charge.

Q. What is the non vult plea? A. Well, the case had been reversed and he was back here for sentence or a new trial.

Q. Now, on Hudock's, you only have the guilty plea, on what date? A. June 1st, 1923.

Q. And Korvach, you have the— A. That would be the same as the Kisik.

Q. —not guilty, the same as the Kisik case? And amount and date of recognizance, October 11, 1922, $1500; that is the Kisik recognizance, is it? A. Yes, sir.

Q. June 1st, 1923, is the Hudock recognizance? A. Yes, sir.

Q. That is right? And October 11, 1922, $1500; that is the Korvach recognizance? A. Yes, sir.

Q. Now, the $1500 recognizance on June 1, 1923, is the recognizance for indictment number S-5, is that right? That is the record you are showing

me now? A. That is the record I am showing you now; yes, sir.

Q. Now, turning back to your Morris Quarter Sessions, what do you call this? A. That is the minute book.

Q. The minute book. And, particularly, at page 57, that shows the record of the trial of Kisik and Korvach, does it not? A. Yes, sir; it does.

Q. And on page 58, it shows a motion made by the Prosecutor for a severance as to Kisik and Korvach; is that right? A. Yes, sir; that is right.

Q. Now, the recognizance before Justice Parker marked S-6 and S-7 are dated when? A. (Referring) Are dated January the 2nd, 1923.

Q. And they are recognizances of who to whom for what, or, of whom to whom for what? A. One of them is a recognizance of John Hudock, charged with attempted robbery; recognizance in the sum of $1500 to the State of New Jersey—

Q. Yes. A. — for his appearance on January the 8th next.

Q. Yes. A. And the other one is a recognizance of John Doe, otherwise referred to as John Hudock,—

Q. Yes. A. —of the National Surety Company as surety.

Q. The date of that is what? A. January the 2nd.

Q. Yes. A. That is given to the State of New Jersey for $1500,—

Q. Yes. A. — for appearance on January the 8th next.

Q. And this first one was for how much? A. Fifteen hundred.



Q. Now, do you know from your records whether they are for the same case, or for two different cases? A. They are for two different cases.

Q. And are they for indictments S-5, which I show you now, a record of which we have just read in your docket, and also for S-8, in which he is mentioned, Hudock is mentioned, as John Doe? A. They are.

Q. You also said that the record shows that on a day in June, I think June first, he pleaded guilty and was sentenced to pay a fine of $500? A. He was.

Q. What record is that in, what book? Hudock, I mean by he. A. (Showing book to counsel.)

Q. The plea appears on page 23 of this book which you showed me, and which you call what? A. Quarter Sessions minute.

Q. And that shows on page 23 at the — A. At the bottom of the page.

Q. —bottom that Hudock pleaded guilty to indictment, which one now is that, S-5 or S-8? A. (Referring to papers) S-5.

Q. S-5. That is the one in which he is mentioned as— A. Hudock.

Q. —Hudock. And your record on page 24 shows that he was fined $500, is that right? A. Yes, sir.

Q. Now, page 24 also shows recognizance of Hudock in the National Surety Company to the State, does it not? A. It shows an exoneretur of the recognizance.

Q. That is what I mean. An exoneretur of the recognizance. What is the date of that? A. The first day of June, 1923.

Q. That is the recognizance exoneretur for the crime that he paid a fine for, is it not? A. Yes, sir.

Q. Now, you also told Mr. Jayne that the records show nothing as to any further prosecution under S-8. Where is the complete record of S-8? A. It is in this book.

Q. That is column—in your docket? A. John Doe, bail; that is the only record there is; forfeiture of the bail; that is all the record.

Q. We are now looking at— A. Proceedings on indictments.

Q. —proceedings on indictments, number two; and at a page— A. That is the October Term, 1921.

Q. —headed, "October Term, 1921." At about the center of the page, we find Bogden, Arkie and John Doe. Now, that is the record of S-8, is it not? A. Yes, sir.

Q. Indictment S-8? A. Yes, sir.

Q. And in the pleas, there is nothing in the column of pleas? A. No, sir.

Q. In, the column of retraxit or conviction there is nothing? A. No, sir.

Q. Nor in the trial day? A. No, sir.

Q. Nothing there,— A. No, sir.

Q. —until we come to the amount and date of recognizance, and we find under Bodjodan, is that correct, $2,000 given on June 14, 1922? A. Yes, sir.

Q. What is this? A. That is $1500.

Q. And $1500, that is a bond given after he was indicted? A. Yes, sir. To traverse the indictment.



Q. Yes. And John Doe, we find a record, $1500 to traverse the indictment? A. Yes, sir.

Q. On January 2, 1923? A. Yes, sir.

Q. Then no further record in the book until we come to "remarks", and it says, "April 7, 1924, motion to forfeit bail, granted, forfeiture will be opened by Court"? A. Yes, sir.

Q. Is that what it says there? A. Yes, sir.

Q. "Forfeiture will be opened by Court"? A. Yes.

Q. Now, have you any record in your minutes of that forfeiture to show whether it was made in open court? A. Do you want these pages kept?

Q. Well, I guess the record will show them; we can go back to them. You are pointing now to page 86? A. Yes, sir.

Q. In the minutes of the court, January Term? What term is that? A. That is January Term; 1924.

Q. January Term, 1924. And that shows that the forfeiture was made in open court, does it not? A. Yes, sir; it does.

Q. And it says there, "Motion to forfeit bail granted, but if the defendant is in court Tuesday, April 8th, at 10:00 A. M., forfeiture will be reopened by court"? A. Yes, sir; that is what it reads.

Q. Now, just give me, finally, if you please, S-9, the complaints in the Rockaway case; have you those? A. I think they have been offered in evidence.

Q. Here they are; yes. Do these complaints refer to indictment S-5 or indictment S-8? A. That I am unable to state, as the complaints are on file with the Clerk until after the record of the

case has all been completed. There is no papers filed with the Clerk until the case has been completed and handed in by the Prosecutor.

Q. The fact is that there are two copies of the one complaint in that record, S-9, isn't it? A. One is warrant and the other is a complaint.

Q. One is a warrant and the other is a complaint; all right. That is what I wanted you to tell me. Now is there any record of another warrant and complaint for the other indictment? A. That I am unable to say.

Q. Do your records show it? A. My records would not show it.

Q. Where did you get these records? A.They were handed in by the Prosecutor,—

Q. Yes. A. —as I told you before.

Q. And you do not know whether they refer to indictment S-5 or S-8? A. I do not.

Q. And you have only the one set for these two indictments, for S-5 and S-8? A. That is all I know. I could not say anything else, Mr. Matthews. I do not know anything about it.

Q. And the paper, the casualty company bond, what was that for, which indictment, S-5 or S-8, which complaint, or which indictment? A. I think it is S-5.

Q. You think it is S-5? A. Yes, sir.

Q. I find on the table there, handed to me by the Prosecutor, the two envelopes which you produced for him, one of which is a brown paperoid envelope and marked Term number one. Are the names Kisik, Hudock and Kovach—are there any papers in that envelope, other than the ones that have been testified here about, which refer to the



Kisik and Korvach matter? A. There is. The papers in that same case?

Q. Yes. In that same case, yes. A. Yes.

Q. What are they? A. A copy of the Clerk's costs.

Q. In what matter? A. In Peter Kisik and John Korvash.

Q. And John Korvach. Nothing in reference to Hudock in that? A. Nothing in reference to Hudock in it.

Q. All right. And the same for the other envelope, which is a paper envelope marked number 1157. Are there any papers in that particularly referring to Hudock? A. No, sir; there is not.

Mr. Matthews: That is all, thank you, Mr. Orr.

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DANIEL A. MARINARO, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Marinaro, where do you live? A. I live in Morristown.

Q. And how old are you? A. I am 27 years old.

Q. You are a member of the bar? A. I am an attorney of this State.

Q. And how long have you been practicing? A. Going on 5 years.

Q. And where have you been practicing? A. In Morristown all the time.

Q. Do you know the defendant, James H. Bolitho? A. I do.

Q. Had you known him for sometime before he was appointed Prosecutor of Morris County? A. I had known him for a short time before that.

Q. And you knew him intimately or not? A. Well, I knew him, when I was a law student, by reputation. And when I became actively engaged as a law student, preliminary to taking my bar examinations, I got to know him intimately at that time.

Q. Now, after he was appointed Prosecutor of the Pleas of the County, did you engage in the defense of those who were charged with crime in this County? A. I did.

Q. Did you have occasion to confer with him about those cases? A. I did.

Q. Frequently? A. On numerous occasions.

Q. Did you have a number of criminal cases during the time that he was Prosecutor of this County? A. I had quite a number.

Q. You represented a defendant, John Hudock, did you not? A. I did.

Q. You were retained to represent him? A. I was.

Q. Did you consult with Prosecutor Bolitho about that case? A. I did.

Q. And where? A. At the Prosecutor's Office in the Court House.

Q. And what was said by you and by the defendant Bolitho?

Mr. Matthews: May we have the date, please?

Q. First, I will inquire did you have more than one conversation with him about that case? A. About the Hudock case?



Q. Yes. A. I did.

Q. Now when, about when, was this first conversation? A. The first conversation that I had with Prosecutor Bolitho in reference to the Hudock case was approximately near the end of April.

Q. Yes. Now—

Mr. Matthews: What year, Mr.—

The Witness: Of 1923. Either toward the end of April or the first part of May.

Q. Now, what was that conversation? A. That conversation was the result of a—of my being retained in New York City.

Mr. Matthews: I object, your Honor please, that this is immaterial unless it is the conversation—

The Court: Yes. Can't you come right to the conversation?

The Witness: At that conversation which I had with Mr. Bolitho, I told him that I had been retained in the Hudock case, and that I wanted to know if anything could be done in reference to the matter. And I explained to him at that time that it was a case which had been left over from John Mills' regime as Prosecutor, and that Hudock had not been tried yet. And I explained which cases they were, the Rockaway case had the Stirling case, and I told him that the people in New York had $1,500, and that if they were willing—that they were willing, if Hudock could be let off with a fine, to pay something for it, and he told me to do business with Hubert.

Q. Well, then, what occurred? A. I subsequently saw Hubert, and all arrangements were made for Hudock to receive a fine of $500 on the Stirling case, and the Rockaway case was to be *nolle prossed.* Hubert was to obtain a written statement from Palco, the victim in that case, to the effect that Hudock had nothing to do with it, and that Bogden was the guilty party.

Q. Well, did you receive the fund of $1,500? A. I did.

Q. What did you do with it? A. $300 I gave to Fred Hubert in an envelope in his automobile. $500 went for the fine, and $200 went to the New York representatives of Mr. Hudock, and $500 went for the fine.

Q. Yes. A. And $500 was my fee.

Q. Now, where did you pay this to Mr. Hubert? A. In Mr. Hubert's automobile on Madison Avenue in this town.

Q. And you received this $1,500 in a check, cash, or how? A. Currency.

Q. How did you pay $300 to Hubert? A. In a sealed envelope, three $100 bills.

Q. Now, what next occurred in this case? A. This occurred about the last week in—in May, and I subsequently called up the Prosecutor and asked him when that thing was going to be disposed of, because my people were pressing me in New York, and he told me to be sure and bring him up the following Friday and to bring him up about four o'clock in the afternoon, at which time I had Hudock come in from New York and presented him in the court room in the rear of this building, where Judge Wilson was sitting on the bench, and he was fined $500, which I paid.



Q. Now, did you speak to the defendant Bolitho before—A. At the time—

Q. —this proceeding of June 1st? A. At the time that I called him up, I asked him if he had seen Fred, and he said yes, he had seen Fred, and presented Hudock on that Friday afternoon.

Q. Now, who was present when the proceeding was had before Judge Wilson on that afternoon? A. I think Mr.—Mr. Bolitho was present, Mr. Hudock, Mr. Orr, the Clerk, Judge Wilson, and, I think, although I am not sure, that Mr. Murphy, the County Adjuster; I am not sure, though, whether he was or not.

Q. Well, those are all the persons who were in the room? A. All that I can remember.

Q. Was court in session in there? A. No. The—this was the Court of Special Sessions, which was called to take care and dispose of this particular case.

Q. I mean, there were not other proceedings going on when you arrived there in that room before Judge Wilson? A. No.

Q. And was the Sheriff there? A. I don't remember. I don't think he was.

Q. Now, was there any reason that the defendant Hudock should be brought in—

Mr. Matthews: I object.

Q. —the back way, and as you describe—

Mr. Matthews: I object.

Q. —which you communicated to the defendant Bolitho?

Mr. Matthews: I object. First of all, it is calling for a conclusion; and the second, it is leading.

The Court: Well, the question is whether

all of this was communicated to Mr. Bolitho? Is that what you say?

Mr. Jayne: Yes.

The Court: The question is, did you say anything to Mr. Bolitho about there being any reason for bringing Hudock in another way? Is that it?

Mr. Jayne: That is another way of putting it.

The Court: Well, in that shape, I think it will be admitted.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Jayne: You might strike it out.

Q. Why was the defendant Hudock brought in the rear entrance of the court house and put out that way? A. Because there was a capias in the Sheriff's office for his arrest upon his being presented here in Morristown—upon Hudock's being presented here.

Q. Well, had you made some arrangement about that with the Prosecutor? A. Only the arrangement that he was to be taken care of in the rear court room of this building at a time when the court house was deserted.

Q. Now, just what was said and done by the parties in interest when this matter was presented to Judge Wilson? A. I do not quite understand.

Q. Just what did the proceedings—what took place there before Judge Wilson? A. John Hudock was called to bar, and he presented himself,



and the charge was read against him, and he was asked to plead to the charge, and he plead not guilty, at which time the Prosecutor notified the court that this was—

Q. He plead what? A. He plead guilty.

Q. Yes. A. The judge asked the Prosecutor about the case, and the Prosecutor informed the court that restitution had been made in this case, and that if a fine would be imposed, the ends of justice would be served.

Q. Yes. Did you make any remarks at all? A. I did not make any remarks at all.

Q. To Judge Wilson? A. He thereupon imposed a fine of $500, which I, having the money, paid.

Q. And who did you pay it to? A. To the Clerk, Mr. Orr.

Q. How long did this proceeding before Judge Wilson take? A. I do not think it took over 5 minutes.

Q. Now, you have told us that there was some understanding with respect to the Rockaway indictment. Did you have any reason to have any further conversation with the defendant Bolitho— A. Only when—

Q. —because of the Rockaway case? A. Only when this case was not disposed of, and I was notified by Mr. Bolitho that this man had to be tried; and one morning I was—I was called in my office, and told that—that Hudock was to be tried that morning. And I came up here and found that they were ready to try him on the Rockaway indictment. And I expressed my surprise and informed the court that I had not been notified of that case being called to trial, at which

time the Assistant Prosecutor informed me that he had notified me in front of my office, but not through letter. After some controversy, in which I could not go ahead with this matter, the bail was forfeited by the court, and upon expressing my indignation to the Prosecutor about this, he informed me that this had to be done; but that not to worry about it; but when the proper time came, I could produce Hudock; that he would see that the forfeiture was vacated and the bail reinstated.

Q. Now, who said that to you? A. Mr. Bolitho.

Q. Marinaro, you are under indictment for your conduct in representing Hudock in this case, aren't you? A. I am.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. And you are under indictment for your conduct in dozens of cases up here in this county, aren't you? A. Not exactly, Mr. Matthews.

Q. How many? A. Four.

Q. Four. Were you a lawyer at this time, a practicing lawyer? A. I was and am an attorney of the State of New Jersey.

Q. Yes. You said that you first went to Mr. Bolitho about the matter in late April or early May, 1923, is that right? A. That is what I said.

Q. When were you retained by Hudock? A. In the early part of April.

Q. How were you retained by Hudock? A. I was retained by Hudock through Mr. Brennan, at that time connected with the office of Mr. Bolitho,



who informed me that a party wanted a lawyer in New York, and he had recommended me.

Q. Just let me get that right, now. You were retained through the offices of Mr. Brennan? A. Yes.

Q. Who was connected with the office of Mr. Bolitho? A. He was County Detective at the time.

Q. Yes. All right. And he told you that a man in New York wanted a correspondent in New Jersey to represent Hudock? A. That is right.

Q. That is right, isn't it?

The Court: Well, is it right? He said, early in April. Were you retained before Mr. Bolitho—

The Witness: No.

The Court: It was after Mr. Bolitho came in as Prosecutor that you were retained?

The Witness: Yes.

The Court: All right.

Q. Well, let us get the date, then, so long as it wasn't early in April, now that you have changed it, because the Court has asked you whether it was or not. When was it? A. I was retained in this case sometime during April, during the middle or the first part of April.

Q. During the middle or the first part of April? A. Yes.

Q. And you were retained through the offices of a Mr. Brennan? A. Yes.

Q. That is right? A. That is right.

Q. Who was then a County Detective? A. That is right.

Q. Attached to whose staff? A. Mr. Bolitho's.

Q. Mr. Bolitho's detective? A. Yes.

Q. You are sure of that? A. I am.

Q. All right. Then Mr. Brennan referred you to a man in New York. Who was that man? A. Mr. Weber.

Q. Mr. who? A. A man by the name of Weber, an attorney in New York City.

Q. What is his first name? A. Joseph Weber.

Q. Where is his office? A. On Broadway, 299, I believe.

Q. 299 Broadway, New York? A. That is right.

Q. You went to New York City to see Mr. Weber? A. On the appointment made for me by Mr. Brennan.

Q. On the appointment made for you by Mr. Brennan. Mr. Brennan go with you? A. No.

Q. You went all alone. And did you see Hudock there? A. Not that time.

Q. You only saw Weber? A. No. I saw Hudock's wife there at the same time.

Q. You saw Hudock's wife. All right. And were you retained financially at that time? A. I was not.

Q. Did you get any money at all from anybody? A. No.

Q. You did not? A. No.

Q. All right. When did you get your money? How often did you go before you got money? A. I went once again.

Q. When was the once again? A. Around the latter part of May.

Q. The latter part of May? A. Yes. The last week.



Q. The last week of May? A. Yes. The first of the last week in May.

Q. You went to whose office? A. Mr. Weber's office.

Q. Whom did you see in Weber's office? A. Mr. Hudock, Mrs. Hudock, another person of their nationality, and Mr. Weber.

Q. This was latter May of 1923, right? A. That is right.

Q. But before you had gone there, you had talked with Bolitho? What? A. I had.

Q. That was in late April? A. That is right.

Q. Or early May? A. That is right.

Q. And certainly before you were retained? Right? A. Yes, sir; before I had received the money for this case.

Q. Yes. Well, when did you enter into your retainer negotiations? A. With who?

Q. With anybody with reference to Hudock? A. On my first trip to New York.

Q. Oh! What arrangements did you make on your first trip to New York? A. The arrangements that I would probably be able to get them off with a fine, get Hudock off with a fine; but it would cost him a thousand dollars in excess to the fine.

Q. Yes. A. Having been instructed in that by Mr. Weber, who was to receive part of my fee.

Q. Yes. If I understand you right, then, on your first visit to New York, you had been instructed by Weber to tell Mrs. Hudock, who was there representing her husband, that you wanted a fee of a thousand dollars and that, in all probability, you would get the man off with a fine? A. No. Mr. Weber had not told me that.

Q. What did he tell you? A. He told me that he expected to get a part of my fee.

Q. Yes. A. And I made those arrangements with that—with Mr. Weber's remarks to me in mind.

Q. Yes. A. To that effect.

Q. Yes. So that you told the woman at the first meeting that you probably would get him off with a fine? A. I said I would try.

Q. Didn't you promise the woman that? A. No. I did not promise her anything.

Q. No? All right. Then when did she tell you to come and see her again, or get your money? A. As soon as I could get her something definite.

Q. Oh! So you told her you would first go and see if you could get him off with a fine; that is it, isn't it? A. Yes.

Q. Yes. All right. And then you came and saw Mr. Bolitho? What? A. Yes.

Q. At the Court House? A. That is right.

Q. In his office, in the Prosecutor's Office? A. Yes.

Q. And you told him you had been retained, and you wanted to know if anything could be done, and you explained to him that it had been left over from the Mills' administration? A. That is right.

Q. How did you know that? A. Because they had told me.

Q. Who had told you? A. The Hudocks.

Q. The Hudocks had told you. When did the Hudocks tell you that? A. On my first trip in and, in fact, Mr. Brennan told me at the time that he sent me there that it was a case which



had been left over from Mr. Mills' administration, but had not been tried.

Q. Had Mr. Brennan been detective under Mr. Mills? A. I think he had, yes.

Q. How long had you known Mr. Brennan? A. Oh, since I was a boy.

Q. Yes. And you had done business with him as lawyers' runner before, had you not? A. No.

Q. That was your first case that he ran for you? A. I do not know whether he run that or not. What do you mean by ran?

Q. What do I mean by ran? A. Yes.

Q. You ask me? Don't you know what a runner means? A. Why, I have known several runners, Mr. Matthews, but I never knew Mr. Brennan as being a runner.

Q. Well, you got this business through Brennan, didn't you? A. That is right.

Q. Had you ever gotten any other criminal business through him? A. No.

Q. Where did you get it? You didn't get it on your ability, did you? A. I do not know.

Q. Well, after Brennan told you that it was a hang-over from the Mills' regime, did you talk to Mr. Mills about it? A. No.

Q. Did you ever talk to Mr. Mills about it? A. I may have casually remarked to him that I had been retained by the Hudocks.

Q. When was that? A. I asked him—oh, I just asked him once about it after I had been retained, I just said that I had been retained by the Hudocks to see their case through, and that was about all.

Q. When was that? A. Shortly after I had been to New York the first time.

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Q. Therefore, in the early part of April or middle April, 1923, right? A. About that time.

Q. Yes. Now, who was in the Prosecutor's Office when you and Mr. Bolitho talked? A. No one.

Q. No one. And when you explained that the Hudock case had been left over from Mr. Mills' administration, did Mr. Bolitho seem to get that as new news, or did he tell you he knew about it? A. He says, "I know about that case."

Q. Oh, he told you he knew all about it? A. Yes, sir.

Q. And then what did he tell you he knew about it? A. He says that he had been watching that case; he had been figuring on bringing it to trial pretty soon, if they didn't come in and see me about it.

Q. He told you he had been watching it and he figured on bringing it to trial if they didn't come in and see him pretty soon? A. Yes. By that, he meant making arrangements for its disposition, I presume.

Q. Well, he might have meant, too, if he didn't come in and fix him up, give him some dirty money, didn't he? A. No. I do not know anything about that.

Q. You did not think that in your heart, did you? A. At that time?

Q. Yes. A. No.

Q. You have only begun to think that since you have been indicted? What? A. No, not since then, Mr. Matthews.

Q. Only since he refused to sign your notes? A. No, not since then either, Mr. Matthews:



Q. I see. Well, we may find out shortly. A. I would be glad to tell you.

Q. I will ask you that, too, at the proper time. Now, you told Mr. Bolitho that the people in New York had $1,500, and they were willing that Hudock be let off with a fine, to pay that money to you, and he said to you, "See Hubert," is that all he said? A. "Make your arrangements with Hubert."

Q. "Make your arangements with Hubert." Is that all he said? A. That is all he said at that time.

Q. All right. Now, let us get it right. After you told this to Bolitho, that they had $1,500 which they were willing to pay if Hubert be let off with a fine, Bolitho said, "Make your arrangements with Hubert"? Is that correct? A. That is right.

Q. Is there anything else he said? A. He—well, he listened to me as I outlined the case to him. After I got through, he says, "All right," he says, "everything will be all right," he says, "make your arrangements through Fred, through Hubert."

Q. He said, "Everything will be all right?" A. Yes.

Q. "Make your arrangements with Hubert?" A. That is right.

Q. Is that right? All right. Now, do you remember what date in April that conversation was, or in May? A. No, I do not.

Q. Well, do you remember when Mr. Bolitho took office? A. What is that?

Q. Do you remember when Mr. Bolitho took office? A. I think it was in April. Yes. The first

of April, he took office. He was sworn in on the 28th. Pardon me. March, wasn't it? March?

Q. Yes. A. I really do not remember—

Q. All right. A. —when he was sworn in.

Q. How soon after the first was this? Was it the same week? A. I do not remember that. I cannot say whether it was that soon after; it might have been later.

Q. Well, Mr. Marinaro, you have been questioned on this before Grand Juries and by Mr. Jayne and Mr. Burdge and everybody concerned in this investigation. Now, don't you remember better than in early April? Don't you remember more specificaly what the date of this conversation was? A. I do not.

Q. Well, you are sure it was in April?

Mr. Jayne: Which conversation do you refer to?

Mr. Matthews: The first conversation.

A. It was in April.

Q. That was your first conversation, in April? A. In April.

Q. Was that the conversation that you had with reference to the $1,500? A. That was.

Q. So it was at your first conversation that you told him about your having been retained, and the $1,500 available, and he saying to you, "See Hubert, it will be all right?" A. That is right.

Q. That is correct, isn't it? Now, how soon after the conversation with Bolitho did you see Hubert? A. Almost immediately.

Q. By that do you mean the same day? A. No. About a day or so afterwards.

Q. A day or so afterwards. How did you get



Hubert, run on him casually, or seek him out? A. No. He came down to my office.

Q. He came down to your office? A. To my office.

Q. To your office without solicitation on your part? A. No. I called him.

Q. Oh, you called him up and asked him to come and see you. Who was in your office when Hubert came? A. No one.

Q. No one. Who was in your office when you talked to Hubert? A. No one.

Q. Where was your office? A. In the Babbitt Building in this town.

Q. What? A. In the Babbitt Building in this town.

Q. Did you have a stenographer at that time? A. I did.

Q. Was she there? A. In the outer office.

Q. Now, did you talk with Hubert about the Hudock case? A. I did.

Q. And what did you say to Hubert, and what did Hubert say to you? A. I asked Hubert if Mr. Bolitho said anything to him, and he says, "Yes, he told me you wanted to see me about this case." I says, yes. He says, "What is there to it?" So I told him, and I said, "There is $300 in it for you." And he says, "That is fine. Everything will be all right." He says, "When will we get the money?" And so I says, "I haven't got it yet. I have to go to New York and get it, and when I do, you will get it."

Q. So you and Hubert were all alone at this time? A. We were, Mr. Matthews, yes.

Q. And I suppose that when you passed him three $100 bills in a sealed envelope in an auto-

mobile on Madison Street, you were also all alone? A. We were.

Q. And was the $300 all alone in the envelope, or was there anything else with it? A. That is all that was in there.

Q. Now, how soon after you saw Hubert in the office all alone, did you give him the money in the envelope all alone? A. Oh, maybe a month later.

Q. Oh! Well now, let us see. What happened between the time you saw him in the office, and the month? A. Why, we were trying to arrange on the date for to bring this man in.

Q. All right. Let me interrupt you— A. Until—yes.

Q. —please, at this point. The conversation with Bolitho was in April, the seeing of Hubert the first time in your office was a day afterwards; was that in April or May? A. The conversation with Bolitho, if I recall my testimony correctly, I said was in the latter part of April.

Q. Latter April? A. Yes. I came upon the case about the middle of April.

Q. You came on the case in the middle of April through Brennan? A. And the latter part of April, probably the last week, I had my conversation with Mr. Bolitho, and if I am—recall correctly, it was the first or second day of May of the same year when Hubert and I had our talk together.

Q. All right. And in the meantime, but between your first conversation with Bolitho and your seeing of Hubert, had you been to New York? A. Kindly repeat that question?

Q. Between the time of your first conversation



with Bolitho and your first seeing of Hubert, had you been to New York? A. No.

Q. When were you to New York? A. At which time?

Q. The first time. A. The middle of April.

Q. The middle of April. And at that time, did you know how much money you were going to get? A. No. I just told them that I wanted a thousand dollars in excess to the amount of the fine.

Q. You told them you wanted an excess in the amount of the fine. Then when did you go back to New York and tell them it would be O. K.? A. Around the first part of May.

Q. The first part of May. And that, of course, was after you had seen Hubert? A. Yes.

Q. And would you say it was in the first week in May? A. I do not know. It was around the first part of May.

Q. Yes. And then did you get your thousand dollars? A. No.

Q. How many trips did you make to New York— A. Two.

Q. —before you got your thousand? A. Two.

Q. Two trips? A. Yes.

Q. All right. When was the second one? A. The first part of May.

Q. Well, you made two trips in the one week? A. No.

Q. How much time elapsed between your first trip to get your money, and the trip you did get your money? A. I didn't get my money in New York; it was sent to me.

Q. It was what? A. Sent to me.

Q. Sent to you by whom? A. By mail.

Q. By mail, by check? A. No.

Q. Was it a money order? A. It was.

Q. A money order signed by whom, do you remember? A. No. I do not remember who it was signed by.

Q. Was it a money order for a thousand dollars? A. No. It was for $1,500.

Q. For $1,500? A. Yes.

Q. And did you cash that at the local post office here? A. I did.

Q. Do you remember when? A. No. In that month.

Q. In the month of May? A. Yes.

Q. How soon after you got your money order in the month of May did you see Hubert all alone and give him the $300? A. In the—in the first—the first of the last week in May.

Q. In the what? A. The first part of the last week in May.

Q. How long after you had got your money from New York? How long after the money order came was it? A. Oh, I do not remember that.

Q. And how did you meet Hubert the day that you gave him the money, by appointment? A. Yes, sir.

Q. Did you call him up? A. Yes, sir.

Q. Where? A. At the court house.

Q. You called him up at the Prosecutor's Office? A. Yes.

Q. The first part of the last week in May? A. Yes.

Q. Correct? A. Yes.

Q. And told him to meet you where? A. In front of the office.

Q. In front of your office? A. Yes.



Q. And was he in his car? A. He was.

Q. And what did you do, come down and sit in the car? A. I did.

Q. Did you drive off? A. Yes.

Q. And you went out on Madison Avenue? A. Yes.

Q. And there you gave him a sealed envelope? A. I did.

Q. Now, after that last week in May, did you get any notice to bring in your defendant Hudock? A. I called up about Wednesday of that week and asked the Prosecutor if he had seen Fred, and he said yes. And I asked him—I told him the people were getting nasty in New York, and he said, "Well, bring him in this Friday afternoon at four o'clock."

Q. Now, when you talked to Hubert, did Hubert tell you that Judge Wilson was going to fine him $500? A. No. But at the first conversation I had with Hubert, I told him that was the amount of fine that would have to be imposed.

Q. Yes. A. And he said—

Q. And Hubert told you he would fix it up with Judge Wilson, didn't he? A. No, he did not tell me.

Q. What did he tell you? A. He told me that would be all right.

Q. That would be all right. And you took his word for it, didn't you? A. I did.

Q. You knew that the Judge was to impose the fine, didn't you? A. I did.

Q. You knew that the amount of the fine depended upon the statute, the limit and the maximum, didn't you? A. Kindly repeat that question.

Q. You knew that the amount of the fine depended upon the statute, that is that the penalty for the offense would have to be statutory? A. I did not consider that at all at that time.

Q. Of course, you were a lawyer all this time, weren't you? A. I was.

Q. Did you know how much the fine could be for such an offense? A. I was not interested.

Q. You did not know, anyway, did you? You do not know now, do you? A. No. Do you?

Q. What I do not know, I will never get my knowledge the way you did, please God. A. I hope not.

Q. Do you know now what the fine is for that offense?

Mr. Jayne: It seems to me that is quite immaterial.

The Court: He has already said he did not know.

Q. Well, how did you know that Judge Wilson would fine this man $500? A. Because Mr. Bolitho told me at the first meeting that his recommendation with the judge would be taken.

Q. Yes. And Mr. Bolitho told you that he would recommend a fine of $500, is that right? A. No. Not at that time. I told him it had to be a fine.

Q. You told him it had to be a fine? A. Yes.

Q. And he told you that Judge Wilson would accept his recommendation? A. He did.

Q. When did he tell you that he would recommend $500 to Judge Wilson? A. At my first conversation.

Q. At your first conversation. All right, then. That is what I asked you. Bolitho told you that



Judge Wilson would take his recommendation, and that he would recommend $500; right? A. In fact, he told me, even before this case came up, that if any time I had any tough nuts to crack in the way of this kind of business, to bring them to him; that Judge Wilson would take his recommendations, as far as sentences were concerned.

Q. When was that? A. That was when he first went into office.

Q. Well now, when? How soon afterward? A. Oh, very soon afterwards.

Q. Were you known in town as that kind of a practitioner that had that kind of business to do? A. Not up to that time.

Q. No? A. No.

Q. You mean you had not been found out up to that time? A. I answered your question that up to that time I was not known as that kind of a practitioner.

Q. Well, didn't you know as a lawyer that Judge Wilson would have to set the fine himself? A. Yes.

Q. You had never seen Judge Wilson about the case? A. Never.

Q. Until you came into open court, isn't that right? A. That is right.

Q. Now, you said that the court house was deserted that day when you came in; is that right? A. I said that, yes.

Q. You used the word "deserted"? A. Yes.

Q. Do you recall whether the Honorable Peter Daly was sitting in the court room when you came in that day, passed through the other court room? A. I came up the back way.

Q. So you do not know whether Judge Daly

was sitting or not, do you? A. It was one of his court days.

Q. What? A. It was one of his court days. I presume he was sitting.

Q. And what time of day was it? A. Between four and four-thirty.

Q. Between four and four-thirty. Had you been in the court in the morning of that day that you brought him in in the afternoon? A. In which court?

Q. Judge Wilson's court? A. I do not remember whether I was or not.

Q. Well, Judge Wilson did not come from home to sit to fine Hudock, did he? A. I do not know where he came from, but he came up here and did just that.

Q. Hadn't the sessions been adjourned for the purpose of pleading this man? A. Had the sessions been adjourned for the pleading of this man? Which sessions?

Q. Quarter Sessions? A. Quarter Sessions? I do not know about that.

Q. You do not know whether Judge Wilson was sitting in Quarter Sessions that day or not, do you? A. That was his day to sit in Quarter Sessions.

Q. Yes. Well, weren't you in court that morning, and didn't they agree to adjourn the Quarter Sessions until 4 o'clock? A. I do not remember.

Q. But, at any rate, he was brought in and the judge was on the bench? A. I was told to bring Hudock in at 4 o'clock.

Q. Yes. And then Bolitho told the court that restitution had been made, and if a fine would be



imposed, the ends of justice would be served; is that right? A. That is.

Q. That is what he said? A. That is what he said; that was the substance of the gist of it.

Q. Of course, when you took the case for your client, you learned all the facts about it, I suppose, didn't you? A. The facts of the case?

Q. Yes. A. Yes.

Q. Sure. And I suppose you knew that nothing had been stolen, so that there could be nothing to restore, no restitution could be made, didn't you? A. By restitution it was meant that the money was recovered before they got away with it and given back to their parties.

Q. Oh, is that it? A. Yes.

Q. You knew, though, didn't you, that no money had been taken in this case, and this was an indictment for attempted robbery? A. All I knew, that no—no money had been stolen; nobody had been hurt; only there had been an attempt made. That is what I knew.

Q. So there was nothing misrepresented to the court, then, was there? A. Nothing as far as that case was concerned.

Q. And there wasn't anything to restore at all, was there? In fact, when the crime was committed, nothing had been taken? A. It was an attempt charge.

Q. An attempt charge? A. That is right.

Q. And the court had the indictment in front of him, did he not? A. Which indictment?

Q. What? A. Which indictment?

Q. The indictment that this man was pleading to. A. Yes.

Q. And the judge had the indictment handed to him by the Prosecutor, didn't he? A. Yes.

Q. And did the Prosecutor say, "Please, Judge Wilson, fine this man $500?" A. No.

Q. He did not mention any amount, did he? A. No.

Q. But Judge Wilson fined him $500, didn't he? A. He did.

Q. Did it ever occur to yourself to ask yourself how it was that the judge just fined him $500, the arrangement that you had made with Bolitho?

Mr. Jayne: I think that question is objectionable.

Mr. Matthews: It is. I will withdraw it.

Q. Did you consider at that time that Mr. Bolitho had asked Judge Wilson outside of court to fine him $500? A. Did I consider that?

Q. Yes. A. I imagine he had done so.

Q. You think so? A. Yes.

Q. That he asked Judge Wilson off the bench to fine him $500? A. I think he—he talked it over, his cases with the judge before he goes into court every Friday morning, and that at that time the relative merits of the different cases are discussed, and the judge must necessarily bank upon the prosecutor to give him the information in reference to those cases. And at his suggestion, I think Judge Wilson has followed Prosecutor Bolitho's suggestion in these matters.

Q. So you think that the Prosecutor tells the judge what to fine the men in this county, do you? A. No, I did not say that.

Q. Well, anyway, he fined him what Bolitho told you he would be fined? A. That is right.



Q. Is that it? A. Yes.

Q. Do you recall having been to Judge Wilson with Mr. Bolitho about this case before this man was brought in? A. No.

Q. You say you never were? A. Not about this case.

Q. Weren't you in Judge Wilson's chambers to discuss this case with Judge Wilson when Mr. Bolitho was present? A. No.

Q. That you cannot be mistaken about, can you? A. I am absolutely sure of it.

Q. Oh yes. Hudock was wanted under a capias in a civil action for the recovery of some money on another complaint, wasn't he? A. Yes.

Q. And you knew that Mr. King had that capias pending for him? A. Mr. Bolitho told me.

Q. Yes. I suppose Mr. Bolitho must have told you; you would not know it otherwise, of course. And you knew Mr. King was trying a case in Judge Daly's court that day, didn't you? A. I do not know whether Mr. King was trying a case or not.

Q. Think whether Mr. Bolitho told you that too, or not? A. No.

Mr. Jayne: I do not think counsel ought to make such statements. Those are not questions. They are directions and statements.

The Court: I did not hear anything improper about that question.

Mr. Matthews: To jog his memory, your Honor please.

Q. Well, just think again; jog your memory. Wasn't Elmer King trying a case here before Judge Daly that day? A. I do not know whether

he was or not.

Q. Why, man, didn't you tell Mr. Bolitho that you wanted this man arraigned, if possible, before Judge Wilson that day while Elmer King was trying his case so that you could avoid the capias? A. I did not.

Q. Well, did you tell Mr. Bolitho you wanted him brought in the back door, so as you could try the capias? A. No.

Q. Or, avoid the capias? A. When Mr. Bolitho told me that the court was going to be held there, I brought him up the back door. We were trying to escape the capias; there is no doubt about that.

Q. And Mr. Bolitho had told you about the capias? A. Yes.

Q. He told you Mr. King had it? A. He said the Sheriff had it.

Q. That is the only knowledge you had of it. You did not know that Mr. King was looking for him, did you? A. Well, I knew that Mr. King was looking for him, because at the time Mr. Bolitho told me about this capias, I investigated and found it to be true.

Q. You allege, besides this $300 to Hubert, you had an understanding that there was to be a *nolle,* didn't you, in the Rockaway case? A. Yes, sir.

Q. When was that *nolle* to be, were you told? A. As soon as Hubert could get a statement from Palco to the effect that Hudock was not in on that case, but that Bogden was the one that did it.

Q. Now, how long after the $300 to Hubert, was Hudock pleaded by the back way entrance trip? A. Oh, about a week.



Q. A week afterwards. That would bring it in what part of May? A. I think it was the first of June.

Q. That is right. That would bring it into June. Now, how soon after June were you notified to bring Hudock in for trial on the other case? A. Oh, I think that was quite sometime afterwards. I think that thing ran along for about six months.

Q. About six months afterwards, what? A Quite sometime afterwards.

Q. All right. Did you get any notice in six months afterwards to produce this man Hudock for trial? A. Never.

Q. I show you a carbon copy of a letter and ask you to please look at it and see whether it refreshes your recollection as to whether or not you got a notice to bring Hudock in? A. (Referring.) That is right.

Q. What? A. That is right.

Q. That is right? A. Yes.

Q. I have in my hand, therefore, the carbon copy of a letter which you did receive? A. I did.

Q. All right. The original of that you received? A. Yes, sir.

Q. Have you the original? A. I believe I have.

Q. Could you produce it? A. I believe I could.

Q. All right. A. I don't—

Q. And this copy shows March 26, 1924, as the date, doesn't it? A. That is right.

Mr. Mathews: I better have that marked for identification, your Honor please.

The Court: I do not think it is admissible as evidence.

Mr. Matthews: No, I do not want it, but

I thought Mr. Jayne might need it, and we have got so many exhibits.

(Marked Exhibit D-1 for Identification—letter of March 26, 1924.)

Q. Now, after you got that letter dated March 26th, ordering you to bring this man in for trial on March 31st, what did you do? A. I went up to see the Prosecutor about it.

Q. Now, when did you see him and where? A. At the court house. I do not know when, but I saw him at the court house. It was after I received the letter.

Q. After March 26, 1924? A. Yes.

Q. All right. What did you say to him, and what did he say to you? A. I asked him what about it, and he said that he couldn't help it, and I says, "Well, I cannot go ahead with this trial," I says, "you know what the original arrangement was." And he says, "I know, but we haven't been able to get the signed statement from Palco." I says, "I cannot help that. I am not going to trial. You know the original arrangement, and I am going to hold you to it."

Q. Who was present? A. No one.

Q. You were all alone again? A. Always.

Q. He said "You know the original arrangement, and you are not going to trial?" A. That is right.

Q. What did Mr. Bolitho do then? A. He took and adjourned the case.

Q. How long did he adjourn it? A. I do not remember how long he adjourned it.

Q. What was the next notice you had of it? A. The next notice I had of it was when I was suddenly called to the court house and told that John Hudock's case would be in the call.



Q. Did you come into open court on March 31st in response to the notice of March 26th, D-1 for Identification? A. I do not remember.

Q. Don't you remember getting up in open court and telling the court that you could not produce your client that day, and asked for an adjournment, that you had not received notice; do you remember telling him that? A. That I had not received notice, yes.

Q. And didn't the court adjourn the case for one week? A. I think they forfeited his bail. I do not remember; but I know that it was after a strenuous argument on both sides to the effect that I had not been notified about this time, that the bail was forfeited in that case.

Q. Yes. A. So far as the dates are concerned, I do not remember.

Q. And the bail was forfeited, was it not? A. Yes.

Q. And do you remember who was on the bail, Mr. Marinaro? A. Some surety company.

Q. Do you remember whether James H. Bolitho, then Prosecutor of the Pleas of the County of Morris, collected $1500 for the County of Morris, for this bail? A. I do not know whether he did or not.

Q. You do not know? A. No.

Q. Did you know that your client was wanted in Scranton, Pennsylvania, at that time? A. I did not.

Q. Mr. Bolitho did not tell you that, did he? A. No. I do not think he knew.

Q. That is only your thought, isn't it? A. No. I do not know whether it is a thought or not.

Q. I show you a letter and ask you just to look

at it and tell me whether or not it was ever shown to you by Mr. Bolitho? A. (Referring.) I have never seen this letter before.

Q. Have you read it at all to jog your memory? A. I have read it. Do you want me to tell you what is in it?

Q. No. You know, as a lawyer, that I cannot have you do that. I will tell that when the time comes. Now, when the bail was forfeited, what did you do? A. Nothing.

Q. Well, he told you—you told Mr. Jayne that he said, "This has to be done; the forfeiture will be reinstated, will be vacated?" A. I thought you meant in reference to opposing it in court, or anything like that. I opposed it all I could in court; but then I was very indignant about it. I kept away from Mr. Bolitho.

Q. Oh! A. And he got word to me that he wanted to see me, and he told me not to be mad about it; that things had to go that way; but if I could ever get Hudock to come in, things would be straightened out and the order would be vacated and the bail would be reinstated.

Q. Why couldn't you get Hudock to come in, Mr. Marinaro? A. I did not know where he was.

Q. Oh; after you had paid his fine that day, you never saw him after? A. I never saw him from that day.

Q. Where did you leave him that day? A. I left him downstairs.

Q. Who brought Hudock out to Jersey that day, do you recall? A. He came out by train and he came up to my office in a taxicab, and when he went back, he went to the Newark tubes in the same taxicab.



Q. What time, do you remember, did he come from New York that day? A. Between four and four-thirty.

Q. And you never saw him since, did you? A. I have never seen him since.

Q. Did you ever see his wife since? A. Yes.

Q. Did she tell you where he was? A. No.

Q. When did you see his wife after the time he pleaded? A. About three months afterwards. I received numerous letters from her.

Q. Yes. A. Wanting the exoneretur in both cases and wondering why this Rockaway case was not being disposed of.

Q. You received letters from his wife wanting the exoneretur for both, eh? A. Yes.

Q. She was not on it, was she? A. Was she on it?

Q. Yes. A. I do not know.

Q. Don't you know that the National Surety Company was on the bond? A. I knew it was a surety company bond. I didn't know who it was. I knew that she had put up some bank books to the surety company.

Q. That is what I want to know. Now, what bank books did she put up? A. I do not know.

Q. Weren't you representing them at that time? A. Wasn't I representing at the time that they put up the bail?

Q. Yes. A. No.

Q. Who was? A. I do not know. That was before Mr. Bolitho was Prosecutor.

Q. Oh! She told you about the bank books that were put up for the bail? A. What is that?

Q. She told you about the bank books that were put up as collateral for the bail? A. Yes. Be-

cause that is why she was anxious to get the bail exonerated, so that she could release that money.

Mr. Matthews: At this point, may I ask whether Mr. Marinaro is going to be recalled, because I have not exhausted my cross-examination as to his credibility, and I am retaining it for another count?

Mr. Jayne: I understand you have concluded your cross-examination on the direct-examination, direct testimony?

Mr. Matthews: On the question of credibility, I would like to go in deeper. Are you going to call him again?

Mr. Jayne: Yes.

Mr. Matthews: At this time, I will cease my cross-examination as to this testimony.

Mr. Jayne: That is all. I will call Edwin Orr.

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EDWIN ORR, recalled as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, you were Deputy County Clerk on June 1st, 1923? A. I was.

Q. I want you to tell the jury, if you will, just what occurred at the proceedings, imposing of sentence on one John Hudock on that day. A. About five o'clock in the evening of June the first, 1923, Daniel A. Marinaro came down to the County Clerk's Office. I was just ready to leave for home. I had my hat and coat on. I had started out the door, when he came in and said,



"They want you in court." I said, "What do you mean?" "Well," he says, "Judge Wilson is up there and he is waiting for you." I went back to my office, took off my hat and got a pad and started up for the court room. When I got up to the court room, or up to the top of the stairs, I glanced in the grand jury room, and Judge Wilson was on the bench. Mr. Bolitho and Mr. Marinaro were standing in front of the table in the center of the room, the court room. That is all that was present at that time. I walked into the court room, took a chair and sat down. Mr. Bolitho said to the court he desired to move the indictment of the State vs. John Hudock. With that, Mr. Marinaro motioned, and as he motioned, from out of the hallway came this man, supposedly Hudock. He stepped up to the bar, and Mr. Bolitho read the indictment to him, and he plead guilty. The court asked if restitution had been made. Both the Prosecutor and Mr. Marinaro answered yes. The judge sentenced him to pay a fine of $500. Mr. Marinaro had the money in his hand, and reached over to me and threw it down in front of me. I said, "I don't want this;" but they all moved out and the defendant went down the back stairs and got into a taxicab and went away.

Q. Now, what did you do with the fine? A. I turned it over to Sheriff Byram.

Q. Is it a part of your duties to collect fines, or receive the money of fines? A. It is not.

Q. Did you ever do so before? A. I did so while I was in the Sheriff's Office, but not as Deputy County Clerk.

Q. How long did these proceedings take? A.

I should judge around from three to five minutes; not over that.

Q. Any discussion of the case— A. None whatever.

Q. —to any extent? Now, earlier in this same case, had you had occasion to see the defendant Hudock? A. I did, yes.

Q. According to the records, he previously appeared and plead and gave bail? A. He appeared here on January the 2d, 1923, and gave bail in the presence of His Honor, Charles W. Parker.

Q. Were you present? A. I was.

Q. And did you see the man? A. I did.

Q. Now, I ask you if the man who came into court, that Marinaro and Prosecutor Bolitho—before Judge Wilson on June 1st, 1923, was the same man who appeared and gave bail in this court previously as John Hudock? A. It was not.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Did you inform the court that that was not John Hudock, Mr. Orr? A. I did not.

Q. Why, you knew at the time that it was not, didn't you? A. I did not, the night before the proceedings took place, no.

Q. Well, it was he, was it? A. No, it was not.

Q. And you said that Marinaro looked out in the corridor and beckoned, and the supposed John Hudock came in; right? A. Yes, sir.

Q. Up before the bench, before His Honor? A. Yes, sir.

Q. Mr. Bolitho said, the defendant is charged, and so forth and so on? A. He did.



Q. You saw him when he came up there, didn't you? A. I did.

Q. You knew that he was not John Hudock, didn't you? A. Not the man that I knew as John Hudock.

Q. You did not tell Judge Wilson, did you? A. I did not. I did not think it was my business to.

Q. What, sir? A. I did not think it was my business to.

Q. Mr. Bolitho was not Prosecutor in January when Hudock pleaded, was he? A. He was not.

Mr. Matthews: That is all.

Mr. Jayne: Is Robert Schenck here? (No response.) Is Mr. Bieser in court?

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RUDOLPH BIESER, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Bieser, where do you live? A. Morristown.

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

Q. I want to inquire if you recall the occasion of bringing John Hudock and others from the train to the office of Marinaro, and from thence to the court house? A. Well, all I can remember is getting the people down to the depot and bringing them up here and waiting, and taking them back to Newark to the tubes. That is all I know of them.

Q. You were the driver of the car? A. Yes, sir; I am.

Q. Where did you get them from? A. At the depot; as much as I know, at the depot.

Q. This is the occasion of June 1st, 1923, as you remember it? A. Well, I cannot remember. It is a year or two ago, anyway.

The Court: Mr. Bieser, which station are you talking about?

The Witness: D. L. & W.

The Court: Morristown?

The Witness: Yes, sir.

The Court: That is, the party, wherever it was, arrived on a train here at Morristown?

The Witness: As much as I know; yes, sir, as I remember.

The Court: Well, so far as you remember?

The Witness: Yes, sir.

The Court: He got into your cab there?

The Witness: Yes, sir. It was either two or three people.

The Court: Yes. And then you came up to the court house with them?

The Witness: Came up here and waited. And then took them to Newark.

The Court: Did you drive one of those yellow cabs?

The Witness: No, sir. It was just a Cleveland sedan.

Q. Do you recall which entrance to the court house you came? A. No, sir; I could not say.

Q. On the side or the front? A. It was on the side here somewheres.

Q. Then I understand you took these people way to Newark? A. Yes, sir.



Q. Immediately after they came out of the court house? Right after this man came out of the court house? A. Well, it was along after they came out, I know, as much as I can remember.

Q. You delivered them where in Newark? A. At the tubes, as much as I can remember.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Whom did you get the call from, Mr. Bieser, to get the men from the train in Morristown? A. I believe Mr. Marinaro gave me the call, if I ain't mistaken.

Q. Did he give it to you by telephone, or did he come to you? A. No. I think he gave it by telephone.

Q. He gave it to you by telephone? A. I think so.

Q. Do you remember what time of day he gave it to you? A. It was in the afternoon sometime.

Q. And your order was simply, "go to the tubes, or go to the Lackawanna station, and there will be some men there whom I want to have you take to the court house?" A. No. I really don't—to tell you the truth, I don't know whether he called me up or whether I just received them there or not. Now, this is two years ago, and I cart thousands of people a year.

Q. I am just trying to get your recollection. I am not holding you to it at all, except from your recollection. But you remember it was in the mid-afternoon? A. Around mid-afternoon; yes, sir; around mid-afternoon.

Q. And are you located there at the Lackawanna station? A. Yes, sir.

Q. You do not recall whether the people came and said, "Take me to the court house," or whether Marinaro telephoned and said, "Get some people there and bring them to the court house?" A. No, sir; I do not remember.

Q. Do you remember how many people you brought here? A. Between two and three.

Q. Well, between two and three. You will have to make it either two or three. A. Well, two to three.

Q. Was Mr. Marinaro with them when they got to the court house, or did they meet him here, or did you stop for him at his office? A. I could not say. I cannot say.

Q. How long were you waiting at the court house for them before you took them back? A. I should judge about a half an hour.

Q. About a half an hour you were here. And then did Marinaro go with the party back to Newark? A. No, sir.

Q. Just the same two or three that you brought went to the tubes in Newark, right? A. Yes, sir.

Q. Do you remember what time you got to the tubes in Newark that night? A. Well, I do not know. Between five and seven, I believe; around six o'clock, or half-past six.

By the Court:

Q. Well, did you get your supper here in Morristown, or don't you remember about that? A. No. No, my memory is not as good as that.

Q. You have not had any very regular hours for meals, I suppose? A. No, sir.



ROBERT H. SCHENCK, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Schenck, where do you live? A. At Morristown.

Q. And you are a practicing lawyer? A. I am.

Q. Associated with what firm? A. King & Vogt.

Q. And you were such in May and June, 1923? A. Yes.

Q. And associated with King & Vogt? A. Yes.

Q. I am interested in whether or not in your practice you had represented someone in whose interests you caused a capias to be issued for the arrest of John Hudock at about the dates that I have already mentioned. A. We did represent a Charles Palco.

Q. Well, did you take proceedings in which a capias for the arrest of John Hudock— A. We did.

Q. —was issued? A. We did.

Q. Now, was such a writ issued? A. There was.

Q. Do you know whether or not it was in the hands of the Sheriff? A. I could not say that positively. I know it was issued, and we were awaiting the appearance of the man at Morristown in order to have it served. Whether the writ itself was handed to the Sheriff, I could not say.

Q. You are acquainted with James H. Bolitho, the defendant in this case? A. I am.

Q. You were acquainted with him at that time? A. Yes.

Q. Did you have any conversation with him concerning the issuance of this capias? A. Well, I do not know that I told him of the capias, but I told him that I wanted to know when Hudock was going to be brought here, and as to whether or not he couldn't get him here.

Q. What did he say to you? A. Why, I was to know when he came.

Q. Well, what did he say he would do for you, if anything? A. Well, he said the man was going to be brought in for sentence, and that I would know when he came; that he would let me know.

Q. Well, did you receive any such notice— A. I did not.

Q. —from Prosecutor Bolitho? A. I did not.

Q. Have you ever? A. I do not think that I ever did.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Are you sure that this was not after his sentence that he told you he was going to be brought in for trial on the other charge? A. No. I do not think that was it. I did not know there was any other charge.

Q. Why, it was on the other charge that the capias was issued, wasn't it? A. No. The capias was issued in the civil suit to recover the money that the man was accused of having stolen.

Q. Yes. But the case he was pleading in was not the stolen money case, was it? A. That was the one that I understood that it was.

Q. No. That was the case where there had



been no money gotten, and you represented Palco in the Rockaway case, didn't you? A. I did.

Q. He had not been tried or pleaded or anything on that case yet, had he? A. He was out under bail, as I understood, and was to be brought in to plead.

Q. He was out under bail in that case? A. To be brought in to plead, yes.

Q. To be brought in to plead to that case? A. As I understood.

Q. Who gave you that understanding? A. Why, from my investigation of the record, and also from my conversations with the Prosecutor.

Q. But, as a matter of fact, when he pleaded, he pleaded to the Stirling case, didn't he? A. I do not know what case he pleaded to.

Q. Didn't you collect your capias from Bogden in that case? A. I did.

Q. You got your money? A. Yes.

Q. From Bogden, another defendant? A. That was a long while after the—this Hudock capias was issued, though.

Q. Yes. Certainly. A. Yes.

Q. It was for the same money that the capias was against Hudock for? A. Yes. We sued first one man and then the other, because the two of them were said to have stolen the money.

Q. And, of course, it was only the courtesy of the Prosecutor to let you know that he was around so that you could serve your capias? A. As I understood; yes, sir.

Q. We know, as lawyers, that is so? A. Yes.

Q. There is no duty on him; it is just his courtesy? A. Yes, sir.

Mr. Matthews: That is all.

By the Court:

Q. Mr. Schenck, do you recollect whether your case was in the Circuit Court or the Supreme Court? A. In the Circuit Court.

Q. Then the record of the capias and everything would be here in the County Clerk's Office? A. It should be.

The Court: That is all.

Mr. Jayne: That is all.

The Court: Now, that is about as far as you want to go, Mr. Jayne, at this time?

Mr. Jayne: Without opening another count, and it would take us past the adjournment hour, I fear, with the one witness. I think we can get along much more readily tomorrow.

The Court: Yes. Now, I want to say just a word to the jury. I have already said to the jury this is a case that they may as well understand of very considerable importance, and it is of great consequence that the jury should not allow any person to talk to them or talk to any person with regard to the case at this stage or at any other stage. I told the jury that, under the circumstances, it would be better that, so far as lunch time was concerned, it would be well if they were kept under charge of the officers and lunch altogether, as evidently has been done. Of course, the court does not wish to keep you away from your homes and, consequently, you will be allowed to go to your homes. I hope you will be here in your places promptly by ten o'clock tomorrow morning so that we won't lose any time in getting started. The court stands adjourned until tomorrow morning at ten o'clock.



(Recess at 4:20 o'clock p. m.)

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Morristown, N. J., September 15, 1925.

10:00 o'clock a. m.

Trial Resumed.

SECOND DAY.

The Court: You may proceed, Mr. Jayne.

Mr. Jayne: I will call Percy Rolston.

PERCY ROLSTON, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Rolston, where do you live? A. Boonton.

Q. Do you hold some official position at Boonton? A. I do.

Q. What position? A. Justice of the peace and police justice.

Q. Were you police justice in the month of August, 1924? A. I was.

Q. Have you here with you your docket— A. I have.

Q. —showing the cases, criminal cases, in which you acted officially as police justice— A. I have.

Q. —in the month of August, 1924? A. I have.

Q. Does your docket show a complaint and the issuance of a search warrant, a complaint for the arrest—the issuance of a warrant for the arrest of one Peter Dolimpio, August 19, 1924? A. It does.

Q. What does it show? A. It shows a raid was made on August the 19th, 1924, on Peter Dolimpio, Richard Avenue, Dover.

Q. Does it show that a complaint was sworn to before you— A. It was.

Q. —for a search warrant? A. By one John Dodson.

Q. Yes. Does it show that a search warrant was issued? A. It was.

Q. Does it show that a complaint was made before you for the arrest of Peter Dolimpio? A. It does; yes, sir.

Q. And the issuance of a warrant— A. Yes, sir.

Q. —for his arrest? A. Yes, sir.

Mr. Jayne: I offer—

The Court: Is this the fifth count?

Mr. Jayne: This is the fifth.

The Court: All right.

Mr. Jayne: I offer the docket.

Mr. Matthews: I would like to see it.

Mr. Jayne: I will withhold the offer of the docket to permit cross-examination.

Q. Mr. Rolston, I show you a paper, and ask you if your signature appears upon it? A. (Referring.) It does.

Q. What is the paper? A. That is an allegation for a search warrant for Peter Dolimpio.

Q. And what other signature appears upon it?



A. The signature of the complainant, John Dodson.

Q. Did he swear to that— A. He did.

Q. —paper, and the contents of that paper, before you? A. He did.

Q. When? A. The 19th of August, 1924.

Q. I show you another paper, and ask you if your signature appears upon that? A. (Referring.) It does.

Q. What is that paper? A. This is a search warrant for the store of Peter Dolimpio, Richard Avenue, Dover.

Q. Did you issue that warrant? A. I did.

Q. Under what date? A. The 19th of August, 1924.

Q. I show you another paper, and ask you if your signature appears upon it? A. (Referring.) It does.

Q. What is that paper? A. That is the complaint in the case of Peter Dolimpio, Dover.

Q. Any other signature appearing upon it? A. John Dodson, complainant.

Q. Did John Dodson swear to the contents— A. He did.

Q. —of that paper before you? A. He did.

Q. When? A. 19th of August.

Q. I show you still another paper, and ask you if your signature appears upon it? A. (Referring.) It does.

Q. What is that paper? A. This is the body warrant for Peter Dolimpio.

Q. Issued by you? A. Issued by me.

Q. Under what date? A. 19th of August.

Q. Was Peter Dolimpio arrested under this warrant? A. He was.

Q. Does the return of this warrant appear upon it? A. It does, under date of 20th of August, 1924.

Q. And who made the arrest? A. Samuel Gould.

Q. And was he brought before you? A. He was.

Q. What action did you take? A. Why, the action states on the docket, I think he went under bail.

Q. Yes. A. Furnished bail.

Q. And did you hold him for the action of the grand jury? A. I am not sure whether it was the grand jury or Special Sessions. It is down at the bottom, the page turned down. He appeared in the Court of Special Sessions under $500 bond. Unable to furnish bond, and committed to jail August the 20th.

Q. Now, the papers which you say were an allegation for search warrant, and a search warrant, complaint for arrest, and warrant for the arrest, which you have just identified, what did you do with these papers? A. I mailed them to the Prosecutor's Office.

Q. And by the Prosecutor, you mean the defendant? A. Yes.

Q. James H. Bolitho? A. Mr. Bolitho, yes.

Q. Will your docket show when you delivered these papers to— A. Yes, it does.

Q. —the Prosecutor, the present defendant? A. The day the papers sent to the Prosecutor, August 22, 1924.

Mr. Jayne: I offer the docket and the four papers?



The Court: Is there no objection to these papers?

Mr. Matthews: I am looking at the papers now, if your Honor please.

By Mr. Matthews:

Q. The docket and papers that you have produced is your entire record, is it? A. Yes.

Q. Of the Peter Dolimpio case? A. Of the case, yes.

Mr. Matthews: No objection.

(Docket marked Exhibit S-11 in evidence. Allegation marked Exhibit S-12 in evidence. Search warrant marked Exhibit S-13 in evidence. Complaint marked Exhibit S-14 in evidence. Warrant for arrest marked Exhibit S-15 in evidence.)

Mr. Matthews: Nothing further from this witness.

Mr. Jayne: I will call Mr. William A. Gardner.

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WILLIAM A. GARDNER, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Gardner, where do you live? A. Dover, New Jersey.

Q. Do you hold an official position at Dover? A. Yes, sir.

Q. Did you hold such position on September 9, 1924? A. Yes, sir.

Q. What position? A. Police justice.

Q. I did not catch the answer. A. Police justice.

Q. Police justice. You kept a docket of your business as police justice? A. Yes, sir.

Q. Does your docket show a complaint, any proceedings taken before you, against Peter Dolimpio on or about September 9, 1924? A. Yes, sir.

Q. What does your docket show? A. Peter Dolimpio was arrested on September the 9th. Complaint was made by George Victor of Wharton.

Q. Yes. What further was done as disclosed by the records of your docket? A. A search was made of the place, and he was brought before me and held in $1,000 bail for the action of the grand jury.

Q. $1,000 bail? A. Yes, sir.

Q. I show you a paper, and ask you if your signature appears upon it? A. Yes, sir.

Q. What is that paper? A. That was the paper that George Victor brought to me from the Prosecutor's Office.

Q. Well, did you sign it? A. Yes, sir.

Q. George Victor appear before you? A. Yes, sir.

Q. What is that paper? A. That is an allegation for a search warrant.

Q. Yes. Did George Victor swear to the contents of that paper before you? A.Yes. He signed his name.

Q. Well, did he swear to it, the contents of it? A. Yes, sir.

Q. Now, I show you another paper and ask you



if your signature appears upon it? A. That is mine; yes, sir.

Q. What is that paper? A. A search warrant.

Q. Did you issue that? A. Yes, sir.

Q. And on what day? A. I signed my name on it.

Q. Well, on what date? A. On September the 9th.

Q. I show you another paper and ask you if your signature appears upon it? A. That is mine; yes, sir.

Q. What is that paper? A. That is a complaint.

Q. And any other signature upon it? A. George Victor.

Q. Did he swear to that, to the contents of that paper? A. Yes, sir.

Q. Before you? A. Yes, sir.

Q. When? A. On September the 9th.

Q. There is another paper. Does your signature appear upon it? A. That is mine; yes, sir.

Q. What is that paper? A. That is the warrant.

Q. Did you issue the warrant? A. Yes, sir.

Q. On what date? A. September the 9th.

Q. Was the person named in that warrant, Peter Dolimpio, arrested under that warrant? A. Yes, sir.

Q. Brought before you? A. Yes, sir.

Q. Now, what did you do with these papers? A. They were taken by George Victor and returned to the Prosecutor's office.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. How do you know they were returned to the Prosecutor's office? A. Why, it was one of his men.

Q. Then you do not know of your own knowledge, do you? A. No.

Q. I show you the paper headed "search warrant," which you have identified, to which there is attached inventory and affidavit. In whose writing is that? A. That I could not really tell you.

Q. Well, did you send that paper to the Prosecutor? A. No, sir.

Q. Well, did you ever have that paper in your possession? A. No. I never seen it before.

Q. So you do not know where that paper came from, either? A. No, sir; I do not.

Q. But all of the papers that were in the case you gave to somebody? A. I gave to George Victor.

Q. On the day that the arrest was made? A. Yes, sir. I never seen that until now.

Q. You never saw that paper before? A. No, sir.

Mr. Matthews: We have no objection.

Q. It is suggested to me that I ask you if you know who Officer Morse and Officer Parker are, whose names are signed first? A. Yes. They are special policemen of the Town of Dover.

Q. Special policemen of the Town of Dover? A. Yes, sir.

Mr. Matthews: We have no objection to the admission in evidence of the docket and the allegation, search warrant, complaint and warrant, the Gardner record ot the Dolimpio case.



The Court: What becomes of the inventory? I suppose Mr. Jayne does not offer that?

Mr. Jayne: Do you want it to go in?

Mr. Matthews: Yes. I suppose it is clipped together.

The Court: All right. The inventory goes in with the rest of it.

Mr. Jayne: In one exhibit?

Mr. Matthews: It is attached to the search warrant.

Mr. Jayne: Make it one exhibit?

Mr. Matthews: Yes, please.

Marked Exhibits S-16, S-17, S-18, S-19 and S-20 in evidence.

Mr. Matthews: No further questions, Mr. Gardner.

Mr. Jayne: That is all, Mr. Gardner. Peter Dolimpio.

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PETER DOLIMPIO, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Dolimpio, where do you live? A. Dover.

Q. How long have you lived there? A. Oh, about three years; about four years.

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

Q. Have you a store there at Dover? A. Yes.

Q. Did you have the store there in August, 1924? A. No. I have the store there about July 1st.

Q. Well, a year ago, or this July? A. Yes.

Q. A year ago? A. Yes.

Q. Now, were you arrested in August, 1924? A. Yes.

Q. On or about August 20, 1924, were you arrested? A. Yes.

Q. Did you appear before Justice Rolston? Do you know Rolston? A. Judge Rolston?

Q. Judge Rolston. A. Well—

Q. The first witness, of Boonton? A. Yes.

Q. Did you go to jail? A. Sure.

Q. How long were you in jail? A. Well, I was in Boonton about for two or three hours. I wait for somebody go bail for me, you know.

Q. Yes. A. And over to Boonton I couldn't find nobody over there and I told the judge they better send me down to Morristown, because in Morristown I got a couple of friends, and I find the bail.

Q. Did you get bail and get out? A. And when he sent me down to Morristown I was call to Danny Marinaro.

Q. Danny Marinaro? A. Yes.

Q. Now, were you arrested more than once? A. Well, I have two arrest.

Q. Two arrest? A. That is the first, I talk about the first one, when I left Boonton.

Q. What officers arrested you the first time? A. Boonton, Sheriff.

Q. All right. What happened, that is, the first time? A. That is the first time, yes. And after, when I was in the jail down in Morristown, down in the station and I was call up Danny Marinaro, he was come in downstairs and he say, "What is the trouble?" and I say—



Mr. Matthews: I object to that.

The Court: Never mind about that talk. Did you get out?

The Witness: Yes.

Q. Well, then, you were arrested again? A. Yes.

Q. Was that the early part of September? A. September 9.

Q. Did you go to jail that time? A. Yes.

Q. Then what happened? A. Well, that time, I have—I was make the bail of the police court from Dover.

Q. You gave bail there at Dover? A. Yes.

Q. I see. Now, did you, after that, see Prosecutor Bolitho? A. After about three or four days, after I was coming down to Morristown, and I went over there to the Mutarella house.

Q. Whose house? A. Patsy Mutarella.

Q. Yes. A. And I went over there and I say, "Well, Mr. Mutarella"—

Mr. Matthews: I object to what he said in Mutarella's house.

The Court: The objection is apparently a valid one.

Q. Well, what did you do then after you went to Patsy Mutarella's house? A. I went over to Patsy Mutarella's house and I say—

Mr. Matthews: No.

A. —"Patsy"—

The Court: You had a talk with him?

The Witness: Well, I was talk to him.

The Court: Yes; all right. Never mind what you said.

Q. Then what did you do? A. And I said to him, "I got some"—

Mr. Matthews: I object.

Q. You cannot tell what you said. Just what did you do after you went to Patsy's house? A. After I went to Patsy's, and me and him—Patsy said to me, "Come here; I take you over to the"—

Mr. Matthews: I object to that and ask it be stricken out.

The Court: Strike it out.

Q. Where did you go then? A. After this, I went over to the Prosecutor's office.

Q. And by the Prosecutor, you mean James H. Bolitho? A. Mr. Bolitho, yes.

Q. Well, did you go to his office? A. Yes.

Q. Patsy with you? A. Yes.

Q. Now, what took place there; what happened there in the office? A. Well, in the office, I was talk to Mr. Bolitho.

Q. Yes. A. And I said to him, "Well, Mr. Bolitho, I got trouble." And he say, "I know everything," he said to me.

Q. Yes. A. Well, I say, "I no like going to court because I no want to be in trouble myself," I said, and he said to me, "Well, give me about $300 and I fix it up."

Q. Yes. A. And that time I no have that $300 in my pocket and I have only a couple of hundred dollars, and I said, "Well, I got only $200 in my pocket. What are you going to do?" He said to me, "Well, go out and come home and go find two more hundred dollars, and come back before noon o'clock."

Q. Yes. A. I was going home and I was going to see some of my friends and I find $200, and I was come back again. I come back there to Mr. Bolitho office, and I say, "The $400 I got." And after this he said to me, "That is all right;



I fix it up," he said to me. And after—before I was go out of the office, he said to me, "If anybody ask you what was doing for that case you have when you have arrested from the Prosecutor's office"—

Q. Yes. A. —"you told them he couldn't do nothing to me, because only was find vinegar only, I have arrest."

Mr. Jayne: Do the ladies and gentlemen of the jury understand?

The Court: If anybody asks about the case—

The Witness: He said to me, "If anybody ask you about the case, you told him he couldn't do nothing to me, because he no find nothing; he was find vinegar in the bottle."

Mr. Jayne: Find vinegar, for him to tell that. That is his testimony as I get it.

Q. All right. Anything else said? A. That is all.

Q. Did you talk about your selling liquor there, whether you could sell—go on and sell liquor? A. No.

Q. Now, who else was there besides you and Patsy and Mr. Bolitho? A. Nobody else.

Q. Nobody else. Now, did you ever have to appear in court on either one of those cases after that? A. No.

Q. Did you ever pay any fine in any one of those other cases, either one of them? A. No.

Q. Were you ever notified to come to court— A. No.

Q. —in either one of them? A. No.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Well, was this after the arrest in August, 1924, that you went down to Mr. Jimmie Bolitho? A. Yes.

Q. What did you do after the one in Dover in September, the arrest, what did you do after that one? A. In September?

Q. Didn't you go down and give him four hundred more then? A. Why—

Q. What? A. —what do you mean?

Q. Well, you were arrested twice, weren't you? A. Yes.

Q. Once in August? A. Yes.

Q. And once in September? A. Yes.

Q. Now, after you were arrested in August, you went over to Patsy Mutarella's house and you had a talk, and you went over to Bolitho's office? A. No.

Q. And you gave Mr. Jimmie Bolitho $400? A. I went over to Mr. Mutarella's house on September case, the second case, not the first one. I talk about the second one, not the first one.

Q. Now, what happened in the August case; were you arrested? A. The August case?

Q. Were you arrested in August? A. Yes.

Q. And you called up Mr. Marinaro? A. Yes.

Q. And you got out on bail? A. I called Mr. Marinaro and I said to him, "Well, I need bail," and he said to me, "All right, you send me the check for $200, and I take you out."

Q. And you did? A. Yes.

Q. And he took you out? A. Yes.

Q. Who arrested you the first time, the Sheriff's men? A. Yes.

Q. And after you were taken out— A. Yes.



Q. —did you go and see anybody? A. No.

Q. Then you were arrested again on September 9th? A. Yes.

Q. Nothing done as to the August complaint? A. No.

Q. Up till September 9th? A. No.

Q. Now, on September 9th, who arrested you? A. From the Prosecutor's office.

Q. The Prosecutor's office. Yes. And who got you out on bail? A. Well, I have a fellow from Dover, the name—well, I forget his name, now.

Q. Yes. A. The fellow, Reck Shelbani.

Q. Well, whoever that man was, did you have Marinaro? A. Well, because at that time, I have a warrant over there, I was in Dover, and the first I know, I was try to get over there.

The Court: Did you have Marinaro the second time or not?

The Witness: No.

The Court: You did not?

The Witness: No.

Q. You did not have any lawyer? A. No.

Q. Patsy Mutarella only; is that right? A. I was going to see Patsy Mutarella, if he know anybody could fix that case.

Q. To fix it, you went to Patsy as a fixer, didn't you? A. And Patsy said to me—

Q. Just a minute. Answer my question. You went to Patsy because you thought he was a fixer, didn't you? A. Yes.

Q. Right? Then Patsy and you went over to Mr. Bolitho's office? A. Patsy, he said to me, "I couldn't do nothing for this; I couldn't help you."

Q. I am not asking you for that. I am asking

you, did you go over with Patsy to Mr. Bolitho's office? A. Yes.

Q. And had you ever met Mr. Bolitho before? A. Well, I see him outside. I no was talk before to Mr. Bolitho.

Q. You never talked to him before then, did you? A. No.

Q. And when you came into his office, you said, "Mr. Bolitho, I am in trouble," he says, "I know all about it; give me $300 and I will fix it up"? A. Yes.

Q. Is that right? And you said, "I only have two hundred." Is that what you said? A. Yes.

Q. And he said, "Well, go get two hundred more and come back at noontime"? A. Yes.

Q. He did not take the two hundred that you had on account, did he? A. No.

Q. He sent you out to get the other two hundred? A. Yes.

Q. And you and Patsy, of course, were all alone with him at this time? A. I was myself, no Patsy.

Q. When you were in the office and having this talk with him about this money, it was only you and Patsy? A. Yes.

Q. And then you went out all alone, or did you go out with Patsy? A. All alone.

Q. And you got the other $200. Did you come back with Patsy, or did you come back all alone? A. I come back with Patsy, too.

Q. With Patsy, too? A. Yes.

Q. Then you and Patsy were together when you gave the $400? A. I give myself, no Patsy.

Q. You gave yourself the $400? A. Yes.

Q. Is that writing there your signature? Just



look at that writing (indicating). A. Yes, that is my name.

Q. That is your name? A. Yes.

Q. All right. You signed it on that paper, didn't you? A. Yes.

Q. How long have you lived in Dover? A. About four years.

Q. Where did you live before that? A. I was living in Pennsylvania before.

Q. Yes. And where before that? A. Well, I am only in United States about five years ago.

Q. You arrived in the United States about 5 years ago? A. Yes.

Q. From where? A. From Italy.

Q. Yes. Are you a citizen? A. Not yet.

Q. On the night that you signed your name on the paper that I have just shown you, where were you? A. I was working in the store that time.

Q. Yes. A. Yes.

Q. Did you see Mr. Marinaro? A. Mr. Marinaro and Louis Marinaro and Mr. Patsy Mutarella was come in to see me.

Q. Mr. Patsy Mutarella, Mr. Marinaro, the lawyer, and his father? A. Yes.

Q. They came in to see you? A. Yes.

Q. And your store then was where? A. I was working in the store over to 227 Richards Avenue, Dover.

Q. In Dover? A. Yes.

Q. Did you go out with them? A. Well—

Q. Yes or no? Did you go out with them? A. Yes, I go out with them.

Q. All right. That is enough. Where did you go with them? A. He take me up town? and I do not know which place he take me.

Q. Who took you up town? A. All three.

Q. All three took you up town? A. Yes.

Q. And when you say up town, do you mean in Dover? A. Yes.

Q. Was there anybody else with you besides Patsy and the two Marinaros? A. Nobody else was when I go out of the store.

Q. And where did you go up town, what place? A. Well, he take me to a place, there was an office in there.

Q. Was it still in the town of Dover? A. Yes.

Q. Did you see anybody in the office? A. Well, he was couple of people. I do not know who was that guy; I do not know him.

Q. You do not know who the guys were that were there, but there were a couple of guys there, is that it? A. Yes.

Q. Had you been to the Sheriff's home before that? A. Yes.

Q. When? A. Well, I do not remember how long before he was.

Q. Who was with you at the Sheriff's home? A. Nobody.

Q. Why did you go there? A. I was going there for—for the trouble I have.

Q. Yes. The trouble on the first arrest? A. And the second arrest.

Q. On the same arrest. Who sent for you?

The Court: The second arrest, he said.

Q. You said, on the second arrest? A. Yes.

Q. That is the September arrest? A. Yes.

Q. Who sent for you to go to the Sheriff's home? A. Nobody.

Q. Oh, you went yourself? A. Yes.

Q. Had you ever met the Sheriff before? A. No,



Q. And who was at the Sheriff's when you went there? A. Well, he was—he was couple of guy in there. I do not know what is his name.

Q. There were a couple of guys in the Sheriff's home, and you do not know what their names were, is that right? A. Yes.

Q. Did you sign anything in the Sheriff's home? A. Yes.

Q. What did you sign? A. I signed an affidavit, I signed a statement.

Q. Yes. Did you read it? A. Yes.

The Court: He signed what?

Mr. Matthews: A statement, he said.

The Court: Oh, a statement, yes.

Q. Was it in English or Italian, the one you signed in the Sheriff's home? A. Well, he write in the satement what I was say myself.

Q. He wrote in the statement what you were to say yourself? A. Yes.

Mr. Jayne: Oh, that is not so at all Mr. Matthews.

Q. Isn't that what you said, Mr. Dolimpio? Didn't you just say that he wrote the statement, the Sheriff wrote the statement? A. Yes.

Q. What you were to say yourself?

Mr. Jayne: No, not "what you were to say."

Mr. Matthews: May I find out? If it is wrong, I will have it stricken.

Q. Will you repeat— A. Yes.

Q. —just what you intended to say, in the best English you can, now? A. When I went over—

Q. No. You are there already. There are two guys there. A. Yes.

Q. Now, what did you do? You signed a pa-

per? A. When I went over to the Sheriff's office, and I was tell the trouble I have myself—

Q. You were telling the Sheriff the trouble you had? A. Yes.

Q. Yes. A. And he said to me, "Well, all right," he said. He write a writing on the paper and after, I sign myself.

Q. And afterwards, you signed yourself? A. Yes.

Q. Now, was this before or after you had been to see Bolitho? A. Oh, it was after this.

Q. This was after you had been to see Bolitho? A. Yes.

Q. Is that right? A. Yes.

Q. After you had parted with your $400? A. Yes.

Q. Is that right? A. Yes.

Q. And you were supposed to be out of your trouble, weren't you? A. What do you mean?

Q. Well, your $400 was going to clear you of all your trouble, wasn't it? A. Well, that is why I have trouble.

Q. That is why you have trouble now? A. That is the trouble I have at this time now.

Q. That is the trouble you have at this time now? A. Yes.

Q. But let us get down to this: you had paid your $400 before you went to the Sheriff, right? A. Yes.

Q. You were out of your trouble, then, weren't you. You thought you were, didn't you? Didn't you think you were out of your trouble when you paid $400? A. I do not know.

Q. You do not know whether you thought so or not, eh? A. No.



Q. Well, how long after you had paid $400 did you go to the Sheriff? A. I do not remember how long he was.

Q. Well, was he a week or was he a day? A. I do not remember.

Q. Well now, think a bit. How long after you were arrested did you go to Bolitho? A. Oh well, I think he was about next day.

Q. Next day? A. I do not remember for sure.

Q. Well, that is near enough to it, I suppose. Now, how long after that do you think you went to the Sheriff? A. I do not remember how long he was.

Q. Well, you remember how long it was after you had been arrested that you went to Bolitho. Now, see if you cannot jog your memory a bit. A. Well, I could not remember, because it was over a year ago.

Q. Well, as long as it was, you went there any way, didn't you? A. Yes.

Q. And you signed a paper which the Sheriff had written? A. Yes.

Q. Now, when you went with Marinaro, Senior and Junior, father and son, and Patsy Mutarella to a place in Dover, where there were two guys, you also signed a paper, didn't you? A. Yes.

Q. And who wrote it? A. Well, the guy, he was in the office, he wrote the paper.

Q. The guy, he was in the office, he wrote the paper? A. Yes.

Mr. Matthews: Will Mr. Harold Forsythe stand, if he is in the court room, please?

(Man stands.)

Mr. Matthews: Will he please come forward.

Q. Will you please look at this gentleman, Mr. Dolimpio, and see if he is the man, or the guy as you said, who wrote the paper? A. Well, I do not know if it was him, now.

Q. How long were you in his home? A. Well, that is—I couldn't remember if it was him now, because I no was taking no picture of the guy that was wrote the paper.

Q. You did not take any picture of him. No, I do not suppose you did. It was nighttime, wasn't it? A. Yes.

Q. You had no flash light with you, did you? A. Oh, it was light in there. No was light business for take a picture of the guy.

Q. You can see him well from there, can you? A. No.

Mr. Matthews: May I please bring this witness up?

The Court: Yes. Come up and stand alongside of the stenographer.

(Man comes forward).

Q. Now, can you say? A. Well, I do not know if it was him now. I couldn't told you yes or no.

Q. You cannot tell me yes or no? A. No.

Mr. Matthews: Thank you, Mr. Forsythe, that is all.

Q. Do you know a man named Alphonso DiBello? A. Yes.

Q. Where does he live? A. He live in Dover.

Q. Was he with you the night you were in this office, the night you signed your name to a paper? A. No.



Q. And Amerigo Esposito, do you know him? A. Yes.

Q. Where does he live? A. Dover.

Q. Was he in this office this night? A. Yes.

Q. He was there that night? A. Yes.

Q. Did you tell the man what to write in the paper that night? A. I no was tell him myself. Danny Marinaro tell him what he got to put down in the paper.

Q. Oh, Danny Marinaro told him? A. Yes.

Q. And you heard Danny tell him, didn't you? A. I no tell nothing, because I do not know what he want to do that night; he was come to see me so late, and I do not know what he want.

Q. Yes. This was after you had been to the Sheriff's, wasn't it? A. Yes.

Q. And you heard Danny talk there, didn't you? A. Well, I heard talk. He talk English that time, Danny, and I couldn't understand everything what he said.

Q. But you could understand some things, couldn't you? A. Yes.

Q. Could you understand what the Sheriff said the night you were at the Sheriff's house? A. No.

Q. You couldn't, but you signed it anyway; then you swore to it, didn't you, took an affidavit? A. Yes.

Q. Yes. You swore to the one in the Sheriff's home, too, took an affidavit there? A. Over to the Sheriff office?

Q. Yes. A. What do you mean?

By the Court:

Q. Well, there were two papers; there was one

paper in Dover and one at the Sheriff's house? A. Yes.

Q. Did you swear to the one in Dover? A. Well, what do you mean, swear?

Q. Well, you are swearing now on the witness stand. Did you make an affidavit? Did you swear to it? A. No.

Q. You did not swear to it? A. Not the one in Dover.

Q. Did you swear to the one in the Sheriff's? A. Yes.

By Mr. Matthews:

Q. Have you seen Mr. Burdge this morning before you came to court? A. Yes.

Q. Did you see Mr. Parker? A. Yes.

Q. Did you talk about what you were going to testify about? A. Yes. He said to me, "What are you going to tell?" "I going to told the truth," what he was help me.

Q. Yes. Is that all he said to you? A. Yes.

Q. The only time you ever saw them? A. Yes.

Q. You never saw them before? A. I see them yesterday, too.

Q. Yes. How many times before yesterday? A. Only one time.

Q. And both times they only told you to tell the truth? A. Well, he no tell me to tell the truth. He tell me, "What are you going to told there?" And I said, I said, "I going to told the truth."

Q. And the truth is you did not swear to this affidavit, isn't it? A. No.

Q. You never raised your right hand and swore—

The Court: Which one are you talking about, now?



Mr. Matthews: Talking about the one that I showed him, and that—

A. That one was make in Dover.

The Court: The one in Dover, or the one at the Sheriff's?

Mr. Matthews: This is the affidavit in Dover that I am holding in my hand that I identified.

The Witness: I was sign that affidavit.

The Court: One moment. What I am trying to point out to Mr. Matthews is that all the Court and jury knows about that paper is that a certain paper has been presented to the witness and he has identified his signature thereon. I do not know what it is, and the jury does not know what it is, and on this question as to whether he swore to it or not, it will have to be treated as an independent paper until you let us see it.

Mr. Matthews: Well, your Honor, I cannot offer it now.

The Court: No.

Mr. Matthews: That is all.

RE-DIRECT EXAMINATION by Mr. Jayne:

Q. I want to ask you just this, please: Did you tell the Sheriff, or whoever was at this house, that you call the Sheriff's house, what to put down on the paper? A. Yes.

Mr. Jayne: That is all.

RE-CROSS EXAMINATION by Mr. Matthews:

Q. But you did not tell the man in the Dover house what to put down, did you? A. No.

Q. No.

Mr. Matthews: That is all.

By Mr. Jayne:

Q. Who did?

The Court: He said that. He said Marinaro told him.

A. Danny Marinaro was talk for that guy that wrote the paper.

Q. All right.

By Mr. Matthews:

Q. One more question. You said you were alone at the Sheriff's house, weren't you? A. Yes.

Q. Only the Sheriff and you? A. He was couple of more men over there; I do not know what is his name, the guy.

The Court: We have had all that.

Q. Did they call you up on the telephone to come over there? A. Yes.

Mr. Matthews: That is all.

Mr. Jayne: That is all. Is Patsy Mutarella in court?

(No response.)



LOUIS MARINARO, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Marinaro, where do you live? A. Morristown.

Q. How long have you lived here— A. Twenty years.

Q. —in Morristown? You are in business here? A. Yes, sir.

Q. What business? A. Contractor.

Q. You are the father of Daniel Marinaro? A. Yes, sir.

Q. Do you know James H. Bolitho? A. Yes, sir.

Q. The defendant? Do you know him for some time? A. I know him for about ten years, anyhow.

Q. Do you know this man, Peter Dolimpio, who was just on the witness stand? A. Yes, sir.

Q. Now, on February 21st, 1925, did you go over to Dover to see Peter Dolimpio? A. Yes, sir.

Q. Anybody send you over there to see him? A. Mr. Bolitho did.

Q. That is, the defendant in this case? A. Yes, sir.

Q. Who went with you? A. Well, really, Patsy and my boy came to me and they said, "Mr. Bolitho wants to see you tonight."

Q. Well, did you go there?

Mr. Matthews: I object.

A. I did not know what I was to go up there for.

Mr. Matthews: I object to the conversation between his son and himself in the absence of Bolitho.

The Court: Your objection is a good one.

Mr. Matthews: May it be stricken out?

The Court: It may be stricken.

Q. Did you go there? A. Yes, sir.

Q. Did you see Dolimpio? A. Yes, sir.

The Court: February 21st?

Mr. Jayne: February 21st, 1925.

The Court: All right.

Q. Where did you first see him? A. At his store.

Q. Did you take him somewhere else? A. I took him in the Mansion House in Dover.

Q. In the hotel? A. Yes, sir.

Q. Was Dan along? A. Yes, sir.

Q. Where in the hotel did you go? A. First, we stopped in the lobby to see the gentleman there, the notary public.

Q. Yes. That is Mr. Forsythe? A. Yes.

Q. Who was just in here? A. Yes. And then we went upstairs in a room.

Q. You went up in a room? A. Yes, sir.

Q. In the hotel? A. In the hotel.

Q. And took Dolimpio up there with you? A. Yes, sir.

Q. And what happened? A. Well, what happened? It happened that we draw an affidavit.

Q. Yes. Who wrote it? A. Why, the notary public.

Q. Yes. Was Danny there? A. Dan was there.

Q. And you were there? A. And I was there.

Q. And Patsy was there? A. Yes, sir.



Q. Did Patsy talk to Dolimpio before you went up there? A. No. They thought it was wise enough to get an interpreter.

The Court: No.

Mr. Matthews: I ask that be stricken out.

The Court: Strike it out. Did he talk? Answer, no.

Q. Before you went up to the Mansion House, did Patsy talk to Dolimpio? A. Yes, sir.

Mr. Matthews: I object to that in the absence of Bolitho.

Mr. Jayne: I am not asking what he said. I asked him if he talked to him.

Mr. Matthews: I withdraw the objection to that question.

The Court: The question has been asked and answered as to whether Patsy talked to Dolimpio. The answer is yes. That is all. Go ahead.

Q. Was there more than one copy made of this paper? A. Three of them.

Q. Did Mr. Forsythe write three? A. Yes, sir.

Q. Were they all alike? A. All the same.

Q. Why did you get three? A. So Danny could have one, Patsy could have the other one, and Mr. Bolitho could have the third one.

Q. Now, after you got the paper—

The Court: Wait a minute. Was this done on the typewriter, Mr. Marinaro?

The Witness: No, by handwriting.

The Court: And were the three copies made all at once, or separately?

The Witness: No, separate.

The Court: Made separately?

New Jersey State Library

The Witness: Yes, sir.

The Court: All right.

Q. Now, who else was present besides the men that you have mentioned? A. Mr. Esposito and Mr. Di Bello.

Q. Yes. Did they go out there with you, or did you find them at Dover? A. We found them at the corner right in front of the Mansion House. I do not know what they call that street there in Dover.

Q. Who asked them to come up? A. Why, I did.

Q. Where did you go after you left the Mansion House? A. Why, I went to Mr. Bolitho's house.

Q. And what time was this? A. About one o'clock in the morning.

Q. You mean it was one o'clock in the morning when you reached Mr. Bolitho's house? A. Between twelve and one, anyhow.

Q. Yes. Was Mr. Bolitho there? A. Yes. He was waiting there.

Q. Waiting for you to bring the papers? A. Yes, sir.

Q. Did you give him one or more of the copies? A. Only one.

Q. You gave him one? A. Yes, sir.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. You first went down with your son to Mr. O'Connor's office, sir, didn't you? A. O'Connor?

Q. Yes. A. No, sir. I do not know Mr. O'Connor.

Q. Sir? A. I do not know him.



Q. You do not know Mr. O'Connor? A. I do not, no. There is too many O'Connors. I do not know which one you mean.

Q. Well, his first name is Richard, and they shorten it to Dick, I believe, in the town he lives in, Dick O'Connor. A. I do not know him.

Q. You do not know him? A. I would like to see him.

Q. What, sir? A. I would like to see him, but I do not know him.

Q. I will show him to you, if he is here.

Mr. Matthews: Is Mr. O'Connor in the Courtroom?

(No response.)

Q. He is not here, but he is a lawyer in town, in Dover. A. In the Town of Dover?

Q. Yes. A. I know the gentleman well, yes.

Q. You know him well. Yes. Now, knowing him well, did you first go to his office that night to have an affidavit drawn? A. No, sir.

Q. You are certain of that, aren't you? A. I am very sure of that.

Q. How long had you known Dolimpio? A. What?

Q. How long had you known Dolimpio? A. Oh, for about a couple of years.

Q. And who dictated the affidavit to the notary who wrote it in longhand? A. Why, Mr. Dolimpio himself.

Q. Mr. Dolimpio himself.

Mr. Matthews: That is all.

Mr. Jayne: That is all, Mr. Marinaro. Is Patsy Mutarella in court? (No response.) I call Edwin Orr.

EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. You have already said that you were Deputy County Clerk, Mr. Orr? A. Yes, sir.

Q. Have you examined the records of the Clerk's office and minutes of the Quarter Sessions, Oyer and Terminer and Special Sessions of this county to determine whether or not any proceedings have ever taken place in those courts against Peter Dolimpio on the charges made on the complaint of August 22nd, 1924, and the complaint of September 9th, 1924?

Mr. Matthews: I object, your Honor please. The records speak for themselves.

The Court: The question is whether he has examined the records to find out whether they contain that. That may be answered yes or no.

A. I have.

Q. And the records, you have the records? A. I have what record there is; yes, sir.

Q. Well, of those courts? A. Of those courts.

Q. Is there any record of any further proceedings in the prosecution of Peter Dolimpio, on either of the two charges that I have mentioned?

Mr. Matthews: I object, because he testified he has what records there are, or there is, as he put it, indicating that all of the records are not there.

Mr. Jayne: He relates to the records of the court. I cannot prove a negative, your Honor please. If there were no further proceedings taken, your Honor, there would



not be any record of any further proceedings.

Mr. Matthews: I think the records speak for themselves.

By the Court:

Q. You say you have what records there are on this subject? A. Yes, sir.

Q. Well, show us what records there are. A. The only record there is, is a bail bond taken.

Q. Well, that you have in your hand? A. I have it in my hand.

The Court: Just show it to Mr. Matthews, if he wants to see it.

Mr. Matthews: No, thank you, your Honor.

Q. And that is all? A. That is all the record there is.

The Court: Does that answer your question, Mr. Jayne?

Mr. Jayne: That answers it.

CROSS-EXAMINATION by Mr. Matthews:

Q. Are you the custodian of the records that you have just been asked about? A. That part of it; yes, sir.

Q. Are you the custodian of all of the records of all proceedings involving Dolimpio? A. I am the deputy custodian.

Q. Who is the custodian? A. Elias Bertram Mott.

Q. That is the only paper you have in the Dolimpio matter there? A. That is the only court record there is.

Q. That is the only court record you have, isn't it? A. It is.

Q. Are you willing to swear there is no other court record in that case? A. Not that we have no other court record.

Q. Well, you do not know, do you? A. I do not know of any other court record, no.

Q. You do not know whether there is or not, do you? A. I could say if there was a court record, yes, and there is not.

Q. There is not any other court record that you know of? A. No, sir.

Mr. Matthews: That is all.

By Mr. Matthews:

Q. Just a minute.

The Court: Do not dismiss the witness until you are sure you are through, and when you have dismissed him, you have dismissed him.

Mr. Matthews: I was suggested a question by my client.

The Court: If that is going to be the situation, just hesitate a moment for a suggestion before you dismiss him.

By Mr. Matthews:

Q. Doesn't your record show the dismissal of this complaint by the grand jury in 1924? A. It does not.

Q. Have you the records of the grand jury's deliberations in that session? A. I have not.

Q. Who has? A. That I am unable to say. The records—

Q. Well, then, if Mr. Dolimpio's case were or were not dismissed, wouldn't you know of it? A. I would not.

Q. Then all of the records would not be in your



custody, if they exist, would they? A. I did not say all the records were.

Mr. Matthews: That is all, sir.

Mr. Jayne: That is all, Mr. Orr.

I should like to reserve the right, your Honor please, because of the unavoidable situation in which I am now placed, to call, if I so desire, Pasquale Mutarella on this Dolimpio count. It was my decision this morning to put him on the stand. I have called for him twice, and he does not appear to be in court, although he was under subpoena yesterday and, by your Honor's direction, was required to appear here again today. I can conclude the evidence upon that count with that reservation, for which I now appeal, for the right to call him if I so decide, later.

The Court: I do not think you will need to have any arrangement with the court. You have a right to call him.

Mr. Jayne: Except at the start of the case, I suggested to the Court that I take up each count.

The Court: Very well. If one of the witnesses you need on this count is missing, of course, you may proceed to another count and call the witness when you get a chance.

Mr. Jayne: I call Stewart Bettens. This is the eighth count, your Honor please.

STEWART BETTENS, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Bettens, where do you live? A. Near Dover.

Q. And what is your business? A. Just at present I work at my trade as carpenter.

Mr. Matthews: I cannot hear you, please.

The Witness: I work at my trade as carpenter, at present.

Q. What is your business?

The Court: Carpenter, he says, carpenter.

Q. Were you ever employed by James H. Bolitho while he was Prosecutor of the County? A. I was.

Q. In what capacity? A. Well, serving search warrants and—mostly.

Q. Yes. Making investigations for him? A. Some.

Q. Were you so employed in August, 1923? A. Yes.

Q. Do you know a hotel known as Fleming's Hotel at Chester? A. Yes.

Q. Did you make some investigation of alleged violations of the prohibition law at that hotel, in August, 1923?

Mr. Matthews: I object. The count in the indictment charges Charles Fleming, not Fleming Hotel.

Mr. Jayne: I am speaking about the eighth count.

Mr. Matthews: Well, the indictment does not charge Fleming Hotel, your Honor please.



The Court: The objection is overruled.

Mr. Matthews: Exception, on the ground, your Honor please, that this is immaterial to the count that is now under discussion.

The Court: You may move later to strike it out if it is found to be irrelevant to the case; but, apparently, it seems to be sufficiently identified for present purposes. Go on, Mr. Jayne:

Mr. Jayne: I think the question was not answered.

The Court: Did you make some investigation about Fleming's Hotel at Chester?

Mr. Matthews: Exception.

The Court: Your exception is noted.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Well, I did not do any investigating.

Q. Well, what did you do?

Mr. Matthews: The same objection.

The Court: Very well. Take your exception. Defendant's counsel prays an exception to this ruling of the Court, which is allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Answer?

The Court: Yes.

A. There were several complaints about the hotel, and different ones of that neighborhood asked me what—

Mr. Matthews: I object to that, and ask it be stricken out.

The Court: Never mind about that. Some persons asked you questions. Yes?

Q. Well, what did you do, Mr. Bettens? A. Then there were two other parties that got evidence against the place.

Mr. Matthews: I object to that as hearsay, and ask it be stricken out.

Q. Were you present? A. Yes; I was present.

Mr. Matthews: May I please have a ruling on that?

The Court: Now, you made your objection before the witness had finished his answer.

Mr. Matthews: The other question was on the way before my objection was out of my mouth, your Honor please.

The Court: Well, let us go back. Strike it all out and start over again, Mr. Jayne.

Mr. Jayne: He said he was present, your Honor please, and I think that would remove the objection. I consent to strike it out, if he was not present, and I ask the question if he was not present.

The Court: Begin over again and let us clear the record.

Mr. Jayne: Will you ask the two previous questions, please, Mr. Stenographer?

(Previous questions and answers read.)

The Court: Don't you see that you were objecting, as I said, to a witness's answer before he had finished the answer. You did not object to the question. The question was, what did you do?



Mr. Matthews: I objected immediately, and the witness started to answer. There is no other way that I know, humanly speaking, to do it, and Mr. Jayne immediately popped the other question, as the record shows.

The Court: Exactly.

Mr. Matthews: It is immaterial to me. It is my client's interests I am protecting, with respect to the Court and the witness.

The Court: What I am trying to point out to you is, that while perhaps at the point when you made your objection the testimony may not have been competent, as to which I do not rule at this time, if the witness had gone on, been allowed to go on and finish his answer, it might well have been competent. That is the point I am trying to make. Now, the question that was asked of this witness was, "What did you do?" Yes. Now, tell us what you did. Never mind about these other parties for the present.

Mr. Matthews: I have lodged an objection to that on the ground that this count charges that he suppressed a complaint against Charles Fleming, and this is evidence with reference to a Fleming Hotel.

By the Court:

Q. Who kept the Fleming Hotel? A. Fleming.

Q. What is his first name? A. One is Bert, and I do not know the other; two brothers, I believe.

Q. You do not know of any Charles Fleming there? A. I do not know, for sure. I think one

is Bert; they call him Bert. I do not know his brother's name.

The Court: I guess you better connect this up, somehow. The Court is rather disposed to pursue the line of least resistance.

Mr. Jayne: I will withdraw those previous questions.

By Mr. Jayne:

Q. Did you subsequently go to see Prosecutor Bolitho about violations of the prohibition law at the Fleming Hotel?

Mr. Matthews: Again I object on the same ground, because there is no allegation in the complaint as to the Fleming Hotel; it is an allegation that he suppressed a complaint as to Charles Fleming.

Mr. Jayne: I will connect up, your Honor please; if not, it may be stricken out.

The Court: Well, I would rather not put anything in before this jury that I will have to strike out afterwards. There is nothing said in this count about Fleming's Hotel. You opened on Fleming's Hotel.

Mr. Jayne: Well, the point is, your Honor please, that he says, this witness says, there were two individuals who were conducting the hotel; the name of one was Bert, and the other he does not know his name. I propose to connect that.

The Court: Can you not clear up the situation now by showing that Fleming's Hotel was partially or wholly under the proprietorship of one Charles Fleming?



Mr. Jayne: Well, I think so. I will have to withdraw this witness, evidently, if he does not know.

The Court: Precisely. Withdraw and get that straightened out.

(Witness excused.)

Mr. Jayne: Is Warren Eagles in court?

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WARREN EAGLES, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Eagles, where do you live? A. Wharton.

Q. Do you know Charles Fleming? A. I was introduced to a man by the name of Charles Fleming—

Q. Yes. A. —by a friend of mine.

Mr. Matthews: I object to that as immaterial to this issue, and I cannot object when it is not responsive, but it is not material that he was introduced to any man by the name of Charles Fleming if he does not know Charles Fleming.

Mr. Jayne: How does he know anybody?

The Court: The objection will be overruled. Go on.

Mr. Matthews: Exception.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Have you seen him? A. Yes, sir.
Q. On different occasions? A. Yes, sir.
Q. Where? A. At Chester Hotel.
Q. And where is that located?
Mr. Matthews: I object to this as immaterial, your Honor please.
A. The center of Chester and cross roads.
Q. Have you been at that hotel at any time? A. I was there twice.
Q. Yes. Did you ever transact any business there? A. Yes, sir.
Q. With who? A. On one occasion with a—
Mr. Matthews: I object to this.
A. (Continuing)—Charles Fleming; on another—
The Court: What is the difficulty?
Mr. Matthews: I object to this as immaterial, that he had business with anybody in the hotel. The hotel is not involved in the complaint.
Mr. Jayne: That is the very question. I will now take the opposite side of the matter.
The Court: Objection overruled. Take your exception.
Mr. Matthews: Exception.
Exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

Mr. Jayne: The answer was—Mr. Stenographer?
The Court: The question was, did you have any business?



Mr. Jayne: And he answered, to some extent.
The Court: Well, start over again, Mr. Eagles.
A. Yes, sir; I did.
Q. With whom? A. On one occasion, with Charles Fleming. On the other, with Bert Fleming.
Q. I see. Do you know Stewart Bettens? A. Yes, sir.
Q. Was he present?
Mr. Matthews: I object as immaterial.
A. Not in the hotel.
Q, Where was he?
Mr. Matthews: Exception.
The Court: Take your exception.
Exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

Q. Where was he? A. I left him out in his automobile.
Q. Yes. A. Whether he stayed there, I do not know, while I did the business.
Q. Did he know that you were going there? A. Yes, sir.
Mr. Matthews: I object as immaterial.
The Court: No. That is overruled.
Q. What business did you have there?
Mr. Matthews: I object to this as not material to the issue.
The Court: Answer the question. Take your exception.
Mr. Matthews: Exception.
Exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

A. Might I ask for the question again?

Q. What business did you have there? A. I went there under Mr. Bettens' directions.

Q. Well, what did you do when there? A. Why, I had something to smoke.

Q. Yes. What else? A. Why, before we left on the second occasion—which occasion are you talking about, the first night or the second night?

Q. On any of these occasions.

Mr. Matthews: I object again as not material to this issue.

The Court: Well, I do not know that we need go into this very much. The question really is the connection of the hotel described in the indictment as Fleming's Hotel with Charles Fleming. That is all I am interested in.

Mr. Jayne: I am pursuing the matter further, without having to make it necessary to call him again, while he is on the stand.

The Court: Well, I think you better call him again. I just want to get this connection straightened out.

(To the witness.) What is the name, is there any name on this hotel?

Mr. Matthews: With respect, I want to object to that, because the hotel is not mentioned in the count.

The Court: All right.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



The Witness: Answer?

The Court: Yes.

The Witness: The hotel has been renovated, and I would not want to say whether there is a name on it or not.

The Court: Oh, at that time?

The Witness: I think there is a sign outside that hangs out from the building, if my memory serves me.

The Court: Well, is there any hotel in Chester known to you and to the public as Fleming's Hotel?

The Witness: Yes, sir.

Mr. Matthews: I respectfully object to that.

The Court: Very well. And who were the parties or the party—

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: (Continuing.)—that ostensibly kept that hotel and ran it?

Mr. Matthews: I object.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Witness: Would it be fair for me to answer as to what I was told were the proprietors?

The Court: No. I want to know what you saw there.

The Witness: I take it for granted from what I heard from one—from the one Mr. Fleming that he was one of the proprietors, and the other was the other.

The Court: Well, you did business with them, with these two, didn't you?

The Witness: I did, and they both issued executive orders while I was there.

The Court: That was the same hotel you have been speaking of?

The Witness: Yes, sir.

The Court: All right. That is all.

Mr. Matthews: Your Honor please, with respect, I move to have it striken out on the ground it is hearsay and immaterial to the issue.

The Court: Yes. The motion will be denied. The exception will be entered.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: The Court considers that the identity of the so-called Fleming's Hotel with the proprietorship of Charles Fleming is sufficiently established at this time, not as a question to be found later by the jury, as to justify the admission of evidence of Mr. Bettens; so there is nothing in the case now to justify your not going on with Mr. Bettens.

Mr. Jayne: That is all. Any cross-examination, Mr. Matthews?

Mr. Matthews: Why, no; not now.

Mr. Jayne: Mr. Bettens, will you resume the stand?



The Court: Mr. Matthews, you say you do not wish to cross-examine this witness at this time?

Mr. Matthews: Or at any time with reference to what has been asked him on that stand now.

The Court: Very well. Now, Mr. Bettens.

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STEWART BETTENS, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Now, I ask you again if you made some investigation of the hotel which now seems to be known as Fleming's Hotel at Chester?

Mr. Matthews: I object to that.

Q. With respect to alleged violations of the prohibition law there?

Mr. Matthews: I object to that as immaterial to this issue because there is no charge against Fleming's Hotel, or this defendant with reference to Fleming's Hotel.

The Court: All right. I suppose we will have that same objection a number of times to come; but it will be overruled, and the exception may be entered.

Mr. Matthews: Yes, sir.

The Court: I am wondering whether it would save time by having a general exception entered to all questions of that character?

Mr. Matthews: I would like to have that.
The Court: You are welcome to it.
General exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

A. May I answer that?

Q. Yes. A. In regards to an investigation.

Q. Yes. A. Well, I asked—

Q. Not what you talked. What did you do, Mr. Bettens? A. Well, what I did, I went there on—not in the hotel, but nearby.

Q. Yes. With whom? A. While two other parties bought a bottle of so-called liquor.

Mr. Matthews: I object to that because he says he was nearby and was not present when it was done.

The Witness: Present? I was present with these two men.

Q. Yes. A. Until they went inside.

Q. Yes. A. I waited just outside in the car, and they went in and brought the evidence out.

Q. What did they bring out? A. A bottle of liquor.

Q. Now, after that, what did you do? A. Well, this happened to be on a Saturday evening, and the following Sunday afternoon I took the bottle of evidence and went down to Mr. Bolitho's home in Rockaway, and there were no one home.

Q. Yes. A. And I went the usual way I was in the habit of doing, over to Henry Schroer's in Rockaway for a search warrant, which I got.

Q. Was he an official that could issue them? A. He was recorder at that time.

Q. All right. A. And, if I remember right, I



was to use that search warrant the following Tuesday evening. I called on three or four to help make the search, and I received a telephone call from Mr. Bolitho asking me did I have a search warrant for that Chester Hotel. I said I had. Well, he says, "I would like you to bring that—those papers connected with that down to me as soon as possible." So I went right down that same evening, that I was supposed to make the search, to the Prosecutor's house and delivered the papers to him, and he said to me, "Now, I don't want you to use papers, a search warrant, on that place just now," he says that "we have the dead wood on him, we can get him at any time. So I had rather you would just let them rest as it is." I let it drop at that; I didn't do any more.

The Court: You had made no search at that time?

The Witness: No. I had made no search.

Q. What became of the papers? A. Well, I delivered them back, so I do not know what became of them.

Q. Back to who? A. Mr. Bolitho.

Q. He took them? A. Yes.

Q. How about the evidence that you speak of? A. Well, the evidence, when I went to his house on the Sunday afternoon to get the search warrant, of course, there was no place to leave the evidence. I took it back home—

Q. Yes. A. —and held it for a while.

Q. Did you deliver that to him, or did you dispose of that yourself? A. Well, shall I go on and tell what became of the evidence?

Q. Yes. Tell everything that is the truth if it has to do with this. A. Well, Mr. Warren Eagles later on asked me—he called me up and asked me did I have that bottle of evidence.

Mr. Matthews: I object to what Mr. Eagles asked, and ask it be stricken out.

The Court: Yes. Never mind about that. What did you do with this?

The Witness: Well, I turned the bottle over to Mr. Eagles, and he—

The Court: No. Never mind what he did with it unless you saw him do it.

The Witness: I did not see what he done with it.

The Court: All right. You gave it to him, and that is the last you saw of it?

The Witness: I gave it to him, and that is the last I saw of it.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: James Doney? (No response.) Mr. Edwin Orr.

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EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, as Deputy Clerk, have you examined all the records and minutes of the Court of Oyer and Terminer, Quarter Sessions and Special Sessions of this County to determine whether there have been any proceedings taken against Charles Fleming for a violation of the



prohibition law since August, 1923? A. I have.

Q. Are there any records? A. There is no record.

Q. So far as the records of the minutes of those courts are concerned, no prosecutions have been had? A. None whatever.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: I will have to again—

The Court: Do you wish to reserve Doney?

Mr. Jayne: Yes, sir.

The Court: All right.

Mr. Jayne: Is Pasquale Mutarella in Court?

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PASQUALE MUTARELLA, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mutarella, where do you live? A. Morristown.

Q. And what is your business? A. Real-estate.

Q. Do you know Peter Dolimpio? A. Yes.

Q. How long have you known him? A. Oh, about three or four years; four or five years.

Q. Do you know Mr. Bolitho? A. Sure.

Q. How long have you know him? A. Oh, two or three years; three or four years.

Q. You knew he was Prosecutor at one time, did you? A. Yes.

Q. Did you go up to his office sometimes here, to the court house? A. Oh, sure.

Q. Often? A. Yes.

Q. Do you know Dan Marinaro? A. Yes.

Q. You have been up to his office, up to Mr. Bolitho's office with Danny— A. Yes.

Q. —at different times? Did you see Peter Dolimpio after he was arrested in August and September 1924? A. Yes.

Q. Did he come to see you? A. He was; yes.

Q. Where did you go with him? A. Up to Mr. Bolitho's office.

Q. Yes. Was Mr. Bolitho there? A. He was, yes.

Q. What did they talk about? A. Well, some business about the raid.

Q. About the raid? A. Yes.

Q. Whose place? A. In Dover. He got a place in Dover.

Q. About the raid? A. Yes.

Q. In his place, eh? A. Yes.

Q. Yes. Well, what did he say? A. Why, Dolimpio come to me; he says—

Mr. Matthews: Who?

The Witness: Dolimpio.

The Court: Never mind what Dolimpio said.

Q. What was said up in the Prosecutor's office when Mr. Bolitho was there? A. Well, he says, "Can you help me out about this thing?"

Q. Who said that? A. Dolimpio.

Q. Yes. A. And Mr. Bolitho says, "Well, I don't think so." And Dolimpio says, "Mr. Bolitho, why don't you fix me up?" And Mr. Bolitho say, "I make a deal for $500."



Q. $500? A. Yes. And Dolimpio have $300 in the pocket. He says, "Well, I come back."

Q. Yes. A. "And I give the $500. I go Dover. I get the $200. I come back and give the $500."

Q. Were you there when he got it? A. Yes.

Q. Did you see him get it? A. Yes.

Q. Did you see him get the money? A. Yes.

Q. Now, afterwards, in February, just before the Elisor Grand Jury started— A. Yes.

Q. —did you go over to see Dolimpio with Louis Marinaro and Danny? A. Yes, one night, yes.

Q. Who sent you over there? A. At that time, Mr. Danny Marinaro call me up. He says—

Q. Well no, you cannot tell what he said. A. No. At that time, Mr. Marinaro call me up. He says, "I got to go in Dover." I say, "Why?" He says, "I got to make"—

Mr. Matthews: I object.

Q. Do not tell your conversation between you and Danny. You went over there? A. Yes.

Q. Did you get any papers signed by Dolimpio? A. Yes.

Q. Where did you go after that? A. Oh, that night?

Q. Yes. It was that night, wasn't it, when you were over there? A. Yes. It was Saturday night; it was about ten or eleven o'clock when we through. I think; I ain't sure; I think so; up to Mr. Bolitho's house.

Q. You went up to Mr. Bolitho's house? A. Yes.

Q. Was he up when you got there? A. Yes, he was up, yes.

Q. Did you give him one of the papers? A. I think Louis Marinaro did.

Q. You are under indictment for this same thing, aren't you, for this Dolimpio case? A. I do not know.

Mr. Jayne: All right. Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. You do not know whether you are under indictment or not? A. Me?

Q. Yes. A. Yes, I think so.

Q. You think so. Well, did you talk to Mr. Burdge and Mr. Parker about— A. About this thing?

Q. Yes. A. Yes.

Q. Did they tell you they would deport you if you didn't testify? A. What did you say?

Q. Did they tell you they would deport you if you didn't testify? A. They never said anything like that.

Q. No. Didn't you tell two different people yesterday that they threatened you with deportation if you did not testify? A. No. They never say anything at all.

Q. Are you a citizen? A. No.

Mr. Matthews: That is all.

Mr. Jayne: That is all.

I will take up next the sixth count, the Mingardi case. William Gardner?



WILLIAM GARDNER, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Gardner, you have already been sworn. Do you have your docket here? A. Yes, sir.

Q. Is this your docket? A. Yes, sir.

Q. As police justice of— A. Of Dover.

Q. —Dover? A. Yes, sir.

Q. Does your docket show a complaint made against one Antonio Mingardi for a violation of the prohibition law? A. What date is that, Mr. Jayne?

Q. Sometime in February, 1924. I think perhaps your records will show a Mr. and Mrs. Christian Deimegard. A. If you will just excuse me; I think it is in the other book. (Witness leaves stand and returns with book).

Q. Christian Deimegard, February 22, 1924? A. That is right. I got it.

Q. It does show such a record, does it? What does your docket show in that proceeding? A. It shows that Fred Hubert made the complaint.

Q. What further proceedings in the case? A. Well, the search warrant and complaint were made out in the Prosecutor's Office and brought to me to sign, and never were returned after they were signed at all.

Q. All your docket shows is that you issued the search warrant and the warrant for the arrest? A. Yes, sir.

Q. They were brought to you, were they? A. Yes, sir.

Q. By who? A. By Fred Hubert.

Q. Made out at the time? A. All made out in the Prosecutor's Office.

Q. Now, I show you a paper and ask you if that is one of the papers to which you are now referring? A. Yes, sir; that is one of them.

Q. What is that? A. That is an allegation for the search warrant, made out in the Prosecutor's Office.

Q. And some others. Is that the signature of Fred Hubert? A. Well, yes, he signed it.

Q. In your presence? A. Yes, sir.

Q. On what day? I think this paper tells. A. On February the 22nd.

Q. Now, I show you another paper and ask you what that is? A. That is a search warrant.

Q. Yes. A. That was not signed.

Q. That was not signed by you, was it? A. No, sir.

Q. Still another paper. Does that have your signature? A. Yes, sir. That is a complaint.

Q. Complaint for the arrest of— A. Of—

Q. Of these parties? A. Yes.

Q. That sworn to before you? A. Yes, sir.

Q. And another paper. A. Warrant for arrest.

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

Q. Now, were the parties brought back before you? A. No. No return was made of the warrant at all.

Q. Do you know whether or not they were placed under arrest, so far as you know? A. I do not really know whether they were arrested or not, Mr. Jayne.

Q. Now, what did you do with these papers after you signed them? A. They were usually



taken away from the office and fetched by the officer.

Q. Was that the usual practice? A. That was the usual practice.

Mr. Jayne: I offer the docket, or the portion relating to the matter in issue; also, the four additional papers.

The Court: I understand you to say, Mr. Gardner, that even the complaints and allegations were taken away from you, you did not keep them?

The Witness: They were taken away, your Honor; yes, sir.

Mr. Matthews: No objection.

The Court: Let them be marked.

(Marked Exhibits S-21, S-22, S-23, S-24 and S-25 in evidence.)

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: I call Antonio Mingardi.

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ANTONIO MINGARDI, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Do you speak English, Mr.— A. No much.

Q. Not much. Where do you live now? A. West Hoboken.

Q. Did you ever live in Morristown? A. Before, yes.

Q. Were you arrested in February 1924? A. Yes, sir.

Q. For what? A. For got a bottle of wine.

Q. Of wine? A. Of wine, yes.

Q. A barrel, or— A. A bottle of wine, yes.

Q. And did you get bail? Did you get bail? A. Yes.

Q. And then you moved away? A. Moved away from Morristown, and I go West Hoboken.

Q. And were you arrested again? A. Yes; they come down there.

Q. They came down there? A. Yes.

Q. Were you brought back here? A. What?

Q. Were you brought back here to Morristown? A. No. Come over here Sunday night, you know, and tell him the judge wants me, want to talk a little bit.

Q. Who came after you? A. I come. Jimmie Virelli and two or more men, I do not know what is their name, see? They been from Morristown, and Louis Marinaro stay outside.

Mr. Jayne: Max Reidler, stand up.

(Man stands).

Q. Is that one of the men? A. One of the men.

Q. That is one of them? A. Yes, sir.

Q. Now, where did they bring you? A. They bring him in Morristown. They come Morristown and put me in jail right away.

Q. Put you in jail? A. Yes.

Q. While you were in jail, who came to see you? A. There came to see me Danny Marinaro and Patsy—I do not know what you call him.

Q. Danny Marinaro and Patsy? A. Yes. And tell me, they say, "Mr. Mingardi, this is no"—

Q. You cannot tell what they said to you. Now, do you remember what day you went into jail,



when it was? A. Yes. Because they come down about the 9th of May. About 11th of May.

Q. The 11th of May. A. 1924.

Q. How many days were you in jail? A. I no remember. Two days, two day and a half or three day and a half.

Q. And then what happened? A. What?

Q. Then what happened? Did you get out of jail? A.Yes, I got out before my wife pay five hundred dollar.

Q. And how did you get out? A. I get out, you know. I no 'stand much, you know.

Q. You do not understand much? A. No.

Q. Do you know where the Prosecutor's Office is? A. Yes. Over there, upstairs.

Q. Did you ever go there? A. Yes. Go up there, you know. He tell me, "You sign this paper," you know, "you go out. I fix it all up."

The Court: Well now, Mr. Mingardi, you say you do not speak English very well. but I think you speak it too well. You talk so fast that I cannot understand you. See if you cannot go slow about this thing.

You went to the Prosecutor's Office?

The Witness: Yes.

The Court: That is right?

The Witness: Yes.

The Court: Well, what happened then? Now, go slow.

The Witness: And he tell me, you know, "Bring me the paper; I sign this paper," you know, "I fix it all up for you. You go get out. Everything all right."

Q. Now, the defendant told you that, did he, Mr. Bolitho? Mr. Bolitho said that? A. Yes, Mr. Bolitho; all three, Danny Marinaro.

Q. All three? A. All three, yes.

Q. Who were the other two? A. Danny Marinaro and Patsy.

Q. All right. Now, have you ever been arrested for that charge since, that same charge about the wine? A. What?

Q. Have you ever been sent for to come back — A. No.

Q. —since that time? A. No.

Q. Were you home in February when Patsy and Louis Marinaro came to Hoboken? A. Yes.

Q. Was anybody else with them? A. No.

Q. Did they come to your house? A. They come to my house, and then Louis Marinaro and Patsy,—

Q. Yes. A. And I work. They tell my wife there at the time, "you go up to the grand jury."

Mr. Matthews: I object to this, now; they were not there.

The Court: I do not know what it is, but it is something that took place when Mr. Bolitho was not there.

Mr. Matthews: In the absence of this defendant Bolitho.

The Court: I think that is probably incompetent.

Mr. Jayne: I do not ask that. I am inquiring whether these two men came there.

The Court: That is all right.

Q. They came to your house, did they? A. Yes.

Q. In West Hoboken? A. Yes.

Mr. Jayne: Cross-examine.



CROSS-EXAMINATION by Mr. Matthews:

Q. You do not know what paper you signed in the Prosecutor's office, do you? A. No. Just a clean paper, that is all.

Q. You do not know what it was? A. No. For 'cause no 'stand much, you know.

Q. Yes.

Mr. Matthews: That is all.

Mr. Jayne: That is all.

The Court: Mr. Jayne, before you go on, there was something or other about $500; but I did not get it all. What do you understand the testimony was?

Mr. Jayne: He said he got out after "my wife paid $500." He wasn't called, he was in jail, was his testimony.

The Court: Oh, after his wife paid $500?

Mr. Jayne: Yes. I am calling the wife.

The Court: Yes.

Mr. Jayne: Mrs. Mingardi.

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CHRISTINA MINGARDI, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mrs. Mingardi, you are the wife of Tony Mingardi, who was just on the chair? A. Tony Mingardi, yes.

Q. Where do you live now? A. Down in West Hoboken.

Q. Did you live in Morristown at one time? A. I no talk English.

Q. You cannot talk English? A. No.

Q. Can't you understand me? A. No. I 'stand a little bit; no much.

Q. Did you live in Morristown? A. Now?

Q. Did you live here at one time? A. Before, sure.

Q. Was your husband arrested? A. Yes.

Q. When? A. Jimmie Virelli, I don't know, cause—I can't 'stand.

The Court: I think you would do better with an interpreter, Mr. Jayne. Have we got one?

Mr. Jayne: Mr. Cattano here? (Man comes forward).

Mr. Matthews: Is this the Court Interpreter that we are using?

Mr. Jayne: I was so informed when I came here.

The Court: Well, find out, Mr. Matthews.

Mr. Matthews: (To Anthony Cattano) Are you the Court Interpreter?

Mr. Anthony Cattano: Yes, sir.

Mr. Matthews: I object to him.

The Court: I do not know that there is any general Court Interpreter.

Mr. Matthews: We claim there is a Dominic Bontempo who is the official interpreter of the Court.

The Court: Perhaps we had better withdraw this witness until we get an interpreter that is satisfactory to both sides. Who is this man that was called up?

Mr. Jayne: Well, I made inquiry—this is outside of the record. (Conference between Court and counsel).



The Court: Let Mr. Cattano come up here and I will examine him myself.

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ANTHONY CATTANO, being examined, stated as follows:

By the Court:

Q. You have interpreted here before, haven't you? A. Yes, sir.

Q. Have you been working on this case in any way? A. I was in the Elisor Grand Jury as an interpreter.

Q. Oh, you were an interpreter in the Elisor Grand Jury? A. Yes, sir.

Q. Well, have you been working as a detective — A. No, sir.

Q. —for anybody, or investigating, or anything of that kind? A. No, sir.

Q. What is your business? A. Barber.

Q. Where? A. Morristown.

Q. I know; but what number? A. Oh, 71 Morris Street.

Q. How many times have you interpreted in cases up here? A. Oh, quite a number of times. During John Mills' administration, I was interpreter then for three years.

Q. Yes.

The Court: I do not know, Mr. Matthews, of any regularly sworn, accredited Italian interpreter at this time.

Mr. Matthews: I was informed, just as Mr. Jayne was informed, that Mr. Bontempo was.

By the Court: (To Mr. Cattano)

Q. Do you know Mr. Bontempo? A. Yes.

Q. What is he? A. He is a contractor.

The Court: I do not know that the Court is tied up to any particular interpreter, provided the man that is offered is competent and impartial. That is the only question.

Mr. Matthews: Well, it would be much better to have one who was not identified even with the Grand Jury proceedings in the case, if possible.

The Court: I do not exactly see what the difficulty is about that.

Mr. Matthews: May I say to your Honor what difficulty I see in it?

The Court: Yes.

Mr. Matthews: My experience in court is that the Italian language is susceptible of interpretation in what we call two or three different dialects, a literal dialect and a colloquial dialect, and you are liable to get a word, and this is an allegation of the payment of money, that may change the entire aspect of the case.

The Court: Well, so is the English language susceptible of that interpretation.

Mr. Matthews: Not as much as the Italian.

The Court: I am wondering whether your client has not enough Italian friends in court to keep tabs on the Interpreter. Unless there is something definite urged against the competency of this man, I do not see any reason why the Court in its



discretion cannot allow it. Let him be sworn.

Mr. Matthews: I want to lodge an objection to him on the ground that he is not the official interpreter of the court.

The Court: Yes. With the reservation that, so far as the Court knows, there is no official interpreter of the court. Swear him, Mr. Orr.

(Anthony Cattano, sworn as Italian Interpreter).

The Court: Now, this witness seems to have been sworn without objection. I see no reason why she should be re-sworn.

Mr. Matthews: I have no objection to her getting the oath in Italian.

The Court: Well, she has been sworn once in English, and unless there is some objection to that oath, the examination may proceed. Go on, Mr. Jayne.

By Mr. Jayne:

Q. Now, did you live in Morristown at one time? A. (Through the Interpreter) Yes, sir.

Q. When did you move away?

Mr. Matthews: If your Honor please,—

A. Over a year.

Mr. Matthews: —your Honor suggested perhaps the defendant Prosecutor had Italian friends in court who would like to check up. Now, if he has, and I do not know, they will never hear that Italian. I would like to hear it myself; I know a little about it. A little louder, please.

The Interpreter: Yes, sir. What was the question again?

Mr. Jayne: You answered, "Over a year ago." There is no question pending.

Q. Now, was your husband arrested in February, 1924? A. Yes, sir.

Q. Was he put in jail? A. Yes, sir; three days and a half.

Q. Did he get bail? A. Jimmie Virelli bailed him.

Q. Was that before he moved away from Morristown? A. Yes.

Q. Was your husband arrested again? A. No; just that time.

Q. Well, did he come back to Morristown after you had moved to West Hoboken? A. No, sir.

Q. Well, how long did you say he was in jail? A. Three days and a half.

Q. What did you do to get him out? A. I went to see him, and he told me that he needed $500.

Mr. Jayne: Now, Mr. Interpreter, have her speak loudly enough so that she can be heard. Tell her to speak loudly enough so that they can all hear her.

The Court: (To interpreter) Well, I think it would be better if you will sit down there by Mr. Jayne and address your questions from there.

The Interpreter: All right.

The Court: These confidential conversations between witness and interpreter always make trouble.

Mr. Jayne: Mr. Stenographer, just where were we at there?

The Court: "I went to see him, and he told me that he needed $500." Who was he? Who told you that he needed $500?



Mr. Matthews: I object to that on the ground that this is a conversation at a time when Bolitho was not present.

The Court: All right. The objection is sustained if you are going to take that ground.

The Interpreter: Her husband told her.

Mr. Jayne: Now, wait a minute.

Mr. Matthews: The conversation is being given, and it is hearsay because Bolitho was not present. I move to strike it out.

The Court: Strike it out.

Q. Now, what did you do after that? A. I went down to the butcher, Patsy, the butcher, and asked him if he would give me the money.

Mr. Matthews: I object to the conversation with Patsy, the butcher.

The Court: No. You went down to see the butcher. Strike out any conversation.

Mr. Jayne: I consent that the rest of it may be stricken.

Q. Then what did you do? A. He told me that he didn't have no money.

Q. What did you do? Not what he told you.

The Court: Just wait a minute. Did you get any money from anybody?

The Witness: No, I gave to somebody.

The Court: You gave money to somebody?

The Witness: I got $200 in Plainfield, fifty at West Hoboken and two hundred and fifty in New York.

The Court: Let us get that right, now. "I had"—

Mr. Jayne: No. She said she got.

The Court: "I got two hundred and fifty in Plainfield." That is right?

The Witness: Two hundred.

The Court: Two hundred in Plainfield. Yes. What else?

The Witness: West Hoboken, $50.

The Court: Fifty in West Hoboken.

The Witness: New York, two hundred and fifty.

The Court: Two hundred and fifty in New York?

The Witness: Yes.

The Court: Yes.

Mr. Jayne: That is five hundred.

The Court: What did you do with it?

The Witness: I gave it to Danny.

Q. Danny who? A. Danny Marinaro.

Q. Who went with you to get the money? A. The son of Jim Russo, with the automobile.

Q. Whose automobile was it? A. Patsy, the butcher.

Q. Where did you go after you got the money all together? A. In the house of the butcher.

Q. And who was there? A. The baker, Tony Romano, the wife of Patsy, Patsy.

The Court: The wife of Patsy and the sister of Patsy, wasn't it? The sorella?

The Interpreter: The sister of Patsy's wife.

The Court: Yes. She said sister, didn't she?

The Interpreter: The sister of Patsy?

The Court: Yes.

The Interpreter: She said the sister of Patsy's wife.



The Court: There was a "sister" somewhere there, I know.

The Interpreter: The sister of Patsy's wife.

Q. Take them one at a time. A. Tony Romano, the sister of Nicoletta, and Nicoletta; that is the wife; the sister-in-law; that is all were there.

Q. Was Danny Marinaro there? A. Dan, yes, sure.

Q. Now then, what did you do? What happened? A. I gave him the money.

Q. Then what happened after that? A. After I gave him the money, they told me,—

Mr. Matthews: I object.

A. (Continuing) "You wait here."

The Court: Never mind what they told you.

Q. No. We do not want that. Did anybody telephone after you gave them the money? A. Yes. Mr. Bolitho.

Q. Who did?

Mr. Matthews: I object to this. That is certainly calling for hearsay, and the Prosecutor must needs know it. She cannot talk English, and he is asking her for a telephone conversation.

Mr. Jayne: It might have been in Italian.

Mr. Matthews: I do not think that is a fair question.

The Court: Ask her whether she knew who it was on the telephone.

Mr. Matthews: Well,—

Mr. Jayne: I have not really got to that point. I am asking if somebody did tele-

phone first. Then, if she says yes, I will say, who? I am talking about who, in her presence.

Mr. Matthews: The question is, did anyone telephone her. It is an incompetent question; otherwise, it is hearsay, because somebody told her something.

The Court: Are you trying to show she called up somebody on the telephone, or somebody called her up?

Mr. Jayne: Suppose I prove both ends of the wire.

The Court: Yes. Go on and prove it.

Mr. Matthews: I have an objection offered against this question, your Honor please, on the ground it calls for a hearsay answer.

The Court: Suppose you start the questioning over again in such shape that another objection can be made, if necessary.

Q. Did anyone telephone in your presence after you returned with the money?

Mr. Matthews: I object on the same ground, that it calls for a hearsay answer.

The Court: The question is, now, whether, when she was there, somebody took the telephone and rang for somebody on it?

Mr. Jayne: That is it.

The Court: That is the question.

Mr. Matthews: I object to that as immaterial.

The Court: Well, the Court considers it is not. The objection is overruled. Enter your exception, and answer the question.



Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Dan Marinaro.

Q. Now, what did you hear him say?

Mr. Matthews: I object to that.

The Court: I think that is objectionable.

Mr. Jayne: Well, I think perhaps it might be if I did not connect it. It is very difficult, your Honor please, to develop these cases in absolute line with everything resting on something that has preceded. I propose to connect it.

The Court: I know you do. The Court has sufficient confidence in you, Mr. Jayne, for that purpose; but it has not sufficient confidence in the eventualities of the testimony to feel justified in allowing this class of evidence to come in when it may very well turn out in a few minutes that you cannot connect it if some of your testimony breaks down.

Mr. Jayne: Of course, I cannot guarantee that.

The Court: That is the thing I am trying to guard against. I do not want to get a lot of evidence in, itself incompetent, unless connected, before this jury, and then have to tell them to strike it out. It is dangerous, and I do not like it.

Mr. Jayne: Very well.

Q. Then, what happened after that?

The Interpreter: She said that they tel-

ephoned and—do you want me to give the conversation they had?

Mr. Jayne: No. Do not give that.

Q. What happened after the telephone call? A. They came to the court house.

Q. Where? Where in the court house? A. She said, I was home, I didn't see.

Q. You did not go with them, then, when they left? A. They did not want me.

Q. All right. Now, were you home in West Hoboken on February 25th? A. Yes.

Q. And did Patsy Mutarella and Louis Marinaro come to see you on that day? A. Yes; they were at my house.

Q. Did you sign any paper for them? A. No.

Q. How much wine, if you know, did they take away from your house,—the officers take away from your house when they searched it?

Mr. Matthews: I object to that question as incompetent and immaterial.

The Court: Do you mean here in Morristown?

Mr. Jayne: Yes.

The Court: Answer the question.

Mr. Matthews: Exception.

The Court: Yes, sir.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. 48 gallons.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: That is all.



PASQUALE MUTARELLA, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Do you know Tony Mingardi? A. Yes.

Q. Do you know his wife? A. Yes.

Q. Did she come to see you sometime in May, 1924? A. Yes.

Q. Where did she see you? A. It was up at my house; he wants to ask me—

Mr. Matthews: I object to what she asked you.

A. (Continuing) She says, "I cannot pay the money, because"—

Mr. Matthews: I object.

The Court: Did Mrs. Mingardi come up to your house? Yes or no?

The Witness: Yes. And she says—

The Court: No. Never mind what she said.

Q. Who else was there? A. He was alone the first time.

Q. Alone the first time. Did she see anybody else there? A. After that, Danny Marinaro is come.

Q. All right. Now, what happened? A. Well, he make a deal, is $500 to be delivered.

Q. Yes. Where did the money come from? A. Why, this woman didn't have any money. He ask me, he cannot pay—

Mr. Matthews: No, I object.

A. (Continuing) This woman ask me—

Mr. Matthews: I object.

The Court: Never mind about what she

asked you. Where did the money come from?

The Witness: I don't know where they get 'em, Judge.

The Court: Well, did you see the money?

The Witness: I saw the money when they gave it to Danny Marinaro.

The Court: You saw the money when it was given to Dan Marinaro?

The Witness: Yes.

The Court: Who gave it to him?

The Witness: The lady, Mrs. Mingardi.

Q. How much? A. I think it was $500, Mr. Prosecutor.

Mr. Matthews: I object to what he thinks and ask it be stricken out.

A. (Continuing) I know I have $250. Danny Marinaro say he go up to Bolitho's office and give him $250. I sure. Then, he keep $250; it might be one hundred; it might be five. I do not know, because I never count that money.

Mr. Matthews: You never counted it?

The Witness: No.

Q. Well, did you go up to the Prosecutor's office? A. Yes.

Q. Did you see Mr. Bolitho there? A. Yes.

Q. What happened there? A. Well, he give it.

Q. Do you know that? A. I see.

Q. You are sure of that? A. Sure.

Q. Well, did Mingardi get out of jail, then? A. I bailed him out with the $500.

Q. Was the Prosecutor there then? A. He was, sure. They called him up, what is the name, Mr.—what is the name? I forget; Mr.—

Q. Mr. Orr? A. Mr. Orr, yes. And they bail it out with $500.



Q. You are not on that bond any more, either, are you? A. No. After I never go on a bond any more; it was cancelled.

Mr. Matthews: I object to that as calling for a legal conclusion. The record will show it.

The Court: Well, the question was answered before you made your objection.

Mr. Matthews: I am doing the best I can to meet the witnesses.

Q. Now, a long while after that, in February of this last year,— A. Yes.

Q. —did you go with Louis Marinaro over to see Mrs. Mingardi? A. Yes.

Q. And who sent you over there? A. Danny. Mr. Marinaro called me up.

Q. I see. A. He says,—

Q. All right. Do not tell what he said. You went over there, did you? A. Yes, I was over there.

Q. Did she sign any paper for you? A. No.

Mr. Jayne: That is all.

CROSS-EXAMINATION by Mr. Matthews:

Q. You did not get any money out of this, I suppose, Mr. real-estate man, did you? A. What?

Q. You did not get any money out of this, did you? A. No, sir.

Q. None at all? A. No, sir.

Q. You never got any out of any of this stuff, did you? A. None.

Q. Never in your life.

Mr. Matthews: That is all.

Mr. Jayne: That is all. I call Louis Marinaro.

LOUIS MARINARO, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Marinaro, in February, just before the Elisor Grand Jury started its sessions, did you go over to West Hoboken with Patsy? A. Yes, sir.

Q. And who did you go over there to see? A. Mrs. Mingardi.

Q. And what did you go over there for? A. To get an affidavit.

Q. What kind of an affidavit? A. It said that wine—instead of been wine, was vinegar.

Q. Why didn't you get it? A. What?

Q. Why didn't you get it? A. Well, she told me, she says, "My wine was wine, it was no vinegar. I am going to stick to it."

Q. Who sent you over there? A. Why, Mr. Bolitho did.

Q. Mr. Bolitho? A. Yes, sir.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Did your son go with you? A. No, sir.

Q. And you went for Mr. Bolitho and not for Mr. Marinaro? A. No, I did not.

Q. What? A. I did not know that my son was implicated into it.

Q. You did not? A. No, sir.

Mr. Matthews: That is all.

Mr. Jayne: Is Victor Brown in court? (No response). I call Edwin Orr.



EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, have you in your custody, as Deputy Clerk, the bail bonds that were given by Antonio Mutarella, or Antonio Mingardi? A. I have.

Q. How many of them are there? A. Two.

Q. Will you produce them? A. (Handing papers to counsel).

Mr. Jayne: I would like to offer these, more to locate dates than anything else.

By Mr. Matthews:

Q. Have you got the record of the case in which the bail bond is entered as one of the steps of the case? A. The case is named on the bail bond itself.

Q. I understand that, sir. I asked you, have you the record with the case on it? A. I have no case on it.

Q. Do you mean to tell me that is all the papers you have with reference to Mingardi? A. That is all the papers I have with reference to Mingardi.

Q. You haven't anything about grand jury proceedings? A. No, sir.

Q. Do you keep them? A. No, sir.

Q. Do you know where they are kept? A. I do not.

Q. Do you know if they are kept? A. I could not say.

Mr. Matthews: That is all. I have no objection.

By Mr. Jayne:

Q. As far as you know, this is all that was done in this case? A. That is all I know of, except the exoneretur of the bail.

Q. I was going to ask you that; but I want first to offer these two.

Mr. Matthews: I have no objection.

(Papers marked Exhibits S-26 and S-27 in evidence).

Mr. Jayne: These are bail bonds, Ladies and Gentlemen of the Jury, the first of which was entered on the 23rd of February, 1924; Carmine Verilli was the bondsman at that time. The other bail bond was made on the 14th day of May, 1924, and Patsy Mutarello was the bondman.

Q. This bail was taken before you, was it? A. Yes, sir.

Q. Now, is this bail still holding? I refer to recognizance S-26, Exhibit 26? A. Both bails have been exonerated.

Q. And when was this bail now identified as S-26 exonerated?

Mr. Matthews: Where is the record of that?

Mr. Jayne: I am asking him to testify from the record, of course.

A. The bail was exonerated on July the 11th, 1924.

Mr. Jayne: I offer the record there may be in the face of exoneration.

CROSS-EXAMINATION by Mr. Matthews:

Q. Where is the record? I want to see it. A. I have my card record here.



Q. Let us see whatever else you have got, will you? On these two cards, Mr. Orr, there is "complaint" written in pencil on one, and on what appears to be another one, the word "complaint" is not written; are they the same case? A. It is the same case, yes.

Q. And one is January Term, 1924, and the other is May Term, 1924? A. Exactly so; yes, sir.

Q. Two separate complaints; two separate cases? A. Those cards are made out when we receive the bail bond, or anything taken from the Prosecutor's Office. The bail was taken in the Prosecutor's Office in this case.

Q. All right. Now, here are two cases, and there are two cards in the Mingardi case. Will you explain the record? A. I am trying to.

Q. All right. Explain this first one that shows January Term on it. A. That bail was taken in the January Term.

Q. Yes. By whom? A. It was taken by me.

Q. Who wrote the word "complaint" in pencil on it? A. That is written in by my stenographer downstairs.

Q. Why is it written in in pencil, and the other in ink? A. It is just a complaint that come in. It is a complaint card. There was no indictment or anything. We generally mark them that way.

Q. Well, why is it written in pencil and not in ink? A. In case there was an indictment, we would take the pencil writing out and mark it an indictment filed such and such a date.

Q. You say afterwards an exoneretur was filed on July 11, 1924, and you have not taken it out? A. No, sir.

Q. And you have not made it a permanent record in ink? A. No, sir.

Q. Now, that is the January Term. Now, look at the May Term. Whose handwriting is that in? A. That is in my stenographer's handwriting.

Q. This one is in your handwriting? A. No, sir.

Q. I notice on that card there is bail $1000, May 14th; is that a new bond in that case? A. It is.

Q. And June 6, 1924, is written underneath; what does that mean? A. That is the date he was to appear under that bond.

Q. And you have an exoneretur entered of that bond? A. Yes, sir.

Q. July 11th. And you also exonerated the other bail on that— A. Yes, sir.

Q. —July 11th? A. Yes, sir.

Q. Two exonereturs on the same day? A. Yes, sir.

Q. Where is the other record? A. There is the record of the exoneretur.

Q. Do you have charge of the custody of the book of recognizances? A. Yes, sir.

Q. Where is that? A. Downstairs.

Q. That is part of the record in this case, isn't it? A. It would be; yes, sir.

Q. Yes. Will you bring it up? A. I can.

Q. All right. I want to cross-examine you on it. I have not finished.

Mr. Matthews: I have no objection to the entrance of the record such as is offered, but I think it ought to be completed, the entire record.

The Court: All right. I suppose you can dismiss Mr. Orr until he gets the book, and



you can re-call him for further cross-examination.

Mr. Matthews: No other questions.

By the Court:

Q. Were these recognizances in writing, Mr. Orr? A. Yes, sir; they are.

Mr. Jayne: They are offered.

Q. They are recognizances that have just come in? A. Yes.

Q. They were not simply taken orally in open court; they were put in writing? A. They were in writing, taken in the Prosecutor's Office.

Q. All right. You better look up that book of recognizances. A. They are searching in it continually every day, and for that reason I did not bring it up.

Mr. Jayne: It seems to me the book is secondary evidence.

The Court: That may be so; but the defense wishes to cross-examine on it, and I guess they are entitled to do so.

Mr. Jayne: Is Victor Brown in court?

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VICTOR BROWN, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Brown, you are warden of the County Jail? A. I am.

Q. Can you tell me whether Antonio Mingardi was committed to Morris County Jail in May, 1924? A. May the 11th.

Q. And how long was he confined to jail? A. Discharged May the 14th.

Q. Who committed him? A. His bond was recalled by his bondsman.

Q. And what officer brought him in? A. Reidler.

Q. And by Reidler, you mean Max Reidler? A. Yes, sir; Max Reidler brought him in.

Q. Do you recall him? Do you remember him? A. I have a record here. I cannot personally remember him, there are so many. The records are here on the books.

Q. Have you any personal recollection of the circumstances under which he was discharged? A. No. Just on the records is all.

Q. What does your record show there about it? A. He gave new bail.

Q. Yes. Where did you get that information? A. Bail was given by Edwin W. Orr, taken by Edwin W. Orr.

Q. Before him, I suppose you mean? A. Yes.

Q. Where did you deliver this man, do you recall? A. He went to the Prosecutor's Office from the jail.

Q. Who notified you to let him go to the Prosecutor's Office?

Mr. Matthews: I object to that as hearsay.

Mr. Jayne: I won't press it.

Mr. Matthews: And immaterial.

Mr. Jayne: I won't press it. I withdraw it. Cross-examine.



CROSS-EXAMINATION by Mr. Matthews:

Q. Have you got the record there? A. Yes.

Q. May I look at it, please? A. (Handing book to counsel).

Q. This record book has the number of the commitment? A. That is the number on the day book.

Q. The date of the commitment, the age of the man. Is the hour of the discharge or the commitment given? A. No; just the day.

Q. Then you have got, "Gave new bail." That is the remarks about him? A. Yes.

Q. You do not know what time of the day on that day that he gave new bail that you let him go? A. No. There were so many coming in and out, I couldn't remember.

Q. No. Thank you just the same.

Mr. Jayne: That is all, Mr. Brown. Is Daniel Allen in court?

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DANIEL ALLEN, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Allen, you were formerly a detective or investigator for Mr. Bolitho when he was Prosecutor? A. Yes, sir.

Q. I show you a paper and ask you if that is your signature? A. (Referring) Yes, sir.

Q. Is that your handwriting? A. Yes, sir.

Q. I am referring to S-23. And there is other handwriting on the paper, and I ask you if that is in your handwriting? A. Yes, sir.

The Court: You mean the whole handwriting, the whole thing?

Mr. Jayne: The handwriting. The rest of it is printed matter.

The Court: All the written portions he says are his, is that right?

Mr. Jayne: Yes, sir. Cross-examine.

Mr. Matthews: No questions. That was S-23 that Mr. Allen identified?

Mr. Jayne: You are correct, sir.

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EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Cross-examination by Mr. Matthews: (Cont'd)

Q. You have produced the recognizance register of Morris County, and it is shown on page 262? A. Yes, sir.

Q. Does that give us the record of the two bonds of Mingardi? A. Yes, it does.

Q. It shows who the bondsmen were? A. Yes, sir. One was Carmine Verilli, and the other was Pasquale Mutarello.

Q. The Verilli— A. Both in the sum of $1,000, to answer charges.

Q. Yes. A. And one was taken on February 23, 1924, and one taken on May the 14th, 1924.

Q. All right. Thank you very much, Mr. Orr.

Mr. Matthews: That is all.

The Court: The Court will take a recess until half past one.

(Recess at 12:30 o'clock p. m.)



After recess. 1:30 o'clock p. m.

HENRY SCHROER, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Schroer, where do you live? A. Rockaway, New Jersey.

Q. At one time you were recorder at Rockaway, were you not? A. Yes, sir.

Q. Had you a docket which shows the cases, complaints made before you as recorder? A. No, sir.

Q. What was your answer? A. No, sir.

Q. Didn't you keep a docket? A. No, sir.

Q. Why not? A. It was—I didn't see nothing in the statute whereby that I was compelled to keep a liquor docket.

Q. I am not talking about a liquor docket. I am talking about a docket as recorder in your business as recorder, recorder of Rockaway. Didn't you know you had to keep any? A. No, sir.

Q. Did you keep a docket—you were also justice of the peace, were you not? A. Yes, sir.

Q. Did you keep a docket as justice of the peace? A. Yes, sir.

Q. Have you that docket here? A. Yes, sir.

Q. Have you a record in your docket of the issuance of two warrants on the 29th of April 1924 on the complaint of Max Reidler against John Doe of the City of Newark County of Essex? A. I think there is one in April, April 29th.

Q. April 29th. What does your docket show

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about that proceeding? A. Do you want me to read it to you?

Q. Yes. A. "On complaint of Max Reidler of the Borough of Rockaway that on the 22nd day of April 1924 at the Borough of Kinnelon, one John Doe of the City of Newark, County of Essex, State of New Jersey, did break and enter into a certain house and building in the Borough of Kinnelon, and did take and carry away a quantity of merchandise, against the peace of the State."

Q. Yes. And does it show you issued warrants on that complaint? Does your docket show you issued warrants? A. This is 1924.

Q. I do not care about the year. Does it show that you issued warrants on that complaint? A. No.

Q. It does not? Have you read us the entire record in your docket about it? A. Yes, sir.

Q. I show you a paper and ask you if your signature appears on it? A. (Referring) Yes.

Q. What is that? What is that paper? A. This is the same as was in the book.

Q. Well, what is the paper? Not the top one, but the bottom one. A. April 29th, 1924.

Q. That is the date of it. I asked you what the paper is. A. That is a warrant.

Q. That is right. And you issued it, didn't you? A. Yes, sir.

Q. As justice of the peace. I show you another paper. Your signature appear on that? A. (Referring) Yes, sir.

Q. What is that? A. That is another warrant.

Q. And you issued it, didn't you, as justice of the peace? A. Yes.



Q. Now, these warrants were returned, were they? A. Returned to me?

Q. Well, the returns appearing on them, aren't there? A. Not to me.

Q. You never brought anybody before you under these warrants? What did you do with these papers after you signed them? A. After I made the warrant?

Q. Yes. These two warrants. A. I must have handed them to Max Reidler.

Q. Have you ever had them since, to your knowledge? A. No.

Q. Did anyone appear, or was anyone brought back before you and arrested under these warrants? A. Not that I know of, Mr. Jayne.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

The Court: Mr. Jayne, to which count is this addressed?

Mr. Jayne: This is the seventh count, known as the Untermeyer case.

The Court: Beginning with Mr. Schroer's testimony, is that right?

Mr. Jayne: Yes.

The Court: All right.

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EDWIN ORR, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, as Deputy County Clerk, will you inform me if indictments, indictment or indictments, were found against three persons, by

name Joseph Juliano, Angelo Grande, and a man whose last name is Sica, Carmine Sica? A. There was indictments found.

Q. Have you the indictments? A. I have.

Q. Will you produce them? A. I have got them right here (handing papers to counsel).

Q. You produce two indictments, do you? Both filed at the same time? A. Both filed at the same time.

Q. When were they presented? A. They were filed in the Clerk's Office on October the 20th, 1924.

Mr. Jayne: I want to offer those, Mr. Matthews.

Mr. Matthews: No objection.

(Marked Exhibits S-28 and S-29 in evidence).

The Court: Each indictment names all three of these men and perhaps others?

Mr. Jayne: Yes.

The Court: All right.

Q. Now, have you a file including all the papers relating to charges against Joseph Juliano, Carmine Sica and Grande? A. I have.

Q. I will show you two warrants bearing the signature of Henry H. Schroer, and ask you if those were included in the records that were filed in your office in this case? A. I couldn't say. I have never seen them before.

Mr. Matthews: What is that? I did not hear it.

The Witness: I say I could not say. I have never seen it before.

Q. Well, what is this envelope there? A. This is the papers that was turned over from the Prosecutor's Office.



Q. Yes. Well, isn't that a file in the County Clerk's Office? A. It is a file in the County Clerk's Office.

Q. Well, when did you hand me that envelope? A. I handed it to you a little while ago.

Q. Well, if those papers are in that file, were they not a part of the record of that— A. They were, if they were in that file.

Q. You have not examined every one of the papers in that file? A. I have not.

Mr. Jayne: I would like to offer those, or the whole file. Any objection?

Mr. Matthews: Before putting in those papers, I would like to examine the file.

Mr. Jayne: I will offer the three warrants.

Mr. Matthews: You withdraw the offer as to the total file, Mr. Jayne?

(Three warrants marked Exhibits S-30, S-31 and S-32 in evidence).

Q. Now, have you a record of what occurred under those indictments? A. Yes, sir.

Q. Which are now in evidence? A. Yes, sir. Do you want the record just as to Sica, Juliano and Grande?

Q. Yes. A. You want the record only as to those three?

Q. Yes. I am only concerned with those three. A. Joseph Juliano, Angelo Grande and Carmine Sica plead to the indictment in this court on November the 14th, 1924, not guilty.

Q. Yes. A. Entered into bail on that day in the sum of $1,000 to traverse the indictment. On November 14th, there was an exoneretur as to the bail given on May 2, 1924.

Q. That is the previous bail, isn't it? A. That is the previous bail on Sica.

Q. Does the record state how much that was, the previous bail? A. $1,000, with Carmine Vigilanti as the surety.

Q. Well, what further record? A. Well, there is two indictments against each of these defendants. Now, do you want them separately or all together?

Mr. Matthews: Separate.

Q. I do not care as long as you get it straightened out in a comprehensive way. A. Well, that is indictment known as number 79 according to our file. Angelo Grande on the same indictment gave bail in the sum of $1,000, with Antonio Seretto as surety. That bail was exonerated; not that bail, but an exoneretur of bail taken on May 9th was exonerated. On February 6, 1925, there was a forfeiture of bail entered. On February the 13th, 1925, there was a new bail of $1,000 to traverse the indictment, with Antonio Seretto as the surety, to appear March the 9th, 1925. Joseph Juliano entered into bail in the sum of $1,000, with Antonio Seretto as the surety on November 14th, 1924. The bail given on May the 9th, 1924, was exonerated. February the 6th, 1925, there was a forfeiture of bail, and on February 13th there was a new bail of $1,000 given, with Antonio Seretto as surety, to appear March the 9th, 1925.

The Court: This is still number 79, Mr. Orr?

The Witness: That is number 79, yes.

A. (Continuing) And indictment number 80, Carmine Sica was indicted for illegal possession and transportation of liquor. On November 14th,



he plead not guilty. Entered into bail on the same day in the sum of $1,000, with Sylvester Piscotto as the surety, to appear November the 21st, 1924. On February 6th, that bail was forfeited. There has been no further proceedings on that indictment. Angelo Grande, indictment number 80, for illegal possession and transportation of liquor. Plead not guilty on November 14th. Gave bail in the sum of a thousand dollars, with Antonio Seretto surety, to appear November 21, 1924. On January the 2nd, 1925, he retracted that plea and plead *non vult* to illegal possession of liquor.

Q. Who is this, Grande? A. Grande. On February 6th, there was a forfeiture of bail. On February the 13th, there was an exoneretur of the former bail and a vacation of the forfeiture entered. On February 13th, he was sentenced to pay a fine of $500. Joseph Juliano was indicted for illegal possession and transportation of liquor, indictment number 80. On November 14th, he plead not guilty. The same day he entered into bail in the sum of a thousand dollars, with Antonio Seretto as the surety, to appear November 21, 1924. January the 2nd, 1925, he retracted his plea, and plead *non vult* to illegal transportation of liquor. On February the 6th, there was a forfeiture of bail, and on February the 13th, there was an exoneretur of former bail and vacated the forfeiture. On the same day he was sentenced to pay a fine of $500. That is the record.

Q. Were any proceedings against these men taken further than you have told us on indictment number 79? A. No, sir.

Q. Indictment number 80, on which these two men pleaded guilty and paid a fine, or were fined $500, was for the illegal possession and transportation of liquor, you say? A. Yes, sir.

Q. The other indictment, 78— A. 79.

Q. —79, was for breaking and entering, was it not? A. Yes, sir.

Q. The stealing of merchandise of the value of $4,000, goods and chattels of Albert Untermeyer, that is true? A. I have not read the indictment, Mr. Jayne. I know it is a charge of breaking and entering and larceny.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. On that indictment, your records last entered say that on February 13, 1925, new bail was given to appear for trial March 9, 1925, is that right, indictment number 79? A. The indictment, in which case is that, Sica, or—

Q. Sica, Grande and Juliano. They are all mentioned in that indictment, aren't they? A. They are.

The Court: He stated that in regard to Grande.

A. (Continuing) There was no new bail given as to Sica.

Q. No. A. The bail was exonerated, the bail of May 2, 1924, but he was still under bail.

Q. Well, what is your entry for Juliano and Grande under that indictment? A. On February the 13th, Juliano and Grande entered in bail in the sum of $1,000, with Antonio Seretto as the surety, to appear March 9, 1925.



Q. Yes. Who was in charge of the criminal business of the County on March 9, 1925? A. Why, Mr. Bolitho was still officiating.

Q. Trying cases in March, 1925? A. I do not say he was trying cases, but I was taking bail before him at the time.

Q. Yes. Was Judge Wilson sitting to try cases in March, 1925? A. I could not say, without referring to the records, whether he was or not.

Q. Have you got the records there? A. I would have to look that up, Mr. Matthews.

Q. When did Mr. Jayne take charge? A. That I couldn't say. Sometime in February, that was. I think the appointment was filed sometime in February for him to take charge of the criminal business in Morris County.

Q. Yes. Does your record show that these men were brought in on bench warrants originally? A. I haven't that record.

Q. Do you know that such a record does exist? A. I know that such a record—that bench warrants were issued.

Q. Whom were they issued by, do you know? A. They were issued by the County Clerk, signed by the County Clerk.

Q. Yes. A. On the indictments as they were filed.

Q. Yes. And where is that record? A. The warrants are handed over to the Sheriff. I do not know what he did with them.

Q. Doesn't the County Clerk keep a record of the bench warrants that he issues? A. He issues a bench warrant on every indictment that is filed.

Q. Yes. A. There is no record of each warrant kept.

Q. Where are the warrants upon their return? A. If they are returned, it would be filed with the indictment.

Q. But you do know that bench warrants were issued by the County Clerk and given to the Sheriff for service in these cases? A. Yes, sir.

Q. And you do not know whether they were returned or not? A. No, sir; I do not.

Q. The men were brought in, weren't they? A. They were, and plead to the indictment.

Q. Yes. So, in all probability, they were brought in under the bench warrants, weren't they? A. I think without question.

Q. What is the practice as to those returned bench warrants, where are they kept? A. They are filed with the indictment in the jacket.

Q. Yes. A. Kept for that purpose.

Q. You do not find them in that jacket, do you? A. I do not.

Q. Will you look again and see? A. I will make sure. (Referring to papers.) No, sir; they are not here.

Q. Then do your records show when these men were arraigned pursuant to that process? A. They do.

Q. When was that? A. On November the 14th, 1924, they were arraigned and plead not guilty.

Q. That is it. And the record shows a fine under one of the indictments, under what date? February 13th, is it, 1925? A. February 13, 1925, they were fined $500.

Q. So that the proceedings under indictment number 80 as to Juliano and Grande and Sica terminated thusly in fines of $500? A. Not as to Sica.



Q. Not as to Sica. As to Juliano and as to Grande? A. And to Grande.

Q. And the proceedings under indictment 79 as to Grande and Juliano are recorded finally in your records this way, are they not: February 13, 1925, new bail given for appearance for trial March 9, 1925? A. Yes, sir.

Q. And thereafter your records speak not? A. There is no further record.

Q. There is no further record? A. No, sir.

Q. Now, you have told us that you do not know whether Judge Wilson sat in March or not? A. I am unable to say.

Q. And what record will show it? A. I have to look up the minutes of that date to see.

Q. Have you them there? A. That I could not say, Mr. Matthews.

Q. Have you them here, or there? A. I might have some of them here.

Q. Yes. Supposing you look for March; it is only last March. A. No, sir; I have not.

Q. Well, where are they, please? A. They are probably in the office.

Q. How far away from here is the office? A. It will probably take me five or ten minutes to get them.

Q. Will you bring them up here later? A. I can; yes, sir.

Q. Yes. All right.

The Court: What particular point do you want to cover, who was sitting, or what?

Mr. Matthews: Whether anybody was

sitting to hear the trial of a cause in March, and when Mr. Jayne was functioning in that capacity.

The Court: All right.

Q. Just one more question. When you bring that record, will you please bring a copy of Mr. Jayne's appointment with you? A. Mr. Jayne's appointment is in evidence here.

Q. It is in evidence? A. Yes, sir.

Q. All right. Then we will look at that later.

Mr. Matthews: That is all for now.

Mr. Jayne: Daniel Marinaro.

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DANIEL MARINARO, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Marinaro, you were practicing law in the year 1924 at Morristown, were you not? A. I was.

Q. And did you become acquainted with Joseph Juliano? A. Did I become acquainted with him?

Q. Yes. A. I knew him.

Q. You knew him, did you? A. Yes.

Q. Did you know Grande? A.No.

Q. Did you know Sica? A. No. I knew a brother of Sica's, but I had never met this Sica.

Q. Were you consulted by Joseph Juliano concerning the complaints that had been made against him for his participation in the removal of certain property from the Untermeyer cottage at Kinnelon? A. I was.



Q. Where was that? A. That was at my office.

Q. Who was present? A. Mr. Juliano, Mr. Sica, Mr. Grande, and Pasquale Mutarella. They had been brought there that morning by Pasquale Mutarella.

Q. Well, did you talk to them? A. I did.

Q. And did you receive any money from them? A. No, not that morning. They consulted me about the case and wanted to know if—

Mr. Matthews: I object to what they wanted to know in the absence of Bolitho.

The Court: Yes. Never mind.

Q. Well, did anything further than a discussion of the case take place on that day or night, whenever it was? A. In what respect?

Q. Well, you have said that these men discussed this case or cases with you? A. Yes.

Q. Did anything else occur except a mere discussion of the matter? A. Nothing except that conversation took place between they and I.

Q. Well, did you see them again after that? A. I did.

Q. How soon after? A. I do not remember how soon afterwards; but it was sometime later.

Q. Yes.

The Court: Not the same day?

The Witness: No.

Q. Did you receive any money from them on this subsequent occasion? A. No, I did not receive any money, not from them.

Q. Yes. Well, on either the first occasion when they were in your presence and company, or on the second occasion, was any money transferred? A. There was.

Q. In your presence? A. There was.

Q. On which occasion? A. On the second occasion.

Q. Now, how much money? A. $900.

Q. And from whom to whom did the money pass? A. Mr. Juliano laid the money on my desk, and Mr. Mutarella picked it up.

Q. And it was in what amount? A. $900. The amount originally agreed upon was one thousand.

Mr. Matthews: I object to that.

The Court: Never mind about the agreement, Mr. Marinaro.

Q. Well, was any sum added to that money by anybody present? A. Mr. Mutarella added another hundred or, he didn't add it at that time, but he subsequently added another hundred to it, as he said—

Mr. Matthews: I object to that and ask it be stricken out.

The Court: Strike it out.

Q. Well, who took the money? A. Mr. Mutarella.

Q. Did you get some of it? A. $300.

Q. And what for? A. As my retainer to represent these men in court.

Q. Do you know what was done with the remaining $600? A. Only from what Mr. Mutarella told me.

Mr. Matthews: I object to that.

Q. Now, you say that you continued to represent them. Were you to represent, in consideration of that $300, the three men, Grande, Sica and Juliano? A. Yes, sir.



Q. They were indicted, were they? A. They were indicted.

Q. Did you know that they were indicted at the time the indictments were found? A. I did not.

Q. How did you learn that they were indicted? A. Mr. Juliano called me up.

Mr. Matthews: I object to that unless it was in the presence of Bolitho.

The Court: Well, "They had been indicted, but I did not know it at that time." Let it stand that way.

Q. Well, did Mr. Juliano know it before you did? A. He did.

Mr. Matthews: Now, I want to object to this testimony. He said, "Did Mr. Juliano know it before that time?" "He did." Now, there is no way of knowing except by hearsay; I think that is hearsay testimony, and I respectfully moved as fast as I could.

The Court: You see, Mr. Matthews, that question was just the kind of a question that necessarily called for a hearsay answer, and that is the kind of a question to which counsel ought to object promptly before it was answered. Now, I took particular note in this instance that the whole question was answered, and a question or two supervened before counsel made any objection at all, and you really must make your objections promptly.

Mr. Matthews: I arose to make my objection. It takes me time to get up. He is a lawyer; he knows he should not answer that question.

Argument

The Court: If you are in a hurry about making an objection, the Court will be willing to overlook the fact that you fail to rise when you make it; but when a question of that kind is asked, "Did Juliano know before you did?" why, any—I won't say any, but counsel of alacrity and diligence will get the objection in before the question is answered. Now, I agree with counsel that the question was incompetent and ought not to have been answered, but I do not think counsel ought to be allowed to speculate upon what the answer is going to be and let it come in and then rise and object and move to strike it out. That the courts cannot permit. I will be very glad to deal promptly and effectively with any proper objections made at any proper time. Go on with the case.

Mr. Matthews: I want to make my motion to strike it out on the ground it is so palpably, and to the Court so palpably hearsay, and on my own statement that I got there as soon as I could.

The Court: Well, the Court knows how fast you got there, of course, itself, and the motion to strike out is denied on the sole ground that it was made entirely too late, and that there was ample time to make it before the witness got the answer out of his mouth.

Mr. Matthews: Exception.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



Daniel Marinaro—Direct

Q. Now, did you see Juliano later after the indictments were found? A. Some short time afterwards; yes.

Q. Where? A. In Morristown, at my office, I believe.

Q. What occurred then? A. Why, we had to go to court to plead to the indictments then.

Q. Yes. A. And we went to court and plead to the indictments and gave—and renewed the bail at that time. I do not remember whether bail was renewed or the old bail was continued. I do not remember.

Q. Did you see the Prosecutor that day? A. Yes.

Q. Did you have any discussion with him that day concerning this case? A. No; not that day; but a few days previous after the indictments had been brought out.

Q. Yes. Where did this conversation between you and the Prosecutor relating to these cases take place? A. In the court room here; we were talking together alone.

Q. Yes. Well, now, what did you say, and what did the Prosecutor say to you? A. I asked the Prosecutor if it was true that these indictments had been brought out, and he says yes. Well, I said, "I understood that there were to be no indictments," and he says it couldn't be helped, anyhow, he says, "Nobody saw me about them."

Q. Yes. A. I says, "Didn't Patsy see you?" He says "No."

Q. Yes. A. I says, "They gave Patsy money," and he says, "Well, Patsy never saw me."

Q. All right. Anything further? A. And, subsequent to that, in his own office, after the indictments were found, he told me that on account of the Untermeyers being such influential people and because they had put their own private detectives on the case, that the indictments, had to be brought out, but that he was the one that had to try the indictments, and not worry about them.

Q. Well, did you see Juliano after that, after the occasion when he pleaded in court? A. Juliano informed me that he doubted whether—

Mr. Matthews: I object.

Q. Not what he informed you. Did you see him afterwards? A. Yes, I did.

Q. Well— A. I saw him at different occasions when he would come to see me about this case.

Q. Well now, in consequence of what he said on this occasion after the indictments had been found, did you go anywhere with him? A. I went to Rockaway one night with him.

Q. With who else? A. Mr. Mutarella and Mr. Grande.

Q. And where did you go? A. We went to the home of Fred Hubert.

Q. Yes. Did you see Fred Hubert? A. No. His mother was there. And we came away from there and met Fred Hubert out—just coming home, as we were leaving there.

Q. Yes. Anybody in your party talk to him? A. I did.

Q. Anybody else besides you talk to him? A. Mr. Mutarella.

Q. Did Juliano hear the conversation? A. He did; but he heard the conversation between Hubert and myself; but I do not know whether he heard it between Mutarella and Hubert, but he must have; he was right there.



Q. Now, later, still later, did you have some other conversations with the defendant, Prosecutor Bolitho, concerning the amount of money that you have mentioned, nine hundred and six hundred? A. Yes.

Q. Now, what were these conversations? Tell the conversations. A. That was after we had been to Rockaway. It was to the effect that these men had decided to employ other counsel. They were not satisfied the way things were going, and wanted their money back, and I told him that I had received $300, and I was ready to give it back to them, and he should give the other six hundred.

Q. Who is that? A. Mr. Bolitho.

Q. Yes. Well, anything further? A. Then he told me that he couldn't do it, because it wouldn't look right for him to pay money for me that I had got that way, and he told me to give it back—and I told him I couldn't do it because I didn't have it; and I told him at the time that I only had some money that belonged to some clients of mine, and mentioned their names to him, and he told me I better give back the money, and I told him I couldn't do it because it didn't belong to me. And, finally, these people were insistent about their money and wanted it back, and I went to him again, and he said, "You give them the money back." And with that, I did; and when I went to him to help make good this other money, he absolutely refused, saying that he did not have it himself, and he sent me to Dover to his partner

to get a note endorsed there, to put it through the National Union Bank. And his partner took it over there, but they would not discount it, and he told me to come back, and if Jim wanted to do anything for me, he ought to endorse the note and they would take his endorsement there, but he refused to endorse the note.

Q. Well, did you return some of the money? A. I did.

Q. How much? A. $400.

Q. Do you know whether the balance of it was returned or not? A. I have been informed that it has.

Mr. Matthews: I object.

The Court: Well, that will be struck out, the answer will.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. To whom did you give the $400? A. Mr. Mutarella.

Q. Was there a gun in your stomach when you gave it to him? A. No.

Q. Was there a gun in Mutarella's stomach when you gave it to him? A. I do not know.

Q. Whose client's money was it that Mr. Bolitho told you to take and give to— A. Mr. Keese from Towaco.

Q. Oh, that was the man that you had been arrested to— A. Yes, that is the man that Mr. Bolitho subsequently had me arrested, when I wouldn't tell him what I had said before the Elisor Grand Jury.

Q. Yes. And you were arrested, eh? A. I



was, by Mr. Bolitho's orders on a complaint of information and belief.

Q. Yes. And what was the complaint about? A. That I had given these people a—a check that had not been honored by the bank.

Q. And what was the check for? A. It was for mortgage money that I had collected for them.

Q. Yes. And you had given them such a check, hadn't you? A. At Mr. Bolitho's instigation.

Q. Well, you had given them such a check? A. Yes.

Q. Now, when was that check that you gave in this Kisik case that was no good? A. Subsequent—sometime after.

Q. Well, give us the date; never mind the after. A. Well, I am trying to remember the date, Mr. Matthews.

Q. All right. Go ahead, then; remember it. A. Sometime during the early part of this year.

Q. The early part of this year. Now, January is an early part of this year. Was it in that month? A. It was in—it was during the spring time.

Q. Well, March is the twenty-first day of spring; was it in that month? A. I do not know.

Q. The twenty-first of March, rather. A. I do not remember; it was during the spring, Mr. Matthews.

Q. Well, was it in March? A. I do not remember.

Q. Was it in April? A. It may have been.

Q. Could it have been in May? A. I do not know.

Q. Was it any later than May? A. It might have been, and it might not have been.

Q. Well, at any rate, you may be able to tell us when you collected this mortgage for the Kisiks? A. Oh, sometime during the early part of the year.

Q. Was it the early part of January? A. It may have been. It was—sometime prior.

Q. Well, will you say it was any later than January, sir? A. I do not remember, Mr. Matthews.

Q. How much was involved in that? How much mortgage money did you collect for the Kisiks? A. Oh, I do not remember. It was around $500.

Q. Was it a foreclosure of a mortgage? A. It was the paying off of a chattel mortgage.

Q. The paying off of a chattel mortgage? A. Yes.

Q. It was $712, wasn't it? A. That was the amount.

Q. Yes. And you gave him a check for $522, didn't you? A. Somewhere around that, yes.

Q. Yes. And do you remember when you gave him that check? A. I do not remember when it was; but it was—

Q. Was it the 7th of April, 1925? A. It may have been. I might be able to tell if I looked at my check stubs.

Q. Well, that check came back bad, didn't it? A. It certainly did.

Q. So that when Mr. Bolitho told you to use the mortgage money of your client, he wasn't telling you to do anything you had not already done, was he? A. Oh, but this was before that.

Q. Well, you used it anyway, did you? A. I did.



Q. Yes. And that is not the only money you have used of your clients, is it?

Mr. Jayne: I object to that.

Mr. Matthews: I think it is very competent to test this man's credibility. He comes here and testified that he participated in the venal proposition of bribing the Prosecutor of the County, and I think I am entitled to search his conscience as to his credibility. This is a pertinent question for that purpose.

Mr. Jayne: The law does not permit counsel to attack the credibility of a witness in that fashion. That is purely a collateral matter. I do not want to limit the interrogation of this witness at all, only within the limits of the law of evidence.

The Court: The question will be overruled.

Mr. Matthews: Exception, for the reasons I have stated.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Did you have any other clients' money at this time besides Kisik's? A. No.

Q. Did you have any of Mr. William Tunison's money at this time? A. No.

Mr. Jayne: I object on the same ground.

The Court: What did he say, no?

Mr. Jayne: He has not answered.

The Court: Did you answer?

The Witness: I started to.

The Court: You may answer.

The Witness: At this time? At what time?

Q. At the time that Mr. Bolitho told you to give the client's money to Grande, or to Juliano. A. I do not remember whether I did at that time or not.

Q. When did you have it? A. I do not remember that.

Q. Have you got it yet? A. No.

Q. When did you give that back?

Mr. Jayne: I object, your Honor please.

Mr. Matthews: I do not know how to test his credibility.

Mr. Jayne: That is not the proper way, I submit, to test his credibility. If your Honor permitted this line of questioning, he might go into all this young man's practice.

Mr. Matthews: No; we have not time for that.

The Court: I think this is outside of the reasonable limits of cross-examination, and will exclude it.

Mr. Matthews: Exception, the purpose of the question being to test his credibility.

The Court: Yes, sir.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. At the time that you were told by Mr. Bolitho to give a client's money to Juliano in repayment of the money you had extorted from him, did you have the Davis money? A. I never had. I never had any Davis money.



Q. Did you have any of Mrs. Fanshaw's money?

Mr. Jayne: I object. It is a persistent effort along the same line.

The Court: The question will be overruled. The Court has ruled generally about this matter.

Mr. Matthews: Exception, on the ground that I am seeking to test his credibility.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. And when were you arrested on the Kisik complaint? A. I do not remember the exact date. Sometime during the spring.

Q. How? A. Sometime during the spring; the late spring; sometime around there.

Q. When did you first see Bolitho about Juliano? A. Sometime during the latter part of last year, I believe.

Q. The latter part of 1924? A. Yes.

Q. Right? A. I believe so.

Q. When were you retained? A. I do not remember that; shortly afterwards.

Q. Shortly after you had seen Bolitho? A. No. Shortly after they had been brought in for the first time.

Q. When were they brought in for the first time? A. That I do not remember.

Q. Which indictment were you retained on, one or both? A. I was retained on the whole case generally.

Q. Yes. Did you plead them? A. I believe—

Q. When they first pleaded to the indictments, did you plead them? A. I believe I did.

Q. At that time, had you been retained? A. Yes.

Q. At that time, had you seen Bolitho? A. No. I had not seen Bolitho at that time.

Q. You pleaded them not guilty, didn't you? A. I did.

Q. You saw that they entered into bond under both indictments? A. I believe I did.

Q. Yes. And was a trial date set at that time? A. No. I—

Q. Who did you plead them before? A. Well, the first time, I think they were brought in and just gave bail to await the action of the grand jury, and that bail was given in the Prosecutor's Office.

Q. I see. That was in November, 1924? A. I do not remember the exact date.

Q. Now, was it directly after this that you saw Mr. Bolitho? A. I did not see Mr. Bolitho until after the—after the indictments had been brought in.

Q. Exactly. All right. Now, when the indictments were brought in, you had already received your retainer, hadn't you? A. I had.

Q. Yes. But it was after they were brought in that you saw Mr. Bolitho? A. After they had been brought in to plead to the indictments, do you mean?

Q. Yes. A. I saw him before they were brought in to plead to the indictments as I sat in the court room here; I talked apart to one side with him.



Q. And, of course, there was nobody within hearing distance of you? A. No.

Q. And what kind of a court day was it, a day for pleading? A. What is that?

Q. Was it a pleading day? A. I do not remember. There was something going on out here. We were standing right over that side there near your table.

Q. Yes. Other people, of course, in the court room at the time? A. Yes. There was other people here.

Q. Who succeeded you as counsel for Mr. Juliano? A. I believe Albert H. Holland.

Q. Yes. Did you discuss the giving back of money to Juliano before or after Mr. Holland became counsel for Juliano? A. I believe before.

Q. Before. And do you remember when Mr. Holland did become counsel for Juliano? A. I do not.

Q. What? A. I do not.

Q. You do not know? You do not know when you were discharged in the Juliano case? A. I do not remember. In reference to the question which you have just asked me, Mr. Matthews, I do not know.

Q. Do you remember when you were discharged as counsel in the Juliano case? A. Shortly before Mr. Holland was retained.

Q. And do you remember whether it was this year or last year? A. That was this year.

Q. You are certain of that? A. I believe it was.

Q. Well, if I were to tell you that Mr. Holland was the attorney for these people on the 27th of December, 1924, according to records that are

available, would that change your memory any as to— A. You might be right on that. I do not remember those dates.

Q. Well, can you give us the date of your first talk with Bolitho in this court room about the Juliano case? A. I really do not remember.

Q. Well, it certainly was not in the month of December, was it? A. I do not remember.

Q. Was it before or after the finding of the indictments? A. It was after the finding of the indictments.

Q. All right. Was it before or after the pleading to the indictment? A. That I do not remember.

Q. And you had been retained, of course, at this time, right? A. Up to the time of the pleadings, yes.

Q. You were retained before the indictments were found, weren't you? A. Yes, I was, up to the time of the pleadings to the indictment.

Q. Yes. A. It was after they plead to the indictments that I was discharged.

Q. Yes. You do not remember whether it was after the pleading to the indictments that you first talked to Bolitho or not? A. I couldn't say with any degree of certainty if it was or not.

Q. But, at any rate, whenever it was, it was here in the court room? A. That was one occasion.

Q. Yes. And on that occasion, you were talking to him and said that you understood they were not to be brought out, meaning the indictments, is that right? A. Yes.

Q. Who told you that? A. Mr. Mutarella.

Q. Oh, you did not know that from Bolitho? A. No.



Q. And Bolitho said, "Well, nobody saw me," and you said, "Patsy was to see you?" A. That is right.

Q. Was Patsy your runner in this case? A. I do not know what you would call it, whether you would call it a runner or not.

Q. Well, was he the procurer of the business for you? A. No. He was not the procurer of the business for me; but he used to bring me cases once in a while.

Q. Well, did he bring you this case? A. I believe he did.

Q. Yes. Brought Juliano to you, didn't he? A. I knew Juliano before this, though.

Q. Now, how long after Bolitho and you talked thusly in the court room here, how long a time elapsed before you talked to Bolitho again? A. That was after the pleading of the indictments.

Q. After the pleading to the indictments. Was it the same day? A. No.

Q. How long after? A. I really do not remember.

Q. It was in his own office? A. Yes.

Q. Was he all alone this time? A. Yes.

Q. And you had no one with you? A. No one with me.

Q. All alone. And then he said that the Untermeyers were so influential, that their own private detectives were on it, and the indictments had to come out? A. No.

Q. All right. Tell me what? A. That conversation occurred shortly after the indictments were found.

Q. Yes. Well, I am asking you for the second conversation with Bolitho. The first conversa-

tion was in this court room, you and he alone, nobody hearing you. That was the one in which you said you told him you thought they weren't to be brought out, and he said, "Well, nobody talked to me about them," and you said, "Well, Patsy was supposed to see and fix them up?" A. Yes.

Q. And then you said you saw him again, and this time in his own office? A. Yes.

Q. He was all alone, and you had no one with you? A. That is right.

Q. Now, on this occasion, didn't you say that he said to you, "Well, the Untermeyers are very influential?" A. Yes.

Q. "They had their own private detectives on this thing, and, of course, it had to come out, but I will take care of it; I am going to try the indictments, and I will take care of it?" A. That is right.

Q. What was the date of this conversation? A. I do not remember.

Q. Well, was it December or January? A. I really cannot say with any degree of certainty.

Q. Then you had another talk with Bolitho, didn't you, about this case? A. I only had two talks, if I remember correctly, with Mr. Bolitho.

Q. Well, I thought you had said that you had a later talk with him after the visit of yourself and Juliano and Mutarella to Rockaway to Hubert's house? A. Oh, that was only when I went to him about—that they wanted the money back.

Q. All right. You talked with him, didn't you? A. Yes.

Q. What month was that in? A. I do not remember.



Q. Well, was it in the year 1925? A. It may have been, and it may have been the year 1924.

Q. Yes. Well, was Mr. Holland then counsel, or were you? A. I do not remember.

Q. You do not remember. Well, was there anybody present besides you and Bolitho? A. No.

Q. No. And do you remember where the meeting was between you and Bolitho alone? A. In his office.

Q. In his office. Do you remember the time of day? A. No. It was during the day.

Q. You do not remember the day of the week? A. I do not.

Q. Nor the month? A. Nor the month.

Q. But you remember the conversation? A. Yes, I certainly do.

Q. Yes; all right. Now, this conversation, you told him the men had decided to have another lawyer? And they wanted their money back? A. That is right.

Q. And you said, "I am going to give mine back," didn't you? A. Yes.

Q. And that was the time he told you to give your clients' money back to Juliano, wasn't it? A. No. I think this conversation took place sometime later.

Q. Oh! How much later? This is another conversation, or the same one? A. No. This conversation, I think, took place after they had retained Mr. Holland as their counsel.

Q. Yes, yes. Now, you do not know, though, when they retained Mr. Holland? A. I do not know, no, I could not say.

Q. And you do not know when it was? A. No, I do not.

Q. Why are you changing your testimony now to say that it was after they retained Mr. Holland? A. Because as you mention these facts it brings them back to my recollection a little bit more clearly.

Q. And interferes with your story a bit, doesn't it? A. Well, do you think so?

Q. I do very much. Don't you? A. No.

Q. Well, you are mistaken. A. That is the province of anyone.

Q. Are you finished? Now, see if you can answer this one for me: When was it that you told Bolitho that you were going to give yours back? Was it in 1925? A. It may have been. I think it was.

Q. Was it in January, February, March, April? A. I do not remember.

Q. And on that occasion he told you to give the Kisik money back? A. I told him that was all the money I had.

Q. Yes. And did you give the Kisik money back to Juliano? A. That was the money I used.

Q. Yes. How did you give it to him, by check? A. I did.

Q. The check drawn on where? A. Drawn on the National Iron Bank.

Q. When did you give him that check? A. I do not remember.

Q. How do you know it was the Kisik money? A. It was all the money I had.

Q. It was all you had at that time? A. Yes.

Q. Was it in April you gave him the Kisik money? A. I do not remember.

Q. You do not remember when you gave Juliano the money back? Who was there when you



gave it back to him? A. I didn't give it to Juliano. I gave it to Mutarella.

Q. Oh, you gave it to Patsy? A. Yes; because they wanted the money back from him. They said, "We gave it to you, and we don't know the kid. We gave it to you."

Q. They said that they "didn't know the kid; we gave the money to you"; is that right? A. That is right.

Q. But the kid knew Juliano, didn't you? A. Well, they meant they didn't know me in this transaction.

Q. Oh! But you were there in the office when they laid the nine hundred cold simoleons on the table, weren't you? A. I was.

Q. So you knew pretty much about it, didn't you? A. I did.

Q. They knew you had gotten a fee out of it, didn't they? A. They did.

Q. Where did you give this check to Mutarella, in your office? A. I did.

Q. What day? A. I do not remember.

Q. Have you got your check, your returned check? A. No. Because it—the check was dated ahead, and then, at the time that he came back, I had been deliberating with Mr. Bolitho, and I went to the bank and got the money in cash.

Q. Oh! A. And they gave me back my check, and I gave him back—I gave him the cash for it.

Q. What bank did you go to to get the cash? A. National Iron Bank.

Q. How did you get it, on a check? A. A counter check.

Q. Have you got that check back? A. I do not know. I may have.

Q. Have you got an account at the National Iron Bank yet? A. Yes.

Q. Do you remember when this was that you gave the counter check at the National Iron Bank? A. No, I do not.

Q. How much was the check for, the counter check? A. $400.

Q. $400. Well, you only owed $300? A. But I had to give back four.

By the Court: Q. Mr. Marinaro, you say that your first check to Mutarella was given back to you? A. Yes.

Q. What did you do with it when he gave it back to you? A. I immediately destroyed it, but the—I think the stub to that is in my check book.

Q. Yes. You do not recollect destroying the counter check, though? A. No, I—I may have it, and I may not.

By Mr. Matthews: Q. Well, why do you say you may have? Isn't it your custom to keep your checks? A. My vouchers?

Q. Yes. A. Returned vouchers?

Q. Yes. A. It is.

Q. Why do you say you may not have it? A. I never recall having looked for it since.

Q. Do you recall when you got the Kesse mortgage check?

Mr. Jayne: I object to it.

The Court: What has that to do with this case?

Mr. Matthews: It is the statement of this man on his cross-examination that Mr. Bolitho told him to give the money of a client back to this man Juliano. I asked him for whom, and he said for Kesse.



The Court: No. You mean Kisik.

Mr. Matthews: I pronounce it that way.

Mr. Jayne: If it is the same person, I do not object.

The Court: If you mean the parties on whose mortgage he collected, that is all right; but somebody else, it is not.

Mr. Matthews: It is the same one, your Honor please.

The Court: When did you get the Kesse mortgage check?

The Witness: I do not remember.

Q. Whom did you get it from? A. I think it was King & Vogt.

Q. King and Vogt here in town? What did you do with it? A. Deposited it.

Q. And your bank account shows that deposit? A. I believe it does.

Q. What bank did you deposit that in? A. In the National Iron Bank.

Q. I show you a paper dated March 6, 1925, and ask you is that your signature?

Mr. Jayne: I prefer to see these papers, your Honor please—

Mr. Matthews: You will. I want him to identify them.

Mr. Jayne:—before the question is asked; otherwise, I cannot know whether to object to the question or not.

Mr. Matthews: I am only asking him, is that the signature?

The Court: Counsel is entitled to get the paper identified by the signature, and I suppose to get it identified by the date appearing on it.

A. That is right.

Mr. Matthews: May I have that marked for identification? Paper dated March 6th, on which the signature is identified, I offer for identification.

Paper marked Exhibit D-2 for Identification.

Q. I show you a paper dated March 31, 1925, and ask you is that your signature? A. That is.

Mr. Matthews: I ask, please, to have that marked for identification.

Paper marked Exhibit D-3 for Identification.

Q. I show you a third paper dated April 6, 1925, and ask you is that your signature? A. It is.

Mr. Matthews: I ask that that be marked for identification.

Paper marked Exhibit D-4 for Identification.

Q. Do you know, Mr. Marinaro, when the money was given back to Juliano finally by everybody that gave it? A. I do not exactly remember.

Q. Can you give us the month? A. I can't, but I know that I didn't have to make restitution of the Kesse money until sometime later.

Q. When did you make restitution of the Kesse money? A. After Mr. Bolitho had me apprehended.

Q. And when were you apprehended? A. I do not remember that.

Q. Did you give bail after the apprehension? A. I did.

Q. And before whom? A. The recorder in Chatham.

Q. Now, you said that when you told Mr. Bolitho that you could not give your clients' money back because it did not belong to you, he said to you, "You give them the money back," and he sent you down to his partner; I take it that is Mr. Dick O'Connor, is it? A. That is right.



Q. When did you go to Mr. Dick O'Connor? A. Shortly after that conversation.

Q. Yes. But when, in what month? A. I do not remember the month nor the date.

Q. Why is it that you cannot remember the month or the date in any of these meetings, and you can remember the words of the conversation? A. Well, the words are more liable to stick with you than the particular day. A lot of times you do things and you don't know it is the day, but you know what you have done.

Q. Yes. But sometimes you remember the year that they happen in, don't you, and sometimes the month? A. Yes; sometimes.

Q. You do not remember the month or year, do you? A. I do not remember the month, no.

Q. No. A. The year was 1925.

Q. You do not remember the month? A. No.

Q. You cannot tell me whether it was January or May, can you. A. (No response.)

Q. Well, you went to Mr. O'Connor, did you? A. I did.

Q. And you saw Mr. O'Connor in Mr. O'Connor's office, did you? A. I did.

Q. Did he sign a note for you? A. I think he did.

Q. You think he did? A. Yes.

Q. Did you discount the note? A. No. He was to have discounted it.

Q. Did he discount it? A. I do not think so.

Q. Did you get the money? A. No.
Q. Did he go to a bank with you? A. No.
Q. He did not? A. No.
Q. Are you sure? A. Absolutely sure.
Q. Did anybody else give you a note or an endorsed note at this time? A. Mr. Mutarella endorsed a note.
Q. Yes. Anybody else? A. No.
Q. Didn't you at this time have another note? A. Another note?
Q. Yes. A. With who?
Q. Another note. I am asking you, with whom? A. I do not—I do not recollect any other note.
Q. Didn't you have a note for $3,000 in the bank at this time?

Mr. Jayne: I object unless it has some relation to this case.

Mr. Matthews: All these transactions have relation to his credibility.

Mr. Jayne: On that ground, I object.

Mr. Matthews: Whether he did not have money to pay the note back or not, and had to use his clients' money.

The Court: He may answer this question. Did you have another note for $3,000?

The Witness: I never had a note for $3,000.

Q. Did you have another note discounted and in the bank at this time unpaid in any amount? A. Oh yes.
Q. Whose note was it?

Mr. Jayne: I object.



The Court: What has that to do with this case; credibility again?

Mr. Matthews: Not only his credibility, but so that I may contradict him, your Honor please; foundation for testimony.

The Court: Well, if it is on an immaterial matter, you cannot contradict it.

Mr. Matthews: I can only say to the Court that I consider it very material.

The Court: The question is overruled.

Mr. Matthews: Exception, please, sir.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. How long have you been practicing law in Morris County? A. About five years.
Q. Yes. How long have you been practicing in the criminal courts of Morris County? A. About the same time.
Q. About the same time. And you tell us that at the time that Juliano wanted his money back, the only money, available money, that you had, was the Kesse money? A. That is right.
Q. Isn't it true that you had gotten former Prosecutor Mills to endorse a note for you?

Mr. Jayne: Objected to.

Q. At this time?

Mr. Matthews: How can I contradict him unless it is true?

Mr. Jayne: I want to be generous to them, but my adversary is taking some advantage of me. I do not hesitate to say to the Court I have objected repeatedly to these matters as being collateral, and your

Honor has ruled upon the matter many times; but counsel is persistent in his interrogation of this witness upon matters which are wholly foreign to the issue of the case.

Mr. Matthews: I might reply to the Prosecutor, if your Honor please, that he now states he had no other available money at this time. I want to ask him the positive question, didn't he have money available at this time through a note endorsed by a specific person, so that they can contradict it if it is not true.

The Court: You may answer the question.

A. No.

Q. Have you—A. Mr. Mills did not endorse a note for me at that time.

Q. Didn't you have money available at that time through the note that the former Prosecutor had endorsed for you? A. The only time former Prosecutor Mills endorsed a note for me was some three years ago.

Q. Three years ago? A. Yes.

Q. You are certain of that, aren't you? A. Either two or three years ago, which note was being discounted, and every three months there would be a renewal.

Q. Yes. Now, wasn't there a renewal of that note at this time? A. I do not remember. I do not think so.

The Court: Supposing there was; it would be merely a carrying along of the debt originally incurred, wouldn't it?

Mr. Matthews: It would, ordinarily,



your Honor please, but the way these finances are carried on it is not. They issue a new note and then "kite" it sometimes.

Q. Just one more question, now: When you brought Hudock into court to plead, you did not bring Hudock, did you? A. I brought the man that I had met in New York.

Q. Yes. You did not know whether he was Hudock or not? A. I really did not.

Q. Don't you know in your heart that it was not Hudock? A. I do not know in my heart that it was not. I only know that the man I met in New York, Mr. Matthews, was the same man that came out here and pleaded.

Mr. Matthews: That is all.

A. (Continuing) And before the time that I saw him in New York, I had never seen him before that.

Mr. Matthews: That is all.

Mr. Jayne: That is all, Mr. Marinaro.

Joseph Juliano.

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JOSEPH JULIANO, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Juliano, where do you live? A. 260 Eighth Avenue.

Q. Newark? A. Yes, sir.

Q. Are you willing to testify as to what relations you had with Danny Marinaro and Patsy Mutarella in these cases in Morris County?

Mr. Matthews: I object to that question, your Honor please, as immaterial, his willingness or unwillingness.

Mr. Jayne: It is extremely material. He is under indictment, and he does not have to testify unless he wishes to.

Mr. Matthews: I do not think if this man wants to claim privilege or exemption he should be prompted.

The Court: Let the question be answered.

Mr. Matthews: Exception, as prejudicial comment.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

Q. All right. You may answer the question.

The Court: Are you willing to testify as to your relations?

The Witness: Why, yes, sir.

Q. Now you, Mr. Juliano, were indicted on two indictments in this county, weren't you? A. Yes, sir.

Q. One for breaking and entering the Untermeyer—some building of the Untermeyer property, and the other for transporting liquor, is that true? A. Yes, sir.

Q. Did you see Patsy Mutarella about this case? A. When?

Q. And Danny Marinaro? Did you ever go to see them about those two cases? A. When?

Q. After—

The Court: Any time.



Q. —or before the indictments were found. A. I went to see my counsel, Mr. Marinaro.

Q. That is before the indictments, before you were indicted? A. Before I was indicted?

Q. Yes. A. Well—before I was indicted.

Q. Yes. You wnow what I mean by indicted? A. Yes.

Q. By the grand jury? A. Yes.

Q. You were first arrested, weren't you? A. Yes.

Q. And you gave bail, I suppose? A. Yes, sir.

Q. And then, later, you were indicted, is that right? A. Yes, sir.

Q. Did you see Marinaro before you were indicted? A. Why, in order to have him for my counsel, sure, I must have seen him.

Q. Well, did you see Patsy Mutarella at any time? A. Why, about my case.

Q. Well, was he present when you talked to Marinaro about your case? A. He was, at different times, but—

Q. Now, just these specific points I want to ask you about. A. Yes.

Q. And counsel may cross-examine you on them. Was anybody else with you, was Grande or Sica with you, when you consulted your lawyer, Marinaro, or did you see him alone? A. For fees?

Q. Yes. A. For the fees, we were all together, three of us together.

Q. Did you turn over any money to Marinaro? A. Yes, sir.

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

Q. How much? A. We gave Marinaro $300 apiece.

Q. $300 apiece? A. Yes, sir.

Q. And there were three of you? A. Yes, sir.

Q. And that makes $900? A. Yes.

Q. Was any more money added to that? A. Mr. Marinaro says that he wanted $1,000 for the three of us, and I told him all we could pay was $900. He says, "Well, I got to have a thousand dollars." Mr. Mutarella voluntarily says to me, he says, "Joe, if you need $100, I will loan it to you." And I says to Mr. Marinaro, I says, "Why, ain't $900 enough?" He says, "No. I got to have a thousand." So Patsy won't take the hundred from me. I says, "All right." And so I took the hundred from Patsy. That made one thousand.

Q. So there was nine hundred plus one hundred that Mutarella spoke about? A. Yes, sir.

Q. Now, you were later indicted, weren't you? You were later indicted by the grand jury? A. After paying the fees, yes.

Q. And did you discharge Marinaro? A. After I was indicted?

Q. Yes. A. Why, yes.

Q. There has been some reference made to a trip to Rockaway. Did you go to Rockaway with Danny Marinaro and Mutarella? A. After I had discharged Marinaro, yes.

Q. Yes. A. Yes, sir.

Q. Did you go by automobile? A. Yes, sir.

Q. Who was along? A. Why, I think it was Patsy, Danny and some other fellow and myself. I do not remember the other fellow.

Q. Where did you go at Rockaway? A. Up some hill some place, I just cannot remember where.



Q. Did you stop at a house there? A. Stopped in the middle of the street.

Q. Did you meet somebody? A. I did not know who the fellow was. I seen him talking to some old lady.

Q. Yes. A. An old lady.

Q. After that, where did you go? A. They explained to me that it was—

Mr. Matthews: I object, now, to any conversation.

The Court: Yes. All right.

Q. Do you know who the woman was?

Mr. Matthews: Again I object to that, because it would have to be hearsay.

Mr. Jayne: I do not think so, your Honor please, on that theory.

Mr. Matthews: He said he met an old lady out there; he did not even know where he was.

Mr. Jayne: He might have known who the lady was.

Mr. Matthews: Well, if I do not object, I cannot get it on.

The Court: Well, your objection may be all right; but the question on its face is proper. Do you know who the old lady was?

The Witness: I did not know when I seen her, no.

The Court: All right.

Q. Then did you go away from there then? A. Yes. We went away from there.

Q. Did you meet anybody else, or any of the party meet anybody else? A. We stopped at another home.

Q. Well, before you stopped at some other home, did you see anybody else, or did Patsy or Danny see anybody else, and talk to anybody? A. I seen him get off and talk to somebody, and he told me it was Mr. Hubert, or Hoover.

Q. Mr. Hubert. Had you seen Hubert before? A. I seen him, yes.

Q. You had seen him before that? A. Yes, sir.

Q. You knew him, then, did you, or, at least, knew who he was? A. I knew who he was.

Q. Who talked to him there at Rockaway? A. Mr. Marinaro.

Q. And did you stop anywhere else? A. We left there.

Q. Did you stop at any other house? A. Down at—then we went down the hill.

Q. You went down the hill. Yes? A. And we stopped at Mr. Bolitho's house.

Q. By Mr. Bolitho, you mean this man's house, the defendant's house? A. Yes, sir.

Q. Do you know him? A. Yes, sir.

Mr. Matthews: What was that?

Mr. Jayne: He says "Yes, sir."

Q. Who went in the house? Anybody go in the house, Mr. Bolitho? A. Danny and Patsy.

Q. Where did you stay? A. I did not want to go in. They says they had to stop there. Mr. Mutarella says he had to stop there to see him—

Q. Yes. A. —on some buildings, or something.

Mr. Matthews: What is that? I did not hear the last part of what you said.

The Witness: I says about buildings,



and so forth. I says, "That don't interest me."

Q. Well, did you stay out in the car? A. I stood out, and then he called me in again when he got on the porch.

Q. Who called you in? A. Mr. Mutarella.

Q. Yes. How do you know the Prosecutor was there? How did you know Mr. Bolitho was there? A. How did I know he was there?

Q. Yes. A. Well, I am speaking now from after I come out.

Q. You went in, then, did you? A. Yes.

Q. Were you introduced, and did you talk to Mr. Bolitho? A. I was not introduced to him at all.

Q. You knew him, did you? A. After going out, then they—but I knew who he was.

Q. Then the man, the defendant, is the man you saw there that day? A. Yes, sir.

Q. How long were you there? A. Why, I should judge about ten or fifteen minutes.

Q. Do you know anything about what was done with the money that you turned over in the office of Danny Marinaro?

Mr. Matthews: I object to that question as calling for a hearsay answer, unless he knows it by actually seeing it.

The Court: Do you know anything about what was done with the money of your own knowledge?

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Witness: I gave it to my counsel as fees. That is all I know.

Q. And did you get it back? A. He didn't give it to me. When I went and asked him for it, he says he didn't have no money; he was broke.

Q. That is Marinaro you are referring to now? A. Yes, sir.

Q. You demanded it back, did you? A. I beg your pardon?

Q. You asked for your money back? A. Well, I told him I had another lawyer, and I didn't want to use him no more. He says to me, he says, "Well, Joe, what can I do? I give you my services."

Q. You cannot tell what the conversation was between you and him. All right.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. You had given this $900 to Marinaro as fees, Mr. Juliano, hadn't you? A. Yes, sir.

Q. And that is what you thought you gave it to him for, and what you intended to give it to him for? A. Yes, sir.

Q. And he wanted a thousand dollars; he wanted a thousand dollars? A. Yes, sir.

Q. And Mutarella volunteered to loan the other hundred, didn't he? A. Yes, sir.

Q. And that hundred was also given as fees? A. Yes, sir.

Q. You never knew Mr. Bolitho in this transaction, did you? A. No, sir.

Q. Did you ever have any promise from Mr. Bolitho, or anybody on his behalf, in this transaction? A. No, sir.



Q. And when you went to Mr. Bolitho's house, was there ever anything said about this transaction in the presence of Mr. Bolitho? A. Not in regards to my case.

Q. And when they went into the house without you, they told you they were gonig in to see him about some buildings, didn't they? A. Yes.

Mr. Matthews: That is all, Mr. Juliano.

Mr. Jayne: That is all. Pasquale Mutarella.

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PASQUALE MUTARELLA, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. You can sit down, Patsy. A. Thank you.

The Court: You have been sworn?

The Witness: Yes, sir.

Q. Were you at Danny Marinaro's office when Juliano paid over $900? A. Yes, sir. I beg pardon?

Q. Were you at Dan Marinaro's office, or were you present, wherever you were, when $900 was put up by Juliano and the other men? A. Yes.

Q. You say you were? A. Yes.

Q. Where was it? A. He don't talk about $900. He talk about $1,000. He says, "You got any other money?" He say, "What do you want?" He say, "I need a hundred dollars."

Mr. Matthews: I object to this conversation.

The Court: The only question is whether you were there when this $900 was put up?

The Witness: Yes, I was there.

The Court: And where was that?

The Witness: Up at Danny Marinaro's office.

The Court: Up at Danny Marinaro's office. All right.

Q. Patsy, what I want to know is, what became of that money? What was done with the money? A. Oh, I do not know, Mr. Prosecutor. We leave it with Danny Marinaro, this money. I do not know anything about it after.

Q. You don't, eh? Did you get any of it? A. No.

Q. You never got any of it? A. No, Mr. Prosecutor.

Q. Did you have to pay some back when you had to go back? A. No, I never pay anything back, Mr. Prosecutor.

Q. You didn't? Did you see Hubert up at Rockaway one night? A. Yes, one night, yes.

Q. Did you talk to him that night about this Grande case?

Mr. Matthews: I object, because Mr. Bolitho was not present. "Did you talk to him about the Grande case?" is the question. It calls for a hearsay answer.

Mr. Jayne: I will withdraw it.

Q. Did you see Mr. Bolitho that same night? A. The same night, Mr. Bolitho? Well, I see Mr. Hubert.

Q. You saw Mr. Hubert. Did you also see Mr. Bolitho? A. I think I did; he was in the house.

Q. Juliano was with you that night, wasn't he? A. Yes.

Q. And Danny and you? A. Yes.



Q. Anybody else? A. That is all; the three.

Q. That is all. Did you ever get your hundred back? A. Yes, I have the hundred dollars back.

Q. You put up $100, did you? A. Yes, Mr. Prosecutor.

Q. Did you get it back? A. I have it back.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: I will take up now the eleventh count, if your Honor please. Is Lieutenant Ryan in court?

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WILLIAM J. RYAN, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Ryan, where do you live? A. Madison.

Q. And what is your occupation? A. Policeman.

Q. Were you a policeman in the Borough of Madison in October, 1923? A. Yes, sir.

Q. Was your attention directed to one Joseph Q. Smith—A. Yes, sir.

Q. —on an occasion in October, 1923? A. Yes, sir.

Q. When was that? A. When was it?

Q. Yes. A. About the 13th of October.

Mr. Matthews: I did not hear you, please?

The Witness: The 13th of October.

Mr. Matthews: Thank you, sir.

Q. And what occurred in relation to this man Smith? A. Well, he was driving through Madison, and he run into another car, and he run—kept right on going; he tried to get away; but he was brought back to the police station by a special officer, and he agreed there to settle all damages, and the other officer that was on duty let him go. Then he went away from there again, and he run into a fence. Then he was brought back again to the police headquarters, and I wasn't there until that time, and then somebody had told me that there was some fuss or somebody—

Mr. Matthews: I object to what somebody had told him and ask it be stricken out.

The Court: Yes. Well, somebody told you something?

The Witness: Well, that is what drew my attention to his car, if that is what you wanted to know; so I went up to look at his car. There was six cases of beer in it; so I brought it in to the police headquarters.

Q. Yes. Smith too? A. Smith was already in there at that time.

Q. Well, what occurred after that? A. Well, we had our recorder come there, Mr. Schoneberger, and I wanted to make a complaint against Mr. Smith for having this liquor in his car.

Mr. Matthews: Pardon? I did not hear that, sir.

The Witness: I wanted to make a complaint against Smith for having liquor in his possession and transporting it, and our recorder wouldn't



take the complaint, because he said it belonged to the Prosecutor.

Mr. Matthews: I object to what he said.

Q. Well, had there been a telephone call there that night? A. Yes. Smith telephoned up to the Prosecutor's office.

Q. Yes. A. And Mr. Hubert came down and put up $25.00 cash bond for his appearance on another date.

Q. That is Fred Hubert, you mean, the county detective? A. County detective, yes.

Q. And he bailed the man that you had under arrest—A. Yes, sir.

Q. —at the Borough Hall? A. Yes, sir.

Q. All right. Well, then what occurred? A. Well, he went—he was let go, that is all; he went home.

Q. Yes. What happened after that? A. Well, we kept the beer there a week or so, I guess, and finally Constable Dave Conkling came down with an order from the Prosecutor to turn it over to him—

Q. I want to show you a paper—A. —which I did.

Q. —and ask you if you received that paper? A. Yes, sir; I did.

Q. And that is the paper that you called, or mentioned, as an order? A. Yes, sir.

Q. Who delivered that to you? A. Dave Conkling.

Q. And then what did you do? A. Why, I gave him the beer, and he took it away; he took it up here, I guess.

Q. Did he give you a receipt for it? A. Yes, sir; he did.

Q. Was the receipt made on the day that you turned the beer over to him? A. Yes.

Q. Is that the receipt? A. Yes, that is it.

Q. Did you take any further action against Smith? A. Why, he had to come back again and had a hearing, and paid a small fine for running away after causing an accident, and for having no driver's license in his possession. And he also had to repair the fence that he broke down.

Q. What was done with the charge that you wanted to make against him for transporting liquor? A. Why, our recorder wouldn't take the charge.

Mr. Matthews: I object to that question, your Honor please, as calling for hearsay testimony. "What was done with the charge that you wanted to make against him?"

Mr. Jayne: He has already testified that he wanted to make a charge.

The Court: Well, there was no charge made, apparently, in person against him.

Mr. Jayne: That is what I am trying to ascertain, whether there was or not.

The Court: Well, you better ask him in that shape, then. Was any charge made by you, or—

Q. Was any proceeding taken against him for the transportation of liquor? A. No, sir.

Q. Why not? A. Why, the recorder wouldn't take the charge.

Mr. Matthews: I object as calling for a conclusion.

Mr. Jayne: It may not be a conclusion. I am ascertaining what occurred.



The Court: Well, do not say "Why not?" Was any action taken? No. Now, I guess you have to stop at that point don't you?

Mr. Jayne: Does your Honor overrule my question?

The Court: I think I do.

Q. Did you endeavor to make a complaint before the recorder?

Mr. Matthews: I object.

A. Yes, sir.

Mr. Matthews: He has already testified to that. He said the complaint was not taken; the court would not take the complaint.

Q. Did the recorder take your complaint? A. No, sir.

Mr. Jayne: I think he has already testified to that.

The Court: I do not know whether he has or not. I will let him do it again.

Q. Was any warrant issued? A. Not concerning the liquor question, there wasn't.

Q. Well, you said there was a telephone conversation, a telephone call made? A. He telephoned to the Prosecutor's office to tell somebody that was there—

Mr. Matthews: I object to that—

A. (Continuing)—the trouble he was in.

Mr. Matthews: —conversation, your Honor please.

The Court: Your objection is sustained.

Q. Did you talk to the Prosecutor's office? A. No, sir.

Q. Or to the Prosecutor, rather? A. No, sir.

Q. Very well. Now, did you find, or did you ascertain, of your own knowledge, that liquors in addition to the beer, were in this automobile? A. Why, yes, I did. I did not see the liquor.

Q. What additional liquor?

Mr. Matthews: I object to that, your Honor.

The Court: Why?

Mr. Matthews: "Did you find there was additional liquors in this automobile of your own knowledge?" He has testified that he went to the automobile and found nothing but beer in it.

Mr. Jayne: No, he did not say so.

Mr. Matthews: I may be mistaken, but I have taken it down in my notes.

The Court: Well, supposing he did so testify; is there any reason why he should not correct his testimony if it is wrong?

Mr. Matthews: No. But tell us if it is wrong, and he wants to correct it, I have no objection, if that is the basis of it.

Mr. Jayne: He was an officer investigating this matter. I think he is entitled to disclose all the information he acquired, provided it is not hearsay.

Mr. Matthews: I object to this as calling for a hearsay answer. Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.
(Seal)

The Court: Mr. Ryan, did you find any other kind of liquor besides beer in the automobile?



The Witness: No, sir.

Q. Do you know whether there was any?

Mr. Matthews: That is certainly calling for some other information, and—

The Court: Question overruled.

Mr. Jayne: Cross-examination.

CROSS-EXAMINATION by Mr. Matthews:

Mr. Matthews: Do you offer that receipt and order?

Mr. Jayne: I will.

Mr. Matthews: Yes, please. I want to examine on them.

Mr. Jayne: I will offer the paper which he calls an order, and the receipt.

Q. Recorder Schoneberger is the recorder of the town of what? A. Madison.

Q. Is he still recorder? A. No, sir; he is dead now.

Q. Dead since this occurred? A. Yes, sir.

Q. And Smith was fined by Recorder, Schoneberger, was it? A. Yes, sir.

Q. For reckless driving and going away after an accident? A. Yes, sir.

Q. And he paid a fine? A. Yes, sir.

Mr. Matthews: I have no objection, I forgot to tell you, for the introduction of those two papers in evidence; and I have no further questions to ask Lieutenant Ryan.

Two papers marked Exhibits S-33 and S-34 in evidence.

Mr. Jayne: Louis Dallin.

LOUIS M. DALLIN, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Dallin, you live in Madison? A. Yes, sir.

Q. Do you remember the day when Smith's car was in Madison? A. Yes, sir.

Q. October the 13th? A. Yes, sir.

Q. Did you see the car? A. Yes, sir.

Q. I just want to inquire from you whether or not there was liquor in that car in addition to the beer? A. Yes, sir.

Q. There was? A. Yes, sir.

Q. Can you say how much? A. (No response.)

Q. Was it in bottles? A. Three or four bottles.

Q. Besides the beer, I mean, other than the beer? I am not asking about the beer. You understand that, do you? A. Yes, sir.

Q. Was there whiskey in the car besides the beer, or so-called whiskey? A. (No response.)

Q. What do you say? A. There was a couple of bottles in there.

Q. All right.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. What were you at that time, one of the police officers of the town? A. No, sir.

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

Q. How? A. Laborer.

Q. A laborer. You were riding with Smith? A. No, sir.



Q. Were you in the accident? A. No, sir. I was going home to dinner.

Q. And did you go to the police station? A. No, sir.

Q. Were you a witness before the recorder? A. No, sir.

Q. How did they know that you knew anything about it? Who sought you out? A. They accused me of stealing the stuff.

Q. Oh! Who accused you of stealing it? A. The police down in Madison.

Q. The police officers accused you of stealing it? A. Yes, sir.

Q. Then you really ought to know how much was there if you stole it, oughtn't you? Did you steal it? A. No, sir.

Q. How many were there beside you? A. Oh, a gang around the car.

Q. There was a gang around the car. What time of day was this? A. Noon time. It was on a Saturday, around Saturday noon.

Q. I see.

Mr. Matthews: That is all.

RE-DIRECT-EXAMINATION by Mr. Jayne:

Q. What street was it on, Mr. Dallin? A. On Ridgedale Avenue.

Q. I am not acquainted with the streets. Would that be the street over which one would pass to come to Morristown? A. No. It was right on the corner going toward Florham Park.

Mr. Matthews: What is that? I did not hear you.

The Witness: It was on Ridgedale Ave-

nue in front of the Ridgedale Inn, a street going towards Florham Park.

The Court: I guess most of us know Ridgedale Avenue. Mr. Jayne does not, perhaps.

Mr. Jayne: I wanted to bring out what street it was.

The Court: Probably most of the jury know, personally, where Ridgedale Avenue is.

Mr. Jayne: That is all.

By Mr. Matthews:

Q. That is the road leading to Florham Park, isn't it? A. Yes, sir.

Mr. Matthews: That is all.

Mr. Jayne: Edwin Orr.

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EDWIN ORR, recalled as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Orr, have you examined the records of the Court of Oyer and Terminer, Quarter Sessions and Special Sessions to ascertain if any proceedings were ever taken against Joseph Q. Smith for the illegal transportation of liquor since October 13th, 1923? A. I have.

Q. Were any proceedings taken as shown by the records? A. There is no record of any.

Mr. Jayne: Cross-examine.



CROSS-EXAMINATION by Mr. Matthews:

Q. There is no record of any proceeding of any kind against Joseph Q. Smith, is there? A. Not in this transaction.

Q. That is what I mean; in this transaction. A. No, sir.

Q. And in the month of October, 1923, there is no record of this transaction? A. There is no record of any transaction of this kind.

Q. All right.

Mr. Matthews: That is all, Mr. Orr.

A. I might say, Mr. Matthews, I have that record that you wanted to know about sometime ago.

By Mr. Matthews:

Q. Thank you. A. On March the 9th, Judge Wilson was holding court.

Q. On March the 9th. Is this the permanent record of the County? A. That is the minute of the record, the actual record.

Q. This is subsequently copied into a book, is it? A. It is. It is copied underneath there ready to be put into a book.

Q. I am prompted by Mr. Bolitho to ask you, isn't this a bastardy proceeding before Judge Wilson and not a court for the trial of indictments? A. It is. That is just what you asked me. I produced the record.

Q. Was Judge Wilson sitting, does your record show that he was sitting for the trial of indictments on that day? A. It does not.

Q. It shows that he was not, doesn't it? A. It shows that he was not sitting.

Q. Thank you.

Mr. Matthews: That is all.

The Court: This is March 9th?

The Witness: 1925.

The Court: What is the significance of that date?

Mr. Matthews: That was the date of the return of the trial of the indictment of Juliano and Grande, wasn't it?

The Witness: It was.

Mr. Jayne: I would like to ask a question of Daniel Marinaro, which I omitted to ask, which is general on all counts.

The Court: All right.

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DANIEL MARINARO, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Marinaro, after the Elisor Grand Jury was either applied for, or taken up its work, investigation, did Mr. Bolitho send for you, ask to see you, and have a conversation with you concerning your attitude in this investigation? A. I had numerous conversations with Mr. Bolitho while the grand jury was—the Elisor Grand Jury was being selected and while it was in session.

Q. Well, what did he say to you? A. Well, he —we discussed the probabilities of the indictments.

Q. No. I do not mean the general conversation. But did he say anything as to whether or not you should speak of the cases which are involved in this indictment? A. Oh, he told me to make sure that Patsy kept quiet, because he and I were the crux of the whole situation.

Mr. Jayne: Cross-examine.



CROSS-EXAMINATION by Mr. Matthews:

Q. You have been in the library here for the last half hour with Detective Parker, haven't you? A. I have been from the time that I last testified until now.

Q. Yes. And you expected to be called for this question? A. I did not.

Q. When was this conversation that he told you to be sure that Patsy kept quiet? A. I do not remember. It was either while the grand jury was in session, or just while it was being selected.

Q. Not after it had found indictments? A. No.

Mr. Matthews: That is all.

Mr. Jayne: That is all. Is Mr. Hegarty in court?

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WILLIAM A. HEGARTY, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Hegarty, where do you live? A. Morristown.

Q. You are an attorney at law of New Jersey? A. I am.

Q. And you were assistant prosecutor under James H. Bolitho, weren't you? A. I was.

Q. And did you begin your term as assistant prosecutor at the same time that Mr. Bolitho became Prosecutor? A. Mr. Bolitho was sworn in before I was.

Q. Well, how much before? A. I think it was just about a few days difference.

Q. And you continued to be assistant prosecutor until what time? A. January 1st, 1925.

Q. You were discharged, were you? A. I was not.

Q. Did you resign? A. I did.

Q. Now, do you know Daniel Marinaro? A. I do.

Q. Do you know Patsy Mutarella? A. I do.

Q. You knew them when you were first made assistant prosecutor? A. I knew them, yes, at that time.

Q. You performed your duties as assistant prosecutor in the Prosecutor's Office here in the court house, did you not? A. Yes; and in the court room.

Q. That was your office, was it? A. Yes.

Q. And that is the only office of the Prosecutor in the building, isn't it? A. Yes.

Q. Now, did you see Danny Marinaro and Patsy Mutarella come to the office? A. Yes.

Q. At any time while you were there? A. Yes, I have.

Q. Many times? A. Quite a number of times.

Q. Were they frequent visitors? A. Well, Mr. Marinaro more often than Mr. Mutarella.

Q. Now, they have come there at times when Mr. Bolitho was there? A. Yes.

Q. Often? A. I couldn't say just how many times he came.

Q. No, I know you couldn't. But they were frequent visitors, were they? A. Quite a number of times.

Q. Did you overhear any of the conversations



between them? A. No; except to general things that were pending at the time.

Q. But with respect— A. Nothing with reference to any of the criminal business of the County.

Q. Why? A. I do not know why.

Q. Well, was it the usual practice for Mr. Marinaro or Mr. Mutarella, or both, as the occasion might be, to go into a room, another room, different from the one you were in?

Mr. Matthews: I object to this as the usual practice being immaterial to this issue.

The Court: Answer the question.

Mr. Matthews: Exception, please.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Well, usually they retired to the private office, or the room that was called the privat office.

Q. The door closed? A. Yes, sir.

Q. That office is next to the one you were in? A. Yes, sir.

Q. Now, would they close the door? A. Yes, sir.

Q. Were you able to hear then what was discussed in the private office? A. I was not.

Q. Did that frequently occur? A. I should say it happened a number of times during the time I was there. I couldn't say.

Q. Both with Mr. Marinaro and with Mr. Mutarella? A. Well, there were times when Mr. Marinaro came alone to see Mr. Bolitho, and he

discussed—I do not know what he discussed with him; but I know he entered the room with him alone.

Q. There were times when they both came together? A. There were times when they both came.

Q. There were times when Mr. Mutarella came and Mr. Marinaro did not? A. I believe there were several times.

Q. Yes. Just by way of general inquiry, do you recall whether you were in the office at the time of this Smith matter? A. I was.

Q. In Madison. Do you recall whether that beer in that case ever reached the Prosecutor's Office? A. It did.

Q. It was brought there, was it? A. Yes.

Q. Do you know what became of it? A. I think it was removed to the cellar, and when the cellar was cleaned out, I do not know where it was removed to.

Q. Do you remember when that occasion arose? Do you remember the day? I do not mean the date, but do you remember? A. It was on a Saturday, I know.

Q. Was the Prosecutor in the office? A. Yes, he was.

Q. Were you present on any occasion when he was called on the telephone concerning that case? A. Yes, I was.

Q. Do you recall what Mr. Bolitho, the defendant said? A. My recollection of the conversation that Mr. Bolitho had on the telephone was to the effect that Mr. Smith was then engaged in some work for him.



Q. Yes. A. I had nothing but a passing interest in it.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. And also, anent the Smith situation, do you remember that paper, Mr. Hegarty? Do you remember having seen it at any time, in your official capacity? A. I probably have seen it, but I just do not—

Q. You do not remember now? A. —remember now.

Q. And, of course, Mr. Hegarty, there were other men came to see the Prosecutor during your time as assistant? A. Yes, sir.

Q. And they also went into the other room and the door was closed, wasn't it? A. Yes, sir.

Q. The treatment of Marinaro, or Marinaro and Mutarella, was not any different from any other private conference with other men, was it? A. Not to me; they always went in there the same as anybody else.

Mr. Matthews: That is all. Thank you, Mr. Hegarty.

RE-DIRECT EXAMINATION by Mr. Jayne:

Q. You had charge of the records of the Prosecutor's Office, largely, didn't you? A. To a great extent; not entirely.

Q. And you had knowledge then of the lawyers who represented defendants in criminal cases in this County, didn't you? A. Yes, sir.

Q. Well, after Mr. Bolitho was appointed Prosecutor of the County and you assistant prosecutor, particularly during the early part of the

term, was there any lawyer who had as many criminal cases defending the defendants, criminal business with the Prosecutor's office, as Daniel Marinaro?

Mr. Matthews: I object to that as immaterial to this issue.

The Court: No. I do not think it is. I think I will allow that.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Offhand, I would say that he probably represented the greater number.

Q. Yes.

Mr. Jayne: That is all.

RE-CROSS EXAMINATION by Mr. Matthews:

Q. Who were the other lawyers that had some business? A. Well, the balance of the business seemed to be interspersed between Mr. Romine and Mr. Ely and Mr. Meyerson, and various other attorneys had a few cases.

Q. Yes. Do you know, Mr. Hegarty, as a lawyer in this County, practicing, that Mr. Marinaro also had about the same number during Mr. Mills' administration? A. Well, at or about that time, I was in New York City.

Q. Oh, I beg your pardon. I thought perhaps you were here all the time. A. No. I was not.

Mr. Matthews: That is all, Mr. Hegarty.

Mr. Jayne: That is all.

The Court: Ladies and Gentlemen, due



to the manner in which counsel have expedited the evidence in this case, the matter has reached a stage where the availability of testimony for the day is about exhausted and both counsel are agreed that if agreeable to the Court and the Jury, we may as well adjourn until tomorrow, so that there will be no further evidence today. The Court will adjourn until tomorrow at ten o'clock promptly.

(Recess at 3:54 o'clock p. m.)

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Morristown, N. J., September 16, 1925, 10:00 o'clock a. m.

Trial Resumed

THIRD DAY

The Court: Anything further, Mr. Jayne?

Mr. Jayne: Your Honor please, you perhaps recall that at the time I was submitting the evidence which intended to support the allegations of the count of failure to prosecute or the suppression of a case in violation of the prohibition law by Fleming at the Chester Hotel, the count in which Mr. Stewart Bettens testified, and Mr. Eagles, I reserved and asked your Honor for the purpose of reserving the right to call another witness whom I then

called and did not respond. So I would like the privilege of calling him.

The Court: Very well.

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RICHARD J. DONEY, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Doney, where do you live? A. Kenvil, New Jersey.

Q. Do you know the Fleming Hotel or Chester Hotel at Chester? A. Yes, sir.

Q. Have you ever visited that hotel? A. Yes, sir; several times.

Q. Do you know the former prosecutor, Bolitho, the defendant? A. Yes, sir.

Q. Did you ever see him there at that hotel? A. Yes, sir.

Q. On more than one occasion? A. Yes; several times.

Q. Where in the hotel have you seen him? A. In the bar-room.

Q. Have you drank with him there? A. Yes, sir.

Mr. Matthews: I object as immaterial to this issue.

Q. Did you?

The Court: Objection overruled.

Mr. Matthews: Exception, please.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



Q. Were you there on one occasion when the Prosecutor came? A. Yes, sir.

Q. And was he in the bar with you? A. Yes, sir.

Q. Did he stand at the bar? A. Yes, sir.

Q. Was he served with anything there?

Mr. Matthews: I object to this as immaterial to this issue, your Honor.

The Court: Overruled.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Answer? A. Yes, sir.

Q. You say yes, sir? A. Yes, sir.

Q. With something to drink? A. Yes, sir.

Q. More than one drink?

Mr. Matthews: I object to all of this questioning as immaterial to the issue. I will rise each time, if your Honor so desires.

The Court: The Court is gratified with the conduct of counsel which is so often disregarded by a good many of the lawyers that it is necessary to rise when addressing the Court, and wishes to express its appreciation, Mr. Matthews. The objection is overruled. Take your exception.

Mr. Matthews: Exception.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Now, tell us just what occurred. A. What do you mean?

Q. On the occasions you are speaking of. A. Sir?

Q. What happened there? What did you see? A. All I see was liquor served over the bar there.

Q. To whom? A. Well, to—

Mr. Matthews: I object to that question, your Honor please, on the same ground.

The Court: Is this when Mr. Bolitho was present, you mean?

The Witness: Yes, sir.

The Court: And can you fix approximately the time?

Mr. Jayne: Yes; I was going to ask him that.

The Witness: I cannot say what time it was, now. I just do not remember.

Q. At generally what time? Can you locate it in general? Summer time, winter time? A. Oh, about in the summer time.

The Court: During his term as Prosecutor?

The Witness: Yes, sir.

Q. What summer was it, this past summer, or the summer before this past summer? A. The summer before.

Q. All right. Now, you were about to say liquor was being served; that is as far as you got. A. Yes, sir.

Q. I asked you, to whom?

Mr. Matthews: I take an exception.

The Court: Yes. You may have your objection and exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



A. Sir?

Q. To whom? A. To most everybody who was in the bar at the time.

Q. Did you have some? A. Yes, sir.

Mr. Matthews: I object to that as immaterial, your Honor please.

The Court: No; I do not think that it is.

Mr. Matthews: Exception.

The Court: You may have your objection to this whole line. I suppose it will be safer if you make your objection from time to time.

Mr. Matthews: I had just as soon object to it, the whole line, all questions that have to do with Bolitho's presence at this time, or the conduct of Bolitho at this time in the hotel.

The Court: All right. You may take it in that form; that is satisfactory.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. How many drinks did you see, as far as you can recall, served to the Prosecutor on this occasion? A. I cannot just recall now how many. There was more than one set up while I was there. I was there about an hour, I guess.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: That is all, Mr. Doney. Is Florence Rice in court? (No response.)

Mr. Jayne: Bruno Shubert. I call this witness out of order. The witnesses are all under subpoena that I am calling.

The Court: Who was the last one you called, Florence?

Mr. Jayne: I called Florence Rice.

The Court: A woman?

Mr. Jayne: Yes. Her testimony ought, in the order of proof, to precede the testimony of this witness.

The Court: Well, is it necessary in order to connect up something?

Mr. Jayne: It really is. This witness is corroboration of her.

The Court: Well, you may have him sworn. Be sworn, Mr. Shubert.

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BRUNO SHUBERT, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Shubert, where do you live? A. Montville.

Q. What is your business or occupation? A. Automobile mechanic.

Q. Do you know Florence Rice? A. I do.

Q. Where does she live? A. Down at Montville. I live in her place.

Q. And what was her business in the year 1924? A. Hotel.

Q. 1923 and 1924? A. Hotel.

Q. In what hotel? A. The Florence Inn.

Q. That is at Montville? A. Yes, sir.

Q. Do you know former Prosecutor Bolitho? A. I know him.



Q. Do you know Frederick Hubert? A. I know him.

Q. Were you at the Florence Hotel at Montville during the year 1924 when former Prosecutor Bolitho and Hubert visited that hotel?

**Mr. Matthews:** I object, if your Honor please, unless the date is definitely fixed as to the time and the count this is connected with. The year 1924 would not be a fair allegation.

The Court: Yes. I do not know what count this is on, anyhow.

Mr. Jayne: This is the tenth count. June.

The Court: June, what year?

Mr. Jayne: June 26, 1924.

Q. Were you there? A. Yes, sir.

Q. Did you see Mr. Bolitho there? A. I do not remember seeing him, but I was told to—

Q. Yes. You were told to do something? A. Yes, sir.

Q. And what did you do?

Mr. Matthews: Now, I tried to rise to that objection. "I was told to do something" is hearsay testimony, and I move to strike it out. The witness was hesitating, and Mr. Jayne supplied it. I trust your Honor will agree with me. I wanted to show the Court that my objection was timely. I think that is a hearsay answer, and I move that it be stricken out.

The Court: It will depend to some extent by whom he was told. I do not think that question in its present form is competent.

Mr. Jayne: I will withdraw it, your Honor please, rather than discuss it.

Q. What did you do? A. Why, I went out and took about a box of Scotch and a box of rye and put it in the car which was standing in the back yard.

Q. Yes. Now, by box of rye, what do you mean? A. Whiskey.

Q. Rye whiskey? A. And a box of Scotch whiskey.

Q. And was it in bottles? A. Yes, sir.

Q. How many bottles in a box? A. Twelve.

Q. Twelve? A. Yes, sir.

Q. And that was twenty-four bottles? A. Yes, sir.

Q. Do you recall what kind of a car it was? A. No. I do not remember.

Q. Did you see who came in it? A. As far as —I could not tell exactly.

Q. Did you see who went away with it? A. No. I do not understand.

Q. You understand my question, do you? A. That is a question I cannot answer.

Q. You know former Prosecutor Bolitho, don't you? A. I know him. The man give me a sentence; that is all. I know him the time he give me the sentence. I didn't know him before that.

Q. Well, did you see him there at the hotel? A. When I saw him, I would not know him anyhow, at that time.

Q. You did not know him at that time? A. No; it was afterwards.

Q. Did you ever take these two boxes out of the car when you put them in it? A. Yes, I took the two boxes.



Q. What did you do with them? A. Put them in the car.

Q. Well, did you ever handle them after that? A. After that?

Q. Yes. A. No. I didn't handle them. I put them in the car. That is all I did.

Mr. Jayne: Cross-examine.

Mr. Matthews: I move, if your Honor please, that this testimony be stricken from the record on the ground that there is no proof that the defendant was concerned in it, or that it was his car.

The Court: It will not be stricken at this time. It is subject to be connected up, and you may renew your motion later on.

Mr. Matthews: I have no cross-examination.

Mr. Jayne: That is all. Florence Rice? (No response). I re-call Mr. Hegarty.

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WILLIAM A. HEGARTY, re-called as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Hegarty, as assistant prosecutor, were you familiar with the men who were employed by the Prosecutor in the official work of the office? A. I was.

Q. Did you, in a general way, have to do with their bills? A. In a certain way, I did have something to do with the bills.

Q. The preparation of them, and so on? A.

The young lady used to type them, and invariably I took their affidavits to the bills.

Q. You were generally familiar,— A. Yes, sir.

Q. —as assistant prosecutor, with those who were employed by the Prosecutor, were you? A. At the outset, I used to check up the work they did, and all that.

Q. Now, to your knowledge, was Joseph Q. Smith ever employed by the Prosecutor? A. I do not know whether he was ever employed or not.

Q. Well, to your knowledge? A. No. Not to my knowledge.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. You do know that sometimes, for the transportation of confiscated liquors, there were trucks or automobiles commandeered by the men working for the Prosecutor? A. Yes.

Mr. Matthews: That is all.

RE-DIRECT EXAMINATION by Mr. Jayne:

Q. Did you ever have any knowledge of Joseph Q. Smith acting as a truckman in that capacity? A. No, sir.

Mr. Jayne: That is all.

Mr. Matthews: That is all, thank you.

Mr. Jayne: Is Florence Rice here in court? (No response). Mr. Downs? (No response).

The Court: Mr. Downs is probably downstairs, isn't he?

Mr. Jayne: I sent down for him and he



is not there. He was not there a moment ago, and the information was that he had left Madison on the ten o'clock car. I am very reluctant to hold up the progress of the case, but I do want to call this woman Florence Rice, and I have asked one of the officers to determine whether she is intending to appear, and I am advised that she is on the way.

The Court: Well, of course, that response "on the way" is the indefinite response that you get in many thousand cases when a witness is expected and does not come. Have you any information as to when Mrs. Rice left Montville or left her home or wherever she is coming from?

Mr. Jayne: She left before ten o'clock, my information is.

The Court: To come here from Montville, is that right?

Mr. Jayne: Yes.

The Court: Well, it would take half an hour, anyhow. There is Mr. Downs.

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GEORGE DOWNS, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mr. Downs, you are the County Treasurer of the County of Morris, are you? A. I am.

Q. How long have you been County Treasurer? A. I am entering on my seventh year.

Q. And then you were County Treasurer,

obviously, in October 1923 and in November—
A. Yes, sir.

Q. —of the year 1923? And you, as Treasurer, would have knowledge of the disbursements of the County funds to any officers in the employ of former Prosecutor Bolitho, during his term, would you not? A. I would.

Q. Can you say from your knowledge of the accounts of the Treasurer's Office whether or not one Joseph Q. Smith was in the employ of the County under the Prosecutor of the Pleas? A. I can say that he was not paid anything through my office.

Q. He was not paid? A. He was not paid anything.

Mr. Jayne: Cross-examine.

Mr. Matthews: No questions.

Mr. Jayne: That is all.

The Court: Mr. Matthews, have you had a chance to look over that abstract (of the indictment)?

Mr. Matthews: Yes, if your Honor please. I with reluctance have to say to the Court that I object to having it go to the jury.

The Court: Could it be amended in any way satisfactory to you so as to shorten it up?

Mr. Matthews: I thought that the taking of any paper that was not an exhibit or the indictment into the room would be objectionable.

The Court: All right. That is all right.

Mr. Jayne: Well, I am in this situation, which I have already described. I have



done my utmost by subpoenaing the witness. It was my present intention of calling the woman Florence Rice, and then I desired to add some explanation to the Court with regard to further action, and rest the State's case.

The Court: Well, I am wondering whether we cannot proceed for the present as though Mrs. Rice had appeared and testified, with a preliminary statement as to what you think she would say and thereby save time, with the privilege of putting her in when she does come, putting on her testimony?

Mr. Jayne: I do not know.

The Court: You do not agree to that?

Mr. Matthews: No, your Honor, because I think I ought to have the testimony itself rather than my good friend's impression of it.

The Court: Well, you recognize that the Court is entitled to control this matter, in its discretion?

Mr. Matthews: Of course, the Court's discretion I gladly accede to, but I would put in whatever objection I see on the record for my client.

The Court: Yes. Mrs. Rice has been subpoenaed?

Mr. Jayne: Yes. She has been in court, I think, since the start of the case with the exception of yesterday, when she was taken ill here in court, or the day before at the closing of the session, and was unable to appear yesterday and did not

appear today. She has been here every day, so I am informed; I have not seen her. My present application, then, is that your Honor, in the exercise of your discretion with respect to the government of this case, permit me to call Florence Rice.

The Court: What do you expect that she will testify to, if called?

Mr. Jayne: I expect her to testify that she was conducting a hotel and selling liquor; that she was frequently visited by former Prosecutor Bolitho and also by Frederick Hubert; and that on the occasion to which Mr. Bruno Shubert referred, these men came there and were served with liquor, and had a general discussion to the effect that she might sell liquor and would not be molested by Prosecutor Bolitho and his office; that the Prosecutor then requested of her two cases of whiskey, one of rye and one of Scotch; that she complied with that request, and that Bruno Shubert, who was an employe, I think, at that time, did take out the case.

Sheriff Estler: If your Honor please, I think she is in the yard now.

Mr. Jayne: That testimony, I think, is sufficient to support the count.



FLORENCE RICE, sworn as a witness on behalf of the State, testified as follows:

Direct-examination by Mr. Jayne:

Q. Mrs. Rice, where do you live? A. Montville.

Q. And how long have you lived there? A. About—I do not know; seven or eight years.

Q. You were residing there then in June, 1924, were you? A. Yes.

Q. What was your business at that time? A. Hotel.

Q. What is the name of your hotel? A. Why, The Florence Inn.

Q. Do you know James H. Bolitho? A. Yes.

Q. You knew him at that time? A. Yes.

Q. Did you know Frederick Hubert at that time? A. Yes.

Q. Did Mr. Bolitho ever visit your hotel around that time? A. Yes.

Q. Did Mr. Hubert? A. Yes.

Q. On more than one occasion? A. No, not Mr. Bolitho.

Q. I see. He was— A. Mr. Hubert was there.

Q. What for? A. Oh, he just stopped in; that was all.

Q. Mr. Bolitho, you say, called there? A. Once.

Q. Yes. And anyone with him? A. Fred Hubert.

Q. Yes. Did you have any conversation with him? A. Oh, yes.

Q. What did you talk about? A. Oh, nothing

much, only just—he said they wanted some sandwiches, and they were on the way from Paterson.

Q. Did they talk about the hotel business? A. I do not remember it.

Q. Was any request made of you— A. No.

Q. —that day? A. No.

Q. Was there any liquor there? A. Yes.

Q. Did the Prosecutor drink any? A. Yes.

Q. Did you furnish it? A. Yes.

Q. Was any request made for liquor, either requested by Mr. Bolitho or Mr. Hubert in Mr. Bolitho's presence, to give them some liquor other than that which they were drinking? A. Why, I gave Hubert two cases, a case of rye and a case of Scotch.

Q. Twelve bottles in a case? A. Yes.

Q. How did they come to your place that day? A. By automobile.

Q. Yes. Do you know Bruno Shubert? A. Yes.

Q. Was he present? A. Yes.

Q. Was he there in the place that day? A. Yes.

Q. How was the liquor taken, given to them? A. Why, Bruno put it in the back of the car.

Q. In what car? A. Why, I do not know what kind of a car it was.

Q. Well, was it the car in which they came? A. Yes. They had a car.

Q. Did you request him to do that? A. I told Bruno to, yes.

Q. Did they take the cases of liquor away with them? A. I believe so.

Q. Your hotel was subsequently padlocked by



decree of the Federal Court, was it not? A. Yes.

Q. Was anything said to you as to whether or not Mr. Bolitho would ever raid you? A. No.

Q. What did he say about it? A. Who was that?

Q. On this occasion when Mr. Bolitho and Mr. Hubert were there? A. About raiding me?

Q. Yes. A. No, they didn't say anything about raiding me.

Q. They did not say a thing, either that he would or that he would not? A. No. He never made any remarks of that.

Mr. Jayne: Cross-examine.

CROSS-EXAMINATION by Mr. Matthews:

Q. Did he ever make any promises to you in consideration of the liquor? A. Who is that?

Q. Mr. Bolitho. A. No, sir.

Q. Was the place raided by the Prosecutor afterwards? A. Afterward?

Q. Yes. A. Well, I do not know, Mr. Matthews. I was not home when that happened.

Q. Well, there was a raid afterwards on the place? A. Yes; but I do not know anything about who was there, or anything.

Q. I see. Do you remember what day Mr. Bolitho and Mr. Hubert were there? A. What day?

Q. Yes. A. No.

Q. The indictment says the 26th of June. Would that refresh your memory whether it was then or not? A. Well, I could not just remember the date.

Q. Your padlock decree was entered against your place by the Federal authorities on the 4th

of June, wasn't it, Mrs. Rice? A. I guess it was the 4th of June, yes.

The Court: What year?

Mr. Matthews: 1924.

Q. Did Mr. Bolitho ask you for this case of liquor, Mrs. Rice? A. No. The way he come to get it was, that he said, "That is a good drink," and I said, "Do you want a drink for yourself?" He didn't ask for it or make any remarks about it or anything.

Mr. Matthews: That is all, thank you, Mrs. Rice.

RE-DIRECT EXAMINATION by Mr. Jayne:

Q. Was this visit to your place by Mr. Bolitho after you had been padlocked by the— A. Oh, no, before; more than a year before.

Q. All right. A year before—I am confused about dates here, somebody is, you are or I am. You were not padlocked, then, at the time— A. No.

Q. —that Mr. Bolitho— A. I was not padlocked then. That was a year before I was padlocked.

Q. You were in business there then? A. Yes.

Mr. Jayne: That is all.

If your Honor pleases, before resting the case on the part of the State, I should like, with your Honor's approval, to make this brief explanation of count 9, and another three counts which relate to the same matter, which I think are the second, third and fourth counts. In regard to the second, third and fourth counts, a male witness of considerable importance has been



pursued by a process server for sometime before the opening of this case on Monday the 14th, and from all the information I have been able to secure, he has departed to that popular resort known as the State of Florida, which state has been heretofore mentioned in this investigation. The female witness, I am informed, is actually ill in bed and under the care of Doctor Charles D. Gordon. The case with respect to those counts relates in general to one situation. I hope that your Honor will not ask me to disclose, in the interests of the State, anything further than to say to you that in the sum and subject matter of those counts are involved other defendants, and that the State, whose interests I am trying to advocate, feels that it is in the interest of justice that I should not press those two counts in this case. So that I will not ask the Court or the Jury to consider the guilt of the defendant under those counts which relate to the Bright-Winship matter, two, three and four, and what is known as the Weber matter, which I think is the ninth count.

The Court: Wait. I will see if that is right. Yes.

Mr. Jayne: With this explanation the State rests.

Mr. Matthews: Your Honor please, I respectfully move for the direction of a verdict as to counts two, three, four and nine, first of all on the Prosecutor's statement.

The Court: I suppose there is no objection?

Mr. Jayne: No objection to that.

Mr. Matthews: I further move—

The Court: A verdict is directed on counts two, three, four and nine of acquittal, there being no evidence to support them at this time.

Mr. Matthews: And now, if your Honor please, with respect, I move for the direction of a verdict as to count one known as the Hudock count for the reason that the State has failed to prove the allegations of the count which are before your Honor, and which I remember to have been that Bolitho accepted money from Marinaro for the purpose of suppressing the prosecution of Hudock; and, if your Honor will remember, it was three-fold; for the purpose of lessening the penalty which Hudock ought to have gotten, and for the purpose of not bringing Hudock before the Grand Jury or, rather, before a court for trial on the second indictment.

The Court: What matter is this?

Mr. Matthews: Number one, Hudock count. (Argument).

Mr. Matthews: Now, since the allegations allege that Mr. Bolitho accepted $300 for a specific purpose, and since there is no evidence in the case to show that Mr. Bolitho got $300 for a specific or any purpose, and since the evidence fails to show the accomplisment of the alleged promised purposes, it seems to me that the State



as failed to prove that count, and I move a direction on that count.

The Court: Your motion will be denied. Enter your exception.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: I now come, if your Honor please, to count two.

The Court: No.

Mr. Matthews: No. That is out.

The Court: County five is the next one.

Mr. Matthews: Yes. I believe that is the Dolimpio count. In that count, the Prosecutor was alleged in the indictment to have taken money from Dolimpio for the purpose of suppressing his prosecution. The testimony in the case was given by Mutarella and by Dolimpio himself, and is contradictory as to the amount given; but there is testimony on both their parts that a certain amount of money was given. The allegation, however, of the count is that this money was given and accepted for the purpose of refraining from prosecuting the said Dolimpio. The facts of the case and the evidence are that the Dolimpio case was carried through to its final conclusion before the grand jury, and that there was no indictment; Mr. Orr's testimony being that there are no records to show that the case was not dismissed by the grand jury, and I think it was incumbent upon the

State to show that the case was not before the grand jury or was not dismissed by the grand jury, in order to prove its contention that Mr. Bolitho took money to suppress a complaint against this defendant. My contention is, therefore, that the count has not been proved within the purview of the requirements of the law on the allegations of the count, count five, the Dolimpio count.

The Court: The motion is denied. Enter your exception.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: The next count which we have to consider is the Mingardi count. That is the count in which Bolitho is also charged to have refrained from prosecution of one Mingardi, and the allegations are that he was paid money, and I think the evidence, all of the evidence, is showed by the statement of Mutarella. The State failed to prove the allegations of the count that there was a failure to prosecute because of the fact, again, as I say, that the witness, Mr. Orr, said that, as far as his records which he produced in court, showed that there was no court action as to the trial of the cause; but the Clerk very generously said that the records of the grand jury were not available, and I think the State has failed to prove, therefore,



that there was not a termination by dismissal by the grand jury. Therefore, with the legal reasons summarized, that the State has failed to prove the allegations of the count, I move to dismiss that count.

The Court: Motion denied. Enter your exception.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: We now come to count seven, which is called the Untermeyer count. This was a count in which Mr. Bolitho was alleged to have gotten money, I think the sum was $600 in this case, to suppress and stifle and lay off, as the wordly expression is, the prosecution of three Italian thieves, Juliano, Grande and another whose name I do not remember, but who is an Italian—Sica, I think that is it. In consideration of the money, he was supposed to refrain from prosecution; but the State has failed to prove this; in fact, it proved the contrary. It produced witnesses who went on the stand, Marinaro and Mutarella. Marinaro says that Mutarella was in his office; that $900 was laid on Marinaro's desk, and that Mutarella took the $900 and he added $100 to it, and that there was a conversation at that time, not in the presence of Bolitho, but that there was a promise that Bolitho would take care of the thing. And the next bit of evidence

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in that case, as I remember it, was that Mutarella was here in court—not Mutarella,—Marinaro was here in court and had a talk with the Prosecutor about the case in the court room, in which the Prosecutor said that nobody had seen him. Then, subsequently, there was a conversation between Marinaro and Bolitho in which Bolitho was supposed to have said that, because of the influence of the Untermeyers, the indictment had to come out.

I respectfully urge upon the Court that there is no evidence in this case that there was any money paid to Bolitho in this case.

I respectfully further urge that the testimony of Juliano, the State's witness, and also of Mutarella, in a specific particular, indicate that Juliano gave money, $300 apiece, for the defense of these clients, to Marinaro; and that because Marinaro wanted $1,000, Juliano said Mutarella, who has been variously described as the runner for Marinaro in cross-examination, supplied the other $100. Juliano said there had been no promises made to him; that he had never seen Bolitho, nor had any dealings with him. Juliano further said that, thereafter, when he was fined and indicted on the new count and called to plead on the robbery end of the crime, on one night they went to Hubert's house, and then they went to Bolitho's house; that they went into Bolitho's house, leaving him in the car, saying they wanted to go in



and see him about some buildings. Then they came out and brought him in, and there was nothing said about the money in his presence. Juliano says he had not been promised any protection from Bolitho for any money; but he changed attorneys and got the present prospective Prosecutor for his attorney after Marinaro failed to give the service that he thought he ought to have and, therefore, he got his money back from them. And Mutarella generously said on the stand, "Yes, I got mine back, too."

I quote this evidence to show that there is no evidence before the court, even that little bit of evidence which is sufficient, to warrant the denial of my motion to dismiss the count. There is no scintilla of evidence, if I may use a hackneyed expression, to show that Bolitho, or anybody on his account, got money for him for this unlawful purpose; and, to go to the unlawful purpose, itself, this man was fined in open court for the crime that was alleged, the transportation of liquor, which the Court will take judicial notice of, for the first offense, must be a fine, and the maximum is $500. And as to the second offense of breaking and entering the Untermeyer home, he was forthwith indicted and a date set for trial, and Mr. Orr brought up the record to show that on the 9th of March Judge Wilson was sitting, but he was sitting in a bastardy case, and Mr. Orr said he was not sitting for the trial of indict-

ments. Mr. Jayne came in to the County to do his commendable work in the month of February, and the records show that Mr. Bolitho was not prosecuting causes further after Mr. Jayne took over the crimnal business of the County. So I cannot see that the State has proved the allegations of the Untermeyer count, which are allegations that Bolitho was paid money for the specific unlawful purpose of suppressing crime or the evidence of crime or complaints against those mentioned in the count. And for this reason I respectfully move a direction of a verdict on that count.

The Court: Well, the evidence may not be considered convincing at this stage, but the Court thinks there is enough of it to justify the jury in taking old of this count, which leads to a denial of the motion.

Mr. Matthews: Yes, your Honor. Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Now, following the Prosecutor's opening, and having argued a motion as to counts one, five, six and seven, may I turn to count eight, which we will call the Fleming count, with your Honor's permission, which has to do with the hotel, I believe, in Chester? Now, in this count, particularly, I would like to refer to the indictment, your Honor, in order that my motion may be specific.



Now, that count is a charge, summarized, that Bolitho, as Prosecutor, with all the necessary preliminary allegations to show his office, had the duty of using lawful diligence for the detection of crime, and it says that while Prosecutor of the Pleas aforesaid, and as such officer, Stewart Bettens, who was also an officer, ascertained that liquor was unlawfully possessed in the premises of Charles Fleming in the Township of Chester in the County of Morris aforesaid. Therefore, if your Honor please, at the outset, I want to urge upon the Court that the allegation against Bolitho in this cause has to do with one Charles Fleming in the Township of Chester, and the said Charles Fleming's premises.

Now, there is no evidence before this Court, except the opinion evidence of a man named Eagles, that Charles Chester—

The Court: Charles Fleming.

Mr. Matthews: Pardon?

The Court: Charles Fleming.

Mr. Matthews: Yes. —kept the hotel in Chester, or kept the premises in Chester that are charged in this indictment. Now, is there any evidence that there was a Charles Fleming? There was a Bert Fleming, and he had a brother whose name he did not know.

Now, all of the testimony in this cause, in this count, has to do with the Fleming hotel, as it was called by one witness, with the Chester House, it is called by another

witness, and one witness said the Chester Hotel. Now, the specific allegation as to Bolitho with reference to this Charles Fleming property is that Bettens went in there; the indictment says that Bettens went into the Charles Fleming premises and got evidence against Charles Fleming and, according to the law, against the premises, because both are liable under our State and national prohibition enforcement act; and that then he went down to a man named Schroer, a justice of the peace, and got a search warrant, and that then he was telephoned to by the Prosecutor who told him that he should not execute this search warrant. And that, therefore, the count alleges, or the State alleges, the ex-Prosecutor told him he should not execute this search warrant; that he, the Prosecutor, did something contemptuous, illegal and wicked. It is our contention in this motion to dismiss this count, first of all, that the State has failed to prove the allegations of the count; and, secondly, that it does not allege a crime, because, if a search warrant was made before Schroer, a justice of the peace, and ths justice of the peace issued a search warrant, and thereafter the search warrant was ordered by the Prosecutor not to be used, that was in the purview and rightful authority of the Prosecutor not to have a search warrant issued at that time. The count goes on to say that he misbehaved and misconducted himself in the said office of





Prosecutor, in that he corruptly, under color of his office, directed Bettens to desist and refrain from making a search of the premises. There is not any evidence of corrupt desistance or corruptly ordering him to desist, or corruptly ordering him not to execute the warrant. And it says further in the indictment, again, that he directed and required Bettens to deliver over to him, the said Bolitho, the said search warrant as well as all intoxicating liquors theretofore purchased from the said Charles Fleming. There is no evidence that Bettens did turn over a search warrant or liquor to the Prosecutor in this case. All the time, however, the count is mentioning Charles Fleming, not the Chester House, not the Fleming Hotel, and it says Bolitho conspired to do this in order that Fleming might go thereafter unapprehended, and so forth. There is not any evidence by the State that the said Charles Fleming was complained against in this court, or that any of the orderly processes of the law had been started against this individual or his legitimate premises, or that any steps had been taken; and if there were not, there could not have been any corrupt restraining from prosecution. And we allege that the State has failed to prove these simple allegations of the count that Charles Fleming's premises and Charles Fleming were involved as shown by the testimony.

And for the further reason that what-

ever may have been done under this count, according to the testimony, were things that were not unlawful or illegal, but things that, in the discretion and judgment and right of the Prosecutor, could and, perhaps, as far as the evidence did disclose, should have been done at that time.

For these reasons, I respectfully move a direction of a verdict as to the so-called Fleming count.

The Court: That motion will be denied.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Now, the ninth count we pass over; that has been directed.

The tenth count is the Florence Rice count, the testimony of which we had this morning. I move the dismissal of that count on the ground that the State has failed to prove by any evidence that Mr. Bolitho received anything from Florence Rice for the purpose of suppressing any complaint or allowing her, in the future, to do anything wrong; because her positive testimony is that, gratuitously, she gave to the Prosecutor, upon his commenting upon the good taste of certain liquor, cases of the liquor to prove that it was all the same as the sample. There is not anything to prove in that count, it seems to me, that the Prosecutor has done any of the allega-



tions alleged in the count, and I move a direction of a verdict on that.

The Court: That is denied. You may have your exception.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Now, the eleventh count is the Smith count. Again, the Prosecutor is charged with having told the judge in Madison that he should suppress the complaint against Smith and should let Smith go. Now, the State, with much eclat, proved that Smith never worked for the Prosecutor, or tried to prove it. The last witness on the stand said there were some men who were employed, sometimes commandeered cars to carry liquor for the Prosecutor. The facts of the case are that, when this man was apprehended in Madison, Mr. Hubert went down and went his bail and that, thereafter, this man was fined $25 in Madison for reckless driving. One man was accused of stealing the whiskey out of the car, and he said he was standing around there, and said he saw two bottles of whiskey in the car; that, when the car was ultimately gotten, there was only beer in the car. There is no evidence before this court to show that that beer had alcoholic content, and there is beer and beer today as a result of prohibition; and, therefore, unless it is proved that it

was beer of more than the kickless content of prohibition beer, it seems to me there is not any proof that Smith was violating the law as far as to that.

Now, as far as the liquor goes, when the matter was called to the attention of the Prosecutor, the evidence shows that there was a telephone to the Prosecutor's office, and that thereafter Hubert went down and went this man's bond, and that, thereafter, he was fined for reckless driving. Then Mr. Orr was put on to show that this man was never brought to book for a violation of the prohibition enforcement law. Under the statute, the only way that the Prosecutor could have acted in this case would have been on complaint in writing on the legitimate evidence. The only evidence that supports it, after all this eclat and investigation is the testimony of an alleged thief of the liquor that there were two bottles of liquor there; and no jury, outside of extreme circumstances, would convict a man in a liquor case upon the testimony of an alleged thief that there were two bottles there which he, the thief, was alleged to have stolen.

My thought in the Smith case is that the Prosecutor is not connected with it in any respect whatsoever; that there is not any malfeasance or non-feasance in the Prosecutor's action as to Smith; that if Smith was carrying the liquor at the time for the Prosecutor, and there is no evidence that he was not, that then he is not guilty.



If he was carrying liquor at the time, and it was not for the Prosecutor, and he was arrested and the liquor was stolen down there at that time after the officer had taken the liquor away, certainly that was not the Prosecutor's guilt, and there certainly was not that evidence which, in the common sense judgment of a Prosecutor, would have warranted cluttering up this court with an indictment, because not even in Morris County, and I say it with respect, could a jury find that Smith, against whom no evidence would be produced except this evidence, was guilty of carrying that liquor.

To summarize my grounds, the State has failed to prove the allegations of the count, which are allegations that Bolitho, with corrupt intent and a desire to protect this Smith from prosecution, told the authorities not to complain against him and thus suppress it, and from that time until this never prosecuted him; but the facts are that that is not so. Lieutenant Ryan's testimony itself would indicate such. I do not think I need to go further to point to the Court the reasons for my summarized statement that I believe the indictment has not been legally proven, and I respectfully move a direction on that count.

The Court: That motion will be denied.

Mr. Matthews: Exception. And, with your Honor's permission, I will open to the Jury.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews opened the case to the Jury on behalf of the Defendant.

Mr. Matthews: I might say, if your Honor please, at this time that I would like to ask the indulgence of the Court as to the calling of the witnesses as to counts like the State did. It would be so much more convenient for the Court and, I think, more instructive to the jury to have the witness testify as to count one like the State did, then put on my other witnesses to count one.

The Court: Very well.

Mr. Matthews: Yes. Thank you, sir.

The Court: You mean, dismiss the witness for the present and recall them later?

Mr. Matthews: Yes, your Honor.

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# Vol. 2

Edwin Orr—Direct

EDWIN ORR, re-called as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Orr, have you there with you the records of the Court of Oyer, or the Court of Quarter Sessions for the October Term, 1923? A. Yes, sir.

Q. Will you tell us from these records when the trial of indictments for the October Term ended? A. That is 1923, you want?

Q. Yes. The October Term, 1923. A. Mr. Matthews, it is going to take quite some little search to find that out.

Q. Just why, Mr. Orr, is it going to take so much time? Isn't it one book? A. It is all in one book, but the cases run through. There is all kinds of minutes in this book.

Q. Yes. But I am looking for the date of the end of the trials of indictments, so you would probably be at the end of the book, wouldn't you? You would at least be in the month of December, say, or November; perhaps that would help you. A. (Referring to records.) The last case tried was on November the 30th.

Q. On November the 30th, 1923, was the last cause tried. And who was the judge sitting? A. C. Franklin Wilson.

Q. C. Franklin Wilson. Now, will you tell me when the January, 1924, Term trials ended? A. (Referring to records.)

The Court: How many questions of this kind do you think you are going to ask?

Mr. Matthews: I thought I would have it right away.

A. Somewhere around in the early part of March. Maybe as late as March the 10th.

Q. The last trial date was March the 10th? A. That seems to be the last trial record I have.

Q. Is that the trial of indictments? A. That is an indictment.

Q. Now Mr. Orr, have you the custody of the grand jury records? A. No, sir.

Q. Who has? A. That I am unable to say.

Q. Do you know of your own knowledge whether there are any such things as grand jury records prior to the Elisor Grand Jury? A. The only records that have been filed with the County Clerk from the grand jury were the criminal papers in cases that were before the grand jury, and there were no indictment found.

Q. Do I understand you right that where there were no indictments found, the criminal papers were turned back to the County Clerk? A. It had been the custom; yes, sir.

Q. You mean it had been the custom. Was it the custom in 1923 and 1924? A. No, sir; it has not.

Q. Was it the custom in 1921 and 1922? A. Yes, sir.

Q. Can you produce the records for 1921 and 1922? A. I can produce some criminal papers turned over by the Prosecutor, the late prosecutor, John M. Mills.

Q. Can you produce the records— A. I cannot.

Q. —of cases— A. I cannot produce the records of the cases that were presented to the Grand Jury.



Q. —of the cases that were not presented to the Grand Jury? A. The papers where turned over by the Prosecutor as criminal papers that had been presented to the Grand Jury, I can.

Q. You can produce them? A. I can produce those papers.

Q. Yes; all right. Now, outside of those papers, is there any record what the grand jury's action is? A. Nothing.

Q. Outside of the indictment itself? A. Nothing except the indictments returned.

Q. Nothing except the indictments returned. There were no stenographic minutes; that is true? A. No, sir.

Q. When did that custom of stenographic minutes cease? A. It never has been, to my knowledge.

Q. It never had been. All right. Now, you produced for the State indictments marked S-7 and S-8, I believe, of the State's exhibits. No. I have the wrong numbers. It is S-5 and 8. You produced at the State's request S-5 and S-8, which I hand you. They were indictments found when? A. At the October Term. One at the October Term.

Q. Which one, designated S what? A. S-8, October Term, 1921.

Q. Yes. A. S-5, October Term, 1922.

Q. And in the October Term, 1921 and 1922, John M. Mills was Prosecutor of the County of Morris, was he not? A. Yes, sir.

Q. Then I show you two recognizances that were marked S-6 and 7, and I ask you what are the dates on those? A. S-7, the date is January the 2d, 1923.

Q. Yes. And that? A. S-6, January the 2d, 1923.

Q. And these are two recognizances taken before His Honor the justice, Justice Parker, are they not? A. Yes, sir.

Q. And in behalf of whom? A. In behalf of—

The Court: Aren't those already in evidence?

Mr. Matthews: They are, your Honor.

The Court: What is the purpose of all this examination about their contents?

Mr. Matthews: Well, it seemed to me it would be the predicate before my next questions.

The Court: Well, they are before the jury already. You examined him right at the time to make oral evidence as to what those things contained.

Q. Well, they are, as a matter of fact, to hurry it along, recognizances taken against— A. John Hudock and John Doe.

Q. John Hudock and John Doe. Now, John Doe is referred to as John Hudock? A. John Hudock.

Q. Now, those two recognizances were taken during John Mills' administration, were they not? A. They were.

Q. Now, will you turn to your record of trials. You did tell me that the record of your trial book for the January Term 1923 ended on the 10th of March. A. For 1923, on or about November 30th, the last date I have.

Q. Now, I ask you, please, what time did the trials for the January Term 1923 end?



The Court: 1923?

Mr. Matthews: Yes, sir.

A. You did not ask me that question.

Q. No. I am asking you now, please, Mr. Orr.

The Court: If this is going to take a lot of time to look up, I am just wondering, Mr. Matthews, if it would not be better for you to let Mr. Orr know what questions you are going to ask in that regard, and look these questions up over recess and not hold the whole court room.

Mr. Matthews: Yes, your Honor.

A. On or about March 12, 1923.

Q. Now, will you turn to your records—

Mr. Matthews: This is the last record question that I think I have, if your Honor please.

Q. —and I ask you what do the records show concerning the prosecution of Hudock?

Mr. Jayne: Isn't this all in the case yesterday, your Honor please? I asked the same question.

The Court: Well, I think it is. I do not understand why we are going over it again.

A. Do you want it on both indictments, Mr.—

Q. Yes, sir; please. A. On the indictment of the October Term 1922, John Hudock was indicted, charged with attempted robbery. On June the 1st, 1923, he plead guilty.

Q. Yes.

The Court: Anything else?

A. On June the 1st, 1923, he was fined $500. On January the 2d, 1923, he entered into bail in the sum of $1,500 in this court.

Q. January 2, 1923? A. Yes, sir.

The Court: That is right. That is one of those two recognizances taken before me, isn't it?

Mr. Matthews: Yes. I guess you are right, your Honor.

The Court: Yes. You are going all over this again.

Q. Do your records show that Kisik and Kovach were fined on that same indictment? A. It does.

Q. And when were they fined, please, Kisik and Kovach, and what amounts? A. On June the 4th, 1924.

Q. June the 4th, 1924. A. They were fined $500 each.

Q. $500 each. Now, in the Bogden indictment of the Hudock indictments, do your records show a forfeiture and a turning over to the County of moneys under that indictment? A. The record shows a forfeiture of bail, but it does not show any record of any money having been turned over.

Q. What is the date of the forfeiture? A. April the 7th, 1924.

Q. April the 7th, 1924. Where is the record of the money paid over, do you know? A. I have no record of that whatever.

Q. That goes to the Treasurer's Office, doesn't it? A. As far as I know.

Q. Yes. All right. Was Bogden fined, according to your record? A. He was.

Q. How much? A. $500.

Q. When? A. On June the 4th, 1924.

Mr. Matthews: That is all on this count, Mr. Orr.

The Court: Any cross?



Mr. Jayne: A few questions with respect to this grand jury matter.

CROSS-EXAMINATION by Mr. Jayne:

Q. You have said on your direct-examination that no memoranda or record was filed with you, or in your office or in the Clerk's Office, with respect to the business transacted by the grand jurors at each respective term, is that so? A. Yes, sir.

Q. Then there would be nothing of record that would disclose whether or not a case had been considered by the grand jury or not unless an indictment was found? A. There is nothing.

Q. Were you in the Clerk's Office preceding the term of John Mills under any other of the Prosecutors, or just during the term of John Mills? A. Just the latter part of Mr. Mills' term, from January 2, 1923, until Mr. Bolitho took office. I was only there about three months.

Q. You have said that it was the practice, as I understood you, for former Prosecutors, where cases had been presented to the Grand Jury and no indictments found—had been considered by the Grand Jury and no indictments found, for them to file all the papers in the case in the Clerk's Office? A. Yes, sir.

Q. Was that practice followed by Bolitho when he was Prosecutor? A. No, sir; it was not.

Q. So that, so far as you know, as custodian of the records and clerk of these courts, was there any way of proving that Prosecutor Bolitho had submitted a case to the Grand Jury and they had found no bill, or disproving that fact? A. There is no records available in the County Clerk's Office.

Q. So then it was possible for Prosecutor Bolitho to say that "I submitted the case against John Doe," or maybe more specifically, "against Peter Dolimpio or Antonio Mingardi," and that "the Grand Jury found no bill," notwithstanding the fact that he had never presented it at all?

Mr. Matthews: I object to that as calling for a possibility and as incompetent.

The Court: Well, it is a conclusion, something that can be argued by anybody. Under the premises that are already in, you do not need any answer from this man.

Q. A presentment was filed in your office by the Elisor Grand Jury? A. Yes, sir.

Q. And the Elisor Grand Jury recommended a—

Mr. Matthews: I object to that as immaterial.

The Court: What has that to do with it?

Mr. Jayne: I withdraw it. That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. You do not know anything about the Prosecutor's records, do you; you are not the custodian? A. I am not.

Mr. Matthews: The Sheriff of the County, please, Mr. Estler. (No response.)

Is Mr. Downs here? We will take him while we are waiting.



GEORGE W. DOWNS, re-called as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. You are the County Treasurer? A. Yes, sir.

Q. Have you the records of your office which would show the forfeiture of a bail on which the National Surety was bondsman for one Hudock in May about, 1924? A. Yes, sir.

Q. Will you produce that record, please? A. I have the County Treasurer's printed report—

Q. Yes. A. —which shows the receipts of all of the—from all sources.

Q. Yes. But outside of that, have you the specific record? A. I have—hold in my hand a letter from the County Clerk which—in which he enclosed me a check for $1,500 of the National Surety Company endorsed over to me, forfeiture of bail in the case of State vs. John Hudock.

Q. Yes. A. That I received and placed it—it is in the other receipts.

Q. That you received, and placed to the credit of Morris County? A. Yes, sir.

Mr. Matthews: I offer in evidence the County Clerk's letter sending the check to Mr. Downs dated May 24th. And also your County's report at page 4 with reference to the special item of the check of the National Surety Company.

The Witness: At the end of the report, the state and municipal county auditor has certified to the correctness of all of them.

Mr. Matthews: Yes. Thank you, as to that. There is nothing further that I want. Thank you, sir.

(Marked Exhibits D-5 and D-6 in evidence.)

Mr. Jayne: No questions.

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CHARLES E. ESTLER, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Have you the records of your office that you were asked to produce, Mr. Sheriff? A. Yes, sir.

Q. You are the Sheriff of the County of Morris? A. Yes, sir.

Q. And the records with reference to a capias issued for John Hudock or Bogden? A. Yes, sir.

Q. What do your records show with reference to that capias?

Mr. Jayne: I think it is objectionable unless proven that these records were kept by him.

Mr. Matthews: Well, I will do that if you want. You know more about it than I do.

Q. Just a minute, Mr. Sheriff.

Mr. Jayne: My information is that he was not Sheriff at the time of this Hudock matter.

Q. What have you there? A. The only records in the office is before my time.

Q. Yes; before your time, of course. But you are the custodian of the Sheriff's Office; you are the Sheriff now? A. Yes, sir.

Q. And that is the Sheriff's record from the Sheriff's Office? A. Yes, sr.



Q. And in the handwriting of some clerk of the previous administration? A. Yes, sir.

Q. And what is the book that you produce? A. It is record book.

Q. Record book. And in that book, what do you keep? A. All papers.

Q. And is that a book in which recognizances would be kept? A. Yes, sir.

Q. And is it a current book, or a book for a previous year? A. Well, it is one for a previous year.

Q. A previous year. And it is the same kind—

Mr. Matthews: I just want the record to show—

Mr. Jayne: You are talking about a record that I haven't any knowledge of, what the record is. If you will be frank about it and tell me what you want to prove—

Mr. Matthews: I have never seen it myself. I want to prove what the capias was that this man was dodging.

The Court: I am wondering, Mr. Matthews, whether the proper way of proving the capias is not to get the file out of the County Clerk's Office and produce the capias. That is the place whence it would emanate, and that is the place where it ought to go back.

Mr. Matthews: It seems to me just as competent to prove it by the Sheriff.

The Court: He had some paper which you are pleased to term a capias.

Mr. Matthews: It has gotten in the record what it is.

The Court: Well, what he terms a capias.

Mr. Matthews: I withdraw the witness, and I will subpoena the County Clerk, and ask you to retain the record, so that if the County Clerk has not got it, we will bring you back. I might save his being brought back again by asking him whether his records show any capias against Hudock or not; but if your Honor rules that we ought to have—

The Court: I have not ruled on that, because there has been no objection to that question.

Mr. Jayne: I do not think the question was asked. He was announcing what he might do. He has not done so.

The Court: Do you want to ask a question? Go on and ask it, unless there is some objection.

By Mr. Matthews:

Q. Is there any record in your book of a capias issued against Hudock?

Mr. Jayne: I object to it for the reasons I previously stated.

The Court: Very well. That is overruled. You will have to get the records from the County Clerk's Office.

Mr. Matthews: Exception, because I considered, in my humble opinion, that record was sufficient to prove it.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: The Court is equally interested with counsel in getting at the facts



of the matter, but I think they ought to be gotten at in a way that is entirely competent.

Mr. Matthews: The testimony had shown that the Sheriff had a capias, and I wanted to show that as of that time he did not have it, and his records show it.

The Court: You are now trying to show by the present Sheriff that there is an entry made in a book by the former Sheriff which has something to do with what may or may not be called a capias, and I do not think that is proper. We can get at it perfectly well in another way.

Mr. Matthews: That is all for now, Sheriff.

The Witness: Thank you.

Mr. Matthews: Is the postmaster of Morristown here?

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CHARLES W. BODINE, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. What is your position, Mr.— A. Postmaster of Morristown.

Q. Postmaster of Morristown. And have you with you the records of your office with reference to money orders from the first of April 1923, until the first of June, that year? A. No, sir; I have not.

Q. You were subpoenaed to bring them. You haven't them in your possession? A. No, sir.

Q. Are they sent to Washington? A. They are; yes, sir.

Q. Do you know the postal laws and regulations with reference to the sending of money orders?

Mr. Jayne: Objected to.

Mr. Matthews: If I can qualify him, I can ask him a question.

Mr. Jayne: You do not have to qualify anybody to prove the law.

Mr. Matthews: This is a regulation.

The Court: The question may be answered.

A. What was the question, Mr. Matthews?

Q. Do you know the postal regulations with reference to the issuance of money orders? A. I do not know just exactly what you mean by that.

Q. Maybe I am as unscientific as the Prosecutor thought I was when I asked the question. A. Mr. Matthews, before I answer your question as a witness, I would like to offer an objection.

Q. Yes. A. As prescribed by the postal laws and regulations, and section 508, paragraph one and five, I am instructed not to answer as a witness in regards to matters of mail matter or money orders.

Q. Yes. Well, that— A. I have the proof here to back me up in that.

Q. That is, you are supposed not to answer any questions with reference to a specific money order or a specific letter? A. The paragraph says mail matter or money orders.

The Court: Yes. You are now asked, Mr. Postmaster, with regard to regulations. There is no objection that you know



of to your testifying as to what the general regulations are?

The Witness: As regards to issuing a money order?

The Court: Yes.

The Witness: No; I think not.

Q. What is the highest amount that a money order can be issued for? A. The highest amount—

Mr. Jayne: I object to that in its present form.

The Court: Why?

Mr. Jayne: Regulations may differ, as government regulations do, undoubtedly.

The Court: Well, get down to the right time, Mr. Matthews.

Q. Have the regulations on money orders ever differed since you have issued money orders as to the highest amount? A. Not that I knew of; no, sir.

Mr. Jayne: That does not meet my objection.

Q. What is the amount?

Mr. Jayne: I object to it.

Q. In 1920—

Mr. Jayne: Counsel does not seem to have made it clear.

Q. —twenty-three, I was going to add.

The Court: May 29, 1923, the indictment charges. Were you postmaster, now, about the 29th of May, 1923?

The Witness: Yes, sir.

The Court: Well now, do you know what the money order regulations, the general regulations, were at that time?

The Witness: On the amount of issued orders?

The Court: Yes.

The Witness: $100.

The Court: I did not ask you what it was. I asked you whether you knew.

The Witness: Yes.

The Court: You do know?

The Witness: Yes.

Q. And it was what? A. $100; that was the limit for one single money order.

Q. For one single money order; yes.

The Court: Now Mr. Postmaster, is there any limit, was there ever any limit, on the number of money orders that could be issued payable to the same person—

The Witness: No, sir.

The Court: —by the same sender?

The Witness: No, sir. Not if they were all drawn less than $100.

The Court: Not over $100?

The Witness: Not over $100.

Q. Now, you have not the records, you say, of your office for the issuance of money orders from May to June 1923? A. Not paid records, no, sir.

Q. Have you any records to show whether or not there were money orders in specific amounts issued to a specific person in the Town of Morristown between those dates? A. Issued at this office?

Q. No. Issued outside of this office? A. Payable at this office?

The Court: Payable here.

Q. Payable at this office. A. Well, I might have.



Q. And those are the records that you are asking us not to ask you to produce, is that it? A. That is the records that I am asking you not to ask me to produce; yes, sir.

Q. And those are the records that I asked you to produce, aren't they, by the subpoena? A. I think you did. No. You asked any paid ones; yes. You did not specify; it said, the subpoena asked for records of money orders paid.

Q. Yes. And you haven't those, you say? A. No. I have not; no, sir.

Q. There aren't any at your office, either, are there? A. Not—I have a record. Yes, I have a record in regards to money orders paid, but not to whom they were paid.

Q. But not to whom they were paid? A. No, sir.

Q. Is there any record in your possession that would show the payees of money orders paid at your office during that time, from April until June? A. No, sir.

Q. Thank you, sir.

Mr. Matthews: That is all.

---

FREDERICK HUBERT, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Hubert, in the month of May, 1923, or in any month in 1923, did Mr. Marinaro give you an envelope for Mr. Bolitho, the envelope sealed, which he told you contained three one hundred dollars? A. No, sir.

Q. At any time in the month of May, 1923, did Mr. Marinaro give you anything for Mr. Bolitho of a monetary value, of a money value? A. No, sir.

Mr. Matthews: That is all. Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. You are under indictment— A. Yes, sir.

Q. —for your participation in the passing of this money from Marinaro to—

Mr. Matthews: I object to that as immaterial and incompetent. He is only entitled to ask whether or not he has been convicted of crime. I have asked him but one question, and there is no evidence that he has been.

Mr. Jayne: It is merely my purpose to show his interest in his present testimony, which I think may be shown in any way it may be shown; by his relationship to the Prosecutor now upon trial, to show the various ways. My friend was thinking about the right of asking a man whether he has been convicted of crime to affect his credibility. This question is addressed to his interest.

The Court: I was wondering. In the case of State vs. Young, which was decided one way by the Court of Appeals, and then there was a re-argument and decided in another way, on this precise point, there is a great deal of question in my mind whether you are entitled to bring this out. I think it is safer not to do so.

Mr. Jayne: I will withdraw it.



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

Q. What is your answer? A. Hubert. No, I have not.

Q. All right.

Mr. Jayne: That is all.

Mr. Matthews: Mr. Bolitho, as to count one.

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JAMES H. BOLITHO, the defendant, sworn as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Bolitho, you were Prosecutor of Morris County during what time? A. My term began April 1st, 1923, and ended May 19, 1925.

Q. You are, of course, a practicing counsellor-at-law of the State of New Jersey? A. Yes, sir.

Q. And your offices are where? A. At Dover now.

Q. And are you married? A. Yes, sir.

Q. You live with your wife and family? A. Yes, sir.

Q. Where? A. At Parsippany.

Q. Parsippany. That is in Morris County, of course? A. Yes, sir.

Q. Now, while you were Prosecutor of the County of Morris, did you have a case called a Hudock case? A. Yes, sir; we had two.

Q. You had two Hudock cases? A. Yes, sir.

Q. Were they or not cases that were legacies

of the Mills' administration? A. They were passed over to me by Mr. Mills.

Q. And they were two of how many cases that Mr. Mills passed over to you? A. One hundred and ten.

Q. One hundred and ten untried indictments? A. Yes, sir.

Q. Do I understand you right? A. Yes, sir.

Q. Now, did Mr. Mills, previous to your actually taking charge, discuss the Hudock cases with you? A. Not—not especially; not any particular case. He discussed the list generally.

Q. I see. Did he tell you at that time that Hudock had any record in New York? A. He did not.

Q. Now, did you subsequently have any proceedings with reference to the pleading of Hudock before Judge Wilson? A. Yes, sir.

Q. And at whose request did you bring them on for pleading? A. Mr. Marinaro.

Q. Mr. Marinaro? A. Yes.

Q. And do you remember at what time Mr. Marinaro as the attorney for Hudock came and asked to have this man brought in for pleading? A. The first I knew about it was the Friday before the date that he was pleaded.

Q. The Friday before the date that he was pleaded? A. Yes.

Q. And from whom did you get the knowledge? A. Mr. Marinaro.

Q. And what was the date that he was pleaded, if you recall? A. I think June 1st, 1923.

Q. Yes. And when you learned of it on the Friday previous, what did you do, if anything? A. Mr. Marinaro came to my office in the morning and said that he represented a man named John Hudock who had been indicted with Kisik and Kovach on a Stirling case, and he said that Kisik and Kovach have an appeal pending, and he wanted to bring Hudock in to plead. And I told him that I had not had a chance to check up the cases that had been passed over to me by Mr. Mills yet, and we had better go see Judge Wilson about it, as I was going then to consult Judge Wilson about Special Session matters coming up on that Friday. I told Mr. Marinaro to go over to the library and wait until Judge Wilson could see us. And then I went and saw Judge Wilson about the other matters. Mr. Marinaro was admitted to the chambers, and he told Judge Wilson that he was retained in that case, and Judge Wilson asked me what I knew about the case, and I told him I had not checked it up, but there were no records in my office of the case.



Q. Let me interrupt you at this point. When you say there were no records in your office of the case, just what do you mean? A. Well, I mean that the record book, the index books, the book of the cases, contained nothing but blank leaves; the records of the cases had been taken out.

Q. When you came to the Prosecutor's Office, then, what did you have in your office in your files that would show you what the cases were that were pending? A. I had nothing in the files—

Q. Yes. A. —except some cases that were left over from the Rathbun and Reed terms as Prosecutors.

Q. Well, where were the indictments, state-

ments of witnesses, and things of that kind? A. There were none there.

Q. In all the 110 cases, there were no statements of witnesses taken by detectives, or anything of that sort? A. All I got in those cases was a typewritten list of the cases.

Q. And there were 110 of those, eh? A. 110; yes, sir.

Q. All right. Now, when you told Judge Wilson that you had not seen the record, what thereafter occurred between Marinaro, yourself and Wilson, Judge Wilson? A. Judge Wilson asked Mr. Marinaro what this man was charged with, and he said that he was charged with—

Mr. Jayne: I think this is objectionable.

The Witness: I beg your pardon.

Mr. Jayne: I want to give the defendant full opportunity to say everything he has done officially, but I think I must object to what other parties said.

Mr. Matthews: Marinaro has testified to conversations. The State has offered that evidence, and it is answerable, your Honor please. They have laid the foundation for it.

The Court: I think we will have to take this conversation.

Q. The Court says you may proceed with that conversation, confining yourself, of course, as a lawyer, in relating it, to just what is competent. A. Well, Mr. Marinaro said that he was charged with two others. This is what he said to Judge Wilson in my presence. With two others, with having attempted to take money from some woman at Stirling. And Judge Wilson said, "Is



that all the charges against him?" And he said, "There is another indictment in the Rockaway case, an old indictment, but" he said, "they had nothing on my client and they never tried it, and we do not want to plead to that." And Judge Wilson then said to me that he thought I better check up the records, and he would adjourn the matter until the next Friday. On the next Friday, Mr. Marinaro came again, and while I was in consultation with Judge Wilson that day, he came in and said that he could bring Hudock out that day to be sentenced, and we went over the—what I had learned from the records.

Q. What records? A. The indictments in the County Clerk's Office.

Q. Yes. Were there statements with those indictments in the County Clerk's Office? A. I found no statements.

Q. What did the record in the County Clerk's office with reference to the Hudock indictments consist of at that time, just the indictments, or—A. All I saw in the envelope was the indictments.

Q. There was no statement of any kind from witnesses, or anything of any kind that you saw? A. I found none.

Q. These were indictments that had been found in October 1921 and October 1922, the Hudock indictments, that you are talking about? A. Yes, sir.

Q. Then what did you do? A. I told Judge Wilson what I had found in the indictments, and Judge Wilson asked Mr. Marinaro when he could come out, when Hudock could come out, and he said he could not come out that morning, but he expected him that afternoon, he thought about three o'clock.

Q. What arrangements were made, Mr. Bolitho—pardon the interruption—by anybody and by whom? A. Judge Wilson said, "When he comes out, Mr. Marinaro, you telephone to me and to the Prosecutor and the Clerk, and if he desires to plead, we will dispose of the matter."

Q. Now, what next did you hear from Marinaro, if anything, and when? A. I got a call from him sometime in the afternoon, I think about three or half-past three, that he had notified Judge Wilson that Hudock was in town, and had notified the Clerk, and asked me if I would come over to the grand jury room where Judge Wilson was going to hold court, and—

Q. Did you go over to the grand jury room? A. I did.

Q. Was there any court in session in this buiding at that time and, if so, who was the presiding judge or justice? A. Judge Daly, I think, was holding court here. There was some judge holding court here. They were trying a civil suit; and my impression is that it was Judge Daly. We passed—I passed through here, both going to the grand jury room and returning, and the court was in session.

Q. At this time, Mr. Bolitho, did you know that there was a capias against Hudock? A. I did not. I knew it a few days after he was found.

Q. Yes. But I say, at this time, Mr. Bolitho? A. No, I did not.

Q. At this time, Mr. Bolitho, had you ever seen Hudock? Up to this time, had you ever seen Hudock? A. I had not.

Q. This was in the month of April or May, 1923? A. This day when he came out was the first of June, 1923.



Q. The first of June, 1923. All right. Now, Judge Wilson held court, you say, in the Grand Jury room? A. When I went over, as I went in the door, Mr. Orr came in, and Judge Wilson came in and went on the bench. Mr. Marinaro then came in the other door of the Grand Jury room with a man with him, and they sat down by the table. And I asked Mr.— I said to the judge, "I desire to move the indictment against John Hudock on the Stirling case," I obtained the indictment from Mr. Orr, and I asked this man if he was John Hudock. He said yes. And I read the indictment to him and asked him if he was guilty or not guilty, and he said guilty. And Judge Wilson imposed a fine of $500, and directed that the defendant be committed until the fine was paid.

Q. Now, prior to this pleading of this man on this day in question, did you have a conversation with Marinaro in which he is supposed to have told you that there was $1,500 in the case, and they were willing, if Hudock would be let off with a fine, that you get some of it, $300, or some part of it? A. I did not.

Q. Did you ever have any conversation with him, at that time or thereafter or before it, in which you had told him you had seen Hubert, and that it was all right, indicating that you had gotten money from Hubert? A. I did not.

Q. At any time between the time that you first knew that Marinaro was in the cause, or, indeed, prior to it, at any time while you were Prosecutor— A. I did not.

Q. —did you get money from Marinaro through Hubert with reference to the Hudock case? A. I did not.

Q. At any time, did you make a promise to Marinaro that you would *nolle prosse* the indictment in the Rockaway case? A. I did not.

Q. What did you do in the Rockaway case? A. Well, Mr.— Senator Rathbun represented Bogden in the Rockaway case, and this appearance of Hudock and his fine acquainted me with the Rockaway case, because I found it in the records in the County Clerk's Office, and I notified Senator Rathbun to produce his client for sentence; that is Bogden. And notified him several times and, finally, the Senator talked with me about the case and said that it was not Bogden who was guilty, but it was Hudock who had got the money from Palco in Rockaway.

Q. Do you remember about when this was, Mr. Bolitho? A. Well, I think that the first notice that we sent to Senator Rathbun was in June, and we communicated with him later by letter.

Q. Do you know whether or not you have a copy of the letter to Senator Rathbun in your files? A. I think there is a copy there; not in the—not in that file, but on the outside. I do not remember the date.

Q. Well, perhaps, later during the recess you will find it. A. Yes.

Q. I cannot find it now.

Mr. Matthews: Is your Honor going to adjourn at 12:30? It will take this witness at least fifteen or twenty minutes more.

The Court: Well, it is not quite 12:30. it is very nearly 12:30, so we may as well take an adjournment now until half-past one. I do not think that letter is competent; I do not know.

Recess at 12:30 o'clock p. m.



After recess. 1:30 o'clock p.m.

JAMES H. BOLITHO, the defendant, resumed the stand for further direct-examination, and testified as follows:

By Mr. Matthews:

Q. Mr. Bolitho, just before luncheon, you referred to a letter that was in the file with reference to your notification of Senator Rathbun to bring in Bogden? A. Yes, sir.

Q. I show you a copy of a letter and just answer me yes or no; is that the letter that you referred to? A. This is not.

Q. It is not? A. This is a letter to Judge Wilson with regard to the same matter.

Q. Well, were you mistaken in saying the letter was to Senator Rathbun? Isn't it to Judge Wilson? A. No. We had sent a letter ot Senator Rathbun referred to in that letter to Judge Wilson, but I do not find a copy in the file.

Q. I show you a carbon copy of a letter and ask you, is that a letter dictated by you in your then official capacity as Prosecutor with reference to this Hudock matter? A.Yes, sir.

Mr. Matthews: I want to show it to Mr. Jayne. I want to offer that letter in evidence, if your Honor please.

Mr. Jayne: Any demand been made for the production of the original?

Mr. Matthews: Well, this is a letter sent to Judge Wilson, and Judge Wilson, we could show by testimony, is in the south on vacation, and will not return here until long after this trial, and this is a record of

the Prosecutor's Office; but if there is a doubt as to its authenticity, I will ask the Prosecutor whether or not we might be able to get the original. That I do not know.

Mr. Jayne: I do not think I shall object. I merely inquired if any effort had been made to procure the original.

The Court: Technically, it is not competent.

Mr. Matthews: I thought so, your Honor.

The Court: Of course, Judge Wilson not being a party in any way, notice to him to produce it will not have any effect. You should subpoena him to produce it. That you seem to have been unable to do. I have no objection to it.

Marked Exhibit D-7 in evidence.

Mr. Matthews: This letter is dated July 19, 1923, addressed to C. Franklin Wilson, Judge, Morristown, New Jersey. "Dear Judge: I have written to Senator Rathbun requesting him to produce in court on Friday, July 27th, his client Bogden, who was convicted a long time ago, and I think ought to be sentenced without further delay. I am enclosing a copy of a letter I sent to Senator Rathbun. It seems to me that this matter has been overlooked or permitted to lie in abeyance too long now. Very truly yours. Prosecutor." Unsigned carbon copy.

Q. Now Mr. Bolitho, what next did you do in reference to the Hudock matter? A. Mr., or Senator, Rathbun called and saw me about it after receiving this letter.



Q. Yes. A. And explained to me that Bogden was a necessary witness against Hudock in the trial of the Rockaway case. I took that matter up with Judge Wilson, and—

Q. What did you do? A. —I told Judge Wilson what the information was that I had obtained from Senator Rathbun.

Q. Yes. But what did you do as Prosecutor, apart from your conversation with the Judge? A. The next thing that I did was, Mrs. Bodgen and her daughter came out, either in August or September.

Q. Let me interrupt you. Did you or did you not write Bogden notifying him of a trial date for the indictment? A. Not Bogden. He had already been convicted; but Hudock, I notified Mr. Marinaro to produce Hudock at the next term of court, the October term.

Q. I show you a letter,— A. We notified him by telephone on that occasion.

Q. I show you a letter addressed to Bogden, and ask you whether or not that would change your impression as to the next step that you took in these cases? A. No. We took steps at the October term to have Hudock tried.

Q. At the October term, what year? A. 1923.

Q. Yes. A. And Mr. Marinaro said that he could not locate him; that he understood he had gone to Buffalo; his wife was sick; and he could not produce him at that term of court.

Q. Yes. A. Then, for the January Term, we had considerable correspondence about it with Marinaro and Bogden and the National Surety Company.

Q. I show you a letter dated March 26th and

Q. In response to this correspondence that I have read, did you receive reply in your official capacity as Prosecutor from the National Surety Company with reference to this forfeiture in the Hudock case? A. I did.

Q. I show you a letter, and ask you, is that part of the correspondence? A. That is one of the letters we received in reply to a letter we had sent.

Q. I show you two other letters on the stationery of the National Surety Company, and ask you, are they part of that correspondence? A. They are.

Mr. Matthews: I offer these three letters in evidence, one dated February 13, 1924, on stationery of the National Surety Company, signed Robert Craig.

(Marked Exhibit D-13 in evidence).

Mr. Matthews: Another dated April 9, 1924, on the stationery of the National Surety Company, signed Frederick W. McGowan.

(Marked Exhibit D-14 in evidence).

Mr. Matthews: A third dated May 15, 1924, stationery National Surety Company, signed Frederick W. McGowan, attorney.

(Marked Exhibit D-15 in evidence).

Mr. Matthews: (Reading Exhibits D-13, D-14 and D-15 to the Jury).

Q. Thereafter, did you or did you not receive a check from the National Surety Company, in your capacity as Prosecutor again, in payment of this forfeited bond? A. We either received a check by mail, but my impression is their representative called at the office with the check.



Q. I see. I show you a letter on the stationery of the National Surety Company, and ask you if that is a letter that you received with reference to that check for that forfeiture? A. Yes.

Mr. Matthews: I offer this letter in evidence.

(Marked Exhibit D-16 in evidence).

Mr. Matthews: (Reading Exhibit D-16 to the Jury).

Q. And the letter mentioned in that letter as to your demand, is that the letter of May 16, 1924? A. Yes, sir.

Mr. Matthews: And I offer that letter in evidence.

(Marked Exhibit D-17 in evidence).

Mr. Matthews: (Reading Exhibit D-17 to the Jury).

Q. Now, in addition to these activities in the collection of a bond, did you, as Prosecutor, pursue other activities with reference to the locating of Hudock? A. We endeavored to locate him.

Q. In that endeavor, did you or did you not have correspondence with the police of another community? A. We wrote to the Chief of Police of Scranton, I think.

Q. Where is that letter that you wrote, the copy of it, do you know? A. I have been unable to find the copy of the letter that was written.

Q. Did you search your files for it? A. We did, yes.

Q. I show you, however, a letter on the stationery of the City of Scranton, what appears to be the stationery of the City of Scranton, and ask you, did you as Prosecutor receive that letter? A. Yes, sir.

Mr. Matthews: Mr. Prosecutor, you have looked at this letter.

Mr. Jayne: I think it is not properly proven. If I had the letter before me written to this present correspondent, then I might consent that they both go in; but here is a letter which is not properly proven at all.

Mr. Matthews: Well, I will go further into the proof of it, if your Honor will allow me.

Q. You say you received the letter that I have just shown you in your capacity as Prosecutor? A. Yes, sir.

Q. And that it was a letter in answer to a letter that you had written to the Chief of Police of Scranton, Pennsylvania? A. Yes, sir.

Mr. Matthews: I think that is sufficient to identify it, if your Honor please. Here is a letter with reference to this case.

The Court: Let me see it.

Mr. Matthews: Yes, sir. (Handing paper to the Court).

The Court: Well, this is not from the Chief of Police. It seems to be from some man who calls himself Captain of Detectives.

Mr. Matthews: Well, I misstated his title. I must have glanced at the words "Chief of Police" at the top of it.

The Court: But this witness has said that he wrote to the Chief of Police.

Mr. Matthews: Well, maybe I have misstated it again.



Q. This letter appears to be sent to you by the Captain of Detectives. Was it the Chief of Police you wrote to? A. It was an authority there that had been given us by the National Surety Company, and we wrote to the authority who wrote this letter back to us.

Q. You do not remember whether it was the Chief of Police, or who it was? A. I do not.

Q. It was following the lead of the National Surety Company that you wrote? A. Their representative told us that they heard—

Q. Never mind what they told you. But they gave you a lead, in response to which you wrote to Scranton? A. Yes, sir.

Q. And this is the letter that you received in reference to the Hudock case? A. Yes, sir.

Mr. Matthews: It seems to me, if your Honor please, that it is properly proven as a document received by him as Prosecutor with reference to Hudock, and shows his activities in the Hudock matter.

The Court: What is it offered to prove?

Mr. Matthews: It is offered to prove that he was active in the Hudock matter to the very end, and forfeited the bail and sought to locate the man, because he is charged with having agreed to suppress it and not do anything about it at all.

The Court: Yes. Well, isn't it sufficient for your purpose to have this witness testify as he has testified that he wrote out to Scranton in conformity with the suggestion made by the National Surety people, and that he got a reply which you have shown him there?

Mr. Matthews: But it is so much better for the jury to see it.

The Court: Well, there are a whole lot of things in that letter which are not relevant to this case.

Mr. Matthews: That is just why, your Honor please, it shows that they wanted him here, and that they were willing to cooperate with the—

Mr. Jayne: I object to a statement in front of the jury what it shows.

Mr. Matthews: Well, I will withdraw that.

The Court: If Mr. Jayne objects to it, I shall have to exclude it.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Do you remember, Mr. Prosecutor, whether or not you had a communication from Scranton with reference to Hudock? A. I did.

Q. And was the communication from somebody in Scranton to whom you had written? A. It was.

Q. And was the lead to that writing furnished you by the National Surety Company? A. By one of its representatives.

Q. Yes. And did you get information from Scranton? A. I did.

Q. And what information did you get, if you remember it? A. That Hudock was wanted in that city for a similar offense to the one committed in the Stirling and Rockaway cases, and with



a warrant of detainer, asking us to detain him if we got custody of him.

Q. Now, at any time, Mr. Bolitho, had you agreed with Marinaro to *nolle prosse* this Hudock indictment? A. I had not.

Q. I think I asked you this morning whether or not you had received, or authorized anyone to receive in your behalf, any money for that purpose? A. I did not.

Q. Oh, just one question about the records in your office of matters that were presented or not presented to the grand jury. What was your custom with reference to those records? A. Cases that were presented in which indictments were found, the papers were held in our office until the indictment was disposed of.

Q. Yes. A. Cases where no indictment was found, we had established the custom of holding the record until the two-year statute of limitations had run against the complaint.

Q. And did you inaugurate a system of permanent record in your office? A. I did.

Q. And was it a card index or book system? A. It was a book index and a card index system.

Q. Yes. And that system you turned over to Prosecutor Holland upon his taking charge of the office? A. I did.

Q. And the records thereunder? A. I did.

Mr. Matthews: I do not think there is anything further. You may cross-examine, Mr. Jayne, as to this Hudock count.

CROSS-EXAMINATION by Mr. Jayne:

Q. Mr. Bolitho, on your appointment to the office of Prosecutor, did you immediately appoint Mr. Hubert one of your detectives? A. I think within a day or so, Mr. Jayne.

Q. You had been acquainted with him, then, before your appointment to the office of Prosecutor? A. I had; yes, sir.

Q. Was your acquaintance rather a lengthy one with him before that? A. I think I have known him since he was a boy.

Q. And Mr. Hubert, from that time until the time of your resignation as Prosecutor, continued to be a county detective? A. He did.

Q. In your department, did he not? A. He did.

Q. And your relations with him were not alone official, but to some extent social, were they not? A. Social, did you say?

Q. Yes. A. Well, if you mean that I rode around with him in an automobile from my home to the place where I worked, yes.

Q. Well, you were a great deal in his company, weren't you, from the beginning of your term as Prosecutor, in fact, down until the time of the resignation? A. Not unless we were on some County business.

Q. Well, there were times, were there not, when you and your family were out for pleasure—and I am not suggesting now that the County paid for it, understand—but Mr. Hubert operated the car with you? A. Yes, sir.

Q. So that you were on a friendly relation with him, in addition to your official relations with



him as Prosecutor and he county detective? A. I was on friendly terms with him, sure.

Q. You were on confidential terms with him, weren't you? A. Only in business matters, County business matters.

Q. Was there any man in your employ while Prosecutor with whom you were on more confidential terms than with Hubert? A. I think not.

Q. So that he was in a sense your confidential man in your conduct of the Prosecutor's Office, wasn't he? A. Mostly from the fact, Mr. Jayne, that he—

Q. I do not care from what fact; but that was his relation to you and to you as Prosecutor? A. If you mean that I was with him more than anyone else, it was, because he lived at Rockaway and drove me to Morristown and back.

Q. Yes. So, as an additional circumstance, then, you both lived in the same town? A. Yes.

Q. And, in fact, he stored his automobile in your garage, didn't he? A. Well, not always. I had no garage until about, I think, some time in nineteen—late in 1924.

Q. Well, when you did get a garage, he stored his car there? I do not mean to be captious. Did he store his car in your garage? A. He did for a time; but I do not remember when he commenced to store it there.

Q. Had you known Pasquale Mutarella before your appointment as Prosecutor? A. I had met him, I think, once or twice.

Q. Is that all? A. I think so.

Q. Only twice, and possibly once? A. Well, I did not keep track of how many times I met him, but I remember having a case that he was a witness in.

Q. You must have met him on that occasion, then? A. I know I met him on that occasion.

Q. You knew who he was and what his business was at the time you became Prosecutor? A. I understood he was a butcher.

Q. Did you understand he was engaged in any other sort of a business except that of butcher? A. I did not understand when I became Prosecutor that he was engaged in any other business.

Q. Did you ever understand he was engaged in some other business? A. Well, I arraigned him in this court, and he was fined $500 for violating the prohibition act.

Q. Exactly. Then you must have known that he was violating the prohibition law, too? A. Only so far as the complaints came before me.

Q. Who made that raid, Mr. Bolitho, resulting in the fine? A. I think the Sheriff's Office.

Q. You never raided him or arrested him for a violation of the prohibition law? A. There was never a complaint made to me about him.

Q. You did not make any complaint yourself, either, did you? A. I had no information upon which to make a complaint.

Q. Did you seek any? A. I did not—

Q. No. A. —in his case, no more than anyone's else.

Q. Well, do not put it that way. Did you seek any in his case? I do not care whether you did against anybody else or not. A. Did I, in order to make a complaint?

Q. Any information upon which you could make a complaint against Pasquale Mutarella? A. I did not.

Q. No. Now, when you became appointed



Prosecutor, did you know Daniel Marinaro? A. Certainly.

Q. How long had you known him before you became Prosecutor? A. Oh, I knew him when he was reading law with Senator Rathbun.

Q. You had known him, then, for sometime. Were you on friendly relations with him? A. Yes, sir.

Q. So that with Hubert, with Patsy Mutarella and with Danny Marinaro you had an acquaintance, and in the case of Hubert and Marinaro, an acquaintance of a considerable time when you became Prosecutor of the County; that is so, isn't it? A. I had not known Marinaro or Mutarella as long as I had known Hubert.

Q. I did not say Mutarella.

Mr. Matthews: Yes, you did.

Mr. Jayne: No. I eliminated him.

Q. I said, you had known Hubert and Marinaro for a considerable length of time before you became Prosecutor? A. I had known Hubert longer than I had known Marinaro; but I had known Marinaro, I suppose, for several years.

Q. Then is your answer to my question yes? A. I cannot see how I can answer it yes, because you—

Q. I did not ask you who you had known longer than the other. I asked you if you had not known both of these men that I have mentioned, namely, Hubert and Marinaro, some length of time, some years, before you became Prosecutor? A. Certainly.

Q. You, of course, knew, obviously, that it was unlawful for you to accept any money to suppress

any violation of the criminal law in your county, didn't you? A. Why, certainly.

Q. Now, you said this morning that Mr. John M. Mills, who was your predecessor in office, discussed with you some of the cases in general, of which you were happy to say there were 110 when you assumed office, and I took it from your testimony that he did not discuss with you in detail these complaints and charges against Hudock; is that correct? A. You embodied in your question that I said I was happy to say there were 110 cases. I did not say that.

Q. Well, your counsel asked you several times, and you answered it.

Mr. Matthews: I object to this as rather unfair. There wasn't any happiness about it. It was more of a difficulty, I should think.

Q. What do you say? Did he talk to you about the Hudock case or not? A. He talked to me generally about all the cases that were on the list.

Q. Did he talk to you about the Hudock case, I have asked you? A. Not in particular.

Q. Didn't he talk to you about the Hudock case? A. He said—

Q. I did not ask you that. A. Yes. He talked to me about the Hudock case.

Q. Now, you have answered it. Now, I understood you to say in your further examination by Mr. Matthews that subsequently you learned about the Hudock case at Rockway from Senator Rathbun, that is, the details of it? A. After I had seen the indictment in the County Clerk's Office.



Q. Had you seen the indictment in both cases simultaneously when you assumed office? A. I had not seen either indictment until after Marinaro had arranged for Hudock to come in and plead.

Q. Was it before the first day of June, 1923, when Hudock was sentenced, that you had seen both of these indictments against Hudock? A. It was.

Q. Then, before June the first, 1923, you knew that Hudock was charged with two indictments? A. Yes, sir.

Q. One of which charged him with an offense at Stirling and one at Rockaway? A. Yes, sir.

Q. You dealt with the Stirling case, didn't you? A. Yes, sir.

Q. Were you familiar with the Stirling case at the time of the imposition of the sentence on June first? A. Only from what the indictment said, and the state of the case that Mr. Mills had left in the office on appeal. The case against Kisik and Kovach was pending in the Supreme Court on appeal.

Q. Yes. And were you familiar with the nature of the charges against Hudock in the Stirling case at the time he was arraigned for sentence? A. Do you mean with what the witnesses would testify to?

Q. No. With what he was charged. A. Yes. I was familiar with what—

Q. What the substance of the charge was against him? A. Yes. I was familiar with what the indictment said he was charged with.

Q. Is that all the information you had? A. Yes.

Q. The cold type of the indictment, or did you provide yourself with some information concerning what he had actually done in the Stirling case? A. The information I had was what I got from the indictment and from the state of the case contained in the testimony in the Kisik and Kovach trial.

Q. Well, did you glean from any of these sources of information, knowledge that Hudock had not recovered any money in the Stirling case? A. That he had not recovered any money?

Q. Yes. Hudock had not taken any money in the Stirling case? A. Yes. He had not taken any.

Q. You knew that, then, did you? A. From the papers I examined, yes.

Q. And you knew that before the first day of June, didn't you? A. Yes.

Q. And you knew, according to the complaint made, that he had attempted to take money, but had been unsuccessful? A. Yes.

Q. Did you know that? A. Yes.

Q. Now, with respect to the Rockaway case, had you any information particularly about that? A. Only the information I got from the indictment.

Q. And that is all you had? A. Yes, sir.

Q. You never had any information up to that time from anyone else concerning the Rockaway case? A. I think I had, Mr. Jayne.

Q. Well, what I am getting at is whether you are less familiar with the Rockaway case than you were with the Stirling case on the first day of June? A. I recollect that, now that you have



spoken. At the time when the Rockaway case happened, I was consulted by Palco.

Q. Yes. So that you did know about that at the time it occurred, didn't you? A. At the time that he consulted me, I did not know the names of the parties who had taken his—

Q. I do not care about the names of the parties. I am asking you as to what occurred, what the nature and circumstances of the crime were. A. I knew that they had taken $900 from Palco.

Q. And you knew that he, or these parties, whoever they were, on June first you knew Hudock was claimed to be one of them that had actually taken nine hundred and some dollars in the Rockaway case; you knew that, didn't you? A. Yes, sir.

Q. And you knew, in the Stirling case, he had not taken anything? A. Yes, sir.

Q. Now, in that Rockaway case, you were pretty familiar with that, weren't you? A. No. I was not familiar with it, except on that first consultation he had had with me.

Q. You were mayor of Rockaway at the time that occurred, weren't you? A. I do not remember the date of the occurrence now.

Q. Mr. Bolitho, you took a statement from these people yourself, the Palcos, didn't you? A. I may have, Mr. Jayne.

Q. I show you a paper. Doesn't that bear your signature on it? Isn't that in your handwriting? A. Yes, sir.

Q. Your answer is "Yes, sir," is it? A. Yes, sir.

Q. And that was made out at the time this Palco matter occurred, wasn't it? A. Well, shortly after, I think.

Q. And this information was sworn to before you as a Master in Chancery of New Jersey? A. I think so.

Q. As a matter of fact, the complaint made in that case was made before you as mayor of the Borough of Rockaway, wasn't it? A. It may have been.

Q. Well, look at that. Is that the complaint? A. Yes, sir.

Q. And is your name signed to it? A. Yes, sir.

Q. I notice there, in extremely large figures, $925. Is that your writing? A. Yes, sir.

Q. So you had a very accurate knowledge at that time that nine hundred and some odd dollars had been taken in that case, didn't you? A. Yes, sir.

Q. You issued a warrant? A. I do not know, now. (Referring to paper) Yes, sir.

Q. Then you were familiar perfectly with this case at the time it occurred, having taken the statement of witnesses and having taken the original complaint. Did you draw it with the typewriting in it? A. It looks so.

Q. Yes. And having issued the warrant? A. Yes, sir.

Q. In fact, you were more familiar with it than anyone could have been, weren't you? A. Except that Hudock's name does not appear in it.

Q. That is true. But when you came to be Prosecutor, if not before, you learned through the records of this court that this John, this additional man in this case, which had been known as John Doe, Bogden said one of the parties was Hudock? A. I did not learn that, that Bogden



said he was Hudock, until after I had conversed with Senator Rathbun sometime in July 1923.

Q. Didn't you know, on July the first, 1923, that this second indictment, which is marked in this case, accompanying the indictment against Hudock, namely, for the Rockaway case, related to John Hudock? A. I did; but Bogden did not tell me it.

Q. Well, didn't you know that that indictment involved these very same transactions or offenses which were sworn to before you on the 12th day of August, 1921? A. Certainly.

Q. You did not act in the Stirling case as the original magistrate before whom the complaints were made, did you? A. I do not know about that. I do not remember.

Q. You do not know that you took any statements in the Stirling case, do you? A. I do not recollect that I did.

Q. So that, of the two cases, you were more familiar—you were certainly familiar with the Rockaway case? A. Certainly.

Q. And that when Hudock appeared, as it is said, here in court on the first day of June, 1923 to be sentenced, sentence was moved against him on the Stirling case? A. Yes, sir.

Q. Did you fix a day on that occasion for the trial of John Hudock on the Rockaway indictment? A. I did not.

Q. Why not? A. I do not know why not.

Q. Well, he was in court that day? A. He was in court for the purpose of pleading, under arrangements with Judge Wilson.

Q. Yes. Was any mention made of this other indictment? A. I do not think there was any-

thing said about it that afternoon when he was sentenced; but in the morning, I recollect that Judge Wilson asked about this Rockaway case, and there was conversation with Marinaro regarding the imposition of a fine.

Q. Did you say to the court, in your introductory remarks, on June first, the day of sentence, that restitution had been made by this defendant? A. I did not; and the Court did not ask me that.

Q. What did you say to the Court? A. The Court said, when Hudock was arraigned—the Court said, "This is the case in which no restitution is required?" And I said yes, there was nothing taken in this case.

Q. That is what you said, was it? A. Yes, sir.

Q. Did Marinaro make any remarks in open court? A. I do not remember what he said about it. He was talking with the judge about something when I called Hudock to read the indictment to him.

Q. How many others were present, you say, besides those that are mentioned by Mr. Orr in his testimony? A. I do not know, Mr. Jayne, who was there.

Q. Now, after this man had been brought in to Morristown to plead to an indictment, the case where he did not receive any money and no sentence or action taken that day, in the case where he did get away with nine hundred and some odd dollars, nothing was done immediately after that, was there, until these letters start in that you have mentioned? A. I think the first thing that was done was a letter to Senator Rathbun—

Q. Senator Rathbun? A. —about Bogden.



Q. Now Mr. Bolitho, after this occurrence in the other room concerning this case, there was considerable discussion about it, wasn't there? A. I remember Mr. Schenck came in the office about it. He had seen it in the newspapers.

Q. Yes. But I mean there was considerable public discussion as to the unusual manner in which that case had been disposed of? A. I did not hear any public discussion of it.

Q. Were you ever informed by anyone that there was a considerable public discussion about the unusual way that case was handled? A. I do not remember that anyone informed me of that.

Q. Did anyone tell you that there was considerable talk, not only here, but in New York City, concerning the way Hudock's case had been handled? A. I do not recollect.

Q. Now, as a matter of fact, Mr. Bolitho, you never intended to do anything further with the Rockaway case until Senator Rathbun got after you about it, did you? A. Indeed, I did.

Q. You wrote Senator Rathbun a letter, and Senator Rathbun replied to you, did he not? A. I do not remember. He may have.

Q. You wrote Senator Rathbun on the 19th day of July, and a copy of your letter your counsel has offered in evidence? A. Yes, sir.

Q. You received an answer to that letter, didn't you? A. Either an answer to the letter, or the Senator called on me about it.

Q. Do you recall having received a letter from him under date of July the 20th, 1923? A. I do not remember.

Q. Well, I show you a copy and ask you if you recall the letter? A. (Referring) Yes, sir.

Q. You received that letter? A. Yes, sir.

Q. And in this letter,—

Mr. Matthews: I object to the use of that letter. It cannot be read.

Mr. Jayne: I did not mean to be discourteous. (Handing paper to Mr. Matthews).

Q. A moment ago I asked you if someone informed you that there was a good deal of public discussion about this matter. You did not recall it then, did you? A. I did not remember about it.

Q. But Senator Rathbun, under date of July 20th, said to you, "I might say that there are some ugly stories circulating in New York about this situation, and in behalf of George Bogden, I call upon you as Prosecutor to bring this man Hudock to trial upon the indictment for this offense as soon as this can possibly be done"? A. Yes.

Q. That is what Senator Rathbun wrote you? A. Certainly.

Q. And immediately after you got this letter from Senator Rathbun, you had to act, didn't you? A. Why, I couldn't act before; there was no term of court until October.

Q. You never attempted to get this man, did you, or fix a date until you got this letter from Senator Rathbun? A. He was sentenced in the other case, I think, June first, and there was no other term of court until October.

Q. I do not care about the terms of court. The man pleaded guilty to one; you had not asked him, or negotiated with him, with respect to the



disposition of this other one, the Rockaway case? A. His counsel told Judge Wilson in my presence—

Mr. Matthews: I think he ought to be allowed to answer.

The Court: He is entitled to a responsive answer.

(Question read).

The Court: The question was whether or not he had done certain things.

Mr. Matthews: Yes. But the question, as your Honor will notice, called for just such a reply. I do not think counsel ought to be allowed to check it.

The Court: I do not see it calls for any reply.

Mr. Jayne: The question is a simple one. I will reframe it.

Mr. Matthews: Do you withdraw the one that is there, so I may get my objection on the record?

The Court: Well, if you will wait a moment, we will have it re-read.

(Question and answer read).

Q. Predicated upon the time of the receipt of this letter from—

Mr. Matthews: Will your Honor just listen to his answer thus far, when Mr. Jayne interrupted him?

The Court: Now, the answer, as read, his counsel did something or other?

Mr. Matthews: Yes. It seems to me that is very responsive to the things that he had not negotiated.

Mr. Jayne: He can answer it. If he has,

his answer is yes; if he had not, his answer is no.

Mr. Matthews: Well, the Prosecutor ought to hold to a question that is susceptible of yes or no.

Mr. Jayne: I will withdraw it rather than take so much time, your Honor please.

Q. After you received this letter from Senator Rathbun, then is when you endeavored to send out all these notices, wasn't it? A. Not immediately afterward. I did it for the October Term of course.

Q. You never sent any notices about this case, took any steps to compel this man to plead to this Rockaway indictment, until after you received the letter from Senator Rathbun, did you? A. He had already pleaded.

Q. Now, you are avoiding—

The Court: Answer the question, Mr. Bolitho. Did you or did you not take any steps?

The Witness: To make him plead?

The Court: Well, repeat the question.

Q. Of course, you may have chosen as Prosecutor—

(Question read).

A. The records showed that he had pleaded.

Q. He pleaded to the Stirling case, and to the Rockaway case he pleaded not guilty, didn't he? A. And not guilty to the Rockaway case.

Q. And I say, you had done nothing, although you had taken him into court, arranged specially for him to plead to the Stirling case, no action whatever was taken with respect to the Rockaway case than had already been taken until after



you received the letter from Senator Rathbun? A. And after I had written this—

Q. Do not add more to that. A. —letter to Senator Rathbun.

Q. But you wrote Senator Rathbun about Bogden, not about Hudock? A. No. He wrote about Hudock and not about Bogden.

Q. And that created the trouble? A. And he was Bogden's counsel, and not Hudock's.

Q. And Bogden was a witness for the State againt Hudock? A. I did not know it then.

Q. Now, he said to you in the letter, "It is not fair that George Bogden should be made the victim, and Hudock, who has plead guilty in this court to a similar offence in this County, and who has a record of committing similar acts throughout the country, should go scot free as to the indictment against him." And in this letter he called upon you as Prosecutor to bring this man Hudock to trial? A. Sure.

Q. Now, after that—

Mr. Matthews: Is that a question, Mr. Jayne?

Mr. Jayne: It will be if you keep still a moment.

Mr. Matthews: Well, I have kept still for two minutes, and there has been a speech and no question. I object to it.

The Court: You cannot object until Mr. Jayne has finished.

Mr. Matthews: May I object at this point, then, to the statement that the Prosecutor has made, without a question?

The Court: I will see if the Prosecutor has finished what he had to say.

Q. Now, it was after that, that you wrote all these letters, copies of which were put in evidence?

Mr. Matthews: I object.

A. Is that the question?

Mr. Matthews: I object to the question as to its form.

The Court: The objection is overruled. Let it be answered.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Witness: Please read the question.

(Question read).

A. Senator Rathbun was counsel—

Q. Now, why don't you answer that question? A. It has a double aspect.

Q. No. There isn't any double aspect. I asked you if it was after the Senator had written you that letter, that you wrote these letters which you introduced in evidence?

Mr. Matthews: I submit that the question does call for three separate answers.

The Court: I will strike out the whole question and get started over again.

Q. I ask you the simple question, was it not after you received the letter from Senator Rathbun that you wrote these letters, copies of which have been offered in evidence? A. It was.

The Court: What is the date of the letter from Mr. Rathbun?

Mr. Jayne: July 20th.

The Court: What is the date of all these letters that have been put in evidence?



Mr. Matthews: July 20th, what year?

Mr. Jayne: 1923. They run along after that. I can tell your Honor, if you wish.

The Court: Then what is the use of wasting so much time in finding out if it was afterwards? The letters speak for themselves.

Q. Now, I understood you to say this morning, when you came into court on June first you asked Daniel Marinaro, you asked the question in court, if this, referring to a man, was John Hudock? A. I did not. You misunderstood me, Mr. Jayne.

Q. Who did you ask? A. I called John Hudock.

Q. You did not say that this morning, did you? A. Well, I do not know. If I did, I must have misquoted myself.

Q. You said you asked if this was John Hudock? A. Well,—

Q. I cannot be certain whether you asked Daniel Marinaro. A. I called—

Mr. Matthews: He called him.

Mr. Jayne: I know you think so; I do not.

A. (Continuing) Whatever I said this morning, I called John Hudock, and this man stood up, and I asked him if he was John Hudock.

Q. So that you did not ask anybody if this was John Hudock? A. Well, I did not know who to ask whether it was John Hudock.

Q. No. But Marinaro you could have asked? A. Marinaro was with him when I did ask.

Q. I notice, Mr. Bolitho, that, notwithstanding the fact that there are a number of copies of these notices that you say you sent to the National

Surety Company, the National Surety Company wrote you back a letter saying they never received any of them? A. I cannot help that. I brought the file from the Prosecutor's Office this morning, and I—

Q. Where has that file been? A. In the Prosecutor's Office here.

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

Q. Have all those copies of those letters been there? A. I found them there this morning.

Q. Had you seen them before? A. I had seen them at the times when the letters were written.

Q. Hadn't you seen them since that until this morning? A. I think I saw them, maybe, yesterday, or yesterday afternoon.

Q. Is that the first occasion you had to inquire for them? A. I think so.

Q. And look at them? A. I think so.

Q. Did you send them copies, to the National Surety Company, of previous correspondence which they say they had never received? A. We did not.

Mr. Jayne: I think that is all.

RE-DIRECT EXAMINATION by Mr. Matthews:

Q. This Rathbun letter was an attempt by Rathbun to get Bogden out of the difficulty, wasn't it?

Mr. Jayne: Now, this is your witness, Mr. Matthews.

Mr. Matthews: Well, you opened it, and you have made him your witness.

Mr. Jayne: I object in order to get it



formally before the Court, but if counsel is going to testify—

The Court: The Rathbun letter will speak for itself. We already have the facts, perhaps, as Bogden's counsel.

Mr. Matthews: No. But, if you please, Justice, it may be that the Prosecutor as Prosecutor knows that a lawyer who is representing the one fellow blames the other, and I want to know if Rathbun was shifting the responsibility on Hudock in order to favor Bogden.

The Court: Are you asking the Prosecutor as a matter of expert opinion?

Mr. Matthews: No, your Honor. I am saying, if he was shifting the blame on Hudock.

The Court: It is open for you to argue on the face of the papers why. I see nothing to asking it of this witness. I overrule the question.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Rathbun was counsel for Bogden, though, wasn't he? A. Yes, sir.

Q. And this Rathbun letter was in response to your letter? Your copy of Rathbun's letter does not appear here, does it? A. It was in response to the letter where I had notified him to produce Bogden for sentence.

Q. It was in response to a letter, however, that

you had written to Rathbun telling him to produce Bogden? A. Bogden for sentence.

Q. For sentence, yes. And you had talked to Rathbun before this, had you, about Bogden? A. I think it was after that, that I talked with him about it.

Q. That you talked to him about it. Now, this indictment that was not tried by you was the same indictment that was found in October 1921, in the Mills' administration, was it not? A. Yes, sir. It was the first indictment.

Q. I mean the one that was not tried at all. They found the Rockaway indictment in 1921.

Mr. Jayne: That is not what you asked him.

Mr. Matthews: Will you repeat the question?

(Question read).

A. Yes; it was the first indictment.

Q. Mr. Bolitho, Mr. Jayne asked you whether the correspondence with the National Surety Company, and the efforts that you made in the forfeiture of the Hudock bail, were not all after July 20th, 1923, the date of the Rathbun letter, and you told him yes; that is right, isn't it? A. That is my recollection.

Q. Yes. And the terms of court, the term of court was what at that time, if any, July 20th, 1923? A. May, October and January.

Q. Yes. And do you know of your own recollection whether or not there were any trials in July, 1923? A. I think not.

Q. And what was the next term of court after July, 1923? A. October.

Q. October, 1923? A. Yes.



Q. And when were your first letters? Oh, your first letters were in March 1924, to the Surety Company, weren't they? A. I think so.

Q. Yes. A. We had notified Marinaro before.

Q. Well, you did not think that Senator Rathbun's assumed authority to order you to proceed with the cause should speed you on to it, did you?

Mr. Jayne: I object to that. It is leading. And I object to what he thinks.

Mr. Matthews: I withdraw the question and reframe it this way.

Q. You were not scared into acting by Senator Rathbun's letter that he demanded that you proceed with the case of another man rather than his client?

Mr. Jayne: Objected to as leading.

Q. Put it in the alternative, to be strictly evidential. Were you or were you not? A. I was not.

Q. You were not. That is all.

The Court: What is the date of this Rathbun letter?

Mr. Jayne: July 20th, 1923.

The Court: Then these letters to the Surety Company were the following March?

Mr. Matthews: Yes, your Honor.

The Court: All right.

Q. You told Mr. Jayne on cross-examination that you had arraigned Mutarella and fined him $500. Have you the records of your office with you, Mr. Bolitho? A. I have not.

Q. Has the Prosecutor the records— A. He has.

Q. —of that?

Mr. Matthews: Is Prosecutor Holland in court?

(No response).

Mr. Matthews: May I withdraw Mr. Bolitho? Well, I won't ask him now, but I will bring him in on another count and save time.

The Court: Oh yes. You can bring him in at any time.

Q. You told Mr. Jayne that Mills talked to you about the Hudock case. You were compelled to answer yes or no. What did Mills say to you about the Hudock case? A. Mills took the list that he gave me of the cases, and went down the list and told me what the defendants were indicted for.

Q. Did he tell you anything different in the Hudock case than in any other case? A. No, he did not, except with reference to the Bogden case, he says Bogden was under a capias, and Bogden was the man who was identified as being the man who got the money.

Q. You have also been asked about some documents from Rockaway that have your signature and are dated in September, 1921, they being statements of the Hudock case, or in the Rockaway case of Hudock. In what capacity did you take those statements? A. I took these—this statement that you show me now as a Master in Chancery, of the statements of witnesses.

Q. And as mayor of the community at that time, were you also the magistrate of it, or how did you happen to take the complaint? A. I think as magistrate in my capacity as mayor.



Q. Yes. You were then, of course, not Prosecutor of the Pleas? A. No, sir.

Mr. Matthews: That is all in that case.

RE-CROSS EXAMINATION by Mr. Jayne:

Q. Mr. Bolitho, you just told your counsel that —remarking about when the courts were in session. Did you ever make any special request to either the Judge of the Quarter Sessions or Justice of the Oyer to hear these cases, the Hudock cases, outside of the regular time? A. I did not.

Q. On June first, the jury was here, was it? A. The jury was trying a case in this room on June first.

Q. The jury then was attending, according to your testimony, this court on June the first, and Judge Wilson sat on the bench on June the first? A. In Special Sessions.

Q. Well, does it make much difference? He is there himself. Do you mean you think it makes much difference whether he is sitting in Special Sessions or Quarter Sessions? A. Except that I did not regulate him.

Q. So that on the first day of June, the day that you arraigned this man in $500, the jury was in court, and the judge was in court, and you were in court, and the defendant was in court; isn't that so? A. Yes. He was under the $1500 bail.

Q. Yes. So that instead of having him sentenced that day, he could have been tried, couldn't he? A. He could not have been tried that day. I did not know anything about—

Q. Well, but you had fixed that day. You could have just as well fixed it for the trial of this case

in which this man obtained $925 from somebody, as you could have fixed it as a day when he could slip in the back door and get a fine of $500 and go out again? A. He did not slip in the back door, Mr. Jayne.

Q. You always pick up some odd part of it. A. Well, that was a part of your question.

Mr. Jayne: That is all.

By Mr. Matthews:

Q. And there were judges and juries here from 1921 to 1923, too, weren't there? You know that as a practicing attorney during those years? A. Yes, sir.

Q. Yes. He was not tried then either, was he?

Mr. Jayne: I do not see the significance of that inquiry.

The Court: Let us close this up.

Mr. Matthews: I close.

Mr. Jayne: I think this letter ought to go in evidence at this point with the others.

Mr. Matthews: There are certain phases of that letter that I think ought to certify—

Mr. Jayne: Your own client said it was a copy of a letter which he received.

Mr. Matthews: Well, that may all well and truly be.

Mr. Jayne: You object to it?

Mr. Matthews: I object to that date.

Mr. Jayne: Then I shall follow the policy of objecting strenuously to everything my adversary offers of that sort.

Mr. Matthews: Isn't this a legitimate objection, your Honor please? I do not know whether that is three or four.



The Court: I do not want to deal with objections at this time, because it is not the proper time for you to introduce it.

Mr. Jayne: I thought, if it had its numerical order among the others, it would be much better for the case.

The Court: When was the plea taken in the Hudock case, June first, what year?

Mr. Matthews: 1923, your Honor.

The Court: Well, can there be any question about the date of this letter in view of that fact?

Mr. Matthews: I do not know. Of course, I never saw it before. I wondered whether that was 1923 or not.

The Court: Well, let us look at it. "Your letter of the 19th instant received."

Mr. Matthews: The 19th of July.

The Court: This is July 20th, something or other. "Now, it is not fair that George Bogden should be made the victim and Hudock, who has pleaded guilty in this court to a similar offense in this County" —Now, he pleaded on the first of June, 1923, and do you think it is possible that Mr. Rathbun could have waited for a year and one month before writing this letter?

Mr. Matthews: Surely.

The Court: You do?

Mr. Matthews: Surely. He could have waited for two years.

The Court: And after Mr. Bolitho on the stand has said that it was not until after this letter that he began to write to the surety company?

Mr. Matthews: I say, of course, we have got to interpolate that; but if we are going to take the letter itself, all I wanted Mr. Jayne to establish for me was that that was a "3." It is just as much for him as it is for me. It looks blurred.

And there is one thing I have got. Mr. Orr, you remember, was going to bring us this capias in that first count.

The Court: All right.

Mr. Matthews: Will you take the stand, Mr. Orr?

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EDWIN ORR, re-called as a witness on behalf of the Defendant, testified as follows:

Direct-examintaion by Mr. Matthews:

Q. Now, you have got the capiases in the Hudock matter; is that right? A. Yes, sir.

Q. And will you turn to your record?

The Court: Let me see those papers.

The Witness: That is in the Bogden matter.

Q. And you have what book with you? A. I have the Clerk's docket.

Q. You have the Clerk's docket. And what page, particularly? A. Page 308.

Q. And at 308, what entry number? A. 1229.

Q. 1229. A. Case of the State—Charles Palco v. John Hudock.

Q. Is this in your time as Clerk? A. It is.

Q. And it is in your handwriting? A. No, sir.



Q. Whose handwriting is it? A. My clerk's, in the office.

Mr. Matthews: Well, I am not objecting.

Q. This shows a recognizance or a capias issued in behalf of Charles Palco against John Hudock, does it? A. It shows on March 14, 1923, there was an affidavit and order filed, and a capias issued.

Q. Yes. Who were the attorneys? A. King & Vogt.

Q. You have the paper? A. I have the Clerk's docket.

Q. You have the paper, the capias? A. I have.

Q. Will you produce it? A. It was an affidavit and order.

Q. An affidavit and order produced. And have you any other paper? A. I have not.

Q. Does your record show anything further? A. It shows nothing further returned.

Q. Nothing further returned. What does your record show on that, an affidavit and order, and— A. Capias issued.

Q. Capias issued. Have you the capias? A. No, sir.

Q. Where is it? A. I couldn't say.

Q. If it had been served, would you have it? A. That—I couldn't say that.

Q. Have you a record in the Bogden case? A. I have.

Q. Will you produce it?

The Court: This has been filed?

Mr. Matthews: Yes. We want that too, with the record, if your Honor please.

The Court: Let me see what you have in your hand there.

Mr. Matthews: (Handing paper to the Court).

Q. What does your record show in the Bogden capias? A. On page 298 of the Clerk's docket,—

Q. Yes. A. —Item number 1189, a case of Charles Palco v. Joe Bogden, also known as George Bogden.

Q. Yes. Who were the attorneys of that capias? A. King & Vogt, attorneys of plaintiff.

Q. Yes. A. Charles A. Rathbun, attorney of defendant.

Q. Yes. And what does it show that was done with that capias? A. On the capias?

Q. On the—what proceedings were taken thereunder? A. On September 14, 1922, there was an affidavit.

Q. Have you got that here in the papers? A. (Handing paper to counsel).

Q. An affidavit filed. Yes? A. An order.

Q. An order. Yes? A. Summons and complaint.

Q. Summons and complaint. Yes. With the return of the Sheriff on it? A. With the return of the Sheriff on it. Another order, special—

Q. Yes. A. An answer.

Q. Yes. Filed by Rathbun as attorney? A. Yes, sir. Notice and petition.

Q. Filed by Rathbun as attorney? A. Yes, sir. And a special answer.

Q. Filed by Rathbun as attorney? You say yes? A. Yes, sir. A capias.

Q. A capias. And with the service on the back of it endorsed by the Sheriff? A. Endorsed by the Sheriff.

Q. Yes. A. And exceptions.



Q. Filed by Mr. Rathbun? A. Yes, sir. And an execution.

Q. And an execution. Now— A. This is a copy of the summons and complaint.

Q. Now, in your record book, it shows that all of these papers were filed that you have handed to me, and it shows that Mr. Rathbun's client paid a judgment does it not, of how much? A. This does not show.

Q. It does not show how much? A. It just shows the judgment at trial.

Q. Well, you have another paper there that will show the costs and the judgment; will you get that out? A. This is just the costs taxed by the Clerk on the judgment; it does not show the amount of the judgment.

Q. Have you anything at all to show the amount of the judgment? A. The execution there will show the amount of the judgment.

Q. I hand you the paper that you call the execution, and ask you, is that the amount on that, $1044.33? A. That is the amount of the recovery.

Q. Yes. And your book shows the judgment satisfied? A. It does not.

Q. No. And what date does it show the judgment entered? A. October 19.

Q. What year? A. 1923.

Q. October 19, 19— A. 1923.

Q. All right, sir.

Mr. Matthews: Now, I offer in evidence, at the present time, if your Honor please, the book at these two pages, and the file in the Hudock matter, the alleged capias, which consists of two papers, and the file

in the Bogden capias matter, and all of the papers enumerated by the Clerk and which are contained in an envelope from the Clerk's Office.

The Court: Do you want all of them in?

Mr. Matthews: Yes, sir, if you please. We can have them marked in the envelope, can't we, because they seem to be a fairly permanent record?

The Court: Yes. The Bogden case was all in 1922?

The Witness: And 1923.

The Court: And the early part of 1923. Judgment seems to have been entered in October, but the pleadings were all complete in February 1923. The affidavit and order to hold to bail in the Hudock case are both on the 14th of March, 1923.

Q. And there is no capias in the file in the Hudock case, is there, Mr.— A. No, sir.

The Court: He has already said there is not.

Q. What is the practice of your office with reference to a capias when it is left with you? A. The practice with the local attorneys is to take them away themselves.

Q. Yes. And you know the practice of King & Vogt, don't you? A. Yes, sir.

Q. And the practice then is to give them to the Sheriff, is it not? A. For the Clerk's Office to hand the papers to any member of their firm who happens to present them, after they are signed and sealed by the Clerk.

Q. To be delivered to the Sheriff? A. No. To be delivered to them.



Q. Didn't you tell me this morning the practice was to have them go to the Sheriff immediately? A. No. Very few papers we deliver immediately to the Sheriff.

Q. No. By the attorney? A. No. The attorney gives them to the Sheriff.

The Court: Why do you ask Mr. Orr what the practice of attorneys is?

Mr. Matthews: Well, I know what the practice is in my county. I want to know what the practice as to capiases is in Morris County. The Sheriff gets it.

The Court: Do you know any reason why it should be different in Morris County than what it is in your own county?

Mr. Matthews: No, your Honor. Here it is different in some cases.

The Court: Well, he says it is not the practice to give it to the Sheriff.

The Witness: It is not the practice of the Clerk to give it to the Sheriff.

Q. But the practice is for the Clerk to give them to the attorneys to be given to the Sheriff, is that right? A. That is what I suppose the practice is, yes.

Q. Well then, as a matter of fact, the Sheriff has the record of them, has he not? A. He should have the record. I could not say he has.

Mr. Matthews: Now, I call the Sheriff to complete this record, on the Hudock capias. That was my purpose this morning.

CHARLES E. ESTLER, re-called as a witness on behalf of the defendant, testified as follows:

The Court: No case against Hudock, the Sheriff says.

Mr. Matthews: But I am not finished with the Sheriff.

The Court: I know you are not; but I am telling you that.

DIRECT-EXAMINATION by Mr. Matthews:

Q. Have you a record in your book of any proceedings in the case of the capias issued at the instance of one Palco who was represented by King & Vogt, attorneys, against one Bogden, who was represented by Rathbun, attorney, Charles Rathbun, attorney? A. This has got one here from Bogden.

Q. Yes, sir. Will you turn to that page and tell me what page that is, in what book? A. Yes, sir. This is record book A-3.

Q. And the page, please? A. Page 45.

Q. Page 45 in record book A-3. And what does that record—

Mr. Matthews: I am going to offer it in evidence, Mr. Jayne.

Mr. Jayne: What do you want to prove, Mr. Matthews? I will be glad to consent to most anything that is a fact here.

Mr. Matthews: I offer it as corroborative of the statements made by the Prosecutor, and contradictory to the statements of the witnesses made by the State.

Mr. Jayne: The State did not deal with



the capias against Bogden. The State dealt with the capias against Hudock.

Mr. Matthews: I want to show that these two cases involving the same man and the same money, namely, the Rockaway case, that Bogden was proceeded against and the money gotten from him, and that Hudock was not.

The Court: You have got the whole file in in the Bogden case from the County Clerk's Office.

Mr. Matthews: Yes, your Honor.

The Court: Now, what is there in this book that would add anything to it?

Mr. Matthews: I want to show that the Sheriff actually served the capias, and the steps he took to do it, and I want to ask him whether there were any steps in the Hudock case.

The Court: Well, what he did in the Hudock case is shown by his return on the capias and not by his record book.

Mr. Matthews: Well, I offer it for that purpose.

The Court: Well, it will be excluded.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Have you also examined your book for any proceedings against one Hudock, proceedings of Palco?

Mr. Jayne: I object to it because the question has already been asked and answered.

The Court: I asked him that, and he said no. It has been answered once. That is enough.

Q. Have you searched the records through for it? A. Yes, sir.

Mr. Matthews: That is all, thank you, Mr. Sheriff. Oh no, there is one more question, if your Honor will indulge me. May I recall him a moment, because it is a question of custom as to that which I want to ask him?

The Court: What is the question that you want to ask him?

Mr. Matthews: The question is, what is the practice of the Sheriff's office with reference to the service of capiases? How are they received? Are they received from the County Clerk, or are they received from the attorneys?

The Court: Well, go on and ask him.

The Witness: Why, the different ones bring them in. They don't always come from the County Clerk.

Mr. Matthews: I did not hear what you said, different attorneys?

The Witness: Different counsel may send one in through their representative, something like that.

Mr. Matthews: Your practice, however, is to get the capias from the counsel after it has been filed by the County Clerk?

The Witness: Oh, it isn't our practice to get any. You mean to receive them?

Mr. Matthews: Yes.



The Witness: Just as they are brought in.

Mr. Matthews: They are brought in by attorneys?

The Witness: Yes, generally.

Mr. Matthews: And then your office serves them and makes a return?

The Witness: Yes, sir.

Mr. Matthews: Mr. Heller, please. This is the count dealing with the Dolimpio case.

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EMIL HELLER, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Heller, you are a native, or a resident, of Morristown? A. Yes, sir.

Q. Of Dover? A. Dover.

Q. Dover. And were you the foreman of the October 1924 Grand Jury? A. Yes, sir.

Q. And as foreman of such Grand Jury, have you a remembrance of a record of whether or not the proceedings were taken against Peter Dolimpio, or that the case was considered against Peter Dolimpio?

Mr. Jayne: I object to it. I do not know just what right one has to call on a member of a Grand Jury to inquire into what proceedings were taken before the Grand Jury.

The Court: After the Grand Jury is adjourned?

Mr. Jayne: Yes. I think that is not the point upon which the question turns. Their deliberations are, as your Honor well knows, secret.

The Court: You may ask him.

Q. The Court says you may answer the question. A. Would you please ask that again.

Q. Yes.

(Question read.)

A. I have a record which I made as foreman in which we considered a case brought against Peter Dolimpio, and I have it spelled, instead of Dolimpio, Dolimfio, D-o-l-i-m-f-i-o. That is the way I had it spelled.

Q. Do you remember what happened in the case? A. Why, the case was considered and dismissed.

Q. And do you remember what the facts were? A. No, sir.

Q. Do you remember who presented the case? A. The case was presented by Prosecutor Bolitho. He presented all cases to that Grand Jury.

Mr. Matthews: You may cross-examine him.

CROSS-EXAMINATION by Mr. Jayne:

Q. Mr. Heller, this was at the October Term, 1924? A. Yes, sir.

Q. Had you ever served on a Grand Jury before that? A. Yes, sir.

Q. Do you recall whether or not any witness was called before the Grand Jury to testify in the Dolimpio case? A. No; there was no witness.

Q. No witness. And the information upon which you considered this Dolimpio case was that



given to you by the Prosecutor, I suppose? A. May I explain that in my own way?

Q. I am just asking you if that was the information upon which you acted? A. The information on which we acted was—

Q. Well, was that the information? I do not want to go into the deliberations of the Grand Jury. A. It was the information that was on the indictment, and the information given to us by the Prosecutor.

Q. No witnesses sworn, you say? A. Not in this case.

Q. No liquor produced before you in the Dolimpio case? I beg pardon? A. No.

Q. You say you have a record. Is that a typewritten record? A. No, sir.

Q. Is it a record prepared by you, or by the Grand Jury Clerk? A. It is a record that I, as foreman, made of my own accord as the cases were presented.

Q. Yes.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. What explanation did you want to give Mr. Jayne about what information you had before you in the Dolimpio case? Tell us. A. Why, we had a great many cases to consider in the October Term of the Grand Jury, and as we went along we came across quite a few cases where the evidence was of such an insufficient nature, the witnesses took up a lot of time, and they were trivial cases, cases without merit, that by a vote of the Grand Jury were thrown out. So, after we had been in

session about three days, it was suggested that inasmuch as we had so many cases still to consider, it would be a wise thing and save unnecessary time to have a committee appointed from the members of the Grand Jury to consider these cases to see if they had merit or not, and then bring them to the attention of the full Grand Jury. During this committee session, we acted on a number of cases; some we decided to recommend to be brought to the attention of the full Grand Jury; others we decided to recommend to the full Grand Jury that there be no indictment for lack of merit or evidence. And in each case where the committee recommended a dismissal, the matter was presented individually to the full Grand Jury, and then the full Grand Jury voted in each individual case.

Q. And was the Dolimpio— A. We had almost, I should judge, almost four hundred cases to consider. We were in session, I believe, six or seven days. We ran across many cases that had absolutely no merit, in the judgment of the Grand Jury, cases that take up lots of time.

The Court: Well, this is a pretty long discussion, Mr. Heller. What is the point of the thing? Was this one of the cases that came before the committee and then they thought there was nothing in it?

The Witness: Yes, sir.

The Court: And recommended it be dismissed?

The Witness: Yes, sir.

Q. And the Grand Jury voted on its dismissal? A. Yes, sir.

Mr. Matthews: That is all, thanks.



The Court: Anything further, Mr. Jayne?

Mr. Jayne: That is all.

Mr. Matthews: May I ask Prosecutor Holland to take the stand, please?

The Court: On this count, or some other?

Mr. Matthews: This count, your Honor.

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ALBERT H. HOLLAND, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Prosecutor, you are the acting Prosecutor of the County of Morris now? A. I am.

Q. And you have been subpoenaed to bring some records with you from your office, have you not? A. I have.

Q. And are these records that you found in your office upon your advent there? A. They are some of them.

Q. Yes. That is what I mean; these are some of the records. Have you a record with reference to Peter Dolimpio? A. I have a card index, or a card which is a part of a card index system of Peter Dolimfino and Peter Dolimpfino.

Mr. Matthews: I want to offer these two records in evidence as records of the activity of the then Prosecutor Bolitho, the new defendant, with reference to the indictments against Dolimpio, the charge in this count being that he suppressed them.

Mr. Jayne: I object to them, not alone in this matter, but I think records as such

lose their evidential value when the person who perhaps makes the records is the defendant in suit. The records may then become self-serving declarations for the defendant. I do not know who prepared this record. it has not been brought out in the testimony; it may be that the defendant prepared it himself. As the trial approaches, he might have prepared a considerable number of records in his own behalf, and I think they would not necessarily be admissible simply because they were records of the office.

The Court: So far they seem to be nothing but a couple of cards that Mr. Holland found when he took possession of the office?

Mr. Jayne: It is not the card I object to; it is what is on it.

Mr. Matthews: They are the records of the Prosecutor's Office during Mr. Bolitho's term and, as such records, they are eternal in Morris County, if your Honor please, right or wrong, unless they can be corrected if they are shown to be wrong. I offer them in evidence for that purpose.

The Court: Did he testify just now?

Mr. Matthews: No, your Honor. Mr. Jayne said that the Prosecutor was self-serving in them. Now, I thought I replied to your Honor through him.

The Court: My difficulty is with regard to their authentication.

Mr. Matthews: If you want me to prove them by the girl who wrote them, I will get



her. I will have to dismiss Mr. Holland and give him back his records until then. Thank you, just for now, Mr. Holland.

(Witness excused.)

Mr. Matthews: If the stenographer is in the office now, will you ask her to come in, please, and give her the records, Mr. Prosecutor?

The Court: Have you any other witness that you can call while you are waiting?

Mr. Matthews: No. The defendant is next.

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MARGARET REPP, sworn as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. I show you two cards, one numbered 1280 and one numbered 1445, and ask you if that is your handwriting on those cards? A. (Referring) Yes, it is.

Q. In the term of Prosecutor Bolitho, were you employed in his office? A. Yes, I was.

Q. And in what capacity, Miss? A. As a county detective.

The Court: Let me see those.

Mr. Matthews: (Handing cards to the Court.)

Q. Did you make the record appearing on card 1280 and 1445? A. Yes.

Q. Yes.

Mr. Matthews: That is all at this time.

CROSS-EXAMINATION by Mr. Jayne:

Q. Just one question. Did you have any knowledge yourself of the information that you put on the cards, or was that given to you by someone in the office? A. The cards were made from the docket.

Q. Well, where did the information come from in the docket? A. Oh, I do not know.

Q. In other words, the information on the cards relating to the action of a grand jury, you would have no knowledge yourself of any action taken by the grand jury, would you? A. No.

Q. So that you would not have any knowledge of any information to that effect relating to the grand jury proceedings that you would put on the card, would you? A. No.

The Court: Is that all? Anything further?

Mr. Matthews: No, if your Honor please. At this point I offer the cards in evidence.

The Court: Anything further?

Mr. Jayne: No, I think not.

The Court: The Foreman of the Grand Jury has testified this complaint was dismissed.

Mr. Matthews: Yes, I know it, your Honor.

The Court: I do not think the cards can add anything to it, but I think the cards may well go in. They are admitted.

Two cards marked Exhibits D-18 and D-19 in evidence.

Mr. Matthews: I call on Mr. Bolitho again, now, in the Dolimpio count.



JAMES H. BOLITHO, the defendant, recalled as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Bolitho, did you have before you as Prosecutor the case of one Peter Dolimpio? A. Yes, sir.

Q. And when did you have that case before you? A. I think my attention was called to it first when I took the files for the grand jury room.

Q. Did you ever meet Dolimpio in your office? A. I did not.

Q. On September 10th, did Mr. Mutarella bring Dolimpio, or anyone in his behalf, to your office? A. He did not.

Q. On September 10th, or on any day, did Dolimpio or anyone in his behalf ask you to help him out, and did you tell him yes, "but bring me $300"? A. I did not.

Q. At any time in September of the year that I have mentioned, 1924 I think is it, or 1923, did you say to Dolimpio, "I want $400. Go out and get the other two hundred by noon and come back here with it"? A. I did not.

Q. At any time in September of 1923 or 1924, or at any time in those years while you were Prosecutor, did Dolimpio or anyone in his behalf pay you $250, and for which you agreed not to prosecute his case? A. He did not.

Q. Did you prosecute the Dolimpio case? A. Yes, sir.

Q. And what became of it? A. It was dismissed by the October Term of the Grand Jury.

Q. Now, did Louis Marinaro come to your home at midnight with a statement that had been made

by Dolimpio with reference to what had happened in the Sheriff's office, and that he had not received any money, but had since signed a paper, and so forth? A. He did not come there at midnight. He came to my house with a paper.

Q. Who was with him when he came there? A. Daniel Marinaro and Patsy Mutarella.

Q. I show you a paper.

The Court: Who is this came there?

Mr. Matthews: Daniel Marinaro and Patsy Mutarella.

The Court: No, no. With him.

The Witness: Louis Marinaro, Daniel Marinaro and Patsy Mutarella.

Mr. Jayne: I did not quite hear when he came.

The Court: He did not say when. He said, "They did not come at midnight; they came to my house."

Q. Let us fix the time. Was it half-past eleven? A. It was between eleven and twelve.

Q. But not exactly twelve, eh, midnight? A. Well, I do not think it was that late. I had been working when they came in.

Q. I show you a paper signed Peter Dolimpio, and I ask you, Mr. Bolitho, is that the paper that they handed you on that night? A. I think there was two papers. This is one of them.

Q. That is one of the papers. What was the other paper; do you remember? A. The same as that.

Q. Well, they handed you two copies of the same article? A. I think so.

Mr. Matthews: I offer this paper in evidence.



Mr. Jayne: I haven't the slightest objection.

Paper marked Exhibit D-20 in evidence.

Mr. Matthews: Now, I will forego reading it, if your Honor please. It may be read later.

Q. Mr. Bolitho, did you send Louis Marinaro or his son, the lawyer, or anybody in your behalf, to Dolimpio to get this statement? A. I did not.

Q. Did you know that this statement was going to be obtained? A. I did not.

Q. Had you advised its being obtained in any manner? A. I had not.

Q. Had you advised a third party its being obtained? A. I had not.

Q. Was Dolimpio with them when they came to you that night? A. No, sir.

Q. What did they say to you with reference to this paper?

Mr. Jayne: I object to it.

Mr. Matthews: They have testified to it.

Mr. Jayne: Unless it relates to the matters in issue in the case.

The Court: Well, the Marinaros testified about what they said to him, didn't they?

Mr. Jayne: Yes. If this conversation is on the same subject matter, I do not object.

Q. That is all I want, only the conversation with reference to this paper and the making of it, and your part of it.

The Court: What is this paper, an affidavit?

Mr. Matthews: Yes. This is the Dolimpio affidavit.

The Court: Is this the vinegar affidavit?

Mr. Jayne: Yes.

Mr. Matthews: The word "vinegar" occurs once in the affidavit. It might be called the Sheriff affidavit. The Sheriff had a piece of blank paper and filled in something about it later, according to the affidavit.

The Court: Go ahead.

A. What was the question?

(Question read).

The Court: What did the Marinaros say to you at the time they came there with regard to this matter?

The Witness: Well, Mr. Marinaro, that is, Daniel Marinaro's father came in first, and then they came in behind him, and they sat down in the house, and Mr. Marinaro said something about I was working late, something to that effect.

Q. Do not go to the preliminaries; go to the meat of this situation. A. Then he put his hand in his pocket and took out this paper and said, "I have something very interesting for you," and he says, "You better read it." So I took it and read it, and I said, "I do not know how that interests me." "Well," he said, "It shows what the Sheriff is doing."

Q. Let me interrupt you at this point. At about this time, the Sheriff's office and your office was in total impasse, was it not? A. Not personally between me and the Sheriff, but between the men, some of them.

Q. Well, the office, I say? A. Yes.

Q. There was a conflict of jurisdiction with reference to liquor cases, was there not? A. Well, it was reported that there was. I had no knowledge of that.



Q. You did not have any knowledge of it? A. Not personally.

Q. How? A. No personal knowledge of it, except what I saw in the newspapers.

Q. I see. All right, then. Go ahead. He told you, then, something about the Sheriff. What was it? A. He said that "You see what the Sheriff is trying to do?" And I had read the affidavit and I handed it back to him, and he says, "That is for you." And I was thinking. I won't say what I was thinking of.

Q. Never mind what you were thinking of, Mr. Bolitho. A. I said "All right." And then they were talking. They said there were three or four of them made and they said that—Patsy Mutarella had one and Daniel Marinaro had one and Louis Marinaro had two. And I asked him if he would let me have one more of them for my file; and he gave me a second copy. I gave that second copy to Mr. Jayne.

Q. You gave the second copy to Mr. Jayne? A. Yes, sir.

Q. When? A. Before the Elisor Grand Jury started its proceedings.

Q. Yes.

Mr. Matthews: Have you the copy, Mr. Jayne?

Mr. Jayne: No.

Mr. Matthews: I think, perhaps, if your Honor please, it might be better at this time to read this Exhibit D-20 to the Jury.

(Reading Exhibit D-20 to the Jury.)

Q. That is all you know about this Dolimpio charge against you, sir, is it? Is there anything else you know about this Dolimpio charging you with taking money for suppressing evidence against him? A. I do not know anything more about it.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. Mr. Bolitho, is it true, then, that the elder Marinaro and Mutarella did call at your house at Rockaway and delivered to you the affidavit which has been offered in evidence? A. The three of them were together, Mr. Jayne.

Q. And Daniel too? A. Yes.

Q. And delivered to you the affidavit? A. Mr. Mutarella—or Mr. Marinaro, Senior, delivered it to me.

Q. Yes. And said to you that here is something in which you would be interested? A. Yes. He said, "Here is something you will be greatly interested in."

Q. Wasn't Patsy Mutarella along then, too? A. Yes.

Q. And did Patsy consider that you would be interested in it? A. Patsy said nothing. He sat there and said nothing.

Q. Did he have a copy of the affidavit? A. Mr. Mutarella said he had. Mr. Marinaro said he had.

Q. So he knew you were interested in the affidavit? A. Well, they did not say about that.

Q. Did he say anybody else was interested in it except you? A. He did not.

Q. And Mutarella said he did not want the affidavit for himself, did he? A. Mutarella? I do not believe Mutarella said anything.



Q. Did Dan Marinaro want it for himself? A. He did not say anything.

Q. Did the elder Marinaro want the affidavit for himself? A. They did not say what they wanted it for.

Q. The only thing said with respect to in whose interest this affidavit was secured was that it would be of interest to you, that is so, is it? A. He coupled that statement with the fact that it referred to the Sheriff in the affidavit. He says, "You can see what the Sheriff is doing."

Q. But it refers to other things, also, doesn't it? A. Well, he said this—"Here is something that will be of great interest to you. You see what the Sheriff is doing," or "You see what the Sheriff is up to."

Q. Danny Marinaro is a lawyer, and was not an officer of the County at that time, was he, or has not been, as far as you know? A. Danny Marinaro was what?

Q. Was not an officer of the County? A. Not to my knowledge.

Q. Mutarella was not an officer? A. Not to my knowledge.

Q. A law enforcement officer? A. Not to my knowledge.

Q. Nor the elder Marinaro? A. Not to my knowledge.

Q. What interest would they have as to whether or not this material that came from Dolimpio's was whiskey or vinegar? A. I am sure I do not know, Mr. Jayne, what interest they had in it.

Q. But if you, Mr. Bolitho, had for a money consideration dismissed a complaint against Dolimpio, when liquor was in fact found, it would be of considerable interest to you to be able to show that it was vinegar instead of whiskey, wouldn't it? A. I do not see how it would be, when the grand jury dismissed it.

Q. But did you tell the grand jury that it was vinegar? A. I showed the grand jury the inventory.

Q. Did you say to Mr. or Mrs. McEwen in the presence of Mr. Klauss of the October Term Grand Jury that the materials found in the Dolimpio case were vinegar and not whiskey? A. I do not remember saying that, Mr. Jayne.

Q. You might have said that, eh? A. I do not think I did.

Q. You are not sure of it, evidently, are you? A. I do not believe I did.

The Court: Who has that affidavit? Let me have it again. I want, also, those two cards.

(Papers handed to the Court.)

Q. You were the only officer present, either in the securing of this affidavit or delivering it to you, weren't you? A. I was not present when this was drawn.

Q. I understand. But you were the only officer who had anything to do with the originating of this affidavit? A. Yes, sir. I was the law enforcement officer of the County.

Q. So that vinegar, the necessity of having this testimony that it was vinegar and not whiskey would have no application to anybody else



except you, would it? A. It would have no application to me.

Q. I just pointed out the application. A. I do not see it.

Q. Well, I show you a couple of envelopes, and ask you if those were not the envelopes used in your office at the time you were Prosecutor? A. That is one that was used; yes, sir.

Q. And these are envelopes that were used in the case of State against Dolimpio, aren't they? A. Yes, sir.

Q. Now, on the bottom of that, it looks to me as if there were written the word "dismissed"? A. Yes, sir.

Q. And that is in your handwriting, isn't it? A. Yes, sir.

Q. The other handwriting upon these envelopes is not yours, is it? A. Mr. Hegarty's.

Q. The word "dismissed" on each envelope is in your handwriting? A. Yes, sir.

Q. Now Mr. Bolitho, do you recall when you delivered this affidavit to me? A. My recollection is, Mr. Jayne, it was when you came here.

Mr. Matthews: I cannot hear you, Mr. Bolitho. I am sorry.

The Witness: I say, my recollection was that it was when you came here, a day or so before the Elisor Grand Jury began its operations.

Q. Yes. Wasn't it, in fact, on the 25th day of February, the day that I in open court applied to his Honor, Justice Parker, for an order for the Elisor Grand Jury; isn't that so? A. I do not know the date. I was not in court when you made the application.

Q. Well, do you recall what you said to me when you gave me that affidavit? A. I think I do.

Q. Did you not say to me, "Mr. Jayne, here is a funny thing. I was coming up the street just a little while ago, and Louis Marinaro met me and he said, "Here is a paper," and showed it to you, and you said you read it and said to Marinaro, "Why, this don't concern me at all. I will only give this to Mr. Jayne." And that Marinaro said, "Why, I do not want to go way up to the court house to deliver this to Mr. Jayne. You take it up. Is Mr. Jayne in town today?" And you replied yes. "And you take it up and give it to him." Is that what you told him? A. No, sir.

Q. What? A. No, sir. I should say not.

Q. Do you recall where we were when you gave it to me? A. You were in the Prosecutor's office.

Q. Yes. In what room? A. In the inside room.

Q. You and I were alone? A. Yes, sir.

Q. Yes. And when you gave me this affidavit, did you have another one in your pocket? A. I do not believe I had another one in my pocket. I am not sure. I had another one, I think, at home; I think I had left one at home.

Q. Just like the one you gave me? A. Whatever one is here.

Q. Well, did you examine them, compare them to see they were copies? A. I did not.

Q. Why, Mr. Bolitho, if this affidavit was not taken at your instance and in your interest, out of the three copies that were secured did you get two of them, giving me one and retaining at the



same time at your home, you say, the other copy? A. I requested a second copy of the affidavit.

Q. And do you know why? A. Because I wanted them. I was a public official, and I wanted two copies of it.

Q. Well, but you said in response to questions of your counsel here that you had nothing to do with this affidavit? A. I had nothing to do with the affidavit.

Q. You said to him that you did not send these men over there to get the affidavit? A. And that is true. I did not, either.

Q. But after they had accomplished all this and gotten the affidavit, your interest was two-thirds of it; you took two of the three copies that they secured, didn't you? A. You do not understand, Mr. Jayne.

Q. Well, didn't you? A. I did, yes.

Q. So that two-thirds of the product and the fruit of their effort you took, didn't you?

The Court: Well, he got two of the three affidavits.

Q. Then from whom did you get the other copy? You say Louis Marinaro gave you one. Where did you get the other one? A. I do not know which one of the other fellows gave me one. There were two copies given to me that night there.

Q. Yes. A. That is my recollection.

Q. You did not tell me that day you gave this to me that you had another copy of it, did you? A. I do not know whether I did or not, Mr. Jayne.

Q. Now, how did you know at that time that Dolimpio had made any statement at the Sher-

iff's house? A. I did not know, only what I saw in that affidavit.

Q. Were you informed before you received this affidavit that Prosecutor Jayne was in possession of a statement made by a groceryman over in Dover to the effect that he had paid you money? A. No, I do not believe I was. I do not remember that I was.

Q. Well now, let us be accurate about this. Weren't you informed by a reputable person that Prosecutor Jayne was in possession of a statement made by some Italian in Dover, whose name this man could not give you, to the effect that you had taken money from him to suppress his case? A. I do not remember anyone informing me that.

Q. You do not say that you had no such information, do you? A. My best recollection is that I did not.

Q. Did you know, at the time that you received this affidavit on the night of February 21st, 1925, that Peter Dolimpio had stated that you had received money from him to suppress the prosecution against him? A. I did not.

Q. When did you first learn that Dolimpio made any such statement? A. I do not know that I learned that until I heard him testify.

Q. What, the other day, Monday? A. Yes.

Q. You never knew it before Monday? A. I think I was apprised of it when the indictment was read, or when I read the indictment.

Q. Did you ask these gentlemen who brought this affidavit to you what this paragraph meant about his signing a blank paper at the instance of the Sheriff? A. I did not.



Q. You did not ask them what that meant? A. I did not.

Q. Did you ask them what was the significance of the fact of getting an affidavit to the effect that when your men had made a raid of Dolimpio's place, they had only found vinegar? A. I did not.

Q. Why, one of these raids to which reference is made in the affidavit was made by your office, wasn't it? A. I do not know.

Q. You directed all the raids that were made, didn't you? A. I had no knowledge that the affidavit was made.

Q. Yes. What affidavit? A. Upon which the second raid was made. Yes.

Q. And that raid was made by your officers? A. It was made by Fichter, I think.

Q. Was he one of your officers? A. Yes. Not a regular detective, but an extra man.

Q. You made the raid under your department, didn't you? Raids were not made, in other words, without your direction, were they? A. Oh yes.

Q. Well, did you give them the direction to raid, though it might have been general? A. Sometimes I did not know they had made a raid until they brought someone in.

Q. Wouldn't the records of your office and your officers show what liquids were found in the raid? A. The inventory would show.

Q. Did you ask them why it was necessary to get an affidavit that vinegar was found? A. I did not ask them a thing about that, Mr. Jayne.

Q. They knew, then, about it? A. I do not know.

Mr. Matthews: That is calling for a conclusion, your Honor please. I have not objected, although probably twenty percent of the questions are objectionable.

Q. I understood you to testify, and it has already been testified to, that these indictments against—or these charges against Peter Dolimpio were disposed of at the October Term, 1924? A. Yes, sir.

Q. So that, from that time on, there were not any charges pending against Peter Dolimpio, were there? A. Not to my knowledge.

Q. He never was fined at all because the grand jury disposed of the complaint? A. Because the cases were dismissed by the grand jury.

Q. What circumstance was there that would induce him to charge you falsely with receiving money? A. I am sure I do not know. I did not know the man.

Q. There would not be any reason, would there, so far as you know? A. Not so far as I know.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. Just a minute, Mr. Bolitho. I show you the State's Exhibit S-23, and ask you if that is the complaint and the inventory attached in the Dolimpio case, which was one of your records? A. No. That is—that says the Deimegardi.

Q. I see. It is the wrong one. I show you another paper marked S-18, and ask you if that is the complaint with warrant attached to it? A. I think that is—yes, that is the—it says Peter Dolimpio.



Q. Well now, your answer is yes; that says Peter Dolimpio. But my question was, is that the complaint or the search warrant in the Peter Dolimpio case? 227 Richards Avenue, in the Town of Dover; is that where he lived, do you recollect? A. I do not know the number that he lived. But the only way I can identify it is by the—by his name appearing on the inventory; the warrant is directed against John Doe.

Q. I see. Now, the inventory in this S-18 shows his name where? A. I think there (indicating).

Q. And it says in it, "Evidence in pint milk bottle taken from bottles broken, one bottle supposed to be coloring taken from stove in back room," r-u-m-e, "where" w-h-a-r-e "whiskey was drunken, one can with broken bottles in it, all taken from store in back room of 227 Richards Avenue, Dover, known as Peter Dolimptio." Is that the case that they are talking about the vinegar in, I mean, in this affidavit? A. I suppose that is the case. There were two complaints against Dolimpio.

Q. And in that statement of Dolimpio's that you gave to Mr. Jayne when Mr. Jayne was here and when you were Prosecutor and Mr. Jayne came to you, in that statement it also says that the first time that he was raided by the Sheriff's men in August, they found nothing but vinegar; isn't that right, doesn't it say that? A. Yes, sir.

Q. Yes. And, of course, the Sheriff could not be held—just as Mr. Jayne asked you, you could not be interested, the Sheriff could not be interested, now that the indictments were suppressed, in having a statement that it was vinegar, could

he? Well, he couldn't? A. I do not get the question.

Q. Well, Mr. Jayne said to you, you had no interest now that the cases were dismissed.

The Court: Isn't that all a matter of argument?

Mr. Matthews: Of course, it is argumentative proof, Mr. Jayne calls it, I think.

Q. Well, at any rate, the statement as to the Sheriff, you know nothing about, do you? You do not know about the Sheriff's raid, do you, what was found? A. All I know is that the papers in the earlier case had no inventory attached to them at all—

Q. I see. A. —when I—when the papers were delivered to me, before I went into the Grand Jury room. After I got into the Grand Jury room, I discovered there was no inventory in that file.

Q. In the Sheriff's docket? A. In the Sheriff's docket.

Q. What was the custom, Mr. Bolitho, with reference to raids made by the Sheriff as to the evidence and as to the papers in the case, during your regime?

Mr. Jayne: I object to that. I see no materiality.

Mr. Matthews: One of these indictments was dismissed by the Grand Jury. The Sheriff made the raid.

Mr. Jayne: I do not see how the practice of the Sheriff's office has any direct connection with this case at all. In fact, the only utterance of the Sheriff's name is that



it is in this affidavit. It seems to me it is going far afield.

Mr. Matthews: The purpose of the question was to show that this man, in presenting the case to the Grand Jury, presented all there was to present. He is alleged to have suppressed it for a consideration, and the raid was made by the Sheriff, and if the Sheriff had the custody of the liquor when he raided it and did not turn it over, or did not give any affidavit of what was there, all he could present was evidence of what he got.

The Court: Now, if you gentlemen have finished talking, I will go back and find out what the question was.

(Question read.)

Mr. Matthews: That is, the evidence of the papers in the case.

The Court: Do you mean the custom in the Prosecutor's office?

Mr. Matthews: The Sheriff's office.

The Court: What was the custom of the Sheriff's office?

Mr. Jayne: That question would encompass, it seems to me, a week's work.

Mr. Matthews: Getting down to the specific case, if you will. But that I think would be objectionable.

Mr. Jayne: I do not see the materiality of any of it, your Honor please, what the practice was. I do not see that it makes any difference whether the Sheriff delivers liquor to the Prosecutor or not.

The Court: The question will be overruled.

Mr. Matthews: Allow me an exception for the reason that I stated, when we finished, you would take up the question.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: That is all now, Mr. Bolitho. Mr. Richard O'Connor.

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RICHARD J. O'CONNOR, sworn as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. O'Connor, you are a practicing attorney and counsellor at law of the State of New Jersey? A. I am.

Q. With offices at Dover? A. Yes.

Q. And you were the law partner of Prosecutor Bolitho when he was Prosecutor? A. Yes.

Q. And are still his partner? A. That is right.

Q. Do you know Daniel Marinaro, an attorney in Morris County? A. I have known Mr. Marinaro since I started to serve my clerkship with King & Vogt in 1918.

Mr. Matthews: This is the Dolimpio count, I might say to your Honor, and Mr. Jayne, with reference to the statement.

Q. And do you recall Marinaro having come to your office with reference to a statement that he wanted taken from some man? A. I do.



Q. Do you recall about when it was, Mr. O'Connor? A. I have no conception of the date, Mr. Matthews, I could say, however, from what Mr. Marinaro told me the following day or two days following, that it was the date of the Forsythe affidavit and, if I am not mistaken, it was on a Saturday.

Q. Well now, did Mr. Marinaro come to your office that night? A. He did.

Q. Or that day? A. He came—

Q. What time of day? A. I got a call at my home at about six-thirty to be at my office at seven o'clock, and I went down to the office and they were waiting there for me.

Q. Yes. Who were waiting? A. Louis Marinaro, that is Danny's father, Danny and Patsy Mutarella.

Q. Yes. And what took place between you, with reference now only to this statement which you call the Forsythe statement? A. We went up into the office, and as soon as we got up there, Louis Marinaro said that he had to go out somewhere; that he would be back. And Patsy and Danny came into my private office. And Danny said, "Dick, I am in a hell of a jam." And I says, "What's the matter, Danny," I says, "You are all excited." And he said, "Dolimpio has gone down and made a statement, as I understand it, or an affidavit, to the Sheriff, which is going to be turned over to Prosecutor Jayne for submission to the Elisor Grand Jury in which he states that I and Bolitho took"—I am not sure whether he said two hundred or four hundred dollars—"to suppress a complaint." And he said, "I was down to see Dolimpio, and he says

that he went to the Sheriff's house, and the Sheriff handed him a blank paper," and that over the signature of Dolimpio this affidavit had been written. And he asked me whether or not I would prepare an affidavit for Dolimpio to sign denying that—that he had known what he was going to sign when he went to the Sheriff's house, or what he did sign, or that he had ever given any money to either Marinaro or Bolitho. And I went out to the typewriter in the outer office and I sat down, and I started. I got as far as "Peter Dolimpio, being of full age, duly sworn," and I stopped, and I said, "Danny," I said, "Now that I think this over, this does not look right." I said, "In the first place, I understand that you want this affidavit to protect yourself, and if I prepare an affidavit it won't look good for two reasons; the first reason is that it implicates the Sheriff, and I do not think, under the existing circumstances, that I, as the Prosecutor's partner, should take an affidavit which would in any way implicate or, you might say, incriminate the Sheriff," I said, "And, furthermore, to submit a prepared statement to Dolimpio which had been prepared for him before you went to see him, merely asking him for signature, would not carry very much weight with it." And I said, "I would advise you, Danny, to go down and see Dolimpio, and not to go down with just your father and Patsy Mutarella, but to go down and get two disinterested friends of yours who might be mutual friends of both yourself and Dolimpio's, and go down and ask Dolimpio whether or not he has signed such an affidavit for the Sheriff, and if he says yes, well then, there is nothing for you to do. On the



other hand, if he denies it, you bring him up town and go before a notary public and let him dictate, or state in his own words, what occurred and take down his affidavit so, at least, it will have the semblance of not having been prepared." And Danny said, "Well," he said, "I do not know where I could go this time of night." It was getting on toward half-past seven. And I said, "The only notary that I can think of offhand is Paddy O'Leary, but I do not think he is at his office at this time of night." And if my recollection is correct, I called Mr. O'Leary's office and he was not there. Then I said, on second thought, "Harold Forsythe, who manages the Mansion House, is a notary public, and the thing for you to do is to go down to Dolimpio's, and if you can get him to go up there, if he cares to go up to Forsythe and have this affidavit prepared," and I did not see—they went out of the office then. We were there probably a half an hour, and I did not see Danny then until two days later when he told me that he had gotten the affidavit, that Forsythe had prepared it.

Mr. Matthews: That is all on this case, Mr. O'Connor. We reserve the right to recall him on another count.

CROSS-EXAMINATION by Mr. Jayne:

Q. Did Danny say to you that the Prosecutor sent him to you? A. He did not.

Q. Do you know of any reason why Danny, in this exigency, should go to the Prosecutor's partner to have this affidavit drawn? A. I do not know, unless it might be that at that time of night—I might say that I was on very friendly

terms with Danny—and at that time of night I think I was the only available attorney in Dover.

Q. Why, he is an attorney himself? A. That is quite true, but I did not suppose he would prepare an affidavit and take the affidavit himself, which concerned him.

Q. No. But you were not to take it, were you? You were just to draw it? A. No. He asked me to draw it, and at first he wanted me to go down with him and take the affidavit.

Q. Why didn't you? A. For the reasons I have already stated.

Q. You thought there was something wrong about it, didn't you? A. I did not necessarily think there was anything wrong, because I did not know Dolimpio. I did not know anything about him. And the only thing I did not like was the idea of going to take an affidavit which might state in it that the Sheriff had done something wrong when, as a matter of fact, I knew nothing about the occurrence. I did not want my signature to such an affidavit.

Q. Well, you had no interest in the Sheriff, did you, at that time, or Mr. Bolitho?

Mr. Matthews: I object as immaterial.

A. The Sheriff was a personal friend of mine.

Q. And Bolitho, the Prosecutor, was your partner? A. He was my partner.

Q. You were in an embarrassing position, weren't you? A. Well, I did not have any particular solicitude for Mr. Bolitho because, outside of our business relations, we were never on very friendly terms, and are not at this time.

Q. And you regarded this request to go and get this affidavit from Dolimpio as a little unusual,



didn't you? A. No. I did not think it was unusual. I thought it would be improper, under the circumstances, just the same as partners would not be permitted to represent opposite sides of a case. I did not think, as a partner of Mr. Bolitho, I should take an affidavit which implicated the Sheriff, a friend of mine and might in some way contain his name.

Q. I thought you said that Danny told you that Dolimpio had given an affidavit against him, Danny, and the Prosecutor? A. I did not say that. I do not think I said he gave it against him.

Q. That he had stated, Dolimpio had stated, that either two hundred or four hundred, as you say, had been paid? A. Had been given to Danny to be given to the Prosecutor.

Q. The Sheriff had nothing to do with it, did he? A. I do not know.

Q. Well, only by what Danny told you. You did not know anything about this matter; you just simply took what Danny told you? A. That is all.

Q. Well, you say that Danny told you that Dolimpio had made a statement accusing him and Bolitho of accepting money, two hundred or four hundred dollars of money; the Sheriff was not involved in that, was he? A. Well, he said the Sheriff was trying to frame him.

Q. Who said that? A. Danny Marinaro and Patsy only said that.

Q. You did not want to help the Sheriff, though? A. I did not regard it in that light at all. It wasn't a question of whether I was helping him or hurting him.

Q. Wasn't this a sort of suspicious mission;

you attached some suspicion to it, and thought as a lawyer you had better stay out of it? A. I did not attach any suspicion to it.

Q. Did you send him to Price, or to Forsythe, rather? A. No, I did not send him. And I had called Forsythe up from my office to find out whether he would be in in the evening. I knew in his managerial duties at the hotel, he would be there until sometime after midnight.

Q. Was Bolitho present at the office when these fellows came there? A. He was not. Our office is never open on Saturday afternoons. Bolitho was never there after eleven o'clock at any time while I was in partnership with him.

Mr. Jayne: That is all.

Mr. Matthews: That is all.

May we, for the business convenience of a man, go to the Fleming count? That is all on the Dolimpio count, except that we ask to call Forsythe. Forsythe has got a new job as a Pullman conductor. He was under subpoena, and asked me to let him go, and I told him I was very sorry, I could not let him go, but he has gone to keep his job.

The Court: Why, he testified already, didn't he?

Mr. Matthews: No, your Honor. He was identified by a man.

The Court: Well, you reserve Forsythe then, do you?

Mr. Matthews: In the Dolimpio count, yes, your Honor. Now, we would like to step to the Fleming count to call Fleming



who may not be with us tomorrow if we do not get him today.

The Court: All right.

Mr. Matthews: Bert Fleming is the name I am asked to call. (No response.) Henry Schroer in that matter.

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HENRY SCHROER, recalled as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Schroer, you were a justice of the peace and police justice in the Town of Rockaway during the incumbency of Mr. Bolitho in the Prosecutor's office, weren't you? A. Yes, sir.

Q. And were you such justice and recorder in the month of August, 1923? A. Yes, sir.

Q. Do you know Stewart Bettens? A. Yes, sir.

Q. How long have you known him? A. About 4 years.

Q. Did you issue a search warrant directed to Stewart Bettens to search Charles Fleming's premises in the Town of Chester? A. No, sir.

Q. In the month of August, 1924? A. No, sir.

Q. Did you issue any search warrant to Stewart Bettens as constable for the Fleming Hotel, the Chester House, Charles Fleming? A. No, sir.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. How do you know you didn't? A. Because I know I didn't.

Q. Do you carry all your cases in your head? A. Mostly all of them.

Q. You did not keep any docket or record, did you? A. No.

Q. Of your business as recorder? A. No.

Q. You had no docket? A. No.

Q. And you had a large number of cases, didn't you? In fact, you had pretty nearly all of the cases of complaints that came from the Prosecutor's office until the end of your term as recorder? A. No, sir.

Q. You did not have pretty nearly all of them? A. No, sir.

Q. Will not the bills on file in the Treasurer's office of your fees and costs show that to be the fact? A. I got some of the work.

Q. Yes. Your bill in December 1923, the bill that you rendered for fees and service as recorder amounted to over $900, didn't it? A. No, sir.

Q. How much did it amount to, your bills that you had submitted for payment? A. That is for the fiscal year.

Q. Well, I do not know what time it was. You submitted bills there that ought to be proof for your fees as recorder? A. Some of them included justice of the peace and constable fees.

Q. Yes. And the amounts ran up over $900? A. They might have; I couldn't swear to it.

Q. Do you remember every one of those cases? A. Mostly every one.

Q. How many cases were there involved in that bill? A. I couldn't tell you offhand.



Q. And you remember all of them? A. Mostly all of them.

Q. And you know that a complaint against Fleming was not made? A. No, sir; positively.

Q. Did Stewart Bettens come over to you to get a warrant? A. No, sir.

Q. He never came near you to get a warrant? A. No, sir.

Q. At that time, besides being recorder and acting as recorder, you were employed by the Prosecutor as an officer, sort of an investigator, weren't you, a detective? A. Yes, yes.

Q. So you had both capacities. Did you call up the Prosecutor as such detective and, in communication with him—

Mr. Matthews: I object to this as immaterial unless it is about this matter.

Mr. Jayne: It is decidedly in harmony with the State's case.

Mr. Matthews: I object to it as immaterial.

The Court: Well, does it refer to this matter?

Mr. Jayne: The testimony was, apparently, that Mr. Bettens, not having seen the Prosecutor at all, by the time he got home with the papers, he received a call from the Prosecutor concerning these papers telling him to come up, bring them up, and bring the papers.

Mr. Matthews: I have not elicited anything of that on the direct-examination; that is not cross.

Mr. Jayne: That is Mr. Bettens' testimony.

The Court: I do not get this at all. Mr. Bettens, you say, says that he got a call from the Prosecutor?

Mr. Jayne: Yes, sir. You recall his testimony was that he first, after his investigations of the Fleming Hotel, went to Rockaway to visit the Prosecutor, and not finding him in, he went to this man as recorder, made a complaint and secured a search warrant. Then he went home and abandoned the raid and, in the meantime, he received a call from Prosecutor Bolitho informing him to come up and bring the papers up to his house.

The Court: Yes. That seems to be what he said.

Mr. Jayne: Now, this cross-examination is intended to elicit the situation to show, my intent of it, the probability of this man Schroer, working as a detective as well for the Prosecutor, being the man who imparted the information to Prosecutor Bolitho of what Bettens had done.

Mr. Matthews: I object as immaterial and not cross-examination.

The Court: Well, he says that he did not issue any search warrant to Bettens. I suppose that is the only point to which he testified.

Mr. Jayne: Yes. I presume I can cross-examine him, however, on his recollection of that.

Q. Now Mr. Schroer—

Mr. Matthews: Well, is that question withdrawn?



Mr. Jayne: I withdraw it.

Q. Mr. Schroer, you are now testifying to what papers you issued; you understand that, don't you? A. Yes, sir.

Q. Now, as a matter of fact, there were papers that you issued over your signature that you had no knowledge of the issuance of?

Mr. Matthews: I object to that as not cross-examination.

The Court: No. That is proper cross.

Mr. Matthews: Exception, please, sir.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. What is that question, Mr. Jayne?

Q. Well, in other words—strike that out—in other words, you indulged in the practice of signing your name to blank search warrants?

Mr. Matthews: Just a minute. I object to that as not cross-examination.

The Court: Well, that is proper cross.

Mr. Matthews: Exception, please, sir.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. Do you want me to answer?

Q. Yes. A. I do not remember doing no such thing.

Q. What do you mean, you do not remember? A. I do not remember signing any blank search warrants.

Q. You were testifying here as to what cases—particularly this case in 1923; now you say you do not remember the important matter of whether or not you signed your name to blank papers; is that what you say?

Mr. Matthews: I object to this question—

A. Yes, sir.

Mr. Matthews: —as not proper cross-examination.

The Court: Yes. Your objection is considered and overruled. Take your exception.

Mr. Matthews: Thank you.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Did you sign your name to blank complaints?
A. I do not remember doing it.

Q. You know what I mean by blank complaints, don't you? A. Yes, sir.

Mr. Matthews: I object to this as not cross-examination.

The Court: Yes. Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. I mean the printed forms of complaints—

Mr. Matthews: The same objection.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



Q. —and the printed form of warrant?

Mr. Matthews: The same objection.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Now, answer it.

Mr. Matthews: The same objection.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. I am waiting for you. A. I do not remember doing it, Mr. Jayne.

Q. Did you not deliver, or did you not sign—put it that way—in the Prosecutor's office, when Prosecutor Bolitho was Prosecutor, these complaints and warrants in blank for use without having complainants brought before you to swear to the complaints?

Mr. Matthews: I object as immaterial. It is not cross-examination, and I object as an attempt to try another case. That is how immaterial it is.

The Court: The question may be answered. Take your exception.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

A. I do not remember signing any blank complaints or printed forms or blank forms, whatever you call them.

Q. But you do not here deny that you did it, do you?

Mr. Matthews: I object for the same reason.

The Court: The same ruling.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. What is your answer to that? A. I do not remember; that is all.

Q. I say, you do not deny it, do you?

Mr. Matthews: I object for the same reason.

The Court: Yes. Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: Well, what do you say to that? Do you deny it or don't you?

Mr. Matthews: Your Honor please, with respect, to your Honor's question, the same exception.

The Court: The same ruling.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Can't you answer more promptly? A. I do not remember signing it.

Q. Well, that is not the question asked you.

Mr. Matthews: I did not hear what he said that time.



Mr. Jayne: He is still giving that same answer.

The Court: He still does not remember.

Mr. Matthews: The question is answered, isn't it?

Mr. Jayne: No. It is not answered.

Mr. Matthews: Then I want to file an objection if there is a new one asked.

Mr. Jayne: You have already.

The Court: Oh, the objection is in all right. (To the Witness): Well, now, is that the best answer you can make to that question?

The Witness: Yes, sir.

Mr. Matthews: With respect, I want to enter an objection to that question.

The Court: Yes.

Mr. Jayne: That is all.

Mr. Matthews: That is all, thank you. Is Bert Fleming in court?

(No response.)

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JAMES H. BOLITHO, the defendant, re-called as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Bolitho, with reference to the charge made against you in the Fleming count of the indictment, did you receive a warrant from Mr. Bettens for a raid upon the place of Charles Fleming, the apartment of Charles Fleming? A. I did not, not Charles Fleming.

Q. Did you receive a warrant from Mr. Bettens for the raid of any premises? A. Several times while he was working for us, he brought in warrants that had been—that had run over their time for service; but never in a case against Charles Fleming.

Q. Well, was there a warrant against a place called the Fleming Hotel? A. No, sir.

Q. Or any Fleming? A. No, sir. I never heard of such a case as a case against a Fleming Hotel.

Q. Did you ever tell him not to serve a warrant on the Fleming Hotel because you would take care of it afterwards; you had him cold, and you would take care of it afterwards? A. No, sir.

Q. Did you ever get any evidence from him of liquor, good, bad or indifferent, that had come from the Fleming Hotel? A. No, sir.

Q. Did you ever suppress any complaint against Charles Fleming or Charles Fleming's premises? A. I did not. I never saw any complaint against him.

Q. Was there any record in your office, that you know of, of any complaint during your administration, or lasting over from the previous one, with reference to Charles Fleming or his premises? A. I never heard Charles Fleming's name in connection with any records in our office.

Q. Do you know this Mr. Eagles who was on the stand? A. Yes, sir.

Q. What is his business? Did he have anything to do with your office? A. Yes, sir. He and Mr. Bettens were both extra men who helped us at times on raids.

Q. Yes. And was Bettens discharged by you,



or was he kept until the end of your term? A. No. Bettens was laid off.

Q. Yes. Now, at any time during the term of Bettens, did Bettens give you any liquor for the prosecution of any case, which he had seized and which referred to Fleming, the Chester House or the Chester Hotel? A. He never gave me any liquor in the Fleming case.

Mr. Matthews: I guess that is all, Mr. **Jayne.**

CROSS-EXAMINATION by Mr. Jayne:

Q. Was Bettens discharged because of his activities in endeavoring to raid the Chester House? A. He was discharged because he failed on three occasions to succeed in the raid on a man by the name of Johnson at Lake Hopatcong.

Q. You did not consider him a trustworthy man? A. Well, he had failed three times on that one case. He had always been good before then.

Q. Well, it was before that case that Bettens had reference to, wasn't it, in August 1923? A. Yes, sir.

Q. At that time, you had no complaint about him, had you? A. No. He was discharged after August, 1923, I think sometime in October or November.

Q. You never heard that liquor was being sold at the Chester Hotel at Chester? A. I never did. I never heard that any liquor had been sold.

Q. You knew—we Prosecutors hear things like everybody else—had you ever heard that liquor was being sold at the Chester Hotel? A. Except that occasionally some one would come in with a list of places naming all the places in the County,

and stating that liquor was sold there; but there was no evidence upon which to operate.

Mr. Jayne: That is all.

Mr. Matthews: That is all. That is all on that count, now, the Bettens count, I think. Mr. Bolitho, is that the last witness for the Bettens count?

The Court: Except Fleming.

Mr. Matthews: Well, yes. We will have to proceed next to the Mingardi count. I ask to call Recorder Thomas to the stand in the Mingardi matter.

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JOSEPH THOMAS, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Thomas, you are the justice—were the justice, or the recorder of where? A. Madison, on—in May 1924. I was recorder, not the justice.

Q. What is it? A. I was not justice of the peace in 1924; I was only recorder.

Q. Recorder, I said. A. Yes, sir.

Q. And have you your docket with you for that month? A. Yes, sir.

Q. Will you tell me whether or not you have a record of a complaint made against one Antonio Mingardi on the 11th of May, 1924? A. Yes, sir.

Q. Will you turn to the page of your docket where it is, and let me see it, please? A. (Indicating.)



Q. May I take it from you for a moment, please, sir? A. Yes, sir.

Q. Now, this page of your docket before you as recorder shows a complaint against Carmine—A. Antonio Mingardi.

Q. Antonio Mingardi. At the instance of what complainant? A. Of Carmine Verilli.

Q. And what was the charge made by Carmine Verilli against Antonio Mingardi? A. For leaving the County without notifying the bondsman, Carmine Verilli; he moved out of the County.

Q. And you issued that complaint, did you? A. Yes, sir.

Q. And what other subsequent steps after the issuance does your docket show? A. Why, I issued a warrant, and he was arrested by one of the officers of the Prosecutor's Office and brought back into Madison, and I committed him to the County Jail at Morristown.

Q. Yes.

Mr. Matthews: I offer in evidence that page of the docket.

Marked Exhibit D-21 in evidence.

Mr. Matthews: That is all.

CROSS-EXAMINATION by Mr. Jayne:

Q. Mr. Thomas, you are not a lawyer, are you? A. No, sir.

Q. Did you understand it was a crime for a man who was under bail to go out of one county into another in the State of New Jersey?

Mr. Matthews: I object as not cross-examination.

The Court: Well, I think I will let that in.

Mr. Matthews: Exception.
Exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

A. Why, the mere fact that Mr.—officers from the Prosecutor's Office came with a bondsman, I thought I was justified in making out the complaint.

Q. That is what I wanted to inquire. An officer of the Prosecutor's Office came to get this warrant, did he? A. No. The officer was with him.

Q. Yes. A. Yes.

Q. And executed it too, didn't he? A. Yes. The officer of the Prosecutor.

Q. And brought Mingardi back? A. Yes, sir.

Q. Bringing him back before you? A. Yes, sir. He must have, from—my docket shows I committed him to the County Jail.

Q. And you committed him to jail? A. Yes, sir.

Q. Did you have anything more to do with him after that? A. No; nothing more.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. Who was there when the Prosecutor's man was at your office? A. To swear out the complaint?

Q. Yes. A. Why, Mr. Reidler was the man of the Prosecutor's Office, and the bondsman, Carmine Verilli, and one more Italian, but I forget his name.



Q. Was it Patsy Mutarella? A. I would not know him.

Q. Oh, you would not know him? A. No.

Q. All right. Thank you, judge.

Mr. Matthews: Max Reidler.

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MAX REIDLER, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Reidler, were you at the judge's office when this complaint was signed by Verilli? A. Yes, sir.

Q. And how did you happen to be be there? A. It was about seven thirty on a Sunday morning. Mr. Louis Marinaro and Mr. Verilli—I didn't know Mr. Verilli at that time until Mr. Marinaro introduced me to him—told me that they wanted to go and pick Mr. Mingardi up in Jersey City for jumping the bail. So I said I couldn't go that way unless they had a complaint and a warrant issued.

Q. Did you know that this man had actually jumped the bail? A. Only from what they had told me.

Q. And when did they tell you he had gone? A. I think it was Friday night they said he had moved, after dark.

Q. And they came to you on what day? A. Sunday morning.

Q. Yes. What did you do? A. Why, we went down—we went down to Judge Thomas in Madi-

son. He was the only one we could find at that time, and Mr. Verilli made a complaint.

Q. And then you went and searched for the man and brought him back? A. Yes, sir; brought him back to Morristown.

Mr. Matthews: That is all.

CROSS-EXAMINATION by Mr. Jayne:

Q. Did you examine the papers in this Mingardi case before you went there and arrested him? A. Did I examine the papers?

Q. Yes. A. I had the papers. I got them from Judge Thomas.

Q. The original papers, I mean? A. Yes.

Q. You had them all, did you? A. Well, which do you mean by the original papers?

Q. Well, the original complaint and warrant made against him upon which he originally gave bail? A. No, I did not.

Q. Did you ever see them before then? A. No, sir. I did not know the man. I did not know there was a raid made.

Q. I am asking you about the papers? A. Well, I understand. That is what I am answering about. It was the first I heard of the name Mingardi.

Q. Who went over there with you? A. Dan Allen, Mr. Verilli and Mr. Marinaro.

Q. Did Patsy go with you? A. No, sir.

Q. He did not? A. I called Mr. Allen to go with me.

Q. Did you meet Patsy when you came back? A. I did not, because we took him right back to Judge Thomas, and I think Judge Thomas committed him, and I brought him up here to Morris-



town, that is, Dan Allen and I, and that is the last I saw or heard of him.

Q. Put him in jail, didn't you? A. Yes, sir.

Q. You found him in West Hoboken, didn't you? A. I told you they didn't know where he had moved to. They said somewheres around the Hackensack Plank Road.

Q. You found him in the State of New Jersey? A. We found him on the boulevard, I think it is, West Hoboken.

Mr. Jayne: That is all.

Mr. Matthews: That is all. Is Mr. Holland, the Prosecutor, here?

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ALBERT H. HOLLAND, re-called as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Holland, have you any records that were turned over to you by Mr. Bolitho that deal with one Mingardi? A. I have a card here marked Antonio Mingardi, number 794.

Q. That is what I am asking you for. These are the records that were turned over to you, aren't they? A. I do not know that you call them records. I call them indexes. There is a docket in which all these cases are entered, together with various items of disposition, and from that docket these cases—these cards are made up, so that the docket—

Q. Well, which would you consider a record? After your years of experience as a lawyer, what

was permanent, finally made, or what was first made? A. What was first made? That is the docket, the same thing as this. I do not believe these are the records.

Q. And you would think that the first book was the permanent record? A. It shows the same information, I believe, that is here.

Mr. Matthews: That is all, Mr. Prosecutor. I offer the card in evidence.

Mr. Jayne: I object to these cards. I do not want to be captious.

Mr. Matthews: I will prove them by the lady, if you want me to.

Mr. Jayne: They have certain records which relate to the disposition of these cases. Now, I am willing that the cards should say so; but I do not think he has established the fact that the card is true.

Mr. Matthews: I offer the cards on the proof that I have offered.

The Court: Mr. Holland, you have the book too, haven't you?

The Witness: Yes, sir; the book is in the office.

The Court: They both go together, then?

The Witness: I believe it shows the same information.

Mr. Jayne: I would not insist on that, but you understand what I previously said to your Honor, that where the official keeping the records himself is the defendant in the suit, I think that the admission of such records would fall into the category of that objectionable evidence which we call self-serving evidence. The official could write



up a number of records which are self-serving.

The Court: Well, the fundamental test in a case of that kind, as I have always understood it to be, is whether the document in question was something that was kept in the ordinary course of business, and without any reference to possibly going into court afterwards. The rule with regard to shop books is a regular thing, day by day, where every transaction as it occurs is put down, both of charge and discharge. Now, the rule has been very much extended by the practice so that almost anything is allowed. I had to write an opinion once in the Court of Errors holding that a manifold card, a copy of some license that was customarily kept and filed in the City Clerk's Office of Atlantic City, was a document and record and admissible in evidence; it went as far as that. But if it appears that these things were kept in the ordinary course of a day's work, why, normally they would seem to come in.

Mr. Jayne: But that has not even been shown. It would be perfectly possible for me, in my office of Prosecutor, to say, under the Grand Jury system in vogue in Morris—sometime ago in vogue—that the Grand Jury considered a complaint against John Doe and dismissed it, and I would put a card in my office to that effect. It seems to me that that would not be evidential of the action of the Grand Jury in my behalf—I have not prepared it—unless or

until I went upon the stand and swore that that was so.

Mr. Matthews: By that token, the loose leaf system must go out of existence.

The Court: I want to say it is a very dangerous system.

Mr. Matthews: It is, only by the exception, I think, your Honor.

The Court: Only by the exception? What do you mean by that?

Mr. Matthews: I mean, in the exceptional case, it only proves the rule. These cards are all part of his general card system. However, I offer it without anything further about it for the purpose of showing that the complaint against Mingardi was dismissed by the Grand Jury, and with that foundation for it.

The Court: I do not think it is evidential of that fact. I will exclude it for that purpose.

Mr. Matthews: Your Honor will allow me an exception on that ground?

The Court: Yes, sir.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. Have you got a card where Mutarella was fined $500? A. The subpoena did not call for that; I do not know whether it is in the files or not.

Q. Yes. Wait a minute. I show you a card and ask you if that is your signature? A. That is my signature. This is a copy—



Q. Just a minute, Mr. Prosecutor. I am doing the questioning this time. Your signature is under "I hereby certify that this is a true copy of the card index record in the case of the State vs. Pasquale Mutarella in the Office of the Prosecutor of the Pleas of the County of Morris on May 20, 1925, when I took charge of the said office." Is that right? A. Yes.

Q. What does that card show? A. Well, that card shows the name of Pasquale Mutarella, with the number 1200, and under a column marked "date" it has a date, July 15, 1924; in a column marked "crime," has "illegal possession and transportation of intoxicating liquor;" and under column marked "court," it has the letters "S S," standing for Special Sessions; and under "date of conviction" is marked 1924, November 14; and in the column marked "sentence" is marked "fine $500;" and underneath that, is a space marked "Remarks," and in there is—are the words, "Plea, guilty." See? Number 859.

Q. Have you the original of this in your office? A. It ought to be.

Q. Bring it in, will you? A. If I can find it.

(Recess at 4:50 o'clock p. m.)

Morristown, N. J., September 17, 1925.
10:00 o'clock a. m.

FOURTH DAY

Trial resumed.

The Court: Counsel may proceed.

Mr. Matthews: Mr. Bert Fleming.

BERT FLEMING, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Fleming, where do you live, please, sir? A. Chester.

Q. And what is your business? A. I have the Chester House.

Q. Is your name, or any part of your name, Bert, or Charles Fleming? A. No, sir.

Q. Have you a brother Charles Fleming? A. No, sir.

Q. Do you know Mr. Bolitho, the defendant in this case, the former Prosecutor of the County? A. Well, not very well. I have met him once or twice.

Q. Yes. At any time, was Mr. Bolitho in your hotel to your knowledge, and did he drink liquor while he was there? A. Not to my knowledge; no, sir.

Q. At any time was he served with anything there at your bar, if you had such? A. No, sir; not as I know of.

Q. Were you there all of the time? A. Well,



I could not say all the time; but, of course, I am there most of the time.

Q. Most of the time? A. Yes, sir.

Q. What is your hotel known as, again? A. Chester House.

Q. Chester House? A. Yes, sir.

Q. Are you familiar with the hostelries, the hotels and inns in Chester? A. Yes, sir.

Q. Is there any hotel in Chester known as the Fleming Hotel? A. Well, not no more than the Chester House, I suppose.

Q. Is there any hotel run by Charles Fleming in Chester? A. I never heard tell of it.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. When Mr. Matthews asked you if Mr. Bolitho was ever served with a drink of liquor in your hotel, you said, "Not as I know of"? A. No.

Q. What did you mean by that kind of an answer? A. Well, I couldn't say that I was there every minute. Somebody might have served him something.

Q. That is possible, isn't it? A. But, of course, that is possible. He might have had something like that. Of course, I do not mean to say that I know; it was not served from us people. That is what I mean. Of course, I do not know what else might have happened.

Q. When you say "us people," what do you mean? A. That is my brother and myself.

Q. What is your brother's name? A. Lloyd Fleming.

Q. Lloyd? A. Yes, sir.

Q. Is he associated with you? A. Yes, sir.

Q. In the conduct of the hotel? A. Yes, sir; he is my partner.

Mr. Jayne: That is all.

Mr. Matthews: That is all, thank you. Mr. Orr, please, in the Mingardi case that we left last night; the record, Mr. Orr, with reference to the May Term of the Grand Jury, 1924.

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EDWIN ORR, re-called as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Have you in your records, Mr. Orr, the date when the May Term 1924 Grand Jury was sworn in? A. Yes, sir.

Q. And what was the date? A. May the 13th.

Q. When did the May Term Grand Jury, according to your records, come into court with its indictments? A. On May the 16th.

Q. On May the 16th? A. Yes, sir.

Mr. Matthews: That is all, thank you, Mr. Orr.

Mr. Jayne: That is all, Mr. Orr.

Mr. Matthews: Mr. Hubert, in the Mingardi matter.



FREDERICK HUBERT, re-called as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Hubert, do you remember in the month of May whether or not you went before the Grand Jury in a case called Mingardi? A. I did.

Q. And did you testify before the Grand Jury in that case? A. I did.

Mr. Matthews: That is all.

Mr. Jayne: That is all.

Mr. Matthews: Did we introduce the record, so-called record of the Prosecutor's Office, in the Mingardi case?

Mr. Jayne: I think everything went in.

The Court: Well, there was one card that you wanted to get in and that I would not let in; I do not know whether that was in the Mingardi case or not.

Mr. Matthews: Wasn't that the Mutarella case, your Honor?

The Court: I do not remember. No. It was in the Dolimpio that the cards came in. Now then, after that, you called him again; card marked "Mingardi 794" was excluded.

Mr. Matthews: (To Prosecutor Holland) Have you the minute book this morning, Mr. Prosecutor?

Prosecutor Holland: Excuse me.

The Court: As I recollect it, I told you at the time that I did not think it was proved in such a way as to be competent; but, apparently, the Mutarella card, there was not any objection to.

ALBERT H. HOLLAND, re-called as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Prosecutor, have you in the card index record that you referred to yesterday, and also in the record book, a reference to one Mingardi in about the May Term 1924? A. I have the card index that refers to case number 794.

Q. Case numbered 794 in the minute book, as you called it yesterday? A. This is the record of the cases; 794, Anthony Mingardi.

Q. Is that the record from the Prosecutor's Office during Bolitho's term that you are now pointing to, Mr. Prosecutor? A. That is right.

Q. At what page? A. The pages are not numbered. The case is marked number 794, and they run numerically.

Q. Now, does that refer to the Mingardi case at the May Term of the Grand Jury 1924? A. There is a remark under "remarks," which says "Dismissed by May Term 1924 Grand Jury."

Q. Yes.

The Court: Well, that has already been shown, hasn't it?

Mr. Matthews: I want to offer the record of it, your Honor please. Your Honor objected to this record because you did not think it properly proven, I think you told us then.

The Court: Yes. Mr. Jayne did the objecting.

Mr. Matthews: Yes. And then your Honor sustained it. I want to offer in



evidence the original record of the Prosecutor's Office, as Mr. Holland has testified that there was an original minute book or a minute book. I want to offer that specific part of it which deals with the Mingardi May Term Grand Jury complaint, which is the subject of one of the counts in the indictment, the allegation about which in the indictment is that Mr. Bolitho suppressed it for a consideration, the purpose being to show that the cause was disposed of.

Mr. Jayne: I desire to ask one question.

CROSS-EXAMINATION by Mr. Jayne:

Q. Prosecutor Holland, have you any knowledge of the accuracy or the truthfulness of the entries in that minute book relating to the Mingardi case? A. I have none whatever.

Mr. Matthews: I renew my offer of the record in the Mingardi case.

Mr. Jayne: I object to it as not properly proved.

The Court: I do not think that Mr. Holland is competent as a witness to the accuracy of this book, something that was made before he had anything to do with the office.

Mr. Matthews: I will ask Mr. Holland, please, to leave the book with us a moment while I call Mr. Bolitho.

The Court: You can, perhaps, prove it in some other way.

Mr. Matthews: Will Mr. Bolitho take the stand with reference to that point at this time.

JAMES H. BOLITHO, the defendant, re-called as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Bolitho, there is a book on the witness box in front of you there, the witness rail, and it has been brought here by the now Prosecutor, Holland, from the Prosecutor's Office. Do you know what that book it? A. This is a record book of the cases which we handled in the Prosecutor's Office while I was Prosecutor.

Q. And was it made under your supervision? A. Yes, sir, sir.

Q. Who, besides yourself, would have anything to do either with the physical making of the record or the supervisory making of it? A. Miss Repp was supposed to keep the records in this book, and assisted by Mr. Hegarty.

Q. I see. A. The entries are made by both of them, so far as my knowledge goes.

Q. And what was the custom, you being the supervisor of the records, as to the entry of these cases or records of cases? A. Well, in the Grand Jury room when a case was disposed of, either by finding an indictment or dismissal, I wrote on the envelope, the file envelope of the case, in the Grand Jury room what the Grand Jury had done with it, and passed it to one of the officers at the door to convey it to my office for the purpose of having an indictment drawn at once if there was an indictment found.

Q. Yes. A. And for the purpose of making a record if the case was dismissed.

Q. Yes. I call your attention to one page there



which has reference to the word "Mingardi," and ask you is that a record made in that manner and under your supervision, and during your term as Prosecutor, in that book? A. That is.

Q. Do you by chance know whose handwriting that is? A. It looks like the handwriting of Mr. Hegarty, that is, part of it; and the other part looks like the handwriting of Miss Repp; but I am not positive.

Mr. Matthews: I renew my offer at this time of the book for the purpose of proving the item in question.

The Court: Mr. Bolitho, have you any personal knowledge as to whether this indictment was dismissed by the Grand Jury?

The Witness: I have; yes, sir.

The Court: Well, any objection to your giving us your—

The Witness: I have no objection.

Mr. Matthews: I have no objection as his counsel to go on and submit to any questioning which your Honor or Mr. Jayne may ask him.

The Court: I am just wondering why, if he knows all about this thing, you do not have him say so.

Mr. Matthews: But I want the record in evidence because his credibility may be attacked.

The Court: That may be so, but is there any objection to preparing the record for it and asking him about it?

Mr. Matthews: It is not at all necessary to do it in the beginning; it is the method of my proof.

The Court: (To witness.) Well, what do you say about it?

The Witness: The case was dismissed on May 14th. I remember the case well.

Q. Were you before the Grand Jury when the witnesses testified? A. I was. And I took the case up with the committee and there was no—the inventory was marked "Nothing found," and the committee looked at the complaint and said, "There is a statement there in the complaint that there was a sale made at this place, and we should like to examine the witness who made the complaint," and they called Mr. Hubert in for that purpose, and I remember his testimony. I also remember that when I came back to the office that night after the Grand Jury had closed, I was informed that Mingardi had been in that day and had given bail in my absence in the Grand Jury room.

Mr. Matthews: Cross-examine.

The Court: Do you object to the book?

Mr. Jayne: No.

The Court: I do not think so. The book may go in.

Marked Exhibit D-22 in Evidence.

CROSS-EXAMINATION by Mr. Jayne:

Q. I understand, Mr. Bolitho, that this entry in this book was made upon information that you gave to either Mr. Hegarty or to Miss Repp? A. It was made from the record on the envelope that I passed out of the Grand Jury room.

Q. You made the record on that envelope? A. I did, in the Grand Jury room.

Q. Yes. A. As I did in every case; I either



said "bill found" or "case dismissed" on the envelope here; wrote that on, and passed it out to the officer at the door.

Q. Do you have any idea how many cases the May Term Grand Jury considered at that term? A. I have not. We handled 1,800 cases in two years.

Q. But you remember this case, however— A. I remember—

Q. —particularly, don't you? A. I remember it on account of the committee asking about a sale.

Q. Well, I suppose they asked about all the cases, didn't they? They had to have some information from some source about it? A. It was a tendency of the Grand Jurors—

Q. I asked you if they asked you about it. A. They asked if there was anything found.

Q. No, no. A. And then they would ask if there was a sale.

Q. You are arguing with me. The question was whether the committee asked you about all the cases? A. Oh yes; they took up all the cases with me.

Q. But you remember particularly this Mingardi case, don't you? A. I remember it on account of this incident.

Q. Do you remember what day it was? A. The 14th of May.

Q. That is the day they considered it? A. Yes, sir. I would not—I could not remember that if it had not been for the fact that when I came back to the office after the Grand Jury had gone home, they told me Mingardi had given bail in the office that day.

Q. So you knew about the bail that day, too, didn't you? A. Yes. It had been given while I was in the Grand Jury room.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. You spoke about an envelope which it was your custom to mark and then pass out, and from which your records were made. I show you an envelope which has the name Mingardi on it, and ask you, is that the envelope in the Mingardi case? A. That is.

Q. I show you two other envelopes anent your testimony with reference to your custom as to how this record was made, marked 1445 and 1280, one referring to Dolimpio, and the other referring to Dolintio, and ask you if those are envelopes that, in the course of the making of this record, were passed out from the Grand Jury? A. Yes, sir.

Q. On those three envelopes, is there any word written across their face? Do not mention the word. A. Yes, there is.

Q. Is the word written across their face in your handwriting? A. It is.

Mr. Matthews: Then, your Honor please, I offer these three envelopes in evidence.

Mr. Jayne: No objection.

Mr. Matthews: Envelope 794.

Marked Exhibit D-23 in evidence.

Mr. Matthews: Envelope 1280.

Marked Exhibit D-24 in evidence.

Mr. Matthews: Envelope 1445.

Marked Exhibit D-25 in evidence.



Q. In your office as Prosecutor, after this record was made, this complaint docket marked D-22, was there a subsequent record made to that? A. Only the card index.

Q. Yes. And that card index was made in what manner?

Mr. Jayne: Well, there isn't any question on this phase of the matter now, is there, your Honor please?

The Court: I do not know.

Mr. Matthews: I am going to offer that card; that is all, Mr. Jayne. I was going to complete my proof.

The Court: This does not seem to be anything but an index and, as such, I think it is entirely valueless.

Mr. Matthews: I will offer it for the purpose of showing further record of the Prosecutor's Office in the Mingardi case.

The Court: It will be excluded.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Jayne: Just a few questions.

RE-CROSS-EXAMINATION by Mr. Jayne:

Q. You have just stated that you marked on the envelopes, these three cases, two of which are against Mingardi and one against Dolimpio, one against Mingardi and two against Dolimpio, you marked on those envelopes the word "dismissed." A. Yes.

Q. I understood you to say to your counsel

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that that was your uniform record? A. That was our—

Q. Your uniform practice, your usual practice? A. Yes.

Q. Did anyone else attend the Grand Jury during your term except you? A. No.

Q. This is, of your office? A. No. I do not remember.

Q. Did the assistant prosecutor ever conduct the business before the Grand Jury? A. I do not think he did, Mr. Jayne.

Q. So that you always attended to that personally, did you? A. Yes, sir.

Q. Now, do you say to us now that you marked on all the envelopes of cases that were presented to the Grand Jury either that there was a bill found or that the complaints were dismissed? A. I say that, yes.

Q. And if these cases which you filed in the—you filed them in the County Clerk's Office, didn't you, afterwards? A. I did not file the cases that were dismissed, because the law provided that the Prosecutor should certify the fee bills in the cases that were dismissed.

Q. Well, you did file a lot of envelopes? A. I do not know whether I filed any or not, except in cases where there were indictments.

Q. Do you know how many envelopes were filed in the Clerk's Office by Mr. Holland from your office when he took office? A. I do not.

Q. There were over nine hundred of them, isn't that so? A. Mr. Hegarty had charge of the records in the office.

Q. Now, out of those nine hundred that Mr. Holland filed with the County Clerk, do you say



that you marked on those the disposition of those cases in your handwriting? A. I marked on them if they were presented to the Grand Jury.

Q. And so that these envelopes will show, will they, with very few exceptions— A. I do not know what they will show.

Q. —the business that was— A. Yes.

Q. With respect to those cases, that was done in the Grand Jury? A. That was the custom, yes.

Q. All right. A. I do not know what they show now.

Mr. Matthews: That is all.

By Mr. Jayne:

Q. What do you mean by that, somebody has erased them? A. I do not know anything about them. I have not seen them since I went out of the Prosecutor's Office.

Q. What do you mean by that remark, that you do not know what they show now? A. Well, I do not. I have not seen them.

Q. Well, have you any reason to believe they are not in the same condition now that they were when you had control of them? A. I cannot say that, Mr. Jayne.

Q. No. I asked you if you had any reason to believe that? A. I have no reason to believe it; but I cannot testify what condition they are in.

Mr. Jayne: That is all.

Mr. Matthews: That is all, Mr. Bolitho, for now.

RAYMOND C. MATTHEWS, sworn as a witness on behalf of the defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Matthews, you are a practicing counsellor-at-law of the State of New Jersey, with offices in— A. Morristown.

Q. —Morristown? Do you know Mr. Daniel Marinaro? A. I do.

Q. How long have you known him? A. I believe I have known him twelve or fifteen years.

Q. At any time during your professional career, were you in legal partnership with him? A. From January 1, 1923 until the first of March, 1924.

Q. Do you know his reputation for truth and veracity in the community in which he lives? A. I believe I do.

Q. Yes. What is that reputation?

Mr. Jayne: I think he must answer yes or no.

Mr. Matthews: Well, we lawyers sometimes transgress.

Mr. Jayne: He either knows it or he does not.

The Court: I think he ought to say that he knows his reputation.

Q. Do you, Mr. Matthews? A. Yes.

Q. What? A. Yes.

Q. Yes. What is that reputation, Mr. Matthews? A. Not good.

Mr. Matthews: You may cross-examine.



CROSS-EXAMINATION by Mr. Jayne:

Q. You are his former partner? A. Yes, sir.

Q. You have had a good many talks with him, I suppose? A. Yes, sir.

Q. You have found him telling the truth about things, haven't you? A. I have.

Q. Everything he said was not a lie? A. No.

Q. You were a partner with him before I come into the County to conduct an investigation, weren't you? A. Yes, sir.

Q. Did he tell you about the Hudock case before I ever came into the County to investigate? A. Well, I—I do not remember the date when you came, Mr. Jayne, but I believe it was before.

Q. Yes.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. Mr. Jayne now asked you about a specific instance of whether Mr. Marinaro told the truth. In your practice with him and in your experience with him, didn't you find him very frequently telling an untruth?

Mr. Jayne: Objected to.

Mr. Matthews: I think the door is open.

The Court: Let it be answered.

A. Yes, sir.

Q. Did you frequently find him telling untruths? A. Yes, sir.

Q. Do you recall an instance of where, in the Negri case, he told an untruth; do you? A. Yes, sir.

Q. And wasn't that an allegation that he had made against the Chief of Police of wrong-doing that was untrue? A. Yes, sir.

Mr. Jayne: I object to it.

The Court: I do not think you are entitled to go into specific instances. You have brought out what you want, that he was found to have told untruths.

Mr. Matthews: Mr. Jayne asked him, "Did you find him in your practice telling the truth" about some matters? It seemed to me that gave me the right on cross-examination, which I would not have otherwise, of asking him, "Didn't you find him telling an untruth?" And then in what instance.

The Court: It would give you the right to ask with regard to, let us say, a thousand instances where you say he told an untruth, and to raise a separate issue on each one of them. Now, that is going too far.

Mr. Matthews: I only want one instance, because it is pertinent to the emergency of this present case.

The Court: I do not know the pertinency.

Mr. Matthews: I do not want to state it in the presence of Mr. Jayne to your Honor for fear it would be prejudicial. May I state it to your Honor in secret with Mr. Jayne?

Mr. Jayne: I could not have asked him in what instances he told the truth.

The Court: I think I will exclude it, Mr. Matthews. I do not think you are entitled to go into these specific instances.

Mr. Matthews: The purpose of the question, for the sake of the record, was to bring out the facts about a specific case



that had a bearing on, or was similar to, this case; and I wanted to ask him whether or not on that occasion an untruth had been told.

The Court: A case that was similar to this case?

Mr. Matthews: Yes. Similar to the allegation of this case.

The Court: All right.

Mr. Matthews: Exception.

The Court: The rule will stand.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: That is all.

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JAMES H. BOLITHO, the defendant, re-called as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Bolitho, did you ever meet Mr. and Mrs. Mingardi? A. No, sir.

Q. Did you ever meet Mr. or Mrs. Mingardi? You did not? A. I did not.

Q. On any occasion in the years of your activity as Prosecutor, during your term as Prosecutor, did you receive from, or on behalf of, Mr. and Mrs., or Mr. or Mrs. Mingardi, $300, $200, or any amount of money in consideration of which you were to suppress their complaints? A. I did not.

Q. Or the complaints against them? You have told us that you were before the Grand Jury when the Mingardi complaint was dismissed; do you remember what date that was? A. Yes, sir. The 14th of May.

Q. Yes. And did you meet Mr. Marinaro with reference to the Mingardi case at anytime? A. I did not.

Q. Did you meet Mr. Mutarella with reference to the Mingardi case at any time? A. I did not.

Q. Did you send anybody to Hoboken, West Hoboken, or any place in the County of Hudson to locate Mingardi or to get a statement from Mingardi? A. I did not.

Mr. Matthews: I think that is all.

CROSS-EXAMINATION by Mr. Jayne:

Q. Is this one of the matters concerning which Mr. Mutarella and Mr. Marinaro visited you in your office? A. The Mingardi matter? No, sir.

Q. You had taken the trouble, either yourself or one of your officers, to confer or consult Mingardi, and you found that he had pleaded guilty to a liquor charge, hadn't you? A. That they had pleaded guilty?

Q. That they would plead guilty? A. I do not recollect that.

Q. No. You did not take the trouble even to confer with them, did you, consult them, to see whether they were guilty or innocent? A. I did not know anything about this Mingardi case until the papers were given to me to take to the Grand Jury in the file of liquor cases.

Q. You heard Mingardi testify on the stand here in your case, didn't you? A. In this case?



Q. Yes. A. Yes, sir; I heard him testify.

Q. You heard him say that he had 48 gallons of wine? A. I heard him say that here; yes, sir. I think Mrs.—

Q. He said it under oath? A. I think Mrs. Mingardi said it.

Q. And, so far as you know, they always have said it? A. I beg pardon?

Q. They always have said it, as far as you know? A. I never heard them say anything about it before.

Q. The only suggestion that it was vinegar instead of wine was when an effort was made to get an affidavit from them? A. I do not know about that.

Q. If you had suppressed this complaint as Prosecutor and there was, in fact, 48 gallons of wine found, it would have been to your interest to have had an affidavit to the effect that it was vinegar instead of wine, wouldn't it?

Mr. Matthews: I object to that question as argumentative and calling for a conclusion, incompetent and immaterial.

The Court: Yes; it seems to be argumentative.

Mr. Jayne: It is cross-examination of his testimony that he did not send them, these men, over there to get such an affidavit. That is the purpose of it.

The Court: Well, you have got his statement that he did not send them. You have the affidavit; the affidavit is in.

Mr. Jayne: No.

The Court: What?

Mr. Jayne: No. This is the Mingardi

matter now. We failed to secure the affidavit. Your Honor is confusing it, I think, with the Dolimpio case.

The Court: Very likely; very likely. Then the question is, if he had succeeded in securing such an affidavit—no.

Mr. Jayne: The question is—

The Court: If he had desired to suppress it, that would have been the thing to do?

Mr. Jayne: That he would have had an interest in securing a statement.

The Court: Yes. You may ask that.

Mr. Matthews: Exception.

The Court: Yes; you have an exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: Do you understand the question?

The Witness: I think I do.

The Court: All right. Then answer.

A. If I had suppressed the complaint, I suppose, in one sense of the word it would be; in the other sense, with the inventory saying "Nothing found," I do not think it would. Why should I ask for an affidavit that there was vinegar when the inventory says "Nothing found?"

Q. Well, there would not have been anything then in the sense of liquor if it was vinegar. A. Well, I do not know why I should want to be interested in that with the inventory in the condition it was in.



Q. You would have been vitally interested, would you not?

Mr. Matthews: I object as incompetent and immaterial to the issue.

The Court: I will allow it.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. You would have been vitally interested if you apprehended that this situation would be exposed by the Elisor Grand Jury of the County, wouldn't you? A. I do not think so, Mr. Jayne.

Q. You wanted to be in a position where you could show that this man Mingardi was not guilty of any crime in the County, didn't you? A. Well, I could show it by the inventory.

Q. Yes. But do you think the inventory is as trustworthy as the words that come from the accused person himself? A. We do not take the accused person before the Grand Jury. We take the evidence that is found on the raid.

Q. Yes. But you would not have had to take this case at all before the Grand Jury, would you? A. What do you mean by that?

Q. Why, as to his declaration here in court when Mingardi goes on the stand, he admits freely that he had 48 gallons of wine. A. That was the first knowledge I ever had of it.

Q. Well, you never tried to get any knowledge about it? A. Why should I consult the defendant as to what he had? If you cannot trust the men who made the raid and the inventory they made, who can you trust on a raid?

Q. Now, your idea is, the men did wrong, is that your idea? A. I could not presume that my officers were wrong.

Mr. Matthews: I object to this argument as argumentative and not material to the issue.

The Court: Proceed, Mr. Jayne.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. You could have brought this man into Special Sessions without presenting this case to the Grand Jury, couldn't you? A. I do not know. I never heard of the case until the case was presented to the Grand Jury.

Q. You know it is common practice for prosecutors to bring those who have no defense to the complaint made against them— A. Yes, sir.

Q. —and who are quite willing to admit their guilt, before the Court of Special Sessions? A. We brought over 900 of them before the Court of Special Sessions, and collected over $42,000 in fines.

Q. But you did not bring in Mingardi, did you? A. Of course, I did not.

Q. And you did not bring in Peter Dolimpio, did you? A. Certainly not. They did not sign up for Special Sessions. I never saw either one of them.

Q. When did you first see this inventory to which you refer? A. When I presented it to the Grand Jury. I can tell you our custom on that, if you want it.



Q. You did not look at it before that? A. Mr. Hegarty arranged the cases for the Grand Jury—

Q. No, no. A. —and I never bothered with them until I got in the Grand Jury and called the witnesses on it that were subpoenaed.

Q. You never examined the papers at all before you went into the Grand Jury? A. I did not.

Q. Haven't you frequently said to Mr. Hegarty, "I do not want to bring these cases up," and handed to him a number of envelopes? A. I do not believe I ever said that to Mr. Hegarty.

Q. You say you never did? A. Unless it was some case, some serious case, in which—like the—like the Untermeyer case, if—

Q. Haven't you regarded that—

Mr. Matthews: Let him answer.

The Court: Let him answer.

A. (Continuing)—like the Untermeyer case, in which it took us several weeks to make an investigation before we could present it to the Grand Jury. It happened before the May Term of court, and our investigation was not completed in time, until the October Term of court.

Q. You regarded the Untermeyer case, then, as a serious case, did you? A. It was a serious case, and we did serious work on it, and got every one of them.

Q. To plead guilty for the illegal transportation of liquor? A. Yes. And to plead to the indictment for robbery, also; and there are some of them awaiting sentence now, and were when I went out of office.

Q. You never tried Juliano, Grande or Sica, these three men? A. Juliano went down to serve

a term from another county after he was fined, and we did not have—and you came in and took charge of the criminal business, and I had no right to try him, and you know it.

Q. When did you say I took charge? A. In February, and there was no term of court between the time Juliano was fined and the time you went into office.

Q. Did you conduct cases in Special Sessions after that date? A. You were appointed—

Q. No, no. Why don't you answer my question?

Mr. Matthews: Give him a chance.

A. I am going to answer, Mr. Jayne.

Mr. Matthews: He said, after that date, and there is no date given you. You gave three dates to him. Give him a chance.

Q. Did you conduct cases as Prosecutor of this County before Judge Wilson after February 19th? A. Yes, sir; with your consent. And you met me in the chambers, and sat in this jury box, and said "Go ahead on the 20th."

Q. Exactly. A. Yes, sir.

Q. So that you had, except for special work in which I was engaged, general control over the work of the Prosecutor's Office, didn't you? A. But Judge Wilson would not try any indictments after that, after you came into the County.

Q. I am not asking you Judge Wilson, anything. I am asking you— A. And we were talking about indictments.

Q. Don't you want to answer my question? A. I will answer it.

Mr. Matthews: Do you know the question, Mr. Bolitho? If you don't, ask the



stenographer. I am frank to tell you I do not know it.

The Court: After the 19th, with Mr. Jayne's consent, did Mr. Bolitho have general control of the County criminal business, is that right?

Q. Except for the special work in which I was engaged? A. Is that the question?

The Court: Yes.

A. Except that Judge Wilson did not sit after that time to try indictments.

Q. Otherwise, you did have; is that what your answer is? A. In Special Sessions; yes, sir.

Q. Otherwise, you had general control of the investigations, the receiving of complaints? A. Yes, sir.

Q. And the general conduct of the Prosecutor's Office? A. I had charge of the Prosecutor's Office until May 19, I think, until I resigned.

Q. Until you resigned, as a matter of fact? A. Yes, sir.

Q. Did you ask Judge Wilson for the privilege of having the jury return and trying criminal cases? A. Judge Wilson—

Q. Now, can't you answer me? A. —told me, without asking me, Mr. Jayne, in his chambers, on account of your appointment, he said he did not know what authority I had to function, and he wanted no questions in case of a conviction on an indictment.

Q. You are talking about February, 1925? A. I am talking of since the 19th of February, yes, sir.

Q. 1925? A. I think I received the information on the 20th from you.

Q. That is, the date you are speaking about—
A. Yes, sir.

Q. —is February of the year 1925? A. Yes, sir.

Q. And the Untermeyer case occurred in April, 1924? A. Yes, but the indictment was found in October, 1924.

Q. Yes. A. And we tried, I think, 19 cases in 17 days' sitting in the October Term, and then the jury was dismissed, and we tried no more indictments.

Q. You did not try these men, Juliano, Grande or Sica, that term, did you? A. My recollection is that most of them pleaded guilty, except Juliano. Grande and Sica—and Sica was not in the matter in this County. He received the liquor in Essex County. There was some question about whether it was valid against him.

Q. It is a fact, then, that they all pleaded guilty except the three that consulted Marinaro and Mutarella? A. They did not plead guilty until they changed their attorneys.

Q. Yes. These three never did plead guilty, did they, Juliano, Grande and Sica? A. They pleaded to the one indictment.

Q. Yes. That was for transportation of liquor. But I am talking about this breaking, entering and larceny of $4,000 worth of liquor. A. They said they had no part in that—

Q. Yes. A. —and they wanted to stand trial on it. Mr. Holland was their counsel, and he informed us—

Q. And they never have been tried on it? They were not tried at the October Term, rather, I mean? A. No, they were not.



Q. You notified all the other defendants for trial, didn't you? A. Yes. And we notified them.

Q. Yes. A. We notified them when they had Marinaro as a lawyer; and we notified them when Mr. Holland was their lawyer.

Q. And you notified all of the defendants except those three men for trial on December 3, 1924, didn't you? A. I think the correspondence will show that I notified their attorney too, Mr. Jayne.

Q. But you did not notify Grande, Sica or Juliano that you intended to proceed with their trial on December 3, 1924? A. I think we did.

Q. Will you say you did? A. I will, yes.

Q. All right.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. Just a minute, Mr. Bolitho. How many cases did you handle as Prosecutor for the County of Morris? A. Eighteen hundred.

Q. You were just asked a question whether or not you notified the other people in the Grande matter. What date did you notify the other people in the Grande matter? A. Well, we notified them all about the same time.

Q. Yes. Do you remember when it was? A. I do not remember the date.

Q. Now, you said they were indicted in the October Term? A. Yes, sir.

Q. And you told Mr. Jayne there were how many criminal trials in how many days? A.

There was either nineteen in seventeen days, or seventeen in nineteen days.

Q. And thereafter was there any opportunity to try anybody else? A. There was not. I think the last case we tried was the Whippany payroll robbery, which took three or four days to try.

Q. And thereafter what was the next term of court? A. January Term, 1925.

Q. I show you the carbon copies of two letters, one addressed to Mr. Albert Holland, and ask you whether or not that is a notice to him concerning these cases that you have been talking about, Grande and Juliano? A. That is.

Q. Is that from the files of your office? A. It is. That is a copy of the letter. I think Mr. Holland has the original.

Q. This is a copy of a letter notifying Mr. Holland, "I did not want to bring in"—what does it say? A. That is a copy of a letter that we sent to Mr. Holland regarding the case.

Q. Now, was Mr. Holland the attorney on the date of that letter, December 27, 1924? A. Yes, sir. He had informed me before that that he was.

Q. Now, why didn't Judge Wilson try any cases, Mr. Bolitho? Tell us.

Mr. Jayne: I object to that.

A. I can only tell you what—

Q. Just a minute, Mr. Bolitho. Wait until the objection is disposed of.

The Court: How does he know why Judge Wilson did not try them?

The Witness: Only what he said to me.

The Court: Exactly.

Mr. Matthews: Well, he has been asked that, and the door has been opened to me.



The inference has been here that he neglected them. Now, he says, "Did you ask Judge Wilson to sit?" He went on to explain, and Mr. Jayne said, "Answer my question," and he said no.

Mr. Jayne: His answer I remember very well. He did explain that. He said Judge Wilson—

The Court: It has all been stated. He said that Judge Wilson was doubtful about Mr. Bolitho's status and, therefore, was not going to try any more indictments.

The Witness: Yes, sir.

The Court: While Mr. Jayne was here on the job.

The Witness: That is right.

The Court: It is all in.

Mr. Matthews: I want to ask the question for the purpose of showing why Judge Wilson did not sit as judge and why it was impossible for this defendant to have gone ahead with the trial of the specific case that he has been questioned about, and I predicate my question upon the examination of Mr. Jayne that I was entitled to cross.

The Court: It has been fully stated, and we do not need to hear it again.

Mr. Matthews: Exception.

The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Q. You told Mr. Jayne that there were a number of cases in which the people pleaded in Speci-

al Sessions, and Mr. Jayne said to you, "Well, Mingardi and Dolimpio were two of them that did not?" Was Mutarella one of them that did plead in Special Sessions? A. Yes, sir.

Q. And was he fined? A. He was.

Q. Under your regime? A. Yes, sir.

Mr. Matthews: That is all.

RE-CROSS EXAMINATION by Mr. Jayne:

Q. Now Mr. Bolitho, Mutarella was a frequent visitor to your office, wasn't he? A. When he came there to go bail for someone.

Q. I do not care what he came for. He was a frequent visitor, wasn't he? A. He was there quite often, Mr. Jayne.

Q. Yes. Did you ever hear he was a bootlegger? A. I did not, except on this complaint.

Q. Did you ever hear that he was regarded as the king bootlegger of Morris County? A. I did not; not until I saw it in the newspapers.

Q. Well, you never arrested him, did you? A. I did not.

Q. You never made any complaint against him? A. I never had that information.

Q. Well, the Sheriff's officers, however, made complaints against him, didn't they? A. Yes, sir; and I had prosecuted him.

Q. Yes. But there were three of them, weren't there, four complaints against him? A. Not to my knowledge.

Q. One case he was charged with sale of liquor and with possession of liquor, and the other case he was charged with possession of liquor and transportation of liquor; and you brought him into court in Special Sessions, and had him plead



guilty to the least serious of the crimes, possession of liquor, and he paid a fine of $500, and that is all the man has ever suffered; isn't that so? A. In order to answer that, I must say that there were not more than two complaints against him, and those complaints for illegal possession of intoxicating liquor, and he paid a $250 fine on each complaint.

Q. Do the records show that? A. I do not know what the records show on it.

Q. Well, you put it in the case here yesterday. I understood there was a fine of $500.

Mr. Matthews: It is in one case; there is one card.

Q. Now, the fine was $500. Now, you say it was $250? A. Both cases were presented the same day, and in my consultation with Judge Wilson, in giving him the data on the cases, he said he was going to fine him $250 on each case. I do not know what the records show.

Q. And what did you say about that? A. I did not say anything. It was useless to tell Judge Wilson what to do.

Q. Why, didn't you say, "Why, this man is a notorious bootlegger of the County," and that "You are fining him on two cases only a half penalty"? A. I never said that in any case. I was not a persecutor. I was a prosecutor.

Q. You considered you would have been a persecutor if Mutarella had been fined a thousand dollars for his violations of the prohibition law? A. I had no evidence that justified me telling Judge Wilson about that—that about any man.

Q. Well, you had two charges, you say? A. Of illegal possession.

Q. Yes. Well, he could have been fined $500 on each one of them, could he not? A. If the Judge saw fit.

Q. He could have? A. Yes, sir.

Q. Now, did you recommend to the judge that he be fined a maximum of $500 on both of the charges? A. I never recommended anything to Judge Wilson, because it was useless.

Q. It was? A. He had a mind of his own.

The Court: Let us close this examination now.

Mr. Jayne: That is all.

By Mr. Matthews:

Q. Just one question. Mr. Bolitho, you have been asked by Mr. Jayne whether you knew that Mutarella, who had been complained against by the Sheriff's men, was a notorious bootlegger, and you said no, that you did not know it. You did not know, either, at that time, did you, that the Sheriff's brother was accused of being a notorious bootlegger? A. I had heard of it; but there was no evidence of it.

Q. No.

Mr. Matthews: That is all.

By Mr. Jayne:

Q. Why didn't you get him if you had heard of it? A. Because it was mere rumor. Every day someone would come in and say someone was a bootlegger, because he has got a new automobile.

Q. Exactly. But I indicted the Sheriff's brother, didn't I? A. I do not know about that, Mr. Jayne; that was not my business.

Mr. Jayne: That is all.



By Mr. Matthews:

Q. Mr. Jayne just asked you a question, "I indicted"—

Mr. Jayne: Well—

Mr. Matthews: Just a minute, Mr. Jayne. The record shows it.

Q. "I indicted the Sheriff's brother, didn't I?" Did Mr. Jayne ever tell you he was going to indict the Sheriff's brother? A. He did not.

Q. Have you any reason to know whether or not he personally indicted the Sheriff's brother? A. Not unless he—

Q. You do not know of any law of the State of New Jersey whereby Mr. Jayne can indict—

The Court: That is just mere talk.

Mr. Matthews: Your Honor will allow me an exception?

The Court: To what?

Mr. Matthews: I thought you ruled against it; I thought you said to strike it.

The Court: I said nothing of the kind.

Mr. Matthews: Well, I am mistaken, and I withdraw the request for an exception in that regard. I did not hear what your Honor said.

The Court: I said that is mere talk.

Mr. Matthews: Well, of course, it was because it was following Mr. Jayne's practice.

The Court: Well, I understand and you understand and Mr. Jayne understands and the jury understands that indictments are not found by an individual in this State, and what is the use of wasting time over a thing like that?

Mr. Matthews: None, except to protect this defendant against remarks that might be prejudicial to the jury.

That is all, Mr. Bolitho, on the Mingardi matter.

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WILLIAM TUNISON, sworn as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Tunison, what is your business, please, sir? A. Automobile dealer.

Q. What is the name of your concern? A. Jordan-Morristown Company.

Q. Do you know Daniel Marinaro, an attorney here in town? A. I do.

Q. Do you know his reputation for truth and veracity in the community in which he lives? A. I do.

Q. What is it? A. Very bad.

The Court: Any cross?

Mr. Matthews: I have not finished yet. I am trying to check up a matter.

Q. In January 1925, up through June 1925, did Mr. Marinaro as attorney have any of your money? A. He did.

Q. Had you requested its return?

Mr. Jayne: I object to this line of examination for the same reasons heretofore stated, and upon which your Honor has repeatedly ruled.

Mr. Matthews: To contradict Marinaro's testimony.



Mr. Jayne: Just a moment until I conclude. I object to counsel injecting this information in this case, and by way of argument, it is further offending against your Honor's ruling with respect to this class of testimony.

Mr. Matthews: I won't argue it—taking unjust advantage of my rights; I think I have tried to keep within them—to refute a statement that is already before this jury of Marinaro that he had no money, that he had been advised by Bolitho to give Kesse's money, a client's money, to Juliano.

Mr. Jayne: He might have spent all his client's money and had none left. I do not see how that proves anything. Counsel was endeavoring to show that he had money with which he could have paid back $400, or whatever it was, in this Juliano matter, and Marinaro—

The Court: Did Marinaro say that he had no money of clients in his hands at the time?

Mr. Jayne: The point is, in his hands; it does not seem to me it is material whether he had it or not. How would this man know whether he had it or not? He might spend it in ten minutes after this man gave it to him.

The Court: Well, I get your point, Mr. Jayne. Suppose you re-ask the question, now.

Mr. Matthews: Will you, Mr. Stenographer, ask it?

The Court: I would rather you ask it over again, if you have no objection.

Mr. Matthews: I want to—

The Court: Then you do object. Mr. Stenographer, read it.

(Question read.)

Mr. Matthews: That is the last one. I think your Honor means the preceding one.

(Preceding question read.)

The Court: Yes. You say that you wanted to prove that he had the money?

Mr. Matthews: Yes, sir.

The Court: Well, you have done that, haven't you? There is the evidence.

Mr. Matthews: I want to know if he requested its return.

The Court: What has that to do with this case?

Mr. Matthews: It has this to do: Marinaro said he had no clients' money at this time.

The Court: And now this witness has said that Marinaro had his money.

Mr. Matthews: It might leave the implication that the money that he had is money for a fee.

The Court: (To witness) Answer it.

A. Yes.

Mr. Matthews: That is all, Mr. Tunison, thank you.

The Court: Any cross?

Mr. Jayne: No.



RALPH B. DUNHAM, sworn as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. Dunham, what is your business? A. I am a sales manager.

Q. Do you hold any official position in Dover? A. I am an alderman in Dover.

Q. Do you know Daniel Marinaro? A. Yes, sir.

Q. In about the month of April, 1925, did you receive a call from him with reference to his getting some money on a note? A. Why—

Mr. Jayne: I object to this. I do not see what the purpose of it is.

Mr. Matthews: The purpose is to refute Marinaro's statement that he was advised by Bolitho to use a client's money in order to pay the Juliano amount back.

The Court: Go ahead.

A. He called up my residence, and I was not home, and he left word for me to call him. I called Mr. Marinaro on the 'phone and he made an appointment to meet me.

Q. Did you meet him? A. Why, I met him sometime in April; I do not know what the date was.

Q. Yes. Did you or not on that occasion have a conversation with him about money with reference to a note? A. He said that he had to raise some money right away; that he was in an awful hole; that he had used a client's money, and he had to make good.

Q. Did he present any paper to you for endorsement? A. He had a note made out there for

$500, and he said that, "I could get Mr. O'Connor to endorse it, if you will endorse it too." I said, "You will have to give me a few days to think it over," because I had heard something about some of his paper before.

Q. Did you, pursuant to his request, go to the bank to assist him? A. I said to Mr. Marinaro at the time, "Why don't you have some of your friends do"—

Mr. Jayne: I think this conversation is objectionable.

The Court: Never mind about that. Did you go to the bank, is the question?

The Witness: No. I went to find out from people that already had endorsed notes for him.

Q. And, as a result of that—A. I did not endorse the note, because he had some out already that had not been made good.

Q. I show you three papers—do not characterize them—and out of the three, see if there is one that you say was the note he asked you to endorse, if it was; if not, why, do not say anything? A. That one for $550 looks like the note.

Q. That is the defendant's exhibit for identification D-4. All right, Mr. Dunham.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. Mr. Dunham, how did Prosecutor Bolitho know all about this Marinaro note transaction with you? A. I presume he knew it through his partner, Mr. O'Connor. I do not know any other way.

Q. Then there were some relations between



Bolitho's office and Marinaro and you on this, on raising this money? A. That is where Mr. Marinaro made the appointment to meet me, in Mr. Bolitho's office.

Q. Oh I see. A. With Mr. O'Connor, but Mr. Bolitho was not there at the time, nor had anything to do with it.

Q. I see.

Mr. Jayne: That is all.

Mr. Matthews: That is all, Mr. Dunham, thank you.

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RICHARD J. O'CONNOR, recalled as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Mr. O'Connor, I show you three papers, D-2 for identification and D-3 for identification and D-4 for identification, and ask you whether or not you have seen those papers before? A. I have.

Q. And did you see Mr. Marinaro with reference to those papers? A. Mr. Marinaro came to see me.

Q. All right. When? A. Well, I cannot identify the—I cannot say the date, rather, unless I say that on the date that the notes were made out, since they are—the first note, March 6th, that is in my handwriting.

Q. On March 6th, did Mr. Marinaro see you and request you to sign a note for him? A. He did.

Q. And for what reason? Did he tell you? A. He did.

Q. Well, what was it? A. Mr. Marinaro came to my office along with Mr. Mutarella. They came into the Dover office, and I think it was around eleven o'clock in the morning. And Mr. Marinaro told me that he had used some client's moneys, and that he had to raise some money. I might say that I had talked to Mr. Marinaro within two weeks previous to that, coming from Newark. I had met Mr. Marinaro in Newark, where I had concluded a foreclosure, in the office of Riker & Riker. And coming back on the train, I told Mr. Marinaro that I was going to pay off a note that I had endorsed for a young lady in Dover for $350 that had stood in the bank for over a year without any payment being made, and without the interest being paid on the last three months.

Q. Where is that bank?

Mr. Jayne: Is all this material about the young lady?

Mr. Matthews: He is apparently continuing on to the point at issue.

A. Mr. Marinaro came—I told Mr. Marinaro that I was glad to have that done because it would open my credit again at the bank, that I had used up my credit limit. And he came this morning and asked me whether or not I could not put this note in. I said, "Danny, I think I could put a note in for some amount, but I do not know whether I could put it in for the amount you want."

Q. Were you friendly with Marinaro? A. Very friendly.

Q. Yes. And were you the beneficiary of Marinaro's kindness, financial or otherwise? A. Not financial; but otherwise, if I may explain.



Q. In what respect? A. Why, Mr. Marinaro was the secretary of the Italian-American Citizens Club in Dover, and I was Town Attorney in Dover in 1923, and when I went up for reappointment, the Italian citizens had a considerable political influence in Dover, and Mr. Marinaro went to the trouble to go before the organization and have them not only endorse me, but to write a letter to the different aldermen who were then going into office for the term of 1924, condemning my opponent.

Q. All right. Then Mr. Marinaro on this day asked you to endorse this note, or to loan him this money, or what happened? Hurry it along. A. Well, he asked me whether or not I could negotiate a note, because Mr. Mutarella was with Mr. Marinaro, and on the first note, March 6th, Mr. Mutarella endorsed the note, and asked me whether or not I could take it to the Dover Trust Company, which was a form note that I gave them, and have it discounted and give him the money.

Q. Yes. Did you go to the bank? A. I told Mr. Marinaro that I would like to talk to Mr. Clark, who was the secretary and treasurer of the trust company, and who had charge of discounts, and I told him if he would come back on that day I would let him know what Mr. Clark had to say. And I think, if I am not mistaken, I told Mr. Marinaro to come back at one o'clock. He came back at one o'clock, but I was not back to the office; I had gone out somewhere, I do not recall just where; but when I got back, my stenographer told me Mr. Marinaro had been there and wanted me to call his Morristown office. I called him at the

Morristown office, and I spoke to Danny, and I said I would like to see him. And he asked me how I had made out. I said, "I would like to see you and tell you about it." It was either that day or the day following that Mr. Marinaro came to the Dover office, and I said, "You better go up and speak to Mr. Clark himself, and he will explain the thing to you." He said, "How did you make out?" I said, "You go up and he will tell you." He went up to the office and came back and said, "Mr. Clark does not care to take the paper, he says I do not do any business at this bank, and since it is not for your accommodation, he does not care to discount it."

Q. That was not discounted? A. That note was not discounted.

Q. What is the identification number on that? A. I cannot read it. I do not know whether you can.

Q. D-2 for identification. And is that your writing on the top of the note? A. I filled out the note, and Mr. Marinaro signed it.

Mr. Matthews: Mr. Marinaro has identified his signature. I offer that note in evidence at this time.

Marked Exhibit D-2 in evidence.

Q. Now, what financial transactions with reference to this note business were had at this time, if any; just the transaction, and what Marinaro said about the need of the money? A. Well, Danny told me he only needed the money for a short time, and the note was made out—at first, I suggested that the note be made out for two months, or one month, rather, and then Danny said he did not know whether he could get the money in in



that time, and it was our understanding when a note was discounted that it would not be renewed. And I suggested that the note be made out for two months, which would give him ample time to pay the note off in full. But after I had informed him that the bank would not discount the note—I said, "Well, Danny," I said, "Since the trust company won't accept a note, so far as my credit is concerned, there is only one thing that we can do," I said, "That is to discount a note at the National Union Bank, and" I said, "I have had credit at the National Union Bank to the extent of $3,000, and I have very little in paper there, but I have not done any business there in quite some time, excepting on renewals."

Q. All right. Hurry it along to that conversation. A. This is my conversation with Mr. Marinaro.

Q. Yes. A. And I said, "I would say to you, though, that if you could get Mr. Bolitho to endorse the note, since our account at the National Union Bank is a joint account, there is no question that we could have the note discounted;" that "I cannot have the note discounted at the National Union Bank; that is must have Mr. Bolitho and myself for that." I said, "Mr. Bolitho and myself, as you know I talked to you at the time, Danny, are contemplating dissolving our partnership because there were several differences that we could not agree on, and Mr. Bolitho, without any knowledge of mine, had written to the bank and asked that the bank not accept any checks drawn on the firm account unless signed by both members, and because of that fact, I do not think Mr. Otto would recognize or accept any note

that was not endorsed by both of us." And I said, "You take this note"—that is the second note for $500, I made that—Danny wrote that out, rather, payable to James H. Bolitho and Richard J. O'Connor. "Now," I said, "I see no reason why I should help you out, Danny; I certainly will if I can; but I cannot help you out in the manner you have outlined, unless you get Mr. Bolitho's endorsement. If Jim will endorse it, I will endorse it."

Q. Referring to the defendant's exhibit for identification, D-3, do you recognize the writing in the body of that note? A. I do. That is Mr. Marinaro signed it.

Q. Made out in your presence? A. It is made out on the blank form of note I had in the office.

Mr. Matthews: I offer that in evidence.

Marked Exhibit D-3 in evidence.

Q. Were you later called upon to endorse the note now D-3? A. Well, I thought—oh, D-3? I was not called upon to endorse it. Mr. Marinaro come back to my office and said that Mr. Bolitho refused to endorse the note.

Q. All right. Then what else was done with reference to the note for this money, if anything? Was there a third paper involved? A. Yes. After—but this note was—it was dated the date we made it out. He went down to Mr. Bolitho, who was at the Prosecutor's office, and I do not think he came back the same day. So then I did not see Mr. Marinaro again for a few days, and then he came back to me, and he said, "Dick, I have to have the money." He said, "I have"—he says, "I have given Kesse a check that has gone back to Athenia, and he will call me up when the check



gets to him, and I have got to tell him the money is in the bank, and I have got to have it there." "Well," I said, "Danny, I do not know any other way that we can get the money unless we go to Ralph Dunham." I said, "If Ralph will endorse the note and I endorse, I think they might accept it at the National Union." I said, "His brother-in-law is a director there, and I do not think they woud turn him down, and I think Ralph owes you more than gratitude for what you have done for him politically," and I said, "I will tell you what to do. I will call Ralph up and you see him, and I will see if I cannot get Ralph to go on the note with me."

The Court: Is there no way of shortening this? I do not know what it is all about.

Mr. Matthews: It is all about the notes, to refute the testimony of Marinaro that he got money and was looking for money from Bolitho.

The Court: But these long-winded conversations—

Mr. Matthews: Repeating what Marinaro said.

Q. The Court asks that you shorten it as much as you can. A. I can only tell you what he said. I do not know how to shorten it.

Q. Well, hustle it. A. So Danny came back to me and told me he had seen Ralph Dunham, and that Ralph said he did not care to endorse the note, or, I do not think that is what—he did say, though, I think he said that Ralph had—

Q. Well—A. —taken it up with the bank and would not endorse the note.

Q. Well, it was not endorsed. Do you recognize that note as the note in question? Do you know Marinaro's signature? A. He signed that in my office.

Mr. Matthews: That is offered in evidence. It is the defendant's exhibit 4 for identification.

Marked Exhibit D-4 in evidence.

Q. And he told you at the time of this last note that the money that he had to pay and the jam he was in was in the Kesse matter, did he? A. I am not so sure, Mr. Matthews. I know he told me the first time. I know he told me the first time; I am not so certain that he told me the last time; but the last time he told me he had to get the money some way, and he might as well be ruined one way as the other.

Q. Didn't he tell you a check had gone to Athenia? A. He told me that on one occasion. I cannot recall whether it was the first or second time. It was not the last.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. Are you still Mr. Bolitho's law partner? A. I am; although I have not been practicing with him for six weeks.

Q. Did Mr. Marinaro say to you, when he came to you the first time, that Bolitho had sent him to you? A. Not the first time, Mr. Jayne. He came with Mutarella the first time.

Q. Who else came with him on any other occasion? A. I do not think—

Q. Anybody else? A. I do not think that anybody was with him the second time. Mr. Mutarella was with him the first occasion. The second occasion, I think he came up to my office alone.



Q. On any of these occasions, did he say that Mr. Bolitho sent him over to see you? A. He said he had been down to see Mr. Bolitho. He did not say Mr. Bolitho had sent him to me.

Q. Well, did he say Jim had sent him to you? A. No. He did not say anything, Jim or Mr. Bolitho, or anybody else had sent him to me.

Q. He came to you? A. That is right. He had not said that to me.

Q. Did you say to Mr. Burdge—

Mr. Matthews: Who?

Mr. Jayne: Burdge.

Mr. Matthews: Oh!

Q. —that you knew about this matter and that, in Dan's effort to get the money back, he came over to you, and he said that Bolitho had sent him over to you, for you to help him out getting the money, and perhaps you could get somebody by the name of Shupe to endorse the note? A. I said nothing. I knew nothing about the Untermeyer matter. I told Mr. Burdge about the note transaction before I came into court.

Q. Let us take the Untermeyer matter out of it. Did you tell Mr. Burdge that Danny told you that Mr. Bolitho had sent him over to see you about getting the money through these notes? And after Dan told you that, you said to Dan, "Well, you go back and get Bolitho's signature, and then I will see what I can do"? A. If I may answer that by saying, I do not recall—I can answer the question; but I do not recall whether I told Mr. Burdge that Dan did say to me that Mr. Bolitho

had suggested to him that on being willing to endorse a note myself, I might get Jack Shupe in Dover, John F. Shupe, to endorse a note for Danny.

Q. Then you knew when Dan came there he had been talking to Bolitho about it? A. Oh yes, I knew that.

Mr. Jayne: That is all.

RE-DIRECT-EXAMINATION by Mr. Matthews:

Q. And you had sent him to Bolitho to talk about it, hadn't you? A. No; I cannot fix the time, Mr. Matthews. I do not know whether he had talked to Mr. Bolitho before he had that conversation with me. I only know that the first time he and Mutarella came, and it was to be a transaction between myself, Mutarella and Marinaro; and on the second occasion, I cannot recall whether it was before he came for the note which I made on that day, myself and Jim, or whether it was after that that we talked about Shupe.

Q. When was that conversation that you were asked about with Burdge? When is that supposed to have occurred? A. That was last week sometime.

Q. All right.

Mr. Matthews: That is all.

Mr. Jayne: That is all.



JAMES H. BOLITHO, the Defendant, recalled as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Matthews:

Q. While you were Prosecutor, Mr. Bolitho, the Juliano—Grande matters were before you, were they not? A. Yes, sir.

Q. When did you first learn about those? A. When I learned first about Juliano and Grande? When they were brought in, apprehended.

Q. Now, you have already testified, though this is on the Juliano-Grande count, that they were indicted in the October Term—A. Yes.

Q. For breaking and entering? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And up to this time, prior to this time, had you seen Marinaro? A. The first I saw Marinaro with reference to that case was when they were brought in and arraigned and entered their pleas.

Q. Yes. Do you remember when that was? A It was in November, 1924; I do not remember the date.

Q. Yes. And at that time, did he tell you that he represented them? A. He did not tell me, but when they were called to answer the indictment, he stood up in court and said he represented them.

Q. That was November, 1924? A. Yes, sir.

Q. I show you a paper and ask you, do you identify it as a record of your office as of the month of November, and as of the case that I am asking you about? A. Yes, sir.

Mr. Matthews: I offer that letter in evidence, the letter—

Mr. Jayne: I object to that letter.

Mr. Matthews: —addressed to Mr. Marinaro, not giving the contents, dated November 28, 1924, a record of the Prosecutor's office, but a carbon copy.

Mr. Jayne: Objected to, because it is in controversy.

The Court: Let me see it. What do you say is the objection, Mr. Jayne?

Mr. Jayne: Well, I object to the use of a copy, to begin with. The only reason I am objecting is that Marinaro testified that he never received any such a notice at all. He explained how he was informed in court one day that he was to have been prepared for trial.

The Court: Technically, this letter is incompetent.

Mr. Matthews: But now it becomes competent, because the sworn testimony is the original was never received; therefore, the copy is the best evidence.

Mr. Jayne: I do not follow you on that.

The Court: Who said it had never been received, Marinaro?

Mr. Jayne: Marinaro.

The Court: This is count seven, isn't it?

Mr. Matthews: The count specifically is the Juliano count.

Mr. Jayne: Yes, seven.

The Court: Well, that is the count that has also been called the Untermeyer count, isn't it?



Mr. Matthews: Yes, your Honor. I have the testimony written up in the Marinaro case. I showed him a carbon copy of a letter and asked him whether it refreshed his recollection as to whether or not he got notice to bring Hudock in; that is not the Juliano case.

Mr. Jayne: My recollection is that he said that he did not receive this notice, and elaborated to some extent upon what occurred after that. There was considerable comment that he had not been fairly treated, did not give him adequate notice to bring his client in.

The Court: Well, I took down Marinaro's direct on this count, but I did not pay much attention to the cross. It may have been on the cross that he said he never got it.

Mr. Jayne: Yes; I think it was.

The Court: I think this may go in.

Letter of November 28, 1924, marked Exhibit D-26 in evidence.

Mr. Matthews: (Reading Exhibit D-26 to the Jury).

Q. Now, in addition to that notice to Mr. Marinaro, did you have any other transaction with him prior to December, 1924? A. No, sir.

Q. Did he come to see you at any other time about this case? A. One night in December, 1924, Mutarella and Marinaro came to my house at Rockaway.

Q. In December? A. Yes, sir.

Q. Did you talk to Juliano at that time? A. Juliano came in later.

Q. Yes. And what, if anything, did Marinaro say to you in December, 1924? A. They came in and said that they were going by on the main street and saw a light in my house and thought they would step in to say hello. And then they said something about Mutarella had sold his Morristown property and was looking for some real estate in Rockaway; and just at that time, I heard someone coming up on the stoop, and a knock at the door, and I opened the door, and Juliano was there. Juliano came in, and Marinaro says, "You have met Juliano, have you?" I says, "I met him in court when he was arraigned." And Marinaro said, "He has got another lawyer now." And I said, "So I have been informed."

Q. And had you been informed at that time? A. Yes. Mr. Holland informed me that he succeeded Marinaro as lawyer for him.

Q. All right. Anything else did they say at that time? A. No. They did not say anything more that night. Juliano said something about he had to go to Newark yet, and he wished they would hurry up. I could not understand why they came there that night at all. It was a puzzle to me.

Q. And thereafter did you see Marinaro about it? A. About the Juliano case?

Q. Yes. A. No, sir.

Q. Did you ever have any transaction with Marinaro in the court room in which you agreed to *nolle prosse* one indictment and allow him to plead to another, in consideration you were to get $900 or $600, or any amount of money? A. No, sir.

Q. Did you ever receive any amount of money



from Marinaro or Mutarella, or any of the others mentioned in the testimony here, or anybody on their behalf, for suppressing complaints or not doing your full duty in the Juliano-Grande case? A. No, sir.

Q. What did you do in the Juliano-Grande case when the case first came into your office? A. The crime was committed in April, 1924.

Q. Yes. A. And there was very little evidence connecting anyone by name with it.

Q. Were the complaints made in John Doe, or were they made—A. They were made John Doe complaints and John Doe warrants, because there had been a car left there, and the license number had been checked up by the men, and the man who owned the car had informed them that the car had been stolen in Newark from his place, and he did not know who had taken it.

Q. All right. What was your activity now, apart from the intimate detail? Complaints were made, you say, John Doe and Richard Roe, and so forth? A. Yes.

Q. When were the beings themselves identified and arrested? A. I was not present when they were identified. They were identified by the Newark—or apprehended by the Newark Police Department, and our office—

Q. Do you remember when? A. I think it was in June or July. It was after the May Term of court, I know.

Q. And after their apprehension, they were put to bail in your County, or were they held and detained anyhow? A. I do not know about the bail, Mr. Matthews. I have no recollection of that, and I have not looked at the record.

Q. Well, after their being bailed, what next did you do as Prosecutor? A. I presented the evidence to the October Grand Jury, and secured two indictments.

Q. Yes. A. One against—I think three of the parties, Juliano, Grande and Sica, for illegal possession and transportation—

Q. Yes. A. —of intoxicating liquors; and one against all of the other men charging several counts of breaking and entering and larceny.

Q. Let me interrupt you there. When you say in English "all of the other men" for another offense, do you mean to include Juliano and Grande too? A. Yes.

Q. You mean Juliano and Grande? A. Yes. Juliano and Grande and Sica were included in the big indictment.

Q. Those indictments were returned by the October Grand Jury, 1924? A. Yes, sir.

Q. And you told me, of course, that Marinaro became their counsel, and that under the facts of the Exhibit D-26, he got a notice for trial on Wednesday, December 3? A. Yes, sir.

Q. Now, will you tell us why you did not try them in the October Term? A. They changed attorneys. No, I am ahead of my story. I think, on December 3, when they came in, Juliano and Grande—this is only my recollection—Juliano and Grande and some of the others did not appear. But some of the defendants did appear and pleaded in the court, and in the other cases I forfeited the bail because of non-appearance of the defendants to answer the indictment.

Q. Who were those defendants whose bail you forfeited, do you remember? A. I think—there



were several of them. I think Juliano and Grande were among them.

Q. Mr. Orr has been good enough to hand me the records of his office, which may refresh your memory. Will you look at that record and see if that refers to what you are just saying about the forfeiture of bail? In fact, look at all of those cards which Mr. Orr tells me deal with that case. A. The forfeiture of bail was later than that, Mr. Matthews; my recollection of that was wrong. The forfeiture of bail was in February.

Q. Yes. That is why I gave you those cards, because I had remembered it that way too. Well, I wanted to know from you, after the October Term had been called and the indictments had been returned, and they were among them, why you did not try them in the October Term? A. I think that—my recollection now of that is that they had changed attorney, and Mr. Holland had advised them to make a different plea.

Q. Yes. I see. Well, at any rate, Mr. Bolitho, were there trials all during that October Term, 1924? A. There were trials up until in December, early in December.

Q. Was your investigation complete in the October Term with reference to the Grande—Juliano cases? A. Well, I think the evidence was pretty well completed.

Q. Yes. All right. Now, they were not tried, however, in the October Term. But in the November Term, under D-26—not November Term, in the month of November, as shown in D-26, you notified Marinaro that they had been set down for trial on Wednesday, December 3? A. That was the October Term, Mr. Matthews.

Q. That is what I was just asking you about. That was in the October Term, was it? A. Yes, sir.

Q. Were they tried then? A. They were not.

Q. Why weren't they tried then? A. Because they had changed counsel.

Q. All right. Now, thereafter, did you send a notice in the course of your duties as Prosecutor such as I have in my hand? Do not characterize it. A. Yes, sir.

Q. And is that the notice that you have in your hand? A. Yes, sir.

Mr. Matthews: I want to offer this in evidence.

The Prosecutor has no objection.

Letter of December 27, 1924, marked Exhibit D-27 in evidence.

Mr. Matthews: (Reading Exhibit D-27 to the Jury.)

Q. Well, between November 28, 1924 and December 27, 1924, Mr. Holland did come into the case; that you remember, don't you? A. Yes. And he consulted with me about it, and he is the only counsel that ever consulted with me about the case.

Q. I see. Now, before the change to Mr. Holland, had they pleaded to any indictment? A. They had pleaded not guilty to the indictments.

Q. Had they pleaded non vult or guilty to any one of them? A. They had not.

Q. Have you got those cards of Mr. Orr's? A. I have (handing papers to counsel).

Q. Then when did they plead guilty to the charge of having liquor? A. I am not sure that



they pleaded guilty. I think that they pleaded non vult to the—

Q. Well, non vult; yes. A. It was sometime after that note was sent to Mr. Holland.

Q. I see. Now, thereafter, the January Term ended when? The October Term ended when? A. Why, early in December. I do not remember the date. I think it was around the sixth or seventh of December.

Q. And you have already told us, I think, in the testimony that is in the record, that after Mr. Jayne's arrival in the County, and he came in the January Term, 1925— A. He came before any cases were tried in the January Term.

Q. Yes. And, thereafter, Judge Wilson in conversation with you told you he did not know whether he had any authority to try indictments while Mr. Jayne was Prosecutor? A. He said he would not take a chance.

Q. And is that the reason why Mr. Holland's clients were not tried on those indictments during your regime in the January Term? A. That is one of the reasons, Mr. Matthews.

Q. What is another reason? A. That is the main reason; but Mr. Juliano was sent to the State's Prison from Warren County to serve a term.

Q. During the time that the trial was pending here? A. No. Between the time that he was— that he pleaded non vult here and the time that the trials began in the next term of court here.

Q. Oh, I see. And, of course, was out of the county and in the jail of Warren County at the time you left office? A. In the State's Prison, I understand.

Q. In the State's Prison. All right. A. I do not know which jail he was in, but I understood—

Q. You knew that, as Prosecutor, however—that is not hearsay—in your time, that he was taken out of the jurisdiction of this court into the jurisdiction of another court in another county, did you not? A. Yes, I did. I saw it in the papers.

Q. You mean the newspapers, Mr. Bolitho, or the prosecutorial papers? A. In the newspapers.

Q. Well then, you would not know as Prosecutor. I was trying to cure the hearsay character of your testimony. Is there anything further about this Grande case that you wish to tell the Court and Jury, this Juliano case? A. Except that Mr. Marinaro testified that he desired me to sign a note.

Q. Oh, yes. Well, did he? A. Not in connection with this case.

Q. Well, when did he ask you to sign a note, if ever? A. Shortly after the Elisor Grand Jury had met, he came to the office, and the first time he came, he wanted to know if I would endorse a note for him for $500.

Q. Yes. A. And I told him no, I would not endorse any note for him.

Mr. Jayne: I must interpose an objection about Marinaro signing notes, if it has no connection with this case. Counsel asked him if it was in connection with this case, and he said no.

The Court: Well, let us keep out this irrelevant matter.

Q. Did Mr. Marinaro on any occasion come to you and ask you to sign a note for him in order



that he might give the money back to Juliano that he had gotten from Juliano, supposedly for you? A. He did not. He never said a word to me about Juliano.

Q. Did he ever have a conversation with you about the signing of a note? A. He did, two.

Q. And what did he tell you the note was for? A. The first time he called, he did not tell me what the note was for. I told him I would not endorse it.

Q. Did he call again? A. He did. Several days afterward, he came in.

Q. And what did he ask you then? A. Well, he came in and he was excited and he looked very pale.

Q. All right. Apart from that, from his looks? A. And he said—he said he had given a client—but he did not mention the name—a check for money which he had collected, and that the check had gone bad, and the client was going to lose his job as postmaster, and he wanted to raise $500 to make the check good.

Q. Did you, on an occasion, procure the arrest of Marinaro in vengeance and spite at your not signing a note? A. I did not. After that time, I received a letter from an attorney in Paterson enclosing the correspondence between Marinaro and a man by the name of Kesse.

Q. Yes. A. And informing me that Mrs. Kesse was coming—

Mr. Jayne: All of this is objectionable—

The Court: Yes, I think it is.

Mr. Jayne: —what somebody else informs him from that letter.

A. (Continuing.) That was the first information I received.

Mr. Matthews: Mr. Bolitho, do not, please. Let me, if I am going to represent you, please.

The Witness: Yes, sir.

Mr. Matthews: The purpose of this is to answer the contention of the State that Mr. Bolitho instituted a complaint against Marinaro. Marinaro's own testimony was to that effect. We want to show by this testimony that an attorney from another city had done so and thus. That is the purpose, without my repeating it.

Mr. Jayne: I think, in general, it is subject to this criticism: The State did not attempt to prove any such thing, but upon cross-examination my adversary asked him, Marinaro, if he had not been arrested for the issuance of a worthless check. Now, perhaps that was an irrelevant and immaterial question. Now, if that were so, that does not give the defense the right to contradict immaterial and incompetent matters that come in.

The Court: I am familiar with the rule. What I want to get at is the exact way in which this matter came in. I do not remember anything about it. I do not remember Marinaro saying anything about it.

Mr. Jayne: We are agreed as to that. It came in on cross-examination. Mr. Matthews asked him if he had not been arrested for issuing a worthless check. Then Marinaro replied—I do not know whether all at once—yes.



Mr. Matthews: "Yes, the Prosecutor had me arrested."

Mr. Jayne: "After I testified before the Elisor Grand Jury." Now, I think the whole matter is immaterial and incompetent.

The Court: Well, it may have been material to this extent—undertaking to show some animus on the part of Mr. Bolitho, and I suppose it is competent for Mr. Bolitho to say he did have him arrested, but that it was on a complaint that came from another county. Let us find out whether he did.

Q. You may answer the question.

Mr. Matthews: What was the question?

The Court: Let me ask the question. Did you have Dan Marinaro arrested on any charge?

The Witness: I did not; no. Mrs. Kesse did.

The Court: Well, was he arrested because of anything emanating from the Prosecutor's Office?

The Witness: No. He was—it did not emanate from the Prosecutor's office. It emanated from Mrs. Kesse.

The Court: Yes. There was a complaint made against him before a magistrate and he was arrested?

The Witness: Yes; before Recorder Kinney at Chatham.

The Court: And held over for the grand jury?

The Witness: Yes, sir.

The Court: And the papers came to you?

The Witness: Yes, sir. Mr. Jayne has—

The Court (to counsel): Well, that is what you wanted to show, isn't it?

Q. Now, Mr. Bolitho, did you this morning subpoena the papers in the Kesse matter from Mr. Jayne? A. I asked him to produce them, I think.

Q. And has Mr. Jayne got the papers? A. He informed me that they were at Lakewood.

Q. Do you recall that there was correspondence in those papers between the attorney from Paterson and the Prosecutor's office, or— A. There was.

Mr. Jayne: I object.

The Witness: There was, yes.

The Court: I will admit it so far, to show that there was correspondence. I do not want to go into it too far. You are wasting time.

Q. Did the file in the Kesse case contain the original complaint made by Mrs. Kesse against Marinaro? A. When I left the Prosecutor's office; yes, sir.

Q. Now, is there anything further, Mr. Bolitho, that you, as the defendant in these causes, or in this cause, want to tell the Court and jury concerning your doings in the Juliano-Grande cases, I having exhausted every question that I—

The Court: All right; that is all. You may as well stop at that point.



A. I think I have said everything that I know about the cases.

Q. I did not hear you at all. A. I say I think I have testified to all that I know about the cases.

Q. All right. A. Unless there is some other question.

Mr. Matthews: Cross-examine.

CROSS-EXAMINATION by Mr. Jayne:

Q. Did Mr. Mutarella and Danny Marinaro frequently visit your home at Rockaway? A. No, sir.

Q. This was an unusual visit, then, they made to your home on the 27th when they came in company with Juliano? A. It was. I could never understand why they came.

Q. Oh, no, no. I did not ask you that. You say this was unusual, this was an unusual visit? A. I do not know what you mean by unusual, Mr. Jayne.

Q. Well, you said that they did not visit you frequently, didn't you? A. No, they did not visit me frequently.

Q. Then it was not usual for them to visit you there at Rockaway? A. Oh, they had been there before.

Q. Oh. A. That is, Mutarella and Marinaro had stopped there before.

Q. On many occasions? A. No, not many occasions.

Q. Then Marinaro told the truth, then, to the effect that he and Patsy Mutarella and Juliano visited your house in Rockaway.

Mr. Matthews: I object as calling for a conclusion and immaterial.

Mr. Jayne: He is in possession of the facts.

Mr. Matthews: I object to that question for those reasons.

The Court: Never mind about characterizing the testimony of another witness. You are entitled to ask him whether it is correct that they did visit his house at Rockaway, and I think he has already said so.

Q. They entered your house, did they? A. Yes, sir.

Q. And anyone else there besides you? A. I do not remember. My family may have been there.

Q. You, Patsy Mutarella and Danny Marinaro. Anyone else come in in the first instance? A. Juliano came in afterward.

Q. And it is also a fact that Juliano stayed outside, remained outside for a while, while Patsy Mutarella and Danny Marinaro entered the house? A. I do not know where Juliano came from.

Q. He remained outside? A. I did not know where he was.

Q. Did you know that they had previously been to the home of Frederick Hubert? A. I had never heard of that before then or since, until I heard it in the court room.

Q. Fred Hubert lives in Rockaway, doesn't he? A. He does.

Q. He did at that time? A. He did.

Q. I notice something in the testimony, some reference to the hill; does he live—is his house where he lives up on top of some hill? A. Yes. You go up over a hill to get to it from the main street.

Q. And coming from his home, you come down



the grade? A. Yes, sir; you come down over the hill again and turn in on another street.

Q. How late was it, Mr. Bolitho, that they called on you that night? A. I would not be sure, but my recollection is it was between eight and nine.

Q. Were you engaged in the real estate business in Rockaway? A. No, sir.

Q. Was Juliano interested in the purchase of Rockaway real estate? A. They did not say anything about real estate after Juliano came in.

Q. So far as you know, then, Juliano had no connection with buying real estate in Rockaway this night? A. No, sir.

Q. Who spoke about the real estate, Patsy or Danny? A. Danny said that Patsy said he had sold his meat business in Morristown, and Patsy said—they were going in the real estate business and wanted to know if there was any places for sale around Rockaway.

Q. Yes. A. And just then Juliano came on the stoop; I heard a footstep on the stoop and a knock at the door and when I opened the door, Juliano was there.

Q. Is that all you talked about? A. They said some—Danny said something about "Juliano wants to know when his case is coming up." No, that Juliano had changed lawyers. They said something about Juliano had changed lawyers.

Q. Then you did talk about the Juliano case to some extent? A. That is all they said about it. Juliano said, "I am in a hurry to get back to Newark."

Q. Yes. A. And they shook hands with me and went out and went away.

Q. What did you say to Juliano? A. I did not say anything to Juliano except "How do you do", when he came in. They asked me if I had met Juliano, and I said "I saw him when he was arraigned in court."

Q. Did Juliano come in of his own accord, or did somebody call him in that night? A. Yes. He came on the stoop and knocked, and I opened the door, and he came in.

Q. You let him in? A. Yes, sir.

Q. How long was it after the others came? A. Oh, it was not more than a minute or two.

Q. And all this conversation that was had there took place in the presence of Juliano too, practically all of it? A. Well, when he came in, they said something about Juliano had changed his lawyer and—or something about Juliano—Juliano had changed his lawyer.

Q. Yes. A. I do not just remember the language they used. And then Juliano said, "Hurry up, boys, I am in a hurry boys; I want to get back to Newark."

Q. You knew at that time that Danny did not have any money with which to buy real estate, didn't you? A. I did not know anything about what Danny had.

Q. Why, he had been to you about a note at that time, hadn't he? A. Oh no. He did not come to me about a note until the Elisor Grand Jury was in session. I think it was in March or April.

Q. Was any specific real estate of Rockaway mentioned, talked over? A. No, Mr. Jayne. From the way they talked, I could not understand what they were driving at. It was just a



casual remark they made, and when Juliano came in, they did not say anything more about it.

Mr. Jayne: I think that is all.

RE-DIRECT EXAMINATION by Mr. Matthews:

Q. I might as well finish your other counts, Mr. Bolitho, at this time, because I think you are the closing witness. Did you ever get a case of rye and a case of Scotch from Mrs. Fisher—Mrs. Rice? A. Rice? I did not get a case of either liquor from her that I ever saw.

Q. Well, you had a drink of good liquor in her place one day, didn't you, when you were having your breakfast or luncheon—not breakfast, I imagine? A. I had a drink of liquor in her place in the early part of April, 1923.

Q. Hubert was with you? A. Yes, sir.

Q. There were two cases of liquor put in your car? A. She told Hubert she was going to put them in his car, but I never saw them.

Q. Did you promise her any protection for her place? A. No. There was nothing said about protection.

Q. Did you raid her place? A. We raided her place after that.

Q. Joseph Q. Smith ran into a fence in Madison?

The Court: One moment. You say "We raided her place afterward"?

The Witness: Yes. We raided her place about a year after that.

The Court: A year after that. All right.

The Witness: The Federal people raided

it first, and while it was under padlock, we got information they were selling, and we raided the place again.

Q. Well, you raided it anyway afterwards, whether it was a year or a week? A. Yes, sir.

Q. And Joseph Q. Smith ran into a fence in Madison with some liquor in the car, and they say in the indictment that you suppressed the complaint against and told the recorder not to take the complaint, and so forth. Do you know anything about that other than what the State has produced here? A. I received a call on the telephone from Madison sometime in October, I think, 1923, from Recorder Schoneberger.

Q. Well, is he living or dead now? A. I understand he is dead.

Q. Well then, leave the conversation out. Pursuant to Schoneberger's talk with you, did you do anything? A. I requested or sent a demand on the Madison police, or a request to the Madison police to deliver over any liquor that they had taken from Smith's car.

Q. Did you get back the liquor? A. We got several bottles of beer.

Q. Did you have the beer analyzed? A. I did.

Q. By whom? A. Dr. Morris Weiss.

Mr. Matthews: Is Doctor Morris Weiss in court today?

(Man stands).

Q. Did he give you an analysis of it? A. He did. I have it there among the papers.

Q. Well, anyway, it was kickless, was it? The analysis, the proof, we are going to produce here. Do you remember whether the analysis shows it was less than the alcoholic content required to



comply with the prohibition law? A. Yes. It showed less than one-half of one percent.

Q. Did you ever at any time know that Mr. Schoneberger was drawing liquor illegally and not for your office?

The Court: Smith.

A. Mr. Smith, you mean?

Q. Smith. Joseph Q. Smith. A. I never heard of it, and there was never any complaint made against Smith for illegal possession or transportation of liquor.

Q. Do you know of your own knowledge whether or not Smith was a tenant in the house that your detective, Hubert, lived in? A. Yes.

Q. Is Hubert still here in court? A. I think so.

Q. Yes. All right. Is there anything else—pardon me—that you want to tell the Court and Jury about the Joseph Q. Smith complaint or count, or the Florence Rice count? A. I do not recollect anything.

Q. No.

Mr. Matthews: Cross-examine.

RE-CROSS EXAMINATION by Mr. Jayne:

Q. Mr. Bolitho, did you make a statement at the time this Madison case arose to the newspapers? A. I think so.

Q. Did you state at the time to the newspapers that Smith was a detective of yours, and instructed by you to transport liquors at the time? A. I do not know just what I said in that statement, Mr. Jayne. If you produce the statement, I will tell you.

Mr. Matthews: I did not hear, please, sir.

The Witness: I say I do not remember what I said in that statement, but if you produce the statement, I will tell you.

Q. Well, was it a written statement that you gave to the papers? A. I do not remember how it was given; whether it was an interview or what.

Q. Was Smith employed by you at the time? A. Smith was not employed directly by me at any time.

Q. He was not an officer, then, at the time, was he? A. I do not think he was ever employed as an officer, Mr. Jayne.

Q. Well, was he being employed on that day by you? A. Not by me personally.

Q. Did you so state to the newspapers? A. I do not know whether I did or not, Mr. Jayne.

Q. Well, your statement—

Mr. Matthews: I object to reading any statement to the newspapers.

Mr. Jayne: The witness asked me if I would read him the statement, to tell whether he dictated it or not.

The Court: Why don't you show it to him?

Q. (Handing paper to the witness). From there down, the quotation (indicating). A. I made some statements, but not all that is contained in that article.

Q. Well, did you state that you had sent this man from your office— A. I did not.

Q. —to transport the liquor? A. I did not.

Q. And you did not so state to the representative of the Newark News? A. I did not.

Q. At that time, also, Mr. Bolitho, you had



some—well, fifteen or twenty men who were more or less continuously employed to perform such work as transporting confiscated liquor for you? A. We did not employ the men that way, Mr. Jayne. If the men went on a raid and secured a quantity of liquor and found it necessary to have transportation, they would call for someone to help transport it. I had nothing to do with that end of it.

Q. But a small quantity, perhaps, six cases, with a few bottles of whiskey, you would not hire a truck to transport that, would you? A. I do not know what they did in any of these cases, except that their instructions were to transport it in their own cars if they had room.

Q. Well, the inquiry that I seek is, that having about from fifteen to twenty men more or less continuously employed at around that very time, you had no occasion to employ one Joseph Q. Smith to transport a small quantity of beer and a few bottles of whiskey in a raid, did you? A. No.

Mr. Jayne: That is all.

Mr. Matthews: That is all, Mr. Bolitho. Doctor Weiss, please.

MORRIS JOSEPH WEISS, sworn as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Doctor, you are a pharmaceutical and analytical chemist, are you not? A. I am.

Q. With offices at Park Place, Morristown? Have you done work of analysis for the County of Morris? A. I have.

Mr. Matthews: Do you admit the doctor's qualifications?

Mr. Jayne: Oh yes.

Mr. Matthews: I do not know anything about them myself except it seems to be that he worked for the County of Morris.

Q. I show you a paper and ask you if that is your signature on it? A. (Referring) It is; yes, sir.

Q. And does that paper refer to—without characterizing it any further—an analysis of liquor made by you on the 10th month, 22nd day, 1923? The name of the man Joseph Smith? A. It refers to that; yes, sir.

Q. And does it show what the analysis was? Just a minute. (Handing paper to Mr. Jayne).

Q. Is this the analysis you made? A. Yes, sir.

Mr. Matthews: I offer it in evidence.

Mr. Jayne: It shows that he analyzed some liquid on the 22nd day of that month. That is the state of the proof.

The Court: Well, do you object to it?

Mr. Jayne: I object to it.

Mr. Matthews: Your Honor will allow me an exception?



The Court: Well, it is not competent.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: May I have it marked for identification?

The Court: Yes.

(Paper marked Exhibit D-28 for Identification).

Q. Do you remember examining the beer on this occasion? A. The beer at that time from Joseph Smith?

Q. I just showed you a report. Does that refresh your recollection? A. I examined several specimens.

Q. I ask you to look at it and see if it refreshes your recollection in any way? A. I do not quite understand what you mean.

Q. Does that refresh your recollection that you tested— A. Oh, I could testify that I analyzed that specimen as it appears on the report.

Q. Did you find that it contained less than one half of one per cent beer? A. Yes.

Mr. Matthews: That is all.

Mr. Jayne: That is all.

Mr. Matthews: I ask an exception to your Honor's refusal to allow admission of Exhibit D-28 for Identification.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

FREDERICK HUBERT, re-called as a witness on behalf of the Defendant, testified as follows:

Direct-examination by Mr. Matthews:

Q. Joseph Q. Smith your landlord? A. His wife.

Q. Yes. And did you go down to Morristown at his request? A. To Madison at his request, I did.

Q. Did you go bail for him? A. I put up $25 for security for reckless driving.

Q. I see. And did he have an automobile? A. Yes, sir.

Q. Did you sometimes ask him on raids to help you carry the liquor you took? A. We used the car many times. I had different drivers many times.

Q. Did you use him on other County cases, on other than liquor cases? A. Yes, sir; if I wanted him; yes, sir.

Mr. Matthews: That is all. Cross-examine.

Mr. Jayne: No questions.

Mr. Matthews: That is all. The Defendant rests.



REBUTTAL

CHARLES A. RATHBUN, sworn as a witness in rebuttal, testified as follows:

Direct-examination by Mr. Jayne:

Q. Senator, I show you a paper and ask you if you know what this paper is? A. I do.

Q. What is it? A. It was a letter that I addressed to James H. Bolitho, then Prosecutor of Morris County.

Q. When did you so address it? A. On July 20, 1923. The reason I remember is because there is a blur over that "3"; whether it is "3" or "4", but I think it is "3".

Q. Well, that is the object of our inquiry, really. Is that letter written in the year 1923?

Mr. Matthews: I object to this as not rebuttal, your Honor please. The only rebuttable reason for bringing this man here is to show that is a "3". He has shown it.

Mr. Jayne: Well, I am trying to be sure about it; that is all.

The Court: I do not get the point of your objection.

Mr. Matthews: As not rebuttal.

The Court: Well, even if it is not rebuttal, it is a question of fixing the date of a paper to which you objected because the date was apparently blurred.

Mr. Matthews: I have not objected to that. That is fixed. I object to the question on the record now.

Mr. Jayne: Well, I will withdraw that

question. He answered it previously, July 20, 1923.

This letter having also been identified by the defendant as being a copy of a letter, the original of which he received, I now offer it.

The Court: Any objection?

Mr. Matthews: No objection to it going in at all.

The Court: The letter goes in.

(Letter marked Exhibit S-35 in evidence).

Mr. Jayne: Any cross?

Mr. Matthews: No questions.

Mr. Jayne: I desire to further offer in evidence the complaint, warrant and recognizance in what may be styled the Rockaway case against Hudock, or under the Hudock count, the papers of which were identified by the defendant; and, in addition,—

The Court: Wait a minute. One thing at a time.

Mr. Jayne: All part of the same thing.

Mr. Matthews: There is no objection.

(Marked Exhibit S-36 in evidence).

Mr. Jayne: In addition to the three papers I previously mentioned, there is another paper upon which are three affidavits relating to the Palco-Hudock matter at Rockaway, which were taken before the defendant, James H. Bolitho.

The Court: Well, Mr. Matthews has seen all of them?

Mr. Jayne: Yes.



Mr. Matthews: Yes, thank you.

The Court: All right.

(Marked Exhibit S-37 in evidence.)

Mr. Jayne: I desire also to offer the copy of the Peter Dolimpio affidavit, one copy of which is in evidence, and the other copy of which, according to the testimony, was delivered to me.

The Court: How many does that make now, two?

Mr. Jayne: Two.

The Court: The third one is still unaccounted for?

Mr. Matthews: It is not in the case at all, your Honor please, the third, it is only mentioned.

The Court: I did not say it was an exhibit. There were three of the papers?

Mr. Matthews: Yes, sir; in the testimony.

The Court: Now, we have two, and the third one, I say, it is not accounted for?

Mr. Matthews: It is accounted for as having been in the possession of somebody in the testimony.

The Court: All right.

(Marked Exhibit S-38 in evidence).

Mr. Jayne: The State rests.

The Court: You all seem to rest, I suppose?

Mr. Matthews: Nothing further for the defendant.

The Court: I suppose the jury would like to finish this case today; I take it for granted that they do, and I am going

to ask the jury to get their lunch a little bit more quickly than previously and try to be back here at one o'clock. That will give you fifty minutes.

(Recess at 12:10 o'clock p. m. until 1:00 o'clock p. m.)

After recess. 1:00 o'clock p. m.

The Court: Mr. Matthews, the Court will hear any motions you have to make.

Mr. Matthews: I desire at this time to make a motion for the direction of a verdict as to all of the counts, but I wish to deal with the counts specifically, and I will first cite the Florence Rice count, and allege as the main reason the reason introduced for the motion on the close of the State's case or, rather, the opening of the case, to quash the indictment, namely, that the count itself does not allege a crime; and, in the second place, that it is ambiguous. And I now offer as a further reason that there was no proof adduced by the State of the allegations contained in the complaint. The count charges that on a specific day Mr. Bolitho, as Prosecutor of the County, solicited and accepted two cases of liquor in consideration of protection that he was to afford to the said Florence Rice in the conduct of the business of illegally selling liquor.

(Argument).



Mr. Matthews: It seems to me, with the evidence adduced by the State as well as the evidence adduced by the defense in its presentation of its case, that there is no proof on that count, and for the reasons advanced in my first motion, and for these additional reasons, I move its dismissal.

The Court: You say you had some argument that went to all the counts?

Mr. Matthews: Well, I am going to deal with each count, now, separately.

The Court: Then you have nothing else to say?

Mr. Matthews: Nothing else on the Florence Rice count.

The Court: Motion denied.

Mr. Matthews: Exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Now, we come to the Fleming count, which was a count which charged that the defendant Bolitho did on a certain occasion conduct himself in the Fleming Hotel in such a manner that he flatly promised, as I remember the wording of the count, Fleming protection, and that he did not proceed against Fleming, although he had knowledge of the violations of the law on Fleming's premises; but the count says the premises of one Charles Fleming in the town of Chester. There is no proof in the State's case, and there is a total disproof in the defendant's

case that there was ever such a place as Charles Fleming's place. Moreover, even if it were proved that there were premises such as are described in the count of the indictment, there is no conduct on the part of Bolitho shown in the evidence that warrants the matter going to the jury under the allegations of the count, namely, that he failed to prosecute or to do his duty as Prosecutor of the County in reference to Charles Fleming's place in the town of Chester. Reiterating the reasons made on the motion in the beginning of the case, and on this additional action and whatever reason there may be in it, I move to dismiss that count.

The Court: That motion will be reserved until I have heard Mr. Jayne on it.

Mr. Matthews: On the count of Joseph Q. Smith, I move dismissal of that count, reiterating again my reasons advocated when I made my motion first, and reciting in addition this testimony to support it, the allegations of that count briefly are, that on a certain occasion when Smith was apprehended by officers in a town in this County, that the Prosecutor advised against him being complained against, and cooperated so that he would not be complained against and did not do his duty, but in malfeasance refused to prosecute Smith for a violation of the liquor law. The testimony of the State was the testimony of Lieutenant Ryan, I recite on the first ground, that on a certain day this car



ran into a fence down in his town, and that the man was apprehended and taken to police headquarters; and when the officers went back and found the car after a second running into some object, there was found in it some beer by a man whose name I do not remember; but he was accused of taking liquor out of it, and at one time he saw two bottles of liquor in it. The testimony of the defense is that on that occasion the recorder of the borough called up about Smith, and that a complaint was taken down there against Smith for disorderly conduct, and he was fined for that. There is no evidence on the part of the State and there is refutation on the part of the defense, of any attempted implication of evidence that Smith was ever guilty of anything that should have been prosecuted by Bolitho, and that Bolitho did not do his duty in every respect with reference to Smith. There is no record produced by the State showing that Smith had come to the Prosecutor's notice for prosecution in any manner, shape or form whatsoever.

And on that count, reciting that evidence, and for the reasons cited more succinctly in the previous motion, I move dismissal of that count.

The Court: I will consider that.

Mr. Matthews: I have recited the Rice count, the Fleming count and the Joseph Q. Smith count.

The Court: Well?

Mr. Matthews: I now go, however, to

the counts in order. I move a dismissal of the Hudock count for the grounds recited in my first motion, and additionally reciting some of the evidence to prove that my allegations of my original motion are true, namely, that the count is ambiguous, that the count does not allege a crime, and, thirdly, that the count is duplicitous, because it charges three things. It charges that Mr. Bolitho suppressed the complaint and the evidence. It charges that he cooperated so that the man would not be sentenced according to justice as he should have been sentenced; and the third allegation, that he cooperated with Marinaro, I believe, to prevent the man from being prosecuted, or did nothing; he conspired with him to *nolle prosse* the indictment. It does not say the word "conspired."

Now, if your Honor please, the proof advanced by the State in the Hudock matter I dealt with on my previous motion, and your Honor recalls it; I do not have to recite it; but the defense went to the proposition in this fashion, and showed that with reference to Hudock, not only was the Prosecutor not guilty of not doing his duty in that regard, but, contrarily, he not only had Hudock fined $500, but he forfeited his bail and collected it for the County.

Now, as to the charge that he cooperated so that he woud be fined, or he would be punished less than he should according to justice, the evidence adduced by the State,



as well as by the defense, shows that all involved in that Stirling case were fined the same amount, and that he was fined without having given the State the expense of a trial and, therefore, there isn't any proof that he did anything that would have been malfeasance in the sense that he cooperated to have this man punished in a less manner than justice required.

Now, as to the other indictment, the Rockaway indictment, there is no proof on the part of the State that there was anything done by Bolitho other than to follow through the entire proceeding. Your Honor will remember that the indictment lasted over from the Mills' administration; that Bolitho's first attention was called to that after he came in by Marinaro; that thereafter Hudock pleaded; that thereafter Rathbun wrote a letter; that thereafter, some months after, Hudock's bail was forfeited, and that thereafter the money was collected for the County; the construction being that Bolitho did three things which would prove, it seems to me, that the State has failed to prove the count, and we have refuted the implication of proof.

Now, the allegation as to the money is, according to the State's proof, that on one occasion Marinaro told Bolitho that he would give him $300 for this purpose, and that one Hubert was given $300 in an envelope. There is no proof on the part of the State that that money ever went to Bolitho.

For these reasons, reciting again the reasons advanced succinctly before, I respectfully move a direction of a verdict on that count.

The Court: Motion denied.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: This is a motion that is addressed to the Court. Consequently, it is not necessary to be heard by the jury. The Court will not exclude the jury, but if any of them care to be out of the court room while the motion is in progress, there is no objection to their going. Go on, Mr. Matthews.

Mr. Matthews: The next count is as to the Dolimpio count, and I move for a direction of a verdict for the reasons cited in the previous motion in reference to that count, and for the additional reasons stated. Now, the allegation in that count was that Bolitho was given a sum of money, $400, I believe, for the purpose of suppressing a complaint against one Dolimpio. The State's proof was that Dolimpio, on one occasion in Bolitho's office, is suggested to have given him $200, and to have been sent out to get $200 more by noon time and came back and gave him the $400. The State's proof varied with Mutarella, who said he gave him $300, and went out and got $200 more, and gave him that by noon-time, making it $500. The



allegation then was that, in consideration of that, Bolitho suppressed the Dolimpio complaint. The evidence of the State was that he did that. They had no proof of that. We produced proof in answer to it in the person of the foreman of the then grand jury, who had a record of the dismissal, and said the Dolimpio case was dismissed by the grand jury of whatever term he was foreman of, and he described the method of the dismissal, and it seems to me the State has failed to prove any consideration of money given to Bolitho to suppress the complaint against Dolimpio. And for those reasons, whatever additional there may be in what I have already cited, and on the previous motions, I move a dismissal of that count.

The Court: I will reserve that.

Mr. Matthews: Then, coming to the Mingardi count. The Mingardi count in the indictment alleged that at a certain time Bolitho received the sum of $250 from either Mutarella or Marinaro, or someone in their behalf, to suppress the complaint against Mingardi, who was charged with violation of the liquor law. The evidence of the State was that Mutarella saw Mingardi or somebody else give Bolitho $250. The records were produced; they did not show what was done with the Mingardi complaint. At that part of the case, it seemed that nothing had been done. The defense then produced further records, the records in the Prosecutor's Office,

that showed the Mingardi complaint had been dealt with by the grand jury on the very day that Mingardi said he had paid money to Bolitho. The testimony showed that Bolitho was in the grand jury room that day. The testimony showed on the part of Hubert that Hubert had testified before the grand jury with reference to the Mingardi case. The records showed that the Mingardi case had been disposed of, and that no bill had been found. The records went further. I produced the identical envelopes in the Mingardi case and showed the dismissal. Evidence was introduced to show the Prosecutor's habit in these cases.

For these reasons, in addition to those already advanced, which I reiterate, I respectfully move a dismissal of the Mingardi count.

The Court: Motion denied. Take your exception.

Mr. Matthews: Yes, sir.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: Then the next count that I have to move to is the Juliano-Grande count, so-called, or Untermeyer count, as we called it at the opening of this cause. In the Juliano-Grande-Untermeyer count, it was alleged that the Prosecutor received $900,—$600, for which he was to see that these men were not indicted. I succinctly



repeat and reiterate my reasons made as to a dismissal of that count in the beginning, prove the allegations of the count. The State put on the stand Juliano himself. Juliano said that he had retained—

The Court: Juliano himself?

Mr. Matthews: Juliano himself, yes. Isn't that right? Yes.

The Court: All right.

Mr. Matthews: Juliano testified that he went to Marinaro's Office.

The Court: I tried to find that in my notes, and I could not find it.

Mr. Matthews: Yes; but he was here, Justice, and he testified, if your Honor will remember, now that I call your Honor's attention to it, that he was in Marinaro's office and retained Marinaro for three men, $300 apiece. He wanted to give Marinaro $900, and Marinaro insisted upon a thousand dollars, and Mutarella, who was present, said he would loan the other $100. And Juliano was asked by the State and asked by myself on cross-examination whether or not at any time he had any arrangement himself, or through his attorney, or any word from his attorney, that the indictments were to be suppressed or any favor to be granted to him, and he said no. Mutarella went on the stand later and said yes, he was in the office, and he loaned the $100 and he got the $100 back. There was no testimony, therefore, that any money was paid to Bolitho. This $600 was supposed to be a consideration for the

suppressing of the complaint and evidence against Juliano, *et al.* The facts of the record and the facts of the testimony, both on the part of the State and the defendant, are that there was an orderly procedure of these causes in this fashion: that they were indicted in the October Term of the Grand Jury; that during that October Term there were seventeen cases tried in nineteen days, or vice versa; that this man could not be brought to book at that time, but he changed attorneys in the month of December; that the new attorney was notified in that month for his production in January; that in January he could not be produced, and at that time my worthy opponent came into the County to do his work here, and that thereafter no prosecution could be had because Judge Wilson did not want to have any more trials because he doubted his authority to do so. There is no evidence, therefore, of failure to prosecute; there is no evidence of anything done by Bolitho that was malfeasance or non-feasance in this respect; and Juliano himself said he had no conversation with Marinaro or no promise from him that Bolitho was to be given anything for any purpose.

Adding these reasons to the reiterated reasons when I first made my motion, I respectfully move a dismissal of the Untermeyer count.

The Court: That motion will be denied.

Mr. Matthews: Exception.



The Court: Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: Now Mr. Jayne, on this Fleming matter, my difficulty is that this hotel called that of Charles Fleming, there seems to be no Charles Fleming anywhere in the foreground or background, and I am wondering if that variance is sufficiently material to vitiate the proof on that count.

Mr. Jayne: I must frankly confess that I had intended, before closing the State's case, to ask for an amendment in that particular. Your Honor will note that the last name is the same, but the first, there seems to be an error in the first name. The man's name is Bert and the indictment reads Charles.

The Court: Well, do you think the amendment is of such a character that it can be allowed under the statute?

Mr. Jayne: I think so.

The Court: I will hear what the other side has to say on that.

Mr. Matthews: After the defendant has produced his defense to this cause, and if the State has a right to amend in that respect, we would have no way to answer. I would object to it. The defense prepared and went to the defense on Charles Fleming, and the State has closed its case, and now, when my motion to direct is made, I think it cannot be made.

The Court: Well, you have brought Mr. Fleming here and you have gone into the matter as though he were really the man intended and as though this was the hotel that was intended by the Grand Jury.

Mr. Matthews: But the complaint alleged Charles Fleming, and I produced him with that in view, your Honor please. It was his complaint, if your Honor remembered, that said we destroyed and suppressed.

Mr. Jayne: It did not say anything about destroying any formal complaint.

Mr. Matthews: No; suppressed.

The Court: Now, about the Joseph Q. Smith matter.

Mr. Jayne: In those cases, your Honor please, it seems to me that under the law the Prosecutor of the Pleas is obliged to exercise all reasonable and lawful diligence, so says the law, in the detection, apprehension and conviction of those who are violating the law. In the Fleming case, in the Rice case and in the Smith case, the evidence seems to show that the Prosecutor, Prosecutor Bolitho, had knowledge that these three individuals were violating the law of the State. In the instance of the Fleming case, the proof of the State is that one of his officers, actually carrying out his duty, discovered the violation of the law there and swore to a complaint initiating a criminal proceeding against the proprietor of this hotel, Fleming's Hotel, or Chester House, at Chester; that the Prosecutor requested him to refrain



from proceeding with that criminal prosecution, summoned him to his home and took from him the papers, so that no further prosecutions could be pursued. And I introduced in evidence a further circumstance, it seems to me, fortifying the contention of the State that, in the presence of the man who came upon the witness stand, the Prosecutor at a subsequent date came into the very premises which Bettens had complained of and there stood at the bar drinking whiskey. I think with that set of circumstances it clearly evidences a violation of the duty which the law imposes upon a Prosecutor of the Pleas.

The Court: Are you speaking to the Smith count?

Mr. Jayne: No. I am speaking to the Fleming. Then the Smith count was an instance where the State has shown a man by the name of Smith, presumably in an intoxicated condition, struck an automobile and thereafter ran into a fence, and it was discovered that in his automobile he had beer and some whiskey. And he was apprehended by the police, and Mr. Hegarty says there was a telephone call—of course, the State has not the testimony now of Recorder Schoneberger, he having died. Mr. Hegarty said he was present when Prosecutor Bolitho stated over the telephone—reference to the telephone having also been made by Lieutenant Ryan, and overheard the Prosecutor, Bolitho, say

that this man was in his employ and transporting liquor for the Prosecutor's Office. There was no prosecution of Smith. The State submitted evidence from which the jury may believe that Smith was not, in fact, an employe of the Prosecutor's Office, and was not transporting confiscated liquor; but, on the contrary, was transporting liquor in a criminal and unlawful manner and was subject to lawful prosecution. That the complaint that was to be made against him was arrested and all the further prosecution of that case was absolutely avoided by a wilful act of misconduct on the part of the Prosecutor in stating to the committing magistrate over the telephone that this man is an employe of mine then acting officially in the interest of the administration of justice; and the State claims that, on the contrary, he was a violator of the law.

The Rice matter I think your Honor reserved.

The Court: I have ruled on the Rice matter. With respect to the Fleming count, I will permit an amendment of that count to charge whatever the evidence seems to have shown and, apparently, that Bert Fleming was at least one of the proprietors, or that there was a certain hotel called the Fleming's Hotel or the Chester House, or whatever it was. What amendment is it that you suggest?

Mr. Jayne: Bert Fleming for the name. He said, however,—

The Court: Very well.



Mr. Jayne: —that his brother was associated with him, whose name was Lloyd Fleming.

The Court: Well, do you want to say Bert Fleming and Lloyd Fleming?

Mr. Jayne: I would not make that motion, your Honor. I move to amend by inserting in place of the name Charles the name of Lloyd.

The Court: Lloyd.

Mr. Jayne: Or Bert.

The Court: Bert Fleming instead of Charles.

Mr. Matthews: I want to interpose an objection to that on the ground that the defense is surprised and has not been allowed to meet it.

The Court: Yes. Your objection is considered. Overruled.

Mr. Matthews: Exception.

The Court: You seem to have undertaken to meet it on every aspect, so I do not think there is any surprise. You may have your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: Now, that seems to close the motions addressed to the indictment and the testimony, doesn't it?

Mr. Matthews: The Dolimpio count and the Joseph Q. Smith count, your Honor denies my motion?

The Court: Yes.

Mr. Matthews: Exception.
Exception allowed and sealed.
CHARLES W. PARKER, Judge.
(Seal)

Mr. Matthews sums up the case to the Jury on behalf of the Defendant.

Mr. Jayne sums up the case to the Jury on behalf of the State.

The Court then charged the Jury as follows:

## Charge.

PARKER, J. Ladies and Gentlemen, counsel, both for the defendant and for the State having argued this case with great vigor and, I may say, with very great ability, it remains now for the Court to instruct you upon the law, with such comment upon the facts or the evidence as may be reasonably required in applying the principles that will be given to you. I wish to say at this time that the comment on the facts will be as meager as it can be made.

You have sat here patiently for three days and a half listening to the evidence in the case. It has been fully discussed before you by two excellent lawyers, and I do not think that anything that the Court can say can add very much to the impression that you are likely to have about it.

Now, this defendant is indicted, by the various counts of this indictment, for alleged malfeasance in the conduct of his office as Prosecutor of the



Pleas of the County of Morris. Every count (and there were originally eleven of them, some of which have been eliminated by action of the Court) charges this general crime of malfeasance in some form, and each count particularizes the malfeasance, or undertakes to do so, by stating certain facts and circumstances which are claimed by the State to constitute that particular malfeasance; and your duty in the premises is not to deal with the whole indictment generally, and to say whether, taking all the things together, there was a general malfeasance in office, but you will have to take up each count separately and take the evidence applicable to that count and then decide whether, with respect to the particular charge of malfeasance therein contained, the allegations of that count have been substantiated on the evidence and the burden of proof that lies upon the State, has been sustained. Some of the evidence, a great deal of the evidence, of course, is applicable only to a particular count. There is some of the evidence that may be said to be applicable to all the counts. I will cite, just for example, one of the last remarks made by Mr. Jayne as he closed: the statement in the evidence that, when the Elisor investigation was pending or about to take place, the defendant said to Mutarella and Marinaro that they were the crux of the situation and if they kept quiet it would be all right, or whatever it was in that regard.

It may be as well to lay before you this undeniable fact, I think, that there are two phases of our civil life in which corruption and malfeasance in office, if it exists, are particular dangerous to

the health of the body politic. One of them, with which we are not at all concerned here, is the conduct of the elective franchise, the management of elections, honesty in the casting and counting of ballots, and all that; for, if there be corruption and fraud and crime in that, why, we all understand that people are declared elected to office who are not elected, and the right of the majority to choose public officers is broken down. That, as I have said, is in no way connected with this case. The other one is corruption and malfeasance in the processes of justice; for, if the processes of justice, if the action of the courts and the action of public officers connected with the administration of justice, are to be fouled and corrupted, no man knows when he is safe.

We are hearing a great deal these days about the prevalence of crime, and there are probably a hundred reasons why crime is more prevalent than it was. One of those reasons, in some cases, may be that the conduct of the public administration of justice is not as it should be; so that if the fountains of justice are to be stopped, the fate of the public is hard indeed. And so I mention this fact, because I want to impress upon you the importance of bringing to this case all the intelligence and all the determination and all the virtue that is in you to decide it rightly.

The office of Prosecutor of the Pleas is an office that is created by our statute. In old times and in the old country there was no such official. There always was an attorney general, and there always has been in New Jersey an attorney general, and his duty in the prosecution of crime,



among other things, extended to the whole realm; but in England, and perhaps up to this day,—I do not know—and in this country and state, until probably long after the American Revolution, there was no public officer appointed and qualified and charged with the specific duty of attending to the prosecution of crime in the interest of the public except the attorney general. And the practice, as I understood it, used to be that the grand jury conducted its investigation without the aid of the Prosecutor, that private complainants would go before the grand jury and that, if the grand jury voted an indictment, in some way or other some lawyer was found to draw the indictment so that it might be presented in court and tried.

About seventy years ago, our Legislature passed an act which is still in force, and part of which I will read. It said, in the third section: "After the passage of this act, the criminal business of the State shall be prosecuted exclusively by the Prosecutors of the Pleas, except in counties where, for the time being, there may be no Prosecutor, or where the Prosecutor desires the aid of the Attorney General." And earlier than that, in 1846, there was this act: "There shall be appointed for each county some fit person whose duty it shall be to prosecute the pleas of the State in such county in the absence of the Attorney General." So that you see in every county, under that legislation, there was an official who might be called, for convenience, the local attorney general for the county. Now, then, having such an official, it was inevitable, as in all other cases

where there is a certain public officer charged with the administration of a certain public duty, that to his office should be drawn all the criminal complaints, and that he would become and remain the public official to whom the public would look, the State would look, the grand jury would look, in large measure, and the judges of the local courts would look, for advice and suggestion what to do in criminal matters. It is, of course, true that the local court is in no legal sense controlled by the Prosecutor, and it is perfectly true that the grand jury, as I have often told grand juries, both from this bench and others, is not controlled by what the Prosecutor may choose to lay before it. But, as a practical matter, you can see how true it must be, that where there is a Prosecutor of the Pleas charged with that duty, and to whom all these things are referable, it would necessarily follow that both courts and grand juries are likely to depend, in some measure, at least, on what that Prosecutor says to them. And, following out that line of thought, you will see that it is perfectly practicable for a wicked or corrupt Prosecutor, should there be one, to gain for himself great material advantages should he choose to accept emoluments for recommendations to the court as to what to do in the way of sentence; statements to the court, true or false, that there is no evidence at hand, and that he did not think a conviction could be sustained; statements to the grand jury, true or false, that there was no evidence on which the grand jury could indict. You see what a tremendous power for good or evil is placed in the hands of one man by the statute, and how important it is that the man



selected to perform the duties of this responsible office should be one who can be depended on to perform them honestly and fearlessly. Now, the claim in this case is that this man did not do that thing; and the various counts of the indictment (perhaps not all of them, but certainly some of them) are to the effect that, instead of doing the duties of his office, instead of prosecuting cases of crime, he prostituted that office and accepted bribes to let the criminals either go scot free or to let them off with less punishment than they deserved. That is the general spirit of this indictment, as far as I can see.

Suppose we take up for a few moments the specific allegations of the particular counts. The first count is that on the 29th day of May, 1923, the defendant was Prosecutor, and there were pending in the Quarter Sessions two indictments, one against Bogden, Arkie and Sica, charging larceny and receiving; and an indictment against Kisik, Hudock and Korvach, found in 1922, charging attempted robbery and an attempt to obtain property by false pretenses, and that Bolitho, the defendant, in order to pervert and obstruct justice, and to enable Haydock or Hudock to escape punishment on this 29th of May took a bribe of $300.00 from Hudock and, in consideration thereof, did refrain from prosecuting the indictment, whereby Hudock escaped punishment; and also did mislead and deceive the Court of Quarter Sessions respecting the facts of the offenses charged in these indictments in order that the Court might be thereby induced to impose a less onerous sentence that it would

have done if the facts had been correctly presented. That is my abstract of the indictment. Of course, you will have the document itself; it is very long; it is verbose as those documents usually are and, as I regret to say, under our criminal law, they generally have to be, especially where something special of this kind out of the ordinary run is charged. But that I understand to be about what the indictment charges. And some of the elements on this have been told to you by John Mills and Mr. Orr, who tells you about the records in the office, and about the $500.00 sentence; and you have the story of Orr and other witnesses about the time at which this thing was done, and that Judge Wilson was sitting in the back room about half past four or five, and that Hudock was hustled or smuggled up the back stairs and into the court room and smuggled out again, and took a taxicab to Newark, and all that. I give that to you simply as a reminder of what these witnesses said in a general way.

As to the bribe, I think the testimony was substantially to the effect that Marinaro went to the Prosecutor to fix the thing, and the Prosecutor told him to see Hubert and that, in accordance with what the Prosecutor told him, he gave the $300.00 to Hubert, and that is the last that was seen of it. Of course, Hubert, denies getting the money, and Mr. Bolitho denies all connection with any money in the case, and claims that the matter was fully and fairly presented and that he did everything that was possible under the circumstances. It seems that the Rockaway case



(whatever happened to the Stirling case) went no farther than the forfeiture of bail, and you have heard what Mr. Jayne had to say on that subject. Now, that is the first count.

We skip now to the fifth, for the next three were eliminated, and this we will call the Dolimpio count. That charges that Mr. Bolitho was Prosecutor on the 10th of September, 1924, and that his duty as Prosecutor was the same as in the first count, and that he knew Dolimpio had twice been complained of for violations of the liquor act, once before a police justice in Boonton and once before a police justice in Dover, and that the Prosecutor knew, therefore, that Dolimpio was guilty of a misdemeanor, and ought to have prosecuted him; but, knowing these premises, and in disregard of his duty, he did on this 10th day of September, exact, take and receive from Dolimpio $400.00 as a bribe for suppressing the evidence and not to prosecute, and that on the 10th day of September, and from thence hitherto, the Prosecutor has wilfully, corruptly and knowingly failed and neglected and refused to prosecute or to present the evidence to the Grand Jury.

Now, under that indictment, under that count, you have this: This is the count, I think, in which the story is that Dolimpio had $200.00 and was told to go out and get two hundred more; and another witness says that he had $300.00 and was told to get two hundred more. However that may be, the exact amount is not material and, of course, you are at liberty to criticize the discrep-

ancy in these stories in any way that commends itself to your good judgment. This is the case, also, in which those three affidavits, that triple affidavit was made in regard to the wine being vinegar. Mutarella says that he saw the money paid to Mr. Bolitho.

Now Mr. Heller, the Foreman of the Grand Jury, said that the case was considered by the committee on business, and that Mr. Bolitho was asked whether there was any evidence on it;—you remember what the testimony was, I do not very well—at all events, there was not any testimony put in before the Grand Jury or before the committee and, subsequently, the Grand Jury threw out the complaint.

I do not know, of course, what the facts are, and you will have to find out. But that shows a case where, if the Prosecutor was corrupt and did choose to kill the prosecution, it was peculiarly, you see, within his power to do so. The Grand Jury was dependent on him to say whether there was any evidence in the case, and if he had evidence and said there was none, why, the Grand Jury had no particular method in which they could compel him to produce it.

I do not want to comment any further on that, because you have heard about it fully from Mr. Jayne and from Mr. Matthews; they have discussed these matters. The defendant denies, of course, demanding or receiving money. He undertakes to explain about this affidavit, and Mr. O'Connor, who was on the witness stand, gave his testimony about it.



Then you come to the sixth count, the Mingardi case, and this is, that on the 14th of May, 1924, Bolitho was Prosecutor, and knew that Mingardi had been complained of for a violation of the prohibition act, and it was the duty of Mr. Bolitho to prosecute him, but that in perversion of his duty, and to enable Mingardi to escape, he took from Marinaro and Mutarella $200.00 as a consideration for suppressing the prosecution, and from that day to this has knowingly failed, neglected and refused to prosecute. In this case there seem to have been papers for arrest, and a search warrant, and they seem to have been,—to judge from the testimony, although this will all be for you to find,—brought from Mr. Bolitho's office by Hubert. Mingardi said he was arrested in February and gave bail and he moved away, and then he was arrested again and taken to Morristown, probably on complaint of leaving the county, as testified to by Recorder Thomas and by Max Reidler; and then he was seen in jail by Dan Marinaro and by Patsy Mutarella, and that he went to see Mr. Bolitho, who got him to sign some paper, since which time he has never heard of the case. His wife was sworn, and she was told, she said, that $500.00 was needed, and she had to go out through the country and get this money together in various places from various people. Mutarella testified, I think, that he saw $250.00 of this given to Mr. Bolitho. And there is a curious piece of evidence that Mrs. Mingardi was asked to make an affidavit that the wine was vinegar and would not do it. The records show nothing but two recognizances and an exoneretur on one. Coun-

sel will correct me if I am wrong about this record business.

Mr. Matthews: An exoneretur on both of them, your Honor, if I am correct.

The Court: Well, maybe there was. I had it this way. The jury will look at that; the record will be before you.

Now, the seventh count; and as to that, I do not want to say much after the discussion of it between counsel. That is the case in which Juliano was involved. That is the case in which it is claimed that $900.00 was raised, and Mutarella said that he also put up another hundred, and that all the money came back because, as a matter of fact, these men were indicted afterwards, and that the money that was put up was for the purpose of avoiding an indictment. Now, of course, it would make no difference, even although an indictment was afterwards found. The malfeasance would be there if it be true that the Prosecutor received a bribe for the purpose of averting an indictment. The mere fact that an indictment was found is not going to change the situation as to the commission of the crime in the first place.

The ninth count is out.

The tenth count, the Florence Rice case; and as to that, only a word. That is a curious case. The charge is, substantially, that Mr. Bolitho knew that Florence Rice was selling liquor in violation of law, and that he did directly and indirectly solicit and propose to receive from her



certain goods and chattels, namely, two cases with bottles containing whiskey and intoxicating liquor, as a gift, gratuity and reward for Bolitho to prostitute and betray the duties of his office, and to refrain from arresting, prosecuting and convicting said Florence Rice, and to suffer and permit her violate the law. I say it is curious because the evidence on both sides seems to be in accord except on one point of the case. Mrs. Rice, you remember, was sworn, and she said that Mr. Bolitho and—was it Hubert? I think it was Hubert—came into her place. She started out with sandwiches and ended up with drinks. And she said, as I recollect her testimony, that they had some whiskey to drink there, and that Mr. Bolitho expressed his appreciation of the whiskey as being very good whiskey, and that she asked him whether he would like to have a little more of it, to which he assented, and that, by her direction, a case, or two cases, of it were placed in the automobile in which Mr. Bolitho had come there with Mr. Hubert, and were taken away in that car. As I understood Mr. Bolitho on the stand, he said very much the same thing. I understood him to say—although this, of course, is for you—that he did have some whiskey to drink there; I do not think he denied that he expressed his approval of the whiskey; he either said, or did not deny, as I recollect it, that Mrs. Rice had offered him some more of it, and that he had agreed to take it. What he did say was that he had never seen that whiskey since, that he did not get it. But there was a preliminary transaction, if I heard the evidence correctly and have remembered it correctly, agreed to by both parties to it.

Now, it is said that there were no promises, no solicitations, no agreements based on the whiskey. Well, probably not in words. I do not say there was bribery in the case. What I am saying is that there might have been. What do we understand happens ordinarily in a case where bribery is to be committed? Do the parties get together and haggle over a table as to how much a bribe shall be, and does the briber give the other party a check on the bank and ask for a receipt, and is there any agreement, written or unwritten, as to what is to be done in consideration of the bribe? So I do not think that as plain, ordinary citizens, we xpect such a thing as that. A bribe, just as often as not, is given by slipping a one-hundred dollar bill in to the hand or the vest-pocket of the other party and saying nothing about it. The other party may not take any notice of it at the time. Now, why should Mrs. Rice have asked Mr. Bolitho, if she did, whether he would like a little more? Why, of course, Mrs. Rice knew, and she said she did, that he was the Prosecutor of the Pleas; that he was in her place where she was dispensing liquor contrary to law, and if she could get him to accept two cases of liquor for himself, wouldn't she have him just about where she wanted him? Wouldn't she be reasonably sure that it would be to his interest to do as little as possible towards prosecuting her? It is said that he did prosecute her. Yes, he did; so says the testimony; so he said; at least, he had her raided. He had her raided after, not before, the Federal authorities had made a raid and had padlocked the place. Then he said he suspected or heard that liquor was still being sold there,



notwithstanding the padlock, and had another raid made. He may have, and may not; I do not think it is very material whether he did or not, although you may. But transactions of that kind are not usually mere little acts of politeness and hospitality between friends. Could there have been anything in the conduct and expression of the parties to indicate to Mrs. Rice that this would be a good thing to do?

The last count is the Joseph Q. Smith count, and I have to confess that, if I were looking at it as a juryman, I should be inclined to think the proof was not very satisfactory in that case, although I do not know how it will appeal to you. The charge is that Smith was transporting intoxicating liquor in violation of law. The testimony said both beer and whiskey, I think; the testimony for the defense says the beer was not intoxicating. That leaves the whiskey, if you find there was whiskey. And that he was arrested and the liquors he was transporting were seized. Now, he was arrested, of course, in the first instance for driving wildly and fetching up in a fence. But he was arrested, and there is testimony, I think, that the liquor was seized. Then, that this came to Mr. Bolitho's knowledge and that he, under color of his office, and intending and contriving to pervert and obstruct justice, required the police officers to discharge Smith and to send him the liquor so that the whole thing might be quashed. Smith was released. Hubert, who was Smith's tenant, or Mrs. Smith's tenant, went down there and put up $25.00 as a security for the charge of reckless driving, or whatever it

was, and the case rather subsided, I think. You may find, of course, upon that testimony, that Bolitho was guilty of malfeasance in office in that case. There seems to be evidence to sustain it, if you are so disposed to find.

I have gone over these matters in some little detail so as to keep them clear in your minds, and I am going to ask you not to return a verdict in writing, but I am going to ask you to return a specific verdict on each count of this indictment which remains for your consideration, and I have put them down on a piece of paper with a little formula which can be read by the foreman when the jury delivers its verdict. The formula is about like this: On the first (or Hudock) count, we find the defendant—then, you will say, of course, guilty or not guilty, as the case may be, according to your finding. On the fifth (or Dolimpio) count, we find the defendant guilty, or not guilty, as the case may be. And so on, rendering a verdict on each count separately. That, I think, will be given to the foreman for convenience so that you will know what these various counts are that are before you for your consideration, and so that you can readily identify them and be reminded of the substance of the count by the names of the various parties who are mentioned therein.

Now, a few general observations and I am through. In the first place, I want to say to the jury that they are the absolute judges of the facts and of the evidence; so that whatever the Court may have said with regard to the facts and the evidence is in no way controlling on the jury,



either as to what the facts are or what the evidence was. That is all for you. The responsibility is yours. Secondly, it is proper to say that the mere finding of an indictment does not establish any presumption of guilt of a defendant, but that the presumption of fact is that the defendant did not commit any of the criminal acts alleged in the counts of the indictment, that he discharged his duty as required of him by law with reference to the duties alleged in the counts of the indictment that it was incumbent upon him to discharge in the proper, legal manner, and that presumption stands with the defendant until it is overcome by evidence to your satisfaction beyond a reasonable doubt. Further, that the defendant, being a public officer, in order to convict, you must find from the evidence beyond a reasonable doubt tht he wifully refused or neglected to perform some duty imposed upon him by law within the time required by law. In order to constitute the offense under our statute, it is necessary that the failure or neglect to perform the duty imposed by law be wilful; it must be a refusal or neglect to perform within the time required by law.

There has been a good deal said in this case, of course, about the defendant being a man of family, and the consequences that will ensue in relation to that family should he be convicted; but it becomes the duty of the Court to tell you that that is not an issue in this case and it is not a consideration by which you ought to be guided. If people commit crimes, the law does not permit or consider that they should be allowed to

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escape punishment merely because they happen to have families. And as is so often said in courts of justice and outside of them, this question of the families, and all that, is one that criminals ought to consider before they commit the crime. They might possibly be deterred. So that should not enter into your considerations. There has also been a good deal said in the case about the witnesses, or some of them, for the State being not credible as witnesses, unreliable, and that their testimony should not be received, because they are, let us say, of foreign extraction, or specially because they have themselves admitted that they had been guilty of criminal practices. Of course, the jury will have to pass upon their credibility and it will have to pass upon the probability of the stories that they tell and upon the value of their evidence in every way. But the Court can only caution you that in an indictment of this kind, charging an offense of this kind, every count of which, I think, with perhaps one or two exceptions, but, I think, without any exceptions, where so many of the counts charge what really amounts to a criminal conspiracy between the Prosecutor and the other parties to obstruct and defeat the processes of justice, how is the State ever going to prove a case except by the testimony of one or more of the co-conspirators or by the confession of the defendant indicted if it can get one, or, let us say, by the fortunate circumstance, which does not seem to have existed in any of the cases now before you, of detectives having a dictaphone rigged up where the conspiracy was formed and hearing its actual formation over the dictaphone? Now, you are all



familiar with the old idea of State's evidence, where one party indicted jointly with another, or by a separate indictment, turning State's evidence; in other words, the State must rely, and it cannot help relying, upon the testimony of such men as these. And there is, of course, a consideration with regard to, let us say, Marinaro, that his very testimony on the witness stand here is an admission on his own part that he has been guilty of a grievous crime, and it is testimony that he was not obliged by law to give. So that, placing what value you choose in your discretion upon this testimony, it is not testimony that should be in the first instance utterly disregarded merely because it is evident that the witnesses are persons of criminal instincts and impulses and criminal acts.

I do not care to charge any of the requests except so far as they have been charged.

Is there anything that counsel thinks I have omitted?

Mr. Matthews: Your Honor has not charged reasonable doubt.

The Court: Well, do you want a definition of reasonable doubt?

Mr. Matthews: I just request that your Honor charge reasonable doubt to the jury.

The Court: Well, I will do it from memory, and if I am wrong about it, I want you to except now and we will hunt up the authorities and get the exact language of the Court of Errors and Appeals. Reasonable doubt is something that is

practically incapable of definition, Ladies and Gentlemen; but as I recollect the language of our Court of Appeals, it may be said to exist in a case where the jury, after a careful examination and consideration of all the evidence, feel that they cannot say that they have an abiding conviction to a moral certainty of the guilt of the accused. Is that near enough for your purposes?

Mr. Matthews: Yes, your Honor.

The Court: Let the officers be sworn.

Mr. Matthews: I have other exceptions.

The Court: Wait until the jury retires.

(Officers sworn and jury retired at 4:30 o'clock p. m.)

The Court: The exhibits will be handed to the jury in due course. Mr. Matthews, it is proper to let you know that this is the paper that I have given the foreman as a guide.

Mr. Matthews: That I will have to take an objection on the record for.

The Court: Well, you can take your objection.

Mr. Matthews: Your Honor please, I wish, with respect, to object to your Honor's having handed the jury the paper in question, a copy of which you handed to me before you handed it to the jury.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)



Mr. Matthews: I want to take an exception to that part of your Honor's charge where your Honor, after very interestingly to me and to the jury, recited the origin of the prosecutorial office, and then followed it by saying the complaint is that Bolitho did not do this in certain counts. I cannot begin to quote what your Honor said, the entire language, but the purport of my objection is that it lie against your statement, after this description of the origin of the prosecutor's office and its importance, that the complaint in this case is that Bolitho did not do this in certain counts, and so forth, in the indictment, the reason for my objection being that the recital of the facts and the building up of its grandeur might leave the impression with the jury that Bolitho fell far short of the moral, intellectual and other qualifications that were necessary, and that that would be an element in his guilt in so falling short.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: The second objection, if your Honor please, is to that part of your Honor's charge where your Honor said, after reciting the facts in the Smith case, "You may find from the testimony, of course, that Bolitho was guilty. There is evidence to sustain it if you are so disposed to find."

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: To that part of your Honor's charge in which you asked the jury to return a special verdict.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: And, with respect, a general exception to your Honor's charge.

The Court: All right. Take your exception.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Mr. Matthews: And your Honor's refusal to charge the requests that I submitted to your Honor—

The Court: Yes.

Mr. Matthews: —as follows:

First request: The finding of an indictment is no presumption of guilt.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Second request: The indictment against defendant in this case is an indictment charging malfeasance. "Malfeasance is defined in 25 Cyc., Page 1666, as follows: 'Evil doing; ill conduct; the doing of what one ought not to do; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful, the doing of an act which a person ought not to do at all; the unjust performance of



some act which the party had no right, or which he had contracted not to do.' "

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Third request: Defendant, being a public officer, in order to convict, you must find from the evidence, beyond a reasonable doubt that he wilfully refused or neglected to perform some duty imposed upon him by law, within the time required by law. In order to constitute the offense, under our statute, it is necessary that the failure or neglect to perform the duty imposed by law be wilful, and that it be a refusal or neglect to perform within the time required by law.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Fourth request: The authorities all agree that acts done accidentally or allowed to be done by inadvertence or through negligence are not in a legal sense, wilful; there must be proof beyond a reasonable doubt that such acts were done, not only by misconduct, but by wilful conduct.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Fifth request: The law provides that it shall be the duty of every Sheriff, Constable, Police Officer, members of the State Constabulary and other officers to use all due diligence to detect violations of the "Prohibition Enforcement Act"

and therefor to make complaint before a Magistrate, and that when a Magistrate issues a search warrant on such complaint it shall be directed to any officer authorized to serve the same, and that such search warrant, may, in all cases, be served by any of the officers mentioned therein, but no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. If you find, from the evidence, that Stewart Bettens, had in his possession a search warrant directed to him to be served against Charles Fleming, the Court charges you that it was the duty of said Stewart Bettens to serve the said search warrant, as directed therein, it was not the duty of defendant to serve the said search warrant.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Sixth request: "The Prohibition Enforcement Act" of 1922, which is known as the Hobart Act, provides that: "If any Prosecutor of the Pleas shall be notified, in writing, by any officer or other person of any violation of any of the provisions of this Act, and such notification shall contain the names and addresses of witnesses, it shall be the duty of said Prosecutor to diligently inquire into the facts of such alleged violation and for that purpose such prosecutor is hereby authorized to issue subpoenas for such persons as he shall have reason to believe have any information concerning, or knowledge of, such alleged violation, to appear before him at a time and place named, then and there to testify under oath concerning



any knowledge such witnesses may have of any violation of any of the provisions of this act; and the testimony of any such witness may be reduced to writing and he shall in the discretion of such prosecutor, be required to sign same. If the testimony shall disclose that any violation of this act has been committed, it shall be the duty of the Prosecutor to make complaint forthwith and to apply for a warrant to arrest the perosn complained against and bring him before a Magistrate for a preliminary hearing on such complaint." The Court charges you that before you can convict defendant of wilful refusal or neglect to proceed against the persons charged in this indictment with having violated the "Prohibition Enforcement Act" you must find from the evidence in the case, beyond a reasonable doubt, that defendant had received notification in writing from some officer or other person of the violation of the Act alleged in this indictment and that such notification contained the names and addresses of witnesses, and that after said defendant had received such notification he refused or neglected to proceed against the party complained against, as having violated the "Prohibition Enforcement Act." If this does not appear in the case to your satisfaction, beyond a reasonable doubt, the defendant is entitled to an acquittal upon the allegations in this indictment charging him with malfeasance or refusal or neglect to enforce the said "Prohibition Enforcement Act."

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Seventh request: The allegations in this indictment charging defendant with malfeasance with reference to the Florence Rice transaction, allege as the overt act, that defendant solicited from said Florence Rice a certain quantity of liquor, and the Court charges you that a solicitation in a legal sense is not an attempt to commit a crime and that it is not until something has been done, which may be called an overt act, that a crime has been committed; that there must be a physical act as contradistinguished from a verbal declaration; that there must be a step taken toward the actual commission of the offense and a mere effort by persuasion to produce the condition of mind essential to the commission of the offense, is not an overt act. It it has not been proved to you by all of the evidence in the case, beyond a reasonable doubt, that defendant did more than merely solicit Florence Rice to deliver to him certain liquor, it is your duty to acquit the defendant of the allegations contained in the count in the indictment relating to said Florence Rice.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Eighth request: The legal presumptions are that defendant, Bolitho, did not commit any of the criminal acts alleged in the counts of this indictment, and that he discharged his duty, as required of him by law, with reference to the duties alleged in the counts of this indictment that it was incumbent upon him to discharge in the proper legal manner, and that presumption



stands with defendant until it is overcome by evidence to your satisfaction beyond a reasonable doubt.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

Ninth request: Public officers, acting officially, are presumed to have done their duty until the contrary appears, and in this case it must appear to your satisfaction, from all of the evidence in the case, beyond a reasonable doubt, and if it does not so appear it is your duty to acquit defendant.

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

(The jury returned at 9:05 o'clock p. m.)

The Clerk: (After calling the Jury) Members of the Jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: What say you, Mr. Foreman?

The Foreman: On the first count, on Hudock, we find the defendant guilty.

On the fifth, or Dolimpio, count, we find the defendant guilty.

On the sixth, or Mingardi, count, we find the defendant guilty.

On the seventh, or Untermeyer-Juliano-Grande, count, we find the defendant guilty.

On the eighth, or Fleming, count, we find the defendant not guilty.

On the 10th, or Florence Rice, count, we find the defendant guilty.

On the 11th, Joseph Q. Smith, we find the defendant not guilty.

The Clerk: Hearken to your verdict as I have it here recorded. In the first count, you say you find the defendant guilty?

The Foreman: Yes.

The Clerk: In the fifth count, you say you find the defendant guilty?

The Foreman: Yes.

The Clerk: In the sixth count, you say you find the defendant guilty?

The Foreman: Yes.

The Clerk: In the seventh count, you say you find the defendant guilty?

The Foreman: Yes.

The Clerk: In the eighth count, you say you find the defendant not guilty?

The Foreman: Yes.

The Clerk: In the tenth count, you say you find the defendant guilty?

The Foreman: Yes.

The Clerk: And on the eleventh count, you say you find the defendant not guilty?

The Foreman: Yes.

The Clerk: And so say you all?

The Jurors: We do.

James H. Bolitho: (The defendant) Your Honor please, may I ask that the jury be polled on the counts where a verdict of guilty was given?



The Court: Well, it can be polled as to every count, I suppose, while we are at it. (To clerk) Will you poll each member of the jury as to whether that is his or her verdict on all these counts.

(The Jury was polled.)

(A typewritten paper bearing the following elimination of words by pen as indicated was handed to the Clerk by the foreman):

"1. On the first (or Hudock) count, we find the defendant guilty.

~~not guilty~~

"5. On the fifth (or Dolimpio) count, we find the defendant guilty.

~~not guilty~~

"6. On the sixth (or Mingardi) count, we find the defendant guilty.

~~not guilty.~~

"7. On the seventh (or Untermyer, Juliano, Grande) count, we find the defendant guilty.

~~not guilty~~

"8. On the eighth (or Fleming) count, we find

~~guilty~~

the defendant not guilty.

"10. On the tenth (or Florence Rice) count, we find the defendant guilty.

~~not guilty~~

"11. On the eleventh (or Joseph Q. Smith)

~~guilty~~

count, we find the defendant not guilty."

## Hearing of October 9, 1925.

MORRIS COUNTY COURT OF OYER AND TERMINER

THE STATE,
vs.
JAMES H. BOLITHO, Defendant.
On Indictment for Malfeasance.

Morristown, N. J., October 9, 1925.

BEFORE: HONORABLE CHARLES W. PARKER, Justice of the Supreme Court.

Appearances:

For the State, Hon. Wilfred H. Jayne, Jr., Deputy Attorney General.

For the Defendant, John A. Matthews, Esq., Anthony A. Calandra, Esq., of Counsel.

The Court: Mr. Jayne, the Court of Oyer is in session for the purpose of dealing with some unfinished matters.

Mr. Jayne: If your Honor pleases, this is the date which your Honor designated to impose sentence upon a number of defendants, among whom is the defendant James H. Bolitho. I desire at this time to move for sentence in the State vs. James H. Bolitho.

Mr. Calandra: May it please your Honor, I am appearing today for Mr. Matthews. He is the counsel engaged in a civil matter in Trenton. I have a motion to make with reference to the judg-



ment, and my motion is addressed to arrest the judgment found by the jury in this case, upon the following grounds:

"First: Because the grand jury which found the indictment was neither drawn, selected nor impanelled according to the provisions of the Chancellor-Sheriff jury act of 1913, which was the adoption by the Legislature of a method for drawing and selecting the grand jury, and a grand jury drawn, selected and impanelled by any other method was not legally organized, and the indictment found by it is void.

"Second: Because the elisors who drew and selected the Elisor Grand Jury were not qualified to draw a grand jury, Joshua R. Salmon being a counsellor at law of the State of New Jersey, and Victor Wiss not being a citizen.

Third: —

The Court: Well, let us see. Have you proof in support of that?

Mr. Calandra: Well, your Honor, we recently learned that Mr. Wiss was not a citizen. I propose to make that as one of the parts of the second ground for the motion in arrest of this judgment.

The Court: I guess you will have to prove it, won't you? Well, go on.

Mr. Calandra: Third ground: Because Donald J. Masterton was an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment and when the indictment was found, and the indictment for that reason is void.

Fourth ground: Because the Honorable Wilfred Jayne, Jr., not being the Prosecutor of the Pleas of the County of Morris, and not having been legally appointed and qualified as Attorney General or as an Assistant Attorney General of the State of New Jersey, and not having taken the official oath as such, was also an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment, and when the indictment was found, and the indictment for that reason is void.

Fifth ground: Because in the challenge to the array of the petit jurors, it was alleged that the Sheriff had been disqualified from drawing juries, that the Sheriff was interested in the outcome of the case against this defendant, and that the members of the panel of said petit jury were biased and prejudiced against this defendant; and these allegations were admitted by the demurrer to the challenge filed by the State; admittedly, the defendant did not have a trial according to due processes of law by a fair and impartial jury, but by a jury which was biased and prejudiced.

The following motions, if your Honor please, are motions to the fact of the indictment and are included and made a part of this motion in arrest of judgment:

As to count one of indictment number 49; Count one was ambiguous and duplicitous and contradictory in its terms. It charges that the Prosecutor accepted a bribe of $300 and, in consideration of said bribe, he did three contrary things, to wit: first, he refrained from prosecuting Hudock with diligence, energy, ability and understanding required of him; second, so managed and disposed of indictments that Hudock escaped just punishment which, according to law and justice, should have been imposed; third, that this defendant misled and deceived the Court of Quarter Sessions respecting true facts and evidence of offenses pending against Hudock in the said indictments, in order to induce the Court to give him a less onerous sentence.



The next ground: The indictment is bad because, with reference to count five of the indictment, it states conclusions of fact and of law, and does not sufficiently allege a crime. It charges that Mr. Bolitho knew that on two occasions Dolimpio had been complained of before a justice of the peace and that Dolimpio was guilty of a misdemeanor. The mere complaint before a justice of the peace was not sufficient. How could Mr. Bolitho know that this defendant was guilty?

The Court: No. How could—

Mr. Calandra: Pardon me. How could Mr. Bolitho know this person charged was guilty? Then it also alleges that it was Mr. Bolitho's duty to prosecute; and also charges that he perverted his trust and took $400 for suppressing the aforesaid offense, and from presenting evidence to the grand jury, and has suppressed and concealed complaint. The mere complaint before a justice would not have been sufficient. The justice might have dismissed it, and it does not allege that he was held for the grand jury.

Argument

As to count six, this count was bad because it states conclusions of law and of fact, and does not sufficiently allege a crime. It charges Mr. Bolitho, as Prosecutor, knew that Mingardi had been complained of in due form of law before a justice of the peace for a violation of the prohibition enforcement act, and that he was guilty of a misdemeanor, and that it then became the duty of Mr. Bolitho to prosecute. This is not so unless shown from the complaint that it was not dismissed. And that he took $200 to suppress and not prosecute, and did suppress.

As to count seven, this count in the indictment was bad because it does not sufficiently allege a crime. It says that he took $600 to refrain from prosecuting Grande and Juliano. It does not allege that he did not prosecute these cases.

As to count ten of the indictment—

The Court: Well, count ten, there was an acquittal on count ten, wasn't there? Are you addressing yourself to any counts on which the defendant was acquitted?

Mr. Calandra: I do not mean to, your Honor.

The Court: Well, count ten—no, count ten was the Florence Rice count. Yes, you are right.

Mr. Calandra: This count is bad because it states conclusions of law and fact, and does not sufficiently allege a crime. It says that Mr. Bolitho had personal knowledge that Rice kept a disorderly house, and took two cases of liquor to enable her to escape arrest.

And the concluding ground, your Honor, is that the counts in the indictment fail to allege that this defendant did not prosecute any of the persons mentioned in the indictments within the time required by law. That is all.



Argument

The Court: That is all you wish to say?

Mr. Calandra: That is all, your Honor.

The Court: I think that every one of these grounds in substance has already been urged and overruled, with the exception of the one noticed by the Court a moment ago, that is, that Mr. Victor Wiss is not a citizen, but as that is a mere allegation and there is no proof of it whatever, the Court does not think it necessary to consider it. In the absence of any proof as to Mr. Wiss's lack of citizenship, that will be overruled; so that the whole motion is overruled. You may have your exception to it.

Mr. Calandra: May I have an exception, your Honor?

Exception allowed and sealed.

CHARLES W. PARKER, Judge.

(Seal)

The Court: If there is nothing further, the Court will proceed to impose sentence in the Bolitho case. The defendant was convicted under the first or so-called Hudock count; fifth, Dolimpio count; the sixth was the Mingardi count; the seventh was the Untermeyer count, and the tenth was the Rice count; that is right, isn't, it, Mr. Jayne?

Mr. Jayne: Yes.

The Court: I want to get those numbers right. That is right, I think.

The sentence of the law, James H. Bolitho, is that on the first or Hudock count of the indictment you be imprisoned in the State Prison for

not less than two nor more than three years, and from thence until the costs of prosecution are paid.

On the fifth or Dolimpio count, the sentence of the law is that you be imprisoned in the State Prison for not less than two nor more than three years, and from thence until the costs of prosecution are paid.

On the sixth or Mingardi count, the sentence of the law is that you be imprisoned in the State Prison for not less than two nor more than three years, and from thence until the costs of prosecution are paid.

On the seventh or Untermeyer count, the sentence of the law is that you be imprisoned in the State Prison for not less than one nor more than three years, and from thence until the costs of prosecution are paid.

On the tenth or Rice count, the sentence of the law is that you be imprisoned in the State Prison for not less than one nor more than three years, and from thence until the costs of prosecution are paid.

That is all.

Mr. Calandra: If your Honor please, I have a writ of error.

The Court: You may present it in this matter. I will direct the Clerk to make the return.

Mr. Calandra: Will your Honor fix bail?

The Court: Now, the bail I think may as well be fixed at the same—I think it is the defendant's own bail, isn't it?

Mr. Calandra: Yes, your Honor.

The Court: Mr. Jayne, any reason why this



bail should not be continued substantially as it is now?

Mr. Jayne: I think not. I am laboring under the assumption that the defendant has some property of some worth.

The Court: Well, for the present, that will be the order. I suppose new bail will have to be given on this writ of error.

Mr. Jayne: Yes.

The Court: And you attend to that; but for the present that will be the order, and if the Attorney General thinks that there is any difficulty about it, why, of course, you can call upon the prisoner to furnish more.

Mr. Calandra: Your Honor will then permit Mr. Bolitho to give his own bail?

The Court: For the present, until further ordered. That, I think, disposes of that case for the present.

Mr. Clerk, here is the writ of error in the Bolitho case. I intended to say in this Bolitho matter—I omitted to say that these terms are to run concurrently.

## Certificate of Trial Judge.

State of New Jersey, }
County of Morris. } ss:

I, Charles W. Parker presiding judge of Morris County Court of Oyer & Terminer and the Judge who presided over the aforesaid cause certify that the foregoing printed book contains the entire record of the proceedings had upon the trial of the said cause and that the same is returned by the Plaintiff in Error therein with the Writ of Errors bringing up the Bill of Exceptions signed and sealed in this cause.

Dated, Oct. 27, 1925.

(Signed) CHARLES W. PARKER,
Pres. Judge of Morris,
County Court of Oyer & Terminer.

(Seal)



## Assignments of Error.

NEW JERSEY SUPREME COURT

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| STATE OF NEW JERSEY,<br>Defendant-in-error,<br><br>vs.<br><br>JAMES H. BOLITHO,<br>Plaintiff-in-error. | On Writ of Error. |

Afterwards, to wit, etc., in the Supreme Court of Judicature of the State of New Jersey, comes the said James H. Bolitho, by his Attorney, and says, that in the record and proceedings aforesaid, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

1. Upon the trial of said cause defendant's counsel in behalf of defendant, filed a challenge to Honorable Charles W. Parker, Justice of the Supreme Court of Judicature of the State of New Jersey, holding the Morris County Court of Oyer and Terminer, and sitting as the trial Judge in said cause, as follows: "(1) Without authority in law, he ordered an investigation upon a petition signed by a less number of tax payers and freeholders of the County of Morris than required by law, said petition not setting up any facts constituting reason for such investigation, and containing merely a conclusion, namely, that there were "deplorable conditions" in the County of Morris; (2) That the said Justice Parker, without authority in law appointed one Wilfred

Jayne, Jr., to prosecute said investigation and allowed the said Wilfred Jayne, Jr., to conduct said investigation without authority in law, and advised and approved the said investigation thus conducted by the said Wilfred Jayne, Jr., without authority in law and later to wit; on the 19th day of February, 1925, purported to legalize said heretofore illegal investigation by the request of the said Charles W. Parker to Edward L. Katzenbach, Esquire, for the appointment, according to law, of the said Wilfred Jayne, Jr.; (3) That, having knowledge of the conditions, circumstances and reasons for the passage of the law of May 29, 1913, known as "The Chancellor-Sheriff Jury Act," and knowing that the intention of the people of the State of New Jersey, by their vote upon the same, and the Legislature of 1913, in passing the same was to abolish Elisor Grand Juries in the State of New Jersey, and make it impossible for Grand Juries to be drawn by choice and not by chance, nevertheless, said Justice Parker, ordered and directed that the Sheriff of the County of Morris be removed as one of the Jury Commissioners, and without any charges of interest or misconduct or otherwise against William C. Sweeney, the other Jury Commissioner of the County of Morris, prevented the said William C. Sweeney from acting as Jury Commissioner of the County of Morris and ordered and directed that two (2) Elisors, namely, Victor A. Weiss, and Joshua R. Salmon, select and impanel an Elisor Grand Jury for the purpose of continuing and terminating the said investigation which he had permitted and ordered to be put in operation; (4) That by law said William C. Sweeney, Jury



Commissioner, as aforesaid, was appoined by the Chancellor of the State of New Jersey, who alone had the power and authority to remove him from his said office as Jury Commissioner; (5) That, although the said "Chancellor-Sheriff Jury Act of 1913, provided that no person licensed to practice law in the State of New Jersey shall be appointed Commissioner of Jury, said Justice Charles W. Parker, appointed as one of the Elisors to draw the Elisor Grand Jury the aforesaid Joshua R. Salmon, who is a person licensed to practice law in the State of New Jersey; (6) That said Charles W. Parker was interested in, and took part in the selection of the Elisor Grand Jury, aforesaid, in that he furnished to Elisor Joshua R. Salmon, three different lists of names of Grand Juries previously selected at previous times in this Court, and otherwise assisted the said Elisor in the selection of the said Elisor Grand Jury; (7) That the list supplied or given by the said Justice Charles W. Parker to the said Elisors for the purpose of selecting the said Elisor Grand Jury was not the list from which a Grand Jury could legally be drawn according to the said Chancellor-Sheriff Jury Act; (8) That the said Elisors, selected and appointed by said Charles W. Parker first selected the names of twenty (20) or more different persons, added them to the list which had been given to the said Charles W. Parker, and then chose the said names which they had added to the said list as the Elisor Grand Jury aforesaid; (9) That said Justice Charles W. Parker requested the Clerk of the Grand Jury, Nathaniel C. Toms, to resign as Clerk of the said Grand Jury of the County of

Morris, said Nathaniel C. Toms, being a resident of the said County of Morris and under civil service, and after said Justice Charles W. Parker had secured the resignation of the said Nathaniel C. Toms, as Clerk of the Grand Jury for the aforesaid County of Morris, appointed as temporary Clerk of the Grand Jury, one J. Donald Masterton, who was not a resident of the County of Morris, nor selected from the civil service list of those eligible for such appointments, nor an employee of the office of the Prosecutor of the County of Morris; (10) That said Justice Charles W. Parker with the appointment of the said J. Donald Masterton, as Clerk, and not as assistant to the Clerk of the said Grand Jury, ordered and permitted the said J. Donald Masterton to be present at all the sessions of the said Elisor Grand Jury and to take stenographically the testimony of the witnesses before the Elisor Grand Jury and transcribe the same, and by reason of the said appointment of the said J. Donald Masterton there was no legal clerk of the said Elisor Grand Jury to record the vote of the same in proper manner on any complaint which the said Elisor Grand Jury heard; (11) That the said Justice Charles W. Parker on the day when he swore in the said Elisor Grand Jury knew that there were but twenty-two (22) persons sworn in as a Grand Jury that the laws of the State of New Jersey require that the said Grand Jury shall consist of twenty-three (23) persons; to which challenge the State filed a demurrer, and to which the said Honorable Charles W. Parker entered a plea of non vult; and said Honorable Charles W. Parker, over-ruled said challenge, to which exception was taken by defendant's Attorney and allowed by the Court.



2. The over-ruling of the said challenge and denial of change of trial Judge constituted the denial of due process of law to defendant.

3. Upon the trial of said cause defendant's counsel in behalf of defendant filed a challenge to the array of petit jurors, as follows; "(1) That the said petit jury was purported to be drawn by Charles E. Estler, Sheriff of the County of Morris, who heretofore by the order of Justice Parker had been disqualified as Jury Commissioner for Morris County, and while so disqualified, participated in drawing of said petit jury, and because the said Charles E. Estler, Sheriff, as aforesaid, is interested in the outcome of several of the causes to be tried by said petit jury, including that of defendant above mentioned; (2) That the aforesaid petit jury by reason of the wide publicity given to the criminal proceedings which will be brought before it, is prejudiced and biased; and this defendant is ready to verify. Wherefore he prays judgment that the said panel of petit jurors may be quashed; to which challenge the State filed a demurrer, and the said challenge was over-ruled and not allowed by the said Honorable Charles W. Parker, to which exception was taken by defendant's Attorney and allowed by the Court.

4. The over-ruling of said challenge and denial of a different panel of jurors, from which the jurors could be drawn for the trial of said cause,

constituted a denial of due process of law to defendant.

5. Upon the trial of said cause defendant's Attorney applied to said Honorable Charles W. Parker for writs of certiorari to review the indictment in said cause and the application for said writs of certiorari were denied by said Honorable Charles W. Parker, to which exception was taken by defendant's Attorney and allowed by the Court.

6. The denial of the writs of certiorari to review said indictment constituted a denial of due process of law to defendant.

7. Upon the trial of said cause the defendant's Attorney moved to quash the indictment for the following reasons: "(1) Without authority in law, Honorable Charles W. Parker, Justice of the Supreme Court, ordered an investigation upon a petition signed by a less number of tax payers and freeholders of the County of Morris than required by law, said petition not setting up any facts constituting reason for such investigation and containing merely a conclusion, namely that there were 'deplorable conditions' in the County of Morris; (2) That the said Justice Parker, without authority in law appointed one Wilfred Jayne, Jr., to prosecute said investigation and allowed the said Wilfred Jayne, Jr., to conduct said investigation without authority in law, and advised and approved the said investigation thus conducted by the said Wilfred Jayne, Jr., without authority in law and later to wit; on the 19th



day of February, 1925, purported to legalize said heretofore illegal investigation by the request of the said Charles W. Parker to Edward L. Katzenbach, Esquire, for the appointment, according to law, of the said Wilfred Jayne, Jr.; (3) That, having knowledge of the conditions, circumstances and reasons for the passage of the law of May 29, 1913, known as "The Chancellor-Sheriff Jury Act" and knowing that the intention of the people of the State of New Jersey, by their vote upon the same, and the Legislature of 1913, in passing upon the same was to abolish Elisor Grand Juries in the State of New Jersey, and make it impossible for Grand Juries to be drawn by choice and not by chance, nevertheless, said Justice Parker, ordered and directed that the Sheriff of the County of Morris be removed as one of the Jury Commissioners, and without any charges of interest or misconduct or otherwise against William C. Sweeney, the other Jury Commissioner of the County of Morris, prevented the said William C. Sweeney from acting as Jury Commissioner in the said County of Morris and ordered and directed that two (2) Elisors, namely, Victor A. Weiss, and Joshua R. Salmon select and impanel an Elisor Grand Jury for the purpose of continuing and terminating the said investigation which he had permitted and ordered to be put in operation; (4) That by law said William C. Sweeney, Jury Commissioner, as aforesaid, was appointed by the Chancellor of the State of New Jersey, who alone had the power and authority to remove him from his said office as Jury Commissioner; (5) That, although, the said "Chancellor-Sheriff Jury Act" of 1913, provided

that no person licensed to practice law in the State of New Jersey shall be appointed Commissioner of Jury, said Justice Charles W. Parker, appointed as one of the Elisors to draw the Elisor Grand Jury, the aforesaid Joshua R. Salmon, who is a person licensed to practice law in the State of New Jersey; (6) That said Charles W. Parker was interested in, and took part in the selection of the Elisor Grand Jury, aforesaid, in that he furnished to Elisor, Joshua R. Salmon, three different lists of names of Grand Juries previously selected at previous times in this Court, and otherwise assisted the said Elisor in the selection of the said Elisor Grand Jury; (7) That the list supplied or given by the said Justice Charles W. Parker to the said Elisors for the purpose of selecting the said Elisor Grand Jury was not the list from which A Grand Jury could legally be drawn according to the said Chancellor-Sheriff Jury Act; (8) That the said Elisors, selected and appointed by said Charles W. Parker, first selected the names of twenty (20) or more different persons, added them to the list which had been given to the said Charles W. Parker, and then chose the said names they had added to the said list as the Elisor Grand Jury, aforesaid, (9) That said Justice Charles W. Parker requested the Clerk of the Grand Jury, Nathaniel C. Toms, to resign as Clerk of the said Grand Jury of the County of Morris, said Nathaniel C. Toms, being a resident of the said County of Morris and under civil service, and after said Justice Charles W. Parker, had secured the resignation of the said Nathaniel C. Toms, as Clerk of the Grand Jury for the aforesaid County of Morris,



appointed as temporary Clerk of the Grand Jury, one J. Donald Masterton, who was not a resident of the County of Morris nor selected from the civil service list of those eligible for such appointments, nor an employee of the office of the Prosecutor of Morris County; (10) That said Justice Charles W. Parker with the appointment of the said J. Donald Masterton, as Clerk and not as assistant to the Clerk of the said Grand Jury, ordered and permitted the said J. Donald Masterton to be present at all sessions of the said Elisor Grand Jury and to take stenographically the testimony of the witnesses before the Elisor Grand Jury and transcribe the same, and by reason of the said appointment of the said J. Donald Masterton there was no legal clerk of the said Elisor Grand Jury to record the vote of the same in the proper manner on any complaint which the said Elisor Grand Jury heard; (11) That the said Justice Charles W. Parker on the day when he swore in the said Elisor Grand Jury knew that there were but twenty-two (22) persons sworn in as a Grand Jury, that the laws of the State of New Jersey require that the said Grand Jury shall consist of twenty-three persons; (12) That D. Farand Sturgis foreman of the said Elisor Grand Jury was not legally capable of acting as Grand Juror by reason of the provision made in the "Chancellor Sheriff Jury Act" that no member of a Grand Jury shall be chosen from the list, who has served within one year and that Mr. Sturgis had served within a year's time of serving on said Elisor Grand Jury; (13) That because said indictment was one of several found by the said Elisor Grand Jury against the defendants

for the same offense, and the offense grew out of the same act and subject matter;'' which said motions to quash said indictment were overruled and not allowed by the Trial Court, to which exception was taken by defendant's Attorney and allowed by the Court.

8. The refusal of the Court to quash said indictment upon said motions constituted a denial of due process of law to defendant.

9. Upon the trial of said cause defendant's Attorney moved to quash the indictment for the following reasons: ''Because Wilfred Jayne, Jr., was in the Grand Jury room at the time the evidence was presented to the Grand Jury, the evidence upon which this indictment was predicated, and that Mr. Jayne's presence in the Grand Jury room was unauthorized and illegal, the ground being that Mr. Jayne was Prosecutor of the County of Ocean and that his appointment as Assistant Attorney General was not according to law, because, the Attorney General is entitled to designate, not to appoint, a second Assistant Attorney General, and at the time of the functioning of Mr. Jayne in this County, the Attorney General had all of the assistants, that he was entitled to by law, that they were in existence in the office of Assistant Attorney General; therefore, the Attorney General did not attend in person nor did he designate one of his Assistant Attorneys General authorized and appointed by law to attend in Morris County; and Mr. Jayne became an unauthorized person in the Grand Jury room,'' which said motions to quash said indictment were over-ruled and not allowed by the Trial Court, to which exception was taken by defendant's Attorney and allowed by the Court.



10. Upon the trial of said cause defendant's Attorney moved to quash the indictment for the following reasons: ''(1) Count one is ambiguous, duplicitous and contradictory in terms because it charges the defendant accepted a bribe of $300, and in consideration of the bribe, that he did three contrary things; First, that he refrained from prosecuting Hudock with the diligence, ability and understanding required of him; second, that he so managed and disposed of the indictments that Hudock escaped just punishment which, according to law and justice, should have been imposed on him; third, that he misled and deceived the Court of Quarter Sessions respecting the true facts and evidence of the offenses pending against Hudock in the said indictment, in order to induce the Court to give him a less onerous sentence; fourth, that said count states a conclusion of law and fact where it says that he enabled Hudock to escape just punishment and that he misled the Court with respect to the true facts and evidence of the charge pending against Hudock in order to induce the Court to give him a less onerous sentence; (2) As to count two, the count is bad because it states a conclusion both of law and of fact and does not sufficiently allege a crime; (3) Count three, we allege is bad because it states also a conclusion of law and fact and does not sufficiently allege a crime; (4) The same motion is made as to count four; (5) Count five is bad, because it states conclusions of law and of

fact and does not sufficiently allege a crime; that count charges Bolitho knew that on two occasions one Dolimpio had been complained of before a Justice of the Peace and that Dolimpio was guilty of a misdemeanor; a mere complaint before a Justice of the Peace was not sufficient, and there is an allegation that he knew that he was guilty of misdemeanor and we maintain that is entirely a conclusion; the count says further perverting his trust he took $400.00 for suppressing the aforesaid offense and has suppressed and concealed the complaint, in fact all through the count it fails to allege anything which would indicate that there had been any obligation on defendant to prosecute; (6) As to count six, it is bad, because it states conclusions of law and of fact and does not sufficiently charge a crime, it charges that Bolitho knew that Mingardi had been complained of in due form of law before a Justice of the Peace for a violation of the enforcement act, and that Mingardi was guilty of a misdemeanor, and therefore, it became the duty of Bolitho to prosecute him; it does not allege that the complaint was not dismissed; there can not be any knowledge on Bolitho's part that the man was guilty; there is no allegation that the complaint in due form and process had been sent to the Prosecutor's office, or that the steps necessary to put upon the Prosecutor the obligation of acting had been gone through; (7) Count seven is bad because it does not sufficiently allege a crime; it does not allege that defendant did not prosecute Grande and Juliano, in fact, as the count is read through, it would indicate that Grande and Juliano were prosecuted; it simply is an allegation of



taking $600, to refrain from prosecuting them and this is an indictment for malfeasance and not for bribery, and it does not allege that defendant did a certain thing, which he should not do, or refrained from doing anything which he should not do; (8) Count eight is bad because it states conclusions of law and fact and does not sufficiently allege a crime; (9) Count nine is bad because it does not sufficiently allege a crime; (10) Count ten is bad because it states a conclusion of law and fact and does not sufficiently allege a crime, as it says that defendant had personal knowledge that one Rice kept a disorderly house, where liquor was sold, that he took two cases of liquor to enable this Rice person to escape arrest; it does not allege that Rice did escape arrest or that defendant did anything to assist Rice in escaping arrest; it is a mere allegation that he took a certain amount of money for the purpose that is not stated and it does not sufficiently allege the crime of malfeasance; (11) Count eleven is bad, because it does not allege a crime; which said motions to quash said indictment were over-ruled and not allowed by the Trial Court, to which exception was taken by defendant's Attorney and allowed by the Court.

11. The refusal of the Court to quash said indictment upon said motions constituted a denial of due process of law to defendant.

12. The indictment in this cause was found by a Special Grand Jury, at a special term of the Oyer and Terminer of the County of Morris, and there was no proof in the case that the special

term of said Court had been appointed by competent authority or constituted in a legal manner, according to the provisions of the Statutes of the State relating to such special term, which constitutes a denial of due process of law to defendant.

13. The venire facias for the said Elisor Grand Jury, which found the indictment in this cause, was issued while the regular Grand Jury, selected and impaneled for the January term of the Morris Oyer and Terminer for the year, 1925, and was recognized as the regular Grand Jury of the County of Morris, remained undischarged and said venire was issued before any proceedings had been taken to set aside said regular Grand Jury, and said venire, was therefore, illegal, and said Elisor Grand Jury, not a proper Grand Jury, and such procedure and the indictment in this cause amounted to a denial of due process of law to defendant.

14. The regular Grand Jury for the January term of the Morris Oyer and Terminer for the year, 1925, had been duly returned, charged and sworn, had not been set aside, and was legally entitled to serve as the Grand Jury of the County of Morris in said Court until the end of the January term of said Court, and there was no authority in law for issuing a venire to any person or persons to select a new Grand Jury or any Elisor Grand Jury, and the indictment in this cause, found by a new or Elisor Grand Jury, constituted a denial of due process of law to defendant.



15. That by reason of the challenge to the Judge sitting as trial Judge in said cause, the demurrer filed by the State and the plea of said Judge, it was admitted that there was an unauthorized person in the Grand Jury room during the sessions of the said Elisor Grand Jury, which found the indictment in this cause, and said indictment should have been quashed for that reason on motion of defendant's counsel.

16. Because Wilfred Jayne, Jr., was Prosecutor of the Pleas of Ocean County, in the State of New Jersey, at the time when he attended the sessions of the said Elisor Grand Jury for the County of Morris and at the time when he presented the evidence against defendant to said Elisor Grand Jury, and when the said Elisor Grand Jury found the indictment in this cause against defendant, and he was not an Assistant Attorney General of the State of New Jersey, and could not legally be such as the offices of the Attorney General and Prosecutor of the Pleas are incompatible with each other and can not be held by one and the same person at one and the same time, and the presence of said Wilfred Jayne, Jr., in the Grand Jury room at the sessions of the said Elisor Grand Jury, which found said indictment, was the presence of an unauthorized person before said Elisor Grand Jury and the proceedings were unauthorized and improper and the indictment so found is void.

17. Because the finding of said indictment and the trial of defendant on the same was contrary to due process of law.

18. Because said J. Donald Masterton was an unauthorized person before said Elisor Grand Jury, during the sessions thereof, at which said indictment was found, and the evidence against the defendant submitted, and the proceedings of said Elisor Grand Jury while said J. Donald Masterton was present, were unauthorized and improper and the indictment so found is void.

19. Because the finding of said indictment and the trial of defendant on the same is contrary to the due process of law.

20. Because the verdict was contrary and against the weight of the testimony.

21. Because the verdict of the jury in convicting the plaintiff-in-error was illegal and improper and contrary to and against the weight of the evidence.

22. Upon the trial of said cause the Prosecutor asked of the witness, D. A. Marinaro, upon direct-examination the following question:

> "Q. Now, was there any reason that the defendant, Hudock, should be brought in—?"

to which defendant's Attorney objected, which the Court overruled, and allowed an exception to the defendant.

23. Upon the trial of said cause, the Prosecutor asked of the witness, Stewart Bettens, upon direct-examination, the following question:



> "Q. Did you make some investigation about Fleming's Hotel at Chester?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

24. Upon the trial of said cause, the Prosecutor asked of the witness, Stewart Bettens, upon direct-examination, the following question:

> "Q. Well, what did you do?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

25. Upon the trial of said cause the Prosecutor asked of the witness, Warren Eagles, upon direct-examination, the following question:

> "Q. Do you know Charles Fleming?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

26. Upon the trial of said cause the Prosecutor asked of the witness, Warren Eagles, upon direct-examination, the following question:

> "Q. Yes. Did you ever transact any business there?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

27. Upon the trial of said cause the Prosecutor asked of the witness, Warren Eagles, upon direct-examination the following question:

> "Q. Yes. What else? A. Why before we left on the second occasion—which occasion are you talking about, the first night or the second night? Q. On any of these occasions."

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

28. Upon the trial of said cause the Court asked of the witness, Warren Eagles, upon direct-examination the following question:

> "Q. Well, is there any hotel in Chester known to you and to the public as Fleming's Hotel?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

29. Upon the trial of said cause the Court asked of the witness, Warren Eagles, upon direct-examination the following question:

> "Q. Very well, and who were the parties or party—that ostensibly kept that hotel and it?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.



30. Upon the trial of said cause, the Court asked of the witness, Warren Eagles, upon direct-examination the following question:

> "Q. Well, you did business with them, with these two, didn't you?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

31. Upon the trial of said cause, the Prosecutor asked of the witness, Stewart Bettens, upon direct-examination, the following question:

> "Q. Now, I ask you again if you made some investigation of the hotel which now seems to be known as Fleming's Hotel at Chester?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

32. Upon the trial of said cause, the Prosecutor asked of the witness, C. Mingardi, upon direct-examination the following question:

> "Q. How much wine, if you know, did they take away from your house—the officers take away from your house, when they searched it?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

33. Upon the trial of said cause the defendant's Attorney asked of the witness, D. Marinaro, upon direct-examination, the following question:

"Q. Yes. And that is not the only money you have used of your clients, is it?"

to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

34. Upon the trial of said cause the defendant's Attorney asked of the witness, D. Marinaro, upon cross-examination, the following question:

"Q. When did you give that back"

to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

35. Upon the trial of said cause the defendant's Attorney asked of the witness, D. Marinaro, upon cross-examination, the following question:

"Q. Did you have any of Mrs. Fanshaw's money?"

to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

36. Upon the trial of said cause the Prosecutor asked of the witness, Joseph Juliano, upon cross-examination the following question:

"Q. Are you willing to testify as to what relations you had with Danny Marinaro



and Patsy Mutarella in these cases in Morris County?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

37. Upon the trial of said cause the Prosecutor asked of the witness, Joseph Juliano, upon direct-examination, the following question:

"Q. Do you know anything about what was done with the money that you turned over in the office of Danny Marinaro?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

38. Upon the trial of said cause the Prosecutor asked of the witness, Joseph Juliano, upon direct-examination, the following question:

"Q. Do you know anything about what was done with the money that you turned over in the office of Danny Marinaro?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

39. Upon the trial of said cause the Prosecutor asked of the witness, William J. Ryan, upon direct-examination, the following question:

"Q. What additional liquor?"

to which defendant's Attorney objected and the

Court overruled the objection and allowed an exception to the defendant.

40. Upon the trial of said cause the Prosecutor asked of the witness, William Hegarty, upon re-direct-examination, the following question:

"Q. Well, after Mr. Bolitho was appointed Prosecutor of the County and you assistant prosecutor, particularly during the early part of the term, was there any lawyer who had as many criminal cases defending the defendants, criminal business with the Prosecutor's office, as Daniel Marinaro?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

41. Upon the trial of said cause the Prosecutor ask of the witness, Richard Doney, upon direct-examination, the following question:

"Q. Have you drank with him there?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

42. Upon the trial of said cause the Prosecutor asked of the witness, Richard Doney, upon direct-examination, the following question:

"Q. Was he served with anything there?"



to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

43. Upon the trial of said cause the Prosecutor asked of the witness, Richard Doney, upon direct-examination, the following question:

"Q. More than one drink?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

44. Upon the trial of said cause the Prosecutor asked of the witness, Richard Doney, upon direct-examination, the following question:

"Q. To whom?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

45. Upon the trial of said cause the Prosecutor asked of the witness, Richard Doney, upon direct-examination, the following question:

"Q. I asked you, to whom?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

46. Upon the trial of said cause the Prosecutor asked of the witness, Richard Doney, upon direct-examination, the following question:

"Q. Did you have some?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

47. Because the Plaintiff-in-error was not tried according to due process of law.

48. The said Elisor Grand Jury was selected and impaneled without authority in law, and the indictment found by said Grand Jury in this cause is contrary to due process of law.

49. No formal complaint under oath was filed against defendant, according to the practice laid down by law in New Jersey, either before the regular Grand Jury for the January term of the Morris Oyer and Terminer for the year 1925, was selected and impaneled, or afterwards, or at any other time, nor was any complaint against defendant, containing a charge of substantive facts necessary to constitute an offense, ever made and filed, which proceedings against defendant were without due process of law.

50. The established principles of Criminal Procedure in the State of New Jersey were not followed in this cause, but were departed from and a new unauthorized system of Criminal Procedure inaugurated, which constitutes a denial of due process of law to defendant.

51. Upon the trial of said cause, after the conclusion of the State's case Attorney for the defendant made a motion for the direction of the verdict on the following grounds: "(As to count



one): For the reason that the State has failed to prove the allegations of the count which are before the Court, and which alleges that Bolitho accepted money from Marinaro for the purpose of suppressing the prosecution of Hudock, and for the purpose of lessening the penalty which Hudock ought to have gotten, and for the purpose of not bringing Hudock before a Court for trial on the second indictment, and since the allegations are that Bolitho accepted $300, for a specific purpose and there is no evidence in the case to show that Bolitho got $300, for a specific or any purpose and since the evidence fails to show the accomplishment of the alleged promised purposes, the State has failed to prove that count; (As to Count 5) This count alleges * * * that defendant had taken money from Dolimpio for the purpose of suppressing his prosecution; the testimony in the case was given by Mutarella and Dolimpio himself, and is contradictory as to the amount given; the allegation in the count being that this money was given and accepted by the defendant for the purpose of refraining from prosecuting the said Dolimpio and the facts being that the Dolimpio case was carried through to its final conclusion before the Grand Jury and that there was no indictment and it was incumbent upon the State to show that the case was not prosecuted and that it was not presented to the Grand Jury and not dismissed by the Grand Jury; therefore, the State has failed to prove the allegations of the count; (As to count six) The State failed to prove the allegations of the count that there was money paid to the defendant and there was a failure to prosecute because of the payment of

the money and the State has failed to prove that there was not a termination of said case by dismissal by the Grand Jury; (As to count seven) The state has failed to prove that defendant was paid any money as alleged in this count or that he failed to prosecute Juliano, Grande and Sica, but, in fact, the evidence produced by the State shows the contrary; there is no evidence in the case with reference to this count that there was any money paid to the defendant in this case or that defendant failed to do his full duty with reference to the defendants, Juliano, Grande and Sica; (As to count 8) There is no evidence before the Court to sustain the allegations of count eight; (As to count ten) The state has failed to prove by any evidence that defendant received anything from Florence Rice for the purpose of suppressing any complaint or allowing her, in the future, to do anything wrong; because her positive testimony is that, gratuitously, she gave to the defendant cases of liquor, but there is nothing in the evidence to sustain the allegations of the count with reference to malfeasance; (As to Count 11) There is not any proof to sustain count eleven; which motions to direct a verdict in favor of the defendant were denied and an exception allowed to the defendant.

52. It was an abuse of discretion and denial of due process of law for the Trial Court to refuse to direct a verdict for the defendant upon said motions.

53. Upon the trial of said cause the defendant's Attorney asked of the witness, James H. Bolitho, upon direct-examination, the following question:



"Q. And this is the letter that you received in reference to the Hudock case?"

to which Prosecutor objected and the objection was sustained by the Court, and an exception allowed to the defendant.

54. Upon the trial of said cause the Prosecutor asked of the witness, James H. Bolitho, upon cross-examination, the following question:

"Q. Now, it was after that, that you wrote all these letters, copies of which were put in evidence?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

55. Upon the trial of said cause the defendant's Attorney asked of the witness, James H. Bolitho, upon re-direct-examination, the following question:

"Q. This Rathbun letter was an attempt to get Bogden out of the difficulty, wasn't it?"

to which Prosecutor objected and the objection was sustained by the Court, and an exception allowed to the defendant.

56. Upon the trial of said cause the defendant's Attorney asked of the witness, James H. Bolitho, upon re-direct examination, the following question:

"Q. What was the custom, Mr. Bolitho, with reference to raids made by the Sheriff as to the evidence and as to the papers in the case, during your regime?"

to which Prosecutor objected and the objection was sustained by the Court, and an exception allowed to the defendant.

57. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. Now, as a matter of fact, there were papers that you issued over your signature that you had no knowledge of the issuance of?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

58. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. Well, in other words,—strike that out—in other words, you indulged in the practice of signing your name to blank search warrants?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

59. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:



"Q. You were testifying here as to what cases—particularly this case in 1923; now you say you do not remember the important matter of whether or not you signed your name to blank papers, is that what you say?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

60. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. You know what I mean by blank complaints, don't you?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

61. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. I mean the printed forms of complaints—?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

62. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. and the printed form of warrant?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

63. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. Now, answer it?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

64. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. Did you not deliver, or did you not sign—put it that way—in the Prosecutor's Office when Prosecutor Bolitho was Prosecutor, these complaints and warrants in blank for use without having complainants brought before you to swear to the complaints?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

65. Upon the trial of said cause the Prosecutor asked of the witness, Henry G. Schroer, upon cross-examination, the following question:

"Q. But you do not here deny that you did it, do you?"



to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

66. Upon the trial of said cause the Prosecutor asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. I say, you do not deny it, do you?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

67. Upon the trial of said cause the Court asked of the witness, Henry H. Schroer, upon cross-examination, the following question:

"Q. Well, what do you say to that? Do you deny it or don't you?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

68. Upon the trial of said cause the Prosecutor asked of the witness, Joseph Thomas, upon direct-examination, the following question:

"Q. Did you understand it was a crime for a man who was under bail to go out of one county into another in the State of New Jersey?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

Assignments of Error

69. Upon the trial of said cause the defendant's Attorney asked of the witness, Raymond C. Matthews, upon re-direct examination, the following question:

"Q. And wasn't that an allegation that he had made against the Chief of Police of wrongdoing that was untrue?"

to which Prosecutor objected and the objection was sustained by the Court, and an exception allowed to the defendant.

70. Upon the trial of said cause the Prosecutor asked of the witness, James H. Bolitho, upon cross-examination, the following question:

"Q. If you had suppressed this complaint as Prosecutor there was, in fact, 48 gallons of wine found, it would have been to your interest to have had an affidavit to the effect that it was vinegar instead of wine, wouldn't it?"

to which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

71. Upon the trial of said cause the Prosecutor asked of the witness, James H. Bolitho, upon cross-examination, the following question:

"Q. You would have been vitally interested, would you not?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.



Assignments of Error

72. Upon the trial of said cause the Prosecutor asked of the witness, James H. Bolitho, upon cross-examination, the following question:

"Q. Now your idea is, the men did wrong, is that your idea?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

73. Upon the trial of said cause the defendant's Attorney asked of the witness, James H. Bolitho, upon re-direct examination, the following question:

"Q. Now, why didn't Judge Wilson try any cases, Mr. Bolitho? Tell us."

to which Prosecutor objected and the objection was sustained by the Court, and an exception allowed to the defendant.

74. Upon the trial of said cause the Prosecutor asked of the witness, Warren Eagles, upon direct-examination, the following question:

"Q. Where was he?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

75. Upon the trial of said cause the Prosecutor asked of the witness, Warren Eagles, upon direct-examination, the following question:

"Q. What business did you have there?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

76. Upon the trial of said cause the Attorney for the defendant offered in evidence the record book of the Sheriff's office of the County of Morris, known as Book A-3 for the purpose of showing what was done with reference to an alleged capias in the Hudock case, to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

77. Upon the trial of said cause the Attorney for the defendant offered in evidence certain cards, which were the card index records of the Prosecutor's office, for the purpose of showing what disposition had been made of the Mingardi case, to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

78. Upon the trial of said cause the defendant's Attorney asked of the witness, James H. Bolitho, upon re-direct examination, the following question:

> "Q. Yes. And that card index was made in what manner?"

to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

79. Upon the trial of said cause the defendant's Attorney asked of the witness, Raymond C. Mat-



thews, upon re-direct examination, the following question:

> "Q. And wasn't that an allegation that he had made against the Chief of Police of wrongdoing that was untrue?"

to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

80. Upon the trial of said cause the Prosecutor asked of the witness, Antonio Mingardi, upon direct-examination, the following question:

> "Q. Did anyone telephone in your presence after you returned with the money?"

to which defendant's Attorney objected, and the Court overruled the objection and allowed an exception to the defendant.

81. Upon the trial of said cause the Court permitted an Italian to be sworn in as an interpreter and to interpret the testimony of the witness, C. Mingardi, said interpreter not being the regular official Court interpreter of the said Court, to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

82. Upon the trial of said cause the Court made the following remark:

> "I am wondering whether your client has not enough Italian friends in Court to keep tabs on the Interpreter."

which was uncalled for and prejudicial to defendant in the presence of the jury, and constituted error.

83. Upon the trial of said cause the Prosecutor asked of the witness, William A. Hegarty, upon direct-examination, the following question:

> "Q. Well, was it the usual practice for Mr. Marinaro or Mr. Mutarella, or both, as the occasion might be, to go into a room, another room, different from the one you were in?"

to which defendant's Attorney objected and the Court overruled the objection and allowed an exception to the defendant.

84. Upon the trial of said cause the Attorney for defendant offered in evidence an analysis of liquor made by one Doctor Weiss, to which Prosecutor objected and the Court sustained the objection and allowed an exception to the defendant.

85. Upon the trial of said cause there were remarks made by the Court regarding the evidence and with reference to the examination of witnesses by the Trial Court which was an abuse of discretion and prejudicial to the defendant and of such a character as to tend to discredit witnesses for the defendant and to lend credibility to witnesses for the prosecution and to involve an intimation of opinion on the evidence unfavorable to the defendant.



86. Upon the trial of said cause improper remarks of the Trial Judge influenced the finding of the Jury and were prejudicial to the defendant.

87. Upon the trial of said cause at the close of the entire case Attorney for the defendant made a motion for the direction of a verdict on the following grounds: (1) As to the Tenth Count: Because the count does not allege a crime and because it is ambiguous and because there was no proof adduced by the State sustaining the allegations contained in the count; (2) As to the Eighth Count, Because there is no proof in the State's case and a total dis-proof in the defendant's case that warrants the matter going to the Jury under the allegations of this count; (3) As to the Eleventh Count, Because there is no evidence on the part of the State and there is refutation on the part of the defense, of any attempted implication of evidence that Smith was ever guilty of anything that should have been prosecuted by Bolitho, and that Bolitho did not do his duty in every respect with reference to Smith; (4) As to the First Count, Because the count is ambiguous and does not allege a crime and it is duplicitous because it charges three things; that Bolitho suppressed the complaint and the evidence; that he cooperated so that Hudock would not be sentenced according to justice as he should have been sentenced; and that he cooperated with Marinaro to prevent the man from being prosecuted, and to have one of the indictments against him *nolle prossed;* that the State has failed to sustain the allegations of this count and on the other hand the defense has shown that the defendant

was not guilty of not doing his duty in that regard, but that he not only had Hudock fined $500 on one of the indictments, but he had his bail forfeited and collected on the other indictment, after Hudock had failed to appear for trial; the evidence also shows that all involved in the Stirling case with Hudock, were fined the same amount as Hudock was, and that Hudock was fined without giving the State the expense of a trial and there isn't any proof that defendant did anything that would have been malfeasance in the sense that he cooperated to have this man punished in a less manner than justice required; the allegations of the count are that on one occasion Marinaro told Bolitho that he would give him $300 for this purpose, and that one Hubert was given the $300 in an envelope, but there is no proof on the part of the State that that money ever went to Bolitho and it is contradicted by the testimony of Hubert and the testimony of Bolitho, and the testimony of the Post Master of Morristown, with reference to the money order; (5) As to the Fifth Count, The direction of a verdict is requested for the reasons cited in the previous motion in reference to that count, and the allegation in that count is that Bolitho was given a sum of money, namely, $400, for the purpose of suppressing a complaint against Dolimpio; the State's proof was that Dolimpio suggested to Bolitho that he would give him $200, and that he was sent out to get $200 more by noon time and that he came back and gave him $400, but that State's proof varied with the testimony of Mutarella, who said Dolimpio gave him $300, and went out and got $200 more



and gave to him by noon-time, making it $500. The allegation of the count then was that, in consideration of that payment, Bolitho suppressed the Dolimpio complaint; the State has produced no proof of that, but the defendant's proof in answer to it in the person of the foreman of the then grand jury, who had a record of the dismissal by the Grand Jury, after it had been presented to the said Grand Jury by the defendant, Bolitho; there is no evidence on the part of the State in the case, of malfeasance on the part of defendant, with reference to this count, and the uncontradicted evidence of the defendant shows that the defendant did what he was required to by law in the case and presented the Dolimpio case to the Grand Jury, where it was dismissed; (6) As to the Sixth Count; This count charges that at a certain time Bolitho received the sum of $250, from either Mutarello or Marinaro to suppress the complaint against Mingardi, who was charged with the violation of the liquor law, but the evidence of the State through its witness, Mutarella, was: "I know I have $250. Danny Marinaro go up to Bolitho's office and give him $250; this I know sure. Then he keep $250; it might be one hundred; it might be five. I do not know, because I never count that money."; but this was not corroborated by Marinaro and evidently Mutarella was not with Marinaro when he says this money was given to Bolitho and furthermore in his testimony, Mutarella, said in answer to the question, "Q. Well, did Mingardi get out of jail then? A. I bailed him out with the $500." This is the only evidence that the State adduced to prove the allega-

tions of this count; the State failed to show that Bolitho was guilty of malfeasance in any sense with reference to the Mingardi case, but the defense produced records, then in the Prosecutor's office, that showed the Mingardi complaint had been dealt with by the Grand Jury on the very day that Mrs. Mingardi said she had paid the money to Marinaro. The testimony of the defense further showed that Bolitho was in the Grand Jury room that day and the testimony of Hubert was that he had testified before the Grand Jury on that day, with reference to the Mingardi case, and the records showed that the Mingardi case had been disposd of by that Grand Jury, and that no bill had been found, and the defense produced the identical envelope in which the Mingardi case had been filed in the Prosecutor's office and which showed upon its face the record made by the Prosecutor in the Grand Jury room, with reference to the disposal of the case, namely, that it had been dismissed; none of this evidence on the part of the defense was contradicted by the State to sustain the count, as aforesaid; (8) As to the Seventh Count: This count alleges that the defendant received $600, for which he was to see that these men, Juliano, Grande and Sica were not indicted, and we now repeat and reiterate the reasons made as to the dismissal of this count in the beginning, and add that the State has failed to prove the allegations of the count. The State put on the stand, Juliano, himself, and he testified that he was in Marinaro's office and retained Marinaro for three men at $300 a piece, but Marinaro wanted $1000, to take the case; that Mutarella said he would loan them the other $100,



and Juliano was asked by the State and asked by the defense on cross-examination, whether or not at any time he had any arrangement, himself, or through his Attorney, or any word from his Attorney that the indictments were to be suppressed or any favor to be granted to him and he said "No"; there was no testimony in the case that any money had been given to Bolitho by anyone with reference to this Juliano matter; but the record evidence of both the State and the defendant is that there was an orderly procedure of these causes in this fashion; that they were indicted at the October term, 1924 of the Grand Jury, that during that October term, 1924, there were seventeen cases tried in nineteen days or vice versa; that this man could not be brought to book at that time, but he changed attorneys in the month of December; that the new Attorney was notified in that month for his production in January; that in January he could not be produced, and at that time Mr. Jayne came into the County to do his work here, and that thereafter no prosecution could be had because Judge Wilson did not want to have any more trials because he doubted the authority of the Prosecutor to proceed on account of Mr. Jayne's appointment; there is no evidence, therefore, of failure to prosecute in the Juliano, Grande and Sica case; there is no evidence of anything done by Bolitho that is malfeasance or non-feasance in this respect; which motion to direct a verdict in favor of the defendant on the several grounds of the indictment, aforesaid, was denied and an exception allowed to the defendant.

Assignments of Error

88. Upon the trial of said cause the Trial Court permitted an amendment to the Eighth or Fleming count, which was an alteration in substance and created a new indictment, and vitiated the indictment as found by the Grand Jury, and because the amendment was after arraignment and plea and there was no new arraignment and plea, to which Attorney for the defendant objected and the objection was overruled by the Court and an exception allowed to the defendant.

89. Upon the trial of said cause in the argument of Mr. Jayne, The Prosecuting Attorney, in the motion for the direction of a verdict at the close of the entire case, and in his statements to the Court in the presence of the jury mis-quoted the evidence and said Prosecutor made uncalled for and unwarranted statements and remarks, which were not proper comments on the evidence in the case, and which were highly prejudicial to the defendant and which influenced the Jury in arriving at its verdict and aroused prejudice against defendant and prevented him from having a fair trial.

90. Upon the trial of said cause the Court charged the Jury as follows:

> "There is some of the evidence that may be said to be applicable to all the counts. I will cite, just for example, one of the last remarks by Mr. Jayne, as he closed: the statement in the evidence that, when the Elisor investigation was pending or about to take place, the defendant said to



Assignments of Error

> Mutarella and Marinaro that they were the crux of the situation and if they kept quiet it would be all right, or whatever it was in that regard."

to which exception was taken by defendant's Attorney and allowed by the Court.

91. Upon the trial of said cause the Court charged the Jury as follows:

> "The other one is corruption and malfeasance in the processes of justice; for, if the processes of justice, if the action of the courts and the action of public officers connected with the administration of justice are to be fouled and corrupted, no man knows when he is safe.
>
> "We are hearing a great deal these days about the prevalence of crime, and there are probably a hundred reasons why crime is more prevalent than it was. One of these reasons, in some cases, may be that the conduct of the public administration of justice is not as it should be; so that if the fountains of justice are to be stopped, the fate of the public is hard indeed.
>
> "And so I mention this fact, because I want to impress upon you the importance of bringing to this case all the intelligence and all the determination and all the virtue that is in you to decide it rightly."

to which exception was taken by defendant's Attorney and allowed by the Court.

92. Upon the trial of said cause the Court charged the jury as follows:

"Now then, having such an official, it was inevitable, as in all other cases where there is a certain public officer charged with the administration of a certain public duty, that to his office should be drawn all the criminal complaints, and that he would become and remain the public official to whom the public would look, the State would look, grand jury would look, in large measure, and the judges of the local courts would look, for advice and suggestion what to do in criminal matters. It is, of course, true that the local court is in no legal sense controlled by the Prosecutor, and it is perfectly true that the grand jury, as I have often told grand juries, both from this bench and others is not controlled by what the Prosecutor may choose to lay before it. But, as a practical matter, you can see how true it must be, that where there is a Prosecutor of the Pleas charged with that duty, and to whom all these things are referable, it would necessarily follow that both courts and grand juries are likely to depend, in some measure, at least, on what that Prosecutor says to them. And, following out that line of thought, you will see that it is perfectly practicable for a wicked or corrupt Prosecutor, should there be one, to gain for himself great material advantages should he choose to accept enclunents for recommendations to the



court as to what to do in the way of sentence; statements to the court, true or false, that there is no evidence at hand, and that he did not think a conviction could be sustained; statements to the grand jury, true or false, that there was no evidence on which the grand jury could indict. You see what a tremendous power for good or evil is placed in the hands of one man by the statute, and how important it is that the men selected to perform the duties of this responsible office should be one who can be depended on to perform them honestly and fearlessly. Now, the claim in this case is that this man did not do that thing; and the various counts of the indictment (perhaps not all of them, but certainly some of them) are to the effect that, instead of doing the duties of his office, instead of prosecuting cases of crime, he prostituted that office and accepted bribes to let the criminals either go scot free or to let them get off with less punishment than they deserved. That is the general spirit of this indictment, as far as I can see."

to which exception was taken by defendant's Attorney and allowed by the Court.

93. Upon the trial of said cause, the Court charged the jury as follows:

"The first count is that on the 29th day of May, 1923, the defendant was Prosecutor, and there were pending in the Quar-

ter Sessions two indictments, one against Bogden, Arkie and Sica, charging larceny and receiving; and an indictment against Kisik, Hudock and Korvach, found in 1922, charging attempted robbery and an attempt to obtain property by false pretenses, and that Bolitho, the defendant, in order to pervert and obstruct justice, and to enable Haydock or Hudock to escape punishment on this 29th day of May took a bribe of $300 from Hudock, and, in consideration thereof, did refrain from prosecuting the indictment, whereby Hudock escaped punishment; and also did mislead and deceive the Court of Quarter Sessions respecting the facts of the offenses charged in these indictments in order that the Court might be thereby induced to impose a less onerous sentence than it would have done if the facts had been correctly presented. That is my abstract of the indictment. Of course, you will have the document itself; it is very long; it is verbose as those documents usually are and, as I regret to say, under our criminal law, they generally have to be, especially where something special of this kind out of the ordinary run is charged. But that I understand to be about what the indictment charges. And some of the elements on this have been told to you by John Mills and Mr. Orr, who tells you about the records in the office, and about the $500.00 sentence; and you have the story of Orr and other witnesses about the



time at which this thing was done, and that Judge Wilson was sitting in the back room about half-past four or five, and that Hudock was hustled or smuggled up the back stairs and into the court room and smuggled out again, and took a taxi-cab to Newark, and all that. I gave that to you simply as a reminder of what these witnesses said in a general way.

"As to the bribe, I think the testimony was substantially to the effect that Marinaro went to the Prosecutor to fix the thing, and the Prosecutor told him to seek Hubert and that, in accordance with what the Prosecutor told him, he gave the $300, to Hubert, and that is the last that was seen of it. Of course, Hubert, denies getting the money, and Mr. Bolitho denies all connection with any money in the case, and claims that the matter was fully and fairly presented, and that he did everything that was possible under the circumstances. It seems that the Rockaway case (whatever happened to the Stirling case) went no farther than the forfeiture of bail, and you have heard what Mr. Jayne had to say on that subject. Now, that is the first count."

to which exception was taken by defendant's Attorney and allowed by the Court.

94. Upon the trial of said cause, the Court charged the jury as follows:

"We skip now to the fifth, for the next three were eliminated, and this we will call

the Dolimpio count. That charges that Mr. Bolitho was Prosecutor on the 10th of September, 1924, and that his duty as Prosecutor was the same as in the first count, and that he knew Dolimpio had twice been complained of for violations of the liquor act, once before a police justice in Dover, and that the Prosecutor knew, therefore, that Dolimpio was guilty of a misdemeanor, and ought to have prosecuted him; but, knowing these premises, and in disregard of his duty, he did on this 10th day of September, exact, take and receive from Dolimpio $400.00 as a bribe for suppressing the evidence and not to prosecute, and that on the 10th day of September, and from thence hitherto, the Prosecutor has wilfully, corruptly and knowingly failed and neglected and refused to prosecute or to present the evidence to the Grand Jury.

"Now under that indictment, under that count, you have this: This is the count, I think, in which the story is that Dolimpio had $200.00 and was told to go out and get two hundred more; and another witness says that he had $300 and was told to get two hundred more. However that may be, the exact amount is not material, and, of course, you are at liberty to criticize the discrepancy in these stories in any way that commends itself to your good judgment. This is a case, also, in which those three affidavits, that triple affidavit was made in regard to the wine being vinegar. Mutarella says that he saw the money paid to Mr. Bolitho.



"Now Mr. Heller, the foreman of the Grand Jury said that the case was considered by the committee on business, and that Mr. Bolitho was asked whether there was any evidence on it;—you remember what the testimony was, I do not very well—at all events, there was not any testimony put in before the Grand Jury or before the committee, and consequently, the Grand Jury threw out the complaint.

"I do not know, of course, what the facts are, and you will have to find out. But that shows a case where, if the Prosecutor was corrupt and did choose to kill the prosecution it was peculiarly, you see, within his power to do so. The Grand Jury was dependent on him to say whether there was any evidence in the case, and if he had evidence and said there was none, why, the Grand Jury had no particular method in which they could compel him to produce it."

to which exception was taken by defendant's Attorney and allowed by the Court.

95. Upon the trial of said cause, the Court charged the jury as follows:

"Then you come to the sixth count, the Mingardi case, and this is, that on the 14th day of May, 1924, Bolitho was Prosecutor, and knew that Mingardi had been complained of for a violation of the prohibition act, and it was the duty of Mr. Bolitho to prosecute him, but that in perversion of

his duty, and to enable Mingardi to escape, he took from Marinaro and Mutarella $200.00 as a consideration for suppressing the prosecution, and from that day to this has knowingly failed, neglected and refused to prosecute. In this case there seem to have been papers for arrest, and a search warrant, and they seem to have been,—to judge from the testimony, although this will all be for you to find—brought from Mr. Bolitho's office by Hubert. Mingardi said he was arrested in February and gave bail and he moved away, and then he was arrested again and taken to Morristown, probably on complaint of leaving the county, as testified to by Recorder Thomas and by Max Reidler; and then he was seen in jail by Dan Marinaro and by Patsy Mutarella and that he went to see Mr. Bolitho, who got him to sign some paper, since which time he has never heard of the case. His wife was sworn, and she was told, she said, that $500 was needed, and she had to go out through the country and get this money together in various places from various people. Mutarella testified, I think, that he saw $250 of this given to Mr. Bolitho. And there is a curious piece of evidence that Mrs. Mingardi was asked to make an affidavit that the wine was vinegar and would not do it. The records show nothing but two recognizances and an exoneretur on one."



to which exception was taken by defendant's Attorney and allowed by the Court.

96. Upon the trial of said cause, the Court charged the jury as follows:

> "Now, the seventh count; and as to that, I do not want to say much after the discussion of it between counsel. That is the case in which Juliano was involved. That is the case in which it is claimed that $900.00 was raised, and Mutarella said that he also put up another hundred, and that all the money came back because, as a matter of fact, these men were indicted afterwards, and that the money that was put up was for the purpose of avoiding an indictment. Now, of course, it would make no difference, even although an indictment was afterwards found. The malfeasance would be there if it be true that the Prosecutor received a bribe for the purpose of averting an indictment. The mere fact that an indictment was found is not going to change the situation as to the commission of the crime in the first place."

to which exception was taken by defendant's Attorney and allowed by the Court.

97. Upon the trial of said cause, the Court charged the jury as follows:

> "The charge is, substantially, that Mr. Bolitho knew that Florence Rice was selling liquor in violation of the law, and that

he did directly and indirectly solicit and propose to receive from her certain goods and chattels, namely, two cases with bottles containing whiskey and intoxicating liquor as a gift, gratuity and reward for Bolitho to prostitute and betray the duties of his office, and to refrain from arresting, prosecuting and convicting said Florence Rice, and to suffer and permit her to violate the law. I say it is curious because the evidence on both sides seems to be in accord except on one point of the case. Mrs. Rice, you remember, was sworn, and she said that Mr. Bolitho and—was it Hubert? I think it was Hubert—came into her place. She started out with sandwiches and ended up with drinks. And she said, as I recollect her testimony, that they had some whiskey to drink there, and that Mr. Bolitho expressed his appreciation of the whiskey as being very good whiskey, and that she asked him whether he would like to have a little more of it, to which he assented, and that, by her direction, a case or two cases, of it were placed in the automobile in which Mr. Bolitho had come there with Mr. Hubert and were taken away in that car. As I understood Mr. Bolitho on the stand, he said very much the same thing. I understood him to say—although this, of course, is for you—that he did have some whiskey to drink there; I do not think he denied that he expressed his approval of the whiskey; he either said, or did not deny, as I recollect it, that Mrs.



Rice had offered him some more of it, and that he had agreed to take it. What he did say was that he had never seen that whiskey since, that he did not get it. But there was a preliminary transaction, if I heard the evidence correctly and have remembered it correctly, agreed to by both parties to it.

"Now, it is said that there were no promises, no solicitations, no agreements based on the whiskey. Well, probably not in words. I do not say there was bribery in the case. What I am saying is that there might have been. What do we understand happens ordinarily in a case where bribery is to be committed. Do the parties get together and haggle over a table as to how much a bribe shall be, and does the briber give the other party a check on the bank and ask for a receipt and is there any agreement, written or unwritten, as to what is to be done in consideration of the bribe? So I do not think that as plain, ordinary citizens we expect such a thing as that. A bribe just as often as not, is given by slipping a one hundred dollar bill into the hand or the vest pocket of the other party and saying nothing about it. The other party may not take any notice of it at the time. Now, why should Mrs. Rice have asked Mr. Bolitho, if she did, whether he would like a little more? Why, of course, Mrs. Rice knew, and she said she did, that he was the Prosecutor of the

Pleas; that he was in her place where she was dispensing liquor contrary to law, and if she could get him to accept two cases of liquor for himself, wouldn't she have him just about where she wanted him? Wouldn't she be reasonably sure that it would be to his interest to do as little as possible towards prosecuting her? It is said that he did prosecute her. Yes, he did so says the testimony; so he said; at least, he had her raided. He had her raided after, not before, the Federal authorities had made a raid and had padlocked the place. Then he said he suspected or heard that liquor was still being sold there, notwithstanding the padlock, and had another raid made. He may have, and may not; I do not think it is very material whether he did or not, although you may. But transactions of that kind are not usually mere little acts of politeness and hospitality between friends. Could there have been anything in the conduct and expression of the parties to indicate to Mrs. Rice that this would be a good thing to do?"

to which exception was taken by defendant's Attorney and allowed by the Court.

98. Upon the trial of said cause, the Court charged the jury as follows:

"You may find, of course, upon that testimony, that Bolitho was guilty of malfeasance in office in that case. There seems



to be evidence to sustain it, if you are so disposed to find."

to which exception was taken by defendant's Attorney and allowed by the Court.

99. Upon the trial of said cause the Court charged the jury as follows:

"I have gone over these matters in some little detail so as to keep them clear in your minds, and I am going to ask you not to return a verdict in writing, but I am going to ask you to return a specific verdict on each count of this indictment which remains for your consideration, and I have put them down on a piece of paper with a little formula which can be read by the Foreman when the jury delivers its verdict. The formula is about like this: On the first (or Hudock) count, we find the defendant—then, you will say, of course, guilty or not guilty as the case may be, according to your finding. On the fifth (or Dolimpio) count, we find the defendant guilty, or not guilty, as the case may be. And so on, rendering a verdict on each count separately. That, I think, will be given to the Foreman for convenience so that you will know what these various counts are that are before you for your consideration, and so that you can readily identify them and be reminded of the substance of the count by the names of the various parties who are mentioned therein."

to which exception was taken by defendant's Attorney and allowed by the Court.

100. Upon the trial of said cause the Court charged the jury as follows:

> "If people commit crimes, the law does not permit or consider that they should be allowed to escape punishment merely because they happen to have families. And as is so often said in courts of justice and outside of them, this question of the families, and all that, is one that criminals ought to consider before they commit the crime."

to which exception was taken by defendant's Attorney and allowed by the Court.

101. Upon the trial of said cause the Court charged the jury as follows:

> "There has also been a good deal said in the case about the witnesses, or some of them, for the State being not credible as witnesses, unreliable, and that their testimony should not be received, because they are, let us say, of foreign extraction, or specially because they have themselves admitted that they had been guilty of criminal practices. Of course, the jury will have to pass upon their credibility and it will have to pass upon the probability of the stories that they tell and upon the value of their evidence in every way. But the Court can only caution you that in an



> indictment of this kind, charging an offense of this kind, every count of which, I think, with perhaps one or two exceptions, but, I think, without any exceptions, where so many of the counts charge what really amounts to a criminal conspiracy between the Prosecutor and the other parties to obstruct and defeat the processes of justice, how is the State ever going to prove a case except by the testimony of one or more of the co-conspirators or by the confession of the defendant indicted if it can get one, or, let us say, by the fortunate circumstance, which does not seem to have existed in any of the cases now before you, of detectives having a dictaphone rigged up where the conspiracy was formed and hearing its actual formation over the dictaphone? Now, you are all familiar with the old idea of State's evidence, where one party indicted jointly with another, or by a separate indictment, turning State's evidence; in other words, the State must rely, and it cannot help relying, upon the testimony of such men as these. And there is, of course, a consideration with regard to, let us say, Marinaro, that his very testimony on the witness stand here is an admission on his own part that he has been guilty of a grievous crime, and it is testimony that he was not obliged by law to give. So that, placing that value you choose in your discretion upon his testimony, it is not testimony that should be in the first instance utterly disregarded

merely because it is evident that the witnesses are persons of criminal instincts and impulses and criminal acts."

to which exception was taken by defendant's Attorney and allowed by the Court.

102. Upon the trial of said cause, the Court charged the jury as follows:

"Reasonable doubt is something that is practically incapable of definition. Ladies and Gentlemen; but as I recollect the language of our Court of Appeals, it may be said to exist in a case where the jury, after a careful examination and consideration of all the evidence, feel that they cannot say that they have an abiding conviction to a moral certainty of the guilt of the accused."

to which exception was taken by defendant's Attorney and allowed by the Court.

103. Upon the trial of said cause, the Court was requested by defendant's Attorney to charge as follows:

"Malfeasance is defined in 25 Cyc., Page 1666, as follows: 'Evil doing; ill conduct; the doing of what one ought not to do; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful, the doing of an act which a person ought not to do at all; the unjust performance of some act which the party had no right, or which he had contracted not to do.'"



which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

103. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

"The authorities all agree that acts done accidentally or allowed to be done by inadvertence or through negligence are not in a legal sense, wilful; there must be proof beyond a reasonable doubt that such acts were done, not only by misconduct, but by wilful conduct."

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

104. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

"The law provides that it shall be the duty of every Sheriff, Constable, Police Officer, members of the State Constabulary and other officers to use all due diligence to detect violations of the "Prohibition Enforcement Act" and therefor to make complaint before a Magistrate, and that when a Magistrate issues a search warrant on such complaint it shall be directed to any officer authorized to serve the same, and that such search warrant, may, in all cases, be served by any of the of-

ficers mentioned therein, but no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. If you find, from the evidence, that Stewart Bettons, had in his possession a search warrant directed to him to be served against Charles Fleming, the Court charges you that it was the duty of said Stewart Bettons to serve the said search warrant, as directed therein, it was not the duty of defendant to serve the said search warrant."

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

105. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

" 'The Prohibition Enforcement Act' of 1922, which is known as the Hobart Act, provides that 'If any Prosecutor of the Pleas shall be notified, in writing, by any officer or other person of any violation of any of the provisions of this Act, and such notification shall contain the names and addresses of witnesses, it shall be the duty of said Prosecutor to diligently inquire into the facts of such alleged violation and for that purpose such Prosecutor is hereby authorized to issue subpoenas for such persons as he shall have reason to believe have any information concerning, or knowledge of, such alleged violation, to appear before him at a time and place named, then and there to testify under oath concerning any knowledge such witnesses may have of any violation of any of the provisions of this act; and the testimony of any such witness may be reduced to writing and he shall in the discretion of such Prosecutor, be required to sign same. If the testimony shall disclose that any violation of this act has been committed, it shall be the duty of the Prosecutor to make complaint forthwith and to apply for a warrant to arrest the person complained against and bring him before a Magistrate for a preliminary hearing on such complaint.' The Court charges you that before you can convict defendant of wilful refusal or neglect to proceed against the persons charged in this indictment with having violated the 'Prohibition Enforcement Act' you must find from the evidence in the case, beyond a reasonable doubt, that defendant had received notification in writing from some officer or other person of the violation of the Act alleged in this indictment and that such notification contained the names and addresses of witnesses, and that after said defendant had received such notification he refused or neglected to proceed against the party complained against, as having violated the 'Prohibition Enforcement Act.' If this does not appear in the case to your satisfaction, beyond a reasonable doubt, the defendant is entitled to an acquittal upon

the allegations in this indictment charging him with malfeasance or refusal or neglect to enforce the said 'Prohibition Enforcement Act.' ''

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

106. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

"The allegations in this indictment charging defendant with malfeasance with reference to the Florence Rice transaction, allege as the overt act, that defendant solicited from said Florence Rice a certain quantity of liquor, and the Court charges you that a solicitation in a legal sense is not an attempt to commit a crime and that it is not until something has been done, which may be called an overt act, that a crime has been committed; that there must be a physical act as contradistinguished from a verbal declaration; that there must be a step taken toward the actual commission of the offense and a mere effort by persuasion to produce the condition of mind essential to the commission of the offense, is not an overt act. If it has not been proved to you by all of the evidence in the case, beyond a reasonable doubt, that defendant did more than merely solicit Florence Rice to deliver to him certain liquor, it is your duty to acquit the defend-



ant of the allegations contained in the count in the indictment relating to said Florence Rice.''

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

107. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

"The legal presumptions are that defendant, Bolitho, did not commit any of the criminal acts alleged in the counts of this indictment, and that he discharged his duty, as required of him by law, with reference to the duties alleged in the counts of this indictment that it was incumbent upon him to discharge in the proper legal manner, and that presumption stands with defendant until it is overcome by evidence to your satisfaction beyond a reasonable doubt."

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

108. Upon the trial of said cause the Court was requested by defendant's Attorney to charge as follows:

"Public officers, acting officially, are presumed to have done their duty until the contrary appears, and in this case it must appear to your satisfaction, from all of the

evidence in the case, beyond a reasonable doubt, and if it does not so appear it is your duty to acquit defendant."

which the Court refused to charge, to which refusal exception was taken by defendant's Attorney and allowed by the Court.

109. Upon the trial of said cause the Jury did not return a verdict which was the verdict of the jury, but it was a verdict submitted to it by the Court upon a typewritten sheet, prepared by the Trial Court, and upon which the Jury merely crossed out certain words, and it was not a verdict found by the Jury after its deliberation; the finding and return of such a verdict being contrary to due process of law and the preparation of said paper and the delivery of the same to the Foremen of the Jury, before the Jury retired by the Trial Court, was an abuse of discretion and highly prejudicial to defendant.

110. Upon the trial of said cause on the day of sentence Attorney for defendant made a motion in arrest of judgment on the following grounds:

"First: Because the grand jury which found the indictment was neither drawn, selected nor impanelled according to the provisions of the Chancellor-Sheriff Jury act of 1913 which was the adoption by the Legislature of a method for drawing and selecting the grand jury, and a grand jury drawn, selected and impanelled by any other method was not legally organized, and the indictment found by it is void.



Second: Because the elisors who drew and selected the Elisor Grand Jury were not qualified to draw a grand jury, Joshua R. Salmon, being a counsellor at law of the State of New Jersey and Victor Wiss not being a citizen.

Third Ground: Because Donald J. Masterton was an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment and when the indictment was found, and the indictment for that reason is void.

Fourth Ground: Because the Honorable Wilfred Jayne, Jr., not being the Prosecutor of the Pleas of the County of Morris, and not having been legally appointed and qualified as Attorney General or as an assistant Attorney General of the State of New Jersey, and not having taken the official oath as such, was also an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment, and when the indictment was found, and the indictment for that reason is void.

Fifth Ground: Because in the challenge to the array of the petit jurors, it was alleged that the Sheriff had been disqualified from drawing juries that the Sheriff was interested in the outcome of the case against this defendant, and that the mem-

bers of the panel of said petit jury were biased and prejudiced against this defendant; and these allegations were admitted by the demurrer to the challenge filed by the State; admittedly, the defendant did not have a trial according to due process of law by a fair and impartial jury, but by a jury which was biased and prejudiced.

The following motions, if your Honor please, are motions to the face of the indictment and are included and made a part of this motion in arrest of judgment:

As to count one of indictment number 49; Count one was ambiguous and duplicitous and contradictory in its terms. It charges that the Prosecutor accepted a bribe of $300, and, in consideration of said bribe, he did three contrary things, to wit: first, he refrained from prosecuting Hudock with diligence, energy, ability and understanding required of him; second, so managed and disposed of indictments that Hudock escaped just punishment which, according to law and justice, should have been imposed; third, that this defendant misled and deceived the Court of Quarter Sessions respecting true facts and evidence of offenses pending against Hudock in the said indictments, in order to induce the Court to give him a less onerous sentence.

The next ground: The indictment is bad because, with reference to count five of the indictment, it states conclusions of fact and



of law, and does act sufficiently allege a crime. It charges that Mr. Bolitho knew that on two occasions Dolimpio had been complained of before a Justice of the Peace and that Dolimpio was guilty of a misdemeanor. The mere complaint before a Justice of the Peace was not sufficient. How could Mr. Bolitho know that this defendant was guilty?

Then it also alleges that it was Mr. Bolitho's duty to prosecute; and also charges that he perverted his trust and took $400 for suppressing the aforesaid offense, and from presenting evidence to the grand jury, and has suppressed and concealed complaint. The mere complaint before a justice would not have been sufficient. The justice might have dismissed it, and it does not allege that he was held for the grand jury.

As to count six, this count was bad because it states conclusions of law and of fact, and does not sufficiently allege a crime. It charges Mr. Bolitho, as Prosecutor, knew that Mingardi had been complained of in due form of law before a Justice of the Peace for a violation of the prohibition enforcement act, and that he was guilty of a misdemeanor, and that it then became the duty of Mr. Bolitho to prosecute. This is not so unless shown from the complaint that it was not dismissed. And that he took $200 to suppress and not prosecute and did suppress.

As to count seven, this count in the indictment was bad because it does not sufficiently allege a crime. It says that he took $600 to refrain from prosecuting Grande and Juliano. It does not allege that he did not prosecute these cases.

As to count ten of the indictment. This count is bad because it states conclusions of law and fact, and does not sufficiently allege a crime. It says that Mr. Bolitho had personal knowledge that Rice kept a disorderly house, and took two cases of liquor to enable her to escape arrest.

And the concluding ground, your Honor, is that the counts in the indictment fail to allege that this defendant did not prosecute any of the persons mentioned in the indictments within the time required by law.

which motion for arrest of judgment was overruled and denied by the Court, to which an exception was taken by Attorney for Defendant and allowed by the Court.

111. Because Anthony Cattano was an unauthorized person in the Grand Jury room at the time when the indictment against plaintiff-in-error was found by the said Grand Jury; the regular authorized interpreter being Domenick Bontempo, and said Anthony Cattano testified in the said case that he attended before the Grand Jury and interpreted the witnesses' testimony with reference to the Italian witnesses, who were sworn before the said Elisor Grand Jury. The attendance of the said interpreter before the said Grand Jury was unauthorized and amounted to the finding of an indictment contrary to due process of law, namely, the indictment on which the plaintiff-in-error was tried in this case.



And the plaintiff-in-error, James H. Bolitho, prays that the judgment aforesaid be reversed, and altogether held for nothing, and that he may be restored to all things he has lost by reason of the said judgment.

JOHN A. MATTHEWS,
Attorney for Plaintiff-in-error.

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**Specification of Causes.**

NEW JERSEY SUPREME COURT

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| STATE OF NEW JERSEY,<br>Defendant-in-error,<br><br>vs.<br><br>JAMES H. BOLITHO,<br>Plaintiff-in-error. | On Writ of Error. |

James H. Bolitho, the plaintiff-in-error, by John A. Matthews, his Attorney, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

1. Because the Court erroneously over-ruled the challenge made by defendant to Honorable

Charles W. Parker, Justice of the Supreme Court of Judicature, of the State of New Jersey, holding the Morris County Court of Oyer and Terminer and sitting as the trial Judge in said cause.

2. Because the Court erroneously over-ruled defendant's challenge to the array of petit jurors.

3. Because the Court erroneously denied writs of certiorari to defendant to review the indictment in this cause.

4. Because the Court erroneously refused to quash the indictment upon the motion made by defendant's Attorney in defendant's behalf.

5. Because the Elisor Grand Jury was selected and impaneled without authority in law and the indictment found by the said Grand Jury in this case was contrary to due process of law and the Court erroneously refused to quash the indictment.

6. Because no formal complaint under oath was filed against defendant according to the practice laid down by law in New Jersey either before the regular Grand Jury for the January term of the Morris County Court of Oyer and Terminer for the year 1925, was selected and impaneled or afterwards, or at any other time, nor was any complaint against defendant, containing a charge of substantive facts necessary to constitute an offense, ever made and filed, which proceedings against defendant were without due process of law, and because the Court erroneously refused to quash the indictment for such reason.



7. Because the Court erroneously refused to quash the indictment for the reason that the challenge to the Judge in said cause, the demurrer filed by the State and the plea of said Judge, thereto, admitted that an unauthorized person was in the Grand Jury room during the sessions of the said Elisor Grand Jury which found the indictment in this cause and said indictment should have been quashed for that reason on motion of defendant made by his Attorney.

8. Because the Court should have quashed the indictment, because Wilfred Jayne, Jr., was Prosecutor of the Pleas of Ocean County, in the State of New Jersey, at the time when he attended the sessions of the said Elisor Grand Jury for the County of Morris and at the time when he presented the evidence against defendant to said Elisor Grand Jury, and when the said Elisor Grand Jury found the indictment in this cause against defendant, and he was not an Assistant Attorney General of the State of New Jersey, and could not legally be such as the offices of the Attorney General and Prosecutor of the Pleas are incompatible with each other and can not be held by one and the same person at one and the same time, and the presence of said Wilfred Jayne, Jr., in the Grand Jury room at the sessions of the said Elisor Grand Jury, which found said indictment, was the presence of an unauthorized person before said Elisor Grand Jury and the proceedings were unauthorized and improper and the indictment so found is void.

9. Because the Court should have quashed the indictment, because said J. Donald Masterton was

an unauthorized person before said Elisor Grand Jury, during the sessions thereof, at which said indictment was found, and the evidence against the defendant submitted, and the proceedings of said Elisor Grand Jury while said J. Donald Masterton was present, were unauthorized and improper, and the indictment so found is void.

10. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, D. A. Marinaro, upon direct-examination, to wit:

"Q. Now, was there any reason that the defendant, Hudock, should be brought in—?"

11. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Stewart Bettons, upon direct-examination, to wit:

"Q. Did you make some investigation about Fleming's hotel at Chester?"

12. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Stewart Bettons, upon direct-examination, to wit:

"Q. Well, what did you do?"

13. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Do you know Charles Fleming?"



14. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Yes. Did you ever transact any business there?"

15. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Yes, what else? A. Why before we left on the second occasion—which occasion are you talking about, the first night or the second night? Q. On any of these occasions."

16. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Well, is there any hotel in Chester known to you and to the public as Fleming's Hotel?"

17. Because the Court erroneously permitted to be answered the following question asked by the Court of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Very well, and who were the parties or party—that ostensibly kept that hotel and ran it?"

18. Because the Court erroneously permitted to be answered the following question asked by

the Court of the witness, Warren Eagles, upon direct-examination to wit:

"Q. Well, you did business with them, with these two, didn't you?"

19. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Stewart Bettons, upon direct-examination, to wit:

"Q. Now, I ask you again if you made some investigation of the hotel which now seems to be known as Fleming's Hotel at Chester?"

20. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, C. Mingardi, upon direct-examination, to wit:

"Q. How much wine, if you know, did they take away from your house—the officers take away from your house, when they searched it?"

21. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Joseph Juliano, upon cross-examination, to wit:

"Q. Are you willing to testify as to what relations you had with Danny Marinaro and Patsy Mutarella in these cases in Morris County?"

22. Because the Court erroneously refused to permit to be answered the following question



asked by the defendant's Attorney of the witness, D. Marinaro, upon direct-examination, to wit:

"Q. Yes. And that is not the only money you have used of your clients, is it?"

23. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witness, D. Marinaro, upon cross-examination, to wit:

"Q. When did you give that back?"

24. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witness, D. Marinaro, upon cross-examination, to wit:

"Q. Did you have any of Mrs. Fanshaw's money?"

25. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Joseph Juliano, upon direct-examination, to wit:

"Q. Do you know anything about what was done with the money that you turned over in the office of Danny Marinaro?"

26. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, William J. Ryan, upon direct-examination, to wit:

"Q. What additional liquor?"

27. Because the Court erroneously permitted to be answered the following question, asked by

the Prosecutor of the witness, William Hegarty, upon re-direct-examination, to wit:

"Q. Well, after Mr. Bolitho was appointed Prosecutor of the County and you assistant prosecutor, particularly during the early part of the term, was there any lawyer who has as many criminal cases defending the defendants, criminal business with the Prosecutor's office, as Daniel Marinaro?"

28. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Richard Doney, upon direct-examination, to wit:

"Q. Have you drank with him there?"

29. Because the Court erroneously permitted to be answered the following question asked of the witness, Richard Doney, by the Prosecutor, upon direct-examination, to wit:

"Q. Was he served with anything there?"

30. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Richard Doney, upon direct-examination, to wit:

"Q. More than one drink?"

31. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Richard Doney, upon direct-examination, to wit:

"Q. To whom?"



32. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Richard Doney, upon direct-examination, to wit:

"Q. I asked you, to whom?"

33. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Richard Doney, upon direct-examination, to wit:

"Q. Did you have some?"

34. Because the Court erroneously refused to direct a verdict in favor of defendant at the close of the State's case and at the close of the entire case, although a motion was made for the same in behalf of the defendant.

35. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the Witness, James H. Bolitho, upon direct-examination, to wit:

"Q. And this is the letter that you received in reference to the Hudock case?"

36. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, James H. Bolitho, upon cross-examination, to wit:

"Q. Now, it was after that, you wrote all these letters, copies of which were put in evidence?"

37. Because the Court erroneously refused to permit to be answered the following question

asked by the defendant's Attorney of the witness, James H. Bolitho, upon re-direct-examination, to wit:

"Q. This Rathbun letter was an attempt to get Bogden out of the difficulty, wasn't it?"

38. Because the Court erroneously refused to permit to be answered the following question, asked by the defendant's Attorney of the witness, James H. Bolitho, upon re-direct-examination, to wit:

"Q. What was the custom, Mr. Bolitho, with reference to raids made by the Sheriff as to the evidence and as to the papers in the case, during your regime?"

39. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. Now, as a matter of fact, there were papers that you issued over your signature that you had no knowledge of the issuance of?"

40. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. Well, in other words—strike that out in other words, you indulged in the practice of signing your name to blank search warrants?"



41. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. You were testifying here as to what cases—particularly this case in 1923; now, you say you do not remember the important matter of whether or not you signed your name to blank papers, is that what you say?"

42. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor, of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. You know what I mean by blank complaints, don't you?"

43. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. I mean the printed forms of complaints—?"

44. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Harry H. Schroer, upon cross-examination, to wit:

"Q. —and the printed form of warrant?"

45. Because the Court erroneously permitted to be answered the following question asked by

the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. Now, answer it?"

46. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. Did you not deliver, or did you not sign—put it that way—in the Prosecutor's office when Prosecutor Bolitho was Prosecutor, these complaints and warrants in blank for use without having complainants brought before you to swear to the complaints?"

47. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. But you do not here deny that you did it, do you?"

48. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. I say, you do not deny it, do you?

49. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Henry H. Schroer, upon cross-examination, to wit:

"Q. Well, what do you say to that? Do you deny it or don't you?"



50. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Joseph Thomas, upon direct-examination, to wit:

"Q. Did you understand it was a crime for a man who was under bail to go out of one County into another in the State of New Jersey?"

51. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witness, Raymond C. Matthews, upon re-direct-examination, to wit:

"Q. And wasn't that an allegation that he had made against the Chief of Police of wrongdoing that was untrue?"

52. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, James H. Bolitho, upon cross-examination, to wit:

"Q. If you had suppressed this complaint as Prosecutor there was, in fact, 48 gallons of wine found, it would have been to your interest to have had an affidavit to the effect that it was vinegar instead of wine, wouldn't it?"

53. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, James H. Bolitho, upon cross-examination, to wit:

"Q. You would have been vitally interested, would you not?"

54. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, James H. Bolitho, upon cross-examination, to wit:

"Q. Now your idea is, the men did wrong, is that your idea?"

55. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witnss, James H. Bolitho, upon re-direct-examination, to wit:

"Q. Now why didn't Judge Wilson try any cases, Mr. Bolitho? Tell us."

56. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. Where was he?"

57. Because the Court erroneously permitted to be answered the following question, asked by the Prosecutor of the witness, Warren Eagles, upon direct-examination, to wit:

"Q. What business did you have there?"

58. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witness, James H. Bolitho, upon re-direct-examination, to wit:

"Q. Yes. And that card index was made in what manner?"



59. Because the Court erroneously refused to permit to be answered the following question asked by the defendant's Attorney of the witness, Raymond C. Matthews, upon re-direct-examination, to wit:

"Q. And wasn't that an allegation that he had made against the Chief of Police of wrong doing, that was untrue?"

60. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, Antonio Mingardi, upon direct-examination, to wit:

"Q. Did anyone telephone in your presence after you returned with the money?"

61. Because the Court erroneously permitted to be answered the following question asked by the Prosecutor of the witness, William A. Hegarty, upon direct-examination, to wit:

"Q. Well, was it the usual practice for Mr. Marinaro or Mr. Mutarella, or both, as the occasion might be, to go in to a room, another room, different from the one you were in?"

62. Because the established principles of Criminal Procedure in the State of New Jersey were not followed in this cause, but were departed from and a new unauthorized system of Criminal Procedure inaugurated, which constitutes a denial of due process of law to defendant.

63. Because the venire facias for the said Elisor Grand Jury which found the indictment in this cause, was issued while the regular Grand

Jury, selected and impaneled for the January term of the Morris Oyer and Terminer for the year, 1925, and was recognized as the regular Grand Jury of the County of Morris, remained undischarged and said venire was issued before any proceedings had been taken to set aside said regular Grand Jury, and said venire, was therefore, illegal, and the said Elisor Grand Jury, not a proper Grand Jury, and such procedure and the indictment in this cause amounted to a denial of due process of law to defendant.

64. Because the regular Grand Jury for the January term of the Morris Oyer and Terminer for the year, 1925, had been duly returned, charged and sworn, had not, been set aside, and was legally entitled to serve as the Grand Jury of the County of Morris in said Court until the end of the January term of said Court, and there was no authority in law for issuing a venire to any person or persons to select a new Grand Jury or any Elisor Grand Jury, and the indictment in this cause, found by a new or Elisor Grand Jury, constituted a denial of due process of law to defendant.

65. Because the finding of said indictment and the trial of defendant on the same was contrary to due process of law, and the verdict against the weight of the evidence.

66. Because the Plaintiff-in-error was not tried according to due process of law.

67. Because the Court erroneously refused to quash the indictment for the following reasons: "Because Wilfred Jayne, Jr., was in the Grand



Jury room at the time the evidence was presented to the Grand Jury, the evidence upon which this indictment was predicated, and that Mr. Jayne's presence in the Grand Jury room was unauthorized and illegal, the ground being that Mr. Jayne was Prosecutor of the County of Ocean and that his appointment as Assistant Attorney General was not according to law, because, the Attorney General is entitled to designate, not appoint, a second Assistant Attorney General, and at the time of the functioning of Mr. Jayne in this County, the Attorney General had all of the assistants, that he was entitled to by law, that they were in existence in the office of Assistant Attorney General, therefore, the Attorney General did not attend in person, nor did he designate one of his Assistant Attorneys General authorized and appointed by law to attend in Morris County; and Mr. Jayne became an unauthorized person in the Grand Jury room."

68. Because the Court erroneously refused to quash the indictment for the following reasons: "(1) Count one is ambiguous, duplicitous and contradictory in terms because it charges the defendant accepted a bribe of $300, and in consideration of the bribe, that he did three contrary things; First, that he refrained from prosecuting Hudock with the diligence, energy, ability and understanding required of him; second, that he so managed and disposed of the indictments that Hudock escaped just punishment which, according to law and justice, should have been imposed on him; third, that he misled and deceived the Court of Quarter Sessions respecting the true

facts and evidence of the offenses pending against Hudock in the said indictment, in order to induce the Court to give him a less onerous sentence; fourth, that said count states a conclusion of law and fact where it says that he enabled Hudock to escape just punishment and that he misled the Court with respect to the true facts and evidence of the charge pending against Hudock in order to induce the Court to give him a less onerous sentence; (2) As to count two, the count is bad because it states a conclusion both of law and of fact and does not sufficiently allege a crime; (3) Count three, we allege is bad because it states also a conclusion of law and fact and does not sufficiently allege a crime; (4) The same motion is made as to count four; (5) Count five is bad, because it states conclusions of law and of fact and does not sufficiently allege a crime; that count charges Bolitho knew that on two occasions one Dolimpio had been complained of before a Justice of the Peace and that Dolimpio was guilty of a misdemeanor; a mere complaint before a Justice of the Peace was not sufficient, and there is an allegation that he knew that he was guilty of misdemeanor and we maintain that is entirely a conclusion; the count says further perverting his trust he took $400.00 for suppressing the aforesaid offense and has suppressed and concealed the complaint, in fact, all through the count it fails to allege anything which would indicate that there had been any obligation on defendant to prosecute; (6) As to Count six, it is bad, because it states conclusions of law and of fact and does not sufficiently charge a crime, it charges that Bolitho knew that Mingardi had been com-



plained of in due form of law before a Justice of the Peace for a violation of the enforcement act, and that Mingardi was guilty of a misdemeanor, and therefore, it became the duty of Bolitho to prosecute him; it does not allege that the complaint was not dismissed; there can not be any knowledge on Bolitho's part that the man was guilty; there is no allegation that the complaint in due form and process had been sent to the Prosecutor's office, or that the steps necessary to put upon the Prosecutor the obligation of acting had been gone through; (7) Count seven is bad, because it does not sufficiently allege a crime; it does not allege that defendant did not prosecute Grande and Juliano, in fact as the count is read through, it would indicate that Grande and Juliano were prosecuted; it simply is an allegation of taking $600 to refrain from prosecuting them and this is an indictment for malfeasance and not for bribery, and it does not allege that defendant did a certain thing, which he should not do, or refrained from doing anything which he should do; (8) Count eight is bad, because it states conclusions of law and fact and does not sufficiently allege a crime; (9) Count nine is bad, because it does not sufficiently allege a crime; (10) Count ten is bad, because it states a conclusion of law and fact and does not sufficiently allege a crime, as it says that defendant had personal konwledge that one Rice kept a disorderly house, where liquor was sold, that he took two cases of liquor to enable this Rice person to escape arrest; it does not allege that Rice did escape arrest or that defendant did anything to assist Rice in escaping arrest; it is a mere allegation that he took a cer-

tain amount of money for the purpose that is not stated and it does not sufficiently allege the crime of malfeasance; (11) Count eleven is bad, because it does not allege a crime."

69. Because the Court erroneously refused to direct a verdict at the close of the State's case in favor of the defendant, upon the following grounds: "(As to count one) For the reason that the State has failed to prove the allegations of the count, which are before the Court, and which alleges that Bolitho accepted money from Marinaro for the purpose of suppressing the prosecution of Hudock, and for the purpose of lessening the penalty which Hudock ought to have gotten, and for the purpose of not bringing Hudock before a Court for trial on the second indictment, and since the allegations are that Bolitho accepted $300, for a specific purpose and there is no evidence in the case to show that Bolitho got $300, for a specific or any purpose and since the evidence fails to show the accomplishment of the alleged promised purposes, the State has failed to prove that count; (As to Count 5) This count alleges that defendant had taken money from Dolimpio for the purpose of suppressing his prosecution; the testimony in the case was given by Mutarella and Dolimpio himself, and is contradictory as to the amount given; the allegation in the count being that this money was given and accepted by the defendant for the purpose of refraining from prosecuting the said Dolimpio and the facts being that the Dolimpio case was carried through to its final conclusion before the Grand Jury and that there was no in-



dictment and it was incumbent upon the State to show that the case was not prosecuted and that it was not presented to the Grand Jury and not dismissed by the Grand Jury; therefore the State has failed to prove the allegations of the count; (As to count six) The State failed to prove the allegations of the count that there was money paid to the defendant and there was a failure to prosecute because of the payment of the money and the State has failed to prove that there was not a termination of said case by dismissal by the Grand Jury; (As to count seven.) The state has failed to prove that defendant was paid any money as alleged in this count or that he failed to prosecute Juliano, Grand and Sica, but, in fact, the evidence produced by the State shows the contrary; there is no evidence in the case with reference to this count that there was any money paid to the defendant in this case or that defendant failed to do his full duty with reference to the defendants, Juliano, Grande and Sica; (As to count 8) There is no evidence before the Court to sustain the allegations of count eight; (As to count ten) The state has failed to prove by any evidence that defendant received anything from Florence Rice for the purpose of suppressing any complaint or allowing her, in the future, to do anything wrong; because her positive testimony is that, gratuitously, she gave to the defendant cases of liquor, but there is nothing in the evidence to sustain the allegations of the count with reference to malfeasance; (As to Count 11) There is not any proof to sustain count eleven.

70. Because the Court erroneously refused to permit to be offered in evidence certain cards, by the Attorney for the Defendant, which were the card index records of the Prosecutor's office for the purpose of showing what disposition had been made of the Mingardi case.

71. Because the Court erroneously permitted an Italian to be sworn in as an interpreter and to interpret the testimony of the witness, Antonio Mingardi, said interpreter not being the regular official Court interpreter of the said Court.

72. Because the Court erroneously refused to permit to be offered in evidence an analysis of liquor made by one Doctor Weiss.

73. Because the Court erroneously examined the witnesses, which was an abuse of discretion and prejudicial to the defendant and of such a character as to tend to discredit witnesses for the defendant and to lend credibility to witnesses for the prosecution and to involve an intimation of opinion on the evidence unfavorable to the defendant.

74. Because the trial Court on the trial of said cause used improper remarks and mis-quoted the evidence which influenced the finding of the jury and were prejudicial to the defendant.

75. Because the trial Court erroneously refused to direct a verdict on the motion made on the following grounds, at the close of the entire case: "(1) As to the Tenth Count; Because the count does not allege a crime and because it is ambiguous and because there was no proof adduced by



the State sustaining the allegations contained in the count; (2) As to the Eighth Count, Because there is no proof in the State's case and a total dis-proof in the defendant's case that warrants the matter going to the Jury under the allegations of this count; (3) As to the Eleventh Count; Because there is no evidence on the part of the State and there is refutation on the part of the defense of any attempted implication of evidence that Smith was ever guilty of anything that should have been prosecuted by Bolitho, and that Bolitho did not do his duty in every respect with reference to Smith; (4) As to the First Count; Because the count is ambiguous and does not allege a crime and it is duplicatus because it charges three things; that Bolitho suppressed the complaint and the evidence; that he co-operated so that Hudock would not be sentenced according to justice as he should have been sentenced; and that he co-operated with Marinaro to prevent the man from being prosecuted, and to have one of the indictments against him *nolle prossed;* that the State has failed to sustain the allegations of this count and on the other hand, the defense has shown that the defendant was not guilty of not doing his duty in that regard, but that he not only had Hudock fined $500, on one of the indictments, but he had his bail forfeited and collected on the other indictment, after Hudock had failed to appear for trial; the evidence also shows that all involved in the Stirling case with Hudock, were fined the same amount as Hudock was, and that Hudock was fined without giving the State the expense of a trial, and there isn't any proof that defendant did anything that would

have been malfeasance in the sense that he co-operated to have this man punished, in a less manner than Justice required; the allegations of the count are that on one occasion Marinaro told Bolitho that he would give him $300, for this purpose, and that one Hubert was given the $300, in an enveolpe, but there is no proof on the part of the State that that money ever went to Bolitho and it is contradicted by the testimony of Hubert and the testimony of Bolitho, and the testimony of the Post Master of Morristown, with reference to the money order; (5) As to the Fifth Count; The direction of a verdict is requested for the reasons cited in the previous motion in reference to that count, and the allegation in that count is that Bolitho was given a sum of money, namely, $400, for the purpose of suppressing a complaint against Dolimpio; the State's proof was that Dolimpio suggested to Bolitho that he would give him $200, and that he was sent out to get $200, more by noon time and that he came back and gave him $400, but that State's proof varied with the testimony of Mutarella, who said Dolimpio gave him $300, and went out and got $200, more and gave to him by noon time, making it $500. The allegation of the count then was that, in consideration of that payment, Bolitho suppressed the Dolimpio complaint; the State had produced no proof of that, but the defendant's proof in answer to it in the person of the foreman of the then Grand Jury, who had a record of the dismissal by the Grand Jury, after it had been presented to the said Grand Jury by the defendant, Bolitho; there is no evidence on the part of the State in the case, of malfeasance on the part of



defendant, with reference to this count, and the uncontradicted evidence of the defendant shows that the defendant did what he was required to by law in the case and presented the Dolimpio case to the Grand Jury, where it was dismissed; (6) As to the Sixth Count; This count charges that at a certain time Bolitho received the sum of $250, from either Mutarella or Marinaro to suppress the complaint against Mingardi, who was charged with the violation of the liquor law, but the evidence of the State through its witness, Mutarella was; "I know I have $250. Danny Marinaro go up to Bolitho's office and give him $250, this I know sure. Then he keep $250; it might be one hundred; it might be five. I do not know, because I never count that money;" but this was not corroborated by Marinaro and evidently Mutarella was not with Marinaro when he says this money was given to Bolitho and furthermore in his testimony, Mutarella, said in answer to the question, "Q. Well, did Mingardi get out of jail then? A. I bailed him out with the $500." This is the only evidence that the State adduced to prove the allegations of this count; the State failed to show that Bolitho was guilty of malfeasance in any sense with reference to the Mingardi case, but the defense produced records, then in the Prosecutor's office, that showed that the Mingardi complaint had been dealt with by the Grand Jury on the very day that Mrs. Mingardi said she had paid the money to Marinaro. The testimony of the defense further showed that Bolitho was in the Grand Jury room that day and the testimony of Hubert was that he had testified before the Grand Jury on that day, with refer-

ence to the Mingardi case, and the records showed that the Mingardi case had been disposed of by that Grand Jury, and that no bill had been found, and the defense produced the identical envelope in which the Mingardi case had been filed in the Prosecutor's office and which showed upon its face the record made by the Prosecutor in the Grand Jury room, with reference to the disposal of the case, namely, that it had been dismissed; none of this evidence on the part of the defense was contradicted by the State and there was no evidence on the part of the State to sustain the count, as aforesaid; (8) AS TO THE SEVENTH COUNT; This count alleges that the defendant received $600, for which he was to see that these men, Juliano, Grande and Sica were not indicted, and we now respeat and reiterate the reasons made as to the dismissal of this count in the beginning, and add that the State has failed to prove the allegations of the count. The State put on the stand, Juliano, himself, and he testified that he was in Marinaro's office and retained Marinaro for three men at $300, a piece, but Marinaro wanted $1000, to take the case; that Mutarella said he would loan them the other $100, and Juliano was asked by the State and asked by the defense on cross-examination, whether or not at any time he had any arrangement, himself, or through his Attorney, or any word from his Attorney that the indictments were to be suppressed or any favor to be granted to him and he said "No;" there was no testimony in the case that any money had been given to Bolitho by anyone with reference to this Juliano matter; but the record evidence of both the State and the



defendant are that there was an orderly procedure of these causes in this fashion; that they were indicted at the October term, 1924, of the Grand Jury, that during that October term, 1924, there were seventeen cases tried in nineteen days or vice versa; that this man could not be brought to book at that time, but he changed attorneys in the month of December; that the new Attorney was notified in that month for his production in January; that in January he could not be produced, and at that time Mr. Jayne came into the County to do his work here, and that thereafter no prosecution could be had because Judge Wilson did not want to have any more trials because he doubted the authority of the Prosecutor to proceed on account of Mr. Jayne's appointment; there is no evidence, therefore, of failure to prosecute in the Juliano, Grande and Sica case; there is no evidence of anything done by Bolitho that is malfeasance or nonfeasance in this request."

75. Because the Court erroneously permitted an amendment to the Eighth or Fleming count of the indictment.

76. Because the Court erroneously permitted Mr. Jayne, the Prosecuting Attorney in his argument in the motion for the direction of a verdict at the close of the entire case and in his statements to the Court in the presence of the Jury mis-quoted the evidence, and made uncalled for and unwarranted statements and remarks, which were not proper comments on the evidence in the case and which were highly prejudicial to the defendant and which influenced the Jury in ar-

riving at its verdict and aroused prejudice against defendant and prevented him from having a fair trial.

77. Because the Court erroneously charged the Jury as follows:

> "There is some of the evidence that may be said to be applicable to all the counts. I will cite, just for example, one of the last remarks by Mr. Jayne, as he closed; the statement in the evidence, that, when the elisor investigation was pending or about to take place, the defendant said to Mutarella and Marinaro that they were the crux of the situation and if they kept quiet it would be all right, or whatever it was in that regard."

78. Because the Court erroneously charged the Jury as follows:

> "The other one is corruption and malfeasance in the processes of justice; for, if the action of the courts and the action of public officers connected with the administration of justice are to be fouled and corrupted, no man knows when he is safe.
>
> We are hearing a great deal these days about the prevalence of crime, and there are probably a hundred reasons why crime is more prevalent than it was. One of these reasons, in some cases, may be that the conduct of the public administration of justice is not as it should be; so that if the fountains of justice are to be stopped, the



> fate of the public is hard indeed. And so I mention this fact, because I want to impress upon you the importance of bringing to this case all the intelligence and all the determination and all the virtue that is in you to decide it rightly."

79. Because the Court erroneously charged the Jury as follows:

> "Now then, having such an official, it was inevitable, as in all other cases where there is a certain public officer charged with the administration of a certain public duty, that to his office, should be drawn all the criminal complaints, and that he would become and remain the public official to whom the public would look, the State would look, the grand jury would look, in, large measure, and the judges of the local courts would look, for advise and suggestion what to do in criminal matters. It is, of course, true that the local court is in no legal sense controlled by the Prosecutor, and it is perfectly true that the grand jury, as I have often told grand juries, both from this bench and others is not controlled by what the Prosecutor may choose to lay before it. But, as a practical matter, you can see how true it must be, that where there is a Prosecutor of the Pleas charged with that duty, and to whom all these things are referable, it would necessarily follow what both courts and grand juries are likely to depend, in some measure, at least, on what that Prosecutor says to them. And fol-

lowing out that line of thought, you will see that it is perfectly practicable for a wicked or corrupt Prosecutor, should there be one, to gain for himself great material advantages should he choose to accept enclu-
10 ments for recommendations to the Court as to what to do in the way of sentence; statements to the Court, true or false, that there is no evidence at hand, and that he did not think a conviction could be sustained; statements to the grand jury, true or false, that there was no evidence on
20 which the grand jury could indict. You see what a tremendous power for good or evil is placed in the hands of one man by the statute, and how important it is that the man selected to perform the duties of this responsible office should be one who can be depended on to perform them honestly and fearlessly. Now, the claim in this case is that this man did not do that thing; and the various counts of the indictment (perhaps not all of them, but certainly some of them) are to the effect that,
30 instead of doing the duties of his office, instead of prosecuting cases of crime, he prostituted that office and accepted bribes to let the criminals either go scot free or to let them get off with less punishment than they deserved. That is the general spirit of this indictment, as far as I can see."

80. Because the Court erroneously charged the
40 Jury as follows:



"The first count is that on the 29th day of May, 1923, the defendant was Prosecutor, and there were pending in the Quarter Sessions two indictments, one against Bogden, Arkie and Sica, charging larceny and
10 receiving; and an indictment against Kisik, Hudock and Korvach, found in 1922, charging attempted robbery and an attempt to obtain property by false pretenses, and that Bolitho, the defendant, in order to pervert and obstruct justice, and to enable Haydock or Hudock to escape punishment on this 29th day of May took a bribe of $300, from Hudock and in consideration thereof, did refrain from prosecuting the
20 indictment, whereby Hudock escaped punishment; and also did mislead and deceive the Court of Quarter Sessions respecting the facts of the offenses charged in these indictments in order that the Court might be thereby induced to impose a less onerous sentence than it would have done, if the facts had been correctly presented. That is my abstract of the indictment. Of course, you will have the document itself;
30 it is very long; it is verbose as those documents usually are and, as I regret to say, under our criminal law, they generally have to be, especially where something special of this kind out of the ordinary run is charged. But that I understand to be about what the indictment charges. And some of the elements on this have been told to you by John Mills and Mr. Orr,
40 who tells you about the records in the of-

fice and about the $500.00 sentence; and you have the story of Orr and other witnesses about the time at which this thing was done, and that Judge Wilson was sitting in the back room about half-past four or five, and that Hudock was hustled or smuggled up the back stairs and into the Court room and smuggled out again, and took a taxi-cab to Newark, and all that. I give that to you simply as a reminder of what these witnesses said in a general way.

As to the bribe, I think the testimony was substantially to the effect that Marinaro went to the Prosecutor to fix the thing, and the Prosecutor told him to seek Hubert and that, in accordance with what the Prosecutor told him, he gave the $300, to Hubert and that is the last that was seen of it. Of course, Hubert, denies getting the money, and Mr. Bolitho, denies all connection with any money in the case, and claims that the matter was fully and fairly presented and that he did everything that was possible under the circumstances. It seems that the Rockaway case (whatever happened to the Stirling case) went no farther than the forfeiture of bail, and you have heard what Mr. Jayne had to say on that subject. Now, that is the first count."

81. Because the Court erroneously charged the jury as follows:

"We skip now to the fifth, for the next three were eliminated, and this we will call



the Dolimpio count. That charges that Mr. Bolitho was Prosecutor on the 10th of September, 1924, and that his duty as Prosecutor was the same as in the first count, and that he knew Dolimpio had twice been complained of for violations of the liquor act, once before a police justice in Dover, and that the Prosecutor knew, therefore, that Dolimpio was guilty of a misdemeanor, and ought to have prosecuted him; but, knowing these premises, and in disregard of his duty, he did on this 10th day of September, exact, take and receive from Dolimpio $400.00 as a bribe for suppressing the evidence and not to prosecute, and that on the 10th day of September, and from thence hitherto, the Prosecutor has wilfully, corruptly and knowingly failed and neglected and refused to prosecute or to present the evidence to the Grand Jury.

Now under that indictment, under that count, you have this: This is the count, I think, in which the story is that Dolimpio had $200, and was told to go out and get two hundred more; and another witness says that he had $300, and was told to get two hundred more. However, that may be, the exact amount is not material, and, of course, you are at liberty to criticize the discrepancy in these stories in any way that commends itself to your good judgment. This is the case, also, in which those three affidavits, that triple affidavit

was made in regard to the wine being vinegar. Mutarella says that he saw the money paid to Mr. Bolitho.

Now Mr. Heller, the foreman of the Grand Jury said that the case was considered by the committee on business, and that Mr. Bolitho was asked whether there was any evidence on it; you remember what the testimony was, I do not very well —at all events, there was not any testimony put in before the Grand Jury or before the committee, and consequently, the Grand Jury threw out the complaint.

I do not know, of course, what the facts are, and you will have to find out. But that shows a case where, if the Prosecutor was corrupt and did choose to kill the prosecution it was peculiarly, you see, within his power to do so. The Grand Jury was dependent on him to say whether there was any evidence in the case, and if he had evidence and said there was none, why the Grand Jury had no particular method in which they could compel him to produce, it.''

82. Because the Court erroneously charged the Jury as follows:

''Then you come to the sixth count, the Mingardi case, and this is, that on the 14th day of May, 1924, Bolitho was Prosecutor, and knew that Mingardi had been complained of for a violation of the prohibition act, and it was the duty of Mr. Bolitho to



prosecute him, but that in perversion of his duty, and to enable Mingardi to escape, he took from Marinaro and Mutarella $200.00 as a consideration for suppressing the prosecution, and from that day to this has knowingly failed, neglected and refused to prosecute. In this case there seem to have been papers for arrest and a search warrant, and they seem to have been—to judge from the testimony, although this will all be for you to find—brought from Mr. Bolitho's office by Hubert. Mingardi said he was arrested in February and gave bail and he moved away, and then he was arrested again and taken to Morristown, probably on complaint of leaving the county, as testified to by Recorder Thomas and by Max Reidler; and then he was seen in jail by Dan Marinaro and by Patsy Mutarella and that we went to see Mr. Bolitho, who got him to sign some paper, since which time he has never heard of the case. His wife was sworn, and she was told, she said, that $500, was needed, and she had to go out through the country and get this money together in various places from various people. Mutarella testified I think, that he saw $250, of this given to Mr. Bolitho. And there is a curious piece of evidence that Mrs. Mingardi was asked to make an affidavit that the wine was vinegar and would not do it. The records show nothing but two recognizances and an exoneretur on one.

83. Because the Court erroneously charged the Jury as follows:

"Now, the seventh count; and as to that, I do not want to say much after the discussion of it between counsel. That is the case in which Juliano was involved. That is the case in which it is claimed that $900, was raised, and Mutarella said that he also put up another hundred, and that all the money came back because, as a matter of fact, these men were indicted afterwards, and that the money, that was put up was for the purpose of avoiding an indictment. Now, of course, it would make no difference, even although an indictment was afterwards found. The malfeasance would be there if it be true that the Prosecutor received a bribe for the purpose of averting an indictment. The mere fact that an indictment was found is not going to change the situation as to the commission of the crime in the first place."

84. Because the Court erroneously charged the Jury as follows:

"The charge is, substantially, that Mr. Bolitho knew that Florence Rice was selling liquor in violation of the law, and that he did directly and indirectly solicit and propose to receive from her certain goods and chattels, namely, two cases with bottles containing whiskey and intoxicating liquor as a gift, gratuity and reward for Bolitho to prostitute and betray the duties





of his office, and to refrain from arresting, prosecuting and convicting said Florence Rice, and to suffer and permit her to violate the law. I say it is curious because the evidence on both sides seems to be in accord except on one point of the case. Mrs. Rice, you remember, was sworn, and she said that Mr. Bolitho and—was it Hubert? I think it was Hubert—came to her place. She started out with sandwiches and ended up with drinks. And she said, as I recollect her testimony, that they had some whiskey to drink there, and that Mr. Bolitho expressed his appreciation of the whiskey as being very good whiskey, and that she asked him whether he would like to have a little more of it, to which he assented and that, by her direction, a case or two cases of it were placed in the automobile in which Mr. Bolitho had come there with Mr. Hubert and were taken away in that car. As I understood Mr. Bolitho on the stand, he said very much the same thing. I understood him to say, although this, of course, is for you—that he did have some whiskey to drink there; I do not think he denied that he expressed his approval of the whiskey; he either said, or did not deny, as I recollect it, that Mrs. Rice had offered him some more of it, and that he had agreed to take it. What he did say was that he had never seen that whiskey since, that he did not get it. But there was a preliminary transaction, if I heard the evidence correctly and have remem-

bered it correctly, agreed to by both parties to it.

Now, it is said that there were no promises, no solicitations, no agreements based on the whiskey. Well, probably not in words. I do not say there was bribery in the case. What I am saying is that there might have been. What do we understand happens ordinarily in a case where bribery is to be committed. Do the parties get together and haggle over a table as to how much a bribe shall be, and does the briber give the other party a check on the bank and ask for a receipt and is there any agreement, written or unwritten, as to what is to be done in consideration of the bribe? So I do not think that as plain ordinary citizens we expect such a thing as that. A bribe just as often as not, is given by slipping a one hundred dollar bill into the hand or the vest pocket of the other party and saying nothing about it. The other party may not take any notice of it at the time. Now, why should Mrs. Rice have asked Mr. Bolitho, if she did, whether he would like a little more? Why, of course, Mrs. Rice knew, and she said she did, that he was the Prosecutor of the Pleas; that he was in her place where she was dispensing liquor contrary to law, and if she could get him to accept two cases of liquor for himself, wouldn't she have him just about where she wanted him? Wouldn't she be reasonably sure that it would be to



his interest to do as little as possible towards prosecuting her? It is said that he did prosecute her. Yes, he did, so says the testimony; so he said; at least, he had her raided. He had her raided after, not before, the Federal authorities had made a raid and had padlocked the place. Then he said he suspected or heard that liquor was still being sold there, notwithstanding the padlock, and had another raid made. He may have, and may not; I do not think it is very material whether he did or not, although you may. But transactions of that kind are not usually mere little acts of politeness and hospitality between friends. Could there have been anything in the conduct and expression of the parties to indicate to Mrs. Rice that this would be a good ting to do?"

85. Because the Court erroneously charged the Jury as follows:

> "You may find, of course, upon that testimony, that Bolitho was guilty of malfeasance in office in that case. There seems to be evidence to sustain it, if you are so disposed to find."

86. Because the Court erroneously charged the Jury as follows:

> "I have gone over these matters in some little detail so as to keep them clear in your minds, and I am going to ask you not to return a verdict in writing, but I am going to ask you to return a specific verdict

on each count of this indictment which remains for your consideration, and I have put them down on a piece of paper with a little formula which can be read by the Foreman when the Jury delivers its verdict. The formula is about like this: On the first (Or Hudock) count, we find the defendant, then, you will say, of course, guilty or not guilty as the case may be, according to your finding. On the fifth (or Dolimpio) count, we find the defendant guilty, or not guilty, as the case may be. And so on, rendering a verdict on each count separately. That, I think, will be given to the Foreman for convenience so that you will know what these various counts are before you for your consideration, and so that you can readily identify them and be reminded of the substance of the count by the names of the various parties who are mentioned therein."

87. Because the Court erroneously charged the Jury as follows:

"If people commit crimes, the law does not permit or consider that they should be allowed to escape punishment merely because they happen to have families. And as is so often said in Courts of justice and outside of the, this question of the families, and all that, is one that criminals ought to consider before they commit the crime."

88. Because the Court erroneously charged the Jury as follows:



"There has also been a good deal said in the case about the witnesses, or some of them, for the State being not credible as witnesses, unreliable, and that their testimony should not be received, because they are, let us say, of foreign extraction, or specially because they have themselves admitted that they had been guilty of criminal practices. Of course, the Jury will have to pass upon their credibility and it will have to pass upon the probability of the stories that they tell and upon the value of their evidence in every way. But the Court can only caution you that in an indictment of this kind, charging an offense of this kind, every count of which, I think, with perhaps one or two exceptions, but I think, without any exceptions, where so many of the counts charge that really amounts to a criminal conspiracy between the Prosecutor and the other parties to obstruct and defeat the processes of justice, how is the State ever going to prove a case, except by the testimony of one or more of the co-conspirators or by the confession of the defendant indicted if it can get one, or let us say, by the fortunate circumstance, which does not seem to have existed in any of the cases now before you, of detectives having a dictapohne rigged up where the conspiracy was formed and hearing its actual formation over the dictaphone? Now, you are all familiar with the old idea of State's evidence, where one party indicted jointly with another, or by a separate

indictment, turning State's evidence; in other words, the State must rely, and it cannot help relying upon the testimony of such men as these. And there is, of course, a consideration with regard to, let us say, Marinaro, that his very testimony on the witness stand here is an admission on his own part that he has been guilty of a grievous crime, and it is testimony that he was not obliged by law to give. So that, placing what value you choose in your discretion upon his testimony, it is not testimony that should be in the first instance utterly disregarded merely because it is evident that the witnesses are persons of criminal instincts and impulses and criminal acts.

89. Because the Court erroneously charged the Jury as follows:

"Reasonable doubt is something that is practically incapable of definition. Ladies and Gentlemen; but as I recollect the language of our Court of Appeals it may be said to exist in a case where the Jury, after a careful examination and consideration of all the evidence, feel that they cannot say that they have an abiding conviction to a moral certainty of the guilt of the accused."

90. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney, as follows:

"Malfeasance is defined in 25 Cyc., Page 1666, as follows: 'Evil doing; ill conduct;



the doing of what one ought to do; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful, the doing of an act which a person ought not to do at all; the unjust performance of some act which the party had no right, or which he had contracted not to do.'"

91. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney, as follows:

"The authorities all agree that acts done accidentally or allowed to be done by inadvertence or through negligence are not in a legal sense wilful; there must be proof beyond a reasonable doubt that such acts were done, not only by misconduct, but by wilful conduct."

92. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney, as follows:

"The law provides that it shall be the duty of every Sheriff, Constable, Police Officer, members of the State Constabulary and other officers to use all due diligence to detect violations of the "Prohibition Enforcement Act" and therefore to make complaint before a Magistrate, and that when a Magistrate issues a search warrant on such complaint it shall be directed to any officer authorized to serve the same, and that such search warrant, may, in all cases, be served by any of the officers men-

tioned therein, but to no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. If you find, from the evidence, that Stewart Bettons, had in his possession a search warrant directed to him to be served against Charles Fleming, the Court charges you that it was the duty of said Stewart Bettons to serve the said search warrant, as directed therein, it was not the duty of defendant to serve the said search warrant."

93. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney as follows:

"The Prohibition Enforcement Act of 1922, which is known as the Hobart Act, provides that 'If any prosecutor of the pleas shall be notified, in writing, by any officer or other person of any violation of any of the provisions of this Act, and such notification shall contain the names and addresses of witnesses, it shall be the duty of said Prosecutor to diligently inquire into the facts of such alleged violation and for that purpose such Prosecutor is hereby authorized to issue subpoenas for such persons, as he shall have reason to believe have any information concerning, or knowledge of, such alleged violation, to appear before him at the time and place named, then and there to testify under oath concerning any knowledge such witnesses may have of any violation of any of the



provisions of this act; and the testimony of any such witness may be reduced to writing and he shall in the discretion of such Prosecutor, be required to sign same. If the testimony shall disclose that any violation of this act has been committed it shall be the duty of the Prosecutor to make complaint forthwith and to apply for a warrant to arrest the person complained against and bring him before a Magistrate for a preliminary hearing on such complaint.' The Court charges you that before you can convict defendant of wilful refusal or neglect to proceed against the persons charged in this indictment with having violated the 'Prohibition Enforcement Act' you must find from the evidence in the case, beyond a reasonable doubt, that defendant had received notification in writing from some officer or other person of the violation of the Act alleged in this indictment and that such notification contained the names and addresses of witnesses, and that after said defendant had received such notification he refused or neglected to proceed against the party complained against, as having violated the 'Prohibition Enforcement Act.' If this does not appear in the case to your satisfaction, beyond a reasonable doubt, the defendant is entitled to an acquittal upon the allegations in this indictment charging him with malfeasance or refusal or neglect to enforce the said 'Prohibition Enforcement Act.'

94. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney as follows:

"The allegations in this indictment charging defendant with malfeasance with reference to the Florence Rice transaction, allege as the overt act, that defendants solicited from said Florence Rice a certain quantity of liquor, and the Court charges you that a solicitation in a legal sense is not an attempt to commit a crime and that it is not until something has been done, which may be called an overt act, that a crime has been committed; that there must be a physical act as contradistinguished from a verbal declaration; that there must be a step taken toward the actual commission of the offense and a mere effort by persuasion to produce the condition of mind essential to the commission of the offense, is not an overt act. If it has not been proved to you by all that defendant did more than merely solicit Florence Rice to deliver to him certain liquor, it is your duty to acquit the defendant of the allegations contained in the count in the indictment relating to said Florence Rice."

95. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney as follows:

"The legal presumptions are that defendant, Bolitho, did not commit any of the criminal acts alleged in the counts of



this indictment, and that he discharged his duty, as required of him by law, with reference to the duties alleged in the counts of this indictment that it was incumbent upon him to discharge in the proper legal manner, and that presumption stands with defendant until it is overcome by evidence to your satisfaction beyond a reasonable doubt."

96. Because the Court erroneously refused to charge the Jury, upon the request of defendant's Attorney as follows:

"Public officers, acting officially, are presumed to have done their duty until the contrary appears, and in this case it must appear to your satisfaction, from all of the evidence in the case, beyond a reasonable doubt, and if it does not so appear it is your duty to acquit defendant."

97. Because the Jury did not return a verdict, which was the verdict of the Jury, but it was a verdict submitted to it by the Court upon a typewritten sheet, prepared by the Trial Court, and upon which the Jury merely crossed out certain words, and it was not a verdict found by the Jury after its deliberation; the finding and return of such a verdict being contrary to due process of law and the preparation of said paper and the delivery of the same to the Foreman of the Jury before the Jury retired by the Trial Court, was an abuse of discretion and highly prejudicial to defendant.

98. Because the Trial Court erroneously refused to grant the motion made in arrest of judgment in behalf of the defendant on the following grounds:

"First: Because the grand jury which found the indictment was neither drawn, selected nor impanelled according to the provisions of the Chancellor-Sheriff Jury Act of 1913, which was the adoption by the Legislature of a method for drawing and selecting the grand jury, and a grand jury drawn, selected and impanelled by any other method was not legally organized and the indictment found by it is void.

Second: Because the elisors who drew and selected the Elisor Grand Jury were not qualified to draw a grand jury, Joshua R. Salmon, being a counsellor at law of the State of New Jersey and Victor Wiss, not being a citizen.

Third: Because Donald J. Masterton was an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment and when the indictment was found, and the indictment for that reason is void.

Fourth Ground: Because the Honorable Wilfred Jayne, Jr., not being the Prosecutor of the Pleas of the County of Morris, and not having been legally appointed and qualified as Attorney General or as an Assistant Attorney General of the State of



New Jersey, and not having taken the official oath as such, was also an unauthorized person before the Elisor Grand Jury when it was investigating the charges against the defendant contained in the counts of the indictment and when the indictment was found, and the indictment for that reason is void.

"Fifth Ground: Because in the challenge to the array of petit jurors, it was alleged that the Sheriff had been disqualified from drawing juries that the Sheriff was interested in the outcome of the case against this defendant, and that the members of the panel of said petit jury were biased and prejudiced against this defendant; and these allegations were admitted by the demurrer to the challenge filed by the State; admittedly, the defendant did not have a trial according to due processes of law by a fair and impartial jury, but by a jury which was biased and prejudiced.

"The following motions, if your Honor please, are motions to the face of the indictment and are included and made a part of this motion in arrest of judgment.

"As to count one of indictment number 49: Count one was ambiguous and duplicitous and contradictory in its terms. It charges that the Prosecutor accepted a bribe of $300, and, in consideration of said bribe, he did three contrary things, to wit: first, he refrained from prosecuting Hud-

ock with diligence, energy, ability and understanding required of him; second, so managed and disposed of indictments that Hudock escaped just punishment, which according to law and justice, should have been imposed; third, that this defendant misled and deceived the Court of Quarter Sessions respecting true facts and evidence of offenses pending against Hudock in the said indictments, in order to induce the Court to give him a less onerous sentence.

"The next ground: The indictment is bad because reference to count five of the indictment, it states conclusions of fact and of law, and does not sufficiently allege a crime. It charges that Mr. Bolitho knew that on two occasions Dolimpio had been complained of before a Justice of the Peace and that Dolimpio was guilty of a misdemeanor. The mere complaint before a justice of the peace was not sufficient. How could Mr. Bolitho know that this defendant was guilty?

"Then it also alleges that it was Mr. Bolitho's duty to prosecute, and also charges that he perverted his trust and took $400, for suppressing the aforesaid offense, and from presenting evidence to the grand jury, and has suppressed and concealed complaint. The mere complaint before a Justice would not have been sufficient. The Justice might have dismissed it, and it does not allege that he was held for the grand jury.



"As to count six, this count was bad because it states conclusions of law and of fact, and does not sufficiently allege a crime. It charges, Mr. Bolitho, as Prosecutor, knew that Mingardi had been complained of in due form of law before a Justice of the Peace for a violation of the prohibition enforcement act, and that he was guilty of a misdemeaor, and that it then became the duty of Mr. Bolitho to prosecute. This is not so unless shown from the complaint that it was not dismissed. And that he took $200, to suppress and not prosecute and did suppress.

"As to count seven, this count in the indictment was bad because it does not sufficiently allege a crime. It says that he took $600 to refrain from prosecuting Grande and Juliano. It does not allege that he did not prosecute these cases.

"As to count ten of the indictment. This count is bad because it states conclusions of law and fact, and does not sufficiently allege a crime. It says that Mr. Bolitho had personal knowledge that Rice kept a disorderly house, and took two cases of liquor to enable her to escape arrest.

"And the concluding ground, your Honor, is that the counts in the indictment fail to allege that this defendant did not prosecute any of the persons mentioned in the indictments within the time required by law."

Specification of Causes

99. Because Anthony Cattano was an unauthorized person in the Grand Jury room at the time when the indictment against Plaintiff-in-error was found by the said Grand Jury; the regular authorized interpreter being Domenick Bontempo, and Anthony Cattano testifying in the said case that he attended before the Grand Jury and interpreted the witnesses' testimony with reference to the Italian witnesses, who were sworn before the said Elisor Grand Jury. The attendance of the said interpreter before the said Grand Jury was unauthorized and amounted to the finding of an indictment, contrary to due process of law, namely, the indictment on which the Plaintiff-in-error was tried in this case.

JOHN A. MATTHEWS,
Attorney for Plaintiff-in-error.



**Exhibit S-1.**

EDWARD L. KATZENBACH

ATTORNEY GENERAL

Trenton, N. J., Sept. 8, 1925.

James H. Bolitho, Esq.,
28 E. Blackwell Street,
Dover, N. J.

Dear Sir:

By Statute there is but one official bearing the name of "Assistant Attorney General." This Statute may be found in 1 Compiled Statutes, Page 152. In February, 1925, the person occupying this office was Harry R. Coulomb, who was appointed February 19, 1924.

Very truly yours,

EDWARD L. KATZENBACH,
Attorney General.

ELK/H.

## Exhibit S-2.

To Edward L. Katzenbach, Esq.,
Attorney General of the State of New Jersey.

You are hereby requested and authorized to attend personally or by such assistant or assistants as you may desire, in the County of Morris and State of New Jersey, for the purpose of prosecuting the criminal business of the State therein, including the investigation of alleged crimes and misdemeanors, attending before the criminal courts and grand juries of said County, preparing indictments and the trial of indictments for crimes and misdemeanors in said County.

Dated May 19, 1924.

CHARLES W. PARKER,
Justice of the Supreme Court, presiding in the County of Morris.

To Wilfred H. Jayne, Jr.,

Pursuant to the request of Mr. Justice Parker above appearing, I do hereby designate you as my Assistant to perform and carry out the duties mentioned and set forth in said request, in the County of Morris.

Dated May 19, 1924.

EDWARD L. KATZENBACH,
Attorney General.



## Exhibit S-3.

To Edward L. Katzenbach, Esq.,
Attorney General of the State of New Jersey.

You are hereby requested and authorized to attend personally or by such assistant or assistants as you may desire, in the County of Morris and State of New Jersey, for the purpose of prosecuting the criminal business of the State therein, including the investigation of alleged crimes and misdemeanors, attending before the criminal courts and grand juries of said County, preparing indictments and the trial of indictments for crimes and misdemeanors in said County.

Dated February 19, 1925.

CHARLES W. PARKER,
Justice of the Supreme Court, presiding in the County of Morris.

To Wilfred H. Jayne, Jr.,

Pursuant to the request of Mr. Justice Parker above appearing, I do hereby designate you as my Assistant to perform and carry out the duties mentioned and set forth in said request, in the County of Morris.

Dated February 19, 1925.

EDWARD L. KATZENBACH,
Attorney General.

## Exhibit S-4.

Docket No. 6.

I, James H. Bolitho, do solemnly promise and swear that I do & will bear true faith & allegiance to the Government established in this State under the authority of the People.

So Help Me God.

JAMES H. BOLITHO.

Sworn & subscribed before me
this 28 day of March, A. D. 1923.
E. B. Mott, Clerk.

I, James H. Bolitho, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of N. J., and that I will faithfully, impartially and justly perform all the duties of the office of Prosecutor of the Pleas of this State in and for the County of Morris according to the best of my ability & understanding.

So Help Me God.

JAMES H. BOLITHO.

Sworn & subscribed before me
this 28 day of March, A. D., 1923.
E. Bertram Mott, Clerk.



## Exhibit S-5.

Morris County, *to wit.*

The Grand Inquest for the State of New Jersey, and for the body of the County of Morris, upon their oath present: That Peter Kisik, John Hudock and John Korvach, late of the Township of Passaic, in the said County of Morris, on the sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two, with force and arms, at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did then and there attempt to forcibly take from the person of Bertha C. Harmon three thousand six hundred dollars in lawful money of the United States of America, the property of said Bertha C. Harmon, by violence and by putting her in fear, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that the said Peter Kisik, John Hudock and John Korvach, on the sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two, with force and arms, at the Township of Passaic, in the County of Morris aforesaid, and within the jurisdiction of this Court, did knowingly and designedly by then and there falsely representing themselves to be persons other than they were, and by falsely representing that they intended to legitimately use and invest a certain sum of money, namely, three thousand six hundred dollars, lawful money of the United States

of America, then on the person of Bertha C. Harmon, the property of said Bertha C. Harmon, for the benefit of the said Bertha C. Harmon, did then and there attempt false pretences to get possession of said sum of money, with intent to cheat and defraud the said Bertha C. Harmon, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

JOHN M. MILLS,
Prosecutor of the Pleas of the
County of Morris.

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**Exhibit S-6.**

Before: CHARLES W. PARKER, a Judge of the Court of Quarter Sessions.

| | |
|---|---|
| THE STATE<br>vs.<br>JOHN HUDOCK, Imp. & NATIONAL SURETY CO. | On Indict.<br>Attempted<br>Robbery. |

State of New Jersey, County of Morris. } ss:

BE IT REMEMBERED, That on this Second day of January, in the year of our Lord One Thousand Nine Hundred and twenty-three, personally appeared before me, Charles W. Parker, a Judge of the Court of Quarter Sessions, in and for the





County of Morris and State aforesaid, John Hudock & National Surety Co., by Harry Lee Powell, agent, and acknowledged themselves to be indebted to the State of New Jersey, in the sum of fifteen hundred dollars each, to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following condition, to wit:

THE CONDITION of this recognizance is such that if the above named John Hudock shall personally be and appear before the Court of Oyer and Terminer or Court of Quarter Sessions in and for the said County of Morris on the eighth day of January next traverse to effect the indictment lately filed against him for attempted robbery, and from day to day thereafter and from term to term thereafter until said indictment shall be finally disposed of, and not depart the said Court without leave, then the above recognizance to be void, otherwise to be and remain in full force and virtue.

JOHN HAYOCK
NATIONAL SURETY CO.
By HARRY LEE POWELL,
Attorney in fact.

Taken and acknowledged the day and year first above written, before me,
Charles W. Parker,
J. S. C.
Judge, &c.

Exhibit S-6

*Cover:*

BEFORE

Charles W. Parker, a Judge of the Court of Quarter Sessions in and for the County of Morris, New Jersey.

RECOGNIZANCE

TAKEN Jan. 2, A. D. 192 .

THE STATE OF NEW JERSEY
vs.
JOHN HUDOCK.

Charge Attempted Robbery.
To appear at Oyer and Terminer or Quarter Sessions Jan. 8, A. D., 1923.



**Exhibit S-7.**

Before: CHARLES W. PARKER, a Judge of the Court of Quarter Sessions.

| | |
|---|---|
| THE STATE<br>vs.<br>JOHN DOE, otherwise referred to as John Hudock & NATIONAL SURETY COMPANY. | On Indictment Larceny & Receiving. |

State of New Jersey, County of Morris. } ss:

BE IT REMEMBERED, That on this Second day of January, in the year of our Lord One Thousand Nine Hundred and twenty-three, personally appeared before me, Charles W. Parker, a Judge of the Court of Quarter Sessions, in and for the County of Morris and State aforesaid, John Doe, otherwise referred to as John Hudock & National Surety Company by Harry Lee Powell, and acknowledged themselves to be indebted to the State of New Jersey, in the sum of fifteen hundred dollars each, to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following condition, to wit:

THE CONDITION of this recognizance is such that if the above named John Doe, otherwise referred to John Hudock, shall personally be and appear before the Court of Oyer and Terminer or Court of Quarter Sessions in and for the said County of Morris on the 8 day of January traverse to effect the indictment lately filed against him for

Exhibit S-7

Larceny & Receiving and from day to day thereafter and from term to term thereafter until said indictment shall be finally disposed of, and not depart the said Court without leave, then the above recognizance to be void, otherwise to be and remain in full force and virtue.

JOHN HAYDOCK arraigned as
John Doe.
NATIONAL SURETY CO.
By HARRY LEE POWELL,
Attorney in fact.

Taken and acknowledged the day and year first above written, before me,
Charles W. Parker,
J. S. C.
Judge, &c.

*Cover:*

BEFORE

Charles W. Parker, a Judge of the Court of Quarter Sessions in and for the County of Morris, New Jersey.

RECOGNIZANCE

TAKEN Jan. 2, A. D., 1923.

THE STATE OF NEW JERSEY
vs.
JOHN DOE, otherwise referred to as John Hudock.

Charge Larceny & Receiving.
To appear at Oyer and Terminer or Quarter Sessions, Jan. 8, 1923, etc., A. D., 192 .



**Exhibit S-8.**

MORRIS OYER & TERMINER

October Term, 1921.

MORRIS CO., *to wit.*

The Grand Inquest for the State of N. J. & for the body of the County of Morris upon their oath Present That Joe Bodjodan, Michael Arkie & John Doe, late of the town of Morristown in sd Co. of Morris on the 25th day of Aug. 1921, with force & arms, at the Town aforesaid in the County aforesaid & within the jurisdiction of this Court Lawful money of U States of A of the value of $925 of the goods & chattels of Charles Palko then & there being found unlawfully did steal, take & carry away, contrary to the form of the statute in such case made & provided and against the peace of this State the Government & dignity of the same.

At the Grand Inquest aforesaid upon their oath aforesaid do further present that the said Joe Bodjodan, Michael Arkie & John Doe on the 25th day of Aug. 1921, in the Town & Co. aforesaid & within the jurisdiction aforesaid lawful money of the United States of America of the value of $925 of the goods & chattels of Charles Palko then feloniously stolen, taken & carried away unlawfully & feloniously did receive & have they the said Joe Bodjodan, Michael Arkie & John Doe then & there well knowing the sd. goods & chattels to have been feloniously stolen, taken & carried away contrary to the form of statute in such

New Jersey State Library

Exhibit S-8

case made & provided and against the peace of this State, the Government & dignity of the same.

JOHN M. MILLS,
Pros. of Pleas of M. Co.

*Endorsed:*

251 No. 9

MORRIS OYER & TERMINER

October Term, 1921

Indictment for Larceny & Receiving

THE STATE
vs.
JOE BODJODAN
MICHAEL ARKIE
JOHN DOE.

JOHN M. MILLS
Prosecutor of the Pleas.

A True Bill.
Seth E. Thomas,
Foreman.



**Exhibit S-9.**

| Name of Def. | |
|---|---|
| Joe Bodjodan 2000 Apr 3 1922 | Larceny & |
| Michael Arkie 1500 June 14 1922 | Receiving |
| John Doe 1500 Jan 2 1923 | |

June 4, 1924. Sentence imp susp fined $500.

April 7 1924. Motion to forfeit bail granted.

Forfeiture will be opened by Court.

This is on Rec in Co Clerk's office. Rec in Proceedings of Indict No. 1 & No. 2.

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**Exhibit S-10a.**

COMPLAINT

State of N. J.,
County of Morris. } ss:

Raymond A. Alland of township of Passaic in sd Co. being duly sworn on his oath complains & says that on Oct 6, 1922 at the Township of Passaic in Morris Co John Doe Richard Roe & John Roe did attempt to obtain money by false pretense from George Harmon namely $3600

Wherefore he prays that the said John Doe Richard Roe & John Roe may be apprehended & held to answer to said complaint and dealt with as law & justice may require.

RAYMOND ALLAND

Subscribed & sworn to before me
this 7th day of Oct. A D 1922
Angelo J. A. Bennell.

## Exhibit S-10b.

### WARRANT.

County of Morris.

To the Sheriff or any constable or special officer of said County or any Marshall of any Borough therein or any police officer of any town therein:

Whereas complaint hath this day been made to me one of the Justices of the peace of County of Morris on oath by Raymond Alland that on 6th day of Oct. 1922 at Township of Passaic in Co. of Morris aforesaid John Doe, Richard Rowe & John Roe did attempt to obtain money by false pretense from George Harmon namely $3600.

These are thereof, in the name of the State of New Jersey to authorize & require you to apprehend the said John Doe, Richard Roe & John Roe if in your Co. he may be found & bring them forthwith before me or some other justice of the peace Judge or Magistrate in & for said Co. to answer the said Complaint & be further dealt with as the law directs & hereof you are not to fail & for so doing this shall be your warrant given under my hand & seal of my office in The Town of Morristown Oct 7, 1922

ANGELO J. A. BENNELL
Justice of the Peace.



## Exhibit S-11.

### COMPLAINT DOCKET.

| | |
|---|---|
| The State<br>vs.<br>Peter Dolimpio. | On Complaint for Violation Prohibition Enforcement Act. |

Before R. Percy Rolston, Police Justice.

Date of Complaint August 19th, 1924.

Name of Complainant John Dodson.

Address of Complainant Randolph Township.

Address of Defendant Dover, Richards Ave.

Witnesses and addresses

Evidence 1 quart bottle partly filled with whiskey—1 qt. bottle alcohol bitters marked 20%.

Signed Samuel Gould.

Name of charge (Copy words of complaint.)

Said complainant did on August 9th, purchase intoxicating liquor at the store of one Peter Dolimpio situate at Dickerson Avenue in the Town of Dover.

Warrant issued and defendant brought to Boonton Police Court for hearing. At hearing defendant plead guilty to possession but stated that the bottles were bought with Doctor's prescription.

Warrant returned before whom and date R. Percy Rolston, August 20th, 1924.

Exhibit S-12

Order made to appear at Court of Special Sessions under $500 bond unable to furnish bond committed to jail.

If bail taken bondsman and addresses.
These papers sent up to Prosecutor August 22, 1924.

---

**Exhibit S-12.**

ALLEGATION FOR SEARCH WARRANT.

Before a Judge of the Court of Common Pleas of the County of Morris, acting as the Magistrate under the Prohibition Enforcement Act.

State of New Jersey, }
County of Morris. } ss:

John Dodson of the Township of Randolph of being duly sworn according to law, upon his oath deposes and says that he has reason to believe and does believe that liquor is unlawfully manufactured, possessed, stored, furnished and sold in, upon and from the premises consisting of store one Peter Dolimpio
at corner of Richards Avenue, Town of Dover
County of Morris aforesaid, and that the said liquor is manufactured, possessed, stored, furnished and sold in violation of Section 10 and 15 of the Prohibition Enforcement Act of this State.

Deponent further says that his belief is founded upon the following facts: Said Complainant did



Exhibit S-13

on August 9, purchase intoxicating liquor at the store of one Peter Dolimpio situate on Richards Ave in Town of Dover.

Wherefore, this deponent prays that process in the nature of a search warrant be issued authorizing and directing the search of the premises of the said Peter Dolimpio at aforesaid.

JOHN DODSON

Sworn and subscribed to before me
this 19th day of August, A. D. 1924.
R. Percy Rolston.

---

**Exhibit S-13.**

SEARCH WARRANT.

State of New Jersey, }
County of Morris. } ss:

THE STATE OF NEW JERSEY, To the Sheriff or any Constable of said County:

WHEREAS, it appears to me, R. Percy Rolston, Police Justice in and for the County aforesaid, by the information on oath of JOHN DODSON of the Township of Randolph
in the County of Morris and State of New Jersey, that
Peter Dolimpio, Richards Avenue, Town of Dover
keeps, occupies and maintains in his store
a room or place where liquor is manufactured, sold, kept, stored, transported, bartered, or otherwise disposed of in violation of Sections 10 and

Exhibit S-13

15 of the "Prohibition Enforcement Act" of the Laws of 192 .

THESE AND THEREFORE, in the name of the STATE OF NEW JERSEY, to authorize and require you, with necessary and proper assistance, to enter, in the daytime or night time, into the said
store
situate, as aforesaid, and there diligently search for the said liquor and manufacturing utensils, and if the same or any part thereof shall be found upon such search, that you bring the liquors and manufacturing utensils so found, and also the body of the said
Peter Dolimpio
before me, to be disposed of and dealt with according to law.

Given under my hand and seal, this 19th day of August 1924.

R. PERCY ROLSTON
Police Justice.



## Exhibit S-14.

COMPLAINT.

(Name of Recorder not filled in.)
Before C. Franklin Wilson, a Judge of the Court of Common Pleas of the County of Morris, acting under the Prohibition Enforcement Act as a Magistrate.

State of New Jersey, }
County of Morris. } ss:

John Dodson of Township of Randolph in the County of Morris aforesaid, upon his oath complains and says that PETER DOLIMPIO OF RICHARDS AVE., DOVER, N. J., did unlawfully and in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of this State, keep, occupy and maintain in his a room or place, where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of; and then and there unlawfully as aforesaid, did sell, deliver and furnish liquor to deponent and to divers other persons whose names are unknown.

WHEREFORE he prays that the said Peter Dolimpio may be apprehended and held to answer the said complaint and be dealt with as the law and justice may require.

JOHN DODSON
Complainant.

Sworn and subscribed to before me
this 19 day of (no month), A. D. 1924.
R. P. Rolston,
Police Justice.

**Exhibit S-15.**

WARRANT.

State of New Jersey, }
County of Morris. } ss:

THE STATE OF NEW JERSEY, To the Sheriff or any Constable of said County:

WHEREAS, Complaint hath this day been made to me R. Percy Rolston, one of the Police Justices in and for the County of Morris, on oath by JOHN DODSON
in said County, that on the 9th day of August 1924 that said complainant did purchase intoxicating liquor at the store of one Peter Dolimpio, situate at Richards Ave., in the Town of Dover in the County aforesaid one Peter Dolimpio
did unlawfully keep, occupy and maintain a room where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of the laws of 192 .

THESE ARE THEREFORE, in the name of the State of New Jersey, to command you to apprehend the said Peter Dolimpio if in your County he may be found and bring him forthwith before me, to answer said complaint, and be further dealt with as the law directs. Hereof you are not to fail, and for so doing this shall be your Warrant.

Given at the Town of Boonton, under my hand and seal this 19 day of Aug. 1924.

R. PERCY ROLSTON
Police Justice.



**Exhibit S-16.**

Before: WILLIAM GARDNER, Police Justice.

| | |
|---|---|
| THE STATE<br>vs.<br>PETER DOLIMPIO. | On Complaint for Illegal Possession of Intoxicating Liquor. |

Date September 9th, 1924.

Name and address of Complainant George Fichter: Borough Wharton.

Nature of Charge Copy complaint in full; that one Peter Dolimpio of 227 Richards Avenue, Dover, did unlawfully have in his premises at 227 Richards Avenue, intoxicating liquor in violation of the Prohibition Enforcement Act. A search warrant was issued to search the store and out buildings at No. 227 Richards Avenue: for the liquor unlawfully possessed;

Name and Address of witnesses—George Fichter, Wharton, N. J. Thomas Beddow; Fred Morse; Charles Parker; Edward E. Lyons.

Address of defendant—227 Richards Avenue.

Warrant returned before William Gardner. Date September 9th, 1924. Order made he was held on one thousand dollars bond for the action of the Grand Jury.

Name and Address of Bondsman: Felix Albano—Sussex Street, Dover.

Papers in the above case forwarded to Prosecutor Sept. 10th.

**Exhibit S-18.**

INVENTORY AND AFFIDAVIT.

The following is a written inventory of the liquor, chattels and other property seized in the execution of the warrant to which this annexed: Sept. 9, 1924.

2 quart bottles broken Mary Rotondo

Evidence in pint milk bottle taken from bottles broken one bottle supposed to be coloring taken from store in back r-u-m-e w-h-a-r-e whiskey was broken. One cream can with broken bottles in it, all taken from store in back room from 227 Richards Ave., Dover, known as Peter Dolimpio.

Officer Morse
Officer Parker
Edw. Lyons
Thos. Beddow
Fred Hubert.



**Exhibit S-19.**

COMPLAINT.

Before William Gardner, Police Justice, acting under the Prohibition Enforcement Act, as a Magistrate.

State of New Jersey, }
County of Morris. } ss:

George Fichter of the Borough of Wharton in the County of Morris aforesaid, upon his oath complains and says that one John Doe, Richards Ave., in the Town of Dover, in the County of Morris, did unlawfully and in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of this State, keep, occupy and maintain in his dwelling house and outbuildings, 227 Richards Ave., in store, situate as aforesaid, a room or place, where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of; and then and there unlawfully as aforesaid, did sell, deliver and furnish liquor to deponent and to divers other persons whose names are unknown.

Wherefore he prays that the said John Doe may be apprehended and held to answer the said complaint and be dealt with as the law and justice may require.

GEORGE FICHTER,
Complainant.

Sworn and subscribed to before me
this 9th day of Sept., 1924.
William Gardner,
Magistrate.

**Exhibit S-20.**

WARRANT.

State of New Jersey, } ss:
County of Morris. }

THE STATE OF NEW JERSEY, To the Sheriff or any Constable of said County:

WHEREAS, Complaint hath this day been made to me, William Gardner, Police Justice in and for the County of Morris, on oath by George Fichter of the Borough of Wharton in said County, that on the 9th day of Sept. 1924 at the dwelling house and outbuildings, Richards Avenue in the Town of Dover, 227 Richards Ave., in the County aforesaid one John Doe did unlawfully keep, occupy and maintain a room where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of the laws of 192 .

THESE ARE THEREFORE, in the name of the State of New Jersey, to command you to apprehend the said John Doe if in your County he may be found and bring him forthwith before me, to answer said complaint, and be further dealt with as the law directs. Hereof you are not to fail, and for so doing this shall be your Warrant.

Given under my hand and seal this 9th day of Sept. 1924.

WILLIAM GARDNER,
Police Justice.



**Exhibit S-21.**

Before William Gardner, Police Justice.

| | |
|---|---|
| THE STATE<br>vs.<br>MRS. AND MRS. CHRISTIAN DEMEDIEN and JOHN DOE and RICHARD ROWE. | On Complaint for violation of the Volstead Act. |

Date of Complaint February 23rd, 1924.

Name and Address of Complainant Fred Hubert, Rockaway Township.

Nature of Charge Copy of Complaint that Mr. and Mrs. Christian Demedein and John Doe and Richard Rowe of Morristown did violate the Volstead Act Sections 10 and 15 of the Prohibition Enforcement Act of the State a search warrant was issued to search the house and outbuildings of the said Mr. and Mrs. Christian Demedein and John Doe and Richard Rowe.

No warrant was returned.

## Exhibit S-22.

COMPLAINT.

Before William Gardner, Magistrate of the County of Morris, acting under the Prohibition Enforcement Act as a Magistrate.

State of New Jersey, County of Morris. } ss:

Fred Hubert of the Borough of Rockaway in the County of Morris aforesaid, upon his oath complains and says that Mr. and Mrs. Christian Demdein and John Doe and Richard Rowe did unlawfully and in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of this State, keep, occupy and maintain in his dwelling house, Nicholas Avenue, Morristown, N. J., a room or place, where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of; and then and there unlawfully as aforesaid, did sell, deliver and furnish liquor to deponent and to divers other persons whose names are unknown.

WHEREFORE he prays that the said Mr. and Mrs. Christian Demedein and John Doe and Richard Rowe may be apprehended and held to answer the said complaint and be dealt with as the law and justice may require.

FRED HUBERT,
Complainant.

Sworn and subscribed to before me
this 23rd day of February, A. D., 1924.
William Gardner,
Magistrate.



## Exhibit S-23.

(Inventory and Affidavit Attached to Search Warrant in Mingardi Case.)

INVENTORY AND AFFIDAVIT.

The following is a written inventory of the liquor, chattels and other property seized in the execution of the warrant to which this is annexed:

Nothing found. (In handwriting of Daniel Allen)

(Signature of Daniel Allen in own handwriting.) } Daniel Allen.

State of New Jersey, County of Morris. } ss:

I, , the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true statement of all liquor, chattels, or other property seized by me in executing the annexed warrant.

.....

Sworn and subscribed this
day of 192
before me.

Magistrate.

Exhibit S-23

(Search Warrant Attached to Inventory and Affidavit Exhibit S-23)

SEARCH WARRANT.

State of New Jersey, }
County of Morris. } ss:

THE STATE OF NEW JERSEY, To the Sheriff or any Constable of said County; or Fred Hubert and James C. Bellingham, County Detective:

WHEREAS, it appears to me, William Gardner, Police Justice in and for the County aforesaid, by the information on oath of Frederick Hubert of the Borough of Rockaway, in the County of Morris and State of New Jersey, that one Mr. and Mrs. Christian Demiegard, 4 Nicholas Avenue in the Town of Morristown, in the County of Morris, keeps, occupies and maintains in their dwelling house and outbuildings situate as aforesaid a room or place where liquor is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of the Laws of 192 .

THESE ARE THEREFORE, in the name of the STATE OF NEW JERSEY, to authorize and require you, with necessary and proper assistance, to enter, in the daytime or night time, into the said dwelling house and outbuildings of the said Mr. and Mrs. Christian Demiegard situate, as aforesaid, and there diligently search for the said liquor and



Exhibit S-24

manufacturing utensils, and if the same or any part thereof shall be found upon such search, that you bring the liquors and manufacturing utensils so found, and also the body of the said Mr. and Mrs. Christian Demiegard before me, to be disposed of and dealt with according to law.

Given under my hand and seal, this 22nd day of Feby. 1924.

UNSIGNED
Magistrate.

---

**Exhibit S-24.**

WARRANT.

State of New Jersey, }
County of Morris. } ss:

THE STATE OF NEW JERSEY, to the Sheriff or any Constable of said County:

WHEREAS, Complaint hat this day been made to me William Gardner, one of the Police Justices in and for the County of Morris on oath by Fred Hubert in said County that on the 22nd day of February, 1924, that said complaint did purchase intoxicating liquor at the dwelling house of one Mr. and Mrs. Christian Demedien and John Doe and Richard Rowe, situate at Nicholas Avenue in the Town of Morristown in the County aforesaid one Mr. and Mrs. Christian Demedein and John Doe and Richard Rowe, did unlawfully keep, occupy and maintain a room where liquor

Exhibit S-24

is manufactured, sold, kept, stored, transported, bartered or otherwise disposed of in violation of Sections 10 and 15 of the "Prohibition Enforcement Act" of the laws of 192 .

THESE ARE THEREFORE, in the name of the State of New Jersey, to command you to apprehend the said Mr. and Mrs. Christian Demedein and John Doe and Richard Rowe if in your County he may be found and bring him forthwith before me to answer said complaint, and be further dealt with as the law directs. Hereof you are not to fail, and for so doing this shall be your Warrant.

Given under my hand and seal this 23rd day of February, 1924.

WILLIAM GARDNER
Police Justice.



**Exhibit S-25.**

ALLEGATION FOR SEARCH WARRANT.

Before William Gardner, Police Justice.

State of New Jersey, }
County of Morris. } ss:

Fred Hubert of the Borough of Rockaway in the county of Morris being duly sworn according to law on his oath deposes and says that he has reason to believe and does believe that liquor is unlawfully manufactured, possessed, stored, furnished and sold in, upon and from the premises at Nicholas Avenue, Morristown, N. J., in dwelling house occupied by Mr. and Mrs. Christian Demedien and John Doe and Richard Rowe, in the Town of Morristown, County of Morris aforesaid and that the said liquor is manufactured, possessed, stored, furnished and sold in violation of Section 10 and 15 of the Prohibition Enforcement Act of this State.

Deponent further says that his belief is founded upon the following facts. Information furnished to the office of the Prosecutor by telephonic communications from residents of the Town of Dover.

WHEREFORE, this deponent prays that process in the nature of a search warrant be issued authorizing and directing the search of the premises of the said Mr. and Mrs. Christian Demedien and John Doe and Richard Rowe at Nicholas Avenue in the Town of Morristown, aforesaid.

FRED HUBERT.

Sworn and subscribed to before
me this 23rd day of Feb., 1924.
William Gardner,
Police Magistrate.

**Exhibit S-26.**

IN THE MATTER OF BAIL

MORRIS COUNTY COURT OF QUARTER SESSIONS
Feb. 23, A. D., 1924.

| | |
|---|---|
| THE STATE<br>vs.<br>ANTONY MINGARDI. | Sur Charges for Illegal Possession Intox Liquor |

*To the Clerk or the Sheriff of the County of Morris:*

I do hereby authorize, empower and direct you to hold the said Defendant to bail for his appearance before the Court of Quarter Sessions of the County of Morris to be holden at Morristown on the 13th day of May A. D. 192 in the sum of One Thousand Dollars, with good and sufficient sureties.

C. F. WILSON
President Judge.

MORRIS COUNTY COURT OF QUARTER SESSIONS

| | |
|---|---|
| THE STATE<br>vs.<br>ANTHONY MINGARDI. | Sur Charges for Illegal Possession Intox Liquors |

State of New Jersey, County of Morris. } ss:

Be It Remembered, that on this 23rd day of February, A. D. nineteen hundred and Twenty-





four, personally appeared before me, Edwin W. Orr, Deputy County Clerk of the County of Morris, at Morristown, in said County of Morris and State of New Jersey, Anthony Mingardi and James Verilla and did severally acknowledge themselves to be indebted to the State of New Jersey in the sum of One Thousand Dollars each, to be levied and made of their respective goods and chattels, land and tenements, if default be made in the following conditions, to wit:

THE CONDITION of this Recognizance is such that if the said defendant, Anthony Mingardi, shall personally be and appear before the next Court of Quarter Sessions, to be holden at Morristown, in and for the said County of Morris, on the 13 day of May next, at 10 o'clock in the forenoon, then and there to answer such charges as shall be preferred against him, and from day to day thereafter and from term to term thereafter until said charges shall be finally disposed of, and not depart the said Court without leave; then the above recognizance to be void, otherwise to remain in full force and virtue.

ANTONIA MINGARDI
CARMINE VERRILLI

Taken and acknowledged before me,
the day and year first above written.
Edwin W. Orr,
Deputy Clerk.

**Exhibit S-27.**

BAIL BOND OF ANTHONY MINGARDI.

Defendant Anthony Mingardi

Bondsman Pasquale Mutarella

Amount of Bail—$1000.

Date May 14, 1924

Date Bail discharged July 11, 1924.

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**Exhibit S-28.**

MORRIS OYER & TERMINER

Oct. Term, A. D. 1924.

Morris Co., To Wit:

1)

The Grand Inquest of the State of N. J. in for the body of County of Morris upon their respective oath present that William Weiner, Leonard Berger, Leo Salinsky, Carmine Sica, Albert Schaefeer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabuitsky, George Capon, John Doe known also as Archie Russell, Richard Roe known as Geo. Schlster, late of Borough of Kinnelon in said Co. of Morris on the 22nd day of April 1924 with force & arms at the Boro. of Kinnelon in Co. aforesaid, & within the jurisdiction of this Court, dwelling house of Alvin Untermeyer there situate, by night, willfully & maliciously did break & enter, with intent, the goods



& chattels of the said Alvin Untermeyer in the said Boro. of Kinnelon then & there being found then & there feloniously to steal, take & carry away, contrary to the form of the statute in such case made & provided & against the peace of this State, the Government and dignity of the same.

2)

And the Grand Inquest aforesaid upon their oath aforesaid, do further present, that the said William Weiner, Leonard Berger, Leo Salinsky, Albert Schaeffer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabinitsky, Geo. Capon, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as Geo. Schelster, on the day aforesaid, in the year aforesaid, & within the jurisdiction of this Court, the dwelling house of Alvin Untermeyer there situate, by day willfully & maliciously did break & enter with intent the goods & chattels of Alvin Untermeyer in the sd. Boro of Kinnelon then & there being found, then & there feloniously to steal, take & carry away, contrary to the form of the statute in such case made & provided against the peace of this State, the Government & dignity of the same.

3)

And the Grand Inquest aforesaid upon their oath aforesaid, do further present, That the said William Weiner, Leonard Berger, Leo Salinsky, Albert Schaefer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kaboritsky, George Capen, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as Geo. Schelster, on the day aforesaid in the year aforesaid, & within the jurisdiction of this Court, the dwelling house of Alvin

Exhibit S-28

Untermeyer there situate, willfully and maliciously did enter, without breaking the same, with intent the goods and chattels of the said Alvin Untermeyer in the sd Boro of Kinnelon then & there being found, then & there feloniously to steal, take & carry away, contrary to the form of the statute in such case made & provided, against the peace of this State, the Government & dignity of the same.

4

And the Grand Inquest aforesaid upon their oaths aforesaid do further present, that the said William Weiner, Leonard Berger, Leo Salinsky, Albert Schaefer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabintsky, Geo. Capen, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as George Schelster, on the day aforesaid, in the year aforesaid at the Boro of Kinnelon aforesaid, in the Co. of Morris aforesaid, & within the jurisdiction of this Court, forty cases of assorted liquors the whole of the value of four thousand dollars ($4000) of the goods & chattels of Alvin Untermeyer then & there being found feloniously & willfully did then & there steal, take & carry away contrary to the form of the statute in such case made & provided, against the peace of this State, the Government & dignity of the same.

5

And the Grand Inquest aforesaid upon their oath aforesaid do further present, that said William Weiner, Leonard Berger, Leo Salinisky, Albert Schaefer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabintsky, Geo. Capen, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as Geo. Schelster, on the day aforesaid in the year aforesaid, in the Boro. of Kinnelon & Co. aforesaid, & within the jurisdiction of this Court forty cases of assorted liquors to the value of $4000 of the goods & chattels of Alvin Untermeyer before then feloniously stolen, taken & carried away, unlawfully & feloniously did receive and have they the sd. William Weiner, Leonard Berger, Leo Salinsky, Albert Schaefer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabuitsky, Geo. Capen, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as Geo. Schelster then & there well knowing the sd goods & chattels to have been feloniously stolen, taken & carried away, contrary to the form of the statute in such case made & provided & against the peace of this State, the Gov & dignity of same.



Exhibit S-28

JAS. H. BOLITHO,
Pros. of Pleas for Morris Co.

Exhibit S-28

*Cover:*

MORRIS OYER & TERMINER

Oct. Term, 1924.

S 28 #78

State

vs.

William Weiner
Leonard Berger
Leo Salinisky
Albert Schaefer
Joseph Juliano
Angelo Grande
Abe Kutzofsky
Sam Kabnitaky
Geo. Capen
Carmine Sica
John Doe known as
Archie Russel
Richard Roe known as
Geo. Schelster

Indict for Breaking & Entering

A True Bill
Emil Heller
Foreman

Recd & filed in Court of Quarter Sessions Oct. 20 1924.

E. B. MOTT
Clerk.



**Exhibit S-29.**

MORRIS OYER & TERMINER

Oct. Term, 1924.

Morris Co., To Wit:

The Grand Inquest for the State of N. J. & for the body of the Co. of Morris upon their oath Present that William Weiner, Leonard Burger, Leo Salinsky, Albert Schaefer, Joseph Juliano, Angelo Grande, Abe Kutzofsky, Sam Kabnitsky, George Capen, Carmine Sica, John Doe known as Archie Russel, Richard Roe known as Geo. Schelster, late of the Boro of Kinnelon in the sd Co. of Morris on the 22nd day of April 1924 & from thence hitherto, with force of arms at the Boro aforesaid, and within the jurisdiction of this Court did unlawfully, knowingly & in violation of Section 10 & 15 of Chapter 255 Laws of 1922 & State of N. J. possess & transport in two certain automobiles 40 cases of assorted liquors containing more than ½ of 1% alcoholic content by volume contrary to the form of the statute in such case made & provided & against the peace of this State & Government & dignity of same.

JAS. H. BOLITHO
Pros. of Pleas for Morris Co.

Exhibit S-29

*Cover:*

S. 29. #80

MORRIS OYER & TERMINER

Oct. Term, 1924.

The State

vs.

William Weiner
Leonard Berger
Leo Salinsky
Albert Schaefer
Joseph Juliano
Angelo Grande
Abe Kutzofsky
Sam Kabnitsky
Geo. Capen
Carmine Sica
John Doe known as
Archie Russel
Richard Roe known as
Geo. Schelster

Indict for
Illegal possession & Transportation of Intoxicating Liquors.

JAS. H. BOLITHO
Pros. of Pleas.

A True Bill.
Emil Heller
Foreman



**Exhibits S-31 and S-32.**

*(It was impossible to obtain these exhibits or copies thereof to enable the same to be printed in full in the State of the Case, as they have been mislaid.)*

---

**Exhibit S-33.**

Madison Oct. 20/23

Received from Lieutenant Ryan 6 cases of beer, (4) bottles missing.

D. CONKLIN.

**Exhibit S-34.**

OFFICE OF THE PROSECUTOR

COUNTY OF MORRIS, N. J.

Edward T. Brennan,
County Detective,
Telephone 1005.

James H. Bolitho,
Prosecutor.

William A. Hegarty,
Assistant Prosecutor.
Morristown, N. J. Oct. 20, 1923.

To Lieutenant Ryan,
Police Department,
Madison, N. J.

Dear Sir:

I desire you to deliver to Mr. Conklin, who represents my office, all of the liquor that was in Joseph Q. Smith's car when you arrested him and took him away from the control and possession of the car that the liquor was in.

Kindly do this at once and oblige.

JAMES H. BOLITHO,
Prosecutor.



**Exhibit S-35.**

July 20, 1923

James H. Bolitho, Esq., Prosecutor,
City.

Dear Sir:

Your letter of the 19th inst. received. I had supposed that after my full explanation of the Bogden case to your Assistant, Mr. Heggerty, there would be the desire on your part to have this await the trial of Hudock, who undoubtedly committed the crime and for which he has not been tried. I might say that there are some ugly stories circulating in New York about this situation and, in behalf of George Bogdan, I call upon you as Prosecutor to bring this man Hudock to trial upon the indictment for this offense as soon as this can possibly be done. It is not fair that George Bogdan should be made the victim and Hudock, who has plead guilty in this Court to a similar offense in this County and who has the record of committing similar acts throughout the country, should go scott free as to the indictment against him. However, I will notify Bogdan to be on hand Friday, the 27th inst.

Yours truly,

CHARLES A. RATHBUN.

**Exhibit S-36.**

COMPLAINT.

(*Copy*)

State of New Jersey, }
County of Morris. } ss:

Charley Polko, of the Borough of Rockaway in said County, being duly sworn, on his oath complains and says (that he is informed and verily believes) that on the 20th, 21st, 22nd and 23rd days of August A. D. Nineteen Hundred and twenty-one at the Borough of Rockaway, in the County of Morris, one Michael Arkie and Joe Bedguine did enter into a conspiracy to rob the said complainant, and did on the 25th day of August, 1921, in furtherance of said conspiracy, rob and steal from and carry away nine hundred dollars, in lawful money of the United States, the property of the said complainant, against the peace of the state,

$925.00
600 Drawn Bank
222 House
91 Check

Wherefore he prays that the said Mike Arkie and Joe Bedguine may be apprehended and held to answer to said complaint, and dealt with as law and justice may require.

CH. POLKO (L. S.)

Subscribed and sworn to before me
this 12th day of
August A. D. 1921.
Sep.

James H. Bolitho,
Mayor.



Exhibit S-36

*Cover:*

THE STATE
vs.
MIKE ARKIE
and
JOE BEGUINE
COMPLAINT

JAMES H. BOLITHO,
Mayor

Name of Witnesses with their addresses on attached paper.

---

WARRANT.

(*Copy*)

County of Morris, ss:

To the Sheriff or any Constable or Special Officer of said County or any Marshal of any Borough therein or any Police Officer of any Town therein:

Whereas complaint hath this day been made to me, Mayor, Borough of Rockaway of the County of Morris, on oath by Charley Polko, that on the 20th, 21st, 22nd and 23rd days of August A. D. Nineteen Hundred and twenty-one (and from thence hitherto), at the Borough of Rockaway in the County of Morris, Mike Arkie and

Exhibit S-36

Joe Bedguine did enter into a conspiracy to rob the said complainant, and did on the 25th day of August, 1921, in furtherance of said conspiracy, rob and steal from and carry away nine hundred dollars, in lawful money of the United States, the property of the said complainant against the peace of the state,

These are thereof, in the name of the State of New Jersey, to authorize and require you to apprehend the said Mike Arkie and Joe Bedquine if in your County they may be found, and bring them forthwith before me or some Justice of the Peace, Judge or Magistrate, in and for said County, to answer the said complaint and be further dealt with as the law directs, and hereof you are not to fail; and for so doing this shall be your warrant.

Given under my hand and seal of my office in the Borough of Rockaway in said County this 12th day of September Nineteen Hundred and twenty-one.

JAMES H. BOLITHO
Mayor.

I return the within warrant into Court with the body of the defendant this 13 day of September, A. D. 1921, having arrested the said defendant at , the same being miles from the office of the Justice.

FREDERICK HUBERT
Constable.



Exhibit S-36

*Cover:*

WARRANT

THE STATE
vs.
MIKE ARKIE
and
JOE BEDGUINE

JAMES H. BOLITHO,
Mayor.

---

RECOGNIZANCE TO APPEAR AND ANSWER CHARGES.

(*Copy*)

Before JAMES H. BOLITHO, MAYOR

| | |
|---|---|
| THE STATE OF NEW JERSEY<br>vs.<br>MIKE ARKIE. | On Charge for Conspiracy. |

State of New Jersey, County of Morris. } ss:

BE IT REMEMBERED, That on this 13th day of September in the year of our Lord One Thousand Nine Hundred and twenty-one personally appeared before me, JAMES H. BOLITHO, MAYOR, of Borough of Rockaway in and for the County of Morris and State aforesaid, MIKE ARKIE, Borough of Rockaway, and acknowledged himself to be indebted to the State of New Jersey, in the sum

Exhibit S-36

of One Hundred dollars each, to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following condition, to wit:

THAT if the above named MIKE ARKIE shall personally be and appear before the Court of Oyer & Terminer to be holden in and for the said County of Morris on the Second Tuesday of October 1921, to answer such charges as shall be then and there preferred against him and not depart the said Court without leave, then the above recognizance to be void, or otherwise to be and remain in force.

MIKE ARKIE.

Taken and acknowledged the day and year first above written, before me,
James H. Bolitho, Mayor,
Borough of Rockaway,
of the County of Morris, N. J.

*Cover:*

Before

JAMES H. BOLITHO,
Mayor,
COUNTY OF MORRIS, N. J.

RECOGNIZANCE

THE STATE OF NEW JERSEY
vs.
MIKE ARKIE

Charge, CONSPIRACY

To appear at OCTOBER TERM OF OYER & TERMINER, 1921.



**Exhibit S-37.**

State of New Jersey, County of Morris, } ss:

Pete Glogulech says that he saw Joe Bodguine talking with Charles Polko in the latter's yard at Rockaway, on August 23rd, 1921, about five o'clock in the afternoon. Said Joe Bodguine boarded at Mike Arkie's last year.

his
PETE X GLOGULECH
mark

Sworn to before me at Rockaway
this 10th day of September, 1921.
James H. Bolitho,
Master in Chancery of New Jersey.

State of New Jersey, County of Morris. } ss:

Mike Koxlasks says that he saw Mike Arkie talking in his yard about two weeks ago with a man, and afterwards Mike Arkie told him it was his friend Bodguine. Last year he saw the same man in Mike Arkie's place.

MIKE KOXLASKS.

Sworn and Subscribed to before me at
Rockaway, N. J., this 10th day of
September, nineteen hundred and twenty-one.
James H. Bolitho,
Master in Chancery of New Jersey.

Exhibit S-38

State of New Jersey, }
County of Morris. } ss:

Steve Yonovock, says that he saw Mike Arkie and Joe Beguine on the 24th of August, on the Town Bridge in Rockaway, about 4 o'clock in the afternoon, they were together, and I saw them together again in an automobile near Perkins or Harris Row on the 25th of August, 1921, the next day, riding together in an automobile.

STEVE YONOVOCK.

Sworn and subscribed to before me at
Rockaway, N. J., this 10th day of
September, nineteen hundred and twenty-one.
James H. Bolitho,
Master in Chancery of New Jersey.

---

**Exhibit S-38.**

State of New Jersey, }
County of Morris. }

I, Peter Dolimpio, who is of full age, being duly sworn, deposes and says:

I was raided the first time by the officers of the Sheriff Staff in August, 1924, they finding nothing but a bottle of Vinegar; I was taken to Morristown, where I retained lawyer, Mr. Marinaro giving him one hundred dollars ($100.00) as a retainer there I was held for the Grand Jury, they dismissed the case.

The second time I was raided by the officers of the Prosecutor's staff in Sept. 1924, they finding a bottle partly filled with vinegar, taken to Morristown but this time I did not retain a lawyer or see anybody held for the Grand Jury, they dismissed the case.



Exhibit S-38

In Nov. 1924, I was called on the telephone and asked to come down to the Sheriff's house in Boonton, N. J., when I arrived there he asked me how long I had been in business and how much money I made. I tell him I did not keep any account and did not know, then he handed me a blank piece of paper and told me to sign it. I asked him what for, he said that he had so many people that he could not remember everybody, and if I signed the paper I would not be bother any more therefor I signed the blank paper.

I have never signed any other paper before or since then when I signed the paper for the Sheriff there was no one present.

PETER DOLIMPIO.

Witness:
Alfonso Dibello,
Amerigo Esposito.

Sworn and subscribed before me
a Notary Public in the Town of
Dover, County of Morris, State of
New Jersey, this 21st day of Feb-
ruary, 1925.
Harold Forsythe.

**Exhibit D-1.**

Morristown, N. J., March 26, 1924.

Daniel A. Marinaro, Esq.,
Babbitt Bldg.,
Morristown, N. J.

*State vs. John Hudock.*

Dear Sir:

The above case has been set down for trial at 10 A. M. Monday, March 31st, 1924, at the Court House in Morristown.

This date has been definitely fixed and cannot be changed.

Yours truly,

Ass't Prosecutor.



**Exhibit D-2.**

Dover, N. J. Mar. 6, 1925.

Two Months after Date I Promise to Pay to the Order of RICHARD J. O'CONNOR $475.00
Four Hundred Seventy Five # Dollars

At THE DOVER TRUST COMPANY.

Value Received
No. Due.
DANIEL A. MARINARO.

*Endorsement:*

Pasquale Mutarello.

---

**Exhibit D-3.**

$500.00 Dover, N. J. Mar. 31, 1925.

Three Months after date I promise to pay to the order of James H. Bolitho and Richard J. O'Connor.....Five Hundred.....Dollars, at The National Union Bank of Dover, N. J.

Value Received with Interest at ...% per annum.
No. Due
DANIEL A. MARINARO.

## Exhibit D-4.

$550.00/100 Dover, N. J. April 6, 1925.

Three Months after date I promise to pay to the Order of .....
Five Hundred and Fifty.....Dollars.
at .....

Value Received
No. Due

DANIEL A. MARINARO.

---

## Exhibit D-5.

Being item found on Page 4 Annual Report of the County Treasurer of the County of Morris, for 1924.

May Court Costs $3,516.00

*In handwriting of Mr. Downs:*

($1500 Bail forfeit included on the item for John Hudock.)



## Exhibit D-7.

July 19, 1923.

C. Franklin Wilson, Judge,
Morristown, N. J.

Dear Judge:

I have written to Senator Rathbun requesting him to produce in Court on Friday, July 27th, his client Bogden, who was convicted a long time ago, and I think ought to be sentenced without further delay. I am enclosing a copy of a letter I sent to Senator Rathbun. It seems to me that this matter has been overlooked or permitted to lie in abeyance too long now.

Very truly yours,

Prosecutor.

Unsigned carbon copy.

**Exhibit D-8.**

Morristown, N. J. March 26, 1924.

Mr. Joseph Bogden,
565 West 192 Street,
N. Y. City, N. Y.

*State vs. John Hudock and Mike Arkie.*

Dear Sir:

The above case has been set down for trial at 10 a. m. Monday March 31st, 1924, at the Court House in Morristown, New Jersey.

It will be necessary for you, Mrs. Bogden and your daughter Julia, to be present at that time to give testimony on behalf of the State of New Jersey.

In the event of any change of date you will be notified by telephone otherwise be on hand at time specified.

Yours truly,

ASS'T PROSECUTOR.



**Exhibit D-9.**

Morristown, N. J. Feb. 9, 1924.

National Surety Co.,
115 Broadway,
N. Y. City.

Gentlemen:

Confirming our telephonic conversation of February 7th, 1924, with reference to the case of the State of New Jersey vs. John Hudock or Huydock, please be advised that this matter will be moved for trial on Monday, February 18th, 1924, at 10 A. M. and it will be necessary for you to produce Hudock at that time.

This date has been definitely fixed and cannot be changed.

Yours truly,

PROSECUTOR.

**Exhibit D-10.**

Morristown, N. J. March 26, 1924.

National Surety Co.,
115 Broadway,
N. Y. City, N. Y.

*State vs. John Hudock or Huydock.*

Gentlemen:

The above case has been set down for trial at 10 A. M. Monday March 31st, 1924, at the Court House in Morristown and it will be necessary for you to produce Hudock at that time.

This date has been definitely fixed and cannot be changed.

Yours truly,

ASS'T PROSECUTOR.



**Exhibit D-11.**

Morristown, N. J. April 2, 1924.

National Surety Company,
115 Broadway,
N. Y. City, N. Y.

*State vs. John Hudock.*

Gentlemen:

Referring to our telephonic conversation with your office on April 1st, 1924, please be advised that the above case will be moved for trial at the Court House in Morristown, at 10 A. M. Monday April 7th, 1924.

It will be necessary for you to have John Hudock present at that time otherwise bail in the case will be forfeited.

Yours very truly,

PROSECUTOR.

**Exhibit D-12.**

Morristown, N. J. April 7, 1924.

National Surety Company,
115 Broadway,
N. Y. City, N. Y.

Gentlemen:

Upon motion of the State this morning in Court of Oyer and Terminer, the bond given by your Company and John Hudock or Huydock was forfeited, because of the non-appearance of the said John Hudock for trial in the said Court.

The State of New Jersey expects your company to pay this Three thousand at once.

Yours very truly,

PROSECUTOR.



**Exhibit D-13.**

We Bond More People than any other Company in the World.

Wm. B. Joyce,
President.

NATIONAL SURETY COMPANY
Capital and Surplus over $10,000,000.00
115 Broadway, New York.

Address Reply to
Court Department
A. C. Millikian,
Asst. Secretary.

February 13, 1924.

State of New Jersey vs. John Hudock or Huydock.

James H. Bolitho, Esq.,
Morristown, N. J.

Dear Sir:

Ordinarily I would handle bail bonds executed in Morristown, and I cannot remember the telephonic conversation referred to in your letter of February 9th. We would therefore, ask you to be so good as to advise me if you have the name of the party with whom you spoke. In any event may I ask that you advise the names of the agents signing the bond for the above party.

Yours very truly,

ROBERT T. CRAIG,
Assistant Superintendent.

RTC:ac

**Exhibit D-14.**

Wm. B. Joyce

E. A. St. John, President. Joel Rathbone, Vice Chairman
William J. Griffin, General Counsel.

NATIONAL SURETY COMPANY

Capital and Surplus over $14,000,000.00

115 Broadway, New York

Make Checks Payable to the Company
Surety Claim Department
Joseph T. Magee
Asst. General Counsel.

April 9th, 1924.

*In Re: Bd.* #3367500 *John Hayduck.*

Hon. James H. Bolitho,
Prosecutor,
Morristown, N. J.

Dear Sir:

We have yours of April 7th, 1924.

We have no record of ever having received notice that the so called John Hayduck, Hudock or Huydock was notified to appear. Will you kindly advise when this notice was given and when the forfeiture was made? Will you also advise the writer who executed this bond in behalf of the National Surety Company. We would like to have information to identify this matter.

Yours very truly,

FREDERICK W. McGOWAN,
Frederick W. McGowan,
Attorney.

FWMc MAH



**Exhibit D-15.**

Wm. B. Joyce, Chairman.

Joel Rathbone, Vice Chairman.

E. A. St. John, President. William J. Griffin, General Counsel.

NATIONAL SURETY COMPANY

Capital and Surplus over $14,000,000.00
115 Broadway, New York.
Make Checks Payable to the Company.

Surety Claim Department
Joseph T. Magee,
Asst. General Counsel.

Please Address Reply for Attention of
Frederick H. McGowan.

May 15, 1924.

In Re: Bd. 3490129—Claim 26996 John Hayduck.

Hon. James H. Bolitho,
Prosecutor, Morris County,
Morristown, N. J.

Dear Sir:

We refer to the matter of the above captioned bail recognizance which as you have already informed us was forfeited on April 7, 1924.

In accordance with our promise to you we have had one of our representatives visit the wife of John Hayduck in Buffalo, N. Y. She insists that she does not know the present whereabouts of her husband. In the course of the interview she

Exhibit D-15

stated that he had not lived with her during the past seven years, but that during that time he had cost her about $15,000 in her endeavor to keep him out of jail on account of his many escapades. She has endeavored to locate him but has been unsuccessful.

We have also endeavored to secure information through the authorities of New York, but the Police Department advise that they have no finger prints of this man, nor any record that would assist us in locating him. It looks now as if our chances of locating him within a reasonable time are slight.

If you desire that we forward our check to you in the sum of $1,500 to settle the above forfeiture, we shall do so upon receipt of advise from you. We regret very much that up to this time we have failed to located this man. On the other hand, we are hoping that perhaps you have been successful.

We would ask that you also kindly advise us that upon checking up the records of the Clerk of your Court that you have found that the writer was correct in the statement that our other bond had not been forfeited because the case in which it was given was disposed of. We would like to receive this advise from you in writing inasmuch as you originally made a demand upon us for the payment of this bond.

We await your reply.

Very truly yours,

FREDERICK W. McGOWAN,
Attorney.

FWM—w.



**Exhibit D-16.**

Wm. B. Joyce, Chairman,

Joel Rathbone, Vice Chairman.

E. A. St. John, President.
William J. Griffin, General Counsel.
Make Checks Payable to the Company.

NATIONAL SURETY COMPANY

115 Broadway, New York.

Please Address Reply for Attention of
Frederick W. McGowan

Surety Claim Department
Joseph T. Magee,
Asst. General Counsel.

May 28th, 1924.

In Re: Bd. #3490129 Claim #26996.
John Hayduck.

Hon. James H. Bolitho,
Prosecutor, Morris County,
Morristown, N. J.

Dear Sir:

We have yours of May 16th, 1924.
Enclosed you will find our check in the amount of $1500. in full payment of our liability under the bail bond which was forfeited in the Court of Quarter Session, Morris County, Morristown,

Exhibit D-17

N. J., April 7th, 1924. You will kindly acknowledge receipt of this check and advise that this check has terminated the liability of the National Surety Company on behalf of the said John Hayduck.

Yours very truly,

FREDERICK W. McGOWAN
Frederick W. McGowan,
Attorney.

FWM:MAH

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**Exhibit D-17.**

Morristown, N. J. May 16, 1924.

National Surety Company,
115 Broadway,
New York City, N. Y.

Attention: Mr. McGowan.

In re: Bd. 3490129 Claim 26996
John Hayduck.

Gentlemen:

Your communication of the 15th instant at hand, and in reply will say, that we think you ought to send us a check for the sum due on forfeiture of bail, in above entitled claim.

Yours very truly,

Prosecutor.



**Exhibit D-18.**

1280

Name Peter Dolimtio

Aliases

Address

| Nationality | Race | Age | Married Single |
|---|---|---|---|

| Date of Offense | Crime | Court | Date of conviction | Date of Sentence |
|---|---|---|---|---|
| 1924. Sept. 9 | Illegal Possession Intox. Liquor | | | |

Remarks Dismissed by Grand Jury.

*On back:*

June 12th, 1925.

I hereby certify that this is a true copy of the card index record in the case of the State v. Peter Dolimtio in the office of the Prosecutor of the Pleas of the County of Morris on May 20th, 1925, when I took charge of the said office.

ALBERT H. HOLLAND
Prosecutor.

## Exhibit D-19.

1445.

Name Peter Dolinfino

Aliases

Address

| Nationality | Race | Age | Married Single |
|---|---|---|---|

| Date of Offense | Crime | Court | Date of conviction | Date of Sentence |
|---|---|---|---|---|
| 1924. Aug. 21 | Illegal Poss. and Sale Intox Liquor | | | |

Remarks Oct. 14-1924 Dismissed by Grand Jury.

*On back:*

June 12th, 1925.

I hereby certify that this is a true copy of the card index record in the case of the State v. Peter Dolintio, in the office of the Prosecutor of the Pleas of the County of Morris on May 20th, 1925, when I took charge of the said office.

ALBERT H. HOLLAND
Prosecutor.



## Exhibit D-20.

County of Morris.
State of New Jersey, }

I, Peter Dolimpio, who is of full age, being duly sworn, deposes and says:

I was raided the first time by the officers of the Sheriff Staff in August, 1924, they finding nothing but a bottle of Vinegar; I was taken to Morristown, where I retained lawyer, Mr. Marinaro giving him one hundred dollars ($100.00) as a retainer there I was held for the Grand Jury, they dismissed the case.

The second time I was raided by the officers of the Prosecutor's staff in Sept. 1924, they finding a bottle partly filled with vinegar, taken to Morristown but this time I did not retain a lawyer or see anybody held for the Grand Jury, they dismissed the case.

In Nov. 1924, I was called on the telephone and asked to come down to the Sheriff's house in Boonton, N. J., when I arrived there he asked me how long I had been in business and how much money I made. I tell him I did not keep any account and did not know, then he handed me a blank piece of paper and told me to sign it. I asked him what for, he said that he had so many people that he could not remember everybody, and if I signed the paper I would not be bother any more therefor I signed the blank paper.

Exhibit D-21

I have never signed any other paper before or since then when I signed the paper for the Sheriff there was no one present.

PETER DOLIMPIO.

Witness:
Alfonso Dibello,
Amerigo Esposito.

Sworn and subscribed before me a Notary Public in the Town of Dover, County of Morris, State of New Jersey, this 21st day of February, 1925.

Harold Forsythe.

---

**Exhibit D-21.**

Copy of Docket.

Before Joseph Thomas, Recorder

THE STATE
vs.
ANTONIO MINGARDI.
} On Complaint for Jumping Bail.

Date of Complaint: May 11th, 1924.

Name and Address of Complainant: Carmine Verrilli, Morristown, N. J.



Exhibit D-22

Nature of Charge (copy of complaint in full) One Antonio Mingardi of Morristown did get away from the Town of Morristown in the County of Morris and State of New Jersey, without notifying his bondsman and defrauding the State of New Jersey by moving and getting away without informing his bondsman of his removal, the said Carmine Verrilli has recalled his bond on the said Antonio Mingardi.

Warrant returned before Joseph Thomas, Recorder, date May 11, 1924.

Order made, Committed to Morris County jail.

Papers in above case forwarded to Prosecutor on May 11th, 1924.

---

**Exhibit D-22.**

| No. | Defendant | Complainant | Date |
|---|---|---|---|
| 794 | Anthony Mingardi | Frederick Hubert | Feb. 22, 1924 |

| Offense | Date | Further Action |
|---|---|---|
| Illegal Possession | | No inventory |
| Intoxicating liquor | | |

Date Remarks

Dismissed by May Term, 1924, Grand Jury.

**Exhibit D-23.**

(File Envelope)

No. 794 Term 192

STATE
vs.
ANTHONY MINGARDI.

Illegal Possession Intoxicating Liquor.

Justice W. P. Gardner.

Constable

Witness Address

Dismissed (In Defendant's handwriting)

No inventory

Dismissed by May term, 1924.

Comments May 13
In Session 4 days
Presentment May 14
Bond ex. July 11th.



**Exhibit D-24.**

(File Envelope)

No. 1280 Term 192

STATE
vs.
PETER DOLIMTIO.

Illegal Possession of Intoxicating Liquor.

Justice

Constable,

Witness Address

Dismissed (In Defendant's handwriting)

Comments

**Exhibit D-25.**

(File Envelope)

No. 1445 Term 192

STATE
vs.
PETER DOLINFIO.

Illegal Possession of and sale of Intoxicating Liquor.

Justice R. P. Rolston

Constable

Witness Address

Dismissed (In defendant's own handwriting)
Comments



**Exhibit D-26.**

Morristown, N. J. Nov. 28, 1924.

Daniel A. Marinaro, Esq.,
Attorney-at-law,
Morristown, N. J.

Dear Sir:

*Angelo Grande*
*Carmine Sica*
*The State vs. Joseph Juliano.*

The above cases have been set down for trial on Wednesday, December 3rd, 1924, at ten o'clock at the Court House.

This date has been definitely fixed, and cannot be changed.

Yours very truly,

Prosecutor.

WAH;MR.

**Exhibit D-27.**

Morristown December 27, 1924.

Mr. Albert H. Holland,
Park Place,
Morristown, N. J.

State vs. Joseph Juliano
Angelo Grande.

Dear Sir:

If the above named defendants desire to retract their pleas to indictments found against them, please arrange to have your clients in Court Friday morning, January 2, 1925.

Yours truly,

Prosecutor.



**Exhibit D-28 for Identification.**

MAURICE J. WEISS PH. G.

PHARMACEUTICAL and ANALYTICAL CHEMIST

25 Park Place

Morristown, N. J.

Date 10.22.23

Specimen Twelve ounce bottle marked 'Taken from car of Joseph Smith, Madison, N. J.

Report

A clear amber liquid having the characteristic odor of beer.
Upon analysis the liquid yielded .25 millimeters of Ethyl Alcohol to 100 Millimeters of the above beer, making a total Alcoholic Content of ¼ of 1%.

MAURICE J. WEISS, Ph. G.

**Opinion of Supreme Court.**

NEW JERSEY SUPREME COURT

No. 23, JANUARY TERM, 1926

STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
JAMES H. BOLITHO,
Plaintiff-in-Error.

On error to the Morris County Court of Oyer and Terminer. For the plaintiff-in-error, Richard J. O'Connor. For the State, Wilfred H. Jayne, Jr. Before Gummere, Chief Justice, and Justices Kalisch and Campbell. The opinion of the Court was delivered by, Kalisch, J.

The plaintiff-in-error was convicted in the Morris County Court of Oyer and Terminer on an indictment charging him with malfeasance in his office of Prosecutor of the Pleas for the County of Morris. The indictment contains eleven counts. These counts differ from each other in the nature of the malfeasance alleged to have been committed by the accused, and in that they charge separate and distinct acts of malfeasance to have been committed by him on different days of the years 1923 and 1924. The jury found him guilty on the first, fifth, sixth, seventh and tenth counts and not guilty on the eighth and eleventh counts. The second, third, fourth and ninth counts were eliminated by the Court from consideration by the jury. On



each of the counts under which the plaintiff-in-error was convicted, it was adjudged that he be confined in the State Prison, at hard labor, for a maximum term of three years and minimum term of two years, and that the sentences should run concurrently.

The case is brought here for review on a strict writ of error and bills of exceptions and also by virtue of the 136th Section of the Criminal Procedure Act. Under the former there are one hundred and eleven assignments-of-errors for a reversal of the judgment and under the latter there are ninety-six specification of causes for reversal set forth to the same end. Many of the specifications of causes are repetitions of the assignments-of-errors. The assignments and specifications have been grouped and argued together, in an elaborate brief of 331 pages, submitted by counsel of plaintiff-in-error, and these will now be considered in the order in which they are presented.

The first point in the brief argued and relied on by counsel of plaintiff-in-error for a reversal of the judgment invokes consideration of assignments-of-errors, 1, 2, 12, 13, 14, 47, 48, 49 and 50, and specifications of causes, 1, 2, 63, 64, 65 and 66. These raise the question as to the legal propriety of the judicial action of the trial judge in denying a challenge on behalf of the plaintiff-in-error upon the ground that the court was disqualified, in law, to hear and determine the issues involved under the indictment.

The challenge is in writing. It states in substance, that it is made because the interest of the

presiding Justice Charles W. Parker, "as shown by the following enumerated acts, is such as to indicate a state of mind and an opinion contrary to the impartial administration of justice towards this defendant; to wit:

1. Without authority in law, he ordered an investigation upon a petition signed by a less number of tax payers and free holders of the County of Morris than required by law, said petition not setting up any facts constituting reason for such investigation, and containing merely a conclusion, namely that there were 'deplorable conditions' in the County of Morris,"

2. That Justice Parker, without authority in law, appointed Wilfred Jayne, Jr., to prosecute and conduct the investigation without authority in law, etc.

3. That notwithstanding the law of May 29, 1913, known as the "Chancellor-Sheriff Jury Act" Justice Parker ordered and directed that the Sheriff of the County of Morris be removed and thereby William C. Sweeny, the other Jury Commissioner was prevented from acting as such and that the said Justice appointed two elisors, namely Victor A. Weiss and Joshua R. Salmon to select and impanel an elisor grand jury, etc. That the said Salmon is licensed to practice law in the State of New Jersey and that under the "Chancellor-Sheriff Jury Act" of 1913, he was not eligible to be appointed a jury commissioner; that the said Justice was interested in and took part in the selection of the Elisor Grand Jury in that he furnished to the Elisor Joshua R. Salmon three different lists of names of grand juries previously selected at previous times in the Court of Oyer and Terminer; that the list supplied to the Elisor was not a list from which a grand jury could be legally drawn under the Chancellor-Sheriff Jury act; that the said elisors added twenty or more different persons to the list given by them by the Justice, and chose from those added names in making up the grand jury; that Nathaniel C. Toms, clerk of the grand jury and under civil service, at the request of Justice Parker resigned, and one J. Donald Masterton, a non-resident of the county was appointed by the Justice as temporary clerk though he was not selected from the civil service list nor an employeee of the office of the prosecutor of the pleas of Morris County; that the said Justice ordered and permitted the said Masterton to take the testimony of witnesses appearing before the elisor grand jury, etc., that the said Justice knew that there were only twenty-two persons sworn in as grand jurors whereas the law requires that a grand jury shall consist of twenty-three jurors.



To this challenge there was a demurrer filed on behalf of the State, the legal effect of this pleading being an admission of such facts as are properly stated as a ground of challenge, but a denial of their sufficiency, in law, to disqualify the trial judge to hear and determine the issues involved in the case.

The avowed basis of the challenge, plainly stated therein, is that the interest of the trial judge, as shown by his acts enumerated in the

challenge, is such as to indicate a state of mind and an opinion contrary to the impartial administration of justice towards the accused.

Proceeding upon the theory that the acts of the trial judge complained of in the challenge are accurately stated, it is quite obvious that they fall far short from showing that he had any personal or private interest apart from a duty, which he, as a judicial officer, owed to the general public, namely, to protect the people of Morris County against corruption and misconduct of its public officers in the administration of the county's business; and in order to achieve the end in view, he ordered, under the statute, an investigation, so that offenders betraying the public trust may be unveiled and brought to condign punishment.

The regularity of the procedure which invoked the investigation is not properly subject to a collateral attack, and moreover, was, as aptly said by the trial judge, wholly irrelevant to the subject matter of the challenge. The other matters spread out in the challenge do not indicate any such personal and private interest in the cause, as would legally disqualify the trial judge from hearing and deciding the issues involved under the indictment.

The proper function of a challenge to the competency of a judge to sit in a cause on the ground of interest and bias has been, apparently, misconceived by the challenger, for in considering the import of the other matters set forth in the challenge, we find that they comprise a series of judicial acts of the trial judge, which acts if unauthorized may properly support a challenge to the array of grand jurors selected and summoned by elisors; or if an unauthorized person was permitted to be present in the grand jury room during the deliberation of the grand jury when the indictment against the accused was found, such a circumstance can be assigned as error; yet in no proper sense does either of these acts furnish a valid basis to a challenge of a trial judge on the ground of interest and bias.



We may safely assume that every law-abiding citizen is naturally at war with violators of the law and hence is more or less interested in the suppression of crime, which interest springs not only from a sense of self-protection, but also from a duty to protect the community, as well, against unlawful acts of its members, and, therefore, it is quite obvious that in order to entertain the notion stressed in the brief of counsel of plaintiff-in-error, we would be driven to the ludicrous declaration that such an interest, as above indicated, disqualifies a judge or juror from sitting in judgment, impartially, between the State and the accused. Such a course would deal a disastrous blow to our judicial system.

In *State* v. *Spencer,* 21 N. J. L. 196, Hornblower, Chief Justice, at page 198, stated a sound legal rule to be applied, when he said:

> "A declaration of opinion to disqualify a juror, therefore, must be such a one as implies malice or ill-will against the pris-

oner, thereby showing that the person challenged does not stand indifferent between the State and him. This is the uniform language of the books and cases which are of authority under our constitution, as well as of the English Courts up to the present time."

This legal rule had become firmly imbedded in the law of this State. The salutoriness of the rule is luminously dealt with by Green, Chief Justice, in *State* v. *Fox,* 25, N. J. L., commencing at page 596. We cannot conjure up any good reason why the legal principle enunciated is not equally applicable to a challenge to a judge upon the ground of interest and bias. We think it is. The challenge was properly overruled.

Under Point II of the brief, it is next urged that the trial judge erred in overruling defendant's challenge to the array of petit jurors. The challenge was as follows:

"(1) That the said jury was purported to be drawn by Charles E. Estler, Sheriff of the County of Morris, who heretofore, by the order of Justice Parker, was disqualified as Jury Commissioner for Morris County and while so disqualified participated in the drawing of said petit jury and because the said Charles E. Estler, Sheriff as aforesaid, was interested in the outcome of several of the cases to be tried by said petit jury including that of defendant above mentioned: (2) That the aforesaid petit jury by reason of the wide publicity given



to the criminal proceedings, which will be brought before it, is prejudiced and biased."

To this challenge the State filed a demurrer. It is to be observed that the challenge is radically defective in that it fails to set out any facts disclosing the sheriff to have been improperly interested in the outcome of the trial of the case against the defendant. It will not be presumed that he was improperly interested. Whether or not he was improperly interested in the outcome of the trial of the defendant was a burden resting upon the defendant to establish by competent evidence. This he made no attempt to do. In the second reason set forth in the challenge there is a like absence of any facts in support of the assertion "that the aforesaid petit jury by reason of the wide publicity given to the criminal proceedings which will be brought before it is prejudicial and biased." The characterization of the jury as "prejudiced and biased" does not within its general sense embrace the controlling essential fact that it is prejudiced and biased against the defendant. Against which party such prejudice and bias is entertained, whether against the State or against the defendant the challenge does not disclose.

The argument of counsel of plaintiff-in-error to the effect, that because the panel of petit jurors was drawn by the jury commission of whom the sheriff was one, and he, subsequently, being disqualified by the trial judge, because of his interest in the cause, thereby disabling the commission

to further function, whereupon the trial judge appointed elisors who selected and summoned the panel of grand jurors, therefore, the panel of petit jurors became disqualified is not only illogical but transparently fragile. The panel of petit jurors was drawn according to law by the jury commissioners, and the fact that the sheriff was subsequently disqualified on the ground of such an interest in the cause as to disqualify him from participating in drawing a panel of grand jurors, standing alone, did not have the effect of invalidating the act of the jury commissioners or affect the lawful status of the petit jury.

Moreover, the challenge under consideration, like the challenge to the Judge has the same radical defect, in that, it contains solely a statement of the reasons for making the challenge. This has been held to be insufficient in law. *Mann* v. *Glover,* 14 N. J. L., 195, 203; in *State* v. *Barker,* 68 N. J. L. 19, 25, the Supreme Court held, that "a demurrer only admits the facts set out in the pleading, and not then unless they are sufficiently pleaded." The challenge was properly overruled.

Under Point III, it is contended, on behalf of the plaintiff-in-error, that Justice Parker erred in refusing to allow a writ of certiorari to review the indictment. The State of the case shows that application was made to the Justice for a writ of certiorari to review the form of the indictment. This application was properly denied. An application to a Supreme Court Justice for a writ of certiorari to remove an indictment into the Supreme Court for the purpose of moving before that tribunal to quash is addressed to the discretion of the Justice. If he refuses to exercise his discretion to allow the writ the application may be made to the Supreme Court *en banc.* But the refusal of either furnishes no proper basis for an assignment-of-error, under proceedings by strict writ-of-error nor for a specification of cause for reversal in proceedings under the 136th section of the Criminal Procedure Act. It will not be out of place to state here that for more than fifty years it was the fixed practice to disallow an application for a writ of certiorari to remove an indictment into the Supreme Court for the purpose of moving there to quash it, unless the prosecutor of the pleas consented to its removal, or unless it appeared upon the face of the indictment that it was clearly defective in substance and a motion to quash had been made in the court of the first instance, which motion was denied.



It is evident that such a course avoids delay in the trial of criminal cases, without depriving a defendant of any legal right he may have to question the validity of the indictment against him, on the trial and upon appeal; of course, if he pursues the practice which obtains in that respect.

We now approach the consideration of the attack made upon the validity of the indictment by the plaintiff-in-error. The grounds of his attack are (1) that the indictment was found by an elisor grand jury, there being no authority-in-law for the appointment of elisors and for the drawing of grand juries by elisors. (2) That Mr. Jayne was not a legally appointed judicial officer and there-

fore his presence in the grand jury room and his participation in presenting testimony before the grand jury against the plaintiff-in-error invalidated the finding of the indictment. (3) That the appointment of the grand jury clerk by the trial judge was without authority in law and that his presence in the grand jury room during the deliberation of the grand jury which resulted in a finding of the indictment against the plaintiff-in-error invalidated the indictment. (4) That the presence of an interpreter in the grand jury room, to interpret the testimony of witnesses who could not speak English, invalidated the indictment. (5) That the indictment is duplicitous in containing eleven counts, each count charging a different offense committed on a different day and naming different persons as third parties in each count. (6) That one of the elisors appointed by the Court was Joshua R. Salmon, who was not qualified to be a jury commissioner by virtue of section one of the Chancellor-Sheriff Jury act. (7) That the grand jury consisted of only twenty-two members who were sworn in.

There was a motion at the close of the entire case to direct a verdict for the defendant for some of the reasons as stated in the motion to quash the indictment and some additional reasons based upon the ground of insufficiency of proof. There was also a motion in arrest of judgment which covered some of the grounds argued on the motion to quash, and thus only the questions raised as to the validity of the particular counts of the indictment by objections and rulings thereon are properly here for decision. Before proceeding to discuss the various questions raised it is well to point out here that in the motion of arrest of judgment the claim made is that one Mr. Weiss, one of the elisors appointed by the Court was not a citizen. There was no proof offered to substantiate that assertion and the trial judge properly disregarded it.



Now as to the authority of the trial judge to appoint elisors.

The contention on behalf of the plaintiff-in-error is, that by virtue of the Chancellor-Sheriff Jury Act, P. L. 1913, page 833, the power formerly vested in the court to appoint elisors, as indicated in Section 8, Revision 1877, page 532; 3 Comp. Stat., Section 13a, page 2966, was repealed. Of course it could not be successfully argued that prior to the passage of the Act of 1913, *supra,* such power did not exist, in view of the decisions of the Court of Errors and Appeals in *State* v. *Zellers,* 666; *State* v. *Egan,* 94 *Id.,* 701; *State* v. *Kuehnle,* 85 *Id.,* 220, 222, to the effect, that the power of the Court to appoint elisors to select and summon grand and petit jurors is sanctioned by Section 8, *supra,* was unassailable.

In support of the contention that Section 8, *supra,* was repealed by the Chancellor-Sheriff Jury Act, counsel of plaintiff-in-error argues that the history of events which led to its enactment and the tenor of its provisions established that it was the intention of the legislature to erect a complete structure for the selecting and drawing of grand and petit jurors and that such intention is clearly evinced by the very first section of the

statute which provides, that the Chancellor of this State shall appoint in each count a citizen, resident therein who shall not be a member of the same political party as the sheriff of such county, and who, together with the sheriff of such county, shall constitute and be designated as "Commissioners of Juries;" followed by sections which provide how grand and petit jurors shall be selected and summoned, and relating to other matters connected therewith, and then points out that Section 14, provides:

> "All acts and parts of acts inconsistent with this act are hereby repealed and shall take effect immediately,"

and thereupon concludes that the legal effect of this legislation was to repeal Section 8. Counsel of plaintiff-in-error seems to have overlooked Section 13, of the statute in question, which section provides:

> "Nothing herein contained shall be held or construed in anywise to limit the power of the court or any justice or judge, as heretofore had or exercised in connection with the drawing or discharge of jurors or panels."

Now it cannot be successfully gainsaid that the power of a court to appoint elisors, in a proper case, to select and summon grand and petit jurors, did not exist prior to the passage of the 1913 statute, for that was the precise judicial power which was exercised in the cases of *State* v. *Zellers; State* v. *Egan and State* v. *Kuehnle, supra,* the existence of such judicial power being recognized and sanctioned by these cases. It will be presumed that the legislature in enacting the statute of 1913, was aware of the provisions of Section 8 of the Revision of 1877, and of the construction placed upon it by our highest tribunal and, therefore, used the wise precaution to expressly declare that nothing contained in the statute of 1913



> "should be held or construed in anywise to limit the powers of the court or any justice or judge as heretofore had or exercised in connection with the drawing or discharge of jurors or panels."

Moreover, we have not only been unable to detect anything in the provisions of the Act of 1913, indicating that the legislative intent was to erect an independent and complete structure for the selecting and summoning of grand and petit jurors, solely, by virtue of the provisions of the supplement, as contended for by counsel of plaintiff-in-error, but find from a comprehension of the entire act an obvious intent of the legislature to add to the jury act of the Revision of 1877, *supra,* some salutary features and to maintain undisturbed the provision of Section 8, which manifestly seeks to prevent a halt in the operation of the judicial machinery, on both the criminal and civil sides of our courts, in the event that a statutory emergency arises for the appointment of elisors because of the disability of the jury commissioners to function, by reason of the disqualification of both or either of them.

It goes without saying, that it would have served no good and efficient purpose for the legislative body to have conferred upon a court the power to appoint elisors, where an emergency had arisen requiring such appointment, unless there was legal machinery provided to go with the appointment which would enable the elisors to select and summon grand and petit jurors. This is accomplished by Section 8 of the Jury Act, Revision 1877, page 532; 3 Comp. Stat., page 2966. We are therefore, of the opinion that the provision of this section insofar as it authorized the appointment of elisors and confers the power upon them to select and summon grand and petit jurors is not inconsistent with the provisions of the Chancellor-Sheriff Jury Act. In addition to what has been said in that regard the fact that the statute of 1913 is entitled:

> "A Supplement to an act entitled 'An act concerning juries' (Revision) approved March 27th 1874, and makes no provision therein for the selection and drawing of grand and petit jurors in the event of the disqualification of both or either of the commissioners is of great significance and as indicating that the legislature was content and intended that upon the happening of the disability of the commissioners to function by reason of disqualification, the Court should appoint elisors to select and summon grand and petit juries, as sanctioned by Section 8 of the Jury Act of 1874, to which the Act of 1913 is a supplement."



Furthermore, since this section of the jury act is obviously intended to prevent grave interruption likely to occur in the orderly course of the administration of the law, especially in that part of it, comprehending the selecting and drawing of grand and petit juries, and since a repeal of the section in question would tend to produce incalculable mischief to the maintenance and enforcement of law and order, and in the absence of any substituted legal machinery having been provided for in the supplement for that of Section 8, of the jury act, in the event the jury commission should become disabled from functioning, and in giving due weight to the sections of the jury act with which the challenged section is in *pari materia,* and as implied repealers are not favored in the law, we are persuaded that all these considerations tend to confirm the conclusion reached that Section 8 is in full force and effect and was so intended to be by the law making power of the State.

As a further ground for quashing the indictment, it is urged that Mr. Jayne was improperly designated by the Attorney General to appear on behalf of the State to conduct the proceedings against the plaintiff-in-error, the said Jayne not being one of the assistants, or assistant of the Attorney-General at the time of such designation, and, therefore his presence in the grand jury room at the time evidence was presented upon which the indictment was predicated was unauthorized and illegal, and because the said Jayne at the time was the prosecutor of the pleas for Ocean County and

for that reason also, his appointment as assistant attorney-general was not according to law.

There was no proof that Mr. Jayne was in the Grand Jury room at any time while testimony was being presented against the plaintiff-in-error, but even if this were a fact, in the view we take of the question raised. Mr. Jayne was properly there.

The contention, of counsel of plaintiff-in-error, that the power, of the Attorney-General, to designate such assistant or assistants to represent him

> "for prosecuting the criminal business of the State therein, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand juries of the county, the preparation of indictments and the trial of indictments for crimes and misdemeanors,"

as declared by Chapter I, P. L. 1922, page 11, was limited to a designation of those assistants who were, at the time of designation clothed with the title of assistant attorney-general, has not even the merit of being specious. The record of the case shows a full compliance with the Statute. Moreover, the title of Mr. Jayne to function as Assistant Attorney-General is not subject to be collaterally questioned.

Next, it is argued that the appointment of the clerk of grand jury by the Trial Judge was without authority-in-law, and hence his presence in the grand jury room during the taking of the testimony of the witnesses and the deliberation of that body, resulting in a finding by it of an indictment



against the plaintiff-in-error rendered such indictment a nullity. The inanity of this argument lies in the circumstance that there is no fact disclosed in the record which supports the assertions made.

The fourth ground urged to support the motion to quash, is, that the indictment is rendered void because of the presence of an interpreter in the grand jury room to interpret the testimony of witnesses who could not speak English.

We do not perceive any error in this. If it becomes necessary to have an interpreter in order to elicit testimony from a witness who cannot speak English, there seems to be no good reason why a grand jury may not summon to its assistance some reputable person who understands the foreign language of the witness, and can speak English, to interpret what is said in the foreign tongue, even though he be not an interpreter appointed by the Court. Unless this be so investigations of grand juries into matters affecting the peace, safety and welfare of a community might be seriously hampered and thus lead to injurious delay and obstruction of justice.

Another ground upon which the validity of the indictment is impugned, is, that one of the elisors appointed by the trial judge was Joshua R. Salmon, a person licensed to practice law, whereas by section one of the Chancellor-Sheriff Act, a person licensed to practice law is ineligible to be appointed as a jury commissioner. Manifestly, there is no merit in this contention, since Mr. Salmon was appointed an elisor and not a jury

commissioner, and there is no such inhibition in the jury act in relation to the appointment of elisors. Although it was assigned as error that the indictment is invalid because only twenty-two persons were impanelled as grand jurors, whereas the law requires that a grand jury shall consist of twenty-three jurors, this objection appears to have been abandoned since it is not presented or argued in the brief of plaintiff in error.

Another ground of reversal urged is, that the grand jury of the January Term, 1925, of the Court, was undischarged at the time the *venire facias* for the elisor grand jury issued and that such elisor grand jury was selected and impanelled before the regular grand jury was discharged. This assertion is not borne out by the facts stated in the record before us. The record discloses that the grand jury of the January Term was discharged on February 18, 1925, on which said date the order disqualifying the sheriff was filed. The elisor grand jury that found the indictment against the plaintiff-in-error was impaneled on the second Tuesday of March, 1925. But it is further urged that the Court was without authority to order a special term and hence the impaneling of the grand jury by the court was without authority and does not constitute due process of law. This argument is built on a fallacious theory. The Court of Oyer and Terminer has power to order a special term and to impanel a grand jury. *State* v. *McDevitt,* 84, N. J. L., 11; affirmed by the Court of Errors and Appeals, 85, *Id.,* 731.



We now approach the consideration of the merits of the attack made upon the validity of the indictment, a motion having been made to quash it, before a jury was sworn, which motion was denied, and an exception taken and subsequently the same grounds as presented on the motion to quash were presented and urged in arrest of judgment which motion was denied and an exception having been taken, error is assigned thereon.

In making the motion to quash Mr. Matthews, then counsel of plaintiff-in-error, said:

> "I would like to make the following motions to the face of the indictment 49 (the indictment on which the plaintiff-in-error was convicted) for the purpose of having it quashed and I will deal with it by counts."
>
> "The ground alleged as the basis of the motion to quash count one, the refusal of which motion is relied on as error requiring a reversal is that the count is ambiguous, duplicitous and contradictory in terms."
>
> "An examination of the allegations of the count proves the criticism directed against it to be without merit. The count sets forth with clearness and certainty various cognate acts of official misconduct."

This is no fault in an indictment of malfeasance in office.

There seems to be no good reason, where the indictment is based upon the accusation of official

misconduct in office, why a careful pleader should not allege therein diver acts of official misconduct, even though such acts were committed on different days and differ in their nature and constitute distinct offenses against the law, so long as they are cognate to the charge of official misconduct.

Malfeasance in office, generally termed official misconduct, is a common law offence and possesses the same characteristics in pleading that obtain in indictments founded on common law offences, arising out of or composed of the commission of a series of immoral or unlawful acts. This is illustrated by the form of indictments for keeping or maintaining a disorderly house, and for other kinds of nuisances. It is true that the keeping of a disorderly house or creating and maintaining any other kind of a public nuisance is a continuous offence, but so also may the offense of malfeasance in office, as was in this case, be made up of various acts of official misconduct, and, therefore, it seems to us there can be no legal obstacle to properly present by indictment the various acts of official misconduct in a single count even where such official misconduct has spread over a considerable period of time.

An examination in the procedure at common law discloses that prosecution for malfeasance was generally, but not invariably had by criminal information filed by the Attorney-General, because malfeasance in office on conviction involved forfeiture of office as well as punishment, 2 Chitty on Criminal Law, 117; 1 Hawk. Pl. of the Crown, Chap. 27, Sec. 1; 2 Archbold Cr. Pr. and Pleading (Ed. 1877) pages 1364, 1365.



It is important to observe that the charge of duplicity is directed against each particular count of the indictment and not against the indictment, as a whole. The question, therefore, before us, is not whether the indictment is duplicitous, but whether each individual count is subject to the criticism made.

The proper function of added counts, at common law, was and still is, unless changed by statute, to charge the alleged wrongful act set out in the indictment, to have been committed by various means or methods, so as to anticipate any fatal variance which might arise between the allegations in the indictment and the proof of the means by and the manner in which the wrongful act was committed if the charge of the indictment was confined to a single count. Thus, at common law in an indictment for murder, the commission of the offense was charged in separate counts by various means, namely, stabbing, shooting, drowning, etc., and if the proof was that the deceased came to his death by any of the means alleged in the indictment, the prosecution would not fail. This nicety of pleading, at common law, has been changed in this State in homicide cases. A statute prescribes the form of an indictment for murder and manslaughter. 2, Comp. Stats. page 1832, Sec. 36. A bill of particulars under the statutory form of indictment meets the common law requirements above referred to. See *State* v. *Mowser,* 92 N. J. L. 474, at pages 476, 477.

The only other departure from the common law which bears upon the legal propriety of charging

in an indictment distinct offenses of the same character, committed on different days, is to be found in Sections 47 and 48 of the Criminal Procedure Act, 2 Comp. Stats. page 1835. Section 47 permits any number of distinct acts of embezzlement committed by the accused against his master or employer, within six months from the first to the last act to be joined in an indictment. Section 48 relates to where property is alleged to have been stolen at one time was taken at different times the prosecutor shall not be required to elect upon which taking he will proceed (except in cases in which the Court shall so order) unless it shall appear that there were more than three takings, or that there were more than the space of six months elapsed between the first and last of such taking.

These statutory changes are signally illustrative of the common law rule on the subject discussed. The indictment *sub judice* proceeds wholly upon the theory of a single crime, namely malfeasance in office. The various acts of misconduct of the accused set forth in the indictment are more in the nature of a bill of particulars of the various acts of official misconduct of the commission of which the plaintiff-in-error was accused, and surely he is not in a position to complain that he was harmed because the State apprised him in the most ample manner of the deeds of official misconduct of which he was accused. It may be the indictment was not the product of scientific pleading and according to strict legal rules. But we are not concerned with the form of the indictment but only with its substance.



While we give full recognition and force to the well settled legal rule that a count in an indictment cannot be utilized for the purpose of joining separate and distinct offenses even though of a like nature, no such objection seems to have been made on the motion to quash the indictment, followed by a motion to direct a verdict for the defendant or in arrest of judgment, and, hence, there is nothing before us to require a judicial pronouncement.

Another ground for reversal urged on behalf of the plaintiff-in-error is, that the trial judge erred in permitting an amendment of the eighth count of the indictment relative to a matter of substance.

Since the jury acquitted the plaintiff-in-error on this count he suffered no harm.

The next point made is that the trial judge erred in refusing to direct a verdict of not guilty. The motion to direct a verdict for defendant was palpably frivolous. There was plenary evidence of facts and circumstances from which the jury could properly find that the accused was guilty of official misconduct.

Next, it is contended that the court erred in the admission and rejection of evidence to the prejudice of defendants. Assignments-of-error numbers 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 74, 75, 80, 83, and specifications of causes for reversal numbers 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,

25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 60, and 61 are stated in the brief on behalf of the plaintiff-in-error as relating to "the admission of evidence brought out on examination of the witnesses by the prosecutor which are assigned as errors and as causes for reversal of the conviction of the plaintiff-in-error." The counsel for plaintiff-in-error contents himself by saying

> "That the examination of the evidence in question was for the purpose, namely, of creating prejudice in the minds of the jurors against the plaintiff-in-error, and such prejudice was created thereby; that this evidence for the most part was immaterial and did not relate in any manner to the allegations contained in the counts of the indictment."

It is apparent that this attempt to argue in a wholesale manner, so to speak, the various assignments of errors and causes for reversal without pointing out specifically the testimony erroneously admitted or rejected, is in clear violation of the legal rule relating to the subject matter. *State* v. *Donnelly,* 2 Dutcher, 463, at page 512; *Kargman* v. *Carlo,* 85 N. J. L., 638 at page 563; *Miller* v. *Delaware River Transportation Company,* 85 *Id.,* page 700. Moreover, counsel of plaintiff-in-error fails to quote in his brief the testimony erroneously admitted or rejected and to point out in what respect any of the rulings of the Court on the evidence was erroneous. The general characterization that the judicial action was prejudicial is of no force.



It is further contended on behalf of the plaintiff-in-error that the assignments-of-errors, Numbers 33, 34, 35, 53, 55, 56, 59, 73, 76, 77, 78, 79, and 84, and specification of causes for reversal, and Numbers, 22, 23, 24, 35, 37, 38, 51, 55, 58, 59, and 70, relating to the refusal of the court to admit evidence on the part of the plaintiff-in-error present further grounds on which reversal of judgment is sought. But nowhere is it pointed out in what respect the rulings of the trial judge were erroneous, except by a general declaration of counsel that the plaintiff was prejudiced in properly presenting his case in that he was restricted in his right of cross-examining the witnesses and deprived of material evidence to which he was entitled. No testimony is quoted which would enable the court to determine whether the rulings of the court were lawfully warranted or not. Of course, the opinion of counsel, that the accused was deprived of his right of cross-examining a witness, unsupported by the testimony raising the question, and the ruling of the court thereon, is of no weight and will be disregarded.

It is further urged for a reversal that the trial judge in the course of the trial and in his charge made comments unfavorable and prejudicial to the plaintiff-in-error. We do not find this assertion supported by the record.

It is further urged, on behalf of the plaintiff-in-error, that under assignments-of-errors Numbers 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103 and specifications of causes for reversal, Numbers 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87,

88, and 89 the judgment should be reversed, because of errors committed in the charge of the court. The specific error or errors in the court's charge are not set out. Copious extracts of the judge's charge are to be found in the assignments-of-errors and specification of causes for reversal, but nowhere is the specific error alleged to have been made by the Court pointed out. The manner in which, the assignments-of-errors and the specifications of causes for reversal, attacking the legal soundness of the Judge's instruction to the jury is presented for review is wholly in disregard of the legal rule already adverted to and laid down in *State* v. *Donelly, Kargman* v. *Carlo* and *Miller* v. *Delaware River Transportation Co., supra.*

Lastly, it is urged, on behalf of the plaintiff-in-error, that the verdict is against the weight of the evidence. We have read the evidence with great care and we have reached the conclusion that the jury could not properly have arrived at any other verdict than it did. It appears on the record that though the plaintiff-in-error was sentenced on each count of the indictment, nevertheless, the Judge, manifestly considered all of the counts as constituting a single indictment for the offense of malfeasance in office, and hence ordered that the sentences pronounced on each should run concurrently.

For the reasons given judgment is affirmed.



**Rule Affirming Judgment and Remittitur.**

NEW JERSEY SUPREME COURT

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| The State of New Jersey,<br>Defendant-in-Error,<br>vs.<br>James H. Bolitho,<br>Plaintiff-in-Error. | On Error. |

This cause having been duly submitted at the January Term, Nineteen Hundred, and Twenty-six of this Court by Wilfred H. Jayne, Jr., Esquire, Attorney for Defendant in Error, and Richard J. O'Connor, Esquire, Attorney for Plaintiff in Error, and the Court having considered the same, and finding no error in the record and proceedings in the Morris County Court of Oyer and Terminer;

It is Thereupon Ordered and Adjudged that the judgment of the Morris County Court of Oyer and Terminer removed by the Writ of Error in this cause be affirmed with costs; and that the record be remitted to the Morris County Court of Oyer and Terminer to be proceeded with in accordance with the Judgment and practice of said Court.

Entered January 31st, 1927.

On Motion of
WILFRED H. JAYNE, Jr.,
Deputy Attorney-General
of New Jersey,
For Defendant-in-Error.

A true copy
Edward J. Kelleher,
Clerk.

## Writ of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS

| | |
|---|---|
| THE STATE,<br>Defendant-in-Error,<br>vs.<br>JAMES H. BOLITHO,<br>Plaintiff-in-Error. | On Error to the Supreme Court |

New Jersey, ss:

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature: (Seal) GREETING: For as much as in the record and proceedings and also in the giving of judgment in a certain case, which was in our said Supreme Court of Judicature, before you, between the State of New Jersey and James H. Bolitho, on a Judgment and conviction rendered on a certain indictment, manifest error has 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 entire 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 cases, at Trenton on the 23d day of February, 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 of the State of New Jersey ought to be done.





Witness, Our Chancellor and President Judge of our Court of Errors and Appeals at Trenton, aforesaid, the third day of February A. D., 1927.

JOSEPH F. S. FITZPATRICK,
Clerk.

Attorney.

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## Copy of Return to Writ.

The answer of the Justices of the Supreme Court of the State of New Jersey within named.

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

WM. S. GUMMERE,
C. J.

## Assignment of Error and Reasons for Reversal.

(*Filed, Feb. 21, 1927*)

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE,
Defendant-in-Error,

vs.

JAMES H. BOLITHO,
Plaintiff-in-Error.

The Supreme Court erred in giving judgment for the defendant-in-error instead of for the plaintiff-in-error.

ELMER ROMINE,
Attorney for Plaintiff-in-Error.

# New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-Error,
(*Plaintiff below*),

against

JAMES H. BOLITHO,
Plaintiff-in-Error,
(*Defendant below*).

SUR INDICTMENT—MALFEASANCE.

BRIEF OF PLAINTIFF-IN-ERROR, SUPPLEMENTAL TO THE MAIN BRIEF, AND DEALING IN PARTICULAR WITH THE POINTS PASSED UPON BY THE SUPREME COURT IN ITS OPINION.

ELMER W. ROMINE,
Attorney for Plaintiff-in-Error.

GEORGE E. CUTLEY,
Of Counsel,

WILFRED H. JAYNE,
Assistant Attorney General,
Attorney for Defendant-in-Error.

The Otsego Press, Cooperstown, N. Y.

# New Jersey
# Court of Errors and Appeals

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|---|---|
| The State<br>vs.<br>James H. Bolitho,<br>Defendant. | Sur Indictment for Malfeasance |

## SUPPLEMENTAL BRIEF.

## POINTS ADVANCED HEREIN.

### First:

The indictment was void because found by an Elisor Grand Jury:

(a) The Chancellor-Sheriff Jury Act is a Supplement to a particular, specified Revision—that of 1874—in which the words "or elisors," with reference to summoning a grand jury, do not appear.

(b) Upon the disqualification of the sheriff, either the under-sheriff or coroner should have acted with the jury commissioner, or the venire should have been awarded to the coroners; but there was no legal authority for awarding it to the elisors;

(c) And the Grand Jury should have been drawn according to Section 10 of the Chancellor-Sheriff Jury Act;

(d) The intent and meaning of the Chancellor-Sheriff Jury Act is to make it impossible to hand-pick a Grand (or Petty) Jury; and the vice lies in the manner in which the Elisor Grand Jury which found this indictment was picked; instead of being drawn in accordance with the provisions of the Chancellor-Sheriff Act and even the disqualification of the Sheriff did not warrant the drawing of a jury otherwise than in accordance with the provisions of that act;

(e) Nor was the Elisor Grand Jury in this case selected from the list provided by Section seven of the Revision of 1874, or provided for by Section seven of the Revision of 1877;

(f) The Supreme Court put an erroneous construction upon the words used in Section 13 of the Chancellor-Sheriff Jury Act.

**Second:**

The indictment was illegal and void, because unauthorized persons were before the Elisor Grand Jury, while the witnesses were being examined:

(a) Mr. Jayne;

(b) Mr. Masterton;

(c) Mr. Cattano.

**Third:**

The indictment should have been quashed upon the motions made for that purpose.



**Fourth:**

The proof did not sustain the allegations of the indictment; and the verdict was contrary to and against the weight of the evidence. It is an indictment for malfeasance, and

(a) There was neither proof of bribery nor of failure to perform a duty under the first count;

(b) With reference to the other counts—at the times alleged therein, and to which the proof went, plaintiff-in-error was not a public officer, and neither had a duty to perform nor authority to legally perform any; and he could not be bribed.

**Fifth:**

(a) The amendment of the indictment by the Court vitiated the whole indictment; and, as amended, the indictment could not sustain the conviction;

(b) After the amendment there was no plea, consequently there was no issue, and no valid trial.

**Sixth:**

The verdict was influenced by the piece of paper given to the jury by the Court, and which was not in evidence; and the verdict was not valid.

**Seventh:**

Illegal evidence was admitted, over objection; and plaintiff-in-error was prevented from putting in legal evidence.

**Eighth:**

There were prejudicial remarks made by the Trial Court during the course of the trial, which wronged and injured plaintiff-in-error and influenced the jury.

**Ninth:**

There was error in the Court's charge.

**Tenth:**

The sentence which was imposed before the writ of error was served was not a lawful sentence.

**As to the Elisor Grand Jury.**

(Supplemental to Point IV, Pages 27-89 Main Brief)

The Chancellor-Sheriff Jury Act of 1913 is not a supplement to the Revision of 1877 (in which Section 8, referred to in the opinion of the Supreme Court, is found), but it is a supplement to the Revision of 1874.

The word "draw" or "drawn" had never been used by the Legislature in any of the jury acts, with reference to a Grand Jury or Grand Jurors, until it was used in Section 8 of the Chancellor-Sheriff Jury Act of 1913. Wherever it is used in any of the other jury acts it is with reference to the drawing of the names of petit jurors to make up either the general panel or the panel drawn for the trial of a case.



Neither did "the court or any justice or judge" before the passage of the Chancellor-Sheriff Jury Act, have or exercise any powers in "connection with the *drawing* of jurors or panels of jurors" with reference to Grand Juries or Grand Jurors. Not even under Section 8 of the Revision of 1877. For under Section 1 of that act, it was provided that the process for *summoning* a jury shall be a *venire facias;* Section 7 provided that the Sheriff should make up the list from which the jurors should be selected, and Section 8 provided that every Grand and Petit Juror shall be *summoned* by the Sheriff or his deputy, or by one of the coroners or elisors, when the venire shall be awarded to the coroners or elisors; and, under these provisions neither the Court, Justice or Judge had or exercised any powers in connection with the *drawing* of jurors or panels of jurors. The *venire facias* was only a writ commanding the officer to whom it was directed *to cause* a certain number of men *to come* to a certain court at a certain time; and the names of the men returned on the panel attached to that writ by the officer serving it (see *Blackstone,* Book III, star page 353, and definitions in *Bouvier's Law Dictionary; Posey* v. *State,* 73 Ala. 490-493) were no part of the writ when it was issued and they were not drawn from anything in any way that the Court, Justice or Judge was connected with; so that the words *"drawing* * * * of jurors or panels of jurors," as used by the legislature in Section 13 of the Chancellor-Sheriff Jury Act of 1913, were not intended to mean such a procedure as the one provided for by Section 8 of the Revision of 1877.

See definition of "Impanel" in *Bouvier's Law Dictionary;* and definition of "drawing" in *Webster's, Standard,* and *Century Dictionaries.* Also definition of the word "Panel."

Legislative intent must govern in construction of statute. (*Donohue* v. *Campbell,* 98 N. J. L. 755, at page 763; 121 Atl. 703; *Capebino* v. *Samorak,* 128 Atl. 648.)

In such an inquiry we must assume that the legislature intended to employ language in its ordinary, popular, and usual acceptance. (*Gibbons* v. *Ogden,* 8 N. J. L. 288; *McLorinan* v. *Overseers, etc.,* 40 N. J. L. 614; *Kent's Com.* 463; *Heston* v. *Atlantic City,* 107 Atl. 820; *Smith* v. *Mayor, et al.,* 127 Atl. 562; *Wellman* v. *Reilly,* 127 Atl. 875; *Boro. of Oakland* v. *Bd. of Conservation, etc.,* 122 Atl. 311.)

But, if any term used in a statute is ambiguous, that meaning will be given to it in which it was used in former legislation on the same subject. (*State* v. *Garthwaite,* 23 N. J. L. 143.)

And, where words in an earlier act are omitted from a later act dealing with the same subject matter, it must be assumed that a change of meaning was intended. (*In re State Highway,* 108 Atl. 820.)

And, in ascertaining legislative purpose, the object and procedure are to determine what the words mean to those who used them, the same as in construing a private contract. (*State* v. *Downes,* 112 Atl. 246.)

And, a change of language in separate provisions of a statute is prima facie evidence of a change of intent. (*Endlich on the Interpretation of Statutes,* Secs. 382-383; *Novicki* v. *O'Mara,* 124 Atl. 672.)



But, where an act is plain and unambiguous in its terms, there is no room for judicial construction, since the language is presumed to evince the legislative intent, and such language cannot be controlled by the supposed policy of previous statutes, even if in *pari materia.* (*Application of Passaic City Clerk,* 116 Atl. 695.)

And, when the later act is repugnant to or inconsistent with the earlier act, it repeals it by implication. (*State* v. *Intoxicating Liquors,* 109 Atl. 257.)

Where a clause in a statute, if good, will render the statute of no effect, that clause is void. (*Jensen* v. *Woolworth Co.,* 106 Atl. 808.)

Resort to method of adding words to and eliminating words from, an act, is not favored unless necessary to make legislation conform to the very evident intent. (*Litchfield* v. *City of Bridgeport,* 131 Atl. 560.)

A subsequent statute, evidently intended as a revision of and substitute for prior legislation, operates to repeal former, though it contains no express words of repeal. (*Garr* v. *Fuls,* 133 Atl. 150.)

Where statutes are in *pari materia* but are in irreconcilable conflict, the earlier statute must give way to the later. (*Buttorff* v. *City of York,* 110 Atl. 728.)

The word "drawing" is a plain, well-defined word and, as used in said Section 13, is not ambiguous.

The legislature knew, of course, that Courts, Justices and Judges had and exercised the power to order jurors and panels of jurors to be drawn and discharged in cases where they sat as trial judges, for this was done in the court over which either the Justice or Judge presided. There was nothing in any other part of the Chancellor-Sheriff Jury Act of 1913 relating to this power, so the legislature took care of the preservation of it in Section 13.

Neither is there anything in the Act of 1913 relating to drawing or discharging Struck Juries, but there had been provision made for that in the State Law since 1797, and the power which the Court, Justice, or Judge, had or exercised, with reference to this drawing or discharge of jurors or panels of jurors under the Struck Jury Acts was preserved by Section 13 of the Chancellor-Sheriff Jury Act of 1913. For in these instances the Court, Justice or Judge did have and exercise powers "in connection with the drawing or discharge of jurors or panels of jurors," but never, with reference to the *drawing* of grand jurors or panels of grand jurors, until the Chancellor-Sheriff Jury Act was passed. If the Justice had or exercised the power to draw grand jurors, or in connection with the drawing of grand jurors, he had the power to create a jury commission composed of himself and elisors whom he had the choosing of; and through such a commission, if he had or exercised powers in connection with the drawing, he could determine, by proper selection of the grand jurors, who should be presented and who should not be; which would be a more arbitrary and dangerous power than the



King of England has had or exercised, directly or indirectly, in such matters, since the days of Magna Charta. It is not difficult to obtain a reason for disqualifying the Sheriff, and the latter being the only official elected by the vote of the people who has anything to do with drawing a Grand Jury; when he is disqualified, and elisors appointed, there is no one answerable directly to the people for what is done or omitted with reference to the composition and work of the Grand Jury; which could, in this manner, become an instrument of injustice, with no redress for its victims; and, in this way, a person could lose his good name, his property, and his liberty, without representation, in the drawing of a Grand Jury, by choice; for there is nothing to prevent the choosing of his bitterest enemies. The legislature which passed the Chancellor-Sheriff Jury Act, and the people who voted for it by virtue of the referendum, never intended that any man should have such power. If they had intended that, they would not have done so by the use of words whose plain meaning does not mean that, unless they were ashamed of what they were doing.

The Supreme Court, in its opinion in this case, states that the fact that the Chancellor-Sheriff Jury Act

> "makes no provision for the selection and drawing of Grand and Petit Jurors in the event of the disqualification of both or either of the commissioners is of great significance and as indicating that the legislature was content and intended that upon the happening of the disability of the com-

missioners to function by reason of disqualification, the Court should appoint elisors to select and summon Grand and Petit Jurors, as sanctioned by Section 8 of the Jury Act of 1874, to which the Act of 1913 is a supplement."

But Section 8 of the Jury Act of 1874 did not give the Court power to appoint elisors; and the Act of 1913 is not a supplement to the Revision of 1877, where the Section 8 that refers to elisors is found. Furthermore, the Chancellor-Sheriff Jury Act of 1913 makes provision for the selection and drawing of Grand and Petit Jurors in the event of disability of the Sheriff and Jury Commissioner. Section 1 of that act, as amended by Chapter 48, P. L. 1916, page 87, provides that in such event the Under Sheriff shall function in the Sheriff's place, and Section 3 provides that the Chancellor shall appoint a successor upon the disqualification of the Jury Commissioner. And, as Mr. Justice Swayze said in the Hudson Circuit, December 14th, 1915, when a challenge to the array of Grand Jurors was made on the grounds that the Sheriff had been guilty of serious crime:

"Since a matter of that kind arose in this court the law of the state has been changed. Grand Jurors are now selected not by the Sheriff alone, but by the Sheriff and a Jury Commissioner, and they are not even selected by the Sheriff and the Jury Commissioner, but three hundred names are selected by these two gentlemen and thirty-five names are drawn by lot to be summoned as Grand Jurors. Under



these circumstances, we think that a challenge to the array directed to partiality on the part of the Sheriff alone cannot be sustained. In presumption of law, both the Sheriff and the Jury Commissioner have assented to each name of the three hundred that has gone into the box. We assume that they have done what the law requires them to do. Obviously a challenge to the array directed to one only of them is inadequate, and the strictest rule ought to be observed, because it affects the whole administration of the criminal law."

It will be noted that in the Chancellor-Sheriff Jury Act (Sec. 1 as amended by Chapter 48, P. L. 1916, p. 87), the legislature makes provision for another to act in the place of the Sheriff as Jury Commissioner only in case of the Sheriff's *absence* or *sickness;* and it is the Under Sheriff who shall then act. Does this not indicate that the legislature intended, as Mr. Justice Swayze said in the Hudson Circuit, that, because of the safeguards provided for by the Chancellor-Sheriff Act, that "a challenge to the array directed to partiality on the part of the Sheriff alone cannot be sustained"?

The Sheriff of Morris County was disqualified by Mr. Justice Parker, "by reason of his interest in the proceedings to be taken by such Grand Jury, from selecting, empaneling and summoning the Grand Jury" (see pages 54-55, Main Brief). He was disqualified as Sheriff—what official was then qualified to act as Sheriff? Whose duty was it to act? The Under Sheriff or a Coroner, or Elisors?

He was ordered to refrain from "selecting, empaneling and summoning" the Grand Jury. Under the Chancellor-Sheriff Jury Act he had no power to "select" a Grand Jury—they were drawn by chance. Under that act, he did not "summon" them until after they had been drawn by chance in the presence of the Court, and only those persons who had been so drawn were summoned, and they constituted the panel. How could the interest of the Sheriff abrogate the above-mentioned method of drawing a Grand Jury, and warrant one to be hand-picked?

And Section 10 of the Chancellor-Sheriff Jury Act provides how a new Grand Jury shall be drawn under that act when, for any reason, a Grand Jury has been discharged before the end of the term. Furthermore, the list of three hundred names is always made up and in existence, and Section 7 of the Chancellor-Sheriff Jury Act provides that either of the Jury Commissioners can draw the numbered pieces of medal from the box in selecting the Grand and Petit Jury.

In the face of this, how can it be reasoned out that the legislature intended, by the language of Section 13, to retain the provisions of Section 8 of the Revision of 1877? If it did intend such, why did it not use language that would clearly indicate it? For the construction put upon the language used in Section 13, by the Supreme Court means that without hearing the Sheriff and upon the mere affidavit of a prosecuting officer to the effect that the Sheriff is interested in matters to be considered by a Grand Jury, the Jury Commissioner falls with the blow that disqualifies the Sheriff, without the Jury



Commissioner being heard; the Grand Jury *in esse* is discharged; the list of three hundred names is discarded, without any charge whatever against those who are on it; the whole structure of the Chancellor-Sheriff Jury Act is demolished, and two men are appointed by the Court as elisors to pick a Grand Jury, not by chance but by choice. If such a radical change of procedure, from that provided in the Chancellor-Sheriff Jury Act of 1913, was intended by the legislature by the insertion of Section 13, would not the legislature have used language clearly indicating that that was what it meant?

When the legislature makes a revision of a particular statute, and frames a new statute upon the subject-matter, and from the frame-work of the act, it is apparent that the legislature designed a complete scheme for this matter, it is a legislative declaration that whatever is embraced in the new law shall prevail, and whatever is excluded is discarded. It is decisive evidence of an intention to prescribe the provisions contained in the later act as the only ones on that subject which shall be obligatory. (*O'Neill* v. *Johnson,* 123 Atl. 538.)

Statutes are to be liberally construed with a view to the effective administration of justice, nevertheless such as take away, change, or diminish fundamental rights must be strictly construed both as to the cases embraced within their terms, and as to the methods to be pursued. (36 Cyc., 1188, citing *Crowder* v. *Fletcher,* 80 Ala. 219; *Hill* v. *Hill,* 117 Atl. 256.)

The following are the provisions found in the "Revised Statutes of 1874-1875" (a small vol-

ume), at page 371, entitled "An Act Concerning Juries"—and this is the act to which the Chancellor-Sheriff Jury Act of 1913 is supplemental (see P. L. 1913, page 828):

## Revision of 1874.

Sec. 1.—Process for jury. *Venire facias.*

Sec. 2.—To what county awarded.

Sec. 3.—Fees for jurors.

Sec. 4.—Jurors not to be *discharged* except by court.

Sec. 5.—That summoning officer is not to take reward for excusing juror; nor summon any who has applied.

Sec. 6.—Qualifications of jurors.

Sec. 7.—Sheriff to procure list of persons qualified as jurors.

Sec. 8.—That the summons of every grand and petit juror shall be made by the sheriff or his deputy, or by one of the coroners, when the venire shall be awarded to the coroners. (Note: The word "elisor" or "elisors" is not in this section, in the Revision of 1874.)

Sec. 9.—Penalty for non-attending of jurors.

Sec. 10.—Fines, how collected.

Sec. 11.—Vacancy in grand jury supplied.

Sec. 12.—Foreman of grand jury to swear, and certify list of, witnesses before grand jury.

Sec. 13.—How general panel of jurors are selected.



Sec. 14.—In case of death, disability, or absence of the clerk, judge of court of common pleas to act in his place.

Sec. 15.—List to be laid before court.

Sec. 16.—How general panel is to be reduced. Court to direct clerk or sheriff, or some other person, to *draw* from box in open court such number of papers with names of jurors on as court shall direct; and the jurors whose names shall be found written thereon shall be *discharged* from further attendance at that time; proviso: "that nothing herein contained shall be construed to prevent any court from excusing or discharging individual jurors for sufficient reason." (This proviso, and the construction that had been put upon it, with reference to the general panel, in *Paterson Gas Light Co.* v. *Brady,* 3 Dutch. 245, 249, and *Smith* v. *Clayton,* 5 Dutch. 357, were what the legislature of 1913 had in mind when it put Section 13 in the Chancellor-Sheriff Jury Act.)

Sec. 17.—How *venire facias* shall be directed to the coroners, or to elisors, for a jury for the trial of any particular cause. (Here the word "elisors" is used as it had always been used in the Statutes of New Jersey; *i. e.,* with reference to the summoning of a trial jury.)

Sec. 18.—Struck juries in the trial of civil and criminal cases, requiring an affidavit in civil actions.

Sec. 19.—After rule for struck jury cause not to be tried by common jury; exception.

Sec. 20—Plaintiff to have preference on motion for struck jury.

Sec. 21.—Notice of trial where defendant has rule for struck jury.

Sec. 22.—Delivery of panel for struck jury, etc.

Sec. 23.—If cause not tried at next term new jury to be struck.

Sec. 24.—How jury struck.

Sec. 25.—Court or judge may order how many names struck jury list shall contain.

Sec. 26.—Who to pay fees for struck jury.

Sec. 27.—How jury selected from general panel. Sheriff shall *draw,* by direction of court, publicly and in open court; *drawing* to continue until twelve persons shall appear who are not challenged or excused, and "such twelve being severally sworn or affirmed, shall constitute a jury for the trial of the said cause," but if for any reason the panel is exhausted without having obtained a jury, the court shall award a *tales de circumstantibus,* etc. (Note: In this section is seen the powers the Court, Justice or Judge had and exercised in connection with the *drawing* or *discharge* of jurors or panels of jurors. Nowhere in the Chancellor-Sheriff Jury Act was this procedure taken care of, except in section 13.)

Sec. 28.—How venire returned.

Sec. 29.—Names replaced in box.

Sec. 30—How jury selected from struck jury.

Sec. 31.—Jury of view. (Here again the court or judge had and exercised powers with reference to a panel. (Note: Neither a "struck jury" nor a "jury of view" is provided for in the Chancellor-Sheriff Jury Act.)



Sec. 32.—This section, and sections 33, 34 and 35 relate entirely to a jury of view.

Sections 36, 37 and 38 relate to Foreign Jury. (Note: Also not taken care of in Chancellor-Sheriff Jury Act.)

Sections 39, 40, 41, 42 and 43 relate to challenges.

Sections 44 and 45 relate to Exemptions from jury duty.

The foregoing is all there is in the Revision of 1874, to which the Chancellor-Sheriff Jury Act of 1913 is a supplement; and everything that was in the Revision of 1874 was taken care of in the new scheme of the said supplement, except those things which we have indicated hereinbefore. The word "elisor" or "elisors" is not used in the Revision of 1874 anywhere with reference to a grand jury—and an elisor drawn grand jury is entirely in conflict with the method provided by the Chancellor-Sheriff Jury Act for drawing a grand jury, and is destructive of its purpose. The word "drawing" is not used anywhere in the Revision of 1874 with reference to grand jurors or a grand jury; and under it the Court, Justice or Judge neither had nor exercised any power in connection with the "drawing" of grand jurors or panels of grand jurors. Every place where the word "drawing" is used it is with reference to the panel of petit or trial jurors. How can Section 8 of the Revision of 1877, referred to by the Supreme Court in its opinon, be read into the Chancellor-Sheriff Jury Act? The legislature by the use of a few words could have put it into that act if it intended to retain it—but, instead,

it made the Chancellor-Sheriff Jury Act a supplement to the Revision of 1874, and not to the Revision of 1877; the former Revision was no more complete than the Revision of 1877, but it did not contain the section eight wherein the word "elisors" was used in connection with the summoning of a grand jury. If the legislature intended to retain this Section 8, and wanted it to still be possible to appoint elisors to summon a grand jury, why did it not make the Chancellor-Sheriff Jury Act a Supplement to the Revision of 1877? See *in re State Highway, etc.,* 108 Atl. 821, paragraph 4; Endlich Interpretation of Statutes, Section 384.

But, the Supreme Court says in its opinion:

> "Moreover, we have not only been unable to detect anything in the provisions of the Act of 1913, indicating that the legislative intent was to erect an independent and complete structure for the selecting and summoning of Grand and Petit Jurors, solely, by virtue of the provisions of the supplement, as contended for by counsel of plaintiff-in-error, but find from a comprehension of the entire act an obvious intent of the legislature to add to the jury act of the Revision of 1877, *supra,* some salutary features and to maintain undisturbed the provision of Section 8, which manifestly seeks to prevent a halt in the operation of the judicial machinery, on both the criminal and civil sides of our courts, in the event that a statutory emergency arises for the appointment of elisors because of the disability of the jury commissioners to function, by reason of the disqualification of both or either of them."



Evidently the legislature did not intend any such thing; the legislature evidently, and by its expressed language, did not intend "to add to the jury act of the Revision of 1877, *supra,* some salutary features," etc., as stated in the opinion of the Supreme Court; for the legislature expressly said that it is a "Supplement to the Revision of 1874" (and that is the language that was printed upon the ballot used in the referendum, and approved by the people by their votes); and its intention must have been to add

> "Some salutary features and to maintain *undisturbed* the provisions of Section 8 of the Revision of 1874, which manifestly prevents a halt in the operation of the judicial machinery, on both the civil and criminal sides of our courts, in the event that an emergency arises for the appointment of coroners (not elisors) because of the disability of the jury commissioners to function, by reason of the disqualifications of both or either of them."

By making the Chancellor-Sheriff Jury Act a Supplement to the Revision of 1874, the legislature, and the vote of the people, eliminated the words "or elisors," and put the jury law back to where it was before the Revision of 1877, where the words "or elisors" first appears in our law with reference to summoning a Grand Jury; in fact, this does the same thing that the Legislature of 1927 has done by the latest law upon the subject.

Section 8 of the Revision of 1874 makes ample provision "for the selection and drawing of Grand and Petit Jurors in the event of the disqualification of both or either of the commissioners;" by providing that the venire may be awarded to "coroners"; who are officers elected by the people, and who, both in the English law and ours, always acted in the place of the Sheriff when he was disqualified; as is shown by the numerous citations elsewhere in this Brief. Elisors only functioned in this State with reference to summoning a Grand Jury after the two words "or elisors" were put in Section 8 of the Revision of 1877; and *State* v. *Zeller, State* v. *Egan, State* v. *Kuehnle* all hang on those two words in that section of that Revision; and those decisions fell with those two words, by the vote of the people and the act of the legislature in making the Chancellor-Sheriff Jury Act a Supplement to the Revision of 1874; and by providing that the venire may be awarded to "coroners"; and, taking the Revision of 1874, and its Supplement—the Chancellor-Sheriff Jury Act—and reading them together, it is clearly seen that the legislature did erect a complete structure for the selecting and drawing of Grand and Petit Jurors, and panels of jurors—repealing all other acts inconsistent therewith—meaning in every respect what the jury law purports to mean now, with the act of 1927 added to it. The people are jealous of their rights, and look with alarm at the exercise of arbitrary power by those who are not elected by their votes; since Magna Charta the people have never tolerated the drawing of Grand Juries by elisors any longer than it took them to stop it, and that was the reason for the Chancellor-Sher-



iff Jury Act, and the reason why it was passed by the people and the legislature; after the people had learned of the methods used in the Zeller, Egan and Kuehnle cases.

Where words in an earlier act are omitted from a later act dealing with the same subject-matter, it must be assumed that a change of meaning was intended. *Rich* v. *Keyser,* 54 Pa. St. 86; *Endlich on the Interpretation of Statutes,* Section 384; *In re State Highway Route* No. 72, 108 Atl. 820.

It is a well-settled and familiar rule that a subsequent statute, revising the subject-matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplied. 36 Cyc. 1079 (c), and cases cited in notes; and where a statute is revised, some parts of the original act being omitted, the parts which are omitted, cannot be revived by construction, but are to be considered as annulled: 36 Cyc. 1080 (bb.) and cases cited. Legislative intent to revive a law, which has by legislative action been annihilated, is not alone sufficient to accomplish such revival; there must be some legislative expression using language equivalent to a re-enactment. *State* v. *Conkling,* 19 Cal. 501; *People* v. *Wilmerding,* 32 N. E. 1099 (reversing 62 Hun 391); *Metropolis Bank* v. *Faber,* 1 N. Y. App. Div. 341, 37 N. Y. Suppl. 423 (affirmed in 150 N. Y. 200, 44 N. E. 779). Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or

evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended. 36 Cyc. 1110-1111 (d), and cases cited in notes. And where a statute is incomplete or defective, whether as a result of inadvertence, or because the case in question was not foreseen or contemplated, it is beyond the province of the courts to supply the omissions, even though as a result the statute is a nullity. 36 Cyc. 1113 (g), and cases cited in notes. And an implication arising from a portion of a statute must yield to the general intent; *Wellsburg, etc., R. Co.* v. *Panhandle Traction Co.,* 48 S. E. 746. In *Com.* v. *Gauger,* 21 Pa. Super. Ct. at 217, 229, the court says:

> "But where an enactment is plain and sensible, and, according to any meaning, broad or narrow, popular or technical, which may be ascribed to the words, does not apply to the case in hand, it is not permissible for the courts to add or omit words, in order to make it so apply, even though it may be clear to them that the case is as fully within the mischief to be remedied as the cases provided for. This would be not to construe, but to amend the law, which is within the exclusive province of the legislature."

Whenever a legislature has used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using it in the same sense; *State* v. *Garthwaite,*



23 N. J. L. 143; 36 Cyc. 1150 (II), and cases cited in note 43. The word drawing in every legislative act of our legislature, where it has been used with reference to drawing juries, is used with reference to Petit Juries only.

By making the Chancellor-Sheriff Jury Act a Supplement to the Revision of 1874 (the Revision of 1874 in the form in which it is found in the small volume of the Revision of 1874-1875—which is the only place where it can be found), the legislature intended that that Revision, with its Supplement of 1913, should constitute the law concerning juries, and that all other Revisions and acts concerning juries should be repealed. It is the Revision of 1874, as it was, after it was enacted, in 1874, together with the Chancellor-Sheriff Jury Act of 1913, that is the jury law; and, under this law, the venire is to be awarded to the sheriff, or coroners, but not to "elisors."

Under the construction which the Supreme Court, in its opinion in this case, puts on Section 13 of the Chancellor-Sheriff Jury Act, what becomes of Section 10 of that act, which provides:

> "That in case a Grand Jury shall be discharged before the end of the term for which it is drawn, the Justice of the Supreme Court may direct the Commissioners of Juries to draw a new Grand Jury to serve for the balance of the term, *and such new Grand Jury shall be drawn and summoned from the list made by the Commissioners prior to the commencement of the term in the same manner as hereinabove stated.*"

The new Grand Jury in this case was not *drawn* and *summoned* from the list made by the Commissioners prior to the commencement of the term *in the same manner as hereinabove stated.* See pages 70-79 State of Case; and this was admitted by the Court, See pages 79, 80 and 81 State of Case. And the vice lies in the manner in which the Grand Jury was drawn or selected—it was handpicked. Section 8 of the Chancellor-Sheriff Jury Act provides that "the jurors drawn" in the manner provided therein shall be summoned by the Sheriff of the County.

It must be remembered that the Chancellor-Sheriff Jury Act is a Supplement to a *Revision,* and to a particular Revision, as it stood after it was adopted as such Revision, in 1874.

## As to Mr. Jayne Being an Unauthorized Person Before the Grand Jury.

(Supplemental to Point VII. Pages 98-131 Main Brief.)

The Supreme Court in its opinion says:

> "There was no proof that Mr. Jayne was in the Grand Jury room at any time while testimony was being presented against plaintiff-in-error, but even if this were a fact, in the view we take of the question raised, Mr. Jayne was properly there."

This question was raised on motion to quash (140-145 State of Case) and in the motion for arrest of judgment (670 State of Case). When it was raised on the motion to quash, it was not denied, but Mr. Jayne met the motion by the stipulation whereby Exhibits S-2 and S-3 (798-799 State of Case) were offered in evidence, and admitted; in which are these words: "attending before the criminal courts and Grand Juries of said County, preparing indictments," etc., and the indictment, with its many counts, was drawn and signed by Mr. Jayne (35 State of Case), and (578 State of Case) Mr. Jayne asked this:



> "Q. Exactly. But I indicted the Sheriff's brother, didn't I?"

There was no question of Mr. Jayne's presence in the Grand Jury room.

Plaintiff-in-error cites the law with reference to the invalidity of his appointment, and lack of authority, on pages 98-146 in Main Brief.

## As to Masterton Being in the Grand Jury Room.

(Supplemental to Point VIII, pages 131-146 Main Brief.)

With reference to the contention of the plaintiff-in-error that the indictment is a nullity because of the presence of Masterton, as Clerk, in the Grand Jury room, it was brushed aside by the Supreme Court in this manner:

> "The inanity of this argument lies in the circumstance that there is *no fact disclosed in the record which supports the assertions made.*"

The facts were alleged in the Challenge to the Trial Judge, admitted by the Judge's plea of

*non vult,* and the demurrer filed by the State, raised again on the motions to quash and in arrest of judgment; and there was never a suggestion that these allegations were not true, or that they should be proved further than they were already admitted in the case; and all this was *disclosed in the record* and *supported the assertions made.* Furthermore, on the motion to quash (111-112 State of Case) the Trial Judge said, when this matter was urged in the motion, "That point was made before I think;" referring to what he had said on the argument of the Challenge (84 State of Case) as follows:

> "It was considered at the time, and I may say that I think that this ninth point was admitted by the demurrer, and that *the facts therein set up are entirely correct with respect to the demurrer.* Now, it may have been erroneous in law for Mr. Masterton to attend the sessions of the Grand Jury. It is even conceivable, although at present I do not pass on it, that the Grand Jury itself was turned into an illegal body, and that this indictment was vitiated."

And the Court admitted all of the facts, even to this (85 State of Case):

> "Mr. Matthews: At this point, I forgot to say to your Honor that your Honor requested the resignation of Mr. Toms. (The regular Clerk of the Grand Jury) The Court: That is correct. I think it says so here."



And (86 State of Case), in answer to further argument of counsel on the point, the court said:

> "You have been all over that. You mentioned *those facts.*"

Was it necessary for the plaintiff-in-error to prove what was admitted by the State and the Trial Judge? What is a Clerk of a Grand Jury for? What does he do, as such? He keeps the record of the proceedings of the Grand Jury; the names of the witnesses sworn; a summary of their testimony, which he must hear to record; of what is done with each complaint heard and each matter investigated, and of what the vote of the Grand Jury was on each; of whether a "bill" was found, complaint "dismissed," or "laid over." His oath contains the clause that "You will keep secret the counsel of the State, the Grand Jury, and your own as such clerk." Masterton was appointed Clerk of the Grand Jury after Mr. Justice Parker had requested the resignation of the regular Clerk, who had been such for twenty-five years, and was under civil service; Masterton acted as Clerk, though his appointment was not according to the provisions of the civil service law, nor according to the right to appoint conferred by the legislative acts upon the Judge, and though he was not a resident of the County of Morris. His appointment, upon the resignation of the regular clerk by request of the Court, and his acting as Clerk of the Grand Jury, because of the purposes for which such a clerk is appointed, implies that he attended the sessions of the Elisor Grand Jury, and was present when the witnesses were sworn and testified, and did, with regard to the record of the said Grand Jury,

what the duties of a clerk of the Grand Jury requires to be done; and, as has been shown, this was admitted. The fact is that Masterton was a Court stenographer in Bergen County, and he was brought over into Morris County and appointed Clerk of the Elisor Grand Jury for the purpose of taking down stenographically, and afterwards transcribing, the testimony of the witnesses before the Elisor Grand Jury; and he did this; and this is admitted by the Trial Court (81-86 State of Case). This point was raised again on the motion in arrest of judgment (669 State of Case).

The presence of an unauthorized person in the Grand Jury room under the facts alleged and admitted in this case vitiated the indictment. See the law cited on this point pages 131-146 Main Brief.

**As to the Interpreter Being an Unauthorized Person Before the Grand Jury.**

(Page 146 Main Brief.)

The Supreme Court in its opinion says:

> "If it becomes necessary to have an interpreter in order to elicit testimony from a witness who cannot speak English, there seems to be no good reason why a Grand Jury may not summon to its assistance some reputable person who understands the foreign language of the witness, and can speak English, to interpret what is said in the foreign tongue, even though he



> be not an interpreter appointed by the Court. Unless this be so, investigations of Grand Juries into matters affecting the peace, safety and welfare of a community might be seriously hampered and thus lead to injurious delay and obstruction of justice."

But where does the grand jury get the authority to do this; to bring an unauthorized person before it, not as a witness, but to hear and interpret the evidence of the witnesses; and what becomes of their oath, "the counsel of the State, your fellows and your own, you will keep secret"?

See:

State v. Bowman, 38 Atl., 331-333.

There was no excuse for using Cattano as the interpreter in the Grand Jury room. The Grand Jury could have used Bontempo, the interpreter appointed by the Court of Quarter Sessions, according to the provisions of P. L. 1898, page 918, as amended by P. L. 1906, page 268.

Cattano testified: "I was in the Elisor Grand Jury as an interpreter" (297 State of Case).

**As to Mr. Salmon Acting as Elisor.**

(Supplemental to Point IV, pages 27-28, Main Brief)

The Supreme Court, in its opinion said:

> "Salmon was appointed an elisor and not a Jury Commissioner, and there is no such inhibition in the Jury Act in relation to the appointment of elisors."

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The Chancellor-Sheriff Jury Act is plain that no person authorized to practice law shall participate in the selecting of a jury. The Act of 1874, to which it is a supplement, provides that "the Sheriff or Coroners" shall summon both Grand and Petty Juries. There was no reason why the venire should not have been awarded to the coroners. So that the statement that Salmon was an elisor and not a Jury Commissioner is without force. While holding the office of Sheriff or Coroner, such official does not practice law.

## As to the Attack Made Upon the Indictment.

(Supplemental to Point IX, Pages 147-164, Main Brief)

The Supreme Court, in its opinion, says of the attack made upon the indictment:

> (1) "An examination of the allegations of the count proves the criticism directed against it to be without merit," etc.
>
> (2) "It is important to observe that the charge of duplicity is directed against each particular count of the indictment and not against the indictment as a whole," etc.
>
> (3) "The indictment *sub judice* proceeds wholly upon the theory of a single crime, namely, malfeasance in office," etc.
>
> (4) "While we give full recognition and force to the well-settled legal rule that a count in an indictment cannot be utilized for the purpose of joining separate and



> distinct offenses even though of a like nature, no such objection seems to have been made on the motion to quash the indictment, followed by a motion to direct a verdict for the defendant or in arrest of judgment, and, hence, there is nothing before us to require a judicial pronouncement."

We take up these statements according to the numbers, as follows:

(1) What does duplicity in an indictment mean? Duplex: twofold, double (14 Cyc. 1122).

The motions to quash, with reference to the form of the indictment, are found on pages 132, 145-152, State of Case, and are repeated in the motion in arrest of judgment (670-673 State of Case). This was an attack on the whole indictment but argued by counts. On 132, State of Case, the motion was:

> "And also that it is a general indictment in which all the above mentioned cases that we have been called to plead to, excepting the assault and battery, are included," etc.,

and on 145, State of Case, with reference to Count One:

> "I would like to make the following motions to the face of indictment 49 for the purpose of having it quashed, and I will deal with it by counts," etc.,

and on pages 97-102, State of Case,

> "I desire at this time to make a motion to the fact of the indictment," etc.

Where a single offense may be committed by several means or in several ways, it may be charged in a single count to have been so committed, *if the ways or means are not repugnant* (22 Cyc. 379 [4]). And the means alleged must not be inconsistent (as in the first count of this indictment). (*People* v. *Kane,* 43 N. Y. App. Div. 472, 61 N. Y. Suppl. 195, 632, 14 N. Y. Cr. 305 [affirmed in 161 N. Y. 380, 55 N. E. 946]; *State* v. *Adams,* 78 S. W. 588; *State* v. *Flint,* 62 Mo. 393; *U. S.* v. *Thomas,* 69 Fed. 588; *State* v. *Smith,* 61 Me. 386; *State* v. *Palmer,* 32 La. Ann. 565; *People* v. *Cooper,* 53 Cal. 647; *State* v. *Chapman,* 62 N. W. 650.)

A series of acts cannot be charged together in one count of an indictment where each of such acts constitute a distinct offense. (22 Cyc. 385 [8]; *State* v. *Jamieson,* 81 N. W. 594, 90 N. W. 622; *State* v. *Dennison,* 82 N. W. 628; *Barnhouse* v. *State,* 31 Ohio St. 39; *Scales* v. *State,* 81 S. W. 947, 66 L. R. A. 730; *State* v. *Temple,* 38 Vt. 37; *U. S.* v. *Patty,* 2 Fed. 664; *State* v. *Haven,* 9 Atl. 841; *People* v. *Sebring,* 14 Misc. [N. Y.] 31, 35 N. Y. Suppl. 237.)

The fact that but a single offense is named will not remedy the fact that the indictment actually charges two offenses. (22 Cyc. 389 [13]; *Messer* v. *Com.,* 80 S. W. 489; *State* v. *Rhea,* 38 Ark. 555; *Territory* v. *Poulier,* 19 Pac. 594; *Mayo* v. *State,* 30 Ala. 32; *State* v. *Rees,* 22 So. 829; *People* v. *Sweeney,* 22 N. W. 50; *Com.* v. *Sullivan,* 104 Mass. 552; *Com.* v. *Cain,* 102 Mass. 487; *Josslyn* v. *Com.,* 6 Metc. 236; *State* v. *Woodard,* 17 S. E. 135; *State* v. *Scott,* 15 S. C. 434; *State* v. *Nelson,* 94 Am. Dec. 130; *Pointer* v. *U. S.,* 151 U. S. 396, 38 L. Ed. 208.)



Defendant is entitled to know which specific act is relied on for a conviction in order that he may properly meet the charge, and in order that a conviction shall not be a matter of choice between offenses. (*People* v. *Williams,* 65 Pac. 323; *State* v. *King,* 91 N. W. 768; *Sisk* v. *State,* 42 S. W. 985; *Hamilton* v. *State,* 37 S. W. 431.)

2. If the "charge of duplicity was directed against each particular count of the indictment," why was it not also directed to the indictment as a whole? How could it be otherwise? By pointing out the duplicity in the counts, the duplicity of the whole indictment was made more apparent; and what becomes of the motion to quash on page 132 State of Case? The motions to quash were all really parts of the same motion, which was pursued further in the motions for direction of a verdict and to arrest the judgment.

"Added counts at common law could charge the *alleged wrongful act* to have been committed by various means or methods," but the certainty required in an indictment precludes the use of alternative statements (as in the counts of this indictment). (*Wharton's Crim. Proced.,* Vol. 1, 10th ed. Sec. 206, p. 251, cases cited in notes); and where one material averment is contradictory to another the whole is bad (*Whart. Crim. Proced.,* Sec. 305, p. 349, cases cited in note 1, among which is *Munzon* v. *State,* 50 S. W. 949), holding charging act as officer of non-existent office bad for repugnance and plaintiff-in-error was charged in this indictment with failing to perform the duties of an office which did not exist—by virtue of Mr. Jayne's appointment—during the

times of the failure to perform alleged in the indictment upon which he was convicted. Where two assaults at different times are proved, there must be an election (*Whar. Crim. Proced,* Sec. 343, p. 395, cases cited notes 10 and 11); and an election is not discretionary where two distinct crimes are put in evidence under separate counts (*Womack* v. *State,* 47 Tenn. [7 Cold.] 508); and it is duplicity to charge conspiracy to commit a crime in one count, and the commission of the same crime in another (*Whar. Crim. Proced.,* Sec. 521, p. 627); and an indictment is bad where it charges different offenses in different counts, where they are all of the same general character, if they do not arise out of the same state of facts (*Whar. Crim. Proced.,* Sec. 548, p. 691); and the indictment must be sufficiently specific to inform the accused with certainty as to the exact charge he is called upon to meet (*Whar. Crim. Proced.,* Sec. 554, p. 701, cases cited Note 7); and the offense must be set forth with certainty (same work, Sec. 563, p. 711, cases cited Note 2); if two distinct offenses are charged in one count, it is bad for duplicity (same work, Sec. 578, p. 731, cases cited Note 2); and an offense cannot be split into separate parts, and the accused prosecuted for each of such separate parts, although each part may, in and of itself, constitute a separate offense (same work, Sec. 694, p. 958); and where distinct offenses are charged, the prosecution will be required to elect upon which count the trial will be had (same work, Sec. 741, p. 1027; Sec. 800, pp. 1124-1125, cases cited Notes 5, 7, 8); criminal acts committed at different times cannot be charged in one indictment (Sec. 1181, p. 1632; Sec. 1233, p. 1688; Sec. 1851, p. 2287).



(3) But in all of the counts upon which plaintiff-in-error was convicted, the allegations of this indictment charge plaintiff-in-error with malfeasance, when he could not have been guilty of malfeasance for he was not a public officer having duties to perform, and in the motions to quash and for arrest of judgment, attacking the indictment, it was urged (Count five) "states conclusions of law and fact, and does not sufficiently allege a crime"; (Count six) the same; (Count seven) "does not sufficiently allege a crime"; (Count ten) the same; which meant that they failed to charge an offense. And in the first motion for the direction of a verdict (406-419 State of Case): (Count one) "the state has failed to prove the allegations of the count," etc.; (Count five) "that the count has not been proved within the purview of the requirements of the law on the allegations of the count," etc.; (Count six) "the State has failed to prove the allegations of the count," etc.; (Count seven) "the records show that Mr. Bolitho was not prosecuting causes further after Mr. Jayne took over the criminal business of the County," etc.; (Count ten) "There is not anything to prove in that count that the Prosecutor has done any of the allegations alleged in that count," etc.; and on the second motion for the direction of a verdict (624-639, State of Case) "I desire at this time to make a motion for the direction of a verdict as to all of the counts, but I wish to deal with the counts specifically; and I will first cite the Rice count (Count ten) * * * It seems to me, with the evidence adduced by the State as well as the evidence adduced by the defense in its presentation of its case, that there is no proof on that count, and

for the reasons advanced in my first motion and for these additional reasons I move its dismissal''; (Count one) ''the count does not allege a crime, * * * the State has failed to prove the count, and we have refuted the implication of proof,'' etc.; (Count five) ''the State has failed to prove it,'' etc.; (Count six) ''the State has failed to prove it,'' etc.; (Count seven) ''my worthy opponent came into the County to do his work here, and thereafter no prosecution could be had because Judge Wilson did not want to have any more trials because he doubted his authority to do so. There is no evidence, therefore, of failure to prosecute; there is no evidence of anything done by Bolitho that was malfeasance or nonfeasance in this respect,'' etc. (634 State of case).

(4) The motions fully covered this, and the analysis of the counts therein indicate it.

Yet, the Supreme Court says: ''The motion to direct a verdict for defendant was palpably frivolous,'' etc. This is not so. The State failed to prove anything charged in any of the counts of the indictment, with reference to a failure to perform duty, or malfeasance. It failed to prove that plaintiff-in-error had been bribed, or had accepted a bribe, as will be seen in the following:

## As to the Proof of the Allegations of the Indictment.

(Supplemental to Points XI and XII, pages 170-236, Main Brief)

The Supreme Court held: (1) There was plenary evidence of facts and circumstances from



which the jury could properly find that the accused was guilty of official misconduct; (2) We have read the evidence with great care and we have reached the conclusion that the jury could not properly have arrived at any other verdict than it did.

In the charge of the Trial Court (page 641, State of Case) is this:

> ''Your duty in the premises is not to deal with the whole indictment generally and to say whether, taking all the things together, there was a general malfeasance in office, but you will have to take up each count separately and take the evidence applicable to that count and then decide whether, with respect to the particular charge of malfeasance therein contained, the allegations of that count have been substantiated on the evidence and the burden of proof that lies upon the State has been sustained.''

The Trial Court knew that each count related to a different transaction at a different time and place, under different circumstances, and with reference to different third persons; that the trial was actually a trial of eleven transactions, grouped wholesale into one indictment, with all the complications which they entailed to defendant, court, counsel and jury—notwithstanding, no election was required.

Under the allegations of the first count there was no evidence that plaintiff-in-error received any money from Hudock, or from any one in his behalf. There was no evidence that plaintiff-in-

error refrained from prosecuting Hudock; the evidence showed that he did prosecute him; and if the man who appeared and was fined was not Hudock, as the witness Orr testified, then Hudock never appeared on the demand of plaintiff-in-error so that he could prosecute him. The evidence did not show that defendant "did mislead and deceive in the Court of Quarter Sessions respecting the true facts," etc. There was no evidence that defendant did not fairly and rightly present the evidence and facts to the court; and the evidence showed that the court had the indictment before it when it imposed the sentence. There was no evidence that the court had had the intention to, or would have imposed, a more severe sentence, or that plaintiff-in-error induced the court to impose a less onerous sentence than the court might have imposed. It was the Court's judgment and not plaintiff-in-error's; and the court imposed such a sentence as was within its power under the law; and Hudock paid the same penalty that his co-defendants paid. When Hudock failed to appear for trial on the second indictment, plaintiff-in-error forfeited his bail. Hudock had not been tried on either indictment by the former Prosecutor, Mills, though he had tried Kisik and Kovok on the Stirling indictment and Bogdon on the Rockaway indictment, but he had never had Bogdon sentenced, and the conviction of Kisik and Kovok was reversed in the Court of Errors. This is what plaintiff-in-error did with these old cases that were left to him by his predecessor in office: Collected fine of five hundred dollars each from Kisik, Kovok and Hudock ($1,500) on Stirling indictment and Hudock did not put the State to expense of trial; collected



fine of five hundred dollars from Bogdon on Rockaway indictment, and fifteen hundred dollars on forfeiture of Hudock's bail in the same case; a total of $3,500; yet he was indicted, found guilty without proof, and sentenced for not doing his duty in these two cases.

The Assistant Attorney General mis-states the evidence in this case in his Brief. With reference to the first count, he states that the State proved:

(1) "That defendant and County Detective Hubert discussed with Marinaro their willingness to deal with him in criminal cases." The evidence did not show this;

(2) "That defendant informed Marinaro that arrangements could be made with Hubert." The evidence of Marinaro was to this effect; but it was uncorroborated, and it was denied by Hubert and plaintiff-in-error;

(3) "It was agreed that Hudock, or some person representing Hudock, would enter a plea of guilty to the indictment charging the commission of an offense at Stirling in Morris County; that the Prosecutor would represent to the Court that restitution had been made by Hudock to the victim of his offense and that a fine of five hundred dollars would serve the ends of justice." This was not the evidence, except in so far as Marinaro testified to it, but he testified that there was no misrepresentation by plaintiff-in-error to the court that imposed the fine (State of Case 215) and the evidence of the defendant (417-484 State of Case), of Hubert (437-439 State of Case), of Bodine (433-437 State of Case), of Mat-

thews (561-563 State of Case), of Tunnison (580 State of Case), and of Estler (490 State of Case) shows that Marinaro did not tell the truth, and that he was not in the habit of telling it. Furthermore Marinaro testified himself that he was under four indictments at the time when he testified, and the evidence shows that there were other complaints pending against him. But count one charged the plaintiff-in-error with misrepresenting the facts in the *Hudock* case "in the Court of Quarter Sessions," and even Marinaro testified that he did not do that, and there was no evidence that he did. The indictment did not charge plaintiff-in-error with deceiving the Court in having a man arraigned and fined for Hudock who was not Hudock, and there was no evidence to this effect except Orr's, and, if he knew it was not Hudock, as an officer of the Court, he should have informed the Court.

(4) "Hudock had obtained nine hundred and twenty-five dollars from his victim in the Rockaway case. Prosecutor Bolitho was very familiar with the offense committed at Rockaway because the formal complaint had been sworn to by the complainant before him as Mayor of the Borough." There was no evidence that Hudock obtained $925 in the Rockaway case. Bodjodan or Bodgon had been convicted of that, and Hudock had not been tried. A capias for this sum was existing against Bodgon, but none against Hudock. Hudock's name was not in the complaint, or warrant, or affidavits, taken before plaintiff-in-error as Mayor in the Rockaway case (See Exhibits S-36, S-37). Bodgon and Arkie are the persons named therein as the ones who took the



money from Polka, and in the indictment in the Rockaway case Hudock's name does not appear, but Bodgon, Arkie and John Doe are the persons indicted for that crime (Exhibit S-8), and in Exhibit S-9, John Doe and Michael Arki, are held under $1,500 bail each and Bodjodan under $2,000, and this bail was fixed by Mr. Justice Parker. See also testimony of former Prosecutor Mills 166-177 State of Case.

(5) "And $300 was given to County Detective Hubert in Morristown," and that "Prosecutor Bolitho" had "informed Marinaro that he had seen Hubert." This is Marinaro's uncorroborated, and impeached, testimony. It is denied by the circumstances and by the testimony of plaintiff-in-error and Hubert. But, if it were believable, how does it prove that plaintiff-in-error received $300 from Hudock?

(6) "Judge Wilson convened a Court of Quarter Sessions in the smaller court room situate in the rear of the Court House and in a proceeding which lasted not longer than five minutes, a person represented to be the defendant Hudock entered the room and pleaded guilty to the indictment for the Stirling offense." This was a regular court room, one of the only two in the Court House, and Court was in session in the other. In this court room such Vice-Chancellors as Stevens and Emery, and such Justices as Pitney and Garretson had often held court; and it is the place that is always used for that purpose when the other court room is in use by another court. All the evidence shows that Hudock, or the man who answered to the name of Hudock, was arraigned, the indictment (Exhibit S-5) read to him,

he pleaded guilty, and the sentence was imposed. No matter how long it took to do this, what more was plaintiff-in-error in duty bound to do? Plaintiff-in-error could not make the Court hold a session secretly in an out-of-the-way place; and any one who is acquainted with the Judge who sat in this case knows that he would not be a party to corrupt action, or be influenced, or misled; and he had the indictment before him, and knew that the Stirling case in which Hudock was involved was an attempt to take money; and he knew that while the former prosecutor had tried the two defendants, Kisik, and Kovok, he had not tried Hudock. But Bieser, the taxi-man who was waiting for Hudock, said it took about half hour (230 State of Case), which shows again that Marinaro told an untruth when he said it took about five minutes. Neither could the plaintiff-in-error be convicted of the crime charged against him because there were only a few persons present when this arraignment took place.

(7) "The Sheriff was not made aware of the proceedings and it appeared from the testimony that he had at the time a capias for the arrest of Hudock in a civil action founded upon the offense committed at Rockaway." The evidence did not show this; but showed the contrary. The Sheriff did not have a capias against Hudock. (490 State of Case.)

(8) "Deputy Clerk, Edwin Orr, testified that the person who appeared for sentence was not the same person who had been previously arrested and admitted to bail under this indictment." If Orr knew this, he did not make the fact known to the Court. Plaintiff-in-error did not know Hudock. He had never seen him. If it was not Hudock, how has the charge in the First Count of the indictment been proved against plaintiff-in-error?



(9) "The testimony further discloses that shortly thereafter Senator Charles A. Rathbun addressed a letter to Prosecutor Bolitho insisting upon the prosecution of the defendants for the offense committed at Rockaway. It was not until after the receipt of this letter that any further proceedings were taken against Hudock. The further proceedings in the case consisted only in the forfeiture of the bail." Rathbun did not insist upon prosecution of defendants, but indicated that he had talked with Mr. Hegarty, and thought that his client Bogdon would not be sentenced until after Hudock was tried (Exhibit S-25). Bogdon had been convicted for the offense. There is no proof that plaintiff-in-error knew up to the time of receiving this letter from Rathbun that there was any evidence upon which Hudock might be convicted. After receiving this information, plaintiff-in-error did all he could to bring Hudock to trial, and when Hudock did not appear, after notice, he forfeited his bail, collected the sum due thereon, and still tried to locate Hudock. What more could plaintiff-in-error do? What did former Prosecutor Mills do with reference to Hudock? What has Mr. Jayne done since May 19, 1924? Does the evidence in the case, or the acts of plaintiff-in-error, as a public official, in the Hudock case, indicate in any way that plaintiff-in-error received $300 from Hudock, or failed to do his duty with reference to the indictments against him? Where did the $1,500 come from

that Marinaro said he got in a money order? Did the National Surety Company advance it? Did the man who was supposed to be Hudock advance it? Did Mrs. Hudock advance it? Marinaro did not tell who sent it to him—he couldn't remember (210 State of Case). On direct-examination he said he got it in currency (194 State of Case) but denied this on cross, by saying he got it in a money order. Exhibit D-15 shows that Mrs. Hudock had not lived with Hudock for seven years, that she was unable to locate him; and that plaintiff-in-error was endeavoring to bring him to justice, even after the forfeiture of his bail. There was no charge that plaintiff-in-error did any wrong, or neglected to do his duty, with reference to Hudock's co-defendants Kisik and Kovok, and Bogdon, yet each of them paid the same amount of fine as Hudock, and there was a capias against Bogdon, and he had more motive for fixing up a case than Hudock, who failed to appear when notified by former Prosecutor Mills, who was out of the State, and whom, it was said, was wanted by the authorities elsewhere, and who must have known it?

And the money that was taken from Polka in the Rockaway case was paid back by Bogdon under the capias issued against him (233 State of Case); and everything relating to the Hudock cases was cleaned up as far as it was possible to clean it up.

In the Dolimpio case there was no evidence that plaintiff-in-error knew that Dolimpio was guilty of a misdemeanor; the State did not prove that plaintiff-in-error took $400 from Dolimpio as a reward, etc.; the State did not prove that plaintiff-in-error did not do everything that was required of him with reference to prosecuting Dolimpio, and in presenting the evidence to the Grand Jury or Court.



The evidence of Dolimpio as to the money transaction cannot be true, if the evidence of Mutarello is true, and the State did not prove that Dolimpio gave the money to plaintiff-in-error. The evidence must establish all the essential elements of the offense as charged in the indictment and a material variance is fatal to a conviction and where the information charges bribery, the accused cannot be convicted on another offense. See 9 C. J. p. 412, Sec. 19, cases cited notes 29 and 33. A conviction for malfeasance, or any other crime, will not be sustained upon testimony which shows a mere opportunity to commit bribery, or any other crime. *Underhill's Criminal Evidence,* 3d Ed. Sec. 111, at page 125; citing *People* v. *Tom Woo,* 181 Cal. 315, 184 Pac. 389. A man is not to be convicted of one crime by proof that he is guilty of another. See *State* v. *Ferrone,* 113 Atl., paragraphs 8 and 9, pp. 456, 457. Solicitation of a bribe does not constitute an attempt to accept or to receive a bribe, 9 C. J. 408, Sec. 8, cases cited note 78. A charge of receiving property or anything of value cannot be supported by proof of receiving a mere promise to give or to do something in the future which is illegal, and therefore void, and of no value; 9 C. J. 403, cases cited notes 28 and 29. It is essential to this offense that the offer, promise or gift be made or accepted with the corrupt intent to influence the officer in the discharge of his official duties, 9 C. J. 404, Sec. 4, cases cited notes

30 and 31. Under an indictment charging a particular offense, a conviction cannot be had upon evidence of another and distinct offense; 31 C. J., 845-846, Sec. 459, cases cited notes 72 and 73. One indicted for malfeasance, failure to do his duty as an official, cannot be convicted on the mere proof of unlawfully obtaining money, but the malfeasance must be shown; *People* v. *LaBow,* 281 Ill. 227, 118 N. E. 395. Proof beyond a reasonable doubt of every material or essential element of the offense is necessary to convict; *Sharp* v. *State,* 123 N. E. 161. Where the testimony is of doubtful integrity it is to be considered with great caution; *Cohn* v. *People,* 197 Ill. 482, 64 N. E. 306. To sustain a conviction on such evidence, the evidence in the record, when considered as a whole should leave no reasonable doubt of his guilt, and the trial should be conducted without prejudicial error; *People* v. *Israel,* 269 Ill. 284, 109 N. E. 969. There should not be a conviction without clear and distinct proof of the facts forming the basis of the offense or *corpus delicti; Smith* v. *Com.* 21 Catt. 809, *Riloff* v. *People,* 18 N. Y. 179; *U. S.* v. *Searcey,* 26 Fed. 435; *State* v. *Keeler,* 28 Iowa 558; *Taylor* v. *State,* 35 Tex. 97; *Stocking* v. *State,* 7 Ind. 326; *State* v. *Winner,* 17 Kan. 298; *Johnson* v. *Com.* 81 Ky. 325; *People* v. *Place,* 157 N. Y. 584, 52 N. E. 576; *People* v. *Patrick,* 182 N. Y. 140, 74 N. E. 843. The prosecution is bound by the testimony on which the theory of its case rests; *People* v. *Hare,* 57 Mich, 505, 24 N. W. 843; *State* v. *Dashman,* 5 S. W. 69; *State* v. *Harcombe,* 158 Pac. 1096.

By its own evidence in this case, the State itself showed that plaintiff-in-error could not be



guilty of malfeasance, or of failure to do his duty as the Prosecutor of the State's criminal business in the County of Morris, or of bribery, as charged in counts five, six, seven and ten of the indictment. The evidence showed that the alleged appointment under which the supposed officer acted was a nullity at these times; *Lambert* v. *People,* 76 N. Y. 220, 32 Am. Rep. 293. Where an officer by law is also an officer in fact, there is no room for any other officer in fact in the same office; *Dienstag* v. *Fagan,* 65 Atl. 1012; and there cannot be two persons in the possession of an office at the same time even when the two are officer *de jure* and an officer *de facto; Morgan* v. *Quackenbush,* 22 Barb. (N. Y.) 72-80; *Boardman* v. *Halliday,* 10 Paige (N. Y.) 223-232; 22 R. C. L. 589, Sec. 309; 13 L. R. A. 177; and the mere fact of possession of an office is not sufficient to make the incumbent a *de facto* officer; 29 Cyc. 1392, paragraph 4.

According to Exhibits S-2 and S-3, pp. 798-799 State of Case, and the stipulation pp. 142, etc. State of Case, Wilfred H. Jayne, Jr., had charge of "prosecuting the criminal business of the State in the County of Morris, including the investigation of alleged crimes and misdemeanors, attending before the Criminal Courts and Grand Juries of said county, preparing indictments and the trial of indictments for crimes and misdemeanors in said County" from May 19, 1924, up to the present time; and it was his duty to prosecute Hudock, Dolimpio, Mingardi, Juliana, Grande, and Sica, and Florence Rice, and to see that the regular Grand Juries were drawn in the proper manner without the necessity of an Elisor Grand Jury, during the entire period of time

since May 19, 1924; and if Hudock had not been properly prosecuted up to that time it was his duty to have at once indicted those who had failed to prosecute him, and to have continued the prosecution of him. If there was neglect of duty with reference to these matters, it was his neglect of duty and not plaintiff-in-error's; for Mr. Jayne was appointed for that purpose; and plaintiff-in-error was suspended as Prosecutor and had no duty, as such, to perform. He was not a public official of any kind during that period; and the necessity for the calling of an Elisor Grand Jury on the affidavit of Mr. Jayne should not have arose, and would not have arose, according to the very evidence in the case, if he had done his duty as per his appointment, as Assistant Attorney-General. No emergency requiring such action could arise except out of his neglect of duty.

The effect of the designation by the attorney-general of Mr. Jayne as his assistant, in compliance with the terms of Mr. Justice Parker's request, was to suspend Mr. Bolitho from taking any part in the prosecution of the criminal business of the county, during the period of Mr. Jayne's service there as assistant to the Attorney-General. (*O'Reardon* v. *Wilson,* 135 Atl. 280.)

During the period of this suspension Mr. Bolitho was without authority to act in the performance of the duties or the exercise of the powers of his office, either personally or through assistants designated by him.

O'Reardon v. Wilson, 135 Atl. 281.



What plaintiff-in-error did, therefore, with reference to the presecution of the criminal business of Morris County, during the period from May 19th, 1924, up to the time he resigned as Prosecutor, must be presumed to have been done under the direction, and with the approval, of Mr. Jayne; and what was not done which should have been done cannot be blamed on plaintiff-in-error, for he had no duty to perform and no authority to act; and nearly all of the evidence in the case was illegal, the charge of the court misleading, and the allegations of the indictment unfounded, and based upon the fallacy that plaintiff-in-error's duty was to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey, in said County of Morris, and to prosecute all persons who should violate any of the criminal laws, aforesaid, when it was not only not his duty to do so, but he had no power to do so. If this was not done, Mr. Jayne is the one who was charged with doing it; and who is responsible if it was not done. It was his duty to do it; it was his duty to prosecute Hudock on the Rockaway indictment, and to have seen that Dolimpio, Mingardi, Juliano, Grandi, Sica, and Florence Rice were prosecuted; plaintiff-in-error had no power to do this, and no way to prevent Mr. Jayne from doing it; and Mr. Jayne took the position, and charged in the indictment which he drew, that they were all guilty of crime, some of them, like Florence Rice, of continuous crime; so if there was any malfeasance—with reference to these matters—it was not plaintiff-in-error's malfeasance, and Mr. Jayne knew it when he drew the indictment, and

when he magnified and augmented the evidence, and with which propaganda and apparent indignation, held plaintiff-in-error up to the public and the jury, as an awful example of a prosecutor of the criminal business of the State who did not do his duty.

In order to complete the offense of bribery—and it must be remembered that plaintiff-in-error was not being tried for bribery—but in order to complete the offense of bribery there must be (1) a public officer empowered to act (2) the thing sought to be accomplished or done must be within the scope of the authority and power of the officer, and (3) it must be bribery of him, or an offer to bribe him, with respect to his official duty, and he is not to be convicted of an offer to bribe him made by someone else. (*Wharton's Crim. Proced.*, 10th Ed. Vol. 1, Sec. 454.)

How can a man be convicted of failure to do his official duty, when he had no official duty to perform, and the conviction stand?

It was necessary for the State to show, in order to sustain a conviction that plaintiff-in-error wilfully refused or neglected to perform *some duty imposed upon him by law* within the time required by law, and the failure or neglect to perform the duty must have been wilful (See *Charge of Court,* 655 State of Case). Wherein does the evidence submitted on the first count of the indictment show this beyond a reasonable doubt? According to Exhibits S-2 and S-3, the Trial Court and Mr. Jayne knew that no evidence of failure to do his duty, with reference to the criminal business of the county after May 19th, 1924, should



have been admitted against plaintiff-in-error; if any of this nature were admitted, it was the Trial Court's duty to direct a verdict on the counts that it related to, or to have directed that the jury disregard it; but instead of that the court charged with great particularity with reference to how the State had sustained the counts based upon transactions after May 19th, 1924, and counts that were sustained, if at all, by evidence that plaintiff-in-error did not do his duty after that date. There was no duty imposed upon plaintiff-in-error by law with reference to those allegations in the indictment, by reason of Mr. Jayne's appointment, and the suspension thereby of plaintiff-in-error as the Prosecutor of the criminal business of the State in the County of Morris.

The Court charged (p. 655 State of Case)

> "in order to convict, you must find from the evidence beyond a reasonable doubt that he wilfully refused or neglected to perform some duty imposed upon him by law within the time required by law."

The great weight of authority now is that the jury are to receive as binding the law laid down by the court; and after conviction if the verdict be against instruction, it will be set aside. (*Wharton's Crim. Proced.* 10th Ed. Vol. 3, Sec. 1744, p. 2184, citing *Robinson* v. *State,* 33 Ark. 180; *Carter* v. *State,* 48 Ga. 43; *Montee* v. *Com.,* 26 Ky. (3 J. J. Marsh.) 150; *Com.* v. *Knapp,* 27 Mass. (10 Pick.) 477, 20 Am. Dec. 534; *Com.* v *Porter,* 51 Mass. (10 Metc.) 286; *Com.* v. *Anthes,* 71 Mass. (5 Gray) 185; *Hardy* v. *State,* 7 Mo. 607; *Pierce* v. *State,* 13 N. H. 356; *Duffy* v. *People,* 26 N. Y., 589; *People* v. *Sherlock,* 166 N. Y., 180, 15 N. Y.

Cr. Rep. 412, 59 N. E. 830, affirming 56 App. Div. 422; *People* v. *Pine,* 2 Barb. 571; *Carpenter* v. *People,* 8 Barb. 610; *Guffy* v. *Com.* 2 Grant (Pa.) 66; *Davenport* v. *Com.,* 28 Va. (1 Leigh) 588; *Sparf* v. *U. S.,* 156 U. S. 51, 39 L. Ed. 343, 15 Sup. Ct. Rep. 273; *U. S.* v. *Shive,* 1 Bald. 570, Fed. Cas. No. 16278; *U. S.* v. *Battiste,* 2 Sumn. 240 Fed. Cas. No. 14545.)

All of the evidence in the case, relating to things that were done or omitted after May 19, 1924, was illegal evidence, and should not have been admitted, because of its influence upon the jury. *Rutzen* v. *Fau,* 5 Nev. & M. 617. Plaintiff-in-error was not the recognized official representative of the State of New Jersey for the prosecution of its criminal business in the County of Morris, actually in power, after May 19, 1924. Counsel for plaintiff-in-error moved for a direction of a verdict. 406-420 and 624-639 State of Case. Yet, in the Brief of Mr. Jayne, the man who was bound to perform the duties he accuses plaintiff-in-error of failing to perform, the evidence in the case is mis-stated. Of the Fifth Count, he says:

(1) "The accused was arrested and admitted to bail upon this charge and the papers were forwarded to Prosecutor Bolitho."

Under the first complaint the evidence for the State showed that Dolimpio was held for appearance in the Court of Special Sessions (238 State of Case) and there was no evidence that Dolompio signed to plead in Special Sessions, which was necessary before he could be tried there. There was no proof that any evidence obtained on



the raid was turned over to the plaintiff-in-error. The inventory in the second Dolimpio case was not sent to plaintiff-in-error, and though the return of the warrant was made to the Magistrate he said he never saw the inventory. (242 State of Case.) The inventory used as evidence against plaintiff-in-error is Exhibit S-18. There was no proof on the part of the State that this inventory was ever in the possession of plaintiff-in-error, or any evidence that it was. Mr. Jayne was entitled to possession of it, and he had possession of it, when it was offered as evidence in the case against plaintiff-in-error.

This fifth or Dolimpio count in the indictment charges that it was plaintiff-in-error's duty as Prosecutor of the Pleas to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the criminal laws of the State of New Jersey in said County of Morris. And one error in the Court's Charge is where it said,

> "That the Prosecutor knew, therefore, that Dolimpio was guilty of a misdemeanor, and ought to have prosecuted him; but, knowing these premises, and *in disregard of his duty,* he did on the 10th day of September, exact, take and receive from Dolimpio $400.00 *as a bribe for suppressing the evidence and not to prosecute, and that on the 10th day of September, and from thence hitherto, the Prosecutor has wilfully, corruptly and knowingly failed and neglected and refused to prosecute or to present the evidence to the Grand Jury.*

* * * But that shows a case where, if the Prosecutor was corrupt and did choose to kill the prosecution, it was peculiarly, you see, within his power to do so. *The Grand Jury was dependent on him to say whether there was any evidence in the case, and if he had evidence* and said there was none, *why, the Grand Jury had no particular method in which they could compel him to produce it''* (647-648 State of Case).

Justice Parker knew that the Grand Jury would have had this evidence (if there were any) if Mr. Jayne had done his duty; for it was through Justice Parker's request, May 19th, 1924, that Mr. Jayne had been appointed to prosecute the criminal business of the State in the County of Morris. Exception was taken to the Charge of the Court (658, etc., State of Case). But, because of Mr. Jayne's appointment, of May 19th, 1924, plaintiff-in-error had no such duty. Plaintiff-in-error could not legally prosecute these cases, or legally present the evidence to the Grand Jury or Court. Whatever plaintiff-in-error might be guilty of, he could not be guilty of not performing a duty when it was not his duty to perform it; and this applies as well to the first count in the indictment, so far as prosecuting Hudock was concerned after May 19th, 1924; and, in this regard, there is another error in the Court's Charge, which was excepted to (646-647 State of Case) where the Court instructed the Jury:

> "It seems that the Rockaway case (whatever happened to the Stirling case) went no further than the forfeiture of bail, and you have heard what Mr. Jayne had to say on that subject."



And the fact that plaintiff-in-error could not be guilty of failing to perform a duty which he was not bound to perform, and which he had no legal right, authority, or power to perform, applies with equal force to all of the other counts in the indictment under which plaintiff-in-error was convicted, for he was convicted of a breach of duty which was not imposed upon him by law to perform, and which he could not legally perform, and the performance of which by him could have proved fatal to the prosecution of the State's criminal business in the County of Morris; and all of the evidence in the case with reference to his failure to perform such a duty was illegal evidence, under the allegations in the counts in the indictment, and should not have been offered by Mr. Jayne, in behalf of the State, nor admitted by the Trial Court.

With reference to the fifth count, according to the evidence, Dolimpio was arrested September 9th, 1924. The charge in the indictment is that Dolimpio bribed plaintiff-in-error September 10th, 1924, and if Dolimpio's evidence is true he called upon the plaintiff-in-error in the forenoon of that day, to fix up his case, as he says. He admits that at this time he is an utter stranger to the plaintiff-in-error (250 State of Case). Though he had given bail in August for appearance in Special Sessions, according to Ralston, no inventory nor evidence was sent to the Prosecutor, and after he had been to the Prosecutor, Dolimpio went to the Sheriff, and signed a paper for him (255 State of Case). That paper was not, produced by Mr. Jayne, nor accounted for. But in Exhibit S-38, Dolimpio swore that the pa-

per he signed was a blank piece of paper. He was called on the telephone to come to the Sheriff (260 State of Case). Dolimpio testified that he did not tell the notary what to write in Exhibit S-38; that Danny Marinaro told him (260 State of Case). How did Danny Marinaro know what to tell the notary? There was no evidence in the case that Danny Marinaro had been to the Sheriff with Dolimpio. But Louis Marinaro, Danny Marinaro's father, who was present, testified that Dolimpio dictated what was put in the affidavit (265 State of Case), so that one of them swore to an untruth, and Mr. Jayne did not put Danny Marinaro on the stand with reference to the Dolimpio matter, though there was this contradictory evidence in his case. Why didn't he use Danny Marinaro?

(2) Mr. Jayne says in his Brief: "Dolimpio consulted one Pasquale Mutarella, who escorted him to Prosecutor Bolitho at the Prosecutor's Office in the Court House at Morristown. Dolimpio testified in detail to the payment of $400 to Prosecutor Bolitho with the understanding *that the charges pending against him would be suppressed.* Mutarella corroborated Dolimpio upon this essential branch of the testimony." In the performance of the duty imposed upon him by law, where was Mr. Jayne that he did not have charge of the office and papers necessary to the prosecution of the criminal business of the State in the County of Morris? Why did Dolimpio go to Mutarella? The latter was under charges for the violation of the Prohibition Law; and if Mr. Jayne had prosecuted him according to the duty imposed upon Mr. Jayne, would he and Danny



Marinaro have been going around making deals with other violators of the law?

Dolimpio paid Marinaro $200 according to his testimony (248 State of Case) but he swears in Exhibit S-38 that it was $100. Still Danny Maminaro is not produced, and there is no effect to correct Dolimpio's conflicting stories made under oath. His story of what he did with reference to paying money to the plaintiff-in-error (246 State of Case) is altogether different from what Mutarella says happened (287 State of Case), but neither of them testified that the money was actually given to plaintiff-in-error (250 State of Case). But this was in September, 1924, and Mutarella was then under charges. According to their story, these two men both under charges, and neither prosecuted by Mr. Jayne though the violations of the law which they were charged with were subsequent to May 19, 1924, were alone with plaintiff-in-error, and Mutarella was a witness to his bribery on or about September 10th, 1924. But on November 14th, 1924—doing what it was Mr. Jayne's duty to do—plaintiff-in-error pressed the charges against Mutarella before the Court of Special Sessions, and Mutarella was fined $500 (545 State of Case). If Dolimpio had paid money to plaintiff-in-error, in the presence of Mutarella, about a month before this, would plaintiff-in-error have done this? There was more reason for him to let Mutarella escape just punishment than there was for him to let Hudock. But, Mr. Jayne says in his Brief that Mutarella corroborated Dolimpio upon the payment of $400 to plaintiff-in-error. But Mutarella must have been sore at plaintiff-in-error for he had been fined, and when

he testified in this case, he and Dolimpio were both trying to escape punishment, for they were both under indictment, but Dolimpio was not under indictment for violation of the Prohibition Law in August and September, 1924, though two regular grand juries and an Elisor Grand Jury had functioned in Morris County since May 19th, 1924, when Mr. Jayne was charged with prosecuting the criminal business of the State in the County. (121, 122, 123, 125, 127, 139 State of Case.) But the evidence of Mutarella and Dolimpio was contradicted by the defense (501 State of Case), and there was an irreconcilable conflict between their testimony, on the vital point in a charge hard to be defended by the party accused though ever so innocent. 1 Hale, 635; and it must appear that the intent to bribe was in respect to some matter within the scope of his official duties; 9 C. J. 411, Sec. 16, cases cited note 8. Accused is presumed to be innocent until his guilt is proved beyond a reasonable doubt; and the State to justify a conviction must prove beyond such a doubt every material element of the crime; *State* v. *Burke,* 79 Atl. 882, quoted in Parker's Digest, Vol. 8, Sup. 1908-1913, under "Criminal Law," p. 555, Sec. 84.

(3) Then Mr. Jayne says in his Brief: "Further testimony was admitted to the effect that Prosecutor Bolitho following the inauguration of the investigation *of his official conduct* (since May 19th, 1924, of course), instructed one Louis Marinaro, the father of the attorney, to accompany Mutarella on an expedition to Dover, the purpose of which was to obtain from Dolimpio an affidavit to the effect that the liquid confiscated therefore from the premises of Dolimpio was vinegar and not intoxicating liquor." What a useless thing, when Mr. Jayne was in possession of the "liquid confiscated," or it was his duty to be; though he did not produce any evidence to show that it was intoxicating liquor.



Louis Marinaro is the father of Danny Marinaro, who was, at the time when Louis testified (as has been said) under indictment, and other pending charges not covered by any indictments obtained by Mr. Jayne, though he had the evidence, and kept it safely at Lakewood (608 State of Case), and these were charges made before the Elisor Grand Jury had completed its work (338, 343, 605-608 State of Case), and Mr. Jayne prevented plaintiff-in-error from using this evidence for the purpose of showing that Marinaro did not swear to the truth. All of the evidence in the case against plaintiff-in-error shows that Daniel Marinaro and Mutarella were involved in some way in all the cases, except the Rice matter, and that one or the other of them, and often both, had taken money from all of the third parties mentioned in the counts of the indictment against plaintiff-in-error. They both had reasons to protect themselves, and Louis Marinaro was vitally interested in his son. But Louis Marinaro is the only one who testified that plaintiff-in-error sent him to get the affidavit from Dolimpio, and this is denied by plaintiff-in-error (503 State of Case), and Mutarella testified that Daniel Marinaro requested him to go (287 State of Case), while, strange to say, the State did not call Daniel Marinaro at all on the Dolimpio case, and he was an important witness if the testimony of the others

is true; and the evidence of O'Connor, which remains uncontradicted in the case, shows that Daniel Marinaro and Mutarella were very anxious to get this affidavit from Dolimpio and shows the reason (518-524 State of Case). This evidence stands as the truth in the case; neither Daniel Marinaro, nor anyone else, contradicted or denied the truth of the statements of O'Connor made under oath. And isn't it singular that though Dolimpio went immediately to Daniel Marinaro for help when he was arrested in August, that he should not have gone in September; isn't it singular that he should have tried to bribe plaintiff-in-error in September and not in August? And isn't it singular that Daniel Marinaro should be seeking someone to take an affidavit from Dolimpio, should ask O'Connor to write it on the typewriter when Dolimpio was not present, and should state to O'Connor: "Dick, I am in a hell of a jam." (And I says, What's the matter, Danny, I says, You are all excited. And he says) "Dolimpio has gone down and made a statement, as I understand it, or an affidavit, to the Sheriff, which is going to be turned over to Prosecutor Jayne for submission to the Elisor Grand Jury in which he states that I and Bolitho took (I am not sure whether he said two hundred or four hundred dollars) to suppress a complaint." (And he said) "I was down to see Dolimpio, and he says that he went to the Sheriff's house, and the Sheriff handed him a blank paper, and that over the signature of Dolimpio this affidavit had been written." Why should Daniel Marinaro have done this, and why should Mutarella be with him in doing these things—unless it was that he and Mutarella had made some deal with Dolimpio, as



they had with others, and they were trying to fix it up, so they could get out from under? If O'Connor did not tell the truth, why didn't Daniel Marinaro contradict it? And, further, if Dolimpio had made his deal with Daniel Marinaro and Mutarella why did he want to make another deal with plaintiff-in-error? It certainly required more motive than the solicitation of plaintiff-in-error to send the two Marinaros and Mutarella anxiously on the mission of getting that affidavit from Dolimpio.

(4) And Mr. Jayne said in his Brief: "After this had been accomplished, the party returned directly to the residence of Prosecutor Bolitho, arriving there about one o'clock in the morning where Prosecutor Bolitho was waiting to receive a copy of the affidavit." Only Louis Marinaro said that he was waiting and that it was one o'clock in the morning, and plaintiff-in-error denied it (502 State of Case); Daniel Marinaro did not testify. Mutarella testified that it was ten or eleven o'clock on a Saturday night (287 State of Case), and O'Connor testified that they were at his office at seven o'clock in the evening (519 State of Case). And they were so anxious to get this affidavit that thed had two other Italian witness it; but Mr. Jayne did not call them, though his witnesses, Louis Marinaro and Mutarella, who contradict each other, must have gotten these Italians to witness the affidavit.

(5) But Mr. Jayne says, in his Brief: "The following day and before any charge had been made against Prosecutor Bolitho, involving his conduct in the Dolimpio case and indeed before the Elisor Grand Jury had been summoned,

Prosecutor Bolitho handed a copy of this affidavit to the Deputy Attorney-General." It was plaintiff-in-error's duty to give Mr. Jayne this affidavit, as he had charge of the Prosecution of the criminal business of the State in the County of Morris; but would plaintiff-in-error have given it to Mr. Jayne if he had had anything to fear in the Dolimpio case? What is there in the Dolimpio affidavit that plaintiff-in-error personally was interested in? (See Exhibit S-28, p. 846 State of Case). There were statements in it that Mr. Jayne was interested in. But Mr. Jayne never did anything with reference to the Dolimpio cases—charges for the violation of the law—referred to in the affidavit.

(6) But, Mr. Jayne says in his Brief: "Dolimpio was never indicted for either offense." Both offenses committed subsequent to May 19, 1924. It was Mr. Jayne's duty to see that Dolimpio was indicted and prosecuted, if he was guilty. But Mr. Jayne, representing the Attorney-General of the State, has not done this, though he had charge of the prosecution of the criminal business of the State in the County of Morris, when these crimes were committed, and ever since. Plaintiff-in-error did more than he was required to do with reference to the charges against Dolimpio (more than any sane man would do, if he didn't need to do it, and had been bribed not to do it); he presented the cases to the Grand Jury (see testimony of foreman of Grand Jury, Heller, 493-497 State of Case), of plaintiff-in-error (501 State of Case), and Exhibits D-18, D-19. If there had been indictments found, with plaintiff-in-error in the Grand Jury room when the evidence was submitted, they would have been quashed on motion. But, if plaintiff-in-error had done nothing whatever with reference to the Dolimpio cases, he would not have been guilty as charged in the Fifth or Dolimpio count in the indictment, of disregarding his duty, etc., and of accepting a reward from Dolimpio for suppressing the offense and not prosecuting Dolimpio, plaintiff-in-error was not being tried for bribery, but for malfeasance, and he could not legally be convicted of failing to present the evidence against Dolimpio to the proper Grand Jury and Court of the County of Morris, "as according to his duty as Prosecutor of the Pleas, etc., he ought to have done," as charged in the indictment drawn by Mr. Jayne, for these duties were taken from him and placed upon Mr. Jayne. He did not suppress the cases, because they were in Mr. Jayne's custody, and were produced at the trial of plaintiff-in-error; he could not suppress the evidence because he never had it according to the evidence in the case, and there was no proof that it had been suppressed; and by the provisions of the Prohibition Enforcement Act of New Jersey the evidence taken on a raid remains in the custody of the officer who conducts the raid.



This reasoning applies with equal force to the Sixth or Mingardi Count in the indictment since May 19, 1924. On 649 State of the Case, the Court charged on this count: "Then you come to the sixth count, the Mingardi case, and this is, that on the 14th of May, 1924, Bolitho was Prosecutor, and knew that Mingardi had been complained of for a violation of the prohibition act, and it was the duty of Mr. Bolitho to prosecute

him, but that in perversion of his duty, and to enable Mingardi to escape, he took from Marinaro and Mutarella $200.00 as a consideration for suppressing the prosecution, *and from that day to this has knowingly failed, neglected and refused to prosecute.*'' There was an exception taken to the charge. But Mr. Jayne, in his Brief in the Supreme Court, again mis-states the facts regarding the evidence in the Mingardi case.

(1) Mr. Jayne says: ''It appeared that an officer attached to the Office of Prosecutor Bolitho appeared before Recorder Thomas, of Madison, and obtained from him some process under pretense of which he arrested Mingardi at Hoboken and committed him to the jail of Morristown.'' There was no evidence that plaintiff-in-error had anything to do with this arrest of Mingardi, but Louis Marinaro did (536, 539, 541 State of Case). There was no pretense about this process. The complaint was made by Carmine Verilli, Mingardi's bondsman; and there is no way, by the evidence, in which plaintiff-in-error can be connected with this complaint.

(2) Then Mr. Jayne says: ''While in jail at Morristown he was consulted by the Attorney, Daniel Marinaro and Mrs. Mingardi appeared at the home of Pasquale Mutarella * * * she returned to the home of Mutarella where Marinaro promptly called the Prosecutor by telephone.'' Yes; we see the two Marinaros and Mutarella mixed up in this affair, too, and from the very beginning. But the evidence does not show that Marinaro called the Prosecutor by telephone, ''promptly'' (in Mr. Jayne's eager language) or otherwise. The testimony of Christina Mingardi (295-306 State of Case) shows how active the Marinaros and Mutarella were. But she says that her husband was arrested only once, and that was before she moved away from Morristown (300 State of Case). She gave Danny Marinaro $500 (303 State of Case); that was all she raised, and Danny Marinaro was the one she gave it to; and this is important because Danny Marinaro was not used as a witness by the State in this case.



(3) And Mr. Jayne says: ''Mutarella and Marinaro then visited the Prosecutor at the Court House and Antonio Mingardi was forthwith released from jail upon a recognizance which appears to have been prepared and signed by Mingardi *with Mutarella as surety,* in the Office of the Prosecutor. No proceedings touching the bail of Mingardi were had before the Court.'' Mingardi was released on bail (311-315 State of Case). In the evidence of Deputy County Clerk Orr, page 312 State of Case, is this, ''Q. This bail was taken before you, was it? A. Yes, sir.'' Mrs. Mingardi raised only $500 and gave it to Daniel Marinaro in Mutarella's house, and Mutarella testified (308 State of Case): ''Q. Well, did Mingardi get out of jail, then? A. I bailed him out with the $500.'' In other words Mutarella got the $500 for going bail for Mingardi, after his former bondsman had turned him in.

(4) Then Mr. Jayne says in his Brief: ''Mutarella testified that he retained $250 of the fund and that he saw Marinaro give part of it to Prosecutor Bolitho. It was after this distribution of the fund that the bail bond was prepared and executed and Mingardi was committed to jail

on May 11, 1924, and released as a result of the aforementioned transaction on May 14, 1924. The Grand Jury of the May Term was in session on May 14, 1924, and concluded its business for the term on that day." Mingardi was released on bail. The fact must not be overlooked that Daniel Marinaro, to whom Mrs. Mingardi gave the $500, and whom Mutarella said gave it to plaintiff-in-error, did not testify with reference to the Mingardi count in the trial of plaintiff-in-error? But how can a person be legally convicted on the testimony of Mutarella in this case? This is what he testified to: "Q. How much? A. I think it was $500, Mr. Prosecutor. (Objection, and Mutarella continues) I know I have $250. Danny Marinaro *say* he go up to Bolitho's office, and give him $250 I sure. Then he keep $250; it might be one hundred; it might be five. I do not know, because I never count that money." There was only $500. He says he had $250; that Marinaro *say* he gave Bolitho $250, and that Marinaro "keep $250; it might be one hundred; it might be five." Then three or four lines further down on the same page (308 State of Case) he testified, "I bailed him out with the $500." This was the only evidence in the case with reference to any money being paid to plaintiff-in-error under the Mingardi count. And Danny Marinaro was not used as a witness. Why? This piece of contradictory, irreconcilable, and unbelievable evidence—because an unbiased mind would not know what to believe in it—is what plaintiff-in-error was convicted on under the Mingardi count. There was no other evidence material to the allegations in the count in the indictment. Could a conviction on a charge of bribery be sustained



on such evidence as that? The State failed absolutely to prove that plaintiff-in-error did not prosecute Mingardi; and the evidence of Mutarella is demolished by his own statement: "I bailed him out with the $500." The evidence of the defense contradicted the statement that Marinaro paid plaintiff-in-error any money (563-564 State of Case). Plaintiff-in-error was in the Grand Jury room, presenting cases to the Grand Jury, when Mingardi gave bail, and did not know about it until afterwards. This evidence was uncontradicted. (533, 550, 549, 554-556 State of Case.)

(5) Then Mr. Jayne says, in his Brief: "It further appeared that forty-eight gallons of wine were confiscated from the premises of Mingardi by the Officers." This was the uncorroborated evidence of Mrs. Mingardi, and it was contradicted by the State's evidence. Mingardi himself said they got: "A bottle of wine" (292 State of Case); and Daniel Allen, another State's witness, testified that the inventory was in his handwriting (317-318 State of Case), and the inventory states: "Nothing found." (Exhibits S-23, p. 823 State of Case.) This was the record of what was found on the raid, made by the officer who made the raid, at the time of the raid. Why wasn't the State bound by this evidence which it introduced?

(6) Then Mr. Jayne says in his Brief: "Prosecutor Bolitho instructed Louis Marinaro, the father of the Attorney, Daniel Marinaro, to visit Mingardi and his wife at Hoboken and, if possible, obtain from them an affidavit to the effect

that the liquid confiscated from their premises at Morristown was vinegar and not intoxicating liquor." Mr. Jayne makes this statement in the face of what the inventory, his own evidence in the case, shows. And he bases this statement on the uncorroborated testimony of Louis Marinaro and denied by plaintiff-in-error (564 State of Case). Louis Marinaro was with Carmine Verilli when the complaint was made against Mingardi (539-541 State of Case), and went with the officer to arrest him. But then what happened? His son, Daniel Marinaro, and Mutarella visited Mingardi in the jail, soon after he was committed. Mrs. Mingardi went in Mutarella's automobile to get the $500. She returned to Mutarella's house with it, and gave it to Daniel Marinaro at that place, in the presence of Mutarella and his household. It was Mutarella and Louis Marinaro who went to Hoboken to try and get the affidavit, according to the State's evidence (294, 306, 309 State of Case). Daniel Marinaro didn't go, though he got the money; but Mutarella testified that Danny Marinaro sent him over there with Louis Marinaro (309 State of Case). Plaintiff-in-error does not come into this matter at all except as Louis Marinaro brings him in. Will a father shield his only child who is in danger?

The State did not attempt to prove that plaintiff-in-error did not present the Mingardi case to the Grand Jury. It produced absolutely no evidence to that effect.

(7) Then Mr. Jayne says in his Brief: "There was no further prosecution of the complaint against Mingardi." After it had been dismissed by the Grand Jury, and the inventory said nothing found; and there was not another Grand Jury until October, and every one was going away on their summer vacation, or to the National Democratic Convention in New York; and after May 19, 1924, three days after the May term Grand Jury had finished its work and had dismissed this case, it was Mr. Jayne's duty to prosecute this case, if it warranted further prosecution. But Mr. Jayne did not think it of sufficient importance to prosecute it at all at any time.



If plaintiff-in-error had anything to do with the conduct of the criminal business of the State in the County of Morris, after May 19th, 1924, it could not have been unless Mr. Jayne permitted it; it must have been with Mr. Jayne's consent; but Mr. Jayne was in duty bound to see to it that the prosecution of the criminal business of the State in the County of Morris was not neglected. Plaintiff-in-error had no duty to perform in that regard. Malfeasance of deputies, agents, and subalterns is imputed to the principal. *Hixon* v. *Cupp,* 49 Pac. 927; *Stephenson* v. *Sinclair,* 36 S. W. 137; *Asher* v. *Cabell,* 50 Fed. 818; 29 Cyc. 1456 (4); *U. S.* v. *Buchanan,* 4 Hughes, 487, 9 Fed. 689; *U. S.* v. *Beatty,* Fed. Cas. No. 14555.

In reciting the evidence under the seventh count, Mr. Jayne again misstates it, and colors it in such a manner as to make it appear to sustain the allegations of the indictment. The robbery which Juliane, Grande and Sica were charged with was committed in the latter part of April, 1924, but it was several weeks after that before it was ascertained who committed the crime. The indictment against plaintiff-in-error charged him with taking, receiving, exacting and

extorting six hundred dollars from Juliane, and Grande, to refrain and forbear from prosecuting them. The State not only did not prove this, but there was absolutely no evidence in the case that plaintiff-in-error received any money from these men, or from any one else for them. Mr. Jayne says in his Brief:

(1) "They secured bail and in due course conferred with Daniel A. Marinaro and Pasqualle Mutarella. As a result of the information given them, they produced a fund of $900 to which Mutarella agreed to add $100, making $1,000. Marinaro received $300."

This statement is wide of the truth, but here we have the State's choice witnesses, Marinaro and Mutarella, acting together again; of course, the former was a practicing attorney, and the only Italian lawyer in the county, and the latter often went bail for Italians charged with crime; but, as in all the cases, Marinaro is the one who grabs the money, and ducks the responsibility by trying to make it appear that someone else got it; and when he testified he had indictments and complaints hanging over him. Juliane, Grande and Sica were brought to Marinaro by Mutarella (331 State of Case). He testified $900 was laid on his desk by Juliane, and that Mutarella picked it up (332 State of Case). He did not know what was done with $600 of it, but he took $300 (332 State of Case). Me gave back $400, though he only got $300, and gave the $400 to Mutarella, whom he said got the $600. (338 and 352 State of Case.) But Mutarella testified that he did not have any of the money, but that Marinaro got it all (368 State of Case). Neither of them testified



that any of it was given of plaintiff-in-error, or that plaintiff-in-error had anything to do with it; and Juliane testified that he paid the money to Marinaro for fees, $300 each for himself, Grande and Sica; and that he never knew plaintiff-in-error in this matter, and this was all State's evidence (366 State of Case). There was no evidence that plaintiff-in-error got anything from any one. But in this testimony, Marinaro is again shown to be a falsifier by the testimony of Mutarella and Juliane. Yet with no evidence whatever against plaintiff-in-error in this matter, the Trial Court denied the motions for the direction of the verdict; and in the face of the fact that there was absolutely no proof that plaintiff-in-error had received any money, or had had anything to do with the money, the Trial Court charged: "As a matter of fact, these men were indicted afterwards. * * * Now, of course, it would make no difference, even although an indictment was afterwards found. The malfeasance would be there if it be true that the Prosecutor received a bribe for the purpose of averting an indictment. The mere fact that an indictment was found is not going to change the situation as to the commission of the crime in the first place" (650 State of Case), and there was an exception to the Court's charge. But, there was no evidence whatever "as to the commission of the crime in the first place," or any other place; so far as that was concerned, there was the mere naked allegations of the indictment, unclothed by even a figleaf of evidence. And everything which Marinaro testified to, with regard to indictments not being found, related to a time subsequent to the finding of the indictments (346-347 State of Case).

(2) Then Mr. Jayne says in his Brief: "It appears that subsequently these three individuals were indicted and Daniel Marinaro consulted Prosecutor Bolitho upon the subject and informed Prosecutor Bolitho that he understood the men were not to be indicted. To this Prosecutor Bolitho replies that the Untermeyers were influential people, had their own detectives investigating the case and that he was obliged to proceed." These men were indicted in October, 1924. Mr. Jayne had charge of prosecuting the criminal business of the State in the County of Morris from May 19th, 1924 (Exhibits S-28 and S-29. pp. 830-835 State of Case). Marinaro testified that the first conversation he had with plaintiff-in-error was after the indictments came out (335 State of Case). But this tale about plaintiff-in-error preventing indictments from coming out was ridiculous. How could he prevent the indictments from coming out? Mr. Jayne was in charge; if not actually so, he was not doing his duty; if he was permitting plaintiff-in-error to do his duty for him, it was his duty nevertheless. It was Mr. Jayne's duty to see that all of the cases were prosecuted. These statements of Marinaro did not prove anything that the State was required to prove. They were not admissions of plaintiff-in-error of any wrong doing or breach of duty; and they were denied by plaintiff-in-error (595 State of Case).

(3) Then Mr. Jayne states in his Brief: "It further appears that after these individuals were indicted they made demand for the return of their money and Marinaro again consulted the Prosecutor upon the subject of returning the money.



The Prosecutor (not the one who was charged with prosecuting the criminal business of the State in the County of Morris) stated that it would not look well for him to return any money and instructed Marinaro to have the law partner of Prosecutor Bolitho endorse a note for him whereby the funds could be raised." A prosecuting attorney is a sworn officer of the government, required not merely to execute justice, but to preserve intact all the great sanctions of public law and liberty. No matter how guilty a defendant may in his opinion be, he is bound to see that no conviction shall take place except in strict conformity to law. *Wharton's Crim. Proced.* 10th Ed. 1955, Sec. 1490, Sec. 1496, page 1961; *State* v. *Ruby,* 61 Iowa 86, 15 N. W. 848; *State* v. *Maynes,* 15 N. W. 864; *Engle* v. *Chapman,* 16 N. W. 886; *People* v. *Quick,* 18 N. W. 375; *State* v. *Pagels,* 4 S. W. 931; *State* v. *Brooks,* 5 S. W. 257; *State* v. *Sanford,* 1 N. & McC. L. 512. Mr. Jayne knew that there was no evidence in the case that plaintiff-in-error had received any money under this count in the indictment; he knew that plaintiff-in-error was not connected in any way with any bribery in this case, and that there was no proof of failure to do his duty, and that he had no duty to perform, yet Mr. Jayne not only pressed for his conviction, but in his misstatements of the evidence in his Brief in the Supreme Court endeavors to make good a conviction which is unsustained by any evidence. Marinaro's statements that he requested plaintiff-in-error to return the money are uncorroborated, and denied by plaintiff-in-error; and Mutarella's testimony shows that Marinaro got the money; and why should Marinaro request plaintiff-in-er-

ror to return it? Marinaro never asked plaintiff-in-error for the money. And Mr. Jayne misquotes even Marinaro. Marinaro did not say that "the Prosecutor stated that it would not look well for him to return any money," etc. Marinaro said, "He told me that he couldn't do it, because it wouldn't look right for him to pay money for me that I had got that way, and he told me to give it back," etc. (337 State of Case). Plaintiff-in-error contradicted these statements of Marinaro's (597-598 State of Case). The testimony of O'Connor contradicts Marinaro's story (583-594 State of Case). Dunham's testimony contradicts it (583-585 State of Case).

(4) Then Mr. Jayne says in his Brief: "Significant testimony speaks of the evening visit of Juliano, Mutarella and Marinaro to the residence of Prosecutor Bolitho. Prosecutor Bolitho in his testimony stated that these three men came to his house to discuss real estate in Rockaway. It appears, however, that they had just previosly been in conference with County Detective Hubert." What is there significant in this testimony? It does not by the widest stretch of the imagination have any bearing on the allegations of the indictment. Marinaro did not say he visited plaintiff-in-error's house at Rockaway (336-337 State of Case). Juliano said they talked about buildings, but not his case (367 State of Case). Mutarella said they saw Hubert and Bolitho (368 State of Case) but what is there significant about such testimony? Is there any justice in a conviction on such testimony? See plaintiff-in-error's testimony 610-612 State of Case.



(5) Then Mr. Jayne says in his Brief: "The indictment for breaking and entering was never further prosecuted." Orr's testimony shows what was done in the prosecution of these cases (321-330 State of Case), and testimony of plaintiff-in-error (595-609, and Exhibits D-26 and D-27 State of Case). But why didn't Mr. Jayne prosecute them? It was his duty to do so. Under the case of *O'Reardon* v. *Wilson,* 135 Atl. 280-281, plaintiff-in-error was suspended from prosecuting the criminal business of the State of New Jersey in the County of Morris (Exhibits S-2 and S-3, pp. 798-799 State of Case). No person's liberty is safe when any person can be convicted, and the conviction sustained, on evidence of this character.

And when we come to the Tenth Count, it is so raw that even Mr. Jayne says in his Brief, in the Supreme Court, "The testimony offered to support this Count did not develop with the same satisfaction at the trial." But did Mr. Jayne prosecute Florence Rice? He drew an indictment charging plaintiff-in-error with knowledge that she kept a place where she sold intoxicating liquors on June 26th, 1924, and "not regarding the duties of his said office," etc., and "to enable her to escape arrest, prosecution, conviction and punishment for her offense so committed," etc., "in breach and violation of the duty of his office," etc., accepted two cases containing whiskey, etc., to refrain from arresting, prosecuting and convicting her. On the 26th day of June, 1924—when Mr. Jayne had had charge of prosecuting the criminal business of the State in the County of Morris, as the representative of the Attorney-

General, for more than a month, according to Exhibit S-2 (798 State of Case). In fulfilling his duty in this regard, did Mr. Jayne subpoena plaintiff-in-error before a Grand Jury for the purpose of using his evidence in the prosecution of Florence Rice? Did he raid Florence Rice's place of business? The Federal authorities did while Mr. Jayne had charge of the prosecution of the criminal business of the State in the County of Morris. The Trial Court knew that Mr. Jayne had charge of the criminal business of the County of Morris, and that it was his duty to prosecute Florence Rice, if she was violating the law. Nevertheless, the Trial Court charged the jury in this case: "But there was a preliminary transaction, if I heard the evidence correctly and have remembered it correctly, agreed to by both parties to it. Now, it is said that there were no promises, no solicitations, no agreements based on the whiskey. Well, probably not so in words. I do not say there was bribery in the case. What I am saying is that there might have been. * * * Why, of course, Mrs. Rice knew, and she said she did, that he was the prosecutor of the pleas; that he was in her place where she was dispensing liquor contrary to law, and if she could get him to accept two cases of liquor for himself, wouldn't she have him just about where she wanted him? Wouldn't she be reasonably sure that it would be to his interest to do as little as possible towards prosecuting her? It is said that he did prosecute her. Yes, he did; he says the testimony; so he said; at least, he had her raided. He had her raided after, not before, the Federal authorities had made a raid and had padlocked the place." The Court here charges the jury, that "he was in



her place where she was dispensing liquor contrary to law," and that "there was a preliminary transaction agreed to by both parties," but there was no evidence of this; and the evidence was to the contrary. There was an exception taken to this charge. And, it was the Court's duty to instruct the jury that Mr. Jayne had charge of the prosecution of the criminal business of the State in the County of Morris, including the investigation of alleged crimes and misdemeanors, attending before the criminal courts and Grand Juries of said county, preparing indictments and the trial of indictments for crimes and misdemeanors in said county; that plaintiff-in-error could not be bribed with reference to *his* official duty, because he had none; that he could not protect Florence Rice from prosecution; and that if he failed to prosecute her, it was no breach of duty on his part, because he could not legally prosecute her, and he could not prevent her prosecution if Mr. Jayne did his duty.

(1) But, this is what Mr. Jayne says in his Brief in the Supreme Court, about the evidence: "There was testimony, however, to show that Prosecutor Bolitho accompanied by County Detective Hubert visited a public hotel which was afterward padlocked as a result of proceedings taken in the United States District Court and there drank liquor offered to him and to the County Detective by one Mrs. Rice who was conducting the hotel; that upon their departure two cases of liquor was deposited in the automobile in which Prosecutor Bolitho and the County Detective were riding." This is an exaggeration of the evidence (see 392-395 and 401-404 State of

Case). There was no promises made by plaintiff-in-error. And if plaintiff-in-error had had charge of the prosecution of the criminal business of the State in the County at that time, he had the right to get evidence against Florence Rice, or any other violator of the law; and his Detective would have the right to get it. Wherein are the charges in this count of the indictment sustained by the evidence in the case? It is not a question of strict morality, but of the violation of a duty in public office.

(2) And Mr. Jayne says in his Brief: "The defendant admitted drinking at the hotel at the invitation of Mrs. Rice and admitted that the two cases of whiskey were to be placed in the car. There was testimony that the liquor was placed in the car." Plaintiff-in-error did not make these admissions (613 State of Case). The evidence did not show that the liquor was placed in the car that plaintiff-in-error was riding in (394 State of Case). Yet there was a conviction on this count, and it has been said that the evidence was plenary.

As quoted above, the Trial Court charged the jury:

> "In order to convict, you must find from the evidence beyond a reasonable doubt that he wilfully refused or neglected to perform some duty imposed upon him by law within the time required by law" (655 State of Case).

Where is there any evidence under the first (or Hudock) count, the fifth (or Dolimpio) count, the sixth (or Mingardi) count, the seventh (or Untermyer, Juliano, Grande) count, or the tenth



(or Florence Rice) count, that plaintiff-in-error wilfully refused or neglected to perform some duty imposed upon him by law within the time required by law? The State did not prove such even in the slightest degree; and the evidence of the defense, and the records, showed that plaintiff-in-error did do every thing, and more than his duty required, within the time required by law. Records import verity, 2 Wharton Ev. Chap. XII, Sec. 982. Under this instruction of the Court, plaintiff-in-error was entitled to a verdict of not guilty as matter of law; upon the authority of the cases cited above, and *Vaughan* v. *State,* 105 S. W. 576; *McDonald* v. *State,* 102 S. W. 703; *State* v. *Ring,* 91 S. W. 11.

Authority cannot be delegated for the performance of an act which from its nature or the terms of the law requiring it, can only be performed by the principal in person. The rule in this class of cases is sometimes stated in this way: that authority cannot be delegated for the performance of a purely personal duty. It is a general rule that a personal duty, trust or confidence imposed upon one person cannot be delegated by him to another. So, "if a public duty or trust is imposed on anyone, these, not being things which one does in his own right, cannot be delegated, but must be performed personally." This rule prevents the principal from delegating to an agent those things which by statute, custom or the inherent nature of the act are required to be done by him in person. *United States* v. *Bartlett,* Day. 9, 24 Fed. Cas. 1021; *Combes' Case,* 9 Co. 76, b.; *Mechem on Public Officers,* Sec. 187.

A public duty was imposed on Mr. Jayne, by his designation by the Attorney-General (May 19th, 1924), upon the request of a Justice of the Supreme Court, acting under the statute. Mr. Jayne accepted the duties imposed upon him by his appointment, and he could not delegate the performance of those duties to another, or permit them to be done by another, and personally escape the responsibility for the mis-performance or the non-performance of the same. The designation of Mr. Jayne was predicated upon the presumption that the prosecution of the criminal business of the State in the County of Morris was in "a deplorable condition." He was the person whom the Attorney-General selected, in whom he reposed confidence and upon whom he imposed a personal duty; *i. e.,* to prosecute the criminal business of the State in the County of Morris; thereby suspending plaintiff-in-error from his office, depriving him of authority and power to act therein, and of any duty to perform as such public officer. Mr. Jayne was not *obliged* to permit plaintiff-in-error to do anything with reference to the duties imposed upon Mr. Jayne. In fact, the very reason for Mr. Jayne's designation to act in the County of Morris obviously required him not to permit plaintiff-in-error to act. But the failure to prosecute violators of the law, or the prosecution of them in an improper manner, could follow only from Mr. Jayne's failure to do his duty.

A public official is always responsible for the illegal acts of his subordinates where the functioning of those subordinates is discretionary with that public official. *Wadsworth* v. *Town of Middletown,* 109 Atl. 246, paragraphs 8 and 9, page 249.



Furthermore, the offence must only only be proved as charged, but it must be charged as proved; *Archibald's Crim. Pleadings, American Edition,* 36; 1 *Chitty Crim. Law,* 213; *King* v. *Walker,* 3 *Campbell,* 264; *King* v. *Robinson,* 1 *Hope's Nisi Prius Reports,* 595. And the *corpus delicti,* is the body of the offence, is the fact of its actually having been committed; 1 *Haggard,* 105, opinioned by Lord Stowell; *Best on Presuptions,* 279. And the evidence must be such as to exclude every reasonable hypothesis except that of the guilt of the defendant; all the facts proved must be consistent with and point to the guilt of the defendant not only, but they must be inconsistent, and every fact must be inconsistent with his innocence. It matters not how clearly the circumstances point to guilt, still, if they are reasonably explainable on a theory which excludes guilt, they cannot satisfy the jury beyond a reasonable doubt that the defendant is guilty, and hence they will be insufficient; 1 *Bishop's Crim. Procedure,* paragraph 1077. And proof of the *corpus delicti* is required in all criminal cases; *State* v. *Geltzeiler, et al.,* 128 Atl. 240. And it is error to admit evidence of entirely separate and distinct matters forming no part of the main transaction; *People* v. *Sharp,* 107 N. Y. 427, 14 N. E. 319. And in all criminal prosecutions defendant has a constitutional right to be informed of the accusation against him; and it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if at all, of the particular offense charge in the bill of

indictment. The allegation and proof must correspond. It would be contrary to all rules of procedure and violative of his constitutional right to charge him with commission of one crime, and convict him of another and very different one. He is entitled to be informed of the accusation against him and be tried accordingly; *State* v. *Harbert,* 118 S. E. 6; *State* v. *Wilkerson,* 79 S. E. 888. And where the evidence is wholly insufficient to justify a verdict of guilty, the court should direct a verdict for the defendant; *State* v. *McHenry,* 117 S. E. 143. And upon the trial of a person for one crime evidence that defendant has been guilty of other crimes is irrelevant and consequently inadmissible; *State* v. *Bloom,* 89 N. J. L. 418, *State* v. *Fisher,* 96 N. J. L. 5, *State* v. *Julius,* 127 Atl. 577, and the latter case holds that where the court in its charge to the jury commented upon the irrelevant testimony, which should not have been admitted, the comment made the testimony especially harmful to the defendant. And the court has inherent power when it discovers that an indictment charges no crime, on its own motion, to set the indictment aside and order a resubmission; *State* v. *Asbury,* 154 N. W. 916, *Davenport* v. *State,* 202 Pac. 18; yet the court in this case knew that plaintiff-in-error was not a public officer, and had no duties as such to perform, from May 19th, 1924, that he could not be guilty of malfeasance or bribery after that date, and the court not only did not eliminate the counts in the indictment relating to charges after that date, but permitted evidence to be introduced, admitted it, and commented upon it in its charge to the jury, gave the jury a piece of paper indicating that plaintiff-in-error should be found guilty



on such allegations in the counts, refused all motions to quash, direct verdict, dismiss and in arrest of judgment, and sentenced on the conviction on such counts. The refusal of a motion to direct a verdict of acquittal at the close of the case for the state, where the case fails to show the defendant's guilt, is an error; *State* v. *Barheller,* 98 Atl. 829; and a motion in arrest of judgment, based on assertion that indictment does not charge crime, should always be granted when record shows that assertion is justified by fact; *State* v. *Lee,* 126 Atl. 420. To admit testimony of various separate offenses is in clear violation of the general legal rule that a defendant is required only to meet the issue presented by the pleadings; *State* v. *Lante,* 121 Atl. 139, at second column of page 142; where it is also said: "It seems to us that the jury, in passing upon the credibility of the prosecutrix, wholly overlooked the apparent discrepancies and contradictions in her testimony, and the improbability of some of her statements * * * and the utter lack of any confirmation of her testimony; and in that case the court held these things made it appear that the verdict was against the weight of the evidence, and gave rise to the inference that it was the result of mistake, passion, prejudice, or partiality. Take Marinaro's unconfirmed and contradictory statements under the first count in the indictment against plaintiff-in-error, coupled with the fact that there was absolutely no proof of failure to perform duty, or of any of the allegations in that count with reference to malfeasance; take Mutarella's unconfirmed, insubstantial and contradictory statements under the fifth or Mingardi count, coupled with the failure of the

state to prove that plaintiff-in-error did not do his duty, and the uncontradicted evidence of plaintiff-in-error, supported by his witnesses and the records, that he had done his full duty in that case; take Dolimpio's and Mutarella's glaringly contradictory statements in the sixth or Dolimpio count, with no proof of failure to do his duty by the plaintiff-in-error, with his evidence, and the evidence of Heller, the foreman of the Grand Jury, and the records, and the fact that at that time plaintiff-in-error had no duty to perform, and was not a public officer and could not be bribed, because of Mr. Jayne's appointment; take the absolute failure of proof in the seventh, or Untermyer, Juliano, Grande count, and the tenth or Florence Rice Count, and the fact that plaintiff-in-error had no duty to perform, and was not a public officer and could not be bribed—take all of this, which is all there was by way of evidence in the case, does it not appear that the conviction is so clearly against the weight of the evidence as to give rise to the inference that it is the result of mistake, passion, prejudice, or partiality? Conviction of defendant of the offense charged against him in the indictment, entirely unsupported by proofs in the case, must be reversed; *State* v. *Lentz,* 107 Atl. 791.

A defendant is entitled to the benefit of any defense shown by the entire evidence, even if the facts on which the defense is based are inconsistent with his testimony. *People* v. *Scalisi,* 154 N. E. 715.



## As to the Indictment Being Vitiated by the Amendment to it.

(Supplemental to Point X—pages 164-169 Main Brief)

This is treated more fully on pages 164-169 of the Main Brief under Point X.

The Supreme Court in its opinion says, "Since the jury acquitted the plaintiff-in-error on the count he suffered no harm." But everywhere in its opinion the Supreme Court treats the indictment as one charging "a single crime, namely malfeasance," and says that "all of the counts constituted a single indictment for the offense of malfeasance." Then, of course, the verdict of the jury should have been "guilty" or "not guilty" on the indictment as a whole, or if they could not agree on either of these verdicts, then the verdict should have been "a disagreement," and the piece of typewritten paper which the Trial Court sent out with the jury influenced them, under the court's charge, in rendering a verdict which was not a legal verdict. The verdict which they rendered shows that they could not agree on either a verdict of "guilty" or "not guilty" on the indictment as a whole.

As shown on pages 164, 165, 166 and 167 of the Main Brief, the Amendment of the Indictment allowed by the Trial Court was with reference to a matter of substance, and it changed the accusation made by the Grand Jury against the accused; *i. e.,* charged him with protecting one Bert Fleming in the violating of the Prohibition Enforcement Act, and of destroying a complaint

and search warrant made against said Bert Fleming, and certain evidence in the form of intoxicating liquors found in the search of the premises of Bert Fleming; whereas the indictment which the Grand Jury found charged accused with having done these things with reference to one Charles Fleming, an entirely different party.

This change in the indictment was made after all the evidence in the case was in, and just before counsel began to sum up. See pages 634-639 State of the Case. Exception was taken to this by counsel for plaintiff-in-error.

Plaintiff-in-error respectfully submits that (1) This amendment created a new and different indictment from the one the Grand Jury found and returned against him; (2) The alteration vitiated the whole indictment; (3) The indictment which counsel summed up on, the court charged on, and the jury took to its jury room, deliberated and returned its verdict on, was not the indictment that the Grand Jury found, or the indictment that accused was arraigned on and pleaded to, or the indictment that he was tried on; (4) After the amendment was made there was no arraignment, no plea, no issue, and no valid trial, and the jury rendered its verdict without these and on a vitiated indictment. Plaintiff was not permitted to meet the allegations of this indictment after its amendment. See page 639 State of the Case.

*State* v. *Brennan*, 83 N. J. L. 12, 84 Atl. 1066, holds that in every criminal case there must be a plea to the indictment, of allegation, preferred against the accused, since without a plea there is no issue and without an issue there can be no



valid trial, there being nothing to try. Citing *Enc. of Plead. etc.,* Pract. Vol. 2, page 770, and cases cited.

31 *Corpus Juris,* page 826, paragraph 422 (citing cases in notes 80 and 81) says:

> "If an unauthorized amendment of an indictment is made by the Court by alteration of the indictment it vitiates the whole indictment, and the amended indictment will not support conviction."

In the case of *Calvin* v. *State,* 25 Texas, 794-796, the Court said:

> "We are of opinion that the alteration of the indictment in this case was contrary to law, and that the indictment as altered could not support a conviction. The words which were erased from the indictment were words of substance. It is true, there was a *second count in the indictment which might have been good to support a conviction,* although the words which were erased had never been contained in the first count, and it may be that the first count would have been good in itself if it had never contained the words which were erased. But these words having been placed in the first count became words of substance by being put there. No conviction could have been had on the first count with those words in it, without proof of the fact asserted by those words. The question is not, therefore, concerning the sufficiency of the indictment, without the erased words, to support the conviction;

nor is it a question of good and bad counts in an indictment. The question is whether or not the counsel, or the district attorney, and the prisoner, or *even the court* can make an alteration in an indictment in a material respect. We think not. The indictment is the sworn declaration of the Grand Jury, and what they in substance 'do say' must stand as they have said it. The law prescribes the extent to which their finding may be amended. The amendments which are allowed relate to matters of form only, and to the name of the party who is accused. *There can be no amendment as to any declaration of a fact by the Grand Jury* * * * When a party is put to trial upon an indictment which has been improperly amended by the court in a material respect, such amended or altered indictment will not support a conviction; and if there be verdict and judgment upon such an indictment, the judgment should be arrested. * * * (This must) have the effect of placing the defendant in the same position he was in before the indictment was presented, because it is an adjudication by the court, that there is no good indictment against him upon which he may be legally convicted."

Indictments are found upon the oath of a Grand Jury, and can be amended in matters of substance only by the Grand Jury.

State v. Brown, 48 Atl. 652;
State v. Wheeler, 25 Atl. 435;



State v. White, 24 Atl. 250;
Rex v. Wilkes, 4 Burroughs, 2569.

31 *Corpus Juris,* page 828, Section 429 (cases cited in Note 27) says,

> "When an indictment is amended in matter of substance after arraignment and plea, there must be a new arraignment and plea."

*McKay* v. *State,* 135 N. W. 1024, holds,

> "It is error for the Trial Court, after permitting such amendment, to require the accused, over his objection, to immediately proceed with the trial without arraignment under and plea to such amended indictment."

*Henderson* v. *State,* 120 S. W. 966, holds,

> "The proof must correspond with the allegations of the indictment, and the indictment cannot be amended to correspond with the proof."

There can be no such amendment where the constitution requires an indictment by a Grand Jury (22 Cyc., 434 (I), citing *State* v. *Startup,* 39 N. J. L. 423; and see other cases cited in Notes 37 and 39).

The constitution of the State of New Jersey provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation, etc. (Section 8, State Constitution).

Where such a form of accusation is required by the constitution, the legislature cannot authorize

the Court to amend an indictment in matter of substance, for as amended it would not be the finding of the Grand Jury. (22 Cyc. 434, b. (II), citing *State* v. *Armstrong,* 4 Minn. 335; *State* v. *Ham,* 60 Atl. 41; *State* v. *Twining,* 71 N. J. L. 388, 58 Atl. 1098; *State* v. *Startup,* 39 N. J. L. 423; *People* v. *Campbell,* 4 Park. Cr. (N. Y.) 386; *Calvin* v. *State,* 25 Tex. 789.)

And the legislature cannot authorize the amendment of an indictment during the trial in matter of substance where, as is the case in most states, if not in all, the constitution guarantees to persons accused the right, before they can be called upon to answer, to be fully and substantially informed of the nature and cause of the accusation, either by an expressed provision to this effect or impliedly by the provision requiring due process of law. (22 Cyc. 435, citing cases in Note 47.)

The evidence that was admitted in this case, over repeated objection, with reference to the Eighth Count in the indictment, was admitted without any proof of the allegations of the indictment, with reference to Charles Fleming, and this evidence had an influence against plaintiff-in-error with the jury on the general charge of malfeasance; and the Trial Court said (280 State of Case):

> "The Court considers that the identity of the so-called Fleming's Hotel with the proprietorship of Charles Fleming is sufficiently established at this time, *not as a question to be found later by the jury,* as to justify the admission of the evidence of



> Mr. Bettens," etc. (See also 270-275, 275-285, 388-391, and 546-547 State of Case.)

The amendment allowed by the Court changed the whole substance of the charge made by the Grand Jury. In effect, it added a new count to the indictment, a new and different matter to the charge of malfeasance, or else it charged a separate and different offense from the one charged by the Grand Jury, and this could not be lawfully done (*State* v. *Sing Lee,* 94 N. J. L. 266, 110 Atl. 113). Accused can only, properly, be called upon to answer to the offense charged against him in the indictment, and he was entitled to have a reasonable time in which to prepare his defense (*State* v. *Lanto,* 121 Atl. 143, first column).

On pages 164-167 of the Main Brief it is shown how this amendment was one absolutely of substance and not of mere form.

## The Verdict Was Influenced

(Supplemental to Point XIX, page 328, Main Brief.)

On page 667 of the State of the Case is found the typewritten paper that was prepared by the Trial Judge (see page 654 of the State of the Case, for this admission) and given to the jury by the Trial Judge before the jury retired, with this instruction, "I have put them down on a piece of paper with a little formula which can be read by the foreman of the jury when the jury delivers its verdict." And this typewritten paper, bearing the elimination of words by pen as indicated on said page 667 of the State of the

Case, was handed to the Clerk by the foreman when the jury came into court.

When the jury went out into its jury room to consider its verdict, it had before it this piece of paper which had been prepared by the Trial Judge. This paper indicated clearly to the jury what its verdict should be.

Counts One, Five, Six, Seven, and Ten are all alike on this piece of paper, but, while Counts Eight and Eleven are like each other, they are different from Counts One, Five, Six, Seven, and Ten.

Count One illustrates how the five counts on which plaintiff-in-error was found guilty were drawn, so as to point out clearly to the jury what it should find, as follows: "1. On the first (or Hudock) count, we find the defendant guilty." The word "guilty" terminating the sentence in each one of these five counts, and the sentence reading right along without interruption, while the words "not guilty" are written in another line beneath.

But when one compares this with the form of the sentence of Counts Eight and Eleven, on this piece of paper, he will see that the sentence in each of those two counts terminates in the words "not guilty," while the word "guilty," with reference to both counts, eight and eleven, is written above the words "not guilty"—an entirely different form from that used in the sentence in each of Counts One, Five, Six, Seven and Ten.

So that when the jury read this piece of paper, it read Counts One, Five, Six, Seven and Ten, as follows: "On the .... count, we find the defendant guilty," but when it read the Eighth and Eleventh Counts, it read: "On the .... count, we find the defendant not guilty."



And that was just the way they marked this piece of paper, and returned it into court as their verdict. Was not this verdict to all intents and purposes prepared by the Trial Judge? Was it a fair and uninfluenced verdict? If the words "guilty" and "not guilty" had been left entirely off this piece of paper when the Trial Judge gave it to the jury, would the jury's verdict have been what it was? The verdict the jury found was the verdict that the Trial Judge had indicated that it should find.

In *Hawkins* v. *State,* 13 Southern Reporter, 353, it was held that the writing upon an instrument given to the jury in a criminal case and taken with them to their jury room, of the word "guilty" by the Judge, is reversible error, unless it *clearly appears* that no injury resulted to the defendant therefrom.

In criminal cases where defendant pleads not guilty, the Court should not direct a verdict of guilty even where the incriminating evidence is conclusive and uncontradicted. (16 C. J., page 937, Section 2301 and cases cited in Notes 91 and 92.)

It is settled that a verdict will be set aside when the jury, during their deliberations, receive a paper of any character, not in evidence, calculated to lead them to their verdict they rendered, there being no proof offered that the jury were not prejudiced by the paper. (*Wharton's Crim. Proced.,* 10th Ed., Vol. 3, Sec. 1767, pages 2216-

2217; citing *State* v. *Taylor,* 20 Kan. 643; *Hackley* v. *Hastee,* 3 Johns. (N. Y.) 252; *Sheaff* v. *Gray,* 2 Yeats (Pa.) 273; *Alexander* v. *Jamieson,* 5 Binn. (Pa.) 238; *Com.* v. *Landis,* 12 Phila. (Pa.) 576, 34 Leg. Int. 204; *State* v. *Tindall,* 10 Rich. L. (S. C.) 212; *Lonsdale* v. *Brown,* 4 Wash. 148, Fed. Cas. No. 8494; *Vicary* v. *Farthing,* Cro. Eliz. (Eng.) 411; 73 Eng. Repr. 653; *State* v. *Lantz,* 23 Kan. 728, 33 Am. Rep. 215; *Carter* v. *State,* 77 Tenn. (9 Lea) 440.)

Should the jury receive any material paper likely to affect their deliberations, which has not been put in evidence (and there is a conviction), it will be a cause for setting aside the verdict. (*Wharton's Crim. Proced.,* 10th Ed., Vol. 3, Sec. 1767, p. 2216; citing *Co. Lit.* 227; 2 Hale P. C. 306; *Atkins* v. *State,* 16 Ark. 568; *People* v. *Page,* 1 Ida. 102; *Yates* v. *People,* 38 Ill. 527; *Whitney* v. *Whitman,* 5 Mass. 405; *Com.* v. *Edgerly,* 92 Mass. (10 Allen), 184; *R.* v. *Sutton,* 4 Moo. & S. 532.)

Counsel for plaintiff-in-error objected to the Trial Judge handing this paper to the jury. (See page 658 State of Case.)

The Assistant Attorney General in his Brief says,

> "The State of the Case does not accurately reproduce the form of the paper with respect to the arrangement of the words 'guilty' and 'not guilty.' "

But the paper is printed in the State of the Case according to the copy returned with the writ, and certified to by the Trial Court.



This matter is treated further on pages 322-324 of the Main Brief.

## As to the Specifications and Assignments

The Supreme Court says in its opinion (1):

> "It is apparent that this attempt to argue in a wholesale manner, so to speak, the various assignments of error and causes for reversal without pointing out specifically the testimony erroneously admitted or rejected, is in clear violation of the legal rule relating to the subject-matter";

and (2):

> "No testimony is quoted which would enable the Court to determine whether the rulings of the Court were lawfully warranted or not."

The assignments of error and specifications of causes set the evidence out as completely as required, and the matter is argued in detail—not wholesale—in pages 251-278 of the Main Brief, as it was in the Supreme Court.

## As to the Prejudicial Remarks of the Trial Judge

The Supreme Court says in its opinion:

> "It is further urged for a reversal that the Trial Judge, in the course of the trial and in his charge, made comments unfavorable and prejudicial to the plaintiff-in-er-

ror. We do not find this assertion supported by the record."

This was amply supported by the record and is fully pointed out and argued in the Main Brief, pages 285-291.

## As to the Errors in the Charge to the Jury

The Supreme Court says in its opinion:

> "The specific error or errors in the Court's charge are not set out," etc.

These were properly set out in the assignments of error and specifications of causes, and argued fully on pages 292-326 in the Main Brief. (See these pages.)

## As to the Verdict Being Against the Weight of the Evidence

The Supreme Court says in its opinion:

> "We have read the evidence with great care and we have reached the conclusion that the jury could not properly have arrived at any other verdict than it did."

In this Brief we have shown that the verdict was against the weight of the evidence. That there was no evidence on the part of the State sustaining the allegations of malfeasance, and that the evidence of the defense showed that plaintiff-in-error did everything that was required of him by law within the time required by law. There was not one act of neglect of duty



shown by the evidence of the State. The records, and the other evidence of the defense, showed that everything was done that could be done; that plaintiff-in-error had not done his duty was pure supposition, and nobody can point to one single line of evidence to sustain it—and the evidence of bribery, in the first count, was not proved at all; nor in any of the other counts, except by the most unreliable, unbelievable, and contradictory evidence, from confessed bootleggers and criminals, whom plaintiff-in-error had prosecuted, and in the face of the unimpeached evidence of the defense, and the records kept regularly in the course of conducting the public business in the offices of the County Clerk, and Prosecutor. No jury except one frightened by newspaper propaganda, such as this was, would have convicted on such evidence. A vast majority of the people of Morris County speak only in terms of condemnation of a conviction founded upon the evidence of Marinaro, Mutarella and Dolimpio in this case.

## As to the Sentence of the Court

As to the sentence: On two of the counts plaintiff-in-error was sentenced to from one to three years, and on three of the counts from two to three years; and when these sentences were imposed nothing was said about the terms running concurrently. But after the writ of error had issued and was served upon the Court, directing that the proceedings be sent up for review, the Court announced that the terms were to run concurrently (674-675 State of Case). Writ of error will not lie until sentence pronounced (*State* v.

*Snover,* 126 Atl. 850). Before the service was made on the writ of error (which issues after sentence) plaintiff-in-error's sentence was a maximum of 15 years and a minimum of either one or two years, no one could determine which, as no one can determine yet what the minimum is. The crime charged was a misdemeanor, and the maximum penalty three years. The Supreme Court says the indictment charged but one crime, malfeasance; but the Trial Court charged the jury:

> "Your duty in the premises is not to deal with the whole indictment generally, and to say whether, taking all the things together, there was a general malfeasance in office, but you will have to take up each count separately and take the evidence applicable to that count and then decide whether, with respect to the particular charge of malfeasance therein contained, the allegations of that count have been substantiated on the evidence and the burden of proof that lies upon the State has been sustained."

And the sentence of the Court was as if there had been convictions on five separate indictments (12 Cyc. 800 (b) *State* v. *Ham,* 65 N. J. L. 464, 47 Atl. 508.) The sentence should be certain and definite. (12 Cyc. 779 (5); *LeRoy* v. *Rainer,* 1 Sid. 214, 82 Eng. Repr. 1064; *State* v. *Bennett,* 15 N. C. (4 Dev. & B. L.) 44.) See also 12 Cyc. 774 (13), *Cooper* v. *State,* 24 N. J. L. 843.



## Points Not Waived

The points not touched upon in this Supplemental Brief are not waived, but are adhered to as pressed in the Main Brief, and it is hereby respectfully submitted that the conviction should be set aside for the reasons stated on pages 330-331 of the Main Brief.

Respectfully submitted,

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# New Jersey
# Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error.

vs.

JAMES H. BOLITHO,
Plaintiff in Error.

On Conviction for Malfeasance in Office.

## Brief of Defendant in Error

### PREFATORY STATEMENT

It will be the purpose of the Attorney for the Defendant in Error to construct this brief as concisely and succinctly as the treatment of the case will admit and in contrast to the composition submitted in behalf of the Plaintiff in Error which, in its unusual length and prolixity, denies the name endorsed upon it.

Confronted with the record of this case bound in two volumes and with a brief embracing in two volumes four hundred pages presented by Counsel for the Plaintiff in Error, touching upon one hundred and eleven Assignments of Error and ninety-nine Causes for Reversal, some relatively terse narrative of the proceedings sought to be reviewed may here be welcome.

Actuated by reasons which are to be deemed sufficient, Mr. Justice Parker, on May 19, 1924, in pursuance of the statute (P. L. 1922, p. 11). requested the

Attorney-General, in the language of the statute, to attend personally or by such Assistant as he might designate, in the County of Morris, for the purpose of prosecuting the criminal business of the State therein, including the investigation of alleged crimes and misdemeaners. In recognition of this request, the Attorney-General, on May 19, 1924, designated Wilfred H. Jayne, Jr., as his Assistant to perform the duties mentioned in the request (Case, p. 798). The Assistant to the Attorney- General thereupon embarked upon the investigation of alleged crimes and misdemeanors in the County of Morris addressing his inquiry primarily to the official conduct of all the public officers concerned with the administration and enforcement of the criminal law in the County of Morris and confining his efforts at the time to eliciting information pertinent to this inquiry in an informal manner. Since the service of the Deputy Attorney-General in this preliminary and informal investigation has excited so much criticism in the brief of the Plaintiff in Error, it may be well here to notice that this service, in its relation to the rights of the Plaintiff in Error, might have been performed by a civilian and needed not of necessity to rest upon any official appointment.

The record further discloses that on February 19, 1925, Mr. Justice Parker, for reasons which subsequently became unimportant, addressed another request to the Attorney-General of the same import, resulting in the designation under date of February 19, 1925, of Wilfred H. Jayne, Jr., as the Assistant to the Attorney-General. (Case, p. 799).

While the record in this case, except by the reported utterances of Counsel, is silent with respect to the actual procedure, it is perhaps both desirable and fair on the part of the prosecuting official to here report the fact that the Grand Jury empanelled and summoned for the January term in Morris County had been discharged on February 18, 1925. On February 25, 1925, the Deputy Attorney-General appeared before Justice Parker in open court at Morristown and there informed Justice Parker that his investigation had proceeded to a point where it seemed advisable and necessary that much of the information thus acquired should be presented to a Grand Jury of the County in the form of sworn testimony and the deputy Attorney-General represented to Justice Parker that the administration of justice in the county required that a Grand Jury be promptly summoned. The Deputy Attorney-General further informed Justice Parker that he had been engaged in the investigation of the official conduct of the Sheriff, as well as that of the Prosecutor, and that it was the information elicited in his investigation that he desired to unfold to the proposed Grand Jury. The Deputy Attorney-General, as the prosecuting official, further informed Justice Parker that he intended to present to the proposed Grand Jury testimony relating to the official conduct of the Sheriff and his officers and that the Sheriff would be a party in interest to the proceedings of the Grand Jury. The Sheriff had been given notice of this intended announcement to Justice Parker and appeared for the purpose of presenting to Justice Parker a communication in which he requested to be relieved both in his capacity as Sheriff and as Jury Commissioner from all participation in the selection and summoning of the proposed Grand Jury. Appropriate proceedings then eventuated whereby the Sheriff was adjudged to be disqualified from selecting and summoning the proposed Grand Jury and two elisors were appointed upon whom this duty devolved. The Grand Jurors were duly summoned and duly sworn and subsequently on May 11, 1925, presented to the Court the indictment in the case here under review.



The indictment is composed of eleven counts and charges official misconduct of a criminal nature committed by the defendant as prosecutor of the pleas in the eleven instances particularly recited in the respective counts. Opportunity may be here taken to state that no objection was ever made to the joinder of these counts in the one indictment and no request was addressed to the Court during the progress of the trial

that the State should be invited to elect the count or counts upon which it relied for a conviction.

On May 23, 1925, at which time the defendant was summoned to plead to the indictment, counsel for the defendant interposed a challenge in writing to the right of Mr. Justice Parker to sit in judgment upon the argument or trial of the defendant. To this challenge a demurrer was filed by the Deputy Attorney-General prosecuting for the State. This challenge after argument was overruled. A challenge to the array of the petit purors was likewise interposed and to this challenge a demurrer was filed by the Deputy Attorney-General. This challenge was overruled. On May 29, 1925, application was made in behalf of the defendant to Justice Parker for a writ of **certiorari** to review the indictment, and following the denial of this application, a motion to quash the indictment was made.

The trial began on September 14, 1925, and on September 17, 1925, the jury rendered a verdict finding the defendant guilty on the first, fifth, sixth, seventh and tenth counts of the indictment. (Case, p. 46.)

To insure convenience in the reference to the briefs submitted in this case the same numerical designation of the points discussed in the brief of the plaintiff-in-error will be here adopted.

## POINT I.

### The Recusation of the Trial Judge was Properly Overruled.

A challenge was interposed to the right of Justice Parker to sit in judgment in the argument and trial of the defendant in the Court of Oyer. (Case, Vol. I, p. 54.) To this challenge a demurrer was filed by the Deputy Attorney-General representing the State. (Case, Vol. I, p. 59.) It is elementary that a demurrer admits, for the purpose of the decision on the demurrer and for that purpose only, such matters of fact as are well pleaded. It does not admit matters of fact that



are not well pleaded nor does it admit allegations of conclusions of law or of fact. A demurrer to a challenge performs no more liberal office. **State v. Barker, 68 L. 19, 21.** Whether a dumurrer filed by the officer prosecuting for the State in answer to a challenge of a trial judge will operate to admit averments in the challenge which the trial judge himself knows to be untrue, may well be doubted.

An acquaintance with the averments of the challenge interposed in this case will at once disclose the propriety of the demurrer. It will be observed that the challenge alleges as its foundation "that the interest of the said Charles W. Parker * * * is such as to indicate a state of mind and an opinion contrary to the impartial administration of justice towards this defendant." This constitutes nothing more than an assertion that the trial judge is partial. The averments, however, of the challenge utterly fail to state any facts evidencing the existence of any such partiality. The challenge alleges conclusions both of law and of fact. In general, it is confined to a reference to acts judicially performed by the trial judge which are claimed to be erroneous in law.

> "There is nothing before this court to show that the justice was so affected. The mere allegation to him of such bias or prejudice, by way of challenge and his refusal to appoint triors, do not prove the existence of the bias or prejudice * * * but before it is set aside this court should be satisfied by legal evidence of the facts showing the existence of such bias or prejudice. There are no such facts in these cases."

**State v. DeMaio, 69 L. 590**

Counsel for plaintiff-in-error fastens tenaciously and most persistently upon the remark of Justice Parker in which he used the expression **"non vult"** (Case, p. 63), and also upon the filing of a demurrer, as circumstances constituting an absolute and unqualified admission of the partiality of Justice Parker. It is obvious that the

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only significance to be attached to the remark of Justice Parker in this particular is that counsel was at liberty to proceed with the argument of the challenge upon the assumption that all the facts well and sufficiently pleaded in the challenge might be regarded for then present purposes as true.

Counsel for the Plaintiff in Error indulges in a lengthy discussion in the brief upon the legal effect of a plea of non vult in our criminal procedure and makes critical reference at some length to the propriety of the request which Justice Parker addressed to the Attorney-General resulting in the designation of a Deputy Attorney-General to investigate alleged crimes and misdeameanors in Morris County.

The record in this case does not indicate that a statutory investigation was ever contemplated nor can any thing be found in the requests made by Justice Parker of the Attorney-General in pursuance of the statute of 1922 to justify the repeated assertion that Justice Parker thereby inaugerated a criminal prosecution against the Plaintiff in Error. The difference is readily discernible between prejudice against crimes and pre judice against a person who may be charged with the commission of a crime.

Under this Point the comment is extravagantly protracted to establish the universally accepted maxim that no man can be a judge in his own case. Favor, however, would not be presumed in a judge. In the absence of statutory provision, bias or prejudice on the part of a judge does not disqualify him. The judge is the officer duly appointed by the constituted government to try the judicial causes in the court over which he is appointed to preside and such errors as the judge might commit through partiality or prejudice will find their remedy in the prosecution of a writ of error.

> "As to the insufficiency of such proof, the judge himself, if sitting alone, must decide."

**State v. DeMaio, 70 L. 220.**

Disqualification has been imposed by statute in this



State. But the disqualification mentioned in the statute, **inter alia**, is that the judge shall "be interested in the event of such action" and the statute expressly excludes as a disqualifying cause the circumstance that the judge "may have given his opinion on any question in controversy in the same action in the course of the previous proceedings therein."

**3 Comp. Stat., p. 4121.**

The interest in the event of the action which the statute regards as a disqualification is an interest of at least such a direct and immediate nature as to in effect transgress the inviolable rule that a man shall not be a judge in his own case.

**Peck v. Freeholders, 21 L. 656**

**State, Winans v. Crane, 36 L. 394**

The answer therefore to the alleged errors discussed under this Point may be found, it is respectfully submitted, in the failure of the defendant to either allege or prove any facts evidencing the existence of any bias, prejudice or partiality. Indeed if all of the judicial acts mentioned in the challenge had occurred, they would not constitute a valid basis to a challenge of the trial judge.

**State v. Spencer 21 L. 196**

The twelfth ground stated in the challenge was that the defendant intended to subpoena Justice Parker as a witness for the defendant at the trial. This ground is without merit.

**State v. DeMaio, 69 L. 590; affirmed, 70 L. 220**

**Crawford v. Hendee, 95 L. 372. 40 Cyc. 2234**

**L. R. A. 1915, p. 766.**

## POINT II.

### The Challenge to the Array of Pettit Jurors Was Properly Overruled.

Under Point II of the brief, the Plaintiff in Error seeks a review of the action of the trial judge in disallowing the challenge to the array of petit jurors.

This challenge was met by a demurrer on the part of the State. A reading of the challenge interposed by the defendant will make it at once apparent that no facts are therein alleged. (Case, Vol. I, p. 89.) The challenge contained the naked averments that the Sheriff who participated in the drawing of the Petit Jury was disqualified and interested in the defendant's case, and secondly, that the petit jurors were prejudiced and biased. No facts were alleged upon which these conclusions were founded and no evidence of the existence of any such interest and prejudice on the part of the Sheriff or petit jurors was adduced. The challenge employs the words "disqualified," "interested," "prejudiced" and "biased." But the record discloses no proof.

> "The defendant says, he challenges the juror, because 'he does not stand indifferent between the parties.' But these words do not constitute a challenge; they express only the reason for making a challenge or the judgment and conclusion of law, consequent upon finding the ground of challenge to be true. The challenger must go further, and state why, the juror does not stand indifferent, he must state some facts or circumstances, which if true, will show either that the juror is positively and legally disqualified, or create a probability or suspicion, that he is not or may not be impartial."

**Mann v. Glover, 14 L. 195, 203.**

"Whether or not a man is disqualified to serve as a juror is a conclusion of law to be drawn by the court from the facts submitted to it.

"The allegation that some of the men whose names were upon the list were not qualified to serve as jurors, being a conclusion of law, and not a statement of fact, its truth is not admitted by the demurrer. A demurrer only admits the facts set out in a pleading and not then unless they are sufficiently pleaded."

**State v. Barker, 68 L. 19, 21.**



Counsel adverts to an order disqualifying the Sheriff. This proceeding is not part of the record in this case. (Case, Vol. I, p. 92 et-seq.)

Indeed, nothing could be presented suggesting the disqualification of the Sheriff in Morris County to draw and summon the petit jury.

Neither in the challenge nor in the argument can be found any charge that the sheriff impartially selected the petit jury. Surely it was incumbent upon the challenger to prove the disqualifying interest or partiality of the Sheriff and jurors or allege facts in the challenge which, if admitted, would take the place of such proof.

**State v. Morehous, 97 L. 285.**

The cases to which appeal is made in the brief of the Plaintiff in Error deal with situations where the Sheriff was shown to be a party in interest in the litigation or had impartially selected the jury.

This point of contention may therefore be brought within this narrow compass; that in the absence of proof it will be presumed that the panel was legally drawn and summoned and that the jurors were impartial; that if, on the other hand, it is insisted that some facts were admitted, then it may be said that the adjudication thereon was an adjudication of fact which cannot be reviewed.

**State v. Patterson, 48 L. 382.**
**State v. Clawson, 59 L. 434.**
**State v. Johnson, 59 L. 271, 535.**
**State v. Moschell, 53 L. 498, 511.**

## POINT III.

### The Refusal to Allow a Writ of Certiorari to Determine the Legal Sufficiency of the Indictment Cannot be Reviewed.

Application was made to Justice Parker on May 29, 1925, for Writ of **Certiorari** to review the form of the indictment. (Case, Vol. I, p. 106, l. 28.)

The application was denied and it is now contended

that the conviction should be reversed because of the refusal of Justice Parker to allow the Writ of Certiorari

The application was addressed to the discretion of the Court.

**1 Comp. Stat., p. 404.**

> "It is also an accepted general rule that the discretionary action of a criminal court will not be reviewed on strict writ of error."

**State v. Riggs, 92 L. 575.**

The scope of the review under Section 136 of the Criminal Procedure Act is limited to proceedings had upon the trial.

**State v. Pisaniello, 88 L. 262.**

Under this Point of the brief Counsel for Plaintiff in Error experiences gratification in a lengthy comment critically reflecting upon the presentment found by the Elisor Grand Jury touching upon the administration of certain public affairs in the County. Just how this foreign subject was admitted within the native boundaries of this case is not easily understood.

## POINT IV.

### The Refusal to Quash the Indictment Because Found by an Elisor Grand Jury Does Not Justify a Reversal of the Conviction.

The record accompanying the writ of error in this case is not informative of any proceedings resulting in the disqualification of the Sheriff, the appointment of elisors, the issuance of the precept, the summoning of a grand jury by elisors and other material facts upon which the intended motion to quash could be founded. Except in the reported language uttered by Counsel, the record is silent on this collateral branch of the case. So far as the return discloses, the indictment was found in the Court of Oyer and Terminer of Morris County at the January term, 1925, by a Grand Jury composed of good and lawful men of the County of Morris, duly summoned, sworn and charged to inquire in



behalf of the State of New Jersey, in and for the County of Morris. (Case, Vol. I, p. 2.)

Counsel for Plaintiff in Error apparently assumes that the averments in the challenge to the trial judge sufficiently and authentically report the proceedings relating to the appointment of elisors and that by virtue of the demurrer to the challenge, the averments are admitted for all purposes. Indeed, Counsel presumes, on page 32 of the brief, to argue that by reason of the demurrer and the expression of **non vult** uttered by Justice Parker, it is admitted that the Chancellor-Sheriff-Jury Act was enacted for the purpose of abolishing elisor grand juries.

Unless the procedure followed by Justice Parker with respect to the disqualification of the Sheriff, the appointment of elisors and the summoning of the grand jury is authentically presented in its entirety for examination, its legality surely cannot be determined. Certainly, opportunity must be accorded to examine the several orders indicative of the course of procedure, adjudications and rulings involved in this antecedent branch of the case. The question must be understood before an answer can be sought. The presumption is that all action was rightly taken and an exceptant must assume the **onus probandi.**

In this state of the record, no error is apparent.

> "Intendment will be made against the party excepting and in favor of the judgment."

**State v. Patterson, 48 L. 381, 384.**

However, all the points raised on this branch of the case have been determined adversely to the contention of the Plaintiff in Error, save one.

> (a) "That the discharge of that body (Grand Jury) whether justiable or not, was a matter of no concern to the plaintiff in error, for the reason that he had no right to have the charge laid against him investigated by that particular Grand Jury. We concur with the Supreme Court upon this point."

**State v. Zellers, 83 L. 666, 667.**

(b) "It is true that the statute speaks of summoning, not of selecting, grand jurors, but by necessary implication it contains a legislative recognition of the fact that there may be conditions which would render it improper to commit the selection of grand jurors to either the sheriff or the coroner of the county and deals with those conditions; for it cannot be supposed that the Legislature contemplated the existence of a situation which would render it improper to permit those officers to perform the mere manual labor of leaving written notices with persons who had been selected as members of a grand jury, and yet which would not render it improper for such officers to select such members."

**State v. Zellers, supra, on p. 668.**

(c) "The original grand jury drawn by the sheriff having been discharged from service, the sheriff being disqualified to act in selecting and summoning a new one, and the Oyer having power to cause such new grand jury to be selected and summoned, the question was presented to that Court: By what officer or officers shall that duty be performed? The determination of that question involved the construction of the Eighth Section of the act concerning juries. Construing it as the Supreme Court did afterward, the Oyer, considering that it would make for the better administration of justice not to have the grand jury selected by coroners, thereupon appointed elisors, and issued its venire to those officers who, in obedience to the command of writ, caused the members of the grand jury which presented the indictment against the plaintiff in error to come before the Court. That these members were properly sworn as grand jurors, that they were good and lawful men duly qualified to serve as such, and that



they were wholly impartial as between the State and the plaintiff in error is not denied."

**State v. Zellers, supra, on p. 669.**

(d) "Can a person under indictment successfully challenge a grand jury so constituted upon the ground that the title of the officers by whom it was selected and summoned is invalid? It has never been suggested, so far as I know, that a person against whom an indictment has been presented by a grand jury may defeat a prosecution under it by showing that the sheriff who selected and summoned the grand jury by which it was found, was not entitled to hold the office of which he was the incumbent because he was not eligible thereto, or had not been duly elected to it or for any other reason. And yet, if the invalidity of the title of the elisors in this case to the office to which they were appointed by the Oyer can be made the basis of overthrowing an indictment found by a grand jury summoned by them, it must be equally true that the same result must follow in the case of an indictment found by a grand jury summoned by a sheriff who was not legally entitled to hold the office which he filled. That the title of the incumbent to an office cannot be attacked in this collateral way we think entirely settled."

**State v. Zellers, supra, on p. 670.**

(e) "In both cases the judge acted upon facts that gave reasonable ground to believe that a complaint might properly be made before the grand jury against the sheriff. In neither case did he act in an arbitrary way. Whether or not there should be a public hearing, with an opportunity for the sheriff to explain, is a matter that must rest in the sound judicial discretion of the judge. He is not to try the case and his only function for the time being is to ascertain whether or not the sheriff is to be trusted to

draw an impartial grand jury as his oath of office requires. Cases may arise, and doubtless this was one, where a premature disclosure of the charge to be made might thwart the very purpose of the procedure."

**State v. Kuehule, 85 L. 220, 222.**

The foregoing excerpts have been selected because of their application to the respective points on contention urged in the brief of the Plaintiff in Error.

The only novel subject of debate introduced by the brief of the Plaintiff in Error under this title is the effect upon Section 8 of "An Act concerning Juries" resulting from the enactment of the Chancellor-Sheriff-Jury Act of 1913.

> Sec. 8. That every grand and petit juror shall be summoned by the sheriff or his deputy, or by one of the coroners or elisors, when the venire shall be awarded to the coroners, or elisors, by notice in writing, under his or their hands, and served either personally, or left at the dwelling house of such juror, six days at least before the day on which such juror is required to appear.

**3 Comp. Stat. 2966.**

The right and power of a judge of the Court of Oyer and Terminer in a proper case to appoint elsors to select and summon Grand Jurors has been settled and established by judicial sanction in our adjective law.

> "That power exists in the Oyer to appoint elisors to select and summon grand jurors in a proper case, certainly when both the sheriff and the coroners are disqualified to perform such services, we have no doubt."

**State v. Zellers, 83 L. 666.**

Other cases may be here cited.

**State v. Kuehnle, 84 L. 164.**
**State v. Kuehnle, 85 L. 220.**
**State v. McDevitt, 84 L. 11.**
**State v. Egen, 84 L. 701.**
**State v. Unsworth, 84 L. 22.**



It will be presumed that the Legislature was cognizant of the provisions of Section 8 of the earlier act and aware of the power exercised by our judges under it. With full knowledge then, of the provisions of the earlier law and of the power exercised by our judges under its authority, the Legislature with evident purpose incorporated in the Chancellor-Sheriff-Jury Act of 1913 the following Section:

> Section 13. Nothing herein contained shall be held or construed in anywise to limit the powers of the court or any justice or judge as heretofore had or exercised in connection with the drawing or discharge of jurors or panels of jurors.

**P. L. 1913, p. 833.**

Additionally, it will be observed that the Chancellor-Sheriff-Jury Act was intended as disclosed by its title to be a supplement to the earlier act and it can not be said to formulate by its provisions any complete scheme covering the subject matter of juries. Many items of importance embraced by the same subject matter are untouched by the provisions of the Chancellor-Sheriff-Jury Act, such as the compensation of jurors, mileage, penalty for nonattendance, vacancies in grand juries, etc.

**3 Comp. Stat., p. 2964.**

The summoning of jurors, which may be regarded as a most indispensable feature of the law relating to juries found no fresh consideration in the Act of 1913. On the contrary the Legislature by the language employed in Section 8 of the Act of 1913 provided for a continued reliance upon the then existing law. The language is "to be summoned for service as such according to law."

**P. L. 1913, p. 832.**
**P. L. 1916, p. 547.**

The Act of 1913 provided only for the repeal of acts and parts of acts inconsistent with it. In the construction of this clause of repeal, the same rule is applied as

in the case of repeal by necessary implication.

> "But there must be a positive repugnancy between the provisions of the new law and those of the old, and even then the old law is repealed by implication, only **pro tanto** to the extent of the repugnancy."
>
> **State v. Kelly, 34 L. 75, 77.**

If the Legislature intended on such a comprehensive subject to destroy **in toto** the then existing law, it would have definitely effectuated this purpose by express words.

**Borough of Oakland v. Board, 98 L. 99.**

The authorities can be readily multiplied which hold that an implied repeal is not favored and that unless there is such a vital repugnancy and inconsistency between the provisions of the former and later acts that they cannot stand together or unless the later act is intended to supersede the former and to comprise in itself the sole system of legislation on the subject, the acts will be read together and the consistent provisions of the former act will hold their place in the statutory law.

## POINT V.

### Motion to Quash Indictment Because Grand Jury Empanelled at a Term Specially Appointed Was Properly Denied.

Again there is occasion to draw attention to the failure of the record to show that any special Term was appointed.

The fact is not presented by the record.

This contention, however, if well founded in fact, has been determined adversely to the argument of the Plaintiff in Error.

**State v. McDevitt, 84 L. 11.**
**Affirmed, 85 L. 731.**



## POINT VI.

### The Contention that the Venire for an Elisor Grand Jury Was Issued Before the Grand Jury Regularly Empanelled at the Opening of the January Term was Discharged, is Not Founded Upon the Fact.

The brief of the Plaintiff in Error fails to indicate the portion of the record evidencing the fact underlying the contention under this Point. Recourse must inevitably be had to the record in an exigency where Counsel for the Plaintiff in Error asserts the existence of a fact and Counsel for the Defendant in Error controverts it. In this situation perhaps it would be cordial to say that the Court would doubtless regard the record entry of the event as more desirable and acceptable.

The Attorney for the Defendant in Error thus circumstanced can only represent the fact to be that the Grand Jury empanelled at the opening of the January Term was discharged by Justice Parker on February 18, 1925. It will be noticed that the copy of the order disqualifying the Sheriff which Counsel thought necessary to set forth in his brief is dated February 25, 1925, and the return to the writ in this case shows that the Grand Jury that found the indictment against the Plaintiff in Error was sworn on the second Tuesday of March, 1925.

The argument of Counsel for the Plaintiff in Error then assumes the form that the Plaintiff in Error had a constitutional right to have any complaint against him submitted to the Grand Jury previously discharged. This contention has been held to be without substantial merit.

**State v. Zellers, 83 L. 666, 667.**

The right of a defendant with respect to a jury is one of exclusion and not of selection.

**State v. Deliso, 75 L. 811.**
**State v. Langhans, 95 L. 213.**

## POINT VII.

### The Official Authority of the Deputy Attorney-General Cannot be Collaterally Attacked.

Under this Point in the brief of the Plaintiff in Error, it is intended to draw into debate the legal propriety of the designation of Wilfred H. Jayne, Jr., by the Attorney-General.

A reference to the record will disclose that the designation of Wilfred H. Jayne, Jr., was made in response to the request of Mr. Justice Parker, who was the Justice of the Supreme Court presiding in the County of Morris, and the request as well as the resulting designation appear to conform in every respect with the provisions of the statute. P. L. 1922, p. 11. (Case, p. 798, 799.)

It is respectfully submitted that the qualification, official authority and title to office of Wilfred H. Jayne, Jr., as an Assistant to the Attorney-General cannot be collaterally and thus indirectly attacked and hence cannot here be presented for determination.

> "When an official person or body has apparent authority to appoint to public office, and apparently exercised such authority, and the person so appointed enters upon and performs the duties of such office, his acts will be held valid in respect to the public whom he represents and to third persons with whom he deals officially, notwithstanding there was a want of power to appoint him in the person or body which professed to do so."
>
> **Erwin v. Jersey City, 60 L. 141, 144.**

The statute of 1922 is but a natural decendant of the earlier statutes of similar but less liberal provisions. Under this statute, as well as under its ancestors, the practice has been followed of appointing Special Deputy Attorneys-General and this long continued course of practice ushers into consideration a well established principle for the interpretation of statutes.



> "Whenever there is a debatable question as to the proper construction of a statutory provision, the contemporaneous and long continued exposition exhibited in the usage and practice under it requires the construction thus put upon it to be accepted by the courts as the true one."
>
> **State v. Kelsey, 44 L. 1.**
>
> **Fritts v. Kuhl, 51 L. 191, 200.**
>
> **McNeal Pipe Co. v. Lippincott, 57 L. 540.**
>
> **Commonwealth Refining Co. v. Riccio, 81 Eq. 486.**
>
> **Board v. Cronk, 6 L. 120.**
>
> **Calame v. Calame, 25 Eq. 548.**
>
> "The defendant, when he accepted this office, had a right to rely on the interpretation which * * * had been put upon this law and in which all the appropriate heads of the government had coincided. I think it must be held that the meaning of this law has been thus conclusively settled * * * "
>
> **State v. Kelsey, 44 L. 1, 23.**
>
> "The legal ground on which this provision is now supported is, that long and continued usage furnishes a contemporaneous construction which must prevail under the mere technical import of the words."
>
> **State v. Kelsey, 44 L. 1, 22.**

The contention now urged in behalf of the Plaintiff in Error under this heading gives birth to the thought that if a plaintiff in error in seeking a review of his conviction of crime can thus attack the official authority of the prosecuting officer, then it would seem that he may draw in question as well in any case the official title of the sheriff who empanelled the jury, the clerk of the grand jury, the clerk who administered the oaths the judge who received the indictment and the judge who presided at the trial, thus under his writ of error testing the title to office of every officer con-

cerned with the processes of the administration of justice in his case.

The argument is then expanded to encompass the point that an unauthorized person conducted the proceedings before the Grand Jury in the assumed capacity of an Assistant to the Attorney-General. This contention must obviously first rest upon the legal conclusion that the prosecuting officer was not in law the alter ego of the Attorney-General, and secondly, upon the assumed fact that this person was present in the grand jury room during the proceedings of the Grand Jury. There is nothing in the record evidencing the fact that the Deputy Attorney-General was present in the grand jury room during the proceedings which resulted in the indictment of the Plaintiff in Error. Counsel again assumes that the demurrer to the challenge of the trial judge supplies this information. The averments in the challenge however, do not state that the Deputy Attorney-General was present in the grand jury room during the proceedings of the Grand Jury.

## POINT VIII.

### The Title to Office of the Clerk of the Grand Jury Cannot be Indirectly Attacked.

Counsel for the Plaintiff in Error in the argument addressed to this Point seeks to put in question the title of one J. Donald Masterton to the office of Clerk of the Grand Jury in the County of Morris.

Much of the Comment under the preceding point has pertinent application to the subject here under discussion. Assuming that the attack upon the appointment of the Grand Jury Clerk is to be accorded consideration, an insurmountable difficulty arises by reason of the absence from the record of the order appointing Mr. Masterton. The relationship of the question to the instant case must be said to exist in the fact that Mr. Masterton was present in the capacity of a Clerk during the proceedings of the Grand Jury. This fact is not apparent in the record.



Under Assignments Nos. 81 and 111 and Causes Nos. 71 and 99, Counsel for Plaintiff in Error complains of the presence of one Anthony Cattano in the grand jury room on an occasion when he is said to have acted as an interpreter.

It will be sufficient upon this subject to say that the presence of Cattano in the grand jury room was not the subject of any exception taken at the trial or the ground of any motion or request addressed to the court. (Case, Vol. I, p. 297, l 18.)

## POINT IX

### The Motion to Quash the Indictment Because of Its Form Was Addressed to the Discretion of the Court and Cannot be Reviewed.

Under this Point the Plaintiff in Error complains that he suffered manifest wrong and injury by reason of the refusal to grant the motion to quash the indictment because of alleged defects in the form of the indictment.

The law relating to this phase of our appelate procedure seems now to be well defined.

The denial of a motion to quash can not be reviewed under Section 136 of our Criminal Procedure Act because this statutory provision only authorizes a review of the "proceedings had upon the trial" and a motion to quash must under our statute be made before the jury is sworn.

**State v. Pisaniello, 88 L. 262.**

A motion to quash is addressed to the discretion of the court and unless the ground of the motion goes to the foundation or legality of the indictment, a denial of the motion is not a proper subject of review on strict writ of error.

**State v. Mead, 53 L. 601.**
**State v. Flynn, 76 L. 473.**
**State v. Pisaniello, 88 L. 262.**

It would seem that even though the motion to quash the indictment was founded upon a ground that goes to the very foundation and legal sufficiency of the indictment, the denial of the motion would not be reviewed unless this same ground of criticism is made the subject of some motion during the progress of the trial or urged in arrest of judgment.

It will be noticed that the motions for a direction of a verdict in the present case were founded upon the alleged insufficiency of proof.

It is true that the same reasons in general stated upon the motion to quash were subsequently assigned upon the motion to arrest the judgment.

It will also be observed that upon the motion to quash the only criticism of the First Count of the indictment was that it was ambiguous, duplicitous and contradictory. This criticism relates merely to the form and not to the sufficiency of this count and errors relating only to the form of an indictment do not constitute a ground for the arrest of judgment.

It is therefore submitted that the refusal to quash the First Count of the indictment can not be reviewed. Mere errors of form such as duplicity in an indictment will not disturb the legality of a judgement.

**State v. Farnum, 66 L. 397.**

It may be maintained, therefore, that the duplicity of which the Plaintiff in Error speaks and which is found only in the allegations which are merely descriptive of the identity of the substantial charge in the indictment, can not be taken advantage of after a verdict and judgment. Such objections must be made before the jury shall be sworn.

**State v. Noyes, 41 L. 418.**

**State v. Moschell, 53 L. 498.**

While Counsel for Plaintiff in Error contended upon the motion to quash and again upon the motion in arrest of judgment that the remaining counts upon which the defendant was convicted did not respectively allege a crime, yet this contention is not pursued in the argument in the brief. The argument in behalf of the Plaintiff in Error under this Point makes no attack upon the legal sufficiency of the indictment. The argument directs its complaint solely at the respective counts in the indictment, the failure of the indictment to allege the wrongful acts with sufficient particularity and certainty, and the matter of duplicity. Counsel for the Defendant in Error therefore has nothing to meet except the bold assertion that the counts of the indictment are insufficient.



## POINT X.

### The Amendment of Which the Plaintiff in Error Complains Was Made to the Eighth Count Upon Which He Was Found Not Guilty.

Counsel for Plaintiff in Error complains of an amendment which was made with the approval of the court to the Eighth Count of the indictment.

The defendant was found not guilty on this count. (Case, p. 46 and p. 638.)

There was no error in allowing the amendment.

**2 Comp. Stat. 1831.**

**State v. Tolla, 72 L. 515.**

## POINT XI. AND POINT XII.

### The Motion for the Direction of a Verdict of Not Guilty Was Properly Denied.

### The Verdict Was Not Contrary to the Weight of the Evidence.

The scope of the review of the matters discussed under these Points is limited.

A motion to discharge a defendant or to direct a verdict of not guilty, is addressed to the discretion of the court and the action of the court is not reviewable on error.

The statutory provision contained in Section 136 of the Criminal Procedure Act "brings into review only the question whether, upon the evidence as it stood when the motion was made, there was a case for the jury."

**State v. Jaggers, 71 L. 281, 283.**

> "It has been repeatedly held by this court that it will not consider a ground of reversal which challenges the sufficiency of the testimony. It is only where the contention is that there is no evidence whatever to support the verdict that the court will examine the testimony, and then only for the purpose of ascertaining whether such contention is well founded."

**State v. Runyon, 93 L. 16.**

Counsel under Point XII of the brief urges as a cause for reversal that the verdict is against the weight of the evidence. The nature and extent of this review has been judicially defined.

**State v. Karpowitz, 98 L. 546.**

**State v. Morehous, 97 L. 285.**

**State v. Knight, 96 L. 461.**

Three and one-half days were devoted to the taking of the testimony in this case. A detailed rehearsal of the testimony in this brief would be inappropriate and, indeed, unnecessary. It is hoped, however, that the references to the testimony here given may be helpful in directing more immediate attention to the pertinent part of the proof adduced by the State in support of the several counts of the indictment upon which the defendant was found guilty.

Record proof was offered to establish the allegation that the defendant was Prosecutor of the Pleas of the County of Morris at the time mentioned in the several counts of the indictment. (Case, Vol. I, p. 154.)

Testimony and records were offered showing that one Frederick Hubert was the County Detective or Special



Officer of the Prosecutor at the time mentioned in the First Count of the indictment. (Case, Vol. I, p. 155.)

As to First Count:

The testimony disclosed that at the time the defendant, James H. Bolitho, became Prosecutor of the Pleas of the County of Morris, there were pending and yet undetermined two indictments against one John Hudock. The defendant and his County Detective, Frederick Hubert, discussed with one Daniel A. Marinaro, a young attorney at Morristown, their willingness to deal with him in criminal cases. Marinaro was consulted by a New York attorney in the interest of Hudock and a fund of fifteen hundred dollars was made available to be used to relieve Hudock from imprisonment upon the charges pending against him in Morris County. Hudock at the time was at large on bail. Marinaro consulted Prosecutor Bolitho, informing him of the available fund of fifteen hundred dollars and was informed by Prosecutor Bolitho that the arrangements could be made with the County Detective Hubert. It was agreed that Hudock, or some person representing Hudock, would enter a plea of guilty to the indictment charging the comimssion of an offense at Sterling in Morris County; that the Prosecutor would represent to the Court that restitution had been made by Hudock to the victim of his offense and that a fine of five hundred dollars would serve the ends of justice. The other indictment alleging an offense committed at Rockaway in Morris County was to be **nolle prossed** in due course and to that end the County Detective was to secure a statement from the complaining witness Palco that the identity of Hudock was uncertain. Hudock had not obtained any money as a result of his criminal offense in Sterling, but had obtained nine hundred and twenty-five dollars from his victim in the Rockaway case. Prosecutor Bolitho was very familiar with the offense committed at Rockaway because the formal complaint had been sworn to by the complainant before him as Mayor of the Borough. In furtherance of the plan, Marinaro divided the fund of fifteen hundred dollars as

follows: $500 was to be used in the payment of the proposed fine; $500 was to be retained by him as his share: $200 to the New York attorney and $300 was given to County Detective Hubert in Morristown. Subsequently Marinaro communicated with Prosecutor Bolitho and was informed by Prosecutor Bolitho that he had seen Hubert and that everything was all right.

The testimony shows that on Friday, June 1st, 1923, at about 4:30 or later in the afternoon, Judge Wilson convened a Court of Quarter Sessions in the smaller court room situate in the rear of the Court House and in a proceeding which lasted not longer than five minutes, a person represented to be the defendant Hudock entered the room and pleaded guilty to the indictment for the Sterling offense. Prosecutor Bolitho then stated to the Court that restitution had been made by the defendant. A fine of $500 was promptly imposed which Marinaro forthwith paid by throwing the currency in that amount upon the desk of the Deputy Clerk and the proceeding terminated by the immediate withdrawal of the supposed defendant from the room and his hasty retreat by taxicab to Newark. The only persons present were: Judge Wilson, Prosecutor Bolitho, Daniel Marinaro, Edwin Orr, the Deputy Clerk who had been requested to be present by Marinaro, and the supposed defendant Hudock. The Sheriff was not made aware of the proceedings and it appeared from the testimony that he had at the time a capias for the arrest of Hudock in a civil action founded upon the offense committed at Rockaway. The Deputy Clerk, Edwin Orr, testified that the person who appeared for sentence was not the same person who had been previously arrested and admitted to bail under this indictment.

The testimony further discloses that shortly thereafter Senator Charles A. Rathbun addressed a letter to Prosecutor Bolitho insisting upon the prosecution of the defendants for the offense committed at Rockaway. It was not until after the receipt of this letter that any further proceedings were taken against Hudock. The



further proceedings in the case consisted only in the forfeiture of the bail.

The following references will draw attention in general to the testimony in these important particulars:

Daniel A. Marinaro, Case, Vol. I. pp. 192, 198.

Edwin Orr, Case, Vol. I, pp. 224, 226.

Rudolph Bieser, Case, Vol. I, p. 229.

Rathbun letter, Case, Vol. II, p. 839.

Initial complaint, etc., Case, Vol. II, pp. 840-842.

As to Fifth Count:

The testimony upon this Count disclosed that in August, 1924, a complaint was duly made before Recorder Percy Ralston, of Boonton, charging one Peter Dolimpio, with the violation of the Prohibition Enforcement Act. The accused was arrested and admitted to bail and the complaint and processes issued in this proceeding forwarded to Prosecutor Bolitho. In September, 1924, a complaint was duly made before Police Justice Gardner, of Dover, charging Peter Dolimpio, with a further violation of the Prohibition Enforcement Act. The accused was arrested and admitted to bail upon this charge and the papers were forwarded to Prosecutor Bolitho. Thus circumstanced Peter Dolimpio consulted one Pasquale Mutarella, who escorted him to Prosecutor Bolitho at the Prosecutor's Office in the Court House at Morristown. Dolimpio testified in detail to the payment of $400 to Prosecutor Bolitho with the understanding that the charges pending against him would be suppressed. Mutarella corroborated Dolimpio upon this essential branch of the testimony.

Further testimony was admitted to the effect that Prosecutor Bolitho following the inauguration of the investigation of his official conduct, instructed one Louis Marinaro, the father of the Attorney, to accompany Mutarella on an expedition to Dover, the purpose of which was to obtain from Dolimpio an affidavit to the effect that the liquid confiscated theretofore from

the premises of Dolimpio was vinegar and not intoxicating liquor. Louis Marinaro, accompanied by Mutarella and Daniel Marinaro, interviewed Dolimpio, escorted him to a private room in a hotel at Dover and induced him to sign an affidavit which was prepared in triplicate. After this had been accomplished, the party returned directly to the residence of Prosecutor Bolitho, arriving there about one o'clock in the morning where Prosecutor Bolitho was waiting to receive a copy of the affidavit. The following day and before any charge had been made against Prosecutor Bolitho, involving his conduct in the Dolimpio case and indeed before the Elisor Grand Jury had been summoned, Prosecutor Bolitho handed a copy of this affidavit to the Deputy Attorney-General. Two copies of the affidavit were offered and admitted in evidence. Dolimpio was never indicted for either offense.

The references to the testimony follow:

Recorder Ralston, Case, Vol. 1, pp. 235—239.

Recorder Gardner, Case, Vol. I, pp. 239—243.

Peter Dolimpio, Case, Vol. I. pp. 243—247.

Louis Marinaro, Case, Vol. I, pp. 261—264.

Pasquale Mutarella, Case, Vol. I, pp. 286—288.

Affidavit, Case, Vol. II, pp. 846, 865.

Exhibits, Case, Vol. II, pp. 869, 870.

As to the Sixth Count:

Testimony offered by the State revealed that a criminal complaint had been made before Police Justice Gardner, of Dover, against one Antonio Deimegard, otherwise known as Antonio Mingardi, charging him with the violation of the Prohibition Enforcement Act. At the time of his arrest he resided with his family at Morristown. He was admitted to bail and subsequently moved his home to Hoboken. It appeared that an officer attached to the Office of Prosecutor Bolitho appeared before Recorder Thomas, of Madison, and obtained from him some process under pretense of which he arrested Mingardi at Hoboken and committed him to



the County Jail at Morristown. While in jail at Morristown he was consulted by the Attorney, Daniel Marinaro and Mrs. Mingardi appeared at the home of Pasquale Mutarella. From information given here she departed in the automobile of Mutarella to obtain a fund of $500 which she evidently borrowed from friends in Hoboken, in Plainfield and in Brooklyn. With the funds thus collected, she returned to the home of Mutarella where Marinaro prompty called the Prosecutor by telephone. Mutarella and Marinaro then visited the Prosecutor at the Court House and Antonio Mingardi was forthwith released from jail upon a recognizance which appears to have been prepared and signed by Mingardi with Mutarella as surety, in the office of the Prosecutor. No proceedings touching the bail of Mingardi were had before the Court. Mutarella testified that he retained $250 of the fund and that he saw Marinaro give part of it to Prosecutor Bolitho. It was after this distribution of the fund that the bail bond was prepared and executed. Mingardi was committed to jail on May 11, 1924, and released as a result of the aforementioned transaction on May 14, 1924. The Grand Jury of the May Term was in session on May 14, 1924, and concluded its business for the term on that day. A record made in the handwriting of Prosecutor Bolitho indicates that this complaint against Mingardi was considered by the Grand Jury which was in session on May 11, 1924, to May 14, 1924, both inclusive and no bill of indictment was found. It further appeared that forty-eight gallons of wine were confiscated from the premises of Mingardi by the Officers.

After the investigation began, but before any formal complaint by way of indictment or otherwise had been made against Prosecutor Bolitho with respect to the Mingardi matter, Prosecutor Bolitho instructed Louis Marinaro, the father of the Attorney, Daniel Marinaro, to visit Mingardi and his wife at Hoboken and, if possible, obtain from them an affidavit to the effect that the liquid confiscated from their premises at Morristown was vinegar and not intoxicating liquor. There

was no further prosecution of the complaint against Mingardi.

References to the testimony follow:

Police Justice Gardner, Case, Vol. I, pp. 289-291.
Antonio Mingardi, Case, Vol. I. pp. 291-294.
Christina Mingardi, Case, Vol. I, pp. 295-307.
Pasquale Mutarella, Case, Vol. I, p. 308.
Louis Marinaro, Case, Vol. I, p. 310.
Exhibits, Case, Vol. II, pp. 866-868.

As to the Seventh Count:

It appeared from the testimony relating to this Count of the indictment that three individuals who may be here known as Juliano, Grande and Sica were arrested for the crime of breaking and entering the residence of one Alvin Uttermeyer at Kinnelon in the County of Morris and stealing therefrom a large quantity of choice liquors. They secured bail and in due course conferred with Daniel A. Marinaro and Pasquelle Mutarella. As a result of the information given them, they produced a fund of $900 to which Mutarella agreed to add $100, making $1,000. Marinaro received $300. It appears that subsequently these three individuals were indicted and Daniel Marinaro consulted Prosecutor Bolitho upon the subject and informed Prosecutor Bolitho that he understood the men were not to be indicted. To this Prosecutor Bolitho replies that the Uttermeyers were influential people, had their own detectives investigating the case and that he was obliged to proceed. It further appears that after these individuals were indicted they made demand for the return of their money and Marinaro again consulted the Prosecutor upon the subject of returning the money. The Prosecutor stated that it would not look well for him to return any money and instructed Marinaro to have the law partner of Prosecutor Bolitho endorse a note for him whereby the funds could be raised.

Signficant testimony speaks of the evening visit of Juliano, Mutarella and Marinaro to the residence of



Prosecutor Bolitho. Prosecutor Bolitho in his testimony stated that these three men came to his house to discuss real estate in Rockaway. It appears, however, that they had just previously been in conference with County Detective Hubert. Juliano subsequently entered a plea to an indictment charging him with the illegal transportation of liquor and was penalized by a fine of $500. The indictment for breaking and entering was never further prosecuted.

References to the testimony follow:

Daniel A. Marinaro, Case, Vol. I, pp. 330-338.
Joseph Juliano, Case, Vol. I, pp. 362-366.
James H. Bolitho, Case, Vol. II, pp. 610-612.
Indictments, Case, Vol. II, pp. 830, 835.

As to the Tenth Count:

The testimony offered to support this Count did not develop with the same satisfaction at the trial. There was testimony, however, to show that Prosecutor Bolitho accompanied by County Detective Hubert visited a public hotel which was afterward padlocked as a result of proceedings taken in the United States District Court and there drank liquor offered to him and to the County Detective by one Mrs. Rice who was conducting the hotel; that upon their departure two cases of liquor were deposited in the automobile in which Prosecutor Bolitho and the County Detective were riding. The defendant admitted drinking at the hotel at the invitation of Mrs. Rice and admitted that the two cases of whiskey were to placed in the car. There was testimony that the liquor was placed in the car.

References to the testimony follow:

Bruno Shubert, Case, Vol. I, pp. 392-394.
Florence Rice, Case, Vol. I, pp. 401-403.
James H. Bolitho, Case, Vol. I, 613.

The foregoing statements of the testimony under the respective Counts are summarized to the extreme, but it is hoped that the statements and accompanying references will be sufficient to indicate that there was tes-

timony supporting the allegations of all the counts upon which the defendant was found guilty.

## POINT XIII.

### No Exception Was Taken to the Alleged Improper Remarks of the Trial Judge and No Motion Was Made With Respect Thereto.

Under the 85th and 86th Assignments of Error, and 73d and 74th Causes for Reversal, Counsel for Plaintiff in Error complains of alleged improper remarks made by the Trial Judge during the progress of the trial. (Case, Vol. II, p. 712, 766.)

An examination of the record reveals that no exception was taken to any of the remarks of the Trial Judge by the defendant at the trial and no motion or request was made in behalf of the defendant with respect to the alleged improper remarks. No objection was interposed at the trial to the occasional examination of witnesses by the Trial Judge and no exceptions were taken with respect thereto.

In this situation there was no denial of any matter by the Court.

**State v. Valentina, 71 L. 552, 556.**

Under the discussion of Point XVII post, references to the record are given showing that the Trial Judge left to the jury unabridged the matter of determining the credibility of witnesses and the determination of the facts. If any inference could be extracted from the remarks of the Trial Judge or from the nature of his examination of witnesses that would be indicative of his opinion with respect to the testimony, this would not constitute reversible error.

**State v. Hummer, 73 L. 714.**

## POINT XIV

### There Was No Error in the Admission or Rejection of Testimony



The Assignments of Error and Causes for Reversal discussed under this Point relate to the admission and rejection of testimony. Council for the Plaintiff in Error presents for determination the legal propriety of every ruling upon the admission or rejection of testimony to which an objection was interposed throughout the entire trial.

A large number of the Assignments of Error and corresponding Causes for Reversal relate to the admission or rejection of testimony upon the Eighth Count (Fleming Case) of the indictment. The defendant was found not guilty upon this count and obviously suffered no manifest wrong or injury from the rulings upon this testimony.

To insure both convenience and brevity a list of these Assignments with the corresponding Causes with references to the case, follows:

| Assignment No. | Cause No. | Case Page |
|---|---|---|
| 23 | 12 | 270 |
| 24 | 13 | 271 |
| 25 | 14 | 275 |
| 26 | 15 | 276 |
| 27 | 16 | 278 |
| 28 | 17 | 279 |
| 29 | 18 | 279 |
| 30 | 19 | 280 |
| 31 | 20 | 281 |
| 41 | 28 | 388 |
| 42 | 29 | 389 |
| 43 | 30 | 389 |
| 44 | 31 | 390 |
| 45 | 32 | 390 |
| 46 | 33 | 391 |
| 57 | 39 | 529 |
| 58 | 40 | 529 |
| 59 | 41 | 530 |
| 60 | 42 | 530 |
| 61 | 43 | 530 |

| | | |
|---|---|---|
| 62 | 44 | 531 |
| 63 | 45 | 531 |
| 64 | 46 | 531 |
| 65 | 47 | 532 |
| 67 | 48 | 532 |
| 74 | 56 | 277 |
| 75 | 57 | 277 |

The foregoing Assignments and Causes relate to testimony introduced in support of the Eighth Count of the indictment and defendant was found not guilty upon this count.

Assignment No. 20, Cause No. 10 (Case, pp. 195, 196). The question to which objection was interposed was not answered.

Assignment No. 32, Cause No. 20 (Case, p. 306). There was testimony showing that the defendant endeavored to have Mingardi sign an affidavit that the material found by the officers upon the search of the premises was vinegar. Furthermore, no prosecution of Mingardi had been undertaken by the defendant as Prosecutor. It was material to show that the material found upon the search was not vinegar but wine and that a large quantity was available for evidence.

Assignment No. 36, Cause No. 21 (Case, p. 360). The reason for supporting this question was stated by the Prosecutor and appears in the record.

Assignment No. 37, Cause No. 25 (Case, p. 365). This question was addressed to the knowledge of the witness upon the subject and the answer was harmless.

Assignment No. 38 (Case, p. 365) is a repetition of the objection to the same question discussed under Assignment No. 37.

Assignment No. 39, Cause No. 26 (Case, p. 374). This testimony was introduced in support of the Eleventh Count upon which the defendant was found not guilty. The answer was "No," and therefore in any event harmless.

Assignment No. 40, Cause No. 27 (Case, p. 386). This testimony was in corroboration of the witness



Marinaro with respect to his relations with the Prosecutor.

Assignment No. 53, Cause No. 35 (Case, p. 455). This was an effort to offer a letter in evidence which had not been properly proved. All that was material with respect to the letter was testified to by the witness.

Assignment No. 54, Cause No. 36 (Case, p. 474). The question to which objection was interposed was never answered.

Assignment No. 55, Cause No. 37 (Case, p. 476). The question was objectionable as leading and called for a characterization of the purpose of the author of the letter.

Assignment No. 56, Cause No. 38, (Case, p. 516). This question related to the custom with reference to raids made by the Sheriff. This was clearly immaterial, since the defendant had previously testified concerning the extent of his knowledge of the Sheriff's raid and of the inventory.

Assignment No. 68, Cause No. 50 (Case, p. 537). This question was proper cross-examination tending to bring out the fact that the rearrest of Mingardi was not initiated by the Recorder but by the Prosecutor through his Officers.

Assignment No. 69, Cause No. 51 (Case, p. 562). This question was answered before the objection was made thereto.

Assignments Nos. 70, 71, 72 and Causes Nos. 52, 53 and 54 (Case, pp. 565, 567, 568). It is submitted that these questions were proper in cross-examination.

Assignment No. 73, Cause No. 55 (Case, p. 574). This question called for a repetition of testimony already given.

Assignment No. 76 (Case, p. 490). This was an effort to prove the docket entries of the Sheriff's office concerning a **capias** against one Bogden. It was immaterial. The Sheriff testified concerning the **capias** against Hudock.

Assignments Nos. 77 and 78 (Case, p. 542, 557). The envelopes containing the files in the particular cases and upon which a record was kept were admitted in evidence. The card index was not evidential. The subject of these records was well covered by the testimony of Margaret Repp and Prosecutor Holland. (Case, p. 500, 541.)

Assignment No. 80, Cause No. 60 (Case, p. 303). This question was abandoned.

Assignment No. 83, Cause No. 61 (Case, p. 383). This question was proper and tending to prove the confidential relations between the defendant and Marinaro and Mutarella.

Assignment No. 84 (Case, p. 618.) The witness fully testified as to the anlysis of the liquor and as to the result of the analysis.

## POINT XV.

### The Motion at the Close of the Case for Direction of a Verdict of Not Guilty was Properly Denied.

The argument under this Point assumes substantially the same form as that employed in the argument under Points XI and XII. The Points therefore raised by Assignment of Error No. 87 and Cause for Reversal No. 75 have been previously discussed.

## POINT XVI.

### No Objection Was Interposed to the Remarks of the Prosecutor and No Motion or Request Was Made With Respect Thereto.

Under Assignment of Error No. 89 and Cause for Reversal No. 76, Counsel for Plaintiff in Erroor makes claim that the Plaintiff in Error suffered injury by reason of certain remarks made by the Prosecutor during the progress of the trial.

To discover where any objection was interposed in behalf of the defendant at the trial to any remarks of



the Prosecutor or any motion or request made with relation to any such remarks is a vain and futile undertaking. Counsel for Plaintiff in Error does not indicate where any such objection, motion or request is reported in the record. Reference is made in the brief to the remarks which are claimed to have brought manifest harm and injury upon the defendant at the trial, but it does not appear that the remarks were regarded as sufficiently harmful at the time to have prompted an objection on the part of the defendant, or any appropriate request.

> " * * * the party injuriously affected must, in order to be relieved, move the trial judge to order the remarks stricken out, and to charge the jury that they should be disregarded; an objection only to the illegal remarks does not require the trial judge to strike them out of his own motion, and unless counsel requests their elimination, no ground for review is laid."
>
> **State v. Terry, 91 L. 539.**
>
> "At least no request was made either that counsel be rebuked by the court, or that the jury be instructed to disregard the improper remark. In these circumstances we think a reversal would not be justified."
>
> **Hahn v. Delaware, L. & W. Co., 92 L. 277; affirmed, 93 L. 463.**
>
> **State v. Kroll, 87 L. 330.**
> **Murphy v. Marrone, 86 L. 663.**
> **Minard v. West Jersey R. Co., 74 L. 39.**
> **Christenson v. Lambert, 66 L. 531.**

## POINT XVII.

### The Court Has the Right to Comment Upon the Evidence.

Counsel for the Plaintiff in Error, as may be deduced from the argument under this Point, hurls his shaft of criticism at the comments made by the Trial Judge

in the charge relative to the testimony.

It is apparent from the reading of the entire charge that the interest of the witnesses, their credibility and the force and effect to be accorded their testimony, were subjects distinctly submitted to the jury.

It may be helpful to here record some of the statements appearing in the charge which are pertinent to this point:

> "Now, a few general observations and I am through. In the first place, I want to say to the jury that they are the absolute judges of the facts and of the evidence; so that whatever the court may have said with regard to the facts and the evidence, is in no way controlling on the jury, either as to what the facts are or what the evidence was. That is all for you. The responsibility is yours."
>
> (Case, p. 654, l. 34.)

"Of course, the jury will have to pass upon their credibility and it will have to pass upon the probability of the stories that they tell and upon the value of their evidence in every way."

(Case, p 656, l. 20.)

"So that, placing what value you choose in your discretion upon this testimony, etc."
(Case, p. 657, l. 15.)

"You are at liberty to criticize the discrepancy in these stories in any way that commends itself to your good judgment."

(Case, p. 647, l. 40.)

"The notion that it is any part of our judicial system that the jury, whether in civil or criminal cases, must be kept in ignorance of the impression made by the testimony upon the mind of the trial judge, is absolutely devoid of foundation. What our judicial system does require is not that jurors should be kept in ignorance of the impression made by the testimony upon



> the mind of the judge, but that they should be informed that it is their right and duty to decide for themselves all disputed questions of fact according as the weight of the testimony appeals to them. * * *
>
> "In view of these expositions of the law, it must be obvious that legal error can not be based upon the comments in question and that even under the broader scope of the proceedings before us, they can not be deemed to be an abuse of judicial discretion for which a reversal can be had."
>
> **State v. Hummer, 73 L. 714, 719.**
>
> "So long as the duty of the jury to decide disputed questions of fact for themselves is pointed out in the charge, the judge's comments and expressions of opinion upon the testimony are not assignable for error."
>
> **State v. Engle, 50 L. 272, 274.**

Cases to the same effect may be readily multiplied.

**State v. Donnelly, 26 L. 463.**

**Bruch v. Carter, 32 L. 554, 565.**

**Castner v. Sliker, 33 L. 507.**

**Faulker v. Patterson Ry. Co., 65 L. 181.**

**State v. Orraye, 84 L. 556.**

**State v. Pulley, 82 L. 579.**

**State v. Schuyler, 75 L. 487.**

> "The error alleged is that it (the charge) is argumentative. Assuming that it is, it is the settled law of this State that a Court has the right to comment upon the evidence."
>
> **State v. Dichter, 95 L. 203.**
>
> "The comments of the Court upon the testimony during the charge were made for the purpose of explaining, applying and elucidating the testimony for the convenience and assistence of the jury and, under the well established rule, present no ground for exception."

**State v. Skillman, 76 L. 464.**

**State v. Valentina, 71 L. 553.**

Much space is devoted in the brief of the Plaintiff in Error to comment upon the failure of the Trial Judge to advert in the charge to the jury to certain other testimony in the case. The Court cannot be required by a request to charge, to make a certain form of comment upon certain parts of the testimony. Requests to charge must embody some legal principle.

**State v. Haines, 92 L. 642.**

**State v. Harrington, 87 L. 713.**

## POINT XVIII.

### There Was No Error in the Refusal to Charge the Requests Submitted by the Defendant.

The requests to charge to which reference is made in Assignments of Error Nos. 103, 106, 107 and 108, were substantially covered by the charge of the Trial Judge.

The requests to charge to which reference is made in Assignments of Error Nos. 103, 104 and 105, except as charged, were not justified by any evidence in the case.

The Court is justified in refusing to give instructions which are not relevant to the proofs.

These Assignments of Error and Causes for Reversal relating to the requests to charge are not in effect argued.

## POINT XIX.

### There Was No Written or Sealed Verdict Rendered.

A true and detailed account of the proceedings attending the rendition of the verdict in this case is reported in the record. (Case, Vol. II, p. 665.)

It will also be observed that the defendant requested that the jury be polled with respect to the verdict of



guilty on the five counts. This request was granted and the jury was so polled.

It must be recalled that the jury in this case was required to consider the guilt or innocence of the defendant upon seven different counts contained in an indictment of eleven counts. It must be conceded that it was the duty of the Court to properly instruct the jury upon the necessity of reaching a conclusion concerning the defendant's guilt or innocense upon each of the seven counts. It was also highly important that the members of the jury should correctly identify the respective counts and the correlation of each count with the testimony introduced to sustain it. The paper fulfilled no other office than to embody in some tangible form the oral instructions of the Court. The State of the Case does not accurately reproduce the form of the paper with respect to the arrangement of the words "guilty" and "not guilty."

## POINT XX.

### The Motion in Arrest of Judgment was Properly Denied.

Counsel for the Plaintiff in Error moved to arrest the judgment upon the ground that the indictment in its respective counts did not allege a crime. Neither upon the motion nor in the present brief has Counsel indicated the fatal omissions which render insufficient the allegations in the respective counts.

While it is asserted in the form of a conclusion that some of the counts do not allege a crime, yet it will be noticed that the only specific reference of Counsel is to the allegations which are merely descriptive of the substantial charge laid in the respective count of the indictment. The criticisms, therefore, are directed rather to the form than to the sufficiency of the counts and it is well settled that errors in form do not constitute a ground for the arrest of judgment. The other

grounds embraced by the motion have been previously discussed under other Points.

Exhaustive research that overlooks no substantial right and adroit ingenuity that permits no technicality to escape, have been ineffectual in exposing any error in this case which can be said to have prejudiced the defendant in maintaining his defense upon the merits.

It is therefore respectfully submitted that the judgment under review should be affirmed.

WILFRED H. JAYNE, JR.,

Deputy Attorney-General,
for Defendant in Error.