

INDEX

	Page
Writ of Error	1a
Return to Writ	2a
Writ of Error	1
Return to Writ	2
Indictment	3
Plea	5
Judgment Record	6
Certificate of Reasonable Doubt	9
Motion in Arrest of Judgment—Gustave S. Fishman	10
Application for Transcript	11
Motion in Arrest of Judgment—Abraham Seidman	12
Assignments of Error	149
Additional Assignments of Error for Defend- ant Seidman	153
Reasons for Reversal	156
Additional Reasons for Reversal for Defend- ant Seidman	160
Testimony	
Motion to Quash Indictment	14
Motion for Mistrial on State's Opening	15, 20
State's Opening	15
<i>Witness for the State.</i>	
Dorothy Miller,	
direct examination	21
cross "	32, 43
Frank Puciarello,	
direct examination	45
cross "	51, 53
re-direct "	64
Daniel Rothenberg	
direct examination	65
cross "	72, 73
Motion for Direction of a Verdict	75

	Page
<i>Witnesses for Defendant Fischman.</i>	
Gustave S. Fischman,	
direct examination	76
cross "	89, 101
re-direct "	102, 104
re-cross "	102
<i>Witnesses for Defendant Seidman.</i>	
Abraham Seidman,	
direct examination	105
cross "	113
Harry Timinski	
direct examination	121
cross "	123
re-direct "	124
Sidney Schwartz,	
direct examination	124
cross "	126
Charles P. Gillen,	
direct examination	127
cross "	127
William Simon,	
direct examination	128, 130
cross "	123
<i>Rebuttal for State.</i>	
Daniel Rothenberg,	
direct examination	131
cross "	133
Motions for Direction of a Verdict	133, 134
Charge to Jury	134
Exceptions to Charge by Defendant Seidman	141
Exceptions to Charge by Defendant Fischman	143
Conclusions on Motion in Arrest of Judgment	145
Certificate of Stenographer	147
Certificate of Judge	148
Supreme Court Opinion	163
Remittitur	167
Assignment of Error	169

Exhibits

	Off'd	P't'd
S. 1. Complaint, Dorothy Miller, against Frank Puciarello		27
S. 1. 10 22 29 Five Ten-Dollar Bills		72
S. 2. Warrant		72

RETURN TO WRIT.

Filed January 29, 1931.

NEW JERSEY SUPREME COURT

10 THE STATE OF NEW JERSEY
Defendant-in-Error,
vs.
GUSTAVE S. FISCHMAN and
ABRAHAM SEIDMAN,
Plaintiffs-in-Error.

20 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 same,
we do certify to the Court of Errors and Appeals
of said State, in a certain schedule to this Writ an-
nexed, as within we are commanded.

WM. S. GUMMERE, C. J.

A true Copy:

FRED L. BLOODGOOD.

Clerk.

30

40

WRIT OF ERROR.

New Jersey Supreme Court

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

GUSTAVE S. FISCHMAN and
ABRAHAM SEIDMAN,
Plaintiffs-in-Error.

*Writ of
Error.*

10

NEW JERSEY, ss.:

TO DALLAS FLANNAGAN, Esquire,
Judge of the Court of Quarter Ses-
(SEAL) sions of the County of Essex:

20

Because in the record and proceed-
ings, and also in giving of judgment
upon a certain indictment against Gustave S.
Fischman and Abraham Seidman, of the City of
Newark, in the County of Essex and State of
New Jersey, for extortion.

Pro ut the said indictment whereof, before you,
they have been indicted, and are thereof con-
victed by a certain jury of the county, taken
between the State of New Jersey and the said
Gustave S. Fischman and Abraham Seidman, as
it is said, manifest error hath intervened to the
great damage of the said Gustave S. Fischman
and Abraham Seidman, as from their complaint
we have received information, we being willing,
in this behalf, to correct the error in due manner,
if any there shall be, and that speedy justice be
done to them, the said Gustave S. Fischman and
Abraham Seidman, command you that if judg-
ment be thereon given, then that you distinctly

30

40

Return to Writ.

and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey, on the seventh day of December next, and this writ, that the record and proceedings aforesaid being inspected, we
 10 may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, our Chief Justice, at Trenton aforesaid, the 19th day of November, A. D. one thousand nine hundred and twenty-nine.

FRED L. BLOODGOOD,
 Clerk.

20 KRAEMER, SIEGLER & SIEGLER,
 Attorneys.

RETURN TO WRIT.

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

I, DALLAS FLANNAGAN, Judge of the Court of Common Pleas and Court of Quarter Sessions in and for Essex County, New Jersey, Do HEREBY
 30 CERTIFY AND RETURN to the Supreme Court of Judicature of the State of New Jersey the indictment, judgment record and proceedings together with the entire record of the proceedings had at the trial in the court and all things touching and concerning the same, as by the within writ to me directed, I am commanded.

IN WITNESS WHEREOF, I have here-
 unto set my hand and affixed the
 40 (SEAL) official seal of said Court at Newark,

Return to Writ Indictment.

N. J., this 10th day of December,
A. D. 1929.

DALLAS FLANNAGAN,
Judge of the Common Pleas and Court
of Quarter Sessions, Essex County, N. J.

Presented in open court this 19th day of No- 10
vember, 1929.

DALLAS FLANNAGAN,
Judge.

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

BE IT REMEMBERED, that at a Court of Oyer 20
and Terminer, holden at Newark, in and for the
County of Essex, on the first Tuesday in April,
in the year of our Lord, one thousand nine hun-
dred and twenty-nine, by the Honorable Wil-
liam S. Gummere, Chief Justice of the Su-
preme Court of Judicature of the State of New
Jersey, and holding the said Court of Oyer and
Terminer, in and for the County of Essex, New
Jersey, by the oath of Edward W. Campbell,
Esmond J. Murray, Henry G. Lambert, Frank- 30
lin J. Berry, George W. Lethbridge, David M.
Caro, Richard A. Hensler, Morris Friedman,
Charles L. Wood, Adam Ritter, Joseph Cen-
tanni, Frank J. Carlton, George C. Pfreund-
schuh, Lawrence S. Fagan, Frank A. Stratton,
Simon Comando, Thomas Smith, Andrew B.
Rodger, John S. Wintermute, Henry Schneider,
James A. McGonnell, Arthur L. Jaggard and A.
Elston Fink, good and lawful men of the said
County of Essex, duly commissioned and then 40
and there duly sworn and charged to enquire in

Return to Writ Indictment.

behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following to wit:

Essex County, to wit: The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Gustave S. Fischman and Abraham Seidman on the third day of June in the year of our Lord one thousand nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, being a Constable and Justice of the Peace respectively, did then and there receive and take by color of their offices the sum of ten dollars as a fee from one Frank Puciarello, the same not being allowed by the laws of this State for doing their offices, they, the said Gustave S. Fischman and Abraham Seidman then and there not being entitled to any fee from the said Frank Puciarello, 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.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

On the twenty-eighth day of June, A. D. nineteen hundred and twenty-nine, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for a said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of the said Court and an entry of such order and delivery

Return to Writ Plea.

and filing was then and there made in the minutes of said court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the twenty-third day of July, A. D. nineteen hundred and twenty-nine, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Dallas Flannagan, Judge of the Court of Common Pleas, Gustave S. Fischman and Abraham Seidman, in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, and the said Gustave S. Fischman and Abraham Seidman, being brought before the bar in their own proper persons and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon them, how they would acquit themselves thereof, say that they are not guilty thereof, and therefore for good and evil they put themselves upon the country, &c. and Joseph L. Smith, Prosecutor of the Pleas of said State for said County of Essex in this behalf doth the like.

Therefore, let a jury thereupon come before the Court of Quarter Sessions, to be holden at Newark, in and for the County of Essex, on the second day of October, A. D. nineteen hundred and twenty-nine, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Gustave S. Fischman and Abraham Seidman to rec-

10

20

30

40

Return to Writ Judgment Record.

ognize upon their oath whether the said Gustave S. Fischman and Abraham Seidman are guilty of the premises in the said indictment specified or not guilty because the said Joseph L. Smith, Esquire, Prosecutor, &c., as the said Gustave S. Fischman and Abraham Seidman put themselves
 10 upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say, on October twenty-first, A. D. nineteen hundred and twenty-nine, before the jury was drawn and sworn, the above-named respective defendants, by their counsel, asked leave of the Court to withdraw their plea of not guilty for the purpose of making a motion to quash the said indictment, and,
 20 after the said plea was withdrawn and such motion was made, the Court denied the said motion; whereupon the said defendants re-entered their plea of not guilty; thereupon the Court ordered the trial to proceed and that the sheriff return a panel.

And afterwards, that is to say on the same day and at the same Court of Quarter Sessions, holden before the Honorable Dallas Flannagan, Judge of the Court of Common Pleas, comes the
 30 said Joseph L. Smith, who prosecutes as aforesaid, and the said Gustave S. Fischman and Abraham Seidman, and the jury of whom mention is before made, and by Conrad Deutchler, Sheriff of the County of Essex, for this purpose empanelled and returned, after the following challenges were exhausted, by the State 4, by the defendant 9, by consent 1, to wit: 1, Alfred J. Butler, 2, Louis H. Benjamin, 3, Joseph F. Burch, 4, Paul F. Chave, 5, Robert E. Colston, 6, Joseph Dickert, 7, Andrew J. Arm-
 40

Return to Writ Judgment Record.

buster, 8, Louis F. Clark, 9, Harold J. Butts, 10, William Bittner, 11, Theodore W. Buck, 12, George C. Conover, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued when motion by counsel of both defendants for a mistrial was made. After the State had opened its case, a motion by counsel of both defendants for a mistrial was denied by the Court. 10

And afterwards, that is to say on the twenty-second day of October, A. D. nineteen hundred and twenty-nine at the close of the State's case a motion was made by counsel for the defendants for direction of verdict of acquittal for both defendants which motion was denied by the Court, and at the close of the defendant's case, a motion by defendant's counsel was made for direction of verdict of acquittal for both defendants which motion was denied by the Court, when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "We find each defendant guilty in the manner and form as is set forth in the indictment," and so they say all. 20 30

By request of J. Mercer Burrell, Esq., counsel for defendant Gustave S. Fischman, the jury was polled and when the roll was called each juror for himself answered, "Guilty in the manner and form as is set forth in the indictment."

And afterwards, that is to say on the fourth day of November, A. D. nineteen hundred and 40

Return to Writ Judgment Record.

twenty-nine a motion in Arrest of Judgment by counsel for both defendants was made.

10 And afterwards, that is to say, on the fourteenth day of November, A. D. nineteen hundred and twenty-nine, argument on motion in Arrest of Judgment by counsel for both defendants was made before the Prosecutor which motion was denied by the Court.

Judgment signed November 14, 1929.

DALLAS FLANNAGAN,
Judge.

20 Whereupon all and singular, the premises being seen and by the Court now here fully understood on this fourteenth day of November, A. D. nineteen hundred and twenty-nine, the Court, Hon. Dallas Flannagan, do order and adjudge that said two defendants, Gustave S. Fischman and Abraham Seidman, be imprisoned in the State Prison of this State for a term of two years each at hard labor, upon this conviction; that they pay the costs of this prosecution and that they stand committed until said costs be paid, which said costs are taxed by the Clerk at
30 the sum of sixty-six dollars and twenty cents and the defendant be in mercy &c.

CERTIFICATE OF REASONABLE DOUBT.

Filed November 19, 1929.

**ESSEX COUNTY QUARTER SESSIONS
COURT.**

 THE STATE OF NEW JERSEY,

vs.

 GUSTAVE S. FISCHMAN and
 ABRAHAM SEIDMAN,
Defendants.

10

*Certificate of
 Reasonable
 Doubt.*

The defendants, Gustave S. Fischman and Abraham Seidman, having been convicted before me on Thursday, November 14, 1929, of the crime of extortion, upon application made in their behalf by Joseph Kraemer, of counsel for the defendant, Abraham Seidman, and J. Mercer Burrell, in behalf of the defendant Gustave S. Fischman, it is, on this 19th day of November, 1929.

20

ORDERED, and I hereby certify that there is reasonable doubt as to the validity of the aforesaid conviction.

DALLAS FLANNAGAN,

30

Judge Essex County Quarter Sessions Court.

Bail—\$5,000—each deft.

D. F.

J.

40

MOTION IN ARREST OF JUDGMENT.

ESSEX COUNTY COURT OR QUARTER
SESSIONS.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, vs. ABRAHAM SEIDMAN and GUSTAVE FISCHMAN, <i>Defendants.</i></p>	}	<p><i>Motion in Arrest of Judgment in Behalf of the Defendant, Gustave S. Fischman.</i></p>
----	---	---	---

20 AND Now after verdict against the defendant, Gustave S. Fischman, and before sentence, comes the said defendant, Gustave S. Fischman, in his own proper person and by J. Mercer Burrell, his attorney, moves the Court here to arrest judgment herein and not to pronounce the same, for the following reasons, to wit:

30 1. That the indictment herein is fatally defective for the misjoinder of the defendants, Abraham Seidman and Gustave S. Fischman, who in said indictment are charged with the commission of separate and distinct misdemeanors, and the motion of Gustave S. Fischman to quash the same for the reason above set forth should have been granted, and the learned trial court erred in the refusal of said motion.

2. That the verdict of guilty against this defendant is contrary to law.

3. That the verdict of guilty against this defendant is contrary to the evidence in this case.

Because of which said errors in the record herein no lawful judgment can be rendered by the Court upon the record in this cause.

40 J. MERCER BURRELL,
Attorney for Defendant,
Gustave S. Fischman.

APPLICATION FOR TRANSCRIPT.

Filed December 6, 1929.

ESSEX COUNTY QUARTER SESSIONS
COURT.

THE STATE OF NEW JERSEY,

*vs.*GUSTAVE S. FISCHMAN and
ABRAHAM SEIDMAN,*Defendants.*

10

*Application
for
Transcript.*

In behalf of the defendants, Gustave S. Fischman and Abraham Seidman, we hereby make application for a transcript of the evidence in the above-entitled cause.

20

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant,
Abraham Seidman.
Attorney for Defendant,
Gustave S. Fischman.

I hereby acknowledge receipt of the above application this 20th day of November, 1929.

30

HAROLD L. COOK.

40

MOTION IN ARREST OF JUDGMENT.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, <i>vs.</i> ABRAHAM SEIDMAN and GUSTAVE S. FISCHMAN, <i>Defendants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p><i>Motion in Arrest of Judgment in Behalf of the Defendant, Abraham Seidman.</i></p>
----	--	--

20 AND NOW after verdict against the defendant, Abraham Seidman, and before sentence, comes the said defendant, Abraham Seidman, in his own proper person and by Kraemer, Siegler & Siegler, his attorneys, moves the Court here to arrest judgment herein and not to pronounce the same, for the following reasons, to wit:

30 1. That the indictment herein is fatally defective, for the misjoinder of the defendants, Abraham Seidman and Gustave S. Fischman, who in said indictment are charged with the commission of separate and distinct misdemeanors, and the motion of Abraham Seidman to quash the same for the reason above set forth should have been granted, and the learned trial court erred in the refusal of said motion.

40 2. That upon the trial of said indictment the State failed to produce any evidence that the said Abraham Seidman received and took by color of his office the sum of ten (\$10) dollars as a fee from one Frank Puciarello, the same not being allowed by the laws of this State for doing his office, as charged in said indictment, and that

Motion in Arrest of Judgment.

the motion made in behalf of the said Abraham Seidman for the dismissal of the indictment at the end of the State's case, and for a directed verdict at the end of the entire case, should have been granted, and that the learned trial court erred in refusing said motion.

3. That the verdict of guilty against this defendant is contrary to law. 10

4. That the verdict of guilty against this defendant is contrary to the evidence in this case.

Because of which said errors in the record herein no lawful judgment can be rendered by the Court upon the record in this cause.

JOSEPH KRAEMER,
Attorney for Defendant,
Abraham Seidman. 20

Service is hereby acknowledged of copy of the within notice, this 4 day of November, 1929.

JOSEPH L. SMITH, JR.,
Prosecutor.

30

40

Motion to Quash Indictment.

TESTIMONY.

Monday, October 21, 1929.

ESSEX COUNTY COURT OF GENERAL
QUARTER SESSIONS.

10	STATE OF NEW JERSEY, <i>vs.</i> GUSTAVE S. FISCHMAN and ABRAHAM SEIDMAN.	}	<i>On Indictment No. 36. Sep. T. 1929 for Extortion.</i>
----	---	---	--

Before HON. DALLAS FLANNAGAN, Judge.

20 For the State appears Joseph E. Conlon, Second Assistant Prosecutor of the Pleas.

For the defendant Seidman appear Kraemer, Siegler & Siegler (by Joseph Kraemer).

For the defendant Fischman appears J. Mercer Burrell.

(Plea withdrawn for the purpose of making motion to quash.)

30 Counsel object to the indictment in that it is duplicitous and that it charges two several and separate crimes in a joint indictment.

The Court: I do not see why these people cannot act together. Motions denied.

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

State's Opening.

(A jury is called and sworn.)

(Recess for one hour.)

AFTER RECESS.

Mr. Conlon opens in behalf of the State.

10

(During the opening:)

Mr. Kraemer: I ask that these statements be taken and a juror withdrawn and a mistrial declared. The charge is for receiving an excessive fee. The prosecutor is now opening to the jury that these defendants were putting up the woman to make a false charge. I ask that the stenographer make a note of this, that these two men—I think Seidman's name was mentioned—put her up to make a charge of rape against Puciarello, the prosecutor having said in his opening remark that the only thing that occurred between Dorothy Miller and Puciarello, that there had been a meretricious relationship between them, and that she wanted to bring an action for breach of promise.

20

The Court: I will deny your motion.

Mr. Kraemer: Your Honor will allow me an exception?

The Court: Yes. (To the jury.) Of course, gentlemen, when you come to decide this case, you must decide it on the evidence admitted. If any evidence is ruled out, you must disregard it when you do come to your decision, you must confine yourself to the evidence.

30

Mr. Burrell: I desire to pray an exception.

The Court: Exception allowed.

Defendants' counsel pray an exception to this ruling of the Court.

40

State's Opening.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

10 Mr. Conlon (continuing): This girl then said to Seidman and Fischman that Puciarello had not raped her—

Mr. Kraemer: I want a general objection to that so that I don't have to rise every time. I take a general exception to the opening in which the other crime is brought in.

Mr. Burrell: I would like to have the same exception.

The Court: Exception allowed.

20 Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

30 Mr. Conlon (continuing): There was a conversation between Fischman and Seidman as to how much money they could get out of Puciarello, and then Seidman and Fischman both joined in the conversation in which they urged Dorothy Miller to make this charge, giving as a reason to her, "If you have a warrant over his head, it will be only money on account and you can make him pay so much a week," and she signed the complaint, which I shall produce. Whether she ever swore to it, we do not know. At any rate, Seidman never took her affidavit to the complaint. The reason I am going to prove that is this: It is necessary that the State prove to
40 you, and that this money that these men re-

State's Opening.

ceived, as laid out in this indictment, was received by them, with a criminal intent, and these criminal conversations have a bearing in accepting this money, they had this conversation in Seidman's office, and she was told to come back later in the day. With that, she made the complaint somewhere early in the afternoon, and then Fischman goes down to Puciarello, the place where he is employed, and he arrests him. He does not show him any warrant; he does show him his badge, "I am a constable, you are under arrest," put them in a car and bring them up to Seidman's office, and on the way up tells him he is charged with rape. When they got up there Puciarello, of course, denies any raping, doesn't know anything about what it is all about, and when they have Puciarello and the girl, Fischman and Seidman proceed to talk to them individually in the inside office and outside office, in an effort to get him to settle for cash, and tells him he is under \$5,000 bail, and he will have to get a bondsman for \$500, otherwise he will have to go to jail for a whole night. During the conversation with the girl, Puciarello is asked, "How much money have you got?" and he says he has not got much, and finally he says he has \$50 in the bank. Then they do the thing which this particular indictment complains of. Fischman tells Purciarello that right then and there he has to put up \$10 in cash for the costs. He had no right to ask for \$10 and no warrant in law for it, and to that extent it was extortion, and Puciarello gave Fischman the \$10 in cash, and then they proceeded to talk further about the settlement, and finally the conversation gets all confused and they can't get together. The girl wants Puciarello to marry her; Puciarello won't marry her,

10

20

30

40

State's Opening.

and then they are talking about the money, and finally Fischman says, "All right, we won't go through with the thing," and hands back the \$10 to Puciarello. Seidman wasn't there, as I remember it, when Puciarello gave over the \$10. After they gave the money back to Fischman
 10 they resumed their negotiations for a settlement and Puciarello gave \$10 to Fischman in Seidman's presence, and he took it, and then there was an agreement whereby Puciarello agreed to pay this girl \$50. There is one matter I overlooked, and that is when the girl first went into Seidman's office they told her that in order to make a complaint, they would have to get \$50—

Mr. Burrell: I object to that statement of the prosecutor.

20 The Court: Objection overruled.

Mr. Burrell: I pray an exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

30 Mr. Conlon (continuing): She went in there this Friday and they told her they would have to have \$50. There is nothing in law to justify that. She said she didn't have it, and she subsequently came back with \$25 and she told them that is all she could get and with this O.K.'d, the three gentlemen went through these negotiations, and finally it was agreed that Puciarello was to pay her \$50, which Puciarello understood was to be in full to the girl, because this warrant would be over his head. After the \$50 was agreed upon, Puciarello said he didn't have
 40

State's Opening.

any money, but he had it in the bank, and there, in Seidman's office, in Seidman's presence, Fischman got a blank check with the name of the bank blank, and Fischman wrote out in his own handwriting the check for \$50 on the Fidelity Union Trust Company to this girl and passed it to Puciarello and Puciarello signed it. It was then agreed that the girl and Fischman should meet the next day, and at that time Puciarello should redeem the check by paying \$50 in cash and receive back the check, and the next day, for reasons which may or may not be evidential and which I cannot state, they did meet at this girl's apartment. Puciarello did hand over \$50 in cash, and was there and then on the spot arrested, and this indictment resulted. Two things I want you to keep in mind in this case, one is that the State is trying an indictment against two defendants, and, of course, at the end of the case, you can find either or both of them guilty or not guilty. The testimony that I shall bring out, as I have stated, will show to you that both of these defendants had knowledge of this entire transaction, and if they did have knowledge of it, it was, as a matter of course, criminal. The second thing I want to call your attention to is this: You will have this indictment in the jury room and you will be able to read it. The specific charge for which the defendants are being tried is receiving this \$10 or taking this \$10 from Puciarello, and which was a payment unwarranted in law. It is unnecessary, and the State will not prove, that both of these defendants took this same \$10, but it will be proven that it was given to Fischman with Seidman's connivance and consent, and to that extent they were acting in concert, and for that reason, if one is guilty, they are both

10

20

30

40

Motion for mistrial on State's Opening.

guilty. During the recital of these facts, you will realize what I said in my opening. I want you to listen to the testimony carefully. If you are satisfied at the end of the case that this thing happened, as I told you, I want a verdict of guilty.

- 10 Mr. Kraemer: I want to renew my motion that I made during the course of the prosecutor's opening, and I want to call attention of the Court that the statute does not require intent. The mere taking of the fee is the crime charged in the statute, and an alleged conspiracy between all of these people to commit the crime as against Puciarello, the crime of conspiracy, and falsely charge him with that crime, and falsely charge them with a crime, and by
- 20 that extort from them money. To that extent, the prosecutor's opening remarks were prejudicial to the defendant, particularly in view of the fact that the prosecutor admits that the defendant Seidman did not take the \$10, and I ask that a juror be withdrawn and a mistrial be directed.

The Court: Motion denied.

- 30 Mr. Kraemer: And also that the prosecutor's statements that this young lady had been having meretricious relations with Puciarello and intended to bring the civil complaint for breach of promise, and that, after seeing Fischman, with the connivance of Seidman, she was persuaded and prevailed upon to bring a charge against Puciarello of rape; that after he was arrested on the complaint of rape, he was brought in and the two defendants attempted to persuade Puciarello to pay \$500 for his relations on that particular occasion, and then afterwards were parties to an arrangement whereby
- 40

Dorothy Miller, direct.

a check of \$50 was made out and given to this young lady in pursuance of the alleged conspiracy, and which check was afterwards redeemed, not in the presence of the defendants, but at the apartment of this young lady by Puciarello paying the young woman \$50, and the insistence by the prosecutor that the defendant pay \$50, that all of these allegations deal with things not in the indictment, and thereby the prosecutor has prejudiced the defendants, and I ask, for those reasons, that a juror be withdrawn and a mistrial directed. 10

Mr. Burrell: I make the same motion.

The Court: Do you think that that states correctly what the prosecutor said?

Mr. Kraemer: Yes.

The Court: The motion will be denied and each defendant will have an exception and the Court will instruct the jury that they will decide the case on the evidence as ruled upon by the Court, and that if any evidence is not admitted, that the jury will disregard it. 20

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly. 30

DALLAS FLANNAGAN,
Judge.

DOROTHY MILLER, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 264 North Broad street. 40

Dorothy Miller, direct.

Q Do you know Frank Puciarello? A I do, sir.

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

Q Do you know Gustave Fischman? A I do.

10 Q How long have you known him? A Only about a couple of months.

Q When did you first meet him? A I had been working in Judge Fischman's office, he has been coming back and forth, but I never spoke to him until Judge Fischman had committed suicide and I have never spoken to him since.

Q Do you see Gustave Fischman here in court? A I do, sir.

20 Q Will you point him out? A (Indicating.) There he is.

Mr. Conlon: It is indicated, for the purpose of the record, that the witness is indicating the defendant Fischman.

Q Do you remember seeing him the latter part of this year? A Yes, sir.

Q Where did you see him. A In his office.

Q Where? A Lawyer's office.

30 Q On Market street? A Yes, sir.

Q Do you remember the first time you went there? A The first time I went there was the first Friday in May.

Q What time of the day was it? A Sometime in the afternoon.

Q Did you have a conversation with him that day? A I did.

Q Was there anybody else present beside you and Fischman? A Yes, a gentleman there.

40 Q Do you know who he is? A No, sir.

Dorothy Miller, direct.

Q Tell us any conversation you had with Fischman on that occasion there?

Mr. Kraemer: I object to that as not being binding upon my client.

Mr. Burrell: I object on the ground that it is not the indictment being tried. What happened between this witness Dorothy Miller and Fischman, not in the presence of Puciarello, is not evidential. 10

The Court: I will overrule your objection.

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge. 20

Q Will you tell us your conversation with Mr. Fischman? A I went to Fischman's office and I explained just what I wanted to do with Puciarello.

Q What did you want to explain? A I told him he had not been treating me right, that he was engaged to a girl, and I told him later, and he denied it, and he promised to keep company with me, so I decided to sue for breach of promise. 30

Q Did you tell that to Fischman? A Yes, and he told me he couldn't advise me, but he would send me up to a friend's office, Abraham Seidman, so that afternoon he gave me Abraham Seidman's card, and I went to Seidman's office.

Q Where is his office? A On Howard street.

Q Do you see him here? A Yes, sir.

Q Could you point him out? A Yes, sir (indicating). 40

Dorothy Miller, direct.

Mr. Conlon: It is admitted for the purpose of the record that the witness indicates the defendant Seidman.

Q What time did you get up to Seidman's office? A It was late in the afternoon.

10 Q Who was there? A Seidman was there alone.

Q Did you have a talk with him? A I did.

Q Tell us what conversation you had with him? A I told him the same thing I have told here in court.

Q Tell us again. A That he was engaged to a girl, that Puciarello was engaged to a girl, and I had asked Puciarello whether it was true, and he said it wasn't, and so, therefore, I decided to
20 make a complaint against Puciarello for breach of promise, and I told that to Seidman, and he told me that that don't do no good, so he decided to look in a big book for something, and he said the best thing that I can do is to sue him for rape, and I had told him my age, and rape—I don't know what the word means—and I told him I didn't want any settlement, I wanted him sent to jail, and he decided to make the complaint against rape, and I told him over and over, and
30 he tell me not to tell him, he has been in this business long enough—

Q You told him over and over? A What rape means? There was a telephone call at the same moment. Who it was, I don't know, the conversation was in Jewish.

Q You mean that somebody called Seidman up? A Yes, sir; and the first thing you know, after they were through, I was called to the phone, and it was Gus Fischman on the phone and he tell me—
40

Dorothy Miller, direct.

Mr. Kraemer: It only shows the defect in this indictment. We have constantly to go through the evidence and pick out the conversations with Fischman or Seidman. I object to the statements over the telephone as not binding upon Seidman. I ask that all of that testimony be stricken out.

10

The Court: Motion denied.

Mr. Burrell: I also make an objection to the admission of this testimony. No proper foundation has been laid for the voice of Fischman over the telephone.

The Court: That objection is good so far.

Q You say you were called to the phone? A Yes, sir.

Q Did you recognize the party at the other end of the wire? A Yes.

20

Q Who? A Gus Fischman.

Q Did he say who he was? A Yes, sir, he said it was Gus Fischman speaking and Abraham Seidman had told him in Jewish that if I wanted to swear a warrant out it would cost \$50.

Mr. Kraemer: I object. This is bringing in Mr. Seidman, Mr. Seidman said thus and so. It is absolutely irrelevant, outside of being hearsay. It is not only hearsay, but it is irrelevant.

30

The Court: It is binding upon Seidman anyway. I will admit it as to him. You may have an exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

40

Dorothy Miller, direct.

Q Tell us, as nearly as you can remember, your conversation with Fischman over the telephone. A Gus Fischman had told me, when I was on the phone, that Abraham Seidman had told Gus Fischman it would cost me \$50 to sign the warrant, and I told Gus Fischman I didn't
10 have \$50, I had \$25, and he said he would pay the other \$25 down, and I said that was all right, so—

Q Just a minute. When you were talking on the telephone, where was Seidman? A Seidman was just a little ways before me. I had told Fischman I didn't have it today; that was Friday; I told him I would have it Saturday; so Saturday I didn't have it; I called up Seidman and told him to postpone it until Monday, which
20 he did, so Monday I went up to Abraham Seidman and I gave him the \$25—

Mr. Kraemer: I object; it is absolutely irrelevant, nothing to do with the charge in the indictment of \$10 being taken from Puciarello.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

30 Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

The Witness: So Monday afternoon, about two o'clock, I went up to Abraham Seidman's office, and I paid him the \$25. I still told him about the rape and he told me not to be foolish, that he knew what I was talking about, and he told me not to be
40 foolish, and he told me to sign the warrant.

Dorothy Miller, direct.

Q What did you sign? A I signed the warrant for Puciarello.

Q Is that his signature (showing paper to witness)? A Yes, sir.

Q Is that the paper you are referring to? A Yes, sir.

10

Mr. Conlon: I offer that in evidence, what purports to be a complaint, Dorothy Miller against Frank Puciarello, charging him with carnal assault.

Mr. Burrell: I object.

Mr. Kraemer: I object on the ground of irrelevancy.

Mr. Burrell: The objection is that this complaint was improperly obtained, and under the well-known line of cases—

20

The Court: Objection overruled. Evidence obtained, no matter how, is proper in this Court.

Counsel for the defendants prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

30

(Paper referred to is marked Exhibit S. 1.)

Q And who was there when you signed this complaint? A Abraham Seidman was there alone.

Q What, if anything, did he say to you after you signed it? A He told me to come back about 4:30, five o'clock, and he would have Frank Puciarello there.

40

Dorothy Miller, direct.

Q Did you come back? A Yes, sir.

Q Who did you find there? A When I came back in the office, I found a lady and a little boy there, and I waited five minutes, and Gus Seidman came up, and this lady and this boy were waiting for Seidman, so Fischman decided to
10 call Seidman up, but I don't recall whether he did or not; so in about fifteen minutes Seidman had arrived, and this lady had spoken something to Seidman, and Seidman had told her he was busy at the time, so the lady and the young boy walked off, so Seidman was in the private office and I don't know what happened there.

Q What happened then? A After they got through talking, Gus Fischman called me in the office and he was saying to Puciarello, "Why
20 don't you marry the girl?"

Mr. Kraemer: I object to that.

Q Was Seidman present then? A No, sir.

The Court: I will allow that.

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.
30

DALLAS FLANNAGAN,
Judge.

Q You say he called you in the office? A Yes, sir.

Q Who was in there? A Just Gus Fischman, and he said to Frank Puciarello, "Why, don't you marry the girl?" And Frank Puciarello had said he couldn't do it because he was engaged to another girl, so he said Puciarello had agreed
40 to make settlement—

Dorothy Miller, direct.

Mr. Kraemer: I object to this general line of testimony and ask for a general exception.

The Court: I think your position is clear, and the Court's position is clear, that if these men were acting in concert, the jury may consider the testimony binding upon both of them. 10

Mr. Kraemer: That is as to the charge of conspiracy?

The Court: No, but as to the charge of extortion. If these men were acting in concert to extort this money, the act of one is binding upon the other. If they were acting in concert, it is binding upon both of them. That will be the position of the Court and you may have an exception. 20

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q As I understood you, Fischman and Seidman went in the private office? A Yes, sir. 30

Q And you went outside? A Yes, sir.

Q What happened then? A They had been talking in there about nine or ten minutes, and Fischman decided to call me in there with Puciarrello, and Fischman decided to—

The Court: Of course, gentlemen of the jury, you will understand that whether these two were acting in concert is a question of fact, and that will be a question of fact for you to decide, and not the Court. 40

Dorothy Miller, direct.

Q You say Fischman called you inside? A Yes, sir.

Q Where was Seidman? A Seidman was typewriting in the inside office. Fischman asked Puciarello to marry me, and Puciarello said that he couldn't marry, he was engaged to another girl, and he said over and over again, and he refused; so Fischman asked Puciarello whether there was any kind of a settlement to be made, so finally I was outside, and Seidman came in and Frank Puciarello, and they were talking—I don't know—so I was brought into the office again, and Gus Fischman had told me that Frank Puciarello decided to settle for \$50. I told him I didn't want to settle for \$50, and I told him I wanted a breach of promise suit, and I wouldn't settle outside of jail, so he said, "I want to see you outside." So he took me outside and said they would have the warrant and it would be better for me to take the \$50, it would be better than suing for breach of promise, and I wasn't still satisfied and I said, "I want Puciarello in jail." I told Fischman I wouldn't settle for \$50, that I wanted Puciarello sent to jail immediately; so somehow or another, Fischman had talked it into me and so I decided to take the \$50, so I took the \$50, and at the present time there is mentioned \$10, but I couldn't say exactly who took it.

Q Who? A Fischman. It was decided to pay \$10 for some papers.

Q Who? A Frank Puciarello. So at that time when that subject was taken up I was told to go outside, and so when I came back in again Gus Fischman had a little check for me; I don't know who signed it and I don't know whose handwriting it was.

Dorothy Miller, direct.

Q (Showing witness paper.) Is that the check? A Yes, sir; that is the check.

Q Who handed you that check? A Gus Fischman had, I think, got that check.

Q Who was there when he handed it to you? A Abraham Seidman was there and Gus Fischman and Frank Puciarello.

10

Mr. Conlon: I offer it in evidence.

Mr. Kraemer: I object.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

20

Q And after you took this check, was there any further conversation? A Because Fischman had told me that I should meet him in front of the bank at twelve o'clock, and he decided that he couldn't make it—

Q You mean the next day? A Yes, that was the following day; so he told Frank Puciarello and myself that I should be there at twelve o'clock noon in front of my apartment and that Gus Fischman would be there.

30

Q He told you to be in front of the bank? A Yes, but he changed the conversation and says to make it at my apartment.

Q At twelve o'clock noon the next day? A Twelve o'clock noon the next day; so Fischman decided and Frank Puciarello decided to give me the money and be there at the same time, and Frank Puciarello arrived and he handed me the \$50 and Gus Fischman wasn't

40

Dorothy Miller, cross.

there, and as I took that \$50, two detectives came up and they arrested me.

Q Did you see the check again? A I did, and I handed it back to Puciarello.

Q You gave it back to Puciarello? A I did, after he handed me the money.

10 Q What became of the \$50? A I put the \$50 in the purse and when I was down to police headquarters they asked for it and I had given it to Captain Sebold.

Cross examination by Mr. Burrell.

Q How old are you? A Eighteen.

Q At present? A I will be nineteen February 25th.

20 Q How long ago did you say that you told Mr. Seidman you met Puciarello? A Four years ago, going on five.

Q When you met Puciarello you were under the age of sixteen? A No, sir; fourteen.

Q I said, you were less than sixteen, you were not less than sixteen when you met Mr. Puciarello? A No, sir; I was sixteen when I met Mr. Puciarello.

30 Q And you told Mr. Seidman that? A No, sir; he never asked me that question.

Q Did you not tell Mr. Seidman your age? A No, sir; he never asked me my age.

Q Did you tell Mr. Seidman that Puciarello had had intercourse with you two or three years before? A No, sir; it is positive on my statement that I said two years ago.

Q You are testifying according to the statement you made? A What do you mean?

40 Q You are trying to tell on the stand the same thing you wrote on that statement? A

Dorothy Miller, cross.

It is the same thing that happened in the office.

Q You are not testifying to what you remember telling Mr. Seidman? A No, sir; I remember every word that I said to Mr. Abraham Seidman.

Q Isn't it possible that you told Mr. Seidman that Puciarello had intercourse with you three years ago? A No, sir; it was two years ago. 10

Q As a matter of fact, Puciarello had intercourse with you four years ago? A No, sir.

Q Isn't it a fact that the first time he had it was by force? A That wasn't mentioned, and I haven't said a word about it.

Q Isn't it a fact that the first time he had it was by force? A I wouldn't say yes or I wouldn't say no. 20

The Court: It is of no importance unless it was mentioned to the defendant. She says it wasn't mentioned to the defendant.

Q Didn't you tell Mr. Fischman that, that Mr. Puciarello had forced you? A No, sir.

Q Didn't you say this to Mr. Seidman, "This Puciarello, this Frank, took my pride." Didn't you use that expression in addressing Mr. Seidman? A I don't know what pride means. 30

Q You didn't use that word? A No, sir.

Q You didn't tell Mr. Seidman that Mr. Puciarello had forced you under the age of sixteen years? A No, sir.

Q You are positive? A I am positive.

Q The first time you went to Mr. Fischman's office, did you tell him all the story? 40

Dorothy Miller, cross.

A Not all of it, as he was busy at the present time.

Q You said that you had some trouble with Frank Puciarello and you wanted him locked up? A Yes, sir.

10 Q And he didn't do that, he said, "I will send you to a friend of mine?" A No, sir; he said, "I will send you to a Justice of the Peace."

Q And you went to Mr. Seidman's office? A Yes, sir.

Q Mr. Fischman didn't accompany you? A Yes, sir.

Q And you told Mr. Seidman the story about what Mr. Puciarello had done? A Yes, sir.

Q And that Puciarello had told you that he was going to marry you? A Yes, sir.

20 Q As a result of his telling you he was going to marry you, you had intercourse? A Yes, sir.

Q And you also told him that Mr. Puciarello had forced you the first time? A No, sir.

Q Didn't you tell Mr. Seidman that you were eighteen years old? A No, sir.

Q How old did you tell Mr. Seidman you were? A I told him I was twenty-six.

30 Q As a matter of fact, you are eighteen? A Yes, sir.

Q You told Mr. Seidman that you were twenty-six? A Yes, sir.

Q What did you tell him you were twenty-six for? A I was kind of nervous; I didn't know what to do. I thought—

40 Q I asked you, why did you tell them you were twenty-six when you were not? A I thought it would be all right for me to say I was twenty-six, so I wouldn't get myself in any trouble, but as Captain Sebold told me—

Dorothy Miller, cross.

Mr. Kraemer: I object to that.

Q Is that the reason you said you were twenty-six, was because something Captain Sebold told you? A No, sir.

The Court: Never mind telling what the captain told you. 10

Q You were frightened at that time? A Yes, sir.

Q And it is possible you can't remember everything? A Yes, sir.

Q Isn't it a fact that you were so frightened you can't recall everything that you told Mr. Seidman? A I am positive I told him most everything. 20

Q Isn't it possible that you may have forgotten to tell him some things? A I may have forgotten to tell him some things, I will admit that.

Q Isn't it possible that some things that you told Mr. Seidman you have not told us here in court, isn't that possible? A I don't know; I seem to remember everything that I told him.

Q But you wouldn't say that you didn't tell him something else, would you? A Well, I don't know about that. 30

Q The next day after you first went to Seidman, did you see Mr. Fischman? A No, sir.

Q The following day did you see Mr. Fischman? A That was Monday.

Q Between the first day of Friday, when you went to Mr. Seidman's, and on Monday, when Mr. Puciarello was arrested, did you see Mr. Fischman at all in person? A No, sir.

Q You didn't? A No, sir. 40

Dorothy Miller, cross.

Q Any time between those two days did you have a conference with Mr. Seidman and Mr. Fischman in Mr. Fischman's office? A No, sir.

10 Q After you left his office on Friday, you didn't see him again until June 3rd? A Saturday I talked to him over the 'phone.

Q In this 'phone conversation, isn't it a fact that you said to Mr. Fischman, "Mr. Seidman says that I haven't enough money for the case?"

A I have told that.

Q You had told that to Mr. Fischman? A Mr. Fischman, yes, sir—I shouldn't never to swear—and I told that also to Mr. Seidman.

Q You told Mr. Fischman that you didn't have enough money for the case? A Yes, sir.

20 Q And that Mr. Fischman told you that if any money was needed, that he would help you? Didn't he say that? A He said all I would need was \$25, he would stand the \$25, the rest of the money.

Q Has Mr. Fischman ever asked you to give him any money? A No, sir; he never said a word about it.

Q On the contrary, Mr. Fischman said that if you needed any money he would loan you money? A Yes, sir.

30 Q And he never asked you to give him any money? A No, sir.

Q Did he ever say that you should give Seidman? A He said that Seidman wanted \$50 for the warrant that he wanted \$50 before he would send out a warrant for Frank Puciarello.

Q The date that Mr. Puciarello was arrested, were you up to Mr. Seidman's office? A Yes, sir.

40 Q You didn't see Mr. Puciarello give Mr. Fischman \$50? A No, sir.

Dorothy Miller, cross.

Q You don't know, of your own knowledge, whether Mr. Fischman or Mr. Seidman ever received \$10? A No, sir.

Q The morning you were arrested—you were arrested? A Yes, sir; Tuesday afternoon.

Q And Lieutenant Rottenberg and Detective Silzer came to your apartment? A Yes, sir; 10
after I took the money.

Q And Frank Puciarello? A Yes, sir.

Q And wasn't there another gentleman with Mr. Puciarello? A No, sir.

Q Do you know Mr. Villani? A No, sir.

Q (Indicating.) This gentleman here? A I know him, inasmuch as he is my boy friend's lawyer.

Q He is your boy friend's lawyer? A Yes, 20
sir.

Q You have had a reconciliation with Puciarello? A No, sir.

Q He is your boy friend again? A No, sir. We were not friends.

Q When you used the words "boy friend" you didn't mean that? A We were not friends in the end, since my case.

Q Where did you first see Mr. Villani? A Down in the First Precinct.

Q Didn't you see him down in Captain Sebold's office? A Yes, sir; that is correct. 30

Q And he was talking to you at that time, was he not? A Yes, sir; he was talking to me; he asked me what the word "rape"—what it meant.

Q And you said to Mr. Villani that you knew just what Puciarello did?

Objected to.

The Court: It is not a question of what she knew. It is a question of what she told, 40

Dorothy Miller, cross.

and she said in that office as to her understanding of the meaning of the word "rape," at that time. I do not think that has anything to do with it.

Q Won't you tell us again what Mr. Villani
10 said to you?

Objected to.

The Court: If you want to ask her a certain thing that may be contrary to what she said here, I will allow you to do it.

Q Did you say to Mr. Villani that "I wanted to have Mr. Puciarello locked up," or "Frank," as you call him, "locked up."

20 Objected to.

The Court: It would not make any difference. She said that is what she went there for.

Q Did you say that you wanted Frank Puciarello locked up for his relations with you? A I haven't said nothing to Mr. Villani.

30 Objected to.
Objection sustained.

Q Did you make a statement down at police headquarters? A Yes, sir.

Q And was Mr. Villani present at that time? A Yes, sir.

Q Was Mr. Puciarello present? A No, sir.

Q And who did you make that statement to, do you know? A Lieutenant Rottenberg was there and Villani was there. Villani and I was
40 doing most of the talking.

Dorothy Miller, cross.

Q Did Lieutenant Rottenberg write down in the statement what you were saying entirely or did he also write down what Mr. Villani was saying?

The Court: How does she know what he wrote down?

10

Q Did you read the paper? A Yes, sir.

Q And you signed it? A Yes, sir.

Q Was this statement in your words, or was it in Mr. Villani's words?

Objected to.

Objection sustained.

Q You talked over the case in the presence of Lieutenant Rottenberg and Mr. Villani, did you not? A Yes, sir.

20

Q And you are now testifying according to those conversations, are you not? A That is not. Those conversations that I testified now is exactly what happened in the office, exactly what is on this statement, I have said the truth.

Q Did they write it down in your words or the words of Mr. Villani?

Objected to.

30

The Court: We do not care whether he did or not.

Q How long have you lived in Newark?

Objected to.

The Court: In Newark?

Mr. Burrell: Yes.

The Court: That is unimportant. Objection sustained.

40

Dorothy Miller, cross.

Q Do you always go by the name of Miller?

Objected to.

Objection sustained.

Q You were arrested, were you not? A Yes, sir.

10

The Court: She said she was.

Q At that time you were not told that you were a witness? A No, sir; I didn't know nothing about it.

Q You thought that you were a defendant, did you not? A Didn't think nothing. I didn't know what happened. I was just all excited.

Q You were told by officers who had you in custody, if you would make this statement against Seidman and Fischman, you would be released?

20

A No, sir; nothing like that was mentioned to me.

Q You have talked over this case frequently?

A Yes, sir.

Q You have been in the prosecutor's office a number of times? A The only time I have been in the prosecutor's office, when he told me to appear on a certain day; that was the 17th of September, when he wrote me, and told me that my case was going to start October 2nd, and that is all he said, and I have made another statement when I was there.

30

Q And Villani was there, you said? A No, sir; Prosecutor Wadkowski's office.

Q And were you not told that you must testify according to the statements that you have made? A No, sir.

40

Q Were you not told that if you didn't testify according to the statements that you made that you would be charged with perjury?

Dorothy Miller, cross.

The Court: Do not pursue these questions any more.

Q You never saw the \$10 pass between Puciarello and Seidman and Fischman, did you?

A No, sir.

Q At that time there were several persons present? A No, sir. 10

Q Wasn't there a lady and a young boy?
A No, sir. I told you they had walked out. There was nobody in there while this was going on.

Q It is a small office, it is merely a partition?

A Yes, sir.

Q Which doesn't go up to the top of the room? A I haven't looked at that. I have looked at a big office and a side office, that is all I have seen. 20

Q Do you know whether this partition went up to the top of it? A No, sir.

Q Do you know whether this partition had a door to it? A Yes, sir.

Q Was this door open or closed? A It was closed when I was in there.

Q You were not in there with them? A Fischman went in there first and I walked back again and the door was closed when they were inside. 30

Q You asked Puciarello to marry you? A I did.

Q Didn't you say, "If you won't marry me, will you give me enough money so I can go back to Pennsylvania and hide my shame?" A No, sir.

Q Didn't you say to him, "If you don't marry me, won't you give me enough money to make up for what I have suffered?" A I told them I wanted Puciarello. 40

Dorothy Miller, cross.

Q You wanted Puciarello sent to jail immediately and you told Seidman the same thing?

A Yes, sir.

10 Q And you told them you wanted Puciarello arrested and sent to jail? A Yes, sir; and Seidman decided to have Puciarello arrested after the court was closed. I didn't know what it was all about, but I just surmised and they wanted to get him for some money, or something like that.

Mr. Kraemer: I object to that and move to strike that out.

The Court: I rule that your motion is too late and you may have an exception.

20 Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q At all times you told Seidman and Fishman you wanted Puciarello arrested for what he had done to you? A Yes, sir.

30 - Q And isn't it true that after you two came together you started crying?

The Court: How is that material?

Q Frank Puciarello began to cry? A Yes, sir.

Q And you began to cry? A Yes, sir.

40 Q And you finally got together and you began to embrace each other, that is, you put your hands together and told him not to cry? A I told him not to cry.

Dorothy Miller, cross.

Q Were not close together? A He was sitting right there. I was right there.

Q And you two were crying? A Yes, sir.

Q And didn't you say to Mr. Seidman that, "Oh, no, I don't think I want to go through with it?" A No, sir.

Q And didn't he say to you, "Just think of what we two used to be to each other?" A No, sir. 10

Q And didn't he say to you, "Can't we do something to straighten this matter out?" A No, sir.

The Court: You are asking the witness the very questions you intend to ask your own defendant in advance. Do not do that.

Q Miss Miller, did you not say at the hearing in this case, in the Fourth Precinct Police Court, before Judge Albano, that there were several persons present, but you couldn't exactly describe them, in response to the question of Mr. Weiss? A No, sir; I was too excited. 20

Q During this whole thing you were very much excited, were you not? A Yes, sir.

The Court: She has answered that. She said she was excited. 30

Q And you were not paying attention to what was being said? A No, sir.

Cross examination by Mr. Kraemer.

Q What is your correct name? A Miss Dorothy Miller.

Q And that is your maiden name, the name that you received after you were born? A Yes, sir. 40

Dorothy Miller, cross.

Q Have you ever used any other name? A
No, sir.

Q Have you ever lived outside of the State
of New Jersey?

Objected to.

10 Objection sustained.

Defendants' counsel prays an exception to
this ruling of the Court.

Exception allowed; let it be sealed and it is
signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Mr. Conlon: May I ask that counsel state
the ground of his objection?

20 Mr. Kraemer: We have a right to con-
front the witness, and we have a right to
impeach the witness by way of the questions.

The Court: That is too broad.

Defendants' counsel prays an exception to
this ruling of the Court.

Exception allowed; let it be sealed and it
is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

30 Q You didn't see any money passed to the
defendant Seidman, did you? A No, sir.

Frank Puciarello, direct.

FRANK PUCIARELLO, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 462½ Bowery street. 10

Q Were you employed in June of this year?
A People's Express.

Q Do you know Abraham Seidman? A I do not.

Q Do you know Gustave Fischman? A No.

Q Have you ever seen either of them before?
A No.

Q You never saw either one of them before?
A Oh, at the time they locked me up I did, yes.

Q Do you see them here in court? A I do. 20

Q Point Fischman out, please?

(Witness indicates.)

Mr. Kraemer: We will admit he identifies him.

Q Do you see Seidman there? Point him out.

(Witness indicates.)

Q When is the first time you saw Fischman? 30

A When he came down to the place I worked at.

Q Do you remember what day that was? A I am not sure whether it was on a Monday or a Friday.

Q What time of the day did he come there?

A About 4:30.

Q Where did you see him first? A I was just going around with my car, he opened the 40

Frank Puciarello, direct.

door and he jumped in my car, and he said, "You are under arrest," and I said, "For what?" and he said, "You come with me," and I went in and he showed me a badge and his car got a flat, and Fischman rode up with me as far as West street. He said, "You are under a rape charge, \$5,000 bail, and \$500 for a bondsman."

Q How much bail? A \$5,000.

Q Fischman told you that?

Mr. Kraemer: I am objecting to the witness, as to conversations with Fischman, because I presume my objection to the previous witness covers this all.

The Court: Yes.

Q You say you were riding up in your car?
A Yes, sir.

Q Where were you going? A I was going up to Irvington, to buy a clutch.

Q After your arrest, did he tell you where you were going? A No; he said I was going up to the judge and he told me to turn left on the street.

Q What did he say to you on the way up?
A He said, "You have got a rape charge against you, \$5,000 bail, and \$500 bonds."

Q Then what happened? A He took me in there.

Q In where? A In the office.

Q Who was there when you got there? A The woman and the little boy.

Q Anybody else? A And myself.

Q Was Seidman there? A No, sir.

Q What happened after you were there? A About five minutes after Fischman calls up and Seidman comes down about ten minutes after.

Frank Puciarello, direct.

Q When Seidman came in, what happened?

A He took me in a little private room.

Q What happened to the woman and the little boy? A I didn't see them no more.

Q And Fischman and Seidman went into a private room? A Yes, sir.

Q What happened there? A Seidman said, "Under \$5,000 bail and \$500 for your bond," and he said, "You are under a charge of rape." And I said, "For what?" and he said, "Dorothy Miller." And he said, "Do you want to marry the girl?" And I said, "No, I am engaged to another girl." So Fischman said, "Marry the girl and leave her." And so he went outside and told the girl, and I didn't want to marry the girl, so Fischman came back in again, he was telling me, "What do you want to do about settling?" I said, "What do you mean by settling?" And he said, "Have you got any money?" And I said, "All I have got is \$50." And he said, "All right, it will cost you \$10 for paper fees." 10 20

Q Where did he tell you that? A In the private room.

Q Who else was there? A Seidman was there, and he said it would cost \$10.

Q For what? A For paper fees. 30

Q What did you do? A I gave him the \$10.

Q Where was Seidman? A Just as I was pulling the money out he went out and he started on the \$10.

By the Court.

Q Was he there when Fischman said, "It will cost you \$10 for the papers?" A Yes, sir. 40

Frank Puciarello, direct.

Q And before you paid out the \$10? A Yes, sir.

By Mr. Conlon.

10 Q And then what happened after that? A So the girl came in— I wouldn't settle up and he gave me the \$10 back again.

Q What do you mean by that? A The girl wouldn't settle for \$50, he told me that.

20 Q Who told you that? A Fischman gave me the \$10 back, and I stuck it in my pocket. Again he tell me, "Why don't you marry the girl and leave her?" And I said, "No, I am engaged." And he said, "I will go out and talk to her again." And he went out and talked to her, and he said, "All right, she is willing, \$50," and while they were outside, I heard this was the first payment of alimony, that is what I heard.

Q Who was it said that? A Both Fischman and the girl were outside, and I was left alone inside. When they were talking together I couldn't say whose voice it was.

Q Did it sound like a man's or woman's voice? A It sounded like a man's voice. It sounded like Fischman's.

30 Q What happened then? A Fischman was looking for a check and Seidman came in and he found a blank. I was too excited to write it out, and I started to write a little bit, and Fischman finished it, and I signed the back of it, the \$50 check.

Q (Showing witness check.) Is that the check, referring to Exhibit S. 2? A Yes, sir.

40 Q Who wrote out the check, aside from the signature? A I wrote just that. I was all excited.

Frank Puciarello, direct.

Q You mean, just the signature? A Yes, sir.

Q Who wrote the rest of the check? A Fischman.

Q Who was there? A Seidman.

Q In the meantime, you had this \$10 in your pocket? A No, but I had had \$10. 10

Q Tell us about that? A Fischman had the \$10. I don't know what he done with it.

Q You just told us before that you had given it to him and he gave it back to you? A When the agreement, \$50.

Q Where did that happen? A In the little room, the private office.

Q Who was there when you gave it to him the second time? A I think Seidman was there, too. 20

Q And who else? A Fischman.

Q And who else? A The girl. I don't think she saw us. She had her back to the door.

Q How did you come to give him the \$10? A If she settled for the \$50, and he said, "It will cost you \$10 for the papers."

Q And you then handed the \$10 to Fischman? A Yes, sir.

Q Was that before or after you signed the check? A That was before I signed the check. 30

Q And then the check was made out and you signed it and it was turned over to the girl in which room? A The private room.

Q Who was there? A Seidman and Fischman.

Q And the girl? A And the girl.

Q And he told you to go home? A After everything was straightened Fischman bid me good bye. He said, "Forget about it." I wrote that over it. 40

Frank Puciarello, direct.

Q Was there any arrangement made about meeting again? A He said he wouldn't press me—

10 Q Who is he? A Fischman told me to meet him at the bank at twelve o'clock—in fact, I told him to meet me at twelve o'clock, and he said, “No, it is better to meet at the girl's apartment, and I will be there.” So I went there with five ten dollar bills and there I gave her \$50 and she gave me the check back.

Q Before you went up to the girl's apartment the next day with the \$50 did you go any other place in reference to this case? A Sure.

Q Where did you go? A I went to my lawyer first.

20 Q And from your lawyer you went where? A My lawyer took me to Captain Sebold and Deputy Chief Brex.

Q Where did you get the \$50 that you turned over to the girl? A From my bank.

Q Who was with you when you got it? A Detective Rottenberg. I don't know his name.

Q Silzer? A And Mr. Villani, my lawyer.

Q What did you do with the money after you got it from the bank?

30 Objected to.

The Court: I will allow that.

Mr. Kraemer: Your Honor will remember that the witness testified that the \$10, which is the basis of this indictment, was paid on a day or two previous to that Saturday. This \$50 was taken out the Monday following. If there was any crime committed, it was committed on Saturday; this only goes to prove another crime.

40

I object to it.

Frank Puciarello, cross.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge. 10

Q What did you do with this money after you got it from the bank? A Took it to headquarters, and he took the numbers off the money.

Q Did you go up to the girl's house alone?
A No.

Q Who went up with you? A Detective Rottenberg and Mr. Villani, my attorney.

Q What happened after you gave the girl the money? A Detective Rottenberg took the girl down to headquarters with the money in her purse. 20

Cross examination by Mr. Kraemer.

Q You say that Mr. Fischman asked you twice for ten dollars? A Yes, sir.

Q And he told you that he wanted \$10 for papers? A For paper fees, yes.

Q Did he tell you for what papers? A The papers—he was going to send me to jail, so he told me. 30

Q When he told you that, who was present?
A Dorothy Miller.

Q Was that the first or second time? A That was just the first.

Q The second time, when Fischman asked you for the \$10, what did he say? A He said he came to a settlement. I had \$50, and he asked for the \$10. 40

Frank Puciarello, cross.

Q Did he tell you what he wanted with the \$10? A I just told you he said that was for his trouble, his paper costs.

Q Fischman said he wanted the \$10 for his papers—for his trouble? A Yes, sir.

10 Q He said that the first time and then he said that the second time? A Yes, sir.

Q Are you trying to repeat his words or are you just telling the substance of what he said? A I told you what he said.

Q Tell us, as nearly as you can remember, his exact words? A He said, "Well, this is the cost for my paper fees."

Q His paper fees? A Yes, sir.

Q And the man you are speaking of now is who? A Fischman.

20 Q That was said the first time? A Yes, sir.

Q And it was said the second time? A Absolutely.

Q When he said that the first time, what part of the office or store, or whatever it was, was it that he said so? A In the private room.

Q His private room? A Yes.

Q You mean a private room? A A private room.

30 Q Who was present? A The first time it was just him and I.

Q And the second time? A I believe she was there, but she wasn't there when I gave him the money. She had her back to the door and she didn't see it.

Q Was there anybody else present? A I think Seidman was there.

Q You are not sure about that? A I swear that I think he was there.

40 Q You will swear that you think so? A Yes, sir.

Frank Puciarello, cross.

Q But you won't swear that he was? A I am sure he was there.

Q When Mr. Fischman said that he wanted \$10 for his papers the second time, was Mr. Seidman there? A Mr. Seidman was just going out when I gave Fischman the \$10.

10

Q The second time? A Yes.

Q That was when Dorothy Miller was present in the same room? A No, Dorothy Miller went out then.

Q Dorothy Miller had gone out? A Yes, with Seidman.

Q What I am trying to find out, when Mr. Fischman, speaking the second time about he wanted \$10 for his papers, where was Seidman, was he nearby or far away, or what was he doing? A Before we spoke about \$10 he was sitting down and when I gave him \$10 Seidman went out.

20

Q The first time? A The second time.

Q You say Seidman was sitting by? A As soon as I gave him the money he went out.

Q When he said he wanted this for his trouble, or his papers, where was Seidman? A He was outside.

Cross examination by Mr. Burrell.

30

Q When you were coming up with Mr. Fischman, wasn't there another man in the car with you? A I just told that he was, he got a flat in his car, and he left his car in the station, and after he left his car this man got in his car with Fischman, and after he got in the office I don't know where that man went.

Q You were driving your own car? A Naturally, sure, I was.

40

Frank Puciarello, cross.

Q And Mr. Fischman told you where to go, isn't that right? A Yes, sir.

Q And isn't it a fact that Mr. Fischman showed you the warrant? A He didn't show me the warrant until I got about two blocks away from the Justice of the Peace's office.

10 Q He showed you a warrant? A He showed me a warrant, but he didn't say what it was. He didn't even tell me the name of the party that made the warrant.

Q Didn't you testify that Mr. Fischman didn't show you a warrant, but merely said that you were held for rape? A Yes.

Q Which is right? Did he show you the warrant or did he tell you that you were held for rape? A He told me both, just about two blocks from the office.

20 Q He showed you the warrant? A He told me it was for rape.

Q You just said that he showed you the warrant when you were two blocks away from the place? A He just showed a paper and I didn't read it. It might have been a piece of blank paper. I didn't even try to open it.

Q You didn't try to read it? A I tried to read it; he put it back in his pocket again.

30 Q He told you that was the warrant? A No; he said I was held for rape.

Q Didn't he tell you this was the warrant for which you are being arrested for rape? A No, he just showed me a badge, I am just saying.

Q Didn't he show you the paper and say, "This is a warrant, you are charged with rape?" A No.

40 Q What did he say? A He just showed me a piece of paper and he said, "You are held for rape."

Frank Puciarello, cross.

Q Did you ask him to show it to you? A No, I didn't.

Q On your way up there, did you have another conversation with Mr. Fischman? A No.

Q Didn't you say to Mr. Fischman, "Will you let me go, I have got to go to my doctor's?"

A I didn't say any such a thing. 10

Q Isn't it a fact that you did have an appointment with your doctor? A I did not.

Q And you didn't ask Mr. Fischman to let you go, you had an appointment with your doctor? A No; it would be foolish to ask him to let me go after he had arrested me. He just grabbed me by the sleeve when I was driving my car out of the beacon.

Q And you got to Mr. Seidman's office? A Yes. 20

Q And who was in there? A Just a woman and a little boy.

Q Did you have a conversation with the woman and the boy? A Fischman went up and about five minutes after Seidman came down.

Q Did Dorothy Miller come there? A I got there first.

Q Who got there first, Mr. Seidman or Dorothy Miller? A Dorothy Miller. 30

Q After Seidman came, did you have a conversation with Dorothy Miller? A Yes, sir; after they got there he was questioning her. They was questioning us first.

Q Didn't you finally have a conversation with Dorothy Miller before you left Seidman's office? A No.

Q Didn't Dorothy Miller say to you, "Frank, won't you marry me?" A That was before the Justice of the Peace. 40

Frank Puciarello, cross.

Q But she said that in the presence of Seidman? A But it wasn't no private conversation.

Q Did she say that or not? Didn't she say, "Frank, will you marry me?" A Sure she did.

10 Q And didn't you say, "Dorothy, I can't marry you?" A Yes.

Q And didn't she say then, "If you don't marry me, you ought to do something for me for the shame you have caused me." Didn't she say that? A No.

Q What did she say? A She didn't say not a thing.

Q She didn't say anything else? A No, she wanted me to get locked up.

20 Q Didn't she cry? A Sure she did.

Q Didn't you cry? A Yes, I was excited.

Q And didn't the two of you get very close together? A No.

Q How close together did you get? A From that chair to there.

The Court: Indicating a distance of about two feet.

30 Mr. Conlon: You were sitting on adjoining chairs?

The Witness: We were sitting across a desk.

Q Opposite each other? A Yes, sir.

Q You said both of you were crying? A Yes, sir.

Q And you said you were very excited? A Yes, sir.

40 Q Didn't you plead to her not to do anything to you? A No.

Frank Puciarello, cross.

Q You didn't say anything to her? A I said, "Come to some kind of a settlement." I didn't tell her that, I told that to Fischman.

Q You didn't tell Dorothy Miller that? A No.

Q Did Fischman tell Dorothy Miller what you had told him? A He asked me that first. 10

Q You just said that you asked Fischman to tell Dorothy Miller that you wanted to make a statement? A He asked me first, "If you want to settle"—and after while I told him to ask her, because she had already told me to make a settlement. She told me that first.

Q I am not asking you that. I said you finally asked Fischman to talk to the girl to make a settlement? A No, I didn't tell him. He went out there himself and told her. 20

Q Then your previous statement was wrong?

Mr. Conlon: I object.

Q Which statement is true, that you asked Fischman to tell the girl or you didn't?

Mr. Conlon: I object.

The Court: I do not see any contradiction. 30

Mr. Burrell: He told us two things.

Mr. Conlon: I object to that, that the witness said two different things.

The Court: The jury will be the judge of that.

Q When you left Mr. Seidman's office, did you have an engagement to come back to that office? A No.

Q Did you have an engagement, when you left the office, to meet Mr. Fischman or Mr. Seid- 40

Frank Puciarello, cross.

man at the bank? A I had an engagement to meet Mr. Fischman at Dorothy Miller's.

Q Where? A In front of the bank, and he insisted that it be at the apartment of her and she wasn't there.

10 Q Isn't it a fact that Miss Miller said to Mr. Fischman, "Won't you drive me down to the bank in the morning?" Isn't that what took place? A I didn't hear that.

Q Did you hear Mr. Fischman say, "I won't be able to make it down to the bank in the morning, and we will meet at your house?" A No.

Q What lead you to believe that you were to meet at her apartment, the exact words that were said? A I didn't hear that.

20 Q Who told you to go to Dorothy Miller's apartment the next day? A Fischman.

Q What did he say—the exact words? A At first I told him to meet me at the bank, "And I will give you the \$50," he made the suggestion first, and then he turned it over to the apartment, and then I went there with the \$50 and Fischman wasn't.

Q Did you say to Fischman, "I will meet you at the apartment? A He told me that.

Q He told you that he would meet you at the apartment? A Yes, he would be with the girl.

30 Q Did he or Mr. Seidman say anything to you about giving them the \$50? A Not that I know of.

Q The \$50 was for the girl? A That is what I thought it was.

Q You didn't give the \$50 to them? A They I overheard that—

Q Did you give the \$50 to Seidman or Fischman?

40 Objected to.

Frank Puciarello, cross.

Q There was no agreement that any part of that \$50 was to go to Fischman or Seidman? A I don't know nothing about that.

Q You don't know anything of any agreement to give them any part of it? A No, sir.

Q You said you gave Mr. Fischman \$10? A Yes, sir.

10

Q The first time you gave that \$10 nobody was present but you and Mr. Fischman, is that right? A That is right.

Q Did you hear Miss Miller testify that at all times you and Mr. Seidman and Mr. Fischman were alone in the room and she was not there?

Objected to.

Objection sustained.

20

Q This small room—isn't this just a partition in the corner of the room? A I didn't notice exactly the room, and I noticed it was just a little private room.

Q There is no partition extending up to the roof? A I didn't look over the top.

The Court: This is not cross examination.

30

Q When you were in this small room, could you see what was going on outside? A No, but I could hear voices though.

Q Didn't you see Mr. Seidman at the typewriter? A I didn't see Mr. Seidman at the typewriter.

Q You didn't see him at the typewriter? A No, sir.

Q Didn't you testify on direct examination that Seidman was at the typewriter and you

40

Frank Puciarello, cross.

saw him there? A No; Fischman said Seidman is at the typewriter for papers to send you to jail.

Q You didn't see Seidman? A He came right in after that, after I gave Fischman the \$10.

10 Q When Fischman gave you the \$10 back, who was present? A The first time?

Q Whenever he gave it back to you, who was present? A Nobody was there the first time.

Q When Fischman returned the \$10 no one was there at all? A No, Seidman came in when I first gave him the \$10.

Q When Fischman gave you back the \$10, who was in the room? A The first time?

20 Q Anytime? A No one; just as soon as I gave him the \$10 Seidman walked out.

Q Did Fischman say to you, "What is the \$10 for?" A He said just for my paper trouble.

Q What? A My fee.

Q Which did he say? For his paper trouble or his fee? A His fees—paper troubles—certainly.

Q Tell us the exact words that he used?

30 A I can't express it any other way.

The Court: You have been all over that.

Q Did Mr. Seidman read the complaint to you? A I didn't even read the complaint, never read it to me at all.

Q Did he ask you how you plead? A Didn't even say a word to me, only he told me, "You are held for \$5,000 bail and \$500 bond."

40 Q Didn't Mr. Fischman say to you that, "If your father has property you will get out easily, if you are held in bail?" A Who said that?

Frank Puciarello, cross.

Q Did Mr. Fischman say that to you? A He asked me did I own the car, and I said, "No, I don't own the car, it is under a finance company."

Q Didn't he ask you if your father had property? A Who ask me that?

Q Fischman. A Fischman ask me that? 10

Q And if your father had property you could get out on bail? A Yes, sir.

Q He said that before you went in the side room? A Yes, sir.

Q When did he say that? A That was between him and me in the little room, after we had the talk, when he said he was going to send me to jail.

Q He said that if your father had property you could get out on bail? A Yes, sir; and I said it wasn't paid for. There was a fellow riding with Fischman. 20

Q Did the fellow riding with Fischman have anything to say? A No, he didn't have a word to say.

Q It was a five-passenger sedan? A Yes, sir.

Q There was a panel between the back and rear seat? A Just my seat.

Q How old are you? A Twenty-three. 30

Q How long have you known Dorothy Miller? A About four years.

Q And have you had intercourse with Dorothy Miller? A Yes.

Objected to.

Objection sustained.

Q You and Dorothy Miller are now very good friends? A Does that concern you anything? 40

Frank Puciarello, cross.

Q You have both agreed you have nothing against her, and she has nothing against you?

A No.

Objected to.

Objection sustained.

10

Q You are not very friendly to Mr. Seidman, are you? A No.

Objected to.

Q And you are absolutely opposed to Mr. Fischman, are you not? A I don't get you. I don't get that word.

Q You don't like Mr. Fischman? A I don't like the both of them.

20

Q And you said that on the day that you were up to Mr. Seidman's office that, "I am going to get you." You said that to Mr. Fischman, didn't you? A No.

Q Did you leave there and go to the police station together? A I went to my lawyer's the same night. He was to a wake, twelve o'clock, and he told me he meet me in the morning.

Q You went to your lawyer first? A Yes, sir.

30

Q When you went up to Seidman's office you said to Fischman and Seidman, "I have a lawyer?" A Wait a minute. I told Fischman to call my lawyer up and Fischman just put the nickel in the slot and never called for the number or anything. He said, "He is not at the office."

Q You gave Mr. Fischman and Mr. Seidman the name and address and telephone number? A No; I didn't give him the number. I said, "Look it up in the telephone book."

40

Frank Puciarello, cross.

Q Did you see either of them look in the telephone book? A No; he just put a nickel in there; he made an attempt to look in the telephone book, that is about all.

Q You saw Mr. Fischman pick up the book?
A Yes, sir.

Q After you told him the name of Mr. Villani and said, "That is my lawyer?" A Yes, sir. 10

Q And you told them that you had a lawyer?
A I didn't say I had one. I said, "I want to get in touch with a lawyer."

Q When you were at the office you told him again that you were going to get in touch with your lawyer? A No, sir; I didn't say nothing. He just said, "Good bye, the best thing you have done is to settle for \$50."

Q And your lawyer took you to the police?
A Yes, sir. 20

Q And your lawyer was there with the police when Mr. Seidman and Mr. Fischman were brought down? A We were all there.

Q And your lawyer went up to Miss Miller's house, did he not? A No, he was across the street. Rottenberg was about twenty-five feet away and Fischman was in the car.

Q And Mr. Villani represented you in the police court, did he not? A Sure he did. 30

The Court: What difference does it make?

Q And then after the girl was arrested, your attorney went down to police headquarters—

Objected to.

The Court: How does that show any bias?

Mr. Burrell: It shows he is testifying for personal revenge. 40

Frank Puciarello, re-direct.

Q You made a statement to the police, did you not? A No.

Q You never made a statement to the police?
A In front of Rottenberg and my lawyer, at my lawyer's office.

10 Q Your lawyer dictated this statement, did he not?

Objected to.

Mr. Conlon: I have the statement here.
If counsel wants it, I will give it to him.

Q Did you ever make a statement to the police? Yes or no? A At Rottenberg's office.

Q You are testifying now according to the statement and not according to your recollection?

20 A I don't get you.

Q You are trying to testify to what is in that statement? A I am saying just what is what.

Q You are trying to remember what is in the statement? A I am not trying to remember. I am just telling you the truth.

Q If it is not in the statement, you are not?
A I think it is in there.

Re-direct examination by Mr. Conlon.

30

Q When did you see this statement last?

Mr. Kraemer: I object to that.

A Two weeks ago.

Q Is that the statement you made? A Yes.

Mr. Conlon: I offer it in evidence.

Mr. Kraemer: I object to it.

40

The Court: Objection sustained.

Daniel Rothenberg, direct.

Mr. Conlon: It is admitted on behalf of the defendants, that the defendant Abraham Seidman is a Justice of the Peace of this State, and that the defendant Gustave S. Fischman is a constable.

Mr. Kraemer: I admit that the defendant is a Justice of the Peace, my client. 10

The Court: Not only now, but at the time of the indictment.

Mr. Burrell: I have no objection.

Adjourned until tomorrow, Tuesday, October 22, 1929, at 10:00 o'clock A. M.

SECOND DAY.

20

Tuesday, October 22, 1929.

Continued pursuant to adjournment.

Present, counsel as before stated.

DANIEL ROTHENBERG, sworn in behalf of the State.

Direct examination by Mr. Conlon.

30

Q You are a lieutenant of the Newark Police Department? A Yes.

Q Attached to the Detective Bureau at Headquarters? A I am.

Q Do you know this man Frank Puciarello? A I do.

Q Where did you see him first? A When he came to police headquarters, June 4, 1929, with Mr. Villani, his lawyer.

40

Daniel Rothenberg, direct.

Q Did he come down there subsequently with some money?

Mr. Kraemer: I object to that, because it is leading and irrelevant.

10 The Court: I will sustain it on the ground it is leading.

Q Did he have anything with him? A He had five ten dollar bills with him.

Q And what, if anything, did you do with those five ten dollar bills?

Mr. Kraemer: I object to that as irrelevant.

The Court: I will allow that.

20 Counsel for defendant Seidman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

A We marked those five ten dollar bills for identification.

30 Q And just how did you mark them? A We marked them with D. R. on the corner of each bill, my initials.

Q Anything else? A And the numbers, copied the numbers of each bill, the serial number.

Q What did you do then with reference to this matter?

Mr. Kraemer: I object.

40 The Court: These were the bills which were testified as having been given to the girl?

Daniel Rothenberg, direct.

Mr. Conlon: Yes, sir.

The Court: What is your theory, it is relevant?

Mr. Conlon: Well, I think it is pursuant of the whole arrangement made in the office.

The Court: Yes, on the theory it is all tied up in one extortion. 10

Mr. Conlon: Yes, sir.

The Court: Of course, there is no evidence that these people at any time were to get any part of the money given to the girl.

Mr. Conlon: No, sir; but this money was paid after Puciarello had given the defendant \$10 and I think it is corroborative of his story in that respect. 20

The Court: No, I do not think so. I think that is going too far, and I think I will rule that out, and I will also instruct the jury to disregard the testimony the girl gave, and the other testimony given as to the turning over of this \$50 marked money. I do not think that is relevant. Of course, if you had connected it up with Puciarello in any way with the defendants, but so far there is no testimony they had any connection with it. 30

Mr. Conlon: I will connect it up to this extent, that the defendant Fischman wrote out a check which Puciarello signed in the presence of both defendants and the arrangement was then made in the presence of these defendants for him to redeem the check on the next day.

The Court: But the girl was to get the money?

Mr. Conlon: Yes, sir. 40

Daniel Rothenberg, direct.

The Court: But they are not connected with it.

Mr. Conlon: I think this corroborates the fact that that arrangement was made in the office of the defendant.

10 The Court: Well, true, but it was not made so they would get it. That arrangement contemplated the girl would get something.

Mr. Conlon: The evidence they had gotten \$25 from the girl and \$10 from Puciarello—

The Court: Well, one or both of the defendants got \$25 and \$10 from the girl.

20 Mr. Conlon: Now, subsequent to that time, Fischman wrote out this check for \$50, which is in evidence and signed by Puciarello, and then Puciarello was instructed by the defendants or one of them, to redeem that check the next day at noon and I understand it was done at the instruction of these defendants.

The Court: Well, there is no evidence they were to get any part of it.

30 Mr. Conlon: I think it corroborates the witness Dorothy Miller and Puciarello as to their testimony of these conversations in Seidman's office.

The Court: Of course, there is this aspect of it, it might possibly be connected with the \$25 and the \$10 on the theory that the \$10 and \$25, were paid with the expectation of getting some return from the girl.

Mr. Conlon: Yes, sir; I presume that, in other words—well, that is a matter for argument.

40 The Court: I want to know what your theory is that this is relevant.

Daniel Rothenberg, direct.

Mr. Kraemer: I am, of course, guiding myself solely by the indictment, and, with due deference to your Honor, if the evidence with respect to the \$25 is absolutely irrelevant to this case, and I am limiting myself to the item of \$10 and the evidence as to that is that Fischman said he wanted \$25 for his paper work. That statement was not made in the presence of Seidman, that was made in the presence of Puciarello and Fischman. 10

The Court: As far as I am concerned, for the purpose of this motion, it does not make any difference whether both defendants were present.

Mr. Kraemer: Now, if they had taken \$10 or one of them had taken \$10, and the jury had the right to determine that question, that completed the crime. Now, what purpose does it serve to prove that on the next day the girl redeemed the check for \$50 for her benefit not in the presence of either of these defendants, if she were acting as their agent? But what she did under the circumstances, what proof was binding on these defendants? Now, why should what she did after the crime, or the alleged crime, had been completed, be charged as evidence against these two defendants? I cannot find any ground that the prosecutor gives. You cannot prove corroboration by subsequent things. You cannot go all over a man's career, proving that he might have had a criminal tendency. Now, intent in this case is not important. Counsel and your Honor spoke of intent. The intent is only to the extent that they are not entitled to the \$10. 20 30 40

Daniel Rothenberg, direct.

He must know he is not entitled to a fee from Puciarello. Otherwise there is no intent in this case. If a Justice of the Peace takes—

10 The Court: He must intend to extort it. If he takes a dollar by mistake a man overpays him, \$11.

Mr. Kraemer: There is no doubt about that. The only fact is about the intent of taking the money.

The Court: That is it, where this evidence may be possibly relevant, where these people engaged in a plan of extortion.

Mr. Kraemer: From whom? He is trying to prove that this girl was extorting money.

20 The Court: No, if they were engaged in a plan of extorting money and this \$10 was part of it, it seems to me that this would be relevant.

Mr. Kraemer: Well, then, you are speaking of a case of conspiracy.

30 The Court: No, I am not. We have got to get at the intent of these people. The jury have got to find they were guilty of extorting money. If this money was taken under a misapprehension, or on some other mistaken theory, then it is not extortion at all, but if it was taken with intent to extort it, then it was extortion. I will admit the testimony.

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

40

DALLAS FLANNAGAN,
Judge.

Daniel Rothenberg, direct.

Q You say you marked these five ten-dollar bills? A Yes.

Q After you marked them, what did you do with them?

Mr. Kraemer: May I have an exception to the entire line? 10

The Court: Yes; both counsel.

Let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q What did you do with the bills after you marked them? A We returned them to the complaining witness, Frank Puciarello.

Q Then where did you go? A Detective Silzer and I followed him to 38 West Kinney street and he went into the hallway and turned the money over to one Dorothy Miller. 20

Q Did you see him turn the money over to her? A No.

Mr. Kraemer: I ask that that testimony be stricken out.

The Court: No. That is obvious that he had no actual knowledge of any transfer and the jury will understand that. His evidence on that subject is no evidence. Strike it out. 30

Q Did you subsequently see Dorothy Miller? A I did.

Q And did you find anything on her person? A The same five ten-dollar bills that we gave to Puciarello before that.

Q And are those the bills? A Those are the bills. 40

Daniel Rothenberg, cross.

Mr. Conlon: I offer them in evidence.

Mr. Kraemer: I object.

Mr. Burrell: I object.

The Court: Overruled.

10 Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

(Bills marked Exhibit S. 1, 10/22.)

Q Did you know where Abraham Seidman's office is? A Yes.

Q Had you ever been there? A Yes.

20 Q When? A June 4, 1929.

Q Who was with you? A Detective Silzer.

Q Did you find anything there? A We asked the defendant Seidman to see the defendant Puciarello, who was coming in there under charges, and we saw the complaint, or copy of a warrant, and he handed it over to Detective Silzer.

Q Are those the papers that you saw there? A Yes.

30 Q And those were the ones that were turned over? A Yes, upon request.

Mr. Conlon: One is marked S. 1 and the other is a warrant which I just found. I will offer them in evidence.

(Paper marked Exhibit S. 2, 10/22.)

Cross examination by Mr. Kraemer.

40 Q Where is this 238 West Kinney street? A 38.

Daniel Rothenberg, cross.

Q What is that, the apartment house on the corner of Kinney and Halsey street? A No, between Halsey and Broad.

Q And did you go into the alleged apartment? A No, I did not go in there; just went as far as the apartment.

Q What? A We remained outside of the apartment while Frank Puciarello went in there. 10

Q Into an apartment? A Into an apartment, 38.

Q This was the apartment of Dorothy Miller? A Yes.

Q Do you know anything at all about the apartment, how many rooms or anything of that kind? A No.

Q Was this attorney by the name of Villani present at that time? A He was about twenty-five feet away. We remained away from the apartment. 20

Q I thought you said you were in the hallway. A No, I didn't say that.

Q Now, after Officer Silzer came out, was Dorothy Miller in custody? A Well, when Dorothy Miller came out with Frank Puciarello, then we took Dorothy Miller in custody.

Q The man who went in was Puciarello? A Yes. 30

Q And you and your partner remained outside? A Yes.

Q And then when he came out with Dorothy Miller, then you took her into custody? A Yes.

Cross examination by Mr. Burrell.

Q You say that you went to the office of Abraham Seidman subsequently? A I did.

Q With Detective Silzer? A Yes. 40

Daniel Rothenberg, cross.

Q And there you obtained these papers that have been offered in evidence, the warrant and complaint? A I did.

Q You said that Mr. Seidman gave those to you. A Upon request, he turned them over to Detective Silzer.

10 Q Isn't it a fact that Silzer seized the papers out of the files of Seidman over his protest? A He did not seize them, he handed them over to him.

Q Did you have a warrant for the arrest of Seidman at that time? A I did not at the time, no.

Q You did take him into custody and you had no warrant? A I did.

20 Mr. Conlon: I object.

The Court: It doesn't make any difference.

Q You already had Dorothy Miller in custody? A We did, yes.

Q And you then took Fischman into custody? A We did.

Q You took them down to police headquarters? A Yes.

30 Q And Mr. Villani went down there with you? A He did.

Q He was with you all through this transaction? A Not to Seidman's office.

Q Except at Seidman's office? A Except at Seidman's office, yes.

STATE RESTS.

Mr. Kraemer: I ask leave to reserve the right to put in a defense.

40 The Court: Yes.

Motion for direction of a verdict.

Mr. Kraemer: This issue created in this case is based upon the indictment and the plea of not guilty. That presents one sole issue. The indictment, your Honor, is read. I hope you will indulge me if I read it again. (Reading.) Now, I discard everything that has been said here about a shake-down, because that is not in this case, and I discard everything that has been said in this case about the \$25, and I limit myself to the question whether there is proof or not and the extortionate taking of \$10 by these two officers, unless it was done jointly, because if the act was not done jointly, there cannot be a conviction. 10

Mr. Burrell: In behalf of the defendant Fischman, I make a motion for the direction of a verdict, the first he made as a part of his argument, I make it as my argument. My motion is made at this time as to the indictment not being a joint one, that these two officers could not be jointly indicted. 20

The Court: I will deny the motion and give you an exception.

Let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN, 30
Judge.

Mr. Kraemer opens in behalf of the defendant Seidman.

Mr. Burrell opens in behalf of the defendant Fischman.

Gustave S. Fischman, direct.

GUSTAVE S. FISCHMAN, defendant, sworn
in his own behalf.

Direct examination by Mr. Burrell.

- Q Where do you live? A At present?
10 Q Yes. A 57 Willoughby street, Newark.
Q Are you married or single? A Married.

Mr. Conlon: I object.

The Court: Sustained.

Q How long have you resided in the County
of Essex? A I was born and raised here.

Q Are you a constable? A I am.

- Q How long have you been a constable? A
20 Fifteen years.

Q Do you know Abraham Seidman? A I
do.

Q Do you know Dorothy Miller? A I do.

Q Do you know Frank Puciarello? A I do.

Q How long have you known Dorothy Mil-
ler? A Well, the last five or six months.

Q Under what circumstances did you meet
Miss Miller? A She come into my office and
wanted to have somebody arrested.

- Q I mean under what circumstances did you
30 first come to know Miss Miller? A She used
to work for another constable I used to go to
see.

Q Did you have any idea what her employ-
ment was there? A I believe it was stenog-
rapher.

Q And did you see her frequently when you
went into that office? A Every time I came
to see my friend.

- Q And she was stenograher in the office of
40 a constable? A Yes.

Gustave S. Fischman, direct.

Q Did you see her sometime around the last part of May or first of June, this year? A I did.

Q Where? A At my office.

Q Where is your office? A 164 Market street, Newark.

Q Now, will you state to the Court and jury the circumstances under which Miss Miller came to your office? A She came to my office, I am not quite sure of the day. 10

Q Well, what month was it? A I think it was in the month of May, the latter part of May.

Q Of this year? A Yes.

Q Proceed. A And she told me she wanted to have a man put in jail. She used to live with him and he had raped her and he was going to remarry someone else. 20

Q Try to give it to us in her exact words. A She said she wanted to have this fellow Frank Puciarello arrested and put in jail, that he had ruined her life, and that he used to send her out to the street to earn money and took it from her, and I cannot just think of a whole lot of other things she told me.

Q What did she wish you to do? A To have him arrested and issue a warrant for him. 30

Q What did you say to her? A I told her I could not do that.

Q Did any other conversation take place? A No.

Q As a result of that, did you do anything? A No, sir; I called up a few justices of the peace that I know. I told her I could get somebody that could tell her more about the case.

Q Now, did you succeed in getting in touch with any of these gentlemen who you called? A I did. 40

Gustave S. Fischman, direct.

Q Who? A Judge Seidman.

Q And then what did you do? A I sent her up there.

Q Did you have any conversation with Judge Seidman with reference to what the nature of the case was? A No.

10 Q What did you say to him, if anything? A I did not say anything. I just sent her up with a card.

The Court: You did not go with her?

The Witness: No.

Q What was on the card? A Just the name and address of Abraham Seidman, Justice of the Peace, 126 Howard street, Newark, and the
20 'phone number.

Q And did Miss Miller come back to your office at any time after that? A No.

Q Did she call you on the telephone at any time? A No.

Q When did you hear anything else from Mr. Seidman after that? A I believe on June 3rd, he called me at my office.

Q On the telephone? A That is right.

Q And what, if any, conversation took place?
30 A He asked me if I was busy and if not to come up, that he had a warrant he wanted me to serve.

Q Now, at this time did you have any talk with Mr. Seidman over a question of \$50 or \$25? A I did not.

Q Did you talk with Dorothy Miller? A I did not.

Q And as a result of this conversation, what did you do? A I went to Seidman's office.
40

Gustave S. Fischman, direct.

Q Who was there, if anyone? A Mr. Seidman and the stenographer and a few other people doing business there.

Q Go ahead. A He gave me the warrant, and gave me the address where this fellow was employed and told me I could get him there at 5:30 when he quits work.

10

Q Now, I show you this paper. Do you recognize this? This is Exhibit S. 2. Is that the warrant? A Yes.

Q And was that signed in your presence by Abraham Seidman or not? A No.

Q Was this already made up when you got there? A Yes.

Q You took it in this way? A Yes.

Q I show you on the back of this warrant a notation, "People's Express, 103 Passaic avenue." A That is the way I got the warrant.

20

Q Oh, this was on the warrant when you received it? A Yes.

Q And after receiving this warrant, Mr. Fischman, what did you do? A I went ahead we did.

about my business until 5:20 when I stopped at the office for a minute, and had some trouble there with my car, and I had a friend of mine, I asked him to drive me down there.

Q Drive you down where? A To the People's Express Company.

30

Q When you reached there, what did you do? A I went in and asked for Mr. Puciarello, and one of the men on the floor said, "There he goes now in his car," and I walked over and I asked him if he was Puciarello, and he said yes, and I said, "I am a constable, and I have a warrant for your arrest," and I opened the warrant and held it right in front of his eyes and he said, "What is it?" I said, "You can

40

Gustave S. Fischman, direct.

read it if you want to," said he said, "What am I to do now?" I said, "You might get in the car and go up to Seidman's office," which we did.

Q Which car did he get in? A In his own car.

10 Q With whom? A I got in the car and sat alongside of him.

Q Tell us what else happened. A Well, the friend who brought me down there was following the car I was in and we got half way up around the Pennsylvania Railroad around Market street, and I heard his horn toot, and I turned around and seen him waving at me, and I told Mr. Puciarello to stop, which he did, and he come running over and said he had a flat tire.

20 Q Who? A That fellow that took me down there.

Q What did you do then? A He decided to leave his car there at the gasoline station and have it fixed, and come up with us.

Q Then what happened after that? A We started to proceed toward Judge Seidman's office.

Q Did any conversation take place between you and Puciarello on your way to Seidman's office? A There did.

30 Q State to the Judge and jury what happened. A He asked me if I thought they would turn him loose. I said, "I don't know," but I said, "Have your people any property?" He said, "Yes." He said, "My father has a piece of property." I said, "Well, if he has a piece of property no matter if they are going to hold you in bail, you can get out." I said, "If you have to get a bondsman, they will charge you all kinds of prices, ten per cent. on a hundred
40 dollars," and he asked me to turn him loose and

Gustave S. Fischman, direct.

I told him I couldn't, and he told me he had a man's disease which he described as the clap and he had an appointment with the doctor at six o'clock and it was important for him to get there, and I told him I could not turn him loose, I would have to deliver him at the Judge's office, and he said, "Maybe I can do something for you someday." He said, "I am pretty well known around Newark," and I said, "I cannot turn you loose as long as I have the warrant in my possession." I said, "I can bring you up to the judge and he can do whatever he wants to you," and he said, "Well, I can probably get even with you some day," and I told him to stop talking and took him to 126 Howard street. 10

Q What did you do then? A He stopped the car across the street from the office and we both went into Judge Seidman's office. 20

Q When you got into the office, was anyone there? A There was a boy there; a boy sitting there.

Q Anyone else? A No, no one else.

Q Did anyone else come in? A Yes, several people came in and out.

Q Was Mr. Seidman there then? A No, sir.

Q Was Dorothy Miller there then? A No, sir. 30

Q Did Dorothy Miller or Seidman come in after that? A I was standing outside waiting for Seidman to come and I seen Miss Miller and another woman and a gentleman drive up to 126 Howard street, the office of Judge Seidman, in a car, and he stopped right in front of the office.

Q Go ahead. A And she come out of the car and I said, "Mr. Puciarello is inside," and 40

Gustave S. Fischman, direct.

she went in there and they seen one another. They both started in to tears and crying.

Q How long after that was it before Judge Seidman arrived? A About five minutes after Miss Miller came; well, five or ten minutes; about that time.

10 Q And at that time Dorothy Miller and Puciarello were together in Seidman's office? A Yes.

Q And you say they were crying? A Yes.

Q Did you say anything to them or they to you? A No.

Q Then Seidman arrived in about five minutes? A Yes.

Q After he arrived, what happened? A I laid the warrant down in front of him on the
20 desk and he sat down and I told him there was the prisoner.

Q And then what happened? A I do not know what happened then between them.

Q I mean— A He was sitting right in front of the desk where the Judge sits. There is two or three chairs alongside of his desk. She was sitting on the further side, and he was sitting on the one next to the desk.

Q After you turned this warrant over to
30 Judge Seidman, what took place, if anything? A Why, they both went into the room, that is, Mr. Puciarello and Miss Miller.

Q Went into which room? A A little room which is partitioned off about six feet high. It don't reach to the top of the ceiling at all.

Q How large is that room? A I imagine it is six by six, or six by seven.

Q A small room? A A small room.

Q Is this a room off the main store? A Just
40 a portion of the floor boxed off.

Gustave S. Fischman, direct.

The Court: When Puciarello and Dorothy Miller went into this room, was there anybody else there?

The Witness: There was another man and a woman and a baby. They were in the big room, not the small room.

The Court: Who went in the small room, Miss Miller and Puciarello and no one else? 10

The Witness: No.

Q How long did they stay in this room? A Oh, I imagine they were there about five minutes.

Q Was the door open or closed? A The door was open.

Q From the outer room, did you hear them in this small room? A Yes. 20

Q Could you hear their conversation? A Very easily.

Q Now, what were they doing or saying, if anything? A Well, I heard Miss Miller ask Mr. Puciarello to marry her. She said, "Now, come on, you made a bum out of me;" she said, "Come on and marry me and I will forget everything."

Q What did Puciarello say? A He said, "I cannot marry you;" he said, "I am already engaged to another girl." 30

Q Did he say anything else? A Well, that is about all I could hear at that time, and they still started crying again, and it bawled up everything they were saying.

Q Did you have anything to say to them? A No.

Q After they were in this room crying and the conversation took place, what happened? A Why, they came out of the room and about that 40

Gustave S. Fischman, direct.

time the man and woman and child who was there left the place and they came out and sat in the same two seats and this man came back again.

10 Q What conversation took place? A She told him, "Well, if you do not want to marry me," she said, "You give me enough money so I can go back to Pennsylvania," and she said, "I can go up there and nobody will have to know the life I have been living down in Newark for you," and he said, "No," that he would not marry her, and he would give her money to get out of town.

Q Was anything else said? A That is all at that time.

Q Did you say anything or Judge Seidman say anything then? A No.

20 Q Well, what else took place? A And he went back into the small room again and some more people came in to Mr. Seidman.

Q Well, who went into the small room? A Miss Miller and Puciarello.

Q Did you go in? A No.

Q Did you or Mr. Seidman at any time go into the small room? A Yes.

30 Q When was that? A Well, he agreed to give her \$50 to go back to Pennsylvania, as she surmised to him the first time; she agreed to do that the first time in the conversation.

Q Well, it was then at that time you went into the room? A Mr. Puciarello called me.

Q What did he say? A He asked me if I knew the name of the bank on Ferry and Market street.

Q What did you say? A I stopped to think for a minute and I said, "Yes, I think it is the Ironbound Branch of the Fidelity Union Trust Company."

40 Q Any other conversation? A Not that I ever heard.

Gustave S. Fischman, direct.

Q What happened after that? A Why, I seen Mr. Puciarello present Miss Miller—well, first he asked the name of the bank, and then he says, “I ain’t got no money”; he said, “If I had a check, I would give you a check.”

Q Who did he say that to? A Why, he said that to the girl and the girl came out and asked if we, either Mr. Seidman or I, had a blank check from the Ironbound Branch of the Fidelity Union Trust Company, and I answered no, and Mr. Seidman answered no, but he did say, “I have a blank check with no name on it at all,” and he gave it to Miss Miller and she brought it back into that little room and about two minutes later Miss Miller came back with the check in her hand and she said for me to come in there, and she said, “What is the name of that bank you said?” I said, “It is the Ironbound Branch of the Fidelity Union Trust Company.” He said, “Well, will you fill that in for me?” Just where the blanks were, there were no names in the top, and I did, and I left it on the desk and he picked it up and gave it to Miss Miller.

Q I show you this check. Is this the check to which you referred? A Yes. I wrote that Fidelity Union Trust Company, Ironbound Branch.

Q Well, did you write any other portion of the check? A No, I did not. It can easily be seen.

Q You wrote the words, “Fidelity Trust Company, Ironbound Branch.” A I did.

Q That is all you wrote at the request of Mr. Puciarello? A It is.

Q Now, after this check was given to Miss Miller, did anything else take place? A Why,

Gustave S. Fischman, direct.

no. They agreed to patch everything up. They were laughing and kidding one another along and Miss Miller said to me, she said, "Well, I do not know where this bank is," she said, "Will you mind driving me down in the morning?" I said, "Well, if I have the time I won't mind driving you down," and I said maybe I would, and all the time we were talking Mr. Puciarello said we would not meet at the bank, he said, "I will go down in the morning and get the money and meet you at the house."

10 Q What did you say? A I said "All right." It was immaterial whether I went down there or met them at the house.

Q Now, when they left was there any appointment to meet at either the bank or Miss Miller's, when you finally left? A No.

20 Q Was there any agreement that Miss Miller was to give you any portion of this \$50? A No.

Q Do you know of any agreement whereby Miss Miller was to give Seidman any portion of the \$50? A No.

Q Did you see any \$25 given to Mr. Seidman by Miss Miller? A No.

Q Did you have any conversation with Puciarello with reference to any fees or costs or trouble? A No, I did not.

30 Q Did you at any time say to Mr. Puciarello, "You must give me or give us \$10 for the trouble of the papers." A No.

Q You did not? A No.

Q Did Mr. Puciarello give you \$10? A No.

Q Did you see him give \$10 to Mr. Seidman? A No.

Q Now, when you were having this conversation in this room about the check and other things, who was in this room? A They were
40 by themselves.

Gustave S. Fischman, direct.

Q No, when you were having a conversation with Mr. Puciarello regarding this check, who else was in the room? A Why, Mr. Seidman was there, that was in the big room after everything was settled.

Q Who was there? A Mr. Seidman and a couple of men and a woman. The place was doing business. 10

Q Which woman? A Miss Miller and several other women.

Q People had come in? A Yes.

Q Now, at any time that you were in the small room who else was there other than yourself? A Nobody outside of Miss Miller and Mr. Puciarello. I never was into that small room.

Q Was Mr. Seidman ever in the small room? A No, sir. 20

Q Did you ever go to the door of the small room? A No. She came out with the check first, as I said before.

Q Well, did you ever go to the door of the small room?

Mr. Conlon: I object to that, he said no.

The Court: He said he did not go in.

Mr. Burrell: I ask him now if he went to the door. 30

The Court: Did you go to the door? Ask him.

Q Did you ever go to the door of the small room? A Why, I was passing up and down alongside of it. I did not actually stop at the door for any purpose.

Q Well, when you went to this door of the small room or passing by in front of it, who was inside? A Miss Miller and Mr. Puciarello. 40

Gustave S. Fischman, direct.

Q Now, were you present on the morning of June 4th, when \$50 was given to Miss Miller? Do you know anything about that? A No.

Q Did Mr. Puciarello say he did not have any money, or what did he say with reference to money? A He said he did not have any money
10 with him, or did not have a check, that he had money in the bank.

Q He said he had no money with him, or no check? A That is right, but that he had money in the bank.

Q What sum of money or check or anything did you see pass that day? A A check made out for \$50 that he had made out personally to Dorothy Miller and signed himself in the amount of \$50.

Q Did you see any other money or any other
20 check passed that day? A No, I did not.

Q Now, when you were taken down to headquarters by Lieutenant Rothenberg, who was there? A Miss Miller, Mr. Puciarello, Lieutenant Rothenberg, Lieutenant Silzer, Mr. Villani.

Q Were you questioned there? A Yes.

Q By whom? A By both Mr. Villani and Captain Sebold.

Q And by Mr. Villani, you refer to the counsel for Puciarello? A That is right.
30

Q And he questioned you at police headquarters? A Yes.

Q Now, were you up to Seidman's office when Rothenberg and Silzer came up there? A I was not.

Q Now, when you first saw Detectives Silzer and Rothenberg, what did they say to you, if anything? A To come down to police headquarters.

Q Did they tell you you were under arrest? A
40 Yes.

Gustave S. Fischman, cross.

Q When they first saw you? A No—

Mr. Conlon: I do not think this makes any difference.

The Court: No.

Q When you got down to police headquarters was Dorothy Miller there? A She was. 10

Q Was she also under arrest? A We were all in the one room.

The Court: How can he tell if a person was under arrest?

Q When you were at police headquarters was anyone placed under arrest while you were there? A I could not say. We were all in that one room. She was there and Mr. Puciarello was there when I got there. 20

Cross examination by Mr. Conlon.

Q How long had you had your office at 164 Market street? A Since about April.

Q And were you in any other business there beside constable? A Well, a musician as a side line. I played occasionally.

Q Had you had any steady position in the end of May of this year? A Well, as I said, as a musician. 30

Mr. Burrell: I object to these questions. They are now trying to prove he is something else than a constable.

The Court: Allowed.

Q (Question read.) A Nothing outside of constable. 40

Gustave S. Fischman, cross.

Q And did you employ anybody in your office? A Nobody but a stenographer.

Q You had a stenographer? A Yes.

Q Were you working out of any particular court of this county? A No.

10 Q You depended upon all of your business as constable from what business the lawyers would hand over to you? A No, sir, I did not.

Q What other business? A I belonged to the American Federation of Musicians.

Q I asked you about your being a constable. A Well, you asked me—you asked me whether I was getting all the work, and depending on that.

20 The Court: Now, stop. Just answer the questions.

Q Were you attached to any court of this county as a constable? A No.

The Court: I am not going to have this. You speak to the prosecutor in a respectful way.

The Witness: I will, your Honor.

30 Q Isn't it a fact that you got your business as constable from lawyers? A I do.

Q Practically all? A No.

Q What other source of business did you have? A Garage men, property owners.

Q And your income as constable was made up as fees from those individuals? A Part of it.

Q You have been a constable how long? A Five years.

40 Q How many arrests have you made in criminal cases in those five years? A I cannot recall. A few. Not amounting to much.

Gustave S. Fischman, cross.

Q More than ten? A I could not say that off-hand.

Q More than twenty? A I could not say.

Q More than fifty? A I could not say, but I did make arrests.

Q Would you say you made more than five?

A I could not give you any definite amount. 10

Q Would you say you made more than two?

A No.

Q You would not say you made more than two? A I could not give you any definite amount. I did make some arrests.

Q And you do not know whether it was more or less than ten? A No.

Q And you do not know whether it was more or less than five? A No.

Q And you do not know whether it was more or less than fifty? A No. 20

Mr. Burrell: The witness definitely said he cannot give a definite number of arrests.

The Court: Have you any objection to the question?

Mr. Burrell: Yes, sir.

The Court: Sustained.

Q This girl came to your office and told you her story? A She did. 30

Q And that time did you know what constituted the crime of rape? A I did not know.

Q What? A What do you mean? What she told me. I just listened to her story.

The Court: Will you not please listen to the question. He asked you if you knew at that time what constituted the crime of rape.

The Witness: No, I did not. 40

Gustave S. Fischman, cross.

Q You did not know what rape was? A No.

Q Did you have any idea what it was? A I had an idea what was going on, but I did not know what it was all about, but I was not interested in it.

10 Q What do you mean? A What she was telling me.

Mr. Burrell: I do not think the witness understands the question.

The Court: He does not need any instruction from you.

Q Did I understand you to say that you did not know what was the crime of rape? A Well, whether I did or not, it didn't interest me
20 at that time to take it into consideration.

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

The Court: Strike it out.

Q (Question read.) A No, sir.

Q You did not know what rape was? A No, sir.

Q You had no idea what rape was? A No.

30 Q You never heard of it? A I heard of it, but didn't know what it was.

Q And this girl came and told you her story? A Yes.

Q She told you that she had been living with this man? A Yes.

Q And that she had had intercourse with him? A Yes.

Q And he promised to marry her? A Yes.

Q And he had put her out in the street? A
40 Yes.

Gustave S. Fischman, cross.

Q And she had given him the earnings she got from the street? A Yes.

Q She told you all that? A Yes.

Q And then you sent her up to Seidman? A Yes.

Q Why didn't you send her to the police court? A I just happened to think of that. I did not send her for any purpose. 10

Q She told you she wanted Puciarello arrested? A Yes. I could not issue any warrant.

Q You knew the police court could issue a warrant? A Well, this was in the afternoon.

Q She said she wanted a warrant? A I said he would advise her if she wanted a warrant. She said she wanted to have him arrested. I said, "You go up and see Judge Seidman and he can tell you more than I can." 20

Q Well, when she said she wanted to have him arrested, why didn't you send her to the Police Court? A This was in the afternoon.

Q And that was the only reason? A Yes.

Q You have been in Police Headquarters? A Yes.

Q And there is usually one or more around there in the afternoon? A Not to take complaints.

Q So you sent her up to Seidman? A I did. 30

Q Had you ever made any arrests on Seidman's warrants before this day? A No.

Q And after you sent her up to Seidman, that was on a Friday? A I believe it was. I am not positively sure whether it was or not.

Q But at any rate, it was a couple of days later, Monday or so, Seidman called you up? A Yes.

Q And he asked you if you were busy? A Yes. 40

Gustave S. Fischman, cross.

Q And if you would execute a warrant? A Yes.

Q And then you went up there? A Yes.

Q Who did you see up there? A Mr. Seidman.

10 Q Anybody else? A His stenographer.

Q Was Dorothy Miller there? A She was not.

Q What did Seidman say to you? A He just gave me the information about the warrant and would I go and make the arrest.

Q Did he say anything that this was the girl that you had sent up? A He did not say anything at all. When I took the papers in my hand, I knew it was the girl I sent up.

20 Q Did you read the warrant then? A I did.

Q Did you know then that the charge was rape? A I did.

Q How did you know that? A By reading the warrant.

Q I thought you told me you did not know what rape was? A By reading the warrant and putting her story together, I knew what it was.

30 Q How did you know she mentioned about rape? A She did not mention about rape. She said he was living with her and that he sent her out to get money and he ruined her and when I saw the charge of rape, I took it that was the charge.

Q How did you know by reason of the warrant, that the warrant set forth the charge of rape, when you didn't know what rape was? A At that time I did not know it.

Q And how did you know the warrant constituted rape? A I figured it out.

40 Q The word rape is not used in this warrant? A No.

Gustave S. Fischman, cross.

Q And he was charged with "feloniously and forcibly make an assault upon the body of Dorothy Miller, and her, the said Dorothy Miller, against her will, did then and there feloniously ravish and carnally know." You understood what those words meant? A I do not.

Q You do not understand now what they mean? A No. 10

Q But you do know now that this was a warrant for rape? A Yes.

Q Tell me again how you knew it was a warrant for rape? A I answered that before.

Q Answer it again.

Mr. Burrell: I object.

The Court: Answer the question.

20

A Upon the testimony she gave me.

Q Oh, then, from the story the girl told you?

A That is right. That was my best conception of rape.

Q It was not from reading the warrant that you decided it was a rape charge? A No. I figured what she told me she must have told Seidman.

Q You did read the warrant? A Yes.

Q And was it your understanding the warrant set forth the same facts the girl told you? A Possibly. 30

Q Possibly is not an answer to my question. Was it or wasn't it? A Well, I cannot remember.

Q Well, she did tell you—

Mr. Burrell: I object. I think the best way to have the witness answer—

The Court: What is your objection?

40

Gustave S. Fischman, cross.

Mr. Burrell: Just this. The prosecutor holds the warrant in his hand and he is asking for a conclusion.

The Court: Objection overruled.

Counsel for the defendant Fischman prays an exception to this ruling of the Court.

10

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

Q You knew this girl had been living with the man? A She told me that.

Q And she told you that she had willingly been having intercourse with him? A She did not say whether it was willingly or not, but she said she was having intercourse with him.

20

Q And she was living with him? A I do not know whether she was living with him.

Q And you knew that this warrant charged three or four months before she charged Puciarrello aforesaid of having intercourse with her? A She told me that.

Q Well, at any rate, leaving this warrant aside, you knew it was a warrant for rape? A I knew it was a warrant for his arrest.

30

Q I asked you whether you did not know it was a warrant for rape? A I did not.

Q When did you first find out it was a warrant for rape? A When he gave me that warrant. I do not know on what it was based, but I based it on the story she told me, whatever it was, whether it was carnal abuse or rape.

Q You can understand my questions? A I am trying to answer them.

40

Gustave S. Fischman, cross.

Q You say you did not know when Seidman handed you this warrant it was a warrant for rape? A That is right.

Q When did you first find out it was a warrant for rape? A By reading it.

Q So it was after you read it that you first knew it was a warrant for rape? A I did not know whether it was a warrant for rape. I was taking the contents of the warrant. 10

Q When did you first make up your mind it was a warrant for rape? A May I see that warrant?

The Court: No. He did not ask you that.

Q (Question read.) A Well, the first time I mentioned— 20

The Court: He did not ask you that. Listen to the question and answer it. He asked you a definite question when did you first make up your mind that this was a warrant for rape.

The Witness: When I arrested Mr. Puciarello.

Q Then you told him that he was charged with rape? A That is right. 30

Q And just at that time you made up your mind it was for rape? A Yes.

Q You did not know before that time what he was being arrested for? A Well, I kind of thought that it was, but I was not sure.

Q Seidman did not tell you? A No.

Q And on your way up to Seidman's office, you told Puciarello he was charged with rape and you had him under arrest? A Yes. 40

Gustave S. Fischman, cross.

Q And then the question of bail came up? A
Yes

Q And you told him the bail was \$5,000? A
I didn't

Q What did you tell him? A He asked me
if they were going to hold him I said, "Has
10 your father property?" And he said, "Yes." I
said, "If your father does hold property, you
can get out on your father's property." I said,
"That will save you getting a bondsman."

Q Then you said something about the bonds-
man charging all kinds of money? A I said it
saves you from getting a bondsman, they charge
you ten per cent., and all different prices.

Q How do you know? A Well, I have a lot
of friends getting into trouble and I have a friend
20 in the bonding business.

Q When you went up to Seidman's office, did
you make any return on the warrant? A I did
not at that time.

Q I didn't ask you that. I asked you if you
did. A I did not.

Q You left the warrant with Seidman? A
Yes, I left it on his desk there.

Q And the warrant was there in his office so
far as you know until the next day? A Yes.

Q Did you ever make any return on the war-
rant? A No, sir.

Q You know that was your duty as a con-
stable? A I did, but I didn't do it.

Q Why didn't you do it? A I forgot about
it, and when I thought of it the next morning
the police had it.

Q Was anything said by Seidman of who was
going to pay you for making a trip down to make
the arrest? A Not at the time.

Q Was anything said by Seidman at any time?
40 A No.

Gustave S. Fischman, cross.

Q Nothing at all? A No.

Q But when he handed you the warrant you took it and there was no discussion who was going to pay it? A Well, I would hold him for my fees.

Q Had he ever paid you before? A No, sir. I never done any work for him.

10

Q Why would you hold him? A Well, I always bill the man who employs me.

Q So your idea was to send Seidman a bill? A That is right.

Q And your idea was that was the way these fees were collected? A No, I knew he got them from the State.

Q From the County? A From the County, rather. Excuse me.

Q And you knew there was paid him a fee by the County? A That is right.

20

Q Did you ever make out an itemized bill? A I didn't have a chance.

Q You didn't up to the day you were arrested? A No.

Q You did not do it the next day? A No.

Q Why not? A They locked me up.

Q What time were you locked up? A Eleven o'clock in the morning. I think it was around eleven. Somewhere around noon. I am pretty sure of that.

30

Q How long have you known Seidman? A Well, I have known him a long while, but I never had much to say to him.

Q You say you never made an arrest for him before? A No, I didn't.

Q Did you ever do any constable business for him before? A No.

Q What other justices of the peace did you call up before you called Seidman up? A Jack Frish.

40

Gustave S. Fischman, cross.

Q Anybody else? A No. That is all at that time.

Q So before you called Seidman you called one justice of the peace up? A Yes.

Q You testified on your direct examination you called up several justices of the peace? A
10 By several I mean them two.

Q By several you mean that one? A I called him and called Seidman.

Q Had you ever made any arrest for Frish before? A No.

Q Then there was nothing said by anyone to you about your getting any money? A No.

Q Puciarello did not offer to tip you for your trouble? A No.

Q And the girl did not offer to give you any
20 money for your trouble? A No.

Q Your idea was this matter was settled? A That is right.

Q In other words, everything was off? A That is right.

Q The warrant was not going to be returned? A The warrant was returned to the justice of the peace.

Q With your return on it? A Well, I was going to do that the next day.

Q You intended at the time to make a re-
30 turn on the warrant? A That is right.

Q And then deliver that to the justice of the peace? A He already had it.

Q Then what did you think was going to happen to it?

Mr. Burrell: I object.

A I did not know what was going to happen.

40 The Court: Overruled.

Gustave S. Fischman, cross.

Counsel for the defendant Fischman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

10

Q What did you think was going to happen to it then? A I don't know. It didn't concern me.

Q Seidman was a friend of yours, you gave him the business? A Sure I did give him the business.

Q And you had no thought of what happened to that complaint and warrant after you left it at Seidman's office? A I didn't.

Q You knew it eventually had to come to the prosecutor's office? A I did not know that.

20

Q And you have been a constable how long? A Five years.

Cross examination by Mr. Kraemer.

Q Did you get a telephone call from Dorothy Miller and say you would advance her \$25 for the purpose of paying \$50 to the justice of the peace? A I didn't.

30

Q Was there any telephone call made by Dorothy Miller from the office of Seidman, the justice of the peace? A No.

Q Did you tell Puciarello you wanted \$10 for your paper fees or paper service? A I did not.

Q At the time you brought it in to the justice of the peace? A No.

Q Did you accept \$10 and then return it to him? A No.

40

Gustave S. Fischman, re-direct—re-cross.

Q Mr. Puciarello has testified after you returned his \$10 you again told him you wanted \$10 for your paper work, for your fees.

10 Mr. Conlon: I object to this, the witness has testified to all of this on direct examination.

The Court: Well, I do not recall, but he has said that he did not accept the \$10.

Mr. Kraemer: Well, I am calling his attention to the particular thing so if it is so he can say so.

The Court: All right. Go ahead.

20 Q Mr. Puciarello said after you returned the \$10 you again asked him for \$10 and he gave it to you and that at that time Mr. Seidman, Miss Dorothy Miller, you and he were present, in the room together, is that so or not? A No, it is not so.

Re-direct examination by Mr. Burrell.

Q Your work as a constable, is it largely of a civil or criminal nature? A Civil.

30 Q You are not ordinarily compelled to serve, or you did not ordinarily serve criminal warrants or have anything to do with criminal cases, had you? A No.

Re-cross examination by Mr. Conlon.

Q When you say civil, what do you mean? A Well, civil suits.

Q Do you serve any papers in civil suits? A I do.

40 Q For whom? A Different lawyers.

Gustave S. Fischman, re-cross.

Q Do you serve any district court summons?
A I do.

Q For whom? A For lawyers.

Q You do not get any of that work from the court? A Except when the attorney apprehends the car.

Q And your other work is going out and seizing automobiles under conditional bills of sale? A A good part of it. 10

Q Do you remember when you were taken down to headquarters? I mean do you remember being taken down? A June 4th, yes.

Q And do you remember talking to Rothenberg and Silzer? A Yes.

Q And do you remember them asking you, telling you why you were being taken down there? A No.

Q You do not remember them telling you? A No. 20

Q Isn't it a fact that they told you why you were being brought down there and they asked you if it was true and you refused to make any statement? A No, sir.

The Court: You say being told what you were being brought there for.

Mr. Conlon: I better reframe the question. 30

Q Isn't it a fact when Rothenberg and Silzer brought you down to headquarters they told you that a complaint had been made against you for extortion, taking money which you were not entitled to as a constable? A No.

Q And they asked you for an explanation as to what you had done and that you then told them you would not say anything, isn't that the fact? A No. 40

Gustave S. Fischman, re-direct.

Re-direct examination by Mr. Burrell.

Q Did you have any conversation with Rothenberg or Silzer at headquarters? A No.

Q Did you have any conversation at headquarters with Captain Sebold? A I did.

10 Q Did the conversation which Mr. Conlon related as taking place between Rothenberg and Silzer, did that take place between you and Sebold? A I don't understand.

Q Did what he said you said to Rothenberg and Silzer, did you say that to Captain Sebold? A Captain Sebold asked me a question and I answered his question. That is all.

Q What is that? A Anything Captain Sebold asked me, I answered his question.

20 Q Did you make any statement to Mr. Villani that you refused to tell him anything? A No.

Q Will you tell us just what was said between you, Rothenberg and Silzer?

Mr. Conlon: I object.

30 The Court: Just a definite question. That does not open the door for everything that was said. He is limited to proving he did not say it. The whole conversation is not permissible on cross examination. Objection sustained. Not proper re-direct examination.

Counsel for defendant Fischman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

40 (The witness retires.)

Abraham Seidman, direct.

Mr. Burrell: I would like to recall the defendant Fischman.

Mr. Conlon: I object. He cannot reopen his case.

The Court: He is not reopening his case. If you object to it, I will not allow it.

10

ABRAHAM SEIDMAN, defendant, sworn in his own behalf.

Direct examination by Mr. Kraemer.

Q Where do you live? A 12 Welland avenue, Irvington.

Q And how long have you lived there? A Oh, nearly a year; over a year, I guess. 20

Q And prior to that, where did you live? A Oh, I lived at—

Q I mean, what municipality? A Newark.

Q All your lifetime? A Yes.

Q Now, you are a Justice of the Peace? A Yes.

Q Elected from Irvington? A Yes.

Q And prior to that had you been a Justice of the Peace? A Yes.

Q For how long? A For five years. 30

Q Elected from where? A Newark.

Q Where did you conduct your office? A At present?

Q Yes. A 215 Court street, Newark, New Jersey.

Q And where did you conduct your office before that? A 126 Howard street.

Q How long have you had your office there? Well, you had your office there at the time of these occurrences? A Yes. 40

Abraham Seidman, direct.

Q Now, in addition to your office as Justice of the Peace, did you have any other business?

A Yes.

Q What was that? A My main business, I am connected as secretary of the New Jersey Land Owners' Protective Association.

10 Q That is a land owners' organization? A Yes.

Q And is that your main business? A Yes.

Q Now, do you have any business connection with Mr. Fischman, the constable? A Yes, I called him up and gave him a warrant to be served.

Q I am asking you what business connection. A No, I have never had any other business connection.

20 Q Now, do you know this Miss Dorothy Miller sitting here? A Yes.

Q And did you know her before the day she came to you to make a complaint? A No, sir.

Q Had you received any notice that she was coming to you for the purpose of making any complaint? A No.

30 Q Did Mr. Fischman call you up and say he was sending somebody there to make a complaint? A I think my girl told me that some constable was sending somebody up, but I was not sure.

Q Now, she came up after that? A Yes.

Q And will you tell the Court and jury as closely as you can, what she said to you? A This was in the neighborhood of between 1:30 and two o'clock when a young lady dressed in black entirely, even her hat, came into my place and said to me, "I have some trouble." I said, "What is it?" So she explained to me the case.

40

Abraham Seidman, direct.

Q I do not know what she explained to you.
A She told me that some time, I think it was February in the year of 1929, that she was raped by a certain party by the name of Puciar-ello. She said she knew him for about two years, she was keeping company with him and in February, 1929, she was out on a party with him and they got liquored up and he says, "Well, we might as well live together; I cannot marry you now because my mother just died—oh, no, my mother was very sick, I cannot marry you, because if I do marry you I might lose my interest in the property, because my mother would object to my marrying outside of my own nationality." He took her up to West Kinney street, where the crime was committed, and rented an apartment, and that night in February—I do not exactly remember the date, but he took her in that apartment and they were liquored up and he ferociously assaulted her and raped her and the next morning when she got up she said, "Frank, what did you do?" He said, "Well, it is all right, I am going to marry you, but I cannot do it at present, because my mother is very sick." I think she said his mother had a cancer. She said, "You know I cannot go on this way, because my people have disowned me, they will have nothing to do with me, and you have ruined my life," and she said she was living with him a few months until she made the complaint and all of a sudden he stopped coming to the apartment and she asked him, "Why ain't you coming up no more," and he said, "Well, they are suspicious of me home," and then she found out he was keeping company with another girl and when she said that, he said, "What of it?" So he—in other words, she said to me, "Now, what could I do in this case?"

10

20

30

40

Abraham Seidman, direct.

I said, "Well, there is different things for you to do, you can do different things, if you want to sue him civilly, you can sue him civilly," and she asked me, "Have I got a criminal action?" and I said, "I think you have." Immediately I looked at my form book *Honeyman on Justices*,
10 1924 Edition, which I have in my office, and it says that if a man rapes a woman without her consent, if he forces her, abuses her, it is called rape, and I made the form out according to the complaint.

The Court: Did you have to look in *Honeyman* to find that out?

The Witness: Yes.

The Court: You did not know it before?

20 The Witness: No, sir; I did not. I never had a rape charge before me.

Q Did you have her sign it? A I certainly did.

Q Did you read it to her? A I read it to her. First, before that had happened, I took out my forms—Shurt's forms, and I got out the typewriter machine, as the girl was not there, and I drew up the complaint, and after I drew up the complaint I read it to her and I gave it
30 to her and I had her stand up and I had a Bible and I swore her in and I asked her if it was the truth, and she swore it was the truth, so help me God.

Q And did you tell us everything that she told you when she came up there on that occasion? A Well, she told me what happened, how he ruined her life.

40 Q Did you tell us everything? A Practically everything.

Abraham Seidman, direct.

Q Now, who was present in the place at that time? A During the time there was more than a half a dozen people present in and out. I had to stop while I was typewriting the complaint, asking me about tenancy cases, what happened, if I collected any rent of different members of the Land Owners' Company, and there was two gentlemen there for the last two hours, one gentleman was waiting for a tenant to bring in rent on a distress warrant, and another gentleman was an electrician who came into the office, he had desk room, he had his name on the window, and he was coming in and asking about certain jobs, and I told him someone was going to come in and "see you in the neighborhood of 12:30."

10

Q Did she give you anything for taking the complaint? A No, she did not.

20

Q She has testified that in effect you asked her for \$50 and she only had \$25, and then you called up Mr. Fischman, the constable, on the wire and had a conversation with him in Yiddish, after which she told you that Mr. Fischman had told her that he would advance the other \$25 for your fees, is that so? A No, it is not so.

Q Was there any conversation between you and Mr. Fischman on the telephone on that occasion? A No.

30

Q Was there any conversation between Mr. Fischman and her on that occasion? A No, sir.

Q After the complaint was taken what did you do? A After the complaint was taken, about three o'clock I called up Mr. Fischman's office and asked Mr. Fischman, and the girl in his office asked me to hold the wire, please; about two minutes he came to the wire and I said, "Fischman, I have a warrant for you to serve and it

40

Abraham Seidman, direct.

has got to be served before 5:30," so he said, "I will be up there." I said, "What time will you be up here, because I have to go out?" And he said, "I will be up there four o'clock," and I waited and four o'clock Mr. Fischman came in with another gentleman, and I do not know who he was; I said, "Mr. Fischman, here is a warrant for you to serve, and it has got to be served no later than 5:30, because then the party leaves his employment at that time," and that was all there was to the matter at that time.

10 Q And at 5:50 did Mr. Fischman bring in this gentleman? A I was not there.

Q You just answer questions correctly. When did you come back to the office after that? A It was a few minutes before six.

20 Q And whom did you find there? A I found there was a few clients of mine there and Mr. Fischman was there, and Miss Miller was there and Mr. Frank Puciarello—I have his name down there—and another gentleman was there.

Q Now, what did you do in connection with these two people? A I said to them, "Pardon me, I am busy now, I have some people to take care of," and I took care of them, and after I took care of them, I immediately went into my office, which is a half partition six or six and a half foot partition, right in the wall, which is partitioned off, so in case you want to talk to somebody—

30 Q What happened? A I got the complaint out of my files and I asked Fischman, "Where is your warrant?" He gave me the warrant and I asked Mr. Puciarello, I asked him, I said, "You know you are held under a serious offense, and have you an attorney, do you want me to give you a hearing, or do you want me to adjourn the case?" So he said to me he would

40

Abraham Seidman, direct.

like to get ahold of his attorney. I sent Fischman in the room right adjoining the private office, which you may call, and he looked up the telephone book there and called Villani, I think the name was, and nobody answered. This gentleman here (indicating). I did not know him then, but I guess that is who he meant. 10

Q What happened after that? A He could not get him, so I said, "Well, I have got to send you to the Newark Street Jail either way, either I have a hearing or not." I said, "I cannot hold you for bail, because I looked up Honeyman on Justices right there and it says only certain crimes a justice of the peace is allowed to hold for bail," and so he started to cry, and Miss Miller started to cry and he said, "I have been working for years with the People's Express, and born in Newark and got my car and my mother just died and give me a chance until tomorrow to have a hearing." I said I would be glad to do that and I adjourned the case until four o'clock the next day without bail. 20

Q You mean you let him go without fixing bail? A Yes.

Q Now, did you have any conversation with Miss Miller at that time or with Mr. Puciarello in which you advised them to fix up their differences and that he should pay \$50 a week as alimony for this young lady? A I did not say anything of the kind, because I left them there in the office and I was taking care of some of my clients. 30

Q Did you hear Mr. Fischman ask Mr. Puciarello for \$10 for his services in connection with his papers? A I did not hear of any money mentioned.

Q Did you see Mr. Puciarello pay Mr. Fischman \$10? A I did not. 40

Abraham Seidman, direct.

Q Mr. Puciarello said he was asked for \$10 by Mr. Fischman for his papers and he gave him \$10 as he was leaving the small room? A No.

10 Q And then he again asked for \$10 as you were leaving the room, and Miss Miller had her back turned to the both of you. Did that occur there in your office? A No.

Q Now, did they show up the next afternoon at four o'clock? A Yes. That is the time the hearing was fixed. It was adjourned until four o'clock and then around noon when there were two detectives come in from headquarters into my office, Mr. Rothenberg, who I had known close to thirty years as a neighbor came in with another gentleman.

20 Q Well they took the complaint and warrant? A The other gentleman, which Mr. Rothenberg introduced me—

Mr. Conlon: I object to any conversations he is going to testify to with the police officers.

The Court: Not binding on the State, sustained.

30 Counsel for the defendant Seidman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

The Court: If there is anything he said at that time that he can deny, then ask him.

Mr. Kraemer: No, sir. I want him to explain what happened.

40

Abraham Seidman, cross.

The Court: Well, there is nothing there that will injure the defendant. Why do we want to rehash it?

Mr. Kraemer: If your Honor thinks it is unimportant, I will withdraw it.

Q Well, did you see Dorothy Miller after this when you let Mr. Puciarello go until the next day? A I seen him down in Headquarters. 10

Q Did she ever promise to give you any part of \$50? A No, she didn't.

Q Did Puciarello ever promise to give you any part of \$50? A No.

Q Was there ever any statement made by Puciarello that he was going to give you \$50, or by her? A No, sir.

20

Cross examination by Mr. Conlon.

Q How many times were you elected justice of the peace? A Twice.

Q Did you ever have anybody run against you?

Mr. Kraemer: I object to that.

The Court: Sustained.

30

Q Did you know what rape was in May of this year? A Sir?

Q Did you know what rape was in May of this year? A Did I know what rape was?

Q Please do not repeat the question. A Yes, I did.

Q You knew the acts that constituted rape? A Certainly. I have been on juries before.

Q And this girl came into your office and told you this story? A Yes.

40

Abraham Seidman, cross.

Q Did she tell you that she had been living with this man? A Since he raped her?

Q And did she tell you that he had had her out in the street? A I do not think she said that to me.

10 Q You are sure? A No, sir; I am not sure about that.

Q And she told you that he had her on a party, is that right—I will withdraw that. She told you that she had known him about two years? A Yes.

Q And that on a certain day they were on a party together? A Similar to that.

Q Do you remember the date of that party? A I do not.

20 Q Did she tell you the date? A It is in the complaint.

Q Yes, but did she tell you that specific date? A Yes.

Q Did you ask her how she remembered that specific date? A I did. She said, "I remember that date, the day we rented the apartment."

Q And after this party they were on, they had been drinking, they were drinking and rented a room in West Kinney street? A Apartment.

30 Q And that they had lived there from February on until a few days before she saw you? A I think so.

Q And then she asked your advice as to what she should do? A She did not ask me no advice at all. She came in and she wants a warrant issued.

Q Didn't you testify on your direct examination that she asked you what she could do and you told her that there were several things she could do? A I did, yes.

40 Q Then she did ask advice? A Well, she asked me if I could take a warrant. I said

Abraham Seidman, cross.

there were two things for to be done. I said if she wanted to sue him civilly, she could do it, and she said no, she wanted him arrested criminally.

Q Well, she did not ask your advice about that? A No.

Q Well, she asked you what she could do and you told her she could do one of two things, is that right? A Yes. 10

Q And then you looked in Honeyman? A Yes.

Q Into the form book? A Yes.

Q And after looking at the book you decided that this girl had been raped? A No, I decided rape was the correct charge.

Q Had you ever taken a rape charge before during your duties as justice of the peace? A No, sir, I had not. 20

Q Why didn't you report this matter to the police?

Mr. Kraemer: I object. The statute requires he should send this to the prosecutor's office and not to the police.

Mr. Conlon: I will withdraw it.

Q Why didn't you report the case to the police when she told you her story so the police could investigate it? 30

Mr. Kraemer: I object on the ground the statute requires the justice to take a complaint and report it to the prosecutor within fifteen days after.

The Court: Well, he can give his reason if he likes. I will allow that question.

Counsel for the defendant Seidman prays an exception to this ruling of the Court. 40

Abraham Seidman, cross.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

10 A I don't have to. My superior officer is the prosecutor.

Q Is that the only reason you did not? A Yes.

Q How many complaints have you forwarded to the prosecutor? A Oh, more than half a dozen.

Q In how long? A Well, in about four or five months.

20 Q Before that did you ever send any? A No, sir. I had no jurisdiction. I had to send them to the nearest police court.

Q And you consider the prosecutor's office your superior office? A Yes.

Q And your superior? A Yes.

Q And was it a fact that you had instructions not to take any criminal complaints?

Mr. Kraemer: I object to that. Nobody can give him any instructions except the State of New Jersey.

30 The Court: Well, I will allow that question.

Counsel for the defendant Seidman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

40 Q Isn't that a fact? A I never heard of any.

Abraham Seidman, cross.

Q You never heard of any such instructions?

A No, sir.

The Court: You mean from the prosecutor?

Mr. Conlon: Yes, sir.

The Witness: No.

10

Q And you did not consult the prosecutor's office about this complaint? A I did not.

Q You knew this case would have to go to trial some day? A I did.

Q Who did you think was going to prepare the case for trial? A The prosecutor's office.

Q And they could prepare it when it came up for trial? A Yes.

Q Now, do you keep a docket? A I do.

20

Q Is this case entered in your docket? A It had no time to be entered into the docket.

Q Will you answer the question? Is this case entered in your docket? A No, it is not.

Q You know how your fees are collected in these cases? A By the County.

Q From the County by you? A Yes.

Q And you knew you were liable to pay Fischman for making the arrest? A Yes, and I collect it from the County.

30

Q And you knew that in order for your fees to be paid that the complaint and warrant would have to go through the regular course of business? A Yes.

Q You knew you had no legal right to do anything with this complaint and warrant after it was issued except return it to the prosecutor's office? A Yes.

Q And what did you suppose was going to happen to this case?

40

Abraham Seidman, cross.

Mr. Kraemer: I object.

The Court: I will allow it.

Counsel for the defendant Seidman prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

10

DALLAS FLANNAGAN,
Judge.

A I was going to send the case up after the hearing to the prosecutor's office.

Q Oh, you were going to have the hearing the next day? A Positively.

Q You knew you had no right in a rape charge to allow a defendant to go without bail? A I did not.

20

Q You did not know that? A No.

Q Didn't you just say you looked it up in Honeyman? A I am not allowed to put bail on them.

Q But he could go without bail? A Well, he had a good job and was a Newark man.

Q Well, you knew you could not set any bail on him? A I did.

30 Q You knew once he was arrested under your warrant that the only one who could set bail on him was the prosecutor's office? A Yes.

Q And in spite of that fact you let him walk out of your office without any bail?

Mr. Kraemer: Well, I do not see if there is anything wrong about that.

The Court: Well, you can argue that to the jury.

40 Mr. Kraemer: I ask your Honor to rule on it.

Abraham Seidman, cross.

The Court: Well, the questions are all answered. There is nothing before the Court. Proceed.

Q Why did you tell Fischman that that warrant had to be executed before 5:30? A Why did I tell him that? 10

Q Yes. A I asked the girl if she knew where we could get this party, Dorothy Miller, and she told me he worked until 5:30.

Q Why did you tell Fischman that this man had to be brought in before 5:30? A I said the only time we could get the man is before 5:30. That is what I told him and I said I have the address, which I think I marked down on the warrant, where he was employed.

Q There was not any intimation this man might run away? A I do not know that. 20

Q You know what intimation means? A No.

Q Was there any suggestion by the girl, or did you make any suggestion this man might run away? A No.

Q Why wasn't he arrested the next morning? A I don't know.

Q But you did tell Fischman that he had to be arrested before 5:30? A I did not tell him that day. I said the only time he could be picked up would be before 5:30 at that place where he was employed. 30

Q You mean before 5:30—you mean at 5:30? A Yes.

Q Well, couldn't Fischman go into the place where he worked and arrest him? A I don't know.

Q You knew the prosecutor's office closed at four o'clock? A Yes. 40

Abraham Seidman, cross.

Q And you knew that if this man was arrested after four o'clock nobody could set bail for him? A After he was arrested?

Q Will you answer that question? A After he was arrested.

Q Read the question please. (Question read.)

10 A I only knew that after I looked up the law after the man was brought in with reference to bail.

Q You did not know that until after he was brought in? A No, not about the bail.

(Recess for one hour.)

AFTER RECESS.

20

Cross examination (continued) by Mr. Conlon.

Q When Miss Miller, Dorothy, was there early in the afternoon and signed the complaint, you told her to come back, did you? A Yes, I did.

Q Why? A Because I figured they would have the prisoner in at the time.

30 Q What of that? A Well, she was the complainant in the case.

Q Well, why did you want her there when the prisoner was brought in? A Well, she was the complainant in the case. I have got to swear her again and have a hearing on the case.

Q Oh, you proposed to have a hearing? A Positively.

Q At half-past five? A Yes.

40 Q Why did you want to have a hearing at half-past five on that day? A Well, before I commit him to jail I either give him a hearing

Harry Timiski, direct.

or send him to jail awaiting a hearing or hold him for the grand jury.

Q And in either case, or any case, you had to commit him to bail? A Yes.

Q What was your purpose in intending to hold a hearing at half-past five in the afternoon? A I have heard cases later than that. 10

Q Did you have any hearing? A No.

HARRY TIMINSKI, sworn in behalf of the defendant Seidman.

Direct examination by Mr. Kraemer.

Q Your business is what? A I am a retired man. I have neuritis and my children are helping me out. 20

Q Are you a member of this Land Owners' Association that Mr. Seidman is secretary of? A Yes.

Q And do you recall this young lady sitting there in the second seat? A Yes.

Q Where did you see her? A In Seidman's office.

Q And do you recall when that was? A That was after one o'clock; between one and two. 30

Q How long ago? A I could not tell. That is a few months.

Q Now, where were you in the room when you saw her? A I was sitting in the office, and I was waiting for Mr. Seidman.

Q When you say you were sitting in the office, what office were you referring to? A In the office of Seidman.

Q And did Mr. Seidman come in? A Yes. 40

Harry Timiski, direct.

Q And did you hear any conversation between him and this young lady? A Seidman came in after she came in and she started to tell him something she wants to get arrested a fellow. She wants to make arrest of a fellow that did not do right—of course, she told him different things.

10 Q What did Seidman do? A Of course, what she told him, he made a bond and she swore to the bond and she signed the bond.

Q Did you see her pay Mr. Seidman any money? A No, sir.

Q Where were you sitting all of this time? A Maybe four or five feet from the two of them.

Q You were there all the time she was there?

A Yes.

20 Q If she had given Mr. Seidman \$25, could you have seen it?

Mr. Conlon: I object.

The Court: Sustained.

Q Was there anything there to prevent you from seeing what was going on?

30 Mr. Conlon: I object.

The Court: Sustained.

A I see everything.

Counsel for the defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

Judge.

Harry Timiski, cross.

Q Tell me again how far you were away from this young lady and Mr. Seidman? A About three to four; not more; maybe less.

Q Did she at any time telephone to anybody? A No.

Q Did you see Mr. Seidman telephone to anybody? A No. 10

Q Did she say to Mr. Seidman she was to get \$25 from a constable to give him? A No.

Q Did you hear her mention anything about twenty-five dollars? A No.

Q Did you see \$25 passed from her to Mr. Seidman? A No.

Q Now, after she swore to this complaint, what happened? A She swore to the complaint and she was there maybe a few minutes and she went out. She went away. She left me. 20

Cross examination by Mr. Conlon.

Q How long have you known Seidman? A A few years.

Q He does the collection work for you? A Yes.

Q And he issues distress warrants and collects rents? A He collects rents for me.

Q Now, the girl was in the office when you came in? A No. I was before she came. 30

Q And then after she was there a while Seidman came? A Yes.

Q And Seidman and she went into the private office? A No.

Q They did not? A No.

Q Were they in the private office at all? A They did not went into the private office. There is another desk and she was telling everything, and he made a bond and then she signed, and he told her to swear. 40

Sidney Schwarz, direct.

Q Is there a private office there in Seidman's place? A There is a little private office in the back.

Q Is that where they were? A No.

Q Did they go in there at any time? A No.

10 Q They never went in the private office? A No. I only see them in the front.

Q What did you do? A I went in to collect for my money.

Q Were you reading the paper? A Sometime I read the Jewish paper.

Q You were not paying any attention to what she was doing? A Well, when she told him the story, I was surprised what she told him, because I have daughters.

20 Q And you say at no time they went in Seidman's private office? A No.

Re-direct examination by Mr. Kraemer.

Q Who else was there at the time? A There was an electrician. People comes in and goes out.

30 SIDNEY SCHWARZ, sworn in behalf of the defendant Seidman.

Direct examination by Mr. Kraemer.

Q Where do you live? A 12 Warren avenue, Irvington.

Q What is your business? A Electrical contractor.

Q Do you know Mr. Seidman? A I know him from the office.

40 Q Have you room in that office? A Yes.

Sidney Schwarz, direct.

Q And how long have you had your office there? A Nineteen months.

Q Now, do you know this young lady, Dorothy Miller? A Yes.

Q When did you first see her? A I seen her the hot month. I see her June. I do not know exactly the time. I should say June. 10

Q Where? A In Seidman's office.

Q Who was present at the time? A Several people were present at that time and Mr. Seidman was in the office.

Q Were you there when he come in? A Yes.

Q Who was there when she come in? A Several gentlemen. Mr. Timinski, I remember that.

Q Where was Seidman? A Behind the desk.

Q Was he there at the time the young lady come in? A Yes. 20

Q Where were you in the room? A At my desk.

Q How far away is that? A About four—four and a half feet.

Q Now, did you hear what was said between her and Mr. Seidman? A No.

Q Were you sitting in a position that you could hear? A Yes.

Q What did you see her do? A Seidman went over there and was talking to her and was typewriting and went back and later on she said something on the Bible, I do not know what. 30

Q And then what happened? A Then she went away.

Q Did you see her use the telephone? A No.

Q Did you see her pay Mr. Seidman \$25? A No. 40

Sidney Schwarz, cross.

Q Did you see her pay Mr. Seidman any money? A No.

Q Was there anything that prevented you from seeing this woman pay \$25 if she did pay \$25? A No.

10 Mr. Conlon: I object.

The Court: Sustained.

Q Nothing in the way between you and this young lady—did you see her go to the pocket-book? A No.

Q Did you see any money on Seidman's desk? A No, sir.

Q Did you see Seidman telephone to anybody? A No.

20 Q Did you see the young lady again after that? A No.

Cross examination by Mr. Conlon.

Q You say Seidman was there when this girl came in? A Seidman was there in the office when the girl came in.

Q Where were you? A At my desk.

Q Where is your desk? A On the right-hand side coming into the office.

30 Q Who else has a desk there? A There were four desks there. There was three desks in the office and one desk in the private office.

Q Where was Seidman when this young girl came in? A In the main office in the back. She was sitting in the back by the desk.

Q What was he doing? A When the girl came in?

Q Yes. A He was doing his business.

40 Q What? A Looking papers over and things like that.

Charles P. Gillen, direct—cross.

Q Was he talking to anybody? A No.

Q Did you see Mr. Timinski there? A No.
He was sitting on a chair there.

Q Timinski and Seidman were there before
the girl came in? A Yes.

Q And how far were you from the girl and
Seidman when they were talking? A They aver- 10
age about four and a half feet. The whole office
is about ten feet.

Q And how far was Timinski from them? A
Between five and seven.

Q He was a little further from them than you
were? A Yes.

Q And you heard nothing that they said? A
No.

20

CHARLES P. GILLEN sworn in behalf of the
defendant Seidman.

Direct examination by Mr. Kraemer.

Q Do you know Mr. Seidman, the defendant
here? A I do.

Q How long have you known him? A Oh,
for a number of years; four or five years or 30
more.

Q And do you know his reputation in the
community? A Yes.

Q Do you know his reputation for being a
law-abiding citizen? A Yes.

Q What is his reputation? A Good.

Cross examination by Mr. Conlon.

Q Did you know him in 1925? A I believe
I did. I think I have known him more than five 40
years.

William Simon, direct.

Q Did you ever hear of his being arrested?

A No.

Q You never heard of him being arrested in March, 1925, with having indecent photographs in his possession? A Never.

10 Q Did you ever hear of his being arrested in November, 1928, for disorderly conduct? A No.

WILLIAM SIMON, sworn in behalf of the defendant Seidman.

Direct examination by Mr. Kraemer.

Q You are a member of the Bar of this State?

20 A I am.

Q Practicing how long? A Thirteen years.

Q Do you know Mr. Seidman, the defendant here? A I do.

Q Do you know what his reputation is in the community? A I do.

Q What is his reputation for being a law-abiding citizen?

Mr. Conlon: May I examine?

30 The Court: Yes.

By Mr. Conlon.

Q Where do you reside? A 809 South Tenth street, Newark.

Q Do you know where Seidman lives? A I do not.

Q Do you know where he lived at any previous time? A I believe I know him to have lived in Verona or Caldwell.

40 Q When? A A few years ago.

William Simon, direct.

Q Do you know any people who were his neighbors up there? A I do not.

Q And, of course, not knowing where he was living since, you do not know any of the neighbors now? A I do not.

Q You have had some professional dealings with him? A A few.

10

Q He has acted in his official capacity for you? A No, he has never acted in any capacity for me.

Q Your knowledge of him is solely from your professional connection? A Yes, and from his friends and people I know who know him.

Q His friends where? A About the City of Newark.

Q Are those friends lawyers? A No, I do not think so.

Q Do you know him personally? A I do, sir.

20

Q Well, is he a personal friend of yours? A Well, I had known him. He is an acquaintance of mine. His friendship is limited.

Mr. Conlon: I object to his qualifications.

The Court: He does not seem to be qualified. He does not know where he lives at the present time and he only had knowledge of his residence in Caldwell or Verona, and does not know his neighbors there.

30

Mr. Kraemer: He says he knows his friends in the City who know him.

The Court: Well, he does not have any knowledge. The test is in the neighborhood where he resides. If the witness was very intimately connected with him in business, I would allow him to testify, but inasmuch as he has little knowledge of the man from

40

William Simon, direct.

what he says and no knowledge of his associates in his home life and no knowledge of his residence, I will sustain the objection.

Counsel for the defendant Seidman prays an exception to this ruling of the Court.

10 Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Direct examination (continued) by Mr. Kraemer.

Q Do you know his reputation as a business man? A I do.

Q Where do you gather that from? A Well, from what I myself observed and what has come to me through my business connection with people who come in contact with him.

20

Q And do you know that he has been a justice of the peace for the last five years?

Mr. Conlon: I object to this. It is not his reputation as a business man.

The Court: No. Sustained.

Counsel for the defendant Seidman prays an exception to this ruling of the Court.

30 Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q I asked you whether you knew his reputation?

The Court: He said he did.

Q Now, I ask you, do you know what his reputation is?

40

Daniel Rothenberg, recalled in rebuttal, direct.

The Court: He said he did, and he was cross examined, but the Court came to the conclusion he did not.

Mr. Kraemer: I am now asking what the reputation is.

The Court: Oh, you already asked that.

Mr. Kraemer: No, sir. I have not gone that far. 10

The Court: Yes, and that is the reason he was cross examined.

DEFENDANTS REST.

DANIEL ROTHENBERG, recalled in behalf of the State in rebuttal.

20

Direct examination by Mr. Conlon.

Q After you arrested Seidman, you brought him to headquarters? A I did.

Q And who was with you? A Detective Silzer.

Q Did you tell him why you were taking him there? A I did.

Q Did you ask him for an explanation?

30

Mr. Kraemer: I object to that.

The Court: Well, he can answer this yes or no.

A I did.

Q And did he refuse to make any statement to you?

Mr. Kraemer: That question was asked Fischman not Seidman.

40

Daniel Rothenberg, recalled in rebuttal, direct.

The Court: I do not recall. I cannot say.

Mr. Conlon: I will confine my question to Fischman.

Q Did you ask Fischman about it? A I did.

10 Q And did you ask him to make an explanation of the case? A I did.

Mr. Kraemer: The prosecutor asked a series of questions relating to Seidman and has constantly switched to Fischman.

The Court: No, he is now talking about Fischman. Before he was talking about Seidman.

20 Q (Question read.) That you were complaining against? A Yes.

Mr. Burrell: I object.

The Court: He said he asked him a question.

Mr. Burrell: Nothing has been in the record prior to that time.

The Court: What do you want, that he specify what he did complain against?

30 Mr. Burrell: Specify when this happened and where this conversation took place.

The Court: Why, it occurred in police headquarters.

The Witness: Police headquarters, June 4, 1929.

Q And did he refuse to make any explanation? A He did.

Motion for direction of a verdict.

Cross examination by Mr. Kraemer.

Q When you said he, you mean who? A I was referring to Fischman, but I asked both.

TESTIMONY CLOSED.

10

Mr. Kraemer: I move all the testimony with respect to the cross examination of the witness Mayor Gillen as to whether or not he knew the defendant Seidman had been indicted for indecent pictures, arrested for disorderly conduct, be stricken out, as there is no proof of such arrest, if any.

The Court: I think your motion comes pretty late.

Mr. Kraemer: He has a right to ask him provided he can support it. 20

The Court: Could he prove that he had been arrested?

Mr. Kraemer: He had no right to ask the question.

The Court: Precisely. He had no right to ask the question and you had a right to object to it and you did not. What right has he to prove the arrest?

30

Mr. Kraemer: For the purpose of weakening Mr. Gillen's testimony. Where a man says, "I don't know these things," then that evidence is not very valuable if it is a fact.

The Court: Well, I do not think the question was admissible in the beginning and although you did not object to it, I will grant the motion to strike it out.

Mr. Kraemer: I renew my motion for the direction of a verdict. 40

Charge to Jury.

The Court: I will deny the motion and you may have an exception.

Let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

10

Mr. Burrell: I make a similar motion.

The Court: Yes.

Mr. Kraemer sums up for the defendant Seidman.

Mr. Burrell sums up for the defendant Fischman.

Mr. Conlon sums up for the State.

20

CHARGE TO JURY.

FLANNAGAN, J.

Gentlemen of the Jury: The Court is the sole judge of the law and has the right to express to the jury his comments and opinions on the facts, but such opinions on the facts do not bind the jury, who are the sole judges of the facts. The jury must follow their own recollection as to what the evidence is or is not where it fails to coincide with the expression of the Court or with the expressions of counsel.

30

The defendant is presumed to be innocent and unless the crime charged is proved against him beyond a reasonable doubt is entitled to an acquittal. The burden of so proving the defendant guilty rests upon the state and never shifts. That all applies, of course, to each of the defendants severally.

As I have already said to you, the case is to be decided upon the evidence, not such evidence

40

Charge to Jury.

as may have been excluded, but such evidence as under the rulings of the Court has been admitted for your consideration.

I referred a moment ago to reasonable doubt and I will define reasonable doubt to you within the meaning of the law. Reasonable doubt is not a mere possible doubt. If after an entire comparison and consideration of all the evidence you find you can say you feel an abiding conviction to a moral certainty of the truth of the charge, you are then satisfied beyond a reasonable doubt within the meaning of those words as they are used in the law. 10

These defendants come before you under a charge which has been made in the form of an indictment by the grand jury of our county. This indictment you will take with you into the jury room and you may read it there. The indictment is found under a statute of our State. That statute provides as follows: 20

“Any judge, magistrate, sheriff, coroner, constable, jailer or other officer as aforesaid, who shall receive or take, by color of his office, any fee or reward whatsoever not allowed by the laws of this state for doing his office, shall be guilty of a misdemeanor.”

In that connection I will read you another statute: “The following and no other fees shall be allowed to magistrates and constables in this State, in criminal cases, and no fees shall be demanded from parties applying to magistrates or constables for their services, but such fees shall be paid out of the funds of the county in which such services were rendered in the manner provided in the preceding section: 30

For drawing complaint and taking affidavit \$1.00. 40

Charge to Jury.

For issuing every warrant \$0.75.

For drawing commitment \$1.00.

For drawing every recognizance \$0.75.

For warrant to jailer to discharge prisoner \$0.75.

10 For issuing every subpoena \$0.25.

For taking examination in writing, when required by law, fee folio \$0.30.

For examination in a case where not required to be taken in writing \$2.00.

For swearing every witness \$0.25.

For making and certifying bill of items of costs in every case \$0.50.

20 For drawing, certifying and sending to the judge of the proper court a copy of complaint and commitment, in a case where a boy under sixteen years of age is charged with crime, and he is a fit subject to be sent to the State Reform School \$3.00.

In cases arising under the act relating to vice and immorality, magistrates and constables shall be entitled to the same fees as for like services in other chiminal cases."

30 Now, gentlemen, let me say to you that this case is a case of great importance. These people are officers of the law. If they have been corrupt in their conduct, if they have extorted money from these people, it is of the utmost importance that they be brought to justice. It must be apparent to you from your experience and from your knowledge that justices of the peace and constables for the most part deal with those persons in the walks of life who have a minimum of education and property and influence, as a general rule. In other words, they deal with people who need protection. The rich man can protect himself. The educated man can protect

40

Charge to Jury.

himself. The man of influence in the community can protect himself. But the poor and ignorant need the protection of the law and, as a rule, these people deal mostly with people of that class. Therefore, if corruption is existent it is highly important that it should be brought to light, and these people should be brought to justice if they are guilty. Of course, if they are not guilty it is highly important and equally highly important that they should be acquitted. 10

The prosecutor in behalf of the State of New Jersey makes certain contentions. Of course, you realize this is a case between the State of New Jersey and these defendants. This girl and this man are witnesses, but the issue lies between the State of New Jersey, as represented by the Prosecutor of the Pleas, and these defendants. 20

The State contends that these people were engaged in a common enterprise, each man using his office to further a common purpose of extortion. If these people were engaged in a common enterprise, if they did take this \$10 in the manner testified to by the State's witnesses, it is not necessary that they both must have been present at the same time when it was done. If this money was taken by Fischman and Seidman was there in the next room, present there, aiding and abetting, he was in legal contemplation a principal and he is just as guilty as the other one if they were acting in concert as the State contends they were. 30

We have gone quite some distance afield in the admission of testimony. Of course, the issue in this case is contained in the indictment. The charge is in the indictment and the pleas are not guilty. That makes the issue. There were conversations admitted where one defendant was 40

Charge to Jury.

present and the other was not. Acts were shown where one defendant was present and the other was not. The general rule is that where there is more than one defendant conversations and acts in the absence of one defendant are not binding and are not evidential as against the absent
10 defendant, but are only evidential as against the defendant there present. But in a case where the charge is extortion and the jury are satisfied beyond a reasonable doubt that the defendants were acting in concert by mutual understanding to extort money and that such acts and conversations are in execution of such concert and understanding, then the conversation and actions are evidential as against the absent defendant as well as the one present and participating.

20 You have heard this entire testimony. The State's witnesses testified to the making of a complaint and so forth. The State contends that this transaction was a common enterprise to entangle this young man, to put him in a position where he would have to pay—not have to pay once, but would pay continuously. As the State contends this transaction just recited here in evidence was merely a starter. According to the testimony of this girl she was told that other payments would follow, that this payment was not all,
30 but there were others to come. This was according to her testimony. She was given to understand that this was just a good beginning and this \$50 was just one \$50 and that others were coming later. Of course, you must judge where the truth lies, not me. The girl says that she told this justice of the peace and also she says she told the constable that she had not been raped, that she went with this man voluntarily, that he promised to marry her was the trouble
40 and that she had lived with him under the

Charge to Jury.

promise of marriage and then he had gone and gotten in with another girl and thrown her over. That is the story she said she told. And she says that they got up this complaint for rape and told her to sign it. For some reason or other the signature of the justice of the peace does not appear on this complaint. The form calls for it, "subscribed and sworn at Newark the 3rd day of June, 1929, before me, blank, Justice of the Peace," but we find no signature there. A warrant was issued against this man on a charge of rape and he was arrested on that charge. No return is made of the warrant. According to his testimony he was told that he would have to be under \$5,000 bail, but no bail was fixed, and the justice of the peace said he had no right to fix any bail and nevertheless he was let go without any bail. I do not know whom you are going to believe, or what you are going to find the facts to be, but that is your obligation. You are sworn officers under your oath just the same as I am, just as responsible, sworn to perform your duty, which is to consider this evidence and decide. Your office is temporary, but mine is for a longer period. It is for you to take all the evidence. The defendants say that this is purely a trumped up affair. The motive that they assign is that this girl wanted to save her own skin, as far as I recall the evidence, and as I have already told you, you are the judges and must follow your own recollection. There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication. Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and

10

20

30

40

Charge to Jury.

prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant. They say that this is purely a fabrication, that this girl came to them and told them that she had been raped. Friends a long time back, according to their own story, and thereupon, she having been raped, the justice felt it was his duty to make this complaint and he says he took this complaint and issued this warrant and he says that he never took a dollar, he never took any ten dollars. Both of them say they never took a dollar, never took any ten dollars, never saw any ten dollars, and as far as I know, no such subject of \$10 was ever mentioned, that it is a pure fabrication out of the whole cloth, according to their testimony. They say this is a fabrication or worked-up case by these people for the purpose of saving their own hides. You may regard all of the circumstances, the circumstances under which the arrests were made and everything else, and you may make up your minds whether that is correct, but be all that as it may, you will remember that it is for you to consider all of the testimony, not only such as the Court or counsel mentioned, but all of it, and it is for you to come to a decision. If you reach a conclusion that the defendant has been proven guilty beyond a reasonable doubt, it is your duty to so find him. Otherwise it is your duty to find the defendant not guilty, and, of course, that applies to each of these defendants. The evidence must be considered as to each defendant and there must be a verdict as to each defendant, guilty or not guilty, so I think that is plain. The evidence must be considered as to each defendant and you must bring in your verdict of guilty or not guilty as to each defendant. I will leave this

Exceptions to Charge.

case in your hands asking you for your careful consideration and trusting that your conclusion may be in accordance with the truth wherever the same may lie.

(The jury retires.)

Counsel for defendant Seidman excepts to that part of the Court's charge in which the Court said in substance that these people were engaged in a common enterprise if they did take ten dollars as testified to by the witnesses; if this money was taken by Fischman and if Seidman was in the next room he is a principal and just as guilty as if they acted in concert.

10

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

20

Counsel for defendant Seidman excepts to that part of the Court's charge in which in substance the Court charged if there were conversations at which one was present and the other not, acts were done at which one was present and the other not, but any acts of extortion where it is shown that the defendants acted in concert, the acts of one or the conversation not in the presence of the other bind the absent defendant.

30

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Counsel for defendant Seidman excepts to that part of the Court's charge wherein the Court stated that this man Puciarello was put in a position where he would have to pay money

40

Exceptions to Charge.

from time to time, according to the girl, this was just the beginning, and this was the first \$50 and others would follow.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

10 DALLAS FLANNAGAN,
Judge.

Counsel for defendant Seidman excepts to that part of the Court's charge in which the Court commented to the jury that for some reason or other there is no signature to the complaint and the form calls for it.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

20 DALLAS FLANNAGAN,
Judge.

Counsel for defendant Seidman excepts to that part of the Court's charge in which the Court said according to this testimony he was told \$5,000 bail was fixed and no bail was fixed and the justice of the peace said he had no right to fix bail.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

30 DALLAS FLANNAGAN,
Judge.

Counsel for defendant Seidman excepts to that part of the Court's charge where the Court said they were guilty of fornication, Puciarello and the lady, because our contention is there was a charge of rape.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

40 DALLAS FLANNAGAN,
Judge.

Exceptions to Charge.

Counsel for defendant Seidman excepts to that part of the Court's charge wherein the Court said, but I venture, I think the opinion, that when we mention the relative importance of prosecutions for fornication and prosecutions for extortion they are relatively uncomparred to prosecutions for extortions. 10

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Counsel for defendant Seidman excepts to that part of the Court's charge where the Court said there was no evidence that any charge was made against either of these two witnesses.

The Court: No charge was ever made? If I am wrong, I will correct that. 20

Mr. Kraemer: Of course, I know of no formal charge but the fact they were taken into custody is a fair inference.

The Court: I do not think so. The evidence is silent on the subject.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge. 30

Counsel for defendant Fischman prays exceptions to the Court's charge as stated by counsel for the defendant Seidman.

Exceptions allowed; let them be sealed and they are signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Exceptions to Charge.

Counsel for defendant Fischman excepts to that part of the Court's charge wherein the Court read to the jury the scale of fees allowed to justices of the peace and that the Court failed to read the scale of fees allowed to constables.

10 Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Counsel pray a general exception to the charge of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

20

30

40

Conclusions on motion in arrest of Judgment.

ESSEX COUNTY COURT OF GENERAL
QUARTER SESSIONS.

Thursday, November 14, 1929.

STATE OF NEW JERSEY,

vs.

GUSTAVE S. FISCHMAN and
ABRAHAM SEIDMAN,

*On Indict-
ment No. 36, 10
Sep. T. 1929
for Extortion.*

*On Motion in
Arrest of
Judgment.*

Before Hon. Dallas Flannagan, Judge.

Present, counsel as before stated.

(Counsel argue.)

20

The Court: The evidence in this case shows that defendant Seidman, a Justice of the Peace, and the defendant Fischman, a constable, conspired to extort money together, each acting by color of his respective office in concert with the other, and that they consummated such combination by extorting the sum of \$10, the same being paid to one of them with the consent and connivance of the other. The jury found, under the charge of the Court, that when this money was paid to one of these defendants it was due to a concert of action between the two of them. They had to so find in order to reach a conviction. Now, the defendants were indicted jointly for extortion and convicted. They claim that judgment should be arrested, because, they say, they are not subject to joint indictment.

30

It is contended that the offenses were separate, but the actions of the defendants seem to me from the evidence to have been joint and

40

Conclusions on motion in arrest of Judgment.

concerted from beginning to end and that their original, constant and common purpose was manifested. Their action was by common consent, common concert, by color of their respective offices, and their purpose was to extort money and that was their object, the \$10 which they did
10 extort being probably only a part of their proposed ultimate gain. Under these circumstances it seems to me obvious that separate indictments would only have tended to multiplicity and confusion and to two trials instead of one, on each of which substantially the same evidence would have been adduced. It is contended that there was no common offense which could be committed between this Justice of the Peace and this constable under their respective
20 offices, but I do not think that is necessary. It is manifest that these defendants could have accomplished nothing unless they had held official status. They used that status to extort money, acting in concert, and I feel that the motion should be denied.

Counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

30

DALLAS FLANNAGAN,
Judge.

40

*Certificate of Stenographer.*ESSEX COUNTY COURT OF GENERAL
QUARTER SESSIONS.

STATE OF NEW JERSEY,

*vs.*GUSTAVE S. FISCHMAN and
ABRAHAM SEIDMAN.*On Indict-
ment No. 36
Sep. T. 1929
for Extor-
tion.*

10

I, HAROLD T. COOK, an official stenographer of the Essex County Court of General Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the above mentioned case, together with Walter W. Ressler, a stenographer engaged by me, which trial was held before the Honorable Dallas Flannagan, presiding Judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on Monday, October 21, 1929, and Tuesday, October 22, 1929, at Newark, New Jersey.

20

HAROLD T. COOK.

Dated December 4, 1929.

30

40

*Certificate of Judge.*ESSEX COUNTY COURT OF GENERAL
QUARTER SESSIONS.

STATE OF NEW JERSEY, <i>vs.</i> 10 GUSTAVE S. FISCHMAN and ABRAHAM SEIDMAN.	}	<i>On Indict- ment No. 36 Sep. T. 1929 for Extor- tion.</i>
--	---	---

I, DALLAS FLANNAGAN, presiding Judge of the Essex County Court of General Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above 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 error bringing up the bill of exceptions signed and sealed in this cause.

20

DALLAS FLANNAGAN,
Judge.

Dated December 4, 1929.

30

40

ASSIGNMENTS OF ERROR.

Filed December 13, 1929.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> GUSTAVE S. FISCHMAN and ABRAHAM SEIDMAN, <i>Plaintiffs-in-Error.</i>	}	<i>On Error to Essex County Court of General Quarter Sessions.</i>	10
		<i>Assignments of Error.</i>	

Afterwards, to wit, on the return day of the writ of error issued in this cause, the said Gustave S. Fischman and Abraham Seidman, plaintiffs-in-error, by Kraemer, Siegler & Siegler, their attorneys, say, that in the records and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the verdict and the judgment aforesaid, there is manifest error in this respect, to wit:

1. That the said Court refused to quash the indictment and denied the motion in arrest of judgment on the ground that the indictment was fatally defective in that the two plaintiffs-in-error were each charged with separate and distinct crimes.

2. That the Court denied the motion made in behalf of the plaintiffs-in-error for the withdrawal of a juror and the declaration of a mistrial, on the ground of objectionable and prejudicial statements made by the prosecutor in his opening to the jury, wherein in substance

Assignments of Error.

said prosecutor charged that these plaintiffs-in-error had entered into a criminal conspiracy with one Dorothy Miller to make a false criminal complaint against Frank Puciarello charging him with the crime of rape, a crime not charged against the plaintiffs-in-error in the indictment.

10 3. That the Court, over objection by these plaintiffs-in-error, permitted the State to introduce into evidence a check made by one Frank Puciarello to Dorothy Miller for Fifty (\$50.00) Dollars to settle the criminal complaint made by the said Dorothy Miller against Frank Puciarello for rape, a crime not charged in the indictment.

20 4. That the Court, over objection by these plaintiffs-in-error, allowed the State to introduce testimony that after the payment of the alleged extorsive fee of Ten (\$10.00) Dollars, the plaintiffs-in-error caused Puciarello to give Dorothy Miller a check of Fifty (\$50.00) Dollars in part settlement of the criminal complaint that she had made against him for rape, a crime not charged against the plaintiffs-in-error in the indictment.

30 5. That the Court, over objection by these plaintiffs-in-error, allowed the State to introduce testimony of one Frank Puciarello that he withdrew Fifty (\$50.00) Dollars from the bank, took it to Police Headquarters of the City of Newark, where the numbers of the bills were taken, and that accompanied by Detective Rothenberg and Mr. Villani, he gave the money to Dorothy Miller, all of which was in the absence of these plaintiffs-in-error, and after the alleged taking by these plaintiffs-in-error of the extorsive fee of Ten (\$10.00) Dollars.

40

Assignments of Error.

6. That the Court, over objection by these plaintiffs-in-error, allowed the State to introduce testimony of Daniel Rothenberg that he received five Ten (\$10.00) Dollar bills from Puciarello, marked them for identification, copied the numbers, then returned the bills to Puciarello, and with Detective Silzer followed Puciarello to No. 38 West Kinney street, Newark, and in the hallway of that address said Puciarello turned over the money to Dorothy Miller, and that the witness thereafter found the same marked five Ten (\$10.00) Dollar bills on the person of the said Dorothy Miller, all of which was in the absence of the plaintiffs-in-error, and after the alleged payment of the extorsive fee of Ten (\$10.00) Dollars charged in the indictment. 10

7. That the Court, over objection by these plaintiffs-in-error, admitted in evidence the said five marked Ten (\$10.00) Dollar bills paid by the said Puciarello to the said Dorothy Miller. 20

8. That the Court overruled the motions made in behalf of the plaintiffs-in-error after the State's case for the dismissal of the indictment.

9. That the Court overruled the motion made by the respective plaintiffs-in-error at the close of the entire case for directed verdicts of "not guilty." 30

10. That the learned trial judge erroneously charged the jury:

"If these people were engaged in a common enterprise, if they did take this Ten Dollars in the manner testified to by the State's witnesses, it is not necessary that they both must have been present at the same time when it was done. If this money was taken by Fischman and Seidman was 40

Assignments of Error.

there in the next room, present there, aiding and abetting, he was in legal contemplation a principal and he is just as guilty as the other one if they were acting in concert as the State contends they were. * * *

10 There were conversations admitted where one defendant was present and the other was not. Acts were shown where one defendant was present and the other was not. The general rule is that where there is more than one defendant conversations and acts in the absence of one defendant are not binding and are not evidential as against the absent defendant, but are only evidential as against the defendant there present. But in a case where the charge is extortion and the jury are satisfied beyond a reasonable doubt that the defendants were acting in concert by mutual understanding to extort
20 money and that such acts and conversations are in execution of such concert and understanding, then the conversation and actions are evidential as against the absent defendant as well as the one present and participating.”

11. That the Court charged the jury:

30 “The State contends that this transaction was a common enterprise to entangle this young man, to put him in a position where he would have to pay—not have to pay once, but would pay continuously. As the State contends this transaction just recited here in evidence was merely a starter. According to the testimony of this girl she was told that other payments would follow, that this payment was not all, but there were others to come. This was according to her testimony. She was given to understand that this was just a good beginning and this \$50 was just one \$50 and that others were coming later.”

40

Assignments of Error.

12. That the Court charged the jury:

“Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant.”

10

13. That the Court charged the jury:

“There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication.”

And the plaintiff-in-error, Abraham Seidman, makes the above his separate assignments of error, and in addition thereto assigns the following additional assignments of error:

20

1. That the Court, over objection in his behalf, permitted the State to introduce testimony of Dorothy Miller of conversations with the plaintiff-in-error, Gustave S. Fischman, not in the presence of this plaintiff-in-error.

2. That the Court, over objection by this plaintiff-in-error, permitted the State to introduce the testimony of the witnesses, Dorothy Miller, that he, the plaintiff-in-error, Abraham Seidman, received a fee of Twenty-five (\$25.00) Dollars for his service as a justice of the peace, in taking her criminal complaint for rape against Puciarello.

30

3. That the Court, overruled the question, on the examination of the plaintiffs-in-error witness, Harry Taiminski, “If she had given Seidman Twenty-five (\$25.00) Dollars could you have seen it?” And another question, “Was there anything there to prevent you from seeing what was going on?”

40

Assignments of Error.

4. The trial court ruled that if the two defendants were acting in concert, the jury could find that testimony of acts or conversations of one not in the presence of the other was binding on both defendants, and that if the two defendants were acting in concert to extort money
10 the act of one was binding upon the other, and pursuant to said ruling overruled the objection of the plaintiff-in-error, Abraham Seidman, that conversations and acts of the defendant Fischman, not in the presence of the plaintiff-in-error, Seidman, were binding as against him and permitted State's witness, Dorothy Miller, to testify to conversations with the defendant Fischman, not in the presence of the plaintiff-in-error, Seidman, to the effect that Puciarello had not
20 treated her right, and that she decided to sue him for breach of promise, and further allowed the State's witness, Dorothy Miller, to testify to a telephone conversation with the defendant Fischman, not in the presence of the plaintiff-in-error Seidman, that the said plaintiff-in-error, Seidman, had told Fischman that he wanted Fifty (\$50.00) Dollars as a fee for taking her complaint, and that after the arrest of the said Puciarello on said complaint, said Fischman, not in the presence of the plaintiff-in-error,
30 Seidman, told Puciarello to marry the girl (meaning the said Dorothy Miller), and said Puciarello answered that he was engaged to marry another, and also allowed the State's witness, Puciarello to testify that he was arrested by the defendant Fischman and to conversations between the said Puciarello and Fischman, not in the presence of the plaintiff-in-error, Seidman, to the effect that said Puciarello was arrested for the charge of rape under Five
40 Thousand (\$5,000.00) Dollars bail, and that Five

Assignments of Error.

hundred (\$500.00) Dollars was required for a bondsman, and also other testimony on the conduct of the defendant Fischman, not in the presence of the plaintiff-in-error, Seidman.

WHEREFORE, said plaintiffs-in-error, Gustave S. Fischman and Abraham Seidman, pray that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and upon the giving of the judgment, and passing of sentence aforesaid, be reversed, cancelled and held for nothing, and that the said Gustave S. Fischman and Abraham Seidman may be restored to all things by them lost on occasion thereof. 10

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Plaintiffs-in-Error. 20

I hereby acknowledge service of a copy of the within assignments of error, this 13th day of December, 1929.

JOSEPH L. SMITH,
Prosecutor.

30

40

REASONS FOR REVERSAL.

Filed December 13, 1929.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> GUSTAVE S. FISCHMAN and ABRA- HAM SEIDMAN, <i>Plaintiffs-in-Error.</i>	<i>On Error to Essex County Court of General Quarter Sessions. Reasons for Reversal.</i>
----	--	---

20 Now comes the said plaintiffs-in-error, Gustave S. Fischman and Abraham Seidman, by Kraemer, Siegler & Siegler, their attorneys, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error and said plaintiffs-in-error say that said judgment should be reversed and assign the following reasons and causes for reversal:

30 1. Because the trial court refused to quash the indictment on the motion of counsel for the plaintiffs-in-error, on the ground that the said indictment charged each of the plaintiffs-in-error with separate and distinct crimes.

2. Because the said trial court denied the plaintiffs-in-error motion in arrest of judgment on the ground that the indictment charged the plaintiffs-in-error each with separate and distinct crimes.

40 3. Because the said trial court denied the motions of the plaintiffs-in-error for the withdrawal of a juror and the declaration of a mistrial, for

Reasons for Reversal.

objectionable and prejudicial statements made by the prosecutor in his opening to the jury, wherein, in substance said prosecutor charged that these plaintiffs-in-error entered into a criminal conspiracy with one Dorothy Miller to have a false criminal complaint made against one Frank Puciarello charging him with the crime of rape upon her, with intent to extort from said Puciarello a large sum of money thereby, all of which was a crime not charged in the indictment upon which said plaintiffs-in-error were presented for trial. 10

4. That the trial court, over objection by these plaintiffs-in-error, allowed the State to introduce testimony on the part of the State's witnesses, Dorothy Miller, Frank Puciarello and Daniel Rothenberg that the plaintiffs-in-error had entered into a criminal conspiracy with Dorothy Miller to make a false criminal complaint against Frank Puciarello charging him with the crime of rape upon her, and thereby to extort from him large sums of money. That pursuant to said criminal conspiracy so alleged to have been entered into between the plaintiffs-in-error and the said Dorothy Miller, a false criminal complaint was made against the said Frank Puciarello by the said Dorothy Miller of rape upon her; that said Frank Puciarello was arrested on the warrant issued pursuant to said complaint; that he was induced by the plaintiffs-in-error to enter into a settlement with the said Dorothy Miller by the payment of fifty (\$50.00) dollars represented by a check, which was permitted to go into evidence, with promises of more money to come thereafter to the said Dorothy Miller; that thereafter, and not in the presence of the plaintiffs-in-error said Puciarello went to the police headquarters 20
30
40

Reasons for Reversal.

of the City of Newark with five ten (\$10.00) dollar bills, the numbers of which were taken by the State's witness, Daniel Rothenberg, and the bills marked, and said Puciarello, accompanied by said State's witness, Daniel Rothenberg, a detective, and another detective, went to the address of the State's witness, Dorothy Miller, where said Puciarello paid said Dorothy Miller said fifty (\$50.00) dollars; that said marked bills were then found upon the person of the said Dorothy Miller, and she was taken into custody, all of which was evidence of a crime not charged in the indictment upon which the plaintiffs-in-error were presented for trial.

5. That the trial court overruled the motions made in behalf of the plaintiffs-in-error after the State's case for the dismissal of the indictment.

6. That the trial court overruled a motion made by the plaintiffs-in-error at the close of the entire case for directed verdicts of "not guilty."

7. That the trial court erroneously charged the jury:

"If these people were engaged in a common enterprise, if they did take this Ten (\$10.00) Dollars in the manner testified to by the State's witnesses, it is not necessary that they both must have been present at the same time when it was done. If this money was taken by Fischman and Seidman was there in the next room present there, aiding and abetting, he was in legal contemplation a principal and he is just as guilty as the other one if they were acting in concert as the State contends they were. * * *

There were conversations admitted where one defendant was present and the other was not. Acts were shown where one defendant was present and the other was not. The general rule is that where there is more than

Reasons for Reversal.

one defendant conversations and acts in the absence of one defendant are not binding and are not evidential as against the absent defendant, but are only evidential as against the defendant there present. But in a case where the charge is extortion and the jury are satisfied beyond a reasonable doubt that the defendants were acting in concert by mutual understanding to extort money and that such acts and conversations are in execution of such concert and understanding, then the conversation and actions are evidential as against the absent defendant as well as the one present and participating.” 10

8. That the trial court erroneously charged the jury:

“The State contends that this transaction was a common enterprise to entangle this young man, to put him in a position where he would have to pay—not have to pay once, but would pay continuously. As the State contends this transaction just recited here in evidence was merely a starter. According to the testimony of this girl she was told that other payments would follow, that this payment was not all, but there were others to come. This was according to her testimony. She was given to understand that this was just a good beginning and this \$50 was just one \$50 and that others were coming later.” 20

9. That the trial court erroneously charged the jury: 30

“Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant.”

Reasons for Reversal.

10. That the trial court erroneously charged the jury:

“There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication.”

10 11. That the verdict of the jury was contrary to the evidence.

And the plaintiff-in-error, Abraham Seidman, makes the above his separate reasons for reversal, and in addition thereto assigns the following additional reasons for reversal:

1. That the trial court allowed the State to prove conversations between the State's witness Dorothy Miller and the plaintiff-in-error Gustave S. Fischman, not in the presence of the plaintiff-in-error, Abraham Seidman.

2. That the trial court permitted the State to introduce testimony of the witness, Dorothy Miller, that he, Abraham Seidman had received a fee of twenty-five (\$25.00) dollars for his service as a justice of the peace in taking her criminal complaint against Puciarello for rape, a crime not charged in the indictment.

30 3. That the trial court overruled the question, on the examination of the plaintiff's-in-error witness, Harry Taiminski, “If she had given Seidman twenty-five (\$25.00) dollars could you have seen it?” And another question, “Was there anything there to prevent you from seeing what was going on?”

4. That the verdict of the jury as against the plaintiff-in-error, Abraham Seidman, was contrary to the evidence.

Reasons for Reversal.

5. The trial court ruled that if the two defendants were acting in concert, the jury could find that testimony of acts or conversations of one not in the presence of the other was binding on both defendants, and that if the two defendants were acting in concert to extort money the act of one was binding upon the other, and pursuant to said ruling overruled the objection of the plaintiff-in-error, Abraham Seidman, that conversations and acts of the defendant Fischman, not in the presence of the plaintiff-in-error, were binding as against him and permitted State's witness, Dorothy Miller to testify to conversations with the defendant Fischman, not in the presence of the plaintiff-in-error, Seidman, to the effect that Puciarello had not treated her right, and that she decided to sue him for breach of promise, and further allowed the State's witness, Dorothy Miller to testify to a telephone conversation with the defendant Fischman, not in the presence of the plaintiff-in-error Seidman, that the said plaintiff-in-error, Seidman, had told Fischman that he wanted fifty (\$50.00) dollars as a fee for taking her complaint, and that after the arrest of the said Puciarello on said complaint, said Fischman, not in the presence of the plaintiff-in-error, Seidman, told Puciarello to marry the girl (meaning the said Dorothy Miller), and that said Puciarello answered that he was engaged to marry another, and also allowed the State's witness, Puciarello to testify that he was arrested by the defendant Fischman, and to conversations between the said Puciarello and Fischman, not in the presence of the plaintiff-in-error, Seidman, to the effect that said Puciarello was arrested for the charge of rape under five thousand (\$5,000.00) dollars bail, and that

10

20

30

40

Reasons for Reversal.

five hundred (\$500.00) dollars was required for a bondsman, and also other testimony of the conduct of the defendant Fischman, not in the presence of the plaintiff-in-error, Seidman.

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Plaintiffs-in-Error.

10

I hereby acknowledge service of a copy of the within reasons for reversal, this 13th day of December, 1929.

JOSEPH L. SMITH,
Prosecutor.

20

30

40

SUPREME COURT OPINION

No. 4, Jany. T. 1930

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY
Defendant-in-Error,
 vs.
 ABRAHAM SEIDMAN,
Plaintiff-in-Error.

10

Error to Essex County Court of Quarter Sessions.
 Argued before Gummere, Chief Justice, and Justice Campbell.

20

For plaintiff in error, Joseph Kraemer.

For the State, Joseph L. Smith, Prosecutor of the Pleas, and Joseph E. Conlon, Assistant Prosecutor.

The opinion of the court was delivered by Gummere, C. J.

The plaintiff in error, Abraham Seidman, a justice of the peace of Essex County, and Gustave S. Fischman, a constable of that county, were jointly convicted upon an indictment which charged them with receiving and taking, by color of their respective offices, the sum of ten dollars as a fee from one Frank Puciarello, the same not being allowed by the laws of this State for performing the duties of their offices, they, the said Seidman and Fischman, then and there not being entitled to any fee from said Puciarello. The present writ of error was sued out by Seidman.

30

40

The indictment is based upon section 22 of our Crimes act (Comp. Stat. p. 1750). The provision of the statute is as follows: "Any judge, magistrate, sheriff, coroner, constable, jailer or other officer who shall receive or take, by color of his office, any fee or reward whatsoever not allowed by the laws of this State for doing his office, shall be guilty of a misdemeanor."

10

The first ground urged for a reversal is that the trial court erred in refusing to quash the indictment upon the ground that it charged the two defendants with separate and distinct offenses. After the verdict of guilty was rendered a motion in arrest of judgment was made upon substantially the same ground, and that motion was denied. This is also urged as a ground for reversal; and these two grounds for reversal involve the same proposition.

20 In our view, the court did not commit error in the refusal of these motions. The indictment does not charge separate and distinct offenses. The averment therein is that the two defendants were guilty of jointly taking a single sum of money from Puciarello, and not separate sums. The situation, so far as its legal aspect is concerned, is the same as that presented in a case in which two men, in the execution of a pre-arranged scheme, joined in "holding up" and robbing a third person. The mere fact that

30 the robbery is the result of a pre-arranged scheme, or conspiracy, does not constitute that offense, when participated in by two persons, two distinct and separable criminal acts.

This conclusion also disposes of the second ground for reversal; namely, that the trial court committed prejudicial error in permitting the Prosecutor of the Pleas in his opening address to the jury, to charge that the defendants had entered into a conspiracy to cause a false criminal complaint to be made against

40 Puciarello, and thereby extort money from him.

Counsel for plaintiff in error further contends as a ground for reversal that the trial court erred in admitting in evidence, over his objection, conversations and conduct of Fischman, not in the presence of plaintiff in error, and charging that such conversations and conduct were evidential against him. We find nothing of merit in this contention. As is stated in *Corpus Juris*, Vol. 16, page 644, par. 1283 "The settled rule applicable to the present situation is that, where it appears that two or more persons have conspired to commit an offense, everything said or done by one of them in execution or furtherance of the common purpose is admissible in evidence against the others."

10

It is further contended as a ground for reversal that it was error for the trial court to permit the State to prove the defendants induced one Dorothy Miller to sign a complaint falsely charging the commission of a rape upon her by Puciarello. The proofs on the part of the State showed that this young woman went to the office of Fischman, the constable, and told him that she had been living with Puciarello upon the understanding that the latter would marry her, as he had promised to do; that while living with him she had asked him to keep this promise, and that he had refused; that she thereupon went to the office of Fischman, and stated that she wanted to bring criminal charges against her lover; that Fischman thereupon sent her to Seidman, the plaintiff-in-error, and the latter prepared a complaint charging Puciarello with committing a rape upon this girl, although there was not suggestion made to him by her that her lover had been guilty of such offense; that she told Seidman that she did not know what rape was, but that he told her that the complaint was all right, and urged her to sign it, and, upon his so urging her, she did so. The threatened criminal prosecution of Puciarello was based upon this complaint, and there was

20

30

40

evidence to support the claim of the State that Fischman, the constable, took part in the negotiations which led to the making of the complaint by Dorothy Miller and its subsequent abandonment, which was based upon the payment to her of Fifty Dollars by Puciarello and ten dollars to the justice of the peace and constable. In view of these facts, we consider that the testimony objected to was properly admitted, being relevant to the charge against the two defendants below set out in the indictment.

It is next argued as a reason for reversal that the court committed error in refusing to direct a verdict for the defendants because there was no competent evidence of the payment of the illegal fee. It is enough to say in disposing of this point that there was evidence of this fact submitted on the part of the State.

It is next argued that the court erred in instructing the jury that there was nothing in the case to indicate that there was ever any charge made against the girl or her lover that they were guilty of fornication. Just why there is supposed to be legal error in this statement we are unable to understand, for an examination of the record shows that this was the fact.

These are the only points argued on behalf of the plaintiff-in-error which are of sufficient merit to justify discussion.

For the reasons indicated, the judgment under review will be affirmed.

REMITTITUR

(Filed January 29, 1931)

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY <i>Defendant-in-Error,</i> vs. GUSTAVE S. FISCHMAN and ABRAHAM SEIDMAN, <i>Plaintiffs-in-Error.</i>	}	<i>On Writ of Error Remittitur</i>	10
--	---	--	----

This cause having been submitted at the January nineteen hundred and thirty term of this court, by Joseph L. M. Smith, Esquire, and Joseph E. Conlon, Esquire, Attorney for the Defendant-in-error, and Joseph Kraemer, Esquire, Attorney for the Plaintiff-in-Error, and the court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions,

It is thereupon, ordered and adjudged that the judgment of the Essex County Court of Quarter Session removed by the writ of error in this cause be affirmed with costs; and that the record be remitted to the said Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered January 15, 1931.

On Motion of

JOSEPH L. SMITH

Prosecutor of the Pleas
Attorney of Defendant in Error.

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above-stated cause.

10

In testimony whereof, I have set my hand and the seal of said Court at Trenton, this twenty-eighth day of January A. D. nineteen hundred and thirty-one.

FRED BLOODGOOD

20

30

40

ASSIGNMENT OF ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	THE STATE OF NEW JERSEY <i>Defendant-in-Error,</i> vs. GUSTAVE S. FISCHMAN and ABRAHAM SEIDMAN, <i>Plaintiffs-in-Error.</i>	}	<i>On Error Essignment of Error.</i>
----	--	---	--

The said Abraham Seidman, says that in the record of proceedings aforesaid there is manifest error in this:

- 20 1. The Supreme Court affirmed the conviction of Abraham Seidman whereas it should have reversed the same.

And the plaintiff-in-error, Abraham Seidman, prays that the judgment aforesaid be reversed and that the record and proceedings be remitted to the Supreme Court, to be proceeded with according to Law and practice of said Court.

30 MARY A. SEIDMAN,
Attorney for Plaintiff-in-Error.

JOSEPH KRAEMER,
Of Counsel with Plaintiff-in-Error
Abraham Seidman.

A SIGNMENT OF ERROR

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY

IN SENATE

January 10, 1907

STATE OF JERSEY and

ABRAHAM STEINMAN

Plaintiff and Respondent

In the case of the State of Jersey and Abraham Steinman, the Court of Errors and Appeals has rendered its decision in the following manner:

The Court is divided 4 to 3 in favor of the State of Jersey, and 3 to 4 in favor of Abraham Steinman.

The majority of the Court is of the opinion that the judgment of the Court of Appeals is affirmed, and that the costs and expenses of the appeal be paid by the respondent.

MARY A. STEINMAN
Mary A. Steinman

JOSEPH H. STEINMAN
Of Counsel with the Respondent

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY	}	<i>On Writ of Error to Supreme Court.</i>
<i>Defendant-in-Error,</i>		
vs.		
GUSTAVE S. FISCHMAN and	}	
ABRAHAM SEIDMAN,		
<i>Plaintiffs-in-Error.</i>		

MEMORANDUM ON BEHALF OF PLAINTIFF- IN-ERROR, ABRAHAM SEIDMAN.

FACTS.

The plaintiff-in-error, Abraham Seidman, a justice of the peace and one Gustave S. Fischman, a constable, were jointly indicted and convicted on the charge of extorting Ten (\$10.00) Dollars as a fee from one Frank Puciarello. A motion in arrest of judgment based upon defects in the indictment was denied, and the defendants sentenced to two years in the State Prison. A writ of error was sued out, a certificate of reasonable doubt allowed, by the learned trial judge, and assignments of error and reasons for reversal filed under the 136th and 137th sections of the Criminal Procedure Act.

The Supreme Court affirmed the conviction and this is an appeal from that judgment. Same grounds here are urged as were urged in the Court below.

This brief is filed in behalf of the plaintiff-in-error, Abraham Seidman, the justice of the peace, and the argument is divided into five points:

FIRST POINT: The indictment is fatally defective because it charges the two defendants with separate and distinct offenses, that Gustave S. Fischman and Abraham Seidman did then and there receive and take by color of their offices the sum of ten dollars as a fee.

SECOND POINT: That it was prejudicial error for the learned trial judge to permit the

State in opening to the jury to charge, and thereafter to introduce evidence to prove, that the defendants had entered into a conspiracy to cause a false criminal complaint to be made against one Frank Puciarello, and thereby to extort money from him, which was not the crime charged in the indictment.

THIRD POINT: That it was prejudicial error for the learned trial judge to permit the State to prove conduct and conversations of the defendant Fischman not in the presence of the plaintiff-in-error, as binding upon the plaintiff-in-error, and to charge the jury that if they should find that the defendants acted in concert, that the conduct and conversations of one of them, although not in the presence of the other, could bind the other.

FOURTH POINT: That the verdict against the plaintiff-in-error was contrary to law and the evidence, and that the learned trial judge should have directed a verdict in his favor.

FIFTH POINT: That the learned trial judge erred in charging the jury as follows:

“There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication. Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant.”

Point 1.

The plaintiff-in-error and his co-defendant were permitted to withdraw their pleas of not guilty and to interpose a motion to quash on the ground that

the indictment charges them respectively with separate and distinct offenses. The motion was overruled and pleas of not guilty again entered. After the verdict of the jury a motion in arrest of judgment was made upon substantially the same ground as the motion to quash, and that was denied. The first assignment of error, and the first and second reasons for reversal cover this point.

The crime of Extortion is condemned by Section 22 of an "Act for the punishment of crimes (revision of 1898)" 2 Compiled Statutes, page 1750. It provides as follows::

22. EXTORTION: Any judge, magistrate, sheriff, coroner, constable, jailer or other officer as aforesaid, who shall receive or take, by color of his office, any fee or reward whatsoever not allowed by the laws of this State for doing his office, shall be guilty of a misdemeanor."

Who shall receive or take by color of *his* office, any fee or reward . . . for doing *his* office.

The Supreme Court in its opinion in this case, said: "The averment therein (referring to the indictment) is that the two defendants were guilty of jointly taking a single sum of money from Puciarello, and not separate sums. The situation, so far as its legal aspect is concerned, is the same as that presented in a case in which two men, in the execution of a prearranged scheme, joined in 'holding up' and robbing a third person," etc.

The statute under which the indictment was found should be construed: Any judge, *or* magistrate, *or* sheriff, *or* coroner, *or* constable *or* jailor *or* other officers as aforesaid, who shall receive or take, *by color of his office*, any fee or reward whatsoever not allowed by the laws of this State for *doing his office*. shall be guilty of a misdemeanor.

Seidman, as justice of the peace, by color of his office could not take the same ten dollars, for do-

ing his office, that Fischman, as Constable, by color of his office, took *for doing his office*. Two hold-up men might rob a man of ten dollars but not by color of their respective offices. The statute aims at any of the officers named who takes an unlawful fee by color of his office for doing his office.

The indictment charges that Fischman being a constable and Seidman a justice of the peace respectively, did receive and take by color of *their* offices the sum of Ten (\$10.00) Dollars for doing *their* offices. It charges that Seidman by color of his office took ten dollars. It charges that Fischman by color of his office took the same ten dollars. For doing *his* office? Which office? It charges a separate and distinct crime against Seidman, the plaintiff-in-error, for the taking of a fee not allowed by law for the doing of his office, and a separate and distinct crime against his co-defendant, Fischman, for charging a fee of Ten (\$10.00) Dollars not allowed by law for doing his office. It does not charge joint participation in a crime. It does not charge that Seidman and Fischman received and took by color of Fischman's office a fee for doing his office, not allowed by law, nor does it charge Seidman and Fischman with the receipt and taking by color of Seidman's office of a fee for doing his office. That would be a joint indictment. The single offense would be that a justice of the peace or a constable, as the case might be, by color of his office, had charged a fee not allowed by law, and the other defendant was joined as a participant in that crime. In such a case there would be a principal, and an aider and abetter, and unless the principal were convicted, the aider and abetter would not be convicted. Such was the situation in the case of *State v. Marshall*, 97 N. J. L. 10, 116 Atl. 691. There it was charged that Caithness, by virtue of his office as a tax collector, had received monies which he had embezzled (Section 168 of the Crimes Act, 2 Compiled

Statutes, p. 1795), and Helen Marshall, a clerk, was charged with aiding and abetting. Caithness was acquitted, but Helen Marshall was convicted. The Supreme Court reversed the conviction and said:

“The verdict of the jury established the fact that Caithness had not embezzled the funds of the town intrusted to him, and specified in the indictment, and, this being so, it is manifest that Helen Marshall could not have become a joint principal with him in the commission of the offense charged against him.”

The case is cited to show that there may be a joint indictment for malfeasance in office, but the charge must be upon the malfeasance of the occupant of the office, and the joint defendant is made a principal because of his aiding and abetting in the commission of the crime. So if in this case the indictment had charged the constable with taking and receiving a fee for doing his office, in excess of or not allowed by law, and Seidman, the plaintiff-in-error, was joined because he had aided and abetted him in the commission of that crime, the indictment would be free of attack, or vice versa, if Seidman had been charged with having received and taken a fee for doing his office in excess of or not allowed by law, and Fischman were charged with aiding and abetting him, the indictment would be free from attack, but in the instant case each one of them is charged as a factual principal “that they did respectively then and there receive and take by color of their offices the sum of Ten (\$10.00) Dollars as a fee from one Frank Puciarello, the same not being allowed by the law of this State for doing *their* offices, they, the said Gustave S. Fischman and Abraham Seidman then and there not being entitled to any fee from the said Frank Puciarello.” This indictment charges a separate and distinct crime on the part of each one of the defendants.

Extortion under the statute is one of the crimes of malfeasance in office. There may be a joint indictment in such a case, but that is where the functions are joint. Such was the case in the *State v. Castle, et al*, 75 N. J. L. 187, 66 Atl. 1059, where the members of the Board of Police Commissioners of the City of Newark were indicted for malfeasance in office, and the indictment was joint, and on objection the Supreme Court said:

“The next objection is that the defendants are jointly indicted when the neglect of each is necessarily a separate offense. This is not the fact. The neglect charged is of the public duty of the defendants as police commissioners. That duty is a *joint duty*, which cannot be exercised by any one of them alone, and the neglect is likewise joint. Each defendant must indeed concur in the neglect, but the result is a joint result.

No doubt seems to have been felt by Lord Mansfield that in a proper case a joint indictment might be found against two justices for improperly refusing to grant a license to an inn. In *People v. Meakim, et al.*, 133 N. Y. 213, 30 N. E. 828, the Court of Appeals of New York sustained a joint indictment against three excise commissioners for neglecting for an unreasonable time to decide a complaint of the sale of liquor on election day.”

So two justices of the peace sitting as a court, or in the exercise of a statutory authority could be jointly indicted for the taking of a fee which they were not authorized by law to take. They would then be exercising a common function. But in this case the justice of the peace and the constable had separate functions. There was no joint duty. Nor does the indictment charge that they received the fee of Ten (\$10.00) Dollars for a joint service. It charges that the plaintiff-in-error as a justice of the peace, and his co-defendant as a constable, re-

spectively, did then and there receive and take by color of their offices, the sum of Ten (\$10.00) Dollars as a fee from one Frank Puciarello * * * for doing their offices (not their joint office).

In *Archibold's Pleadings*, Section 3, page 29, the logical test for determining when a joint indictment may be found is set out as follows:

“Where several persons join in the commission of an offence, all or any number of them may be jointly indicted for it, or each of them may be indicted separately. Thus, if several commit a burglary, robbery or murder, they may be indicted for it jointly, or separately; and the same, where two or more commit a battery, or are guilty of extortion, or the like. Where money has been obtained under false pretenses, and the false pretenses were conveyed by words spoken by one defendant in the presence of the others, all of whom acted in concert together, it was holden that they might all be indicted jointly. So where two persons joined in singing a libelous song, it was holden that they might be indicted jointly; and the same, where two or more persons join in any other kind of publication of a libel. But if the publication of each party be distinct, as if two booksellers, not being partners, sell the libel at their respective shops, they must be indicted separately. So, two or more cannot be jointly indicted for perjury, or for seditious or blasphemous words, or the like, because such offences are in their nature several. *Even where several commit a joint act, which act however is not of itself illegal, but becomes so merely by reason of some circumstances applicable to each individual severally and not jointly*, they must be indicted separately; thus, several partners cannot be indicted jointly for exercising their trade without having served an apprenticeship.”

The italicized parts of this paragraph are applicable to the instant case. The taking of an unauthorized fee by a citizen for some service rendered by him where the fee is not authorized by law is not of

itself a crime. The taking of an unauthorized fee by a justice of the peace is criminal because the fee is obtained under color of his office. Now, a justice of the peace is entitled to a fee for doing his office, and a constable is entitled to a fee for doing his office, but the functions are entirely separate. The justice of the peace receives the complaint, holds the hearing and holds the defendant for bail; the constable serves the warrant and makes the return, and conveys the prisoner to jail when no bail is provided. These are separate legal functions, performed by individuals clothed with the authority of their respective offices, and the receipt by them respectively of fees not allowed by law are separate and distinct offenses, but the indictment in this case charges that they received a fee for the doing of their offices, separate and distinct offenses.

Wharton, in his book on *Criminal Procedure*, Volume 1, page 404, chapter 351, dealing with joint offenses, says:

“Where the offenses are necessarily several there can be no joinder. It is true that where a libellous song was sung by two men, it was held that they might be indicted jointly; and the same view has been taken where two or more persons join in any other kind of publication of a libel.”

But in chapter 353 of the same volume he says:

“Persons holding different offices with separate duties cannot be jointly indicted for a misdemeanor in office. Thus, an indictment charging such an offense against the inspectors, clerks and judge of an election, was held bad on demurrer.”

In 14 R. C. L., under the title “Indictments and Information,” on page 194, the rule is laid as follows:

“But when the offense charged does not

wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant without which it would be no offense, the indictment must charge them severally and not jointly,"

and cites *State v. Lehman*, 182 No. 424, 66 L. R. A. 490. There the members of a municipal assembly were indicted for entering into a corrupt agreement to support a measure which was to come before them in consideration of a promise to place money at their disposal. The indictment was sustained, but the Court held:

"It was one transaction, the same subject matter the same purposes were designed to be accomplished; *the performance of the same functions rested upon all alike.*"

But here there was no performance of the same functions resting upon all alike. It was a separate function that each defendant was charged with exercising, the plaintiff-in-error, that of a justice of the peace, and his co-defendant, that of a constable.

In *State v. Hall*, 97 N. C. 474, 1 S. E. 683, the Mayor and Aldermen, and the Board of Audit and Finance of a city were jointly indicted for wilful and negligent failure to discharge duties devolved upon them by the city charter. A demurrer was sustained, and an appeal was taken to the Supreme Court of that State. The Supreme Court HELD:

"The respective duties and powers of these two boards are different and for the most part entirely distinct. The Mayor and Aldermen represent and exercise the chief corporate powers of the City, while the board of audit and finance are an adjunct of the city government, charged with important prescribed powers and duties in respect to its finances.

The indictment seems to contemplate that these two boards are a unit, certainly in some material respects, and exercise powers and have

duties in common. This, we think, is a clear misapprehension of their respective natures and purposes, as above indicated. They are separate and distinct bodies, and intended to serve distinct purposes. * * *

But, moreover, the indictment insufficiently charges two distinct offenses against two distinct boards of officers, sustaining distinct relations to the City of Wilmington. This is wholly unwarranted by principle or precedent. *Different parties cannot be charged with different and distinct offenses in the same indictment. Such a practice would be impracticable and lead directly to injustice and confusion.*"

The demurrer was sustained.

We submit that the justice of the peace and the constable are two distinct functionaries, their duties and their powers are separate, the fees allowed by law to a justice of the peace are separate from those allowed to a constable, and they cannot be in one indictment jointly charged with receiving and taking, by color of their respective offices, fees for doing the duties of their offices. These are separate and distinct functions, the fees are separate and distinct, the excessive taking of fees is a separate offense, and in the indictment should have been charged separately.

We respectfully submit that the motion to quash should have been granted, that the motion in arrest of judgment based upon the same ground should have been allowed, and that its denial constitutes prejudicial error for which the judgment should be reversed.

POINT II.

The charge of the indictment was that the plaintiff-in-error, a justice of the peace, and his co-defendant, a constable, received Ten (\$10.00) Dollars from one Frank Puciarello, to which they were not en-

titled under the law. The prosecutor in opening this case to the jury was permitted, by the rulings of the learned trial judge, to charge that the defendants had entered *into a criminal conspiracy to cause a false criminal complaint of rape to be made by one Dorothy Miller against Frank Puciarello*; that the plaintiff-in-error issued his warrant for the arrest of Puciarello under that complaint; *and that his co-defendant, the constable, thereupon arrested Puciarello; and then they proceeded in what is known as the vernacular, to blackmail Puciarello, and compelled him to pay Dorothy Miller Fifty (\$50.00) Dollars; that they release said Puciarello but held the warrant over his head as a threat to compel him to make further payments; and that Dorothy Miller was charged Twenty-five (\$25.00) Dollars by the plaintiff-in-error as his fee for taking the criminal complaint.* (The indictment charges the taking of a fee from Frank Puciarello, but not from Dorothy Miller.)

Objections were made to the prosecutor's opening, to the State's proof of the criminal conspiracy, to the State's proof of the payment of a Twenty-five (\$25.00) fee by Dorothy Miller to the plaintiff-in-error for taking the complaint, and to that portion of the Judge's charge which dwells upon the State's contention and describes it in detail. All of these objections were overruled and exceptions allowed, and they are set forth in the second, third, fourth, fifth, sixth and seventh joint assignments of error and the second separate and additional assignments of error of this plaintiff-in-error, as appears on pages 152 and 153 of the State of the Case, and the third and fourth joint reasons for reversal and the second additional reason for reversal of this plaintiff-in-error, as appears on page 160, State of Case.

The whole of the prosecutor's charge was not taken by the stenographer at the trial, but sufficient of it was taken and appears on page 15, State of Case

et seq., to show that the charge that was presented to the jury was not that of extortion of Ten (\$10.00) Dollars by a constable and a justice of the peace, but rather that of conspiracy to blackmail, by a false criminal charge of rape. A motion was made in behalf of the plaintiff-in-error to withdraw a juror and to declare a mistrial by reason of this opening, and that motion was overruled, and exception allowed, and the prosecutor was permitted to continue this opening to the jury, explaining in detail how the conspiracy was formed and executed. Objections to this opening were taken in behalf of the plaintiff-in-error and exceptions allowed (p. 16, State of Case). Thereafter the State was allowed to prove by the witnesses, Dorothy Miller, Frank Puciarello and Daniel Rothenberg, the alleged conspiracy entered into between the plaintiff-in-error and his co-defendant to blackmail Puciarello, and also to prove that the plaintiff-in-error had charged Dorothy Miller Twenty-five (\$25.00) Dollars for taking the complaint, a separate act of extortion, not charged in the indictment. The testimony was objected to in behalf of the plaintiff-in-error, and exceptions allowed (p. 23; p. 25, l. 1 and 27, p. 26, l. 22; p. 28, l. 21, all in the State of Case), and on page 29, line 1 an objection to the general line of testimony was made and allowed and exception allowed. Thereafter counsel pursuing the well-established rule that where the Court has indicated a ruling on an objection to a general line of testimony it is not proper to interrupt the continued examination of the witness for the purpose of repeating the objection, the detailed objection was not continued.

Not only was the prosecutor permitted in his opening to the jury to charge the defendants with *conspiracy to blackmail Puciarello by the false complaint of rape, and to present evidence of that complaint, and by his witness to prove that charge*, but the

Court in its charge to the jury summarized the evidence as follows: (p. 138, state of case.)

"You have heard this entire testimony. The State's witnesses testified to the making of a complaint and so forth. The State contends that this transaction was a common enterprise to entangle this young man, to put him in a position where he would have to pay—not have to pay once, but would pay continuously. As the State contends this transaction just recited here in evidence was merely a starter. According to the testimony of this girl she was told that other payments would follow, that this payment was not all, but there were others to come. This was according to her testimony. She was given to understand that this was just a good beginning and this \$50 was just one \$50 and that others were coming later. Of course you must judge where the truth lies, not me. The girl says that she told this justice of the peace and also she says she told the constable that she had not been raped, that she went with this man voluntarily, and that she had lived with him under the promise of marriage and then he had gone and gotten in with another girl and thrown her over. That is the story she said she told. And she says that they got up this complaint for rape and told her to sign it, etc."

The case was saturated by the prosecutor in his openings remarks, by the testimony of the witnesses, Dorothy Miller, Frank Puciarello and Daniel Rothenberg, and by the Court in its charge, *with accusation and proof of the charge that the plaintiff-in-error and his co-defendant had conspired to blackmail Puciarello.*

The charge was lost sight of, and become a mere incident. By law defendants were called upon to answer *the charge of having taken and received an unlawful fee of ten (\$10.00) dollars from Frank Pu-*

ciarello. As the case was presented to the jury they were obliged to defend themselves against the crime of conspiring to blackmail Frank Puciarello, without the presentation of an indictment for that crime.

The course that the Court took here in sanctioning the opening of the Prosecutor, the testimony of the State's witnesses and in summarizing the case to the jury is clearly condemned by the Supreme Court in the well known case of *State v. Raymond*, 53 N. J. L. 260, 21 Atl. 328. The general rule is there declared to be that upon the trial of a person for one crime, evidence that he has been guilty of other crimes is irrelevant. Justice Dixon, who wrote the opinion for the Supreme Court, sets out five exceptions, but not one of them justifies the Court's rulings in this case.

Some semblance of justification is asserted for the introduction of this testimony on the ground that intent is an element of the crime of extortion. Corrupt intent is necessary only where the defendant admits the taking of the fee, and tries to justify it on the theory that he received the fee under a belief that the statute justified it. Such was the fact in the case of *Loftus v. State*, 19 Atl. 183. There the justice of the peace admittedly took three dollars and thirty-five cents. (\$3.35). And so also in the case of *Cutter adv. State*, 36 N. J. L. 125. There the defense set up was that he had taken these monies innocently, and under a belief that by force of the statute, he had a right to exact it. These are practically cases of confession and avoidance. The defendant admits the taking of the fee, and excuses himself on the ground that he believed that he had a right to do so. There intent becomes material, and the State has a right to introduce testimony to prove that he took the fee not under a mistaken belief of his right to do so, but with a corrupt intent. It follows as a logical conclusion that testimony of corrupt intent is material and relevant only in such

cases where the defense consists of the admission that the fee was received, but under a belief of a right to exact it. Where the defendant denies the receipt of a fee and necessarily does not attempt to justify it, good intent or corrupt intent is foreign to the issue. In this case the defense was not that the fee was received under a belief that the defendants were entitled to exact it, which would have invoked the issue of good or corrupt intent, but a complete denial that they had received any fee from Puciarello. Motive and intent were not material, but even assuming for the sake of argument that motive and intent were material, it must be demonstrated, as said by Mr. Justice Dixon, "that the defendant's guilt of the extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried." There is no logical connection at all between the defendants' guilt of the conspiracy and the intent with which the alleged ten (\$10.00) dollar fee was exacted. The defendants could have exacted ten (\$10.00) dollars as a fee with a corrupt intent, even though they had not entered into the criminal conspiracy. They could have been guilty of the criminal conspiracy, and still not have exacted an extortionate fee. The existence of both facts is merely incidental; they are not logically consequential.

The only justification that can be asserted for the introduction of this testimony is that the propensity of the defendants to commit crime, particularly the crimes of the nature set forth in the indictment, as shown by testimony of their criminal conspiracy, and of the fact that Dorothy Miller was charged twenty-five (\$25.00) dollars by the plaintiff-in-error as a fee for taking her complaint, proves that they also exacted ten (\$10.) dollars as a fee from Frank Puciarello as charged in the indictment, but this justification is equally illogical and illegal, and was declared to be so by the Supreme

Court in *State v. Raymona*, *supra*, in the words of Justice Dixon.

“But it must not be supposed that the defendant’s propensity to commit crime, or even to commit crimes of the same sort as that charged, can be put in evidence to prove his guilt of the particular offense; for, however reasonable would be the deduction that, when a pocket is picked in a group of persons, of whom only one is addicted to picking pockets, he is the offender, his singularity in this respect could not, under our legal theory, figure as proof of his guilt. There must appear, between the extraneous crime offered in evidence and the crime of which the defendant is accused, some other real connection, beyond the allegation that they have both sprung from the same vicious disposition.”

See also *State v. Bloom*, 89 N. J. L. 418. *State v. Fisher*, 96 N. J. L. 5. The court commented on this testimony of conspiracy which was not charged in the indictment. This comment made the testimony especially harmful to plaintiff-in-error. See *State v. Julius*, 138 Atl. 588.

We respectfully submit that the opening of the prosecutor, sanctioned by the Court, *the introduction of proof that the defendants had conspired to blackmail Puciarello, and of the details of the execution of that conspiracy, and the Court’s summary of the charge upon which the defendants were presented to the jury so unduly emphasized the charge of the conspiracy as to crowd from the minds of the jurors the charge in the indictment, and supplanted that charge with one for a criminal conspiracy to blackmail, so that the defendants were convicted not of the crime charged against them in the indictment by the grand jury, but of a crime for which they were not presented by any indictment of the grand jury.* This was due to the rulings of the learned trial judge over the objections of the plaintiff-in-error, and is manifest and prejudicial error.

POINT III.

The learned trial judge erred in ruling that conversations and conduct of the co-defendant Fischman, not in the presence of the plaintiff-in-error were binding upon him, and in charging the jury at the close of the entire case that if they should find that the defendants acted in concert to extort money, that the conduct and transactions of the co-defendant Fischman were binding upon the plaintiff-in-error, Seidman. The learned trial judge further erred in overruling objections to testimony on the part of the State's witnesses Dorothy Miller and Frank Puciarello of transactions and conversations with the co-defendant Fischman, not in the presence of the plaintiff-in-error, and in permitting Daniel Rothenberg, a witness for the State, to testify that accompanied by Frank Puciarello, to whom he had given Fifty (\$50.00) Dollars in marked money, he went to the home of Dorothy Miller, where the Fifty (\$50.00) Dollars was paid to her to redeem a check for that amount previously given, and that she was then taken in custody and the Fifty (\$50.00) Dollars in marked bills found upon her, all of which was not in the presence of the plaintiff-in-error, and after the crime charged in the indictment had been completed by the payment of the Ten (\$10.00) Dollars by Frank Puciarello to the plaintiff-in-error and his co-defendant. This error of the learned trial judge is set forth in the Tenth joint assignments of error and the first and fourth of the plaintiff's-in-error separate assignments of error (p. 151, State of Case, *et seq.*), and in the Fourth joint reasons for Reversal and the First and Fifth of the plaintiff's-in-error separate reasons for reversal (p. 157, State of Case, *et seq.*).

Dorothy Miller was produced as a witness for the State, and testified that she knew the co-defendant Fischman, and that on the first Friday in May she had a conversation with him. She was then asked (p. 23, l. 1):

“Q Tell us any conversation you had with Fischman on that occasion there?”

An objection was interposed in behalf of the plaintiff-in-error, which was overruled, and the witness was permitted to testify that she told Fischman that Puciarello had not treated her right; that he had promised to keep company with her, and that she had decided to sue him for breach of promise. Thereafter (p. 25) she testified to a telephone conversation with the co-defendant Fischman. Objection was made in behalf of the plaintiff-in-error, and the Court ruled (p. 25, State of Case, l. 32):

“The Court: It is binding upon Seidman anyway. I will admit it as to him. You may have an exception.”

She was then allowed to testify to conversations with the defendant Fischman not in the presence of the plaintiff-in-error, as follows (p. 28, State of Case):

“Q You say he called you in the office?

A Yes, sir.

Q Who was in there? A Just Gus Fischman, and he said to Frank Puciarello ‘Why don’t you marry the girl?’ And Frank Puciarello had said he couldn’t do it because he was engaged to another girl, so he said Puciarello had agreed to make settlement—”

A general objection was then interposed and the Court ruled as follows (p. 29, State of Case, l. 14):

“The Court: No, but as to the charge of extortion. If these men were acting in concert to extort this money, the act of one is binding upon the other. If they were acting

in concert, it is binding upon both of them. That will be the position of the Court and you may have an exception."

Obedient to this ruling of the Court, and in accordance with the well-established principle that when the Court has indicated a ruling to an objection to a general line of testimony, it is not proper for counsel thereafter to interrupt the testimony and repeat the objections, the witness was permitted to testify (p. 31, State of Case) that on the following day she met Frank Puciarello at her apartment, and received from him Fifty (\$50.00) Dollars, and handed back the check for that amount to Puciarello, and in Police Headquarters she was asked for the Fifty (\$50.00) Dollars, and gave it to Captain Sebold.

Frank Puciarello, a witness for the State, was permitted to testify to conversations and transactions with the co-defendant Fischman not in the presence of the plaintiff-in-error, although the objection in behalf of the plaintiff-in-error was repeated (p. 46, State of Case) and he testified that he was arrested by the co-defendant Fischman, who showed him a badge, and told him "you are under a rape charge, \$5,000.00 bail and \$500 for a bondsman (p. 46)." This witness was then questioned with respect to the payment of Fifty (\$50.00) Dollars in cash. Objection was made that this alleged payment was two days after the completion of the crime charged in the indictment, the receipt of the Ten (\$10.00) Dollar fee. The objection was overruled, and the witness was permitted to testify that on the Monday after the payment of the Ten (\$10.00) Dollars on the previous Saturday, he withdrew Fifty (\$50.00) Dollars from the bank (p. 51, State of Case), took it to headquarters where the numbers were taken of the money; that he went to Dorothy Miller's

house, accompanied by Detective Rothenberg and Mr. Villani, an attorney; that he then gave the money to the girl and that Detective Rothenberg took the girl to headquarters, with the money in her purse. All of this testimony related to a transaction that was not in the presence of either of the defendants, and two days after the crime charged in the indictment was allegedly completed by the defendants' taking Ten (\$10.00) Dollars as a fee from Frank Puciarello.

Daniel Rothenberg, a witness for the State, on direct examination was allowed to testify that on June 4th Frank Puciarello and his lawyer came to Police Headquarters. He was then asked (p. 66, State of Case):

“Q Did he have anything with him? A He had five ten-dollar bills with him.

Q And what, if anything, did you do with those five ten-dollar bills?”

An objection was interposed on behalf of the plaintiff-in-error and overruled, and the witness was permitted to testify that the five ten-dollar bills were marked. The witness was then asked (p. 66, State of Case, l. 35):

“Q What did you do then with reference to this matter?”

It must be borne in mind that this was not in the presence of either of the co-defendants, and was two days after the crime charged in the indictment had allegedly been completed. Objection was interposed in behalf of the plaintiff-in-error, and the Court ruled (p. 70, State of Case) that this testimony was admissible for the purpose of proving the intent of the defendants in receiving the alleged Ten (\$10.00) Dollar extorsive fee. An exception was allowed to the plaintiff-in-error to this entire line of testimony

(p. 71, State of Case). The witness was then permitted to testify that the marked bills were then returned to Puciarello and that the witness and Detective Silzer accompanied Puciarello to the home of Dorothy Miller; that the marked bills were found by him upon Dorothy Miller. The marked bills were admitted into evidence over objection on the part of the plaintiff-in-error, and an exception was allowed (p. 72, State of Case).

The objections to this testimony bring up the precise question, whether or not acts and transactions of a defendant, not in the presence of his co-defendant are admissible as against an absent co-defendant. In *State v. Unger*, 93 N. J. L. 50, 107 Atl. 270, the Supreme Court deals with that question. There error was assigned because the assistant prosecutor was permitted to testify to declarations and admissions made to him by one of the defendants, Unger, and the Court ruled:

“Of course where, as here, two or more defendants are indicted and tried together, the declarations of one which have a legitimate tendency to establish his guilt are admissible against him, even though not admissible against his co-defendants. In such case the proper remedy of the defendant against whom the declaration is not admissible is to request a limitation of its application.”

In the case of *State v. Newman*, 95 N. J. L. 280, 113 Atl. 225, one of the grounds for reversal of the conviction was the alleged error of the trial court in admitting testimony given by one Lefferts as to a conversation between him and the defendant Marschek after the alleged conspiracy had been fully executed. Chief Justice

Gummere, speaking for the Supreme Court,
HELD:

“It is not denied that the statement of the defendant was material and tended to support the charge laid in the indictment, but it was urged as a ground for its exclusion that what Marschek said was not binding upon his co-defendant, Newman, because it was admittedly made in the latter’s absence. But this fact did not render the testimony inadmissible. As we said in *State v. Unger*, 93 N. J. L. 50, 107 Atl. 207, where two or more defendants are indicted and tried together, the declarations of one, which have a legitimate tendency to establish his guilt, are admissible against him, even though not admissible against his co-defendant. In such a case the proper remedy of the defendant against whom the declaration is not admissible is to request a limitation of its application to the defendant who made it.”

In the case of *State v. Cortese*, 4 M. 683, 134 Atl. 294, one of the points relied on for reversal was:

“that testimony relating to a conversation had between a witness of the State and Rizzo, who was one of the defendants, was improperly admitted, as it was not held in the presence of the plaintiff-in-error, and that its admission was harmful error, so far as he was concerned. Proof of the conversation was competent, so far as the defendant Rizzo was concerned. Not having been had in the presence of Cortese, it was not competent as against him. But the objection to the admission of the testimony was that it was incompetent as to all of the defendants, and the objection itself, being unsound, was, therefore, properly overruled. If counsel for the plaintiff-in-error had desired to protect his client against the effect of this testimony, he should have requested the court to instruct the jury that, although it was evidential as against Rizzo, it was not evidential as against his client.”

This judgment was affirmed by the Court of Errors and Appeals in a *per curiam* opinion.

From these opinions two rules are deducible. The first and primary rule is that transactions and conversations of a defendant not in the presence of his co-defendant are not binding upon the absent defendant, and, secondly, that a general objection to such testimony on the part of the defendant who was absent is improper; that the proper objection is that such testimony should be limited to the defendant to whom the transactions and conversations are attributed.

In this case the Court admitted the conversations and transactions of the co-defendant Fishman, not in the presence of the plaintiff-in-error, not because the objection of the plaintiff-in-error was too wide, but on the specific ground that such conversations and transactions were "binding upon Seidman anyway." This ruling of the learned trial judge appears on page 25, State of Case, line 30:

"The Court: It is binding upon Seidman anyway. I will admit it as to him. You may have an exception."

And again, when a general objection was made to this line of testimony, the Court emphatically makes its position clear as follows, (p. 29, State of Case):

"The Court: I think your position is clear, and the Court's position is clear, that if these men were acting in concert, the jury may consider the testimony binding upon both of them.

Mr. Kraemer: That is as to the charge of conspiracy?

The Court: No, but as to the charge of extortion. If these men were acting in concert to extort this money, the act of one is

binding upon the other. If they were acting in concert, it is binding upon both of them. That will be the position of the Court and you may have an exception."

And so in this case the question as to the propriety of the form of the objections made in behalf of the plaintiff-in-error do not enter, because the Court overrules any objection that may be made, and holds that such evidence is admissible and binding upon both of the defendants. Even if it should be assumed that the objections in behalf of the plaintiff-in-error were properly overruled, and this testimony properly admitted, yet this testimony could be admitted only as against the defendant Fischman, and not against the plaintiff-in-error, Seidman. The Court, however, by this ruling and its charge makes this testimony not only admissible, but as binding upon both of the defendants, and the learned trial judge, in his charge to the jury, instructs the jury as follows: (pp. 137 and 138, State of Case).

"There were conversations admitted where one defendant was present and the other was not. Acts were shown where one defendant was present and the other was not. The general rule is that where there is more than one defendant conversations and acts in the absence of one defendant are not binding and are not evidential as against the absent defendant, but are only evidential as against the defendant there present. But in a case where the charge is extortion and the jury are satisfied beyond a reasonable doubt that the defendants were acting in concert by mutual understanding to extort money and that such acts and conversations are in execution of such concert and understanding, then the conversations and actions are evidential as against the absent defendant as well as the one present and participating."

This ruling of the learned trial judge obliged the jury to consider testimony of acts and transactions of the defendant Fischman not in the presence of his co-defendant, the plaintiff-in-error, as binding upon the plaintiff-in-error, even though the plaintiff-in-error was not present, and this clearly violates the rule laid down by the Supreme Court in the cases of *State v. Newman*, *State v. Unger* and *State v. Cortese, supra*. Because of this ruling the plaintiff-in-error was held culpable for the alleged instigation by his co-defendant Fischman of the criminal complaint made by Dorothy Miller against Frank Puciarello, for the negotiations by Fischman with Puciarello to settle the complaint, and for the settlement that ultimately took place by the check of Frank Puciarello to Dorothy Miller of Fifty (\$50.00) Dollars, which he redeemed with five ten dollar bills, which were marked, and which marked bills were found on Dorothy Miller when she was taken into custody. All of these transactions were not in the presence of the plaintiff-in-error.

The testimony of the witnesses, Dorothy Miller, Frank Puciarello and Daniel Rothenberg as to the payment of the five marked ten dollar bills, the redemption of the check and the finding of the money upon her all related to transactions at least two days after the alleged payment of the ten dollar fee by Frank Puciarello to Gustave S. Fischman. It was admitted by the Court upon the theory of corroboration and to supply motive. It was objected to by the plaintiff-in-error as inadmissible (p. 66, *State of Case*) and the objection was overruled.

In the case of *State v. Herbert, et al.*, 92 N. J. L. 341, 105 Atl. 796, the defendants were convicted of a conspiracy to unlawfully obtain

a divorce for one Helen Knittel from her husband on the ground of adultery. They were convicted. One of the defendants, Herbert, appealed from the conviction, and one of the grounds for reversal was the admission of testimony of acts and of statements made by the alleged co-conspirators in the absence of the plaintiff-in-error, and after the denial of the decree by the Court of Chancery. Justice Kalisch, speaking for the Supreme Court said as to this point:

“The insistence of counsel of plaintiffs-in-error is that the object of the conspiracy, as charged in the indictment, was fully executed, when the witnesses, who were to give the testimony to be used in the divorce case, were actually produced and gave their testimony in the Court of Chancery. Furthermore, it is insisted that if the appeal, taken by the party affected by the decree, to the Court of Errors and Appeals, in legal effect, kept the unlawful agreement alive, so as to make the acts and statements of an alleged conspirator pending the appeal evidence against his co-conspirator, nevertheless that cannot be so as to acts and declarations of an alleged co-conspirator made after the appeal had been argued and submitted for decision to said Court.

On the other hand, while counsel of the State in their brief concede that the State offered letters, telegrams, and other documentary matters in evidence, and which were received as such by the trial judge, and which written matter emanated from an alleged co-conspirator and had their origin after the case was decided by the Court of Chancery, and was pending on appeal, up to the time the case was argued, as evidence against the plaintiffs-in-error, they, counsel of the state, contend that the evidence was properly received and permitted to weigh against the plaintiffs in error, on the theory that the object of the conspiracy was not

fully executed until the decision of the Court of Errors and Appeals was handed down on June 18, 1917."

The Court went on to hold:

"If the testimony of the declarations and of the activities referred to, had been limited to its legal operation, as tending to establish the guilt of the persons who made the statements and were engaged in such conduct, of course, no fault could be found, for, under a well-settled legal principle, declarations and conduct of an accused may be given in evidence, even though they occur during the trial of the cause. But that was not the case here. The testimony was not confined to operate within its legal sphere."

Mr. Justice Kalisch then proceeds to analyze the testimony as to whether or not the conspiracy had come to an end when the appeal was submitted to the Court of Errors and Appeals, and HELD:

"The unlawful agreement being at an end, each of the conspirators ceases to be the agent of the other, and therefore can only bind himself by his acts or declarations, notwithstanding the fact that such acts or declarations relate to concealment of the crime of the completed conspiracy."

Of course there the Court was dealing with conspiracy. This is not the situation in the instant case, but the logic of the rule laid down there applies even with more emphatic force to the case here. In this case two defendants were jointly charged as a constable and as a justice of the peace respectively with receiving a fee of Ten (\$10.00) Dollars for doing the duties of their offices, which fee was not allowed by law. When the State proved the payment of the Ten (\$10.00) Dollars, that logically completed the State's case, but the State was permitted to go further, and to prove that Fifty (\$50.00) Dollars was paid by Puciarello to Dorothy Miller to settle

her charge of rape against him; that he gave Dorothy Miller a check for Fifty (\$50.00) Dollars, and that on Monday, at least two days after the completion of the alleged crime of extortion, Puciarello, his attorney, and a detective from Police Headquarters of the City of Newark, went to the home of Dorothy Miller with five marked Ten Dollar bills; that Puciarello paid the bills to Dorothy Miller to redeem the check; that she was taken in custody, and the marked money found upon her. All of this testimony was admitted over objection on the part of the plaintiff-in-error and violated two rules of evidence, the first, that the conversations and transactions, not being in the presence of the plaintiff-in-error, were not binding upon him and therefore inadmissible as against him, and secondly, that the crime for which the defendant was charged having been completed, subsequent transactions not relating to the crime, and in which he did not participate, were irrelevant, incompetent and immaterial.

We respectfully submit that the admission of this testimony was erroneous, prejudicial and harmful to the plaintiff-in-error.

POINT IV.

At the close of the State's case and at the close of the entire case appropriate motions were made in behalf of the plaintiff-in-error for a dismissal of the indictment and for a directed verdict of not guilty (p. 75). These motions were overruled, and are made the subject of the eighth joint assignment of error and the fifth and sixth joint reasons for reversal.

Whatever proof there is in the case with respect to the taking of the Ten (\$10.00) Dollar fee charged in the indictment is in the testimony

of the State's witnesses, Dorothy Miller and Frank Puciarello. All that Dorothy Miller testified is shown on page 30, State of Case. After telling about the receipt of the check of Fifty (\$50.00) Dollars she says (on l. 30):

"So I took the \$50., and at the present time there is mentioned \$10. but I couldn't say exactly who took it.

Who? A Fischman. It was decided to pay \$10 for some papers.

Q Who? A Frank Puciarello. So at that time when that subject was taken up I was told to go outside, and so when I came back in again Gus Fischman had a little check for me; I don't know who signed it and I don't know whose handwriting it was."

The latter refers to the check of Fifty (\$50.00) Dollars which she received. That is all she testified to on her direct examination with respect to the Ten (\$10.00) Dollars mentioned in the indictment. On her cross examination in behalf of the co-defendant Fischman she was asked (p. 41):

"Q You never saw the \$10. pass between Puciarello and Seidman and Fischman, did you? A No, sir."

And on cross examination in behalf of the plaintiff-in-error she was asked (p. 44, State of Case, l. 31):

"Q You didn't see any money passed to the defendant, Seidman, did you? A No, sir."

Frank Puciarello, on his direct examination, testified (p. 47, State of Case, *et seq*):

"Q What happened there? A Seidman said 'Under \$5,000. bail and \$500. for your bond.' And he said 'You are under a charge of rape.' And I said 'For what?' and he said 'Dorothy Miller.' And he said 'Do you want to marry the girl?' And I said 'No, I am engaged to another girl.' So Fischman

said 'Marry the girl and leave her.' And so he went outside and told the girl, and I didn't want to marry the girl, so Fischman came back in again, he was telling me 'What do you want to do about settling?' I said, 'What do you mean by settling?' And he said 'Have you got any money?' And I said 'All I have got is \$50.' And he said 'All right, it will cost you \$10. for paper fees.'

Q Where did he tell you that? A In the private room.

Q Who else was there? A Seidman was there, and he said it would cost \$10.

Q For what? A For paper fees.

Q What did you do? A I gave him the \$10.

Q Where was Seidman? A Just as I was pulling the money out he went out and he started on the \$10.

By the Court.

Q Was he there when Fischman said 'It will cost you \$10 for the papers?' A Yes, sir.

Q And before you paid out the \$10.? A Yes, sir.

By Mr. Conlon.

Q And then what happened after that? A So the girl came in—I wouldn't settle up and he gave me the \$10. back again."

He then proceeds to testify that the alleged proceedings for the settlement between this witness and Dorothy Miller were resumed, which culminated in the payment of the Fifty (\$50.00) Dollar check. He then testified (p. 49, State of Case):

"Q In the meantime, you had this \$10. in your pocket? A No, but I had had \$10.

Tell us about that? A Fischman had the \$10. I don't know what he done with it.

Q You told us before that you had given it to him and he gave it back to you? A When the agreement, \$50.

Q Where did that happen? A In the little room, the private office.

Q Who was there when you gave it to him the second time? A I think Seidman was there, too.

Q And who else? A The girl. I don't think she saw us. She had her back to the door.

Q How did you come to give him the \$10.? A If she settled for the \$50. and he said 'It will cost you \$10 for the papers.'

Q And you then handed the \$10. to Fischman? A Yes, sir."

On cross examination he testified (p. 51, State of Case):

"Q You say that Mr. Fischman asked you twice for ten dollars? A Yes, sir.

Q And he told you that he wanted \$10. for papers? A For paper fees, yes.

Q Did he tell you for what papers? A The papers—he was going to send me to jail, so he told me.

Q When he told you that, who was present? A Dorothy Miller.

Q Was that the first or second time? A That was the first.

Q The second time, when Fischman asked you for the \$10. what did he say? A He said he came to a settlement. I had \$50. and he asked for the \$10.

Q Did he tell you what he wanted with the \$10.? A I just told you he said that was for his trouble, his paper costs.

Q Fischman said he wanted the \$10 for his papers—for his trouble? A Yes, sir.

Q He said that the first time and then he said that the second time? A Yes, sir.

Q Are you trying to repeat his words or are you just telling the substance of what he said? A I told you what he said.

Q Tell us, as nearly as you can remember, his exact words. A He said 'Well, this is the cost for my paper fees.'

Q His paper fees? A Yes, sir.

Q And the man you are speaking of now is who? A Fischman.

Q That was the first time? A Yes, sir.

Q And it was said the second time? A Absolutely."

* * * *

Q Who was present? A The first time it was just him and I.

Q And the second time? A I believe she was there, but she wasn't there when I gave him the money. She had her back to the door and she didn't see it.

Q Was there anybody else present? A I think Seidman was there.

Q You are not sure about that? A I swear that I think he was there.

Q You swear that you think so? A Yes, sir.

Q But you won't swear that he was? A I am sure he was there.

Q When Mr. Fischman said that he wanted \$10. for his papers the second time, was Mr. Seidman there? A Mr. Seidman was just going out when I gave Fischman the \$10.

Q The second time? A Yes.

Q That was when Dorothy Miller was present in the same room? A No, Dorothy Miller went out then.

Q Dorothy Miller had gone out? A Yes, with Seidman.

Q What I am trying to find out, when Mr. Fischman, speaking the second time about he wanted \$10. for his papers, where was Seidman, was he nearby or far away, or what was he doing? A Before we spoke about \$10. he was sitting down and when I gave him \$10. Seidman went out.

Q The first time? A The second time.

Q You say Seidman was sitting by? A As soon as I gave him the money he went out.

Q When he said he wanted this for his trouble, or his papers, where was Seidman? A He was outside."

Gustave S. Fischman denied the taking of the Ten (\$10.00) Dollars. The plaintiff-in-error denied the payment of the Ten (\$10.00) Dollars. So all of the testimony in the case bearing upon the alleged payment of the Ten (\$10.00) Dollars is that of the direct and cross examination of the two States' witnesses, Dorothy Miller and Frank Puciarello. Dorothy Miller denies that she saw any money paid at all. Puciarello says that he made a payment of Ten (\$10.00) Dollars once to Fischman, which was returned, and then when the negotiations for a settlement between him and Dorothy Miller were resumed and culminated in the payment of Fifty (\$50.00) Dollars by the payment of his check, he again paid Ten (\$10.00) Dollars to Fischman, but he finally admits, on cross examination (p. 53, State of Case):

“Q When he said he wanted this for his trouble, or his papers, where was Seidman?

A He was outside.”

So that by his own testimony, when the request was made by Fischman for the Ten (\$10.00) Dollars, Seidman was outside. He says (p. 51, l. 30):

“Q Did he tell you for what papers? A The papers—he was going to send me to jail, so he told me.

Q When he told you that, who was present? A Dorothy Miller.

Q Was that the first or second time? A That was just the first.”

Further on in his cross examination he says (p. 52, l. 24):

“Q When he said that the first time, what part of the office or store, or whatever it was, was it that he said so? A In the private room.

Q His private room? A Yes.

Q You mean a private room? A A private room.

Q Who was present? A The first time it was just him and I."

With respect to the request for Ten (\$10.00) Dollars the second time, he testified (p. 52, State of Case, l. 31):

"Q And the second time? A I believe she was there, but she wasn't there when I gave him the money. She had her back to the door and she didn't see it.

Q Was there anybody else present? A I think Seidman was there."

But he recants this statement, and finally, on cross examination, testified (p. 53, State of Case):

"A Before we spoke about \$10. he was sitting down and when I gave him \$10. Seidman went out.

Q The first time? A The second time.

Q You say Seidman was sitting by? A As soon as I gave him the money he went out.

Q When he said he wanted this for his trouble, or his papers, where was Seidman? A He was outside."

Puciarello is contradicted by Dorothy Miller, and also by Fischman and Seidman. But even assuming that the jury had a right to find, from this testimony, that he did pay Ten (\$10.00) Dollars, nowhere in the testimony does it appear that Seidman received any money as a justice of the peace for doing the duties of *his* office, as charged in the indictment. All that can be spelt out of this meagre testimony is that Fischman, in the absence of Seidman, asked Puciarello for Ten (\$10.00) Dollars for his services, and that he was paid Ten (\$10.00.) Dollars, which he returned, and then paid Ten (\$10.00) Dollars the second time, which he kept, and that both these payments were made in the absence of Seidman. The record is void of any evidence that Seidman shared the Ten (\$10.00) Dollars with Fischman.

We have called attention to the fact that this indictment charges that Gustave S. Fischman and Abraham Seidman—being a constable and a justice of the peace respectively, did then and there receive and take by color of *their* offices the sum of Ten (\$10.00) Dollars as a fee from one Frank Puciarello, the same not being allowed by the laws of this State for doing *their* offices, they, the said Gustave S. Fischman and Abraham Seidman then and there not being entitled to any fee from the said Frank Puciarello. The charge is not that the plaintiff-in-error joined with his co-defendant Fischman, in exacting that fee for his co-defendant Fischman, which was not authorized by law. The charge is that he himself, as a justice of the peace, by color of *his* office exacted a fee for doing the duties of *his* office, which fee he was not allowed to receive by law. There is nothing in the case to prove that charge against him. Proof of his co-defendant's guilt is not proof of his guilt under the charge laid in the indictment. Under what we respectfully submit was a misconception of the purport of the indictment, the Court ruled that if these two men were acting in concert, the acts and conduct of one were binding upon both. That would be true were the indictment one for conspiracy, but that is not the indictment in the instant case. Here they were severally charged with having received fees for the doing of their duties as a constable and justice of the peace respectively, which fees they were not entitled to charge. The proof must be in accordance with the allegation. To sustain a conviction against Seidman it was necessary to show that he made a charge for *his* services as a justice of the peace, and received a fee from Puciarello. There is not a scintilla of evidence to support that charge.

We respectfully submit that the motions for the dismissal of the indictment as against this plaintiff-in-error, and at the close of the entire case for a directed verdict of "not guilty" should have been granted, and that this court should reverse the verdict of the jury as to this plaintiff-in-error, because it is against the evidence and is contrary to law.

POINT V.

The Court in its charge to the jury instructed them as follows (p. 139, State of Case, l. 34):

"There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication. Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant."

The plaintiff-in-error took exception to these portions of the Court's charge (pp. 142 and 143, State of Case) and these exceptions are covered by the twelfth and thirteenth joint assignments of error (p. 153, State of Case) and the ninth and tenth joint reasons for reversal (pp. 159 and 160, State of Case). The significance of these exceptions lie in this—the State contended that the plaintiff-in-error and his co-defendant caused Dorothy Miller to bring a false criminal complaint of rape against Frank Puciarello, so that they could blackmail him. In support of that contention Dorothy Miller testified in behalf of the State that she went to Seidman's office and told him (p. 24, State of Case, l. 15):

"A That he was engaged to a girl, that Puciarello was engaged to a girl, and I had

asked Puciareello whether it was true, and he said it wasn't, and so, therefore, I decided to make a complaint against Puciareello for breach of promise, and I told that to Seidman, and he told me that that don't do no good, so he decided to look in a big book for something, and he said the best thing that I can do is to sue him for rape, and I had told him my age, and rape—I don't know what the word means—and I told him I didn't want any settlement, I wanted him sent to jail, and he decided to make the complaint against rape, and I told him over and over, and he tell me not to tell him, he has been in this business long enough."

And on her cross examination in behalf of the co-defendant Fischman, she denied that Puciareello raped her and that she complained to the plaintiff-in-error of a rape upon her, but admits that there was a sexual intimacy between her and Puciareello for which she wanted a complaint taken for breach of promise to marry her (p. 33, State of Case). From her testimony the jury had a right to infer that the idea of charging Puciareello with rape originated with the plaintiff-in-error and was part of the conspiracy between him and his co-defendant to blackmail Puciareello.

Her testimony is directly contradicted by the plaintiff-in-error who testified as to what happened when Dorothy Miller came into his office (p. 107, State of Case):

"She told me that sometime, I think it was February in the year 1929, that she was raped by a certain party by the name of Puciareello,"

and he proceeded to testify to the details of the crime related to him by Dorothy Miller. His co-defendant Fischman testified (p. 77) that when Dorothy Miller came to his office "she told me

that she wanted to have a man put in jail. She used to live with him and he raped me and was going to remarry someone else.”

It was vitally important for the ultimate result of this case to determine which of these two contradictory versions was true. If the plaintiff-in-error and his co-defendant had testified falsely when they said that Dorothy Miller charged Puciarello with rape, then the jury had a right to discredit their entire testimony including the denial of the receipt and acceptance of the alleged extorsive fee of Ten (\$10.00) Dollars. On the other hand if Dorothy Miller testified falsely when she denied the rape and the making of that complaint, then the jury would have a right to discredit her entire story. And so this question became one of the important factual questions in the case for the jury to determine. It was removed from the jury's consideration by the assumption on the part of the learned trial judge that the offense chargeable to Puciarello and to Dorothy Miller was that of fornication and not rape, thus sustaining the State's contention and concluding that the testimony of Dorothy Miller was right and the testimony of the plaintiff-in-error and his co-defendant was false.

In that part of his charge wherein the learned trial judge comments upon this feature of the case he makes no mention at all of rape. He impliedly sweeps that aside as unbelievable and says (p. 139, State of Case, l. 34):

“There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication. Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of

the law, prosecutions for fornication become more or less insignificant.”

Thus the Court puts the charge against the plaintiff-in-error and his co-defendant of extortion, in juxtaposition with that of the offense charged against the State's witnesses, and characterises that offense as fornication. Where the plaintiff-in-error and his co-defendant charged rape, the Court assumed that fornication existed. The compelling conclusion that must be made from the Court's comment is that the plaintiff-in-error and his co-defendant lied when they testified that the State's witness Dorothy Miller had charged Puciarello with rape, and that the complaint of rape in evidence was a spurious one which originated in the mind of the plaintiff-in-error for the purpose of blackmailing Puciarello. This was a complete vindication of the charge made by the State. It was contrary to law.

In the case of *Schmidt v. Marconi Wireless Telegraph Co. of America*, 86 N. J. L. 183, 90 Atl. 1017, the Court of Errors and Appeals, in an opinion by the present Chief Justice, held that the veracity of Ex-Governor Griggs, admittedly unimpeachable, could not be taken from the jury and determined by the Court, and held:

“Of course the testimony of a man whose character for truth and integrity is so universally known as that of Governor Griggs would always be accepted as a correct recital of the facts spoken to as he remembered them. But it will hardly do to say that the character of a witness is the determining factor upon the question whether the facts testified to by him shall be determined by the court or by the jury. It cannot be that, where the character of the witness for truth and veracity is known by the court to be unimpeachable, the facts sought to be established by his testimony are to be determined by the court, but that where, in the judg-

ment of the court, the witness is not entitled to full faith and credit, the facts sought to be proved by him must be determined by the jury. No such rule of evidence exists. In every case where the issue depends upon the determination of facts, the existence of which is not admitted, the jury, and not the court, must determine them."

The Court had no right to assume the existence of facts not conclusively proven. Such was the opinion of the Court in *State v. Pitman*, 119 Atl. 438. There the Supreme Court, in a per curiam opinion reversed the conviction because the judge told the jury that the prosecutrix was sixteen years of age on November 17th, and although this testimony was not contradicted the Court held:

"The jury must decide the case on the evidence. It is prejudicial error for a judge to attempt to influence a jury in the finding of an essential fact by saying that his notes show that the prosecutrix became of age on November 17th. A jury might readily infer from such a statement that because the judge says his notes show that the prosecutrix became of age on November 17th it must accept the judge's notes as conclusively establishing that the prosecutrix became 16 years of age on the date shown by the judge's notes, regardless of the weight it may give to the testimony on that branch of the case."

A similar question arose on the appeal in the case of *State v. Lanto*, 98 N. J. L. 401, 121 Atl. 139. That was a case of carnal abuse where the age of the prosecutrix was an essential element of the crime. There was testimony that the girl was fifteen years of age on the 18th day of January, 1922. There was no contradiction of that fact, and the judge so charged the jury. The conviction was reversed, and Mr.

Justice Kalisch, speaking for the Supreme Court, held:

“The trial judge could not have used more forceful language than he employed here to impress upon the minds of the jurors that the prosecutrix was under 15 years of age at the time of the occurrence, which term ‘occurrence’ plainly and solely referred to the alleged act of sexual intercourse, and that the only problem for the jury to consider was the fact of such occurrence—sexual intercourse—since the age of the prosecutrix and the age of the defendant had been established by admission. There was, however, only the admission of the defendant as to his own age.”

Justice Kalisch proceeds to lay down the rule as follows:

“In treating the age of the prosecutrix as a court question, and as an established fact binding upon the jury to accept and in eliminating from its consideration the credibility of the testimony adduced by the state as to the age of the prosecutrix, harmful error was committed, which necessitates a reversal of the judgment.”

We do not believe a further citation of authorities is essential.

We therefore respectfully submit that the necessary effect of the judge's remarks in relation to fornication was to remove from the jury the consideration of the question whether or not a complaint for rape had in fact been made by Dorothy Miller to the plaintiff-in-error as a justice of the peace, and to leave with the jury the Court's conclusion that the offense, if any, that had been committed was fornication. This corroborated the State's contention, and discredited the veracity of the plaintiff-in-error and his co-defendant in the denial of the receipt of Ten (\$10.00) Dollars as a fee, which was the charge

laid against them in the indictment. We submit that this was prejudicial and harmful error.

CONCLUSION.

We respectfully submit that the indictment herein was fatally defective; that the verdict is contrary to law and the evidence; and that there was prejudicial error in the admission of evidence and in the charge of the learned trial judge, and upon these grounds we respectfully move the Court to reverse the conviction herein as against the plaintiff-in-error.

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Plaintiff-in-Error
Abraham Seidman.

JOSEPH KRAEMER,
Of Counsel.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>On Error.</i>
GUSTAVE S. FISCHMAN and ABRA- HAM SEIDMAN, <i>Plaintiffs-in-Error.</i>		

v.

BRIEF FOR THE STATE.

Statement of the Case.

Plaintiffs-in-error Abraham Seidman, a justice of the peace, and Gustave S. Fischman, a constable, were indicted, tried and convicted in the Essex County Court of Quarter Sessions on a charge of extorting ten dollars as a fee from one Frank Puciarello, on the 21st day of October, 1929, and on November 14th, 1929, the defendants were sentenced to the State Prison for a term of two years each at hard labor. Both defendants are now under bail pending the writ taken from these convictions.

A writ of error is taken under sections 136 and 137 of the Criminal Procedure Act, bringing the entire record to the Supreme Court. The brief was filed on behalf of the plaintiff-in-error, Abraham Seidman, and Gustave S. Fischman, the other defendant, stipulated to submit his case on the same brief.

The Supreme Court in a decision rendered by Chief Justice Gummere affirmed the conviction, and delivered the following report: (Reported Vol. IX, N. J. Adv. Rep., page 10.)

“GUMMERE, CHIEF JUSTICE. The plaintiff-in-error, Abraham Seidman, a justice of the

peace of Essex County, and Gustave S. Fischman, a constable of that county, were jointly convicted upon an indictment which charged them with receiving and taking, by color of their respective offices, the sum of \$10 as a fee from one Frank Puciarello, the same not being allowed by the laws of this state for performing the duties of their offices, they, the said Seidman and Fischman, then and there not being entitled to any fee from said Puciarello. The present writ of error was sued out by Seidman.

“The indictment is based upon section 22 of our Crimes act. *Comp. Stat.* p. 1750. The provision of the statute is as follows: ‘Any judge, magistrate, sheriff, coroner, constable, jailer or other officer who shall receive or take, by color of his office, any fee or reward whatsoever not allowed by the laws of this state for doing his office, shall be guilty of a misdemeanor.’

“The first ground urged for a reversal is that the trial court erred in refusing to quash the indictment upon the ground that it charged the two defendants with separate and distinct offenses. After the verdict of guilty was rendered a motion in arrest of judgment was made upon substantially the same ground, and that motion was denied. This is also urged as a ground for reversal; and these two grounds for reversal involve the same proposition. In our view, the court did not commit error in the refusal of these motions. The indictment does not charge separate and distinct offenses. The averment therein is that the two defendants were guilty of jointly taking a single sum of money from Puciarello, and not separate sums. The situation, so far as its legal aspect is concerned, is the same as that presented in a case in which two men, in the execution of a prearranged scheme, joined in ‘holding up’

and robbing a third person. The mere fact that the robbery is the result of a prearranged scheme, or conspiracy, does not constitute that offense, when participated in by two persons, two distinct and separable criminal acts.

“This conclusion also disposes of the second ground for reversal; namely, that the trial court committed prejudicial error in permitting the prosecutor of the pleas, in his opening address to the jury, to charge that the defendants had entered into a conspiracy to cause a false criminal complaint to be made against Puciarello, and thereby extort money from him.

“Counsel for plaintiff-in-error further contends as a ground for reversal that the trial court erred in admitting in evidence, over his objection, conversations and conduct of Fischman, not in the presence of plaintiff-in-error, and charging that such conversations and conduct were evidential against him. We find nothing of merit in this contention. As is stated in 16 *Corp. Jur.* 644, *Par.* 1283: ‘The settled rule applicable to the present situation is that, where it appears that two or more persons have conspired to commit an offense, everything said or done by one of them in the execution or furtherance of the common purpose is admissible in evidence against the others.’

“It is further contended as a ground for reversal that it was error for the trial court to permit the state to prove that the defendants induced one Dorothy Miller to sign a complaint falsely charging the commission of a rape upon her by Puciarello. The proofs on the part of the state showed that this young woman went to the office of Fischman, the constable, and told him that she had been living with Puciarello upon the understanding that the latter would marry her, as he

had promised to do; that while living with him she had asked him to keep this promise, and that he had refused; that she thereupon went to the office of Fischman, and stated that she wanted to bring criminal charges against her lover; that Fischman thereupon sent her to Seidman, the plaintiff-in-error, and the latter prepared a complaint charging Puciarello with committing a rape upon this girl, although there was no suggestion made to him by her that her lover had been guilty of any such offense; that she told Seidman that she did not know what rape was, but that he told her that the complaint was all right, and urged her to sign it, and, upon his so urging her, she did so. The threatened criminal prosecution of Puciarello was based upon this complaint, and there was evidence to support the claim of the state that Fischman, the constable, took part in the negotiations which led to the making of the complaint by Dorothy Miller and its subsequent abandonment, which was based upon the payment to her of \$50 by Puciarello and \$10 to the justice of the peace and constable. In view of these facts, we consider that the testimony objected to was properly admitted, being relevant to the charge against the two defendants below set out in the indictment.

“It is next argued as a reason for reversal that the court committed error in refusing to direct a verdict for the defendant because there was no competent evidence of the payment of the illegal fee. It is enough to say in disposing of this point that there was evidence of this fact submitted on the part of the state.

“It is next argued that the court erred in instructing the jury that there was nothing in the case to indicate that there was ever any charge made against the girl or her lover that they were guilty of fornication. Just

why there is supposed to be legal error in this statement we are unable to understand, for an examination of the record shows that this was the fact.

“These are the only points argued on behalf of the plaintiff-in-error which are of sufficient merit to justify discussion.

“For the reasons indicated, the judgment under review will be affirmed.”

Statement of Facts.

The brief of plaintiffs-in-error is divided into five points: Under Point IV it is argued by the plaintiffs-in-error that the verdict is against the weight of the evidence. In order to acquaint the Court with the facts of the case before we argue the purely legal points we deem it proper to argue the fourth point first, and submit that the facts adduced at the trial amply justified the verdict of the jury.

POINT IV.

On May 31, 1929, Dorothy Miller went to the office of Gustave S. Fischman at 164 Market street, Newark, and told him that she had been wronged by Frank Puciarello and that she had lived with Puciarello under Puciarello's promise to marry her; that she had asked Puciarello to marry her and Puciarello had refused, stating that he was engaged to another girl. She explained to Fischman that she wanted to bring criminal charges against Puciarello. Fischman, who had been a constable for over five years, instead of sending her to a police precinct sent her to Abraham Seidman, a justice of the peace with offices at 126 Howard street, Newark, N. J. and gave Dorothy Miller one of Seidman's cards

(p. 23, l. 22, etc.). This was sometime in the afternoon.

Miss Miller accordingly went to Seidman, where she found Seidman alone, and told him of the abuse made upon her by Puciarello and his refusal to marry her, and that Puciarello had induced her to go on the streets and solicit and had received her earnings as a prostitute. She did not complain of any force or violence being used by Puciarello. However, Seidman advised her to sign a complaint charging Puciarello with rape. Dorothy says she did not know what rape meant but that she signed a complaint upon Seidman's telling her that he had been in the business long enough (p. 34, l. 30, etc.).

While she was at Seidman's office Seidman's telephone rang and Seidman was then engaged in a telephone conversation in Jewish. After Seidman had talked for awhile Miss Miller was called to the telephone and she recognized the voice as that of Fischman, who told her that Mr. Seidman had advised him in Jewish that if she, Miss Miller, wanted to swear out a warrant it would cost \$50 (p. 25, l. 20), and upon her advising Seidman that she had only \$25, Fischman advised her that he would himself supply her with the other \$25. This was on a Friday. Miss Miller promised to have the \$25 on the following day (Saturday) and, not having it on Saturday, she brought the \$25 to Abraham Seidman's office and gave it to him on the Monday following, at about 2:00 P. M. She again asked him to explain to her what the charge of rape was, but he, Seidman, told her that he knew what he was talking about and that she should sign a complaint, and she then signed the complaint (p. 27, l. 1), *and Seidman told Miss Miller to come back to his office at 4:30 or 5:00 P. M. and he would have Puciarello there.* At

about 4:30 or 5:00 o'clock she returned to Seidman's office and there found Fischman and Puciarello, and soon after Seidman came in. After a few minutes Fischman and Seidman went into Seidman's private office, and in about 9 or 10 minutes they called Puciarello and Miss Miller in. Fischman, in the presence of Seidman, asked Puciarello to settle the matter by marrying Miss Miller, which Puciarello refused to do. After several attempts at settlement Fischman advised Miss Miller that Puciarello had agreed to settle for \$50. At first Miss Miller was unwilling to accept, insisting that she wanted to press criminal charges against Puciarello (p. 30, l. 3, etc.), but after some more conversation Fischman induced her to accept \$50 in settlement.

All this time all four persons, Seidman, Fischman, Puciarello and Miller, were in the same room. As Puciarello did not have \$50, Fischman made out a check for \$50, drawn upon Fidelity Union Trust Company, Ironbound Branch, of Newark, which Puciarello signed. This check was turned over to Miss Miller. It was then agreed that Puciarello, Fischman and Miller should meet at Miller's apartment, when Puciarello would redeem the check by giving Miss Miller \$50 in cash. At that time it was decided to pay \$10 to Fischman for his papers (p. 47, l. 10, etc.).

Frank Puciarello testified that about 4:30 P. M. on June 3rd, when he was about to leave his place of employment, he was arrested by Fischman who, being asked the reason for the arrest, said: "You are under a rape charge; \$5,000 bail and \$500 for the bondsman." He was then taken into Seidman's office by Fischman. Miss Miller was there and Seidman came in in about five minutes. Then

Seidman and Fischman had a private conference, after which Seidman said (p. 47, l. 10, etc.):

“Under \$5,000 bail and \$500 for your bond, and he said ‘You are under a charge of rape.’ And I said, ‘For what?’ and he said, ‘Dorothy Miller.’ And he said, ‘Do you want to marry the girl?’ And I said, ‘No, I am engaged to another girl.’ So Fischman said, ‘Marry the girl and leave her.’ And so he went outside and told the girl, and I didn’t want to marry the girl, so Fischman came back in again, he was telling me, ‘What do you want to do about settling?’ I said, ‘What do you mean by settling?’ And he said, ‘Have you got any money?’ And I said, ‘All I have got is \$50.’ And he said, ‘All right, it will cost you \$10 for the paper fees.’

“Q Where did he tell you that? A In the private room.

“Q Who else was there? A Seidman was there, and he said it would cost \$10.

“Q For what? A For paper fees.

“Q What did you do? A I gave him the \$10.”

It appears, therefore, that it was Seidman who told Puciarello he must pay \$10. Puciarello paid this \$10 to Fischman when Seidman was just about leaving the office. Subsequently Miller, the girl, refused to go on with the settlement. Thereupon Seidman returned the \$10 to Puciarello. A few minutes later the agreement to settle the matter for \$50 was finally accepted by Miller, and again, for the second time, Puciarello paid Fischman the \$10 while Seidman was in the office.

“Q Tell us about that? A Fischman had the \$10. I don’t know what he done with it.

“Q You just told us before that you had given it to him and he gave it back to you. A When the agreement, \$50.

“Q Where did that happen? A In the little room, the private office.

“Q How did you come to give him the \$10? A If she settled for the \$50, and he said, ‘It will cost you \$10 for the papers.’

“Q And you then handed the \$10 to Fischman? A Yes, sir.

“Q Was that before or after you signed the check? A That was before I signed the check.

“Q And then the check was made out and you signed it and it was turned over to the girl in which room? A The private room.

“Q Who was there? A Seidman and Fischman.

“Q And the girl? A And the girl.

“Q And he told you to go home? A After everything was straightened Fischman bid me good bye. He said, ‘Forget about it.’ I wrote that over it.”

The following day, to wit, Saturday, according to arrangements made, Puciarello met Miss Miller to pay her \$50 in cash to redeem the check; although Fischman had promised to be there at the time he did not make his appearance.

Puciarello further testified on cross examination (p. 62, l. 30) that when he was taken up to Seidman’s office he wanted to call up his attorney. Fischman made a pretense of looking through the telephone book and calling up Puciarello’s attorney, which in fact he did not do, and he turned around and told Puciarello that his attorney was not at the office.

While both defendants denied the taking of the \$10, their testimony was replete with contradictions and failures to give explanation of essential points. Fischman, for instance, said that at the time Miller came to his office and told him her

story, which contained no charges of any violence having been used on her by Puciarello, he did not know what rape was; but that when he read the warrant he knew the warrant was for rape, although the warrant itself did not contain the word "rape," and he did not know what the form of the charge contained in the warrant meant. And subsequently he said he knew that charge was rape upon the testimony she, Miss Miller, had given (p. 95, l. 20). He admitted that he sent Miller to Seidman instead of sending her to the Police Department to make a complaint. He knew it was his duty to make a return on the warrant, but he made no such return, and left the warrant with Seidman after surrendering Puciarello (p. 98, l. 29). He said he expected to be paid upon sending Seidman an itemized bill for his services, but he never made out such a bill. At one time he said the reason he did not make a return on the warrant was because he forgot about it (p. 98, l. 34), and then he said the reason he did not make a return on the warrant was that he thought everything was settled. It was for the jury to consider whether it was believable that this man Fischman, who had been a constable for five years, would forego his fees as a constable thinking the whole matter had been settled, and make no return on the warrant. When Seidman was first arrested he was advised of the charges of extortion against him and was asked to give an explanation, and he said he had nothing to say. He denied this (p. 103, l. 30, etc.), and the State proved by rebuttal that he was asked to make an explanation, which he refused to do (p. 132, ll. 10 to 38).

Abraham Seidman could give no satisfactory explanation why he let Puciarello go free after Puciarello had been arrested on the very serious

charge of rape and had been surrendered to him. He knew that he could not hold Puciarello for bail because he had looked up *Honeyman on Justice*, and he concluded that a justice of the peace is not allowed to hold for bail one accused of rape. He informed Puciarello that he would have to send him to jail whether he had a hearing or not, because he lacked the power to hold him to bail. Although the girl had told him nothing about the use of violence or force by Puciarello, he looked up his law books and decided that rape was the correct charge; and that he did not report the case to the police for investigation because he knew his superior officer is the Prosecutor and not the police (p. 116, l. 9). He did not enter this case in his docket book, although he keeps one (p. 117, l. 20). He knew he had no legal right to do anything with the complaint after it was issued except to return it to the Prosecutor's office. While he testified that after having looked up *Honeyman on Justice* he knew he had no right to hold Puciarello for bail and so advised Puciarello that he would have to send him, Puciarello, to the Newark Street Jail; on cross examination he claimed he did not know that he had no right to allow the accused to go free without bail.

Seidman told Fischman that the warrant had to be executed before 5:30 P. M., and he also admitted telling Dorothy Miller to be at his office that afternoon, because he figured that the prisoner would be there at that time (p. 129, l. 25) and he wanted her at his office so that they could have a hearing on the case that very afternoon. He proposed to have a hearing at half-past five at his office (p. 120, l. 36). At no time during his examination did he say he was going to have a hearing on the day of the arrest of Puciarello but on the next day (p. 114, l. 14).

The testimony of both Seidman and Fischman was thus rendered unbelievable by their many contradictions. With all their explanations and reasons advanced for their conduct, they have failed to explain why a return was not made on the warrant, why Puciarello was allowed to go without bail and why Puciarello was finally completely discharged by them, Fischman and Seidman. The answer is simple. As Fischman said, the whole matter was settled. It would be preposterous to think that a justice of the peace and constable finally settled and disposed of the matter and allowed the accused to go at large without first seeing to it that their services were paid for.

On the question of the verdict being against the weight of the evidence.

“It is an elementary rule that where there is evidence from which the jury might properly find the defendant guilty, the issue is one for the determination of the jury, and the court will refuse to direct a verdict of acquittal on the ground that there was no legal evidence of the defendant’s guilt.”

State v. Krupin, 100 N. J. L. 7.

“On this question, the appellate court will only consider whether there was sufficient evidence to go to the jury, and will not disturb the verdict unless it finds that there was such a lack of evidence that the verdict must have been the result of prejudice, mistake or passion.”

State v. Grace, 98 N. J. L. 341.

“The effect of such an assignment (that the verdict is against the weight of the evidence) is the same as that on a rule to show cause where the reason assigned is that the verdict is against the weight of the

evidence. The competency of the evidence is not to be weighed."

State v. Morehouse, 97 N. J. L. 285, at p. 296.

"The Court should not set a verdict aside, even although, in its opinion, the jury might, upon the evidence, have found otherwise."

Queen v. Jennings, 93 N. J. L. 353.

All of these decisions are approved in the case of *State v. Treficanto*, Vol. 7, N. J. Adv. Rep. p. 752. Not yet officially reported.

We herewith quote the opinion of the Court of Errors and Appeals on the question of weight of evidence given in the Treficanto case.

"On the question of a verdict being against the weight of the evidence in a criminal case, certain principles of law come in aid of a verdict of guilty. One is that under *Pamph. L. 1921*, p. 951, in all cases where the entire record is brought up with the writ of error, if from consideration of the entire evidence it appears that the verdict was not against its weight, the court will not go further and consider whether the defendant was guilty beyond a reasonable doubt. *State v. Fischer*, 97 N. J. L. 34, 36; affirmed, 98 *Id.* 293.

"To justify the setting aside of a verdict as against the weight of the evidence that fact must be so clear as to give rise to an inference that the verdict was the result of mistake, passion, or prejudice. *State v. Grace*, 98 N. J. L. 341; *Leary v. West Jersey and Seashore Railroad Co.*, 1 N. J. Mis. R. 549, 550; or partiality also. *State v. Karpowitz*, 98 N. J. L. 546.

"And the court should not set a verdict aside even though in its opinion the jury

might, upon the evidence, have found otherwise. *Queen v. Jennings*, 93 N. J. L. 355; *State v. Grace*, *supra*.

“Even if the defendant’s witnesses had outnumbered those of the state that would afford no ground for setting the verdict aside as against the weight of evidence. *Bowell v. Public Service Corp.*, 77 N. J. L. 231; *State v. Grace*, 98 *Id.* 342; *State v. Karpowitz*, *Ibid.* 546; *Barwick v. Blauvelt*, 2 N. J. Mis. R. 270; *Fornerotto v. Board of Public Utility Commrs.*, 6 N. J. Adv. R. 1631.”

It is respectfully submitted, therefore, that the verdict of the jury was amply sustained by the evidence, and that it should not be set aside.

POINT I.

It is argued under this point that the charges against the two defendants were misjoined in one indictment.

The defendants were charged under section 22 of the Crimes Act (2 C. S. 1750).

“22 Extortion.—Any judge, magistrate, sheriff, coroner, constable, jailer or other officer as aforesaid, who shall receive or take, by color of his office, any fee or reward whatsoever, not allowed by the laws of this state for doing his office, shall be guilty of a misdemeanor. (P. L. 1898, p. 800.)”

The indictment charges “that Gustave S. Fischman and Abraham Seidman on the third day of June in the year of our Lord one thousand nine hundred and twenty-nine, at the City of Newark, in the County of Essex aforesaid, being a Constable and Justice of the Peace respectively, did then

and there receive and take by color of their offices the sum of ten dollars as a fee from one Frank Puciarello."

Much emphasis is laid by plaintiffs-in-error upon the difference in the functions of the respective offices of the two defendants; and cases are cited and quoted to the effect that where certain officers have different duties to perform, they cannot be jointly indicted for *neglect* of their duties, or for violation of their duties; and counsel for plaintiffs-in-error concedes that where the functions and duties are common they may be joined in one indictment.

The section under which defendants were tried and convicted applies to a class of officers, which class includes that of constables and magistrates, and "other officers as aforesaid." Under this section, all the enumerated officers have one common duty; that of not accepting fees not allowed by law. In the case at bar, Fischman is not charged with violating his duties as a constable, nor for neglecting them; neither is Seidman charged with neglecting or violating the duties of his office. Even though their acts do amount to a malfeasance in office, that is not the charge. The charge is that being officers of the *class* enumerated in the quoted section, they received fees not allowed by law; they are charged as officers enumerated in the section, and as such officers, in respect to this section, their duties are common, to wit, to refrain from accepting fees not allowed by law.

It is not contended by plaintiffs-in-error that, by reason of the difference in their functions, the fees would be legal if accepted by one, while illegal if accepted by the other. They concede that it was illegal for either of them to accept it. If the taking was by joint action, they were properly

joined as defendants, and it is not relevant under color of whose office they, Seidman and Fischman, took the money, and it would amount to an extortion under either circumstances.

Where the neglect of each defendant would constitute a separate offense, an offense of a different nature, necessarily the two defendants cannot be joined; but where the offense charged is the violation of a duty common to both, the offense is the same, and the two defendants may be jointly indicted.

Counsel for plaintiffs-in-error says the indictment charges a "separate and distinct crime on the part of each defendant," and bases such distinctions upon the difference in functions of the two offices, but we submit counsel fails to explain how the difference in official functions creates any difference in the crime committed by each. Neither was entitled to any fees, and either was individually guilty of extortion, and, having acted jointly, they were jointly guilty of extortion.

That the mere difference in functions of office does not present a legal obstacle to a joinder is evident from the case of *State v. Young, et al.*, 56 *Atl.* 471. (The N. J. citation of 69 N. J. L. 592 is not complete.) In that case, the president, vice-president, executive committee, general superintendent, Superintendent for Essex County, Assistant Superintendent for Essex County, and the Roadmaster of the North Jersey Street Railway Company, were indicted for manslaughter, for causing the death of Ernestina Nuller, at a grade crossing. That all these officers had functions to perform, different from each other, cannot be doubted, but no difficulty was felt by the Court in allowing a joint indictment.

In *State v. Lehman*, 182 Mo. 424, 81 S. W. 1118, several officers of the City of St. Louis were jointly indicted for *bribery*; all were officers of the municipal assembly. The Court, sustaining the joint indictment, lays emphasis not upon the similarity of office but upon the concert of action. The Court says:

“It may be that the joint corrupt agreement may result in the commission of *separate* and *distinct* offenses by all those who participated in the making of it; but the *acts which resulted in the commission* of the distinct offenses were joint, and the proof of the guilt of one who participated in the making of such agreement would necessarily prove the guilt of the others who were parties to it. In other words, their crimes may be distinct; but their acts which resulted in the commission of the crime are joint.”

It is thus apparent that the decision is based upon the fact that there is a concert of action between the defendants; that they have committed the act jointly.

The Court goes on to say,

“Is there any legal, valid or practical reason why such issue as is presented in the indictment should not be presented to all of them in one count and in one indictment.”

This is a sound, logical and practical reason for the ruling which held the joint indictment good; and it is squarely applicable to the indictment in the case at bar, for the plaintiffs-in-error, or either of them, do not even contend that they were in any way handicapped in their defense by

reason of the joint indictment. The Missouri court in the Lehman case further observes:

“If their guilt depends upon the proof of a corrupt agreement in which all participated, and the proof of the guilt of one necessarily involved the proof as to the others who were parties to the agreement, then we are unable to see how the purpose and objects of good pleading could be obtained by requiring the issue, in which all are equally interested, to be presented to each individual by a separate and distinct indictment or information against each person interested. * * *”

The Court then cites text writers and authorities and approves the rule

“That where the same evidence, as to the act which constitutes the crime, applies to two or more, they may be jointly indicted.

* * * Nor is it an objection that the fact, proved against two or more, constitutes a distinct species of legal and technical offense.”

Bishop, in his *New Criminal Law*, Vol. 1, No. 474, 475, approves Lord Hale's opinion to the following effect:

“It seems that to warrant such a joinder in the same indictment, the offenses must be of the *same nature*, and such as will admit of the same plea and the same judgment.”

In the case of *State v. Byhre, et al.*, 163 N. W. 282, *Minn.*, the defendants one P. Byhre, county auditor, and A. L. Swanberg, county commissioner, were jointly indicted for becoming unlawfully interested in a certain contract between the County of Case, wherein they held their respective offices, and one Ole Skoog, for certain construction work.

The indictment was demurred to, and it was argued that it was impossible that the defendants (holding different offices, and burdened with different duties) committed the offense jointly. They were joined as principals and not as aiders and abettors. The indictment was held good because the statute under which the two defendants were charged applied to all county officials.

Similarly, in the case at bar, the statute defining extortion applies to a class in which are included constables and magistrates, and irrespective of their individual duties they are all under a common ban against accepting fees.

In 31 C. J. 754, will be found an analysis of joinder of parties. Under Par. 312 it is said:

“Save in cases of those offenses which cannot be committed singly and those which cannot be committed by two or more persons jointly, *parties jointly* concerned in the same offense may be indicted jointly or separately.” (Italics ours.)

As quoted in brief of plaintiffs-in-error, according to Archibald's Pleadings, two or more may be indicted jointly for extortion. Extortion, therefore, is not one of the exceptions referred to in the above quotation from Corpus Juris.

31 C. J. 754 Par. 314.

“When an offense is one which may be committed by more than one person at the same time, the several persons engaged in its commission may be jointly charged. Of this nature are indictments for larceny and many other offenses which may be committed by persons acting in concert. This rule applies, although defendants, some being officers and others individuals, are subject to different punishments for the offense.”

The case of *State v. Hall*, 1 S. E. 683, cited by plaintiffs-in-error, is not in point: In that case the Court had no doubt that the mayor could be indicted jointly with the aldermen; but the difficulty was in joining the board of audit and finance, for the simple reason that the charge was not the joint commission of a criminal act, but neglect to perform their duties; *i. e.*, neglect to approve certain rates of assessment, and there was nothing to show that the board of audit and finance were under duty to approve those rates because there were no ordinances levying such rates. In the Hall case, what constituted neglect of duty for the aldermen did not constitute neglect of duty for the board of audit and finance. Whereas, in our case, the taking of fees from Puciarello constituted extortion for either plaintiff-in-error.

In 14 R. C. L. 194, No. 139, the rule is given that,

“A joint indictment may be found where the same evidence as to the act which constitutes the crime applies to all persons indicted, and several persons may be indicted jointly for offenses arising wholly out of the same joint act. There is no objection to such joinder because the fact, proved against two or more, constitutes a distinct species of legal and technical offense as to each.” * * *

It is urged by plaintiffs-in-error that it was error to use in the indictment the words “by color of *their* office,” instead of designating under color whose office the \$10 was taken. There was no justification for the receipt under color of either defendant’s office, and the nature or degree of the crime would not be different if the money was taken under color of one or the other office; Puciarello paid the \$10 because he found

himself in the hands of the law, the administration of criminal law, represented by a magistrate and a constable. It was the machinery of criminal administration, represented by the combination of the offices of a magistrate and a constable which induced Puciarello to part with his \$10. It was, therefore, by color of *their* offices that the two defendants extorted the money from Puciarello.

Plaintiffs-in-error do not show in what way the joint indictment harmed them in their defense on the merits; and under our well established rule that merely legal errors, if there are any, do not constitute ground for reversal unless such error caused the accused substantial injury in his defense on the merits, the plaintiffs-in-error have shown no ground for reversal under this point.

POINT II.

It is argued by plaintiffs-in-error that it was error for the Court to allow the admission of evidence relative to the complaint for rape which the defendants, Seidman and Fischman, induced the witness Miller to make against Puciarello; the arrest of Puciarello upon a warrant issued upon such complaint; the arranging, by the two defendants, of a settlement between Miller and Puciarello by which the latter was to pay Miller \$50.00; the release of Puciarello while holding the warrant over his head to compel him to make further payments; the payment of \$25.00 by Miller to the defendant Seidman for his services.

The argument of counsel for plaintiffs-in-error is based upon the general principle of law that evidence for collateral crimes are not admissible for the proof of a charge. Like most other general principles of law, this rule has well recog-

nized exceptions, so that where evidence tending to show extraneous crimes are relevant for the purpose of proving intent, motive, a plan or scheme, or knowledge of guilt, such evidence is nevertheless admissible even though incidentally it prove distinct and separate offenses.

The rule in New Jersey, upon the question of admission of evidence of collateral crimes, is:

“Where there is a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other, evidence thereof is admissible, and such evidence does not fall under the condemnation of testimony relative to other offenses than the one for which the defendant is on trial.” *State v. Noel*, 102 N. J. L. 659 at p. 672.

In the case of *State v. Landecker*, 100 N. J. L. 195, defendant was on trial for unlawfully obtaining certain formulae from one La Vella, an employee of a chemical company. It was argued in that case, that the trial court erroneously permitted the defendant to be asked questions tending to show that before he obtained these formulae from La Valle he sought to obtain them from one Farley, another employee of the chemical company. Then court says,

“We are told that this was legally erroneous because the state by these questions attempted to prove the commission of an independent crime by the defendant. This is true, but the fact did not make the testimony incompetent. As was pointed out in *State v. Deliso*, 75 N. J. L. 808, 816, 817, where the prior crime evidences a state of mind shown to have been carried forward and exhibited in the criminal act under investigation, and so nearly related in time,

place and circumstances, that the mental state involved is practically continuous, such evidence is competent. Where a series of crimes are committed for the accomplishment of a single ultimate purpose, and that purpose is manifestly the sole inducing cause of the commission of each separate crime, the rule applied in the case just cited makes proof of these separate crimes competent evidence."

In the case at bar, the various acts of the defendants, in connection with the issuing of a warrant against Puciarello, inducing Miller to sign a complaint for rape upon which to base the warrant; the settlement of the quarrels between Miller and Puciarello, the taking of \$25.00 from Miller, and all the other acts, proof of which is made the ground of this argument, were put in not for the purpose of showing the criminal propensity of the defendants. They were admitted to show the state of mind of the two defendants at the time of the taking of the \$10.00 to show their criminal intent and to negative any possible claim of mistake or misapprehension; to show the plan and the scheme contrived by the defendants in order to put Puciarello in a position whereby, they could extort money from him.

With apparent seriousness it is argued by plaintiffs-in-error that since they completely denied the taking of the \$10.00, the intent in the taking was unnecessary to prove. This argument disregards not only the right but the duty of the state to adduce, in its case in chief, all the elements necessary for the proof of the crime charged.

In *State v. Cutler*, 36 N. J. L. 125, it was held by Chief Justice Beasley that even though the statute does not make evil intent a part of the

crime, it is nevertheless a necessary element of it. The prosecution could not anticipate the defense, and there were no admission of any sort by the defense; the prosecutor, therefore, was not only justified, but under duty to prove all of the necessary elements of the charge, in the state's case in chief. Plaintiffs-in-error's argument amount to a concession of the relevancy of the testimony on the question of intent; the objection is based on the claim that it was unnecessary to show intent. An evil mind, an evil intent, being a necessary element of the crime of extortion, the state properly adduced all evidence, showing or tending to show the evil intent, the guilty intent; such evidence is not rendered inadmissible because it also proved collateral crimes.

The state's contention was, that even though the \$10.00 was actually paid to Fischman, there was a common enterprise, a concert of action, a scheme mutually agreed upon, between the two defendants. And all the evidence on the so-called collateral crimes, made the basis of this argument, were very relevant for the purpose of proving such common enterprise and concert of action between the two defendants.

In conclusion, the testimony concerning the making of the complaint, the taking of the \$25.00, the final settlement of the difficulty between the girl and Puciarello, the arrangements to meet at the girl's apartment, etc., were introduced not for the purpose of proving distinct crimes, but to prove the co-operation between the two defendants in laying the foundation for the final taking of the \$10.00. All these facts were so closely inter-related with the charge in point of time, place and circumstance, that the charge could not have been properly proved without showing them.

It is submitted that no error was made by the court in this respect.

POINT III.

Under this point, it is argued that the court should not have allowed the introduction of testimony of witnesses as to the acts and declarations of the defendant Fischman made in the absence of Seidman. The gist of the argument of Counsel for Seidman is that such evidence should have been admitted with a caution not to apply it as against Seidman. It is, therefore, practically admitted by Counsel for Seidman that the testimony, the admission of which is herein argued, was admissible against Fischman; this of course, could not have seriously been disputed.

It is submitted, however, that all acts and transactions of Fischman, made in furtherance of the common object, in the execution or furtherance of the common purpose, was admissible against Seidman. It must be kept in mind that the charge in the instant case is very much in the nature of a conspiracy entered into between the two defendants to entangle Puciarello into such a position where he would be compelled to pay.

In 16 C. J. 644, Par. 1283, the rule is given,

“The general rule is that where it appears that two or more persons have conspired to commit an offense, everything said, done, or written by one of them during the existence of the conspiracy, and in the execution or furtherance of the common purpose, is admissible in evidence against the others. This rule of evidence is founded upon principles which apply to agencies and partnerships, for it is reasonable that, where a body of men assume the attribute of individuality, whether for commercial

business or for the commission of a crime, the association should be bound by the acts of one of its members in carrying out the design; and the legal principle governing in cases where several are connected in an unlawful enterprise is that every act or declaration of one of those concerned in the furtherance of the original enterprise and with reference to the common object is, in contemplation of law, the act or declaration of all. The acts and declarations of a conspirator also may be admissible as part of the *res gestae*.

16 C. J. 647, Par. 1284.

“Charge of Conspiracy Not Necessary. The generally accepted view is that it is not necessary that the indictment or information should charge a conspiracy, but, where, although no conspiracy is charged, it is made to appear that there was concerted action between co-defendants, the act and declarations of one are admissible against the other.”

Par. 1287.

“5. Proof of Conspiracy—a. Necessity. In order that the acts or declarations of an alleged conspirator may be admissible against an alleged co-conspirator the existence of the conspiracy must be shown; it also must be shown that the defendant against whom the evidence is offered was a party to such conspiracy. The same rule applies to acts and declarations of one charged as an aider or abettor of defendant.”

And it is further stated in 16 C. P. 651, Par. 290, that any evidence which properly tends to prove the existence of a conspiracy is admissible, such as overt acts done in carrying out the purposes of the conspiracy.

The fact that evidence offered to prove a conspiracy also proves that the same persons were engaged in a conspiracy to commit other crimes of a like character does not exclude it. 16 C. J. 652, and citations under note 53.

16 C. J. 653, Par. 1293.

“g. Concerted Action Sufficient. It is not necessary that there should be proof sufficient to convict defendant and the person whose acts or declarations are sought to be shown of the crime of conspiracy as defined by statute; it is sufficient if the evidence shows that defendant and the actor or declarant were acting with common purpose and design, even though it does not appear that there was a previous combination or confederacy to commit the particular offense. A fortiori where concerted action prior to the commission of the crime is shown, it need not appear that there was a conspiracy extending over any great length of time.”

Par. 1294.

“6. Determination as to Existence of Conspiracy. It is for the court or the trial judge to determine whether there is sufficient prima facie evidence of the existence of the conspiracy to warrant the admission of the acts or declarations of alleged co-conspirators with defendants, and the ruling on this question has the same weight as any other finding of fact.

Par. 1305.

“8. Time of Act or Declaration—a. In General. In order that the acts or declarations of a conspirator shall be admissible against a co-conspirator they must have been done or made during the existence of the conspiracy. Conversely, any act or declaration done or made while the con-

spiracy existed is, so far as the element of time is concerned, admissible.”

The rule of law expounded herein was applied in the case of *State v. Neary*, 8 N. J. Adv. Rep. 120, in which Justice Trenchard, speaking for the Court of Errors and Appeals said:

“Upon the trial of an indictment for murder committed in perpetrating the robbery of a mail truck, the testimony of one of the participants who was present aiding and abetting in the robbery, as to a conversation prior to the robbery with another of the participants, who was also present, aiding and abetting but not indicted because dead, about robbing the truck, was not rendered inadmissible by the fact that the dead man was not indicted, *nor by the fact that the indictment did not charge a conspiracy to commit murder.*” (Italics ours.)

See cases collected in 16 C. J. 654, §1296, and *Ibid.* 647, §1284.

“None of the cases cited by the plaintiffs in error, to wit, *State v. Unger*, 93 N. J. L. 50, *State v. Newman*, 95 N. J. L. 280, *State v. Cortese*, 4 Misc. 683, sustain the argument of counsel on this point, because, in each of the cases cited the offered evidence was admitted and a reversal on that ground was refused; and in each of the cited cases the evidence offered was not ‘the acts and and declarations of a co-conspirator,’ but the *admissions*, in the nature of a *confession*, made by a co-conspirator *after* the accomplishment of the purposes of the conspiracy, in which case, of course the rule is that ‘Confessions or admissions of one conspirator or co-defendant are not admissible against another, unless they were made in his presence and assented to by him.’ ” 16 C. J. 659, 1314.

And finally, the rule is laid down succinctly in 16 *C. J.* 667, as follows:

“11. Acts or Declarations in Absence of Defendant—a. Where Conspiracy shown. Where the existence of a conspiracy is sufficiently shown, an act or a declaration of one conspirator may be shown as against another conspirator, although the act was done or the declaration was made out of the presence or hearing of the defendant against whom it is sought to be used, unless the act was done or the declaration was made at the time when the conspiracy was not in existence, or was not in furtherance of the common design.”

In the instant case the testimony relating to the acts or conduct of Fischman, made the basis of argument under this point, were not in the nature of admissions or confessions made by Fischman; they were *acts* tending to prove the existence of the conspiracy, the commission of overt acts in pursuance of said conspiracy, and the existence of a concert of action between Fischman and Seidman. Neither defendant made any statements in the nature of confessions. The state proved by the testimony of Miller that while she was in Seidman's office, Seidman had a telephone conversation with Fischman, carried on in Jewish, and before Seidman hung the receiver up, she was called to the phone and she recognized the voice of Fischman at the other end who advised her that she must pay \$50.00 to Seidman in order for Seidman to take her complaint and that she accordingly paid Seidman \$25.00. Puciarello, too, testified concerning the negotiations had in Seidman's office. It was therefore, entirely proper for the state to corroborate these by subsequent conversations or dealings had between Miller, Puciarello, and

Fischman in Seidman's office; where they were attempting to settle the matter amicably.

In *State vs. Herbert*, 92 N. J. L. 341, p. 359, this court approves the rule that "the acts and declarations of each co-conspirator are admissible against all the co-conspirators if made and done before the object of the same has been consummated."

In the present case the conspiracy was not consummated by the taking of \$10.00 from Puciarello, this extortion of the \$10.00 was only an incidental part of the general scheme. It will be remembered that the \$50.00 which Miss Miller was to get from Puciarello was represented to be only the "first payment of the alimony" (Case, p. 48, l. 20). The final consummation of the plans and scheme would not have been complete until after the payment of the \$50.00 by Puciarello to Miller at Miller's apartment. For, then and only then would the negotiations and settlements made at Seidman's office be finally concluded.

Having shown the existence of a conspiracy, the state was entitled to show the overt acts following such conspiracy to corroborate the conspiracy. It is respectfully submitted therefore, that no error was committed by the court in admitting into evidence the various acts and declarations of Fischman.

POINT V.

The following portion of the charge is argued as erroneous, and reversal is requested therefor.

P. 139, l. 34.

"There is nothing in this case to indicate that there was even any charge made against this girl or this fellow if they were

guilty of fornication. Of course, fornication in this State is against the law, but I venture to affirm that when we mention the relative importance of prosecutions for fornication, and prosecutions for extortion by officers of the law, prosecutions for fornication become more or less insignificant."

It is argued by plaintiffs-in-error that by this portion of the charge the Court conclusively assumed that the story told by Miller to Seidman and Fischman was of fornication and not of rape.

It is remarkable that counsel fails to observe the part of the charge immediately following the above, as follows:

Case, p. 140, l. 3, etc.—

"They say that this is purely a fabrication, that this girl came to them and told them that she had been raped. * * * but be all that as it may, you will remember that it is for you to consider all of the testimony, not only such as the Court or counsel mentioned, but all of it, and it is for you to come to a decision."

How counsel can interpret this to be an invasion by the Court of the province of the jury is beyond our conception.

The only statement of the fact contained in the excerpt of the charge argued as erroneous is the statement that

"There is nothing in this case to indicate that there was ever any charge made against this girl or this fellow if they were guilty of fornication."

The statement is absolutely correct, for the record is devoid of any charges having been made against the boy or the girl for fornication.

It is argued by plaintiffs-in-error that they were justified in not making the charge for fornication, because the girl related a story of rape.

The question whether or not Miller complained of rape or fornication was left to the determination of the jury, their attention being called to the claim of plaintiffs-in-error that Miller said she had been raped.

It remains uncontroverted that the warrant against Puciarello was abandoned in that Puciarello was allowed to go free, although the Justice, Seidman, knew that he must send Puciarello to Newark Street Jail (C. p. 111, l. 11) and would not hold him for bail. Therefore, the Court's observations were again justified in that these charges, whatever the plaintiffs-in-error understood them to be, were not pressed.

The meaning of this observation made by the Court becomes clearer when taken in connection with the part immediately preceding it, which is,

“The defendants say that this is purely a trumped-up affair. The motive that they assign is that this girl wanted to save her own skin, as far as I recall the evidence, and as I have already told you, you are the judges and must follow your own recollection.”

The accused claimed that the charge against them was a fabrication of the Miller girl and Puciarello in order to save themselves from criminal charges, but the fact remains that the charge of rape against Puciarello was not put through its regular course. Puciarello was not held; he was released. That Puciarello and Miller were trying to frame up these two defendants cannot in any way explain why Seidman did not hold Puciarello for a hearing or for the Grand Jury;

why he did not docket the case; why Fischman did not make his return on the warrant.

There is nothing in the case to indicate that there was any charge made against Miller or Puciarello for fornication. They not being under a charge of fornication, why should they contrive together to fabricate a case against Seidman and Fischman. Miller had no occasion to attempt to "save her skin," because she was under no charge, and as for Puciarello, according to Fischman's own testimony "everything was off" (p. 100, l. 22). They had, therefore, no reason to fabricate a case against the two defendants. And it is in that sense that the Court made the observation that there was no charges of fornication against Miller or Puciarello.

The language used by the court cannot possibly be interpreted to mean an assumption by the Court that Miller's complaint against Puciarello was for fornication and not for rape, because the Court speaks of a charge made against the girl as well as the man, and cannot therefore, have referred to the charges made by the girl.

We deem it unnecessary to take the various cases cited by plaintiffs-in-error, because in each of these cases the trial court conclusively decided points of fact which were for the jury to decide, and left to the jury the decision of facts based upon other facts conclusively assumed by the Court. That was precisely the situation in the case of *State v. Lanto*, 98 N. J. L. 401, cited by plaintiffs-in-error. In the case at bar the Court most emphatically left the determination of all facts to the jury, and did not so much as give his opinions or beliefs of the facts, which he had the right to do.

"In a criminal case it is always the right and often a duty of the judge to tell the jury

how the testimony strikes his mind both as to its force and the inferences he would draw from it, and such expressions will not lead to a reversal as long as the right and duty of the jury to decide for themselves all disputed questions of facts is pointed out. *State v. Randall*, 95 N. J. L. 452, 113 A. 231."

"A trial judge in his charge may call attention to any matter affecting the credibility of the witnesses and may comment on the testimony and intimate an opinion as to its weight whenever he thinks it necessary for the promotion of justice, so long as he fairly leaves the jury to determine the facts and to draw their own conclusions as to the credibility of the witnesses and the weight of the testimony. *State v. Grace*, 98 N. J. L. 341, 119 A. 767."

"It is within the court's province to comment on the evidence and it is often its duty to do so. *State v. Lyons*, 1 N. J. L. Adv. R. 1480, 112 A. 758, 99 L. 94."

"It is always the right, and often the duty of the judge to tell the jury his opinion of the testimony, both as to its force and the inferences he would draw from it, and such expressions in charge are not reversible error, so long as the right and duty of the jury to decide for themselves all disputed questions of fact is pointed out in the charge. *State v. Dragone*, 1 N. J. L. Adv. R. 1490, 122 A. 878, 99 L. 144."

It is submitted that no error was made by the Court in his charge.

It is respectfully submitted, therefore, that the decision of the Supreme Court should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas.

JOSEPH E. CONLON,
Assistant Prosecutor.



