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TESTIMONY.

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State's Exhibits:

Writ of Error to Supreme Court.

New Jersey, to wit:

(Seal) The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, GREETING:

FOR AS MUCH as in the record and proceedings, and also in the giving of judgment, in a certain plaint, and which was in our said Supreme Court of Judicature, before you, between the State of New Jersey, defendant-in-error, and Samuel Silverman, plaintiff-in-error, manifest error hath intervened to the great damage of the said plaintiff, Samuel Silverman, as it is said: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the party aforesaid in his behalf, DO COMMAND YOU, that if judgment be thereon given and confirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 15th day of October, next, together with this writ, that the record and proceedings aforesaid, being inspected, we may

cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

WITNESS, his Honor, Luther A. Campbell, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the 24th day of September, A. D., in the year of our Lord one thousand nine hundred and thirty-five.

THOMAS A. MATHIS,
Clerk.

PERKINS, DREWEN & NUGENT,
Attorneys.

Writ of Error to Bergen Quarter Sessions.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY vs. SAMUEL W. SILVERMAN, et als., *Defendants.*	Writ of Error.

The State of New Jersey to the Court of Quarter Sessions in and for the County of Bergen, GREETING:

(Seal)

Because in the record and proceedings and also in giving of judgment in a certain indictment pending before you, in which said indictment Samuel W. Silverman was a defendant, and which said indictment was for fraudulently advertising securities of the New Jersey Bond and Mortgage Corporation, a corporation of the State of New Jersey, and upon which indictment he was convicted, as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial to the great damage of the said Samuel W. Silverman as by his complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly, to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record and proceedings had upon the trial of said indictment to our Supreme Court on the 14th day of February, 1935, together with this writ, that

the record and proceedings being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

WITNESS, Thomas J. Brogan, Esquire, our Chief Justice, at Trenton, January 25, 1935.

FRED L. BLOODGOOD,
Clerk.

Return to Writ of Error.

BERGEN OYER AND TERMINER.

THE STATE OF NEW JERSEY
vs.
SAMUEL SILVERMAN.

Return to Writ of Error.

The indictment and the record and proceedings whereof mention is within made, with all things touching and concerning the same, I certify to the Justices of our Supreme Court of the State of New Jersey at the day and year within contained in a certain schedule to this writ annexed, as I am commanded.

A. D. DELMAR,
Judge, Bergen County
Court of Quarter Sessions.

Attest:
JAMES W. MERCER,
Clerk.

Return.

Indictment.

BERGEN OYER AND TERMINER.

DECEMBER TERM, A. D. 1931.

Bergen County, to wit: The Grand Inquest of the State of New Jersey, in and for the County of Bergen, upon their respective oaths, present, that Samuel W. Silverman, Matthew J. Kurtz, Robert W. Thompson, Nathan Lieberfreund and Edgar Ross, late of the City of Hackensack, in the said County of Bergen, on the fifth day of February, in the year of Our Lord one thousand nine hundred and thirty , at the City aforesaid, in the county aforesaid, and within the jurisdiction of this Court, being then and there officers, directors or employees of the New Jersey Bond & Mortgage Corporation, a corporation of the State of New Jersey, with intent to sell and dispose of a certain bond issue of the said corporation in the sum of Five Hundred Thousand Dollars, did make, publish, disseminate, circulate and place before the public, and did cause to be made, published, disseminated, circulated and placed before the public, certain circulars, pamphlets and letters containing assertions, representations of fact, which were untrue, deceptive and misleading, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

GEORGE F. LOSCHE,
Assistant Attorney General
and Acting Prosecutor.

Return—Indictment.

Endorsed:

WITNESS:

Philip L. Coffin.

Vio. Laws of 1913, Chapter 318
Supplementing Laws of 1898, Page 794.

George F. Losche, Assistant Attorney General and Acting Prosecutor.

A true bill.

THEO. BOETTGER,
Foreman.

Filed, February 2, 1932.

July 15, 1932. Silverman & Thompson N. G.

Arraigned

Plea

Amt. of Recognizance, $

Silverman—January 14, 1935

Trial

Sentence

January 14, 1935—Silverman found guilty by jury.

January 17, 1935, Silverman, 360 days in County Jail and fine of $1,000. To stand committed until fine is paid.

Return.

Record.

BERGEN COUNTY COURT OF
QUARTER SESSIONS,

PART TWO.

Hon. A. DEMOREST DEL MAR, Presiding.

January 14, 1935.

THE STATE OF NEW JERSEY

vs.

SAMUEL W. SILVERMAN,
Defendant.

Vio. Laws of 1913, Chapter 318, Supplementing Laws of 1898, Page 794.

JOHN J. BRESLIN, Jr., Prosecutor.
I. F. GOLDENHORN, Attorney for Defendant.

Motion for a severance as to Samuel W. Silverman granted on motion of John J. Breslin, Jr.

Motion for adjournment by Mr. Goldenhorn denied by Court.

Motion to quash by Mr. Goldenhorn denied by Court.

State	Challenges	Defense
8	Jury	7

1. John Vrabel
2. Harry Vorrath
3. Leonard Neighbour
4. Joseph Kenny
5. Martha Lange
6. Fred Mursch
7. Arthur Marion
8. Albert Zeyher
9. Anna Lakefield
10. Charles Raymond
11. Frank Farco
12. Mary Oakley

Record.

Opening by Mr. Breslin to Court and jury.

WITNESSES:

State

1. Philip L. Coffin, Jr. 2. Martin K. Fowler
3. Remson S. Voorhis

Defense.
1. Samuel W. Silverman
2. I. F. Goldenhorn

State—Continued

Philip L. Coffin, Jr.—recalled.
Remsen G. Voorhis—recalled

4. Thomas Ryer
5. Samuel W. Garrison
6. Victor D. Banta
7. Sidney Hicks
8. Charles Dean
9. Kenneth D. MacLaren
10. Peter F. Cook

1:00 P. M. Court recessed until 2:00 P. M.
2:18 P. M. Court reconvened. Jury called by clerk. All present.

State—continued

11. John J. Carey
12. James F. Boyd
13. Dr. Clarence Norcum

Philip L. Coffin, Jr.,—recalled

14. Edwin Hall Davis
15. Mattie R. Lee
16. Matthew J. Kurtz
17. Edgar Ross
18. Robert A. Stokes

State rests.

Motion by Mr. Goldenhorn for a directed verdict of acquittal in favor of the defendant Samuel W. Silverman denied by the Court.

Defense.

3. Percy A. Gaddis
4. Jacob H. Klein

Samuel W. Silverman—recalled.

Defense rests.

Rebuttal
Matthew J. Kurtz—recalled
Philip L. Coffin, Jr.—recalled
19. Nathan Leiberfreund

Case closed.

Motion for a directed verdict of acquittal in favor of the defendant Samuel W. Silverman denied.

Case closed and evidence summed up by respective counsel and submitted to the jury upon charge of the Court.

Sentence.

The jury retired to consider of their verdict having two officers sworn to attend them.

The jury returned into court and upon being called they all answered present and said that they find the defendant Samuel W. Silverman guilty as charged.

At the request of counsel for the defendant the jury was polled and all jurors concurred in the verdict as rendered.

Defendant remanded for sentence.

Sentence.

BERGEN COUNTY COURT OF QUARTER SESSIONS,

PART TWO.

Hon. A. DEMOREST DEL MAR, Presiding.

January 17, 1935.

THE STATE vs. SAMUEL W. SILVERMAN.	For Sentence.

JOHN J. BRESLIN, Jr., Prosecutor.
I. F. GOLDENHORN, Counsel for Defendant.

The above defendant, Samuel W. Silverman, having been tried and found guilty, the Court did

sentence said Samuel W. Silverman to 360 days in the Bergen County Jail and imposed a fine of $1,000.00. Defendant to stand committed until payment of fine.

Case and Exceptions.

BERGEN COUNTY COURT OF
QUARTER SESSIONS,

PART II.

THE STATE

vs.

SAMUEL W. SILVERMAN,
Defendant.

Hackensack, New Jersey,
January 14, 1935.

Before—Honorable A. DEMOREST DEL MAR, Judge, and a jury.

APPEARANCES:

For the State: Hon. JOHN J. BRESLIN, Jr., Prosecutor of the Pleas.
For the Defendant: I. FAERBER GOLDENHORN, Esq.

Motion For Severance.

The Prosecutor: In the matter of The State vs. Samuel W. Silverman, the State asks for severance in the other cases; we are moving Indictment No. 9098.

Mr. Goldenhorn: Your Honor, I must respectfully ask for an adjournment because of surprise. It seems to me that I should have been given notice that the State would ask for severance just as I would give notice if I represented two witnesses and asked for severance for one of them. I am surprised of the fact. I may want to use—I did want to use—some of these defendants as witnesses; but if there is to be severance and they are not to be here, I ask for an adjournment. Further, I desire, for the purpose of the record, to move for an adjournment of this case on the ground that some material witnesses are absent, whose names I have given to your Honor in an affidavit which I furnished to your Honor on Monday, January 7th, 1935. They are not here today. I have been trying to get in touch with them, and have succeeded in getting in touch with some in Chicago, and I can produce them if this case is adjourned for one week more. We cannot safely go to trial without these important and material witnesses. I desire to move for an adjournment on the further ground that since your Honor granted me an adjournment on Monday last, I have served notice on the Prosecutor to answer a bill of particulars, which the Prosecutor has refused to do, on the ground that I have served it upon him too late. I say that in the interests of justice the bill of particulars should have been answered. One week before

trial is ample time to answer, and in view of the fact that the indictment contained nothing but contentions—had not stated facts—it would seem to me that it would be a great injustice for this defendant to go to trial without a bill of particulars. On that ground I ask for an adjournment for a reasonable time, and an order from your Honor directing the Prosecutor to answer the bill of particulars served upon him. I desire to ask for an adjournment on the further ground that when this matter came up before your Honor last Monday, January 7th, 1935, in the presence of this panel, the learned Prosecutor stood up and deliberately made statements to the effect that this defendant had robbed the widow and the orphan and that the stock was worthless, and it had been sold by the company when the defendant was not able to pay the salaries of its employes, and those remarks were made by the learned Prosecutor with the distinct understanding that the panel should hear his remarks. And I submit to your Honor that those remarks were highly prejudicial to this defendant and the denial of substantial justice to him and must materially affect the opinions of the jurors before they were drawn before you. On account of those remarks, I submit, we are entitled to a reasonable adjournment so that we can have a panel here that will be unprejudiced. Justification for the remarks made by the learned Prosecutor was that I had made a statement in an affidavit which I was obliged to do in order to show merit before your Honor before I could ask for an adjournment, because if I had no merit—if I could

not show merit—I must of necessity be denied the adjournment for which I applied. On those grounds, I must respectfully ask for an adjournment of this case for such a reasonable time as will give me an opportunity to put in my defense to this indictment.

The Prosecutor: There is only one thing to be said, that is, that in my mind the granting of an adjournment is entirely discretionary with your Honor. Counsel for the defendant knew that the case was to be tried today. The defendant cannot be harmed by the severance; the other defendants are in Court, and if counsel wants to call them, he can do so.

The Court: What is this about a demand for particulars?

The Prosecutor: I was served with a demand for particulars, which was refused on two grounds: The first ground was that the demand was too late, the second ground was that the questions were not proper. I wrote Mr. Goldenhorn telling him that if he would make an application to your Honor the matter could be argued on its merits. He has not done anything at all.

Mr. Goldenhorn: If there were anything unreasonable in my demand the Prosecutor had a perfect right to serve me with a notice to strike it out. I know of no procedure that requires me —I think your Honor will agree—to appear before you. When I make a demand—the statute specifically states that I can make any demand before trial within a reasonable time—and, surely, a week is a reasonable time; as a matter of fact,

all of our special notices are on two days' notice. Here he has had seven or eight days, and he has refused to do it. It seems to me that I am entirely within my rights. I cannot go to trial unless I know the specific facts that I must know in order to present a just defense. I know that the disposition of the Prosecutor is to be fair about this matter, but it seems to me that I have been terribly prejudiced by this last minute preparation of the case. Now, of course, the Prosecutor is going to say that we have had four years in which to prepare our case; as a matter of fact, there was not a thing done by the State until last month, when I was out to California; when I got back I immediately got in touch with him, and we have made every possible effort to prepare this case for trial, but I am handicapped because of their failure to give me the particulars. I will do whatever you tell me to, but I will say in all frankness that I am terribly seriously embarrassed because of their failure to give me a bill of particulars.

The Court: I am satisfied, Mr. Goldenhorn, that the case ought not to be postponed at this late day; you have had ample opportunity to ask for a bill of particulars. It seems that an indictment was handed up about two years ago, and that you have had all that time in which to ask for a bill of particulars. In fact, since the case has been before me, which is since last November, you have applied for adjournments on the grounds, as I recall them, that you were absent; that you wanted to make an application to a justice of the supreme court for a writ of certiorari;

later you wanted to make an application to the supreme court en banc for such writ; and again, that you had a lot of witnesses that were not available; you wanted some witnesses to testify to the appraised value of certain properties in the case; and possibly other reasons that I have overlooked—in addition to the reasons advanced today. I think that if the Court were to be so lenient as to grant an adjournment every time a reason was advanced we would never have this case tried at all; for which reason I think the case ought to be tried today. Your motion for an adjournment will be denied.

Mr. Goldenhorn: Your Honor will grant me an exception to your ruling?

Exception allowed and sealed:

A. D. DEL MAR,
Judge.

Mr. Goldenhorn: Will your Honor permit me to withdraw the plea of not guilty for the purpose of making a motion before your Honor now to show your Honor that this indictment was found upon testimony of one Phillip Coffin, who was then the Assistant Attorney General of the State, and that he alone testified before the Grand Jury and that he testified from information imparted to him by Mr. Samuel W. Silverman under protest in the examination held under the Blue Sky Law, or the law which permits the Attorney General to investigate matters of corporations. At the time that investigation took place I protested against giving the testimony and asked that he

be excused because he would be compelled to give testimony and be a witness against himself, in violation of Article 5, of the Constitution of the United States, but that motion on my part was denied, and that under the law of 1930, being Chapter 52, Sec. 8, of the Laws of 1930, Mr. Silverman then testified before the Attorney General, and that it was on that testimony that Mr. Coffin testified before the Grand Jury, and Mr. Silverman was indicted. My contention is that under that law Mr. Silverman was entirely immune from punishment; and I can say that as a fact—I have witnesses here in Court, or I will procure them in less than five minutes, to show your Honor that that is the testimony on which he was indicted. The State had no right to indict him, he was entirely immune from punishment—I can show that the indictment was based on it, that the only witness appearing before the Grand Jury was Phillip Coffin. The State having no right to ask him to testify and compel him to testify and come in here now and refuse him immunity, on that ground I think that your Honor should grant my motion to withdraw from the plea of not guilty.

The Court: You have had four years in which to make this motion. I will not entertain it at this late day.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed:

A. D. DEL MAR,
Judge.

Motion for Indictment.

Mr. Goldenhorn: I will make one more motion: I now move for the quashing of this indictment, for the reason I submitted to your Honor in a brief, and at the same time, the State filed its brief, or intended to—and for the reason set forth in that brief, which I will submit to the stenographer for the purpose of the record, I ask for the quashing of this on the ground that a reading of that indictment does not charge a crime under the laws of the State of New Jersey.

The Court: Motion denied.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed:

A. D. DEL MAR,
Judge.

(A jury was duly impaneled, but before being sworn, Mr. Goldenhorn asked the following question: "Is any member of the jury a member of the same Democratic Club as the Prosecutor, Mr. Breslin?" The Prosecutor made an objection, the Court sustained the objection, and Mr. Goldenhorn asked for an exception.)

Exception allowed and sealed:

A. D. DEL MAR,
Judge.

(The jury was sworn.)

(The Prosecutor made an opening statement to the jury on behalf of the State.)

Opening Statement by Prosecutor.

(During the course of his opening statement the Prosecutor said the following:)

> * * * "To our mind, the basic foundation of this case is that although in 1930 the employes of this company had not been paid and although the company was not paying taxes on properties it owned, and although it collected money from people for shares of stock of the corporation, the corporation was just a skeleton, there was not anything else, and then Mr. Silverman, typical of the speculator of the boom days, decided that he had sold the stock, still he was going to take another chance and fleece the public some more."

Mr. Goldenhorn: Now, just a moment, if your Honor please, there is nothing in the indictment which justifies the statement that he was fleecing the public some more. I submit that to sum up this case at this time for the purpose of prejudicing this jury against the defendant is highly improper and unjust; and I ask for a mistrial.

The Court: Motion will be denied. The Prosecutor will be admonished not to go outside of the facts that he intends to prove to the members of the jury.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed:

A. D. DEL MAR,
Judge.

(The Prosecutor continued with his opening statement.)

(The Prosecutor made the following statement to the jury, which was challanged by Mr. Goldenhorn:)

> * * * "They did not have any cash, they could not pay their employes; we are going to have men from the banks here to show what their balances were. I think they had $5.00 in the Peoples Trust Company; and still, they had the audacity to attempt to sell $500,000.00 worth of bonds to the public, and fraudulently misleading the transfer agent of the Empire Trust Company, of New York City."

Mr. Goldenhorn: I want to ask Mr. Breslin whether it is his contention before this Court and jury that a solitary, single bond of the New Jersey Bond & Mortgage Company was sold to anyone anywhere? He makes the statement that they sold $500,000.00 worth of bonds. He knows that is not so. I must respectfully ask him whether he is going to produce one witness that will show there was a single bond of the New Jersey Bond & Mortgage Company sold by this company?

The Court: I don't think you have the right to question the statement at this time.

Mr. Goldenhorn: I think I have the right, on statements that he knows, or should know, are palpably false.

(The Prosecutor continued with his opening statement.)

(Mr. Goldenhorn took exception to the following remarks by the Prosecutor:)

> * * * "I don't know what other deposits there were, but to show you how fraudulent and how deceptive they were, the Empire Trust Company of New York, whose transfer agent we have here this morning, would not have anything to do with Mr. Silverman's companies; they had one experience, they would have nothing to do with $500,000.00"—

Mr. Goldenhorn: I ask that "one experience" be withdrawn. It is entirely improper and highly prejudicial to the rights of this defendant. It makes no difference whether he had forty experiences, the question is whether they were transfer agents.

The Court: The remarks referring to other experiences will be stricken from the record, and the jury cautioned not to take notice of them.

(The Prosecutor continued with his opening statement.)

PHILLIP L. COFFIN, JR., called as a witness on behalf of the State, first being duly sworn, testified as follows:

Direct Examination by the Prosecutor:

Q. What is your occupation, please? A. I am a lawyer.

Q. Were you ever connected with the Attorney General's Office of the State of New Jersey? A. Yes, sir.

Q. When? A. 1929, until June, 1934.

Q. In what capacity? A. Assistant Attorney General.

Q. Specializing in any particular line of work? A. I was assigned to the Division of Securities.

Q. Do you know the defendant in this case, Samuel W. Silverman? A. I do.

Q. Did Mr. Silverman appear before you? A. He did.

Q. To testify? A. He did.

Q. In what proceeding? A. In proceedings instituted under the authority of the New Jersey Securities Act pursuant to a subpoena that had been served upon him.

Q. Did he testify before you? A. He did.

Q. I show you an exhibit and ask you whether or not Mr. Silverman produced this as representing the assets of the corporation? A. He did.

The Prosecutor: I offer it in evidence.

Mr. Goldenhorn: I object to it on the ground that the defendant is immune from punishment because of the very fact that this man who now sits in the witness chair was at that time the Assistant Attorney-General of the State of New Jersey, examining him under the Securities Act, and ask permission to ask one question before any evidence is introduced at all—

The Court: I will allow you to do so.

By Mr. Goldenhorn:

Q. Is it not a fact that the time Mr. Silverman testified he was represented by an attorney? A. That was right.

Q. Was the attorney I. Faerber Goldenhorn and Mr. Levitan of the City of Jersey City? A. Yes, sir.

Q. Did I not protest giving any testimony because his constitutional rights were being violated? Did you not at that time say under this Act, pointing to the Securties Act, he was compelled to give testimony in the case? A. That is a double-barreled question. The answer is no.

Q. You mean to say he did not protest against giving testimony? A. I do.

Q. Have you any minutes that were taken at that time? A. I have not them, giving them to the Prosecutor.

Q. Is it not a fact that you testified before the Grand Jury at the time this indictment was found?

The Prosecutor: I object on the ground that it is immaterial.

The Court: I sustain the objection.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Mr. Coffin, do I understand you to say that the defendant at the time he was represented by his attorney that they did not protest and say that he was compelled to be a witness against himself? A. You understand correctly, sir.

Q. Do I understand he voluntarily testified in this case before you? A. He testified under the compulsion of a subpoena that had been served upon him.

Q. Did he not at that time and did not counsel at that time protest to the giving of any testimony because it was using and compelling him to be a witness against himself? A. He did not.

Q. Now, this exhibit which was shown to you as having been handed to you by Mr. Silverman, did this represent all of the accounts of that company at that time? A. I will have to see it.

The Prosecutor: I object to that question if he is going into it.

The Court: I think it is out of order. This exhibit was offered in evidence, your right to cross-examine will come later.

The Prosecutor: I offer it in evidence.

Mr. Goldenhorn: I object to it as in no way coming within the purview of this indictment, as being made in the presence of the Attorney-General under compulsion of the subpoena in violation of the defendant's constitutional rights, and further it is incompetent, immaterial and irrelevant, as showing on its face absolutely nothing, and as not being a complete record of the standing of the concern at that time.

The Court: May I see the document? Objection overruled.

Mr. Goldenhorn: May I ask the witness just one question as to admissibility?

The Court: Yes.

Q. Do you know whether or not that is in the same condition in which it was handed to you? A. No, I do not.

The Court: It will be received in evidence and marked Exhibit S-1.

(Paper marked Exhibit S-1.)

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

By the Prosecutor:

Q. I show you that exhibit, and ask you whether or not Mr. Silverman produced that? A. I cannot very definitely testify that Mr. Silverman produced it. There were several witnesses that appeared before me, all of whom are required under demand by subpoena to produce certain papers and documents and records. The testimony taken before me will disclose whether this particular document was presented by Mr. Silverman or some of the other respondents to the subpoena.

Q. Would you want an opportunity to look at the testimony? A. I will welcome such an opportunity.

Q. Before you do that, in reference to this, can you tell us whether or not Mr. Silverman offered that? A. This was offered before me, but I do not know who actually gave it to me. I do not know who was testifying at the moment.

Q. Was Mr. Silverman there? A. I would have to consult the testimony.

The Prosecutor: May I ask that the witness be excused or declare a recess for a few minutes?

The Court: Do you wish to produce another witness?

The Prosecutor: I would like to produce the foundation and have it cleared up now.

The Court: The witness might as well remain in the witness chair.

The Witness: It will only take me a second.

(The witness examines the transcript.)

Q. Did you find it? A. Yes.

Q. Who offered it? A. Mr. Silverman himself individually offered both of these exhibits.

The Prosecutor: I will offer both in evidence.

Mr. Goldenhorn: I make the same objection. I take it your Honor makes the same ruling, and I take an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

The Court: The objection will be overruled as to the documents received in evidence.

(The paper was received in evidence and marked Exhibit S-2 in evidence.)

Q. At the same time the certified copy of the incorporation was produced before you? A. That is correct.

The Prosecutor: I offer that in evidence.

(Paper received and marked Exhibit S-3.)

Q. At that time did you also have control of the minute book of the Board of Directors of the New Jersey Bond & Mortgage Company? A. I did.

Q. I show you a resolution and ask you if you can identify that?

Mr. Goldenhorn: I object to that on the ground that the best evidence would be the minute book itself, and not some alleged copy of it, and ask him to refresh his memory from reading a copy of the paper when the best evidence can be produced. There is nothing shown here that any attempt has been made to produce it.

The Court: Is this a copy of the minutes, Mr. Breslin?

The Prosecutor: Yes.

The Court: I will sustain the objection.

The Prosecutor: I would just like to lay a foundation then.

Q. Do you know where the original minute book is? A. I think it is in the hands of the receiver.

Mr. Goldenhorn: Then I certainly object to this because it can be produced, and that is the best evidence.

The Prosecutor: That is all.

The Witness: May I amend that? It is either in the hands of the receiver or the successors of the corporation, but it is beyond my control.

The Prosecutor: I won't press that. I can prove that in three or four ways.

Q. At the time of the hearing was the circular produced? A. At a later hearing a circular was produced.

Q. Is that the circular?

By Mr. Goldenhorn:

Q. Who produced it and when and under what circumstances? A. Several hearings were held and several different circulars were produced relating to different issues and different offerings.

Q. You don't know who produced that particular one, do you? A. I do not know whether the man named Ross or Silverman produced it. I do not know who identified it, I would have to consult the transcript of the testimony taken at that hearing.

By the Prosecutor:

Q. Would this help you, or was it a later hearing? A. It was a later hearing.

The Court: Is the question whether circulars were published?

The Prosecutor: Yes. They were handed out to individual members of the public. I won't press it.

That is all.

Cross Examination by Mr. Goldenhorn:

Q. At the time that you were Assistant Attorney-General, the Attorney-General was Mr. Stevens, was he not? A. That is right.

Q. Was it at his request that you appeared before the Grand Jury in this case? A. No.

Q. But you are testifying now exclusively from testimony which was given to you by Mr. Silverman and others connected with the company in pursuance of subpoenaes you brought before you as then Deputy Attorney-General for the purpose of inquiring into the status and affairs of this corporation, is that right? A. No.

Q. Wherein is the question erroneous? A. The testimony that I have furnished here and the testimony that I furnished before the Attorney-General was obtained partially from Mr. Silverman's testimony before me, also that of other officers and directors of the corporation. It was also obtained by outside investigation made through auditors and accountants by discussing the matter with many individuals with whom I dealt, some under oath, some as the result of interviews.

Q. At that time was there a statement produced by the appraisers of the Lloyd Thomas Company, appraisal engineers of the City, County and State of New York as to the worth and equity of the New Jersey Bond & Mortgage Company in property which they then had? A. What time are you referring to?

Q. I am referring to the time of the examination before you as the Deputy Attorney-General examining the officers themselves of this corporation, including Mr. Silverman, on behalf of the Attorney-General? A. There was no appraisal offered me from Lloyd Thomas pertaining to the circular described in the bond issue, but in investi-

gating into the merits of the offer that had been made some time prior to the bond offering, an issue concerning preferred shares and common shares for which an appraisal had been prepared by the Lloyd Thomas Company, that appraisal was produced.

Q. And do you recall what the amount of that appraisal was offhandedly?

The Prosecutor: I object to that on the ground it is immaterial, and not within the scope of direct examination.

The Court: Sustained.

Mr. Goldenhorn: May I urge that it is a contradiction of the statement offered here in evidence, which shows some $100,000.00; it would be part of the res gestae, because that is part of the transaction before him as Deputy Attorney-General to fix the value of this property.

The Court: That is not res gestae in this case.

Mr. Goldenhorn: May I ask your Honor for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Mr. Coffin, had you at the time you made an examination of the affairs of this corporation any personal knowledge of the standing of the corporation, what it was doing, of your own knowledge? A. No.

Q. Isn't it a fact that when Mr. Silverman came to you and a circular was shown to him by you

that he said that that circular had been issued by a man named Edward Ross, and that when he found out that it had been printed he immediately stopped it, so that there were no circulars circulated by him? A. No.

Q. What did he say with respect to who issued that circular? A. It was always very vague as to all of the details concerning the company as to the properties that it owned, as to what it proposed to do with the moneys it was going to raise from the sale of securities. I was never able to get a definite response to any query.

Q. But you do recall now that he did not tell you that that circular about which we have been talking, without having it identified and that has been in the hands of the Prosecutor here, that that circular was stopped by him as soon as he learned that they were about to publish it? A. I do not recall any such statement.

Q. You won't say that he did not tell you that, will you? A. I will.

Q. In other words, you will say that he did not tell you that he had stopped Mr. Ross from issuing it? A. I will say so, yes.

Q. Now, you have no feeling towards Mr. Silverman at all, have you? A. None whatsoever.

Q. You knew at the time that you appeared before the Grand Jury that he was having some difficulty with Mr. Stevens under whom you served as Deputy Attorney-General, did you not? A. I do not.

Q. You knew that he was attacking Mr. Stevens in articles in newspapers down in Monmouth County, isn't that so?

The Prosecutor: I object on the ground it is immaterial. I withdraw the objection.

Q. Isn't that so? A. I do not, sir.

Q. Do you mean to say that you do not know Mr. Stevens was being attacked by Mr. Silverman in articles which appeared in Ocean County? A. I know that Mr. Silverman was attacking everybody.

Q. Attacking everybody, meaning your boss too, Mr. Stevens? A. I do not definitely recollect any particular disparaging articles about the Attorney-General at the moment.

Q. Let me refresh your memory. You remember his attacking the Attorney-General because of the assistance he was giving Mr. Tumen, the Prosecutor of the Pleas of Monmouth County who has since been excused from serving as Prosecutor down there?

The Prosecutor: He has been barred—

The Court: No discussion between counsel.

A. Mr. Silverman had a newspaper.

Q. Just a moment. You have answered my question, sir.

The Court: Was the last question answered?

(The question was not answered.)

(Last question read.)

A. Mr. Silverman was publishing a weekly paper called the Free Lance which brought out many critical articles concerning men in public life. I

saw several copies of that paper. I purchased it. They were never sent to me. I read them casually, and I believe I do remember some reference to the Attorney-General.

Re-direct Examination by the Prosecutor:

Q. You do know by reading that paper that he also attacked Justice Parker and Justice Bodine?

Mr. Goldenhorn: I object on the ground that it is immaterial.

The Prosecutor: That is all for the time being.

The Court: What was the date of the examination which these documents, Exhibits S-1, S-2 and S-4 were produced before you?

The Witness: July 30, 1930.

Re-cross Examination by Mr. Goldenhorn:

Q. Do you remember when it was that you testified before the Grand Jury, what month, 1930 or 1931? A. When I first undertook the investigation of Mr. Silverman—

Q. I didn't ask you that. Just a minute. A. It was some time after the proceedings were filed in Chancery.

Q. You cannot tell the year or the month, can you? A. I would guess 1931, but that is a guess.

Q. Aren't you guessing about all your testimony that you are giving here with respect to these documents? A. I haven't said I was.

Q. Do you know whether the documents are in the same condition now as they were when they were turned over to you? A. They are in the same condition as when I turned them over to the Prosecutor—as when I got them—I don't know what he has done with them since.

Q. Do you know how many pages each exhibit had? A. No.

Mr. Goldenhorn: That is all.

The Prosecutor: That is all for the present.

By the Court:

Q. Who in the Prosecutor's office did you turn these documents over to? A. I turned them over to Mr. Schmidt—to Mr. Fowler.

The Prosecutor: I am going to connect it up.

MARTIN K. FOWLER, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. I show you an exhibit that has been marked in evidence, Exhibit S-3, and ask you from whom you got it? A. I got it direct from Charles Schmidt who was under Mr. Hobart at the time.

Q. Is it in the same condition as when you received it? A. Yes, exacty.

Q. Take a look at these others. A. These are all exactly the same as when I received them.

Q. They have not been altered while they have been in the office of the Prosecutor down to the present moment? A. No.

The Court: What are those documents?

The Prosecutor: S-1, S-2 and S-3. And I offer this.

(Paper marked Exhibit S-4 in evidence.)

Cross Examination by Mr. Goldenhorn:

Q. You say that they are in the same condition now as they were in then? A. Yes, sir.

Q. Who put those pencil markings on there? A. I have never been able to find out. I have even wondered myself.

Q. Were they on there when you turned them over to the Prosecutor? A. Yes.

Q. Do you know how many pages each exhibit contained? A. No, sir.

Q. You are just glancing at the papers and you say that they are in the same condition as when— A. There is a fastener, it is not pinned in individually and mine I know I don't put a fastener in, we do not use that type of machine in our office; I could not put in a fastener like that.

Q. That is the reason you give? A. Yes, sir.

Mr. Goldenhorn: That is all.

REMSON S. VOORHEES, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. What is your business? A. Well, at present I am a clerk; I was a stenographer.

Q. Were you stenographer for Mr. Coffin in July, 1930? A. For the Assistant Attorney-General, yes.

Q. And where was your office? A. 1060 Broad Street, Newark, New Jersey.

Q. Do you remember the defendant, Samuel W. Silverman, coming there to testify? A. I do.

Q. Did you take down the original shorthand notes? A. I did.

Q. Did you transcribe those notes? A. I did.

Q. Now, can you tell us, as a result of your transcription of the notes taken, what Mr. Silverman testified to at that particular hearing?

Mr. Goldenhorn: I want to object, your Honor, on the ground that the testimony was not given voluntarily by Mr. Silverman; even if he did it is a violation of his constitutional rights, compelling him to be a witness against himself, and that having been compelled to be a witness against himself he is immune from punishment under the Act which I cited to your Honor; in the Act of 1930 or 1931 which exempts him from any prosecution provided he should testify as he did testify before the Attorney-General. I therefore object to any testimony given at this time or being used by the stenographer in the prosecution against Mr. Silverman.

The Court: You are not offering any proof to substantiate your argument, are you?

Mr. Goldenhorn: I wanted to do that earlier in the day. I cannot do that until

I get into my defense, under your Honor's ruling. But it must be apparent to your Honor that all of this testimony, even that adduced by Mr. Coffin, the testimony obtained by him under subpoena which shows that he did not voluntarily come. Now he gives this testimony after the State has gotten all the information it can and has him indicted. I submit that is illegal.

The Court: I have not ruled on the other question because it has not been presented to me. Do you intend to make your objection without proof?

Mr. Goldenhorn: I object at this time unless your Honor will give me an opportunity to produce Mr. Silverman and other witnesses to show how the testimony was obtained.

The Court: I will permit that.

Mr. Goldenhorn (to the witness): Step down, sir.

Your Honor, are we going to listen to this in the presence of the jury? I think we ought to hear it without the jury.

The Court: The jury may retire for a few minutes.

SAMUEL W. SILVERMAN, the defendant, called as a witness in his own behalf, being first duly sworn, testifies as follows:

Direct Examination by Mr. Goldenhorn:

Q. You are the defendant in this case? A. I am.

Q. Do you recall testifying before the Attorney-General, or rather the Assistant Attorney-General, Mr. Coffin, in Newark, New Jersey, in July, 1930 or thereabouts? A. I do.

Q. Were you attended at that time by an attorney or attorneys? A. I was.

Q. Who were your attorneys at that time? A. I. Faerber Goldenhorn and Abraham Levitan.

Q. At the time that you were asked to testify, did you come under a subpoena? A. I did.

Q. When you were there did anybody in your behalf, or did you, protest against giving any testimony? A. I did.

Q. What was said when you were protesting against giving any testimony? A. That under the statute I am compelled to.

The Prosecutor: I object to this. The question is what was said.

Mr. Goldenhorn: He is telling us.

Q. What was said by him? A. There was nothing said except that under the statute I am compelled to answer any question put before me.

Q. What did they say if you did not testify would happen to you? A. That I would be held in contempt.

Q. If you did not answer? A. Yes, sir.

Q. If you did answer what did he say about immunity, if anything? A. That was argued between the lawyers; I don't recall.

Q. But you did testify after protesting, is that right? A. With the understanding that it would not be used against me.

Phillip L. Coffin, Jr.—State—Recalled, direct.

Q. Besides Mr. Goldenhorn, who else was your attorney at that time? A. Mr. Levitan.

Q. Did he at any time protest against your testifying? A. He did.

Q. Was it before Mr. Coffin? A. It was.

Q. Were you ever given a copy of the testimony which was taken at any of those hearings? A. I was not.

Q. Were you ever permitted to correct any testimony given at those hearings? A. I was not.

Mr. Goldenhorn: That is all.

The Prosecutor: No questions at this time.

Mr. Goldenhorn: Step down.

The Prosecutor: That is all I have at the present time. I would like to recall Mr. Coffin to contradict what Mr. Silverman has said.

The Court: You may do so.

PHILLIP L. COFFIN, JR., recalled, as a witness on behalf of the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. You just heard Mr. Silverman testify? A. Yes, sir.

Q. Did he tell the truth or not?

Mr. Goldenhorn: I object to that.

The Court: Objection sustained.

Phillip L. Coffin, Jr.—State—Recalled, cross.

Q. Did you tell him that he had to testify, that he was compelled to testify? A. He could have made an objection to testifying.

The Prosecutor: That is all.

Mr. Goldenhorn: I ask that answer be stricken out, although within the strict rules of evidence I have not the right because it is responsive. The only one who can object to that is the Prosecutor himself, but I submit that it is not answering the question asked of him.

The Court: Have you any further questions?

The Prosecutor: No, sir.

By the Court:

Q. Did you ever tell him that he had to testify under penalty of being found in contempt of Court? A. I never did, sir. There was no contempt. He could be contemptuous of me, there would be no penalty for that.

Cross Examination by Mr. Goldenhorn:

Q. You were familiar with the statute which compelled him to testify, were you not? A. Perfectly.

Q. What is that? A. I was perfectly familiar.

Q. You told him what the law was, didn't you? A. I did not.

Q. Didn't you tell him that he had to testify? A. I did not. That is why you were there.

Q. Mr. Levitan, as his attorney, protested that he could not be a witness against himself and didn't you say that you would protect him against the statute? Didn't you argue with his attorney at that time, Mr. Levitan, also with him, that he had to testify? A. The point was never raised.

Mr. Goldenhorn: That is all.

The Prosecutor: That is all.

Mr. Goldenhorn: I want to take the stand, sir.

I. FAERBER GOLDENHORN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Mr. Goldenhorn: I reside at the Plaza Hotel, Jersey City. I am an attorney at this time for Samuel W. Silverman. I was one of the attorneys for Mr. Silverman in July, 1930, when in pursuance of a subpoena I attended before Mr. Coffin at some office on, I think, on Broad Street, in the City of Newark, New Jersey.

When we came before Mr. Coffin I said to him, I said Mr. Silverman refuses to answer any questions put to him because it would be compelling him to be a witness against himself. He then directed my attention to the statute in which it was recited that he was obliged to give testimony, and that the only thing that he could be held for was perjury if he committed per-

jury in that particular proceeding, and it would not be used, none of the testimony would be used by him, would be used in any other Court or in any other transaction except for the perjury that he might commit in that particular proceeding. I then advised him to freely turn over all his books and papers, letters and statements, everything relating to the corporation that he knew anything about.

That is all.

Cross Examination by the Prosecutor:

Q. Now you are a bit confused. You were not present before Mr. Coffin on July 30, 1930. The defendant, Mr. Silverman, was represented by Leo Blumberg of Gross & Gross, isn't that so? A. I did not say that I was there on July 30th. I said I was there some time in the month of July; to the best of my recollection of 1930. I don't recall the exact date. Mr. Silverman was there more than once.

Q. Didn't you know that as a matter of fact Mr. Silverman was represented by Mr. Blumberg before you represented him? A. I don't know. I knew a man by the name of Levitan represented him and I represented him.

Q. Did you say that on July 30, 1930 before Mr. Coffin you advised Mr. Silverman of his constitutional rights? A. I did not say it happened July, 1930. I say it happened some time in the month of July, 1930 when I was appearing before Mr. Coffin who was then the Assistant Attor-

ney-General, to testify to the affairs of the New Jersey Bond & Mortgage Company.

The Prosecutor: I would like to put Mr. Coffin back on the stand to clear up one thing.

The Court: All right. You may do so.

PHILLIP L. COFFIN, JR., recalled, testified further as follows:

Direct Examination by the Prosecutor:

Q. Did Mr. Goldenhorn appear before you as Mr. Silverman's attorney on July 30, 1930? A. No.

Q. Did Mr. Levitan ever appear before you? A. I never saw Mr. Levitan at a formal hearing before me.

The Prosecutor: That is all.

Cross Examination by Mr. Goldenhorn:

Q. Do you recall my being there at all, Mr. Coffin? A. You were there in 1931, May 7th, 1931; that is the only formal hearing that I remember that you attended.

Q. You don't recall any conversation? A. No, sir, I do not; there were none.

Q. What fixes May 7, 1931 in your mind? Have you refreshed your memory from looking at minutes? A. I have, sir.

Phillip L. Coffin, Jr.—State—Recalled, cross.

By the Court:

Q. When was the first hearing in connection with the investigation of the affairs of the New Jersey Bond & Mortgage Company? A. July 30, 1930.

The Court: Anything further?
The Prosecutor: That is all.

By Mr. Goldenhorn:

Q. Were there any other hearings before that time? A. No.

Q. You don't recall? A. No.

Q. Would you say there were not? A. I will say there were not.

Q. Were there any in the month of August, 1930? A. I don't believe so.

Mr. Goldenhorn: That is all.

The Witness: I am sure that you never attended one.

Mr. Goldenhorn: Beg pardon?

The Witness: I am sure that you never attended one.

Q. In August? A. Yes.

Q. You said there were not any, didn't you? A. I don't believe there were. Even if there were, I am sure that you did not attend one.

Q. What makes you so sure that I did not attend one in the month of August? A. Because your first appearance was May 7, 1931.

Q. That is your recollection of it? A. Yes, my positive belief.

Mr. Goldenhorn: That is all.

The Prosecutor: That is all.

Now I respectfully submit under the question of fact that the evidence is overwhelmingly in favor of the State that on May 7, 1931 the defendant did not take advantage of the provision of the Act.

Mr. Goldenhorn: I would like to be heard on that. It seems to me that we must apply the rule of reason to these things. Here is a man who voluntarily goes before the Deputy Attorney-General, assuming that it was voluntarily done, and he hands up every bit of information that he can. I say to you, is it likely or is it fair, for the State having induced him to come under subpoena, waiving aside my testimony altogether for the purposes of the argument, waiving aside Mr. Silverman's, is it fair and is it just when the State compels a man to be a witness against himself and then goes before the Grand Jury, and as a matter of insight I ask you, if that appeals to one's sense of justice and whether it is a thing likely to have happened. Now, Mr. Silverman says he did protest, and I think it is not at all unlikely. I have sworn today that he did protest and that he was under that very act compelled to be a witness against himself, and in the face of that on his testimony alone, according to this indictment, no one else appeared before the Grand Jury, this man is indicted —not on any knowledge that he personally

has at all, because he swore that he had no personal knowledge of anything—what he got he got from Mr. Silverman entirely. I submit to you whether that is just or fair to come in now and indict him and try him on evidence which he himself gave to the State.

The Court: Mr. Goldenhorn, didn't Mr. Silverman have some personal interest in going there before this Commission to satisfy them that this company had a right to issue these bonds, and he wanted to issue them without interference?

Mr. Goldenhorn: No, sir, he was under subpoena. He had no personal interest in the outcome at all. I am going to show the Court and jury not only that he didn't sanction it but when he found it out, he stopped it.

The Court: That is a matter of defense.

Mr. Goldenhorn: I want to show you that he not only did not have an interest but that he was there, as Mr. Coffin stated, under subpoena, and that the testimony he had no knowledge himself, not a single fact; he was testifying under oath, this man, without the knowledge of a single fact, and it was on hearsay that he procures an indictment in Bergen County. I submit to your Honor that it is highly unfair, highly unjust, and there is not a single Judge in the world that won't say it is.

The Court: You are attempting to predict what this Judge is going to do.

Mr. Goldenhorn: I know that your Honor is absolutely just, that is I am anticipating a very favorable verdict.

The Court: You better recall your remarks. The jury may be recalled.

(The jury returned to the court room.)

The Court: When the jury retired, I think Mr. Goldenhorn made an objection. That objection will be overruled.

Mr. Goldenhorn: May I ask for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

REMSON S. VOORHEES, recalled, as a witness on behalf of the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Will you lean over as much as you can and talk as loudly as you can so that the jury can hear you read the questions and answers in that testimony? A. "State of New Jersey, Office of the Attorney-General, Division of Securities."

Mr. Goldenhorn: My objection is further and I want the record to show it, because without the reasons given we have no right to object. I want to object on the further ground that the testimony will be read by the stenographer, and it does not contain any record of the proceedings that

took place there, because of the conversation between counsel in an outer room where the stenographer was not present at all, with respect to the taking of this testimony which of course will not appear in the minutes, could not possibly appear there.

The Court: I understand that this testimony is being offered as an alleged admission against the defendant, and no remarks will be relevant except those things which were said by the defendant at that time which are material to the present issue.

Mr. Goldenhorn: And that is the only reason on which you are admitting it. May I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. (Continued) "State of New Jersey, Office of the Attorney-General, Division of Securities. In the Matter of the Inquiry Regarding the New Jersey Bond & Mortgage Company Examination. Transcript of Testimony taken before Phillip L. Coffin, Jr., Special Assistant Attorney-General, at the office of the Attorney-General, Division of Securities, 1060 Broad Street, Newark, New Jersey, on July 30, 1930, pursuant to the provisions of the New Jersey Securities Act, as amended and supplemented.

Appearances: Hon. Phillip L. Coffin, Jr., Special Assistant Attorney-General.

Remson S. Voorhees–For State–Recalled, direct.

Leo Blumberg, Esq., of Gross & Gross, Solicitor for the New Jersey Bond & Mortgage Company and Samuel W. Silverman, President of the said corporation, and Edgar Ross, General Manager of the said corporation.

Remsen S. Voorhees, sworn as stenographer. Examination by Mr. Coffin:''

Mr. Goldenhorn: I want to object on the further ground that the testimony can only be used for the purpose of contradiction, if there is any contradiction; secondly, only as to those things which relate to the specific matter embodied in this specific indictment but nothing else, and a reading of those minutes which may contain any number of matters not at all material or relevant to the issue before you would be highly improper, illegal and immaterial.

The Court: Of course, the transcript containing matters not material to the issue before the Court ought not to be read to the jury.

The Prosecutor: We have a resume prepared of facts that we feel are material to this indictment. I suppose the best thing to do would be to go through that testimony and pick them out and in that way save time by not reading a lot of immaterial and irrelevant facts.

Mr. Goldenhorn: Maybe I can agree with counsel on that.

The Court: If counsel can agree on what is material and what is not objectionable, let it be read.

Mr. Goldenhorn: There are a lot of matters in here which are highly immaterial and highly prejudicial and outside the purview—

(Consultation between Court and counsel.)

The Prosecutor: I will ask that this witness be excused for the time being.

THOMAS A. RYER, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor

Q. Where do you live? A. Jersey City.

Q. How long have you lived there? A. 61 years.

Q. What is your business? A. Real estate.

Q. Business is not so good these days, is it? A. Well, it is good with me.

Q. During the years of 1928, 1930 and 1931, were you connected with the State Highway Department? A. I made appraisals for them.

Q. Did you make an appraisal of this tract of land approximately 15 acres, three different plots, waterfront, at the foot of Sip Avenue and Hackensack Avenue, Jersey City? A. I did.

Mr. Goldenhorn: I would like to have the time fixed that these appraisals were made if I can get it.

The Prosecutor: Do you admit Mr. Reyer's qualifications as a real estate expert?

Mr. Goldenhorn: I have known him longer than you, and I do.

Q. When did you make that appraisal, Mr. Ryer? A. I made the first appraisal as of November the 1st, 1929.

Mr. Goldenhorn: I object to that on the ground it is immaterial and irrelevant, and too long prior to the time of the finding of this indictment alleged in the complaint which was in February, 1930, as I recall it.

The Court: You mean that the price of property has changed so materially between November, 1929 and the year 1930 as to make this testimony valueless. Objection overruled.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. In your opinion what was the fair market value of that property as of February, 1930? A. Do you want the three parcels?

Q. Yes, please. A. $137,400.00.

The Prosecutor: That is all.

Cross Examination by Mr. Goldenhorn:

Q. Mr. Ryer, you gave your opinion and your appraisal to the Condemnation Commissioners

who were appointed to condemn about 1/15th of this property, isn't that so? A. It was a small portion of it.

Q. And those Commissioners awarded for that very small portion the sum of $80,000.00, is that right? A. I think that is true.

Q. And that was appealed from, is that right? A. It was.

Q. And the jury afterwards disagreed the first time, and on a subsequent trial the jury found that property only to be worth about twenty-two or twenty-three thousand dollars? A. That was the part that was taken. I think it was twenty-four thousand something, that the jury awarded which was exactly my figure.

Q. You also heard the appraisers testify that that property was worth in the neighborhood of $500,000.00, did you not?

The Prosecutor: I object.

The Court: Objection sustained.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Were you present when other real estate men in Jersey City testified as to the value of that property which you say in your opinion was worth about one hundred thousand odd dollars?

The Prosecutor: I object on the ground it is immaterial.

The Court: Objection sustained.

Mr. Goldenharn: May I urge my reason? My reason is it might be an honest opinion that might differ from his if he heard it as an expert real estate man. The jury would have the right to say whether they believe his estimate or whether they believe the other people's estimate.

The Court: If you have appraisers of honest opinion whose opinions differ from this witness you may produce them.

Mr. Goldenhorn: I have them here and I am going to produce them if I must. I want to avoid it if I can. I think it is a perfectly fair test. I am asking him what the difference is. The jury might conclude that his opinion is based upon excellent judgment while the opinion of my expert is entirely to the contrary, I don't know. I thought I may ask him if I can. I take exception to your Honor's ruling.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Mr. Ryer, you are not familiar with all of the property of the New Jersey Bond & Mortgage Company which they had in 1929 and 1930, are you? A. I don't know.

Q. You don't know how many pieces they own? A. No.

Q. You don't know their value? A. No.

Q. You don't know whether they are worth $500,000.00 or $50,000.00? A. No.

By the Court:

Q. Which three parcels is it that you said were worth $137,400.00? A. The three parcels that were purchased from the Bumstead people by Mr. Silverman.

Q. Have you a description of it? A. Yes, I can give it to you.

Q. Can you identify them on this Exhibit S-1? A. Well, I have a different area. I assume it is the first item of 15 acres, although I nave it as 13.94, but I think that is intended to be the same property, there was some question of areas.

Q. When you talk of areas, what do you mean? A. The three tracts altogether lumped less than 14 acres.

Re-direct Examination by the Prosecutor:

Q. I show you these pictures and ask you whether or not those pictures correctly represent that tract?

Mr. Goldenhorn: I object on the ground that it is immaterial and irrelevant whether they do or not. We are not here trying this case on pictures. We are here to have this Court and jury use values if they possibly can show misrepresentation if there was any. It seems to me highly improper whether a photograph is here or not. The witness testified that he gave an appraisal of one hundred thirty-seven odd dollars for some 13 or 15 acres, is that right?

The Witness: Yes.

By the Court:

Q. That is located on the meadows? A. No, on the Hackensack River.

Mr. Goldenhorn: It seems to me whether we have photographs of the land there is no difference.

The Court: I suppose if there is going to be a conflict as to the value of this property we ought to have some photographs.

Mr. Goldenhorn: This man has given his estimate of $137,000.00; it would be highly prejudicial.

The Prosecutor: I wish to show that a strip of meadowland that Mr. Silverman claims was worth $337,000.00—

Mr. Goldenhorn: I object, he never claimed that meadowland was worth $337,000.00, and I ask for a mistrial.

The Court: Motion denied.

Mr. Goldenhorn: I press my objection to the introduction of the photographs.

By the Court:

Q. Do those two photographs show the entire tract contained a little less than 14 acres? A. The tract is located at the right hand side of the picture in the distance as near as I can tell from this photograph.

Q. Where is the tract in relation to that building that looks like a factory building? A. It is back of the building; it is south of the Mengel Box.

Q. What is that structure on the left, the large structure? A. This is the new highway. That is the high speed highway.

Q. Where is the tract in relation to that highway? A. As I said in a little to the right of the center of the picture at the almost end of the structure—this is the land in here (indicating).

By the Prosecutor:

Q. The Judge asked you whether those photographs represent all of the property? A. I said you could not see all of the property from this photograph.

By the Court:

Q. Could you mark on that photograph which you have in your hand the approximate location of the bounds of this tract? A. It would be a very difficult matter to put that on here, on this photograph.

Q. Under there is the location of the property (indicating). A. The highway is here,—under that highway.

By the Prosecutor:

Q. Can you describe in ordinary language to the jury the type of land it was?

Mr. Goldenhorn: I object on the ground it is immaterial as to what type of land it was. If the witness has given his estimate as a witness on behalf of the State that that property was worth $139,000.00 it

would make no difference what the description was, what it consisted of, or anything else. He is asked here to give his opinion based as an expert, to which I have no objection, representing as he has the Highway Commission of the State of New Jersey. Now he has given his figure at $139,000.00. I make the point that it makes no difference whether it is meadowland or any other land that has a value he figures.

The Prosecutor: I won't press the pictures. He says here is one picture that does not show the property so I won't press it in view of that.

The Court: I think he should testify as to the topography, and so forth.

Mr. Goldenhorn: Will your Honor grant me an exception to that ruling?

The Court: There is no question pending.

Mr. Goldenhorn: I understood that there was a question as to what kind of land there was and I am objecting to it.

The Court: The objection will be overruled if there is such a question.

Q. Answer the question. A. This was a piece of meadowland, water front property on the Hackensack River, partially filled from the dredging from the river.

The Prosecutor: That is all.

Re-cross Examination by Mr. Goldenhorn:

Q. The figures which you gave to the Court and jury are not the same figures that were given by others in your presence as experts?

The Prosecutor: I object to that.
The Court: Objection sustained.
Mr. Goldenhorn: Exception.
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. You know, do you not, that Mr. Percy A. Gaddis, a reputable real estate man in Jersey City gave an estimate very much higher than yours for the same land?

The Prosecutor: I object to that.
The Court: I sustain the objection.
Mr. Goldenhorn: Your Honor will grant me an exception?
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Do real estate men sometimes differ in their appraisals, Mr. Ryer?

The Prosecutor: I object to that.
The Court: Objection sustained.
Mr. Goldenhorn: May I ask your Honor for an exception?
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Now, you were trying to make these figures just as low as you could, representing the State of New Jersey in the Highway Department, isn't that so, because the land was being condemned or part of it? A. I was not.

Q. You didn't want the State to pay any more than it was reasonably worth, did you? A. I didn't care what they paid as long as they paid, in my opinion, the value of the property.

Q. Weren't there other experts testifying in your presence and in consultation with you?

The Prosecutor: I object to that.

The Court: I sustain the objection.

The Prosecutor: He should not pursue it any further.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. I will put one more: Isn't it a fact, before you gave your estimate, the estimate which you have given under oath here of $139,000.00 for the 13 plus acres of land on the meadows, you were consulting with other experts representing the State and that you gave as your opinion it was worth $139,000.00, and other experts with whom you consulted about this very property gave higher estimates?

The Prosecutor: I object to that.

The Court: Objection sustained.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

SAMUEL W. GARRISON, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Where do you live? A. Jersey City.

Q. How long have you lived there? A. 40 years.

Q. And you are a real estate man? A. I was up to last February.

Q. How long had you been in the real estate business? A. About 25 years.

Q. Did you also make appraisals for the State Highway Commission of this particular tract? A. I did.

Q. And in your opinion what was the fair market value of the tract as of February, 1930? A. Well, there was three parcels. You mean the total for the three parcels?

Q. Yes, please. A. I am delaying a little bit because we have been out of business from February; we have been in another business. I had to figure this and add it up. I think about $127,000.00 as near as I can see.

Cross Examination by Mr. Goldenhorn:

Q. Are you giving us now the $127,000.00 as the price of the land? A. $127,000.00.

Q. $127,000.00? A. Yes, sir.

Q. Well now, your basis of $127,000.00 includes about 13 acres plus, does it not, Mr. Garrison? A. It does.

Q. Now, you are familiar with the fact, and you testified, did you not, for the State Highway

Commission at the time that about 1/15th of this land was under condemnation? A. That is right.

Q. Is that right? A. Yes.

Q. You are also familiar with the fact that 1/15th portion or about 1/15th portion of that land was condemned and the Commissioners, headed by Judge Thomas Brown, the Commission placed an award of $80,000.00, is that right? A. For the part taken, plus damage.

Q. And that part which was taken represented only about 1/15th of this entire tract, is that right? A. Yes.

Q. And that jury finally awarded the company about $24,000.00? A. I believe that is so.

Mr. Goldenhorn: That is all.

VICTOR D. BANTA, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Are you connected with the Peoples Trust & Guaranty Company of Hackensack, New Jersey? A. I am.

Q. In what capacity? A. Assistant Treasurer.

Q. Can you give us the average balance during the month of February, 1930, of the New Jersey Bond & Mortgage Corporation? A. Well, the average balance would probably be in the neighborhood of $100.00, I guess.

Q. $100.00? A. Yes, a rough estimate.

Cross Examination by Mr. Goldenhorn:

Q. You don't know any other bank that they had money in, do you? A. No, sir, I do not.

Q. What year is that you are referring to? A. 1930.

Q. What month particularly? A. February.

Q. Of 1930? A. Yes, sir.

Mr. Goldenhorn: That is all.

The Prosecutor: That is all.

SIDNEY HICKS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Are you connected with the Franklin—Washington Trust Company, of Newark, New Jersey? A. Yes, sir.

Q. Have you a statement for the month of February of the New Jersey Bond & Mortgage Company? A. Yes, sir.

Q. Can you tell us what that averaged, approximately, during the month of February, 1930? A. Approximately $150.00.

Q. $150.00.

The Prosecutor: You may cross-examine.

Cross Examination by Mr. Goldenhorn:

Q. Do you know any other banks that they deposited with, Mr. Hicks? A. No, sir.

Mr. Goldenhorn: That is all.

The Prosecutor: That is all.

CHARLES A. DEAN, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. What is your name, please? A. Dean.

Q. Where do you live? A. In Paterson, New Jersey.

Q. By whom are you employed? A. The Empire Trust Company of New York City.

Q. In what capacity? A. Assistant Trust Officer.

Q. What are your duties? A. I have charge of the transfer and registration department.

Q. In February, 1930, was the Empire Trust Company of the City of New York the transfer agent for the $500,000.00 bond issue of the New Jersey Bond & Mortgage Corporation? A. It was not.

The Prosecutor: You may cross-examine.

Cross Examination by Mr. Goldenhorn:

Q. Was it the transfer agent for the company at any time, Mr. Dean, or don't you know? A. It was transfer agent at one time for the stock of the corporation.

Q. For the New Jersey Bond & Mortgage Company? A. Yes, sir.

Mr. Goldenhorn: That is all.

Re-direct Examination by the Prosecutor:

Q. They have no authorization from your company—

Mr. Goldenhorn: I object.

The Prosecutor: I will withdraw the question.

By the Court:

Q. Is there any such thing as a transfer agent for a company as distinguished from transfer agent for a stock issue or bond issue? A. Transfer agents are for stock issues, not for bond issues.

Q. How does a transfer agent derive its capacity to act? A. By appointment from the principal.

Q. It is the common practice, as you understand it, that there has to be a separate appointment of the transfer agent for any particular stock or bond issue? A. That is right.

Re-cross Examination by Mr. Goldenhorn:

Q. Your company does that as transfer agent for the corporation, does it not? A. For corporations.

Q. For corporations? A. Yes.

By the Prosecutor:

Q. For reputable corporations?

Mr. Goldenhorn: I object to that.

KENNETH D. McLAREN, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. By whom are you employed? A. The Corporation Trust Company of New York City.

Q. And what is your business? A. Assistant Trust Officer.

Q. What are your duties as trust officer? A. In charge of the transfer department and registration department.

Q. In the month of February, 1930 was your company, The Corporation Trust Company, the registrar of a $500,000.00 bond issue of the New Jersey Bond & Mortgage Corporation? A. There is nothing in the circular to indicate that they are the registrar for a $500,000.00 bond issue. They certainly were not. I have one in my hand. I think it is a copy and it says simply registrar, Corporation Trust Company.

The Court: Is this in evidence?

The Prosecutor: No. You haven't any objection to the circular going in?

Mr. Goldenhorn: Yes, I have. You haven't proved it yet. You haven't proved my man knew anything about it except that he tried to stop it.

The Court: I don't see how you have the right to read from any particular circular or how you have the right to take cognizance of what may be in it.

Mr. Goldenhorn: Only this, that counsel had put into the words of the witness whether or not he was registrar of the Corporation Trust Company of New York City for the issue of $500,000.00 worth of bonds. There is nothing in here anywhere to indicate any such evidence or any such foundation for it. If it is based on the circular I will have no objection for the purpose of identification that the circular get in at this time.

The Court: It cannot be used unless it goes in evidence.

Mr. Goldenhorn: We will permit the circular to go in.

(The circular was admitted in evidence and marked Exhibit S-5.)

Q. With reference to Exhibit S-5 in evidence, I call your attention to registrar, Corporation Trust Company of New York City, and ask you whether or not your company was the registrar? A. Of the bond issue?

Q. Of the bond issue. A. No.

Mr. Goldenhorn: I object on the ground that there is nothing in that statement to indicate that they were the registrar for the bond issue, not at all.

The Court: Objection overruled.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Cross Examination by Mr. Goldenhorn:

Q. Your company was the registrar of this company, wasn't it? A. Of the stock.

Q. Of the stock? A. Common and preferred.

Q. Well, you are the registrar of the company though, isn't that so? It is designated in all the circulars. When you read that your company is the registrar it does not state what particular issue it is a representative for? A. Yes, it does.

Q. How long had you been registrar for this company? A. June 18, 1928.

Q. Until when? A. March 11th, 1930.

Q. So that you were registrar on February the 6th, 1930, weren't you? A. Yes.

Re-direct Examination by the Prosecutor:

Q. What is the custom with reference to the floatation of stock or bond issues?

Mr. Goldenhorn: I object to that on the ground that it is immaterial and irrelevant as to what the custom was.

The Court: I suppose that is a matter now that is regulated by the statute.

Q. Was your company to be consulted about this issue?

Mr. Goldenhorn: I object to that on the ground that it is immaterial and irrelevant. How can he speak for the company? The question is whether or not they were the registrars of this company; that is, the circular says that they were.

The Court: Objection sustained.

Q. What is the common practice? What is a registrar to begin with?

Mr. Goldenhorn: I object to that on the ground that it is immaterial what it is. The question is whether they were the registrars. It does not matter what their duties were.

The Court: Objection overruled.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

(Last question read by the stenographer.)

A. The registrar is a check on the transfer agent for over-issue of stocks.

The Prosecutor: That is all.

Mr. Goldenhorn: That is all.

PIERRE F. COOKE, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. You are a lawyer? A. Yes, sir.

Q. How long have you been a lawyer? A. I was admitted in 1895.

Q. Did you have any business relations with the Bumpstead Estate? A. Yes, sir.

Q. What was your connection? A. I was counsel for Mrs. Bumpstead from the time of her husband's death in 1922 until her death in 1930; and I was and I am still one of the executors and trustees under her will.

Q. Are you familiar with the transaction whereby the tract at the foot of Sip Avenue and Hackensack River was sold? A. Yes, sir.

Q. What was the selling price? A. What is that?

Q. What was the selling price? A. $30,000.00.

Q. That is for the whole tract? A. There were three small tracts.

Mr. Goldenhorn: I want to object to this unless the time is fixed.

The Court: I suppose there is no objection to fixing the time.

Q. When was that? A. 1925.

By the Court:

Q. The Bumpstead Estate owned land adjoining this property, did it not? A. The Bumpstead Estate owned a number of tracts on the Hackensack Meadows, one very large piece of some fifty odd acres extended from Dales Avenue, Jersey City to the Hackensack River, and besides that three or four smaller scattered pieces of meadow lands, and the three pieces involved in this transaction were part of those scattered tracts. I don't know whether it was all of them or not but this

particular transaction involves about 13 or 14 acres.

Cross Examination by Mr. Goldenhorn:

Q. Now there was a part of the Bumpstead Estate, part of the land adjoining this land that was condemned, is that right, for a public highway, is that right? A. Just a moment. The public highway condemned the surface highway through the large tract that I have just mentioned.

Q. How many acres would it cover? A. Involved in the condemnation?

Q. Yes. A. I should say that the first condemnation was about two or three acres.

Q. And how much did you receive for those two or three acres in the condemnation proceedings?

The Prosecutor: I object to that as being immaterial.

Mr. Goldenhorn: I am going to show the value.

The Court: Let me hear your objection.

The Prosecutor: My point is that I did not offer this man as a real estate expert, I just offered to prove the fact that the property was sold for $30,000.00.

The Court: I sustain the objection.

Mr. Goldenhorn: This land was sold for $130,000.00, but land nearby there somewhere in the neighborhood sold 1,500 per cent. and even more than that.

The Court: (The Court attempted to speak.)

Mr. Goldenhorn: Just a minute.

The Court: Don't tell me just a minute.

Mr. Goldenhorn: I just want to present my argument, it is not disrespect for the Court, I have too much affection for you to do that. Now, my point is this, I want to show it if your Honor will permit me—if your Honor rules against me, I submit—I want to show that it was not a very small portion of land adjoining our property and that he received a tremendous sum of money for it in 1929 or 1930. If that is so it is a question for the jury to say whether or not when we put a value of $500,000.00 even in the bond issue that we are unfair or defrauded anybody in the representation.

The Court: Anything further?

Mr. Goldenhorn: Nothing.

The Court: I have already ruled.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Mr. Cooke, there was a tremendous increase, was there not, in the value of property between the time that this property was sold and the time that the condemnation proceedings took place in the building of this highway or skyway? A. As I already stated there were two highways condemned. One was some years previous to 1925, which is known as the surface highway. That is the road that goes through a grade. The high-

way which was condemned—they are the plots that we are concerned—now concerned with—is what is known as the skyway or the elevated railway, that was the second condemnation, and that condemnation involves some two or three acres of the Bumpstead large tracts. Whether it physically adjoins the property that you are now concerned with or not I am not prepared to say, but it is in the neighborhood, very near.

Mr. Goldenhorn: Now, may I with your Honor's permission, ask what he received for those two acres?

The Prosecutor: I object.

The Court: No, I do not think it is proper cross examination.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Mr. Goldenhorn: That is all.

Re-direct Examination by the Prosecutor:

Q. How much cash did you receive on this transaction?

Mr. Goldenhorn: I object on the ground that it is immaterial and irrelevant.

The Court: I sustain the objection.

The Prosecutor: I offer a certified copy of the deed.

The Court: It will be admitted.

(The deed was received in evidence and marked Exhibit S-6, there being eight documents.)

Mr. Goldenhorn: I did not notice the deed. The deed is to a man by the name of Joseph Braunstein, not to this corporation. I think he was under the impression that this land was sold to the New Jersey Bond & Mortgage Company; it was not according to the deed now being offered, is that right?

The Prosecutor: That is right. I have the whole chain of title if you want to look at it.

Mr. Goldenhorn: If you say that is the chain, I will admit it for the purpose of the record, but I do not want to be under the impression that the New Jersey Bond & Mortgage Company bought it for $30,000.00 when it did not.

The Court: You may bring it out on your examination.

Mr. Goldenhorn: I want to enter an objection on the ground that the selling of the property in 1929 was entirely anterior to the finding of this indictment.

The Court: Too late, Mr. Goldenhorn.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

The Court: You should make your objections at the proper time instead of talk to people in the court room.

Recess.

After recess.

JOHN J. CAREY, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Where do you live? A. Jersey City, New Jersey.

Q. And are you employed? A. Yes.

Q. By whom? A. At the present time the Hudson County National Bank.

Q. In the year 1930 were you employed by the Passaic National Bank? A. I was.

Q. Have you the records with you? A. I do, I have them here.

Q. During the month of February, 1930, did the New Jersey Bond & Mortgage Company carry an account with your institution? A. They did.

Q. And what were the average balances during that month?

Mr. Goldenhorn: I want to object on the ground that their bank account is no criterion by which you can judge the value of the assets of a corporation.

The Court: Objection overruled.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. $450.00.

Cross Examination by Mr. Goldenhorn:

Q. Did you keep those records yourself? A. Why, no, they are on file at the bank.

Q. You did not make them, did you? A. This was the original bank account.

Q. You didn't make those records, did you? A. A portion of them.

Q. Won't you answer my question, please? Did you make the records? A. No.

Mr. Goldenhorn: That is all.
The Prosecutor: That is all.

JAMES F. BOYD, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. What is your business? A. Real estate.

Q. Where do you live? A. In the Village of Ridgefield Park, New Jersey.

Q. How long have you been in the real estate business? A. Since 1926.

Q. During the past few years have you been retained to do various kinds of appraisal work for the State Highway Commission? A. Yes, sir, since 1927.

Q. Were you familiar with the values of certain properties in Bergen County during the year 1930? A. I was.

Q. What was the name of your firm at that time? A. Rusch & Boyd.

Q. Have you made an appraisal of the market values of certain pieces of property as of February, 1930? A. For you, yes, sir.

Q. And what was the total amount of that particular value?

Mr. Goldenhorn: I object on the ground that any value fixed by this witness would be immaterial, irrelevant and incompetent, because it would not cover all of the properties. If he would give us everything as of 1930, of all the properties of the defendant corporation, we have no objection, but certainly do object to the injection of some isolated opinions on some pieces of property. It can't possibly be material or relevant.

The Court: Are you through?

Mr. Goldenhorn: Yes, sir.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Now, will you please give us the locations and the values?

Mr. Goldenhorn: I object on the further ground that there is no proper foundation for a knowledge of these specific properties, nor is there any time fixed for

their values. He is basing his values upon—

The Court: I asked you before whether you were through, and you said yes.

Mr. Goldenhorn: Now I am making a second objection.

The Court: Listen to me for a second. You have not any right to obtain a ruling then get up and urge something further without the permission of the Court. You have been doing this repeatedly. Hereafter if you have any objections to make you may make them, and state all of your reasons at once.

Mr. Goldenhorn: If I am some times a little late won't your Honor indulge me a little?

The Court: I will do it occasionally but you have been making a practice of it. You may get up now and state all of your objections or all of your reasons for the objection.

Mr. Goldenhorn: My reason for the objection was, first of all, there is no time or place fixed; secondly, it does not include any knowledge so far as the foundation is concerned of the various values of these respective pieces of property; thirdly, that it would not be material or relevant if he had or not, because it does not cover all of the property; fourthly, it would not make any difference whether the values were much less than fixed by this witness as compared with other appraisals.

If the defendant had the right to believe those were the values fixed by a reputable appraisal concern upon which he relied that he would be entirely within his legal rights to take his appraisals rather than appraisals—he may fix a very much lower value on the properties involved. Those are my reasons.

The Court: I sustain the objection on the ground that the time must be fixed.

Q. I ask the witness as of February, 1930?

Mr. Goldenhorn: Read the question from the record.

The Court: Overruled.

A. Yes, sir, I have appraised lots 6, 7, 8, Borough of Riverside On those lots I place a value of $3,000.00.

Lots 2687 and 2688, Borough of Fairlawn, on those lots I place a value of $3,000.00.

Lot 43M, in the Village of Ridgefield Park, I have appraised at $9,296.00.

Lot 21, in Block 107, Borough of East Rutherford, has, in my opinion, a value of $2,500.00.

Lot 67 in the same block, a value of $1,400.00.

Lot 21, in Block 108, a value of $4,200.00.

Lot 151, Borough of Carlstadt, a value of $3,952.00.

Lot 14, Block 451, Township of Teaneck, a value of $1,500.00.

Lots 23, 24, 25, 26, 27, in Block 452 in the Township of Teaneck, a value of $6,250.00.

Lots 613, 614, 615, 616, 617, 618, 619, in Block 24 in the Borough of Montvale, a value of $360.00.

Lots 108, 109, 110, 111, 112, value $543.44.

Lots 45, 46, 47, in Block 3, value $500.00.

Lots 62-A, B and C, in Block 33, Village of Palisades Park, value of $39,960.00.

Lots 1094, 1095, in Block 45, in Palisades Park, value $2,000.00.

Lot 5135, in Block 21, value of $750.00.

Lot 4959, in Block 18, value of $1,000.00.

Lot 1417, in Block 76, value $750.00.

Lot 8, in Block 6, and Lot 1, in Block 35, in Little Ferry, value $8,353.20, or a total value of those properties of $52,810.80.

The Prosecutor: You may cross-examine.

Cross Examination by Mr. Goldenhorn:

Q. You don't know whether that represented all of the properties belonging to the corporation at that time, do you? A. I do not.

Q. When did you make this examination, Mr. Boyd? A. Well, I definitely made this appraisal for Mr. Breslin about two weeks ago.

Q. And you made your appraisal two weeks ago as of the values as of 1930? A. As of February 5th, 1930.

Q. Now, as a matter of fact, you also appraised some property in Alpine, Bergen County, did you not? A. Yes, not for Mr. Silverman, though.

Q. I didn't ask you that, did I? You know that some of the properties in Alpine increased as much as $1,000.00 in a year?

The Prosecutor: I object to that on the ground it is immaterial.

The Court: Overruled.

The Prosecutor: Exception.

Q. Was there any noticeable improvement in the values of properties between 1929 and 1931 in Bergen County? A. There was not. Generally speaking the market at its peak in 1929 has been gradually more, probably dropped since that time except in certain localities.

Q. Not only in certain localities but where the land is approximately near the property taken for public works, isn't that so? A. Well, it has not proved to be the case since 1930.

Q. There has been no change in your judgment, is that right? A. I think the values are less today by a great deal than they were then.

Q. We are not asking you for the estimates of today, we are asking them as of February 6th or March 6th, 1930? A. Those are the values I give.

Q. And that is your best judgment? A. Yes, sir.

Q. Had you gone over those figures with anybody or are they your sole judgment? A. They are my opinion.

Q. Was there—don't answer this until the Court passes upon it. Was there any change in the values of property such as you examined in the neighborhood you examined between 1925 and 1930? A. Which property do you specifically refer to?

Q. I am referring to those specific properties. A. Yes, I would say between 1925 and 1930, all properties enjoyed an upward trend.

Q. There was quite an upward trend? A. Yes, there is no doubt about that.

Re-direct Examination by the Prosecutor:

Q. Did you appraise any of these properties prior to the time that you were retained by the Prosecutor's Office two weeks ago? A. Yes.

Q. In your capacity as State Highway Appraiser? A. I did.

Q. A few or many would you say? A. Of the entire number I appraised two lots on Waneta Drive, Riverside, and I appraised these in 1930 and have used these in that same appraisal that I have used in my highway work. I have appraised some of the meadowland and have used approximately the same prices that I used in the highway work.

The Prosecutor: That is all.
Mr. Goldenhorn: That is all.

DR. CLARENCE M. NORCOM, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Doctor, what is your name? A. Clarence M. Norcom.

Q. Where do you live? A. 14 Colonial Terrace, Nutley, New Jersey.

Q. How long have you lived there? A. Since 1927.

Q. Did you receive a circular of the New Jersey Bond & Mortgage Corporation? A. Yes, I did.

Q. After you received that circular did you make an affidavit?

Mr. Goldenhorn: I object to that on the ground that it is immaterial whether he made an affidavit after he received the circular or not. I object to the question on the ground that there has been no connection between this defendant and the issuance of this circular or of the delivery of any circular.

The Court: Objection sustained.

The Prosecutor: I want to show by this man that he received a circular and he filed an affidavit with the Court of Chancery and with that was his original circular that he received. I want to offer the original circular.

Q. What happened to the original circular? A. It was turned over by Mr. Coffin to the Prosecutor's Office.

Q. Did you receive this circular? A. Similar to this one, yes.

Q. And you turned it over to Mr. Coffin? A. I believe so, to the best of my recollection.

The Prosecutor: That is all.

Cross Examination by Mr. Goldenhorn:

Q. Where do you live, sir? A. Nutley, New Jersey.

Q. What county is that in? A. Essex County.

The Court: Is this circular being offered in evidence?

The Prosecutor: No, your Honor. I will put on Mr. Coffin to prove it is the one that went with the affidavit. I will ask to have it marked for identification and then I will offer it.

(Paper referred to marked Exhibit S-1 for Identification.)

By the Court:

Q. The circular which you received, did you say it came through the mails? A. It came through the mails, yes, sir.

Q. How was it wrapped? A. It was in a regular envelope at that time. It was the regular sealed rate.

Q. What was on the envelope? A. To the best of my recollection, New Jersey Bond & Mortgage Company.

Q. Have you got the envelope? A. I don't think I have, I probably destroyed it.

The Court: That is all.

PHILLIP L. COFFIN, JR., recalled, as a witness on behalf of the State, testified as follows:

Direct Examination by the Prosecutor:

Q. I show you this circular and ask you if this is the circular which you received from Mr. Norcom? A. Yes, sir.

The Prosecutor: I offer the circular.

Mr. Goldenhorn: I object on the ground that we haven't the circular connected up with the sending of it by Mr. Silverman, or by his authorization, or with his knowledge. For that reason I press my objection.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

The Prosecutor: Your Honor, this young man is from the Clerk of the Chancery Court. These are original records and I think we have the right to take these out of the files.

Mr. Goldenhorn: I don't think you have. I will consent to a copy.

The Court: It is stipulated that the circular referred to in the argument is an exact copy of the one already in evidence and marked Exhibit S-5.

Mr. Goldenhorn: With the exception that the objection I have made may stand.

The Court: Yes.

(Paper referred to received in evidence and marked Exhibit S-7.)

EDMUND HALL DAVIS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Where do you live? A. Paterson, New Jersey.

Q. How long have you lived there?

Mr. Goldenhorn: I object on the ground it is immaterial and irrelevant.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. 22 years.

Q. What is your business? A. An accountant, a public accountant.

Q. Were you appointed receiver for the New Jersey Bond & Mortgage Company? A. No, I was not.

Q. Did you have anything to do with working for the receivers? A. I was appointed accountant for the receiver by the Court.

Q. By whom? A. By the Vice-Chancellor.

Q. Vice-Chancellor Lewis? A. Vice-Chancellor Lewis.

Q. Do you recall when that was? A. 7th of May, 1931.

Q. Did you make an examination of the assets of the company? A. No, sir, I made an examination of the books of the company.

Q. Did you make an audit? A. Yes.

Q. In your examination of the books of the company, did you ascertain its financial condition? A. I did.

Q. From your examination of the books of the company would you say—

Mr. Goldenhorn: I object to the form of the question first, it would be leading, and second, the accountant made his account in 1931 which is a year after.

The Court: You have not heard the question yet, I don't think the Prosecutor has finished.

Q. From your examination of the books of the company, would you say that the corporation had never experienced an unsuccessful year in business?

Mr. Goldenhorn: I object to that, it calls for a conclusion.

The Court: I sustain the objection.

Q. What assets of the company did you find?

Mr. Goldenhorn: I object to whether he found any assets; he found them in May, 1931 which is a year after the time set forth in the indictment.

The Court: I sustain the objection.

The Prosecutor: I will connect it up, if your Honor please.

The Court: I don't think it is material.

The Prosecutor: I mean I will connect it up between May, 1931 and February, 1930.

The Court: Of course, if you show that the assets are the same at the time of the examination of the books as at the time they were in February, 1930, or that this witness examined the books and ascertained what the assets were as of February, 1930, no doubt I will permit it.

The Prosecutor: I will withdraw this witness for the time being and I will put another witness on to show what the condition was.

MATTY R. LEE, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

(Mrs. Lee was escorted to a seat in front of the jury by one of the officers of the Court because she is blind.)

Mr. Goldenhorn: Maybe I can agree what this witness will testify to with the Prosecutor instead of troubling Mrs. Lee on the stand.

What do you expect to prove by her?

The Prosecutor: Mr. Goldenhorn, I am trying my case as I think it ought to be tried.

Mr. Goldenhorn: With or without, as a matter of fact.

The Court: Let us not have any bickering.

Direct Examination by the Prosecutor:

Q. Where do you live? A. 237 West Anderson Street, Hackensack, New Jersey.

Q. Do you own any stock in the—

Mr. Goldenhorn: Just a moment. I object on the ground that the indictment does not say anything about stock, and it is an endeavor to prejudice the minds of this jury. The indictment very simply sets forth exactly what the charge is and charges that the defendant did dispose of a certain bond issue of the said corporation in the sum of $500,000.00.

The Court: I don't understand the indictment to say that.

Mr. Goldenhorn: I am reading the short indictment.

The Court: Dispose of a bond issue?

Mr. Goldenhorn: I have a copy of a short indictment.

The Court: Is it numbered 9098?

Mr. Goldenhorn: The indictment charges as follows: If I may be permitted your Honor—"That the said Samuel W. Silverman and others, late of the City of Hackensack, County of Bergen, on the 5th day of February, in the year 1930, at the City aforesaid, within the jurisdiction of this Court, being then and there officers, directors or employes of the New Jersey Bond & Mortgage Company, a corporation of the State of New Jersey, with intent to sell and dispose of a certain bond issue of the said corporation, in the sum of $500,000.00 did make, published, disseminated, circulated and placed before the public,"—

The Court: I have the indictment be-

fore me. You are talking about the same indictment.

Mr. Goldenhorn: Yes.

The Court: What is your objection?

Mr. Goldenhorn: To ask this woman whether she bought any stock.

The Court: Your objection is that it is immaterial?

Mr. Goldenhorn: Yes.

The Court: I will sustain the objection.

The Prosecutor: This goes to the crux of the whole case, your Honor. Here is this woman who purchased stock in the corporation. This prospectus says they never defaulted on any of their obligations—

Mr. Goldenhorn: Just a moment. If we are going to argue this I think it ought to be argued out of the presence of the jury. It is highly prejudicial.

The Court: All right. The jury may retire.

(The jury retired.)

The Court: Mr. Prosecutor, do you consider a share of stock an obligation of the corporation?

The Prosecutor: No, but I do intend to prove by this witness according to the statement she has given us that she talked with the defendant, Mr. Silverman, and Mr. Silverman made certain promises to her that he would pay certain dividends. He took her $3,000.00, she lost everything in the world, she hasn't anything—

Mr. Goldenhorn: I object to that, your Honor.

The Court: One at a time, Mr. Goldenhorn.

Mr. Goldenhorn: My objection is to the voice in which this is couched. He is a likable fellow but he gets noisy.

The Prosecutor: I want to show by this witness that she had a conversation with the defendant, Mr. Silverman, and that he made certain representations to her. He did not live up to those representations when he issued this circular. He knew that the circular was false because of the fact that he had not lived up to the representations to her.

The Court: How is it relevant whether this woman is a stockholder or whether she bought stock in the corporation?

The Prosecutor: It is relevant because of his admission to this woman of his obligations to her. She is an ordinary stockholder and she talked with Mr. Silverman according to the statement that I have in front of me according to what she gave to the office Mr. Silverman made certain representations and he did not live up to them.

The Court: I sustain the objection.

Call the jury back.

(The jury returned to the court room.)

The Prosecutor: That is all then in view of your Honor's ruling.

The Court: I only ruled against this one question, I haven't ruled that your other testimony is not admissible.

Mr. Goldenhorn: I move for a mistrial in the remarks addressed to the Court. He

addressed them so loudly they must, of necessity, have been heard through the one single door into the jury room where the jury was confined; that they are highly prejudicial and injurious to the rights of my client. On that ground I ask for a mistrial.

The Court: Motion denied.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Mrs. Lee, do you know Mr. Silverman? A. I don't know him personally but I have talked to him a great many times on the telephone. I learned he was—

Mr. Goldenhorn: Just a moment. I object to what she learned. I object to the telephone conversation.

The Court: The question has been answered.

Q. What did you talk to him about?

Mr. Goldenhorn: Just a moment. I object unless some time and place is fixed.

A. He was in the Peoples Trust Company; I think they had offices—

The Court: Madam, don't answer questions when an objection is made until the Court has ruled.

Now will you fix the time and place.

Q. Can you give us the time, how many years ago? A. Yes, we bought stock I think in about 1928.

Q. Was it after that? A. It was after these two young men came to the house.

Mr. Goldenhorn: I object.

The Court: It will be stricken out.

Q. After this happened you say you talked with Mr. Silverman? A. Yes, I learned that Mr. Silverman—

Mr. Goldenhorn: Just a moment. I object to what she learned.

A. (Continuing) —went to Hackensack. I had to find out where he was.

The Court: Madam, don't argue, counsel is not on trial here.

(To Mr. Storms, Chief Court Officer:) You have this lady seated up here where she can't argue.

The Prosecutor: She is blind.

The Court: Don't answer any questions when an objection is made to it until I have had a chance to rule upon it, do you understand?

The Witness: Yes.

Q. Where did you call? A. I called in Hackensack from my home.

Q. And to whom did you talk? A. Mr. Silverman.

Mr. Goldenhorn: I object on the ground that there is no proper foundation laid for this talk with Mr. Silverman on the telephone; she says that she does not know him, she never met him, as I understand her testimony. If I am in error I want to be corrected.

Q. How many times did you call? A. I called numberless times.

The Court: Just answer questions, don't give your reasons, don't volunteer anything.

Q. How many times did you call?

Mr. Goldenhorn: I object to that on the ground it is incompetent, irrelevant and immaterial. There is no time when these calls were made.

The Prosecutor: If he wants me to fix the time I will do it.

The Court: How can all this be material. The only question is did Mr. Silverman say anything which is an admission against him.

The Prosecutor: That is right. May I ask her what she called him about?

Mr. Goldenhorn: I object on the ground that it is immaterial as to what she called him about. Suppose she called him about the transactions that are in discussion in

this indictment. Unless she spoke to him it doesn't make any difference.

The Prosecutor: I am trying to prove that she called him and spoke to him.

The Court: The fact that she called does not show that she had a conversation with him.

The Prosecutor: I am leading up to that time and trying to prove one thing at a time.

Q. Did you call the Peoples Trust Company?

Mr. Goldenhorn: I object. There is no foundation laid for calling anybody unless the time and place are fixed.

Q. When did you first call? A. As near after the stock that we did not get any dividends.

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

The Court: I will let it stand.

Q. Didn't get any dividends? A. Didn't get any dividends.

Mr. Goldenhorn: I ask for a mistrial on the statement of the Prosecutor that she did not get dividends. It is highly prejudicial to this defendant's rights and interest.

The Court: Are you objecting to the question?

Mr. Goldenhorn: Yes, sir. I object to the statement made in the presence of the jury.

The Court: I will sustain the objection.

Mr. Goldenhorn: I now ask for a mistrial on the statement made by the Prosecutor.

The Court: I deny your motion.

Q. How long have you been blind?

Mr. Goldenhorn: I object on the ground that it is immaterial and irrelevant.

A. My sight was failing—I didn't lose it entirely—but I don't read.

The Court: That is all, Madam.

I sustain the objection. The remarks of the witness will be stricken from the record.

Q. Did anybody ever come to your house with reference to this matter?

Mr. Goldenhorn: I object.

The Court: I sustain the objection.

A. Surely.

The Prosecutor: Just a minute, Mrs. Lee.

I want to show that Mr. Silverman or someone went to her house.

The Court: Let us assume for the purpose of argument that someone went to the house, how is that material?

The Prosecutor: First I asked while the jury was outside if this defendant made certain statements.

Mr. Goldenhorn: I object to what he asked while the jury was outside, and ask for a mistrial if he makes a statement.

The Court: Your motion will be denied.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

The Court: The only material thing I see is whether or not the defendant made some statement which was an admission against him; whether someone else went to the house or she tried to call him to the house is immaterial.

The Prosecutor: May I ask if Mr. Silverman ever went to her house, if she ever spoke to Mr. Silverman, and if so, when?

The Court: Yes.

Q. Did you ever speak to Mr. Silverman? A. Mr. Silverman called me up and told me that unless I change that stock for other stock—

The Court: Say yes or no, Madam. I will have to put you out of Court if you don't listen to me.

The Prosecutor: The woman is upset.

The Court: It does not make any difference whether she is blind or not. When I tell her to stop you have to stop, you

must not volunteer anything. That question could have been answered with a simple yes or no.

By the Court:

Q. Did you ever talk to Mr. Samuel W. Silverman?

Mr. Goldenhorn: I want to object on the ground that there is no foundation for any knowledge on her part that she ever spoke to Mr. Samuel W. Silverman, and I object to any insinuations at this time as highly prejudicial, there being no identity of Mr. Silverman in any shape or form.

Q. Did you ever speak to Samuel W. Silverman? A. I did.

Q. When?

By the Prosecutor:

Q. When? A. I can't tell you the exact date but it was soon after buying of the stock.

By Mr. Goldenhorn:

Q. What year is that? A. 1928.

Mr. Goldenhorn: I object on the ground that it is immaterial, incompetent and irrelevant, it being entirely anterior to the finding of the indictment, having no materiality under the form of the indictment which has enumerated a bond issue.

By the Court:

Q. Did you ever speak to Mr. Silverman at any other time?

The Prosecutor: Do you hear the Judge's question?

The Witness: Yes.

A. I spoke to him numerous times.

Q. When? A. After that, and he told me—

Q. No, no. When did you speak to him? A. What is that?

Q. When did you speak to him? A. Well, I can't tell you the exact date.

Q. Can you tell about what year it was? A. Well, maybe in 1929 after buying of the stock.

Q. Did you speak to him at any other time? A. I told you various times. I was worried about it and called him up.

Mr. Goldenhorn: I ask that it be stricken out.

The Court: It will be stricken out.

Q. When at various other times? A. After I had spoken the first time; then I had called him up and talked to him and he told me not to worry—

Q. No, no, Madam. You can't make these statements in Court.

The Court: Unless you have something more I am through with the witness.

The Prosecutor: May I proceed with questions that I think are proper, then you can rule on them.

The Court: Yes.

By the Prosecutor:

Q. Did you talk with Mr. Silverman about this company? A. Yes.

Mr. Goldenhorn: What company? I object unless the company is designated by name.

The Court: Objection sustained.

The Prosecutor: As I recall it you don't want me to ask any question unless it is proper. She said that she bought stock in this company.

The Court: What company?

Q. What company did you buy stock in? A. Bond & Mortgage Company.

Q. Then when you talked to Mr. Silverman, did you talk—

Mr. Goldenhorn: Just a moment. I object, that is not designating the name of this company. I most respectfully insist that any conversation over the telephone would not be binding upon this defendant.

The Court: Was it the New Jersey Bond & Mortgage Corporation?

The Witness: That is the name that they went under.

Q. Have you a certificate?

Mr. Goldenhorn: I object on the ground that it is irrelevant and immaterial, and highly prejudicial. It is not within the purview of this indictment; we are indicted for a specific thing. It hasn't anything to do with the stock. I have raised an objection about whether it is the same corporation.

The Court: I am going to allow this for the purpose of ascertaining whether it is the same corporation which is referred to in the indictment.

Q. Have you a stock certificate? A. Yes.
Q. Where is it? A. I think Mr. Lee has it.

The Prosecutor: Is Mr. Lee here?

A Voice: Yes.

Mr. Goldenhorn: I most respectfully object to the showing of any certificate, it is not within the purview of this indictment. It is simply for the identification of the corporation. The witness says it is the New Jersey Bond & Mortgage Company, I have no objection to that.

The Court: Are you willing to stipulate on the record that this lady was a stockholder in the New Jersey Bond & Mortgage Corporation?

Mr. Goldenhorn: I am willing to stipulate that she is, but it is entirely irrelevant and immaterial whether she is or not.

The Court: It is so stipulated on the record.

Q. What did you talk to Mr. Silverman about?

Mr. Goldenhorn: I object, your Honor, unless some foundation is laid for the fact that she talked to Mr. Silverman.

A. What would I talk about but my interest.

The Court: Madam, I will have to hold you in contempt of Court if you do not listen. Don't ask any questions and don't volunteer any answers; just answer the questions that are put to you, if I do not rule them out; that is all you have to do, and you and I will get along wonderfully.

Mr. Goldenhorn: May I ask her just one question—it is a little out of order—but I think it is in order because it goes to whether there is any identification of this defendant of having had any talk with this defendant.

The Court: No. You will have to wait until the Prosecutor is through.

The Prosecutor: Do you deny he is the same Silverman connected with the company?

Mr. Goldenhorn: Don't ask me to deny or affirm anything; prove your case. If you don't know how, I will assist you.

The Court: I am not going to stand for any of these bickerings between counsel. Mr. Goldenhorn's remarks will be stricken from the record.

Q. Mrs. Lee, what did you talk to Mr. Silverman about?

Mr. Goldenhorn: I object on the ground that it is immaterial and irrelevant, and not being within the purview of this indictment. The only subject that this Court is interested in is whether she talked to him about any representation in regard to the bond issue.

The Court: Ask the question.

Q. What did you talk to Mr. Silverman about? A. About my dividends; what I was to get for the money I had paid him. What would I talk about?

Q. What did you get? A. I never got a cent.

Mr. Goldenhorn: I object.

The Court: I sustain the objection.

The Prosecutor: That is all.

Cross Examination by Mr. Goldenhorn:

Q. Will you tell this Court and jury what sort of a looking man Mr. Silverman is? A. I don't know what kind of a looking man he is.

Q. As a matter of fact, Madam, isn't it true that you never saw him in your life? A. Why, certainly I never saw him; I did not represent I did.

Q. Then you don't want this Court and jury to understand you did? A. No, I do not.

Q. So that when you say you spoke to him on the telephone, you spoke to some man who rep-

resented himself at the other end of the telephone as being Mr. Silverman? A. Men don't generally say they are Silverman if they are not.

Q. In general, did you say? A. This man did not.

Q. So you don't know him at all, do you? A. No, I only know his representatives.

Q. He never sold you a bond, did he? A. Two men were representing him.

Q. Listen, Madam, just listen. He never sold you a bond, did he? Do you know what a bond is? A. I certainly do. I had dealings, all kinds of dealings.

Q. He never sold you a bond in all his life, did he? Answer yes or no. A. We don't expect the company—he had a man to come here, he sent those who represented him.

Mr. Goldenhorn: I ask that be stricken out as not being responsive.

The Prosecutor: I will consent.

The Court: It will be stricken out.

Q. He never sold you a bond, did he? A. No.

Mr. Goldenhorn: That is all. You have answered my question.

I ask that this witness's testimony be stricken out as being highly prejudicial to the defendant. I most respectfully ask for a mistrial on the ground that it was injected simply for the purpose of arousing sympathy—we all have sympathy for a woman suffering as she is—I ask that the Court withdraw one of the jurors and declare a mistrial.

The Prosecutor: Anything that this woman said that is material to the issue to effect admission of interest against Silverman's interest.

The Court: I don't think she testified she had any conversation with him.

The Prosecutor: I do. I thought she said she talked to Mr. Silverman. I think the record will bear me out. I think this woman has been through an ordeal and I move to withdraw her at this time.

The Court: There is a motion here to strike out her entire testimony. I have to rule upon it. If you consider any part important I will hear you.

The Prosecutor: I consider the particular fact that she talked to Mr. Silverman and said she didn't receive dividends is material, when he later tries to put out a circular saying that the company was in good condition.

The Court: I will strike out the entire testimony and caution the jury to disregard it. I will deny the motion for a mistrial. I might say that I do not consider a share of stock an obligation of the corporation, and even if it were true, that dividends had been promised or guaranteed on a share of stock, I do not see how it can be material.

Mr. Goldenhorn: May I, with your permission, say something to the Prosecutor contradicting the statement that she made about dividends, I have them here in my notes. If he wants to offer that I will go

into that and prove what she really got out of her investment. I am just warning her.

The Court: It will be stricken out.

MATTHEW J. KURTZ, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Where do you live? A. 270 South Burnett Street, East Orange, New Jersey.

Q. How long have you lived there? A. Two and a half years.

Q. Were you ever employed by the New Jersey Bond & Mortgage Company? A. Yes, sir.

Q. In what capacity? A. Sales manager.

Q. Where was their office? A. Hackensack, New Jersey.

Q. Whereabouts in Hackensack? A. Peoples Trust Building, 210 Main Street, I think, it was.

Q. How long were you employed by the company at that particular place? A. A year and a half, or possibly a little longer.

Q. When would you say that you severed your connection with that company? A. I was not active after May or so, in 1930, but my resignation officially went in about some time in September.

Q. Of 1930? A. 1930.

Q. Now, were you paid on a salary or a commission? A. I was to receive a salary.

Q. Did you receive the salary?

Mr. Goldenhorn: I object on the ground that it is immaterial, incompetent and irrelevant.

The Court: May I see Exhibit S-5 in evidence?

(Argument between Court and counsel.)

The Court: Mr. Prosecutor, I will give you permission to renew this line of questioning upon your showing to the Court a salary which has not been proven in the form of an obligation within the meaning of this prospectus.

The Prosecutor: On another ground, that they were in an unsound financial condition. If they couldn't pay the salaries of their employes they were not in a sound financial condition.

The Court: I certainly rule against you on that.

The Prosecutor: Then I would like to adjourn because I can show you in about two minutes.

The Court: I am perfectly willing to have you show me.

There will be a recess for about ten minutes.

(The jury may retire.)

(Argument between Court and counsel.)

The Court: Your objection is that there is no proof that this man was properly an employe of the corporation?

Mr. Goldenhorn: That is the first objection. The second is that there isn't any-

thing to show that we couldn't pay every obligation of his salary if he were entitled to it. There is no evidence here that he was entitled to it; his say-so doesn't make it so.

The Court: I overrule the objection.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

The Court: Call the jury back.

(The jury returned to the court room.)

MATTHEW J. KURTZ, resumed the stand and testified further as follows:

Direct Examination by the Prosecutor (Continued):

Q. Did you receive a salary? A. One month's.

Q. One month's? A. One month's.

Q. When was that? A. I think it was about some time in July, 1929.

Q. And from July, 1929 up until May, 1930 you only received one month's salary?

Mr. Goldenhorn: I object to that on the ground that it is irrelevant and immaterial.

A. That is right.

Q. The reason you received no other salary during the other months was for the reason heretofore stated?

Mr. Goldenhorn: I object.

The Court: Sustain the objection. There is nothing to show—

The Prosecutor: I will re-frame my question.

The Court: There is nothing yet to show that he was to receive anything else.

Q. What was your agreed weekly salary? A. $10,000 a year.

Mr. Goldenhorn: I object to that unless it is shown with whom the agreement was made and how.

The Court: Sustained.

Q. Did you have an agreement to be paid? A. I did.

Q. With whom was it made? A. With Mr. Silverman.

Q. What was that agreement?

Mr. Goldenhorn: I object.

The Court: Who do you mean by Mr. Silverman?

The Witness: Well, Mr. Silverman was the corporation.

The Court: Who do you mean?

The Witness: Samuel W. Silverman.

Q. Where is he? A. He is sitting there (indicating).

By the Court:

Q. Did he hold any office in this corporation? A. He was president of the New Jersey Bond & Mortgage Corporation.

Q. That is the man that you spoke to with reference to employment? A. That was the man I spoke to.

Q. What was said by him and what was said by you? A. He agreed to discuss it with the members of the Board as a formal proper procedure; then I was notified to proceed and I went ahead on that basis and received one payment accordingly.

Mr. Goldenhorn: I object.

Q. Who notified you to proceed? A. Mr. Samuel W. Silverman.

Q. What did he tell you? A. To go ahead according to the duties outlined. I proceeded and received one month's compensation.

Q. You talked about what your compensation should be? A. $10,000 a year.

Q. No, no. The answer is yes, I take it? A. Yes.

Q. How much was it to be? A. Ten thousand a year.

Q. Who said that? A. Mr. Samuel W. Silverman.

Q. Was there a conversation as to when this sum was to be paid? A. Yes, monthly.

Q. Who said that? A. Mr. Samuel W. Silverman.

The Court: Anything further?

The Prosecutor: We haven't anything further on that particular point.

Q. How much were you paid? A. I think I was paid somewhere under $1,000.00; that was all the money that I received.

Q. When did you receive that? A. That was paid to me prior to July or August of that year, I am not quite certain, but Mr. Britt arranged the payment to me for that money in the absence of Mr. Silverman.

Q. Do you know who the directors of the corporation were at the time this contract was made? A. Yes, sir.

Q. Who were they? A. Mr. Harper W. Britt, Mr. Lieberfreund and myself, I think there was one other, I don't recall the name, your Honor, I had not seen him. Mr. Lieberfreund, Mr. Thompson, Mr. Silverman, and myself, I think there was one other, I don't recall the name, your Honor, I haven't seen him.

Q. Where did you carry on your work? A. At headquarters in Hackensack, New Jersey.

Q. How often did you report there? A. Every day.

Q. Were any of the other directors there during the time of your employment? A. Occasionally they would appear.

Q. Were you there when they were there? A. Sometimes.

Q. Did you ever make any demand for any further payment? A. I did.

Q. When? A. After waiting for some little time for a further payment I made a demand.

Q. When? A. Possibly in September of that year. It was a month later in 1929.

Q. Were you paid? A. I was not.

Q. Have you been paid anything since? A. I was not.

The Court: Anything further?

The Prosecutor: Not on that particular point, I haven't.

The Court: Mr. Goldenhorn?

Mr. Goldenhorn: I will wait until the prosecutor gets through.

By the Prosecutor:

Q. What was Mr. Silverman's connection with the corporation? A. President.

Q. Who ran the corporation?

Mr. Goldenhorn: I object to that on the ground that it calls for a conclusion, and ask that the time and place be fixed when Mr. Silverman was supposed to have been president.

The Prosecutor: I will withdraw the question.

Q. What did Mr. Silverman do in so far as acts of the company were concerned?

Mr. Goldenhorn: I object to that unless the time and place is fixed.

The Court: Fix the time.

Q. Suppose you give his activity with this company from the time you went there until the time that you left?

Mr. Goldenhorn: I object to that on the ground that there is no time and place fixed as within the purview of this indictment which was March or February of 1930.

The Court: Objection overruled.
Mr. Goldenhorn: Exception.
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. What were Mr. Silverman's activities in connection with this company? A. As president of the New Jersey Bond & Mortgage Corporation he conducted the administrative activities of that entire organization. All the employes were subject to his rule and his plan of formula of operation. He very seldom consulted other members in a decision.

Q. Now, were you familiar with this circular?

The Court: You are referring now to Exhibit S-5 in evidence?
The Prosecutor: Exhibit S-5, yes.

A. Not this particular circular.
Q. Not that one? A. No.
Q. You didn't have anything to do with this particular one then, I take it, Exhibit S-5 in evidence? A. No, sir.
Q. What were your duties? A. My duties originally—

Mr. Goldenhorn: Just a moment. I object to that on the ground that it is incompetent, immaterial and irrelevant as to what his duties were. It does not come within the purview of this indictment.
The Court: Objection overruled.

Mr. Goldenhorn: Exception.
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. My duties were to assist in the creation of the New Jersey Bond & Mortgage Corporation so it would prove acceptable to the general public, and to organize sales groups for the purpose of selling the company's issue in order to have sufficient funds to purchase various parcels and other instruments in the market to carry on the business.

Q. Well, do you know of your own knowledge, whether or not the company had any money to make such purchases, say for six months prior to the time that you left?

Mr. Goldenhorn: I object to that on the ground that it is not the best evidence of what the company could do. The best evidence would be to have the books and the minutes of the corporation.

The Court: Objection sustained.

The Prosecutor: You see the difficulty is that they have the books.

Mr. Goldenhorn: Just a moment. I want to object to that statement.

The Prosecutor: We gave them notice to produce.

Mr. Goldenhorn: We haven't any such thing.

The Prosecutor: I haven't got them.

Mr. Goldenhorn: I know that you have them because your own witness says that

you took them from us. We haven't got them. When we turned them over to the Attorney-General's office he turned them over to someone else. For counsel to say that I ask for a mistrial on the ground that it is highly prejudicial to this defendant.

The Court: Motion denied.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Cross Examination by Mr. Goldenhorn:

Q. Mr. Kurtz, when did you say you became an employe of this company? A. Early in 1928.

Q. Who was the president of the company then? A. There was no New Jersey Bond & Mortgage Corporation until about May, 1928.

Q. I show you a check purporting to be to your order for $500.00 dated September the 6th, 1928, signed by Harper Britt, president, and someone else, as treasurer, and ask you if you received that check? A. I did.

Q. Is it your endorsement on the back of it? A. That is my signature.

Q. Was that check given to you by the New Jersey Bond & Mortgage Company? A. The New Jersey Bond & Mortgage Company.

Q. Then it was formed in 1928, wasn't it? A. I say some time in about May—I said.

Q. And you didn't say though at that time that Mr. Britt was the president, did you? A. I did not.

Q. Is it because you did not know, or is it because you had forgotten? A. Because I did not quite clearly get that. If you will give me time I will explain that.

Q. I don't want you to explain anything. Just answer my question. You are one of the defendants mentioned in this indictment, aren't you? A. I am.

Q. And you were one of the directors of the company? A. I was.

Q. Have you been promised anything in the way of reward, or failure to prosecute, if you testified in this case? A. By whom?

Q. By Mr. Breslin or anyone from his office. A. I certainly was not.

Q. But you are not on trial today, are you? A. I do not know.

Q. Don't you know whether you are on trial or not? A. I was subpoenaed and I am here.

The Court: So that there won't be any question about it, you ought to know he is not on trial today. We all know that he is here, but he is not on trial.

Q. How many pieces of property to your knowledge did the New Jersey Bond & Mortgage Company own in 1930, in March or February, about? A. I should say possibly some twenty pieces.

Q. Only twenty? A. I just guessed that.

Q. Isn't it true that it is nearer 200 pieces of property that they owned at that time? A. Not to my knowledge.

Q. You only know of about twenty? A. As I recall clearly scanning over some of these sheets I would visibly see possibly twenty or so.

Q. That is your best recollection? A. As I recall.

Q. Now, did you ever sue the company for any back salary? A. I did not.

Q. Do you recall in the course of your employment employing the firm of Lloyd-Thomas, real estate appraisers, New York, to make appraisals of this property? A. I did not employ them, they were employed by the corporation.

Q. Did you go to them to engage them? A. I never went to their office, no; they were called to the office at Hackensack.

Q. You are familiar with their appraisal, aren't you? A. Yes, sir, I am.

Q. Did they at that time appraise all of the properties of the company to your knowledge? A. They were supposed to appraise all of the properties that Mr. Silverman listed for them.

Q. Those you listed for them, do you remember what their appraisal was with respect to that?

The Prosecutor: I object to that on the ground that it is immaterial.

The Court: I sustain the objection.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Was it by reason of the appraisal which Lloyd-Thomas made that you endeavored to take

over the sales agency of this corporation? A. I requested that that appraisal be made, yes, sir.

Q. Did you check up on the appraisal to find out whether it was a fraudulent one or an honest one? A. As a layman I had no idea. That is the reason I asked for the best authority and accepted Lloyd & Thomas.

Q. Are they a reputable concern? A. I understood them to be then.

Q. While acting on their appraisal were you endeavoring to sell the securities of this company, these bonds particularly? A. Upon their appraisal and that of Haskins & Sells' financial statement. There was a statement drawn up by the certified public accountants.

Q. Who was Harry Haskins? A. Haskins & Sells is the name of an organization in New York, they have other branches.

Q. Were they engaged to make the appraisal? A. I insisted that they have an appraisal made before I would take the offering to the City of New York.

By the Court:

Q. You say that Haskins & Sells were the appraisers? A. They were the auditors. An audit was made and also an appraisal of the property.

By Mr. Goldenhorn:

Q. They are certified public accountants, aren't they, and auditors? A. That is a correct statement.

Q. Now, I show you what purports to be a statement, and I want to show it to the Prosecutor, as he has to look at this.

The Prosecutor: I know all about it.

Q. I show you what purports to be an appraisement made by Haskins & Sells, certified public accountants, under date of June 14, 1928, and I ask you whether or not you ever saw it or not? Don't answer the question until the learned Prosecutor raises an objection or does not. I ask you if you ever saw this statement before? Look at it. A. I never saw any of these particular sheets, either collectively nor individually as they are.

Q. Did you know what their appraisement or certification was as to the value of the properties that the company owned?

The Prosecutor: I object to that on the ground that it is immaterial.

The Court: I sustain the objection.

Q. Was it on the basis of their appraisement that you tried to sell the bonds of the corporation?

The Court: He has already answered that, has he not?

Mr. Goldenhorn: Not yet. He spoke of the engineer's appraisement.

The Court: Is that some other appraisal you have here now?

Mr. Goldenhorn: Now, I have the certified public accountants' statement. He said they were not appraisers.

Q. Was it on the basis of the auditor's report that you tried to sell these bonds of the company? A. I distinctly stated that when both of the reports were issued, and they looked favorable to me, I then ventured to present the offering to the public.

Q. And those reports that looked favorable to you were by the firm of Lloyd & Thomas and by Haskins & Sells of New York, is that right? A. That is correct.

Q. Mr. Kurtz, were you present at a meeting held at the office of Mr. Saul Nemser, a member of the Bar of the State of New Jersey on Montgomery Street, Jersey City on the 6th day of February, 1930, when a resolution of the corporation was passed authorizing the issuance of $500,000.00 worth of bonds of the New Jersey Bond & Mortgage Company? A. I do not recall any such meeting.

Q. Now, see if I can refresh your memory. Do you remember—I withdraw the question. This check I showed to you and which I desire to have marked for identification, if your Honor please—did you receive $1,000.00 in salary in addition to this $500.00? A. I don't recall receiving a thousand dollars in addition to that.

(The paper in question was marked Exhibit D-1 for Identification.)

Q. Do you know who gave you the money, the thousand dollars, whether it was paid in cash or by check? A. I don't recall receiving a thousand dollars in check or in cash.

Q. Didn't you state, or am I in error about that, that you received a thousand dollars on account? A. I said it was under a thousand dollars; all the salary I received from the corporation, I don't recall whether it was $500.00 or a little more.

Q. Under a thousand? A. Under a thousand.

Q. Altogether? A. Altogether, and that is it.

Q. That is part of it? A. I don't believe there was any more; there may have been another check.

Re-direct Examination by the Prosecutor:

Q. Were you present at a meeting of the directors on the 5th day of February, 1930? A. I don't recall a meeting in the early part of February of the Board of Directors in 1930.

Q. You don't recall that? A. I do not.

Q. Now, these papers that Mr. Goldenhorn has shown you they pertain to the stock issue? A. They pertain to the stock issue only.

Mr. Goldenhorn: I object to that on the ground that what the paper says is the best evidence of it. If counsel wants to offer it in evidence I will give it to him; but to pick out and make a statement like that is highly prejudicial, and I ask for a mistrial.

The Court: Motion denied.

Mr. Goldenhorn: It is an attempt to inject part of the record without offering the record itself; it has nothing to do with stock.

The Court: Mr. Goldenhorn, I have ruled. There is nothing before the Court. Now let us get straight on this.

The Prosecutor: That is all for the present.

EDGAR ROSS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. You have been in the jail for a few months? A. I have.

Q. And when you were arrested you were working in Mt. Vernon, New York? A. White Plains.

Mr. Goldenhorn: I object to where he was working at the time he was arrested.

The Court: I will allow it.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. During the year 1929 were you employed by the New Jersey Bond & Mortgage Corporation? A. I was.

Q. When did you become an employe of that company? A. In the summer of 1929.

Q. And how long did you remain with the company? A. Approximately a year.

Q. During the time that you were with them did you know the defendant, Samuel W. Silverman? A. I did.

Q. Did you know him then? A. I did.

Q. Were you working on a salary or a commission basis? A. I was working on a salary basis.

Q. How much was your salary? A. $50.00 a week.

Q. Were you paid every week? A. I was.

Q. Up until what time? A. Well, I was paid for the whole time that I was employed there with the exception of two or three times when there was not enough money to pay the help.

Q. Then they had always to make it up? A. Yes, sir.

Mr. Goldenhorn: I object to that and I ask that it be stricken. It is entirely voluntary on the part of the Prosecutor.

The Prosecutor: I will consent to it being stricken out.

Q. What were your duties? A. Well, I was to take care—to prepare liens for foreclosures, to take up matters for the sale of real estate that were condemned by the State Highway Commission, to negotiate with them, and do general work.

Q. Under whose supervision? A. Under Samuel W. Silverman's supervision.

Q. Who was the ante of that company? A. What?

Mr. Goldenhorn: I object.

The Prosecutor: It will be withdrawn.

Q. What was Mr. Silverman's activities in connection with this company? A. He was president and he issued the orders.

Q. Do you recall about the time that this circular was prepared, or a copy of it? A. I do.

Q. Who gave the information for that circular? A. That information was given by Mr. Silverman and myself.

Q. To whom was it given? A. It was given to Develier, Bolton & Colt.

Q. Where is their office? A. Their office was in Newark, New Jersey.

Q. After giving it to them— A. Subsequently it came back to the office in Hackensack.

Mr. Goldenhorn: I object to that on the ground that it is immaterial.

By the Court:

Q. What subsequently came back? A. The material for this particular circular.

Q. What was the name that you mentioned? A. Develier, Bolton & Colt.

Q. What was their business? A. They were engaged to sell the stock for the New Jersey Bond & Mortgage Company at that time.

The Court: As I understand the testimony, some information was given to this company, is that right?

The Prosecutor: Yes. The question was, did it come back.

By the Prosecutor:

Q. Did the circulars come back from them? A. The proof came back.

Q. What did you do with the proof? A. I submitted it to Mr. Silverman.

Q. What did Mr. Silverman do? A. He approved it, I O. K.'d it.

Q. Now, were the circulars printed up? A. They were.

Q. Now, some time after that was there some discussion about the payment of the printing bill for the circulars?

Mr. Goldenhorn: I object to that on the ground that it is immaterial, incompetent and irrelevant.

The Prosecutor: I want to show that despite the fact that they had sent out circulars for the bond issue they could not even pay the printing bill.

The Court: I don't think that question is designed to bring out the information. I will sustain the objection.

Q. After the circulars went out did Mr. Silverman have anything to do with the payment of the printing bill?

Mr. Goldenhorn: I object to that question on the ground that it contains an unwarranted fact that they went out without showing who delivered them or how they got out.

The Court: Sustained.

By the Court:

Q. Mr. Ross, what was the business of this corporation? A. They were dealing in tax liens.

Q. Any other business? A. Well, they had some bonds and mortgages, real estate they controlled and owned some real estate.

Q. Was the real estate improved or unimproved? A. Unimproved.

Cross Examination by Mr. Goldenhorn:

Q. About how many pieces of property would you say the New Jersey Bond & Mortgage Company had purchased either at tax sales or any other way, and had to its credit in the month of February or the month of March, 1930, about? A. I can't give you the exact numbers.

Q. Well, about how many? A. I could not even venture a guess.

Q. Was it a great many? A. Well, there were quite a few that they either owned outright by their foreclosure proceedings, or acquired by deed, or that they had to foreclose on a profit sharing basis with Mr. Thompson.

Q. Now, Mr. Thompson is also one of the defendants mentioned in the indictment and apparently against whom there has been a nolle prose, is that right? A. Yes, sir.

The Court: Has the indictment against Mr. Thompson been nolle prosed?

The Prosecutor: Yes, sir.

Q. He is an agent of many years' standing here in Hackensack? A. Yes.

New Jersey State Library

Q. Now, when you say that you approved of this circular, was that based upon the opinion of anybody? A. Not at all, except Samuel W. Silverman.

Q. Didn't you consult with the concern of Lloyd-Thomas in New York? A. I did not.

Q. Did you see their report? A. I saw their report in our office, that report dated back to 1927, I believe, or earlier, I am not sure.

Q. You also knew of a report made by Haskins & Sells, didn't you? A. Also from the same time.

Q. Wasn't that the basis upon which you gave your approval to the printing? A. In the circulation of this circular those were used with it.

Q. You had no reason to doubt their appraisement, had you? A. I had none at all.

Q. Well, you did not as a matter of fact? A. I did not, no.

Mr. Goldenhorn: That is all.
The Prosecutor: That is all.

ROBERT A. STOKES, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct Examination by the Prosecutor:

Q. Where do you live? A. Weehawken, New Jersey.

Q. What is your business? A. I am an accountant.

Q. Were you ever employed by the New Jersey Bond & Mortgage Corporation? A. Yes, I was employed from January, 1928 to the receivership.

Q. When was the receiver appointed?

Mr. Goldenhorn: I object to that on the ground that it is immaterial, irrelevant and incompetent. The date of his employment in 1928, unless it continued up to the time of the finding of this indictment, would be highly immaterial and irrelevant.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. April 17, 1931.

Q. What was your status in this particular company? A. I kept the books.

Q. Bookkeeper? A. That is right.

Q. In charge of the bank account? A. Yes, sir.

Q. What was Mr. Silverman's connection with this company? A. Well, Mr. Silverman, when I originally went with the firm in 1928, was president, and my recollection is that he resigned in May, 1928, and resumed the office of president in June, 1929.

Q. What kind of an office was this? A. The office in Hackensack?

Q. Yes, how many rooms did they have? A. There was a directors' room, two private offices, and then a rather large main office.

Q. Where was it? A. 210 Main Street, the Peoples Trust Building, Hackensack, New Jersey.

Q. What was Mr. Silverman's status? I mean, in so far as the place was concerned. Was he just a small fellow in the company or was he a big shot?

Mr. Goldenhorn: I object to "big shot", on the ground that it calls for a conclusion. I don't know what they are, except that in Bergen County I have seen a lot of them.

The Court: Objection sustained.

Q. Mr. Stokes, what was Mr. Silverman's activities with the company? A. He was in charge.

Q. Did you have anything to do with this $500,000.00 bond issue? A. I had nothing to do with the negotiations of it.

Q. Did you know that it had been prepared? A. Yes, sir.

Q. For a few months prior to February, 1930 had you been paid? A. My recollection is that in 1930, the early part of 1930, the salary checks were held up on account of insufficient funds in the bank to pay them.

The Prosecutor: That is all.

Cross Examination by Mr. Goldenhorn:

Q. Did you have charge of the payroll? A. Yes, sir.

Q. I show you a large number of check vouchers for salaries, and I ask you if they are in your handwriting?

The Prosecutor: Wait a minute. I want to object. I want to know where they got the records of the bank, if they say that they have not got them. We have made representation in the Court that we cannot get the minute book, they said that they did not have it; they have the checks and everything else.

Mr. Goldenhorn: I object to the Prosecutor making a speech like this.

The Court: I overrule the objection.

By Mr. Goldenhorn:

Q. Was this in your handwriting? A. Most of them are in my handwriting.

Q. These show payments of salaries up until when? A. These don't show payment of salaries.

Q. What are those vouchers? A. Those are check vouchers, vouchers made out in the place of the check stub; it does not indicate payment.

Q. Was there ever a single bond of the issue mentioned in this circular, Exhibit S-5 in evidence? A. I don't get the question.

Q. Was there a single bond sold under this circular which has been marked Exhibit S-5 in evidence, that is the subject of this litigation today? A. No.

Q. Not a single one? A. No.

Q. To anybody, is that right? A. (No answer.)

Mr. Goldenhorn: That is all.

The Prosecutor: That is all.

I would like to recall Mr. Stokes, with your Honor's permission, for a few questions.

The Court: You may recall him.

Robert A. Stokes—For State—Recalled, direct.

ROBERT A. STOKES, recalled as a witness on behalf of the State, testified further as follows:

Direct Examination by the Prosecutor:

Q. What were your duties again? A. Well, I was a bookkeeper and I handled the various office routine.

Q. Did you have charge of the bank account? A. Yes.

Q. What was the general financial condition of that company?

Mr. Goldenhorn: I object to that on the ground that it calls for a conclusion not based on any foundation.

The Court: I sustain the objection.

Q. Were any dividends paid while you were there?

Mr. Goldenhorn: I object.

A. Yes, sir.

Mr. Goldenhorn: I withdraw the objection since the witness has already answered the question.

Q. Of what were the dividends paid of, of capital or surplus?

Mr. Goldenhorn: I object.

The Prosecutor: Now, he fell for that. He specifically stated the reason for his objection.

Mr. Goldenhorn: I don't quite get on to what he meant by "fell for it", I don't know.

The Court: I want to know your legal reason for the objection.

Mr. Goldenhorn: I object on the ground that there is no foundation for any such question, and it calls for a conclusion on the part of the witness, and it is immaterial under the purview of this indictment.

The Court: What difference does it make whether the dividends were paid out of capital or out of stock?

The Prosecutor: If I may be heard on that particular point. We contend that they paid dividends out of capital stock. Now, they say in this circular that the bonds are an excellent opportunity for the safe investment because of its great underlying security. Where in the name of reason and justice can there be any underlying security in a company where they have paid dividends out of capital stock?

Mr. Goldenhorn: That is an unwarranted statement. It is not in issue before this Court, and the underlying securities are real estate, which are worth over $600,000.00.

The Prosecutor: You tell that to the jury.

Mr. Goldenhorn: I am telling it to you.

The Court: Address your remarks to the Court, Mr. Goldenhorn.

Mr. Goldenhorn: If I may apologize to the Court.

The Court: I don't accept any more apologies of this kind. If you make any remarks, address them to the Court.

Mr. Goldenhorn: I have imbibed a little of this spirit from my adversary.

The Court: From what?

Mr. Goldenhorn: From my friend on the other side.

A. My recollection is that all dividends were declared out of capital.

Cross Examination by Mr. Goldenhorn:

Q. What do you base your recollection on, any books that you have here of the company? A. No, my recollection of the entries made on the books.

Q. You haven't the books here? A. No, I haven't, but I have a good recollection of what they are though.

Q. And it is based on that recollection that you think that dividends were paid out of the capital, is that right? A. Yes, sir.

Q. Do you know how many pieces of property the company owned? A. At what time?

Q. In 1930, in May or in February or March. A. I should say 40 properties, 45 parcels of property.

Q. You never knew of any more, did you? A. I am giving you an estimate of what I think they owned at that time.

Q. How many tax liens did they buy, do you know? A. Oh, several hundred.

Q. Several hundred? A. Yes, sir.

Robert A. Stokes—For State—Recalled, re-direct.

Q. And they belonged to the company, did they not? A. What is that?

Q. Did they? I see you are smiling—is that so? A. They belonged to the corporation.

Q. Had they any value? A. Yes.

Re-direct Examination by the Prosecutor:

Q. How many tax liens had been converted into actual cash for six months prior—

Mr. Goldenhorn: I object.
The Court: Objection overruled.
Mr. Goldenhorn: Exception.
Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. —to February, 1930? A. I would not be in a position to tell just exactly how many.

Q. Was it a very large number or small? A. Small, very.

Q. In other words, business was not so hot?

Mr. Goldenhorn: I object to the word "hot."
The Court: Objection sustained.

Re-cross Examination by Mr. Goldenhorn:

Q. Now, I want to show you the cards again, and ask you if it is not a fact that the company purchased within a year and a half $37,650.96 worth of tax liens, in your own figures? A. (The

witness looks at them.) These vouchers represent tax liens purchased by the company.

Q. And they amount to the figures you observe here? A. I don't know, I have not checked it up.

Q. That slip attached to it, would that indicate anything to your mind? A. If I checked the list, yes. They are not in order for me to check them.

Q. You have looked them over generally, is that right? A. Yes, sir.

The Prosecutor: May I take that?

Mr. Goldenhorn: Yes.

The Prosecutor: I want the minutes, too.

Mr. Goldenhorn: I most respectfully insist that that is a very improper remark to ask me to give him the minutes. We haven't got them. It is done for the purpose of prejudicing this jury.

The Court: If you say you haven't got them, that is all. There is nothing before the Court.

Mr. Goldenhorn: I again call your attention to the remark made.

The Court: I have tried repeatedly time and time again to stop counsel from bickering. I cannot hear all the remarks; I did not hear this one.

By the Prosecutor:

Q. What is the amount of the first memorandum there? A. 23,397.

Q. And that is not the amount on this first one, is it? A. No.

The Prosecutor: That is all.

By Mr. Goldenhorn:

Q. What you mean is that you have not looked to see whether it is in this bunch or not? A. The question as I understand it, Mr. Goldenhorn, is the top voucher is not listed on the top of the adding machine list.

The Court: Do you want to put these in evidence?

Mr. Goldenhorn: I would like to, yes; I think the jury ought to have them. They represent these different items, they have all been checked up by some one else, they are not in regular order, that is all.

The Court: You are not offering that slip in there, are you, that contains a typewritten copy of the various items? It is a matter of computation.

Mr. Goldenhorn: Suppose I offer this bunch in evidence.

(The papers were received and marked Exhibit D-2 for Identification.)

The Prosecutor: The State rests.

Mr. Goldenhorn: I move for a direction of a verdict in favor of the defendant on the ground that it has not been shown that there has been a single circular, described as Exhibit S-5 in evidence, ever circulated. It has not been shown that a single circu-

lar, known as Exhibit S-5 in evidence, was made, published, disseminated, circulated and placed before the public; nor that the defendant did cause to be made, published, disseminated, circulated and placed before the public of Bergen County, any circular, pamphlet, letter, and so forth, containing assertions or representations of fact which were untrue, deceptive and misleading in the County of Bergen, and I now, on that ground alone, ask for a dismissal of the indictment, and request that your Honor request the jury to find this defendant not guilty?

The Court: Mr. Breslin?

The Prosecutor: All I will say is, that under the indictment as I read it, anybody who makes or did make, publish, circulate and place before the public, is guilty under this particular statute. The proof is that Mr. Silverman approved of the circular going out; that it did go out; and that it was received by somebody—that approval took place in Hackensack, which is the crux of the crime.

The Court: Is it your understanding that the mere approval of the circular, that the circular is false and misleading, that under the terms of the statute it is a criminal offense?

The Prosecutor: Yes. In view of the evidence in the case it is clear that Mr. Silverman dominated the activities of the company—a man in Nutley, New Jersey, received the publication.

The Court: You don't contend that publication was unnecessary?

The Prosecutor: No. I say that a crime was committed when the circular was made out. And the statute says anybody that makes a circular—he made it in Hackensack.

The Court: As I understand the evidence, one witness testified to having received one of these circulars through the mail; this witness lives, as I recall, out of the County.

The Prosecutor: That is right.

The Court: There is no proof as I recall the evidence as to where this circular was mailed from.

The Prosecutor: We say that the making of the circular is a violation of the statute. Anybody who makes a circular—he did not have to send it out. Your Honor can reserve decision on it until the end of the case and the motion can be renewed. I don't see how the defendant is going to be prejudiced, as a matter of law, your Honor. Where did he place the circulars before the public? In Hackensack—everybody has testified that he dominated the company.

The Court: Have you proved that?

The Prosecutor: We don't have to prove it. I say he did make, and so forth.

The Court: The motion is denied.

Mr. Goldenhorn: I would like to ask your Honor for a continuance of this matter until tomorrow morning in view of the ruling of your Honor. I would like per-

mission between now and then to submit to your Honor the fact that the act was in the conjunctive and not in the disjunctive, and that in addition, each and everyone of these specific items should be proved before the State had made out a case.

The Court: I was anxious to proceed with the case if possible today. How long do you expect to take with your defense?

Mr. Goldenhorn: I am advised by my client and those associated with me that it would take about a day and a half to put in our defense, because we have a great many expert witnesses and a great many exhibits, as your Honor can see here. These are just a few of our defense paraphernalia that we want to offer for the edification of the Court and jury. I shall have to forego the pleasure of going to Trenton tomorrow on account of loyalty to my client.

The Court: Mr. Prosecutor, is there any reason why you should not proceed today?

The Prosecutor: Your Honor is in control of the situation. One minute Mr. Goldenhorn says that he wants to go ahead, and in another, he says that he wants to go over until tomorrow morning.

The Court: If you are going to take a day and a half to put in your defense I think you ought to start in today.

Mr. Goldenhorn: I would like to consult with those who are associated with me in the matter; I don't unncessarily want

to take up the time of this Court and jury. I would like to consult with my associates in the matter, if your Honor will allow me five minutes' time, it will save a lot of time.

The Court: There will be a recess for ten minutes.

Mr. Goldenhorn: I take an exception to your Honor's ruling.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

THE DEFENDANT'S CASE.

PERCY A. GADDIS, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct Examination by Mr. Goldenhorn:

Q. What is your business or profession? A. Real estate business for the last 42 years.

Q. Where? A. In Jersey City, and throughout the State of New Jersey.

Q. Now, you have frequently made appraisals for the State Highway Commission of New Jersey, and been used as an expert by them? A. I have.

Q. And have you made appraisals of property on the meadows in the neighborhood of the Passaic and Hackensack Rivers? A. I have.

Q. Did you make those appraisals in the years of 1930 and 1931? A. I did.

Q. And did you make appraisals of property of the New Jersey Bond & Mortgage Company on the meadows at that time? A. I did.

Q. And just tell his Honor and the jury how many acres that land consisted of and where it is situated? A. The property in question consists of some undeveloped meadow land on the Hackensack River south of the Pennsylvania Railroad between there and Duncan Avenue and fronting parallel on the Hackensack River which was bi-sected by the so-called Pulaski Highway or Skyway.

Q. What was your estimate of the value of the land in 1930 or 1931—1930, to be exact? A. I made two appraisals. If you will pardon me for a minute I want to keep them separated. As of June 6, 1931, 306—

The Prosecutor: I object to that June 6, 1931.

The Court: I sustain the objection.

Q. Go back to 1930, Mr. Gaddis, to February or March of 1930, about February 6, 1930? A. What date may I ask about? The figure I gave you was of that time. I had 1931, so when I was called on to tax it as before—and the latter figure was $319,701.00, which I testified to in 1932.

Q. And was that for all of the property or only part of it? A. It apprehended two large parcels. I think there was a large parcel not included in it which was not figured by the highway so I had no occasion to include that.

Q. Now, you heard Mr. Cooke this morning testify to the value of the land owned by the

Bumsted Estate. Where was the Bumsted Estate property with respect to the property of the New Jersey Bond & Mortgage Company? A. The Bumsted property immediately adjoined.

Q. On the south, north, west or where? A. On the north adjoining, I think, is a part of the Silverman property of the New Jersey Bond & Mortgage Company.

Q. Have you the appraisals and the amount as was fixed for the two acres of land taken by the Commissioners in condemnation of the Bumsted property adjacent to this property? A. I have.

Q. What did they bring?

The Prosecutor: I object to that unless it is the two acres that have been referred to in the testimony.

Mr. Goldenhorn: That is what I am talking about.

Q. You are familiar with it, aren't you? A. Yes, very. I have a list of all the sales here.

Q. What was it sold for, how much? A. It was 158,350.

By the Court:

Q. Square feet? A. 11,069 square feet or $30,000.00 an acre.

Q. How much altogether for the two acres or thereabouts? A. This was not fully two acres, because this did not include the part in the north and south highways going into Bayonne. I haven't that figure before me. This is the part which crosses diagonally by the skyway.

By Mr. Goldenhorn:

Q. How much did that bring? A. $30,000.00 an acre.

Q. How many acres were there? A. 158,043, nearly three acres in that.

Q. This brought $110,000.00? A. Yes, sir.

The Prosecutor: I object to that. The testimony this morning was that a jury awarded $24,000 for that portion of real estate.

Mr. Goldenhorn: I am talking about the Bumsted property now.

The Prosecutor: I object to the Bumsted property.

Mr. Goldenhorn: I have taken the property adjacent to it that was testified to by Mr. Cooke this morning, whether he was familiar with the value of that land for the purpose of allowing this jury to fix the value of our land with some degree of reason. Juries are not infallible. They may say a property is worth $10,000.00 that is worth $200,000.00. I want to show by a reputable real estate man, a man who testified on behalf of the State, knows about these values, knows of the fair prices, to say what prices the land in that neighborhood brought, because Mr. Silverman testified saying that his land was worth $500,000.00.

The Court: I understood you to represent to the Court on Mr. Breslin's objec-

tion that your question related to the piece of property taken in condemnation came out of the Silverman tract?

Mr. Goldenhorn: I did not have that in my mind. I want to reframe my question so as to have your Honor thoroughly understand what I have in mind.

The Court: If you are going around to other properties for showing what this particular piece is worth, it ought to be shown by other facts.

Mr. Goldenhorn: He took the value of our property, appraised it at $319,000.00; I want to show that a piece of land right next to it, less than two acres, brought $110,000.00.

The Court: I think you ought to show what kind of a sale it was, show the details that go with it and show that that was the fair market price.

Q. Are you familiar with sales of land in that property, the same character of land as the New Jersey Bond & Mortgage Company's property? A. I am.

Q. Of comparable property? A. I am.

Q. And what was the value of the property that was taken, and in what way was it taken, where it brought, according to your figures, so much an acre? A. They were taken in the same manner as the Silverman property.

Q. What do you mean? A. By the New Jersey Bond & Mortgage property, it was the same adjacent meadowland, of the same character, the

same location, and taken for the same purposes, for the right of way of the Pulaski Skyway.

Q. At the same time that the Silverman land was taken? A. Well, simultaneously, it may have been settled a few weeks before or after four months—it was taken in the same proceedings.

Q. What did that property bring then? A. It was paid for by the State at the rate of $30,000.00 an acre.

Q. That would be how much in money? A. $110,000.00.

Q. Have you examined any other property of the New Jersey Bond & Mortgage Company, or did you examine any in the year 1930, in February or March? A. Nothing except these two tracts out of which the digging was for the Pulaski Skyway.

Q. And that is the piece of property which the jury gave for the small portion that they took the sum of twenty-two thousand odd dollars—$24,000.00, I beg your pardon? A. $24,000.00.

Cross Examination by the Prosecutor:

Q. You testified before a jury in Hudson County in the condemnation proceeding, didn't you? A. I did.

Q. What value did you place upon that portion of land that they awarded $24,000.00 for? A. I will show it to you in just a moment. $115,000.00.

Q. In other words, you testified before the jury that that portion of land was worth $115,000.00 and the jury awarded $24,000.00? A. Including consequential damages.

Q. Including consequential damages? A. For the remainder.

Q. Do you say that the Bumsted property is the same as the Silverman property? A. The majority of it, yes. The edge of it comes up immediately touching and encroaching the solid land or a little filled better than the other, but the portion that was paid for by the State Highway was absolutely the same.

Q. Despite the fact that you testified to this $115,000.00 figure, the jury only awarded $24,000.00?

Mr. Goldenhorn: I object.
The Prosecutor: That is all.
Mr. Goldenhorn: That is all.

By the Court:

Q. This $110,000.00 paid in condemnation, the piece containing about three acres, does the item of damages enter into that? A. Yes.

Q. Was it separate from the value of the property? A. No, the award never does separate it, in my experience.

Q. There was one lump sum paid for the three acres that were taken and damages for the remainder of the tract? A. Yes, it was a similar situation, similar severance, and so forth, diagonally going through.

Q. How much was the remainder of the tract? A. 40 odd acres still remaining in the Bumsted tract; about 13 acres remaining in the Silverman tract.

Q. This Bumsted property fronts on the Hackensack River? A. Yes.

Q. It is intersected by the same highway? A. Yes.

Q. Is any portion of it easily accessible to the Hackensack River cut off by the building of this highway and by the taking of that land? A. From that direction, yes; that is from side to side, yes, the same as the Silverman tract was.

Q. Did that Bumsted property cover tracts on the public road outside of this public highway? A. (The witness examines map.)

Q. Did the Bumsted tract have any frontage on the public road outside of the skyway? A. The easterly part did; the westerly part was only on paper streets, the same as the Silverman tract; that is Sip Avenue and Bumsted tract would abut the end of Hogan, Duncan, and other streets, all of which were only paper streets.

Q. After the condemnation of the land for the purpose of building the Skyway, how much of the Bumsted tract remained between that which was condemned and the Hackensack River? A. How much of the Bumsted between that and the Hackensack River—three-quarters of it.

Q. The other quarter was between the Skyway and the public road? A. Yes, the new public road that ran through the property that went to Bayonne, Highway No. 2, I believe, is a branch of it.

Q. This Skyway is now built as an elevated above the surface of the land, is it not? A. Yes. It is anywhere from 100 to 125 feet.

Q. Is that the point where these properties are? A. At the point where these properties are

it would average, the roadway would average 75 feet, I may have it exact, it seems it ran up to 51, 52, up to 55 feet.

Q. That is the surface of the Skyway is 55 feet above the surface of the land? A. Right.

By Mr. Goldenhorn:

Q. Mr. Gaddis, the New Jersey Bond & Mortgage Company also butts and did abut at that time on the Hackensack River, is that right? A. Yes.

Q. And you also testified before the Commissioners in Condemnation in this matter, isn't that right? A. I did.

Q. And the Commissioners estimated the part taken, or had estimated $80,000.00, and your figures were $115,000.00, is that right? A. I think they were $120,000.00 and the award was for $80,000.00; I can get it in a moment; $80,000.00 was the award, and my testimony was $115,000.00.

By the Prosecutor:

Q. Did you take into consideration the purchase price of this property when you fixed the value at $219,000.00? A. Yes.

Q. Did you know that the property had been bought for $30,0000.00? A. I did, and knew that other property near it had been bought for less a few years before.

By Mr. Goldenhorn:

Q. Property two years before sold for much less and then sold much higher, didn't it? A. It did.

JACOB H. KLEIN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct Examination by Mr. Goldenhorn:

Q. You are in the real estate business in Jersey City? A. I am.

Q. You have been for how many years? A. 19 to 20 years.

Q. Have you frequently testified in actions in condemnation proceedings, particularly over there? A. Yes, sir, in quite a few Courts.

Q. In what? A. In a few Courts.

Q. And are you familiar with the New Jersey Bond & Mortgage property on the meadows? A. I am.

Q. Which has been the subject matter of our discussion here in Court? A. I beg your pardon?

Q. Which has been the subject matter of our discussion here in Court, the same property? A. Yes, sir.

Q. Did you testify before the Commissioners in condemnation? A. I did.

Q. And are you familiar with the amount of land that was taken? A. Well, I know of it, yes.

Q. Did you make any estimate as to its value in 1930? A. I did.

Q. What was your estimate as to its value? A. The valuation at that time I placed at $533,370.80.

Q. Did that include all the land or only the land that was taken in condemnation? A. That was before the severance as it was prior to the condemnation.

Q. You mean all of the land? A. All of the land.

Q. Did you testify to the basis of the value before the Condemnation Commissioners when they made the award of $80,000.00? A. I did.

Q. And for the portion that was taken, is that right? A. That is right.

Q. All of it was not taken, was it? A. No, sir.

Q. It was only a part? A. Only a part.

Q. They took that and gave the New Jersey Bond & Mortgage Company $22,000.00? A. It was either twenty-two thousand or twenty-four thousand dollars.

Q. Is that right? A. Yes, sir.

Q. And that was for a small portion of it? A. Yes, sir.

Q. Now, you know the Bumsted property? A. I do.

Q. Is that the same comparable land as the land of the New Jersey Bond & Mortgage Company on the meadows? A. Approximately about the same, the same general character, the same character.

Q. Are you familiar with the land, what it sold for? A. I did, but I did not take a memorandum with me.

Q. You don't know what it is? A. No.

Cross Examination by the Prosecutor:

Q. What is the name of your concern? A. J. H. Klein Company.

Q. What was your fee for making this appraisal?

Mr. Goldenhorn: I object on the ground that it is immaterial, incompetent and irrelevant.

The Prosecutor: I want to show interest.

By the Court:

Q. The appraisal that you spoke of now, this particular parcel amounting to $533,000.00, is that made for the purpose of this trial? A. No, sir; that was in 1930 when I was before the Commissioners.

The Court: How can it be material, Mr. Breslin?

The Prosecutor: I won't press it.

The Court: The question will be withdrawn.

By the Prosecutor:

Q. How much did you say the property was worth in 1930? A. $533,370.80.

Q. How much an acre? A. It varies.

Q. On the average? A. Well, in Block 1627, Blocks 5 and 6, there was 47,892 square feet, which I figured at 80 cents a square foot.

Q. How much an acre would that be? A. That is a little over $40,000.00.

Q. $40,000.00 for meadowland? A. Approximately, yes.

The Prosecutor: That is all.

Mr. Goldenhorn: That is all.

By the Court:

Q. Do you want to make some correction in your testimony? A. Yes.

The Court: Speak up loudly so that the jury can hear you.

Q. I assume that you made an error when you said $40,000.00? A. I said $40,000.00; so it will come to a little more than thirty-three or thirty-four thousand dollars an acre.

SAMUEL W. SILVERMAN, the defendant called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct Examination by Mr. Goldenhorn:

Q. You are the defendant on trial before this Court and jury, are you? A. I am.

Q. You have been in the real estate business in Bergen County and Essex County and other counties for a unmber of years? A. 30 years.

Q. Have you during that period of time bought property and tax liens for the New Jersey Bond & Mortgage Company? A. I did.

Q. Mr. Silverman, I show you Exhibit S-5 in evidence, and ask you if you ever did make, publish, disseminate, circulate and place before the public, or if you did cause to be made, published, disseminated, circulated and placed before the public, any circular such as Exhibit S-5 in evidence? A. I never did.

The Court: You are referring to Exhibit S-5 in evidence?

Mr. Goldenhorn: Exhibit S-5 in evidence, right.

Q. Did you ever have any talk with Mr. Ross who was called here as a witness to the effect that you and he were to issue such a circular? Answer yes or no. A. No, sir.

Q. Did you know that such a circular had been printed and had been shown to you? A. No, sir. Afterwards it was printed—when I went to the office at Newark that was the early part of March.

Q. Did you ever authorize anybody or tell anybody to circularize those circulars or hand them to anybody in Bergen County or send them through the mails to any human being? A. I never did.

Q. Was there ever a single bond issued in accordance with that circular? A. Never was, and won't be permitted.

Q. Who would not permit it? A. I would not.

Q. Why not? A. Because at that time we were supposed to get the money from the highway; we didn't need any bond issue at all. It was the creation of Mr. Ross in the Newark office. I went there to stop it. That is where the whole trouble was, I called up the office, he had two men in charge with him.

Cross Examination by the Prosecutor:

Q. What do you mean that you didn't know any had been issued, was your company in such a good financial condition? A. No.

Q. Now, please, was your company in a good financial condition about February, 1930? A. Fairly well off.

Q. What did you have? A. We had a couple of hundred pieces of property and with that considerable liens.

Q. Where were they? A. Bergen County and Hudson County.

Q. How many tracts of land did you own—never mind about the tax liens. A. That was in 1928.

Q. Had you acquired any property since 1928 to 1930? A. About 200 pieces.

Q. Where? A. In Bergen County.

Mr. Goldenhorn (to Mr. Silverman): Don't get yourself exited.

The Witness: He knows where.

Q. Just answer the question. Didn't you appear before Mr. Coffin? A. I did.

Q. Didn't you submit to him a list of your assets?

Mr. Goldenhorn: Just a moment. This is not proper cross examination. If we are going to go into this I want the jury to hear everything that took place, and have it read by the stenographer, that was said to Mr. Coffin. I submit that the cross examination should be limited to what I asked the witness and to nothing else.

The Court: Mr. Goldenhorn, I think you are confined to two things now. As to what took place in the absence of the jury

that may be repeated in Court which goes to the weight of the testimony. The question as to whether it is proper cross examination is something entirely different. I think it goes to the credibility of the witness. I will allow it.

Mr. Goldenhorn: May I ask an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. When you appeared before Mr. Coffin did you give him a list of your property? A. I believe I did.

Q. Is that the list? A. That is the list made up by Lloyd & Thomas, part of the list of part of the property.

Q. Is that the list that you gave to Mr. Coffin? A. That is part of the list, yes.

Q. What else did you give him? A. I don't know, I can't recall what papers were brought to his office at that time; there was a big bunch of papers over there, you could pick out whatever you wanted to, we had nothing to hide.

Q. You had plenty to hide. You had nothing to hide? A. No.

Mr. Goldenhorn: I want to take exception to the remarks of the Prosecutor.

The Court: The witness has answered.

Q. You say that you had nothing to hide?

Mr. Goldenhorn: Just a moment. I submit that the question was drawn out by the Prosecutor himself, which is the point that I am making, because this is not proper cross examination.

The Court: There is no question pending.

Q. I will press the question. You say that you had nothing to hide in so far as the activities of the New Jersey Bond & Mortgage Company were concerned? A. No, sir.

Q. Didn't you take $3,000.00 from Mrs. Lee? A. I know that that is not so. I never met that woman in my life; I never spoke to that woman in my life.

Q. Do you mean to say that your company did not get $3,000.00 from Mrs. Lee? A. I don't know anything about a—

Mr. Goldenhorn: Will you stop when I object. I want to object on the ground that it is not proper cross examination, and this is not material or relevant, and is not in contradiction of anything.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Do you deny that she purchased $3,000.00 in your company?

Mr. Goldenhorn: I object to that on the ground that it is immaterial and irrelevant.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Do you deny that? A. As far as I know she never spent a dollar in our company—as far as I know personally.

Q. You were the man that ran the company?

Mr. Goldenhorn: I object to that on the ground that it calls for an unwarranted assumption of fact.

The Prosecutor: It is cross examination.

The Court: I will allow it.

Q. You were the man that ran the company? A. Not exactly.

Q. Well, who else did? A. Mr. Ross had charge during the time that I was president in 1929 and 1930 until the middle of February when I took an active interest and refused to let them go any further in handling the affairs of the company.

Q. You mean to say that Mr. Ross had more to do with the management of the company than you did? A. He had full control of the company, he was the general manager.

Q. Did you supervise it? A. While I was here at times I did; it was my duty as president of the company.

Q. You were president then? A. Yes, in 1929 and 1930.

Q. How much did Mr. Ross have invested in the company?

Mr. Goldenhorn: I object to that on the ground it is improper cross examination.

The Court: Objection overruled.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. How much did Mr. Ross have invested in the company? A. His salaries and his expenses; what he was drawing.

Q. In other words, it was your company? A. No, it was not my company.

Q. Whose company was it? A. It was the stockholders.

Mr. Goldenhorn: I object to that on the ground that it calls for a conclusion, "Whose company it was."

The Court: I sustain the objection.

Q. Did you have anything to do with the purchase of this tract from the Bumsted Estate for $30,000.00? A. I was the broker at that time in 1925.

Q. You were the broker? A. Yes.

Q. Who was the vendee? A. I believe it was James T. Braunstein, if I am not mistaken; I don't recall.

(At this time the Prosecutor called out and asked if Mr. Lieberfreund was in Court, and he received a response, yes.)

Q. Did you ever tell Mr. Lieberfreund that you and your family were 95 per cent. of the company?

Mr. Goldenhorn: I object to that on the ground that it is irrelevant, immaterial and incompetent, and not within the purview of this indictment, whether he told him that. There is no time and place fixed. It is not proper rebuttal because it is on an immaterial issue.

The Court: I will sustain the objection.

The Prosecutor: It is to affect his credibility, Judge.

The Court: He has not said yet what his interest was in the company.

Q. What interest did you have in the company? A. I was president of the company.

Q. What was your interest as far as the stockholders are concerned? A. I had some stock in the company.

Q. How much did you have? A. I don't recall.

Q. You don't recall? A. No, I don't recall.

Q. Haven't you the records here to show that? A. I don't think we have stock records at all.

Q. You haven't the stock records? A. No.

Q. Who was Mr. Braunstein that purchased this piece of property? A. He owns the Braun-Green Ignition Company, one of the largest automobile accessories companies in the United States—he lives over in Park Avenue, New York.

Q. Did you have any interest in the Silver-Ross Company at that time?

Mr. Goldenhorn: I object to that on the ground that it is not proper cross examination, and it is not within the purview of this indictment; there was nothing brought out by me.

The Court: How can that be material?

The Prosecutor: I am going to show that he was the Silver-Ross Company.

Mr. Goldenhorn: Suppose he is.

The Court: Mr. Prosecutor, I will hear you.

The Prosecutor: My point is that Mr. Silverman dominated the Silver-Ross Company. The Silver-Ross Company sold this particular property to the New Jersey Bond & Mortgage Company. In other words, Mr. Silverman had bought it for $30,000.00 then sold it to the corporation, of which this Mrs. Lee was a stockholder, for some fabulous sum of $300,000.00.

Mr. Goldenhorn: I say to your Honor that that is highly prejudicial to the rights of this defendant to make a statement like that. It is not proper cross examination, it is not within the purview of this indictment.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Did you have any interest in the Silver-Ross Company? A. I did.

Q. What was your interest in that? A. I owned about 28 per cent. or 25 per cent. of the stock of the company.

Q. Do you know anything about the $69,000.00 mortgage that was placed on this property—the Bumsted property? A. There was a mortgage given to Mr. Braunstein by my brother-in-law, whose name is Dr. Berman, from Brooklyn.

Q. He gave the $69,000.00 mortgage? A. Yes, sir.

Q. That mortgage subsequently got back into your hands? A. It did not.

Q. It was assigned to you? A. It was re-assigned back; it was assigned to me for the purpose of making a loan.

Q. A loan? A. Yes, then it was repaid back.

Q. Why should you have a mortgage assigned to you if you had no interest in the real estate?

Mr. Goldenhorn: I want to object on the ground that that is not proper cross examination.

The Court: Are you referring now to a mortgage on the abutting property?

The Prosecutor: No, this other property; this man says that he had a mortgage assigned to him for $69,000.00, and he went out and tried to borrow on it.

The Court: I will allow it.

Mr. Goldenhorn: I can't see the materiality of it, and I therefore object. Does your Honor rule that it is proper under those circumstances?

The Court: I understand, Mr. Prosecutor, that you were to prove something. I don't think you have done it yet. I think you said that you were going to prove that this witness was the Silver-Ross Realty Company; he now says that he owns 25 per cent. of the stock, and unless you can show he had substantial control over the corporation and permitted making the sale of this property I don't think you can go any deeper into that.

The Prosecutor: I will ask him who else was interested in the Silver-Ross Company.

Mr. Goldenhorn: I object to that on the ground that it is irrelevant and immaterial. The witness stated what his interest is.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Who else was interested in the Silver-Ross Company? A. My brother, Harry Silverman; my father, Meyer Silverman; I can't recall who else. Those are the two who were interested.

Q. Now, to get back to the $69,000.00 mortgage, from whom did you get that? A. That mortgage was assigned to me by Dr. Berman for the purpose of securing a loan—he wanted to get a loan from some bank in New Jersey, and I put up his collateral. I went to the bank and put up the collateral. I went to the bank and made a

loan for him, he assigned the mortgage over to me, got the money and gave it to him—reassigned the mortgage back to him. I acted just to help him along to secure a loan on that mortgage.

Q. Where is this man that held this $69,000.00 mortgage, where does he live? A. Midwood and Rogers, Brooklyn.

Q. What kind of a doctor is he? A. A medicine doctor and pharmacist.

Q. He came over to New Jersey and had you put through this loan? A. Yes, my brother-in-law.

Mr. Goldenhorn: I object to that on the ground it is incompetent, immaterial and irrelevant, and not within the purview of this indictment, and not proper cross examination.

The Court: Who was the mortgagor?

Q. Who made the mortgage? A. Mr. Braunstein borrowed $69,000.00 from Dr. Berman; it was back in 1925, 1926 or 1924—I don't remember when it was, it was years ago.

Mr. Goldenhorn: I want to object on the ground that it is long anterior to the transaction.

The Court: How can this be material, Mr. Prosecutor?

Q. When did Mr. Braunstein sell the property to the Silver-Ross Company? A. I don't recall.

Q. It was December the 12th, 1925 that Braunstein sold it to the Silver-Ross Company. A.

When did Mr. Braunstein buy it, may I ask, I know that will refresh my memory.

Mr. Goldenhorn: I objected this morning to the admission of these papers although I consented so that we would not have to have the County Clerk here to prove them. I objected on the ground that they were immaterial, that they were long anterior to the alleged time set forth in the indictment.

The Court: They are in evidence, aren't they?

Mr. Goldenhorn: No. I have consented and waived the proving of them and I objected to their materiality or relevancy in the case. At the time that I admitted them I said that they might be offered in this proceeding in this manner.

The Prosecutor: I am surprised at Mr. Goldenhorn's remarks. They were marked in evidence this morning.

Mr. Goldenhorn: If they are in evidence I have no objection to their being used.

I move at this time that I think they are entirely irrelevant. My contention is—this is my recollection—though I may be in error, that they would not be offered in evidence because they were immaterial and too long anterior to the transaction in the indictment.

The Court: In case they are not in evidence it is consented that they be marked in evidence.

Mr. Goldenhorn: Yes, sir.

Q. How many shares of stock did you have in the New Jersey Bond & Mortgage Company? A. I don't remember.

Q. You don't remember? A. No.

Q. Do you remember testifying before Mr. Coffin? A. I remember being there testifying, but I don't recall.

Q. You testified truthfully before Mr. Coffin? A. I always do, Mr. Breslin.

Q. Now, did you or did you not testify before Mr. Coffin that you were the owner of 4,695 shares of preferred stock at $10.00 a share?

Mr. Goldenhorn: I object to that on the ground that this is an attempt to use testimony adduced before the Attorney-General over the protests of this defendant, in violation of his constitutional rights and in violation of the Statutes of 1930 and 1931 of this State with respect to the immunity to which this defendant is entitled to testify before the Attorney-General.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. I will re-frame the question. Did you or did you not testify before Mr. Coffin that you or your nominees owned 29,405 shares of the preferred stock of the corporation? A. My nominees may.

Q. Yes. A. Is that referring to when the corporation was reorganized in 1928?

Q. It is referring to the question that was asked of you before, Mr. Coffin. A. Then ask the question and let me refresh my memory as to the question how that was asked.

Q. Did you or did you not say that you or your nominees owned 68,000 shares of common stock of that corporation? A. That was on reincorporation in 1928 when the company came to me—the bankers came to me to buy this company.

Q. I am asking you whether or not you testified before Mr. Coffin, that you owned 68,000 shares of common stock in that corporation. Did you so testify, yes or no? A. You are misreading that question.

Q. Just a minute.

The Court: The question is very simple.

The Witness: I am asking if that one question was asked.

The Court: You haven't any right to ask questions. Did you or did you not say that—

Mr. Goldenhorn: On behalf of the defendant I object on the ground that there has been no time or place fixed.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

(Last question read.)

A. I myself did not.

By the Court:

Q. Did you say you owned it or did you not say that? A. I did not.

By the Prosecutor:

Q. You did not? A. Not I, personally.

Q. You were at the hearing there, were you not? A. Yes, sir.

Q. You say that you did not know how much stock you owned in that company? A. No, I do not recall.

Q. How much did you invest in that company in dollars and cents?

Mr. Goldenhorn: I want to object to that on the ground that it is not proper cross examination, and it does not come within the purview of this indictment, having no materiality or relevancy or competency.

The Court: How is that material, Mr. Prosecutor?

The Prosecutor: Here is a man who says he doesn't remember how many shares of stock he owned; doesn't know anything about the company. We certainly on cross examination have a right to go into these matters to affect his credit. Now, what he says he doesn't remember how many shares of stock he had— The question now is how much he paid.

The Court: Objection sustained.

Q. Who is Meyer Silverman? A. My father.

Q. Who is Joe Silverman? A. My brother.

Q. Who is Harry Silverman? A. A brother of mine.

Q. Were you asked the following question and did you answer in the following manner: July 30, 1930 at the bottom of page 9: "Q. When you increased the capitalization how did you convert your 8 shares of preferred and 8 shares of common?"

Mr. Goldenhorn: I object to the question on the ground that it is entirely immaterial and irrelevant and incompetent, and not proper cross examination, and not within the purview of this indictment, not being addressed to anything in the trial so far brought out by me.

The Court: How is this material, Mr. Breslin?

The Prosecutor: It is to affect his credibility, and to show that he said before Mr. Coffin—

Mr. Goldenhorn: Just a moment. I object to what he said now. He was just going to get it in that way—not while I am here. I object.

The Prosecutor: He comes before this jury today and he says that he doesn't remember.

Mr. Goldenhorn: Just a moment. I object to the argument.

The Court: How can I pass upon this without hearing the argument?

Mr. Goldenhorn: I know. I can't permit him to make statements here that are

going to be highly prejudicial which I cannot meet afterward.

The Court: There is nothing the Prosecutor says and there is nothing which you say that can be binding on the jury.

Mr. Goldenhorn: With that instruction, I will sit down.

The Court: I will so instruct the jury when the time comes. All right, Mr. Breslin, proceed.

The Prosecutor: I will repeat the question.

The Court: I want to hear your reason.

The Prosecutor: Let us assume that he said before Mr. Coffin that he had a certain interest in the corporation in July, 1930. He comes on the stand today and he says he doesn't remember what his interest was in the corporation. Now, that is clearly to affect his credibility. Now, if he was telling the truth before Mr. Coffin he isn't telling the truth today.

Mr. Goldenhorn: That is an unwarranted statement for counsel to make, and I ask your Honor for a mistrial on account of it.

The Court: Motion denied.

Mr. Goldenhorn: There is no such testimony.

The Court: I will permit the question.

Mr. Goldenhorn: I ask your Honor for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Mr. Goldenhorn: Your Honor refuses my motion for a mistrial?

The Court: Yes, sir.

The Prosecutor: I will try to make this just as short and brief as I can.

The Court: For the purpose of saving time in this case I think, Mr. Goldenhorn, that if you will make one motion at the end of the case for a mistrial, including all of your grounds, that you may be entitled to move upon, I think we will save a lot of time. I think you have made about twenty motions for a mistrial on each one of which I ruled against you. Now, for the balance of the trial if you will save up all your grounds until the end and make one motion, you may save some time.

Mr. Goldenhorn: I do not want to make a motion so late that I will be chargeable with dereliction or lateness. I shall try to get my motions in—sometimes I am not fast enough with all of my agility, I am not fast enough to get in my motions.

Q. When you increased the capitalization how did you convert your 8 shares of preferred and 8 shares of common?

Mr. Goldenhorn: I object for the same reasons as before.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Did you answer, "What we did for that—this is the way the company had taken over the property, and then we gave our stock to the company, but it was supposed to be allotted to the company. For all of the assets of the corporation we were to receive 68,000 shares of common stock and 29,400 shares of preferred stock." Did you so testify? A. Yes, sir.

Q. Did you own that much stock?

Mr. Goldenhorn: I object to that on the ground that it is immaterial, irrelevant, and not within the purview of the indictment.

The Court: Objection overruled.

Mr. Goldenhorn: I ask for an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. In that answer I said: "We," if you will recall; "We," the company, the original company.

Q. Who is the "We" referred to? A. Why, my nominees, there must have been about twenty-five or thirty.

Q. Oh, your nominees? A. Yes, whoever my nominees were. The original company was a small company that owned these assets; these bankers came over to buy this company, and instead of giving us our money for it, they gave us stock—that is all they gave us, they never gave us one dollar, and the nominees of the company with myself agreed to take the stock—which we gave 400,000 odd dollars' worth of property; they

were supposed to give us dollar for dollar what their appraisal calls for. Instead they gave us $300,000 worth of stock and no money; and that stock was distributed between myself and my nominees.

Q. Mr. Silverman, you have been in the real estate game for many years?

Mr. Goldenhorn: Just a moment.

A. Quite a number of years.

Mr. Goldenhorn: Just a moment. I object to the word "game"; there is no game about the real estate business.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. You have been in the real estate business for many years, right? A. When I was a little boy I was, yes.

The Prosecutor: What has that got to do with this case here today that I am here today representing the State of New Jersey? And I don't want any insults from you.

The Witness: I am not making any insults.

Mr. Goldenhorn: There is no reason for your—

The Court: There is nothing before the Court.

Q. Now, Mr. Silverman, you said that this was a small company? A. Yes, sir.

Q. Whose company was it? A. It was my nominees and stockholders.

Q. Did you have anything to do with this small company? A. I did.

Q. Who else was in the small company? A. In the small company there was—

Mr. Goldenhorn: Just a moment. I object on the ground that it is immaterial, irrelevant and incompetent.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. (Continuing) Well, there was Mr. Peterson, Mr. Thompson, there was Mr. Britt, there was Mr. Gross. There must have been about twenty or thirty, whoever the nominees are.

Q. You say that you gave $485,000 to this company in New York? A. Whatever they appraised the stuff; they had their own appraiser. Whatever their appraisal was they were supposed to give us dollar for dollar, instead of that they gave us $300,000 worth of stock and no money.

Q. You were a real estate man for many years. Do you want this Court and jury to believe— A. That is right.

Mr. Goldenhorn: I object. The question is finished.

The Prosecutor: No, it is not finished.

The Court: Finish the question.

Q. (Continuing) —as a real estate man you want the Court and jury to believe today that you took the appraisal placed on it by a New York corporation as to the value of these properties, and turned them over and received shares of stock?

Mr. Goldenhorn: I object to the form of the question on the ground that it is irrelevant, incompetent and immaterial.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. I certainly did, and I was pretty good at that time; because they were supposed to put in a few million dollars into this business and it would have been a great success, but they never did.

Q. Who was to put in the millions of dollars? A. These bankers of New York.

Q. What bankers? A. Knoblock Company and others.

Q. They were selling agents of your stock? A. They were supposed to put the money in; originally they were guaranteeing to underwrite this issue.

Mr. Goldenhorn: May I inject one objection at this time. It seems to me that

we are getting away from the issue called for by the indictment.

The Court: I think we are getting pretty far afield myself.

Q. Well, you or your nominees owned 68,000 common and 29,400 preferred shares, is that right? A. Yes, sir.

Q. And that stock was given to you according to the valuation made by Haskins & Sells of New York. A. Haskins & Sells and Lloyd-Thomas Company of New York. Those people—they were hired by the bankers.

Q. Who signed the checks of the corporation? A. Why, the president of the company.

Q. You were the president? A. I became president in October—well, it must have been July or August of 1929.

Q. Was your company able to pay all of its obligations? A. Absolutely.

Q. Absolutely? A. Absolutely.

Q. Was your company able to pay taxes on the real estate you owned?

Mr. Goldenhorn: I object on the ground it is incompetent and immaterial.

The Court: How can that be material, Mr. Prosecutor?

The Prosecutor: To affect his credibility.

The Court: I sustain the objection.

Q. Did your company have large bank balances?

Mr. Goldenhorn: I object to that on the ground it is immaterial. The company need not have large balances to be successful and pay off its obligations.

The Court: Objection sustained.

Q. Did your company pay the franchise tax for 1925 and 1930?

Mr. Goldenhorn: I object on the ground it is immaterial and incompetent.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. I do not recall that.

Q. You were the president? A. Yes, sir.

Q. You had charge of the balances? A. Yes, sir.

Q. Kurtz worked for you? A. He worked for Knoblock & Company, New York.

Q. Didn't he work out here in Hackensack? A. Also worked out at Newark, too.

Q. Please, he worked in Hackensack, didn't he? A. Yes.

Q. Weren't you the supervisor while he was in Hackensack? A. No.

Q. Who was? A. Whoever the president of the company was—I was president about July, 1929—when I became president.

Q. From July, 1929? A. Then I went to Europe right after that.

Q. You went to Europe? A. Yes, sir.

Q. With some of the money? A. No, I have been going every year for seventeen years.

Mr. Goldenhorn: I object—

The Court: The question was not finished.

Mr. Goldenhorn: I think it is prejudicial and unfair.

Q. Now, to get back to Mrs. Lee. Do you deny that your company sold $3,000.00 worth of stock to that woman?

Mr. Goldenhorn: I object to that, your Honor ruled it out this morning. I hope you will rule it out now.

The Court: I sustain the objection.

Q. Did you promise Mrs. Lee dividends?

Mr. Goldenhorn: I object to that on the same grounds as that your Honor ruled out her testimony this morning.

The Prosecutor: He said that the company was in good condition.

The Court: I sustain the objection.

Q. You know as a matter of fact dividends were paid out of capital?

Mr. Goldenhorn: I object to that on the ground that it is not within the purview of this indictment.

The Court: I overrule the objection.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. I do not.

Q. You do not? A. I do not.

Q. Didn't you supervise the payment of dividends? A. Perhaps I did. It was passed by the Board of Directors and I doubt very much—

Q. No speeches. A. I am answering your question, Mr. Prosecutor.

Q. Now, how many employees did you have up there outside of Kurtz and Ross? A. Maybe four or five, I don't recall.

Q. Did you and all your nominees get any dividends from this company?

Mr. Goldenhorn: I object on the ground it is incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Q. Who did the nominees hold stock for? I am talking about this 68,000 shares? A. For their respective nominees.

Q. Who were they? A. Whoever the nominees were; you have a list of the names.

Q. You know who the names are.

Mr. Goldenhorn: I object to this argument between the Prosecutor and the witness.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. Well, you have Peterson, you have Thompson, and you had Britt, and you had Stokes, and you had Braunstein, and you had Bierbaum.

Q. Mr. Britt was out of the company? A. He was a stockholder. Those stocks allotted belonged to them.

Q. Mr. Britt resigned from the company? A. Yes, but he had stock in the company, he was one of the nominees.

Q. Do you know why Mr. Britt resigned from the company?

Mr. Goldenhorn: I object.

The Court: Objection sustained.

By the Court:

Q. What do you mean by nominee? A. That was the bankers' term, nominee. I don't know much about it, only what the bankers told me when they came to me at that time away back in 1928. I wish to God that I had never met them.

Q. I want to know what you mean? A. I am telling what they told me.

Q. Not what someone told you. What is your understanding? A. My understanding is that the nominees of that stock would do a lot to pay the old stockholders. Whoever we owed money to for stock, I would tell them to hold the stock that may be allotted—they are my nominees.

Q. The people you nominate? A. Whoever the stockholders were who we owed money to took stock the same as I did.

By the Prosecutor:

Q. Did you have any interest in the shares of stock so assigned to nominees? A. No, I only had my own stock, whatever they gave me, which was very little.

Q. The nominees were named by you, weren't they? A. They were named by me, yes.

Q. Why wasn't the stock made out direct to them? A. Why, because we couldn't figure what shares of stock they should get; I decided what each man was entitled to for his interest in the old company, then they figured out the actual percentage the stock was allowed to their percentage in the new companies.

By the Court:

Q. What was the difficulty in determining what each man was entitled to receive? A. I don't recall at this time, Judge.

Q. The stock in your company shows how many shares of stock each party had— A. Yes, sir.

Q. —did it not? A. In the old company there was a small number, I think eight shares each, and then there was lot of property which was turned in by the Silver-Ross Company; the Silver-Ross Company had a different party who was interested in the Silver-Ross Company in the various pieces of property; they were taken from these people so gave for it this new company, and stock was given them for their property. I have negotiated the whole thing. We got stock, we were supposed to get cash; we didn't even get a good nickel in cash.

Q. Do I understand that all of this property was not directly conveyed to the new company? A. No, it came from different people, some came from four or five different people, and it was all put in the company, their stock was issued to me and my nominees, and I distributed the stock to my nominees giving the names of the nominees to our registrar, the Empire Trust Company, as transfer stock in the corporation stock. Whoever they were was registered and they gave stock credit to my nominees.

By the Prosecutor:

Q. Who is Samuel Braunstein? A. He was an employe of the company.

Q. Did he ever own any property that the company subsequently acquired? A. He did.

Q. And he held that property for you?

Mr. Goldenhorn: I object to that on the ground it is immaterial and irrelevant and incompetent as to whether this Mr. Braunstein held some property for him. How can it be material to this issue; I therefore object to it.

The Prosecutor: This is part of the property included in the schedule of property of the corporation.

The Court: I will allow it.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. What was the question?

Q. This East Rutherford property; the Carlstadt property. A. I may have had an interest in that property with Mr. Braunstein.

Q. Don't you remember? A. I don't recall.

Q. You don't recall that? A. No.

Q. How much did you pay for that property? A. Oh, I don't know what property you are talking about even.

Q. I am talking about the East Rutherford garage down there, the Van Riper Estate. A. I sold ten thousand pieces of property in the last ten years, I can't recall everything.

Mr. Goldenhorn: I object.

Q. You sold ten thousand pieces of property? A. Ten thousand pieces of property in this State in the last ten years, all over the State of New Jersey.

Q. How many have you sold in Bergen County? A. Look up the County Clerk's downstairs and find out.

Q. I am asking you.

Mr. Goldenhorn: I object to that on the ground it is not proper cross examination; it is not within the issues contained in the indictment.

The Court: I think we are getting pretty far from the issue.

Q. You had an interest in the Silver-Ross Company? A. Yes, I did. I told you about 25 to 28 per cent., whatever it may be. I was proud of that too.

Mr. Goldenhorn: Stop your comments, will you?

Q. For how much did the Silver-Ross Company sell that piece of property in Jersey City to the new corporation that was formed?

Mr. Goldenhorn: I object to that on the ground that the best evidence has not been produced; nor is it proper cross examination.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. The answer that I can give to your question is that I don't know what they received for that particular piece of property or any other piece of property. The bankers—

Q. Never mind the bankers. Did you look at this before you gave it to Mr. Coffin? A. (The witness looks at it.) Yes, that is all of this stuff.

Q. Now, please. I asked you if you looked at it before you gave it to him? A. I don't know, I will look at it now.

Q. Take a good look at it. A. Yes.

Mr. Goldenhorn: I most respectfully insist that the attack of the Prosecutor is highly prejudicial. He is trying him as if he was confronting a thief; I don't think he is entitled to that treatment.

The Prosecutor: I only wish I could say what I want to say in reply to that.

The Court: Address yourself to the Court.

Mr. Goldenhorn: I think it is highly improper; I at least try to control myself.

The Court: What is it you are taking an exception to?

Mr. Goldenhorn: I am taking exception to the manner of attack of the Prosecutor in this case.

The Court: What in particular?

Mr. Goldenhorn: In his manner of approach, the language he uses, his intonations, his insinuations with his remarks conveyed to the ladies and gentlemen of this jury.

The Court: Objection overruled.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Q. Did you look at that before you gave it to Mr. Coffin? A. Yes, I am looking at it again now.

Q. Did you tell him of any other properties that the corporation owned other than you mentioned to him in that schedule? A. This is the schedule made up by Lloyd-Thomas in 1928; I have been trying to say that before. This is one of the sheets of the corporation.

Q. Weren't you subpoenaed before Mr. Coffin? A. Yes, so were the bookkeepers, so was everybody else.

Q. Didn't you propose that as the assets of the corporation? Yes or no? A. No—

The Court: Don't volunteer anything. Just answer questions.

Q. You say that you know nothing about this bond circular? A. I do not.

Q. Nothing at all? A. Absolutely not.

Q. How then did you come to Hackensack? A. These bonds have nothing to do with Hackensack; they were taken out in the Military Park Building.

Q. How do you know that? A. I went there in March, and stayed there in the early part of the evening.

Q. You went there in March? A. Yes, it was not in February; it was in March.

Q. Why didn't you come to Hackensack? A. Because I had nothing to do in Hackensack; they had their day offices.

Q. And you were the president? A. I know that.

Q. And you had a lot of money invested in this corporation? A. I know that.

Q. You mean to say that you did not come to Hackensack a couple of times a week? A. Hackensack; had nothing to do with Hackensack; I came to Hackensack once a week perhaps. This is in Newark that they had this done.

Q. What did you do in Newark? A. Had offices in Newark, under the name of the New Jersey Bond & Mortgage Company.

Q. Weren't you in Hackensack in February, 1930?

Mr. Goldenhorn: I object on the ground that there is no evidence of a resolution having been passed; the minutes are not before this Court. It is an attempt to inject some copy of some paper, which the Prosecutor says is a copy of a resolution from the minutes of the corporation.

The Court: Wait until the Prosecutor is through.

Q. Were you in Hackensack at a meeting of the Board of Directors on February 5th, 1930? A. I was not.

Q. You were not? A. I was not; there was no such meeting held there.

The Prosecutor: That's all.

By the Court:

Q. Were those copies of these circulars, Exhibit S-5 in evidence, sent out to people of Bergen County? A. No, never; not to my knowledge.

Q. Did you say they were not? A. Not to my knowledge, nobody in Bergen County received any. I was surprised when I heard of it.

Q. Are you making that statement of your own knowledge that nobody in Bergen County received any? A. As far as I know of.

Q. Would you say that they were not sent out to Bergen County people in the mails? A. That I can't answer that; I doubt very much if they have been sent out, because I refused to pay that printer's bill. That's where the discussion was attempted cancellation.

New Jersey State Library

Q. Could they have been sent out by someone connected with your corporation without your knowledge? A. Well, I don't know what they did in Newark; I am not there; but not through my advice or anything.

Q. Were they printed with your kowledge? A. I never saw it until I took steps to close up the office out there.

Q. Did you authorize the printing of them? A. I never did. That's why I won't pay the bill; they tried to stick me with the bill. That's where the fight was.

By the Prosecutor:

Q. Didn't you endorse any note for the payment of that bill? A. Yes, I did not want any litigation. They sued me; then I endorsed a note.

Q. You were sued for $600.00? A. $587.

Q. And you were not responsible for them? Please, were you responsible for them? A. They claimed in the suit that Mr. Ross was the general manager of the company; my lawyer says that we have no business to refuse payment because he was the general manager of our company, and it was best to settle with them; so of course I gave them a note.

Q. You endorsed the note? A. Yes, and paid it too.

Q. You did not go to court? A. My lawyer said that we were responsible.

Q. Who told you that? A. My lawyer at that time, Gross & Gross.

Q. Are they in court today? A. I don't know.

Q. Are Haskins & Sells in court today? A. I

don't know; I had nothing to do with that. They were bankers; I had nothing to do with Lloyd-Thomas or Haskins; Kurtz was the man did that. He'll tell you about that; he's very truthful about that.

Q. Did Kurtz have more interest than you? A. As far as the banking was concerned, yes.

Q. I am talking about shares of stock? A. Yes, he had stock.

Q. How many shares of stock did Mr. Kurtz have? A. I don't know what he owned.

Q. Was he a bigger stockholder than you?

Mr. Goldenhorn: I object on the ground that it is immaterial and incompetent.

A. He was the biggest stockholder.

Mr. Goldenhorn: May I call your Honor's attention, and the jury as well—

The Prosecutor: I object to any summation at this time.

Mr. Goldenhorn: I am talking about your Exhibit S-5 in evidence, which you say is in evidence, or not.

The Prosecutor: It is in evidence.

Mr. Goldenhorn: That being so, may I read from the exhibit?

The Prosecutor: I object on the ground that there is nothing before the Court to justify him reading it at this time.

Mr. Goldenhorn: I will withdraw my question with respect to it, and I will call the jury's attention to it at the proper

time so as not to take up the time of the Court.

The Prosecutor: That's all, Mr. Silverman.

(Defendant rested.)

MATTHEW J. KURTZ, recalled as a witness in rebuttal, testified as follows:

Direct Examination by the Prosecutor:

Q. Mr. Kurtz, how many shares of stock did you own in this corporation?

Mr. Goldenhorn: I object on the ground that it is immaterial and irrelevant; it is contradictory of nothing either on direct examination of what the witness said to be contradicted by the witness now on the stand, and it is not subject to examination in view of the fact that it was not proper cross. The witness was made the witness of the Prosecutor at the time, consequently cannot now try to contradict the witness that he made his own witness while he was on the stand.

The Prosecutor: The purpose of the question is that Mr. Silverman is trying to place before the jury now the fact that he had nothing to do with the company, financial or in any other way. I want to show through this witness certain facts. I will withdraw him, and let it go to the jury.

The Court: Sustain the objection.

PHILLIP L. COFFIN, recalled as a witness in rebuttal, testified as follows:

Direct Examination by the Prosecutor:

Q. Do you recall Mr. Silverman testifying what his interest was in the corporation? A. I am sorry, sir, I did not hear it.

Q. Do you recall what Mr. Silverman testified before you with reference to his interest in this corporation?

Mr. Goldenhorn: I object. The only way under the law as to the rules of evidence, if they intend to contradict a witness is to put into the witness's mouth the exact questions asked and the exact answers given, and the circumstances under which it was given. By asking in this general way is not the proper way to rebut or contradict or discredit a witness.

The Court: Overrule the objection.

Mr. Goldenhorn: May I ask for an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. I do.

Q. What did he say? A. He said that in consideration of the transfer of these properties he or his nominees would get 29,400 shares of $10.00 par value stock, having a total value of $294,000, and 68,000 shares of no par value voting stock.

The Prosecutor: That's all.

Mr. Goldenhorn: No questions.

NATHAN LIEBERFREUND, called as a witness in rebuttal, for the State, first being duly sworn, testified as follows:

Direct Examination by the Prosecutor:

Q. Are you connected with the New Jersey Bond & Mortgage Company? A. What?

Q. In what capacity, if any? A. I was a contractor.

Q. Do you remember coming to Hackensack in February, 1930, to a meeting?

Mr. Goldenhorn: I object on the ground that it is immaterial, irrelevant and incompetent. It would not make any difference whether he came; the question was whether he was here at a meeting when Mr. Samuel W. Silverman was in here.

The Court: Overrule the objection.

A. To my best recollection I think I was on February 5th, to a meeting.

Q. Did you see Mr. Silverman? A. There was no meeting held.

Q. Now, what did Mr. Silverman say?

Mr. Goldenhorn: I object unless for the purpose of the question they have the exact words and must be put into his mouth.

The Court: I will sustain objection.

The Prosecutor: Mr. Silverman testified that he was not here on February 5th; this witness says that he was here. I want to show what Mr. Silverman said on that date.

The Court: We are now on rebuttal.

The Prosecutor: I am rebutting what Mr. Silverman's testimony was.

The Court: You may by opening up your case again.

Q. What did Mr. Silverman say with reference to the meeting?

Mr. Goldenhorn: I object on the ground that the witness said there was no meeting held; understand, he's your witness not mine.

Q. Was anything said about the circular by Mr. Silverman?

Mr. Goldenhorn: I object on the ground that it is leading; and there has been no foundation laid.

The Court: Overrule the objection.

Mr. Goldenhorn: Exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

A. There was a circular there, yes.

Cross Examination by Mr. Goldenhorn:

Q. What circular was it, do you know? A. That $500,000 issue.

Q. Who placed it there in the office, do you know? A. It was lying there, I don't know who placed it there.

Q. You also saw them issuing this circular. Did you issue it? A. No, sir.

Q. Was any mailed out to your knowledge? A. Not that I know of.

Q. Was there a single bond issue? A. I really don't know.

Q. You're not certain that Mr. Silverman was there on the night of the 5th of February, are you, or the 6th of February? A. Whenever the meeting was, I came too late; all I met was Mr. Silverman.

Q. What day of the week was the 6th of February, 1930? A. I think it was the 5th.

Q. What day was it? A. I really don't remember the exact date.

Q. Do you remember a meeting being held in Jersey City, in Saul Nemser's office, the 5th of February, 1930? A. I was not in Jersey City.

Q. You weren't in Jersey City? A. No.

Q. But you're not prepared to say that you were not in Hackensack on the 5th of February, are you? A. I think I was in Hackensack.

Q. You think so, but you are not sure? A. I am sure that I was in Hackensack.

Q. You feel quite certain of that? A. Yes.

Q. What fixes it in your mind, anything? A. That I was in Hackensack?

Q. Yes. On the 5th of February, what fixes it in your mind, any happening on that date, or anything? A. No, I remember I went back to New York with Mr. Silverman in the car.

Q. Well, that might have happened any day, as well as the 5th of February? A. I was only to two meetings in the whole time.

Q. There was not any meeting held on the 5th of February, was there? A. Not one? I came to

the meeting, I was told that the meeting was over.

Q. The meeting was off?

The Court: "Over".

By the Court:

Q. You got there too late? A. Yes.

By Mr. Goldenhorn:

Q. You have nothing to refresh your memory, have you, Mr. Lieberfreund, as to the date? A. Well, to the date, is the only time when that meeting was held, I received a communication to come to—

Q. When was a meeting held before that or after that, if you recall? A. It was a year before I think in October or September, or October.

Q. And there had not been a meeting held since, has there? A. No.

Q. You recall now that it was on the 5th or 6th of February, 1930, is that right? A. (No answer.)

Q. What year do you think we are in now? A. 1935.

Q. And how many years ago was that? A. That was in 1930.

Q. How old are you, sir? A. I am past 63.

Mr. Goldenhorn: That's all.

The Prosecutor: That's all.

By the Court:

Q. Did you see a printing bill for printing of these circulars? A. A bill?

Q. Yes. A. No, sir.

Q. Was there any argument about a bill? A. No, sir.

Q. Do you know how many circulars were printed? A. No, sir.

Q. How many have you seen? A. There was a pile; there were many laying on the table.

Q. How many? A. A stack; I didn't count them.

Q. How high was the stack? A. Quite high.

Q. Were there any others in the Hackensack office? A. There was Mr. Silverman; there was one man, I think, a contractor; he left while I was reading this circular.

Q. Were there any other circulars in the Hackensack office? A. I don't know; only what I seen on the table.

Q. That one stack? A. Yes; I really don't remember the quantity.

Q. Do you know who mailed them? A. I don't know.

Q. Did anybody mail them, to your knowledge? A. Not I know of.

Q. Do you know to what offices they were mailed? A. I don't know.

Mr. Goldenhorn: That's all.

The Prosecutor: That's all.

Mr. Goldenhorn: I'd like to call the Clerk in Chancery.

The Court: The State rests?

The Prosecutor: Yes.

The Court: For what purpose, Mr. Goldenhorn?

Mr. Goldenhorn: I want to show the papers filed in the Court showing the values of the property as found by the Receivers when they took hold of the corporation, to fix the values, so your Honor, the jury will know.

The Court: You know as well as I do that the appraisers must give their testimony in open Court, where they are subject to cross examination.

Mr. Goldenhorn: I know the report was corfirmed in the Court of Chancery, the amounts and figures.

The Court: It does not make any difference. Overruled.

Mr. Goldenhorn: I ask an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Mr. Goldenhorn: With that we rest our case. I want to make a motion for a direction of verdict in this case, on the ground that the State has not shown that the values of the properties of the New Jersey Bond & Mortgage Company were not worth the amount of money set forth in the alleged circular, purporting to have cheated and defrauded, or attempted to cheat and defraud, or circularize for the purpose of defrauding anybody; and that, secondly, for the following reasons, that the State has not

proved such a discrepancy in value, in the values of the property; nor has the State proved the values of all of the properties, because no one testified on behalf of the State as to the values of all of the properties in 1930 of the New Jersey Bond & Mortgage Company, so that there is no fraudulent representation made with respect to the values of the property; nor has the State shown any fraudulent representation made by this defendant, or any attempt to make any fraudulent representation by any circulars; nor has the State proved within the purview of this indictment that this defendant, Samuel W. Silverman, individually or as a director of the New Jersey Bond & Mortgage Company, that he did on any occasion stand the expenditure for agreeing to or with any person did attempt to publicize or assist in presenting for that purpose in the issue of a bond issue of the said corporation in the sum of $500,000; nor is there any evidence that he did make, publish, disseminate or circulate, or place before the public; nor that he did any of these things, although the statute is in the conjunctive, and my contention of the law is that he would have to do each one of these to be guilty of the crime, assuming that he did it, but there is no evidence that he did any or either of these things mentioned in the indictment. For those reasons, I most respectfully ask your Honor to instruct this jury to find a verdict in favor of the defendant.

The Court: On what property do you claim that the State has not put in an appraisal?

Mr. Goldenhorn: Mr. Silverman testified that in addition to the properties that were offered in Exhibits S-1, S-2, S-3 or S-4, I can't remember which, that there were some 500 odd pieces in addition to that which the company purchased, and that they were not included in the statement made by him to the Assistant District Attorney General. And may I say further, that the values fixed by these experts find on their own basis that one-fifteenth of the property over here on the meadows was condemned, and the jury gave $24,000 for it.

The Court: The weight of the evidence is for the jury to consider in its finding. Motion will be denied.

Mr. Goldenhorn: May I have an exception?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

(Recess for five minutes.)

(Consultation between counsel and the Court.)

The Court: It having been suggested to the Court that there may be some legal objection to permitting the jury to go out for dinner after the Judge's charge, counsel for the defendant waived any objection to such procedure. Is that stipulated, Mr. Goldenhorn?

Mr. Goldenhorn: Yes.

(Mr. Goldenhorn summed up the case to the jury.)

(The Prosecutor summed up the case to the jury.)

(The Court charged the jury as follows:)

Charge to the Jury.

The Court: Ladies and gentlemen of the jury, it is important at the outset of this case for you to understand what your function is, what my function is, and what the functions of the Prosecutor and counsel for the defendant are. You are the sole judges of the facts and there is nothing that I may say with reference to the facts or to the evidence in the case, and nothing that the Prosecutor may have said, or that counsel for the defendant may have said, with reference to the evidence, that is in any way binding upon you. The measure of your obligation is the oath of office which you have taken. It is your duty to ascertain what the facts are in this case from your own recollections of what the evidence is and apply to those facts the law as it will be given to you by the Court. Just as you are the judges of the facts in the case so I am the judge of the law, and you must take your law from me. And there is a reason for that, because, should I err in telling you what the law is, the defendant would have a remedy, should he be prejudiced thereby, on appeal; whereas, if you should take your law from counsel for the defendant, or from the Prose-

cutor, or from any other source whatsoever, there would be no remedy for such error. And so you understand what your function is and what my function is, and the function of the Prosecutor is to represent the State of New Jersey in this case, and the function of the attorney for the defendant is to represent him, both lawyers being officers of this Court, and both having the duty to present to you their respective client's case.

You are not to be prejudiced in your solution of this case by anything that has taken place in this court room, you are not to be prejudiced, for instance, by the fact that the counsel for the defendant has made a number of motions which have been denied by the Court; it is his privilege, and possibly his duty, to make those motions in representing his client, and the fact that the Court did not agree with him in his contentions is not to prejudice the defendant; by the same token, the State of New Jersey is not to be prejudiced in its rights in this case. The State of New Jersey represents the public, and there is a public interest in all criminal cases, and it is very important that you should have that in mind in your deliberations, that you are not only to be fair and impartial to the defendant but you are also to be fair to the public at large.

The issue in this case is made out by a charge in the indictment, and a denial by the defendant; and it is your duty to solve this issue. The indictment charges that the defendant Samuel W. Silverman, together with others named in the indictment, who are not now on trial, in the County of Bergen, State of New Jersey, on February 5th, 1930, at the City of Hackensack, County

of Bergen, within the jurisdiction of this Court, being then and there officers, directors or employes of the New Jersey Bond & Mortgage Company, a corporation of the State of New Jersey, with intent to sell and dispose of a certain bond issue of the said corporation, in the sum of $500,000.00, did make, publish, disseminate, circulate and place before the public and did cause to be made, published, disseminated, circulated and placed before the public, certain circulars, pamphlets and letters containing assertions, representations of fact, which were untrue, deceptive and misleading, contrary to the form of the statute in such case made and provided, against the peace of the State, the government and dignity of the same.

The indictment charges a number of things in the conjunctive that it is alleged he did; for instance, "made public, circulated, and placed before the public, and did cause to be made public, disseminated, circulated, and placed before the public certain circulars, pamphlets and letters."

I will call your attention to the statute under which this indictment was found, the statute, Chapter 318 of the Laws of 1913 says in part, that any person, who with attempt to sell or in any wise dispose of securities, or anything offered by such person, directly or indirectly to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public or causes,

directly, or indirectly to be made, published, disseminated, circulated, or placed before the public, in this State, in the form of a notice, hand-bill, poster-bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding, among other things, securities so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor.

So, under this indictment, it is not necessary that the State shall be compelled to prove all of the things they allege in there, but it is absolutely essential that they shall have proven all of the material things as set forth therein. Under this statute it is not necessary that the State shall have proven that the defendant made and published and disseminated and circulated, etc. It is sufficient that they prove that the defendant either did make, or did publish, or did disseminate or did circulate, etc., because the statute is in the disjunctive. And so, as to whether these things were untrue, deceptive or misleading, it is sufficient for the State, as proven, that they were either untrue, or deceptive, or misleading.

What is an indictment? An indictment is, practically speaking, a charge made by the Grand Jury after hearing one side of the case—after having heard evidence presented to it representing one side of the case. They charge that the defendant is guilty of a certain crime set forth in the indictment. Now, the defendant has no opportunity to appear before the Grand Jury and have his case heard, but this is a Court where

both sides are heard and their claims are presented, so that the mere fact that the Grand Jury found an indictment against the defendant is not any evidence of his guilt.

The defendant comes to Court presumed to be innocent, and this presumption of innocence continues until the State has proved his guilt beyond a reasonable doubt. The burden of proof is on the State to prove beyond a reasonable doubt every material element of the crime charged; and if, upon your consideration of the evidence there is a reasonable doubt in your minds with regard to the guilt of the defendant, the defendant is entitled to the benefit of that doubt. Reasonable doubt is not a mere possible doubt; it is that state of the case which, after a consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the charge against the defendant to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of you ladies and gentlemen. If, after considering the evidence, giving to the defendant the benefit of all reasonable doubt, you are led to the conclusion that the defendant is not guilty, you should so declare by your verdict. The law does not require the defendant to prove himself innocent of the charge. If, on the other hand, the State has proven to you beyond a reasonable doubt that the defendant committed the crime charged, then you should convict the defendant by bringing in a verdict of guilty, as charged.

Charge to the Jury.

You may take the indictment with you to the jury room, but you may only use it for the purpose of refreshing your memory as to the crime charged against the defendant. You must not give any consideration to what the punishment or the sentence of the defendant might be in case of a conviction. This matter is entirely one for the Court, and you may rest assured that the Court will do the proper thing. I do not think it is necessary for me to comment on the evidence at any length. One of the important questions for you to decide is whether the circular, which I think is Exhibit S-5 in evidence, and which is the high point of contention in the case, or at least, is the basis of the charge against the defendant was made or published by the defendant, and if so, was it done in Bergen County, and if so, does it contain assertions or representations of fact which are untrue or deceptive or misleading, contrary to the form of the statute which I quoted to you a little bit earlier in my charge. Now, there is some reference in this circular, Exhibit S-5, to an obligation of the corporation; the circular says the company has never experienced an unsuccessful year in business or defaulted on any obligation whatever; and an important thing for you to consider is what an obligation is. An obligation may be defined briefly as a duty, or more at length, as a tie which binds one to pay or do something agreeably to the laws and customs of the country in which the obligation is made.

Mr. Goldenhorn: Your Honor, may I make a request to charge: I think your Honor intended

to do so, but perhaps overlooked doing so. If they find that a circular was sent out from Hackensack, or any other place, without the knowledge or consent of this defendant, Samuel W. Silverman, then in that event the jury must find the defendant not guilty.

The Court: I think that is fairly implied from what I have said. It would be failure of proof on the part of the State should you be satisfied from the evidence that the circular was either made or published by someone in the company without the knowledge or consent of the defendant; certainly the defendant could not be held responsible for that act.

Mr. Goldenhorn: I have just another request, and that is, that the jury must consider with a great deal of care the testimony of the other defendants under the indictment with Samuel W. Silverman in this matter, because they are accessories in the case.

The Court: I would rather have had you put that request in writing; it is a little late for it.

The Prosecutor: I object to any request being made out of time. I think your Honor's charge was very fair.

The Court: The Court will refuse defendant's request to charge, first, because it is not in writing, secondly, because it comes at a very late time.

Mr. Goldenhorn: Will your Honor grant me an exception to your refusal?

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Mr. Goldenhorn: I now offer these exhibits; they were offered for identification.

The Court: It is too late now. I don't think they are of any importance.

Mr. Goldenhorn: I ask an exception.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

(On account of the lateness of the hour, the Court requested the jurors to say whether they would prefer to retire immediately to deliberate on the case or would prefer to dine before retiring to deliberate; and the jurors said they would rather dine first; whereupon the Court selected two Court officers to escort the jurors to a restaurant, with the following remarks:)

The Court: You are not to discuss this matter with anyone, nor permit anyone to talk to you about it. It is very necessary that you come back to this court room to deliberate without any outside influence being brought upon you, and without reading any newspaper, or receiving in any way any communcation from anyone on the outside.

(The officers then escorted the jurors to a restaurant.)

Mr. Goldenhorn: When this exhibit was marked for identification, your Honor stated that I could put in evidence the little slip with it, and I might put in these because they were papers identified by the State's own witnesses, representing outlay of the company during the period of a year and a half. If I am in error, I would like to refer to the record.

The Court: If they are exhibits, naturally they will go to the jury. I suppose the Prosecutor might think of lots of things he might do now to help his case. If they are in evidence they will go to the jury, if they have not been admitted in evidence, they will not go to the jury room.

The Prosecutor: They were offered for identification.

Mr. Goldenhorn: I ask for a general exception to your Honor's entire charge, and specifically to that part of the charge in which your Honor commented about the punishment in the event the jury found a verdict of guilty.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

(The officers and jurors returned to the Court room, and the jury retired to deliberate on the case.)

(The jury later brought in a verdict of guilty.)

The Court: So say you all?

Mr. Goldenhorn: May I ask that the jury be polled.

The Court: The Clerk will poll the jury. If you concur in the verdict as rendered by your foreman, when your name is called you will say, "Yes"; if you do not concur in that verdict you will say, "No."

(The jury was polled by the Clerk of the Court, each juror concurring in the verdict of guilty.)

(After argument between counsel for the defendant and the Prosecutor, the Court remanded the defendant in the custody of the Sheriff to await sentence.)

On Motion in Arrest of Judgment, and Sentence.

BERGEN COUNTY COURT OF
QUARTER SESSIONS,

PART II.

THE STATE

vs.

SAMUEL W. SILVERMAN,
Defendant.

On Motion in Arrest of Judgment and Sentence.

Hackensack, New Jersey,
January 17, 1935.

Before—Honorable A. DEMOREST DEL MAR, Judge.

APPEARANCES:

For the State, Hon. JOHN J. BRESLIN, Jr., Prosecutor of the Pleas.
For the defendant, I. FAERBER GOLDENHORN, Esq.

Mr. Goldenhorn: I want to say to your Honor that I served notice on the prosecutor of a motion in arrest of judgment in this case on three grounds; the first ground being that the defendant, Samuel W. Silverman, was indicted as an officer and director of the New Jersey Bond & Mortgage Corporation, of the State of New Jersey. The Prosecutor promised your Honor that he would endeavor to introduce a copy of the resolution or the minutes of the meeting of the corporation supposed to have been held on the 6th day of February, 1930 or 1931,—I might

be in error about the year, but I think it was 1930;—your Honor denied the offer because it was seemingly a copy, and we were promised by the Prosecutor that he would prove the original resolution. That was never done.

Now, this man is not indicted individually for having issued fraudulent circulars; he is indicted as an officer and director of the corporation and, as such, the act is primarily a corporate act, or done through him allegedly as the one who controlled the corporation. Now, the indictment is not an individual indictment and I, therefore, insist that the State, having failed to show the resolution for any act by the corporation through Mr. Silverman as the directing influence, this indictment, of necessity, and the evidence adduced before your Honor must fail, and your Honor must hold under the law as I interpret it that no case has been made against this defendant as an officer and director within the purview and letter of the indictment.

My second reason is that your Honor, in his charge to the jury, stated to the jury that they must pay attention to your charge and that they must be controlled by the law for their edification.

The Prosecutor: I do not want to be rude or disrespectful, but I do not see that in the grounds that they served me with. I think their argument ought to be confined to the points that they have raised in this notice. If Mr. Goldenhorn will point that out to me, I would like to see it.

Mr. Goldenhorn: Yes, it comes within the purview of Section 4, because of the various motions which I made for a mistrial and which were refused by the Court.

The Prosecutor: All right, I have not any objection.

Mr. Goldenhorn: I had hoped that you would not, because I had wanted to urge the points because they are legal points, and even my young friend here, as a young lawyer,—

The Court: I do not want any sarcasm in this court, Mr. Goldenhorn.

Mr. Goldenhorn: Forgive me for any fun I may have; I very seldom have any these days. Your Honor charged the jury that although the statute was in the conjunctive, designating the various words specified in the statute, the jury must be controlled by the statute, and not by the indictment. The indictment being in the conjunctive, my point being that under that indictment, as I interpret it,—I may be in error but, at least, I feel that my contention is that it was incumbent upon the State to prove each and every allegation in the indictment, that the indictment controls and not the statute. In other words, the grand jury had the right to establish that they picked out this violation of the statute or that violation of the statute; but if they chose to say by their indictment, "You have been guilty of all of those things", it is incumbent upon the State to prove all of those things. Not having proved all of those things set forth in the indictment, in my judgment, the indictment prevailing, this verdict must be set aside and judgment arrested.

Now, my last point is that a witness was called on behalf of the State, a woman who was blind and who could hardly walk, a woman who was escorted through the whole of this court room,

who stood facing the jury in giving her testimony. Your Honor will recall with what difficulty your Honor tried to prevail upon her to keep quiet,—when all those efforts were made, she let the statement get to the jury that she had been cheated and defrauded through the selling of stock, which took place some time in 1926, in this, that she had not received dividends. After hearing her evidence and her failure to identify Mr. Silverman, the defendant, as the one who had any business relations with her whatever, your Honor struck out all of her testimony, and in the face of your Honor having struck out her testimony, the learned Prosecutor stood before the jury and adverted to the fact that this complaining woman had been cheated and defrauded, not in such words, but in substance. Now, I say that was highly prejudicial, highly illegal and highly improper; and I made a motion, if your Honor will recall, for a mistrial, which your Honor denied me, and I took an exception.

Now, I say, those three reasons, each and every one of them, would be, in my judgment, a good, substantial legal reason for your Honor to arrest this sentence and grant us a new trial.

The Court: Under the first point, is it your conception of the law that a resolution of the board of directors of this company was necessary in order to authorize the making of the circular?

Mr. Goldenhorn: Yes, sir. This was not the act of the individual for his own benefit; this was the act of the corporation, allegedly controlled by this defendant. It is a corporate act, and that is why the Prosecutor tried to introduce

the minutes; otherwise, there would not have been any necessity for it.

The Court: Do you mean to say there is no such corporate act?

Mr. Goldenhorn: I say that there would have to be a resolution in order to have it a corporate act. For instance, if they wanted to put out circulars, they would have a member of the board of directors call a board meeting to authorize circulars. This board derived the benefits and advantages of the bond issue, or the stock issue, for the benefit of the corporation. You see, Mr. Silverman himself would not have benefited, even if the bonds had been issued, and they were not; nobody bought a bond; there was not any issued; but if there had been, it would have been the act of the corporation. The corporation would have gotten the benefit, even though Mr. Silverman controlled the corporation, as it is alleged; the indictment says that Mr. Silverman, as an officer and director of the New Jersey Bond & Mortgage Company, issued certain bonds, or had it done, in fraud of the statute. Now, that is my contention. I would like to have your Honor give me a ruling on it.

The Court: In your second point, I understand you allege error in the charge of the Court to the jury. Is it your conception that the proper way is for the judge to arrest judgment?

Mr. Goldenhorn: Ordinarily, I would say no; I would say that would come within the purview of an appeal; but, your Honor having made the charge upon which this jury rendered its verdict, if I could convince your Honor, and I

hope I have, that your Honor made that error, and it was of such substantial character that your Honor could say, as a matter of law, you will arrest judgment because of the effect it had in determining the mind of the jury in finding its verdict against this defendant, that is my conception of the reason for pressing that point. And, surely, my last point, that the jury was prejudiced by the remarks of the Prosecutor.

There is just one other thing that I want to call your attention to. Your Honor will recall—I do not think it was intentional, but whether because of the Prosecutor's vehemence, emotional force, or youth,—there were times here when your Honor excused the jury, when, no doubt, the jury must have heard in that room, through that thin partition, what the Prosecutor was saying. He was talking so loudly that I called your Honor's attention to it; it was loudly and emotionally emitted as only John knows how to emit when he gets going. Now, surely, that is not said in disparagement of anyone, for it is a pleasure to hear the Prosecutor and watch him in action; but in this particular case it was highly prejudicial to my client, whose liberty is about to be deprived because of those very actions.

Now, it seems to me that on those three grounds, I have the right, and I am within my rights, in asking that your Honor arrest judgment in this case.

The Court: Mr. Breslin?

The Prosecutor: Your Honor, I think that all the points raised by Mr. Goldenhorn should be raised on appeal. As for a ruling on them, your

Honor's charge was eminently fair. I see no merit in the application for arrest of judgment. If the defendant's case has been prejudiced, he can raise the proper points on appeal before the Supreme Court.

The Court: That is my conception. I am convinced that no error has been made. I am satisfied now that at the time of the trial my conception of the law was correct. Unless I am mistaken, I think the proper remedy is to apply for a writ of error. Motion is, therefore, denied.

The sentence of the law in this case is that he serve an additional three hundred and sixty days and pay a fine of one thousand dollars, and stand committed until the fine is paid.

Mr. Goldenhorn: I take exception to the Court denying my motion in arrest of judgment.

Exception allowed and sealed.

A. D. DEL MAR,
Judge.

Certificate of Entire Record.

BERGEN COUNTY COURT OF QUARTER SESSIONS.

THE STATE vs. SAMUEL W. SILVERMAN, *Defendant.*	On Iindictment For Misdemeanor. Certificate of Entire Record.

I, A. Demorest Del Mar, Judge of the Bergen County Court of Quarter Sessions, before whom

this cause was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of said cause.

A. DEMOREST DEL MAR,
Judge of the Bergen County
Court of Quarter Sessions.

Assignments of Error.

NEW JERSEY SUPREME COURT.

THE STATE, *Defendant-in-Error,* vs. SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	Sur Indictment for Misdemeanor (Chapter 318 of the laws of 1913). In Error. To Bergen Quarter Sessions. Assignment of Errors.

Afterwards, to wit, on the return day of said writ of error, before our Justices of our Supreme Court, at Trenton, comes the said Samuel W. Silverman, plaintiff-in-error, by Perkins, Drewen & Nugent, his attorneys, and says:

That in the record and proceedings aforesaid, and also in the matter recited and contained in said bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

Assignments of Error.

1. Because the trial Court denied the motion made by defendant's counsel for the quashing of the indictment on the ground that the only testimony submitted to the grand jury against the said defendant, under the complaint wherefrom the said indictment was found and presented, is within the provisions of Chapter 52 of the Laws of 1930, Section 6, and by reason whereof the said defendant was exempt from prosecution and the said indictment should have been quashed.

2. Because the trial Court denied the motion made by defendant's counsel to quash the indictment made on the ground that the said indictment does not charge a crime.

3. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor in opening the case to the jury said of the defendant, among other things:

> "* * * and then Mr. Silverman, typical of the speculator of the boom days, decided that he had sold the stock, still he was going to take another chance and fleece the public some more."

4. Because the trial Court admitted into evidence over the objection of defendant's counsel State's Exhibit S-1.

5. Because the trial Court admitted into evidence over the objection of defendant's counsel State's Exhibit S-2.

6. Because the trial Court, upon objection of the Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness Phillip L. Coffin, Jr., the following question:

> "And do you recall what the amount of that appraisal was offhandedly?"

7. Because the trial Court permitted the witness, Remsen S. Voorhees, on behalf of the State, to be asked and to answer the following question:

> "Now, can you tell us, as a result of your transcription of the notes taken, what Mr. Silverman testified to at that particular hearing?"

8. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor said, during his examination of the witness Thomas A. Eyer, on behalf of the State:

> "I wish to show that a strip of meadow land that Mr. Silverman claims was worth $337,000.00—"

9. Because the trial Court, upon objection of the Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness, Pierre F. Cooke, the following question:

> "And how much did you receive for those two or three acres in the condemnation proceeding?"

10. Because the trial Court admitted into evidence, over the objection of defendant's counsel, State's Exhibit S-6.

11. Because the trial Court permitted the witness John J. Carey, on behalf of the State, to be asked and to answer the following question:

"And what were the average balances during that month?"

12. Because the trial Court permitted the witness, James F. Boyd, on behalf of the State, to be asked and to answer the following question:

"Q. And what was the total amount of that particular value."

13. Because the trial Court permitted the witness Philip L. Coffin, Jr., on behalf of the State, to be asked and to answer the following question:

"I show you this circular and ask you if this is the circular which you received from Mr. Norcom."

14. Because the trial Court admitted into evidence, over the objection of defendant's counsel, State's Exhibit S-7.

15. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor said, in open court, during the course of the trial and in the presence of the jury, rela-

tive to questions asked by the Prosecutor of the witness Matty R. Lee, on behalf of the State:

"This goes to the crux of the whole case, your Honor. Here is this woman who purchased stock in the corporation. This prospectus says they never defaulted on any of their obligations—

No, but I do intend to prove by this witness according to the statement she has given us that she talked with the defendant, Mr. Silverman, and Mr. Silverman made certain promises to her that he would pay certain dividends. He took her $3,000.00, she lost everything in the world, she hasn't anything—

I want to show by this witness that she had a conversation with the defendant, Mr. Silverman, and that he made certain representations to her. He did not live up to those representations when he issued this circular. He knew that the circular was false because of the fact that he had not lived up to the representations to her.

It is relevant because of his admission to this woman of his obligations to her. She is an ordinary stockholder and she talked with Mr. Silverman according to the statement that I have in front of me according to what she gave to the office Mr. Silverman made certain representations and he did not live up to them.

She (referring to the State's witness, Matty R. Lee) is blind.

I am trying to prove that she (the witness, Matty R. Lee) called him (the defendant) and spoke to him.

I am leading up to that time and trying to prove one thing at a time.

I want to show that Mr. Silverman or some one went to her house."

16. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the witness Matty R. Lee, on behalf of the State, had testified as follows:

"Q. When did you first call? A. As near after the stock that we did not get any dividends.

Q. Didn't get any dividends? A. Didn't get any dividends.

Q. How long have you been blind? A. My sight was failing—I didn't lose it entirely—but I don't read."

17. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that there were made, in open court, during the course of the trial and in the presence of the jury, the statements following; that is to say:

"The Prosecutor: May I ask if Mr. Silverman ever went to her (the witness Matty R. Lee) house, if she ever spoke to Mr. Silverman, and if so, when?

The Court: Yes.

Q. Did you ever speak to Mr. Silverman? A. Mr. Silverman called me up and told me that unless I change that stock for other stock—

The Court: Say yes or no, Madam. I will have to put you out of Court if you don't listen to me.

The Prosecutor: The woman is upset.

The Court: It does not make any difference whether she is blind or not. When I tell her to stop you have to stop. You must not volunteer anything. That question could have been answered with a simple yes or no.

By the Court:

Q. Did you ever talk to Mr. Samuel W. Silverman? A. I did.

By the Prosecutor:

Q. When? A. I can't tell you the exact date but it was soon after the buying of the stock.

By the Court:

Q. Did you ever speak to Mr. Silverman at any other time? A. I spoke to him numerous times.

Q. When? A. After that, and he told me—

Q. Can you tell about what year it was? A. Well, maybe in 1929 after buying of the stock.

Q. Did you speak to him at any other time? A. I told you various times. I was worried about it and called him up."

18. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor, in open court, during the trial and in the presence of the jury, made statements as follows:

"The Court: I don't think she (the witness Matty R. Lee) testified she had any conversation with him (the defendant).

The Prosecutor: I do. I thought she said she talked to Mr. Silverman. I think the record will bear me out. I think this woman has been through an ordeal and I move to withdraw her at this time.

The Court: There is a motion here to strike out her entire testimony. I have to rule upon it. If you consider any part important I will hear you.

The Prosecutor: I consider the particular fact that she talked to Mr. Silverman and said she didn't receive dividends is material, when he later tries to put out a circular saying that the company was in good condition."

19. Because the trial Court permitted the witness, Matthew J. Kurtz, on behalf of the State, to be asked and to answer the following question:

"Did you receive a salary?"

20. Because the trial Court permitted the witness, Matthew J. Kurtz, on behalf of the State, to be asked and to answer the following question:

> "Suppose you give his activity with this company from the time you went there until the time that you left."

21. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor, in open court, during the trial and in the presence of the jury, said:

> "You see, the difficulty is that they (defendant and his counsel) have the books."

22. Because the trial Court, upon objection of Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness, Matthew J. Kurtz, the question:

> "Those you listed for them, do you remember what their appraisal was with respect to that?"

23. Because the trial Court permitted the witness, Robert A. Stokes, on behalf of the State, to be asked and to answer the following question:

> "When was the receiver appointed?"

24. Because the trial Court permitted the witness, Robert A. Stokes, on behalf of the State, to be asked and to answer the following question:

"How many tax liens had been converted into actual cash for six months prior—"

25. Because the trial Court declined, when thereunto moved by counsel for the defendant, at the close of the State's case, to direct a verdict of acquittal.

26. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"Do you mean to say that your company did not get $3,000.00 from Mrs. Lee?"

27. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"Do you deny that she purchased $3,000.00 in your company?"

28. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"How much did Mr. Ross have invested in the company?"

29. Because the trial Court permitted the defendant, upon cross examination by the Prosecutor, to be asked and to answer the following question:

"Did you have any interest in the Silver-Ross Company at that time?"

30. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

> "Now, did you or did you not testify before Mr. Coffin that you were the owner of 4,695 shares of preferred stock at $10.00 a share?"

31. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

> "When you increased the capitalization how did you convert your eight shares of preferred and eight shares of common?"

32. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor, in open court, during the trial and while defendant was on the witness stand, and in the presence of the jury, stated concerning the testimony of the defendant:

> "Now, if he (the defendant) was telling the truth before Mr. Coffin he isn't telling the truth today."

33. Because the trial Court permitted the defendant to be asked, on cross examination by the Prosecutor, and to answer the following question:

> "Who else was in the small company?"

34. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"Did your company pay the franchise tax for 1925 and 1930?"

35. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"You know as a matter of fact that dividends were paid out of capital."

36. Because the trial Court permitted the Prosecutor to argue with the defendant, upon cross examination, in the manner following; that is to say:

"Q. Who did the nominees hold stock for? I am talking about this 68,000 shares. A. For their respective nominees.

Q. Who were they? A. Whoever the nominees were. You have a list of the names.

Q. You know who the names are."

37. Because the trial Court permitted the defendant, upon cross examination by the Prosecutor, to be asked and to answer the following question:

"Q. Did he (Samuel Braunstein) ever own any property that the company subsequently acquired? A. He did.

Q. And he held that property for you?"

38. Because the trial Court permitted the defendant, on cross examination by the Prosecutor, to be asked and to answer the following question:

"For how much did the Silver-Ross Company sell that piece of property in Jersey

City to the new corporation that was formed?"

39. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor, in open court, in the course of the trial and in the presence of the jury, made the comment, on motion addressed by defendant's counsel to the Court, as follows:

"Mr. Goldenhorn: I most specifically insist that the attack of the Prosecutor is highly prejudicial. He is trying him as if he is confronting a thief. I don't think he is entitled to that treatment.

The Prosecutor: I only wish I could say what I want to say in reply to that."

40. Because the trial Court permitted the witness, Phillip L. Coffin, Jr., on behalf of the State, to be asked and to answer the following question:

"Do you recall what Mr. Silverman testified before you with reference to his interest in this corporation?"

41. Because the trial Court permitted the witness, Nathan Lieberfreund, on behalf of the State, to be asked and to answer the following question?

"Was anything said about the circular by Mr. Silverman?"

42. Because the trial Court declined, when thereunto moved by defendant's counsel, at the

close of the whole case, to direct a verdict of acquittal.

43. Because the proofs could not satisfy a considerate mind beyond a reasonable doubt that the defendant was guilty as charged in the indictment.

44. Because the trial Court charged the jury as follows:

> "Under this statute it is not necessary that the State shall have proven that the defendant made and published and disseminated and circulated, etc. It is sufficient that it prove that the defendant did make, or did publish, or did disseminate, or did circulate, etc., because the statute is in the disjunctive and so as to whether these things were untrue, deceptive or misleading, it is sufficient for the State, as proven, that they were either untrue, or deceptive, or misleading."

45. Because the trial Court refused to charge the jury as follows:

> "You must consider with a great deal of care the testimony of other defendants under the indictment with Samuel W. Silverman in this case, because they are alleged accessories in the case."

46. Because the trial Court refused to charge the jury that they must consider with special care and caution the testimony of the other defendants named in the indictment, who appeared as wit-

nesses for the State, because such other defendants are alleged accomplices in the commission of the crime charged in the indictment.

47. Because the trial Court refused to caution the jury in their consideration of the testimony of the other defendants named in the indictment, who appeared as witnesses on behalf of the State, on the ground that such other defendants were accomplices in the commission of the crime alleged in the indictment.

Plaintiff-in-error prays that the judgment of his conviction may be reversed for the reasons aforesaid.

PERKINS, DREWEN & NUGENT,
Attorneys for Plaintiff-in-Error.

Specifications of Causes for Reversal.

NEW JERSEY SUPREME COURT.

THE STATE, *Defendant-in-Error,* vs. SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	Sur Indictment for Misdemeanor (Chapter 318 of the laws of 1913). In Error. To Bergen Quarter Sessions. Specification of Causes for Reversal.

And now comes the said Samuel W. Silverman, plaintiff-in-error, by Perkins, Drewen & Nugent,

his attorneys, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and that from such error he has suffered manifest wrong and injury; and he says further that the said judgment should be reversed, and he specifies the following reasons or causes for such reversal:

1. Because the trial Court denied the motion made by defendant's counsel for the quashing of the indictment on the ground that the only testimony submitted to the grand jury against the said defendant, under the complaint wherefrom the said indictment was found and presented, is within the provisions of Chapter 52 of the Laws of 1930, Section 6, and by reason whereof the said defendant was exempt from prosecution and the said indictment should have been quashed.

2. Because the trial Court denied the motion made by defendant's counsel to quash the indictment made on the ground that the said indictment does not charge a crime.

3. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor in opening the case to the jury said of the defendant, among other things:

> "* * * and then Mr. Silverman, typical of the speculator of the boom days, decided that he had sold the stock, still he was going to

take another chance and fleece the public some more."

4. Because the trial Court admitted into evidence over the objection of defendant's counsel State's Exhibit S-1.

5. Because the trial Court admitted into evidence over the objection of defendant's counsel State's Exhibit S-2.

6. Because the trial Court, upon objection of the Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness Phillip L. Coffin, Jr., the following question:

"And do you recall what the amount of that appraisal was offhandedly?"

7. Because the trial Court permitted the witness, Remsen S. Voorhees, on behalf of the State, to be asked and to answer the following question:

"Now, can you tell us, as a result of your transcription of the notes taken, what Mr. Silverman testified to at that particular hearing?"

8. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor said, during his examination of the witness Thomas A. Ryer, on behalf of the State:

"I wish to show that a strip of meadowland that Mr. Silverman claims was worth $337,000.00—"

9. Because the trial Court, upon objection of the Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness, Pierre F. Cooke, the following question:

"And how much did you receive for those two or three acres in the condemnation proceeding?"

10. Because the trial Court admitted into evidence, over the objection of defendant's counsel, State's Exhibit S-6.

11. Because the trial Court permitted the witness John J. Carey, on behalf of the State, to be asked and to answer the following question:

"And what were the average balances during that month?"

12. Because the trial Court permitted the witness, James F. Boyd, on behalf of the State, to be asked and to answer the following question:

"Q. And what was the total amount of that particular value?"

13. Because the trial Court permitted the witness Phillip L. Coffin, Jr., on behalf of the State, to be asked and to answer the following question:

"I show you this circular and ask you if this is the circular which you received from Mr. Norcom."

14. Because the trial Court admitted into evidence, over the objection of defendant's counsel, State's Exhibit S-7.

15. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the Prosecutor said, in open court, during the course of the trial and in the presence of the jury, relative to questions asked by the Prosecutor of the witness Matty R. Lee, on behalf of the State:

"This goes to the crux of the whole case, your Honor. Here is this woman who purchased stock in the corporation. This prospectus says they never defaulted on any of their obligations—

No, but I do intend to prove by this witness according to the statement she has given us that she talked with the defendant, Mr. Silverman, and Mr. Silverman made certain promises to her that he would pay certain dividends. He took her $3,000.00, she lost everything in the world, she hasn't anything—

I want to show by this witness that she had a conversation with the defendant, Mr. Silverman, and that he made certain representations to her. He did not live up to those representations when he issued this circular.

He knew that the circular was false because of the fact that he had not lived up to the representations to her.

It is relevant because of his admission to this woman of his obligations to her. She is an ordinary stockholder and she talked with Mr. Silverman according to the statement that I have in front of me according to what she gave to the office Mr. Silverman made certain representations and he did not live up to them.

She (referring to the State's witness, Matty R. Lee) is blind.

I am trying to prove that she (the witness, Matty R. Lee) called him (the defendant) and spoke to him.

I am leading up to that time and trying to prove one thing at a time.

I want to show that Mr. Silverman or some one went to her house."

16. Because the trial court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial on the ground that the witness Matty R. Lee, on behalf of the State, had testified as follows:

"Q. When did you first call? A. As near after the stock that we did not get any dividends.

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"The Prosecutor: May I ask if Mr. Silverman ever went to her (the witness Matty R. Lee) house, if she ever spoke to Mr. Silverman, and if so, when?

The Court: Yes.

Q. Did you ever speak to Mr. Silverman? A. Mr. Silverman called me up and told me that unless I change that stock for other stock—

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The Prosecutor: The woman is upset.

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Q. When? A. I can't tell you the exact date but it was soon after the buying of the stock.

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Q. Did you ever speak to Mr. Silverman at any other time? A. I spoke to him numerour times.

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Q. Can you tell about what year it was? A. Well, maybe in 1929 after buying of the stock.

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material, when the latter tries to put out a circular saying that the company was in good condition."

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"You see, the difficulty is that they (defendant and his counsel) have the books."

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"Those you listed for them, do you remember what their appraisal was with respect to that?"

Specifications of Causes for Reversal.

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"How many tax liens had been converted into actual cash for six months prior—"

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"Do you mean to say that your company did not get $3,000.00 from Mrs. Lee?"

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"Q. Who did the nominees hold stock for? I am talking about this 68,000 shares. A. For their respective nominees.

Q. Who were they? A. Whoever the nominees were. You have a list of the names.

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43. Because the proofs could not satisfy a considerate mind beyond a reasonable doubt that the defendant was guilty as charged in the indictment.

44. Because the trial Court charged the jury as follows:

"Under this statute it is not necessary that the State shall have proven that the defendant made and published and disseminated and circulated, etc. It is sufficient that it prove that the defendant did make, or did publish, or did disseminate, or did circulate, etc., because the statute is in the disjunctive and so as to whether these things were untrue, deceptive or misleading, it is sufficient for the State, as proven, that they were either untrue, or deceptive, or misleading."

Specifications of Causes for Reversal.

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> "You must consider with a great deal of care the testimony of other defendants under the indictment with Samuel W. Silverman in this case, because they are alleged accessories in the case."

46. Because the trial Court refused to charge the jury that they must consider with special care and caution the testimony of the other defendants named in the indictment, who appeared as witnesses for the State, because such other defendants are alleged accomplices in the commission of the crime charged in the indictment.

47. Because the trial Court refused to caution the jury in their consideration of the testimony of the other defendants named in the indictment, who appeared as witnesses on behalf of the State, on the ground that such other defendants were accomplices in the commission of the crime alleged in the indictment.

48. Because the trial Court erroneously permitted the Prosecutor to elicit from the witness Remson S. Voorhees, on behalf of the State, the reading of a paper writing as a transcript of testimony given and statements made by the defendant in a prior proceeding unrelated to the trial below, without the identification of such paper writing or without its authentication as such transcript or statement.

49. Because the Court erroneously declined, when thereunto moved by counsel for the defend-

ant, to strike the answer given by the witness Matty R. Lee, on behalf of the State, as follows:

"Q. When did you first call? A. As near after the stock that we did not get any dividends."

50. Because the trial Court erroneously permitted the witness Matty R. Lee, on behalf of the State, to give testimony relating to the purchase by her of the stock of New Jersey Bond & Mortgage Corporation as follows:

"Q. What company did you buy stock in? A. Bond and Mortgage Company.

Q. Then when you talked to Mr. Silverman did you talk—

Mr. Goldenhorn: Just a moment. I object. That is not designating the name of this company. I most respectfully insist that any conversation over the telephone would not be binding upon this defendant.

The Court: Was it the New Jersey Bond & Mortgage Corporation?

The Witness: That is the name that they went under.

Q. Have you a certificate?

Mr. Goldenhorn: I object on the ground that it is irrelevant and immaterial and highly prejudicial. It is not within the purview of this indictment. We are indicted for a specific thing. It hasn't anything to do with the stock. I have raised

an objection about whether it is the same corporation.

The Court: I am going to allow this for the purpose of ascertaining whether it is the same corporation which is referred to in the indictment.

Q. Have you a stock certificate? A. Yes.

Q. Where is it? A. I think Mr. Lee has it."

51. Because the trial Court, on the objection of the Prosecutor, denied defendant's counsel the right to ask, upon the cross examination of the witness Matthew J. Kurtz, the following question:

"Q. Did you know what their appraisement or certification was as to the value of the properties that the company owned?"

52. Because there was no proof in the case that any criminal offense charged by the indictment was committed in the County of Bergen.

53. Because there was no proof in the case that any criminal offense charged by the indictment was committed within the jurisdiction of the trial Court.

54. Because the verdict was against the weight of the evidence.

55. Because the verdict was the result of mistake, passion and prejudice.

Specifications of Causes for Reversal.

56. Because the trial Court had no jurisdiction of the indictment upon which the defendant was tried and convicted, by reason of the fact that the said indictment was found by the Grand Inquest of the State of New Jersey in and for the County of Bergen, in the Bergen County Court of Oyer and Terminer, and presented by the Grand Inquest aforesaid to the said Bergen County Court of Oyer and Terminer, and the said indictment having been retained in the said Bergen County Court of Oyer and Terminer and never having been handed down to the Bergen County Court of Quarter Sessions for trial or other disposition.

57. Because the trial Court caused the jury to be excluded from the court room while testimony of witnesses was being taken relative to the appearance of defendant as a witness before the Attorney General, pursuant to the provisions of Chapter 52 of the Laws of 1930.

58. Because the trial Court erred in deciding as a matter of law that the defendant as a witness before the Attorney General, pursuant to the provisions of Chapter 52 of the Laws of 1930, did not protest within the provisions of Section 6 of said Statute to the giving of the testimony then and there elicited from him.

59. Because the trial Court erred in not submitting to the jury, as a question of fact for decision by the jury, whether or not the defendant as a witness before the Attorney General, pursuant to the provisions of Chapter 52 of the Laws of 1930, had protested within the provisions of Sec-

tion 6 of the said Statute against the giving of the testimony then and there elicited from him.

60. Because the trial Court erred in permitting the State to adduce against the defendant evidence of facts that had been elicited from the defendant as a witness before the Attorney General, pursuant to the provisions of Chapter 52 of the Laws of 1930, and from which defendant was immune by reason of the provisions of Section 6 of the said Statute.

61. Because it does not appear from any caption or other competent record that the indictment upon which the defendant was tried was found by persons duly empaneled, sworn and qualified as a grand inquest of the State of New Jersey in and for the body of the County of Bergen.

62. Because the trial Court erred in denying the motion of defendant's counsel made before the jury was impaneled, for leave to withdraw the plea of not guilty in order to plead specially in bar of the indictment on the ground that the defendant was immune from prosecution for anything within the purview of the said indictment, under and by virtue of the provisions of Chapter 52 of the laws of 1930.

63. Because the trial Court erred in denying the motion of defendant's counsel, made before the jury was impaneled for leave to withdraw the plea of not guilty in order to adduce proof of facts to establish the immunity of the defendant from prosecution for anything within the purview of the indictment, under and by virtue of the provisions of Chapter 52 of the laws of 1930.

64. Because the trial Court committed an abuse of discretion in failing to declare a mistrial by reason of the Prosecutor's statement to the jury, in the course of his opening as follows:

> "They did not have any cash, they could not pay their employes; we are going to have men from the banks here to show what their balances were. I think they had $5.00 in the Peoples Trust Company; and still, they had the audacity to attempt to sell $500,000.00 worth of bonds to the public, and fraudulently misleading the transfer agent of the Empire Trust Company, of New York City."

65. Because the trial Court committed an abuse of discretion in failing to declare a mistrial by reason of the Prosecutor's statement to the jury, in the course of his opening as follows:

> "I don't know what other deposits there were, but to show you how fraudulent and how deceptive they were, the Empire Trust Company of New York, whose transfer agent we have here this morning, would not have anything to do with Mr. Silverman's companies; they had one experience, they would have nothing to do with $500,000.00—"

66. Because the trial Court committed an abuse of discretion in failing to declare a mistrial by reason of the language of the Prosecutor used in re-direct examination of the witness Charles A. Dean, on behalf of the State, as follows:

"Re-cross Examination by Mr. Goldenhorn:

Q. Your company does that as transfer agent for the corporation, does it not? A. For corporations.

Q. For corporations? A. Yes.

By the Prosecutor:

Q. For reputable corporations?"

67. Because the trial Court erred in denying the motion of defendant's counsel to strike from the record the answer made by the witness Matty R. Lee, on behalf of the State, in her direct examination as follows:

"When did you first call? A. As near after the stock that we did not get any dividends."

68. Because the trial Court committed an abuse of discretion in denying the motion of defendant's counsel for a mistrial made at the conclusion of the testimony of the witness Matty R. Lee, called on behalf of the State.

69. Because the trial Court erred in sustaining the objection of the Prosecutor of the Pleas to the question asked by defendant's counsel in his cross examination of the witness Matthew J. Kurtz, recalled on behalf of the State, as follows:

"Q. Did you know what their appraisement or certification was as to the value of the properties that the company owned?"

70. Because the trial Court committed an abuse of discretion in failing to declare a mistrial by reason of the Prosecutor's conduct as follows in his cross examination of the defendant:

"Q. Is that the list that you gave to Mr. Coffin? A. That is part of the list, yes.

Q. What else did you give him? A. I don't know, I can't recall what papers were brought to his office at that time; there was a big bunch of papers over there, you could pick out whatever you wanted to, we had nothing to hide.

Q. You had plenty to hide. You had nothing to hide? A. No."

71. Because the trial Court committed an abuse of discretion in failing to declare a mistrial because of the following language used by the Prosecutor in the course of an argument as to the propriety of a question put to the defendant as a witness in his own behalf:

"My point is that Mr. Silverman dominated the Silver-Ross Company. The Silver-Ross Company sold this particular property to the New Jersey Bond & Mortgage Company. In other words, Mr. Silverman had bought it for $30,000.00 then sold it to the corporation, of which this Mrs. Lee was a stockholder, for some fabulous sum of $300,000.00."

72. Because the trial Court committed an abuse of discretion in failing to declare a mistrial by reason of the Prosecutor's cross examination of the defendant as a witness in his own behalf:

"Q. Weren't you the supervisor while he was in Hackensack? A. No.

Q. Who was? A. Whoever the president of the company was—I was president about July, 1929—when I became president.

Q. From July, 1929? A. Then I went to Europe right after that.

Q. You went to Europe? A. Yes, sir.

Q. With some of the money? A. No, I have been going every year for seventeen years."

Plaintiff-in-error prays that the judgment of his conviction may be reversed for the reasons aforesaid.

PERKINS, DREWEN & NUGENT,
Attorneys for Plaintiff-in-Error.

Exhibit S-1.

SCHEDULE "A".

REAL ESTATE OWNED BY NEW JERSEY BOND & MORTGAGE CORPORATION.

Location	*Block*	*Plot*	*Size*	*Market Valuation*	*Mortgage Outstanding*	*Cost To Corp.*
Waterfront—foot of Sip Avenue, Hackensack River, Jersey City.	1627 1639 1639	6) 1 : 7-A)	15 acres	$386,500.	1st—$21,000. 69,000.	$189,000.
Riverside.	101	6-7-8	.....	2,000.	.....	1,250.
Fort Lee.	37	2687-2688.	50X100	4,000.	1,000.	1,750.
Ridgefield Park.	43M	....	8 acres	6,000.	.....	4,400.
East Rutherford.	107	21	2½ acres	1,500.	.....	750.
	107	67	3½ "	2,800.	.....	1,500.
East Rutherford and Carlstadt. Van Riper Est. 20 acres—6 of which are on the Hackensack River Waterfront.	....	....	20 acres	25,000.	10,000.	2,500.
Teaneck.	451	14	.....	3,500.	.....	2,000.
	452	23-24-25-26-27.	.....	7,500.	.....	2,500.
Montvale.	3	108-9-10-11-12.	.....	1,500.	.....	.....
	3	543-4-5-6-7.	.....	.....	.....	.....
	24	613-14-15.	.....	600.	.....	.....
Palisades Park.	33	62-A-B-C.	.....	5,000.	Taxes due 2,500.	.....
	45	1094-5	.....	1,500.	250.	.....
	21	5135	.....	400.	100.	.....
	18	4959	.....	500.	100.	.....
	76	1417	.....	800.	225.	.....
Little Ferry.	16	8	5½ acres)	7,500.)	.....	1,000.)
	35	1	1½ ")	.....)	.....	.....)
				$456,600.	$104,175.	$206,650.

Exhibit S-1.

SCHEDULE "B".

MORTGAGES OWNED BY NEW JERSEY BOND & MORTGAGE CORPORATION.

PALISADES PARK.

Owner	*Block*	*Plot*	*Size*	*Valuation*	*Mtge.*	*Date of Mtge.*	*Term*	*Maturity*
Dora D. Alpersten 2507 Krieger Av., Bronx, N. Y.	41	199-A-B.	50X100	$4,000.	$1,000.	4/20/28.	2 yr.	4/20/30.
Harris Fleischman, 901 Broadway, Woodcliff, N. J.	102	2150, 2151.	50X100	3,800.	1,300.	7/21/27.	2 "	7/21/29.
Vito Bologna, c/o J. M. Rotola, 411 Broad Ave., Palisades Pk.	73	2092, 2093.	37½X100	3,000.	875.	3/19/28.	2 "	3/19/30.
Nathan Meltzer, Bayonne, N. J.	44	4472 to 4481	250X100	6,500.	2,000.	3/10/28.	2 "	3/10/30.
Effrel Realty Co., c/o F. J. Quinn, Palisades Pk.	33	62-D-E.	50X100	8,000.	2,000.	11/26/27.	3 "	11/26/30.
HACKENSACK.								
Joseph Carrara, 225 Morris St., Fairview, N. J.	610	13/16	100X100	$3,500.	$1,600.	2/ 1/27.	2 "	2/ 1/29.
	609	1/2	50X100	1,500.	400.	2/ 1/27.	2 "	2/ 1/29.
RIVERSIDE.								
J. Foght Brown Co. Hackensack, N. J.	4	6&7	50X100	$5,500.	$3,000.	4/26/28.	2 "	4/26/30.
			TOTAL	$35,800.	$12,175.			

Exhibit S-1.

SCHEDULE "C".

ACCRUED TAXES

Municipality	*Block*	*Plot*	*Size*	*Market Valuation*	*Taxes Due*
Palisades Park.	33	62-A, B-C	100X75	$5,000.	$2,500.
	45	1094-1095.	50X100	1,500.	250.
	21	5135	25X100	400.	100.
	18	4959	25X100	500.	100.
	76	1417	25X100	800.	225.
				$8,200.	$3,175.

SCHEDULE "D".

MORTGAGES DUE

Location	*Block*	*Plot*	*Size*	*Market Valuation*	*Mortgages Outstanding*	*Cost To Corp.*
Waterfront—foot of Sip Avenue, Hackensack River, Jersey City.	1627 1639 1639	6) 1 : 7-A)	15 acres	$386,500.	1st—$21,000. 2nd—69,000.	$189,000.
Fort Lee.	37	2687, 2688.	50X100	4,000.	1,000.	1,750.
East Rutherford and Carlstadt. Van Riper Est. 20 acres—6 of which are on the Hackensack River Waterfront.	....	....	20 acres	25,000.	10,000.	2,500.
				$415,500.	$101,000.	$193,250.

Exhibit S-5.

The Circular.

$500,000

NEW JERSEY BOND & MORTGAGE CORPORATION

Ten-Year, Six Per Cent. Gold Bonds

With Privilege of Conversion Into Common Stock Prior to Maturity

Issued in Denominations of $1,000, $500 and $100 —Registered as to Principal. Interest Coupons Payable Semi-Annually, February and August 15th. Bonds Dated, February 15, 1930—to Mature February 15, 1940.

Transfer Agent	*Registrar*
Empire Trust Company	Corporation Trust Company
New York City	New York City

Depositories:

Franklin-Washington Trust Company, Newark, N. J.

Journal Square National Bank, Jersey City, N. J.

Peoples Trust & Guaranty Company, Hackensack, N. J.

Legal matters incidental to the founding of the Corporation have been subject to the approval of Messrs. Oliver & Comstock of New York City. All legal details in connection with this issue have been passed upon by Messrs. Gross & Gross of Jersey City, N. J., for the Corporation. The books of the Corporation were audited by Haskins & Sells of New York City. Appraisals have been certified by Lloyd Thomas Company of New York City.

Exhibit S-5.

PRICE: PAR and INTEREST

Subscriptions Received Subject to Allotment.

The statements contained herein are authorized by the Corporation, and this circular is issued by the Corporation.

NEW JERSEY BOND & MORTGAGE CORPORATION
[A New Jersey Corporation]

Description of Issue

These 6%, Ten-Year Gold Bonds are Debentures, dated as of February 15th, 1930, payable to the Registered Owner, maturing February 15th, 1940. They are a direct obligation of the Corporation, chargeable against its entire Assets, and constitute its only funded debt. There are no other securities with preference rights over these bonds, and they have priority over the Capital Stock of the Corporation. The Authorized issue is $500,000.00.

Interest Payable Semi-Annually

Each Bond bears coupons at the rate of 6% per annum, payable semi-annually, every February and August 15th. The coupons are payable at Corporation's Main Office in Newark, N. J., upon presentation, or may be collected by deposit in any bank or Trust Company, through the Corporation's Bank Depository in Newark, N. J.

Exhibit S-5.

Conversion Rights

These Bonds are convertible, prior to maturity, at the option of the Registered Owner, upon fifteen days' notice in writing, into Common Stock of the Corporation, as follows:

February 1st, 1931, to January 31st, 1932, inclusive, at $20 per share
February 1st, 1932, to January 31st, 1933, inclusive, at $22 per share
February 1st, 1933, to January 31st, 1934, inclusive, at $24 per share
February 1st, 1934, to January 31st, 1935, inclusive, at $26 per share
February 1st, 1935, to January 31st, 1936, inclusive, at $30 per share
February 1st, 1936, to January 31st, 1937, inclusive, at $35 per share
February 1st, 1937, to January 31st, 1938, inclusive, at $40 per share
February 1st, 1938, to January 31st, 1939, inclusive, at $45 per share
February 1st, 1939, to January 31st, 1940, inclusive, at $50 per share

This convertible feature assures the Bond owner certainty of income characteristic of the Bond, with all the safety of the Principal provided by the Bond, and the further privilege of sharing to the fullest extent in the prosperity of the Corporation by exchanging his Bonds for the Common Capital Stock of the Corporation.

Exhibit S-5.

Capitalization

	Authorized	*Outstanding*
10 Year 6% Convertible Gold Bonds	$ 500,000	Now offered
7% Preferred Stock —Par Value $10	$1,000,000	$280,000
Common Stock—No Par Value	130,000 shares	80,000 shares

Business

The New Jersey Bond and Mortgage Corporation was chartered April 21st, 1927, under the laws of the State of New Jersey, and has since been continuously and actively engaged in buying, selling, and otherwise dealing in New Jersey Municipal Tax Liens, First Mortgages and Realty Bonds.

The Corporation business commodity is cash or its equivalent—the same as a Bank—and consequently the business is basic. The Assets are always protected by underlying security at a ratio of more than twenty to one.

The business of dealing in First Mortgages, Municipal Tax Liens and Realty Bonds has been well organized during the past few years, and is generally recognized as being ultra-conservative. Nevertheless, the records of the more outstanding and substantial Bond and Mortgage Companies show average annual earnings of from 50% to 100% and more. These earnings are being referred to here because many Bond holders are under the impression that the engaging in such

a fundamentally sound and conservative business necessarily compels a conservative profit.

The Corporation has proven successful from its inception, and is considered a Leader in its Field.

Purpose of Issue

The proceeds from this offering will be used to increase the Corporation's working Capital, and specifically to the purchase of a large volume of Tax Liens in Bergen, Hudson and Essex Counties, which are now available to the Corporation, and in acquiring other valuable assets throughout the State of New Jersey.

Security

These Gold Bond debentures are a direct obligation of New Jersey Bond and Mortgage Corporation chargeable against the entire assets of the Corporation, and have priority over the equity and interest of the capital stock.

Back of the Corporation's bonds are the entire capital, surplus and current earnings, cash in office and in banks; the Corporation's ownership of tax liens, mortgages, bonds, accounts receivable, investment securities and other assets.

None of the assets are pledged or assigned by the Corporation, but are held free in the Treasury for the safety and benefit of the security holders. As debentures, the Corporation's bond issues are not secured by a mortgage or collateral trust indenture on only a portion of the assets, but are backed *by all* the assets of the Corporation and all these assets are equally liable to pay

the whole amount of the participating debentures at maturity, with semi-annual interest as due.

None of the capital of the Corporation is tied up in buildings, machinery or merchandise, all of which are subject to depreciation in value. The business from which the Corporation derives its income is that of dealing in money or its equivalent only, which is not subject to the usual business hazards of depreciation, labor troubles, depressions, shipping embargoes, changes in style, obsolescence of plan, machinery or equipment, and the like.

Management

The Executive affairs of the Corporation are in competent administrative hands, who have a background of years of experience and success in this line of endeavor.

The Management's standards are widely recognized as sound, conservative and productive of dependable profits.

The Corporation has never experienced an unsuccessful year in business, or defaulted on any obligation whatever. Its total Assets are in excess of $539,115.82.

An Attractive Issue

The convertible Gold Debenture Bonds of the Corporation offers an excellent opportunity for a safe investment, because of its great underlying security, which should be of special appeal to the conservative Investor who favors Municipal Bonds. Moreover, it offers the Investor the

opportunity of participating in the full earnings of the Corporation by converting into Common Stock when that stock has become seasoned and yielding large returns.

NEW JERSEY BOND & MORTGAGE CORPORATION
MILITARY PARK BUILDING
Newark, New Jersey

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT,

#5, MAY TERM, 1935.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	On Writ of Error. Argued May 8, 1935. Decided 1935.

Before—BROGAN, Chief Justice, and Justices LLOYD and DONGES.

For Plaintiff-in-Error: RANDOLPH PERKINS, John Drewen, of counsel.
For Defendant-in-Error: JOHN J. BRESLIN, Jr.

LLOYD, J.:

Plaintiff in error was convicted of violating Chapter 318 of the Laws of 1913, which provides in part that

> "Any person, firm, corporation, * * * who with intent to sell * * * securities * * * makes, publishes, disseminates, circulates or places before the public * * * in the form of a circular, an advertisement of any sort regarding securities so offered to the public, which advertisement contains any assertation, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor."

The first point argued is that the indictment is fatally defective in failing to allege that the documents issued were known to contain representations of fact which were untrue, deceptive and misleading.

The question is one of interpretation. The act does not by its terms make guilty knowledge a necessary element in the commission of the offence, and it is contended that, while the legislature has power to declare the improper conduct of those subject to its jurisdiction to be criminal and subject to judicial penalties, unless the contrary legislative intent clearly appears the law will not be so construed as to make the act criminal in the absence of a criminal intent.

The plaintiff-in-error was president of the New Jersey Bond and Mortgage Corporation and as such was charged with preparing for public use and advertising purposes a circular in which, according to the state's proofs, he grossly misrepresented the assets of the corporation; the circular being issued for the purpose of the sale of the bonds therein offered as an investment.

There are cases in abundance holding that a forbidden act is completed in a legal sense when the act is done, whether with or without intent or guilty knowledge. There are other cases holding a legislative intent to make guilty purpose essential. The dividing line is aptly illustrated in such cases as Halsey v. State, 41 N. J. L. 552, and State v. Kuehnle, 85 N. J. L. 220, in the first of which the mere commission of the act was held to be criminal, and in the latter as requiring a corrupt motive.

We think the statute in the present case comes under the former classification. In the Halsey

case the offence dealt with was that of exceeding appropriations by a Board of Chosen Freeholders. Here it was the issuance of a circular containing assertions of fact respecting the company's financial standing. The facts stated in the circular were intended to be relied upon by the public as a basis of investment. The plaintiff-in-error was president of the company and these facts were or should have been within his knowledge in preparing and issuing the circular. The outside public to whom the bonds were to be offered could in the nature of things have no knowledge except that thus conveyed to them. It is to be noted that while intention to sell the securities is incorporated in the act as a necessary factor, there is no such limitation of responsibility for the information disseminated with respect to the knowledge or want of knowledge. The statute is intended to protect the public against false and misleading information regarding securities offered for sale. Its purpose would be frustrated if those issuing false information could shield themselves behind the plea that they did not know it to be untrue. It was peculiarly the business of those issuing the circular to know the facts before offering the securities. It is our conclusion that the legislative purpose was to hold responsible those who put out information of such character to the substantial truth of the statements contained therein.

It is urged that the statute forbids the publication by circular or otherwise of false information respecting securities *offered to the public,* and that there is no proof that any bonds were ever offered to the public. Assuming that this is a correct

interpretation of the statute, there was proof that the circular was at least in one instance forwarded by mail to a prospective purchaser, and the circular was in itself an offer of the bonds to the public. The issue is described in detail and preceding such description occurs the following: "Price par and interest subscriptions received subject to allotment." It is impossible to read this language without recognizing in it an offer of the bonds themselves for public subscription, and therefore presenting evidence to meet this claimed interpretation of the act.

Other grounds of appeal and causes for reversal are the alleged improper conduct of the prosecutor in the cross examination of the defendant, in the examination of the witness Lee called by the state, as well as in statements and comments during the course of the trial, and the refusal of the judge to withdraw a juror.

While some of the remarks of the prosecutor are subject to criticism and not to be commended in orderly judicial proceedings, we think they were not sufficient to justify our holding that the court below abused its discretion in refusing to withdraw a juror as was requested by defendant's counsel.

As to the examination of Mrs. Lee, this lady's testimony was later struck out and the jury directed to disregard it.

The application to withdraw the plea of not guilty was denied. It was addressed to the discretion of the court and in this ruling we find no abuse of discretion.

The oral request for instruction at the conclusion of the charge was properly denied as neither

in form nor time. To require the court to submit such an instruction at that stage of the case would give it an undue prominence and weight with the jury which it was not entitled to have, and the request properly came within the ban of the requirement that requests for instruction must be presented not only in writing but timely in order that they may receive due and considered examination.

There is nothing in the record of the cause which requires further discussion and the judgment below is affirmed with costs.

Rule on Affirmance of Judgment and Order of Remittitur.

NEW JERSEY SUPREME COURT.

MAY TERM—1935.

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

vs.

SAMUEL W. SILVERMAN,
Plaintiff-in-Error.

In Error to Bergen Quarter Sessions.

Rule on Affirmance of Judgment and Order of Remittitur.

This case having been duly argued at the May Term, A. D. 1935, of this Court, by John Drewen, counsel for Samuel Silverman, plaintiff-in-error, and John J. Breslin, prosecutor of the pleas, coun-

sel for the State of New Jersey, defendant-in-error, and the Court having considered the same and having examined the record and proceeding of the Bergen Quarter Sessions in this case and finding no error therein,

It is hereby ordered and adjudged that the judgment of the Bergen Quarter Sessions in the above entitled case be and the same hereby is affirmed; and

IT IS FURTHER ORDERED that the record of the said cause be forthwith remitted to the said Bergen Quarter Sessions there to be proceeded with in accordance with this judgment and the practice of said Court.

Entered September 20th, 1935.
On motion of

JOHN J. BRESLIN, JR.,
Prosecutor of the Pleas,
Counsel for the State of New Jersey,
Defendant-in-Error.

Certification by Chief Justice to Return of Supreme Court.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

(Signed) THOMAS J. BROGAN,
Chief Justice.

Assignments of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MAY TERM—1935.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	On Error to Supreme Court. Assignments of Error.

New Jersey, ss.:

AFTERWARDS, to wit, on the return day of said writ before the New Jersey Court of Errors and Appeals, comes the said Samuel Silverman, by his attorneys, Perkins, Drewen & Nugent, and says:

That in the record and proceedings aforesaid and also in the giving of the judgment aforesaid, there was manifest error to the prejudice and injury of the said plaintiff-in-error, and he therefore assigns the following for cause of error:

1. The New Jersey Supreme Court erred in rendering judgment affirming the verdict of the Bergen County Court of Quarter Sessions instead of reversing the judgment of the Bergen County Court of Quarter Sessions, for the several reasons set forth in the specification of causes for reversal as well as in the assignments of error.

PERKINS, DREWEN & NUGENT,
Attorneys for and of counsel with
Plaintiff-in-Error.

1460CT.T.1935

New Jersey Court of Errors and Appeals

OCTOBER TERM, A. D. 1935.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	In Error. To Supreme Court.

BRIEF FOR PLAINTIFF-IN-ERROR.

(Italics ours.)

Plaintiff-in-error was convicted in the Bergen Quarter Sessions of a violation of a supplement to the Crimes Act, being Chapter 318 of the Laws of 1913, which denounces, among other things, misrepresentations in advertising of securities offered to the public for sale.

It was brought to the Supreme Court on bill of exceptions, together with a certificate of the entire record (Chapter 136, Crim. Proc. Act). The Supreme Court affirmed.

All objections set forth in the assignments of error are included also in the specifications of causes for reversal. These are numbered alike in both places.

Throughout this brief reference to specification of cause for reversal will designate both the specification and the assignment, except, of course, where the point involved is contained in the specifications only.

Facts.

In February, 1932, the plaintiff-in-error, together with Matthew J. Kurtz, Robert W. Thompson, Nathan Lieberfreund and Edgar Ross, were jointly indicted for a violation of the statute above mentioned.

The circular (Case, p. 251) upon which the indictment is based was prepared in contemplation of a bond issue of the New Jersey Bond & Mortgage Company. As the record shows, however, nothing was done toward the completion of the issue. Not a bond was printed; not a bond was sold or offered for sale.

Three years after the finding of the indictment, however, it was moved for trial, moved against the defendant Silverman alone. It had been nolle prossed as to the defendant Thompson, and a severance was ordered as to the remaining defendants, Kurtz, Lieberfreund and Ross. The three last named were called as witnesses on behalf of the state.

POINT I.

The indictment is defective. It does not charge a crime because it does not charge intent or guilty knowledge (Specification No. II).

Before the jury was impaneled counsel for the defendant moved the Court for the quashing of the indictment on the ground that it does not

charge a crime under the laws of the State of New Jersey (Case, p. 16, line 12).

The only intent alleged is in the passage that the defendants, being officers, directors or employes of the New Jersey Bond & Mortgage Corporation, did make, publish, disseminate, circulate and place before the public, certain pamphlets and letters, containing assertions and representations of fact, which were untrue, deceptive and misleading, *with intent to sell and dispose of a certain bond issue of the said corporation.* That such intent to sell and dispose of a bond issue was in any particular a dishonest or unlawful intent is nowhere charged. That the representations contained in the circular might have been untrue, deceptive and misleading *without knowledge or wrongful intent* of any kind on the part of the defendants named, goes without saying. In other words, for all that is contained in the indictment, any untrue, deceptive or misleading statement in it might well have been untrue, deceptive and misleading as the result of an altogether honest mistake. Thus it follows that no act toward which the indictment is directed is either charged to be, or described as, wrongful, fraudulent, or even immoral, in any particular.

The statute under which the indictment was drawn does not include any provision that the statements contained in the advertisement shall be untrue, deceptive or misleading to the knowledge of those by whom it is published nor with any accompanying fraudulent intent. But that merely raises a question of statutory construction.

This question is dealt with exhaustively in the learned opinion of Chief Justice Beasley, in Halsted v. State, 41 N. J. L. 552. There, with phil-

osophic comprehension, the whole matter is explored. The Court of Errors and Appeals in the Halsted case concluded that the statute before it did not import the element of criminal intent as essential to the offense denounced. But, as the Chief Justice is so careful to point out, the determining factor is the nature and character of what the statute is designed to prevent. The statute there dealt with the exceeding of appropriations by a Board of Chosen Freeholders, so fixing a limitation upon the power and function of such Boards, making a breach of that limitation a malfeasance in office and prescribing the punishment therefor. As the Court observes, the statute prescribes official conduct, definite and specific, and easily capable of performance. The result being that non-performance was made a malfeasance regardless of good or bad intent or no specific intent at all.

After considering the authorities that hold in given cases that the criminal violation of statutory provisions does not *necessarily* imply a criminal intent, the Chief Justice turns to a review of those decisions which, where the statute is of a different character, hold to a correspondingly different principle. This review is opened (at p. 591) with the statement:

> "But, on the other hand, it is equally undeniable that in some cases, when the prohibition in a statute against doing a certain act, or series of acts, is couched in general terms, courts have, to use the language of Lord Cockburn, imported into the statute a proviso that the denoted act shall be done from a guilty mind."

And the principle, so clearly stated by the Chief Justice, upon which rests the distinction between the class of statutes that presupposes the element of criminal intent and the class which does not, is as follows (p. 592):

> "In such instances the entire function of the Court is to find out the intention of the legislature, *and to enforce the law in absolute conformity to such intention.* And in looking over the decided cases on the subject it will be found, that in the considered adjudications, this inquiry has been the judicial guide. And naturally in such an inquiry the decisions have fallen into two classes, because there have been two cardinal considerations of directly opposite tendency, influencing the minds of the judges; *the one being the injustice of punishing unconscious violations of the law,* and the other the necessity, in view of public utility, of punishing, at times, some of that very class of offences."

But the opinion in the Halsted case deserves a reading in full.

In State v. Kuehnle, 85 N. J. L. 220, the Court of Errors and Appeals reached the conclusion, unlike that in the Halsted case, that the statute (Section 32 of the Crimes Act), intends, *though it does not state,* that the interest which it denounces on the part of a public officer in a contract made with the governing body of which he is a member, *shall be a corrupt interest.*

By way of distinguishing between the Halsted and Kuehnle cases, Justice Swayze, speaking for the Court at page 225, ibid., says:

"We do not overlook the rule of Halsted v. State, 12 Vr. 552. It was held in that case that, with respect to statutory offences, the maxim that crime proceeds only from a criminal mind does not universally apply. But the great Chief Justice who spoke for this Court in that case was too acute and accurate to fail to perceive and call attention to the fact that the real question is one of statutory construction. The Legislature may, if it will, make an act criminal without regard to the criminal intent; the question is, has it done so. The construction of the statute in that case turned on the fact that the duty to be performed was a simple one, not subject to very great difficulties in its performance. *In the present case the statute, if construed literally and as not requiring a corrupt motive, would lead to results that surely could not have been intended.*"

So here, if the statute in the present case is to be construed literally, and as not requiring *guilty knowledge* that the statements in the circular are untrue, deceptive or misleading, and consequently a *fraudulent intent,* it would "lead to results that surely could not have been intended."

A giving effect to the statute in the present case entirely apart from any element of immoral purpose in its breach would be tantamount to a holding of all persons concerned in the publication of advertisements of corporate securities, not to mention "merchandise, service, or anything offered by such person to the public for sale or distribution", to a degree of inerrancy approaching infallibility.

The statute must be construed as including knowledge that the statements contained in the

circular are untrue, deceptive and misleading and of fraudulent intent in their exploitation.

Where criminal intent or guilty knowledge is an element of the crime charged, this must be both alleged and proved (State v. Seran, 28 N. J. L. 519; State v. Malloy, 34 N. J. L. 411).

The indictment is fatally defective and should have been quashed.

The opinion of the Supreme Court indicates clearly that rather than construe the statute, it confined its attention to what *ought to be imputed to the defendant* by way of intent or guilty knowledge *in this case*. The court endeavored to find the legislative meaning by an appraisal of the charge and the evidence *in this case*. And in making such appraisal it did not see the case in relation to what is really the statute in point, but in relation to what it evidently misconceived the statute to be. We think these observations are at once justified by the opinion below. The court says (Case, p. 259, line 40):

> "We think the statute in the present case comes under the former classification. In the Halsey case the offense dealt with was that of exceeding the appropriation by a board of chosen freeholders. Here it was the issuance of a circular containing assertions of fact respecting the company's financial standing. The facts stated in the circular were intended to be relied upon by the public as a basis of investment. The plaintiff-in-error was president of the company, and these facts were or *should have been* within his knowledge in preparing and issuing the circular. * * * The statute is intended to protect the public against false and mis-

> leading information regarding securities offered for sale. * * * It was peculiarly the business of those issuing the circular to know the facts before offering the securities. It is our conclusion that the legislative purpose was to hold responsible those who put out information *of such character* to the substantial truth of the statements contained therein."

The statute itself is not at all confined to the purpose, nor has it the specific scope that the court thus ascribes to it. It is very broad and general in its terms and application. The statute is not only "intended to protect the public against false and misleading information regarding securities offered for sale." It is that and a good deal more. And it cannot be soundly concluded that the legislature intended to punish in one class of offense under it, regardless of the presence or absence of guilty knowledge, unless it is shown that the intent so to punish is to apply to every class of offense alike. The statute does not particularize, nor in any way differentiate as to these.

It is well enough for the Supreme Court to say what must have been the legislative intent relative to "misleading information regarding securities offered for sale." But it could not, with any cogency, impute the same legislative intent relative to advertising by a pants presser, a window cleaning organization, or a beauty parlor. Nor could it do so with reference to circulars announcing the sale of ordinary merchandise. And yet the statute deals with these things equally with the advertising of securities. The court's reading of the statute excludes everything except

so much of the statutory text as relates to securities. By the same method of deletion the statute can be said to provide that:

> "any person who * * * with intent to sell or in any wise dispose of merchandise or service * * * makes, publishes, disseminates, circulates or places before the public * * * or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this state * * * in the form of a poster, bill or circular or in any other way, an advertisement of any sort regarding merchandise or service, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed $1,000 or imprisonment in the county jail for a period of not exceeding one year, or by both such fine and imprisonment."

What is thus presented is just as vital a part of the statute as that which the Supreme Court dealt with. The legislature certainly made no distinctions, and the lower court was not warranted in doing so. If it is proper to say that it is the statutory intent that one selling corporate securities shall be held responsible, however innocent of guilty knowledge or intent he may be, for misinformation contained in circulars relating thereto, which he causes "directly or indirectly" to be made, it is equally proper to hold to the like stern degree of responsibility one who offers in his advertisement to do no more than render the services of barber, valet, window cleaner, or the like.

We respectfully submit that the Supreme Court's conclusion is definitely repugnant to the spirit and import of Chief Justice Beasley's dissertation in Halsey v. State, 41 N. J. L. 552, as it is to the opinion of Justice Swayze in State v. Kuehnle, 85 N. J. L. 220.

Consider, if the decision below is to stand, then it is the law of this State that one who "indirectly causes" the advertising of ordinary service or merchandise, and such advertising should turn out to be "misleading", would be guilty of a crime punishable by a year's imprisonment and one thousand dollars' fine, though he were entirely innocent of criminal intent or guilty knowledge. That never could have been intended!

Certainly it does seem that criminal intent is too vital to the philosophy of punishment, especially for common offences, ever to be dispensed with that easily.

POINT II.

The trial court erred in denying defendant's motion for a directed acquittal at the close of the State's case; also in denying motion for directed acquittal at the close of the whole case. There was no proof of any representation concerning securities actually "offered for sale to the public." There was no proof of knowledge on the part of defendant that any essential statement contained in the circular was false or deceptive. There was no proof of criminal intent. And there was no proof that the defendant had committed any act described in the indictment within the jurisdiction of the trial court (Specifications of Cause Nos. 25, 42, 52, 53).

The words of the statute directly pertinent to the present case, are (Chapter 318, Laws of 1913):

> "Any person, firm, corporation * * * who with intent to sell * * * securities * * * offered by such person, firm, corporation to the public for sale, * * * makes, publishes, disseminates, circulates or places before the public * * * in the form of a circular, an advertisement of any sort regarding securities so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor."

There can be no violation of this statute without the element of intent, and the intent, in part, must be to sell securities that are "offered to the public for sale." A circular, standing alone, is not a circular within the terms of the statute; it must relate to securities that are actually "offered to the public for sale."

It is not the offense of offering securities to the public for sale upon false or deceptive representations in a circular that the statute denounces. But rather the making of a false or deceptive circular concerning securities that *are offered* to the public for sale. The one would be predicated only upon the character of a circular. The other, the true import of the statute, is predicated, not upon the character of a circular only, but upon the character of a circular, *plus the relation of that circular to a collateral thing, i. e., a then existing offer of securities to the public for sale.*

All that can be said of the circular in evidence is that it contains certain statements *purporting*

to relate to a contemplated issue of securities, that is in the abstract. As a matter of fact that issue never came into existence. There was no denial of that. It had never been and never was to be "offered to the public for sale." There was no denial of that, either. Indeed, implicit in the state's proof was the assumption that the bonds never had actually been "offered to the public for sale." There was never a bond printed; there was never a bond sold.

Unless the purpose of this statute is to be regarded as including an altogether idle end, it must be construed to mean that the circular advertisement contemplated by it should be a thing of practical moment, that is, something that has to do with the promotion by false or misleading statements of the sale of securities then actually "offered to the public for sale." Any other construction would justify a conviction out of nothing more than this: A sale of securities is projected; nothing is done in furtherance of that, beyond the *preparatory* step of formulating a circular; this circular is prepared or "made"—to use the word of the statute upon which the State relies —but nothing more is done or intended to be done, and no bond or "security" is printed or in anywise made available for sale or delivery! No such intent can be ascribed. The very language of the act, as a whole, forbids it. But the case we have supposed is the present case, in every respect.

But there was still another element of intent essential to the proof of the State's case. The advertising with *intent to sell* securities is one thing. *Intent that the advertisement shall con-*

tain matter untrue, deceptive or misleading is quite another. There can be no crime under this act without such intent. That element of the State's case was not proved. The circular in evidence is the usual one of its kind. It is almost entirely a generalization. It states correctly the company's business and the period during which it had been engaged in it. The purpose of the projected issue is stated as follows (Case, p. 255, line 10):

> "The proceeds from this offering *will be* used to increase the corporation's working capital and specifically to the purchase of a large volume of tax liens in Bergen, Hudson and Essex Counties, which are now available to the corporation, and in acquiring other valuable assets throughout the State of New Jersey."

There was nothing in the State's proof to show that this statement of purpose was not entirely honest.

The "security" of the contemplated bonds is described:

> "These gold bond debentures are a direct obligation of New Jersey Bond & Mortgage Corporation, chargeable against the entire assets of the corporation, and have priority over the equity and interest of the capital stock.
>
> "Back of the corporation's bonds are the entire capital, surplus and current earnings, cash in office and in banks, the corporation's ownership of tax liens, mortgages, bonds, ac-

counts receivable, investment securities and other assets.

"None of the assets are pledged or assigned by the corporation, but are held free in the Treasury for the safety and benefit of the security holders. As debentures the corporation's bond issues are not secured by a mortgage or a collateral trust indenture on only a portion of the assets but are backed by all the assets of the corporation * * *."

Now of course all of this refers to a bond issue presumably then in contemplation by the person or persons who prepared the circular. And if these contemplated bonds *had* been brought into being, and if they *had* been available for sale, and if there *had* been any proceeds from a sale thereof, there is nothing to show but that such proceeds *would* have been used and conserved in full compliance with what the circular states as to the "Purpose of Issue." And if there had been such proceeds, there is nothing to show that they would not have created "current earnings, cash in office and in banks," as well as ownership by the corporation of "tax liens, mortgages, bonds, accounts receivable," etc. And who can deny that had the projected issue been carried out, the bonds *would* have been a corporate obligation, secured by just such assets as those stated in the circular?

Since the circular, at least in the main, is directed toward a thing in contemplation, it is in that light that it must be read. There was not a word of testimony to show that anything in it was false to the knowledge and with the fraudulent intent of the defendant.

But when the circular was printed in February, 1930, the corporation *did* have assets; and this is a vitally important consideration on the present argument. It had assets and these assets had value. The State did not deny that; on the contrary, it proved it; and the whole matter seems to have turned upon differences of opinion as to what these values were, because the only apparent theory upon which the State tried its case was that a $500,000 debenture bond issue must be in some way fraudulent, unless backed by at least $500,000 in corporate assets *then existing* and owned by the corporation, *and regardless of knowledge or intent.*

The Exhibit "S-2" (Case, p. 248) is a schedule of the corporation's assets, and is the basis of the State's theory above outlined.

The proof adduced by the prosecution consisted chiefly of testimony to show that the values given in the schedule for the respective assets were excessive. But this was and is entirely matter of opinion; and that the values stated in the schedule were not without support of creditable authority appears from the fact that these were based upon estimates made for the corporation by professional appraisers. It was the witness Edgar L. Ross (indicted jointly with the defendant) who prepared the circular and sent it to the printer. Of course, he testified that it was all with the approval of the defendant. But the important thing is that this witness, offered by the State, admitted on cross examination that the corporation had the report of Lloyd & Thomas Company of New York, as well as a survey by Haskins & Sells, auditors; that in the preparation of the circular these reports "were used"; that the witness had "no reason at all to doubt

their appraisement''; and that as a matter of fact he did not doubt it (Case, p. 124, line 20).

Nothing could more impressively show that opinions of the value of these assets could be in perfectly honest difference than the divergent testimony given by reputable real estate experts.

Thomas A. Ryer testified, for the State, that a parcel of realty, constituting one of the assets, had as of February, 1930, a value of $137,400 (p. 49, line 33). Percy Gaddis, for the defense, gave it as his opinion that the true value of the same property, as of February, 1930, was $319,700 (p. 138, line 33). Defendant's witness, Jacob H. Klein, testified that in his opinion the value of this asset at the time in question was $533,370.80 (p. 146, line 36). *And these estimates were not arrived at for the purpose of the trial below.* They had previously been calculated by their respective proponents for use before commissioners in condemnation, who were taking lands of the same character and in the immediate vicinity for State Highway purposes. Moreover, while the State adduced opinion testimony of the value of specific parcels of the corporation's real estate, no attempt was made, even upon its theory of prosecution, to show the total value *of all the real estate assets.*

There was no proof whatever that the defendant had in any way contrived false estimates for the purpose of arriving at an untrue basis of a bond issue, or for any other purpose; but on the contrary that, whoever prepared the circular, relied for its data upon estimates honestly obtained.

In similar spirit the State sought to make something of the status of Empire Trust Company,

as transfer agent of the corporation, and of the Corporation Trust Company, as registrar of the corporation, as announced in the circular. These corporations had been transfer agent and registrar under a previous stock issue. The State proved that itself (pp. 61-66); *and that they would have borne the same function with regard to the bond issue—had it ever transpired*—there is no reason to doubt from any evidence in the case.

The remaining feature of the proof was testimony of certain banking representatives of "average balances of the corporation" at or about the time the circular was "made." This was in no sense material to the issue framed under the indictment. *Whether the corporation assets were frozen or liquid has no possible bearing on the guilt or innocence of the defendant.* One of the very reasons for a bond issue may well be the fact that corporate assets *are* frozen.

On the face of the circular the "depositories" of the corporation are named. That these had been the depositories no one denied. The State proved they had been. Nor was there any proof or showing that the "proceeds" of the bond issue, had it been carried out, as well as profit from the use of those proceeds, would not have been placed in these "depositories" and thence used for investment as stated in the circular.

There could, as shown under Point I, be no criminal intent in the present case without defendant's guilty knowledge of falsity in the statements and representations embraced in the circular. The state proved no such knowledge and hence no criminal intent.

We next consider the want of proof that any act stated or described in the statute was committed by the defendant, either within the court's

jurisdiction, or for that matter, anywhere. Were the circulars "published, disseminated circulated or placed before the public"? The State produced one witness, Dr. Norcom, who testified that he received in the mail at his home in Nutley (not in Bergen County) a circular "similar" to the one in evidence. He had destroyed the envelope. He could not tell where or by whom it was mailed, nor positively whether it reached him in an envelope bearing the imprint of the New Jersey Bond & Mortgage Company or not (p. 81, line 25). That is all there was on the subject.

Relative to this circular the Supreme Court said (Case, p. 261, line 1):

> "* * * There was proof that the circular was at least in one instance forwarded by mail to a prospective purchaser, and the circular was in itself an offer of the bonds to the public."

But the important thing is, as alleged in our brief below, that there was nothing whatever in the case to show that the defendant Silverman had the slightest connection with this circular or with the sending of it.

When the State was confronted with the motion for a directed verdict, it abandoned everything, except the proposition that there was proof that the defendant "made" the circular. There was no such proof. The only effort at such proof was by the testimony of the co-defendant Ross. And all he said was that the information for the circular "was given by Mr. Silverman and myself" to Develier, Bolton & Colt of Newark, who had been engaged to sell the *stock* of the New Jersey Bond & Mortgage Company. That it was

thus given at any place other than Newark the witness does not say. Next, he states that subsequently "the material for this particular circular came back to the office in Hackensack." That is all there is so far as Hackensack or Bergen County is concerned; material or proofs "came back to Hackensack." The witness next says that he submitted these to the defendant, who approved them, and that the witness himself "O. K.'d it." But that it was submitted to defendant for approval, or that defendant approved it, or that defendant had anything whatever to do with the proof or the material or with the circular that resulted from these, *in Hackensack or elsewhere within the jurisdiction of the trial court,* there is not a word to show.

Further effort was made by the State, through the co-defendant Lieberfreund, to connect the defendant with the circular, but without result. The witness was at the office of the company in Hackensack on February 5th, 1930. He was asked bluntly this leading question (Case, p. 189, line 20):

> "Was anything said about the circular by Mr. Silverman?"

Objection to the question was overruled. The witness answered:

> "There was a circular there, yes it was lying there, I don't know who placed it there."

This is the extent of the proofs.

But there is one thing more, of real importance, under this point we have yet to consider. It is a feature to be seen in the relation of the proofs

to the statute under which the indictment was drawn. It would seem to dispose of the State's contention that the proofs suffice to show that the defendant at least "made" the circular, within the meaning of that word in the Act. But they sever the word from the text and thus lose its meaning. The language is:

> "any person * * * who, with intent to sell * * * securities * * * offered * * * to the public for sale * * * makes, publishes, disseminates, circulates or places before the public * * * in the form of a circular, pamphlet or letter * * * an *advertisement* * * * which *advertisement* contains any assertion," etc.

So, the thing here is not a circular, but "an *advertisement*" the advertisement may be in the *form of a circular,* pamphlet or letter, but it must be an advertisement. Admitting for the moment all that the state can contend for its proof that the defendant "made" a circular, there is certainly no proof that in the "form of a circular" or anything else he made "an advertisement."

The "material" is sent to Newark, the "proofs come back to Hackensack," they were "approved and O. K.'d," the printed matter was seen in the company's office (by Lieberfreund) and *nowhere else.* We might also admit for the argument that all this made a circular (though it never circulated), but it certainly did not produce an *advertisement,* "made" by this defendant. Advertisement connotes advertising; there was none. There was never so much as an attempt to advertise. At most, it was mere *preparation,* always to be distinguished in the criminal law from an attempt.

The trial judge erred in refusing to direct an acquittal.

POINT III.

The trial court committed an abuse of discretion in refusing to order the withdrawal of a juror and to declare a mistrial, though repeatedly asked to do so, by reason of the continued eliciting by the Prosecutor of irrelevant and prejudicial matter, and the use by him throughout the trial, in his opening to the jury, in his arguments before the court, and in his examination of witnesses, of language highly prejudicial, having no relation to the issue framed under the indictment, and to the manifest wrong and injury of the defense (Specifications of Cause Nos. 3, 15-18, 21, 26, 27, 32, 36, 39, 50, 64-68, 70-72).

The specifications and assignments upon which this point is based are directed respectively to a single breach, or to a group of breaches, of necessary trial decorum.

The cases cited below on this subject deal, with few exceptions, with a single offense; none with more than two. But in the present case no adequate appreciation would be had from a separate discussion of one wrong at a time. They must be seen in toto. They really do not stand singly; they work to a cumulative result in their effect upon the atmosphere of the trial. The record is a veritable narrative of language and conduct calculated to inflame the minds of the jury and to render it impossible for them to see calmly or clearly that upon which they were called to sit in judgment.

We shall state the occurrences in the order of their happening. It started in the very opening to the jury. The prosecutor said (p. 17, line 10):

> "* * * To our mind, the basic foundation of this case is that although in 1930 the employees of this company had not been paid and although the company was not paying taxes on properties it owned, *and although it collected money from people for shares of stock of the corporation,* the corporation was just a skeleton, there was not anything else, and then Mr. Silverman, typical of the speculator of the boom days, decided that he had sold the stock, *still he was going to take another chance and fleece the public some more.*"

A motion for mistrial, the first of many, was made and denied. In denying the motion, the court said:

> "The prosecutor will be admonished not to go outside of the facts that he intends to prove to the members of the jury."

In view of what was subsequently to occur again and again, it is difficult to understand what was intended by this "admonition."

A few minutes later, the prosecutor, still in his opening, said to the jury (Case, p. 18, line 11):

> "* * * They did not have any cash, they could not pay their employees; we are going to have men from the banks here to show what their balances were. I think they had $5.00

in the People's Trust Company; *and still they had the audacity to attempt to sell $500,000.00 worth of bonds to the public, and fraudulently misleading the transfer agent of the Empire Trust Company of New York City.*"

Who the "they" were who "had the audacity to attempt to sell $500,000.00 worth of bonds to the public" the prosecutor did not say. But there was not a word of testimony in the case that the defendant himself or anyone else ever sold or attempted to sell a single bond. One of the witnesses called by the prosecutor was a representative of the Empire Trust Company referred to. Neither of this witness nor of any other did the prosecutor ask a single question, conceding for the moment the propriety of such a question, that had to do with any "fraudulent misleading of the transfer agent," either by "they" or by the defendant.

When this statement was made defendant's counsel directed the court's attention to it. The judicial response was "I do not think you have the right to question the statement at this time" (Case, p. 18, line 33).

Again, in his opening to the jury, the prosecutor said (Case, p. 19, line 8):

"* * * I don't know what other deposits there were, but to show you how fraudulent and how deceptive *they* were, the Empire Trust Company of New York, whose transfer agent we have here this morning, *would not have anything to do with Mr. Silverman's companies; they had one experience, they would have nothing to do with $500,000.00.*"

There was not so much as an offer of evidence concerning that "one experience," nor of evi-

dence to show any refusal on the part of either the Empire Trust Company, or anyone else, to do business with "Mr. Silverman's companies." But the statement was made; the density of the atmosphere was already increasing.

To the last statement also defendant's counsel objected. The court said:

> "The remarks referring to other experiences will be stricken from the record and the jury cautioned not to take notice of them."

The futility of this ruling is seen when the ruling is viewed in relation to what preceded and to all that followed it, *to none of which did the court even refer in its charge.*

The decisions in point announce the principle that something must be pardoned to the spirit of combat. We are helped somewhat in the present case to determine the stress of the prosecutor's animus by the fact that it appears before any combat had started.

So much for the opening.

Some of the worst offenses were the "coolest." One was positively urbane. Counsel for defendant was cross-examining the State's witness Coffin. The prosecutor interrupted (p. 26, line 25):

> "Q. Would this help you, or was it a later hearing? A. It was a later hearing."

The court then asked the prosecutor:

> "Is the question whether circulars were published?"

And this was the prosecutor's answer (Case, p. 26, line 30):

"*Yes, they were handed out to indivdual members of the public.* I won't press it."

Now here was something vital to the state's case, something that must be proved, but which had never happened and which could not *be* proved. Not a syllable of testimony is there in the whole case that any circular was handed out to members of the public individually or otherwise, either by the defendant or by anyone acting for him.

But the prosecutor just about supplied the needed testimony by giving it to the jury, without oath, that the circulars "were handed out to individual members of the public."

Next, defendant's counsel is cross-examining the State's witness Dean (p. 62, line 20):

"Q. Your company does that as transfer agent for the corporation, does it not? A. For corporations.

Q. For corporations? A. Yes."

The prosecutor interrupted with this, in form a question, in fact a slur:

"A. For *reputable* corporations?"

The prosecutor also tried evidently to create the impression that the defendant was concealing the records of the corporation by secretively withholding its minute book and other books. This was persisted in, notwithstanding the State's own witness, Philip L. Coffin, Jr., Assistant Attorney General, testified he had had the books, and delivered them to the receiver, later amending this with the statement, "It is either in the hands of the receiver or the successors of the

corporation, but it is beyond my control'' (Case, p. 25, line 1).

Apparently without taking the trouble to determine whether the books *were* in the hands of the receiver, the prosecutor more than once asserted in the course of the trial that it was the defense who had the books. This is how it was done. The prosecutor, in examining Matthew J. Kurtz, a witness called by the State, endeavored to show without the original records, what the condition of the company was ''six months prior to the time that the witness had left the company's employ.'' Objection was made to this under the best evidence rule, and it was sustained. Immediately the prosecutor exclaimed outright, ''You see, *the difficulty is that they have the books*'' (Case, p. 111, line 31). Defendant's counsel again asked for a mistrial. It was again denied.

But the prosecutor was not through with it. Counsel for the defendant was using a paper in his re-cross examination of State's witness Robert A. Stokes. The prosecutor asked counsel for permission to take the paper. Counsel said, ''Yes.'' The prosecutor added, *''And I want the minutes, too''* (Case, p. 132, line 19). Defendant's counsel called the court's attention to this remark of the prosecutor, but the court stated that he had not heard it.

Here is one of the questions asked by the prosecutor of the State's witness, Robert A. Stokes (Case, p. 126, line 10):

> ''Q. I mean, in so far as the place was concerned. What was Mr. Silverman's status? Was he just a small fellow in the company or was he a *big shot?*''

During his cross examination of defendant, the prosecutor mingled interrogation with aspersion. We quote from case (p. 152, line 28):

> "Q. What else did you give him (the Deputy Attorney General)? A. I don't know. I can't recall what papers were brought to his office at that time; there was a big bunch of papers over there; you could pick out whatever you wanted to, we had nothing to hide.
>
> Q. *You had plenty to hide.* You had nothing to hide? A. No."

This was giving the lie direct to the defendant. Defendant's counsel took exception to the "remarks of the prosecutor." Not a word or rebuke or admonition came from the court. The court merely observed, "The witness has answered" (Case, p. 152, line 38).

Later, in the cross examination of defendant, the prosecutor asked this question (p. 153, line 20):

> *"Didn't you take $3,000 from Mrs. Lee?"*

Earlier in the trial the prosecutor had called as a State's witness the blind woman, Mrs. Lee. He made every effort to get the utmost out of the fact that several years prior she had purchased stock of the New Jersey Bond & Mortgage Company and of the fact that payment of dividends had ceased. Of course, this had no relevancy whatever, and how harmful it was to the defendant in maintaining his defense upon the merits will soon be shown. Repeatedly the court ruled out questions asked to elicit matter of the kind indicated. But the theme was pursued in spite of these repeated rulings until it

was finally shown that Mrs. Lee had never, to her knowledge, dealt with the defendant, and all of her testimony was stricken from the record. Notwithstanding all this, the prosecutor opens the subject again in his cross examination of defendant. There could have been but one purpose in this, and one only. It had, as we have said, no conceivable relation to the issue, and why the court, in view of the experience he had already had permitted the question to be urged again, we cannot understand. Indeed, the court *expressly* permitted it, overruling objections to these questions that were based upon the same ground as that upon which the testimony of Mrs. Lee had been stricken (Case, p. 153, line 20, to p. 154, line 20).

A yet more grievous offense is the one that followed. The defendant was still on the stand. The prosecutor was striving to bring into the case the affairs of an entirely different corporation, known as Silver-Ross Company, to show that this company was owned and controlled by defendant, and that a piece of property which it had bought was sold by it to the New Jersey Bond & Mortgage Company at a "fabulous" profit. Obviously, this could have no more bearing on the issue than the matter of Mrs. Lee. Yet, both were injected into the case once more, not by any attempt at testimony this time, but by a speech from the prosecutor in the course of an argument brought on by an objection of defendant's counsel. This is what the prosecutor said (p. 157, line 20):

> "My point is that Mr. Silverman dominated the Silver Ross Company. The Silver Ross Company sold this particular property to

> the New Jersey Bond & Mortgage Company. In other words, *Mr. Silverman had bought it for $30,000, then sold it to the corporation, of which this Mrs. Lee was a stockholder, for some fabulous sum of $300,000.*''

The court allowed the ''question''! *Nothing in the prosecutor's diatribe conformed to the fact or to the proof.* He was given the widest latitude and substantiated nothing. But the damage was done.

Occasionally the trial court would try to bring the prosecutor back to the rules of evidence. But on at least one occasion the prosecutor did not so much as halt.

At page 160, line 25, the prosecutor is endeavoring to dig deeply into a transaction utterly collateral to anything in the case. It had to do with a mortgage transaction between defendant and one Braunstein. This is what occurred:

> ''Q. Who made the mortgage? A. Mr. Braunstein borrowed $69,000.00 from Dr. Berman; it was back in 1925, 1926 or 1924—I don't remember when it was, it was years ago.
>
> Mr. Goldenhorn: I want to object on the ground that it is long anterior to the transaction.
>
> The Court: *How can this be material, Mr. Prosecutor?*''

Apparently without response to the court's question, the prosecutor continued his inquiry (Case, p. 160, line 36).

A few minutes later, in an argument concerning the propriety of a question asked by him of

the defendant, the prosecutor said this (Case, p. 166, line 28):

> "Now, if he was telling the truth before Mr. Coffin, *he isn't telling the truth today.*"

Defendant's counsel promptly objected:

> "That is an unwarranted statement for counsel to make,"

and asked for a mistrial. The court immediately denied the motion and permitted the question.

Shortly thereafter, in a question asked by the prosecutor, the latter referred to defendant's business as the real estate "game." Defendant's counsel objected to the use of the word "game." The court overruled the objection (Case, p. 169, line 20).

Next, apparently out of sheer impulse only, the prosecutor insinuated into the case that defendant had absconded with the funds of the corporation. He was questioning the defendant as to the years during which the latter had been president of the company. In one of his answers defendant fixed the time by a reference to the year he "went to Europe." This seems to have presented an opportunity, for the very next question is:

> "Q. *With some of the money?*"

Defendant's counsel objected. But the court said:

> "The question was not finished" (Case, p. 174, lines 1-20).

And once more the prosecutor turned to the subject of the blind Mrs. Lee and the sale to

"that woman" by your company of $3,000's worth of stock. Defendant's counsel objected. The court sustained the objection. But the prosecutor paid not the slightest heed. His next question was:

> *"Did you promise Mrs. Lee dividends?"* (Case, p. 174, line 20).

The next episode is one in which the prosecutor just above gave the lie direct to the defendant, still on the stand in his defense. He asked defendant to name the "nominees," persons to whom certain allotments of shares had been made. The defendant responded that he did not know, saying to the prosecutor, "You have a list of the names." To this the prosecutor responded, *"You know who* the names are." Defendant's counsel objected "to this argument between the prosecutor and the witness." *The court expressly allowed it* (Case, p. 175, line 29).

Shortly thereafter there was apparently a new "high." We judge so from the fact that at the bottom of page 180, defendant's counsel objects:

> "I must respectfully insist that the attack of the prosecutor is highly prejudicial. He is trying him as if he was confronting a thief; I don't think he is entitled to that treatment."

The prosecutor interrupted:

> *"I only wish I could say what I want to say in reply to that."*

This, in view of all that had preceded it, in the atmosphere in which it was said, could have had but one meaning to the jury. The court then

asked defendant's counsel what he was taking exception to. He was told to "his manner of approach, the language he uses, his intonations, his insinuations with his remarks conveyed to the ladies and gentlemen of this jury." *This objection was overruled.*

We have reserved to the last the episode of the blind witness, Matty R. Lee. Though we must recount passages, the official record of it should be read in full. It is naturally graphic, from her being "*escorted to a seat in front of the jury by one of the officers of the court, because she is blind,*" to the striking out of her entire testimony because it was irrelevant, incompetent and immaterial. Her examination by the prosecutor and the arguments provoked by it run through eighteen pages of the record (pp. 85-103). This shows how the State exploited in turn her age, her affliction, her poverty, the failure of her dividends, the ordeal through which she had been put on the stand, and the persistent asking of suggestive, highly prejudicial and irrelevant questions. Even this was one of the questions:

> "Q. How long have you been blind?" (Case, p. 93, line 10).

Surely, here was a situation with which it must be humanly presumed no defendant, whoever the person or whatever the charge against him, could fairly cope.

Objections to improper questions availed nothing nor, for that matter, did the sustaining of these objections. The prosecutor continued on his course. He went so far as to tell the contents of a statement that the witness had made to the prosecutor's investigator (Case, p. 88, line 28).

While right at this juncture the jury had, for a few minutes, been excluded from the room, defendant's counsel moved for a mistrial (Case, p. 88, line 40):

> "Mr. Goldenhorn: I move for a mistrial in the remarks addressed to the court. *He addressed them so loudly they must of necessity have been heard through the one single door into the jury room where the jury was confined;* that they are highly prejudicial and injurious to the rights of my client. On that ground I ask for a mistrial."

It was denied.

Shortly thereafter, when the jury had returned, the prosecutor stated to the court in their presence (Case, p. 94, top):

> "First, I asked *while the jury was outside if this defendant had made certain statements.*"

Again there was a motion for a mistrial and again it was denied.

The prosecutor wanted to show that "Mr. Silverman *or someone* went to her house" (p. 93, line 35).

And once, when the prosecutor had finally reached an impasse with the court, he asked if he might proceed with questions that *"I think are proper"* (Case, p. 97). Leave to do that was given. The very next question asked by the prosecutor was upon the very inquiry that had been ruled out (Case, p. 97).

The court, having repeatedly ruled out questions relating to the witness's purchase of stock

in the corporation (a thing occurring years before the existence of the circular, and having no possible bearing upon anything within the purview of the indictment), relented to the extent of permitting the prosecutor to show that the stock certificate was one issued by the New Jersey Bond & Mortgage Company, *and actually inquired of defendant's counsel if he was not willing to stipulate on the record "that this lady was a stockholder in the New Jersey Bond and Mortgage Company"* (Case, p. 98, line 34).

The concluding phase was the argument between the court and the prosecutor that followed upon defendant's motion to strike the witness's testimony from the record (Case, p. 102, lines 1, et seq.):

> "The Prosecutor: Anything that this woman said that is material to the issue to effect admission of interest against Silverman's interest.
>
> The Court: I don't think she testified she had any conversation with him.
>
> The Prosecutor: *I do. I thought she said she talked to Mr. Silverman. I think the record will bear me out. I think this woman has been through an ordeal and I move to withdraw her at this time.*
>
> The Court: There is a motion here to strike out her entire testimony. I have to rule upon it. If you consider any part important, I will hear you.
>
> The Prosecutor: I consider the particular fact that *she talked to Mr. Silverman and said she didn't receive dividends is material,* when he later tries to put out a circular saying that the company was in good condition.

> The Court: I will strike out the entire testimony and caution the jury to disregard it. I will deny the motion for a mistrial. I might say that I do not consider a share of stock an obligation of the corporation, and even if it were true, that dividends had been promised or guaranteed on a share of stock, I do not see how it can be material."

All this was in the presence of the jury. But the court in its charge did not "caution the jury to disregard it."

It is respectfully submitted that any one of the exceptions taken or any one of the defendant's objections overruled while this witness was on the stand, should work a reversal of the conviction because of manifest wrong and injury to the defendant in maintaining his defense upon the merits.

It was entirely the State's performance. The defense had no part in it. It did not bring Mrs. Lee there. It was in no way bound or legally affected by anything she had said; and though the defense had done nothing to occasion any show of severity toward her, it could only stand helplessly by while the trial court said "it does not make any difference if she is blind or not", threatened to "put her out of the courtroom" (Case, p. 94, lines 33-40) and later to hold her in contempt (Case, p. 99, line 18). But, who can doubt that it was the defendant who "paid" for it? Who can doubt that the reflex of the compassion engendered by all this in the hearts of the jury was bitter resentment against the defendant, who had "sold stock" to the "blind woman", and that this resentment was carried

into their verdict, *though there was not a word of testimony in the case that he had ever had a transaction with her in his life; nor, if he had, that the business was not in every way proper, nor that the stopping of dividends was due to any wrong or fault of his.*

All that the Supreme Court says about the "blind woman" in its opinion is that her testimony was stricken out. It must be apparent that the striking out of this testimony, considering all that had accompanied the giving of the testimony, must have been utterly futile. The testimony may have been stricken out. But the spectacle of this unfortunate woman, the "ordeal" to which she had been subjected, the emotions that this must have aroused in the jury certainly were not stricken out. It is not in human nature that the mere formal technical entry of a record on the minutes that the testimony of Mrs. Lee was stricken out could have had any effect whatever on the psychological state of the jury created by the entire episode. It is not apparent from the record that the jury were ever directly told that the testimony was stricken out.

In State v. Ferrone, 116 At. 336 (97 Conn. 258), the Connecticut Court of Errors had before it a conviction of one possessing burglar's tools. There was an inference drawn in the argument of state's counsel from the fact that accused when arrested had cash and Liberty bonds on his person, and there was a reference to defendant's appearance and character, and he was called "The burglar." The argument was unfair and the conviction was reversed. The court said at page 340:

> "In the enforcement of our rules we have not and shall not forget the ardor of advo-

> cacy and the excitement of trials and the temptation which is apt, under such circumstances upon occasion, to carry away even experienced counsel. We repeat: 'Counsel must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument. State v. Laudano, 74 Conn. 638, 646, 51 Atl. 860, 863.' But when every reasonable allowance is made the trial court as well as the court of review must insist that fairness in the trial and in the argument shall be observed. What was said in State v. Ferrone must never be forgotten: 'The purpose of a criminal trial in this state is not more to punish the guilty than to discharge the innocent.' "

In State v. Hernia, 68 N. J. L. 299, our Court of Errors and Appeals had before it a conviction of murder in the first degree, resulting from a trial in which the prosecutor in his summation indulged in fervid impertinence derogatory to the defendant personally. This was pronounced by the appellate court to be reprehensible.

What is more important to note, however, is the manner in which the appellate court dealt with the assignment of error based upon the prosecutor's breach. What defendant's counsel did at the trial was simply to request the trial court to give adequate cautionary instructions to the jury against what the prosecutor had said. And the appellate court is careful to indicate the restricted scope of the grievance before it on error, that "*no other request was made* and no excep-

tion to the instruction was taken." We respectfully submit that the very plain implication of what Justice Garrison says in his opinion is that another result might well have been reached had counsel not made merely the request he did, but had "*requested the court to stop the trial.*" In a word, the decision of the Court of Appeals to sustain the conviction, is based upon the proposition strictly taken that the trial court had been asked by defendant's counsel to do one definite thing in the face of what had occurred, and that the trial court did *precisely what was asked of it.* We quote from the opinion (p. 304):

> "The legal aspect of this branch of the case is that the trial court, when requested by the counsel for the prisoner to instruct the jury with reference to the remarks of the prosecutor, did as he was requested; *that no other request was made and no exception to the instruction was taken.* No error is assigned upon this point, but under his statutory causes for reversal, counsel asks this court to set aside the verdict because the prosecutor erred in using the language above cited, and because the court 'did not denounce the language sufficiently strong to take away the prejudice that had already formed in the minds of the jury.' These matters do not come within the reviewing power of this court, proceeding as at common law, *and in the present case are not brought within the broader procedure sanctioned by the statute.* The complaint is not with respect to a ruling upon testimony or to any error in the charge of the court. *No matter of discretion is involved, as might have been*

> *the case had the trial court been requested to stop the trial.* The court was requested by counsel representing the prisoner to instruct the jury, and did so in an unexceptionable manner."

Where the decisions sustain a conviction notwithstanding unfair conduct at the trial, it is mainly upon the ground that the objectionable language is to be justified or excused, as bearing some relation in truth or pardonable comment to the character of the case made out by valid proofs. (In the present instance the offenses committed were extraneous to the issue in the widest sense.) For an illustration, see State v. McCormack, 93 N. J. L. 287, where the court said:

> "It is next argued that there should be a reversal because the prosecutor of the pleas in his summing up to the jury characterized the defendant as a 'crook'. We think not. *The evidence tended to show that the defendant committed the assault and battery upon the complaining witness because of her refusal to respond to his improper demands for money. In view of this* we think the prosecutor was within his privilege in making the statement objected to."

See also to the same effect State v. Lang, 75 N. J. L. 1. In the latter case the assignment was directed to language used by the prosecutor as follows:

> "The defendant was 'a monster in his passions, licentious in his desires, beastly in his love, brutal when thwarted, and cowardly when caught.' "

This language is excused by the court because it was found to be *"within the four corners of the evidence."* And the court is careful to expound the effect of the evidence as follows:

> "The defendant was the uncle of the girl whom he killed, a brother of her mother; it was fairly to be inferred from the proofs that he desired to marry her, notwithstanding the fact that a marriage between them would have been incestuous, and that if this could not be accomplished, he desired to have her submit herself to his embraces without the sanction of a marriage ceremony. The proofs also fairly support the inference that he killed her because she refused to submit herself to his wishes."

And the court continues (at p. 8):

> *"In view of these facts,* it seems to us that the prosecutor was within his privilege in making the statement which was objected to. It is necessary for the proper administration of justice that, in the summing up to the jury, counsel shall be given the widest latitude *within the four corners of the evidence,* and so long as he confines himself to the evidence, what is said by him in its discussion, by way of comment, denunciation or appeal, affords no ground of exception."

No influence wrought upon this trial by the calling of the blind witness and by the language and conduct of the prosecutor could be said to have arisen from anything "within the four corners" either of the evidence or the indictment.

The burden of resisting the state's proof under the charge it makes is the lot of the culprit. But it is not prosecution, it is persecution; it is not trial justice, but oppression and pursuit to compel a defendant to go beyond this legitimate onus of his plight and to combat as unseen and incalculable enemies those elemental human reactions of hatred or suspicion, motivated by factors altogether foreign to the issue. These are ad hominem forces; they are directed not to the offense alleged and in no way concern it, but to the defendant personally.

Due procedure and precept for the conduct of trials are designed to serve the surest promotion and the least hindrance of impartial justice, within the bounds of human possibility. But where the mental and emotional stability of juries — questionable enough in any case — are heedlessly subjected to the mounting exploitation of irrelevant themes whose normal effect is to touch the deepest springs of inimical feeling, there can be no ground left for the pretence that the trial was without manifest wrong and injury to the defendant.

Nothing in the prosecutor's disesteem of the defendant personally can ever justify a breach of those canons of deportment without which trial justice can never be assured or even expected. Precedent makes law, and when abuses of the kind in question are permitted because of what some might believe to be the lack of personal merit in him who happens to be in the role of defendant at the time, they stand nevertheless as law, to endure for other days and other times, to serve in the trials of other men whose fault may be not so much that they ran foul of the law as of those who represent it. That the law should

be no hater of persons cannot be less important than that it should be no respecter of persons. These are the two sides of one salutary shield.

Official animus has no better place in the forum of justice than popular clamor, and against invasion of the latter our highest courts have maintained an unrelenting defense. We can do no better than quote a passage from the opinion of Justice Ladd, of the New Hampshire Supreme Court in State v. La Page, 57 N. H. 245, at page 301:

> "But popular clamor, however loud, cannot be permitted to invade this place without imperiling the most sacred rights of the innocent as well as the guilty. The rule which we apply in the trial of a wretch who has ravished and killed an innocent girl, and then, with the incarnate spirit of a fiend, torn and cut and mutilated her body in a way that causes the blood to curdle and the heart to rise in almost uncontrollable rage, is the same rule which we must apply to the trial of the innocent victim of a wicked and audacious conspiracy, or of one who, without fault, has become entangled in a mesh of circumstances which threaten an innocent life" (State v. Greenleaf, 54 Atl. 44).

Commonwealth v. Turi (Pa. Sup. Ct. 1929), 144 Atl. 761:

> "Propriety of prosecuting attorneys remark depends primarily on whether they are mere assertions to inflame juries passions or fair deductions from the evidence."

State v. Moran, 121 At. (Conn. 1923), page 277:

"Where while accused was under cross examination on the witness stand an assistant of the prosecuting attorney said in the presence of the jury, 'He sits there as a perjurer upon that stand,' and the court refused to declare a mistrial and dismiss the jury as requested by accused's counsel, merely saying to the jury that it was for them to decide after the evidence was closed whether the witness was telling the truth or not, *and no effort was afterward made to remove the prejudicial influence of such statement, there was reversible error.*"

Commonwealth v. Wilcox (Pa. Sup. Ct. 1934), 173 Atl. 653:

"Whether judgment will be reversed for remarks of district attorney depends in part on court's attitude following objection and probable effect of remarks *as reflected in the verdict.*"

In the latter case the court held that the language of the district attorney was cured by cautionary instruction to the jury. That instruction is set forth at length in the opinion, and it would seem to have been most scrupulously given.

But in Commonwealth v. Williams, 164 Atl. 533, decided not long prior to the decision in the Wilcox case, the same appellate court dealt with an assignment based upon intemperate language of the prosecuting attorney in a case where no effort was made to correct it by cautionary precept to the jury. The court reversed the conviction. As in the present case, there were repeated motions for a mistrial; and as in the present case

also, the jury were not cautioned. The court's comment was (p. 534):

> "The court's attention was called to these improper remarks through exceptions, and although proper instructions might have cured the error the jury were not instructed to disregard them."

The court adds:

> "Improper remarks and unfair arguments made during the trial, especially of a case involving a serious criminal charge, have heretofore been emphatically condemned by this court. We must again forcibly repeat 'that the district attorney is a quasi-judicial officer, representing the Commonwealth, which seeks no victims, but only justice; that, since he is invested with these grave responsibilities, he should, at all times, conduct the Commonwealth's case fairly, present it in an impartial manner, and avoid seeking to influence the jury by arousing their prejudices.' (Cases cited.) It is to be regretted that all members of the bar do not always keep in mind what was said by this court years ago, that 'A cause is not well tried unless fairly tried, and a verdict obtained by incorrect statements or unfair argument or by an appeal to passion or prejudice stands on but little higher ground than one obtained by false testimony. * * * The winning of a verdict should be a hollow reward to the advocate who has brought it to pass by appeals to a jury's prejudices and not by the strength of the case presented. Such

verdicts are, moreover, worthless, for the courts will not let them stand. It is one of the duties of trial judges to keep the argument and remarks of counsel within proper bounds.' "

Commonwealth v. Schultz, 170 Atl. 462, Superior Ct. Pa. 1934:

"Whether remarks of counsel warrant granting of new trial depends largely on atmosphere of trial."

On motion in arrest of judgment (Case, p. 208, line 16), counsel for defendant said:

"Your Honor struck out all of her (Mrs. Lee's) testimony, and *in the face of your Honor having struck out her testimony, the learned prosecutor stood before the jury and adverted to the fact that this complaining woman had been cheated and defrauded, not in such words, but in substance.* Now, I say that was highly prejudicial, highly illegal and highly improper."

Neither the court nor the prosecutor denied this statement.

The trial below should have been stopped, and the refusal to stop it was error.

The Supreme Court found that the Prosecutor's conduct is "subject to criticism and not to be commended in orderly judicial proceedings." It concluded, however, that it was not sufficient to require a mistrial (Case, p. 261, line 25).

In a word, the court condemned what it approved. And this approval we respectfully submit

is momentous. We can well forget the personal fortunes of this defendant, but we must not forget that precedent makes law, and that judicial approval of what occurred in the trial below shall stand for a canon of trial conduct. It is the hard case that makes bad law. But that is signally so where the trial deportment of a prosecuting officer that is doubtful, to say the least, is up for sanction and approval. As we have observed, the Supreme Court condemned, but it also approved. The condemnation passes. The approval stands. If that approval is to be re-affirmed in this court, it will mean that in the trial of a criminal case in this state a prosecutor is free to state injurious matter that is not within his proofs (Case, p. 18, line 11); and to state prejudicial matter that is not within the purview of the indictment (Case, p. 17, line 10); to affirm things vital to the State's case, though not within the proofs (Case, p. 26, line 30); to slur the defense by the imputation of disrepute (Case, p. 62, line 33); to give the lie direct to the defendant while testifying as a witness in his own behalf (Case, p. 152, line 28); to submit the proposition, not in summation but while testimony is still being taken that the defendant is not telling the truth (Case, p. 166, line 28); to impugn the defendant with personal baseness, unrelated to anything in the indictment upon trial (Case, p. 174, lines1-20); to express the wish that he were free to say what he might of the defendant's personal character and insinuate that he is unduly hampered by the restriction (Case, p. 181, line 1).

Nor must it be forgotten that a designing prosecutor, if this record is approved, might expand the mischief by simply multiplying the variety of

its form. The law involved in the precedent to be made of this case will be law for this defendant only in its least aspect. In its largest, it will be law for all the people. If a prosecutor is free to do what this record shows was done, the presumption of innocence could easily be overcome and reduced to an abstract theory.

POINT IV.

The State's witnesses Ross, Kurtz and Lieberfreund were indicted jointly with defendant, the trial being moved against the defendant alone, upon a severance. When requested to do so the trial Judge should have cautioned the jury relative to the testimony of these co-defendants and it was error to decline (Specifications of Cause Nos. 45, 46, 47).

The importance of this point is in the fact that it was upon the testimony of the co-defendant Ross that the State relied for support of its theory of the "making" of the circular by defendant. Ross was office manager, in regular attendance. The court was specially requested to caution the jury in considering the testimony of Ross and the other co-defendants. The prosecutor objected and the request was declined (Case, p. 202, lines 20-40).

We do not dispute the competence of accomplices as witnesses, nor that their testimony may not prevail without corroboration. Those questions have long been settled. What we urge is that standing with these is the related rule of caution, and that the court was obliged to apply that rule, upon the request that he do so.

In State v. Hyer, 39 N. J. L., at 601, this court said:

"The legal competency of accomplices as witnesses is clearly established. Indeed, it is said to be the policy of the law to invite such persons to come forward and expose undiscovered participants in their guilt. Jordaine v. Lashbrooke, 7 T. R. 609. Yet, tainted as they are with confessed criminality, and testifying, as they often do, under the strong motive of hope of favor or pardon, *it is but natural to withhold from them that faith in their testimony which we accord to the upright, disinterested and innocent.* It was reasonable that courts should regard their testimony with suspicion and look carefully into the secret motives that might actuate bad minds to draw in and victimize the innocent; and, consequently, *there has grown up in the courts a settled practice quite universal, and entitled in its observance almost to the reverence of law, to advise jurors, in the strongest cautionary terms, not to convict defendants on such testimony, unless they can find corroboration in the testimony of other and unsuspected witnesses,* upon such material circumstances as tend directly to establish the guilt of the accused. *And quite frequently do the courts, in their discretion, direct juries to acquit and set aside verdicts founded on the testimony of uncorroborated accomplices.*"

In the same case, at page 603, Lord Ellenborough, in Rex v. Jones, 2 Camp. 131, is quoted:

"No one can seriously doubt that a conviction is legal, though it proceed on the evidence

of an accomplice. Judges, in their discretion, *will advise a jury not to believe an accomplice, unless confirmed.*''

In the same case, at page 603:

''Alderson, B., in Rex v. Wilkes, 7 C. & P. 272, in summing up to the jury, says: 'You may legally convict on the evidence of an accomplice only, if you can safely rely on his testimony, *but I advise jurors never to act on the evidence of an accomplice only, unless he is confirmed as to the particular person charged with the offense.*'

''The same language substantially was used by Lord Abinger, C. B., in directing the jury in Reg. v. Farler, 8 C. & P. 106. In the case of Reg. v. Stubbs, 33 E. L. & Eq. R. 552, at the trial before the Durham Sessions, corroboration of the testimony of an accomplice as to the connection of the prisoner with the offence was wanting, and the chairman instructed the jury that corroboration as to each prisoner was not necessary. The correctness of this direction was reserved for the judgment of the Court of Criminal Appeal, and it was unanimously decided by that court that it had no power to interfere. Chief Justice Jarvis says: 'It is not a rule of law that accomplices must be confirmed, in order to render a conviction valid, *but it is usual in practice for the judge to advise the jury not to convict on such testimony alone.*' ''

State v. Hyer, supra, embraces a survey of the high English authorities to which our principle of law on the subject is traced. It is there-

fore of great importance that we set forth the conclusion reached by this court upon that survey:

"It will be found, on examination, that the rule in this country is the same. In 1 Whart. Crim. Law, Sec. 783, the author states that the preponderance of authority in this country is that a jury may convict a prisoner on the testimony of an accomplice alone though the court may, at its discretion, advise them to acquit unless such testimony is corroborated on material points. And in the note in the sixth edition, a number of American cases are cited in support of the statement in the text. *These cases recognize the same practice in our courts, to caution and advise juries against conviction upon such testimony alone.* The corroboration which they are directed to look for, must be upon matters material to the guilt of the accused, not as to the fact of the crime, merely, *but upon matters which connect the prisoner with the crime committed, and the number of accomplices testifying has no effect to dispense with or lessen the need of supporting proof.* Such proof must come from sources untainted by the particular crime. They will show, further, that this is a practice, merely—one, it is true, *of high obligation on courts to observe*—and that it is not a rule of law. If this be the state of the law, then the defendant was not entitled to the instruction asked for had the witness been, in the law, particeps criminis. The instruction requested was, that as matter of law, a conviction based on the testimony of an accomplice could not be supported. This instruction was not his right.

> *"It is extremely unlikely that, in the interests of justice, any judge, in a proper case, would neglect much less refuse, to give, on request, such caution to the jury, as the circumstances of the case required;* but if he should—it being a matter of discretion with him—errors could not be assigned on the refusal."

Of course, matters of discretion are now assignable, where the action worked manifest injury, as contended here.

If indeed it be matter of "high obligation on courts to observe" the practice of cautioning jurors against accepting the testimony of accomplices, it cannot be doubted that in the present instance manifest wrong and injury *were* done to the defendant, because the court not only did not impart such caution, but directly refused to do so when requested. Considering the atmosphere engendered at the trial, no justification for the court's refusal to caution can be seen in the reason assigned by him. He required that the request be in writing, and demurred to granting it because it came "too late." The fact remains that a cautioning of the jury, regardless of any request to do so, was matter of "high obligation on the court to observe."

The consistency with which the authorities on this subject, though holding that uncorroborated testimony of an accomplice is sufficient whereon to base a conviction, nevertheless stress, almost to the point of solemnity, the duty and "high obligation" upon courts to impart direct caution, is indeed impressive.

In State v. Simon, 71 N. J. L. 142, this court had before it an assignment based upon the trial

court's refusal to charge that "there must be corroborative evidence of the witness (an accomplice) before the jury can convict on his evidence alone." The refusal to adopt such a charge was of course held to be not erroneous. But what this court called especial attention to was the care and emphasis with which the trial judge warned the jury relative to the testimony of the witness in question.

Just how firmly incumbent upon courts is the practice of cautioning juries in this regard may be seen from the fact that this court in State v. Simon, supra, went so far as to consider the character of the warning given in that case as presenting a possible ground of reversal. Referring to the words in which the caution was imparted, the court says at page 145:

> "While the caution was not precisely in line with the *usual practice of the courts,* yet since the matter was one of discretion with the trial judge, this departure is not a ground for reversal."

The decisions in this state qualify the rule that a conviction may stand upon the uncorroborated testimony of an accomplice by the "obligation" of the trial court to warn the jury against such testimony. This court in State v. Goldman, 65 N. J. L., at 395, states the New Jersey law as follows:

> "It is held in this state that convictions for crime *under proper cautionary instructions* from the court, may be sustained when only the evidence of the accomplice is relied upon."

And to the like effect is the holding of this court in State v. Rachmann, 68 N. J. L. 120:

> "A jury in this state may convict even on the uncorroborated evidence of an accomplice, *the court having properly cautioned them of the force of such evidence.*"

In State v. Lyons, 70 N. J. L. 635, the Court of Errors and Appeals had before it a conviction of murder in the first degree. One of the assignments was directed to a passage in the court's charge relative to the sufficiency of the evidence of a witness for the state, an accomplice. This passage was sustained by the court on the ground of its serving the legitimate purpose of caution. Chancellor Magie, speaking for the court, said (p. 647):

> "I do not, however, understand that the judge intended his instructions to extend beyond the cautionary advice *usually and properly given to juries* respecting the evidence of an accomplice."

In the case of State v. Lieberman, 80 N. J. L. 506, this court had before it a situation similar to the present one, where one indicted with the defendant and against whom the indictment had been nolle prossed, appeared as a witness in behalf of the state. But the question in that case did not turn upon any refusal to warn; it had to do strictly with the accuracy of a request to charge, and which request was obviously not a valid one.

Another case that clearly couples the New Jersey rule governing the testimony of accomplices

with the related rule of caution, is State v. Bossone, 88 N. J. L. 45, where Justice Swayze, speaking for this court, said at page 47:

> "There was no error in charging that the defendant might be convicted on the unsupported evidence of an accomplice. *The trial judge properly cautioned the jury* as to the weight to be given to such evidence."

In State v. Bien, 95 N. J. L., Justice Bergen, speaking for the Court of Errors and Appeals, says at page 480:

> "The point made by the plaintiff in error is, that the effect of this charge was to place the evidence of detectives upon a higher plane than the evidence of customers. The answer to this is that if we assume that the detectives were accomplices, nevertheless the jury may convict upon their testimony without corroboration if they believe their testimony, and a verdict based upon the uncorroborated testimony of the accomplices would be a legal verdict, *although it is customary to instruct the jury to accept the uncorroborated testimony of an accomplice with caution, as he might,* for his own protection, throw the blame from his own shoulders to those of another. Such caution was not given in this case, but we are *merely dealing with the request which did not include any suggestion that the jury should be so cautioned;* all the request contained was that the jury should never convict upon the evidence of an accomplice unless corroborated. This the Court was not bound to charge, although it did, and *it was*

not requested to caution the jury regarding the acceptance of the testimony uncorroborated.''

The force of this pronouncement upon the present argument in its plain indication that the court was *obliged to caution upon request,* and that the failure to caution was excused in the Bien case only because the question presented to the court was one having to do strictly with a request to charge that was invalid.

In the present instance there was no such invalid request, the request here having to do merely with cautionary instruction which the court was asked to give (Case, p. 202, line 20).

From the authorities cited by Chief Justice Beasley in State v. Brien, 32 N. J. L. 414, it appears that one jointly indicted with a defendant who is separately tried, and who is called as a witness for the prosecution upon such trial, falls in the same category as an accomplice. The question considered by this court in State v. Brien, supra, was the competency as a witness (upon the theory of his status as tantamount to that of an accomplice) of one who was jointly indicted, upon the separate trial of another named in the indictment. Chief Justice Beasley says:

> ''Lord Hale * * * appears to have entertained no doubt that the witness under the circumstances stated was competent; and in another place, considering the subject of the admissibility of accomplices, says, in laying down the usual practice, 'The party that is the witness is never indicted, because that doth much weaken and disparage his testimony, but possibly not to wholly take away his testimony.''

That the rule relating to the testimony of an accomplice is not to be separated from the principle requiring cautionary precept to the jury appears also from State v. Mohr, 2 N. J. Misc. 241; 127 At. 348 (not in official reports). The trial court was sustained in its denial of the requests to charge but the request was invalid. And here, too, the Appellate Court is careful to set forth in full the caution imparted to the jury. We read:

> "It is also contended as error that the court refused to charge that the testimony of an accomplice must be received with great caution, and the testimony of a fellow conspirator, not corroborated, is entitled to little credit. We think that request was properly refused. The credit to be given to a fellow conspirator or an accomplice is a matter to be determined by the jury, and the court *properly charged* that in considering the testimony of the so-called accomplices, or fellow conspirators, the jury should keep in mind their relation to the situation, viz., that they stole the automobile which the defendant was charged with having received, and weigh it carefully because of that relationship, and that the jury should also consider the extent to which their testimony had been corroborated by the other witnesses upon the subject. State v. Rachman, 68 N. J. L. 120, 53 A. 1046."

The trial court committed error in denying defendant's request that the jury be cautioned.

POINT V.

In disposing of motion by defendant's counsel that was tantamount to a special plea in bar of the indictment, the trial court excluded the jury. This was error (Specifications of Cause Nos. 57-60, 62, 63).

The defendant about a year prior to the presentment of the indictment was subpoenaed to appear as a witness at a hearing held by an assistant attorney general of New Jersey under the authority of the so-called "Blue Sky Law." As amended by Chapter 52 of the Laws of 1930 (paragraph 6) the act provides for immunity from prosecution for persons giving testimony at inquiries held under its authority. The pertinent language is:

> "If any person shall ask to be excused from testifying * * * or producing any book, paper or any document before the Attorney General, or officer conducting the inquiry * * * upon the ground or for the reason that the testimony or evidence * * * may tend to incriminate him or convict him of a crime * * * and shall, notwithstanding, be directed by the * * * officer conducting the inquiry to testify * * * he must none the less comply with such direction, but in such event he shall not thereafter be prosecuted * * * for or on account of any transaction, matter or thing concerning which he may testify * * * and no testimony so given or produced shall be received against him upon any criminal action, investigation or inquiry."

Upon the trial, defendant invoked the provisions of this statute. His counsel, before the im-

paneling of the jury, asked leave to withdraw the plea of not guilty for the purpose of adducing evidence to show that the indictment was found solely upon the testimony of the Assistant Attorney General by whom the information resulting therein had been elicited from the defendant at the statutory hearing, and of establishing the right of the defendant to the immunity provided (Case, p. 14, line 25). The indictment had been pending three years without trial and the court declined the motion, in this language: "You have had four (sic.) years in which to make this motion. I will not entertain it at this late day" (Case, p. 15, line 31).

Thus matters stood until early in the trial, when the prosecutor sought to elicit the reading by the witness Voorhees of a purported transcript of the testimony given at the statutory hearing by the defendant (Case, p. 34, line 18). To this defendant's counsel objected, urging as grounds those embraced in the previous motion for leave to withdraw the plea of not guilty. The trial judge thereupon reversed his position in the matter and virtually called upon counsel to adduce the proof to substantiate the factual basis of the objection he had made. What the court said was:

> "You are not offering any proof to substantiate your argument, are you?" (Case, p. 34, line 36).

The following colloquy then ensued:

> "Mr. Goldenhorn: I wanted to do that earlier in the day. I cannot do that until I get into my defense, under your Honor's ruling. But it must be apparent to your Honor that all of this testimony, even that

adduced by him under subpoena which shows that he did not voluntarily come. Now he gives this testimony after the State has gotten all the information it can and has him indicted. I submit that is illegal.

The Court: I have not ruled on the other question *because it has not been presented to me.* Do you intend to make your objection without proof?

Mr. Goldenhorn: I object at this time, unless your Honor will give me an opportunity to produce Mr. Silverman and other witnesses to show how the testimony was obtained.

The Court: I will permit that."

At this point what we have is in full legal effect the permission by the trial court to defendant to interpose a special plea in bar of the indictment upon the ground of statutory immunity, and the raising of an issue thereupon which required disposition in disputed matters of fact by the verdict of a jury.

Witnesses were called pro and con under this special issue, and their testimony, with the incidental argument of counsel, appears in the State of the Case from pages 35 to 45. All of this was done in the absence of the jury, and the result of the testimony, of which the jury had heard not a word and concerning which it was permitted to have no part, *was the simple ruling by the trial court that the objection previously made to the reading of the transcript of defendant's testimony at the statutory hearing was overruled.*

Now the record shows that the exclusion of the jury was brought about by the suggestion of de-

fendant's counsel, made in this language (p. 35, line 28):

> "Goldenhorn: Your Honor, are you going to listen to this in the presence of the jury? I think we ought to hear it without the jury.
>
> The Court: The jury may retire for a few minutes."

But there can be no denying that all issues of fact under a special plea in bar like that here in question must be determined by a jury finding. There was no authority whatever for the court's sitting in full determination upon facts and law alike, as was done in the trial below. Regardless of the part taken by defendant's counsel in the exclusion of the jury, it remains that the trial court was bound either to exclude the application to go into the question before him or, upon permitting it, to deal with it according to law. As matters stand upon the record before this court, the jury did not function through the entire trial.

Notwithstanding any informality in the manner or method of raising the special plea in bar, it was in dealing with the substance of that plea, which the court permitted, that the court erred. It might perhaps have required that the plea be in writing. It did not do so. It might perhaps have denied leave to go into the question at all. It did not do so. But, having ruled that the question of immunity after the manner of a special plea in bar be gone into, it was error for the trial court to so widely deviate from the required procedure as to exclude the jury, the only proper triers of the factual questions involved, from the courtroom.

Indeed, not only was there no finding of fact by the jury under the special plea, but *there was none found by the court either, and the defendant was entitled to one.* All that the court did was simply to overrule the objection directed to the reading of the transcript of the statutory hearing. Though it seems not to have been appreciated, what was really involved was a question of immunity from the prosecution in toto. In and by the first motion defendant's counsel made, and which the court denied, that immunity was invoked. And though in form the question upon which the court reversed its ruling was an objection to the reading of the transcript, nevertheless in truth and substance the *whole issue upon which the question of immunity turned was thus by the court's ruling admitted into the case.* The claim for immunity was pressed upon the trial court, and there was no right to diminish that claim to a mere objection to a single line of testimony in the trial, because if the objection to the testimony was good, *it followed of necessity that the claim to immunity was good, for the facts that determined the one likewise determined the other.* The two could not be separated. So that upon no aspect or theory of the case did the trial court have any right to act as trier of the factual issues under the special plea in bar, nor, having assumed to act as such trier, to determine the facts by a mere overruling of an objection to the testimony of the witness Voorhees.

In State v. Caprio, 98 N. J. L. 13, this court had before it a record in which a special plea in bar upon a claim of statutory immunity had been made below. The procedure followed in that case under the special plea is in accord with

the undisputed law on the subject generally (16 C. J. 414, et seq.), and such procedure is definitely recognized in this state by the Caprio case, which was later affirmed by the Court of Errors and Appeals (98 N. J. L. 292).

POINT VI.

The trial court erred in preventing defendant from showing appraisals of the realty assets of the corporation that had been made for it by Lloyd & Thomas and by Haskins and Sells (Specification of Causes Nos. 22, 51, 69).

The co-defendant Kurtz was called by the State for the obvious purpose of showing that the corporation's condition at the time did not warrant the bond issue. For example, one of the things he stated was that his agreed salary had not been paid. This of course opened the witness to cross examination on other aspects of the corporate affairs that did justify—at least for the purpose of a defense to a criminal prosecution—the bond issue that had been contemplated. Indeed this witness testified that when the report of Lloyd & Thomas and that of Haskins & Sells were submitted to the company, "they looked favorable" to him (Case, p. 117, line 8). Now, if the defendant and his associates did in fact rely upon appraisals honestly procured by the corporation from those setting themselves up as professionals in such work, it was most essential that it be shown, and by the same token the defendant had every right to show it. But when counsel tried to do so the prosecutor objected and the objection was sustained. These are the questions that were asked of the witness Kurtz and which were disallowed:

"Q. Those you listed for them, do you remember what their appraisal was with respect to that?" (Case, p. 114, line 28).

And:

"Q. Did you know what their appraisement or certification was as to the value of the properties that the company owned?" (Case, p. 116, line 20).

This inquiry was eminently proper, especially in view of the fact that the witness had stated that it was he who requested that the appraisals be made (Case, p. 115, line 2); that the two concerns that made them, he understood to be reputable (Case, p. 115, line 12); and that the very reason the witness had for his request that the appraisals be made was that *the assets of the company should be thereby revealed to him in relation to the projected offer of the securities* (Case, p. 115, line 26). But the full truth, the thing that would have given character and point to the whole inquiry, the court would not permit to be shown. If the defendant could have shown what these appraisals were, and that everything implied as to corporate assets by whatever was contained in the circular was justified by the appraisals, it was of the utmost importance to him that he be permitted to do so. That it was manifest error to preclude this seems altogether obvious.

Assume, for the argument, that there was a stringency in liquid reserves that occasioned the non-payment of Kurtz's salary. Must that end the tale as he saw fit to tell it? He required the appraisals; he got them. He says he was satisfied with what they showed but beyond this the defendant was not permitted to go. It must not

be overlooked that this was in the State's case, and it affected, as we have shown, an element vital to the case. It was harmful in the highest degree to foreclose the inquiry.

POINT VII.

Included in the grounds hereinabove urged for a reversal because of the trial court's refusal to declare a mistrial are questions asked, and permitted over the objection of defendant's counsel, which present reversible error aside from any consideration in the case relative to mistrial (Specifications of Cause Nos. 26, 27, 37, 38, 49 and 50).

In view of what has already been shown under Point III of this brief, we shall not labor the argument with continued discussion of the prejudicial questions asked and matter elicited by the prosecutor as indicated in the argument under that point. But lest we be understood as foregoing a cause for reversal, we urge upon the court that the questions asked and the matter elicited as shown within the specifications of cause stated at the end of the heading to this point, present reversible error upon grounds other than their relation to any application for the declaring of a mistrial.

The questions asked of the defendant (Specifications 26 and 27) relative to the purchase by Mrs. Lee of the company's stock were in no sense material, being at the same time highly prejudicial. The same is true of the questions asked of the defendant (Specifications 37 and 38), concerning his transactions with Braunstein and transactions between Silver-Ross Co. and New Jersey Bond and Mortgage Co.

Specifications 49 and 50 relate to testimony given by the witness Matty R. Lee concerning her purchase of the company's stock, the stoppage of dividends, and her "talk with Mr. Silverman." No argument other than what has already been advanced under Point III is required in this connection.

POINT VIII.

The verdict was against the weight of the evidence within the provisions of Chapter 349 of the Laws of 1921.

The verdict in the present case was against the weight of the evidence within the principles laid down in State v. Treficanto, 106 N. J. L. 344.

Where the divergence between the verdict and any legitimate inference from the proofs is as wide as it is in the present case, the result is a necessary inference "that the verdict was the result of mistake, passion, prejudice or partiality" (State v. Treficanto, 106 N. J. L. 344; State v. Karpowitz, 98 N. J. L. 546).

For a case wherein our Court of Errors and Appeals reversed a judgment of conviction for insufficiency of proofs, see State v. Noel, 102 N. J. L. 659.

The judgment of affirmance brought up by the present writ should be reversed.

Respectfully submitted,

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PERKINS, DREWEN & NUGENT,
Attorneys for and of counsel
with Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

OCTOBER TERM, A. D. 1935

THE STATE OF NEW JERSEY, *Defendant-in-Error.*	*In Error.*
vs.	*To Supreme*
SAMUEL W. SILVERMAN, *Plaintiff-in-Error.*	*Court*

BRIEF FOR DEFENDANT IN ERROR

This is an appeal from a Rule of Affirmance of judgment and Order of Remittitur entered September 20th, 1935, in the Supreme Court, based on a conviction in the Bergen Quarter Session of a violation of Chapter 318 of the Laws of 1913, which prohibits among other things misrepresentations in advertising and circulars which offer merchandise; securities and other things to the public for sale.

FACTS

At the December Term 1931 of the Bergen County Grand Jury, Samuel W. Silverman, the plaintiff-in-error, with Matthew J. Kurtz, Robert W. Thompson, Nathan Lieberfreund and Edgar Ross, was indicted for a violation of the statute above mentioned.

On January 14, 1935, the plaintiff-in-error, Samuel W. Silverman, was convicted of violating Chapter 318 of the Laws of 1913, supplementing the Laws of 1898, page 794.

The indictment was based upon a certain circular (Case, p. 251) prepared by the plaintiff-in-

error which advertised a bond issue of the New Jersey Bond and Mortgage Corporation. The indictment was moved for trial against the defendant, Silverman, only.

On January 17, 1935, the defendant, Samuel W. Silverman, was sentenced to a term of 360 days in the Bergen County Jail and a fine was imposed upon him of $1,000.00.

POINT 1.

The Indictment Is Not Defective

Proof of knowledge of the falsity of matters contained in the circular was not a necessary element of the case.

The motion made by counsel for the defendant for the quashing of the indictment on the ground that it did not charge a crime was properly denied by the trial court.

The statute upon which this indictment was based provides as follows:

> (Chapter 318 of the Laws of 1913).
> "Any person, firm, corporation,***, who with intent to sell***securities***makes, publishes, disseminates, circulates or places before the public *** in the form of a circular, an advertisement of any sort regarding securities so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor."

The above extract represents the pertinent part of the statute under scrutiny at this time.

At no place is it stated in this statute that any false statement in the circular or advertisement

must be made with the knowledge of the defendant as to its falsity.

It is quite apparent that the legislature assumed that any one sponsoring the sale of securities would know, and as a matter of fact be in a better position than the general public to know, the true facts concerning the article advertised. The legislature in enacting Chapter 318 of the Laws of 1913, undoubtedly with the thought in mind of protecting the public to the fullest extent, so worded the act that any one placing the article before the public for sale in such a circular should do so at his own peril insofar as the truth of the matters therein contained was concerned.

The plaintiff-in-error in his brief argues that such a construction of the statute places a heavy burden on all persons concerned in the publication of advertisements of corporate securities.

It is submitted that for the good of the purchasing public this safeguard was purposely placed in the statute.

It is a well known fact that the legislature in its wisdom has enacted many criminal statutes where proof of intent is not made a necessary element to warrant a conviction.

Halsted vs State, 41 N. J. Law page 552, wherein Chief Justice Beasley speaks for the Court of Errors and Appeals on page 592.

> "As there is an undoubted competency in the law maker to declare an act criminal, irrespective of the knowledge or motive of the doer of such act, there can be, of necessity, no judicial authority having the power to require, in the enforcement of the law, such knowledge or motive to be shown. In such in-

stances the entire function of the court is to find out the intention of the legislature, and to enforce the law in absolute conformity to such intention."

This case dealt with the offense of exceeding appropriations by a Board of Chosen Freeholders.

The reasonableness of requiring a person so advertising to make an exhaustive investigation as to the securities advertised before a gullible public is induced to make purchases is too obvious for argument.

POINT 2.

The Trial Court Did Not Err In Denying The Defendant's Motion For A Directed Acquittal At The Close Of The State's Case Or In Denying The Motion For A Directed Acquittal At The End Of The Whole Case.

Plaintiff-in-error in his brief raises the point that there was no proof of intent to sell the bonds referred to in (Exhibit S-5, p. 251).

A perusal of the circular in question amply demonstrates that its entire purpose was to induce the public to purchase the bonds therein offered.

Attention is called to the part of the circular where the bonds are referred to as an "offering" Case, p. 255, l. 11).

It is submitted that even though no bonds were actually or physically laid on the counter for sale, the effect of the circular was to induce the public to pay money to the New Jersey Bond and Mortgage Corporation for the purchase of this issue of bonds. This is the evil the legislature sought to avoid by the enactment of the statute under which

the indictment in this case was brought.

It is quite apparent that the circular was designed to attract an unwary investor. It is couched in glittering terms of the financial stability and record of the corporation.

It is submitted that whether the bonds therein referred to were ever actually printed or not, in nowise affects the guilt or innocence of the person charged with the violation of this act.

The circular offered certain bonds for sale. Certain statements of fact in the circular were untrue. The fact that the bonds were never printed cannot permit the maker of such an advertisement to escape unscathed.

It is to be noted that at no place in the circular is there any statement to the effect that the bonds had not been prepared or were not actually for sale. The bonds were referred to and discussed as though they were actually ready for delivery upon payment.

The circular in question was in many respects untrue.

First, the statement (Case, p. 256, l. 31) "Its total assets are in excess of $539,115.82".

The testimony of Phillip L. Coffin, Jr., former Assistant Attorney General, (Case, p. 42 and p. 24 and p. 20) was to the effect that at an official hearing held before him during the course of an investigation of the New Jersey Bond and Mortgage Corporation, during the year 1930, the defendant Silverman voluntarily gave a written statement which represented the real estate assets of this company as of that time. This statement is known as Exhibit S-1 (Case p. 248, 249 and 250.) It is to be noted that in this statement Exhibit S-1 the real estate assets of the corporation were alleged to

amount to $468,775.00 without deduction for mortgages of $104,175.00 or a net valuation of $364,600.00.

According to the testimony of the experts testifying on behalf of the state, the estimated value of the corporation's real estate holdings as of February 1930 was $190,210.80 without deduction for mortgages of $104,175.00 or an approximate net valuation of $86,035.80 and without a deduction for unpaid taxes. (Case, pages 49, 58 and 77.)

The statement in regard to the total assets being in excess of $539,115.82, is misleading also in violation of the statute in that it is expressed in this way to give the unwary investor the thought that its assets exceed its liabilities by this amount or in other words that this amount is a surplus.

The foregoing amount of assets is subject to a decrease of almost $300,000.00 in arriving at the true valuation of the real estate whereas the liabilities of an equal amount would not be subject to any such deduction because of the fact that Silverman or his nominees had received capital stock amounting to 68,000 shares of common and 29,400 preferred the latter $10 par value in exchange for real estate on the basis of the excessive value set forth in Exhibit S-1. (p. 178 l. 10 and 177 l. 30 and p. 172 l. 10). The truth is that the company's assets were about $300,000.00 less than its liabilities.

Further instances of the falsity of certain statements in the circular are as follows:

The witness Dean testified (Case, p. 61, l. 23) that in February 1930, the date of the making of the circular, (Exhibit S-5, the Empire Trust Company, New York City, was not the transfer agent for the $500,000.00 bond issue described in the

circular, despite the fact that the circular so represented this to be the case. (Case, p. 251, l. 20).

The witness McLaren testified (Case, p. 64, l. 29) that the Corporation Trust Company, New York City, was not the registrar of the bond issue described in the circular. Despite this fact, however, it was so presented in the said circular. Exhibit S-5, (Case, p. 251, l. 20).

The circular further contained a statement, (Exhibit S-5) (Case, p. 256, l. 29):

> "The Corporation has never experienced an unsuccessful year in business, or defaulted on any obligation whatever."

The uncontradicted testimony of the witness Kurtz (Case, p. 103, l. 24), sales manager at the company's office in Hackensack, was that he had only received one month's salary from July 1929 to May 1930 (Case, p. 105, l. 38). It should be noted that the circular was made in February 1930.

The witness Ross testified that he had failed to receive his salary of $50.00 a week when it came due (Case, p. 120, l. 16).

The evidence clearly shows that this circular false in many respects, was made by the defendant Silverman.

The witness Ross, a former employee, testified (Case, p. 121, l. 18) that when the proof of the circular came back to the Hackensack Office, he, Ross, presented it to the defendant Silverman for his approval and the defendant Silverman approved it (Case, p. 122, l. 11).

This witness further testified that the defend-

ant was the president of New Jersey Bond and Mortgage Corporation and issued the orders (Case, p. 121, l. 2).

The testimony of employees of the company indicates that the defendant Silverman was the dominant factor in this corporation and he was in complete charge of its activities.

The furnishing of the material for the circular by the defendant Silverman and Ross to the Newark concern that printed the circulars and the subsequent approval by the defendant Silverman constituted a "making" as defined by the statute and as alleged in the indictment.

This all occurred at the office of the company in Hackensack, Bergen County, New Jersey, and within the jurisdiction of the trial court. (Case, p. 121, l. 18).

That there was a dissemination of the circulars, the following testimony was adduced:

The witness, Dr. Norcom, testified that he received one of the circulars through the mail (Case, p. 81, l. 18) and the witness Lieberfreund testified that there was "a pile" of the circulars on the office table in the Hackensack Office (Case, p. 192, l. 14 and 24).

It is urged, however, that mere proof of the "making" of the circular containing false statements constituted a violation of the statute, the statute being clearly in the disjunctive and not conjunctive.

POINT 3.

The Declaration Of A Mistrial Is Discretionary With The Trial Judge. There Was Nothing In The Conduct Of The Prosecutor During The Trial That Warranted The Declaration. The Trial Judge Committed No Error In Refusing To Declare A Mistrial.

The plaintiff-in-error makes much of the alleged highly prejudicial language by the Prosecutor in his opening to the jury, in his arguments before the court, and in his examinations of witnesses by citing certain isolated parts of the testimony. If the alleged prejudicial language is read in connection with all of the testimony, it will be found that certain isolated parts of the testimony referred to by the plaintiff-in-error were within the limits of legitimate argument and fair comment taking into consideration the zeal of the Prosecutor in the heart of the argument.

In the case of State vs. Ferrone, 116 At. 336 (97 Conn. 258), cited by the plaintiff-in-error, the court said:

> "In the enforcement of our rules we have not and shall not forget the ardor of advocacy and the excitement of trials and the temptation which is apt, under such circumstances upon occasion, to carry away even experienced counsel. We repeat: 'Counsel must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument."

With reference to the testimony of Mrs. Lee,

which testimony was stricken from the record, the court at the time it ordered her testimony stricken from the record, directed the jury to disregard her testimony, and it must be assumed nothing being shown to the contrary that they did disregard it during their deliberations. No injury was suffered therefore by Mrs. Lee's testimony being offered.

The trial court obviously viewed the atmosphere of the trial and in view of the fact that repeated motions for a mistrial made by counsel for the plaintiff-in-error were denied, it must be assumed that there was nothing prejudicial to the plaintiff in-error in the atmosphere of the trial.

It is fundamental that the declaration of a mistrial is discretionary with the trial judge. A careful examination of the entire record disclosed no abuse of discretion on the part of the trial judge, nor does the plaintiff-in-error allege that the trial judge was actuated by some malice or prejudice which would prompt an abuse of discretion.

POINT 4.

The Trial Judge In Failing To Charge The Jury Relative To The Testimony Of Co-Defendants Committed No Error.

The request to charge this by counsel for the defendant came at the end of the trial judge's charge to the jury. (Case p. 202, l. 20).

Furthermore, the request to charge was not in writing as required and there was nothing in the charge up to that point that had made necessary the charge requested by counsel for the defendant, State vs. Litman, 86 Law, 453.

A charge cautioning the jury against convicting on the testimony of an accomplice is something that is within the sound discretion of the trial judge and there is no evidence in this case that this discretion was in any way abused. The defendant however, waived his right to any special charge along these lines by not having requested it at the proper time and in the proper form.

POINT 5.

The Trial Court Committed No Error In Disposing Of The Motion That Was Made By Defendants Counsel And Claimed To Be Tantamount To A Special Plea In Bar To The Indictment And There Was No Error In The Excluding Of The Jury During The Argument Of This Motion.

In the present case, the defendant on July 15th, 1932, entered a plea of not guilty to the indictment (Case, p. 4, l. 22).

At the trial the counsel for the defendant requested permission of the trial judge to withdraw the plea of not guilty heretofore entered for the purpose of entering a plea in bar. This refusal was based on the fact that counsel had delayed making such a motion for more than three years. (Case, p. 15, l. 31).

Permission to withdraw a plea is addressed to the sound discretion of the court. (Clark vs. State 58 Law, p. 383).

It is submitted that the trial court committed no error by this ruling.

In the brief of plaintiff-in-error, it is argued that the trial court committed error in excluding the jury from the Court Room during the argument of a motion regarding the immunity of the defendant as a result of previously testifying before the Attorney General.

Plaintiff-in-error cites in part Chapter 52 of the Laws of 1930, paragraph 6.

This argument, however, cannot be maintained because the jury was excluded at the special instance of counsel for the defendant (Case, p. 35, l. 28).

> "Mr. Goldenhorn:
> Your Honor, are we going to listen to this in the presence of the jury? I think we ought to hear it without the jury.
>
> The Court: The jury may retire for a few minutes."

Under those circumstances the defendant cannot be heard to complain at this time.

POINT 6.

The Trial Court Did Not Err In Preventing Defendant From Showing Appraisals Of The Realty Assets Of The Corporation That Had Been Made For It By Lloyd and Thomas and By Haskins and Sells.

At the outset it should be noted that the firm of Haskins and Sells was not a firm engaged in the business of appraising real property. Their business was that of auditing (Case, p. 115, l. 32). This was testified to by Matthew J. Kurtz, a former em-

ployee of the New Jersey Bond and Mortgage Corporation.

There had been no foundation laid to show that the said Haskins and Sells was in any way qualified to make an appraisal on real property.

The court was not in error in denying the defendant the privilege of showing an appraisal made at some time by Lloyd and Thomas. Any appraisal the witness Kurtz testified to as having been made by Lloyd and Thomas would be hearsay evidence, which was not admissible and likewise the proper foundation was not laid for the introduction of the appraised alleged to have been made by Lloyd and Thomas in that the time when it was made was not given nor was there any testimony as to the qualifications of those acting for Lloyd and Thomas.

POINT 7.

The Trial Court Properly Ruled On The Questions Asked By The Prosecutor And Permitted Over The Objection Of Defendant's Counsel And There Was No Reversible Error In The Rulings Of The Trial Court.

The testimony given by the witness, Mattie R. Lee, was ordered stricken from the record by the trial court and that at the time that it was ordered stricken from the record by the trial court, the jury was instructed to disregard the testimony. Therefore, it is to be assumed as alleged in the reply to Point 3 no proof being shown to the contrary that the jury disregarded this testimony.

The questions asked of the defendant concerning his transactions with Braunstein and transactions between Silver-Ross Company and New Jersey Bond and Mortgage Corporation were material

because the affairs of the Silver-Ross Company were closely intertwined with that of the New Jersey Bond and Mortgage Corporation and because Braunstein apparently acted as a dummy or nominee for the defendant. All of the other reasons urged in Point 7 have been dealt with in the reply to Point 3 of the plaintiff-in-error.

POINT 8

The Verdict Was Not Against The Weight Of The Evidence.

Certainly there was sufficient evidence before the jury upon which to base a verdict of guilty and the plaintiff-in-error's arguments are void of any proof or substance that the verdict was the result of mistake, passion, prejudice or partiality.

For the reasons stated above, it is respectfully submitted that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

John J. Bergen Jr
Prosecutor of the Pleas.

Dated October 5, 1935. Leland V. Berry of Counsel