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New Jersey Court of Errors and Appeals

LILLIAN L. NOE,

Prosecutor-Appellant,

vs.

THE MONMOUTH COUNTY COM-
MON PLEAS COURT,

Respondent-Appellee.

10

On Appeal

20

AMENDED GROUNDS OF APPEAL.

*To William A. Stevens, Esq., Attorney of Re-
spondent-Appellee:*

TAKE NOTICE, that the Appellant, Lillian L. Noe, writes down the following grounds of appeal on her appeal from the whole of the judgment to the Court of Errors and Appeals.

1. The Supreme Court erred in affirming in- 30
stead of reversing the judgment under review.

QUINN, PARSONS & DOREMUS,
Attorneys of Prosecutor-Appellant.

Service of a copy of the within Amended
Grounds of Appeal is hereby acknowledged this
day of September, 1929.

Attorney of Respondent- 40
Appellee.

NOTICE OF APPEAL.

LILLIAN L. NOE, Prosecutor, vs. 10 THE MONMOUTH COUNTY COM- MON PLEAS COURT, Respondent.	}	On Certiorari
---	---	---------------

*To William A. Stevens, Esq., Attorney of Re-
spondent:*

SIR:

20 TAKE NOTICE, that the Prosecutor, Lillian L. Noe, appeals in the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above entitled case.

QUINN, PARSONS & DOREMUS,
Attorneys of Prosecutor.

30 Service of a copy of the within Notice of Appeal is hereby acknowledged this day of September, 1929.

Attorney of Respondent.

OPINION OF THE SUPREME COURT.

NEW JERSEY SUPREME COURT

No. 216, JANUARY TERM, 1928

LILLIAN L. NOE,

Prosecutrix,

vs.

THE MONMOUTH COUNTY COM-
MON PLEAS COURT,

Respondent.

10

On Certiorari.

Before: Justices TRENCHARD, KALISCH and 20
KATZENBACH.

For the prosecutrix, Theodore D. Parsons.

For the respondent, William A. Stevens.

Per curiam: The prosecutrix was convicted in a magistrate's court in the County of Monmouth, which Court was held by Joseph M. Cox, a Justice of the Peace, in and for the County of Monmouth, upon a conviction charging her with a violation of Subdivision 3, Section 14 of the Motor Vehicle Act, in that the prosecutrix, did, on the sixteenth day of September, 1925, on a public highway of the Borough of Deal in the County of Monmouth and State of New Jersey, to wit: on Norwood Avenue said Norwood Avenue being at said time and place a public highway in the State of New Jersey, operate a motor vehicle while under the influence of intoxicating liquor. 30 40

Opinion of the Supreme Court

Upon said conviction, the prosecutrix was sentenced to the common jail of the County of Monmouth for a period of thirty days.

10 It appears that in addition to this complaint, there was a complaint that on the day in question, the prosecutrix had been operating an automobile at a rate of speed in violation of the section of the Motor Vehicle Act, regulating the rate of speed with which vehicles may be driven upon the public highway, etc.

Both of these complaints were tried together, presumably, by consent of the prosecutrix, since the record does not disclose she offered any objection to the course pursued by the magistrate; and upon the evidence before him, he found the prosecutrix guilty of the separate violations charged against her, and upon the conviction of the prosecutrix of operating an automobile while under the influence of intoxicating liquor, the magistrate imposed the sentence, as above stated; and upon the conviction for driving an automobile, at a rate of speed prohibited by the Motor Vehicle Act, she was adjudged to pay a fine of
20
30 one hundred dollars.

From both of these convictions and judgments, the prosecutrix appealed to the Monmouth County Court of Common Pleas. By virtue of these appeals the prosecutrix was entitled to a trial *de novo*. From the record of the Court of Common Pleas, it appears that at the hearing of the appeals, counsel of respective parties agreed that
40 the appeals be tried together, and counsel of the prosecutrix announced that the prosecutrix ap-

Opinion of the Supreme Court

peared specially and only for the purpose of interposing objection to the jurisdiction of the justice of the peace, before whom the causes were tried, which objections were as follows: (1) That the complaints were not properly sworn to, in that the justice signed the jurat as "Justice of the Peace of Deal" (2) That the prosecutrix had not been granted an immediate hearing after her arrest, as required by the statute. (3) That the offense charged had occurred in the Township of Ocean and not in the Borough of Deal, and that a police officer of the Borough of Deal had made the arrest of the prosecutrix without authority. 10

The Trial Judge overruled these objections, holding that it appeared that the Justice of the Peace was an officer designated by the statute, as a magistrate, before whom such prosecution might be had, and that the proofs taken on the motion sufficiently disclosed that the prosecutrix had driven a motor car, while under the influence of liquor, within the limits of the Borough of Deal; that as to the alleged failure of the justice to hold an immediate hearing, it appeared by such preliminary proofs that the prosecutrix was in such state of intoxication as to be unable to intelligently proceed with the hearing at the time of her arrest, and that the justice had postponed the same for that reason, until the following morning. 20 30

An exception was allowed to the ruling of the Trial Judge, and the Court then proceeded to a hearing of the appeals *de novo*. The record then states that the prosecutrix remained mute and 40

Opinion of the Supreme Court

took no part in the proceedings, and then gives a list of the witnesses who were sworn and examined to establish the complaint; the substance of their testimony, and that the Court found from the evidence that the complaint for reckless driving involved the complaint while driving under the influence of intoxicating liquor, and thereupon dismissed the complaint for reckless driving, but found the prosecutrix guilty of driving a motor vehicle while under the influence of intoxicating liquor, as charged in the complaint; and it was upon this conviction that the Trial Judge adjudged the prosecutrix to be committed to the common jail of the County of Monmouth for a period of thirty days.

The validity of the proceedings are now before us for review, by writ of certiorari sued out by the prosecutrix.

The record discloses, that the first reason presented for a reversal of the judgment is that the arrest of the prosecutrix was made by an officer without a warrant, though the offense was not committed in his presence.

This objection is without any substance. A complaint was made in writing by a witness who observed the intoxicated condition of the prosecutrix, and he called an officer so that the latter might take the prosecutrix into custody. The officer seeing her condition, took her out of the automobile to the magistrate's office.

Under Section 31 of the Motor Vehicle Act, P. L. 1921, page 680 and 681, any constable or po-

Opinion of the Supreme Court

lice officer * * * is authorized to arrest, without warrant any person violating in the presence of such constable or police officer * * * any of the provisions of this act. * * * There was sufficient proof that the prosecutrix was violating a provision of the Motor Vehicle Act in the presence of an officer, so that her arrest was not without warrant of law, or irregular. 10

The second reason urged for a reversal is, that the offense was committed in the Township of Ocean and the arrest was made by a police officer of the Borough of Deal in the Township of Ocean. The place where the offense was committed raised a factual question, and since there was testimony, which tended to show that the offense was committed in the Borough of Deal, the finding of the Trial Judge is not reviewable. 20

The third reason relied upon for a reversal is, that the Court had no jurisdiction, in that the complaint was defective. This reason is too general to be considered. It does not point out in what particular respect the complaint is defective. 30

The fourth reason presented for a reversal is, that the complaint is not subscribed by an officer authorized to make complaints. There is no merit in this contention. The law does not require that the complaint should be made by an officer. The complaint can be made by an individual, who observed a violation of any of the provisions of the Motor Vehicle Act. 40

Opinion of the Supreme Court

The fifth reason advanced to support the claim that the proceedings were faulty and defective, and required a reversal of the judgment is, that the Justice of the Peace adjourned the case, and did not hold a summary hearing in accordance
10 with the provisions of the Motor Vehicle Act. The record discloses that it was the intoxicated condition of the prosecutrix which prevented the holding of a summary hearing, and that it was in consideration of her not being able to present a defense intelligently, that the magistrate postponed the hearing until she was able to do so. The record shows she was afforded a summary hearing as soon as her condition warranted it.

20 There is no merit in the sixth reason advanced by counsel of the prosecutrix, that the proceedings are invalid because the prosecutrix was detained in some other place than the office of the magistrate, and in fact, was detained in a cell in the station house. According to the testimony, her condition of intoxication was such that it was deemed best that she should occupy a cell and not be upon exhibition in a public place.

30 The seventh reason relied on for a reversal is like the sixth, and needs no comment.

The eighth reason has already been considered and disposed of in what has been said *supra*, that it was not necessary that the complaint should have been sworn to and signed by the officer making the arrest.

The ninth reason is without merit, for it ap-
40 pears by the record there was no objection made

Opinion of the Supreme Court

in the Justice Court to the hearing of both complaints together in a single trial, and moreover, when the cases came on for trial *de novo*, in the Common Pleas Court, counsel for prosecutrix consented that both complaints be considered in one proceeding. 10

The tenth reason urged for a reversal, is, that the Court below, violated the constitutional rights of the prosecutrix in subjecting her to an examination by a physician without her consent. This reason seems to have been abandoned, for it is not argued in the brief, and moreover, there is no merit in the contention.

The eleventh reason relied on for a reversal is 20 the same in character as has been commented upon in considering the fourth reason, and which later reason was found to be unsubstantial.

The result reached is that the judgment of the Court of Common Pleas be affirmed, with costs.

ORDER OF AFFIRMANCE.

NEW JERSEY SUPREME COURT

10	LILLIAN L. NOE, <div style="text-align: right; padding-right: 20px;">Prosecutrix,</div>	}	On Certiorari.
	vs.		
	THE MONMOUTH COUNTY COMMON PLEAS COURT, <div style="text-align: right; padding-right: 20px;">Respondent.</div>		

20 The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Monmouth, returned with the certiorari in this cause, the reasons for reversing the judgment below, and having heard the arguments of counsel thereon and having duly considered the same, do order that the judgment of the Court of Common Pleas be in all things affirmed with costs, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

30 Entered, July 5, 1929.

WILLIAM A. STEVENS,
Attorney of Respondents.

**AFFIDAVIT ON APPLICATION FOR WRIT OF
CERTIORARI.**

NEW JERSEY SUPREME COURT

LILLIAN L. NOE,

Prosecutor,

vs.

THE MONMOUTH COUNTY COM-
MON PLEAS COURT,

Respondent.

10

On Certi-
orari.

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

20

Lillian L. Noe, of full age, being duly sworn according to law, upon her oath deposes and says:

I am a resident of the State of New Jersey. On September 17, 1925, I was convicted by Justice of the Peace Cox in the Borough of Deal, for a violation of Subdivision 3, Section 14, of the Motor Vehicle Act, and by him was sentenced to thirty days in the County Jail. I appealed to the Common Pleas Court where I contested the jurisdiction. The Court, however, upon trial *de novo* again convicted me and sentenced me to the County Jail. 30

In the Justice of the Peace's office I did not fight the case on its merits, nor was I represented by counsel. Before the Monmouth County Common Pleas Court I did not contest the case on its merits, but simply challenged the jurisdiction of the

40

Affidavit on Application for Writ of Certiorari

Court both as to the subject matter and as to my person.

On September 16th, I was driving an automobile in the evening, in a northerly direction on Norwood Avenue. Leslie J. Gunther was driving in a southerly direction on Norwood Avenue. The dividing line between the Borough of Deal and the Township of Ocean is the center line of Norwood Avenue. The Borough of Deal lying to the east of the center line and the Township of Ocean lying to the west of the center line. The car driven by Leslie J. Gunther was at a standstill and to the west of the center line and was therefore in the Township of Ocean. This was stipulated between the attorneys before the Monmouth County Common Pleas Court, namely, that where Mr. Gunther's car was struck was in the Township of Ocean. My car after striking his car continued in a westerly direction over into the Township of Ocean being off the road and on property of one Wettig, whose property lies entirely in the Township of Ocean.

About ten minutes after the accident happened a police officer of the Borough of Deal, which was his sole position and it was stipulated before the Monmouth County Common Pleas Court that he had no other authority than that of a policeman of the Borough of Deal, came over to my car and without a warrant arrested me. At that time I was in the Township of Ocean. He did not see the accident, nor did he see me driving the car at any time, but came up ten minutes after the accident had happened.

Affidavit on Application for Writ of Certiorari

He arrested me, conducted me from my car to the car of Mr. Gunther, and took me to the Deal Police Station, where I was held in custody in Police Headquarters for at least one hour and a half. At that time the Justice of the Peace came and I was taken from Police Headquarters to the office of the Justice of the Peace in the same building but an adjoining room. I was held there until a complaint had been sworn to and a warrant issued. 10

No warrant had been issued prior to that time. The complaint was not sworn to by the officer making the arrest but by Mr. Conover.

I was then arraigned before the Justice of the Peace. I did not plead to the complaint; I did not request an adjournment; I had nothing to say. The Justice of the Peace of his own volition adjourned the case until ten o'clock the next morning and did not proceed to summarily and forthwith hear the cause. 20

After adjourning the case until the next morning, he then handed the warrant to the Chief of Police who placed me under arrest, and he then ordered that I be locked up in a cell and detained until the next morning. This was done and I was imprisoned until the next morning at ten o'clock. I again reiterate that I did not ask for an adjournment, nor consent to the same. 30

Prior to the time of trying the complaint a doctor from Asbury Park, without my consent, examined me. The next morning he gave evidence against me. This evidence was illegally obtained 40

Affidavit on Application for Writ of Certiorari

and by giving this evidence I was forced to testify against myself by the acceptance of such evidence.

The complaint is not signed before a Justice of
 10 the Peace as such. It bears the signature of Joseph M. Cox "Justice of the Peace of Deal." There is no such officer as Justice of the Peace of Deal, and the complaint is defective. The record of conviction shows that I was tried in one hearing upon two separate complaints—for violation of Subdivision 3, Section 14, and for a violation of Section 16 of the Motor Vehicle Act. It further
 20 shows that in one and the same sentence I was adjudged guilty of a violation of both sections, and the Judge in pronouncing judgment against me incorporated these judgments of guilty upon two separate complaints, in one conviction.

Further, the complaint did not comprise a statement that it was made for a violation of the Motor Vehicle Act and its supplements and amendments, and more particularly for a violation of the Act of 1923, by authority of which Act the
 30 Justice pronounced his sentence.

Furthermore, the form of the conviction differed from the form provided by the statute.

Prior to the trial in the Monmouth County Common Pleas Court by my attorney, I moved to dismiss the cause for lack of jurisdiction on the following grounds:

- 40 1. There was no jurisdiction because the complaint by its face, did not show it had been taken before a magistrate within the terms of the Motor Vehicle Act.

Affidavit on Application for Writ of Certiorari

2. There was no jurisdiction because the arrest was made by an officer without a warrant, though the offense was not committed in his presence.

3. That the complaint was not signed by the officer making the arrest, although the arrest was made without warrant. 10

4. That the court had lost jurisdiction because there had been no return made upon the warrant.

5. The court lost jurisdiction because the hearing was not summary and forthwith as required by the statute, but was adjourned though no request was made for such adjournment by the deponent. 20

6. That the court lost jurisdiction because deponent was not detained as provided by the statute in the office of the magistrate until the complaint had been drawn up and hearing held.

7. The court lost jurisdiction by confirming the deponent in a cell upon the Court's adjournment of the hearing.

8. That the court below had obtained no jurisdiction of the person of deponent because the arrest was made by an officer of the Borough of Deal in the Township of Ocean. 30

9. That the court below lost jurisdiction by proceeding to hear charges on two straight complaints at one and the same time.

10. That the court below lost jurisdiction by convicting deponent of two separate violations in one and the same judgment of conviction. 40

Writ of Certiorari

11. The court below lost jurisdiction by rendering a conviction in form different from that required by the statute.

12. The court had no jurisdiction because the
 10 complaint was defective in that it did not recite the supplements and amendments of the Motor Vehicle Act.

I make this affidavit on application for writ of certiorari to review the judgment rendered against me in the Monmouth County Common Pleas Court, on the ground that the Monmouth County Common Pleas Court had no jurisdiction to render the judgment for the reasons stated
 20 above.

LILLIAN L. NOE.

Subscribed and sworn to before me this
 17th day of November, A. D. 1925.
 S. W. Parmentier,
 (Seal) Notary Public of N. J.

WRIT OF CERTIORARI.

30

New Jersey, to wit:

The State of New Jersey to our Court of
 Common Pleas in and for the County
 (L. S.) of Monmouth: GREETINGS:

We being willing for certain reasons to be certified of a certain judgment and conviction by you lately made and rendered on an appeal brought
 40 to our said Court of Common Pleas, in and for

Writ of Certiorari

the County of Monmouth from a judgment of conviction obtained before Joseph M. Cox, Justice of the Peace in the County of Monmouth, for a violation of Subdivision 3, Section 14 of the Motor Vehicle Act, Wherein Lillian L. Noe, defendant below, was appellant, and the State of New Jersey, Leslie J. Gunther, Prosecutor below was appellee: 10

We do hereby command you, the said Court of Common Pleas in the County of Monmouth that you send under the hand of your President Judge and the seal of the Court to our Justices of our Supreme Court of Judicature at Trenton on the 26th day of November next, as well the judgment on conviction aforesaid as the judgment on conviction, order of commitment and proceedings made and given by the said Joseph M. Cox, Esquire, Justice of the Peace in and for the County of Monmouth, with all things touching and concerning the same as fully and entirely as they remain in our said Court of Common Pleas, by whatever names the parties may be called therein, together with this our writ, that we may further cause to be done thereupon what of right and according to laws of this State should be done. 20 30

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton, this 19th day of November in the year of our Lord one thousand nine hundred and twenty-five.

EDWARD J. KELLEHER,

Clerk.

THEODORE D. PARSONS,
Attorney for Prosecutor.

40

REASONS.

NEW JERSEY SUPREME COURT

10	LILLIAN L. NOE, <div style="text-align: right; padding-right: 20px;">Prosecutor,</div>	}	On Writ of Certiorari, Affidavit etc.,
	vs.		
	THE MONMOUTH COUNTY COM- MON PLEAS COURT, <div style="text-align: right; padding-right: 20px;">Defendant.</div>		

20 The Prosecutor, Lillian L. Noe, by Theodore D. Parsons, her attorney, comes and prays that the conviction of the Monmouth County Court of Common Pleas for a violation of Subdivision 3, Section 14, of the Motor Vehicle Act, be reversed and set aside and for nothing holden, for the following

REASONS

30 1. The Court had no jurisdiction to render such conviction by reason of the fact that the arrest was made by an officer without a warrant, though the offense was not committed in his presence.

2. There was no jurisdiction by reason of the fact the offense was committed in the Township of Ocean and the arrest was made by a police officer of the Borough of Deal in the Township of Ocean.

40 3. There was no jurisdiction in that the complaint was defective.

Reasons

4. There was no jurisdiction in that the complaint is not subscribed by an officer authorized to make the complaint.

5. There was no jurisdiction in that the proceedings were faulty and defective, the Justice of the Peace adjourning the case and not holding a summary hearing in accordance with the Act. 10

6. There was no jurisdiction in that the Prosecutor was detained in some place other than the office of the Magistrate as required by the Act.

7. There was no jurisdiction in that the Prosecutor was detained in a cell in the Station House against her will before hearing given. 20

8. There was no jurisdiction in that the complaint was not sworn to and signed by the officer making the arrest as required by the Act.

9. There was no jurisdiction in that the hearing at the Court below two complaints were heard together and two convictions rendered together.

10. There was no jurisdiction for the reason that the court below violated the constitutional rights of the Prosecutor in subjecting her to an examination by a physician without her consent. 30

11. There was no jurisdiction in that the complaint was signed by another party than the officer making the arrest.

12. The whole proceedings were in divers other respects and manners illegal and erroneous.

THEODORE D. PARSONS,
Attorney for the Prosecutor. 40

CONTINUANCE.

NEW JERSEY SUPREME COURT

10	LILLIAN L. NOE, <div style="text-align: right; padding-right: 20px;">Prosecutor,</div>	}	On Certi- orari.
	vs.		
	THE MONMOUTH COUNTY COM- MON PLEAS COURT, <div style="text-align: right; padding-right: 20px;">Respondent.</div>		

20 It is stipulated by and between the parties hereto that argument of the above writ of certiorari be continued to the January term of the Supreme Court, 1927, which agreements is entered into because of an understanding between the respective attorneys that the said writ was to be argued before the Justice granting the writ and because of various adjournments agreed between counsel as to argument of said writ before said Justice and because of the advice of said Justice that he would not hear the argument of said writ but that it must be argued before the Supreme

30 Court *en banc*.

THEODORE D. PARSONS,
Attorney for Prosecutor.

WILLIAM A. STEVENS,
Attorney for Respondent.

Continuance

RETURN TO WRIT

*To the Honorable Justices of the Supreme Court
of Judicature of New Jersey:*

In obedience to the command of this writ, 10
directed to the Court of Common Pleas of the
County of Monmouth and State of New Jersey,
and the undersigned, Judge of said Court, the
complaint against Lillian L. Noe, and the proceed-
ings and orders and all things touching and con-
cerning the same, to the Honorable Judges of
the Supreme Court of Judicature at Trenton, at
the time and place within mentioned, we do cer-
tify and send as we are commanded. 20

IN WITNESS WHEREOF, I Rulif V. Law-
rence, Judge of the Court of Com-
(L. S.) mon Pleas, of the County of Mon-
mouth have hereunto set my hand
and caused the seal of this Court to be affixed
this Nineteenth day of December, One thousand
Nine hundred and twenty-five.

(S) RULIF V. LAWRENCE 30
Judge of the Court of Common
Pleas of the County of Monmouth.

Attest:

Joseph McDermott,
Clerk.

COMPLAINT.

For Violation of Subdivision 3 of Section 14
Chapter 208, P. L. 1921.

STATE OF NEW JERSEY

10	LESLIE J. GUNTHER, <div style="text-align: right;">Prosecutor,</div>
	vs.
	LILLIAN L. NOE, <div style="text-align: right;">Defendant.</div>

State of New Jersey, }
 20 County of Monmouth. } ss:

Personally appeared before the subscriber, Leslie J. Gunther who, being duly sworn according to law, on his oath says that on the 16th day of September A. D. nineteen hundred and twenty-five, one Lillian L. Noe of the Borough of Highland in the County of Monmouth and State of New Jersey did violate the provisions of subdivision three of section fourteen of an act of Legislature of the State of New Jersey entitled, "An act
 30 defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved
 40 April eighth A. D. nineteen hundred and twenty-

Complaint

one, and more particularly of that part of said subdivision three of section fourteen which reads as follows:

“No person shall operate a motor vehicle while under the influence of intoxicating liquor or any narcotic or habit producing drugs, or permit any person who may be under the influence of intoxicating liquor or narcotic or habit producing drugs to operate any motor vehicle owned by him or in his custody or control.”

in the following respect, to wit: that the said Lillian L. Noe did, on the 16th day of September A. D. nineteen hundred and twenty-five on a public highway of the Borough of Deal in the County of Monmouth and State of New Jersey, to wit: on Norwood Avenue, said Norwood Avenue being at said time and place a public highway in the State of New Jersey, operate a motor vehicle while under the influence of intoxicating liquor (or permit, as the case may be)

* * * * *

all of which is contrary to and in violation of said subdivision three of section fourteen of said act and against the form of said statute.

Therefore, the said Leslie J. Gunther prays that the said Lillian L. Noe may be apprehended and dealt with according to law.

LESLIE J. GUNTHER.

Sworn and subscribed to before me,
this 16th day of September, A. D.
nineteen hundred and twenty-five.

Joseph M. Cox,
Justice of Peace of Deal.

WARRANT.

For Violation of Subdivision 3 of Section 14
Chapter 208, P. L. 1921

State of New Jersey, }
County of Monmouth. }ss:
10

The State of New Jersey to any Constable of the County of Monmouth or to any police officer of the Borough of Deal or to the Commissioner of Motor Vehicles of this State or to any Inspector of Motor Vehicles of said State:

20 WHEREAS, Proof has been made before me, under oath, that one Lillian L. Noe, of the Borough of Highland, in the County of Monmouth and State of New Jersey, did, on the sixteenth day of September A. D., nineteen hundred and twenty-five at Borough of Deal in the County of Monmouth and State of New Jersey, violate the provisions of subdivision three of section fourteen of an act of the Legislature of the State of New Jersey entitled, "An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April eighth, A. D. 30 nineteen hundred and twenty-one, and more particularly of that part of said subdivision three of section fourteen which reads as follows:

40 "No person shall operate a motor vehicle while under the influence of intoxicating

Warrant

liquor or any narcotic or habit producing drugs, or permit any person who may be under the influence of intoxicating liquor or narcotic or habit producing drugs to operate any motor vehicle owned by him or in his custody or control." 10

in the following respect, to wit: that the said Lillian L. Noe did, on the 16th day of September A. D. nineteen hundred and twenty-five, on a public highway of the Borough of Deal in the County of Monmouth and State of New Jersey, to wit: on Norwood Avenue said Norwood Avenue being at said time and place a public highway in the State of New Jersey, operate a motor vehicle while under the influence of intoxicating liquor (or permit, as the case may be). 20

all of which is contrary to and in violation of said subdivision three of section fourteen of said act and against the form of said statute.

You are hereby commanded to take the body of the said Lillian L. Noe so that you have him forthwith before the subscriber, to answer and charge and be dealt with according to law. 30

Given under my hand and seal this 16th day of September A. D. nineteen hundred and twenty-five.

JOSEPH M. COX, (L. S.)
Justice of the Peace.

CONVICTION AND COMMITMENT.

For Violation Subdivision 3, Section 14

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

10 BE IT REMEMBERED that on this 17th day of
September A. D. nineteen hundred and twenty-
five at Borough of Deal in said County Lillian L.
Noe defendant, was by me Joseph M. Cox con-
victed of violating subdivision three of section
fourteen of an act entitled, "An act defining mo-
tor vehicles and providing for the registration of
the same and the licensing of the drivers thereof
fixing rules regulating the use and speed of mo-
20 tor vehicles; fixing the amount of license and reg-
istration fees; prescribing and regulating process
and the service thereof and proceedings for the
violation of the provisions of the act and penal-
ties for said violations," approved April eighth,
one thousand nine hundred and twenty-one in a
summary proceeding at the suit of the State of
New Jersey, by Leslie J. Gunther, Prosecutor,
upon complaint made by Leslie J. Gunther,

30 And further that the witnesses in said proceed-
ing sworn on behalf of the prosecutor testified as
follows:

Judge: Last night, Mrs. Noe, you were in such
condition when you were arraigned before me,
that it was impossible for you to enter a plea to
the complaint filled against you.

Mrs. Noe: Give me something for my nerves.
I can not talk.

40 Judge: The complaints filed against you are
under Sections 14 and 16 of Chapter 208, Laws of

Conviction and Commitment

1921. You are charged of operating a motor vehicle while you were under the influence of intoxicating liquor, and operating a motor vehicle in a reckless manner and so as to endanger life and property. Are you guilty or not guilty?

Mrs. Noe: I can not talk. 10

Judge: I will enter a plea not guilty for you
Mrs. Noe. Mr. Gunther, your name is?

Mr. Gunther: Leslie J. Gunther.

Judge: Your address?

Mr. Gunther: Asbury Park, New Jersey.

Judge: Hold up your hand Mr. Gunther. You do solemnly swear in the presence of the Almighty God, that the testimony you now shall give in this cause in hearing shall be the truth, the whole 20 truth, and nothing but the truth?

Mr. Gunther: Yes.

Judge: You are the complainant in this action. Tell me what happened.

Mr. Gunther: Why I was driving south on Norwood Avenue and going along why, I should judge about 20 miles per hour, and this other car driven by the defendant was coming along on the left side of the center, going north and coming along about 30 to 35 miles per hour and they smashed 30 into me on front left side.

Judge: You were on the right side of the road proceeding south and the defendant on the wrong side of the road proceeding north.

Mr. Gunther: Yes.

Judge: Did you see Mrs. Noe?

Mr. Gunther: Yes.

Judge: Was she driving the motor vehicle that struck you? 40

Mr. Gunther: Yes.

Conviction and Commitment

Judge: Did you call an officer?

Mr. Gunther: Yes.

Judge: Who was the officer?

Frank Rogers: Officer Finn.

Judge: You have filed a complaint charging
10 Mrs. Noe with reckless driving and endangering
life and property?

Mr. Gunther: Yes.

Judge: How much do you estimate the speed to
be she was driving at the time she struck you?

Mr. Gunther: About 35 miles.

Judge: You have said she was on the wrong
side of the road; was she more on the left side of
road than on the right.

20 Mr. Gunther: Yes.

Judge: Did you know personally the condition
Mrs. Noe was in?

Mr. Gunther: I did. I could see she was not fit
to drive a motor vehicle.

Judge: What did she say?

Mr. Gunther: Nothing at all.

Judge: You have filed a complaint charging the
defendant of operating a motor vehicle while un-
der the influence of intoxicating liquor?

30 Mr. Gunther: Yes.

Judge: That is all. Mr. Mahan, your name.

Mr. Mahan: George B. Mahan, 532 South Mat-
lock Street, West Chester, Pa.

Judge: You do solemnly swear in the presence
of the Almighty God, that the testimony which
you now shall give in this cause in hearing, shall
be the truth, the whole truth and nothing but the
truth?

40 Mr. Mahan: Yes.

Conviction and Commitment

Judge: Mr. Mahan please tell the court what you saw last night of the accident to Mr. Gunther.

Mr. Mahan: Mr. Gunther and I were proceeding about 20 or 25 miles per hour on the right side of the road on this street coming south at about 9:45 P. M. The defendant's car was coming up on the left side at about 35 miles per hour. We stopped and just as we stopped, the defendant's car struck our car and knocked it across the road, but the defendant proceeded to tear down three panels of a fence and crash into trees. I went to her and asked what is the meaning of this. Are you intoxicated. She said she was lucky that I was driving, and Mr. Noe jumped out of the car and I recognized him and he said come to Deal Inn for a drink. I said we better go to the Police Station first, so we came down here.

Judge: You were not driving the car?

Mr. Mahan: No.

Judge: That is all. Mr. Featherstone, your name.

Dr. Featherstone: Daniel J. Featherstone, 506 Fourth Avenue, Asbury Park, N. J.

Judge: Mr. Featherstone, you do solemnly swear in the presence of Almighty God, that the testimony which you now shall give in this cause and hearing shall be the truth, the whole truth and nothing but the truth?

Dr. Featherstone: Yes.

Judge: Mr. Featherstone, you were called here last night to examine Mrs. Noe?

Dr. Featherstone: I was called here to examine Mrs. Noe about 10:45 last evening. I examined her in the other room. From her appearance I

Conviction and Commitment

judge she was under the influence of intoxicating drinks.

Judge: What did the examination consist of?

10 Dr. Featherstone: I asked her to speak. She mumbled. Refused to say anything. Her pupils were dilated. Pulse were 120. Breath smelled of alcohol. She refused to answer any questions. There is no question but that she was under the influence of intoxicating liquor. She was unable to stand up without support.

Judge: This certificate which I show you, you made last night and is a report of her condition?

Dr. Featherstone: Yes.

20 Judge: That is all doctor. James Finn. You are a police officer of the Borough of Deal?

Mr. Finn: Yes.

Judge: Were you called to an accident last night?

Mr. Finn: Yes.

30 Judge: Mr. Finn, please hold up your hand. You do solemnly swear in the presence of the Almighty God, that the testimony which you now shall give in this cause in hearing shall be the truth, the whole truth, and nothing but the truth?

Mr. Finn: Yes.

Judge: Just tell me please, what you know about it.

40 Mr. Finn: Well Judge, your Honor, when I came there Mrs. Noe was behind the wheel and Mr. Noe was sitting along side of her at the time. I recognized them as soon as I went there and I immediately asked where I could get a car to take them to Police Headquarters.

Judge: Did Mrs. Noe say anything to you?

Conviction and Commitment

Mr. Finn: She was not in a condition to say anything. Mr. Noe said he had wanted to drive the car, but Mrs. Noe would not let him, and I said you have no license to drive anyway. He also said we were down to so and so, she is under the influence of liquor, but I am not. 10

Judge: Did he state where he got the liquor?

Mr. Finn: He did not tell me where he got the liquor?

Judge: You brought them here to Police Headquarters?

Mr. Finn: Yes, and I notified the Chief at once.

Judge: That's all Mr. Finn. Mrs. Noe, I do not know whether you have heard the testimony or not, given in this action. 20

Mrs. Noe: I heard some of it.

Judge: Have you anything to say?

Mrs. Noe: Nothing.

Judge: It is mandatory on my part, if I am satisfied that you were driving, as charged, under the influence of intoxicating liquor, and I am so satisfied by the testimony given, to find you guilty which I now do and sentence you for thirty days to the County Jail at Freehold. As to the complaint charging you of violation of section 16, driving in a reckless manner, and so as to endanger life and property, there is not a question of doubt in my mind that you were driving the car in a reckless manner also endangering life and property; as to that charge, find you guilty and I impose a penalty of \$100.00 and costs. These convictions are subject to an appeal and if you want me to note your appeal now I will do so. 30 40

Mrs. Noe: Please note my appeal.

Conviction and Commitment

Judge: You will file bond for \$300.00 for your appearance on September 28th, 1925, before the Court of Common Pleas, to be held at Freehold.

10 Wherefore the said Joseph M. Cox does find that the said defendant did at the time and place charged in the complaint filed in this cause operate a motor vehicle while under the influence of intoxicating liquor (operate or permit as the case may be, follow the language of statute) in violation of subdivision three of section fourteen of said act, and therefore convict said Lillian L. Noe of a violation thereof, and order that the said Lillian L. Noe be and she hereby is committed to the common jail of the County of Mon-
20 mouth for a period of thirty days.

JOSEPH M. COX, (L. S.)

(Sign and seal in official capacity)

Justice of the Peace

CASE OF

30	STATE OF NEW JESREY, vs. LILLIAN L. NOE.	} Complaint:	(Violation of Sections (14 & 16 (Chapter 208, Laws of 1921
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Leslie J. Gunther, Prosecutor.

Arraigned 11:30 p. m. September 16, 1925.

40 Defendant asked to plead.

Conviction and Commitment

Defendant asked if she wished an adjournment.
 Defendant asked if she desired to give bail.
 Defendant being in a state of stupor and unable
 to speak.

Hearing in this cause is set for ten o'clock in **10**
 the forenoon September 17, 1925.

JOSEPH M. COX,
 Justice of the Peace.

D. F. FEATHERSTON M. D.

506 Fourth Avenue,

Asbury Park, N. J.

20

Patient's Sept. 16, 1925 Address 10:55 p. m.

Name

This is to certify that I have examined Mrs.
 Lillian Noe and find her under the influence of
 intoxicating liquor.

D. F. FEATHERSTON, M. D.

NOTICE OF APPEAL.

(Filed October 2, 1925)

Before JOSEPH M. COX, Justice of the Peace, in
and for the County of Monmouth.

10	STATE OF NEW JERSEY LESLIE J. GUNTHER, <div style="text-align: right;">Prosecutor,</div> <div style="text-align: center;">vs.</div> LILLIAN L. NOE, <div style="text-align: right;">Defendant.</div>
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20 *To Joseph M. Cox, Justice of the Peace, in and
for the County of Monmouth:*

PLEASE TAKE NOTICE, that the defendant hereby
appeals from the conviction entered by you
against her, for violation of Subdivision 3, Sec-
tion 14, Chapter 208, P. L. 1912, to the Monmouth
County Court of Common Pleas.

30 THEODORE D. PARSONS,
Attorney of Defendant.

APPEAL BOND.

(Filed October 2, 1925.)

KNOW ALL MEN BY THESE PRESENTS, that we, Lillian L. Noe of the Borough of Highlands, County of Monmouth and State of New Jersey, and John Cornwall, Jr., of the Borough of High- 10
lands, County of Monmouth and State of New Jersey, are held and firmly bound unto the State of New Jersey, in the sum of Five Hundred Dollars (\$500) to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty- 20
fourth day of September, A. D. Nineteen Hun-
dred and twenty-five.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the said Lillian L. Noe, on the sev-
enteenth day of September, 1925, was found guilty of violating Subdivision 3, Section 14, of the
Motor Vehicle Act of the State of New Jersey, before Joseph M. Cox, a Justice of the Peace, of
the Borough of Deal, County of Monmouth and State of New Jersey; and whereas, the said Lil- 30
lian L. Noe, desires to appeal from the sentence of Justice of the Peace, Joseph M. Cox, of the
Borough of Deal, and County of Monmouth, to the Court of Common Pleas, and is desirous that
execution on said sentence be stayed pending the hearing and determination of said appeal.

NOW THEREFORE, if the said Lillian L. Noe, shall stand to and abide by such further order or 40
judgment as may thereafter be made against her,

Appeal Bond

the said Lillian L. Noe, then this obligation to be void, otherwise to remain in full force and virtue.

LILLIAN L. NOE (L. S.)

JOHN CORNWELL, JR. (L. S.)

10

Signed, sealed and delivered
in the presence of
Mattie Van Brunt.

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

20 John Cornwall, Jr., of full age, being duly sworn according to law, upon his oath deposes and says: he is the surety in the within bond named; he is a resident of the Borough of Highlands, County of Monmouth and State of New Jersey; that he is the owner in fee of real estate subject to execution worth the sum of Five Thousand dollars (\$5000) over and above his just debts and liabilities.

JOHN CORNWELL, JR.

30 Subscribed and sworn to before me this
24th day of September, A. D. 1925.
(L. S.) Mattie Van Brunt,
Notary Public of N. J.

40

JUDGMENT ON APPEAL.

(Filed November 19, 1925)

MONMOUTH COMMON PLEAS COURT

STATE OF NEW JERSEY,	}	Summary pro- ceeding on Complaint of Violation of Motor Vehicle Act of 1921, etc. On Appeal.	10
vs.			
LILLIAN L. NOE, Defendant.			

The defendant was found guilty by Joseph M. Cox, a Justice of the Peace of the Borough of Deal, in this County on complaint of one, Leslie J. Gunther, who charged her with driving an automobile on a public street of the Borough of Deal, while under the influence of intoxicating liquor. The complaint was in writing and charged the defendant as stated, whereby it was alleged that she violated section 14, subdivision 3 of the Motor Vehicle Act of 1921. A warrant was duly issued on this complaint and the defendant was apprehended and taken before the Justice of the Peace. 20 30

In addition to this complaint and warrant, a complaint was also made by Leslie J. Gunther charging the defendant with reckless driving of a motor car on the same date as the previous complaint and a warrant issued thereon. The justice found the defendant guilty on both complaints. On the first he imposed a penalty of thirty days in the County Jail, and on the second a fine. Defendant appealed from both convictions 40

Judgment on Appeal

and the hearings on the appeals were brought on in due course on notice.

At the hearing of the appeals, (which were tried together by consent), the State was represented
10 by Hon. William A. Stevens, and the defendant by Theodore D. Parsons, Esq., Counsel for the defendant announced that she appeared specially and only for the purpose of interposing objections to the jurisdiction of the Justice of the Peace. He thereupon made the following objections to such jurisdiction:

First, that the complaints were not properly sworn to in that the Justice signed the jurat as
20 "Justice of Peace of Deal"; Second, that the defendant had not been granted an immediate hearing after her arrest as required by the statute; and Third, that the Offense charged had occurred in the Township of Ocean, and not in the Borough of Deal, and that a police Officer of the Borough of Deal had made the arrest of the Defendant without authority. The objections were overruled, the Court holding that it appeared
30 that the Justice of the Peace was an officer designated by the statute as a "Magistrate" before whom such prosecutions might be had, and that the proofs taken on the motions sufficiently disclosed that the defendant had driven a motor car while under the influence of liquor within the limits of the Borough of Deal. As to the alleged failure of the Justice to hold an immediate hearing, it appeared by such preliminary proofs
40 that the defendant was in such state of intoxication as to be unable to intelligently

Judgment on Appeal

proceed with a hearing at the time of her arrest, and that the Justice had postponed the same for that reason until the following morning. An exception was allowed to the Court's ruling. The Court then proceeded to a hearing of the appeals *de novo*. Defendant remained mute and took no part therein. The following witnesses were sworn and examined in behalf of the State: Leslie J. Gunther, George B. Mahan, Dr. Daniel J. Featherstone, Chief of Police Rogers of the Borough of Deal, and Police Officer Finn. 10

The substance of the testimony was that the defendant had driven a motor car through the Borough of Deal on Norwood Avenue in a northerly direction and caused a collision with a car driven by the complainant, Leslie J. Gunther, who was driving south on Norwood Avenue; that said collision was caused by the defendant driving her car on the wrong side of the road in the direction in which she was proceeding and without having same under control; that after colliding with complainant's car, she had driven her car over the sidewalk onto private property of one, Wetten; that the defendant's husband was a passenger in the car with her; that the police officer was called, and finding the defendant under the influence of intoxicating liquor, apprehended her and took her to police headquarters in the Borough of Deal; that while there she was examined by Dr. Featherstone who pronounced her under the influence of intoxicating liquor; that her condition was such that when the Justice of the Peace arrived a hearing could not be held inasmuch as she was 20 30 40

Judgment on Appeal

10 incoherent and unable to talk, whereupon such hearing was postponed until the following morning at ten o'clock, at which time a hearing was had and the defendant was found guilty. The complaints and warrants were sworn to and issued immediately after the arrest of the defendant and prior to the hearing as indicated.

20 Inasmuch as the complaint for reckless driving also involved the complaint for driving while under the influence of intoxicating liquor, this court concluded that the former complaint should be dismissed together with the proceedings thereon and that defendant should be held under the charge of driving while under the influence of intoxicating liquor.

30 On consideration of the evidence offered on appeal, this court finds the defendant guilty of driving a motor vehicle while under the influence of intoxicating liquor on Norwood Avenue, a public street of the Borough of Deal, in the County of Monmouth on the sixteenth day of September, A. D. 1925, contrary to the provisions of Section 14, Subdivision 3, of the Motor Vehicle Act of 1921, its supplements and amendments, and the conviction below is affirmed. It is ordered that the defendant be committed to the Common Jail of the County of Monmouth for a period of thirty days.

RULIF V. LAWRENCE, P. J.

CLERK'S CERTIFICATE.

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

I, Joseph McDermott, Clerk of said County, do hereby certify that the foregoing is a true copy of the complaint, warrant, conviction and so forth in the Case of State vs. Lillian L. Noe, as the same remain on file in my office. 10'

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said County this nineteenth day of December, Nineteen Hundred and Twenty-five.

JOSEPH McDERMOTT,

Clerk. 20'

TESTIMONY.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Plaintiff-Appellee, vs. LILLIAN L. NOE, Defendant-Appellant.</p>
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Transcript of testimony taken in the above stated cause, before Judge Rulif V. Lawrence, Judge of the Monmouth County Common Pleas Court at the Court House, Freehold, New Jersey, on Thursday, November 12, 1925, at ten o'clock in
20 the forenoon.

Appearances:

Mr. Parsons of the firm of Quinn, Parsons and Doremus, attorney of the Defendant-Appellant.

Mr. William A. Stevens, attorney of the Plaintiff-Appellee.

30 Mr. Parsons: I move to dismiss the complaint on the ground that the complaint is fatally defective for the reason or by reason of the fact that it is not shown that it was taken before a Magistrate, or within the provisions framed in the Motor Vehicle Act. The complaint is signed by Joseph E. Cox, Justice of the Peace of Deal. In the case of B vs. Wilson decided by our Supreme Court, it was held that the complaint taken before E. W. Shom-

Motion to Dismiss Complaint

berger without any designation as to his title, was fatally defective.

The Court: I remember that case.

Mr. Parsons: The defendant moves to dismiss this complaint on the ground that the designation of the official before whom the complaint was taken, erroneously made, has the same effect as is in the absence of designation of title at all. It is submitted that a complaint taken before a Justice of the Peace of New York or of Pennsylvania could be fatally defective. It is submitted in the instant case, characterizing this officer "Justice of the Peace of Deal" when there is no such officer, that the complaint should be dismissed as fatally defective. 10 20

The Court: The motion is denied. Exception allowed.

Mr. Parsons: I move to dismiss the complaint because it appears by the record that the arrest was made by an officer, that if it is assumed, as the Court has stated, that the officer had the right to make the arrest inasmuch as the offense was committed in his presence, or where he had reason to believe it was committed in his presence; we think the complaint is fatally defective for Section 31 of the Motor Vehicle Act provides, and it has been repeatedly held it must be strictly followed that where an arrest is made without warrant, the defendant must be taken forthwith before a Magistrate, there detained in the office of the Magistrate, and the complaint subscribed to by the officer making the arrest. The complaint in the instant case is subscribed to by Lewis J. Gunther. The arrest, as appears by the record, 30 40

Motion to Dismiss Complaint

was made by Officer Finn. It has been said, the Statute being penal and being of necessity strictly construed—a variance being shown between the person making the arrest and the person subscribing to the and swearing to the complaint, it is
10 submitted the complaint is fatally defective, and the Magistrate below and this Court have no jurisdiction.

The Court: Motion denied; you may have an exception.

Mr. Parsons: I further move to dismiss the complaint on the ground that it appears by the record that the officer came up after the accident had happened, this appearing by the testimony of
20 Mr. Mahan and Officer Finn. That he was called to the scene of the accident that he then arrested the defendant and took her to the Borough Hall, and notified the Chief of Police. The proceeding is fatally defective on the record, since it appears affirmatively by the record that the offense was not committed in the presence of the officer. That he came there after the accident occurred, walked up to the occupants of the car and made the arrest without warrant; that he conducted the defendant
30 to the police headquarters without a warrant. He had no jurisdiction or authority to do so. That the inception of the whole proceedings being fatally defective, the Court, having never acquired jurisdiction over the person of this defendant, and neither the Court below nor this Court has jurisdiction.

The Court: The motion is denied; exception granted.

40 Mr. Parsons: I move to dismiss the complaint on the ground that the proceedings do not show

Motion to Dismiss Complaint

in any wise that the jurisdiction was ever acquired of the person of the defendant. There is no return made upon the warrant or anything in the warrant to show that the person who made the arrest had authority to do so; that she was arrested within the jurisdiction of the Borough of Deal, and that she was arrested by a police officer— 10

The Court: I believe it is admitted that the collision actually occurred in the Borough of Deal.

Mr. Parsons: I don't concede that. The testimony of Gunther is that it was in the extreme west of that portion of the road.

The Court: That is, of Ocean or Deal? 20

Mr. Parsons: That is Ocean Township. When he was struck, he says Mrs. Noe's car was straddling the white line.

I further move to dismiss the complaint and the proceedings thereunder on the ground that the Court below lost jurisdiction both over the person of the defendant and over the subject matter—if it ever did obtain jurisdiction—by reason of the fact that the hearing was not summary and forthwith, as required by the Statute, where an arrest is made by a warrant. That the defendant was detained for a further period than necessary to have the complaint sworn to by the Magistrate; that upon the complaint being sworn, and before the Magistrate the hearing was not summary and forthwith, as required by the Statute. That the Statute must be strictly construed. 30

The Court: You admit that the warrant was issued before her detention? 40

Motion to Dismiss Complaint

Mr. Parsons: No, I do not; she was detained right after the accident by the officer.

The Court: Then the complaint and warrant were issued simultaneously?

10 Mr. Stevens: As soon as the Recorder could be brought. The complaint and warrant were issued when she appeared in the Borough Hall.

The Court: The same evening?

Mr. Stevens: Exactly; the same time.

20 Mr. Parsons: I move to dismiss the complaint on the ground that the Magistrate had no authority to give any adjournment except upon the request of the defendant; that by the record in this case, it affirmatively appears that the defendant did not request such an adjournment; the Magistrate by giving such an adjournment thereby lost jurisdiction, and that this Court and the Court below have no jurisdiction in the matter.

The Court: Motion denied; exception allowed.

30 Mr. Parsons: I move to dismiss the complaint and the proceedings on the ground that the Magistrate below heard two complaints, charging two separate offenses at one and the same time. That by the record it apparently appears that the Magistrate, the defendant not consenting to it, held a hearing on the charge of reckless driving, and on the charge of the violation of section 14, subdivision 3; the Magistrate had no jurisdiction to conduct hearings in such a manner. The hearing in each charge must be separate; and that thereby, in conducting the hearing in such a manner, the
40 Magistrate lost jurisdiction of the whole proceedings.

Motion to Dismiss the Proceedings

The Court: You will find in some of these cases, the Supreme Court very frankly indicates that a commission is of no significance, the form of the conviction; that if brought up on appeal, it is a trial *de novo* before the Common Pleas Court and the form of conviction filed is immaterial. 10

Mr. Parsons: It is the manner by which the conviction is arrived at; in *The State vs. Rosenblum*, it is held that it is substantially defective—

The Court: —as to jurisdiction. You object because he incorporated both complaints in the conviction?

Mr. Parsons: In the present action, I have not mentioned that fact. My present grounds for objecting is not because of the incorporation of both complaints in one conviction, but my present objection is that the Magistrate lost jurisdiction by hearing two charges at one and the same hearing. 20

Mr. Parsons: I move to dismiss the proceedings on the ground that the Court lost jurisdiction of the matter and because of the substantive defect in the proceedings below by reason of the fact that it appears in this conviction that there were two violations. That the conviction does not make certain which offense was meant in the conviction, which charges the violation of two separate sections, and sets forth two separate complaints. 30

I further move to dismiss the proceedings on the ground that this Court has no jurisdiction, or the Court below has no jurisdiction, by reason of the fact that the proceedings are fatally defective, and that there is a substantive defect in the 40

Motion to Dismiss the Proceedings

proceedings in that the conviction in this case differs from the conviction as required by the Statute.

10 That the Act uses the word "Shall." The Act specifying such conviction; that such word is mandatory; that the conviction differs from this act and the proceedings are substantially defective, and that thereby the Court below and this Court has lost jurisdiction.

I further move to dismiss the proceedings on the ground that the complaint is fatally defective; that the proceedings below were had under the Motor Vehicle Act and also under the amendment of 1923, which specifies the form of the conviction and the punishment—

20 The Court: 1924.

Mr. Parsons: 1924, and that no mention is made of this act in the complaint; the complaint is fatally defective for omitting the mention of fact.

I further move to dismiss the proceedings on the ground that it appears by the proceedings that the statutory rights of the defendant were invaded; it appears definitely by the record below that the Doctor—Doctor Featherstone examined the defendant and gave testimony at the trial; it further appears by the record that this examination was before arraignment. It further appears by the record that the Magistrate below in his opinion did not deem the defendant in a fit condition to go to trial. The examination by the physician is a statutory defect, in that it is a violation of the constitutional rights of the defendant, unless it is shown affirmatively that the defendant voluntarily consented to such an examination;

40

Fred Wettack—Direct

that unless such examination is made with her knowledge and with her positive assent, which must be more than by just standing mute—that the Court had no right to have such examination made; had no right to receive such evidence.

The Court: If that be so, how could he lose jurisdiction? 10

Mr. Parsons: It is substantively defective in the Court below, and that thereby the Magistrate below in permitting such examination and receiving such illegal evidence lost jurisdiction of the cause.

The Court: How many exceptions were there?

Mr. Parsons: I think there were eleven.

The Court: I shall deny the motions to dismiss for the reasons urged, reserving, however, the right to rule on the question of the form of the conviction. 20

Mr. Parsons: May I make a special appearance, swearing a witness specially, for a further proof of lack of jurisdiction?

The Court: You may.

30

FRED WETTACK, being duly sworn, according to law, on his oath, testifies as follows:

Direct-examination by Mr. Parsons:

Q. Mr. Wettack, you live where? A. Ocean Township.

Q. And your property is located where? A. In Ocean Township, on Norwood Avenue, at least.

Q. Do you remember the night of September 16, 1925? When the automobile of the defendant, 40

Fred Wettack—Direct

Mrs. Noe, knocked part of your fence down? A. It did.

Q. Your fence is located where? A. In Ocean Township.

10 Q. Is it north of the sidewalk? A. On the west side of Norwood Avenue.

Q. Is the fence beyond the sidewalk and beyond the curb? A. Beyond the sidewalk.

Q. West of the sidewalk? A. West of the sidewalk.

No cross-examination.

Mr. Parsons: As part of this case, I would like to have the same things stipulated as were stipulated in the former case.

20 It appears that Ocean Township and Deal Borough are adjacent; that the boundary line between Ocean Township and Deal Borough is designated by a center line on Norwood Avenue. Lying west of the center line of Norwood Avenue is the Township of Ocean, and to the east is the Borough of Deal.

It is further stipulated that Officer Finn is a police officer of the Borough of Deal.

30 It is further stipulated that he doesn't hold any other official position—but that he is solely and strictly a police officer in the Borough of Deal alone, holding no county position in any county, or any position in the Motor Vehicle Department.

The Court: Motion denied.

Mr. Parsons: I except to your ruling in denying the motion.

40 Exception allowed.

Leslie Gunther—Direct

LESLIE GUNTHER, being duly sworn, according to law, on his oath testifies as follows:

Direct-examination by Mr. Parsons:

Q. Mr. Gunther, the night of this accident, you were proceeding which way on Norwood Avenue? 10

A. I was proceeding south.

Q. Mr. Gunther—

Mr. Parsons: Mr. Gunther is also called as a witness on the part of the defendant, I appearing specially for the purpose of providing lack of jurisdiction.

Q. Mr. Gunther, on September 16th, you were driving in a southerly direction on Norwood Avenue? A. I was. 20

Q. And as you were proceeding on Norwood Avenue, you were then to the west of the center line of Norwood Avenue? A. I was.

Q. When the car of the defendant was approaching, where did you stop? I believe you have testified that you stopped—where did you stop? A. In front of Mr. Wettach's property.

Q. Whose? A. Mr. Wettach's.

Q. And with relation to the center line of Norwood Avenue, where did you stop? Were you entirely on the paved portion of the road? A. I was west of the white line. 30

Q. How far west of the white line would you say? A. Two or three feet.

Q. The car of Mrs. Noe then hit your car? A. Yes, sir.

Q. And you were in a stationary position west of the white line? A. I was. 40

Leslie Gunther—Direct

Q. After Mrs. Noe's car hit your car, did you see where it went? A. Mrs. Noe's?

Q. Yes. A. It went in a westerly direction, crossed over the curb, through the fence, into a tree.

10 Q. And you had come to a standstill? A. Yes.

Q. And your car was on the west side of Norwood Avenue? A. It was.

Q. You stayed in your car, did you, or did you get out? A. Stayed in for a little while.

Q. And Mrs. Noe stayed in her car, did she? A. Yes, sir.

Q. She stayed there until the officer came up, did she? A. She did.

20 The Court: How did that car get on the west side on the property of Mr. Wettach?

Mr. Parsons: I cannot explain that; it must have gone around that boy's car.

Witness: It went in front.

By the Court:

Q. It struck your car on the left? A. It sent me back.

30 Q. And it threw you back, did it? A. Yes, sir.

Q. And then she turned her wheel to her left and went up— A. On Mr. Wettach's property.

By Mr. Parsons:

Q. After that, the officer came up and you and Mrs. Noe went down to the Deal Police Station, is that right? A. Yes, sir.

40 Mr. Parsons: I wish now to move for a dismissal of the complaint on the ground that the Court below and this Court has

Discussion

lack of jurisdiction by reason of the fact that it now appears that the offense complained of occurred in the Township of Ocean it appearing by this witness, and it appearing by the record and by the stipulation that the accident happened west of the center line. It further appearing by the stipulation that the arrest was made by the officer—by an officer who had no jurisdiction in Ocean Township, he being an officer of the Borough of Deal. 10

The Court: Suppose I happened to be along as an individual, and saw this automobile, and this occurrence; would I have the right to arrest Mrs. Noe? 20

Mr. Parsons: Absolutely not. Neither a misdemeanor or a high misdemeanor—

The Court: You mean to say a citizen has not the power to arrest, the offense being committed in his presence?

Mr. Parsons: For a violation of the Motor Vehicle Act, absolutely not. The Motor Vehicle Act has a summary proceeding in itself.

Motion overruled and exception allowed 30
Mr. Parsons.

The Court: I filed a conclusion in a case here some six or seven months ago, where I held that the jurisdiction of the Justice of the Peace, even though elected for the Borough, extended throughout the county.

Mr. Parsons: I am not attacking the jurisdiction of the Justice of the Peace, but of the officer who made the arrest. The right of the officer to make the arrest. 40

Discussion

The Court: (After discussion.) I think I will examine that question, and if the officer did not have any power then, he probably got it later; that is going to be your insistence.

10.

Mr. Stevens: Yes; we contend that is an offense has been committed, that a Borough officer is entitled to follow the person so committing the offense anywhere; the mere fact that the car stopped in Ocean Township across the way, has nothing to do with it; we are not prosecuting on that question, but for driving without a license under the influence of intoxicating liquor; she must have been; she was not on the right side of the road; she was recklessly driving.

20.

The Court: Where did she come from, some place in Deal?

Mr. Parsons: The record shows, I believe, where she came from.

The Court: I will reserve decision on the last motion, as to the right of the officer to arrest outside of the Borough. I might find that the motion is not based upon the facts in the case; in other words, if she did drive through Deal under the influence of liquor, she has violated the law in Deal; through Deal while under the influence of liquor she is violating the law in Deal.

30.

Mr. Stevens: And he could follow and arrest her anywhere in the county.

Mr. Parsons: Then I further wish it to appear on the record at the present time, it appearing affirmatively now that the

40.

Joseph M. Cox—Direct

arrest was made by an officer, that the offense was committed out of his presence; he came up after the occurrence, after the accident, this appearing affirmatively on the record at the present time, by additional testimony and by the stipulation; I wish to renew my motion that the Court below and this Court lacks jurisdiction by reason of the fact that the officer who made the arrest failed to sign the complaint; that he, further, had no authority to make the arrest, the offense not being committed in his personal presence; that further, he had no jurisdiction—or that the Court below had no jurisdiction to hear the proceedings on the ground that the arrest was made by an officer in the Township of Ocean. 10 20

The Court: I shall reserve decision on the motion with respect to the arrest by the officer; all other motions will be denied. You may have an exception.

Mr. Parsons: I also like to appear specially and call the Recorder for the purpose of the matter of jurisdiction. 30

JOSEPH M. COX, being duly sworn, according to law, on his oath testifies as follows:

Direct-examination by Mr. Parsons:

Q. Mr. Cox, you are Justice of the Peace of the Borough of Deal? Are you? A. I am.

Q. On September 16th, was the defendant Mrs. Noe brought before you? A. She was. 40

Joseph M. Cox—Direct

Q. And at what time? A. I would say about 11:30 p. m.

Q. Brought before you at about 11:30? A. Somewhere in that neighborhood.

10 Q. Brought by whom? A. At my request by the Chief of Police of Deal.

Q. Where was she at that time? A. That I cannot tell you.

Q. Where were you? A. In my Court Room.

Q. Where is your Court Room? A. In the Borough of Deal.

Q. And where in the Borough of Deal? A. In the Borough Hall.

20 Q. You came to the Court House, did you? A. I did.

Q. And where was she when you came to the Court Room? A. That I cannot tell you.

Q. Where did she come from when she appeared before you? A. She came through the door, brought by the Chief.

Q. She came through what door? A. She came through the door between the Police Headquarters and the Court.

30 Q. Where does the door lead to? A. In the Police Headquarters.

Q. Your Court Room is where? A. In Borough Hall.

Q. That is your office? A. That is.

Q. So when you came into your office, she was not in your office? A. She was not.

40 Q. Now, a complaint was made out before you at that time? A. It was, and a warrant issued forthwith.

Joseph M. Cox—Direct

Q. And you adjourned the hearing until the next morning? A. No, I did not; I asked that the defendant be brought before me.

Q. After she was brought before you, you adjourned the hearing until the next morning? A. I asked her three questions. 10

Q. And after you asked her three questions, did you adjourn the hearing until the next morning? A. I did.

Q. Then did she request you to adjourn that hearing? A. She did not.

By the Court: Why did you do that?

A. Because she was in such a condition she was unfit to question, and I would not have gone ahead with the hearing; probably I had a right under the law, but I wouldn't do it; I wouldn't have the hearing then. 20

Q. What was her condition? A. She was in a stupor.

Mr. Parsons: I would like to have that stricken from the record.

The Court: The record will stand as it is made. 30

By Mr. Parsons:

Q. Mr. Cox, after the hearing adjourned until the next morning do you know what was done with the defendant, Mrs. Noe? A. Yes.

Q. What was done with her? A. She was ordered placed under arrest by me, as she could not answer the questions I asked her. I handed the officer the warrant that I had issued, and he handed it to her and placed her under arrest and put her in a cell until the next morning. 40

Joseph M. Cox—Cross

Q. You asked her these questions first, before she was arrested by the officer? A. I cannot answer that.

10 Q. You just now said— A. I read her the complaint, I read the warrant, the first things I think I did.

Q. And at that time, she was in Police Headquarters? A. She was sitting in a chair, yes, in my Court.

Q. And you handed that warrant to an officer of the police force after you read the complaint? A. I read the complaint and warrant.

20 Q. And then you handed the warrant to the Chief of Police and told him to put her under arrest? A. I had read them first to her.

Q. Do you know where she was placed? A. I presume in a cell; that was my order.

By Mr. Stevens:

Q. You were sent for, were you not? A. Yes.

Q. Mr. Cox, who gave you notice of the arrest of Mrs. Noe? A. Who gave me notice? I was in bed and I was called up by the Chief.

Q. What did you do? A. I said—

30 Mr. Parsons: I object to what he said.

Q. What did you do? A. I came to Borough Hall.

Q. And Mr. Gunther made a complaint before you? A. Yes, Mr. Gunther was in the Court Room waiting for me.

Q. Had you seen Mrs. Noe at all? A. No; not at all.

40 Q. Did you know then where Mrs. Noe was? A. No, I did not.

Joseph M. Cox—Cross

Q. What followed the making of the complaint?

A. I asked Mr. Gunther what the complaint was all about, and he explained to me; I proceeded to draw the complaint under Section 14, subdivision 3, and immediately a warrant issued—

Q. What was done with the warrant? A. The warrant was handed to the Chief and the usual service of same— 10

Q. What do you mean by the usual service?

A. When I handed him the warrant, he told her she was under arrest.

Q. Where did he give that warrant to her? A. Right in my presence.

Q. Was she in your Court Room at the time?

A. She was sitting in a chair, yes. 20

Mr. Parsons: I make a further motion for the purpose of the record, to dismiss the proceedings on the ground that the Court below and this Court has no jurisdiction; it is specifically provided in Section 31, Subdivision 1, that the person so offending shall be detained in the office of the Magistrate until the officer making the arrest shall make oath or affirmation, which he shall do forthwith. It appears she was detained in Police Headquarters. It appears that the office of the Magistrate was the Court Room; that she was brought into the Court Room by the Chief of Police, and at that place, after a complaint had been made, the hearing was adjourned until the next day. On these grounds and the statements contained herein, and on the ground 30 40

Leslie Gunther—Direct

that this Court and the Court below has no jurisdiction, I move for the dismissal of the complaint.

The Court: I will reserve decision.

10 Mr. Parsons: All of the above evidence of witnesses called in behalf of the defendant, I appearing specially to contest the jurisdiction.

LESLIE GUNTHER, being duly sworn, according to law, on his oath testifies as follows:

20 By Mr. Stevens:

Q. You were in Deal on the night of the 16th of September, were you not? A. I was.

Q. You were riding in a car? A. I was.

Q. And going toward where? A. Asbury Park.

Q. Down what road? A. Norwood Avenue.

Q. Who was with you in the car? A. George Mann.

Q. George— A. Mann.

Q. Do you know the premises of Mr. Wettach?

30 A. When I see them.

Q. And he lives where? A. On Norwood Avenue.

Q. Opposite what street, do you know? A. I believe it is Morgan Avenue.

Q. Morgan Avenue? A. I believe it is Morgan Avenue, yes.

Q. Did anything occur there that night out of the usual? What occurred. Go over the story
40 you told before? A. I was going south on Nor-

Leslie Gunther—Direct

wood Avenue. I noticed this car coming north on the left-hand side of—on the west side of the road, and I saw this car coming so close to me, and I stopped and signalled, and the car came along and swerved a bit, and crashed into the left front of my car, sent me back to the other side of the road, and the other car careened to the left, went over the curb, through the fence and into a tree. 10

Q. Did you see the persons who were in the car that ran into you at the time? A. After a while, I did.

Q. About how long after the actual happening did you see them? A. About—maybe five minutes—ten—I don't know just exactly how long it was; I was excited, and in the excitement, I couldn't judge. 20

Q. Five or ten minutes or more? A. Possibly.

Q. What did you do, go over to their car where they were sitting? A. I did, yes.

Q. Did you see Mrs. Noe? A. I did.

Q. Did you notice her condition? A. No, not particularly.

Q. Did you observe her condition? A. No. 30

Q. Did you observe her condition later on in the evening? A. I did not.

Q. Do you know whether or not she was under the influence of liquor? A. I am no judge.

Q. You saw her? A. I saw Mrs. Noe, yes.

Q. Did she act normal? A. She acted listless, and all like that.

Q. Did you smell her breath? A. I did not.

Q. Were you near enough to? A. No, sir. 40

Leslie Gunther—Direct

By the Court:

Q. Can't you tell us what she did? You say she acted excited. What did she do? A. She was nervous—shaky—

Q. What did she do? A. What did she do?

10 Q. Yes. A. At what time?

Q. You said she acted excited. What did she do? Did she get out of the car and stagger, or did she throw up her hands, or start talking, or what lead you to believe she was excited? A. I was not close enough to find that out; I was not close enough to see what she did; I was interested in my own car.

20 By Mr. Stevens:

Q. You made out this complaint, Mr. Gunther, did you not, charging her with being under the influence of liquor? A. I believe I did, yes.

Q. What did you do that for? A. I did that on the advice of people in the Court Room.

Q. You saw her in the Court Room—you were close by her? A. Yes, sir.

By the Court:

30 Q. What did she do in the Court Room before you made the complaint? A. The only thing she did in front of me was to sit there in the chair.

Q. What was her condition in the chair? Was she normal? A. She didn't sit there perfectly straight, or anything like that.

Q. Did her chin fall on her chest, or were her eyes closed? A. I did not notice that.

Q. How do you know she was drunk? A. I don't know.

40

Leslie Gunther—Direct

By Mr. Stevens:

Q. You charged her with being under the influence of liquor; that was in your own opinion, wasn't it? You believed it when you made this sworn affidavit, didn't you? A. Yes.

Q. What was she, under the influence of liquor? 10
A. Reckless driving was my charge.

Q. You also made a charge of her being under the influence of liquor, didn't you? A. I might have signed the warrant there during the excitement, and so forth, and under the advice of people around there, I signed it; I didn't realize it—

By the Court:

Q. Has anyone been talking to you about this case? A. No, sir. 20

Q. Has Mrs. Noe or any of her relatives been to see you? A. No, sir.

By Mr. Stevens:

Q. Have you any reason to think she was not under the influence of liquor on that occasion when you made the complaint? A. I don't know.

By the Court:

Q. How far up the road did you see her coming? A. About three blocks. 30

Q. What is the average length of a block, have you any notion at all? A. Why—

Q. 150 feet? A. Well, yes: I guess so. There are no blocks in between there. It is a sort of open field.

The Court: Do counsel agree to that, that three blocks would be in the neighborhood of four or five hundred feet? 40

James Finn—Direct

Mr. Parsons: I want it to appear in the record that I am taking no further part in the trial of this case.

Mr. Stevens: I didn't get your question about three or four blocks.

10

The Court: He says he saw the car about three or four blocks away, and in his opinion, a block would be about 150 feet.

Mr. Stevens: That is probably 1,000 feet or more, three or four blocks.

JAMES FINN, being duly sworn, according to law, on his oath testifies as follows:

Direct-examination by Mr. Stevens:

Q. Mr. Finn, what is your business? A. Policeman.

Q. Policeman where? A. Deal.

Q. Were you on Norwood Avenue on the night of the 16th of September last? A. Yes, sir.

Q. Do you remember an accident wherein the Gunther car and the Noe car came together? A. Yes, sir.

30

Q. How soon after the happening of the accident do you say you were on the ground? A. I fix about ten minutes.

Q. About ten minutes? A. Maybe not quite that.

Q. When you came there, what did you see? A. When I came there, I see Mrs. Noe's car up against a tree and Mr. Gunther came to me and said, "My car is hit—broken," and he said, "I

40

James Finn—Direct

want to be paid for it." "Well," I said, "Who run into your car?" He said, "Mrs. Noe, and they are under the influence of liquor." "Well," I said, "We will go up and have a talk with them." Upon our approach to the car—we approached the car and I said, "Hello, Mr. Noe." 10
They said, "Hello—"

Q. You know Mr. Noe? A. I did; yes, sir. I said, "Who are we to strike, if anybody, about paying for this car?" She said, "What have I done?" I said, "You have broken up this man's car and smashed your own car and drove in and broke the gate around here." I said, "You had better come and have a ride down with me; we will straighten this matter out, who will pay the damages." She said, "All right. Can't we go in my car?" I said, "No, you cannot move your car at all; your car ain't in no condition to be moved." Then they got into Mr. Gunther's car, and we all went down to Police Headquarters. Down there, we went in the Chief's office and I talked to Mrs. Noe in regard to paying the bill, but Mrs. Noe was in no condition to— 20

By the Court: 30

Q. What was the matter with her? A. Well, my estimate of the woman—she was under the influence of liquor.

Q. What did she do to make you think that?
A. Her breath smelled.

Q. You actually smelled her breath? A. I actually smelled her breath.

Q. Was it alcoholic? A. To my estimation, yes.

Q. You know whether it was; you have smelled alcohol? A. Yes, sir. 40

James Finn—Direct

Q. Go on. A. And then I had the desk man to telephone for the Chief, and in the meantime, Mrs. Noe leaned over and put her head in my lap and fell asleep.

10 Q. Did this woman walk? A. No, sir; she did not; we had a time to take her out of the car, I and Mr. Duncan.

Q. Was her husband there at the time? A. Yes, sir; Mr. Noe was there.

Q. What did Mr. Noe do? A. He didn't do anything. He said, "Let's go and have a drink." And I said, "All right; let's go."

Q. That was all Mr. Noe said? A. That was all Mr. Noe said, then. That was all he said.
20 When we got at Police Headquarters "Well," Mr. Noe said, "It was not me was driving the car; I was not driving. She wouldn't let me drive the car because I had no driver's license."

By the Court:

Q. Was this woman under the influence of intoxicating liquor? A. Well, I should say "Yes."

Q. Why do you say that? You have already
30 testified you smelled her breath— A. I smelled her breath.

Q. What else? Did she walk at all, either at the Police Station or at the scene of the accident? A. Yes, sir.

Q. How did she walk? A. She staggered at the Police Headquarters; she wouldn't get up out of the chair; I had to help her up out of the chair.

Q. You say she went to sleep in your lap? A.
40 She put her head over in my lap and went to sleep.

James Finn—Direct

Q. How long was she in that position with you?

A. She was in that position from 9:45 until about 11:20.

Q. When did the Magistrate come? A. He came there I should judge, about 11:30 or 11:40.

Q. And after the Magistrate came, what was done? A. Well, of course, we telephoned for a doctor and the doctor came there. 10

Q. When did he make an examination? A. He made an examination in the Chief's office.

Q. Yes; go on. A. And he pronounced her—

Q. Never mind that;— A. And then after the Magistrate came, after the doctor came, I turned her over to the Chief and the Chief took her into the Magistrate's room and Mrs. Noe didn't have anything to say. 20

Q. Did you see her walk from the Chief's office to the Court Room? A. Yes.

Q. How did she walk? A. She walked with the Chief's assistance; the Chief had her by the arm.

Q. Couldn't she walk alone? A. I couldn't say whether she could or not, but the Chief had her by the arm at the same time.

Q. Was it in the Court Room that she sat down and put her head in your lap? A. No, sir; in the Chief's room, private room, and she went to sleep. 30

Q. She went to sleep? A. Yes, sir.

Q. Then the complaint was made, was it, when the Magistrate came? A. Yes, sir; Mr. Gunther made the complaint.

Q. And a warrant was issued? A. A warrant was issued.

Q. Then what was done after that? A. Why she was put in a cell; when she went before the 40

James Finn—Direct

Magistrate, she wouldn't say whether or not—she wouldn't plead to no charge at all; she was in no condition to plead.

Q. Was the complaint and warrant given to her? A. Yes.

10 Q. What did she say? A. She didn't say anything.

Q. Then was she taken to a cell? A. Yes, sir.

Q. And the next morning, a hearing was had? A. The next morning, a hearing was had.

Q. And at that time, who appeared at the hearing? A. Mr. Gunther and myself and Mr. Noe and Mrs. Noe, and the Chief.

Q. When you made the arrest, Officer, of this
20 woman, what did you say to her? A. I said, "Mrs. Noe," I said to her, "you have run into Mr. Gunther's car and broke the mudguard and bent some parts of his axle, and," I said "he wants to be settled for it—he wants you to pay for it." "What have we done?" she said. "I am just telling you what you have done." There was a crowd gathered around there, and before there was too much excitement, I said to Mrs.
30 Noe, "You had better come and take a ride with me."

Q. Did she demur or refuse? A. No, she did not.

Q. Did you lay your hand on her? A. I took her by the arm and assisted her.

Q. You got to the Gunther car and went to Police Headquarters? A. Yes.

Q. Did you at any time forcibly put your hands on her and take her to Police Headquarters? A.
40 No, sir; only to help her.

James Finn—Direct

Q. Did you exercise any force at all to take her to Police Headquarters? A. No, sir.

Q. At that time, did you indicate to her that she was under arrest? A. Well, no, sir, I did not.

Q. Did you say anything about her being under arrest? A. No, sir, I did not. 10

Q. You simply said the matter should be settled at Police Headquarters? A. I said it should be settled at Police Headquarters.

Q. And you all went there— A. We all went there with that intention.

By Mr. Stevens:

Q. You gave testimony the next morning? A. Yes, sir. 20

Q. And did you testify that in your opinion, she was intoxicated? A. Yes, sir.

Q. You didn't make the complaint? A. No, sir.

Q. Mr. Finn, Norwood Avenue in front of the Wettach property is the dividing line between Ocean Township and Deal, is it not? A. Yes, sir.

Q. Now, how far south from the Wettach property does that line serve as a dividing line? A. Down to the brook.

Q. How far below the Wettach property is that? 30
A. About 300 feet.

Q. And from there on South in Deal, is Norwood Avenue entirely within the limits of the Borough? A. It is entirely within the limits of the Borough.

Q. And anyone driving up Norwood Avenue from the lower section of Deal to the north section, after they cross the brook on the right-hand side of the road would be in the Borough of Deal? 40
A. Yes, they would be in the Borough of Deal.

Dr. Daniel Featherstone—Direct

Q. And in the Township of Ocean, they drive south? A. They drive south.

Q. And following the line of the brook known as Poplar Brook, they are in the Borough of Deal, whether on one side or the other of the road? A.
10 Yes.

Q. If Mrs. Noe had come from below, south of the brook, she had to drive in the Borough of Deal if she drove on Norwood Avenue, is that so? A. Yes.

Q. Whether on one side of the road or the other? A. Yes.

Q. Do you know where she came from? A. That I couldn't say.

20 Q. Did you see her in the Borough of Deal before the accident? A. No, sir.

Q. You didn't see her that night on your beat? A. No, sir.

Q. You didn't know of this accident until you went there—until you were called there? A. Until I was called there.

30 DR. DANIEL FEATHERSTONE, being duly sworn, on his oath, according to law, testifies as follows:

Direct-examination of Mr. Stevens:

Q. Dr. Featherstone, you are a practising physician of this state? A. I am, sir.

Q. You practise in Asbury Park? A. I practise in Asbury Park.

40 Q. Were you in the Borough of Deal on the night of the 16th of September last? A. I was.

Dr. Daniel Featherstone—Direct

Q. How did you come to come there? A. I was called by the police authorities of the Borough of Deal to come to Police Headquarters.

Q. You arrived at Police Headquarters about what time? A. I should judge about eleven o'clock. 10

Q. What was the purpose of the call to Deal? A. I didn't know until I got there, but when I arrived at Borough Hall, they told me that they had a woman to be examined to determine whether she was under the influence of intoxicating liquor or not.

Q. Who told you that? A. I don't remember, but I think it was the Clerk; either that or the Chief. 20

Q. One of the police officials? A. Yes, one of the police officials; I don't know which one.

Q. Did you make the examination? A. I did, sir.

Q. In just what way did you examine her? Did you meet Mrs. Noe there? A. Oh, yes. She was in the Chief's office, and when I went in the office, she was sitting in one chair beside Officer Finn; her head was over on his lap, she was asleep. I woke her up and took her pulse, going at the rate of 120; I smelled her breath which smelled of alcohol, and I asked her a few questions; she couldn't answer them; she was completely disoriented; she did not know where she was or what time it was, or what day it was. I asked her to stand up, and she couldn't stand without support, and in talking, what little talking she did—it was—her speech was thick—rather incoherent; it was hard to understand her. 30 40

Frank Rogers—Direct

By the Court:

Q. Did you examine her pupils? A. Yes; they were dilated.

Q. Couldn't she walk? A. Apparently not.

10 Q. What did she do? A. I asked her to stand up; she apparently could not. We supported her, and when we released her, removed our support, she flopped down on the chair; she was in a condition of stupor.

Q. You pronounced her drunk? A. I did.

Q. Or under the influence of intoxicating liquor? A. Under the influence of intoxicating liquor; yes, that is the wording of it.

20 Mr. Stevens: I have several other witnesses; the Chief of Police—

The Court: You may put on the Chief.

FRANK ROGERS, being duly sworn, according to law, on his oath testifies as follows:

Direct-examination by Mr. Stevens:

30 Q. You are the Chief of Police of the Borough of Deal? A. Yes, sir.

Q. You were in the Borough of Deal on the night of the 16th of September last? A. Yes, sir.

40 Q. Just tell the Court just what you know about the Noe case. A. They called me up and said they had an accident down there, and wanted me to come down, and I went down to the office, and I seen Mrs. Noe out on the sidewalk, and when I got there, she was staggering around, and Officer Finn had her by the arm, and I said: "Officer,

Frank Rogers—Direct

bring her inside.” When we went inside, we went to my office and set down together and talked to her a while there, so I thought it best to get a doctor. I called up Dr. Featherstone to examine her, and I called up the Judge, so we all got over there together, so the Judge after a while called me in, and said: “Where is she?” “In my office.” He said: “Bring her in,” so we brought her in and the Judge read the complaint and warrant to her, and wanted to know if she understood. She said, “No, I don’t understand what you are talking about.” He went on talking and she said, “No, I cannot answer.” He said, “All right.” He handed me the warrant and said, “That’s the warrant for her; put her in a cell until tomorrow morning. She don’t understand what I am talking to her about,” and I got another officer and we took her and led her to a cell. 10 20

By the Court:

Q. What was her condition? A. As I said, she was intoxicated.

Q. How did you determine that condition? A. She couldn’t stand up; she was falling all over; took two of us to lead her to the cell. 30

Q. What else? A. She had a very strong odor of alcohol.

Q. Did you smell her breath? A. Yes, sir.

Q. Was it alcoholic? A. Smelled so; yes, sir.

By Mr. Stevens:

Q. Was her husband present in the Court, in the Court Room during all this time? A. Yes.

Q. Did he make any explanation of her condition in your presence? 40

The Court: That is not competent.

Frank Rogers—Direct

Q. The next morning, was she given a hearing?

A. Yes.

Q. Before the Recorder? A. Yes.

Q. As Justice of the Peace? A. Yes.

10 Q. And she made no defense, did she? A. No;
she wanted to give bail.

By the Court:

Q. What did she say the next morning at the hearing? A. I don't just remember now what she did say.

Q. Were you present? A. Yes, I was in and out; I was not right there all the time.

20 Q. You didn't testify before the Recorder? A.
No, sir.

The Court: I think you may recall the Magistrate and question him as to what occurred the next morning at the hearing, whether the warrant was again read to her, and just what was said by Mrs. Noe at that time.

New Jersey Court of Errors and Appeals

LILLIAN E. NOE,

Prosecutor-Appellant,

vs.

THE MONMOUTH COUNTY COM-
MON PLEAS COURT,

Respondent-Appellee.

On Certiorari

On Appeal
from Supreme
Court.

BRIEF OF APPELLANT.

This is an appeal from a judgment of the Supreme Court affirming a judgment of the Monmouth County Common Pleas Court, brought up for review by a Writ of Certiorari.

The appellant was convicted by the Monmouth County Common Pleas Court for a violation of Subdivision 3 of Section 14 of the Motor Vehicle Act of 1921.

In the opinion of the Supreme Court, affirming the conviction of the Common Pleas Court, there was evident an apparent misconception of the facts of the case, and also of the grounds urged for reversal. The facts will be briefly set out, followed by a review of the record and testimony.

STATEMENT.

On September 16, 1925, the Appellant was driving an automobile in a northerly direction on the state highway between Asbury Park and Long Branch. Ocean Township lies to the west and Deal Borough to the east of the centre line of the state highway. She collided with another car on the Ocean Township side of the state highway. Her car stopped in Ocean Township; she remained in her car until a policeman of the Borough of Deal, who had been summoned, appeared, placed her under arrest and took her before Justice of the Peace Joseph M. Cox, whose office was at the Borough of Deal. Until the Justice of the Peace arrived she was detained not in the office of the magistrate, but at the police station. Upon the arrival of the magistrate a complaint was made out by the operator of the other automobile. The appellant was then placed in a cell without hearing and all proceedings were adjourned by the Justice of the Peace until the following morning, when she was tried and judged guilty. The Appellant made no request for the adjournment, nor took any part in any of the proceedings, either before the magistrate or before the Common Pleas Court, except to challenge the jurisdiction of the Court.

REVIEW OF RECORD AND TESTIMONY.

The complaint was signed by Leslie J. Gunther, and the jurat was taken by Joseph M. Cox "Justice of the Peace of Deal." The complaint charges that "Lillian L. Noe did * * * on a public highway of the Borough of Deal * * * operate

a motor vehicle while under the influence of intoxicating liquor" (p. 23).

The warrant directs the arrest of Lillian L. Noe because she did "on a public highway of the Borough of Deal * * * operate a motor vehicle while under the influence of intoxicating liquor."

The record of conviction contains the testimony taken before the magistrate (p. 26 *et seq.*).

The docket shows that the appellant was arraigned at 11:30 P. M.; that the appellant did not ask for an adjournment and that the hearing was set for 10 o'clock September 17th (pp. 32-33).

An appeal was taken and heard by the Monmouth County Common Pleas Court. Several motions were made to dismiss the complaint. Then permission was given by the Court to appear specially and offer testimony as to the lack of jurisdiction (p. 49).

Fred Wettack testified that he lived in Ocean Township (p. 49); that on September 16, 1925, the defendant's automobile was west of the sidewalk and in Ocean Township (p. 50).

It was then stipulated on the record that Ocean Township and Deal Borough are adjacent; that Ocean Township is west of the centre line of Norwood Avenue, and the Borough of Deal is east. It was further stipulated that the police officer was a policeman of the Borough of Deal, and held no other position (p. 50, ll. 18-36).

Leslie Gunther testified that when his car stopped he was west of the centre of Norwood Avenue in front of the Wettack property (p. 51, ll. 23-34). Mrs. Noe's car was still further west

and on the Wettack property (p. 52, l. 10). Mrs. Noe remained in her car until an officer came up (p. 52, l. 19). After the officer came up he took Mrs. Noe down to the Deal Police Station (p. 52, l. 35).

Joseph M. Cox, testified that he was a Justice of the Peace (p. 55). Mrs. Noe, when he came to his office in the Borough Hall, was brought in from the room occupied by police headquarters, to his office (p. 56). The complaint was made out before the magistrate, and a warrant issued forthwith. The hearing was adjourned until the next morning. Mrs. Noe did not request this adjournment. After the adjournment of the hearing Mrs. Noe was placed in a cell until the next morning (p. 57, ll. 15-16, ll. 32-41). She was placed in a cell by order of the magistrate (p. 58, l. 22).

At the conclusion of this testimony the appellant withdrew from any further participation in the case. The testimony was introduced for the sole purpose of attacking the jurisdiction of the Court.

A careful reading of the record and the testimony shows the following uncontradicted facts:

1. *The accident happened in Ocean Township.*
2. *The officer who made the arrest was a policeman of the Borough of Deal.*
3. *The officer making the arrest, did not see the accident.*
4. *The arrest was made in the Township of Ocean.*
5. *The officer arrested without a warrant.*
6. *The officer making the arrest swore out no complaint against the appellant.*

7. *The appellant was detained in the Police Station and not in the office of the Magistrate while the complaint was being sworn to.*
8. *The Magistrate did not proceed with the hearing forthwith, but, on his own motion, adjourned the hearing until the next morning,* AND DETAINED THE APPELLANT IN A CELL.

REVIEW OF THE OPINION OF THE SUPREME COURT.

The opinion of the Supreme Court is found at page 3 *et seq.* The Supreme Court in its opinion, in several particulars, misconceived the facts and legal points under review.

In disposing of the first reason for reversal, the Supreme Court stated "that a complaint was made in writing by a witness who observed the intoxicated condition of the prosecutrix, and he called an officer so that the latter might take the prosecutrix into custody (p. 6, ll. 31-38).

This statement of the facts is erroneous. The complaint, which was made, was not sworn to until *after the arrest and detention of the appellant.* This point is material, because, under the statute, where an arrest is made without a warrant, the complaint must then be sworn to by the officer making the arrest. The Supreme Court treated the case as though the complaint had first been sworn out and then the officer had made the arrest.

Under the second reason the Supreme Court again erred as to the facts. The Supreme Court says: "The place where the offense was committed raised a factual question" (p. 7, l. 19). There

was no factual question whatsoever as to the place where the offense was committed. *On the contrary*, it was stipulated on the record that the location where the accident took place was in the Township of Ocean (p. 50).

Under the fourth reason, the Supreme Court entirely misconstrued the purport of the argument. This point was directed to the failure of the magistrate who subscribed the complaint to identify himself as a Justice of the Peace of the County of Monmouth.

The facts which were mis-stated by the Supreme Court are material and bear directly upon the legality of the conviction. Irrespective of the question of public policy in affirming this conviction, there was a definite and precise law, governing the situation. This law has been supported by various decisions. If the regulations and directions of this law were not followed, then the conviction must be set aside.

ARGUMENT.

I.

The appellant took no part in any of the proceedings in the inferior courts.

Before the Justice of the Peace, Mrs. Noe in no way took part in the proceedings (see pp. 26-31, inc.).

Upon the Appeal in the Common Pleas Court, the Common Pleas Judge described the proceeding as follows:

“At the hearing of the appeals, which were tried together, with consent, the State was represented by Hon. William A. Stevens and the defendant by Theodore D. Parsons, Esquire. Counsel for the defendant announced that she appeared specially and only for the purpose of interposing objections to the jurisdiction of the Justice of the Peace (p. 38, ll. 8-14) * * * An exception was allowed to the Court’s ruling. The Court then proceeded with a hearing of the appeals *de novo*. Defendant remained mute and took no part therein” (p. 39, ll. 7-11).

The appellant in the inferior courts, therefore, preserved her rights and now in this proceeding challenges the jurisdiction of both the Justice of the Peace and the Court of Common Pleas. The procedure followed was that set forth in *State v. Rosenblum*, 102 L. 125, in which Chief Justice Gummere wrote the opinion for this Court. Chief Justice Gummere described the proper procedure as follows (p. 127):

“If the appellant, having refused to take part in the trial of the cause in the Magistrate’s Court, upon the ground that jurisdiction over his person had not been obtained, on his appeal to the Court of Common Pleas unsuccessfully seeks a reversal of the conviction in the lower court on that ground, he may then refuse to be a party to a trial *de novo* in the latter tribunal, and thereafter have a review of the appellate proceedings on certiorari.”

This is the course which has been strictly followed by the appellant herein. She took no part in the proceedings before the Justice. No part was taken before the Common Pleas Court, except to challenge the jurisdiction of the inferior court and of the Common Pleas Court.

II.

No jurisdiction of the appellant was ever acquired because the appellant was arrested by a police officer without a warrant for an offense which was not committed in the presence of the police officer.

The details of the arrest are as follows:
Mr. Gunther, whose car was damaged, testified:

“I stopped and signalled and the car came along and swerved a bit and crashed into the left front of my car * * *

Q. About how long after the actual happening did you see them? A. About maybe five minutes or ten, I do not know just exactly how long it was * * *” (p. 61).

The Police Officer Finn, testified as follows:

“Q. How soon after the happening of the accident did you say you were on the ground? A. I fix about ten minutes * * * When I came there I see Mrs. Noe’s car up against a tree” (p. 64, ll. 31-40).

“Q. Do you know where she came from? A. I cannot say.

Q. Did you see her in the Borough of Deal before the accident? A. No, sir.

Q. You did not see her that night on your beat? A. No, sir.

Q. You did not know of this accident until you went there—until you were called there? A. Until I was called there” (p. 70, ll. 16-28).

The testimony of both Gunther and Finn show the manner in which the arrest was made. The accident happened. Five or ten minutes afterwards Gunther got out of his car and went over and saw Mrs. Noe. He then notified the police. Officer Finn came up and arrested Mrs. Noe with-

out a warrant. Under his own testimony he did not see the accident.

This case is governed by chapter 208 of the laws of 1921. Section 31 of the Motor Vehicle Act of 1921, at page 680, specified when an arrest can be made without warrant:

“Any constable or police officer or motor vehicle inspector, or the Commissioner of Motor Vehicles, is hereby authorized to arrest, without warrant, any person violating *in the presence of such constable*
* * * and to bring the defendant before any Magistrate of the county where such offense is committed.”

In the words of the Supreme Court, in *Brewster v. Wilson*, (3 Misc. 526):

“As the proceeding was of a summary character, highly penal in its nature, and the legal steps to be taken are clearly mapped out in the statute conferring jurisdiction, it was essential to the validity of the proceedings and for the Magistrate to acquire jurisdiction of the cause that it should appear that the statutory requisites have been complied with.”

Under the act it is clear that the appellant could not be arrested without a warrant unless the offense was committed in the presence of the officer. In the instant case the officer himself admits that he came up ten minutes after the accident. There is no testimony that would indicate that the motor was running, or anything to permit the officer to say that an offense was committed in his presence. Nevertheless the officer arrested the appellant. This was clearly without authority. There was no jurisdiction in any way

obtained over the person of the appellant through this procedure.

The Supreme Court, in passing upon the objection says as follows:

“This objection is without any substance. A complaint was made in writing by a witness who observed the intoxicated condition of the prosecutrix, and he called an officer so that the latter might take the prosecutrix into custody” (p. 6, ll. 30-36).

Such was not the case. The arrest was first made and the complaint sworn to afterwards. Where an arrest is made without a written complaint, the act makes it obligatory that the offense be committed in the presence of the officer making the arrest. The only way in which these proceedings were ever instituted was by the initial arrest of Mrs. Noe. If this arrest was made without a warrant and without a written complaint, it could only be made by an officer in whose presence the offense was committed. Admittedly, in the present case no offense was committed by the Appellant in the presence of the officer. He then had no right to arrest her without a warrant. No jurisdiction was obtained over the appellant.

To annul the clear reading of this statute, would permit any person to cause the arrest of another under the Motor Vehicle Act; any traveler or passenger upon the highway could simply call a police officer and point to an innocent person and state to the officer that that person had violated the Motor Vehicle Act. An officer could then arrest that person upon another person's unsworn statement.

The Act, as has been stated, is in derogation of the common law. The intent of the legislature was to protect the personal rights of citizens, and not subject them to unwarranted and illegal arrests. To sanction such a method of arrest as was followed in this case, is to stamp with approval unauthorized arrests upon the mere unsworn complaint of any person, and to subject citizens to the whims of any person who makes a statement to an officer. For this reason alone it is submitted that no jurisdiction was ever obtained over the appellant, and the conviction is void.

III.

No jurisdiction was obtained over the appellant because the officer making the arrest did not sign the complaint.

Should this Court, in the face of the admitted testimony of Gunther and the police officer Finn, determine that the police officer was justified in arresting without a warrant, on the ground that an offense had been committed in his presence, the proceeding to obtain jurisdiction over the person of the appellant was defective, because the statute was not followed in the next step. The statute provides that after the arrest is made

“The person so offending shall be detained in the office of the Magistrate until the *officer making such arrest shall make oath or affirmation, which he shall do forthwith*, declaring that the person under arrest has violated one or more provisions of the act” (P. L. 1921, p. 681).

The arrest in this case was made without a warrant by Officer Finn. The appellant was taken to the Deal Police Station. She was detained there from 9:30 until 11:30, when the magistrate came. Then the complaint was signed, not by Officer Finn, *as the statute requires*, but by Leslie J. Gunther (p. 23).

The statute is definite and precise. As has been stated by the Supreme Court, in *State v. Baker*, 3 Misc. 532, at page 535:

“A plain reading of the statute discloses that the legislature’s intent was to provide methods of procedure by which persons arrested without warrant should be carefully protected in their rights. It is absurd to say that the method of procedure declared by the legislature as to what shall be the duty of the Magistrate when an accused is arrested without warrant, is merely directory. It is clearly mandatory.”

So, in the instant case, there is a clear and definite direction that the officer shall forthwith make oath or affirmation that the person under arrest had violated one or more provisions of the act. This the officer failed to do. This was an essential step in the proceedings by which jurisdiction of the person of the appellant could be obtained.

The Supreme Court, in its opinion, clearly misstates the law. The Supreme Court said:

“The eighth reason has already been considered and disposed of in what already has been said, *supra*, that it was not necessary that the complaint should have been sworn to and signed by the officer making the arrest” (p. 8, ll. 32-38).

This was disclosed under the fourth reason:

“The fourth reason presented for a reversal is that the complaint is not subscribed by an officer authorized to make complaints. There is no merit in this contention. The law does not require that the complaint should be made by an officer. The complaint can be made by an individual who observed a violation of any of the proceedings of the Motor Vehicle Act.”

This is a clear mis-statement of the law. The law has already been quoted wherein it is mandatory that the officer making the arrest without warrant shall make oath or affirmation. This must be in writing.

In *Watt v. Wallerius*, 99 Law, 370, the Supreme Court passed upon the necessity of a police officer arresting without a warrant making a written complaint. Section 31 is quoted in this opinion. Justice Campbell, speaking for the Supreme Court, says:

“The respondent was arrested by prosecutor, a police officer, who witnessed the alleged violation, and taken, without warrant or other process, before the Justice of the Peace, who, upon the verbal oath of the officer, issued a warrant, charging respondent with the violation of Section 16 of the act, and then proceeded to try the matter, found respondent guilty, and inflicted the penalty hereinbefore referred to.

“The Motor Vehicle Act is a penal statute and is therefore quasi-criminal in character. *State Board &c., v. McCloskey*, 87 N.-J. L. 470, 476.

“At common law, all proceedings of a criminal or quasi-criminal nature, except

contempts, were required to be initiated by written complaints.

“This is so conceded so and has always been so fixedly the practice in this state as not to be open to question nor require the citation of any authority for its support. And such would therefore be the requirement unless the contrary clearly appeared by specific legislative authority contained in the act in question. Such is not the case. On the contrary, it appears perfectly plain that the legislative intent and purpose was to require a written complaint in all cases of violation of the act.”

The arrest having been made by the officer without a warrant, if it be conceded that he had the right to make such arrest, the next step in the proceedings was a compulsory provision of the Act that he under oath or affirmation should make complaint. Justice Campbell has decided that this should be a written complaint. No such complaint was made by Officer Finn. The process of acquisition of jurisdiction then and there failed.

IV.

No jurisdiction was obtained over the appellant because the Magistrate did not hold a summary hearing.

Under either provision of the Motor Vehicle Act the magistrate has no authority to adjourn a hearing except upon the explicit request of the defendant (Sec. 25, P. L. 1921, p. 677), reads:

“Upon the return of said summons or warrant, the magistrate *shall proceed in a summary way to hear and determine the guilt or innocence of such person.*”

Section 26, reads:

“Any hearing to be held pursuant to this Act shall on the *request of the defendant be adjourned.*”

These two sections provide the procedure where a complaint has been made in writing, and summons and warrant issued thereafter. The Supreme Court considered this case of that character. Such is not the fact, however. As has been pointed out above, this case is one of arrest by an officer without a warrant. Procedure for the hearing is set out in paragraph 31:

“Whereupon said magistrate shall issue a warrant returnable forthwith, and the said magistrate shall *proceed summarily to hear* or postpone the case.” (P. L. 1921, p. 681.)

The magistrate had no jurisdiction of the case unless he followed this procedure. It was his duty to summarily and forthwith hear it. If he did not do so he lost jurisdiction of the person of the appellant.

The Supreme Court admits that the hearing was not had forthwith. In its opinion the Supreme Court says:

“The record discloses that it was the intoxicated condition of the prosecutrix which prevented the holding of a summary proceeding, and that it was in consideration of her not being able to present a defense intelligently that the magistrate postponed the hearing until she was able to do so. The record shows *she was afforded a summary proceeding* as soon as her condition warranted it.” (p. 8, ll. 11-20.)

Where a person is arrested without warrant and held for hearing the statute prescribes the procedure. As has been pointed out, this must be followed strictly.

The power given to the magistrate in such a case is broad and wide. To protect personal liberty the legislature has provided where a person is arrested that he should have a hearing immediately. The wisdom of this provision is evident. Had the magistrate the power to determine the condition of a person to proceed with a hearing, he might hold a defendant in custody for four or five days. Not infrequently intoxication is confused with concussion of the brain and nerve shock. Such a condition might last easily for three or four days. The magistrate would not have the power or right to hold a person in custody during this period of time. The proper procedure in a case such as the present one, if the magistrate found that the defendant was incapable of proceeding with the hearing, was to either serve a summons upon her or issue a warrant returnable the next day. To permit the magistrate to adjourn the hearing upon his own volition, without any request accords him powers which the legislature expressly desired to restrict and limit.

In *Van Wyck v. DeLorenzo*, 3 N. J., Misc. 529, a somewhat similar case was before the Supreme Court. The defendant was taken to a police station under arrest for operating an automobile while intoxicated. The prosecutor was first placed in a cell and then released upon leaving \$500 bail, and agreeing to appear for a hearing two days afterwards. The Court reversed the conviction and says:

“It was only within the power of the magistrate *upon the request of the accused to postpone the hearing and accept bail.*”

In *State v. Baker*, 3 N. J. Misc. 532, the Supreme Court said:

“It is absurd to say that the method of procedure declared by the legislature as to what shall be the duty of a magistrate when accused is arrested without warrant is merely directory. It is clearly mandatory.”

The statute in no wise authorized any adjournment of a hearing except upon the request of the accused.

It is admitted in the present case that no request was made for an adjournment. It, on the contrary, appeared as part of the record in the docket of the magistrate that arraignment was made at 11:30 in the evening, and hearing set for 10:00 o'clock the next morning. There was a clear disregard of the statute in this behalf.

In the words of the Supreme Court, in *Van Wyck v. DeLorenzo*, *supra*, this was one of the necessary requisites to confer jurisdiction. This request being absent, the Court lost jurisdiction and had no power to entertain the complaint.

V.

No jurisdiction was had of the appellant because the appellant was placed in a cell and detained there rather than in the office of the Magistrate until the hearing.

The statute provides:

*“The person so offending shall be detained in the office of the magistrate until the officer making such arrest shall make oath * * * and the said magistrate shall proceed summarily to hear or postpone the case as is provided in Sections 26 and 27 of this Act”* (P. L. 1921, p. 681).

It is to be remembered that this arrest was made in the year 1926. This is the section which governed at the time of the hearing. It is true that this portion of the Act was amended in 1926, by Chapter 151 of the Laws of that year. The law which governs this case, however, is Chapter 208 of the Laws of 1926. A definite provision exists that the person so offending *shall be detained in the office of the magistrate and further, that the magistrate shall proceed summarily to hear the case.* Nowhere does any authority appear to detain any defendant in a cell where there has been no request for an adjournment. The direction is that any accused shall be detained in the office of the magistrate and that the magistrate shall summarily proceed to hear the case.

The Supreme Court, in speaking of the sixth and seventh reasons which are consolidated in this one point of the argument states:

*“There is no merit in the sixth reason advanced by counsel * * * According*

to the testimony her condition of intoxication was such that it was deemed best that she should occupy a cell and not be on exhibition in a public place.

The seventh reason relied on for a reversal is like the sixth, and needs no comment'' (p. 28, ll. 20-31).

Such a decision has the effect of altering the statute. It is actually amending and supplementing an enactment of the legislature by judicial opinion. The statute is definite and precise in this regard.

VI.

No jurisdiction was obtained over the appellant because the arrest was made by a police officer who had no authority to make the same.

Testimony has been quoted before in this brief wherein the police officer admitted that no offense took place in his presence. There is no such situation, as in *State v. Ray*, 4 Misc. 493, of the accused sitting behind the wheel with the engine running. The only statement by Police Officer Finn is that he came up ten minutes or so after the accident and took Mrs. Noe to the police station. It was stipulated as part of the testimony that the point where Mrs. Noe was arrested was in the Township of Ocean. It was further stipulated as part of the testimony that the police officer was solely a police officer of the Borough of Deal. The police officer had no jurisdiction to make an arrest unless the offense was committed in his presence.

Assuming that this offense was committed within the presence of the police officer, then he

had no authority to make an arrest except in the Borough of Deal. There can be no answer to the statement that he could not serve a warrant or a summons outside of his own borough. His authority extended only within the confines of the borough appointing him. Admittedly, the arrest was made in another municipality to which his authority did not extend.

2 Ruling Case Law, 469, says:

“A public officer appointed as a conservator of the peace for a particular municipality has no official power to apprehend offenses beyond the district for which he has been appointed.”

The Supreme Court in discussing this point simply disposed of it by saying that there was evidence that the offense had been committed in the presence of an officer, and further, that the offense had been committed in the Borough of Deal. There is *not one scintilla of evidence* in the entire proceeding *that any offense was committed in the presence of the police officer, nor that any offense was committed in the Borough of Deal.*

This point must be decided upon the bald statement that the offense was committed in the Township of Ocean, that the policeman did not see the offense, and that as a police official of the Borough of Deal he came over into the Township of Ocean and arrested the appellant. This is an absolute statement of fact.

Such a proceeding, it is submitted, is clearly illegal and the first step in the entire proceedings, namely, the arrest of the appellant being illegal, no jurisdiction was ever obtained over her.

VII.

No jurisdiction was obtained over the appellant because the complaint does not show on its face that it is sworn to before a Magistrate.

It appears from the record that the complaint was made before Joseph M. Cox, a Justice of the Peace of Deal.

In *Brewster v. Wilson*, 3 N. J. M. 526, the Supreme Court considers the question of whether a complaint sworn to before E. W. Schoneberger with a seal, but with no description of his office, was questionable, and while the case is decided on another ground, the validity of such a complaint is doubted. In relation to this point, the Court says:

“As the proceeding was of a summary character, highly penal in its nature, and the legal steps to be taken are clearly mapped out in the statute conferring jurisdiction, it was essential to the validity of the proceedings and for the magistrate to acquire jurisdiction of the cause that it should appear that the statutory requisites have been complied with. Section 31 requires that the alleged offender shall be taken before a magistrate and the complaint in writing shall be made before him. The complaint does not show upon its face that it was taken before him as such magistrate, nor is there anything in the complaint to indicate that he is a magistrate.

The Trial Judge was without power to amend the complaint. It may be, but, without deciding it, that proof could be taken by calling the magistrate or the production of an official record that he was such

a magistrate. If he had designated himself as such in the complaint, his authority could not have been collaterally attacked."

In the instant proceeding no such course was taken advantage of, as is suggested might be proper by the Supreme Court. The state at no time offered to prove that Cox was a Justice of the Peace of the County of Monmouth. Therefore the record stands that he is Justice of the Peace of the Borough of Deal, which is impliedly, by the above case, erroneous. It is submitted that the above statement applies equally to a complaint sworn to before a person, who, by the record, appears to be holding a fictitious office, as to one which shows that he holds no office. There is not now, nor has there ever been, such a magistrate as Justice of the Peace of Deal.

It is respectfully submitted that on its face the complaint would be defective, if this jurat were signed and subscribed by a person as Justice of the Peace of Pennsylvania or New York.

The fact that Deal happens to be in the State of New Jersey does not affect the analogy. There is nothing in the case anywhere appearing that the officer by whom the jurat was subscribed, was a magistrate of this state. On the contrary, the designation itself indicates that his office is a fictitious office and does not exist. It is, therefore, respectfully submitted that the complaint is invalid by reason of the character of the jurat.

VIII.

CONCLUSION.

The initial step, the arrest, was made by an officer who had no authority in the municipality where the arrest was made, was made by him without warrant, although he did not see any offense committed. When he had taken the appellant before the magistrate he did not upon his oath make complaint against her. The accused was not detained in the office of the magistrate, nor did the magistrate proceed summarily to a hearing. The Motor Vehicle Act, which is in derogation of the common law, and which permits the right of personal liberty to be lost under certain circumstances, contains certain definite provisions to protect this civil right. These provisions in the present case were patently disregarded. A woman was placed in a cell without any authority from the statute. She was arrested illegally. To affirm this conviction, regardless of public policy, is to alter and change the terms and provisions of the Motor Vehicle Act, which it is alleged she violated.

For the reasons that:

1. The appellant was arrested without a warrant by a police officer in whose presence no offense was committed;
2. The police officer making the arrest did not swear to and sign the complaint;
3. The magistrate upon his own volition and with no request from the appellant, adjourned the hearing and did not proceed with a summary hearing;

4. The appellant was not detained in the office of the magistrate until the hearing, but was placed in a cell;

5. The police officer who made the arrest had no authority in the township where he made it, to arrest the appellant;

6. The complaint does not on its face show that it was signed before a magistrate; it is respectfully submitted that the Supreme Court erred in its affirmance, and that its judgment should be reversed to the end that the conviction should be set aside.

A review of the proceedings in the present case inspires the quotation of the words of the Supreme Court in *Van Wyck v. DeLorenzo, supra*:

“The entire proceedings seem to have been irregular.”

Respectfully submitted,

THEODORE D. PARSONS,
*Attorney for and of Counsel
with Appellant.*

New Jersey Court of Errors and Appeals.

LILLIAN E. NOE, <i>Prosecutor-Appellant,</i>	} <i>On Certiorari.</i>	
<i>vs.</i>		} <i>Appeal from</i>
THE MONMOUTH COUNTY COM- MON PLEAS COURT, <i>Respondent-Appellee.</i>		
	} <i>Court.</i>	

BRIEF OF RESPONDENT-APPELLEE.

PRELIMINARY STATEMENT.

In 1925 appellant was convicted of driving a motor vehicle while intoxicated. She appealed to the Monmouth County Court of Common Pleas where the conviction was affirmed. The Supreme Court on certiorari affirmed the judgment of the Common Pleas Court.

The judgment of the Supreme Court is now up for review. Seven grounds for reversal are urged in appellant's brief, which significantly contains no suggestion that either the magistrate or the Court of Common Pleas was without jurisdiction of the *subject matter*, as distinguished from jurisdiction of the *person*. Jurisdiction of the former was vested in both tribunals by the terms of the Motor Vehicle Act in force when the alleged violation occurred. The issues raised and discussed by the appellant seem therefore to concern principally the possible absence of jurisdiction of the person.

**As to the Argument, That the Appellant Took No Part
in Any of the Proceedings in the Inferior Courts.**

If the appellant took no part in the proceedings before the magistrate it was not due to any unwillingness on her part to submit to the jurisdiction of the court, but rather because she could not talk. (p. 26.)

JUDGE: Last night, Mrs. Noe, you were in such condition when you were arraigned before me, that it was impossible for you to enter a plea to the complaint filed against you.

MRS. NOE: Give me something for my nerves. I can not talk.

On the trial *de novo* she appeared by counsel, who when the case was called (p. 42), made no intimation of a special appearance but, quite inconsistent with appearing specially, he proceeded straightway to address motions to the complaint. Finally he dwelt upon the inadmissibility of testimony claiming that the magistrate 'had no right to receive such evidence' (p. 49). Only after his motions were denied did he attempt to make a special appearance (p. 49).

MR. PARSONS: May I make a special appearance, swearing a witness specially for a further proof of lack of jurisdiction?

THE COURT: You may.

Before this special appearance was entered, it had been argued that the complaint was defective because it contained no mention of the Act alleged to have been violated (p. 48). Such argument necessarily embodied the claim that appellant was not informed of the nature and cause of the accusation. If no person were before the court, and it is now so insisted, who was it who was not informed of the nature and cause of the accusation?

If jurisdiction of the person had not been ac-

quired this last motion could not have been decided even in appellant's favor.

Her claim that she took no part in the proceedings below is not substantiated by the record.

II.

As to the Arguments, (1) That Appellant Was Arrested by an Officer Without a Warrant; (2) That the Officer Did Not Sign the Complaint; (3) That the Magistrate Did Not Immediately Hold Trial; (4) That Appellant Was Placed in a Cell Instead of in the Magistrate's Office; (5) That the Arrest Was Made by an Officer Without Authority.

Throughout the above-captioned arguments, appellant has indulged in a bold and unwarranted assumption. She has assumed that if the requirements of *Section 31 of the Motor Vehicle Act* were not met, then no jurisdiction could vest. The fallacy of this reasoning lies in assuming that *Section 31* provides the only method of acquiring jurisdiction of the person. The section contains merely one method. There remains still another, set forth in *Section 25*, reading as follows:

'25. (1) Jurisdiction of offenses; summary hearings; process—A complaint having been made in writing and duly verified, that any person has violated any of the provisions of this act, any magistrate of the county, or recorder or police magistrate of any municipality, in which the offense is committed may, within thirty days after the commission of said offense, issue either a summons or a warrant directed to any constable, police officer, the inspector of motor vehicles or the Commissioner of Motor Vehicles of this State, for the appearance or arrest of the person so charged; and the magistrate shall state what section or provision of this act has been violated by the defendant, and the time, place and nature of said violation and upon the return of said summons or warrant the said magistrate shall proceed, in a summary way, to hear and determine the guilt or innocence of such person, and upon conviction, may impose upon the per-

son so convicted the penalty, by this act prescribed, together with the costs of prosecution for such offense'. *Chapter 208, Laws of 1921, p. 677.*

In the instant situation the requisites of Section 25 were met. A complaint issued (p. 59) and thereafter a warrant. Then followed an arrest of the appellant (p. 59). What took place before the issuance of the complaint and warrant may or may not have been an effort to comply with some other section of the Act. If the effort failed, as the appellant now insists, it would give rise perhaps to an action for false imprisonment but should not render ineffective an entirely different procedure later invoked under the dictates of an entirely different section.

The facts at bar are not unlike those in *State v. Ray*, 4 *N. J. Mis. R.* 493 at 496, wherein the court said, 'When taken to the recorder's office a complaint was made by the owner (in this case, Gunther) of the car which Ray (in this case, appellant) had struck. The proceedings from this point were in accordance with the portion of the statute which provides for an arrest upon a sworn complaint'.

For present purposes it would appear immaterial how the appellant got to the magistrate's chambers. The fact remains she was there, and she was there when arrested after the issuance of a complaint and warrant. Should it become legally necessary to account for her presence, it might be said, as the court suggested in the *Ray* case; she was there as the result of an original arrest for intoxication. As was said of Ray, 'It was lawful to have arrested him upon this ground'.

III.

As to the Argument, That the Complaint Was Not Properly Sworn To.

Appellant's criticism of the jurat of the complaint seems to be that it contains two words too

many, i. e., 'of Deal'. Their use, purely superfluous, should not render entirely inoperative the significant words which they curiously trail, i. e., 'Justice of the Peace'.

Unlike the complaint in *Brewster v. Wilson*, 3 N. J. Mis. R. 526, there is something in the instant complaint to indicate that Joseph M. Cox was a magistrate. In the *Brewster* complaint, there was nothing.

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It is respectfully urged that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

WILLIAM A. STEVENS,
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With Respondent.

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