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Writ of Error.

WRIT OF ERROR TO SUPREME COURT.

New Jersey Court of Errors and Appeals

NEW JERSEY, ss.

The State of New Jersey to our
Supreme Court, GREETING: 10

(SEAL) Because in the record and proceed-
ings and judgment in a certain cause
which was in our said Supreme Court
between the State of New Jersey, prosecutor
and defendant-in-error, and Helen Duvel, plain-
tiff-in-error, manifest error has intervened to
the great damage of the said prosecutor as by
its complaint we are informed; we being willing
that the error, if any there be, should, in due
manner, be corrected, and full and speedy justice 20
be done to the parties aforesaid, do command
that if judgment be thereupon given then you
distinctly and openly send, under your seal, the
record and proceedings aforesaid, with all
things touching and concerning the same, to our
Court of Errors and Appeals, at Trenton, on
the 16th day of September, instant, together with
this writ, that we may cause to be done thereon
what of right and according to the law and
custom of the State of New Jersey ought to be 30
done.

WITNESS, our Chancellor and Presiding Judge
of our Court of Errors and Appeals, at Trenton
aforesaid, the 9th day of September, 1926.

Clerk.

J. O. BIGELOW,
Attorney.

Return.

RETURN.

The answer of the Justices of the Supreme Court of the State of New Jersey within named.

10 The record and proceedings where of mention is within made with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

20

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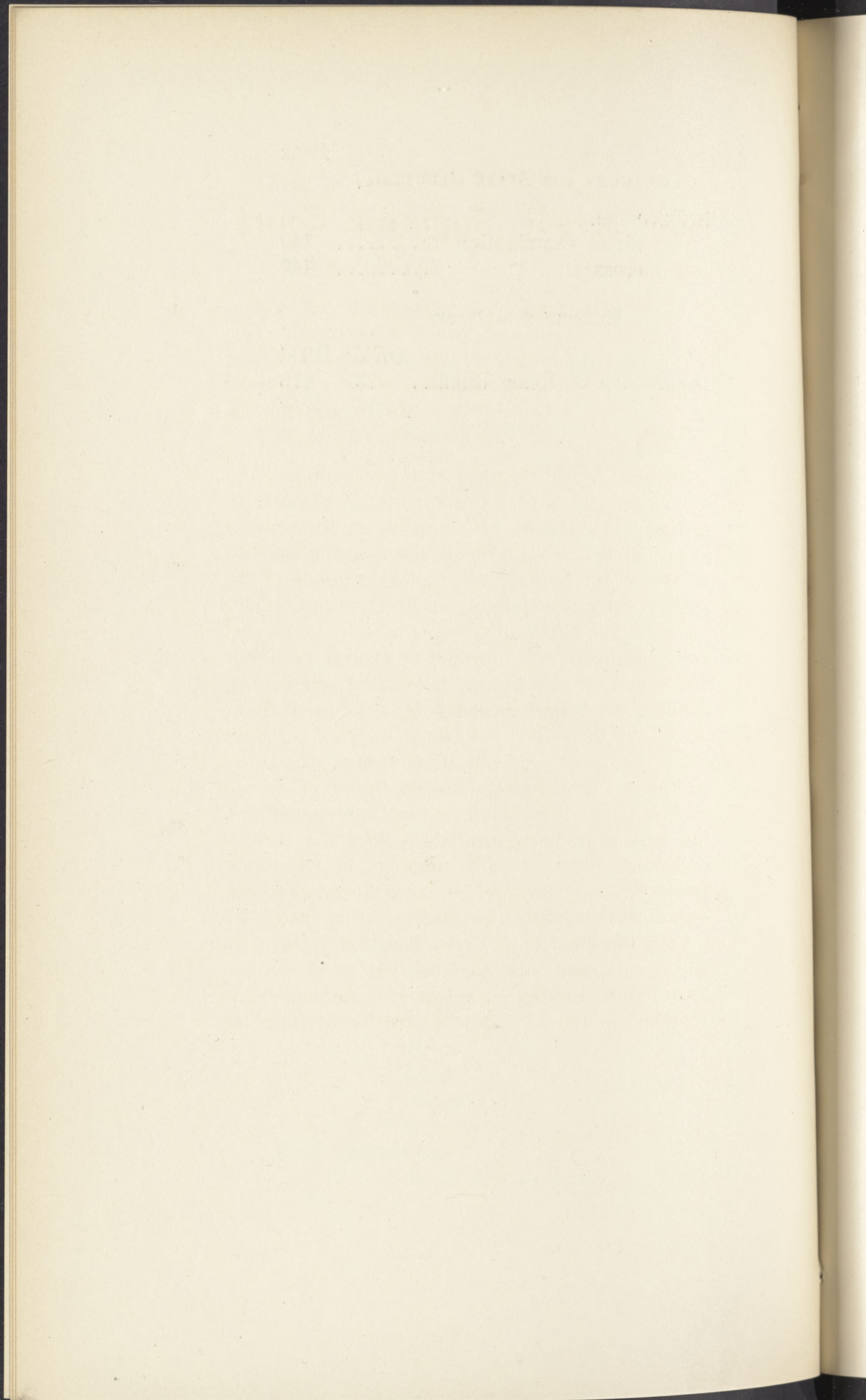
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Writ of Error.

New Jersey Supreme Court

New Jersey, ss.:

(Seal) The State of New Jersey to our Judges 10
 of our Court of Oyer and Ter-
 miner of the County of Essex,
 constituting the Court of General
 Quarter Sessions in and for the
 County of Essex, GREETING:

Because in the record and proceedings, and
also in the giving of judgment upon a certain in-
dictment in the name of the State of New Jersey
against Helen Duvel, alias Helen Bugel, alias Hat- 20
tie Hager, for larceny and receiving goods of the
value of Fifty-two Dollars and Thirty-nine (\$52.39)
Cents, in the City of Newark, in said County of
Essex, found in our Court of Oyer and Terminer
and in and for said County heard and determined,
manifest error hath intervened to the great dam-
age of her, the said Helen Duvel, as from her com-
plaint we have received information; we being
willing in this behalf to correct the error in due
manner if any there shall be, and that speedy jus- 30
tice may be done to her, the said Helen Duvel,
do command you, that if judgment be thereupon
given, then you do send the record and proceed-
ings aforesaid, with all things touching and con-
cerning the same to us under your Seal, distinctly
and openly, and this Writ, so that we may have
them before our Supreme Court of Judicature, at
Trenton, on the 18th day of April next, that in-

Return.

specting the record and proceedings aforesaid we may further do thereupon for correcting the error, that which of right and according to law shall be fit to be done.

10 WITNESS William S. Gummere, Chief Justice of our Supreme Court, at Trenton, the 30th day of March, in the year of our Lord, One Thousand Nine Hundred and Twenty-five.

EDWARD J. KELLEHER,
Clerk.

FRANK B. COLTON,
Attorney.

Return.

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

I, DALLAS FLANNAGAN, Judge of the Court of Quarter Sessions in and for the County of Essex, New Jersey, Do Hereby Certify and return to the Supreme Court of Judicature of the State of New Jersey, the Indictment, Judgment, Record and Proceedings, together with all things touching and concerning the same together with the entire record as by the within Writ to me directed, I am
30 commanded.

In Witness Whereof, I have hereunto set my hand and the official seal of said Court and County at Newark, New Jersey, this 1st day of July A. D., 1925.

40 DALLAS FLANNAGAN
Judge of the Court of Quarter Sessions, Essex County, New Jersey.

Indictment.

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

Be it remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the third Tuesday in September, in the year of our Lord, one thousand nine hundred and twenty-five, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Andrew C. Snyder, Chas. W. Smith, Ralph Zirpoli, Edwin LeRoy Stewart, Hobart A. Walker, Henry Loeffler, J. Samuel Stage, W. Edson Huegel, I. N. Lewis, Arthur A. Carpenter, Atkins A. Wolf, Richard W. Erler, Neil J. Convery, Henry Buermann, Rutherford Stell, Edward Barone, Albin A. Lucius, Harry Wilder, I. Woodruff Faulks, Frederick Pleasants, Chas. W. Buvinger, Wm. Buerman, Edward Markowitz, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County, to wit: The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Helen Duvel, alias Helen Bugal, alias Hattie Hager on the nineteenth day of June, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Newark, in the County of Essex aforesaid unlawfully did steal, take and carry away ten lace panels,

Indictment.

10 each panel of the value of five dollars, one pair of shoes of the value of two dollars and thirty-nine cents, in all of the value of fifty-two dollars and thirty-nine cents of the goods and chattels of Hahne & Company, a corporation, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20 And the Grand Jurors aforesaid, upon their oath do further present that the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, on the nineteenth day of June, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Newark, in the County of Essex aforesaid unlawfully and feloniously did receive and have ten lace panels, each panel of the value of five
30 dollars, one pair of shoes of the value of two dollars and thirty-nine cents, in all of the value of fifty-two dollars and thirty-nine cents of the goods and chattels of Hahne & Company, a corporation, before then feloniously stolen, taken and carried away, the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, then knowing the said goods and chattels to have been feloniously stolen, taken and carried away, contrary to the form of the statute in such case made and provided, and
40 against the peace of this State, the government and dignity of the same.

J. O. BIGELOW,

Prosecutor of the Pleas.

On the twenty-fifth day of October A. D. Nineteen hundred and twenty-four, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court

Indictment.

of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided. 10

PLEA.

And afterwards, that is to say on the thirteenth day of October A. D. Nineteen hundred and twenty-four, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Dallas Flannagan, Presiding Judge of the Court of Common Pleas, Helen Duvel, alias Helen Bugal, alias Hattie Hager, in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, and the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, being brought before the bar in her own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon her, how she would acquit herself thereof, says that she is Not Guilty thereof and therefore for good and evil she puts herself upon the country, &c. and John O. Bigelow, prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like. 20 30

JUDGMENT RECORD.

Therefore, let a jury thereupon come before the Court of Quarter Sessions, to be holden at Newark, in and for the County of Essex on the nineteenth day of November A. D. Nineteen hundred and twenty-four, then next ensuing, twelve free and 40

Indictment.

lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, to recognize upon their oath whether the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, is Guilty of the premises in the said indictment specified or Not Guilty because the said John O. Bigelow, Esquire, Prosecutor, &c. as the said Helen Duvel, alias Helen Bugal, alias Hattie Hager, puts herself upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say, on the second day of February A. D. Nineteen hundred and twenty-five, to which day the trial of aforesaid indictment was postponed, at the same Court of Quarter Sessions, holden before the Honorable Dallas Flannagan, Judge of the Court of Common Pleas, comes the said John O. Bigelow, who prosecutes as aforesaid, and the said Helen Duvel, alias Helen Bugal alias Hattie Hager, and the jury of whom mention is before made, and Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned after the following challenges, by the defendant, to wit: John W. Lane, John Spielman, Edward L. Hines, Ira L. Calvert, Charles Dietz, Raymond A. Loppocker, Albert J. Dewey, William Weneck, Oscar J. Jorgenson, Halsey P. Hunt, Philip Bopp and Otto Hunter, being called, were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was com-

Indictment.

menced and continued until the fifth day of February A. D. Nineteen hundred and twenty-five, when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "We find the defendant Guilty of Larceny as is set forth in the first count in the indictment and recommend her to the Mercy of the Court," and so they say all. 10

And afterwards, that is to say on the twenty-sixth day of February A. D. Nineteen hundred and twenty-five the Court heard motion of Joseph Siegler, Esquire, Attorney for the defendant, for new trial and in arrest of judgment, whereupon the Court reserved decision.

And further, that is to say on the fourth day of March A. D. Nineteen hundred and twenty-five the Court, having heard and considered said motion for a new trial and in arrest of judgment, denied said motion. 20

Whereupon all and singular, the premises being seen and by the Court now here fully understood, on this thirtieth day of March A. D. nineteen hundred and twenty-five the Court, Hon. Dallas Flannagan, do order and adjudge that defendant be imprisoned in the Common Jail of this County for a term of thirty days upon this conviction, that she pay a fine of Two hundred dollars and the costs of this prosecution, and that she stand committed until said fine and costs be paid which said costs are taxed by the Clerk at the sum of \$77.41 and the defendant be in Mercy, etc. 30

Judgment signed March 30, 1925.

DALLAS FLANNAGAN,
Judge. 40

Opening.**ESSEX QUARTER SESSIONS.**

Before—Hon. DALLAS FLANNAGAN, J., and a jury.

10	THE STATE <i>v.</i> HELEN DUVEL, alias HELEN BUGAL and alias HATTIE HAGER.	} Indictment No. 57. Larceny and Receiving.
----	---	---

Wednesday, February 4, 1925.

For the State appears JAMES L. MCKENNA,
Third Assistant Prosecutor of the Pleas.

For the defense appears JOSEPH SIEGLER,
and LEON MIRABEAU, of the New York
Bar, who is admitted *pro haec vice*.

20

A jury is called and sworn.

Mr. McKenna opens in behalf of the State.

JACOB FRIEDMAN, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. Mr. Friedman, where do you live? A. South Eleventh Street, 469.

30 Q. And you are employed by Hahne & Company? A. Yes, sir.

Q. And you were so employed on the 19th day of June of last year? A. Yes, sir.

Q. On that day did you see Helen Duvel? A. Yes, sir.

Q. Where did you first see her? A. In the upholstery department, third floor.

Q. Of Hahne & Company? A. Third floor, yes, sir.

40

Jacob Friedman, direct.

Q. And whereabouts on the third floor is the upholstery department located? A. That is the corner of Broad and New, in that section, on the Broad and New Street side.

Q. What first attracted your attention to her? A. Coming out of the storeroom section, where none of our customers approach, coming towards Halsey Street, leaving the Broad Street side, towards Halsey— 10

Q. Did you see anything on her at that time? A. A package.

Q. I show you a package and ask you whether you identify this package? A. There is ten lace panels here that were sold for \$5.50 each—

The Court: Excuse me. He asked you do you identify the package? 20

The Witness: Yes, sir.

Mr. McKenna: I ask that it be marked for identification.

(The same is marked S-1 for identification.)

Q. Was there anything else she had? A. A box containing shoes, unwrapped.

Q. I show you a box and a pair of shoes and I ask you whether you identify them? A. Yes, sir.

Mr. McKenna: I ask to have those marked for identification. 30

(The same are marked S-2 for identification.)

Q. Do you see Helen Duvel in court here? A. Yes, sir.

Q. Will you point her out to the jury, please? A. That lady right there, in the first seat.

Jacob Friedman, direct.

Mr. McKenna: Pointing to Helen Duvel, the defendant, Mr. Siegler?

Mr. Siegler: Yes, sir.

Q. What did you do when you saw her leaving?

10

A. Why, I called the store detective, I followed her as she was coming through the store towards the rear of the store and I approached her and asked her if she is waited upon, in the furniture department, that is to the extreme rear of the store, that is leaving Broad Street away to the rear, and I approached her in amongst our furniture, and she said, "Yes, I am waited on, thank you," and I got a good description of the package, and then more so, because our marks are plain, right here, in black crayon.

20

Q. The marks are on the panels there? A. Ten panels, \$5.50 each.

Q. This here mark here (indicating on Exhibit S-1 for identification)? A. Yes, these are crayon marks, and then I went back in—if anybody is familiar with Hahne & Company—there used to be an opening right through to the fourth floor, and we have got that all closed up now, and I went back towards that opening, that is near the center, and I called for our store detective.

30

Q. Who was the store detective that you called? A. At the time, Daxton.

Q. What did you do after that? A. Mr. Daxton did the rest, he followed the party that I pointed out to him with these parcels down the stairs to the second floor, and I was through with the transaction right there.

Q. At about what time was that, Mr. Friedman?

A. That should have been about half-past twelve.

40

Q. Was it about half-past twelve? A. Positively about half past-twelve.

Jacob Friedman, direct.

Q. And after that you followed her from the third to the second floor you did not see her again?

A. Yes, sir.

Q. When? A. She came back to the third floor through the rear stairway.

Q. How long after? A. In five minutes, probably less.

10

Q. Was Daxton there, too? A. Yes, sir.

Q. Did you talk to him at that time? A. Why, I went to his assistance at the time, where she discarded the package, coming to the first floor she discarded this package in our furniture section.

Q. Who discarded it? A. Mrs. Duvel.

Q. Where did she discard it? A. In the furniture section.

Q. Did you see where she put it? A. The store detective insisted on her going back and picking that package up.

20

The Court: What did he say to her?

The Witness: "Pick that package up."

The Court: And what did she say?

The Witness: She went and picked it up.

Q. Did she still have the shoes with her? A. Oh, yes, the shoes were under another arm.

Q. Then where did you go with him? A. I went with him and her to our fourth floor where they generally take the shoplifters and search them.

30

Q. And what took place on the fourth floor? A. Why, there was a confession made by this party.

Mr. Siegler: I object to the use of that word and I ask that it be stricken out.

The Court: Strike it out.

Q. Just what did she do when she got to the fourth floor, what were her words; what did she

40

Jacob Friedman, direct.

say? A. Why, when she got to the fourth floor there was nothing said immediately, there was nothing said, she was all excited and she stood there and she wanted to know if we would let her smoke, and she smoked six cigarettes. We let her have her rest there, and the store detective
10 questioned her about what she done.

Q. Did you hear what she said? A. Why, she wanted to be forgiven for what she had done.

Q. Can you tell her exact words? A. I can illustrate her actions.

Q. Illustrate her actions. A. Of course, you know how they are when they are nervous, "Please don't lock me up," that all goes with it, and she kept crying for awhile, and finally they went to work, and our store has a system of a confession
20 to be signed—

Q. All right, Mr. Friedman, will you tell us what she said, please?

The Court: He said she said, "Please don't lock me up." That is all he said that she said.

The Witness: The detective told her to come out with the truth, if she has got anything else about her person, and so forth,
30 "You are not telling the truth, now come out with it and we will treat you right." That is the way they do.

The Court: What did she say when he said that?

The Witness: Well, she said, "I am telling the truth," and that was the address, and so forth, where she was supposed to be living.

The Court: She gave her address and she
40 asked to be forgiven.

Jacob Friedman, direct.

The Witness: Yes, sir.

The Court: Did she say anything else at all?

The Witness: No, she did not have much to say after that.

The Court: Did they accuse her of taking the goods?

10

The Witness: Naturally, she had the goods on her.

The Court: What did she say about that?

The Witness: She wanted to be forgiven in some way, your Honor, and get out of it so we would not have her locked up.

Q. Did you ask her where she took the curtains?

A. I had nothing to do with the questioning.

20

Q. Who was there at the time besides yourself?

A. There were several store detectives there.

Q. Do you know who they were? A. Why, one gentleman from Bamberger's had come as soon as they notified him, they notify you. Mr. Carrington from Bamberger's, Mr. Stollberg who was the city authority from headquarters, and a young lady that is with L. S. Plaut & Company, a store detective at that time, and we had another store detective, but I am not sure of her name, I cannot think of her name.

30

Q. How long did this conversation take place on the fourth floor? A. Well, I was in the room at least ten minutes, then I went out.

Q. Were you in there on and off or were you in there all the time? A. I was in there until this confession was signed.

Q. What was the confession, she admitted it?

A. She admitted and signed it, and knew what she signed.

40

Jacob Friedman, direct.

Q. She admitted that she took the goods?

Mr. Siegler: I object to the leading question.

10 The Court: If the confession was signed the confession is the best evidence, but if she had anything to say before the confession was signed you might bring that out.

Q. Then where did you go, Mr. Friedman, after that? A. Well, all of us men were told to step out of the room and then the lady searched her.

Q. Who took the curtains, do you know? A. Why, the curtains were out of my hands after I left her.

Q. Did you leave the store with Helen Duvel? A. No, sir.

20 Q. You stayed in Hahne & Company? A. I stayed and attended to my business.

Q. Do you know what time she left? A. I cannot state the time because my floor is the floor below and I cannot state the time.

Q. And that was the last time you saw her? A. The last time I saw her.

Q. I show you a paper and ask you whether you saw Helen Duvel sign that? A. Yes, sir.

30 Q. And that is her signature? A. That is the statement that was made out, the written form, and she was asked to read it over and sign it.

Q. Now, were any threats made to her? A. Not a threat made to her.

Q. Were any promises made? A. Nothing like that.

Mr. McKenna: I ask that the paper be marked for identification.

(The same is marked S3 for identification.)

Jacob Friedman, cross.

The Court: She was under arrest at the time this statement was made?

The Witness: There were some authorities there, I am not positive whether Mr. Stollberg was there when this statement was made or not.

Q. But you don't know whether he had arrested her or not? A. The arrest was made from there, at which time I was not there present.

10

Q. I am trying to get at whether or not this woman was under arrest when she made this statement? A. She was in the hands of the store detective.

Q. But the officer from headquarters was there, someone from headquarters or the police department was there? A. I am not positive if he was there.

20

Cross examination by Mr. Siegler:

Q. Where do you live, did you say? A. 469 South Eleventh Street.

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

Q. How long have you been employed by Hahne & Company? A. Four years.

Q. In what capacity? A. Floor superintendent.

Q. Do you know this man, Mr. Daxton, that you referred to? A. Only as a store detective.

30

Q. How long have you known him? A. Since he was employed there.

Q. How long do you know him?

Mr. McKenna: I object to that at this time, as not proper cross examination.

The Court: I think so, sustained.

40

Jacob Friedman, cross.

Q. How long do you know him?

Mr. McKenna: I object.

The Court: Sustained.

Q. What period of time do you know Mr. Daxton?

10

Mr. McKenna: Objected to.

The Court: Sustained.

Q. How long has Mr. Daxton worked there up until June of 1924? A. I cannot tell you, I did not hire him, and he may have been employed—

The Court: You have answered the question.

Q. Did you know him more than a month at the time of this occasion? A. I am not positive.

20

Q. What time of the day was it that you came down on this floor? A. Half-past twelve, twenty minutes after.

Q. You had been out to your lunch? A. Yes, sir.

Q. And what time did you leave the store? A. About eleven o'clock, or probably five after.

Q. Have you any particular office there? A. No particular office, I have a section where I keep my books, and so forth, but no particular office.

30

Q. And where is that, what floor? A. Third floor.

Q. And this third floor is an open floor running from Halsey Street to Broad? A. Yes, sir.

Q. And what would you judge the distance to be? A. About 235 feet.

Q. And on what point of that floor have you got your place where you usually conduct your affairs? A. No particular place.

40

Jacob Friedman, cross.

Q. Oh, you are a floorwalker? A. And floor superintendent, it is the same thing.

Q. And was there anybody on that floor outside of this lady when you came on it? A. Positively, there must have been customers in the store.

Q. Not must have been, did you see any other customers there? A. Oh, yes, considerable people on the floor. 10

Q. Did you see any salesmen there? A. Certainly, we have salesmen and salesladies.

Q. Did you see any? A. Positively.

Q. Did you look for any? A. At what particular time do you mean?

Q. This time, as you were looking at this woman? A. At that particular time I did not look for any salesman, no, sir, because there are saleswomen there. 20

Q. Did you look for anybody at all? A. At the time she was in the furniture department I looked for a salesman to take care of her.

Q. Now, where was this woman when you first saw her? A. In the upholstery department.

Q. And what part of the store is that? A. Broad Street and New, the Broad and New Street section, that is the front part of the store.

Q. In the corner? A. Yes.

Q. And have they got any counters there and the regular make-up of the ordinary retail division? A. Yes, sir. 30

Q. And this woman was in front or in back of the counter? A. Coming from behind the counter.

Q. How many sales people have you got behind that counter? A. There are four sales people there, but at that particular time there wasn't four, it was lunch hour.

Jacob Friedman, cross.

Q. Two of the four go out to lunch at one time?

A. No, sir, one third of the help goes out.

Q. Well, there was at least one or two there, wasn't there? A. Yes.

Q. And how far away were you when you first laid your eyes on her? A. About fifteen feet away.

10 Q. Coming towards her? A. Coming towards me.

Q. And she was standing there? A. Walking. Coming from behind this section that I am trying to tell you.

Q. That is an open section? A. No, sir, it is not open, it is behind the counter that is used as a stockroom; it is not more than two feet wide.

Q. And how long is this counter? A. I should judge about sixty feet.

20 Q. How many people were behind that counter? A. Are you talking behind the partition or behind the selling counter?

Q. Behind the selling counter. A. I should judge there was one or two there; I am not positive, because my eyes were not on the clerks at the time.

Q. Did you approach any of them? A. No, sir, I did not.

Q. Now, when you saw her coming out what did she have in her hand? A. Two bundles.

30 Q. Two bundles? A. Yes, sir.

Q. Were they in one hand or both hands? A. They were under both arms.

Q. And was one of these bundles open? A. They were packed right there, still in the original packing; this top paper does not belong to it—pardon me, this is the paper, that is the original package with the string around it that way, we sell our merchandise from it, and we use a sample about

Jacob Friedman, cross.

twenty-five feet from where that comes; we work from a sample.

Q. Did you wrap this parcel up? A. I did nothing to it, I had nothing to do with the package, as far as wrapping it is concerned.

Q. Did you wrap it up when you first saw it? A. That parcel was in the original container from the stockroom; it does not leave the store in that wrapping. 10

Q. Did you wrap this bundle up? A. No, sir.

Q. And was this the bundle that this woman had when she was in the furniture department? A. Yes, sir.

Q. Did she walk through the furniture department? A. She went to the rear of the store and went into the furniture section.

Q. How many salesmen did she pass? A. Well, it is a question whether she passed them; naturally she passed some salesmen, but I cannot state how many, because we have in our furniture department twenty-four of them, and as I said there was one-third of them out to lunch. 20

Q. Did she go through that entire department? A. She went to the rear of the store and went into the case goods department, which we call the case goods, that is, dining room suits, and bedroom suits, and so forth. 30

Q. And didn't she look at some chairs there? A. At the time I approached her she wasn't looking at anything.

Q. Well, was she looking at chairs at any time? A. I cannot state.

Q. Did she stop to look at chairs? A. She did not hesitate at any time until I approached her.

Q. Why did you hesitate, are you in doubt about

Jacob Friedman, cross.

that? A. I am not in doubt, I say she did not hesitate at this particular time.

Q. This other bundle was a light bundle? A. Yes, sir.

Q. Did she have one shoe exposed under her arm? A. No, sir, it was closed up in the carton.

10 Q. Where is that carton? A. It is broken now.

Q. What do you mean it is broken? A. The carton is broken now. It is exposed now.

Q. That is not the same carton that you found her with? A. Yes, sir; it is the carton.

Q. Are you sure of that? A. Yes, sir.

Q. You did not supply it during this little wait on the fourth floor? A. No, sir; I handled that carton.

Q. You handled it? A. Yes, sir.

20 Q. And did you handle it well enough to tie it and wrap it? A. I took that carton from under one of her arms while she was walking through the store with the store detective, because she had enough with that bundle.

Q. You took the carton from her? A. Yes, sir.

Q. And was there one shoe in there or two shoes? A. There was a pair of shoes.

30 Q. Of course, you don't remember whether this is the pair that was in there, do you? A. Well, that is the same pair of shoes. I believe they are \$2.39 a pair; I am not positive, I think they are \$2.39. Of course, I am not familiar with the shoes.

Q. Are you in the shoe department? A. No, sir, I am not familiar with the shoes.

Q. And you cannot swear now positively that this was the same pair of shoes that you got at that time? A. That is the same pair of shoes, they are tied together the way we use them.

40 Q. And this bundle, as she walked through the

Jacob Friedman, cross.

furniture department, was exposed by her? A. It was not exposed.

Q. I mean this bundle without any indication that it was purchased in the place? A. Oh, yes, there is an indication on it.

Q. There are indications on it that belonged in your store? A. Yes, sir.

10

Q. And she walked with that bundle with the marks indicating that it had not been sold through the furniture department, is that right? A. She had those bundles.

Q. These originally wrapped bundles, those here that are on this desk? A. Yes, she had those bundles.

Q. And she walked downstairs to the second floor? A. The rear stairway, yes, sir.

Q. And before she got through you asked her if she wanted to be waited upon? A. Oh, no. You got that wrong. I approached her as she went into the furniture department, 75 feet from the stairway and I let her go on when she said she was waited upon, that she did not wish anything.

20

Q. And you were suspicious, then, of course? A. Naturally, I would not have followed her if I had not been.

Q. Why didn't you take the bundle from her then? A. I had no authority.

30

Q. You mean to say if somebody is walking away with the property of your employer you have no authority? A. I have no authority to make an arrest.

Q. Did Mr. Daxton have the authority to make an arrest? A. He has the authority as far as the store end of it is concerned.

Q. And you got in touch with Mr. Daxton? A.

40

Jacob Friedman, cross.

I called him immediately as she was about to leave the store.

Q. Did you get him on the 'phone? A. Yes, sir.

Q. Where did he come? A. As he came down from the fourth floor to meet me on the third floor staircase, as the lady was walking down with the merchandise.

Q. When she got to the third floor did she stop anybody on the third floor? A. She got to the second, she couldn't go back to the third.

Q. I mean on the second. A. That I don't know, I did not see any action on the second floor, I did not leave my floor.

Q. As far as you know you have no knowledge of what happened on the second floor. I know she went across the second because I looked through the open space and saw her walk on the second floor.

Q. With these bundles under her arm? A. With these bundles under her arm with the store detectives after her.

Q. Did she stop to speak to anybody there? A. I did not see her after that.

Q. When did you see her after that? A. Coming through the third floor, coming back through the bed department, coming back through the rear stairs—naturally she did not come up the same stairs she went down, and on that stairway—

Q. Tell us where these stairs are? A. The rear stairway is in the far corner of Halsey and Central Avenue, it is away in the rear, and it is never used by a customer, very rarely used.

Q. Where is the other stairway? A. The other stairway is the main center stairway that leads from the rear of the store, the Halsey Street center, goes down and winds right down to the main floor where that open space used to be.

Jacob Friedman, cross.

Q. When she went from the third floor to the second floor she used the center stairway? A. Yes, sir.

Q. The stairway everybody uses? A. Yes, sir.

Q. She walked down there? A. Yes, sir.

Q. And a few minutes afterwards she walked up what stairway? A. I did not see her walk up that stairway because I was not behind her, the store detective was with her. 10

Q. When she walked up on the third floor did you see her there? A. I seen her in the bed department.

Q. What part of the division is that? A. It is in the same section as that rear stairway, Central Avenue and Halsey Street rear.

Q. And how far from the furniture department is that? A. It is in the furniture department, bed department is included in furniture. 20

Q. And she walked through that furniture department? A. The detective was with her at the time.

Q. Where were you? A. I was right there. I seen her come in my direction, and I ran across the floor because I heard Daxton tell her to pick up that package, it was discarded there.

Q. What I am trying to find out is where were you when she reached the third floor again? A. I was right at that stairway, that rear stairway, and the center of the store, I could see fifty or sixty feet from where I was standing. 30

Q. And when she arrived on the third floor where did she go? A. Well, when she arrived on the third floor—we are getting apart, I did not see her arrive on the third floor.

Q. Where were you when she got to the third floor again? A. She was followed by the store 40

Jacob Friedman, cross.

detective and I walked across the store to assist him in getting her up the stairs, she was in the bedding department.

10 Q. Anyway you did not see her just before Mr. Daxton approached her on the third floor? A. I seen her before she was on my floor, and after she went to the second, but I did not see her from that section until she hit the bedding department, which is at least fifty feet away from the rear stairway.

20 Q. What I am trying to get, Mr. Friedman, is did you see her walking on the third floor, when she came back to that floor at any time before you observed Mr. Daxton with her ordering her to take this bundle up in her hand? A. I seen her coming up that bedding aisle in quite a rush, I would not say she was walking, and that bundle was discarded, and she was told to pick it up.

Q. You did not see her discard the bundle? A. I seen her pick it up.

Q. You did not see her discard the bundle? A. I seen her pick it up.

Q. Did you see her discard that bundle, yes or no? A. I say I seen her pick it up.

30 Mr. Siegler: If the Court please, I think I am entitled to an answer yes or no whether you saw this woman discard this bundle.

The Witness: I could not see, exactly, your Honor, because the furniture would obstruct my view.

Q. When you say you saw her discard the bundle, on direct examination, and attempt to say it now, it is merely your guess that you did. You did not actually see her?

Jacob Friedman, cross.

The Court: That is too involved.

Q. Is it your guess or did you actually see it?

The Court: The question is too involved, whether he actually saw it—whether it is a guess or not is a conclusion.

Q. You say you did not actually see her, that you could not owing to the conditions existing there? 10

The Witness: I could see her, but the under part of the furniture could not be seen, the upper part could.

Q. What attracted your attention to go to the point where Daxton was? A. I was interested to see, he was following the woman and I was interested, I saw that he would take care of her, and I wanted to assist him if he needed it. 20

Q. Was there any doubt in your mind that Mr. Daxton could take care of her? A. Certainly, if you see a woman on the floor as I did, and as I have seen her, you would be naturally interested in following her up, too.

Q. And that was your only interest to see that she was followed up? A. I did not have to see her after she leaves my floor.

Q. Did you come to the place where Daxton was? A. I came to the corner of the bedding department, as I said before, and assisted him in taking her upstairs. 30

Q. Where were the bundles? A. Under her arm.

Q. And who made her put the bundles under her arm? A. Nobody made her put them.

Q. Who ordered her to put them under her arm? A. She had the bundles all the way through 40

Jacob Friedman, cross.

the store until she come back to the first floor and discarded that bundle.

Q. Mr. Friedman, you are not so illiterate that you cannot understand my question. A. No, I am not illiterate.

10 Q. In your answer before you said she discarded it. Now, a few moments ago you testified that you did not see her discard this bundle, is that true? A. That is what I stated. I did not actually see her discard it, on account of the furniture being in the way.

Q. When you got to where Daxton was talking to this woman did Daxton say anything to this woman about this bundle that was lying on the floor? A. As I stated he told her to pick that bundle up, which she did.

20 Q. After she picked this bundle up where was she taken to? A. Why, I escorted her to the fourth floor to the regular room where they investigate shoplifting cases.

Q. And who carried the bundles? A. She carried one of them, that ten panel.

Q. Who carried the other? A. I took the shoe package out of her arm and held her arm to the fourth floor.

30 Q. Was the shoe package tied with a cord? A. The shoe package was upwrapped without a string or anything on it.

Q. And that is the way she was carrying it? A. That is the way she had the package under her arm.

Q. You are not supposed to go off the third floor, are you? A. Oh, I can go off the floor, if I wish.

40 Q. Why did you state, in answer to some of my questions, after I asked you, if you went down to

Jacob Friedman, cross.

the second floor, that you are not supposed to go off your floor and that is why you did not follow her, is that true, was that a true statement? A. I did not say I could not go off my floor, I never made that statement.

Q. I said, isn't that the reason you did not go from the third to the second floor, according to what you testified here, because you are not supposed to go off the third floor? A. No, it simply was not necessary for me to leave my floor when there was a man in charge of the transaction. 10

Q. When you got to the fourth floor whose office did you go to? A. I went to that office where our store detectives are on the fourth floor.

Q. How many rooms is that? A. Just one room.

Q. How big is that room? A. I should judge about ten or twelve feet square. 20

Q. Is there any window in that room? A. Yes, sir.

Q. On what street? A. The offices are on Halsey Street, the windows, facing Halsey Street, it is not directly on Halsey Street, it is probably 100 feet away from Halsey Street.

Q. There is no direct light from the street, is there? A. There is a light, that part of the store is looking over the roofs on Halsey Street. It is light. 30

Q. Was there a desk in that room? A. Yes, sir.

Q. Are there any chairs in that room? A. Yes, sir.

Q. How many? A. Three chairs, I think at the time.

Q. Are you sure about that? A. Yes, sir.

Q. When she was brought into that room did she sit down or remain standing? A. They gave her a chair to sit down. 40

Jacob Friedman, cross.

Q. And who else sat down? A. Daxton sat down.

Q. What did you do? A. I was standing at the time.

Q. And the conversation opened by whom? A. The store detective who questioned the woman.

10 Q. And did you hear Daxton say to her that she was the Indian woman? A. I think there was something said to that effect, they wanted to know if she was the Indian.

Q. Who said that? A. Daxton.

Q. And before this woman was apprehended were you expecting an Indian woman or that Indian woman in the store that day? A. I did not expect anything that day.

20 Q. Did Daxton say that he expected this woman? A. I don't know of any assertions made by him in that respect.

Q. You don't remember that? A. No, sir, nothing was said to that effect to me, because I am the one who got the Indian, if she was the Indian, I did not know she was.

Q. There was something said by Daxton about the Indian woman? A. Well, there was something said.

30 The Court: You mean up in the room?
The Witness: In the detective's office.

Q. And before this confession or alleged confession was signed, what was said? A. He did question her, he thought he had the Indian, which she resembled.

Q. He said he thought he had the Indian? A. Yes, sir.

40 Q. And after he got through questioning her he was satisfied that he did not have the Indian? A. I do not know about that.

Jacob Friedman, cross.

Q. Well, didn't he say so to you? A. I don't know about anything further than that, as far as the Indian end of it is concerned.

Q. Now, before he was satisfied that he had the Indian woman he was talking pretty vulgar to her, wasn't he? A. Now, wait a minute, counsellor—

The Court: You have so much in there—

10

Mr. Siegler: Question withdrawn.

Q. When he started to converse with her, and a few minutes elapsed he started to use very harsh language to her, didn't he?

The Court: The whole question is, you want to ask what language he used, was there anything said of that sort, any vulgar or abusive language used?

The Witness: There was nothing said whatever that I know of. I was not in the room all alone, because there were other store detectives in there all this time.

20

The Court: He has only asked you when you were there what language was used when you were in there. Was there any such language used?

The Witness: No, sir; there was no vulgarity used that I know of.

30

Q. What time was it when you got in the room?

A. I was in the room every bit of ten minutes.

Q. What time was it when you arrived? A. I cannot say, I arrived with the store detective.

Q. Was it about one o'clock? A. I cannot say it was, it was between half-past twelve and one; I cannot say the exact time.

Q. And you stayed in there about fifteen minutes? A. About ten minutes.

40

Jacob Friedman, cross.

Q. And then you left this room when she signed the paper, is that right? A. Yes, sir.

Q. Did you see her sign? A. Yes.

Q. Were you in the room the whole time until that paper was signed? A. Yes, sir.

10 Q. Did you get any address or did Daxton get any address from Mrs. Hager? A. Yes, sir, that Bank Street address that we got.

Q. She did not give that address? A. She wrote that down herself.

Q. And is that the address that you went to? A. I did not go there.

Q. Now, when Daxton was talking to her he said to her, didn't he, "You are the Indian woman"? A. I answered that before.

20 Q. Did he say that to Mrs. Hagar, "You are the Indian woman"?

Mr. McKenna: That is objected to.

The Court: I will allow it to be asked again.

Q. You say that he did say something about the Indian woman.

30 The Court: You have not answered the question, did he say to her, "You are the Indian woman." Did he say that or not, did he mention the Indian?

The Witness: Yes, your Honor.

Q. And after he said that did he go over and say, "Take off that hat, take off that wig, you are the Indian"? A. He told her to take off her hat. She took it off, it was close in the room at the time and it was in the summertime, and very close.

Q. Did he pull her hat off? A. No, I think she took it off herself; I am not positive.

Jacob Friedman, cross.

Q. And about that time she started to tremble and was highly nervous and upset, wasn't she? A. She was nervous, because you could tell, she was nervous from the many cigarettes she smoked.

Q. She was physically nervous, did you observe her condition as highly nervous and upset? A. No, I would not call it highly nervous and upset condition, because that is natural, the way they put on. 10

Q. What did you observe, you said on direct examination that she was talking, did you? A. That was her plea, certainly, that is the plea with them all.

Q. We are not asking you to condemn her, I am asking you to tell me what you saw. The jury will do that if it is necessary.

Mr. McKenna: Suppose Mr. Siegler asks the witness questions and does not argue with him. 20

The Court: Ask another question.

Q. She was shaky? A. She was nervous at the time, yes, sir. I will say she was nervous.

Q. And then Mr. Daxton said, "Go ahead, sign, I will treat you right"? A. No, he didn't say that.

Q. Did he say, "We will treat you right"? A. He told her to tell the truth about her statements, her address, that is what I have said, and I am pretty sure I said that. 30

Q. Did he say, "We will treat you right"? A. Tell the truth, come out with the truth, and if she told the truth she would not probably be in trouble, I suppose.

Q. You used the language in your examination, "We will treat you right." Was that used? A. I don't think I said that, I am not positive, but what 40

Jacob Friedman, cross.

I may have said is "We will take care of you."
I don't know anything about treating you right.

Q. Was that said, "We will take care of you"?

A. What I did say was if she told the truth they
would take care of her, I think, if I am not mis-
taken.

10 Q. And after that she signed the statement? A.
She read the statement and she was told that was
the total amount she had taken.

Q. Well, that statement is printed, already
manufactured, isn't it? A. It is a form.

Mr. McKenna: I object.

The Court: Sustained.

Q. Isn't it a form? A. Well, there is a form
there which is filled out for different answers
20 there. I am not familiar with that form because I
am not the store detective, but there is writing on
that of the amount, and all that.

Q. You did not see her write on that statement?

A. No, she did not have to write, just to sign her
name and address.

Q. But that is all she done? A. She read it and
signed her name.

Q. How long did you keep her there? A. I didn't
keep her there.

30 Q. How long was she kept there? A. I don't
know, I told you I was in the room about ten min-
utes or probably fifteen minutes, I cannot exactly
say. I said about ten minutes, and I cannot change
my statement.

Q. Where was Mrs. Connors and this other dele-
gation? A. They were in the room.

Q. You mean to say that in the course of ten
minutes Carrington got there and Connors got
there? A. I did not say Carrington, but Connors.

Jacob Friedman, cross.

Q. Didn't you state that Carrington was in the room with you? A. Carrington was there later. I did not stay in the room all the time, I came back again.

Q. You mean that you left after that statement was signed, went downstairs and came back again? A. Yes, sir.

10

Q. How long after that? A. I judge about ten minutes after that.

Q. What was the necessity of keeping this woman after she signed the statement, do you know? A. Waiting for the headquarters man, I believe.

Q. Well, where did they get Carrington from, do you know? A. I guess Mr. Daxton knows.

Q. Who else was there when you came back? A. Stollberg, Carrington, Connors, that is the woman from Plaut's, and Daxton.

20

Q. What time did they leave the store? A. That I don't know.

Q. Was it an hour after the unofficial arrest?

Mr. McKenna: I object to that.

Q. Well, will you say it was more than an hour? A. I can't say.

Q. Will you say it was half an hour? A. I can't say because I was not there at all times. I should judge it was probably half an hour.

30

By the Court:

Q. Now, you spoke about marks on that bundle? A. Yes, sir.

Q. I had the impression that you referred to marks which were original marks that had come in on that bundle when your store bought the bundles. A. There is one, your Honor (indicating).

40

Jacob Friedman, cross.

Q. Is that the original package that those goods were received in by your store? A. From the manufacturer.

Q. Is it not your writing at all? A. Not our writing whatsoever.

10 Q. And are those goods the originals that would come in that package? A. Yes, sir.

Q. And are they all the goods that would be in that package? A. There may be twelve in a package, on this package it is ten.

Q. Oh, there might be twelve in a package? A. Yes, it is marked there with our numerals.

Q. You said that came from a department of the store from which goods were sold on sample? A. In the back of the shelving where we work on our samples, out about thirty feet.

20 Q. In other words, this is a storeroom where the goods are kept and the goods are sold in a sales department and a salesman or some other employee goes to that room and delivers them to the purchaser? A. Yes, sir.

Q. Is that the fact? A. Then they come from a certain section of the store to go to the storeroom to get this merchandise.

30 Q. In other words, this particular merchandise is not shown to the customer at all? A. No, sir, that is in the reserve stockroom.

Q. And that package that you have before you is the original package in which the goods are received from the manufacturer or dealer? A. Yes, sir.

By Mr. Siegler:

Q. Are you in charge of the receiving room? A. Well, I check this merchandise, I know what it is.

William J. Daxton, direct.

Q. I didn't ask you that. You understand that question. A. Not in charge of receiving, no, sir.

Q. As far as the goods in the receiving room, as far as you are concerned, you have no personal knowledge of it? A. I know how merchandise is brought down, but I have nothing to do in the receiving room and I cannot answer a question on the receiving end of it. 10

Q. So any merchandise in that room is beyond your jurisdiction? A. You are talking about the storeroom?

Q. Yes. A. It is not beyond my jurisdiction.

Q. You have charge of that? A. I recheck this merchandise. I know what it is.

Q. Was that bundle opened by you? A. No, sir, that bundle was rechecked by me in stock taking and there is the numerals still there, the numbers and the season it was bought in, in the original package. 20

Q. It was put on when it was bought? A. Yes, and I rechecked it.

Q. How do you know that you rechecked this bundle? A. Because I am positive.

Q. What makes you so positive? A. Because I am the only man to take that stock.

Q. Do salespeople have anything to do with the stock? A. The salespeople do not have anything to do with the checking. 30

WILLIAM J. DAXTON, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. Where do you live, Mr. Daxton? A. 209 East 44th Street, New York City.

William J. Daxton, direct.

Q. On the 19th day of June of last year were you employed by Hahne & Company here in Newark?

A. I was.

Q. In what capacity? A. Chief detective.

Q. Did you see the defendant, Helen Duvel, on that day? A. I did.

10 Q. Where was your attention first called to her?

A. As I came down the stairs from the fourth floor.

Q. Who called your attention to her? A. Mr. Friedman.

Q. And where was she at the time? A. About five feet from the stairs.

Q. That is, what stairs do you mean? A. The stairs in the center of the store.

20 Q. And you had a conversation with Mr. Friedman at that time? A. I did.

Q. As a result of the conversation which you had what did you do? A. I followed the defendant.

30 Q. Where? A. The defendant walked down the stairs carrying the large bundle and the small box to the second floor; she walked along the second floor, continually looking back and looking around the store, and to the rear of the store where there is a stairway at the Halsey Street entrance. She walked up that stairway and as she walked up that stairway I ran up the center stairs and met her as she came off the stairs. She walked in around the furniture department of the third floor and then cut over into the bedding department and threw the large bundle underneath a couch or a daveno that was in the department, and as she walked away I walked up to her and I said to her, "What is the use of throwing it there, why don't you pick it up?" She said, "Pick what up?" I

40

William J. Daxton, direct.

said, "That package that you just threw under there." I said, "Go ahead, pick it up," and she went over and picked up the package and I said, "Come on upstairs, I want to talk to you." I escorted the defendant up to the office on the fourth floor, with Mr. Friedman, who was right with me at the time, and I opened up the package and I asked her where she had got them, and she said, "I found them." I said, "Where did you find them?" She said, "I don't want to talk." I said, "What is the use of you acting like that, why don't you tell me where you got the package, and this pair of shoes?" She would not answer no questions, and I said, "You got to do one thing or the other. If you don't say something I have got to call the police." The defendant asked for a match, I gave her a match and she sat there and smoked a cigarette and wouldn't do any talking, so I took the form that is used in the department stores and I asked her her name and she said it was Helen Duvel. I told her that was not her name. She said "Yes, it is." I said, "No, that is not, I haven't the right name." I then wrote the name anyway, and I asked her where she lived and she said, "221 Bank Street, Newark." I asked her how long she had been living there in Newark, and she said she had only been here a couple of days. I asked her where she came from and she said she came from Philadelphia. I said, "How long have you been in Philadelphia?" She said she had been in Philadelphia a couple of months. I said, "Isn't it a fact that you are from New York?" And she said, "I have been in New York." I said, "You belong in New York, don't you?" She said, "No." I said, "Now, I know that I know you," which I did. I knew the defendant and I could not place where

William J. Daxton, direct.

I knew her from. Then I asked her if she was not the Indian then she must have been her sister. I filled out the card and I called up Detective Stollberg on the telephone and Stollberg came, and as customary, I notified the other stores in Newark that a woman had been taken into custody with
10 some merchandise. As a result of the call, why, Miss Connors of L. S. Plaut & Company and Mr. Carrington came to the office on the fourth floor. I then told the woman to read the back of the card over carefully and sign it if she wanted to sign it, and if she didn't it did not make any difference whether she did or not.

Q. Who was present at the time? A. Mr. Carrington, Miss Connors, Mr. Friedman and myself.

Q. All right, then, what did she do? Just go
20 right on with your story. A. Why, the defendant asked couldn't it be straightened out, and couldn't she be given another chance and be forgiven; that it was a mistake; she knew that it was a serious mistake. I told her if she came clean and told the truth and gave me something on which I could really see my way clear that I would. She insisted that her name was Helen Duvel and I insisted that it was not. She insisted that she lived
30 at 221 Bank Street and I told her that she was not a resident of Newark, and there is a question upon that, on the name and address, and I asked her where 221 Bank Street was located and she started to give an explanation, and the people of Newark, this Miss Connors and the others that were there knew the defendant was telling a lie when she gave that address, I mean, she did not know the location of 221 Bank Street.

Mr. Siegler: May I interrupt a moment to
40 get the last part of the answer?

William J. Daxton, direct.

The Court: When you told her that if she would give you something that you could really see your way clear on, was that after she said she knew it was a serious mistake and she would like to be forgiven?

The Witness: That was after she had made that remark.

10

Q. I call your attention to a card, Mr. Daxton, and ask you whether you recognize that card? A. I do.

Q. Is that your signature there? A. Yes, sir, it is.

Q. Did you see Helen Bugal sign that card? A. I did.

Q. And what address is given there? A. 231 Bank Street and the name here is Helen B-u-g-a-l.

20

Q. And that is her signature? A. Yes, sir.

Q. Did you make any promises to her when she signed this card not to prosecute her? A. No, I did not.

Q. Did you beat her in any way? A. I did not.

Mr. McKenna: I offer the card in evidence and I ask permission to read it to the jury.

Mr. Siegler: At this time I object to it, your Honor, and I want an opportunity to cross examine this witness on its admissibility.

30

The Court: Go ahead.

Mr. Siegler: I think the most expeditious way is to wait until Mr. McKenna gets through.

The Court: No, he offers it now.

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William J. Daxton, cross.

Cross examination by Mr. Siegler:

Q. What time did you get into this office of yours? A. Around 12:30.

10 Q. And when you got in there who was with you? A. The defendant and Mr. Friedman and Miss Clancy, she later came in, about a minute or two minutes behind her.

The Court: At the time this statement was signed had the officer from the police come?

The Witness: No, I don't think he had, not to the best of my knowledge, I don't think he was there.

Q. Who? A. Detective Stollberg.

20 Q. I want to know who went into this office when you came up from the third floor to the fourth floor? A. Mr. Friedman, the defendant and I.

Q. That's all? A. That's all, and a minute or so later Miss Clancy.

Q. And when you got her in there you were pretty certain in your mind that she was the Indian woman that you knew so much about. A. No, I was not certain, I wanted to make sure of it. I told the defendant I knew her.

30 Q. And this Indian woman was generally known as a very notorious woman in this particular crime, isn't she, in your profession? A. She is.

Q. And when you walked her into your office you were reasonably satisfied that she was the woman, that woman, from your general observation of her? A. No, I was not.

Q. Didn't you think she was the Indian woman?

Mr. McKenna: I object. The only pur-

William J. Daxton, cross.

pose of the cross examination is as to the competency of the confession, whether it was voluntary. I think we ought to get right down to that.

The Court: This is not your general cross examination, of course. It is only as to the admissibility of this so-called confession. 10

Q. At any rate you asked her whether she was the Indian woman?

Mr. McKenna: That is objected to.

The Court: That doesn't make any difference.

Q. Didn't you, Mr. Daxton? A. Yes, sir.

Q. When you started to talk with her you said to her, "You ought to come clean," or, "Tell the truth," or something to that effect, didn't you? A. I told the defendant not to be trying to kid anybody. 20

Q. Well, there wasn't any kidding done, was there, she wasn't joking with you, was she? A. Yes, as to her identity.

Q. Oh, she was joking with you? A. Not joking, but misleading.

Q. Wasn't she in a nervous condition, shaking and trembling? A. No, not at that time; she gradually became nervous. 30

Q. And she started to tremble? A. I wouldn't say tremble.

Q. Well, was she shaky? A. Naturally nervousness, but it could have been from the cigarette smoking and the fact of being brought into the office.

Q. Didn't you say to her, "Now, sign this confession," or "Sign this statement, that I show you, 40

William J. Daxton, cross.

and tell the truth and I will help you." A. No, I told her to read it over carefully and then sign it if she wanted to. It didn't make any difference whether she did or not.

Q. Didn't you call her vile names? A. I did not.

10 Q. You didn't use any vulgar language to her at all? A. No, sir, I did not.

Q. When she refused to sign or consent to your suggestion? A. No, I did not.

Q. She refused to talk at all at first, didn't she? A. She did.

Q. Then you said to her, "Take off your hat"? A. I asked her to take off her hat and sit over there and calm herself.

20 Q. Did she take off her hat? A. She did and pulled a chair closer to the window.

Q. And did you get up close to her and say, "Take off that wig"? A. I don't think I was five feet near to her at any time she was in the office.

Q. It is a little office, isn't it? A. No, I wouldn't say so. It was formerly a telephone room and those operators sat in there continually with a switchboard and they had their closets to dress and everything, and I would say ten people could sit in there comfortably.

30 Q. And then didn't you grab a hold of her hat and attempt to pull it off? A. I didn't go near the woman.

Q. Did she do anything to you? A. Not a thing.

Q. And then when she refused to do that you grabbed it off and threw her against the wall? A. I did not.

Q. And punched her right in the head? A. I did not.

William J. Daxton, cross.

Q. Did she have any bruises on her head when she left your office? A. I saw no bruises.

Q. You mean to tell me that you did not see any bruises on that woman after she left your office? A. I did not.

Q. Didn't you testify in the police court that this woman struck her head up against your desk and your chair in your office? A. No, I testified in the police court that the woman gradually became hysterical and began shaking her head up and down near the radiator which is flush by the window. 10

Q. And she was injured in doing that? A. No, she was not.

Q. Do you mean to tell me, Mr. Daxton, that from the time she left your office and went down to police headquarters to Mr. Brex's office that you did not observe that she had a marked lump on the top of her forehead? A. I did not. 20

Q. And when she was going with her head like that (indicating) and was real nervous, hitting her head up against the radiator or up against something there, how soon after did she sign that statement? A. Why, that was—she did not do that until the police officer came in the room and I told them to take her, I was going to make a complaint of larceny against her, and that is when the woman really became hysterical, when she saw she was going to be arrested. I had asked Detective Stollberg would he go and verify the address at 221 Bank Street, Newark— 30

The Court: When this officer came in had she already signed the statement?

Witness: Yes, she had, to the best of my knowledge I believe she had.

William J. Daxton, cross.

Q. Where was this statement signed? A. In the office of Hahne & Company.

Q. On this desk? A. Not on a desk, on a large table in the center of the room.

Q. Did she sit alongside of that table? A. No, she pulled a chair over to the table.

10 Q. And who handed her this (indicating paper)?
A. I did.

Q. And why did you hand her that? A. Because it is customary, for every woman brought into the department stores, to sign that, to have that handed to them, and it acts as a release.

Q. And that is why you had her sign this release to Hahne & Company? A. I gave the statement to the defendant and told her to sign it if she wanted to.

20 Q. Your duty was to get this woman to sign this so you could use it as a release for Hahne & Company?

Mr. McKenna: I object to that.

The Court: You cannot characterize it, it is the statement and you better refer to it as such.

Q. Your duty was to get S3 signed so it would release Hahne & Company from any obligations of
30 your arrest of this woman? A. Yes, sir.

Mr. McKenna: I offer the statement.

The Court: Is there anything else, by either side on the question of the voluntary character of this statement? Do you wish to raise this issue as a preliminary issue?

Mr. Siegler: Oh, yes.

The Court: All right, I will hear any witnesses which you have on it.

Harry E. Carrington, direct.

HARRY E. CARRINGTON, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. Where do you live, Mr. Carrington? A. 14 Belgrove Place, East Orange.

Q. On the 19th day of June, last year you were employed as a house detective for L. Bamberger & Company? A. Yes, sir. 10

Q. Did you have occasion on that day to go to Hahne Company around 12:30 in the afternoon? A. I did, between 12:30 and 1.

Q. Did you go there to Mr. Daxton's office? A. I had an appointment for lunch, as I remember it, that day with Mr. Daxton, about one o'clock.

Q. Did you see him in his office? A. I did.

Q. Who was there at the time? A. There was Mr. Friedman, Miss Connor, Mr. Daxton, Mrs. Hager and another one of my girls employed in Bamberger's by the name of McAllister, whose name was not mentioned, who had been doing some shopping for Mr. Daxton. 20

Q. Were you there the time the defendant signed the statement? A. I was, sir.

Q. Were there any threats made to her? A. No, sir.

Q. Were there any promises held out to her? A. No, sir. 30

Q. Any inducement made to her? A. I should say no inducement.

Q. Will you tell us just exactly what happened, as you can recall it. A. When I walked into the office Mrs. Hager was sitting at the corner of a table, which is in the center of the room. Mr. Daxton was at his desk facing the table, and Mrs. Hager's hat was lying on the corner of the desk, 40

Harry E. Carrington, cross.

and he asked her if she wanted to sign this confession and he said, "Read it." She said she could not read it because she had an appointment with an oculist, or something, and she finally found, if I remember it correctly, her glasses, and she read this and signed it.

10 Q. Did you see her sign this? A. Yes, sir.

Q. And that is the signature? A. Yes, sir, that is the signature she signed at that time.

Q. And you were present? A. I was, yes, sir.

Q. Did you see anybody hit her at that time or anybody strike her? A. Why, positively not.

Cross examination by Mr. Siegler:

Q. You did not know anything about this arrest when you got to Hahne & Company, did you? A.
20 As I remember it I did not. I was on my way to Hahne & Company—

Q. Is there any doubt about your memory being correct? A. I cannot remember whether or not Mr. Daxton had phoned me at the office or whether, in view of the fact that I had a luncheon appointment with him—I think very likely I did not get the phone at the store.

Q. Who did you have with you, anybody? A.
30 No, I came in alone. I have forgotten whether Miss Connor was there just before I was or just afterwards, I know we were in the office.

Q. You did not meet her, did you, before you went to the office? A. No.

Q. Did you go direct to the office? A. Yes, sir.

Q. And when you got there you found quite a crowd in the office, didn't you? A. Why, if five people constitute a crowd, yes, sir.

Q. It is a little bit of a place, isn't it, it is 10 by 12? A. No, I should say it was a little larger
40 than that.

Harry E. Carrington, cross.

Q. Would you say it is bigger than this jury box?

A. Well, about the length of it and possibly that wide.

Q. How many chairs were in it? A. There was a small roll top desk, a medium sized table, possibly a little larger than this, and three or four chairs.

10

Q. And when you got in there they were all talking? A. No, not particularly.

Q. Everybody sat around looking at each other? A. Not exactly.

Q. Who was doing the talking? A. I believe Mr. Daxton was talking to Mrs. Hager.

Q. Did you participate in these proceedings in any way? A. Beyond the fact, Mr. Daxton was saying, "We got the Indian here," and I said, "No, you haven't got the Indian there."

20

Q. Was that after the paper was signed? A. No, that was before she signed, I should say.

Q. Are you sure about that? A. Reasonably certain, yes, sir.

Q. Now, did you, before the paper was signed, suggest to Mr. Daxton that the other parties leave the room? A. Why, no.

Q. And did Miss Connor speak to Mrs. Hager? A. I don't remember whether she did or not, I think in human probability we all spoke to her.

30

Q. And the desire was to urge her to sign this paper? A. No, there was no particular urging done.

Q. Well, didn't Mr. Daxton try to urge Miss Hager to sign the paper? A. Why, if I remember correctly he said, "Here is the statement, read it," and it was read over to her and she read it and she signed her name Bugal—wait a minute, I don't

40

Harry E. Carrington, cross.

remember whether it was Bugal or something else; she signed Bugal, I think, was the name she signed.

Q. Did Mr. Daxton say to her, "Now, Mrs. Hager, if you sign this paper I am going to make a complaint against you for larceny"? A. Well, that would be—

10 Q. Did he say that? A. If you sign this paper will he make a complaint of larceny?

The Court: "If you sign this paper, I am going to make a complaint against you for larceny." That is the question.

Mr. Siegler: Yes, that is the question.

A. No, sir.

Q. Did he say, "If you sign this paper I will take care of you"? A. The only talk I think was—

20 The Court: Please just listen to that question. You can answer that yes or no, whether he said that. Just read it again.

The Witness: I cannot possibly answer it yes or no.

The Court: I don't know why you cannot. (Question read.)

A. No, I should say no.

30 Q. Did he say, "If you sign this paper we will treat you right, Mrs. Hager"? A. I don't think so, no, sir.

Q. Will you say he didn't say that? A. I think I will, yes.

Q. And did he say, "If you sign this paper it merely releases Hahne & Company from the obligation of your arrest"? A. No, sir.

Q. What did he say before this paper was signed that induced her to sign it?

Harry E. Carrington, cross.

Mr. McKenna: That is objected to and I move that the word "induced" be stricken out.

The Court: I cannot allow that word in there. What did he say, you can ask him that.

Q. That is the question, what did he say immediately before the signing of that paper? A. "Read this paper." 10

Q. That's all he said? A. As I remember, yes, sir.

Q. Did Miss Connor say anything before that? A. No, sir.

Q. Did Miss Clancy say anything? A. No, sir.

Q. Did Mr. Friedman say anything? A. I don't believe that Mr. Friedman was there—yes, he was, but no, Mr. Friedman didn't. 20

Q. Did Miss McAllister say anything? A. As I remember not, no, sir.

Q. And that is the only thing that Daxton said, "Read this paper and sign it"? A. I should say so, yes, sir.

Q. What was Mrs. Hager's condition just before she signed this paper? A. Why, it was a very warm day, and she was warm, I guess we were all warm, and from the way her hat was lying there, there was a mark in the right hand corner—she had a hat very similar to the one she is wearing now—I am not an authority on styles—but I should say it was about that, and evidently she wore it on the side, and there was a red mark, the same as a straw hat will leave, right straight across her forehead, and everyone had run out of cigarettes except Daxton and he supplied some, if I remember. 30

Harry E. Carrington, cross.

Q. I asked you what her physical condition was, was she nervous and shaky? A. Why, no more nervous than the average shoplifter.

Q. You know that is not a fair statement.

The Court: Strike it out.

10 A. I mean that a woman under conditions of that kind would be.

Q. Did she tremble? A. Not that I remember, particularly.

Q. Well, was she nervous and quivery? A. I cannot seem to recall that she was.

Q. Your memory of this transaction is not so clear, is it, Mr. Carrington? A. Why, it is clear on the main details.

20 Q. That was not a very main detail, you didn't consider it a main detail, to observe her physical condition before she signed the statement? A. Why, no.

Q. Did you see Daxton grab ahold of her hat? A. I don't believe that Mr. Daxton was nearer than half-way across the office to Mrs. Hager at any time, while I was in the office, at least.

Q. Did you walk out with him? A. I had my automobile there, and Detective Stollberg wanted to verify this 231 Bank Street address—

30 Q. Did you walk out with him? A. Yes, sir.

Q. Did you observe whether this woman had a hat on her head? A. She did not.

Q. Did you observe whether she had a swelling on her head when she got to the police court? A. You mean the police station.

Q. Police station or headquarters? A. I didn't go to headquarters with her.

Q. Did you go to the restaurant with her to have a cup of coffee? A. I did not.

40

Elsie Connor, direct.

Q. Did she at any time that you observed her in that office, and until the last time that you saw her that day complain that she had a pain or a swelling on her head? A. No, sir.

Mr. McKenna: I renew the offer.

The Court: No, I am going to hear all of the testimony on the preliminary issue, not only what you have to offer, but what the the defendant has to offer. 10

ELSIE CONNOR, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. Miss Connor, where do you live? A. 790 Clinton Avenue.

Q. Were you at Hahne & Company on the 19th day of June of last year? A. Yes, I was. 20

Q. Did you go to Mr. Daxton's office? A. Yes, sir.

Q. Who was present at the time? A. Mr. Carrington and Miss McAllister—at least I think Mr. Carrington came in, or we came in together, I think I got there right ahead of him.

Q. Did you see the defendant there? A. I did.

Q. Did you see her sign this statement? A. I did.

Q. I show you the statement, is that the statement she signed? A. Yes, sir. 30

Q. Did you see her sign that? A. I did.

Q. Were there any inducements made to her to sign that statement? A. Not that I heard.

Q. Did anybody strike her? A. No.

Q. Did anybody touch her or hit her or grab her hat? A. I think when I came in the office I think I asked her to take her hat off because I wanted to see her face. 40

Elsie Connor, cross.

Q. What was the condition of her head? A. Why, like any woman's hat that fits tight, she had a ring around her head.

Q. And while you were there was she struck?

A. No, indeed, no, I did not see anybody else hit her, either.

10

Cross examination by Mr. Siegler:

Q. How long were you in that room? A. When I was notified—

Q. How long were you in that room?

Mr. McKenna: I object to the manner of questioning the witness.

The Court: How long were you in that room?

20

The Witness: I think I got there half-past twelve and I went to police headquarters, I can't tell you how long I was in the room.

The Court: He wants your approximation, whether it was fifteen minutes or half an hour, or what?

The Witness: About half an hour.

30

Q. Are you the detective there for Hahne & Company? A. I am detective for L. S. Plaut & Company.

Q. How did you get there? A. Why, we generally call everybody up when we get a case to have a look at each one of them, so Mr. Daxton was kind enough to call us to look at this woman.

Q. And when you got there were they all there—Mr. Carrington? A. No, I don't think Mr. Carrington was, I think he came in after I was there.

Q. Were you the one to search her? A. I am.

Q. She wasn't searched with everybody around?

40

Elsie Connor, cross.

A. No, she was not thoroughly. It takes a woman to search a woman.

Q. And that was before this statement was signed? A. It was.

Q. You didn't find anything on her? A. I did not.

Q. She was nervous? A. No more than the average case, it is quite an ordeal to go through that, and I guess she naturally would be nervous. 10

Q. And as soon as this was over how soon did she sign the statement? A. Oh, I think she calmed down quite some, before she signed that statement, and she read it and they asked if she knew what she signed and she said yes and signed it.

Q. And they all came in the room? A. They did when I opened the door and told them I searched her and found nothing on her. 20

Q. Did Daxton tell her to sign this statement and he would see that it would be all right? A. I can't say that any promises were made of any kind.

Q. Was that said to her? A. No, I don't think so.

The Court: Now, you say you don't think so.

The Witness: No, there wasn't, in fact, there wasn't any such thing. 30

Q. Did Mr. Daxton say, "Now, if you sign this statement here, I am going to make a complaint against you for larceny"? A. No, he did not.

Q. Did he say anything to her at all in the way of assuring her that everything would be all right if she did sign this statement, that he would try to help her? A. No, he did not. He asked her to 40

Elsie Connor, cross.

read it and he asked her if she knew what it was, and when she read it, and if she wanted to sign it.

Q. You saw this, didn't you? A. Yes.

Q. You were there? A. Yes, I was.

Q. And there was nothing written on there, was there? A. Only the general form.

10 Q. The general form didn't say what was done, did it? A. Doesn't it say "that I did wilfully and unlawfully take away the following"?

Q. That is printed, isn't it? A. Isn't that the form?

Q. Did she say it? A. She read it and said, "Yes," before she signed it.

Q. When did she say yes? A. Before she signed the card.

Q. She signed this card? A. Yes, sir.

20 Q. She signed that card? A. Yes.

Q. Did Mr. Daxton say, "This is a release to Hahne & Company"? A. I don't think he did say anything of the kind.

Q. You don't think he did? A. Oh, he didn't say anything of the kind.

Q. You are sure? A. Positive.

Q. Did you see her sit near the radiator with her head on the radiator or on the desk? A. She had her head on the window seat like that (indicating), she went over to the window to get
30 some air because I myself pushed up the window.

Q. She was pretty well fatigued and exhausted?

Mr. McKenna: Objected to.

The Court: That is permissible cross examination.

A. She was awful warm and all of us were, and I opened the window to get air as well as her.

Q. And she had her head down? A. She had
40 her head on her arm lying down.

Elsie Connor, cross.

Q. Did you see Daxton go over and grab her hat off her head? A. No, I myself asked her to take it off so she laid it on the table.

Q. Did you all talk to her? A. Yes, we all asked her questions.

Q. And after these questions were asked Daxton started to question her, didn't he? A. No, I don't remember. 10

Q. Did Daxton say to her he insisted that she was the Indian woman? A. I don't think so, no. He did say something about the Indian, but I cannot say he insisted that that woman there was the Indian.

Q. And he wanted her to prove that she was not the Indian. A. I cannot say that.

Q. What time was it when you left this office? A. Well, I said I went to Bank Street with them. 20

Q. And they came back? A. I came back and left them at the corner of New and Halsey Street and went back to my store.

Q. Did you see any swelling on her head? A. None, only when she took her hat off, that red mark across her head.

Q. Well, that wasn't a swelling, was it? A. No.

Q. It wasn't a cut? A. No.

Q. It wasn't bleeding? A. No.

The Court: Is there any further witness on behalf of the prosecution on the preliminary issue? 30

Mr. McKenna: No, sir.

The Court: Is there anything which the defendant wishes to offer on the preliminary issue?

Mr. Siegler: Yes, so that the record will be complete I wish to state that this testi-

Hattie Hager, direct.

mony is offered on the preliminary issue as to the voluntary character of this statement.

The Court: This is not the main issue in the case, this is only the question of whether this statement is voluntary or not.

10 HATTIE HAGER, the defendant, sworn in her own behalf.

Direct examination by Mr. Siegler:

Q. Mrs. Hager, do you remember June 19, 1924, at Hahne & Company? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Now, you remember Mr. Daxton in his office? A. Yes, sir.

20 Q. Now, will you tell us what Mr. Daxton said and what Mr. Daxton did when you got into his office? A. I was taken up to Mr. Daxton's office at 12:40 P. M., and Mr. Daxton said where I got those bundles. I said I found them on the third floor and I went as far as the elevator, which is going down, to inquire where the lost and found desk was, because one shoe was attached to that package and it struck me why, being a store detective myself previously, that somebody left the parcel there—

30 Mr. McKenna: If the Court please, I object.

The Court: All we want to do is to find out what happened in the room. The rest of the case we will hear later.

The Witness: Yes, I came up to the room. Mr. Daxton took me up to the room and said, "Now, I got you, you are the Indian." I said, "Mr. Daxton, allow me to explain to

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Hattie Hager, direct.

you. I am not the Indian, I am a plain Jewish woman. I am not the Indian." He said, "Well, I will convince you that you are the Indian. What will you say then?" He went over to a small compartment of his desk and he took out various pictures and he could not compare any of those pictures with my identity. Finally he could not get the pictures and he got very mad and very abusive, used very, very abusive language to me, and he rang up Lord & Taylor's and told Lord & Taylor's, he called the man by the name of Clawson, and he said, "I got the Indian, can you give me a description?" I could not hear over the 'phone what was said, but he repeated, "woman' about six feet tall, fifty-two years of age, large chicken pox on her face, and extremely pale." That was not tallying with his idea, and he rang up McCreery's and inquired from the house detective in McCreery's about the Indian, to give him a description about the Indian woman.

The Court: Does this have any bearing as to whether this statement was voluntary or not?

Q. What did he do right before the statement, get down as near to the statement as you can?

A. The statement was this. He came over to me, I was sitting in the extreme corner, and he got hold of the chair I was sitting in and he said, "Get up, take off your hat." I said, "I will not." He said, "I am telling you to take off your hat." And I said, "I will not. What is the idea?" He said, "You are wearing a wig," and he came over and

Hattie Hager, direct.

took off my hat off my head and he said, "Now, I will show you not to talk to a dick that way," and he came over and punched me right with his fist on my forehead, and he said, "Come over and sign here a paper." I became very dizzy at that moment. I don't know really, I could not collect my
10 senses, I could not collect at that moment, I was very dizzy, and I felt extremely nervous. I was trembling. Now, I don't recall what name and what I signed, I don't recall because everything was black before my eyes.

Q. Now, after that was there anybody else in there? A. When the statement was signed?

Q. Yes. A. No, sir. He said to the people to leave the room, he is going to take the Indian under the third degree.

20 Q. After you signed did they come in? A. I don't recall.

Q. What did they do with you after you signed? A. I was sitting in the corner, I don't know whether I was sitting there or I was laying or I was sitting. I was in a terrible condition.

Q. What was your physical condition after?

Mr. McKenna: I object to what happened after.

30 The Court: Yes, to the time of the signature.

Mr. Siegler: Well, immediately after the signature?

Mr. McKenna: That is objected to.

The Court: After the paper is signed and the statement is made then whether it was voluntary or not and what occurred after that has no bearing.

Frank E. Brex, direct.

Mr. Siegler: I understand that, but I want to ascertain her physical condition right before she signed the paper.

Mr. McKenna: That is different.

Q. What was your physical condition right before you signed the paper? A. I was all right, I was nervous, of course, I was in an extreme nervous state because Mr. Daxton would not let me explain and insisted upon I was the Indian. 10

Q. I mean before you signed was there any injury on your body before you signed? A. No, there was not.

Q. I mean immediately before you signed did Daxton do anything, or by reason of what he had done was there anything upon your body before you signed? 20

The Court: Was there any injury upon your body before you signed. He is asking you the same question over again. He wants to know if there was any injury on your body or if your head or arms or any other part of your body was injured before you signed the statement?

The Witness: Yes, your Honor, I say that Mr. Daxton struck me on the head before I signed the paper. 30

Cross Examination Waived.

FRANK E. BREX, sworn in behalf of defendant.

Direct examination by Mr. Siegler:

Q. Captain, you are attached to the police department of the City of Newark? A. Yes, sir.

Q. Have you ever seen this woman before? A. I did. 40

Frank E. Brex, direct.

Q. When? What day? A. I don't recall the date.

Q. Where did you see her? A. At my office, as the result of a conversation with Lieutenant Joseph Farrell.

10 Q. And where was she brought from before she came in? A. From the prison.

Q. And do you recall if it was June 19th, would that date refresh your recollection? A. I don't recall the date. I do know it was a bright evening, around seven o'clock, I remember it was daylight.

Q. When she came to your office did you observe her condition? A. I did.

Mr. McKenna: I object to that.

20 The Court: He said he did.

Q. Do you know whether it was the same day she was arrested or not?

The Witness: The day of her arrest.

Q. Did you observe her condition? A. I did, and she called my attention to her condition.

Mr. McKenna: I object to that.

30 The Court: If you want to show that she had a mark on her head, proceed.

Q. Tell us, Captain, what you saw? A. She had a white handkerchief, which seemed to be wet on her head. Her head was disheveled, and on the side of her head, there was an injury, on the right temple, and she claimed to have been beaten by a detective, and I asked her to remove the handkerchief and she did, and she had a sort of a lump there and I asked her how she felt and she said she had a headache.

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Frank E. Brex, direct.

Mr. McKenna: I object to that, if the Court please.

Mr. Siegler: That is part of the *res gestae*.

The Court: No, I think not. I will stop it right there. What he observed about her physical condition I will allow him to state. 10

Mr. Siegler: I pray an exception.

The Court: Yes, you may have an exception.

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

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

DALLAS FLANNAGAN,

Judge.

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Q. What did you observe, Mr. Brex, if anything, as to her general physical appearance? A. She was highly nervous, very excited. I had a conversation relevant to how the thing was brought about.

Mr. McKenna: I object to the conversation.

Q. Was that nervousness that you refer to observable by the casual look upon her? A. Oh, yes. 30

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

The Court: Whether she was nervous at that time is very remote, but I will allow it to stand.

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Joseph Farrell, direct.

Cross examination by Mr. McKenna:

Q. Captain, about what hour was this? A. I think it was about seven or half-past seven in the evening.

10 JOSEPH FARRELL, sworn in behalf of the defendant.

Direct examination by Mr. Siegler:

Q. You are an officer of the police department of the City of Newark? A. Yes, sir.

Q. For how many years? A. Thirty-four years.

Q. Have you ever seen this lady before (indicating defendant)? A. The night she was in custody in police headquarters, in Newark, on the 19th of June last.

20 Q. Where did you first see her? A. In the cell upstairs.

Q. And when you got to the cell will you tell us what you observed about this lady that attracted your attention, particularly? A. It is my custom to interview all shoplifters.

The Court: And, I suppose, Lieutenant, alleged shoplifters, too?

30 The Witness: Yes. I went upstairs and I asked Mrs. Martin, the matron, if they had a lady there and she said yes, and I said, "Let me see her," and she brought me to the cell. I seen Miss Duvel sitting in the corner of the cell weeping and crying, and I said, "Come up to the door, lady, what is the matter?" and she said, "Well—

Mr. McKenna: I object to any conversation.

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Joseph Farrell, direct.

The Court: No, I think the conversation would be admissible, he can corroborate it, but we are talking now of the voluntary statement and that is all the testimony I will allow at this time.

Mr. Siegler: Not for the truth of it, but for the purpose of supporting the veracity of the defendant as to the involuntariness of this statement, and the conversations of the people that were around her immediately before and immediately after is evidence in support of what she says her condition was, not that they were true, but in support of her statement that they took place— 10

The Court: What time was this, Lieutenant?

The Witness: A little after seven o'clock. 20

The Court: Declarations at that time would be inadmissible.

Defendant's counsel prays an exception to this ruling of the court.

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

DALLAS FLANNAGAN,

Judge.

Q. All right, Mr. Farrell, tell us what you did. 30

A. Well, I had a conversation with the lady in the cell and I seen that she was in a pretty bad shape and had a lump on her forehead and she told me she had been beaten by a detective—

Mr. McKenna: That is objected to, just a moment. You know better than that.

The Court: You heard me rule that you were not to give in the testimony the conversation. 40

Nellie A. Martin, direct.

The Witness: Yes, sir.

The Court: Why did you do it then?

The Witness: I wanted to explain it right.

10 Q. Did you notice what part of the forehead this lump was on? A. She had a lump on the forehead on the right hand side.

Q. And did you observe what her general condition was with respect to nervousness or her rational conduct? A. She was very much nervous and excitable and crying.

Q. And did you take her anywheres after that? A. I went down and reported to the captain and he sent me back to bring her downstairs.

20 Q. And you saw her again downstairs? A. I had a conversation with her downstairs.

Cross examination by Mr. McKenna:

Q. You are not friendly particularly with Hahne & Company, are you, Lieutenant?

Mr. Siegler: I object to that question.

A. I have no objections to Hahne & Company.

30 NELLIE A. MARTIN, sworn in behalf of the defendant.

Direct examination by Mr. Siegler:

Q. Mrs. Martin, what is your occupation? A. I am a matron at police headquarters.

Q. How long have you been the matron? A. Over six years.

Q. Are you in charge of the ladies' department at police headquarters? A. I am.

40 Q. That is merely a temporary quarter, isn't it? A. Yes, sir.

Nellie A. Martin, cross.

Q. Did you ever see this lady, the defendant?

A. Yes, I took charge of her when she was brought in.

Q. And when was she brought in? A. I don't know just the exact time, some time in the afternoon after one o'clock. I come in at one and she was brought in after that, about two o'clock, I guess. 10

Q. Have you any reports which will show when she was brought in, the exact time? A. I guess it is marked in the book.

Q. And when she was brought in did you observe her condition? A. She was very nervous and crying and she said she had an awful pain in her head and I got her some chopped ice and gave her a drink of cold ice water.

Q. Did you observe the condition of her head? 20
A. It was very red.

The Court: What was red?

The Witness: Her forehead.

Cross examination by Mr. McKenna:

Q. There was no bruises or breaking of the skin?

A. No, it was very red.

Q. Did you notice whether it was caused by her hat? A. I don't know.

Q. And you gave her ice to apply to it? A. Yes, sir. 30

Q. Did you notice was there a lump? A. I did not notice any, but it was very red.

The Court: Is that all the testimony on the preliminary issue?

Mr. Siegler: Yes.

Mr. McKenna: Yes, sir.

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Thereupon the Court took an adjournment until 2 o'clock P. M.

AFTER RECESS.

(The jury retired to the juryroom.)

10 The Court: Now, Mr. Siegler, I will hear your objection to the introduction of this statement in evidence.

20 Mr. Siegler: If the Court please, the attempt to have this proposed statement admitted into evidence is objected to by us on the ground that it is not the voluntary product of the defendant. We have produced, in support of that contention, the testimony of the defendant herself, which seems to me as clear and convincing that something did happen immediately prior to the time that this statement was absolutely signed by her. What is admitted, on all fours, by all parties concerned, is that there were at least five people in that room, all characterized as store detectives, from one place or another, at the very time that this statement was given to her to sign. There were conversations between Daxton, in the presence of at least Friedman and one other witness, where he, Daxton, was laboring under the apprehension that she was this notorious Indian woman, and it was not until a few minutes after that, according to his own statement, that he was satisfied that it might have been a mistake. Friedman testifies before this statement was signed, even though he doesn't admit that Daxton actually struck her, but he does ad-

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mit that one or two things happened, and in his own language he says in one place, "We will treat you right." On cross examination, under some strenuous attack on my part, he qualifies that and he says that "We will help you," or words to that effect; that she was nervous, and to illustrate her condition, as he remembered it, he shows a trembling of his hand; that she was trembling, she was in a nervous state; that she had to call upon the officers or the persons in that room for cigarettes, that she had been smoking, and that at another time she was over in the corner, near the radiator, according to Mr. Friedman's own testimony, and was holding her head or putting her head over on the table or on the radiator, and that it was soon after that she was handed this statement, and in the language of Daxton, "I will see that it is all right, that she won't be prosecuted," or something to that effect, and the statement was signed by her. Now, if her testimony stood alone as to her physical condition, what she said happened to her, that Daxton said, "Now, you are the Indian woman, take off your hat, and he grabbed ahold of her hat and struck her in the forehead, and she was bewildered, and became in a condition that she did not quite understand just what was taking place, I would say that perhaps her testimony should not be taken with the full credit that it was given, but we produce here the witnesses of the police headquarters where she was taken immediately after

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her removal from this place for the purpose not of establishing the fact that Daxton actually struck her, but establishing the veracity of her statement that she had a bad physical injury, and to support her further statement that that injury must have been committed in that room, because she was nowhere from twelve o'clock until they took her down to the police station, where nobody else could have inflicted that punishment upon her, and we produce Mrs. Martin, who is the first one in police headquarters to receive her, and she saw that she had a very decided injury on her head, that she applied ice for several hours, I think, or only a short time, and then Lieutenant Farrell comes to the place, and when he hears that it is in the line of his duty, that this particular person was incarcerated, he has a conversation with her and he observes immediately that she has a decided lump or swelling and was applying ice, and when she was taken from the prison floor to Captain Brex's office, Captain Brex told you, in unmistakable language, what her condition was, highly disturbed, and in a peculiar mental condition, corroborating what Friedman says her condition was when she was taken into that place, into that room, so, you see you have a chain of evidence which supports the conclusion, and must necessarily support the conclusion that there was something that induced this statement and that Friedman told the truth when he says the conversa-

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tion was first about her being the Indian woman and the statement that, "We will fix it," or that it will be all right, "come clean and tell the truth and I will help you." Daxton admits that he had this conversation; Daxton admits that she said she found this bundle and Daxton admits that when he got her into the office she refused to speak and she spoke very little until almost the time when she signed this statement, when he said it will be all right, and then your Honor will remember my question to him and his answer. My question to him, "Your duty was to get Exhibit S3 signed so that would release Hahne & Company from any obligations of your arrest of this woman," and his answer was "Yes," indicative of the proposition that they had some conversation.

(Argument.)

Mr. Siegler: I am addressing my motion to your Honor that to find that this was a voluntary statement, voluntary to the extent that the Morehouse case contemplates and the other cases that I have referred to, it must be supported by some evidence in the case that it actually was voluntary, now, to do that, we must only analyze the testimony of the witnesses of the State, who they rely upon to show to your satisfaction that there is evidence that it was voluntary. Now, as I pointed out to you, and I think your Honor will agree with me, Daxton's testimony proved, that from the time of this woman's arrest until he got this statement—it indicates a con-

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versation between the two where he at least held out a promise of reward to this woman, setting aside whatever we may say about that, and that was borne out by his testimony when he speaks about the release from liability, and he said he would help her.

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The Court: The difficulty with that is this, as I see it. The defendant did not testify that she relied on any of those statements. What she testified to was that she signed this statement while she was in a dazed condition. Now, if the position of the defendant had been that she relied upon these statements, and was willing to testify to something or to sign something which might not have been true, relying upon these statements that you refer to, that would have been one thing, but what she said on the stand was that she had been struck on the head, and that when she signed this statement she did not know what she was doing or words to that effect. That is, she said she was in a dazed condition and did not know what she signed, so that the basis of her contention was that she signed this statement not knowing what she signed. Therefore, she did not rely on that at all, and therefore, it does not seem to me that that enters into it.

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(Further argument.)

The Court: There is another consideration to enter into the proposition and that is this: That is the experience of the defendant. Now, if she were a young, tender girl, without experience, the circum-

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stances would be very much stronger in favor of her contention, but she testified that she had been a store detective herself, she was experienced, and she knew what she was doing and she was up against some detectives. Now, it takes much more evidence to convince the Court that a statement was not voluntary when the Court considers the character of the individual upon whom the influence, if it be influence, was brought to bear, and the Court is considering the fact that she had been in this business herself and, of course, would be acquainted with store detectives, and whether or not she really had to submit to any duress or influence or hope or fear to make a statement that was not true. Of course, the underlying principle of excluding this statement is that it may lead to the introduction into evidence of language which is not true, and would therefore be prejudicial, but we have to consider all the facts and circumstances, and consider her previous occupation and see whether or not she was in any way induced in making the statement which was signed by her, which is not true, and that by signing the statement which was not true, she would still get the benefit. Of course, that is not consistent with her testimony. Her testimony is that she did not know what she signed, and so, it seems to me, one alternative or the other must be taken—that she signed this statement without knowing what she was doing or that there was influence.

(Argument.)

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The Court: Of course, this is not like a motion for the direction at the close of the State's case. All the testimony is before the Court and the Court has to decide it from that testimony—decide this preliminary issue, and that preliminary issue includes her testimony.

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(Argument.)

The Court: The real question is whether this defendant signed a statement influenced by promises of reward or by threats or fear. The witness Friedman testified that Daxton told the defendant that if she would tell the truth, "We will fix you right" and further, at another place, "If you tell the truth we will take care of you." Now, if the defendant had testified that she made this statement relying upon those representations, a very different situation would be presented from that presented here, but she testified that very abusive language was used towards her; that the store detective got a hold of her chair and said, "Take off your hat," but she refused and he pulled it off her head; that he punched her in the head with his fist; that she became dazed and does not recall what name she signed or what was signed; that everything was black before her eyes. She said that before this occurred everyone left the room and someone said they were going to put her under the third degree. Now, she recites, with great particularity, what occurred in connection with her alleged identity with the so-called Indian woman, and she also recites that she

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was a store detective herself before this. The question is first, whether or not this statement was induced by these promises that if she would tell the truth she would be treated right and "If you will tell the truth we will take care of you." I discredit the statement of the defendant that she was dazed and did not know what she was doing. I discredit her statement that she was attacked and struck. I believe that if she had relied upon these promises that I have recited and had been brought to a frame of mind where she would have been willing to sign a false statement, or what she claims was false, she would have been very prompt to say so on the stand. On the whole testimony I am satisfied that she was not induced in signing the statement by promises or threats, and I am of the opinion that the preponderance of the evidence, all of the evidence submitted to me on this preliminary issue, is to the effect that this statement was voluntary and it will be therefore admitted into evidence.

(Exhibit S3 for identification is marked Exhibit S3 in evidence.)

Mr. Siegler: I except to your Honor's finding with respect to the alleged statement made by this defendant on the ground that there is absolutely no evidence adduced by the State which would justify the finding that this statement was produced as the voluntary act of the defendant; second, on the ground that your Honor makes a finding with respect to the credibility of her testimony on this question, which is not now

William Daxton, direct.

before us, and has no place in this proceeding at this time or at any other time until the entire case is in.

Defendant's counsel prays an exception to this ruling of the court.

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

DALLAS FLANNAGAN,
Judge.

The Court : The stenographer will note that the jury retired before the argument and were not present during the time when the Court rendered its decision, and made its remarks as the basis thereof. You may note now that the jury returns to the room.

20 (The jury returns to the court room.)

(Mr. McKenna reads Exhibit S3 to the jury.)

WILLIAM DAXTON resumes the stand.

Direct examination by Mr. McKenna (continued):

Q. Mr. Daxton, after this paper was signed how long did you remain in the room? A. Until Detective Stollberg arrived, which was about ten minutes later.

30 Q. And after that you went where? A. To 221 Bank Street.

Q. And why did you go to 221 Bank Street? A. 221 and 231, in that vicinity.

Q. Why did you go there? A. With the defendant to verify that she resided there.

Q. And when you got to that address what happened? A. When we got to the address the defendant stated then that she did not live there;

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William Daxton, direct.

that she lived in Pennsylvania Avenue, Washington, D. C.

Q. Who was in the machine when you went to that address? A. Detective Stollberg, Miss Connors, myself and Mr. Carrington.

Q. Was anything done to the defendant on the way up? A. No, there was not. 10

Q. Was there any conversation? A. No, there was not.

Q. How many houses did you go to in that vicinity, did you say? A. We went to both addresses.

Q. That is 231? A. And 221.

Q. And after that where did you go? A. I asked the defendant, was she hungry—

The Court: Why did you go to 221?

The Witness: Because the defendant first stated she resided at 221 and in signing the paper she signed 231. 20

Q. And did you make inquiries at those addresses? A. We did.

The Court: She then said she lived where, in Philadelphia?

The Witness: No, Pennsylvania Avenue, Washington, D. C.

Q. Did she give you any other address, Mr. Daxton? A. No, that was the only address she gave in the machine on the return from Bank Street, was the Washington address. 30

Q. And about what time was it that you left the Bank Street address? A. About twenty minutes after one, half-past one.

Q. Where did you go then? A. I asked the defendant, on her return, was she hungry, did she

William Daxton, direct.

10 want something to eat, and she said, "Yes, she would like to get a cup of coffee," so I asked Detective Stollberg would he let the defendant go in and get a cup of coffee, and while we were in the restaurant, at the corner of New and Halsey Street, the defendant said she had left something up in the office and Stollberg said, "All right, I will take you
20 back and see if it is there." And the defendant had some coffee and a piece of pie and she then asked if she could have a package of cigarettes, and she asked the man behind the counter, and the man did not keep the kind she wanted, so I said, "I will go across the street and see if I can get them for you," and Stollberg said, "That's all right," I will take her over there," so the defendant, Stollberg and I crossed the street to a cigar store
20 where she tried to get the kind of cigarettes she used and not having them she took another pack.

Q. After that you went where? A. The defendant and Stollberg went back for her purse which she had left on the table in the office and from there she went to police headquarters.

Q. What time did you go to police headquarters? A. I didn't go to headquarters.

Q. Who went to police headquarters? A. Detective Stollberg and the defendant.

30 Q. Just the two of them? A. Just the two of them.

Q. And that was about what time? A. A quarter after two or half-past two.

Q. You don't know what happened at police headquarters? A. No, sir.

Q. How old are you, Daxton? A. Going on thirty-five years of age.

William Daxton, cross.

Cross examination by Mr. Siegler:

Q. Were you a police officer in Newark at that time? A. I was not.

Q. A special police officer? A. No, I was not.

Q. What time was it when you went to 231 Bank Street? A. We left about 1:15, I guess, quarter after or half-past one. 10

Q. Who went with you? A. Stollberg, Miss Connor and Mr. Carrington.

Q. Did you walk or go in an automobile? A. No, in an automobile.

Q. And is that the place you had down as the address that the Indian woman lived? A. It was not.

Q. Well, was 221 the address where you thought or had information to believe the Indian woman resided? A. It was not. 20

Q. Why did you go to 221 when you had 231 on this slip? A. Because the defendant stated previously to writing that slip that she lived at 221.

Q. Well, did you call that to her attention when she wrote down 231 Bank Street? A. I did.

Q. Why wasn't it changed? A. The defendant wrote her signature and her address.

Q. But at that time you said, a few moments ago, that she told you it was 221 Bank Street, is that right? A. She did. 30

Q. After she got through writing you noticed that it was 231 Bank Street, is that right? A. It is.

Q. Did you call her attention to the fact of this discrepancy, of this difference? A. I did.

Q. Why wasn't the change made on that paper? A. Because I did not believe either one of the addresses. 40

William Daxton, cross.

Q. Well, you went to these addresses, didn't you? A. I did.

10 Q. Wasn't it a fact, Mr. Daxton, that she was so nervous and excited, and in such a terrible state that she did not know exactly what address she wrote on that paper? A. Oh, she knew the address, because she described the neighborhood, she tried to describe the neighborhood.

Q. What was the name she gave you? A. Helen Duvel.

Q. When you got through with that paper writing, did you look at it? A. I did.

Q. I want you to look at this paper and tell me where on that paper is written "Helen Duvel"? A. No, Helen Bugal is written on it.

20 Q. Didn't that occur to you that there was some discrepancy about it? A. It did.

Q. Well, why wasn't that changed? A. Because the defendant had stated that Duvel was not her name, that Helen Bugal was her name.

Q. When did she say that? A. Right after the signing of this card.

Q. And is that why there was no change made? A. Because she stated that this was her correct name, Helen Bugal.

30 Q. Didn't you testify in the police court that her name was Helen Duvel? A. Only from the defendant's own statement, yes, sir.

Q. Well, defendant's own statement was that it was Helen Bugal. A. And Helen Duvel.

Q. You didn't know which was which? A. I did not.

Q. Now, what time did you leave your office? A. About 1:15, just as soon as the arrival of Detective Stollberg.

40 Q. How much time did you spend down on

William Daxton, cross.

Bank Street? A. About fifteen minutes, fifteen or twenty minutes.

Q. And then somebody reminded themselves that she left a purse in your office? A. No, the defendant reminded us that she had forgotten her purse.

Q. Is there anything else she left in your office? 10
A. Not to my knowledge.

Q. Well, she was in an excited state when she left your office and she forgot about what belonged to her? A. Not to my knowledge.

Q. Where was the purse, on your desk? A.
No, on a table.

Q. Did you go back with them? A. I did not go into the office, Detective Stollberg took her back.

Q. Where did you stay? A. Stood talking to 20
one of the executives outside of the door, about five feet away from them.

Q. And after that she was in the hands of Mr. Stollberg, wasn't she? A. She was.

Q. Where did you accompany them after that?
A. Just until she got the cigarettes and then I left the defendant.

Q. Where? A. At the corner of Halsey and New Streets.

Q. How many hours was that after you had 30
arrested her? A. I didn't arrest the woman.

Q. You took her up to your office, didn't you?
A. I did.

Q. You were not a police officer either, were you? A. No.

Q. How many hours was that after that that you took her over to the cigar store? A. About an hour and three-quarters, I guess.

Q. And this little proceeding that you were

William Daxton, cross.

10 participating in took one and three-quarter hours until the time that the Newark Police Department came in? A. Oh, no, the Newark police officer was there about three-quarters of an hour, between half an hour and three-quarters of an hour after the defendant had been brought into the office.

The Court: Did the police officer get there after the statement was signed or before?

Witness: No, he came after.

The Court: How long would you say after?

20 The Witness: About five or ten minutes, I 'phoned for the police officer no more than the defendant was brought into the office.

Q. Where is this cigar store? A. On the corner of Halsey and New Streets.

Q. Did you go out through the Halsey Street entrance? A. We did.

Q. What was your idea in going up to the cigar store with her? A. Just doing her a favor as far as cigarettes were concerned, buying her a package of cigarettes.

30 Q. Where was Mr. Stollberg, couldn't he have done that favor for her? A. He could have.

Q. You weren't doing her a favor by taking her signed statement confessing the offense? A. I was.

Q. You mean to tell me that you were her friend, doing her a favor, to have her confess to this offense? A. I was not her enemy.

Q. And because you were not her enemy you took her across to the cigar store and saw that she bought some cigarettes for herself? A. I did.

William Daxton, cross.

Q. What particular object did you have in mind by going across the street with her? A. None at all.

Q. Wasn't it because you wanted sufficient time to elapse so that this woman could be cooled off and her injury disappear, if possible? A. No, sir.

Q. Why didn't you tell Stollberg, instead of going over to that cigar store with a person who stole merchandise in your store, "Stollberg take this woman to police headquarters," instead of taking her down to get coffee and taking her down to the cigar store to get cigarettes? A. I could not order Detective Stollberg what to do.

Q. Why did you participate in doing this? A. Doing her a favor.

Q. Did you tell him to take her to headquarters? A. No, I just told him that Hahne & Company were making a complaint against her for larceny.

Q. Did you sign the complaint? A. I did.

Q. But at that time you did not intend to prosecute her for larceny? A. I did.

Q. Why didn't you go to police headquarters with this girl right after this statement was signed?

A. Because it is not customary to go in every case.

Q. Isn't it customary that before you arrest a woman or anybody else they must take the merchandise out of your place so that you can say that they left the premises? A. No, not always.

Q. Most always? A. In certain cases.

Q. And you were in doubt as to whether this woman had committed any offense at this time? A. I was not.

Q. That is why you were walking around with this woman an hour and half after you arrested her? A. No, sir.

William Daxton, cross.

Q. And it was about four o'clock when you left them? A. Oh, no, it was before that, it may have been three or a quarter after three.

Q. Now, about this statement, Mr. Daxton, whose handwriting is this? A. That is mine.

10 The Court: You mean the body of the statement?

The Witness: I wrote the body.

Q. That is just in pen and ink? A. Yes, sir.

Q. I refer to Exhibit S3.

The Court: Are you referring to the part of the statement on that side (indicating) or the whole thing, or what is it, I don't quite understand what is in your handwriting.

20 The Witness: All of it.

The Court: All of it is in your handwriting.

The Witness: All of the body with the exception of the defendant's signature.

The Court: And the address?

The Witness: And the address, yes, sir.

Mr. Siegler: That has no connection with our case.

30 The Court: Was that offered in evidence, Mr. Prosecutor?

Mr. McKenna: It was.

The Court: The whole thing?

Mr. McKenna: The whole thing.

The Court: The reverse side?

Mr. McKenna: Yes, sir.

Mr. Siegler: I did not know there was a reverse side.

40 The Court: No, I cannot admit that. It is perfectly plain that there is memoranda

William Daxton, cross.

that must have been put on here later because it refers to the sale.

Mr. McKenna: That is true, but there is no objection to putting a piece of paper, blank paper on it, so that the jury cannot see what it is.

The Court: That is not the question. 10
The question is whether that was offered in evidence, and you contend it was.

Mr. McKenna: That is the first part of it. I offer the statement.

The Court: Just this side (indicating).

Mr. McKenna: Yes, I understand your question, that is not in evidence, that part of the statement is not in evidence and if the Court will direct the clerk to cover the back of the statement with a piece of 20
paper in such a way as it is not submitted to the jury, and will instruct the jury not to look at that part of the paper which is on the back of it, and to only look at this part, that is, the side of the paper which contains the signature "Helen Bugal," and the address 231 Bank Street.

Q. You looked at the part that I refer to, didn't you? A. I did.

Q. Who wrote the ink part of that statement? 30
A. I did. The writing that is on the statement with the exception of the signature and the address I wrote.

Q. You wrote? A. I did.

Q. And it is your information, isn't it? A. Yes, sir.

Q. Now, there is in this statement, "ten lace panels, \$55—"

William Daxton, cross.

The Court: Wait a minute, that is not in evidence.

Mr. Siegler: Yes, this side.

The Court: I beg your pardon.

10 Q. "Ten lace panels, \$55." Did Mrs. Duvel—
Miss Hager is her correct name—tell you that it
was ten lace panels costing \$55? A. No, sir.

Q. She did not?

20 Q. Well, when did you write that, did you put
that in above her signature? A. No, sir, when
Miss Duvel, the defendant, put the bundle on the
table I opened the bundle in her presence, and
in Mr. Friedman's presence, and he took the value
right from the curtains, from the panels, and as
he took the value from them in the presence of
Mrs. Duvel, I wrote down just what it is on that
card.

Q. Did you realize that this woman was signing
a statement that was to contain information of
her own knowledge, did you realize that? A. I
did, yes, sir.

Q. Did you tell her that what she was about to
sign was a statement of her own knowledge? A.
I did.

30 Q. Did she tell you that "10 lace panels \$55"?
A. No, she did not.

Q. Did she tell you "1 pair of shoes \$2.39"? A.
No, she did not.

Q. Well, why under the sun didn't you attempt
to get in this statement your own statement and
not this woman's statement? A. It was with the
knowledge and consent of the defendant that that
was wrote down.

Q. That is your best answer? A. It is.

Q. I suppose that you thought at that time that

William Daxton, redirect—recross.

you were doing her a favor in having her sign this statement? A. I did not.

Q. You didn't think you were doing her a favor?

A. No.

Q. Mr. Daxton, have you ever been convicted of crime? A. I was.

Q. What crime? A. Receiving stolen goods. 10

Redirect examination by Mr. McKenna:

Q. Mr. Daxton, how many years ago was that?

A. Eighteen years ago.

Q. How old were you at that time? A. Sixteen years of age.

Q. Have you been employed constantly since then? A. I have.

Q. And what were you accused of stealing at that time? A. I was not accused of stealing, it was a pair of eye-glasses. 20

Q. And you pleaded guilty at that time? A. I did.

Q. And have you ever been in trouble since that time? A. I have not.

Q. And you have been employed as house detective since then? A. Two years after that.

Q. Before you signed and after you wrote this statement did she read the statement? A. She did. 30

Recross examination by Mr. Siegler:

Q. Mr. Daxton, you, a short time after this affair, withdrew from the employment of Hahne & Company?

Mr. McKenna: I object to that, if the Court please.

Q. Did you withdraw from the employ of Hahne & Company? A. I did. 40

William Daxton, recross.

Q. How long after? A. When my time was up, the end of that month, the end of June.

Q. It was about eleven days after? A. About eleven days.

10 Q. Mr. McKenna asked you whether you had ever been in trouble before, after that occasion we spoke about. May I ask you whether you ever had any trouble about a fur coat? A. I did not.

By the Court:

20 Q. You said that when you had the defendant sign the statement that you did her favor. Can you explain what you meant by that? A. It was only at the suggestion of counsel, what I meant by doing the defendant a favor at that time previous, before the defendant signed this, why, I questioned her and the defendant wanted to be let go, and she said she was sorry and wanted to be forgiven for what she had done, and I talked to her on the recovery of other property, and I told the defendant anything she could do to help Hahne & Company to recover their property that had been taken from them it would be appreciated.

30 Q. And that is what you meant by doing her a favor? A. Meaning at the end of the case the executives of Hahne & Company would intercede for her.

Q. Did you think they would intercede for her if she rendered them service? A. If she rendered Hahne & Company that service.

By Mr. Siegler:

Q. Where are you working now? A. The Fifth Avenue Detective Bureau.

40

William Daxton, recross.

Q. That is a private detective agency? A. Yes, sir.

Q. Mr. Daxton, before she signed this you told her that you wanted to be of service to her and tried to favor her if you could? A. I did, before and after.

Q. And was it after that she signed the statement? A. No, on the conversation we had before and after. 10

Q. But after this conversation where you told her you wanted to do her a favor and be of service to her? A. I did not say I wanted to do her a favor, I said, when you asked me did I think I was doing her a favor, I told you yes.

Q. Did you tell her you were in a position to do her a favor? A. I did not. 20

By the Court:

Q. You said on your direct examination, as I recall it, before that you told her that if she told the truth and gave you something that you could really see your way clear you would give her a chance to do so, is that right? A. I did.

Q. I mean to convey to you the idea that you told her if she would tell the truth and give you some facts or a knowledge of such a nature that you would utilize it for her benefit and do something for her, is that the idea involved in the incident? A. What I meant by that was to go before the vice-president of Hahne & Company at the end of the case, whatever the result would be of the case, and have him intercede for her. 30

Q. In other words, if she gave you the facts to justify that then they would be taken in her favor and utilized for her benefit? A. For her benefit with the executives of Hahne & Company. 40

William Daxton, recross.

Q. That is what you meant to say? A. That is what I meant to say.

By Mr. Siegler:

10 Q. Did you tell her that if she signed this printed form, that if she did sign it what you would do for her? A. No, I did not.

Q. What did you tell her? A. I did not tell her anything relative to signing the printed form. I gave her the printed form and told her to read it carefully and she could sign it if she wanted to, or not—

The Court: That she could, if she wanted to or not.

20 The Witness: That she could sign it if she wanted to, it really didn't make any difference.

Q. Do you know really what happened? A. Yes, I do.

Q. Was that before or after the signing of the paper? A. Before.

Q. Relative to what the Judge asked you? A. Relative to what the Judge asked was after the signing of the paper.

30 Q. What happened before the signing of the paper?

Mr. McKenna: If the Court please, I object, we have been over this whole thing.

Q. Before she signed the paper you told her, didn't you, that you were ready to do her a favor, if you could? A. No, I never said I wanted to do her a favor, not in them words.

40 Q. What words did you use? A. I told the defendant if she could help me in any way and I could see my way clear I would take the matter

Dr. Charles C. Gollinger, direct.

up with the executives. I had already decided and told the defendant she was to be arrested.

DR. CHARLES C. GOLLINGER, sworn in behalf of defendant.

Direct examination by Mr. Siegler:

10

Q. Where do you live, Doctor? A. 53 East 61st Street.

Q. Are you a practicing physician of the State of New York? A. I am.

Q. And practicing in the City of New York? A. I am.

Q. Of how many years standing? A. Eight years.

Q. Do you know Mrs. Hattie Hager, the defendant? A. I do.

20

Q. How long have you known her? A. Oh, quite a few years, about—approximately four years.

Q. Do you know what her reputation is in the community in which she lives?

Mr. McKenna: If the Court please, I object, there is nothing to show where she resides yet.

The Court: Do you know where she resides, Doctor?

30

The Witness: I called professionally on her about a half a year ago, and I believe that is her residence.

The Court: Do you know where she resides?

The Witness: I have reason to suppose that I called upon her at her residence.

Q. Where is that? A. Up on Lexington Avenue.

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Dr. Charles C. Gollinger, direct.

The Court: What address, do you know, Doctor?

The Witness: No, I don't remember off-hand.

The Court: Can you say near what street?

10 The Witness: Why, it is up about 90th Street or thereabouts.

Q. Doctor, do you know what her reputation is in the community in which she lives as a law abiding citizen? A. Good, as far as I know.

The Court: He did not ask you that, do you know it?

The Witness: Yes, sir.

The Court: Do you wish to cross examine?

20 Mr. McKenna: Yes, sir.

By Mr. McKenna:

Q. Doctor, have you discussed her reputation with the people in that particular community? A. No, sir.

Mr. McKenna: I object to that, if the Court please.

30 Q. Did you ever discuss it with anybody in the neighborhood? A. No, sir.

Mr. McKenna: I again object.

By the Court:

Q. Did you ever hear anybody speak of her in the neighborhood? A. No, sir.

Q. What basis have you, Doctor, of knowing her reputation in the neighborhood in which she resides? A. I consider myself a sufficiently good

Dr. Charles C. Gollinger, direct.

student of human nature, and having known her long enough to know that her reputation is good.

Q. Excuse me—in other words, you judge it from your own personal observation, having known her in a professional capacity? A. And not having known anything against her, I do.

Q. Will you please answer the question. (Question repeated as follows): In other words you judge it from your own personal observation of having known her in a professional capacity? A. I do. 10

Q. Have you had any other association with her except professionally? A. No, sir.

Q. Have you ever met her socially or in a business way in connection with any one else? A. No, sir.

The Court: I don't think he is qualified, Mr. Siegler. 20

By Mr. Siegler:

Q. How often in the past four years have you come to her residence, professionally? A. Just once.

Q. And how often did she come to your place of business? A. Quite a few times.

The Court: How many times do you mean by that, quite a few—approximately, you understand. 30

The Witness: You mean as long as I have known her?

The Court: Yes, in the last four years.

The Witness: Oh, about a dozen times.

The Court: And about a dozen times—

The Witness (interrupting): Well, twenty-four times, approximately. 40

Dr. Charles C. Gollinger, direct.

Q. And have you heard anybody say anything—

The Court: No, he has not testified that he has never been in touch with her or associated with her or any connection with any one but himself, alone.

10 Q. Did you have occasion to see Miss Hager in June of 1924? A. I did.

Q. Did you keep a record of your treatments then?

Mr. McKenna: If the Court please, I object. That is not the purpose of this examination at all. The witness is called as a character witness to testify to the defendant's reputation in the community in which she resides.

20 The Court: I understand, but this is a different subject and probably is addressed to the injury which she is supposed to have received.

Q. When did you see her and what was she suffering from?

The Court: You have the date there I imagine, Doctor?

30 The Witness: June 21st, 25th, 27th and 30th; contusion over the left eye, conjunctivitis and swelling over the left ear.

The Court: What is the common name for conjunctivitis?

The Witness: Inflammation of the anterior or outer layer of the eyeball.

The Court thereupon took a recess until to-morrow, Thursday, February 5th, 1925, at ten o'clock A. M.

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Harry E. Carrington, direct.

SECOND DAY

Thursday, February 5th, 1925.

Continued pursuant to adjournment.

Present, counsel as before stated.

HARRY E. CARRINGTON resumes the stand. 10

Direct examination by Mr. McKenna (continued):

Q. Mr. Carrington, you were in this room at the time the defendant signed this statement? A. Yes, sir.

Q. At any time did you leave that room while the statement was being signed? A. I did not, sir.

Q. You did not see anybody beat her? A. I did not. 20

The Court: That issue is closed. All your testimony on that subject has been introduced and you cannot introduce any more.

Q. After you left where did you go? A. Down in the elevator to the back door, got into a Bamberger machine which I had sent over at the request of Detective Stollberg to go up and verify the address that she had given of 231 Bank Street. When we arrived at 231, she said that was not the address and she said she had mentioned 221. The defendant and Miss Connor and myself stayed in the car and Stollberg and Daxton went into both of those addresses and tried to verify them and see whether or not she did live there or knew any one in the house. 30

Q. How long did that take, Mr. Carrington? A. Why, I think we left Hahne's store possibly a quarter or half-past one—possibly an hour. 40

Harry E. Carrington, direct.

10 Q. Where did you go after that? A. I went to the corner of Bank and Halsey Streets, and I had an appointment and I called my man to drive the machine as Mrs. Duvel said she had left her pocketbook or some other package—I have forgotten what—in Hahne's, and Detective Stollberg asked me if I would let the car go up there to save time, and I told my man and he drove up there.

Q. And you left at that time? A. I left then at Bank and Washington, yes.

Q. Was that the last time you saw her that day? A. Yes, sir.

20 Q. Were there any marks visible on her forehead? A. There were marks of her hat, I saw her hat it had one of those wire crowns, and it was a warm day, and I guess we all had similar marks on our head.

Q. And that was all the marks you could see? A. Yes, sir.

Q. At any time on the trip did anybody beat her? A. No, sir.

The Court: That issue is closed.

30 A. At no time was anything said to the defendant except that at one time she asked for cigarettes and someone gave her some of them, I think it was myself.

Q. And all this time you knew her by what name? A. By the two names she had given; originally it was Duval.

Q. When did you realize that her name was Hager? A. The next morning on the way to the police court, Mr. Daxton told me——

Mr. Siegler: I object.

The Court: Sustained.

Harry E. Carrington, cross.

Cross examination by Mr. Siegler:

Q. What time did you say you got to police headquarters? A. I did not go to police headquarters.

Q. You don't know what time they got there? A. No, sir.

Q. What time was it when you left them? A. I should say half-past two.

Q. Mr. Carrington, what made you so particularly interested in going to Bank Street and parading this woman around town looking at various places there, it was out of your jurisdiction.

Mr. McKenna: I object, if the Court please, it is an ambiguous question. In the first place there is no evidence of the fact that she was paraded about town.

The Court: I think the question is too involved. You can ask him why he took her to these various places, that would be all right.

Q. Why did you take such particular interest in this particular case?

The Court: The question whether he took particular interest is a conclusion. There is no objection to your asking him why he took her to these various places, but the question of particular interest involved a supposition that he did have a particular interest.

Q. Did you have a particular interest in this case? A. No, sir.

Q. Then, why did you stay at Hahne & Company as long as you did until all these various

Harry E. Carrington, cross.

steps were taken as testified by you? A. Because the officer in the case, the arresting officer in the case, asked me if I would loan him my machine, and there was no one else to drive my machine, as far as I know.

10 Q. When you got there the arresting officer was not there? A. The arresting officer was there within possibly five or ten minutes.

Q. When you got there was the arresting officer there? A. I should say no, he was not.

Q. But you continued to stay there, nevertheless? A. Yes, sir.

Q. Did you leave the room when this woman was searched? A. The woman was not searched, when I got there. If she was searched at all I don't know when she was.

20 Q. Didn't you say a few moments ago that you were there at the time this woman signed the statement? A. I did.

Q. Did you hear Miss Connor testify that before this statement was signed this woman was searched, is that true? A. Your question again, please.

30 Q. Did you hear Miss Connor testify that before the woman signed this statement that she was searched? A. I don't believe I heard Miss Connor say that, possibly she did.

Q. And you were there, as you testified yesterday, immediately after Mr. Daxton and Mr. Friedman came into Mr. Daxton's office with the defendant? A. I said, yes, I think I did.

40 Q. You were there the whole time until the statement was signed, is that right? A. After I came into the office the statement was signed and I did not leave the office after I came into it, but whether or not the woman had been searched before I came there I don't know.

Harry E. Carrington, cross.

Q. Did you make any inquiry? A. There is no reason why I should.

Q. Well, you made a great many inquiries about this woman when you came in, didn't you? A. That is one I must have missed.

Q. Is that the only one you missed? A. I don't know. 10

Q. But you did not miss this when Daxton told you that this was the Indian, you said, "No, that is not the Indian woman"? A. I certainly did, because I know the Indian woman.

Q. Do you know this lady? A. I do not.

Q. Did you know her name was Duvel? A. She said it was.

Q. You did not know it was Duvel, did you? A. I can take any statement I wanted.

Q. You did not care what statement you took, was that your attitude? A. I had no right to doubt the name the lady had given. 20

Q. Did you hear she signed the statement as Bugal? A. Yes, sir.

Q. You knew that her name was Bugal when she signed Bugal on that statement? A. I knew that she said her name was both, and I did not know which it was, and I don't know yet.

Q. Why, you never heard her say her name was Bugal, did you, before she signed this statement, Mr. Carrington? A. I did not know whether it was before or after, she used both names. 30

Q. Your memory isn't clear on that? A. Whether before or after, no.

Q. Why did you go over to 231 Bank Street? A. I think I said to drive the machine, there was no one else to do it.

Q. That was the only reason? A. I guess so.

Q. Did you go to 221 Bank Street? A. The machine stopped in front of 231 and Detective Stoll- 40

Charles H. Stollberg, direct.

berg and Daxton walked to 221, or at least I assume they went to 221, they went up the street.

Q. And did you take her up to where you heard she afterward went, to this cigar store? A. I left them at the corner of Bank and Washington streets, on my way back.

10 Q. Did you accompany her to the restaurant? A. I did not.

Q. Were you present at the police court when they had this hearing? A. Not at the police court.

Q. You were not there when we took the testimony? A. Not when they took the testimony, I was outside.

CHARLES H. STOLLBERG, sworn in behalf of the State.

20 *Direct examination by Mr. McKenna:*

Q. Are you a detective attached to police headquarters? A. I am.

Q. And you were so attached on the 19th day of June of last year? A. I was.

Q. At that time, officer, did you have occasion to go to Hahne & Company's store? A. On a call, yes, sir.

Q. In response to a telephone call? A. Yes, sir.

30 Q. What time did you get there? A. Around 1:30.

Q. Where did you go? A. I went up on the fourth floor to Mr. Daxton's office.

Q. When you got there who was in the room? A. Oh, there was about five or six people in there.

Q. Did you see the defendant there? A. The defendant was in there, Mr. Daxton and Mr. Carrington, Miss Connor and Mr. Friedman.

Q. Will you tell us just everything that hap-

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Charles H. Stollberg, direct.

pened when you got in there, officer? A. When I went into the room the defendant sat right near the radiator, by the window with her hat off. I went in and I said, "Well, what is it?" And he said, they had a case of grand larceny, and I said "What was it, outside?" And they said, "No, in the store." It was simply more of an attempt at it, so I said, "What do you want to do, lock her up?" and Mr. Daxton said, "Yes," so I asked her her name and she said Duvel, so I looked at the card and I said, "Did you sign this card?" and she said, "Yes, but that ain't my name, my name is Duvel." I asked her whether she lived at 221 Bank Street, and I said, "Are you sure of that?" and she said, "Yes, sir," so I said, "All right," and I called for the police machine. The police machine was out, and I wanted to go to verify this address, so we got up to 221 Bank Street, and she said it was 231, and we made different inquiries at different stores and in the buildings there and then she admitted she did not live there, so coming down I said, "Where do you live?" and she said, "Pennsylvania Avenue, Washington, D. C." So when we got down as far as Bamberger's, Mr. Carrington said he had an appointment and he got somebody else to drive the machine up to Hahne's and she requested us—said she left a pocketbook, or a purse or something there and I said, "All right," so we went up and got it and we came down the stairs again. In the meantime I telephoned for our machine again and they said all right they would send it up, so we were waiting, and the defendant said she was feeling sick, could she go to get a cup of coffee, and I said, "Sure," and we went to the restaurant at the corner of New and Halsey Street, and she had a piece

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Charles H. Stollberg, cross.

10 of pie and a cup of coffee and still the machine did not get there, so she said, "I haven't got any cigarettes, can I go and get a pack of cigarettes?" And I said, "Sure," and they did not have the kind she wanted in the restaurant and we again crossed the street, we went across the street to the cigar store at the opposite corner and there she went in and got a package of cigarettes and as she came out the department machine came up and I took her to headquarters and slated her at four o'clock.

Q. Did you see her struck at any time? A. No, sir.

Q. Did you notice the condition of her head? A. When I went in there she was facing me and her hair was combed this way, up a little bit, it was not across her forehead, and there was a red mark as though a hat had been on there, and while I was talking to Mr. Daxton as to what he was going to do, Mrs. Duvel sat there this way (indicating) throwing her head up and down on the radiator, doing this as though she was in hysterics

Cross examination by Mr. Siegler:

Q. What time did you get there, Mr. Stollberg?

A. To where?

30 Q. To Hahne & Company? A. It was around 1:30.

Q. That was about an hour after—when you came there you went right to Daxton's office, didn't you? A. Yes, sir.

Q. And you found the congregation together in that room? A. Five people I think were in there.

Q. Five? A. Yes, sir.

Q. Let us get that right. A. There was Mr. Daxton, Carrington, Miss Connors, Mr. Friedman and Mrs. Duvel and myself made six.

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Charles H. Stollberg, cross.

Q. Where was Miss Clancy, did you see her? A. Miss Clancy was not there at the time, when I was there.

Q. She was not there at any time while you were there? A. I didn't see her.

Q. Was Miss McAllister there? A. I did not see her—I saw her on the floor, but not in the office.

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Q. Was Miss Giles there? A. Outside.

Q. They were all in that party? A. Not in the room.

Q. I mean at one time or another they were in the party? A. That I can't say.

Q. Did Miss Giles participate in this affair at all? A. Not while I was there.

Q. What was she doing there? A. She was on the floor, on the main floor.

Q. Outside of the office? A. Yes, sir.

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Q. She is a store detective? A. She was at the time.

Q. For Hahne & Company? A. Yes, sir.

Q. There was seven or eight, without Miss Giles that were in that room? A. Not in the room, no, sir.

Q. It was pretty crowded, wasn't it? A. No, not very much crowded, it is a pretty good sized room.

Q. Weren't you rather surprised when you walked in there and saw that congregation of men and women? A. No, sir.

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Q. Is that a usual affair? A. A usual affair.

Q. Didn't you ask how long this woman was in that room? A. I did not.

Q. Why not? A. I don't think it was my business to.

Q. You are a police officer of this community? A. Yes, sir.

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Charles H. Stollberg, cross.

Q. Are you charged with the duty of protecting the citizens of this city when their liberty and their rights are called to your attention?

Mr. McKenna: I object to that as immaterial and ambiguous and it has nothing at all to do with this case.

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The Court: I don't think it is necessary to ask this witness that.

Mr. Siegler: I think it is in view of the peculiar circumstances, when it arises in a store of this city—

The Court: The question is really argumentative. The witness will testify as to whether that is a duty. I will allow him to testify. Is that your duty, officer?

20

The Witness: Yes, sir.

Q. Did you make any inquiry why this woman—or how long this woman had been in this place?

A. I asked them when they got her and they said, "Oh, about half an hour or so ago."

Q. Did you ask them or did they tell you what this woman had said before you got there? A. No, sir.

30

Mr. McKenna: I object and ask that it be stricken out.

The Court: I will let it stand.

Q. Did anybody show you a statement that was signed? A. Yes, sir.

Q. Who? A. Mr. Daxton.

Q. And she was there? A. She was.

Q. Did you ask or did he tell you voluntarily? A. I asked did she sign any papers.

Q. Why did you ask that? A. To see what name she gave.

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Charles H. Stollberg, cross.

Q. What particular interest did you have at that time to know her name? A. It is my duty to find out her name, who she was.

Q. You were called there to find out who you have to take into custody under the law, weren't you? A. I was.

Q. That was your mission there, wasn't it, Mr. Stollberg? A. Yes, sir. 10

Q. What difference did it make to you whether this woman signed the statement or whether she had not when you came there to arrest her? A. The question arose, I asked her her name and she said her name was Helen Duvel, so Daxton said, "That ain't what you signed there," and he showed me the card and it was signed Bugal, and I asked her if she signed that card and she said yes.

Q. Did you ask her whether it was her right name? A. She said "my name is Duvel." 20

Q. Why didn't you ask her to sign her correct name? A. I had no business to ask her to sign the card.

Q. You had no interest in that? A. No.

Q. But you asked her whether she wrote that name which appears on the statement in ink? A. I did not, I asked her whether she signed the card.

Q. Did you ask her whether she signed the contents on the card? A. I asked her whether she signed that card and she said yes, and I said, "Did you write Bugal down there" and she said, "Yes, sir." 30

Q. You did not ask her whether what she signed above her signature was true or otherwise? A. I did not.

Q. Why didn't you take her to police headquar-

Charles H. Stollberg, cross.

ters right away? A. Why, we verified the address, I thought it was wrong.

Q. You were called there to arrest this woman when Daxton said in answer to your question, "I want to make a complaint of larceny against this woman," isn't that the fact? A. Yes, sir.

10 Q. Why, Mr. Stollberg, didn't you take her out of that room and over to police headquarters in the custody of our police department? A. She was in my custody, she was under arrest.

Q. Why didn't you take her to the place that the City of Newark provides for people who are under arrest? A. It is our custom to verify the address.

20 Q. Why didn't you have Mr. Daxton come to police headquarters to sign the complaint? A. They never sign any complaint when we come down.

Q. Who was going to sign the complaint? A. Mr. Daxton.

Q. Did you take him down to headquarters? A. I did not.

Q. If you did not take Mr. Daxton down to police headquarters how did you expect the complaint to be made against this woman? A. It is made the following day, always.

30 Q. On this particular day what authority did you have to arrest this woman? A. Mr. Daxton's word as representative of Hahne's.

Q. So, you arrested this woman on Mr. Daxton's word that he would make a complaint the next day? A. Yes, sir.

Q. How long have you known Mr. Daxton? A. A few months, since he was employed there, April. I think he went to work, if I am not mistaken.

Charles H. Stollberg, cross.

Q. You had known Mr. Daxton so well that you were willing to take his word that he was going to be there the next day to make a complaint?

A. As a representative of the store, yes, sir. We do it in all cases.

Q. Did you look at this statement when they showed it to you? A. I did.

10

Q. Did you look at it very carefully? A. Yes, and the signature that was on.

Q. Did you notice any writing on there in pen and ink? A. I didn't take particular notice.

Q. You made no inquiry about it? A. No, sir.

Q. Did you notice Mr. Daxton's name whether it was on or not? A. I didn't take notice of his name, I just looked at the name of Bugal, that was all.

Q. Did you notice what street was on there? A. Beside the name some address, 221 or 231.

20

Q. Did you look at it well enough to compare it with the handwriting and the ink on the balance of this paper? A. No, sir; all I know is I just looked at this name and address and I asked her if she signed it and she said, "Yes," and I said, "What is your name?" And she said, "No, Duvel," and I asked her what was right, and she said, "Duvel."

Q. You did not ask her if she signed the address on that card? A. I simply asked her if she signed this card.

30

Q. Mr. Stollberg, did you go back with her to the store to get her purse? A. It was a bag or purse she had, or something; I think it was a bag she left there on the table.

Q. And you went back to the store? A. I went back to the Halsey Street entrance and came down

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Charles H. Stollberg, redirect—recross.

the elevator again, and while I was on the telephone for the police machine—

Q. Well, you got to police headquarters about four o'clock? A. Yes, sir.

Q. Do you know whether or not she showed any bruises on her head when she got there? A. I did not see any.

Q. Did she complain to you that she was suffering from some pain? A. No, sir.

Q. When you got into the room the first time at 12:30 she was in a very nervous state, wasn't she? A. I didn't get there until 1:30—she was in kind of a nervous state.

Q. Shaking and trembling? A. Yes, she was shaking and shivering there.

Redirect examination by Mr. McKenna:

Q. Did officer Daxton turn these curtains and shoes over to you? A. Yes, sir.

Q. And you turned them over to whom? A. To Max Winant, the property clerk.

Recross examination by Mr. Siegler:

Q. Did I understand you to say that you called for the machine before you went to Bank Street? A. Yes, I called for the machine the first time, but there was no machine in, the machine was out.

Q. And did you call for the machine when you went to the restaurant? A. That was when we called for the machine again.

Q. Was that the second time? A. Yes, sir.

Q. Where was the machine then? A. They sent it up and I had to wait about fifteen minutes before the machine came up.

Max Winant, direct.

Q. And then you went back to the store and you called up again? A. Oh, no.

Q. I thought you just said that when you went back and got this purse you called up police headquarters again for the machine? A. That was the second call I made of the two calls to police headquarters for the machine.

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MAX WINANT, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. You are the property custodian at police headquarters, Mr. Winant? A. I am.

Q. I show you Exhibit S1 for identification, and ask you whether you received that from Officer Stollberg? A. Yes, sir.

Q. And you kept it where? A. In my office.

20

Q. And you brought it to the Court House? A. Yes, sir.

Q. And this pair of shoes you received from whom? A. Officer Stollberg.

Q. And you had them where? A. In my office.

Q. And you brought them to the Court House yesterday? A. Yes, sir.

Mr. McKenna: I offer the panels and the shoes in evidence.

30

Cross examination by Mr. Siegler:

Q. Mr. Winant, who handed this package to you? A. Officer Stollberg.

Q. Do you remember the date? A. The morning following this, it is right down on the book, the day after the arrest was made, after she was arraigned in court.

Q. That was June 20th? A. The following morning when it was.

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Max Winant, direct.

Q. About what time? A. Right after he came back from court, I should judge, whatever time court was over, ten or eleven o'clock that morning.

10 Q. And when it got into your possession, will you just tell us exactly the physical appearance of the package? A. Well, it was pinned. I opened the pins to count the stuff, and then I handed a receipt to Officer Stollberg to give to Captain Brex and then I placed it in my rack and marked the number on the outside of the package, as you will see.

Q. I am not interested in that, say for instance, I am Stollberg and I come back from the police court—

20 Mr. McKenna: I object to that.

Q. I want to know how this package was when you received it from Stollberg? A. In just the same way as it is opened here.

Q. I want to know how many wrappers there were? A. There were two wrappers on here, this and the outside wrapper.

Q. Is that the wrapper you put on? A. The wrapper was handed to me that way.

30 Q. And when you opened it was there a cord on it? A. Yes, that very cord you see there with the tag on the outside.

Q. When you opened this wrapper—was this the wrapper that was handed to you? A. Yes, that is the wrapper.

Q. Were there marks on it? A. No, I never looked for marks, I only checked them and put the tags on.

Q. How were these shoes handed to you? A. Wrapped in the bundle.

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Max Winant, direct.

Q. Wrapped in? A. That same bundle.

Q. It was wrapped in the first wrapper? A. I wouldn't say first or second wrapper, it was on top of the lace curtains wrapped over with the newspaper on the inside.

Q. Was there any cord around this box? A. That I couldn't say, the cord was on the outside. 10

Q. And no paper on? A. No, sir; there was not.

Q. Mr. Winant, was the defendant present when these goods were delivered to you? A. No, sir.

Mr. Siegler: I object to the offer on the ground that it has not been testified that the conditions that Mr. Winant says these goods were received by him on June 20th, 1924, is the same condition that Mr. Daxton says the goods were in when they left his possession—there is no evidence of the continuity of its condition being the same when they were taken from this woman. Therefore, we are in a position that we do not know whether these are the goods or they are not the goods, there is no evidence in the case to prove continuity of the possession of this merchandise. 20

(Argument.)

The Court: I will admit them, and you may have an exception. 30

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

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

DALLAS FLANNAGAN,
Judge.

Charles Goldberg, direct—cross.

(Ex. S1 for identification was marked Ex. S1 in evidence.)

(Ex. S2 for identification was marked Ex. S2 in evidence.)

10 CHARLES GOLDBERG, sworn in behalf of the State.

Direct examination by Mr. McKenna:

Q. Mr. Goldberg, where do you live? A. East Orange.

Q. And you are employed by Hahne & Company? A. Yes, sir.

Q. You were there employed on the 19th day of June, last year? A. Yes, sir.

20 Q. I show you a pair of shoes and I ask you whether you recognize those shoes as the property of Hahne & Company? A. Yes, they are.

Q. Do you know whether this pair of shoes was the property of Hahne & Company on June 19, 1924? A. Yes, sir.

Cross examination by Mr. Siegler:

30 Q. How do you know that these shoes here were the property of Hahne & Company on June 19, 1924? A. Well, they should have been, if no one bought them.

Q. But you don't know of your own knowledge whether Hahne & Company owned this particular pair of shoes, do you, on June 19th, 1924? A. No, I cannot say I do.

Mr. Siegler: I object to that offer.

The Court: The shoes are already in evidence, and you have an exception. This witness is a supplemental witness. What

makes you say that these shoes are the property of Hahne & Company?

The Witness: Why, we carry that particular style of shoe and make in our stock.

The Court: What you mean to say is that Hahne & Company on this particular day in June carried shoes of that style and make? 10

The Witness: That style and make and mark, and so on.

The Court: That is all you can really say?

The Witness: Yes, sir.

Mr. McKenna: I might say that the purpose of this testimony is to show that they were the property of Hahne & Company.

The Court: This witness does not show that they were the goods of Hahne & Company. He says that Hahne & Company simply carried goods of this kind in stock. 20

Mr. McKenna: The State rests.

Mr. Siegler: I move, with the permission of the Court, for an acquittal in this case, on the ground that the State has not, by its evidence, established under its first count that the defendant did steal and carry away ten lace panels at the value of \$5, one pair of shoes at the value of \$2.39. The only evidence in this case—and it starts with the testimony of Mr. Friedman—is when he saw Miss Hager, the defendant in this case, on the third floor, coming from around a counter on that floor with a package in one hand and with another package of an exposed pair of shoes in the other hand, coming through the aisle. This lady walks 30 40

Case.

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through the third floor, goes down to the second floor and comes back on the third floor and places that same package down on the floor in the upholstery department and leaves it there, and that is the first time that Mr. Daxton, or anybody else who is interested in the prosecution of this case, informed her to pick up that package and asked her where she got it and her reply was "I found it." She is taken upstairs. Now, as far as that testimony is concerned—

The Court: Where was it you say she put it?

Mr. Siegler: She put it in the upholstery department between two pieces of furniture.

20

(Argument.)

The Court: Of course, I must take the evidence in its most favorable light to the State on this motion. Now, then, you know that confession, so-called, is in evidence, and of course, that must be taken with all the rest of this evidence, and then we must look at it in its most favorable light. I am afraid that you are overlooking that confession.

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Mr. Siegler: No, sir. I have a further motion on that, if the Court please. There is nothing in this case that establishes the value of these goods to be over \$6.00.

The Court: I don't recall any proof of the value.

Mr. McKenna: Oh, yes. Mr. Friedman testified that the value of each panel was \$5.

Mr. Siegler: The next proposition: This

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Case.

indictment carries two counts, one for receiving and one for stealing.

The Court: The first is larceny.

Mr. Siegler: The first is larceny and the other is receiving, and we are entitled to have the Prosecutor inform us on which of these counts he expects a conviction, and I believe from the evidence there is absolutely no testimony here to support the receiving count, even if the statement is taken into evidence and given consideration. 10

The Court: You mean, in other words, you move to dismiss the receiving count?

Mr. Siegler: Yes, and I move now that the statement permitted by your Honor, for the consideration of the jury, be withdrawn as evidence in this case because of the testimony of Mr. Daxton. He says that he inserted in his own handwriting the words "ten lace panels \$55" and "one pair of shoes \$2.39," as being his own information, his own statement as to the value of this property in this statement, and that being the statement of the defendant—therefore, this statement in its entirety, not being the statement of Helen Duvel or Miss Hager, the defendant, is certainly not a voluntary statement including all of the facts— 20 30

The Court: One moment. That testimony was given in the presence of the jury, wasn't it?

Mr. Siegler: Yes.

The Court: "I signed it after he inserted it."

Mr. Siegler: Yes, sir.

The Court: I will have to deny your motion, and in regard to the receiving, I will 40

Hattie Hager, direct.

reserve that and pass upon that at the end of the case. I am disposed to rule with you on the receiving count, but I would rather rule on it at the end of the case.

Mr. Siegler: I pray an exception to your Honor's rulings denying my motion.

10 The Court: Certainly, you may have a separate exception in each case.

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

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

DALLAS FLANNIGAN,

Judge.

Mr. Siegler opens to the jury in behalf of the defendant.

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HATTIE HAGER, resumes the stand.

Direct examination by Mr. Siegler:

Q. What is your name? A. Hattie Hager, H-a-g-e-r.

Q. Where do you live? A. 1227 Lexington Avenue.

Q. How long have you lived in New York City? A. Ever since my mother died, seven years ago.

30 Q. How long have you been in this country? A. Eighteen years.

Q. What was your occupation on June 19, 1924? A. Investigator.

Q. For whom? A. Mr. Mirabeau.

Q. And what is Mr. Mirabeau's business? A. Attorney at law.

Q. Did you investigate for any other attorneys in New York? A. Yes, sir, in Brooklyn.

40 Q. Who? A. I investigated for Mrs. Scott Gabriel, 120 Broadway, New York City.

Hattie Hager, direct.

Q. Have you been an investigator for social work in the City of New York at any time? A. Yes, sir.

Q. Where and for whom? A. For Mrs. Gabriel.

Q. What particular work was that?

Mr. McKenna: I object to that, if the Court please. I think we have gone far enough in that. 10

The Court: I will allow that.

A. Social work during the war.

Q. Did you come to Newark on June 19, 1924?

A. Yes, sir.

Q. Where did you go to, what was your mission and what did you do? A. I arrived in Newark around ten o'clock and I went off the Park Place station, and from there— 20

The Court: He asked you what was your mission.

The Witness: Investigating in Bloomfield, New Jersey.

Q. Tell me what you did and what you were here for? A. I went out on an investigation on the 19th of June. My mission was to go to Bloomfield, New Jersey. When I went off the Park Place station I inquired from the officer where the buses are running to Bloomfield, New Jersey, and the officer directed me to the bus and I went there. I reached Bloomfield, I presume it was around quarter to eleven. I went to Glenwood Avenue or Glenwood Street. After I investigated— 30

Q. Whom did you go to see there? A. The name I will tell you in a moment, Alfonso Falsano.

Q. And for whom did you go there? A. I went for Mrs. Falsano. 40

Hattie Hager, direct.

Q. At whose direction were you going there?

A. Mrs. Falsano.

Q. I mean any attorney's direction? A. So—

Q. Was there any attorney directing you? A. Counsellor Mirabeau.

10 Q. When you got through there where did you go? A. After I got through I took the bus and went back to Newark, and the bus stopped in front of Hahne's. I went into Childs, it was pretty near to twelve o'clock, I went into Childs there on Broad Street, pretty near Hahne's there, I don't know exactly the number, and I had a cup of coffee. After I came out from Childs I thought, well, the 19th day of June—

Q. No, not what you thought, what did you do?
20 A. I went to look at the window in Hahne's and I saw some cretonnes displayed in the window and I thought I will go up there and see if I can get some cretonne. I went in the store and I went to the notion department and I bought a package of hairpins in the notion department, and I took the elevator and went up to the third floor. When I reached the third floor I reached the furniture department. That elevator reached the furniture department. I asked the salesman who approached me and said, "Do you wish to be waited on?" I
30 said, "Where is the cretonnes?" He said, "In the front of the store."

Q. The Broad Street front? A. Yes, sir. I went over there and the cretonne, the terry cloth—in fact, I wanted terry cloth, which is better quality—

Mr. McKenna: I object to that.

The Witness: And the price was exorbitant. I did not buy because I thought I

Hattie Hager, direct.

could get it much cheaper in New York or in Brooklyn, and I did not buy. When I left that cretonne counter—

The Court: What was it you did not buy?

The Witness: I wanted to get the cretonne.

The Court: But you said there was something you did not buy. 10

The Witness: I did not buy first of all on account of the exorbitant price and it was not the quality I actually wanted.

The Court: Is this the cretonne you are talking about?

The Witness: Yes, sir.

The Court: The price was too high?

The Witness: Yes.

The Court: And it was not up to the quality that you wanted. 20

The Witness: Exactly. I walked away from the cretonne counter back again to the elevator and I saw a parcel laying there between a davenport.

Q. A settee like? A. A settee, exactly, and a piece of furniture there. I looked all around and I thought somebody has forgotten that parcel, because it was such a large parcel, and what attracted my attention, there was one shoe, so I thought somebody had forgotten the parcel. 30

Q. You mean an open shoe? A. An open shoe, yes, sir.

Q. What did you do?

The Court: An open shoe, you mean there was a shoe outside of the package?

Mr. Siegler: Yes, sir.

Hattie Hager, direct.

The Court: That is what you mean, a shoe outside of the package?

10 The Witness: Yes, sir, attached to the package. Now, I picked up that parcel and I went toward the elevator, and when I reached the elevator went just down, so I walked down the center stairs which are pretty near the elevator.

20 Q. Is that the main stairway? A. The main stairway, yes, sir. After going there I reached the second floor and a young lady, a blond young lady, walked toward me and I told her I found this package and I wanted to go to the lost and found desk. She told me the lost and found desk is on the Halsey Street entrance on the main floor, but she said, this young lady to me, "Listen to my advice. Better don't walk with this parcel. Put it back. Possibly somebody will come and claim it over there, put it back where you found it," and I took the advice which she gave me, right there where I was standing, I took her advice and I walked up that same stairway and she said, "Better put it back where you found it," which I did. When I reached that section where I found it—

30 The Court: You say this was a lady—was she some of the store people or a customer?

 The Witness: Store people.

 The Court: A saleslady?

 The Witness: Saleslady.

40 Q. And when I reached that settee there I put back that parcel. Daxton walked over to me and said, "Hey! Come here, don't you want that?" I said, "No, sir, it doesn't belong to me." "Where

Hattie Hager, direct.

did you get it?" I said, "I found it here and I put it back here and it doesn't belong to me." He said, "Oh, yes, it belongs to you," he said, "You pick up that parcel." I said, "I will not." He said, "I am telling you to pick up that parcel," and I said, "I will not," and he raised his hand, in fact he raised his hand to me and he said, "Pick up that parcel." Finally I didn't pick up the parcel and he himself picked up the parcel and walked up to the fourth floor. 10

The Court: As I understand it you refused to pick up the parcel and he picked it up himself?

The Witness: Yes. He walked up to the office on the fourth floor, he called me in, in Mr. Daxton's office, and he said, "Now, I got you. You are the Indian, the notorious Indian woman. We are after you for the longest time. In fact, we got it today from New York that you were on your way over. You are the Indian." I said, "I am not an Indian." He said, "What is your nationality, are you a gypsy?" I said, "No, neither am I a gypsy, I am not an Indian and I am not a gypsy." And he said, "You got to show me and answer my questions," and I said "I am answering your questions, I am not an Indian." And, I told him my name is Duvel, I am going under that name of Duvel in the performance of my investigations. You know, you cannot use your own name in the performance of investigation so I told him my name is Helen Duvel. He said, "I know that you live on Bank Street, 20 30 40

Hattie Hager, direct.

all right, and you hire a room there for the purpose of storing Hahne's merchandise." I said, "I don't know even where Bank Street is, and I don't know even to this day where Bank Street is here in Newark. Mr. Daxton insisted that still I am the Indian and I live on Bank Street. Within a few minutes he had Miss O'Connor, or Connors down in the room, and also Friedman, Daxton and Connors. Daxton and Friedman were standing at a little table and did not let me see the parcel at all. I inquired what was there, I would like to know, and they didn't let me see it at all, neither Friedman or Daxton. They told me to sit down and they put me in the extreme corner, which absolutely I can prove there is no radiator where I was sitting, and Miss O'Connor or Connors arrived and she said to me, the first thing, "Say, you tell the truth about yourself, you are the Indian." I said, "No, I am not an Indian." She said, "Oh, we know you." In the meantime Daxton opened a compartment in his desk and he said, "I will convince you that you are the Indian because I have your picture here." After looking at various pictures and not finding any he said to me, "Wait, I will convince you otherwise, somehow somebody took your picture away from here—

Mr. McKenna: I would like to object, if if the Court please, at this time. This is repetition, we have been all over it, and it all leads up to the signing of the confession. Miss Duvel was on the stand yesterday

Hattie Hager, direct.

day and testified to everything she is testifying to now, and I object.

The Court: Just confine yourself to what happened without repeating what you said yesterday.

The Witness: Then, when he could not find any pictures he got very angry and very abusive and he could not get any other description from the people, which he inquired about me, and he went over to a center desk and got out, I don't know, a card something similar to this here and he said, "Come over here and sign this." I said, "I would not sign anything for you or anybody else because I have not committed any crime, why should I sign." And he said, "You come over here and sign this or crumbs will be picked up from the floor of you." And I said, "I will not, I will not under no circumstances in the world, will I ever sign my name to anything," and finally I was sitting in the extreme corner with my chair and he said, "I am telling you to come over here and sign this," so he got ahold of the chair and he pulled the chair away from me and he said, "You are not entitled to sit here, you stand. You are a pretty bad woman, and we know you are the Indian and you are not entitled to sit here." He said, "Miss Connor, will you step out, Friedman, will you step out, I will take that baby under the third degree." Well, he remained with me alone in the room. He said, "Take off your hat," I said, "I will not." He said, "You are afraid, you are wearing a wig," I said, "I am not wearing

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Hattie Hager, direct.

a wig, I can show you I am not wearing a wig—”

The Court: Didn't you tell us that yesterday?

The Witness: Yes, sir.

10 The Court: As far as you can, don't repeat what you said yesterday.

The Witness: He tore off my hat and struck me with his bare fist, and he struck me on my head and I remained dazed and I don't know what occurred.

Q. Who was in the room with you before the statement was signed and after your arrest, who was in the room there, how many people were in the room? A. When the statement was signed Daxton and myself.

20

Q. And were all these people in the room at various times? A. Yes, sir.

Q. Miss Connors? A. Yes, sir.

Q. Was Miss Clancy there? A. Miss Clancy requested Mr. Daxton, while she is house detective, to search me and he said, "Never mind, Elsie Connors will fix her up."

Q. She was house detective, Miss Clancy? A. No, Miss Clancy did not search me, Miss Connors searched me.

30

Q. Were you searched before this statement was signed or after? A. Before.

Q. Tell us what you mean by search, your pockets or what? A. I wore a suit that day, it was a very chilly day that day, I wore a suit and she took my coat off, pulled up my waist, put her hands in my corset and also tore my brassiere and she went with her hands all the way down until my skirt, and she reported to Daxton she could not find anything on my body.

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Hattie Hager, cross.

Q. Where did they take you after that? A. I don't recall what happened after this, I don't recall anything after they took me for a ride, or they took me somewhere.

Q. Did you tell them to go to 231 Bank Street?

A. No, sir.

The Court: Do you recall going to 231 Bank Street? 10

The Witness: No, sir.

The Court: Do you recall getting any cigarettes.

The Witness: I recall I was drinking coffee, but where I was drinking the coffee, your Honor, I don't know, I was terribly dizzy, I was in so dazed a condition I did not know most of the time where I was; I was hysterical and I had a very severe pain in my head, he struck me a terrific punch. 20

Q. Do you remember when you got to police headquarters? A. Well, I should judge it was 4:30 but I don't recall exactly the time, Mr. Stollberg ought to know.

Q. Did you have anything done to you for your injury when you got to police headquarters? A. Yes, when I was brought upstairs Mrs. Martin took care of me, and Mrs. Maryin applied ice on my forehead and also cold applications, and my handkerchief I had every minute to wet, and I had quite a lump on my forehead. 30

Cross examination by Mr. McKenna:

Q. How long have you been a store detective?

A. I was working with Bloomingdale Brothers four or five seasons.

Hattie Hager, cross.

Q. When did you start for them? A. 1908.

Q. Then you worked for who else? A. For Berlin Brothers, that is the concern is Levy Brothers, and the store goes under the name of Berlin in Brooklyn, Broadway.

10 Q. Who else did you work for? A. Two or three seasons for Gimbels.

Q. When did you stop working for Gimbels? A. 1920.

Q. Why did you stop working for Gimbels? A. Well, their season is only around the Christmas holidays.

Q. Did you have any trouble with Gimbels? A. No, sir.

Q. Never had any trouble with Gimbels? A. Never in my life.

20 Q. Sure about that? A. Positive.

Q. Just think a bit. A. I will.

Q. Have you any trouble with them at the present time? A. I don't think so—

Mr. Siegler: Objected to.

The Court: Sustained.

30 Q. When did you start to work for a lawyer as an investigator? A. I worked right along all those years, I worked for all the lawyers, various lawyers and I work doing their investigations.

Q. And you have been in court often, haven't you? A. Occasionally.

Q. You know what a confession is, don't you? A. I do.

Q. You know that it is void if it is induced by coercion or promises or threats, don't you? A. I knew.

Q. And you knew that that day, didn't you, on

Hattie Hager, cross.

the 19th day of June? A. I never would have signed it if I would not be struck.

The Court: She said she signed the statement when she did not know what was going on.

Q. You did not know a thing that was going on? 10
A. No, sir.

Q. You did not really know that you signed it, did you? A. No, sir.

Q. Now, is that your signature? A. I presume I would not be able to write this thing over again, it is, I presume it is my name, but that is not the address.

Q. That is your signature but not the address?
A. The signature but not the address.

Q. That is not your writing, the address? A. 20
No.

Q. Now, you say there was just one man and that was Daxton in the room, is that right? A. Correct.

Q. Sure about that? A. Positively.

Q. Sure there was no radiator in the room? A. Yes, sir.

The Court: If I understand your testimony the words "Helen Bugal" are written by you. 30

The Witness: That looks like my handwriting, sir, but I would not be able to do such a handwriting if I would be normal, not in a nervous condition.

Q. But you say it looks like your handwriting?
A. Yes, sir.

Q. But you have no recollection of writing it?
A. No, sir.

Hattie Hager, cross.

Q. This "231 Bank Street" you say is not your handwriting? A. No, sir.

Q. You say you were never in the store room on the third floor, Miss Duvel? A. No, sir.

Q. Never there? A. No, sir.

10 Q. Did you see Mr. Friedman there? A. No, sir.

Q. Was there anybody around on the third floor that day? A. Oh, there was salespeople.

Q. Were there any salesmen around? A. It was evidently during the lunch hour and there is not so many people.

Q. Were there some there, did you see anybody there? A. I saw some people there in the furniture department, in the cretonne department.

20 Q. Now, from your experience as a store detective, if any articles were found isn't the first thing to do to go and tell somebody, the saleswoman on the floor? A. I do.

Q. The saleslady that you saw, is she in court? A. Friedman knows where she is.

Q. Is she in court? A. No, sir.

Q. Did you go down there to get her? A. I certainly did.

Q. Have you got her here in court?

30 Mr. Siegler: No, we haven't got her, not when you have her, we couldn't have her.

Mr. McKenna: We haven't got her because she did not exist.

Q. Was that the only woman you spoke to? A. Yes, sir.

Q. And that was on the second floor? A. Yes, sir.

Q. What kind of a looking woman was she? A. A blond, looks like Billie Burke.

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Hattie Hager, cross.

Q. And what counter was she at? A. She was working in the middle aisle.

Q. She was just walking around? A. She walked in the middle aisle, yes, sir.

Q. You did not leave the parcel with her, though, did you? A. Upon her advice I returned it where I found it.

10

Q. Is that usual and customary, Miss Duvel, to find an article in the store and carry it around?

Mr. Siegler: I object to that question as to what is usual and customary, the fact is what she did.

The Court: Objection sustained.

Q. How long were you carrying that parcel before you spoke to this woman that looked like Billie Burke? A. About two minutes.

20

Q. And you went down from the third to the second floor, is that right? A. Yes, sir.

Q. Then you went up the back stairs? A. She directed me to go up there, she said that is quicker for me.

Q. And when you got up there did you see Friedman? A. I did not.

Q. Who was the first person that you spoke to? A. When I walked up to the third floor I talked to nobody, I put the parcel back where it belonged, and started away.

30

Q. The place that you put it is that the place where you found it? A. Yes, sir.

Q. Underneath the settee? A. No, sir, between the settee and a piece of furniture.

Q. Is that where you found the shoes? A. Just one, that is not them shoes, it was a baby shoe.

Q. Well, these are not the shoes that you had that day? A. Oh, Mr. Friedman will tell you where he got the shoes.

40

Hattie Hager, cross.

Q. These are not the shoes that you had that day? A. Positively, there was one baby shoe as big as that (indicating) and that is what attracted my attention, and Mr. Friedman did the rest. He brought in the shoes and said to Mr. Daxton, "These are the shoes," and Mr. Daxton told him
10 in my presence, "It looks very plausible."

Q. Did you know where the lost and found department was when you went into that store? A. No, I inquired of the young lady to tell me and she told me it was on the Halsey Street entrance on the main floor.

The Court: You say you found this bundle between two pieces of furniture?

The Witness: Yes.

20 The Court: Were they on the floor or were they in between two pieces of furniture or where were they?

The Witness: On the floor.

The Court: They were lying on the floor between two pieces of furniture?

The Witness: Yes, sir.

The Court: What was the character of this furniture?

30 The Witness: One was a settee and the other piece of furniture was a davenport.

Q. Between a settee and a davenport? A. Yes, sir.

Q. Lying down on the floor below? A. Yes, sir.

Q. Now, Miss Duvel, you say your brassiere was torn? A. Yes, sir.

Q. Have you got the brassiere that was torn here? A. Well, a couple of hooks went out and I sewed it up.

40 Q. You didn't keep it, you didn't think it would

Hattie Hager, cross.

be necessary to show it here today? A. It would not be necessary to show it to you, my brassiere.

Q. Didn't you think if you were handled rough and you could show a brassiere that was torn that it would help you if it were true? A. I don't know that it would help me, I sewed it up, I am pretty handy in sewing.

10

Q. You say your skirt was torn? A. No, sir.

Q. Was any other part of your clothes torn or ripped? A. Yes, my underwear when Miss Connors tried to search me.

Q. How badly was it ripped? A. It was badly ripped.

Q. Did you bring that underwear here? A. No, sir.

Q. You didn't think it was necessary, did you? A. I did not think it was necessary to bring the underwear over here.

20

Q. You say they beat you and treated you rough, is that right? A. Yes, Mr. Daxton, nobody else laid a hand on me.

Q. Where did he hit you? A. In my head.

Q. What part of my head? A. Right here.

Q. On the right side? A. No, more to the center.

Q. Did you hear Captain Brex say it was a slight red mark on the right side? A. I don't know what Captain Brex said.

30

Q. Was it on the right side or on the left side?

A. In the center here where I showed it to you, that lump.

Q. Was there any marks besides the red mark on your forehead that was caused by your hat bearing down on your head? A. There was no red mark. The women don't wear tight hats to make a red mark, and disfigure their foreheads.

40

Hattie Hager, cross.

Q. Was this hat tight? A. No, sir.

Q. This person that you went to see in Bloomfield is he in court? A. No, sir.

Q. Why not? A. Well, we can get him here.

Q. Why isn't he here, do you know?

10 Mr. Siegler: I object to that. What business is it of your why he is not here.

Mr. McKenna: I want to know.

Mr. Siegler: On my advice.

Q. Did you see anybody at the cretonne counter? A. Yes, sir.

Q. Whom did you speak to at the cretonne counter? A. A saleslady.

Q. Is she here? A. I don't know, perhaps she is.

20 Q. But you are sure of one thing, Miss Duvel, that when you signed this paper you don't remember what happened to you, you really don't remember signing it, is that right? A. I don't remember signing it.

Q. But you do recognize that as your signature? A. That name looks like mine, yes, sir, but not the address.

30 Q. Did you tell the officers that you lived in Pennsylvania Avenue, Washington? A. I don't recall that, I don't know what I told them, Lieutenant Farrell or Captain Brex or anybody.

Q. Did you ever live in Washington? A. No.

Q. Did you ever go to Washington? A. I was once before in Washington.

Q. Did you ever live on Pennsylvania Avenue in Washington? A. No, sir.

Q. Are you sure of that? A. Yes, I stopped at the Hotel Raleigh.

Q. What street is that on? A. Avenue S.

Hattie Hager, cross.

Q. You know that the Raleigh Hotel is on Pennsylvania Avenue and 12th Street? A. Avenue S.

Q. Avenue S and 12th Street? A. I don't know, I stayed there one day.

Q. You don't know that that is on Pennsylvania Avenue and 12th Street? A. No, sir.

By the Court:

10

Q. As I understand you, after you were struck with this blow you remained in a dazed condition, at least until you got to Captain Brex's office? A. Yes, sir.

Q. And because of that all these intervening incidents you don't recall? A. No, sir.

Q. All you can recall is the drinking of a cup of coffee? A. Yes, sir.

Q. Just think of anything else you can recall from the time you were struck this blow in the head until the time you were in Captain Brex's office. A. I was brought in headquarters and Miss Martin got Farrell and he came up and he asked Mrs. Martin to be so kind and give me a drink of water, and I felt very bad, and she assisted me, she showed me in the room and gave me a drink of water. I begged—

20

The Court: I did not ask you that. You told us that when you were with Mrs. Martin she gave you some water and applied ice on your forehead.

30

By Mr. McKenna:

Q. Did you ask them for a doctor while you were at police headquarters? A. I was in a dazed condition.

Q. Do you remember Captain Brex offering to

40

Leon Mirabeau, direct.

get you a doctor and you refusing to have one?
A. I don't recall, I cannot recall this.

Redirect examination by Mr. Siegler:

Q. Were you, in your work as an investigator,
employed by the railroads? A. I was.

10 Q. Which one? A. The New York City Rail-
road.

LEON MIRABEAU, sworn in behalf of the de-
fendant.

Direct examination by Mr. Siegler:

Q. Where do you live? A. 373 Clinton Street,
Brooklyn—I maintain an office at 373 Clinton
Street, Brooklyn, and reside at 528 Lafayette Ave-
20 nue, Brooklyn.

Q. How long have you been practicing law? A.
Sixteen years.

Q. Do you know the defendant? A. I do.

Q. How long have you known her? A. Thirteen
years.

Q. Was she ever engaged by you in any capacity
whatever? A. I engaged the defendant from time
to time as investigator in particular cases.

30 Q. Do you know of your own knowledge whether
she has done this character of work for any other
lawyer?

Mr. McKenna: I object to that as highly
immaterial.

The Court: Have you any personal
knowledge on the subject?

The Witness: I have, yes, sir, Judge.

Q. What is your knowledge? A. My knowledge

Leon Mirabeau, direct.

is—do you want the record for the last thirteen years?

Q. By whom has she been employed in this work? A. She has been employed by me, engaged in that particular work, and by Mrs. Gabriel, an attorney, and Mr. Lamberta of 44 Court Street, Brooklyn, an attorney.

10

The Court: You are testifying of your own knowledge, are you?

The Witness: I have personal knowledge.

The Court: How do you have that personal knowledge?

The Witness: For this reason, when meeting these various parties who are attorneys and friends of mine I have discussed the work of the defendant and I have recommended the defendant to some of these people.

20

The Court: In other words, they told you they employed her.

The Witness: Yes, and they told me the results in some cases.

The Court: Well, that is hearsay, isn't it?

The Witness: Yes, they told me.

The Court: Yes, but you said you knew it of your own personal knowledge.

30

The Witness: Learning it from the attorneys for whom she did the work.

Q. Do you remember on June 19th or thereabouts, of 1924, having occasion to engage the defendant in any work? A. I engaged her for some work, but to precisely say the 19th of June, 1924, that would be impossible.

40

Leon Mirabeau, direct.

Q. Did you have a case in your office of Falsano against Falsano? A. I have the case in the office.

Q. Did she have any connection with that case?

A. Yes, sir.

10 Q. What was her connection when you undertook that case? A. I did not want to take the case unless an investigation was first made.

Q. Did you do anything in pursuance of that attitude? A. That was my response.

Q. Well, was there an investigation made? A. I only know from what Mrs. Hager told me about the latter part of June.

Q. Did you know of the Falsano against Falsano case existing? A. It was reported to me, I was not the attorney in the matter.

20 Q. Who came to see you? A. Mrs. Falsano spoke to me.

Q. Did she tell you where her husband lived? A. She did not.

Q. Did you know whether there was any witness in Bloomfield? A. I don't know of my personal knowledge whether there was any witness or where the parties were, but I do know this, I was consulted in the matter and I wouldn't have anything to do with it until an investigation was made.

30 Q. And do you know whether the defendant made an investigation? A. Yes, sir.

The Court: Where was the defendant at the time this conversation occurred?

The Witness: That is my statement to the defendant, that I wouldn't take it. Mrs. Falsano speaks Italian and I do not, and Miss Hager speaks Italian—

The Court: Miss Hager speaks Italian?

The Witness: Yes, sir.

Leon Mirabeau, direct.

The Court: Go ahead.

The Witness: And I said I would not take it, and I make it a practice not to undertake any cases unless it is investigated. Now, as to whether or not she was going to engage Miss Hager—

Q. Well, did you know that these people who were to be investigated lived in Bloomfield? A. I did not.

Q. In this conversation did any information given to the defendant embrace the fact that somebody lived in Bloomfield, New Jersey? A. There was no talk about that at that time.

Q. How long have you known her, Mr. Mirabeau? A. I have known her over thirteen years.

Q. Do you know where she lived during that period? A. She lived in Scholes Street in the Borough of Brooklyn, Williamsburg, which is twelve or thirteen blocks from my present office, which is located at 113 Graham Avenue, Brooklyn.

Q. How long did she live there? A. To my knowledge about five or six years.

Q. And you had contact with her how often? A. During that period I had occasion to see her maybe at the rate of once or twice a month, sometimes at the office, sometimes on the street, she was in my neighborhood.

Q. Where did she live after that, to your knowledge? A. I lost track of her until about two or three years later, that is, about six or seven years ago, when I found she resided in New York, I believe at 1227 Lexington Avenue. I was there once or twice, I assigned some work and I had not received a report and I went down to find out why

Leon Mirabeau, direct.

and I found that she was ill. That is the only once or twice that I was at her home.

Q. Do you know what the general reputation of this defendant is in the community where she lives, in Brooklyn, during the period that you had your office there, for being a good, law abiding citizen?

10

Mr. McKenna: That is objected to.

The Court: That is the period he had an office there?

Mr. McKenna: Exactly.

The Court: And he said she resided within thirteen blocks of his office and then moved to New York.

Mr. Siegler: I am talking about the period when she lived in Brooklyn.

20

The Court: As I get the testimony that was six or seven years ago.

Mr. Siegler: Yes, sir.

The Court: I think it is remote.

Mr. Siegler: I have a right to show her reputation.

The Court: Not six or seven years ago, the reputation is irrelevant as of that time.

Mr. Siegler: If she had a bad reputation six or seven years ago am I barred from showing she continued in that reputation?

30

The Court: Of what value can the reputation be six or seven years ago? Is it of any value? I think it is too remote. The time of which the reputation is important is as of the time of the commission or alleged commission of the crime. I think her reputation as far back as six or seven years ago is too remote to be of any value.

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Mr. Siegler: And therefore, my question as to her general reputation—

Leon Mirabeau, direct.

The Court: As of that time is excluded. Defendant's counsel prays an exception to this ruling of the court.

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

DALLAS FLANNAGAN,

Judge.

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Q. Mr. Mirabeau, how often had you come in contact with this defendant the last few years?

A. Well, the last few years I have come in contact with her very often.

Q. What does that mean? A. That means almost every other day.

Q. Have you had any ability to observe this lady's reputation in the community in which she lives? A. I have.

20

Mr. McKenna: That is objected to.

Q. What observation have you been able to make? A. About four or five years ago Miss Hager asked to have her name placed upon my door. I knew Miss Hager professionally, but I did not know her socially, but I knew a great many men and women who knew her socially and I knew Dr. Clinkostein of 77 McKibben Street, Brooklyn, Dr. Sachs, corner of Scholes and Leonard Street, a dentist, Mr. Lamberta, an attorney of 44 Court Street, and Mr. Berlin, another attorney at 44 Court Street, who I knew knew Miss Hager, so I made inquiries, because in the building it is required that before you allow anyone to have his name on your door or take them in your office, you must vouch for their good character, otherwise your lease may be cancelled. Mr. Higgins is the manager and I so informed him—

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Leon Mirabeau, cross.

The Court: That is four or five years ago.

The Witness: Yes, sir.

The Court: Four or five years ago is too remote. Please get down to a date approximately near the date when she is alleged to have committed this crime, limit it to that or around that date.

10

Mr. Siegler: Around the last year or two.

The Witness: I mean, for instance, I meet Mr. Lamberta almost every week in court and we ask each other, he says to me, "Have you seen Miss Hager, how is she, is she all right. That is one fine woman." Her mutual friends are my mutual friends. It is a daily occurrence.

The Court: That runs down to date?

20

Witness: Yes, sir.

Q. And you testified you have been to where she lives? A. Yes, I think once when she was sick.

The Court: Mr. McKenna, do you wish to cross examine?

Mr. McKenna: No, sir.

Q. What is her general reputation in the community in which she lives as a law-abiding and upright citizen? A. Good.

30

Cross examination by Mr. McKenna:

Q. Mr. Mirabeau, are you receiving a fee from Miss Hager in this case? A. I am not, I am here voluntarily, believing that her statement to me—

Q. Never mind, you know you cannot answer that way. A. I am here voluntarily without a fee.

The Court: You are an attorney at law and you are expected to conform to the

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Leon Mirabeau, cross.

rules of the court and rules of evidence.
Now, don't volunteer speeches for the benefit of the lady you represent.

Q. Mr. Mirabeau, you were also over in the police court when the case came up for hearing?

A. I was.

Q. And was that you who retained Mr. Siegler in this case? A. I didn't know Mr. Siegler.

Q. But you helped prepare the case?

Mr. Siegler: I object to that.

The Court: It may be so, his association with the case.

A. I consulted Mr. Siegler in regard to the case as far as the New Jersey law is concerned, I did not know it, and the facts were discussed in my presence.

Q. That is, in your office? A. No, sir, in Mr. Siegler's office.

Q. How many times have you been over to see Mr. Siegler?

Mr. Siegler: I object.

A. I don't believe I was here three times, once to the police court when the matter came up, once where the case came up again, and I think the People of the State of New Jersey asked for an adjournment, and once this week when it was adjourned for two days.

Q. And you came over with Miss Hager from New York? A. No, sir.

Q. You came alone? A. Yes.

Q. Do you represent Miss Hager in any other matters? A. No, I do not.

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Jacob Litwin, direct.

JACOB LITWIN, sworn in behalf of defendant.

Direct examination by Mr. Siegler:

Q. Do you know the defendant? A. I do.

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

Q. How long have you known the defendant?

10 A. Since about March, 1912.

Q. Do you know where she lives? A. I do.

Q. Have you known her continuously? A. Yes, up to the present time.

Q. Do you know where she lives now? A. New York, around 82nd Street and Lexington Avenue.

Q. Do you know how long she has lived there?

A. If I am correct I believe it is since about 1917.

Q. How often do you see her? A. Almost twice a week.

20 Q. And have you occasion to go over to see her?

A. Yes, sir.

Q. Did you have occasion to observe what she does, her occupation? A. Yes, sir.

Q. What is her occupation? A. As I understand it she is an investigator in certain cases and social worker.

Q. And for the last three or four years have you been seeing her? A. Well, about once a week, sometimes twice a week.

30 Q. Have you had occasion to meet other people that know her within the last three or four years?

A. Yes, sir.

Q. Do you know where she lives now? A. Around 82nd Street and Lexington Avenue, I don't know the number.

Q. Do you know what her reputation is in the community as a law-abiding citizen? A. Very good.

Cross Examination Waived.

Louis Meckenberg, direct—cross.

LOUIS MECKENBERG, sworn in behalf of the defendant.

Direct examination by Mr. Siegler:

Q. Where do you live? A. 450 Throop Avenue, Brooklyn.

Q. Do you know Miss Hager, the defendant? A. Yes, sir. 10

Q. How long do you know her? A. Over ten years.

Q. Do you know where she lived within the last three or four years? A. Yes, sir.

Q. Where? A. 1227 Lexington Avenue, New York.

Q. How often did you see her in the last three or four years? A. I see her twice a week.

Q. Does she come into your home and do you go to her home? A. She used to come to my home when my wife was alive, and now my wife died four years and I am single and I go over to see her. 20

Q. Do you meet people who know her? A. I know some people that know her.

Q. Do you know what her reputation is in the community as an upright woman and a good citizen? A. Sure I know.

Q. What is it? A. She is a good character and an honest woman, so far as I know. 30

Q. Your daughter lives with her, too?

Mr. McKenna: I object.

The Court: Sustained.

Cross examination by Mr. McKenna:

Q. Have you talked to people about her, you never discussed her, have you, with anybody? A. No, sir. 40

Joseph Farrell, direct.

Q. So you never talked to the neighbors and found out what they thought about her? A. I talked with the neighbors.

Q. You never discussed her and never talked about her? A. No, sir.

10 Q. You never talked about her reputation to the neighbors, did you? A. No, sir.

JOSEPH FARRELL, recalled in behalf of the defendant.

Direct examination by Mr. Siegler:

Q. Mr. Farrell, when Miss Hager was brought down to see you, or came under your observation did you do anything in the performance of your duty to find out who this woman was?

20

Mr. McKenna: Objected to.

The Court: What difference does that make?

Mr. Siegler: I mean with respect to their records.

The Court: I cannot allow that. You are not going to try to impeach her, are you?

(Argument.)

30

The Court: The only way you can show her character and reputation is the way you have tried to do it by stating her general reputation. You cannot do it by a special investigation.

Mr. Siegler prays an exception to this ruling of the Court.

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

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DALLAS FLANNAGAN,
Judge.

Joseph Farrell, direct.

Q. Did you examine the records in your Bertillion office under the name of Helen Duvel and Hattie Hager?

Mr. McKenna: Objected to.

The Court: Sustained.

Mr. Siegler prays an exception to this ruling of the Court. 10

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

DALLAS FLANNAGAN,

Judge.

Q. Did you discover—

The Court: Haven't I ruled that a special investigation to ascertain the reputation or character of the defendant is not competent here in order to show her good character? 20

Mr. Siegler: I have sent for this Falsano woman and I think that unless the Prosecutor makes an issue of it we ought to wait for her to come.

The Court: Does that close your case except for this witness?

Mr. Siegler: Yes. If she is not here by two o'clock I can leave it out.

30

(The Court thereupon took a recess until 2 o'clock.)

Phillip Purrazzo, direct—cross.

AFTER RECESS.

PHILLIP PURRAZZO, sworn in behalf of the defendant.

Direct examination by Mr. Siegler:

10 Q. Where do you live? A. 284 Glenwood Avenue, Bloomfield.

Q. Did you ever see this lady last summer (indicating the defendant)? A. Once, yes, sir.

Q. Where? A. In Bloomfield.

Q. What time of day? A. I don't know the day.

Q. Was it June or July? A. I don't know, I don't remember, it was in the summer, it was a very hot day that day she came.

20 Q. And what did she see you about? A. I was in the store and she came in and asked me if I know Mr. Falsano.

Q. She asked you if you knew Mr. Falsano? A. Yes, sir.

Q. Did you give her any information about that? A. Well, I don't know nobody.

Cross examination by Mr. McKenna:

Q. You don't remember what day it was, do you? A. No, sir.

30 Q. Are you sure it wasn't June? A. I don't remember, it was in the summer.

Q. But you are not sure whether it was June or July? A. I no remember.

Q. It may have been May? A. I don't remember.

Q. You are sure it was this woman? A. Yes, sir.

Q. Did they show you this woman during the

Phillip Purrazzo, redirect—recross.

noon hour? A. She was in the store and I am waiting—

Q. Yes, but what I mean, did you see this woman during the noon recess, between one and two o'clock? A. It was in the daytime, I don't remember whether it was one or two o'clock.

Q. Just today, did you see this woman outside in the hall? A. No, I see her in my store. 10

Q. But did you see her today, before you came into this court room? A. Yes, I see her outside.

Q. Who showed her to you? A. Well, another lady came and a man came in an automobile.

Q. Who is the man who came? A. I don't know.

Q. Is this the man (indicating Mr. Siegler)? A. No, sir.

Q. Who showed you this woman when you came into the court house? A. Well, they came to Bloomfield. 20

Q. When they got outside in the corridor did they show you this woman? A. No, I see her.

Redirect examination by Mr. Siegler:

Q. Were you here under subpoena at any time when this case was to be tried? A. No, sir.

Recross examination by Mr. McKenna:

Q. Were you talking to this woman outside? A. Yes, sir. 30

Q. Just talking to her before you came in? A. Yes, sir.

Q. How long did you talk to her? A. No long.

Q. Did she tell you about this happening up in Bloomfield in the summertime? A. She say nothing.

Q. What did she say to you? A. Only she come in a couple of months ago and she go back again. 40

Phillip Purrazzo, recross.

Q. Did she ask you whether you knew her? A. What?

Q. Did she ask you whether you knew her, did she ask you that at noontime? A. No.

Q. Nothing at all? A. No, sir.

10

Mr. Siegler: I call for Mr. Daxton, one of the witnesses in this case, whom your Honor ordered to return today.

The Court: I understood he was here.

Mr. McKenna: He was here, I did not think there was anything further for Mr. Daxton.

The Court: You rested your case?

20

Mr. Siegler: I called for him this morning and your Honor said I can have him if I make him my own witness, and somebody said he just went down to telephone and he has never appeared in this court room since then.

The Court: I don't know about that, but I know just before we got to the noon recess I asked you if you rested your case except for this witness in Bloomfield and you said yes, so I thought the witness was at liberty, if he saw fit, to go, after that.

30

Mr. Siegler: He was not here when your Honor requested him.

Mr. McKenna: Mr. Daxton was here, he came over here voluntarily and was here. There was no further need for him and Mr. Siegler said he rested his case, with the exception of one witness whom he may or may not have here. Do you absolutely need Mr. Daxton?

40

Mr. Siegler: Yes, I have a certified copy here of a record which I want him to identify. Maybe you will admit it.

Rose Meckenberg, direct.

ROSE MECKENBERG, sworn in behalf of defendant.

Direct examination by Mr. Siegler:

Q. Where do you live? A. 122 Lexington Avenue.

Q. Do you know the defendant? A. I do. 10

Q. How long have you known her? A. About ten or twelve years.

Q. Do you live with the defendant? A. I do.

Q. How long? A. About seven years.

Q. And was that your father who was on the witness stand this morning, in your absence? A. Yes, sir; that's right.

Q. And when he said he comes to the defendant's house does that mean the house where you and she live together? A. Yes, we have an apartment together. 20

Cross Examination Waived.

Mr. McKenna (after examining paper): I certainly will not admit that.

The Court: Do not describe the paper.

Mr. Siegler: I offer a certain paper of the Court of General Sessions of the Peace of of the County of New York—

The Court: Didn't I ask you not to describe that paper? 30

Mr. Siegler: I am not describing it.

The Court: You are describing it, you are saying what it contains and what it is. The paper may be marked for identification.

(The paper referred to is marked D1 for identification.)

Mr. Siegler: I offer the paper marked D1 for identification. 40

Case.

The Court: Do you object to it, Mr. Prosecutor?

Mr. McKenna: I do, if the Court please.

The Court: On what ground?

10 Mr. McKenna: On the ground that the defendant has already admitted it on the stand.

The Court: That is no ground at all.

Mr. McKenna: He has already admitted that conviction.

The Court: It would not make any difference, the fact that he has admitted it does not preclude truth of the full record.

(Argument.)

20 The Court: There may be something else in the record besides what he was asked about. In other words, assuming he is asked, "Were you convicted of crime," and then it is sought to determine what the nature of the crime was.

(Further argument.)

30 The Court: I don't think the objection is good. As I understand it you haven't any objection to this paper on the ground that it is not certified properly for admission in this Court, and I will admit it.

(D1 for identification was marked D1 in evidence and read to the jury by Mr. Siegler.)

Defendant Rests.

Jacob Friedman, direct—cross.

JACOB FRIEDMAN, recalled in behalf of the State, in rebuttal.

Direct examination by Mr. McKenna:

Q. Mr. Friedman, as the defendant Helen Duvel left the third floor you followed her? A. I did, yes.

Q. With your eyes? A. Yes, sir.

10

Q. Did you see her talking to any blonde woman looking like Billie Burke? A. No, sir.

The Court: Did you see her talking to any blonde woman at all?

The Witness: No, sir.

Q. Mr. Friedman, could you follow her all the way along the second floor? A. Yes, I could see her from the third floor at least twenty feet from the balcony on the second floor.

20

Q. And it was before that time that you had approached her, as she left the third floor, and asked her whether she had been waited on and she said, "Yes, thank you"? A. That was after I had approached her that she went to the second floor.

Cross examination by Mr. Siegler:

Q. You were on the third floor? A. Yes, sir.

Q. You did not go off the floor? A. No, sir.

Q. You stayed right there? A. I stayed right there.

30

Q. Where did you go? A. I walked around the balcony.

Q. What balcony? A. The third floor balcony.

Q. Did you see her as she descended from the third to the second floor? A. Yes, sir.

Q. Where were you standing as she went down?

A. As she went down I was on the telephone, so

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immediately after she went down Mr. Daxton was behind her.

Q. So, you did not have your eye on her all the time? A. I did not have my eye on her after I left that spot, but she was half way down.

10 Q. You went to the telephone? A. I had already telephoned.

Q. Well, while you telephoned you could not see where she was going? A. Yes, sir.

Q. Were you looking at her and watching her? A. I was.

Q. Where was the telephone? A. Right at the head of the staircase.

Q. Was it in a booth? A. No, sir.

Q. And did you see her as she went on the floor? A. Yes, sir.

20 Q. And from where you were standing you saw her walk to the second floor? A. I did, I left my station and ran around and saw her leaving the staircase on the second floor.

Q. And you could not see her in full vision? A. Yes, sir.

Q. While she was walking? A. Yes, sir.

Q. Even in the balcony? A. Certainly.

Q. You did not see her stop to talk to anybody there? A. No, sir.

30 Q. And if she had you would have seen her? A. Yes, sir.

Q. And you remember that thoroughly? A. Yes, sir.

Both sides rest.

Mr. Siegler: With your Honor's permission, I want to renew my motion as made at the end of the State's case, with respect

Case.

to a direction of a verdict of acquittal, on the same ground as I stated at that time.

The Court: As to the count in the indictment for receiving, the Court will grant your motion and direct a verdict of not guilty on that count.

Mr. Siegler: Now, if the Court please, with respect to the other count in the indictment, I contend that the State has failed to establish the fact that this merchandise was stolen by this defendant and carried away by her in an attempt to steal. There is no evidence in this case to support that contention. I also move at this time that this statement marked Exhibit S3 be withdrawn from consideration of the jury on the ground that it is not the voluntary statement of the defendant, and further on the ground that it is not the statement of this woman, because according to the admitted testimony of Mr. Daxton, he wrote in, in pen and ink, these items that appear here, "10 lace panels \$55, one pair of shoes \$2.39, total \$57.39," and it being his statement of fact and not the statement of fact of the defendant. 10 20

The Court: And do you contend that he wrote that in after she signed it? 30

Mr. Siegler: Yes, sir.

The Court: Do you contend that he wrote that in after she signed it?

Mr. Siegler: Certainly.

The Court: Do you contend that his testimony is to the effect that he wrote in those words after she signed the paper? 40

Case.

Mr. Siegler: That is what I gathered from his testimony.

The Court: As to the first motion to direct a verdict on the count charging larceny, that motion is denied and you may have an exception.

10

Mr. Siegler prays an exception to this ruling of the Court.

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

DALLAS FLANNAGAN,

Judge.

The Court: As to the second motion to strike out the statement offered in evidence and marked S3, your motion is also denied and you may have an exception.

20

Mr. Siegler prays an exception to this ruling of the Court.

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

DALLAS FLANNAGAN,

Judge.

Mr. Siegler: And there is no proof of ownership in Hahne & Company as to these goods. According to the testimony of Goldberg and the other witnesses there does not appear to be any definite testimony that the property at that time was owned by Hahne & Company.

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The Court: I think the testimony is that it came from a certain stockroom where sales were made from samples, and as to the other bundle, another witness testified that those were shoes of the character that

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Charge to Jury.

they had in their store, and so, I will overrule that motion.

Mr. Siegler prays an exception to this ruling of the Court.

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

DALLAS FLANNAGAN,

Judge.

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Mr. Siegler sums up in behalf of the defense.

Mr. McKenna sums up in behalf of the State.

Charge to Jury.

The Court thereupon charged the jury as follows:

FLANNAGAN, J.:

20

Gentlemen of the Jury: I am requested by the defendant's counsel to charge as follows:

"The defendant is charged in the indictment that she did on June 19, 1924, unlawfully steal, take and carry away ten lace panels and one pair of shoes, all of the value of \$52.39, the goods and chattels of Hahne and Company, a corporation. It is, therefore, the duty and the burden of the State to establish to your satisfaction beyond a reasonable doubt: First, that she did steal these goods and chattels; second, that she did take and carry away the same; third, that the said goods and chattels were the property of Hahne and Company, a corporation; and if the State fails to establish beyond a reasonable doubt that said goods and chattels were the property of Hahne and Company, a corporation, the defendant should be found not guilty, or if the jury finds that the goods

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Charge to Jury.

and chattels were the chattels of Hahne and Company, a corporation, but the defendant did not steal the same, even though she did take and carry away the property, she should be found not guilty." I so charge you.

10 Also as follows: "If the jury find that the intention of the defendant, when she took up the parcel from the floor, was to locate the owner of the same, or to deposit it with somebody in authority at the store, or returning it to the owner, it is not larceny, and it is the duty of the jury to find the defendant not guilty." I so charge you.

There are several paramount instructions, to each and all of which my entire charge is subject, and I have divided them into two parts:

20 First, the Court is the judge of the law and the jury of the facts. The Judge has the right to comment on the evidence and to express his opinion on the facts, but the jury, as the exclusive judges of the facts, must disregard any statements by the Judge as to what the evidence is, what is present in, or absent from, the evidence, unless such statements coincide with their own recollection; and the jury are at liberty to disregard any opinions expressed by the Judge on the evidence, or on the facts, or on what is salient in the facts, or
30 persuasive or controlling in determining the facts, and must decide the case not only on the considerations and circumstances pointed out, and evidence referred to, by the Judge, but on all the considerations, circumstances and evidence in the case.

Second, the defendant is presumed to be innocent, and unless the crime charged, and each of its elements, is proved against her beyond a reasonable doubt, she is entitled to an acquittal. The

Charge to Jury.

burden of so proving the defendant guilty rests upon the State and never shifts.

The defendant comes before you under an indictment which has been found by the Grand Inquest of our county. This indictment contains two counts. The first count is for what is commonly known as larceny, and the second count is for what is commonly known as receiving, to wit, receiving stolen goods, knowing them to have been stolen. 10

The Court withdraws the second count of the indictment from your consideration, that is, directs you to find a verdict of not guilty on the second count.

As to the first count, gentlemen, the Court submits that count to you for your verdict, and that count reads as follows: "The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present, that Helen Duval, alias Helen Bugal, on the 19th day of June, one thousand nine hundred and twenty-four, at the City of Newark, in the County of Essex aforesaid, unlawfully did steal, take and carry away, ten lace panels, each panel of the value of five dollars, one pair of shoes of the value of \$2.39, in all of the value of \$52.39, of the goods and chattels of Hahne and Company, a corporation, contrary to the form of the statute in such case made and provided, against the peace of this State, the government, and the dignity of the same." 20 30

The defendant has introduced certain testimony as to her good reputation. It is the right of a person charged with crime to have all the relevant testimony, including that relating to his good character, or reputation, considered by the jury in every case, and if, on such consideration there 40

Charge to Jury.

exists, in the mind of the jury, a reasonable doubt of his guilt, even though that doubt be engendered merely by his good repute, he is entitled to an acquittal. But, if from the entire evidence, including that relating to good character or reputation, the jury believe the defendant guilty beyond
10 a reasonable doubt, she should be convicted, and the evidence of good character or reputation should not alter the verdict.

Now, I have used the expression "reasonable doubt," and I will define to you the meaning of reasonable doubt in the sense in which I have used it. I have used it in a legal sense. Reasonable doubt is not a mere possible doubt. It is that state of the case, which, after an entire consideration and comparison of all the evidence
20 leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

You have heard the testimony. The issue here, gentlemen, is not whether this woman was the Indian woman. That is not the issue which is submitted to this Court for determination by virtue of this indictment which has been found by the Grand Inquest of our county. The issue submitted here is not one concerning, or involved in
30 a difference or dispute which may have arisen between the police department and the detectives employed by the department store of Hahne and Company. Those things have been adverted to here in the argument, those alleged things. They are not the issue. The issue here is whether this woman is guilty of this charge under this indictment, to wit, the taking and carrying away of these articles specified with intent to steal them.

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Charge to Jury.

Now, the defendant does not deny that she had those articles in her possession. She admits that she had them in her possession, but she denies that she was carrying them or transporting them or moving them with intent to steal. She says she was taking those articles to the lost and found counter to deliver them there, because, she says 10
she found them in the store.

Now, a question is presented to you as to her intent. Did she intend to steal, or did she intend to take these articles to the lost and found counter, as she says? She says she had that intention, but she abandoned it and put the goods back where she found them, to wit, between two pieces of furniture. Now, the State says she did put them back, the State says she did put them between two pieces of furniture, but the State contends 20
that she did not put them back there because the State contends they did not come from there, and the State asks you to infer that the reason she put them back there was that she suspected she was being observed and she did not know what else to do.

Now, the question of the credibility of witnesses comes before you, and the defendant, on cross examination, undertook to impeach the credibility of the witness Daxton. Now, when a witness takes 30
the stand, it is always permissible for anyone who may be opposing him, or the opposing side, to show that he has been convicted of crime, for the purpose of affecting his credibility. Now, the defendant has introduced a record here in regard to the conviction of the witness Daxton. This record shows that nearly seventeen years ago this man was convicted of the crime of criminally receiving stolen property or goods, or you may sub- 40

Charge to Jury.

stitute the words, knowing the same to have been stolen, a similar charge, gentlemen, to the charge in the second count of this indictment, you will notice it in the indictment before you.

10 This paper says that he was charged with robbery, grand larceny, assault in the second degree and receiving, and it says that he was convicted of receiving, sentence was suspended by the Court, by the Judge, and he was returned to the House of Refuge. He testified that since that time he has held responsible positions in various places, and it is claimed that he has redeemed himself from any effect of that conviction nearly seventeen years ago, at a time when he says he was about sixteen years of age. Now, it is for you to say, gentlemen, how far that conviction affects his
20 credibility.

On the other hand, you have to consider the credibility of the defendant, and the defendant, of course, has an interest in the outcome of this case. That consideration will naturally present itself to your minds, as men of affairs. You should, of course, consider such interest in determining the credibility of the defendant as a witness. The defendant, of course, is faced with a criminal charge, the consequence of a conviction on any criminal
30 charge is serious, and it is for you to decide how far this circumstance affects the value of her testimony, and you are to decide how much credence you will place in her story, in view of such interest.

Now, a preliminary question arose here as to the introduction in evidence of this statement. The defendant claims that this statement was signed by her while she was in such a physical condition that she did not know what she was do-

Charge to Jury.

ing. She says that she has no recollection of it; she says that she remained in that condition until she went before Captain Brex, or about that time when she came under the supervision of the matron at police headquarters who gave her cold water or put ice on her face or forehead.

There was testimony that certain promises were made, that is, it was testified by some witnesses that someone said to her, "If you will tell the truth we will treat you right," and "If you will tell the truth we will take care of you." Now, in her testimony on the stand she said nothing about relying upon those promises, but she said that she signed it when she did not know what she was doing. 10

Now, as I said to you, the question of the admissibility of this statement arose. The admissibility of the statement was a preliminary question, and you remember it was tried as a preliminary question. Now, it was the province of the Court to pass upon that preliminary question. Of course, as I have said to you, the jury has its province and the Court has its province. Each is responsible in the administration of the law for the discharge of its duty in its particular department, the Court having functions and the jury having functions. To pass upon the admissibility of this statement was one of functions of the Court, and the Court passed upon that preliminary question adversely to the defendant and submitted the statement to you gentlemen for your consideration, along with all other evidence in this case. 20 30

There were other witnesses, of course, in this case, besides the two mentioned.

The witness Friedman says that he saw this defendant come out of the stockroom with this 40

Charge to Jury.

10 bundle; that he followed her with his eyes down to the second floor, he watched her from a balcony or from an opening which existed at that time in Hahne's store, as he says; that he went up to her and asked her if she was waited on and she said that she was. He also says that he saw her deposit this bundle in the furniture department between two pieces of furniture, and he says he notified the house detective, and that she was brought to the fourth floor where she made this statement.

20 There were other witnesses in the case whose testimony you will consider, and it will be for you to weigh all the testimony in the case and determine from it the guilt or innocence of this defendant under the charge as charged, and the law as given to you by the Court.

30 It is for you to pass upon the question, and you will please remember, what I said to you in the beginning, that you will take into consideration not only such testimony, facts and circumstances as have been adverted to by the Court, but all of the facts and circumstances, and, furthermore, should you find that the Court, in stating what the evidence may or may not be, has been in error as far as your recollection shows, that is to say, his recollection differs from your own, as to the evidence, you will please follow your own recollection and disregard the recollection of the Court. So, gentlemen, the case is with you.

(The jury retires.)

The Court: The requests of the defendant I refuse, except as charged, and the defendant may have a separate exception as to each request.

40 Mr. Siegler: I except, if the Court please, to

Exceptions.

your Honor's statement to the jury in describing possession of this merchandise by the defendant, that she admits she was in possession of the goods without carrying that characterization further in describing that her possession was the possession of the store, until such time that the jury decides that it was the exercise of ownership by her with an intent to deprive the true owner thereof of his property. 10

The Court: You may have an exception.

Mr. Siegler: I except to your Honor's statement in which you say that the State says she put them back, meaning the merchandise. That is a question of fact which is in controversy in this case, and is properly and exclusively for the jury, and not one for the Court.

The Court: You may have an exception. 20

Mr. Siegler: I except to your Honor's statement insofar as your Honor refers to these facts contended, or facts testified, or something to that effect, that the defendant suspected she was being observed. I also except because it is a conclusion of fact not established by the evidence.

The Court: You may have an exception.

Mr. Siegler: And I except to your Honor's statement to the jury as to the legal determination made by your Honor on the preliminary question on the question of the admissibility in evidence of S3, commonly known in this trial as the confession. 30

The Court: You may have an exception.

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

DALLAS FLANNAGAN,
Judge.

Defendant's Requests to Charge.

10 1. The defendant is presumed to be innocent under the law until proven guilty beyond a reasonable doubt. The burden of proving every essential element of the indictment for which the defendant is on trial is upon the State, and this burden remains upon the State and never shifts until the state has established the guilt of the defendant beyond a reasonable doubt.

Denied, except as charged.

20 2. If you believe from the evidence that at the time of the acts alleged against her, the defendant, in this case, the defendant, Helen Duval, was a woman of good character, and being an honest, truthful, law-abiding citizen, then you should consider this good character in determining her guilt or innocence of the charges made against her in this case, and if, after considering all the evidence in this case, including the evidence of good character, you entertain reasonable doubt of the guilt of the defendant, you should acquit her, and find her not guilty.

Denied, except as charged.

30 3. The defendant, Helen Duval, is presumed to be innocent until the contrary appears beyond a reasonable doubt, and every reasonable doubt arising from the evidence must be construed in her favor, and if upon a comparison of all the evidence the jury entertain and have such a reasonable doubt, it is your duty to find the defendant not guilty.

Denied, except as charged.

4. If you believe from the evidence that at the time of the acts alleged against the defendant in

Defendant's Requests to Charge.

this indictment, the defendant, Helen Duval, was a woman whose general reputation in the community where she lived, for truthfulness, honesty and a law-abiding citizen was good, then you should consider this good character and reputation in determining her guilt or innocence of the charge made against her in this case, and if after considering all the evidence in this case, including the evidence of good character and reputation, you entertain reasonable doubt of the guilt of the defendant, you should find the defendant not guilty. 10

Denied, except as charged.

5. You are instructed that the previous good character of the defendant, if proved to your satisfaction in this cause, should be considered by you, together with all the other facts and evidence, in passing upon the question of the defendant's guilt or innocence of the charge made against her, for the law presumes that a person whose character is good is less likely to commit a crime than one whose character is not good. 20

Denied, except as charged.

6. In order to find the defendant guilty, the evidence must be such as to exclude every single reasonable hypothesis except that of the guilt of the defendant. In other words, all of the facts proved must be consistent and point to the guilt of the defendant, and inconsistent with her innocence. It matters not how clearly the circumstances point to guilt, still, if they are reasonably explainable, on a theory which excludes guilt, then it cannot be said that the facts in the case are sufficient to satisfy the jury beyond a reasonable doubt of the guilt of the defendant, and in 30

Defendant's Requests to Charge.

that event, the defendant should be found not guilty.

Denied, except as charged.

10 7. The defendant has a right to offer affirmative evidence of her good character or reputation for the qualities which would render it improbable or unlikely that she should commit the offense that she is charged with, and if the establishing of her good reputation is the only evidence in the case which engenders and creates in your mind a reasonable doubt, then it is your duty to resolve the reasonable doubt of the defendant's guilt in her favor and your verdict must be not guilty.

Denied, except as charged.

20 8. The defendant is charged in the indictment that she did on June 19, 1924, unlawfully steal, take and carry away ten lace panels and one pair of shoes, all of the value of \$52.39, the goods and chattels of Hahne & Company, a corporation. It is, therefore, the duty and the burden of the State to establish to your satisfaction beyond a reasonable doubt: First, that she did steal these goods and chattels; second, that she did take and carry away the same; third, that the said goods and chattels were the property of Hahne & Company, a corporation; and if the state fails to establish beyond
30 a reasonable doubt that said goods and chattels were the property of Hahne & Company, a corporation, the defendant should be found not guilty, or if the jury finds that the goods and chattels were the chattels of Hahne & Company, a corporation, but the defendant did not steal the same, even though she did take and carry away the property, she should be found not guilty.

Charged.

40 9. If the jury find that the taking of the per-

Defendant's Requests to Charge.

sonal property set out in the indictment by the defendant was not with the intention of permanently depriving the owner of said property, then it is the duty of the jury to find the defendant not guilty.

Denied except as charged.

10. The taking of the personal property specified in the indictment, by the defendant, must be with intention of permanently depriving the owner of its property, but such intention will not be presumed from the mere taking of the property, if the circumstances appearing in proof may justify also the inference that the taking was without such intention.

10

Denied, except as charged.

11. If the jury find that the intention of the defendant, when she took up the parcel from the floor, was to locate the owner of the same, or to deposit it with somebody in authority at the store, or returning it to the owner, it is not larceny, and it is the duty of the jury to find the defendant not guilty.

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Charged.

12. The defendant's confession must be voluntary before it can be legally weighed in evidence. The requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. The confession is voluntary in law, if, and only if, it was in fact, voluntarily made. A confession may have been given voluntarily although it was made to police officers, while in custody, and in answer to examination conducted by them. But a confession obtained by compulsion must be excluded whatever

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Defendant's Requests to Charge.

may have been the character of the compulsion. The confession offered in this case, before it can be given any weight in evidence, should be found by you to have been made without the pressure of help or fear from persons having authority, or the result of a promise of some benefit in the criminal prosecution.

Denied, except as charged.

13. If the jury are satisfied, after considering all the evidence with respect to the method employed in obtaining the confession in this case from the defendant, that it was not the voluntary act of the defendant, it is your duty to reject it and give it no weight whatever in your deliberation.

Denied, except as charged.

14. If the jury come to the conclusion that the confession was not voluntary, and therefore reject it from your consideration, and there is not sufficient evidence produced by the State to prove the allegations of the indictment beyond a reasonable doubt, then it is your duty to find the defendant not guilty.

Denied, except as charged.

15. A confession which is not voluntary is not admissible in evidence, under the fifth amendment to the Constitution of the United States declaring that no person shall be compelled in a criminal case to be a witness against himself. The voluntary character of an alleged confession depends on the question whether the making of the statement was voluntary and without inducement or compulsion, and whether the particular communications contained in it were voluntary or not.

Denied, except as charged.

Defendant's Requests to Charge.

16. If the jury are satisfied that the defendant was taken to the office of Mr. Daxton, the store detective, and there searched of her person, and was thereupon told that if she did not sign he would smash her in the face or inflict other injury upon her, or that if she signed he would see that nothing would come of the case and that the defendant signed the confession after having been struck by Daxton, then the jury are instructed that they must reject the confession and disregard the statements made therein and give it no legal weight in evidence. 10

Denied, except as charged.

The jury having retired, the Judge directed the Court to remain open and the Clerk to receive the verdict. Thereafter, at about six P. M., the following communication, in writing, was received from the jury by the Clerk: 20

"1. Kindly explain what constitutes larceny.

"2. Was it necessary for the defendant to have carried the goods off the premises of Hahne and Company to have committed the offense?"

The Clerk thereupon communicated with the Judge and was directed by him to answer the inquiry, in writing, as follows, which the Clerk did:

"1. Larceny is the taking and carrying away of the goods of another with intent to steal the same. It is not necessary that the carrying away be for any particular distance. Any distance is sufficient if the intent be present. 30

"2. It was not.

"The inquiry of the jury is answered as above by the direction of the Court to the Clerk over the telephone." 40

Certificate of Judge.

Counsel for the defendant not having been present, the Court, of its own motion, grants an exception in behalf of the defendant.

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

10 DALLAS FLANNAGAN,
Judge.

Certificate of Judge.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

20 THE STATE,
v.
HELEN DUVEL, alias, etc.

State of New Jersey, }
County of Essex, }

30 I, DALLAS FLANNAGAN, Presiding Judge of the Essex County Court of General Quarter Sessions, and the Judge who presided over the afore-said cause, do hereby certify that the foregoing printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated, Newark, N. J., April 25, 1925.

40 DALLAS FLANNAGAN,
Presiding Judge of the Essex
County Court of General
Quarter Sessions.

Certificate of Court Stenographer.
ESSEX COUNTY COURT OF QUARTER
SESSIONS.

THE STATE,	}	
<i>v.</i>		
HELEN DUVEL, alias, etc.		10

I, Joseph S. Fishkind, one of the Official Stenographers of the Essex County Court of Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the cause of the State of New Jersey *v.* Helen Duvel, alias, etc., on Indictment No. 57 for larceny and receiving, which said trial was held before Hon. Dallas Flannagan, presiding judge of the Essex County Court of General Quarter Sessions and a jury, on Wednesday, February 4th, 1925 and Thursday, February 5th, 1925, at Newark, N. J. 20

Dated, Newark, N. J., April 16, 1925.

JOSEPH S. FISHKIND,
 Official Stenographer of the Essex County Court of General Quarter Sessions. 30

Exhibit S-3.

Of my own free will and accord, and without any promise or understanding that I shall not be prosecuted, I confess that on the 19 day of June, 1924, I did take from the establishment of Hahne & Co., of Newark, N. J., the following articles, the property of Hahne & Co., without their knowledge or consent.

10

ARTICLES:

10 Lace Panels \$55.00

1 Pr. Shoes 2.39

 57.39

Name (Signed) HELEN BUGAL,
Address 231 Bank St.

Witness W. J. Daxton.

20

Exhibit S3, Feb. 4, 1925.

JOSEPH S. FISHKIND,
Official Stenographer.

Assignment of Errors.**NEW JERSEY SUPREME COURT.**

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

v.

HELEN DUVEL, alias HELEN BUGAL,
alias HATTIE HAGER,
Plaintiff-in-Error.

On Indictment for
Larceny and Re-
ceiving.

On Writ of Error
to Essex Quarter
Sessions.

Afterwards, to wit, on the return day of said
Writ of Error, before our Supreme Court of the

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Assignment of Errors.

State of New Jersey, comes the said HELEN DUVEL, alias HELEN BUGAL, alias HATTIE HAGER, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment as aforesaid, there was manifest error, and she assigns the following causes for error: 10

1. Because the Trial Court refused to direct a verdict of acquittal, and denied defendant's motion for such acquittal, on the first count of the indictment, which is for the larceny of goods and chattels of the value of \$52.39, and because the Trial Court submitted that count to the jury for their verdict, defendant having moved for such acquittal at the close of the case for the State and again at the close of the entire case upon the ground that the evidence failed to sustain the charge in said count, to which refusal and denial an exception was duly allowed. 20

2. Because the Trial Court, against defendant's objection, admitted in evidence and submitted to the jury for its consideration an alleged statement in writing signed by defendant and which was marked in evidence as Exhibit S3, to which admission in evidence an exception was duly allowed. 30

3. Because the Trial Court refused to strike out, on defendant's motion, the said alleged statement in writing marked in evidence Exhibit S3, to which refusal an exception was duly allowed.

4. Because the Trial Court, against objection by defendant, admitted in evidence against defendant a package containing ten lace panels, which was received in evidence and marked Ex- 40

Assignment of Errors.

hibit S1, and a box containing a pair of shoes, which was received in evidence and marked Exhibit S2, to which admission in evidence an exception was duly allowed.

5. Because the Trial Court failed and refused to charge the following request of defendant:

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"If the jury find that the taking of the personal property set out in the indictment by the defendant was not with the intention of permanently depriving the owner of said property, then it is the duty of the jury to find the defendant not guilty."

6. Because the Trial Court failed and refused to charge the following request of defendant:

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"The taking of personal property specified in the indictment, by the defendant, must be with intention of permanently depriving the owner of its property, but such intention will not be presumed from the mere taking of the property, if the circumstances appearing in proof may justify also the inference that the taking was without such intention."

7. Because the Trial Court failed and refused to charge the following request of defendant:

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"The defendant's confession must be voluntary before it can be legally weighed in evidence. The requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or threat. The confession is voluntary in law if, and only if, it was in fact, voluntarily made. A confession may have been

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Assignment of Errors.

given voluntarily although it was made to police officers, while in custody, and in answer to examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion. The confession offered in this case, before it can be given any weight in evidence, should be found by you to have been made without the pressure of help or fear from persons having authority, or the result of a promise of some benefit in the criminal prosecution." 10

8. Because the Trial Court failed and refused to charge the following request of defendant:

"If the jury are satisfied, after considering all the evidence with respect to the method employed in obtaining the confession in this case from the defendant, that it was not the voluntary act of the defendant, it is your duty to reject it and give it no weight whatever in your deliberation." 20

9. Because the Trial Court failed and refused to charge the following request of defendant:

"If the jury come to the conclusion that the confession was not voluntary, and therefore reject it from your consideration, and there is not sufficient evidence produced by the State to prove the allegations of the indictment beyond a reasonable doubt, then it is your duty to find the defendant not guilty." 30

10. Because after the jury had retired a Clerk of the Court, in the absence of the Trial Judge and 40

Assignment of Errors.

of counsel for the defendant, and without warrant or right in law, communicated to the jury certain directions and instructions of law, all in violation of defendant's rights and to her prejudice, to all of which an exception was duly allowed.

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11. Because the Trial Court, after the verdict of the jury, denied defendant's motions for a new trial and for arrest of judgment upon the ground that the verdict had been rendered irregular and invalid by reason of the said communication of the Clerk to the jury.

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12. Because the verdict of the jury was against the weight of the evidence, this cause being assigned under and pursuant to the Statute in such case made and provided, being Chapter 349 of the Laws of 1921.

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Wherefore said plaintiff-in-error prays that the judgment and sentence aforesaid, by reason of the aforesaid and all other errors appearing in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that defendant and plaintiff-in-error may be restored to all things she has lost on occasion thereof.

FRANK B. COLTON,
Attorney for and of Counsel with
Plaintiff-in-Error.

Service of a copy of the within assignment of errors acknowledged this 24th day of July, 1925.

JOHN O. BIGELOW,
Prosecutor of the Pleas.

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Specifications of Causes for Reversal.**NEW JERSEY SUPREME COURT.**

THE STATE OF NEW JERSEY, Defendant-in-Error, <i>v.</i> HELEN DUVEL, alias HELEN BUGAL, alias HATTIE HAGER, Plaintiff-in-Error.	On Indictment for Larceny and Re- ceiving. On Writ of Error to Essex Quarter Sessions. 10
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AND the said plaintiff-in-error, HELEN DUVEL, alias, &c., by FRANK B. COLTON, her attorney, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause, as follows:

1. Because the Trial Court refused to direct a verdict of acquittal, and denied defendant's motion for such acquittal, on the first count of the indictment, which is for the larceny of goods and chattels of the value of \$52.39, and because the Trial Court submitted that count to the jury for their verdict, defendant having moved for such acquittal at the close of the case for the State and again at the close of the entire case upon the ground that the evidence failed to sustain the charge in said count, to which refusal and denial an exception was duly allowed.

2. Because the Trial Court, against defendant's objection, admitted in evidence and submitted to the jury for its consideration an alleged statement in writing signed by defendant and which was marked in evidence as Exhibit S-3, to which admission in evidence an exception was duly allowed.

Specifications of Causes for Reversal.

3. Because the Trial Court refused to strike out, on defendant's motion, the said alleged statement in writing marked in evidence Exhibit S-3, to which refusal an exception was duly allowed.

10 4. Because the Trial Court, against objection by defendant, admitted in evidence against defendant a package containing ten lace panels, which was received in evidence and marked Exhibit S-1, and a box containing a pair of shoes, which was received in evidence and marked Exhibit S-2, to which admission in evidence an exception was duly allowed.

5. Because the Trial Court failed and refused to charge the following request of defendant:

20 "If the Jury find that the taking of the personal property set out in the indictment by the defendant was not with the intention of permanently depriving the owner of said property, then it is the duty of the Jury to find the defendant not guilty."

6. Because the Trial Court failed and refused to charge the following request of defendant:

30 "The taking of personal property specified in the indictment, by the defendant, must be with intention of permanently depriving the owner of its property, but such intention will not be presumed from the mere taking of the property, if the circumstances appearing in proof may justify also the inference that the taking was without such intention."

7. Because the Trial Court failed and refused to charge the following request of defendant:

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Specifications of Causes for Reversal.

"The defendant's confession must be voluntary before it can be legally weighed in evidence. The requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or threat. The confession is voluntary in law if, and only if, it was in fact, voluntarily made. A confession may have been given voluntarily although it was made to police officers, while in custody, and in answer to examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion. The confession offered in this case, before it can be given any weight in evidence, should be found by you to have been made without the pressure of help or fear from persons having authority, or the result of a promise of some benefit in the criminal prosecution."

8. Because the Trial Court failed and refused to charge the following request of defendant:

"If the jury are satisfied, after considering all the evidence with respect to the method employed in obtaining the confession in this case from the defendant, that it was not the voluntary act of the defendant, it is your duty to reject it and give it no weight whatever in your deliberation."

9. Because the Trial Court failed and refused to charge the following request of defendant:

"If the jury come to the conclusion that the confession was not voluntary, and therefore reject it from your consideration, and there is not sufficient evidence produced by

Specifications of Causes for Reversal.

the State to prove the allegations of the indictment beyond a reasonable doubt, then it is your duty to find the defendant not guilty."

10. Because after the jury had retired a Clerk of the Court, in the absence of the Trial Judge and of counsel for the defendant, and without warrant or right in law, communicated to the jury certain directions and instructions of law, all in violation of defendant's rights and to her prejudice, to all of which an exception was duly allowed.

20 11. Because the Trial Court, after the verdict of the jury, denied defendant's motions for a new trial and for arrest of judgment upon the ground that the verdict had been rendered irregular and invalid by reason of the said communication of the Clerk to the jury.

12. Because the verdict of the jury was against the weight of the evidence, this cause being assigned under and pursuant to the Statute in such case made and provided, being Chapter 349 of the Laws of 1921.

FRANK B. COLTON,
Attorney for and Counsel with
Plaintiff-in-Error.

Service of copy of the within acknowledged this
24th day of July, 1925.

JOHN O. BIGELOW,
Prosecutor of the Pleas.

Memorandum.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

STATE OF NEW JERSEY
v.
HELEN DUVAL, alias HATTIE HAGER.

On Motion for
New Trial on
Motion in Arrest
of Judgment.

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KRAEMER & SIEGLER, JOSEPH SIEGLER, of
Counsel, for the motions.

JAMES L. MCKENNA, Third Assistant Prose-
cutor of the Pleas of Essex County,
opposed.

FLANNAGAN, J.:

These are two motions, one for a new trial and
one in arrest of judgment. The ground to be now
considered is that the Judge having left the Court
House and gone to his home, directing the court to
remain open and the clerk to receive the verdict,
the jury caused a written request for further in-
structions to be delivered to the clerk, which hav-
ing been read by him to the Judge over the tele-
phone, an answer was dictated over the telephone
by the Judge to the clerk, who took down the an-
swer in writing and by direction of the Judge trans-
mitted this writing to the jury and entered a state-
ment of what had occurred upon the minute book
kept by him. The Judge, on returning subsequent-
ly to court, entered upon the stenographer's min-
utes a recital of what had occurred, together with
an exception, granted of the Court's own motion,
to the defendant.

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Memorandum.

The dictation of the Judge of his instructions to the jury were correctly taken down by the clerk in the writing delivered to the jury.

10 The instructions so transmitted are without fault, they correctly state the law and answer the inquiries of the jury and go no further. The instructions were the instructions of the Judge and not of the clerk. The clerk acted merely as the amanuensis and instrumentality of the Judge. His acts were purely clerical, they involved the exercise of no discretion, he made no determinations but merely acted as a medium through which the instructions of the Judge were accurately conveyed as given.

20 The case is similar to *Cutler v. Ellis*, 1 N. J. Misc. R., 228, at 229. The Supreme Court in that case, referring to a similar state of facts, says:

“The manner in which the instructions were imparted was informal and irregular, but that ought not to result in setting aside the verdict.”

30 The case is unlike that of *Fockner v. Hopkins*, 126 A., 633, where the clerk, in the absence of the Judge, undertook to exercise discretion and perform judicial functions by determining himself that a verdict was improper, by refusing to receive it, by instructing the jury as to their rights, and as to the proper form of verdict, and by ordering them to return to the jury room and consider the case further.

The defendant's objection in the case at bar does not go to the merits, it is purely technical. While the act of the Judge was, as expressed by the Supreme Court, “informal and irregular,” it in no respect prejudiced the defendant.

Memorandum.

The motions for a new trial and in arrest of judgment are denied.

Dated March 4, 1925.

DALLAS FLANNAGAN,
Judge.

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[3569]

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THE HISTORY OF THE

CITY OF BOSTON, FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME.

BY SAMUEL JOHNSON, ESQ. OF BOSTON.

IN TWO VOLUMES. VOL. II.

LONDON: Printed by J. JOHNSON, in Pall-mall.

1785.

Opinion of Supreme Court.

OPINION.

Filed August 10, 1926.

NEW JERSEY SUPREME COURT.

No. 16, January Term, 1926.

10

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> HELEN DUVEL, alias HELEN BUGAL, alias HATTIE HAGER, <i>Plaintiff-in-Error.</i>	}	<i>On Error to Essex County Quarter Sessions.</i>
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Before Gummere, Chief Justice, and Justices
Kalisch and Campbell.

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For plaintiff-in-error, Frank B. Colton.

For defendant-in-error, John O. Bigelow.

PER CURIAM:

The writ of error brings to us for review a judgment of conviction for larceny (shop lifting) entered upon verdict at the Essex Quarter Sessions.

There are only two questions presented. One is that the trial court erred in admitting an alleged confession of the plaintiff-in-error. We think this is not so, because there was testimony warranting the Court in admitting it as competent and such Court action will not be disturbed where there is any testimony supporting such ruling.

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The other ground urged is: that after the jury had retired to consider its verdict the trial judge left the court room and the Court House after

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Opinion of Supreme Court.

first having directed the clerk to take the verdict; subsequently a communication in writing was received by the clerk from the jury, as follows:

1. Kindly explain what constitutes larceny.
 2. Was it necessary for the defendant to have
- 10 carried the goods off the premises of Hahne & Company to have committed the offense?

The clerk communicated with the trial judge by telephone and was directed by him to answer the inquiry in accordance with answers given to the questions by the judge to the clerk over the telephone; the clerk taking down the answers in writing and by direction of the judge delivering this writing to the jury.

- 20 This with the further statement that the instructions dictated by the judge were correctly taken down by the clerk and given to the jury and that such answers were a correct statement of the law, will be found in a memorandum filed by the trial judge upon a subsequent motion for a new trial.

- We think that this procedure was so irregular and so likely to be prejudicial to a defendant and so charged with possibilities of harm and abuse as to require a reversal.
- 30

All the authorities seem to require and insist upon judicial acts of this character being done and performed in open court.

State *v.* Doty, 32 L. 403;

Davis *v.* Township Delaware, 41 L. 55;

Folkner *v.* Hopkins, 126 Atl. 633;

State *v.* Simon, 127 Atl. 570.

- There is one case in this Court to which our attention has been directed, Cutler *v.* Ellis, 1
- 40 Misc. Rep. 228. This was a civil action and the

Opinion of Supreme Court.

Court found that although the action was "informal and irregular," yet "that ought not to result in setting aside the verdict, when, as appears clearly, the lawful rights of the plaintiffs were not prejudiced thereby."

That the instructions given may have been proper and legally correct and that they were correctly transmitted by the clerk to the jury is beside the question, although it is urged that the defendant below suffered no harm. That is impossible for us to say. It may or may not be so. For instance, while the instructions brought forth by the questions may have been correctly given yet the request therefor, if made in open court, may have called for requests upon the part of the defendant below, for further instructions, suggested or provoked by the questions propounded by the jury and the instructions given in obedience to the request, and where the action of the trial court was as here the defendant below had no such opportunity.

For this reason, therefore, the judgment below is reversed.

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*Remittitur.***REMITTITUR.**

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>against</i> HELEN DUVEL, alias HELEN BUGAL, alias HATTIE HAGER, <i>Plaintiff-in-Error.</i>	} <i>On Writ of Error.</i> } <i>Order of Reversal and Remittitur.</i>
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20 This cause having been duly argued at the
 February, 1926, term of this Court on a writ of
 error to the Court of Quarter Sessions for the
 County of Essex, in the record, proceedings,
 and judgment of conviction, by said Court, of
 said plaintiff-in-error upon indictment for lar-
 ceny and receiving goods, and after trial by jury
 thereon, on which arguments Frank B. Colton,
 Esq., appeared and was heard as counsel for
 the plaintiff-in-error and John O. Bigelow, Esq.,
 Prosecutor of the Pleas of said County of Essex,
 appeared, and he was heard as counsel for the
 30 defendant-in-error; and the Court having con-
 sidered and duly deliberated on the causes
 specified by the plaintiff-in-error for reversal of
 said judgment of her conviction, and having
 heard the arguments for and against said re-
 versal, and having determined that the said
 record discloses prejudicial and reversible error
 on the trial in said court below,

Therefore, on this 1st day of September, 1926,
 it is

40 ORDERED, that because of such error the said
 judgment of conviction of said plaintiff-in-error

Remittitur.

be and the same is hereby, in all things, reversed and set aside, and a new trial granted to her, and it is further

ORDERED, that the record and proceedings herein be remitted to the said Court of Quarter Sessions for the County of Essex for such new trial in accordance with the practice of said Court. 10

Entered September 1, 1926.

On motion of

FRANK B. COLTON,
Attorney for Plaintiff-in-Error.

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*Assignments of Error.***ASSIGNMENTS OF ERROR.****New Jersey Court of Errors and Appeals**

10	THE STATE OF NEW JERSEY, <i>Plaintiff-in-Error,</i> <i>vs.</i> HELEN DUVAL, <i>Defendant-in-Error.</i>	}	<i>On Error.</i> <i>Assignments</i> <i>of Error.</i>
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The State of New Jersey, by John O. Bigelow, its attorney, says that in the records and proceedings aforesaid there is manifest error, to wit:

20 1. Because the judgment of the Supreme Court was in favor of the said Helen Duval, whereas it should have been in favor of the State.

2. Because the Supreme Court reversed and set aside the conviction of the said Helen Duval, whereas it should have affirmed the same.

30 And the said Plaintiff-in-Error, the State of New Jersey, prays that the judgment aforesaid may be reversed, and that the conviction of the said Helen Duval be in all things affirmed.

J. O. BIGELOW,
Attorney of Plaintiff-in-Error.

I consent to the filing of the above assignments as of time, and acknowledge service of the same this seventh day of January, 1927.

FRANK B. COLTON.

New Jersey Court of Errors and Appeals

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

VS.

HELEN DUVEL,
Defendant-in-Error.

On Error.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT.

Defendant-in-Error having been convicted after trial and verdict, in Essex Quarter Sessions of grand larceny, and having been sentenced to imprisonment and fine caused such judgment of conviction to be reviewed by the Supreme Court on writ of error with the entire record of the proceedings had on the trial, assignment of errors, and specification of causes (Crim. Proc. Act, Sec. 136). Before the Supreme Court she sought reversal of the conviction on two grounds of prejudicial error in the trial below, viz:

First: A communication of instructions conveyed to the jury, after it had finally retired to consider its verdict, by the clerk of the court

under direction of the trial judge over the telephone.

Second: The admission in evidence by the trial judge of a card form of "confession" signed by defendant and secured from her by a store detective in the employ of the complaining party.

The Supreme Court reversed the judgment of conviction for the reason, assigned by its Opinion Per Curiam, that "this procedure (the communication to the jury by the clerk) was so irregular and so likely to be prejudicial to a defendant and so charged with possibilities of harm and abuse as to require a reversal".

As to the Second ground for reversal, the Supreme Court was of opinion that there was no error in admitting the alleged confession "because there was testimony warranting the Court in admitting it as competent and such Court action will not be disturbed where there is any testimony supporting such ruling." (Case, p. 183)

The State contended before the Supreme Court, and now insists to this Court, that the judgment of conviction in the Sessions should be affirmed because (1) while the communication of instructions by the Clerk to the jury was informal and irregular the legal propositions contained in it are not open to attack, and, therefore, it did not prejudice defendant nor constitute reversible error and (2) "there was testimony warranting the Sessions in admitting the confession".

Further reference to some relevant facts of the case and to the arguments of the State are made under the following Points.

POINT I.

THE COMMUNICATION OF INSTRUCTIONS BY THE CLERK TO THE JURY CONSTITUTED ERROR PREJUDICIAL TO THE DEFENDANT THEN ON TRIAL AND OBLIGED REVERSAL OF HER CONVICTION, AND THIS IRRESPECTIVE OF ITS STATEMENTS OF THE LAW, WHETHER CORRECT OR NOT.

The occasion and circumstances of the clerk's communication, so far as disclosed and of record, were dictated by the Trial Judge to the court stenographer on the following day and were, with some additions of circumstances, embodied in the judge's "Memorandum" denying defendant's motions for a new trial and for arrest of judgment. (Case, p. 179) Defendant was thereby privileged to learn from the record, that after the judge's charge in Open Court and after the jury retired, the judge left the Court House and went to his home, directing the court to remain open and the clerk to receive the verdict; that thereafter, at about six P. M. the clerk received from the jury its request in writing for further and specific instructions as to what constituted larceny and whether or not, it was necessary for defendant to have carried the goods off the premises of the owner to have committed the offense, which having been read by the clerk to the Judge over the telephone, an answer was dictated over the telephone by the Judge to the clerk, who took down the answer in writing and by direction of the Judge trans-

mitted this writing to the jury and entered a statement of what had occurred upon the minute book kept by him. (Case, pp. 167, 179)

The communication was neither in open court nor with the knowledge, consent or attendance of defendant or her counsel, nor was any attempt made to secure such.

The record does not disclose how or by whom it was actually presented to the jury, but after receiving it the jury reached its verdict of guilty.

The State urges, and asks this Court of last resort to adopt, in reversal of the Supreme Court, the proposition that because the clerk's communication of instructions to the jury correctly stated certain principles of law as to the crime of larceny the defendant on trial was not and could not have been prejudiced by that admittedly unwarranted and irregular procedure of the clerk, and that therefore there was nothing in it of reversible error, and with correlative maintenance of the doctrine that no harm, prejudice or reversible error accrues to a defendant on trial from the fact that the jury received its instructions out of court in the absence of the trial judge and of the defendant, from a clerk, constable or other officer of the court, provided such instructions embody correct statements of law.

THE BRIEF FOR THE STATE purports to support that remarkable proposition by reference to "the overwhelming weight of authority" as indicated by certain reported cases in this and other states, mainly the latter, and to the "facts" of the present case as "necessary in order to determine whether the instructions could have been prejudicial".

Defendant submits that the cases cited by the State furnish no authority whatever for its proposition, and that the "facts" recited from some of the testimony on the trial and from the charge to the jury by the trial judge have no bearing on the question as to whether or not the irregular communication of instructions by the clerk to the jury worked any prejudicial and reversible error to the defendant. Therefore, we deem comment on those "facts" unnecessary but we refer below to the citations of "overwhelming authority".

In support of our contention that the clerk's communication to the Jury constituted prejudicial and reversible error, as determined by the Supreme Court, we refer to the following cases in our own courts:

- Davis v. Township of Delaware*, 41 N. J. L. 57;
- State v. Doty*, 32 N. J. L., 403;
- State v Samaha*, 92 N. J. L., 125; aff. 93 N. J. L., 482;
- Folkner v Hopkins*, 126 Atl., 633;
- State v Simon*, 127 Atl., 570;
- State v Unger*, 93 N. J. L., 50; aff. 94 N. J. L., 495.
- Cook v. Green*, 6 N. J. L., 109;

and additionally, upon what appears to be the latest adjudication by this Court in

- Sokolowski v Olkowski*, 130 Atl., 514 (October, 1925).

In the case last cited, *Sokolowski v. Olkowski*, *supra*, this Court by Mr. Justice Parker said that the instructions of the Trial Judge to the jury

through a telephone, and through a Clerk, "were no legal substitute for his presence. If he was to mould the verdict, or send jury back to correct it, he should have the jury before him in open court. Any other practice, as we said in *Johnson v. Depuy*, 2 N. J. L., 152, would be subject to great abuses."

In *Davis v Township*, *supra*, the Court Says:

"A Court is an incorporeal political being which requires for its existence the presence of the judges. Bac. Abr., 'Courts.' "

In *State v Doty*, *supra*, the Court says:

"The law strictly forbids all intercourse, of every description, upon the subject of the cause on trial, between jurors and all other persons. To effect this end, the court commits them in charge of one of its sworn officers. The consequence must be, therefore, that any attempt to invade this seclusion is illegal, and a palpable violation of judicial authority. It may be some extenuation, but certainly cannot be a vindication of such conduct to say that no effort was made, by the illegitimate communication, to turn the juror from the line of his duty. The legal inhibition is against all intercourse with the jury during their consultation, and it is manifest any sequestration short of this would be entirely illusory, for it is certain if the door were thrown open, that no mode could be devised so that only proper intelligence would be permitted to pass."

In *State v Samaha, supra*, the Court says:

“After the jury retired from the bar, the Court said: ‘I have overlooked charging the jury on reasonable doubt. Shall I have the jury brought back or go to the jury room?’

“Mr. Crandell: ‘You better go to the jury room, I guess.’ “Whereupon the judge went to the jury room and charged the jury that the defendant was entitled to benefit of a reasonable doubt. This irregularity is not properly before the court for review, under this assignment, as it is not embraced within the scope of error alleged therein. If advantage of the irregularity complained of was intended to be taken by counsel of defendant, it should have been made the subject of an assignment of error, which was not done. But since it appears on the face of the record that the judge did go into the jury room after the jury had retired thereto, to deliberate upon their verdict, it seems well for us to state here, that the action of the court was highly improper and irregular and is not palliated by the fact that what he said to the jury was favorable to the defendant: and were it not for the circumstance that the act of the court in going into the jury room was at the suggestion and with consent of counsel of defendant, it might have resulted in vitiating the verdict of the jury.”

In *Folkner v. Hopkins, supra*, the Court says:

“At common law a verdict could only be rendered in the presence of the court;

that is, in the presence of the judge or judges before whom the trial was had (*Davis v. Township of Delaware*, 41 N. J. L. 57). This rule of the common law has been modified by section 160 of our Practice Act (Comp. Stat., p. 4103), which provides that, after the jury have gone from the bar to consider of their verdict, 'the court may direct that the verdict be taken by the clerk in open court in the absence of the judge, and may order that the court remain open *for that purpose*.' The power of the clerk under the conditions named is strictly limited by the statute, and that is to take such verdict as the jury shall render, without regard to whether or not it is in accordance with the instructions delivered to that body by the court; without regard to whether or not the finding can be legally justified. *He is not vested by the statute with any judicial power*, nor does the order of the court directing him to take the verdict attempt to confer such power upon him. It is no concern of his officially whether the verdict can be upheld; or whether or not judgment can be entered upon it. He cannot legally refuse to accept a verdict, but must 'take' it as rendered."

In *State v. Unger, supra*, the Court says:

"It is further argued by the defendants that it was to their manifest wrong and injury for the trial court to deny a motion to direct a mistrial. The Supreme Court affirmed the action of the trial court upon the ground that the great

ing of such motion is a matter of discretion, and that the defendants did not suffer any wrong or injury by its refusal. The situation of the cause when this motion was made and denied was as follows: The trial judge determined that, in the proper administration of justice, the jury should be put in the charge of constables and kept isolated during the trial, and for that purpose four constables were sworn and assigned to that duty. After this was done the court of its own motion directed a detective, in the employ of the prosecutor of the pleas, to watch the jury and see that no one had opportunity to communicate with them, but this action was not known to the prosecutor of the pleas. Acting on this instruction the detective intruded on the privacy of the jury and was as active in the care and custody of the jury as the sworn constables." * * *

"The question is whether all this was a proceeding from which the defendant suffered a manifest wrong or injury. We think it was, *unless we adopt as a rule of judicial procedure that any stranger, and if one then many, may, under a pretended authority, intrude himself on the privacy of a jury* and assume its care and custody without injury to the accused, if it be proved that the intruder had not conversed with the jury about the case. We are not disposed to sanction such a procedure, especially where the intruder is in the employ of the prosecuting officer, for his presence may have exercised a secret influence on the jury, for they must

have known that the intruder claimed to be there by the direction of the Court, or in some official capacity, otherwise they would have ejected him. The administration of justice should be free from any suspicion of partiality or bias if it is to be respected and the judgments of our courts obeyed, and that condition cannot exist if persons not legally authorized are permitted to mingle with a jury and assume its custody during the course of the trial. 'Any attempt to invade that seclusion is illegal' (*State v. Doty*, 32 N. J. L., 403). The Court had no right to send its special officer to assist the sworn officers in the performance of their duty, and the evidence does not show that the Court intended any such thing, but without direction and without authority the detective assumed his right to do what he did. The Supreme Court in support of its judgment refers to *State v. Lewis*, 83 *id.* 161, but in that case the Court of its own motion overruled a question put by the prosecutor. All that happened was that the Court overruled a question, and as its action was favorable to the defendant, he could not have suffered the statutory manifest wrong and injury. So, in *State v. Cucuel*, 31 *id.* 249, all the alleged irregularities happened in the presence and with the consent of an authorized officer of the court, and on a rule to show cause it was held that the irregularities were not sufficient ground for a new trial, but that is not the case here, for we are dealing with the unauthorized intrusion on the privacy of the

jury by one who was connected with the office of the prosecutor of the pleas. We are of opinion that an accused person defending himself against a criminal charge suffers the manifest wrong and injury described in the statute, when a detective attached to the office of the prosecutor of the pleas, without authority of law, assumes, in part, at least, the care and custody of a jury empaneled to determine his guilt or innocence on an indictment prosecuted by the prosecutor of the pleas, and in pursuance of that assumption mingles with the jury, converses and takes his meals with them as freely as a properly appointed officer sworn to perform that duty. Certainly, the State's officer could not do what his superior could not. The defendants have not had that fair and impartial trial which the law affords them. The judgment will be reversed.'

Cases in other jurisdiction to which we refer, are the following:

- Sargent v. Roberts, et al.* (Mass.) 1 Pick., 337;
- State v. Smith*, 6 R. I., 33;
- Kirk v. State*, 14 Ohio, 512;
- Fish v. Smith*, 12 Ind., 563;
- Benson v. Fish*, 6 Greenl. (Maine), 141;
- Read v. Cambridge*, 124 Mass., 567;
- State v. Patterson*, 45 Vt., 308;
- Taylor v. Betsford*, 13 Johns, (N. Y.), 487;
- People v. Beck*, 305 Ill., 593; 137 N. E., 454;
- Crabtree v. Hagenbaugh*, 23 Ill., 289;

Havenor v. State, 125 Wis., 444; 104 N. W., 116;

Henderson v. State, 197 Pac., 720;

Leeth v. State, 206 Ala., 439; 90 So., 687 at 691;

Hopkins v. Bishop, 91 Mich., 328; 51 N. W., 902;

Watertown Bank & Loan Co. v. Mix, et al., 51 N. Y., 558;

Com. v. Heden, 162 Mass., 521; 39 N. E. 181;

Kullberg v. O'Donnell, 158 Mass., 405; 33 N. E., 528.

And particularly,

Fillipon v. Albion &c Co., 250 U. S. 76.

Turning now to the cases in other jurisdictions, *supra*, which deal with the questions raised by this record, we will take them up in the order in which they are cited.

Sargent v. Roberts, supra.

This is the leading case and is universally cited. The facts in this case as set out in the opinion are as follows:

“The trial of this action which was *acsumpsit* was had before Jackson, J., and lasted three days. After the jury had been out six hours, the foreman wrote to the Judge at chambers that they could not agree and that they waited for his direction. The Judge returned an answer in writing saying that he was unwilling, after so much time had been

consumed in the case, to permit them to separate, and giving such instructions as would enable them to reconsider the cause in a more systematic manner. He added that the officer had directions to take them to a more convenient apartment if they desired.

"The Judge also directed the jury to bring his letter into court with them, in order that it might be filed with the papers in the case. After this, they agreed upon a verdict in favor of the defendants and the plaintiff moved for a new trial, among other reasons, because of this communication from the judge to the jury."

Parker, C. J., in the opinion, says:

"One ground on which the motion for a new trial rests is the written communication from the Judge to the jury, after the court was adjourned, in answer to a note from the foreman, stating the improbability of their agreeing upon a verdict. It has been the practice in this county for the Judge, at his discretion, to allow the jury to separate, after they have been so long together as to satisfy him that there was such a difference of opinion as would result in a final disagreement, unless the fear of remaining all night in an uncomfortable situation should prevent it. This practice probably arose from the custom of having but one session in the day; the effect of which is, that there is much less opportunity for the jury to communicate with the

court, than there is in other counties where there are two sessions, and where the court is frequently in session in the evening. In those cases, if the jury want information, they can obtain it, and the court will take the cause from them, when it shall appear that the keeping them longer together will be likely to occasion much inconvenience without eventually obtaining a verdict, or else that a verdict will be given contrary to the opinion of some of the jury, merely to avoid that inconvenience. But in this county, where the court usually adjourns at two or three o'clock until the next morning, juries are more frequently exposed to the hazard of remaining together all night and are deprived of the privilege intended to be given them by the statute, of being discharged of the cause after going into court a second time without being able to agree. The object of this statute was, no doubt, to prevent that restraint upon juries which the common law allows, or perhaps requires, and it was in the spirit of this statute, that the Judges here have substituted the discharge of them at their discretion, after the court shall be adjourned. No material inconvenience has hitherto been seen to come from the exercise of this power, and it is not known that the exercise of it has ever been complained of by the bar. For myself, I have done this repeatedly, and have, in reply to notes received from the foreman, sent answers either complying with or refusing the request of the jury: and I have sometimes stated to them as a reason why they could

not be dismissed, the importance of terminating a dispute which had already occasioned much expense to the parties. I cannot say when this practice began, but am satisfied that it existed before it was adopted by me. It probably originated in the idea that there were some powers necessarily exercised by the Judge out of court; and this of releasing the jury from fatigue and great personal inconvenience, after they had made all suitable efforts to come to an agreement, was among the least questionable.

“The communication in question in this case was made upon the ground of this practice, which had been so common here as to pass without notice. The object of the note of the foreman was probably to obtain leave for the jury to separate, and the answer of the Judge was calculated to enable them to revise the case in a systematic manner, in the hope that such a revision would produce a union of opinion on one side or the other of the cause. It probably had that effect. As it is impossible, we think, to complain of the substance of the communication, the only question is, whether any communication at all is proper, and if it was not, the party against whom the verdict was is entitled to a new trial. And we are all of opinion, after considering the question maturely, that no communication whatever ought to take place between the Judge and the jury, after the cause has been committed to them by the charge of the judge, unless in open court, and, where practicable, in presence of the counsel in the cause. The oath administered to the officer seems

to indicate this as the proper course; 'He is to suffer no person to speak to them, nor to speak to them himself unless to ask them whether they are agreed,' and he is not to suffer them to separate until they are agreed, unless by order of court. When the court is adjourned, the Judge carries no power with him to his lodgings, and has no more authority over the jury than any other person; and any direction to them from him, either verbal or in writing, is improper. It is not sufficient to say that this power is in hands highly responsible for the proper exercise of it; the only sure way to prevent all jealousies and suspicions is to consider the Judge as having no control whatever over the case, except in open court in presence of the parties and their counsel. The public interest requires that litigating parties should have nothing to complain of or suspect in the administration of justice, and the convenience of jurors is of small consideration compared with this great object. If, by reason of the long intervals between the sessions of the court, jurors here are subjected to inconveniences which do not exist elsewhere, this must be remedied by holding two sessions a day instead of one. It is better that everybody should suffer inconvenience, than that a practice should be continued which is capable of abuse, or at least of being the ground of uneasiness and jealousy. New trial granted."

State v. Smith, supra:

"If the jury can receive the law of a case on trial in any other mode than from in-

structions of the court, given in the presence of party and counsel, how are their errors of law with any certainty to be detected and how with any certainty therefore to be corrected? It is the statute right of parties here, following the ancient course of the common law, to have the law given by the court, in their presence, to the jury, to guide their decisions, in order that every error in matter of law may be known and corrected.

“In *Sargent v. Roberts*, 1 Pick., 337, a new trial was granted because the Judge who tried the cause, upon receiving after the adjournment of the court, a letter from the foreman informing him that the jury could not agree and that they waited his directions, returned an answer in writing that that he was unwilling, after so much time had been consumed, to permit them to separate, and then proceeded in his reply to give them such directions as would enable them to reconsider the cause in a more systematic manner. It seems from the opinion of the court that this course was taken by the distinguished Judge who tried the cause under the sanction of an old practice prevailing in Massachusetts, which allowed such communication between the court and jury in relation to a cause which had been committed to the jury and about which they had difficulty in coming to an agreement, but to condemn a practice so dangerous to the rights of parties and so opposed to the spirit of the common law which demanded that everything given to a jury in relation to a case before them, should be given in open court in the

presence of all interested or authorized, for criticism, for suggestion, to guard against injustice and error and to afford the means of remedying or correcting them, the verdict was after full hearing, set aside and a new trial granted.

“In short, without the aid of authority, if a party, and especially one criminally convicted, shows to us that so well defined a right of trial as that the jury should receive the law of the case before them, solely and openly from the court, has been violated in his person, we dare not refuse him a new trial, to be conducted in the mode which the constitution as well as the common and statute law accords to him. If we did, he might well complain that in a criminal prosecution his trial had not been in one particular ‘public’; that in a matter of law he had not had, in the full sense, ‘the assistance of counsel in his defense’ or ‘the liberty to speak for himself’; and that he had been deprived of his liberty or his property in a mode unknown to the common law or the ‘law of the land.’ New trial granted.”

Kirk v. State, supra.

“After the jury was charged by the court and had retired, one of the associate Judges of the court went into the jury room, at their request, and explained the charge of the court to them, the court having temporarily adjourned; neither the attorney for the state nor for the defendant, nor the defendant himself being present at the time nor having any notice of the same.

“It is his right to have a *public trial*
 * * * the witnesses shall give their testimony in public and the court shall declare the law in public; and the jury are sworn to render their verdict according to the law and evidence thus publicly given. In no other way can the jury be advised of a fact or principle of law touching the case of the accused. It is his right thus to have everybody know for what he is tried and why he is condemned and witness the manner, tone and temper of his prosecution, that he may be subject to no other influence than truth and law, and that mercy which construes every doubt to his benefit. The court charged with his trial have no right to hold any communication with the jury touching his case, except in the presence of the prisoner and before the public. The court cannot secretly communicate to the jury what they have said respecting the law of the case. It is the right of the accused to know and have the public know that the court communicates no new principle of law which had not been before publicly declared nor is he at all bound to trust to the court or judge in the matter. It is his great privilege and no power can impair it.

“What a complete prostration then, is it, of the constitutional rights of the accused, that a single Judge during the temporary adjournment of the court, should go to the jury room to explain to them what had been the charge of the court! It is not claimed that this Judge acted from any other motive than a mistaken notion of duty but

this fact in no sense impairs the rights of the accused. Judgment reversed."

Benson v. Fish, supra:

"The case of *Sargent v. Roberts*, 1 Pick., 337, is a strong illustration of the solicitude with which every statement or communication with the jury not made in open court and in the presence and with the knowledge of the parties or their counsel is excluded. The written instructions given by the Judge in that case to the jury, after the adjournment of the court, contained nothing exceptional; but it being deemed irregular even for the Judge to communicate with the jury at such a time, the verdict was set aside."

Fish v. Smith, supra:

"After the jury had retired to their room to consider of their verdict, they sent to the Judge information that they desired instructions upon a point. Instead of calling the jury back to the court room and instructing them in the presence of the party, the Judge, without, it is admitted, intending any wrong, went into their room and gave them instructions in the absence of the parties and without their consent. This is a practice not to be tolerated. It is an error for which the case must be reversed."

Read v. Cambridge, supra.

In this case, the facts were:

"After the Sheriff's jury, before which the trial was had, had retired to their

room and were deliberating upon their verdict, they rang the bell to call the Sheriff, who had them in charge, and who was the presiding officer at the trial. The Sheriff went to the door of the jury room and as the door was being opened, the written question: 'Have the counsel the right to argue as to what is not in evidence?' was handed to the Sheriff by the foreman and the answer 'No' was given by the Sheriff orally to the foreman at the door. The Sheriff took an early opportunity, after the jury had been dismissed and before the verdict was returned to the superior court, to submit this question and answer to the counsel of both parties, who declared that the Sheriff's instructions were correct.

Gray, Chief Justice, in opinion, says:

"The action of the Sheriff after the jury had retired to deliberate upon their verdict was irregular, and in violation of the settled law of the Commonwealth, and requires the verdict to be set aside.

"In *Sargent v. Roberts, v Pick*, 337, after a trial of three days before a justice of this court, the jury had been out six hours, when the foreman wrote to the judge at chambers, informing him that they could not agree, and that they waited for his directions; the judge returned an answer in writing, saying that he was unwilling, after so much time had been consumed in the cause, to permit the jury to separate, and giving such instructions as would enable them to reconsider the cause

in a more systematic manner, and directing them to bring this letter into court with them in order that it might be filed with the papers in the case; the jury returned a verdict for the defendant, and the plaintiff moved for a new trial, because of his communication from the judge to the jury. The full court, after mature consideration, and observing that the judge had acted in accordance with a practice which had long prevailed to some extent, and that it was impossible to complain of the substance of the communication, and the only question was whether any communication at all was proper, unanimously held that the plaintiff was entitled to a new trial.

“The reasons were thus stated by Chief Justice Parker: ‘No communication whatever ought to take place between the judge and the jury, after the cause has been committed to them by the charge of the judge, unless in open court, and, where practicable, in presence of the counsel in the cause.’ ‘When the court is adjourned, the judge carries no power with him to his lodgings, and has no more authority over the jury than any other person; and any direction to them from him, either verbal or in writing, is improper. It is not sufficient to say that this power is in hands highly responsible for the proper exercise of it; the only sure way to prevent all jealousies and suspicions is to consider the judge as having no control whatever over the case except in open court in presence of the parties and their counsel. The public interest requires that litigating

parties should have nothing to complain of or suspect in the administration of justice, and the convenience of jurors is of small consideration compared with this great object.' 'It is better that everybody should suffer inconvenience, than that a practice should be continued which is capable of abuse, or at least of being the ground of uneasiness and jealousy.' I Pick. 342.

"It was thus adjudged that, even in the highest court of the state, a communication from the judge to the jury, which was in writing and filed, so that there could be no question of its terms, and which was unobjectionable in substance, was yet, being made out of court in the absence of the parties and their counsel, improper and illegal, and required a new trial to be granted on the motion of the party against whom the verdict was returned.

"The rule thus established was recognized by Chief Justice Shaw in *Commonwealth v. Roby*, 12 Pick, 496, 518, and by Chief Justice Bigelow in *Merrill v. Nary*, 10 Allen 416, 417; it has never been qualified by legislation (although the whole statute law of the Commonwealth has been since twice revised) and has governed the practice of our courts for more than half a century; and it has been approved in many other states. *Benson v. Fish* 6 Greenl. 141, *State v. Smith*, 6 R. I. 33, 36. *State v. Patterson*, 45 Vt. 308, 316. *Kirk v. State*, 14 Ohio, 511. *Fish v. Smith*, 12 Ind. 563. See also *Norris v. Cook*, 1 Curtis, 464.

“The decision in *Thayer v. Van Wlett*, 5 Johns, 111, cited by the learned counsel for the petitioner, has been overruled (*Taylor v. Betsford*, 13 Johns. 487. *Benson v. Clerk*, 1 Cowan, 258. *Moody v. Pomeroy*, 4 Denio, 115. *Watertown Bank & Loan Co. v. Mix*, 51 N. Y. 558). In *Taylor v. Betsford*, the court said: ‘The only error necessary to be noticed in this case is, that the justice went into the room with the jury, at their request, privately and apart from the parties, to answer certain questions proposed to him by the jury. This we have repeatedly held to be erroneous, unless done with the consent of the parties. Whether the information given by the justice were material, or had any influence upon the verdict of the jury, is a matter which we will not inquire into.’

“Against this weight of authority, the only cases, brought to our notice, which countenance a different rule, are two in New Hampshire and one in South Carolina. *Basset v. Salisbury Manuf. Co.*, 8 Foster, 438. *Allen v. Aldrich*, 9 Foster, 63. *Goldsmith v. Solomons*, 2 Strob. 296. And in the latter the point adjudged related only to instructions as to the form of the verdict, given by the judge to the foreman in open court; and the criticism upon the judgment of this court in *Sargent v. Roberts* was based upon the singular theory that the intercourse between the jury and the bench is confidential that often communications from the jury ought not to be disclosed to the bar.

“The duty of the sheriff or other officer presiding at a trial by a sheriff’s jury is

prescribed by statute to be to keep order, to administer the oath to jurors and witnesses, to decide all questions of law arising at the trial and direct the jury upon any question of law when requested by either party, and when requested, to certify to the court, with the verdict, the substance of any decision or direction by him given. Gen. Sts. c. 43, 32, 33. *Merrill v. Berkshire*, 11 Pick. 269, 274. *Tucker v. Massachusetts Central Railroad*, 116 Mass. 124. In performing these duties, his functions are judicial; in attending the jury after they have retired to deliberate upon their verdict, he acts as an executive officer, just as his deputy might. *Tripp v. County Commissioner*, 2 Allen, 556, 558. *Briggs v. Taunton*, 110 Mass. 423, 427. The sheriff does not hold a court, except for the purpose of presiding at the particular trial under the warrant to him from the county commissioners. Gen. Sts. c. 43, 27. If he has any authority to direct the jury in matter of law, after he has once committed the case to them, it can only be in the presence of the counsel. The statute which requires him to give directions to the jury, and to certify them to the court, at the request of either party, implies that the parties must be present, by themselves or their counsel, when the directions are given. No reason has been or can be suggested why an executive officer, exercising judicial functions in a particular case should not be subject to the same restrictions as the judges in the courts.

“The question of the foreman was evidently addressed to the sheriff and answered by him in his judicial capacity. As he had no right, under the circumstances, to make any communication at all to the jury, the decisions already cited are conclusive to the point that the court will not inquire whether the communication was in fact erroneous or prejudicial. The statement, in his certificate, that the counsel of both parties, after the jury had been dismissed, assented to its correctness, is wholly immaterial, because it was no part of his duty at that stage of the case to inquire into or certify their opinion upon that point. Verdict set aside.”

State v. Patterson, supra.

“After the jury had retired to consider of their verdict they sent the following inquiry in writing to the court by the officer having them in charge. ‘What is the law in relation to manslaughter in the third degree, or what is the punishment for manslaughter in the third degree,’ and the presiding judge, while the court was in session and the jury in their room for deliberation, without the knowledge of the respondent, or his counsel or the counsel for the state, sent to the jury in their room, and without their coming into court, the following communication in writing. ‘There are no degrees in manslaughter under our law; but the amount and kinds of punishment which shall be inflicted, you will see, are with certain limitations in the discretion of the court.’ ”

In the opinion, which sets aside the verdict and grants a new trial, the Court says at page 313:

“The exception to the communication of the presiding judge with the jury and sending to them a copy of the statutes with reference to a particular section is maintained. The prevailing idea in this state has been that all communications between judge and jury after a case has been submitted to the jury and while they have it in consideration, should be in open court and so far as we know, the practice has been conformable with the idea.

“In 1 Pick. 337, *Sargent v. Roberts, et al.*, C. J. Parker says: ‘We are all of opinion, after considering the question maturely, that no communication whatever ought to take place between the judge and jury after the cause has been committed to them by the charge of the court, unless in open court, and when practicable, in presence of counsel in the case.’ ”

In *Taylor v. Betsford*, 13 Johns. (N. Y.), 487, the facts are as follows:

“When the jury in the court below retired to deliberate upon their verdict, the justice at the request of the jury, went into the room with them to answer certain questions proposed to him by the jury, but was not accompanied by the parties nor had obtained the consent of the plaintiff in error, who, however, knew that the justice was going and did not object to it.

A verdict and judgment was given in the court below for the defendant in error."

The Supreme Court of New York in a *per curiam* opinion say:

"The only error necessary to be noticed in this case is that the justice went into the room with the jury at their request, privately and apart from the parties, to answer certain questions proposed to him by the jury. This we have repeatedly held to be erroneous, unless done with the consent of the parties. Whether the information given by the justice were material or had no influence upon the verdict of the jury, is a matter which we will not inquire into. In the present case, It cannot fairly be inferred that the plaintiff-in-error gave his consent, unless, from the circumstances that he knew that the justice was going to the jury and did not object. But this is not enough. The practice is dangerous and improper and ought to be guarded against; and the consent ought not to be a matter of inference as it may be liable to great abuse and it ought to appear affirmatively that it was done with the consent of the parties. If they are present, it may be easily ascertained whether they will give it or not and then the door will be shut against abuse by reason of misunderstanding or wrong conclusions drawn from circumstances; and upon this ground the judgment will be reversed."

People v. Beck, supra.

“The law is well settled in this state that it is error, for which a judgment will be reversed, for a trial judge to hold any communication with the jury after their retirement to deliberate upon their verdict, except in open court.”

Crabtree v. Hagenbaugh, supra.

The facts in this case were: The jury, after they had retired, sent for the Judge, who went to their room and communicated with them in regard to the instructions which had been given.

The Court says:

“This was manifestly done with no improper motive on the part of the judge and it may be that it had no influence with them in the formation of their verdict. Indeed, the most the judge did was to decline to explain the meaning of the written instructions which had been given to the jury. We choose to assume that what was said and done by the judge while in the jury room, did not influence the jury in their deliberations, for we think that independent of its effect upon the jury, the judgment should be reversed for the simple reason that such an interview did take place. If, in this case, no harm was actually done, *and for that reason the verdict is allowed to stand, we open the door to the inquiry in all such cases as to whether the party has been injured by the interview. Such an inquiry should not be tolerated.* The policy of the law requires that all proceedings of the court should be open and notorious and in the presence of the party, so that

if he is not satisfied with it, he may take exceptions to it in the mode pointed out by law and not be put to extraneous proof to show that an error has been committed in a secret proceeding, and, in fact, out of court."

Hanover v. State, supra.

The facts in this case were: After the jury had retired for deliberation as to their verdict in the case, they sent a communication to the presiding Judge through the bailiff having them in charge, requesting him to come before them for the purpose of answering some inquiries concerning the case. The Judge responded by stepping into the doorway of the room, where they were deliberating, whereby a juror propounded some questions to him as to the right of immunity of persons who had appeared and testified before a Grand Jury in transactions involving the offense of bribery.

The Court holds:

"We are constrained to hold that the communications had between the jury and the judge in the case, after the jury had retired to deliberate upon the verdict, were prejudicial and constitute reversible error." (Citing many cases.)

Henderson v. State, supra.

"It being a violation of the law for the judge to be present with the jury while they are considering their verdict, in the interests of justice, it is only proper to hold that such act constitutes prejudicial error."

Leeth v. State, supra:

"All courts are agreed that no communication whatever ought to take place between the judge and the jury after the cause has been submitted to them, unless in open court."

Hopkins v. Bishop, supra:

"The court had no right to send an answer to the jury room to a question propounded in writing to him by the jury after they had retired to deliberate upon their verdict, without the consent of counsel in the case. The judgment is reversed."

Watertown Bank & Loan Co. v. Mix et al., supra.

The facts in this case are stated in the opinion which is as follows:

"Johnson, C.: After this case had been submitted to the jury, at the Jefferson Circuit, and while they were deliberating upon it, they sent, by the constable in charge of them, to Judge Mullin, who held the circuit, a written inquiry 'whether the witness Moffat proved positively, on cross examination, that Hains did not leave that money on the counter.' The judge having read it, directed it to be handed to Mr. Tanner, the shorthand reporter, who had taken minutes of the evidence on trial. Tanner looked over his minutes on receiving the paper, and then wrote upon it 'No such question was asked.' It was then handed to the judge and by his direction carried to the jury room and delivered to the jury. They subsequently found a ver-

dict for the defendants. This communication between the judge, jury and constable occurred without the knowledge or consent of the plaintiffs, their attorneys or counsel, and did not come to their knowledge until some days after the trial was ended. Upon these facts a motion on the part of the plaintiffs was made at Special Term, before Judge Mullin, to set aside the verdict and for a new trial, which was granted. On appeal to the General Term this order was reversed. The plaintiffs have now appealed to the Court of Appeals.

“A question is made preliminarily, that the order is not reviewable in the Court of Appeals, and rested in the discretion of the Supreme Court. In opposition to this view it is insisted, on the part of the plaintiffs, that the right of a party to have the trial of his cause transacted openly in court, with the opportunity to be present, is a substantial right, not resting in the discretion of the court, and of which the party cannot be lawfully deprived without his own consent. If the order in question is not discretionary, then either under the second subdivision of section eleven of the Code, as an order refusing a new trial, or under the fourth subdivision of the same section, it is appealable if the order affects a substantial right. The right is plainly substantial, for it relates to the substance of the jury trial. This mode of contestation is a public proceeding, as well in respect to production of proofs as to the instruction of the jury by the judge. The party has a right to be

heard in respect to everything transacted, and to bring in review all the proceedings at the trial. If the judge at the trial had insisted, in presence of the counsel, on giving to the jury a written answer to the question proposed by them and refused to communicate it to counsel, such a course would have been the subject of an exception, as erroneous. *The proposition involved in sustaining what took place at this trial is even more dangerous, for it must go the length of holding that the judge may make such communication to the jury in private, as he thinks right.*

There can be no other limit since the party has no means of knowing whether the judge has made any communication, nor what was its subject or terms, if any has been made. In this very case, it does not appear whether the answer of the reporter, transmitted by the judge, corresponded with the reporter's minutes or with the fact. Is it the presumption that it did so accord? If that is the rule, then obviously the party has no protection against the erroneous recollection or judgment of the judge, except in his sense of fairness, and desire not to work injustice. It throws upon the party the burden of showing affirmatively that the judge did communicate to the jury, and that the communication tended to his injury. This burden is so great as in almost all instances to be equivalent to a denial of the party's right; and if it exists it materially diminishes the security of parties in the administration of justice. The answer transmitted to the jury in this case was indi-

rect in its terms, leaving in doubt whether it should be understood as a negative answer to the question of the jury, or only as an affirmation that no such question as was implied by the jury's inquiry had been directly put. It is impossible to think that if the jury's question had been put in open court, in presence of the jury and counsel, the matter would have been left in so doubtful a state. The case well illustrates what mischief would result from allowing such a discretion to the judge. It is in my opinion better and safer to adhere to the rule, as affirmed by the adjudged cases and by what I understand to be the settled usage in this state, that there ought to be no communication between the judge and the jury, after they have gone from the bar to consider of their verdict, in relation to the oral evidence or his instructions to them, unless it take place openly in court or with the express assent of the parties. (*Bunn v. Croul*, 10 Johns., 239; *Taylor v. Betsford*, 13 Johns., 487; *Neil v. Abel*, 24 Wend., 185, 186; *Sargent v. Roberts*, 1 Pick., 337.)

“Thinking it to be shown that the party's right does not rest in the discretion of the judge, that it is a substantial right and that it has been violated in this case, I am of opinion that the order of the General Term should be reversed, and that of the Special Term affirmed. All concur. Ordered accordingly.”

Com. v. Heden, supra:

“It is well settled that instructions to the jury upon the substance of the case must be given in open court.”

Kullberg v. O'Donnell, supra:

Field, C. J. says:

“In *Sargent v. Roberts*, 1 Pick, 337, it was said, ‘No communication whatever ought to take place between the Judge and the jury after the cause has been committed to them by the charge of the Judge, unless in open court, and, when practicable, in presence of counsel in the cause.’ In *Com. v. Roby*, 12 Pick., 496 at 518, it was said that the verdict was set aside in *Sargent v. Roberts*, ‘on the ground that the practice then prevailing was improper and that it was important that all instructions to the jury should be given in open court’ In *Merrill v. Nary*, 170 Allen 416, it was said ‘the only regular and safe mode of conducting trials is for the court to instruct the jury on all material points before they retire to deliberate upon their verdict, and, if they have occasion for further information, they should return into court and state the questions upon which they wish for further advice and receive in open court such directions as may seem to the Judge material and necessary. It is plain that the point decided is that all instructions to the jury must be in open court.’”

Fillipon v. Albion etc. Co. is referred to below.

Additionally, all of the following cases hold that any communication of the Judge with the jury after they have retired to consider of their verdict, constitutes reversible error, *unless done in open court*.

Boerum v. Seymour Realty, 127 Misc. (N. Y.) 577 (July 1926).

State v. Ashley, 113 S. E. (S. C.) 301.

Groce v. State, 147 Ga. 672, 95 S. E. 234

State v. Alexander, 66 Mo. 148.

State v. Wrath, 15 Wash. 621, 47 Pac. 106.

Coolman v. State, 163 Ind. 503, 72 N. E. 568.

State v. Murphy, (N. D.) 115 N. W. 84,

Kirk v. State, 14 Ohio, 511.

O'Connor v. Guthrie, 11 Iowa 80.

Johnson v. State, 100 Ala. 55, 14 So. 627.

Law v. Freeman, 117 Ind. 341, 20 N. E. 242.

McBean v. State, 83 Wis. 206, 53 N. W. 497.

Mound City v. Mason, 262 Ill. 392, 104 N. E. 685.

Bentler v. Comm, 143 Ky 503, 136 S. W. 896.

Berst v. Moxom, 163 Mo. App. 123, 145 S. W. 857.

Greeley v. Weaver, 5 Atl. 267 (Me).

Holiday v. Sampson, 95 S. W. 643 (Tx).

ARGUMENT OF POINT I.

The underlying principle upon which all of above cases are based is that the giving of instructions upon matters of law is of the very

substance of jury trial at common law, and must be given in open court. This principle has its roots far back in the history of the common law and of free institutions. The right to a "public trial" in a criminal case means not only that the defendant shall know what principles of law were applied to his case, but that *the public at large shall know*. This principle is frequently characterized by courts as a "priceless inheritance". The principle here involved is one of substance and not of form, and, to a high degree, is calculated to preserve to the future, what many courts have referred to as the "precious privilege of equality before the law."

Whether this fundamental principle of the common law can ever be safely relaxed in a civil case is a question not now before the court; but in a criminal case where the defendant is guaranteed by special constitutional mandate a "public trial", we respectfully insist that the principle above stated should in all cases be strictly enforced and its violation declared to be reversible error.

In dealing with the question involved in this case, we do not have to consider what the effect of a communication to the jury, such as was had in this case, might have on a verdict in a civil cause.

In *Cutler v. Ellis*, N. J. Mis., 228, the Judge communicated with the jury through the medium of the Clerk, after they had retired to consider of their verdict and this Court held that:

"The manner in which the instruction was imparted was informal and irregular, but that ought not to result in setting aside the verdict when, as appears clearly,

the lawful rights of the plaintiff were not prejudiced thereby."

While the overwhelming weight of authority would seem to be against this finding, we respectfully insist that such a finding cannot be made in a criminal case.

Under Article 1, Paragraph 8 of the Constitution of this State, "the accused" shall have the right to a speedy and *public* trial by an impartial jury, and "have the assistance of counsel in his defense." Whether under our constitution and the common law, a party is entitled to a "public trial" in a civil cause, is not in this case involved. Surely a trial in which there is a secret and undisclosed, in the sense of unknown, communication between the Judge and jury, after they have retired to consider of their verdict, is not a "public trial" within the meaning of our constitution.

The fact that the communication between the Judge and the jury was through the medium of the Clerk lends no sanction to the transaction. The Clerk has no official relation to or right of access to the jury.

Neither at common law nor by authority of the statute which permits the Clerk of the Court, in the absence of the Judge, to receive a verdict in a criminal case, has the Clerk power to discharge a jury until that body has rendered its verdict.

State v. Van Ness, 82 N. J. L., 181.

Whether the Clerk had this communication with the jury in the jury room or called them into the court room does not appear from the record; but it necessarily follows from the known situation, that he must either have gone to the jury

room and there communicated with the jury, or else he must have called them into the court room and there communicated with them. He had no power to do the latter, and surely if he went to the jury room and communicated with them there, he had no power or authority so to do. Of course, the Judge could not authorize and empower the Clerk to do *what he could not do himself*. The authorities are overwhelming that it is reversible error for the Judge to go to the jury room and have communication with the jurors there, after they have retired to consider of their verdict.

If the Judge had written out instructions for the jury and sent them by his chauffeur to the jury after they had retired to consider of their verdict, can there be any doubt that his act would have constituted reversible error?

We respectfully insist that the Judge had as much right to choose his chauffeur to carry his message to the jury as he had to choose the Clerk.

If the Judge may dictate over the telephone to some agent *certain* instructions and have his agent write down what he hears over the telephone, and take that to the jury room and communicate it to the jurors, why may he not deliver his whole charge to the jury over the telephone or by telegraph or by radio?

As is pointed out by Chief Justice Parker in *Sargent v. Roberts, supra*, the oath administered to the officer who is put in charge of the jury indicates that no such communication should be had with the jury; "He is to suffer no person to speak to them, nor speak to them himself unless to ask them whether they are agreed."

The question of what constitutes a denial of the right to a "public trial" in a criminal case

is discussed in the cases in other jurisdictions above cited.

We respectfully insist that the communication by the Clerk with the jury after they retired to consider of their verdict, constituted a denial of his constitutional right to a "public trial."

In *Cutler v. Ellis*, which was decided in May, 1923, this Court held that the manner in which the instruction to the jury was given in that case was "informal and irregular." That admonition of this Court did not prove effective to stop a practice with many courts, to whose decisions the highest regard is paid, have denounced as "dangerous" and violation in criminal cases of the constitutional rights of the accused. Will this Court allow this practice to continue at least in criminal cases? This question goes to the very foundation of our system of trial by jury. Shall the ancient rules and safeguards, which through all the years have protected and fostered our jury system, be maintained, or shall the door be opened wide for the continuance of the practice complained of, which denies the accused his constitutional right of a "public trial"?

This right of the accused to a "public trial," the Court in *Kirk v. State*, *supra*, calls "the great privilege" of the accused, and says, "no power can impair it."

In *Smith v. State* *supra*, the Court says:

"Without the aid of authority, if a party, and especially one criminally convicted, shows to us that so well defined a right of trial, as that the jury should receive the law of the case before them, solely and openly from the court, has been violated in his person, we dare not refuse him a new trial."

In *People v. Beck*, *supra*, the Court says:

“If, in this case, no harm was actually done, and for that reason the verdict is allowed to stand, we open the door to the inquiry in all such cases, as to whether the party has been injured by the interview. Such an inquiry should not be tolerated.”

In *Read v. Cambridge*, *supra*, Chief Justice Gray says:

“As he had no right under the circumstances to make any communication at all to the jury, the decisions already cited are conclusive to the point that the court will not inquire whether the communication was in fact erroneous or prejudicial.”

In *Taylor v. Betsford*, *supra*, the Court says:

“Whether the information given by the Justice were material or had any influence upon the verdict of the jury, is a matter which we will not inquire into.”

If, however, inquiry were made in this case as to whether or not the communication had with the jury influenced their verdict, there can be no doubt that that question must be answered in the affirmative.

The goods alleged to have been stolen, were not removed from the premises of Hahne & Co. Evidently, the jury were in doubt as to whether it was necessary, as a matter of law, that the goods should be removed from the premises in order to constitute larceny, for the second question was:

“2. Was it necessary for the defendant to have carried the goods off the premises of Hahne and Company to have committed the offense?”

The answer to this question in the communication was:

“It was not” (p. 167).

It is perfectly clear that this answer must have influenced the verdict and therefore harmed the defendant.

The overwhelming weight of authority in jurisdictions other than our own is to the effect that such an act on the part of the trial judge works prejudicial and reversible error.

We therefore respectfully insist on the authority of the cases above cited, that the communication had by the Judge with the jury, through the Clerk, after they had retired to consider their verdict, violated the constitutional right of the defendant below to a “public trial” and constitutes legal and reversible error.

AS TO AUTHORITIES AND ARGUMENTS OF THE PLAINTIFF-IN-ERROR

The Brief For the State cites (pp. 3-5) 13 cases, 2 Federal and 11 in States other than our own, against the ruling of the Supreme Court in this case and as establishing that while “any communication between the judge and the jury, except in open court is, of course, informal and irregular—the overwhelming weight of authority holds that such a communication is not ground for reversal if not in fact prejudicial” (P. 3

Brief), and 3 New Jersey cases as authority for the statement (P. 10 of Brief) that "the rule is firmly established in this State such irregularities are not ground for a new trial or for a reversal of judgment unless the defendant was prejudiced", each of the quoted statements intending to apply to this case the doctrine and conclusion that defendant suffered no prejudice from the irregular and unlawful procedure of the trial judge and the clerk because the instructions given by the judge to the Clerk and by the clerk to the jury stated the law correctly.

We submit that the authorities referred to in the Brief do not tend to support the contentions of the State, and for illustrations.

Fillipon v. Albon &c. Co., 250 U. S. 76—being the first cited by the State, and its Brief quoting (at p. 3) from the opinion of the Circuit Court of Appeals (242 Fed. 258), and, while noting that it was "Reversed because instructions were inaccurate", inadvertently omits reference to this wholly contrary dictum of the U. S. Supreme Court, in the Opinion by Justice Pitney, (250 U. S. p. 81)

"The circuit court of Appeals considered that the jury had asked a plain question in writing concerning a matter of law, and the judge had answered it in writing plainly and accurately, and were of the opinion that since nothing else had occurred,— the question and answer having been preserved of record and counsel having been promptly notified of what had taken place, and given the opportunity of excepting to the substance of the instruction and to the manner of giving it,—no harm has been done, and none was

probable to arise under like circumstances, and hence affirmed the judgment.

It is not correct, however, to regard the opportunity of afterwards excepting to the instruction and to the manner of giving it as equivelant to an opportunity to be present during the proceedings. To so hold would be to overlook the primary and essential function of an exception, which is to direct the mind of the trial judge to the point in which it is supposed that he has erred in law, so that he may reconsider and change his ruling if convinced of error, and that injustice and mistrials due to inadvertent errors may thus be obviated.

United States Fidelity & G. Co. 236 U. S. 512, 529, 59 L. ed. 696, 704, 35 Sup. Ct. Rep. 298;
Guerini Stone Co. v. Carlin Constr. Co. 248 U. S. 334, 348 ante, 275, 286, 39 Sup. Ct. Rep. 102."

The judgment below was reversed not only because "instructions were inaccurate" as stated in the Brief for the State here, but also because they were irregularly communicated. The case opposes the contentions of the State and clearly supports the ruling of the Supreme Court in this case. The second case cited by the State, *Dodge v. U. S.*, 258 Fed. 300, certiorari denied 250 U. S. 660—does not support the propositions of the State or controvert the final ruling in the Fillipon case (*supra*), for, irrespective of the fact that the communication by the judge to the jury consisted of a single word, that word was not sent until after counsel for the parties

had been summoned and informed by the judge of the request of the jury. The Memo in 250 U. S. 660 does not state why certiorari was denied.

State v. Olds, 76 N. W. 644 (Iowa)—is not an authority because (p. 646) the motion for new trial was based mainly on affidavits of jurors, which were not competent.

In *State v. Borchert*, 74 Pac. 1108 (Kansas), the communication by the judge related only to the form of the verdict (p. 1110)

In *Mosley v. Washburn*, 165 Mass. 417, the irregularity consisted of sending two executions involved in the case to the jury by an officer who pointed out the dates on them to enable a mere calculation of interest, it being held (p. 419) that what was done "had no tendency to influence the decision of the jury upon the merits".

In *Whitney v. Commonwealth*, 190 Mass. 531, the instruction by the judge to the jury "was merely as to the proper way to exhibit and preserve their verdict on paper, after they had decided upon it" (p. 539) "and did not touch any matter that could affect the substance of the verdict itself, before it was agreed upon" (P. 540).

Lewis v. Lewis, 107 N. E. 970 (Mass.)—The States's Brief refers to this as "an excellent case", but it does not favor the State's Contentions here, for the opinion of Rugg, C. J. declares (at p. 971) that except for a certain Massachusetts statute "this irregularity would have required a setting aside of the verdict" and distinctly approves many of the authorities cited herein for defendant.

Corbett v. Galloway, (Mich. 1884), 18 N. W. 218—Here the decision appears to have rested

mainly on the disapprobation of the court as to the practice adopted by the appellant.

Gandolfo v. State, 11 Ohio State, 11 Ohio State,, 114. Here the claimed irregularity was that the judge sent to the jury a certain statute of the State, on their request, it being held that such act was not prohibited by law (though there have been rulings to the contrary in many states).

Walter v. State, 233 Pac. 240 (Okla.)—Here the judgment below would have been reversed for the irregularity except for a certain statute of the State.

People v. Kelly, 94 N. Y. 526, is no authority whatever on any question in this case, for its determination rested on matters of practice, and there was nothing of record which established any irregular communication of procedure by the trial judge or by any one else.

Dishmaker v. Heck, 150 N. W. 951 (Wis.)—In this case the foreman of the jury went to the court room, by direction of the jury placed before the judge the paper on which he had written questions to be answered by the jury for their Special Verdict, and asked the judge to decipher a word of the writing. The Judge told the foreman that the word was "punitive". All of this was in open court and taken down by the court stenographer.

Buntin v. City of Danville, 24 S. E. 830 (Va.)—Here the judge furnished his answer in writing to a question from the jury. The report shows no participation by any one else.

All that can be fairly claimed by the State for the authorities so cited is that in two or three states, not including New Jersey, there has not been strict adherence to the doctrine

that such an irregular procedure as in the case at bar necessarily constitutes prejudicial and reversible error and ground for reversal.

None of the 3 New Jersey cases cited on page 10 of the brief for the State is authority for the doctrine stated. Each of them has reference to alleged misconducts of juries involving irregularities of an entirely different sort and calling for application of another principle of law.

POINT II.

THE PRINCIPLE ADOPTED AND EXPRESSED BY THE SUPREME COURT IN DETERMINING THAT THE TRIAL COURT PROPERLY ADMITTED IN EVIDENCE THE ALLEGED "CONFESSION" OF THE DEFENDANT THEN ON TRIAL WAS ERRONEOUS.

The Court disposed of defendant's Assignment of Errors 2, 3, 7, 8, 9 covering that question (Case, pp. 171, 172), and Specifications of Causes 2, 3, 7, 8, 9 covering the question, (Case pp. 175, 176, 177.), with the entire record of the proceedings in the trial court as brought up with the Writ of Error, (Criminal Proc. Act, Sec. 136) by its brief ruling (Opinion Per Curiam, Case, pp. 183-185) as follows:

"One (of the questions) is that the trial court erred in admitting an alleged confession of the plaintiff in error. We think this is not so, because there was testimony warranting the Court in admitting it as

competent and such court action will not be disturbed where there is *any* (italics ours) testimony supporting such ruling”.

which contravenes the principle and ruling by this Court of Errors and Appeals in *State v. Morehous*, 97 N. J. L. 285, where, by Judge Katzenbach, it was held (p. 292) that where, as here, the entire record is before the court according to Criminal Proc. Act, “*this makes it necessary to consider not whether there was evidence of the confession having been made voluntarily, but whether the sufficiency of the evidence supports the finding of the trial court that the confession was voluntarily.*”

Against that definite ruling the Supreme Court determined in this case that with the entire record before it, and notwithstanding the conflict of evidence before the trial court, ~~asks~~ the confession, it was not necessary for it to consider whether that was ~~sufficiency~~ of evidence to support the finding of the trial court, but merely whether there was, *any* evidence to support it, and, on that determination, the Supreme Court whether considered nor referred, in the Opinion, to such conflict of evidence.

POINT III.

THE ENTIRE RECORD OF THE PROCEEDINGS ON THE TRIAL IN THE SESSIONS DISCLOSES THAT, ~~THAT~~ THERE WAS NO SUFFICIENCY OF EVIDENCE TO SUPPORT THE FINDING OF THE TRIAL JUDGE THAT THE ALLEGED "CONFESSION" OF DEFENDANT WAS VOLUNTARY, HENCE IT WAS IMPROPERLY ADMITTED ON THE TRIAL.

The alleged confession was by defendant's signature on a printed card form (Ex. S-3, Case p. 170) presented to her by a store detective in the employ of the Complainant (Case, p. 38).

Under the recognized rule of law that an extra-judicial confession is not admissable in evidence against an accused unless proved to have been freely and voluntarily made, and without inducement by threat or promise, and that the burden of such proof rests on the prosecution, the Trial Judge received testimony for both the State and the defense on the preliminary issue as to the admissibility of the signed card, and on that testimony determined that defendant signed the card confession voluntarily and admitted it in evidence for the stated reasons, in substance, (1) that because defendant testified that when she signed the statement on the card she was in a dazed condition and did not know what she signed, and because she did not testify that she relied on any of the statements made to her at the time, she did not rely on them and that, therefore, they did not enter into the question of ad-

missibility of the card confession, and (2) that the age and previous occupation and experience of defendant rendered it improbable that she was induced to sign the confession by promises or threats (pp. 70-73).

As in *State v. Morehous*, 97 N. J. L., 285 (March, 1922) the entire record of the proceedings in the court below is before this Court (Criminal Proc. Act, Sec. 136) and on the authority of that recent adjudication without reference to others to same effect, plaintiff in error now asks for the determination of this Court, on such entire record, that THE FINDING OF THE TRIAL COURT THAT THE CONFESSION WAS VOLUNTARY WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE. And we submit that such "sufficient evidence" must be the evidence which was before the Trial Court when the confession was received in evidence on the trial.

State v. Jagers, 71 N. J. L., 281;

State v. Bacheller, 89 N. J. L., 433;

State v. Contarino, 92 N. J. L., 381.

In support of the general proposition, as definitely settled in this State, that in order to render a confession of guilt by an accused competent and admissible against him as proof to guilt it must be shown by the prosecution that such confession was made freely and voluntarily and was not extorted or induced by any sort of threats or violence, or induced by fear or the influence of any direct or implied promises in respect to prosecution for the alleged crime, and without deeming it necessary to cite any of the other and very many controlling cases of same purport, reference is made to

Roesel v. State, 62 N. J. L., 216;
Bullock v. State, 65 N. J. L., 557;
State v. Young, 67 N. J. L., 223;
State v. Hernia, 68 N. J. L., 299;
State v. Dolan, 86 N. J. L., 192;
State v. Mowser, 91 N. J. L., 395;
State v. Morehous, 97 N. J. L., 285;
State v. Monich, 74 N. J. L., 522;
Bram v. U. S., 168 U. S., 532.

The evidence on which rested the determination of the Trial Court consisted of the testimony of four witnesses for the State, Jacob Friedman, William J. Daxton, Harry E. Carrington, and Elsie Connor, and of four witnesses for the defense, Hattie Hager, the defendant, Frank E. Brex, Joseph Farrell and Nellie A. Martin.

The testimony of the witnesses for the State alone established that the card statement of alleged confession was not signed by the accused defendant freely or voluntarily.

(1) As to the situation and surrounding circumstances.

On June 19, 1924, at about 12:30 P. M. Jacob Friedman, a floor superintendent in the store of Hahne & Co., in Newark seeing defendant coming through the third floor of that store carrying a package and a box, called the chief detective of the store, William J. Daxton, who followed defendant to the second floor and then up to the third floor where he walked up to defendant and said to her "come on up stairs, I want to talk to you." Daxton and Friedman "escorted" defendant to a small room on the fourth floor where, as testified by Friedman, "they generally take the shoplifters and search

them" (p. 11). There Daxton, the chief detective, mistakenly thinking that he had in custody "the Indian woman," generally known as a very notorious woman in this particular crime, disputed with defendant, who "was all excited" and "kept crying for a while," insisted on her answering his questions, and, as testified by Friedman, "finally they went to work, and our store has a system of a confession to be signed" (p. 12), Daxton produced the form card (Exhibit S.3), himself filled out answers on it and then "notified the other stores in Newark that a woman had been taken into custody with some merchandise" (p. 38). On that notification there came to this small room, which was about 10 x 12 feet, and in which were desk, table and chairs, on a very warm day and with little air (p. 54), "this other delegation" (p. 32) of detectives from other stores, consisting of Harry E. Carrington, Elsie Connor, Miss Clancy and, a little later, Charles H. Strollberg, a detective from police headquarters in Newark, all making up an inquisition of six members, including Daxton and Friedman. They all "talked" to the defendant in custody and asked here questions (p. 55), "she had her head on the window seat and went over to get air" (p. 54). There was an intermission in the proceedings while Elsie Connor, by some unreported and unknown authority, searched the prisoner's person and after a time, defendant signed the card, prepared and filled in by Daxton, by the name "Helen Bugal". According to the remarkable testimony of Friedman the entire procedure occupied about 10 minutes (pp. 14, 32), while Elsie Connor testified that she was in the room about a half hour.

Such was the situation as to place, custody, and menacing ordeal which, by the evidence for the State, defendant faced when she signed "the form that is used in the department stores" (Daxton, p. 37) and which was received in evidence as her "confession," but, and of even greater relevancy—

(2) As to the inducement to the signing by promise of threat—and here again only the testimony for the State.

True it is that each of those four witnesses testified, as to the general proposition, that there was no such inducement, but neither Carrington nor Connor was present until the later stage of Daxton's procedure towards defendant; while his testimony and that of Friedman that no promise was made as inducement is distinctly opposed by their other and controlling testimony to the contrary.

On his direct Friedman testified that Daxton, the store detective, who had the accused in custody, told her to "come out with the truth and we will treat you right" (p. 12), that she was "then all excited and wanted to be forgiven in some way, and get out of it so we could not have her locked up" (p. 13), while on his cross examination, and with evident wish to offset the effect of his direct, he did not think he had so testified but was certain that Daxton told defendant "tell the truth, come out with the truth, and if she told the truth she would not probably be in any trouble" (p. 31); that he (Friedman) may have said on his direct "We will take care of you," but that what he had said was "if she told the truth they would take care of her." Daxton testified that after "escorting" defendant to the small room on the fourth floor ("the

room where they generally take the shoplifters and search them," p. 11) he told her "if you don't say something I have got to call the police" (p. 37), that she asked if it couldn't be straightened out, if she couldn't be given another chance and be forgiven, and that "I told her if she came clean and told the truth and gave me something on which I could really see my way clear that I would" (p. 38). He also testified that it was his duty to get the card (Ex. S. 3) signed by defendant so that it would be a release to his employers "from any obligation of my arrest of this woman."

Disregarding entirely, on this question as to sufficiency of the evidence to sustain the conclusion of the trial judge, the testimony of defendant, and of Frank E. Brex, Joseph Farrell and Nellie A. Martin, we submit that on the evidence for the State, and within the rulings above cited, the signature of defendant by the name of "Helen Bugal" to the form statement of confession (Ex. S. 3) could not have been and was not her free or voluntary act, but was induced by the compelling conditions under which it was made and by the threats and promises made to her by the detective in whose custody she was at the time; and that, for the error in the admission of the statement, the judgment of defendant's conviction should be reversed.

Respectfully submitted,

FRANK B. COLTON,
Attorney for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

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

vs.

HELEN DUVEL,
Defendant-in-Error.

On Error.

BRIEF FOR THE STATE.

The defendant who is usually referred to in the evidence as Hattie Hager, was convicted of larceny (shoplifting) in the Essex Sessions and sued out a writ of error.

In the Supreme Court only two reasons were urged for reversal; one dealing with a communication by the judge to the jury and the other based on the admission in evidence of the defendant's confession.

The Supreme Court found no error in the admission of the confession but did find that the procedure in communicating to the jury was erroneous and harmful, and so they reversed the judgment of the Sessions.

The State now asks this Court to reverse the judgment of the Supreme Court and to affirm the conviction of the defendant. So much of the facts as are necessary to an understanding of the questions raised, are set forth below in the argument.

I.

The communication with the jury.

Some time after the jury had retired to consider of their verdict, the judge left the Court House. Still later, about 6 P. M., the jury, doubtless through the medium of the constable having them in charge, sent a written communication intended for the judge, to the clerk, asking for further instructions. The clerk thereupon telephoned the judge and the judge dictated to the clerk the instructions requested, and the clerk forwarded these instructions to the jury, (Case, p. 167).

The Supreme Court said of this procedure:

“We think that this procedure was so irregular and so likely to be prejudicial to a defendant and so charged with possibilities of harm and abuse as to require a reversal.” (Case, p. 184, l. 26.)

The communication from the jury to the Court was as follows:

1. “Kindly explain what constitutes larceny.
2. “Was it necessary for the defendant to have carried the goods off the premises of Hahne & Company to have committed the offense?”

The answer of the judge was this:

1. “Larceny is the taking and carrying away of the goods of another with intent to steal the same. It is not necessary that the carrying away be for any particular distance, any distance is sufficient if the intent be present.
2. “It was not.”

The legal propositions contained in these answers have not been and cannot well be attacked by the defendant. Clearly there was no

error in this regard except it be in the manner of communicating these instructions to the jury.

Any communication between the judge and the jury, except in open court, is, of course, informal and irregular. But the overwhelming weight of authority holds that such a communication is not ground for reversal if not in fact prejudicial.

Fillipon v. Albion, etc. Co., (C. C. A. III) 242 Fed. 258. Reversed because instructions were inaccurate, 250 U. S. 76, 63 L. Ed. 853. After the jury retired they sent a written question to the trial judge, concerning the applicable rule of contributory negligence and the judge returned a written answer. An exception was afterward allowed to the instruction thus given and to the manner of giving it. The Court of Appeals adopted the rule "that the circumstances of each case should be carefully scrutinized in order to be sure that no harm has actually been done and that no harm is likely to be done by the kind of communication that may be under examination in a given case." Judgment affirmed.

Dodge v. U. S., (C. C. A. II) 258 Fed. 300; certiorari denied 250 U. S. 660, 63 L. Ed. 1197. The defendant was being tried on an indictment containing four counts. The jury sent a note to the judge asking if they could convict on the first count and he returned the answer "Yes" by the bailiff in charge. Error was assigned that the Court communicated with and instructed the jury not in open court and not in the presence and without the knowledge and consent of the defendant or his counsel.

The Court of Appeals, affirming, said:

"While the judge should not have done what he did, to reverse on that ground

would, under the circumstances, be so extremely technical that it does not at all approve itself to our judgment.”

State v. Olds, (Iowa) 76 N. W. 644. Same rule.

State v. Borchert, (Kansas) 74 Pac. 1108. A well considered opinion.

Mosley v. Washburn, 165 Mass. 417, 43 N. E. 182. After the jury retired, they sent the judge a written question by the officer having them in charge, namely, from what date should they calculate interest. The judge correctly answered the question by the same officer. The Supreme Judicial Court, after stating the general rule that no communication affecting the cause ought to take place between the judge and jury, unless in open court, refused to reverse the judgment because the irregularity did not harm the appellant.

Whitney v. Commonwealth, 190 Mass. 531, 77 N. E. 516. After the jury had agreed upon their verdict, the foreman telephoned to the judge for instructions as to the form of a written verdict and received correct instructions over the telephone on that point. The verdict was sustained.

Lewis v. Lewis (Mass.) 107 N. E. 970, is an excellent case carefully analyzing the earlier decisions.

Corbett v. Galloway, (Mich.) 18 N. W. 218. Here, the trial justice went to the jury room and answered a question. Held not to be prejudicial. Judgment affirmed.

Gandolfo v. State, 11 Ohio State 114. The judge, at the request of the jury, sent to them a copy of the statute, calling attention to the sections relating to homicide. Held not prejudicial and not ground for reversal.

Walter v. State, (Okla.) 233 Pac. 240. In Oklahoma, the jury not only determine whether a defendant is guilty but fix his punishment. In this case, they sent a note to the judge asking if they could suspend sentence during good behavior. He sent back word that they could not. Held to be harmless and not ground for reversal.

People v. Kelly, 94 N. Y. 526. There was a motion for arrest of judgment because, as shown by affidavit, a written communication was received by the judge from the jury and was answered by him in writing. "The nature of the communication between the jury and the Court is not disclosed, and it nowhere appears by the record in this case that anything transpired by reason of such communication which affected the rights of the defendant, or that he was in any way injured thereby." Judgment affirmed.

Dishmaker v. Heck, (Wis.) 150 N. W. 951. The jury, being unable to decipher a word in the question propounded for a special verdict, sent their foreman to ask the judge what the word was. The judge not only told him the word, but also defined it. The Court of Appeals affirmed. "It would be a little less than absurd to hold that because a trial judge correctly told a jurymen what a given word in a special verdict was and what it meant, there should be a new trial of case."

Buntin v. Danville, (Virginia) 24 S. E. 830. "The answer returned by the Court to the question propounded by the jury correctly stated the law and the irregularity excepted to is not sufficient to vitiate a verdict that is plainly right upon the evidence and the law applicable thereto."

Numerous cases could be cited such as *Sargent v. Roberts*, 1 Pick. 337, stating the general rule that no communication affecting the cause ought to take place between the judge and jury, but I believe it will be found that in every state except Illinois the application of this general rule has been narrowed by the decisions so that a case will not be reversed unless the communication in fact worked an injury. This view of the matter prevailing in the Federal courts and in the courts of our sister states, is in New Jersey embodied in the statutory direction (Crim. Pro. Act, Sec. 136) that:

“No judgment given upon any indictment shall be reversed * * * for any error except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits.”

The Court below said on this point:

“That the instructions given may have been proper and legally correct and that they were correctly transmitted by the clerk to the jury is beside the question, although it is urged that the defendant below suffered no harm. That is impossible for us to say. It may or may not be so. For instance, while the instructions brought forth by the questions may have been correctly given yet the request therefor, if made in open court, may have called for requests upon the part of the defendant below, for further instructions, suggested or provoked by the questions propounded by the jury and the instructions given in obedience to the request, and where the action of the trial court was as here the defendant below had no such opportunity.” (Case, p. 185, l. 9.)

A further reference to the facts is necessary in order to determine whether the instructions could have been prejudicial.

The defendant was being tried on an indictment charging the larceny of ten lace panels and one pair of shoes of the goods and chattels of Hahne & Company. Hahne & Company operate a large department store in Newark. The evidence on the part of the State was that one of the employees of Hahne & Company saw the defendant in the store in the upholstery department, carrying a package containing the lace and a box of shoes unwrapped (Case, p. 9) and that she put the package underneath a couch or davenport in the department. (Case, p. 36.)

The defendant testified she found the package and the shoes by the davenport and thinking someone had forgotten them, picked them up and started to take them to the lost and found desk, but after speaking with a saleswoman, decided to put them back where she found them. (Case, pp. 117 and 118.)

The Court charged the jury in open court that the State had the burden of proving "first, that she did steal these goods and chattels; second, that she did take and carry away the same." (Case, p. 153, l. 30.) And further that she must be acquitted if she "did not steal the same even though she did take and carry away the property." (Case, p. 154, l. 1.)

The Court charged at the request of the defendant:

"If the jury find that the intention of the defendant, when she took up the parcel from the floor, was to locate the owner of the same, or to deposit it with somebody in authority at the store, or returning it to the owner, it is not larceny, and it is the duty of the jury to find the defendant not guilty." (Case, p. 154, ll. 9 to 16.)

The Court further charged on this subject:

“The issue here is whether this woman is guilty of this charge under this indictment, to wit, the taking and carrying away of these articles specified with intent to steal them. Now, the defendant does not deny that she had those articles in her possession. She admits that she had them in her possession, but she denies that she was carrying them or transporting them or moving them with intent to steal.” (Case, p. 156, l. 36 to 157, l. 5.)

Then as above pointed out, after the jury had retired, the Court further instructed them in answer to their first question:

“Larceny is the taking and carrying away of the goods of another with intent to steal the same. It is not necessary that the carrying away be for any particular distance. Any distance is sufficient if the intent be present.”

And in answer to the second question, “Was it necessary for the defendant to have carried the goods off the premises of Hahne & Company to have committed the offense?” the Court replied that it was not.

The Supreme Court suggested that the defendant may have been harmed because she might have desired to have submitted to the Court additional requests to charge, “suggested or provoked by the questions propounded by the jury and the instructions given in obedience to the request, and where the action of the trial court was as here, the defendant had no such opportunity.”

Neither the Supreme Court nor learned counsel for the defendant have suggested what requests might actually have been provoked by the questions of the jury and their answer, and I have

been unable to imagine any requests which might properly have been provoked.

The Supreme Court referred to certain New Jersey decisions which seem to require that judicial acts of this character be done in open court.

State v. Doty, 32 N. J. L. 403. This was a contempt proceeding. A defendant on trial for embracery offered to make an arrangement with a jurymen for the latter to signal how the jury stood with regard to their verdict after they had retired to consult. The defendant was attached for contempt.

Beasley, C. J., said: "The law strictly forbids all intercourse of every description upon the subject of the cause on trial between jurors and all other persons." But nowhere does he suggest that every such communication is ground for reversal.

Davis v. Delaware Township, 41 N. J. L. 55. At the conclusion of a trial in the Sessions, the Court crier took the verdict in the absence of the judge, the clerk and counsel.

Reed, J., for the Supreme Court said that the verdict so taken was entirely invalid because a verdict is the answer of a jury given to the Court and the Court is an incorporeal, political being which requires for its existence the presence of the judges. However, the judgment was affirmed because the record stated that the verdict was returned in court.

Folkner v. Hopkins, 126 Atl. 633. After the jury had retired, the judge left the court house, directing the clerk to take the verdict. When the jury brought in their verdict, it was most irregular and so the clerk refused to accept it and

gave to the jury instructions as to the form of their verdict. Thereupon they brought in another verdict in the form suggested by the clerk. The Supreme Court said "The action of the clerk as above set forth was very clearly without legal warrant. * * * He cannot legally refuse to accept a verdict but must 'take' it as rendered. * * * The verdict actually entered in this case was a nullity."

State v. Simon, 127 Atl. 570. The jury was locked up for the night but about 1 A. M., having agreed, the clerk came and took their verdict in the absence of judge, defendant and counsel. Judgment was reversed principally on the ground that the defendant was deprived of his right to poll the jury.

None of these decisions are authority for the ruling of the Supreme Court in the instant case. At most, these decisions establish the general rule that intercourse between jurors and other persons upon the subject of the trial, and even the mingling of the jurors with other persons, is forbidden. On the other hand, the rule is firmly established in this State that such irregularities are not ground for a new trial or for a reversal of judgment unless the defendant was prejudiced.

State v. Cucuel, 31 N. J. L. 249;

Titus v. State, 49 N. J. L. 36, 7 Atl. 621;

Warren v. State, 56 N. J. L. 686, 29 Atl. 505.

In conclusion, we urge that the defendant did not and could not have been prejudiced in maintaining her defense upon the merits by the communication between the judge and jury, and therefore that the judgment should not have been reversed because of such communication.

II.

The confession was properly admitted in evidence.

The State, during the examination of the store detective Daxton, offered in evidence a card on which the defendant had written a confession. (Case, p. 39.) Both the State and the defense offered evidence on the question whether the confession was voluntary. (Case, pp. 39 to 65.) Then argument of counsel was heard in the absence of the jury. (Case, pp. 66 to 73.)

The Court found that the defendant was not induced to sign the statement by promises or threats and that the statement was voluntary. (Case, p. 73, l. 20.) It was thereupon admitted in evidence as Exhibit S. 3. (Case, p. 73.)

The confession, Exhibit S. 3 (Case, p. 170) was signed by the defendant in the store building of Hahne & Co., in an office on the fourth floor, occupied by the store detective. She was first questioned for perhaps half an hour, principally as to her true name and place of residence. (Case, pp. 37, 38.) *This is the only subject of questioning mentioned in defendant's testimony.* (Case, pp. 56, 57.) The confession was signed on a printed form, the only items written in, being the date and the list of articles which were found in the bundle which she was detected with. The preliminary questioning did not result in the obtaining of any information at all which was incorporated in the confession.

The defendant was a woman of experience, a former store detective herself (Case, p. 56, l. 28).

During the first few minutes while the defendant was in the detective's room, there was present with her only William J. Daxton, the store de-

tective of Hahne & Co., and Jacob Friedman, one of their floor managers. Friedman was merely a spectator and took no part in the questioning. (Case, p. 12, l. 9; p. 49, l. 18.) Later, Miss Elsie Connor, store detective of L. S. Plaut & Co., and Harry E. Carrington, store detective of L. Bamberger & Co., arrived. There was more discussion and then the defendant signed the confession.

While the defendant was alone with Daxton and Friedman, it appears that she begged Daxton not to lock her up (Case, p. 12, l. 23), but rather to give her another chance. (Case, p. 38, l. 22.) Daxton's reply seems to have made little impression on those present; the testimony about it is vague.

Friedman testified on direct examination that Daxton told her that she should tell the truth and "we will treat you right." (Case, p. 12, l. 30.) On cross examination, he thought that the phrase was "If she told the truth, she would not probably be in trouble." (Case, p. 31, l. 35.) Or "If she told the truth, they would take care of her." (Case, p. 32, l. 6.)

Daxton's own version is that when Mrs. Hager, the defendant, asked him to give her another chance "I told her if she came clean and told the truth and gave me something on which I could really see my way clear, that I would." (Case, p. 38, l. 25.)

It may be observed that this promise—whatever its exact terms—was more directed to obtaining an admission of the defendant's identity than an admission of her guilt. (Case, p. 38, ll. 25 to 40.) Daxton was under the mistaken impression that the defendant was a certain notorious shoplifter known as the "Indian woman." (Case, p. 47, l. 18.)

After Carrington and Miss Connor arrived, there was more questioning, but nothing in the nature of a promise and no threats of any kind. Finally, Daxton apparently gave up hope of trying to establish that the defendant was the Indian woman, and so he filled in the printed form of confession with the list of articles, and laid it before her. Daxton testified that he told her to read it carefully "and sign it if she wanted to sign it, and if she didn't, it did not make any difference whether she did or not." (Case, p. 38, l. 14.) Carrington testified that there was no particular urging; that Daxton said to defendant, "Here is the statement, read it"; that she read and signed it. (Case, p. 47, ll. 32 to 40.) The name she signed was fictitious, "Bugal."

Miss Connor's evidence was that Daxton asked defendant to read the paper and that he asked her if she knew what it was and if she wanted to sign it. (Case, p. 53, l. 38, etc.)

All these witnesses denied any promises (except as above related), threats or ill-treatment.

The defendant testified, on the preliminary question whether the confession was permissible, that Daxton asked the others present to step out of the room while he took her under the third degree (Case, p. 58, l. 19); that he struck her with his fist, told her to sign and she signed—dizzy, trembling, everything black before her eyes. (Case, p. 58, l. 1.)

In her testimony, she did not mention Daxton's remark or any promise whatever.

The trial judge concluded that her testimony as to how the confession was obtained was false. He also concluded that the promise made to her early in the interview made no impression upon

her and was not the means of procuring her confession, and that, on the contrary, her confession was voluntary and admissible. (Case, pp. 70 to 73.)

The evidence clearly supports this conclusion of the Court and brings the case within the decision of—

State v. Morehous, 97 N. J. L. 285, 117 Atl. 296.

“The question of the admissibility of a confession must in every case rest upon the particular facts of the case. In the present case, the remark of Chenoweth (the objectionable promise) was not noticed, if made, by the other officers present. It could hardly have been then so emphasized as to be in any sense the moving cause of the confession. The defendant does not say it was. * * * If the effect of the remark of Chenoweth had been done away with before the confession was made, evidence of the confession is admissible.”

The Supreme Court was clearly correct in finding that there was testimony warranting the Sessions in admitting the confession.

The judgment of the Supreme Court should be reversed and the judgment of the Essex Sessions should be affirmed.

Respectfully submitted,

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J. O. BIGELOW,
Of Counsel.

