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New Jersey Supreme Court

THE STATE vs. ALEX. ISRAEL and JACOB GOLDFARB.	}	Error to Monmouth Quarter Session.	10
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Writ of Error.

New Jersey Supreme Court, 20

The State of New Jersey to the Court
(L. S.) of Quarter Sessions of the County
of Monmouth, GREETING.

For as much as in the indictment, record and process, and also in the giving of judgment in a certain indictment found by our Court of Oyer and Terminer holden in and for the County of Monmouth, for the October Term, A. D. 1919, made against Alex. Israel and Jacob Goldfarb in a certain cause wherein and whereby the said Jacob Goldfarb is jointly charged with the said Alex. Israel with having, at the City of Brooklyn, in the State of New York, stolen one Oldsmobile and automobile and with having, at the said City of Brooklyn, in the State of New York, unlawfully and feloniously received the said Oldsmobile automobile and did bring the same into this State, which said indictment was ordered to be delivered to our Court of Quarter Sessions in and for the 30

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County of Monmouth and was therein duly filed and entry made and the said Court on process issued held and determined; and wherefore the said Jacob Goldfarb, by a jury of the said County of Monmouth, was thereupon convicted of having stolen the said Oldsmobile automobile at the said
 10 City of Brooklyn, in the State of New York and with having unlawfully and feloniously received the said Oldsmobile automobile and bringing the same into this State and into the said County of Monmouth. And as is said manifest error hath intervened to the great damage of the said Jacob Goldfarb as by his complaint we are informed. We being willing that said errors, if any there should be, duly corrected and full and a speedy justice done to the said Jacob Goldfarb in this behalf.

20 Do command you that if judgment be given thereupon you send distinctly and openly under your seal the indictment, record and process aforesaid with all things touching the same and this writ to our Supreme Court of Judicature at Trenton, on the 1st day of May, A. D. 1920, in order that the said indictment, record, process and proceedings being inspected we may further cause to be done thereupon for correcting those errors what of right and according to law ought to be done.

30 Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this twelfth day of April, A. D. 1920.

ENOCH L. JOHNSON,
 Clerk.

WM. L. EDWARDS,
 Atty. of plaintiff in error.

(Filed April 16, 1920.

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RULIF V. LAWRENCE,
 Judge.)

The answer of Rulif V. Lawrence, Judge of the Court of Common Pleas, constituting the Court of General Quarter Sessions in and for the County of Monmouth, the record and proceedings whereof mention is within made, and all things touching and concerning the same, to the Supreme Court of New Jersey, at the day and place within named. I certify and send in the schedule annexed to this writ, as I am within commanded. 10

RULIF V. LAWRENCE,
Judge.

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

20

BE IT REMEMBERED that at a Court of Oyer and Terminer held at Freehold in and for the said County of Monmouth on the first Tuesday in October, one thousand nine hundred and nineteen, before Samuel Kalisch, Esquire, one of the associated Justices of the Supreme Court of Judicature of the State of New Jersey, and Rulif V. Lawrence, Esquire, Presiding Judge of the Court of Common Pleas and of the General Quarter Sessions in and for the said County of Monmouth according to the form of the statute in such case made and provided by the oaths of, 30

1. John N. Hillyer
2. Cornelius B. Barkalow
3. Alonzo Brower
4. Henry P. Conover
5. William A. Close
6. Alexander D. Cooper
7. Wm. H. Freeman

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8. Forrest Green
 9. William H. Houston
 10. Ellsworth Jackson
 11. Samuel W. Kirkbride
 12. J. Lyle Kinmouth
 13. Harry P. Mount
 10 14. John L. Opferman
 15. William C. Pingle
 16. Mortimer V. Pach
 17. Lemuel Rhodes
 18. John W. Sutphin
 19. Joel P. Sickles
 20. George Sutton
 21. Forman R. Thompson
 22. Otto Weigand
 23. Garrett R. Conover

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good and lawful men of said County of Monmouth, then and there duly summoned according to the form of the statute in such case made and provided and then and there duly sworn and charged by the said Samuel Kalisch, Judge as aforesaid, presiding in said Court of Oyer and Terminer in and for the said County of Monmouth to inquire in behalf of the State of New Jersey in and for the said County of Monmouth. It is presented in the manner and form following, to wit: IN THE COURT OF OYER AND TERMINER OF MONMOUTH COUNTY, October Term, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND NINETEEN, MONMOUTH COUNTY, To Wit:

30

The Grand Inquest of the State of New Jersey and for the body of the County of Monmouth upon their respective oaths PRESENT that Jacob Goldfarb and Alex. Israel late of the Borough of Belmar in the County of Monmouth on the eighteenth day of August, in the year of our Lord one thou-

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sand nine hundred and nineteen, with force and arms, at the City of Brooklyn in the State of New York one Oldsmobile automobile, of the value of one thousand dollars of the goods and chattels of Elsie Schuster then and there being found, unlawfully did steal take and carry away and they the said Jacob Goldfarb and Alex. Israel did bring the said Oldsmobile automobile so stolen, taken and carried away into this State, to wit: at the Borough of Belmar in the County of Monmouth 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. 10

AND THE GRAND INQUEST aforesaid, upon their oaths aforesaid do further present that the said Jacob Goldfarb and Alex. Israel late of the Borough of Belmar in the County of Monmouth, on the eighteenth day of August, in the year of our Lord one thousand nine hundred and nineteen with force and arms, at the City of Brooklyn in the State of New York, one Oldsmobile automobile, before then feloniously stolen, taken and carried away, unlawfully and feloniously did receive and have they the said Jacob Goldfarb and Alex. Israel then and there well knowing said goods and chattels to have been feloniously stolen, taken and carried away, and they the said Jacob Goldfarb and Alex. Israel did bring said Oldsmobile automobile so received as aforesaid into this State, to wit: at the Borough of Belmar in the County of Monmouth, contrary to the form of the statute in such case made and provided and against the peace of this State and government and dignity of the same. 20 30

CHARLES F. SEXTON,
Prosecutor of the Pleas. 40

And afterwards, to wit, on the sixth day of November, in the year of our Lord one thousand nine hundred and nineteen, at a session of the Court of Quarter Sessions aforesaid being of the term of October before the Honorable Rulif V. Lawrence, Esquire, Judge at Freehold aforesaid.

10 It is Ordered that all the indictments be filed and retained in the Court for trial or other disposition,

WHEREUPON on the thirteenth day of November, in the year of our Lord one thousand nine hundred and nineteen, at a Court of General Quarter Sessions at Freehold aforesaid, in the County of Monmouth aforesaid, being of the term of October, before Rulif V. Lawrence presiding Judge of the Court of Common Pleas here cometh the said
20 Jacob Goldfarb, who being brought to the bar here in the proper person by Elmer H. Geran, Esquire, Sheriff of the County of Monmouth to whom also he is here committed and having heard the indictment read and being commanded of and concerning the premises in the said indictment above specified and charged how he will acquit himself thereof says he is not guilty thereof and thereupon for good and evil he puts himself upon the country and
30 Charles F. Sexton, Esquire, Prosecutor of the Pleas for said County who prosecutes for the State of New Jersey doth the like,

WHEREUPON on the first day of December, nineteen hundred and nineteen, it was ordered that a severance be granted as to Jacob Goldfarb.

THEREFORE let the said indictment be continued until the first day of December, nineteen
40 hundred and nineteen, and from thence to April eighth, nineteen hundred and twenty, and the jury

Writ of Error.

thereupon here come before the judge aforesaid at Frehold aforesaid in the County of Monmouth aforesaid on the eighth day of April, nineteen hundred and twenty, being of the term of January, twelve good and lawful men each of whom shall be a citizen of this State and resident within the County and State aforesaid above the age of twenty-one years and under the age of sixty-five years and by whom the truth of them after may be better known and who are not of kin of the said Jacob Goldfarb to recognize upon their oaths whether the said Jacob Goldfarb be guilty of misdemeanor in the indictment above specified or not guilty because as well the said Charles F. Sexton, Prosecutor of the Pleas for the said County of Monmouth aforesaid who prosecutes for the said State of New Jersey in that behalf as the said Jacob Goldfarb has put himself upon the said jury and the same day is given to the parties aforesaid and the same place at which time, that is to say on the eighth day of April, in the year of our Lord one thousand nine hundred and twenty, being of the term of January before the judge aforesaid here cometh as well the said Charles F. Sexton, Prosecutor of the Pleas who prosecutes as aforesaid as the said Jacob Goldfarb being brought to the bar here in his proper person by the Sheriff of the County aforesaid for this purpose are impanelled and returned, that is to say:

1. Austin Curtis
2. James W. McGarry
3. Elias J. Clayton
4. George K. Hopping
5. Romaine Rue
6. Victor E. Chabert
7. Frank Lewis
8. John Murphy
9. William F. Errickson

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10. Robert Kehs
11. Charles T. Woodward
12. Harry P. Grim

10 being called come who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of said issue commenced before the said Court and jury the evidence being closed and counsel heard the said issue under a charge of the said Court was submitted to the said jury, and the said jury in charge of the said officers in court duly sworn for that purpose were taken to a private room to consider of their verdict and afterwards at Freehold aforesaid the jury returned into and before said Court in charge of said officers sworn as aforesaid to keep them in charge and then and there in the presence of said 20 Charles F. Sexton, Prosecutor of the Pleas and of the said Jacob Goldfarb do say upon being asked in due form that they have agreed upon their verdict and by their foreman further say that they find defendant guilty of misdemeanor as he stands charged in the indictment.

WHEREUPON it is ordered that the verdict and proceedings be entered and recorded and the defendant be remanded and thereupon the said Jacob 30 Goldfarb on the sixteenth day of April, nineteen hundred and twenty, being produced in and before the Court of Freehold aforesaid, it is ordered and adjudged by the Court that the defendant be confined in the County Jail for six months and to be fined of one thousand dollars and the costs of Prosecution.

Judgment signed this sixteenth day of April, nineteen hundred and twenty.

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RULIF V. LAWRENCE,
P. J.

Writ of Error.

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

I, Joseph McDermott, Clerk of the said County, and also Clerk of the Court of Common Pleas constituting the General Quarter Sessions, do hereby certify that the foregoing copy of record and proceedings in the case of State vs. Jacob Goldfarb is a true and correct copy thereof as the same remains on file in my office. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
 (L. S.) of said County this Twenty-seventh day of April, A. D., nineteen hundred and twenty.

JOSEPH McDERMOTT,
 Clerk. 20

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Order.

NEW JERSEY SUPREME COURT.

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THE STATE

vs.

ALEX. ISRAEL and JACOB
GOLDFARB.

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Application having been made to me for permission to file the transcript of the testimony in the above entitled cause and making it a part of the return to the Writ of Error, heretofore issued in this cause, and it appearing that it was impossible for the official stenographer to transcribe the testimony within the time mentioned for the return of the Writ of Error in this cause heretofore taken,

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It is, on this 17 day of August, Nineteen hundred and twenty, ORDERED, that the transcript of the testimony taken by the official stenographer in the above entitled cause and filed in the Supreme Court, be and the same is hereby made a part of the return to the Writ of Error, filed May 1, 1920, and the same may be annexed thereto for that purpose.

RULIF V. LAWRENCE,
Judge.

Filed Aug. 18, 1920.

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Testimony.

MONMOUTH COUNTY QUARTER SESSION.

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JACOB GOLDFARB and ALEX. ISRAEL.</p>	}	<p>On Indictment for a Misdemeanor.</p>	10
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Freehold, N. J., April 7, 1920.

Before RULIF V. LAWRENCE, Judge, and a jury.

APPEARANCES.

For the State—CHARLES F. SEXTON, Esq., Prose- 20
cutor of the Pleas.

For the Defendants—WILLIAM L. EDWARDS, Esq.,
and HAROLD McDERMOTT, Esq.

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 MONMOUTH COUNTY QUARTER SESSION.

10	THE STATE vs. JACOB GOLDFARB and ALEX. ISRAEL, Defendants.	}	On Indictment for a Misdemeanor.
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Freehold, N. J., April 7, 1920.

20 Mr. Edwards: If your Honor please, there is a severance here in this case. For the purpose of making a motion I should like to withdraw the plea of not guilty in behalf of Goldfarb.

The Court: What is the nature of your motion, a nolle pros?

Mr. Edwards: No, sir; to quash the indictment, a motion to quash the proceedings.

30 Now, if your Honor please, this indictment charges the defendant, Goldfarb—there is a severance in this case, I understand—"late of the Borough of Belmar, with having on the 18th day of August, 1919, at the City of Brooklyn, in the State of New York, one automobile of the value of \$1,000 of the goods and chattels of Elsie Schustler then and there being found, unlawfully did steal, take and carry away, and then the said Jacob Goldfarb and Alex. Israel did bring the said automobile so stolen, taken and carried away into this State, to wit: at the Borough of Belmar," etc.

40 Now the second count is that for receiving and states: "And the grand inquest aforesaid upon their oaths aforesaid do further present that the said Jacob Goldfarb and Alex. Israel, late of the

Borough of Belmar," etc., "on the 18th day of August," etc., "at the City of Brooklyn, in the State of New York, one automobile before that feloniously stolen, taken and carried away, unlawfully and feloniously did receive and have"—

The Court: Does the first count charge the larceny of the automobile?

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Mr. Edwards: Yes, sir; and the second charges the receiving. The first count in this indictment charges the larceny of the automobile in question in the City of Brooklyn and State of New York, although it also lays the venue in this language, "in the County of Monmouth, on the 18th of August, in the year"—no, there is no date. It is not there. I think perhaps it would be better to read the whole of that. "Present that the said Jacob Goldfarb on the 18th day of August, in the year of our Lord one thousand nine hundred and nineteen, with force and arms at the City of Brooklyn, in the State of New York, one automobile of the value of \$1,000 of the goods and chattels of Elsie Schustler then and there being found, unlawfully did steal, take and carry away and then the said Jacob Goldfarb and Alex. Israel did bring the said automobile so stolen, taken and carried away into this State, to wit: at the Borough of Belmar, in the County of Monmouth, 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."

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Now the second count is for the receiving of the same automobile in the same City of Brooklyn, and they lay the venue as to its being also in the State of New York. Now I imagine, if your Honor please, that here are alleged two complete crimes that the stealing and the receiving knowing it to have been stolen are complete crimes within them-

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10 selves. And indeed if that were not so, if they were incomplete crimes within themselves, I would still contend that under our cases this Court has no jurisdiction to try the two, even taking cognizance of the fact that the crimes were committed in New York City. And for that point I refer your Honor to the language used in the courts of this State to this effect: (Reads from decision.)

My second point is that the act itself precludes this Court from taking jurisdiction of this case. May I read the statute? It reads:

(Mr. Edwards reads from statute.)

20 Now that is so clear and so plain that there is no disputing the fact that the Legislature took upon themselves to give to the courts of this State the power to convict and punish for a crime that was committed in another state.

The Court: Simply because the result of the crime was brought into New Jersey?

Mr. Edwards: Yes, sir.

The Court: That is, for larceny?

30 Mr. Edwards: Yes, sir. That is, the jury must find before it can find anything else that a crime has been committed under the indictment; namely, in the State of New York and the City of Brooklyn, before they can determine the proposition as to whether or not the defendant brought the goods into this State knowing them to have been stolen. In other words, I conceive if the Legislature were to have said in effect or substance, "Any person at any place without the state who brings the same into this State may be convicted and punished for a misdemeanor."

40 The Court: You think it would be good, do you?

Mr. Edwards: I do, because there would be one

continuous action, that is, the receiving and the bringing in; and the very fact that they must bring it in would make it one continuous action, and indeed other statutes which we have upon our statute books so state. But to say as this statute does; namely, "that they may be convicted and punished in the same manner as if such larceny and receiving (not the bringing in) had been committed in this State, to me is overstepping the bounds. 10

I have several cases directly upon that point, one of them decided by Chief Justice Beasley in this State. It is a lengthy opinion and I do not conceive it is necessary to read it, but I do not presume that you could act upon it otherwise than Judge Martin did some years ago. And for that reason also I ask that the indictment be quashed. 20

Then again, if your Honor please, I have made an application to your Honor, or rather presented a petition for compulsory process against one of the witnesses and this morning I am confronted with the fact that two other witnesses refuse to come from the City of New York to this court-house for the purpose of attending this court. Now I contend that our constitutional rights are there invaded. If the Legislature pretended to give this Court jurisdiction or any court in this State jurisdiction to try or to take cognizance of an offense that occurred in another state they should have put into the hands of the defendant an instrument which the Constitution of the United States guarantees him, that is, the right of compulsory process and the right to have his witnesses here. 30

Now I will read your Honor one of the sections of the State Constitution, which is practically a redraft of the United States Constitution, which says: "that the accused shall have the right to a speedy and public trial by an impartial jury, be 40

confronted by witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense."

10 Now we are precluded from having compulsory process and if your Honor were to grant compulsory process it would be manifestly useless upon its face, because neither this Court nor any other can compel a resident of another state to come into this State by its process and the Legislature in passing that act has simply taken the right guaranteed to us by the United States Constitution away from us.

The Court: Your point is you have a material witness who will not come here?

Mr. Edwards: They will not come here.

20 The Court: Perhaps you can agree that if they were here they would testify to certain things.

Mr. Edwards: That may be so. But I contend I have a constitutional right here and I am not going to let go of it. I may add for your Honor's edification, although I assume your Honor is familiar with the case, that these are the words of Chief Justice Beasley in one of the important cases of this State (reads from case).

The Court: What is that case?

30 Mr. Edwards: The State vs. Wyckoff.

The Court: I will hear you, Mr. Sexton.

(Mr. Sexton replies.)

The Court: The respective motions of the counsel for the defendant will be denied. In case the Court has the power to pass upon them, even to the extent of declaring this statute unconstitutional, still the Court will recognize the well known rule that the proper forum for the decision of this question is the Supreme Court or the Court of
40 Errors and Appeals. The trial court should not

decide that, because if that were done then the question could not be definitely settled in the proper forum. If I should grant your motion the indictment would be quashed, and the State has not right of appeal, and therefore it is not my duty to put the State to such a disadvantage in that respect.

10

I am frank to say, as I have said heretofore, on the question of the constitutionality of this statute, I think there is very reasonable authority for the contention of counsel in a number of the courts in the different states in the United States. I was quite surprised to find in examining this question a while ago in another case of a similar character involving this precise question how many cases there were which seemed to distinguish this particular statute. There is a case in the State of New York where there is a statute almost the duplicate of this, except the mere addition of the article. There was a difference in the use of the article "two persons" instead of "any persons." Apparently the Legislature of this State borrowed this statute from New York.

20

Mr. Edwards: May I say that this statute was taken up by George Gordon Battle and the courts held there that the introduction of evidence from another state could not be admitted—the introduction of evidence of a crime or a partial crime that occurred in another state would not be admitted.

30

The Court: It is not my understanding that the question has been passed on as to its constitutionality. However, we need not discuss that. The Court's view is that I ought not to decide this motion adversely to the State under circumstances which would prevent that point being raised as it should be raised. Therefore the motions of counsel for the defendant, in both respects, I will deny them.

40

(Exception noted for defendant as ground of appeal.)

10 Mr. Edwards: Now, if your Honor please, I have had looked up the question as to whether this case has ever been ruled down to this Court. I understand that there has been no rule entered ruling down the indictments found at the last term to be tried at this term.

The Court: Ruling down the indictments from the Oyer and Terminer to the Quarter Sessions?

Mr. Edwards: Yes, sir; from the Oyer and Terminer to the Quarter Sessions.

The Court: What does the record show?

Mr. Edwards: I know they were looked up and none was found.

20 The Court: I would be very much surprised if that were not so, because the Court announced—

Mr. Edwards: I did not look it up, if your Honor please, personally. I am simply taking that precaution.

Did I understand your Honor to pass on the second point I raised as to compulsory process?

The Court: Well, I denied your motion in that respect.

Mr. Edwards: That is, as to compulsory process?

30 The Court: Yes, sir. And I may say that I am denying that upon your statement in respect to the commission that was referred to, that he did not resort to that.

Mr. Edwards: Well, I could not resort to that, if your Honor please; if it was with regard to one of these witnesses I mentioned who refused to come down.

40 The Court: Well, this case has been on trial since December 13th, I think if you intended to resort to that you should have resorted to it in that respect before this time.

MRS. ELSIE E. RONAN, sworn for the State.

Direct Examination by Mr. Sexton:

Q. Mrs. Ronan, where do you live? A. I live at 136 Herkimer Street, Brooklyn, New York.

Q. And where did you live about August last? 10

A. I lived at 132 Herkimer Street, Brooklyn, New York.

Q. And you were the owner or are the owner of an automobile? A. I am.

Q. Pardon me, Mrs. Ronan. You have been married recently; is that so? A. I was married on June 29, 1918.

Q. And what was your name before you were married?

Mr. Edwards: How is that material? 20

Mr. Sexton: Well, we will find out in just a minute.

The Court: I presume he wants to show that the car in question was owned by Mrs. Ronan at the time before she was married. that is what you want to show, isn't it?

Mr. Sexton: Yes.

By the Court:

30

Q. What was your name at that time when the car was stolen? A. My name was Elsie E. Ronan at the time it was stolen.

Q. At the time it was stolen you were then Mrs. Ronan? A. Yes.

Q. Prior to your marriage what was your name? A. Elsie E. Schustler.

The Court: In other words, the name in the indictment is Schustler? 40

Mr. Sexton: Yes, that is the point exactly.

By Mr. Sexton:

Q. What kind of a car was that you owned? A. I owned a four cylinder Oldsmobile.

Q. Did anything happen to it on or about August last? A. It was stolen.

10

Mr. Edwards: I object to that unless she answers yes or no.

The Court: Yes, you may answer yes or no. Did anything happen to it at that time in question?

Q. In August last? A. Yes, sir.

Q. What was it? A. It was stolen on August 21st, Thursday evening.

20 Q. And from where was it stolen? A. It was stolen from the front of our apartment.

Q. That is, on Herkimer Street? A. At 132 Herkimer Street, Brooklyn.

Q. What did you do upon ascertaining that the automobile had been stolen?

Mr. Edwards: I object to that as irrelevant and immaterial, as to what she did in New York State.

30

The Court: The objection is overruled. She may answer.

Mr. Edwards: I further object to it upon the ground that the indictment says that the automobile was stolen on the 18th of August, the proof now is that it was on the 21st of August, and we are not concerned with anything that happened on the 21st.

40

Mr. Sexton: That appears to be so, if your Honor please. But our contention is that the date is immaterial in it anyhow.

The Court: No, that is not the essence of the offense.

Mr. Sexton: No, it is not.

The Court: You may want to move to amend.

Mr. Sexton: I will at the proper time.

The Court: The objection is overruled. 10
You may have an exception.

(Objection noted for defendant as ground of appeal.)

(Question repeated.)

A. I immediately went to the corner to find a policeman and I couldn't find one on the corner of Nostrand Avenue and I went—

Mr. Edwards: May I, if your Honor 20
please—

The Court: No. You reported the matter to the police, did you, Mrs. Ronan?

A. Yes.

The Court: Go on from there.

Q. Did you make efforts to ascertain what had become of your car? 30

The Court: She says she did; she reported it to the police.

Q. Have you recovered your car? A. I have.

Q. And when was it recovered?

Mr. Edwards: I object to all this line of testimony, if your Honor please, on the ground that it is a transaction that took place in New York State. 40

(Objection overruled. Objection noted for defendant as ground of appeal.)

A. When did I receive it as my own? I received it as my own from the agent, Mr. Reeves, in Asbury Park on September 9th, last, 1919.

10 Q. Had you seen it prior to September 9, 1919, and after it had been stolen? A. I had.

Q. Where had you seen it? A. I saw it on September 8, 1919, in the garage of Mark Guy on Main Street.

Q. Do you know Mr. Reeves? A. Yes, sir.

Q. Sitting with me? A. Yes, sir.

Q. Were you able to identify your automobile at the time, namely, on September 8th? A. Immediately.

20 Q. And identify it? Just tell the jury how you could tell it was your automobile. A. I knew that like a mother knows her own child, because I have driven the car ever since I have owned it, and I knew it by its color and by the doors and by a mark on the dash about an inch square on the left hand side of the dash, which is a Circassian Walnut, there was a piece broken off; and I also knew it by the hub caps, which were painted brown, and the machine outside was painted Fleetwood blue and the
30 hub caps were brown and the bumper was also painted Fleetwood blue and light red, and the rear had a tire rack which was originally there to carry one tire but had been made over to carry two, and in such a way that it would never be found on any other car, and I also could identify it by the engine number, which is 73 x 15760—

40 Mr. Edwards: I object to that testimony and ask that that be stricken out unless the engine or something—it is not primary evidence, in other words.

The Court: The objection is overruled. You may have an exception. Any witness who can reel off a number like that is entitled to at least having the record limit for the time being, whether you cross-examine or not and destroy it.

(Objection noted for defendant as ground of appeal.) 10

A. And I also recognized it by the top of the car, which my husband has had stained since to a black dye stain, and which originally was a tan.

Q. So there was no doubt whatever but that it was your car? A. No, there was no doubt in my mind at all.

Q. Who was home at the time this car was taken? 20

(Objected to. Objection overruled. Objection noted for defendant as ground of appeal.)

A. At my home?

Q. Yes. A. My husband and I, also had some company that evening.

Q. And to the best of your knowledge what time was it the car was taken? A. It was taken between twenty minutes of eleven and eleven o'clock that evening. 30

By the Court:

Q. Where was it Mrs. Ronan, at that time, on the street or in a garage? A. It was on the street in front of our apartment, and it was also locked.

Q. Who first discovered the loss of the car? A. I did.

Objected to as irrelevant and immaterial. 40
The Court: I don't see how it is material.

Is it? What do you want to show by that?

Mr. Sexton: No, probably it is more or less of a detail, as to the actual loss of it. You may take the witness.

Cross Examination by Mr. Edwards:

10

Q. You had the number of the car, had you, Mrs. Ronan? A. Yes, I have the number of the car.

Q. How long have you had the number? A. Since I owned it.

Q. You knew the number from the time you owned it, did you? A. I did.

Q. You went to the police immediately after you discovered the loss of your car? A. Yes.

20 Q. And that was in Brooklyn? A. I telephoned to the police in Brooklyn.

Q. Well, you telephoned to the policemen in Brooklyn? A. Yes.

Q. That you had lost your car? A. Yes.

Q. You didn't know who took it? A. No.

Q. To your own knowledge you don't know who took it at this moment, do you? A. What do you mean by my own knowledge? Explain it.

Q. You didn't see it stolen?

30 By the Court:

Q. You didn't see anybody take it? A. No, I didn't see it stolen.

By Mr. Edwards:

Q. Neither did you see anyone in possession of it except Mark Guy; is that what you said? A. Will you kindly repeat it?

40 Q. Neither did you see anyone with it in their possession except Mark Guy, whom you have men-

tioned here a moment ago? A. At what time do you mean?

Q. At any time after the car was stolen. A. Well, the first I saw it was in Mark Guy's garage.

Q. How long after you lost the car? A. It was on the 8th of September I saw it in Mark Guy's garage. 10

Q. How did you come to go to Mark Guy's garage? A. With Mr. Reeves.

Q. Did you know Mr. Reeves before that?

By the Court:

Q. In other words, what was it that induced you to go to Mark Guy's? A. Why, I went with Mr. Reeves as he represented the State. 20

By Mr. Edwards:

Q. Did you know Mr. Reeves before that, is what I asked you. A. Before I went?

Q. Yes? A. No, I didn't.

Q. Who was it told you that it was at Mark Guy's? A. Mr. Reeves.

Q. Did he telephone you or write to you or what? A. He spoke to me.

Q. Where? How? A. In his office. 30

Q. Well, how did you come to go there? A. I went there as the New York police told me my car was down there and I was to go there to recover it.

Q. You are certain the car you saw in Mark Guy's garage—that is at Asbury Park, is it? A. Yes.

Q. Was the car that you lost? A. The car that was stolen. 40

Re-direct Examination by Mr. Sexton:

Q. Just one question. Were you married or not when you purchased the car? A. I was single when I purchased it.

10 By the Court:

Q. Well, there is no doubt that your name was Schustler at that time and that accounts for the name in this indictment, does it not as Schustler? A. Yes, and the reason they have this indictment is because I wrote the entire history of the car to Commissioner Dill giving my single name and married name, the entire history of the ownership.

20 Q. The Motor Vehicle Commissioner of New Jersey? A. Yes.

By Mr. Edwards:

Q. Did you write that information before you got in touch with Mr. Reeves or after? A. I wrote that before.

30 Q. How long after you wrote that letter to Mr. Commissioner Dill was it that you received word from Mr. Reeves? A. I didn't receive word from Mr. Reeves, I received word from the New York police on the Saturday previous to go down to Asbury Park to identify my car.

Q. Not what the police told you, but you received word from the police of New York, is that it? A. Yes.

ARTHUR T. RONAN, sworn for the State.

Direct Examination by Mr. Sexton:

40 Q. You are the husband of the last witness, Mr. Ronan? A. Yes.

Q. Do you recall the evening that the automobile in question was stolen? A. I do.

Q. Describe the automobile. A. The Oldsmobile was a four-cylinder car, model 43, 1916, painted Fleetwood blue, carried a bumper of the same color, with a handmade tire rack, made by a blacksmith, which was exceptional on that model; a few slight tears in the top that had been repaired, and the inside of the top had been dyed black.

10

Q. And you have already said that you recall the evening that it was stolen? A. Yes.

Q. What time was it, about? A. Between 10:40 and 11:00 o'clock.

Q. And after the car was stolen what did you do if anything? A. We endeavored to locate a policeman and then we telephoned to the police headquarters.

20

Q. What was the value of the car? A. \$1,000 when it was new.

Q. Did you see the car again after it was stolen? A. Not until we saw it in Asbury Park.

Q. And what day was that? A. September 8th.

Q. And you were then down with your wife? A. Yes.

Q. And where was the car then? A. It was impounded in Mark Guy's garage.

Q. Did you meet Mr. Reeves on that occasion? A. Met Mr. Reeves on that day.

30

Q. And you were then able to identify the car as belonging to your wife and was stolen? A. Yes, sir.

Q. The car is now in the possession of whom? A. Of my wife.

Cross Examination by Mr. Edwards:

Q. How long have you had the car? A. My wife had the car since she bought it. It think it was June 8, 1916.

40

Q. Bought it new? A. Bought new; yes, sir.

Q. Sure of that? A. What was the question?

Q. Did she buy it new? A. Yes, she did.

Q. You are sure of that? A. Yes, sir.

10

SAMUEL MICHELSON, sworn for the State.

Direct Examination by Mr. Sexton:

Q. Where do you live, Mr. Michelson? A. Belmar.

Q. What is your business? A. Hotel.

Q. Are you in any other business? A. Automobile.

20

Q. With whom, if anyone? A. Joe Bender.

Q. Do you know Alex Israel? A. Yes, sir.

Q. Do you know Jacob Goldfarb? A. Yes, sir.

Q. How long have you known Jacob Goldfarb?
A. Oh, for about two years.

Q. And he is the defendant sitting behind me?
A. Yes, sir.

Q. How long have you known Alex Israel? A. Since last August.

30

Q. When did you first meet Alex Israel? A. About the first week in August, I believe. The 12th, was it?

Q. Did you have any business dealings with him? A. Partly.

By Mr. Edwards:

Q. With whom? A. Israel. That is, not I myself personally. Joe Bender did.

By Mr. Sexton:

40

Q. Were you present at the time? A. Well, not at the time, no.

Q. How did you first come to meet Israel? A. Well, I came down, we had a garage down the beach and I came down to the garage and I found him there. He was storing there.

Q. Storing what? A. That is, he used to store cars in the garage. He would come in to get the car washed; it seems to me stay there over night. I don't exactly remember how it was. I think he came in to get the car washed. 10

Q. What kind of a car was that? A. A Buick.

Q. What kind of a Buick? A. Six cylinder.

Q. Do you know the model? A. No.

Q. What time was it you first saw him then? A. It seems to me it was on Saturday afternoon, I think it was, when I first came to the garage, and I couldn't exactly say now. I found him and Joe Bender there and they were discussing about buying the car. 20

Q. Buying what car? A. That Buick. Finally, at last, they made a deal. They traded a Buick for a Maxwell they take.

Mr. Edwards: How is that material?

The Court: Well, yes, I think it is a circumstance to go to the jury, their relationship.

Mr. Sexton: It has another bearing, if your Honor please. It develops that the Buick car was a stolen car. 30

The Court: Well, no one seriously objects to it. Go on.

Q. Now, were you present the next morning? A. When the trade was made? A. Yes, I was there.

Q. What was the trade?

By Mr. Edwards:

Q. Between whom? A. He gave him a Maxwell sedan— 40

Q. Between whom? A. Between Israel and Joe Bender.

By the Court:

10 Q. In your presence? A. That is when they made the trade the next day, I came there when they made the trade.

Mr. Edwards: I object to the evidence.

The Court: You intend to connect this testimony with the defendant, do you not?

Mr. Sexton: Yes.

The Court: With that assurance on the part of the prosecutor you may proceed. If you don't I will strike it out.

20 Objection noted for defendant as ground of appeal.

By Mr. Sexton:

Q. You were about to say you came there? A. Came there, yes. They had arrangements made, I think, to give him the Maxwell.

Objected to.

30 Q. No, not what you think, what you know. A. To give him the Maxwell, standing \$200.

Objected to.

Q. Do you know that was the arrangement? A. That was about the arrangement.

Q. Well, there was a trade of a Maxwell automobile and some money?

40 Mr. Edwards: I object to the prosecutor telling him or leading him.

The Court: It is leading.

By the Court:

Q. What became of the Buick car? Did it come into your possession? A. Yes, sir.

By Mr. Sexton:

Q. At that time did you see Goldfarb there? A. He used to come around pretty often. 10

Q. At that particular time when the deal was being made with the Buick car? A. No, not right then.

Q. How soon after that did he come? A. Well, he come around to see me after that later on.

Q. Did you have any conversation with him? A. Well, first I asked—he is a man that knows about cars and I asked him what he thought about the car. 20

Q. About which car? A. About the Buick whether it was a good deal; and he thought it was all right and I asked him whether he knew Israel. He thought he was all right to deal with.

Q. You asked him if he knew Israel? A. Yes.

Q. What did he say? A. Yes, he thought he was all right.

Q. What else did he say about Israel? A. Nothing else. 30

Q. Did he come in with Israel? A. No, he came in to see me. He used to come to see me quite often down there.

Q. Do you ever recall Goldfarb introducing Israel? A. No, that was the only time. I asked him whether he knew Israel.

Q. Now, do you recall a transaction in reference to an Oldsmobile? A. Yes.

Q. When did that occur? A. That was later, about a week or two weeks later, I believe it was. 40

Q. Can you fix the date? A. I couldn't. I could if I looked up my books home.

Q. And what was the transaction in reference to the Oldsmobile? A. That was a trade also.

10 Q. With whom? A. With Israel. We traded a Buick—no, he had an Oldsmobile we traded him for a big four cylinder Buick we had.

Q. When you say we who are you referring to?
A. Joe and I, Joe Bender and I.

| Mr. Edwards: And Israel, he said.

A. And Israel, yes.

Q. Did you see Goldfarb about that time? A. No. He might have been but I never paid much attention.

20

The Court: No, strike it out.

Q. Later on what did you ascertain in reference to the cars, namely, the Buick and the Oldsmobile?

Objected to. |

The Court: How do you say that is competent? The witness has said that so far as that transaction was concerned he had no contract at all with Goldfarb.

30

Mr. Sexton: That is true.

The Court: Well now, how do you say it is competent?

Mr. Sexton: The state's case is this, if your Honor please, I don't want to develop it at this time, but Goldfarb was making—Israel was the tool of Goldfarb.

40

The Court: I understand that is going to figure—at least, I read between the lines and see what you are getting at; but how do you do it by this testimony, especially as it hap-

pened after the alleged larceny of the cars in question?

Mr. Sexton: Well, the question was directed as to the condition of the cars. For instance, I had in mind whether they were stolen cars or not.

The Court: I understand that. This Oldsmobile was an incident in the present offense, wasn't it? 10

Mr. Sexton: No, sir; we are speaking of the Oldsmobile. That is the indictment we are trying.

The Court: Oh, I beg your pardon. You are trying the Buick car, aren't you?

Mr. Sexton: No, sir; we are trying the Oldsmobile.

Mr. Edwards: It sounded as if we were trying a Buick so far. 20

The Court: Yes, all right. The objection is overruled. You may have an exception.

Objection noted for defendant as ground of appeal.

Mr. Edwards: I understand that it is all going in on the ground that he is going to connect Goldfarb up with the Buick car.

The Court: So there won't be any more confusion, what does this indictment charge, the theft of an Oldsmobile? 30

Mr. Sexton: Yes.

The Court: Not the theft of Mrs. Ronan's car?

Mr. Sexton: Yes, the Oldsmobile.

The Court: I understood him to say it was a Buick.

Mr. Sexton: No, your Honor is mistaken. It was an Oldsmobile.

The Court: All right. Go on. 40

Q. What became of the Oldsmobile? A. We sold that in Asbury Park to Bennett and Heath.

Q. And what became of the Buick car? A. We sold that in Long Branch—I have forgotten his name.

10 By the Court:

Q. In any event to some one in Long Branch?
A. Long Branch.

By Mr. Sexton:

Q. What did you learn, if anything, later in reference to the two cars? A. They were stolen.

20 Objected to.
 The Court: Oh, yes, not what he learned.
 Strike it out.
 Mr. Edwards: I ask that that be stricken
 out.
 The Court: Strike it out.

Q. Did you have cause at any time to investigate the title to these cars? A. No.

Q. Do you recall going to Mr. Reeves? A. Yes.

30 Q. When was that? A. Well, once I was a little
 suspicious, kind of felt a little shaky about it, I
 went to see him—

 Mr. Edwards: I object and ask to strike
 that out.

 The Court: Yes, strike his feelings out.

Q. What did you do, is the question. A. Well, I went to see Mr. Reeves and wanted to know what he thought of it.

40 Q. Thought of what? A. Of that car.

Q. Which car? A. Let me see. Oh, no; not those cars at all; I went to see about a Hudson afterwards.

Q. And there was some investigation made about a Hudson car?

Objected to as leading, irrelevant and immaterial. 10

The Court: Yes, it is leading. The objection is sustained as leading.

Q. As a result of the investigation what did you find? A. Well, I didn't find anything. Well, we found out afterwards, I suppose.

Mr. Edwards: I object to the latter part of the statement. Didn't find anything, that may remain. I object to the rest. 20

The Court: Strike it out, the latter expression as to Mr. Reeves.

Q. As I understood you to state, you sold those two cars, the Buick and Oldsmobile, one to a man in Asbury Park and one to a man in Long Branch?

A. Yes, sir.

Q. Have you suffered any financial loss by reason of these sales? 30

Objected to as immaterial. Objection sustained.

Q. Did you see the Buick car or the Oldsmobile car after you sold it? A. No, sir.

No cross examination.

JOSEPH BENDER, sworn for the state.

Direct Examination by Mr. Sexton:

Q. You are the man referred to by Mr. Michel-
son as his partner? A. Yes.

10 Q. Do you know Israel, Alex Israel? A. No, I
didn't know him before, when I bought a car. Now
I know.

Q. When did you first become acquainted with
him? A. In July sometime.

Q. Do you know Goldfarb? A. Oh, I know Gold-
farb over a year.

Q. Do you recall having any business dealings
with either Mr. Goldfarb or Israel? A. Well, I
didn't done no business with Goldfarb. I done
20 business with Israel.

Q. And what was it?

Mr. Edwards: I object to that as irrele-
vant and immaterial, unless they connect
it up.

Objection overruled. Objection noted for
defendant as ground of appeal.

By the Court:

30 Q. What was the business? A. Well, a Buick
car.

By Mr. Sexton:

Q. And when was it? A. Sometime in July. I
don't know the date.

By the Court:

40 Q. 1918 or 1919? A. 1919.

Q. 1919? A. Yes, sir.

By Mr. Sexton:

Q. What kind of a Buick car was it? A. Six cylinder, 1916.

Q. And what was the deal with Israel?

Mr. Edwards: I object.

10

The Court: The objection is overruled, with the understanding that the state will connect this testimony with the defendant.

Q. What was the deal? A. The deal was, I was trading with him on a Maxwell car, sedan. We had a garage on the beach and we had a lot of cars coming in and going out, because it was in the summertime, in July. And this Israel drove in the garage with a little six cylinder Buick, 1916. He washed his car and he bought gasoline, five gallons; and afterwards we was talking and he asked me what business I am in, and I told him I was buying cars and selling cars and storing. And then we started to do business with him on the Buick car. So I gave him \$260 to boot on the Maxwell car.

20

Q. Did you see Goldfarb or not? A. Oh, I seen him later.

Q. How long afterwards? A. About an hour.

30

Q. Where was he? A. He come up always over Sunday, every Saturday he come up in our garage, and of course he is coming up for two days vacation every summer. He come up every Sunday, almost.

Q. Later on did you have any transaction in reference to the Oldsmobile? A. Yes, about a week afterwards.

Q. What was that?

40

Mr. Edwards: With whom?

Q. With whom? A. Israel.

The Court: The same man, Israel.

Q. What was that transaction?

10 Mr. Edwards: I object on the same ground.

The Court: The same ruling. The same ruling will apply to all this testimony on the ground that you state, namely, it is a transaction in another state.

Mr. Edwards: No.

The Court: Involving an alleged larceny in another state?

Mr. Edwards: No.

20 The Court: Well, state it.

Mr. Edwards: The objections that I have been making so far have been for the fact that transactions have been taking place between Mr. Michelson and Israel and Mr. Bender and Israel at which Mr. Goldfarb was not at all present.

30 The Court: Oh, yes; the court has already stated and will continue to state, as it will be understood that unless the state connects this testimony with your client it will all be stricken out. Proceed.

Question repeated.

A. He drove in the garage with an Oldsmobile.

Q. Well, what happened with the Oldsmobile?

A. He drove in the garage and we traded him for a four cylinder Buick 1916. I gave him \$60 boot.

Q. What did you do with the Buick automobile?

40 A. I sold it to Jake Schwartz, of Long Branch, for \$800.

Q. What did you do with the Oldsmobile? A. I sold it to two fellows from Ocean Grove. I don't know the name—two young fellows, used to work on the beach.

No Cross Examination.

10

Jacob Schwartz, sworn for the state.

The Court: Are you calling Mr. Schwartz for the purpose of showing that he purchased the car?

Mr. Sexton: Yes.

The Court: Of the former witness?

The Court: Is there any question, any excuse? 20

Mr. Edwards: Not to my knowledge.

The Court: Is it material then, unless you have some reason for doing it?

Mr. Sexton: No, they were eventually taken away from Mr. Schwartz.

The Court: All right. Do that.

Mr. Edwards: I am not going to dispute the fact that he bought the car, bought of Mr. Bender. 30

Mr. Sexton: And that it was later taken away from Mr. Schwartz?

The Court: Well, prove it by Mr. Bender.

Direct Examination by Mr. Sexton:

Q. Mr. Schwartz, you live in Long Branch? A. Yes, sir.

Q. What is your business? A. Taxi-cabs.

Q. Do you recall buying a Buick automobile from Mr. Bender? A. From Mr. Michelson. 40

William D. Walling—Direct Examination.

Q. Michelson? A. Yes.

Q. When was it? A. Around the 20th of August, 1919.

Q. And how much did you pay for it? A. I gave him \$500 and a Ford car.

10 Q. Have you got that car yet? A. What, the Ford car?

Q. No, the Buick car. A. No. Chief Walling took it away from me.

By the Court:

Q. Chief of police? A. Yes.

By Mr. Sexton:

Q. When he take it away?

20

Objected to.

The Court: Fix the date.

A. About five weeks after I bought it. I had it about five weeks.

Cross Examination by Mr. Edwards:

30 Q. Is that the car you wanted to sell to Kaplan? A. Kaplan?

Q. Yes. A. No, I didn't want to sell it. I bought it for myself.

WILLIAM D. WALLING, sworn for the state.

Direct Examination by Mr. Sexton:

40 Q. You are Chief of Police of Long Branch, Mr. Walling? A. Yes, sir.

Q. Do you know Jake Schwartz? A. I do.

Q. Do you recall an incident concerning a Buick car in reference to Jake Schwartz? A. I do.

Q. When did that occur? A. September 3rd.

Q. What was it? A. He bought a Buick, seven passenger Buick. I have the number here of it, that is, the motor number. It was reported to me by the New York police that it was a stolen car. 10

Objected to.

By the Court:

Q. As a result of something which was reported to you by the New York police you made an examination of this car? A. I seized the car, yes, sir. 20

By Mr. Sexton:

Q. In Mr. Schwartz's possession? A. Yes, sir.

Q. And you examined the number? A. Yes, sir.

Q. Can you remember the number without looking at your memorandum? A. No, sir.

Q. Did you make the memorandum at the time? A. Yes, sir. 30

Q. Is that the memorandum you now have? A. No, sir; one similar to it.

Q. Made at the same time? A. This was made later.

Q. How much later?

Mr. Edwards: I don't wish to take objection to that.

Q. What is the number? A. 193225. That is the motor number. 40

Q. Do you recall whether or not there was a frame number on it or not? A. There was a frame number on to it but I don't recall the number. The car was identified by the owner, a man by the name of Dawn, turned over by me to him.

10 Mr. Edwards: All this, of course, is still under objection, your Honor.

The Court: Yes, the objection is overruled.

A. Dawn was the owner of the car. I hold his receipt for the car.

Q. And you turned the car over to him? A. I did, yes, sir.

20

Leroy Wyckoff, sworn for the state.

Direct Examination by Mr. Sexton:

Q. Mr. Wyckoff, you are in the employ of the state of New Jersey? A. Yes, sir.

Q. In what capacity? A. Inspector of motor vehicles.

30 Q. Do you recall having brought to your attention the circumstances concerning a Buick automobile and that of an Olds automobile, one belonging to Elsie Schustler, the Oldsmobile and the other to one Jesse Dawn? A. I do.

Q. When was that, Mr. Wyckoff? A. That was around the latter part of August or the first part of September. I don't know the dates exactly.

40 Q. I have a file of papers belonging to you. Would that refresh your memory if you had that? A. It might. (Examines papers.) Shortly after the first of September, a few days.

Q. How was your attention first called to this matter, Mr. Wyckoff? A. My attention was first called by Mr. Reeves.

Q. And what did you do? A. Well, my attention was first called to the Hudson car in question. That is how I got the lead on it.

Q. Then following up the Hudson car what did you ascertain, if anything? A. I located this Buick car and the Oldsmobile car. 10

Q. Located them where. A. The Oldsmobile in the garage of Mark Guy undergoing repairs and the Buick was in possession of a man by the name of Schwartz in Long Branch. On the day in question it was in New York or out of the City of Long Branch.

Q. Schwartz was? A. The Buick car was.

Q. What did you do if anything in reference to the Oldsmobile? A. I impounded that where it was. 20

By the Court:

Q. In Guy's garage? A. Guy's garage, yes, sir.

By Mr. Sexton:

Q. Now will you describe the car that you impounded? A. It was a 1916 Oldsmobile, painted blue with a Circassian walnut small dashboard on there, such as automobiles have. It had been repainted and the hubs painted, showed more or less wear, and the top had been patched, or a couple places scratched and patched. 30

Q. Where did you obtain your information concerning this Oldsmobile.

Objected to.

Mr. Sexton: It is where, not what information concerning this Oldsmobile. 40

Mr. McDermott: What difference does it make?

The Court: Who received information? What do you want to show?

Mr. Sexton: Simply connecting up, that is all, if your Honor please.

10 The Court: With the defendant?

Mr. Sexton: With other witnesses, as getting the whole show.

The Court: I think I will allow you to answer for that purpose.

Objection noted for defendant as ground of appeal.

20 Q. Where did you obtain your information concerning this car? A. You mean information concerning the whereabouts of it or the owner of it?

Q. Well, the owners. I can't lead you. You must tell us. A. The ownership of both cars was traced through the Underwriter's Detective Bureau.

Q. And where are they located? A. They are located at New York City.

Q. Were you present when Mrs. Ronan identified her car? A. Mrs.—

Q. Or Schustler, if you knew her? A. Yes.

30 By the Court:

Q. That car was at Guy's Garage at the time you identified it? A. Yes, sir.

By Mr. Sexton:

Q. What became of that car? A. I released it.

Q. Released it to whom? A. To her.

40 Q. Her, meaning who? A. Mrs. Schustler at that time. That is, I gave her an order to take it.

By the Court :

Q. This lady who was here on the stand this morning? A. Yes .

Q. Under the name of Mrs. Ronan? A. Yes.

No cross examination.

10

SAMUEL REEVES, sworn for the state.

Direct Examination by Mr. Sexton :

Q. Mr. Reeves, you reside at Asbury Park? A. Yes, sir.

Q. You hold a position in reference to the Motor Vehicle Department? A. Yes.

Q. What? A. Inspector and also agent.

20

Q. Do you recall your attention being brought to a matter of an Olds and a Buick car? A. Yes, sir.

Q. And when was that first called to your attention, Mr. Reeves? A. I think it was on September 5th, if that is correct. I think it was on Monday. I think September 5, 1919.

Q. And what did you do? A. What did I do what?

Q. In reference to this matter being brought to your attention.

30

By the Court :

Q. After it was brought to your attention. A. I investigated and through the investigation the Oldsmobile was impounded by the state in Guy's Garage.

By Mr. Sexton :

Q. Were you present when it was identified by the— A. I was, identified by the lady here this morning.

40

By the Court:

Q. Miss Schustler or Mrs. Ronan, as she is now known? A. She came down—

10 Q. What date was that? A. She came down first and identified the car on September 8th about four o'clock in the afternoon. She wanted to take the car away and I told her no, she couldn't take it away, she would have to get an order from the department. So she left for Trenton on the nine, got an order and came back with it. The car was released.

By Mr. Sexton:

20 Q. And Mr. Wyckoff was present at that time?
A. He was.

No Cross Examination.

ALECK ISRAEL, sworn for the state.

Direct Examination by Mr. Sexton:

30 Q. Where do you live, Aleck? A. The last I live I lived in Goldfarb's house.

Q. And where was that? A. 267 South Fourth St., Brooklyn.

Q. Do you know Jacob Goldfarb? A. Yes, sir.

Q. How long have you known him? A. I have known him for about five years.

Q. Where were you working? A. I was working by Mr. Levine in Jersey City.

Q. Where is that? A. 559 Grove St.

40 Q. Did you ever have any conversation with Jacob Goldfarb in reference to automobiles? A. I

Aleck Israel—Direct Examination.

was working for Mr. Levine and Mr. Goldfarb was going around to me, he told me, he says I shall throw away that job and he give me to sell cars, he make me for salesman to sell cars.

Q. What was he going to pay you?

Objected to as immaterial.

10

A. He told me he was going to pay me \$50 on a car, and he showed me where to sell them to.

Q. Well, did you sell any cars? A. Yes, sir.

Q. What is the first one you sold? A. I sold a Buick.

Q. What kind of a Buick? A. I don't know about the cars much, couldn't tell you. I know it was a Buick.

Q. Where did you get the Buick from? A. Mr. Goldfarb. 20

Q. Where? A. New York.

Q. Whereabouts in New York? A. In New York near the ferry.

Q. And what ferry, do you recall? A. That was near Hoboken ferry; yes, near Hoboken Ferry.

Q. Who had the Buick there? A. There was two boys was near the Buick.

Q. Who were they? A. I know them because I worked for Mr. Goldfarb and I knowed they was near, they were hanging around near down where he was working. 30

Q. Do you know their names? A. I forget their names.

Q. Was it Dan and Bob? A. Yes, that is the ones.

Q. Where was Mr. Goldfarb? A. He was coming up in his car down there from the place where the car was, in Goldfarb's car.

Q. Jake Goldfarb? A. Yes. 40

Q. Was he with you? A. Yes, I was in the house and he told me, he said, "Come. I got a car, and we will go to Asbury Park and I will show you where to sell it."

Q. Jake told you that? A. Yes, sir.

10 Q. And then you went down to the ferry, as I understand? A. Then we went down to the ferry and we went over Hoboken ferry.

Q. Who went over the Hoboken ferry? A. Me and him. He had this car and he told me I should go take that car and drive after him.

Q. Who told you what ferry to go to? A. Goldfarb told me. He drive before me.

Q. And who drove the car down to the ferry? A. Down to the ferry?

20 Q. Yes. A. Them boys that was staying near the car.

Q. No, but you went to the ferry? A. I went to the ferry. The car was down there, that Buick.

Q. Were you in the automobile when you went down to the ferry? A. Yes, Goldfarb's car.

Q. Who drove that car? A. Them two boys.

Q. No, the Goldfarb car, who drove that? A. Goldfarb drove that.

Q. Goldfarb took you to the ferry? A. Yes.

30 Q. Then where did Goldfarb go after you left the boys with the Buick automobile? A. Yes, he called them on the side, but I see him give them some money and they went away.

Q. Who went away? A. Them two boys.

Q. And what did Goldfarb say to you then? A. He says to me, "Drive the car after me. I show you where to go."

Q. And did he show you where to go? A. Yes.

Q. Where did he show you? A. I went over Hoboken ferry and I met Mr. Levine's son.

40 Q. Yes? A. And I met him in the street with that car and I told him—

Objected to.

The Court: No, not the conversation. Tell what you did.

Q. You went over the ferry? A. Yes.

Q. And you met Mr. Levine's son? A. Yes.

Q. Now then what did you do? A. I told him 10
I was going to Asbury Park.

Q. Told who? A. Mr. Levine's son.

Q. No, not what you told him.

The Court: It doesn't make any difference what you told him.

Q. Was Goldfarb present when you told this?
A. No.

Q. After you met Levine's son where did you go? A. I stopped by Levine's house. He went to 20
get his coat to go with me.

Q. Where was Goldfarb? A. Goldfarb come right up there because he had me lost at that time, and he come right after me and he found me right down there and I told him I am taking along Mr. Levine.

Q. Did Goldfarb have the car in question at that time? A. Yes.

Q. Where did Goldfarb find you? A. In Levine's house. 30

Q. Then where did you go? A. Then he told me, "Drive after me and drive to Newark"—

Q. Who told you to drive after me? A. Goldfarb.

Q. And then you drove to Newark? A. Yes.

Q. Then where did you go? A. Then we come to Red Bank and we slept down there.

By the Court:

40

Q. Spent the night in Red Bank? A. Red Bank.

Aleck Israël—Direct Examination.

Q. The next morning where did you go? A. The next morning we go to Asbury Park.

Q. Goldfarb go with you? A. Yes, sir.

Q. You followed his car? A. I followed his car.

By Mr. Sexton:

10

Q. Who showed you where to go? A. Goldfarb.

Q. Who paid the bill at the hotel, do you know?

A. Goldfarb.

Q. Do you know who paid the ferry bill? A. Goldfarb paid the ferry bill.

Q. Then when you got to Asbury Park where did you go? A. We went in a restaurant and eat something. Then he says, "Drive with me and I will show you where you go to sell that car."

20

Q. Said that at the restaurant? A. Yes.

Q. Where was the restaurant? A. I think it was on Main Street of Asbury Park.

Q. Did he show you where to sell the car? A. Then he stopped about Eighth Avenue, Belmar, and he told me, he says, "You go in there and drive the car to Michelson's drive the car to the garage on Eighth Avenue, is a garage down there by the corner, and then," he says, "you go in and ask him about washing the car, and he is going to ask you if that car is for sale." Then Bender asked me, he says, "From where you come?" I says, "From Newark." He says, "You want to sell the car?" I says, "Yes." Then about ten minutes later Goldfarb come in. He told me before, "I am going to help you out to sell the car." About ten minutes later he come in and I heard Mr. Bender call him on the side and they had a talk something and then after he bought the car they changed for a Maxwell car.

30

40

Q. How much did you get? A. I had—I forget the amount—\$185.

Q. Who got the money? A. Then after a while Goldfarb called me off on the side, he said—

Q. No, who got the money from Bender? A. I got the money.

Q. You got the money from Bender? A. Yes.

Q. Did you drive the Maxwell car out? A. No, sir. 10

Q. What did you do with it? A. He took it away.

Q. Who took it away? A. Goldfarb.

By the Court:

Q. That is, Goldfarb took the car that Bender traded? A. Yes.

Q. For this Buick car? A. Yes, he sold it in Brooklyn. 20

By Mr. Sexton:

Q. Who drove the Maxwell out of Bender's Garage? A. He make like he buying the car down there; he make himself like he is buying the car from me.

Q. Oh, I see, Goldfarb. I get you. Then he drove the car out? A. Yes, and he give me \$50. I give him the money— 30

Q. Where did you give him the money? A. Outside. He called me outside from the garage and I give him the \$185, then he make like he was buying the car from me and then he give me \$50, then when we was in the office he give me \$50 like he was buying the car from me, and then he drove it away.

Q. What was the \$50 actually for? A. For selling the car.

Q. Where did you go then? A. Then we went back again to Brooklyn. 40

By the Court:

Q. With whom?

By Mr. Sexton:

10 Q. Who did you go with, if you recall? A. He made an appointment where to meet me.

Q. Who? A. Goldfarb.

Q. Where did you meet him? A. I met him on Eighth Avenue, Belmar.

By the Court:

Q. How did you go back from New York? A. In his car?

20 Q. That is what I asked. A. Yes.

Q. He took you back to New York? A. Yes.

By Mr. Sexton:

Q. What became of the Maxwell car? A. His cousin took it away. His cousin was along.

Q. What is his cousin's name? A. I can't tell you. The second name is Goldfarb, too.

Q. His cousin was along with you? A. Yes.

30 Q. Did the cousin stay at the hotel at Red Bank? A. Yes.

Q. All three of you stayed at the hotel? A. Yes, sir.

Q. When he made this appointment to see you in New York where were you to meet him? A. I was living in his house.

Q. Oh, he was going to meet you in his house? Do you remember what day this was? A. No, I couldn't tell you that.

40 Q. Do you remember what month it was? A. I

think it was—I can't tell you for sure but there was—I can't tell for sure.

Q. Now did you come down again? A. Yes, sir; we come down in the house. Then about two weeks later—

Q. Did you have a car with you at that time, have an automobile at that time, two weeks later? 10

A. Yes, sir; he told me, he says, "Come with me and I get another car and you can sell it, too, and you make \$50."

Mr. Edwards: Two weeks later when, Mr. Prosecutor?

The Witness: After the Buick was sold.

Q. Where was it that he spoke to you about coming over, he has got another car? A. In the house.

Q. In the house? A. In the house. I was in the house and he come in. 20

Q. Where did you go? A. In Brooklyn, wasn't it?

Q. I am asking you. A. In Brooklyn.

Q. Where in Brooklyn did you go? A. Oh, about a couple blocks from his house.

Q. From whose house? Where was the Oldsmobile when you got it? A. On the street.

Q. What street was it? A. I can't tell the street. I didn't look what street it was. 30

Q. Who took you to the street? A. Goldfarb.

Mr. Edwards: Which car are you speaking about now?

Mr. Sexton: I am speaking now of the Oldsmobile.

Q. Was anybody in the car when you go there? A. No, sir.

Q. Did Goldfarb get in the car? A. Yes, sir. 40

Recess till 1:15 P. M.

Trial of the cause resumed at 1:15 P. M.

ALECK ISRAEL, resumed:

By Mr. Sexton:

10 Q. We were talking about getting the Oldsmobile and your last answer, or rather, the last question was whether when you got to the Oldsmobile, Goldfarb got in the car. A. Yes, sir.

Q. What is your answer? A. Yes, sir; he got in the car.

Q. Do you remember what street it was that this car was on? A. No, sir.

Q. Are you familiar with Brooklyn? A. Who, me?

20 Q. The different streets. Do you know the different streets in Brooklyn? A. No, I don't know very good.

Q. When you left Goldfarb's house, how far had you walked before you came to where the car was? A. About four blocks.

Q. And how did you know where you were going? A. Because he told me he has got a car down there, and go to the same place where we was before.

30 Q. Goldfarb told you that? A. Yes.

Q. When he said, "I have got the car down there," did he say where it was? A. No.

Q. Did you walk to where the car was? A. Yes, sir.

Mr. Edwards: I submit that the prosecutor ought not to lead the witness.

Mr. Sexton: Well, if you want me to ask him how he got there I will do it.

40 Q. How did you get to where the car was? A. Walked down there.

Q. Who walked there? A. Me and Goldfarb.

Q. What time was it that you got to where the car was? A. It was about eight o'clock in the evening.

Q. Did you drive the car away? A. Yes.

Q. Who drove the car? A. Goldfarb drove it.

Q. Where did you drive it to? A. Staten Island Ferry. 10

Q. And where did you go? A. We go over the Staten Island Ferry and drive straight to Asbury Park. We stopped at a hotel at Red Bank.

Q. Do you remember at what hotel in Red Bank you stopped at? A. No, I don't know the name of it.

Q. Where was it? A. His cousin was there at that time with him.

Q. Which cousin? A. Goldfarb's cousin was that time with him, and we sleep that time in the same hotel, in that hotel. 20

Q. Then where did you go? A. Then we go to Asbury Park.

Q. Whereabouts in Asbury Park? A. He left me in Asbury Park and he says, "You go ahead down to Michelson's."

Q. Who left you? A. Goldfarb. He had his car down there in Asbury Park. He left it, left his car in Asbury Park; and he said, "Go ahead down into Michelson's and I will meet you there. You try to sell him that car." 30

Q. Did you go down there to Michelson's? A. Yes.

Q. Then what happened when you got to Michelson's? A. We sold that car. I had started to sell that car and he came in and he make himself like he wanted to buy that car too.

Q. Which car are you speaking of? A. Oldsmobile. And we came for a Buick. 40

Q. Any money? A. \$60 to boot.

Q. Who got the money? A. I had the money.

Q. What became of the Buick that you exchanged for? A. Goldfarb took it away and he sold it in Brooklyn to a man.

10 Q. Who drove the car back to Brooklyn? A. I drove it. And he was going right—he had his car. He had a Liberty car and I drove after him.

Q. You drove a Buick back? A. Yes, sir.

Q. What did you do with the money you got for the Buick, four cylinder Buick? A. He got the money for it. I didn't have that money. He only give me \$30 from the \$60, and he said he would give me the money when I need it.

By the Court:

20 Q. Well, you say he did give you \$30? A. Yes.

Q. And you gave him the \$60 then? A. Yes.

Q. When did you give him the \$60? A. I gave him on the way, on the way back to Brooklyn.

Q. Back to Brooklyn? Where was it that he gave you the \$30 from this \$60? A. It was on the way. We was going to Brooklyn. We stopped in a restaurant to eat and he give me.

Mr. Edwards: What was that about giving him the \$60?

30 The Court: He testified that he gave the \$60 to Goldfarb on the way from Asbury Park to Brooklyn. Goldfarb gave him back \$30 before they got to Brooklyn. Is that right?

The Witness: Yes, sir.

The Court: And told him that he would give him—

The Witness: That he would give me the rest of the money when I needed it.

40 Q. How much was there due you? How much was the balance? A. \$20.

Q. Making \$60 in all? A. Yes, sir.

By Mr. Sexton:

Q. What was the arrangement with Goldfarb that you were to get for selling these cars? A. \$50 for selling the car.

Q. Did you make any arrangement each time you started out? A. Yes. Of course I left my business and he told me that. 10

Q. Did you go down there on any other occasion? Did you go to Belmar on another occasion? A. Yes.

Q. Another time? A. Yes.

Q. And when was that? A. Well, that was after a while, about a few weeks later, I think. I was locked up.

Q. How did you go to Belmar the last trip? A. By train I come.

Q. And before that had you been down there with another automobile? A. Yes, with a Hudson automobile. 20

Cross Examination by Mr. Edwards:

Q. Where do you say you live? A. The last time?

Q. When you were asked by the Prosecutor a while ago, this morning, you said you lived somewhere, didn't you? How is it you don't understand me and you did understand the Prosecutor? A. Left from where, from the station? 30

Q. Where did you tell the Prosecutor you lived?

By the Court:

Q. Where is your home? A. Oh, Goldfarb, I live in Goldfarb's house.

By Mr. Edwards:

Q. Where is that? A. 267 South Fourth Street.

Q. You didn't live at number 7 West 112th Street, did you? A. I lived where? 40

Q. Did you or didn't you live in West 112th Street? A. No, sir.

Q. Did you ever swear that you did? A. My sister lived in—

Q. Did you ever swear that you did? A. No, sir; I don't think so.

10 Q. You have told the truth about what took place between you and Goldfarb and these automobiles today, have you? A. Yes, sir.

Q. You have told other stories about it, haven't you? A. What stories do you mean?

Q. You have told other stories other than what you have told here this morning to the court and jury, haven't you? A. Yes, I told about Goldfarb.

20 Q. You told different stories than you have told to the court and jury here this morning, haven't you? A. Yes, I told them when Mr. Goldfarb was locked up with me he told me he says he is going to take me out if I told different I would sign a paper for him, he takes me out if I told different, I would sign a paper for him. I should sign a paper for him—

The Court: What he said was he would have told a different story if Goldfarb had taken him out.

30 Q. You even swore to a different story, didn't you, under oath? A. Under oath?

Q. Yes. A. No, sir.

Q. Do you know Mr. Feingold? Stand up, Mr. Feingold. Did you ever see that gentleman before? A. Yes, when I make out a paper in jail.

Q. Do you know this gentleman? (Indicating Mr. McDermott.) A. Yes, he was there that time.

40 Q. Did they tell you to tell a different story and swear to it? A. They didn't tell me. Goldfarb told me that.

Q. Didn't this gentleman ask you before he swore you to this story that you have told different than what you have told this court and jury this morning, whether or not that was the truth that you swore to over in the jail? A. I told him he wasn't—

Q. Did he or didn't he?

10

(Question repeated.)

Q. Do you understand the question? A. I don't understand very good.

The Court: Well, I don't either. Put it over again.

The Witness: Just explain me good.

(Mr. McDermott requested to stand.)

20

Q. Did this gentleman ask you before you signed a statement over in the jail whether that statement that you signed over in the jail was the truth, the whole truth and nothing but the truth? A. I didn't tell him the truth—

Q. Did he or didn't he? A. I didn't tell him the truth that time.

(Question repeated.)

30

By the Court:

Q. In other words, the paper that you signed in the presence of Mr. McDermott? A. Yes.

Q. You said to Mr. McDermott it was the truth? A. Yes, I said it.

Q. You told Mr. McDermott it was the truth, did you? A. Yes, Goldfarb told me I should say like that.

Q. Because Goldfarb told you you should say like that? A. Yes, sir.

40

By Mr. Edwards:

Q. Goldfarb wasn't there then, was he? A. He was there then.

10 Q. You knew when you swore to that that you were perjuring yourself then, didn't you? A. I didn't know it.

Q. You didn't know it? A. No, he said because he would take me out. He says if I sign that paper he was going to take me in \$10,000 bail.

Q. Do you know it now, that you have perjured yourself? A. I don't know.

20 Q. You don't know what perjury is, do you? You don't know what violation of an oath is, do you? You don't know the effect of telling a falsehood on the witness-stand or swearing to it, do you? A. I know that I got to say the truth on the witness-stand.

Q. But you didn't have to swear to it any other place; is that it? A. I don't understand what you mean.

Q. The first place that you saw which was a Buick car, was taken to the Hoboken ferry by two boys; is that correct? A. Yes, sir.

Q. And that was on the New York side, was it? A. Yes, sir.

30 Q. And Goldfarb wasn't there at that time, was he? A. Yes, sir.

Q. Oh, he was waiting for the two boys too, was he? A. He took me there, yes, in his car.

Q. By the way, is that your signature? (Paper shown witness.) A. Yes, sir.

Mr. Edwards: I will offer it for identification.

(Paper marked Exhibit A for Identification.)

Aleck Israel—Cross Examination.

Q. Where are the bills of sale that you had for these cars? A. Mr. Goldfarb had them.

Q. Who did you give them to? A. Goldfarb.

Q. Didn't anybody take them away from you when you were arrested? A. No, sir.

Q. Sure about that? A. I am sure.

Q. You didn't have them on your person or in your possession at the time you were arrested, did you? Now be careful. I want a straight answer. 10

A. I don't think if I had any bills of sale. I give it to him, the bills of sale, every time I had them.

Q. You gave who a bill of sale? A. I gave the bill of sale what I had from Michelson.

Q. No, I am speaking now of the bill of sale for this Oldsmobile car. A. Who give the bill of sale?

Q. You had a bill of sale for the Oldsmobile car, didn't you? A. No, sir. 20

Q. Are you sure you didn't? A. No, sir.

Q. Haven't you sworn that you did have? Did you have a bill of sale for the Buick car? A. No, sir.

Q. Have you sworn that you did? A. No, sir.

Q. Do you know Frank Francis? A. Yes, sir.

Q. Who is he? A. I know he was hanging around that time Goldfarb's place of business.

Q. Did you swear that you got a bill of sale for the Buick car from one Frank Francis? A. No, sir; I never did. 30

Q. That paper was read to you, wasn't it, at the time you signed it and swore to it?

(Paper shown witness.)

A. No, sir.

Q. Do you say it was not read to you at the time you signed it and swore to it? A. Which paper? 40

The Court: Let him look at it.

Q. Take it and look at it.

By the Court:

Q. Have you seen that paper before?

10

Mr. Edwards: I am offering him Exhibit A for Identification.

Q. The question is have you seen the paper before? A. Yes, sir; I seen that paper.

By Mr. Edwards:

Q. Where? A. In the jail he was making it.

20

Q. And you read it, didn't you? A. I couldn't read it.

Q. Mr. McDermott read it to you, didn't he? A. He read it. He told me what to put down in the paper.

Q. Mr. McDermott told you what to put down in the paper, did he? A. No, Goldfarb said what he was writing in the papers.

Q. Who wrote this? A. That gentleman there (indicating Mr. Feingold).

30

Q. And you say Goldfarb told Feingold what to put in this paper, do you? A. Yes, sir.

Q. Did you not show Mr. Michelson a bill of sale when you sold ths car to him? A. No, sir.

Q. You are sure about that? A. Sure about that.

Q. Did you not show a bill of sale to Mr. Bender at the same time you sold these cars? A. No, sir.

Q. And you are sure about that? A. Yes, sir.

Q. You drove the cars from New York into New Jersey, didn't you? A. One car. One car he drove.

40

Q. Which car did you drive into New Jersey? A. Buick car.

Q. Who drove the Oldsmobile into New Jersey?
A. Goldfarb did.

Q. Where did he drive it into New Jersey? A.
He drove it straight to Asbury Park.

Q. Do you mean to say that Goldfarb drove the
car, the Oldsmobile, from New York State to As-
bury Park? That is what you mean to say, is it? 10

A. Yes, sir.

Q. You didn't drive it at all? A. No, sir.

Q. You didn't drive this? A. No, sir.

Q. And Goldfarb drove the car then into Michel-
son's garage, did he? A. No, to Asbury Park.

Q. Who did? A. I drove myself to Mitchelson's
garage.

Q. And you told the Prosecutor that Goldfarb
showed you where to take the car, didn't you? A.
Yes, sir. 20

Q. You didn't know where Bender & Michel-
son's garage was, did you? A. I never was in As-
bury Park.

Q. And you never were in Belmar before, were
you? A. Never did.

Q. You have a brother living in Belmar, haven't
you? A. No, sir.

Q. Haven't you sworn that you had a brother
living in Belmar? A. No, sir; he was working at
that time. 30

Q. Did you used to visit him there? A. I just
meet him. I didn't know he was down there even.

Q. When was the first time you were over in
Belmar? A. I can't tell you.

Q. Well, you went to see your brother in Bel-
mar, didn't you, before you ever drove any cars
there? A. Never was.

Q. Where were you at the time that Goldfarb
came to you and told you that he had a car some-
where down the street for sale? A. In Goldfarb's 40
house; because I worked some place for him.

Q. You worked for his father for some years, didn't you? A. No, only worked one year.

Q. You worked for Goldfarb's father for one year, did you? A. Maybe, I can't tell sure.

10 Q. And at the time that Goldfarb told Michelson and Bender that he knew you Goldfarb of course was telling the truth, wasn't he? A. Sure.

Q. He had known you because you had worked for his father, isn't that so? A. I didn't heard them.

Q. Well, if Goldfarb did tell Michelson and Bender, as Mr. Michelson and Mr. Bender say, that he knew you, he was telling the truth, wasn't he, at that time? A. Sure he did.

Q. Goldfarb came to you in Jersey City, was it, where you were working? A. Yes, sir.

20 Q. For Levinson? A. For Levin.

Q. And told you to give up the job and come with him? A. Yes, sir.

Q. Now you knew at that time that Goldfarb was in the automobile business, didn't you? A. Yes, sir.

Q. And that he had been in the business for a long time, didn't you? A. I know him when he was in business for about two years.

30 Q. You knew that he was in business for about two years? A. Yes, sir.

Q. And during all that time you had never heard any rumors about his dishonesty, did you? A. No, never had.

Q. All the time that he was in business his reputation was good, wasn't it?

Objected to.

40 The Court: He doesn't have to answer that.

Aleck Israel—Cross Examination.

Mr. Edwards: Well, for two years he knew the man in business.

Q. Who is Dan? Oh, you know, don't you? Why don't you tell us?

By the Court:

10

Q. Do you know Dan? A. Oh, I think that is the fellow that was by the car at that time.

By Mr. Edwards:

Q. By what car? A. When it was near the ferry, near Hoboken Ferry. He was there.

Q. How old was he? A. I don't know that.

Q. Well, he is older than Goldfarb, isn't he? A. I don't know.

20

Q. He was one of the men that came with the automobile, wasn't he, the Buick automobile? A. When I come the car was standing at the place.

Q. What, a Buick? A. Yes.

Q. Didn't you say a while ago that the Buick was brought to you by two young fellows?

Mr. Sexton: No, he didn't say that.

A. No, I didn't say that.

Q. What car was brought to you by two young fellows? A. I didn't say that.

30

Q. You didn't say that? A. No.

Mr. Edwards: I say he did.

Mr. Sexton: I say he didn't.

The Court: I will tell you what he did say.

Mr. Edwards: I prefer to refer to the notes.

The Court: It will take a long while to do that.

40

Q. Two young fellows came with the car, to you, didn't they? A. Not to me.

Q. Who to? A. On the street. They was standing on the Street.

Q. Where were they standing on the street? A. They was at Washington Street, New York.

10 Q. Now one of them was Dan, wasn't he?

By the Court:

Q. Did you know either one was Dan? A. I didn't know them very good. I know they was hanging around.

Q. Well, who is this Dan they are talking about, do you know? A. I know him when he brought the car down there.

20 Q. One of them that brought the car down? What was the other boy's name, do you know? A. Dan and—

Q. Which car was that? A. The Buick car. That is the two fellows that was standing by the car when we come down.

By Mr. Edwards:

Q. Now they brought the Buick car down, didn't they? A. I didn't see them.

30 Q. Well, you have said that they brought it down, haven't you?

Mr. Sexton: I object. I submit that the witness—

The Court: Don't argue it. Go on.

Q. You have stated, haven't you, that two young fellows brought the car down? A. I think that was because they was standing near the car.

40 Q. Well, you have stated so, haven't you? A. No.

Q. Well, why did you think then that two young fellows brought that car down when you didn't see them? A. Because they was standing near the car.

Q. Who was standing near the car? A. Two young fellows.

The Court: That is what he said before, those two young fellows were standing near the car. 10

Q. And one of them was Dan, wasn't it? A. Yes, sir.

Q. Now Dan isn't a boy, is he? A. I didn't see him.

Q. Didn't see him? You didn't see whether Dan was a boy or not? A. He was going in pants.

Q. You mentioned a Hudson car a while ago, the last car you had down here. Who came down in that? A. I did. 20

Q. You didn't see Goldfarb that day, did you? A. Yes, sir.

Q. Did you? Now, who stole that car? A. I don't know.

Q. You don't know? Didn't you tell anybody that you stole it and two or three hours after you stole it you had it down at Belmar? A. Never told anybody. I didn't said it. 30

Q. Did you have a bill of sale on the Hudson car either? A. Yes, sir.

Q. Did you? Where did you get that from? A. I got that from where I bought it.

Q. Who did you give it to? A. The bill of sale?

Q. Yes. A. I give that to Mr. Reeves.

Q. After you had possession of the Hudson car—that has been mentioned here has it not, Mr. Prosecutor?

Mr. Sexton: Yes. 40

Q. How long after you had possession of the Hudson car was it that you had it down at Belmar? A. I don't understand what you mean.

Q. The moment that you got possession of the Hudson car you brought it right down to Belmar, didn't you? A. Yes, sir.

10 Q. And you had it down in Belmar two or three hours after you got possession of it in New York, didn't you? A. Yes, sir.

Q. Mr. Goldfarb was with you at the time you got that bill of sale? A. No.

Q. Goldfarb wasn't with you when you got the bill of sale for the Hudson car, was he? A. No, sir.

Q. He didn't know where you got that, did he? A. Yes, I told him.

20 Q. When did you tell him? A. When I come over right to him.

Q. You got that bill of sale from whom? A. From where I bought it.

Q. How much did you pay for that? A. \$1,250.

Q. Who gave you the money to pay for it? A. Goldfarb gave me \$700 to buy a Cadillac car. He made an appointment—I was near the house of Goldfarb. Some man come to Goldfarb and he started to talk about buying a Cadillac.

30 Q. He gave you \$700 to buy a Cadillac with, did he? A. Not to buy. He says the man is going to bring it up to Staten Island Ferry.

Q. But instead of your using the \$700 then that Goldfarb gave you for the purpose of getting a Cadillac you used the money to get a Hudson automobile, did you? A. Then we went back again—

Q. Did you or didn't you? A. If I used that money?

40 Q. Yes, for the Hudson automobile. A. I used the \$700.

Q. For a Hudson automobile, didn't you? A. Yes, with \$550 more.

Q. And Goldfarb didn't know that you were going to use the money for a Hudson automobile, did he? A. No, sir.

Q. And who brought the Hudson automobile down here? A. To where? 10

Q. To Belmar? A. I brought it down.

Q. Goldfarb with you? A. No, sir.

Q. Did he know anything about it? A. Yes, sir.

Q. After you told him? After you told him, isn't that so? A. I told him, yes.

Q. Now, when did you tell him about this \$700 that you used for the Hudson car, after you were locked up? A. No, sir.

Q. Before you were locked up? A. Yes, sir.

Q. You hadn't got out on bail, had you? A. No, sir. 20

Q. And you kind of got sore at Goldfarb because you didn't get out on bail, didn't you? A. I wasn't sore on that.

Q. Well, when did you change your mind to change this story about this automobile question?

A. What do you mean?

Q. You swore to this affidavit before Mr. McDermott on September 9th, didn't you? A. Yes.

Q. And at that time you told Mr. McDermott and you told Mr. Feingold that the statement that you made therein under oath was true, didn't you? 30

A. I didn't say it was the truth.

Q. You didn't tell them it was true? A. No.

Q. You didn't tell Mr. McDermott it was true? A. No.

Q. Neither did you tell Mr. Feingold that it was true, did you? A. He told me to swear to it, that was all.

Q. Who did, Mr. McDermott? A. No, Mr. Feingold. 40

Q. And Mr. Feingold is the one that wrote that in as Mr. Goldfarb told him to write it? A. Yes, sir.

10 Q. Now, when Mr. Feingold and Mr. McDermott left you they didn't know but what that statement that you gave them under oath was the truth, did they? They didn't know but that it was the truth, did they? A. Goldfarb told me that he told McDermott the truth, how it was.

Q. And when did you change your story in the jail that differs now from that statement that you have made on paper? A. Because I—

Q. When did you do it? A. I write him two letters.

Q. Wrote who two letters? A. To Mr. Goldfarb.

20 Q. You wrote Mr. Goldfarb two letters? A. Yes.

Q. Now, how long was that after you made this statement? A. About three weeks after that.

Q. About three weeks after that? A. Yes.

Q. And in those letters or one of them you stated that unless he got you out on bail that you would frame him, didn't you? A. No, not like that.

30 Q. Didn't you? A. No, he said to me if I—he says, "No use to go one and both in jail;" he said one. He says, "I am going to take you out anyhow." He says, "You wouldn't need to go to jail." He says he was going to get \$60 and "You will get it."

Q. You were in jail then, weren't you? A. Well, I don't care.

40 Q. How long after that was it before you changed your story? Now that is three weeks past that you wrote those two letters; how long after the three weeks was it? A. Right after the three weeks. I didn't get an answer. That is why I told my story.

Q. And then who talked to you about changing your story? A. Nobody.

Q. Not anybody? A. No, sir. I went up to the Prosecutor's office to the officer there—

Q. And the officer talked to you about it, didn't he, Broderick, you mean, the officer of Asbury Park? A. Yes. 10

Q. And you didn't tell him that you had made an affidavit, did you? A. After I make out that paper I told him.

Q. That the paper you made to Mr. McDermott wasn't true? A. No, I told him I was going to tell him the truth, how it was.

Q. The paper that you made out to Mr. McDermott, was that sworn to? Did you take an affidavit at that time? A. Yes, sir.

Q. Did you know what you were doing at that time? A. Yes, sir. 20

Q. You were telling the truth then, were you? A. Yes, sir.

Q. You said a while ago that when you brought the Oldsmobile into Mr. Bender's and Michelson's garage that Goldfarb came in about ten minutes after, is that true? A. About a half an hour after.

Q. Why did you say ten minutes a while ago? A. Ten minutes, he come by the Buick car, he come about ten minutes. 30

Q. Notwithstanding the fact that Mr. Michelson and Bender have sworn that it was more than an hour after your car you say it was ten minutes; is that true? A. That is what it was, about ten minutes.

Q. And Mr. Goldfarb heard you and Bender and Michelson making this deal for the Buick car, did he? A. Yes, sir.

Q. And Goldfarb was there when you were making the deal for the Buick car, wasn't he? A. Yes, sir. 40

Q. And he was talking to Mr. Michelson and Mr. Bender about making this deal for the Buick car, wasn't he? A. Yes, sir.

Q. Notwithstanding the fact that Mr. Michelson and Mr. Bender say that that is not so you say that is so; is that right? A. About what?

10 Q. About you and Mr. Goldfarb and Bender and Michelson making this deal for the Buick car? A. What was talking? I don't remember.

Q. You were talking about making the deal, weren't you? A. Selling the car, you mean?

Q. Yes. A. Yes.

Q. And you say Goldfarb dealt with Michelson and Bender too at that time, do you? A. He was there that time, yes.

20 Q. And he was dealing with them about it at that time too, wasn't he? A. What do you mean, dealing?

Q. Why, he was bargaining with them to buy this Buick car, wasn't he? A. What do you mean bargaining, he helped to buy the car?

Q. Helped to sell the Buick car to Michelson and Bender? A. He make himself like he wanted to buy the car too; they shall buy it.

30 Q. You said, too, did you not, that Goldfarb drove the Maxwell car out of Bender & Michelson's too, didn't you? A. Yes, sir.

Q. Now, you are sure of that too, aren't you? A. I am sure of that.

Q. Can you read? A. No, sir.

Q. Any language? A. No.

Q. Can you write? A. No.

Q. Any language? A. No.

Q. Can't sign your name? A. Yes, sir.

Q. Then you can write, can't you? A. Sign my name, that is all.

By the Court :

Q. Is that the only thing you can do in the way of writing, sign your name? A. Yes, sir.

Q. That is all you can do? A. Yes, sir.

By Mr. Edwards :

10

Q. You can't do anything else but sign your name, can you? You can't do anything else but sign your name? A. What do you mean anything else?

Q. Any writing; you can't write anything else? A. No, sir.

Q. Why did you say just a little while ago that you wrote three letters to Mr. Goldfarb after that if you can't write? A. Somebody else has written for me.

20

Q. Somebody else wrote them? A. Yes.

Q. Then you don't know what the letter said that Mr. Goldfarb sent to you? A. I told him what to write, that is all.

Q. But you don't know what somebody else wrote to Goldfarb at all, do you? A. Yes, sir.

Q. How do you know? A. Because he read it over for me.

Q. He read it over to you? But Mr. McDermott and Mr. Feingold didn't read this thing over to you at all, did they? A. What thing?

30

Q. This paper that you signed in front of Mr. McDermott? A. No, sir; didn't read it over.

Q. And you didn't know what was in it at all, did you, when you signed it? A. No, sir.

Q. And yet you say that you heard Mr. Goldfarb tell Mr. Feingold what to say? A. I said and he helped me out what to say.

Q. One moment. Answer my question. You first say that you don't know what was in that paper.

40

Now I ask you why you didn't know what was in that paper when a while ago you said that Goldfarb stood there and told Mr. Feingold what to put in the paper? A. Well, after that I couldn't read if they put the right thing in it.

10 Q. Did you swear before the squire down at Asbury Park that Goldfarb was a partner of yours?

A. I don't know.

Q. You don't know whether you did or not, do you? And isn't it a fact, too, that you told Mr. McDermott that the reason why you said that Goldfarb was a partner of yours was because somebody told you to tell him? A. No, sir; nobody told me to tell him myself.

20 Q. Didn't you tell Mr. McDermott that it was Mr. Bender that told you to tell him so? A. I told him because Goldfarb told me to say that.

Q. You did tell Mr. McDermott then that it was Mr. Bender told you to swear that; is that it? A. Bender to swear to it?

Q. You did tell Mr. McDermott, did you not, that Mr. Bender told you to swear that Mr. Goldfarb was a partner of yours? A. I don't know that.

Q. Well, I think I have made that as clear as any one can make it and use the English language. A. I don't understand that.

30

By the Court:

Q. Did Bender tell you to say to anyone that Goldfarb was a partner of yours? A. No, sir. What do you mean, a partner?

Q. Well, were you and Goldfarb partners? A. No, sir.

Q. He didn't ever tell you to say that you were to anybody? A. No, sir.

40

By Mr. Edwards:

Q. Did you ever say it to anybody? A. That Goldfarb was a partner?

Q. Yes. A. Yes, I didn't said that.

By the Court:

10

Q. What did you say? A. I only said he give me the cars to sell.

Q. Well, did you tell anybody that Goldfarb was a partner of yours? Did you not tell the justice in Asbury Park that he was? A. Yes, before Mr.—

Q. Mr. Who? A. Before Judge Borden.

Q. Before Judge Borden you did say that Goldfarb was a partner? A. Yes, because I was mixed up that time and didn't know what to say.

20

By Mr. Edwards:

Q. And you were on a witness stand then, weren't you? A. Yes.

Q. And you knew that you were on the witness stand then as you know that you are on the witness stand now, that if you lied you would perjure yourself, didn't you? A. I didn't know it.

Q. Do you know it now? A. Yes.

30

Q. So it didn't make any difference to you what you swore to under oath then, did it? A. I know the right thing.

Q. You knew the right thing but you swore to the wrong thing, is that it? A. I swore to the wrong thing before.

Q. And you swore to the wrong thing when you swore to that paper too? A. Yes, sir.

Q. But now you say that the thing that you are swearing to now and the paper that you gave to

40

Mr. Broderick you are swearing to the truth then?

A. Yes.

Q. And you expect this court and this jury to believe it, don't you?

Objected to.

10

The Court: No, strike out the last. It is an improper question.

Re-direct Examination by Mr. Sexton:

Q. Is that your signature (paper shown witness).

A. Yes, sir.

Q. Do you recall that paper? A. Yes, sir.

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

20

The Court: It may be so marked.

Paper marked Exhibit B for identification.

Re-cross Examination by Mr. Edwards:

Q. You have plead guilty to the charge of stealing and receiving stolen goods? A. Not stealing, only receiving from Goldfarb.

Q. Did you not plead guilty this morning to the charge of stealing and receiving these particular cars and this particular Oldsmobile in question?

30

A. Not stealing, for receiving.

The Court: Well, that is all. The record will speak for itself.

HENRY O. METZGER, sworn for the state:

Direct Examination by Mr. Sexton:

40 Q. Where do you reside, Mr. Metzger? A. Red Bank.

Q. Are you the proprietor of what is known as the Globe Hotel? A. Yes, sir.

Q. I have a book which I show you and ask you what that book is? A. Hotel Register.

Q. Will you turn to the hotel register and tell me whether or not you find an entry of Goldfarb and Israel under date of the 12th? A. Yes, sir; I do. 10

By the Court:

Q. 12th of what? A. August.

Q. August, 1919? A. August, 1919, yes, sir.

By Mr. Sexton:

Q. Found on page what of your register? A. Well, there is no page of the register. 20

Q. It is simply under that date? A. Just under the date.

Q. And what are the names? You may read them. A. J. Goldfarb, M. J. Goldfarb, Alex Israel.

Q. Read the whole record, indicating the time when they were there, the hour. A. Well, it doesn't—

Mr. Edwards: I object to this unless the Prosecutor shows that the defendant is the one who entered that record. 30

The Court: Well, I think it is competent in view of the preceding witness. He testified that they did stop in Red Bank, didn't he?

Mr. Sexton: Yes, at a hotel.

Q. Just read the entire entry there as you have it. 40

Objection noted for defendant as ground of appeal.

A. J. Goldfarb, Brooklyn; M. J. Goldfarb, Bronx; Alex Israel, Jersey City.

10 By the Court:

Q. Does it indicate the hour of the day, the meals? A. They were the last entry. It was possibly—

Objected to.

20 Q. If you know. A. It was after twelve o'clock at night. It was probably on the morning of the 13th. It was the last entry at night. It was very late.

Mr. Sexton: Stand up, Israel.
Israel stands.

By Mr. Sexton:

Q. Do you recognize that gentleman as being one of the men? A. Yes, sir.

30

Mr. Sexton: Stand up, Goldfarb.
Goldfarb stands.

Q. Do you recognize this fellow as being one of the men? A. Yes. The other one was quite a stout man, the man who paid the bill. He was quite stout.

Mr. Sexton: I offer this record.
The Court: Is there any objection?

40

Cross Examination by Mr. Edwards:

Q. You are not sure that the other gentleman was more or less boyish? Was he a boy or what?

A. No.

Q. Mature? A. Yes.

Q. Sure of that? A. Yes.

Q. How is it you recollect that? A. Oh, he was large, he was stout.

Q. How do you recollect that? A. From the one that paid the bill.

Q. Who paid the bill? A. Goldfarb.

Q. This gentleman? A. No, sir. The first one that entered—made the entry, paid the bill, I think.

Q. You heard Israel say a while ago that he paid it, didn't you? A. No, sir.

Q. You didn't hear his say that? A. No, sir.

Q. Then you are sure this man didn't pay it, aren't you? A. I don't think he paid it, no, sir.

Mr. Sexton: Now, Mr. Edwards, in order that Mr. Metzger may take his records, will you allow me to show it to the jury?

The Witness: You may have it if you want it, to keep it.

Mr. Sexton exhibits the register to the jury.

Mr. Edwards: All that record is under my objection and exception, because there is no proof that this is the man who signed.

Objection noted for defendant as ground of appeal.

The Court: The record should show that it was received and marked as an exhibit.

Register marked Exhibit S-1.

Mr. Edwards: May I look at that record, so I can show the defendant?

Examined book.

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Mr. Edwards: I want the jury to note before the record leaves that Israel's address upon this book is Jersey City. You notice that in particular, gentlemen, that it, is Jersey City, instead of—

10 Mr. Sexton: I object to any argument; just what it is.

The Court: You may call attention to it. The address of Israel as there given as Jersey City.

Mr. Edwards: The address given by Israel at that time was Jersey City. I can comment upon what the evidence is as to what he has given on the witness stand today.

The Court: Yes, certainly.

20

THOMAS BRODERICK, sworn for the state.

Direct Examination by Mr. Sexton:

Q. Mr. Broderick, you are a police officer in the City of Asbury Park? A. Detective sergeant.

Q. Do you know Alex Israel? A. Yes.

30 Q. You arrested him, I understand? A. Yes, sir.

Q. Do you recall when it was? A. September 5th, at 3 P. M.

40 Q. And at that time was a statement made to you by him? A. He made a statement to me in the presence of Inspector Reeves and Wyckoff and I think there was another officer, I think Mr. Shedd was there, I am not sure. He made the statement and then brought him to headquarters. A little later I went to Red Bank and apprehended Mr. Goldfarb and brought him back to Asbury Park

with Mr. Wyckoff, and then we had statements from them. We didn't put them in writing. Some time later I went to the county jail and tried to get statements from them and Israel refused, saying he had been promised something and had made a statement to his counsel and Goldfarb. A week or two later I received a message from him to come to Freehold and with your office assistant, he repeated the story to me that he did the night in the office to Mr. Reeves in the presence of Wyckoff, and it was made a note of and a copy of the same made and he swore to it before a Notary Public, I think William O'Brien. 10

Q. And is that the statement you refer to?

Paper shown witness.

A. Yes, sir. Mr. Kent was the witness with me. That statement is practically word for word as he gave it to Mr. Reeves and Wyckoff the first afternoon I apprehended him. That was before we got Goldfarb. 20

Cross Examination by Mr. Edwards:

Q. How do you recall that, Mr. Broderick? A. Recall the statement? 30

Q. Yes. How do you recall the statements being practically word for word as you say? A. Well, it was quite impressive, and the method they had of working, etc.

Q. Impressive to you? A. Yes. I am rather interested in thieves and apprehending them.

Q. And it impressed you the first time, didn't it, as much as it did the last time when he put it in writing? A. Yes, it was what we call coming clean. 40

Q. Oh, you heard him make a statement before the justice of peace at Asbury Park, didn't you, the police justice at Asbury Park? A. To the court. They were arraigned. There is a railing like that and they stand up before the P. J. and he implicated Goldfarb as his partner at that time.

10 Q. He did say then that Goldfarb was his partner, did he? A. Yes, he implicated him as his partner. They had been locked up all that night, you know. That was the following morning, that statement.

Q. And then he told you different stories after, didn't he? A. Then I came to Freehold and tried to get him to make an affidavit, as I found that he was getting friendly with Goldfarb in prison, and he had already been interviewed and had made a
20 statement.

Q. He had been friendly with Goldfarb before, had he? A. Well, when he was arrested he saw that he was alone and he assisted us in apprehending Goldfarb, as he said Goldfarb had left him and gone with the car.

Q. I am not asking you what he told you about Mr. Goldfarb being there. A. He spoke about his friendship. I want to show that he had been friendly.

30 Q. You said a little bit ago that you notice that Goldfarb and he were getting friendly. Now I say to you that you hadn't noticed that friendly existence between them theretofore; had you? A. Well, when is this theretofore?

Q. Any time before. A. Well, that is what I am trying to tell you.

Q. Any time before they were in jail together. A. Up until the time of Israel's arrest they had been friendly, and then when Israel found that he
40 was deserted and alone he told this story, and I believe he came clean.

Q. That is what he told you, was it? A. And on the strength of that story we apprehended Goldfarb. He was headed off at Red Bank by the police up there.

Q. Now, just answer my question, will you? I am not asking for a sermon. A. No, I won't do that.

Q. Israel was sore because he was in jail then, is that it? A. Why, most everybody gets a little bit peeved about that. 10

Q. You know too that he was? A. The next morning, yes.

Q. And you know that is why he sent for you, isn't it? A. Three or four weeks later?

Q. Yes. A. Yes, when he found—

Q. And he told you—

Mr. Sexton: Let him answer. 20

A. You want to know what Israel told me—

Q. You just answer my question, will you, please? I will ask you what I want. A. All right.

Q. He told you that he was sore on him, didn't he? A. Because—

Q. He told you that he was sore on him, didn't he? A. No, but there was a reason for it.

Q. Answer the question. 30

The Court: Answer whether he told you or not first.

A. He told me, yes.

Q. And he appeared to be sore at that time, too, didn't he? A. He appeared to be disappointed, yes.

Q. And when he was sore and when you knew he was sore at Goldfarb because Goldfarb was not assisting in taking him out of jail, that was the time you got your pump busy, wasn't it? 40

(Objected to.)

The Court: You have no right to characterize it.

Mr. Sexton: I move that the question be stricken out.

10 The Court: Oh, he hasn't answered it. I will allow him to answer the question as to his interrogating the defendant, instead of using the word pump.

Q. You did interrogate Israel then, didn't you?

A. What do you mean interrogate him?

Q. Well, I didn't know that you would comprehend that any more than you did pump. A. I am used to swearing.

20 The Court: Put the question.

Q. That is the time that you did ask Israel these questions, wasn't it, that brought forth the statement from him? A. When he was in the Prosecutor's office he made that statement, yes.

Q. And you questioned him about it? A. I assisted in it.

30 Q. And assisted him in making the answers too, didn't you? A. No, I couldn't do that because he knew more about it than I did.

WILLIAM O'BRIEN, sworn for the state.

Direct Examination by Mr. Sexton:

40 Q. I show you a paper, Mr. O'Brien, marked Exhibit B for Identification, and ask you on the bottom of it whether that is your signature. A. Yes.

Q. And whether that affidavit was taken before you? A. Yes.

Q. As the officer therein indicated? A. Yes.

By the Court:

Q. It was read over to Israel? A. Yes, sir. 10

Q. Signed by him? A. Yes, sir.

Q. Sworn to before you? A. Yes, sir.

Cross Examination by Mr. Edwards:

Q. Did you read it over to him, Mr. O'Brien? A. I did.

Q. Carefully? A. Carefully, yes, sir. What do you mean, carefully?

Q. Well, you have answered yes so I presume you know what I mean. A. I suppose you mean— 20

Q. Or a careful witness like you wouldn't have answered. You read this over to Israel at the time? A. Yes, sir.

Q. Word for word? A. Word for word.

Q. Did he tell you he understood it? A. He said he did.

Q. He solemnly swore to it, did he? A. He certainly did.

Mr. Sexton: I offer it in evidence. 30

Mr. Edwards: I object to the offer because it is tantamount to a statement made by one not in the presence of the defendant and therefore is just as much hearsay evidence as if it were words uttered in the absence of the defendant now under trial or on trial.

The Court: Now one moment, Mr. Sexton. You are attempting in that way to prove, I 40

suppose, that Israel told the same story at one time as he did at another; is that it?

Mr. Sexton: Yes.

The Court: Do you think you have a right to do that, in other words to bolster up the character of your evidence?

10

Mr. Sexton: No, it is not that.

The Court: Because there is a presumption that he is telling the truth.

Mr. Sexton: It was brought out on cross-examination if your Honor please, that Israel had made this other statement. Now I don't want to be left in the position—

The Court: I think you are anticipating. In the first place, it is not the right place at this time to offer it. You have no right to anticipate their defense as suggested by the cross examination.

20

Mr. Sexton: It seems to me I have a right.

The Court: It won't rule this out at this time, but I won't permit it to be marked now.

Mr. Edwards: Then my objection is sustained?

The Court: As to the present time. I will not rule definitely as to the admission of this paper at this time.

30

State Rests.

Mr. Edwards: If your Honor please, I ask at this time that the evidence concerning this Buick automobile be stricken out.

Mr. Sexton: One moment, if your Honor please. I find that there is a witness here that I did not know was here.

The Court: Very well.

40

BARNEY LEVIN, sworn for the State.

Direct Examination by Mr. Sexton:

Q. Where do you live, Mr. Levin? A. 559 Grove Street, Jersey City.

Q. Do you know Alex Israel? A. I have known him for about four and a half years. He has worked for a friend of mine that is dead and buried—the Lord have mercy on him—and he has handled all kinds of money of mine and he acted as a perfect straight gentleman. 10

Mr. Edwards: I ask that all that be stricken out.

The Court: Strike it out. Answer the question. You haven't been asked to give a certificate of character yet. 20

Q. Do you know Jacob Goldfarb? A. I know Goldfarb from the time that he has worked for me, this Alex Israel. Every night he wouldn't leave him alone. He would be ringing the telephone and coming over after him.

Objected to.

Q. You have seen Goldfarb over at your place? A. Several times. 30

Q. When did Israel leave your employ? A. Just, it is not quite a year yet.

Q. And prior to that Goldfarb would come there? A. He come there and he wouldn't leave the man alone at all, to go away from me.

Q. Did Israel work on a salary from you? A. He worked on half shares.

By the Court:

Q. What business? A. Wholesale produce. 40

By Mr. Sexton:

10 Q. Did Israel own an automobile? A. He owned an automobile with me in partners. The two of us bought it. And after he went away from me with Mr. Goldfarb I gave him out of the share what the automobile was worth.

Q. When he left you he went with whom? Who did he go with? A. Went with Jake Goldfarb.

Cross Examination by Mr. Edwards:

20 Q. You are sure he didn't work for someone else before he went to work for Goldfarb? A. I said to him before, your Honor, that he worked for Levinson, that this gentleman over there, Mr. Feingold, knows him well.

Q. Israel went to work for someone else after he left you, didn't he? A. Pardon me. You have a mistake, your Honor.

Q. You are sure he didn't? A. I certainly am sure. Positively sure.

Q. You know that he went to work for Jake Goldfarb, this defendant? A. He took him away from me.

30 Q. Immediately after? Now I am putting you on your knowledge. You say you know that he went to work for Jake Goldfarb, this defendant? A. Positively.

Q. Immediately after he left you? A. Yes.

Q. Now tell us how you know it. A. Because I went right over to Brooklyn to him.

Q. Did you go over with him? A. I didn't go over with him, but any time—

40 Q. Just answer my question now. We will put the buts in afterwards. You didn't go to Brooklyn with him? A. No.

Q. You never saw him while he was over in Brooklyn? A. certainly I did.

Q. How long after he left you? A. A couple days after, a week after, two weeks after.

Q. When was the first time, two weeks or two days after? A. I am explaining to you, two days or a week after, any time I wanted to go out automobile driving I phoned over for him and phoned over for him and he took us, because I can't drive.

10

Q. Who took you out? A. Alex Israel.

Q. Who did you phone to? A. To Mr. Goldfarb's house.

Q. You mean this man's house (indicating defendant)? A. Positively.

Q. You are sure it was not Philip Goldfarb's house that you telephoned to? A. No, sir.

Q. Where did you find the number of Jacob Goldfarb, in the telephone book? A. In the telephone book.

20

Q. In the telephone book? A. I did, yes.

Q. Which telephone book? A. New York Telephone book.

Q. He is in the New York Telephone book? A. His father's telephone book.

Q. I asked you a while ago whether you telephoned this man's house and you said yes, positively. A. Yes.

30

Q. Now you change your tone, do you? A. I ain't changing my tones.

By the Court:

Q. Suppose I ask you; when you called up that number who did you ask for? A. Mr. Goldfarb, for Jake.

Q. You asked for Jake on that phone? A. Yes.

Q. When you got Jake you would ask for Israel? A. Yes, sir.

40

Q. To come over with the car? A. Yes, come over and take me out.

By Mr. Edwards:

Q. Israel was there at that time then? A. Yes.

10 Q. Why didn't you ask the party who first answered the phone—why is it you didn't ask for Israel instead of first asking for Jake Goldfarb and then asking for Israel? A. I say, "Is Jake here"? "Yes, who is it you want"? "I want Alex. Please send him over. I want to go out for an automobile ride." And Jake says, "He is not here. He is away on business."

20 Q. You had to pay telephone toll from Jersey City to Brooklyn, did you? A. Certainly, I had ten cents I had to pay.

Objected to.

Mr. Edwards: I only want to show that time is money and he was not spending his time, without other circumlocution.

The Court: Well, he paid the usual toll.

Q. Notwithstanding the fact that you knew that Israel was there, you would first ask for Jake Goldfarb to get Israel? A. I would say—

30 Q. I don't care what you would say; that is what you did, isn't it? A. Positively. I would have to ask for somebody, couldn't I?

Q. Why didn't you ask for Israel at once? A. I would say, "Is Israel there, is Alex there"?

Q. But suppose someone else answered as you said before; what then? A. Sometimes they would say he is not there. Other times they would say yes, he is there.

40 Q. Israel is a real honest man, isn't he? A. Honest? I would trust him with anything when he goes out, and I always did.

Morris Miller—Direct Examination.

Q. You have been in court here all the morning and afternoon, haven't you? A. Positively. When you get a horse, when you steer him, anyways you steer him he will go.

Q. We don't want any funniness here. A. I am only telling what is the truth.

Q. I know you are. A. I came up here to tell the truth. 10

Q. You would say he was honest notwithstanding what you heard him swear to here to-day, wouldn't you? A. Honest.

MORRIS MILLER, sworn for the State.

Direct Examination by Mr. Sexton:

Q. Mr. Miller, where do you live? A. 559 Grove Street, Jersey City. 20

Q. Do you know Alex Israel? A. I do, sir.

Q. How long have you known him? A. I can't remember the time. I know him in the work, he worked for Mr. Levin.

Q. And you have worked for Mr. Levin? A. Oh, no; I have my own business.

Q. Do you know when Alex left Mr. Levin's employ? A. I can't remember exactly, because it is out of my business. 30

Q. Do you know Jacob Goldfarb? A. No, sir.

Q. Do you recognize the man sitting behind me here? A. Well, they tell me it is Mr. Goldfarb.

Q. Did you see him over at Mr. Levin's place? A. No, sir.

No Cross Examination.

Mr. Edwards: May I just ask the last witness, Levin, another question?

The Court: Yes. 40

BARNEY LEVIN, recalled.

Further Cross Examination by Mr. Edwards:

Q. You said that Israel worked for you for how long? A. For about a year.

10 Q. On commission? A. Not quite.

Q. On commission? A. Yes, sir.

Q. Made good money? A. Yes, sir.

Q. How much?

The Court: A week, you mean?

Mr. Edwards: Yes.

A. Well, he knocked out \$35 a week.

Q. And more? A. \$40 a week.

20 Q. More, too, sometimes? A. Well, sometimes more, sometimes less.

Q. Well not less than \$35 and sometimes considerably more than \$50, wouldn't he? A. No.

Q. Well, it would average \$50 a week? A. Hardly, sometimes, no, I don't think so.

Q. Well, the average would be \$50 a week, wouldn't it? A. No, it would be about \$35, \$30, \$33.

State rests.

30

Mr. Edwards: Before I offer this witness, if your Honor please, may I at this time ask your Honor to move on the striking out of the testimony, of all of the testimony that was given in reference to the Buick?

The Court: Well, you are entitled to your motion on that. Make your motion.

Mr. Edwards: I now do make it.

The Court: You may state the grounds.

40

Mr. Edwards: The motion is made upon the grounds, as I objected to the evidence going in about this Buick automobile that has been discussed here to day and your Honor allowed me an exception and stated that unless the prosecutor coupled it up to the defendant that you would strike it out. Now I submit that the prosecutor has not even pretended to do that. 10

The Court: On the Buick car?

Mr. Edwards: On the Buick car. It was the Oldsmobile.

The Court: Oh, yes, I know. But didn't Israel testify that that car was brought—what is your recollection of that testimony?

Mr. Edwards: That the Oldsmobile was brought.

The Court: I understand that about the Oldsmobile. 20

Mr. Edwards: And not the Buick. He didn't mention Goldfarb in connection with the Buick car at all.

The Court: I will hear you, Mr. Sexton.

Mr. Sexton: If my memory serves me correctly, if your Honor please, the testimony of Israel is that Goldfarb had gone to Jersey City and gotten him to go with him for selling automobiles, and took him to the ferry at Washington Street. There was Dan and some one else with a Buick automobile—no, Goldfarb first took him to the house, then they rode down in Goldfarb's automobile to where Dan and the other fellow were with the Buick. 30

The Court: Standing by the Buick car?

Mr. Sexton: Standing by the Buick car. It was taken then. 40

The Court: Taken then by Israel, driven by Israel, who followed Goldfarb to Asbury Park.

Mr. Edwards: Now, I submit, that, this is—

10 The Court: Well, however, the motion is denied and you may have an exception.

Mr. Edwards: Notwithstanding the fact—

The Court: No, I am going to admit it on the ground that the jury are entitled to have that testimony in connection with the circumstances showing the alleged relation between Goldfarb and Israel. I think the state is entitled to have that go to the jury.

20 Mr. Edwards: Then I have no business to argue, but I may have an exception?

The Court: You may note an exception.

(Objection noted for defendant as ground of appeal.)

The Court: I would say that it may also be competent under that theory of the State against Gargare, of the Lakewood case.

30 Mr. Edwards: I don't agree with your Honor on that case. That case is predicated upon an entirely different premise.

Defendant's testimony.

MAX FEINGOLD, sworn for defendant:

Direct Examination by Mr. Edwards:

40 Q. Will you tell us your business, please? A.
I am a practicing attorney at Freehold.

Q. Last September 9, 1919, you were then a practicing attorney of this borough? A. I was.

Q. And connected with the County Clerk's office of this county? A. I was.

Q. As a clerk, were you? A. I was, yes, sir.

Q. Do you know Alex Israel, the man who was upon the witness stand a short time ago? A. 10
Only from seeing him that day.

Q. I show you a paper marked Exhibit A for Identification and ask you if you ever saw that paper before? A. That is my handwriting. I wrote that paper.

Q. At whose request did you write that paper?
A. Mr. McDermott's.

Q. Harold McDermott? A. Yes.

Q. Who dictated the substance of the paper of the contents to you? A. Mr. Israel. 20

Q. At the time that was dictated to you did Mr. Goldfarb tell you what to answer therein?

Objecter to as leading.

Mr. Edwards: I think I have a right to.

The Court: No, this is your witness on direct examination.

Mr. Edwards: But Israel said that he did.

The Court: Oh, I see, it is a foundation 30
for contradiction, yes.

Mr. Edwards: That is the point.

The Court: Well, I think that is elementary.

Q. Did he or didn't he? A. He did not.

Q. Was he there in the room at the time it was written by you? A. He was not present at all.

Q. Were the contents of the paper read to Israel?
A. Yes, sir. 40

Q. By whom? A. I read it to him after it was written.

Q. Did you read it to him carefully? A. Yes, sir.

Q. And he swore to it then, did he? A. Yes, sir.

10 Q. Who sent for you, you say, to take the affidavit? A. Mr. Harold McDermott came in the office for me.

Q. Do you speak Jewish? A. I do, yes.

Q. Yiddish? A. Yes.

Q. Do you know that Israel speaks Yiddish? A. I don't know, no.

Q. Did you explain it to him in Yiddish, too? A. No, sir.

Q. He didn't need it, did he? A. No, sir.

20 Cross Examination by Mr. Sexton:

Q. Mr. Feingold, are you quite positive that Godfarb was not there? A. Absolutely positive.

Q. That he was not at that time—where did this conversation take place? A. In the witness room in the jail.

Q. Had you talked with Mr. Goldfarb prior to that? A. No, sir; I had not.

30 Q. Who was present? A. Mr. McDermott, Israel and myself.

Q. And you did this at the request of Mr. McDermott? A. He stopped at the clerk's office and requested me to go over and write an affidavit.

Q. You were not in the employ of Goldfarb at that time? A. Had no interest at all in the case.

Q. Your memory is quite clear that Goldfarb was not there? A. Yes, sir.

40 Q. You asked him questions and who transposed it into the narrative style? A. Mr. McDermott asked him questions and I simply wrote the

Harold McDermott—Direct Examination.

answers. He was instructed and he talked slowly so I could write the answers.

Q. You didn't write the questions? A. No, sir.

Q. Well, from the questions and answers you transposed it in the narrative style; isn't that so Mr. Feingold? A. Yes.

Q. Did you see Goldfarb there that day? A. 10
No.

Q. Sure about that? A. I am not certain. I might have seen him passing the door. He might have been near the jail door as I passed in, I don't know. I am certain he was not in the room or I haven't ever spoken to him.

Mr. Edwards: I offer that in evidence.

The Court: It may be marked.

Affidavit marked Exhibit D-1.

20

HAROLD McDERMOTT, sworn for defendant.

Direct Examination by Mr. Edwards:

Q. Mr. McDermott, you are a practicing attorney at law of this county? A. Yes, sir.

Q. And do you know Mr. Feingold? A. Mr. 30
Feingold? Yes, sir.

Q. Do you recall somewhere about the 9th of September last requesting him to go with you to have an affidavit taken in the jail? A. Yes, sir.

Q. Did he go? A. He did.

Q. Was the affidavit taken by you? A. You mean the swearing of the--

Q. The swearing to the affidavit? A. Mr. Feingold swore Mr. Israel.

Q. Was Mr. Goldfarb present at the time Mr. 40

Feingold wrote this or took the affidavit? A. To the best of my recollection he was not.

Cross Examination by Mr. Sexton:

10 Q. Mr. McDermott, you were at that time employed as counsel for Goldfarb, were you not? A. Yes, sir.

Q. And you were looking out for the interests of Mr. Goldfarb, naturally? A. Yes, sir.

Q. Who first informed you that Israel was willing to make a statement? A. Israel did himself.

20 Q. And acting upon that information you went over to get a statement, taking Mr. Feingold with you? A. Well, Israel, Mr. Israel if he was willing to put in affidavit form the story he told me, and he said he was. I then left the jail and went to the clerk's office and asked Mr. Feingold to go with me and make the affidavit.

Q. Did you talk with Mr. Goldfarb when you first went to the jail? A. Naturally I did.

Q. Yes, you did talk with Mr. Goldfarb? A. Yes, sir.

30 Q. And then you went back and Israel was alone at that time in the witness room, as Mr. Feingold has testified? A. To the best of my recollection when I took the affidavit, Mr. Sexton, Mr. Feingold and I and Mr. Israel were alone.

Q. But Goldfarb had been with you during part of the conversation that you had with Israel? A. I had been to see Goldfarb several times previous.

Q. But this particular time, this particular day? A. Yes.

Q. Goldfarb and Israel had been together? A. I don't know about that.

40 Q. Well, to the best of your recollection? A. I couldn't tell you. They were not there with me.

Q. When you first went there to talk with Mr. Israel and ask him if he would put in affidavit form, was that on the same day that you got the affidavit? A. I am not clear about that, Mr. Sexton, I am frank to tell you. I remember being at the jail and going over this story thoroughly with Mr. Israel and I questioned him closely about it, and he told me that he was willing to put it in affidavit form. I don't recall whether it was that same day or the next day that we went to jail with Mr. Feingold and took the affidavit. 10

Q. And was Goldfarb present when you went over this with Israel? A. You mean when I talked with him about it?

Q. Yes. A. And he first told me his story?

Q. Yes. A. Yes. 20

Re-direct Examination by Mr. Edwards:

Q. Did Goldfarb prompt Israel what to say at the time Israel told you the story which you afterwards got? A. He did not.

Q. And is this the story, Exhibit D 1? A. Yes, sir.

Q. That Israel then told you? A. He told me verbally that same story either the same day or the day previous. 30

Mr. Edwards: Shall I read this, if your Honor please, the affidavit?

The Court: You may.

(Mr. Edwards reads the affidavit, Exhibit D 1.)

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

Alex Isriel of full age being duly sworn upon his oath deposes and says:

10 I am 27 years of age and reside 7 West 112th St., New York City and am now confined in the County Jail at Freehold, N. J. I know Jacob Goldfarb and have known him for the past three years. During the latter part of July 1919 I bought a five passenger Buick car in Brooklyn, N. Y., from Frank Frances and another man called Dan and I paid them five hundred dollars and I got a bill of sale from them.

20 I had a brother in Belmar, N. J., and I drove the Buick car to Belmar the day after I bought it. I stopped at Michelsohn's Garage at Belmar for gasoline. A man named Joe Bender gave me gasoline. Bender asked me if I wanted to sell the car and I told him I would sell the car. Mr. Michelsohn was there when Bender asked about selling the car. I left there with the Buick and came back about three hours later. I then saw Mr. Michelsohn and sold the Buick to him. He gave me \$185.00 in cash and a Maxwell Sedan for the Buick. About an hour later Goldfarb came to the garage and I sold 30 him the Maxwell car for \$25.00.

A week later I bought another seven passenger Buick from the same persons in Brooklyn. Three days later I drove this car to Michelsohn's garage at Belmar and sold it to Michelsohn for \$360 cash and a five passenger Buick 1915 model. Two days later I saw Goldfarb in Brooklyn at his home and sold the five passenger Buick to him for \$250.00 and gave him the bill of sale that Michelsohn gave 40 me.

About two weeks later I bought an Oldsmobile in Brooklyn from a man who was introduced to me by Frances and the man called Dan. About 4 days later I took this car to Michelsohn's garage at Belmar and sold it to Michelsohn for \$50.00 cash, and a five passenger Buick 1916 model. Same day I saw Goldfarb in Belmar and sold this Buick to him for \$450 cash, and gave him Michelsohn's bill of sale. Goldfarb had been buying automobiles for about two years. I had worked for his father in Brooklyn and knew he was in this business. 10

About two weeks after this last sale I bought a Hudson touring car in New York City from a woman on 52nd Street and paid her \$1250.00 and received a bill of sale. The next day I took this car to Belmar; this was on a Sunday. The next day, Monday, I was arrested for speeding. This car was held to secure five hundred dollars bail. After I was released on bail on Tuesday I went to Brooklyn and came back to Belmar on Wednesday and went to a house on Fourth Avenue where I stayed when I was in Belmar. I was told there that the car was a stolen car. I then went back to New York to find the woman who sold it to me, to find out if it was stolen. I could not find this woman. 20

On Thursday, the next day, I saw Goldfarb at Exchange Place, Jersey City, and I told him I was going to take a lawyer along with me because I was in trouble and I asked him to go to a lawyer with me which he did. On Friday, the next day, the lawyer and I came to Asbury Park. The lawyer said he would see Judge Borden. I waited down-stairs. When the lawyer came down he told me the case was in Mr. Reeves' hands. Then the lawyer and I got into an automobile, went to the house where I stayed on Fourth Ave., then we went to Michel- 30 40

sohn's Garage where I saw Joe Bender. I told Bender I was going to Reeves' office and he said, "I am going along with you." The lawyer, Bender and I drove to Reeves' Store. Mr. Reeves was not there and we waited for him. When he came in he started to ask me questions where I got the Hudson car.

10 I told him where I bought it. Reeves told me that the three cars I sold to Bender were stolen cars and I said I did not know it. They asked more questions and then said they would go out and leave me with my lawyer. Then I told my lawyer I wanted to tell them everything what it was. The lawyer said all right and called in the two detectives, Reeves and another man. Then I told them that

20 Jake Goldfarb was a partner with me and told them how I bought the cars and everything. Bender told me to tell everything on Jake Goldfarb and if I told everything on Jake Goldfarb he, Bender, would help me out and I would go out free. I was mad at Goldforb because he had refused to lend me money, the day we were at the lawyer's office when I wanted money to pay the lawyer.

At Reeves' office the detectives mixed me up and I did not know what I was saying. After that we went before Judge Borden and I was placed under

30 \$5000 bail and have been in jail since. About 8 o'clock that night I was taken again before Judge Borden and two detectives came to me and told me that I had to tell on Jake Goldfarb what I had said that I was a partner with him. Bender was not present. They then took me upstairs and they asked me if I know Goldfarb and the detective was along side of me and told me to say what I said before that Jake Goldfarb was a partner with me. I said this to the Judge. Goldfarb was arrested.

40 The truth is that Goldfarb was not a partner of mine. I bought the cars myself. Goldfarb did not

know I was going to buy them. Goldfarb never told me to buy any cars from these people. I never divided or gave any money to Goldfarb for any of the cars that I sold. Everything I did was my own business. I lied to the people in Asbury Park when I told them that Goldfarb was a partner of mine as he was not connected with me in any way. Goldfarb, as far as I know, has no connection with the people from whom I bought the cars. I never knew Goldfarb to buy any stolen cars or steal cars from anyone. 10

I make this affidavit because I want to tell the truth about everything.

Goldfarb never told me to buy any automobiles from anybody.

ALEX ISRAEL.

20

Sworn and subscribed before me
an attorney at law of N. J.
Sept. 9, 1919.

MAX FEINEGOLD,
Attorney at Law of N. J.

JOSEPH BENDER, recalled for defendant. 30

Direct Examination by Mr. Edwards:

Q. Mr. Bender, Mr. Israel swore on the witness stand that Goldfarb drove a Maxwell sedan and a Buick from out of your garage at the time compensation of them was taken. Will you state to the court and jury your recollection on that? Was it Goldfarb that drove those cars out or was it Israel?

A. No, sir; Israel.

40

Cross Examination by Mr. Sexton:

Q. Are you quite sure about that? A. I am sure of that because I seen it. He drove out of the garage, Israel.

10 Q. Goldfarb was there though, wasn't he? A. No.

JACOB GOLDFARB, sworn for defendant.

Direct Examination by Mr. Edwards:

Q. Where do you live? A. 267 South Fourth, Brooklyn.

20 Q. How old are you? A. Twenty-one.

Q. Are you in business in Brooklyn? A. Yes, sir.

Q. What is your business? A. Automobile dealer.

Q. How long have you been in business there? A. Oh, the past two years.

Q. Do you know Alex Israel? A. Yes, sir.

Q. Was Alex Israel living with you at the time of the arrest? A. No, sir.

30 Q. Was he living at your house at the time of the arrest? A. No, sir.

Q. Do you know where he was living at the time of the arrest? A. He was living up in his sister's house, 112th Street.

Q. That is the place that he states in his affidavit that he was living, 7 West 112th Street, was it? A. Yes, sir.

40 Q. On August 18, 1919, did you on that date or on any other date steal an Oldsmobile in Brooklyn or did you on that date or any other date re-

ceive an Oldsmobile in Brooklyn knowing it to have been stolen? A. No, sir.

Q. Did you on that date or any other date bring that Oldsmobile car into this state at the Hoboken ferry or any other ferry? A. No, sir.

Q. You have known Israel for some time, have you? A. Yes, sir. 10

Q. Do you know for whom he worked? A. Oh, he worked for us for several years.

Q. Who do you mean by us? A. My father, Philip Goldfarb.

Q. Your father is— A. In the scrap iron business in Brooklyn.

Q. And has been there for a great many years, has he? A. Yes, sir.

Q. So that when Mr. Michelson says, as he did this morning, that he asked you whether you knew Israel, what was your answer? A. I says I know him. I say, "I know him. He used to work for us." 20

Q. And as a matter of fact he did work for your father at that time? A. Yes, sir.

Q. And therefore as a matter of fact you did know him when Mr. Michelson asked you whether you did or not; is that true? A. Yes, sir.

Q. Did you ever divvy up or divide any money for the sale of any automobiles which Israel made to Michelson or Bender or any one else in this state? A. No, sir. 30

Q. Did you tell Israel on the 18th of August or any other time to follow you down to Michelson's in your car? A. No, sir.

Q. You did meet Bender down there, did you? A. Met Mr. Bender.

Q. Or Mr. Israel? A. I met him down there.

Q. Saw him there several times, did you? A. Oh, yes; I saw him several times, 40

Q. You have been dealing for some time with Bender and Michelson, have you not? A. Oh, yes; I do a big business with Michelson and Bender.

10 Q. What do you mean a big business? A. Oh, I must have done over \$5,000 or \$6,000 worth of business with them, buying and selling cars off of them.

Q. And you visited down this way, did you not? A. In the summertime.

Q. In the summertime? A. Yes.

Q. Have you ever been in trouble in your life? A. No, sir.

20 Q. Did Israel give you \$60 while you were going from Michelson's and Bender's to Asbury Park or home, and then did you give him back \$30 against of that \$60 and tell him that you would give him \$20 later on? A. No, sir.

Q. Did you ever make an agreement with this man to sell cars for you at an agreed price of \$50 per car? A. No, sir.

Q. He has stated that you were present and told him and Mr. Feingold what to put in this affidavit marked Exhibit D 1. Did you, or didn't you? A. Tell Israel what to say in this affidavit?

Q. Yes. A. No, sir.

30 Q. Did you tell Mr. Feingold what to put in that affidavit? A. No, sir. I haven't seen Feingold.

Q. Were you present at the time that affidavit was written? A. No, sir.

Q. Were you present at the time the affidavit was taken by Mr. McDermott? A. No, sir.

Q. In the ante-room of the jail or any other place? A. No, sir; I was in the jail, in the back, on the other side.

40 Q. How did you happen to be in Belmar at the time Israel drove down there, can you tell?

Mr. Sexton: Which time?

Mr. Edwards: Any of the times.

A. Well, as a matter of fact I used to get in connection with Mr. Bender. He used to buy these sometimes big cars which I can get rid of them. He used to call me up often week ends, I used to drive up there very often Saturday afternoon, I would drive up and stay over till Sunday night and go home, because our business closes at twelve o'clock in the city.

10

Q. Did you drive a Maxwell car out of Bender & Michelson's, the car that was traded for a Buick?

A. No, sir.

Q. Did you drive the car, the Oldsmobile or the Buick, into this county or into this State? A. No, sir.

20

Q. You were at Red Bank? A. Yes, sir.

Q. And with whom were you at Red Bank? A. I was there with Mr. Israel and my cousin, Goldfarb.

Q. What time did you get to Red Bank? A. Got there about eleven, half-past eleven.

Q. Whose car were you driving then? A. My own car.

Q. How did you come to be with Israel at that time? A. Well, I bought a Chalmers car and I broke down in the road at Red Bank in the car tracks. We had put it in that garage on the left-hand side there opposite the hotel, then we had to tow it home that same day. We had to tow that car home. We came very late and we didn't have anything, tools, so we remained there till the morning. In the morning we towed the car home. Israel was driving the car and my cousin was on the running-board and we towed the car home to Brooklyn.

30

40

Q. How did it come that Israel happened to be with you two at that time? A. Well, because he used to do my—he used to take cars in for me because he could drive a car and happened to be handy and he was still working for my father at the time.

10 Q. And when was that? Do you recall when it was, about?

Mr. McDermott: August 12th.

Q. That was before then this Oldsmobile in question was even thought of being stolen, evidently, was it? A. I don't know anything about it.

Q. The Oldsmobile was stolen, according to the evidence on the 21st. So that you were at Red Bank with these people on the 12th of August?

20 That was it? (No reply.)

Q. Did you pay the bill, as Israel said, at the Red Bank hotel that night? A. Yes, sir; paid all the bills.

Q. Did you tell Israel what to say in this affidavit or did you know what he was going to say in this affidavit at the time he drew it? A. I didn't know what he was going to say; no, sir.

Q. Well, did you tell him to say what he has stated in this affidavit? A. No, sir.

30 Q. I suppose you did tell the truth?

Objected to.

A. About this affidavit?

Q. No, about his conversation with McDermott?

The Court: What did you tell him to say, if anything?

Q. What did you tell him to say, if anything?

A. I told him to say the truth how the thing happened.

40

Mr. Sexton: Of course, he will answer it now.

Q. Mr. Israel has stated here that you promised to get him out if he would make a statement in your favor. Is that so? A. No, sir.

Cross Examination by Mr. Sexton:

10

Q. Mr. Goldfarb, do you know where Israel was working in Jersey City? A. Yes, sir.

Q. Where is it that Israel worked in Jersey City? A. I delivered a wagon for him—

Q. Never mind. Where is it that he worked? A. Jersey City.

Q. Whereabouts in Jersey City? A. I think it is Grove Street.

Q. What number? A. I don't know the number. 20

Q. Have you been over there? A. Yes, sir.

Q. How many times have you been over there?
A. Oh, I have been over there once with a horse, about three or four times.

Q. Been over there a number of times, haven't you? A. Three or four times.

Q. When did Israel leave the Jersey City place?
A. When?

Q. Yes. A. He must have left it several times, because he worked for us and he went away. 30

Q. When was the last time? A. I don't remember.

Q. When did he come to work for you the last time? A. The latter part of July.

Q. Yes, the latter part of July? A. Wait a minute. In May, in the month of May.

Q. You want to make it May instead of July, do you? A. Because we were working—

Q. Never mind. You would like that to be May instead of July? A. Yes, sir. 40

- Q. How many cars did Israel drive down to the shore for you? A. For me?
- Q. Yes. A. None at all.
- Q. Didn't you say a few minutes ago that you had him to drive cars back and forth for you? A. In the city.
- 10 Q. And down to the shore? A. No, sir.
- Q. What was he doing with you at Red Bank? A. I towed the car in from Red Bank to New York with him.
- Q. With whom? A. A Chalmers car; a busted-up car.
- Q. Whose car was that? A. That was my car.
- Q. What was Israel doing with you? A. He was driving it.
- 20 Q. And was he down to Red Bank with you? A. The car was busted and we had to tow it into New York.
- Q. When you say we, you mean your cousin, you and Israel? A. Yes, sir.
- Q. What was Israel doing down to Red Bank? A. He helped me tow the car into the city.
- Q. Where did he come from? A. From Brooklyn.
- Q. Tow the car into the city? A. Yes, sir; from Red Bank to New York.
- 30 Q. Where did you get the Chalmers car? A. I bought it in New York and I brought it down to Red Bank.
- Q. Where were you going? A. I was going to Asbury Park.
- Q. And going to take Israel along with you? A. To Asbury Park.
- Q. Yes. A. No, sir.
- Q. What were you doing with Israel there? A. You don't understand me.
- 40 Q. No, I don't. I am asking.

The Court: How did Israel come to go down to Red Bank, was the question.

A. To tow the broken car on the road.

Q.. We understand that, but why did he come down with you? A. He came down with my automobile. He left my place in Brooklyn. 10

Q. With you in your automobile? A. Yes, sir.

Q. Went down with you? A. Yes, sir.

Q. And went back with you and had a bursted car in Red Bank? A. In back. We were towing the car in back.

Q. In other words, you started out from Brooklyn and got a bursted car? A. Yes, sir.

Q. Took Israel and another man? A. Yes, sir; my cousin.

Q. Who was the other man? A. A cousin of mine. 20

Q. Goldfarb? A. Yes, sir.

Q. What was his first name? A. Moe. The register shows the name.

Q. You registered there? A. Yes, sir.

Q. At the Globe Hotel? A. I don't remember the name of the hotel; opposite the garage which I had my busted car in.

By Mr. Sexton: 30

Q. When did you break the Chalmers car? A. About a week before.

Q. Where were you going when you broke the car? A. I was going to Asbury Park and I bought a Pierce Arrow of Mr. Bender.

Q. Did Bender help you to tow the car home? A. The Chalmers?

Q. Yes. A. Yes.

Q. How many cars did you buy from Bender, 40

have you bought from Bender? A. Oh, a number of cars.

Q. Well, how many? A. I have got the book here.

Q. Well, tell me without the book? A. Oh, bought ten or fifteen cars.

10 Q. What kind of cars were they? A. There was a Haynes car, a 1919, late 1917, a Pierce Arrow, a Hupmobile, 1917, a Dodge of 1917.

Q. Did you sell any cars to Bender & Michelson? A. Yes.

Q. What kind of cars did you sell them? A. Cadillac coupe.

Q. Cadillac? A. Yes, Cadillac; and Fords, several Fords.

Q. Seven Fords? A. Several.

20 Q. As a matter of fact, you usually traded when you went down there, didn't you? A. No, we bought out and sold.

Q. You would bring a car down and bring a car back? A. Oh, I wouldn't bring them down, I would call them up and tell them. They had to use this car and naturally I would deliver it to them.

Q. Bring it down and take a car back? A. Not all the time.

30 Q. But most of the time you would take a car back? A. I didn't take a car back sometimes.

Q. Bring a car down and either swap or buy between you and then take a car back; is that so? A. Never swapped with them; just do a cash business.

Q. How many cars have you bought from Israel? A. Israel?

Q. Yes. A. I think it is two or three cars.

Q. Well, how many? A. Two cars, I think.

40 Q. What kind of cars were they? A. It was a broken sedan.

Q. What kind of a sedan? What was the name of the car? A. A Maxwell sedan, and a 1913 Buick, and a 1914 Buick.

Q. When did you buy them? A. Oh, in the month—when?

Q. Yes, when? A. I don't remember the month.

Q. Well, it was last August, wasn't it? A. 10
Around that time.

Q. And they are the same cars that Israel has been talking about that he got from Michelson & Bender? A. I didn't know that.

Q. Where did you get these cars from Israel? A. In New York.

Q. Whereabouts in New York? A. From my place of business.

Q. Did Israel bring them to your place there? A. Yes, sir. 20

Q. You and Israel had business dealings then in reference to cars? A. Well, I sold him another, an Overland car once.

Q. Sold him an Overland? A. Yes, he bought an Overland car.

Q. Was that in August? A. No, that was previous to August.

Q. Well, after Israel left Levin's in Jersey City what business was he in? A. He was working several months for my father. 30

Q. No, after he left Levin's? A. He worked several months for my father.

Q. Then who did he work for? A. Who did he work for?

Q. After that. A. I don't know who he worked for.

Q. Who did he work for last August? A. Last August, I don't know. I don't know who he worked for.

Q. When you and Israel were in jail together 40

here you talked over the troubles that you were in?

A. Yes, sir.

Q. Did you tell Mr. DeDermott that Israel would make a statement? A. That Israel would make a statement?

10 Q. Yes. A. I didn't tell him anything about a statement. I told him to come over and told to Israel about my case. I had Mr. McDermott to get me bail, to see what he could do for me, taking me out.

Q. So you suggested to Mr. McDermott that he go and talk to Israel about your case; and how soon after that was it that Mr. McDermott got this statement from Israel? A. I think it was the following day.

Q. And you had a talk to Israel before you spoke to Mr. McDermott, hadn't you? A. Yes, sir.

20 Q. And as a result of that talk you told Mr. McDermott to go over and get the statement? A. I didn't tell him anything about the statement. He didn't tell me anything about a statement.

Q. Have a talk with him? A. I talked with Mr. McDermott.

Q. After you had talked with Israel in the jail? A. That is before. I put him on the case to get me out. I put Mr. McDermott on the case to get me out. He says all right, he will try to get me out.

30 And so it went on.

Q. And then you had your talk with Israel? A. Yes, sir.

Q. And you told Mr. McDermott for him to talk with Israel; is that right? A. Because Israel told me the story how the whole thing happened when he was locked up in Asbury Park and how the detectives first told him Mr. Bender had told him to squeal because he knew that I had some money and the only way to get the money was to get it
40 out of me because Israel hasn't got any money.

Q. That is so, Israel hasn't got any money, has he? A. I don't know whether he has or not.

Q. You said a minute ago that he hadn't. A. But then Mr. Bender thought that I am the man who has got the money and he says he knows my father is a rich man in New York.

Q. He is a rich man? A. A scrap iron man in New York. He thinks that he would get money out of my people, he would get money out of Israel. He went and told Israel to squeal everything on me, which he did. 10

Q. Who did that? A. Bender did that to Israel.

By Mr. Edwards:

Q. Israel told you that? A. Yes, Israel told me that, to me in jail. 20

Q. You don't know as a fact that that is so?

Mr. Sexton: Who is doing this examination, you or I, Mr. Edwards?

Mr. Edwards: I want to get it straight.

Mr. Sexton: You do it afterwards.

Q. Your father is a rich man then? A. Yes, sir.

The Court: No doubt about it; it has been said three times. 30

Q. Do you recall the day that you met Israel at Bender & Michelson's garage in Belmar? A. Do I recall the date?

Q. Yes. A. The first day I met him?

Q. Yes, the first day you met him? A. The first day that I met him I didn't meet him in Michelson's garage.

Q. Where did you meet him? A. On 4th Avenue. 40

He was talking to his brother. He has got a brother in Belmar in a tailor shop, and he was talking to him.

Q. Then you later on met him in Michelson's garage? A. No, I went to Lakewood that day. That afternoon I went to Lakewood and come back from
10 Lakewood. I bought a car in Lakewood.

Q. What kind of a car was that? A. I bought some magnetos and a car. I think it was a Ford—no, an Oldsmobile.

Q. You bought an Oldsmobile? Well, had you seen Israel— A. I bought an eight cylinder Olds, 1917.

Q. Had you seen Israel up at Michelson's garage up until that time? A. Yes, I did.

Q. When did you first see him up at Michelson's
20 garage? A. When I first seen him?

Q. Yes. A. You want to know the date?

Q. Yes, I want to know the date. A. I don't remember the date; in the month of August.

Q. And how soon after that did you buy the Maxwell car from Israel? A. Several days after.

Q. Several days after that? A. That I seen Israel?

Q. Yes. A. I bought that car in New York.

Q. Well, I didn't say anything about buying any
30 car in New York. A. Several days after.

Q. Didn't you see that car in Michelson's garage when you were there that day? A. No, sir.

Q. You didn't see that Maxwell car? A. I didn't stop at Michelson's garage that day.

Q. Didn't you tell Michelson that you knew Israel? A. Yes, I told Michelson I knew Israel after the transaction was transacted. Michelson told me that he bought a car from Israel. He didn't mention what make of car he bought, what make of car, he
40 bought a car from Israel. He asked me if I knew

him. I says yes, I knew Israel, he worked for my father several years.

Q. And you saw Israel in Belmar, didn't you?

A. I did see him in Belmar.

Q. And saw him in the garage? A. No, not in the garage. The first time I seen him I seen him on 4th Avenue at the tailor shop there.

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Q. That was no the same day, wasn't it?

Mr. Edwards: The same day as what?

Q. The same day that you were speaking with Michelson in the garage? A. No, the following day.

Q. In other words you said— A. The first day I seen him on 4th Avenue. I was coming from New York. I see him in 4th Avenue, I don't know what street. There is a tailor shop there on Main and something, I believe, that is a tailor shop there. I am not acquainted with the streets there. I met Israel there, without a car. He was talking to his brother.

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Q. Then I got so far as the following day, when you talked with Michelson in the garage. A. Yes, sir.

Q. And that is a couple days later you say you bought a Maxwell? A. Yes, sir.

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Q. Now then how soon after that did you buy the 1914 Buick? A. I don't remember the date.

Q. Well, about approximately. A. Maybe a month later.

Q. A month later? It might have been a couple weeks or so? A. It may have.

Mr. Edwards: If your Honor please, I had other witnesses one Brokaw, who would not appear and come down here, and one from

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Charge of the Court.

the state bank, who would not come down here, because as he put it, of press of business. But we rest.

Mr. Sexton: Did your Honor allow my affidavit to go in?

10 The Court: No, I will hear on that affidavit. The objection to your own client's affidavit is that it is self-serving, isn't it?

Mr. Sexton: No, they are taking the state's witness. They say here that their affidavit is a true one.

The Court: Now you say that you have one which you say also is the true one.

Mr. Sexton: It is substantiated by the very story he told a day or so afterwards.

20 The Court: Well, I think it is not competent at all. It will not be admitted.

Both sides rest.

Charge of the Court.

30 Gentlemen of the Jury: The Court will not take any more time in observation upon this case than seems necessary. The defendant Goldfarb was originally indicted with one Alexander Israel for violating a special law of this state which provides for the prosecution of any person or all persons identified with the particular incident who, having stolen property in another state or received it in another state knowing it to have been stolen and brought it into this state and shall be subject to such prosecution as though the larceny had occurred in the State of New Jersey.

40 Whether that is a proper law under our constitution or not is not for you to consider, gentle-

men. I have held that it is not for this Court to consider, but that it is a question for the Supreme Court or the Court of Errors and Appeals of this state to decide. And, therefore, so far as this Court and the jury are concerned, we are trying this case upon the theory that it is a perfectly good law which the legislature in its wisdom passed. 10

Now I may say, gentlemen, that the object of the law sufficiently clear to justify the statement that it was intended to stop the bringing of stolen property into this state and to punish the offense of bringing the property into this state for the reason that where stolen property is sold to an innocent purchaser, the innocent buyer can acquire no title superior or above that of the original owner, and the original owner can follow the property wherever he finds it and take it from a person who has it in his possession, even though he may have been an innocent buyer of it. So in this case you observed under the testimony the fact to be that Mrs. Ronan was notified that her car, which was stolen in New York—if you believe the testimony, and if you believe that fact to have been established beyond a reasonable doubt to your satisfaction, pursued the car into New Jersey, found it here in the possession, we will say, of an innocent party, if you believe the testimony;—it 20
having been taken by the automobile inspector from either Bender or Michelson—you will recall what testimony was, and—if you assume they were innocent buyers—the car was turned back to the original owner, Mrs. Ronan, and Michelson and Bender, if they paid a sum of money for it, lost what they had paid so far as Mrs. Ronan was concerned. Of course they have a right to bring 30
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suit against the person who sold it to them and if he were financially responsible, recover their loss.

10 So therefore, gentlemen, the purpose of the law I think must be clear to you that it was to protect an innocent buyer of such property against having his money taken from him improperly and being obliged to surrender the property so bought to the original owner. The difficulty with the law is the manner in which it is drawn, and with that, I say, you have nothing to do whatever. I do not say, gentlemen, and I am not saying that the appellate courts will not sustain this law. I am not anticipating what the appellate courts would do with respect to it.

20 Now gentlemen, the case narrows itself down to this: If you find that the defendant, in association with Israel, stole this car in the City of New York or received the car knowing it to have been stolen and brought it into New Jersey, and the State has satisfied you of those facts beyond a reasonable doubt, then it will be your duty to convict him; on the other hand, if the State has not so satisfied you you ought to acquit the defendant.

30 I may say that the State relies very largely upon the testimony of an accomplice; that is to say, the testimony of Israel. Now it is the law in this state, that you may convict upon the uncorroborated testimony of an accomplice for crime, assuming you believe the accomplice's testimony. And when I speak of accomplice, if you find he was an accomplice, I am referring to the other defendant, this defendant Israel. He is not upon trial, because he has pleaded guilty to receiving
40 the property in question knowing it to have been stolen.

Now I may say, gentlemen, that if the defendant Goldfarb was with Israel—I do not mean that he necessarily had to be physically with Israel in the bringing of the car in question into this state, but if he was associated with the offense, in other words, that he knew that it was a stolen car, that he assisted Israel, or indeed, if you find under the evidence that he was a principal, if he conceived the idea, in other words, of disposing of this car, in the manner alleged in the indictment, it would not make any difference, I intend to say to you, whether he was actually with Israel all the time that he was disposing of the property. In other words, if he directed Israel to steal the car or if it was stolen by him it would not make any difference, if he directed Israel to steal and Israel did steal the car, and it was understood he was to take it to Asbury Park and sell it, that it was done under the direction of Goldfarb; Goldfarb knew all about it, he need not have been present. If he directed that it be done he would be a party to the offense, and therefore under our statute just as much a principal as though he were on the scene himself.

I am giving you this instruction because you may find under the evidence that these parties were not together during the commission of the crime, if there was a crime committed, and that is for you to say. Because the burden is always upon the State to prove the guilt of the defendant charged in the indictment beyond a reasonable doubt. Therefore in this case you must find that the defendant either was with Israel when the car was brought in—they seem to admit, at least Israel admits that he brought the car down to Asbury Park; you will recall what his testimony

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10 was. You must find beyond a reasonable doubt that the defendant Goldfarb was not only involved directly or in the manner I have indicated by directing Israel to perpetrate this crime of stealing the car with respect to the stolen property; that he did cause it to be stolen, and also it must be proved by the State beyond a reasonable doubt that he brought it into this state or was associated with it being brought into the state in the manner I have already indicated to you, and you are to be so satisfied by the evidence beyond a reasonable doubt.

20 Now, gentlemen, it is your right to believe or disbelieve the story of Israel. It appears that he has made two statements which you may find in a material way differ. If you cannot believe the statement made in court to-day by reason of the previous statements which you may find, if you do find, in a material way are inconsistent, you would have the right to throw out his testimony; and if you threw out his testimony, you might find the case the that the State had not carried the burden of proving the defendant Goldfarb guilty beyond a reasonable doubt, and if you find that situation you should acquit Goldfarb.

30 On the other hand, if you find that Israel, as claimed by the State, has told the truth to-day and that he was not telling the truth on the other occasoin because of the promise made by Goldfarb to get him released from jail on bail, you would have a right, I may say, to accept his story here to-day as the truthful one; and if you did, then you would give it, in association with other evidence of the State such interpretation as would lead you to decide whether the State had proven

40 the guilt of this defendant beyond a reasonable doubt.

Finally I reiterate, gentlemen, if you have any reasonable doubt of the defendant's guilt, acquit him; if you have no reasonable doubt of his guilt it would be your duty to convict him.

Defendant's Exceptions.

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Mr. Edwards: I ask an exception to that portion of the charge in which the Court said in substance that the car was found presumably in the possession of an innocent purchaser.

I also except to that portion of the charge in which the Court stated that the defendant Goldfarb would be just as much a party to the stealing of the car or the receiving of it if he directed the stealing of it and if it were stolen by his direction, even though Goldfarb was not present, or words to that effect.

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The defendant also prays a general exception to the whole charge.

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Assignment of Error.

NEW JERSEY SUPREME COURT.

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THE STATE,
Defendant-in-Error,

vs.

JACOB GOLDFARB,
Plaintiff-in-Error.

On Indictment
for violating
Chapter 44,
etc., Laws of
1917.

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Afterwards, to wit, on this date, before the Honorable, The Supreme Court of the State of New Jersey, comes Jacob Goldfarb, by his attorney, William L. Edwards, and says that in the record and proceedings aforesaid, and also in the giving of the verdict and judgment aforesaid, there was manifest error, and assigns the following causes of error:

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1. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for stealing a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, in the State of New York, another independent state or sovereignty, on the 18th day of August, 1919.

2. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, in another sovereignty, unlawfully steal, take and carry away the said Oldsmobile automobile.

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3. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the de-

fendant, by sentence, for the stealing, taking and carrying away of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sovereignty.

4. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for unlawfully and feloniously receiving a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, State of New York, another independent state or sovereignty, on the 18th day of August, 1919. 10

5. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, at Brooklyn, in the State of New York, another independent state or sovereignty, unlawfully and feloniously receive said Oldsmobile automobile, on the 18th day of August, 1919. 20

6. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence, for the unlawful and felonious receiving of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sovereignty. 30

7. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence of a fine of \$1,000.00 and six months in jail for the larceny of receiving of the automobile in question, in the City of Brooklyn, in the State of New York, another independent State or sovereignty, when there was no evidence of any kind produced to show that the offense of larceny or receiving in the State of New York of 40

the automobile in question was grand larceny or petit larceny.

10 8. The crime of larceny or receiving of the automobile in question in the City of Brooklyn, in the State of New York, another independent state or sovereignty, are not crimes that the Court of Oyer & Terminer of Monmouth County can take notice of or have jurisdiction over or for which it can punish.

9. The Court should have granted the motion to quash the indictment against the defendant, Jacob Goldfarb, for the reasons then stated to the Court, which were that:

20 (a) The indictment charged the stealing and receiving of the automobile therein mentioned, at the City of Brooklyn, in the State of New York, and not within the jurisdiction of the Oyer & Terminer Court of Monmouth County.

30 (b) The Court of Oyer & Terminer of Monmouth County could not take the cognizance of the fact that the crime of stealing or receiving the automobile mentioned in the indictment were committed in the State of New York.

40 (c) The said crime of stealing the automobile mentioned in the indictment, or receiving the same, knowing it to have been stolen, are complete crimes within themselves and having taken place, as alleged in the indictment, in the State of New York, the Court was without jurisdiction to hear or determine the case on those questions or receive evidence of the stealing or receiving of said automobile in question.

(d) The Court, in the event of the defendant being found guilty, would have to sentence the defendant as if "such larceny or receiving," as is alleged in the indictment and necessary to be proved at the trial, had taken place in this state and that it was without jurisdiction so to do.

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10. The corpus delicti was not proved and the Court, therefore, erred in permitting the case to go to the jury.

11. The corpus delicti was not proved and the jury had nothing upon which to base its conclusion that the defendant did either steal or receive the particular automobile mentioned in the indictment.

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12. There was no evidence to show that the Oldsmobile in question was stolen either by Israel or the defendant Goldfarb and brought into this state by either of them.

13. The Court erred in the following part of its charge to the jury:

"It (the automobile in question), having been taken by the automobile inspector from either Binder or Michelson—you will recall what testimony was, and—if you assume they were innocent buyers—the car was turned back to the original owner Mrs. Ronan, and Michelson and Binder, if they paid a sum of money for it, lost what they had paid so far as Mrs. Ronan was concerned."

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When there was absolutely no evidence that the particular car mentioned in the indictment as the

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property of Mrs. Ronan or Elsie Schuster was the car stolen by either of the defendants, or the car that was, as stated by the Court, taken by the automobile inspector from either Binder or Michelson and turned back to the so-called original owner.

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14. The Court erred in the following part of its charge to the jury :

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“Now I may say, gentlemen, that if the defendant Goldfarb was with Israel—I do not mean that he necessarily had to be physically with Israel in the bringing of the car into this State but if he was associated with the offense, in other words, that he knew it was a stolen car, that he assisted Israel or indeed, if you find under the evidence that he was a principal, if he conceived the idea, in other words, of disposing of this car in the manner alleged in the indictment, it would not make any difference, I intend to say to you whether he was actually with Israel all the time that he was disposing of the property. In other words, if he directed Israel to steal the car or if it was stolen by him, it would not make any difference if he directed Israel to steal and Israel did steal the car, and it was understood he was to take it to Asbury Park and sell it, that it was done under the direction of Goldfarb, Goldfarb knew all about it, he need not have been present. If he directed that it be done, he would be a party to the offense, and therefore, under our statute just as much a principal as though he were on the scene himself.”

30

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“I am giving you this instruction because you may find under the evidence that these

Assignment of Error.

parties were not together during the commission of the crime."

15. The Court erred in permitting evidence over the objection and exception of counsel, of an alleged theft of a Buick car not mentioned in the indictment that was being tried, and that the admission of such evidence was harmful to the defendant. 10

16. The Court erred in refusing to strike out such evidence of the alleged theft of a Buick car because the prosecutor failed to connect the defendant in any way with the alleged theft of such Buick automobile.

17. The Court erred in permitting evidence of the theft of the Oldsmobile automobile on August 21, 1919, three days after the time alleged in the indictment. 20

18. The Court erred in permitting evidence of Elsie Schuster and N. Ronan as to what they did as to the so-called stolen Oldsmobile automobile in the City of Brooklyn, in the State of New York.

19. The Court erred in permitting the testimony of conversations and transactions between Binder and Israel, which conversations were not in the presence of defendant and which transactions were not in the presence of the defendant. 30

20. The Court erred in refusing to strike out the testimony given by Binder of the conversations and transactions with Israel which had not taken place in the presence of the defendant Goldfarb.

21. The Court erred in permitting the testimony of the witness, Samuel Michelson, of transaction 40

held between Michelson and Israel, not in the presence of the defendant, of the alleged theft of a Buick car.

10 22. The Act under which the defendant was indicted, namely, Chapter 44 of the Laws of 1917, page 78, is unconstitutional and void:

(a) Because it violates the 6th Amendment to the Constitution of the United States, which provides that,

20 "In a criminal procedure, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which districts have been previously ascertained by law, and to be informed of form and nature of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

30 (b) Because it is in violation of Article 3, Section 3, of the United States Constitution, which provides that,

"The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed."

40 (c) Because the acts of larceny or receiving as alleged in the indictment are separate and distinct acts taking place in another place which the Oyer & Terminer Court of Monmouth County took cog-

Assignment of Error.

nizance of contrary to the constitutional inhibition.

23. The Court erred in not permitting the defendant to have compulsory process as prayed for and as a result the Court deprived the defendant of his constitutional rights to have compulsory process as provided under Article 1, Section 8, of the State Constitution, as well as the United States Constitution.

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WM. L. EDWARDS,
Atty. and counsel of
Plaintiff in Error.

Filed, Aug. 28, 1920.

Due and legal service of the within Assignment of Errors is hereby acknowledged as within time.

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CHAS. F. SEXTON,
Attorney for Defendant-in-Error.

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Specifications of Causes for Reversal.

NEW JERSEY SUPREME COURT.

10

THE STATE,
Defendant-in-Error,

vs.

JACOB GOLDFARB,
Plaintiff-in-Error.

On Indictment
for violating
Chapter 44, etc.,
Laws of 1917.

20

The entire record of the proceedings had upon the trial of this cause, having been returned by the plaintiff-in-error therein, and now comes the said plaintiff-in-error, Jacob Goldfarb, by his attorney, William L. Edwards, and specifies the following causes for reversal of the verdict rendered in this cause:

30

1. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for stealing a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, in the State of New York, another independent state or sovereignty, on the 18th day of August, 1919.

2. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, in another sovereignty, unlawfully steal, take and carry away the said Oldsmobile automobile.

40

3. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the de-

Specifications of Causes for Reversal.

fendant, by sentence, for the stealing, taking and carrying away of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sovereignty.

4. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for unlawfully and feloniously receiving a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, State of New York, another independent state or sovereignty, on the 18th day of August, 1919. 10

5. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, at Brooklyn, in the State of New York, another independent state or sovereignty, unlawfully and feloniously receive said Oldsmobile automobile, on the 18th day of August, 1919. 20

6. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence, for the unlawful and felonious receiving of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sovereignty. 30

7. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence, of a fine of \$1000.00 and six months in jail for the larceny of receiving of the automobile in question, in the City of Brooklyn, in the State of New York, another independent state or sovereignty, when there was no evidence of any kind produced to show that the offense of larceny or receiving in the State of New York of the automobile in question was grand larceny or petit larceny. 40

8. The crime of larceny or receiving of the automobile in question in the City of Brooklyn, in the State of New York, another independent state or sovereignty, are not crimes that the Court of Oyer & Terminer of Monmouth County can take notice of or have jurisdiction over or for which it can punish.

9. The Court should have granted the motion to quash the indictment against the defendant, Jacob Goldfarb, for the reasons then stated to the Court, which were that:

(a) The indictment charged the stealing and receiving of the automobile therein mentioned, at the City of Brooklyn, in the State of New York, and not within the jurisdiction of the courts of this state or within the jurisdiction of the Oyer & Terminer Court of Monmouth County.

(b) The Court of Oyer & Terminer of Monmouth County could not take cognizance of the fact that the crime of stealing or receiving the automobile mentioned in the indictment were committed in the State of New York.

(c) The said crime of stealing the automobile mentioned in the indictment, or receiving the same, knowing it to have been stolen, are complete crimes within themselves and having taken place, as alleged in the indictment, in the State of New York, the Court was without jurisdiction to hear or determine the case on those questions or receive evidence of the stealing or receiving of said automobile in question.

(d) The Court, in the event of the defendant being found guilty, would have to sentence the de-

Specifications of Causes for Reversal.

fendant as if "such larceny or receiving," as is alleged in the indictment and necessary to be proved at the trial, had taken place in this state and that it was without jurisdiction so to do.

10. The corpus delicti was not proved and the Court, therefore, erred in permitting the case to go to the jury. 10

11. The corpus delicti was not proved and the jury had nothing upon which to base its conclusion that the defendant did either steal or receive the particular automobile mentioned in the indictment.

12. There was no evidence to show that the Oldsmobile in question was stolen either by Israel or the defendant Goldfarb and brought into this state by either of them. 20

13. The Court erred in the following part of its charge to the jury:

"It (the automobile in question), having been taken by the automobile inspector from either Binder or Michelson—you will recall what testimony was, and—if you assume they were innocent buyers—the car was turned back to the original owner Mrs. Ronan, and Michelson and Binder, if they paid a sum of money for it, lost what they had paid so far as Mrs. Ronan was concerned." 30

When there was absolutely no evidence that the particular car mentioned in the indictment as the property of Mrs. Ronan or Elsie Schuster was the car stolen by either of the defendants, or the car that was, as stated by the Court, taken by the au- 40

tomobile inspector from either Binder or Michelson and turned back to the so-called original owner.

14. The Court erred in the following part of its charge to the jury :

10 “Now I may say, gentlemen, that if the de-
 fendant Goldfarb was with Israel—I do not
 mean that he necessarily had to be physically
 with Israel in the bringing of the car into this
 state but if he was associated with the offense,
 in other words, that he knew it was a stolen
 car, that he assisted Israel or indeed, if you
 find under the evidence that he was a princi-
 pal, if he conceived the idea, in other words,
20 of disposing of this car in the manner alleged
 in the indictment, it would not make any dif-
 ference, I intend to say to you whether he was
 actually with Israel all the time that he was
 disposing of the property. In other words, if
 he directed Israel to steal the car or if it was
 stolen by him, it would not make any differ-
 ence, if he directed Israel to steal and Israel
 did steal the car, and it was understood he
 was to take it to Asbury Park and sell it, that
 it was done under the direction of Goldfarb,
30 Goldfarb knew all about it, he need not have
 been present. If he directed that it be done,
 he would be a party to the offense, and there-
 fore, under our statute just as much a princi-
 pal as though he were on the scene himself.”

 “I am giving you this instruction because
 you may find under the evidence that these
 parties were not together during the commis-
 sion of the crime.”

40 15. The Court erred in permitting evidence over
 the objection and exception of counsel, of an al-

Specifications of Causes for Reversal.

leged theft of a Buick car not mentioned in the indictment that was being tried, and that the admission of such evidence was harmful to the defendant.

16. The Court erred in refusing to strike out such evidence of the alleged theft of a Buick car because the prosecutor failed to connect the defendant in anyway with the alleged theft of such Buick automobile. 10

17. The Court erred in peermitting evidence of the theft of the Oldsmobile automobile on August 21, 1919, three days after the time alleged in the indictment.

18. The Court erred in permitting evidence of Elsie Schuster and N. Ronan as to what they did as to the so-called stolen Oldsmobile automobile in the City of Brooklyn, in the State of New York. 20

19. The Court erred in permitting the testimony of conversations and transactions between Binder and Israel, which conversations were not in the presence of defendant and which transactions were not in the presence of the defendant.

20. The Court erred in refusing to strike out the testimony given by Binder of the conversations and transactions with Israel which had not taken place in the presence of the defendant Goldfarb. 30

21. The Court erred in permitting the testimony of the witness, Samuel Michaelson, of transaction held between Michaelson and Israel, not in the presence of the defendant, of the alleged theft of a Buick car. 40

Specifications of Causes for Reversal.

22. The Act under which the defendant was indicted, namely, Chapter 44 of the Laws of 1917, page 78, is unconstitutional and void :

10 (a) Because it violates the 6th Amendment to the Constitution of the United States, which provides that :

20 “In a criminal procedure, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which districts have been previously ascertained by law, and to be informed of form and nature of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

(b) Because it is in violation of Article 3, Section 3, of the United States Constitution, which provides that :

30 “The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed.”

(c) Because the acts of larceny or receiving as alleged in the indictment are separate and distinct acts taking place in another place which the Oyer & Terminer Court of Monmouth County took cognizance of contrary to the constitutional inhibition.

40 23. The Court erred in not permitting the defendant to have compulsory process as prayed for

Specifications of Causes for Reversal.

and as a result the Court deprived the defendant of his constitutional rights to have compulsory process as provided under Article 1, Section 8, of the State Constitution, as well as the United States Constitution.

WM. L. EDWARDS, 10
Attorney and Counsel of Plaintiff-in-Error.

Filed Aug. 28, 1920.

Due and legal service of the within Specifications of Causes for Reversal is hereby acknowledged as within time.

CHAS. F. SEXTON,
Attorney for Defendant-in-Error. 20

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To Honorable Rulif V. Lawrence, Judge of the
General Quarter Sessions of Appeal in and for
the County of Monmouth:

The petition of Jacob Goldfarb of the City of
Brooklyn, in the State of New York respectfully
shows unto your Honor that:

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1. He has been indicted by the Grand Jury in
and for the County of Monmouth for the October
1919 Term.

2. Three indictments were presented against him
by said jury and that his trial for said indictments
has been fixed by this Honorable Court for the
eighth day of March, 1920.

20

3. He desires compulsory process to be issued
by this Honorable Court against Isadore Brokaw,
who resides at Larchmon, in the State of New York,
and shows unto your Honor that Isadore Brokaw
is a material witness in his favor in the trial of said
indictments.

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4. He expected to have the said Isadore Brokaw
present at the trial of said indictments, but today
learns that the said Isadore Brokaw refuses to be
present at the said trial of said indictments unless
he is compelled so to do.

He, therefore, respectfully prays your Honor to
grant unto him such relief as may be necessary in
order that he may have compulsory process for ob-
taining the said named Isadore Brokaw as a wit-
ness in his favor, and that your Honor will order
such compulsory process to be granted unto him.

And your petitioner will ever pray, etc.

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WM. L. EDWARDS,
Attorney for Petitioner.

Order Remitting Record

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

ALEXANDER ISRAEL AND JACOB
GOLDFARB,
Plaintiffs in Error.

In Error.

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It appearing to the Court that the record in above entitled cause was removed into the Supreme Court; that an opinion was rendered affirming the judgment of the Court of Quarter Sessions of the County of Monmouth in this State;

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It is on this fifteenth day of July Nineteen Hundred and Twenty-one Ordered that said Judgment be and same is hereby affirmed and the record in above entitled cause be and same is hereby remitted to the Court of Quarter Sessions of the County of Monmouth, to be proceeded with in accordance with this judgment and the practice of said Court.

Entered July 15, 1921.

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On motion of
CHARLES F. SEXTON,
Attorney for Defendant in Error.

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

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Writ of Error to Court of Errors and Appeals

In testimony whereof I have set my hand and the seal of said Court at Trenton, this thirteenth day of September A. D. nineteen hundred and twenty-one.

ENOCH L. JOHNSON,
Clerk.

10
(Seal)

Writ of Error to Court of Errors and Appeals

(Filed Oct. 1, 1921)

20 NEW JERSEY COURT OF ERRORS AND APPEALS

New Jersey, ss:

The State of New Jersey to our Justices
(Seal) of our Supreme Court, GREETING:

Because in the record and proceedings and also in the giving of the judgment upon a certain indictment which was in our said Supreme Court before you, between the State, defendant-in-error, and Alex Israel and Jacob Goldfarb, plaintiffs-in-error, on a writ of error issued out of the Supreme Court, to the Judges constituting the Court of Oyer and Terminer in and for the County of Monmouth, as is said, manifest error hath intervened to the great damage of the said Alex Israel and Jacob Goldfarb, as and from their complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Alex Israel, and Jacob

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Writ of Error to Court of Errors and Appeals

Goldfarb, do command you that if judgment be given, then you send distinctly and openly under your seal the entire record, proceedings and indictment aforesaid, with all things touching and concerning the same, to our Court of Errors and appeals, before the Judges thereof, on the 1st day of October and this writ, and that the record and proceedings aforesaid being inspected we may cause to be further done what of right and according to law ought to be done. 10

WITNESS, HON. EDWIN ROBERT WALKER, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the 17th day of September in the year of our Lord one thousand nine hundred and twenty-one. 20

WM. L. EDWARDS,
Attorney.

Thos. F. Martin,
Clerk.

Opinion*(Filed June 22, 1921)*

NEW JERSEY SUPREME COURT

February Term, 1921

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THE STATE,

VS.

ISRAEL, *et al.*

Error to Monmouth County Quarter Sessions. Argued before Gummere, Chief Justice, and Justices Bergen and Katzenbach.

20 For Plaintiff in error, William L. Edwards.

For the State, Charles F. Sexton, Prosecutor of the Pleas.

The opinion of the Court was delivered by Katzenbach, J.

The plaintiff in error, Jacob Goldfarb (the defendant below), was convicted upon an indictment charging him with having, with one Alexander Israel received and brought into this state an Oldsmobile stolen in the city of Brooklyn, in the state of New York, and taken and carried away by them, knowing that the same had been feloniously stolen, contrary to the statute passed in 1917 as a supplement to the Crimes Act, and known as Chapter 44 of the Laws of 1917, page 78. A severance of the indictment was allowed by the trial court, and Alexander Israel testified for the state in the trial of Goldfarb.

1. The first ground of reversal urged in behalf of the plaintiff in error is the refusal of the trial court to quash the indictment on the ground that the act of 1917, upon which the indictment is

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Opinion

based, is unconstitutional, in that it violates article 3, sec. 2 paragraph 3 of the United States Constitution, which provides that the:

“Trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed.” 10

This question is not properly before us, as the granting or refusal of a motion to quash is discretionary with the Trial Court, and not reviewable by writ of error. *State v. Potter*, 83 N. J. Law, 428, 85 Atl., 216; *State v. Riggs*, 92 N. J. Law, 575, 106 Atl., 467. We will, however, because of the importance of the question, deal with it as if it were properly before us. 20

The unconstitutionality is alleged to be that the statute does not provide for the conviction and punishment of a crime committed in this state but of a crime committed in a foreign state. It was held in *State v. Le Blanch*, 31 N. J. Law, 82, that the possession in this state by a thief of goods stolen in another state did not constitute the crime of larceny. In this opinion Chief Justice Beasley refers to the divergence of views upon this question obtaining in the different states. In some of the states, one who has stolen goods in a foreign state may be indicted for larceny in the state into which the stolen goods are brought. In some of the states, which entertained the view of Chief Justice Beasley, as expressed in the *Le Blanch* case (1864); statutes had been passed at that time similar to the New Jersey Act of 1917, as, for example, New York State. These statutes had been upheld by the Courts. *People v. Burke*, 11 Wend. 40 (N. Y.), 129; *Hemmaker vs. State*, 12 Mo., 453, 51 Am. Dec., 172. The statute under considera-

Opinion

tion is not designed to punish for larceny against the dignity of another state sovereignty, but for the bringing into this state property felonously stolen without its limits, whereby citizens of this state may be induced to become purchasers of the same, and suffer loss when the property shall be reclaimed by the rightful owner. We are of the opinion that this state had the power to protect its citizens by the enactment of this statute, and that it is constitutional.

The second ground of reversal pressed is that there was no evidence upon which to base a proper conclusion that the Oldsmobile car mentioned in the indictment was actually stolen or brought into this state. We consider the testimony of the owner of the car identifying the car while in this state as the one taken from in front of her residence in Brooklyn, together with the testimony of Israel, describing how he and Goldfarb took the car and drove it into this state, as ample evidence to sustain the conviction of Goldfarb on this point.

2. It is also claimed that the plaintiff in error was harmed by the admission of evidence of conversations and transactions with reference to the sale of a Buick car. The evidence shows that the Buick car was probably a stolen car, and Goldfarb assisted in bringing it into this state, and was present during the transaction of the sale or exchange of the car. Under these circumstances, we are of the opinion that the evidence was admissible to prove intent under the authority of *State v. Gargare*, 88 N. J. Law, 389, 95 Atl., 625.

The final grounds pressed for reversal are certain portions of the charge which it is alleged were prejudicial to the defendant. We have examined these portions of the charge and find in them no error.

The judgment under review will be affirmed.

Assignments of Error

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE, v. JACOB GOLDFARB, Plaintiff in Error.	}	Upon Error to the New Jer- sey Supreme Court.	10
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Afterwards, to wit, on this day, before our Judges of our Court of Errors and Appeals in the last resort at Trenton, comes the said Jacob Goldfarb, by his attorney, William L. Edwards, and says that in the record and proceedings aforesaid, there is manifest error in this: 20

1. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for stealing a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, in the State of New York, another independent state or sovereignty, on the 18th day of August, 1919.

2. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, in another sovereignty, unlawfully steal, take and carry away the said Oldsmobile automobile. 30

3. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence, for the stealing, taking and carrying away of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sov- 40
 ereignty.

Assignments of Error

4. The indictment is bad, faulty and void in that it undertakes to indict the defendant, Jacob Goldfarb, for unlawfully and feloniously receiving a certain Oldsmobile automobile, the property of Elsie Schuster, at the City of Brooklyn, State of New York, another independent state or sovereignty, on the 18th day of August, 1919.

5. The Oyer & Terminer Court of Monmouth County was without jurisdiction to try and determine the question of whether the defendant did, at Brooklyn, in the State of New York, another independent state or sovereignty, unlawfully and feloniously receive said Oldsmobile automobile, on the 18th day of August, 1919.

6. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence, for the unlawful and felonious receiving of said Oldsmobile automobile from the City of Brooklyn, in the State of New York, another independent state or sovereignty.

7. The Oyer & Terminer Court of Monmouth County was without jurisdiction to punish the defendant, by sentence of a fine of \$1,000.00 and six months in jail for the larceny of receiving of the automobile in question, in the City of Brooklyn, in the State of New York, another independent State or sovereignty, when there was no evidence of any kind produced to show that the offense of larceny or receiving in the State of New York of the automobile in question was grand larceny or petit larceny.

8. The crime of larceny or receiving of the automobile in question in the City of Brooklyn, in the State of New York, another independent state or sovereignty, are not crimes that the

Assignments of Error

Court of Oyer & Terminer of Monmouth County can take notice of or have jurisdiction over or for which it can punish.

9. The Court should have granted the motion to quash the indictment against the defendant, Jacob Goldfarb, for the reasons then stated to the Court, which were that: 10

(a) The indictment charged the stealing and receiving of the automobile therein mentioned, at the City of Brooklyn, in the State of New York, and not within the jurisdiction of the Oyer & Terminer Court of Monmouth County.

(b) The Court of Oyer & Terminer of Monmouth County could not take the cognizance of the fact that the crime of stealing or receiving the automobile mentioned in the indictment were committed in the State of New York. 20

(c) The said crime of stealing the automobile mentioned in the indictment, or receiving the same, knowing it to have been stolen, are complete crimes within themselves and having taken place, as alleged in the indictment, in the State of New York, the Court was without jurisdiction to hear or determine the case on those questions or receive evidence of the stealing or receiving of said automobile in question. 30

(d) The Court, in the event of the defendant being found guilty, would have to sentence the defendant as if "such larceny or receiving," as is alleged in the indictment and necessary to be proved at the trial had taken place in this state and that it was without jurisdiction so to do.

10. The *corpus delicti* was not proved and the Court, therefore, erred in permitting the case to go to the jury. 40

Assignments of Error

11. The *corpus delicti* was not proved and the jury had nothing upon which to base its conclusion that the defendant did either steal or receive the particular automobile mentioned in the indictment.

10 12. There was no evidence to show that the Oldsmobile in question was stolen either by Israel or the defendant Goldfarb and brought into this state by either of them.

13. The Court erred in the following part of its charge to the jury:

20 "It (the automobile in question), having been taken by the automobile inspector from either Binder or Michelson—you will recall what testimony was, and—if you assume they were innocent buyers—the car was turned back to the original owner Mrs. Ronan, and Michelson and Binder, if they paid a sum of money for it, lost what they had paid so far as Mrs. Ronan was concerned."

30 When there was absolutely no evidence that the particular car mentioned in the indictment as the property of Mrs. Ronan or Elsie Schuster was the car stolen by either of the defendants, or the car that was, as stated by the Court, taken by the automobile inspector from either Binder or Michelson and turned back to the so-called original owner.

14. The Court erred in the following part of its charge to the jury:

40 "Now I may say, gentlemen, that if the defendant Goldfarb was with Israel—I do not mean that he necessarily had to be physically with Israel in the bringing of

Assignments of Error

the car into this State but if he was associated with the offense, in other words, that he knew it was a stolen car, that he assisted Israel or indeed, if you find under the evidence that he was a principal, if he conceived the idea, in other words, of disposing of this car in the manner alleged in the indictment, it would not make any difference, I intend to say to you whether he was actually with Israel all the time that he was disposing of the property. In other words, if he directed Israel to steal the car or if it was stolen by him, it would not make any difference if he directed Israel to steal and Israel did steal the car, and it was understood he was to take it to Asbury Park, and sell it, that it was done under the direction of Goldfarb, Goldfarb knew all about it, he need not have been present. If he directed that it be done, he would be a party to the offense, and therefore, under our statute just as much a principal as though he were on the scene himself."

"I am giving you this instruction because you may find under the evidence that these parties were not together during the commission of the crime."

15. The Court erred in permitting evidence over the objection and exception of counsel, of an alleged theft of a Buick car not mentioned in the indictment that was being tried, and that the admission of such evidence was harmful to the defendant.

16. The Court erred in refusing to strike out such evidence of the alleged theft of a Buick car because the prosecutor failed to connect the

Assignments of Error

defendant in any way with the alleged theft of such Buick automobile.

17. The Court erred in permitting evidence of the theft of the Oldsmobile automobile on August 21, 1919, three days after the time alleged in the
10 indictment.

18. The Court erred in permitting evidence of Elsie Schuster and N. Ronan as to what they did as to the so-called stolen Oldsmobile automobile in the City of Brooklyn, in the State of New York.

19. The Court erred in permitting the testimony of conversations and transactions between Binder and Israel, which conversations were not in the
20 presence of defendant and which transactions were not in the presence of the defendant.

20. The Court erred in refusing to strike out the testimony given by Binder of the conversations and transactions with Israel which had not taken place in the presence of the defendant Goldfarb.

21. The Court erred in permitting the testimony of the witness, Samuel Michelson, of transaction
30 held between Michelson and Israel, not in the presence of the defendant, of the alleged theft of a Buick car.

22. The Act under which the defendant was indicted, namely, Chapter 44 of the Laws of 1917, page 78, is unconstitutional and void:

(a) Because it violates the 6th Amendment to the Constitution of the United States, which provides that,

40 "In a criminal procedure, the accused shall enjoy the right to a speedy and public

Assignments of Error

trial by an impartial jury of the state and district wherein the crime shall have been committed, which districts have been previously ascertained by law, and to be informed of form and nature of the accusation to be confronted with the witnesses 10
against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

(b) Because it is in violation of Article 3, Section 3, of the United States Constitution, which provides that,

"The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed." 20

(c) Because the acts of larceny or receiving as alleged in the indictment are separate and distinct acts taking place in another place which the Oyer & Terminer Court of Monmouth County took cognizance of contrary to the constitutional inhibition.

23. The Court erred in not permitting the defendant to have compulsory process as prayed for and as a result the Court deprived the defendant of his constitutional rights to have compulsory process as provided under Article 1, Section 8, of the State Constitution, as well as the United States Constitution. 30

24. Because the Supreme Court should have reversed the judgment given below and given judgment in favor of the plaintiff in error, who is the defendant below. 40

25. Because for divers reasons apparent upon the record, the judgment should be reversed.

WM. L. EDWARDS,
Atty. of plaintiff in error.

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Count 3 errors and Appeal

New Jersey Supreme Court

STATE

vs

JACOB GOLDFARB

ON ERROR

Brief of the State of New Jersey

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This defendant, Goldfarb, was indicted, tried and convicted under Statute (P. L. 1917, page 78) making it unlawful to bring stolen property into this State or to bring property into this State, having heretofore received it knowing it to have been stolen.

The facts briefly stated are that on August 21st, 1919, defendant, Goldfarb, and Alex Israel stole a four-cylinder Oldsmobile belonging to Elsie Schustler, from her residence at 132 Herkimer Street, Brooklyn, and brought the stolen automobile into Monmouth County, New Jersey, at Belmar, New Jersey, where it was sold to one Samuel Michaelson and Joseph Bender.

20

Goldfarb and Israel were making a practice of stealing cars and selling them in New Jersey. They having previously sold a Buick car to Michaelson and Bender, and after selling the Oldsmobile, the car in question, they brought down a stolen Hudson car and tried to sell that to Michaelson and Bender. Michaelson becoming suspicious reported the matter to authorities, investigation was made and it was then discovered that all the cars that Goldfarb and Israel were bringing down were stolen cars.

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At the trial a severance was obtained and Israel testified for the State against Goldfarb.

ARGUMENT

ASSIGNMENTS OF ERROR AND GROUNDS FOR REVERSAL are the same.

10 EXCEPTIONS NUMBER ONE TO NUMBER NINE AND THE SUB-DIVISIONS THEREOF:

These exceptions seem to be all aimed directly or indirectly at the validity of the indictment and the statute under which the indictment was drawn, and conviction had.

20 While this statute is new as a statute to New Jersey, the principal herein involved is not new to the common law of this State. Great Britain and other States in the Union, in fact, nearly all of the States of the Union have a similar law and an abundance of authority concerning the same. New York State has a statute, which is word for word the same as the statute in question.

Those States which do not have the statute hold that such a statute is unnecessary in order to punish a culprit for bringing stolen property into the State.

30 New Jersey took its stand in the matter when the decision of the Supreme Court in case of State vs. LeBlanch, 31, N. J. L. page 82 was rendered. In this case there is a very interesting discussion of the entire subject.

State vs. Le Blanch, decides that :

40 "The possession in this State by the thief of property stolen in another state, does not constitute the crime of larceny in New Jersey."

In order therefore to make the possession in this State by the thief of property stolen in another State the crime of larceny in this State, the statute in question was passed.

This Statute has been passed on and declared valid.

The earliest case is in New York, 1834, *People vs. James Burke*, 11 Wendell 129, from which is quoted: 10

“Savage, Ch. J:

By the revised statutes it is enacted that ‘every person who shall feloniously steal the ‘property of another in any other state or ‘country and shall bring the same into this ‘State, may be convicted and punished in the ‘manner as if such larceny had been com- ‘mitted in this State; and in every such case 20
‘such larceny may be charged to have been ‘committed in any town or city into or ‘through which the stolen property shall have ‘been brought.
‘2 R. S. 698.”

‘This case comes primarily within the ‘statute and is no doubt one of the cases in- ‘tended to be provided for. 30

‘That the Statute is constitutional and ‘within the proper sphere of legislative action ‘I cannot doubt, it is justly liable to the ob- ‘jection that we undertake to punish offenses ‘committed against another government.

‘It is not the larceny in Canada which we ‘punish, but the larceny committed in the ‘state of New York, in every place into which ‘the stolen property has been brought. 40

10 'In this respect the statute recognizes the
 'Common Law, by which the possession of
 'stolen property in contemplation of law re-
 'mains in the owner, and the thief therefore,
 'is guilty of theft in every place into which
 'he carries the stolen goods. Such has al-
 'ways been the common law in relation to
 'different counties. It is a principal, also of
 'the common law, that every offender shall
 'be punished in the County wherein the of-
 'fense was committed, but in respect to stolen
 'goods, the offender may be punished in any
 'county where he carries the stolen goods, he
 'is guilty of stealing them in every place
 'where he has them.

20 'This principal was in Mass., without the
 'aid of a Statute applied to the case of prop-
 'erty stolen in another state and carried into
 'that state. 1 Mass. R. 116 2nd 14."

IN HENMAKER VS. THE STATE OF MISSOURI:

12 Missouri, page 453, 1849, we find:

Judge Norton:

30 'The principal question presented by the
 'instruction in the case involves the power of
 'the legislature to enact the Third section of
 'the 9th Art of the Act concerning crimes
 'and punishments'; That section provides
 'That any person who shall steal or obtain by
 'robbery the property of another, in any
 'other state or country, and bring the same
 'into this state, may be convicted and pun-
 'ished for larceny in same manner as if such
 'property had been feloniously stolen or taken
 'within this State and in any such cases, the
 40 'larceny may be charged to have been con-

'victed, and may be indicted and punished in
'any county into or through which such
'stolen property may have been brought.

'The argument which denies to the legisla-
'ture the power to pass such a law seems to
'be based upon the assumption that it is de-
'signed to execute the criminal law of another
'state or country.

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'The cases to which we have been referred
'arose in States where no such legislative
'enactment as the above was in force.

'In Tennessee, in North Carolina and in
'New York previous to the Revision of 1830,
'Courts held that by the Common Law and
'in the absence of any statute, enactment, of-
'fenses of the character committed in an-
'other state or foreign country cognizable in
'their respective courts.

20

'This opinion is based upon the doctrine in
'Butler case (3 Co. Inst. 113) and upon addi-
'tional facts that the states of the Union do
'not occupy the same relation to each other
'which the countries of England do.

'In Mass. a contrary decision was made in
'the case of Commonwealth vs. Anderson
'(2 Mass. Rep. 14). We are not under the
'necessity of deciding the question which
'that case presents.

30

'Our Statute was obviously intended to
'punish offenses committed against our crim-
'inal laws and not those which were com-
'mitted without the jurisdiction of the State.

'If the legislators think it expedient to de-

40

'clare that a person who is guilty of grand
'larceny in another state or country and
'brings within our jurisdiction the stolen
'goods shall be considered as guilty of grand
'larceny here, it is clearly within their con-
'stitutional power to make such enactment.

10 'In the determination of the character of
'the offenses there is no necessity for inquire-
'ing what may be larceny under the laws of
'the Country where the offense was com-
'mitted.

20 'The legislature punishes the offenses com-
'mitted in the State by bringing the stolen
'property into it and in doing so, they merely
'codify a settled principal of the common law,
'applicable to different counties and extend
'it to the neighboring states and foreign
'countries. The case of the (People vs. Burke,
'11 Wendell, 129) is an authority in point
'upon a statute exactly like our own."

30 It should be noted that the Statutes above construed
are practically the same as the New Jersey statute,
see also Bishop's New Criminal Law, Volume 1, page
139. Also see editorial case note in 15 LRA, page
722 (old series) which deals in all the phases of this
Statute and answers a number of the objections rais-
ed in this case.

Also see State vs White, 14 L. R. A. page 556
(New Series) with case note thereto added.

While I might furnish other citations, I take it
that the above are amply sufficient to sustain the statute
under discussion and the several objections thereto.

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EXCEPTIONS 10 and 11

These exceptions are too general to be of any service or basis of argument.

EXCEPTION No. 12

Ample evidence to show Oldsmobile stolen and brought into this State, Mrs. Elsie E. Ronan tells of Oldsmobile car being stolen from apartment at Bradley (page 20 line 20) printed case. 10

Alex Israel tells of he and Goldfarb taking the car (page 53 State Case, Line 21) and driving car to Staten Island Ferry, etc. (page 55 printed case, line 10).

EXCEPTION No. 13

This exception is answered by Exception No. 12 and the further fact that Mrs. Ronan later identified her car as the one taken from Michaelson's in Belmar (page 22 State case, line 20 etc.) which was the same oldsmobile sold by Goldfarb and Israel to Michaelson. See testimony of Israel, Michaelson and Bender. 20

EXCEPTION No. 15 and No. 16

Evidence was introduced of the bringing of other stolen cars into this State by Goldfarb and Israel, under the authority of State vs Gargare, 95 Atl. page 625, 88 N. J. L. Page 389. 30

EXCEPTION No. 18

This exception is not understood.

EXCEPTIONS Nos. 19, 20 and 21

Bender and Michaelson were allowed to tell what 40

transactions they had with Israel and it will be seen by their testimony Goldfarb was about the premises. Then again what Israel said and did was at the direction of Goldfarb.

EXCEPTION No. 22 and SUBDIVISION
THEREOF

10 These exceptions are all answered by citations in the fore part of this brief, where the constitutionality and all phases of the law are amply discussed.

It is therefore respectfully submitted that no error was committed in the foregoing record.

CHARLES F. SEXTON,

Attorney for the State of New Jersey.

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New Jersey Court of Errors and Appeals

THE STATE

VS.

ALEX. ISRAEL and JACOB GOLD-
FARB.

BRIEF OF JACOB GOLDFARB, PLAINTIFF-IN-ERROR

Statement

This case brings up for review the indictment, record and all things touching the disposition of the same.

The defendant Jacob Goldfarb was jointly indicted with one Aleck Israel under what is conceded to be the authority given by Chapter 44, P. L. 1917, p. 78, which is a supplement to an act entitled "An Act for the Punishment of Crimes (Revision of 1898)" and which reads as follows:

"Any person who having at any place without this State, stolen the property of another, or received such property knowing it to have been stolen, brings the same into this State, may be convicted and punished in the same manner as if such larceny or receiving had been committed within this State. Complaint may be made and the indictment found and tried, and

the offense may be charged to have been committed in any county into or through which the stolen property is brought."

For the purpose of convenience, it may be well at this time to point out the fact that since the trial the above-quoted act has been changed by Chapter 261, P. L. 1920, p. 480, to read as follows:

"Any person who having at any place without this State, stolen the property of another, or received such property knowing it to have been stolen, brings the same into this State, shall be guilty of a misdemeanor."

There was a severance of this indictment (State of Case, p. 6, lines 33-36), and after the severance a motion to quash was made upon the ground that the Act of 1917 was unconstitutional in that:

(1) It provides that defendant may be "convicted and punished" for "such larceny or receiving" that was committed in another State.

(2) It violates Article 3, Section 2, paragraph 3, of the United States Constitution, which provides that

"the trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed,"

in that

(a) It attempts to give the Court power to try as well as convict and punish for the crimes of larceny and receiving committed in New York State, and not

"where the said crimes shall have been committed,"

as provided in said article.

(3) It violates Article 6 of the amendment of the Constitution of the United States, in that

(a) It attempts to give the Court power to try the indictment alleging the crimes of larceny and receiving committed in New York State and to convict and punish the defendant

“in the same manner as if such larceny or receiving (in New York State) had been committed in this State,”

thus depriving the defendant of a

“speedy and public trial by an impartial jury of the state and district wherein the crimes shall have been committed,”

as provided in said article.

(4) It further violates Article 6 of the amendment to the Constitution of the United States, which provides that

“the accused shall enjoy the right * * * to have compulsory process for obtaining witnesses in his favor,”

in that

(a) It attempts to give the Court cognizance of an indictment alleging the crimes of larceny and receiving committed in New York State in these words: That the defendant

“may be convicted and punished in the same manner as if such larceny or receiving had been committed in this State,”

while the Court could not, by its process, compel a witness residing in the State where the crime was committed, as alleged in the indictment, to come into this State as a witness in favor of the accused.

(5) It violates Article 1, Section 8, of the State Constitution for the same reasons as alleged in (4).

This motion was denied (p. 16, line 33).

Before the day of trial, application by petition was made to the Court for compulsory process against a witness (see Petition, p. 140).

The Court refused to grant compulsory process and denied both motions (see p. 16, line 33; p. 17 lines 10-25; p. 18, lines 20-29). The defendant, being deprived of his constitutional right to compulsory process, was thereupon put to trial.

During the trial several objections and exceptions were made and taken to the admission of evidence, principally among which were the following:

(1) To the introduction of evidence of the theft of a Buick automobile. So persistent was the Prosecutor in his effort to introduce evidence of the theft of a Buick car that even the Court became confused about the matter to such an extent that it was under the impression that the defendant was being tried for the theft of a Buick car instead of the Oldsmobile mentioned in the indictment (see pp. 32, 33). Indeed, the Prosecutor was so intent upon proving another crime that he entirely overlooked the proof of the *corpus delicti* in this case, as will be seen by a perusal of the testimony and as I shall refer to later on.

(2) To the admission of conversations and transactions had between the witnesses Michelson and Binder and Israel, not in the presence of the defendant (pp. 29, 30, 37), and which the Court admitted on condition that the Prosecutor would connect it with the defendant. This, it is emphatically asserted, the Prosecutor failed to do, as will be seen by reference to the testimony. Further objections and exceptions were made and taken, which are, however, more or less fully set out in the assignments of errors, and

which may be conveniently stated in the argument.

A verdict was rendered against the defendant, and he was sentenced to pay a fine of \$1,000 and costs of prosecution and to be confined in the County jail for six months.

There are twenty-three assignments of errors, the causes for reversal being the same. The first to the ninth, inclusive, deal with the questions of the indictment being found in this State and objections to the Court taking cognizance of the trial of the indictment. They may, therefore, with logical propriety, be argued conjointly.

POINT I

The indictment should not have been found in Monmouth County nor should the Oyer and Terminer of Monmouth County have taken cognizance of or jurisdiction over the subject-matter alleged therein, because:

(A) The Monmouth Oyer and Terminer would necessarily be taking judicial cognizance of the complete crimes of larceny and receiving that had been committed within the jurisdiction of another State or sovereignty, for

1. The first count alleges the complete crime of larceny as having been committed in the State of New York in these words: That the defendant

“with force and arms at the City of Brooklyn, in the State of New York, one Oldsmobile automobile, of the value of \$1000.00 of the goods and chattels of Elsie Schuster then and there being found,

unlawfully did steal, take and carry away * * * and did bring the said Oldsmobile automobile, so stolen, taken and carried away”

into this State.

2. The second count alleges another complete crime—that of receiving—as having been committed in the State of New York in these words:

That the defendant

“with force and arms, at the City of Brooklyn, in the State of New York, one Oldsmobile automobile, before then feloniously stolen, taken and carried away, unlawfully and feloniously did receive and have * * * then and there well knowing said goods and chattels to have been feloniously stolen, taken and carried away.”

(B) There can be no doubting the fact that the statute under discussion does not provide for the conviction and punishment of a crime committed in this State, as the Legislature, probably seeing this glaring error, afterward provided for by changing the act (see Chapter 261, P. L., 1920, p. 480), nor does it state that it shall be a crime or misdemeanor against the laws of this State to steal or receive stolen property in another State and bring it into this State, but it distinctly provides that the conviction and punishment shall be founded upon the crime of larceny or receiving committed in another State “as if such larceny or receiving had been committed within this State.” True, the “offense”—whatever that may mean—may be charged to have been committed in any county through which the “stolen” property is brought, but nevertheless, the one charged with the “offense” is convicted and punished “as if such larceny or receiving” committed in another State had been committed within this State. It is clear, too,

that it intended that proof of the crimes of larceny or receiving or both, committed in another State, be made. Therefore, the State had to prove that the defendant either

- (a) stole the property in Brooklyn, or
- (b) received the stolen property in Brooklyn.

The State did, over objection and exception try to prove these facts (see pp. 19-27).

The result of this procedure necessarily precluded the defendant from

1. Being tried for the crime at a place

“held in the state where the said crimes shall have been committed,”

contrary to Article 3, Section 2, paragraph 3, of the United States Constitution.

2. Having

“a speedy and public trial by an impartial jury in the state and district where the crimes shall have been committed,”

contrary to Article 6 of the amendment of the United States Constitution.

3. Procuring witnesses from another State to prove his innocence of these charges, thus taking away from him the right

“to compulsory process for obtaining witnesses in his favor,”

in further violation of Article 6 of the amendment of the United States Constitution.

(a) Because the process of the courts of this State does not go into another State or territory.

It is a well-settled principle of law that

“the right to punish a crime when committed within the jurisdiction of another state has never been acknowledged as a right, much less claimed as an obligation.”

United States v. Pirates, 5 Wheat, 197.

“If an essential part of the complete crime happened within another exclusive jurisdiction, the state could not have, at common law, OR TAKE BY FORCE OF ITS OWN STATUTES, jurisdiction of the complete crime. Nor can its court have judicial knowledge of the part happening within another exclusive jurisdiction.”

State v. Carter, 3 Dutcher, 449.

State v. Wyckoff, 2 Vroom, 65.

State v. Knight, 1 Taylor, 65.

People v. Gardner, 2 Johns, 477.

State v. Le Blanch, 2 Vroom, 82.

Justice Vredenburg, in the case of *State v. Carter* (*supra*), puts the proposition very concisely when he says, at page 508:

“That was supreme within its territorial limits and in its very nature, and in fact is exclusive. There cannot be two sovereignties supreme over the same place, at the same time and over the same subject matter. The existence of theirs is exclusive of ours. We may exercise acts of sovereignty over the ways of ocean or land, but we must necessarily stop at the boundary of another. THE ALLEGATION OF AN ACT DONE IN ANOTHER SOVEREIGNTY, TO BE A VIOLATION OF OUR OWN, IS SIMPLY ALLEGING AN IMPOSSIBILITY, AND ALL LAWS TO PUNISH SUCH ACTS ARE NECESSARILY VOID.”

In further substantiation of the contentions stated under this point, it is pardonable to quote extensively from the case of *State v. Le Blanch* (*supra*). The question in that case was whether the possession, by the thief, in this State, of property stolen by him in a foreign territory constitutes the crime of larceny. The Chief Justice, speaking for the Court, makes these pertinent remarks:

“An examination of the ancient authorities would appear to establish, in a very satisfactory manner, that the grounds of the common law, on which the triableness of larceny in any one of several counties was vested, are not applicable as between independent sovereignties” (see p. 83).

“From this review, it would seem to be clear that the common law doctrine, arising from the transfer of stolen property from one county to another, affords no countenance to the idea that a larceny committed under one system of criminal law can be punishable under another and different system. The principle adopted was simply this, that a taking would be implied from the possession of the chattels in those cases in which the first caption of them was an infringement of the common law; thus the measure of the crime, the mode of trial, the extent of punishment and the effect of the conviction would be identical in whichever county the trial occurred. All beyond this was a mere question of venue—a matter so pliant that it would expand under the slight pressure of convenience” (see p. 85).

Again, at page 87:

“It is universally conceded, that criminal laws are in their nature local and in their operation are confined within the limits of the State in which they are enacted. But when larceny is inferred from the possession of the stolen property in a jurisdiction other than that in which the original felonious taking occurred, it is impossible to overlook the fact that it is the foreign and not the domestic law which is enforced. For illustration, let us suppose goods taken under such circumstances as to give rise to the question whether the act is a larceny or a mere breach of trust—which law is to be regarded in settling the question? I think all will admit that it is the foreign law which must determine the

criminality or the innocence of the act, for it will scarcely be pretended that if the original acquisition of the property was not criminal, it can be made so by the transportation of such property into a new jurisdiction. In all cases, then, of this nature, the judge trying the cause must decide, whether by force of the facts proved the offense was larceny in the place of the original transaction; and if the proposition is solved in the affirmative the prisoner would be convicted, but if in the negative, the result would be acquittal. It is obvious that THIS IS NOT THE EXECUTION OF THE DOMESTIC LAW, but the enforcement of the penal code of a foreign government."

It must be apparent that the last sentence of the above quotation is very pertinent to this issue, as is also the fact that the Chief Justice points out that it must be decided whether the offense of larceny in the place of the original taking was actually such or merely a breach of trust. It will be noticed in this case and in this connection that no proof was offered by the State to show whether the stealing was grand larceny, petit larceny or what in New York State. YET THE COURT PROCEEDS TO SENTENCE THE DEFENDANT AS IF PROOF HAD BEEN OFFERED THAT GRAND LARCENY HAD BEEN COMMITTED IN THIS STATE AND SENTENCED THE DEFENDANT TO A FINE OF \$1,000 AND COSTS AND IMPRISONMENT FOR SIX MONTHS.

Further on, at page 88, the Chief Justice makes this statement:

"There was much wisdom in the rule common law, which for the purposes of trial gave a locality to crimes. As a general rule, they cannot be favorably investigated, either on the part of the state or in behalf of the prisoner, except at a place reasonably near to the locality where the imputed offense was perpetrated. It

is there that the character of the parties can be ascertained and proved; there the witnesses ordinarily reside, and there all the circumstances, often minute, but generally important, can be gathered up to explain or to lend a point to the more direct evidence. This is a principle that from time immemorial has been considered the right of the prisoner in the administration of criminal law. So highly prized has it been, it has frequently been made the subject of constitutional guarantee."

He then proceeds to point out that such constitutional guarantee is among the amendments to the Constitution of the United States above referred to and remarks that:

"I am utterly unable to perceive why the right should be abolished with regard to the class of cases under consideration.

"A larceny is committed when with requisite felonious intent there has been a taking or asportation; the conveyance of the property over a territorial line cannot duplicate the criminality. In the eye of reason, and in the nature of things, it is but a single offense both before and after such transportation. The consequence that the criminal, as a matter of ordinary justice, should be but once tried for the offense.

"The doctrine necessarily goes to this length that after trial attended with all legal formalities and an acquittal by solemn judgment of law, the party so acquitted is left liable to a second trial in another jurisdiction for substantially the same offense.

"Nor does there seem to be even the excuse of necessity for this departure from correct principle. The practice of the states under the constitutional provision affords a proper remedy in cases of stolen property brought within our territory; in the surrender of the criminal to the author-

ities of the state whose laws have been violated. It does not seem to me, that either the claims of comity or the necessities of self defenses require us at our own expense to punish the infraction of foreign laws. Our duty is discharged when we arrest the offender and hold him subject to the requisition of the government whose civil order has been broken."

For the reasons aforesaid it is contended that:

(1) The indictment should not have been found in Monmouth County.

(2) The Court should have granted the defendant's motion to quash.

(3) The Court had no jurisdiction to try and determine the question presented in the indictment.

(4) The Court should have granted the defendant compulsory process.

(5) The Court was without jurisdiction to sentence.

(6) The Court illegally sentenced the defendant as if proof of grand larceny had been established while no such proof was offered.

(7) The Courts of New York State are the only Courts that could take judicial cognizance of the matters alleged in the indictment.

(8) The Court deprived the defendant of his constitutional rights.

Therefore, and for these reasons alone, the judgment should be reversed.

The tenth, eleventh and twelfth assignments may be next considered as they all relate to an important phase of the case that may be conveniently considered together.

POINT II

The corpus delicti was not proved and, therefore, there was nothing upon which to base a proper conclusion that the Oldsmobile mentioned in the indictment as having been stolen was actually stolen or brought into this State.

Fourteen witnesses, including the defendant Israel, were produced by the State. But it is emphatically asserted that none of the witnesses proved that the Oldsmobile mentioned in the indictment as having been stolen was actually stolen or brought into this State by either of the defendants.

Let us consider what the several witnesses testify to.

The first witness, Elsie E. Ronan, testified that she lived at 132 Herkimer Street, Brooklyn; that she was married on June 29 1918; that her maiden name was Elsie E. Schuster, the name mentioned in the indictment (see p. 19). She owned "a four cylinder Oldsmobile" which was stolen from in front of her apartment on the evening of August 21st, three days after the day alleged in the indictment (see p. 20); that she recovered the car at Asbury Park, September 9, 1919, and that she saw it on September 8, 1919, in the garage of Mark Guy. No EVIDENCE WAS OFFERED BY HER THAT SHE SAW EITHER THE DEFENDANT OR ISRAEL STEAL THIS PARTICULAR OLDSMOBILE OR HAVE IT IN THEIR POSSESSION. Her husband, Arthur T. Ronan, merely corroborates his wife's testimony.

Samuel Michaelson was the third witness produced for the State and it is respectfully urged that his testimony, as well as that of Joseph

Binder, be carefully perused, for when it is, it will be seen that Michaelson merely testifies to transactions had with a Buick automobile between Israel and Binder, NOT IN THE PRESENCE OF THE DEFENDANT GOLDFARB (see p. 29), and another transaction had between him and Israel and Binder with another Buick and "an Oldsmobile." There is no mention by him that "an Oldsmobile" was the Oldsmobile mentioned in the indictment or the one in question. Goldfarb was not present at these transactions (see p. 32; see particularly p. 33). The Prosecutor then asks the defendant: "Q. What became of the Oldsmobile? A. We sold that in Asbury Park to Bennett and Heath." It will be seen that the automobiles sold in Asbury Park by Michaelson were "an Oldsmobile and a Buick" (p. 32, lines 8-10). The Oldsmobile which Michaelson had and sold was not proved to be the Oldsmobile mentioned in the indictment or the one belonging to Elsie Ronan (p. 35). IN SHORT, THE PROSECUTOR FAILS BY THIS WITNESS TO PROVE THAT THE OLDSMOBILE IN QUESTION WAS THE OLDSMOBILE THAT MICHAELSON AND BINDER HAD IN THEIR POSSESSION OR THE ONE SOLD BY MICHAELSON TO BENNETT AND HEATH.

Joseph Binder simply corroborates his partner Michaelson and states that "I didn't do no business with Goldfarb. I done business with Israel" (p. 36). But still no proof of the Oldsmobile in question being the Oldsmobile mentioned in the indictment.

Jacob Schwartz swears only to the fact that he bought a Buick car from Michaelson.

Chief Walling testifies only to the fact that a seven passenger Buick car was reported stolen and that he seized a Buick car in Schwartz's possession. He says not a word about the Oldsmobile in question.

LeRoy Wyckoff testified that he was employed by the State of New Jersey as an inspector of motor vehicles and had brought to his attention the circumstances concerning a Buick automobile "and that of an Olds automobile, one belonging to Elsie Schuster, the Oldsmobile, and the other to one Jesse Dawn. That was around the latter part of August or the first of September" (p. 42), and that "I located this Buick car and the Oldsmobile car" (p. 43, lines 10-13). "The Oldsmobile was in the garage of Mark Guy and the Buick in the possession of Schwartz in Long Branch" (p. 43). "It was a 1916 Oldsmobile painted blue with circassian walnut, small dashboard on there, SUCH AS CARS HAVE, had been repainted and the hubs painted, showed more or less wear and the top had been patched." A comparison of the description of the Oldsmobile mentioned by this witness Wyckoff (p. 43, lines 29-40) and that of Mrs. Ronan differ very materially (see p. 22, lines 20-40). But even if we conclude that the descriptions are alike, nevertheless, there is still no evidence to show that the Oldsmobile described by Wyckoff got into the possession of Mark Guy or his garage through either Goldfarb or Israel or that it was the one sold by Michaelson to Bennett and Heath as testified to by Michaelson. Certainly there is no evidence to show that the defendant Goldfarb by any manner got the Oldsmobile there or knew anything about it.

Neither does the testimony of Samuel Reeves show that the Oldsmobile mentioned in the indictment was the Oldsmobile actually stolen by the defendant or Israel.

Henry D. Metzger, another witness to the fact that on August 12, 1919, or about eight days before the Oldsmobile mentioned in the indict-

ment was stolen, Goldfarb and Israel had been at his hotel in Red Bank.

We must look, then, to the testimony of Israel to see if we can find any testimony to prove that the automobile in question was stolen by him or the defendant Goldfarb in Brooklyn and brought into this State and that the automobile of Elsie Schuster or Ronan was the one that Goldfarb or Israel stole there and brought to Michaelson and that Michaelson sold to Bennett and Heath, as sworn to by him, and which automobile was afterward turned over by Reeves to the owner. AGAIN, IT IS RESPECTFULLY SUBMITTED, THAT NO SUCH PROOF WAS IN EVIDENCE OR MADE BY ISRAEL.

Israel made several statements concerning the matter which are very contradictory. A glance at the testimony of Harold McDermott and Max Feingold, one of the Deputy County Clerks, together with the affidavit which Israel made (see pp. 100 101, 102 and 103), will clearly demonstrate this pertinent fact. Israel swears, first, that Goldfarb told him that he was to pay him \$50 a car and showed him where to sell cars (p. 47). The first car that he sold was a Buick (p. 47); that he got the Buick from Goldfarb at New York near the Hoboken Ferry; that two boys drove this Buick car and that Goldfarb drove his own car (p. 48). Goldfarb told him to "drive the car after me. I show you where to go" (p. 48). "I went over Hoboken Ferry and I met Mr. Levine's son" (p. 48). "Goldfarb was not present" (p. 49). "Goldfarb came right up there because he had me lost there at that time, and he came right out there and I told him, 'I am taking Mr. Levine along' " (p. 49). On cross-examination, it will be seen that Israel, again, admits that he drove the so-called Buick car into New Jersey (p. 62, bottom of page). At page 63 the question is asked: "Q.

Who drove the Oldsmobile into New Jersey? A. Goldfarb." Right here it will be noticed that the Buick car that so much was made of at the trial was brought into this State, not by the defendant Goldfarb, but by Israel.

Note at page 53 this question:

"Q. Did you have a car with you at that time, have an automobile at that time, two weeks later? A. Yes, sir; he told me, he says, 'Come with me and I get another car and you can sell it, too, and you make \$50.'"

Carefully reading page 53, it will be seen that the Prosecutor asked these questions:

"Q. From whose house? Where was the Oldsmobile when you got it? A. On the street.

"Q. WHAT STREET WAS IT? A. I CAN'T TELL THE STREET, I DIDN'T LOOK WHAT STREET IT WAS.

"Q. Who took you to the street? A. Goldfarb.

"Q. Was anybody in the car when you got there? A. No, sir.

"Q. Did Goldfarb get in the car? A. Yes, sir."

Again, at page 54, the Prosecutor makes this statement:

"Q. We were talking about getting the Oldsmobile and your last answer, or rather the last question, was whether when you got to the Oldsmobile, Goldfarb got in the car? A. Yes, sir."

Here it will be noticed that Israel does not know where the car, which the Prosecutor calls the Oldsmobile, came from. He does not know the street from which it was obtained, because, at page 54 the question is asked:

“Q. What is your answer? A. Yes, sir;
HE GOT IN THE CAR.

“Q. DO YOU REMEMBER WHAT STREET IT
WAS THAT THIS CAR WAS ON? A. NO, SIR.”

The Prosecutor is the one that mentions the Oldsmobile.

It is to be hoped that the testimony of Israel and his affidavit will be read carefully and, when so read, it will be seen why the defendant insists that the Prosecutor has not shown, even by Israel, that the automobile of Mrs. Ronan or Elsie Schuster, stolen from in front of her apartment at 132 Herkimer Street, Brooklyn, was the automobile stolen or taken on some street not known by Israel or mentioned in the indictment.

On further cross-examination (p. 71), Israel admits that when he drove “the automobile into Binder’s and Michaelson’s garage” that Goldfarb was not present.

Therefore, it is respectfully submitted, that the *corpus delicti* was not proved.

The fifteenth to the twenty-first assignment of errors, inclusive, may be considered together, as they relate practically to the same subject, namely, to the objections regarding the admission of evidence of the theft of a Buick car and of conversations and transactions not in the presence of the defendant Goldfarb.

POINT III

It was harmful and prejudicial to the defendant for the Court to permit evidence of conversations and transactions had between Michaelson and Binder and Israel about a Buick car that admittedly had not been brought into this State by the defendant Goldfarb and which was not charged in the indictment as having been stolen and brought into this State, and which the Court first admitted on the assurance that the prosecutor would connect the defendant with these conversations and transactions; but when the prosecutor did not connect the defendant with them, the Court, nevertheless, refused to strike it out and stated as its reason that the "jury are entitled to have the testimony in connection with the circumstances showing the alleged relation between Goldfarb and Israel."

The witness Michaelson, sworn in behalf of the State, testified to a transaction that Joe Binder had with Israel about the exchange of a Buick six-cylinder automobile and a Maxwell sedan, not in the presence of the defendant (see pp. 28-29). This evidence was objected to (p. 30). The evidence was offered upon two theories, as stated by the Court and the Prosecutor:

- (a) That "it is a circumstance to go to the jury, their relationship," and
- (b) "It develops that the Buick car was a stolen car."

The Court stated that it would admit the evidence with the "assurance on the part of the

Prosecutor" that he intended to connect this testimony with the defendant (p. 30). The Prosecutor did not connect this testimony with the defendant. But if he did, it would make no difference, for there can be no doubt but that Israel is the one that brought the Buick car into this State (p. 48, ll. 30-42). Goldfarb had, in the meantime, "lost" Israel (p. 49), and that it was Israel, and not Goldfarb, that drove this car from New York into New Jersey (p. 62, ll. 30-41). Therefore, in this instance alone, it is clear that the Prosecutor, as well as the Court, were going upon the theory that they had a right to prove that Israel violated the 1917 statute and thus connect the defendant Goldfarb with that, when conspiracy was not alleged in the indictment, for Israel is the one that brought the car into this State. If the car were not brought into this State by Goldfarb, then, surely, he could not be charged with the violation of the 1917 statute, if for no other reason than that conspiracy was not charged in the indictment.

The testimony of Joseph Binder, as to conversations and transactions, was admitted upon the same theory and was not in the presence of defendant.

"The admission of evidence of conversations and transactions held not in the presence of the defendant, even by a *particeps criminis*, unless in cases of conspiracy, is so well established in this State that the citation of the numerous cases on this point would be superfluous."

The defendant was, therefore, seriously harmed by the admission of these conversations and transactions between Michaelson and Binder and Israel and not in the presence of the defendant Goldfarb. It cannot be said with fairness that the admission of this evidence did not create a

great prejudice in the minds of the jury, while the defendant was put in the position where he could not deny or dispute any portion of the evidence or of the transactions testified to. It will be recalled, too, that one of these transactions, that of the Buick car, was the Buick car that was admittedly brought into this State by Israel, according to his own admissions, as heretofore pointed out. Upon what theory, then, could the Court have permitted this very harmful and prejudicial testimony to go in against the defendant? I can conceive of no theory whatsoever, except that stated by the Court, namely, that

“It is a circumstance to go to the jury, their relationship,”

or, as stated by the Prosecutor, that

“It develops that the Buick car was a stolen car.”

Neither of these theories, however, are proper under the case *sub judice*.

The cases of *Clark v. State*, 47 L., 556; *State v. Raymond*, 53 L., 260; *Park v. State*, 59 L., 573; *State v. Sprague*, 64 L., 419; *Bullock v. State*, 65 L., 557; *State v. Snover*, 65 L., 293; *State v. Newman*, 73 L., 202, are the authorities for the rule that the State cannot offer testimony to prove that the defendant committed an offense not charged, for the purpose of showing that he would be likely to commit the offense charged.

In the *Snover* case (*supra*), quoting from the *Raymond* case (*supra*), it is pointed out that

“There must appear between the extraneous crime offered in evidence and the crime of which the defendant is accused some other real connection beyond the allegation that they have both sprung from the same vicious disposition.”

What has that to do with the defendant's and Israel's "relationship" and what difference does it make whether, as stated by the Prosecutor, "it develops that the Buick car was a stolen car?" Even if it were a stolen car, the car was not brought into this State by the defendant and he, therefore, had not violated the Statute of 1917, because before he could have done so he must not only have stolen or received the car, knowing it to have been stolen, but must have brought it into this State.

For the reasons mentioned under this point, it is respectfully submitted that the admission of the testimony referred to was harmful and prejudicial to the defendant. The admission of such testimony is like putting a red-hot poker on a man and telling him that when it is taken off it won't hurt. No one can deny that it did hurt and was prejudicial as well.

The thirteenth and fourteenth assignment of errors relate to the Court's charge to the jury.

POINT IV

**The Court erred in its charge to the jury
in the following respects:**

(A)

“It (the automobile in question) having been taken by the automobile inspector from either Binder or Michaelson—you will recall what testimony was, and—if you assume they were innocent buyers—the car was turned back to the original owner, Mrs. Ronan, and Michaelson and Binder, if they paid a sum of money for it, lost what they had paid so far as Mrs. Ronan was concerned” (see p. 119).

(B)

“Now, I may say, gentlemen, that if the defendant Goldfarb was with Israel—I do not mean that he necessarily had to be physically with Israel in the bringing of the car into this State, but if he was associated with the offense, in other words, that he knew it was a stolen car, that he assisted Israel or indeed, if you find under the evidence that he was a principal, if he conceived the idea, in other words, of disposing of this car in the manner alleged in the indictment it would not make any difference, I intend to say to you whether he was actually with Israel all the time that he was disposing of the property. In other words, if he directed Israel to steal the car or if it was stolen by him, it would not make any difference if he directed Israel to steal and Israel did steal the car, and it was understood he was to take it to Asbury Park and sell it, that it was done under the direction of Goldfarb, Goldfarb knew all about it, he need not have been present. If he directed that it be done, he would be a party to the offense, and,

therefore, under our statute just as much a principal as though he were on the scene himself.

“I am giving you this instruction because you may find under the evidence that these parties were not together during the commission of the crime” (see p. 121),

because

(1) Contrary to what the Court said about it not being necessary for Goldfarb to be

“physically with Israel in the bringing of the car in question into this State”

and the fact that

“he directed that it be done, he would be a party to the offense, and, therefore, under our statute just as much a principal as though he were on the scene himself,”

SUCH IS NOT THE LAW.

It must be conceded that Goldfarb would not be violating the letter and spirit of the 1917 act if he did not bring the particular Oldsmobile mentioned in the indictment into this State, and since there is no question but that the stealing or taking away of the car in question occurred in New York State and not in this State, therefore,

“As the defendant did no act within this State in his own person, the point to be decided is, did he do such act in this State by construction or in contemplation of law?”

State v. Wyckoff, 31 Law, at page 67.

“The general rule of law has always been that a crime is to be tried in the place in which the criminal act has been committed. It is not sufficient that part of such act shall have been done in such place, but it is the completed act alone which gives jurisdiction.”

State v. Wyckoff (*supra*), at bottom of page 68.

“Under such a condition of affairs it is not easy to see how the accessory has brought himself within the reach of the laws of the offended state. His offense consists in the enticement to commit the crime; and that enticement and all parts of it TOOK PLACE IN A FOREIGN JURISDICTION. As the instrumentality employed was a conscious guilty agent, with free will to act or refrain from acting, THERE IS NO ROOM FOR THE DOCTRINE OF A CONSTRUCTIVE PRESENCE IN THE PROCURER. Applying to the facts of this case the general and recognized principles of law, it would seem to be clear that the offense of which the defendant had been guilty is not such as the laws of this State can take cognizance.”

State v. Wyckoff (*supra*), at page 69.

(C) The Court erred in charging that

“If you have any reasonable doubt of the defendant’s guilt, acquit him; if you have no reasonable doubt of his guilt, it would be your duty to convict him,”

because

(1) It put on the defendant the burden of showing that he was not guilty beyond reasonable doubt, while by law he is to be assumed innocent, and that assumption continues until overcome by the establishment of his guilt beyond a reasonable doubt.

See *State v. Sandt et al.*, 111 *Atl.*, page 651, where the Court charged that

“If these men are convicted, they must be convicted on testimony which leaves in your minds no reasonable doubt of their guilt. If, after a consideration of all the

testimony, you are satisfied that the men are not guilty beyond a reasonable doubt, you should acquit them; but if you have no such reasonable doubt you ought to convict them.”

The last quotation is substantially what the Court stated in its charge to the jury (see p. 123).

This practically disposes of all the assignment of errors except the twenty-second and twenty-third, which deal with the constitutional rights of the defendant. But these points have been covered in Point I and need not be referred to again.

It is, for these reasons, respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

WILLIAM L. EDWARDS,
Attorney for Defendant Goldfarb.