INDEX.

NEW JERSEY
COURT OF ERRORS AND APPEALS

Writ.

NEW JERSEY, SS.: The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting:

(L. S.)

Because in the record and proceedings and also in the giving of judgment, in a certain complaint which was in our said Supreme Court of Judicature before you between the State of New Jersey, defendant in error, and John Verona, plaintiff in error, upon a certain indictment against John Verona, of the City of Elizabeth, Union County, for larceny and receiving stolen goods. Pro ut the said indictment and counts therein, as it is said manifest error hath intervened to the great damage of the said plaintiff in error, as by his complaint we are informed, we being willing that the error, if any there be, shall in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes to be holden at Trenton on the 31st day of March next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon, for correcting that error what of right and according to the laws and customs of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of

our Court of Errors and Appeals at Trenton, aforesaid, the Thirteenth day of March A. D. 1919.

WILLIAM R. WILSON,
Attorney.
THOMAS F. MARTIN,
Clerk.

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

WM. S. GUMMERE,
C. J.

Assignments of Errors.

Afterwards, to wit, etc., before the Judges of the said Court of Errors and Appeals, in the last resort in all causes at Trenton, comes the said plaintiff in error by William R. Wilson, his attorney, and says, that in the record and proceedings aforesaid and also in the matters and things recited and contained in his assignments of error before the Supreme Court of Judicature of the State of New Jersey, as well as in the matters and things in the record and proceedings of the trial specified by him, judgment was given in said Supreme Court for the Union County Quarter Sessions against the said plaintiff in error and that there is manifest error in the following respects, to wit:

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

Assignments of Error

2. That the charge of the Court as a whole, and in each and every part of it is illegal and thereby defendant suffered manifest wrong and injury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defense upon the merits, and are causes for reversal.

4. That the defendant by his counsel requested the Court to charge as follows: "That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him, which the Court refused to charge, but charged as follows: I charge you on this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen which charge was to the manifest wrong and injury of the defendant."

5. That the Court below erred to the prejudice and injury to the plaintiff in error in the following respect, to wit: That when John Verona, the defendant, was called to the stand his Counsel stated to the Court as follows: "I ask that an interpreter be used. I have had talks with him and I cannot thoroughly understand him," to which the Judge said: "He has lived here sixteen years and he is in business that brings him in contact with all types of humanity. I understand him." To which Coun-

sel said: "Does your Honor refuse to allow the interpreter to act?" To which the Court said: "Yes, Sir," which refusal was to the manifest wrong and injury of the said defendant.

6. That the Court below erred to the prejudice and injury of the plaintiff in error in the following respect, to wit: That the testimony of the witness John Sebonas was permitted over the objection of the Counsel for the defendant in which said Counsel said: "I object to the testimony of this witness. Whereas John Verona is being tried for the larceny of brass journals, the property of the Central Railroad Company and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals, they now get John Sebonas to show he stole them himself and sold them I suppose to John Verona. The indictment is fatal in this respect. When they charge a man with larceny of brass journals and also charge him with receiving brass journals, they have to show not only he stole them but afterwards appropriated them to his own use. There is no question about that as an elementary principle, if larceny by the defendant be proven by John Verona, although the offender appear only to be a principal in the second degree the charge fails because the offenses are substantially distinct and because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same man." Which objection was overruled by the Court to the manifest wrong and injury of the plaintiff in error.

7. That at the conclusion of the State's case defendant's Counsel addressing the Court said: "I make this motion. There is a distinct allegation

in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not conform with the charge in the indictment, and I move that your Honor direct the jury to find this man not guilty of the crime he stands charged with. Four brass journals is charged in the indictment and the evidence is that it is cracked up brass and zinc—entirely different, one is junk and the other is a merchantable and manufactured article." Which motion was overruled and which action was to the manifest wrong and injury of the defendant.

8. That the Court permitted one John Galatian in behalf of the State to be sworn as a witness, and permitted him to testify in the presence of the jury as to the alleged conviction of one Niblo Palmer, a witness for the defendant, although no proof was introduced that it was the same Niblo Palmer and which after a discussion, said witnesses was withdrawn although the effect of his testimony before the jury no doubt affected the minds of the jury, and the Judge failed to instruct the jury in his charge to pay no attention to the same, which testimony so offered and introduced was prejudicial to the defendant and he suffered manifest wrong and injury by its illegal introduction.

9. That if the defendant was guilty of receiving and not of larceny then under the indictment the verdict of guilty was erroneous and defendant suffered manifest wrong and injury under the evidence in the cause.

10. That the refusal of the Court to permit an interpreter to be used was prejudicial to the de-

fendant, and manifest wrong and injury was done him by such refusal.

11. That the introduction of one John Galatian as a witness and his evidence being placed before the jury as to one Niblo Palmer was prejudicial to the defendant and he suffered manifest wrong and injury thereby.

12. That the testimony of Sebonas, the one who is alleged to have stolen the journals, is uncorroborated and there can be no conviction in this case.

13. That the property received, under the indictment was not the identical property which was stolen but property of a different nature.

14. That the ownership of the property was not proved as laid in the indictment.

15. That the evidence of Sebonas, an accomplice to the receiving, was not corroborated.

16. Guilty knowledge on the part of the defendant was essential, to the constitution of the offense and such knowledge should have been imputed to him at the time of the receiving and not afterwards.

And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing and that he may be restored to all things he has lost on account of the said judgment.

WILLIAM R. WILSON,
Attorney for and of Counsel With the
Plaintiff in error.

Specifications of Causes for Reversal.

Afterwards to wit, etc., before the Judges of the said Court of Errors and Appeals, in the last resort in all causes at Trenton, comes the said plaintiff in error by William R. Wilson, his attorney, and says, that in the record and proceedings aforesaid and also in the matters and things recited and contained in his specification of causes for reversal before the Supreme Court of Judicature of the State of New Jersey, as well as in the matters and things in the record and proceedings of the trial specified by him, judgment was given in said Supreme Court for the Union County Quarter Sessions against the said plaintiff in error and that there is manifest error in the following respects, to wit:

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

2. That the charge of the Court as a whole, and in each and every part of it is illegal and thereby defendant suffered manifest wrong and injury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charges of the Court, which prejudiced the said plaintiff in error in maintaining his defense upon the merits, and are causes for reversal.

4. That the defendant by his Counsel requested the Court to charge as follows: "That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him, which the Court refused to charge, but charged as follows: "I charge you on this request that it is not absolutely necessary for the de-

fendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen," which charge was to the manifest wrong and injury of the defendant and this is cause for reversal.

5. That the Court erred to the prejudice and injury of the plaintiff in error in the following respect, to wit: That when John Verona, the defendant, was called to the stand his Counsel stated to the Court as follows: "I ask that an interpreter be used. I have had talks with him and I cannot thoroughly understand him," to which the Judge said: "He has lived here sixteen years and he is in business that brings him in contact with all types of humanity. I understand him." To which Counsel said: "Does your Honor refuse to allow the interpreter to act?" To which the Court said: "Yes, sir," which refusal was to the manifest wrong and injury of the said defendant, which is cause for reversal.

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to John Verona. The indictment is fatal in this respect: When they charge a man with larceny of brass journals and also charge him with receiving brass journals, they have to show not only he stole them, but afterwards appropriated them to his own use and received them. That is this indictment. The indictment says, that John Verona himself actually stole the brass journals and after he stole them he appropriated or received them to his own use. There is no question about that as an elementary principle, if larceny by the defendant be proved by John Verona, although the offender appear only to be a principal in the second degree, the charge fails because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same men." Which objection was overruled by the Court to the manifest wrong and injury of the plaintiff in error which is cause for reversal.

7. That at the conclusion of the State's case defendant's Counsel addressing the Court said: "I make this motion. There is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not conform with the charge in the indictment, and I move that your Honor direct the jury to find this man not guilty of the crime he stands charged with. Four brass journals is charged in the indictment and the evidence is that it is cracked up brass and zinc—entirely different; one is junk and the other a merchantable and manufactured article." Which motion was overruled and which action was to the manifest wrong and injury of the defendant, which is cause for reversal.

Specifications of Causes for Reversal

8. That the Court permitted one John Galatian in behalf of the State to be sworn as a witness, and permitted him to testify in the presence of the jury as to the alleged conviction of one Niblo Palmer, a witness for the defendant, although no proof was introduced that it was the same Niblo Palmer and which after a discussion, said witness was withdrawn although the effect of his testimony before the jury no doubt affected the minds of the jury, and the Judge failed to instruct the jury in his charge to pay no attention to the same, which testimony so offered and introduced was prejudicial to the defendant and he suffered manifest wrong and injury by its illegal introduction and this is cause for reversal.

9. That if the defendant was guilty of receiving and not of larceny then under the indictment the verdict of guilty was erroneous and defendant suffered manifest wrong and injury under the evidence in the cause, which is cause for reversal.

10. That the refusal of the Court to permit an interpreter to be used was prejudicial to the defendant and manifest wrong and injury was done him by such refusal.

11. That the introduction of one John Galatian as a witness and his evidence being placed before the jury as to one Niblo Palmer was prejudicial to the defendant and he suffered manifest wrong and injury thereby.

12. That the testimony of Sebonas, the one who is alleged to have stolen the journals, is uncorroborated, and there can be no conviction in this case,

Specifications of Causes for Reversal

13. That the property received, under the indictment was not the identical property which was stolen but property of a different nature.

14. That the ownership of the property was not proved as laid in the indictment and this is cause for reversal.

15. That the evidence of Sebonas, an accomplice to the receiving, was not corroborated.

16. Guilty knowledge on the part of the defendant was essential to the constitution of the offense, and such knowledge should have been imputed to him at the time of the receiving and not afterwards.

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing, and that he may be restored to all things he has lost on account of the said judgment.

WILLIAM R. WILSON,
Attorney for and of Counsel
With the Plaintiff in Error.

Judgment of affirmance was entered in the Supreme Court.

Joinder in error was filed by the Prosecutor of the Pleas.

Opinion.

NEW JERSEY SUPREME COURT,
NOVEMBER TERM, 1918.

THE STATE

vs.

JOHN VERONA.

On Error to Union County Quarter Sessions.

Argued before GUMMERE, Chief Justice and Justices SWAYZE and TRENCHARD.

For plaintiff in error, WILLIAM R. WILSON.

For the State, WALTER L. HETFIELD, JR., Prosecutor of the Pleas.

Per Curiam:

The Grand Jury of Union County presented an indictment against the defendant, containing two counts, the first of which charged him with the larceny of four brass journals, the property of the Central Railroad Company of New Jersey; and the second charging him with receiving the same property, knowing it to be stolen. The defendant sues out the present writ to review the conviction had on the indictment.

The first assignment of error rests upon the contention that the conviction was invalid, because the indictment charged the stealing and receiving of four brass journals, while the proof on the part of the State was that the metals in question consisted of old junk, that is, broken pieces of brass, zinc and lead. But this contention is without legal justification, for one of the State's witnesses, a youth named Sebanos, testified that he had stolen the brass journals from the sheds of the Central Rail-

road Company between Elizabeth and Linden, and that after breaking them in half he sold them to the defendant. The fact that these journals were broken did not altogther destroy their character, and render them a mere amorphous mass. We conclude, therefore, that the first assignment of error is without merit.

The next assignment is directed at the charge to the jury. The instruction complained of is as follows: "In order that you may find the defendant guilty it must appear in the first place, that the goods which he purchased were stolen; and, next, it must appear that the purchaser knew the goods were stolen. For, if it does not appear in the testimony that the defendant knew that the goods were stolen, then, of course, he would not be guilty of the crime of receiving. But it is not necessary that the evidence should show that actual, positive, direct information was conveyed to the defendant of the fact that the goods were stolen in order to make him guilty. Guilty knowledge may be found by the jury where the defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen." Just why counsel considers this instruction erroneous does not very clearly appear from his brief. He refers to a New York case which he considers condemns the instruction now under review. But whether it does, or does not, is immaterial, for, in the case of State vs. Goldman, 65 N. J. L. 394, 398, Justice Fort, speaking for this court, laid down the rule that "Guilty knowledge may be found by the jury where the defendant receives the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen." The trial court properly accepted this rule

as controlling, and followed it. The defendant can take nothing by this assignment of error.

The defendant avers, as another ground for reversal, that there was no proof of ownership of the articles alleged to have been stolen. But the testimony of Sebanos that he stole these journals from the sheds of the Central Railroad Company is evidence of the latter's possession, and possession is *prima facie* proof of qualified ownership.

A further ground for setting this conviction aside is based upon the refusal of the trial court to permit an interpreter to be sworn at the request of the defendant. This, of course, was a matter in the discretion of the trial court, and there is nothing in the case to show that such discretion was improprly exercised. On the trial the defendant's own testimony showed that he was fairly familiar with our language.

Other matters are referred to in the defendant's brief as grounds for reversal, but, apparently, were not considered of sufficient importance by him to merit discussion. Our examination of the case leads us to concur in this view.

We conclude, therefore, that the judgment under review should be affirmed.

Writ.

NEW JERSEY, ss:

THE STATE OF NEW JERSEY to JAMES C. CONNOLLY, Esquire Judge of the Court of Common Pleas of the County of Union, constituting the Court of Quarter Sessions of said County.

[SEAL]

GREETING:

Because in the record and proceedings and also in the giving of judgment upon a certain indictment against John Verona, late of the City of Elizabeth, in the County of Union, for larceny and receiving stolen goods. Prout the said indictment and counts therein, whereof he hath been indicted and is therefore before you convicted by a certain jury of the County of Union, taken between the State of New Jersey and the said John Verona, as it is said manifest error hath intervened to the great damage of the said John Verona, as from his complaint, we have received information we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done unto him, the said John Verona, command you that if judgment be therein given, than that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our Supreme Court of Justicature, to be held at the City of Trenton, on the twelfth day of April next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Writ

WITNESS, Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton aforesaid this twenty-third day of March A. D., 1918.

WILLIAM R. WILSON,
Attorney.

ENOCH L. JOHNSON,
Clerk.

In obedience to the command of this writ, the record and proceedings of the plea whereof mention is within named, with all things touching and concerning the same to our Supreme Court of Judicature, to be held at the City of Trenton within specified, at the time and place within mentioned, I, the Judge of the Court of Common Pleas of the County of Union, constituting the Court of Quarter Sessions of said County within mentioned, under my seal and hereunto annexed, send as within I am commanded, as appears by the schedule hereto annexed.

C. B. PIERCE,

Judge of the Court of Common Pleas of the County of Union, constituting the ourt of Quarter Sessions of said County.

The execution of this writ appears by the schedule hereto annexed.

In Testimony Whereof, I, William B. Martin, Clerk of the County of Union and of the Court of Common Pleas and Court of Quarter Sessions in and for said County have hereunto subscribed my name and affixed the seal of said Courts this eleventh day of April A. D., 1918.

[Seal]

W. B. MARTIN,
Clerk.

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

Be it Remembered, That at the Court of Oyer and Terminer, holden at the City of Elizabeth, in and for the County of Union, on the first Tuesday of October, in the year of our Lord one thousand nine hundred and seventeen, before the Honorabl James J. Bergen, one of th Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable James C. Connolly, Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of Charles H. K. Halsey, Winfield S. Baer, Peter M. Eriksen, Francis G. Merrill, Eugene M. Laing, John B. Hicks, Van Wyck Lott, John C. Tull, Charles H. Lord, Everad C. Brewer, Ambrose Powell, Charles M. Affleck, William T. Sawyer, Oscar T. Peck, Henry C. Meyer, William A. Bourdon, William M. Hager, William G. Heise, Henry Leahy, Stacey Bender, Frank E. Binns, Frank O. Manley, William T. Kirk, good and lawful men of said County of Union, then and there sworn and charged to inquire on behalf of the State of New Jersey, in and for said County of Union, it is presented by at

least twelve of said jurors in the manner and form following, to wit:

The bills herewith presented are true bills.

C. H. K. HALSEY,
Foreman.

ALFRED A. STEIN,
Prosecutor of the Pleas.

UNION OYER AND TERMINER

October Term A. D., Nineteen Hundred and Seventeen.

Union County, to wit:—The Grand Inquest for the State of New Jersey, and for the body of the County of Union, upon their oath, PRESENT, that John Verona, late of the City of Elizabeth, in the County of Union aforesaid, on the thirtieth day of July, in the year of our Lord One thousand nine hundred and seventeen, with force and arms, at the City of Elizabeth aforesaid, in the County aforesaid, and within the jurisdiction of this Court, four brass journals, of the weight of fifty pounds, of the value of fifteen dollars, of the goods and chattels of the Central Railroad of New Jersey, a corporation, then and there being found, unlawfully did steal, take and carry away, 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.

And the Grand Inquest aforesaid, upon their oath, aforesaid, do further present that the said John Verona on the thirtieth day of July in the year of our Lord One thousand nine hundred and seventeen in the City of Elizabeth and County aforesaid, and within the jurisdiction aforesaid, four brass journals, of the weight of fifty pounds of the value of fifteen dollars, of the goods and

chattels of the Central Railroad of New Jersey, a corporation, before then feloniously stolen, taken and carried away unlawfully and feloniously did receive and have; he the said John Verona then and there well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

ALFRED A. STEIN,
Prosecutor of the Pleas.

That, at a Court of Quarter Sessions holden at Elizabeth, in said County of Union, on Friday, the thirtieth day of November, in the year of our Lord, One thousand nine hundred and seventeen, before Honorable James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the statute in such case made and provided, the Grand Jury presented the indictment aforesaid, which said indictment was thereupon ordered by the Court of Oyer and Terminer of said County to be delivered to the Clerk of the Court of Quarter Sessions of said County, who is directed to affile the same in the said Court of Quarter Sessions, according to the form of the statute in such case made and provided, and thereupon the said indictment is delivered to the Clerk of the Court of Quarter Sessions and by the said Clerk affiled and entered in said Court of Quarter Sessions of said County.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union, on Friday the fourth day of January, in the year of our Lord One thousand nine hundred and eighteen, before Honorable James C. Connolly, Judge aforesaid, comes the

said John Verona, in his own proper person, and now here touching the premises in the said Indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says he is not guilty thereof, and of this he puts himself upon the Country, etc., and Alfred A. Stein, Esquire, who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at the same term of the said Court of Quarter Sessions, holden at Elizabeth aforesaid, on Monday, the eighteenth day of February, in the year last aforesaid, before Honorable James C. Connolly, Judge aforesaid, the said John Verona, being set to the Bar, Alfred A. Stein, who prosecutes for the State, moves the trial of the Indictment aforesaid, wherefore let a jury thereupon come on this day last aforesaid, before this Court of Quarter Sessions aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said John Verona, to recognize upon their oaths, whether the said John Verona be guilty of Larceny and Receiving, in the Indictment aforesaid specified or not guilty, because as well the said Alfred A. Stein, who prosecutes for the State in this behalf as the said John Verona has put himself upon the said jury and the jurors of the said jury by James E. Warner, Sheriff of said County of Union, for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit:

Aaron C. Vandevere, Clinton M. Baker, Giles M. Hoyt, Jeremiah Warrington, Julius C. Weber, Arthur D. Crane, John Fate, Eli S. Apgar, Peter Skelley, Francis A. Clark, Louis J. Martin, Thomas G. Ward, who being chosen, tried and sworn to speak the truth of and concerning the premises, on the day and year last aforesaid, returned into

Court in charge of the officer sworn to attend them, and then and there upon their oath say that the said John Verona is guilty of Larceny and Receiving, in the form aforesaid and as in the Indictment aforesaid is above charged against him.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth aforesaid, in the County aforesaid, on Friday the twenty-second day of March, in the year of our Lord One thousand nine hundred and eighteen, before Honorable James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the statute in such case made and provided, the said John Verona, being set to the Bar, Alfred A. Stein, Esquire, who prosecutes for the State in this behalf, moves for judgment on the said John Verona.

Whereupon all and singular the premises being seen and by the Court now here fully understood—

It is ORDERED and adjudges that the said John Verona having been convicted of the crime of Larceny and Receiving, be imprisoned in the State Prison of this State for a Minimum term of two years and for a Maximum term of seven years at hard labor upon this conviction, that he pay the costs of this prosecution, which costs are taxed by the Court at the sum of Forty-five Dollars and Forty-one Cents, and that he be further imprisoned from and after the expiration of the imprisonment from and after the expiration of the imprisonment above imposed until said costs are paid.

And the said defendant in Mercy, etc.

Judgment signed March 22, 1918.

JAMES C. CONNOLLY,
Judge.

Bill of Exceptions.

1. At the conclusion of the Court's charge the defendant prays a general exception to the said charge, and the same is allowed and signed and sealed accordingly.

C. B. PIERCE,
Judge.
[SEAL]

2. And the defendant by his counsel requested the Court to charge as follows: That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him, which the Court refused to charge, but charged as follows: I charge you on this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen and thereupon defendant prayed an exception to said refusal so to charge, and the same is allowed and signed and sealed accordingly.

C. B. PIERCE,
Judge.
[SEAL]

3. That when John Verona, the defendant in this case, was called to the stand his Counsel stated to the Court as follows: "I ask that an interpreter be used. I have had talks with him and I cannot thoroughly understant him," to which the Judge said "He has lived here sixteen years and he is in a business that brings him in contact with all types of humanity, I understand him. To which counsel said "Does your honor refuse to allow the inter-

peter to act?" to which the Court said "Yes, Sir." To which the counsel for the defendant objected and prayed an exception and the same is allowed and signed and sealed accordingly.

C. B. PIERCE,
Judge.
[SEAL]

4. That the testimony of the witness John Sebonas, was permitted over thte objectioon of the Counsel of the defendant in which he said "I object to the testimony of this witness. Whereas John Verona is being tried for the larceny of brass journals the property of the Central Raolroad Company and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals, they now get John Sebonas to show he stole them himself and sold them, I suppose, to John Verona. The indictment is fatal in this respect. When they charge a man with larceny of brass journals and also charge him with receiving brass journals they have to show he not only stole them but afterwards appropriated them to his own use and received them. That is this indictment. The indictment now says, that John Verona himself actually stole thte brass journals and after he stole them he appropriated or received them to his own use. There is no question about that as an elementary principle, if larceny by the defendant be proved by John Verona, although the offender appear only to be a principal in the second degree, the charge fails because the offenses are substantially distinct, and because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same man; and the Court overruled the objection

of counsel, and thereupon he prayed an exception to said ruling and the same is allowed and signed and sealed accordingly.

C. B. PIERCE,
Judge.
[SEAL]

5. At the conclusion of the State's case, the defendant's Counsel addressing the Court said, "I make this motion: There is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not correspond with the charge in the indictment, and I move that your Honor direct the jury to find this man not-guilty of the crime he stands charged with. Four brass journals it is charged in the indictment and the evidence is, it is cracked up brass and zinc, entirely different; one is junk and the other is a merchantable and manufactured article." Which motion the Court refused, and thereupon defendant prayed an exception to the Court's ruling and the same is allowed and signed and sealed accordingly.

C. B. PIERCE,
Judge.
[SEAL]

Assignments of Error.

Afterwards &c., comes the plaintiff in error by William R. Wilson, his attorney, and assigns errors in the following respects for the reversal of the judgment in this cause:

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

2. That the charge of the Court as a whole, and in each and every part of it is illegal and thereby defendant suffered manifest wrong and injury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defense upon the merits, and are causes for reversal.

4. That the defendant by his counsel requested the Court to charge as follows: "That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him, which the Court refused to charge, but charged as follows: I charge you on this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen which charge was to the manifest wrong and injury of the defendant."

5. That the Court below erred to the prejudice and injury to the plaintiff in error in the follow-

ing respect, to wit:— That when John Verona the defendant was called to the stand his Counsel stated to the Court as follows: "I ask that an interpreter be used. I have had talks with him and I cannot thoroughly understand him" to which the Judge said: "He has lived here sixteen years and he is in business that brings him in contact with all types of humanity. In understand him. To which Counsel said: "Does your Honor refuse to allow the interpreter to act?" To which the Court said: "Yes, Sir," which refusal was to the manifest wrong and injury of the said defendant.

6. That the Court below erred to the prejudice and injury of the plaintiff in error in the following respect, to wit:— That the testimony of the witness John Sebonas was permitted over the objection of the Counsel for the defendant in which said Counsel said: "I object to the testimony of this witness. Whereas John Verona is being tried for the larceny of brass journals, the property of the Central Railroad Company and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals, they now get John Sebonas to show he stole them himself and sold them I suppose to John Verona. The indictment is fatal in this respect. When they charge a man with larceny of brass journals and also charge him with receiving brass journals, they have to show not only he stole them but afterwards appropriated them to his own use and received them. That is this indictment. The indictment says, that John Verona himself actually stole the brass journals and after he stole them, he appropriated or received them to his own use. There is no question about that as an elementary principle, if larceny by the defendant

be proven by John Verona, although the offender appear only to be a principal in the second degree the charge fails because the offenses are substantially distinct and because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same man." Which objection was overruled by the Court to the manifest wrong and injury of the plaintiff in error.

7. That at the conclusion of the State's case defendant's Counsel addressing the Court said: "I make this motion. There is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not conform with the charge in the indictment, and I move that your Honor direct the jury to find this man not-guilty of the crime he stands charged with. Four brass journals is charged in the indictment and the evidence is that it is cracked up brass and zinc—entirely different, one is junk and the other is a merchantable and manufactured article." Which motion was overruled and which action was to the manifest wrong and injury of the defendant.

8. That the Court permitted one John Galatian in behalf of the State to be sworn as a witness, and permitted him to testify in the presence of the jury as to the alleged conviction of one Niblo Palmer, a witness for the defendant, although no proof was introduced that it was the same Niblo Palmer and which after a discussion, said witnesses was withdrawn although the effect of his testimony before the jury no doubt affected the minds of the jury, and the Judge failed to instruct the jury in his charge to pay no attention to the same, which tes-

timony so offered and introduced was prejudicial to the defendant and he suffered manifest wrong and injury by its illegal introduction.

9. That if the defendant was guilty of receiving and not of larceny then under the indictment the verdict of guilty was erroneous and defendant suffered manifest wrong and injury under the evidence in the cause.

10. That the refusal of the Court to permit an interpreter to be used was prejudicial to the defendant, and manifest wrong and injury was done him by such refusal.

11. That the introduction of one John Galatian as a witness and his evidence being placed before the jury as to one Niblo Palmer was prejudicial to the defendant and he suffered manifest wrong and injury thereby.

12. That the testimony of Sebonas, the one who is alleged to have stolen the journals, is uncorroborated and there can be no conviction in this case.

13. That the property received, under the indictment wa snot the identical property which was solen but property of a different nature.

14. That the ownership of the property was not proved as laid in the indictment.

15. That the evidence of Sebonas, an accomplice to the receiving, was not corroborated.

16. Guilty knowledge on the part of the defendant was essential, to the constitution of the offense,

and such knowledge should have been imputed to him at the time of the receiving and not afterwards.

And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing and that he may be restored to all things he has lost on account of the said judgment.

WILLIAM R. WILSON,
Attorney for and of Counsel with the plaintiff in error.

Specification of Causes for Reversal.

Afterwards &c., comes the plaintiff in error by William R. Wilson, his attorney, and specifies the following errors and causes in the record and proceedings therein relied upon for the reversal of the judgment in this cause.

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

2. That the charge of the Court as a whole, and in each and every part of it is illegal and thereby defendant suffered manifest wrong and inury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defence upon the merits, and are causes for reversal.

4. That the defendant by his Counsel requested

the Court to charge as follows: "That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him, which the Court refused to charge, but charged as follows: "I charge you on this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen," which charge was to the manifest wrong and injury of the defendant and this is cause for reversal.

5. That the Court below erred to the prejudice and inury of the plaintiff in error in the following respect, to wit:—That when John Verona the defendant was called to the stand his Counsel stated to the Court a sfollows: "I ask that and interpreter be used. I have had talks with him and I cannot thoroughly understand him," to which the Judge said: "He has lived here sixteen years and he is in business that brings him in contact with all types of humanity. I understand him." To which Counsel said: "Does your Honor refuse to allow the interpreter to act?" To which the Court said: "Yes, sir," which refusal was to the manifest wrong and injury of the said defendant, which is cause for reversal.

6. That the Court below erred to the prejudice and injury of the plaintiff in error in the following respect, to wit: That the testimony of the witness John Sebonas was permitted over the obection of the Counsel for the defendant in which said Counsel said: "I object to the testimony of this witness. Whereas John Verona is being tried for

the larceny of brass journals, the property of the Central Railroad Company, and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals, they now get John Sebonas to show he stole them himself and sold them I suppose to John Verona. The indictment is fatal in this respect—When they charge a man with larceny of brass journals and also charge him with receiving brass journals, they have to show not only he stole them but afterwards appropriated them to his own use and received them. That is this indictment. The indictment says, that John Verona himself actually stole the brass journals and after he stole them, he appropriated or received them to his own use. There is no question about that as an elementary principle, if larceny by the defendant be proved by John Verona, although the offender appear only to be a principal in the second degree, the charge fails because the offences are substantially distinct and because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same man." Which objection was overruled by the Court to the manifest wrong and injury of the plaintiff in error which is cause for reversal.

7. That at the conclusion of the State's case defendant's Counsel addressing the Court said: "I make this motion. There is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not conform with the charge in the indictment, and I move that your Honor direct the jury to find this man not guilty of the crime he stands charged with. Four brass journals is charged in the indict-

ment and the evidence is that it is cracked up brass and zinc—entirely different; one is junk and the other is a merchantable and manufactured article." Which motion was overruled and which action was to the manifest wrong and injury of the defendant, which is cause for reversal.

8. That the Court permitted one John Galatian in behalf of the State to be sworn as a witness, and permitted him to testify in the presence of the jury as to the alleged conviction of one Niblo Palmer, a witness for the defendant, although no proof was introduced that it was the same Niblo Palmer and which after a discussion, said witness was withdrawn although the effect of his testimony before the jury no doubt affected the minds of the jury, and the Judge failed to instruct the jury in his charge to pay no attention to the same, which testimony so offered and introduced was prejudicial to the defendant and he suffered manifest wrong and injury by its illegal introduction and this is cause for reversal.

9. That if the defendant was guilty of receiving and not of larceny then under the indictment the verdict of guilty was erroneous and defendant suffered manifest wrong and injury under the evidence in the cause, which is cause for reversal.

10. That the refusal of the Court to permit an interpreter to be used was prejudicial to the defendant and manifest wrong and injury was done him by such refusal.

11. That the introduction of one John Galatian as a witness and his evidence being placed before the jury as to one Niblo Palmer was prejudicial to the defendant and he suffered manifest wrong and injury thereby.

Specification of Causes for Reversal

12. That the testimony of Sebonas, the one who is alleged to have stolen the journals, is uncorroborated and there can be no conviction in this case.

13. That the property received, under the indictment was not the identical property which was stolen but property of a different nature.

14. That the ownership of the property was not proved as laid in the indictment and this is cause for reversal.

15. That the evidence of Sebonas, an accomplice to the receiving, was not corroborated.

16. Guilty knowledge on the part of the defendant was essential, to the constitution of the offense, and such knowledge should have been imputed to him at the time of the receiving and not afterwards.

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, he reversed, annulled and altogether holden for nothing, and that he may be restored to all things he has lost on account of the said judgment.

WILLIAM R. WILSON.
Attorney for and of Counsel
with the Plaintiff in Error.

Joinder in Error.

And thereupon, afterwards, to wit: on the twenty-fifth day of October A. D. 1918 the State of New Jersey, by Walter L. Hetfield, Jr., Prosecutor of the Pleas of the County of Union, comes into Court and says that there is no error in the record and proceedings aforesaid or in giving the judgment aforesaid, and it prays here that the Court here may proceed to examine as well as the record and proceedings aforesaid as the matters aforesaid assigned for errors, and that the judgment aforesaid, in a manner aforesaid given, may in all things be affirmed, &c.

WALTER L. HETFIED, Jr.,
Prosecutor of the Pleas of the County of Union, in the State of New Jersey, for the Defendant in Error.

UNION COUNTY OYER AND TERMINER,
OCTOBER TERM, 1917.

STATE OF NEW JERSEY, vs. JOHN VERONA	Larceny & Receiving.

Transcript of Evidence Taken Before HON. JAMES C. CONNOLLY, Common Pleas Judge, and a Jury, at Union County Court House, City of Elizabeth, New Jersey, on the eighteenth day of February A. D., 1918.

Transcript of Evidence

UNION COUNTY QUARTER SESSIONS,
OCTOBER TERM, 1917.

STATE OF NEW JERSEY, vs. JOHN VERONA	Larceny & Receiving.

Transcript of stenographer's notes of evidence, taken in the above entitled matter, before HON. JAMES C. CONNOLLY, Common Pleas Judge, and a Jury, on the eighteenth day of February A. D., 1918, at 1:00 p. m., in the Union County Court House, City of Elizabeth, New Jersey.
Appearances:

ALFRED A. STEIN, ESQ.,
Prosecutor of the Pleas, Representing the State.

WILLIAM R. WILSON, ESQ.,
Representing the Defendant.

A Jury having been empanelled and found satisfactory, they were sworn.

ADJOURNED UNTIL 2:05 P. M.

AFTERNOON SESSION, 2:05 P. M.

Mr. Stein opens the case to the Jury.

JOHN SEBANOS, produced as a witness, on behalf of the State, being duly sworn on his oath, according to law, saith:

Direct Examinatioon by Mr. Stein:

Q. Your name is John Sebanos? A. Yes, sir.

Q. And you are now confined in the Rahway Reformatory? A. Yes, sir.

Q. Where you were sentenced from this Court? A. Yes, sir.

Q. Do you know this defendant, John Verona? A. Yes, sir.

Q. And before you were sentenced to the Reformatory you lived in Elizabeth? A. Yes, sir.

Q. How old are you? A. I will be twenty in September.

The Court: Be what?

A. Twenty in September.

Q. How long ago was it you were sentenced? A. It will be six months next month.

Q. It will be six months next month. And you were sentenced for stealing some brass journals? A. Yes, sir.

Q. From whom? A. From the Central Railroad.

Q. And how many? A. Three journals I think.

Q. Three. When did you take those? A. It was in July.

Q. Where did you get them, John? A. In the Central Railroad Shed.

Q. You must talk a little louder so the last gentleman can hear you. Central Railroad Sheds? A. Yes, sir.

Q. In Elizabeth? A. Right off Elizabeth, between Elizabeth and Linden.

The Court: Between Elizabeth and Lincoln.

A. Right off Elizabeth, between Elizabeth and Linden.

Q. Who did you sell those journals to?

Mr. Wilson: I object to the testimony of this witness. Whereas John Verona is being tried for the larceny of brass journals the property of the Central Railroad Company, and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals they now get John Sebanos to show he stole them himself and sold them, I suppose, to John Verona. The indictment is fatal in that respect. When they charge a man with larceny of brass journals and also charge him with receiving brass journals they have to show he not only stole them but afterwards appropriated them to his own use and received them. That is this indictment. They can bring another indictment or another charge that on the same day John Sebanos stole these brass journals himself and sold them to another; that is the subject of another charge. The indictment now says John Verona himself actually stole the brass journals, and after he stole them, he appropriated or received them to his own use.

The Court: Let me see that indictment. (Discussion at desk between counsel and Court, not reported).

Mr. Wilson: There is no question about that as an elementary principle, if larceny

by the defendant be proved,—by John Verona—although the offender appear only to be a principal in the second degree, the charge falls, because the offenses are sub-substantially distinct. And because there can be no guilty reception unless there be a prior stealing or receiving by another. Not by the same man.

Mr. Stein: What case is that?

Mr. Wilson: Rex against Gruncell, ninth Carrington, 365. State vs. Smith, 37 Mo. 58, Wharton Criminal Law, Section 986. The indictment need not set forth the name of any person from whom the goods were received, nor, according to the preponderance of authority, that they were received from some person or persons unknown; when, however, the principal felon is named a variance is fatal. It is not fatal to the averment of unknown that the Grand Jury have found an indictment against a named person for stealing the same goods." That is section 997. And section 927, states "In Larceny a party can not be convicted as a princial, unless he is actually or constructively present at the taking and carrying away of the goods. His previous consent to, or procurement of thte goods and appropriation, alone, at Common Law, make a principal." So you say in this indictment the jury has to do this, they have to say John Verona was the principal, that he stole the goods. And then took them away. Now they are seeking to show John Sebanos was the person who stole the goods. This indictment could have been for receiving after he knew the goods had been stolen. It is not drawn in

that way. It charges Verona with stealing the goods and after he stole them he appropriated them to himself. (Citing case: 927 Section). So he can not be tried on the indictment because in the indictment they seek to charge him as principal and the evidence is that John Sebanos i sthe principal, the man that did the stealing. So my objection to this testimony is that it can not be introduced by the other side as affecting the larceny or alleged larceny of John Verona, as he is charged with stealing and receiving.

Mr. Stein: Does Your Honor wish to hear me on the question?

The Court: No. The indictment is drawn in the usual form and contains two counts. The form they have used for many years to my knowledge in this County. And certainly has been used in this County since I have been Judge.

Mr. Wilson: The indictment does not charge Sebanos with stealing.

The Court: The indictment contains two counts, one charging receiving and the other larceny.

Mr. Wilson: The first count charges John Verona with stealing the goods.

The Court: Yes.

Mr. Wilson: They seek to show John Sebanos stole the goods.

The Court: Yes?

Mr. Wilson: And there is a difference in the law with regard to that. Because when you have two counts in the indictment the second count is based on the larceny in the first count. If they had put in there John Sebanos had done the stealing and John Verona had done the receiving, I could not make any valid objection.

The Court: This is for larceny and receiving. This indictment, as I have already stated, is in the usual form, and if the objection which you now make should prevail then no man could successfully be tried before this Court no matter what his crime might be.

The Court: This indictment is in the form that has been used in this County for many, many years.

Mr. Wilson: Not when I was Prosecutor.

The Court: I am not going to talk about that. You have said all you wanted to say. I shall overrule your objection. I think it is without foundation.

Mr. Wilson: I except to your Honor's ruling; exception allowed, sealed accordingly.

C. B. PIERCE,
Judge.

Q. (Question repeated by the stenographer.) "Who did you sell those journals to?" A. I don't know his name. But the man that is here.

Q. Where is the man? A. Sitting right there; second man.

Q. When did you sell them to him? A. Well, in July, toward the end of the month.

Q. Where did you meet this man who is sitting here, the defendant? A. Right in behind my father's property.

Q. Where is your father's property? A. 131 Bayway.

Q. When you saw this man, the defendant, what was he doing? A. He was passing by on a peddler's wagon.

Q. And what did he say to you? A. He asked me if I have got anything for him.

Q. Did you ever see him before that day? A. Yes.

Q. What was his business? A. Junk dealer.

Q. And he asked you if you have got anything for him. What did you say? A. I said "Yes. I have got some brass."

Q. And then what happened? A. He said, "Let me see it."

Q. Did you let him see it? A. Yes, sir.

Q. Where was the brass? A. I had it in the yard, and I threw it over the fence and showed him.

Q. Did he stay on his wagon? A. No, sir; he got off his wagon.

Q. When he got off his wagon, where did he go? A. He came over and looked at the brass and he seen there was too much boys around, and he said he would be back later, and he got on the wagon and went away and came back after.

Q. How many boys were there around then? A. Two or three.

Q. Two or three. What did he say about the boys? . He said too much boys, and he got on the wagon and he went away.

Q. Did he come back? A. Yes, sir.

Q. And when did he come back? A. About five minutes later.

Q. And where did you meet him then? A. Same place.

Q. That does not tell us where it was. At his father's house? A. Right outside of my father's property.

Q. Where did you and he go then, when he came back the second time? A. He offered me nine cents a pound.

Mr. Wilson: That is not the question.

Q. No. Where did you go, you and he then, when he came back the second time? A. Didn't go nowhere. Waited there.

Q. Waited where? A. Right by my father's property.

Q. Who was with you then? A. Stephen—I don't know his last name.

Q. Stephen was with you? A. Yes.

Q. You don't know his last name. What was said then when you and Stephen were there, when he came back the second time? A. He asked me how much I wanted for the brass.

Q. Did you tell him? A. I asked him. And then I asked him how much he paid a pound and he said nine cents; I didn't want to sell it to him. I asked for ten cents and he said, "I will give you five dollars for it all."

Q. What did you say? A. said all right.

Q. Then what? A. Then he took the brass and put it on the wagon and gave me a five dollar bill and went away.

Q. What shape was this brass in? A. It was round like and came down square and then round again (indicating).

Q. When he bought it, I mean, what shape was it in? A. It was broke in half.

Q. It was broke in half? A. Yes, sir.

Mr. Stein: Cross-examine the witness.

Cross-examination by Mr. Wilson:

Q. John, you say you came from the Reformatory? A. Yes, sir.

Q. How long have you been there? A. Five months now.

Q. And it was for stealing this very brass, wasn't it? A. Yes, sir.

Q. Did you plead in this Court? A. Yes, sir.

Q. And do you know what date you plead? A. Day I pleaded?

Q. Yes? A. I think it was the first part of the Court session.

Q. Early in August? A. In September.

Q. What? A. In September.

Q. First of September.

Mr. Stein: Early part of September.

Q. Early part of September, yes. When did you first say Verona bought this from you? A. Yes, sir.

Q. When did you first say it? When did you first tell anybody that Verona bought it from you? A. When I first got arrested.

Q. When was that? A. In July.

Q. Well, the last time he came around there you say that you sold it to him? A. Yes, sir.

Q. And nobody was present? A. Yes, sir.

Q. Who? A. Stephen—I don't know his last name; but he is here in Court.

Q. You don't know his last name? A. No, sir.

Q. Why don't you know his last name? Weren't you acquainted with him at all? A. Yes, sir; I was acquainted with him.

Q. Why do not you know his last name? A. I can't pronounce it.

Mr. Wilson: That is all.

STEPHEN WOJTELKO, produced as a witness, on behalf of the State, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Smith:

Q. How do you pronounce that? A. Wojtelko (pronouncing it like Wo-tel-ko).

Q. How old are you? A. I will be fifteen in May. May ninth.

Q. Steve, do you know this defendant here, Verona? A. I know him now. Because we had a trial with him.

Q. And do you know the boy that just went off the stand by the name of Sebanos? A. Yes, sir.

Q. Did you know where Sebanos lived? A. Yes, sir.

Q. And do you remember last July Sebanos, whether or not he had any brass around his house? A. No, sir.

Q. Did you see this man, the defendant, Verona, come to Sebanos' house? A. Yes, sir.

Q. When? A. Why, it was about—beginning of August.

Q. Beginning of August of last year? A. Yes, sir.

Q. How did he come there? On foot or was he riding? A. With a horse and wagon.

Q. And did he stop at Sebanos' house? A. Yes, sir.

Q. And who did he speak to? A. To John. To John Sebanos.

Q. Who else was around beside you and John? A. Walter Adonock.

Q. Who? A. Walter Adonock.

Q. Where is he now? A. In the Navy.

Q. How old a lad is he, if you know? A. About eighteen.

Q. Well, what did this man Verona say to Se-

banos? A. He asked him did he have anything to sell to him, and John said "Yes."

Q. Did John call him? A. No, sir; he comes around as usual. The horse and wagon on a trip.

Mr. Wilson: He is a junkman, isn't he?

A. Yes.

The Court: Do not interpose.

Q. There is no doubt about that. What did John say when he asked him did he have anything to sell to him? A. John said "Yes, I have some brass."

Q. What happened then? A. Why, at the time I came there because John offered me a book to read—

Mr. Wilson: Never mind.

Mr. Stein: Mr. Wilson, I will conduct the examination.

Mr. Wilson: I object to the answer.

The Court: When the defendant came there John offered him a book. That is perfectly proper. I will allow it to stand.

A. He offered me the book because me and him —I bought books, and he bought books, and we trade and read them.

Mr. Wilson: This is John Sebanos.

The Court: He is telling about the transaction.

A. And when I came there the junkman came there. And John asked me for a book, and he said, "Wait until I sell my brass."

The Court: Was the defendant there?

A. Yes, sir.

The Court: Go on.

A. And when he came there there was a lot of children around. He said he will go away and come back again because there is a lot of children around and he is fraid of being caught.

Q. Did you hear him? A. Yes, sir.

Q. And did he say that last part, about afraid of being caught? A. Yes, sir.

Q. Sure about that? A. Yes, sir.

Q. Go on? A. And he goes away. And about five minutes he came around and offered another price.

Q. Where were they the second time they were talking about the brass? A. They were in back of John's fence.

Q. Was the brass there? A. It was there in back.

Q. Did you see it? A. I didn't see it at first. At first the junkman weighed the brass and John saw it was more than fifty pounds, and he took it out to make it regular weight, and that is when I saw it.

Q. That is when you saw it? A. Yes, sir.

Q. To make it fifty pounds? A. Yes, sir.

Q. First time he weighed it? A. Yes, sir.

Q. How soon after did he come back? A. Five minutes after.

Q. And they went back of the house again, did you go along? A. They stood there.

Q. Didn't leave the back yard? A. Yes, sir.

Q. And when you were—what did the junky do then? A. The junkman gave John a price nine cents a pound, and John refused the price. He

said, "I won't sell that less than ten cents." And Verona said he would offer five dollars for the whole shooting match and John took it.

Q. Did you see any money passed? A. Yes, sir.

Q. How much? A. Five dollar bill.

Q. Who handed it over? A. Verona handed it to John.

Q. Then what happened to the brass? A. The junkman put the brass on his wagon and went off, and John gave me the book and I went home.—

The Court: After that, do not state what happened after that.

Q. The junkman went off with the brass? A. Yes, sir.

Q. And later on did anybody come around to ask you about it or talk to you about it? A. No, sir.

Q. Did you ever see Verona again after that? A. Yes, sir; I saw him pass by with horse and wagon.

Q. Did he say anything to you? A. Yes, sir. He told men next time. The next time I came up to Court again tell the Judge I was telling a lie. He didn't buy.

Q. At that time when he said that to you you had already been brought to police headquarters to tell what you knew? A. Yes, sir.

Q. And was Verona there when you were brought to police headquarters? A. Yes, sir.

Q. And after you were to police headquarters and told what you knew about this, where was it he stopped you? A. On Bayway avenue, going to school.

Q. What? A. On Bayway avenue.

Q. What were you doing down there? A. I go to school.

Q. You go to school down there? A. Yes, sir.

Q. How many times did he stop you and tell you

to say that? A. He stopped me and told me that once. And many other times he stopped me and cursed at me.

Q. He just told you to do that once? A. Yes.

Q. What did you say to him? A. I didn't say nothing to him. I just said "nothing doing," and walked off.

Q. Just said "nothing doing", and walked off? A. Yes.

Q. And after that he didn't say anything more but cursed at you? A. Yes, sir.

Cross Examination by Mr. Wilson:

Q. Pronounce your name again? A. Wojtelko (pronounced as "Wo-tel-ko).

Q. Wo-tel-ko? A. Yes, sir.

Q. Do you go to school now? A. Yes, sir.

Q. On this occasion you say you were at John Sebanos' what kind of brass was it? A. When it was broke up it looked like it was mixed with zinc or lead.

Q. What is it? A. When it was broke up it looked like it was mixed with brass and zinc.

Q. Everything mixed together? A. Yes, sir.

Q. Old junk? A. When it was broken up. I saw the broken part of it.

Q. Old junk? A. Yes, sir.

Q. It wasn't four brass journals? A. I don't know anything about it.

Q. I mean this: you know what a journal is? A. Yes, sir.

Q. It was not four of those things? A. No, sir; it was broken up in pieces.

Q. It was broken up in pieces? A. Yes, sir.

Q. It was broken up brass, wasn't it? A. Yes, sir.

Q. And on the day you say Sebanos and Verona were negotiating, you did not see any selling of four brass journals, did you? A. No, sir.

Q. And there was no sale made that time? A. No, sir.

Q. And that is the only occasion when you saw Sebanos and Verona buying things? A. Yes, sir.

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

Q. You say this occasion was sometime in August? A. August, beginning of August.

Q. About the tenth? A. No, sir; about the first.

Q. About the first of August. And you were, never a witness before in the case, were you? A. No, sir.

Q. What is it? A. No, sir.

Q. You never told anybody else before this? A No, sir.

Q. You do not know what happened before with regard to this in any Court? A. No, sir.

Q. How did you come to say anything about it now? A. I am asked to say it.

Q. What is it? A. I am asked to say it.

Q. You know John Verona was charged with stealing four brass journals? A. Yes, sir.

Q. Did you ever say to anybody you saw Sebanos sell to Verona four brass journals? A. No, sir.

Q. You are positive about that? A. I told it in Court.

Q. What was it? A. Yes, sir.

Q. Did you ever tell anybody before— A. Yes.

Q. (Continued)—he sold four brass journals? A. No, sir.

Q. That is what I asked you. He did not sell any brass journals? A. No, sir.

(Question repeated by the stenographer).

Mr. Wilson: That is all.

Mr. Stein: State will rest.

STATE RESTS.

Motion for Direction.

Mr. Wilson: If Your Honor please, I make this motion: there is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and, therefore, that the evidence does not correspond with the charge in the indictment, and I move that Your Honor direct the jury to find this man not guilty of the crime he stands charged with. Four brass journals it is charged in the indictment and the evidence is it is cracked up brass and zinc. Entirely different; one is junk and the other is merchantable and manufactured article.

The Court: What have you to say to that?

Mr. Stein: The young man who sold the journals testified he sold them to him in broken pieces. And the charge is this man received stolen goods in the usual way, and the only way it is by the thief which we have and he sold them to this man, no matter whether they were mixed up, they were junk, or no; and the man knew, we have shown, he knew he was buying those goods, and tney were stolen, and he had a suspicion they were because he said he would not buy from those boys because there was too many children around and he would not buy because he was afraid of getting in trouble. Now it is a question to determine whether he bought these, and it is a question next to determine whether this man bought goods knowing them to be stolen.

The Court: When you arise to address the Court on any motion you must make your argument and rest satisfied with it.

Mr. Wilson: The Prosecutor has said this:

that the state has proved in regard to this; they have not proved it is the property of the Central Railroad of New Jersey, yet.

Mr. Stein: The boy said he stole them from the Central Railroad of New Jersey.

Mr. Wilson: No, he did not. He said—

The Court: Make your motion.

Mr. Wilson: I have concluded.

The Court: In the testimony of the boy, Sebanos, it appears that the brass sold to the defendant were brass journals. He swears to that. Now the tetimony—if the testimony of the last witness Stephen Wojtelko was the only testimony before the Court I would be inclined to grant your motion. But in view of the fact that the young boy, Sebanos, has testified they were brass journals, I think the testimony supports the indictment.

(Further argument).

The Court: I refuse your motion.

Mr. Wilson: I except to Your Honor's ruling.

The Court: You may go to the Jury.

Exception allowed, sealed accordingly.

C. B. PIERCE,
Judge.

Mr. Wilson opens to the jury for the defendant.

Defendant's Testimony.

PATRICK KEHOE, produced as a witness on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Wilson:

Q. Mr. Kehoe, you are a resident of Elizabeth? A. Yes, sir.

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

Q. Have you a place of business in Elizabeth? A. Yes, sir.

Q. Where? A. Feed business, Magnolia avenue.

Q. What ward is that? A. Eighth Ward.

Q. Is John Verona in the same ward as you are? A. Yes, sir.

Q. Do you know John Verona? A. Yes, sir.

Q. How long have you known him? A. Four or five years.

Q. Do you know what his reputation for honesty is in the neighborhood in which he lives, do you know? A. I always found him good—

Q. Yes, or no? A. Yes, sir.

Q. What is it, good or bad? A. Good.

Cross-examination by Mr. Stein:

Q. You are in the feed business? A. Yes, sir.

Q. You supply him with horse feed? A. Yes, sir.

Q. Pays his bill all right? A. Correct.

Q. That is all qou know about it? A. Yes, sir. Pretty straight fellow. If he owes you a little bill he will come back and pay you.

Q. So far as his reputation for other things was

concerned nobody has ever talked that over with you? A. No, no.

By the Court:

Q. Does h elive in the same neighborhood with you? A. He lives above me.

Q. Does he live in the same neighborhood? A. No, sir.

Q. How far away from you? A. Same ward; about seven or eight blocks.

Niblo Palmer, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Redirect Examination by Mr. Wilson

Q. Mr. Palmer, you are a resident of Elizabeth? A. Yes, sir.

Q. How long have you lived here? A. About twenty-nine or thirty years.

Q. Where do you live, if I might ask? A. 1137 Prospect place.

Q. That is in what ward? A. Twelfth Ward.

Q. Right adoining the Eighth Ward? A. Right near North avenue.

Q. Do you know where John Verona lives? A. Yes, sir.

Q. How many blocks do you live from him? A. I should judge about fifteen hundred feet.

Q. Fifteen hundred feet? A. Yes, sir.

Q. Do you know what his general reputation is in the community in which he lives for honesty? A. Yes, sir.

Q. Is it good or bad? A. Good.

Mr. Wilson: That is all. Cross-examine.

Patrick Kehoe—For Defendant—Recross

Angelo Saittrello—For Defendant—Direct

Recross Examination by Mr. Wilson

Q. Have you ever been convictetd of a crime? A. Wha?

A. Have you ever been convicted of a crime? A. Me? No, sir.

Q. Never? A. No, sir.

Mr. Stein: That is all.

ANGELJ SAITTRELLO, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Direct Examination by Mr. Wilson:

Q. Mr. Saittrello, what is your business? A. Why, I am working Prestolight Company.

Q. Prestolite Company? A. Yes, sir.

Q. Where is that located? A. Down Newark.

Q. Down Newark? A. Yes, sir.

Q. How long have you lived in Elizabeth? A. About three years.

Q. Where do you live, Mr. Saittrello? A. 912 Van Buren avenue.

Q. Do you know where John Verona lives? A. Yes, sir.

Q. Where does he live? A. Right—905 Jackson avenue.

Q. That is in the same neighborhood in which you live? A. Yes, sir.

Q. How long have you known John? A. About three years.

Q. Do you know what his general reputation for honesty is in the neighborhood in which he lives? Do you know what it is—good, good or bad? A. Yes, sir; regularly gentlemanly.

Q. Good? A. Yes, sir; good.

Mr. Stein: Do not testify for him.
The Court: Strike that out.

Q. Do you know what his reputation is? A. Yes, sir.
Q. What is it, good or bad? A. Very good.

Mr. Stein: No questions.

VINCENT DANIELS, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Wilson:

Q. Mr. Daniels, you are a resident of Elizabeth? A. Yes, sir.
Q. How long have you lived here? A. About twenty-five years.
Q. Do you know John Verona? A. Yes, sir.
Q. Do you know what his reputation—his general reputation is in the community in which he lives for honesty? A. Yes, sir.
Q. What is it, good or bad? A. Good.

Cross-examination by Mr. Stein:

Q. You live about two miles away from him, don't you? A. Pretty near.

Mr. Stein: Pretty near. That is all.

JOHN VERONA, the defendant, being duly sworn on his oath, according to law, saith:

Direct Examinaation by Mr. Wilson:

Mr. Wilson: I ask that an Interpreter be used, if Your Honor please. I have had talks with him and I can not thoroughly understand him.

By the Court:

Q. How long have you lived in the United States?
A. Sixteen years.
Q. Sixteen years.

The Court: He has lived here sixteen years, and he is in a business that brings him in contact with all types of humanity.

Mr. Wilson: I have had difficulty in understanding him. I would ask that an interpreter be employed to present the matter to the Jury.

The Court: I understand him so far.

Mr. Wilson: Does Your Honor refuse to allow the interpreter to act?

The Court: Yes, sir.

Mr. Wilson: I except to Your Honor's ruling.

Exception allowed, sealed accordingly.

C. B. PIERCE,
Judge.

By Mr. Wilson:

Q. Where do you live? A. Jackson avenue.
Q. How long have you lived there? A. Three years.

Q. John Sebanos says that sometime last year you bought some brass from him? A. Don't want no brass from nobody.

Q. Did you ever buy any brass from John Sebanos? A. No, sir. He lie; that is all right for me.

Q. One boy, Wojtelko, says that in August, the early part of August when John Sebanos was present that you bought from John Sebanos a lot of cracked up brass with zinc? A. No want to say; that is all.

Q. Did you or no? A. No, sir.

Q. And he said that is the only occasion whenever he was present when you bought anything at all? A. No, sir. Want say one kind man. Just one big mistake.

The Court: And this is the man you said you could not understand.

Mr. Wilson: He is doing better.

Mr. Wilson: Cross-examine.

Cross Examination by Mr. Stein:

Q. Mr. Verona, do you mean to say that you never bought junk from this boy? A. No, sir.

Q. Never? A. Never.

Q. No kind of junk? A. No kind of junk.

Q. And never bought any brass? A. No, sir.

Q. Did you ever see this man before? A. I never see him before. One bigga mistake for me.

Q. You mean to say you never saw that boy before? A. No, sir; nothing at all.

Q. And never bought nothing from him? A. Nothing; nothing.

Mr. Stein: That is all.

Mr. Wilson: That is all.

That is our case.

DEFENSE RESTS.

STATE'S REBUTTAL TESTIMONY

JOHN SEBANOS, recalled.

Direct Examination by Mr. Stein:

Q. John, Mr. Verona said he never saw you before. How many times did you sell him junk? A. About ten times.

Q. How many times did you sell him brass? A. About three or four times.

Q. Did you send for that day be bought this stuff, or did he come by himself?

Mr. Wilson: I object.

Mr. Stein: I withdraw that. That is all.

Cross Examination by Mr. Wilson:

Q. The time you say you sold this cracked up brass when Wojtelko—that is the only time Wojtelko was ever with you when you sold brass to John Verona, isn't that so? A. Yes, sir.

CHARLES W. RUNYON, produced as a witness, on behalf of the State, in rebuttal, being duly sworn on his oath, according to law, saith:

Direct Examination by Mr. Stein:

Q. You are Deputy County Clerk? A. I am a clerk in the County Clerk's Office.

By the Court:

Q. Where is the County Clerk? A. He is in Anniston, Alabama.

Q. What is he doing there? A. In the Army.

Q. Where is the Deputy County Clerk? A. Sick.

Q. In Newark? A. In Newark.

Q. Confined to his home? A. Yes, sir.

Mr. Wilson: I make no objection regarding Mr. Runyon's testifying to the books.

By Mr. Stein:

Q. I will call your attention to the record Court or Oyer and Terminer, is that the official County Record of the proceedings of that Court? A. Yes, sir.

Q. I call your attention to page 297, and ask you whether Niblo Palmer was ever convicted of a crime in this County? A. Yes, sir.

Q. Of what crime? A. Indictment for Assault and Battery.

Q. And sentenced to what? A. To pay a fine of one hundred dollars nd cost.

Q. Atrocious assault and battery, isn't it? A. Yes, sir; atrocious assault and battery.

The Court: How long ago was that?

A. February fifteenth, 1899.

The Court: 1899? That is a long time ago.

Mr. Stein: Cross-examine.

Cross-examination by Mr. Wilson:

Q. Did you see Niblo Palmer testify here a mo-

ment ago? A. I seen a man by the name of Niblo Palmer.

Q. Is it the same man mentioned there?

Mr. Stein: Oh!—

The Court: I will allow it.

A. I don't know.

Q. Is it the same man? A. I don't know.

The Court: I think in fairness and justice, if Mr. Palmer, who is now in Court is not the person mentioned in the indictment it ought to be known to the jury for his own sake and his reputation. You better call him.

Mr. Wilson: No, sir!

The Court: If he is the man he has sworn falsely on the witness stand.

JOHN A. GALATIAN, produced as a witness, on behalf of the State, in rebuttal, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Stein:

Mr. Stein: Will you stand up, Mr. Palmer.

Q. Chief Galatian, do you know that man? A. I do.

Q. What is his name? A. Niblo Palmer.

Q. How long have you known him? A. I arrested him in 1898, and I have known him ever since.

Q. I show you a paper and ask you whether or not that will refresh your memory, whether it is in

your handwriting? A. This is in my handwriting.

Q. And it is a part of the records of what office? A. Prosecutor's office.

Q. And is the Niblo Palmer that just stood up the Niblo Palmer that was convicted of atrocious assault and battery in 1899 and fined one hundred dollars and costs? A. In 1899—

Q. Is that the same man? I want to know? A. I have no personal knowledge of that. Because—

Mr. Wilson: That is all the question.

A. I was thinking this was 1899. Yes, it is 1899. I wasn't in the office then.

Q. You made that record? A. 1909 I was.

Q. You made this record? A. I made this record.

Q. Did you not arrest him at the time of this thing? A. Not on this.

Mr. Stein: I ask the other arrest be stricken out, and the testimon yabout that.

The Court: The Court will strike it out.

Q. You do not know whether that same man was convicted there or not? A. Not in 1899. That was before I came in the office. And then I knew him.

Q. There was no conviction after that? A. It does not appear on that card, but in 1908 I arrested Niblo Palmer on an old indictment about six years old. He jumped his bail.

Q. Was he convicted at that time? Does the record show?

The Court: I will strike it out.

A. That is my recollection although I haven't any personal knowledge of this conviction in 1899,

that the arrest in 1908 was the result of his jumping the bail on this indictment. And John Whelan was the bondsman and there was a five hundred dollar bond forfeited and afterwards collected. That happened in 1908.

The Court: Now do not say anything more unless you are asked a question.

Mr. Wilson: That is all.

Q. Mr. Galatian, I call your attention to the Record of County Clerk's Office, page 297, State against Niblo Palmer, indictment for attrocious assault and battery, sentenced to pay a fine of one hundred dollars and costs of prosecution, under datae of Thursday, February twenty-third, 1899; and now again call your attention to the card or record which you made and ask you to look at the date of the sentence marked on that. What is the date on that card? A. Record on the card refers to the record at page 297; record of conviction.

Q. Same date? A. Same date.

Q. Same sentence? A. Refers to the same sentence and same conviction.

Mr. Stein: I am going to offer the record made by the Chief together with the record of the County Clerk's office in evidence.

Mr. Wilson: I am going to object.

The Court: You will have to first connect that with Mr. Niblo Palmer. As I understand the testimony up to this point, he does not recognize this man as the man he arrested.

Mr. Stein: Not for this indictment. I have a right to offer when a man says he was not convicted, I have the right to offer the record.

The Court: I will allow that.

Mr. Stein: To go to the jury together with the card made at that time by the Prosecutor's office through its Chief.

Mr. Wilson: I object to it for this reason: because the State has not shown that the record of the conviction of February 23rd, 1899, that the man convicted there is the same man that has been on the stand today. I move it be stricken out for that reason.

Mr. Stein: It is the Court record and of course it has a right—

Mr. Wilson: No, it has not.

The Court: I think that there is a presumption that every man is innocent until he is proven guilty.

Mr. Stein: I will withdraw the offer in order to save the Court's ruling. I won't withdraw the testimony offered on that, but the record I withdraw.

Mr. Wilson: I move the testimony be stricken out.

The Court: I was about to say a little while ago there is a presumption every man is innocent until he is proven guilty, and it is for the jury to say whether he is proven guilty or not from all the testimony offered in the case. There are records of the Court in evidence and there is testimony of the witness, a witness who is the Chief County Detective and who testifies a man by the name of Niblo Palmer was arrested by him in 1909. And it seems to me that there is sufficient before the jury to make up—at least to have the defendant take the witness stand, if he is not the party referred to in the records, and swear that he is not such person. The records, however, are with-

drawn. They are not now before the jury.

Mr. Stein: You mean the witness, not the defendant.

The Court: The witness, I mean. I understand, though, that the records are withdrawn. Now then there is the testimony and it seems to me that the testimony is of no value without the records, because the records are the best evidence.

Mr. Stein: I will withdraw that. They are simply introduced to impeach this man's record when he said he knew this defendant's reputation. That is simply a side issue.

The Court: All the testimony relating to Niblo Palmer is withdrawn. All of it.

Mr. Wilson sums up the case for the Defendant.
Mr. Stein sums up the case for the State.

UNION COUNTY OYER AND TERMINER.

STATE vs. JOHN VERONA.	Indictment No. 93, October Term, 1917. Larceny and Receiving.

Court's charge to the Jury, by Hon. JAMES C. CONNOLLY, Judge of the Court of Common Pleas.

Gentlemen of the Jury: The defendant in this case is indicted for receiving; for larceny and receiving stolen goods; there are two counts in the indictment. One is for larceny and the other is for receiving stolen goods. And before the Court

took any evidence in the case you will remember that counsel requested that the indictment be *nolle prosequied* for want of certainty and because it was conflicting. I think those were the grounds of your application, Mr. Wilson?

Mr. Wilson: Not quite. I can state it a little more fully if you want it.

The Court: You have stated it very fully. The Court at that time refused to grant the motion of the attorney for the defendant and I should not refer to the matter now except that in the requests to charge which the counsel for the defendant has handed to the Court, he requests that the same matter be now taken up by the Court in its charge "that as the indictment charges the larceny was committed the larceny is fatal." I say in view of the fact that I am requested to instruct the Jury on the matter. I refer to it now. The case of the State of New Jersey against Braunstein, decided in the Court of Errors and Appeals of this state at the March term, 1913, states the law as follows on this very proposition: "The argument in this Court was that the proof showed that the defendant was guilty of larceny rather than that of receiving stolen goods. The evidence is quite persuasive to that effect and the count for larceny should not have been stricken out. The line of distinction between the facts constituting the larceny and the facts constituting receiving of stolen goods is often a fine one, as may be seen by a reference to *Second Rus. Cr. & M.*, 546, and prudent pleading justifies joining a count for each offense in the same indictment. In the present case we should have had some difficulty if the point had been made at the trial. It was not, and we need not further consider it, and the judgment is affirmed."

Mr. Wilson: Will your Honor pardon me? In that case—

The Court: No. I am charging the jury. The crime of receiving is a very serious one. The punishment is very serious where guilt is established and a conviction follows. And in order that you may find the defendant guilty, it must appear in the first place that the goods which he purchased were stolen; and next it must appear that the purchaser knew the goods were stolen. For, if it does not appear in the testimony, that the defendant knew that the goods were stolen, then of course he would not be guilty of the crime of receiving. Neither would he, in that case, be guilty of the crime of larceny. But it is not necessary, gentlemen of the jury, that the evidence should show you that actual, positive, direct information was conveyed to the defendant of the fact that the goods were stolen in order to make him guilty. Guilty knowledge may be found by the Jury where the defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen.

Now, then, what is the testimony in the case? The state produces a boy named Sebanos. He is brought here from the Rahway Reformatory, where he is now confined. He testified that he sold the brass journals to this defendant at the rear of his home in Linden in this County, and he says that those brass journals were stolen by him from a shed of the Central Railroad and brought to his place. He said that the defendant had purchased material from him before the day on which these journals were purchased. And that on the day on which they were purchased the defendant passed his place, stopped his wagon and inquired whether he had anything and he informed him that he had.

Now, the testimony of this boy, Sabanos, is that the defendant said that there were too many children around, or words to that effect. You remem-

ber the testimony; that he went away and returned in five minutes—that he returned in a short time at any rate. When he returned, the brass journals were produced and then they tried to agree upon a price. Well, you saw the size of this fellow, and you saw the character of the chap that he is, and you saw the defendant here in Court. Now you are to take their circumstances and their position on that occasion into consideration. Does it appear that the boy was in any business that would put him in control of the articles that he had to sell?

The defendant offered nine cents a pound for the material, the boy requested ten. The defendant then offered a lump sum of five dollars for the amount and thereupon the bargain was closed. The material was thrown into the wagon of the defendant by the defendant. The five dollars was paid over and he went off.

Now, in addition to that testimony, is the testimony of the boy named Wojtelko. Wojtelko seemed to me to be a very intelligent boy; more intelligent, perhaps, than the class of people among whom he lives. He goes to school in the neighborhood, down in Linden. He was present on the occasion when the defendant bought the brass. He does not agree with Sebanos as to the character of the material. He says it was brass broken up. He does not say it was brass journals. He said it was brass broken up. But he said that the material was weighed and after it was weighed Sebanos took some of the brass out again in order to even up the number of pounds. What was taken out, or what the characater of the material was that was taken out does not appear. But he saw pieces taken out and he saw the five dollar bill passed over. And he further testifies that this defendant subsequently requested him, the witness, when he went

to Court to tell the Judge that he had not told the truth when he said that he, the defendant, purchased brass from Sebanos. And when the witness said he would not comply with his request, then he cursed him, and used abusive language to him when he met him thereafter. Now, that is the testimony of those boys.

The testimony of the defendant is that he never purchased anything from Sebanos; that he never saw that boy before, and never bought anything from him. That is his language.

Now, then, the question arises; who are you going to believe? Are you going to believe the testimony of this man, the defendant, as against the testimony of the two boys, as to whether he ever saw Sebanos or not, or whether he was ever at his place? Can it be that the two boys are lying about that and he is telling the truth? It may be that he is telling the truth? You are the judges of that. I can not pass on that question any more than you can pass on the questions of lw involved in the case.

But you are called upon to take all the testimony and say from an examination of that testimony—all of it, whether the defendant is guilty beyond a reasonable doubt. In weighing the testimony against the defendant you must take into consideration the testimony of the witnesses who have appeared here as to his good reputation. I am requested by the defendant's counsel to charge you on that. And, since he has mde a request in that respect, I shall charge you in his language, which I read from his request:

"Every defendant coming into Court is presumed to be innocent until the evidence produced by the State overturns that presumption and you must be satisfied with the testimony which overturns that presumption of the guilt of the defendant beyond a reasonable doubt."

I am also requested by counsel for the defendant to charge you what a reasonable doubt is. I shall do that also in considering his requests.

The following are the requests of the defendant; I have already disposed of the first one.

"Second: The guilty knowledge on the part of the defendant is essential to the constitution of the offence." I have charged you on that, and I now charge you in accordance with the request.

"That there can be no guilty reception by the defendant unless there is a prior stealing by another." I so charge you.

"The testimony of the thief is to be scrupulously weighed, and if uncorroborated, a conviction should not be permitted, and the Jury should be instructed to acquit." I so charge you.

"That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him." I charge you to this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if, as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen.

"Sixth: That good character is of importance to a person charged with the commission of a criminal offence, and the jury have the right to consider whether a person of good character would be less liable to be guilty of the commission of crime than a person of bad character." I so charge you.

"That evidence of good character is evidence which must be considered, and if in the judgment of the jury that good character does raise a doubt against positive evidence they have a right to entertain that doubt and the prisoner must have the benefit of it." I so charge you.

"Evidence of good character may of itself create a reasonable doubt where, otherwise, no reasonable doubt would exist." I so charge you.

"That evidence of good character is not a mere makeshift thrown in to assist in the production of a result that would happen at all events, but is positive evidence and may of itself, by the creation of a reasonable doubt, produce an acquittal." I so charge you.

"The defendant requests the Court to define to the jury what a reasonable doubt is."

"It is a term, often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of Jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge."

I am reminded that I forgot to state that every person charged with crime is presumed to be innocent until the State overcomes the presumption by evidence so strong that no other result can take plce than that of guilt. All of the testimony that is submitted in the case must be considered by you, and you must be satisfied beyond a reasonable doubt of the defendant's guilt. And, if you are, your verdict must be guilty. If you are not, your verdict must be not guilty.

Mr. Wilson: I except to your Honor's charge, and refusal to charge as requested.

Exception allowed, sealed accordingly.

C. B. PIERCE,
Judge.

DEFENDANT'S REQUESTS.

(1) "That as the indictment states the larceny to be committed by the defendant, proof that another committed the larceny is fatal."

(2) "The guilty knowledge on the part of the defendant is essential to the constitution of the offence."

(3) "That there can be no guilty reception by the defendant unless there be a prior stealing by another."

(4) "The testimony of the thief is to be a scrupulously weighed, and if uncorroborated, a conviction should not be permitted, and the jury should be instructed to acquit."

(5) "That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him."

(6) "That good character is of importance to a person charged with the commission of a criminal offence, and the jury have the right to consider whether a person of good character would be less liable to be guilty of the commission of crime than a person of bad character."

(7) "That evidence of good character is evidence which must be considered, and if in the judgment of the jury that good character does raise a doubt against positive evidence they have a right to entertain that doubt and the prisoner must have the benefit of it."

(8) "That evidence of good character may of

itself create a reasonable doubt where otherwise no reasonable doubt would exist."

(9) "That evidence of good character is not a mere make-weight thrown in to assist in the production of a result that would happen at all events, but is positive evidence and may of itself by the creation of a reasonable doubt, produce an acquittal."

(10) "That the defendant having introduced evidence of good character, the jury are to consider it with the other evidence in the case, and it is to be considered irrespective of the fact that the jury have a doubt as to the offence being committed by the defendant."

(11) "The defendant requests the Court to define to the jury what a reasonable doubt is."

UNION COUNTY COURT OF QUARTER SESSIONS.

THE STATE OF NEW JERSEY VS. JOHN VERONA	Sub-Indictment for Larceny and Receiving.

I, CARLTON B. PIERCE, Judge of the Union County Quarter Sessions, at which the above stated cause was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of said cause.

C. B. PIERCE,
Judge.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JOHN VERONA,
Plaintiff in Error.

} IN ERROR.

BRIEF ON PART OF DEFENDANT IN ERROR

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COURIER-NEWS, PLAINFIELD, N. J.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant in Error, vs. JOHN VERONA, Plaintiff in Error.	IN ERROR.

BRIEF ON PART OF DEFENDANT IN ERROR

The Plaintiff-in-error was indicted at the October Term, 1917, of the Union Oyer and Terminer, for larceny and receiving. He was found guilty as charged in the indictment at the January Term, 1918, of the Union County Court of Quarter Sessions.

The First Count in the indictment charges that on July 30, 1917, the defendant stole from the Central Railroad Company of New Jersey, four brass journals of the value of Fifteen Dollars.

The Second Count charges that on the same date he unlawfully and feloniously did receive and have the said four brass journals, knowing same to have been stolen, taken and carried away.

I.

The First Assignment of Error is as follows:

"1. That the verdict is fatally and incurably defective and of no legal validity or effect."

The jury rendered a general verdict of guilty as charged in the indictment. The evidence submitted

by the State clearly showed that the witness, John Sebanos, stole the property in question and sold it to the plaintiff in error, and that at no time during the trial did the State contend that the plaintiff in error was guilty of stealing brass journals, nor did the charge of the Court in any way intimate that the First Count of the indictment charging larceny was to be considered by the jury.

When there is a good count and a bad count, and a general verdict of guilty, it has been held that a valid judgment can be entered on the verdict, which will be presumed in error to have been entered on the good count.

Wharton's Crim. Pro. 10th Ed. Vol. 3, p-2103, Sec. 1671.

Where a complaint contains several counts, whether for the same or for different similar offences, the plea, conviction, and sentence may be general, upon the complaint as a whole; and not upon each count separately.

Com. vs. Holmes, 137 Mass. p-248.

Where judgment is reversed because of error in the sentence, this Court has the power under Section 144 of the Criminal Procedure Act (2 Comp. St. 1910, p-1867), to render such judgment as should have been rendered (that is, by amendment make the sentence such as might have been passed), or to remand the case for that purpose to the Court before which the conviction was had.

State vs. Huggins
87 Atl. p-630.

Where there are several counts in an indictment, each charging a distinct crime, a general verdict of guilty amounts to a conviction of each separate offense, and, even if the verdict cannot be supported as to one

or more of the crimes charged, it will be upheld as to the offense described in a single good count.

State vs. Huggins,
87 Atl. p-630.

State vs. Rudner,
104 Atl. p-320.

II.

The Second and Third Assignments of Error are as follows:

"2. That the charge of the Court as a whole, and in each and every part of it is illegal and thereby defendant suffered manifest wrong and injury, which is cause for reversal."

"3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defence upon the merits, and are causes for reversal."

These assignments are too general and do not apprise the State of what particular errors were committed either in the charge or admission of evidence. Although the case is brought up under Sections 136 and 137 of the Criminal Procedure Act of 1898, it does not relieve the plaintiff in error from specifying the causes relied upon for reversal.

The clear implication is that the review is to be confined to matters of which the State is apprised, either by assignment of error or specifications of causes for reversal.

State v. Young, 38 Vr. 223 (51 Atl. 940).
State v. Shutts, 40 Vr. 206 (54 Atl. 235).
State v. McQueen, et al. 40 Vr. 476 (55 Atl. 45).

III.

The Fourth Assignment of Error is as follows:

"4. That the defendant by his counsel requested the Court to charge as follows: 'That under the indictment the State must prove that the articles mentioned therein were stolen by the defendant and received by him,' which the Court refused to charge, but charged as follows: 'I charge you on this request that it is not absolutely necessary for the defendant to steal the articles set forth in the charge against him. It is not necessary that it should be shown by the State that he stole them, if as I have already stated to you, the articles were stolen and he bought them knowing them to have been stolen,' which charge was to the manifest wrong and injury of the defendant."

It is submitted that the above part of the Court's charge was proper on the Second Count in the indictment charging the plaintiff in error with having received stolen goods, as it is evident throughout the testimony that the State only endeavored to convict him on said Second Count and not on the First, as the witness, John Sebanos, produced on behalf of the State testified that he stole the property from the Central Railroad Company of New Jersey, and sold them to the plaintiff in error.

> "Guilty knowledge may be found where defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen."
> State v. D'Adame, 82 Atl. 520, 82 N. J. L., 520.

The Fifth Assignment of Error is as follows:

"5. That the Court below erred to the prejudice and injury of the plaintiff in error in the following respect, to wit:—That when John Verona, the defendant, was called to the stand his Counsel stated to

the Court as follows: 'I ask that an interpreter be used. I have had talks with him and I cannot thoroughly understand him,' to which the Judge said: 'He has lived here sixteen years and he is in business that brings him in contact with all types of humanity. I understand him.' To which Counsel said: 'Does your Honor refuse to allow the interpreter to act?' To which the Court said: 'Yes, sir,' which refusal was to the manifest wrong and injury of the said defendant.''

It is submitted that it was purely within the discretion of the Court as to whether an interpreter should have been used when the plaintiff in error was testifying.

On page 42, line 23 (State of the Case), the Court said: ''I understand him so far.'' On page 43, line 28 (State of the Case), Mr. Wilson, Attorney for the plaintiff in error, stated ''He is doing better,'' which tends to show that both the Court and even counsel for the plaintiff in error had no trouble whatever in understanding the testimony of the witness.

V.

The Sixth Assignment of Error is as follows:

''6. That the Court below erred to the prejudice and injury of the plaintiff in error in the following respect, to wit:—That the testimony of the witness, John Sebanos, was permitted over the objection of the Counsel for the defendant in which said Counsel said: 'I object to the testimony of this witness. Whereas John Verona is being tried for the larceny of brass journals, the property of the Central Railroad Company, and the second count for receiving, they seek to qualify the fact that while they charge in the indictment that John Verona stole these journals, they now get John Sebanos to show he stole them himself and sold them I suppose to John Verona. The indictment is fatal in this respect. When they charge a

man with larceny of brass journals and also charge him with receiving brass journals, they have to show not only that he stole them, but afterwards appropriated them to his own use and received them. That is this indictment. The indictment says that John Verona himself actually stole the brass journals and after he stole them, he appropriated or received them to his own use. There is no question about that as an elementary principle, if larceny by the defendant be proved by John Verona, although the offender appear only to be a principal in the second degree the charge fails because the offences are substantially distinct and because there can be no guilty reception unless there be a prior stealing or receiving by another, not by the same man.' Which objection was overruled by the Court to the manifest wrong and injury of the plaintiff in error.''

It is submitted that the testimony of the witness, John Sebanos, was proper, even though one of the Counts in the indictment charged the defendant with larceny, and that evidence showing that the plaintiff in error did not steal the property, but that he received it knowing it to have been stolen was proper.

The offences of larceny and receiving stolen goods may be charged in the same indictment, for while they are different offences, and punished by different degrees of severity, still they differ only in degree, and belong to the same class of crimes, and may be well united and often must be, if justice is to be administered, for it may be doubtful whether the proof will sustain the charge of larceny, or only the more mitigated offence of receiving stolen goods, knowing them to be stolen, and the indictment must therefore be found so as to meet either charge, and such is the common practice.

"Since the line of distinction between facts constituting larceny and facts constituting receiving stolen goods is often a fine one, counts for each offence are properly joined in the same indictment."

State vs. Barunstein, 87 Atl. p-335.

VI.

The Seventh Assignment of Error is as follows:

"7. That at the conclusion of the State's case defendant's counsel addressing the Court said: 'I make this motion. There is a distinct allegation in here that four brass journals were stolen, and all the evidence is that a lot of junk or cracked up brass was delivered to John Verona mixed up with zinc, and therefore that the evidence does not conform with the charge in the indictment, and I move that your Honor direct the jury to find this man not guilty of the crime he stands charged with. Four brass journals is charged in the indictment and the evidence is that it is cracked up brass and zinc—entirely different, one is junk and the other is a merchantable and manufactured article.' Which motion was overruled and which action was to the manifest wrong and injury of the defendant."

It is submitted that the testimony of the State witness, John Sebanos, conformed to the charge of the indictment as to the description of the property stolen by the witness Sebanos, and received by the defendant.

Page 22, line 33 (State of the Case), reads as follows:

"Q. It will be six months next month. And you were sentenced for stealing some brass journals? A. Yes, sir.

"Q. From whom? A. From the Central Railroad.

"Q. And how many? A. Three journals, I think."

Page 28, line 31 (State of the Case), reads as follows:

"Q. What shape was this brass in? A. It was round like and came down square and then round again (indicating).

"Q. When he bought it, I mean, what shape was it in? A. It was broke in half."

In the absence of a controlling statute an indictment for larceny should describe the property alleged to have been taken with reasonable certainty, or, as is sometimes said, with "certainty to a common intent."

R. C. L. Vol. 17, p-55.

VII.

The Eighth Assignment of Error is as follows:

"8. That the Court permitted one John Galatian in behalf of the State to be sworn as a witness, and permitted him to testify in the presence of the jury as to the alleged conviction of one Niblo Palmer, a witness for the defendant, although no proof was introduced that it was the same Niblo Palmer and which after a discussion, said witness was withdrawn although the effect of his testimony before the jury no doubt affected the minds of the jury, and the Judge failed to instruct the jury in his charge to pay no attention to the same, which testimony so offered and introduced was prejudicial to the defendant and he suffered manifest wrong and injury by its illegal introduction."

It is submitted that all of the testimony of the witness, John Galatian, relating to the defendant's, witness, Niblo Palmer, was withdrawn by the Court. See page 50, line 24 of the State of the Case, wherein the Court states, "All of the Testimony Relating to Niblo Palmer is withdrawn. All of it."

VIII.

It is submitted that the Ninth Assignment is covered by Assignment One.

IX.

It is submitted that Assignment Ten is covered by Assignment Five.

X.

It is submitted that Assignment Eleven is covered by Assignment Eight.

XI.

The Twelfth Assignment of Error is as follows:

"12. That the testimony of Sebanos, the one who is alleged to have stolen the journals, is uncorroborated and there can be no conviction in this case."

It is submitted that a jury may convict upon the testimony of an accomplice without any confirmation of such testimony.

State v. Lieberman, 80 N. J. L., 506.

XII.

It is submitted that Assignment Thirteen is covered by Assignment Seven.

XIII.

The Fourteenth Assignment of Error is as follows:

"14. That the ownership of the property was not proved as laid in the indictment."

It is submitted that the testimony of John Sebanos is sufficient to prove ownership in the Central Railroad Company of New Jersey, which reads as follows:

"Q. From whom? A. From the Central Railroad." Page 22, line 36 (State of the Case).

It is not necessary to show in detail the exact state of the title, general evidence of property is admissible, and is sufficient.

Barnes vs. People, 18 Ill. p-52.

XIV.

It is submitted that Assignment Fifteen is covered by Assignment Twelve.

XV.

The Sixteenth Assignment of Error is as follows:

"16. Guilty knowledge on the part of the defendant was essential, to the constitution of the offence, and such knowledge should have been imputed to him at the time of the receiving and not afterwards."

Where it is proved that property has been stolen and the facts surrounding its receipt by the person charged with having received it, knowing it to have been stolen, impute guilty knowledge, the guilt is a question for the jury. See State vs. Brown, 72 N. J. L., p-354.

See page 27, line 24 (State of the Case), which reads as follows:

"Q. When he got off his wagon, where did he go? A. He came over and looked at the brass and he seen there was too much boys around, and he said he would be back later, and he got on the wagon and went away and came back after.

"Q. How many boys were around then? A. Two or three.

"Q. Two or three. What did he say about the boys? A. He said too much boys, and he got on the wagon and he went away.

"Q. Did he come back? A. Yes, sir.

"Q. And when did he come back? A. About five minutes later."

It is respectfully submitted that no error was committed either in the charge of the Court or in the entire proceedings had upon the trial by which the plain-

tiff in error suffered manifest wrong or injury, and that the conviction should be sustained.

WALTER L. HETFIELD, JR.,
Prosecutor of the Pleas.

Attorney for the Defendant in
Error and of Counsel.

NEW JERSEY
COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY, Defendant in Error, vs. JOHN VERONA, Plaintiff in Error.	In Error.

BRIEF OF PLAINTIFF IN ERROR.

Statement of Case.

John Verona, the plaintiff in error was indicted at the October Term, nineteen hundred and seventeen of the Union Oyer and Terminer for larceny and receiving. The charge in the indictment is that on July 30, 1917, he did steal from the Central Railroad Company of New Jersey, four brass journals of the weight of fifty pounds and of the value of fifteen dollars. The second count in the indictment recites that on the same day he unlawfully and feloniously did receive and have the said four brass journals well knowing the same to have been feloniously stolen, taken and carried away.

He was tried on the said indictment on February 18, 1918, and on the same day was convicted as charged in the indictment Court of larceny and receiving. On March 22nd, A. D. 1918, he was sentenced by Judge Connolly, then judge of the Court of Common Pleas constituting the Court of Quarter Sessions, to the State Prison for a minimum term of two years and for a maximum term of seven years at hard labor, and to pay the costs of prosecution. The case has been sent to Quarter Sessions for trial.

The matter is now before this Court on bill of exceptions, assignments of error and specifications of causes for reversal, and the entire record of the proceedings had upon the trial has been brought up under Section 136 of the Criminal Procedure Act, and is part of the case.

The contention of the plaintiff in error is that he suffered manifest wrong and injury both in the Judge's charge and in the admission and rejection of evidence.

The evidence of John Sebonas, who was a witness for the State, shows, that in the Summer of 1917 he was sentenced to serve in the Rahway Reformatory for having stolen as he says three brass journals from the Central Railroad Company of New Jersey and that they were the same that he afterwards sold to the plaintiff in error. See hic testimony at *pages* 23 *and following* of the printed book.

He is contradicted by one Stephen Wojtelko, who testified that the material sold was old, cracked up brass and lead or zinc, and not brass journals. The charge in the indictment being for four brass journals alleged to have been stolen. *See his testimony at page* 34 *of printed book.*

This was the evidence for the State, and when the State closed a motion was made for a direction of a verdict for the defandant. *See page* 36 *of printed book.*

When the defendant was called the Judge refused to grant an interpreter for him so that his defence might properly be placed before the jury. The stenographer took it down fairly well, although he had difficulty as he stated at the time, and with the assistance of us all at the trial we succeeded in getting down what is now presented to the Court. The defendant feels that he didn't have an opportunity to present his case as if he had been assisted by an interpreter.

Evidence of good character was also introduced.

See testimony of Patrick Kehoe, Niblo Palmer, Vincent Daniels and Angelo Saittrello, *pages* 38 *to* 42 *in printed book.*

One John Galatian, the County Detective, was introduced for the purpose of showing that Niblo Palmer, one of the character witnesses, had been convicted of a crime, in which he failed. My objection to his testimony is that the record of a conviction of February 23, 1899, did not show that it was the same man that had been on the stand. This witness was afterwards withdrawn, but not until the Prosecutor of the Pleas had made this comment: "They are simply introduced to impeach this man's record when he said he knew this defendant's reputation. That is simply a side issue." *See page* 50 *printed book.* The Court should never have permitted this evidence to be introduced as it affected the minds of the jury, and prejudiced them against the defendant.

The defendant feels that he was unjustly charged with the larceny of the brass journals, because one John Sebonas had been convicted and sentenced for this offence some time before. That there was no legal evidence that the junk sold was the property of the Central Railroad Company of New Jersey, and that he cannot be punished for both offences.

When the case was closed the Judge proceeded to charge the jury but failed to state to them to ignore and pay no attention to the testimony of Mr. Galatian, the County Detective, so that the same remained before them as if legally competent and prejudiced the defendant in the minds of the jury. He then proceeded to state that Counsel for defendant had requested him to charge, "that as the indictment charges the larceny was committed, the larceny is fatal." *See page* 51 *printed book.* He is mistaken, my request was as follows: "That as the indictment states the larceny to be committed by the defendant, proof that another committed

the larceny is fatal." This is the first request to charge. See page 57 printed book. There were several requests to charge, but the Court failed to charge the tenth one, on page 58 of printed book which was important to the plaintiff in error to be placed before the jury. It is to the following effect: "That the defendant having introduced evidence of good character, the jury are to consider it with the other evidence in the case, and it is to be considered irrespective of the fact that the jury have a doubt as to the offence being committed by the defendant."

See *State v. Lang*, 87 N. J. Law 508.

The Law.

The case is presented to this Court by assignments of error and specification of causes for reversal which are the same. The first three specifications will be taken together.

On the resting of the State's case the Counsel for the plaintiff in error moved that the Court direct the jury to find the defendant not-guilty of the crime he was charged with, for the reason that the evidence didn't correspond with the charge in the indictment. The indictment charging the larceny of four brass journals and the evidence being that it was cracked up brass and zinc. This the Court refused.

I.

As to Specification of Defences 1, 2, and 3.

The plaintiff in error insists that the verdict is defective and the charge of the Court illegal and that he suffered wrong and injury.

The indictment charges the defendant with steal-

ing and receiving four brass journals, while the evidence is that it was cracked up brass and zinc or lead. See testimony of Wojtelko in printed book. *He says it was brass broken up and looked like it was mixed with zinc and lead.*

The indictment charges the defendant with the larceny of the goods when in fact they were stolen by some one else. He is also charged with receiving the goods so stolen by him.

One cannot be at the same time a principal in a larceny and in a legal sense, a receiver of stolen goods.

See Cyc., Vol. 34, p. 518.

The law seems to be that the property received must be the *identical property* which was stolen, not something from which the stolen property was exchanged.

See 34 Cyc. 517.

The Prosecutor is bound by the description of the species of goods stated; thus, for instance, one indicted for stealing a pair of shoes cannot be supported by evidence of a larceny of a pair of boots.

Wharton Criminal Pleading and Practice
Sec. 212, 8th Edition.

As to the Charge of the Court.

The Court said: "But it is not necessary, that the evidence should show you that actual positive, direct information was conveyed to the defendant of the fact that the goods were stolen in order to make him guilty. Guilty knowledge may be found by the jury when the defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen." It is the contention of plaintiff in error that such knowledge must be imputed to him at the

time the offence was committed and not afterwards. Guilty knowledge on the part of the defendant is essential. He must know at the moment of receiving the goods that they were stolen.

May v. *People,* 60 Ill. 119.

In *Cohen* v. *People,* 197 Ill. 842 (34 Cyc. 530, par 19), the Court charged the jury, That "absolute knowledge" need not be proven, but that if it appeared by the evidence, that circumstances were such as to have induced defendants and any man of ordinary observation to believe that the property was stolen and was being offered for sale to the defendant by one who had no right so to do that is sufficient. It was held erroneous as not showing that there must have been actual belief at least on the part of the defendant that the goods were stolen. But in an indictment for receiving embezzled property an instruction that the jury, if finding that the defendant received the property under such circumstances as would satisfy a man of ordinary observation, intelligence and caution that it had been embezzled would be justified in presuming guilty knowledge, is not open to objection if the jury had also been charged that the guilty knowledge must be proved beyond a reasonable doubt.

There can be no connection upon the uncorroborated testimony of the thief where he is an accomplice to the receiving.

See 34 Cyc. p. 529.

II.

As to Specification 4.

In this case all the evidence was, that John Sebonas stole brass journals and was convicted, and

there was no evidence connecting the defendant with the larceny. It appears that Sebonas was convicted in August, 1917, and served a term in the Rahway Reformatory for the larceny of brass journals that the State now seeks to convict the defendant with having stolen.

As to Specification 5.

The Court refused an interpreter, for the defendant who was an Italian and unacquainted with our language and with difficulty his testimony was brought out. The defendant insists that it was an abuse of discretion reposed in the Court and that he should have had every opportunity to present his case through an interpreter. He feels that he suffered an injury by the refusal of the Judge to permit him to present his case through an interpreter.

As to Specification 6.

There is no proof of ownership of articles alleged to have been stolen, except by the evidence of John Sebonas who says he stole them. The defendant denies that he stole them and says further that he never received them.

In larceny a party cannot be connected as a principal unless he was actually or constructively present at the taking and carrying away of the goods. His previous consent to a procurement of the caption or asportation, will not at common law make him a principal, nor will his subsequent reception of the thing stolen or his aiding in concealing or disposing of it have that effect.

Wharton Criminal Law, Vol. I, Sec. 927, 8th Edition.

As an elementary principle, if larceny by the defendant be proved, though the offender appear

only to be a principal in the second degree, the charge of receiving falls because the offences are substantially distinct, and because there can be no guilty reception unless there be a prior stealing by another.

Wharton Criminal Law, 8th Ed., Vol. I, Sec. 986;
Rex v. *Gruncell,* 9 C. & P. 365;
State v. *Smith,* 37 Mo. 58.

As to Specification 7.

With respect to the proper description of the goods stolen, difficulties will sometimes occur. The general rule is given that they should be described with such certainty as will enable the jury to decide whether the chattel proved to have been stolen is the very same with that upon which the indictment is founded and shows judicially to the Court that it could have been the subject matter of the offence charged, and enable the defendant to plead his acquittal or conviction to a subsequent indictment relating to the same chattel.

Russell on Crimes, Vol. II, Sec. 313.

The goods sold were cracked up brass or zinc, and the defendant had reason to believe that they were not stolen goods. If articles had been presented to him whole, as brass journals, a different rule would apply and he would then have been placed on his guard.

The last question is whether it is described with sufficient certainty in order that the jury may be satisfied that it is the thing described. If this had been some article, that in ordinary parlance had been called by a particular name of its own, it would have been a wrong description to have called it by the name of the material of which it was composed, as if a piece of cloth were called so many

pounds of wool, because it had ceased to be wool, and nobody could understand that you were speaking of cloth. It would be wrong to say so many ounces of gold, if a man stole so many sovereigns; you would there mislead by calling it gold.

And where a prisoner was indicted for stealing ten pounds of copper and the articles stolen were copper nails, Earle, J. was inclined to hold that they should have been so described.

Russell on Crimes, Vol. II, Sec. 315.

So also where a prisoner was indicted for stealing *inter alia,* two shifts and the only article identified by the prosecutor was what she called a shirt, which had been made for a little girl six years of age, and the prosecutrix stated that she called such things shifts while girls were so young, Tindal, C. J., said: "It must be shown that the article is generally known by the name laid in the indictment, and here the prosecutrix says, she should call it a shirt. The prisoner must therefore be acquitted."

Russell on Crimes, Vol. II, Sec. 315.

Thus an indictment charging the stealing of a "brass furnace" is not supported by evidence of stealing the pieces of brass into which the furnace has been broken up. *Ibid, Sec.* 316 *and cases cited.*

As to Specification 8.

The admission of the evidence of John Galatian and the failure of the Judge in his charge to the jury to tell them to pay no attention to the same is reversible error. The State sought to interject in the case evidence that they were compelled afterwards to withdraw, but it no doubt affected the minds of the jury. Palmer the witness denied that

he had ever been convicted of a crime. The introduction of Galatian, as a witness, and his evidence having been placed before the jury was prejudicial to the defendant and he suffered injury thereby. This will also apply to specification II.

As to Specification 10.

The Court refused to permit an interpreter to be used and for that reason is made the basis of an exception. When the defendant was to be sworn a request was made by the Counsel of the defendant for the appointment of an interpreter. This seems to have been an abuse of the discretion reposed in the trial Court. No opportunity was given for an explanation except that the Judge seemed to feel that he had lived here sixteen years and that he (the judge) could understand him. The defendant should have had an opportunity to give his reasons for the appointment of an interpreter. It is felt by the defendant that he was prejudiced in the presentation of his case.

As to Specifications 12 and 15.

Sebonas alone swears that he stole the brass journals. The other witness, Wojtelko, swears that it was brass and zinc or lead, that was sold. Nothing is said about brass journals, so Sebonas is uncorroborated.

The testimony of the thief is to be scrupulously weighed and if uncorroborated, a conviction should not be permitted to rest.

Wharton Criminal Law, Vol. I, Sec. 982,
34 Cyc. 529 (e).

As to Specification 13.

This is covered by the law in specification 7 above.

As to Specification 14.

The only proof in the case is that of Sebonas who says he got the brass journals from the shed, but there seems to be no evidence as to the ownership of the cracked brass and zinc.

As to Specification 16.

The guilty knowledge should be imputable to the defendant at the time of receiving and not afterwards. The Judge failed to state it in this manner and also failed to state that the guilty knowledge must be proved beyond a reasonable doubt.

Character evidence was also introduced and requests to charge on the same were submitted to the Court. The Court failed to charge the tenth request as requested. The Judge said: "In weighing the testimony against the defendant you must take into consideration the testimony of the witnesses who have appeared here as to his good reputation," but he failed to charge as I requested that evidence of good character is to be considered irrespective of the fact that the jury have a doubt as to the offence being committed by the defendant.

See *State* v. *Lang*, 94 Atl. Rep. 631.

The defendant suffered manifest wrong and injury in the sentence of the Court.

The Judge of the Quarter Sessions exceeded his powers in passing sentence.

The defendant was convicted *of larceny and receiving.* (See printed book, p. 7.) These are two distinct offences, and the Judge proceeded to sentence him, and imposed one sentence upon him, that is to an imprisonment in the State Prison for a minimum term of two years and a maximum term of seven years at hard labor and costs. The Judge exceeded his powers. Both crimes are misdemean-

ors and the punishment for each is not greater than three years.

See *Laws of* 1898—*Criminal Law*, p. 854 par. 218.

Both larceny under $20 and receiving stolen goods are misdemeanors.

See *Laws of* 1898—*Criminal Law*, p. 837 par. 158;
Receiving Stolen Goods, Laws, 1906, p. 431.

The Judge in sentencing him must have taken into account the two counts and sentenced on both. There is no evidence in the case that he is guilty of both—on the contrary the evidence is that he is not guilty of larceny. In sentencing for either the Court exceeded its power.

In *State* v. *Dugan*, 66 N. J. Law, 65, the Court said, "Where one is convicted on an indictment containing two distinct offences, the Court should not pronounce a single indiscriminate sentence conjointly for the two offences but should sentence upon each count."

The Court had no power to impose the sentence it did. Both charges are misdemeanors.

In *State* v. *Stephens*, 53 N. J. Law, 245, the Court said, "Where, however, the punishment thus inflicted is not greater than the punishment provided for either of such misdemeanors the Court will not disturb the judgment." The sentence in this case was greater than could have been imposed on either count.

The punishment in this case was not commensurate with the crime. It was a cruel one. An examination of the whole case will reveal this fact that the defendant was prejudiced in his rights by the action of the Court in refusing an interpreter and permitting Mr. Galatian to testify to a fact

that wasn't so. It got before the jury and the effect of his testimony wasn't effaced. The man was ignorant, illiterate, and the junk presented to him was broken up and wasn't of such a nature to put him on his guard. The Counsel for the defendant feels and can not too strongly urge upon the Court to reverse the finding below.

If the Court reaches the conclusion that the sentence was excessive, it may then remand the case to the lower court to render such judgment therein as should have been rendered.

See *Laws of* 1898, Criminal Procedure,
p. 916 par. 144.

It is respectfully submitted that a new trial be granted.

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