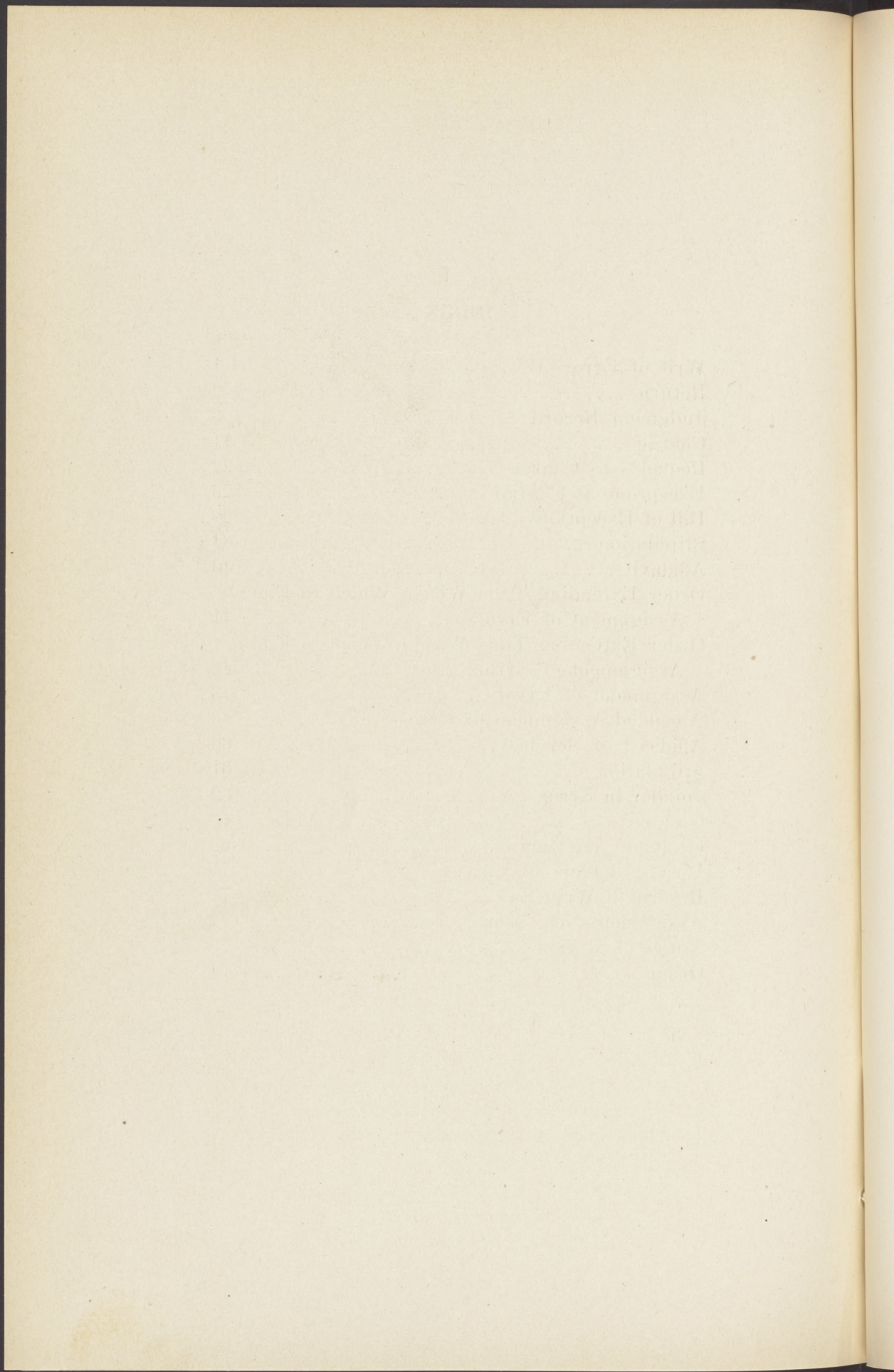


INDEX

	PAGE
Writ of Error	1
Return	2
Judgment Record	3
Charge	11
Requests to Charge	22
Exceptions to Charge	26
Bill of Exceptions	28
Stipulation	34
Affidavit	40
Order Extending Time Within Which to File Assignment of Errors	41
Order Extending Time Within Which to File Assignment of Errors	42
Assignment of Errors	43
Amended Assignment of Errors	48
Affidavit of Service	60
Stipulation	61
Joinder in Error	62
Opinion	63
Order of Affirmance	69
Writ of Error	70
Return to Writ	71
Assignments of Error	72
Notice of Motion	73
Order	74



Writ of Error.

NEW JERSEY, SS.:

To GODFREY W. SCHROTH, Esquire,
Judge of the Court of Quarter Sessions
of the County of Mercer: Because in the
[L. S.] record and proceedings, and also in giving of judgment upon a certain indictment against David Bleefeld, alias Jeff Taylor, alias James H. Taylor, late of the City of Brooklyn, State of New York, for malicious mischief, as set forth in the indictment. 10

Pro ut the said indictment, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, as it is said, manifest error hath intervened to the great damage of the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey, on the 26th day of May, next, and 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 law ought to be done. 20 30 40

Return.

Witness, Thomas J. Brogan, our Chief Justice,
at Trenton aforesaid, the 7th day of May, nine-
teen hundred and thirty-four.

FRED L. BLOODGOOD,
Clerk.

10

GEORGE PELLETTIERI,
Attorney.

Return.

20

The entire record and proceedings of the indict-
ment, plea, trial, conviction and judgment, includ-
ing the entire record of the proceedings had upon
the trial of said cause, whereof mention is within
made, with all things concerning the same, to the
Supreme Court of Judicature of New Jersey with-
in specified at the day and place within contained,
we certify in a certain schedule to this writ an-
nexed as we are commanded.

30

GODFREY W. SCHROTH,
Judge.

40

Judgment Record.

(Filed May 26, 1934.)

STATE OF NEW JERSEY.

**MERCER COUNTY COURT OF QUARTER
SESSIONS.**

10

Holden before GODFREY W. SCHROTH, Judge

January Term, 1934.

THE STATE <i>v.</i> DAVID BLEEFELD, alias Jeff Tay- lor, alias James H. Taylor.	}
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Sur Indictment
Malicious Mischief.
George Pellettieri, Esq.
Erwin E. Marshall, Esq.,
and Augustine V.
Gribbin, Esq.

20

STATE OF NEW JERSEY.

MERCER COUNTY, to wit:

Be it remembered, that at a Court of Oyer and Terminer holden at Trenton, in and for the said County of Mercer on the second Tuesday of October, in the year of our Lord one thousand nine hundred and thirty-three, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and before the Honorable Godfrey W. Schroth, Judge of the said Court of Common Pleas in and for the said County of Mercer, according to the form of the statute in that case made and provided, by the oath of

30

40

Judgment Record.

- | | |
|--------------------------|-------------------------|
| 1. Stephen K. Little | 13. Herman Juris |
| 2. Edward J. Fitzpatrick | 14. Samuel McDonald |
| 3. John T. Connor, Jr. | 15. Leroy Morris |
| 4. John L. O'Hara | 16. Louis Finkle |
| 5. Eugene Phillips | 17. James P. Frey |
| 6. John Snow | 18. William McDermott |
| 7. Scott Fell | 19. Edward J. Peartree |
| 10 8. Harry Haines | 20. Maybelle Moore |
| 9. Walter Firth | 21. John W. Hendrickson |
| 10 10. Willet M. Dennis | 22. Alexander Husid |
| 11. Vincent Galloni | 23. John M. Lyons |
| 12. John Simon | |

20 having first alleged them to be conscientiously scrupulous of taking an oath, good and lawful men of the said County of Mercer, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Mercer, it is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

STEPHEN K. LITTLE,
Foreman.

"Endorsed."

30 Filed December 5, 1933.

CHARLES P. HUTCHINSON,
County Clerk.

Judgment Record.

IN THE
COURT OF OYER AND TERMINER
OF MERCER COUNTY.

October Term, A. D. 1933.

MERCER COUNTY, to wit:

10

The grand inquest of the State of New Jersey and for the body of the County of Mercer upon their respective oath, present that David Bleefeld, alias Jeff Taylor, alias James H. Taylor, late of the City of Trenton, in the said County of Mercer, on the sixteenth day of February, in the year of our Lord one thousand nine hundred and thirty-three, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this court, did then and there unlawfully, wilfully and maliciously damage, injure and spoil the engine of a certain automobile truck, being then and there the property of Anthony Dagof-tino, trading as Rex Tailors and Cleaners, by pouring a large quantity of molasses into the crank case of the said automobile truck contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20

30

ERWIN E. MARSHALL,
Prosecutor of the Pleas.

Filed December 5, 1933.

CHARLES P. HUTCHINSON,
County Clerk.

40

Judgment.

And afterwards, to wit, on Tuesday, the fifth day of December, in the year of our Lord, one thousand nine hundred and thirty-three, at a session of the said Court of Oyer and Terminer, as aforesaid, being as yet of the term of October

10 aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of General Quarter Sessions of the said County for trial according to the form of the statute in such case made and provided, and a ruling to that effect then and there duly made and entered upon the record of each of the said Courts respectively; and afterwards, to wit, on the twenty-sixth day of December, in the

20 year of our Lord, nineteen hundred and thirty-three, at a session of said Court of General Quarter Sessions, in and for the said County of Mercer of the term of October, of the year of our Lord, nineteen hundred and thirty-three, before the Honorable Godfrey W. Schroth, Judge of the Court of General Quarter Sessions, at Trenton, in the County of Mercer aforesaid, come the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, in his proper person according to the conditions of his recognizance made by himself and

30 his pledges in that behalf heretofore made and now here touching the premises in the said indictment above specified and charged upon him being asked in what manner he will acquit himself thereof, he says that he is not guilty thereof and of this he puts himself upon the County and Erwin E. Marshall, Prosecutor of the Pleas of the County of Mercer, who prosecutes for the State in this behalf does likewise the same; therefore let the said indictment be continued until a jury thereupon come here before the said Judge afore-

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Judgment.

said, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit, on Monday, the nineteenth day of March, in the year of our Lord, nineteen hundred and thirty-four, of the January Term, nineteen hundred and thirty-four, before Honorable Godfrey W. Schroth, Judge of the Court of General Quarter Sessions in and for the said County, twelve good and lawful men and women of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, to recognize upon their oath whether the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, be guilty as charged in the indictment aforesaid above specified or not guilty, because as well the said Erwin E. Marshall, who prosecutes for the State in this behalf as the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, have put themselves upon the said jury, and George Pellettieri, Attorney for the defendant herein moved for withdrawal of plea of not guilty of defendant, which motion was granted by the Court. George Pellettieri, attorney for the defendant herein moved to quash the indictment and after hearing argument of George Pellettieri, attorney for the defendant herein as well as by Augustine V. Gribbin, appearing for Erwin E. Marshall, Prosecutor of the Pleas, the Court denied the motion; whereupon George Pellettieri, attorney for the defendant herein entered a plea of not guilty to the indictment and the jurors of the said jury by Albert Cooper, Jr., Sheriff of the said County of Mercer and Maurice D. Raub, Jury Commissioner of the said County of Mercer for this purpose empaneled and returned agreeably to the statute in such case made and provided, to wit,

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Judgment.

- | | |
|-----------------------|-----------------------|
| 1. Hannah A. Hager | 7. May Howarth |
| 2. Margaret Mayer | 8. Samuel Schildkraut |
| 3. William H. Conover | 9. Hilda C. Jones |
| 4. Mildred Slimm | 10. Hazel B. Harbourt |
| 5. John Megules, Sr. | 11. Elizabeth Naylor |
| 6. Norah V. Hunt | 12. Mary Jackson |

10

who having been tried and sworn to speak the truth of and concerning the premises upon their oath, and after evidence from witnesses produced by Augustine V. Gribbin, appearing for Erwin E. Marshall, Prosecutor of the Pleas, and the case having continued from day to day thereafter until Wednesday, March 21, 1934, and the case of the State had rested, George Pellettieri, the attorney for the defendant, moved for the direction of an

20

acquittal, which motion was denied by the Court; whereupon counsel for defendant prayed an exception to the said ruling, which exception was allowed, and after evidence from witnesses produced by George Pellettieri, the attorney for the defendant herein, the case having continued from day to day thereafter until Monday, March 26, 1934, on which last mentioned day George Pellettieri, the attorney for the defendant herein moved for a mistrial, which motion was denied by the

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Court, whereupon counsel for defendant prayed an exception to the said ruling, which exception was allowed, and after evidence from witnesses produced by George Pellettieri, the attorney for the defendant herein, and the case having continued from day to day thereafter until Tuesday, April 3, 1934, and the case of the State and defendant being closed on said last mentioned day, George Pellettieri, the attorney for the defendant herein, moved for direction of a verdict of acquit-

40

tal, which motion was denied by the Court; where-

Judgment.

upon counsel for defendant prayed an exception
 to the said ruling, which exception was allowed,
 and after argument to the Judge of the said Court
 and jury by George Pellettieri, the attorney for
 the defendant herein, as well as by Augustine V.
 Gribbin, appearing for Erwin E. Marshall, Prosec-
 cutor of the Pleas, and after a charge by the 10
 Court the jury retired to consider of their verdict
 in charge of the officers of the said Court, duly
 sworn for that purpose, were taken to a private
 room to consider of their verdict and having
 agreed upon their verdict, come again into Court
 and by their foreman say they find the defend-
 ant David Blefeld, alias Jeff Taylor, alias James
 H. Taylor, guilty as charged in the indictment
 and so say they all, on him above charged in the
 form aforesaid and as by the indictment afore- 20
 said is above supposed against him; and David
 Kelsey, appearing for George Pellettieri, attorney
 for the defendant herein, requested the Court that
 the jury be polled, and the jury being polled every
 juror when asked what his or her verdict was,
 answered guilty as charged in the indictment, on
 him above charged in the form aforesaid and as
 by the indictment aforesaid is above supposed
 against him; and thereupon the said David Blee- 30
 feld, alias Jeff Taylor, alias James H. Taylor, was
 remanded for sentence until Friday, the fourth
 day of May, nineteen hundred and thirty-four, at
 which last mentioned day the said David Bleefeld,
 alias Jeff Taylor, alias James H. Taylor, being
 present before the said Honorable Godfrey W.
 Schroth, Judge of the said Court of General Quar-
 ter Sessions, and it being forthwith demanded of
 the said David Bleefeld, alias Jeff Taylor, alias
 James H. Taylor, if he hath or knoweth of any-
 thing to say wherefore the said Judge as aforesaid 40

Judgment.

here ought not upon the premises and verdict as
aforesaid to proceed to judgment against him, who
nothing further saith unless as he before had said,
whereupon all and singular the premises being
seen and by the said Judge here fully understood
duly considered and adjudged and the Court do
10 order on this conviction that the defendant be con-
fined in the New Jersey State Prison for a maxi-
mum term of three years and a minimum term of
two years:

Signed GODFREY W. SCHROTH,
Judge.

STATE OF NEW JERSEY.

(SEAL)

20

County of Mercer.

I, CHARLES P. HUTCHINSON, Clerk of the Court
of Oyer and Terminer, and Clerk of the Court of
General Quarter Sessions, do hereby certify that
the foregoing are the entire record and proceed-
ings and judgment in the case of

THE STATE

v.

30

DAVID BLEEFELD, alias JEFF TAYLOR,
alias JAMES H. TAYLOR.

as the same remains on file and of record in my
said office.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and official seal of said courts, this twenty-
sixth day of May, A. D. 1934.

40

CHARLES P. HUTCHINSON,
Clerk.

(SEAL)

Charge.

The Court (SCHROTH, J.): Ladies and gentlemen of the jury. The indictment on which the defendant, David Bleefeld, alias Jeff Taylor, alias James H. Taylor, is being tried in substance charges that, on the sixteenth day of February, 1933, in the City of Trenton, in this County, the said defendant did unlawfully, wilfully and maliciously damage and injure the engine of a certain automobile truck belonging to Anthony D'Agostino, trading as Rex Tailors and Cleaners, by pouring molasses into the crank case of the said automobile truck; and it now becomes your duty to render a verdict upon the question of the defendant's guilt or innocence. In doing this, you must be guided by the principles of law bearing upon the case that I will now proceed to state and explain. 10 20

As you have undoubtedly observed, considerable testimony concerning matters unrelated to the case before you has been adduced by both the State and the defendant; but the one and only issue which you are to consider and determine is whether or not the defendant is guilty of the crime charged in this indictment.

In deliberating on this question, you are totally to disregard any and all testimony which I directed you to disregard during the course of the trial, as well as any and all testimony which, for any reason whatsoever, I have heretofore ruled to be inadmissible and therefore out of the case. 30

In the determination of all questions of fact, the sole responsibility is with the jury. You are the sole judges of the evidence, of the weight of the evidence and of the credibility of the witnesses. 40

Charge.

I shall have little to say about the evidence. The case has been, I think, very thoroughly tried on the part of the State and on the part of the defendant. Any comments that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only
10 to aid you in applying the principles of law to the facts as you may find them. You must consider not only the evidence to which I shall refer, but you must consider all the evidence in the case. You must not rely upon my quotations from the evidence as being accurate, but you must depend entirely upon your own recollection. The law of the case, however, you must take from the Court. If the Court lays down the law incorrectly, the defendant has his remedy; but if jurors disregard
20 the law laid down by the Court, the administration of justice would soon become a mockery and no man would be safe in his person or property.

In this case, as in every criminal case, the defendant is presumed to be innocent until he is proved to be guilty. To support the indictment, the State must prove facts sufficient for that purpose by evidence beyond a reasonable doubt, and that burden never shifts. If there be reasonable doubt whether the defendant be guilty, he is to be
30 declared not guilty.

Reasonable doubt is a term often used, probably fairly 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 the jurors in that condition that they cannot say that they feel
40 an abiding conviction, to a moral certainty, of the

Charge.

truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfied the reasoning and judgment of those who are bound to act conscientiously upon it.

If, after carefully canvassing the evidence, giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should so declare by your verdict. 10

You must, of course, totally disregard the fact that, during the course of the trial, the Court, in the exercise of its discretion, saw fit to hold the defendant guilty of contempt of Court and to punish him therefor. That occurrence has nothing whatsoever to do with the defendant's innocence or guilt of the crime charged in the indictment on which he is being tried; and, as I have already said, you are not to allow that matter to intrude upon your deliberations in any manner or to any extent whatsoever. 20

To sustain the indictment, the State must prove, by evidence beyond a reasonable doubt, first, that, on the sixteenth day of February, 1933, in the City of Trenton, in this County, the defendant poured molasses into the crank case of the automobile truck mentioned in the indictment.

With this point you will probably experience little difficulty; for the evidence to the effect that he did so is practically uncontradicted. In this connection, there has been introduced in evidence a written statement, in the nature of a confession, which purports to have been made by the defendant in the presence of certain police authorities, in which he states that he poured molasses into a truck belonging, in the words of the statement, to "Rex Cleaning," and that he did so because they were working against the code and he wanted 30 40

Charge.

to cause them trouble. In this written statement, the defendant does not aver that he did so because he was compelled to do so by another person. The defendant admits that he signed this statement, but says that he signed it under the influence of a promise of immunity made to him by the said police authorities, or by one or some of them, or, at least, as I interpret his testimony in this connection, with and in the hope, which he testified was induced by the said police authorities, or by one or some of them, that, if he told the truth about the matter or matters concerning which he was being questioned, he would be dealt with more leniently.

Under the law, a confession made under the influence of a direct or implied promise of immunity by a police authority or in the hope of receiving a benefit or obtaining leniency for making the same, where such hope is engendered by a police authority, is regarded as an involuntary confession and, therefore, not admissible in evidence against the person alleged to have made it. I will not discuss the evidence produced in this connection, but you have heard it and you must consider it all, both that produced on the part of the defendant and that produced on the part of the State.

If you determine, from all the evidence, that the defendant was induced to sign the written statement by any promise of hope of the kind which I have mentioned and that it was not, therefore, what the law regards as a voluntary confession, you must reject it from your consideration, even though you may believe it to be true.

On the other hand, if you determine from all the evidence that the defendant was not induced to sign the said statement by any promise or hope

Charge.

of the kind which I have mentioned, and that it was, therefore, what the law regards as a voluntary confession, you will still remain the sole judges of the force and effect and of the credibility and weight to be given to it.

Wholly aside from the matter of the defendant's written statement, however, he personally testified on the witness stand to the effect that, on the sixteenth day of February, 1933, in the vicinity of Market and Mercer Streets in this City and County, he himself lifted up the hood of the truck mentioned in the indictment and that, while the hood was being held up by one Steiner, he, the defendant, poured molasses into the crank case of the said truck. 10

If, then, you are satisfied beyond a reasonable doubt that, on the sixteenth day of February, 1933, in the City of Trenton, in this County, the defendant did in fact pour molasses into the crank case of the truck mentioned in the indictment, you must go further and determine whether or not the said act of the defendant caused injury to the engine of the said truck; and, to sustain the indictment, the State must prove, by evidence beyond a reasonable doubt, that the said act of the defendant did in fact cause injury thereto. 20

In this connection, however, the State does not have to prove that the said engine or any part thereof was entirely destroyed; nor does the State have to prove that the usefulness of the said engine was permanently impaired. 30

As I have already stated, the State must prove, by evidence beyond a reasonable doubt, that the engine was injured or damaged by the act of the defendant; but, in connection with the question of injury or damage thereto, the State is only required to prove, by evidence beyond a reasonable 40

Charge.

doubt, that the act of the defendant rendered the said engine temporarily useless as such. In determining this question, you will likewise probably encounter little difficulty; because practically all the evidence in the case on this point tends to indicate that the engine of the truck would not function properly after the said molasses had been poured into the crank case and that, in order to restore its usefulness, the said truck had to be taken to a garage and the engine there put into running condition again.

If, then, you are satisfied beyond a reasonable doubt that, on the sixteenth of February, 1933, in the City of Trenton, in this County, the defendant did in fact pour molasses into the crank case of the truck mentioned in the indictment, and if you are further satisfied, by evidence beyond a reasonable doubt, that the said act of the defendant caused injury to the engine of the said truck by rendering it temporarily useless as such, you must go further and determine whether or not the defendant committed the act of pouring molasses into the crank case of the said truck wilfully, unlawfully and maliciously and with intent to injure the said Anthony D'Agostino; and, to sustain the indictment, the State must prove, by evidence beyond a reasonable doubt, that the defendant did in fact commit the said act wilfully, unlawfully and maliciously and with intent to injure the said Anthony D'Agostino.

The word "unlawfully" means without legal right, justification or excuse.

The defendant, according to the evidence in the case, does not appear to have had any legal right, justification or excuse for pouring molasses into the crank case of the truck, and, furthermore, he does not seem to be setting up any such claim or defense.

Charge.

The word "wilfully," as employed in the statute covering crimes of the kind charged in this indictment, means with evil intent or without reasonable grounds for believing the act to be lawful.

According to the evidence in the case, however, the defendant does not appear to have had any reasonable grounds for believing that the act of pouring molasses into the crank case was lawful; and, furthermore, he does not seem to be setting up any such claim or defense. 10

The word "maliciously," as employed in the statute covering crimes of the kind charged in the indictment, means that the act to which it relates was motivated by actual malice. Actual malice may take the form of ill-will toward an individual; but it is also intended to denote an action flowing from any wicked and corrupt motive, a thing done with an evil mind, where the fact has been attended with such circumstances as evince plain indications of a heart regardless of social duty and fatally bent on mischief. Hence, actual malice may be implied from any deliberate or wanton act against the property of another, which shows an abandoned and malignant heart or a desire to injure such other in the lawful enjoyment of his property or the legitimate conduct of his business. 20

Now, did the defendant, when he committed the act in question, do so with actual malice, as I have defined and explained that expression? 30

Did the defendant commit the act for the purpose of unjustly crippling the owner of the truck in the lawful pursuit of his business? If so, he committed the act with actual malice.

Did the defendant commit the act in order to terrorize the owner of the truck into raising prices on the work he was doing? If so, he committed the act with actual malice. 40

Charge.

10 Lastly, as I have already stated, the State must prove, by evidence beyond a reasonable doubt, that the defendant poured molasses into the crank case of the truck with intent to injure the owner thereof. This, of course, does not mean with intent to injure the person of the owner of the truck, but it means with intent, springing from moral turpitude, to injure him wantonly in the proper enjoyment of his property or the legitimate conduct of his business.

Intent is, of course, an act of the mind and cannot be seen. No one can look into the defendant's mind and ascertain from such inspection what his intention was. That intent we generally infer from his acts and conduct.

20 If the State fails to establish, by evidence beyond a reasonable doubt, any one of the elements of the crime charged in the indictment, as I have enumerated and explained them, that is to say, if the State fails to establish, by evidence beyond a reasonable doubt, any of the things which I have stated that the State must establish by evidence beyond a reasonable doubt, you must acquit the defendant.

30 The defendant, however, contends that he poured molasses into the crank case of the truck mentioned in the indictment because of fear that, unless he did so, he would be killed or suffer serious bodily injury at the hands of one Joe Marino. He testified that, at the time he committed the act in question, he was dominated by and fearful of this man because of his alleged sinister character and threats of personal violence. The defendant also testified to the effect that he was dominated by and fearful of another person, called George Galli or George Gallo, as a sort of dangerous and unscrupulous power behind the said

40

Charge.

Marino. In any event, the defendant contends that he poured molasses into the crank case of the truck mentioned in the indictment under compulsion or duress.

The burden of establishing such a defense, however, rests upon the defendant, although, if you are not satisfied of his guilt beyond a reasonable doubt, on the whole case, it is your duty to acquit him. 10

The fact that a crime was committed under compulsion may be set up as a defense to prosecution for the commission thereof. Such a defense, however, is recognized by the law as a valid defense only within certain prescribed limits. It would be a most dangerous rule if a defendant could successfully shield himself from prosecution for a crime by merely setting up fear from or because of threats of a third person without fixing any conditions under which the defense of compulsion may be properly interposed. Therefore, compulsion that will legally excuse an accused must, at the time of the commission of the crime charged, be present and imminent and of such a character as to induce a reasonable fear in a man of ordinary fortitude and courage. Moreover, at the time of the commission of the crime charged, danger of immediate or impending death or of immediate or impending serious bodily harm must either actually exist or be apprehended by the defendant on reasonable grounds. 20 30

Furthermore, the compulsion allegedly exercised must be such as to leave the accused no reasonable opportunity to escape from or to successfully defend himself in equal combat with the person allegedly inducing the fear.

So far as I recall, there is no testimony in the case tending to show that the man known as 40

Charge.

10 George Galli or George Gallo was even in Trenton at the time the defendant poured molasses into the crank case of the truck mentioned in the indictment. In fact, there is some evidence in the case tending to show that, at that time, the said George Galli or George Gallo was dead; and the defendant himself testified to the effect that he had not seen or heard from the said George Galli or George Gallo for several months prior to the time he poured molasses into the crank case of the truck mentioned in the indictment.

20 Furthermore, so far as I recall, there is no testimony in the case tending to show that a man known as Joe Marino was present at the time the defendant committed the said act or that he was even in the vicinity of the place at which the said act was committed by the defendant at the time it was committed by him. In fact, the defendant himself testified to the effect that, although he had been talking to Marino on the sixteenth of February, 1933, in a restaurant on Warren Street, in this City, Marino left him shortly before eight o'clock in the evening, with the understanding that he would meet the defendant again at eleven o'clock, which was approximately three hours after the defendant poured molasses into the crank case of the truck.

30 Therefore, at the time the defendant poured molasses into the crank case of the truck, was he in danger of immediate or impending death or of immediate or impending serious bodily harm at the hands of Marino? Did the defendant, at the time he poured molasses into the crank case of the truck, have a reasonable opportunity to escape before committing the act? These are questions which I leave to you to determine.

Charge.

I will say once more that the only question which you are called upon to decide is the question whether or not the defendant is guilty or innocent of the crime charged in the indictment.

In determining the credibility of the witnesses, you may consider their manner and demeanor on the stand, their intelligence, their opportunity to know and observe and their capacity to remember the facts to which they testify, the consistency or inconsistency of their testimony, the probability or improbability of their statements, the bias or prejudices, their interest or want of interest in the outcome of the case, and all other factors and circumstances which, in your judgment, bear upon the question of their credibility. Weigh, and weigh carefully, all the evidence in the case, consider its source and its quality, and determine for yourselves the degree of credit to which it is entitled.

The nine requests to charge, submitted by the defendant, I refuse to charge except as I have charged.

Mr. Pellettieri: I ask an exception——

The Court: Just a moment. Ladies and gentlemen of the jury, you may retire for your deliberation. Let the officers be sworn.

(The jury retired.)

Requests to Charge.

(Defendant's counsel requested the Court to charge, as follows:

FIRST REQUEST.

10 If the defendant feared death at the hands of Joe Marino, and such fear was well founded and he believed there was an immediate actual danger of death or great bodily harm to himself, then such coercion or duress may be set up as a defense to the prosecution for the commission of a crime committed under such coercion.

20 Because the law is—The fact that a crime is committed under coercion or duress, in fear of death, may be set up as a defense to the prosecution for the commission of such crime. The fear must be well founded and immediate and actual danger of death or great bodily harm must be present. Compulsion that will excuse must be present, imminent, and be of such a nature as to induce a well grounded fear in a man of ordinary fortitude and courage.

SECOND REQUEST.

30 Two essentials are necessary to the commission of a crime, viz: A will and an unlawful act as a consequence thereof.

The term "Will" does not necessarily imply that the actor was aware that he was committing an unlawful act, or that his intention was vicious.

40 The defendant testified that he would not have committed the crime if he had not been threatened and feared death or serious bodily harm at the hands of Joe Marino, if you believe him then you must acquit because the law is well settled that where a constraint is placed upon the will of a

Requests to Charge.

person whereby he is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject, then the will and the act do not join, and there is no criminal responsibility.

THIRD REQUEST.

10

If you find that the State has proven beyond a reasonable doubt that the foreign substance was placed in the oil of the crank case of the engine by the accused and you further find that the said foreign substance injured the engine to such an extent as to impair its utility or materially diminish its value, then you must convict the defendant; on the other hand, if you find that the said foreign substance was placed in the engine by the accused but that it did not injure the engine to such an extent as to impair its utility or materially diminish its value, then you must acquit the defendant.

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FOURTH REQUEST.

Where a person is charged with the commission of a particular crime, before he can be found guilty thereof, it is essential that the existence of the *corpus delicti* be established, which cannot be done by mere extrajudicial confession of the accused; it must be done by direct and positive proof *aliunde*, and beyond a reasonable doubt. Facts ascertained by reason of the confession may be used for the purpose of establishing the *corpus delicti*; but this will not dispose of the rule requiring that the *corpus delicti* must be proved independently of the confession, and beyond a reasonable doubt, before evidence of the confession is admissible.

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Requests to Charge.

The *corpus delicti* must be proved beyond a reasonable doubt.

A mere naked confession is not enough.

FIFTH REQUEST.

10 “Malicious mischief, as defined by Blackstone, and for which an indictment will lie, is ‘an act done or injury to the property of another, done not *animo furandi* or with intent to gain by another’s loss, but either out of a spirit of wanton cruelty or black and diabolical revenge.’ ”

SIXTH REQUEST.

20 “Our Statute uses the words ‘wilfully or maliciously.’ Wilfully, as employed in a statute punishing malicious mischief, has been held to import more than voluntarily or knowingly, and to mean with evil intent or legal malice, or without reasonable grounds for believing the act to be lawful. Malice is an essential ingredient of an offense of malicious mischief. As distinguished from the meaning attributed to ‘maliciously’ as ordinarily employed in criminal statutes, as equivalent to wrongfully, intentionally, and without just cause or excuse, the word has been held in many
30 statutes directed against the unlawful destruction of property to have a restricted meaning peculiar to such statutes, implying that the act to which it relates must have resulted from actual ill-will or revenge.”

SEVENTH REQUEST.

40 “‘In order that the offenses of malicious mischief may be perpetrated, it is necessary that there be injury to property.’ ”

Requests to Charge.

EIGHTH REQUEST.

To constitute malicious mischief, under the New Jersey Statute, it is essential that more than a mere trespass be involved, and that there be shown something which evinces actions or at least an act of moral turpitude.

If the proof shows beyond a reasonable doubt that the act complained of was not done wilfully or maliciously, but was done under duress then the accused cannot be charged as having had the intent to injure the truck, and therefore you must acquit him.

10

NINTH REQUEST.

Reasonable doubt is not a mere possible doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge. More particularly explaining to you what is meant by an abiding conviction to a moral certainty, of the truth of the charge, I hereby charge you that the law means: Want of an abiding conviction of guilt is a conviction which will rest with you all the rest of the days of your life; if there is a doubt raised after consideration of the evidence, the accused is entitled to it, and if a reasonable doubt is raised, he should be acquitted because the burden of proof is upon the prosecution, and, if upon such proof there be a reasonable doubt remaining, the accused is entitled to the benefit of the doubt. That is your duty.

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Exceptions to Charge.

Mr. Pellettieri: I will take a general exception to the charge of the Court.

The Court: An exception is allowed and sealed accordingly.

10

-----,
Judge.

Mr. Pellettieri: And an exception to the failure of the Court to charge the first request.

The Court: On what ground?

Mr. Pellettieri: On the ground the first request embodies the fact that if the defendant believed that there was immediate actual danger of death or great bodily harm to himself, the Court has confined the defense of coercion or duress to the necessity of the presence of the person inducing the coercion or duress.

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The Court: An exception will be noted and sealed accordingly.

-----,
Judge.

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Mr. Pellettieri: I desire to take an exception to the failure of the Court to charge the second request, in that the Court failed to charge the jury that two essentials are necessary to the commission of a crime; that is, a will and an unlawful act as a consequence thereof.

The Court: An exception will be allowed and sealed accordingly.

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-----,
Judge.

Exceptions to Charge.

Mr. Pellettieri: The third request has been covered, and I do not ask an exception as to that.

I take an exception to the refusal of the Court to charge the fourth request, as to the necessity of the proof of the *corpus delicti*.

The Court has left the question of the voluntariness of the confession to the jury, although the law is well settled in this State that that is absolutely a question of fact for the Court to determine. 10

If the *corpus delicti* had not been proved, and the jury found that the confession was voluntary, it is certainly prejudicial.

The Court: Suppose I had not left the confession to the jury, then what would you have said?

Mr. Pellettieri: Then I could have availed myself of the exception which I took after the Court admitted it in evidence. 20

The Court: All right. An exception will be noted and sealed accordingly.

-----,
Judge.

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Bill of Exceptions.

MERCER COUNTY QUARTER SESSIONS.

10	STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	On Indictment. Bill of Exceptions.
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ERWIN E. MARSHALL, Prosecutor of the Pleas,

By AUGUSTINE V. GRIBBIN, Assistant Prosecutor.
 20 GEORGE PELLETTIERI, Attorney for Defendant.

BE IT REMEMBERED, that on the nineteenth day of
 March, nineteen hundred and thirty-four, at the
 trial of the indictment of the above-named David
 Bleefeld, alias Jeff Taylor, alias James H. Taylor,
 in said Court of Quarter Sessions before GODFREY
 W. SCHROTH, Esquire, Judge of said Court, where-
 in said David Bleefeld, alias Jeff Taylor, alias
 James H. Taylor, was charged under indictment
 No. 103 of the January Term, with malicious mis-
 30 chief, the trial of said indictment came on to be
 heard by a jury for that purpose duly empaneled.

1.—Thereupon the said Augustine V. Gribbin,
 Assistant Prosecutor of the Pleas of said County
 of Mercer to maintain said issue on his part of-
 fered statement signed by the defendant which was
 marked as S-2 for identification, which statement
 attempted to prove the crime as alleged in the
 indictment by confession, to which counsel for de-
 40 fendant made exception to said statement to be
 introduced in evidence. The counsel for the de-

Bill of Exceptions.

fendant further asked the Court to rule that the *corpus delicti* must be proven beyond a reasonable doubt before the statement made by the defendant could be introduced to prove the commission of the crime; to which the Court refused and defendant made exceptions to said ruling of said Judge and prayed that said Judge set his hand and seal to these exceptions and they were sealed accordingly. 10

2.—Thereupon the said Assistant Prosecutor of the Pleas of said County of Mercer, to maintain said issue on his part offered the testimony of one, James S. Kirkham.

“Q. And that you would do nothing to him? Did you tell him that you would not do anything to him? A. I did not. He asked me if I could get him an S. S.” 20

Whereupon the Attorney for the defendant moved to strike the answer from the record and the jury be instructed to disregard it, to which the Court refused and ruled that the answer may stand; whereupon, counsel for the defendant made exceptions to the ruling of said Judge and prayed that the exception be allowed and it was sealed accordingly. 30

3.—Thereupon said Assistant Prosecutor to maintain the said issue on his part offered the confession of the defendant in evidence which confession was objected to by counsel of the defendant on the ground that same was obtained by promise, threat and duress. The Court ruled that said confession marked S-1 be admitted in evidence for the reason that said confession was voluntarily made. Whereupon counsel for the defendant asked the Court to find what facts are satisfactorily established as to the voluntariness 40

Bill of Exceptions.

of the confession, which facts let the Court to believe that the confession was voluntarily made. The Court refused to give this request and ruled and stated "Well, I think that record speaks for itself in that connection." Whereupon, Counsel for the defendant made exception to the ruling of said Judge and exception allowed and sealed accordingly by said Court.

4. Counsel for the defendant at the close of the State's Case moved for a direction of the verdict of acquittal for the defendant on the ground that the State has not proven the alleged act of vandalism on the date as charged in the indictment, and on the further ground the State has failed to prove the essential requisites of malicious mischief, which motion the Court denied and counsel for the defendant prayed for an exception and the exception was allowed and sealed accordingly.

5. The Court during the trial asked of the defendant among other things certain questions, to wit:

Q. Now, was this money paid to this public official during the time that its operations were lawful, namely, between January, 1932, and February, 1933, or not? A. Yes, sir.

Q. That would seem to indicate, then, that the naming of the public official in question could not possibly incriminate you, if the operations of your concern were entirely legitimate during this whole period; isn't that so? A. Yes.

Q. It could not incriminate you—that is true? A. Yes, sir.

Q. Name him. I instruct you, sir. Now you are doing this under my instruction. A. (No response.)

Bill of Exceptions.

Q. You owe good faith to the Court as much as you do to what you call your word of honor—and more.

Q. Now answer the question, sir? A. What is the question?

Q. Who was this public official? A. I refuse to answer the question.

10

Q. You will be in contempt of court. A. I am going to keep my word if it is a gentleman's word or not.

Q. Now you answer that question, Mr. Taylor. A. I refuse to answer.

Q. Why? A. I gave them my word that I will say nothing and I am going to say nothing.

Q. That is no good reason. I will give you six minutes to consult with your counsel. We will recess during that time.

20

AFTER RECESS.

The court asked the witness:

“Do you refuse to name him?”

A. Yes, sir.

The court then adjudged the defendant guilty of contempt and ordered him committed to the County Jail until such time as he purged himself of such contempt.

30

Counsel for the defendant made an exception to the Court ruling holding the defendant in contempt and moved for the Court to declare a mistrial which motion the Court denied. The Court granted an exception to counsel for the defendant and it was allowed and sealed accordingly.

6. The counsel for the defendant excepted to the charge of the Court, in that the Court refused to charge the first, second and fourth re-

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Bill of Exceptions.

quests, submitted by counsel of the defendant, which are as follows:

FIRST REQUEST.

10 If the defendant feared death at the hands of Joe Marino, and such fear was well founded and he believed there was an immediate actual danger of death or great bodily harm to himself, then such coercion or duress may be set up as a defense to the prosecution for the commission of a crime committed under such coercion.

20 Because the law is—the fact that a crime is committed under coercion or duress, in fear of death, may be set up as a defense to the prosecution for the commission of such crime. The fear must be well founded and immediate and actual danger of death or great bodily harm must be present. Compulsion that will excuse must be present, imminent, and be of such a nature as to induce a well grounded fear in a man of ordinary fortitude and courage.

SECOND REQUEST.

Two essentials are necessary to the commission of a crime, viz: A will and an unlawful act as a consequence thereof.

30 The term “will” does not necessarily imply that the actor was aware that he was committing an unlawful act, or that his intention was vicious.

The defendant testified that he would not have committed the crime if he had not been threatened and feared death or serious bodily harm at the hands of Joe Marino, if you believe him then you must acquit because the law is well settled that where a constraint is placed upon the will of a person whereby he is urged to do that which
40 his judgment disapproves; and which, it is to be

Bill of Exceptions.

presumed, his will (if left to itself) would reject, then the will and the act do not join, and there is no criminal responsibility.

FOURTH REQUEST.

Where a person is charged with the commission of a particular crime, before he can be found guilty thereof, it is essential that the existence of the *corpus delicti* be established, which cannot be done by mere extrajudicial confession of the accused; it must be done by direct and positive proof *aliunde*, and beyond a reasonable doubt. Facts ascertained by reason of the confession may be used for the purpose of establishing the *corpus delicti*; but this will not dispose of the rule requiring that the *corpus delicti* must be proved independently of the confession, and beyond a reasonable doubt, before evidence of the confession is admissible.

The *corpus delicti* must be proved beyond a reasonable doubt.

A mere naked confession is not enough.

7. Counsel for the defendant made a general exception to the charge of the Court and prayed that said Judge would set his hand and seal to this Exception and it was sealed accordingly.

GODFREY W. SCHROTH,
Judge of the Court of Quarter
Sessions of Mercer County.

Acknowledge service of a copy of the within Bill of Exceptions this 15th day of August, 1934.

ERWIN E. MARSHALL,
Prosecutor.

Filed August 15, 1934.

FRED L. BLOODGOOD,
Clerk.

Stipulation.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	}	On Writ of Error. Stipulation.
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20 It is hereby stipulated and agreed by and between counsel for plaintiff-in-error and Prosecutor of the Pleas of Mercer County for the defendant-in-error, that Section 5 of the Bill of Exceptions be amended to read as follows:

“5. During the course of the trial, the defendant, David Bleefeld, alias Jeff Taylor, alias James H. Taylor, testified that certain moneys were paid to a public official for ‘police protection’; and the Court asked of the defendant among other things certain questions, to wit:—

30 ‘Q. Name him. I instruct you, sir. Now you are doing this under my instruction. A. (No response.)

Q. You owe good faith to the Court as much as you do to what you call your word of honor—and more.

Mr. Pellettieri: Again I urge the Court to instruct the witness as to his rights.

40 The Court: Well, he has answered to my satisfaction, Mr. Pellettieri. You may take an objection if you wish and register it on the record.

Stipulation.

Mr. Pellettieri: If the witness feels that by naming this man he is incriminating himself, he can still avail himself of that privilege.

The Court: Yes, but he just said there would be nothing to incriminate him.

Mr. Pellettieri: That is a question of law, 10
your Honor.

The Court: I may be wrong, but I am willing to take my chance. You may take your objection.

Mr. Pellettieri: May I instruct the witness as to his rights, as to self-incrimination?

The Court: No. That is within the discretion of the Court to exercise it this way.

Mr. Pellettieri: May I have an exception? 20

The Court: You may have an exception, and it is allowed and sealed accordingly.

Judge.

Q. Now answer the question, sir. A. What is the question?

Q. Who was this public official? A. I refuse to answer the question.

Q. You will be in contempt of court. A. 30
I am going to keep my word if it is a gentleman's word or not.

Q. Now you answer that question, Mr. Taylor. A. I refuse to answer.

Q. Why? A. I gave them my word that I will say nothing, and I am going to say nothing.

Q. That is no good reason. I will give you six minutes to consult with your counsel. We 40
will recess during that time.

Stipulation.

(After Recess.)

Q. Will you answer that question, sir? A. The question of naming the——

10 Q. Yes. A. I refuse to answer on the ground of incriminating myself. I don't want it to appear that I am a wise guy, saying this out of ego.

Q. How can you say you would incriminate yourself on the testimony you have just given about the legitimacy of the objects and purposes of this organization during the whole time. A. It may be no crime, but still bribing an official can be a crime, and that is why I refuse to answer, on the ground of incriminating myself.

20 Q. If your objects were perfectly proper why would you have to resort to bribery of any kind? A. It was simply something that was forced over, that is all.

Q. Answer this question: Was this money paid to the public official in question by a person other than yourself? A. Myself only.

Q. Now I ask you to answer the question. Name the official. A. I refuse on the grounds of incriminating myself.

30 Q. There was no bribery necessary to the conduct of a perfectly legitimate business was there? You said under oath that this business was properly conducted for approximately thirteen months and during that time this money was paid. Is that not so? A. I do not think so.

Q. You do not think what? A. That it was necessary to pay anybody.

40 Q. Then you certainly cannot incriminate anybody if everything was on the level. A. It

Stipulation.

looked on the level to me, that I was doing right.

Q. If you thought you were doing right at the time, and your intentions were good, and if it was so clean, what have you to fear when it comes to naming this man? A. Just upon incriminating myself.

10

Q. You said a moment ago you were going to keep your word. Is it a question of keeping your word—which is it? A. It is both.

Q. Is it true that you paid some public official? A. Yes, sir.

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

Q. Why was it necessary to pay anybody for protection if your purposes and objects and the manner in which you conducted your business was lawful and proper? A. By answering that question I am afraid I will have to go into a lot of unnecessary questions.

20

Q. Do not worry about the number of questions, necessary or unnecessary. Answer my question. A. To my way of thinking I was conducting it in a legitimate way. To his way of thinking, he didn't think so.

Q. To whose way? A. This official.

Q. Well, without naming him, what did he say about it? A. That I would have to take care of him every week.

30

Q. How much did you pay him? A. On an average, about \$25 or \$30 a week.

Q. Between what months? A. Between June and—from June right up to the end of the year.

Q. Of 1932? A. Yes, sir.

Q. Did the payments stop then? A. Yes, sir.

Q. Why? A. Because the collections were not coming in in full.

40

Stipulation.

Q. Did you pay him anything after that?

A. I don't recall. I do not think so.

Q. When did you get out of this business?

A. Around April of 1933.

Q. Did you pay something up to that time to this official? A. From January to April?

10 Q. Yes. A. No, I do not think so.

Q. Did you pay him after Galli and Marino got into the activities of your organization?

A. Yes.

Q. Were you ever with this official in the presence of either of those men? A. No, sir.

Q. How did you come to go to him in the first place? A. He came to me.

Q. When? A. In June or July.

Q. Of what year? A. 1932.

20 Q. What did he say? A. That he wanted to be taken care of or he would chase me out of here.

Q. Did he say he was a public official? A. Yes, sir.

Q. In what department of the city government? A. The Police Department.

Q. Was he a private policeman or an officer?

30 Mr. Pellettieri: In all fairness to all of the men that may be in this especial department and in any other branch of the police department, I think that a sufficient aspersion has been cast upon the integrity of all of the members of the police force in this community——

The Court: That is the trouble, Mr. Pellettieri: It casts aspersions on every member.

40 Mr. Pellettieri: And I feel, in view of this witness's obstinacy in refusing to

Stipulation.

divulge the name of this officer that we should——

The Court: It is not fair to cast a blight on the whole department. This man went so far as to say that he paid money to a police officer and he did not name him. I do not hesitate to say right here that I should think he would regard it sufficiently of public interest to state who it was and not to keep his word, as he says, in any such bargain as that. 10

Mr. Pellettieri: Do you wish to name him?

The Witness: No, sir.

Q. Do you refuse to name him? A. Yes, sir.

The Court: I adjudge you guilty of contempt of court and order your commitment to the county jail until you purge yourself thereof.' 20

Counsel for the Defendant took an exception to the Court ruling holding the defendant in contempt in the presence of the jury and made a motion to the Court that a mistrial be declared on the ground that the commitment for contempt may have raised in the minds of the jurors an assumption that the Court was leaning toward the guilt of this defendant.' 30

The motion was denied and the Court granted an exception to Counsel for the Defendant and it was allowed and sealed accordingly.

GEORGE PELLETTIERI,
Attorney for Plaintiff-in-Error.

ERWIN E. MARSHALL,
Prosecutor of the Pleas of Mercer
County for the Defendant-in-Error. 40

Filed November 22, 1934.

FRED L. BLOODGOOD,
Clerk.

Affidavit of John G. Van Blarcom.
NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> 10 DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	}	On Indictment for Malicious Mischief. Affidavit.
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STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

JOHN G. VAN BLARCOM, being duly sworn, says that:

20 He is the official Court Reporter of the Mercer County Court of Quarter Sessions.

That on March 19, 20, 21, 22, 23, 26, 27, 28, 29, April 2, 3, 4, 1934, as such official reporter deponent made a stenographic report of proceedings on the trial of the indictment in the above-entitled matter.

30 That deponent is in receipt of a request from the above-named plaintiff in error for a transcript of such stenographic report; that such transcript will contain approximately twelve hundred typewritten pages; that such transcript will be prepared and ready for delivery on or about August 15, 1934.

JOHN G. VAN BLARCOM.

Sworn and subscribed to before me }
this 26th day of June, A. D. 1934. }

GOLDIE ZENTNER
Notary Public of N. J.

Filed June 26, 1934.

40 THOMAS W. TRENCHARD,
J. of S. C.

Filed June 26, 1934.

FRED L. BLOODGOOD,
Clerk.

**Order Extending Time Within Which to File
Assignment of Errors.**

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	}	Order.	10
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This matter being opened to the Court by George Pellettieri, Attorney for David Bleefeld, alias Jeff Taylor, alias James H. Taylor, and good cause being shown;

It is on this 26th day of June, nineteen hundred and thirty-four, ORDERED, that the time within which to file the Assignment of Error in the above-entitled cause be continued and extended until the fifteenth day of August, nineteen hundred and thirty-four;

It is further ORDERED, that the attorney for the plaintiff-in-error have leave to file a written order directed to the official court stenographer, John G. Van Blarcom, within a period of one month from the signing of this order and to do all things requisite to Rule 162 of the Rules of the Supreme Court of New Jersey;

On Motion of

GEORGE PELLETTIERI,
Attorney of Plaintiff-in-Error.

Dated June 26, 1934.

Let the above rule be entered on the minutes.

THOMAS W. TRENCHARD,
Justice of the New Jersey
Supreme Court.

Filed June 26, 1934.

FRED L. BLOODGOOD,
Clerk.

**Order Extending Time Within Which to File
Assignment of Errors.**

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	}	Order.
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This matter being opened to the Court by George Pellettieri, Attorney for David Bleefeld, alias Jeff Taylor, alias James H. Taylor, and good cause being shown;

20 It is on this 6th day of July, nineteen hundred and thirty-four, ORDERED, that the time within which to file the Assignment of Error in the above-entitled cause be continued and extended until the fifteenth day of August, nineteen hundred and thirty-four;

30 It is further ORDERED, that the attorney for the plaintiff-in-error have leave to file a written order directed to the official court stenographer, John G. Van Blarcom, within a period of one month from the signing of this order and to do all things requisite to Rule 162 of the Rules of the Supreme Court of New Jersey;

On Motion of
 GEORGE PELLETTIERI,
 Attorney of Plaintiff-in-Error.

Dated July 6th, 1934.

Let the above rule be entered on the minutes.

40 THOMAS W. TRENCHARD,
Justice of the New Jersey
Supreme Court.

Filed July 9, 1934.

FRED L. BLOODGOOD,
Clerk.

Assignment of Errors.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	In Error. Assignment of Errors. 10
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Afterwards, to wit, on the twenty-sixth day of May, nineteen hundred and thirty-four, before our said Supreme Court of the State of New Jersey, comes the said David Bleefeld, alias Jeff Taylor, alias James H. Haylor, by George Pelletieri, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said Bill of Exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

(1) That the said Court before whom, Godfrey W. Schroth, Judge of the Court of Quarter Sessions of Mercer County, at and upon the trial of the said issue so joined between the State of New Jersey, and the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, permitted a witness, James S. Kirkham, to be asked by Assistant Prosecutor Augustine V. Gribbin, the following question:

“And that you would do nothing to him? Did you tell him that you would not do anything to him?”

A. “I did not. He asked me if I could get him an S. S.”

Assignment of Errors.

Counsel for the defendant moved that the answer be stricken from the record and that the jury be instructed to disregard it, which the Court refused and ruled that the answer may stand.

10 (2) That the said Assistant Prosecutor in order to maintain said issue on his part offered a statement signed by the defendant and marked as S-2 for identification, which said statement attempted to prove the crime as alleged in the indictment by confession to which counsel for the defendant made exceptions to said statement to be introduced in evidence.

20 Counsel for the defendant contended to the Court that the *corpus delicti* must first be proven beyond a reasonable doubt before statement by the defendant could be introduced to prove the commission of the crime. The contention of the counsel for the defendant was refused by the Court and permitted said statement to be introduced in evidence.

30 (3) That the said Assistant Prosecutor to maintain the said issue on his part offered the confession of the defendant in evidence, which confession was objected to by counsel of the defendant on the ground that same was obtained by promise, threat and duress. The Court ruled that said confession marked S-1 be admitted in evidence for the reason that said confession was voluntarily made.

40 Thereupon counsel for the defendant asked the Court to find what facts are satisfactorily established as to the voluntariness of the confession which facts led the Court to believe that the said confession was voluntarily made. The Court refused to give this request and ruled "Well, I think that the record speaks for itself in that connection."

Assignment of Errors.

(4) That the Court erred in adjudging the defendant in contempt in the presence of the jury for the refusal of the defendant to answer certain questions, to wit:—

“Q. Now, was this money paid to this public official during the time that its operations were lawful, namely, between January, 1932, and February, 1933, or not? A. Yes, sir.

10

Q. That would seem to indicate, then, that the naming of the public official in question could not possibly incriminate you, if the operations of your concern were entirely legitimate during this whole period; isn't that so? A. Yes.

Q. It could not incriminate you—that is true? A. Yes, sir.

Q. Name him. I instruct you, sir. Now you are doing this under my instruction. A. (No response.)

20

Q. You owe good faith to the Court as much as you do to what you call your word of honor—and more.

Q. Now answer the question, sir? A. What is the question?

Q. Who was this public official? A. I refuse to answer the question.

Q. You will be in contempt of court. A. I am going to keep my word if it is a gentleman's word or not.

30

Q. Now you answer that question, Mr. Taylor. A. I refuse to answer.

Q. Why? A. I gave them my word that I will say nothing and I am going to say nothing.

Q. That is no good reason. I will give you six minutes to consult with your counsel. We will recess during that time.

40

Assignment of Errors.

(After Recess.)

The Court asked the witness:

‘Do you refuse to name him?’ A. Yes, sir.”

10 The Court then adjudged the defendant guilty of contempt and ordered him committed to the County Jail until such time as he purged himself of such contempt.

The Court erred in adjudging the defendant in contempt which conduct by the Court was highly prejudicial to the defendant.

(5) That there is also error in this: That the said Court charged the jury as follows:

20 “As you have undoubtedly observed, considerable testimony concerning matters unrelated to the case before you has been adduced by both the State and the defendant; but the one and only issue which you are to consider and determine is whether or not the defendant is guilty of the crime charged in this indictment.”

(6) There is also error in this: That the said Court refused to charge the jury certain requests submitted to the Court, to wit:

FIRST REQUEST.

30

If the defendant feared death at the hands of Joe Marino, and such fear was well founded and he believed there was an immediate actual danger of death or great bodily harm to himself, then such coercion or duress may be set up as a defense to the prosecution for the commission of a crime committed under such coercion.

40 Because the law is—The fact that a crime is committed under coercion or duress, in fear of death, may be set up as a defense to the prosecu-

Assignment of Errors.

tion for the commission of such crime. The fear must be well founded and immediate and actual danger of death or great bodily harm must be present. Compulsion that will excuse must be present, imminent, and be of such a nature as to induce a well grounded fear in a man of ordinary fortitude and courage.

10

SECOND REQUEST.

Two essentials are necessary to the commission of a crime, viz.: A will and an unlawful act as a consequence thereof.

The term "Will" does not necessarily imply that the actor was aware that he was committing an unlawful act, or that his intention was vicious.

The defendant testified that he would not have committed the crime if he had not been threatened and feared death or serious bodily harm at the hands of Joe Marino, if you believe him then you must acquit because the law is well settled that where a constraint is placed upon the will of a person whereby he is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject, then the will and the act do not join, and there is no criminal responsibility.

20

FOURTH REQUEST.

Where a person is charged with the commission of a particular crime, before he can be found guilty thereof, it is essential that the existence of the *corpus delicti* be established, which cannot be done by mere extrajudicial confession of the accused; it must be done by direct and positive proof *aliunde*, and beyond a reasonable doubt. Facts ascertained by reason of the confession may be used for the purpose of establishing the *corpus*

30

40

Amended Assignment of Errors.

delicti; but this will not dispose of the rule requiring that the *corpus delicti* must be proved independently of the confession, and beyond a reasonable doubt, before evidence of the confession is admissible.

10 The *corpus delicti* must be proved beyond a reasonable doubt.

A mere naked confession is not enough.

(7) There is also error in this: The Court in its charge to the jury was partial and highly prejudicial to the defendant.

GEORGE PELLETTIERI,
Attorney and Counsel of Plaintiff-in-Error.

Filed August 15, 1934.

20 FRED L. BLOODGOOD,
Clerk.

Amended Assignment of Errors.

NEW JERSEY SUPREME COURT.

30	STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	} In Error. } Amended Assign- } ment of Errors.
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40 Afterwards, to wit, on the twenty-sixth day of
 May, nineteen hundred and thirty-four, before
 our said Supreme Court of the State of New Jer-

Amended Assignment of Errors.

sey, comes the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, the said defendant, by his Attorney, George Pellettieri, and says that the judgment herein should be reversed because in the record and proceedings herein, and in the matters contained and noted in the Bill of Exceptions herein, and in giving the judgment aforesaid, there is manifest error in this, to wit: 10

(1) That the Court of Quarter Sessions, at and upon the trial of the said issue so joined between the State of New Jersey, and the said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, permitted a rebuttal witness for the State, one James S. Kirkham, the Chief of the Mercer County Detectives, who was called to testify as to the voluntariness of an alleged confession made by the defendant herein, permitted the answer to a certain question, to stand, to wit: 20

“And that you would do nothing to him? Did you tell him that you would not do anything to him?”

A. “I did not. He asked me if I could get him an S. S.”

Counsel for the defendant moved that the answer be stricken from the record and that the Court instruct the jury to disregard it, on the ground that the answer was not responsive to the question and was a volunteered statement of said witness, which motion was denied and the Court ruled that the answer be permitted to stand. 30

(2) That the Court of Quarter Sessions aforesaid, erroneously permitted a confession alleged to have been voluntarily made by the defendant to be introduced in evidence, which said confession attempted to prove the crime as alleged in 40

Amended Assignment of Errors.

the indictment before the State had proven the *corpus delicti*.

10 Counsel for the defendant contended to the court that the *corpus delicti* must first be proven beyond a reasonable doubt before a confession by the defendant could be introduced to prove commission of the crime. The contention of the counsel for the defendant was refused by the Court and said confession was permitted to be introduced in evidence over the defense counsel's objection.

20 (3) That the Prosecutor for the State in order to maintain the said issue on his part offered the confession of the defendant in evidence, which confession was objected to by counsel of the defendant on the ground that same was obtained by promise, threat and duress. The court ruled that said confession marked S-1 be admitted in evidence for the reason that said confession was voluntarily made.

30 Thereupon counsel for the defendant asked the Court to find what facts were satisfactorily established as to the voluntariness of the confession and which facts had led the Court to believe that the said confession was voluntarily made. The Court refused to grant this request and ruled, "Well, I think that the record speaks for itself in that connection."

(4) That the Court erred in adjudging the defendant in contempt in the presence of the jury for the refusal of the defendant to answer certain questions, to wit:

"Q. Name him. I instruct you, sir. Now you are doing this under my instruction. A. (No response.)

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Amended Assignment of Errors.

Q. You owe good faith to the Court as much as you do to what you call your word of honor—and more.

Mr. Pellettieri: Again I urge the Court to instruct the witness as to his rights.

The Court: Well, he has answered to my satisfaction, Mr. Pellettieri. You may take an objection if you wish and register it on the record. 10

Mr. Pellettieri: If the witness feels that by naming this man he is incriminating himself, he can still avail himself of that privilege.

The Court: Yes, but he just said there would be nothing to incriminate him.

Mr. Pellettieri: That is a question of law, your Honor. 20

The Court: I may be wrong but I am willing to take my chance. You may take your objection.

Mr. Pellettieri: May I instruct the witness as to his rights, as to self-incrimination?

The Court: No. That is within the discretion of the Court to exercise it this way.

Mr. Pellettieri: May I have an exception?

The Court: You may have an exception, and it is allowed and sealed accordingly. 30

Judge.

Q. Now answer the question, sir. A. What is the question?

Q. Who was this public official? A. I refuse to answer the question.

Q. You will be in contempt of court. A. I am going to keep my word if it is a gentleman's word or not. 40

Amended Assignment of Errors.

Q. Now you answer that question, Mr. Taylor. A. I refuse to answer.

Q. Why? A. I gave them my word that I will say nothing, and I am going to say nothing.

10 Q. That is no good reason. I will give you six minutes to consult with your counsel. We will recess during that time.

(AFTER RECESS.)

Q. Will you answer that question, sir? A. The question of naming the——

Q. Yes. A. I refuse to answer on the ground of incriminating myself. I don't want it to appear that I am a wise guy, saying this out of ego.

20 Q. How can you say you would incriminate yourself on the testimony you have just given about the legitimacy of the objects and purposes of this organization during the whole time? A. It may be no crime, but still bribing an official can be a crime, and that is why I refuse to answer, on the ground of incriminating myself.

30 Q. If your objects were perfectly proper why would you have to resort to bribery of any kind? A. It was simply something that was forced over, that is all.

Q. Answer this question: Was this money paid to the public official in question by a person other than yourself? A. Myself only.

Q. Now, I ask you to answer the question. Name the official. A. I refuse on the grounds of incriminating myself.

40 Q. There was no bribery necessary to the conduct of a perfectly legitimate business was there? You said under oath that this business was properly conducted for approxi-

Amended Assignment of Errors.

mately thirteen months and during that time this money was paid. Is that not so? A. I do not think so.

Q. You do not think what? A. That it was necessary to pay anybody.

Q. Then you certainly cannot incriminate anybody if everything was on the level. A. It looked on the level to me, that I was doing right. 10

Q. If you thought you were doing right at the time, and your intentions were good, and if it was so clean, what have you to fear when it comes to naming this man? A. Just upon incriminating myself.

Q. You said a moment ago you were going to keep your word. Is it a question of keeping your word—which is it? A. It is both. 20

Q. Is it true that you paid some public official? A. Yes, sir.

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

Q. Why was it necessary to pay anybody for protection if your purposes and objects and the manner in which you conducted your business was lawful and proper? A. By answering that question I am afraid I will have to go into a lot of unnecessary questions.

Q. Do not worry about the number of questions, necessary or unnecessary. Answer my question. A. To my way of thinking I was conducting it in a legitimate way. To his way of thinking, he didn't think so. 30

Q. To whose way? A. This official.

Q. Well, without naming him, what did he say about it? A. That I would have to take care of him every week.

Q. How much did you pay him? A. On an average, about \$25 or \$30 a week. 40

Amended Assignment of Errors.

Q. Between what months? A. Between June and—from June right up to the end of the year.

Q. Of 1932? A. Yes, sir.

Q. Did the payments stop then? A. Yes, sir.

10 Q. Why? A. Because the collections were not coming in in full.

Q. Did you pay him anything after that? A. I don't recall. I do not think so.

Q. When did you get out of this business? A. Around April of 1933.

Q. Did you pay something up to that time to this official? A. From January to April?

Q. Yes. A. No, I do not think so.

20 Q. Did you pay him after Galli and Marino got into the activities of your organization? A. Yes.

Q. Were you ever with this official in the presence of either of those men? A. No, sir.

Q. How did you come to go to him in the first place? A. He came to me.

Q. When? A. In June or July.

Q. Of what year? A. 1932.

30 Q. What did he say? A. That he wanted to be taken care of or he would chase me out of here.

Q. Did he say he was a public official? A. Yes, sir.

Q. In what department of the city government? A. The Police Department.

Q. Was he a private policeman or an officer?

40 Mr. Pellettieri: In all fairness to all of the men that may be in this especial department and in any other branch of the police department, I think that a sufficient

Amended Assignment of Errors.

aspersion has been cast upon the integrity of all of the members of the police force in this community——

The Court: That is the trouble, Mr. Pellettieri: It casts aspersions on every member.

Mr. Pellettieri: And I feel, in view of this witness's obstinacy in refusing to divulge the name of this officer that we should—— 10

The Court: It is not fair to cast a blight on the whole department. This man went so far as to say that he paid money to a police officer and he did not name him. I do not hesitate to say right here that I should think he would regard it sufficiently of public interest to state who it was and not to keep his word, as he says, in any such bargain as that. 20

Mr. Pellettieri: Do you wish to name him?

The Witness: No, sir.

Q. Do you refuse to name him? A. Yes, sir.

The Court: I adjudge you guilty of contempt of court and order your commitment to the county jail until you purge yourself thereof." 30

The court erred in adjudging the defendant in contempt and committing him to the County Jail in the presence of the jury which conduct by the court was highly prejudicial to the defendant.

(5) That the Court of Quarter Sessions erred in refusing to instruct the defendant as to his rights against self-incrimination in response to 40

Amended Assignment of Errors.

certain questions asked of the defendant as to the moneys which were paid to a public official for "police protection," to wit:

10 "Q. Name him. I instruct you, sir. Now, you are doing this under my instruction. A. (No response.)

Q. You owe good faith to the Court as much as you do to what you call your word of honor—and more.

Mr. Pellettieri: Again I urge the Court to instruct the witness as to his rights.

The Court: Well, he has answered to my satisfaction, Mr. Pellettieri. You may take an objection if you wish and register it on the record.

20 Mr. Pellettieri: If the witness feels that by naming this man he is incriminating himself, he can still avail himself of that privilege.

The Court: Yes, but he just said there would be nothing to incriminate him.

Mr. Pellettieri: That is a question of law, your Honor.

30 The Court: I may be wrong but I am willing to take my chance. You may take your objection.

Mr. Pellettieri: May I instruct the witness as to his rights, as to self-incrimination?

The Court: No. That is within the discretion of the Court to exercise it this way.

Mr. Pellettieri: May I have an exception?

The Court: You may have an exception, and it is allowed and sealed accordingly."

40

Amended Assignment of Errors.

(6) That there is also error in this: That the said Court charged the jury as follows:

As you have undoubtedly observed, considerable testimony concerning matters unrelated to the case before you has been adduced by both the State and the defendant; but the one and only issue which you are to consider and determine is whether or not the defendant is guilty of the crime charged in this indictment. 10

(7) There is also error in this: That the said Court refused to charge the jury certain requests submitted to the Court, to wit:

FIRST REQUEST.

If the defendant feared death at the hands of Joe Marino, and such fear was well founded and he believed there was an immediate actual danger of death or great bodily harm to himself, then such coercion or duress may be set up as a defense to the prosecution for the commission of a crime committed under such coercion. 20

Because the law is: The fact that a crime is committed under coercion or duress, in fear of death, may be set up as a defense to the prosecution for the commission of such crime. The fear must be well founded and immediate and actual danger of death or great bodily harm must be present. Compulsion that will excuse must be present, imminent, and be of such a nature as to induce a well grounded fear in a man of ordinary fortitude and courage. 30

Amended Assignment of Errors.

SECOND REQUEST.

Two essentials are necessary to the commission of a crime, viz.: A will and an unlawful act as a consequence thereof.

10 The term "will" does not necessarily imply that the actor was aware that he was committing an unlawful act, or that his intention was vicious.

20 The defendant testified that he would not have committed the crime if he had not been threatened and feared death or serious bodily harm at the hands of Joe Marino; if you believe him then you must acquit, because the law is well settled that where a constraint is placed upon the will of a person whereby he is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject, then the will and the act do not join, and there is no criminal responsibility.

FOURTH REQUEST.

30 Where a person is charged with the commission of a particular crime, before he can be found guilty thereof, it is essential that the existence of the *corpus delicti* be established, which cannot be done by mere extrajudicial confession of the accused; it must be done by direct and positive proof *aliunde*, and beyond a reasonable doubt. Facts ascertained by reason of the confession may be used for the purpose of establishing the *corpus delicti*; but this will not dispose of the rule requiring that the *corpus delicti* must be proved independently of the confession, and beyond a reasonable doubt, before evidence of the confession is admissible.

40

Amended Assignment of Errors.

The *corpus delicti* must be proved beyond a reasonable doubt.

A mere naked confession is not enough.

(8) There is also error in this: The Court in its charge to the jury was partial and highly prejudicial to the defendant.

10

GEORGE PELLETTIERI,
Attorney and Counsel of Plaintiff-
in-Error.

I hereby consent to the filing of the within Amended Assignment of Errors this 27th day of November, 1934.

ERWIN E. MARSHALL,
Prosecutor of the Pleas.

20

Service of the within Amended Assignment of Errors is hereby acknowledged this 27th day of November, 1934.

ERWIN E. MARSHALL,
Prosecutor of the Pleas.

Filed November 30, 1934.

30

FRED L. BLOODGOOD,
Clerk.

40

Affidavit of Service.

NEW JERSEY SUPREME COURT.

10

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

DAVID BLEEFELD, alias JEFF
TAYLOR, alias JAMES H. TAYLOR,
Plaintiff-in-Error.

On Writ of Error.
Affidavit of
Service.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

20

DAVID KELSEY, being duly sworn according to
law, upon his oath deposes and says:—

1. I am an Attorney-at-Law practicing in the
City of Trenton, County of Mercer and State of
New Jersey.

30

2. On the fifteenth day of August, nineteen
hundred and thirty-four, I served personally upon
Erwin E. Marshall, Prosecutor of the Pleas of
the County of Mercer, State of New Jersey, a
copy of the Assignment of Errors in the above-
entitled cause, the original of which is on file with
the Clerk of the Supreme Court, State of New
Jersey.

DAVID KELSEY.

Sworn and subscribed to before me this }
17th day of November, A. D., 1934. }

GOLDIE ZENTNER,
Notary Public of N. J.

Filed November 17, 1934.

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FRED L. BLOODGOOD,
Clerk.

Stipulation.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	} On Writ of Error. Stipulation. 10
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It is hereby stipulated and agreed by and between counsel for plaintiff-in-error and the Prosecutor of the Pleas of Mercer County for the defendant-in-error, that due to the pressure of business making it impossible for the record in this case to be completed in time to be printed and submitted before the October Term of the Supreme Court, that this matter be continued to the January Term, 1935, of the aforesaid court. 20

Consented to and agreed.

ERWIN E. MARSHALL,
Prosecutor of the Pleas in and
for the County of Mercer. 30

GEORGE PELLETTIERI,
Counsel for Plaintiff-in-Error.

Filed November 23, 1934.

FRED L. BLOODGOOD,
Clerk.

Joinder in Error.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error, <i>vs.</i> DAVID BLEEFELD, alias JEFF TAYLOR, alias JAMES H. TAYLOR, Plaintiff-in-Error.	}	On Writ of Error. Joinder in Error.
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20 And hereupon the State of New Jersey, defendant-in-error, by Erwin E. Marshall, Prosecutor of the Pleas of the County of Mercer, its attorney, comes into court and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and the said State of New Jersey prays here that the Court may proceed to examine the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid, may in all things be affirmed.

ERWIN E. MARSHALL,
Prosecutor of the Pleas, &c.

30 Consent is hereby given on this 21st day of November, 1934, that the above Joinder in Error be filed as of within time.

GEORGE PELLETTIERI,
Attorney for Plaintiff-in-Error.

Filed November 22, 1934.

40 FRED L. BLOODGOOD,
Clerk.

OPINION

STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,*Plaintiff-in-Error.*On Writ of
Error.

10

Submitted Jan. 25, 1935—Decided April 20, 1935.

1. The examining counsel may move to strike out the answer of a witness, or part of an answer which, in reply to a competent question, is irresponsive. Opposing counsel has no right to have the testimony of his adversary's witness struck out unless it is incompetent, in which case either party has the right to have the incompetent testimony excluded. 20
2. The action of the court in holding a defendant, on trial, for contempt, may not be reviewed on bill of exceptions, the remedy therefor being that provided by statute.
3. The direction of a mistrial in a criminal case rests in the sound discretion of the trial judge, and is to be exercised only in very extraordinary and striking circumstances, in order to prevent a failure of justice. Since it rests in discretion, a strict bill of exceptions will not lie to its refusal. 30
4. The committing of the defendant for contempt, in the presence of the jury, is a practice not to be commended, and should be avoided if at all possible. 40

Opinion.

On writ of error.

Before BROGAN, CHIEF JUSTICE, and Justices PARKER and BODINE.

For the defendant-in-error, *Erwin E. Marshall*, prosecutor of the pleas of Mercer county (*Augustine V. Gribbin*, of counsel).

10 For the plaintiff-in-error, *George Pellettieri*.

The opinion of the court was delivered by

BROGAN, CHIEF JUSTICE. The plaintiff-in-error was convicted of malicious mischief in the Quarter Sessions Court of Mercer county. Two questions only are presented on this appeal. Both are brought up on strict bill of exceptions. The first is the refusal of the trial court to strike out an answer made by one of the State's witnesses and the second is the action of the trial judge in committing
20 the defendant for contempt of court because he refused to answer a question.

(1) As to the first legal proposition, apparently the object of the question was to show that the witness, the chief of detectives of Mercer county, had obtained a statement or an admission from the defendant and that it was voluntary in character. The State's attorney asked the witness this question: "Q. * * * Did you tell him you would not do anything to him? A. I did not. He asked me if I
30 could get him an S. S." Thereupon the attorney for the defendant moved to strike this answer from the record and requested that the jury be instructed to disregard it. The court declined so to do and ruled that the answer might stand. Exception was taken for the defendant.

The plaintiff-in-error now argues that the court, in permitting the answer to stand, fell into error for the reason that the answer was in part not responsive. The State says it was harmless to
40 permit the answer to stand and, further, that there

Opinion.

was no explanation as to what the witness meant by an "S. S.," and therefore, that being the part of the answer that was volunteered, no harm was done the defendant by letting the answer stand because that part of the answer was unintelligible to court, jury and counsel. We have never heard the expression "S. S." before but think that perhaps the term was intended to mean suspended sentence. But, be all that as it may, the ground of appeal is valueless. 10

When a witness, under examination, makes an irresponsible answer, counsel for the adverse party is not always within his rights in moving to strike out such answer. The examiner may move to strike out the answer or part of answer which, in reply to a competent question, is irresponsible, but opposing counsel has no such right. The test seems to lie in the competency of the testimony. If the question be competent and the answer incompetent either party may move to strike out the answer. If the witness, in response to a competent question, gives testimony which is competent but irresponsible, the examining counsel has the right to have the irresponsible matter excluded, but the adverse party has no right, on motion, to have such competent although irresponsible testimony struck out. In the present case the question was competent and so was the answer complained of, although it was irresponsible. Defense counsel, however, because it was competent testimony, was not entitled to have it struck out. *State vs. D'Adame*, 84 N. J. L. 386 (at p. 390). The doctrine laid down in this case was followed in *Rubin vs. Trowbridge Sign Co.*, 99 Id. 217, although the syllabus (2) of this later case seems to us misleading and the opinion itself in part (page 218) grounded on elements foreign to the rule in the *D'Adame* case upon 20 30 40

Opinion.

which it relies. In the Trowbridge Sign Co. case it seems that in response to a competent question an expert witness made answer, a good deal of which was volunteered. The opinion indicates that in such a situation the adverse party was entitled to move that the objectionable part of the answer be
 10 struck out, citing *State vs. D'Adame, supra*. If that be taken to mean that the answer was objectionable legally, because it was volunteered or irresponsible, we observe that we do not think that the learned opinion writer intended to give this impression and, fearing that it might give rise to an obscurity as to the real distinction, we deem it prudent to call attention to the line of demarcation as we understand it. In the Trowbridge case, the volunteered part of the answer should have been
 20 struck out on the motion of the non-examining counsel, not because it was irresponsible, but only because it was incompetent, since it was hearsay. Its incompetency is the only reason that it was subject to exclusion on the motion of adverse counsel on the authority of *State vs. D'Adame, supra*.

(2) The next assignment of error upon which a reversal is sought is the action of the trial judge in committing the defendant for contempt because he refused to answer a question. Defendant testified that he had paid out moneys to a public official
 30 for "protection" in the conduct of his operations (what the operations were does not appear, the bill of exceptions containing only enough of the testimony to disclose what actually happened at that particular moment of the trial), and he refused, on being asked, to name the official. He did admit, however, that the "operations" of his concern during the period in which he paid for the so-called protection were "entirely legitimate" and
 40 that the naming of the public official could not be

Opinion.

incriminating to himself. The court then insisted that he name the official in question, and he refused to do so. The court recessed at this juncture for six minutes in order to give the defendant time to consult with his counsel in the matter and after the recess the defendant, on resuming the stand, declined to answer the question on the ground that 10
by so doing he might incriminate himself, whereupon the court adjudged him guilty of contempt and ordered him committed to the county jail until such time as he purged himself of the contempt. Defendant's counsel objected to the action of the court in holding the defendant in contempt and thereupon asked the court to declare a mistrial, which motion was denied and an exception allowed.

The exception was directed at the court's action in holding the defendant in contempt and likewise 20
the denial of the motion for a mistrial. The action of the court in holding the defendant for contempt may not be reviewed on bill of exceptions. The remedy therefor is provided by statute (*Comp. Stat.*, p. 1736, §§ 138, 139). *Attorney-General vs. Verdon*, 90 N. J. L. 494. This brings us to the question as to whether or not it was error for the court to have denied motion for a mistrial because the court committed the defendant for contempt. 30
"The direction of a mistrial in a criminal case rests in the sound discretion of the trial judge and is to be exercised only in very extraordinary and striking circumstances in order to prevent the failure of justice. Since it rests in discretion, a strict bill of exceptions will not lie to its refusal nor can it be availed of under section 136 of our Criminal Procedure act unless its refusal resulted in manifest wrong or injury." *State vs. Lewis*, 83 N. J. L. 161; affirmed, 84 Id. 417. See *State vs.* 40

Opinion.

Unger, 93 Id. 50 (at p. 55); *State vs. Rosenberg*, 97 Id. 430.

10 The arrest of a witness or, as here, the committing of the defendant for contempt, in the presence of the jury, is a practice not to be commended (*State vs. Terry*, 89 N. J. L. 522) and should be, if at all possible, avoided, but we think nevertheless that under the circumstances here presented to us it did not vitiate the trial. *State vs. Harrington*, 87 Id. 713 (at p. 716).

We conclude that the judgment under review must be affirmed.

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40

ORDER OF AFFIRMANCE OF JUDGMENT

NEW JERSEY SUPREME COURT.
January Term, 1935.

BETWEEN	
THE STATE OF NEW JERSEY,	}
<i>Defendant-in-Error,</i>	
AND	
DAVID BLEEFELD, alias JEFF TAY- LOR, alias JAMES H. TAYLOR,	
<i>Plaintiff-in-Error.</i>	Writ of Error to New Jersey Supreme Court. Order of Affirmance of Judg- ment.

10

This cause having been duly argued at the January Term, 1935, of this Court by George Pellettieri, of counsel of plaintiff-in-error, and Erwin E. Marshall and Augustine V. Gribbin, of counsel for defendant-in-error, and the Court having considered the same and finding no error in the record of proceedings of Mercer Court of Quarter Sessions;

20

It is, thereupon, on this first day of May, in the year of our Lord one thousand nine hundred and thirty-five, ORDERED AND ADJUDGED that the judgment of the Mercer Court of Quarter Sessions, removed by Writ of Error in this cause, be affirmed with costs; and record be remitted to the Mercer Court of Quarter Sessions to be proceeded with in accordance with the judgment, and practice of said Court.

30

Entered May 1, 1935.
On Motion of

ERWIN E. MARSHALL,
Attorney for Defendant-in-Error.

Filed May 1, 1935.

40

WRIT OF ERROR

NEW JERSEY, SS.

State of New Jersey to the Chief
Justice and other Justices of our Supreme
Court of Judicature: GREETING: Because
[L. S.] in the record and proceedings, and also in
giving of judgment upon a certain indict-
ment against David Bleefeld, alias Jeff
10 Taylor, alias James H. Taylor, late of the City of
Brooklyn, State of New York, for malicious mis-
chief, as set forth in the indictment.

Pro ut the said indictment, whereof, before you,
he hath been indicted, and is thereof convicted by
a certain jury of the county, taken between the
State of New Jersey and the said David Bleefeld,
alias Jeff Taylor, alias James H. Taylor, as it is
said, manifest error hath intervened to the great
20 damage of the said David Bleefeld, alias Jeff Tay-
lor, alias James H. Taylor, as from his complaint
we have received information, we being willing, in
this behalf, to correct the error in due manner, if
any there shall be, and that speedy justice be done
to him, the said David Bleefeld, alias Jeff Taylor,
alias James H. Taylor, command you that if judg-
ment be thereon given, then that you distinctly and
openly send, under your seal, the record and pro-
ceedings aforesaid, with all things touching the
30 same to our Court of Errors and Appeals in the
last resort in all causes at Trenton, on the twenty-
first day of May, next, and 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 law
ought to be done.

Witness, our Chancellor and President Judge of
our said Court of Errors and Appeals at Trenton,
aforesaid, the first day of May, nineteen hundred
40 and thirty-five.

THOMAS A. MATHIS,
Clerk.

GEORGE PELLETTIERI,
Attorney.

RETURN TO WRIT

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,*Plaintiff-in-Error.*Writ of
Error. 10

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. 20

THOMAS J. BROGAN,
Chief Justice.

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ASSIGNMENTS OF ERROR

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

Defendant-in-Error,

10

vs.

DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,

Plaintiff-in-Error.

On Writ of
Error.
Assignments
of Error.

NEW JERSEY, SS.

20 Afterwards, to wit, on return of said writ before the New Jersey Court of Errors and Appeals, at Trenton, came said David Bleefeld, alias Jeff Taylor, alias James H. Taylor, by George Pellettieri, his attorney, and says that in the record and proceedings aforesaid, and also the giving of judgment there was manifest errors, to wit:

30 Because the Supreme Court erred in giving judgment for the State of New Jersey, and affirming the judgment of the Mercer County Court of Quarter Sessions instead of giving judgment for the plaintiff-in-error and reversing the judgment of the Mercer County Court of Quarter Sessions for the several reasons set forth in exceptions two and five of the Bill of Exceptions and Assignments one and four in the amended Assignment of Errors.

GEORGE PELLETTIERI,

Attorney for Plaintiff-in-Error.

NOTICE OF MOTION

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,*Plaintiff-in-Error.*On Writ of
Error.
Notice
of Motion.

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SIR:

TAKE NOTICE, that I shall apply to the New Jersey Court of Errors and Appeals to be holden at Trenton, on Tuesday, the twenty-first day of May, nineteen hundred and thirty-five, in the State House, in the City of Trenton, at the hour of ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as counsel can be heard, for an order to set down the above-entitled cause for argument on any day within the term which the said Court may see fit, on the ground that since the judgment in the above-entitled cause was not entered until the first day of May, nineteen hundred and thirty-five, and since the Writ of Error issued on the first day of May, nineteen hundred and thirty-five, was made returnable on the twenty-first day of May, nineteen hundred and thirty-five, the cause has not been at issue long enough to admit the plaintiff-in-error to prepare said cause for argument on the opening day of the May Term, 1935.

20

30

Dated May 18, 1935.

Respectfully,

GEORGE PELLETTIERI,

Attorney for Plaintiff-in-Error.

Service of the within Notice of Motion is hereby acknowledged this 18th day of May, 1935.

40

ERWIN E. MARSHALL,

*Prosecutor of the Pleas
of Mercer County.*

ORDER

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

Defendant-in-Error,

10

*vs.*On Writ of
Error.
Order.DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,*Plaintiff-in-Error.*

20 The Plaintiff-in-error in the above-entitled cause having made application to the Court of Errors and Appeals of the State of New Jersey at the May Term, 1935, for an order setting a date for the argument of the above-entitled cause, and the same having been duly argued by George Pellettieri, Esquire, attorney for and of counsel with the plaintiff-in-error, and Erwin E. Marshall, Esquire, attorney for and of counsel with the defendant-in-error, and the Court having duly considered the same;

30 It is thereupon, on this twenty-second day of May, nineteen hundred and thirty-five, ORDERED, that the above-entitled cause be placed at the bottom of the oral list for argument during the present term.

On motion of

GEORGE PELLETTIERI,
Attorney for Plaintiff-in-Error.

105 MAY. 7 1935

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

DAVID BLEEFELD, alias JEFF TAY-
LOR, alias JAMES H. TAYLOR,

Plaintiff-in-Error.

} On Writ of
Error.

BRIEF OF PLAINTIFF-IN-ERROR

On Writ of Error to Supreme Court Affirming Judgment of Mercer County Court of Quarter Sessions. Trial before Scroth, *J.*, and a Jury.

Plaintiff-in-error, David Bleefeld, alias Jeff Taylor, alias James H. Taylor, was indicted at the October Term, 1933, of the Mercer Oyer & Terminer, on a charge that he did unlawfully, wilfully and maliciously damage, injure and spoil the engine of a certain automobile truck (being then and there the property of Anthony Dagoftini, trading as Rex Tailors & Cleaners), by pouring a large quantity of molasses into the crank case of the said automobile truck. He was tried from March 19,

1934, to April 3, 1934, and was found guilty of malicious mischief as charged in the indictment, and he was sentenced to be confined in the New Jersey State Prison for a maximum term of three years and a minimum term of two years. This conviction was affirmed by the Supreme Court and is brought up for review by a Writ of Error issued out of the Court of Errors and Appeals on the first day of May, nineteen hundred and thirty-five.

It is the contention of the plaintiff-in-error that the Supreme Court committed prejudicial, harmful and reversible error in giving judgment for the State by affirming the judgment of the Trial Court for the following reasons:

Because the Supreme Court erred in giving judgment for the State of New Jersey, and affirming the judgment of the Mercer County Court of Quarter Sessions instead of giving judgment for the plaintiff-in-error and reversing the judgment of the Mercer County Court of Quarter Sessions for the several reasons set forth in Exceptions two and five of the Bill of Exceptions and Assignments one and four in the amended Assignment of Errors.

The plaintiff-in-error argued in the Supreme Court, and urges the following points for reversal in this Court:

1. In admitting testimony which was in part not responsive for the reasons more fully discussed hereinafter.
2. In refusing to declare a mistrial after adjudging the plaintiff-in-error in contempt of Court and committing him to the Mercer County Jail in the presence of the jury, on the grounds urged and more fully discussed hereinafter.

Point One.

Under this point will be argued Assignment One in the Amended Assignment of Errors which is, in substance:

That the Court erred in admitting testimony which was in part not responsive.

James S. Kirkham, the Chief of the Mercer County Detectives, was called as a rebuttal witness by the State to testify as to a certain conversation held with the plaintiff-in-error while the plaintiff-in-error was incarcerated in the City of New York, and State of New York. Mr. Kirkham was asked a certain question by the State, to wit:

“Q. And that you would do nothing to him? Did you tell him that you would not do anything to him?”

He answered, to wit:

“A. I did not. He asked me if I could get him an S. S.”

Counsel for the plaintiff-in-error moved that the answer “He asked me to get an S. S.” be stricken from the record and that the jury be instructed to disregard the same, on the ground that it was a voluntary statement and was not within the confines of the question as propounded by the Prosecutor.

The Court of Errors and Appeals in the case of *Rubin vs. Trowbridge Sign Co.*, 99 N. J. L. 216, held that

“If a portion of a witness’ answer was volunteered, and not responsive, the adverse counsel is entitled to move that the objectionable part of the answer be stricken out.” See also, *State vs. D’Adame*, 84 N. J. L. 390.

It is apparent from the above quoted question and answer that the objectional part of Mr. Kirkham's answer was not responsive but volunteered and its admission therefore a clearly harmful error to the plaintiff-in-error, since it tended to insinuate that plaintiff-in-error had a consciousness of guilt and had attempted to bargain with officers of the law and thus obstruct the course of justice.

Point Two.

Under this point will be considered Exception Five as set forth in the stipulation (S. of Case p. 39, lines 24 to 33), and Assignment Four in the Amended Assignment of Errors (S. of Case p. 55), which is, in substance:

That the Court erred in refusing to declare a mistrial after adjudging the plaintiff-in-error in contempt and committing him to the County Jail in the presence of the jury.

The record shows, by the matter brought up in colloquy between Court and plaintiff-in-error, that the plaintiff-in-error was adjudged in contempt of court and committed to the Mercer County Jail in the presence of the jury, after he had refused to name a certain public official, whom he paid for "police protection," on the ground that to do so would incriminate him. Counsel for plaintiff-in-error then made a motion for a mistrial, which motion was denied by the trial court. An exception was taken and allowed.

It is the contention of the plaintiff-in-error that the refusal of the Trial Court to grant a mistrial at this point was an abuse of discretion and resulted in manifest wrong and injury to the plaintiff-in-error because the commitment for contempt in the presence of the jury may have raised in the minds of the jurors an assumption that the court was leaning towards the guilt of the plaintiff-in-error.

The effect of this action by the Trial Court on the Jury was highly prejudicial to the plaintiff-in-error and deprived him of a fair and impartial trial.

By the overwhelming weight of authority the arrest of even a defendant's witness in the presence of the jury has been held to be prejudicial error and grounds for the reversal of the judgment. *State vs. Clark*, 146 P. 1107, 29 Idaho, 48; *Rutherford vs. U. S.*, 258 F. 855, 169 C. C. A. 575; *Boyer vs. The State*, 183 P. 620, 16 Okl. Cr. 388; *State vs. Davis*, 225 S. W., 707; 284 Mo., 695; *State vs. Smith*, 154 So. 2, 179 La. 294; *Atkins vs. The State*, 130 La. 273; *State vs. Dodgen*, 153 S. E. 536, 41 Ga. App. 458; *Mitchell vs. The State*, 26 S. W. (2d) 204; *State vs. Swink*, 271 N. C. 726; *State vs. Owenby*, 146 N. C. 677; *State vs. Dick*, 60 N. C. 440; *Burk vs. The State*, 66 Ga. 157; *Taylor vs. The State*, 42 S. W. 384; *Golden vs. The State*, 75 Miss. 130; *Brandon vs. The State*, 75 Miss. 904; *Kitner vs. The State*, 45 Ind., 177; and numerous other cases.

In *State vs. Swink*, 271 N. C. 726, during the progress of the trial, in the presence of the jury, and while one Forest Phillips was on the stand as a witness for defendant, "the demeanor of the said Forest Phillips was bad and almost contemptuous, and it appearing to the Court that some proceedings ought to be taken against him on account of his testimony, as well as his manner and obstinacy, the Court, at the conclusion of the testimony, directed the sheriff to take charge of him, and also directed the solicitor to take such steps as were necessary." Defendant excepted.

The Court said:

"In this we think the able and just judge who presided inadvertently committed an error, which fairly entitles the defendant to another trial."

The Court further stated that:

“The right to punish summarily a contempt committed in the immediate presence of the Court is necessary to maintain its dignity; but if, in the Judge’s opinion the necessity exists for immediate commitment, injury to the party offering the witness can be avoided by sending the jurors out and keeping the action of the Court from them.”

In *Rutherford vs. U. S.*, 258 F. 855, 169 C. C. A. 575, in a prosecution against leaders of a religious society, who it was charged had violated the Espionage Act, where the government called members of the society and they proved unwilling witnesses, the Court held that the acts of the trial court in committing such witnesses for contempt, on the theory that they were falsifying when they refused to answer questions, but stated that they did not remember, etc., was under the circumstances so prejudicial to the defendants that a new trial should be granted. The Circuit Court of Appeals of the United States in that case said

“We think that the attitude of the court in regard to the testimony of these three witnesses and the action it took in the presence of the jury in the case of the witness, William F. Hudgings, was most prejudicial to the defendants. It was very likely to intimidate witnesses subsequently called, to *prejudice the jurors against the defendants, and to make them think that the court was satisfied of the defendants’ guilt. What a Judge may say to the contrary on such an occasion will not necessarily prevent such consequences.* It is not enough to justify a conviction that the defendant was guilty. He has a right to be tried in accordance with the rules of law. The de-

fendants in this case did not have the temperate and impartial trial to which they were entitled, and for that reason the judgment is reversed.”

The *Rutherford* case is almost directly on point. In that case the government witnesses were committed in contempt of court in the presence of the jury for refusing to answer certain questions put to them by the Court; however, the present case is stronger than the *Rutherford* case because the defendant himself, rather than a government witness, was committed for contempt of court in the presence of the jury for refusing to answer certain questions put to him by the Court.

Courts have even held that the action by the Trial Court in reprimanding defendant's counsel and committing him in contempt of court in the presence of the jury, were grounds for reversal. *Boyer vs. The State, supra*; *State vs. Davis, supra*. Certainly it is clearly more injurious and most prejudicial to the defendant to be committed in contempt of court in the presence of the jury.

The Court should not, either by word or action intimate to the jury that it believes the defendant guilty. It has been held reversible error to have a defendant's alibi witness arrested for perjury, even though the said arrest was made outside the court room, where the jury had some knowledge of the arrest of the witness. *State vs. Smith*, 154 So. 2, 179 La. 294.

In New Jersey we have the cases of *State vs. Terry*, 89 N. J. L., 522, and *State vs. Harrington*, 87 N. J. L., 713, 716, which are distinguishable from the case *sub judice*.

In the *Harrington* case one of the State's witnesses was arrested in the presence of the jury after he had left the stand. This was held to be

no ground for reversing the judgment. This case is distinguishable from the present case on two grounds:

First: In the *Harrington* case a State's witness was arrested in the presence of the jury, whereas, in the instant case the defendant himself was arrested in the presence of the jury, which is certainly more prejudicial to the defendant's rights, causing him to be deprived of an unbiased, fair and impartial trial.

Secondly: The *Harrington* case does not disclose the reason for which the State's witness was arrested, and we respectfully submit that the statement by the Court of Errors and Appeals on page 716, to wit:

"So far as the case discloses, his arrest may have been for some offense entirely disconnected with the trial of the case, but even if the evidence showed that it was for perjury committed on the witness stand, that did not vitiate the trial," is dictum.

The *Terry* case favors the contention of the plaintiff-in-error, that an arrest of a witness in the presence of a jury is a practice not to be commended (89 N. J. L. 524). However, we again wish to repeat that the present case is even stronger than the *Terry* case, because in the present case we have the defendant himself arrested in the presence of the jury.

We maintain that this act of the Trial Court in holding the defendant in contempt of court and committing him to the Mercer County Jail in the presence of the jury was so prejudicial to the defendant that nothing which the Trial Court could subsequently say could rectify the matter. The Trial Court charged the jury as follows:

“You must, of course, totally disregard the fact that, during the course of the trial, the court, in the exercise of its discretion, saw fit to hold the defendant guilty of contempt of court and to punish him therefor. That occurrence has nothing whatsoever to do with the defendant’s innocence or guilt of the crime charged in the indictment on which he is being tried, and, as I have already said, you are not to allow that matter to intrude upon your deliberations in any manner or to any extent whatever.”

We submit that neither this language of the Trial Court, nor any other language it could possibly use, could be powerful enough to wipe from the minds of the jury the prejudice already instilled by that act of the Court.

We again wish to call attention to the case of *Rutherford vs. U. S.*, *supra*, in which, although the Trial Court had charged the jury as follows:

“Well, gentlemen of the jury, I should say the action of the court in this regard should not be considered by you. You should draw no inference against the defendants, because there is no evidence in the case warranting it at the present time.”

yet, the Circuit Court of Appeals of the United States said that:

“It was very likely to intimidate witnesses subsequently called, *to prejudice the jurors against the defendants, and to make them think that the court was satisfied of defendant’s guilt. What a Judge may say to the contrary on such an occasion will not necessarily prevent such consequences.*”

“Remarks made by the trial judge in the jury’s hearing will have the same effect as formal instructions. The trial judge must be careful in his conduct of the case that he says and does nothing in the presence of the jurors while the case is progressing which can be construed to the prejudice either of the prosecution or the accused.” 16 Corpus Juris, p. 827.

In *State vs. Allen*, 100 Iowa 7, 12, 69 N. W. 274, the Court said:

“It must be remembered that jurors watch courts closely, and place great reliance on what a trial judge says and does. They are quick to perceive the leaning of the court. They are prompt to notice the inclination, even, of the court, and from his conduct, whether properly or not, they will almost invariably arrive at a conclusion as to what the court thinks about the case. Every remark dropped by the court, every act done by him during the progress of the trial, is the subject of comment and conclusion by jurymen. Hence it is that judges presiding at trials should be exceedingly discreet in what they say and do in the presence of a jury, lest they seem to lean towards or lend their influence to one side or the other.”

“The utmost care should be exercised by a trial judge not to let fall any expression, either by question, instruction, or otherwise, that is capable of being interpreted by the jury as an index to what the judge thinks of the prisoner, his counsel, or his case.” *Lewis vs. State*, 55 Fla. 54, 45 S. 998.

We are not unmindful of the rule in New Jersey that the direction of a mistrial in a criminal case rests in the sound discretion of the Trial Judge,

and that a denial of such motion can only be grounds for a reversal where there has been an abuse of discretion, *State vs. Unger*, 93 N. J. L., page 51. We respectfully submit, however, that the action of the Trial Court in committing the defendant in contempt of court in the presence of the jury and the Court's refusal to declare a mistrial under such circumstances is such an abuse of discretion as to warrant a reversal of the verdict.

CONCLUSION

For the reasons argued in the separate points argued in this brief, it is respectfully submitted that the judgment of conviction be reversed and a trial de novo ordered.

Respectfully submitted,

GEORGE PELLETTIERI,

*Attorney for David Bleefeld,
alias Jeff Taylor, alias James
H. Taylor, Plaintiff-in-Error.*

and that a great deal of such work has been done in the State of New York. The State of New York has been very successful in its efforts to secure the preservation of its natural resources. The State of New York has been very successful in its efforts to secure the preservation of its natural resources. The State of New York has been very successful in its efforts to secure the preservation of its natural resources.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error.

vs.

DAVID BLEEFIELD, alias JEFF
TAYLOR, alias JAMES H.
TAYLOR,
Plaintiff-in-Error.

} On Writ of Error.

BRIEF OF DEFENDANT IN ERROR.

ERWIN E. MARSHALL,
Prosecutor of the Pleas of Mercer County,
AUGUSTINE V. GRIBBIN, Of Counsel,
Attorneys for Defendant-in-Error.

FACTS.

The facts are substantially as stated in the brief of Plaintiff-in-Error. David Bleefield, alias Jeff Taylor, alias James H. Taylor, the Plaintiff-in-Error, was indicted at the October Term, 1933, of the Mercer Oyer and Terminer for Malicious Mischief. At the trial of the issue he was found guilty as charged and sentenced to be confined in the New Jersey State Prison for a maxi-

mum term of three years and a minimum term of two years.

The judgment of the Mercer Quarter Sessions Court was affirmed by the Supreme Court. And this judgment is now brought up for review by Writ of Error from this Court.

Plaintiff in Error urges that the judgment of the Supreme Court should be reversed for the reasons alleged in assignments of error No. 1 and No. 4.

POINT 1.

There was no reversible error in the ruling of the Trial Judge assigned as error in the first assignment of error.

Under the first assignment of error, Plaintiff-in-Error specifies a single question and answer during the examination of one James S. Kirkham, a State witness called on rebuttal, to wit: "Q. And that you would do nothing to him? Did you tell him that you would not do anything to him? Answer: I did not. He asked me if I could get him an S S."

The refusal of the Trial Court to have the above answer stricken as not responsive, on motion of Plaintiff-in-Error, is alleged as error.

It will be noted that the motion of Plaintiff-in-Error as appears from the bill of exceptions and assignment of errors was to have the answer stricken out as not responsive.

The answer, it appears, was responsive to the question and in addition contained unresponsive matter. The motion of Plaintiff-in-Error was not to have the unresponsive matter stricken from the answer, but to have the entire answer stricken from the record. The motion should have

been to have the irresponsible part of the answer stricken.

Rubin v. Trowbridge, 99 N. J. L. 216.

Besides, as stated in the opinion of the Supreme Court, the irresponsible part of the question being competent testimony, counsel for Plaintiff-in-Error was not entitled to move to have the answer stricken out.

State v. D'Adame, 84 N. J. L. 390.

It is further urged that there was nothing harmful in the irresponsible part of the answer. There was no explanation by the witness as to what was meant by S S, and from all appearances the answer was unintelligible to the Court, jury and counsel. No further questions were put to the witness, and it cannot be maintained that a portion of an answer that is unintelligible and unexplained can work any harm to the Plaintiff-in-Error.

POINT 2.

There were no errors in the rulings of the Trial Court complained of in the fourth assignment of error.

This assignment of error attacks two rulings of the Trial Court namely:

(1) The judgment and sentence by the Court of the Plaintiff-in-Error for contempt in the presence of the jury, and:

(2) The refusal of the Court to grant a motion of Plaintiff-in-Error for a mistrial.

"There can be no doubt of the right of the Court below, for the preservation of its dignity, to commit for contempt committed in its pres-

ence." In re: *Selick J. Mindes*, 88 N. J. L. 117; see also in re: *Peter Carrigan*, 33 N. J. L. 344; in re: *Cheeseman*, 49 N. J. L. 115.

And a judgment in a contempt proceeding is not reviewable on bill of exceptions. "A proceeding in contempt, the sole purpose of which is the punishment of the alleged contemner and the vindication of the dignity and authority of the Court, is not reviewable by an Appellate Tribunal, in the absence of legislative authority, except for lack of jurisdiction in the Court in which the proceeding is had. *Attorney-General v. Verdun*, 90 N. J. L. 494. That the Court below had jurisdiction seems to be without question. In re: *Selick J. Mindes*, 88 N. J. L. 117.

The statutory method of review, which has not been followed by the Plaintiff-in-Error in this Case, is prescribed by Chapter 147, Laws of 1884, page 219; 2 Compiled Statutes, pages 1736-37, as follows:

"138. Review of contempt proceedings; jurisdiction.

Sec. 1. That hereafter, every summary conviction and judgment by any court inferior in its jurisdiction to the Supreme Court, except an Orphans' Court, for a contempt against its own dignity, peace or good order, shall be reviewable, both upon the law and the facts, by the Supreme Court; and every such conviction and judgment by any Orphans' Court shall be reviewable in the same way and manner by the Prerogative Court. (P. L. 1884, p. 219.)

139. Review of contempt proceedings; procedure.

Sec. 2. That every such conviction and judg-

ment shall, upon the petition of the person or persons convicted, signed by at least two counselors-at-law, be, by the court wherein such conviction is had, immediately certified and sent to the Supreme Court or the Prerogative Court, as the case may require, to which the same shall be certified and sent, together with the petition of appeal and all proceedings touching the conviction and judgment, and which said court shall be invested with jurisdiction and required to re-hear the matter of contempt upon which the conviction was founded, both upon the law and upon the facts, which shall be inquired into and ascertained by depositions or in such other way or manner as the court above shall direct; and it shall be required to give such judgment in the premises as to it shall seem to be lawful and just under all the circumstances of the case, to be enforced in such way and manner as it shall order and direct; and that, upon the person appealing giving to the clerk of the court in which conviction shall take place a good and sufficient bond for the due performance of the judgment of the court above, approved by any one of the Justices of the Supreme Court of this State, the appeal shall suspend the judgment and supersede all further proceedings in the court below to enforce the same until otherwise ordered by the court above; and upon the breach of the condition of any such bond so given, it shall be the duty of the prosecutor of the pleas of the county in which it is given to prosecute the same to effect, in the name of the clerk, and pay the proceeds to the county collector, to be distributed by him according to law. (P. L. 1884, p. 220.)

The statutory procedure outlined above was followed in the case of in re: *Selich J. Mindes*, 88 N. J. L. 117; in re: *William P. Verdun*, 89 N. J. L. 16, and *Attorney-General v. William P. Verdun*, 90 N. J. L. 494; and in re: appeal of *William P. Verdun*, 91 N. J. L. 491.

It is the contention of Plaintiff-in-Error that there was manifest error in the court's holding the Plaintiff-in-Error in contempt of court in the presence of the jury. Immediately prior to the time that the Plaintiff-in-Error was held in contempt, he was testifying in his own behalf, and in the course of his testimony had stated that he had paid certain monies weekly over a period of weeks to a certain police official of the City of Trenton. Although the record does not disclose it, except in so far as it can be gleaned from the Judge's charge, the Plaintiff-in-Error maintained in the course of his testimony that the confession made by him and admitted in evidence was obtained under a promise of immunity and in line with this contention gave testimony of making certain payments of money to a certain police official, but on being questioned by the judge he refused to name the public official he referred to and for this refusal he was held in contempt by the Court and punished accordingly.

There appear to be no cases directly in point in this State involving the commitment of a defendant for contempt during the course of his trial.

The cases of foreign jurisdiction cited in the brief of Plaintiff-in-Error refer to the punishment of a witness for contempt in the presence of the jury, but such has been held not error in our Courts.

State v. Harrington, 87 N. J. L. 713.

State v. Terry, 89 N. J. L. 522.

But it is contended by Plaintiff-in-Error that in as much as it has been adjudged error in foreign states (although the contrary is the rule in this State) to hold a witness in contempt in the presence of the jury, a fortiori, it would be error to hold the defendant in contempt. But it appears that the reason behind the decisions adjudging it error to hold a witness in contempt in the presence of the jury seems to be that a party to a suit should not be prejudiced by the conduct of a witness or other person over whom he has no control, and to punish such a person may unjustly react to the damage of a party to a suit. But this reason is lacking when the defendant himself is responsible for the contemptuous conduct. And to hold that the defendant could not be punished for contempt in the presence of the jury on the ground that it would be prejudicial to the defendant would leave the court powerless in the face of a deliberate contempt on the part of the defendant. We could have the situation of a defendant on trial making a mockery of the court by his contemptuous conduct and the court left helpless, lest in maintaining the dignity of the court, he prejudice the minds of the jury against the defendant.

No doubt it would be of benefit to the Court to have the entire record and to know what later transpired at the trial, whether or not the defendant later answered the question, and what further testimony was given. In fact, it seems almost indispensable to have the entire record when called upon to decide whether or not the Plaintiff-in-Error was deprived of a fair and impartial trial.

In failing to bring up the entire record, Plaintiff-in-Error does so at his peril. *State v. DeVito*, 103 N. J. L. 266.

The record does disclose that the Court in its charge

told the jury to totally disregard the fact of Plaintiff-in-Error being held in contempt.

Under the fourth assignment of error it is also contended by Plaintiff-in-Error that the trial Judge erred in refusing to direct a mistrial. But the direction of a mistrial rests in the discretion of the trial Judge, and his action thereon is not reviewable on strict bill of exceptions.

“A mistrial being in the discretion of the Court, a strict bill of exceptions will not lie to its refusal.” *State v. Lewis*, 83 N. J. L. 161; affirmed 84 N. J. L. 417; also *State v. Ungar*, 93 N. J. L. 50. (Reversed on other grounds, 94 N. J. L. 495.)

CONCLUSION.

It is respectfully submitted that for the foregoing reasons the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

ERWIN E. MARSHALL,
Prosecutor of the Pleas of Mercer County,

AUGUSTINE V. GRIBBIN,
Of Counsel,

Attorneys for Defendant-in-Error.

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