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## Writ of Error.

Filed October 10, 1918.

STATE OF NEW JERSEY, *ss.*

(L. S.) THE STATE OF NEW JERSEY, to the Chief Justice and other Justices of our Supreme Court of Judicature. GREETING:

Because in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature before you, between the State of New Jersey, prosecutor and defendant in error, and Frank E. Taylor, defendant and plaintiff in error, in error to the Essex County Quarter Sessions Court manifest error hath intervened to the great damage of the said prosecutor as by its complaint we are informed; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice be done to the parties aforesaid, do command you that, if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the thirtieth day of October next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

*Return.*

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the 10th day of October, nineteen hundred and eighteen.

THOMAS F. MARTIN,
*Clerk.*

J. H. HARRISON,
*Attorney.*

Service of a copy of the within writ is acknowledged this 14th day of October, 1918.

WILBUR A. HEISLEY,
*Attorney of Defendant in Error.*

## Return.

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

WM. S. GUMMERE,
*C. J.*

Filed October 31st. 1918

**Writ of Error.**

Filed.

# New Jersey Supreme Court.

NEW JERSEY, *ss:*

The State of New Jersey to the Judge of the Court of Common
[L. S.] Pleas constituting the Court of Quarter Sessions in and for the County of Essex, GREETING:

Because in the record and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey against Frank E. Taylor, et al., for conspiracy, manifest error hath intervened to the great damage of the said Frank E. Taylor, as from his complaint we have received information; we being willing in this behalf to correct the error in due manner if any shall be, and that speedy justice be done to him, the said Frank E. Taylor, DO COMMAND YOU that if judgment be thereon given, then that you do distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, together with the entire record of the proceedings had upon the trial of said indictment, to our Supreme Court, to be held at Trenton, on the thirteenth day of August, nineteen hundred and seventeen, 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 laws and customs of New Jersey, ought to be done.

*Writ of Error.*

WITNESS, William S. Gummere, Chief Justice of our said Supreme Court at Trenton, the twenty-fourth day of July, nineteen hundred and seventeen.

WM. C. GEBHARDT,
*Clerk.*

WILBUR A. HEISLEY,
*Attorney.*

## Order.

NEW JERSEY SUPREME COURT.

FRANK E. TAYLOR,
*Defendant-Plaintiff in Error,*

*vs.*

THE STATE OF NEW JERSEY,
*Plaintiff-Defendant in Error.*

*Order.*

The Prosecutor of the Pleas and Wilbur A. Heisley, attorney for the defendant, having duly consented that the said defendant should make application to me, the undersigned, for leave to amend the Writ of Error issued in said cause, by striking therefrom the words, "together with the entire record of the proceedings had upon the trial of said indictment," and that my determination upon such application should have the same force and effect as if made by the Supreme Court, and having duly considered said application in the presence of said attorneys,

It is, on this sixth day of October, nineteen hundred and seventeen, ORDERED that the said Writ of Error be and the same is hereby amended by striking therefrom the said words, "together with the entire record of the proceedings had upon the trial of said indictment."

Let this order be entered in the minutes.

(Signed) WM. S. GUMMERE.
*C. J.*

*Return.*

Entered October 23, 1917.

On motion of

WILBUR A. HEISLEY,
*Attorney of Plaintiff in Error.*

A true copy,

WM. C. GEBHARDT,
*Clerk.*

## Return.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss:*

I, WILLIAM P. MARTIN, Judge of the Court of Common Pleas and Court of Quarter Sessions, Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the indictment, judgment record and proceedings, together with all things touching and concerning the same, together with the entire record of the proceedings had upon the trial of the said indictment as by the within amended writ to me directed I am commanded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the [L. S.] official seal of said Court and County at Newark this 22nd day of January, A. D. 1918.

WM. P. MARTIN,
*Presiding Judge,*
*Of the Court of Quarter Sessions,*
*Essex County, New Jersey.*

## Indictment.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss:*

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the first Tuesday of April, A. D. one thousand nine hundred and seventeen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Peter Fox, Henry Loeffler, Albert B. Diss, George Barker, Edward H. McCormick, Jr., Eugene F. McCabe, Chester L. Blauvelt, Patrick J. Corr, John B. Brasser, Theodore Aab, William R. Konow, Alfred Popik, John W. Halsey, Frederick Wiebke, Herman Metzger, Karl J. Wolf, Israel Dimond, Harry Hall, Edward H. Heckel, Aaron Lang, John Buhl, Thomas Halpin and Fred C. Artopeus, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to inquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County to wit:

Essex Oyer and Terminer.

April Term, A. D. 1917.

The Grand Jurors of the State of New Jersey in and for the body of the County of Essex, upon their oath present, that at all times and days hereinafter mentioned, one James F. Cowan

was a court attendant, duly appointed to attend upon the several courts of the County of Essex, in the State of New Jersey; and one Frank E. Taylor was a clerk in the office of the Clerk of the said County of Essex, duly qualified and acting as such, and as such clerk was charged, among other things, with the duty of correctly keeping the record of attendances of the petit jurors summoned to serve in the various courts of said County of Essex, and of certifying said record of attendances to the Sheriff of said County of Essex, who, upon such certification, was authorized to pay, and did pay, out of the moneys and funds of said County of Essex, and of the Board of Chosen Freeholders of said County, to said petit jurors, the various amounts of money to which said jurors were, by law, respectively entitled.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Frank E. Taylor and James F. Cowan, and divers other persons to the Grand Jurors aforesaid unknown, late of the City of Newark, in the County of Essex aforesaid, on the first day of October, in the year our Lord one thousand nine hundred and sixteen, and on all other days since and up to the taking of this inquisition, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this court, wickedly, devising and intending, knowingly, corruptly and unlawfully to cheat and defraud the Board of Chosen Freeholders of the County of Essex of its moneys and funds, did, amongst themselves, wickedly, corruptly, knowingly and unlawfully conspire, combine, confederate and agree together fraudulently and falsely to cheat and defraud the Board of Chosen

*Indictment.*

Freeholders of the County of Essex, of its moneys, goods, chattels and property, and fraudulently and falsely to cheat and defraud the said the Board of Chosen Freeholders of the County of Essex of divers large sums of money, to wit: five hundred dollars, the property of the said, the Board of Chosen Freeholders of the County of Essex, by falsely and corruptly certifying to the Sheriff of said County of Essex the record of attendances of the petit jurors summoned to serve in the courts of said county, by corruptly procuring the fraudulent application of the funds of the said, the Board of Chosen Freeholders of the County of Essex, to the payment of unlawful and fraudulent certificates and warrants issued to such petit jurors; and fraudulently and falsely to cheat and defraud the said, the Board of Chosen Freeholders of the County of Essex, of its moneys and property, by corruptly procuring the fraudulent application of divers large sums of money, the property of the said, the Board of Chosen Freeholders of the County of Essex, for use other than the use of said county and the said the Board of Chosen Freeholders, and by wilfully and corruptly concealing said fraudulent application of said moneys and property by falsely keeping the records of attendances of the petit jurors, duly summoned to serve in the various courts of said County of Essex, whereby the said, the Board of Chosen Freeholders of the County of Essex became and was cheated and defrauded of a large sum of money, of the moneys of the said, the Board of Chosen Freeholders of the County of Essex, to wit: the sum of five hundred dollars.

*Indictment.*

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in execution of and according to said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the thirtieth day of March, in the year of our Lord one thousand nine hundred and seventeen, at the City of Newark aforesaid, in the county aforesaid, the said Frank E. Taylor did falsely, fraudulently and corruptly keep the record of the days of attendance of one James Marshall, who has theretofore been summoned to serve as a petit juror in the courts of said county, by crediting said James Marshall with having served as such petit juror for a period of ten days, whereas in truth and fact, the said James Marshall had not then and there served as such petit juror; and the said Frank E. Taylor, being then and there a clerk in the office of the Clerk of said County of Essex, did falsely, fraudulently and corruptly certify to the Sheriff of said County of Essex that the said James Marshall had served as a petit juror in the courts of said county for a period of ten days, and did thereupon fraudulently and corruptly draw a certain warrant in favor of said James Marshall, which said warrant authorized and directed the Sheriff of said county to pay to the said James Marshall out of the funds and moneys of the said, the Board of Chosen Freeholders of the County of Essex, the sum of twenty-five dollars as compensation, in accordance with the statute in such case made and provided, for the services of the said James Marshall for ten days' attendance as petit juror in the aforesaid courts; and the said Frank

E. Taylor and the said James F. Cowan did fraudulently and corruptly cause and procure said warrant and authorization to be presented to the said Sheriff of Essex County for payment out of the moneys and funds aforesaid of the said, the Board of Chosen Freeholders of the County of Essex, they, the said Frank E. Taylor and James F. Cowan then and there well knowing that the said James Marshall had not then and there served as a petit juror in the courts of said county for a period of ten days, and that the said James Marshall was not then and there entitled to receive said sum of twenty-five dollars out of the moneys and funds of the said, the Board of Chosen Freeholders of the County of Essex; that afterwards, on the day and year last aforesaid, at the city and county aforesaid, Ralph B. Schmidt, being then and there Sheriff of said County of Essex, and relying upon said certificate, warrant and authorization, and upon its presentation by the said James Marshall, did pay and cause to be paid to him, the said James Marshall, the sum of twenty-five dollars out of the funds of the said, the Board of Chosen Freeholders of the County of Essex; whereby the said, the Board of Chosen Freeholders of the County of Essex was cheated and defrauded of a large sum of money, to wit, the sum of twenty-five dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further execution and according to said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the twentieth day of April, in the year of our Lord one thousand nine hundred and

seventeen, at the City of Newark aforesaid, in the county aforesaid, the said Frank E. Taylor did falsely, fraudulently and corruptly keep the record of the days of attendance of one Charles J. Alliger, who had theretofore been summoned to serve as a petit juror in the courts of said county, by then and there crediting said Charles J. Alliger with having served as such petit juror for a period of eleven days, whereas in truth and fact, the said Charles J. Alliger had not then and there served as such petit juror; and the said Frank E. Taylor, being then and there a clerk in the office of the Clerk of said County of Essex, did falsely, fraudulently and corruptly certify to the Sheriff of said County of Essex that the said Charles J. Alliger had served as a petit juror in the courts of said county for a period of eleven days, and did thereupon fraudulently and corruptly draw a certain warrant in favor of said Charles J. Alliger, which said warrant authorized and directed the Sheriff of said county to pay to the said Charles J. Alliger, out of the funds and moneys of the said, the Board of Chosen Freeholders of the County of Essex, the sum of twenty-seven dollars and fifty cents, as compensation, in accordance with the statute in such case made and provided, for the services of the said Charles J. Alliger for eleven days' attendance as petit juror in the aforesaid courts; and the said Frank E. Taylor and the said James F. Cowan did fraudulently and corruptly cause and procure said warrant and authorization to be presented to the said Sheriff of Essex County for payment out of the moneys and funds aforesaid of the said, the Board of Chosen Freeholders of the County of Essex,

they, the said Frank E. Taylor and James F. Cowan, then and there well knowing that the said Charles J. Alliger had not then and there served as a petit juror in the courts of said county for a period of eleven days, and that the said Charles J. Alliger was not then and there entitled to receive said sum of twenty-seven dollars and fifty cents out of the moneys and funds of the said, the Board of Chosen Freeholders of the County of Essex; that afterwards, on the day and year last aforesaid, at the city and county aforesaid, Ralph B. Schmidt, being then and there Sheriff of said County of Essex, and relying upon said certificate, warrant and authorization, and upon its presentation by the said Charles J. Alliger, did pay and cause to be paid him, the said Charles J. Alliger the sum of twenty-seven dollars and fifty cents out of the funds of the said, the Board of Chosen Freeholders of the County of Essex, whereby the said, the Board of Chosen Freeholders of the County of Essex was cheated and defrauded of a large sum of money, to wit, the sum of twenty-seven dollars and fifty cents.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the fourth day of May, in the year of our Lord one thousand nine hundred and seventeen, at the City of Newark aforesaid, in the county aforesaid, the said Frank E. Taylor did falsely, fraudulently and corruptly keep the record of the days of attendance of one Fred S. Helwig, who had theretofore been summoned to serve as

a petit juror in the courts of said county, by crediting said Fred S. Helwig with having served as a petit juror for a period of ten days, whereas in truth and fact, the said Fred S. Helwig had only served as such juror for a period of three days, and the said Frank E. Taylor, being then and there a clerk in the office of the Clerk of said County of Essex, did falsely, fraudulently and corruptly certify to the Sheriff of said County of Essex that the said Fred S. Helwig had served as a petit juror in the courts of said county for a period of ten days, and did thereupon fraudulently and corruptly draw a certain warrant in favor of said Fred S. Helwig, which said warrant authorized and directed the Sheriff of said county to pay to the said Fred S. Helwig out of the funds and moneys of the said, the Board of Chosen Freeholders of the County of Essex, the sum of twenty-five dollars as compensation, in accordance with the statute in such case made and provided, for the services of the said Fred S. Helwig for ten days' attendance as petit juror in the aforesaid courts; and the said Frank E. Taylor and the said James F. Cowan did fraudulently and corruptly cause and procure said warrant and authorization to be presented to the said Sheriff of Essex County for payment out of the moneys and funds aforesaid of the said, the Board of Chosen Freeholders of the County of Essex, they, the said Frank E. Taylor and James F. Cowan, then and there well knowing that the said Fred S. Helwig had not then and there served as a petit juror in the courts of said county for a period of ten days, but had only served as such juror for a period of three days, and that the said Fred

S. Helwig was not then and there entitled to receive said sum of twenty-five dollars out of the moneys and funds of the said, the Board of Chosen Freeholders of the County of Essex; that afterwards, on the day and year last aforesaid, at the city and county aforesaid, Ralph B. Schmidt, being then and there Sheriff of said County of Essex, and relying upon said certificate, warrant and authorization, and upon its presentation by the said Fred S. Helwig, did pay and cause to be paid to him, the said Fred S. Helwig, the sum of twenty-five dollars out of the funds of the said, the Board of Chosen Freeholders of the County of Essex, whereby the said Board of Chosen Freeholders of the County of Essex was cheated and defrauded of a large sum of money, to wit, the sum of seventeen dollars and fifty cents.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the fourth day of May, in the year of our Lord one thousand nine hundred and seventeen, at the City of Newark aforesaid, in the county aforesaid, the said Frank E. Taylor did falsely, fraudulently and corruptly keep the record of the days of attendance of one Fred Busse, who had theretofore been summoned to serve as a petit juror in the courts of said county, by crediting said Fred Busse with having served as a petit juror for a period of ten days, whereas in truth and fact, the said Fred Busse had only served as such juror for a period of two days; and the said Frank E. Taylor, being then and

there a clerk in the office of the Clerk of said County of Essex, did falsely, fraudulently and corruptly certify to the Sheriff of said County of Essex, that the said Fred Busse had served as a petit juror in the courts of said county for a period of ten days, and did thereupon fraudulently and corruptly draw a certain warrant in favor of said Fred Busse, which said warrant authorized and directed the Sheriff of said county to pay to the said Fred Busse out of the funds and moneys of the said, the Board of Chosen Freeholders of the County of Essex, the sum of twenty-five dollars as compensation, in accordance with the statute in such case made and provided, for the services of the said Fred Busse for ten days' attendance as petit juror in the aforesaid courts; and the said Frank E. Taylor and the said James F. Cowan did fraudulently and corruptly cause and procure said warrant and authorization to be presented to the said Sheriff of Essex County for payment out of the moneys and funds aforesaid of the said, the Board of Chosen Freeholders of Essex County, they, the said Frank E. Taylor and James F. Cowan, then and there well knowing that the said Fred Busse had not then and there served as petit juror in the courts of said county for a period of ten days, but had only served as such juror for a period of two days, and that the said Fred Busse was not then and there entitled to receive said sum of twenty-five dollars out of the moneys and funds of the said, the Board of Chosen Freeholders of Essex County; that afterwards, on the day and year last aforesaid, at the city and county aforesaid, Ralph B. Schmidt, being then and there Sheriff of said County of Essex, and relying upon said

certificate, warrant and authorization, and upon its presentation by the said Fred Busse, did pay and cause to be paid to him, the said Fred Busse, the sum of twenty-five dollars out of the funds of the said, the Board of Chosen Freeholders of the County of Essex, whereby the said, the Board of Chosen Freeholders of the County of Essex, was cheated and defrauded of a large sum of money, to wit, the sum of twenty dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the eighteenth day of May, in the year of our Lord one thousand nine hundred and seventeen, at the City of Newark aforesaid, in the County aforesaid, the said Frank E. Taylor did falsely, fraudulently and corruptly keep the record of the days of attendance of one Jacob M. Englander, who had theretofore been summoned to serve as a petit juror in the courts of said county, by crediting said Jacob M. Englander with having served as such petit juror for a period of ten days, whereas in truth and fact, the said Jacob M. Englander had not then and there served as such petit juror, and the said Frank E. Taylor, being then and there a clerk in the office of the Clerk of said County of Essex, did falsely, fraudulently and corruptly certify to the Sheriff of said County of Essex that the said Jacob M. Englander had served as a petit juror in the courts of said county for a period of ten days, and did thereupon fraudulently and corruptly draw a certain warrant in favor of said Jacob M. Englander, which said warrant

authorized and directed the Sheriff of said county to pay to the said Jacob M. Englander out of the funds and moneys of the said, the Board of Chosen Freeholders of the County of Essex, the sum of twenty-five dollars as compensation, in accordance with the statute in such case made and provided, for the services of the said Jacob M. Englander for ten days' attendance as petit juror in the aforesaid courts; and the said Frank E. Taylor and the said James F. Cowan did fraudulently and corruptly cause and procure said warrant and authorization to be presented to the said Sheriff of Essex County for payment out of the moneys and funds aforesaid of the said, the Board of Chosen Freeholders of the County of Essex, they, the said Frank E. Taylor and James F. Cowan, then and there well knowing that the said Jacob M. Englander had not then and there served as a petit juror in the courts of said county for a period of ten days, and that the said Jacob M. Englander was not then and there entitled to receive said sum of twenty-five dollars out of the moneys and funds of the said, the Board of Chosen Freeholders of the County of Essex; and that afterwards, on the day and year last aforesaid, at the city and county aforesaid, Ralph B. Schmidt, being then and there Sheriff of said County of Essex, and relying upon said certificate, warrant and authorization, and upon its presentation by the said Jacob M. Englander, did pay and cause to be paid to him, the said Jacob M. Englander, the sum of twenty-five dollars out of the funds of the said, the Board of Chosen Freeholders of the County of Essex, whereby the said, the Board of Chosen Freeholders of the County of Essex, was cheated

and defrauded of a large sum of money, to wit, the sum of twenty-five dollars, 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.

J. H. HARRISON,
*Prosecutor of the Pleas.*

On the sixth day of June, A. D. nineteen hundred and seventeen, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of General Quarter Sessions, and to be delivered to the clerk of the Court of General Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the clerk of said court and an entry of such order and delivery and filing was then and there made in the minutes of said court at the same time pursuant to the statute in such case made and provided.

## Plea.

And afterwards, that is to say, on the sixth day of June, A. D. nineteen hundred and seventeen, at a Court of General Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable William P. Martin, Presiding Judge of the Court of Common Pleas, Frank E. Taylor, in the custody of Ralph B. Schmidt, Sheriff of the County of Essex afore-

said, and the said Frank E. Taylor being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is not guilty thereof, and therefore for good and evil he puts himself upon the country, &c. and J. Henry Harrison, Prosecutor of the Pleas of said State, for said County of Essex, in this behalf doth the like.

THEREFORE let a jury thereupon come before the Court of General Quarter Sessions, to be holden at Newark, in and for the County of Essex, on the eighteenth day of June, A. D. nineteen hundred and seventeen, then next ensuing, twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Frank E. Taylor, to recognize upon their oath, whether the said Frank E. Taylor is guilty of the premises in the said indictment specified or not guilty, because the said J. Henry Harrison, Esquire, Prosecutor, &c. as the said Frank E. Taylor puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say the eighteenth day of June, A. D. nineteen hundred and seventeen, at the same Court of General Quarter Sessions, holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, comes the said J. Henry Harrison, who prose-

*Judgment.*

cutes as aforesaid, and the said Frank E. Taylor, and the jury of whom mention is before made, and by Ralph B. Schmidt, Sheriff of the County of Essex, for this purpose empanelled and returned, to wit: William Brueckman, William B. Yearance, George H. Denman, Jr., William G. Dixon, Charles W. Brown, Henry Fenster, Abraham Friedman, Richard M. Taylor, Fred M. Kreimer, William J. Blair, Harry M. Fernberger and Augustus Abbott, being called were sworn upon the jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the twenty-second day of June, A. D. nineteen hundred and seventeen, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and court do say upon their oath, they find the said defendant Frank E. Taylor guilty as charged, and so they say all.

Whereupon all and singular the premises being seen and by the court now here fully understood,

It is, on this twenty-fourth day of July, A. D. nineteen hundred and seventeen, ORDERED and adjudged that the said Frank E. Taylor be committed to the Essex County Penitentiary for a term of eighteen months and to pay a fine of two hundred and fifty dollars, and stand committed until the costs and fine are paid, which costs are taxed by the clerk of this court at the sum of fifty-six dollars and seventy-seven cents.

And the said defendant be in mercy, &c.

Judgment signed July 24, 1917.

WM. P. MARTIN,

[L. S.] *Judge.*

ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

June 18, 1917.

| | |
|---|---|
| STATE<br>*vs.*<br>FRANK E. TAYLOR. | *Indictment No. 273.*<br>*Conspiracy.* |

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor William P. Martin, Judge, and a jury, at the court house, in the City of Newark, New Jersey, in the presence of Henry J. Harrison, Esq., prosecutor of the pleas for the state, and Wilbur A. Heisley, Esq., for the defendant.

*The Court.* I understand the deputy sheriff may be called upon as a witness. Have you any objection to his drawing the jury?

*Mr. Heisley.* Not at all.

Prosecutor Harrison opened for the state.

JAMES F. COWAN, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Cowan, where do you live? A I live in East Orange.

Q How long have you lived there? A For three years or more.

Q Do you know the defendant, Frank E. Taylor? A I do.

*James F. Cowan, direct.*

Q How long have you known him? A Well, since I came to this building about ten years ago.

Q And you came to this building, as you term it, in what capacity? A As elevator man.

Q And then subsequently you received an appointment as court attendant? A I did.

Q And when did you receive that appointment? A Seven years ago.

Q And to what court were you assigned, Cowan? A Judge Davis's court.

Q Then subsequently you went to another court? A Yes, sir.

Q And which one, Judge Dungan? A Well, I was with the new—at the time they had a special court upstairs, I was with them while they had that special criminal court.

Q And about how long ago was it that you went to Judge Dungan's court as court attendant? A About two years.

Q In what capacity was Frank E. Taylor serving at that time? A Clerk.

Q And where? A In Judge Dungan's court.

Q And has he served as such clerk or in that capacity up to the present time? A He has.

Q Do you know what Mr. Taylor's duties were in the matter of the calling of the list of jurors summoned to serve? A Yes, sir; he called the roll every morning.

Q And where would he call the roll? A In the Supreme Court room.

Q That is what you have designated as Judge Dungan's room? A Yes, sir.

*The Court.* Called the roll of what?

*Witness.* Jurors.

*The Court.* That is rather indefinite, I think.

*Mr. Harrison.* It is merely introductory. I will prove that in another way.

Q Who had charge, if you know, of the excusing of jurors beginning with October, 1916? A Judge Osborne.

Q And do you know the method by which Judge Osborne excused the jurors? A Only the slips that would come it. The name would be written on a slip.

Q Mr. Taylor would receive slips from Judge Osborne? A Yes, sir.

*Mr. Harrison.* It is admitted by the defense that the two bundles of slips were written by Judge Osborne, were notifications to Mr. Taylor by Judge Osborne and Judge Martin designating the jurors who were to be excused and the times for which their excuses were to run.

*The Court.* To be excused or had been?

*Mr. Harrison.* Were to be excused, and as a result were excused.

*Mr. Heisley.* We admit, if the Court please, that those slips are the slips signed by Judge Osborne notifying Mr. Taylor that he had excused the jurors. We do not admit they are all the slips the Judge sent to him, but such as he produces are genuine slips.

*Mr. Harrison.* I offer the slips.

(Two bundles of slips marked Ex. S 1 and S 2.)

Q I show you a book marked "Jury List," and ask you if you have ever seen this book before? A Yes, sir; I have.

Q Where? A Up in the court room, Mr. Taylor's desk.

Q And do you know who kept that book? A Yes, sir.

Q And what was the method pursued by Mr. Taylor for indicating the presence or absence of the jurors whose names were set forth in the book?

*Mr. Heisley.* I object.

*The Court.* Objection sustained. He has not yet said Mr. Taylor kept the book. You asked him if he knew who kept it and he said yes.

Q Who kept that book, Mr. Cowan? A Mr. Taylor.

Q The defendant, Frank E. Taylor? A Yes, sir.

*The Court.* I suppose the book covers a longer period than October, 1916?

*Witness.* I don't know what it contains. I only know he called the roll from the book. It is the roll book.

Q What was the method which Mr. Taylor had for the marking—for indicating the presence or the absence or the excusing of the jurors set forth in these lists? A Just have a mark down for present and an E for excused.

Q And what kind of a mark was used for indicating the presence of the jurors? A Just a straight mark.

*The Court.* Straight line?

*Witness.* Straight line.

Q Perpendicular straight line? A Yes, sir.

*James F. Cowan, direct.*

Q And the mark used for indicating the excusing of a juror was what? A E.

*Mr. Harrison.* I offer that part of the book showing the list of attendances and excuses of jurors beginning with March 19, 1917, and ending May 18, 1917.

*The Court.* Are the pages numbered?

*Mr. Harrison.* No; they are not. There is no other way of identifying them.

*The Court.* You offer these inclusive?

*Mr. Harrison.* Inclusive.

(Book marked Ex. S 3.)

Q Was there any other method of excusing jurors that you know of? A Yes, sir.

Q And what was that method, or who excused them by the other method you refer to? A Mr. Taylor.

Q And did you know about that method? A Yes, sir.

Q Had you had a talk with Mr. Taylor about it? A He had a talk with me.

Q Oh, he came to you? A Yes, sir.

Q And when was the first time that he came to you, Cowan? A Oh, I can't tell. I think it was some time around October, to the best of my knowledge—some time there—I can't tell exactly just when.

Q Some time in October of what year? A Last year.

Q And what did Taylor say to you on that occasion? A Why, he didn't say anything on that occasion, that was the first time that we let a man go.

*The Court.* The first time you did what?

*Witness.* Let a man go away.

Q And after you had let him go did you have another talk with him? A Yes, sir.

Q And when? A About a month after that.

Q And what did Taylor say to you? A Well, we let another—

*Mr. Heisley.* What?

*Witness.* Another man went.

*The Court.* What did he say to you, not what you did.

*Witness.* He didn't say anything just at that time. One time he come in and he told me he had a man that was coming in on Monday morning and he said he wants to get away very bad—if I would talk to him and tell him just what to do he thought that this man would be all right. So I said, "What will I say to him?" "Well," he says, "you tell him that if he will go away that we will have to mark him present—we can't excuse him outright—we will have to mark him present and for him to come back at the end of the term and draw the money and then return it to me so that I could give it back to Mr. Taylor to fix up his books."

Q And what did you say to him?

*Mr. Heisley.* What was the last?

(Answer read.)

Q And can you fix the time of that talk with Taylor? A Well, it was before the holidays.

Q Before the holidays in 1916? A Yes, sir.

Q And when Taylor made these statements to you what did you say to him, Cowan? A

I said it was all right to leave a man go, but how about the collecting of the money—I told him that I didn't care to do that.

Q What did he say then? A Well, he didn't say anything. He said that was the only way we could let him go. He said this man would be glad enough to get away, he wouldn't say anything about it.

Q And did Taylor say anything to you further about why the juror would not say anything about it? A Yes, sir; he told me that as soon as he would draw the money that that would make him a party to it and he would have to keep his mouth shut.

Q Now, do you remember the name of the man? A No; I couldn't tell you the name. I didn't know one man from another. I only saw him about a minute, while I was talking to him.

Q When did you next—do you remember whether you excused that man or not? A Yes, sir; that man went away.

Q Were you present when he was paid off? A Yes, sir.

Q Do you know how many days he was excused for? A I think four or five, I am not sure.

Q Now, will you tell the Court and jury just what happened after he had been excused? A Why, he went away and he came back and served some of his time, as I recollect it, and then he went away for the days that we let him go and he come in and served the rest of his time and on pay day he got his money.

Q He got how much money? A He got all that was coming to him for the full time.

Q Do you know what he did with it? A He kept what he served and gave me the rest. The

exact amount I can't tell you, either ten or eleven dollars, something like that.

Q What did you do with this ten or eleven dollars you got from him? A I went to Mr. Taylor with it.

Q When you went to Mr. Taylor with it what did you do with the money? A We divided.

Q What ratio? A Why, he gave me half. I told him what I had.

Q Did you have any talk with him at the time of the division of this money? A No; just took half of it and he took half—he gave me half of it back—I told him what I had.

Q When next did you talk with Taylor about the excusing of jurors? A Well, it was some time right after the New Year.

Q Now, tell us just where this was had and what was stated both by him and you in this conversation. A Well, it was just about the same thing. He told me when he would have a man that would come in—he would say there will be a man in here Monday morning and I want you to take care of him. He is all right. Tell him just what to do.

Q And what would he tell you to tell these jurors? A Told me I should let them go if they would promise to keep their mouth shut, that we had to mark them present, that we couldn't excuse them outright, we had to mark them present and if they would agree to that to come around on pay day and draw it and give the money back to me, so that I could give it back to Mr. Taylor and he would fix up the books.

Q And what did you say to him when he told you that on this occasion in the early part

of the New Year, I believe you said? A Why, I told him just the same. I didn't like the idea of collecting this money from the men. I said it was all right to let them go, but he told me once they drawed it out that makes them a party to it and you needn't be afraid.

*The Court.* What is the last part of that answer?

(Latter part of answer read.)

Q And a result of this conversation in the early part of the New Year what took place? A Only just when a man would come in to be excused why he would tell him to sit one side and as soon as I would come in he would tell me about the man and I would go and talk to him.

Q And he would then refer you to certain— A Certain jurors.

Q Jurors? A Yes, sir.

Q And you would then go to them and make the arrangement according to his suggestion? A Make the arrangement, yes, sir.

Q Where was the jury box containing the numbers and names of the jurors kept? A In all courts. It would go from one court to another.

Q And what would you do after excusing a juror so far as the slips were concerned? A Well, if a man was excused for two days or one day I would take his name out and wrap it up in a piece of paper and mark on it the day. If the juror was excused for the term I would take that slip out and tear it in two and throw it on the floor. If he was excused for the first week I would take out the slip for the first week and wrap that in a piece of

paper and mark on it, "Excused for the first week."

Q What did you do with the slips containing the names of jurors which you and Taylor permitted to go—whom you and Taylor had permitted to go? A Put them in the drawer.

Q What drawer? A In the table upstairs in the court room, some time.

Q Judge Dungan's court room? A Yes, sir. Sometimes in the little pasteboard box on Mr. Taylor's desk.

Q And upon the expiration of the term of these jurors whom you had excused what would you do with the slips? A Generally destroyed them.

Q Upon the ending of the term of these jurors what arrangements did you make for the payment to them of money by the sheriff? A I would meet them outside in the hall and they would give me back whatever was coming to them.

*The Court.* Outside of what? In the hall?

*Witness.* Out in the corridor.

*The Court.* Where?

*Witness.* On the top floor sometimes, sometimes on the mezzanine floor and sometimes down on the first floor.

Q And was this by arrangement with the respective jurors? A Yes, sir.

Q And upon the receipt of the money from the jurors what would you do with the money? A I would bring it back upstairs and give it to Mr. Taylor—divide it.

Q And where would you divide it? A Generally down in the jury room, Judge Dungan's jury room.

Q And upon what basis? A Fifty-fifty.

Q And did the division always take place in the jury room? A Most always.

Q Just describe the division itself, Cowan? A Well, I generally kept it all in the lefthand pocket and I would take it when I would get all through and go down there and I would put it right out on the table and count it out. Sometimes he would count it and sometimes I would count it. Then we would take half each.

Q Do you know Frank S. Helwig? A I wouldn't know him to see him.

Q Stand up, Mr. Helwig. I ask you if you recognize the gentleman who has stood up in the court room as Frank S. Helwig? A I hardly know him by name.

Q Do you know his face? A I cannot say as I do.

Q Do you know John R. Matthews? A I might know him if I see hi.m

Q Stand up, Mr. Matthews? A Yes, sir; I remember that man.

Q Do you know when he served as a petit juror in this county.

*Mr. Heisley.* I object on the ground that he is not one of the persons named in the indictment, who is implicated in this conspiracy. I am making this motion in the belief that he is not one of the persons in the indictment.

*Mr. Harrison.* He is not mentioned, I believe, your Honor, as one having performed one of the so-called overt acts, but

it seems to me that conspiracy being the essence of the crime and the overt acts being of themselves of comparatively little importance that we might introduce proof as to other overt acts than those in the indictment.

*Mr. Heisley.* I understand that in common law conspiracy is no crime unless something is done in the way of an overt act in furtherance of it. The prosecutor by this indirect way seeks to prove an overt act which is not alleged in the indictment and I submit it is incompetent.

*The Court.* Is there only one count in the indictment?

*Mr. Harrison.* One count charging these defendants with having conspired to cheat and defraud the Board of Freeholders in a number of ways.

*The Court.* The gravemen of the indictment is the conspiracy, isn't it, Judge?

*Mr. Heisley.* It is.

*The Court.* I will hear you.

*Mr. Heisley.* There is one count in the indictment charging a conspiracy between these two men to defraud this county. The prosecutor then has specifically alleged that in order to carry out that conspiracy we dealt with five persons whom he has named. I say that when he chooses to name any person—and he must name them under our statute, because the statute, of course, as your Honor knows, requires an overt act to be specified—that when he has named five men it must be manifestly unjust to permit him to come in and prove people

whom he has not named at all. I think that such an indictment is not within the scope of the federal or the state constitution. It requires him to intelligently apprise us of the charge made against us. The charge made against us is a conspiracy perfected and perpetrated through the means of five persons whom he names.

*The Court.* If this was conspiracy to murder or commit robbery all that would be sufficient would be to allege the conspiracy, wouldn't it?

*Mr. Heisley.* To commit a robbery?

*The Court.* Yes.

*Mr. Heisley.* He would have to show that the robbery was consummated.

*The Court.* No. Under section 37 of the Crimes Act it is not necessary to prove any overt act. A conspiracy in those particular crimes specified, such as arson, burglary, manslaughter, murder, rape, robbery and sodomy, need not have attached to it an overt act. The mere making of the agreement is the crime.

*Mr. Heisley.* Yes, sir.

*The Court.* And in order to constitute the crime of a conspiracy to defraud or obtain moneys from a municipal corporation, Board of Chosen Freeholders of the County of Essex, it is only necessary to show that there was an overt act, not a multiple of overt acts, but an overt act. And if there was one overt act whatever else may have been done in pursuance of the conspiracy may be shown to prove the indictment. However, I will not decide this

question at this time because the question on the record does not raise the point at all. The prosecutor is simply asking the witness if he knows a John J. Matthews, and he may answer that question.

Q Do you know John J. Matthews? A I only know him to see him.

Q Do you know where and under what circumstances you first met him? A I do.

Q Where? A On the top floor of the court house.

Q When? A The last week of the panel of jurors that I was arrested upon.

Q Now, can you fix the time, Cowan?

*Mr. Heisley.* I object as irrelevant.

*The Court.* Are you going to connect this by showing that there was an overt act in pursuance of this—

*Mr. Harrison.* I intend to follow that up and bring your Honor's attention to that matter in another question or so.

*The Court.* I will let the testimony go in on that statement.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Harrison.* This question I believe is merely for the purpose of fixing the time. He said the last week which he served.

*The Court.* That is, of course, simply a preliminary question. He may answer that.

Q Do you understand the question, Mr. Cowan? A I met him the last week that he was serving here as a juror, I believe the 18th—the week ended up with the 18th of May.

Q That was the week ending Friday, May 18, 1917? A Yes, sir.

Q Do you recall what part of that week you met him? A I met him on Monday and on—on Monday, I believe.

Q That is on the Monday preceding Friday, the 18th of May, 1917? A I met him the week before. I talked with him upstairs. He would stand around near the entrance of Judge Osborne and Judge Dungan's court room with his overcoat on his arm and he talked to me different days there.

Q What day did you first talk with him? A Well, the first day he come in there he just come over and said, "How do you do?" and I talked as I would talk to any man that would speak to me upstairs.

Q And after that preliminary conversation which you had when did you next talk to him? A About Thursday or Friday, I think, of the same week.

Q What was that conversation, or, what did he say to you and what did you say to him?

*Mr. Heisley.* I object on the ground that it is irrelevant and on the ground that whatever was said between him and this man Matthews out of the presence of Mr. Taylor is not binding upon Mr. Taylor.

*The Court.* Why not? When you prove a conspiracy then the acts of the conspirators in carrying out the conspiracy as contemplated is evidence, is not it?

*Mr. Heisley.* And on the further ground that he is not one of the persons named in the indictment by whom the conspiracy was consummated.

*The Court.* On the prosecutor's statement that he intends to connect this and prove an overt act or one of them, as laid in the indictment, I will overrule the objection.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q (Question read.) A He started in saying that he would like to get off.

Q Get off of what? A Get off the jury, and I said to him, "Why don't you go in and see Judge Osborne?" He hesitated. I said, "Why don't you see Mr. Taylor, maybe he can help you out if it is really necessary for you to get away." So that is all that was said that week.

Q When did you next see him? A On Monday.

Q That is the Monday before Friday, the 18th of May? A Yes, sir.

Q Did you have another talk with him? A He came up to me.

Q What did he say to you? A He says, "You promised last week that you would try and do something for me." He says, "I am in pretty bad shape"; he says, "I got to go to Springfield and I want to get there for a couple of days"; he says, "and I would appreciate anything you could do for me." I told

him, "Well, I will have to see Mr. Taylor. If Mr. Taylor is satisfied to let you go you can go if you don't want to see the Judge."

Q What did you do? A I went and saw Mr. Taylor. He said, "All right, you go see Mr. Taylor. I will be glad and appreciate it because they need me at Springfield, Massachusetts, very bad." So I went and spoke to Mr. Taylor about it and asked Mr. Taylor if he could let this man go for two or three days, that he said he would be back on Friday sure. Taylor says, "Yes, let him go. Tell him to keep his mouth shut and it is all right."

Q And do you know how many days he remained away? A Tuesday, Wednesday and Thursday, and he came in on Friday.

Q And when he came in on Friday what happened? A I gave him his voucher for the full term.

Q And from whom did you get that voucher? A Mr. Taylor.

Q I show you—

*Mr. Heisley.* We will admit it, Mr. Harrison. Mr. Taylor admits he signed that.

*Mr. Harrison.* It is admitted; one signed "Joseph McDonough, Clerk, Taylor, to the order of John R. Matthews. It was signed by Mr. Taylor on or about May 18, 1917. I offer it in evidence.

(Paper marked Ex. S. 4.)

*Mr. Harrison.* This warrant is headed Essex County Clerk's office. "To the Sheriff of Essex county. This is to certify that John R. Matthews has served as a petit juror ten days during the April term, 1917. In testimony wheroef I set my hand

and affix my official seal at Newark this 8th day of May, 1917, Joseph McDonough, Clerk, Taylor."

Q Was that warrant in the condition that you now see it when you received it from Mr. Taylor? A No; this was not on.

Q By "this" you refer to— A Lead pencil marks.

Q Pencil marks 25 with a decimal between the 25 and 0 and mileage $2.08 and the total $27.80. What did you do with the warrant? A Gave it to Mr. Matthews.

Q Where? A On the first floor.

Q And did you have a talk with him at that time? A No, just told him that that was his warrant. Had a talk with him upstairs before he went away.

Q When you handed him his warrant, what, if anything, did you tell him to do without?

*Mr. Heisley.* Without interrupting the Court all the time may it be understood that my objection goes to all questions concerning Mr. Matthews or any juror other than those five named in the indictment?

*The Court.* I do not think your objection ought to be as broad as that. Your objection is to anything that Cowan said or Mr. Taylor did in connection with Matthews.

*Mr. Heisley.* Yes, sir.

*The Court.* I so understand it.

*Mr. Heisley.* Except, of course, I think it is perfectly proper, and in all events it is perfectly harmless for Cowan to say that he knows Matthews and Matthews was a juror.

Q When you handed this Exhibit S. 4 to Matthews what was said between you? A Nothing. I told him there was his warrant for his pay, to go in and get it cashed in the sheriff's office.

Q Anything further? A Nothing further until he came out.

Q When he came out what happened? A Why, he gave me $11 for four days that he was away.

Q What did you do with the money? A Put it in my pocket.

Q And what happened to that money after that? A It was taken away from me in the prosecutor's office.

Q By whom? A Well, I gave it up. They asked me to give it up, you and Mr. Hargan and Joe Ducker was in there.

Q Did you have any other moneys in your pocket on that day which you had received from jurors? A Yes, sir.

Q How much? A Eighty some dollars. I don't know how much.

Q And do you know from whom you had received the difference between the eighty some dollars and eleven dollars? A Some of them I remember.

*Mr. Heisley.* I make the same objection as to these other persons he is about to name.

*The Court.* I cannot tell anything about it until he names them.

*Mr. Heisley.* I don't want him to name them. The harm is done then. I object to his giving the names of any persons from whom he has received money except the five

persons whose names are mentioned in the indictment.

*The Court.* Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q You may answer the question. Do you remember? A I remember one, Englander. I would not know the man if I saw him. I remember the name. I wouldn't know any of these men, one from another.

Q Do you remember how much Englander had received? A I think he received his full pay.

Q And that was how much? A $25.

Q Do you recall how much of that—

*The Court.* Now, if there is a specific objection to a particular question on the ground other than that which you have stated I think you ought to make it. I would not admit a question such as was just asked and answered over your objection. He is asked "Do you remember how much he received?" It does not appear yet that Cowan was there when the money was paid.

*Mr. Heisley.* I object on the ground that this man personally does not know how much was paid to Englander.

*The Court.* You are too late now. I want to find out how broad your objection is. I think I will sustain the objection and strike out the answer.

*Mr. Harrison.* I will withdraw the question.

Q How much, do you recall, did you receive from Englander? A Well, I didn't count any of it. They come out and handed it to me and I put it right in my pocket. I took what they gave me.

Q Do you recall the circumstances in connection with the warrant which Taylor made out in favor of Englander? A It was just—

*Mr. Harrison.* I will withdraw the question.

Q I show you a warrant to the order of Jacob M. Englander—

*Mr. Harrison.* It is admitted that the warrant dated May 18, 1917, for ten days' service as petit juror was prepared by the defendant in favor of Jacob M. Englander. I offer it in evidence.

(Paper marked Ex. S. 5.)

Q Did you ever see Exhibit S. 5 before, Mr. Cowan? A Yes, sir.

Q When and where? A Got it from Mr. Taylor.

Q When? A On Friday that they were to be paid.

Q Can you fix the date of the month? A 18th day of May.

Q And what did you do with it after you received it from Mr. Taylor? A Gave it to Mr. Englander.

*Mr. Harrison.* I will read the Englander certificate. Same heading. "This is to certify that Jacob M. Englander has served

as petit juror ten days during the April term, 1917. In witness whereof I have hereunto set my hand and affixed my official seal at Newark the 13th day of May, 1917. Signed Joseph McDonough, Clerk, Taylor.''

*Mr. Harrison.* It is also admitted that the certificate to the order of Vernon E. Beavers—

*Mr. Heisley.* I make my same objection to this certificate simply because it is not one of those five named in the indictment, but otherwise I admit it is the original certificate.

*Mr. Harrison.* Subject to relevancy it is admitted.

*Mr. Heisley.* Yes.

*Mr. Harrison.* That certificate to the order of Vernon E. Beavers for ten days' service as petit juror—

*The Court.* I understand that Beavers is on a different footing.

*Mr. Harrison.* I think I better offer them separately.

*The Court.* You offer the Beavers warrant?

*Mr. Harrison.* Vernon E. Beavers warrant was signed by the defendant Taylor on the 18th day of May, 1917, and is in form as then delivered with the exception of the lead pencil memorandum $25.

*The Court.* In view of the prosecutor's statement that this will be connected the court will overrule the objection and allow the defendant an exception.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

(Paper marked Ex. S. 6.)

*Mr. Harrson.* The same admission subject to the same objection is made with reference to certificate dated May 18, 1917, to the order of Charles Hicks for ten days' service.

(Paper marked Ex. S. 7.)

*The Court.* You make the same objection?

*Mr. Heisley.* Yes, sir; and exception.

*The Court.* Admitted and exception allowed.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Harrison.* Certificate of Joseph McDonough, by Taylor, to the order of James Marshall for ten days' service is admitted.

(Paper marked Ex. S. 8.)

*Mr. Harrison.* Certificate to the order of Michael Brown, dated March 30, 1917, is admitted, and subject to the same objection as to relevancy.

*Mr. Heisley.* Yes, and exception.

*The Court.* Same objection and same ruling.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

(Paper marked Ex. S. 9.)

*The Court.* I assume that Brown is not named in the indictment as one of the overt acts.

*Mr. Harrison.* He is not.

*The Court.* All right. Is that a ten-day certificate?

*Mr. Harrison.* Yes, sir; during the December term, 1916, signed as all the others are signed, Joseph McDonough, Clerk, Taylor.

*The Court.* Does it state the date?

*Mr. Harrison.* Yes, sir. I referred to that date, dated March 30, 1917. Certificate dated March 30, 1917, to the order of Joseph Roller for service petit jury for ten days during the December term, 1916, is admitted subject to the same objection.

(Paper marked Ex. S. 10.)

*Mr. Harrison.* Certificate dated April 20, 1917, certifying that Charles J. Alliger for petit jury service for eleven days is admitted without objection.

(Paper marked Ex. S. 11.)

*Mr. Harrison.* Certificate to the order of Herman H. Jackson, dated April 20, 1917, for eleven days' service during the April term is admitted subject to the same objection.

(Paper marked Ex. S. 12.)

*Mr. Harrison.* Certificate to the order of F. Lemberg for services as petit juror for eleven days is admitted subject to the same objection. This certificate bears date April 20, 1917.

(Paper marked Ex. S. 13.)

*Mr. Harrison.* Certificate in favor of Adam Hebeler for eleven days' service petit juror, dated April 20, 1917, is admitted subject to the same objection.

(Paper marked Ex. S. 14.)

*Mr. Harrison.* Certificate in favor of Louis Kengott for eleven days' services as petit juror, dated April 20, 1917, is admitted subject to the same objection.

(Paper marked Ex. S. 15.)

*Mr. Harrison.* Certificate in favor of George Kaye for services as petit juror for eleven days during the April term, 1917, bearing date April 20, 1917, is admitted subject to the same objection.

(Paper marked Ex. S. 16.)

*Mr. Harrison.* Certificate dated May 4, 1917, in favor of Fred Busse for ten days' services during the April term, 1917, is admitted without objection.

(Paper marked Ex. S. 17.)

*Mr. Harrison.* Busse being one named in the indictment.

Certificate in favor of Fred S. Helwig, dated May 4, 1917, for ten days' services, petit juror, is admitted without objection and marked.

(Paper marked Ex. S. 18.)

*Mr. Harrison.* Certificate dated May 4, 1917, in favor of Eugene Cavenget is admitted subject to the same objection.

(Paper marked Ex. S. 19.)

*Mr. Harrison.* Certificate in favor of Edward J. Witherill, dated May 4, 1917, for ten days' services as petit juror is admitted subject to the same objection.

(Paper marked Ex. S. 20.)

Q Can you recognize any of the exhibits S. 4 to S. 20, inclusive, in addition to those which you have already testified, namely, the Matthews and Englander and Helwig certificates?

*The Court.* He has testified with regard to the Helwig certificate?

*Mr. Heisley.* Yes, sir.

Q With the exception of Matthews and Englander. I think your Honor's recollection is better than mine. A I know John—Michael J. Brown. I wouldn't know them.

Q By the Michael J. Brown certificate you refer to Exhibit S. 9? A Yes, sir.

Q And do you recall what you did with that certificate? A I gave it to him at the end of the term.

Q And from whom did you receive it? A Mr. Taylor. He was only away four days, I believe.

Q By "he" you refer to Brown? A Mr. Brown.

Q And with what instructions did you deliver it to Brown? A Under the same condition that he would take and draw the pay and give it back to me so that I could give it to Mr. Taylor to straighten out his books.

Q And after you delivered the certificate to Brown do you know what he did? A Went and got it cashed.

Q What did he do after that? A Gave me the money out of it.

Q Do you remember how much he gave you? A $10, I believe. It might be some change, but I know—

Q What did you do with the money? A I put it in my pocket and brought it up to Mr. Taylor.

Q And when you brought it to Mr. Taylor what did you do with it? A Why, we divided it up.

Q On what basis? A Even, fifty-fifty.

Q On what date did you make the division of the Brown money with Taylor? A Well, the last day of the term he served. I don't know just what term—what jury he was on.

Q Can you by reference to the certificate fix the time? A Yes, sir; 30th of March.

Q Were there any other moneys that you divided with Taylor on the 30th of March which you received from jurors other than Brown?

*Mr. Heisley.* I object to the question unless he is referring simply to those names in the indictment.

*The Court.* Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

A Whatever I collected—I don't know what the amount was. I never kept any track of it. No matter what I collected he always got half.

Q Do you know how many men were excused by Mr. Taylor in the method which you have given to us in the first panel of the April term, namely, from April 3d to April 20, 1917? A No; I do not.

*The Court.* Do you object to that, Judge?

*Mr. Heisley.* He says he don't know. I don't object to it.

*Witness.* I don't know how many there were. There was quite a few I remember, that first—the opening of the term—quite a few men excused, but who they are or how many I don't know.

Q Do you know how much money which you received from jurors on April 20, 1917, you divided with Mr. Taylor?

*Mr. Heisley.* I object unless it is limited to the jurors mentioned in the indictment.

*The Court.* This is a personal transaction with Taylor which shows his knowledge. Overruled.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

A I couldn't tell you the exact amount.

Q Can you tell the approximate amount? A Well, it was very near $80 or $90 apiece to the best of my recollection. It may have been more; it may have been less; I couldn't say for sure.

*James F. Cowan, cross.*

Q When were you taken in custody, Cowan? A Friday noontime on the 18th day of May, I think the 18th—17th or 18th.

*The Court.* Which is it?

*Witness.* Well, it was on Friday, whatever date that was in May; 18th, I believe. I am not sure.

Q With whom were you conversing when taken into custody? A Mr. Taylor.

Q The defendant, Frank E. Taylor? A Yes, sir.

Q And what was the conversation between you and Taylor which immediately preceded your being taken into custody? A I was just going to give him the money. Had my hand in my pocket when Mr. Ducker came in and told me that you wanted to see me.

*Cross examination* by Mr. Heisley.

Q Cowan, last fall as I understand it, was the first time that you and Taylor conceived the idea of robbing the county, is that right? A Well, we didn't conceive the idea. There was presents given to us as presents at the time.

Q I am not speaking—presents are not robbery—I say that last fall was the first time in all the years that you have served here, and Mr. Taylor has served, that either you or he, as far as you know, conceived the idea of robbing the county?

*Mr. Harrison.* I object to the characterization of the crime as robbery or anything else.

*The Court.* It certainly is not robbery.

*Mr. Heisley.* May I substitute the word "steal" for "robbery?"

*Mr. Harrison.* I object to any characterization of the crime.

*The Court.* I suppose the technical name of the crime is "larceny," but "steal" will be allowed.

Q Can you answer, Cowan? A To the best of my knowledge it was.

Q And where did you and Taylor first talk about this scheme of stealing or cheating the county by the means which you have testified to here this morning? A Up in the court room.

Q When was it? A As I said before, before the holidays, to the best of my opinion of it.

Q How long before the holidays? A Oh, two or three weeks—probably a month before that.

Q Didn't you say awhile ago that it was in October? A It was in October when we first got the presents, I said. We did not talk about it then.

Q Do you mean to say that you have said anything in your direct evidence about you and Taylor receiving presents? A Why, yes; that is what I got it from.

Q Do you mean to say that you have testified under the examination of the prosecutor this morning to anything about you and Taylor receiving presents? A The first $5 I said was given to me as a present.

Q Did you testify to that this morning? A I think I did.

Q Didn't you say this morning in effect that you and Taylor came into this understanding in the month of October? A No; I did not.

Q Didn't you mention October this morning? A I did, yes, sir.

Q In what sense? A That we let a man go in October and he made us a present of $5.

Q Did you say it was a present? A I did —I think so—I meant to say it if I didn't. We had no arrangement with that man at all; just simply let him go.

Q Didn't you say that Mr. Taylor said to you that—as to the October transaction—that there was a man coming in Monday morning and that you would have to mark him present, but you would let him go and you told him to keep his mouth shut? A I didn't say that was in October. I said that was later on.

Q Let me ask you this. When did you say the first criminal transaction of this kind of which you have testified to this morning occurred by you and Mr. Taylor's acts?

*Mr. Harrison.* I object. It seems to me that he cannot define when or where the crime was committed.

*The Court.* It calls for a conclusion and assume the witness has a knowledge which perhaps he does not possess. Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court; the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q You know what a crime is, don't you? A Yes, sir.

Q You know it was a crime for you and Taylor to agree to mulct this county out of money for jurors that they did not earn? A We did not agree on that. He was my boss and I was doing as he asked me to.

Q Will you answer the question? You knew it was a crime for you and Taylor or any two persons to agree to get money from this county in the manner in which you say you and Taylor obtained it? You knew that, didn't you? A I knew it wasn't just right.

Q You knew it was a crime? A I couldn't say that I knew it was.

Q What? A I couldn't say that I do. I was doing it for him.

Q Didn't you think it was wrong for you to aid another person in perpetrating a crime? A I told him so. I thought it was wrong.

Q Then you knew it was a crime at least on Taylor's part to take that money from the county in this way, didn't you? A Yes, sir.

Q Now, I want you to tell us, if you will, when was the first time— A I don't know.

Q You don't know what I am going to ask you. When was the first time that you and Taylor discussed the subject of getting money in this way from this county? A Well, to the best of my knowledge it was before the holidays.

Q What time before the holidays? A Might have been two or three weeks before.

Q What was said about it? A Well, he just told me that he had a man coming in upon Monday morning, if I would talk with him, and he told me just what to tell him, to leave him go.

*The Court.* He asked you what he said?

*Witness.* What who said?

*The Court.* Taylor.

*Witness.* I am telling you that he told me that he had a man coming in.

Q A juror? A A juror that wanted to get away and he told me to tell him just what to do. He says, "You tell him we can let him go providing he will come around—we will have to mark him present, and providing that he will come around on pay day and draw the money and give that to me so I could give it to Mr. Taylor to straighten out his books."

Q What was this man's name? A I couldnt' tell you.

Q Did Mr. Taylor mention the man's name? A I don't know as he did, at that time.

Q What did you say to Mr. Taylor in answer to that thing? A I told him I would do it for him if he wanted me to do it.

Q You knew that was wrong? Why do you hesitate? You knew it was wrong, didn't you? A I suppose I did.

Q You knew you were helping Taylor in robbing the county, didn't you? A Well, he was my boss.

Q You knew you were doing wrong in helping Taylor to rob the county, didn't you? A Yes, sir.

Q Yes; and you didn't say a word against it? A Not at that time.

Q You fell for it quick enough, didn't you? A I did; yes, sir.

Q And went right into the scheme? A Yes, sir.

Q In what way did you understand that Taylor wanted the money in order to straighten up his books? A That is what he told me to tell them.

Q Can you give us any idea or explanation of what—in what manner Taylor wanted the money for the purpose of straightening up his books?

*James F. Cowan, cross.*

*Mr. Harrison.* I think the witness can hardly go into the mental operation of what Taylor wanted to do or what he was going to do.

*The Court.* Suppose the question were, "What did you understand Taylor to mean by such and such a statement?" That would be a proper question and this is almost the same proposition. Objection overruled.

Q Answer the question (question read). A I don't know, only that is what he told me to tell these men that we were leaving go.

Q Well, you didn't care as a matter of fact what manner Taylor was going to straighten up his books, did you? A No.

Q What you wanted to do was to get hold of the money? A Not any more than him.

Q No; you were just about as hungry for it as he was? A Probably.

Q Yes; I think so. You knew as a matter of fact, as clerk of the court, Mr. Taylor had no right to receive any money from any juror, didn't you? A I guess he had no right.

Q Well, you know it, don't you, Cowan?

*The Court.* Do not guess. He asks you what you know.

*Witness.* I don't know whether he had any right or not.

Q You knew that all he was to do there with the jurors was to keep this book and write out the warrants for them to get their money and the juror would be paid off by the sheriff; you knew that? A I knew that, yes, sir.

Q You knew you had no right to a dollar of that money, didn't you? A Yes, sir.

Q And you knew you were aiding him in committing a crime when you were getting money from the different jurors, didn't you? A Yes, sir; and I wanted to get out of it and he wouldn't let me.

*Mr. Heisley.* I ask to have that stricken out.

*The Court.* Motion granted.

Q When next did you have any talk with Taylor about getting money from the county in this way? A We never had any more talk about it, only for the first. He told me any time to go right ahead and tell them all the same story. I never told one man this and one man that.

Q And you kept on doing that until you were caught redhanded with the money on your person, isn't that so? A Yes, sir.

Q And yet during all that time you didn't want to do any of this thing yourself, did you? A Oh, yes.

Q You did want to do it? A I done it for him, yes, sir. He gave me half of it.

Q And that is why you did it? A Yes, sir.

Q Your moral scruples against doing it were not sufficiently strong to keep you from taking part of the money, were they? A No; it wasn't that, but I wanted to get out of it, that is all I asked. I asked him to let me—

Q You mean you wanted—

*The Court.* Let him answer the question.

*Witness.* I asked him to let me out of it, that I didn't care about doing it.

Q That was only the one time, isn't that so? One time, that is all? A Only once.

Q That was last October or— A No, it was February of this year.

Q February? A February of this year.

Q You asked him to let you out of it? A Yes, sir.

Q He wouldn't let you out of it? A He told me I was foolish. I wanted to resign. He told me I was foolish to resign.

Q And instead of getting out of it or instead of resigning you kept right on, is that right? A Yes, sir; getting worse.

Q Getting more money dishonestly? A Yes, sir.

Q And that money you kept? A Not myself.

Q You kept fifty fifty of it, didn't you? A Yes, sir.

Q Did you ever talk about resigning? A Yes, sir; to Mr. Taylor.

Q Last winter? A Yes, sir.

Q And wasn't that at the time at the end of a drunken debauch you had been on, lasting nearly two weeks, in which you were unable to attend to your duties as court attendant? A I was drinking a little.

Q What? A I was drinking a little. That was what made me—

Q I asked you if when you were talking about resigning it was not at the end of a drunken debauch, lasting nearly two weeks, in which you were so incapacitated that you could not attend to your duties as court attendant? A No, sir; it was not.

Q He trusted you with the moneys, I suppose, during that time? A I didn't collect any.

Q When you got back in your sober mind you began collecting again, is that right? A Yes, sir.

Q Now, these jurors were in this thing about as deep as you and Taylor, weren't they?

*The Court.* What do you mean by that?

*Mr. Heisley.* I mean they were a party. They were acting with knowledge of the crime that you and Taylor were perpetrating.

*Witness.* No.

*Mr. Harrison.* I object on the ground that there is no evidence here tending to show any knowledge on the part of the jurors.

*Mr. Heisley.* I think I am entitled to show what was in this man's mind, that he understands not only that Taylor was in the conspiracy, but every one of these jurors to whom he said "Keep your mouth shut."

*Mr. Harrison.* You did not say anything like that. If that is to be understood—

*Mr. Heisley.* I will withdraw the question.

Q Didn't you understand—didn't you believe that at the time you were dickering and dealing with these jurors that they were in the crime just the same as you and Taylor? A Didn't I believe that?

Q Yes. A Yes; because Mr. Taylor told me that they were.

Q And you told every one of these jurors to keep his mouth shut, didn't you? A Yes, sir.

Q Every one of them? A Yes, sir.

Q And they entered into the scheme willingly, didn't they? A Well, some of them, some of them would turn me down.

Q You know here over twenty different men? A I might know one or two of them. They would come back to get their pay and say, "This is Mr. So and So." I wouldn't know them.

Q How many jurors did you deal with, would you say? A There must have been that many, around twenty.

Q Did you mention the proposition to any juror that turned you down? A Yes, sir.

Q To whom did you make such a proposition who turned you down? A Well, I can't tell the names.

Q How do you remember then that you did? A I know, because three or four turned me down and I told Mr. Taylor about it, and said that was the part I didn't like.

Q How did you come to go to those men? A Well, Mr. Taylor would tell me that he knew that they wanted to get away, and sometimes they would come up to me and ask me and I would go in and ask Mr. Taylor—I would go ask Mr. Taylor if he would let these men go if they wanted to get away. He said, "Will they keep their mouths shut?" I said, "Oh, I think they will;" he said, "All right, go out and do it." When I would go out and put the question to them about drawing this money and giving it back to the county some of them couldn't see it and said, "No, they would sooner serve it."

Q Did Taylor tell you these men's names? A No—some of them he might have.

Q You just said no? A No; not these two these two men I have referred to he didn't be-

cause I don't know their names. I would know the men if I seen them.

Q The men who turned you down, did Mr. Taylor tell you the names of these two men? A He told me the name of one man that works in New York, I think, some place, that wouldn't have nothing to do with it.

Q The other man to whom he sent you, did he tell you his name? A No; he pointed him out.

Q He pointed him out? A Yes, sir.

Q Did you ask him for the name? A No.

Q He didn't offer to tell you his name? A No.

Q Do you mean to say that as far as you know he sent you to a man who was an utter stranger to him, a man he did not name, a man he did not know and asked you to perpetrate a crime? A Yes, sir.

*Mr. Harrison.* I object on the ground that it is immaterial and calls for a conclusion.

*The Court.* I think that is a proper question. It refreshes his mind and brings out features in the story he has told. You answered yes?

*Witness.* Yes, sir; he did.

Q And the man whom you approached you didn't know from a basket of chips, did you? A No, I did not.

Q Yet you mean to tell us that you were soliciting a man whom you did not know and whom you believed Taylor didn't know to enter into your scheme to cheat this county out of money, is that right? A Well, they got away.

Q Cheat the county out of money, isn't that so? A Yes, sir; that is so.

Q Were you drunk at that time? A No.

Q You did this in your right mind, did you? A Yes, sir; I done it all for him. He was my boss up there. He told me to get—

Q Before he led you astray I suppose you were a good little boy? A No; I was no angel; never pretended to be one.

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q You are known as Faker Cowan, aren't you? That is your alias? A That was given to me—

Q Isn't your alias Faker Cowan? A Yes, sir. I think I ought to be allowed to say how that came on.

Q Didn't you go into this crime because you were addicted to the practice of gambling on horse races and playing policy?

*Mr. Harrison.* I object. It is entirely immaterial.

*The Court.* What is the purpose of the question.

*Mr. Heisley.* For the jury to say whether or not this man, if he was addicted to gambling—following the race track and playing policy that he would be more apt—for them to say whether or not such a man would be more apt to steal money than somebody else would. I think his course of life is revelant. I propose to show what Mr. Taylor's business was and that he had no object in stealing.

*The Court.* It is a question of whether this scheme is the witness's or the joint

product of Taylor and himself. Whether or not this witness had some particular reason to go into a scheme of this sort, a more important reason than any reason that can be attributed to Taylor for going into it may be argued. Are you going to let the prosecutor proves that Taylor had some motive for going into it?

*Mr. Heisley.* I have no objection. I am going to prove Taylor's character and prove he hadn't any motive for going into it.

*Mr. Harrison.* How can we go into the psychology of this man and determine the probability or liability of his committing this particular crime from the fact that he may or may not have done something else at some other stage of his life.

*The Court.* This witness has sworn that this was Taylor's scheme; that Taylor invented it, that he told him what to do, that he uttered a mild and feeble protest on one or two occasions and then continued to do it for some little time. Now, the defence is asking him if he did not want this money for a particular purpose. He cannot impeach this witness by calling attention to the fact that he may have gambled some time or other on a horse race. It is not competent for that purpose, but the contention is that it is competent for the reason that it shows a motive of Cowan in going into this plan alone and not with Taylor. I think I will let him answer it on the question of motive.

RECESS.

*The Court.* There is an open question on the Record.

*Mr. Harrison.* I will withdraw my objection.

Q (Question read.) A No, sir.

Q You did gamble on horse races and you did play policy? A I played policy about fifteen years ago—twelve or fifteen years ago. It was shut down then. I don't know of any policy being played around this county since then.

Q The reason you haven't played policy since I suppose is because it has been shut down.

*Mr. Harrison.* I object as calling for a conclusion.

*The Court.* I do not think that is proper.

Q You do play the horses? A Yes, sir; I play them occasionally. Mr. Taylor has played with me.

Q Who did? A Mr. Taylor.

Q Did I ask you about that? A No.

Q Did I ask you about whether Mr. Taylor played with you? A No.

Q Did I? A I don't know whether you did or not.

Q What made you say that Mr. Taylor played with you when I didn't ask you about him? A Well—

Q You did it to hurt Mr. Taylor, didn't you? A No; I don't want to hurt Mr. Taylor. I am telling the truth about Mr. Taylor. I haven't said one word of a lie.

Q Why is it, that when I asked you if you played the horse races that you said "yes," and you had played them with Mr. Taylor? Why did you bring in Mr. Taylor? A Because I—because he did.

Q Did you think I asked you whether you played them with Mr. Taylor? A No; I didn't.

Q Did I ask you if you played them with anybody? A I don't know as you did.

Q You know I didn't, don't you? A Well, you didn't.

Q Why do you always want to ring in Mr. Taylor's name? Wasn't it because you wanted to prejudice the jury against him? A No.

Q You didn't want to hurt Taylor, did you? A No, because I never told it to the prosecutor before that he played horses with me.

Q How many times did Mr. Taylor play the races with you? A About two or three times.

Q Hasn't he played with you three times? A Probably three. Not more, I don't think.

Q Not more? A No.

Q Wasn't it under these circumstances that you got some of the officers around this court house to chip in $2 apiece on a pool? A On what?

Q On a race pool? A No.

Q Isn't that so?

*Mr. Harrison.* I object as being entirely immaterial.

*The Court.* Ask him if he and Taylor were in these three transactions or were there others in them.

Q Were you and Taylor in the three races together or were there others in with you? A Once there was another man in with us.

Q Cowan, every time that you bet money on horse races and got Taylor in isn't a fact that there were other officers around this court house that went in with you just as a matter of sport?

*The Court.* You mean on the same bets?

*Mr. Heisley.* Yes.

*The Court.* Answer that.

*Witness.* Yes, sir; they had, just for a matter—

*The Court.* He says isn't it true that every time?

*Witness.* Oh, no; not every time.

Q One time you got him to go in—bet $2 with you with others and the horse won, didn't it? A Yes, sir; it run second.

Q Another time, the second time where he and others went in with you he put in $2 and the horse did not run, isn't that so?

*Mr. Harrison.* I object to the whole line of question.

Q Over the years that you have known Taylor only three times have you ever known him to put any money into your custody for the purpose of betting on horses? A That is all. That was merely sport.

Q You say that Taylor kept this poll of the jury? A Yes, sir.

Q You kept it, too, didn't you? A No, sir.

*The Court.* Referring to Ex. S. 3.

Q Why, you used to go to this book the same as other officers when Taylor was out of the court room and mark a juror absent or present, wouldn't you? A No; not me.

Q You have never done it? A Never marked the book myself.

Q You have seen other officers do it? A Might have been.

Q Not only might have been— A Mr. McKee done it because Mr. McKee was helping him.

Q You saw Mr. Picot do it? A I can't say that I saw Mr. Picot. I knew Mr. Picot—I don't know that I ever found Mr. Picot mark it.

Q Haven't you seen Officer Smith and Officer McLoughlin do it? A Not mark anbody present.

Q Have you seen them mark them absent? A Never.

Q Then you haven't seen any of those officers excepting McKee and maybe Picot, is that right? A Yes, sir.

Q The book was kept open on the desk in the court room, wasn't it? A Yes, sir.

Q And it wasn't locked up at night? A No, sir.

Q There was nothing to prevent anybody going to this book which was one of the instrumentalities of committing this crime when Mr. Taylor was out of the room, was there?

*Mr. Harrison.* I object to it as calling for a conclusion.

*The Court.* Objection sustained.

Q What time did you get there in the morning? A Oh, sometimes 9 o'clock, sometimes quarter after 9; sometimes half-past 9.

Q And would you report upstairs? A After I would report to the sheriff's office.

Q And Mr. Taylor, quarter of ten every morning, would call off the 140 names of jurors, or thereabouts, who were empanelled for the two weeks' service, isn't that so? A Yes, sir.

Q Wouldn't that list sometimes be called by somebody else when Mr. Taylor would be in some of the other judges' rooms? A Yes, sir.

Q Taylor would be in the Chief Justice's room practically all the time except when he was running around to the other judges' rooms? A Yes, sir.

Q He kept a list of you officers, too, didn't he? A What do you mean by list?

Q Never mind. Now, you say that in these cases of these jurors who were in this deal with you and Taylor—those names would be kept in a box on the desk, is that right? A Sometimes.

Q Where was that box on the desk? A Why, right up in front under the—

Q No other names were kept there but those?

*Mr. Harrison.* Which names?

*Mr. Heisley.* The names of those jurors who were in this deal with you?

*Witness.* I don't know what was kept there. I know he used to keep some of them there. Sometimes he put it in the drawer underneath the table.

Q Didn't you say this morning on your direct examination that as to certain jurors who were excused, I think, you would tear the slips up and as to other jurors you would do certain things with the slips upon which their name was written? A Yes, sir.

Q But as to these jurors whom you mentioned as being connected in some manner with this offence, those names were put in the box on the desk? A Sometimes.

Q What I want to get at now is this, weren't they the only jurors' names that were put in that box? A Well, I didn't know of any others being put in there.

Q No. You believed that they were the names only of jurors whom you and Tay-

lor were doing business with, is that right? A I wouldn't say that. I don't know.

Q Didn't you say so this morning when you testified? A I testified that sometimes I would take the name out and leave it in the box up there and sometimes I would take them out and put them in the drawer underneath where I kept them.

*The Court.* Of what?

*Witness.* Drawer of the table.

*The Court.* What table?

*Witness.* First table out in the Supreme Court room.

Q You recall testifying to a pasteboard box, don't you? A Yes, sir.

Q Do you say now that there wasn't any pasteboard box kept on that desk or in that desk in which the names of jurors with whom you and Taylor were doing business were placed? A Yes, sir.

Q Was that box open to view? A No; sometimes it would be in the top drawer, right-hand side.

Q Couldn't any officer have gone—don't you know there is no—don't you know that there is no top drawer on the righthand side of that desk? A Lefthand side.

Q What? A Lefthand side.

Q What did you say righthand for? A I meant lefthand. I put up this hand.

Q And wasn't that drawer unlocked? A Not always.

Q Often was? A Often was; yes, sir.

Q Now, were there any other persons in this combine or conspiracy with you and Taylor and the jurors?

*Mr. Harrison.* I object as incompetent.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court. The same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Was there any other person or persons who had agreed with you besides Frank Taylor to go into this scheme of which you have testified?

*Mr. Harrison.* Objected to as being immaterial and calling for a conclusion.

*The Court.* I will admit it.

A No, not that I know.

Q You admit—you confess the stealing of money from this county, don't you? A Yes, sir.

Q And you know that you do not have to testify to anything that will tend to incriminate you, don't you? A Yes, sir.

Q You were told that by the prosecutor when you confessed to him, weren't you? A Told what?

Q That what you might say would be used against you on the trial? A Yes, sir.

Q And you know that you do not have to testify today?

*Mr. Harrison.* I object.

*Witness.* Told me anything I made in my statement may be used against me. That is all he ever told me.

Q And you know you do not have to come here and testify and confess to the perpe-

trating of this crime, don't you? You know that, don't you? A What is that?

Q (Question read.) A Yes.

Q What are you doing in here testifying today, what is your motive? A I am telling the truth.

Q What is your motive in telling the truth when you know— A I have no motive. I was caught with the money on me and there was nothing else for me to do.

Q Do you testify through sorrow? A I testify because I was guilty of having the money on me and there was nothing else for me to do, that is all.

Q You testify because you thought they had the goods on you and you would be convicted, isn't that right? A Yes, sir.

Q And you testify in the belief that it would be better for you to testify, isn't that right? A To tell the truth about it.

Q You testify because you thought by telling this story it would be beneficial to you, didn't you? A No, not any way at all; I wasn't going to make it any worse and deny it. After I was caught I admitted.

Q Don't you think by confessing to the prosecutor and by coming here and pleading non vult and by testifying against Mr. Taylor that it was going to be beneficial to you? A No, sir.

Q You didn't think that would help you at all, eh? A No, sir; I did not.

Q Then you testify— A I did not, because I am telling absolutely the truth about it. There is nothing more for me to say. I was caught and the money on me and I can't say nothing else. I am not saying a word about Mr. Taylor that isn't so.

Q You are testifying in the belief, notwithstanding you are aiding the state, that you will be punished in all probability for the perpetration of this crime? A I know I will be punished for it.

Q You do not expect His Honor or any judge who may sentence you or deal with you to give you any leniency or any consideration on account of your aiding the state, is that right?

*Mr. Harrison.* I object. It is not material.

*The Court.* I am inclined to believe that it is legally proper to show the condition of the witness's mind and his reasons for making the statement, if he has any reasons.

A That is right, I do not.

Q You simply want the state to convict Taylor, so that if you go to jail he will go to jail along with you, is that the idea? A No, sir; it is not.

Q You do not want him convicted? A I am only telling the truth about it. I cannot carry this whole load myself.

Q You do not want him convicted? A It doesn't make any difference to me. I am simply telling the truth. I have got nothing against Mr. Taylor. I am telling the truth about the thing that happened.

Q You have been around these courts for years, haven't you? A Yes, sir.

Q You know that squealers who assist the state to convict others generally get consideration in their sentence, don't you? A I don't know that I do.

Q You don't know that? A I don't know that I do.

Q You know what a squealer is, don't you? A I don't call myself a squealer when I was caught with the goods.

Q You are telling the truth— A When I was telling the truth I don't call that squealing. When I got the money on me. I can't take the whole load on my own shoulders.

Q I ask you if you do not know that squealers who assist the state in convicting other people do not generally profit by the fact that they so testify, and didn't you testify in that belief and with that hope? A No, sir.

*The Court.* How is he a squealer, he has not said that. Aren't you making a wrongful assumption of fact?

*Mr. Heisley.* A man who peaches on another is a squealer.

*Re-direct examination.*

Q When you told Mr. Taylor in February of this year that you wanted to get out of it, what did Taylor say to you? A Why, he told me I was foolish. He told me, where could you ever get a job as good as this?

Q Was it at that time you told him you wanted to resign? A Yes, sir.

Q Was anything said by him to you about the continuation of this indirect excusing of jurors? A No; not at that time.

Q You gave some testimony that your alias was Faker Cowan? A Yes, sir.

Q When and under what circumstances did you get that alias? A I got that alias about thirty-five years ago when I was a young fellow playing baseball. For my age I was a pretty good player at the time and very tricky with the ball and I used to make some pretty

good plays for a boy and they called me faker on that account.

Q That was a boyhood nickname? A Boyhood nickname.

*Re-cross examination.*

Q You have always been a pretty good player and pretty tricky, haven't you?

*The Court.* That doesn't mean anything.

*Mr. Heisley.* That is practically what he said.

*The Court.* He said he was a good player of baseball.

Q Cowan, do I understand you to say that the only reason you are confessing or did confess and in testifying and aiding the state was because they caught you with the goods on? A Yes, sir; and I told the truth.

Q You hadn't a particle of sorrow for the fact that you turned traitor to the county and tried to steal money from it? A I told the truth about the affair.

Q You haven't a particle of sorrow or remorse for the fact that you turned traitor to your employer, the County of Essex, and tried to steal money from it, have you? A I am sorry for whatever I done, yes, sir.

Q What? A I am sorry for whatever I done. I was caught and can't do—

Q Are you sorry for what you did or are you sorry you were caught? A Sorry for what I did now more than anything else.

Q You are not sorry you got caught? A Yes, I am.

*James F. Cowan, re-cross.*

*By the Court.*

Q Cowan, you say that you handed these warrants that were put in evidence here, S. 4 to S. 20, inclusive, to these different jurors and that they were given to you by Taylor. Were all the warrants of all the jurors given to you at the same time? A You mean for each panel?

Q Yes. A No. Sometimes he wouldn't have them ready, sometimes he would.

Q As I understand it, on Friday, usually, at the end of the term of service you said that Taylor delivered these warrants to you? A Yes, sir.

Q Now, the question is did he deliver all the warrants for other jurors besides these? A For everybody that would come in on that Friday, yes, sir.

Q I do not mean these people you dealt with; I mean all of them? A No, not all the regular—general panel.

Q From what you said I understand that there were a few, four or five or six or seven, whatever it was, in numbers, of jurors who had been absent and who got warrants for full time? A Yes, sir.

Q Is that right ? A That is right.

Q And that the warrants for them you handed to them, that you got them from Taylor? A Yes, sir.

Q Now, the other warrants for the other jurors on the same panel of jurors, were they handed to you by Taylor and did you give them to those jurors as you described? A No. I would go sometimes with Mr. Taylor and bring over the jury list and get the list out, when

*James F. Cowan, re-direct.*

Mr. Taylor would call off the name off the general panel, when they would be getting paid off.

Q Who gave out the warrants for the general panel? A Mr. Taylor.

Q Since October, 1916, whom have you seen write on the pages of this list of jurors, S. 3, besides Taylor? A I don't know of anybody.

Q You said you saw McKee and Picot and another? A Well, sometimes when Mr. Taylor would be calling the roll the Judge would ring for him or somebody come out and say the Judge would want him right away, and one of the men, either Picot or McKee, would continue to call the roll. That is all I ever seen.

Q What did you see them write? Did you notice what they wrote? A Get down and call the names off, that's all I would know. I wouldn't be standing up looking over them. See them at the book calling the names.

*Re-direct examination.*

Q How many times since October did you see Picot or McKee—did you hear Picot or McKee call the names? A I couldn't say. Very seldom. I couldn't say that, because I wasn't always in the room when they were calling the roll. I might be out in the corridor.

Q Could you fix the number of times? A No; I could not.

Q Could you say it was once or twice or more? A No; I couldn't do that. I don't know how many times they did it.

Q Where was the jury list, Ex. S. 3, kept, if you know? A That book there? Right down along in Mr. Taylor's right hand slab there or —where you shove a book in.

Q Alongside of his desk? A In his desk, in the bottom.

*James F. Cowan, further cross.*

Q And where would it be when he left the room? A In there.

Q And when he locked his desk for the night, if he did that, where was the book? A In that place.

Q Inside the desk? A Inside, stands right up on its edge into the place there.

*Further cross examination.*

Q You do not mean that the book was locked up at night at all, do you? A Very seldom. It was locked up once in awhile. Very seldom, I guess.

Q To be fair, you don't remember a single time when that book was locked up at night, do you? A Oh, yes, I do.

Q You do, eh? But very seldom. All right. A Very seldom.

Q All right? A The desk was very seldom locked at all.

It is admitted that the defendant, Frank E. Taylor, was assistant to the county clerk who was acting clerk to the Supreme Court and Circuit Court; that he was charged with the duty of keeping the records of the attendances of all persons summoned to attend the various courts as petit jurors and had charge of the preparation and the issuing of warrants to the sheriff for the compensation to petit jurors for their services.

*Mr. Heisley.* That is admitted.

*The Court.* I do not suppose he was clerk of the court. He is the representative of the county clerk who attended the courts.

JAMES MARSHALL, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the village of South Orange, New Jersey, Mr. Marshall? A I do.

Q Were you summoned as a petit juror in the courts of this county recently? A In the month of April, if my recollection serves me correctly.

*The Court.* This year?

*The Witness.* Yes, sir.

Q Do you remember the date of the beginning of your service? A I do not now recall, sir, but my impression is the early part of the month.

Q Upon what date did you finish your service? A I cannot fix the date of the month, sir, but I should think two weeks from the date of the commencement.

Q And can you fix the time of either the commencement or the ending? A I do not now recollect the dates other than my impression is they were early in April.

Q So that the ending of your service was early in April? A No, the commencement, that is my impression.

Q Do you know Mr. Frank E. Taylor, the defendant in this case? A No. I do not think I ever saw him before.

Q When did you first see him?

*Mr. Heisley.* He says he never saw him before.

*Witness.* Just now I just said I never had seen him before.

Q Do you know James Cowan, the man who preceded you on the stand? A He was a court officer whom I saw when summoned for jury duty. I didn't know his name.

Q And did you have a talk with him at the time of your beginning your service? A I don't know what you mean by a talk, sir. I had a few words with him at the door of the court room when I presented my summons for jury service.

Q And what was that conversation? What did that conversation relate to? A I had previously spoken to a friend of my anxiety to be excused from jury service and he said that he would endeavor to arrange that I might be excused, to present my jury notice at the door of the court room on the day that it called for, and I did that with my personal card and asked that I might be discharged.

Q Are you speaking of a conversation with Cowan? A I have had no conversation so far with anyone; I was relating circumstances to a court attendant at the door. I presented my jury notice with my personal card and asked that I might see the Judge. Presently an officer came out, and it was this man Cowan, as I learn now. Asked me some questions concerning my name, my residence, my affiliations, which were such as to lead me to believe that he was endeavoring to identify me.

*The Court.* Never mind your conclusions, just state what took place.

*Witness.* He came back in a few moments and told me, "You are excused subject to call," and I asked him by whom. I said, "I don't want any mistake." He said,

"I am the officer in charge of the excuses. You are excused subject to call."

Q What did you then do? A Went on about my business. Came back—my recollection is at the end of that first week, to make certain that there wasn't any mistake about the business, because I was apprehensive that there might have been something wrong, as I did not myself see one whom I believed to have competent authority. I came back at the end of the second week, in the morning, to make the same inquiry. He told me that it was all right and gave me a sheriff's warrant for some money. I told him I didn't believe I was entitled to that money. He says I was because I had been on call. I signed for the money. Took it—

Q How much? A I don't recall, sir; $25 or $26, I think.

Q How many days had you actually served as petit juror? A None at all. Never had been called.

Q What did you do with the money when you got it from the sheriff's office? A Put it in my pocket. Afterwards, on leaving the building, I met this man Cowan with a very anxious look on his face near the front steps and gave him a part of the money. I do not remember how much. My recollection is that I took a bill off of the top part of the roll and gave it to him.

Q Did you serve as a juror at all during the two weeks for which you were called? A I did not.

Q When you first had these few words with Cowan, bringing your subpoena and your card with you, as I believe you said, was any state-

ment made by Cowan with reference to the card and subpoena? A None whatever, sir.

Q Why did you give him the card? A Because of the fact that a friend had told me that he would arrange that I would be excused, or arrange for me to be excused.

Q Did you tell Cowan what he should do with the card? A I asked, as I think I said, that it be sent in to the Judge.

*Cross examination* by Mr. Heisley.

Q Mr. Marshall, what is your business? A Fire insurance.

Q In what building are you located in Newark? A I am not located in Newark.

Q New York City? A Yes, sir.

Q Now, Mr. Marshall, I do not mean to offend you, but let me ask you a question, did you think that in any of this conduct in which you participated that you were aiding or abetting in the perpetration of a crime against this county? A I certainly did not.

Q You acted in good faith? A I certainly did.

Q If there was any crime perpetrated did you see anything in it that indicated to you that Taylor was in any way connected with it?

*Mr. Harrison.* I think that is very hypothetical and calls for a conclusion which this witness is not competent to pass upon.

*The Court.* Objection sustained.

Q Did you see, Mr. Marshall, Mr. Taylor take any part or aid at all in the transaction which you had with Cowan and which you testified to? A I think I have answered that, sir. I have never seen Mr. Taylor before.

*James Marshall, cross.*

Q Then you would say no, wouldn't you? A Absolutely.

*The Court.* Didn't you answer your name on the first day?

*Witness.* I did not.

Q And did this man Cowan make any demand for money on you? A None whatever.

Q Did he tell you that you could not be excused, but that you would be marked present, and at the end of your term come back and get your money and keep your mouth shut? A He did not.

Q Did he tell you that he had to get the money from you to give to Mr. Taylor so that Taylor could keep his books straight? A He did not.

Q Did he tell you anything of that kind? A He did not.

Q Did he say anything to you that indicated that you and he were perpetrating a crime? A Most certainly did not.

Q Is he the only person who made any request of you—no—is he the only person in connection with the courts of this county that you know of who spoke with you about being excused from attendance or about your attendance as a juror in the courts of this county? A Absolutely.

*By the Court.*

Q What door do you refer to that you went to with your subpoena as juror and with your card? A The door of a court room on the third floor of this building. I should think in that direction, your Honor (pointing).

*Charles J. Alliger, direct.*

Q Was it in the corner or in the front side of the building or on the north side, or don't you know? A It was on the front side and a corner office.

Q Did you ask for any particular judge? A I did not.

*Witness.* Will you Honor permit me to say something.

*The Court.* No, you cannot make a statement unless you are asked a question.

*Further cross examination.*

Q Let me ask a question. I don't know that it will lead up to what you want to say. How much money did you give Cowan? A I cannot tell you, sir. Whatever the size of the outside bill was I gave him.

Q Did you have to labor with him much to get him to take it? A I think that is indicated in my previous answer, sir, I did not.

CHARLES J. ALLIGER, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Alliger, you live in Montclair, New Jersey? A Yes, sir.

Q Do you know Frank H. Taylor, the defendant in this case? A I wouldn't say that I know him.

Q What is the first time you ever saw him? A Why, as I sat as a summoned juror in the court room upstairs he was at the desk up front.

Q And when were you called as a petit juror? A It was in April.

Q Of this year? A Of this year.

Q And when you reported here to whom did you first go? A Why, I reported in that court room.

Q And to what person did you first go? A I answered our roll call there.

Q Did you see Mr. Taylor? A Not prior to the roll call, no.

Q After the roll call did you see him? A Why, as they called for jurors who wanted to be excused to remain and come up forward why I sat with the rest of them.

Q Who called the roll, do you remember? A Why, there were two or three calling the roll. He was—Mr. Taylor, I think, called it and one of the men repeated it—repeated the names.

Q After the roll had been called did you talk to Mr. Taylor? A No, not at once.

Q What? A Not at the time.

Q To whom did you present your excuse? A Why, Mr. Taylor, but, I sat with the balance of the jurors that wanted to be excused and took my turn.

Q You took your turn then and saw Taylor? A I saw Taylor, yes, sir.

Q You presented your excuses to him? A To him.

Q What did Taylor say? A Why, he asked me to wait a few minutes and I went out in the small anteroom on the right of the Judge's seat, waited there a short time and came back again. Then I gave him my excuses in detail.

*The Court.* This does not mean much, "Gave him my excuses in detail." State what you said.

*Witness.* What I said?

Q What did you state to Taylor? A I told him that the business I was engaged in was occupying a considerable amount of time, I was putting in a great deal of night work and that it was really necessary on my own account that I be excused if it was at all possible.

Q What did he say? A Why, he referred me then to Mr. Cowan.

Q What did he say? A He says, "You go with Mr. Cowan and see if you can arrange it with him."

Q And did you follow his suggestion? A Yes, sir.

Q And then state what you did after that? A Why, I followed—Mr. Cowan and I went to the back of the room, sat down in one of the seats there and he explained to me that it would be out of the question to be excused—well, just plain excuse and let off the jury—as it would lead to everyone wanting to be excused. He said the only way to fix it would be to mark me present—and that I could go and need not come back again until the 20th, unless I was previously called.

Q 20th of April? A 20th of April.

Q What else? A Well, except to be cautioned not to repeat any of it, why, that was all there was to it at the time—no, he told me that when I came back or that at the end of the term, the end of the two weeks, that if I would come and ask for him at a certain place here in the building and see him there he would meet me there and straighten out the matter.

Q Did he state in what way he would straighten up the matter? A No, I can't say that he did. There was nothing in his actual words that would say that.

Q Well, what, if anything, did he say about it? A Well, it was more—he implicated, or he gave me the impression.

*Mr. Heisley.* I object.

*The Court.* Not what he gave the impression. What is your best recollection of what he said.

*Witness.* Just what I have answered before. If I would come back at that time and see him there at the front of the building that he would straighten the matter out then.

Q Did you return at the time stated by him for you to return? A Yes, sir, I did.

Q Now, tell us just what transpired on the 20th of April? A Well, I wouldn't—I came in and waited there for some ten minutes for him. I was looking for him and at last he came out of one of the offices and happened to see me standing there. I went up to him and told him I was there by engagement. He seemed to remember me and told me to wait a little while. I told him I couldn't very well wait if it could be avoided. I was anxious to get to the office. He says, "All right, wait just a minute." He left me and came back with a small—I presume a small slip of paper folded twice.

Q Do you know what that small slip of paper was? A I did not look at it.

Q At that time. Did you look at it later? A No, I never saw it. It was folded double.

Q What did you do with the slip of paper? A He told me to take it up to a certain office on that floor, and as I understood, ask for Mr. Taylor, which I did. It seems there was more than one Mr. Taylor in the building and they

wanted to know what Mr. Taylor I wanted, and they thought maybe I had made a mistake. I went back to see Mr. Cowan and he said don't tell them you are looking for Mr. Taylor. Tell them that Mr. Taylor sent you. I went back again and went in this office and then I put this slip of paper in the window there.

Q Do you know what office you went to? A I could identify it. I can't tell you the name of it.

Q In what part of the building was it? A It was on the lower floor in this corner of the building (indicating) way off in the corner.

Q Southeast corner? A Yes, sir; no, southwest, that is.

*The Court.* On High street?

*Witness.* Yes, sir.

*The Court.* I suppose everybody will agree that that is the sheriff's office.

*Mr. Heisley.* Yes, sir.

*Witness.* I have never been in the building before. I don't know.

Q And when you went in there what happened? A Why, they gave me a blank sheet of paper to sign under some other signatures.

Q And after signing what happened? A Why, then I turned to leave, but I was called back and, well, I found then I was going to draw pay as a juror. They paid me.

Q And how much did they pay you? A $29.70.

Q I call your attention to a signature, C. J. Alliger, on sheriff's payroll list.

*The Court.* Jurors' payroll.

*Mr. Heisley.* We admit it, or do not dispute it at least.

*Charles J. Alliger, cross.*

Q Jurors' payroll and ask you if that is your signature? A Yes, sir; that is my signature, but these figures were not in at the time I signed and this was held back. I didn't see this rest of the sheet at all.

Q By these figures you refer to the figures contained in the three columns immediately to the right of your signature? A Yes, sir; four—yes, three columns.

*Mr. Harrison.* I ask that this be marked for identification.

(Paper marked Ex. S 21 for identification.)

Q I think I asked you, Mr. Alliger, what happened after you left the sheriff's office? A Why, I met Mr. Cowan out in the hall. Meanwhile I had put the—well, I put three ten-dollar bills in the envelope and went out and left it with him.

Q And then you left the court house? A Left the court house.

Q At what time of day was it that this took place? A I had an engagement with him for 10:05 in the morning and kept it. I do not believe I was—

Q When had you made that engagement with him for 10:05? A At the time we were in the back of the court room upstairs the morning of the summons—the jury was summoned.

Q How many days, if any, had you served? A I did not serve at all.

*Cross examination* by Mr. Heisley.

Q Mr. Alliger, this slip that Mr. Cowan gave you, what did you do with it? A I followed his instructions and took it up to this other

office that I spoke of, in this—sheriff's office, I believe, now.

Q Sheriff's office? A I understand now it is the sheriff's office.

Q Well, you see, that sort of paper? A Yes.

*The Court.* Showing the witness one of the warrants.

Q Yes, sir. And was it folded like that? A Just the opposite; the second fold.

Q Just that way (indicating)? A No, folded over again from lengthwise.

Q That way (indicating)? A Now, fold it once more. Which order those folds were in I couldn't tell you, but that was the size after it was folded.

Q Well, it was a paper in which would represent about the appearance of this voucher or warrant which I am holding in my hand and interrogating you about? A Yes, sir.

Q And you took that paper to the clerk or to the sheriff's office? A Yes, sir.

Q You didn't give that to Mr. Taylor? A No.

Q When you responded up in the court room to the roll call on the first day wasn't there a public announcement made that the clerk, Mr. Taylor, would hear excuses of jurors and then in response to that didn't a lot of you gentlemen, who would rather attend to business than serve the county, gather around him and want him to excuse you? A Yes, sir.

Q Isn't that true? A Yes, sir.

Q And he told you to see Mr. Cowan? A Why, in the end he did, yes, sir.

Q Well, he was a pretty busy man, wasn't he? A Yes, sir.

Q I suppose there were a lot of you patriotic gentlemen who wanted to be excused, weren't there? A About forty.

Q About forty. That is all. Forty. Wasn't the crowd so great there and you gentlemen so zealous in your attempt to get excused that the clerk had to ask you to stand back? A Yes, sir.

Q Yes; and he asked you to stand back or stand to one side? A Not individually.

Q With good grace and good manners you did stand to one side, didn't you? A I stood aside.

Q When you came back to him he told you to see Mr. Cowan? A No, he told me to wait a few minutes, he would take it up with me later.

Q He would take it up later. Then, when you came back to him he did tell you to talk to Mr. Cowan? A To go with Mr. Cowan, yes, sir.

Q Did he point out Cowan to you? A Cowan stood alongside of us.

Q Stood alongside of you? A Yes, sir.

Q He was assisting Mr. Taylor, wasn't he? A Yes, sir; I suppose he was.

Q Now, Mr. Alliger, this was all done in an open manner, wasn't it? A Yes.

Q Yes. Mr. Taylor didn't whisper to you to see Mr. Cowan? A No, he didn't whisper, no.

Q And there were other gentlemen around at the same time that could have heard what he said as well as you? A Probably, yes, sir. I couldn't tell you. There were several men

gathered around there. I wasn't looking around to see whether there was anyone close behind me or not.

Q Was this before or after you went in some anteroom? A Afterwards. After I came back and saw Mr. Taylor the second time.

Q Well, you were not under the impression that you were aiding in the perpetration of any crime or offense against this county, were you?

*Mr. Harrison.* I object as being entirely immaterial as to what his impression was.

*Mr. Heisley.* I would like to be heard on it if your Honor has any doubt on it.

*Mr. Harrison.* Actual conversations are material. But I fail to see what his impression may or may not have been.

*The Court.* Doesn't it affect the question of whether what he said is the truth or not?

*Mr. Harrison.* As to his credibility?

*The Court.* Yes. I will hear you on the question if you have any doubt about it?

*Mr. Harrison.* I withdraw the objection.

Q (Question read.) A No crime; possibly an offense.

*The Court.* What do you mean by that?

*Witness.* I mean that I expected—

*The Court.* What is the difference in what you say between offense and crime?

*Witness.* I don't know—I will try to tell you what I mean. I fully expected that if I was excused from jury service here that naturally somebody would look for something in the way of remuneration and

possibly that would be considered an offense. I don't know.

Q You had an idea there was more or less graft in Essex county, is that the idea?

*Mr. Harrison.* I object as being entirely immaterial and irrelevant as to what his ideas may have been as to the prevalence of graft in Essex county or any other place. We are not trying other offenses, we are trying a conspiracy indictment here. I fail to see what this witness's impression as to the moral condition as to graft or other crimes—what bearing it will have on this case.

*The Court.* The question that is being inquired into is whether or not Taylor sent this man to Cowan to make arrangements with him to stay away and then obtain from him the money which he would receive from the county and divide it up with Taylor. Now, the inquiry is with reference to the condition of the witness's mind as to whether he believed at that time that he was entering into a scheme to rob the county of Essex, and he says, no, he did not think it was a crime, it might have been an offense. Now, there is something in the idea that a man may pay something for the services of somebody else and yet permit himself to think he is not doing very much wrong and is not just as bad as the other person and for fear that possibly this inquiry may be in relation to that matter I doubt whether I ought to shut it out, this inquiry into the state of mind of this witness.

*Mr. Harrison.* What bearing would the statement of this witness as to the so-called graft conditions in Essex County have upon the particular transaction which is now being considered.

*The Court.* That is too broad, of course, but the specific question I suppose relates to the matter of his paying something by way of a gift and not by way of entering into the conspiracy himself. Essex County is a pretty big place, Judge. I think I will sustain that objection.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Heisley.* If your Honor please, would you allow me to say something on that?

*The Court.* Yes.

*Mr. Heisley.* Suppose I can make this man admit that he was a participant in this crime. I do not say that he was, but suppose I can make him admit it. I discredit him instantly in the minds of the jury because he is in the same position as the State informant. Suppose on the other hand I can get him to say no, there was nothing about this which he thought was at all crooked or wrong. I think I am entitled to have the benefit of that impression from him for that reason. The prosecutor has had him say in a nice sort of way certain things that happened there to indicate that there was some subterraneous passage up there, that he comes up to the desk and

offers some excuse and Taylor tells him to go in the anteroom and wait and when he comes back in the anteroom he shoves him down to Cowan in some other part of the room, and the inference to be drawn from circumstances of that kind unexplained would be the inference of guilt, there was something crooked on the part of Mr. Taylor or Mr. Cowan. It seems to me I have a right to have this man say how he was impressed by this transaction—what was his motive—tell us his conduct upon the occasion—whether he was one of these thieves or whether he was a man who didn't think it was thievery, but that it was some sort of perquisite that was handed out that was not criminal, but an immoral act. I think I ought to be permitted to have him say just exactly what he means.

*The Court.* What has that got to do with the question of "Did you think there was graft in Essex County?"

*Mr. Heisley.* I thought his answer before that led up to that.

*The Court.* The question is, "Did you think there was graft in Essex County?" The court has already expressed its opinion of being with you on the main ground.

*Mr. Heisley.* I will withdraw the question.

Q Did you think, Mr. Alliger, that you were aiding either Taylor or Cowan or somebody else in the unlawful or improper abstraction of funds from Essex County? A No, sir; none whatever.

Q You were not ashamed of what you did? A No, not up to that point.

*Charles J. Alliger, re-direct.*

Q You got ashamed of yourself later on? A I did.

Q I suppose you got ashamed of yourself when you had handed $30 over to Cowan, is that right? A No. When I had the $30—or the $29.70 handed to me.

Q Because you thought you had not earned it? A That is it.

Q Cowan was the man who gave you this slip or warrant which you presented to the sheriff's office? A The slip, yes, sir.

Q And why was it you gave Cowan the entire $30? A Why, they couldn't make the exact change and they gave me three ten-dollar bills and I gave them thirty cents change.

Q You turned it all over to Cowan? A I didn't stop to make any change. I got rid of it right away.

Q You wanted to get it out of your hands? A I wanted to get it out of my hands.

*Re-direct examination.*

Q When you came back the second time from the anteroom to see Taylor how long were you with him? A I couldn't answer that definitely, but a short time.

Q Matter of very few minutes? A I couldn't say definitely, but a short time.

Q By a short time do you intend us to understand the matter as minutes or seconds? A Oh, four or five minutes maybe.

Q And were you alone with him at that time? A No, there were two or three other men gathered round there.

Q Where were you and Taylor at that time? A Taylor sat at his desk just inside of that rail and I, if I remember right, I was outside leaning against it; leaning over the rail.

Q Well, these other three or four men that you speak of were going and coming while you were talking with Taylor? A Why, they were behind me and out of my sight. I couldn't say what they were doing. There was someone there, that is all I know.

Q You mean there were three or four men somewheres near you in the room? A In the immediate vicinity, that is all.

Q But your conversation with Taylor was at a distance of how many feet? A Why, not more than eighteen inches or two feet from face to face.

Q And were you talking loudly or in a low tone? A I wasn't talking loudly. I was talking normally, possibly.

Q And how was he talking? A The same probably. I do not recollect.

Q And when you say that Cowan at that time was assisting Taylor what do you mean, Mr. Alliger? A Why, he appeared to be busy around the desk there.

Q Coming and going? A Coming and going.

Q Was he there when you had this second talk with Taylor? A Yes, sir; he stood alongside of me.

Q And he overheard it? A Probably.

Q How far from Taylor did Cowan stand at this second conversation? A When Mr. Taylor nodded towards him he was right at my elbow about.

Q Was Cowan where he could hear the conversation between Taylor and you? A If he had been there all the time he could.

Q And during what portion of the conversation was Cowan there? A Why, I was not

conscious of his being there—him personally being there at all. There was someone near me, that is all I knew. As Mr. Taylor referred me to him, as I turned he was there. How long he had been there I can't say.

*Mr. Heisley.* With the consent of the prosecutor I would like to call a witness out of order.

*The Court.* All right.

NELSON Y. DUNGAN, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Judge, you are one of the Circuit Judges of Essex County, aren't you? A I am.

Q You preside in this county and also in two or three other counties in this State, don't you? A I do.

Q And how long have you been a judge of the Essex Circuit Court? A Six and a half years.

Q And you know Mr. Taylor, who sits here at my left? A Very well.

Q You sit here in the room generally occupied by the Chief Justice, do you not, when you hold court, the Supreme Court room? A Yes, sir.

Q And are you familiar with Mr. Taylor's duties? A Generally; yes, sir.

Q Do you know he acts as clerk for the Chief Justice when he sits up there? A I know that.

Q And does he act as your clerk when you preside? A At all times.

Q At all times, yes. Judge, how long have you known Mr. Taylor? A Six and a half years.

Q And have you seen him intimately? A Very.

Q Will you just be good enough to tell the jury what his general duties are in your court? A Well, they are so numerous that I can tell only generally. With reference to juries he calls the attention of the jury commissioners to the proper dates for drawing juries; he attends when jurors are drawn; has something to do with the list, just what I am not entirely familiar with, but after the jurors are drawn then he calls the list of jurors at 9:45 each morning.

Q In your room? A In my room, yes, sir. Then he, as the particular panel in each case is drawn, places that upon the record book which he keeps, swears the jury, attends during the trial, swears the witnesses as a rule—sometimes officers swear them—generally he does it; then he receives the verdict of the juries and records that verdict, and when cases are being tried in the Supreme Court he examines the posteas before they are signed by me—posteas being the record of the trial at the Circuit which is sent to the Supreme Court in Supreme Court cases, and which is attached to the Circuit record, which is the transcript of the pleadings which comes to the trial judge from the Supreme Court when cases of the Supreme Court are tried at Circuit. He examines all orders, keeps track of motions. That is generally what he has to do with reference to jurors.

Q Pardon me. Before you leave, do you know whether or not he keeps a list of all of the jurors not only that serve under you, but under

the other judges? A Yes; he keeps a list of all jurors and if jurors are discharged during the term of service he makes out the warrants for the compensation of those jurors, and when they serve to the end of the term he makes out the warrant for the whole term. We have upon the list about five hundred cases each term for the three judges who sit in this county.

Q Three Circuit judges? A The three Circuit judges who sit here, and he has to do with the making up of that list and the indexing of that list, and then each week—each Friday there is made up a call for the succeeding week, consisting of thirty cases. In my court it has been my practice to leave that entirely to Mr. Taylor. Then there is a day call of ten cases, which is made up under the rules from the week's call, the rules being fifteen, but in my court I have adopted the practice of putting in ten cases, which I do arbitrarily—and Mr. Taylor keeps track of those cases and puts them in the call—makes up the call. Then he attends to the attorneys' credits. It is the practice of the county clerk to require a deposit of each attorney before filing pleadings and to require a trial fee before the case proceeds to trial if the attorney is without credit.

Q What is the amount of the fee—trial fee? A $10. And it is his duty to keep track of those credits and to require the attorneys to pay that fee, and it frequently is paid to him in court. There are many other duties. That is just what occurs to me now.

Q Now, Judge, may I ask you this, whether from what you observed the performance of these various duties keep him occupied only a

part of the time or is he a very busy man? A Very busy man.

Q And do the officers up there report to him frequently? A Yes, sir.

Q And has your association with him been such during the six and a half years that you have known him as to learn of his reputation for honesty? A Yes, sir.

Q And do you know what his reputation is?

*Mr. Harrison.* I object.

*The Court.* Objection sustained. You ask him if he knows what his reputation is.

*Mr. Heisley.* For honesty.

*The Court.* You asked him if he has learned his reputation. You haven't asked him if he knows his reputation for honesty. You haven't located it. Do you mean in the community where Mr. Taylor lives?

*Mr. Heisley.* Yes.

*The Court.* It doesn't appear where he lives yet.

Q Have you learned, Judge Dungan, and do you know of his reputation for truth and honesty in the County of Essex?

*Mr. Harrison.* I object on the ground that it is too broad. It ought to be in the community in which he resides.

*The Court.* I think that is the law as sustained by the authorities. I do not think it is where he resides. I think it is where he lives. I think that is the correct statement of law.

*Mr. Heisley.* Does the prosecutor admit that he lives in Montclair, and I suppose when he is down here he is generally alive.

*The Court.* I think he lives not only where he resides, but where he is working, but your question is too broad. It does not appear that he lives in all Essex County.

*Mr. Harrison.* We will admit he lives in the Town of Montclair in this county.

Q Judge, do you know of the reputation of Mr. Taylor for honesty in the County of Essex in this State?

*Mr. Harrison.* I object on the same ground that the question is entirely too broad.

*The Court.* Why don't you ask him about the State of New Jersey?

*Mr. Heisley.* That is bigger yet than Essex County.

*The Court.* Objection sustained.

Q Judge, do you know the reputation of Mr. Taylor for truth or for honesty in the town of Montclair in this State? A I think I do.

Q And do you know it in the City of Newark in this State? A I do.

Q What is that reputation? A Good.

Q Have you ever heard anything against it? A I never have.

*Cross examination* by Mr. Harrison.

Q Have you ever discussed Mr. Taylor's reputation for honesty, Judge? A I have.

Q When? A Prior to this charge.

Q And did you make the inquiry concerning his honesty yourself? A I did; not exactly an inquiry, no, but a remark—remarks about him started by my estimate of his worth and

acquiesced in by those with whom I was speaking—

Q Was that subsequent to this charge, the charge contained in this indictment found in the April term of the Essex County Court of Oyer and Terminer? A Since, but my testimony related to a period before that time.

Q So that you never had occasion before the finding of this indictment to discuss his reputation with anybody? A I never had occasion, but I did. I mean there was no occasion for it except my own estimate of his worth.

Q And because of that you made inquiries concerning him? A I made remarks concerning him relating to my estimate of it, which remarks were acquiesced in by those whom I was talking to.

Q Do you know his reputation in the town of Montclair? A I think I do.

*Re-direct examination.*

Q You come here, I think, without subpoena? A I have no subpoena.

Q Then you come without it? A Yes, sir.

GREHAM H. JACKSON, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Jackson, you were subpoenaed as a petit juror to serve in the courts of this county? A Yes, sir; some time around the latter part of March, I believe, I was subpoenaed.

Q And what was the last date of the service upon which you were called? A I don't know exactly except that I was told to come back here on the 20th of April.

Q And was it for the two weeks immediately preceding that that you were called to serve? A Yes, sir; I believe so. I know it was the first of April—first day of April that the term started.

Q You know Frank E. Taylor? A I never knew him by name until the time I came to serve as a juror, the first of April.

Q Where did you first meet him? A Why, I saw him, Taylor, a year ago last January when I served on a jury before.

Q Well, did you see him when you were called to serve in April this year? A Yes, sir.

Q Where? A In the Supreme Court room.

Q And was that the first day of your service? A Yes, sir; the day I came to answer roll call.

Q Now, tell the court and jury just what happened, beginning with your first appearance on the 4th of April? A Why, I was advised—Why I expressed a desire to get off and was advised by a party to see Mr. Taylor, so I came in the court room about twenty minutes of ten and inquired for Mr. Taylor and they referred me to an office on the second floor. I believe it was or third floor—the floor above this. I don't know whether it is the second or third. I went there and they told me that Mr. Taylor was out or in the court room or something to that effect, so I went up to answer roll call. I answered roll call and inquired of one of the officers if I could go down to Mr. Taylor's office and they told me that Mr. Taylor was right here, so they pointed him out to me, and I went up and asked him if I could be excused—told him that I was moving my plant and one thing another and also had a case on call here

in the courts at the present time and had to serve as witness on that and didn't see how I could serve very well as juror and witness at the same time, and the court officer, Cowan, as I recognize him today, he stood there by Mr. Taylor.

Q While you were there? A Yes, sir. Mr. Taylor turned about and told him to look up the case on the calendar and see if it was on call, evidently to verify my statement. Cowan started for the judge's chambers and Mr. Taylor turned to me and he says, "You go with him," and I did. He reached the door of the judge's chambers and as he opened it he saw the judge was in there. He says, "We can't go in there now," but he says, "Come out in the corridor and I will talk with you." We went out in the corridor. He said, "I think we can fix this all right for you."

*The Court.* Who said that?

*Witness.* Cowan. He says, "I think we can fix this all right for you." I said, "Very well. I will appreciate it very much if you can because I am in pretty bad shape as far as my business is concerned and I can't very well be spared." He said, "Wait here a minute until I can go in and see Mr. Taylor." He went back in the room where Mr. Taylor was.

*Mr. Heisley.* Did you go in with him?

*Witness.* No. I waited out in the corridor.

*Mr. Heisley.* How do you know he went in?

*Witness.* At least that is where I left Mr. Taylor. He went back in the court

room and in a few minutes came back. He says, "We can fix it up all right for you, but"—No. First he says to me, he says, "You positively—the judge positively would not excuse you for any business reason," he says, "There is no use of your trying to get off that way, but," he says, "We can fix it up all right, but you will have to keep your mouth shut." So he then explained that he would tear up my slip when he come to it and that I would be marked present on the roll call although my name would not be called. He then told me to come back on the 20th of April at 10:10 and that he would give me a slip for the money which I was to get from the sheriff's office and take up to Mr. Taylor's office and hand it to Mr. Taylor. That was all the conversation that took place, or as near as I can recall at the present time.

Q Well, where did you go after that? A Went back and went to work.

Q Did you serve at all on the jury during that two weeks from the 4th to the 20th of April? A I did not.

Q Did you return to the court house on the 20th of April? A I did.

Q What time? A 10:10.

Q Whom did you see here? A No one but Cowan.

Q Tell what— A Well, outside of the sheriff's office I saw some people there and the bootblack.

Q Tell what transpired between you and Cowan and what you did? A Why, Cowan met me down there at the bootblack stand and told me to wait. He says, "I will get your slip

for you." He went and got the slip, came back and handed it to me; told me to go to the sheriff's office.

Q Wait a minute, Mr. Jackson. I show you Ex. S. 12 and ask you if that is the slip which you received at that time from Cowan? A I couldn't swear to it. I presume it is. A similar slip.

Q You may proceed. A Where was we at?

*The Court.* "He told me to go to the sheriff's office."

*Witness.* He told me to go to the sheriff's office and he gave me an envelope at the same time. He says, "You put this money in the envelope and you can hand it to me when you come out," and I did that.

Q How much did you get from the sheriff's office? A $27.50.

Q How much did you give Cowan? A $27.50. At least I gave him all they gave me.

Q I show you Ex. S. 21 for identification, being sheriff's pay roll of jurors for the two weeks ending April 20th and call your attention to the name opposite No. 57, Greham H. Jackson, and ask you if that is your signature? A That is my signature, yes, sir.

Q Were those figures immediately to the right there, when you signed? A I do not recall, I do not think they were.

*Cross examination* by Mr. Heisley.

Q Mr. Jackson, when you went in to see Mr. Taylor the first time you thought the man you had to see was the county counsel on the second floor, wasn't it? A I didn't know really, I just inquired for Mr. Taylor and I was referred to the county counsel's office.

Q But you found out the man to see really was Frank Taylor? A Why, evidently. I didn't know until afterwards whether I had made a mistake or not.

Q So you got in the court room about quarter before ten? A Yes, sir. I was up there in time for the roll call.

Q And don't you know, Mr. Jackson, that that is just the time when Mr. Taylor calls the entire list of jurors for all the courts of this county? You served before? A Well, I know he called the list of jurors, yes, sir.

Q And you used to report and Mr. Taylor would call the roll? A Yes, sir.

Q About a quarter before ten? A Yes, sir.

Q You served the year before in January? A Yes, sir.

Q And you used to report and Mr. Taylor would call the roll? A Yes, sir.

Q At quarter before ten; and the room would be filled with jurors; is that not so? And when you went in on this day in April at quarter before ten wasn't the room practically filled with the entire jury panel? A Practically, yes, sir.

Q And when you spoke to him didn't he tell you he was busy or say you better talk to Mr. Cowan about it? A No, sir.

Q Didn't he tell you when you gave him your excuse for not serving or wishing to be excused—when you gave him your reasons for wishing to be excused you said to him as a reason that you had a case which was subject to call at the April term? A Yes, sir.

Q And you thought you ought not to be a juror under such circumstances, and didn't he tell you to go with Cowan and look up the list

of cases and see if your case was on the list? A See if it was on the call or something like that—words to that effect.

Q Isn't that practically all that Mr. Taylor said to Cowan? A That is practically all he said. All that I heard him say anything.

Q And isn't it practically all that Mr. Taylor said to you? A No, sir.

Q What else did he say to you? A He says, "You go with him," he says.

Q That is what I said. Didn't he say go with him and see if the case was on the list? A Yes, sir.

Q And Cowan started to take you into Judge Dungan's room for the purpose, as you understood it, of seeing if your case was on the list? A Yes, sir.

Q Whether you were telling Taylor the truth? A Yes, sir.

Q Yes. Judge Dungan was in his room and Cowan said you can't go in there; come out in the hall? A Correct.

Q That is all. And in no other way that you know of was Taylor implicated or concerned in the conversation you had with Cowan, is that right? A I couldn't say that he was.

Q Nor do you know of his being implicated in any way in your paying this money back to Cowan in the envelope? A I have no way of knowing, no.

Q Let me ask you, Mr. Jackson, didn't you know you were doing wrong? A Why, I didn't realize it at the time. I tell you I had been working nights and Sundays and all times. I was moving my plant, and the thing that was uppermost in my mind was to get off. I didn't stop to think. I realized it since and the proof

of the pudding is that I repaid my moral obligation to the county.

*By the Court.*

Q What do you mean by that; you paid the money back to the county? A I paid the money back to the county.

Q Was Cowan dressed in an officer's uniform of the court at the time? A He was.

Q Did Taylor hand anything to Cowan? A Not that I recall.

Q Did you see in Cowan's hands the printed book eight or ten inches in length and four or five inches in width or something of that sort? A No; no, sir.

Q Did Cowan have anything in his hand? A Not that I recall. I am very positive he did not.

FRED S. HELWIG, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Helwig, you live in Irvington, New Jersey? A Yes, sir.

Q Have you recently served as a petit juror in the courts of this county? A Yes, sir.

Q Beginning what day? A Why, I am pretty sure it was April 23d.

Q And to whom did you report on that day? A Why, for the roll call up on the northeast corner of this building on the third floor.

Q The room we have identified as Judge Dungan's court room? A Yes, sir.

Q And who called the roll that morning? A I couldn't say who called the roll. I do not recall.

Q Do you know Mr. Taylor? A I couldn't tell you. There was—I attended three of these roll calls and different men called the roll. I would not swear that Mr. Taylor called the roll on the 23d of April.

Q Now, you saw him there that day.

*Mr. Heisley.* Does he say so.

*Mr. Harrison.* Strike it out.

Q Did you see Mr. Taylor on the 23d of April? A I don't remember.

Q Well, what did you do in the way of jury service on that day? A Why, I couldn't tell you just what court we went to. I finally came into this court here and I was called for jury service here. That was that Monday.

Q After finishing your jury service here what did you do? A We didn't finish that day. The case was carried over until the next day and we finished about six o'clock the following day. Then—do you want me to go ahead.

Q Yes, tell just what happened. You made some efforts to be excused, didn't you? A Why, on Wednesday, that was the third day, I wasn't called on any jury and I went from court in the afternoon—I went from court to court and it seemed as though the cases that were on would be carried out the rest of the afternoon and there was one or two courts that were closed —they weren't doing anything—so it got about three o'clock and I thought if I could be excused I could make good use of the time, because where I worked we have been handicapped for clerks due to calling men to the war and rather than work half the nights—go down there after serving up here and work nights—I thought it would be a good chance to get a few hours' time

in the daytime, so I went down to the sheriff's office and asked them down there where I should go to be excused. So I met the gentleman that calls off the jurors here, the dark-haired gentleman, who parts his hair in the center.

Q Takes the names out of the jury box? A Yes, sir.

*The Court.* Can you agree on who this is?

*Mr. Heisley.* He looked at me as if he thought I might part mine in the center.

*Witness.* The gentleman was here this morning, that called off the jury this morning.

*The Court.* That was the under sheriff.

*Witness.* I asked him where I should go to be excused and he says, "Why, go up to Mr. Taylor's office," he says, and I told him just what the conditions were and he said, "I think he can fix you up for the afternoon." I said—I thanked him.

Q You went to Mr. Taylor's office? A Yes, sir.

Q Where? A Room to the rear of where the roll is called. And I went in there and asked for Mr. Taylor. Mr. Cowan was in plain clothes and he said Mr. Taylor isn't here this afternoon, he says, "He has gone to a funeral." He says, "Is there anything I can do for you?" I says—of course, I stated that I wanted to get off. I said it was only a matter of an hour or so. I said, "I don't think there will be any more jurors this afternoon, so if I could get away I would like to get away." "Well," he says, "Is it absolutely necessary that you get away?" I said, "Certainly it is or I wouldn't

ask you;'' and he said, ''Well,'' he said, ''Come over here and we will fix it up.'' So he goes to the box which the jurors' names are in and he says, ''What number is yours?'' I told him my number. I don't remember my number now, and he asked me my name and he opens the box and he takes out my name or slip with my name on and then he says, ''Well,'' he says, ''This will fix it up this afternoon,'' he says, and he went outside into the court room to a table on the right-hand side and put that slip with some more slips that were fastened together with an elastic band; and I said to him then—I said, ''Is there any way I could get excused for the rest of the term?'' and ''Well,'' he says, ''If it is absolutely necessary that you you get away,'' he says, ''perhaps I can—perhaps we can fix it up.'' ''Well,'' I said, ''Who should I go to see?'' ''Well,'' he says, ''I will speak to Mr. Taylor to-morrow morning and state your case to him.'' Of course, I stated certain conditions. He says, ''I will state your case to him.'' He says, ''And I think we can fix it up all right,'' and he says, ''Now, you come here to-morrow morning about half-past nine,'' he says, ''and see me,'' he says, ''And then I will take you in and introduce you to Mr. Taylor.'' So I came the following morning and I was met by Cowan on the outside in the corridor. He was in his uniform then. He come up to me and he says, ''Good morning.'' I did not recognize him at first because he was in street clothes the day before and I looked at him again and I said, ''Oh, good morning,'' and he says, ''Come on.''

Q Now, just what time in the morning was this and where did you first see him? A This

was between 9:45—or 9:30—or 9:30 and 9:45. I got here about 9:30 downstairs. Then I went right upstairs and it was outside in the corridor.

Q Outside of Judge Dungan's court room? A Judge Dungan's court room. So he said, "Come on over here," so I followed him and we went around the bend to the right and he said to me, "I have spoken to Mr. Taylor and," he says, "I think it will be all right." So I said, "What do you mean 'all right?' What am I to do?" "Well," he says, "You are excused for the rest of the term." He says, "Or until Friday"—I don't know what the date would be. Anyhow it would be the second Friday after the 23d of April. He said, "You are excused until that time," he says, "And then come downstairs and meet me down by the bootblack stand and I will go get your slip," he says, "for the two weeks' pay and you take that to the sheriff's office and sign for it," he says, "and then you take out the days you served and give me the rest," he says, "And I will turn that over to Mr. Taylor and he will take that into his account and straighten out his books." That didn't look good to me and I said to him, "Well," I says, "That don't look very good to me," I says. "I would rather see Mr. Taylor and have this verified." "Well," he says, "It is perfectly all right," he says, "but if you want Mr. Taylor to verify it," he says, "I will call out Mr. Taylor." I said, "Well, I would sooner have that;" so he goes in the court room and calls Mr. Taylor and Mr. Taylor comes out to me and he says, "Mr. Taylor, this is Mr. Helwig," he says. "I have just explained to him about being excused and he says under the conditions he wants to know whether it is

perfectly O. K." and Mr. Taylor says—he shook hands with me—he says, "Yes, everything is O. K.," he says. I says, "Are you sure of that?" He says, "Yes," and he says, "Excuse me," and he goes back into the room there. So Mr. Cowan said to me, "Well," he says, "I will see you a week from Friday," he says, "and we will fix it up all right;" so I left the court, and I started thinking the best way to clear myself, because I didn't want to get in any graft, and I thought in justice to the county to report the matter.

Q To whom did you report it? A I came—first I consulted a friend of mine, talked things over and then I came to Mr. Harrison.

*The Court.* The prosecutor?

*Witness.* Yes, the prosecutor.

Q What took place after that so far as that payment of the money was concerned? A Well, on the following Friday I arrived downstairs about a quarter to ten, I think it was—it was around that time—and I waited possibly ten or fifteen minutes and Mr. Cowan came downstairs and he says, "Why, good morning." I said "Good morning;" he says, "Just a minute," he says, "and I will get your slip," so he says, "You wait here;" so he went to the elevator; I think he went upstairs, and about five or ten minutes after he came downstairs and gave me the slip and he says, "Now, you go to the sheriff's office and give him this slip," he says, "and sign for your money and then bring it out here," he says, "and we will fix things up." So I went to the sheriff's office and signed for my money and brought the money outside. I was going to hand it to him there

in the corridor. He says, "Come with me," so we walked around to the right and went downstairs, one flight of stairs there to the basement and just around the pillar—it isn't a pillar, just where somebody wouldn't see us—and I handed him the $18 and I think there was seven dollars and eighty cents I kept for myself, and he bid me good day and I proceeded to business.

Q And how many days did you actually serve during that two weeks? A Three days.

Q I show you Ex. S. 18 and ask you if that is the slip that you received on the 11th of May from Cowan and which you turned over to the sheriff? A It looks very much like the slip I had. I wouldn't swear that was the slip.

Adjourned until tomorrow morning at 10 o'clock.

ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

June 19, 1917.

STATE

*vs.*

FRANK E. TAYLOR.

SECOND DAY.

Appearances as before stated.

FRED S. HELWIG, recalled for cross examination by Mr. Heisley.

Q Mr. Helwig, what is your business? A Accountant.

Q Accountant where? A Here in the city.

Q Well, as you learned yesterday Newark is a very large place, Essex County particularly. I will withdraw it if you hesitate to tell where you are working. A Sherwin-Williams Company.

Q You need not answer if you are ashamed of it. What made you hesitate about telling us where you worked? What made you hesitate about telling us where you worked? It isn't a thing to be ashamed of? A No; it is nothing to be ashamed of.

Q Why did you hesitate? A It may get in the papers that I am working for the company and may interfere with the business—may hurt the business or something of that sort.

Q Well, I don't want to hurt you. Now, I understand, Mr. Helwig, that you did not

know Mr. Taylor personally when you first came here to serve on this panel? A No, sir; I did not.

Q And who was it that told you to see Mr. Taylor? A As I understand now the under sheriff.

Q Yes. And you began serving here on Monday morning, didn't you? A Yes, sir.

Q And if you did not know Mr. Taylor then you did not have any arrangement with him before that Monday that you were to be approached on Monday by Cowan or himself, isn't that so? A I was not approached on Monday.

Q Well, whether you were approached on any other day you did not have an arrangement before you came to court—any arrangement with Mr. Taylor whereby you expected to be approached by Taylor or Cowan, isn't that so? A Yes, sir; that is so.

Q Now, you went upstairs to see Mr. Taylor and the man that got hold of you outside was this man Cowan, is that so? A I didn't see him outside, I went right into Mr. Taylor's office.

Q Well, now, when you speak of the office what do you mean? A The room to the rear of Judge Dungan's court. It is a sort of vestibule there and then you turn to your left and there is quite a room inside.

Q That is Judge Dungan's private room you refer to, Mr. Helwig, is Judge Dungan's chamber? A Well, I don't know what the name is.

*The Court.* It is known as the Chief Justice's chamber.

*Mr. Heisley.* The Chief Justice isn't often there. Judge Dungan is there often.

*The Court.* Ask the witness.

*Witness.* I couldn't say what you call it.

*The Court.* Anyway, it is the room in the northeast corner of this building on the third floor?

*Witness.* Yes.

*Mr. Heisley.* Can we agree that that is the Chief Justice's chamber?

*Mr. Harrison.* Chief Justice's chambers.

*Mr. Heisley.* And Judge Dungan's.

*The Court.* Did you say "and Judge Dungan's"?

*Mr. Harrison.* And formerly Judge Heisley's chambers.

Q Well, you found Cowan in that room, didn't you, Mr. Helwig? A Yes, sir.

Q And he told you that you could not see Mr. Taylor because Mr. Taylor was away, I think, attending a funeral, is that right? A That is it.

Q What did you say to Cowan? A Well, I told him that I come up to see Mr. Taylor to see whether I could be excused for the afternoon. "Well," he says, "I am afraid you can't see Mr. Taylor because he is off this afternoon attending a funeral," and, he says, "But whatever your business is perhaps I can help you out," and I said, "Well, I would like to be excused this afternoon." I told him that I went from court to court and it didn't appear that any more jurors would be chosen that afternoon and if I could get excused for the hour I could make good use of it, and he said, "Was it absolutely necessary that you must leave?" "Well," I says, "I wouldn't ask the hour," I

said, "If it wasn't necessary that I get back to business"; so he said, "Well," he says, "I guess I can arrange for it this afternoon," he says, "Then I will speak to Mr. Taylor in the morning and tell him what I done." So he went to the box and he took out my name. He asked me my name.

Q Mr. Helwig, I do not want to make you talk any more than you want to or take up any more of the time of the court and jury than is necessary. A All right.

Q Then you came back when? A Came back the following morning.

Q And you met him downstairs in this uniform. I see. A No, I met him on the top floor.

Q He was in uniform? A Yes, sir.

Q And the time came along—the time came rather when you became suspicious that Cowan was a crook, didn't you? Why do you hesitate? Isn't that so? A Yes, sir.

Q And you thought that he was maybe getting you in trouble and that you were acting perhaps in a way you should not act? You were fearful of that, weren't you? A Well, I figured that there was some crooked work going on here.

Q I mean to say you became suspicious of Cowan, isn't that true? A Yes, sir.

Q At some time. And you felt it was your duty to see whether Taylor would stand for what Cowan was doing? A Yes, sir.

Q And you told him you wanted Taylor to verify this arrangement which Cowan had made with you? A I did; yes, sir.

Q And that arrangement was substantially that you were to be excused, to be marked

present and come back and draw the money and turn the money over to Cowan and Cowan was going to divide it with Taylor. That was practically the arrangement with Cowan? A No; he was going to turn the money over to Mr. Taylor.

Q To straighten his books? A To straighten his books.

Q Well, what did you say to Cowan about your wanting Taylor to verify this arrangement? A Well, I says—I kind of hesitated, and I started—I said—well, I said, I don't kind of approve of that, I said—

Q Now Mr.—

*The Court.* Go on and finish your answer. Give as nearly as you can what you said to Cowan and what he said to you?

A I said I don't kind of approve of that.

Q You don't kind of approve of it? A I don't kind of approve of that. I said, I would like to see Mr. Taylor and have him verify this, and he says, "Well," he says, "it is all right, but if you want to see Mr. Taylor I will call him out." So he went in the door there and in a few seconds why Mr. Taylor came out.

*The Court.* From what did he come out?

*Witness.* Well, I couldn't see whether he came out of that little vestibule there or whether the court room, but I think it was the vestibule.

Q Did he go into the Judge's chambers? A No, not the Judge's chambers, the door in the court room there, the outer door.

Q He came out of the vestibule, didn't he, into the corridor, where you and Cowan were?

A Yes, sir. I am pretty sure it was the vestibule.

Q Well, it is the vestibule. I won't dispute that.

*The Court.* Go on and finish your answer.

*Mr. Heisley.* I think he has.

*Mr. Harrison.* No. He is interrupted so frequently he don't get a chance to talk, Judge.

*The Court.* The question was what did you say to Cowan and what did he say to you?

*Mr. Heisley.* He has got that far and says Taylor came out.

*The Court.* The witness hesitated. I want to know whether there was anything more that he said to Cowan or Cowan to him.

Q What was said then next by either of you three men, that is you, Cowan or Taylor? A Mr. Cowan, when Mr. Taylor came out, Mr. Cowan said to Mr. Taylor, this is Mr. Helwig.

Q Introduced you? A Yes, sir; and Mr. Taylor shook hands with me and then Mr. Cowan said, "I have spoke to Mr. Helwig about the arrangement we have—that I have made for him to be excused and he wants to know whether it is perfectly O. K., and Mr. Taylor said, "Yes, everything is all right," and with that he excused himself and went back into the room.

Q Now, Mr. Helwig, that is all that was said, was it, as far as you remember at that time? A Yes, sir; that is all as far as I remember.

Q Up to that time you had never seen Mr. Taylor? A Never seen him, no, sir.

Q And when Mr. Cowan introduced you to Mr. Taylor it was then that Mr. Taylor shook hands with you? A Yes, sir.

*The Court.* Hadn't you seen him before?

*Witness.* No, sir; not that I remember.

*The Court.* Hadn't you seen him in the morning calling the roll?

*Witness.* Well, I always sat in the rear of the court room and I wouldn't swear whether he called the roll because there were different men called the roll up there.

Q At the time you were introduced to Taylor you didn't know him and as far as you know he didn't know you, isn't that so? A That is the fact.

Q And when Cowan said to him, "Mr. Taylor, this is Mr. Helwig, whom I have made arrangements with," or something of that kind, did he say anything to Mr. Taylor as to what the arrangement was that he had made with you? A No, sir.

Q But, of course, at that time, Mr. Helwig, you thought by Taylor's assenting to it that he was in this scheme just exactly as Cowan was, didn't you? A I did, yes, sir.

Q But you do admit that at that time there was nothing said that indicated to Taylor that here was a corrupt agreement on foot between you and Cowan, isn't that a fact?

*Mr. Harrison.* I object as calling for a conclusion.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Was there anything said at that time which would indicate to Mr. Taylor that there was a scheme contemplated by Cowan for the purpose of cheating Essex County out of jurors' fees by means of having you marked present when you were not present?

*Mr. Harrison.* I object as calling for a conclusion and being argumentative.

*The Court.* He has already answered.

*Mr. Heisley.* Does your Honor overrule it?

*The Court.* The Court will act upon the matter at its own convenience, and will not be delayed or hurried by counsel.

*Mr. Heisley.* I do not desire to hurry the court. I want a ruling.

*The Court.* The Court will overrule the objection.

*Mr. Heisley.* May I have an exception?

*The Court.* No, not when the Court is with you.

*Mr. Heisley.* Oh, overrule the objection.

*The Court.* You see, you are too quick. Now, proceed.

*Witness.* May I have the question?

Q (Question read.) A No; there was not.

*Re-direct examination.*

Q When Mr. Taylor said to you it is O. K., or all right, you thought that you had his approval to being excused, did you not?

*Mr. Heisley.* I object on the ground that what he thought is not admissible as against the defendant.

*Mr. Harrison.* Defendant has already cross examined as to the state of mind of this party—this witness on the same point and it seems to me the conclusion which he endeavors to draw from the circumstances and the witness's statement on the subject is merely being followed up.

*The Court.* Yes; the door is open, but not for leading questions. What is your objection?

*Mr. Heisley.* I will withdraw the objection.

Q When Mr. Taylor said to you in Cowan's presence it is all right, or everything is O. K., what did you think with reference to your being excused?

*Mr. Heisley.* I object as immaterial what he thought.

*The Court.* You asked him the question, what was that?

*Mr. Heisley.* I asked him if he did not think that Taylor was as deep in the scheme which was in effect as Cowan was. The prosecutor is not asking that question at all.

*The Court.* Doesn't that open the door to ask him what he did think?

*Mr. Heisley.* I will withdraw the objection.

Q Do you recall the question, Mr. Helwig? A No, sir; I do not.

Q (Question read.) A Well, I thought they were working a scheme up there to—and there were several men into it and if it was in my power to convict them I would go ahead and do it.

Q Who did you then think were in the scheme?

*Mr. Heisley.* I do not object, provided I am permitted to cross examine on it.

*Mr. Harrison.* I will withdraw the question.

*Mr. Heisley.* I wish you would ask it.

*Mr. Harrison.* I will repeat the question then.

*The Court.* Do you know the question?

*Witness.* Yes, your Honor.

*The Court.* All right, then, you can answer it.

*Witness.* Mr. Cowan and Mr. Taylor and possibly others.

Q When you say that different men called the roll on the first morning of your attendance, do you know who called the roll? A No, I don't know the gentleman's name, and I would not swear that Mr. Taylor called the roll.

Q Would you swear that anybody that you knew called the roll? A No, I would not.

Q You don't know who called the roll? A No, sir; I do not remember.

Q In what part of the room were you sitting when the roll was called? A Away to the rear.

*Fred S. Helwig, re-cross.*

*Re-cross examination.*

Q Mr. Helwig, what time of day was this when you had the conversation upstairs when Taylor came out? A Well, it was between 9:30 and quarter to ten.

Q Mr. Taylor apparently was very busy, wasn't he? A Well, he appeared to be so.

Q Are you one of the gentlemen who said you had served as a juror before? A No, sir.

Q Well, the prosecutor has asked you as to what you thought as to the men who were in the scheme and you said you thought at that time that Taylor was in the scheme. You don't know that he was in the scheme, do you? A No, sir.

Q And would you be fair enough to admit, Mr. Helwig, that it was entirely possible for Cowan to be doing this thing on his own hook and simply calling Taylor out and deceiving him in your presence?

*Mr. Harrison.* I object on the ground that it is asking the opinion of the witness upon a question on which he is not qualified to express an opinion and on the ground that it is argumentative.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court; same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Mr. Helwig, don't you realize that Cowan could have been doing this thing himself and telling Taylor something entirely different than

he told you and apparently have Taylor assent to it? Don't you recognize that fact?

*Mr. Harrison.* Objected to on the same ground.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court; same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

WILLIAM A. BENDER, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Where do you live, Mr. Bender? A Glen Ridge.

Q Were you called to serve recently upon the petit jury panel of the courts of this county? A Yes, sir.

Q When? A As near as I can recollect the latter part of April in this year.

Q What was the first day of your appearance, if you recall? A I couldn't give it any closer than that. I think it was on a Monday.

Q And did you serve any part of the two weeks' service for which you were called? A No, sir.

Q By whom were you—why didn't you serve? A I was excused by the judge.

Q What judge? A I don't know his name, but I would know him if I seen him. I can describe his appearance.

It is admitted that Judge Osborne excused this witness on the first day of his term of service.

Q What did you do after you were excused? A I went about my business. Went to New York and continued—

Q And you did not serve a single day? A No, sir.

Q You were excused for the whole term of your service? A Yes, sir.

Q I show you a warrant in favor of William Bender, dated May 4, 1917, days' services petit juror, signed Joseph McDonough, clerk, Taylor, and ask you if you ever saw that warrant before? A No, sir.

*The Court.* Which one are you showing? One that has been put in evidence?

*Mr. Harrison.* No, sir; it has not been put in evidence. I ask that it be marked for identification.

(Paper marked Ex. S. 22 for identification.)

Q I show you sheriff's payroll of jurors for April term, 1917, the first entry being May 5, 1917, and call your attention to the name of William Bender, opposite 21, on the second page of the jury list, and ask you if that is your signature? A No, sir; it is not.

Q Did you ever receive from the sheriff of this county or any one in his office the sum of $26.60 on May 8th, 1917, or any other time? A No, sir; I did not.

*Mr. Harrison.* I ask that the list be marked for identification.

(Paper marked Ex. S. 23 for identification.)

*William A. Bender, cross.*

*Cross examination* by Mr. Heisley.

*Mr. Heisley.* If your Honor please, I move to strike out the witness's evidence because I do not see how it is relevant. It does not tend in the slightest degree to prove any conspiracy. He does not show that he ever had directly or indirectly any interview or connection or association at all either with Cowan or with Mr. Taylor. What the prosecutor has shown is apparently a fraud perpetrated upon the County of Essex, the crime of forgery, by means of which a sum of money was extracted from the county, which is necessarily prejudicial to the defendant, but yet with which he is in no way connected at all, and I sincerely hope it will not be permitted to exist.

*The Court.* Let me see S. 22.

*Mr. Heisley.* I think it shows a separate and distinct crime by somebody else with which this man is in no way connected and cannot help but be prejudicial.

*The Court.* It is admitted that the warrant S. 22 for identification is in evidence.

*Mr. Harrison.* I intended to put it in evidence and I later may.

It is admitted that Ex. S. 22 for identification, being the William Bender warrant, was issued by Mr. Taylor on or about May 4, 1917, the date on the warrant. I offer it and ask that it be marked.

*The Court.* Is it William or William A? He says his name is William A. What is the warrant?

*Mr. Harrison.* William Bender.

*The Court.* I suppose there ought to be some evidence of identification.

*Mr. Heisley.* I do not insist upon it, your Honor.

*The Court.* There may be other William Benders. The objection is withdrawn.

(Paper marked Ex. S. 22 by striking out the words "for identification.")

Q Mr. Bender, do you know Mr. Taylor? A No, sir.

Q Never saw him that you know of before this trial? A No, sir.

Q Never talked with him? A No, sir.

Q In the court room or outside of the court room? A No, sir.

Q You went to Judge Osborne to be excused and he did excuse you? A First I went to the—I answered my name at roll call.

Q In the Supreme Court room? A In a room on the floor above this, I believe.

Q We will have no trouble about that. You responded present anyway? A Yes, sir.

Q To that roll call. And was that the last time you were in that court room? A I think it was.

Q And when you were excused by his Honor, Judge Osborne, did you go immediately out of the building? A Yes, sir.

Q Was the Judge on the bench when he excused you or was he in a private room? A He was on the bench.

Q Your excuse was made in open court? A Yes, sir.

Q But not in the Supreme Court room? A We went from the room, where we answered the roll call—I believe there was announcement

made that those who had any reasons to be excused should go to some other room and we all went to that room.

Q And in that room his Honor Judge Osborne publicly excused you? A Yes, sir.

Q And you went away? A Yes, sir.

Q And that was all you did about it? A Yes, sir.

*By the Court.*

Q What day did you answer the roll call? A I believe it was on Monday in the latter part of April.

Q You never answered roll call after that? A No, sir.

Q You don't know whether somebody else did, do you? A No, sir.

Q In reference to excusing you, do you know whether Judge Osborne did anything? A Judge Osborne did, the judge excused me.

Q You said he excused you by saying you were excused to you in court? A Yes, sir.

Q But you don't know whether he did anything else or not? A No, sir.

GEORGE E. BRIGGS, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Briggs, where do you live? A 136 South 11th street.

Q City of Newark? A Yes, sir.

Q Were you called to serve as a petit juror in the courts of this county recently? A Yes, sir.

Q Do you remember the day when you were supposed to begin service? A April 23d.

*George E. Briggs, cross.*

Q And did you serve as such juror? A No, sir.

Q Why not? A I was excused by Judge Osborne.

Q When? A The same morning, sir, 23d, because I had been subpoenaed on the federal jury.

*Mr. Harrison.* It is admitted that warrant in favor of George E. Briggs was issued by the defendant Taylor on or about the 4th day of May, 1917, certifying the said Briggs had served as petit juror for ten days during the April term, 1917.

*Mr. Harrison.* I offer it in evidence.

(Paper marked Ex. S. 24.)

Q I show you Exhibit S. 24, being the warrant just referred to, and ask you whether you ever saw it before? A No, sir; I did not.

Q Did you ever present that to the sheriff of this county for payment? A No, sir; I did not.

Q I call your attention to the name of George E. Briggs appearing opposite the No. 14 on sheriff's payroll of jurors, first date on which is May 5, 1917, and ask you if that is your signature? A No, sir; it is not.

Q Did you ever receive from the sheriff on the 4th day of May, 1917, or any other time the sum of $25? A No, sir; I did not.

*The Court.* You are showing him S. 23 for identification.

*Mr. Harrison.* Yes, sir.

*Cross examination* by Mr. Heisley.

Q Mr. Briggs, you were properly excused by Judge Osborne in the presence of quite a num-

ber of people in one of the court rooms of this county? A Yes, sir. There was quite a number of excuses at the time.

WILLIAM C. APPLETON, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the Borough of Glen Ridge, this county, Mr. Appleton? A I do.

Q You were recently called to serve as petit juror in the courts of this county? A I was.

Q When? A The first part of May, I think, about May 7th. That is, the summons was previous to that but the time was Monday, May 7th.

Q Did you serve? A I did not.

Q Why? A Was excused by the Judge.

Q What Judge? A I think it was Judge Osborne.

It is admitted that warrant in favor of William C. Appleton for ten days' service as petit juror during the April term, 1917, said warrant bearing date May 18, 1917, was issued by the defendant, Taylor.

*Mr. Harrison.* I offer it in evidence.

(Paper marked Ex. S. 25.)

Q I show you Exhibit S. 25 and ask you if you ever saw that warrant before? A No.

Q I show you sheriff's payroll list of petit jurors, the first date on which is May 18. 1917, and call your attention to the name of William C. Appleton opposite No. 62 and ask you if that is your signature? A No.

Q Did you on May 18th or at any other time receive from the sheriff or anyone in his office

the sum of $26.60 for compensation and mileage as petit juror? A I did not.

*Mr. Harrison.* I ask that the sheriff's panel be marked for identification.

(Paper marked Ex. S 26 for identification.)

*Cross examination* by Mr. Heisley.

Q I think you said you were excused by Judge Osborne? A Yes, sir.

Q In a public manner, the Judge on the bench? A Yes, sir.

SAMUEL LEMBERG, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in Nutley, New Jersey, Mr. Lemberg? A Yes, sir.

Q Were you recently called to serve as petit juror in the courts of this county? A Yes, sir.

Q When? A It was some day in April. I can't remember the date. It was in April.

Q Did you serve? A No, sir.

Q Not at all? A No, sir.

Q Who excused you? A By name Mr. Taylor. I was in the court house so—I think it was the Friday before Easter—I can't remember the date you know in the month—Friday before Easter, so I told him I was very busy.

Q You told whom you were very busy? A Mr. Taylor.

Q Mr. Taylor, Frank E. Taylor, the defendant in this case? A Yes, sir; and he excused me.

*The Court.* What did he say? Do not say he excused you.

*Witness.* Well, I told him I ain't got much time and I am very busy so he let me go, so I went away. So the other fellow by the name of Cowan or whatever you call him, yesterday was here on the chair the first time.

Q Cowan and Taylor both present when you were excused? A Yes, sir.

Q Now tell in detail just what you said to either one of them and what either one of them said to you? A Now, Taylor was to excuse. Now I want to go home, so on the way out of the door there was another fellow with gray hair, I don't know his name, Cowan or whatever his name is, so he told me I should come around in two weeks; two weeks I should come later, so I think it was the date on the 20th.

Q Now, was Cowan present? A Yes, sir.

Q When Taylor said to you you were excused? A Excused, yes, sir.

Q Just what words did he use when he said it? A Well, he just told me "you are excused," that is it.

Q And where were you when this was said to you by Taylor? A Where was I? Right upstairs. I was never here in court before.

Q Now wait a minute, Mr. Lemberg.

*The Court.* Answer the question and do not volunteer so much. If you do not understand say you do not understand the language or the words.

Q Now, I ask you where were you—in what part of the court house were you when you were excused? A I was upstairs.

Q In what room? A I can't—I think it was like this way, on the court.

*The Court.* The witness indicates a northwesterly direction.

Q Did you answer the roll call when you came here? A What do you mean, roll call?

*The Court.* He says he came on Friday preceding the Monday when he was expected to be here, and then he said he came on Friday before Easter at another time.

Q Did you answer roll call? A Roll call, no.

Q Was your name called while you and the other jurors were in the court room? A Yes, sir.

Q Who called your name? A Who called my name? What court room do you mean? I can't understand.

*Mr. Heisley.* Can we have an interpreter?

*The Court.* I have sent for one.

*Mr. Harrison.* I will withdraw this witness.

*The Court.* It is your privilege to call him again.

*Mr. Harrison.* I expect to recall him.

*The Court.* Because the defendant has a right to cross examine him. I have sent for the interpreter.

ADAM HEBLER, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the City of Newark? A Yes, sir.

Q And how long have you lived here? A Forty-five years.

Q You recently served as petit juror in the courts of this county? A I believe I have twice before this—twice.

Q You were recently summoned or called to serve? A Yes, sir.

Q And when? A I think it was the 3d of April, 3d or 4th.

Q 1917? A Yes, sir.

Q Did you serve on that day? A Yes, sir.

Q Now tell just what happened. A Well, I went in and the roll was called.

Q By whom? A I think it was Cowan, I think, if I ain't mistaken.

Q Do you mean Cowan? A Yes, sir; I think. I ain't sure.

Q Stand up? A I think he called the roll, if I ain't mistaken; I think he is the man.

*The Court.* Is that the man?

*Witness.* Yes, sir.

Q Is he the man who repeated the names? A I think he did. I think he is the man.

Q You answered your name? A Yes, sir.

Q Did you serve? A No, sir.

Q At all? A No, sir.

Q Why not? A Well, I turned around after —do you mean why I didn't serve?

Q Why didn't you serve?

*The Court.* Do you want him to state his reason for being excused or with whom he talked?

*Mr. Harrison.* I will withdraw the question.

A I answered my name and I sat down. I say I answered my name. After the roll was called somebody got up and says, "Who wants to be

excused please remain." So I sat down and waited and I think it was about twenty or twenty-five minutes and I see them all going up to Mr. Taylor and some he excused for the following Monday and some he did not. So I turned around when my turn came and come up to Mr. Taylor sitting there at the desk and I explained my case, why I wanted to be excused—I understood while I was there that the Judge would not be there until Monday—I said I just happened to lose my wife, I had to get up at one o'clock at night, and he looked up at me and says, "Sit down awhile, or wait a few minutes," so I sat down a few minutes.

Q Where did you sit down? A About the third seat back from where Mr. Taylor was writing.

Q In what room? A In the court room upstairs.

Q In the Supreme Court room? A Yes, sir. And somebody beckoned me to come back and I come back and Mr. Cowan, I think was the man that approached me, he said, "You want to be excused?" I explained the same case to him as I did to Mr. Taylor, on account of losing my wife and I had to get up one o'clock in the night and I would like to be excused. "Well," he says, "we will excuse you." He says, "You come up two weeks from—that is on the 20th, I think he said, "you come up here—you come up," so I come up and as I was coming in the court house down stairs he met me and stopped me and says, "Wait a few minutes;" I said, "All right;" and he come back in a short time with a voucher. He says, "We got to do this to keep our books straight." So he says, "You go in there and get this and hand me the envelope, and put it in the en-

velope," and when I come out he stopped me, he says, "Is it all there?" I said, "Yes; do you want me to count it?" He said, "No, it isn't necessary." I said "Goodby" and away I went. That was all.

Q How much did you receive from the sheriff's office? A I think it was $27.50, if I ain't mistaken.

Q I show you Exhibit S. 14 and ask you if that is the warrant which you received from Cowan on the day in question? I ask you if that was the warrant you received from Cowan on April 20, 1917? A Yes, sir; that is right.

*Cross examination* by Mr. Heisley.

Q Mr. Hebler, Mr. Taylor excused a lot of jurors, didn't he? A Well, I think he excused some there, that is that was old veterans. I ain't sure.

Q I don't care whether they were veterans or not. A There was a couple—few old gentlemen that he excused.

Q Absolutely, yes. And did he excuse some others after talking with them? A Until the following Monday, yes, sir.

Q And didn't they crowd around his desk? A They did crowd around his desk, and they all got orders to go back and sit down awhile.

Q He told them to go back and sit down awhile? A Yes, sir.

Q He told others that besides you? A Not the ones—not after they were questioned. That was before they were questioned.

Q All right. But he did tell some of them to go and sit down awhile? A That is before they were questioned, yes, sir.

Q Before they were questioned? A Yes, sir.

Q Now, isn't it a fact that some of these men he hesitated about excusing in your presence? A Yes, sir; I was one of them.

Q Yes, I know, and in your presence before he gave his final judgment didn't he hear the excuses of a lot of others so that he could determine which ones were cases of urgency? A Well, he heard the questions of them and then excused them until Monday.

Q I mean this, Mr. Hebler. See if I can make myself plain to you. A Yes, sir.

Q Some of these men seemed to have strong excuses and some did not seem to have very strong excuses?

*Mr. Harrison.* I object.

*Witness.* That I don't know.

*The Court.* Do not answer when an objection is made.

(Objection sustained.)

Q Did not Mr. Taylor hesitate about excusing some who offered excuses until he had heard the excuses of all who wanted to be excused? A Yes, sir.

Q And wasn't everything that he did there done in a public and open manner? A It was then, yes, sir.

Q I don't suppose you know that Mr. Taylor sometimes was sitting in that capacity at the express request of Judge Osborne, do you? A I thought he had a right to excuse people.

*The Court.* Do you object?

*Witness.* That is what I thought and that is the reason I—

*The Court.* Do not answer.

*Adam Hebler, cross.*

*Mr. Harrison.* It is immaterial, if your Honor please, whether he did or not.

*The Court.* How can he state that unless he states he was present and saw something done or produces an order?

*Mr. Heisley.* I suppose I can ask him if he knows, not how he knows. May I have the question repeated?

*The Court.* You can ask him what Judge Osborne did to his knowledge. You are making him your witness. You are going on to something that has not been asked yet, but you can ask him what he saw Judge Osborne do.

(Question read.)

*Mr. Heisley.* That is the question I desire to have stand.

*Mr. Harrison.* I object further on the ground that it is not proper cross examination and argumentative in form.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*By the Court.*

Q Did you see Judge Osborne that day or hear him issue any orders? A No, sir.

Q You did not see him there at all? A No, sir.

Q Was there any judge on the bench? A No, sir.

Q Or acting? A No, sir.

Q Did any judge give any directions to Taylor in your presence? A No, sir.

Q This was on Wednesday, wasn't it? A Yes, sir.

Q You don't know anything about the opening day of the term, do you, of the April term? A No, sir.

SAMUEL LEMBERG, recalled for further direct examination by Mr. Harrison (through Interpreter Birn.)

Q In which court room was your name called? A Upstairs.

Q Were there other jurors present at the same time? A No.

Q Who was in the court room when you came here the first day? A The clerk, Mr. Taylor, and there was another—Mr. Cowan.

*The Court.* We want it all in English or all in the language with which you are the most familiar with.

*Witness.* I can speak English.

*The Court.* Yes, but we cannot understand you. You better use the other language.

*Witness.* As I came to the court I asked Taylor if I can be excused.

Q What did Taylor say to you? A He told me, "yes, you can go home."

Q What did you do? A I went home.

Q Was that the first day that you came to the court room? A Yes, sir.

Q And what day of the week and month, if you know, was it? A The month of April, but I can't tell the date.

*The Court.* What day of the week was it?

*Witness.* I think it was—must have been about Monday or Tuesday.

Q Do you remember the day that you were called to appear in the summons which had been served upon you? A No, sir; I can't remember that.

Q Did you see Mr. Taylor before the day set forth in your summons? A Never.

Q Was it after? A Yes, sir; after, I was here in the court.

Q And how many days after you were summoned to appear did you appear? A Two weeks.

Q You were called to serve for two weeks, were you not? A Yes, sir.

It is admitted that the first day upon which the witness, Samuel Lemberg, was called to serve was April 4, 1917.

*The Court.* That is on Wednesday.

*Mr. Harrison.* Yes, sir. I suggest that that be also made part of the admission, April 4, 1917.

Q The first day that you were expected to serve was Wednesday, April 4, 1917? A Yes, sir.

Q Did you come to the court house on that day? A Yes, sir.

Q What part of the day did you come? A In the morning, ten o'clock in the morning.

Q And what time in the day did you see Mr. Taylor? A In the morning, when I come around here in the morning.

Q About ten o'clock? A Yes, sir.

Q Were there a number of other men in the court room when you got there? A There was a few people there.

Q How many? A Oh, about three or four.

Q How long did you remain at the court house that day? A Well, I just was in the court house, saw a few people, people right away after—another to be excused—there was a few men here and then I had to wait for my next, so a couple of fellows was away so I had my next.

*Mr. Heisley.* What is this man talking?

*Mr. Harrison.* English, I believe.

*Mr. Heisley.* I think he ought to talk so we can understand, or else he is not a competent witness. I can't understand him. I think it is manifestly unfair.

*Mr. Harrion.* I think if he raises his voice and talks slowly we can all hear him.

*The Court.* I think the answer as much as has been given ought to be given to counsel, if he wants it before we go any further.

(Answer read.)

*The Court.* Tell him to go on in Yiddish and not to change without the permission of the Court.

A (Continuing.) I went over to the man, I mean Mr. Taylor, and asked him to be excused and then he let me go.

Q What did he say when he let you go? A He didn't say nothing to me.

Q Did you see Cowan that day? A As I started for home I met Cowan near the door and he told me to be back in two weeks.

Q Wasn't Cowan with Taylor when Taylor excused you? A No, sir; not near the desk.

Q Where was he? A By the door.

Q Did you come back to the court house three weeks— A Two weeks.

Q After you saw Taylor did you see Cowan? A Yes, sir.

Q Where? A As I came back—I mean upstairs, where I was at the time, I met him near the door. Then he gave me a receipt for $29.70.

Q Is this the paper which Cowan gave to you? A Yes, sir.

*Mr. Harrison.* Show him Ex. S. 13.

*The Court.* Is the amount $29.70?

*Mr. Harrison.* Correct.

Q What did you do with this paper? A Mr. Cowan took me downstairs to an office, then I showed him the receipt in that office and I signed. While I was in the office one of the men showed the paper to me and told me to sign it. I did sign it and then he gave me $29 in paper and 70 cents in silver.

Q What did you do with the money? A As I went into the office he says, "I will wait for you here"; and I went in the office and he told me he will wait for me. I came out, had the money and he took me here to a public building and he asked me for the money—he asked me for the money and I gave him $29.70, all I got. I then told him that I am a poor man, it wouldn't be fair for him to take the whole amount; I want some of it back, and he gave me $5.

Q Where was this public place you refer to? A Downstairs in the cellar.

*The Court.* How long have you been in this country?

*Witness.* I am here twenty-four years.

*The Court.* Why don't you talk slowly and distinctly in English so we can understand you? We could understand you if you would not run your words together and try to tell us everything at one time.

*Witness.* I am awful nervous.

*The Court.* You need not be nervous. Nobody is going to do anything to you.

Q I call your attention to the name "Samuel Lemberg," appearing opposite No. 58 on Exhibit S. 21 for identification and ask you if that is your signature? A Yes, sir.

*Cross examination* by Mr. Heisley.

Q I imagine, Mr. Lemberg, that considering your fluent English speech you had great difficulty in getting a discharge from Mr. Taylor as juror?

*Mr. Harrison.* I object.

*Mr. Heisley.* I will withdraw the question.

Q Did you tell Mr. Taylor why you wanted to be excused? A Yes, sir; I did.

Q At least, you think you did? A I told him.

Q How did you tell him, in English or Yiddish? A I told him in English.

Q The same as you have talked here this morning? A No—well, I get nervous. That is why I get—

*The Court.* That is why what?

*Witness.* I get so nervous I can't talk.

*The Court.* You take your time in answering the question.

Q You are not nervous when you talk to me, you are only nervous when you talk to the prosecutor, isn't that right? You are not nervous now? A I ain't nervous?

Q You are not nervous when you talk to me, are you? Why don't you answer? A No.

*The Court.* He has answered that he is nervous.

*Mr. Heisley.* I didn't think he was nervous when he talked with me, your Honor.

*The Court.* Yes; he says he is.

*Mr. Heisley.* I am surprised at that.

Q Well, have you told us all that Cowan said to you? A What?

Q You do not understand that plain English? That is pretty good English. A Explain it and I should understand it.

Q I cannot do it. Have you told us all that Cowan said to you? Now, don't you understand that? A I can't understand that word.

Q What is the trouble, me or you?

*The Court.* Put it, Mr. Interpreter.

(Mr. Birns puts the question and the witness answered Yes.)

Q And you mean for us to understand that you and Cowan went through a scheme to cheat this county out of about $27 and Cowan gave you $5, is that right?

*Mr. Harrison.* I object on the ground that it calls for a conclusion and that

the question is argumentative and an improper statement of the testimony.

*The Court.* I do not understand there was any discussion in this testimony as to the means by which this was carried out except the bald fact that he was excused by Taylor and told by Cowan to come back.

*Mr. Heisley.* Yes, and that he went with Cowan to the office of the sheriff of this county and drew $29.70 for money which he knew he was not entitled to a cent of, whether he speaks Yiddish or English.

*The Court.* Does not your question relate to what happened on April 4th, and not as to what happened on the 22d or whenever date it was they were paid?

*Mr. Harrison.* 20th.

*Mr. Heisley.* I have mentioned no date in my question.

*The Court.* I think you are putting together two different conversations.

*Mr. Heisley.* Let me reframe it.

*The Court.* Do that.

Q You understood that you and Cowan as a result of you two men getting together were perpetrating a fraud upon this county whereby you were cheating the county out of this sum of money that was being paid for services which you did not render the county, isn't that so?

*The Court.* Now, do you understand that question?

*Witness.* I understand, but I do not know what the answer is.

Q Why? Do you think it would incriminate you?

*Mr. Harrison.* He don't know what incriminate means.

Q Do you think it would maybe get you in trouble if you answered the question? A What?

*The Court.* Repeat the long question to the interpreter and let the witness answer.

Q (Question read.) A Now, I will give you an answer. I told Cowan to give me money for two days that I had been serving here. That is all.

Q But, although you only asked him to give you two days' pay, you took the whole bunch of money, didn't you? A I did took the whole bunch of money, but I didn't have no chance to have the money.

Q No, but you wanted a chance to have the money, didn't you?

*Mr. Harrison.* I object as being immaterial what he wanted as not being proper cross examination.

*The Court.* I think what he did and what Cowan did and what Taylor did is very important, and this is a question that searches out his mind on that subject matter.

*Mr. Harrison.* I will withdraw the objection.

Q While you only say that you wanted Cowan to give you two days' pay— A Yes, sir.

Q —you tried to keep the whole $29, didn't you? A No, sir; I thought—

*The Court.* I thought what? Go ahead and finish your answer.

*Witness.* He just give me $5, that is all.

Q Didn't you get the whole $29 from the sheriff's office? A I did get it, sure; I couldn't say no.

Q And didn't you and he then go downstairs in the cellar? A He called me—I don't know where to go.

Q Did you go downstairs in the cellar? A Yes, sir; he called me, so I did went.

Q And what were you going to do when you got the money at the sheriff's office? Where were you going if he had not called you downstairs? A Before I went to the office he told me, he says, "Say, Lemberg, that money you get in the office belongs to me," so then I went to the office—so the fellow took me right in a public place—in a public place and give me the money. I didn't have no chance to look on the money.

Q You mean to say he grabbed it before you looked at it? A He didn't grab it. He asked for the money in the envelope, the way it was. He asked for the envelope and I gave him the money; so I said, "I am entitled to the two days I worked," and so he says, "All right, here is $5." That is all I done.

Q Now, Lemberg, you didn't say a word to the prosecutor about you telling Cowan that you were entitled to two days' wages, did you? A Well, I did—I asked for the $5 and he did give it to me.

Q You didn't tell the prosecutor that, did you? A I said the same thing.

CHARLES HICKS, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Hicks, you were recently called to serve as petit juror in the courts of this county? A Yes, sir.

Q Do you remember the date of your first appearance here? A I can't remember the date. I know it was on Monday, the first day I was to be here—first week at least.

It is admitted that the first day of attendance of the panel on which Mr. Hicks served was May 7, 1917.

Q Did you serve as a petit juror? A I did.

Q For how many days? A Six days.

Q Why didn't you serve the full number of days? A On Monday of the second week I went to Mr. Cowan and asked him if I might get off a couple of hours for that day. He told me I might. I returned on Tuesday, the next day, and was ready to answer roll call when Cowan called me out of the court room and asked me how I made out the day before. I told him all right. He says, "Do you want to get off any more?" I said, "Yes; I would like to." He says, "How long?" I said, "I wouldn't care if I could get off for the rest of the term." He said, "All right; you beat it and get out of here and come back Friday," which I did.

Q Did he tell you what you were expected to do on your return, Mr. Hicks? A No, sir.

Q When you returned on Friday what took place? A I met Mr. Cowan on the floor above

here, came down the back stairs to the sheriff's office and cashed my voucher. As he handed it to me, I noticed it called for $25, which was for more time than I had served. I spoke to him about it—I questioned him, rather, well, I would say thoroughly, on the matter because I felt it was more money than was coming to me. He says, "That will be all right. You cash it and pay the balance back to me, or the difference to me, at least; and he says, "It will go back to the county."

Q Was Cowan in uniform at that time? A I just can't remember whether he was or not.

Q And you cashed your voucher, and after that what happened? A I cashed my voucher and before handing anything to him I again questioned him on it thoroughly, and I also asked him if it was perfectly proper as far as he was concerned, or as far as any one else was concerned connected with the building or the court, and I also questioned him as to myself last. He says, "You haven't anything to worry about. You hand the money to me and it will be put back into the treasury."

Q Is Exhibit S. 7, which I now show you, the warrant you received from Cowan on the 18th of May? A To the best of my knowledge, yes, sir.

Q And the warrant, which you had cashed at the sheriff's office? A Yes, sir.

Q Leaving the same with the sheriff? A Yes, sir.

*Mr. Heisley.* No cross examination.

*The Court.* How much, if you remember, did you give to Cowan?

*Witness.* $10.

LOUIS KENNGOTT, sworn on the part of the state.

*Direct examination* by Mr. Harrison.

Q Do you live in the City of Newark? A Yes, sir.

Q And you were called to serve as a petit juror on April 4th of this year in the courts of this county? A Yes, sir.

Q Did you come to the court house on that day? A Yes, sir.

Q And did you serve for the whole term? A No, sir.

Q How many days did you serve? A I didn't serve any.

Q Why? A Because I was excused.

Q By whom? A By Mr. Cowan.

Q Mr. James F. Cowan? A Yes, sir.

Q Did you see Mr. Taylor that day? A Yes, sir.

Q The defendant? A Yes, sir.

Q In this case? A Yes, sir.

Q Did you have a talk with him? A Well, I got up against his desk and told him my excuse for trying to be excused and he said to take a seat and I sat back and waited, and I saw a lot of other jurors going to leave the room and being excused and by and by Mr. Cowan come along and come in back and I looked around; he says, "Do you want to be excused," I said, "Yes"; "Well," he says, "you are excused for the rest of the term, but to come down on the 20th of April and come and meet me," so I come down on the 20th and I saw him down here on the first floor and he give me a voucher and told me to go in the sheriff's office and get my money, so I went

in there—but before that he says, "and come out and see me again"—so I went in and got the money and signed for it and he come out and I met him and I took the money and give him the whole money, and he took the money and put it in an envelope. That is about—

Q How much did you receive? A I think it was $27.50.

Q I show you Exhibit S. 15, and ask you if that is the warrant you received from Cowan that day and which you subsequently had cashed in the sheriff's office? A It was something like it, but I couldn't swear to it now.

Q Where did the other jurors go who were being excused? A Well, they went out of the room.

Q On the first day? A They went out of the court room.

Q And where did Taylor tell you to sit down? A Oh, he just said, "Take a seat." Didn't just exactly tell me where to sit. I went back—

Q Where did you sit? A I sit about as far as this from Mr. Taylor now.

*Mr. Harrison.* Witness indicates a distance of approximately 15 feet.

Q While you were talking with Mr. Taylor was Cowan there? A Cowan was off and on going in front of Mr. Taylor and then walking off—walking in and around, and I would see him in front of me again. When he come up against me he was coming from the rear.

Q How long had you set behind Taylor before Cowan spoke to you? A Why, I should judge half an hour or three-quarters of an hour.

Q And who was in the court room when

Cowan came to see you besides Cowan and Taylor and yourself? A Well, I don't know. I think Mr. Taylor left them when—I was one of the second last or third last ones of the jurors that left the room.

*Cross examination* by Mr. Heisley.

Q How many days did you serve? A I didn't serve any.

Q Well, didn't you know that you had no right to this money? A Well, I will tell you. I tell you my excuse—what my excuse was—and maybe you might see how anxious I was.

Q No; I would just like you to tell us, if you will, whether you did not know it was wrong? A Well, no; I did not; really I did not. I thought that was the way they had of excusing us jurors.

Q Well, I won't go into that. What Mr. Taylor did with you was the same as he did with other jurors up there, wasn't it? A Yes, sir.

Q It was all done in a public manner? A Yes, sir.

*Mr. Harrison.* I object to that question on the ground that there is no testimony tending to show what was done with the other jurors at that time, and it is not proper cross examination and further calls for a comparison by this witness of what was done in a variety of cases and therefore calls for a conclusion from this witness.

*The Court.* I think he brought out from this witness—he certainly has from most of them—the fact that other jurors who tried to be excused were sent out into

another room or went out or went out the door.

*Mr. Heisley.* Brought out by this man.

*Mr. Harrison.* I do not object to cross examining on that point. I think it is unfair for this witness to be called upon to give his conclusion as to what was done during that whole process up there in the matter of giving of excuses, the manner of giving the excuses that were given. This question seems to be entirely too broad and comprehensive.

*The Court.* You mean that the question ought to relate to what was done?

*Mr. Harrison.* Yes, sir.

*The Court.* Before you go into the question of whether it was public or private. I think that is a sound excuse. Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q What was done by Mr. Taylor with you was the same that you saw him do with other jurors, isn't that so, Mr. Kenngott? A Yes, sir.

Q And when Mr. Taylor considered your excuse there were other jurors standing around his desk? A Yes, sir.

Q And there were a whole lot of them that wanted to be excused, weren't there? A Yes, sir.

Q And there were the officers there of the court in their uniform, isn't that right? A Yes, sir.

Q Among whom was this man Cowan? A Yes, sir.

Q You did not know Mr. Taylor before that, did you? A No, sir.

Q As far as you know you had never seen him or spoken to him in your life? A No, sir.

Q You had no arrangement with him to cheat the county, had you? A No, sir.

Q And when you went and sat down before he gave you any decision upon your request for excuse you walked back about as far as from you to me, which the prosecutor says is 15 feet, and sat down, is that right? A Yes, sir.

Q Did you know Cowan before that? A No, sir.

Q And Cowan came up back of you, didn't he? A Yes, sir.

Q Not in Mr. Taylor's presence? A No.

Q And had the conversation which you have related, is that right? A Yes, sir.

*The Court.* Where was Taylor when Cowan spoke to you?

*Witness.* If I remember right, I think he was running in and out from a little room to his desk and in back again. I could not say was he at his desk when Mr. Cowan was up against me.

Q He was a busy man, wasn't he, at that time, Mr. Taylor was? A That is the way it looked to me.

Q As far as you know Taylor had no knowledge of the arrangement which Cowan was mak-

ing with you about getting this money from the county, is that so, as far as you know?

*Mr. Harrison.* I object as calling for a conclusion and not being a fact which should be proved, and further, as not being proper cross examination.

*The Court.* You can ask him if Taylor was within hearing, or asked him to speak to Cowan or Cowan spoke so Taylor could hear.

*Mr. Heisley.* Will your Honor be good enough to rule on the question as I have asked it?

*The Court.* Yes, and I will also be good enough to explain to counsel from time to time as I may see fit the proper line to pursue, and counsel can pursue it or not, as he sees fit. The objection in this case is sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Heisley.* Of course, your Honor, I do not want to be offensive, but may I simply say this. If your Honor disagrees with the question, I suppose I have the legal right to ask my question according to my view.

*The Court.* You have. You may have, if you desire, the reasons why the Court acts, and perhaps if you learn the reasons why the Court acts it will help you in serving the defendant.

*Mr. Heisley.* Very likely that may be true, nevertheless I must ask the questions as I think they are proper and get your Honor's ruling.

*The Court.* Yes. You will also still receive the suggestions notwithstanding whether you use them or not. Now we will proceed.

Q Taylor said nothing to you and you saw nothing done at all in the court room that day that indicated to you or made you think that Taylor was trying to cheat the county out of money, did you, Mr. Kenngott?

*Mr. Harrison.* I object. It seems to me that clearly calls for a conclusion of the witness as to the operation of his mind as to what Taylor's motives or purposes may have been in the acts which took place that particular morning. I can certainly have no objection to the evidence as to what was said and done, but it seems to me that the attempts to have this witness draw his own conclusion as to the results of those acts, or indicate what he thought Taylor's purpose was is entirely outside of the realm of this inquiry.

*The Court.* Well, if Taylor had said, "Now, sit on the bench and Cowan will talk to you pretty soon," that would make an added impression on his mind. If Taylor said, "I cannot hear you at all. You go down and wait and I will talk to you pretty soon," and then Cowan came up that would clearly indicate that Taylor did not say anything to this man to connect him with what Cowan said afterwards. As I uderstand the wit-

ness's testimony it is that he spoke to Taylor and Taylor said, "Sit down," and shortly afterwards Cowan came up and spoke to him. Now the question is in searching this man's statement as to what actually occurred in order to ascertain if he is giving us a correct version of what happened and he is asked if he was not impressed with the facts at that time that Taylor had nothing to do with Cowan. That is the purpose of that inquiry and I think that is different from the one that I previously ruled on, and I think it is proper.

*Mr. Harrison.* Not to press my objection too hard or too positively, your Honor, but only to this point, that I take it, it is the province of this jury to determine from the circumstances whether or not this particular man was linked up on this occasion with Cowan and Taylor, and what this man may have gathered from the circumstances is no moment—is of no assistance to the Court or the jury—his conclusion as to what their purpose was—what Taylor's purpose was and Cowan's purpose was is of no moment at all.

*The Court.* Of course, it isn't, but when he makes a statement of what actually happened, may he not be asked if at that time he did not believe or understand a certain thing to be true in order to bring to his attention specifically that particular matter and then ask him if in view of that fact he is not mistaken about his statement of what occurred. It is a very close border line question, but I do not regard the situation other wise than that the defendant should have

*George Kaye, direct.*

the benefit of any doubtful question and I am going to overrule the objection.

(Question read.)

A I did not.

*The Court.* What did you say?

*Witness.* I did not think that Mr. Taylor was in any way connected with Mr. Cowan.

*Re-direct examination.*

Q When you paid the money back to Cowan you thought that you were merely returning to him the money which you had received to be paid back by him to the county, did you not?

*Mr. Heisley.* I object to the question as leading.

*Mr. Harrison.* You made him your own witness?

*The Court.* You are asking him now about sixteen days later.

*Mr. Harrison.* Question withdrawn.

Q On the day that you spoke to Mr. Taylor about being excused and at the time when Cowan told you you might go, did you then think that either Taylor or Cowan were in a scheme to cheat the county? A No, sir.

GEORGE KAYE, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the City of Newark, Mr. Kaye? A Yes, sir.

Q And you were called to serve as a petit juror in the courts of this county on— A April 4th.

Q Did you appear at the court house before that time? A Yes, sir; on the 2d.

Q Did you see Mr. Taylor that day, the defendant in this case? A Yes, sir.

Q Did you have a conversation with him? A The only conversation I had with him was that I wanted to postpone jury duty and he referred me to Mr. Cowan.

Q Now state in detail just what your conversation with Taylor was on that Monday preceding the 4th of April. A Why, I said to Mr. Taylor, "I am a pretty busy man"—it was right before Easter—I am a window trimmer in the drygoods business, "is there any possibility of me getting off for the time being, at least two weeks?" He says—that is all I had with him. So he referred me to Mr. Cowan.

Q Where was Cowan at that time?

*The Court.* What did he say, not "referred"?

*Witness.* He says, "There is the party you want to see." He pointed to him and Mr. Cowan was coming down in the back of the Supreme Court.

Q Who was in the court room at that time besides you, Cowan and Taylor? A There was some people working there taking measurements in back of the Judge's stand.

Q Did you see Cowan? A Yes, sir.

Q How long after your conversation with Taylor? A Oh, it was about—couldn't have been only a couple of minutes.

Q And where? A I would say about over there; about the first seat towards the door. The door, I remember the door set—Supreme Court—just about in that position.

*Mr. Harrison.* The witness indicates a distance of approximately 30 feet.

*Witness.* About 20 to 25 feet.

*Mr. Harrison.* I will withdraw the suggestion as to distance.

Q What was your conversation with Cowan? A I told him the same thing, I was a window trimmer and would like to—and in the drygoods business, and it being Easter, is there any way that I could have a postponement of the jury duty, I says, at least, if it could be only for a couple of weeks. I said, "I am very busy now and I am under contract with different concerns," and I says, "it will be an awful big loss to me especially as I went through the dull season, and thought it was pretty hard that I couldn't fulfill my contracts." He says, "Very well," he says, "You can go," he says, "but appear here two weeks from Friday at ten o'clock.

Q Did you appear on Friday two weeks from that day? A Yes, sir.

Q Did you see Cowan? A Yes, sir; downstairs as I was coming in.

Q What did he say? A He said, "Wait a minute," and he went over to the county clerk's office and came out with a slip and an envelope.

Q I show you Exhibit S. 16 and ask you if that is the slip to which you refer? A I can't remember because the slip was folded.

Q What was your conversation with Cowan at that time? A He says,—when he came to me he says, "You go to the sheriff's office and get the money for this slip"; I says to him, "Where is the sheriff's office?" In fact, I

didn't even know where the sheriff's office was. He directed me there. I went in the sheriff's office. They gave me the money on this slip. I heard the party there say, "Eleven days." I didn't know what that was even. He handed me out $27.50. I put the money in the envelope and brought it out to him as directed. Previous to my going into the sheriff's office he told me, he says, "This money goes back to the house, that is the general routine."

Q Had you served at all? A No, sir.

Q During the two weeks between April—during the period between April 4th and April 20th? A No, sir.

*Cross examination* by Mr. Heisley.

Q Mr. Kaye, that is all the conversation that Cowan had with you as to what was to be done with the money, was it? A Yes, sir.

Q That it would revert back to the house? A Yes, sir.

Q Now, are you sure that he used the word "house" or county? A House.

Q "The house." And when you stepped up to see Mr. Taylor in the court room— A Yes, sir.

Q —there were a number of people there, you say? A Only people who were doing some work there, taking some measurements.

Q As a matter of fact, they were hanging a flag back of the Judge's desk? A I didn't see that. I only saw them taking measurements.

Q Well, they were taking measurements back of the desk? A Yes, sir.

Q Mr. Taylor was up there with them, wasn't he? A He seemed to be a pretty busy man

in my opinion. He was running from his desk there. He seemed to have all he could do—all he could handle—the way it seemed to me.

Q And he told you to see Cowan? A Yes, sir; he told me to see him.

Q He didn't whisper it, did he? A No.

Q Spoke out in his natural voice as far as you could see? A About as natural, as I could see.

Q So that the workingmen around there could hear him say it just as well as you? A Yes, sir.

*Re-direct.*

Q Where were these men working? A Right in back of the Judge's platform. I would say taking the measurements up high.

Q How near to Taylor were you when you were talking with him? A Well, about as close as you are to this gentleman alongside of you.

*Mr. Harrison.* The witness indicates a distance of a foot to 18 inches.

*Witness.* About 2 feet.

Q Were you both talking loudly? A About the same as I am talking now.

Q I show you Exhibit S. 21 and call your attention to the name George Kaye, opposite No. 53 of this list, and ask you if that is your signature? A That is my signature, yes, sir.

JACOB M. ENGLANDER, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the City of Newark, Mr. Englander? A Yes, sir.

Q You were called to serve as petit juror in the courts of this county beginning May 7, 1917? A Yes, sir.

Q Did you meet Mr. Taylor that day? A Yes, sir.

Q The defendant in this case. Who introduced you? A A friend of mine introduced me to Mr. Taylor in the vestibule.

Q What time in the day was it? A Why, I should say between 9:45 and 10 o'clock.

Q Did you have a talk with him? A Yes, sir.

Q What was that conversation? A I wished to be excused for business reasons. I was told by Mr. Taylor to go in the jury room, which I did; sat at a bench for about five moments—minutes rather—and a court officer came in who later on I found out was Mr. Cowan. He says, "Are you Mr. Englander?" I says, "Yes." He says, "Will you step out in the hall a moment?" I did; and he says, "I understand you wish—no, I beg to be corrected there—he says, "You wish to be excused?" I says, "Yes, for business reasons." He says, "How long a time do you wish to be excused?" I said, "If possible, the entire period of two weeks"; he says, "Well, I guess we can fix that up," and I thanked him. He says, "You report on May 18th or 19th. I forget which it was, but it was a week from the following Friday—"and meet me in the

corridor at the bootblack stand at 10:10." That Friday morning I met him and he handed me a folded voucher. I says, "What is that for?" He says, "That is for your salary as juror." I says, "What am I to do with that?" He says, "Take that into the sheriff's office and collect," which I did. I met him outside. Well, I received two tens and a five. Met him outside. I said, "Mr. Cowan, what disposition is made of this money?" He says that goes to Mr. Taylor to straighten out his account. And now I wish to add that I have made restitution to the county to the extent of $25. That is all I know about the matter.

Q I show you Exhibit S. 5 and ask you if that is the card which you received from Cowan on May 18th last? A It is.

Q And the one which you had cashed in the sheriff's office, in this county? A Yes, sir.

Q I call your attention to the name Jacob Englander, appearing on Exhibit S 23, for identification, opposite No. 54, and ask you if that is your signature? A It is.

Q And it was signed at the time of the presentation by you of your warrant? A Yes, sir.

Q A receipt by you of $25? A Yes, sir.

Q When Mr. Taylor told you to take a seat did he tell you where to take a seat? A I am under the impression it was at a table.

*Mr. Heisley.* I object. I understood him to say it was his impression.

*Witness.* I was going to say "impression"—

*The Court.* Before you proceed further with your answer, was there anything said by Mr. Taylor about where to take a seat?

*Witness.* My recollection is—

*The Court.* Answer that question, yes or no.

*Witness.* Yes, sir.

*The Court.* The objection is sustained.

Q What is your best recollection as to what was said by Mr. Taylor? A "Take a seat in the jury room." There was a table at—well, where you go in the jury room there was a table near the door and a long bench. I sat at that bench alone and at that bench Mr. Cowan came up to me. I didn't see Mr. Taylor from that time until in the jury room.

*The Court.* What does the witness mean, can you agree what he means by the jury room?

*Witness.* It is a room where there were a number of men that stopped there for roll call. I got there before roll call—I imagine so—and I sat separate from the jurors.

*The Court.* In the Supreme Court room?

*Witness.* I don't know whether it is Supreme Court room or not. It is the first time I have ever been up in that room.

Q Was it the room where Mr. Taylor sits at his desk? A I did not meet Mr. Taylor at his desk. I met Mr. Taylor in the vestibule.

Q Can you describe in which vestibule you met him? A Why, yes; it is the little vestibule leading out from the room where the

jurors were and beyond that vestibule on the other side was a room I should judge where the Judge's chambers were. I never looked in there, but—

Q And after Taylor met you in the vestibule and had this conversation with you you went into the Supreme Court room and took a seat? A Well, I shouldn't say it was the Supreme Court room. It was the room where the jurors were to assemble.

*Mr. Harrison.* We will agree that it was in the Supreme Court room. Counsel agree that where the witness took his seat was in the Supreme Court room.

Q Was anything further said by Taylor? A No, sir.

Q When he told you to take your seat, that anyone else would see you? A No, sir.

Q Was any reference made by him to Cowan or to any other person? A Not that I recall.

Q Who opened the conversation between you and Cowan? A Mr. Cowan did. Came alongside of me and said, "Are you Mr. Englander? I said, "Yes,"; that opened the conversation.

Q And where was Taylor at that time? A I don't know. I didn't see him.

Q Who else was in the room? A Why, as I said, the jurors were there. I sat apart from the rest of the jurors.

Q Why didn't you go back to see Mr. Taylor to be excused? A Why I thought it was sufficient when the court attendant excused me.

*Mr. Heisley.* What?

*Witness.* Court attendant.

*Mr. Heisley.* You thought it was sufficient?

Q Did you make a sworn statement on the 22d day of May, 1917, in Mr. Newman's office in this city? A No, sir.

Q Did you make one in the Prosecutor's office? A Why, I don't know as it was the Prosecutor's office. I made a statement before the stenographer.

Q On the 22d of May? A I couldn't name the date. Some time around there.

Q I call your attention to your signature, Jacob Englander, and ask you if that is your signature? A It is.

Q Is the statement which you have before you the statement which you signed on that day? A It is.

Q Can you by reference to that statement refresh your recollection so that you can testify as to what else Taylor told you when you first saw him on May 7th?—that is, what else in addition to what you have already testified to?

*The Court.* Answer that yes or no.

*Witness.* Yes, sir.

Q What else did Taylor say to you? A I think Mr. Taylor said that "Cowan will take care of you."

*Cross examination* by Mr. Heisley.

Q Mr. Englander, when you called to see Mr. Taylor you say it was about the time when you were expected to answer the roll call, isn't that so? A About that time, yes, sir.

Q And the court room was practically filled with the general panel of jurors? A I didn't go in the court room.

Q You did when you were seated? A Yes, sir.

Q Well, when you went in there the room was practically filled with jurors, isn't that so? A Yes, sir.

Q And you had learned that Mr. Taylor was the clerk of that court? A Only that morning.

Q I don't know when you learned it; you had learned it? A Yes, sir.

Q You went to him with the idea, he being the clerk, would hear your excuse and maybe make some concession to you, is that right? A Yes, sir.

Q And you met him when he was not at his desk, but when he was in the little ante-room leading from the lobby or foyer of the court house—corridor of the court house into the court room? A Yes, sir.

Q And there were other people there with him? A No, sir.

Q Weren't the officers sitting in that little room, court officers? A There was one in the corner, sir; one fellow was sitting in the corner, one court officer.

Q In that little lobby. And Mr. Taylor didn't ask you to take a seat there? A No, sir.

Q Nor did he sit down with you? A No, sir.

Q But soon after you told him that you were a juror and wanted to be excused he told you to go in the room and the court officer would take care of you, is that right? A Yes, sir.

Q He said that in the ordinary tone of voice? A Yes, sir.

Q This man sitting there in the lobby could have heard him? A I think so.

Q I mean there was no apparent or evident intent on the part of Mr. Taylor to whisper to you? A Hardly.

Q What? A No, sir.

*Fred Busse, direct.*

Q Spoke out apparently in his natural tone of voice? A Yes, sir.

Q And where did Mr. Taylor go? A I don't know. I guess he went in the Judge's chambers.

Q Well, you saw him there during the time you remained there, didn't you? A No, sir.

Q I don't mean that you spoke to him, but you saw him there in the building, didn't you? A I wasn't in the building after that for five minutes, until the officer came up. I never saw Mr. Taylor from the time I spoke to him until I came in the court this morning.

Q You said he told you that Mr. Cowan would take care of you. What you swore to was that he said the court officer would take care of you? A I may be vague as to that, whether it was Cowan or court officer.

Q Well, when you made this affidavit to the State on May 22d you do admit that you said in it that he told you that a court officer would take care of you? I do not want to censure you for it. A I am vague about that.

FRED BUSSE, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the Borough of Verona, Mr. Busse? A Yes, sir.

Q And you were called to serve as petit juror in this county on April 23d, this year? A Yes, sir.

Q Did you respond to that call? A Yes, sir.

Q And did you serve? A I reported for roll call on the morning—

Q Now, tell directly just what happened that morning. A After the roll call announcement

was made for those who wished to be excused to go into the court room of Judge Osborne. I took advantage of it because I wanted to be excused and appear before the Judge. I stated my reasons, telling the Judge that this was a most inopportune time for me to serve because the nature of my business is such that we have got an awful lot to do now, and I would not like to shirk any duty if I could serve during the month of December, January, February; I would be very willing to do it. The Judge said, you can't do that now, under the present ruling, but probably that will be allowed under a new ruling, but he said, "I could let you take off a day." He allowed me to take off Tuesday, which I mentioned.

*The Court.* Was that the next Tuesday after April 23d?

*Witness.* Yes, sir.

*The Court.* Then that would be April 24th, would it?

*Witness.* April 24th, yes, sir. I was off that day. I reported on Wednesday morning. Wednesday morning I answered the roll call and I was called in with the other jurors into the different courts and was never drawn on any panel. On Thursday morning I reported again. In the meantime I had seen business people downtown here in Newark and they wanted my presence in forming a business organization, so I had in mind to get off Thursday. I went out to luncheon on Thursday noon and as I came back I walked up the stairway and I seen a man in court officer's uniform, and it proved later to be Cowan. I spoke to him. I asked him, "Where can one go to get an

excuse?" Cowan said, "You want to be excused?" I said, "Yes; if it is possible I would like to get off on Friday." He said, "Do you want to be excused for the whole term?" I said, "If that is possible, why yes," because business was pressing on me so, and it seemed to be the most important matter with me. He says, "Well, we can fix you up. We can let you off, but you will have to wait until Mr. Taylor comes. He will be back very shortly after lunch." So I waited a few moments and Taylor came along and Mr. Cowan introduced me to Mr. Taylor. He says, "Mr. Taylor, this is Mr. Busse. He would like to get off." Mr. Taylor said, "All right." So Cowan said, "Why, you can get off this afternoon," and he said—before that he said, "I would have to come back on the last Friday of the term to see him; so I kept away until that Friday, and Friday I came up to the court house here and walked up to the room back of Judge Dillon, or the Judge that testified yesterday.

*The Court.* Dungan.

*Witness.* Judge Dungan's room. As I came up the hallway Cowan came out of the door. He recognized me and he asked me to step into the vestibule, and he gave me a certificate or warrant and told me to go down to the sheriff's office and then come back and see him. I went down to the sheriff's office, I signed the paper and came back to Cowan and Cowan took me up to a window up to the further end of the room and he asked me how many days did you serve; I said, "Two days." "Well, he says,

"the rest of that goes to Mr. Taylor." So I gave him the balance, kept the two days and mileage and that was all and I hurried out to get away.

Q I show you Exhibit S 17 and ask you if that is the warrant which you received from Cowan in the anteroom, so-called? A Well, it looks very much like that, yes, sir.

*The Court.* How much is it for?

*Mr. Harrison.* $27.46.

Q When you met Cowan in the anteroom on the 4th of May did you have a conversation with him? A No, he simply gave me this warrant and told me to come back to see him.

Q Did he have it in his hand as you approached? A No, sir; he took it from somewhere. I really cannot recall.

Q Was anything further said by Taylor in addition to the expression, "All right?" A No, sir; not one word more.

Q When did you return the $22, I think it was, to Mr. Cowan? A At the window in the judge's room back of the court room.

Q Who was present when you paid it? A Mr. Taylor was working at the desk and another court attendant at the phone, and there was some hesitation until this other attendant left the room.

Q When the other attendant left the room did you pay the money over to Cowan? A Yes, sir.

Q Where did you and Cowan stand when this transfer of money took place? A At the easterly window of the room.

*Fred Busse, cross.*

Q Where was Mr. Taylor at that time? A He was sitting at the desk in the rear of us facing towards the Court chambers.

Q How far away from you and Cowan was Taylor seated? A Oh, probably 6 or 8 feet.

Q How long were you with Cowan on this occasion? A Probably at the most four or five minutes.

Q Did you talk in your usual tone of voice? A Rather subdued.

Q Do you know whether Taylor at that time was in a position that he could hear? A I don't know, sir.

Q What conversation did you have with Cowan? A He was 6 to 8 feet away. I don't know whether he heard, Mr. Prosecutor—pardon me for interrupting you.

Q Just what was the conversation you had with Cowan in the Judge's chambers? A In the Judge's chambers? Well, he simply told me—he asked me how many days I had served, and I didn't want to lose any words about it. I simply said two days and he said, "The rest goes to Mr. Taylor," and I simply gave him the $22 and I hurried away because I was good and glad to relieve my mind of an action—of anything of that kind.

*Cross examination* by Mr. Heisley.

Q You succeeded in relieving your mind, but did you relieve your conscience? A Well, sir, at the time being my—

*Mr. Harrison.* I object—I withdraw the objection.

Q Won't you answer yes or no? A I will say no, not exactly relieved my conscience. I was overwhelmed by the colossalness of my busi-

ness. I never gave the other matter any thought at the time because that was so pressing on my mind that that seemed uppermost to be taken care of.

Q You knew you were doing wrong? A Well, some time after, of course, the reflection come to me it was not just the right thing to do.

Q Didn't you talk in a subdued voice right in that room at the time because you knew at the time you were doing wrong? A I simply said "Two days." I said nothing further but "two days."

Q Answer my question, won't you? You said a moment ago that in this little room you talked in a subdued voice. I ask if you did not talk in a subdued voice because you knew at that time you were doing wrong? A That is all I said, "Two days," if that is subdued. Of course I did not say it loudly so that everybody could hear it.

Q Didn't you talk in a subdued tone of voice at that time because you thought you were a party to a scheme to rob this county?

*Mr. Harrison.* I do not like the expression the Judge uses.

*Mr. Heisley.* Cheat the county.

*Witness.* Well, there was a conscientious reflection there.

*The Court.* Have you got that, Mr. Salmon, there was a conscientious reflection?

(Answer read.)

*The Court.* Is that the way you want it? Is that what you said?

*Witness.* Yes, sir.

Q Mr. Taylor, as I understand it, was working at the desk, you say? A Yes, sir.

Q And he was sitting facing the court room? A Facing the court room, yes, sir.

Q And you and Cowan and this other man were at the back of him, is that right? A Yes, sir. The other man was way in the rear towards the northerly end. He was at the 'phone for some business.

Q The 'phone is on one of the tables? A There is a 'phone I believe in the rear end; I think he was at the rear end of the room.

Q You are speaking of Judge Dungan's room? A Yes, sir.

Q Don't you know at that time in that room there was one desk which had a 'phone on it, a flat desk where people could sit on that side (indicating) and put their feet under it, and people could sit on that side (indicating) and put their feet under it, and on the desk over here was the 'phone, while the table of which you speak ran the same as that railing in front of the jurors near the door? A Near the door the table was, but the 'phone, evidently, in my mind appears to have been in the northerly end of the room near the wall.

Q Mr. Taylor, as far as you know, had no knowledge of the fact that you and Cowan were dividing up the money which you and he had unlawfully obtained from the county, isn't that so, at that time?

*Mr. Harrison.* I object as calling for a conclusion of this witness and not being proper cross examination. The question is not whether Taylor had knowledge. Under the circumstances and facts detailed as to what took place in this room is for the jury entirely. This witness can testify as to what was said and actually done in

that room, but as to whether or not Taylor had knowledge of the attempt to cheat and defraud the county, I object. It is not for this witness. It is for the jury.

*Mr. Heisley.* I asked him as far as he knew.

*The Court.* So far as he knew?

*Mr. Heisley.* Yes; something peculiarly in his knowledge.

*The Court.* Did you ask him so far as he knew at that time?

*Mr. Heisley.* Yes. If your Honor will let the stenographer read the question.

*The Court.* Yes. Repeat the question.

Q (Question read.)

*The Court.* I think that makes it proper.

*Mr. Heisley.* You may answer, the Judge says.

*Witness.* Well, I don't know whether he did know anything about it.

Q You never talked to Taylor about dividing up any money? A No, sir.

Q You never talked to him nor did Taylor talk to you about getting money unlawfully from the county? A He didn't directly, no, sir.

Q Everything that was done in getting the money from the county was done through the medium of Cowan, wasn't it? A It was.

*Mr. Harrison.* I object to it as calling for a conclusion, because this witness has stated that he had some conversation with Taylor.

*The Court.* Objection sustained.

*Fred Busse, cross.*

Q Cowan is the only man who said anything at all about where this money was to go—it was to go to Taylor, isn't that so? A That's what he said.

Q And he said that when Taylor was not present, didn't he? A He said that when Taylor was present, the last day; and he said that the first day when he approached the matter for me to come back.

Q When was it that he said it in Taylor's presence? A On that Friday, May 4th.

Q Was that the last day? A That was the last day of the term.

Q You mean when you were in the room? A That is the day I was in the room, yes, sir.

Q And when Taylor was writing at the desk? A Yes, sir.

Q And when you and Cowan were talking in a subdued tone of voice at the window? A Taylor said—Cowan said—pardon me!—Cowan said that goes to Mr. Taylor?

Q Yes; but that is at the time when you and Cowan were talking in a subdued tone of voice, wasn't it? A He said that in a manner that it could be heard. It was audible anyhow. It was not so subdued as not to be heard exactly, but it was not in a very loud voice either.

Q You do not think anybody out in the corridor or out in Market street heard him? A No; not that distance.

Q Was this door leading from the anteroom of the court room into this room where Mr. Taylor was open all the time you were in there? A It was open, yes; yes, sir.

Q And wasn't court being held in that big room? A I suppose, judging by the hour there

must have been court, but I had no time to look around.

JOHN R. MATHEWS, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Mathews, you live in the Borough of Caldwell? A Yes, sir.

Q And you were called to serve as petit juror in this county beginning May 7th, 1917? A I was, yes, sir.

Q And did you serve? A I served part of the time.

Q What days did you serve, Mr. Mathews? A I served the first six days.

Q And why did you not serve the remainder of the two weeks? A I was excused.

Q By whom? A By Cowan.

Q Under what circumstances? Did you make a memorandum of what transpired at the time? A I think I have.

*The Court.* Answer the question yes or no. Do not look at anything, please.

*Witness.* Yes, sir; I did.

Q While the events were fresh in your mind? A Yes, sir.

Q So that you could recall them. Can you by reference to that memorandum so refresh your recollection that you can testify about it? A I can.

*Mr. Heisley.* I would like to cross examine before he uses it.

*The Court.* He hasn't said he don't remember.

Q Under what circumstances were you excused, without referring to the memorandum book? A Do you want me to tell the story of it?

Q Yes. A I came in on Tuesday morning, I think, the 15th of May, and went into Judge Dungan's room, about nine o'clock in the morning, and Cowan was sitting at a table, and he had approached me the first day, that is May 7th, and had offered to let me off and I reminded him of that and asked him whether he could make good his previous offer, that I had an urgent call to go out of town and I found it necessary to get away, and he asked me how long it would be; well, I said, "I would like to have it for the rest of the term." "Well," he said, "you come in and see me," or, "You see me again." I reminded him that I was on a case at that time and I would see him after I got through with the case. I again saw him shortly after the lunch hour on that Tuesday.

*Mr. Heisley.* That is the 15th?

*Witness.* The 15th, yes, sir,—and he told me that I got excused, but that I must keep very quiet and not say anything to anybody and he said I should wait for him and he would go down into this court room and see whether I was empannelled on the jury that was up for a murder trial, and he came back and told me that I was on that jury, but that the jail was quarantined and the case would not come to trial, and he told me to go ahead and go home, or go to my office, and come back the following Friday and meet him in the corridor by the boot-black stand at 10:30, and that furthermore

that the four days' pay for the days that I was to be away would have to go to Mr. Taylor.

*Mr. Heisley.* Go to Mr. Taylor.

A (Continuing.) I then—I came back Friday and met him at 10:30 in the lower hall on the first floor near the bootblack stand and he gave me my warrant and told me to get the money and come back to the same spot, and I had the warrant cashed in the Sheriff's office and came back and he asked me how much I had received. I told him $27.80, and I said, "How much do I owe to you now?" "Well," he says, "Where do you live?" I said, "Caldwell;" he says, "You owe me $11." I gave him $11 and thanked him and he said that was all right and if I ever got called again and wanted to get off to come right to him. They were always glad to do those things for good fellows.

Q Did you take the serial numbers of the bills which you gave Cowan that day? A Yes, sir.

Q What are those serial numbers? A One dollar bill V81217430V; there was a $5 bill T406780B, National Park Bank of New York; there was another $5 bill, E47346511, United States Legal Tender.

Q I show you Ex. S4 and ask you if that is the warrant which you received from Cowan on the 18th of May? A To the best of my knowledge.

Q I call you attention to the signature John R. Mathews appearing opposite the number 59 on Ex. S23 for identification and ask you if that is your signature? A Yes, sir.

Q And you signed it at the time of the receipt of the money from the sheriff on the 18th of May? A Yes, sir.

*George F. Brandenberg, direct.*

Q At whose suggestion did you perform and act through the various acts? A At your suggestion.

*Cross examination* by Mr. Heisley.

Q You live up in the Burg where our distinguished prosecutor lives, don't you? A Yes, sir.

Q Know him pretty well? A Yes, sir.

Q Mr. Mathews, as far as you know, of your own knowledge, Taylor had no connection with this transaction of which you have spoken, directly or indirectly, excepting as Cowan told you that Taylor was to get some of the money, is that right? A That is all.

*Re-direct examination.*

Q On which days did you not serve or attend as a petit juror during the two weeks for which you were called to serve? A The 18th, 17th—I am saying them backwards, so that I can refresh myself,—the 18th, 17th and 16th. On the 15th, in the afternoon, I was excused. I had served in the morning.

Q Did you answer the roll call on the 16th, 17th and 18th of May? A I did not.

RECESS.

GEORGE F. BRANDENBERG, sworn on behalf of the State.

*Direct examination* by Mr. Harrison.

Q You are the sheriff—one of the under sheriffs of this county, Mr. Brandenberg? A Yes, sir.

Q And in the course of your duties do you have supervision of the payment to jurors of

the amounts to which they are entitled for services? A Yes, sir.

Q I show you Ex. S26 and S21 and S23 and ask you what those papers are? A These are the payroll papers—papers made out from vouchers that are presented to us and the amounts opposite are the amounts paid to the persons holding the vouchers.

Q And the names set out in the list being the names of whom? A Of the men who hold the vouchers supposedly.

Q And supposed to have served as jurors in the courts of this county? A Yes, sir.

*Mr. Harrison.* I ask that that be marked in evidence.

Papers marked Ex. S21, 23 and 26, by striking out the words "for identification."

Q I show you payroll list for the April term with the first entry under date of May 1, 1917. Is it admitted in evidence without objection?

Paper marked Ex. S27.

Q I show you Ex. S22 and 24 and 25 and ask you if you can by reference to the payroll list and the warrants themselves and state if these warrants have been paid and if so upon what date? A They have been paid. They were paid; one was paid May 5th.

Q Which one is that? A S24 was paid on May 5th, 1917; S22 was paid May 8th, 1917; S25 was paid May 18, 1917.

Q Out of what funds? A Out of the sheriff's office funds—funds in the sheriff's office.

It is admitted by counsel that these warrants were paid out of the funds of the

*George F. Brandenberg, cross.*

Board of Chosen Freeholders of Essex County.

*Cross examination* by Mr. Heisley.

Q Sheriff, I believe among those papers you have been asked about two papers bearing the signature of proposed jurors by the name of Appleton and Helwig. Both of those men have appeared here in this—and they—all three of those jurors have been here as witnesses this morning and testified in this case that they nor either of them—they or any of them, rather, signed that roll. Do you know who did sign the roll? A Positively not.

Q Did you know at the time you were paying this money out that the men who were signing the roll were not Bender, Briggs and Appleton? A No.

Q As far as you know did Frank Taylor have anything to do with procuring signatures for that roll by these fictitious persons?

*Mr. Harrison.* I object on the ground that it is immaterial and calls for the conclusion of this witness.

*The Court.* This question might mean whether Brandenberg, the witness, paid the money to Taylor personally. Your objection assumes that the sheriff's office paid this money to some individual other than Taylor and Cowan, and isn't that an improper assumption in your objection?

*Mr. Harrison.* I think not, if your Honor please, because the testimony has already been produced in this case showing that Judge Osborne had given these men excuses for the whole two weeks' service and had

transmitted those excuses to Mr. Taylor; that in spite of that Mr. Taylor had issued these warrants directing the sheriff to make payment thereof. Now, my objection goes chiefly to the proposition that this witness —this witness being asked as far as you know had Taylor done anything about this,— is merely a conclusion and does not assume any of the evidence that has been introduced in this case.

*The Court.* I agree with you but the witness does not agree with you. I mean I agree with you as to your legal position generally but not in its specific application to this question, because the witness said he paid those warrants and said he did not know whether the persons to whom he paid the warrants were the jurors. Now, the question is did Taylor have anything to do with it so far as you know. Now, suppose that Taylor collected these warrants himself, wouldn't the witness have to say yes, he paid it to Taylor? Doesn't that make the question perfectly competent?

*Mr. Harrison.* It certainly would be if directed to the fact of the payment to Taylor.

*The Court.* He puts it in another way. Do you know whether he had anything to do with it,—whether Taylor was alongside of the man to whom the money was paid,— whether he was in the hall—whether he called them up and asked them to pay it or something of that sort. I think it is a proper question.

*George F. Brandenberg, re-direct.*

A I knew absolutely nothing of it, about Taylor.

*Mr. Heisley.* That is all. May I ask a question out of order as to character?

*Mr. Harrison.* I have no objection, but let me finish up this examination.

*Re-direct examination.*

Q Do you know whether Cowan had anything to do with the payment of these warrants? A Nothing; know nothing about it.

*The Court.* Do you know whether or not you paid them to Cowan personally?

*Witness.* Neither one of them, no, sir.

*The Court.* You know Cowan?

*Witness.* Positively.

*The Court.* You have known Cowan, have you?

*Witness.* Yes, sir.

*Further cross examination.*

Q Mr. Brandenberg, how long have you known Mr. Taylor? A Twelve to fifteen years.

Q How long have you been connected with the sheriff's office in the county? A A little less than three years.

Q Where did you know Frank Taylor before you became connected with the sheriff's office? A Well, being around the court house. I had been connected with the court house as a member of the board of elections and so forth.

Q Were you a member of the County Board of Elections, too? A Yes, sir.

Q And during the twelve years that you have known Frank Taylor have you learned what his reputation is for honesty?

*George F. Brandenberg, further cross.*

*Mr. Harrison.* I think that question is entirely too broad.

Q In the community in which he lives?

*Mr. Harrison.* I withdraw the objection.

*The Court.* Answer the question yes or no.

*Witness.* No, I have not.

Q Pardon me, Sheriff. I did not mean to confine my question to where he sleeps, up at his house, when I say the community in which he lives?

*Mr. Harrison.* I submit it is not up to counsel for the defense to define the question. If he will ask the question then we will determine whether it should be objected to or not.

*The Court.* If a witness is called for a particular purpose in good faith and he does not appear to testify as anticipated I think it is in the discretion of the Court to allow some explanation, even to the extent of confronting him with statements elsewhere, but I will first have the whole question. I do not think the whole question is on the record. I think the Judge was interrupted in the middle of it.

*Mr. Heisley.* But I mean to include the city of Newark and the county of Essex.

*Mr. Harrison.* I object to the question.

*The Court.* That is too broad.

Q Do you know what his reputation is for honesty in this community?

*Mr. Harrison.* Same objection.

*George F. Brandenberg, further cross.*

*The Court.* I suppose that the defense's position is that he is going to show that the defendant worked here in the community and that he is here a good part of the day, and I think the authorities, when they laid down the principle that a good reputation in the community in which one lives means where he lives. I think a person lives where he works sometimes more hours than where he sleeps. In other words, a person might have a summer home in one place and winter home in another, and I think his reputation in the community in which he lives is broad enough to cover all those things. I have studied the authorities pretty closely on this point and I am inclined to think that that is the proper construction of the authorities. You may answer that, but only answer it yes or no. Do you know his reputation for honesty in this community, I think is the question.

*Witness.* Yes, sir.

Q What is it? A Excellent.

Q Have you ever heard anything against him until this charge was preferred? A Never.

*Mr. Harrison.* I object as incompetent.

*The Court.* Yes. That is going further. He has already answered it.

*Mr. Heisley.* Does your Honor think it is incompetent to show that he has never heard anything against him?

*The Court.* Yes, I do.

*Mr. Heisley.* Pardon me for saying this, but in an old case I think Judge Van Syckle, speaking for the Supreme Court or the

Court of Errors of this state, said it was competent to show that, that that was one of the very best evidences of a man's good character, the fact that he hadn't heard anything against him.

*The Court.* I remember the decision to which you refer and it is true that the best evidence—or very good evidence of good reputation is that one never hears anything against him. But you, on direct examination, may ask the question do you know his reputation in the community in which he lives for the characteristic involved, and he says yes, and then he may be asked what it is and he may state what it is, but when you go on and say have you ever heard anything against him that is not proof of reputation. That is proving specific acts. I will withdraw the ruling at this time until you show me the decision you refer to. Mr. Brandenberg is in the court house and you can call him when you find it. For the present I will reserve decision.

*Re-direct examination.*

Q Do you know where Mr. Taylor lives, Sheriff? A I do not.

*Re-cross examination.*

*The Court.* You know he is not dead when he is around this court house?

*Mr. Harrison.* I object.

EUGENE CAVENGET, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Do you live in the city of Newark, Mr. Cavenget? A Yes, sir.

Q And you were called to serve on the petit jury of this county on April 23d of this year? A I believe it was the 23d.

Q How many days of your two weeks' term did you serve? A Two days and a half, not quite three.

Q Why didn't you serve the rest of the time? A Why, I asked to be excused—that is, I didn't ask to be excused, but Mr. Cowan called me out of the jury room and he said, "I heard that you wished to be excused;" I told him, "Yes, I did." He says, "Well, I think that would be all right, but," he says, "you know the time you do not serve the money has to be returned to the county." I said that was satisfactory to me; he says, "Wait a minute," he says, "and I will be back;" he says, "I will have to see the clerk." He returned in about three or four minutes and he says, "It is all right, you need not report here until a week from this Friday." I came back a week from that Friday and met Mr. Cowan downstairs in the main corridor and he gave me a warrant and directed me into the sheriff's office. I received two ten dollar bills and a five. I gave Mr. Cowan $20 and kept five for the two days which I thought I had earned.

Q Were you excused at all by the Court? A No, sir, only through the officer who I thought was a representative of the Court.

Q Did you ask Judge Osborne to be excused? A I did not.

*Cross examination* by Mr. Heisley.

Q Mr. Cavenget, where was it that Cowan tackled you about your being excused? A He called me out of the jury room.

Q You were in the court room or were you in the jury room? A In the jury room.

Q There is a room in this building as you understand it where the jury remain when they are not needed by any of the judges, isn't that right? A Yes, sir.

Q And it was from that room that he called you? A Yes, sir.

Q Had you ever met the man before? A No, sir; only through seeing him around the court.

Q Total stranger to you? A Total stranger to me.

Q And you never knew Mr. Taylor, did you, Mr. Cavenget? A Only through the roll call, that is all, and I didn't know what his name was.

Q Where did you say that Cowan said that he would fix that up and he would go and see the clerk and where did you stay while he went to see the clerk? A Why, I think it was the floor above, I don't know; where the rotunda is there.

Q Did you stay outside of the court room? A Yes, sir.

Q You don't know really where he went after he left the corridor, do you? A Absolutely not.

Q And you don't know of your own knowledge that this man sitting here, Mr. Taylor, was

in any way directly or indirectly connected with this transaction? A I know nothing about it.

Q That is all. Where were you when you paid this money over to Cowan? A As I left the sheriff's office, I think it is the two steps as you go down into the main corridor.

Q Was anybody present? A Why, people going past.

MICHAEL J. BROWN, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q You live in the city of Orange, Mr. Brown? A Yes, sir.

Q And you were called for jury service in the courts of this county? A Yes, sir.

Q On the 19th of March in this year? A Yes, sir.

Q How many days did you serve? A I served six days.

Q Why didn't you complete your term? A Well, on Monday morning I got excused for Monday and Tuesday by Mr. Cowan—

Q Please state the manner in which you were excused by Cowan. A Why, I lost the roll call in the morning on Monday morning the first day—I didn't reach court until ten o'clock—and some of the jurors told me to go up and see Mr. Taylor, and he had a desk up near the judge—so I went up there and stayed about fifteen or twenty minutes standing up near his desk; in the meantime Mr. Cowan came up to me and asked me what I wanted. And I said I wanted to report for duty, and he said, "Well," he said, "you are too late, and you better sit down here a while and I will fix it up for you,"

so I sat down facing where Mr. Taylor's desk was. So after a few minutes sitting down there he said—

*The Court.* Who?

—Judge Dungan was hearing some motions, I believe, and he said, "Come on outside." He said, "I want to have a talk with you." So I went outside in the corridor and he said, "Do you want to get excused any day?" "Why," I said, "I am very busy; I will be today and tomorrow; I would like to get off." "Well," he says, "I will go in and see Mr. Taylor and see if I can get you off." So he went in and came out directly and he said, "It is all right," he says. "You can get off for those two days," and then I came back on Wednesday.

Q Did you see him enter the court room? A Yes, sir.

Q Did you see him go to Taylor? A Not that day. Then I served on Wednesday, Thursday and Friday and also the following Monday, Tuesday and Wednesday, making six days, and on Wednesday afternoon I went to him and told him—asked permission if I could get off on Thursday and Friday, and he said to me—he said, "Well, how many days have you been off?" I said two. He says, "Well, I will see Mr. Taylor and I will try to fix you up." So I was standing at the door of the court, the southerly end of the room, so he walked over to Mr. Taylor's desk and spoke to him and Mr. Taylor, whatever the conversation was, just bowed his head and Mr. Cowan came right back to me. He says, "It is all right," he says. "Now, report back on Friday." "Well," I said, "what time on Friday?" He said, "Ten o'clock." I said,

"I got a title to close in the morning," I said, "in one of the lawyers' offices and I won't be able to get back, how will it do on Saturday?" "Well," he says, "can't you make it Friday?" "Well," I said, "I will try to, but it will be nearer twelve o'clock than it will be ten." So I came down, I think, about twenty minutes to twelve on Friday and when I came down I met Mr. Cowan in the corridor and he says, "I have been waiting for you." So he says, "Here is your card—your voucher for you, and he said, "You go in the sheriff's office and he will pay over this money to you." So I went in there and they paid me for ten days. So I came back again and I looked at the envelope, or looked at the money I had, and held it in my hand until I met him; and I said, "They paid me too much money." "Well," he says, "part of this goes back, and he had a little pad and a little pencil in his hand and on it he had my name down M. J. Brown $10. He says, "This $10," he says, "has to go back to Mr. Taylor to straighten his books out." So he took the $10 that was on top of the money and then I went home.

Q I show you Ex. S. 9, is that the warrant you received from Cowan? A Yes, sir.

Q And you signed the sheriff's pay roll? A Yes, sir.

*Cross examination* by Mr. Heisley.

Q Mr. Brown, when Cowan went to see Mr. Taylor at the desk, you refer to the desk that is in the Supreme Court room where Mr. Taylor was sitting? A It was the desk that was up near the judge's desk and it was a little this side.

Q In Judge Dungan's court room? A It was the desk where Mr. Taylor always sat when he read out the jurors' names.

Q His official desk, wasn't it? A Yes, sir.

Q There were people in the court room, weren't there at the time? A At the time.

Q Yes. A The time that Mr.— I think there was Mr. Tansey, the lawyer, and some other lawyer were arguing some case before the judge.

Q You mean to say this was done right in open court, is that right? A Yes, sir.

Q In the public court room while a case was being tried? A Well, there was no case being tried; they were up to the judge's desk talking.

Q They were arguing—the judge was on the bench? A Yes, sir; the judge was on the bench looking at some papers.

Q This was done within ten feet of where Judge Dungan was passing upon some motion, isn't that so? A Yes, sir.

Q Did you ever know Mr. Taylor before you came here to serve? A I did not.

JOSEPH H. DUCKER, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Ducker, you are one of the detectives attached to the office of the Prosecutor of the Pleas of this county? A I am.

Q Were you the one who took Mr. Cowan in custody? A I was.

Q Recently. What date? A The 18th day of May.

Q What time of the day? A It was about 12:40.

Q Where? A In the chambers of the Supreme Court room.

Q Who was present at the time? A Why, when I went in there Mr. Taylor was sitting at the desk writing and Cowan stood at the desk alongside of him evidently talking to him. I did not hear anything that was said. I immediately took him into custody and brought him downstairs.

Q Did you see what they were examining at the time?

*Mr. Heisley.* I object.

*The Court.* Objection sustained.

Q What was before Taylor and Cowan at the time? A He evidently had a pad—paper of some description—I didn't pay much attention to what Mr. Taylor was doing because I had no knowledge of him being involved in anything. I was sent after Mr. Cowan and I got Mr. Cowan and brought him downstairs. Carried out the instructions that I got.

*Cross examination* by Mr. Heisley.

Q All that you know, Mr. Ducker, is that Mr. Taylor was sitting at his usual desk writing on something? A Yes, sir.

Q And you don't know what it was he was writing or doing? A I do not.

Q Except he was writing? A He was writing something. Evidently Mr. Cowan was dictating to him.

Q Yes. Do you know what are known as lawyers' credits up there? A I didn't know they had any.

Q You do not think that lawyers are entitled to credit. They do not get much, Mr. Ducker.

Let me ask you this. Do you know—have you seen these—have you seen a printed letter which Mr. Taylor sends out in behalf of the county clerk to lawyers notifying them to deposit fees for the trial of cases which are soon to be reached? A No, sir; I couldn't say that I ever saw one of those documents.

Q So you couldn't say whether that was what Mr. Taylor was writing or not? A No, sir; I couldn't say whether he was writing that or his will.

HON. HARRY V. OSBORNE, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Judge, you are one of the judges of the Court of Common Pleas of this county? A I am.

Q Have you in that capacity had charge of excusing petit jurors summoned to serve in the courts of this county? A I have.

Q For how long a time? A I cannot fix the exact date from my recollection, but I should say probably about several months.

Q And will you state the method generally used of excusing—followed in the excusing of jurors? A A juror desiring to be excused makes an application to me for that purpose and after hearing him I use my judgment in excusing him. If I determine to excuse him I have a slip of paper upon which is printed—if I could see it I could tell you more particularly—have you any objection to my refreshing my memory as to the printed matter?

Q I show you Exhibits S. 1 and S. 2? A Upon which is printed, "Essex County Court

of Common Pleas," a blank for the date. And it is addressed to the county clerk of Essex County—excusing the following juror—place for the names of the jurors excused, the time for which they are excused and a space on the bottom for the signature. Upon the excuse being granted I wrote the name of the juror and immediately following the name of the juror, in some instances, the reason; in other instances not; and the time for which he is excused.

Q By reference to Exhibit S. 1 can you tell us for what period W. C. Appleton was excused for the jury term beginning May 7th? A S. 1? You handed me what seems to be S. 2.

Q S. 2? A S. 2 is composed of several sheets, and referring to the third sheet of the exhibit the name of W. C. Appleton appears in my handwriting under date of May 7th, excused for the term.

Q Calling your attention to Exhibit S. 1 I ask you if you can refresh your recollection as to the term for which George E. Briggs and William Bender were, respectively, excused? A First page of Exhibit S. 1. On the first page appears the name George E. Briggs in my handwriting, reason given stated in my handwriting, "Federal jury," excused for the term. On the second sheet appears the name of William Bender in my handwriting, excused for the term, also in my handwriting. Both of these excuses under date of April 23d.

Q Do you recall the opening day of the term? A In a very general way.

Q That panel? A Not particularly; unless my recollection was refreshed.

Q Were these pencil memoranda which you find on these two exhibits, S. 1 and S. 2, there

when they passed out of your possession? A They were not.

Q To whom were these lists transmitted? A These lists were transmitted by me through one of the court attendants to Mr. Taylor.

Q What were Mr. Taylor's duties in the matter of the excusing of the jurors? A Mr. Taylor, to the best of my knowledge, had—was the clerk or deputy of the county clerk or representative of the county clerk attached to the Supreme Court room. Whether officially designated to Judge Dungan or Judge Gummere, I am not sure—at any rate he sat in that room as the representative of the county clerk, and the jurors were called in that room—the roll call in the morning took place there and Mr. Taylor had charge of the roll call. And these lists were sent to him so that he might know whom to mark excused—who had a right to be away.

Q What authority, if any, did you give to him in the matter of excusing jurors himself? A I recall generally none. But in one or two particular instances or perhaps two or three I have given him authority to excuse. I recall one instance in particular where I was leaving for the day earlier than usual and giving him authority to discharge the panel when the courts were through—whole panel—I think it was late in the week. And I think perhaps on one or two other occasions I have given him such general authority when I was going to be absent for a short period of time.

*The Court.* That is to excuse the whole panel?

*Witness.* That is my recollection of it.

*The Court.* With reference to authority to excuse particular jurors for any particular reasons?

*Witness.* I do not recall any definite authority to excuse particular jurors for particular reasons. There may have been an occasion once or twice when I was leaving and I said to him—I think it is probably so—that I said, "If anybody wants to get off this afternoon you may let him go," something of that kind, when I was leaving; was not staying up to four o'clock.

*Cross examination* by Mr. Heisley.

Q Judge Osborne, do you recall also on the opening day of the last past April term that you were going, I think, to Canada—going away and you would not be in court on Wednesday morning when the general panel was to be called and you told Mr. Taylor when he called the jury to deal with the jury? A I didn't go to Canada this year.

Q Well, when you went away somewhere on Wednesday morning? A What date?

Q The opening day, the 4th or 5th of April?

*The Court.* The opening of the term, judge, was April 3d, Tuesday, and the 4th is Wednesday and the jury in the opening of the term comes first on that Wednesday.

*Witness.* Yes; I remember I went away with the chief justice and county clerk.

Q I think I met you all down at the station. I was going to work and you people were going away gunning.

*The Court.* I think the jury will have to disregard that.

*Witness.* This is for the purpose of refreshing my memory, which it does.

Q Do you recall telling Mr. Taylor to deal with the jury that day? A I do not specifically recall it, but I may have done so. If he says I did, I probably did.

Q You had confidence enough in him to give him that power, didn't you, in your absence? A Yes, sir.

Q Now, let me see whether this refreshes your memory or strengthens it. You recall—do you recall when you came back from this expedition which you judicial gentlemen went on—do you remember him telling you that he saved the county $65 by excusing jurors? A I do not recall it.

Q You do not say he did not? A I do not say he did not. I hear a great many things I do not remember.

Q Judge, when you would excuse these jurors in your court room and you write these slips your duty then with the matter was practically ended, wasn't it? A Well, no; I don't think so.

Q What more would you do? I mean other than to hand the paper to the clerk or somebody and tell them to report them to Mr. Taylor? A Mr. Taylor would frequently report back to me conditions which he found which he thought needed my attention, and it was a matter of common occurrence for him to come to my room with the record of jurors who failed to answer their names when called and ask me to deal with them. I would sometimes have to issue an order to show cause to bring the juror into court to find out why he was not here, and my duties extended to a general supervision over the panel.

Q Judge, were these suggestions or matters which Mr. Taylor brought to your attention in the interest of the county or against the interest of the county? A I am sure I don't know.

Q What did you think of them? Did you think they were in the line of his duty? A I certainly assumed they were in the line of his duties. In whose interests they were I cannot tell you.

Q Were they detriment to the county's interests? A I don't know. He brought matters that came to his attention presumable that required some action on my part.

Q And generally he was a pretty busy man, wasn't he? A I know nothing of his duties other than the most general way, other than the handling of this matter. He sat in another court room.

Q Well, the fact is, I believe, that you have in this county a panel of jurors of about one hundred and forty names approximately, drawn every two weeks while the court is in session? A All of them did not appear, however.

Q I say they are summoned? A They are summoned. Their names are drawn. Some of them are not summoned because they are not found. Some are dead, some are out of the city.

Q You are aware, judge, I suppose, of the general character of the charge involved in this indictment, aren't you? A Yes, sir.

Q And haven't you and hasn't Mr. Taylor put in considerable time during the last three or four months in evolving a scheme for the drawing of jurors which would practically eliminate—or at least very much limit the chances for a fraud of this kind which is em-

bodied in this charge being perpetrated upon the county?

*Mr. Harrison.* I object.

*The Court.* Objection sustained and the jury will disregard any inference contained in the mere asking of the question.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Judge, how long have you known Frank Taylor? A I think as long as—

*Mr. Heisley.* I want to make him my witness now as to character.

*Witness.* I think probably twenty years. Certainly nearly that. I think almost since I came to Newark to practice law.

Q How long have you been a judge? A Judge?

Q Yes. A About five years—six years.

Q And, of course, you knew him when you were practicing as a practicing attorney. And do you know what his reputation is for honesty in the city of Newark? A Yes, sir.

Q What is it? A Good.

Q Have you ever heard anything against him until this charge was made?

*Mr. Harrison.* I object as not being within the proper scope of character testimony.

*The Court.* Objection sustained.

*Mr. Heisley.* May I have an exception?

*The Court.* I will dispose of it the same way I did the other question.

*Mr. Harrison.* I will withdraw the objection, your Honor, to this question.

*The Court.* All right. Have you ever heard anything against him?

*Witness.* No; not until this charge was made.

*Mr. Heisley.* That is what I mean.

*Re-direct examination.*

Q Do you know where Mr. Taylor lives? A Why, I think I have seen in the paper that he lives in Montclair.

ALFRED J. HARGAN, sworn on the part of the State.

*Direct examination* by Mr. Harrison.

Q Mr. Hargan, you are a lieutenant of detectives attached to the prosecutor's office of this county? A I am.

Q And in the course of your duties were you assigned and given in charge this matter of the investigation of the indirect excusing of jurors? A I was.

Q And in the course of your investigation did you have occasion to examine the drawer of the table in the Supreme Court room? A I did.

Q When did you make that examination? A On May 2d, 1917, the first time.

Q And what did you find there? A I found a number of papers put away in one corner—a number of jurors' slips out of the jury box with jurors' names and numbers on them, with

a rubber band around them, and put away in one corner of it.

Q And did you make a memorandum of the names that you found at that time? A I did.

Q What names did you—what slips—or what names did the slips contain? A They contained the name of William F. Francks, No. 55; Fred S. Helwig, No. 72; Eugene Cavenget, No. 28; Fred Busse, No. 21; Julius Regan, No. 28, and Edward K. Witherhill, No. 135.

Q Have you examined the jury panel for that term to determine whether those men were jurors at that time? A They were at that time on the panel.

Q What did you do with those slips? A I placed them back in the drawer where I found them.

Q What do you mean by jury slips? A The slips that belong in the jury box with the name and number of the juror.

Q Did you have occasion at or about that time to be in the Supreme Court room while the roll was being called? A I went up there on the next day, on the morning of May 3d, while the roll was being called, for the purpose of hearing whether a particular name was called.

Q Who called the roll that morning? A Mr. Taylor.

Q The defendant in this case? A Yes, sir.

Q Did you make a memorandum of any names that were not called? A I went there for the purpose of hearing if one particular name was called.

Q What particular name? A Fred Helwig.

Q Was his name called? A It was not.

Q Did you have occasion to go again to the Supreme Court room? A I did.

Q For a similar purpose? A I went there again for the purpose of hearing the roll call on May 17th to see if a particular name was called.

Q What particular name? A John R. Mathews.

Q Was that name called? A It was not.

Q Who called the roll that morning? A Mr. Taylor.

Q The defendant in this case? A The defendant in this case.

Q Were you present when—on May 18th this year—when Cowan was searched? A I was.

Q I show you two fives and one one-dollar bill and ask you if you can identify that money? A I can.

Q In what way? A By the numbers of the bills and a memorandum contained here in my handwriting.

Q When did you take those numbers? A I took those numbers on the morning of—on the night of May 17th and made a duplicate list, one of which I gave to Mr. Mathews on the early morning of May 18th, and this slip, which I retained in my possession until Cowan's arrest, having in the meantime seen Mr. Mathews, and struck from the list all the numbers that it contained with the exception of bills which he had reported to me that he had paid to Mr. Cowan.

Q To whom did you give that money? A Mr. John R. Mathews.

Q What date did you give him the money? A About 9 o'clock on May 18th.

*Mr. Harrison.* I offer the three slips and the bills in evidence.

Envelope marked Ex. S 28.

Q Did you find any other money on Cowan at the time you took this $11 from him? A At the time that he turned over the $11 I requested him to turn out all the money that he had in his possession so that Mr. Ducker could search it for the numbers that I had given to Mr. Ducker on the yellow slip that you now hold in your hand. He produced besides those bills the remainder of the money that is contained in this envelope.

Q Did he say where that money came from? A He—after I had spoken to him he said that he had got it—

*Mr. Heisley.* One moment. I object. This is evidently some statement that this man made after the object of this conspiracy had been consummated and the thing had entirely ended.

*The Court.* I do not see how it is competent.

*Mr. Harrison.* I will withdraw the question.

*The Court.* Things that Cowan does during the course of the business covered by the conspiracy is no doubt competent, but I do not think this is. I think he may state where he got this money.

Q Where did you get this $75? A It was given to me out of Mr. Cowan's possession on May 18th.

*The Court.* Possession is a legal term.

*Witness.* Out of his pocket.

*Frank E. Taylor, direct.*

*The Court.* Did you see it taken out of his pocket?

*Witness.* I did.

*Mr. Harrison.* I offer these bills aggregating $75 as one exhibit.

Envelope marked Exhibit S 29.

*Cross examination* by Mr. Heisley.

Q Mr. Hargan, where was this desk in which the drawer was where you found a roll of jurors' names? A Immediately as you enter the court room from the alcove.

Q Lobby? A Lobby, from the Judge's private chambers in the Supreme Court room.

Q On the righthand side? A On the righthand side as you go in.

Q That was where the reporters sit generally, wasn't it? A Yes, sir.

Q It wasn't in Mr. Taylor's desk? A No, sir.

STATE RESTS.

Mr. Heisley opens for the defendant.

FRANK E. TAYLOR, sworn in his own behalf.

*Direct examination* by Mr. Heisley.

Q Mr. Taylor, you live at Montclair, don't you? A Upper Montclair.

Q Upper Montclair. You are a married man? A I am.

Q And this lady sitting here, the third lady, is your wife, isn't she? A Yes, sir; she is.

Q And that boy and girl? A Are the son and daughter.

Q And how long have you been attached to the county clerk's office of Essex County? A For just about fifteen years.

Q Now, your duties have brought you in contact a great deal, I think, with the judges of the courts of this county? A In most everyday touch with them—some of them.

Q Judge Osborne has told what duties he knew that you performed and so has Judge Dungan. Are there any other duties which you have been assigned to by the county clerk? A There are many other duties, almost too numerous to mention. My work is made up of little details. It is hardly alike for two days in succession. In addition to the many things Judge Dungan mentioned yesterday, when the Supreme Court is in session here I am in attendance with that.

Q You mean when the judges from other sections of the state come in? A Or when a justice sits here for motion day, as usually occurs every Saturday—sometimes on Mondays. It is one of my duties to see that the jury commissioner and the sheriff are notified when juries will be drawn; to attend at the drawing of those juries, keep a list of those names, attend to the signing of the order for having drawn that jury, see that they are printed and issued to the various court rooms; attend my court regularly, attend the roll call at 9:45 every morning, just as soon after roll call as is possible to get word to Judge Osborne the number of jurors attending, so that he can deal with excuses; he aimed to do that before 10 o'clock each day; at 10 our own court would convene; I would have to attend my call; keep the disposition of the cases, draw juries, swear wit-

nesses, receive verdicts, make certain of getting my fees from certain lawyers who had not credit in the office—

Q You mean those trial fees? A Trial fees.

Q What is the amount of the usual trial fee? A Usually $10, but depending on the number of attorneys in each case.

Q Now, pardon me. That was to secure the county against loss, isn't that right? A Yes, sir.

Q Now, would those fees in the course of the year amount to very many dollars or not—several thousand or not? A I would not say they amounted to several thousand, because they varied, but in the aggregate in the fifteen years that I have been here, together with my service in the office and the collection of such fees there isn't any question but what I have handled a great many thousand dollars, without the loss of a dollar.

Q Without taking up unnecessary time let me ask you generally, did these duties require much of your time or not? A I don't know whether it is relevant or not—

*The Court.* Answer the question.

*Witness.* It required a great deal of time. It required every minute of time I could give to it.

Q When was the busiest portion of your day? A Depending on the day.

Q Suppose it was a court day, when the courts were all in session? A I say a Friday would be my very busiest day.

Q On Friday? A On Friday I had to make up my call of cases for the succeeding week.

That usually consisted of thirty cases. I had to make in duplicate a list of those cases.

Q Now, I won't take your time to enumerate that. I think that is not important. Now, will you tell us what judges you have sat under since you have been an assistant of the county clerk? A First in the Honorable Judge Frederic Adams.

Q He is one of the presiding judges of the Circuit Court? A Circuit Court; second, yourself, and third, Judge Dungan. In the meantime all the time being under the Chief Justice.

Q Let me ask you so that I do not forget it. You have heard this testimony of this man Cowan, that you and he were in a scheme to cheat the county by means of having people paid for jury service who had not actually served. Were you ever in such a combination with him or any other person? A I have never been in a combination with him or any person.

Q Have you ever been a party or acquiesced in any person, in any way, cheating or defrauding this county out of any money in any manner whatsoever? A Absolutely not, sir.

Q Have you ever retained unlawfully any of the money of this county, jurors' fees or trial fees or anything else? A I have never retained or I have never obtained a dollar unlawfully from any man, woman or child.

Q Are you guilty of this offense charged in this indictment?

*Mr. Harrison.* I object.

*The Court.* He has said it three times.

*Mr. Heisley.* I was asking him if he was guilty. I asked if he ever did such a thing.

*The Court.* He isn't guilty if he hasn't done it.

*Mr. Heisley.* I hope your Honor will let him answer it. I do not want anybody to think that he has not denied his guilt.

*The Court.* He has denied it in detail and he has denied it in omnibus.

*Mr. Heisley.* I will not press it, sir.

Q This man Cowan says that you would mark present as jurors and make out these slips for jurors for more days than the jurors had attended and that after he would get the money that you and he usually would repair to some room in this building and there divide up the amount of money so procured unlawfully between you on a fifty-fifty basis. Is that so or not? A That is not so.

Q Did it ever happen in any instance? A It did not.

Q Did he ever suggest it to you? A He did not.

Q Did you ever suggest it to him? A I did not.

Q Have you ever received from any juror or any person called to serve as a juror any money—any part of that juror's compensation? A I have not.

Q Have you ever asked for it? A I have not.

Q Have you ever suggested to Cowan that he try to get it for you? A I have not.

Q Have you ever been accused of crime in your life? A I have not.

Q Have you ever been convicted? A I have not.

Q He says that you told him in effect in October that a man was coming in on Monday as a juror and suggested that he make a sort of arrangement with that man, so that the money would be abstracted from the county and then divided between you and him. Did you ever make any such statement to him? A I did not.

Q He says that again the first of the year you made a similar arrangement with him, is that so or not? A It is not.

Q Of these various men who have been called here as witnesses and who were summoned as jurors, did you know a single one of them prior to their going upon the witness stand? A I did not know one single one.

Q Did you know at any time prior to the arrest of Cowan and his confession that he was in this scheme in any way? A I did not.

Q For the purpose of robbing the county? A I did not.

Q What has been Cowan's name during the time that you have known him? A Oh, they have termed him Faker, and sometimes Billy Sunday.

Q Whoever accused him of being Billy Sunday?

*The Court.* What relevancy has this got to this charge?

*Mr. Heisley.* To show that this man has an alias.

*The Court.* There is a certain issue here. The question is not what Cowan is called, the question is about what the truth is in this allegation in the indictment.

*Mr. Heisley.* Do I understand your Honor to rule it is not competent to show that he goes by an alias?

*The Court.* I do not consider there is any question on the record; I will rule on the very next objection that is made.

Q What has been his habits, Mr. Taylor, as to the use of intoxicating liquor, if you know?

*Mr. Harrison.* I object on the ground of the lack of relevancy and immateriality.

*The Court.* Objection sustained.

*Mr. Heisley.* Will your Honor hear me on that?

*The Court.* You haven't asked him about any particular time.

Q How long have you known Cowan?

*The Court.* The question is not whether Cowan drinks. The question is whether what he says is true.

Q How long have you known Cowan? A He came to our court room just three years ago—and not two years, as he stated.

Q You saw him in the court house long before that? A I speak of my room.

*The Court.* You were not asked how long he has been in your room. You were asked how long you have known him.

*Witness.* I have known him since we moved in this building, that is a matter of ten years.

Q Do you know what his habits have been as to the use of intoxicating liquor during the

time that you have known him, to and including the period covered by this indictment?

*Mr. Harrison.* I object as not material and not one of the issues in this case.

*The Court.* Objection sustained.

*Mr. Heisley.* Will your Honor allow me to state on the record my reasons?

*The Court.* No. I do not want to hear any argument. It is perfectly obvious that it is utterly incompetent. We will proceed to the next question.

Q Is it true or not that during the time covered by this indictment Cowan upon several occasions was so overcome by the excessive use of intoxicating liquors that for two weeks at a time he was absolutely unable to attend to any of his duties as a court attendant?

*Mr. Harrison.* I object as being leading, as being immaterial and irrelevant.

*The Court.* Objection sustained.

Defendant's counsel pray an exception to this ruling of the court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*The Court.* This is your witness. You cannot lead him.

*Mr. Heisley.* But your Honor has prohibited me from showing what his practices were as to drinking.

*The Court.* We are not trying Cowan as to whether or not he is a drunkard. We are trying Taylor to find out whether or

not what Cowan says is true and whether the charge in the indictment is true. The question is not whether Cowan drinks or is intoxicated; the question is what is the truth as to the allegation made in the indictment.

*Mr. Heisley.* But your Honor has forbade me to state to your Honor why I think this evidence is relevant, and, of course, I have no right to be contumacious, and do not intend to be, but in view of the fact that you will not allow me to state in what aspect I consider the evidence relevant, I want to have these questions on the record and get exceptions. That is all.

*The Court.* If you seriously urge that this witness has a right to tell us that Cowan has or has not been drinking for the last ten years I will hear you.

*Mr. Heisley.* I do not say that the fact that a man drinks for ten years shows that another man did not commit the crime, but I respectfully say, sir, that it is competent for us to show that this man, whom we are accused by the State of making a co-conspirator with us is known to be in such condition that he is helpless and hopeless; that it is for the jury to say whether or not it is probable that man in his right senses would make such a combination with a man whom he knows to be for weeks at a time out of his head by the use of intoxicating liquor.

*The Court.* From your opening I thought you were going to show that Cowan in-

vented this whole scheme and carried it through alone.

*Mr. Heisley.* I am.

*The Court.* I think it is too remote.

*Mr. Heisley.* May I have an exception?

*The Court.* No, you cannot have an exception because you are making an explanation. There is not any open question on the record.

Q Mr. Taylor, do you know whether or not during any portion of the period covered by this indictment Cowan has been for any considerable time—period of time—mentally incompetent from any cause?

*Mr. Harrison.* I object on the ground that it is leading, it is immaterial and irrelevant and calls for a conclusion of the witness and an opinion of the witness perhaps as a medical legal expert.

*The Court.* I will sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Do you know whether from the excessive use of liquor or from any other cause for a period of several weeks covered by the time mentioned in this indictment Cowan has been in such a condition that his language would be incoherent and he appeared to be mentally incompetent?

*Mr. Harrison.* I object on the same ground.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Do you know if during this time Cowan had been in the habit of following horse races and gambling on the horse races?

*Mr. Harrison.* I object on the same ground as the question immediately preceding.

*The Court.* Objection sustained. And besides that you asked Cowan and you are bound by his answer.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Do you know whether he has been in the habit of playing what is known as policy, a game of gambling?

*Mr. Harrison.* Objected to for the same reason and on the further ground that he seeks to impeach his own witness.

*The Court.* Withdraw the last ground. I will sustain it on the other ground.

Defendant's counsel prays an exception to this ruling of the Court, same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Adjourned until tomorrow morning at ten o'clock.

THIRD DAY.

June 20, 1917.

Appearances as before.

*Mr. Heisley.* With the permission of the Court and the consent of Mr. Harrison I would like to call a couple of witnesses out of order.

*The Court.* You may do so.

BENJAMIN M. WEINBERG, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q You are an attorney of the Supreme Court of this state practicing in this city? A Yes, sir.

Q How long have you known Mr. Taylor? A Why, since he came to this circuit.

Q That would be ten or twelve years ago—fifteen? A Since his appointment by Mr. Horton—how long ago that is—I think it is ten years.

Q Do you remember when he used to act as clerk under Judge Adams? A I do.

Q And have you during the course of these years that have intervened often had business in

the courts with which he was associated? A Yes, sir; large part of my practice has been in his court.

Q And have you learned during those years and down to the making of this present charge what his reputation has been in this community for honesty? Have you learned it? A I have.

Q What is his reputation? A Why, his reputation as I have known of it has been the very best.

Q Have you ever heard it questioned?

*Mr. Harrison.* I object to it as being irrelevant.

*Witness.* I have not.

*The Court.* Do not answer. Objection sustained. I will make the same ruling. You were going to show me an authority.

*Mr. Heisley.* I thought it was Judge Van Syckel. It was Judge Lippincott, 14 and 35 Vroom.

*Cross examination* by Mr. Harrison.

Q What do you understand by the term community, Mr. Weinberg? A Why, the locality. The immediate locality in which the party resides or has lived.

Q Where does Mr. Taylor reside? A Of my own personal knowledge?

*Mr. Harrison.* Strike the question out. Do you know where he resides?

*Witness.* I do not, except by hearsay.

Q Did you have occasion to ask other people about Taylor's reputation? A No, but I have discussed it many times.

Q Since the finding of this indictment? A Before and since, but my replies are not based on my discussions since the indictment.

Q What was the occasion for your discussing his reputation? A Why, we have often considered the fidelity, as we considered it, of Frank, as we called him, in his position, with respect to the confidences which he kept regarding the actions of juries and the business in general.

Q His trustworthiness in connection with his work in keeping the roll and other similar duties in the court? A No. I wouldn't say that I ever discussed the question of his roll keeping at all. Never.

Q Did you ever discuss the question—discuss his reputation for honesty? A Yes, sir; in that respect, with respect to confidences and so forth which he kept with regard to his work in court. We have always felt that Taylor was a man who never went outside of his work in letting anybody know those things that they ought not to know and so forth.

Q And your opinion, then, is based entirely upon the discussion in reference to those confidences? A Those and matters of a kindred nature; usually always connected with the general discussion of a man of character and ability and so forth.

Q So that your discussions regarding his reputation were confined—were limited by those to which you have just testified? A I can hardly say that they are limited to those two or three things, because, as you well know, in the discussion of a man you are apt to consider almost everything from his general sportmanship right down to his fundamental honesty. I will say that I never discussed the question of his honesty in

taking care of money or his honesty in keeping the rolls of this court. We had no occasion to talk about any such thing.

Q Nor his integrity? A Except in the manner I have spoken about. I think that affects the integrity.

*Mr. Harrison.* I ask that the witness's testimony be stricken out.

*The Court.* All of it?

*Mr. Harrison.* All of it, on the ground that on cross examination it is shown that it related to the question of the confidence that the people had in Mr. Taylor rather than his reputation for honesty and integrity.

*The Court.* Mr. Weinberg has sworn that he does know his reputation for honesty in the community in which he lives, and on cross examination your construction is that he knows his reputation rather with relation to his fidelity. I think I will leave that to the jury to determine.

Now, Judge, the door is wide open and you can put your question if you want to, regardless of finding any authority.

*Mr. Heisley.* I have got lots of authority. The question is, have you ever heard it questioned? Do you want to hear me?

*The Court.* The door is open by the cross examination and the question becomes proper. You may now ask it if you want to.

*Mr. Heisley.* Might I now refer your Honor to these authorities, because there will be a number of these witnesses?

*The Court.* Yes. I will examine them, but go on with this witness.

Q Answer the question. A That question referred to something else I might suggest. The question as Mr. Salmon read it is hardly a complete one I think.

Q I want to get through with the case, if I can.

*Witness.* What is the question, please? I did not get the question.

Q Have you ever heard Mr. Taylor's reputation for honesty or for the observance of the law questioned in this community? A Never.

ANDREW VAN BLARCOM, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Van Blarcom, you are an attorney at law? A Yes, sir.

Q And have been for many years an assistant prosecutor of the pleas of this county? A I was; yes, sir.

Q And you frequently have had business in these courts, of course? A Yes, sir.

Q How long have you known Mr. Taylor? A Oh, I suppose seven or eight years.

Q Were you frequently thrown with him? A Yes, sir.

Q And observed him in the performance of his duties and also socially, I suppose? A Yes, sir.

Q And have you during those years learned of his reputation for honesty and for the observance of the law of this community? A Yes, sir.

Q What is that reputation? A Good.

Q Have you ever heard it questioned? A No, sir.

NOT CROSS EXAMINED.

JEROME T. CONGLETON, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Congleton, you are an attorney at law? A Yes, sir.

Q And you have held some positions in this community, haven't you, official positions ? A I am a member of the county tax board.

Q That isn't a very popular office, is it? A Not at times.

Q Where do you reside? A City of Newark, Roseville section.

Q And how long have you practiced in the courts of this county? A I have been admitted, I think it is some sixteen years, and my practice has been generally in this county.

Q Have you often met Mr. Frank Taylor in the courts of this county? A I have.

Q And have you during those years learned of his reputation in this community for honesty and for the observance of the law? A I have.

Q What is that reputation? A Good.

Q Have you ever heard it questioned? A No.

*Cross examination* by Mr. Harrison.

Q Do you know where Mr. Taylor lives, Mr. Congleton? A Upper Montclair.

Q Have you ever discussed with people in Montclair his reputation for honesty and integrity? A Not in Montclair, no, sir. I will say that when Judge Heisley put the question to me

he said, "this community." I assumed he meant Newark.

Q Did you have occasion to inquire about his honesty and integrity? A At one time I heard it discussed specifically, yes, sir.

Q And is your opinion based upon that one discussion? A No, sir.

Q Was that discussion before or after the finding of this indictment? A Several years before. I say several, I think two or three—two or three or four.

Q Are you the one who opened the discussion? A No, sir.

*Re-direct examination.*

Q What was that discussion? A I as attorney for Millburn township, had an application pending before Judge Dungan for the appointment of assessment commissioners to levy an assessment for some local improvement in Millburn township and Judge Dungan had to appoint the commissioners, and he appointed as one of those commissioners Mr. Taylor, and at that time Judge Dungan discussed with me Mr. Taylor. That is what I had in mind.

Q You come here without subpoena, don't you? A I do.

FRANK E. TAYLOR resumes the stand for further direct examination.

*Direct examination* by Mr. Heisley.

Q Mr. Taylor, were you the employer of Cowan? A I was not.

Q Who was he employed by, if you know? A I do not know. He was employed by the sheriff of this county and assigned to our court room.

*Frank E. Taylor, direct.*

Q The sheriff does assign, I understand it, these attendants to the various courts of this county, is that so? A He does.

Q Do you know whether or not of your own knowledge that Cowan was on the civil service list? A I know he must have been.

Q You don't know it; you simply reason it?

*The Court.* Isn't that a question of law?

*Mr. Heisley.* I asked him what he knows.

*The Court.* The list is the best evidence.

Q Did you have any power of discharge to exercise with Cowan?

*Mr. Harrison.* I object as being irrelevant.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN,

[L. S.] WM. P. MARTIN,

Q Did you do anything for the purpose of having Cowan assigned to the court room in which you performed the most of your duties?

*Mr. Harrison.* I object as being irrelevant and immaterial.

*The Court.* Can't you gentlemen stipulate that Cowan's services were paid for by the municipal corporation known as the Board of Chosen Freeholders of the County of Essex and that he is a court attendant under the act, I think, which was first passed in 1912, making constables court attendants; that he is attached to the sheriff's office and under the supervision of

the sheriff and the court and that Mr. Taylor is under the supervision of the county clerk, isn't that so?

*Mr. Heisley.* I believe so.

*The Court.* Isn't it all so as a matter of fact and as a matter of law?

*Mr. Heisley.* So I understand.

*Mr. Harrison.* The state is ready to so stipulate.

*The Court.* Doesn't that clear it up and save time?

*Mr. Heisley.* Not to my mind.

*The Court.* The defendant refuses to stipulate.

*Mr. Heisley.* I do not refuse. I agree to it. If you say that is the law I agree to it.

*The Court.* What is the point of this question? Nothing was said by the State that Taylor selected Cowan before he went to the Supreme Court room. The testimony is that Cowan was in Part II. of the Court of Common Pleas with Judge Osborne up until three years ago and then he went over.

*Mr. Heisley.* The point I have in mind is this. I want to negative the idea that Mr. Taylor used any influence with the sheriff or anybody else to have Cowan either assigned to the room where Taylor was or to keep him in that room or have him associated in any way with Taylor in the performance of his duty.

*The Court.* That was three years ago when Cowan went to that court room and

the State has not shown that anything happened before October of last year, if it did then. The objection is sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Mr. Taylor, did you do anything, try to exercise any influence with the sheriff or with any persons having control of the appointment of Cowan, to keep him in your court room or to have him associated with you in any way in the performance of your duties during the time covered by this indictment?

*Mr. Harrison.* Objected to as being immaterial and irrelevant.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q What duties did Cowan perform in your court room? A He performed the usual duties of a court attendant.

Q How many court attendants did you have in your room? A Six or seven, I think. I would have to count them.

Q Did he perform any other duties than those performed by the rest of the court attendants? A Yes, sir.

Q What were they? A At his Honor Judge Martin's order—

*The Court.* You were asked what the duties were?

A One of those duties was to take the names of such jurors as had been excused by the court out of the jury box. Another duty was to visit the varoius court rooms at different times of the day to see if the jury could be excused for lunch or the day, late in the afternoon. In general, to keep tabs on the jury.

Q Prior to his appointment had there been such an officer performing such duties? A There had.

Q Who was the officer prior to Cowan's designation?

*Mr. Harrison.* I object as being irrelevant.

*Mr. Heisley.* I claim it is material, your Honor, if you want to hear me, on the ground that it will negative the idea of any collusion between Taylor and this man in Cowan's activities. What he was doing he was doing in the course of the business of the court that had to be done by some one—that Taylor had to have somebody do it for him.

*The Court.* The slips containing names of jurors put in the sheriff's box are required to be made under statute by whom?

*Mr. Heisley.* I don't know.

*The Court.* Aren't they required to be made by the sheriff?

*Mr. Heisley.* To be put in the box?

*The Court.* Yes.

*Mr. Heisley.* I think they are. I am not sure about it. I think they are. The

sheriff's office calls the jury—turns the wheel and calls the jury.

*The Court.* I do not think the course of dealing prior to the time in the accusation is necessary.

*Mr. Heisley.* It strikes out our defense practically, if we cannot show why this man was doing this thing. The natural inference is he was doing it purposely for Taylor.

*The Court.* He may state how long it has been done. He may state whether or not it was done before Cowan was there to show the regular order of business—to show that this thing of which he is accused, if that is his defense, is not a separate and distinct act on his part at all. It has always been done. I think I will let the question be answered. The question is, who did that before referring it to Cowan?

*Witness.* Mr. McKee did it before Mr. Cowan.

*The Court.* State the name in full.

*Witness.* Lloyd H. McKee.

*The Court.* And he was then a court attendant?

*Witness.* He was.

Q Holding a similar office and appointment to that enjoyed by Cowan, is that right? A Yes, sir.

Q And down to what time did McKee perform those duties? A About a year ago, I should say.

Q And then at that time was Cowan assigned to the performance of those duties? A Cowan was then assigned.

Q Who assigned him? A I did.

Q Why did you assign Cowan to the performance of those duties? A Because the court had found fault with the way McKee had done it and had jacked me up publicly and ordered that some one take care of it who could do it.

Q Did the court specify who should take care of it? A The court did not.

Q Was that left to you? A It was.

Q And you assigned Cowan? A I did.

Q At that time did you know or suspect that Cowan was to engage in any criminal practice with this county? A I did not.

*Mr. Harrison.* I object.

*The Court.* Do not answer when there is an objection.

*Mr. Heisley.* He did not object until after the answer.

*The Court.* The objection is sustained and the answer stricken out and the jury will disregard the answer.

Q At the time you assigned Cowan to the performance of this duty did you have in mind using him for the purpose later on of perpetrating the fraud upon the county which forms the gist of this prosecution?

*Mr. Harrison.* I object as immaterial and calling for a statement of alleged facts prior to the charge laid in this indictment; also calling for the conclusion of this witness, and on the further ground that the state of his mind at that time is irrelevant.

*The Court.* Mr. Prosecutor, I want to hear you on that. Here is a charge of a deliberate conspiracy, as we call it, which, if

the State's witnesses are telling the truth, begun some time in October or December of last year. I suppose it will be argued by you that a person would not quickly—impulsively go into a thing of this sort, but that it would be planned out and worked out, and the State will have a right to argue that Taylor may have conceived the idea and selected Cowan to assist him in what he then believed to be his duties in making these lists or taking the slips out of the jury box, and if that is something that might be argued for the State then why cannot the defendant, who knows what was in his mind at that time say that I did not have that motive? Why isn't he denying something that is in the State's case?

*Mr. Harrison.* Just a word on it, your Honor. The proof of the State tends to show that this conspiracy was formed some time around the holidays of 1916-'17.

*The Court.* Two or three weeks before the holidays, that is what I understand.

*Mr. Harrison.* There was some testimony about a present, I believe, in October or November. McKee performed these duties up to a year ago, according to this witness' statement, Cowan then being assigned to the performance of the duty. It seems to me that if this witness' state of mind is taken into consideration by the court and jury a year ago, why shouldn't it also be taken in mind six years ago or more? If we are analyzing his state of mind four months before the alleged date of the conspiracy, why shouldn't we go back for a number of years previous? It seems to me

that if his state of mind would be material at any time it would not be material until after the time when the conspiracy at least is alleged to have been formed.

*The Court.* Suppose you had evidence—put a very extreme case, that is not here at all—that Mr. Taylor had said when he selected Cowan, "I am selecting Cowan because I want to go into a scheme to defraud the county?" Now, he certainly could deny that. He could deny that he had any intention at that time. Now, the bare fact comes out that Cowan was selected by Taylor and in order to meet the inference that might be argued against him because of the fact that he selected Cowan he now desires to say that at that time "I had no idea at all of selecting Cowan for the purpose of stealing money or cheating the county." Now, why can't he meet that situation, or any possible inference that the State or anybody can draw and say that I did not have that intention? Why can't he deny it?

*Mr. Harrison.* I am not going to argue the matter further, your Honor.

*The Court.* I think that I will let him answer that. You answer it. The question is, did you have any such intention at that time?

*Witness.* It is not quite clear to me yet.

*The Court.* Repeat the question.

(Question read.)

A Absolutely not.

Q Mr. Taylor, Cowan has testified and so have a number of witnesses who were jurors during the period involved, saying that Cowan

would come to you at times and talk to you apparently about jurors' service, is that so or not? A Mr. Cowan has often come to me—

*Mr. Harrison.* I object.

*The Court.* Objection sustained. He cannot compare his testimony with the other jurors—with the other witnesses and denounce their testimony as incorrect.

*Mr. Heisley.* Why does your Honor assume he is going to denounce?

*The Court.* If he is going to confirm it it is not worth while asking him. The question that ought to be asked of this witness is what he did. He is your witness. You cannot lead him.

*Mr. Heisley.* Please repeat the question. (Question read.)

*The Court.* I have ruled on that.

*Mr. Harrison.* My objection I would like to say is that the question is leading and the form is improper and therefore objectionable.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Would or would not Cowan during the period embraced in this accusation come to you at any time and talk to you about the excusing of jurors?

*Mr. Harrison.* Objected to as leading.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Did Cowan during the period mentioned in this indictment or involved therein ever talk to you? A He did.

Q What would he talk to you about? A On numerous occasions about excusing jurors. May I explain?

Q Yes.

*The Court.* Answer the question.

*Mr. Heisley.* Is there anything to explain? I want the explanation.

*The Court.* You asked him a question.

*Mr. Heisley.* The witness says he wants to explain it.

*The Court.* He says that there were conversations and he stated the subject matter. Now, if you want those conversations you can ask when and where they took place, who was present and what was said and by whom?

*Mr. Heisley.* I understood the witness to say he wants to make an explanation.

*The Court.* That is not the way to conduct the examination of a witness. The way is by question and answer.

*Mr. Heisley.* Will your Honor give me an exception to that ruling?

*The Court.* No; there isn't anything open on the record for the court to rule on.

Q You have said, Mr. Taylor, that you desire to make an explanation of some evidence that

you have just given. Did you say that? A Yes, sir.

Q Please make the explanation.

*Mr. Harrison.* I object to it as not being proper. This witness is called upon to answer questions and not make explanations.

*The Court.* You mean by explanation that you want to modify or change or enlarge upon anything you have said?

*Witness.* I thought I needed to add to my answer.

*The Court.* You may do that.

*Mr. Harrison.* Objection withdrawn.

*Witness.* May I have the question? I am a little muddled now.

(Question read.)

*Witness.* I wanted to add that he was the man who had charge of the jury box. If any one at all in the court room had anything to do with the jury it was Mr. Cowan. He was the logical man for me to talk to about jurors—the only one.

*Mr. Harrison.* What kind of a man?

*Witness.* Logical.

Q When Judge Osborne or any other judge would excuse a juror, what, if anything, was done regarding taking the name of the jurors—the slip which had his name on in the box—out of the jury box? A The usual course was for Judge Osborne to send that to me by an attendant for me to mark my books; for me to mark on the slip that Judge Osborne sent to me the number of that particular juror and hand to Cowan to take out of the box.

Q And what would be done with those slips which were taken out of the box? A That is beyond my knowledge.

Q You say Cowan would take them out? A Yes, sir.

Q Before he would take them out did McKee used to perform that same service? A He did.

Q Did you ever know that there was—that these slips with the jurors' names which were taken from the box were ever rolled up with a rubber band around them and put in the upper left-hand drawer of your desk? A I know they were not.

Q Do you know that they were placed in a pasteboard box on your desk? A I know they were not.

Q Did you have such pasteboard box for that purpose? A I did not.

Q Did you know that there were any such names ever kept in the drawer of the reporters' table? A I did not.

Q Did Cowan ever tell you they were? A He did not.

Q Did Cowan ever tell you he was keeping a list of any of those names which he had been excusing? A He did not.

Q Will you tell us whether the other attendants would ever talk to you about anything?

*Mr. Harrison* I object as being entirely irrelevant.

*Mr. Heisley.* I want to show that the other attendants talked to Mr. Taylor just the same as Cowan did about the jurors who wanted to be excused to negative the idea of any scheme existing between Taylor and Cowan.

*The Court.* You may state specific facts. What occurred on particular occasions. But there is nothing in this question to show that it is competent. Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN.
*Judge.*

Q Did the other officers during the time—the period in which Cowan would come to you and talk to you about the excusing of jurors—did other officers who were court attendants come to you about such matters? A They have—

*Mr. Harrison.* I object as being immaterial and irrelevant and on the further ground that it is leading.

*The Court.* That is sustained and the answer is stricken out.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN.
*Judge.*

Q Did these other officers who were court attendants during the period in which Cowan was coming to you and reporting about jurors—I mean during the time referred to in this accusation—did they come to you and have any conversation with you?

*Mr. Harrison.* I object as being incompetent and leading.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN.
*Judge.*

Q Did they come to you and tell you that some jurors wanted to be excused? A They have.

*Mr. Harrison.* I object as being immaterial.

*The Court.* Do not answer.

*Mr. Harrison.* I tried to get the objection in as quickly as I could.

*The Court.* The objection is sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN.
*Judge.*

*The Court.* It might just as well be understood that this witness is a witness called by the defendant—you put him on the stand and ask him what was done, not if he did not do such and such things.

Q What did the other court attendants in similar positions with Cowan do? A Why, every attendant—

*The Court.* At what time?

*Mr. Heisley.* Why, during the period of this accusation.

*The Court.* From October, 1916?

*Mr. Harrison.* I object. It seems to me that it is entirely immaterial. Certainly

it is immaterial unless it is confined to some specific act or acts which are under inquiry in this issue. The broad question "What did other attendants do during the period covered by this indictment?" is entirely too broad.

*The Court.* Objection sustained.

*Mr. Heisley.* I do not want to press a thing unduly and perhaps I am so dense I do not understand what influenced your Honor's ruling. I do want facts, but nevertheless, I do want to defend Mr. Taylor properly. Now, I understand that your Honor has overruled this line of questions upon the ground that I am suggesting something to the witness. I am asking him another question which I think is not at all offensive, asking what the other officers did and what they would say to him. That was objected to as being incompetent. The object of this line of questions is to show that these other officers talked to him about jurors exactly as Cowan did.

*The Court.* When?

*Mr. Heisley.* During this period.

*The Court.* You mean on Sunday or Saturday or Friday or the first Monday of the jurors' service or on Friday—the last Friday of their service?

*Mr. Heisley.* There is no court here on Saturday or Sunday.

*The Court.* You do not particularize any particular date. It never can be met and never can be understood. Why can't you pick out the dates?

*Mr. Heisley.* I am not going to limit it to dates. I have no set dates. I am going to show if you will permit me that while Cowan was running to this man and talking to him that the other attendants were doing the same thing, and if this man was in a conspiracy with Cowan he was in a conspiracy with these other men. I cannot say if they did it on the 5th of February or the 3d of March, and that would be objected to as leading; I simply want to ask this man if these men did the same as Cowan did to make it seem like conspiracy.

*The Court.* You better pick out particular days, find out who was present, what the facts are, what they said and what he said.

Q Did these other court attendants as a practice or at any time while you were here in the performance of your duties during the time involved in this accusation come to you and talk to you about jurors' services? Do not answer. There must be an objection.

*Mr. Harrison.* I renew my objection on the same grounds stated to the previous question. It seems to me that what the practice or custom may have been between this witness and other attendants would have no bearing upon what was done between this witness and Cowan. It seems to me that it cannot be argued that if he did not have a conspiracy with these other people that therefore he did not have a conspiracy with Cowan. The course of dealings which he may have had with other

attendants is no basis for drawing the conclusion or inference as to the course of dealings with Cowan.

*The Court.* Not with other attendants, but the course of dealing in the court room with reference to jurors, whether it involved other attendants or any other person, is perfectly proper, if it was a course of dealings, but this witness has not said he always did the same thing every day. He hasn't said that there was any course of dealing and I think the objection is perfectly proper.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Were these officers, other court attendants, during the time that is covered by this indictment, in the habit of coming to you in the court room and speak to you about the performance of any of your duties? A They would.

*Mr. Harrison.* The same objection, and that question is leading.

Objection sustained.

*Mr. Heisley.* You sustain it on account of being leading or being incompetent?

*The Court.* Both. Mr. Taylor can tell us what happened if you ask him.

Q What happened, Mr. Taylor?

*The Court.* Fix the time and place that you are going to tell us about.

Q What happened during the time involved in this accusation that you are now being tried for? A Why, every attendant—a juror would come into—

*The Court.* You are asked what happened—now, fix the time and place first that you are going to tell us about.

*Witness.* During the course of the day, between the hours of 9:45 and 4 o'clock, Saturdays and Sundays excepted, in the Supreme Court room, where the roll was usually called, it was the custom of all of the attendants, every one of them, to bring to me the requests of jurors for discharges—everything of that sort.

*The Court.* Were these requests in writing?

*Witness.* No, sir. They didn't know where to go and the officer-attendant would bring them to me to advise them.

Q Were Cowan's requests in writing? A No, sir.

Q Were or were not the requests of these other attendants of a character similar or dissimilar to the requests which Cowan would make? A They were all alike.

*Mr. Harrison.* Wait a minute. I object. I do not think it is proper.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q What would the jurors do when they would come to you—no. Did the jurors themselves ever make any requests of you to be excused? A They did.

Q Of course, all my questions are referring to the time covered by this indictment. And where would they generally make these requests? A Publicly at my desk.

Q Now, what would you do with them? What action would you take upon their request? A If the excuse was a valid excuse and within reasonable time I would direct them to the court who had power to excuse—Judge Osborne in this instance.

Q Did you ever exercise during this period the power of excusing jurors? A In the absence of Judge Osborne I have and sometimes at his express permission—with his express permission, and in some extreme cases without.

Q What do you mean by an extreme case? A The last man that I can recall excusing had a very—apparently was suffering with toothache and his face was all swollen out and he couldn't get to the court, the court was sitting on the bench.

Q You mean he couldn't get to the Judge? A Couldn't get to the Judge. Whenever, on other occasions, I have excused jurors and have gone to the Judge and told him of it and have undertaken to tell him my reasons the Judge has said, "I am satisfied; I do not care to know his reasons, if they were satisfactory to you." I have felt whenever I done that thing that I had the fullest confidence of the court and what I did was for the good of the county.

Q Did you ever take it upon yourself to excuse a juror for a full term? A Not that

I can recall. Not without some specially good reason.

Q Would your excuses be for a limited or unlimited time? A A limited time.

Q Now, Mr. Taylor, do you recall any time when you were ever requested by the Judge, or any judge to act generally upon the excuses of the general panel of jurors? A Yes, sir.

Q When was that? A At the opening of the April term.

*The Court.* This year?

*Witness.* This year, 1917.

Q What occasion do you refer to? A I refer to the occasion of the opening of the April term. I say the opening, I mean to say the term opens on April 3d, I think, your Honor said yesterday, and the general panel of jurors always come in the following day, on Wednesday. Judge Osborne in this instance delegated to me the power of dealing with such excuses, as he expected to be away until the following Monday. I think your Honor did not sit.

Q Did you so deal with the excuses? A I did, sir.

Q And will you just tell the jury what occurred in that court room that morning? A After roll call that morning—

*The Court.* This is April 4th?

*Witness.* Yes, sir. I announced, or had announced, I am not certain which, that owing to the absence of Judge Osborne, who generally excused the jurors, he delegated that power to me, that I would hear such excuses.

Q Were the general panel then assembled in the court room? A They were. Immediately after roll call, on receipt of that word, they all rushed up promptly to my desk.

Q When you say all do you mean? A It seemed to me so. They came in swarms so we had to station, I think, two officers, and on two or three occasions ask them to stand back, that I couldn't hear more than one at a time.

Q Yes. Now, then, what was your course of procedure that day? A I listened to the more urgent ones. Such as I let go I let go for that day to come back on the following Monday, and with the express understanding that they would lose their pay for that day. I later said to Judge Osborne I had saved, I think, the county $68 by excusing those jurors that day.

Q You did? A Yes, sir. They were so insistent and so pressing that on two or three occasions, as I say, I asked them to walk back —I couldn't hear so many at a time—asked them to go sit down.

Q Did you on that day or any other time when you were dealing with the excuses pass upon requests to be excused immediately? A May I have that question repeated?

Q (Question read.) A No, sir.

Q What would be your course of practice? A Why, I would have to pick out the more urgent. Every man could not be excused.

Q Now, I call your attention to the evidence of Mr. Kenngott, the juror, who says that he attended on April 4th and that you told him to sit down in the room with the other jurors, in the court room; do you recall him? A I do not recall him. Maybe so.

Q Do you deny that that occurred? A I do not. It may be so.

Q Now, if it did occur, can you tell us why you would give him such instructions? A Possibly I might have thought his excuse not so urgent and others might be more urgent. Perhaps I asked him to sit down until I had heard the rest.

*The Court.* Now, Mr. Taylor, you were asked what happened on that morning of April 4th, and you have not finished yet telling it.

*Witness.* I don't know just how far I got. I did excuse them.

*Mr. Heisley.* I am not through with him yet.

Q What else, if anything, would you do in the excusing of jurors on April 4th? A Why, I would naturally mark my book—mark the excuses on my books and notify Cowan and have Cowan take the names of those jurors out of the box. That would complete the transaction.

Q Suppose Cowan wasn't there? A Well, somebody else would do it then.

Q Well, I do not want to lead you, but would you—suppose Cowan wasn't there and you wanted the name taken out of the box or wanted a message to give to a juror or anything of that kind—wanted to say something to a juror; would you use the officers? A Certainly; that is what I said I thought.

Q Were or were not those officers there in attendance upon you at that time? A They were.

Q Mr. Taylor, do you recall ever in your history when you have exercised the right or the power of discharging a juror—of your ever doing it outside of the court? A Outside of the court room?

Q Yes. A No, sir.

Q Do you ever recall the time of your doing it secretly or when there was nobody present? A It has been done right openly in the court room whenever I have ever done it.

Q Now, a Mr. Kaye was called as a juror and said in substance that on April 4th that you referred him to Cowan and there were some men making measurements back of the Judge's bench. Do you recall that? A I think that was not on April 4th, Judge.

Q I may have the date wrong. Do you recall the occurrence of Mr. Kaye, who was here as a witness, whether it was on that date or some other date, where he says you referred him to Cowan and at the time there were some men making some measurements back of the Judge's bench? A I recall very distinctly the day the men were making the measurements behind the Judge's bench and I have a very fair recollection that one or two men came in to see me while I was busy. They were asked their business; they told me they were jurors; I referred them to Mr. Cowan, not knowing whether they were prospective jurors or thinking they were on the present panel then—not knowing what they wanted even.

Q Why did you refer them to Cowan? A Because Cowan is the man of all men who has charge of the box.

Q Were you busy or not at the time? A I was busy.

Q The witness yesterday, who was a juror at the last term, by the name of Busse, testified in substance that he and Cowan came into Judge Dungan's private room—chambers—and that there was an officer in one corner of the room—some portion of the room—that he and Cowan were over by the window facing outdoors, and that you were at the desk facing the court room, I think, and at that time he and Cowan had some transaction in which he turned over to Cowan some moneys which he had drawn for jurors' fees. Do you recall any such instance? A I do not.

Q He says that they talked in a subdued voice. Did you know what they were talking about? A I did not, if they were ever there.

Q Do you recall the transaction at all? A I do not. I haven't the slightest recollection of it.

Q Do you recall a transaction ever, at any time, of Cowan and any juror dividing up the money? A Absolutely not.

Q Did you know that they were dividing up any money at that time? A I did not know. I would not have known it if they had.

Q Why? A I wouldn't have paid any attention to it.

Q What do you mean by that? A Why, it never would have occurred to me. I wouldn't have known what they were doing.

Q Now, Mr. Helwig was called as a witness, and he says in substance that he told Cowan that he wanted Taylor to verify the arrangement which Cowan was making with Mr. Helwig, and that he took him upstairs and called you out in the corridor, I think he said it was, and said he introduced you to Mr. Helwig and

that you shook hands with him and that Cowan said, in substance, said to you that he had told Mr. Helwig about the arrangement that you and he had, and that Mr. Helwig wanted to know, and that you said it was perfectly all right, in substance, and that he could go. Do you recollect any such transaction? A I do not recollect any specific transaction. He has introduced me to jurors on occasions. He has stopped me going through the hall on occasions. Stopped me when I was busy and in a hurry and has introduced me to jurors. That is all possible.

Q Do you deny, Mr. Taylor, that such an occurrence happened? A I cannot deny it. I don't know.

Q If anything was said about an arrangement at that time or any other time did it refer—did you know that it referred to any arrangement of which Cowan had spoken to Mr. Helwig existing between you and Cowan for the purpose of defrauding the county?

*Mr. Harrison.* I object as being leading and hypothetical. The witness has testified he does not recall the incident or any such incident. Now, the question of counsel, as I gather it, is based upon the assumption of such an incident happening and asking this witness's conclusion to be drawn therefrom and what his state of mind and belief was.

*The Court.* The leading feature of the objection is not sound because this is a denial and, of course, in order to bring out a denial a leading question must be asked, otherwise you could not deny anything. The hypothetical feature is trouble-

some. I will sustain the objection on that ground. You may ask him, "Did you ever have any knowledge of any arrangement between Cowan and any juror?"

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q When Mr. Helwig was there or at any time when Cowan spoke to you in the presence of any juror, did you have in mind or did you know that Cowan had suggested to these jurors a scheme in which he had implicated you whereby the county was to be defrauded of money in the manner mentioned in the indictment? A I did not.

Q When did you first hear of any scheme of this character? A On the Friday—I cannot give you the date.

Q What occurred that day?

*The Court.* The day of Cowan's arrest?

*Witness.* Yes, sir. I don't know the date.

Q Did you ever know that Cowan was keeping any pad or list of jurors with names on it from whom he was collecting money? A I did not.

Q Did you ever know he was collecting money from jurors? A I did not.

Q Now, there was a man here by the name of Lemberg, I guess it was, yesterday, said he had a talk with you about excusing him. Do you recall that gentleman? You know he

was the man who could not talk English? A I do not recall him, but in all probability I would have excused him.

Q Why? A Because of his inability to speak or understand English. I would have felt that was one of the times I was called upon to do it.

Q And Mr. Jackson?

*The Court.* That was on April 4th?

*Witness.* Yes, sir; wasn't that April 4th?

*Mr. Heisley.* I think it was.

Q Lemberg says that after his conversation with you that Cowan followed Lemberg and engaged him in conversation about this scheme to defraud the county. That is the substance of it. Did you know that at the time? A I did not.

Q Did you know that Cowan was following him? A I did not.

Q Did you direct Cowan to follow him? A I did not.

Q Now, the gentleman by the name of Jackson. Do you recall—he is the witness who was a juror and he testified in substance that he asked you to excuse him and told you the one reason for his request was that he was a litigant before the court and therefore ought not to serve on the panel and that you told Cowan to go with him. Do you recall that? A I do not recall it. I might have told Cowan to look the matter up in the calendar or something of that sort.

Q Would that be one of Cowan's duties? A At my direction. It would be the logical thing for me to have done.

Q Why wouldn't you do it youreslf? A Because of my other duties, I presume.

Q Did you ever tell Cowan or suggest to Cowan that he should approach Jackson for the purpose of making any unlawful combination? A I did not.

Q Did you know that Cowan contemplated it? A I did not.

Q Did you know that he had done it? A I did not.

Q Mr. Taylor, yesterday three witnesses swore when they were paid money down at the sheriff's office—the names of these witnesses were Bender, Briggs and Appleton—that they did not sign their names to the exhibit, which the sheriff has produced, which is supposed to be signed by the jurors acknowledging receipt of the money—in other words that the names were forged.

*Mr. Harrison.* I think the Judge has forgotten the testimony. There is no testimony that these men were paid the money.

Q Yesterday, Bender, Briggs and Appleton testified that they did not receive any money at all and that their names, which are written on—signed on the sheriff's list—were not signed by them. Do you know who those names were signed by? A I do not.

Q Did you ever procure anybody to sign that list? A I did not.

Q Did you ever know that they were being signed by any— A I did not.

Q Wait a minute—by any fictitious person? A No, sir.

Q Did you ever sign or procure anyone to sign a juror's name to these lists? A No, sir.

Q Did this man Cowan ever tell you that that was being done? A No, sir.

Q Did you ever know that he had substitutes who were answering the roll call as jurors? A No, sir.

*Mr. Harrison.* There is no evidence of that. No connection shown between either Cowan or Taylor.

*Mr. Heisley.* He says he don't know.

Q Mr. Taylor, this book, jury list, is the book in which you kept the record of the jurors, I think? A It is.

*The Court.* Showing witness Exhibit S 3.

Q And is it all in your handwriting? A No, sir.

Q Is the most of it in your handwriting? A The greater part, I should say, is in my handwriting.

*The Court.* The only part that is in evidence is from March 19 to May 18.

Q Who, if anybody, besides you, would make the entries of any kind in that book between March 19 and May 18? A Mr. McKee, Mr. Picot, I think; of course, it would not be done in my presence. If I were present I would do it myself.

*The Court.* Do not testify to something you do not know.

Q Do you know their handwriting? You only know what they told you? A Yes, sir.

Q Then you don't know; that is not legal? A I can say that I told them to do it.

Q And have you on occasions or not found writing in there which you did not put in there yourself? A Yes, sir.

Q Where was that book kept? A In my desk.

Q Was it under lock and key? A Never except on two or three occasions.

Q At night time was it locked up? A No; it never had been locked up. My trial minute book never had been locked up.

Q Your trial minute book? A No.

Q During the day would it be locked up? A No, sir; it had to be in use all day.

Q Have you ever seen any of the officers in the court room marking in the book? A Every one of them, I think.

Q You have seen them? A Yes, sir.

*The Court.* You are answering now with reference to these particular dates.

*Mr. Heisley.* At the time. That is what I am confining it to.

*The Court.* Are you answering that way?

*Witness.* No; I cannot say that. I am speaking generally.

*The Court.* Answer with reference to those dates.

Q March 19 to May 18, during those times? A I know that they have marked in that. I can't say that very day.

Q During those times? A Yes, sir.

Q How about prior to that time?

*Mr. Harrison.* I object as being immaterial.

*The Court.* He may go back to October.

Q Back as far as October, 1916, what do you say? A I know that they all have marked in it.

*The Court.* Have you seen them, that is the question?

A I have seen some of them. I have ordered some of them; I have started the roll call, for instance, and Judge Dungan has sent for me and I have had to tell one of the others to finish it.

*The Court.* And then you would go out?

*Witness.* Yes, sir; I would see them sit down and start.

Q Mr. Taylor, just come down here to the rail, will you, a minute?

*Mr. Harrison.* It seems to me that the witness can testify from above there, if your Honor please, with just as much effect.

*The Court.* Yes, I think the question ought to be put first.

Q Mr. Taylor, how would you keep this book? How would you indicate, for instance, whether a man was excused or whether he was absent or whether he was present? A If he were present he would be marked by a simple dash, a 1.

Q You mean a 1?

*Mr. Heisley.* Now, may I show this to the jury?

*The Court.* Go on and finish your answer.

*Witness.* I thought I did. He asked me how to indicate present.

*The Court.* I thought he said absent.

*Witness.* Did you say absent?

*The Court.* Tell us how you would do it if he were absent.

*Witness.* If he were absent after the first call it would be indicated by a dot where I would ordinarily start the one. At the second call—and there are always at least two calls—if he did not respond then he would be marked with an e usually—not with an e—I am wrong—the dot would remain, showing he had not answered.

Q Would that be in pencil or in ink? A Ordinarily in ink. The marking of a man present, the dash—the one—would be in ink; the dot would be in ink.

Q Suppose he was absent—did not respond—what mark, if any, would you make and in what way? A That little dot would still remain there showing he had been called once and twice.

Q Ink or pencil? A Ink for that.

Q Well, suppose that after—suppose a man who had been called and who had not responded and you made the dot, should afterwards respond during that day—came in late, for instance—would you do anything then? A Yes, sir; if I were present and he came to me I would mark him present.

Q How would you mark him present? A By the 1—dash.

Q Now, what other marks would you make on your book? A A man who was excused for the term would be indicated by a line.

Q Come down and show the jury any such line. A There is a man excused for the term (indicating).

Q You refer to March 19th opposite the name of L. F. Bird?

*The Court.* Characterize that by "horizontal lines."

*Mr. Heisley.* He points to it.

*The Court.* Merely for the sake of making the record clear.

*Mr. Harrison.* Your Honor, may we not identify the kind of line that is used?

*The Court.* Yes. Exhibit the line to the court.

*Witness.* (Showing book to the judge.)

*The Court.* The witness points to the page headed March 19, 1917, column first is No. 12, the next column is L. F. Bird, and under the columns 19, 20, 22, 23, 26, 27, 28, 29 and 30 is drawn a horizontal line, not straight, but almost straight, a slightly wavy line, is that it?

*Witness.* Yes, sir.

*The Court.* Is that an edge ruler with a wave on it?

*Witness.* It was originally, but it has been reduced. It is not more than six inches long. Kept for that purpose.

Q I call your attention on March 19th to a similar entry opposite the name Braun, the word "Sickness" drawn through the line; is that in your handwriting? A Yes, sir.

Q What does that sort of mark mean? A That would mean that that man had been excused and some time after his excuse Judge Osborne had sent me in the reason and I had put it on the record.

Q Now, I show you on this same page under No. 23 Frederick D. Camp—I find that he is marked present on the 19th, 21st, 22d, 23d

and 26th and then the horizontal line such as the court has indicated after? A Showing that he has been excused from that time on.

Q Excused by the Judge or you? A By the Judge.

Q Now I show you another under No. 28 on the same page, same date, March 19th, the name of Charles Collard, being marked present for five days and marked E. E. E. in the various columns. What do those ee's stand for? A That he had been excused probably from day to day.

Q Who by? A The Judge.

Q Now, Mr. Taylor, is there any other class of excuses that you want to show us an example of? A There is one in pencil showing he had been excused.

Q No. 20 on March 19th opposite the name of Henry Brenninger in the first column he is marked present and then there is a horizontal line in pencil, what does that indicate? A That means he has been excused by the court, but I never have had any reason why and never completed the operation by finishing that in ink, and finishing it such as I would in other cases. Sometimes Judge Osborne had a letter that he would send in to me, the excuse, and I would mark my book and notify the jury commission so that they would not draw a man who for any reason or other was exempt.

*The Court.* You mean a doctor's certificate?

*Witness.* Whatever it might be.

*The Court.* When you use the word "excuse"—

*Witness.* The reason I might say.

Q Now, Mr. Taylor, you have one entry here somewhere where the written word "exempt" is partially erased (referring witness to April 23, 1917, No. 16, Levi Best). A Yes, sir.

Q There has been evidently some word written there in ink and partially erased. Do you know what word that was? A I take it that that word has been "exempt."

Q Do you know in whose handwriting it is? A I can't state positively, but I could say it is in mine.

Q Notwithstanding that word, if it was exempt, and partially erased, the man has been marked present. What would you say was the significance of that erasure and the marking of him present? A I should have said that, had there been no question about the book, that I had made a mistake in putting the word "exempt"—put the word exempt in the wrong place and perhaps erased it, but—I would think I erased it.

Q What would you mean by "exempt"? What significance— A That might be that he was an exempt fireman and his certificate was on file.

Q Exempt from jury duty? A Exempt from jury duty.

Q I want to run over with you the account of these men who testified yesterday, or at least some of them, as jurors; one by the name of Charles Hicks, who I think was summoned or returned there on May 7th? A Yes, sir.

Q Do you find anything about that that you want to call the court's and jury's attention to? A I find on the 14th there has been an "e"—there is some slight trace of an e on the 14th having been erased.

*The Court.* That refers to the 14th of May?

*Witness.* Yes.

Q Here is a magnifying glass. Look at it through the glass, Mr. Taylor, and see whether you can tell whether it was an E, whether it was in pencil or ink and in whose handwriting, if you know, the E had been made? A It is an E in pencil that I should say was in my handwriting. I am inclined to think so.

Q Now, can you tell why that appears on your book in that shape, first having been marked excused in pencil and then having been erased and marked present? A Can I tell why?

Q Yes. A No; I cannot at this time.

Q Did such things occur?

*Mr. Harrison.* I object as being entirely too comprehensive.

Q Do you know whether such instances appear in that book? A I know they do.

Q And do you know what was the cause of making such records? A Because of information obtained.

Q What do you mean by that? The jury do not know. A That man might have been on a hold-over case. I would not say. He might have been excused for this day, the 14th, the E might have been down for that day, showing he was excused; I might not have called him; he might have called my attention to the fact that he was present; he may have told me that he had been drawn on a hold-over case. I might have erased it and marked him present. I might have erased that E and marked him present if he had been late. I might have done so on the

say so of any officer who may have come in and reported it. There are many reasons.

*The Court.* In this particular case, 14th, you say E is apparently in your handwriting and was in pencil. What is there now?

*Witness.* He is marked present. The E apparently is erased.

*The Court.* This tally line—this diagonal line you refer to meaning present is there?

*Witness.* Yes, sir; I should speak of that as one.

Q Mr. Taylor, look at the space between the word Hicks and the first line and see if you notice anything on that line in that space—any evidence of any erasure of any kind.

*Mr. Harrison.* What page and date do you refer to?

*Mr. Heisley.* Same one.

*Witness.* There is a mark, but it might have been done by the typewriter.

Q Take the name of Kenngott on April 4th and tell what you find there, referring to the date of April 4th and name of Kenngott. Describe it to the jury, then we can show them the book. A Kenngott is marked present every day. There has been the usual pencil marks excusing him for part of the time. I can't say what part.

Q The horizontal line? A The line does not reach all the way across.

Q I say it is the horizontal line to which the judge refers? A Yes, sir. The last three days shows traces of my E having been erased.

Q You say your E. Do you know that was your E? A I do not.

Q What is your opinion about it? A Well, when it is erased it is very hard to determine who made the E.

Q You see some evidence of an E? A Yes, sir.

Q Whose E does it look like? A I should say mine.

Q Take the name of Kaye, April 4th. A That is almost the same situation. There are traces of the line having been erased and the last three days, the 18th, 19th and 20th, show traces of the E having been erased.

Q Now take the case of Englander, May 7th? A Yes, sir. He has been marked present every day and very slight traces—a very slight trace of an E having been erased on the 16th and 17th. The mark on the 16th apparently—no, the mark on the 17th apparently with a strange pen, not uniform with the other marks.

Q Can you, Mr. Taylor, point to some of these marks which you are sure are marks which you have made? Can you or not? A I think so. I think that these marks—most of these marks that are uniform are my marks.

Q I will take this mark to which you have just called the jury's attention as being with a strange pen, have you any recollection as to who made that mark? A I have not.

Q What is your belief? Is it your marking or somebody else's? A I believe that is not my marking.

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q Have you any idea whose it is? A I have not.

Q Is it your mark? A No, sir.

Q I call your attention on the same page to a name No. 55 Frank G. Geissler, and it appears that on the 7th, 8th, 9th, 10th and 11th he was marked present and after the 11th for five days there appears an erased line and five marks put in over. Can you account for that? A I cannot other than the ways I have accounted.

Q What do you mean by that? A I mean to say that he apparently had been excused and perhaps had been drawn on a case and had to stay there.

Q Well? A Couldn't take advantage of his excuse.

Q What are these figures out here in this last column on the right hand side of each page? A Total number of days.

Q No juror would serve over ten days, is that the rule? A Possibly.

*The Court.* Total number of days served?

*Witness.* Yes, sir.

Q Would he sometimes serve over ten days? A Yes, sir.

Q Just tell the court and jury under what circumstances? A The usual panel is two weeks. A man might be drawn on the last day of the two weeks' panel, drawn on a holdover case and come back an extra day. We had one case lasted five weeks. So long as that case is not finished he must attend.

Q Take the case of Busse, April 23d, No. 21, Fred Busse. Now, look at that and tell the jury what that record shows? A There is a line underneath there on the opposite page, right

opposite. There are traces of some mark, an e, having been erased on the 27th.

*The Court.* Erased and the line indicating present inserted?

A Yes, sir.

Q Now, take the case of Mathews, May 7th? A There is a trace of a horizontal line having been erased beginning at the 14th. I am not sure whether it included the 14th. Covering the 15th and perhaps the 16th, but traces of an erasure.

Q Take the case of Helwig, April 23, referring to the name of Fred F. Helwig, 72? A Marked present every day, showing erasure of horizontal line beginning at April 26th, extending through until May 4th.

Q What was that horizontal line in, if you can tell, pencil or ink? A That had been in pencil.

Q Take the case of Bender, April 23, and referring to the name of William Bender, No. 10, April 23; tell the court and jury what you find there? A I find he was marked present every day. The horizontal line having been erased over the name in the column under April.

*The Court.* The horizontal line extends out under the figures indicating the day of the month?

*Witness.* No, sir; it is directly over the name in this case, as is often done on the first operation.

*The Court.* Can you say whether or not that horizontal line was originally in ink or in pencil?

*Witness.* In pencil.

Q Can you tell who made the horizontal line? A Made with my ruler and made in the usual way; I should say I did it.

Q That would indicate that the man had been excused, would it? A Regularly.

Q Take the case of Briggs, April 23, referring to No. 18, George Briggs? A I find the same situation as applies to—

Q Look at it and see if you do not find something else? A Yes, sir; I find in addition to that the erasure in my writing of "Federal jury."

Q Mr. Taylor, can you tell me whether you ever erased that word "Federal Jury?" A Never.

Q Do you know who did erase it? A I do not.

Q Did anybody erase it with your authority? A Never, sir.

Q This refers, I understand, Mr. Taylor, to one of the jurors who says he never got any pay, and that he never signed his name to the sheriff's list, is not that right? A I don't know that, sir.

Q Now, Mr. Taylor, take the name of Appleton, May 7th, referring now to No. 5, opposite William C. Appleton. What do you find there? A Find him marked present every day. Erasure of the horizontal line in pencil.

Q Can you tell the jury who made the horizontal line in pencil? A I have every reason to believe I did, sir.

Q Do you know who erased that line? A I do not.

Q Take the case of Lemburg, April 4th? A The horizontal line has been erased part of

the distance. I cannot say how far. Three e's have apparently been erased.

Q On what dates? A On the 18th, 19th and 20th.

Q And marked present over them? A Yes, sir.

Q Take the name of Hebler, April 4th, No. 71, Adam Hebler. What do you find there? A I find that the horizontal line—it seems to me for not more than the first three, possibly four days—has been erased. Shall I give those dates?

Q Yes. A 4th, 9th, 10th, possibly 11th, and three e's erased on the 17th, 18th and 19th.

*Mr. Heisley.* If your Honor please, I am not going to show the book to the jury, but I suppose you will agree with me that they will have the book to look at themselves when they go out.

*The Court.* They will have it so far as it is in evidence from March 19th to May 18th.

*Mr. Heisley.* That will include all this period.

*The Court.* Have you finished your answer? Your answer is that the horizontal line has been stricken out from the first to the third and I think the 11th day, and I think three e's have been erased on the 17th, 18th and 19th. Now, what was put in there, if anything?

*Witness.* Marked present every day.

*The Court.* And the present mark inserted?

*Witness.* Yes, sir.

Q Can you tell, Mr. Taylor, who made the horizontal lead marks, if you know?

*Mr. Harrison.* He hasn't said it was lead?

A It is lead pencil.

Q The horizontal marks? A I presume I did. I do not know.

Q Can you explain the existence of that entry in its present condition? A No; I cannot. It might have been there—it is hard for me to explain it—I don't know whether I did it or not. That line may have been erased—it may have been all the way across there. I can't tell. It shows three days and perhaps four. There is a mark on the back of the page. This is in pencil.

*Mr. Harrison.* May I ask what is in pencil?

*Witness.* The horizontal mark.

Q Turn to Alliger. Is that the same date? Referring to No. 1 under date of April 3d. What do you find there? A I find that Mr. Alliger has been marked present every day and the erasure of the horizontal line. I find an erasure of an e, both line and e being in pencil. The erasure of the e for the 20th.

Q Do you know who made that horizontal line? A I do not, except as I have answered. It is made in the usual way, with the usual ruling.

Q Does it look like a wavy ruler that has been used? A Yes, sir.

Q Do you know how that alteration came to be made, how it came that the excuse mark was

erased and present marked in the place? A I do not.

Q Now, take the case of Jackson. What date is that? April 4th. Referring to No. 79, name of Herman H. Jackson. What do you find there? A There has been an erasure of a pencil wavy line and he has been marked present every day; although right back of that on the other page is an ink wavy line extending not quite so far on the wrong side as the pencil mark does on the right side.

Q Mr. Taylor, I notice that in most of these cases you have marked—or in all of them as far as I can see—where a man has been excused, you have marked it in ink and yet in these cases to which I have called your attention it was marked in pencil. How do you account for those being in pencil and the others being in ink? A Why, I will have to explain it a trifle.

Q I want you to? A Before Judge Osborne attended to the excusing of the jurors his Honor Judge Martin did it and it was his custom to excuse for the entire term or for the first or second week. That was usually indicated by a wavy horizontal line.

Q What in, pencil or ink? A Sometimes pencil and sometimes ink; usually ink then.

*The Court.* Was it not invariably in ink when I excused the jurors?

*Witness.* When you did, yes, sir; but I was just about to add that at the beginning of the term of the panel in each jury the Sheriff would return to me the names of such men who were unable to serve for any reason—dead, exempt or can't find; all that sort of thing. Twenty, twenty-five some-

times. Many times in putting those down in ink it has turned out that the man instead of having moved away had simply moved his residence and has seen his name in the paper, summoned as a juror, and would come in and answer to his name. Call the roll and would not call his name because I had already marked it as being unable to find them; that man would then stand up and say I am here and I would call him and find that he had moved. He would then be served with a summons right there and that line would have to be erased. I have complained many times to the Sheriff's officer about my having to erase those names. Have cautioned him to be careful not to give them to me until he was certain of it.

*By the Court.*

Q Now, you have told us what you did when Judge Martin was excusing jurors—by the way, when was that, last November? A I think you stopped before that, Judge Martin.

Q A little bit before that. It was some time last fall, wasn't it? A I should say before the beginning of the September term.

Q It was not before the summer vacation? A No; I think it was about the beginning of the September term.

Q Week or two after the beginning of the September term? A Yes, sir.

Q Then what happened when Judge Osborne begun? A Judge Osborne changed the practice. He would excuse a man in advance, not for the first week—sometimes for the first week, sometimes for the second and sometimes for the

term, but very often for days at a time—every other day for instance, extending across the period of his entire time. I started to keep such things in ink and found I had occasion to erase so often because a man would be caught on a holdover jury—to make that plain he may come in on Monday, answer roll call and go to Judge Osborne, get his excuse, be excused for Tuesdays and Thursdays of the first week and Monday, Wednesday and Friday of the second week. That excuse he would give to me in the ordinary course of events and I would mark him in advance excused, with an e. I had to number that excuse and hand it to Cowan to take out of the box. Tuesday morning in calling the roll I would not call that name, that man would be marked excused. Many times after finishing the call that man would stand up and say "You did not call my name." I would say to him, "Why, you are excused today." "Yes, but I was on a holdover case. I am here." That had to be erased. There were many of those cases.

*Further direct examination.*

Q Maybe I did not understand you and possibly you did not understand me. I want to know why it is that some of these horizontal lines were in ink and some were in pencil? A I thought I had explained that.

Q Perhaps you have. If you think you have all right? A I would like to do it if I haven't. Very often Judge Osborne would not send in the reason for excusing a juror as stated. Now, that caused so many changes in my books and because of others marking my books, that they would do that usually in lead pencil, that then

as a final operation all lead pencil marks would be erased and inked, as they ought to be. Occasionally there would be still an excuse—a horizontal line in pencil across the space usually occupied by the service, showing that I had not as yet received a reason for excusing that man. Judge Osborne would sometimes hold those things back, perhaps forgetting to send them, but when those things would come in I would complete that operation in ink and mark the reason why he was excused, and if it was such a reason that the jury commission ought to know, notify them, so that he would not be drawn again.

Q You would have to make out these warrants which have been offered in evidence about the end of the time of the jurors' service, wouldn't you? A No, sir; I would make out my warrants usually the first day.

Q Make them out complete? A Make them out so far as the name and the term were concerned.

Q What about the jurors' time? A The time would be the last thing to go in on pay day. I would write the name of the juror and the term and sign the clerk's name and my own name in advance. I could not tell what minute a juror would come in and want his pay warrant. Sometime in my absence. So at the beginning of the service I would make out the pay warrants.

Q Take the case of a juror serving the full time until the last day, when would you complete making out his warrant? A On the last day.

Q Where would you go, if anywhere, for the information which you—which would guide you

in making out his warrant correctly? A Always to my book. I depended on my book and such information as was given to me.

*The Court.* Referring to S. 3?

*Witness.* Yes, sir.

Q When was it—was there any time, as a practice, when you would finally go over this S. 3 and ink it up? A Oh, yes, sir.

Q When was that? A Usually on the day I would issue my pay warrant, the last day.

Q Do you know whether Cowan knew that that was your practice? A Oh, always. He knew it.

Q How did he know it? A Why, because he is the man who had the book every morning—took out the excuses from the jury box. He knew—he knew better than anyone else. He—as a matter of fact he would go to the jury room with me. He would hand the jurors printed copies of the jury list as they would receive their warrants.

*The Court.* You do not mean "Take out excuses from the jury list." What you mean is you told Cowan to take the names of the jurors out of the box following the roll call of those who were excused.

*Witness.* No, your Honor, I do not mean that. I mean to say in the morning, when I would come in early in the morning Mr. Cowan almost invariably had my book—take off the names of such men as were excused for that day—he would take those names out of the jury box.

Q Why would he do that? A That was what he was asked to do.

Q Take the slips with their names on out of the jury box? A Yes, sir.

Q Where would he go to get that information? A From my book. I mean to say from my book and such slips as he had. It was constantly changing though.

*The Court.* From the slips or from your book?

*Witness.* Both. From the slips that Judge Osborne would send in—that would come to me to be entered on my book, be brought and handed in. He said I think on his testimony that he tore some of these slips up.

*The Court.* Who entered the slips in the roll call book?

*Witness.* I did if I was there. Mr. Cowan has on many occasions.

*The Court.* I am speaking now from March 19th to May 18th?

*Witness.* Yes, sir.

*The Court.* That you know of, that you saw him do it.

*Witness.* I know I have seen him do it. I know Mr. McKee has marked excuses in the book.

Q Mr. Taylor, you are aware that you have issued certificates or signed certificates to men for serving that they were entitled to more pay than they actually were entitled to? A I do know it now, yes, sir.

Q When did you first know that? A At this trial.

Q Did you ever know that at the time you were drawing those certificates? A I did not, sir.

Q Did or did you not execute those certificates in this way? A I did.

Q In the belief that the men were entitled to the time that you were writing the certificates for? A Absolutely.

Q Did you or did you not have any reason to suspect that your books were wrong? A I had no reason to suspect my books were wrong.

*Mr. Harrison.* I object. It seems to me that it is a question for the jury.

*Mr. Heisley.* Shows good faith.

*The Court.* Did you make these certificates—you say now that you are satisfied that they are incorrect—out from the book?

*Witness.* Is that the question?

*The Court.* Yes.

*Witness.* Absolutely from the book.

*The Court.* Now, Judge Heisley asks you had you any reason to believe or any suspicion that they were not correct, and you said no.

*Mr. Heisley.* At that time.

*The Court.* At that time. Were the erasures made before or after you made up these certificates?

*Witness.* I don't know, your Honor. I can't tell that. May I explain that?

*The Court.* You don't know.

*Witness.* May I qualify my answer?

*The Court.* Yes.

*Witness.* I want to say, as I stated before, the warrants, the names were filled in the warrants the beginning of the service of the jury. The actual making out of the

warrant was always a hurried operation. The jury usually knew they were discharged and were waiting for their pay. They were anxious to get away and would bother the life out of me.

*The Court.* The question is not what they would do. The question is did you know. That is the only question I have asked you. I do not want you to answer anything else. Do you know whether or not these erasures were made before or after?

*Witness.* No, sir; I do not.

*The Court.* The time you made out the slips?

*Witness.* I do not.

Q Do you know, Mr. Taylor, whether or not at the time you made out these slips these entries to which I called your attention were in the same condition as they appear to be in now? A I thought—some of these you have got to look very closely now to see an erasure.

Q Why is it if the erasure was there that you did not discover it at the time you were making out the slips? A Because—I have undertaken to tell you—the final making out of the slip is a hurried operation, because the men want to get away. It is simply a question of putting down their total and filling out their warrant. I would not be apt to closely scrutinize it.

Q At the time you made any of those certificates out did you know you were making it out for the wrong amount? A I did not, sir.

Q Did you intend to cheat the county? A I did not.

Q Did you intend to have that slip used as a means for cheating the county? A I did not.

Q Did you have any suspicion at that time that anybody had been tampering with your book or making any erasures? A I had not.

Q Is there anything else you want to say, Mr. Taylor, that I have not asked you? Let me ask you this. Did any of the officers other than Cowan come and get the jurors' slips and warrants? A Yes, sir.

Q What officers do you now have in mind, all of them, or only a few? A I suppose almost every man in the building at times has come and said he had a friend—

*The Court.* Do not suppose. Only confine your answer from March 19th to May 18th. What is your judgment about that? During that time?

A My best judgment is that others other than Mr. Cowan have obtained warrants on request. I never refused him.

Q Had that been the practice? A That had been the practice.

Q Had been the practice before this time? A Always.

*The Court.* What? For you to give slips to anybody other than jurors?

*Mr. Heisley.* He did not say that, your Honor. I was speaking about the officers coming and getting the slips for jurors.

*The Court.* Do you mean to swear that it was the practice of yourself to give out jurors' warrants to anybody except jurors?

*Witness.* Yes, sir. When an officer would come and say that the juror was in

the corridor for his slip, that the juror couldn't come in and interrupt court, I have given it to the officer without any question.

*The Court.* And when there was a jury in some other court room that you believed was going to be held late, I suppose you would send the warrants in to the clerk in the other court room?

*Witness.* Absolutely, yes, sir.

*The Court.* Outside of those two instances are there any other instances in which you have given jurors' warrants to anybody except the jurors?

*Witness.* No, sir; not that I can recall.

Q Mr. Taylor, have I omitted to ask you anything that you wanted to testify to? I don't know as I have? A Yes, sir.

Q What is it? Mr. Taylor, this is something I thought of, your Honor. He did not suggest this to me. This fellow Cowan has testified that he told the jurors that he wanted this money for the purpose of letting Taylor settle up his books or fix up his books. In the course of your duties did you have any duty of receiving money from jurors for the purpose of fixing up your books? A I had no way—I handled no money.

Q You could not legally handle any juror's money, could you? A No, sir.

*Cross examination* by Mr. Harrison.

Q When you received the excuse slips from Judge Osborne what would you do with them, Mr. Taylor? A I would mark my record—I would number the slips and hand them to Mr. Cowan to take out of the box.

Q You would make proper notation in your book? A Yes, sir.

Q Of the instructions which you had received from Judge Osborne with reference to excuses of jurors? A I would.

Q Where a reason was sent out by Judge Osborne would you put that in your books? A I would. Those reasons usually came separate and apart. I mean to say he did not always put the reason on the excuse.

Q But when he did put the reason on the excuse slip what would you do? A Well, now, I am not certain whether at that time I would note it or not. If it came to my attention—if it struck me forcibly I would. My practice was to depend on the letters. My practice was to depend—every once in awhile he would send in the letter.

Q Well, didn't you testify that you would make proper notation in your book S. 3 of the excuses—of the reasons for the excuses which Judge Osborne had contained in the list which he transmitted to you? A I did. Or I meant to if I didn't.

Q And where would you put that reason? A Usually on—if it were an excuse covering the term—usually right over that line.

Q That is under the date of the prospective jury service and over the so-called wavy horizontal line which you would draw in such cases opposite the jurors' names? A Yes, sir.

Q And would you usually put that horizontal line under such circumstances in ink and the reason for the excuse in ink? A As I have said before—qualified as I have said before, that because of so many erasures much of this had

been done in pencil since Judge Osborne has been doing it.

Q But when you would receive from Judge Osborne— A May I add—

*Mr. Harrison.* Withdraw the question—complete your answer.

*Witness.* If it were what I considered a final operation—if it were for the term without any reservation and the reasons given I would usually aim to put it in ink.

Q That was a completed transaction, wasn't it, Mr. Taylor? A Yes, sir.

Q And there is no occasion under such circumstances for the omission of the horizontal wave—the wavy horizontal line or the reason for the excuse being placed in ink, was there? A There was no reason for it, you say?

Q Yes. Considering your system of keeping the books, was there any reason for not closing the transaction immediately upon the receipt from Judge Osborne of the slip which came setting forth the excuses? A That might depend on who got that—whether I got it or whether Mr. McKee got it—might depend on how much time I had to give to it. It wasn't always so.

Q But when you got them you wrote them in ink? A If I had the time. If nothing interfered that was my aim.

Q To close such a transaction and to close it at once? A Yes, sir.

Q I show you Ex. S. 1 and call your attention to the first page thereof and to the name George E. Briggs immediately underneath being written the words "Federal Jury" and to the right thereof the words "until Term" and ask you

if in due course you received from Judge Osborne the information just referred to to excuse Mr. Briggs? A I presume I did.

*The Court.* Why can't you answer?

*Witness.* Judging from appearances I did. I know that I have written "Federal jury" on that line and it is erased—partly erased (referring to Ex. S. 3).

Q I notice a pencil number immediately to the left of the name Briggs, being the number 18, and ask you if you recognize in whose handwriting those figures are? A Yes, sir; that is mine.

Q I find that the figure 18 has a line or lines drawn through it. What is the significance of that marking? A I don't know. That line drawn through was put on after I made the 18.

Q Do you say that none of those—no marking over the figure 18 opposite Briggs' name is your marking? A I say so positively.

Q Why do you say that? A I know I did not put it there.

Q Can you identify the pencil marks that you make on that sheet? A Well, I don't suppose I can identify them, no, sir.

Q Will you swear positively that the figures 18 in pencil are your figures and the pencil marking over the figures are not yours? A I cannot swear whether they are or not in pencil. I take it for granted they were when I entered that because that had been my custom.

Q Just put the figures down without making any mark over the figure? A Yes, sir. That was simply for the convenience of Cowan in taking the name out.

*Frank E. Taylor, cross.*

Q That number 18 is the number which Briggs had assigned to him on the jury panel, wasn't it? A I presume so.

Q By reference to Ex. S. 3 can you say whether or not that is so? A 18 is his number, yes, sir.

Q Now, Mr. Taylor, do not the pencil lines over the figure 18 indicate that as far as Briggs' service is concerned it is a closed issue or matter? A Not to me, sir; no, sir.

Q Was it not your practice upon the receipt of such list from Judge Osborne to mark the number of the juror opposite his name and when you have made the proper entries in the book to put the pencil mark through the figure? A I never did it to my knowledge—never. I put the number down alone.

Q If your practice was upon receipt from Judge Osborne of the jury excuses and reasons therefor to mark in ink those reasons in your book S. 3 I would ask you why you put in in your own handwriting in pencil in the blank page immediately opposite the name Briggs the words "Federal Jury" and failed to put those words in ink, and the wavy horizontal line under the date of prospective service of the juror? A No, I don't know that I know just that question. May I have the question?

Q (Question read.) A I thought I covered that when I said that since Judge Osborne has been dealing with it I used the pencil perhaps more than I have the pen. I would consider if that were marked "Federal Jury" there in pencil that at any time—I think that you will find that that excuse is dated April 23d, which would be Monday and a busy day—any time I can go over that I figured—my final transaction,

and complete it in ink—I would have two full weeks in which to do that.

*By the Court.*

Q Wasn't it final when he was off on the federal jury? A Yes, your Honor.

Q I understand the question to be, you having stated it was always your practice to put in ink the wavy line when there was a final operation? A I do not mean to convey just that impression. I meant to say that usually had been the custom before Judge Osborne excused jurors.

Q You were asked about it as a final operation. That was your expression? A I mean as a final operation when I considered that page completed. When the men are all paid. I would have had two full weeks in which to do that. I do not mean to say that it was done the minute it came in or I do not mean to convey the impression that because that man was through that made a final operation of it.

RECESS.

Q I call your attention to the diagonal straight line to indicate presence of jurors—straight lines opposite the name of George E. Briggs, and ask you if you can tell in whose markings they are? A May I have my glass? Well, it is marked with the usual ruler and I think I have already said I think it is my handwriting.

Q Do you refer to the wavy horizontal lines in your answer? A Yes, sir.

Q I now direct your attention to the vertical lines which indicate the presence of jurors under

their dates of attendance, or supposed attendance, and ask you if you can tell us who made those marks? A No. I should say generally, with the exception of the first one, they seem to be uniform with my marking. The first one all that day apparently is not in my handwriting.

Q The words "Federal Jury" in pencil immediately following the name is still quite legible, is it not, Mr. Taylor? A No. I have to look pretty closely for it.

Q Can't you see it with the naked eye? A Your eyesight must be better than mine. I would have difficulty seeing it.

Q I observe that opposite the name Hugh K. Bradley on the same page there is written the word in ink "Unknown" over the horizontal wavy line and immediately ahead of that there appears to have been written in pencil the word "Unknown" over the horizontal wavy line in pencil. When were the ink entries made opposite that name? A I can't give you any specific dates, except generally to complete the transaction it was made in ink.

Q Well, was that made upon the opening day of service of that panel? A No, sir.

Q Or at a later time? A At some later time. Apparently I did not call the roll of jurors that day.

Q So that your usual custom was not followed in that case either? By that I refer to the making of the final entry immediately upon receipt of information from Judge Osborne? A If I have conveyed the impression that I made the final entry upon receipt of notice I am wrong. I do not mean that at all.

Q You wish now to correct your testimony? A I thought I did before lunch. May I make myself clear?

Q You may. A I mean to say by completing it that I did not consider it completed until the jury service was over. I would feel that I had all that time in which to complete it.

Q Do you know who erased the pencil marking and the word "unknown" after the name Bradley on that page? A I don't know. I should suppose I did, inasmuch as I have carried it out here in ink and completed the transaction.

Q And do you know who erased the pencil mark after the word "Briggs" and the words "federal jury"? A I do not.

Q Will you say that you did not do it? A I cannot say that. I have no recollection of it. There is nothing there to convince me that I did it, however.

Q And your conclusion that you, however, did make the erasing after the word Bradley is based upon the fact that the same words and the same markings appear in ink under the dates of service? A Yes, sir; in other words, I say the transaction is completed in my own handwriting.

Q You testified that you think you did the markings after the name William Bender appearing on the same page. I ask you if you made all of the markings after that name? A No, sir.

Q Which ones did you mke? A I did not make the one under the date of the 23d, the first day.

Q But all the rest you did make? A Well, I wouldn't state positively. It looks uniform with my writing.

*Frank E. Taylor, cross.*

Q Looking at the last column under date of May 4th can you tell whether or not there has been an erasure there? A Same name?

Q Opposite the name William Bender? A I would say not. There is apparently—I think I could show it to you—the name on the opposite side of the page—the typewriting on the opposite side of the page seems to cast a shadow on this side. I would not say there was any marking there.

Q Does there appear to have been an E there before the vertical marking was placed there? A Not to my eye, Mr. Harrison.

Q Referring to the Appleton entry under date of May 7th—under the panel of May 7th—who made the vertical markings there? A I wouldn't undertake to say other than I have said.

Q Do they appear to be uniform? A The markings?

Q The vertical markings? A The ones, in other words, the present marks?

Q Yes; the present markings? A Well, perhaps I am not qualified to say. It strikes me there is a slight difference.

Q Looking under May 17th and 18th opposite the same name— A Yes, sir.

Q Is there an apparent erasure there? A Why, the pencil line shows all the way through, but I cannot detect any erasure.

Q Isn't there an E, Mr. Taylor, in each one of those dates? A I cannot see it if there is.

Q Which is apparent? A Not to me, there isn't.

Q Can you not see there is an E there which you placed there and which has been erased? A May I take this in some other light?

Q Yes. Try this table here.

*The Court.* Do you wear glasses?

*Witness.* No, but I am afraid I will have to.

A I cannot see it.

*Mr. Heisley.* How would it be to show it to the jury and let them see it?

*The Court.* You may in your own examination.

Q I call your attention to the markings opposite the name John A. Chambers and ask you if in the last column you cannot clearly detect an E over which is written or placed the vertical marking? A Yes, sir; there is on two dates, the 17th and 18th.

Q And those E's are in whose handwriting? A Well, they are two E's; they may be mine and they may not.

Q Can't you tell, Mr. Taylor, whether they are yours or not? A Not when they are so nearly erased. I wouldn't want to state positively that that was my E.

Q What does the record S. 3 show with reference to the days attended by John A. Chambers? A Ten days.

Q I observed on Ex. S. 2 that Chambers was excused by Judge Osborne until May 16th, that being eight days out of the ten, how do you account for the fact that the book shows a record of attendances of ten days whereas he was excused by the order—was to be excused under the terms of Ex. S. 2 for eight of those dasy? A Except as I have stated he may have been held over on a case.

*The Court.* What is the date of the exhibit which you show the witness?

*Mr. Harrison.* May 7th.

*The Court.* That is on Monday, May 7th, that is the opening day of the period.

*Witness.* Yes, sir.

Q How could he have been held on a case and the record show what it does show?

(Last question and answer read.)

*Witness.* My answer was incorrect.

*The Court.* Repeat the answer of the witness that he has already given.

(Answer read.)

*The Court.* Answer this question.

*Witness.* May I correct the other one?

*The Court.* How, you are asked. You can state how.

*Witness.* Clearly I misunderstood the first question.

*Mr. Heisley.* May he explain?

*Mr. Harrison.* Go ahead and explain.

*Witness.* I did not understand your first question. If he had been excused until the 16th, I think you said, of course he could not be held on a holdover case. I did not realize what your question was. The horizontal line does not—if it has been erased—it apparently only covers two days here, the 14th and 15th.

Q And isn't that where the E's are found? A No, sir; they are not; seventeen and eighteen. I cannot account for that.

Q I call your attention to the name of Fred Busse on the jury panel of April 23d and ask

you what Ex. S. 3 shows with reference to his days of attendance? A It shows him marked present every day. It is very puzzling whether he is marked—both sides of the page seems to be—I don't know what I stated on my direct—there seems to have been a pencil mark across the name, but I am uncertain on that because there is one directly behind it on the other page. There has been an erasure of an E on the 24th.

Q Didn't you testify on direct examination that there— A I haven't finished, Mr. Harrison. And on the 1st of May is another erasure of an E, and barely possible there is one on the 25th, I wouldn't say.

Q Are the vertical lines placed over an erased E on those three days? A On two. I am not positive about the third day, the 25th.

Q On which two do you find the erased E? A On the 24th and on the 1st of May.

Q Whose E's are they? A I wouldn't say. It is more than half erased.

Q Can't you from an inspection there determine whose E's they are? A No. I would want more than that to determine before I would say positively they are mine.

Q What is your best impression. You cannot identify them? A That is my best impression.

Q That it is your E? A No, that it is my best impression, what I have given you, where a letter is more than half erased I wouldn't want to say positively it is mine or not.

Q So you express no opinion on that, or do not recognize that E as your E? A I do not deny it and I do not recognize it. I think no one living could recognize it.

*Frank E. Taylor, cross.*

Q By reference to Ex. S. 1 what did you understand Judge Osborne's directions to be in the matter of excusing Busse? A Excused Mr. Busse on April 24th and on May 1st.

Q Are those the columns in which the E's appear? A There is one E that I recognize under April 24th, one E under May 1st. Now, may I identify them?

Q Yes. A Now, from that excuse I should say that they are my E's.

Q So that your E's have been erased opposite the name Busse and the vertical marking to indicate the presence of Busse has been entered on those two dates? A They have been partly erased.

Q Referring to the panel of April 4th and the name Charles J. Alliger therein I ask you if you find any erased E's in his record of attendance? A Apparently on the 19th and 20th.

Q Whose E's are they? A Worse than ever. One is almost entirely covered by the one.

Q In the case of Charles Alliger who made the vertical markings which indicate his presence? A When?

Q On any or all of the days where he is shown to have been present? A From the 4th until the 18th appear in one handwriting, 19th and 20th appear to be in a different handwriting; 4, 9, 10, 11 and 12, 13, 16, 17, 18 seem to be uniform.

Q So that the markings for the 13th, 16th and 17th of April were made by you? A I didn't say that. I say they are apparently all in one handwriting.

Q Can you identify them as having been made by you? A Well, they are so far as I know. They are uniform with my marking.

Q But the entries of the 4th, 10th and 12th were made by someone else? A No, sir; I do not say that. I said the markings of the 19th and 20th are not like the rest of the markings.

Q Excuse me. Referring now to the name Hebler, same date—or same panel—I ask you if there appear to be any markings made over erased pencil E's? A Yes, sir; there are.

Q Under what date? A The 18th. May I have a sheet of paper, please?

Q (Handing witness paper.) A The 18th and 20th?

Q Is there one on the 17th and 19th? A I cannot detect it if there is.

Q Can you tell whose E's is found on the 18th and 19th, I think you said, or 18th and 20th? A No; I cannot. They are fainter than the others.

Q Can you see the whole E on the 18th and 20th? A I don't know whether it is my eyesight or not. I cannot see it.

*Mr. Heisley.* Come down to the light.

*Witness.* What date did I give?

Q 18 and 20. A There is also one on the 19th, on the 18th and 19th. I couldn't tell whose they were. On the last date, the E is plainer.

Q Whose E is that? A I don't know whether it is mine or not. I wouldn't say it is or it isn't.

Q Who made the vertical markings opposite Hebler's name? A I wouldn't say.

Q They may have been made by you or they may have been made by somebody else? A

They may have been made by me or somebody else.

Q Referring to the name of George Kaye, same panel, I ask you if there are any erased pencil E's opposite his name? A Yes, sir; on the 18th and 19th and 20th.

Q Can you tell whose E's they are? A No, sir.

Q Do you know whether you made them or some one else made them? A I do not. The same answer would apply.

Q Can you by comparison of those E's with your other E's tell whether you made them or not? A No; they are so indistinct—half erased—I do not see how a half of one letter could be compared with—

Q Aren't they uniform? A I don't know how to answer. They look—there is only half a letter shows, the other half erased. I don't know how you can compare it.

Q Who made the vertical markings appearing after Kaye's name? A They look uniform with my markings, sir.

Q And you believe they are yours? A I do not say that. I do not deny that they are mine.

*The Court.* You are not asked what you deny?

*Witness.* I don't know.

*The Court.* The question is are they yours?

*Mr. Heisley.* He says he cannot say, your Honor.

Q The best you will say is they look like yours? A Yes, sir, I will say they look uniform with mine.

Q Referring to the name of William H. Jackson in the same panel. May I ask you if there appear there any erasures of pencil E's? A One on the 20th.

Q Last column. That is quite plain, is it not? A It is not to me.

Q Can you not tell from that E whose E it is whether or not you made it? A No, sir; I cannot. I cannot see the lower half of it at all.

Q Whose vertical markings appear opposite Jackson's name? A They are in two writings.

Q Which are yours? A The first three are more uniform with mine I should say.

Q You say that they are yours? A I do not.

Q You say they are not yours? A I do not.

Q You don't know whose they are? A No, sir.

Q Do you know whose markings the remainder of the markings are? A I do not.

Q Referring to the name Louis Kenngott, I ask you if there are any erased pencil E's opposite his name? A When?

Q Same panel. A Yes, sir; on the 18th, 19th and 20th.

Q Can you from an inspection tell who made those E's? A No more than I have, sir.

Q Do you know whether you made them or not? A I do not.

Q Can't you from the E's which appear there on the 19th and 20th determine whether they are your E's or not? A No more so than I have.

Q Can't you see the whole of the letter. In each case the one is over it, covers the E, but with the exception of the part covered by the vertical marking the whole E is apparent, is it

not? A No; in the first place, on the 18th, there is nothing but one loop of the E shown.

Q I am now referring to the E's under the heading of the 19th and 20th? A I would not undertake to identify them any more than I have.

Q Doesn't the whole of the E appear under the 19th and 20th? A It is very indistinct to my eye.

Q Even with the microscope? A Even with the magnifying glass.

Q Whose vertical markings are opposite the name Kenngott? A They are uniform markings.

Q Are they your markings? A So far as I know. They are uniform with most of the markings in the book.

Q Referring to the name S. Lemberg in the same panel I ask you if there are any erased pencil E's which appear opposite his name? A Yes, sir; there are two partly erased E's on the 19th and 20th.

Q Isn't there one also under the heading of the 18th? A Well, I cannot see one.

Q Those that you do see, can you identify them as your E's? A No; I would not.

Q Whose vertical markings are those opposite Lemberg's name? A It seems to me there are two markings at least there.

Q Which are yours? A I don't know.

Q Which appear to be yours? A I should say the one on the 16th was not mine, the others seem to be uniform.

Q Referring to the name Cavenget under panel of April 23d, I ask you what E's appear to have been erased opposite his name? A

That is so indistinct I don't know whether it is or not.

Q Aren't there two E's there under the date of the 3d and 4th? A I cannot say that. There may have been an erasure but it is so indistinct I cannot say.

Q There appears to have been a wavy horizontal line drawn through the whole of the vertical markings, can you say whether that horizontal line was in ink or pencil before its erasure? A In pencil.

Q You identify it as being your line? A No, sir. Made in the usual way with the usual ruler though.

Q Do you know who erased it? A I do not.

Q Who made the vertical marking there? A There are at least two writings?

Q Any of them yours? A I don't know.

Q Aren't all of them yours with the exception of the opening day? A No, sir; the first three seem to be alike—perhaps the five—the first five are in apparently the same kind of ink. The next is in different ink, the last three still different ink.

Q But are the marks different? A Oh, as much as one I can vary from another I should say there is a difference.

Q Can you say which of those marks you made? A I cannot.

Q Did you make any of them? A I don't know.

Q Referring to the name Fred Helwig in the same panel, I ask you if there doesn't appear to be an erased wavy horizontal line opposite that name? A Pencil line, yes, sir.

Q Whose line is that? A Made in the usual way with the usual ruler.

Q Did you make it? A I don't know.

Q Would you say that it was yours? A I do not say whether it was mine or not. I do not know.

Q Whose vertical markings appear opposite Helwig's name? A With the exception of the first two the rest appear to be fairly uniform.

Q With the exception of the first two? A Yes, sir.

Q Who made the others? A Who made which others?

Q Strike it out. Withdraw the question. Who made the first two markings? A I don't know.

Q Who made the remainder of the markings? A I should say I made those, they are more uniform with the greater part of the book.

Q Turning to the panel of May 7th and the name Jacob Englander, I ask you if you find any indications of erased pencil E's opposite his name? A That is very uncertain. There may have been one on the—

Q Don't you find them in the last two columns? A I do and I don't.

Q Can you tell whose E's they are if they are there? A Absolutely not.

Q Whose vertical markings do you find opposite Englander's name? A Two different ones, one on the 18th—one on the 17th is made in different hand from the 18th.

Q And which are yours? A I should say these are mine, uniform.

Q All except the 18th? A No, all except the 17th; 17th is apparently a different writing.

Q Turning to the name of Hicks in the same panel, do you find indications of erased pencil

E's there on a date Monday, May 14th, Charles Hicks? A Yes, sir; there has been.

Q Whose E is that? A I don't know.

Q Is there enough appearing for you to determine whether or not it is your E? A Absolutely not.

Q Whose vertical markings appear opposite Hicks' name? A Except for the 18th they appear to be uniform.

Q Would you say they were yours? A Judging from the fact that they are uniform with the greater part of the book I would.

Q Referring to the name Mathews in the same panel do you find indications of pencil E's under the date of the 18th and 19th? A On May 18th there has been an E erased.

Q Is there also an E under the heading of the 21st? A I do not believe that could be considered an E.

Q Whose vertical markings do you find opposite Mathews' name? A Uniform.

Q Are they yours? A I should say so on that basis.

Q I call your attention to the E's appearing on the page where Mathews' name is found which E's are in ink and ask you who made those E's? A I think those three are mine, sir, opposite the name Monday.

*Mr. Harrison.* The witness refers to three E's opposite the name Mondy.

Q I ask you if you can identify the other E's which appear on the same page? A One opposite 88, Philip J. Long appears to be mine. May I make a statement about these E's?

Q I think you can answer questions, Mr. Taylor.

*Witness.* All right.

Q Are there any other E's on that page which you identify as having been made by you? A Yes, sir, I may have made the E opposite 103; I may have made the two E's opposite 105.

*The Court.* You are not asked what you may have done. Are they made by you, that is the question and the answer ought to be an answer, it ought not to be a mere statement that it may have been.

*Witness.* Well, I must say that I cannot answer it.

*The Court.* Say so, if you can't.

*Witness.* Without qualifying.

*The Court.* Say so, that is what we ought to have.

*Witness.* May I qualify it?

*The Court.* State a fact, when you are asked what other E's there are you say 103 may have been. That is no fact at all.

*Witness.* I may state if I may state a fact.

*The Court.* Certainly you may state a fact about whether or not that is your E; that is the question you are asked, nothing else.

*Witness.* It is in connection with this, your Honor.

*The Court.* Answer the question.

*Witness.* I don't know how to answer it, yes or no.

*The Court.* The question is are there any other E's on that page made by you?

*Witness.* Yes; I think I made a lot of those E's on that page.

Q Why didn't you say that at the start? A Because I have a good reason for it.

*Mr. Heisley.* They asked you the reason, why don't you give the reason?

*Witness.* The E's on that page may have been in heavy pencil and I may have undertaken to copy that E, so it may or may not have been my E.

Q So that when there was a pencil E in one of those columns it was your effort to retrace the pencilled E? A No. If it were too heavy to erase easily and I could finish—cover it with ink, I did so.

Q Whether the pencil E had been made by you or by someone else? A Yes, sir; I took my book as it was given to me.

Q But all of the E's which appear on that page were either made originally by you in ink or copied over E's which had been previously placed there by you in pencil? A Yes, sir, or by somebody else in pencil.

Q Can you tell which of these E's had been traced over E's made by somebody else? A The two E's, the E over 98 is made over a pencil E. I think the E's under 88 have been made over pencil E's; I think the E over 103 has been made over a pencil E, and I am not sure about 105 whether—yes, it has been made over a pencil E.

Q Can you tell who made those pencil E's? A I cannot—covered with ink.

Q So you may have made them or someone else may have made them? A Yes, sir.

Q Are there any E's which you found in ink in S3, being the part of the jury from March 19th to May 18th, which were not made by you.

I won't press for an answer now but would request that the witness be prepared to answer at a later time.

*Mr. Heisley.* Do you understand what he means?

*Witness.* No; I do not.

*The Court.* You better do it now, there are only eighteen or twenty pages, aren't there?

*Mr. Harrison.* Fifteen pages I think. It looks as though we would consume the rest of the afternoon with this witness. I think it will save time if he will be prepared to answer that question tomorrow.

*The Court.* All right.

*Mr. Heisley.* We will look that up after court.

Q What was your practice where E's had been placed in this jury book when you came to mark the record of attendance over those same E's? A The question is not clear.

*Mr. Harrison.* I will withdraw the question.

Q It was your practice when occasion warranted to put an E in the book yourself, was it not? A I do not follow you.

*Mr. Harrison.* Withdraw the question.

Q Did you ever put any pencil E's in the book? A Yes, sir.

Q Under what circumstances? A As I related this morning when a man is excused in advance, sometimes in a hurry or an excuse comes in to me when I am in a hurry I mean,

or when I am hurried to put it in pencil—sometimes in pencil, sometimes in ink.

Q I am now speaking of the time between March 19th and May 18th, 1917? A So am I.

Q And when a juror had been excused for separate days it was then your practice upon receipt of notice to that effect to put either a pencil or an ink E in the space for which he was excused, is that so? A Usually where in advance—for instance, if a man came in and had served the better part of the panel and was excused for the last three days sometimes, and was discharged sometimes it would have been a dash with that wavy edged ruler.

Q And when you came to make up your markings—final markings—we will term them—for a particular panel was it your practice then to erase the pencil E's that you had previously placed there and replace the pencil E's with an ink E? A No, sir; my practice usually was to put down the ink E first. It was a little confusing if you rub out an E, a pencil E, where you have many of them to do and undertake to remember where you ought to put it down; you will get confused; my practice was to put the ink over the pencil. That is what I tried to make you understand.

Q But in the first instance you might put that E down there in pencil or in ink? A Yes, sir.

Q And when you made up your final markings you would leave the ink E's as they stood and replace the pencil E's with ink E's, is that correct? A I don't know whether I do not make myself plain.

Q Now, perhaps if the question is read you will get at what I am driving at. If it is not clear.

(Question read.)

*Witness.* Why; if I left the ink E there I wouldn't have to replace the pencil E, would I? Perhaps I do not understand you yet.

Q (Question read.)

*Mr. Heisley.* How can anybody understand that question.

*The Court.* It is perfectly simple. I do not see how anybody cannot. You said, as I understand it, Mr. Taylor, that sometimes when you had occasion to write the E in you would write it with a pencil.

*Witness.* Yes, sir.

*The Court.* Other occasions you would write it in in ink, wouldn't you?

*Witness.* Yes, sir.

*The Court.* Now, Mr. Harrison asks you when you came to the end of the period to make up the time for the purpose of making your final record you would leave the ink E's as they were?

*Witness.* Yes, sir.

*The Court.* And write in ink over the pencil E's?

*Witness.* Yes, sir.

*Mr. Heisley.* Write a second time.

*Witness.* Over the pencil in ink. I would leave such E's as were in ink alone and write over the pencil in ink. Is that the idea? I couldn't understand.

*The Court.* Is that the way you did it?

*Witness.* Yes, sir.

Q And where you had inadvertently or otherwise marked an E upon receiving—proper cause being shown—and it turned out later that the juror was present upon the day when the E appeared what would you do with the E? A If it were—if I understand your question correctly now, if the juror had been marked excused and he appeared—if it were a pencil E I would erase it with a rubber; if it were an ink E I would erase it with an eraser and mark him present.

Q With the vertical mark? A Yes, sir.

Q So whether it was an ink E or pencil E which you had made in the first instance you would erase them upon proper—upon it being shown that the juror had been present and replace that E with your vertical marking? A Yes, sir, or upon information given me.

Q When you made your warrant was it your custom to check up those warrants with the excuse list which had come to you from Judge Osborne? A I never thought of such a thing.

Q Why didn't you? A Those excuse lists had passed from me to the man who had charge of that—to the man who took them out of the box. It never had been done. I never had been ordered to do it. It never occurred to me.

Q When you received these lists S. 1 and S. 2 didn't you make a memorandum in your jury book? A Yes, sir.

Q Didn't you mark either in ink or in pencil the days for which the respective jurors had been excused by Judge Osborne? A Yes, sir; but may I state that—

*Frank E. Taylor, cross.*

Q I think we will work it out with a series of questions better. Did you ever delegate anybody else to make the record from the Osborne list in your book? A Yes, sir.

Q Whom have you so delegated? A Mr. McKee.

Q When? A On many occasions.

Q How many occasions between March 19th and May 18th did you delegate McKee to make a record in your book of the Osborne excuses? A I never delegated anyone specifically. But I couldn't be in two places at one time. When the excuses came in if Mr. McKee sat at the desk as a matter of course he would do it. He did it fifteen years before I ever came here.

*Mr. Harrison.* I ask that the last part of that be stricken out.

*The Court.* Strike it out. "He did it fifteen years before I ever came here" will be stricken out.

*Mr. Heisley.* May I have an exception to your Honor's ruling?

*The Court.* Was he here before he came here? How could he testify what McKee did. When you say McKee did it fifteen years before you got here you are saying something you do not know anything about.

*Witness.* I didn't mean to say that.

*The Court.* Were you here before you got here?

*Witness.* No, sir.

*The Court.* How can you testify to what McKee did.

*Witness.* I didn't testify.

*The Court.* You said McKee did it fifteen years before you came here, didn't you?

*Witness.* Yes, sir.

*The Court.* You were not here?

*Witness.* No, sir.

*The Court.* How can you say what McKee did from your own knowledge?

*Witness.* I cannot say from my own knowledge.

*The Court.* It will go out.

Q I ask you to look at the record of the jury list in evidence, S. 3, from March 19 to May 18 and show us where McKee or anybody else besides you have made written memoranda of the excuses set forth in the Osborne lists? A Well, here is one right on the first page.

*The Court.* What does the witness point to?

*Mr. Harrison.* Witness points to a memorandum immediately above the name Davidson on sheet headed March 19th, 1917, being No. 35.

*The Court.* What appears there?

It is agreed that over that name appears the words "Conviction of crime."

*Mr. Harrison.* I asked him in whose handwriting that is?

*Witness.* The handwriting itself is in Mr. McKee's handwriting.

Q Referring to that entry "Convicted of crime," did you receive from Judge Osborne a list excusing Davidson for that reason, for the reason that he had been convicted of crime? A I don't know, sir. Sometimes those came from

your office. Sometimes that word came direct from your office.

*The Court.* The prosecutor excusing jurors?

*Witness.* The word came.

*The Court.* The prosecutor excuses jurors?

*Witness.* I didn't say excused a juror; the word sometimes came.

*The Court.* The excuse put on the book?

*Witness.* I am not saying he would excuse him or anything about it. I don't know. The information sometimes comes from the prosecutor's office.

Q Are there any other entries made by Mr. McKee there? A Yes, sir.

Q Where? A 107.

Q Under heading of March, 1917, on the third page of Ex. S. 3 over the name Adolph Pitterman appears the words "son to be tried." Does that appear upon any list of excuses which you had received from Judge Osborne? A I haven't any idea.

Q In whose handwriting does that appear? A I should say that was Mr. McKee's.

Q Are there any other entries in handwritings other than yours? A Yes, sir.

Q Where? A No. 12.

Q Witness refers to writing, the words "sick" over George Bifis, No. 12, on page headed April 3, 1917. In whose handwriting is that? A Mr. McKee.

Q Are there any other entries in handwriting other than yours there? A I find no other in ink. There has been some pencil erasures. I don't know whose handwriting they were in.

*Frank E. Taylor, cross.*

Q Calling your attention to Ex. S. 1 and S. 2, being the so-called Osborne lists, I ask you if any entries of excuses set forth in those lists were or the reasons for such excuses are entered in handwriting other than yours? A I do not believe I understand your question, sir.

Q (Question read.) In Exhibit S. 3? A I do not get—your meaning is not clear to me. I do not understand the question. Judge Osborne's orders to excuse certain people, is that it?

*Mr. Harrison.* Yes. The witness had identified these and called them Judge Osborne's lists. I used the same phraseology. Identify them as Judge Osborne's lists.

*The Court.* Now, Mr. Taylor, tell the prosecutor what you do not understand about the question.

*Witness.* I do not understand the question. What does he want me to do with these lists?

*Mr. Harrison.* I will withdraw the question.

Q You have testified that the only two original entries in Ex. S. 3 which were not made by you, were the two entries made by Mr. McKee. I now ask you if those two excuses set forth by Mr. McKee appear in the Osborne lists Ex. S. 1 and S. 2? A I don't know without looking.

*The Court.* That is not correct, Mr. Prosecutor, is it? Doesn't your question contain a wrongful assumption of it? Hasn't Mr. Taylor testified that the words "Convicted of crime" opposite the name Davidson—the words "son to be tried" opposite the words Pitterman and "sick" opposite or

over the name are in McKee's handwriting?

*Mr. Harrison.* I made an error there, three then.

*Witness.* I did testify to that.

Q I ask you if those three excuses entered by McKee appear on the list of excuses furnished by Judge Osborne.

*The Court.* Showing witness S. 1 and S. 2.

Q By looking at the dates Mr. Taylor can't you answer that quickly?

*Witness.* You do not seem to have any orders covering March 19 at all.

Q They do not appear there? A No, sir, I do not find the names because I do not find any order covering those dates.

*The Court.* Wasn't your question broader than that? Doesn't it cover each one?

*Mr. Harrison.* Perhaps it did.

*The Court.* One is Davidson, 35, did you look for that?

*Witness.* Davidson, Pitterman—they are both on the 19th.

*The Court.* And Bifis, April 3d.

*Witness.* There is no order covering any of them, no orders covering those dates at all. The orders all start after the last date.

*The Court.* There are no orders in Ex. S. 1 and 2—

*Witness.* No, sir.

*The Court.* Of the dates of the beginning of the service of each one of these

persons to whom you have referred. That is true, isn't it?

*Witness.* Now, wait just a minute. I want to make sure of that.

*The Court.* Take Davidson. What is the beginning of his service?

*Witness.* Those two are in March and there are no orders covering March at all.

*The Court.* Then there isn't any order covering April 3d because that is the day you did the excusing?

*Witness.* Not the 3d, the 4th.

*The Court.* They were not here on the opening day of the term?

*Witness.* No, sir. These excuses seem to start April 23d.

*The Court.* They do not appear there?

*Witness.* No, sir.

Q Did you ever see anybody else besides McKee make entries in S. 3? A Yes, sir. When I have been busy a juror has come in late—

Q Never mind that. I will fix the date. A Yes, I have.

Q Within the period between March 19th and May 18th? A Yes, sir.

Q Who made such entries? A I cannot tell you that.

Q Did you ever see anybody make any? A I have.

Q Whom have you seen? A One of the attendants.

Q Which one? A I cannot tell. I have ordered them to do it.

Q Was it made in your presence? A They have reported a juror late and I have said "Mark him."

Q How many times has that happened between the dates specified, Mr. Taylor? A I would not undertake to say. It happens daily.

Q So that almost daily one or the other of the attendants will make marks in your book? A Mr. McKee or Mr. Picot or one of the attendants, yes, sir.

Q Will you name the others whom you have seen between the dates specified make such markings? A Mr. Cowan, I think; Mr. Smith, he is a newer man, and Mr. McLoughlin.

Q And McKee and Picot? A Yes, sir. Sometimes they would report them to me. If I had an opportunity I would mark them. I have told them to mark them.

Q Have your instructions in that matter been limited to marking jurors as present by these men named? A Usually such jurors who would come in late.

Q Have you ever designated one or more of these men to mark the books with the E? A No; I think not, unless Mr. McKee. I think Mr. McKee has marked them.

Q Have you ever instructed him to do so? A Perhaps not specifically. He knew my method and followed it.

Q Did you ever see him do it? A I have seen E's he made.

Q Can you point out any E's within the period designated? A No, because they would be covered by my ink now.

Q In your direct examination I think you said that McKee did this up to a year ago? A I did not. I said McKee took the names out of the box up until a year ago.

Q I beg your pardon. You are quite right. Why did you assign Cowan to do this? A Be-

cause Mr. McKee, who is of a nervous disposition, did not do it satisfactorily. Judge Martin found fault. Told me plainly that somebody must be assigned who will do it.

Q McKee had been doing this for a number of years?

*The Court.* Just a moment. Did you ever show this poll book to Judge Martin —this roll book?

*Witness.* I don't know that I ever did.

*The Court.* I mean prior to the occasion of—

*Witness.* I do not recall.

*The Court.* —May 18th?

*Witness.* I don't know, sir.

*The Court.* Now, go on with what the prosecutor was asking you.

Q (Question read.) For a number of years prior to the time you put Cowan on the job. hadn't he, Taylor? A Been doing what?

*Mr. Harrison.* Strike out the question.

Q You testified in your direct examination that Cowan for about a year had charge of the jury box? A Yes, sir.

Q Now, you say that prior to that time for a long period of years McKee had had charge of the jury box? A No; I did not say that I said Mr McKee for a short period of time—I don't know how long—since Judge Martin ordered it—not a long period of time.

Q And you say that you assigned Cowan because of objections by one of the Judges? A No; I did not. I said Judge Osborne—Judge Martin called me down here and told me that it was not satisfactory on several occasions.

*The Court.* What was not satisfactory?

*Witness.* The way that the names were not being taken out of the box, sir.

*The Court.* That the Sheriff would pull names—the slips with names upon them out of the box and there would not be any juror to answer it, is that it?

*Witness.* Yes, sir. And at the time you stated that it had a bad effect on the general panel.

*The Court.* Now, go on.

*Witness.* And you insisted on my naming someone who would do it.

Q And thereupon you named Cowan? A Yes, sir.

Q And he took charge, I think you said, of the jury box? A He took charge of taking the names of the excused jurors from the box.

Q The practice was for Cowan to take the names out of the jury box upon your instructions? A Not upon my instruction, but upon receipt of excuses that I would receive from Judge Osborne, after writing them on my record.

Q And he would take, after you had marked your record from the Osborne list—you would turn the list over to Cowan? A Yes, sir. Many times he had them before I did.

Q And Cowan would remove the names or the slips containing the names of the excused jurors from the jury box? A Yes, sir.

Q Where was this jury box kept? A Why, used in all the various court rooms and sometimes at night he would take it in our room, or back room, chambers.

Q Wasn't it very frequently in your back room, as you call it? A Wherever he—we kept it perhaps wherever the last jury would be drawn.

Q Wasn't the jury box in the custody of the Sheriff? A Legally, perhaps, but physically it was oftentimes left in the last room where the jury was drawn.

Q When not being used in other court rooms wouldn't it be kept in the Chief Justice's chambers, in the rear of the court room where you sat? A Never by my order.

Q I am not asking you about order. A Not to my knowledge.

Q Didn't you, when you went into the room for one purpose or another, see the jury box there? A No, now I can't say that I have. It may have been there.

Q Didn't you see it there? A I do not recall seeing it there. I have seen it on occasions when they had it in there taking names out.

Q So that it was there from time to time and you have seen it there? A On such occasions that I speak of.

*The Court.* Who was there?

*Witness.* Mr. Cowan has had it there. McKee—perhaps Mr. McKee had done it before him; I don't know.

*The Court.* Did you see the deputy sheriff there or any other sheriff?

*Witness.* I don't know that I have.

Q Did you keep any record of the excused jurors other than found in Ex. S. 3? A This is the record. This is the only record I kept.

Q Did you ever have occasion to check off that record with the Osborne list? A Never had any occasion to.

Q Didn't you think it was important when making out the warrants to check up the correctness of those warrants with the list? A There never had been occasion to question it.

Q Did you think it was important or didn't you think it would serve as a check? A It never has been brought to my attention, sir. I followed the method prescribed by the auditors—by the expert accountants—whatever they were, the last time they were here; followed it closely.

Q For how long a period did you excuse jurors of your own motion? A At my own motion?

Q I will withdraw the question. Didn't you testify on direct examination that Judge Osborne gave you authority in your discretion on one occasion to excuse jurors? A If I said one I think you misunderstood me. I said on more than one occasion he has done it.

Q Can you specify one occasion and the length of time during which he gave you such authority? A I specified one occasion, particularly, as I said, the opening of the April term.

*The Court.* That is on April 4th?

*Witness.* Yes, sir. That is the particular occasion I referred to this morning.

*The Court.* Was there any other occasion between March 19 and May 18 when he gave you authority directly in writing or by word of mouth to excuse jurors separate, not to tell the whole panel to go home because the different courts were through with them.

*Witness.* He did.

*Frank E. Taylor, cross.*

*The Court.* But was there any other occasion when he told you to excuse at your discretion?

*Witness.* Yes, sir.

*The Court.* Jurors separate?

*Witness.* There were on two or three or three or four—I don't know how many occasions when he has been about to go away.

*The Court.* When was it—when was the first?

*Witness.* I cannot remember now.

*The Court.* Between March 19th and May 18th?

*Witness.* Well, I don't know that I can say—state positively between those dates.

*By the Court.*

Q Now, when was it between those dates, if you know? A I say—it would have to be my recollection—March 19th would have been pretty nearly the opening of the April term.

Q April 4, I think, was the official opening of the term. A April 3d was the opening of the April Term. That would have been a very short time. I don't know. I cannot state that positively.

Q Can you say whether or not you are sure if Judge Osborne did so he did it because he was going away? A I think he stated on one or two occasions that he was going away.

Q Did he state on several occasions between March 19th and May 18th that he gave you this power to in your discretion discharge jurors, that he was going away?

*Mr. Heisley.* May I enter an objection to your question?

*The Court.* Certainly.

*Mr. Heisley.* On this theory, that your question assumes that the witness has said that Judge Osborne did that between March 19th and May 18th; and the witness has distinctly said that he cannot say that he did between that time.

*The Court.* He did it once. He did it on April 4th.

*Witness.* Yes, sir.

*Mr. Heisley.* Will you rule on the objection, your Honor?

*The Court.* I will reframe the question in accordance with the wise suggestion of counsel.

Q He did it on this occasion on April 4th. That is, he said that the reason why he wanted you to exercise your judgment in the matter was because he was going away. Do you know whether or not he did it on any other occasion? A He has done it on other occasions but I cannot be held within those dates, because I don't know just when.

Q On all those other occasions was it because he was going away? A On at least two occasions he met me in the corridor and said that he expected to be away and in a sort of general way said, "You look after the jurors—take care of them."

Q Did you keep any record of the excuses which you granted under authority of Judge Osborne on April 4th? A Except to note them on my book here. I have a very distinct recollection of going to Judge Osborne when he came back on the following Monday and stating to him, I think, that I had saved the county some $68.

*Frank E. Taylor, cross.*

Q Did he tell you with reference to April 4th to excuse jurors that you thought that you ought to excuse, or ought to be excused, until the following Monday or for the term? A No, it was general, I think, Judge Martin. I think he gave me to understand—I drew the conclusion—the inference—that he meant for me to deal with them until he came back on Monday.

Q For the term? A No.

Q That you were to excuse from Wednesday, the 4th, to the following Monday? A Yes, sir; generally.

Q That is the only panel of jurors, at the opening day of the term, that comes in on Wednesday? A Yes, sir.

Q And then serves two full weeks after that, isn't that so? A Yes, sir; that is true.

Q That is to say it happens every term; three times a year? A Yes, sir.

*Further cross examination.*

Q Upon your granting of the excuses on April 4th what entries would you make in Ex. S. 3? A Usually the E.

Q And how did you direct Cowan as to what slips were to be taken out of the box at that time? A Well, on that occasion I don't know that I directed him at all because, as it turned out, nobody used the jury that day. The entire panel were discharged shortly after until the following Monday, so there wouldn't have been anything to take out in that case.

Q Well, was it because of the excusing of the panel that the county would gain so much money? A No; at the outset somebody expected to use the jury on that opening day; that first Wednesday, and such as were excused it

was with the distinct understanding that it would be without pay. They went right away. The balance of the panel were held here until perhaps—I don't know—perhaps twelve o'clock—and then were excused. I think perhaps his Honor drew one jury. I don't know.

Q How would Cowan know what names to take out of the box at that time if he did not have the Osborne list? A On that occasion there were none to take out. I mean for such as were excused for that first day.

Q Did you excuse Alliger that day? A I don't know. I have nothing here to show that I did. Alliger is marked present every day.

Q Did you excuse Kaye? A Same day?

Q On the same day? A No, sir; I have nothing to show for it.

Q Did you excuse Hebler on the same day? A Who?

Q Hebler? A Nothing to show here for it.

Q Did he answer roll call? A Every day.

Q Is the roll call in your handwriting? A Apparently.

Q And did you excuse Jackson on that day? A He is here every day.

Q In your marking? A Well, that is not so uniform as the other. I don't know.

Q Did Lemberg show up on the first roll call on that day? A According to this book he is.

Q He is marked present for the full term eleven days, is he not? A Yes, sir.

Q Did you excuse him? A I excuse him when?

Q On April 4th? A Apparently not. He is marked present here.

Q Are the markings in the Lemberg case uniform? A Yes, sir.

Q Would you say that they were made by you? A They are uniform with my markings, or with the greater part of the markings. I should say so.

Q Assuming Lemberg, as he testified, to have been absent all except the first two days of that panel how do you account for his having been marked present by you for the whole eleven days? A If he was not there in person if I marked him, someone must have answered for him or someone has given me some information to lead me to believe he was there. There is nothing in my record here to show that he was not there.

Q Assuming Adam Hebler to have answered roll call and never served and that the markings of his presence were all made by you how do you account for that condition? A I did not get your whole question I think, there?

Q I will reframe it.

*Mr. Heisley.* Read it.

(Question read.)

*Witness.* If I marked him, as I apparently have done, I believed he was here. He was present or at least some one has given me information to lead me to believe he was here.

*The Court.* You call the roll, don't you?

A I call the roll, yes, sir.

*The Court.* Somebody has got to answer present?

*Witness.* Yes, sir.

*The Court.* What do you mean by "somebody leading you to believe"? Your duty is to call the roll, isn't it?

*Witness.* Yes, sir. If I called the roll and somebody answered,—according to my record he was present.

*The Court.* If nobody answered it would not have been marked present?

*Witness.* Absolutely.

ADJOURNED until tomorrow morning at 10 o'clock.

## FOURTH DAY.

## ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

June 21, 1917.

STATE

*vs.*

FRANK E. TAYLOR.

FRANK E. TAYLOR resumes the stand for further cross examination by Mr. Harrison.

Q (Question read as follows): "Are there any E's which you find in ink in S. 3, being a part of the jury list from March 19th to May 18th, which were not made by you?" A Yes, sir; I think I find some.

Q Where do you find them? A May I use the book? On March 19th opposite the name of No. 26 Fred S. Coe I find two that apparently are not in my handwriting.

*The Court.* Are not in your handwriting?

*Witness.* Yes, sir. That is the question as I understand it.

*Mr. Harrison.* May I suggest that perhaps if the witness refers to the dates under which the E's are found they will be more easily identified.

*The Court.* I want to have an understanding as to what the witness says. You are telling us the E's that are in your handwriting or the E's that are not?

*Witness.* Are not, as I understand it.

*The Court.* And the rest are in your handwriting?

*Witness.* Apparently, yes, sir.

*The Court.* All right. Now, there are two E's opposite the name of Coe, March 19th?

*Witness.* Under the panel whose service began March 19th, but under the dates of March 22d and 23d. Under the panel beginning March 19th, under date of March 30th, No. 70 John A. Johnson.

*The Court.* One E?

*Witness.* One E. On the same panel under date of March 30th, No. 87, Arthur A. McDavitt—the same panel under date of March 28th, 111, G. E. Reinhard; panel beginning service on April 4th, 17th; under date of April 20th, No. 20, Conrad Brotherly; same panel, same date, No. 27, James D. Coe; same panel, April 20th, No. 66; same panel—

*The Court.* What is the name of the man?

*Mr. Harrison.* Give us the name of No. 66?

*Witness.* Herman Goldblatt. The same panel under date of April 14th, S. Ingling.

*The Court.* What number juror?

*Witness.* 77. Now, there are others here that have been blurred. In these cases that I have given I think in every case it seems to have been an original ink entry. There are others that are blotted. There is made over E's in pencil.

Q Were all of the E's other than those which you have just given us made by you? A No. I have just said there are other E's. For instance, here is one blotted badly.

Q Where is that E to which you are now referring? A That is under the name of Herman Goldblatt, this same 66, under date of April 17th. That is an E made over a present mark of mine and the present mark—

Q Who made the E? A I don't know when it is blotted like that.

Q Then the list which you have given us is not then a complete list of E's in ink not made by you? A As nearly so as I can give it. I think with that only exception. As I understood from the question it was to point out such E's as I found not made by me.

Q So that with the addition of the Goldblatt E which you have just given us to the list previously given by you, all other E's in ink in the book S. 3 were made by you? A As I have explained before, Mr. Harrison, many of them are made over a pencil mark. I presume I made them.

Q Well, can't you be sure that you made them, Mr. Taylor? A I cannot. I have told you as plainly as I know how. If I have made the ink E over the pencil E I cannot tell whether the original pencil E was mine or not.

Q I am asking you what ink E's, whether made by you upon a blank space or over some kind of a mark, are yours. A I presume so. I cannot state positively as I have said.

Q But as a result of your— A May I say if I found a pencil E there in all probability I have gone over it in ink, believing that the E belonged there whether it was my E or somebody else's E in pencil.

Q So that with the exception of the E's contained in the list which you have just given us and with the addition of the Goldblatt E all other E's appearing in Ex. S. 3 were made by you in ink either in the blank spaces or over some mark? A I presume so. I cannot state positively but I presume so.

Q How many cases were there, if you can tell us, in which you made the ink E over pencil E? A I was not asked to look that up. I did not look it up. Do you want me to look it up now.

Q No. I will call your attention to the panel of April 4th, and the E's appearing opposite the name Alliger which E's appear to have been erased, and ask you if you can say who placed those E's there? A No; I wouldn't undertake to say, Mr. Harrison.

Q Do you say they are not yours? A I do not. I do not deny it and I do not admit it. A letter as nearly erased as those I do not see how anyone can.

Q Do you know who made them? A Do I what?

Q Do you recognize the handwriting? A No, sir.

Q What do you say with reference to the E's opposite the Hebler name? A Was that the same date?

Q Under panel of April 4th? A Well, I must make the same answer I think.

Q Where did you usually pay off these jurors? A Depending whether there was—

*Mr. Heisley.* Let me have the question. There is no proof that Mr. Taylor did pay them off.

Objected to.

*The Court.* Objection sustained.

Q Where did you usually give the jurors warrants for their services? A Depending whether the court was or was not—

*The Court.* Where you usually did, that is the question.

*Witness.* I suppose it has been paid as often in one place as another. If the court was in session they were paid in the jury room. If the court was not in session they were called in our court room.

Q Wasn't it your practice to go to the jury room and give the jurors their warrants there? A If the court was in session I went to the jury room and paid them.

Q And on what day would you usually pay them off, Mr. Taylor? A On the day they were discharged.

Q And on what day of the term was that usually done? A Usually Friday—Thursday

or Friday, depending whether or not they were used on the last day.

Q And what time of the day would you usually pay them off? A When they were discharged and when the sheriff was ready.

Q Did you ever give them their certificates in bulk on Saturdays during the period covered by March 19th and May 18th? A What do you mean in bulk, Mr. Harrison?

*Mr. Harrison.* I will withdraw the question.

Q Did you ever pay off the jurors by giving them the warrants? A I never paid a juror. I gave them a warrant on the sheriff.

Q And did you ever call them together for that purpose on a Saturday during the period to which we have just referred? A I never recall calling them together on Saturday, although there may have been jurors out who were paid Saturday. I don't know. Men who come in who could not wait—who did not wait for their pay on Friday, if they were paid on Friday. Men often come in—they come in every day in the week after their service was over for their warrants; they may have come in on Saturday.

Q During this period though it was usual to have the jurors come together on a Friday to receive their warrants, was it not? A If Friday were the pay day and they waited for their warrants they would be paid on Friday.

Q Were they ever paid on Saturday during the period covered by our examination? A As I have just explained they never were paid in bulk, as you say. I mean to say the jury as a whole never was paid on Saturday within this

time to my recollection, but men come in constantly who did not wait for their voucher, for their pay warrant—men come in constantly all day long and, by the way, can I correct an answer I made to Judge Martin yesterday? I did not finish my answer complete.

*Mr. Harrison.* I think, if the Court please, that after I get through with the cross examination then the request is proper to be made.

*The Court.* Judge Heisley will make a note of it and ask you about that.

Q And when you paid off the jurors was it not your practice to go into the jury room, call the names of the jurors and give them their warrants for the days of service which they had performed? A My practice was to pay them in the court room if the court was not in session. Call them up alphabetically and hand them their warrants. They were just as anxious to get away as I would be to pay them. If court was in session I would have to go to the jury room. I would have to first separate the panel. If there was a jury sitting in this room those twelve would have to be separated from the rest. If there was a jury in each court room each series of twelve would have to be separated. The balance would be called either in Judge Dungan's court to be paid or in the jury room to be paid.

Q And wouldn't the jurors usually come to you after the warrants? A I usually went to them.

Q And didn't you think it strange that on April 20th that Cowan should come and ask for seven warrants all within a very short period

of time? A No; it would not have struck me as strange. Officers frequently did that.

Q Did you give any other officer any warrants on that day? A If anybody asked for it.

Q I am not asking you if anybody—do you recall? A I do not recall any specific instance, no, sir.

Q Do you recall giving any other officer any warrants during this whole period between March 19th and May 18th? A I know that I have. I do not recall a specific instance.

Q Do you recall the name of the officer to whom you gave such a warrant? A I don't know that I can say that. I can say in the course of the last few months I suppose I have paid every officer—

*The Court.* Do not suppose. Answer the question and state the fact.

A I know that I have handed any officer who asked for it—who stated to me that such and such a person was there for his voucher.

*The Court.* The question is whether or not you paid other officers by delivering warrants?

*Mr. Harrison.* During this period between March 19th and May 18th?

*Witness.* As I have answered it, if they have applied to me I probably have. I cannot state a specific instance.

Q You cannot give the name of any officer to whom a certificate was given by you for jury service during this period? A If you had asked me the same thing about Mr. Cowan I could not state.

*The Court.* Do not answer the question by asking another or making a dependent relative statement. Answer it by stating the facts.

*Witness.* I thought I had, Judge Martin.

*The Court.* You answer it again.

*Witness.* Will you please give me the question?

Q (Question read.) A I cannot specifically state any officer.

Q Do you recall the fact of giving Cowan these six certificates on the 20th of April? A I do not.

*The Court.* What six?

*Mr. Harrison.* By the six, I refer to the warrants of Coe, Lemberg, Hebler, Alliger, Jackson, Helwig and Kenngott. Seven. Cut out Helwig and leave it six. Now, your answer to that question is what?

*Mr. Heisley.* Does the evidence show they were given on the same day?

*Mr. Harrison.* Yes.

Q Do you remember when you paid the general panel whose service was to end on the 20th of April? A I do not.

Q Don't you recall paying them in the court that morning at 11 o'clock? A I do not.

Q Didn't you think it quite unusual that all these warrants should be called for by Cowan at or about 10 o'clock? A I do not recall that he did.

Q Did you ask him anything about the identity of the jurors or where they were? A I have no recollection of his coming to me. I cannot see why I should have done that.

Q Did any other officer come to you that day and receive from you certificates for the payment of jurors? A I don't know.

Q Do you recall where you paid off the jurors for the panel of service ending the 4th of May? A I do not.

Q Do you recall Cowan coming to you at or about 10 o'clock and receiving the warrants for Fred Busse and Eugene Cavenget? A I do not. I have no recollection.

Q Do you recall that on that day giving any other officer warrants for the payment of jurors? A I haven't any recollection. Do not even know it was a pay day.

Q Do you recall Cowan coming to you and receiving from you on the 18th of May at or about 10 o'clock in the morning warrants from you for the payment of service of jurors, Jacob M. Englander, John R. Mathews and Charles Hicks? A I have no recollection of it. May I ask was that a pay day?

Q It was. A I have no recollection of it.

Q Do you recall when and where you paid off the jurors on that day—you gave them the certificates on that day? A No, sir; I couldn't tell you. I have no recollection of paying anywhere any specific dates.

Q Do you recall whether on that date, May 18th, you gave any other officer certificates? A I have no recollection whatever of it. It would have made no impression on me.

Q Didn't it make an impression on you that Officer Cowan came to you at about the same time on April 20th and got six warrants? A I think Officer Cowan never came to me—do you mean together, at one time?

Q Within a very few minutes of each other? A No; I have no recollection and I do not know that it would surprise me if he did. The sheriff sometimes was not prepared and would send me word he wouldn't be prepared to pay until a certain time. He has told me—the under sheriff rather—he has told me he had a little money, not to send too many down. Sometimes he told me not to send any more down.

Q It was your practice, Mr. Taylor, was it not, to give these warrants to the jurors in person? A No. If the court was in session, no sir; they would not have entrance into the court room.

*The Court.* In person the question is. That is you would deliver them directly to the juror, the person entitled to them.

*Witness.* No, sir; not if an officer came in and said the juror was asking for a warrant.

Q (Question read.) A You are speaking now of the general panel, are you?

Q The general panel of jurors to serve in the general courts of the county? A That was my practice then, yes, sir.

Q And the giving by you of warrants to court officers or officers was an exception, was it not? A As I have just told you, if the juror came in in advance of the discharge of the general panel, if the court was in session he would not have entrance into the room and if an officer came in and asked for it I usually gave it to him. I have directed Mr. McKee to give it to him.

*The Court.* Now, answer the question. Was it an exception, that is the question?

*Witness.* I suppose it was an exception, because the general panel were paid in person.

Q And being an exception didn't the fact of Cowan calling upon you on April 20th for six warrants for jurors at about the same time cause you to think that that was unusual? A I have no recollection, to begin with, of his coming for six warrants at any one time. Further than that, as I said, I depended on the sheriff notifying me if he had any more money.

Q What bearing had the sheriff having or not having the money have upon the tender by you of the certificates to Cowan? A Because I would give him no more if the sheriff notified me he had no more money. I wouldn't send any more down.

Q Had you received notification from the sheriff that morning? A I don't know this morning in question. I don't know.

Q If you had received such information you would not have given such warrants to Cowan, would you? A If I ever received that information I would not send any more men down.

Q And therefore having given the warrant to Cowan you had not received the information, had you? A I don't know. I have no recollection of ever having given six to him.

Q I ask you to refer to the panel ending May 18th, shown in Ex. S 3, and also direct your attention to Ex. S 25, being a warrant issued by you to William C. Appleton for ten days' service, and ask you if you recall issuing that warrant?

*Mr. Heisley.* We admitted this all before, didn't we?

*Mr. Harrison.* Yes. I want to ask him one more question.

*Witness.* The warrant is in my handwriting. I clearly issued that, yes, sir.

Q Do you recall to whom you gave it? A I haven't the slightest recollection.

Q I also show you Ex. S 22, being the William Bender warrant for ten days' service in the panel ending May 4th.

*Mr. Heisley.* We admit issuing all of those.

*The Court.* Yes, but he has a right to cross examine about it.

*The Court.* When did you put in the days on the warrant just shown to you, S 25?

*Witness.* On the 4th of May.

*The Court.* When did you put in the days, the number of days on the warrant S 25?

*Witness.* Why, apparently on the 18th of May. I wouldn't say. That warrant is dated the 18th of May.

*The Court.* Will you answer the question? There is a figure 10 there, isn't there?

*Mr. Harrison.* It is written out.

*The Court.* Written and in figures or written out?

*Witness.* It is written out.

*The Court.* When did you write "ten" there?

*Witness.* Why, I issued this warrant, so far as I know, on the 18th day of May.

*The Court.* Can't you state more definitely than that?

*Witness.* The warrant is dated May 18th.

*The Court.* Do not argue it, please, but answer.

*Witness.* I beg your pardon. April 18th.

*The Court.* When did you write the word "ten" on that warrant S 25?

*Witness.* I wrote the word "ten" on that warrant on the day I made out this voucher, which is dated the 18th day of May, '17, as far as I know.

*The Court.* Now, you have testified that you made out a voucher on May 7th—that you made out all vouchers on the Monday of the opening of the period except to fill in the days—the number of days?

*Witness.* Yes, sir.

*The Court.* You said you signed your name and finished it all on that day?

*Witness.* I beg pardon, sir.

*The Court.* Now, I ask you the question again. This is the third time I have asked it, what day you wrote the letters "ten" on that warrant S 25?

*Witness.* I don't know that I understand it, your Honor.

*The Court.* What is the difficulty about it?

*The Witness.* I don't know. I thought I had answered it.

*The Court.* You wrote t-e-n on that warrant S 25, didn't you?

*Witness.* Yes, sir; I think I did.

*The Court.* Well, don't you know?

*Witness.* I presume so.

*The Court.* Well, don't you know that you did?

*Witness.* I have said I did.

*The Court.* Do you answer you did or you did not.

*Witness.* Well, there is a doubt in my mind because I rarely put the figure after it. I usually write the word.

*The Court.* Did you write the W and the small m and capital C, capital A and the rest of Appleton? Did you write that?

*Witness.* I wrote William C. Appleton, yes, sir.

*The Court.* Did you write Apr.?

*Witness.* Yes, sir.

*The Court.* And '17 for 1917?

*Witness.* Yes, sir.

*The Court.* Now, did you or did you not write the word t-e-n on that warrant S 25?

*Witness.* Well, I am a little uncertain. I am a little uncertain. I cannot say further than that. Offhand I would have said that I did.

*The Court.* You have sworn that you did, haven't you?

*Witness.* Well, I have—

*The Court.* Do you want to correct your testimony to that effect?

*Witness.* I want to correct my testimony in this respect, that I am not at all certain of it now.

*The Court.* Look at it again.

*Witness.* I did look at it.

*The Court.* Your practice was to make out these warrants on the Monday of the opening of the term?

*Witness.* Yes, sir.

*The Court.* That is to say that you filled in the name of the juror and the name of the term and the year and signed your name?

*Witness.* Yes, sir.

*The Court.* And the warrant was then ready to be delivered to a juror except for the number of days' service, isn't that so?

*Witness.* Except for the number of days —inserting the date of the pay.

*The Court.* Those two things were inserted later by you as a rule?

*Witness.* Yes, sir.

*The Court.* Now, can you say from that practice and from looking at that S 25 whether or not the word ten was written by you?

*Witness.* I cannot state positively that the word ten is by me. I would have said—

*The Court.* Do you deny under oath that it was written by you?

*Witness.* Well, Judge Martin, I don't know what to do. I say I am not certain.

*The Court.* Well, we do not understand what you do say. You say you don't know whether it is your own or not? You won't swear that it is yours, will you?

*Witness.* No, sir. I think I am justified in saying that I cannot swear that it is.

*The Court.* I do not ask you whether you are justified or not. You won't swear that it is yours and you won't swear that it is not yours?

*Witness.* That is the position I feel I ought to take.

*The Court.* It isn't a question of position. You understand you are under oath to state the facts as they are.

*Witness.* Well, I will try to.

*The Court.* Let me ask you again so that there may be no mistake about it. Is the "ten" in your handwriting?

*Mr. Heisley.* If your Honor please, may I interpose an objection to your Honor's question? The witness has repeatedly told your Honor in answer to questions which you have repeated a number of times to him that he cannot tell whether it is his handwriting or not. I think he has given a responsive answer a number of times to your Honor and it is incompetent and I respectfully suggest improper for your Honor to repeat the question to force him into more specific answer when he says he cannot state it specifically.

*The Court.* The statement of counsel disregards the fact altogether that the witness has repeatedly sworn that he always filled in the dates, that it was his practice, and the number of the days of service in his handwriting, and that instead of this witness having answered the question he hasn't answered it. That is why the Court is pursuing this inquiry.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*The Court.* Now answer again, Mr. Taylor, whether or not you are prepared to say that word ten is written by you?

*Witness.* I am not prepared to say that the word ten or the figure 10 are written by me.

*The Court.* All right. That is all.

Q I call your attention to Exhibit S 22, being the warrant of William Bender, and ask you if you recall to whom you gave that warrant? A I do not.

Q Was that warrant drawn in the usual way? A Yes, sir; I presume so.

*The Court.* And the word ten written there by you?

A Yes, sir; I should say that that was my handwriting.

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

Q I call your attention to Ex. S 24, being the warrant issued by you to George E. Briggs and ask you if you recall to whom you delivered that warrant? A I don't know who I delivered it to.

Q And the handwriting on the whole warrant is yours? A They are both made out in the usual way. I should say they are mine, although it is in a different ink.

Q What do you say about the word ten there, as to whether or not it is written in by you? A May I compare this with some other ten that I know I did write?

Q Can't you testify directly from it? A It is different ink. Both the amount and the date are in different ink.

Q Will you say whether or not that is your handwriting? A Well, I have said I thought it was.

Q Are you positive it is yours or that it is not yours? A No; I am not positive now. If I may compare it with some ten that I have written—

Q But without comparing it with another ten which you have written you cannot say whether that is your ten or not? A No. There is a doubt in my mind now. Made in the customary way, though.

Q You, however, say that the ten in the Bender warrant— A I think that applies in each case if your Honor please.

Q Let me finish. You have, however, said that the ten in the Bender warrant, Ex. S. 22, was written by you. Do you now wish to change your answer with reference to the Bender warrant? A I would like to say that they are both in the same class; both in different ink.

Q And you will not say whether or not they are in your handwriting? A I do not want to say positively they are.

*The Court.* You said that one exhibit was made out in the usual way.

*Witness.* I mean to say there are no figures on it.

*The Court.* Your recollection is that your custom was to write out in letters the number of days.

*Witness.* It wasn't my custom—

*The Court.* And not put the figure in brackets after?

*Witness.* It was not my custom. It was my order.

*The Court.* Do you order yourself?

*Witness.* The order of the auditor. It was formerly done by putting the figures down.

*The Court.* Your practice was to write it out in words, wasn't it?

*Witness.* In letters, yes, sir.

*The Court.* And you did not put the number of days also in in brackets, is that it?

*Witness.* I have done it occasionally where my letters were not plain, write them in numbers. Sometimes I have put the figures after the letters where I had not written it plainly.

Q Did you ever give any warrant to McKee during this period? A Just how do you mean?

Q Did you ever give any jurors pay warrants to Lloyd McKee during this period? A Lloyd McKee has made out pay warrants at my direction repeatedly.

*Mr. Harrison.* May I ask that the question be repeated.

(Question and answer read.)

*Witness.* Will you make your question a little clearer, Mr. Harrison?

*Mr. Harrison.* Strike it out.

Q During the period from March 19th to May 18th, 1917, do you recall having given jurors pay warrants to officer Lloyd McKee? A I will have to ask a question. Do you mean pay warrants that I had made out and handed to him?

Q Yes. A Possibly. I have no recollection of it; but that was not the practice. Lloyd McKee used to make out the pay warrant himself and I would sign it.

Q Did Lloyd McKee do that after he was—after Cowan was assigned by you to this job? A He did it before and after.

Q So that after Cowan was put on the job in place of McKee about a year ago McKee still continued to perform some of the duties which he had previously performed, is that so? A Yes, sir; Mr. McKee has performed all the duties.

Q So that during this period covered by Ex. S. 3, both McKee and Cowan had charge of the jury box? A Well, I wouldn't say Mr. McKee really had charge of the jury box. He had no charge of the jury box, that was Mr. Cowan's particular duty.

Q McKee sometimes prepared warrants you say which you signed? A Mr. McKee—I have directed to do everything that I ever did. Take verdicts—everything—or not take verdicts—but swear witnesses, write my trial minutes, keep my minute book—

Q So that this removal of McKee which you say took place about a year ago only related to the matter of the jury box? A That is all.

Q So that with that exception McKee continued to perform all the duties which he had previously performed? A Oh, yes, sir.

Q And Cowan's work, being limited—Cowan's special work being in connection with the jury box and the jury slips in the box? A Yes, sir; special work. He did his usual duties in addition to that.

Q And had you delivered instructions to McKee to continue his work in connection with the jury box and jury slips? A I did.

Q Do you recall how many warrants, if any, McKee had drawn during the period covered by this inquiry? A I do not.

Q Do you recall that he drew any? A I cannot state any specific instance.

Q So you don't know whether he had drawn any or not, do you, Taylor? A I know that—I can't say—I know that I have told him—

Q During this period—to draw warrants? A Almost every day.

Q By almost every day did you refer to the days of actual payment or to consecutive days during the term? A I mean that daily men would be excused of jury duty—sometimes discharged—they would come there for pay warrants right then and there. Mr. McKee has made out the pay warrants and I would sign them. He has made them out almost daily,—he has made them out if I have been—

Q How many would you say in all he had prepared in that way for you during this period? A I wouldn't undertake to say. I don't know.

Q Would you approximate the number? A I could not.

Q I show you Exhibits S4, S5, S7, S8, S9, S11, S13, S14, S16, S12, S15, S17, S18, S19, S6, S10 and S20 and ask you if McKee made out any of those warrants? A No, sir; I could say he did not.

Q Is all of the ink writing on the exhibits just shown you in your handwriting? A Yes, sir; I think so.

Q Aren't you sure of it? A I say I think so.

Q Aren't you positive? A Yes, sir; I will say they are mine.

Q How much of the county's money have you handled between March 19th and May 18th? A I don't know just what you mean by that.

Q Didn't you testify on your direct examination that you had occasion to collect various amounts for the county, particularly from lawyers in the way of trial fees? A Yes, sir.

Q Just how much have you handled in that way or other ways of the county's money during that period? A I don't know; I never kept any books. Simply handled it and handed it over to the bookkeeper.

Q Can you say that that amount run into the hundreds or thousands of dollars? A Between these dates?

Q Yes. A It would not.

Q Would it run into the hundreds? A I don't know.

Q So that you can't fix the amount that you handled. You are sure it wouldn't run into the thousands though? A I know it would not.

Q Would it run into the hundreds? A I don't know that. I don't know. It would depend on who had credit and who didn't.

Q So that some lawyers have credit? A Yes, sir.

Q And you would take this money and turn it over to the bookkeeper in the county clerk's office? A Yes, sir.

Q You testified, I believe, that you were surprised on May 18th when notice of this indirect excusing of jurors was brought to your attention, did you not? A I did.

Q You had had no inkling of any kind prior to that that there was something wrong in this matter? A I had not.

Q No one had brought it to your attention in any way? A Absolutely not.

Q Cowan had said nothing to you about it? A Not one word.

Q No one else had said anything to you about it? A You were the first man that ever spoke to me about it.

Q Do you know Mollie Kreidel? A I do.

Q Your answer is— A No.

*Mr. Heisley.* You know her?

*Witness.* Oh, I know her, of course I do.

*Mr. Heisley.* You did?

*Witness.* I did know her.

Q She is a young lady who works in the county clerk's office, isn't she, Mr. Taylor? A She is.

Q How long have you known her? A Since she has been there. I don't know how long it is.

Q A number of years? A Yes, sir.

Q Didn't she come to you about two or three months ago and have a talk with you about this matter? A She did not. She has come to me repeatedly but not about such a matter.

Q Didn't she say to you in effect that Cowan had been to her and said there was something wrong about the payments being made to jurors? A Absolutely no.

Q And didn't she also say in effect that Cowan wanted to resign and get out of it? A She did not.

Q And didn't you say in effect to her, "Oh, it is only Cowan's beer talk." A I did not.

*Frank E. Taylor, re-direct.*

*Re-direct examination.*

Q Mr. Taylor you have been asked about three exhibits being warrants which you issued to the sheriff, one No. 24, to Mr. Briggs and one No. 22, I think it is, to Mr. Bender and one 25 to Mr. Appleton. Look at the record of the certificates to Briggs and see if on May 4th, the time that this certificate was delivered, your book showed that he had served ten days as specified in the certificate? A My book showed he had served ten days, yes, sir.

Q Take the case of Bender on May 4th and see if your book shows that at that date he had actually served ten days, Bender, May 4th? A By book shows he served ten days, yes, sir.

Q Take the case of Appleton, 18th of May? A It shows he served ten days.

Q Mr. Taylor, to take up the last part of the prosecutor's cross examination, when this Kreidel girl came to see you what was the conversation? A Miss Kreidel has spoken to me on numerous occasions—I say numerous—not a few occasions, after Mr. Cowan has been on one of his debauches. She was fearful of his losing his position and she has come and begged me to intercede for him.

Q Intercede with who? A With the under sheriff, so that he held his position. She never in her life made such a statement as the prosecutor has said.

Q Has she ever interceded with you in the presence of any of the officers? A Yes, sir; perhaps not within their hearing, but within their sight.

Q Have you the officer in mind? A No particular officer. She has come up in the corridor there and called me out of the court room.

*Frank E. Taylor, re-direct.*

Q Do you know why this young woman interceded for Cowan?

*Mr. Harrison.* I object as immaterial.

Q Do you know why?

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Do you know whether or not she was his wife or related to him in any way?

*Mr. Harrison.* Objected to as being immaterial.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Do you know whether she is a woman who had lived with him for some time?

*Mr. Harrison.* I object as immaterial, irrelevant, and further on the ground that it is leading.

*The Court.* The objection is sustained and the Court desires at this time to again renew its warning to the jury that the jury is to draw no inference whatever from any question that is asked—merely because of the

asking of the question, where it is not answered in some manner or other by the witness.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Did Miss Kreidel tell you what her—what was the interest or motive which prompted her in interceding with you?

*Mr. Harrison.* I object on the ground that it is immaterial and irrelevent.

*The Court.* Objection sustained. This is your witness.

*Mr. Heisley.* No, no. It is on cross examination of the things he brought out.

*The Court.* Are you cross examining Mr. Taylor?

*Mr. Heisley.* I am on this because it is something I did not bring out at all.

*The Court.* It was brought out simply as a foundation I suppose for the purpose of putting Miss Kreidel or somebody else on the stand to prove the statements and if that statement is then shown it is then your opportunity in sur-rebuttal to put in all the testimony you desire in relation to that contradictory statement. You do not have to touch it as the record now stands.

*Mr. Heisley.* Suppose she is not called.

*The Court.* Then Mr. Taylor's denial is left as it is.

*Mr. Heisley.* May I have an exception to your Honor's ruling.

*The Court.* Is there an open question on the record?

*Mr. Heisley.* You sustained the objection, I think.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

(Question read.)

*Mr. Harrison.* I would like to add the further objection that it is not proper redirect examination.

*Mr. Heisley.* If your Honor please, I desire to state upon the record my offer because I do not want to keep on asking questions when your Honor has ruled.

*The Court.* I think I understand the question. There is no difference between your idea of what ought to be done and the ruling of the Court except as to the matter of time. The Court has said that in its judgment when Mr. Taylor said that no such statement was ever made by him that that ends the matter for the present and it settles it for the jury that there wasn't any such statement. At this time there is no evidence that there ever was any such statement. Now, if the State at the proper time introduced evidence to show that there was such a statement, then you may have the fullest opportunity to meet that statement

and explain it or say anything you can in reference to it, but as the record now stands Mr. Taylor's denial is absolutely uncontradicted and is the fact in the case.

Q You said a while ago, Mr. Taylor, that you wanted to make a correction to some answer which you gave to his Honor's question yesterday? A Yes, sir.

Q Be good enough to make that explanation.

*The Court.* Is that about the delivery of the warrants?

*Witness.* Yes, sir. I want to state that where a juror did not appear in person for his warrant or it was not sent to the court room where he was sitting, it was given to the auditor. I would retain it a week or two and it was then sent to the auditor's office and if that juror then came in afterwards he would have to go to the auditor and get it and then take it to the sheriff and cash it. I neglected to add that to my answer yesterday.

Q You have been asked about your practice or the custom of giving jurors warrants to officers. What was your practice about that. State it as quickly as you can.

*Mr. Harrison.* He has gone over that in great detail.

*The Court.* You may answer the question.

*Witness.* The practice was on pay day to fill in the time of the jurors on the warrant.

Q I do not mean that, about delivering the warrants to officers? A It is part of my answer. If there were courts sitting in the various

rooms I would have to send those twelve warrants to that court room in the custody of the clerk by the officer.

Q By an officer? A Yes, sir.

Q The same kind of an officer as was Cowan? A Yes, sir.

Q What I am getting at, Mr. Taylor, is was there any difference in your practice of delivering these warrants to Cowan than there was in delivering them to other similar court attendants? A No difference whatever.

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

*Mr. Heisley.* May I have an exception?

*The Court.* Your objection only runs to the question, but the answer was simultaneous with the objection almost.

*Mr. Harrison.* I didn't really get an opportunity to get it in.

*The Court.* Do you move to strike out the answer?

*Mr. Harrison.* I do.

*The Court.* You may state what differences there were if any or similarities there were if any?

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Was there any reason why you should give Cowan any more of these warrants than there were for you giving those warrants to other court attendants that you know of?

*Mr. Harrison.* I object as not being proper re-direct examination and calling for the conclusion of the witness and being immaterial.

*The Court.* It is a denial on their part and it is proper to make it a leading question. It is a denial of the confederacy and alleged agreement of conspiracy. Just answer that.

A No reason.

Q Mr. Taylor, yesterday Mr. Hargan testified that he was present in court on the 3d day of May when you were calling the general panel of jurors and that you did not call the name of Helwig, a juror. Will you look at your book and see—no, do you know whether you did or did not call him on that day? A I don't know.

Q Why? A I can't tell certainly without seeing the book.

Q Look at the book and see whether you can find whether or not you did or should have called him. May 3d, Frank Helwig? A There has been a line erased. He has been excused. I naturally would not have called him.

Q Just explain.

*The Court.* Just tell us what you mean by that. Tell us why you say that there has been a line erased and you would not call him?

A I mean to say that there is trace of a horizontal line having been erased across the better part of the name Fred S. Helwig and if at the date, on the 3d of May—if that had not been erased I would have taken it for granted he was excused and would not have called him.

*Frank E. Taylor, re-direct.*

Q Look at the case of Mathews on May 18th and see whether that is in the same condition? A It is except that this one—well, there is a trace of a mark and it is one of those cases where the E has been erased. There has been an E there on the 18th.

Q If there had been an E there on the 18th would it have been your duty to call that name or not? A I would not have called it. If he had been present he would have called my attention to it and it would have been corrected.

Q What were you doing when Mr. Ducker came into your room on the 18th of May when they say that Cowan was standing near you and Mr. Ducker says you were writing—what were you doing?

*Mr. Harrison.* I think that has been covered in the direct examination.

A Why, I think I was just in the act of closing up my attorneys' form letters, sir, as we call them. I don't know whether I had just finished them—whether they were sealed or whether they were not. That is the job I had been working on, and he had been there it seems to me, but two seconds.

*By the Court.*

Q Where were the slips that were originally made for the jury box usually kept so far as you know from March 19th to May 18th? A I don't know.

Q Of those jurors who you understood to have been excused? A I don't know, once they left my possession to go to Mr. Cowan.

Q Did you ever see any? A I have seen some here in court. Some were picked up.

Q I mean during that period in your court-room? A I would have seen them naturally.

Q Where did you see them? A They would be handed to me—handed to Cowan and excused no doubt.

Q You handed over to Mr. Cowan the orders of Judge Osborne excusing jurors with the idea that those orders should be executed by taking the names of the jurors out of the box. Now, I ask you if those names which were taken out of the box were put in any particular place to your knowledge? A I don't know anything about the names, sir. I thought you were speaking of the slips from Judge Osborne.

Q I am not speaking of Judge Osborne's orders. I am speaking of the slips containing the names that are put in the jury box and which are drawn out by the sheriff from the jury box for the purpose of drawing a jury. Now, those names you say were taken out by Cowan at the time you learned that any particular juror was excused so that his name would not needlessly be called by the sheriff and waste time in the different courts calling the names of absentees, is that so? A Yes, sir.

Q Now, did you see those slips, where they were kept by Cowan? A I did not. I don't know where they were kept.

Q Did you see Cowan put the slips back again when the period of time when jurors were excused for had expired? A Well, I can't state that positively. He would take my book each morning and take off such as were excused for that day and presumably take those men out of the box. I have seen him at the box. I have seen him take names out and seen him put them

back, but just what he did with them other than that I cannot state.

Q Do you know where those slips were? A That is what I say, I do not.

Q How long did it take you to call the roll as a rule. You started at quarter to ten, did you? A Yes, sir; I should say four or five minutes. I don't know that. I know if I did not do it quickly Judge Osborne wanted to know why.

Q You did it as quickly as you could? A Yes, sir; so that he could feel—

Q What were your usual hours of work. From nine to four? A Yes, sir, but rarely left at four.

Q Did you appreciate—put it another way—did you bear in mind or have in mind in keeping this roll book S. 3 that it was a public record kept by you as the representative of the county clerk? A Yes, sir; I had that in mind and I trusted absolutely everybody with it.

Q I didn't ask you about anybody else. That is all.

*Further cross examination.*

Q I call your attention to the present—the vertical present mark opposite Mathews' name under date of May 18th and ask you if that is your mark? A I don't know; it may or may not be.

Q Is it uniform? A Is it what?

Q Isn't it uniform with all the other one's there? A All those one's are fairly uniform.

Q And aren't all those one's yours? A I don't want to say I made that one and I wouldn't say I did not make that one.

Q If you made it when did you make it? A If I made it I made it from information.

*The Court.* When?

*Witness.* I presume on that day. I don't know. It might have been marked excused and someone come in and reported him present and I might have erased it.

Q You may have erased the E that was there? A I may have erased that E on information. I don't know.

Q Not having called the name when would you have put the E there? A When anybody would have said he is there or something of that sort.

Q When? A Just as I say, if he had been there and I had not called him, if an officer came in and said he was there I would have taken that officer's word for it and erased the E and marked him present.

Q Do you recall the circumstance of any officer coming to you and saying Mr. Helwig was there that day? A This is not Helwig.

Q I beg pardon, Mathews? A No; I have no recollection of it.

Q Can you tell me whose E appears on there under date of May 18th? A No better than I have. It is just what I say—it is more than half erased.

Q Doesn't what you can see indicate to your mind that it is your E? A I wouldn't say that it is my E or any other E of the rest.

Q What is the E under date of the 21st, is that in your handwriting?

*Mr. Heisley.* Haven't you been all over that?

*Mr. Harrison.* No.

*Witness.* No, sir; I think, as I testified yesterday, there is something there that I would say is an E.

Q Referring to the Helwig entry under date of May 3d, can you tell whether that present vertical mark is yours?

*Mr. Heisley.* I submit if your Honor please—

*Mr. Harrison.* These questions were developed by the re-direct questions.

*Witness.* Yes, sir; I should say in Helwig's case, uniform with the rest of the markings there, the present marks.

Q And is that made over an erased E? A No, sir; made over an erased horizontal line.

Q And whose horizontal line is it? A I can't tell you that. Made in the usual way with the usual ruler, I should say.

Q Do you know when it was put there? A I do not, other than if it had been there and had not been erased I would have believed him to have been excused.

Q Why was the line put there in Helwig's case, that is, the wavy horizontal line? A As I told you, I would have believed him to have been excused if that line had appeared there.

*Re-direct examination.*

Q Did you have any particular pen with which you marked these wavy lines—made your lines and made your E's? A Yes, sir; I had a gold pen in an old cork penholder, short stubby cork penholder that was given to me by Mr. Wilson about ten years ago, and the holder itself is so disreputable that nobody knows it was a gold pen.

*The Court.* The answer is yes, is it?

*Witness.* Yes, sir.

Q Was that the only pen or was that the usual pen that you usually made your marks on this book with? A That was the usual pen I used for everything.

Q Still upstairs so far as you know? A I presume so. I left it there.

HOWARD MacSHERRY, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. MacSherry, you are a member of the bar? A Yes, sir.

Q And I believe you are the trial attorney of the Public Service Corporation? A Yes, sir.

Q And you have tried a great many cases in this court house? A I think so.

Q And also the old court house? A Yes, sir.

Q And how long have you known Mr. Taylor? A About fifteen years—sixteen years.

Q And what means have you had of becoming familiar with the extent of his duties as a court clerk? A Well, I have been, I might say, in almost daily attendance on the courts of this county every court day and I suppose that every day I was in court I would probably see Mr. Taylor from one to five and ten times a day.

Q And what would he generally be doing when you saw him?

*Mr. Harrison.* I do not wish to be captious about it, but there seems to me but

little doubt of what Mr. Taylor's duties were. It has been put in by two or three witnesses. It seems to me entirely unnecessary to go into it further.

*Mr. Heisley.* I want to show by this witness, whom I think the court knows and will take judicial notice of the fact is in court more than most any attorney in New Jersey, to show the practice. I do not want to suggest to Mr. MacSherry what I want him to testify to, but I want to show the practice and the custom of the people using this book—the officers using this book, and coming up to Mr. Taylor and jurors coming up and being excused and also additional duties which Mr. Taylor had to perform.

*The Court.* You cannot show any custom about that.

*Mr. Heisley.* I want to show what he did.

*The Court.* You can show what Mr. MacSherry observed during this period in question.

*Mr. Heisley.* Am I confined to this particular period?

*The Court.* Why certainly. That is the only period we are going to try. It was not a question of what was the custom, but the question is what happened on these days.

Q Mr. MacSherry, what did you see Mr. Taylor do generally during the period from March 19th to May 18th, 1917? A That is the April term?

Q Yes. A Beginning the first Tuesday of April?

Q Yes. A Well, I observed in that term what I had observed during—since Judge Cutler

opened this new court in this county—that Taylor left his usual post over in the Supreme Court room and came over there to coach evidently the new clerk in his duty in Judge Cutler's court and would remain there sometimes half to three-quarters of an hour at a stretch at the opening or just after the opening, I suppose, of his court, and then come back again, and that would happen three or four times a day.

Q And have you seen this jury book which was kept on Mr. Taylor's desk in the court room? A Well, I have seen a book similar in size and appearance. And I am quite certain that that is the book. Yes, sir; I can say I have.

Q Have you seen any other person than Mr. Taylor during this period at his desk, sitting in his chair, and using this book? A Numerous times.

Q Have you seen Cowan do it? A Yes, sir.

Q More than once? A Yes, sir.

Q Have you seen other officers do it? A Yes, sir.

Q Was or was not Mr. Taylor in your judgment a busy or not a busy man during the period which I have called your attention to?

*Mr. Harrison.* I object as calling for a conclusion.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Mr. MacSherry, do you know Judge Dungan's private chambers very well? A Very well.

Q You have often been in there? A Many, many times.

Q Will you tell the jury if you know what was the condition of quiet in that room during the period I have directed your attention to, whether it was a quiet room or a noisy room? A I can tell you.

Q What is it? A I thought it was a very open room—so open in fact and so given to interruptions that I would not take a witness, if I had occasion, in there for an interview.

Q You never did take your witnesses in there to interview them? A I generally take them in some dark and secluded place.

Q Not to be facetious, I am directing your attention to know whether it was a public room or whether it was a noisy room or a quiet room? A Very noisy room.

Q And from whence did the noise come?

*Mr. Harrison.* I object as being immaterial and incompetent.

*The Court.* What is the difference?

*Mr. Heisley.* Because the witness said yesterday that in that very room he and this man Cowan stood over by the window which faces on Market street and Springfield avenue and in a subdued tone of voice talked about this division of money and there divided the money while Taylor was over to the table facing the court room.

*The Court.* Why don't you ask Mr. MacSherry if he was there on May 18th?

*Mr. Heisley.* He was not there.

*The Court.* Were you present in Judge Dungan's private chambers on May 18th, Friday afternoon sometime between 12:30 and 1 o'clock?

*Witness.* I couldn't remember that. I couldn't say whether I was or not.

*Mr. Heisley.* Will your Honor pardon me? May I not show—of course I understand that it would be the very best thing I could prove if I could prove it, if such a thing occurred as this man said did occur—it isn't likely he had an outsider like Mr. MacSherry in there—isn't it competent for me to show that this room is interrupted by noise and many times you can't hear yourself speak unless you close the window; isn't that competent to show that that room is abnormally a noisy room as a general thing? Doesn't your Honor's criticism go to the weight of the evidence?

*The Court.* Not at all. I haven't heard any testimony here yet that the windows were closed or open. There isn't any evidence if it was a hot or cold day or whether it was raining or the sun was shining. Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Mr. MacSherry, during the fifteen years of your friendship with Mr. Taylor, have you by reason of your attendance here upon the Court

and other ways learned of his reputation for honesty and for the observance of law? A Yes, sir; inside the court and outside of it.

Q What is his reputation for honesty and the observance of the law? A Most excellent reputation.

Q Did you ever hear it questioned? A Never heard it questioned until this trouble.

Q Mr. MacSherry, are you subpoenaed here?

*The Court.* You cannot cross examine your own witness.

ARTHUR HORTEN, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Horten, your residence is in Montclair? A Montclair, yes, sir.

Q And you have been a county clerk of this county of Essex? A Yes, sir.

Q And during what year? A Well, 1902 to 1907 inclusive, I think. I wouldn't be sure about the exact years, but I think it was the fall of 1902 and my term expired the fall of 1907. To be exact I wouldn't be sure about that.

Q Was Frank Taylor a clerk in your office during the time of your long incumbency? A Yes, sir.

Q How long have you known Frank? A I beg pardon? I will have to say not at the outset. When I went there, of course. He was there soon afterwards.

Q You appointed him, did you? A Yes, sir.

Q Did you make any inquiry at any time prior to appointing him as to his general character for honesty and observance of law?

*Mr. Harrison.* I object.

*Witness.* Yes, sir.

*The Court.* Objection sustained. It is not proper to ask whether he made inquiry. The question is, does he know the reputation for honesty in the community in which he lives, and having laid the foundation, then you ask him whether it is good or not.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Mr. Horten, you have known Frank Taylor how long?

*Mr. Harrison.* I object as being immaterial.

*The Court.* That is a matter of identification, so as to be sure he knows this particular Taylor. You may answer that on the theory of identification.

*Witness.* I knew him several years before—several years in Montclair before I was elected county clerk.

Q And have you known him ever since? A Yes, sir.

Q And have you by reason of your acquaintanceship with him learned and become aware of what his reputation is for honesty and for observance of law in this community? Have you learned? A Yes, sir.

Q How have you learned, in what way?

*Mr. Harrison.* I object as being immaterial. It seems to me the point is whether he knows it and if he answers yes then the usual question is what is it.

*Mr. Heisley.* I want to show how he learned it.

*The Court.* This seems to the Court to be a proposition that is rather clear in the law. Evidence of the defendant's character cannot be shown except by showing his general reputation for the characteristic involved in the accusation, and I understand reputation to be the general opinion which the community holds with reference to the individual. A person might have a good reputation and bad character or good character and bad reputation. Now, if the witness says he knows the reputation of this defendant in the community in which he lives for honesty and observance of law you qualify him and it is not necessary to cross examine and ask him how he learned. He says he knows. The prosecutor may, if he wants to, demand to cross examine him on that question. I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Heisley.* So as to have the matter disposed of I would like to ask this witness, and I propose to prove in support of his general opinion that his reputation is such and such, that at the time of his employment

he took occasion to inquire, make a special inquiry as to what his reputation was and then I want to prove what he found out that his reputation was. In other words it strikes me that would be much more satisfactory—

*The Court.* That is as to the credibility of Mr. Horten's testimony.

*Mr. Heisley.* No, no.

*The Court.* Yes, it is. Mr. Horten says, "I know his reputation. There isn't any dispute about it."

*Mr. Heisley.* I would like to state on the record what my reason was to see then whether your Honor would qualify your judgment or whether you would adhere to it.

*The Court.* I thought you had stated your reason.

*Mr. Heisley.* I want to show by Mr. Horten, if I can, that he not only knows his reputation is good, but by actual inquiry made by him prior to the time and at the time of the appointment of Mr. Taylor as one of his lieutenants that he made inquiry among the neighbors and residents of the place in which Mr. Taylor then lived.

*The Court.* The only question that the defendant is allowed to prove is his good reputation, and in order to qualify Mr. Horten to say that his reputation is good it is only necessary to show that Mr. Horten knows it. Mr. Horten has sworn that he does know it. Whether he knows it better than some other witness or in another way is a question of the degree of credibility of his testimony.

*Mr. Heisley.* Your Honor will not permit such kind of evidence.

*The Court.* There isn't any open question. I have already ruled on it and given you an exception.

Q What is his reputation for honesty and the observance of the law in this community? A Very good. I never heard it questioned in any way, shape or form.

No Cross Examination.

JOHN B. WOOLSTON, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Woolston, you have been the county clerk of this county? A Yes, sir.

Q And during what period? A 1907 to 1912.

Q And during that time was or was not Mr. Taylor an employee in your office? A He was.

Q You succeeded Mr. Horten, did you not? A Yes, sir.

Q And how long have you known Mr. Taylor? A Well, I knew him three or four years before. I was elected county clerk, that was 1907—about 1903 or '04.

Q And have you known him continually from then down to the present time? A I have.

Q And do you know what his reputation is for honesty and for the observance of law in this community?

*Mr. Harrison.* I object.

*The Court.* Objection sustained. Ask him whether he knows his reputation.

Q Do you know his reputation for honesty and the observance of law in this community? Do you know it? Yes, or no? A Yes, sir.

Q What is it? A Very good.

Q Have you ever heard it questioned? A No.

*Cross examination* by Mr. Harrison.

Q Do you know where Mr. Taylor lives? A Montclair.

JOSIAH M. BALDWIN, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Baldwin, where do you live? A 654 Clinton avenue.

Q Where, Newark? A Newark.

Q How long have you known Mr. Taylor? A About ten or fifteen years.

Q Were you a juror here last April term? A Why, I was, about a month ago.

Q Were you here on the panel of May 7th? A I think I was.

Q Have you any doubt about it? A Why, I couldn't tell you just now. My name would be on the jury list for that time.

Q Do you recall it was early in May or not? A Yes, sir, it was.

Q And do you recollect of applying to anyone to be excused from jury duty during that time? A Yes, sir.

Q For how long a period did you ask to be excused? A Why, I wanted to get excused for the whole term.

Q What was your relations up there with Mr. Taylor during the years you have known

him, friendly or unfriendly? A Why, friendly.

*Mr. Harrison.* I object as immaterial.

*The Court.* I don't know that it is immaterial. It calls for a conclusion.

*Mr. Harrison.* And calling for a conclusion.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Did you ever have any trouble with Mr. Taylor?

*Mr. Harrison.* I object as immaterial.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Were you on friendly or unfriendly terms with Mr. Taylor any time when you were called for service on the jury of this county?

*Mr. Harrison.* Same objection.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same

is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q To whom did you apply to be excused as a juror? A Mr. Taylor.

Q Did he excuse you or not? A He said he could not.

Q Well, did he? A No, he did not.

Q What became of you as far as being excused? A He advised me to see Judge Osborne, who had charge of the excuses at that time.

Q Have you come here under subpoena or without subpoena? A Without subpoena.

*Cross examination* by Mr. Harrison.

Q You were requested to come by the defendant Taylor? A Requested to come here? No. I called Mr. Taylor up last night and asked him if I could do anything for him.

*By the Court.*

Q When was this? A When was what?

Q When was this? A What do you refer to?

Q You said you asked Mr. Taylor to excuse you and he told you to go to Judge Osborne, when was that? A That was about two or three days before the jury convened. My reason for going there was—

Q I didn't ask you anything else. I asked you when it was. A I should say—

Q Where was it? A It was in the Supreme Court room.

Q And what time was it? A That I couldn't remember, whether it was morning or afternoon.

Q Did Taylor say to you to go to Judge Osborne's chambers on the next Monday morning? A Yes, sir.

Q At ten o'clock? A Yes, sir.

Q Did he tell you to come back and answer roll call at quarter to ten first? A I answered roll call first and then went in there.

Q Did Taylor on this day, two or three days before the Monday that you were to serve, tell you to come in on Monday and answer roll call at quarter to ten? A I think he did.

DAVID H. SLAYBACK, sworn in behalf of defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Slayback, where do you live? A I live in Verona.

Q What official position do you hold up there? A I am the Mayor of Verona.

Q How long have you known, if you have known, Frank Taylor? A About thirty years.

Q And have you known him intimately or not? A Not specially intimately.

Q Have you learned and do you know of his reputation in the community in which he lives for honesty and the observance of law? A Yes, sir.

Q What is that reputation? A He has always borne a good reputation. This is the first time I have ever heard anything where he has been questioned.

No Cross Examination.

HENRY H. BIDDULPH, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Biddulph, where do you live, please? A Montclair.

Q How long have you lived there? You need not confess to your age. All your life? A About forty years.

Q Have you ever held any official position in Montclair? A Yes, sir.

Q What? A Postmaster.

Q How long were you postmaster? A Eight years.

Q And how long have you known Frank Taylor? A About twenty-five.

Q Have you known him intimately? A Very.

Q Have you learned during those twenty-five years what Frank Taylor's reputation is in the community for honesty and for the observance of law? A I have.

Q What is it? A Excellent.

Q Have you ever heard it questioned in any way? A Never.

HOMER D. SMITH, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q What is your occupation? A I am a court attendant.

Q To what court room are you assigned? A Supreme Court room, Essex County.

Q You are also, I think, a member of the bar of New Jersey? A I am, yes, sir.

Q Are you in the employ of the sheriff? A I am.

Q That is to say you were selected by the sheriff as court attendant? A Yes, sir.

Q How long have you been such attendant? A Since September term last year.

Q This, I understand, has been in the room where Mr. Taylor was? A It is.

Q Have you seen this book, S. 3, I think it is, the jury list? A Daily.

Q And where was this book generally kept? A Kept in Mr. Taylor's desk in the lower compartment.

Q Have you seen anybody use this book? Who have you seen use this book during the time you have been court attendant? A Mr. Taylor, Mr. McKee, Cowan, I have used it myself, and I believe that is all I have seen personally use it.

Q Do you recall whether or not Taylor had any particular kind of pen that he used? A He did.

Q What was the pen? A A cork holder with a fountain pen point in it. A very heavy marking pen.

Q What kind of material, if you know, was the pen itself made of? A 14-karat gold point.

Q Did you ever see anybody use that pen there besides Taylor? A I can't say that I have seen anybody use it. I used it myself personally, always sitting at the desk—it was the only pen available on his desk.

Q Used it on his book? A Oh, yes.

Q Now, do you know whether or not during the period beginning March 19th and ending May 18th, 1917, you have ever seen Mr. Taylor send any jurors with any of the court attendants to any of the judges for the purpose of being

excused? Do you know whether you have seen that?

*Mr. Harrison.* Objected to as leading.

*Witness.* Oh, yes.

*The Court.* Do not answer when there is an objection. Let him state what he saw.

Q What have you seen done as to jurors being sent by direction of Mr. Taylor with a court attendant to some other Judge's room for the purpose of being excused or dealt with?

*Mr. Harrison.* I renew the objection.

*The Court.* Objection sustained.

*Mr. Heisley.* Would your Honor suggest the question I should ask?

*The Court.* I should think that you would be prepared to understand the nature of the objection at this time. What did you see Mr. Taylor do, if anything, in reference to jurors who desired to be excused?

*Witness.* On every occasion when I have been present and a juror has approached Mr. Taylor concerning the question of excuse he has always directed them to go to Judge Osborne and present their pleas to be excused and he has asked me to take them in many, many times—direct them into Judge Osborne's room to see the Judge personally.

Q Have you seen other officers asked to do the same duty? A Yes, sir; Mr. McLoughlin used to take care of that almost invariably.

*Cross examination* by Mr. Harrison.

Q I call your attention to Ex. S. 3 and ask you to examine the letter E's which appear there and ask you if you made any of those E's? A I have never made an E in this book.

*The Court.* Referring to ink E's?

*Witness.* Either in ink or pencil.

Q Did you ever make any erasures in this book, Ex. S. 3? A I have never made an erasure, no, sir.

Q For what purpose did you use Taylor's pen on this book, referring to Ex. S. 3? A To mark tardy jurors present when they arrived, and—under Taylor's direction, he would be busy on something else.

Q On how many occasions between March 19th and May 18th did you use Taylor's pen? A I couldn't state specifically how many times. On numerous occasions.

Q Can you approximate the number? A I am afraid I could not. I used to use it for other purposes also.

Q Would it run into the dozens, hundreds or thousands? A Oh, it would run into the dozen times.

Q Several dozen times? A Yes, sir.

Q And was it only used for marking the vertical diagonal lines indicating the presence of jurors? A Mr. Taylor used it—

Q Was it only used by you for the purpose of marking the vertical diagonal lines? A No, sir; I have written personal checks, also inserted the names.

*The Court.* We are talking about the book.

*Witness.* In the book, no, for no other purpose except for marking jurors present.

*The Court.* Tardy jurors present?

*Witness.* Tardy jurors present.

*The Court.* Any other class of jurors?

*Witness.* On one occasion I marked the entire panel you had here and excused until about twenty minutes to eleven on account of pleas.

*The Court.* The morning when persons indicted were called upon to plead?

*Witness.* Yes, sir; and the list was sent up and I entered the entire twelve.

Q And before placing these vertical marks to indicate the presence of jurors did you ever rub out any other marks? A I never have.

Q So that your marks were always placed in blank spaces? A They were.

*The Court.* Were they in ink or in pencil?

*Witness.* They were in ink.

Q Did you ever receive any jurors' pay warrants from Taylor for delivery to jurors? A Personally I have not.

*Mr. Heisley.* I object as not proper cross examination.

*The Court.* Objection sustained, but I will let the prosecutor make the witness his own for this question and therefore the question will be asked as if the witness were called by you in rebuttal.

*Mr. Harrison.* I so request your Honor while the officer is on the stand.

*The Court.* This is your witness for that purpose.

*The Court.* I never did, is that the answer?

*Witness.* That is, I have asked for a warrant? I wish to qualify my statement. I do not quite get your question. I have received vouchers from Mr. Taylor for delivery to other courts where there would be a hold-over jury or something of that nature, and I have often handed—been messenger boy between Mr. Taylor and the jurors in his presence, or in some other court room; but to ask personally for any one whom I was acquainted with on the jury, I never have.

Q You have seen Taylor, McKee, Cowan and yourself go with jurors to Judge Osborne's chamber in the matter of excuses, as I understood you to say? A No; my answer to that was Mr. McLoughlin usually took them in; he was there for that purpose; he reported each day the number of jurors present and those absent—the number of those who were absent.

Q Could you say just what marks McKee had made in the jury list except Ex. S. 3? A I said nothing about McKee's entries, except that he would call the roll at times.

Q You never saw him mark the books? A Mr. McKee?

Q Yes. A Oh, yes.

Q And what kind of marks did he put in the book? A Similar marks, the diagonal marks across the page, marked present.

Q How many times? A Well, he marked it practically daily.

Q McKee would mark the book daily? A McKee; yes, sir; he was the assistant clerk; he acted in that capacity.

*Homer D. Smith, cross.*

Q That is between these dates? A Oh, yes, sir; he always occupied that position.

Q And McKee had charge of the jury slips, too? A That I couldn't say positively, but they were in the desk and he had full access to everything in Mr. Taylor's possession.

*The Court.* The jury slips were?

*Witness.* The jury slips, the vouchers, anything that came to Mr. Taylor he had full possession of and knowledge of the marking of it.

Q And they were in Taylor's desk, too? A I believe he kept them in his desk.

*By the Court.*

Q As I understood your answer you said that Taylor put warrants for jurors' pay in your hands some time to be delivered to other court-rooms for the jurors who were then engaged there and sometimes to give out to jurors there in his presence. What did you mean by "there in his presence"? Did you ever take any warrants out of his sight? A Not that I can recall. I merely mentioned that as—I would be delivering them in the court room to men sitting there.

Q That is, who would stand up in the court-room? A Yes, sir. I was merely a messenger.

Q And you would hand the warrant over to the juror? A Yes, sir.

Q When you took these warrants into other court rooms was the delivery to jurors that were held there later than the usual time? A That was the idea, and deliver them to the clerk of that particular court.

*Homer D. Smith, re-direct.*

Q Did you ever take any other number of warrants than twelve? A I did not.

Q Did you ever take seven or six or three or two? A I have never done so. The entire panel.

*Re-direct examination.*

Q Mr. Smith, do you recollect whether when Mr. Taylor used to call the jury roll in the morning, whether the general panel would remain seated or stand up? A They would remain seated.

Q Since this indictment has been found do you know whether when the jury is called there they remain seated or standing?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*The Court.* It doesn't make any difference what they do now.

*Mr. Heisley.* May I have an exception to your Honor's remark that it makes no difference?

*The Court.* Why, certainly.

Defendant's counsel prays an exception to this ruling of the court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

DR. WALTER S. WASHINGTON, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Doctor, you are a practicing physician in this city? A I am.

Q How long have you been such? A A little over forty-one years.

Q And you have, I think, frequently appeared in the courts of this county? A Yes, sir.

Q As witness? A Yes, sir.

Q Called as expert often? A Yes, sir; sometimes.

Q When did you first get acquainted with Frank Taylor? A I don't remember exactly.

Q Have you seen him often or not? A In the last few years, since he has been clerk of the court, I have seen him very frequently.

Q During those years have you learned what his reputation is for honesty and for the observance of law in this community?

*The Court.* Yes or no, doctor.

A Well, I don't think I can answer that either yes or no. I would have to say no.

*The Court.* Then explain. Go on and answer.

*Witness.* I would say no. I think that would be the fair way. If I am allowed to explain afterwards—

*The Court.* There is no objection.

*Witness.* I had no special knowledge as to whether he was honest or not except his general reputation.

Q That is what I am speaking about? A Yes, sir; I know his general reputation as to being an honest, upright, obliging and capable.

*The Court.* Do you know his general reputation for honesty?

*Witness.* Yes, sir.

Q What is his reputation for honesty and the observance of law in this community? A Good.

Q Have you ever heard it questioned? A Never a moment.

No Cross Examination.

GEORGE H. MURDOCK, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q What is your occupation, please? A Writer and publisher.

Q Where do you live? A Red Bank, New Jersey.

Q And how long did you live in Newark before you moved to Red Bank? A Seven years.

Q When did you cease residing in Newark? A About two weeks ago.

Q What was your occupation while you lived in Newark? A Part of the time I was connected with the newspapers.

Q Which newspaper was that? A Newark Evening News.

Q What else? A About five years I was secretary and treasurer of the Fire Insurance Society of Newark.

Q Anything else? A Now I am in business for myself.

Q Well, during the years in which you were connected with the Evening News were you frequently in the courts of this county? A I

was assigned to the court house for two years--a period of two years.

Q Did you become familiar with Frank Taylor during those two years? A Very well acquainted with him.

Q What has been the degree of your familiarity with him since those two years? A Very close.

Q Well, how frequently did you see him? A I think at least on an average of once a month.

Q Well, are your families on social terms?

*Mr. Harrison.* I object.

*The Court.* Is there any question about the identity of the person he is going to testify about?

*Mr. Harrison.* None at all.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q Have you visited him at his home in Montclair?

*Mr. Harrison.* I object as immaterial.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*John H. Scott, direct.*

Q Have you learned by reason of your acquaintanceship with him what his reputation for honesty and the observance of the law is? A I have.

Q What is it? A Exceptionally good.

Q Have you ever heard it questioned? A Never until this case.

No Cross Examination.

JOHN H. SCOTT, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Scott, where do you reside? A Montclair.

Q What is your occupation? A Why, I am manager.

Q Manager of what? A Standard Bitulithic Company, Warren Brothers, road builders and contractors.

Q You said Standard Bitulithic, didn't you? A Yes, sir.

Q They are engaged in building roads? A Yes, sir.

Q How near to Mr. Taylor do you live? A Why, I should judge a mile or more.

Q Do you hold any official position up there? A Not at the present time.

Q Have you held any official position in this county? A I have, at present, in the county.

Q And do at the present time? A Yes, sir.

Q What is that? A Member of the County Board of Elections.

Q How long have you known Mr. Taylor? A I should say twenty-five years.

Q Have you during these twenty-five years learned and do you now know what his reputa-

tion is in that community—the community in which he lives, for honesty and for observance of law? A Excellent.

*The Court.* Do you know, first? Answer that, yes or no.

*Wtness.* Yes, sir.

Q What is his reputation? A The very best.

*Cross examination* by Mr. Harrison.

Q You are a candidate for county clerk, aren't you, Mr. Scott, Republican ticket?

*Mr. Heisley.* I object. I do not see what difference that makes.

*The Court.* I do not quite see, either.

*Mr. Harrison.* I withdraw the question.

WILLIAM FERRIS, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Where do you live? A Montclair.

Q How near to Frank Taylor? A Next door.

Q How long have you known him? A Between seven and eight years.

Q Do you know what his reputation is in that community for honesty and the observance of law? A I do.

Q What is it? A Of the best.

No Cross Examination.

MICHAEL J. WHELAN, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Whelan, you are one of the court attendants? A I am.

Q How long have you been in that position? A Fourteen years last April.

Q And you have generally been assigned to the Supreme Court room? A Always.

Q And, of course, you know Mr. Taylor? A Very well.

Q And you know this jury book when you see it? A I know the jury book; yes, sir.

Q Where was it usually kept? A In Mr. Taylor's desk.

Q In the daytime, where was it? A In the desk.

Q In it or on it? A Well, sometimes on it and sometimes inside in the lower part.

Q Have you or not seen any other person occupying Mr. Taylor's desk when court was in session? A I have.

Q Who? A I have seen Mr. McKee; I have occupied it myself sometimes.

Q Who else have you seen? A I have seen Mr. Homer Smith.

*The Court.* Answer the question only with reference to, say, the 1st of October, 1916, down to the present time—18th of May.

Q From last October down to the middle of May who else have you seen?

*The Court.* You have seen McKee in that time and about yourself, have you been there in that time?

*Witness.* I have been.

Q Homer Smith, he said, who else? A And myself.

Q Yes; who else? A I have seen nearly all the officers sitting there.

Q How about Cowan? A I have seen Cowan sitting there.

Q Who would generally administer the oath to the witnesses who were called in the trial then pending in that court? A The crier.

*The Court.* That is Mr. Picot?

*Witness.* Picot.

Q Have you ever seen anybody mark in this jury book besides Mr. Taylor? A I saw Mr. McKee; I saw Mr. Picot.

Q Anybody else? A No, sir.

*The Court.* Did you ever mark in it?

*Witness.* No, sir.

*The Court.* When you said you occupied Taylor's desk, you mean you just simply sat there? Didn't you do anything.

*Witness.* Well, if Mr. McKee or Mr. Taylor was not there when the witnesses was sworn I would mark the witnesses' names on the pad that was there.

*The Court.* I mean with reference to the roll book. Did you ever do anything with that?

*Witness.* No, sir; never marked it.

*The Court.* You have seen McKee and Picot write in that book, put some marks in or something in?

*Witness.* Roll call in the morning.

Q Have you ever seen Cowan use this book? A No; I never did.

Q I mean for the purpose of getting a list of jurors who were excused? A No; I never did.

*Cross examination* by Mr. Harrison.

Q Do you know what marking Mr. McKee put in the book? A Mark a man present, one mark in a little square.

Q Just the vertical mark in reply to answers at roll call? A Yes, sir.

Q And that was the only time you ever saw him make markings in the book? A Yes, sir.

Q And how frequently have you seen him do that between March 19th and May 18th, 1917? A Quite frequently.

Q And who usually called the roll in the morning? A Why, Judge Dungan would come—

Q No. I think you can answer that without explanation? A Well, Mr. Taylor and Mr. McKee—

Q Can't you say which one did it more often than the other? A Well, I think Mr. McKee did it more often than Mr. Taylor.

Q You would say in that period that Mr. McKee—that is the period between March 19th and May 18th—Mr. McKee called the roll more frequently than Mr. Taylor? A I should say so.

Q What kind of marks did you see Picot put in the book? A Well, the same kind. Marked a man present; if he answered the roll call, he would mark him present.

Q Who called the roll? A Why, Mr. Picot called the roll.

Q So Picot sometimes called the roll? A Picot.

Q And it was while Picot was calling the roll that you saw him using these marks to indicate the presence of jurors? A Yes, sir.

Q And did Picot call it more frequently than McKee? A Picot, I only remember about two or three times.

Q You remember Picot calling it two or three times during that period? A Yes, sir; not during that period. I don't quite recollect whether he called that period or not, but I remember two or three times him calling since he has been there in the court room.

Q Picot has been there how long? A I think it is two years this summer, I think.

Q So he done it two or three times during those two years? A Yes, sir.

Q And you don't know whether he has done it within the period covered by March 19th and May 18th? A I do not.

Q So that during that period the only persons whom you are sure of marked in the book are Taylor and McKee? A Yes, sir.

Q Do you know who made the marks in the book after roll call? A After the juror would come in late? Well, sometimes Mr. Taylor, sometimes Mr. McKee.

Q Did you see Mr. McKee make other marks? A I saw him while he was there during the time of roll call.

Q But only these vertical marks that would indicate the presence of jurors? A Yes, sir.

RECESS.

*Lloyd H. McKee, direct.*

JOSEPH McDONOUGH, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. McDonough, you are the county clerk of this county? A I am.

Q How long have you known Frank Taylor? A Well, intimately about five years. It is about five years—just five years I should say.

Q Did you know him before that? A By reputation.

Q By reputation. Now, then, he, of course, has been an officer in your office, hasn't he? A He has.

Q And have you during those five years learned so that you now know what his reputation is for honesty and for the observance of law, yes or no? A I have always known him to be very good.

*The Court.* Yes or no first.

*Witness.* Yes, sir.

Q What is his reputation? A It has always been very good, to the best of my knowledge.

Q Have you ever heard it questioned until this accusation came up? A No.

No Cross Examination.

LLOYD H. McKEE, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. McKee, you are one of the attendants, aren't you, of the county? A Yes, sir.

Q How long have you been connected with the courts? A Twenty-five years.

Q How long have you known Mr. Taylor? A Fifteen years, when he first come in the office.

Q And down to a certain time, I believe, you had charge of, or were assigned to the duty of taking the names of jurors out of the jury box? A To the present day?

Q No; I said down to a certain time. A Oh, to a certain time, yes, sir.

Q And have you ever seen this jury list S. 3? Who used to call the roll of jurors in the morning in the Supreme Court? A Mr. Taylor.

*The Court.* Fix the time.

Q Say from last October down to any time during the period extending from last October to May 18th, 1917? A Mr. Taylor.

*Mr. Harrison.* The book is only in evidence for a period from March 19th to May 18th. Isn't it proper to limit that question, if it refers to the book, to that period?

*Mr. Heisley.* I think not. This fraud is said to have been perpetrated during all those months. We claim one of the means of the fraud is this book. I want to know what has been done with that book during that time.

*The Court.* I agree with the statement of the prosecutor, but I still think it may have some bearing to show custom throughout that period.

*Mr. Harrison.* Objection withdrawn.

A Mr. Taylor, George Joerschke, Mr. Picot and myself.

Q Now, during that time who have you seen occupying the chair at Mr. Taylor's desk in the

Supreme court room on different occasions? A Myself.

Q Yes, who else? A At different occasions?

Q On different occasions? A Oh, after roll call one of the officers would come up and mark some jurors present.

Q Have you seen that done? A Yes, sir.

Q Many times? A Many times. After every roll call mostly always one or two late.

Q Have you done it? A Yes, sir.

Q Have you seen Cowan do it? A I don't know whether I have or not. I think I have. They have all marked them, every officer in the room.

*The Court.* Have you seen Cowan do it?

*Witness.* No; I can't say that I have personally seen him do it.

Q Have you ever seen Cowan sitting at the desk? A Yes, sir.

Q Where this book was? A Yes, sir.

Q And when the book was on the desk? A Yes, sir.

Q Have you ever seen Cowan taking the excuses off of this jury book? A Yes, sir.

Q More than once? A Yes, sir.

Q During that time? A Yes, sir.

*The Court.* You mean taking the excuses off—erasing the E's?

*Mr. Heisley.* No.

*The Court.* You mean listing the orders of Judge Osborne?

*Witness.* I have seen Mr. Cowan take that book where he had the list of excuses and get the excuses off the book and take the names out of the box. I do not mean erasing anything.

*Mr. Heisley.* No; I do not mean that.

Q Mr. McKee, did you ever see any pasteboard box on that desk or any upper lefthand drawer in that desk that had any jury slips with jurors names on? A No.

Q Do you know whether or not that upper left-hand drawer of the desk was always locked or unlocked? A Always locked.

Q Who had the key to it? A Mr. Taylor.

*Cross examination* by Mr. Harrison.

Q Do you know whether the drawer in the table in the northwest corner of the Supreme Court room was locked or unlocked? A No. Cowan had the key to that.

Q Was it locked or unlocked? A After he got there—it used to always be open. I used to put always the jury slips in that and Mr. Cowan got there and he had it locked.

Q You used to put the excuses? A All the excuses and letters from the Judges I used to keep and kept there.

Q In the drawer of the table in the northwest corner of the room? A Yes, sir.

Q The table has frequently been identified as the table at which the reporters used to sit? A Yes, sir; first little table on the right.

Q As you go to the right as you enter from the ante-room? A Yes, sir; we call that Mr. Oughletree's desk.

Q How often have you heard Joerschke call the roll between March 19th and—

*The Court.* You mean Joerschke?

*Mr. Heisley.* Yes. He gave me the name of Joersche, Picot and himself.

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*Witness.* Mr. Joersche called it one day in the winter, I think, when Mr. Taylor was home sick. That is all.

Q Can you say that was after March of this year? A No, that was a year ago pretty near. Oh, no.

Q How often have you heard Picot call the jury roll in the morning between March 19th and May 18th? A Why, not over two or three times. The last time he called the roll I left my glasses home and he done it for me.

Q Can you fix the days when he called the roll? A No, I could not. I couldn't fix it when I called it myself.

Q How many times have you called the roll between those two days? A What day is that?

Q Between March 19th and May 18th, 1917. A I only called it the time Mr. Taylor was home sick? I don't know what day that was. I haven't called the roll since March, I don't think.

Q That was in the early part of March, wasn't it? A I don't know the time. Mr. Taylor was home sick for two or three days and I called the roll.

Q You called the roll but once? A No, I called it all the time Mr. Taylor was home sick. I don't know how long he was home sick; four or five days or a week.

Q Those are the only times you have called the roll between the dates mentioned? A That is all.

*The Court.* Was it one of those times that you say Picot called it for you?

*Witness.* No. I think—let's see, Judge—I think that was before, if my memory was right, calling in Mr. Picot to help me.

*The Court.* We want your best memory as to how many times Picot called the roll between March 19th, that is a couple of weeks before the opening of this April term, and May 18th?

*Witness.* I don't think Mr. Picot called the roll since that time. I think it was before that time.

Q Your best recollection is that Picot hasn't called the roll of jurors since the early part of March? A I am pretty sure he has not.

Q Who has called the roll at other times? A Mr. Taylor.

Q You said you had charge of the names to a certain time—up to what certain time? A A year ago last April, when Judge Cutler was appointed I went over to his court as clerk and stayed there in that court until the following September and the September term, of course, opened and I went back to my room and Mr. Taylor said he had assigned Mr. Cowan to that position simply because I had too much to do. A year.

Q Did he give any other reason? A He said that I had too much to do and Mr. Cowan had some time and he would let him do it.

Q Did he allege it was because of your nervousness? A I don't know that he did. No; I never heard that before until I heard it this morning.

Q How many times during the period mentioned, from March 19th to May 18th have you marked late jurors present? A Oh, maybe three or four times in all. There is so many people around there, the court crier, after roll call Mr. Taylor would be called in the other room, they

would step up and do it. I don't think I done it over one or two times—one or two names.

Q When you say two or three times you want us to understand, Mr. McKee, you mean two or three separate markings or two or three days? A Two or three different days.

Q So that on two or three different days during that period you had charge of marking late jurors present? A Nobody had charge of it. He would—Judge Dungan would send for him and he would say "mark up absent jurors." There was always two or three or four late jurors—one or the other of the officers would do it, sometimes Picot, sometimes different officers, sometimes myself.

Q Do you know how many times the other officers have done that? A They have done it many times; done it a lot of times.

Q Done it a lot of times? A Yes, sir.

Q Between the dates mentioned? A Yes, sir.

Q Under whose instructions would they do it? A I don't know—under Mr. Taylor's. Late juror would come up there saying, "I am a little bit late this morning," and the officer would say, "What is your name?" He would mark him. Mr. Taylor would make a little bit of a dot, and then finish out the line, one.

Q So that those markings were made by these other officers in places where they had observed dots previously made by Taylor? A Little dots. Finish the line out to show that the man had responded.

Q Did you ever make any erasures in Ex. S. 3? A No. Oh, I have called the roll, made two or three little spots calling the roll, erased that little blot out.

Q Did you ever erase the letter E? A No; never.

Q Did you ever erase the horizontal wavy line? A No.

Q Did you ever make any pencil E in Ex. S. 3? A No.

Q Did you ever see any of the others make pencil E's in Ex. S. 3? A No, nobody done that except—marked those except Mr. Taylor and I. I have marked some excuses coming in from the Judge in the morning—marked that so that they could take the names out of the box, so that they would not be called—few times.

Q Where would you mark them? A Opposite the date that the Judge had excused them for.

Q How would you mark them? A Sometimes with a little bit of an E.

Q In pencil or ink? A Ink.

Q Can you identify in this book the marks which you made of any E? A I don't know. I made a good many of them.

Q (Showing witness Ex. S. 3—strike the question out, please—.) How many times during the period in question have you placed pencil E's under the names of jurors? A I do not see any of my E's here at all. I do not see any of my E's there. None at all.

*The Court.* When you say "there," what have you seen? You have just examined all of the jury lists from March 19th, 1917, to May 18th, 1917?

*Mr. Heisley.* It is May the 21st. This says. I don't know when he started.

*The Court.* That includes the jury panel which left on the 18th of May. Does that in-

clude the jury panel that left on the 18th of May?

*Witness.* Yes.

Q Did you ever see any of the other court officers erase ink or pencil E's before the placing of vertical marks? A No, sir.

Q Did you ever see any of the other court officers erase ink or pencil E's? A No.

Q Or the wavy horizontal lines found in places in that book? A I did not.

*The Court.* To whom did you refer by other court officers, name them, who have marked present marks in the book from March 19th to May 18th?

A Well, you mean the late jurors coming in, your Honor?

Q Yes. A McLoughlin, Mr. Smith, Mr. Picot and myself.

*Further cross examination.*

Q Mr. McKee, have you ever delivered warrants for payments to jurors during the period mentioned?

*Mr. Harrison.* I will make him my witness for this purpose.

*Mr. Heisley.* I do not object to it.

A If notice comes in from the Judge that the juror was excused for the term, Mr. Taylor says, "Give the juror his voucher;" I would put in the number of days and Mr. Taylor would sign the County Clerk's and his name and give it to him.

Q That is at the conclusion of service? A No, not the conclusion of service; first week;

second week. I may have given it the last day of the term too.

Q Do you remember any specific case when you did during this period? A No.

LEON L. PICOT, sworn on the part of the defendant.

*Direct examination* by Mr. Heisley.

Q Mr. Picot, I believe you are a member of the bar, but not practicing your profession, is that right? A That is correct.

Q And you hold at the present time the position or office of court crier in the Supreme Court chambers, is that right? A Yes, sir.

Q How long have you held that position? A Three years last month. It is a little over three years.

Q And are you generally in the Supreme Court room? A Yes, sir.

Q Are you familiar with this Ex. S. 3, the jury list? A Yes, sir.

Q And you have seen it in the court room there I suppose? A Yes, sir, on Mr. Taylor's desk. In Mr. Taylor's desk or in the little compartment on the right of the desk.

Q Was it locked or unlocked? A Unlocked.

Q Left there day and night? A As far as I know. Daytimes anyway.

Q And who have you seen between March 19th and May 18th of this year use that book for any purpose, writing in it or any other purpose? A What are the dates, Judge?

Q Between March 19th and May 18th of this year; that is during the April term? A Why, at roll call, Mr. Taylor would call the roll and Mr. McKee, during those dates; and I have seen

Mr. Smith mark a late juror, and I think that I have myself, upon calling Mr. Taylor's attention to the fact that a juror had reported, he says, "All right, mark it up," and I have marked it.

Q Have you seen any other person—any person other than Mr. Taylor while court was in session occupying his chair at the table? A Yes, sir; Mr. McKee would occupy that chair, and if Mr. McKee were out and I swore a witness I would come over and enter the name in the minutes and sit at that desk.

*The Court.* You mean write it on a blotter?

*Witness.* Write it right in the minute book.

*The Court.* On a pad?

*Witness.* No, sir; in the minute book itself.

*The Court.* The minute book yourself, in your own handwriting?

*Witness.* My own handwriting.

*The Court.* You mean the official minute book of the Essex county circuit court?

*Witness.* Yes, sir; the court record.

Q Did you write it in the book that Mr. Taylor usually wrote those names in on the desk? A Yes, sir.

Q Have you ever seen Cowan at this desk? A Yes, sir.

Q What have you seen him doing there? A Sitting there looking at the roll call book.

Q At this jury list? A Yes, sir.

Q Now, Mr. Picot, you know there is a left-hand upper drawer in that desk, I suppose, don't you? A Yes, sir.

Q Have you ever seen that desk when it was open? A Very seldom. It is usually locked.

Q Have you seen it open? A I have seen it open, yes, sir.

Q Did you ever see in that drawer or in any other place on that desk any little pasteboard box with jurors names on the slips in that box? A No.

Q Do you know the little table over by the door that leads in from the lobby to the bar of the court, don't you? A Yes, sir.

Q Whose table is that? A That was my table.

Q Your table? Well, now, do you know whether anybody else other than yourself has been using it this spring? A Yes, sir.

Q Who? A Mr. Cowan.

Q Was there a drawer to that table? A Yes, sir.

Q Was there a lock and key to that drawer? A There was a key which I had which I never had used.

Q Yes. Now, I do not want to lead you but what became of the key if you know? A I don't know.

Q Did you ever have any conversation with Cowan about it? A Yes, sir; Mr. Cowan asked me if he could use that little drawer to put his jurors excuses in and I said "why, certainly." He says, "Well, you have a key, haven't you"; I said, "I haven't it with me, I will look when I get home," and I looked for it and I couldn't find it, so Cowan had one made and used the key that he had made.

Q Do you know of any other person this spring that has used that drawer except this man Cowan? A No.

*Leon L. Picot, cross.*

Q Have you ever seen jurors—a juror sent with an officer from that court room to any other court room in this building? A Yes, sir; I heard Mr. Taylor send officers to Judge Martin or Judge Osborne with jurors who desired to be excused.

*The Court.* This includes the period since before I was acting?

*Witness.* Yes, sir.

*The Court.* That includes, too, Judge Osborne after?

*Witness.* Yes, sir.

Q Where was the jury box kept which has the slips in with the jurors' names? A Well, the jury box will be kept in the last court where the jury was drawn.

Q No regular place for it, eh? A No regular place for it.

*Cross examination* by Mr. Harrison.

Q How many times have you called the roll of jurors since March 19th? A I don't believe I called the roll since March 19th.

Q How many times have you heard McKee call it? A Well, I was home the greater part of April sick, so I can't say very much about it.

Q Have you heard McKee call it at all since? A Oh, yes; McKee has called the roll.

Q How many times? A I dare say several.

Q Three or four? A At least that many.

Q Did you ever hear anybody else call it? A During that period?

Q Yes. A No.

Q Can you fix the date when he called it—when McKee called the roll? A I cannot.

*Leon L. Picot, cross.*

Q So that at all other times during this period except the time it was called by McKee, Taylor called the jury list? A Yes, sir; to my knowledge, but I was home at least fourteen days in April, part of the time early part of April and latter part of April.

Q How many times have you marked late jurors present during this period? A Perhaps once or twice.

Q How many times have you seen McKee mark late jurors present during this period? A Well, I can't say, but he would mark late juror present the days he would call the roll, when he was at the desk.

Q So that could only have been then at least the three or four times that you refer to? A Yes, sir; that I know of.

Q Did you ever make any erasures in this book? A No, sir.

Q Did you ever see anybody else make any erasures? A No. I have heard Mr. Taylor comment—

*The Court.* Did you ever see anybody else?

*Witness.* I have seen him erase ink blots in the book.

*The Court.* Who?

*Witness.* Mr. Taylor.

Q Did you ever see anybody else do it? A No, sir.

Q Did you ever see Mr. Taylor erase E's in the book? A No, sir.

Q Did you ever see anybody erase wavy horizontal lines? A No, sir.

Q During this period, of course? A No.

Q I show you Ex. S. 3, being the jury record of attendance from March 19th to May

18th, and ask you if any of the letter E's there found are in your handwriting? A There cannot be because I never made an E in the book.

Q Did you ever make a wavy horizontal line in the book? A No, sir.

Q So that the only markings which you put in the book are the vertical markings to indicate the presence of jurors at the times you have mentioned? A That is correct.

Q Did you have occasion to go to the drawer in your desk, as you term it, during this period? A No, sir; I never used the drawer at all from the time that I had it.

Q Did you ever deliver payroll warrants to jurors during this period? A No, sir.

*Re-direct examination.*

Q Mr. Picot, just one question. You say that you never have seen Mr. Taylor erase an E. Now, I understood you to say that? A Yes, sir.

Q Now, in the case where a juror had been excused, but which may be caught on what you call a holdover jury and would come in, wouldn't he have to be marked present? A Yes, sir, but at roll call Mr. Taylor would make a line through the E. Whether he would erase the E afterwards—make a heavy line through the E showing he had been called on a holdover case.

Q Do you know whether or not in those cases he erased the E or not? A I don't know whether he did or not, no.

Q You couldn't say? A No.

*The Court.* The line you refer to is the vertical or diagonal line indicating presence?

*Leon L. Picot, re-direct.*

*Witness.* Yes, sir; the heavy line he would make through the E.

*The Court.* You do not mean the wavy line?

*Witness.* No; I do not mean the wave.

*Re-cross examination.*

Q Can you call the attention of the jury to any E's where such mark was made? A Yes, sir.

Q (Witness directs the attention of the jury to an E opposite the name Henry O. Bouse, under date of May 1.)

*The Court.* I do not catch the point of this.

(Question read.)

*The Court.* You are telling us in this answer that you actually saw Mr. Taylor make that particular mark?

*Witness.* No, sir.

*The Court.* Or that that is the kind of mark that you saw Mr. Taylor make. And you don't know which it is.

*Witness.* That is the kind of mark.

Q Do you know what his practice was with reference to the marking of jurors present who had previously been marked with an E? A I don't know what happened outside of that roll call. What he would do then, he would make that line through the E.

*Re-direct examination.*

Q Mr. Picot, won't you just count the number of days in this Bance account and see whether or not according to the practice of

keeping that book that that day, which has the E with the vertical line through it, is not marked as one of the days for which he is to be paid? A No. There is a total of ten days here carried on out and there is eleven of these days here.

Q Well, then, what would be the significance then of that E and 1 in that one column? The net result is a deduction, isn't it, of one day? A Yes, sir, that is the net result, as shown here.

Q It is not adding a day to it, is it? A No.

Q The result of that marking would be to save the county the payment of a juror's fee for that day, is that not so?

*Mr. Harrison.* I object on the ground that is clearly calling for a conclusion of the witness and is an improper re-direct question.

*The Court.* It is obviously incorrect. If the E was put down first and stricken out or over it a line drawn to show the person was present I suppose that would mean that the county would have to pay the money, or doesn't your question assume that?

*Mr. Heisley.* You asked me a question. There are eleven columns used. That is to say eleven columns in which they are marked, but the county is only charged for ten days and it must be that that E and 1 has been eliminated from that account and thereby saving the county two dollars and a half jurors' fees.

*The Court.* Now, is that the question?

*Leon L. Picot, further cross.*

*Mr. Heisley.* Not at all. I am through. I am answering your Honor's question. You asked me a question.

*The Court.* You asked the question and the prosecutor objected and I made this observation and the question is whether you want that answered.

*Mr. Heisley.* No; I do not care. It shows for itself, I think.

*Further cross examination.*

Q Do you know in the case just referred to, Mr. Picot, whether the E was put there before or after the vertical mark?

*The Court.* Opposite Bance?

Q Under heading of May 1st? A I cannot say.

Q Are you familiar with the Osborne excuse slips? A Yes, sir.

Q Did you have occasion to examine them from time to time? A I have seen them, yes, sir.

Q Do you know what the practice was upon receipt of these slips so far as the marking in this Exhibit S 3 is concerned? A To mark the man excused for the days called for on the slip.

Q And what time would they usually come in, after or before the roll call? A After roll call.

Q And where a juror had been marked present at roll call and a subsequent excuse came from Judge Osborne excusing that juror for a day or more, do you know what the practice was? A To mark him excused.

Q And how would he be marked excused? A In the column under the date for which he had been excused.

Q With an E over the present mark? A With an E over the present mark.

*Mr. Heisley.* That was a saving, wasn't it, Mr. Prosecutor?

*Mr. Harrison.* He was excused. He did not do any work. I do not see how it would be any saving.

DEFENDANT RESTS.

AMELIA KREIDEL, sworn on the part of the State, in rebuttal.

*Direct examination* by Mr. Harrison.

Q Do you know James T. Cowan? A Yes, sir.

Q And do you know Mr. Frank E. Taylor? A Yes, sir.

Q And how long have you known them? A I have known Mr. Taylor ever since I have been employed in the county clerk's office, since 1903, and Mr. Cowan I have known nine years, in March.

Q And you have been employed continuously in the county clerk's office since that time? A Yes, sir.

Q Did you have a conversation recently with Mr. Taylor in the matter of the excusing of jurors? A No, sir; I never had any conversation about jurors with Mr. Taylor.

Q Did you have a conversation with him about Mr. Cowan's position here in the court house? A Yes, sir, some time the latter part of February or beginning of March—the rea-

son I state that is his daughter's birthday is the 14th of February and mine is the 11th of March—Mr. Cowan hadn't been attending to business regularly and on Tuesday Mr. Taylor told me to go up and see that he will be in tomorrow, which was Wednesday; so I went to Mr. Cowan and I asked him to be back to business on Wednesday, and he said, "Don't make me go back. Let me resign. That man will get me in jail. All he wants is money, money"; so I says, "Who do you mean?" He says, "Mr. Taylor." So I came down on Wednesday morning and I went to Mr. Taylor, called him out of the Supreme Court room—I said, "Mr. Taylor, is James doing anything wrong?" He says, "Why?" I says, "I told him to come to work today and he says, 'Do not make me come back, because that man will get me in jail; all he wants is money, money.'" Mr. Taylor says, "Oh, bosh! that is only mere talk; don't pay any attention to it." So Mr. Cowan came in Wednesday, or Thursday rather, and then on Friday came in again. Then I spoke to Mr. Taylor again in our office as he was coming in at 9 o'clock—shortly after it—and I repeated my questions to him and he said, "Oh, that man is going crazy; don't pay any attention to him." So a few days later I spoke to Mr. Cowan and he says—

*The Court.* Never mind what Mr. Cowan said.

*Cross examination* by Mr. Heisley.

*The Court.* I suppose it is not disputed that this is the lady referred to in the question this morning?

*Mr. Harrison.* The state does not dispute it.

Q The first time you spoke to Mr. Taylor was in the Supreme Court room, was it? A No, sir; I called him outside; out around the curb.

Q Up at the Supreme Court room? A On the third floor, yes, sir.

Q What did you say to Mr. Taylor? A I said to him, "Mr. Taylor, is James doing anything wrong? If he is I want to know it," and then he said, or I said, "Why, last night he said to me, 'Don't make me come back; let me resign, because that man will get me in jail. All he wants is money, money.'" And I said, "Who?" He says, "Mr. Taylor." I says if he is doing anything wrong I think I have a right to know. He says, "Oh, bosh! that is only beer talk; don't worry about it."

Q How long have you known James, as you call him? A Nine years last March.

Q Have you ever been married to him? A No, sir.

Q Are you a married woman? A No, sir, I am not.

Q Are you related to Cowan? A No, sir; we are not related.

Q Where do you live? A Newark.

Q Newark is quite a town. How far from him do you live? A I live in Tracey avenue. Just at present I am with my brother on Elizabeth avenue and Mr. Cowan lives in East Orange.

Q How long have you been living with your brother? A Just since this trouble.

Q Where did you live before this trouble? A On Tracey avenue with my parents.

*Amelia Kreidel, cross.*

Q Where did you live during the week after this trouble started? A I was with my brother.

Q Didn't you live at Cowan's house for a week? A No, sir; I did not. I went up with Mr. McKee the night of the trouble and I stayed until Sunday night.

Q What day of the week was the night of the trouble? A Friday.

Q And you stayed until Sunday night? A Friday night, Saturday and Sunday.

Q Sleep in his house? A Yes, sir, with his second daughter.

Q I didn't ask you who you slept with? A That is, we did not do any sleeping Friday night. No one went to bed.

*Mr. Heisley.* I am not asking you about that.

*The Court.* Yes, you did. You asked her if she slept in his house. She has a right to say she was there and did not sleep.

Q I didn't ask who you slept with, did I? A No, sir.

Q Who did Cowan's family consist of at that time? A Five children, three girls and two boys.

Q How old is the oldest? A Twenty-six years—twenty-five, I think.

Q And he has no wife? A No, sir.

Q His wife is dead you understand? A Yes, sir.

Q Why were you so interested in Cowan? A Because I am very fond of his children—I am very fond of them and some day when circumstances are satisfactory, we may marry.

Q You may marry Cowan? A Yes, sir.

Q Are you engaged to him? A Well, there is an understanding.

Q Yes. Then you really are engaged to Cowan? A Yes, sir.

Q And were you engaged at that time? A What time?

Q The time of this trouble? A Yes, sir.

Q How long have you been engaged? A Well, there has been an understanding over five years.

Q And you call him James and he calls you by your first name? A Yes, sir.

Q And you say that he has not been attending to business for some time before you went to see Mr. Taylor?

*Mr. Harrison.* I think there is no testimony to that effect.

*Mr. Heisley.* There was something said about his not attending to business regular.

*Witness.* I said he had not been attending regular to business. That is come in in the morning probably and leave before closing time and then again wouldn't come in until later in the day.

Q That was the time when he was drinking, wasn't it? A Yes, sir.

Q He is a man who does go on awful sprees, isn't he? A Not awful sprees, no, sir.

*Mr. Harrison.* I object as not being proper cross examination and as being immaterial.

*Mr. Heisley.* The state has proved that he was attending to business irregularly, or not attending it. It seems to me that it is relevant for me to show why he was irregular. If his man was away because he was drunk I think we are entitled to know it.

*The Court.* Isn't it a little bit too broad? I think it is perfectly proper to ask this question around about this time.

Q I am directing your attention to the time which you speak of which I understood you to say was in February, wasn't it? A Latter part of February or beginning of March. Just exactly, I cannot tell you.

Q Well, at that time he had been on quite a protracted drunk, hadn't he? A I don't know what you would call it.

Q You know when a man is loaded, don't you, Miss Kreidel?

*Mr. Harrison.* I object.

Q You know what I mean, don't you? I mean he was drunk? A Mr. Cowan is a man who can't stand very much drink.

Q He gets drunk very easily? A Very easily.

Q When he gets started he stays going for some time, doesn't he?

*Mr. Harrison.* I object as being immaterial.

*The Court.* If this relates to the time I think it is proper.

Q (Question read.) A Not always.

Q No, but he did last winter? A Well, he hadn't been—

*The Court.* Last February?

*Mr. Heisley.* Yes.

*Witness.* He hadn't been in. I won't say positive, but I don't think he was in to business on Saturday morning and he came in late Monday morning and I don't think he was—I wouldn't say positive, but I don't

think he was in Tuesday. Wednesday he was in, Thursday and so on, he was in after that.

Q And did you have to give him medicine? A Aromatic spirits?

Q Yes. That is usually what you give the fellow when he is on a drunk, isn't it?

*The Court.* I do not think we need that information.

Q What did you give him aromatic spirits of ammonia for?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q Didn't you give it to him because he had been on a protracted drunk and had become sick from drunkenness?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

Q And it was at this time when he was sick that he had told you that Taylor wanted money, money, money all the time, is that right? A Yes, sir.

Q What was it that he actually said to you at that time? A He says, "Don't make me go back. Let me resign. That man will get me in jail. All he wants is money, money."

*Amelia Kreidel, cross.*

Q Did anybody hear you tell this to Mr. Taylor up here in the corridor? A No, sir. We stepped aside so no one would hear it.

Q When you told that to Mr. Taylor he replied, "That is all bosh. Pay no attention to it." A Oh, bosh, that is only beer talk.

Q Only beer talk, that was Mr. Taylor's reply? A Yes, sir.

Q Hadn't you along during that period been in the habit of coming to Mr. Taylor and asking him to try to see that Cowan would not lose his job on account of his drinking? A No, sir; I did not.

Q Didn't you ever go to Mr. Taylor about that time and ask him not to make Cowan lose his job? A No, sir; I never asked him.

*Mr. Heisley.* If your Honor please, I move to strike out all this witness's testimony so far as it relates to what she said that Cowan said to her and what she said to Mr. Taylor and his reply because manifestly anything which Cowan said to her out of Taylor's presence would not be binding, and the fact that Taylor did not admit it—he made no confession—no admission of any kind indicating his acquiescence, but on the other hand told her to pay no attention to it, "it is all bosh, only beer talk," it is not relevant, but highly prejudicial to Mr. Taylor. If this woman had testified that Taylor had admitted or acquiesced in or had remained silent when she said this to him it would have been one thing, but he repudiated it in effect saying there was nothing in it that it was all bosh and nothing but beer talk, and it does appear that this is what he should have

said to her in view of her testimony that this man had been on a drunk.

*The Court.* Counsel for the defense has remained silent while the question was asked of Miss Mollie Kreidel and the answer given, and no motion at that time even was made to strike it out, and he had cross examined without any objection or motion then to strike out, and has now cross examined further, and after that is completed the motion is then made; and this it seems to me is like the case in 99 Atlantic Reporter, page 400 which says that counsel may not sit by without objection, take their chances on what the answer of a witness is going to be and then move to strike it out. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

*Mr. Heisley.* I ask your Honor to instruct the jury to pay no attention or give no consideration to the evidence of this woman—to part of it which I have just objected to and move to have stricken out.

*The Court.* Motion denied.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and it is signed and sealed accordingly.

STATE RESTS.

FRANK E. TAYLOR, recalled on the part of the defendant in surrebuttal.

*The Court.* Just a moment, Judge, the last motion is too broad. If the intention of the motion is to request the Court to instruct the jury that anything said by Cowan to Miss Kreidel when Taylor was not present cannot be any evidence against him, that motion should be granted, but the motion that is made by counsel also includes what Miss Kreidel said to Taylor and what Taylor said on that occasion.

*Mr. Heisley.* I respectfully request the Court to instruct the jury that they must entirely disregard anything which this woman said that Cowan told her in the absence of Mr. Taylor.

*The Court.* I so charge the jury and direct them.

Q Mr. Taylor, you know this last witness? A Yes, sir.

Q And you heard her testimony? A I have.

Q When she came to you, at the time she indicates, did she say to you anything—no—did she say to you or ask you if James had been doing wrong and so forth and did you make the reply, "It is all bosh, it is nothing but beer talk?" A I never made any such reply. The only time she ever came to me was when he had been on this spree and she did come to me then and interceded with me to save his job.

*The Court.* What did she say—not your conclusions about what she did say. What did she say and what did you say?

*Witness.* Asked me to save his job for him when he did come in. She, herself, gave him medicine in the jury room.

Q In whose presence? A In my presence.

Q Had he been on a drunk? A He had been away from the office for about two weeks.

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DEFENDANT RESTS.

TESTIMONY CLOSED.

On motion the case was reopened and it was stipulated that Cowan has pleaded *non vult* to this indictment.

Adjourned until tomorrow morning.

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ESSEX COUNTY GENERAL QUARTER SESSIONS COURT.

FIFTH DAY.

June 22, 1917.

STATE,

*vs.*

FRANK E. TAYLOR.

Appearances as before.

During the summing up of Mr. Heisley for the defendant, the case was opened by consent for the introduction in evidence of a paper containing a list of the names of some of the jurors and the dates when the panel on which they served was first called to serve, and the same was marked Exhibit D 1.

Mr. Harrison summed up for the State.

RECESS.

## Charge to Jury.

MARTIN, *J.*

Gentlemen of the Jury: The Court has observed with considerable satisfaction the care and attention which you have devoted to the presentation of the testimony, and we have now reached a point where it becomes the duty of the Court to instruct the jury with reference to the principles of law governing the case.

The principles of law as charged should be accepted as a correct statement of law. The jury, however, is the sole judge of the facts, weight of testimony, credibility of witnesses, inferences to be drawn from the evidence and the ultimate conclusions to be reached upon all the facts. The Court in referring to the evidence is not to be understood as deciding any fact, but merely as attempting to illustrate or explain the application of the principles of law. If the Court errs in its statement of any evidence or assumes the existence of evidence that is not actually before the jury, the jury is to rely upon its recollection and not upon the recollection of the Court. If any part of the evidence is referred to seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all the evidence and pertinent proof bearing upon the question of guilt of this defendant, not only that which is mentioned by the Court, but all the facts which may appear by the evidence. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or matter has been offered as evidence and excluded, or matter has been presented and subsequently stricken out, the jury should disregard all such suggestions, statements, offers and excluded matter. The verdict lawfully and properly can only be based upon the evidence remaining in the case.

The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of the defendant; and the burden of

proving the guilt of the defendant beyond a reasonable doubt is upon the state and does not shift from the state throughout the case.

"Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is taken to be proof beyond a reasonable doubt, because if the law should go further than this and require absolute certainty it would exclude circumstantial evidence altogether."

This defendant is presented upon an indictment found by the grand jury of this county, which charges substantially that he and James F. Cowan and divers other persons to the grand jurors aforesaid unknown on the 1st day of October, 1916, and on all other days since and up to the taking of this inquisition, within the jurisdiction of this court, wickedly devising

and intending to defraud the Board of Chosen Freeholders of the County of Essex of its moneys, did amongst other things unlawfully conspire, combine, confederate and agree together to cheat and defraud the said Board of Chosen Freeholders of the County of Essex of large sums of money, to wit, the sum of $500, by falsely and corruptly certifying to the sheriff the record of attendance of petit jurors summoned to serve in the courts of said county and corruptly procuring the fraudulent application of the funds aforesaid to the payment of these fraudulent certificates and warrants and thereby cheating and defrauding the Board of Chosen Freeholders; and the allegations further include that it was concealed from the said Board of Chosen Freeholders that these warrants were false and fraudulent, and that by means of this combination or agreement or understanding or conspiracy these defendants Cowan and Taylor carried out this conspiracy. Then there are several paragraphs in this indictment following the first two paragraphs, the substance of which I have narrated, which charge substantially as follows: And the grand jurors aforesaid do further present that in the execution of and according to the said conspiracy, combination, confederacy, etc., did on the 30th day of March, in the year 1917, perform certain acts; that Taylor did falsely and fraudulently keep the records of the days of attendance of one James Marshall, who had been theretofore summoned as a petit juror by crediting Marshall as having served as such juror for a period of ten days, whereas in truth and fact, Marshall had not been there and served at all as a petit juror, and that said Taylor, being

then and there clerk in the office of the clerk of the County of Essex, did falsely and fraudulently certify to the sheriff that Marshall had so served for ten days and thereupon a certain warrant was drawn, which warrant authorized the payment of money to Marshall as compensation for his services, and that Taylor and Cowan did fraudulently and corruptly cause and procure said warrant to be presented to the sheriff and that the money was obtained thereon and twenty-five dollars was received, and that the sheriff paid the money relying on said false certificate, and that the moneys were received by said Cowan and said Taylor. This is an allegation of the commission of an overt act in pursuance of the conspiracy, because a mere conspiracy of the kind stated in this indictment is insufficient to constitute a crime unless some overt act that is charged in the indictment is committed.

The succeeding paragraphs of this indictment, which I will not at this time read, state, as I recall them, in substance, the commission of other overt acts like the acts with reference to the Marshall money, naming, however, Charles J. Alliger, Fred S. Helwig, Fred Busse and Jacob M. Englander.

This is a charge of the commission of the offense known as conspiracy. Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by any agreement or other alliance to commit any crime, or to cheat and defraud any person of any property by any means which are in themselves criminal, or to cheat and defraud any person of any property by any means which, if executed, would amount to a cheat, or to obtain money by false

pretenses, shall on conviction be deemed guilty of a conspiracy and be liable to the same penalty as persons convicted of a misdemeanor.

In order to convict of a conspiracy there must be two or more persons to make the agreement, because a person cannot make an agreement with himself. It must be for the unlawful purpose described, and in this case it must have been unlawfully carried out. If these elements are shown to the satisfaction of the jury upon the principles of law stated, then the crime is made out.

There has been some evidence here, considerable evidence, in fact, of the good reputation of this defendant for honesty and for observance of law. It is the right of a person charged with crime to have all the relevant testimony, including that relating to his good character or reputation, considered by the jury in every case; and if, on such consideration, there exists reasonable doubt of his guilt, even though that doubt be engendered merely by his previous good repute, he is entitled to an acquittal.

There are some facts in this case which appear to be beyond dispute, or, if disputed at all, disputed only in an inconsiderable degree. In this court house there are, or were during the period to which this evidence particularly refers, several judges sitting, three of them in the Essex County Circuit Court, some trying Supreme Court issues and some Circuit Court issues and two judges of the Court of Common Pleas sitting in the criminal courts of the county. It appears that it was the practice for the commission of jurors, consisting of the sheriff of the county and the commissioner of jurors appointed for that purpose, to draw

jurors and return them, that the jurors were kept here usually for a period of service of two weeks, the service beginning usually on a Monday morning; that this was probably uniform except as to the opening week of the term. The only term with which we have to deal here is the April term, which began on April 3d, a Tuesday. The jury was brought in here on Wednesday and were then excused to return to serve the next two weeks after that, commencing with Monday, April 9th. The sheriff's duty is to attend, in person or by his undersheriff, in court and produce a juror's box, into which should be placed the names of all the jurors, from which a jury is drawn in each case. After the calling of the roll of jurors, in the room of the Essex County Circuit Court, which has been called in this case, the Supreme Court room, where Judge Dungan has been sitting—the jury list is called there at about quarter of ten—apparently from the evidence, the jurors would go from one court to another following the sheriff with his jury box until drawn, and left in the court room where needed. It was the sheriff's duty to keep possession of or to retain control over the jury box. Another person who appears in this evidence belongs to that class of officials around the court room known as court attendants—formerly, I understand, that the constables were assigned by the sheriff to attend court and subsequently an act was passed by the legislature, which provided for court attendants, which, I think—in fact, I know—included the court constables—the attending court constables at that time and those who have been regularly and properly appointed since—and these court attendants are assigned

to the courts by the sheriff, probably with the approval of the Judge. In addition to the sheriff and the court attendants there is a requirement in the statute that the county clerk, who is the clerk of the Essex County Circuit Court, shall appear in person or by representative and attend to the business of the court, and it is agreed in this case beyond all dispute that Mr. Frank E. Taylor, this defendant, was the representative of the county clerk, employed by him to act in the position of his representative in the room which has been called the Supreme Court room. His duties were to call the roll of jurors, keep a correct account of the result of the roll call, note excused jurors, note jurors absent without excuse, keep minutes of what was done by the Court and perform such other and further duties as might be assigned to him, some of which have been described, I think, very largely in detail, by Judge Dungan, who has been a witness here before you. Therefore, I might say that it appears by the evidence that the duty of Mr. Taylor in the employ of the county clerk engaged in that position was to perform certain regular clerical duties properly and accurately. In addition to these and the other figures, who have appeared in the evidence before you, there is the Judge himself and the Judge performs a judicial function. Apparently, I think there will be no dispute about it, the judges in the court house—I think Judge Osborne said so—have agreed amongst themselves to assign or request Judge Osborne to act as the Judge to deal with jurors who desire to be excused or were exempt or desired to make special application to the Court for some relief. In the

performance of that duty it appears that Judge Osborne acted practically exclusively of all other judges during the time mentioned here, probably, I suppose, to avoid confusion and the necessity of making records, etc., by other judges. The excusing of a juror, apparently from this testimony, was to have been the act of the Judge. It was not delegated—I am speaking now of the general practice—to Taylor, the representative of the clerk of the court, it was not delegated to the sheriff, it was not delegated to Cowan, it was not delegated to the county clerk nor commissioner of jurors. It is a judicial function, to be acted upon and determined by the Judge, whether the excuse be proper, is sufficient, whether the person is exempt and all other matters which the special application involves. It appears that after the term of service—which was the theoretical term and in most cases the practical term of jurors, of two weeks, unless they were kept there for some unusual time or unless on account of the intervention of holidays the service would not be quite two weeks, sometimes they are held over for two weeks and a half, but the practice was usually that the jurors were discharged some time on the second Friday of the term of service, that is to say, the last Friday next before the Monday of the term of service of the succeeding panel, it was the duty of Mr. Taylor, as the representative of the county clerk, to make out, in accordance with the roll book properly kept, warrants or certificates of attendance of jurors, and deliver them to the jurors, so that they might cash those certificates and receive the pay from the sheriff to which they might be entitled. Cowan went to

a great many jurors, I do not know how many there are here, probably sixteen, not necessarily in the presence of Taylor, but sometimes in his presence, to some of the jurors who had apparently made it known in some fashion to somebody that they desired to be excused, and he would say substantially to the juror that you may be excused, you may come back here a week from this week Friday, at the end of the service, and when the juror returned at the end of the service Cowan would hand a warrant to him and the juror would draw the money, put it in an envelope usually provided for that purpose and give it to Cowan. As I have said I have tried to state what I believe is substantially undisputed in this case.

It is not the purpose of the Court, to state or recapitulate, the testimony that appears before the jury. Within the limits of a proper and reasonably limited charge, the Court is unable to recite all the testimony that has been presented here before you. Therefore the Court will content itself with merely stating some of the contentions of the parties.

It is contended by the State that Cowan, a court attendant, who had known Taylor for some ten years, talked with Taylor, probably as a result of an incident some time in October when some juror gave $5 because he had been allowed certain privileges, that two or three weeks before the holidays in December last, Cowan said he talked with Taylor and that Taylor said he had a man who wanted to get away, and told Cowan to let him go away, that he would mark him present and to come back and draw the money and return it to Cowan and Cowan could give it back to Taylor and

that he, Taylor, would fix up the books; Cowan said all right, but how about collecting the money, and Taylor said to have the man draw the money and he would be a party to the transaction and he would have to keep his mouth shut. Later Cowan said we talked about the same thing and he again told me what to do, he said "I didn't like the idea of collecting the money," he said, "It is all right, and he told me of certain men I could go to and try to fix it up." Cowan then stated that he took the slips out of the jury box and he put the names, that is to say these slips, of the men who were permitted to go, in a box on Taylor's desk or in a drawer, and he said that we divided the money in Judge Dungan's jury room. Taylor denies the statements of Cowan. The question is whether Cowan has been corroborated. You are largely to deal with this, it seems to me, in view of the fact that Cowan swears to one thing on the one hand, and Taylor swears to something opposite, on the other hand, squarely denying what Cowan says, and because Cowan is a self-confessed accomplice in this case and you ought to scrutinize his testimony carefully and ought not to find a man guilty upon the unsupported testimony of an accomplice. The law is that the jury may find a defendant guilty upon the testimony of an accomplice if the evidence is entirely trustworthy and credible, but, as I said, in all probability no jury would want to convict the defendant, unless it is a perfectly clear case, upon the mere statement of an accomplice, against the denial of the defendant, therefore if the accomplice is corroborated substantially as to material matters, it may help the jury in determining the weight it will give to

the evidence of the accomplice, and therefore the State contends that the statements of Cowan have been corroborated because it has been shown that Taylor actually operated in pursuance of the scheme mentioned by Cowan in his testimony. The State contends that Charles Alliger said that he answered the roll call, that afterwards he saw Taylor, went into a small anteroom and told him that he was very busy and wished to be excused, that Taylor said to him to go with Cowan and see if it can be arranged, or if you can arrange it with him; he did so and Cowan said he would mark him present or have him marked present each day; he told him to come back at the end of the term; that he came back, saw Cowan, he gave him a paper folded which he took to the sheriff and received $29.70 and signed for it and gave Cowan three $10 bills, because the sheriff gave him three $10 bills and he gave the sheriff 30 cents. Apparently, in this particular case, Alliger says that Taylor told him, substantially, to go with Cowan and he would arrange it with him. That Graham H. Jackson testified he told Taylor he wanted to be excused, was moving his plant and had a case in court, and that Taylor turned to Cowan and said "Look it up," but that neither Cowan nor Taylor at that time had any list in their hands. Taylor told him to go with him, Cowan said he could fix it and then Cowan went on with his usual statement. I think the more precise language of Jackson in this respect is, referring to the conversation with Taylor, that

> "Mr. Taylor turned around to Cowan and told him to look up the case on the calendar and see if it was on call, evidently to verify my statement; Cowan started towards the

judge's chambers and Mr. Taylor turned to me and he says, 'You go with him,' and I did."

That Fred Helwig said he came into the court room here, stayed until six o'clock, on Wednesday his name was not called; about three o'clock he asked the under sheriff and was sent to see Taylor in Judge Dungan's court room.

He found Cowan and Cowan took his name out of the box and put the slip with more slips that he had. He told him that he wanted to be excused with the rest of the panel; he said he would see Taylor at 9.30 A. M. Next day he saw Cowan, who said he saw Taylor and that it would be all right, to come back Friday and get the money so that he, Taylor, could straighten out his books. I said, "That don't look good to me." That later Cowan and the witness were in the presence of Taylor and Taylor said, "Yes, everything is all right" or "O. K." in response to the statement made by Cowan that the witness had been excused. Lemberg testified he came the first day, he asked Taylor if he could be excused so that he could go home and that this was in April, on Monday. He went to Taylor and he let him go. (Right here I would say that it is the contention of the State that Judge Osborne never gave Taylor the authority to excuse jurors in special cases except on the 4th day of April and that then only until the following Monday, April 9th, that Judge Osborne was about to be absent on the 4th day of April and he gave his authority, to let them go until April 9th.) That Kenngott said that Taylor excused him on April 4th, that he, Kenngott, went to Taylor and told him his excuse and Taylor said to sit down and that Cowan came

over to him and told him the usual story and he came back on April 20th, got $27.50 and gave it to Cowan; that George Kaye said that on April 2d, which was on Monday before the opening of the term, April 3d, two days before the day he was directed to appear, he came to the court house and saw Taylor, who told him to go to Cowan; after he had told Taylor that he wanted to get off from jury duty that Taylor said, "There is the man whom you want to see." He saw Cowan at once, who stood about 20 feet away, and told him he was a window trimmer, that the time was just before Easter and he had some contracts, was very busy, and Cowan said to him, "Well, you can go, appear here Friday," and then he went on and told the usual story—and later Kaye drew the money and gave it to Cowan; that Englander was drawn as a juror on May 7th, Monday, was introduced to Taylor in the vestibule and said he wanted to be excused for business reasons, and Taylor told him to go to the jury room, which I think he afterwards described as the court room. "Cowan," Taylor said, "will take care of you," that Cowan came in and said, "Is this Mr. Englander?" which the state contends he probably would not have known unless it was given to him in some way by some one that was acquainted with the nature of the business—and later Englander said that he drew the warrant and paid the money over to Cowan. That Fred Busse says that announcement was made for all those who desired to be excused, to go before Judge Osborne, and that Judge Osborne told him to go until April 24th, that on Wednesday he was present apparently and his name was not called, he asked Cowan how to get excused

and Cowan said he could fix it up to wait until Taylor comes; that Cowan introduced him to Taylor and he stated that he wanted to get off and Taylor said "All right." He got a certificate later and gave $22 in the judge's room to Cowan; and Taylor was in the room at the time when the money passed, six or seven feet away, his voice was subdued, he does not know that Taylor heard what was said or saw what was done. Alfred J. Hargan, who has been described as a detective attached to the prosecutor's office —a county detective in point of fact—testified that on May 3d he went up into the room where the roll was called and that Taylor called the roll and that Mr. Helwig's name was not called; that on May 17th Mathews' name was not called, and that in addition to these witnesses these jurors (I have not mentioned all the jurors because there were other jurors who dealt only with Cowan) to these jurors who had some sort of a conversation with Taylor there is the further conversation of Miss Amelia Kreidel with Taylor, in which she said that:

> "Some time in the latter part of February or beginning of March—the reason I state that is his daughter's birthday is the 14th of February and mine is the 11th of March—Mr. Cowan had not been attending to business regularly and on Tuesday Mr. Taylor told me to go up and see that he will be in tomorrow, which was Wednesday, so I went to see Mr. Cowan."

And she talked with him and she came back on Wednesday morning and she says:

> "And I went to Mr. Taylor, called him out of the Supreme Court room, and said to Mr. Taylor, 'Is James doing anything

wrong?' He says, 'Why?' I says, 'I told him to come to work today and he says, 'Don't make me come back because that man will get me in jail, all he wants is money, money.' Mr. Taylor says, 'Oh, bosh, that is only beer talk; don't pay any attention to it.' So Mr. Cowan came in Wednesday, or Thursday rather, and then on Friday came in again. Then I spoke to Mr. Taylor again in our office as he was coming in at nine o'clock—shortly after—and I repeated my question to him and he said, 'Oh, that man is going crazy; don't pay any attention to him.' "

The State further contends that the roll call book containing the names of the jurors, opposite to which there should be placed a sign indicating correctly what actually happened to the juror, whether he was present or excused or absent without excuse, or whatever the situation was, and that that book, in Taylor's custody, kept by him, in which occasional entries were sometimes made of those present and tardy, had been erased, had been changed, and, sometimes, altered with respect to statements opposite the names of the very persons mentioned in the evidence, that it has been brought out before the jury that the warrants signed by Taylor are made out repeatedly, while similar to the roll book, are false in fact, erroneously certifying to the sheriff that certain persons had served when they had not, and that those false certificates were signed by Taylor; that many of those false certificates, if not all, were made out entirely in the handwriting of Taylor, and some of them were made out in the handwriting of Taylor even where he had an excuse or an order

from Judge Osborne directing that the particular juror should be discharged because he was excused for the term; that you will find that here, in Exhibit S. 1 or 2, where it appears that Judge Osborne ordered the excusing of a certain juror, opposite his name and to the left of his name on the list given by Judge Osborne there would be in pencil the number 18 or 25, or whatever it might be, the number apparently of the juror, apparently in the handwriting of Taylor, showing that it should have been in the ordinary practice, entered up promptly in the roll book; that therefore the book is not an accurate statement—is not true—is a false book in the respects pointed out and contended for by the State, and finally that Taylor himself has contradicted his own statements previously made upon the witness stand with respect to what does appear in that book; that he has made admissions of certain lines and certain markings and certain E's having been made in his writing on direct examination and denied it on cross; that he has made contradictions, inconsistent statements, and has failed to explain adequately, not a mere making of an error, not the carelessness which is necessarily an accompaniment of the acts of all human beings—there are times when errors will creep in—but the errors have been made repeatedly and so often that it is claimed the onus is thrown upon Taylor to explain the nature of them and that he has failed to make any explanation to relieve the books of the appearance from which the jury might draw the inference that they were knowingly and fraudulently kept.

From these facts and the other facts in the case the State contends that Cowan, who says

he is guilty, has not only been corroborated with respect to material facts in the case, but has been very fully and amply corroborated with respect to many material facts in the case, and that knowledge has been brought home to Taylor by the active, affirmative oath of certain witnesses who have testified to transactions with him. The State contends moreover that Taylor by his contradictions and inconsistencies has weakened the strength of a clear statement amounting to an absolute denial of the charges made against him .

On the other hand, the defense of the defendant is a denial, and, not only is it a denial, but, it is that the State has failed to prove beyond a reasonable doubt the guilt of the defendant; and then, in addition to that, as a further fact for the consideration of the jury, in determining whether or not this defendant is guilty—not to exonerate him from consequences if you actually find that he is guilty, but as a fact as stated already by the Court to be considered is the good reputation. I do not see how there can be any dispute in this case about this defendant's prior good reputation. There has not been a syllable or a scintilla of evidence or suggestion of anything else in the case, so that is an absolute fixed fact in the case.

Taylor says substantially, as I understand it, that while it all may be true that the judge's duty is to discharge jurors and act upon their applications, yet that in point of fact if he acted and it was subsequently ratified by the judge that was not something which should visit upon him any disapproval; and he says that on April 4th he was authorized to act upon the excuses of jurors in the absence of Judge Os-

borne. He says it was his duty to keep his roll book correctly and he tried to do so and he contends that he did so as to matters with which he was concerned, but owing to the number of his duties in the clerical capacity in which he acted, calling the roll and talking with different people and entering up in the minutes the names of witnesses who are called in the cases and such other duties as have been described to you, that it became necessary and had been his practice for a long time, to have the assistance of some one else in making certain markings in the book. He said the book was kept in his desk, that is to say, in a lower compartment, where it was not locked at night, from which I assume that he means that it would be open to the access of anybody from four o'clock in the afternoon until at least nine and probably quarter to ten the next morning. He says that the book shows, admittedly, on its face to the merest inspection, alterations; that it cannot be possible that if he concocted this scheme or participated in it after it was planned by others that he would do such a manifestly absurd thing as making altered books and keeping them. He says that others marked in the books. He introduced testimony that there might be some carelessness, there might be some negligence, but, that, at all events, he had never done anything in connction with these books or with his position which was in any way the result of any desire on his part to secure moneys from the county nor as the result of any conspiracy. He says that these jurors, or some of them, who testified to conversations with him, and upon consideration of their mere evidence that it might appear to have been private conversations

with him, were not conversations at all, that jurors would come up to his desk and press around his desk in the court room and ask him to be excused; they would come in such numbers he would say, "Won't you sit down?" or "Won't you wait?" or "Go with the officer," or if Cowan was there "Go with Cowan;" that while some of these conversations appear to have been secret, the product of a desire on his part to seek out the men who might be apt subjects for the treatment of Cowan, yet that whatever he did was done frankly and in open court and without any desire to hide what he was doing. He said that it was impossible to say, as I understand his testimony, that these warrants were accurately made out because he said he made out the warrants, that is the name of the party and the name of the term and the year and signed his own name, on the Monday of the beginning of the period, and he said it might be that the number of days were filled in by someone else. There were a number of witnesses called by the defense and sworn on behalf of the defendant, some of whom, as a matter of convenience so as not to have them recalled on the witness stand, were immediately called by the State, not for cross examination, after they had completed, but became witnesses for the State, and these witnesses testify that they did, some of them, mark tardy jurors present, and they marked them in the open blanks, that is open spaces, but did not mark tardy jurors present over the letter E; but none, so far as I can remember, said he saw any other person than Taylor, except when Taylor was away, write or put the present mark or any other mark in this book. Taylor also stated

that he did not make these changes and did not make the erasures; that some of the present marks were placed over the letter E, and that while some might have been incorrect, yet he was no party to any of the transactions.

For these reasons the defendant contends that the State has failed to show beyond a reasonable doubt the guilt of the defendant; that if there is any explanation or hypothesis upon which the jury may consider this testimony consistent with the defendant's innocence that that hypothesis should be adopted, and the defendant denies absolutely his guilt, as I said before, and relies upon his good reputation.

The State contends in reply to the position taken by the defendant that this is a "one man scheme," as it has been called by someone in our presence, that is to say the defense's contention is that one man, and that man Cowan, planned this entire matter and carried it into effect, using others as innocent tools, frequently as ready accomplices, some of the jurors who drew their pay and handed it over to Cowan—the State contends in reply to this that Cowan is not of the mental ability and capacity to work out the plan as you have seen it developed here, that Cowan in order successfully to carry this plan out alone would have to deceive Taylor himself and that he would have to make false markings in the book or have them made for him and made in such a way as to escape detection by Taylor. For example, if a juror who was called on May 7th was excused by Cowan, Cowan would have to put the letter E in the column for the next morning so that Taylor in calling the roll would not call that man's name, and yet if the day before Taylor had taken the orders of Judge

Osborne and written in all the letters E that should have been written in, he might remember that he had not written in the letter E that must go in before he, Taylor, called the roll on the second day, that if Judge Osborne's orders came in time the E could be written in on that morning without causing Taylor any surprise if he turned the orders over to Cowan to write in the excuses and post them up, but the evidence is that ordinarily those orders came in from Judge Osborne at quarter-past ten, half-past ten or some time a little later; that Taylor called, in point of fact, the roll incorrectly on two different occasions; that Taylor must have delivered the warrants for the pay of six or seven jurors to Cowan, that if he had given him twelve that would not excite Taylor's suspicion or bring home knowledge to him, that there are instances in these books where there are certain orders given by Judge Osborne, I think in the Briggs case, and Bender and Appleton, if my memory is correct, but I would not undertake to be certain about it, excusing these men and still they are marked present—three separate instances; that it would be utterly impossible for Cowan to "plant" some person or persons in the court room and answer roll call during the course of four or five or six weeks, at least a hundred times, if not more, maybe a hundred and fifty, and thus deceive Taylor into marking present those who were not there, and therefore the State contends that the defense has not shaken the testimony referred to presented on behalf of the State.

It is the duty of the jury to search through the evidence that has been presented and to ascertain where the truth is. The jury may con-

sider amongst other things, in ascertaining, weighing and determining what weight, if any, it will give to the statement of witnesses, the demeanor, manner of testifying, appearance, mental capacity, observation, closeness of attention, the probability of the statements, their inconsistencies and contradictions and all such other considerations that may be evolved from experience or which the jury may deem proper under the circumstances. Amongst all the other ways of ascertaining, weighing and determining the credibility of a witness, the jury may consider the interest of a witness in testifyng and whether or not that interest has affected the truthfulness or credibiliy of his or her statement. This consideration may be applied to all of the witnesses in the case, those presented by the State and those presented by the defendant. It may be applied to Cowan, for example. He has pleaded *non vult* and is awaiting sentence. What interest has he in testifying? Has he been promised or does he believe—can he reasonably expect clemency for telling something against Taylor that is untrue? Has he any other interest? If he has, consider it in connection with what weight you are going to give to his testimony? What interest has Amelia Kreidel who expects some day she will marry Cowan? Surely she has interest in this case. Consider what effect that interest has upon her testimony. What interest has Mr. Alliger and Mr. Englander and Mr. Busse and all these other gentlemen who have been here as jurors ,and if they have any interest, has it affected the truthfulness of their statements made under oath to you? And then, of course, it may be applied to the defendant himself, because he has been a witness on the stand,

and in that connection the jury has a right to consider the very grave interest which this defendant has in any verdict you may render and whether or not that interest has affected the truthfulness or credibility of his statement on the stand.

If upon consideration of all the evidence, under the principles of law as stated, beyond a reasonable doubt, you find this defendant guilty, your verdict should be guilty. If you do not so find him, then, of course, your verdict must be not guilty. And in this connection the Court ought to say that the duty of the jury is to decide the case upon the evidence. That is its sworn duty. That is what is included in the oath which you have taken. That means to exclude all other considerations. That means that Taylor cannot be found guilty simply for gross carelessness. It means that he ought not to be released if you believe he is guilty beyond a reasonable doubt under the principles of law as stated because of any sympathy. You have no right to consider any matter of sympathy. It is not a question of sympathy for Taylor's family. It is a question for determination upon the evidence as you find it. It is not a question for determination by the jury of whether this defendant ought to be punished or not if he is guilty because whatever disposition should be made is left to the discretion of the Court and for which the Court only is responsible. So that the jury's duty is solely and only to determine the guilt of the defendant upon the evidence in the case. Whatever consequences there may be the jury is not responsible for, that rests upon others.

The Court has been requested to charge certain propositions of law, most of which have been

very substantially and I believe fully covered. With some of which I do not agree.

"Second. The evidence of an accomplice, while legal, is always to be carefully scrutinized by the jury."

I so charge you.

"Fourth. If you believe that any of the jurors who have been called by the State as witnesses, dealt with Cowan in the belief that he was perpetrating a crime by attempting to procure the payment to such jurors of fees by the county which they had not earned, then in law such jurors were accomplices of Cowan, and you should scrutinize carefully their evidence in this case, and what prompts them to testify, and whether or not they have an interest or desire to secure the conviction of this defendant."

I so charge you.

"Sixth. He is not to be (referring to Taylor the defendant, I suppose it means) convicted simply because you may think he was careless in keeping his jury list, or acted unwisely or even negligently in the performance of his duty, because he is not indicted for that."

I so charge you.

Defendant's counsel prays a general exception to the charge of the Court, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

DEFENDANT'S REQUESTS TO CHARGE.

1st. It is the duty of the jury to carefully consider the evidence of the witness Cowan, and consider the fact that he is not obliged under the law of this state to testify as he has, and thus incriminate himself, and the jury should consider what is the motive that prompts him in so testifying, and whether he is testifying in the belief that he is benefiting himself by so testifying, or that he will receive a lighter and easier sentence than he would if he had not so testified."

Defendant's counsel prays an exception to the refusal of the Court to charge as requested, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

"3d. The defendant has produced numerous witnesses who have testified to his good reputation, and if you are satisfied that he has a good reputation, the fact of such reputation may alone, and of itself, engender in your minds a reasonable doubt as to the guilt of the defendant, and if it does engender such doubt, then you must acquit him.

Defendant's counsel prays an exception to the refusal of the Court to charge as requested, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

(5) In order to convict this defendant, you must be convinced beyond all reasonable doubt, that he actually entered into a corrupt agreement as described in the indictment for the purpose

set forth in the indictment, and if you have any reasonable doubt about his having entered into such agreement, you must acquit him.

Defendant's counsel prays an exception to the refusal of the Court to charge as requested, the same is allowed and it is signed and sealed accordingly.

[L. S.] WM. P. MARTIN,
*Judge.*

STATE

*vs.*

FRANK E. TAYLOR.

I, F. L. Salmon, one of the official stenographers of the Essex County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey *vs.* Frank E. Taylor on indictment No. 273 for conspiracy, which trial was held before Hon. William P. Martin, presiding judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on the dates of June 18, 19, 20, 21 and 22, 1917, at Newark, New Jersey.

F. L. SALMON.

*Certificate of Judge Martin.*

STATE

*vs.*

FRANK E. TAYLOR.

I, Wlliam P. Martin, presiding judge of the Essex County Court of General Quarter Sessions and Essex County Court of Oyer and Terminer, and the judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated, January 22, 1918.

[L. S.] WM. P. MARTIN,
*Presiding Judge of the Essex County Court of Oyer and Terminer and General Quarter Sessions.*

*Exhibits.*

# New Jersey Supreme Court.

| | |
|---|---|
| State of New Jersey,<br>*Plaintiff-Defendant in Error,*<br>*vs.*<br>Frank E. Taylor,<br>*Defendant-Plaintiff in Error.* | *Stipulation.* |

It is hereby stipulated and agreed between the Prosecutor of the Pleas and the counsel of the defendant, so that the same may be considered in lieu of proof by the Court upon the argument of this cause.

1st. That the Exhibits hereinafter mentioned are in form and substance as follows:

## EXHIBIT S. 1.

That Exhibit S. 1, dated April 23, 1917, is a communication from the Honorable H. V. Osborne, Judge of the Essex Court of Common Pleas, to the County Clerk of Essex, directing the excusing of various jurors for the periods set opposite their respective names. Jurors Geo. E. Briggs and William Bender are directed to be excused for the whole term of service for which they were summoned. Immediately in front of Briggs' name appears the figure "18" in pencil, with a diagonal pencil line drawn through the figure. Immediately in front of Bender's name appears the figure "10" in pencil, with a diagonal pencil line drawn through the figure.

*Exhibits.*

EXHIBIT S. 2.

That Exhibit S. 2, dated May 7, 1917, is a communication received from said Judge of the Essex Court of Common Pleas to the said County Clerk, directing the excusing of various jurors for the periods set opposite their respective names. Juror W. C. Appleton is directed to be excused for the whole term of service for which he was summoned. Immediately in front of Appleton's name is the figure "5" in pencil with a diagonal pencil line drawn through the figure.

The following is a true copy of EXHIBIT S. 4.

"ESSEX COUNTY CLERK'S OFFICE,
TO THE SHERIFF OF ESSEX COUNTY.

This is to certify, that John R. Matthews has served as a Petit Juror Ten days during the Apr. Term, 1917,

In testimony whereof, I have set my hand and affixed my official seal at Newark, this 18th day of May, A. D. 1917.

25.00
Mlg 2.80
———
27.80

Joseph McDonough, Clerk.
Taylor."

It is stipulated that EXHIBITS S. 5 to S. 20 inclusive, are warrants or vouchers of the same form as Exhibit S. 4, but differing as to the dates, amounts and names of persons to whose order the warrants or vouchers were respectively drawn.

*Exhibits.*

It is stipulated that EXHIBIT S. 21 is the Sheriff's Petit Jury pay roll for December Term, 1916, of Essex County Courts, showing receipts on April 20, 1917, by jurors therein named, of amounts set opposite their respective names; that among the names appear the following, with the amounts below set forth:

| | |
|---|---|
| Charles J. Alliger, | $29.70 |
| George Kayh, | 27.50 |
| Louis Kengott, | 27.50 |
| Adam Hebeler, | 27.50 |
| Graham H. Jackson, | 27.50 |
| Samuel Lemberg, | 29.50 |

The following is a true copy of EXHIBIT S. 22.

"ESSEX COUNTY CLERK'S OFFICE

TO THE SHERIFF OF ESSEX COUNTY.

This is to certify, that William Bender has served as a Petit Juror ten days during the Apr. Term, 1917.

In testimony whereof, I have set my hand and affixed my official seal at Newark, this 4th day of May, A. D., 1917.

25.00
1.60

---

26.60

Joseph McDonough, Clerk.
Taylor."

*Exhibits.*

It is stipulated that EXHIBIT S. 23 is the Sheriff's Petit Jury payroll for the April Term, 1917, of Essex County Courts, purporting to show the amounts of money respectively received by the jurors therein mentioned, and the date of such receipts; that opposite the number "14" and under date of May 5, 1917, appears the name "George E. Briggs," and the figures $25.00.

The following is a true copy of EXHIBIT S. 24.

"ESSEX COUNTY CLERK'S OFFICE
TO THE SHERIFF OF ESSEX COUNTY.

This is to certify, that George E. Briggs has served as a Petit juror ten days during the Apr. Term, 1917.

In testimony whereof, I have set my hand and affixed my official seal at Newark, this 4 day of May, A. D. 1917.

Joseph McDonough, Clerk.

"

25.00

*Exhibits.*

The following is a true copy of EXHIBIT S. 25.

"ESSEX COUNTY CLERK'S OFFICE

TO THE SHERIFF OF ESSEX COUNTY.

This is to certify, that Wm. C. Appleton has served as a Petit juror ten days during the Apr. Term, 1917.

In testimony whereof, I have set my hand and affixed my official seal at Newark, this 18 day of May, A. D. 1917.

Joseph McDonough, Clerk,
Taylor."

25.00
Mlg 1.60

26.60

It is stipulated that EXHIBIT S. 26 is the Sheriff's Petit Jury payroll for the April Term, 1917, of Essex County Courts, purporting to show the amounts of money respectively received by the jurors therein mentioned, and the date of such receipts; that opposite the number "62" under date of May 18, 1917, appears the name "Wm. C. Appleton," and the figures $26.60.

It is stipulated that EXHIBIT S. 27 is the Sheriff's Petit Jury payroll for April Term, 1916, of Essex County Courts, showing receipts on April 20, 1917, by jurors therein named, of amounts set opposite their respective names;

*Exhibits.*

that among the names appear the following, with the amounts below set forth:

| | |
|---|---|
| Fred S. Helwig | $25.80 |
| E. Caveneget, | 25.00 |
| Fred Busse, | 27.40 |

It is stipulated that the roll book of jurors is not to be printed, but the original thereof is to be produced by the state on the argument.

Dated January 23, 1918.

J. H. HARRISON,
*Prosecutor of the Pleas.*

WILBUR A. HEISLEY,
*Attorney of Defendant.*

## Assignments of Error.

Filed February 7, 1918.

# New Jersey Supreme Court.

| | |
|---|---|
| STATE OF NEW JERSEY,<br>*Plaintiff-Defendant in Error,*<br>*vs.*<br>FRANK E. TAYLOR,<br>*Defendant-Plaintiff in Error.* | *On Error to Essex Quarter Sessions.*<br>*Assignments of Error.* |

Afterwards, to wit, on the return day of the Writ of Error issued in this cause, comes the said Frank E. Taylor, plaintiff-in-error, by Wilbur A. Heisley, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment, aforesaid, there is manifest error in this, to wit:

FIRST: Because the said Court at page 33, line 9, permitted over the objection of the defendant, the witness, James F. Cowan, to be interrogated and to answer as follows:

Q Do you know John J. Mathews? A I only know him to see him.

Q Do you know where and under what circumstances you first met him? A I do.

Q Where? A On the top floor of the Court House.

Q When? A The last week of the panel of jurors that I was arrested upon.

Q Now can you fix the time, Cowan?

*Mr. Heisley.* I object as irrelevant.

*The Court.* Are you going to connect this by showing that there was an overt act in pursuance of this—

*Mr. Harrison.* I intend to follow that up and bring your Honor's attention to that matter in another question or so.

*The Court.* I will let the testimony go in on that statement.

SECOND: Because the said Court, at page 34, line 30, permitted over the objection of the defendant, the said witness Cowan to be interrogated and answer as follows:

Q What was that conversation, or, what did he say to you and what did you say to him?

*Mr. Heisley.* I object on the ground that it is irrelevant and on the ground that whatever was said between him and this man Mathews out of the presence of Mr. Taylor, is not binding upon Mr. Taylor.

*The Court.* Why not? When you prove a conspiracy then the acts of the conspirators in carrying out the conspiracy as contemplated is evidence, is not it?

*Mr. Heisley.* And on the further ground that he is not one of the persons named in the indictment by whom the conspiracy was consummated.

*The Court.* On the prosecutor's statement that he intends to connect this and prove an overt act or one of them, as laid in the indictment, I will overrule the objection.

THIRD: Because the said Court at page 33, line 22, permitted over the objection of the defendant,

the said witness Cowan to be interrogated and answer as follows:

Q Did you have any other moneys in your pocket on that day which you had received from jurors? A Yes, sir.

Q How much? A Eighty some dollars. I don't know how much.

Q And do you know from whom you had received the difference between the eighty some dollars and eleven dollars? A Some of them I remember.

*Mr. Heisley.* I make the same objection as to these other persons he is about to name.

*The Court.* I cannot tell anything about it until he names them.

*Mr. Heisley.* I don't want him to name them. The harm is done then. I object to his giving the names of any persons from whom he has received money except the five persons whose names are mentioned in the indictment.

*The Court.* Objection overruled.

FOURTH: Because the said Court, at page 41, line 9, over the objection of the defendant, permitted a paper called a certificate to the order of Vernon E. Beavers to be admitted in evidence as follows:

*Mr. Harrison.* It is also admitted that the certificate to the order of Vernon E. Beavers—

*Mr. Heisley.* I make my same objection to this certificate simply because it is not one of those five named in the indictment, but otherwise I admit it is the original certificate.

*Mr. Harrison.* Subject to relevancy it is admitted?

*Mr. Heisley.* Yes.

*Mr. Harrison.* That certificate to the order of Vernon E. Beavers for ten days' service as petit juror—

*The Court.* I understand that Beavers' is on a different footing.

*Mr. Harrison.* I think I better offer them separately

*The Court.* You offer the Beavers' warrant?

*Mr. Harrison.* Vernon E. Beavers' warrant was signed by the defendant Taylor on the 18th day of May, 1917, and is in form as then delivered with the exception of the lead pencil memorandum $25.

*The Court.* In view of the prosecutor's statement that this will be connected, the Court will overrule the objection and allow the defendant an exception.

FIFTH: Because the said Court, at page 42, line 10, over the objection of the defendant, permitted a paper called a certificate to the order of Charles Hicks to be admitted in evidence as follows:

*Mr. Harrison.* The same admission subject to the same objection is made with reference to certificate dated May 18, 1917, to the order of Charles Hicks for ten days' service.

(Paper marked Exhibit S 7.)

*The Court.* You make the same objection?

*Mr. Heisley.* Yes, sir, and exception.

*The Court.* Admitted and exception allowed.

SIXTH: Because the said Court, at page 42, line 31, over the objection of the defendant, permitted a paper called a certificate to the order of Michael Brown, to be admitted in evidence as follows:

*Mr. Harrison.* Certificate to the order of Michael Brown, dated March 30, 1917, is admitted and subject to the same objection as to relevancy.

*Mr. Heisley.* Yes, and exception.

*The Court.* Same objection and same ruling.

(Paper marked Exhibit S 9.)

*The Court.* I assume that Brown is not named in the indictment as one of the overt acts.

*Mr. Harrison.* He is not.

SEVENTH: Because the said Court, at page 46, line 19, over the objection of the defendant, permitted the witness Cowan to be interrogated and answer as follows:

Q On what date did you make the division of the Brown money with Taylor? A Well, the last day of the term he served. I don't know just what term—what jury he was on.

Q Can you by reference to the certificate fix the time? A Yes, sir; 30th of March.

Q Were there any other moneys that you divided with Taylor on the 30th of March, which you received from other jurors than Brown?

*Mr. Heisley.* I object to the question unless he is referring simply to those names in the indictment.

*The Court.* Objection overruled.

EIGHTH: Because the said Court, at page 47, line 20, over the objection of the defendant, permitted the witness Cowan to be interrogated and answer as follows:

Q Do you know how much money which you received from jurors on April 20, 1917, you divided with Mr. Taylor?

*Mr. Heisley.* I object unless it is limited to the jurors mentioned in the indictment.

*The Court.* This is a personal transaction with Taylor which shows his knowledge. Overruled.

A I couldn't tell you the exact amount.

Q Can you tell the approximate amount?

A Well, it was very near $80 or $90 apiece to the best of my recollection. It may have been more; it may have been less; I couldn't say for sure.

NINTH: Because the said Court, page 423, line 40, improperly and contrary to the law of this State, charged the jury as follows:

"Cowan went to a great many jurors, I do not know how many there are here, probably sixteen, not necessarily in the presence of Taylor, but sometimes in his presence, to some of the jurors who had apparently made it known in some fashion to somebody that they desired to be excused, and he would say substantially to the juror that you may be excused, you may come back here a week from this week

Friday, at the end of the service, and when the juror returned at the end of the service, Cowan would hand a warrant to him and the juror would draw the money, put it in an envelope usually provided for that purpose, and give it to Cowan. As I have said I have tried to state what I believe is substantially undisputed in this case.

It is not the purpose of the Court to state or recapitulate the testimony that appears before the jury. Within the limits of a proper and reasonably limited charge, the Court is unable to recite all the testimony that has been presented here before you. Therefore, the Court will content itself with merely stating some of the contentions of the parties.

It is contended by the state that Cowan, a Court attendant, who had known Taylor for some ten years, talked with Taylor, probably as a result of an incident some time in October, when some juror gave $5 because he had been allowed certain privileges, that two or three weeks before the holidays in December last, Cowan said he talked with Taylor, and that Taylor said he had a man who wanted to get away and told Cowan to let him go away, that he would mark him present and to come back and draw the money and return it to Cowan and Cowan could give it back to Taylor, and that he, Taylor, would fix up the books; Cowan said, all right, but how about collecting the money, and Taylor said to have the man draw the money and he would be a party to the transaction, and he would

have to keep his mouth shut. Later Cowan said we talked about the same thing and he again told me what to do—he said, "I didn't like the idea of collecting the money"; he said, "it is all right, and he told me of certain men I could go to and try to fix it up." Cowan then stated that he took the slips out of the jury box and he put the names, that is to say, these slips, of the men who were permitted to go, in a box on Taylor's desk, or in a drawer, and he said that we divided the money in Judge Dungan's jury room. Taylor denies the statements of Cowan. The question is whether Cowan has been corroborated. You are largely to deal with this, it seems to me, in view of the fact that Cowan swears to one thing on the one hand, and Taylor swears to something opposite, on the other hand, squarely denying what Cowan says, and because Cowan is a self-confessed accomplice in this case, and you ought to scrutinize his testimony carefully and ought not to find a man guilty upon the unsupported testimony of an accomplice. The law is that the jury may find a defendant guilty upon the testimony of an accomplice if the evidence is entirely trustworthy and credible, but, as I said, in all probability no jury would want to convict the defendant unless it is a perfectly clear case, upon the mere statement of an accomplice, against the denial of the defendant, therefore, if the accomplice is corroborated substantially as to material matters, it may help the jury in determining the weight it will give to the evidence of the accom-

plice, and therefore, the state contends that the statements of Cowan have been corroborated because it has been shown that Taylor actually operated in pursuance of the scheme mentioned by Cowan in his testimony. The state contends that Charles Alliger said that he answered the roll call, that afterwards he saw Taylor, went into a small ante room and told him that he was very busy and wished to be excused, that Taylor said to him to go with Cowan and see if it can be arranged, or if you can arrange it with him; he did so and Cowan said he would mark him present or have him marked present each day; he told him to come back at the end of the term; that he came back, saw Cowan, he gave him a paper folded, which he took to the sheriff and received $29.70 and signed for it and gave Cowan three $10 bills, because the sheriff gave him three $10 bills and he gave the sheriff thirty cents. Apparently in this particular case, Alliger says that Taylor told him substantially, to go with Cowan and he would arrange it with him. That Graham H. Jackson testified he told Taylor he wanted to be excused, was moving his plant and had a case in court, and that Taylor turned to Cowan and said, "look it up," but that neither Cowan nor Taylor at that time had any list in their hands. Taylor told him to go with him, Cowan said he would fix it, and then Cowan went on with his usual statement. I think the more precise language of Jackson in this respect is, referring to the conversation with Taylor, that:—

"Mr. Taylor turned around to Cowan and told him to look up the case on the calendar and see if it was on call, evidently to verify my statement; Cowan started towards the Judge's chambers and Mr. Taylor turned to me and he says, 'you go with him,' and I did."

That Fred Helwig said he came into the court room here, stayed until six o'clock, on Wednesday his name was not called; about three o'clock he asked the undersheriff and was sent to see Taylor in Judge Dungan's court room. He found Cowan and Cowan took his name out of the box and put the slip with more slips that he had. He told him that he wanted to be excused with the rest of the panel; he said he would see Taylor at 9:30 A. M. Next day he saw Cowan, who said he saw Tayand and that it would be all right, to come back Friday and get the money so that he, Taylor, could straighten out his books. I said, "that don't look good to me." That later Cowan and the witness were in the presence of Taylor and Taylor said, "yes, everything is all right," or "O. K.," in response to the statement made by Cowan that the witness had been excused.

Lemberg testified he came the first day, he asked Taylor if he could be excused so that he could go home and that this was in April, on Monday. He went to Taylor and he let him go. (Right here I would say that it is the contention of the state that Judge Osborne never gave Taylor the authority to excuse jurors in special cases except on the 4th day of April, and that then

only until the following Monday, April 9th, that Judge Osborne was about to be absent on the 4th day of April and he gave his authority to let them go until April 9th.)

That Kenngott said that Taylor excused him on April 4th; that he, Kenngott, went to Taylor and told him his excuse and Taylor said to sit down, and that Cowan came over to him, and told him the usual story, and he came back on April 20th, got $27.50 and gave it to Cowan.

That George Kaye said that on April 2d, which was on Monday before the opening of the term April 3d, two days before the day he was directed to appear, he came to the court house and saw Taylor, who told him to go to Cowan; after he had told Taylor that he wanted to get off from jury duty that Taylor said, "there is the man whom you want to see." He saw Cowan at once, who stood about twenty feet away, and told him he was a window trimmer, that the time was just before Easter, and he had some contracts, was very busy, and Cowan said to him, "well, you can go; appear here Friday"; and then he went on and told the usual story—and later Kaye drew the money and gave it to Cowan.

That Englander was drawn as a juror on May 7th, Monday. Was introduced to Taylor in the vestibule and said he wanted to be excused for business reasons, and Taylor told him to go to the jury room, which I think he afterwards described as the court room. "Cowan," Taylor said, "will take care of you"; that Cowan came in and said, "Is this Mr. Englander?"

which the state contends he probably would not have known unless it was given to him in some way by some one that was acquainted with the nature of the business—and later Englander said that he drew the warrant and paid the money over to Cowan.

That Fred Busse says that announcement was made for all those who desired to be excused, to go before Judge Osborne, and that Judge Osborne told him to go until April 24th; that on Wednesday he was present apparently and his name was not called; he asked Cowan how to get excused and Cowan said he would fix it up—to wait until Taylor comes; that Cowan introduced him to Taylor and he stated that he wanted to get off and Taylor said, "all right." He got a certificate later and gave $22 in the Judge's room to Cowan; and Taylor was in the room at the time when the money passed, six or seven feet away, his voice was subdued, he does not know that Taylor heard what was said or saw what was done.

Alfred J. Hargan, who has been described as a detective attached to the prosecutor's office—a county detective in point of fact—testified that on May 3d he went up to the room where the roll was called and that Taylor called the roll and that Mr. Helwig's name was not called; that on May 17th, Mathews' name was not called and that in addition to these witnesses, these jurors (I have not mentioned all the jurors' names, because there were other jurors who dealt only with Cowan), to these jurors who had some sort of a conversation with Taylor.

TENTH: Because the Court by so charging would justify the jury in finding a verdict of guilty upon its construction of the law because of the acts committed by some of the persons mentioned in the assignment of error and who were not mentioned in the indictment.

ELEVENTH: Because by reason of said portions of the Judge's charge set forth in Assignment No. 9, the Court in substance told the jury, contrary to law, that the acts of the jurors, who were not named in the indictment, but referred to in the Court's charge, constituted overt acts within the meaning of the statute concerning conspiracies.

TWELFTH: Because the Court should have told the jury that the acts performed by any person other than those named in the indictment, could not be substituted for or considered as the overt act by the statute of this state required to be performed by one of the defendants.

THIRTEENTH: Because under the law of this state, the defendants could be convicted only of making the alleged corrupt agreement set forth in the indictment in connection with one or more of the overt acts therein set forth, but as a result of the failure of the said Court to so charge the jury, this defendant has been convicted of an alleged agreement or offense not set forth in the indictment.

FOURTEENTH: As result of the failure of the Court to charge as aforesaid, the defendant has been found guilty of making the corrupt agreement alleged in the indictment, and of acts of persons not named in the indictment,

and which acts the Court permitted the jury to believe were to be substituted or treated as the overt acts of five persons or one of them named in the indictment.

FIFTEENTH: Because there was a fatal variance in the proof offered by the state and the charge set forth in the indictment, and as a result thereof, the defendant was not informed of the nature and cause of the accusation against him, as required by Section 8 of Article 1 of the Constitution of the State of New Jersey, and of Article 6 of the Amended Constitution of the United States.

SIXTEENTH: Because said Court (page 50, line 15) would not permit the said Cowan to be asked the following question, viz.:

Q Let me ask you this. When did you say the first criminal transaction of this kind of which you have testified to this morning occurred by your and Mr. Taylor's acts?

*Mr. Harrison.* I object. It seems to me that he cannot define when or where the crime was committed.

*The Court.* It calls for a conclusion and assumes the witness has a knowledge which perhaps he does not possess. Objection sustained.

SEVENTEENTH: Because the said Court (page 66, line 37) refused to permit the witness Cowan to be asked the following question:

Q Now, were there any other persons in this crime or conspiracy with you and Taylor and the jurors?

*Mr. Harrison.* I object as incompetent.

*The Court.* Objection sustained.

EIGHTEENTH: Because said Court, at page 123, line 20, would not permit the witness, Fred S. Helwig, to be asked and to answer the following question:

> Q And would you be fair enough to admit, Mr. Helwig, that it was entirely possible for Cowan to be doing this thing on his own hook and simply calling Taylor out and deceiving him in your presence?
>
> *Mr. Harrison.* I object on the ground that it is asking the opinion of the witness upon a question on which he is not qualified to express an opinion and on the ground that it is argumentative.
>
> *The Court.* Objection sustained.

NINETEENTH: Because said Court, at page 123, line 38, would not permit the said witness Helwig to be asked and to answer the following question:

> Q Mr. Helwig, don't you realize that Cowan could have been doing this thing himself, and telling Taylor something entirely different than he told you and apparently have Taylor assent to it? Don't you recognize that fact?
>
> *Mr. Harrison.* Objected to on the same ground.
>
> *The Court.* Objection sustained.

TWENTIETH: Because said Court, at page 154, line 39, refused to allow the witness, Louis Kenngott, to be asked and answer the following question:

> Q As far as you know, Taylor had no knowledge of the arrangement which Cowan was making with you about getting this money from the county, is that so, as far as you know?
>
> *Mr. Harrison.* I object as calling for a conclusion and not being a fact which should

be proved, and, further, as not being proper cross examination.

*The Court.* You can ask him if Taylor was within hearing or asked him to speak to Cowan or Cowan spoke so Taylor could hear.

*Mr. Heisley.* Will your Honor be good enough to rule on the question as I have asked it?

*The Court.* Yes, and I will be good enough to explain to connsel from time to time as I may see fit, the proper line to pursue, and counsel can pursue it or not as he sees fit. The objection in this case is sustained.

TWENTY-FIRST: Because said Court at page 201, line 35, refused to permit the witness, Harry V. Osborne, to be interrogated as follows:

Q And haven't you and hasn't Mr. Taylor put in considerable time during the last three or four months in evolving a scheme for the drawing of jurors which would practically eliminate—or at least very much limit the chances for a fraud of this kind which is embodied in this charge being perpetrated upon the county?

*Mr. Harrison.* I object.

*The Court.* Objection sustained and the jury will disregard any inference contained in the mere asking of the question.

TWENTY-SECOND: Because the said Court, at page 213, line 39, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Do you know what his habits have been as to the use of intoxicating liquor during the time that you have known him

to and including the period covered by this indictment?

*Mr. Harrison.* I object as not material and not one of the issues in this case.

*The Court.* Objection sustained.

*Mr. Heisley.* Will your Honor allow me to state on the record my reasons?

*The Court.* No; I do not want to hear any argument. It is perfectly obvious that it is utterly incompetent. We will proceed to the next question.

TWENTY-THIRD: Because the said Court, at page 214, line 16, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Is it true or not that during the time covered by this indictment Cowan upon several occasions was so overcome by the excessive use of intoxicating liquors that for two weeks at a time he was absolutely unable to attend to any of his duties as a court attendant?

*Mr. Harrison.* I object as being leading, as being immaterial and irrelevant.

*The Court.* Objection sustained.

TWENTY-FOURTH: Because the said Court, at page 216, line 14, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Mr. Taylor, did you know whether or not during any portion of the period covered by this indictment Cowan has been for any considerable time—period of time—mentally incompetent from any cause?

*Mr. Harrison.* I object on the ground that it is leading, it is immaterial and irrele-

vant and calls for a conclusion of the witness and an opinion of the witness perhaps as a medical legal expert.

*The Court.* I will sustain the objection.

TWENTY-FIFTH: Because the said Court, at page 216, line 32, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Do you know whether from the excessive use of liquor or from any other cause for a period of several weeks covered by the time mentioned in this indictment Cowan has been in such a condition that his language would be incoherent and he appeared to be mentally incompetent?

*Mr. Harrison.* I object on the same ground.

TWENTY-SIXTH: Because the Court would not, at page 413, line 10, permit the witness Amelia Kreidel to be asked the following question:

Q What did you give him aromatic spirits of ammonia for?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q Didn't you give it to him because (page 410, line 19) he had been on a protracted drunk and had become sick from drunkenness?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

TWENTY-SEVENTH: Because the said Court, at page 217, line 12, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Do you know if during this time Cowan has been in the habit of following horse races and gambling on the horse races?

*Mr. Harrison.* I object on the same ground as the question immediately preceding.

*The Court.* Objection sustained. And besides that, you asked Cowan and you are bound by his answer.

TWENTY-EIGHTH: Because the said Court, at page 225, line 14, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Did you have any power of discharge to exercise with Cowan?

*Mr. Harrison.* I object as being irrelevant.

*The Court.* Objection sustained.

TWENTY-NINTH: Because the said Court, at page 227, line 13, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Mr. Taylor, did you do anything, try to exercise any influence with the sheriff or with any person having control of the appointment of Cowan, to keep him in your court room, or to have him associated with you in any way in the performance of your duties during the time covered by this indictment?

*Mr. Harrison.* Objected to as being immaterial and irrelevant.

*The Court.* Objection sustained.

THIRTIETH: Because said Court at page 232, line 38, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Mr. Taylor, Cowan has testified and so have a number of witnesses who were

jurors, during the period involved, saying that Cowan would come to you at times and talk to you apparently about jurors' service, is that so or not? A Mr. Cowan has often come to me—

*Mr. Harrison.* I object.

*The Court.* Objection sustained. He cannot compare his testimony with the other jurors—with the other witnesses and denounce their testimony as incorrect.

*Mr. Heisley.* Why does your Honor assume he is going to denounce?

*The Court.* If he is going to confirm it, it is not worth while asking him. The question that ought to be asked of this witness is what he did. He is your witness. You cannot lead him.

*Mr. Heisley.* Please repeat the question.

(Question read.)

*The Court.* I have ruled on that.

*Mr. Harrison.* My objection I would like to say is that the question is leading and the form is improper and therefore objectionable.

*The Court.* Objection sustained.

THIRTY-FIRST: Because said Court, at page 233, line 35, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Would or would not Cowan during the period embraced in this accusation, come to you at any time and talk to you about the excusing of jurors?

*Mr. Harrison.* Objected to as leading.

*The Court.* Objection sustained.

THIRTY-SECOND. Because said Court, at page 236, line 30, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Will you tell us whether the other attendants would ever talk to you about anything?

*Mr. Harrison.* I object as being entirely irrelevant.

*Mr. Heisley.* I want to show that the other attendants talked to Mr. Taylor just the same as Cowan did about the jurors who wanted to be excused, to negative the idea of any scheme existing between Taylor and Cowan.

*The Court.* You may state specific facts. What occurred on particular occasions. But there is nothing in this question to show that it is competent.

THIRTY-THIRD: Because said Court at page 237, line 13, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Did the other officers during the time —the period in which Cowan would come to you and talk to you about the excusing of jurors—did other officers who were Court attendants, come to you about such matters?

A They have—

*Mr. Harrison.* I object as being immaterial and irrelevant and on the further ground that it is leading.

*The Court.* That is sustained and the answer is stricken out.

THIRTY-FOURTH: Because said Court, at page 237, line 30, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Did these other officers who were Court attendants during the period in which Cowan was coming to you and reporting about jurors—I mean during the time referred to in this accusation—did they come to you and have any conversation with you?

*Mr. Harrison.* I object as being incompetent and leading.

*The Court.* Objection sustained.

THIRTY-FIFTH: Because said Court at page 238, line 10, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Did they come to you and tell you that some jurors wanted to be excused? A They have.

*Mr. Harrison.* I object as being immaterial.

*The Court.* Do not answer.

*Mr. Harrison.* I tried to get the objection in as quickly as I could.

*The Court.* The objection is sustained.

THIRTY-SIXTH: Because said Court at page 242, line 27, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q Were or were not the requests of these other attendants of a character similar or dissimilar to the requests which Cowan would make? A They were all alike.

*Mr. Harrison.* Wait a minute. I object. I do not think it is proper.

*The Court.* Objection sustained

THIRTY-SEVENTH: Because said Court at page 249, line 20, would not permit the defendant Taylor, when called as a witness in his own behalf, to be asked the following question:

Q If anything was said about an arrangement at that time, did it refer—did you know that it referred to any arrangement of which Cowan had spoken to Mr. Helwig existing between you and Cowan for the purpose of defrauding the county?

*Mr. Harrison.* I object as being leading and hypothetical. The witness has testified he does not recall the incident or any such incident. Now, the question of counsel as I gather it, is based upon the assumption of such an incident happening and asking this witness's conclusion to be drawn therefrom and what his state of mind and belief was.

*The Court.* The leading feature of the objection is not sound because this is a denial, and of course, in order to bring out a denial, a leading question must be asked, otherwise you could not deny anything. The hypothetical feature is troublesome. I will sustain the objection on that ground. You may ask him "did you ever have any knowledge of any arrangement between Cowan and any juror."

THIRTY-EIGHTH: Because the Court refused at page 440, line 1, to charge the jury, when duly requested so to do, as follows:

1st: It is the duty of the jury to carefully consider the evidence of the witness Cowan,

and consider the fact that he is not obliged under the law of this state, to testify as he has, and thus incriminate himself, and the jury should consider what is the motive that prompts him in so testifying, and whether he is testifying in the belief that he is benefiting himself by so testifying, or that he will receive a lighter and easier sentence than he would if he had not so testified.

THIRTY-NINTH: Because the Court refused at page 440, line 20, to charge the jury, when duly requested so to do, as follows:

3rd: The defendant has produced numerous witnesses who have testified to his good reputation, and if you are satisfied that he has a good reputation, the fact of such reputation may alone and of itself, engender in your minds a reasonable doubt as to the guilt of the defendant, and if it does engender such doubt, then you must acquit him.

FORTIETH: Because the Court refused to charge the jury at page 440, line 37, when duly requested so to do, as follows:

5th: In order to convict this defendant, you must be convinced beyond all reasonable doubt, that he actually entered into a corrupt agreement as described in the indictment, for the purpose set forth in the indictment, and if you have any reasonable doubt about his having entered into such agreement, you must acquit him.

Wherefore the said plaintiff in error, Frank E. Taylor, prays that the judgment and sentence aforesaid by reason of the aforesaid errors

and all other errors appearing in the record and proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the said Frank E. Taylor may be restored to all things he has lost on occasion thereof.

WILBUR A. HEISLEY,
*Attorney of Plaintiff in Error.*

## Specification of Causes.

Filed February 7, 1918.

NEW JERSEY SUPREME COURT.

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| STATE OF NEW JERSEY,<br>*Plaintiff-Defendant in Error,*<br>*vs.*<br>FRANK E. TAYLOR,<br>*Defendant-Plaintiff in Error.* | *On Error to Essex Quarter Sessions.*<br>*Specification of Causes.* |

And that said plaintiff-in-error also specifies the following causes relied upon by him for relief or reversal pursuant to the statute in such case made and provided.

FIRST: Because the Court at page 33, line 10; page 34, line 30, permitted the witness James F. Cowan, over the objection of the defendant, to testify as to acts performed by John J. Mathews, said Mathews not being one of the five persons mentioned in the indictment as performing a so-called overt act.

SECOND: Because the Court at page 38, line 27, over the objection of the defendant, permitted the witness Cowan to be interrogated and answer as follows:

> Q And do you know from whom you had received the difference between the eighty some dollars and eleven dollars?

THIRD: Because the Court at page 41, line 10, over the objection of the defendant, admitted in evidence certain so-called certificates, one drawn to the order of Vernon E. Beavers; one to Charles

Hicks; one to Michael Brown; one to Joseph Roller; one to Graham H. Jackson; one of F. Lemberg; one to Adam Hebler; one to Louis Kenngott; one to George Kaye; one to Eugene Cavenget and one to Edward J. Witherill, said action of the Court being erroneous and harmful to the defendant, because they were by said action of the Court and in its charge to the jury, treated as a substitute for the overt acts specified in the indictment.

FOURTH: Because if said certificates were relevant at all, it was incumbent upon the Court to have told the jury in what aspect of the case they were relevant and it should have told the jury that even if it believed that Cowan and Taylor had entered into a corrupt agreement, that the state was limited in its proof of overt acts, to the overt acts set out in the indictment and referring to the five persons named therein, and that no conviction could be had even if the jury believed that all these acts of other persons unnamed in the indictment were proven to their satisfaction, unless they also believed that one or more of the overt acts mentioned in the indictment had also been proven beyond a reasonable doubt.

FIFTH: Because the Court permitted, page 46, line 19, over the objection of the defendant, the witness Cowan to testify that he had divided with the defendants monies which he had collected from persons not mentioned in the indictment, and that upon this specification the defendant will urge the reasons assigned in the fourth specification.

SIXTH: Because the Court, at page 47, line 20, over the objection of the defendant, permitted the

witness Cowan to testify as to the alleged division with Taylor of eighty or ninety dollars which he, Cowan, had collected from persons not mentioned in the indictment, and in support of this specification, the defendant will urge the reasons set forth in Specification No. 4.

SEVENTH: Because the Court, at page 125, line 23, permitted the witness Wm. A. Bender, when called for the state, to testify in fact and substance that his signature had been forged to a paper known as "Sheriff's payroll" for April Term, 1917, and marked Exhibit S. 22 for Identification, without in any way showing that the defendant was in any way connected with said forgery, or that said forgery was a part of or connected with the alleged corrupt agreement of defendant and Cowan and when requested (page 126, line 2) in behalf of the defendant to strike out the witness' evidence on such subject, the Court failed to do so.

EIGHTH: Because the said act of forgery was not an element or part of the crime charged in the indictment.

NINTH: Because the admission of such evidence and the failure of the Court to strike it out, was calculated to impress the jury with the belief that the forgery was an act forming a part of the crime charged in the indictment and for which the defendant should be convicted.

TENTH: Because the action of the Court resulted in defendant being convicted of forming a corrupt agreement with Cowan, and of doing an act which was not one of the overt acts charged in the indictment.

*Specification of Causes.*

ELEVENTH: Because by permitting Cowan and persons who have been called as jurors, but who were not named in the indictment, to testify as to acts performed by them in connection with Cowan, such evidence being admitted upon the assurance of the Prosecutor, see page 30, line 26; page 33, line 20; page 35, line 5; page 37, line 29; page 38, line 30; page 41, line 36; page 46, line 27; page 47, line 20; page 100, line 20 down to page 103, line 19; page 125, line 10; page 129, line 20; page 130, line 31; page 134, line 13 to line 9 on page 136; page 141, line 33 to line 38 on page 142; page 148, line 21 to line 28 on page 149; page 150, line 22 to line 10 on page 151; page 159, line 3 down to 13 on page 161; page 179, line 8 to line 23 on page 180; page 189, line 16 to line 37; page 191, line 24 to line 28 on page 193; page 252, line 27 to line 12 of page 253; that it would be connected with the conspiracy charged in the indictment, was illegal and injurious to the defendant, because the Prosecutor did not connect such evidence with the charge mentioned in the indictment, and if it was evidential at all, it was the duty of the Court to have told the jury that they could not regard such acts as a substitute for the overt acts charged in the indictment.

TWELFTH: Because the Court by the admission of proof of acts done by others than those named in the indictment, and by the admission in evidence of the certificates to such persons, induced the jury to believe that if it found that such facts so testified to and such warrants were connected with the alleged corrupt agreement, that the jury should accept such acts and such certificates as overt acts and in place of the overt acts charged in the indictment.

*Specification of Causes.*

THIRTEENTH: Because the Court in its charge to the jury, substantially told the jury that the facts and acts testified to by such persons would support a verdict of guilty, whereas the Court should have told the jury in what aspect such facts and acts were relevant, if at all, but that it could not find a verdict of guilty on such facts and acts unless the jury believed beyond all reasonable doubt that one or more of the overt acts mentioned in the indictment had been proven.

WILBUR A. HEISLEY,
*Attorney of Plaintiff in Error.*

**Supreme Court Opinion.**

Filed August 21, 1918.

# New Jersey Supreme Court.

FEBRUARY TERM, 1918.

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| THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* FRANK E. TAYLOR, *Plaintiff in Error.* | *On Error to Essex Quarter Sessions.* |

Argued February 20, 1918.
Decided , 1918.

Before Gummere, Chief Justice, and Justice Kalisch.

For the plaintiff in error, Wilbur A. Heisley.

For the State, J. Henry Harrison, Prosecutor of the Pleas.

The opinion of the Court was delivered by KALISCH, *J.*

The record in this case discloses a conviction and judgment thereon of the plaintiff in error, indicted jointly with one James F. Cowan of a criminal conspiracy to cheat and defraud the Board of Chosen Freeholders of the County of Essex of its moneys, goods, chattels and property. Cowan pleaded *non vult* to the indictment, was called as a witness for the State, and gave testimony tending to establish the commission of the offense, by the defendants, as charged

against them in the indictment. The indictment contains but a single count, which charges that the defendants named therein did wickedly, corruptly, knowingly and unlawfully conspire, combine, confederate and agree together fraudulently and falsely to cheat and defraud the Board of Chosen Freeholders of the County of Essex of divers large sums of money, to-wit, etc. Here follow charges of the various fraudulent and unlawful means alleged to have been used by the defendants, and of the several overt acts committed by them to accomplish and to carry into effect the unlawful agreement. Five overt acts are laid in the indictment, in each of which is set forth the name of the person with whom the defendants acted, and through whom the defendants were enabled and succeeded in obtaining money unlawfully from the Board of Chosen Freeholders.

The record is a voluminous one, containing forty assignments of errors and thirteen specifications of causes for reversal. We propose to deal only with those which have been argued orally before us and those relied on in the brief of counsel of plaintiff in error.

The first fifteen assignments of errors and all of the specification of causes for reversal deal with the admission in evidence of acts not charged as "overt acts" in the indictment, and the rulings of the Trial Judge regarding the competency of such acts in evidence.

The precise point made by counsel of plaintiff in error, relating to this group of alleged errors, is that the Trial Judge, against the objection made by counsel, permitted the State to prove acts of eleven individuals who were not named in the indictment, but whose acts were

similar to the "overt acts" mentioned therein, and treated the same as "overt acts" upon which the plaintiff in error could be lawfully convicted, regardless of whether the State proved or did not prove any of the specified overt acts. This assertion is not supported by the record. It does appear that counsel of defendant objected to the introduction of testimony tending to prove other acts of the defendants, in pursuance of the unlawful agreement, with persons other than those mentioned in the indictment, but which acts were similar in character and occurred during the same period of time, whereupon counsel of the State said to the Court that he intended to follow it up and connect these acts with those set forth in the indictment, thereupon and upon condition that proof would be made of one or more of the overt acts charged in the indictment the Court admitted the testimony. Proof was subsequently made of the overt acts laid in the indictment. Counsel of plaintiff in error, in his brief, does not seriously contend that the testimony was inadmissible for all purposes, but frankly admits that it was admissible "for the purpose of proving the fraudulent purpose and intent of the persons involved." But he argues that the Trial Judge, having admitted such testimony, it became his legal duty "to have expressly told the jury that the evidence of other acts should be considered by them only and solely for the purpose of determining whether Cowan and Taylor were corruptly and fraudulently inclined, as charged, and should have distinctly told the jury that they should not consider such acts as or in lieu of the stated overt acts in the indictment, and that even if the jurors believed that these

other acts were committed, but if they had any reasonable doubt as to every one of the overt acts mentioned in the indictment, the defendant should be acquitted." No request was made of the Trial Judge by counsel of defendant to instruct the jury to the effect as above suggested, and, therefore, the Trial Judge was under no legal duty to do so. Counsel of defendant is in no position to complain of matters which the Judge omitted to charge the jury, unless the Judge's attention was directed thereto by a request and such request was refused. Besides all this, however, it appears that the Judge, in express terms, instructed the jury that "a mere conspiracy of the kind stated in this indictment is insufficient to constitute a crime unless some overt act charged in the indictment is committed." This was an accurate statement of the law.

It further appears that counsel of defendant moved to strike out the testimony of the witness Bender, upon the ground of irrelevancy, and in that it tended to prove a distinct offense unrelated to the offense charged in the indictment. The Trial Judge apparently ignored the application, for he made no ruling whatever. Construing the failure of the Court to make a ruling equivalent to a denial of the motion (which is not to be considered as a precedent), we have considered the point raised, and upon examination of the testimony objected to conclude therefrom that the motion to strike out was without any merit. The testimony was relevant on the question of the motive and intent which actuated the defendants, and besides it was a proper procedure for the State to prove the character of the unlawful means adopted by the defendants

to carry into effect the conspiracy charged on the indictment, even though those particular unlawful means were not set forth in the indictment, and in themselves constituted an indictable offense, and so long as they were related to the subject matter of the indictment. The matters argued under assignments 16, 17, 18, 19 and 20, we find, are without merit. The 21st assignment of error is founded upon the refusal of the Trial Judge to permit Harry V. Osborne, a witness produced by the defendant, to answer the following question: "And haven't you, and hasn't Mr. Taylor, put in considerable time during the last three or four months in evolving a scheme for the drawing of jurors which would practically eliminate—or at least very much limit—the chances for a fraud of this kind, which is embodied in this charge, being perpetrated upon the county?

This question was properly excluded. It could only have a bearing upon the defendant's character for honesty. It is to be borne in mind, however, that it is firmly settled law that it is only the general reputation of a defendant which can, properly, be put by him in evidence. Particular facts and circumstances tending to establish honest dealings or conduct are inadmissible.

Assignments 22, 23, 24 and 25 relate to the exclusion by the Court of questions asked of the defendant by his counsel which sought to establish by this witness that Cowan was addicted to the excessive use of liquor, and to such an extent that he would be incapacitated for weeks at a time, during which he was mentally incompetent and incoherent, and that these facts were known to the defendant before and at the

time it is alleged that he entered into a conspiracy with Cowan to defraud the county. The purpose of offering this testimony, as stated to the Trial Court by defendant's counsel, was to have the jury pass upon the question, as a matter of fact, "whether or not it is probable that a man in his right senses would make such a combination with a man whom he knows to be for weeks at a time out of his head by the use of intoxicating liquors."

We think the testimony offered was competent, and that its exclusion was error prejudicial to the defendant. It may very well be that the probative force of such testimony is very slight. But that is not a proper matter for a Court to deal with. The Court cannot legally substitute its judgment for that of the jury and exclude from the latter's consideration testimony, upon the theory that its evidential value is weak, without depriving a defendant of a constitutional right to the benefit of such testimony, and a jury of one of its most sacred functions—to weigh testimony and make deductions therefrom. If the testimony was competent its potentiality was for the jury to determine. In the case, *sub judice,* there is no ground stated by the Trial Judge why he ruled the questions out. The nature of the case was such that the State was obliged to resort to the testimony of Cowan, an alleged co-conspirator, and to proof of conduct between the defendants, in order to establish the unlawful agreement. Cowan testified as to the criminal compact that existed between him and Taylor to defraud the county. If it be true that Taylor knew Cowan to be an irresponsible drunkard and given to other vices, the question might naturally arise would Taylor, who, ac-

cording to the testimony, bore an excellent reputation for honesty and who held an office of trust for many years without stain, ally himself with a man whose drunkeness might at any moment have made him indiscreet and thereby disclose the fraud that was being perpetrated. Now, in order for the defendant to have the benefit of the jury's consideration of that important question, it was incumbent upon the defendant to establish first, as a fact, that Cowan's habits were what the questions put to the defendant aimed to prove, and that the latter knew of such habits before and at the time when the alleged conspiracy was formed. This the Court, erroneously, refused to permit the defendants to do, and, therefore, the judgment must be reversed. We are not unmindful that it might be fairly argued that men do not seek among the virtuous and honorable for accomplices to commit unlawful deeds, but even so that circumstance can only affect the evidential value of the testimony offered and not its competency, as we have already pointed out.

We have examined the questions raised by the remaining assignments of errors and find them unmeritorious.

The judgment is reversed.

## Assignments of Error.

Filed October 30, 1918.

# New Jersey Court of Errors and Appeals

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| THE STATE OF NEW JERSEY,<br>*Plaintiff in Error,*<br>*vs.*<br>FRANK E. TAYLOR,<br>*Defendant in Error.* | *On Writ of Error to Supreme Court. Assignments of Error.* |

Afterwards comes the State of New Jersey by J. H. Harrison, its attorney, and says, that in the record and proceedings aforesaid there is manifest error, to-wit:

(1) Because the judgment of the Supreme Court in said cause was entered in favor of Frank E. Taylor, whereas it should have been entered in favor of the State of New Jersey.

(2) Because the Supreme Court reversed and set aside the judgment entered on the conviction of the said Frank E. Taylor in the Essex County Court of Quarter Sessions, whereas it should have affirmed the said judgment.

(3) Because there was error in the record and proceedings before the Supreme Court.

And the said plaintiff in error and State of New Jersey prays that the judgment aforesaid in the Supreme Court be reversed, and that the conviction of said Frank E. Taylor be in all things affirmed, and that the record and proceed-

ings be remitted to the Supreme Court according to law and the rules and practice of said Court.

Dated October 24, 1918.

J. H. HARRISON,
Prosecutor of the Pleas,
*Attorney for Plaintiff in Error.*

Service of a copy of the within is acknowledged this 29th day of October, 1918.

WILBUR A. HEISLEY,
*Attorney of Defendant in Error.*

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

# New Jersey Court of Errors and Appeals

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| STATE OF NEW JERSEY, *Plaintiff in Error,* *vs.* FRANK E. TAYLOR, *Defendant in Error.* | *On Indictment for Conspiracy.* |

## Brief for Plaintiff in Error.

An indictment for conspiracy was found by the Essex County Grand Jury against Frank E. Taylor and James F. Cowan, to the effect that they conspired to defraud the Board of Chosen Freeholders of Essex County out of funds belonging to the county, by keeping false accounts of the attendance of petit jurors, issuing certificates directed to the Sheriff certifying to false amounts as being due said jurors for attendance, and having the petit jurors collect such amounts and returning same to Taylor and Cowan, who appropriated the amounts so returned to their own use.

The overt acts alleged in the indictment, in execution of the conspiracy began March 30th, 1917, and continued to about May 18th, 1917.

The points upon which this writ is based are fully set out in the printed case and are repeated at the head of each argument in this brief.

There were a large number of assignments of error of the Essex County Court of Quarter Sessions argued in the Supreme Court, which will be considered in this brief. The attention of the Court is called to the fact that all of the errors alleged in the Court of Quarter Sessions were decided in favor of the State with the exception of assignments 22, 23, 24 and 25, which related to the exclusion by the Trial Court of questions asked of the defendant Taylor on direct examination, which questions sought to establish that defendant Cowan was addicted to the excessive use of liquor to such an extent that for weeks at a time he was mentally incompetent, and that these facts were known to defendant Taylor before and at the time of the alleged conspiracy, as stated to the Trial Court by the defendant's counsel. The purpose of this testimony was to have the jury pass

upon the question "as a matter of fact whether or not it is probable that a man in his right senses would make such a combination with a man whom he knows to be for weeks at a time out of his head by the use of intoxicating liquor."

## FIRST.

All of the specifications of causes and the first 15 assignments of error relate to the admission of evidence of acts not charged as overt acts in the indictment and the treatment of such acts by the Trial Court. The statute upon the subject pertinent to this discussion, page 805 of the Laws of 1898, Section 37, provides "any two or more persons who shall unlawfully agree * * * shall be guilty of a conspiracy * * * but no agreement to commit any crime other than arson * * * shall be deemed a conspiracy *unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement.*"

On this argument, we are concerned only with the view of the crime as set out in the statute of this State. About the application of that statute there can be no dispute. *State* vs. *Dougherty,* 86 L., 539.

The contention of the defendant is that the testimony of the eleven witnesses, by means of whom the conspiracy was furthered, became harmful to the defendant because he was not apprised of their testimony, in the indictment. The answer to this is two-fold.

*First.* After the fact of the conspiracy itself had been established, it became relevant to show the means by which the conspirators sought to accomplish their purpose. (Cases cited, Wharton Criminal Ev., 10 Ed., p. 1672.) A conspiracy was clearly shown by Cowan's testimony and the testimony of the five witnesses named in the indictment. The State now insists, in view of this situation, that it became not only highly important to use all the evidence of which it had knowledge relating to the conspiracy, and used in support thereof, but that the defendant was not harmed, because the defendant denied absolutely the existence of *any* conspiracy.

Where the fact of the conspiracy itself is at issue it is relevant to show similar acts by the accused at or about the same time (Wharton, *supra,* 1673, and cases cited), and such relevancy is not affected by the fact that such acts may tend to establish other and distinct offenses where they are offered for the purpose of showing motive on the part of the conspirators.

*Second.* Our further answer to that contention is the proof of the acts of the eleven persons not mentioned in the indictment were facts which *inter alia* showed the conspiracy itself, or, at least, corroborated and confirmed other testimony of a corrupt agreement.

The history of the legislation bearing upon this point is important. The gist of the common law offense of conspiracy is the unlawful agreement. The mere agreement will constitute the offense. (*State* v. *Norton*, 23 N. J. Law, 33.)

> "In every case that can be adduced of conspiracy, the offense depends on the unlawful agreement, and not on the act which follows it; the latter is but evidence of the former. 2 Burr., 993; 3 Burr., 1321." (Chitty Crim. Law, Vol. 3, *1140.)

No overt act was necessary to show the completion of the offense, and in the framing of the indictment at common law it was held to be sufficient to state the conspiracy alleged (Chitty Crim. Law, Vol. 3, *1142 and 1143).

The New Jersey statute requires, except in certain specified crimes, that no agreement "shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more parties to such agreement."

An indictment for conspiracy must charge an overt act, but it has been held in this State that in setting forth an overt act it is not necessary to state *all the means used in the execution of the plot*. *State* v. *Young*, 37 N. J. L., 184.

The testimony, therefore, of the co-conspirator Cowan, and of the instrumentalities used by Taylor and Cowan, named in the indictment, i. e., James Marshall, Charles Alliger, Fred S. Helwig, Fred Busse and Jacob M. Englander, formed the basis of the State's contention relating to the charge laid in the indictment and were specifically alleged in the indictment as the means by which the unlawful objects were accomplished. Having, therefore, proven the conspiracy (the order of the proof being entirely in the discretion of the Court), the State then properly adduced evidence of similar acts, by eleven other jurors not mentioned in the indictment.

Thus we urge that this evidence was perfectly proper. It was not charged that any of these jurymen were part or parcel of the conspiracy, so that being known to the prosecutor they would come within the purview of *Plainfield* v. *Flanagan*, 15 Vroom, 118. It is contended that the defendant was harmed and prejudiced by proving other crimes against him; and also that evidence of acts on the part of the eleven persons not mentioned in the indictment was not relevant for any purpose.

The answer to both of these criticisms is obvious and is supported by decisions in this and other jurisdictions:

(a) The issue is one of conspiracy, and in such cases it is

relevant to show acts by the accused similar to those charged in the indictment in furtherance of the common enterprise.

> "A clear case of a corrupt agreement to defraud by the joint act of two persons, neither of whom could have carried it out without the assistance of the other, is not often disclosed, but the record kept of the acts leading to its consummation by one of the conspirators was competent evidence against all, especially in a case like this, where both parties knew that *one of the means of carrying out the crime,* viz., the checks, were not charged as they should have been to the account of the plaintiff in error and that the omission to do so was tending to prevent the discovery of the wrong-doing. It is urged that the books were not properly kept and, therefore, not competent evidence, but so far as the plaintiff in error is concerned, one of the elements of the crime is that, to his knowledge his account was not debited with the unlawful overdrafts. *It was an overt act in the execution of the corrupt bargain, and the books were competent to prove it.*"

*State* v. *Armstrong,* 95 Atl. Rep., ~~948~~ 991 - 88 Wash. 780

So in the case under consideration one of the overt acts in the execution of the corrupt bargain and by means of which it was carried out with the assistance of Cowan, is competent evidence against Taylor, just as much as the checks which were not mentioned in the indictment were competent evidence against Armstrong, because the failure to charge them to his account was the means of carrying out the corrupt agreement.

So also is the law in other jurisdictions. On the trial of an indictment for conspiracy to obtain money from Cook County, Illinois, by means of false pretenses, the Court held that "Evidence that one of the defendants collected money from appointees of official positions under the board and gave it to another of the defendants is admissible," even though the names of the persons from whom the money was collected are not mentioned in the indictment.

*Ochs* v. *People,* 16 N. E., 663.

That is exactly the situation in this case. Taylor through Cowan collected money as a result of the conspiracy from other people than those mentioned in the indictment. So that both under the Armstrong case and under the Ochs case the testimony was properly admitted.

A leading case upon this subject is *Garland* v. *State,* 112 Md., 83, which is cited with extensive notes in Am. & E. annotated cases, Vol. 21, p. 28, where in a prosecution for a conspiracy to obstruct the administration of justice by procuring the discharge of a person committed for the action of the Grand Jury, one of the conspirators who paid a sum of money to his alleged co-conspirator was permitted to

testify that he presumed the latter was discharged through the influence of said co-conspirator, the reason why the witness paid the money being admissible for the purpose of "Reflecting upon the question as to whether there had been a previous agreement to corruptly influence the Grand Jury."

Again in *State* v. *Sykes*, 89 S. W. (Mo.), 851, which was an indictment against Sykes for conspiracy with a man named Byers to commit crime, the Court held that it was not even necessary that Byers should be joined in the indictment in order that evidence by the State might be introduced to show that a conspiracy did in fact exist between them, citing Wharton on Criminal Evidence, 9th Edition, page 700, as follows:

> "It makes no difference as to the admissibility of the act or the declaration of the conspirator against the defendant, whether the former be indicted or not or tried or not, for the making one a co-defendant does not make his acts or declarations any more evidence against another than they were before, *the principle upon which they are admissible* at all being the act or declaration of one is an act or declaration of all united in one common design, a principle which is wholly unaffected by the consideration of their being jointly indicted.
>
> "The moment the connection of individuals in an unlawful enterprise has been shown, every act and every declaration of each member of the conspiracy, in pursuance of the concerted plan, or in reference to the common object become the acts and declarations of all, and are, therefore, original evidence against each of them." (Law on Criminal Conspiracies and Agreements, by Hampton L. Carson, Blackstone Publishing Company (1887), p. 216, and cases cited in foot note.)

A case exactly in point, it seems to us, holds as follows:

> "The fourth point made is that the district attorney was permitted, over the objection of the defendant, to introduce proof of other offenses entirely separate and distinct from that for which he was on trial. The first specification under this head is upon the overruling of an objection to a question of the district attorney put to a witness, McDuffy, who was living nearby the plaintiff in error at the time when the officers attempted his arrest and Garner was killed. The question was, 'Did you know anything about George Davis having a still there?' to which the objection was made that it related to another violation of law entirely, distinct and separate from that for which the respondent was being tried. The objection being overruled, the witness testified that Davis did have a still there; that it was at one time east of his house, 'and then he had it on the west side.' We think it was competent to show the fact called for by the question. It was admissible to show the object and purpose of the alleged conspiracy, and explain the motive of the respondent in entering into it, and in resist-

ing the officers by firing upon them and killing one of their number. The objection was properly overruled." (*Davis* v. *U. S.*, 107 Fed. Rep., p. 756.)

Therefore, as to the contention of defendant relating to other overt acts, it seems clear from the principles of law above cited that the contention should fail.

(b) The evidence was relevant to show the motive on the part of the conspirators (Wharton Crim. Ev. (10 Ed.), p. 1674, and cases cited in the foot notes).

In *Packer* v. *U. S.*, 106 Fed. Rep., 906, at page 909, under an indictment which charged the defendant with having devised a scheme to be effected through the U. S. Post Office by inducing other persons to entrust him with money for investment in stock speculations, evidence was admitted in regard to previous business transactions of the accused and it was urged by the plaintiff in error that this was evidence of offenses not connected with the one for which the accused was on trial. The Court held that ordinarily such evidence does not tend to prove the defendant guilty of the particular offense, but was usually prejudicial.

> "It is competent only when the *quo animo* is in issue. Because the intent is in issue whenever in criminal or in civil actions a fraudulent scheme or act is the subject of proof, evidence is competent of other frauds of like character committed by the party charged at or near the same time. In such cases the evidence is competent only when the other frauds or criminal acts are so connected as to time, and are so similar in other relations, that the same motive may reasonably be imputed to them all. *Lincoln* v. *Claflin*, 7 Wall., 138, 19 L. Ed., 106; *Insurance Co.* v. *Armstrong*, 117 U. S., 591, 6 Sup. Ct., 877, 29 L. Ed., 997; *Mayer* v. *People*, 80 N. Y., 364."

Assuming for the sake of argument that the testimony of Cowan could not have been procured, it is well settled that any testimony, either direct or indirect, circumstantial or otherwise, which tends to prove the crime, is admissible in evidence. The cases which decide that principle are well settled and citations are unnecessary. Therefore, the evidence of these other witnesses are such circumstances and direct proof tending to show the commission of the crime, and upon that theory alone were admissible. (Wharton Crim. Ev., 10 Ed., p. 1672, and cases cited in foot notes.)

> "Evidence to show that the defendant tried to effect insurance upon the life of the assured in other companies at or about the same time that he effected it with the New York Life Company was admissible to show such fraudulent purpose." *Armstrong* v. *N. Y. Mutual Life Insurance Co.*, 117 U. S., 591.

So, too, *Lincoln* v. *Claflin*, 7 Wall., 132.

Finally: "The conspiracy is the crime, and the overt act bringing it within the requirement of the statute, may be a very insignificant affair." *State* v. *Young, et al.,* 8 Vr. 184, at p. 189.

In our own State, the principle is well settled that while the general rule is that upon the trial of a person for one crime, evidence of guilt of other crimes is irrelevant, there are a number of exceptions, one of which is that when several acts arising out of the same transaction may have sprung from or been actuated by a single motive. *State* v. *Raymond,* 24 Vr., 260; *State* v. *Poppick,* 54 Vr., 318.

This contention relates to the testimony of the witnesses Beavers, Brown and Appleton, and counsel asserts that the State attempted to prove the crime of forgery. There was no such contention, as the evidence clearly shows, but even accepting the challenge of the defendant in error, the matter is disposed of under the principles just cited. If the evidence did tend to prove another crime it still was not inadmissible by reason of that fact, if admissible for any other pertinent purpose.

The analogy between the principle here cited and the introduction of the evidence of these three witnesses is entirely obvious.

*This evidence, moreover, was not offered to prove the crime of forgery.*

The assignment of error upon this point by the defendant is as follows:

*"Because the admission of such evidence and the failure of the Court to strike it out, was calculated to impress the jury with the belief that the forgery was an act forming a part of the crime charged in the indictment and for which the defendant should be convicted."*

The entire case is barren of any such allegation or testimony to that effect. Moreover, the defendant denied it. The object of the testimony was clearly for the purpose of showing that some one received the money belonging to the county on three certificates admittedly signed by Taylor, showing Taylor's connection with the matter. Taylor knew these jurymen had not served. That is the only legitimate inference that can be drawn from the evidence. Taylor denied that he signed the pay roll or caused it to be signed. The State did not allege that he did. Such being the fact, it could not in any way have prejudiced the jury. The evidence was admissible for the purpose of showing the act of the defendant in execution of the conspiracy. This being a part of the same transaction was also admissible as tending to explain or qualify the fact in issue. *People* v. *Law,* 100 Calf., 379, 34, Sec. 856.

Even though counsel may seek to find support in the case of *State* v. *Hummer,* 52 Vr., 433, upon his motion to strike out, after having failed to make the proper objection, yet that case is not authority for overruling the refusal of the judge because the motion was to strike out the testimony on the ground that it tended to prove a separate and distinct crime. That was the limit of the motion. To avail himself of the Hummer case counsel was bound to state all of his reasons to the Court so that the Court would be apprised of the actual purpose thereof. Under the principle set out in *State* v. *Kebaszewski,* 92 Atl., 387, to the effect, "a motion to strike out the testimony of a witness for the State, some of which testimony was competent, was properly denied," this objection seems unsound.

The Supreme Court dealt with this class of alleged errors by holding in effect that defendant was in no position to complain of the matters which the Judge omitted to charge the jury, because the Court's attention was not directed thereto by proper request.

The Supreme Court holds "besides all this, however, it appears that the Judge, in express terms, instructed the jury 'a mere conspiracy of the kind stated in this indictment is insufficient to constitute a crime unless *some overt act charged in the indictment is committed*' his is an accurate statement of the law."

## SECOND.

ASSIGNMENTS 16, 17, 18, 19, 20 AND 21 ARE BASED UPON THE EXCLUSION BY THE COURT OF CERTAIN QUESTIONS PUT TO COWAN.

*Sixteenth.* Q. Let me ask you this, when did you say the first criminal transaction of this kind of which you have testified to this morning occurred by your and Mr. Taylor's acts? Page 50, line 15. The question asks the witness to define "criminal transaction," which, of course, would not only be the witness's conclusion; and, further, to assume a fact which had not yet appeared was within the witness's knowledge. P. 462, L. 20.

*Seventeenth.* Q. Now were there any other persons in this crime of conspiracy with you and Taylor and the jurors? No exception was taken to the ruling of the Court, and indeed, it is urged that the ruling was entirely proper. Cowan was not competent to testify to a conclusion which the import of the question. As to whether or not there were other persons in the conspiracy depended upon the facts and not upon Cowan's *ipse dixit.* P. 462. L. 35.

*Eighteenth, nineteenth and twentieth.* These questions relate to the personal opinion of Jurors Helwig and Kenngot as to Tay-

lor's knowledge as to what Cowan was doing concerning their attendance as jurors. Upon the mere reading of the questions, it seems to us that it becomes instantly apparent that they were improper. They called for a conclusion and for the opinion of the witnesses upon a question on which they were not qualified to express an opinion. P. 463, L. 10-40.

*Twenty-first.* This assignment relates to alleged conferences between the defendant Taylor and the witness, Judge Osborne looking to the evolution of the method of the drawing of juries to eliminate the perpetration of a fraud. It is difficult to understand just what bearing such conferences could have upon the proof or disproof of the crime charged in the indictment. Taylor could readily have had such conferences while engaged in the commission of the acts alleged.

## THIRD.

### ASSIGNMENTS 22, 23, 24 and 25.

These relate to questions put to Taylor concerning the drinking habits of Cowan. (P. 464, l. 40, etc.)

The conspiracy charged in the indictment covered the period from October 1, 1916, to May 18th, 1917.

Our answer to this contention is as follows:

The questions were irrelevant and incompetent because they intended to prove by specific acts the bad reputation of a co-conspirator. Regardless of the contention of the defendant that such questions were competent "to show that Cowan was by reason of intoxication helpless and hopeless and that it was a question for the jury to say whether or not it was probable that a man in his right senses would make such a combination with a man whom he knows to be out of his head by the use of intoxicating liquor," it is but another way to attempt to prove the character and reputation of Cowan by indirection. The issue was not as to Cowan's condition, but as to whether or not a conspiracy had been formed between Cowan and Taylor. There could be no logical connection between Cowan's alleged intoxication and the making of the illegal agreement.

The purpose of this question must have been to elicit an answer which would tend to show that Taylor had not made a corrupt agreement with Cowan. That is the point fundamentally at the bottom of the answer sought to be elicited by the question and rests upon an effort to attack Cowan's credibility; in other words, counsel sought to show because of the moral character of Cowan that the credibility of his testimony therefor would be subject to attack, and would be a matter for consideration by the jury.

To restate the proposition, the State urges, whatever Cowan's character or reputation so far as sobriety or gambling was concerned, that it did not raise the question of the probability of Taylor's connection with the crime and in no way presented that matter for the consideration of the jury.

The nearest principle of law that we have been able to find controlling a situation of this kind is set out in the line of cases which hold that a defendant may not prove in support of his innocence, the good character of his co-conspirator. If he cannot show that he would not be likely to conspire with a man of good character, how could it be said that he would be unlikely to conspire with a man of low moral character? And if this principle be applicable in the case at bar, it would seem to be applicable to all cases where a defendant was involved in crimes with others; that the State could show that the such other persons were of low moral character. In other words, if such evidence of good character of a co-conspirator be admissable to prove the innocence of a defendant co-conspirator, it would certainly be admissable to prove the guilt of such defendant if this co-conspirator had a low moral character. If Cowan's bad character can be used in demonstration of the innocence of defendant Taylor, why could not Cowan's good character be also used in demonstration of the same purpose?

As has been intimated, no case directly in point has been found in a search of the authorities, but argument can be advanced from cases which approach the subject supporting the view of the State. This is particularly true in the case of *Omer* v. *Commonwealth,* 25 S. W., p. 596.

> "The appellant contends that he should have been permitted, not only to establish his own character among the people of the community, as he did do, but also the good character of each of the parties indicted with him. At first blush it might seem plausible that, as it was sought to make the accused responsible for the acts of these parties, he should be permitted to show their good character, as rebutting the idea of conspiring with such men. But the accused alone was on trial, and his own conduct and character were involved. The rule would have to work both ways, and a good man caught, ever so innocently, in bad company, might be made to suffer from the establishment of such a rule, or if presumptions of guilt or innocence might be indulged in, according as the party charged was in good or bad company.
>
> We are not inclined to disturb the ruling of the lower court in refusing to allow the alleged co-conspirators to testify. For obvious reasons, we shall not discuss the testimony on this point. The proof may be presented in an entirely different aspect on another trial, and we do not intimate what should

be done under circumstances differing from those now before us. For the reasons indicated, the judgment is reversed, and a new trial is awarded, to be had upon principles consistent herewith."

It will be seen by reference to this case that it has been held that an attempt to establish the good character of a co-conspirator is incompetent and irrelevant. If Cowan had been on trial with Taylor, it would have been incompetent for Taylor to have proven Cowan's good character, and vice versa for Cowan to have offered evidence in support of Taylor's good character. "The rule would have to work both ways, and a good man caught, ever so innocently, in bad company, might be made to suffer from the establishment of such a rule, or a bad man caught in good company, would be able to profit by it." If the principle is good, the converse is equally good. Therefore, if Cowan's good reputation could not be proved, under the same principles, his bad reputation could not be the subject of proof. So also in the case of *Walls* v. *State,* 25 N. E., 457:

> "On trial for robbery, the accused cannot show the character for honesty of one jointly indicted with him, but not on trial. The appellant on the trial of the cause offered to prove by a competent witness that Belcher, his alleged accomplice, was at the time of the robbery, a person of good character for honesty, but the Court refused to admit such evidence. Belcher was not on trial, and the question then under investigation related to the guilt or innocence of the appellant and did not necessarily involve the guilt or innocence of Belcher. For the purposes of the trial of the cause, Belcher was a stranger to the record and his character for honesty was no more important than the character of any other third person. In the refusal to admit the evidence the Appellate Court said there was no error."

Here again it appears that the State properly objected to the testimony relating to Cowan's habits. As far as the case at bar was concerned, Cowan was a stranger to the record, and his character for intoxication was no more important than the character of any third person, and under the case just cited, the Court correctly refused to admit the evidence. But the principles extend even further than in the two cases just cited. "Though the accused may prove his own character, he will not be permitted to prove that others conspiring with him and jointly indicted, or who are suspected of complicity in the crime, are men of good characters. This evidence is not in the least relevant to show his innocence, as his friends or acquaintances of the accused are men of impeachable character in no way proves he is himself." Underhill on Criminal Evidence, p. 97. So it appears also in the authorities stated in Underhill, that a defendant can not prove the good character of others conspiring with him and jointly

indicted, and the reason given "that such evidence is not in the least relevant to show his innocence" applies with equal force in the case under consideration. This rule also finds support in *State* v. *Hairston,* 28, S. E., 493.

It is from these fundamental principles, in the absence of any cases directly in point, the State urges that the testimony sought to be introduced by the questions put to Taylor on direct examination, are incompetent and irrelevant.

(B) THE EVIDENCE SOUGHT TO BE INTRODUCED TENDED TO CONFUSE THE ISSUE WITHOUT EVEN HAVING A MINIMUM PROBATIVE VALUE, AND WAS THEREFORE PROPERLY EXCLUDED.

The theory of relevancy of testimony as distinguished from minimum probative value is treated in Wigmore on Evidence, Vol .1, pp. 90-91, and holds that while some evidence may have a logical connection between the facts offered as evidence and the issuable fact, it is nevertheless immaterial, because it raises matters which tend to confuse the real issue in the minds of the jury.

Thayer's Treatise on Evidence at the Common Law (1898, p. 516) succinctly states the general proposition as follows:

> "The law of evidence undoubtedly requires that evidence to a jury shall be clearly relevant, and not merely slightly so; it must not barely afford a basis for conjecture, but for real belief; it must not merely be remotely relevant, but proximately so. Again, it must not unnecessarily complicate the case, or too much tend to confuse, mislead, or tire the minds of that untrained tribunal, the jury, or to withdraw their attention too much from the real issues of the case."

Such evidence comes within the exercise of the sound discrimination of the Court, and its admission or rejection is not ground for error. As was said in *Thompson* v. *Church,* 1 Root, (Conn.) 312: "The business of the Court is to try the case and not the man, and a very bad man may have a very righteous cause." In order to meet the issue of Cowan's drunkenness, raised by the excluded questions, it would have been necessary, and the State could have produced many witnesses who could have testified to Cowan's habits of sobriety, and this would have resulted "in trying Cowan" and diverting the minds of the jury to this issue rather than to the issue whether or not a conspiracy existed to defraud the Board of Chosen Freeholders.

To carry the argument to its logical conclusion, it would not have been competent "to impeach the defendant by proof of par-

ticular acts which have no connection with the offense for which he is on trial.". *Seaborn* v. *Commonwealth,* 80 S. W., 223. Certainly if such a rule could not be applied to the defendant, it could not be applied to any witness testifying against him. In fact in *State* v. *Beaty,* 62 Pacific Rep., 658, it was held to be error for the State to introduce evidence in rebuttal that the accused, together with three other persons not on trial sustained bad reputations. The opinion in this case is of considerable length, and therefore it is not convenient to set it out in full, but reference is made to it because of its bearing upon the subject matter under discussion.

It is well established, of course, the character or reputation of a witness can not be established by specific acts. *Hodge* v. *People,* 6 N. E., 797; *State v. Bullard,* 6 S. E., 191; *Barton* v. *Morphes,* 12 N.C., 520, in which the Court held:

> "Where character is not in issue, but comes in question incidentally, as that of a witness does, the rule is that specific charges of criminal or corrupt acts are not to be heard to impeach it. Two reasons are given for the rule, either of which, I think, is sufficient to sustain it. The first is the number of issues such evidence is calculated to create, thereby consuming the time of the Court, and abstracting the mind from the main issue; the other is that both the party and witness would almost always be wholly unprepared to meet and repel the charges. But these reasons do not go to exclude proof of bad character by common report or reputation, for that is single in its nature and but one issue can arise upon it."

So it was held " the fact that witness that is in the habit of drinking intoxicating liquors to excess, does not affect his creditability." Century Digest, 1117. The fact that a witness is a gambler has been held not ground for impeachment. *Scaggs* v. *State,* 113 S. W., 346; 40 Cyc. 2595.

So therefore, for the reasons above stated, it is urged that the questions were properly excluded because they tended (1) to confuse the main issue, and (2) because they tended by specific acts to show the character or caliber of the witness.

## (C) THE RULING WAS HARMLESS.

Under our statute, unless the exclusion of the particular evidence sought to be introduced was harmful or prejudicial to the defendant, this Court will not reverse. It is contended, if the Court determines that Taylor's evidence on this point should have been admitted, that it in no way prejudiced the defendant, because there

was considerable evidence in the case upon the matter to which the question related. This evidence is fully set out as follows:

Amiel Kreidel, p. 404, l. 37.

"Q. Did you have a conversation with him (Taylor) about Mr. Cowan's position here in the court house?

"A. Yes, sir, some time the latter part of February or beginning of March. The reason that I state that is his daughter's birthday is the 14th of February and mine is the 11th of March. Mr. Cowan had not been attending to business regularly and on Tuesday Mr. Taylor told me to go up and see that he will be in to-morrow, which was Wednesday; so I went to Mr. Cowan and I asked him to be back to business on Wednesday, and he said, 'Don't ask me to go back. Let me resign. That man will get me in jail. All he wants is money, money;' so I says, 'What do you mean?' He says, 'Mr. Taylor.' So I came down on Wednesday morning, and I went to Mr. Taylor, called him out of the Supreme Court room, I said, 'Mr. Taylor, is James doing anything wrong?' He says, 'Why?' I says, 'I told him to come to work to-day and he says, "Do not make me come back, because that man will get me in jail; all he wants is money, money."' Mr. Taylor said, 'Oh, bosh, that is only *mere* talk; don't pay any attention to it.' So Mr. Cowan came in Wednesday, or Thursday, rather, and then on Friday came in again. Then I spoke to Mr. Taylor again in our office as he was coming in at nine o'clock; shortly after it, and I repeated my questions to him and he said, 'Oh, that man is going crazy; don't pay any attention to him.'"

And again, p. 406, l. 12-22:

"Q. What did you say to Mr. Taylor?

"A. I said to him, 'Mr. Taylor, is James doing anything wrong? If he is I want to know it;' and then he said, or I said, 'Why last night he said to me, don't make me come back; let me resign because that man will get me in jail. All he wants is money, money.' And I said, 'Who?' He says, 'Mr. Taylor.' I says if he is doing anything wrong I think I have a right to know. He says, 'Oh, bosh, that is only beer talk; don't worry about it.'"

And again, p. 408, l. 14-30:

"Q. And you say that he has not been attending to business some time before you went to see Mr. Taylor?"

No answer.

"Q. That was the time when he was drinking, wasn't it?"

"A. Yes, sir."

"Q. He is a man who goes on awful sprees, isn't he? A. Not awful sprees, no, sir."

And again, p. 409, l. 4-10:

"Q. I am directing your attention to the time which you speak of. I understand you to say was in February, wasn't it?" "A. Latter part of February or beginning of March, just exactly, I cannot tell you."

It is necessary to recall here, that the February and March mentioned by the witness is the date approximately of the first offence charged in the indictment, viz: March 30th, 1917, and was at about the time the conspiracy was hatched. Therefore, the following testimony is important in view of the point raised on the appeal. (P. 409, l. 13 et seq.):

"Q. Well, at that time he had been on quite a protracted drunk, hadn't he? A. I don't know what you would call it."

"Q. You know when a man is loaded, don't you, Miss Kreidel?"

Mr. Harrison: I object.

"Q. You know what I mean, don't you? I mean he was drunk. A. Mr. Cowan is a man who can't stand very much drink."

"Q. He gets drunk very easy? A. Very easily."

"Q. When he gets started, he stays going some time, doesn't he?

Mr. Harrison: I object as being immaterial.

The Court: If this relates to the time I think it is proper.

"Q. (Question read,) A. Not always."

"Q. No, but he did last winter. A. Well, he hadn't been."

The Court: Last February?

Mr. Heisley: Yes.

Witness: "He hadn't been in. I won't say positive, but I don't think he was in to business on Saturday morning, and he came in late Monday morning and I don't think he was, I won't say positive, but I don't think he was in Tuesday. Wednesday he was in, Thursday and so on, he was in after that."

"Q. And did you have to give him medicine? A. Aromatic spirits."

"Q. Yes. That is what you usually give a fellow when he is on a drunk, isn't it?"

The Court: I don't think we need that information.

"Q. What did you give him, armomatic spirits of ammonia for?"

Mr. Harrison: I object.

The Court: Objection sustained.

"Q. Did you give it to him because he had been on a protracted drunk and had become sick from drunkenness?"

Mr. Harrison: I object.

The Court: Objection sustained.

An exception was taken to this ruling of the Court. (P. 410, l. 30.)

"Q. And it was at this time when he was sick that he told you that Taylor wanted money, money, money all the time, is that right? A. Yes, sir."

The defendant was recalled to refute this testimony. (P. 413, l. 29.) His evidence is as follows:

"Q. When she came to you, at the time she indicates, did she say to you anything—no—did she say to you or ask you if James had been doing wrong, &c., and did you make the reply, 'It's all bosh, it is nothing but beer talk.' A. I never made any such reply. The only time she ever came to me was when he had been on this spree and she did come to me then and interceded with me to save his job."

The Court: What did she say, not your conclusions about what she did say. What did she say and what did you say?

Witness: Asked me to save his job for him when he did come in. She herself gave him medicine in the jury room.

"Q. In whose presence? A. In my presence."

"Q Had he been on a drunk? A. He had been away from the office for about two weeks."

It is important to keep in mind the date to which the defendant just referred because it coincides with the date about which Miss Kreidel had been testifying. (P. 404, et seq.)

The only other testimony upon that point is to be found in Mr. Taylor's testimony. (P. 213, l. 10 et seq,)

"Q. What has been his habits, Mr. Taylor, as to the use of intoxicating liquor, if you know?"

The question was objected to and the objection sustained, but no exception was taken. A new question was then put.

"Q. Do you know what his habits have been as to the use of intoxicating liquor during the time that you have known him, to and including the period covered by this indictment?"

Objection made and sustained.

"Q. Is it true or not that during the time covered by this indictment, Cowan upon several occasions was so overcome by the excessive use of intoxicating liquors that for two weeks at a time he was absolutely unable to attend to any of his duties as a court attendant?"

Objection was made and sustained and counsel for the defense then stated his reason as follows:

"Mr. Heisley: I do not say that the fact that a man drinks for ten years shows that another man did not commit the crime, but I respectfully say, sir, that it is competent for us

to show that this man whom we are accused by the state of making a co-conspirator with us is known to be in such a condition that he is helpless and hopeless; that it is for the jury to say whether or not is probable that a man in his right senses would make such a combination with a man whom he knows to be for weeks at a time out of his head by the use of intoxicating liquor."

After the question had been over-ruled, the following question was asked:

"Mr. Taylor, do you know whether or not during any portion of the period covered by this indictment Cowan has been for any considerable time—period of time—mentally incompetent for any cause?"

Objection made and sustained.

"Q. Do you know whether from the excessive use of liquor or from any other cause for a period of several weeks covered by the time mentioned in this indictment Cowan has been in such a condition that his language would be incoherent and he appeared to be mentally incompetent?

Objection made and sustained.

Q. Do you know if during this time Cowan had been in the habit of following horse races and gambling on the horse races?

Objection made and sustained.

Q. Do you know that he has been in the habit of playing what is known as policy, a game of gambling?

Objection made and sustained.

Cowan testified upon the subject as follows: (P. 59, l. 3.)

Q. Were you drunk at that time? A. No.

Q. You did this in your right mind, did you? A. Yes, sir. I done it all for him. He was my boss up there. He told me to get—— Q. Before he led you astray, I suppose you were a good little boy? A. No, I was no angel, never pretended to be one.

An objection was made and sustained, but the objection came after the answer was in and no motion was made to strike it out. Therefore, it stands.

"Q. You are known as Faker Cowan, aren't you? That is your alias. A. That was given to me.

Q. Isn't your alias Faker Cowan? A. Yes, sir. I think I ought to be allowed to say how that came on.

Q. Didn't you go into this crime because you were addicted to the practice of gambling on horse races and playing policy?"

Objection was at first made and in reply to the query of the Court as to the purpose of the question, counsel for defendant said, "For the jury to say whether or not this man, if he was addicted to

gambling, following the race track and playing policy, *that he would be more apt—for them to say whether or not such a man would be more apt to steal money than somebody else would.* I think his course of life is relevant. I propose to show what Mr. Taylor's business was and that he had no object in stealing. I am going to prove Taylor's character and prove he hasn't any motive for going into it."

The objection subsequently was withdrawn and the witness answered, "No, sir." (P. 61-63.)

"Q. You did gamble on horse races and you did play policy? A. I played policy about fifteen years ago—twelve or fifteen years ago. It was shut down then. I don't know of any policy being played around this county since then.

Q. The reason you haven't played policy since, I suppose, is because it has been shut down.

Mr. Harrison: I object as calling for a conclusion.

The Court: I do not think that is proper.

Q. You do play the horses? A. Yes, sir, I play them occasionally. Mr. Taylor has played with me.

Q. Who did? A. Mr. Taylor.

Q. Did I ask you about that? A. No.

Q. Did I ask you about whether Mr. Taylor played with you? A. No.

Q. Did I? A. I don't know whether you did or not.

Q. What made you say that Mr. Taylor played with you when I didn't ask you about him? A. Well——

Q. You did it to hurt Mr. Taylor, didn't you? A. No, I don't want to hurt Mr. Taylor. I am telling the truth about Mr. Taylor. I haven't said one word of a lie.

Q. Why is it that when I asked you if you played the horse races that you said, "Yes," and you had played them with Mr. Taylor? Why did you bring in Mr. Taylor? A. Because I—because he did.

Q. Did you think I asked you whether you played them with Mr. Taylor? A. No, I didn't.

Q. Did I ask you if you played them with anybody? A. I don't know as you did.

Q. You know I didn't, don't you? A. Well, you didn't.

Q. Why do you always want to ring Mr. Taylor's name? Wasn't it because you wanted to prejudice the jury against him? A. No.

Q. You didn't want to hurt Taylor, did you? A. No, because I never told it to the Prosecutor before that he played horses with me.

Q. How many times did Mr. Taylor play the races with you? A. About two or three times.

Q. Hasn't he played with you three times? A. Probably three. Not more, I don't think.

Q. Not more? A. No.

Q. Wasn"t it under these circumstances that you got some of the officers around this court house to chip in $2 apiece on the pool? A. On what? A. On a race pool? A. No.

Q. Isn't that so?

Mr. Harrison: I object as being entirely immaterial.

The Court: Ask him if he and Taylor were in these three transactions or were there others in them.

Q. Were you and Taylor in the three races together, or were there others in with you? A. Once there was another man in with us.

Q. Cowan, every time that you bet money on horse races and got Taylor in, isn't it a fact that there were other officers around this court house that went in with you just as a matter of sport?

The Court: You mean on the same bets?

Mr. Heisley: Yes.

The Court: Answer that.

The Witness: Yes, sir, they had just for a matter——

The Court: He says isn't it true that every time.

The Witness: Oh, no, not every time.

Q. One time you got him to go in—bet $2 with you and others, and the horse won, didn't it? A. Yes, sir, it run second.

Q. Another time, the second time, where he and others went in with you, he put in $2 and the horse didn't run, isn't that so?

Mr. Harrison: I object to the whole line of questions.

Q. Over the years that you have known Taylor, only three times have you ever known him to put any money in your custody for the purpose of betting horses? A. That is all. That was merely sport."

The Supreme Court was of the opinion that the defendant ought to have the benefit of the jury's consideration of that important question, and in order to give them that benefit "It was incumbent upon the defendant to establish first as a fact that Cowan's habits were what the questions put to the defendant aimed to prove, and that the latter knew of such habits before and at the time when the alleged conspiracy was formed."

This exact point was involved in *Woods* vs. *Dailey,* 71 N. E. 1068. A witness, Mahon, testified as to the habits of Woods, who died from drink. Mahon himself was a damaging witness to the plaintiff in error and it was sought to destroy or weaken his testimony by showing upon cross examination that he was addicted to the excessive use of intoxicating liquor, and to that end he was

asked: "How many times have you been to the Keeley cure?" "How many times have you had snakes, yourself?" Upon objection these questions were overruled. "The only legitimate object of such cross examination," if any, the Court said, "was to bring to the knowledge of the jury the fact that the witness was addicted to the excessive use of intoxicating liquor with a view to affect his credibility." It appeared, on direct examination that he testified "That he used to buy whiskey" and "used to buy lots of whiskey, but did not do so now." The record showed the jury were fully advised as to the fact that the witness had been in the habit of using intoxicating liquor to excess. "The result of such a cross examination would have been that the Court for the time being would have been forced to abandon the trial of the real issues in the case and enter upon the trial of a wholly immaterial issue."

All of the points sought to be presented to the jury by the questions put to Taylor were already in evidence; viz.: a. Cowan's intoxication; b. habits; c. gambling; d. moral character. Further testimony would have been merely cumulative, *and its admissibility was within the sound discretion of the court.*

The witness, Kreidel, says that Taylor told her Cowan's plaint was "only beer talk." Q. That was the time he was drinking, wasn't it? A. Yes, sir. Cowan wen "on sprees" and on a "protracted drunk." That he is a man who "cannot stand very much drink"; that he gets drunk "very easily"; that she gave Cowan "aromatic spirits of ammonia" and that he had been away presumably on a drunk for "about two weeks."

Cowan himself testified that he was "no angel—never pretended to be one"; that he was known as "Fakir Cowan," which he later explained; that he "played policy and gambled on horse races"; that Taylor played with him; that he played the horses "occasionally"; that he "played the races" with Taylor "two or three times."

Comparing this evidence with that sought to be introduced, it appeared that when Taylor was asked what Cowan's habits were as to the use of intoxicating liquor "including the period covered by the indictment" that the witness Kreidel had already testified that Cowan "got drunk very easily" and went on "protracted sprees" and at about the time of the conspiracy he was away from the office "two weeks." Cowan had already admitted that he was "a gambler" and had "played the races, etc."

Taylor was asked in the excluded questions about this matter and the Supreme Court said that however slight their probative value, they should have been admitted. Their admission, however,

would have resulted only in cumulative evidence. The jury from the evidence then in the case could have determined that Cowan (quoting from the excluded questions) "had been in the habit of following horse races and gambling on horse races," and that "for a period of several weeks" had used liquor excessively and that because of these facts he was not such a man that Taylor would likely have conspired with him.

The exclusion of the questions, therefore, was neither harmful nor prejudicial.

*Twenty-second* to *Twenty-fifth assignments.* These relate to the refusal of the Court to permit the defendant Taylor to answer the questions which appear on pages 213, line 39; 214, line 6, and 216, line 14.

These questions were excluded on the principle of self-serving declarations. A declaration to be inferred from conduct falls under the same rule.

*State* v. *Leo,* 31 Vr., 23.

*Voorhees* v. *Henderson,* 5 Dutcher, 101.

In *Burk* v. *State,* 71 Ala., 382, it was decided that the defendant testifying in his own behalf could not on his direct examination tell his motives for certain particular acts of his.

In a prosecution for homicide evidence that defendant asked to be taken before deceased before she died for identification and that on being charged with wounding deceased he refused to flee from the scene of the crime, was inadmissible, being an effort by the defendant to make evidence in his own behalf.

*Walker* v. *State,* 35 Southern, 1011.

Defendant's statement made to a witness at the time defendant told him of having fired the first shot into the ditch was hearsay and self-serving declaration and inadmissible.

*People* v. *Taylor,* 87 Pacific, 215.

The most liberal view upon which the answer to this question could be admitted would be that the statements he made would be "in his own favor." A declaration made by defendant in his own favor, unless part of the *res gestae,* or of a confession offered by the prosecution, are inadmissible in evidence.

*Wharton's Criminal Evidence,* 10th Edition 1425.

This is especially true when such declarations are open to the suspicion of being part of the defendant's plan of defense.

*State* v. *Brown,* 64 Missouri, 367.

The conclusion, however, seems irresistible that the modern doctrine is that if such questions are permitted at all, the witness cannot be compelled to answer them if asked only for the purpose of degrading the witness. Mr. Wharton says, in his opinion, "such questions should never be permitted."

*Wharton's Criminal Evidence, supra,* cases cited in the foot note.

After all, in such a situation, it becomes a matter for the discretion of the court. "From a careful examination of the authorities no absolute rule can be laid down and the power over it must rest in the discretion of the court."

*State* v. *Bilansky,* 3 Minnesota, 246.

## FOURTH.

ASSIGNMENTS 26 TO 37 INCLUSIVE RELATE TO THE EXCLUSION OF A DIFFERENT CLASS OF QUESTIONS.

*Twenty-sixth.* This point has been considered in the argument under assignments 22-25.

*Twenty-eighth and Twenty-ninth.* The relation between defendants, Cowan and Taylor, would not be admissible to prove or disprove the crime alleged in the indictment. It would be quite as possible for Cowan, as an employee of Taylor, to conspire with him.

*Thirtieth to Thirty-sixth.* These relate to the refusal of the Court to permit Taylor to answer the questions set out on pages 232, line 38, 249, line 20. The single answer to all of these questions is a reiteration of the well-known principle that it is not competent for one witness to pass upon or characterize the testimony of another witness. That is the province of the jury.

*Thirty-first.* The question raised by the thirty first assignment was clearly leading.

*Thirty-second.* As to the question raised by the thirty-second assignment, it is, of course, absolutely immaterial "if they talked to Taylor about anything." The Court offered an opportunity to counsel to make the question relevant, but counsel declined to avail himself of that opportunity.

*Thirty-third.* Both this question and the one covered by the next assignment, thirty-four, are in the same category. It nowhere appears what is meant by "talk" and besides, "talk" between Taylor and other attendants would not be admissible on any theory. The Court sustained the objection on the ground of it being leading and

incompetent. For the reasons thus stated it seems clear that the ruling was entirely proper.

*Thirty-fifth and Thirty-sixth.* The first question was leading, and the second question did not meet the requirement of materiality and relevancy. The reason urged was, "The object of this line of questions is to show that these other officers talked to him about juries exactly as Cowan did," which, of course, had nothing to do with the inception of the conspiracy and the fraudulent agreement to execute it.

*Thirty-seventh.* The State feels justified in resting upon the objection made to the question and the opportunity offered by the Court to counsel to reframe the question.

## FIFTH.

ASSIGNMENTS 38 TO 40 INCLUSIVE CONCERN EXCEPTIONS TO THE REFUSAL OF THE COURT TO CHARGE CERTAIN REQUESTS.

The three subjects embraced in these requests are embodied in the 38th, 39th and 40th assignments.

*Thirty-eighth.* This request relates to the weight to be given by the jury to Cowan's evidence, and the basis of the exception is that the Court did not fully comply with the wishes of the defendant.

This subject as treated by the Court will be found on P. 437, lines 20-30. We think the request was fully covered. The alleged error is rather one of omission than commission, but the record disproves that assertion.

*Thirty-ninth.* This assignment is aimed at the failure of the Court to charge the jury concerning Taylor's good reputation in the exact words of the request. The instruction, however, contained all the essential elements of the principles of law and was in entire accord with the well-settled rules of this state. See P. 420, L. 16-27.

*Forty.* The objection raised by this assignment is that the Court did not accurately instruct the jury upon the law concerning reasonable doubt.

The principles charged, P. 416 and 417, are in language almost identical with the decisions of this court.

We respectfully submit that the judgment of the Supreme Court should be reversed and the judgment of the trial court sustained.

Respectfully submitted,

J. H. HARRISON,
*Prosecutor of the Pleas.*

JOHN A. BERNHARD,
*Assistant Prosecutor.*

February Term, 1919.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

# New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
*Plaintiff—Plaintiff-in-Error,*

*vs.*

FRANK E. TAYLOR,
*Defendant—Defendant-in-Error.*

*On Error to the Supreme Court.*

## Brief for the Defendant.

This writ brings up the entire record of the proceedings had at the trial as well as the conviction of the defendant in the Essex Oyer and its reversal by the Supreme Court.

The indictment charges Taylor, who is known as the Clerk of the Supreme Circuit Court of Essex County, with conspiring with one Cowan to falsify the records of jurors, issuing jurors' vouchers for more days than they had attended, having the jurors collect money from the sheriff and return a portion of the same to Cowan, who in turn, divided it with Taylor.

While there are many points raised by the assignment of error and specification of causes, none of which we mean to waive, we nevertheless intended to press for the earnest consideration of this Court four points, all of which we think show grounds requiring the reversal of the verdict.

1. The Court permitted the jury to consider overt acts which were not alleged in the indictment, *as being a part* of the crime, instead of treating such unalleged overt acts *as evidence* from which the jury might infer the making of the unlawful combination.

2. By permitting the State to prove the forgery of jurors' signatures and sheriff's receipts without offering the slightest evidence to connect either Taylor or Cowan, directly or indirectly, with such forgeries; the Court failed to instruct the jury, when so requested, to disregard such evidence.

3. Because the Court refused to allow Taylor to show that *he knew at the time of the making of the alleged combination* by him and Cowan, that Cowan was addicted to the excessive use of intoxicating liquors, as a result of which he frequently went on prolonged sprees of drunkenness lasting several weeks

at a time, during which time he would be wholly mentally aberrated.

4. A general exception to the charge was taken, and under it the defendant complains that the charge was erroneous and prejudicial to his interests in two respects, viz:

a. By failing to tell the jury the legal difference as a matter of relevancy between the alleged overt acts and unalleged overt acts, and treating the unalleged overt acts as though they possessed the same qualities as the alleged overt acts.

b. By failing to refer to the forgeries, but instead of doing so, treating them as though the State had connected Taylor and Cowan with such forgeries.

## AS TO POINT I.

### Unalleged Overt Acts.

The indictment alleges five overt acts between March 30 and May 18, a period of only a little over six weeks. We will briefly state here our conception of the law:

In the case at bar, by virtue of our statute, Section 37 of the Crimes Act, the crime is expressly stated to exist *only when some overt act is done by one or more* of the parties to such agreement. In other words, that an unlawful agreement alone does not constitute conspiracy.

At common law it was not necessary to allege overt acts, but if they were alleged, then the Government's proof was confined thereto.

*Reg.* v. *Steele,* Crompton and Meeson, 337.
*Rex.* v. *Hamilton,* 7 Carrington & Payne, 448.

Our Courts have defined this crime, *State* v *Dougherty,* 88 N. J. Law, pages 211 and 212, and we believe at the bottom of page 539, 86 N. J. L., generally supports defendant's contention.

*State* v. *Young,* 37 N. J. Law, page 189, and *State* v. *Norton,* 23 New Jersey Law, page 48, are authorities for the proposition that the indictment *must set forth some act.* We do not contend for a moment that evidence of overt acts not alleged in the indictment or perpetrated *at or about the same time* as those specified in the indictment may not be proved *for the purpose of corroborating the charge that the defendants entered into a combination,* and we insist that the cases cited

on pages 9 and 11 of State's brief clearly sustain this contention. (See Bullock ad State, 36 Vroom, bottom of page 575), but we earnestly urge that where in a criminal case evidence is admissible and relevant for *one* purpose and *not for others,* it is the duty of the Court, *without* request, to instruct the jury as to its relevancy. *State* v. *D'Adame,* 84 N. J. L., pages 396-7, where at page 397 the Court of Errors says: "—the absence of such instructions even when not requested, might be sufficiently injurious to warrant reversal."

We assert that nowhere in the entire case did the Court or prosecutor distinguish the relevancy of an *alleged* act from the relevancy of an *unalleged* act. On the contrary, from first to last the jury was given the impression that alleged and unalleged acts stood on the same footing and as the evidence of the unalleged acts was overwhelming and *undisputed,* the inference is necessary that Taylor was convicted of the unlawful agreement *and the unalleged acts.*

The learned Supreme Court, at page 482, line 4 to line 15, seems to run counter to the deliverance of this Court in *D'Adame ads State, supra,* but we are content to believe that the judgment of this tribunal will prevail. We do insist that a defendant may not be legally convicted of a conspiracy supported only *by unalleged overt* acts. The State must not only prove the combination, but it must also prove at least *one alleged overt* act. The Court has no right to substitute an unalleged overt act in place of the overt acts which must, under the rules of pleading, be and were set forth in this indictment *as a component part of the crime.*

If the State proves an agreement and an overt act *charged,* it is entitled to a verdict; if it proves the agreement but fails to prove at least one of the alleged overt acts, it is not entitled to a verdict. If it proves an agreement and acts not specified in the indictment, it does *not prove the crime charged.* If it proves the agreement and offers some uncertain evidence as to the proof of one of the alleged overt acts, but offers *strong proof of a similar act not alleged,* it is not entitled to a verdict for the reason that no one can tell whether the defendant was convicted by the jury of the *overt act charged* which was doubtfully proved, *or of the uncharged act* which was strongly proved.

As we will show later, the State's case hinged upon its inducing the jury to believe the testimony of Cowan as against

the flat contradiction of Taylor. The other witnesses called by the State gave evidence of comparatively little value in warranting an inference of the making of a combination.

At the trial, seventeen jurors were called as witnesses by the State, and voluntarily admitted entering into this conspiracy with Cowan, *but not one of them said he entered into any agreement with Taylor.* Only three, viz: Alliger, at page 82, line 13 and page 86, at the bottom, and Helwig, page 110 at the bottom, and Busse, page 173, line 12 and page 175 at the top, testified to any act *from which it was possible to make a deduction of Taylor's guilt,* and the acts to which they testified also warranted a deduction of innocence on Taylor's part. Cowan and the seventeen unblushingly and publicly confessed their guilt because they were caught red-handed, and were naturally desirous of aiding the State as the price for their freedom. The State gave the seventeen immunity, and they, perhaps prompted by the animal instinct of self-preservation and not by repentance, tried to aid the State in convicting Taylor, whose exceptionally high reputation was attested by the oaths of a Circuit Judge, a Common Pleas Judge, and leading lawyers and citizens of that County. Taylor naturally objected to being painted by the State as black as the seventeen who seem to bask in the smiles of the sovereign government, which in this respect, we might liken unto Providence; in "moving in a mysterious way, its wonders to perform."

That the Prosecutor considered unalleged acts were provable as *a component part of* the crime rather than *as possible evidence of it,* will readily be seen by referring to Page 31 at the top, where the Prosecutor says:

> "— but it seems to me that conspiracy being the essence of the crime and the overt act being of comparatively little importance, that we might introduce proof of other over acts than those in the indictment."

Who ever heard of overt acts being of comparatively little importance!

At the bottom of that page, we vigorously protested against any substitution of unspecified acts for whose which were specified.

To show that the Court fell into the same error, we refer to the bottom of page 32, where the Court said (line 35):

> "It is only necessary to show that there was an overt act."

What he should have said was that it was necessary to prove an *alleged* overt act, and that other acts *not alleged might be proved simply for the purpose of permitting the jury to see whether or not they were facts from which the making of the alleged fraudulent agreement might be inferred.*

At page 33, the Court asked the Prosecutor: "Are you going to connect this by showing that there was an overt act in pursuance of this?" The Prosecutor replied: "I intend to follow up and bring your Honor's attention to that matter in another question or so." The Court responded: "I will let the testimony go in on that statement," and the testimony did go in, and went in with the *same force and effect as though the acts had been charged in the indictment and constituted a part of the crime charged,* and nowhere in the entire case, either in the comments by the Prosecutor or the rulings of the Judge, or in his charge, can there be found a syllable *indicating that the Court or the Prosecutor did not consider the unalleged overt acts as a constituent and component part of the crime charged, and for which the defendant might be convicted,* even although there was no proof offered of the alleged overt acts.

As to the overt acts alleged, nowhere in the entire evidence of Cowan's confession does he positively identify a single one of the five men named in the indictment in connection with the overt acts. The nearest to it is the case of Englander, whom at page 39, line 13, Cowan uncertainly identifies; but the proof as to the unalleged overt acts was unquestioned.

This record may not be read by the impartial mind without reaching the conclusion that Taylor was convicted of the agreement *and of acts not specified* in the indictment, rather than of the agreement and *one or more of the specified acts.*

The Court in its charge on page 425, line 19, says: "The question is whether Cowan has been corroborated," and then at page 426, line 25, page 427, line 37, page 428, line 3, refers to the *unalleged* overt acts of several unnamed jurors, and at page 431, line 39, in speaking of such acts says:

"From these facts and the other facts in the case, the State contends that Cowan—has been corroborated," but he utterly fails to state in what respect Cowan has been corroborated, or to distinguish between the relevancy of he alleged and the unalleged overt acts.

The Supreme Court in passing over this point said, page 481, line 25: "The proof was subsequently made of the overt

acts laid in the indictment." We reiterate our statement, *that no proof whatever* was made of any overt act in the indictment except the feeble and uncertain identification of the juror Englander, and with the greatest respect for the learned Court we assert its conclusion was not warranted by the evidence.

## POINT II.

### The Forgeries.

The State proved (page 125, line 23 to line 30), that the name of William Bender, a juror was forged on the Sheriff's payroll. Counsel for defendant had not objected to the Prosecutor asking Bender if the signature was his, and assumed that the State intended to prove the genuineness of the signature, because previously thereto (at top of page 85), Charles J. Alliger proved that he *had* signed the Sheriff's payroll, and at page 103, line 25, Jackson also testified that he *had* signed the Sheriff's payroll; consequently counsel could not anticipate that the learned Prosecutor was about to shift his position and prove the contrary by other jurors. So it came as a complete surprise; but immediately, on page 126, defendant's counsel asked the Court to strike out this evidence of forgery *because of its irrelevancy* and *because there was no evidence whatsoever tending in the slightest degree to connect either of these defendants with the forgeries.* The Court ignored the request, not ruling upon it at all. The State at page 12 of its brief erroneously says the sole basis of our motion was the proving of a separate offence.

The Court did not even ask the State, *nor did the State offer* to in any way connect either of these defendants, directly or indirectly, with the forgeries, and we challenge anyone to find the slightest evidence tending to show that Taylor or Cowan had any knowledge or participation in the forgeries.

It is only fair to presume that the State knew when it offered its prejudicial evidence that it had no way of connecting the defendants with it. The veriest tyro at the law must have known that evidence of this character should not have been introduced *unless there was at least some reason for believing* the defendants would be connected with it; and yet, where this dfendant's liberty was at stake, the State, without any justification whatsoever, introduced evidence which must of necessity have inflamed the jurors against this defendant, because

the jurors would naturally think that if the Court permitted such evidence to go in and remain in over the protest of counsel for defendant, the Court intended the jury to give some heed to the evidence concerning these forgeries.

We respectfully suggest in passing, that if counsel for defendant had undertaken any such practice in behalf of this defendant, he would have been the subject of a severe reprimand from the Court.

The State asserts on page 11 of its brief that the State's object in proving the forgeries was to prove that "some one received the money." Why in common fairness did it not say so to the Court and jury? Why not have told the Court it did not assert that the defendants were forgers?

But the forgery was not proof of "some one receiving the money."

The real proof could easily have been furnished by the Sheriff's employee testifying as to the payment. The object was to induce the jury to believe (without any justification) that Taylor was a desperado.

Upon the authority of this learned Court as delivered in *State* v. *D'Adame,* 84 N. J. Law, at pages 396 and 397, we not only say this evidence should have been stricken out, but that the Court *without any request*, should have stricken it out on its own motion. We refer also to the case of *Bullock* ads. *The State,* 65 New Jersey Law, beginning at page 574 and running through to the end of the case, holding the admission of evidence tending to show that the defendant had committed assault and battery upon Campbell, was not only illegally admitted, but that the remarks of the Judge in directing the jury to disregard it were not sufficient as a matter of law, to eradicate the unfavorable impression which the jury received. The case of *Bullock* ad *State* is also followed in *State* v. *Mount,* 73 N. J. Law, 584.

The Federal Courts also hold that it is the duty of the Court *of its own motion* to take action by the withdrawal of a juror, or otherwise, to correct the prejudicial effect of extraneous evidence, and a recent case upon this subject is found in the United States Circuit Court of Appeals for the Third Circuit—1918—*Robert J. McKibben* v. *Philadelphia and Reading Railway Company,* 251 Fed. Rep., 577, where it appeared that at the trial, counsel for the plaintiff in his argument to the jury, made a state-

ment as to what had been done by other juries in former trials of the case, the Court saying:

> "Such statements in the presence of the jury are, in the Federal Court, deemed so improper as to warrant opposing counsel to request, or for the Courts of *their own motion to direct* the withdrawal of a juror and the continuance of the case—"

and reiterating what the same Court had said in *Vaughn* v. *Magee, 218 Federal Reporter, 632,* viz.:

> "We will not enter into a speculative analysis of what effect the statement and its repetition to the jury had. It suffices to say that the jury had before it substantial statements of matters which *were not only not in evidence, but which on no principle of law could have been admitted in evidence.* The possibility of a verdict of juries being based on that which is not evidence, goes to the very foundation of that fair and impartial trial for which Courts exist. Whether the objectionable statements did or did not influence the jury in this particular case is not the test, for this Court cannot permit any such practice to obtain even a foothold in its Circuit."

We urge that the language underscored exactly describes the case at bar, and if this is the rule in civil causes in the Fderal Courts, we insist then, that in a case where a citizen has been convicted and an imprisonment sentence imposed upon him, this Court will adopt and invoke the same rule.

We know the Supreme Court passed over this question of forgery very lightly in its decision (see page 483, beginning with line 22, to end of page 483 at line 9), the Court's conclusion that it was a proper procedure for the State to prove the character "of the unlawful means adopted by the defendant was entirely correct, *provided there was any evidence to show that these forgeries were 'adopted' by the defendant;* even if murder had been committed, as a means of effectuating the conspiracy, the murder would be evidential, *provided the defendants were the murderers."* But in this case, we repeat, *there was not the slightest evidence of any kind to connect* the defendants, either directly or in the most remote manner with these forgeries, and it does seem strange that the learned Supreme Court in dealing with a case where the liberty of the citizen is at stake—because this defendant was sentenced to the penitentiary,—should fall into the error of assuming—and we say with the greatest re-

spect—*without the slightest justification, or without one iota of evidence* to justify it, that these defendants were connected with these forgeries.

If the State could have connected Taylor with the forgery, its case would have been clear, because no one would question the damning effect on the minds of the jury if it was lead to believe that in order to consummate conspiracy, the defendant resorted to the high crime of forgery.

It would have been better far for the State to have desisted from its unfair practices to convict Taylor, and instead to have performed its legal duty to prosecute the seventeen men who confessed to being moral perverts.

We respectfully insist *as a matter of law,* that this happening requires a reversal of this verdict, because no one can assert that the evidence was not illegal and we respectfully refer the Court on this point to the top of page 576 in *Bullock* v. *State,* where this tribunal, in dealing with this same situation, has solemnly adjudicated, "—but the admission of the evidence being error, *it must clearly appear that the testimony illegally admitted was so eradicated from the case that its admission could not have injuriously affected the accused,*" citing a decision in the Federal Supreme Court. *What shall be said of a case where the Court when applied to, absolutely declined to do a single thing toward eradicating such evidence?*

## POINT III.

### Probabilities.

On the trial (see pages 213, line 39, and 214, line 36; 216, line 14, and line 32), the defendant sought to prove that Taylor knew *at the very time when* Cowan testified he and Taylor made the agreement, that Cowan was so addicted to the use of intoxicating liquors that he would go upon protracted sprees during which for weeks at a time he would be mentally incompetent. We insisted that as Taylor was proved to be a man of most excellent reputation (see pages 98, 187, 218, 222, 223, 355, 360, 364, 365, 368, 377, 378, 380, 386), and that as for fifteen years (see page 208) he had been a clerk of the Supreme Court Circuit, personally serving (page 210, line 12) the Chief Justice of this State and various Circuit judges, it was only reasonable to presume that Taylor was possessed of a good mentality. In other words, that he was at least of the average intelligence.

Bearing in mind that the term of service of jurors lasted only two weeks, and also that Taylor was a man of excellent reputation, and of good intelligence, and was confronted by only the testimony of Cowan *as to the making of the agreement*, it became important, in order to enable the jury to determine whether they would believe Cowan, the self-confessed criminal, or Taylor, who was the direct opposite, to have before them the fact of Cowan's mental incompetence, for the purpose of deciding whether it was at all likely that Taylor would jeopardize his good name and his liberty by entering into a contract with a worthless man *who he knew at that time* was not only liable to talk in his drunken fits, but also because of the probable protracted period of Cowan's inability, he would very likely be unable to effectuate the object of the agreement, for the simple fact *that the sprees would last longer than the term of service of the jurors.*

The Trial Judge treated this offer almost with contempt, where at page 214, line 10, defendant's counsel asked the privilege of stating his reasons, when the Court tartly replied: "No, I do not want to hear any argument; it is perfectly obvious that it is incompetent. We will proceed to the next question." And, at the bottom of page 214, where the Court observed: "We are not trying Cowan as to whether or not he is a drunkard." But, finally on page 215, after again appealing to the Court to be heard on the subject, counsel for defendant, at line 25, distinctly told the Court the object of his offer and why he thought it was competent, and then, on page 16, line 10, after the Court had refused an exception, counsel for the defendant propounded this interrogatory:

> "Q Mr. Taylor, do you know whether or not during any portion of the period covered by this indictment Cowan has been for any considerable period of time mentally incompetent *from any cause?*"

to which the prosecutor objected on the ground that the question was leading, immaterial and calling for a conclusion, and in effect improper for any one to answer save a medical expert; the Court sustained the objection.

We respectfully submit that the objection was absolutely valueless because the question was not leading; it related to a material subject, and it did not call for a conclusion such as might be expressed only by. a "medical expert." *State* v. *Genz,* 29 Vroom, page 482.

At the bottom of page 216 we continued this line of interrogation, but with no better success.

As evidence of the defendant's good faith in pursuing this line of questions, we respectfully refer the Court to the evidence of the lady friend of Cowan, who expected to marry him. (See page 47, line 38.)

On page 404, at the bottom, she speaks of a conversation with Mr. Taylor in the latter part of February or the first of March, and, on page 45, says that Cowan "had not been attending to business regularly," and in which she said she had informed Taylor that Cowan had practically told her of the alleged unlawful conduct and agreement of Cowan and Taylor, and, on page 406, line 25, this woman says that Taylor replied, in speaking of Cowan's alleged conversation: "Oh, bosh, that is only beer talk."

On page 408, at line 28, she says: "That was the time when he was drinking." At page 409, line 12, she was asked:

"Q Well, at that time, he had been on quite a protracted drunk, hadn't he? A I don't know what you would call it.

Q You know what I mean, don't you? I mean he was drunk. A Mr. Cowan is a man who cannot stand very much drink.

Q He gets drunk very easily? A Very easily.

Q When he gets started, he stays going for some time, doesn't he? A Not always."

(Page 410, line 8.)

"Q And did you have to give him medicine? A Aromatic spirits.

Q That is usually what you give the fellow when he is on a drunk, isn't it?

*The Court.* I do not think we need that information.

Q What did you give him aromatic spirits of ammonia for?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q Didn't you give it to him because he had been on a protracted drunk and had become sick from drunkenness?

*Mr. Harrison.* I object.

*The Court.* Objection sustained.

Q (page 410, line 30.) And was it this time when he was sick that he had told you that Taylor wanted money, money, money, all the time; is that right? A Yes, sir."

The importance of this evidence is shown by the fact that it relates to a time *only two weeks prior* to the first criminal act proven against Cowan, namely, on March 19, with the juror Brown (page 191, line 21).

We earnestly insist that for the purpose of enabling the jury to see whether it was probable that Taylor made this agreement, it was competent to show that Cowan was not a man with *whom any sane man would have made such* an agreement. We don't care whether his undesirability and unfitness for the purpose was due to liquor or any other specific cause, because our question to him not only included liquor, but whether *"from any cause" he was* mentally incompetent. If this man had been a half-witted man, could a jury have been induced to believe that a sane man would jeopardize his reputation and his liberty with such an one? Suppose the execution of this agreement depended upon Cowan's making great physical exertions, would it not have been competent for Taylor to have shown *on the question of probability,* Cowan was physically paralyzed, bedridden and unable to move? Was it not, therefore, competent where the carrying out of this alleged scheme required great mental activity and ability, to show that Taylor, an intelligent man, *knew at the time* of the making of the agreement that this man was not only not mentally active, *but that he was a mental incompetent,* and that it was very probable that at the precise time when he would be called upon to exercise mental activities, to-wit, the two weeks of service, he would be absolutely unfit because of a drunken debauch, during which he would be attended by a woman with a bottle of aromatic spirits of ammonia.

Suppose to the knowledge of Taylor, Cowan was one who constantly talked in his sleep, thereby divulging his confidential affairs. Could not that be shown. Suppose Taylor knew that Cowan was to immediately be imprisoned for years, could he not have shown that fact and his knowledge of it? It is not a question of the weight of such evidence, but rather its admissibility with which we are dealing. It is something to which the jury is entitled, just the same as it is entitled to consider the reputation of the defendant, and which of itself might engender a doubt resulting in the defendant's acquittal. It was for the jury to settle whether it was probable that a man in his right mind like Taylor would enter into a conspiracy with a man who would never secure the confidence of any other man of average intelligence. It is analogous to the rule followed in civil cases, where

if there is a dispute as to the price agreed upon for a commodity, it is competent to show the actual value, for the purpose of enabling the Court to determine whether it *was probable that* the parties did agree upon the price alleged by one of them.

*Lewis* v. *Goldstein,* 75 N. J. Law, 305.

On page 14 of the State's brief, it is stated that this evidence was offered for the purpose of showing Cowan's "reputation." It is difficult to take this statement seriously, because defendant's counsel clearly stated, at page 215, line 33, that its relevancy was on the subject of the *probability of the making of the agreement.*

The cases cited by the State for the purpose of sustaining the ruling of the Trial Court and overruling the Supreme Court do not touch the point, because in such cases there clearly was an attempt to establish *by specific acts the person's reputation* for the purpose of affecting his credibility. In the case at bar, there was no such design.

It seems to me we need no better argument on the point than the language of the Trial Judge in his charge. Defendant's counsel had urged repeatedly through the trial that this scheme was Cowan's scheme; in other words, a "one-man scheme" rather than a scheme of two. The learned Court, on page 435, at line 18, says:

"The State contends, in reply to the position taken by the defendant, that this is a 'one-man scheme,' as it has been called by someone in our presence; that is to say, the defendant's contention is, that one man, and that man Cowan, ran this entire matter, and carried it into effect, using others as innocent tools, frequently as ready accomplices, some of the jurors who drew their pay and handed it over to Cowan, the State says in reply to this that Cowan is *not of the mental ability and capability to* work out the plan as you have seen it developed here. * * * " In other words, the Lower Court considered it entirely proper *upon the question of probability* to have the *jury consider Cowan's mentality.* On the other hand, he thought it *entirely improbable that Taylor would give any consideration to Cowan's mentality.* We confess we cannot follow the reasoning of the learned Court. It seems in common fairness that if it was proper for the jury for the purpose of convicting Taylor to consider Cowan's mentality, it was only reasonable to presume that Taylor would at least have given at the inception

of his alleged criminal career a like consideration to the subject. learned Court. ~~It seems in common fairness that if it was proper~~

The attempt of the State (see its brief, page 21) to show that the error was harmless, fails, because the evidence actually admitted merely showed Cowan was probably on a spree in March. We desired to show that *we knew at the date of the making of the alleged agreement, at the Christmas holidays,* that Cowan would probably be on a debauch in March if he lived up to his past performances.

We regret our lack of ability to make this point clear enough to be comprehended by the State.

The Supreme Court (beginning at the bottom of page 483) held that the refusal of the Court to permit such proof was erroneous and reversed the conviction for that reason.

## POINT IV.

### General Exception to the Charge.

1. The value of this general exception is claimed to exist in the fact that the Trial Court, having all through the trial, over the objection of Taylor, treated the unalleged overt acts as having all the characteristics and force of the alleged overt acts (the matter having been called to his attention repeatedly by the counsel for the defendant), it became the duty of the Trial Court in its charge to have corrected the error. Instead of doing so, this subject was treated (in the charge) precisely as it had been in the admission of the evidence, and, therefore, neither in the ruling of the Court on the evidence, nor in its charge, nor anywhere else in the entire record of the case, was the jury given to understand that there was *any distinction* whatsoever in the force and effect of an alleged and an unalleged act.

2. The same reason applies to the treatment of the forgeries.

By the 136th section of the Criminal Procedure Act, it is provided, "If it appears that the plaintiff * * * suffered manifest wrong or injury, either in the admission or the rejection of testimony, whether objection was made thereto or not, *or in the charge of the Court* * * * the Appellate Court shall remedy such wrong. * * * We are aware that it has been held in *State* v. *Hummer,* 81 New Jersey Law, page 430, and in the cases following it, that the record must show that the Court

was called upon for judicial action concerning the points of which complaint was made. No one will question, and no one will deny, that both of these points by repeated objections were brought to the Court's attention. But even although it is the settled law that judicial action must be sought in order to avail of the benefits of this 136*th section, we strongly urge that no such action is required by the statute allowing a general exception.*

Section 140 of the Criminal Procedure Act says: "Upon the trial of any indictment, it shall be lawful to take a general exception to the charge of the Court to the jury, without *specifying any particular ground or grounds for such exception, or without specifying what portions of said charge are excepted to.* * * * " (The italics are ours.) English language cannot be more comprehensive; we cannot conceive of the Legislature adopting any language to make it more clear that the *only thing* the defendant ought to do at the end of the charge is to demand an exception, and which the Judge must give almost automatically.

To accentuate this insistence, we refer to section 141 of the same act, reading: "It shall be lawful where such general exception has been taken, *to assign any error or errors* of law upon portion of the charge so excepted to."

We can see reason for holding, under section 136, that the matter complained of must be brought to the attention of the Court, but we are unable to discover any reason for applying such rule when taking a general exception. On the contrary, it was the obvious intent of the Legislature to allow a defendant out of abundant precaution, to take a general exception to the Judge's charge, and then, *upon reflection afterwards,* to assign under section 141, "*any error* or errors of law" which he might desire.

This is a statute in aid of justice, for the benefit of the defendant, should be liberally construed and we respectfully insist that no other interpretation may be placed upon it.

To hold that the matter must be brought to the attention of the Trial Court, and reasons assigned, is to nullify and utterly ignore the self-evident intent of the Legislature.

Section 142 says: "If upon the hearing of the case * * * it shall appear to the Court that *any error* of law has been committed in *any way* in the charge so expected to * * * it shall be the duty of the Court * * * to reverse the judgment."

We respectfully and most earnestly insist that the Court did err in its charge in treating the overt acts unalleged as having the same force and effect as the alleged overt acts. That it did err in failing in its charge to indicate to the jury that the Court did not consider the forgeries as overt acts, or as having any evidential effect.

In conclusion, we know, of course, that this Court is not going to consider the weight of evidence, but I deem it only my duty, in justice to Mr. Taylor, and the position he has so long and honorably held, to say that by referring to pages 64, line 38; 107 at the top, page 134, line 18; pages 253, 254, 255, 307, 309, 357, 370, 374, 380, 383, 392 and 396, it will be found that the poll book was kept unlocked, accessible to all the officers, and was used by numbers of them, including Cowan.

At pages 274 at the bottom, 276 at line 15, it will be seen that these vouchers were all drawn at the beginning of the jurors' term, and filled in, with the exception of the days and the amount. They were handed out hurriedly when over one hundred men would on one morning, at the end of the service, demand the vouchers.

It will also appear, at page 276, line 13, that Cowan was not the only officer who procured these slips for jurors.

Taylor had no more cause to assume that the officers in the court room, or any of them, were dishonest, than he had to believe that the jurors returned by the Jury Commissioners were the scoundrels they subsequently confessed to be.

Respectfully submitted,

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