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New Jersey Supreme Court

Writ of Error

New Jersey, ss:

The State of New Jersey to Henry H. Eldridge, President Judge of the Cape May County Quarter Sessions Court (Seal.) holden at Cape May Court House in and for the county of Cape May of the April Term, 1918. Because in the indictment, record, process and proceeding and also in the giving of judgment upon a certain indictment against Donald R. McCormack, who was indicted by the Grand Jury of Cape May County at the December term, 1917, charged with assault and battery, and after trial thereof was found guilty in said Quarter Sessions Court of Cape May County, and in said indictment, record, judgment and proceedings manifest error hath intervened to the great damage of the said Donald R. McCormack as from his complaint we have received information. We being willing in this behalf to correct the error in due form and manner, if any there be, and that speedy justice be done to him, the said Donald R. McCormack, command you that if judgment be therein given, then that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our Supreme Court to be holden in Trenton on the

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Presentation of Indictment

3rd day of July, 1918, 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.

10 WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton aforesaid, the 14th day of June, A. D., 1918.

ENOCH L. JOHNSON,
Clerk.

C. L. Goldenberg,
Attorney.

20

Presentation of Indictment

CAPE MAY COUNTY, to wit. Be it remembered, that at a Court of Oyer and Terminer, holden at Cape May Court House, in and for the said County of Cape May, on the second Tuesday of December in the year of our Lord one thousand nine hundred and seventeen before the Honorable Charles C. Black, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Henry H. Eldridge, Judge of the Court of Common Pleas, in and for the said County, according to the form of statute in such case made and provided, by the oaths of E. W. Springer, D. P. Haley, Edgar A. Stratton, Charles M. Broughton, Shamgar Douglas, Florin Mason, Irvin Eldredge, William Cresse, Daniel Schellenger, Irving Fitch, Charles C. Bohm, Jesse D. Ludlam, Henry High, David Hughes,

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Indictment

Augustus T. D. Howell, Lucius Harris, Thomas S. Goslin, Howard S. Hoffman, Frederick J. Derr, Charles York, Frank S. Ashmead, Charles C. Bradford, Alfred Sapp, good and lawful men of the said County of Cape May, duly summoned and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Cape May. IT IS PRESENTED in manner and form following, that is to say: The bills herewith presented are true bills. 10

E. W. SPRINGER,
Foreman.

Indictment

20

In the Court of Oyer and Terminer of Cape May County, December Term, in the year of our Lord one thousand nine hundred and seventeen. CAPE MAY COUNTY, to wit:

THE GRAND INQUEST of the State of New Jersey, and for the body of the County of Cape May, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath,

30

PRESENT THAT Donald R. McCormack, alias John Hogan, alias William Hart, etc., late of the city of Sea Isle City in the said county of Cape May, on the 11th day of September, in the year of our Lord one thousand nine hundred and seventeen at the city of Sea Isle City aforesaid, in the County of Cape May aforesaid, and within the jurisdiction of this Court, did willfully by menaces assault one Hilda A. Voigt, in the peace of God and of this State then and there being, 40

Indictment

And did then and there demand of her the said Hilda A. Voigt, certain Moneys; to wit: the sum of five thousand dollars, with intent, the said Hilda A. Voigt then and there to rob: Contrary to the form of the statute in such case made and provided and against the peace of this State, the
 10 government and dignity of the same.

AND THE GRAND INQUEST AFORESAID, upon their oath and affirmation aforesaid, do further

PRESENT, that the said Donald R. McCormack, alias John Hogan, alias William Hart, etc., on the 11th day of September, in the year of our Lord one thousand nine hundred and seventeen, at the city of Sea Isle City aforesaid, in the County of Cape May aforesaid, and within the
 20 jurisdiction of this Court, did wilfully in a forcible and violent manner and means, demand of Hilda A. Voigt certain money, to wit; the sum of five thousand dollars, with intent her the said Hilda A. Voigt then and there to rob. To the evil example of all others in like case offending, 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.

EUGENE C. COLE,
 30 Prosecutor of the Pleas.

 Indictment

In the Court of Oyer and Terminer of Cape May County, December Term, in the year of our Lord one thousand nine hundred and seventeen.
 40 CAPE MAY COUNTY, to wit: THE GRAND INQUEST

Indictment

of the State of New Jersey, and for the body of the County of Cape May, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, Present that Donald R. McCormack alias John Hogan alias William Hart, etc., late of the city of Sea Isle City in the said County of Cape May, on the 11th day of September, in the year of our Lord one thousand nine hundred and seventeen at the city of Sea Isle City aforesaid, in the County of Cape May aforesaid, and within the jurisdiction of this Court, with force and arms in and upon one Hilda A. Voight in the peace of God and of this State then and there being an Atrocious Assault did make, and her the said Hilda A. Voight then and there Atrociously did beat, wound, and ill treat by maiming and wounding her the said Hilda A. Voight and other wrongs to the said Hilda A. Voight then and there did to the great damage of the said Hilda A. Voight. Contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

AND THE GRAND INQUEST AFORESAID, upon their oath and affirmation aforesaid, do further present, that the said Donald R. McCormack alias John Hogan alias William Hart, etc., on the 11th day of September, in the year of our Lord one thousand nine hundred and seventeen, at the city of Sea Isle City aforesaid, in the County of Cape May, aforesaid, and within the jurisdiction of this Court, with force and arms in and upon Hilda A. Voight in the peace of God and of this State then and there being An Assault did make and her the

Record of Conviction

said Hilda A. Voight then and there did beat, wound and ill treat and other wrongs to her the said Hilda A. Voight then and there did to the great damage of her the said Hilda A. Voight. To the evil example of all others in like case
 10 offending, 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.

EUGENE C. COLE,
 Prosecutor of the Pleas.

Record of Conviction

20 Which said indictments, with sundry other indictments, were, to wit, on the 21st day of December in the year of our Lord one thousand nine hundred and seventeen, at the Court of Quarter Sessions, holden at Cape May Court House, in and for the County of Cape May, before Henry H. Eldredge, Esquire, Judge of the said Court of Quarter Sessions and of the Court of Common Pleas of said County, no Justice of the Supreme
 30 Court of the State of New Jersey being present in the court house and the Grand Jury being desirous of making presentment of sundry bills of indictment according to the form of the statute in such case made and provided, duly delivered here in Court by the Grand Jurors aforesaid in and by said presentment, in due form of law to be determined.

40 Afterward, to wit on the 22nd day of December, in the year of our Lord one thousand nine hundred-

Record of Conviction

dred and seventeen, before Henry H. Eldredge, Esquire, Judge of the said Court of Quarter Sessions of the County of Cape May, said defendant, Donald R. McCormack, alias John Hogan, alias William Hart, by Clarence L. Goldenberg, Esquire, his attorney, entered pleas of not guilty to both of said indictments. 10

Whereupon, on the 12th day of June, in the year of our Lord one thousand nine hundred and eighteen, before the Court of Quarter Sessions aforesaid, the said defendant, Donald R. McCormack, alias John Hogan, alias William Hart, was set to the bar and being ready for trial, the trial of the said indictments was moved by the Prosecutor of the Pleas, it being agreed by counsel and ordered by the Court that the two aforesaid indictments be tried together. The Sheriff was then ordered to return a panel of jurors, and the following jurors, being called and not challenged, were duly sworn: 20

Jury

- | | | |
|-----------------------|-----------------------|----|
| 1. J. Frank Broderick | 7. William R. Pinker | |
| 2. Robert Spence | 8. Charles R. Ginder | |
| 3. George Peterson | 9. Clarence B. McGraw | |
| 4. William T. Corson | 10. Frederick B. Neal | 30 |
| 5. Lucius Q. Clark | 11. Charles W. Mathis | |
| 6. William Matthews | 12. Charles Abrams | |

Appearances:

Eugene C. Cole, Esq., Prosecutor of the Pleas,
J. M. E. Hildreth, Esq., for the State.

Clarence L. Goldenberg, Esq., John R. K. Scott,
Esq., of the Philadelphia bar, for the
Defendant. 40

Record of Conviction

Evidence.

Witnesses for the State, Hilda A. Voight, sw.

Witnesses for the Defense: Elmer Peterson, sw.; Mrs. Florence Peterson, sw.; George Cro-
 10 necker, sw.; Louis Braca, sw.; Jeremiah P. De-
 laney, sw.

During the trial, the indictment for assault
 with intent to rob, and forcible demand for
 money, and the first count of the indictment for
 atrocious assault and battery, were abandoned by
 the State, and were ruled out of the case by the
 Court, leaving the trial to proceed on the re-
 maining count for simple assault and battery.
 20 The evidence being closed, and the arguments of
 counsel being summed up, the Court charged the
 jury and then retired to their room to consider
 of their verdict, with Alfred Urquhart, a con-
 stable, duly sworn to attend them. After which
 the said jury, accompanied by said constable, re-
 turned into Court, and being asked say they have
 agreed upon their verdict, and by J. Frank Brod-
 erick, their foreman, do say that they find the de-
 fendant guilty of assault and battery, with a
 recommendation to the mercy of the Court, and
 30 so say they all.

Afterwards, to wit, on the 19th day of June in
 the year of our Lord one thousand nine hundred
 and eighteen, before the Court of Quarter Ses-
 sions aforesaid, at Cape May Court House afore-
 said, cometh the said Donald R. McCormack,
 alias John Hogan, alias William Hart, and hav-
 ing been set to the bar here in his proper person
 to receive the judgment of the law, the Prosecutor
 of the Pleas then moved for the judgment of the
 40 law. Whereupon, on the said 19th day of June in
 the year of our Lord one thousand nine hundred

Certificate of Trial Justice

and eighteen, all and singular the premises being seen by the Court here fully understood, it was ordered and adjudged by the Court that the defendant Donald R. McCormack, alias John Hogan, alias William Hart, be imprisoned in the State Prison of this State for not more than a maximum term of three years and not less than a minimum term of eighteen months, at hard labor, and that he pay a fine of five hundred dollars, and the costs of prosecution, upon this conviction, and that he stand committed until the fine and costs of prosecution are fully paid. 10

Certificate of Trial Justice

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The answer of Henry H. Eldredge, Esquire, President Judge of the Court of Common Pleas of the County of Cape May, holding the Court of Quarter Sessions in and for the said County within named; the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded. 30

HENRY H. ELDREDGE,
Judge.

And I further certify that returned herewith is the record of the entire proceedings at the trial of the said cause.

HENRY H. ELDREDGE,
Judge. 40

Certificate of Stenographer

I hereby certify that the proceedings, evidence and rulings are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

A. K. LITTLEFIELD,
Official Stenographer.

Judge's Certificate

CAPE MAY COUNTY COURT OF QUARTER SESSIONS

20

STATE,

vs.

DONALD R. McCORMACK.

30

I, Henry H. Eldredge, Judge of the Court of Quarter Sessions of Cape May County, New Jersey, do hereby certify that the above record and proceedings hereby transmitted by me to the Supreme Court of the State of New Jersey, comprises the entire record of the proceedings had upon the trial of the above stated cause.

HENRY H. ELDREDGE,
Judge of Cape May County Court
of Quarter Sessions.

New Jersey Superior Court

IN SENATE
JANUARY 18, 1888

STATE OF NEW JERSEY
IN SENATE
JANUARY 18, 1888

REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 15, 1887

ALBANY: J. B. LIPPINCOTT & CO., PRINTERS.
1888.

New Jersey Supreme Court

	STATE,	}	CAUSES FOR REVERSAL.
	<i>Defendant in Error,</i>		
	vs.		
10	DONALD R. MCCORMACK,	}	
	<i>Plaintiff in Error.</i>		

Plaintiff in Error assigns the following causes for reversal of the verdict and judgment of conviction in the above stated cause:

1. Because the Trial Judge permitted the following questions to be asked and answers thereto to be given:

- 20 (a) Q. Well, on this occasion of which you speak did he make any demand for money?
- A. Yes, sir.
- Q. What amount did he demand of you?
- A. Five thousand dollars.
- Q. And what did you say to him when he demanded?
- A. I said I had no more money.
Paper Book Page 14, line 11.
- 30 (b) Q. That is what I am getting at, did you have a home of your own?
- A. I did.
- Q. In Sea Isle City?
- A. Yes, sir.
Paper Book Page 46, line 31.
- 40 (c) Q. You owned the cottage in Sea Isle City?
- A. Yes, sir.

Q. That is the day that he made this demand upon you for the five thousand dollars?

A. Further demand. He had been demanding; yes.

Paper Book Page 47, line 13, and 23.

(d) Q. How much money had Mr. McCormack gotten from you prior to demanding the five thousand dollars? 10

A. In the month of September he had seven thousand dollars, and before that time there was some, I don't recall the exact amount, but all in all, the whole amount that he had gotten from me amounted to between—over thirty thousand dollars.

Q. Over thirty thousand dollars?

A. He stripped me completely of everything I had and then even said that he would take my, deprive my child, take everything from my child. 20

Paper Book Page 49, line 19.

2. The Prosecutor, in his argument to the jury improperly made the following statement:

“Would I, District Attorney, having delved in this case for months, urged this prosecution if I did not believe what the prosecutrix said was true?”

3. The Prosecutor, in his argument to the jury, improperly made the following statement: 30

“This crook,” (referring to defendant). “It is so stated in Mr. Grimes' letter and is uncontradicted.”

4. There were other manifest errors in the record and proceedings in said cause to the manifest wrong and injury of defendant.

C. L. GOLDENBERG, 40
Attorney of Plaintiff in Error.

Testimony

CAPE MAY COUNTY COURT OF QUARTER
SESSIONS

16	STATE, vs. DONALD R. MCCORMACK.	}	On indictment, etc.
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Cape May Court House, N. J.,
June 12th, 1918.

Before HON. HENRY F. ELDREDGE, J., and jury.

20 Appearances:

For the State: J. M. E. Hildreth, Esq., and
Eugene C. Cole, Prosecutor.

For the Defendant: C. L. Goldenberg, Esq.,
and John R. K. Scott, Esq., Member of
the Philadelphia Bar.

30 The Court: Gentlemen, you were selected about
a week ago for the purpose of hearing the case which
is set down for today, and I have been asked by
counsel to ask the question as to whether or not dur-
ing that interval of time any of you have discussed
the matter with any person or have formed any
opinion in any way with respect to the guilt or
innocence of the party charged.

Several Jurors: Have not.

The Court: Has anyone?

A Juror: I haven't. I don't know what the case
is.

40 The Court: Verdict seems to be unanimous, gen-
tlemen.

Mrs. Hilda A. Voigt—Direct

The Prosecutor: Then I will move the case.

Jury sworn.

The Prosecutor opened the case to the jury.

MRS. HILDA A. VOIGT, a witness produced on behalf of the State, being first duly sworn and examined, testified as follows: 10

Direct-examination by the Prosecutor:

Q. Where do you live, Mrs. Voigt, where is your home? A. Sea Isle City.

Q. You live in you own house? A. Yes, sir.

Q. Did you live there on the eleventh of September last? A. Yes, sir.

Q. Are you the Hilda A. Voigt named in the indictment which I have just read? A. I am. 20

Q. Do you see in court the defendant charged here with assaulting you. A. Yes, sir.

Q. Point him out to the jury; is that the man there? A. Yes, sir.

Q. Is that the man you know as Donald R. McCormack? A. Yes, sir.

Q. State in your own language briefly just what happened on the eleventh of September in your house in Sea Isle City by this man to you; state your case in your own language, Mrs. Voigt. 30
A. Mr. McCormack had been getting money from me previous to this time and in the afternoon he demanded money from me and there wasn't very much said, but after dinner I had gone to our room, had gone to put my little child to bed, and in my room when Mr. McCormack came in and said he wanted to see me. I went 40

Mrs. Hilda A. Voigt—Cross

over to his room and without a moment's notice he hit me on the face with his fist, and threw me against the bureau, and said, "I will fix you, then it will be too late, but I will get everything you have got." He had already stripped me or

10

everything I had.
Q. Well, on this occasion of which you speak did he make any demand for money? A. Yes, sir.

Q. What amount did he demand of you? A. Five thousand dollars.

Q. And what did you say to him when he demanded? A. I said I had no more money.

Q. And thereupon what did he do? A. He called me out of my room into his.

20

Q. What did he say to you when he said that?
A. He hit me on the side of the face.

Q. And what else. A. And he threw me against the bureau, bruising me very much on the arms and, you know, said that he would fix me and then it would be too late, but he would get everything I had, and what my child had, too.

Q. Did you do anything to him to provoke that assault? A. Absolutely nothing.

30

CROSS-EXAMINATION by Mr. Scott:

Q. You gave your name as Hilda A. Voigt, I believe? A. Yes, sir.

Q. Is that the name you were known by in September in Sea Isle City? A. Yes, sir.

Q. Any other name. A. September, yes, I was known by Mrs. McCormack at that time.

40

Q. Known by the name of Mrs. McCormack at

Mrs. Hilda A. Voigt—Cross

that time? You and Mr. McCormack lived there in Sea Isle City, did you not? A. Yes, sir.

Q. He was known as Mr. McCormack, and you were known as Mrs. McCormack? That is so, is it not? A. Yes, sir.

Q. You were living there together and had been living there from the early part of the spring, had you not? A. From July. 10

Q. Now this assault that you complain about took place on the eleventh day of September? A. Yes, sir.

Q. And then did you remain at Sea Isle City there on the twelfth day of September? A. Yes, sir.

Q. And the thirteenth day of September? A. No, we went to Philadelphia the day after, we went to Philadelphia the next day. 20

Q. Who, you say we? A. Mr. McCormack and I and my child.

Q. How did you go to Philadelphia? A. By rail.

Q. By the train? I didn't hear the words you said, did you say train? A. Yes, sir.

Q. Went by the train? A. Yes, sir.

Q. Then when you went to Philadelphia where did you go to? A. I went to the Hotel Majestic.

Q. And you remained there how long? A. One night. 30

Q. You and Mr. McCormack and the child? A. Yes.

Q. And then did you go, come back to Sea Isle City again? A. I went to Pittsburg.

Q. You went then to Pittsburg, and how long did you remain in Pittsburg? A. I remained then at that time until the fourteenth, one day, one day. 40

Mrs. Hilda A. Voigt—Cross

Q. One day, and then you came back to Sea Isle City, did you? A. Went back to Philadelphia and came from there to Sea Isle.

Q. When you arrived at Philadelphia where did you go. A. I went to the hotel, to meet my family.

10 Q. What hotel? A. Hotel Majestic.

Q. And you got to the Hotel Majestic, then, I suppose, on the fifteenth or sixteenth day of September, didn't you? A. On the night of the fourteenth.

Q. And then went? A. Went over that night.

Q. And then you went from the Hotel Majestic down again to Sea Isle. A. Yes, sir.

Q. Mr. McCormack and you and the child, all three? A. Yes.

20 Q. You say yes? A. I did.

Q. How long did you remain there in Sea Isle City, in the home, you and Mr. McCormack and the child? A. We remained there until in October, and then we went, I went back, we went back the first of November.

Q. Let me bring to your mind first did you go again up to Philadelphia on the twenty-eighth day of September with the automobile? A. Twenty-eighth day of September.

30 Q. Yes, latter part of September? A. We went to Philadelphia in an automobile on the first of October because we went there to take my child to the Wenonah University, and from there we went to Philadelphia.

40 Q. Well now whether it was the first of October or latter part of September you went there and that young man drove you, did he not? (Young man stands up in the court room.)

Mrs. Hilda A. Voigt—Cross

That is the young man drove you, did he not?

A. Yes, sir.

Q. Whatever day it was of course you are not sure, the date was the latter part of September or the early part of October? A. It was the first of October because I remember of having taken my son to school at that time. 10

Q. You and Mr. McCormack and the child all go up in the automobile? A. We did.

Q. And where did you go? A. We went from the—we went to the school, Wenonah School.

Q. You put the child in the military school? A. Yes, sir.

Q. Yes. A. And then we went to Philadelphia and at that time he demanded money from me, and I went to Pittsburg. 20

Q. Yes—well now how long did you remain there in Philadelphia? A. I never remained in Philadelphia over night, because I usually took the night train.

Q. How long did you remain that time in September or early part of October, you said it was the first of October? A. It was about the fifth of October, I don't exactly remember the date.

Q. Well how long, whatever it was, without considering the date, how long did you remain in Philadelphia, over night or a couple of days? A. Over night. 30

Q. Is that all, over night? A. I believe so.

Q. Well, are you sure? Do you know? A. In October? No, we remained there several days, because we discharged Mr. Peterson and he returned on Sunday.

Q. By Mr. Peterson that is the young man who drove? A. That is the man who drove. 40

Mrs. Hilda A. Voigt—Cross

Q. Then did you return back to Sea Isle City again? A. I did.

Q. And Mr. McCormack also? A. Mr. McCormack went to New York, I believe.

10 Q. Well, did you come back to Sea Isle City and go to the Bellevue Hotel at Sea Isle City? A. Yes, sir.

Q. You and Mr. McCormack dined there? A. We did.

Q. Do you know the date of that, early part of October, I don't suppose you remember the exact date? As a matter of fact about the third day of October? A. Early part of October.

Q. Then did you go over to your home in Sea Isle City, you went to your home? A. Yes, sir.

20 Q. And remained there with Mr. McCormack until when? A. First of November.

Q. Then the first of November you went to Pittsburg? A. Yes, sir.

Q. And then, so we understand that, the jury, from the time of the eleventh day of September up until the first of November you and Mr. McCormack were living at Sea Isle City? A. Yes, sir.

30 Q. Then you went to Pittsburg, and how long did you remain in Pittsburg? A. I remained in Pittsburg at least two weeks.

Q. And then did you return back from Pittsburg? A. Yes, sir.

Q. Did you live with Mr. McCormack then after that? A. No, sir.

40 Q. Now, when you were assaulted and this man attempted to rob you, as you stated, on the eleventh day of September, did you have him arrested on the eleventh day of September? A. Not on that date, no.

Mrs. Hilda A. Voigt—Cross

Q. Did you have him arrested on the twelfth day of September? A. No, sir.

Q. Did you have him arrested any time during the month of September? A. No, I did not, because he had promised on his honor that he would return every penny that he owed me, but the first of November I had put my trust in him, trusting that he would keep his word, and for that reason, and absolutely for that reason alone, I remained with him, so, because of that, he would be honorable enough to return to me everything that he had taken from me, stripped me entirely, and that was the only object of my remaining under the same roof with him. 10

Q. So, I understand that your living with him and having him arrested was because he did not return the money that he had gotten from you while he was living with you? That is the reason you remained with him, you say that was the reason? A. I expected him to return as he had promised. 20

Q. I say that is the reason that you didn't, why you remained with him? A. Why I remained with him because he promised.

Q. And then the reason you arrested him is because you didn't get the money, is that the idea? A. No. 30

Q. Well, you kept on living with him on during all the month of October. A. Yes, sir.

Q. You didn't arrest him then, did you? A. No, sir.

Q. Then you didn't go to any Justice of the Peace or any district attorney or any constable or any policeman or any judge, or anyone and complain on the twelfth day of September that 40

Mrs. Hilda A. Voigt—Cross

he had assaulted you and attempted to rob you, did you? A. No, sir.

Q. And you didn't do that at all during the month of September or during the month of October? A. I didn't commit myself to no one at all.

10 Q. Now, Mrs. Voigt—you call yourself now Mrs. Voigt, you did call yourself Mrs. McCormack—you entered into a contract with Mr. McCormack of marriage, did you not? A. Yes, sir.

Q. You are married. A. I thought I was, but I found myself a victim of a vicious crook.

Q. You have testified that you are married, you entered into a marriage relationship with this man, did you not? A. I thought I was his wife, but I found out different.

20 Q. I show you a telegram dated the seventeenth day of September, and ask you whether or not you sent that telegram to Mr. McCormack? A. I did.

Q. And where did you send that, can you read that? A. The seventh of September.

30 Q. Seventeenth day of September, and I will read that, from New York, "seventeenth day of September, 12 p. m. D. Robert McCormack, Hotel Majestic, Philadelphia, arrive Broad Street 2 p. m." You sent him that telegram, didn't you? A. Yes, sir.

Q. You did arrive at that time from where? A. From Pittsburg.

Q. Now that was the time you claim that you went away on the fourteenth day of September and you returned to your husband on the seventeenth, you sent him that wire?

40 The Prosecutor: I object to that, your

Mrs. Hilda A. Voigt—Cross

Honor, she has testified he was not her husband.

Mr. Scott: Pardon me, she did nothing of the kind.

Q. You sent that telegram for him at your arrival at Broad Street, did you not? A. Yes, sir. 10

Q. Did you send that telegram there that he might meet you at Broad Street Station? A. I always did.

Q. You always did? A. Yes.

Q. And did he meet you at the Broad Street Station? A. Yes, sir.

Q. Now, he had beaten you up and attempted to rob you on the eleventh day of September, hadn't he? He had beat you up on the eleventh day of September, a few days before this, and attempted to rob you, didn't he? A. Yes, sir. 20

Q. You told that to the jury? A. Yes, sir.

Q. And you, of course, sent that telegram for him to meet you? Why did you send it to have the man meet you who attempted to rob you? Why did you want the man who attempted to rob you four days before that, and grabbed you by the throat and punched you in the jaw, as you testified, and threw you against the bureau, and demanded your money, why did you want to meet him at the Broad Street Station? A. 30
Because I was not accustomed to going from the station into a hotel alone at night.

Q. Well, do you mean to tell this jury that you sent for the man that attempted to rob you to meet you at Broad Street Station at night for your safety, is that what you mean to say? A. Absolutely.

Q. Well now did you send this telegram dated 40

Mrs. Hilda A. Voigt—Cross

the same day from Pittsburg, September seventeenth, to your husband? A. No, sir.

Q. You mean to say? A. Because I never addressed myself as mother.

10 Q. Do you mean to say, Mrs. McCormack, that you didn't send this telegram, "D. Robert McCormack, Hotel Majestic, arrived safely, feeling fine, load of love to you both. Mother." Do you mean to say that you didn't send that telegram to him? A. I sent that to my child.

Q. Well, if you sent it to your child how did you address it to D. Robert McCormack, then? What is your explanation? A. I sent that.

Q. You sent it to him, didn't you. A. Sent it to them, yes.

20 Q. Sent it to Mr. McCormack? A. Yes.

Q. Did you not address it to him? A. Yes.

Q. And then it was to him that you sent your load of love, was it not? That is right, is it not? That is so? Is it right. A. Yes.

30 Q. Now can you explain to these gentlemen why you sent your load of love on the seventeenth day of September to a man who had attempted to rob you on the eleventh day of September? Can you explain that? Can you explain it, Mrs. McCormack, why you sent this man that attempted to rob you four days before your load of love? Can you? Is there any explanation. A. No explanation.

Q. No explanation at all? Now when you went to the Majestic, before leaving him, before leaving the hotel you wrote your husband a letter, did you not, and left it at the Hotel Majestic for him? A. That is my handwriting.

40 Q. Well, did you write the letter? A. Yes, sir.

Mrs. Hilda A. Voigt—Cross

Q. Then you wrote the letter to this gentleman, Mr. McCormack, did you not? A. Yes.

Q. And you wrote that letter at the Hotel Majestic when you arrived from Pittsburg, did you not. A. Yes.

Q. You wrote the letter you were at the Majestic Hotel that night? A. I was. 10

Q. And you wrote the letter and left the letter there for him, did you not? A. Yes.

Q. This letter was addressed to D. Robert McCormack, addressed personally for and marked "addressed" and that is the letter and envelope you had the letter addressed in and you left at the hotel: "Most adorable one: Altho you have just bid me an affectionate adieu, I hear you calling me and see your sweet presence ever before me." You wrote that to him, did you not? A. Yes, sir. 20

Q. Now, this was the man when you came to the Majestic that you now claim attempted to rob you on the eleventh day of September, four days before, is it? A. Which he did, yes.

Q. "May I in the same strength assure to you and be your guiding happiness and success. I could not go out until I had written you this little greeting and unlimited love message to welcome you upon your return home. May it cheer you, dear heart, until I again return to fold you in my warm embrace and place a kiss of divine affection upon your responsive lips. May the glorious sunshine penetrate your soul and keep you happy forever more. I would love to write you volumes but you find it so difficult and tedious to decipher my writing. As will give you the rest mentally. Be content and may God 30 40

Mrs. Hilda A. Voigt—Cross

shower you with his wonderful blessing and happiness should I fail to return before our appointed hour. I too will favor you with a little phone message. With fondest love and all good things be thine, your most devoted Baby Lamb.”

10 Now that is the letter that you wrote and left the man at the Majestic when you came back, was it not. A. Yes, sir.

Q. Now this is the man you wrote to that a few days before that attempted to rob you and did strike you and threw you down against the bureau? That is so, is it? A. Yes, sir.

Q. Now when you came to Sea Isle City from your trip, is that the letter that you left him at Sea Isle City? A. There is no date on that, I can't tell.

20 Q. I understand there is no date on it. This is a letter addressed and left to him “To my adorable Husband, Donald Robert McCormack.” That is the letter that you left, as your address shows there, at your home at Sea Isle City for him, is it not? That is so, is it not. A. Yes, sir.

30 Q. This was, of course, before you left him in November and went away to Pittsburg and never came back? It was before that, of course, when you were down here in September at your Sea Isle Home? That is so, is it not? A. Yes, sir

40 Q. “Sea Isle City, N. J. My adorable Husband: May you miss me, dear one, during your absence in dreamland, as I miss you while there. Your presence is my inspiration by day and by night. May God grant us everlasting devotion, faith and loyalty to each other and ever continued health, happiness and wealth. With fond-

Mrs. Hilda A. Voigt—Cross

est love, warm embraces and tender kisses, your sacred wife, Hilda Voigt McCormack." That was a note you wrote him, was it not? A. Yes, sir.

Q. That is so, is it not? A. I said yes.

Q. Now, the man wasn't there when you wrote the letter at the Majestic Hotel for him, and he wasn't at the Sea Isle Cottage when you left this note there for him, was he? You did this yourself, did you not. A. I did. 10

Q. Then you went out to Pittsburg where you originally lived, did you not? A. Yes, sir.

Q. And you remained out there during November, until about the middle of the month of November, did you not? A. Yes, sir.

Q. And while you were out there you wrote to him and wired him, sending him both? A. I did that by the instructions of the district attorney, William Grimes. 20

Q. You wrote him from Pittsburg, as I understand you said that you wrote from Pittsburg with instructions of the District Attorney? A. By the instructions, yes.

Q. Now, who do you mean by the district attorney. A. William D. Grimes, my legal advisor in Pittsburg.

Q. He isn't district attorney, he only ran for office like myself and got defeated. Mr. Grimes is the man that advised you in Pittsburg, is he? He is the man who advised you? A. Not in this matter, just about sending the letters. 30

Q. I didn't want you to go astray, he advised you in this very matter, did he not. A. He advised me.

Q. And you gave his letter of advice to Mr. 40

Mrs. Hilda A. Voigt—Cross

McCormack and we have it here, is that not so?

A. I don't know.

Q. That is so, is it not, Madam? A. I would like to see it.

10 Q. All right, we will show it to you. For instance there is the first telegram that you sent to your husband while you were at Pittsburg, is it not? You don't mean to say that your lawyer advised you to send your love to this man that you claim assaulted you, do you. A. That is my telegram.

Q. That is your telegram? A. Yes.

Q. That was sent on the twelfth day of November, was it not? A. Yes, sir.

20 Q. Then you wrote your husband from Pittsburg right after you arrived in Pittsburg on the fourth day of November, you wrote him there sometime after the first, didn't you? A. I don't recall the exact date.

Q. I thought you said here a moment ago—A. About the first of November.

Q. Somewhere about the first. A. About the first of November.

Q. Here is your handwriting, and you wrote your husband from Pittsburg on the fourth day of November, did you not? A. Yes, sir.

30 Q. Now this letter was on the fourth day of November, and the telegram that I show you that you have just identified which said, "Have been detained, will wire later, much love, Hilda," on the twelfth day of November, you sent that during your presence in Pittsburg, and sent your love on the twelfth day of November, did you not? That is so, is it not? A. Yes, sir.

40 Q. This letter on the fourth day of November

Mrs. Hilda A. Voigt—Cross

you wrote to him: “Good morning, Sweetheart: How are you. Well and happy, I hope, dear, and have received and enjoyed my little greeting of last night sent by special to let you know that you are constantly on my thoughts, and I wish you were here with me, even this great city and all I have to do makes me feel lonely without you, and I think of our happy little home life in Aloha which is now so forsaken,”—something I can’t make that word out, I suppose you mean Sea Isle—“but if I can see the one important party today I will be with you and you with me in very few hours, according to the law. I have had such a tedious time, dear, worrying and being greatly annoyed, as you may imagine, but I feel when our matters, both yours and mine, are closed up we shall again be so happy. I hope you were successful in your business transaction last Saturday in New York, and that you will keep all your promises to me as you have assured. One good turn deserves another, as you have often said, and that you wished and would make us all very, very happy soon. I hope you will favor me with a nice long letter today and tell me a lot of good news, how you are and what you are and have been doing. I see you lonely in our dear little suite and wish I could enjoy it with you—you know we are in the divine law and nothing can disturb us. I got up this morning with a bursting headache and terrific sore throat and had to see my doctor. I am all nerves and wish everything was settled—and once more peace and harmony could reign. The world is so full of awful things now—crimes, sorrows, sufferings, deceit and treachery and all

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Mrs. Hilda A. Voigt—Cross

10 things you have so often spoken to me about that it pays us to be good and honorable and honest and reap the beautiful benefits there from. I think each day as I hear of awful sadness how you have said you wanted to live only one life of goodness and honor and I am proud of you, dear, for your high ideals. You know I love the higher life and all pure and noble deeds, honor and honesty and all that is good and beautiful and when we live as you and I desire we have our own little heaven, don't we, and that is all that counts, after all. May God protect and guide you in all your doings and bring all our transactions in business to a successful issue. I pray for your success and wish you were here with me. I know how you hate hotels, etc. and how you will enjoy our simple and unusual home life, our happy little plans for the winter and our every-day interests—are they not ideal? I wish 1,000's and 1,000's could be as happily and unworldly mated as we are—in perfect harmony *in God's good way!* I am sorry you did not take life everlasting in your bag and could read it now in peace and quiet. Have you written to Charles,"—Charles the boy, is it? A. My son, yes, my little boy.

30 Q. "I wish again we were all together in"—was your home a particular name, your cottage have a name on your cottage? A. Aloha.

40 Q. "In Aloha where love and harmony and peace and purity reigns. I hope I shall hear from you today and wish you would come on—so we could return together and be happy once more. O, dear! I must hurry now and hope to return home tonight or for sure tomorrow.

Mrs. Hilda A. Voigt—Cross

With my same fond love and all good wishes and prayers for your success and happiness and God bless you, Ever your Hilda." That was the letter you wrote him as you say on the fourth day of November? A. Yes, sir.

Q. After you had left and gone to Pittsburg? 10
A. Yes, sir.

Q. That is so, is it not? A. Yes, sir.

Q. And this is the letter that you say that your lawyer directed you to write, or the telegram, which? A. There was two letters and a telegram that Mr. Grimes told me to write to Mr. McCormack after we had the information that we had.

Q. Is this the other letter that you spoke about, letter of the fourteenth of November? A. 20
This is the one Mr. Grimes, yes, one of the ones.

Q. This is one of the—A. He told me to write it just as I had always written before.

Q. And is the other letter, the other one that you wrote that Mr. Grimes directed you should write? A. Yes, sir.

Q. And the telegrams stating you were detained, sending your love, did Mr. Grimes direct you to write them? A. He said that I should send him letters and telegrams as I had always done before, in the same tone. 30

Q. Then these letters, three letters were letters that you would call fake letters following your sincere letters that you wrote before, is that the idea? A. No, sir, not exactly.

Q. He said write in the same tone that you had written before. A. He advised me to do that.

Q. In other words you kept up the appearance 40

Mrs. Hilda A. Voigt—Cross

of the same sincerity that you had, as you had shown in the previous letters, is that the idea?

A. Until that time, we didn't know of records that we had received later.

10 Q. You had not been advised by Mr. Grimes yet, had you? "Robert Darling, your precious telegram just received and has brought me a world of happiness inasmuch as it has answered me, I have not been entirely forgotten, which I rather feared when every day I called hopefully at the William. Penn"—that is the Pittsburg hotel, is it not? A. Yes, sir.

20 Q. "For a wee little love message of some kind and failed to receive it which made me also anxious about you, perhaps you were ill or otherwise distressed. The reason I did not receive your message this morning (and fortunately the one this evening which had been forwarded to me) was owing to the fact that you had mis-sent it to East Pittsburg which is an entirely different place, but it is alright now because it's here. God ordained it so, dear. I will phone you tomorrow as I cannot go out again to-night in the awful fog and smoke. I wrote you this afternoon telling you of my illness, a terrific headache, and worse sore throat. I first feared I
30 would have to call in a doctor, but I worked up enough courage to go and see mine, who said I simply must take better care of myself and not wreck my nervous system as I have been doing lately, too much worry and anxiety was entirely too much for me. You know you have always called me your little baby who never had experienced any responsibility and that is true, I have
40 never had such trials and anguish. May God help

Mrs. Hilda A. Voigt—Cross

me and give us both renewed strength and faith
 each day in our ambitions to do that which is
 right and honorable to make us successful. I
 wish I could cuddle on your shoulder for a real
 heart to heart chat, one of our very own, would
 you not love it? The kind we enjoy over our
 Ta'h and we feel like real good folks, in peace
 and harmony and good will towards men. You
 know how very sad and dreary this great big
 world is at large and especially when one feels
 all alone, so far away from the ones most dear
 and near, who understand and care just how
 your heart aches and how you feel. So many
 yearn for true kinship as ours, so let us treasure
 it, it makes life exquisite like your beautiful
 roses and sweetmeats, etc., which I have loved
 and appreciated so much and which I yearn for
 this morning when I woke up ill and realizing aw-
 ful loneliness, it made me want for you and
 Charles dear, sweet kind words and interests
 just like when I was troubled with my ankle. I
 don't think I could ever overcome the horrible
 feeling of being alone and ill, and this morning I
 confess I was almost prostrated and had no one
 to kiss or love me or say some real, true, kind
 sympathetic words like yours and Charles. Of
 course I should not complain and I am not, but I
 fear I am awfully spoilt now and now, dear, I
 must bid you goodnight. Do write me a letter
 and let me know all about yourself. I will re-
 turn just as soon as I can, so be happy and con-
 tented. With all good wishes and my prayers
 for your success, Ever your Sincere and devot-
 ed Hilda." That is the letter you wrote him in
 the middle of November, the fourteenth day of

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Mrs. Hilda A. Voigt—Cross

November of this last year, is it not. A. Yes, sir.

Q. Now, Mrs. McCormack, I have read your writing as well as I could there in the darkness, I read practically the substance of the letter that you wrote him, did I not? A. Yes, sir.

10 Q. Now you were at Pittsburg, and you were there under the advice of Mr. Grimes, your lawyer, were you not? A. I didn't go to Pittsburg at his advice. I went to Pittsburg—

Q. I say you were there under his advice? A. I went to consult him. He was my legal advisor at that time.

Q. And you told him, of course, that you had entered into a marriage contract with Mr. McCormack, and that you had signed this contract in your own handwriting. A. Yes, sir.

20 Q. Now can you read that to the jury yourself, you read what you wrote. A. "I, Hilda Abel Voigt do this day and date, agree to and do become the wife of Donald Robert McCormack, according to our agreement."

Q. In other words, you then told your lawyer that in Pennsylvania, this is on the paper of the Hotel Majestic, I believe, that you had entered into such a contract, and he then told you that you were legally married to his man, that you had negotiated a marriage ceremony under the laws of the land, did he not? That is right, is it not, Mrs. McCormack? A. Yes, sir.

30 Q. Then, Mrs. McCormack, you then, no, Mr. Grimes for you then issued a warrant charging Mr. McCormack with various crimes had in Pittsburg and came to Philadelphia, you and he, to place him under arrest and take him out to

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Mrs. Hilda A. Voigt—Cross

Pittsburg, that is so, is it not? A. I didn't say Mr. Grimes undertook that part. I said nothing at all about that that Mr. McCormack had been with me—

Q. Just answer my questions, Mrs. McCormack. Mr. Grimes, your Pittsburg lawyer, that you called the district attorney, had a warrant or warrants issued for Mr. McCormack to take him from Philadelphia to Pittsburg upon charges that you preferred there in Pittsburg, is that not so? A. I am not— 10

Q. Just answer my question, Mrs. McCormack. Did he or did he not issue the warrants. You were there and he was there. A. That is the thing, I presume.

Q. That was done, of course, under the advice of your attorney, and the man that had been, with whom you had been acquainted for a great many years, Mr. Grimes, was it not? A. Absolutely not. 20

Q. Then in Philadelphia a contest was there and bail was entered for Mr. McCormack in Philadelphia, and then you came here to Sea Isle and had him arrested down here upon this charge, did you not? A. Yes, sir.

Q. You did that under the instructions of Mr. Grimes, of course? He sent you here to have him arrested, did he not. A. I don't know what else to say. 30

Q. Well he did it, he sent you here, did he not? A. Yes.

Q. In other words, you had him arrested? A. I had him arrested.

Q. You had him arrested for crimes alleged to have been committed in Pittsburg and then 40

Mrs. Hilda A. Voigt—Cross

when he entered bail for his appearance at Pittsburg you then came to Sea Isle City and had him arrested down here on this charge that you now prefer as having happened on the eleventh day of September, that is so? A. I didn't charge there, because it was in the jurisdiction where I lived.

Q. That is why you had him arrested here, and you had him arrested in the Pittsburg matter? A. Yes, sir.

Q. Now as a matter of truth Mr. McCormack had not been in Pittsburg with you, had he. A. No, not with me.

Q. You never knew him to be in Pittsburg, did you? A. I don't know whether he had ever been in Pittsburg prior to our acquaintance or not.

Q. But you issued a warrant and charged him with a crime in Pittsburg, didn't you? A. No, I didn't.

Q. Well, Mr. Grimes for you, having you swear to the affidavit, you swore to the affidavit in Pittsburg? You don't mean to say you didn't? A. He took out the warrant but it was not for his having been in Pittsburg, it was his warrant for him—

Q. Didn't you issue a warrant for a crime having taken place in Pittsburg. That is so, is it not? A. I didn't sign a paper to that effect.

Q. But you were before the Justice of the Peace in Pittsburg and arrested him in Pittsburg for a crime that had taken place in Pittsburg and you were—A. I did sign a paper to the effect that Mr. McCormack had gotten money—

Mr. Hildreth: Hold on, she has a right to explain that.

Mrs. Hilda A. Voigt—Cross

Q. Go on, Madam. A. That I had given him because the warrant was taken out by the Pittsburg sheriff or whatever authorities—

Q. Justice of the Peace, you mean? A.—Issues the warrant, I went with Mr. Grimes and Mr. Grimes did that from Pittsburg but it wasn't for the fact that Mr. McCormack had been to Pittsburg, Mr. McCormack had not been to Pittsburg, please, but it had been the crimes that he had committed against me, was devoted to the truth of that, there was no charge at all at that time given that I had signed. 10

Mr. Hildreth: No charge of what? A. I mean issue of warrant that, I didn't sign any issue warrant in Pittsburg for the fact that he had been there with me.

Q. You mean to tell the jury now, Mrs. McCormack, that you didn't charge him with any offense having taken place in the City of Pittsburg? A. I did not. 20

Q. You did not. A. The charge was there, the charges were issued, and the charge was for that, and it was presented to him, the warrant was presented at Pittsburg to Mr. Grimes and to my detective to be taken to Philadelphia.

Mr. Hildreth: That is the way you understood it? A. Exactly, Judge. 30

Q. Now, Mrs. McCormack, then after you had had Mr. McCormack arrested here in Sea Isle City he was living over to Atlantic City, wasn't he? A. I had him arrested at the Ritz-Carlton, please.

Q. I say after you had had Mr. McCormack arrested here in Sea Isle City you had a hearing here before a Justice of the Peace, that Justice appeared here this morning. A. Steelman. 40

Mrs. Hilda A. Voigt—Cross

Q. After that you went over to Mr. McCormack's apartments in Atlantic— A. I did.

Q. Pardon me until I finish. Over to his apartments in Atlantic City and dined with him, did you not? A. I beg your pardon, Mr. Grimes told me to go to Atlantic City.

10 Q. Will you answer my question? A. Will you let me, please.

Q. Pardon me, did you go to Atlantic City after you had Mr. McCormack arrested here in Sea Isle City and there dine with him? A. May I please give an explanation?

Q. You can answer yes or no and make any explanation.

The Court: Yes or no, and explain your answer.

20 A. Yes, I did, I went to see, that is I had Mr. McCormack arrested in the Ritz-Carlton and then I came over with my attorney and my detectives.

Q. You are referring now to the Philadelphia arrest from Pittsburg, are you not? A. I am speaking of that now, please, I had him arrested from Pittsburg to the Ritz-Carlton, but I wish to lead up to the answer—

30 Mr. Scott: I object. This is not an explanation to her yes or no on my question. If she wants to explain something after she is through with my question I have no objection, but I asked her whether after the Sea Isle arrest if she did not dine in the city of Atlantic City with her husband, Mr. McCormack, and she says yes. Now to that she can make any explanation she wants made if there is any explanation to that.

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Mrs. Hilda A. Voigt—Cross

The Court: Do you want to explain that?

A. Yes, I do. In every place after I had him arrested at the Ritz-Carlton at Philadelphia Mr. Grimes told me that I should go to Atlantic City for a few days until he would send for me, which he did, and while I was there I didn't go to the hotel because there was someone I knew had an apartment, who rented rooms. I went there, this woman, knew the street, and I went there for the few days thinking I would be under better protection. And Mr. McCormack found out I was there and came and molested me, came this afternoon, this party said that he would give me money if I would come to his apartment and get it, and of course, unconsciously I did, I didn't go alone, and he promised that he would give me money. That was the object.

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The Prosecutor: What money was this? A. Some money that he owed me.

Q. Now how many times, Ms. Voigt, did you go to his apartments? A. Just the once.

Q. How many times did you meet him at Atlantic City and dine with him or associate with him at all? A. I didn't associate with him at any time.

Q. How many times in Atlantic City since the Sea Isle City arrest have you met Mr. McCormack in Atlantic City? A. He came to the house where I was living once.

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Q. Won't you please answer my question? A. I am answering.

Q. I am speaking now of Atlantic City, how often in Atlantic City since the Sea Isle City arrest have you met Mr. McCormack? A. I met him once on the street.

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Mrs. Hilda A. Voigt—Cross

Q. Yes. A. And the day, two days that he came to the house where I was living.

Q. Mrs. McCormack, just get your mind down to the question and answer, you met him once in the street, how many other times? A. Twice.

10 Q. Where, at his apartments? A. No, just once at the apartment because I went there—

Q. Where was the other time you spoke of? A. At the apartment where I live, where I have my room.

Q. Where you lived in Atlantic City? A. I had a room at this apartment where I was stopping.

20 Q. Yes. A. And he came there, this party on this afternoon, he said he would give me money, and I was very badly in need of it, I haven't anything at all, and my terrible interest on the notes, he knows that I had borrowed for his sake, had come due, and I hadn't anything to pay those with, and he had promised he would give it to me, and he didn't have it in his pocket, and he asked me to go with him up to his apartment, and I did go because I thought he would give it, that was the only object and the reason of my going there.

30 Q. Now, Mrs. McCormack, then he came to your home at Sea Isle City and there gave you some money, did he? You got some money from him, did you? A. He gave me a hundred dollars.

Q. How did that arise? A. That arose this way, that I had wrote him, that was quite a long time after I had—

40 Q. That is after the Sea Isle arrest, is it? A. He came to my house one Thursday and got in-

Mrs. Hilda A. Voigt—Cross

to my house when I didn't know he had been there.

Q. Pardon me just a minute, we will get along a good deal better. I have no objection to your explaining all that you want to tell, but just let's do it orderly. After the Sea Isle arrest he came to the Sea Isle cottage and there gave you a hundred dollars. Just explain the circumstances of that in your own way. A. He came to my house and at that time I needed money again, I hadn't anything, there was four large interests which came due, on four large notes, and I asked him to give me some money to pay off those notes, and he handed me a hundred dollars which I used for that purpose. It wasn't his money. It was mine. 10

Q. Now, Mrs. McCormack, after you had written these various letters and sent these various telegrams in September, which I have read you, and after you wrote these various letters from Pittsburg to your husband, you then had him arrested? A. I did. 20

Q. At the Hotel Ritz-Carlton in Philadelphia?
A. I did because I had my records then.

Q. You arrested him on the charge from Pittsburg, did you not. A. I had him arrested from Pittsburg. 30

Q. Now you know, as you have testified here, you never knew Mr. McCormack to be in Pittsburg? A. I don't know whether he had ever been there before I knew him or not, but I am speaking of the time.

Q. Did you get that letter from your attorney, Mr. Grimes, dated the third day of December?
A. This letter was taken from my house there. 40

Mrs. Hilda A. Voigt—Cross

Q. Did you get that letter from Mr. Grimes, your attorney in Pittsburg? A. This letter was addressed to me and this letter evidently has been taken from my house.

10 Q. That is addressed to you by whom, Mrs. McCormack? A. Addressed to me by Mr. McCormack—by Mr. Grimes.

Q. Did you receive that letter from your attorney, Mr. Grimes. A. I did.

Q. Now that is your attorney's letter to you? A. Those letters were not given to Mr. McCormack. They were taken from my house.

20 Q. Didn't you bring them to his apartments and give them to him, and didn't you, when you gave them to him, tell him then that Grimes was the man that was forcing you to prosecute him and that you were then trying to get away from Mr. Grimes? A. Absolutely not.

30 Q. Did not? Well this is the letter of instructions that you received from Mr. Grimes in reference to your Sea Isle case, is it not: "Hilda Abel Voigt, 202 Caspian Avenue, Atlantic City, New Jersey. Your message received and I was waiting to get your address in order to communicate with you. Yesterday (Sunday) the Atlantic City Chief of Police wired me that McCormack was under arrest, and I answered him to hold him in heavy bail or turn him over to the Marshal from Sea Isle City with whom he had communicated. I also telegraphed the Marshal at Sea Isle City of the facts and told him to go to Atlantic and get the man. I also telegraphed Eugene C. Cole at Seaville, Ocean City (to whom I had written from New York) of this man's arrest in Atlantic City and that he was a

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Mrs. Hilda A. Voigt—Cross

dangerous crook and should be held under any circumstances and the bail made quite heavy. I have not heard from any of them today. The situation existing now is this, in order that you may understand it: M.”—by that you meant McCormack, did you not? You understood M. to be McCormack, did you not? A. Depends on the following phrase. 10

Q. “M. has been held by the magistrate at Philadelphia under bail for the grand jury at Pittsburg on the informations we made charging bigamy, false pretences, larceny, and surety of the peace before Alderman Charlton. These cases will now be sent to court and we can appear (if we desire to do so) at any time in the future, before the Grand Jury, or we can drop them, depending on circumstances. Of course, these crimes must have been committed in Allegheny County, as explained to you and if he were here on two occasions as you told me and got the money from you, under the circumstances, we might be able to convict him herer if we pursued the matter. At any rate, true bills could be returned by the Grand Jury at any time and we could perhaps have him extradited and brought to Allegheny County for trial. This, however, is further along and need not concern us at the present moment, except to explain the situation to you and your attitude and position if you discuss the Pittsburg cases with any of the authorities in Cape May County. 20 30

Secondly: McCormack having gone to Cape May County and being under arrest there brings up our complaints or informations that were made before the Justice of Peace at Sea Isle 40

Mrs. Hilda A. Voigt—Cross

10 City in which we charged him with felonious assault and battery (which means an assault and battery committed upon you with intent to kill); Grand Larceny being the theft, of the bond and mortgage from your house at Sea Isle, together with other papers, and also surety of the peace which means, threats made against your life by him, including threats to kidnap your child, etc.

It is on these informations that he is now arrested and probably held in Cape May County.

20 The District Attorney of Cape May County, E. C. Cole, may possibly desire to talk to you about the cases; and if so, please remember that you must have this man held on these charges and if he threatened your life and abused you with threats to kill in the manner you told me, there should be no difficulty about it.

Also, remember that this man is a dangerous crook and in order to get free of him, he will have to be convicted eventually in Cape May County or Pittsburg, which is the place where the action is now taking place.

30 I think my telegrams and letters to the authorities where you are, together with his record, are sufficient to hold him for some time. Under any circumstances, you need not be fearful, as we have got the goods on this fellow, and while your money is probably gone for good, we should be able to convict him and send him to the penitentiary." "I inclose notice of a check drawn on the Park Bank which was not paid amounting to \$27.50. If this has not been paid," etc. pertaining to some private business
40 of yours. That was the letter of instructions

Mrs. Hilda A. Voigt—Cross

that you got from Mr. Grimes of Pittsburg, was it not? A. Yes, sir. But I didn't at any time say that Mr. McCormack had been with me, that was the suggestion of Mr. Grimes.

Q. What? Do you mean to say that lawyer suggested to you that this man was in Pittsburg? Do you mean to say that? A. Yes, sir. 10

Q. Do you mean to say that this man Grimes told you to swear that McCormack had been in Pittsburg when he was not in Pittsburg? Do you mean that? A. Yes, sir.

Mr. Scott: I ask, may it please your Honor, that these notes be certified and sent to the District Attorney of Allegheny County.

A. Because I didn't say that Mr. McCormack had been to Pittsburg. 20

Q. Then you knew by that that Grimes was so corrupt and biased that he got you, a woman, to swear to warrants of crimes taking place in Pittsburg when you told him this man had never been at Pittsburg so far as you know.

Mr. Hildreth: I object to that.

Mr. Scott: I think I have the right. Here I assume this woman followed his advice and this man is branded as a crook. 30

The Court: We are not trying him.

A. We are getting off the track entirely.

Mr. Hildreth: He has the right to elucidate the facts, as to the conclusion of those facts—

Question withdrawn.

Q. And that letter has been taken from my house because I never had that letter. 40

Mrs. Hilda A. Voigt—Cross

Q. Now, madam, this is the other letter that you identify as getting from Mr. Grimes, is it not? A. Yes, sir. I never gave Mr. McCormack any letters Mr. Grimes had written to me at any time.

10 Q. And you never told Mr. Grimes that Mr. McCormack was ever in Pittsburg? A. I didn't say only that I didn't know if he had ever been there before our acquaintance but I didn't say—

The Court: Just answer that.

A. I answered that.

Q. "Mrs. Voigt. I have your two letters. Had I not been engaged in the trial of a case here, I would have gone to Cape May Court House today. I hope that Mr. Cole took proper care of M."—by M you knew he meant Mr. Mc
20 Cormack, of course? A. Yes.

Q. And I will be anxious to hear what the result of the hearing was.

Up to the present time, our proceedings against him have worked out splendidly. Unfortunately, he has so much money and such powerful friends that he is able to cause some trouble.

I hope you understand that this man is a crook of the worst character. I suggest that under no
30 circumstances do you remain at Sea Isle City alone or in the neighborhood of where he is without proper protection. I am surprised that he has not murdered you before this. I am not writing this to frighten you, but because it is the fact, and the man is a dangerous person.

I presume that he was required to give bail at
40 Cape May, and is now at large. Under any circumstances, you, of course, should keep out

Mrs. Hilda Voigt—Re-direct

of his way and Mr. Cole will probably tell you when the cases will be finally tried in Cape May County.

I have written to Wenonah Academy, telling them under no circumstances to permit him to see or communicate with your son." Now that was the second letter that you received from this man, was it not? A. I received those from Mr. Grimes. They were never handed to Mr. McCormack. They were taken from my house. 10

Q. Mrs. McCormack, I forgot to ask you, after this man assaulted you and threw you against the bureau and bruised you and beat you up, what doctor did you go to? A. I didn't go to any doctor. I didn't give any confidences to anyone. I did that for the sake of protecting—I wasn't known in Sea Isle, I communicated with no one—the doctor who was there I didn't speak with him, a stranger, and I don't believe in physicians. 20

RE-DIRECT-EXAMINATION by Mr. Hildreth:

Q. When did you first meet Mr. McCormack, Mrs. Voigt? A. I met him in May in Atlantic City, 1900—about a year ago, 1917.

Q. Over a year ago? A. Yes. 30

Q. And you stated on cross-examination that you entered into an agreement of marriage with him? A. I did.

Q. And where was the agreement made? A. In the Majestic Hotel in New York City on the twenty-eighth of May.

Q. Was it in writing. A. Yes, sir.

Q. Did he sign it? A. Yes, sir. 40

Mrs. Hilda Voigt—Re-direct

Q. Is his signature to the letter? A. Not to that, but I have my copy, it is in Mr. Grimes' possession, please.

Q. He wrote a letter similar to the one you wrote for him? A. Verbatim.

10 Q. And he signed it? A. Yes, sir.

Q. And you saw it, did you. A. Yes, sir.

Q. And thereafter you did live together as husband and wife, did you? A. Well, we were not together all the month of June, it was from the first of July, and Mr. McCormack, the very next day had borrowed a hundred dollars, very day after we were married, borrowed a hundred dollars from me—

Mr. Goldenberg: I ask that these answers be responsive.

20 Mr. Hildreth: You just answer my questions and I think we will get along a little better.

Q. How long after you made this agreement of marriage did you go to Sea Isle City to live? A. Well, I went back to Atlantic City because my lease expired shortly, first of June, my mother had just died a very few months prior to that and my lease expired the first of June, I went to Sea Isle, and took up my residence there in my own home, my house that I owned.

30 Q. That is what I am getting at, did you have a home of your own? A. I did.

Q. In Sea Isle City? A. Yes, sir.

Mr. Scott: We don't want to be captious, and not objecting, but I want the witness to be able to tell the story without any legal objection, but I submit the gentleman making the direct examination should confine her to those things alone

40

Mrs. Hilda Voigt—Re-direct

that she can testify to. She has testified to marriage and she can testify to assault, but she can't testify to any other questions, and if she will respond to the Judge's questions—

Mr. Hildreth: I rather think that is in line with the testimony you brought out, that they lived in Sea Isle City. 10

Q. You owned the cottage in Sea Isle City?

A. Yes, sir.

Q. And you and Mr. McCormack lived there after you contracted this agreement of marriage, lived there for some time? A. We lived there from the 1st of October, 1st of July until the last of October.

Q. And you were living there on the 11th day of September? A. 1917; yes. 20

Q. 1917? A. Yes.

Q. That is the day that he made this demand upon you for the five thousand dollars? A. Further demand. He had been demanding; yes.

Mr. Scott: I object. That is not re-direct, your Honor.

The Court: That is merely repeating, Judge, what has already been brought out.

Mr. Hildreth: Well, I certainly have a perfect right— 30

The Court: No; you can't repeat testimony over and over again.

Mr. Hildreth: Of course I can't repeat testimony over and over, but I certainly have a right to ask on subjects which the gentleman on the other side has introduced.

Mr. Scott: We didn't introduce that, Judge. It was your direct-examination. 40

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Mr. Hildreth: You brought it out on your examination.

The Court: That is your own testimony, that is the State's own testimony. That is merely repetition.

10 Q. In your answers to Mr. Scott on the other side you testified that he had gotten some moneys from you, too? A. Yes, sir.

Mr. Scott: I submit that I didn't make any examination at all of any moneys whatever, and therefore that is not re-direct-examination, and I object to it. She volunteered some answers which managed to get upon the record.

20 Mr. Hildreth: That was brought out in the examination that he had gotten moneys other than the five thousand dollars from her. Now I want to show just how much money he had gotten from her.

Mr. Scott: I object to it, your Honor. There was no cross-examination upon any such subject. The only cross-examination of any money that we brought out was to have her testify that this man gave her one hundred dollars at Sea Isle City in her cottage, so that I therefore object.

30

Mr. Hildreth: Your Honor will recall in the cross-examination the fact was brought out that he had procured other moneys from her, practically had taken All the money that she had, and I am asking her on that now, which was brought out by the defense in their examination.

40 Mr. Scott: I call upon the judge to indicate one question that was asked by us.

Mrs. Hilda Voigt—Re-direct

The Court: And if it had not been, Mr. Scott, this is a matter of disention with the Court as to how far the re-direct examination shall be limited, is it not?

Mr. Scott: I think within the limits of the law, I think the Court has a certain amount of discretion. 10

The Court: I will permit the question; proceed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is hereby allowed and sealed accordingly.)

(Seal)

Q. How much money had Mr. McCormack gotten from you prior to demanding the five thousand dollars? 20

Mr. Scott: I object to that, may it please your Honor.

A. In the month of September—
(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is hereby allowed and sealed accordingly.)

(Seal) 30

A. In the month of September he had seven thousand dollars, and before that time there was some, I don't recall the exact amount, but all in all, the whole amount that he had gotten from me amounted to between—over thirty thousand dollars.

Q. Over thirty thousand dollars? A. He 40
stripped me completely of everything I had and

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then even said that he would take my, deprive my child, take everything from my child.

10 Mr. Goldenberg: If your Honor please, I want to renew my objection to that question and ask that that answer be stricken out. There is no charge here of obtaining money. The charge here is four kinds of assault. The only connection money has with it is to bring it under section 121, under which it is necessary to show an intent to rob. Now the theory of the prosecution or their attempt is to inject into this case the fact that amicably or otherwise this man had some time or other obtained some money from this woman other than the five thousand dollars which they allege that he attempted to obtain, and then let the jury argue and reason from that that if he did get some money from her by one means or another, that he must be guilty of this assault or attempt to get some other five thousand dollars. Now you can't show a man's propensity for crime and reason from one crime that he committed another, but in this case they are showing something that is entirely foreign to the case. The man is not charged with obtaining money from her under false pretenses. He is not charged with robbing her. The charge is that he assaulted her with an intent to rob her, wouldn't make any difference whether it was two dollars or two million, the crux of the crime is the assault, not the attempt to get money.

40 The Prosecutor: The answer to that is

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that he has misstated the fact. The indictment is for forcibly and wilfully, in a forceful and violent manner and means demanding of her certain amounts, to wit, five thousand dollars. That was true of the five thousand that he demanded on the 11th of September violent and forcible means. It was brought out by Mr. Scott there was other amounts. Now the law is that one crime cannot be proven by another, but where there is a series of offenses, and counsel can show a common purpose, then it is relevant. Now this was only the culmination, this was the last call which culminated in the demand for five thousand, and we claim that under the law it is admissible, and having been brought out on cross-examination there is a right now to go on and show the whole circumstance.

Mr. Goldenberg: Let me read the exact language of this section under which he is indicted on two counts in this indictment: "Any person who shall wilfully, maliciously assault another—etc.—or by other forcible and violent manner and means demand of another the personal goods or chattels with intent to rob him shall be guilty of a high misdemeanor." It is a species of assault. The statute provides for an assault with intent to kill, or in an attempt to rape, it provides for an atrocious assault, and it provides for an assault with an intent to rob. Now what he is charged here with is an assault with an in-

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tent to rob. The question of money is simply collateral to it, incidental to it, and has nothing to do with it.

10 Mr. Scott: I think, may it please your Honor, while it is discretionary in the Court to a limited sense to allow on re-direct-examination what the Court thinks would be direct-examination, the Court can't admit on re-direct-examination that which would be irrelevant in direct-examination. This would be irrelevant in direct-examination.

The Court: Of course it has to be legal evidence.

20 Mr. Scott: Because the door was not opened by cross-examination.

30 Now, my friend, the District Attorney, and his associates have said the door has been opened by cross-examination and I challenge them, not a word of cross-examination, may it please your Honor, in reference to any moneys, the only possible question that we asked in reference to money was the fact that this man had given her one hundred dollars at the time that she admits that he paid her a visit in Sea Isle City after the arrest in Sea Isle. Now there has been nothing in cross-examination which prompted it, and while your Honor has discretionary right as to saying what is re-direct as contrary to direct-examination, in a limited sense, as I said before, it must be relevant testimony and I therefore object to this upon the ground that it is not relevant and ask
40 the answer to be stricken out.

Mrs. Hilda Voigt—Re-direct

A. May I say—

The Prosecutor: Mr. Scott says that the only reference to money was the one hundred dollars, but, do you remember the answer, "He gave me one hundred dollars, but it was my money, and he had other moneys of mine," and he stopped her there. 10

A. It wasn't a volunteer—

Mr. Scott: Pardon me, Mrs. McCormack. You can't get into the discussion.

Mr. Hildreth: May it please the Court, it seems to me that the defense has opened this question so largely that I hardly think your Honor would be justified in excluding this testimony.

Mr. Scott: Would you mind indicating where we opened it? 20

Mr. Hildreth: In addition to that I might say to your Honor the subject matter of obtaining from her other moneys was unquestionably brought out by the examination of the attorneys for the defense, and it seems to me that I would have a right, outside of that, to show all the facts, and the facts that other moneys had been taken from this woman as part of this transaction, leading up to the transaction, to say nothing of the fact that they have opened the door wide themselves, they have introduced this very subject matter which now they object to, and your Honor will recall that in their examination of this woman it was testified that he had not only gotten a hundred dollars which they re- 30 40

Argument

ferred to, which they want to confine themselves to, but she also said that he had gotten other money, and if I recall rightly he had practically stripped her of every cent that she had. Now, under those circumstances, I respectfully insist—

10

A. May I say, please—

Mr. Hildreth: Wait a moment. I respectfully submit that we have a perfect right to go into that matter at this time.

The Court: Insist on your question, do you, Judge?

Mr. Hildreth: Yes.

The Court: The objection is overruled.

20

Mr. Goldenberg: Will your Honor, in order that I may keep the record straight, grant me an exception to the entire line of testimony so that I won't be compelled to object?

The Court: There is a motion to strike out the last question. That motion is overruled.

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is hereby allowed and sealed accordingly.)

30

(Seal)

The Court: Now, there is an exception asked to this entire line of testimony.

(Whereupon the defendant, by his counsel prays a bill of exceptions which is hereby allowed and sealed accordingly.)

40

(Seal)

Argument

Q. When did you first go to Pittsburg after September 12th-11th? A. In September?

Q. Yes. A. I believe I was in Pittsburg twice in September.

Q. After the assault took place? A. In September my charge was made in the first in September after the time that Mr. McCormac promised to give me back my money. 10

Q. If you will just answer my questions I think we can get along a good deal better.

Mr. Goldenberg: If the Court please, as the record stands now, this is a wife and this is a husband. There are two indictments here containing two counts, and in each count the real gravamen of the offense, that is the distinguishing feature of the offense is an intent to rob. In other words, we have an indictment here with a simple assault and we have another with atrocious assault and then we have an indictment with an element that distinguishes both from simple and atrocious assault, namely, an assault with intent to rape. Now I want to raise a point in addition to the objections I introduced here that as the evidence stands now Mr. and Mrs. McCormack are husband and wife and under the laws of New Jersey there can be no such thing as any species of stealing either from the husband by the wife or from the wife by the husband, consequently no testimony relative to any moneys that he previously obtained from her would be admissible. 20 30

The Prosecutor: The answer to that is 40

Argument

10 already given by the Court of Errors in 67 Equity, 17 Dickinson, page 782, Syllabus number 5. The Court of Errors having decided that fact I don't think it is worth while to argue it, if she was his wife, which she denies, if she was his wife, he had no right to demand of her by violent means the balance of her money. I am aware of all those cases he has. He showed them to me. They are all old cases, and have all been overthrown by this case in the November term, which I have cited in 62 Equity. It has been thoroughly gone into. The Texas Statute under which it was brought, in New Jersey, is identical with our own, and the decision of the Court I have just read we think has entirely overthrown the common law rule of merger, and a woman has just the same control over her property as a man has, even if he was her husband he could be guilty of stealing from her as if he was not under that decision.

20
30 Mr. Goldenberg: If the Court please, we are relying on two cases here. In 1916, when that enabling statute was passed in connection with the married woman and her property, it in no sense changed this law, however, and referred exclusively to property. With these enabling acts in mind, Vice-Chancellor Bergen said the rule of the common law that a husband and wife are to be regarded as one has not been abrogated.

40 Mr. Hildreth: May it please the Court,

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that is not the charge. The count in the indictment does not charge that he stole or attempted to steal from her. That is not the crime that he stole or attempted to steal from her. The crime is that he used force in demanding money of this woman. I doubt very much myself whether a husband could be convicted of stealing from his wife or the other way. 10

The Court: With what did that case deal, property rights?

The Prosecutor: Yes; and that case overthrows the Vice-Chancellor's decision he is quoting. There are two decisions of the Vice-Chancellor in another matter.

Mr. Goldenberg: The Judge is arguing another phase of the case and he is assuming my contention of the law is correct, and he is still contending the indictment is good. 20

Mr. Hildreth: I am assuming the charge is not in the indictment that he robbed this woman. That is not the crime. The crime is not the taking of the money from the woman, but is the taking by threats, menaces or assault and battery is the crime. That is the essence of the act. 30

The Court: Well, are you relying on the second count in the indictment, that is to say, could a man be guilty of intending to commit a crime which he could not commit?

Mr. Goldenberg: There you are, you have got the crux of the real situation.

Mr. Scott: In other words, robbery con- 40

Argument

10 sists of a crime, assault and battery, and larceny, and there cannot be larceny in the State of Pennsylvania or State of New Jersey between husband and wife and therefore the husband in this indictment is the constituents of the crime of what we would call in Pennsylvania robbery, which is assault and battery. Now may I digress for a second and go back to my other thought, may it please your Honor, which I think we are getting entirely off the subject in allowing this line of examination. There is absolutely to my mind, may it please your Honor, the objection is fundamental to this line of examination that is being asked of this lady on the grounds that it is absolutely irrelevant. I is quite immaterial, may it please your Honor, if this man prior to the 11th day of September had gotten one dollar or gotten thirty thousand or gotten thirty million dollars. That is not the question here before the jury. The question before the jury is whether this man assaulted and used force against this lady. That is the only issue that they have got. Now the rule as to relevancy is that it must be testimony to a fact that is in issue, or is relevant to the fact in issue. Now where could there be any relevancy as to whether or not this man had gotten from this woman prior to the 11th day of September money or not? She charges an assault on the 11th day of September. Doesn't it rather tend to lead 40 the mind of the jury away from the issue?

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Isn't the jury likely to forget the question as to whether or not this woman, who wrote this man around about the time she claimed that she was assaulted, affectionate notes, and going back and say, "Well, this man got her money," aren't they likely to be misled from the issue, and isn't it the purpose of the rules of evidence to hold the question down to the issue in the indictment, as framed by the indictment and the plea? Now I take it, may it please your Honor, that the very fundamental objection to it, without considering the question as to husband or wife, on the very question of relevancy, his line of direct-examination should be eliminated. As I said before, the only possible excuse for a question to be asked in direct examination is where the door has been opened by improper cross-examination. The door has not been opened in this case to allow the line of re-direct-examination.

Along the line that has been argued by Judge Hildreth and Mr. Goldenberg, this woman in the capacity as a wife is restricted as to what charges she can bring and testify against her husband. She could not bring a charge, may it please your Honor, against the husband of larceny if this man went into her home and took her money from her, while, if they were not married that would be larceny under the common law, larceny under our statutes, it would not be larceny under the laws that exist when the money is taken by a hus-

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10 band from the wife or a wife from a husband. Now, if that is so, in a larceny case, then robbery, which is the assault with intent to rob as you call it in this State, is but a different degree of larceny. It is larceny with a force. It is the old common law robbery where either by violence or by putting in fear the property is taken. Now, in this case, may it please your Honor, I take it that the only charge that could be preferred by Mrs. McCormack against her husband is the charge of violence, and I therefore take it that upon that ground this line of examination should be excluded.

20 Mr. Hildreth: I will admit that what Congressman Scott says that we have gone outside of this case very largely. I think your Honor must admit that a great deal of testimony has gone into this case that has no business in this case, but the State—

The Court: A good time to stop then, wouldn't it?

30 Mr. Hildreth: No; I mean from a legal standpoint. I am talking about from a legal standpoint. I want your Honor to understand that we were perfectly satisfied to have the testimony which they brought into the case brought into the case, perfectly satisfied to bring it in. Now, the Court having allowed them the latitude which you have allowed the other side, it seems to me it would be proper—

40 The Court: Of course you must bear

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in mind that that was allowed without objection. I confess that the cross-examination I think was carried, in point of time, at least beyond what—

Mr. Hildreth: I think there were a great many things put in hadn't any business put in from a legal standpoint. 10

The Court: There was no objection on the part of the State.

Mr. Hildreth: Therefore it is discretionary with the Court whether we can go on with this line of examination or not. I want to call your Honor's attention to the indictment. There are four counts that charge assault and battery, one charges atrocious assault, and then there are two counts of demanding money by threats or menaces. Now, I doubt myself very much if in the State of New Jersey a husband could be convicted of larceny from his wife. 20

The Court: Let me interrupt you right there. Do you concede then that the second count in the indictment cannot stand?

Mr. Hildreth: No. 30

The Court: Why?

Mr. Hildreth: Because the second count is for assault and battery.

The Court: With intent to rob.

Mr. Hildreth: Not at all.

The Court: Yes.

Mr. Hildreth: The first count in the indictment?

The Court: The first count is the atro- 40

Argument

cious assault, second count is the simple assault. What is the third count?

Mr. Hildreth: What count do you want?

10 The Court: I want the third count, unless there are two indictments.

Mr. Hildreth: I thought there was one indictment with four counts.

The Prosecutor: There are two indictments all fastened together.

The Court: The second count in this indictment is the same thing, with intent then and there to rob. Now, I ask Mr. Goldenberg this question, whether a person be guilty of intending to commit a crime which they could not do?

20 The Prosecutor: Yes.

Mr. Goldenberg: No; and I want to call your Honor's attention to the fact that section 121, follows section 120, section 120 is headed robbery, section 121 is headed attempt to rob, section 122 is headed larceny from the person, so you can see to what extent, in opinion of Newman, this intent to rob got in this indictment, that is the very phase of it that distinguishes it from the other two counts, they have assault and atrocious assault. Now if we could not rob then we could not commit an assault with intent to rob. You certainly cannot convict a man with an intent to do something if you could not convict him of the same thing itself.

30 The Court: Isn't that correct as a legal proposition?

40

Argument

Mr. Hildreth: No; I don't think it is at all. I think the crime consists in making the demand by threats.

The Court: Yes; but under your indictment mustn't you prove an intent to rob before you can convict him of that indictment? In other words, mustn't you prove the crime which is alleged in your indictment?

Mr. Hildreth: Yes; but the crime is not the robbing, the crime is using the force and menaces against the party, that is the crime, this count charges the assault and the atrocious assault. Now, isn't the crime in the second indictment not the act of robbing or attempting to rob, but isn't the crime using force?

The Court: Is it a crime then to demand money without intent to rob?

Mr. Hildreth: Yes.

The Court: Now, if it is your second indictment will stand. If the intent to rob is one of the elements of the crime in the second indictment, unless a husband can rob his wife, the second indictment cannot stand.

Mr. Goldenberg: That is our contention exactly.

The Court: Now, Mr. Cole contends a husband can't rob his wife or the wife rob her husband.

The Prosecutor: No; the Court of Errors did it; I didn't.

The Court: Do you agree with the Court of Errors?

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The Prosecutor: And this argument is predicated upon the wife. Suppose it should turn out she was not his wife at all; how about it then?

10 The Court: I will discuss it as the evidence is.

Mr. Hildreth: But isn't it a matter of proof whether or not they are married in this case?

The Court: Yes; but when you have allowed more than enough, you can't introduce this testimony, you can't prove that crime is a direct part of the offense.

20 Mr. Hildreth: There is no doubt about that matter, though in this case the crime is not robbing or the attempt to rob, but what makes it a crime is the fact that you used force and menaces against the person.

The Court: What makes it a crime is whatever the statute says makes it a crime.

30 Mr. Hildreth: What makes the act of attempting to rob; what makes this crime attempting to rob the crime in this case, not the robbing or attempting to rob, but the robbing with menaces and threats.

40 The Court: But you are coming right around to my point of view. If you admit, of course, a husband can rob; then, of course, that indictment is good. What I am getting at is this, unless you can show the authority in the statutes that to demand money with intent to rob is a crime, then you must prove, in order to stand on this indictment, that the man demanded

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money with intent to rob, intent to rob a woman who up to the present time is his wife, which is impossible under the law, I take it. I shall both agree with you and agree with the Court of Errors and Appeals in the case which Mr. Cole cited, but I understand that has to do not with criminal matters, but with property rights. 10

Mr. Scott: That is our situation in Pennsylvania. No question about that.

Mr. Hildreth: I don't think there is any doubt about that.

The Court: I don't think you can extend that case which deals with property rights to the criminal code.

Mr. Hildreth: I don't feel that way about it at all. I don't feel that a husband can be convicted in New Jersey of larceny from his wife. I don't think he can. My view of this indictment is that the crime is not the act of robbing, but it is using this force. 20

The Court: No; you don't get the point at all. It is menaces with intent to rob, but intent is a part of the crime, the demand of itself is not a crime unless you intend to rob. The State must show the Court either that a demand for money without intent to rob is a crime, or that a husband may be guilty of robbing his wife or that this man and woman are not husband and wife else the second indictment must fall. 30

Mr. Scott: And this line of examination is excluded? 40

Mrs. Hilda Voigt—Re-direct

The Court: And this line of examination be excluded.

Recess taken until 2 o'clock p. m.

10

Afternoon Session

Trial of the cause resumed at 2 p. m.

MRS. HILDA VOIGHT, resumed:

Re-direct-examination resumed by Mr. Hildreth:

20

The Court: What are you prepared to do, gentlemen, with respect to the second indictment?

Mr. Hildreth: Bow to the ruling of the Court. If your Honor rules that, of course we will bow to it and then we will proceed.

The Court: Have you any authority to the contrary?

Mr. Hildreth: No; we have no authority to the contrary.

30

The Court: Then the trial from now on will proceed on the first indictment only or if it is one indictment on the first two counts.

Mr. Scott: Then the testimony is stricken out, as I understand the part of the statement was, the last part of your Honor's statement was that your ruling would also exclude that testimony that was testified to the money.

40

Mrs. Hilda Voigt—Re-direct

The Court: There was only one question. Last question and answer repeated. Objection sustained.

Mr. Scott: The money that was gotten prior to the five thousand dollars, that covers the whole situation.

10

Mr. Hildreth: The testimony in answer to my question of the money gotten prior to the five thousand dollars, the answers to my questions.

The Court: That is stricken out.

Q. Mrs. Voigt, you were married before you met Mr. McCormack? A. Yes, sir.

Q. What was your name? A. Mrs. Charles Henry Voigt.

Q. Is he dead? A. Yes, sir.

20

Q. And he was dead when you met Mr. McCormack? A. Dead eight years.

Q. You speak of having a child? A. Yes, sir.

Q. How many children have you? A. I have one living child.

Mr. Scott: I hardly think this is relevant. I object to it as being irrelevant.

The Court: It seems immaterial.

Mr. Hildreth: Been referred to and the door is wide open, by the defense, of course the Court is not going to narrow us down.

30

The Court: I go back to my original statement.

Mr. Hildreth: I will withdraw the question.

Q. When did you first see Mr. Grimes in Pittsburg? A. November, about the 1st of November.

Q. First of November? A. I can't recall just exactly the date.

40

Mrs. Hilda Voigt—Re-direct.

Q. Then you didn't see him when you were to Pittsburg the first time? A. Absolutely I never consulted with him before the time in November after the time Mr. McCormack promised to return to me every cent that he had from me.

10 Mr. Scott: I ask that that answer be stricken.

The Court: That is not responsive.

Q. You did go to Pittsburg on the 14th of September, did you not? A. I went to Pittsburg two or three times in September.

Q. Well, how soon after the alleged assault and battery did you go to Pittsburg? Did you testify this morning on cross-examination you went there on the 14th? A. No, sir; I went there the day before, after, about the 12th, and I went to Pittsburg on the night of the 12th.

20 Q. Did you see Mr. Grimes then? A. No; I did not. I didn't see Mr. Grimes until after the time expired when the money was to be returned to me.

Q. What time in November was it that you saw Mr. Grimes? A. I saw Mr. Grimes about the—between the 10th and 15th because I didn't return.

30 Q. Wait a minute. That is all right. What business is Mr. Grimes in? A. He is an attorney.

Q. Can you tell by looking at this letter here when it was written? A. I don't just exactly recall; no, I couldn't tell.

Q. Can you state whether it was written before or after you had seen Mr. Grimes? A. I believe this was written before the time I saw Mr. Grimes because there were just two letters—

40 Mr. Goldenberg: Just a minute. I ask

Mrs. Hilda Voigt—Re-direct

that the witness be instructed to answer the question, if the Court please, and not volunteer anything more.

(Answer repeated.)

A. Two letters and telegrams that I sent during the period.

10

The Court: That is responsive, isn't it, Mr. Goldenberg?

Mr. Goldenberg: I don't think so; if your Honor please. I think that was capable of being answered before or after, in other words I want the witness to answer the question and not volunteer.

Mr. Hildreth: I think that was properly answered. She was uncertain about it.

Q. There was three letters which you wrote to Mr. McCormack after you had this unfortunate occurrence in Sea Isle? A. City.

20

Q. There were three? A. Yes.

Q. Why do you now say that this was written before you had seen Grimes? A. I don't know whether that was the one that was written or not, Judge Hildreth.

Q. You are not certain about this? A. No; I don't recall that, unless I had it marked where it was written from.

30

Q. You can't fix the time when you saw Mr. Grimes in November to a certainty, can you, between 10th and 15th, she said, didn't she?

Mr. Scott: Yes; between 10th and 15th.

A. I will tell you my reference, Judge Hildreth, is the fact that it was after the election, Mr. McCormack said he would pay me back every dollar he owed me, and it was then he didn't pay it, make explanation why or anything, and after that he wanted to still urge me to give him more money.

40

Mrs. Hilda Voigt—Re-direct

Q. You said this morning these letters here, that you wrote these letters to Mr. McCormack, tell me why you wrote them to him? A. Why Mr. Grimes said to always write to him as I always had done before.

10 Q. What for, for what purpose? Go on, Mr. Grimes told you to write to him as you had done heretofore? A. As I had done before.

Q. For what reason?

Mr. Goldenberg: If the Court please, how can this defendant be bound by any conversations that took place between her and Mr. Grimes in Pittsburg?

20 Mr. Hildreth: I don't suppose for a moment that he could be unless we would be permitted to question her upon it because they opened the door this morning and went into this whole thing, and under this circumstance, they having thrown open the door and gone into it, we certainly ought to be permitted to follow it up. I didn't think this morning that the testimony was relevant and ought to get into the case, I don't think the fact of her going to Pittsburg and all that sort of thing was relevant at all, but we didn't care anything about it, but they having opened the door and gone into this certainly we are not going to be precluded now from letting her give her proper explanation of it.

30 Mr. Scott: Judge Hildreth does not grasp Mr. Goldenberg's objection which was the purpose of the state of mind of Mr. Grimes cannot be answered for by this witness.

40

Mrs. Hilda Voigt—Re-cross

The Court: She can't answer that. She has testified that Mr. Grimes told her to write the letters but why he told her that she can't tell.

Q. Mr. Grimes told you to write those letters you have written to your husband? A. Yes. 10

Q. He was your attorney acting for you? A. Absolutely.

RE-CROSS-EXAMINATION by Mr. Scott:

Q. He was also the man that told you to say that Mr. McCormack was in Pittsburg when you knew he had not been there? A. Yes.

By Mr. Hildreth: Q. He didn't tell you to say that, did he, Mrs. Voigt?

Mr. Scott: Wait; I object. I submit that is not proper examination. She has answered that in cross-examination. 20

The Court: The question is leading, Judge, to say the least.

Q. Give the words of Mr. Grimes when he told you what to swear to. A. Why, we were in the Bellevue Stratford at the time the hearing was in Philadelphia and he said to me, he said, "Hilda, we will have to see how to get this case into our hands in the west." 30

Q. Yes. A. And he said that while—he said, "Did you get any money or did you give Mr. McCormack any money in Pittsburg at any time?" and I said, "No, sir," and then he just took the matter up himself.

Q. Took the matter up himself? A. By letter because I said to him that I could not swear to anything like that and of course, you have the dictations from the letter, what he said, and 40

Elmer Peterson—Direct

I said; I didn't know whether Mr. McCormack had ever been in Pittsburg before or not.

By Mr. Scott: Q. In other words both you and Grimes knew what he was instructing you to do was untrue about the Pittsburg proposition, both
10 of you knew that was untrue? A. Certainly; I told Mr. Grimes he never was there with me.

Q. He said to you, "Hilda, we will have to get a way to have this, to get this case in the west"?
A. Take him to Pittsburg.

By Mr. Hildreth: Q. Then you didn't know it was improper what you were doing? A. I did not.

Q You were following his advice? A. Exactly.

20 The Court: Gentlemen, I don't think there is any use continuing this thing.

Mr. Hildreth: I am trying to put Mr. Grimes—

A. There has been so much confusion I have not been able to talk at all.

Mr. Scott: Pardon me, I object.

State rests.

30 Mr. Scott opens the case for the defense.

ELMER PETERSON, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Scott:

40 Q. What is your name, young man? A. Elmer Peterson.

Elmer Peterson—Direct

Q. What is your age? A. Seventeen.

Q. And do you go to school? A. I will graduate Friday from High School.

Q. Do you know Mr. and Mrs. McCormack? A. I do.

Q. And do you know this lady, Mrs. McCormack? A. I do. 10

Q. Where have you seen them, young man? A. Sea Isle City.

Q. Do you live in Sea Isle City? A. I do.

Q. And how near to their home is your home? A. Within about five squares.

Q. Do you live there with your mother? A. I do.

Q. And father? A. Yes.

Q. Now, young man, do you remember one particular date in the latter part of September of last year when you had occasion to see Mr. and Mrs. McCormack and were in their company for some time? A. I do; the 28th of September. 20

Q. How do you fix the 28th day of September?

A. I drove them to Philadelphia in my automobile.

Q. How do you know it was the 28th day of September? A. I know it was in the latter part of September, and the school list at the high school shows it was the 28th. 30

Q. That is the day you were absent from school? A. Yes, sir.

Q. Where did you first see them that day? A. I first saw them at their residence, about 1 o'clock.

Q. You there, Mr. McCormack and Mrs. McCormack and the boy? A. And the boy; yes, sir.

Q. What was Mr. McCormack's and Mrs. Mc- 40

Elmer Peterson—Direct

Cormack's conduct toward each other; what was their appearance? A. Perfectly friendly.

Q. Did Mrs. McCormack make any complaint to you of having been assaulted at any time prior? A. She did not.

10 Q. Now, had you seen them at any time prior to that during the latter part of September? A. Yes; I have seen them several times on the street.

Q. Together? A. Together.

Q. What was their apparent demeanor? A. Apparently friendly.

Q. Now, when you saw Mrs. McCormack, was there any remarks? Any marks or bruises or any evidence of any violence upon her? A. Not that I saw.

20 Q. Now, where did you proceed with them with your automobile, young man? A. I drove to Wenonah, New Jersey, to the Military Academy.

Q. Who did you leave at the Wenonah Academy? A. Charles Voigt.

Q. That is the boy? A. Yes.

Q. Who went into the academy besides the boy? A. Mrs. Voigt and I think Mr. and Mrs. McCormack.

30 Q. Then Mrs. McCormack and Mrs. McCormack just proceeded to where? A. To Philadelphia.

Q. And how long were you detained in Philadelphia with them? A. I was detained there until the 1st of October.

Q. That was from the 28th of September until the 1st of October? A. Yes.

40 Q. During that time, did you drive them around about the town? A. Sunday afternoon, the last day of September, I drove them through Hunting Park.

Mrs. Florence Peterson--Direct

Q. Where were they living in Philadelphia?
A. Majestic Hotel.

Q. What was the conduct of the two people towards each other? A. Extremely friendly.

Q. Did you see any evidence of any violence on the part of Mrs. McCormack towards Mr. McCormack? A. Not the least. 10

Q. Hear any complaint from her, see any evidence of any bruises about her at all? A. Not the least.

Q. Make any complaint, show extreme affection for one another? A. None whatever.

Q. I say did they show extreme affection for each other? A. They did.

No cross-examination.

20

MRS. FLORENCE PETERSON, a witness produced on behalf of the defendant, being duly sworn, and examined, testified as follows:

Direct-examination by Mr. Scott:

Q. Mrs. Peterson, your full name is what? A. Florence Peterson. 30

Q. Are you a married lady? A. I am.

Q. You are living with your husband? A. I am.

Q. And where? A. Sea Isle City, New Jersey.

Q. Are you in business there? A. Yes; I am in the telephone business; agent for the telephone.

Q. Is this young man your boy? A. He is; yes, my son. 40

Mrs. Florence Peterson—Direct

Q. Do you remember Mr. McCormack? A. I do.

Q. Know Mrs. McCormack? A. I do.

Q. Now, just prior to the 28th day of September when your boy took them to Philadelphia—
10 do you remember the occasion of your boy taking Mr. and Mrs. McCormack to Philadelphia? A. I do.

Q. Now, just prior to that did you see Mr. and Mrs. McCormack? A. I did.

Q. You say you did? A. I did; yes.

Q. About how long prior to it? A. Well, about the, around the 20th of September.

Q. What was this occasion of your seeing them?

Mr. Hildreth: I object to this line of
20 testimony. Does your Honor think this is material, this testimony?

Mr. Scott: I think, may it please your Honor, this is undoubtedly material, subsequent conduct. If this man had been a fugitive from justice after the 11th day of September, why it undoubtedly would be evidence against him; his conduct and the conduct of the prosecutrix is of course relevant.

The Prosecutor: If your Honor please,
30 the only possible bearing this testimony could have would be in the line of condonation, he is trying to show after this assault these people were around together, that the woman didn't complain to the chauffeur and didn't complain to anyone, as a woman of her style would be likely to. Her condonation doesn't affect the State
40 of New Jersey. It is the State of New

Argument

Jersey complaining against this man of assault and battery, and I don't think the conduct of the wife in condoning and going around with him, I don't think that is pertinent to the fact whether he beat her up or not.

10

Mr. Scott: There is no question about not being relevant, say for instance the charge is rape, the conduct of the prosecutrix of making no outcry, and so forth.

The Court: But that crime is in a peculiar category so far as the evidence is concerned.

Mr. Scott: It is in this peculiar category, the law says not only is it evidence but it is overwhelming evidence unless overcome would clear the defendant, but here is a lady that charges the defendant with the crime of assault and battery. Now, we have the right in an examination of her to show what her conduct was. Now, we have the right of the defense to show what his conduct was, would a man that had been guilty of assaulting his wife remain in her presence and have basked upon him her affection? Our offer by this witness is to prove that just prior to the 28th day of September, the 20th, which is that much nearer to the 11th of September, that this lady saw the two of them together, and there was no evidence of any bruises upon her, no marks upon her, there was no complaint upon her part, and there was extreme affection exhibited between the two of them.

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40

Mrs. Florence Peterson—Direct

Mr. Cole: Has she testified to that?

Mr. Scott: I guess there can be no question to her testifying to it.

Mr. Goldenberg: That is the offer.

The Court: Do you object to it, gentlemen?

10 The Prosecutor: I do; yes.

The Court: Overruled.

Q. Now, Mrs. Peterson, on the 20th, what was the occasion of your seeing them? A. Why perfectly friendly.

Q. I say what was the occasion of your seeing them? A. Occasion, why, it was about the 20th of September when I saw Mrs. McCormack in the office.

20 Q. As Mrs. McCormack? A. As Mrs. McCormack, and she appeared very happy, and I congratulated her on her marriage.

Q. What did she say? A. And she said "yes, we are so congenial, and I am so glad because Charles needs a firm hand, and we are so happy."

Q. And what did she say about Mr. McCormack's conduct towards Charles? A. Oh perfect, he was a congenial father.

30 Q. Now, did you see Mr. and Mrs. McCormack during that summer from the early part of September on? A. Yes; frequently.

Q. See them frequently together? A. Yes; on and off.

Q. What was the apparent relationship between the two of them? A. Loving husband and wife.

many years, I take it? A. Quite a few years;

40 Q. You have lived in Sea Isle City for a great yes.

Charles George Cronecker—Direct

Q. When you saw Mrs. McCormack on the 20th of September did you see any evidence of any violence or any bruises or marks upon her? A. I did not.

Q. Did she make any complaint or tell you she had any? A. No.

Q. This man is a perfect stranger to you, just simply a man— A. Who has business, yes.

Q. And so is the lady? A. Yes.

No cross-examination.

CHARLES GEORGE CRONECKER, a witness produced on behalf of the defendant, being duly sworn and examined, testified as follows:

Direct-examination by Mr. Scott:

Q. Mr. Cronecker, what is your full name? A. Charles George Cronecker.

Q. Where do you live, Mr. Cronecker? A. Sea Isle City.

Q. Where in Sea Isle City? A. Hotel Bellevue.

Q. Is that hotel maintained by your father? A. No; my mother.

Q. Do you remember the 3d day of October 1917? A. I do.

Q. Do you know Mr. McCormack? A. In a business way; yes.

Q. Do you know Mrs. McCormack? A. I do.

Q. Did you see them on that 3d day of October, 1917? A. Yes.

Q. Where did you see them? A. In the hotel office.

Charles George Cronecker—Cross

Q. What were they doing there in the hotel?

A. They had had supper at the hotel that evening.

Q. Did you notice the relationship between the two of them? A. They acted friendly.

10 Q. Did you see any evidence of any bruises or marks upon Mrs. McCormack? A. No.

Q. Was there any complaint at all made upon her part of any violence inflicted upon her? A. No.

A. Did she seem—her relationship with her husband and her husband with her seemed to be friendly? A. Yes.

20 Q. Now, did you know that during the month of September up until this time in October until November in which she went away to Pittsburg, know them to see them around about? A. I may have seen them. I don't know any particular time.

Q. I am not asking you any particular time, but on different occasions you saw them at the hotel? A. Yes; on different occasions.

Q. What was their apparent relationship between the two of them? A. They were always friendly when I seen them.

30 Q. I forgot to ask you how you are so positive about the date, 3d day of October, how do you know that? A. Why Mr. McCormack registered for supper that evening.

Q. And you have looked at the register? A. Yes.

CROSS-EXAMINATION by the Prosecutor:

40 Q. Was Mrs. McCormack, as you call her, or Mrs. Voigt, present when he registered? Was she present when he wrote on the register what he did? A. I couldn't tell you.

Lewis Bracen—Direct

Q. Is it or is it not a fact that later than that, and not much later when Mrs. Voigt came there under the protection of the police, she was isolated in your room and requested that he be kept away from there and not permitted to get her, was she not isolated in your hotel? A. She was; yes. 10

RE-DIRECT-EXAMINATION by Mr. Scott:

Q. And that was after he had been arrested, was it not? A. That was after the arrest. I don't know what date. I know she was there.

Q. That was after the prosecution down there, here in this jurisdiction, against Mr. McCormack by her, wasn't it? A. I couldn't tell you that.

Q. What you did there, you did under the instructions of Mr. Cole, didn't you? A. What? 20

Q. Mr. Cole had you isolate her there, it was Mr. Cole the prosecutor? A. I think so; yes.

LEWIS BRACEN, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct-examination by Mr. Scott: 30

Q. Mr. Bracen, your business is what? A. General merchant as near as I can tell you.

Q. Where is your place of business, Mr. Bracen? A. On South Ocean Avenue, Sea Isle City.

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

Q. Do you know Mrs. McCormack? A. Very well. 40

Lewis Bracen—Direct

Q. Did you see them during the latter part of September and during the month of October?

A. I did.

10 Q. Did you notice the attitude or the relationship between the two of them during that latter part of September and the 1st of October? A. Very cordial for one another.

Q. How long had you known Mr. McCormack?

A. I judge the early part of the spring when Mrs. McCormack introduced to me Mr. McCormack. I didn't know Mr. McCormack at all before.

Q. It was Mrs. McCormack introduced her husband to you? A. Yes.

Q. And what was their apparent relationship then?

20 The Court: Mr. Scott, I think you ought to be limited to on or about the time. Question withdrawn.

No cross-examination.

30 The Court: Is there any question or dispute on this line of testimony which you are introducing now, Mr. Scott? There is no evidence at all of any uncordial relationship between these parties except on the occasion in question.

Mr. Scott: I take it it is material and relevant to offset a claim that she would make any violence, that was inflicted upon her.

Jeremiah P. Delaney—Direct

JEREMIAH P. DELANEY, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct-examination by Mr. Scott:

Q. Mr. Delaney, what is your full name? A. 10
Jeremiah P. Delaney.

Q. And your business is what, Mr. Delaney?
A. Hotel and general contractor.

Q. And where are you engaged in business, Mr. Delaney? A. Landis and Ocean Avenue, Sea Isle City.

Q. Mr. Delaney, do you know Mr. McCormack?
A. Yes, sir.

Q. Do you know Mrs. McCormack? A. Yes,
sir. 20

Q. Did you have occasion to be at their home during the latter part of September of 1917? A. I did.

Q. What was the occasion of your being there?
A. I was doing some work at that time on the McCormack property.

Q. What were you doing? A. Laying cement walks.

Q. Did you see both of them together during that latter part of September? A. I did. 30

Q. What was the relationship between the two of them? A. Very kind to one another.

Q. You saw them at their home and you were there? A. Yes, sir.

Q. Working in and about their home? A. Yes, sir.

Q. Did you see any evidence of any bruises or marks or show of violence upon Mrs. McCormack?
A. I did not. 40

Jeremiah P. Delaney—Cross

Q. Did she make any complaint of any violence by Mr. McCormack upon her? A. No, sir.

The Court: I don't think that is evidence, Mr. Scott.

10 Mr. Scott: Your Honor, referring to my last question whether she made any complaint at all?

The Court: Yes. I don't think that is any evidence at all. In fact I am dubious of the entire line. I think it ought to be limited to right at the time.

Mr. Scott: That is why I called this witness, just around that period.

CROSS-EXAMINATION by the Prosecutor:

20 Q. Mr. Delaney, you have taken a very strong interest in this matter on behalf of Mr. McCormack, have you not? A. I have not.

Q. You keep a hotel there? A. Yes.

Q. Has he not made your hotel his headquarters ever since this happened? A. No, sir; he has not.

Q. Has he been there repeatedly? A. Twice, I think. You told me that I was very much interested but I never knew it.

30 Q. Didn't you? All right, that is all if you didn't know it.

40 Mr. Scott: I offer in evidence, may it please your Honor, the telegrams and letters that were identified by Mrs. Voigt as having been sent by Mrs. McCormack, sent by her to her husband, D-1 to D-7 and also offer in evidence, may it please your Honor, the letters addressed to Mrs. Voigt by Mr. Grimes, which she has identified.

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Letters referred to admitted in evidence and marked Exhibits D-1 to 9 inclusive.

Also offer in evidence contract of marriage.

Contract of marriage admitted in evidence and marked Exhibit D-10.

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Defendant rests.

Testimony closed.

MOTION FOR A DIRECTION

Mr. Goldenberg: If the Court please, I want to make a motion to the Court to direct the jury to acquit on the first count of this indictment that we are trying on. That indictment reads that within the jurisdiction of this Court with force and arms in and upon one Hilda A. Voigt, in the peace of God and of this State then and there being, an atrocious assault and battery did make, and her the said Hilda A. Voigt did then and there atrociously beat, wound and ill treat, by maiming and wounding her, the said Hilda A. Voigt, and so on. Now atrocious assault and battery is defined by section 113 of the Crimes Act as follows: "Any person who shall commit an atrocious assault and battery by maiming or wounding another shall be guilty of a high misdemeanor." Now this section, they have followed here and they have used the exact language of the Act he atrociously assaulted her by maiming and wounding her. Maiming is defined in

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Motion for a Direction

Regina v. Jones, one of the old English cases, in First Carrington and Paine as the infliction of a permanent injury. It is defined in High v. The State, which is the Texas Appellate Court case, "To maim is to maliciously cut off or otherwise
 10 deprive a person of a hand, arm, finger, toe, and so forth, or in any way to deprive a person of any part of his body." In another leading Texas case it says, "Maiming is synonymous with wounding," and in 58 Law, v. Devine, it says the words "maim and wound are common law equivalent words and mean the same thing." There is absolutely nothing in this case that would sustain a charge that the defendant here maimed the prosecutrix. Now taking the word wound—I am
 20 citing now Regina v. McClellan, 8 Carrington and Paine, 635, English leading cases: "To constitute a wound it is necessary that there should be a separation of the whole skin, and a separation of the cuticle or upper skin only is not sufficient." Commonwealth vs. Risley, 43 Massachusetts says, "The word wound does not include a slight scratch by rupturing longitudinally only, not separating the whole skin." Now there is absolutely nothing in this case
 30 that shows that there was any wounding in this case. In other words there is nothing here that brings the charge, even taking the State's case at its strongest, up to the dignity of a charge of atrocious assault and battery. There is neither wounding nor maiming here, and consequently it is our contention that under the evidence as it stands we are entitled to have the jury instructed to acquit him.

40 The Court: Mr. Goldenberg, that section of

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the statute reads: "Whoever shall commit an atrocious assault by maiming and wounding—" can you commit an atrocious assault without maiming or wounding?

Mr. Goldenberg: You can't commit an atrocious assault without maiming or wounding that I know of, then it is a simple assault and battery. 10

The Court: Suppose one should strike another with a club, wouldn't that be an atrocious assault?

Mr. Goldenberg: That is a different situation from what you have got here, that is by an instrument; yes. If I take a knife, or I take a gun, or I take a dangerous instrument and assault a man, certainly; but I am speaking now of a man simply using his hands, as the matter stands in this case; certainly that is an atrocious assault and battery, the very instrument itself makes the character of the assault, but this contemplates a case where a man does not use a dangerous instrument, where he simply uses his hands. 20

The Prosecutor: One of the surprising things, it makes a difference whose side a man is on. Mr. Goldenberg has many a time stood before Court and juries and stated what your Honor knows to be true that atrocious assault is one the probable consequence of which may be death or severe bodily injury. That is the test. The testimony is that he struck her a violent blow along the side of the head, which may produce death or severe bodily injury, and then seized her and threw her against the corner of a bureau, bruising and wounding her. We know how easy it is to break a person's neck by doing that. Could you or I or anybody else or Mr. Goldenberg be thrown 30 40

Motion for a Direction

10 against the corner of a piece of furniture without danger of producing severe bodily injury? He didn't take a club nor dagger or gun, no, that is true; no, he didn't wound her by cutting her open or anything of that sort, but he committed an assault which was liable to produce death or severe bodily injury, and if that is not an atrocious assault, then I got to learn the law all over again.

Mr. Goldenberg: There is nothing to that, Judge. The atrocious assault does not consist in the result. It is possible that a man might make a simple assault that would probably be manslaughter. It is not the result. It is the manner in which the assault is made.

20 The Court: Yes; but Mr. Goldenberg, let me ask you this. doesn't an act, however committed, which may result in grievous bodily injury, and which does result in injury, if the jury so find it, is that an atrocious assault?

30 Mr. Goldenberg: Let me show you the distinction, Judge, the distinction is an assault with a dangerous instrument, there, you have the possibility and potentiality of injury, but the potential effect of it doesn't enter into it where the dangerous instrument is used. Then the question is what the result is, and the result must be wounding or maiming. In other words, if I go at Mr. Cole here—

The Court: Where is your authority for that? Have you any law on that?

Mr. Goldenberg: I think it is fundamental, if I go at Mr. Cole here with a hatchet, there is no question—

40 The Court: I know. We won't argue that feature of it. We know that that much is certain.

Motion for a Direction

What I am asking is can there be an atrocious assault without the use of a dangerous instrument?

Mr. Goldenberg: Yes, suppose I get Mr. Cole down on the floor here and beat him until his nose bleeds, his eyes open, if I open up the skin there would be an atrocious assault. 10

Mr. Scott: Your atrocious assault, same as we have in Pennsylvania, aggravated assault and battery, we have the assault and battery, aggravated assault and battery, and assault and battery with intent. Now the definition of assault and battery is a battery where there is violence, when that battery grows to grievous bodily harm, then it becomes aggravated assault and battery or atrocious assault and battery. 20

The Court: What do you consider grievous bodily harm? 20

Mr. Scott: Where there is a wound, where there is a breaking, where there is more than mere assault, for instance, may it please your Honor, if I would strike merely with my hand that would be assault and battery, if I would strike with my hand with such violence that I fractured his skull, that would be aggravated assault and battery. If I struck him with such violence that I not only fractured his skull but I caused his death, that would then become manslaughter or murder. Now, here you have assault and battery alleged with a hand, and no grievous bodily injury, and it becomes mere assault and battery. Now, had he had a bludgeon in his hand, and struck that woman a blow with a bludgeon, even though it didn't cause grievous bodily injury, it would then become aggravated 30 40

Motion for a Direction

assault and battery because he was armed with a bludgeon, but if he had struck without his bludgeon and caused no grievous bodily injury it becomes no higher than assault and battery, and the highest that they have offered here is assault and battery. May it please your Honor one word more I think will make it clear, Mr. Cole says, "Isn't it atrocious assault when this lady may have had her neck broken against that bureau?" Couldn't he go one step further and say, "Isn't it murder if she had died?"

The Prosecutor: Be manslaughter.

Mr. Scott: It would be manslaughter, certainly, if you put the element of death in it, and it becomes atrocious assault if you put the grievous bodily injury in it, death isn't in it, so therefore it is not manslaughter, and the grievous bodily injury is not in it, so therefore it is not atrocious assault. It is no higher than assault and battery.

The Prosecutor: I simply insist upon my definition as I have defined it many a time and so has he and so have you.

The Court: Well, gentlemen, it won't affect your argument before the jury, will it? Suppose you argue the facts to the jury and the Court will look at the law in the meantime.

During the argument.

Mr. Scott: I state that the District Attorney, in the hearing of the jury said, "Would I, District Attorney, having delved in this case for months, urged this prosecution if I did not believe what the prosecutrix said was true?" Now I ask the District Attorney whether or not that

Motion for a Direction

is the remark he made in substance? If not I will correct.

The Prosecutor: That is substantially what I said, which I instantly withdraw, and ask that no notice be taken of it and I ask the Judge to direct the jury to disregard it and I withdraw those remarks. 10

The Court: Do you object to that, to the withdrawal of them, Mr. Scott?

Mr. Scott: No; I am not going to object to the District Attorney, but make the request of the District Attorney that they be withdrawn and certified.

The Prosecutor: I withdraw the remarks and ask that they be disregarded.

During Mr. Hildreth's argument. 20

Mr. Scott: I ask your Honor to have noted that Mr. Hildreth, acting as District Attorney, refers to the defendant as "This crook," and supplements that by saying, "It is so stated in Mr. Grimes' letter and is uncontradicted." I ask the District Attorney to certify whether or not those are his remarks, or contradict them as being his remarks.

Mr. Hildreth: Yes; and supplementing that as was quoted by the attorney on the other side. 30

Mr. Scott: I ask the Court to certify those remarks as being the remarks of the attorney acting as the district attorney, and upon being so certified, I ask a juror be withdrawn as an improper remark made by the district attorney.

• Mr. Hildreth: I only insist a proper comment to make upon the testimony in this case.

The Court: The motion is overruled. 40

Motion for a Direction

At the close of the argument.

10 Mr. Goldenberg: If the Court please, in order to keep the record straight I want to renew my motion for the Court to direct the jury on the first count of the indictment he is being tried on, which count charges him with having committed an atrocious assault on Hilda A. Voigt.

The Court: Are you still opposing that motion, gentlemen?

The Prosecutor: I will not oppose that motion.

20 The Court: I think that is a correct view, Mr. Cole. It would seem from the authorities that an atrocious assault either must be committed with a deadly weapon or with an intent. If the deadly weapon is used the intent is presumed, but if no weapon is used the intent must be proven, and there is no proof of the intent in this case.

The Prosecutor: I concur with that.

Mr. Hildreth: I would like your Honor to charge directly upon the count in the indictment, on which he can be convicted, so that they will understand that.

The Court: Yes.

30 Do you want a direction of a verdict in the second indictment or the second and third counts in the indictment as the case may be?

40 Mr. Goldenberg: No; there are two separate indictments, as I understand it. The Court wiped out the second indictment subsequent to the noon recess. That is disposed of. Now this is the first count of the other indictment charging an atrocious assault and battery which leaves only the count of simple assault and battery.

Charge of the Court

ELDRIDGE, J.: Gentlemen of the jury, by reason of the motions which have been made by counsel for the defense and which have been allowed by the Court, the case which is now to be placed in your hands consists of one count, that is the indictment consists of one count. The State charges that one Donald R. McCormack, on the 11th day of September, 1917, committed an assault on Hilda Voigt, in the city of Sea Isle. I want to call your attention in the first place to the fact that the State charges, the complaining witness does not charge. The matter which you are now determining is not a dispute between the man and the woman in the case, but is a trial between the State of New Jersey and the defendant. It is not a personal matter which you have to determine, but is a matter in which the public has been or may have been offended, and you are to determine whether or not that is the case, so that, so far as the personal element, or personal relations between the parties are concerned, please bear in mind that it is the State that is prosecuting the case and not the complaining witness.

The State charges Donald R. McCormack with committing an assault and battery upon the complaining witness. An assault has been defined as being any act which puts another in the fear of bodily harm while the least touching of another in anger is a battery. That is the offense with which defendant is charged, an assault and battery.

Now you have the testimony of the complaining witness in the case that on the 11th of September last, in the City of Sea Isle, the defendant came to her room and demanded money of her and upon

Charge of the Court

her refusal struck her in the side of the face and knocked her against the bureau, or some piece of furniture in the room. If you believe her story you should convict, if you do not you should acquit. The case is peculiar in this particular that
10 the defense may be described as being negative. That is to say there is no positive denial on the part of the defense of the act. The defense relies upon its cross-examination of the complaining witness, and the added fact that for several weeks a month or two or probably more after the offense is alleged to have been committed, this man and this woman were on the best of terms. There is also evidence introduced, evidence of the neighbors, or the friends of the parties in question
20 showing that on or about the time that the offense is alleged to have been committed this man and this woman were living together as husband and wife, apparently happy. If those circumstances as brought out by the defense raise in your mind a reasonable doubt as to whether or not the defendant committed the act with which he is charged, you should acquit. Now you have a right to take into consideration among other things in this case the fact that the defendant was
30 not put on the stand to testify in his own behalf. You as the jury have a right to draw from that circumstance whatever inference in your mind can reasonably be drawn from it. Your verdict then depends entirely in this case upon whether or not you believe the story of the complaining witness. If you believe the evidence which she gave on the stand to be true, beyond a reasonable
40 doubt, you should acquit. If any other circumstances which have been introduced in this case

Charge of the Court

raise in your mind a reasonable doubt as to the truth of her statement, you should acquit.

Every man is presumed to be innocent until proven guilty. The burden of proof rests with the State. The State must prove beyond a reasonable doubt that the defendant is guilty as charged in the indictment, a reasonable doubt being defined as being such a doubt as would make one in the ordinary affairs of life hesitate as to whether he should follow this course or follow that particular course. The State has asked me to charge that the only issue to be determined is the assault which is charged to have been committed in Sea Isle City September 11th. That I have already told you, that nothing Mr. Grimes said or did has any bearing on the case. That is true this far, it affects only the bona fides of the prosecution. If you should find or there should be some doubt in your mind as to the assault having been committed, then, of course, Grimes' testimony becomes important as determining, as going to affect the bona fides of the prosecution. On the other hand, if you are satisfied beyond a reasonable doubt that the assault was committed, the reason for the complaining witness bringing this prosecution is absolutely immaterial.

I am asked by the defense to charge that there is a presumption of innocence. I have already told you that. A person is presumed to be innocent until proven guilty. That the burden of proof is on the State to prove the defendant's guilt beyond a reasonable doubt. That I have also told you. I think that there is nothing that I can add. You may swear a constable and the jury retire.

Charge of the Court

I have been asked by the defense to say that the failure of the defendant to take the stand raises no presumption of guilt. That is true, it raises no presumption of guilt, but that may be considered along with the other evidence in the

10 case.

New Jersey Supreme Court

STATE OF NEW JERSEY,
Defendant in Error,

vs.

DONALD R. MCCORMACK,
Plaintiff in Error.

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Opinion

1. Upon the trial of an indictment for assault and battery, what was said by the defendant at the time of the assault, or immediately prior thereto, was a part of the *res gestae* and admissible in evidence.

2. A party who calls a witness may re-examine him to rebut, or explain, or avoid the effect of new matters brought out on cross examination.

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3. While it is error for the Prosecutor of the Pleas, in summing up to the jury, to declare his individual opinion or belief that the defendant is guilty, in such a manner that the jury may understand such opinion or belief to be based upon something which the prosecutor knows outside the evidence, yet, when the prosecutor, upon objection thereto, promptly and frankly withdraws such remark and asks that it be disregarded, and the incident is thus closed without any request being made to the court in respect thereof, a reversal is not justified because of such remark.

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4. Where the evidence in a criminal case shows that the defendant committed the assault and battery upon a woman because of her refusal to respond to his improper demands for money, a statement by the Prosecutor of the Pleas in his summing up to the jury that the defendant was a "crook" will not lead to a reversal.

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5. When a defendant elects to proceed by way of review only under Section 136 of our Criminal Procedure Act (C. S. p. 1863) he must specify the causes in the record relied upon for reversal with sufficient precision to apprise the court, and counsel for the State, of the injury which he complains, and the court will consider only those so specified.

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On writ of error to the Cape May Quarter Sessions Court.

Before Gummere, Chief Justice, and Justices Swayze and Trenchard.

For the plaintiff in error, C. L. Goldenberg and John R. K. Scott (of the Philadelphia Bar).

For the defendant in error, Eugene C. Cole, Prosecutor of the Pleas, and James M. E. Hildreth.

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The opinion of the Court was delivered by TRENCHARD, J.

This writ of error brings up for review (pursuant to Section 136 of our Criminal Procedure Act) the judgment upon a conviction of Donald R. McCormack, alias John Hogan, alias William Hart, for assault and battery upon one Hilda A. Voigt at Sea Isle City on September 11, 1917.

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We are of the opinion that none of the causes assigned justify a reversal.

It is first contended that the trial judge erred in permitting the State to examine Hilda A. Voigt, the complaining witness, as follows:

"Q. Well, on this occasion of which you speak did he make any demand for money?

"A. Yes, sir.

40

"Q. What amount did he demand of you?

"A. Five thousand dollars.

"Q. And what did you say to him when he demanded?"

"A. I said I had no more money."

We think that was proper. The record shows that the "occasion" referred to was the time of the assault. What was said by the defendant at the time of the assault, or immediately prior thereto, was a part of the *res gestae* and admissible in evidence.

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It is next contended that the re-examination of the same witness by the State was improper; but we think not in the circumstances.

Counsel for the defendant on cross examination elicited from this witness that some weeks prior to the assault and while she and the defendant were living as man and wife in Sea Isle City, defendant demanded and obtained from her large sums of money. Defendant's counsel then sought to show that her real motive for having the defendant arrested was that he had not returned to her such moneys, and repeatedly put such questions to her. He also elicited from her that she had obtained some moneys from the defendant. In this situation it was competent for the State on re-examination to inquire "how much money had Mr. McCormack gotten from you prior to demanding the \$5,000", and to elicit from her that it amounted to over \$30,000, since that tended to rebut and explain and avoid the effect of the new matter brought out on cross examination.

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It is next contended that the judgment should be reversed because the Prosecutor of the Pleas in his summing up to the jury said: "Would I, District Attorney, having delved in this case for months, urge this prosecution if I did not believe what the prosecutrix said was true?"

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We think this was improper. It is always error for the Prosecutor of the Pleas in his summing up to the jury to declare his individual opinion or belief that the defendant is guilty, in such a manner that the jury may understand such opinion or belief to be based on something which the prosecutor knows outside the evidence. But, in the present case, when the defendant's counsel objected and asked that the remarks be withdrawn, the Prosecutor at once said: "I withdraw the remarks and asked that they be disregarded." Nothing more was said upon that topic. Apparently the incident was thus closed to the satisfaction of all concerned by the prompt and frank withdrawal of the improper remark. At least no request was made to the Court in respect thereof. In these circumstances we think that the defendant was not prejudiced and a reversal would not be justified on account thereof.

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Hahn vs. Delaware L. & W. R. Co., 105 Atl. 459.

It is next argued that there should be a reversal because the Prosecutor of the Pleas in his summing up to the jury characterized the defendant as a "crook". We think not. The evidence tended to show that the defendant committed the assault and battery upon the complaining witness because of her refusal to respond to his improper demands for money. In view of this we think the Prosecutor was within his privilege in making the statement objected to.

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State vs. Lang, 75 N. J. L. 1, affd. 75 N. J. L. 502.

The last cause for reversal assigned is that "there were other manifest errors in the record and proceedings in said cause to the manifest wrong and injury of the defendant." But that is not a sufficient specification. When, as here, a defendant

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elects to proceed by way of review only under Section 136 of our Criminal Procedure Act (C. S. p. 1863) he must specify the causes in the record relied upon for reversal with sufficient precision to apprise the court, and counsel for the State, of the injuries of which he complains, and the court will consider only those so specified.

State vs. Herron, 77 N. J. L. 523.

The judgment will be affirmed.

Rule for Affirmance

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant in Error,	}	
	vs.		IN ERROR
	DONALD R. McCORMACK, Plaintiff in Error.		To Cape May County Oyer and Terminer.

20 This cause having been argued at the February Term, 1919, of this Court, by Eugene C. Cole and James M. E. Hildreth, Attorneys of Defendant in Error, and C. L. Goldenberg and John R. K. Scott, Attorneys of Plaintiff in Error, and the Court having inspected the return to the writ of error, and considered the reasons assigned for reversal, and being of the opinion that said judgment should be affirmed,

30 It is Ordered that the judgment of the Cape May Court of Quarter Sessions removed by writ of error in this cause, be affirmed, and the record remitted to said Cape May Court of Quarter Sessions to be proceeded with according to law and the practice of said Court.

Entered July 12, 1919.

On motion of

EUGENE C. COLE,

JAMES M. E. HILDRETH, Attys.

A true copy.

40 ENOCH L. JOHNSON, Clerk,

Writ of Error

New Jersey, ss.:

The State of New Jersey to the Chief Justice and associate Justices of the Supreme Court of the State of New Jersey: Because in the judgment of the Supreme Court, affirming the judgment of conviction in the Court of Quarter Sessions in the county of Cape May upon a certain indictment against Donald R. McCormack charged with assault and battery alleged to have been committed on the 11th day of September, 1917, on one Hilda A. Voigt, manifest error hath intervened, to the great damage of the said Donald R. McCormack, as from his complaint we have received information, we being willing in this behalf to correct the error in due form and manner, if any there be, and that speedy justice be done to him, the said Donald R. McCormack, command you that if judgment be therein given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, to be holden in Trenton, on the eleventh day of August, 1919, 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.

Witness, Edwin R. Walker, Chancellor of the State of New Jersey and President Judge of the Court of Errors and Appeals, in the last resort in all causes, at Trenton aforesaid, this twenty-third day of July, A. D. nineteen hundred and nineteen.

THOS. F. MARTIN, Clerk.

C. L. GOLDENBERG,
Attorney for Donald R. McCormack. 40

Assignments of Error

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	The State of New Jersey, Defendant in Error, vs. DONALD R. MCCORMACK, Plaintiff in Error.	}	IN ERROR Assignments of Error.
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20 Afterwards, to wit, on the 11th day of August, A. D. nineteen hundred and nineteen, before our said Court of Errors and Appeals in the last resort in all causes, comes the said Donald R. McCormack, by C. L. Goldenberg, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited in said bill of exceptions, and also in the causes of reversal aforesaid, and also in the giving of judgment of affirmance aforesaid, there is manifest error in this to wit:

1. That the New Jersey Supreme Court did not reverse the judgment of the Cape May County Court of Quarter Sessions for the reasons set forth in the assignments of error and causes of reversal filed and argued upon the writ of error before said Supreme Court in said cause;

30 2. That the Supreme Court adjudged that the Court of Quarter Sessions committed no error by reason of any matters set forth in the following assignments of error:

1. Because the Trial Judge permitted the following questions to be asked and answers thereto to be given:

40 (a) Q. Well, on this occasion of which you speak did he make any demand for money?

A. Yes, sir.

Q. What amount did he demand of you?

A. Five thousand dollars.

Q. And what did you say to him when he demanded?

A. I said I had no more money.

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(Paper Book Page 14, line 11).

(b) Q. That is what I am getting at, did you have a home of your own?

A. I did.

Q. In Sea Isle City?

A. Yes, sir.

(Paper Book Page 46, line 31).

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(c) Q. You owned the cottage in Sea Isle City?

A. Yes, sir.

Q. That is the day that he made this demand upon you for the five thousand dollars?

A. Further demand. He had been demanding; yes.

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(Paper Book Page 47, line 13 and 23).

(d) Q. How much money had Mr. McCormack gotten from you prior to demanding the five thousand dollars?

A. In the month of September he had seven thousand dollars, and before that time there was some, I don't recall the exact amount, but all in all, the whole

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amount that he had gotten from me amounted to between—over thirty thousand dollars.

Q. Over thirty thousand dollars?

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A. He stripped me completely of everything I had and then even said that he would take my, deprive my child, take everything from my child.

(Paper Book Page 49, line 19).

2. The Prosecutor, in his argument to the jury, improperly made the following statement:

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“Would I, District Attorney, having delved in this case for months, urged this prosecution if I did not believe what the prosecutrix said was true?”

3. The Prosecutor, in his argument to the jury, improperly made the following statement:

“This crook,” (referring to the defendant). “It is so stated in Mr. Grimes’ letter and is uncontradicted.”

4. There were other manifest errors in the record and proceedings in said cause to the manifest wrong and injury of defendant.

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C. L. GOLDENBERG,
Attorney of Donald R. McCormack,
Plaintiff in Error.

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Court of Errors & Appeals
New Jersey ~~Supreme Court~~

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
DONALD R. MACCORMACK,
Plaintiff in Error.

SUR INDICTMENT,
CONVICTION, &C.

EUGENE C. COLE, Prosecutor of the Pleas.
JAMES M. E. HILDRETH,

For the State.

C. L. GOLDENBERG,
JOHN R. K. SCOTT, of Pennsylvania Bar,
Attorneys for Defendant.

BRIEF OF STATE.

The writ of Error in this case brings up the record of the conviction of Donald R. MacCormack, alias John Hogan, alias William Hart, by a jury in the Cape May Quarter Sessions, June 12, 1918, for assault and battery on Hilda A. Voigt, (page 7, State of the Case) and his sentence on said conviction to fine and imprisonment, (page 9).

Only two specific reasons (aside from the general claim of manifest wrong, etc.) are assigned and served upon the prosecution; and to these the State assumes the plaintiff in error is confined.

Sect. 137 Criminal Procedure Act.

State v. Shutts, 40 Vr. 206.

State v. Miller, 42 Vr. 529.

State v. Young, 103 At. Rep. 173.

State v. Heron 77 N.J. 2. 523 71 Ad. 274

FIRST REASON.

Objection to testimony showing that the assault was accompanied by a demand for money.

I.

Such act was clearly *res gesta*.

The most casual reading of the 16 questions and answers which constitute the State's case in chief clearly shows: a demand for money, a statement of inability to comply therewith, an instant and brutal assault, accompanied by threats of the most sinister kind. (Page 13).

The whole incident was an inseparable unit, and is clearly *res gesta*.

II.

It was not objected to by defendant's counsel, but was made the basis of a long and diffused cross examination; much of it wholly irrelevant, and far outside of the testimony in chief, but which strengthened and confirmed the uncontradicted fact.

(Pages 18, 19, 21, 45).

It further brought out an apparent marriage relation between the complaining witness and defendant, and clearly called for and justified the re-direct examination of the witness by the counsel for the State which is the first ground alleged for a reversal (Pages 45 to 49 inclusive) and when counsel for the State in such re-direct, made an apparent repetition, the Court on first objection made by defendant's counsel, promptly stopped him (Page 47, line 30). The testimony of the witness as to defendant getting her money, was in answer to Mr. Scott himself on cross-examination.

(Pages 19, 38, 39). The defendant therefore is now objecting to matter by himself injected.

It is not true as charged by defendant in this paragraph (1, in Def'ts. Brief) "That the State was anxious "to bring before the jury the fact that defendant had "obtained money from the complaining witness."

The fact is that the State viewed with apprehension the danger that the long and diffuse cross-examination of the complaining witness, covering as it does 30 pages (15 to 45, State of the Case) and bringing in a mass of extraneous matter, might confuse the minds of the jury, leading them from the clear cut issue of the trial; and, made a specific appeal to the jury to ignore all such, and of the Court to charge them to disregard all such extraneous matters and testimony, and to consider only the matter alleged in the indictment. This the Court fully and repeatedly did in its clean cut and impartial charge. (See charge of Court, page 93, lines 10 to 30, and page 95, lines 10 to 20, State of the Case).

SECOND REASON.

It is alleged and admitted, that the Prosecutor in his argument to the jury used language substantially, as follows, referring to the complaining witness :

"Would I, having delved in the case for months, have urged this prosecution if I did not believe that what the prosecutrix said was true ?"

The fact is and the record shows, that on exception being taken by Hon. J. R. K. Scott, counsel for defendant, the Prosecutor instantly withdrew the remark, asked the jury to take no notice of it, and the Court to direct them to disregard it. (See pages 90 and 91, State of the Case.)

Even without such instant and open retraction and instruction, it is insisted that the remark, made in the heat of argument would afford no ground of reversal.

“Convictions in Criminal cases will not be reversed because of the impassioned and strong arguments of the prosecuting officers, unless the Court can clearly see that such arguments were unwarranted by the evidence, and probably contributed to the result.”

People v. Peck, 147, Mich. 84.
110 Northwestern 495.

“A judgment of conviction will not be reversed on account of the improper remarks or conduct of the prosecuting attorney which could not have prejudicially influenced the jury.”

People v. Bodley, 131 Cal. 240, 63 Pac. 351.
Moxie vs. State. 114 Ga. 19, 39 S. E. 944.
State vs. Rice, 7 Ida. 769, 66 Pac. 87.
State v. Young, 114 La. 686, 38 Southern 517.
State v. Nelson, 91 Minn. 114, 97 N. W. 652.
State v. Morse, 35 Ore. 462, 57 Pac. 631.
State v. Williams, 11 S. D. 64, 75 N. W. 815.
State v. State 49 Lex. Cr. Rep. 550.
State v. Mooney 49 W. Va. 712.

Nolan v. D. & W. R.R. Co. 105 Ill. 407

Even a misstatement of the evidence by Counsel is not reversible error where it appears that it was corrected, unless some injury appears.

Yancy v. State, 48 Tex. Cr. Rep. 166.
Likewise in argument to the jury.
Williams v. State 114 Pac. 1114.

The defense it is respectfully submitted, was in no degree prejudiced, but rather benefitted before the jury by the incident.

As to the statement in the same (second) cause for reversal as follows: "That the Prosecutor in his argument to the jury referred to the defendant as "this crook," "it is so stated in Mr. Grimes' letter and is uncontradicted," the statement misleads.

The incident in full is found on page 91, State of Case.

The expression of Counsel for the State, to which exception is taken, was not his own.

He quoted and correctly, the words of a letter introduced and read into the record (improperly as the State contends) by Mr. Scott himself: which letter had been written privately to the complaining witness by her then attorney, a lawyer in Pittsburg, Pa., and taken from her house without her privity (presumably by the defendant); and with which she was confronted on the witness stand on her cross-examination.

(Pages 40 and 44, State of the Case.)

Defendant seeks to take advantage of his own wrong.

The qualifying words of Judge Hildreth used in the incident, viz :

"It is so stated in Mr. Grimes' letter, and is uncontradicted," were true, fair, and legally proper. (P. 91)

Moreover the statement, in the very words quoted, and even made stronger, is in the testimony of the complaining witness uncontradicted and unobjected to by def'ts. counsel (page 20, lines 10 to 20) Counsel for the State had a clear right to refer thereto precisely as he did.

The refusal of defendant to take the witness stand in denial, was a proper subject of comment, even directly.

Parker v. State 32 Vroom, 308 ; 33 Vroom, 801.

Cone vs. Commonwealth 20 Ky. 721, 47 S. W. 436.

It was properly charged by the Court (page 94) and favorably modified at defendant's request. (Page 96). Even independent of the qualification by Judge Hildreth, and of the charge of the Court and the modification thereof at the defendant's request, the remarks objected to could be no ground of reversal.

"It is necessary for the proper administration of justice that, in the summing up to the jury, counsel shall be given the widest latitude within the four corners of the evidence, and, so long as he confines himself to the evidence, what is said by him in its discussion by way of comment, denunciation or appeal, affords no ground of exception."

State v. Lang 46 Vr. 1.

State v. Barker 39 Vr. at p. 28.

"In Criminal prosecution where the remarks of the State's Attorney in addressing the jury appear to have been prompted by the previous conduct and remarks of counsel for the defendant, and the remarks objected to do not appear to have been prejudicial to the defendant, the ruling of the Court in refusing to stop the State Attorney is not erroneous."

Reges v. State, 49 Fla. 17; Duffin v. People 107 Ill. 113; Boyle v. State 105, Ind. 469; People v. Ringstead 90, Mich. 317.

Jamison v. U. S. 104, S. W. 872.

Watkins v. U. S. 41, S. W. 1044.

Reed v. State 103, Pac. 1042.

Sellers v. State 124, S. W. 770.

Thacher v. State 106, Pac. 986.

"Epithets used by Prosecuting Attorney toward accused have been held not reversible error in a homicide case."

State vs. Hess 239 Mo. 144 S. W. 489.

The remarks of counsel as to other irregularities of the accused are not ground of reversal where they could not have injured the defendant.

Palmer v. People 138, Ill. 356.

THIRD (GENERAL) REASON.

The State takes the strongest issue with the statement therein that "A reading of this record discloses that the defendant in this case did not have a fair trial; that he was convicted not of assault and battery on Hilda A. Voigt, but for taking her money."

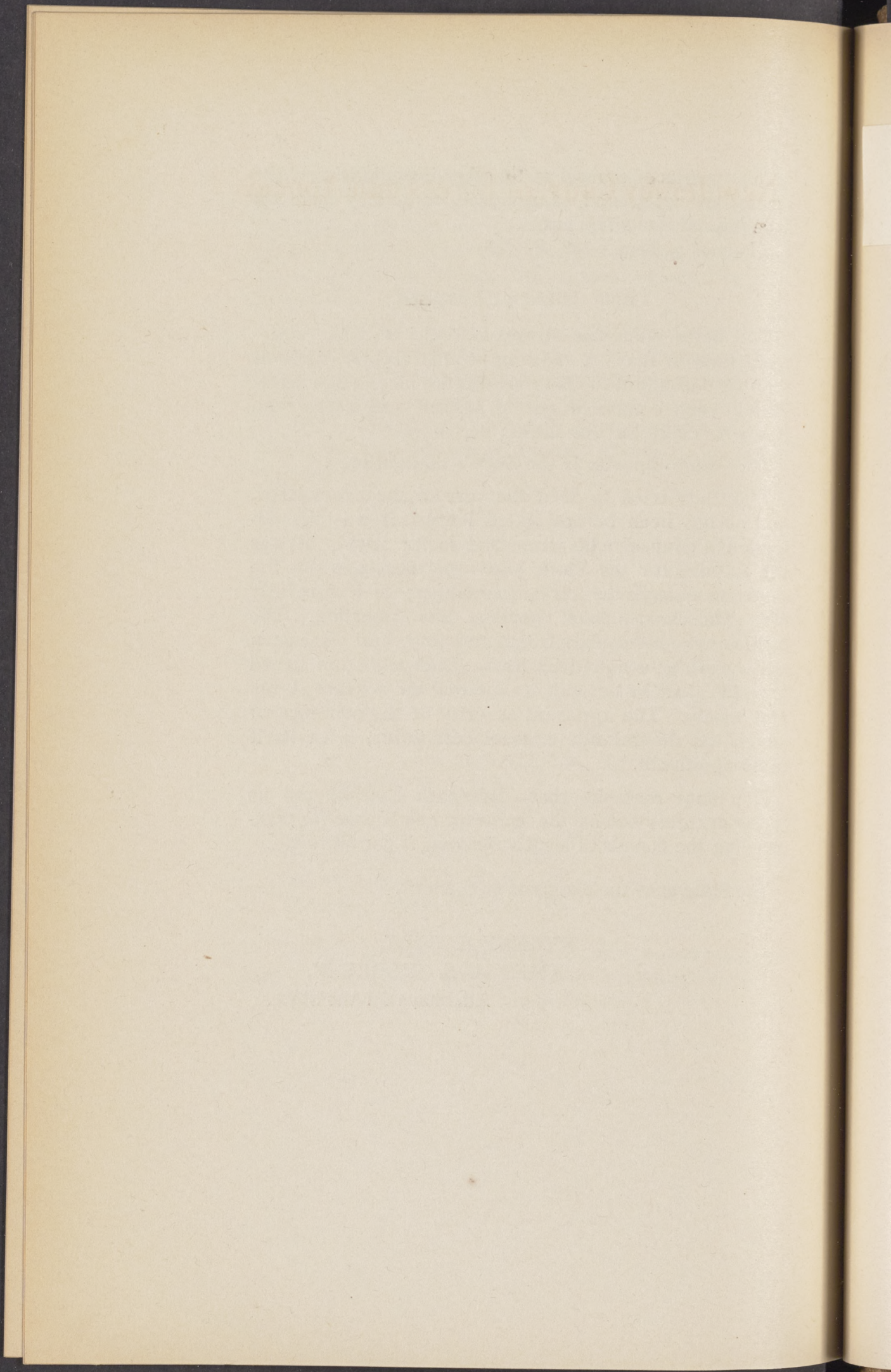
The exact opposite is the State's contention.

The State tried to hold the case to the exact issue, and as has been before stated herein, it was the defendant's counsel who wandered so far afield. It was the counsel for the State who specifically asked the Court to charge the jury accordingly; as it carefully did. The charge itself verifies this assertion. The parties were before the Court and jury, and were seen and carefully weighed by both. Both were not heard to testify, for the defendant shunned the witness stand, and wisely. The apparent severity of the sentence of which the defendant's counsel complains, is in itself most significant.

The State contends that defendant has suffered no wrong or injury but on the contrary had license far transcending the bounds of legal strictness, if not propriety.

The State asks the dismissal of the writ.

EUGENE C. COLE,
 JAMES M. E. HILDRETH,
 Attorneys for the State.



New Jersey Court of Errors and Appeals

STATE,

Defendant in Error,

vs.

DONALD R. MCCORMACK,

Plaintiff in Error.

On Writ of Error.

Brief for Plaintiff in
Error.

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This writ of error brings up for review the conviction of the defendant for assault and battery and is before the Court under the 136th Section of the Criminal Procedure Act.

The defendant was tried on two indictments each having two counts. The first indictment charged the defendant with assault with intent to rob and assault with forcible demand for money. The second indictment charged the defendant in the first count with atrocious assault

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and in the second count with simple assault and battery.

During the trial the indictment of assault with intent to rob was abandoned by the State, it appearing that the defendant and the complaining witness were husband and wife. Following that, the count charging the defendant with atrocious assault was abandoned by the State there being no evidence that the assault was made with any weapon or with any attempt to commit atrocious assault. (See State of Case, page 92). So that the case went to the Jury on the one count, that of simple assault.

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The facts are most unusual. The indictments charged that the defendant committed an assault on one, Hilda S. Voigt, but it appeared during the trial that the defendant

and Hilda A. Voigt, the complaining witness, were husband and wife, (See State of Case, Pages 14, 15 and 45, line 30), and lived together in Sea Isle City, Cape May County, from June of 1917 until September 11, 1917, on which date the alleged assault took place. Following the alleged assault and for a period of over two months, the defendant and the complaining witness lived together as husband and wife, both in Sea Isle City and Philadelphia (See State of Case page 18, line 20, and p. 19, line 30) and endearing communications passed between them (See
10 cross examination Pages 20 to 32) during their absence from one another. The day after the alleged assault the complaining witness and defendant went to Philadelphia and both of them stopped at the Hotel Majestic (See State of Case Page 15, line 30). They travelled together between Sea Isle City and Philadelphia several times in an automobile (Page 16, line 30) and continued on very friendly terms until some time in November, when defendant was arrested.

20 The complaining witness was not corroborated. The defense produced several witnesses who testified to their having seen complaining witness with defendant on the date of the alleged assault and that they were friendly. All of this negated the truth of the complaining witness' testimony touching the assault. The defendant, however, did not take the stand.

30 A reading of the testimony discloses that while the State's case went to the Jury on the count of simple assault, he was convicted on side lights injected into the evidence touching financial transactions between the complaining witness and the defendant. The evidence was introduced on redirect examination by the State over objection, but was admitted by the Court. The defendant was convicted, the jury bringing in a verdict of guilty with a recommendation for mercy and the defendant was sentenced to pay a fine of \$500 and serve a term of not

more than 3 years, nor less than 18 months in State's Prison.

The causes for reversal are three fold:

1. That relating to the admission of testimony concerning financial transaction between the defendant and the complaining witness.

2. Remarks made by the Prosecutor during the trial and in addressing the Jury. 10

3. A general cause on the theory that manifest wrong and injury appears in the record.

I.

A reading of the examination of the complaining witness discloses that the State was anxious to bring before the Jury the fact that the defendant had obtained money from the complaining witness. The State persisted in the inquiry notwithstanding repeated objections (See State of Case, page 49) to which exception was taken and sealed (See Line 30). Attention is directed to the fact that the defendant was tried on an indictment for assault and battery. Notwithstanding that, the following questions and answers were permitted to go before the Jury: 20

Q. Well, on this occasion of which you speak did he make any demand for money?

A. Yes, sir.

Q. What amount did he demand of you? 30

A. Five thousand dollars.

Q. And what did you say to him when he demanded?

A. I said I had no more money.
(See page 14, line 10 to 20).

* * * * *

Q. In you answers to Mr. Scott on the other side you testified that he had gotten some mon-
eys from you, too?

A. Yes, sir.

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(See State of Case page 48, line 10).

* * * * *

Q. How much money had Mr. McCormack gotten from you prior to demanding the five thousand dollars?

Mr. Scott: I object to that, may it please your Honor.

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A. In the month of September—

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is hereby allowed and sealed accordingly.)

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A. In the month of September he had seven thousand dollars, and before that time there was some, I don't recall the exact amount, but all in all, the whole amount that he had gotten from me amounted to between—over thirty thousand dollars.

Q. Over thirty thousand dollars?

A. He stripped me completely of everything I had and then even said that he would take

my, deprive my child, take everything from my child.

(See State of Case Page 48, line 10).

* * * * *

It is respectfully submitted that this testimony was clearly inadmissible and operated to the material injury of the defendant, and that the admission of this testimony is reversible error.

The testimony was erroneously admitted under any circumstances. It will be recalled that originally the defendant was tried on two indictments, one dealing with assault with intent to rob, the other dealing with assault only and that the indictment dealing with assault with intent to rob was eliminated and the case went to the Jury on the question of assault only. It is apparent that the testimony above quoted was erroneously admitted on the question of assault. It had no bearing on the case and tended to prejudice the Jury against the defendant and to deprive him of a fair trial.

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It is likewise self evident that this testimony was inadmissible and manifestly injurious on the indictment dealing with assault with intent to rob, for it is elementary law that evidence dealing with the defendant's propensity to commit crime is inadmissible in a trial for another crime. *State vs. Raymond*, 53 N. J. L. 260. *State vs. Bloom*, 89 N. J. L. 418.

However the indictment dealing with the charge of assault with intent to rob was eliminated and the testimony as it stood, was permitted to go to the Jury on the indictment of assault only.

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It is respectfully submitted that it needs no argument to demonstrate the illegality of this testimony as affecting this case. The matter becomes more serious when

the court will consider that the Jury was not instructed in any way how to deal with this illegal testimony. The Court charged in the stereotyped manner on the question of assault. He, in no way removed the effect of the testimony concerning the moneys obtained by the defendant from the complaining witness. The Jury was not cautioned. They were not directed. They were not instructed.

10 Assuming that there may be some theory upon which this testimony was admitted, while the indictment charging assault with intent to rob was under consideration, it is respectfully submitted that it became the Court's duty to instruct the Jury to consider the testimony only for the purpose for which it was admitted, (See Opinion of Justice Gummere, in the case of *State vs. Hummer*, 62 *Atl. Rep.* 388.)

In the case of *State vs. Bullock*, 65 *N. J. L.* 557, Chief Justice Deput deals with a similar question and disposes of it in this fashion:

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“Where evidence which is illegal is received by the Court in the progress of a trial, it is competent for the Court subsequently to exclude such illegal testimony * * * 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. * * * To have removed the effect of this evidence, it would at least have been necessary to have expunged it from the record formally and emphatically before the testimony was closed, and the summing up of counsel was commenced.”

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In the case of *State v. Doherty*, 86 *N. J. L.* 525, Justice Kalisch deals with the same question at page 543, etc.

In that case it was urged for the plaintiff-in-error that nothing that a trial judge may say in his charge to the Jury in directing them to exclude from their consideration illegal testimony admitted during the trial can cure an error. This position is denied by the Supreme Court but the proposition here urged is stated by Justice Kalisch with emphasis, that is, that it is the Court's duty to eliminate illegal testimony by directing the Jury as to their duty to eliminate such testimony, from their consideration.

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The Court's attention is directed to the fact that in the case at hand, it was not incumbent upon the defendant to request the elimination of this testimony, in view of the fact that objection was made and exception taken and sealed (See State of Case page 49, line 30). The cases above cited are similar to illustrate the proposition that it may have been possible for the Court to eradicate the testimony by proper directions, but this was not done and a reading of the Court's charge demonstrates the grievous error committed during the trial.

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It is respectfully submitted that the admission of the testimony above quoted was erroneous, injurious and constitutes reversible error and that for that reason a new trial should be granted.

II.

The second line or cause for reversal relates to comments made by the Prosecuting Attorney as follows:

“Would I, District Attorney, having delved in this case for months urge this prosecution if I did not believe what the prosecutrix said was true?” 30

That the Prosecutor in his argument to the Jury referred to the defendant as “this crook” “it is so stated in Mr. Grimes' letter and is uncontradicted.”

It is respectfully submitted that both of these comments were injurious to the defendant and is reversible error under the circumstances of this case.

10 In order to determine the availability of these assignments the atmosphere of this case must not be disregarded. The State must have known that the complaining witness and the defendant were husband and wife or lived together as husband and wife. Notwithstanding that in order to introduce the testimony of the financial
20 transaction between them, the indictment refers to the complaining witness as Hilda A. Voigt, although she lived in the County under the name of McCormack. That during the course of the trial notwithstanding the fact that the trial involved the crime of assault the testimony related to the taking of money by the defendant. The Prosecutor endeavored to impress upon the Jury the importance of the case and in making the comment, by referring to the defendant as a "crook" notwithstanding the fact that there was no testimony showing it or justifying the Prosecutor to so refer to the defendant, committed not only an ethical breach, but a grave injury to
30 the defendant by prejudicing the minds of the Jury and depriving the defendant of a fair trial before the Jury.

In the case of *People v. Fielding*, 158 N. Y. 542, 53 N. E. 497, 46 L. R. A. 641, 70 Am. St. Rep. 495, the New York Court of Appeals declared it to be error to permit appeals by the Prosecutor of the Pleas to the prejudice of the jurors, based upon facts which have not been proved, but which rest wholly on his unsupported assertions; and that when proper exception is taken thereto,
30 and it is apparent that such appeals may have influenced the jury in their verdict, the conviction should be set aside.

In the case at hand there is no proof whatever that would justify the prosecutor to refer to the defendant as

a "crook". The charge upon which he was being tried, was assault. No testimony was introduced touching anything indicating moral degeneracy or any propensity to crime, and it is respectfully submitted that it falls directly within the above case which is quoted with approval in our own case of *State v. Barker*, 52 Atl. 287 and *State v. Land*, 66 Atl. 942.

The following cases sustain the proposition that under such circumstances comments by the prosecuting attorney are injurious and reversible error:

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Raggio v. People, 135 Ill. 533; 26 N. E. 377.

Jackson v. State, 116 Ind. 464; 19 N. E. 330.

People v. Dane, 59 Mich. 550.

People v. Quick, 58 Mich. 321.

Commonwealth v. Bubnis, 197 Pa. 642, 47 Atl. 748.

Williams v. U. S., 168 U. S. 383, 42 L. E. 509.

Rhodes v. Commonwealth, 92 Am. St. Rep. 360.

People v. Payne, 91 N. W. 739.

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People v. Connolly, 106 Mich. 424.

People v. Winslow, 36 Mich. 505.

Martin v. State, 56 Atl. Rep. 813.

III.

Under the general cause for reversal, it is respectfully submitted that the Court should not shut its eyes to the unusual manner in which this defendant was indicted, tried, convicted and sentenced. A reading of this record discloses that the defendant in the case did not have a fair trial; that he was convicted not of assault and battery on Hilda A. Voigt, but for taking her money; that he was charged with assault but he was actually tried for divers other crimes by innuendo and it is not stretch-

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ing the argument too far by saying that the Jury could not have disassociated its mind from the testimony in the case not bearing on assault without proper directions.

10 The verdict of the Jury was guilty with a recommendation of mercy. The record does not disclose that this alleged assault was in any way outrageous, there was no instrument used, there were no suggestions of bodily harm having been committed and the testimony of all the witnesses for the defence show that the complaining witness was about the streets the same day and that the defendant and she were friendly; that they travelled together the same day or the next day to Philadelphia and stopped at the same Hotel. There were no circumstances introduced to show an intent to do harm and still the Jury in its verdict asked for mercy.

20 Is it not reasonable to suppose that they were under the impression that they were trying the defendant under one of the other indictments which were eliminated during the trial? The sentence of the Court on the conviction for simple assault was a \$500 fine and a term in prison for not more than 3 years and not less than 18 months. This sentence tends to confirm the general impression gained from a reading of the entire record that the defendant in this case did not have a fair trial on that count of the indictment on which he was tried and which was submitted to the Jury.

Under these circumstances, justice demands that the verdict be set aside and that a new trial be awarded.

30 Respectfully submitted,

C. L. GOLDENBERG,
Attorney of Plaintiff in Error.



