INDEX

	PAGE
Writ of Error, Court of Errors and Appeals..	I
Return.	III
Writ of Error.	1
Answer.	3
Return.	4
Order.	11
Motion to Quash Indictment.	14
STATE'S TESTIMONY:	
David M. Anderson—Direct.	19
Recalled—Direct.	30
Recalled—Cross.	41
Ernest M. Ritchie—Direct.	20
Cross.	24
Recalled—Direct.	54
Harris C. Powell—Direct.	43
Louis L. Townsend—Direct.	58
Cross.	65
Raymond B. Wright—Direct.	66, 77
Cross.	75, 79

New Jersey State Library

PAGE

Ellen Mailly—Direct 79

Dorothy L. Kavanaugh—Direct..... 81
Cross..... 86

Norman D. Dorsett—Direct..... 90
Cross..... 116
Re-direct..... 132
Re-cross..... 134

L. Webster Melcher, Jr.—Direct..... 139
Cross..... 143
Re-direct..... 147
Re-cross..... 147

Motion for Directed Verdict.....151, 249

DEFENDANT'S TESTIMONY:

Allan W. Redfield—Direct..... 155
Cross..... 175

Robert Mayhugh—Direct 216

Harry F. Green—Direct..... 223
Cross..... 224

Henry H. Wilson—Direct..... 225

Roscoe B. West—Direct..... 227

J. Emerson Jackson—Direct..... 228

Charles Mailley—Direct 229
Cross..... 230

Charles H. Eastlack—Direct 230

William P. Gilmore—Direct 231

PAGE

Patrick A. Stewart—Direct..... 232
Cross..... 233

Dr. John J. Haley—Direct..... 234

James W. Thurston—Direct..... 235

Valentine H. Wendt—Direct..... 236

J. Gallagher—Direct 237

John J. Gallagher—Direct..... 238

Harlan S. Miner—Direct..... 239

STATE'S REBUTTAL TESTIMONY:

Raymond B. Wright—Direct..... 242

Charge of the Court..... 252

Verdict..... 263

Exhibit S1, Check..... 62

Exhibit S2, Deposit Slip..... 68

Exhibit S3, Ledger Sheets..... 74

Exhibit S4, Cash Book Entry..... 83

Exhibit S5, Record of Metered Consumption.. 99

Exhibit S6, Cash Book..... 100

Exhibit S8, Cash Book..... 188

Exhibit S9, Deposit Slip..... 245

PAGE

Defendant's Exhibit No. 1, Audit Sheet..... 167

Defendant's Exhibit No. 2, Audit Sheet..... 167

Defendant's Exhibit No. 3, Audit Sheet..... 167

Defendant's Exhibit No. 4, Audit Sheet..... 167

Defendant's Exhibit No. 5, Check..... 131

Defendant's Exhibit No. 6, Photograph..... 161

Defendant's Exhibit No. 7, Photograph..... 161

Defendant's Exhibit No. 9, Letter..... 174

Stipulation..... 264

Joinder-in-Error..... 265

Assignments of Error..... 266

Specification of Causes for Reversal..... 275

Opinion..... 285

Rule of Affirmance..... 292

Assignment of Error..... 294

Joinder-in-Error..... 296

WRIT OF ERROR.

(Filed Jul. 15, 1931.)

The State of New Jersey, ss.

To William S. Gummere, Esquire, Chief Justice of the Supreme Court of the (SEAL) State of New Jersey, and to the Judge of the Court of Common Pleas of the County of Camden, constituting the Court of Oyer and Terminer holden at Camden, in and for the County of Camden, for the Term of September, in the year of our Lord one thousand nine hundred and thirty, Greeting:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Allan W. Redfield, late of the City of Gloucester City, in the County of Camden, for having embezzled the sum of one thousand $1,000) dollars, which indictment is in words and figures as follows:

In the
COURT OF OYER AND TERMINER
of Camden County.
April Term, A. D. 1930.

CAMDEN COUNTY, to wit:.

The grand inquest of the State of New Jersey and for the County of Camden, upon their respective oath present that Allan W. Redfield, late of the City of Gloucester in the County of Camden, on the twentieth day of January, 1927, at the city and county aforesaid and within the jurisdiction of this Court, holding an office of

trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of Water Clerk of the said City of Gloucester City did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, 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.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Allan W. Redfield, as it is said, manifest error hath intervened to the great damage of the said Allan W. Redfield, as from his complaint we have received information. We being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Allan W. Redfield, command you, that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes on the twenty-ninth day of

July, 1931, 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 Robert Walker, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this ninth day of July, 1931.

THOMAS A. MATHIS,
Clerk.

HARVEY F. CARR,
Attorney for Plaintiff-in-Error.

RETURN.

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

WM. S. GUMMERE,
C. J.

WRIT OF ERROR.

THE STATE OF NEW JERSEY, *ss.*

To Samuel M. Shay, Judge of the Camden County Court of Quarter Sessions:

(Seal) Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Allan W. Redfield, late of the City of Gloucester City, for, while holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department or Water Clerk of the said City of Gloucester City, embezzling the sum of one thousand ($1000) dollars committed to his care by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Allan W. Redfield, as it is said, manifest error hath intervened to the great damage of the said Allan W. Redfield, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done him, the said Allan W. Redfield, command you that if

judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey, on the 2nd day of December, 1930, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, our Chief Justice, at Trenton aforesaid, this twelfth day of November, 1930.

FRED L. BLOODGOOD,
Clerk.

HARVEY F. CARR,
Attorney for Plaintiff-in-Error.

ANSWER.

CAMDEN COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY,
Plaintiff,
v.
ALLAN W. REDFIELD,
Defendant.

Sur Indictment.
Answer.

The answer of Samuel M. Shay, Esquire, Judge of the Court of Quarter Sessions of the County of Camden, within named, the record and proceedings whereof mention is made, and of all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at the day and year within contained in a certain schedule to this writ annexed, as I am commanded.

And I further certify that the said record and proceedings herewith submitted comprise the entire record of the proceedings had upon the trial of the said cause.

SAMUEL M. SHAY,
Judge.

STATE OF NEW JERSEY.

CAMDEN COUNTY COURT OF QUARTER SESSIONS.

Holden before SAMUEL M. SHAY, Judge.

September Term, 1930.

THE STATE,
v.
ALLAN W. REDFIELD.

Sur Indictment.
Embezzlement.

CLIFFORD A. BALDWIN, ESQ.
HARVEY F. CARR, ESQ.

CAMDEN COUNTY, to wit:

Be it remembered, that at a Court of Quarter Sessions, holden at Camden, in and for the County of Camden, on the second Tuesday of April in the year of our Lord one thousand nine hundred and thirty before the Honorable Samuel M. Shay, Judge of the

said Court and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the Grand Jury being desirous of making present of sundry bills of indictment, according to the form of the statute in such case made and provided by oath of Neil M. Alcott, William Clair, Walter L. Campbell, Charles J. Clark, Alice Collier, Wilbert Davis, Camille Estornelle, Joseph Fitzgerald, Charles W. Fischer, Edward Fox, Thomas S. Hopkins, William Kunitz, Samuel Katz, J. R. Mick, Francis X. O'Brien, Charles L. Stafford, John A. Schlorer, George Tiedekin, Stewart Trottman, Charles A. Voltz, John Welsh, Harry Willson and E. C. Lambert, good and lawful men and woman of the said County of Camden, 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 Camden.

It is presented, in manner and form following, that is to say:

The bills herewith presented are true bills.

EUGENE C. LAMBERT,
Foreman.

Filed Sept. 8, 1930.
CHARLES F. WISE,
Clerk.

Camden Quarter Sessions.
April Term, 1930.

IN THE
COURT OF OYER AND TERMINER
OF CAMDEN COUNTY.

April Term, A. D. 1930.

CAMDEN COUNTY to wit:

The grand inquest of the State of New Jersey and for the County of Camden, upon their respective oath present that Allan W. Redfield late of the City of Gloucester in the County of Camden, on the twentieth day of January, 1927, at the city and county aforesaid and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of Water Clerk of the said City of Gloucester City did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, 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.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas.

A true bill.

EUGENE C. LAMBERT,
Foreman.

Filed Sept. 8, 1930.

CHARLES F. WISE,
County Clerk.

Which said indictment with sundry other indictments, were to wit, on the eighth day of September, in the year of our Lord one thousand nine hundred and thirty, at the Court of Quarter Sessions, holden at Camden in and for the County of Camden aforesaid, before Samuel M. Shay, Judge of the Court of Common Pleas and Court of Quarter Sessions, of said county, in the absence of Frank T. Lloyd, Justice of the Supreme Court, assigned to hold the Circuit Court of the County of Camden, holden at Camden, duly delivered here in Court by the Grand Jurors aforesaid in and by said presentment, in due form of law to be determined.

Whereupon on the eleventh day of September in the year of our Lord one thousand nine hundred and thirty, before the Court of Quarter Sessions aforesaid, the defendant, Allan W. Redfield, was ordered to be placed at the bar to plead, and on being charged by the Prosecutor plead not guilty.

Whereupon on the twentieth day of October in the year of our Lord one thousand nine hundred and thirty, on motion of counsel for the defendant the plea of not guilty was withdrawn by leave of the Court for the purpose of making a motion to quash the indictment which motion was made before the jury was sworn. Whereupon on motion of the Prosecutor of the Pleas it was ordered by the Court that the within indictment be forthwith amended by the Deputy Clerk of the Court in the following particular: The numerals "1927" were ordered to be stricken out and in their place the words "Nineteen Hundred and twenty-seven" inserted. And the motion to quash the indictment was thereupon denied by the Court.

Whereupon on the said twentieth day of October in the year of our Lord one thousand nine hundred and thirty, before the Court of Quarter Sessions aforesaid, the defendant, Allan W. Redfield, was ordered to be placed at the bar to plead, and on being charged by the Prosecutor plead not guilty, the trial of the cause was moved, whereupon the Court ordered the Sheriff to return the *venire facias* to him directed and delivered in this case with the following panel of jurors, who being duly sworn took their seats in the box to wit:

William Ruff, S
Elwood Rowan, S
Mary Yeager, S
Mary Osborne, S
Mary Smith, S
Margaret Lloyd, S
Blanche Carter, S
Emily A. Hay, S
George W. Huff, S
Margaret Riggins, S
Frank Doughty, S
Gertrude E. Harris, S

And having heard the testimony of Davis M. Anderson, sworn; Ernest N. Ritchie, sworn; Davis M. Anderson, recalled; Harris C. Powell, sworn; and whereupon on the twenty-first day of October in the year of our Lord one thousand nine hundred and thirty, Harris C. Powell, recalled; Ernest N. Ritchie, recalled; Lewis L. Townsend, sworn; Raymond B. Wright, sworn; Ellen Mailley, sworn; Dorothy L. Cavanaugh, sworn; Norman D. Dorsett, sworn; L. Webster Melcher, sworn in behalf of the State; and having heard the testimony of Allan W.

Redfield, sworn; and whereupon on the twenty-third day of October in the year of our Lord one thousand nine hundred and thirty; Allan W. Redfield, recalled; Robert Mayhugh, sworn; Harry F. Green, sworn; Henry H. Wilson, sworn; Roscoe B. West, sworn; J. Emerson Jackson, sworn; Charles Mailley, sworn; Charles H. Eastlack, sworn; William P. Gilmore, sworn; Patrick A. Stewart, sworn; John J. Hailey, sworn; James W. Thurston, sworn; Valentine H. Wendt, sworn; John J. Gallagher, sworn; Holland Myers, sworn; in behalf of the defendant; and having heard the testimony of Raymond B. Wright, recalled in rebuttal.

The evidence being closed and counsel having summed up the cause to the jury, the jury retired after being charged by the Court, with Officers Gaskill and Ervoilini, sworn to attend them, after an absence they returned into court, and being called, all appear and say they have agreed upon their verdict, and by their foreman upon their oath do further say they find the defendant, Allen W. Redfield, guilty as he stands charged.

The jury was polled by request of counsel for the defendant.

And afterwards, to wit, on the tenth day of November in the year of our Lord one thousand nine hundred and thirty, before the Court of Quarter Sessions, at Camden aforesaid, cometh the said Allan W. Redfield, and having been brought to the bar in his proper person to receive the judgment of the law.

Clifford A. Baldwin, Esquire, Prosecutor of the Pleas, then moved for the judgment of the law.

Whereupon on the said tenth day of November,

in the year of our Lord one thousand nine hundred and thirty, at Camden, in the County of Camden aforesaid, all and singular, the premises being seen by the Court here fully understood, it is considered and adjudged by the Court that the said defendant, Allan W. Redfield be confined in the State Prison at Trenton, New Jersey, at hard labor for the term of five years and from thence until the costs of prosecution are paid.

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, Charles F. Wise, clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of the proceedings and records with all things touching and concerning the same in the case of

THE STATE, v. ALLAN W. REDFIELD.	Sur Indictment. Embezzlement.

filed November 10, 1930, and recorded in the Clerk's Office of the County of Camden, in Book No. 3 of Quarter Sessions Minutes, page .

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this third day of January, A. D. 1931.

CHARLES F. WISE,
Clerk.

(Seal)

ORDER.

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY,
Plaintiff,
Defendant-in-Error,
v.
ALLAN W. REDFIELD,
Defendant,
Plaintiff-in-Error.

Action at Law.
Order.

It appearing that the stenographer's transcript of the testimony taken in the above cause was not received by the attorney for the appellant until the 30th day of December, 1930, and it further appearing that the return day of the writ of error issued herein has expired.

It is on this 31st day of December, 1930, ordered that the return day of the said writ of error be, and the same is hereby extended until the 10th day of January, 1931, provided however that the appellant shall bring this cause on for argument at the January Term, 1931, of this court. Let this rule be entered.

FRANK T. LLOYD,
J. S. C.

I consent to the entry of the foregoing order.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas of Camden County.
Attorney for Defendant-in-Error.

TESTIMONY.

CAMDEN COUNTY COURT OF QUARTER SESSIONS.

THE STATE,
Plaintiff,
v.
ALLAN W. REDFIELD,
Defendant.

October 20, 1930.

APPEARANCES:
For the State, CLIFFORD A. BALDWIN, Prosecutor.
For the defendant, HARVEY F. CARR, ESQ.

Before SHAY, J., and a jury.

Mr. Carr: Application was made by counsel for the defendant for leave to withdraw the plea of not guilty, for the purpose of making a motion to quash

the indictment; the motion having been made before the jury was sworn. The jury not, as yet, having been sworn, I understand that his Honor gave leave that we may withdraw that plea?

The Prosecutor: That is correct.

Mr. Carr: I now make my motion, and I think it would save a little time if one of the court officers will bring in the authorities I have noted here. In the meantime, I will give you the grounds of my motion.

If the Court please, I move to quash the indictment in this case on several grounds, the first of which is—may I have the indictment, itself?

The Court: Here, I have it. Do you have a copy of it?

Mr. Carr: This indictment reads—I will omit the caption—"Camden County to wit:

"The Grand Inquest of the State of New Jersey and for the County of Camden, upon their respective oaths, present that Allan W. Redfield, late of the City of Gloucester, in the County of Camden, on the 20th day of January, 1927, at the city and county aforesaid, within the jurisdiction of this Court, holding an office of trust and profit in the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department, of Water Clerk of the said City of Gloucester City, did embezzle the sum of one thousand dollars of the money committed to his keeping, by virtue of a

certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, 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.'' That is signed by the Prosecutor, and endorsed as a true bill by the foreman of the Grand Jury.

Now, if your Honor please, the first ground of attack upon this indictment is that the date appears in Arabic numerals. It has been held in several cases in this State, cases in the Court of Errors and Appeals, that this is a vital defect in an indictment, the reason for it being that every indictment is required to be expressed in the English language, and in no other tongue, and that the charges be set forth in words at length and without abbreviation.

(Mr. Carr then argued, at length, in support of his motion, which argument was off the record.)

The Prosecutor: I think it may be freely admitted that the principal which Mr. Carr contends for is proper, and that there may be a fault in the indictment as it stands at the present time, in writing the number of the year in Arabic numerals instead of in words at length. However, at this juncture, I move for the amendment of the indictment, in that the Arabic numerals ''1927'' be amended to read nineteen hundred and twenty-seven.

(The Prosecutor, thereupon, argued in support

of his motion to amend the indictment, all of which argument was off the record.)

The Court: As I see it, if I recall the rules of the Court of Chancery, they require your pleadings now to be in Arabic. When you have to use figures you use figures instead of writing them out. Arabic numerals have become such a fixed thing in our regular daily routine, also in our court proceedings, etc., that I think it is time they should be recognized as proper to be used in an indictment. I know that the case Mr. Carr cites is right in point, but it is not in point to the extent that it refuses an amendment; and, when these indictments are handed up, under the statute, you are allowed to make certain amendments so long as you don't change the substance of the indictment.

There is such a demand being made, today, by people as a whole, by the Bar Association, by the American Bar Association and by the Press for the elimination of technicalities, particularly in criminal law—a demand all around for the elimination of technicalities, that I would like to have the Supreme Court pass upon this. I do not believe that the Supreme Court will object to the amendment of this indictment. As the motion sets forth, it should be amended; and, I will, therefore, rule in favor of the Prosecutor.

Mr. Carr: May I have an exception, if your Honor please?

The Court: Yes.

Mr. Carr: I make the motion on the further ground that in this indictment there is no averment of the ownership of the moneys referred to in the indictment; nor is there any averment that the moneys were received by the Clerk in his capacity as Clerk.

(Mr. Carr argued in support of the motion last above made, off the record.)

The Court: As to that motion, I will say that the indictment sets forth that Mr. Redfield was the Clerk of the Water Department, and that this company paid to him some money as such clerk. It also sets forth the reasons upon which that money was paid, to wit, that they were consumers of water. So, I feel that this indictment, Mr. Carr, sets forth with sufficient particularity the ownership of that money, and the capacity of the party who received it. I do not feel that the motion has enough merit in substance to allow it, and I will, therefore, deny it and grant you an exception.

Mr. Carr: I thank you. I don't like to say anything after your Honor has ruled, but I call attention to the fact that the indictment, itself, does not say that the money was committed to him by virtue of his being the City Water Clerk.

The Court: Not in so many words; but I think, taking the whole contents of the indictment, it is the only reasonable inference that could be drawn from it.

Mr. Carr: Just before the jury is . . . , I want to ask a question. This matter has been in the public press, newspapers, and probably all of you, or some of you, have read about it. I am wondering whether any of you have reached any opinion by reason of anything you may have read in the newspapers, as to the guilt or innocence of Mr. Redfield.

(To the query last above addressed to the jury, they answer, "No.")

The Prosecutor: I would like to have the defendant called to the bar of the court, to plead.

(Whereupon, the defendant was arraigned, and plead "not guilty.")

(The Prosecutor, on behalf of the State, opened the case to the jury.)

(Mr. Carr opened the case to the jury, on behalf of the defendant.)

DAVID M. ANDERSON, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. You are Mayor of the City of Gloucester City?
A. Yes, sir.
Q. How long have you been its Mayor?
A. Why, I have been Mayor for ten years, anyway.
Q. In your capacity, as Mayor, are you familiar with the various office-holders of that city?
A. Well, I know them all, yes.
Q. Do you know Allan W. Redfield?
A. Yes.
Q. He is the gentleman sitting at the table, to my left?
A. Yes.
Q. At the table over there? (Indicating.)
A. Yes, sir.
Q. Did Mr. Redfield, on January 20, 1927, hold any office in the City of Gloucester City?

Mr. Carr: I object, if your Honor please. There is a better way of proving the facts than this. If he was appointed to that office, I presume there is a Municipal record of it; and, we have the right to see just what was done rather than to depend upon the memory of this gentleman, here.

The Prosecutor: We have that record; but this

is the Chief Officer of the City of Gloucester City, and as such, he is fully competent to say who the office-holders of that city may have been, from his own knowledge. That is the purpose of this question.

Mr. Carr: This man holds an official position. Somewhere there is a record of how he got that position.

The Court: Do you have the records?

The Prosecutor: Yes; we have the record.

The Court: Then, as long as objection has been taken, don't you think it is well to produce the record?

The Prosecutor: I will withdraw Mayor Anderson at this time, and ask him to remain in the court room. I will call Ernest Ritchie.

Ernest M. Ritchie, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?
A. 624 Powell Street, Gloucester City.

Q. Do you hold any official position in the City of Gloucester City?

A. I am Acting City Clerk.

Q. As such Acting City Clerk, do you have custody and control of the minutes of City Council of the City of Gloucester City?

A. I do.

Q. Do you have those in court, today?

A. I do.

Q. Will you turn to the minutes of the meeting of City Council held on January 1, 1919; do you have that record?

A. Yes.

Q. Will you read, please, from those minutes, any statement therein contained about the appointment of Allan W. Redfield?

Mr. Carr: What is the page number, do you know, Mr. Ritchie, please?

The Witness: There is no page in this book.

Mr. Carr: Dated January 1, 1919?

The Witness: Dated January 1, 1919. "Nominations for Water Clerk were then called for. Mr. Barnard stated there had been considerable trouble from time to time on account of plumbers being unable to secure permits, and the necessary connections for making taps; and, it was felt that the Water Clerk's office should be located in the City Hall, and he would, therefore, make the nomination of Mr. Allan W. Redfield.

There being no further nominations, on roll-call,

he received the vote of all members present. President Pancoast declared him elected for a term of three years."

Q. Have you, at my request, followed down since January 1, 1919, through the minutes of City Council, all appointments to that office which have been made?

A. January 2, 1922, was the next.

Q. Read that.

A. "Mr. Mayhugh nominated Allan W. Redfield as Clerk of the Water Works. There being no other nominations, on roll-call, Mr. Redfield was elected for a term of three years."

Q. Are there any later than that?

A. January 2, 1922.

Q. Any later than that?

A. That is all.

Q. Since 1922, have you any records of his appointment as Water Clerk?

A. No, sir.

Q. According to your records, who has held the office of Water Clerk since that time?

Mr. Carr: What records?

The Prosecutor: The records of City Council of the City of Gloucester City.

Mr. Carr: I ask that the records be produced.

The Witness: Nobody but Mr. Redfield.

Mr. Carr: Pardon me, please. Are there any more records than you have there?

The Prosecutor: I will see.

By the Prosecutor:

Q. Did you examine the records for subsequent years?

A. I did. There are no minutes of organization for 1923 or 1925.

Q. Have you any for organization in 1928?

A. I have for 1928.

Q. Is there any record in that year for the employment of a Water Clerk to the Water Department?

A. No, sir.

Q. Have you found any records since the one you recited for 1922, concerning an appointment to the office of Water Clerk?

A. No, sir.

Q. Or Clerk of the Water Department?

A. No, sir.

Q. The last you found is for 1922, then?

A. 1922.

Q. When did you become Acting City Clerk?

A. August 5, 1930, this year.

Q. Prior to that time, did you hold any office in Gloucester City?

A. I was Secretary of the Board of Health.

Q. As Secretary of the Board of Health, how long did you hold that office?

A. Two years.

Q. When did you become Secretary of the Board of Health?

A. 1928.

Q. As Secretary of the Board of Health, did you have any occasion to deal with anybody in the Water Department of the City of Gloucester City?

Mr. Carr: That is objected to as immaterial and irrelevant.

The Court: Objection overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: No.

The Prosecutor: You may cross-examine.

Cross-examination.

By Mr. Carr:

Q. Will you let me see the minutes of January 1, 1919, that you referred to, please?

A. (Witness hands minutes to Mr. Carr.)

Q. I will read you a paragraph therein, and ask you whether there is any other reference in this minute book to the Clerk of the Water Department other than that which I now shall read. This is under date of January 1, 1919: "Nominations for Water Clerk were then called for. Mr. Barnard stated that there had been considerable trouble from time to time on account of plumbers being unable

to secure permits and the necessary connections for making taps; and, it was felt that the Water Clerk's office should be located in the City Hall, and he would, therefore, make the nomination of Mr. Allan W. Redfield. There being no further nominations, on roll-call, he received the vote of all members present. President Pancoast declared him elected for a term of three years." Is there any reference whatever to the election or duties of Water Clerk other than what I have just read?

A. None that I know of.

Q. I ask you to refer to the minutes of January 2, 1922, and to tell me what, if any, reference you find there to the Water Clerk. I now read this excerpt from the minutes of January 2, 1922: "Mr. Mayhugh nominated Allan W. Redfield as Clerk of the Water Department. There being no further nominations, on roll-call, Mr. Redfield was elected for a term of three years." Is there any other reference at that meeting to the Clerk of the Water Department?

A. No.

Q. Do you find anywhere in your minutes any other reference to the appointment of Mr. Redfield, or the duties and powers of Mr. Redfield?

A. No.

Mr. Carr: Mr. Prosecutor, I would like to have the Clerk formally identify three or four resolutions, and unless you are going to keep him here, may I call him as my witness, at this time?

The Prosecutor: Yes; I have no objection.

Mr. Carr: All right, thank you.

ERNEST M. RITCHIE, called as a witness on behalf of the defense, having first been duly sworn, was examined and testified as follows:

By Mr. Carr:

Q. Will you kindly turn to page 34 of your Minute Book, under date of March 4, 1929, a resolution referring to the employment of an auditor for 1925. Do you have such a reference—may I have the book just a moment?

A. (Witness hands book to counsel.)

Q. I call your attention to this paragraph (indicating), on page 34, and ask you to read it.

A. "A resolution was presented by Mr. Mayhugh, of the Finance Committee, that a contract for an annual audit be awarded to the New Jersey Audit Company. On motion of Mr. Mayhugh, seconded by Mr. Lewis, same was adopted."

Q. Will you kindly turn to page 38 of the Minute Book, under date of May 6, 1926, where I now indicate, and read that paragraph, please?

A. "The Finance Committee submitted a written report showing the finances for the month of April, also a report of the auditors on an audit of the books of the City of Gloucester City for 1925. On motion of Mr. Mayhugh, seconded by Mr. Hyland, the same was received and filed."

Q. Kindly turn to page 53 of the Minute Book, under date of February 3, 1929, referring to resolution engaging auditors for the 1926 audit?

A. "The following resolution was presented. Be it resolved that an audit of the accounts of Glouces-

ter City for 1926 be awarded to the New Jersey Audit Company for $750."

Q. That is all that relates to that, is it not?

A. That is all.

Q. Now, turn to page 80, under date of February 2, 1928, a resolution to engage auditors for 1927.

A. "A communication was read from the New Jersey Audit Company, agreeing to audit the books of Gloucester City for the year 1927 for $750."

Q. Page 105, March 7, 1929, resolution regarding the audit for 1928. I think it is the very first paragraph?

A. The following resolution was read. "Be it resolved that an audit of the accounts of Gloucester City for 1928 be awarded to the New Jersey Audit Company, at the price or bid of $750."

Q. Page 112, June 6, 1929, a resolution relating to the appointment of auditors for 1929?

A. "The following resolution was presented. Be it resolved that the New Jersey Audit Company be awarded contract for auditing the accounts of Gloucester City for 1929, for $750."

Q. Now, Mr. Ritchie, I show you an audit of the New Jersey Audit Company (signed) Sidney P. McCord, Registered Municipal Accountant, addressed to the Commissioner of Municipal Accounts, and I ask you whether this audit came from your custody as Acting Treasurer?

A. Yes, sir.

Mr. Carr: I ask that this be marked "Defendant's Exhibit No. 1, for identification.")

(Paper last above referred to, so marked.)

By Mr. Carr:

Q. I show you what purports to be an audit of the financial conditions and transactions of the City of Gloucester for the fiscal year 1926 (signed) New Jersey Audit Company, by Sidney P. McCord, Registered Municipal Accountant, and I ask you whether that came from your custody as Acting City Clerk?

A. Yes, sir.

Mr. Carr: I ask that this be marked "Defendant's Exhibit No. 2, for identification.")

(Paper last above referred to, so marked.)

By Mr. Carr:

Q. I show you an audit and report, showing a true and correct statement of the financial conditions and transactions of the City of Gloucester, New Jersey, for the fiscal year 1927 (signed) New Jersey Audit Company, by Sidney P. McCord, Registered Municipal Accountant, and ask you whether that came from your custody as Acting City Clerk?

A. Yes.

Mr. Carr: I ask that this be marked for identi fication.

(Paper last above referred to marked "Defendant's Exhibit No. 3, for identification.")

By Mr. Carr:

Q. I show you what purports to be an audit of the City of Gloucester, New Jersey, for the fiscal year ending December 31, 1928, signed by the New Jersey Audit Company, by Sidney P. McCord, Municipal Registered Accountant, and ask you whether that came from your custody as Acting City Clerk?

A. Yes, sir.

Mr. Carr: I ask that this be marked for identification.

(Report last above referred to marked "Defendant's Exhibit No. 4, for identification.")

Mr. Carr: That is all; thank you.

The Prosecutor: I understand there are some organization minutes of the City Council which may be lacking in your records?

The Witness: 1923 or 1925.

The Prosecutor: For the years 1923 and 1925?

The Witness: Yes, sir.

The Prosecutor: Where are they?

The Witness: I don't know.

The Prosecutor: Did they come into your pos-

session when you became Acting City Clerk, or were they missing at that time?

The Witness: Missing, at that time.

DAVID M. ANDERSON, recalled.

Direct examination (resumed).

By the Prosecutor:

Q. Mayor, I think you testified that you have been the Mayor of Gloucester City for ten years last past?

A. No; there was a time that I did not fill.

Q. When was that?

A. That was in 1923. Previous to that, I was Mayor; previous to that, I have been Mayor more than ten years.

Q. Were you Mayor during the calendar year 1927?

A. Yes.

Q. As such Mayor, were you the Chief Executive Officer of the City of Gloucester City?

A. Yes.

Q. Who, during that year, was Clerk of the Water Department of the City of Gloucester City?

Mr. Carr: I object, if your Honor please.

The Witness: Allan W. Redfield.

Mr. Carr: Just a minute. The way to prove it is by the records.

The Court: The records don't disclose it, I understand ——

The Prosecutor: This is secondary evidence.

The Court: Secondary evidence.

Mr. Carr: There has been no effort made to show that the best evidence is not obtainable. The Acting Clerk has been there only a few years.

The Court: But he, as I understand it, stated that all the records were turned over to him, and the records don't disclose this particular matter.

Mr. Carr: I still maintain that some diligent search must be shown to have been made.

The Court: I am sorry I will have to rule against you. You may have an exception.

The Witness: Allan W. Redfield.

By the Prosecutor:

Q. During the year 1928, who was Clerk of the Water Department?

Mr. Carr: I make the same objection.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

By the Prosecutor:

Q. Were you Mayor during 1928?
A. Yes.
Q. Were you the Mayor during 1929?

Mr. Carr: I object to this as immaterial.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: Sure, I was.

By the Prosecutor:

Q. Who was Clerk of the Water Department during that year?
A. Allan W. Redfield ——

Mr. Carr: I make the same objection.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

By the Prosecutor:

Q. Were you Mayor of Gloucester City during the year 1930, down to the present time?

A. Yes.

Q. Who was Clerk of the Water Department during the early part of the year 1930?

Mr. Carr: I object.

The Court: When Mr. Carr objects, please don't answer the question. Wait until he finishes, and then the Court will rule upon his objection. This objection is overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: Allan W. Redfield.

By the Prosecutor:

Q. How long did Mr. Allan W. Redfield hold that office during 1930?

A. Why, up to the time of this here investigation occurred in the papers.

Q. Do you know that there was an investigation?

Mr. Carr: I object to that as immaterial and irrelevant.

The Witness: Yes.

By the Prosecutor:

Q. I am trying to fix the time ——

A. I cannot give you the exact date.

Q. Was there an investigation?

Mr. Carr: I object to that as immaterial and irrelevant. He is trying to prove the time.

The Court: He is trying to fix it by that, as I understand it.

Mr. Carr: That is not right, to bring in an investigation as an attempt to fix the time.

The Court: It may be necessary, and it may not; I don't know. You may have an exception.

The Witness: Sure.

By the Prosecutor:

Q. Up until the time of that investigation, was Mr. Redfield Clerk of the Water Department?

A. He was, yes.

Q. Who made that investigation?

Mr. Carr: I object, if your Honor please. Now, we are going far afield.

The Court: We have already allowed some evidence to get in here of an audit having been made. I assume, now, that this will be followed up by the investigation, itself.

The Prosecutor: I want to see which investigation the Mayor is talking about. He may not mean the same one we are talking about.

Mr. Carr: The investigation has no place, here.

It was brought in here as an attempt by this man to fix a time.

The Prosecutor: I won't press it; it is not important.

By the Prosecutor:

Q. Now, Mayor, as Clerk of the Water Department during the year 1927, will you tell the Court and jury what the duties of the clerk of this department were during that year?

Mr. Carr: I certainly object to this. He is giving his construction of the legal duties of the Water Clerk. Presumably they were established by an ordinance or resolution of Council. For this man to attempt to give his idea of what the legal duties were of the Clerk, is highly improper.

(Argument and informal discussion here ensued, off the record.)

Mr. Carr: May I see whether they were established by some preceding ordinance?

The Court: I have no objection to your making that inquiry.

By Mr. Carr:

Q. Was there an ordinance establishing the Water Department?

A. Yes.

Q. And authorizing the employment of a Clerk?

A. Of a Clerk of the Water Department, who collected the debts due the city.

Q. Pardon me; I don't want that. There was an ordinance passed by Council prior to Mr. Redfield being elected Clerk?

A. Yes.

Q. That established a Water Committee authorizing the employment of an engineer and Clerk?

A. Yes.

Q. And there, his duties are defined?

A. Yes.

Q. Not at such point subsequent to Mr. Redfield being appointed Clerk; that is, at some time prior to January 1, 1919, this ordinance was passed, was it not?

A. Oh, sure; there have been several clerks.

Mr. Carr: I object. The testimony is that since that time, one or two years, certain records are missing; but the office was created many years ago, and the City Ordinance should speak for itself.

The Court: Do you know that ordinance?

The Prosecutor: I should like to ask him a question.

By the Prosecutor:

Q. Mayor, were you familiar with the conduct of the Water Department of the City of Gloucester City during 1927?

A. Well, I knew ——

Mr. Carr: Answer "yes" or "no."

The Witness: It was the duty of the City Clerk —the Clerk of the Water Department to collect ——

Mr. Carr: I ask that that be stricken out. The question was, is he familiar. Answer that "yes" or "no."

The Court: I think he can answer "yes" or "no."

The Witness: Well, no, no; it is specified ——

The Prosecutor: You have answered.

The Witness: I specified before that, what he had to do.

Mr. Carr: I object to any volunteered statements by this witness, and ask that that be stricken out, and that he be directed to answer questions only.

The Court: Answer questions, only.

By the Prosecutor:

Q. Did Gloucester City have a Water Department in the year 1927, to your knowledge?
A. Yes.
Q. Who was Clerk of it?
A. Allan Redfield.

Mr. Carr: You have already covered that.

By the Prosecutor:

Q. Were you observant, in your duties around the City Hall, during the year 1927, of the conduct of that Water Department office?

Mr. Carr: I object to that as immaterial.

The Witness: No, I can't say I was.

The Court: He says he was not.

By the Prosecutor:

Q. Who, during the year 1927, to your knowledge, collected the water rents of the City of Gloucester City?

A. Allan W. Redfield ——

Mr. Carr: That is objected to.

The Court: Objection overruled.

(Exception noted for defendant, by direction of the Court.)

The Court: Do not answer so quickly. I admonished you several times to wait until Mr. Carr has finished making his objection before answering any question.

By the Prosecutor:

Q. Who sent out bills during the years 1926 and

1927, for water accounts owing to the City of Gloucester City?

Mr. Carr: I object, unless he knows of his own knowledge.

The Court: That is quite proper.

By Mr. Carr:

Q. Do you know who sent out the bills?
A. I know I received bills ——

Mr. Carr: I ask that that be stricken out.

By Mr. Carr:

Q. I asked you whether you knew, of your own knowledge, who sent out the water bills, generally; I mean to the people at large?
A. Allan W. Redfield, the Clerk.

Mr. Carr: I ask that that be stricken out. My question was, do you know of your own knowledge?

The Witness: I know I received them.

Mr. Carr: I ask that that be stricken out.

The Prosecutor: I think that that is responsive.

The Court: I think it is all right, go ahead.

By Mr. Carr:

Q. I asked you, of your own knowledge, who sent out the 3500 or more water bills of Gloucester City?

A. Oh, well, I don't know who sent out all of them.

Q. As a matter of fact, you didn't see them sent out, did you?

A. No.

Q. You don't know, of your own knowledge, who did send them out?

A. I knew I received them.

Q. Answer "yes" or "no."

A. I know I received the bills.

Mr. Carr: I ask that that be stricken out.

By Mr. Carr:

Q. What I want to get at, Mr. Mayor, is, while a large number of bills would go out, perhaps 3500, to the various house holders or people in Gloucester

---

A. Yes.

Q. Somebody would have to make them out and send them out; isn't that right? You didn't see those 3500 bills sent out?

A. No.

Q. You didn't see who made them out, and you didn't see who mailed them, did you; am I right?

A. That is right.

By the Prosecutor:

Q. Mayor, you have testified that Allan W. Red-

field was the person who collected the water rents of the City of Gloucester during 1927. Was he paid during that year for that service?

A. Sure.

Q. What was his compensation?

A. He got $300 a year for it.

Q. During the year 1928, did he get that same amount?

A. Yes.

Q. During the year 1929, did he get that same amount?

A. Yes.

Q. During the year 1930, down to the time that you spoke of, did he get the same rate of pay?

A. I should judge he did, yes.

The Prosecutor: You may cross-examine.

Cross-examination.

By Mr. Carr:

Q. You say that Allan W. Redfield collected the water rents?

A. Yes.

The Court: I am sorry, but I don't think the Mayor's answer by nodding his head, was caught by the stenographer. Don't nod your head; just say "yes," or answer the question loud enough for the stenographer to hear you.

The Witness: Yes.

By Mr. Carr:

Q. Do you have any other functions excepting Mayor down there?

A. No, sir.

Q. As Mayor, you have a number of duties to perform, have you not?

A. Well, they are not very excessive.

Q. You don't work at the job, do you?

A. I am not working on the job at present anyway, because I have been in bad health.

Q. When you say that Mr. Redfield collects the moneys, you didn't see him collect all the water rents?

A. No.

Q. And, personally, you could not identify a single account where you had seen him paid?

A. Except my own.

Q. So that out of possibly 3500 water accounts, the only one you have known Mr. Redfield to collect, was yours, am I right?

A. Yes.

Mr. Carr: That is all.

HARRIS C. POWELL, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?
A. Gloucester City.
Q. Do you hold any official position there?
A. Yes.
Q. What?
A. City Treasurer.
Q. How long have you been City Treasurer?
A. Since May, 1911.
Q. Continuously down to the present time?
A. Yes, sir.
Q. Are there any revenues coming into your hands as City Treasurer, from the Water Department of the City of Gloucester City?

Mr. Carr: I object, unless the time is specified. I object to it as incompetent, irrelevant and immaterial.

The Court: Proceed, now.

By the Prosecutor:

Q. I will ask you, specifically, Mr. Powell, whether for the years 1926 and 1927, water revenues of the City of Gloucester City came into your custody?
A. Yes, sir.

Q. As City Treasurer?

A. As City Treasurer.

Q. From whom did you receive them?

A. Mr. Redfield.

Q. Allan W. Redfield?

A. Yes, sir.

Q. In what manner did Allan W. Redfield pay these moneys to you?

A. By check.

Q. How were the checks signed?

A. Well, now, I can't recall positively whether as Water Clerk or personal check. I rather think it was as Water Clerk; I am not positive, though.

Q. On what bank were those checks drawn?

A. Gloucester City Trust Company.

Q. How frequently would you receive, during those years, water revenues from Mr. Redfield?

A. Some years four times; some years five times; some years, six times; as high as eight.

Q. Anywhere from four to eight times a year?

A. Yes.

Q. Do you know how many times during the years 1926 and 1927 you received such revenues from him?

Mr. Carr: I object, if your Honor please. The checks, themselves, would be the best evidence. It is too much to ask a man to depend upon his memory. When we are charged with specific things, namely, for embezzling a certain sum of money, at certain times, I think it is very important that the checks be produced.

The Court: I suppose the witness will have to refer to something, anyhow, to answer that question.

By Mr. Carr:

Q. What is this piece of paper you have, Mr. Powell?

A. These are figures taken from the ledger book, showing receipts ——

The Court: You better have the ledger.

By the Prosecutor:

Q. Mr. Powell, at the end of a given calendar year, was there a financial—a final settlement between you and Mr. Redfield, as Clerk of the Water Department?

The Court: What year?

The Prosecutor: First, the year 1926?

Mr. Carr: I object again. The books themselves should be produced rather than to require him to rely on his memory.

The Court: I think he might know that of his own knowledge. It would appear to be a fact that one might be able to remember better than a lot of we lawyers.

Mr. Carr: Well, I object to any reference to any memorandum, at this time.

The Court: I think that is well taken.

The Witness: I received checks during the year.

Mr. Carr: Your Honor will allow me an exception?

(Exception noted for defendant, by direction of the Court.)

The Witness: Whether they were final receipts, I could not say. Sometimes I received checks in December.

By the Prosecutor:

Q. Well, as City Treasurer of the City of Gloucester City, were you familiar with the audits made annually by the New Jersey Audit Company?

A. Yes.

Q. When those audits were made, were the accounts of the Water Department audited?

A. Yes.

Q. Was the audit of the Water Department reflected in the Auditor's report?

A. Yes.

Q. And do these auditor's reports show a final settlement or accounting between the Water Department Office of which Mr. Redfield was the Clerk?

A. They show the amount of deficit outstanding.

Q. Was there any period when the audit would begin, and the audit would end, any calendar period?

A. Yes.

Q. What was that period?

A. From the first of January to December 31.

Q. So that each year, when the audit was made, it was made from January first of that year to December 31st of the same year?

A. Yes.

Q. Was there such an audit made for 1926?

A. Yes.

Q. 1927?

A. Yes.

Q. 1928?

A. Yes.

Q. 1929?

A. No.

Q. Was not an audit for 1929 made?

A. Not made by the New Jersey Audit Company.

Q. Has there been an audit made down to and including December 31, 1929?

A. The State Department have audited them for 1929.

Q. Now, you spoke of conditions existing at the end of a calendar year, in terms of a deficit. Do you know, of your own knowledge, whether there were deficits for any particular calendar years during the time I have mentioned?

Mr. Carr: If this is intended to refer to the audits, I think the audits speak for themselves. The word "deficit" is very ambiguous. It might be deficits in the Water Department by reason of delinquent water payers, or ——

The Court: I think there is some merit to that objection.

At this time, we will adjourn until tomorrow morning, ten o'clock.

This is the first criminal case—the first kind of any case you have had, this panel of jurors; and, I want to take this opportunity to admonish you not to discuss this or any other case in which you are sitting as jurors, nor allow any one else to discuss a case with you during its continuation, and until final disposition of it. So, be very circumspect about that; allow no one to approach you directly or indirectly, in this one.

(Adjourned until Tuesday, October 21, 1930, at ten o'clock A. M.)

Tuesday, October 21, 1930.
10:00 o'clock A. M.

TRIAL RESUMED.

PRESENT: Parties as before noted.

HARRIS C. POWELL, recalled.

Direct examination (resumed).

By the Prosecutor:

Q. I think the last question asked you yesterday was objected to. I will withdraw it. I now ask you whether you, as City Treasurer, have anything to do with the payment of salaries to the Municipal employes of Gloucester City?

A. I do. The warrants are drawn by the City Clerk and signed by the President of Council, or Mayor. Then, they come to me, and I enter them on the cash book and sign them.

Q. You sign the checks as well?

A. I sign the checks as well.

Q. During the years 1926 and 1927, did Allan W. Redfield receive any compensation from the City of Gloucester City?

Mr. Carr: I object to that as immaterial.

The Court: I think it is material, provided the compensation is tied up with this alleged employment.

The Prosecutor: I propose to do that.

Mr. Carr: Exception.

The Witness: Yes.

By the Prosecutor:

Q. What compensation, during those years, did Allan W. Redfield receive ——

Mr. Carr: I object to that.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: $300.00 a year.

By the Prosecutor:

Q. For what service did he receive that $300 a year?

Mr. Carr: Same objection.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: Water Clerk.

By the Prosecutor:

Q. Did he continue to receive that same compensation for the year 1927?

Mr. Carr: Same objection.

The Court: Same ruling.

(Exception noted for defendant, by direction of the Court.)

The Witness: He did.

By the Prosecutor:

Q. Down to what time?

Mr. Carr: Same objection.

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

The Court: Until he requested to be relieved for a period.

By the Prosecutor:

Q. When was that?
A. I think in August.
Q. Of this year?
A. Of this year.
Q. Was that compensation paid to him, of $300, continuous during the years 1926, 1927, 1928 and 1929, down to the time in 1930 which you have mentioned?

Mr. Carr: Same objection.

The Court: Same ruling.

(Exception noted for defendant, by direction of the Court.)

The Witness: I believe it is.

By the Prosecutor:

Q. Will you let me know the dates on which you received any water revenues from Allan W. Redfield, Water Clerk, during the years 1926, 1927, 1928, 1929 and 1930, down to the time you have mentioned?

Mr. Carr: May I see what books those are? What books are you referring to, Mr. Treasurer?

The Witness: These are the Treasurer's records.

Mr. Carr: What do you call the book you are looking at, now?

The Witness: This is just the ledger.

Mr. Carr: In what book do you first post your entries, assuming this to be the ledger?

The Witness: In the cash book.

Mr. Carr: This ledger is not a book of original entry?

The Witness: We take the records from the cash book.

Mr. Carr: And post them into the ledger?

The Witness: Post them into the ledger.

Mr. Carr: Who makes the entries in the cash book?

The Witness: My assistant.

Mr. Carr: Who makes the entries in the ledger?

The Witness: My assistant.

Mr. Carr: I object to the use of the ledger. The cash book is the book of original entry. This is simply a transfer.

The Court: I think it is well taken.

The Prosecutor: I won't press it. That is all.

Mr. Carr: No cross-examination.

ERNEST M. RITCHIE, called.

Direct examination (resumed).

By the Prosecutor:

Q. Have you, over night, secured at my request the Ordinance Records of the City of Gloucester City, so far as you have been able to find them?

A. I have.

Q. Do you have the Ordinance Book?

A. I do.

Q. Is one of those books which you have on the desk, there, the Ordinance Book?

A. Yes, sir.

Q. Is there, in Gloucester City, to your knowledge, an ordinance creating a Water Department?

Mr. Carr: I object. This gentleman has only been employed in this department for a few months. The question is whether at any time there was any ordinance. Obviously, he cannot tell except as the books he refers to, may disclose.

The Court: You will have to testify from the records; do the records disclose an ordinance?

The Witness: Yes, sir.

By the Prosecutor:

Q. What record do you have that there is in Gloucester City an ordinance creating a Water Department?

A. An amendment to an ordinance passed November 27, 1912.

Q. That amended ordinance that you refer to, does it speak of a prior ordinance which it seeks to amend?

A. It does.

Q. What year is referred to as the date of the original ordinance, in the amended ordinance?

A. May 7, 1891.

Q. Do you have in your custody any records of an ordinance of the City of Gloucester City, for the year 1891?

A. No, sir.

Q. Did you make a search for that?

A. I did.

Q. So that you are unable to produce the original ordinance of 1891?

A. Yes.

Q Will you tell me, please, what provisions are made by the ordinance of 1912 amending the original ordinance which you did find in your books or records; what is the nature of the amendment?

Mr Carr: Suppose he reads it in.

The Witness: An ordinance entitled: "An ordinance to amend an ordinance entitled, An Ordinance to Regulate and Control the Water Works of Glou-

cester City. The water rents and collection thereof; passed May 7, 1891, which amendment was passed December 27, 1906.

First, be it ordained by the Mayor and Common Council of Gloucester City that Section 4 of the Ordinance of which this is an amendment, shall be amended to read as follows:

Section (4) And, be it ordained that after the organization of Common Council on January 1, A. D. 1913, and every third year thereafter, there shall be appointed by said Common Council a Chief Engineer, an Assistant Engineer and a Clerk of said department who shall hold their offices, respectively, for the term of three years, and until their successors shall qualify.

The Engineer shall receive an annual salary of $1200; the Assistant Engineer shall receive an annual salary of $900, and the Clerk shall receive an annual salary of $300; all payable in equal monthly payments out of the moneys appropriated for the payment of salaries of the several employes of the Water Department.

Passed November 27, 1912; approved December 5, 1912. (Signed) Charles F. West, City Clerk; G. William Barnard, President of Council; Robert A. Lincoln, Mayor.''

Q. That amending ordinance of 1912 refers to—is amending a prior ordinance of 1906, which amended an 1891 ordinance; is that correct?

A. That is correct.

Q. Have you located the amending ordinance of 1906?

A. I have.

Q. That is among your records?

A. Yes, sir.

Q. What was the nature of that amendment; will you read that, please?

Mr. Carr: Pardon me, just a minute.

The Witness: (Reading.) "An ordinance to amend an ordinance entitled, 'An Ordinance to regulate and control the water works of Gloucester City, the water rents, and collection thereof; passed May 7, 1891.

First, be it ordained by the Mayor and Common Council of Gloucester City, that Section 4 of the ordinance entitled, An ordinance to regulate and control the water works of Gloucester City, the renewals and collections thereof; passed May 7, A. D. 1891, be and the same is hereby amended so as to read as follows:

Section (4). And be it ordained that after the organization of Common Council, on January 1, A. D. 1907, and every third year thereafter, there shall be appointed by said Council a Chief Engineer, an Assistant Engineer and a Clerk of said department, who shall hold their offices, respectively, for a term of three years, and until their successors shall qualify. The Chief Engineer shall receive an annual salary of $1,000; the Assistant Engineer shall receive an annual salary of $800, and the Clerk shall receive an annual salary of $300; all payable in equal monthly payments out of the moneys for the payment of salaries of the several employes of the Water Department.

(2) And, be it ordained that this ordinance shall

take effect immediately. Passed by Common Council December 27, 1906; approved December 28, 1906. Attested: George W. Wynkott, City Clerk; G. William Barnard, President of Council; John H. Boylan, Mayor.

LOUIS L. TOWNSEND, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?

A. 5832 Brush Road, Philadelphia.

Q. Are you connected with the Air Reduction Sales Company?

A. Yes.

Q. In what capacity?

A. Chief Clerk.

Q. As such Chief Clerk, will you describe your duties, please?

A. To sign checks paying for all expenses incurred in the Philadelphia district, and to manage the entire personnel.

Q. Does your company have a plant in the Philadelphia district located at Broadway & Jersey Avenue, in Gloucester?

A. 560 Broadway, Gloucester, we call it.

Q. Is that within your jurisdiction?

A. Yes, sir.

Q. Do you make payment of expenses for that particular plant?

A. Yes, sir.

Q. Do you have custody of the various checks of the company by which you are employed?

A. Yes, sir.

Q. Will you produce a check, please, that was given to the Gloucester City Water Department, toward the end of 1926 or the early part of 1927?

A. (Witness produces check.)

Q. I show you this check, No. 8111, of the Air Reduction Sales Company, drawn on the Central National Bank of Philadelphia, dated November 22, 1926, to the order of the City of Gloucester, Bureau of Water, in the amount of $1146.24, and I ask you if you can identify that check?

Mr. Carr: Can he identify the signatures, first?

The Witness: This is the Assistant District Manager.

By Mr. Carr:

Q. What is his name?

A. J. H. Maugle; this is Sadie Friedman.

By the Prosecutor:

Q. Did you hold the same position you have described in November of 1926?

A. Yes. This gentleman had the authority to sign checks when I was not there.

Mr. Carr: Mr. Maugle?

The Witness: Yes, sir.

By the Prosecutor:

Q. I ask you, now, where Mr. Maugle is?
A. He is dead.
Q. I ask you what Sadie Friedman did?
A. She is in Philadelphia.
Q. Do you have any knowledge as to what this check was issued by your company for?
A. To pay the water rent at the Gloucester plant.
Q. Did your company receive a bill for water rent in that amount?
A. Yes, sir.
Q. Did you order the payment of that bill?
A. Yes, sir.
Q. Is this the check which your company issued in payment of that bill?
A. Yes, sir.
Q. Did this check come back to you after you had caused it to be issued?
A. Yes, sir.
Q. I call your attention to this rubber stamp on the back which reads: "For Deposit Only to the account of Gloucester City Water Department," and ask you if that endorsement was on the check when it came back to your company?
A. Yes, sir.

The Prosecutor: I offer this check in evidence.

Mr. Carr: These words in the left-hand margin,

"Water consumed," etc., were placed on the check in your office?

The Witness: Yes.

Mr. Carr: I have no objection to the offer, except that I think the jury should be instructed that those words in the left-hand margin are to be disregarded so far as the defendant is concerned.

The check shows the payment of money, but the notation there is evidently intended for the convenience of the Air Reduction Company in keeping their accounts.

The Prosecutor: I certainly object to that instruction to the jury. It is well known commercial practice at this time that when checks are forwarded by an industrial concern, such as this, they do bear a statement of what the check is in payment of. Therefore, an endorsement will be an acknowledgment that the money is received in payment of this particular thing.

The Court: I see no objection to the receipt of this. Whatever it shows, now, I understand it did not contain when it was issued. These notations, or figures, were not put on by the defendant?

The Witness: No, sir.

The Court: I will admit it.

Mr. Carr: My objection is this, that as to the words appearing in the left-hand margin of the

check under the caption "Payment of bills," "Water consumed, 4-12 to 11-10-26, inclusive, amount $1146.24," the jury should be instructed that they are not binding in any way on the defendant, the check being intended to evidence only the payment of money to the City of Gloucester, Bureau of Water. That, I understand, you overrule?

The Court: Yes.

Mr. Carr: Your Honor will grant me an exception?

(Exception noted for defendant, by direction of the Court.)

(Said check marked Exhibit S1.)

By the Prosecutor:

Q. Did you make a search, at my request, for the original bill received from the City of Gloucester City for the payment of which this check was issued?

A. Yes, sir.

Q. Were you able to locate it?

A. No, sir.

Q. Will you explain the practice of your company with respect to the payment of bills and obtaining of receipts?

Mr. Carr: I object, if your Honor please. That practice certainly is not binding on this defendant; it is immaterial and irrelevant. There is one thing

in here, they paid a certain amount of money; but, as to what their practice is in other matters is immaterial here, and not binding on the defendant.

(Argument, and discussion here ensued, off the record.)

The Court: Overruled.

(Exception noted for defendant, by direction of the Court.)

The Witness: When we get bills for expenses such as this, they are attached to the papers; draft is drawn on another bank to replenish our funds in the local bank account. They are kept by the Accounts Payable Department, in our office.

By the Prosecutor:

Q. And are the bills mailed back to the person with whom you are doing business at the time you send them a check in payment?

A. Not unless there is a voucher supplied by the vendor. Then, the voucher is returned with the check, for their information, so that they can apply it to their ledgers properly.

Q. Is it your custom to ask for receipts from the persons with whom you are doing business?

Mr. Carr: I object to that on the same ground.

The Court: I will permit that question.

(Exception noted for defendant, by direction of the Court.)

The Witness: Yes, except the cancelled check is a receipt.

Mr. Carr: I object; that is not responsive; and, I ask that it be stricken out.

The Court: Strike it out.

By the Prosecutor:

Q. Answer the question I asked you.

A. No.

Q. What effort did you make, Mr. Townsend, at my request, to try to locate the particular bill that you received from the Gloucester City in payment of which this check was issued?

A. I wrote to our department that places these bills away, and they came back and told me ——

Mr. Carr: I object to what they told him.

By the Prosecutor:

Q. As a result of that, Mr. Townsend, did you obtain it?

A. No, sir.

The Prosecutor: You may cross-examine.

Cross-examination.

By Mr. Carr:

Q. When did you write?
A. A week ago.
Q. I beg pardon?
A. I don't know what the exact date was; I imagine about a week ago.
Q. As I understand your system, then, after the bill has been paid and the check comes back, you send to some central or general office of your company the receipted bill practically as a voucher for the amount that you have expended; is that right?
A. Not a receipted bill. The bill is not receipted; just the bill itself.
Q. You obtain a receipted bill at some time, do you not?
A. No, sir; we don't ask for it.
Q. You mean, you never had a receipted bill from the City of Gloucester ——
A. No, sir; we accept the cancelled check.
Q. Then, you never had a receipted bill from the City of Gloucester for this account?
A. No, sir.
Q. This check has been paid, has it not?
A. Yes, sir.
Q. The full amount of $1146.24 has been paid by your company?
A. Yes.
Q. And paid to the City of Gloucester ——
A. Yes, sir.
Q. Paid out of the account of the Air Reduction

Company of the Central National Bank of Philadelphia?

A. Yes, sir.

Q. The effect of the check being to transfer $1146.24 to the City of Gloucester, Bureau of Water; is that right?

A. Yes, sir.

Q. And in the making of that payment you did not come in contact with the defendant in any way?

A. No, sir.

Q. The City of Gloucester City has been paid that entire bill, $1146.24?

A. Yes, sir.

Mr. Carr: That is all.

Raymond B. Wright, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. You reside in the City of Gloucester City?

A. Yes, sir.

Q. Are you familiar with the Gloucester City Trust Company?

A. Yes.

Q. In what capacity?

A. At the present time as note teller, general ledger bookkeeper.

Q. Were you with the Gloucester City Trust Company in the fall and winter of 1926?

A. Yes, sir.

Q. What were your duties, then?

A. Practically the same, except that at certain times I helped the teller in his work.

Q. Have you been continuously in the employ of the Gloucester City Trust Company since November, of 1926?

A. Yes.

Q. Are you familiar with the records of the Gloucester City Trust Company by reason of the employment you mentioned?

A. Yes, sir.

Q. Do you have in your custody deposit tickets of the Gloucester City Water Department for the month of December, 1926?

A. Yes.

Q. I will ask you to produce a deposit ticket of, approximately, December 10, 1926, in that account?

A. It was actually deposited on the 17th, but the deposit slip may have been made up a day or two ahead of time.

Mr. Carr: The deposit was made on December 17th—actually made on December 17, 1926?

The Witness: Yes. I have the card here if you want to verify that.

Mr. Carr: You mean, the ledger card?

The Witness: Yes.

Mr. Carr: Does the ledger card verify the fact that this deposit was made on December 17th and not on December 10th?

The Witness: Yes.

The Prosecutor: I offer this deposit ticket in evidence.

(Deposit ticket last above offered in evidence marked Exhibit S2.)

By the Prosecutor:

Q. Does this deposit ticket include a check drawn on the Central Bank of Philadelphia for $1146.24?

A. Well, I could not say "yes" or "no" to that because the memorandum says "Philadelphia, Pennsylvania." I could not swear that it was a check on the Central National Bank.

Q. Was there a check deposited, in that account, on the Philadelphia Bank for $1146.24?

A. Yes.

Q. What was the total amount of that deposit?

A. $2,725.04.

Q. Was there any cash deposited at that time?

A. No.

Q. You have the deposit which immediately preceded this deposit?

Mr. Carr: I object to that, if your Honor please. We are not concerned with any deposit which might precede this. We are charged with embezzling the

moneys that came from this particular source. Certainly, he could not have embezzled anything until he got it.

The Prosecutor: I think we are concerned, if your Honor please. We can show, I think, circumstances from which the jury may draw the inference that about this time there was no cash deposited by the Gloucester City Water Department in this bank account both before or after this particular time. I think that that is a circumstance we are entitled to go into.

Mr. Carr: It would make no difference, only this, that we are indicted for a specific offense here, and

---

The Court: Mr. Baldwin, perhaps it might be well to produce that, if at all, on rebuttal.

The Prosecutor: Yes. If Mr. Carr objects to it, I see no reason to press it.

Mr. Carr: I do object to it.

By the Prosecutor:

Q. Mr. Wright, you do have in your custody here, today, the other deposit tickets of the Gloucester City Water Department, do you not?

A. Yes.

Q. From what time down to what date?

A. January 1, 1925, to the present time.

Q. Have you also the ledger account of the Gloucester City Water Department during that time?

A. Yes, sir.

Q. Who was the person to draw checks against that account on your bank during the period January 1, 1925, down to the time you have mentioned?

A. Well, to my knowledge, I would say, Mr. Redfield.

Q. What is the title of the account?

A. Gloucester City Water Works.

Q. When checks would come in against that account, would they be signed by Mr. Redfield?

Mr. Carr: I object to that as leading. I doubt whether this gentleman knows.

The Prosecutor: I understood this gentleman to testify that he worked as teller, in the bank.

By the Prosecutor:

Q. As such teller, do you have any checks—knowledge of checks coming in against this bank account, or as such general ledger bookkeeper?

A. From my own knowledge I would say "yes."

Q. By whom were those checks signed that came to your knowledge?

A. Mr. Redfield.

Q. In what capacity?

A. As clerk.

Q. Did the check indicate that he was signing it as clerk?

A. Yes.

Q. I ask you to produce the record of the ledger account with the Gloucester City Water Works from January 1, 1925, down to date.

Mr. Carr: I object to the use of the ledger account. Did you keep this ledger account?

The Witness: No.

Mr. Carr: This ledger account showed a summary of transactions from other sources, did it not?

The Witness: Yes, from the individual bookkeeper.

Mr. Carr: Then, the ledger is based on the work of the individual bookkeeper?

The Witness: Yes, sir.

Mr. Carr: You were not the individual bookkeeper?

The Witness: No.

Mr. Carr: Nor did you keep this ledger?

The Witness: No.

Mr. Carr: I object.

The Prosecutor: We are not asking this witness as to the preparation of the ledger account. He is one of the officials of the bank. He testified that he

is familiar with those records, and he testified what that familiarity arose from. I think he is fully competent to produce here in court, today, a group of sheets, and to say that these are the ledger sheets our bank has with the Gloucester City Water Department.

Mr. Carr: It is not binding on us at all, if your Honor please. The rule whereby books of account are admitted in evidence is a well known exception to the hearsay evidence rule. It applies only in the Civil Courts, and only where the subject-matter is the sale of merchandise, and only where it is the book of original entry, testified to by the party who made the entries. So, on all these grounds, it is not admissible, in my judgment, and I object to the offer.

By the Prosecutor:

Q. Were those entries made by any one person?

A. No. I would say that we have had at least five or six different men working on these books.

Q. Are they all still with your bank?

A. No.

Q. Where are they?

A. I could not tell you that.

Q. Are the sheets which you hold in your hand, the original sheets in your custody as an official of the bank, the original sheets referring to the account with the Gloucester City Water Department?

A. These are the original sheets; yes, sir.

The Prosecutor: I think they are admissible.

Mr. Carr: That violates the rule, as to the right to cross-examine. I cannot cross-examine this gentleman on these. He does not know. I could cross-examine the men who made the entries if they were here.

The Court: I think I should admit these records, as the records of the bank.

Mr. Carr: Unless they are used against us, it doesn't make any difference.

The Court: They are introduced as records of the bank, made by several people, many of whom have since left the employ of the bank, and are not subject to subpoena; is that right?

The Prosecutor: As far as we know.

Mr. Carr: You will allow me an exception?

(Exception noted for defendant, by direction of the Court.)

The Prosecutor: I will offer these in evidence.

By the Prosecutor:

Q. Which period do these (indicating) cover?
A. 1925.
Q. These all go down as far as November, 1926?
A. September 16, 1926.

The Prosecutor: I offer the rest, and ask that they be marked.

(Sheets last above offered in evidence marked Exhibit S3.)

By the Prosecutor:

Q. Did you, at my request yesterday morning, compare the contents of these ledger sheets with some of the similar ledger sheets held by Mr. Dorset, the gentleman at the table there?

Mr. Carr: That is objected to. It is irrelevant, whether he compared those with something else that Mr. Dorset had. I don't even know what Mr. Dorset did.

The Prosecutor: It is merely laying the foundation at this time for an analysis of the bank account, made by an expert witness, Mr. Dorset.

Mr. Carr: Well, here are the records, and there is Mr. Dorset.

The Court: I think Mr. Dorset is the man.

The Prosecutor: I just wanted to have two witnesses instead of one, to show that there was a comparison. Mr. Dorset will be able to say, of course. You may cross-examine.

Cross-examination.

By Mr. Carr:

Q. Mr. Wright, Exhibit S2, being two deposit slips fastened there together, dated in ink "12-10-26," with a lead pencil notation "17" at the top—the first sheet appears to be totalled $2,750.04; is that right?

A. $2,725.04.

Q. The second sheet does not appear to be totalled?

A. No.

Q. And, when you gave the figures $2725.04 as the total of the deposits, you failed to include the 12 or 15 deposits on the second sheet?

A. This is not the first sheet.

Q. Oh, the $2725.04 is the total of the two sheets?

A. Yes, total of the two sheets.

Q. The check, Exhibit S1 which I now show you, bears an endorsement of a rubber stamp: "For Deposit Only to the Account of Gloucester City Water Department," does it not?

A. Yes, sir.

Q. Then, it bears the stamp of the Gloucester City Trust Company, of Gloucester City, N. J., dated December 17, 1926, does it not?

A. Yes.

Q. Does this indicate that the amount of the check was paid by the Air Reduction Sales Company to the City of Gloucester, Bureau of Water, and deposited in that account of your bank?

A. It does.

Q. So that the City of Gloucester, Water Depart-

ment, received the entire sum of $1146.24 by a deposit in your bank, in that name; is that true?

A. Yes.

Q. Now, could any moneys be withdrawn from that account except by a check made by the Water Department, and to the order of the City Treasurer?

A. Well, I would say "no" to the first question, but I could not answer the question as to who it would be payable to.

Q. At any rate, it could only be withdrawn by check?

A. Yes.

Q. Signed by the proper person, or proper official; isn't that true?

A. Yes, sir.

Q. Do you know, as a matter of fact, that all of the moneys withdrawn from that account were payable to the City of Gloucester, either to the City Treasurer or to the City itself?

A. I could not say "yes" to that.

Q. Were all that you saw drawn in that way, to wit, to the order of the City of Gloucester?

A. Of my knowledge, no, sir.

Q. You never saw any drawn any other way?

A. No, apparently not.

Q. Do you wish to qualify that answer at all?

A. Well, to my knowledge, I have never seen it otherwise.

Q. You saw a number of the checks?

A. I did, yes.

Q. All you did see were drawn to the order of the City of Gloucester, checked out of this account?

A. Well, I believe I saw—I could not say "yes" to that question.

Q. As to those checks you did see drawn against this account?

A. To my knowledge, all checks I did see were payable to the City of Gloucester—were payable to the City Treasurer of Gloucester City.

Mr. Carr: That is all.

By the Prosecutor:

Q. Will you tell me, please, what payments were made out of that account during the period covered by these ledger sheets, by date and amounts?

Mr. Carr: Do you know to whom they were paid?

The Witness: Not to whom paid.

Mr. Carr: Then, I object. It is no evidence at all unless we show to whom they are paid. This young man says every check he saw was paid to the City of Gloucester, but he didn't see them all.

(Lengthy argument here ensued, off the record.)

The Court: I will allow the question.

Mr. Carr: Your Honor will grant me an exception?

(Exception noted for defendant, by direction of the Court.)

The Witness:

January 3, 1927	$9,500.00
April 1, 1927	2,500.00
August 3, 1927	14,000.00
August 14, 1927	11,500.00
November 18, 1927	1,000.00
November 18, 1927	1,500.00
January 4, 1928	4,100.00
July 6, 1928	17,000.00
July 17, 1928	6,500.00
September 17, 1928	3,000.00
January 5, 1929	2,300.00
July 9, 1929	15,000.00
September 7, 1929	6,000.00
October 2, 1929	6,000.00
November 15, 1929	1,200.00
December 3, 1929	1,600.00
January 11, 1930	3,200.00
January 11, 1930	58.75

By the Prosecutor:

Q. Were there any withdrawals made during the year 1926?

A. No, not after December 17th.

Q. When did that particular account open, the sheet which you have in your hand?

A. The first entry was made—it was transferred from this old bookkeeping method to the new bookkeeping method, November 30, 1926.

Q. Subsequent to that transfer, what was the first withdrawal made from the account?

A. January 3, 1927.

Cross-examination.

By Mr. Carr:

Q. Is there anything in this record, Exhibit S2, to indicate to whom the withdrawal payments were made?

A. No.

Q. They simply show a sum of money, without showing who got it; isn't that true?

A. Yes, sir.

Q. And, in some of those cases where you did see the checks, the payee was the Treasurer of the City of Gloucester?

A. Yes, sir.

Q. You know of no other payee, or person, who got money out of this account except the Treasurer of Gloucester City?

A. As far as I know.

Ellen Mailly, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?

A. 610 Powell Street, Gloucester.

Q. I ask when you were married, so that your name became Mailly?

A. April 28, 1920.

Q. During the year 1926 or 1927, did you have any employment with the Gloucester City Water Office?

A. Not at the office. I did some extra work at my home.

Q. Where?

A. My home.

Q. Who had you to work at your home?

A. Mr. Redfield.

Q. Were you paid for that work?

A. Yes.

Q. By whom?

A. Mr. Redfield.

Q. What kind of work did you do?

A. I copied from one book to another book, and made the bills out for that year.

Q. Do you know what I mean by "posting," a bookkeeping term—did you do any posting in the main office?

A. Oh, no.

Q. What did you do?

A. Copied the names, the street numbers and names from one book to another.

Q. I show you a book ——

The Court: Can the last juror hear this witness?

The Juror: Not so good.

The Court: You will have to speak louder.

By the Prosecutor:

Q. I show you a book, and ask you if this page is in your handwriting?
A. No; that is not my handwriting.

The Prosecutor: That is all.

DOROTHY L. KAVANAGH, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?
A. Gloucester.
Q. Were you at any time employed in the Gloucester City Water Department?
A. I was in 1929.
Q. When?
A. 1929.
Q. Not before that time?
A. No.
Q. Where did you do your work?
A. At home.
Q. Who had you do it?
A. Mr. Redfield.
Q. Were you paid for it?
A. No.
Q. You did not receive any pay?
A. No.

Q. I show you a book, and ask you if this page of writing is in your handwriting?

A. It is, yes.

Q. Did you write this amount, on the middle line of this page, "January 20, Air Reduction Sales Corporation, $146.24," and $146.24 under the column "total" and under the column "Water Rent?"

A. Yes, I did.

Q. How did you come to write those amounts in, Miss Kavanagh?

A. I believe I wrote them from stubs.

Q. If I were to show you the particular stub from which you made that posting, would you be able to identify it?

A. I am not sure.

The Prosecutor: I offer this in evidence.

Mr. Carr: What is that record?

The Prosecutor: I judge it is the cash book, from the period January 1, 1927.

Mr. Carr: I object to it, except as to the one entry made by this young lady.

The Prosecutor: That is all we want on it.

The Court: He is only offering it for that.

Mr. Carr: For the one entry?

The Prosecutor: That is right.

Mr. Carr: I have no objection to that particular line being marked as an exhibit.

(Paper last above offered in evidence marked Exhibit S4.)

By the Prosecutor:

Q. I show you a pink sheet of paper, No. 88, made out to the Air Reduction Sales Corporation, South Broadway, in the amount of $146.24, and I ask you if that is the stub from which you made that posting?

A. I don't remember whether it is or not.

Q. Does it look like it?

Mr. Carr: I object to that leading question.

The Court: I don't think that it is harmful. I will allow it, and grant you an exception.

The Witness: I think it is.

By the Prosecutor:

Q. Did you make postings from stubs such as that, into the book of account?

A. I think I did.

Q. Can you say whether or not, if you put $146.24 in the book, the same amount was on the stub from which you posted?

Mr. Carr: I object; that is argumentative.

The Court: I don't think that it is.

The Prosecutor: I will reframe it.

The Court: Reframe it.

By the Prosecutor:

Q. You say you made this posting of $146.24 from the stub?

A. Yes.

Q. Was the same amount, $146.24 on that stub?

A. I don't remember that.

The Court: Why did you put it down, then, that is the question; where did you get the information, and why did you put that amount there?

The Witness: I know I got it directly from the stub.

By the Prosecutor:

Q. You say you have this stub from which you made that posting?

A. I am not sure, but I think it was a loose stub.

Q. Are you sure that it was a loose stub?

Mr. Carr: I object to that as being a leading question.

The Court: It is just the other way. Answer the question.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

The Witness: I think it was.

By the Prosecutor:

Q. Who supplied you with the stub?
A. Mr. Redfield.
Q. Does this particular piece of pink paper have anything on it that you identify as your own marking?
A. No, I don't see anything.
Q. When you were posting from the stub into the book, did you make a check—tick-mark, or anything like that on the stub from which you posted?
A. No.
Q. You did not do that?
A. No.
Q. Did you put any mark on the stub?
A. No.
Q. Where did you get the stubs from which you did your posting?
A. Mr. Redfield gave me them.
Q. Did you post the stubs in the same condition as you received them from Mr. Redfield?

Mr. Carr: That is objected to as leading.

The Court: I think I will allow the question.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

The Witness: Yes.

By the Prosecutor:

Q. Did you receive from Mr. Redfield the particular stub from which you made this entry of $146.24?

Mr. Carr: That is objected to as leading.

The Court: Did you, or did you not?

The Witness: I did.

The Court: You did?

The Witness: Yes, received that.

The Prosecutor: I offer this particular stub in evidence, because the witness said she thought it was the stub.

Mr. Carr: I want to cross-examine her on that before you offer it. She seems to be very uncertain.

The Court: I will allow you to cross-examine her.

Cross-examination.

By Mr. Carr:

Q. Miss Kavanagh, you were handed a large number of stubs for posting in the cash book?

A. Yes.

Q. These moneys were paid largely in the month

of June, generally speaking, were they not, down there?

A. Yes, sir.

Q. Several thousand payments?

A. Yes, sir.

Q. Were you able to post as soon as the payments were made?

A. No.

Q. Why not?

A. Oh, because there was a lot of work to do. It piled up a little bit.

Q. How long would it be, a matter of a week or weeks before you could get your posting in the cash book done?

A. I should say a week or two.

Q. During this time, several hundred stubs would accumulate?

A. Yes.

Q. The stubs would come in there in large numbers during the month of June?

A. Yes.

Q. The fact was you did not have time to post during that rush period; is not that right?

A. Yes.

Q. So that when you got down to post, you had before you hundreds of these stubs; is not that right?

A. Yes.

Q. Not simply one, but hundreds of them; is not that right?

A. Yes.

Q. At this time, you cannot remember what was on these stubs, can you?

A. No.

Q. Except that you tried to post them accurately; is not that true?

A. That is true, yes.

Q. When you speak of stubs, you mean the perforated stub that accompanies the bill?

A. Yes.

Q. That is torn off, detached from the bill at the time that payment is made?

A. Yes.

Q. The stubs are not in this form?

A. No, they are not.

Q. Not in that form at all?

A. No.

Q. Your recollection is that you posted that entry from the stub and not from this pink copy of the bill; is that right?

A. Yes.

Q. So, your best recollection is that you did not post from this pink bill, 88, but that you did post from the stub?

A. Yes, sir.

Mr. Carr: I object to the book at this time.

The Court: I think the objection is well taken. I won't admit the book in evidence.

The Prosecutor: May I pursue this a little further?

The Court: Yes.

By the Prosecutor:

Q. When you speak of stubs from which you did

some posting, do you recall any stubs of that nature, loose stubs, that you posted, which had to do with industrial concerns in the City of Gloucester?

Mr. Carr: That is objected to as immaterial and irrelevant.

The Prosecutor: I am asking whether it was that type of stub she posted industrial accounts from.

The Court: I will allow it.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

The Witness: I remember it was a stub from the same kind of a bill that was on the others.

By the Prosecutor:

Q. When you posted an industrial account, one of the manufacturing companies in Gloucester, did you have the same kind of stubs as you had for householders' accounts?

A. Yes.

Q. Did you ever do any posting from records such as this? (Indicating.)

A. No.

Q. In whose handwriting were the stubs from which you posted?

A. They are typewritten.

The Prosecutor: That is all.

Mr. Carr: That is all.

NORMAN D. DORSETT, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?
A. My post office address is Trenton.

Mr. Carr: Where do you live, not your post office address?

By the Prosecutor:

Q. Where do you live?
A. The street address?
Q. Yes.
A. 64 Crescent Avenue.

Mr. Carr: Where?

The Witness: Trenton.

By the Prosecutor:

Q. By whom are you employed?
A. The State of New Jersey.

Q. In what capacity?

A. Auditor of the Department of Municipal Accounts.

Q. Does that department have any connection with the office of Prosecutor of Pleas of Camden, New Jersey?

A. Only to make certain reports, at night times.

Q. I mean, are you attached to the office of the Prosecutor, in any way?

A. None.

Q. Did you at any time—did you recently make an audit of the Water Records, and revenues of the City of Gloucester City?

A. I did.

Q. When was that?

A. It was started in 1929 and finished in 1930.

Q. Over what period of time did you audit?

A. I audited 1925, and investigated the years back of that, including all known records in the office.

Q. Under whose direction did you make that audit?

Mr. Carr: I object to that.

The Court: I will allow it.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

By the Prosecutor:

Q. Under whose direction did you make that audit and investigation?

A. The Commissioner of Municipal Accounts.

Q. What is his name?

A. Walter R. Darby.

Q. Is he your superior, in authority?

A. Yes.

Q. When you audited and investigated the records of the Gloucester City Water Department, with whom did you take the matters up?

A. With Allan W. Redfield.

Q. In the course of your audit, did you have a conversation with Mr. Redfield?

A. I did.

Q. How long have you been an auditor?

A. In this present proposition?

Q. In your whole experience?

A. About 12 years.

Q. How long have you been associated with the Department of Municipal Accounts?

A. Nine and a half years.

Q. What was your professional training for the duties of auditor?

A. Rider School, at Trenton, and Pace School, at New York City.

Q. During the past twelve years, have you audited municipal accounts?

A. For the last nine and a half, exclusively.

Q. In other words, for the last nine and a half years you have not done anything but auditing municipal accounts?

A. That is all.

Q. In the course of your conversations with Mr. Allan W. Redfield, and in the course of your audit and investigation, did this particular book come to your attention?

A. It did.

Q. In what way?

A. It was given to me by Mr. Redfield as his record of metered concerns, in the City of Gloucester.

Q. What explanation, if any, did he make about the contents of that book?

A. That it was a record of the bills and charges made by the City of Gloucester Water Department to the industrial concerns of the City.

Q. Was this particular pink sheet, No. 88, in the book at the time he turned it over to you?

A. It was.

Q. And did he make any comments to you about that particular page?

A. Not about that particular page, no.

Q. Did he explain in any way about the practice under which that book was used; that is, what the pink sheets in it represented?

A. That it was a duplicate copy of the bill sent to the industrial concerns.

Q. Did he explain anything about the original bill?

A. I don't quite understand—don't quite get your question.

Q. Did any of the original bills appear in that book, or anything he told you?

A. Yes, they are copies of the original bills; that is, copies on the forms which they were starting to use as bills and not completed.

Q. Did he explain that to you?

A. That they were voided, for reasons.

Q. Will you turn to one of the original bills that he described to you?

A. I believe that (indicating) to be one.

Q. That is No. 109?

A. Yes.

Q. That is on blue paper?

A. Yes.

Q. Underneath it, is a pink paper, and that is 109?

A. Yes.

Q. Can you say whether or not the pink paper, underneath the blue paper, is a carbon copy of the blue paper?

Mr. Carr: I object. It has nothing to do with this bill here. It is some other bill, for some reason voided.

The Prosecutor: I won't press it.

By the Prosecutor:

Q. Now, Mr. Dorsett, did this particular invoice —I believe you called it No. 88—come to your attention in the course of your audit and investigation?

A. It did.

Q. Did this entry on page 2 of this book, for $146.24, come to your attention?

A. It did.

Q. From the time that these two things came to your attention, this pink slip, and this entry in the book, will you describe the course of your investigation—the course which you pursued from that time forward, relative to that item?

Mr. Carr: I certainly object to the course of this

investigation. That would not be any evidence at all. He may testify as to specific things that he did or knows of.

The Court: He will have to do that.

By the Prosecutor:

Q. When this book, and this entry, came to your attention, what did you do?

Mr. Carr: I object to that. I don't care what this man did. Here are books and records. An accountant is not an expert except that he calls attention to specific things. He has a perfect right to call attention to any entries, call attention to physical facts in this case, but certainly not to his course of investigation, what he did, or what his conclusions are.

The Court: Well, he had to do something, to testify; and that is what the Prosecutor wants.

Mr. Carr: He makes an examination of the books.

The Court: I will permit the question to be answered.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

The Witness: I had made the audit up myself, the transcript of these pink sheets, all of them ——

Mr. Carr: I object to that, if your Honor please. I don't care what transcripts he made. There is only one question here, whether we embezzled certain moneys.

10

The Court: That is the only question, and sometimes that is hard to prove.

Mr. Carr: I know this, that it will be hard to prove here.

The Prosecutor: Not so very.

The Court: Go ahead.

20

The Witness: They were then sent to the persons, corporations rather, that they applied to, and asked for a confirmation.

Mr. Carr: I object to that. I knew where this would lead us to. It represents 30 or 40 letters, and 30 or 40 letters written back.

The Court: I am sorry, Mr. Carr.

30

(Informal discussion here ensued, off the record.)

The Court: Perhaps we better take it step by step.

The Prosecutor: All right, sir.

By the Prosecutor:

Q. Mr. Dorsett, in the course of your audit and investigation, did you analyze the books of account?

Mr. Carr: I object as to whether he did or not. I think we are entitled to have him point out anything he found.

The Court: But he has to analyze them to point them out, I assume, unless he is a very clever man. The objection is overruled.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

The Witness: I did.

By the Prosecutor:

Q. Did you examine the books at the time?
A. I did.
Q. Did you audit the books at the time?
A. I did.
Q. Where did you get the books from?
A. Through Mr. Redfield.
Q. Did he give them to you?
A. He showed me where they were; at least, handed them to me the first time. After that, I sometimes got them myself from the vault.
Q. Did he hand you this book?
A. Originally, yes.
Q. Is this one of the books which you audited?

A. Yes.

Q. Will you produce any other books which you audited, which would include the period from November, 1926, down to the present time?

A. This book here forms part of it.

Q. Can you tell us what this book is, in which Miss Kavanagh entered numbers here?

A. This is the cash book covering the period from January 1, 1927, to December 31, 1928.

Q. In other words, that covers the period of two years?

A. Yes.

Q. Will you identify that book, so far as you know it?

A. This book is a carbon copy of bills rendered to industrial concerns in the City of Gloucester.

Mr. Carr: I object to the characterization, "industrial concerns."

The Court: I don't think it is improper. It is allowed. You might, however, develop what he means, "industrial concerns."

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

The Witness: I can name it by any other name he wishes.

By the Prosecutor:

Q. How did Mr. Redfield describe it to you?

A. As the record of all metered consumption.

The Court: Did they have metered consumption in the houses at that time?

The Witness: Not at that time.

The Prosecutor: I offer this book in evidence as a book turned over to Mr. Dorsett by Mr. Redfield, with the explanation that it was a record of the metered consumption.

(Book last above offered in evidence marked Exhibit S5.)

By the Prosecutor:

Q. Did you audit and examine any cash book subsequent to December 31, 1928?

A. I did.

Q. Will you produce those?

A. (Witness produces a book.)

Q. What is that book?

A. A cash book, beginning January 1, 1925, and going down to July 7, 1930.

Q. Was that book turned over to you by Mr. Redfield?

A. It was.

Q. How did he explain this book to you?

A. I asked him for his cash book for that period, and it was turned over to me as the cash book for that period.

Mr. Carr: I object to it as having no bearing whatever on this case.

The Court: This indicates the cash received, I

take it, from January 1, 1929, long subsequent to the period charged here?

Mr. Carr: Yes, indicates the cash received.

The Witness: Yes.

The Court: That is no reason why it should not be admitted, because it shows other matters ——

Mr. Carr: It shows no matter relative to this issue; it began on January 1, 1929.

(Informal discussion here ensued, off the record.)

The Court: I will admit it.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

(Said book marked Exhibit S6.)

Mr. Carr: I notice a number of figures here in red pencil.

The Witness: Yes.

Mr. Carr: Were they made by you?

The Witness: Yes, sir.

Mr. Carr: They appear on numerous pages?

The Witness: Yes.

Mr. Carr: It is to be understood that the entries made in lead pencil, by the auditor, are not evidential of anything; is that correct?

The Prosecutor: That is correct.

By the Prosecutor:

Q. Did you audit those cash books, Mr. Dorsett?
A. I did.
Q. Did you analyze the bank account of the Gloucester City Water Department?
A. I did.
Q. Did you obtain from the Gloucester City Water Department any material from which to conduct that examination of yours?
A. I did.
Q. Have you seen, at any time, the original records of the bank account which is now in evidence, and marked Exhibit S3?
A. There is only one here with any notation as to an exhibit. I saw both of these sheets. (Indicating.)
Q. These together constitute the exhibit, is that what you mean?
A. Yes, only one is marked as being an exhibit.
Q. When did you see those sheets marked in evidence?
A. The last time I saw them before they appeared here in the court-room was yesterday morning.
Q. Did you personally compare with those, the records from which you conducted your examination?

A. I did.

Q. Were they the same?

A. They were.

Q. From the records from which you made your analysis of the bank account, can you explain to the Court, and to the jury, how the analysis of the bank account was brought into relation with the contents of these cash books?

Mr. Carr: I object to all that.

(Argument and discussion here ensued, off the record.)

The Prosecutor: I will ask another question.

By the Prosecutor:

Q. Did you conduct your audit, and investigation, in a manner best suited to the audit profession?

Mr. Carr: I object to that as calling for a conclusion.

The Prosecutor: He is an expert witness.

The Court: It might be hard to prove, but ——

The Prosecutor: I will withdraw the question.

Mr. Carr: I object to that.

By the Prosecutor:

Q. I will ask you this, Mr. Dorsett, did you take these cash books, the first of which bears the item "$146.24," on page 2, Exhibit 4—did you take all of the contents of that book, and then did you take all of the contents of the cash book, Exhibit S6, which followed it, and audit this account?

A. I did.

Q. How far down did that bring you, to what period of time?

A. In part, it stopped on June 11th.

Q. What year?

A. 1930.

Q. Did you have a continuous audit of the contents of those books, from the time of the item of $146.24, down to June, 1930?

A. Yes.

Q. Did you, during a corresponding period, analyze the bank account?

A. I did.

Q. From the records you have described?

A. I did.

Q. Did you break that period of time up into component periods of time?

Mr. Carr: Objected to as immaterial and irrelevant; we can't even understand the question.

The Court: I will permit it.

Mr. Carr: Your Honor will allow me an exception?

The Court: Exception allowed.

The Witness: I did.

By the Prosecutor:

Q. What component periods of time?

Mr. Carr: I make the same objection.

The Court: Same ruling.

(Exception noted for defendant, by direction of the Court.)

The Witness: The calendar years.

By the Prosecutor:

Q. This item of $146.24, appearing under date of January 20, 1927, formed a part of what component period?

A. The calendar year 1927. May I revise that, Your Honor?

Mr. Carr: No; you have answered the question.

The Court: If he wants to add something to his answer to the question, that may be proper, we will allow it, having ruled on it.

The Witness: I said "the calendar years." It is true that it was in the calendar years, but in addition to that, it is by months.

By the Prosecutor:

Q. So that you took each month's collections, and each month's cash account deposits ——

A. I did.

Q. Did you compare them with each other?

A. I compared as to the calendar year, the total of deposits and total receipts shown by the cash book.

Q. Will you describe to the Court, and to the jury, the total amount of cash receipts shown in these records for the month of January, 1927?

A. Is that to be from my analysis?

Q. From the records, as you analyzed them.

Mr. Carr: I would rather he refer to the record. I don't care about this thing he has here. The record is the best evidence. If he is going to tell what that shows for January, I want him to refer to the book, not to his memorandum.

By the Prosecutor:

Q. What is that paper you have in your hand?

A. This is an analysis of the cash books and the deposits made into the bank account of the Water Department of Gloucester City.

Q. Did you make it yourself?

A. I did.

Q. From the records?

A. I did.

Q. Is it true and correct?

A. It is.

Mr. Carr: I object to its use. He may, for convenient reference to these books, use the memorandum where he cannot recall—where he canont recollect; but, he cannot testify from that memorandum what these books show. He may take the books themselves and show it, but he cannot show it from a particular piece of paper.

The Court: If that were true, we would have to sit down and wait for him to subtract and multiply everything. If he is an expert, and comes in and says he made an analysis of these books, and the result shows thus and so, I think it is all right.

The Witness: That is what I have done.

The Court: Go ahead.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

By the Prosecutor:

Q. Read the total of cash receipts, as shown by these books, as you found them for the months of 1927?

A.

January	$824.30
February	466.65
February	722.90
April	124.50
May	2,066.00
June	25,212.40
July	897.38

August	600.32
September	1,246.66
October	618.63
November	408.75
December	1,397.19

Q. What are the total receipts for the year 1927, as shown by the cash book?

A. $34,585.68, exclusive of bank interest.

Mr. Carr: My objection goes to this entire line of examination. I don't want to be constantly interrupting.

The Court: All right.

By the Prosecutor:

Q. In what month of 1927 did you find the cash receipt item of $146.24, which has been marked Exhibit S4?

A. The month of January, 1927.

Q. Did you examine the books prior to the year 1927?

A. I did.

Q. Are those books here?

A. Yes, sir.

Q. Do any books prior to 1927, down to November 10, 1926, show any record of money received from the Air Reduction Sales Corporation?

A. They show moneys in payment of other charges.

Q. Between the first of November and end of December?

A. It shows it for other, prior charges.

Q. Does it show it during the months of November, or December, 1926?

A. No.

Q. Does the cash book for 1926, which you have examined, show any moneys received from the Air Reduction Sales Corporation, during November or December, 1926?

A. No.

Q. What total, for the year 1927, did you find deposited in the bank account?

Mr. Carr: I would like the benefit of an exception.

The Court: You have it.

The Witness: The total deposits in the calendar year 1927 was $33,314.01, excluding the bank interest items.

Q. Did the cash receipts and bank deposits equal each other?

A. No.

Q. Which was the greater?

A. For the figures that I have given, the receipts are greater.

Q. By how much?

A. A trifle over $1,300.

Q. Did you make a corresponding analysis of the cash books and bank account for the calendar year 1928?

A. I did.

Q. What was the total amount of cash receipts for the year 1928?

Mr. Carr: Same objection.

The Court: Same ruling.

Mr. Carr: Your Honor will allow me an exception?

The Court: Exception allowed.

The Witness: 1928, $28,633.08, exclusive of bank interest.

Q. Total deposits?

A. $28,857.84, exclusive of bank interest.

Q. For that year, did the cash receipts and bank deposits equal each other?

A. No.

Q. Which was the greater?

A. The deposits were slightly greater.

Q. By how much?

A. $224.76.

Q. Did you make a corresponding examination of the cash books—cash receipts and bank deposits for 1929?

A. Yes.

Mr. Carr: I make the same objection.

The Court: Overruled.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

The Witness: Yes.

By the Prosecutor:

Q. What were the cash receipts as shown by the books?

A. $32,595.49.

Q. And the bank deposits during the same period were what?

A. $32,159.79.

Q. Which was the greater?

A. Receipts.

Q. By how much?

A. Approximately, $430.

Q. Did you make a corresponding analysis during the portion of 1930 which you audited?

A. Yes, sir.

Mr. Carr: I make the same objection.

The Court: Same ruling.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

By the Prosecutor:

Q. How much were the receipts, as shown by the books?

A. $4,243.09.

Q. And the bank deposits?

A. $5,889.69.

Q. Which was the greater?

A. Deposits.

Q. By how much?

A. $1,700.

Q. Now, in your examination of the cash books, from the first of November, 1926, let us say, down to date, did you find any credit of $1,000 to the Air Reduction Sales Corporation?

A. No, sir.

Q. Did you find any other credits to the Air Reduction Sales Corporation, in addition to the $146.24?

A. In payment of other charges, yes.

Q. Did you examine to see that they were in payment of other charges?

A. I did.

Q. Assuming that the Air Reduction Sales Corporation made a payment of $1,146.24, and assuming that at the time of this entry, Exhibit S4, there was posted into the cash book of the City of Gloucester City, only $146.24, have you, in the course of your audit of the cash records of this Water Department, found any record of the other $1,000 being placed to the credit of the cash revenues of that department?

Mr. Carr: I object to that, because there is a record here of these moneys going into this account. There is a record there (indicating) of $1,100 going into the Treasury. We are not charged with being bad bookkeepers.

The Court: He may answer.

Mr. Carr: You will allow me an exception?

The Court: Yes.

The Witness: I have not.

By the Prosecutor:

Q. In the cash books, anywhere?

A. No.

Q. Was there any explanation made to you by Mr. Redfield concerning the deposits, as cash receipts, for the year 1930 whereby the cash deposits exceeded the cash receipts, as shown on the books?

A. Yes.

Q. What was that explanation?

A. That the first deposit of January 1, 1930, applied to the calendar year of 1929.

Q. How much was that first deposit?

A. $1,744.55.

Q. In the course of your examination, did you find any other instances where moneys deposited in the early part of one year were applicable to the revenues of the preceding year?

A. Yes.

Q. Did Mr. Redfield say so?

A. Yes.

Q. Did you analyze the cash receipts and bank deposits any further back than the year 1927?

A. Yes.

Q. How much further back?

Mr. Carr: I object to that. It certainly is irrelevant.

The Court: It might or might not be relevant. I will permit it.

Mr. Carr: Exception?

The Court: Exception.

The Witness: To the beginning of January, 1925.

By the Prosecutor:

Q. What, in that period, was the total amount of cash receipts as shown by the cash books?

Mr. Carr: I certainly object to that.

(Argument and discussion here ensued, off the record.)

The Court: I shall permit it.

Mr. Carr: You will allow me an exception?

The Court: Exception allowed.

The Witness: Beginning and ending?

By the Prosecutor:

Q. Beginning and ending?
A. To when?
Q. Down to the time that you mentioned, in 1930?
A. The total receipts for the period covered from January 1, 1925, to and including June 11, 1930, is $187,133.85.
Q. And the cash deposits during that period?
A. $186,930.73.

Q. Which is the greater?

A. The receipts.

Q. By how much?

A. $203.12.

Q. Assuming the Air Reduction Sales Corporation made a payment to the City of Gloucester City of $1146.24, and further assuming that that payment was posted into the books of account of the Water Department as $146.24, and also assuming that no other record of the extra $1,000 appears at the present time in the cash book records of the Water Department, I ask you what the effect would be upon the difference between cash receipts and bank deposits if that payment had been properly posted as $1,146.24?

Mr. Carr: I certainly object to that. This gentleman is asked, now, to usurp the functions of the jury. He has reached a point, here, where, as the result of five years of auditing, there is a difference of only $203.12, in the five-year period. It is claimed that $1,100 was embezzled ——

The Prosecutor: $1,000.

Mr. Carr: I should say, $1,000. This is an attempt, by a process of deduction, if he answered this question, to tell the jury that he is able to state that the City of Gloucester did not get this other $1,000 we are charged with having embezzled, because, if it had been entered in the books, there would have been $1,000 more with which we would have been generally chargeable.

(Argument and discussion here ensued, off the record.)

Mr. Carr: My objection is, that he is now usurping the functions of the jury.

The Court: I don't think so. He is asked to give his conclusion from an examination that he has made, and he lays the basis for that conclusion by an explanation of the auditing, etc., he did. From that, he draws his conclusion. He is an auditor, and has a right to form his conclusion. I will allow the question.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception.

The Witness: The difference, as I gave you in those figures, would have been $1,203.12.

By the Prosecutor:

Q. Now, Mr. Dorsett, I show you a book which has been marked in evidence as Exhibit S6, and ask you if you can point to any page in that book which you found to be in Mr. Allan Redfield's handwriting?

A. Page 168.

Q. Did you see him write it?

A. I did.

Q. Did he write everything which appears upon that page?

A. He did.

Q. Did he make the tick marks?
A. This is his writing.
Q. Who made the red figures?
A. They are my checks.
Q. How about the pencil figures?
A. Mine.
Q. How about the blue ink?
A. That is his.
Q. All of it?
A. All of it.

The Prosecutor: You may cross-examine.

Cross-examination.

By Mr. Carr:

Q. I think you said that in 1925 the receipts exceeded the bank deposits, did you not?
A. No.
Q. Did not you say that? You say you did not say that?
A. I misunderstood your question, sir; I did.
Q. That was by reason of the fact that the deposits for the following year comes in and overlaps; is that right?
A. Yes.
Q. That is true in each year?
A. Yes.
Q. That is, moneys taken in in December, some of them are necessarily deposited after the first of the year?
A. That often occurs.
Q. It would naturally occur?

A. In most cases, yes.

Q. That, generally speaking, accounts for this difference?

A. In this case, you mean?

Q. Yes, as you have your figures here?

A. Except for the last sheet covering the year 1930.

Q. And, as a result of all of your auditing, you discovered on the books a difference of $203.12 covering the period from January 1, 1925, to June 11, 1930; is that right?

A. That is the difference between the receipts and the deposits, as shown by the cash-books.

Q. That covers a five-year period, does it not?

A. It covers that period named, from January 1, 1925, to June 11, 1930.

Q. A little more than five years, to be accurate?

A. Yes.

Q. How long were you down there making this audit, and investigating?

A. I was not there continuously, sir. I started in October, 1929.

Q. How many of you were working on the job?

A. As many as three besides myself.

The Court: All four men started in October, 1929?

The Witness: Yes.

By Mr. Carr:

Q. Some of you were there, working all the time?

A. No, sir.

Q. Give me an idea as to how much of the period of time was covered, three-fourths of it, do you think?

A. No; I think that is high.

Q. All right; half of the period, then?

A. Oh, yes.

Q. Three or four men?

A. Not all of that time was there three or four men, sir.

Q. Always more than one, however?

A. Not always, no.

Q. Most of the time?

A. Yes, sir.

Q. Why was it you chose a five-year period?

A. Why did I choose a five-year period?

Q. Yes.

A. Because of the Statute of Limitations.

Q. That is what I thought. That is to say, you were looking for a period within which you might land this man in jail if you found anything wrong?

The Prosecutor: I object to that.

The Court: I think he can answer that question.

The Prosecutor: It is highly improper in its present form, and is not proper cross-examination of this witness.

The Witness: The reason I made that analysis in a period of five years, is the answer I gave.

Mr. Carr: Will you read the question, Mr. Stenographer?

(Question repeated, as follows:

"Q. That is to say, you were looking for a period within which you might land this man in jail if you found anything wrong?")

The Witness: No.

By Mr. Carr:

Q. Then, if you were simply anxious to get the right figures, why didn't you go back further than five years?

A. I did.

Q. How much further back did you go?

A. As far as the records were available.

Q. How far back was that?

A. 1924; beginning with June 1, 1924.

Q. You mean, there never was any record of what the receipts were, beginning the year 1924?

A. Receipts, but no ledgers prior to June 1, 1924.

Q. Cash books?

A. There was one cash book that goes back farther than June 1, 1924.

Q. Then, is it your answer that it is not a coincidence that you chose the period of Statute of Limitations for this audit?

A. I did not choose that. I thought you had reference to that analysis I had made.

Q. Your analysis states—deals only with the period of Statute of Limitations?

A. Yes; and that is my answer.

Q. The purpose of your analysis, of course, is, if possible, as you believe this man guilty, to put him

in jail; isn't that so; wasn't that the purpose of your whole analysis?

A. To determine the truth, by certain actions.

Q. Now, may I ask whether you have made, or whether your Department has taken the trouble to submit the results of this audit to the City Council of Gloucester?

A. The audit, sir?

Q. The audit, report, investigation, or whatever you choose to call it?

A. That part of it is not finished yet, sir.

Q. Prior to the making of these charges, did you or anybody in your department, make any report to the City Council of Gloucester, that you found irregularities?

The Prosecutor: I object; there has been no time fixed for the making of these charges. I think the question infers that Mr. Dorsett makes the charges, which is not the case.

Mr. Carr: What I want to bring out is whether or not this gentleman or these gentlemen, believe that there were irregularities there, and whether they did the usual and normal thing, of reporting those facts to the City of Gloucester, which was most vitally concerned; and, if they did not, why they didn't.

The Prosecutor: I further object because it is immaterial.

The Court: I think it is immaterial; I don't think it is necessary.

By Mr. Carr:

Q. Did you, or any one to your knowledge, in your department, make any request or demand upon Mr. Redfield to pay this sum of $1,000 referred to, into the City Treasury?

The Prosecutor: I object. Demand is not an essential in the crime of embezzlement.

Mr. Carr: It is one of them.

The Court: Sustained. I don't think it is necessary; the Court does not agree with you. You may have an exception.

By Mr. Carr:

Q. Now, regardless of any bookkeeping whatever, does not this check, Exhibit S1, show that the City of Gloucester received in its Treasury the sum of $1,146.24?

A. It shows that the Bureau of Water received it.

Q. A department of the City of Gloucester?

A. A department of the City of Gloucester.

The Court: It is now half-past twelve. We will adjourn until one-thirty.

October 21, 1930.
1.30 O'clock P. M.

TRIAL RESUMED.

PRESENT: Parties as before noted.

NORMAN D. DORSETT, recalled.

Cross-examination (resumed).

By Mr. Carr:

Q. Now, Mr. Dorsett, in your audit and examination of these accounts, and of the records of the bank, did you not find, as a matter of fact, that all of the moneys that went into the Water Department account, and that were checked out, were paid to the account of the City of Gloucester, or its City Treasurer?

A. All checks drawn against that bank account, as exhibited there by that sheet, (indicating) went to the credit of the City of Gloucester, except for one check that went out against the account, for $11.00, on account of the bad check included in a prior deposit.

Q. So that, with the exception of this bad check transaction amounting to $11.00, every dollar that

was checked out of the Water Department account, was checked into the account of the City of Gloucester; is not that true?

A. That is true.

Q. And, therefore, you found no checks against that account drawn to the order of Mr. Redfield, did you?

A. No.

Q. And when this check of $1,146.24 was deposited to the account of the Water Department—Exhibit S1—there was no way by which it could be obtained out of that account, or any part of it, except by a check drawn against the account; is not that true?

A. A check drawn against that account would relieve the account of that amount of money.

Q. You have not quite answered the question.

A. Well, there was a way, but it was not exercised.

Q. As these accounts were handled—not as they might have been handled—there was no way that a dollar deposited in the account of the Water Department, could be obtained out of that account except by a check drawn against it?

A. That is true.

Q. Is not that true?

A. Yes; it would take a check, drawn against it.

Q. You did not find any check drawn against this account, to the order of Mr. Redfield, for $1,000, did you?

A. No, sir.

Q. So that, assuming that this check for $1,146.24—Exhibit S1—was deposited to the account of the Water Department, no part of that check could be withdrawn except by a check drawn to the order of the City of Gloucester, could it?

A. I don't think the question is well stated, simply because it could have been drawn against it.

Q. I would like you to bear in mind the statement—I mean to say the system, as you found it, and not as it might have been?

A. Then, the question should be framed that way.

Q. All right, sir, I will reframe the question. According to the system pursued during these five years of your audit and investigation, were there any moneys drawn out of the Water Department account, except by checks drawn to the City of Gloucester, eliminating the $11.00 transaction?

A. There were not.

Q. So that of the $187,133.55 of receipts during the period from January 1, 1925 to June 11, 1930, every dollar of receipts was placed in the bank except $203.12, so far as the books disclose; is not that right?

A. That is true.

Q. And out of the $186,930.73 deposited by Mr. Redfield in that period of time, Mr. Redfield paid to the City of Gloucester, the same sum of money, to wit, $186,930.73; is not that correct?

A. I cannot say as to the figure for the turn-over of 1930. He made a final turn-over, I understand.

Q. Pardon me; I am looking at your schedule "G"?

A. Yes, sir.

Q. Which, as I understand it, represents your analysis of the receipts of this department from January 1, 1925 to June 11, 1930; it does represent that, does it not?

A. Yes, sir.

Q. It also represents the bank deposits in the same period of time?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. So that there was deposited in the bank by Mr. Redfield, $186,930.73; that is correct?

A. That is, total deposits.

Q. And the same amount of money, covering the same period of time, to wit, $186,930.73, was checked out of that account by Mr. Redfield, to the order of the City of Gloucester; isn't that true?

A. I cannot answer that question, sir. The final turnover by Mr. Redfield was not made during the time when I could find it out.

Q. I am speaking about this typewritten schedule "G," and I am asking you whether you can tell me, up to the period it is closed, to wit, June 11, 1930, Mr. Redfield had not turned over to the City of Gloucester, out of this special account, and into this general account (indicating), the sum of $186,930.73?

A. He had not.

Q. He had not?

A. No, sir.

Q. Then, there was a balance in the bank, as of June 11, 1930?

A. There was a balance there, yes, because he had not turned over the collections.

Q. You don't show that in your account?

A. It has nothing to do with the analysis.

Q. So far as your analysis went, you show bank deposits of $186,930.73, up to a definite date?

A. Yes, sir.

Q. Now, having made this careful analysis, I sup-

pose you know whether that money was checked out of that account and into the account of the City of Gloucester, do you not?

A. I know, except ——

Q. Pardon me. Tell me whether you know or do not know?

The Court: I think he is trying to answer the question, Mr. Carr.

Mr. Carr: I think he can say "yes" or "no."

The Court: Answer the question, if you can. If you cannot answer it directly, you can qualify it.

The Witness: I will qualify it to the extent that I cannot say that the final transfer closing that account in the bank—the bank account was closed, but I can't say that that transfer was actually made to the City of Gloucester. I can say that all checks charged against that account from January 1, 1925 to June 11, 1930, except for the $11.00 item, of the deposit memorandum in the bank, was paid to the City of Gloucester.

By Mr. Carr:

Q. Then, do not we come back to the same point, that there having been deposited by Mr. Redfield in the Water Department account, the sum that I have named, to wit, $186,930.73, you find by the records that Mr. Redfield paid to the City of Gloucester, by check drawn against this account, the sum of $186,-930.73, except the $11.00 check transaction?

A. No, I do not, sir.

Q. Well, let's get at it differently. Did Mr. Redfield pay anything back to the City of Gloucester out of this $186,930.73—did he pay anything out of this?

A. Yes, he did, surely.

Q. How much did he pay?

A. How much did he pay?

Q. Yes, how much did he pay; you analyzed his figures?

A. I haven't that analysis with me, sir. I will admit that the checks charged against that account were paid to the City of Gloucester. You have that bank account here. All you need to do is to find the balance.

Q. Please don't make a speech. I am looking at your schedule "G", which shows, as I have stated, that there was deposited, including a balance existing on January 1, 1925, to the account of Mr. Redfield, as Clerk of the City of Gloucester Water Department, the sum of $186,930.73; does it not?

A. That is the deposits for the period.

Q. Now, you say, do you not, that every dollar deposited during that period was checked out by Mr. Redfield to the order of the Treasurer of the City of Gloucester?

A. I say that ——

Q. Tell me "yes" or "no" on that?

A. I can only say I don't know.

Q. That is, after these years of auditing, you don't know whether the money was paid over or not, and you don't know how much; is that right?

A. Well, because ——

Q. As you sit here, now, testifying, you don't know

how much money Mr. Redfield paid over to the City of Gloucester?

A. I cannot give you the dollars and cents of the total transfer, no.

Q. But you do say, however, that every dollar he deposited in that bank was turned over by him to the Treasurer of the City of Gloucester, do you not?

A. No, I don't say that.

The Prosecutor: It is perfectly clear, your Honor ——

The Witness: If you let me, I will try to explain it to you, sir.

By Mr. Carr:

Q. Did Mr. Redfield turn over any money to the City of Gloucester?

A. Yes.

Q. Our minds do not seem to meet. Do I understand you to say that every time that he had deposited in this bank account, this special account had been checked out by him to the order of the City of Gloucester, eliminating the $11.00 transaction?

A. No, I didn't say that.

Q. You didn't say that?

A. No.

Q. Yes, you did. However, you do recognize the amount of deposits there, without my reading them?

A. Oh, yes.

Q. You haven't any idea as to how much of these deposits he turned over to the City of Gloucester City?

A. I can give my estimation, if you want that, sir.

Q. You didn't think that we were interested in knowing whether Gloucester City got the money or not?

A. I have told you, sir, that all checks drawn against that account prior to June 11, 1930, were paid to the City of Gloucester, except the $11.00 charge.

Q. And, that $11.00 charge was the "making-good" of a bad check, of a customer's bad check?

A. Yes.

Q. Not Mr. Redfield's personal check?

A. No.

Q. You did not complete your audit to the extent of putting on paper and bringing here in court the amount that Mr. Redfield had paid over to the City of Gloucester, did you?

A. I haven't that with me, no.

Q. So that, sitting here at this moment, you cannot state how much Mr. Redfield paid over to the City of Gloucester, or that every check drawn was drawn to the order of the City of Gloucester, elimnating the $11.00 item?

A. I can tell you.

Q. You can tell me?

A. Yes.

Q. Have you any records here, or figures that show it?

A. No, but I can give you the information.

Q. Why didn't you put that down on paper?

A. Well, I could not anticipate what you wanted, sir.

Q. In other words, coming here to testify in this matter, against Mr. Redfield, who is charged with

embezzlement, you didn't consider it important to be able to testify definitely as to what moneys Mr. Redfield paid to the City of Gloucester?

A. As an auditor, it is not necessary for me to put that information in writing, in order to testify.

Q. You have not, as yet, answered the question.

A. I am not allowed to qualify it ——

The Court: You are allowed to answer the question honestly, and to the best of your ability.

By Mr. Carr:

Q. Did you consider it important, or didn't you?

A. Yes, but it couldn't be determined in less than one minute.

Q. You have been quite some time making up this analysis for the benefit of the Prosecutor?

A. No, sir.

Q. No, how long?

A. A couple of days.

Q. You had time enough to do that, too, hadn't you, in that time?

A. Well, yes.

Mr. Carr: May this be marked for identification?

The Prosecutor: I ask what the purpose is in marking it for identification.

Mr. Carr: Because it was referred to, and used, by both counsel. I want to be able to identify it, that is all. I couldn't offer it, now.

The Court: No, that is right.

(Paper last above referred to marked "Defendant's Exhibit No. 5 for identification.")

By Mr. Carr:

Q. I am not sure that I covered this, but I will ask you, anyway. Exhibit S1, being a check of the Air Reduction Sales Company for $1,146.24, as shown to you, indicates that that sum of money was deposited in the acount of the Water Department of the City of Gloucester, does it?

A. I would say that this check was deposited to the credit of the Gloucester City Water Department.

Q. And that the Water Department, of course, received the money due upon it?

A. The bank account received credit for that money, yes.

Q. Have you any doubt that that money got to the bank, to the credit of the Gloucester City ——

A. I have no doubt that the money got in the bank.

Q. To the credit of the City of Gloucester?

A. Yes, that is right.

Q. Gloucester City Water Department?

A. Yes, that is right.

Mr. Carr: That is all.

Re-direct examination.

By the Prosecutor:

Q. You have been asked a good many questions, from this analysis, Defendant's Exhibit 5 for identification. I understand that, from your schedule "G," the total receipts from January 1, 1925, to June 11, 1930, amounted to $187,133.55;; is that correct?

A. That is true.

Q. Does that include any moneys that the Water Department might have received and not entered in the cash books?

A. Yes, sir.

Q. What moneys would it include as received by the Water Department that are not entered in the cash book?

A. The difference of $1,000, here.

Q. You may not understand my question. I am asking you whether this $187,133.55, which you show as the cash receipts of the Water Department during that period—whether that amount constitutes the receipts of the Water Department in full, or only those receipts shown on the cash books of the Department?

A. Only those receipts shown by the cash book.

Q. Does it include any item not shown by the cash book?

A. Only bank credits for interest.

Q. Interest on deposits?

A. Yes.

Q. Anything but that?

A. That is all—yes, it does include items charged to Mr. Redfield by a prior auditor.

Q. Does that include the $1,000 in issue in this case?

A. No.

Q. I ask you about this item in Schedule "G," of bank deposits from January 1, 1925, including the balance at that time down to June 11, 1930, which amounts to $186,930.73; is that the amount of the total bank deposits?

A. Yes.

Q. Is that the amount of money withdrawn during that time?

A. No; that amount exceeds the amount withdrawn during that period.

Q. At June 11, 1930, did some balance remain in the bank account?

A. It did.

Q. Are you able to tell, from any record which is in evidence in this case, how much money was in the bank on June 11, 1930?

A. Yes.

Q. Will you tell us that, please?

A. At the close of the bank's business, on June 11th, there was $4,245.98.

Q. Is that the reason that the amount withdrawn from the bank account during this period does not equal the amount deposited during the period?

A. That is right.

Q. Can you tell, from any record which is in evidence, whether the account has been closed up—whether the account has been closed by withdrawals subsequent to June 11th?

A. Yes.

Q. Has it?

A. Yes.

Q. Has it been entirely closed?

A. Yes, sir.

Q. Is there any balance remaining on deposit at this time?

A. No, sir.

Q. Now, in the course of your auditing, did you ask Mr. Redfield where he kept the Water Department revenues?

A. Yes.

Q. What did he say?

A. Gloucester City Trust.

Q. Did he give any other bank account names, or anything of that kind?

A. No, sir.

The Prosecutor: That is all.

Re-cross examination.

By Mr. Carr:

Q. You spoke of a prior charge, of a charge made by a prior auditor, charging Mr. Redfield's account, did you not?

A. Yes, sir.

Q. Was the figure $469.75 appearing on Schedule "B," what you had reference to?

A. No; it appears ahead of that, here. (Indicating.)

Q. $751.61?

A. Yes, sir.

Q. That charge was covered by moneys to equal the amount of the charge, was it not?

A. Yes.

Q. On one account, the charge was $64.30?

A. Yes, sir.

Q. Mr. Redfield paid them into the Treasury, did he not?

A. It has the effect of having been paid in there, yes.

Q. Is it paid in? Can you tell, as an auditor, whether this has been paid or not—do you know that?

A. I could not identify the items as going in.

Q. What I am trying to find out is, whether these items have been paid by Mr. Redfield; can you, as an auditor, tell that, or don't you know?

A. Yes, it has been paid, except for the balance shown on the last sheet of that analysis.

Q. So, the items you referred to as being something charged against Mr. Redfield by a prior auditor, have all been paid?

A. Yes, except for the difference appearing, of $203.

Q. Difference of $203.10?

A. That is right.

Q. And, this balance, as of June 11, 1930, $4,245.98, has since been paid to the City Treasurer?

A. It has been withdrawn; I haven't seen the city record of its withdrawal, here.

Q. But, according to the records here, it has been withdrawn by check payable to the order of the City of Gloucester?

A. It was not supposed to be in the other checks drawn against this account.

Q. I didn't ask you that, "supposed to be." Can you tell me, as an auditor, when this sum of money, $4,245.98 was checked out; can you tell where it was checked in—where it went to?

A. No, because I haven't examined the records for the period when it was charged against this bank account.

Q. So, as auditor, you see a charge here covering a balance of $4,245.98 in this account, which has been later checked out, and the account closed, and you have no idea where the money went?

A. I have an idea, but you cannot expect me to swear that it went there, unless you allow me to inspect the city records.

Q. I will allow you to do most anything. At any rate, as an auditor and investigator, in closing this audit, you never did verify, or take the trouble to verify, what became of the $4,245.98 balance as of June 11, 1930; is that right?

A. I did not verify the transaction, no.

Q. So that you closed your audit, after having audited and investigated Mr. Redfield for a five-year period, without taking the trouble to find out where the balance exceeding $4,000 went, and when it was checked out of this account; is that true?

A. It was not necessary.

Q. Perhaps not, but anyhow you didn't do it, did you?

A. No.

Q. You checked, of course, everything that Mr. Redfield did, very carefully, did you not?

A. Up to June 11th.

Q. And, in doing that, you audited this long account, about 3500 customers, consumers?

A. Yes.

Q. For about a five-year period?

A. Yes, sir.

Q. Therefore, there were about 17,500 customers in this?

A. That is right.

Q. And, then, when it came to the simple thing of checking one account, as to what became of the balance exceeding $4,000, presumably paid to the City of Gloucester, you did not check up that item, did you?

A. It is not essential.

Q. But, you did not, did you?

A. I did not.

Q. And, you did not regard it as essential?

A. That is right.

Q. To a complete and full audit, closing this account?

A. I closed my audit as of June 11th, sir.

Q. There was nothing to prevent you opening it, was there ?

A. No; it was not essential that I should.

Q. Surely not. You considered it a complete audit when you knew there was still this balance in the bank, and which had been transferred or was about to be transferred to the City of Gloucester; isn't that right?

A. I did.

Q. In fact, you recommended that this account be closed and transferred to the Treasurer's account?

A. I did.

Q. Then, did not follow it up to see whether it had been done, did you?

A. It was not essential.

Q. But you did not do it, whether it was essential or not; you didn't follow it up to see whether it had been done?

A. No.

By the Prosecutor:

Q. When you closed your audit on June 11th, did this money remain in the bank?

A. The $4,200, yes.

Q. Did you verify it at the bank, that the money was there?

A. Yes.

Q. Do you close audits without insisting on the bank account being closed?

A. They are never closed in our Municipal groups.

Q. There is some balance remaining at the close of the audit?

A. Yes.

Q. And, when you make the next audit, what happens?

A. I take off that balance.

By Mr. Carr:

Q. But, you insisted that this account be closed?

A. Yes; it was, after June 11th.

Q. Let me ask you one more question. All of the moneys deposited in the Water Department account, as shown on Schedule "G," you found had been checked out to the order of the Gloucester City Treasurer, except this balance of $4,245.98?

A. Yes, sir; that is what I tried to answer a long time ago.

Q. So that up to June 11th, when you had finished your work on Schedule "G," at least, there was a balance—there was the balance I have mentioned in this case, $4,245.98, and by the records of the bank, that balance has been closed up; am I right?

A. That balance, including every deposit since that time.

Q. Has been closed?

A. Yes, sir.

Q. You don't say, from your investigation, that Mr. Redfield got that balance?

A. Oh, I would not say that, no.

Q. You don't attempt to say that?

A. Oh, no.

Mr. Carr: That is all.

L. Webster Melcher, Jr., having been duly sworn, was examined and testified as follows:

Direct examination.

By the Prosecutor:

Q. Where do you live?

A. Narbeth, Pennsylvania.

Q. Do you have any business?

A. Yes.

Q. What is your business?

A. I am an examiner of disputed documents and handwritings.

Q. How long have you been engaged in that business?

A. For the past 18 years.

Q. Will you describe, please, the general scope of your profession, what it includes?

A. It includes all questions pertaining to disputed documents, such as erasures, interlineations, forgeries of handwriting, questions of typewriting, stamping of papers, matters involving inks and other related questions.

Q. Does it extend to alterations of documents ——

A. Yes, sir.

Q. Have you testified in courts respecting your profession and your skill in it?

A. I have testified during the past 11 years as a handwriting expert.

Q. In what courts?

A. In practically all the local courts. By "local courts" I mean within a radius of probably one hundred miles of Philadelphia.

Q. Have you given testimony in those courts regarding your opinion on questioned documents?

A. I have.

Q. Did you, at my request, examine page 168 of the cash book which has been marked Exhibit S6?

A. Yes, sir.

Q. Did you use that page 168 as a sample of standard handwriting of the person who wrote it?

A. Yes, sir.

Q. Did you have any direct means of knowing, yourself, who did write it?

A. No.

Q. Were you told to make page 168 of that book your standard?

A. I was.
Q. And, did you?
A. I did.

Mr. Carr: What are you referring to there, Mr. Melcher?

The Witness: The notes of the examination I made.

Mr. Carr: I object to their use, so far, unless this witness' memory is not sufficiently good.

The Prosecutor: When the time comes for your notes, you may be permitted to use them.

Mr. Carr: Stick them in your pocket.

By the Prosecutor:

Q. I show you what purports to be a carbon copy of something; it is marked 88, a pink sheet of paper with the name of the Air Reduction Sales Corporation on it, and ask you if you examined that, at my request?
A. I did.
Q. How did you examine it, with what means, or what instrument?
A. I made a microscopic examination of it.
Q. In the course of your microscopic examination of that piece of paper, what did you find?
A. I found that there had been erasures on this document under the places now occupied by the numerals "584975" and "25" and "$146.24."

Q. Can you say, from your examination, when those erasures were made, in point of time?

A. Only to the extent: The reverse side of this sheet of paper, Exhibit S5, in back of the places where the erasurers were made, shows a copy of blue carbon from the next sheet which now appears in this book; and, between those two sheets that now appear in the book, there was originally another sheet of blue paper, and, of course, this sheet of blue paper must have been removed from the book when the erasures which I have mentioned were made, in order to give this transfer of the carbon from the next succeeding sheet.

Q. Now, with respect to the erasures on the face of the sheet, were you able, in the course of your microscopic examination, to discern any figures previously existing there which were erased, or which it had been attempted to erase?

A. Only under the numerals 25—that is, 25 cents a thousand gallons; under those numerals as they now appear, I can see the numerals "25" slightly to the right of the ones that now appear; but, the other erasures I have not been able to decipher.

Q. Can you say whether or not, from your examination, the erasures which were made at the place for the gallons, and at the place for the money, or rate—I would like to know whether the erasures indicated to you that there had been some previous writing there which has been removed?

A. Yes, there is no doubt in my mind that the previous writing on this space (indicating), was removed by erasure.

Q. The new writing which appears there, the number of gallons, 584975, and the new writing, 25 cents,

and the new writing, $146.24—can you say in whose handwriting those figures are?

A. Yes.

Q. Whose?

A. The same person who filled up the body of this bill, or receipt, and who signed "A. W. Redfield" on it, and who also made all the entries on this page 168 of this cash book.

The Prosecutor: Cross-examine.

Cross-examination.

By Mr. Carr:

Q. What did you say your job was, Mr. Melcher?

A. Examining disputed documents.

Q. You testify frequently in court?

A. Yes.

Q. Almost daily?

A. No.

Q. How frequently would you say?

A. Well, I should think last year I testified about 30 times.

Q. Last year?

A. Yes.

Q. Is that a fair average?

A. Yes.

Q. This handwriting expert stuff is not an exact science, is it?

A. Not such as mathematics.

Q. No, I should not think so. Is it a recognized vocation?

A. Yes.

Q. There are a number of eminent gentlemen in your profession, are there not?

A. Yes.

Q. Your father is one of them, I think?

A. Yes.

Q. And there are some gentlemen in New York engaged in the same vocation?

A. Certainly.

Q. Mr. Osborne is one of them?

A. Yes.

Q. And, usually, when you testify as an expert, you find another qualified expert on the other side, do you not?

A. No.

Q. You don't, usually?

A. Not usually, no; occasionally.

Q. I see. On those occasions, with an equally capable and competent expert, you disagree as to your conclusions?

A. Yes.

Q. Always you find that the expert on the other side, in court, disagrees with you, do you not?

A. Otherwise, he would not be on the other side.

Q. You don't question the honesty and integrity of your opponent, do you?

A. Not if I know him to be reputable.

Q. Well, you do know a number of them who are reputable?

A. I do.

Q. It is not a disreputable profession, is it?

A. No.

Q. So that most of them are reputable whom you know, isn't that right?

A. Yes.

Q. And they frequently reach an exactly contrary conclusion from you, in court, do they not?

A. You say frequently. I think I can answer that "no."

Q. Well, do they ever disagree?

A. They disagree occasionally.

Q. And, one of those occasions was right in this room, a day or two ago?

A. Yes.

Q. You were for the defense, and some other distinguished gentleman was for the State?

A. Yes.

Q. And, with the same facts before you, you absolutely disagreed as to your conclusions, did you not?

A. Well, we may have had—may not have had the same facts before us.

Q. Well, at any rate, testifying as to the same disputed piece of writing, you reached a different conclusion?

A. Reached a different conclusion, yes.

Q. One conclusion was, it was shown that it was a forgery; isn't that right?

A. Yes.

Q. And your expert knowledge, and that of other experts at times, leads to an absolutely different conclusion?

A. Yes, sir.

Q. And that is upon the assumption that your adversary is perfectly honest and capable?

A. Yes, sir.

Q. And the explanation for this difference is because of the possibility of error on one side or the other; isn't that right?

A. I suppose so.

Q. You, in your long experience as a handwriting expert, have, sometimes, made mistakes, have you not?

A. I have made mistakes in my early stages of an investigation.

Q. But when you come to the end, you are absolutely one hundred per cent sure, are you not?

A. I don't recall any occasion in which I have testified where I know I made a mistake.

Q. So that you would feel that you are one hundred per cent correct in your work as an expert?

A. I don't say that, no.

Q. When you come to testify, not when you are getting ready; isn't that right?

A. No, I can make a mistake, and have made mistakes.

Q. Not in your testimony, surely; you never made a mistake in your testimony, did you?

A. I can only repeat that I don't know of any case in which I have testified, that I was wrong.

Q. But you do remember a case in which you testified to one conclusion and the expert on the other side, equally reputable, testified to another, do you not?

A. Yes.

Q. So that either one or the other of you two experts must have been wrong in your conclusions, isn't that right?

A. Yes.

Mr. Carr: That is all.

Re-direct examination.

By the Prosecutor:

Q. The figures which now appear on that sheet, the number of gallons, and the rate per gallon, the amount of money involved, what kind of writing are they in?

A. Carbon copy, made with a pencil and piece of blue carbon paper.

Q. What type of writing is the signature "Allan W. Redfield," and the date "1-20-27" in?

A. Black pencil.

Q. Original, or carbon?

A. Original.

The Prosecutor: Any further questions?

Mr. Carr: Only one.

Re-cross examination.

By Mr. Carr:

Q. Mr. Melcher, you have testified with a great deal of confidence as to the figures, in lead pencil, of Mr. Allan W. Redfield. I ask you whether anywhere on page 168 you see the signature of Mr. Redfield, for purposes of comparison?

A. No, I do not.

Q. Therefore, you did not have before you, any admittedly genuine signature of Mr. Redfield, for purposes of comparison, did you?

A. That is correct.

Q. And you testified, without hesitation, that the signature "Allan W. Redfield" was the same—was by the same one that wrote the entries on page 168, did you?

A. I did.

By the Prosecutor:

Q. Why are you so positive?

Mr. Carr: I object to that.

The Court: I will allow it.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

The Witness: Because I analyzed the handwriting on page 168 which probably—I am sure—but I say "probably" contains all the letter forms found in Allan W. Redfield's signature; and I found that the same characteristics which appeared in the Allan W. Redfield signature also appeared in the handwriting on page 168, and in the body of this bill.

By the Prosecutor:

Q. What about the figures?

A. The same thing applies to the figures.

Q. Did you have a standard page of figures?

A. Yes, sir.

Q. Are they of the same characteristics as the figures on the pink slip of paper?

A. They are.

By Mr. Carr:

Q. Would you have been a little more sure if you had had a genuine signature to compare with the signature you saw there?

A. I might have been.

Q. Is not it a little better practice to show all these letters with the same characteristics, assembled in one signature, for the purpose of comparison, than to pick them out of a page with twenty, thirty, or forty entries on?

A. It would have simplified the solution of the question.

Q. Pardon me?

A. I say, it would have simplified the solution of the question; it would have made it easier for me.

Q. And the results a little more certain, would it not?

A. Possibly; I don't think so. I have no doubt as to the results.

Mr. Carr: I didn't ask for that voluntary statement ——

The Prosecutor: I think it is responsive to the question.

The Court: I will allow it to remain.

STATE RESTS.

Mr. Carr: I have a motion to make, your Honor, and I think it better to be made at side bar.

The Court: The jury may leave the box, if they desire, for five minutes.

Mr. Carr: (At side bar.) If your Honor please, before making this motion, my attention was called to the indictment, and to the pencil amendment therein by striking out the Arabic numerals "1927," and substituting the words "nineteen hundred twenty-seven." I am going to suggest, for the purpose of the record, that that amendment be a formal one, because otherwise, in presenting this indictment, when the matter is reviewed, the Court will be unable to tell.

The Court: The motion is granted; that is perfectly proper, Mr. Carr.

Mr. Carr: If your Honor please, the defendant here is charged as follows:

That "on the twentieth day of January, 1927, at the City and County aforesaid and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of Water Clerk of the said City of Gloucester City did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or

on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, contrary to the form of the statute in such case made and provided,'' etc.

Now, if your Honor please, I move for a directed verdict in favor of the defendant, on the following grounds:

(1) Upon all of the grounds stated on the motion to quash the indictment, including the ground that the Court was without power to order the amendment of the indictment, and upon the following additional grounds:

(2) That there is no proof in this case that the said clerk had any duty whatever with regard to the moneys of the Water Department. That duty could only be imposed by some ordinance or resolution of the City Council of the City of Gloucester.

The Gloucester City ordinances, which were offered here, simply deal with the salary of the officer, the fixing of his term, and his election, I think, in 1919, for a period of three years. They clearly outlined, one or two of them did, that they are amendments to an ordinance passed in 1891, as I recall, which establishes the Water Department, and presumably defines the duties of the Clerk of the Water Department.

Now, it won't do to say that there is any secondary evidence in this case as to the duties of the Clerk. The only testimony we had with regard to that, as I recall, was that of the Mayor, who said that he knew that the office was created by an early ordinance passed a number of years before, and reference to the amendment shows it to have been

passed in 1891. So that, a vital factor in this case is to prove that Mr. Redfield, by virtue of his office of Water Clerk, had committed to him sundry funds. There is no proof of that in the case.

(3) The indictment, itself, does not charge that these moneys were received by Mr. Redfield in his capacity as Water Clerk, the allegation being that being Clerk of the Water Department, or Water Clerk of the said City of Gloucester City, he did embezzle the sum of $1,000 of money committed to his keeping by virtue of a certain payment. It does not say that it was made to him by virtue of his occupying that office, or that he had any duty in the premises.

(4) My next point is, that there is no statement in the indictment of the ownership of these moneys.

(Mr. Carr, on behalf of the defendant, argued at length in support of his motions, and the Prosecutor, on behalf of the State, replied in opposition thereto; following which Mr. Carr answered the Prosecutor. All of this discussion was off the record.)

(5) Mr. Carr: One ground I had intended to include in this motion before replying to the Prosecutor, was that the allegation here is "money," and that the proofs relate to a check.

(Further argument and discussion here ensued, off the record.)

The Court: As I see it, this defendant here never did have his hands on any money; he received a check, which is an order on the bank to pay. The bank check was deposited and undoubtedly, through the natural course of events, the bank in which it was deposited credited it to the account of the depositor; but, we have nothing on the record to show that the amount of money that evidently came into their hands, or into the fund, itself, has ever been applied as it should be applied.

I take it, of course, if it can be established that there was a misapplication, or wrong posting to someone who did not pay, if that has occurred, why, of course, it would be a perfect defense, because you would thereby establish the fact that the money had not been extracted. I think that that is a duty that devolves upon the defendant. However, in considering a lot of cases, and after a search of the criminal law, I am inclined to believe that the Supreme Court, if called to pass upon some of these old decisions, will take a little different stand than they have taken in the past, because there seems to be a tendency, all the way from top to bottom—from the Supreme Court of the United States down—to try to get away from as much of the technicalities of the law as possible, especially in criminal matters. Whether that is right or wrong, of course, remains with the Court of last resort; but I know that that tendency is in vogue, and is advocated by the Chief Justice of the United States, and by the American Bar Association, and various other bar associations; and, it seems to me to be in accordance with what we conceive to be the public policy, today. So, I think a little more liberal view should

be applied when we take into consideration the old situations of forty, fifty, sixty or seventy years ago, when we were living in different times, and under different circumstances. Bookkeeping methods were in vogue at that time which are now irregular. We are obliged to consider the new conditions as they prevail in modern accounting and business.

The research made by counsel for the defendant has, undoubtedly, been very exhaustive; but I fail to take the view of the law that counsel for the defense takes. I really believe that the State, at this stage of the proceeding, has made out a prima facie case against the defendant sufficient to cause him to go on trial with his defense.

As to the other matters raised, concerning the indictment, I passed upon that before; I do not feel that the amendment was a material alteration of the indictment, hence I will deny the motion, for the reasons stated when it was made previously.

As to the other motions which have been urged by counsel for the defendant, I feel, likewise, that they do not merit the consideration of the Court which counsel has urged, and those motions are denied. I deny all the motions. I assume counsel will want an exception, and it will be allowed.

Mr. Carr: Yes, thank you; I do want exceptions to these rulings.

DEFENDANT'S EVIDENCE.

ALLAN W. REDFIELD, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester City.
Q. How long have you lived there?
A. All my life, 47 years.
Q. Are you married?
A. Yes.
Q. How long?
A. 23 years.
Q. Do you have any children?
A. Two.
Q. What are they?
A. Girls.
Q. How old are they?
A. One is 21; and the other, 17.
Q. Have you been more or less active in political life, in Gloucester City?
A. I have.
Q. For how long?
A. Since I became a voter, I guess.
Q. What positions have you held down there?
A. Since 1918 I held the position of City Clerk.
Q. Continuously?
A. Yes, sir.

Q. Were you connected with the Water Department?

A. In 1919; January 1, 1919, I was elected Water Clerk.

Q. At a salary of $300 a year, I think?

A. Yes, sir.

Q. Did you hold any other elective office down there?

A. Since 1923.

Q. What?

A. As a member of the County Commission from the First Ward.

Q. Continuously since that time?

A. Yes, sir.

Q. Is that an elective office?

A. Yes.

Q. In the Water Department, can you tell me, approximately how many accounts you have been handling?

A. Between 3200 and 3500.

Q. Generally small householders, small accounts?

A. Mostly small accounts.

Q. When were your bills payable?

A. On or before the first of July.

Q. When would they go out to the consumers?

A. Sometimes they would go out before the first of June; other times, around the middle of May.

Q. Was there any period of time when there was a rush to pay the bills?

A. During the month of June, yes.

Q. Where is your office as Clerk of the Water Department?

A. In the same room, same location as the City Clerk's office.

Q. Was that also the Council Chamber?

A. That is also the Council Chamber.

Q. How large a room was that?

A. I should say about 18 by 20 by 30.

Q. How was that room furnished and equipped?

A. Well, it had a number of desks and chairs, Councilmen's desks.

Q. How many Councilmen were there?

A. Nine.

Q. There were nine desks in there?

A. Nine desks in there.

Q. Was there any railing or partition to separate you in the collection of these moneys from the public?

A. There was not.

Q. How were the moneys paid?

A. Persons came in the door, and stood right in the room. We used to fix up a temporary desk and put a table across when we had a busy season.

Q. Did you have a cash register there, anything of that sort?

A. No, sir.

Q. Were there any adequate means of protecting the money that came in, in this crowded condition?

The Prosecutor: I object to that; it calls for a conclusion.

By Mr. Carr:

Q. What were the means of protection?

A. When we would have a crowd, I just had to take the money in over the table; otherwise, they

would give it over each Councilmen's desk that was there.

Q. As you send out bills, was there a perforated stub on the bills?

A. There was.

Q. As the moneys would be paid, what would be done with the bill and the receipt?

A. A person would bring his bill in; it would be stamped with the date and "Received Payment."

Q. A rubber stamp?

A. Rubber stamp, yes. The stamp would read: "City Water Department," per whoever received the money, and that stamp would be put on both the bill and stub, the stub torn off, and then there was another stamp, a facsimile signature of my signature that would be stamped on the ——

Q. On the receipt?

A. Signed by myself, or per.

Q. Then what would you do with the stubs and money at the end of the day?

A. Maybe at two or three periods during the day, they would be put in the vault.

Q. Would you have time to post them in the cash book, as they came in?

A. I did not.

Q. How long would it be before you would get an opportunity to post up in the cash book ——

A. Around that period of time, maybe it would be a couple of weeks.

Q. What would you do, during this period in June when the water consumers were coming in to pay their bills ——

The Prosecutor: One minute. I have listened

to this quite a while. I think when we ascertain that the issue in this case was a payment made in November, and put in the books in January, we will realize that June has nothing to do with it.

(Argument and discussion here ensued, off the record.)

The Court: You show the last June succeeding this; I will allow you to do that. I won't allow you to go ahead of that.

By Mr. Carr:

Q. In June succeeding this business, which would be June of 1927 ——

The Prosecutor: 1926.

Mr. Carr: No. 1927—this is dated 1926, put in the books in January.

The Prosecutor: I think the Court said the June before.

Mr. Carr: No, June succeeding.

The Court: June succeeding.

By Mr. Carr:

Q. Describe the conditions that prevailed in the office in June, 1927, and what duties you had to perform.

A. In connection with the duties of collecting the water rents, the third Tuesday in June was Primary Election, with the exception of presidential. Primary Election came along, and made quite considerable work.

Q. What were your duties in connection with the Primary Election?

A. I had to see that the election ballots were prepared, and the required number of ballot boxes, look after the facilities for carrying on the election in 20 election districts.

Q. How many election officers were there?

A. Four to each district.

Q. That would be 80 election officers; how many boxes?

A. For Primary Election, there would be 40.

Q. 40 ballot boxes, and all the ballots you would have to distribute?

A. Yes.

Q. What about the voting registers—registering the votes?

A. They were prepared by the election officers.

Q. You would have custody of them?

A. I would have custody of them when they came back from the County Board of Election.

Q. What else would you have to do as City Clerk?

A. To issue any permits that were required to be issued through the City Clerk's office.

Q. I show you a photograph of the interior of the room. Can you tell me what room that is?

A. This picture of the Council Chamber, City Clerk's office, and Clerk of the Water Department, Gloucester City.

Q. Was it in that condition in 1926 and 1927?

A. Yes, with the exception of possibly a table was placed across one point here. (Indicating on photograph.)

Q. I show you another photograph of what appears to be the same room, with a table, flat top, with the closet adjoining the door, and I ask you whether that represents the condition as it was when the water rents were being paid?

A. Yes.

Mr. Carr: I offer these in evidence. Would you like to look at them, Mr. Prosecutor?

The Prosecutor: No objection.

(Photographs last above referred to, marked Defendant's Exhibits 6 and 7, respectively.)

By Mr. Carr:

Q. Now, Mr. Redfield, won't you come here before the jury, and tell them about these pictures? I am showing you Defendant's Exhibit No. 6. I point to the door and a railing with a flat top desk. Will you tell me where you sat when collecting the water rents?

A. This railing is back of the back part of the Council Chamber. A person coming in to do business with the City Clerk's office came in this door. (Indicating.) In the rush period, he stood at this table (indicating), to get the water bill.

Q. Immediately the door?

A. Yes.

Q. Where these ——

A. Chairs should be.

Q. In the room, as shown here?

A. In the room as shown there.

Q. I show you Defendant's Exhibit No. 7; is that another picture of the same room?

A. Yes.

Q. A water consumer would come in this door (indicating), walk right in?

A. Yes.

Q. There was no barrier or screening or any protection; is that right?

A. No.

Mr. Carr: Mr. Foreman (addressing foreman of the jury), will you kindly look at it and pass it along?

By Mr. Carr:

Q. Mr. Redfield, I show you the State's Exhibit No. 1, being a check to the order of the City of Gloucester, Bureau of Water, for $1,146.24, signed on behalf of the Air Reduction Sales Company. I ask you whether you ever received that check?

A. This is one of several checks that came in from that same company.

Q. When you received that check, what did you do with it?

A. Deposited it in the bank.

Q. In the Gloucester City Trust Company?

A. Yes, sir.

Q. In what account?

A. City Water Department account.

Q. Was that where all the funds of the Water Department were being deposited?

A. All moneys that came into my keeping, on account of the Water Department, were deposited in that account.

Q. Did you ever draw any moneys out of that account, for your personal use?

A. I did not.

Q. When moneys were drawn out of that account, to whose order were they drawn?

A. City Treasurer.

Q. How would they be drawn?

A. On account of water rentals.

Q. By what means, check?

A. By check, yes.

Q. To the order of the City Treasurer?

A. Yes, sir.

Q. And, every dollar you put in, was it checked out in that way?

A. It was.

Q. Did you ever check out one dollar of it, for your personal account?

A. I did not.

Q. Did you ever take one dollar of the money of the City of Gloucester for any personal purpose whatever?

A. I did not.

Q. Did you steal $1,000 of the money handed you by the Air Reduction Sales Company?

A. I did not.

Q. Did you ever steal a dollar from the City of Gloucester?

A. I positively did not.

Q. Did you put in the bank all moneys you collected from any source?

A. I did, in connection with the Water Department, yes.

Q. And, you put that in the same water account in the Gloucester City Trust Company?

A. I did.

Q. Was your attention ever called by any official of the City of Gloucester, or by the City Council of Gloucester, about any claim of shortage in your accounts prior to these charges being made?

A. It was not.

Q. Nobody ever asked you to pay back any money that they said you were short?

A. They did not.

Q. Did the auditor ever tell you that you were short?

A. Not in this account, no.

Q. Did he ever ask you to pay back, or to explain this item of $1,000?

A. He did not.

Q. When is the first you heard of it?

A. Just before ten o'clock yesterday morning, in the Prosecutor's office; I had access to the books there.

Q. Did you, personally, make this entry in the cash book showing a deposit of $146.24, on page 2 of that book, dated January 20, 1927?

A. Yes, that is my posting.

Q. I am asking you if the entry under date of January 20, 1927, in the cash book, page 2, was made by you. I call your attention to the entry under that date, page 2, Air Reduction Sales Corporation

(meter), $146.24, marked State's Exhibit No. 4; did you make that posting, yourself?

A. I did not.

Q. I show you the State's Exhibit No. 5, apparently a carbon copy, on pink paper, numbered 88, Air Reduction Sales Corporation, showing the figures $146.24, and I ask you when your attention was first called to that bill, and to the figures thereon?

A. The first I saw of that was yesterday morning.

Q. In the Prosecutor's office?

A. In the Prosecutor's office.

Q. Produced at my request, for inspection; is that right?

A. About ten o'clock.

Q. Ten o'clock, yesterday. Did you alter any figures on that exhibit of the State's, which is marked S5?

A. I did not, no.

Q. Did you alter any figures in connection with this matter?

A. I did not.

Q. Were you ever asked by the auditor and investigator to explain any of these differences?

A. I was not.

Q. So that it was not until yesterday morning, shortly before this trial, that this was ever called to your attention; is that right?

A. That is true.

Q. Has City Council, or any member of City Council, come to you claiming you were short in your accounts?

A. They have not.

Q. Has City Council, or any member thereof,

asked you to make good any alleged shortage in your accounts?

A. They have not.

Q. Has the auditor who testified come to you and told you that you were short in your accounts, and asked you to make good?

A. He has not.

Q. Did you have any knowledge that it was claimed you were short in your accounts until this criminal complaint was made against you?

A. I did not.

Q. Were your accounts audited in the fiscal years of 1925, 1926, 1927 and 1928?

A. They were.

Q. By whom were they audited?

A. The New Jersey Audit Company.

Q. Who was the New Jersey Audit Company?

A. Sidney P. McCord.

Q. Is he Comptroller of the City of Camden?

A. He is.

Q. I show you these audits, Defendant's Exhibits 1, 2, 3 and 4—at least, marked Defendant's Exhibits 1, 2, 3 and 4 for identification, and I ask you whether or not they are the audits made by Mr. McCord's company?

A. Yes, sir, these are the audits.

Mr. Carr: I offer these several audits in evidence.

The Court: Any objection?

The Prosecutor: No objection.

The Court: They are admitted.

(Exhibits last above offered in evidence marked Defendant's Exhibits Numbers 1, 2, 3 and 4, respectively.)

Mr. Carr: Now, with the Court's permission, I will read one or two excerpts from this report, Defendant's Exhibit No. 1:

"To the Commissioner of Municipal Accounts: This is to certify that the report attached hereto is a true and correct statement of the financial transactions and conditions of the City of Gloucester, New Jersey, for the fiscal year 1925, and that an exact copy of this report has been forwarded to the governing body of said city. The New Jersey Audit Company, (signed) Sidney P. McCord, Registered Municipal Accountant.

The records are in good shape and correctly reflect the financial transactions of the city, as shown in the several schedules of this report. The officials in charge rendered any aid required during the progress of the audit, and we desire, at this time, to thank them for their courtesy."

By Mr. Carr:

Q. Now, Mr. Redfield, this tabulation includes, does it not, in the schedule, "City of Gloucester," receipts and disbursements, "Water Department," the moneys received and disbursed by the Water Department?

A. That is a report of the money disbursements; I don't know anything about the disbursements.

Q. But it includes the water rents collected?

A. It does.

Q. And the disbursements of the entire department; isn't that true?

A. Yes.

Q. And, that is true of each one of these audits for the three succeeding years; isn't that so?

A. That is right.

Mr. Carr: In the audit for the fiscal year 1926, here is the certificate: "To the Commissioner of Municipal Accounts: This is to certify that the report attached hereto is a true and correct statement of the financial conditions and transactions of the City of Gloucester, New Jersey, for the fiscal year 1926, and that an exact copy of this report has been forwarded to the governing body of said city. The New Jersey Audit Company, Sidney P. McCord, Registered Municipal Accountant."

Also, "The Water Department Register has been added and proved, and proper entries made in the general ledger showing revenue accruals, and expenses of said department. The records are in good shape, and show the correct financial transactions of the city.

"We desire, at this time, to thank the officials in charge for their courtesy and assistance during the progress of the audit."

The certificate accompanying the audit for the fiscal year 1927 reads:

"To the Commissioner of Municipal Accounts: This is to certify that the report attached hereto is a true and correct statement of the financial condition and transactions of the City of Gloucester,

New Jersey, for the fiscal year 1927, and that an exact copy of this report has been forwarded to the governing body of said city. The New Jersey Audit Company, Sidney P. McCord, Registered Municipal Accountant.

"The auditors had access to any and all records, and wish to thank the officers for their courtesy during the progress of this audit. New Jersey Audit Company, (signed) Sidney P. McCord, Registered Municipal Accountant."

The Prosecutor: May I have that, Mr. Carr?

Mr. Carr: Yes. This is the certificate accompanying the audit for the fiscal year 1928:

"To the Commissioner of Municipal Accounts: This is to certify that the report attached hereto is a true and correct statement of the financial condition and transactions of the City of Gloucester, New Jersey, for the fiscal year 1928, and that an exact copy of this report has been forwarded to the governing body of the said city. The New Jersey Audit Company, Sidney P. McCord, Registered Municipal Accountant. It contains, among other things, the following:

All receipts and payments and postings to the general ledger have been checked in detail from books of original entry, and journal entries prepared to properly close the books.

The water register has been added and proved, and entries made in the journal and ledger to correctly show the revenue and expense, together with the cash receipts and disbursements of the Water Department."

By Mr. Carr:

Q. Now, all of these audits include an audit of your accounts with the Water Department?

A. They do.

Q. And, in any of these audits, does it appear that you were short $1,000, or any other sum?

The Prosecutor: I object; they speak for themselves.

Mr. Carr: This is only for convenience.

The Court: Do you have any objection to that?

The Prosecutor: Withdrawn.

The Witness: It does not, sir.

By Mr. Carr:

Q. And were all of the books and records that have since been audited by the State Accountant, made available to Mr. McCord, in his audit?

A. They were.

Q. Had you called Council's attention to the crude facilities for the collection of water rentals?

A. I had.

Q. More than once?

A. Quite a few times.

Q. Had you called the attention of the Water Department to that situation—I mean, the Water Committee?

A. I had.

Q. Had you suggested to the Water Committee that a list of delinquents be prepared for use in auditing, and to check against possible errors?

A. Both to the Finance Committee and Water Committee.

Q. Was that ever done?

A. It was not.

Mr. Carr: Cross-examine.

The Prosecutor: If the Court please, if we are going to adjourn at four o'clock, I should like to defer my cross-examination until tomorrow morning.

The Court: Then, gentlemen, at this time, before adjourning, I want to take this opportunity of admonishing the jury that you will not discuss this case with anyone, nor allow anyone to discuss it with you. Should anyone undertake to approach you, you will make known the name of the person who does approach you when you return for service here, for the continuation of this case, on Thursday morning, at a quarter to ten.

Mr. Carr: There seems to be full comments of this trial in the newspapers, and I suggest that the jurors be directed to refrain from reading them, so that they may not be influenced thereby.

The Court: I think it would be just as well if you will not read the newspapers. It would be better for you to get this testimony as you receive it here, and not have it possibly mixed with any

newspaper statements. So, may I suggest that you not read anything about it, and return here at a quarter to ten on Thursday.

(Adjourned until Thursday.)

Thursday, October 23, 1930, 10.00 o'clock A. M.

TRIAL RESUMED.

PRESENT:

Parties as before noted.

ALLAN W. REDFIELD, recalled.

Direct examination (resumed).

By Mr. Carr:

Q. Mr. Redfield, I show you letter dated September 25, 1929, addressed to Mr. Allan W. Redfield, Clerk, City of Gloucester, New Jersey, and signed by Walter W. Darby, Commissioner of Municipal Accounts, with a notation in the lower left-hand corner: "Copy to Mr. Norman D. Dorsett," and ask you whether you received that letter?

A. I did.

Q. Was it presented to you by Mr. Dorsett?

A. No; mailed to me by Mr. Darby.

Q. And did Mr. Dorsett appear following the receipt of this letter?

A. He did.

Mr. Carr: I offer this in evidence.

(Letter last above offered in evidence marked Defendant's Exhibit 9.)

Mr. Carr: I will read this letter which has been marked Defendant's Exhibit No. 9. It reads as follows:

"STATE OF NEW JERSEY
OFFICE OF STATE TREASURER
Department of Municipal Accounts
File No. 103

TRENTON September 25, 1929

Mr. Allen W. Redfield, Clerk
City of Gloucester,
Gloucester, N. J.

Dear Sir:

This is to advise you that in accordance with the powers vested in me by statute I intend to make and complete the 1929 audit of the City of Gloucester City. In accordance with the provisions of Section 3 (b) Chapter 266, P. L. 1919, I am designating Mr. Norman D. Dorsett, employee of this Department, to conduct this audit.

I trust that you will see that Mr. Dorsett has access to any records, books, papers, etc., which may be needed by him in connection with this work.

Thanking you in advance for your co-operation in this work, I am,

Very truly yours,
(Sgd) Walter R. Darby,
Commissioner of Municipal Accounts.

S/B
Copy to Mr. Norman D. Dorsett"

Cross-examination.

By the Prosecutor:

Q. Now, Mr. Redfield, during the time that you were the Water Clerk and City Clerk of Gloucester, had the State of New Jersey ever conducted an audit of the City of Gloucester's affairs before?

A. Not while I was there.

Q. How long have you been there?

A. Since 1918.

Q. So, from 1918, the State had never stepped in to make an audit?

A. No.

Q. Do you know why they did in 1929?

Mr. Carr: I object, if your Honor please; he can't know ——

The Prosecutor: He might know.

The Court: Of course, if there is something that would come to his knowledge, that he would know, all right. You cannot speculate on it.

The Prosecutor: I asked if he knew. That can be answered "yes" or "no."

The Court: Well, all right.

The Witness: No.

By the Prosecutor:

Q. I understand that you have been the Water

Clerk in Gloucester City since January 1, 1919; is that right?

A. That is right.

Q. What other offices have you held in that City during that same period?

A. City Clerk.

Q. What compensation did you receive as Water Clerk?

A. $300 a year.

Q. Throughout the time?

A. I did.

Q. What compensation did you receive in your other position?

A. As City Clerk?

Q. Yes, how much?

A. The salary was $1500 a year, together with fees.

Q. What kind of fees did you receive in addition to your salary?

A. Fees for vital statistics; issuance of marriage licenses. There was also a provision whereby I received $25 a year for each and every voting district in the City.

Q. How many were there?

A. Twenty.

Q. How much a year?

A. $25 a year for each one.

Q. That would be $500 for your election services?

A. Yes.

Q. Did you receive, as City Clerk, the salary of $1500 for every year you served as City Clerk?

A. I did not.

Q. How did that vary?

A. Well, that was changed by ordinance.

Q. About when?
A. I don't recall just what year.
Q. What was it before that?
A. $1200.
Q. How many years have you been receiving $1500?
A. I don't remember the date that that ordinance was passed.
Q. Your salary as City Clerk was $1500, and you got $500 more for your election services?
A. Yes, sir.
Q. And $300 a year for Water Clerk?
A. Yes.
Q. That would be $2,300 a year, in salaries?
A. Yes.
Q. What did the fees amount to?

Mr. Carr: I don't see the relevancy of this at all; I object.

The Court: I will allow it.

Mr. Carr: Your Honor will give me an exception?

The Court: Exception allowed.

The Witness: I could only approximate it.

By the Prosecutor:

Q. What was the largest year that you had with respect to fees?
A. I don't recall.

Q. How much was the largest amount you received from fees in any one year?

A. I could not say accurately.

Q. Well, did you ever get as much as $300?

A. Additional in fees?

Q. Additional, in fees?

A. Oh, yes.

Q. How much more than $300 did you get, in fees?

A. I couldn't say.

Q. Can you approximate it?

A. I could not.

Q. Did you get $500?

A. I would say, approximately.

Q. Did you ever get more than $500 a year?

A. I don't know.

Q. Is $500 your best approximation of the largest amount you ever received, in fees?

A. I am not saying that, Mr. Baldwin, that I didn't get more.

Q. What was the source of those fees ——

A. Copies of vital statistics; issuing marriage licenses, etc.

Q. How much would that be?

A. I couldn't say.

Q. Don't you know how much it cost for a marriage license?

A. That is, per item?

Q. Yes.

A. Well, it changed about three or four years ago.

Q. What is it now?

A. It is $2.00.

Q. What other fees do you say you got?

Mr. Carr: I certainly object to this. I can't see how it is possibly relevant.

The Court: I think it might be. I shall permit this to be answered.

Mr. Carr: You will grant me an exception, your Honor?

The Court: Surely.

The Witness: Permit fees; for the issuance of different permits.

Q. Building permits?

A. They didn't come to me; they came to the City.

Q. Water permits?

A. Water permits didn't come to me.

Q. What kind?

A. Issuance of burial permits.

Q. That is part of the vital statistics?

A. Part of the vital statistics. When I spoke of vital statistics, I had reference to the amount that was designated by the Department of Health, that I was entitled to at the end of a given period; but, in addition to that, we also received 25 cents for every burial permit; for other permits, 50 cents.

Q. How much did you receive from the City of Gloucester City, in fees arising out of your position there, in 1926?

A. I don't know.

Q. 1927?

A. I don't know.

Q. Did you have any other source of income?

Mr. Carr: I object to that. That has nothing to do with this case.

The Court: I don't think that that is proper, unless it is limited to his official position. The other sources I cannot see that they are relevant.

The Prosecutor: It is relevant, because this man testified on direct examination that he never took a penny of the City's money. I would like to know what money he did have as income that came from the City, or what other income, if any, he had, so that facts inconsistent with his statements, may be essential in this case.

Mr. Carr: That is going a long ways, to try to say that this man had an income from this, that and the other thing.

The Court: Mr. Baldwin, I think you should define your examination to the income derived from his official connection, whatever that may be. I am perfectly agreeable as to that; but as to his private income aside from his position, I don't think that he should be required to disclose it.

The Prosecutor: All right, sir.

By the Prosecutor:

Q. Will you describe, please, just what part you played in the handling of the Water Department of

the City of Gloucester City; what you, individually, did?

A. You mean, to take it all the way through?

Q. What did you do as Water Clerk of the City?

A. More of a supervisor, and when I had time in the rush periods, I helped out and took water rents, collected water rents, in the rush.

Q. How many rush periods a year would you have?

A. They were paying water rents the whole year through. The month of June was the month we were busiest.

Q. Is that the only time you played any personal part in the administration of the affairs of that department?

A. Oh, no.

Q. What were you doing at times other than in June?

A. Got the money to the bank.

Q. Did you prepare the deposits?

A. Sometimes the clerk prepared them, and took them to the bank.

Q. Did you ever prepare them?

A. I did.

Q. Did you ever make out the deposit tickets?

A. I did.

Q. What part did you play in the sending out of bills?

A. In what way?

Q. Any way.

A. I didn't have anything to do—I supervised, to see that they were sent out. I didn't make the bills out, as a rule, but I helped sometimes.

Q. You didn't make any bills out?

A. I made some bills out, yes.

Q. How many types of bills do you have down there for water?

A. If I recall rightly, three.

Q. What were those three different types?

A. Flat rate, meter.

Q. That is two; what is the other one?

A. There were two different kinds of meter bills.

Q. How were those two different kinds of meter bills used?

A. I might qualify that by saying two different kinds of meter bills. One came to us in 1929. Prior to that, there were only two forms.

Q. Prior to 1929, there was a flat rate bill, and meter bill. The flat rate bills were sent to private property owners, were they not?

A. Yes.

Q. Householders?

A. Yes. Any person that had not meters, where they were property owners, storekeepers, or some other business places, he had just a flat rate.

Q. On those flat rate bills, did you have any space for the gallons each purchased?

A. Not on flat rate bills.

Q. On meter bills?

A. Yes.

Q. Did you make out the meter bills?

A. I think I did in most cases, yes.

Q. I show you a book, State's Exhibit No. 5, and ask you to glance over that, and to say if you made out the bills of which the carbon copies in that book are copies?

A. The body of the bills appear to be in my handwriting, yes.

Q. Where there is a receipt on those bills, and particularly No. 88, 1-20-27, Allan W. Redfield, is that your writing?

A. That signature is my writing, yes.

Q. Is the rest of the bill your writing?

A. This is.

Q. Is the rest of it your writing?

A. I would not say it was, no.

Q. Do you mean, it was not?

A. Yes, I say it was not.

Q. You say it was not?

A. The rest of it is not.

Q. Whose is it?

A. I don't know.

Q. So that you now say that the date, April 12—November 10, 1926, is not in your writing?

A. I didn't say that. That may be in my writing.

Q. What part of it is not in your writing?

A. This part of the bill is not in my writing.

Q. The number of cubic feet?

A. Is not.

Q. Is not?

A. Is not.

Q. Or this figure here? (Indicating.)

A. It is not.

Q. Or this 25? (Indicating.)

A. It is not.

Q. Or this number of gallons?

A. It is not.

Q. Do you recognize the writing as being that of any other person in your office?

A. I do not.

Q. Why did you make out the meter bills?

A. Why did I make out the meter bills?

Q. Yes.

A. I don't know as there was any particular reason why I should particularly make out meter bills. The bills were issued at irregular periods, and when the water inspector would bring the slips in to me, I would make the bills out. I assume he would turn them over to me.

Q. Did you make any other kind of bills out?

A. I quite often made out flat rate bills.

Q. When they would call, say, for bills, you would make them out?

A. Yes.

Q. Well, in the initial sending out of bills, did you make out any flat rate bills?

A. I did assist in making them out.

Q. It was a flat rate bill that had a stub attached to it?

A. Yes.

Q. Did the meter bills have a stub attached to them?

A. Not prior to 1929.

Q. In 1926, you say?

A. No.

Q. 1927?

A. No—pardon me; we did have some old bills around—I don't know whether any were used or not—that had stubs.

Q. Wasn't this your practice there, that there was one sheet, which is blue, and the other sheet, which is pink?

A. Yes.

Q. The blue bill was the one sent to the consumer?

A. Yes.

Q. That is the one you made out?

A. Yes.

Q. And, there was a carbon copy retained on the pink sheet?

A. Yes.

Q. That was done by you?

A. Yes.

Q. This carbon copy you made out and caused to be sent to the Air Reduction Sales Corporation?

A. Yes.

Q. Did you ever have any knowledge of that bill being paid?

A. I don't recall that particular bill. I identified a check here that came from the Air Reduction.

Q. What does this mean down here (indicating) "1-20-27, Allan W. Redfield," in original pencil writing?

A. That was the practice, to put in there when the bills came in, so that when we knew they were paid, I would write in there that they had paid.

Q. That refreshed your recollection, and you know that was paid?

A. Yes, sir.

Q. Do you know from anything appearing on here how much was paid?

A. I do not.

Q. Your signature on here indicates you had knowledge at the time that it was paid?

A. My signature on it would indicate I knew that check came in.

Q. You would not have marked it unless it was paid?

A. Unless I knew the check came in.

Q. You did know that this check came in, didn't you?

A. I did.

Q. Now, how did you treat that check when it came in, as 1926 revenue or 1927?

A. I don't recall.

Q. Well, by looking at the check, could you tell me when you cleared it through the bank?

A. No, I could not.

Q. You could not tell that. I want you to look at the check, and tell me when it cleared through the bank?

A. It was cleared through the bank 12-18-26, apparently.

Q. I show you State's Exhibit No. 2, which is a deposit ticket on the Gloucester City Trust Company, dated 12-10-26, and ask you if you made that out?

A. That is correct, up to the 12-17.

Q. Did you make it out?

A. I made this out.

Q. That is your handwriting?

A. Yes.

Q. Is the check for $1146.24 thereon entered, this check, State's Exhibit No. 1?

A. Check drawn on the Philadelphia Bank for $1146.24.

Q. That was this check?

A. Apparently so; I should say it was.

Q. So, you put this money in the bank during December, 1926?

A. According to that record.

Q. You kept your books on the calendar year, January 1st to December 31st?

A. Not always.

Q. Why not?

A. My work would lap over the calendar year.

Q. Well, your audit, made by Mr. McCord, did not lap over the calendar year?

Mr. Carr: I object to that. He is not able to pass on Mr. McCord's work.

By the Prosecutor:

Q. For what period of time did Mr. McCord audit, when he audited?

A. Calendar year.

Q. So that when Mr. McCord made his audit for the year 1926, and closed his audit as of December 31, 1926, this money was in the bank, was it not, in your Water Department account?

A. According to that idea, yes.

Q. Did that appear anywhere in your 1926 book?

A. I don't know.

Q. Did it appear anywhere in your 1927 book?

A. I don't know.

Q. I show you this book which has been marked State's Exhibit No. 4, and ask you if you can tell me what book this is?

A. Cash book of 1927; cash book.

Q. This item which appears under date of January 20th, Air Reduction Sales Corporation, is that the payment which this check represents?

A. I could not say.

Q. Why?

A. I didn't keep that book.

Q. You didn't make the entry?

A. I didn't keep that book.

Q. Why did you write "1-20-27" when you received this pink slip?

A. I don't know, unless it was overlooked, and we didn't know the date it came in.

Q. Then, the date on this pink sheet corresponds with the date of this posting in this book?

A. Apparently it does.

Q. Would you show this Air Reduction item, charged by you in 1926, in your books of 1927 revenue?

A. I would not say.

Q. You would not say?

A. No.

Q. Why not?

A. Because I didn't prepare the book.

Q. I show you this book, and ask you if you can identify it?

A. It is supposed to be—intended to be the 1926 cash book.

Q. Well, is it?

A. That is what we used it for.

Q. It is the 1926 cash book, then?

A. Yes.

The Prosecutor: I ask that this be marked for identification.

(Book last above referred to marked State Exhibit No. 8, for identification.)

By the Prosecutor:

Q. Turn to page 155 of this book, where a very

convincing ink stain appears, and I ask you if you can identify those particular figures on pages 154 and 155?

A. In what particular?

Q. Do you know what those pages represent?

A. They apparently represent January, 1927, cash report.

Q. And, under date of January 20th, can you see any Air Reduction Corporation there?

A. I see "Air Reduction."

Q. Do you recall that ink stain?

A. I do.

Q. You know there was such an ink stain?

A. Yes.

Q. After the ink stain, I presume you started the new 1927 cash book?

A. New 1927 cash book.

Q. Was that upon your direction?

A. Well, of course, we had to have one. That was the arrangement; different times of the year we started over again.

Q. You there had to start the year 1927 on page 154?

A. Yes.

Q. At that time there remained in the book 146 other pages; is that right?

A. Yes.

Q. After the ink stain, there still remained more than 140 pages of unused stubs in the book?

A. I guess.

Q. Why did not you continue to use this book by turning over a few pages, instead of writing up a new book?

A. It would not hold, I believe, all of the 1927 re-

ceipts; and, furthermore, after having the ink bottle spilled on it, it did not look very proper to carry that book, when it was only necessary to do such a small amount of work to start anew.

Q. When you started in on 154, you thought that there would be enough pages?

A. Yes.

Q. But, the 158 would not have been, or 160?

A. I did not say it would not hold all the 1927 receipts; I say, after the ink was spilled on.

Q. Can you tell me what figures appear opposite the Air Reduction item there?

A. I cannot.

Q. Why?

A. Because my eyes are not just good enough today.

Q. The ink stain prevents it?

A. I don't know.

Q. You don't know?

A. I don't know that that is the reason.

Q. Just how busy were you, Mr. Redfield, with your water collections, during November and December of 1926?

A. I could not say. Some years there was quite a lot of transactions—quite a lot of persons that came in late in the year; I don't recall 1927, or 26; I don't know.

Q. You don't know whether you were busy or not?

A. I can't say how busy I was; I was busy all the time.

Q. This check got in the bank?

A. It did.

Q. I don't suppose you experienced any trouble getting it there?

A. Well, we would get the checks in the bank as they came in; list them up and send them up there. We would write them up, make a duplicate out and send them up there.

Q. How often would you make your bank deposits?

A. It was infrequent; whenever we had the opportunity to get it made up.

Q. You couldn't have done it once a week?

A. Sometimes I didn't, no.

Q. Or, once a month?

A. I think there were some periods when it did go on months.

Q. There was a month went by without a bank deposit being made?

A. Yes.

Q. Why was that?

A. No reason, except pressed for time.

Q. Knowing that your office furnishings were not what you liked them to be, you still preferred to keep the money in the office instead of the bank?

A. I had a vault, in the City Hall.

Q. That is where you kept the money?

A. Yes, after it had been collected.

Q. What would cause you to take the money to the bank when you did take it?

A. That is where it was intended to go.

Q. Were you supposed to put it there?

A. Most assuredly.

Q. That was part of your duties?

A. Most assuredly.

Q. And, was it your duty to draw against that money, and turn it over to the City Treasurer?

A. It was.

Q. How frequently, would you say, you did turn money over to the City Treasurer?

A. That was done at infrequent periods; I don't know.

Q. You did not make a monthly remittance?

A. I did not.

Q. Did you endeavor to close up your accounts at the end of each calendar year?

A. No.

Q. Why not?

A. I was too busy to get down to it.

Q. You knew that a little later on there would be an auditor coming around to audit the calendar year accounts?

A. Yes.

Q. Yet, you did not see fit to put all the money which you had, at the end of the year, in the account, and turn a check for it over to the City Treasurer; is that right?

A. It would have been in the account, I would have assumed, whether it was in my office or in the bank.

Q. It didn't make any difference whether the money was in your bank, or in the office?

A. Not in that respect.

Q. When you turned money over to the City Treasurer, you always did it in round figures?

A. Mostly, yes.

Q. You didn't give him odd amounts which would agree with any particular part of your book ——

A. Sometimes.

Q. Did you, in 1927?

A. I don't know.

Q. Was there ever any cash came into your office, as Water Clerk?

A. Yes.

Q. Very much cash?

A. Quite a bit.

Q. Did many people pay their bills in cash?

A. Yes.

Q. At all periods of the year?

A. Yes.

Q. Did you deposit that cash in the bank, as such?

A. I did.

Q. How frequently would you put cash in the bank?

A. I don't know.

Q. I show you this deposit ticket which you made up, and ask you if there was any cash which formed part of that deposit?

A. No; there is no notation on that slip as having been deposited at that time.

Q. Well, then, would your conclusion be that there wasn't any cash deposited at that time?

A. No, it would not.

Q. What?

A. No, it would not.

Q. Why not?

A. It might have been cash.

Q. If it was cash, would you not show it on the deposit ticket?

A. There was no cash deposited at that time.

Q. The deposit was made in December, 1926, was it not, Mr. Redfield?

A. I think, December 17th.

Q. Would you say whether or not the last deposit which preceded that was on September 16, 1926, three months earlier?

A. I would not say.

Q. Would you know it was not the next preceding deposit?

A. I would not.

Q. Do you know whether you made any bank deposits between September 16th and December 17th?

A. I don't know.

Q. Would you say you did?

A. I would not.

Q. Was it customary, that there might be three months intervening between bank deposits?

A. I guess it has been, sometimes.

Q. Do you know whether the next preceding deposit, ahead of the September one, was in July, the 23rd?

A. I do not.

Q. Assuming that the deposit which next preceded the December deposit was that of September, 1926, and there was $350 cash deposited at that time, would you say that that was all the cash that was on hand?

Mr. Carr: I object to the assumption, as a matter of cross-examination. Further, I object to entries of deposits of cash occurring prior to December, because that could not in any way affect this situation; it would be entirely outside of the scope of the indictment.

The Court: It might, and might not, as far as

the cash report is concerned. I think I will permit the question.

The Prosecutor: I will re-frame that, if your Honor please.

By the Prosecutor:

Q. Did the deposit which you made on September 16, 1926, include $350 in cash?

Mr. Carr: I renew my objection.

The Court: Overruled.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

The Witness: I don't know.

By the Prosecutor:

Q. You don't know?
A. I don't know.
Q. Do you know the deposit which next succeeded that of December, 1926, was in March, 1927?
A. I don't, no.
Q. Do you know that that deposit did not have any cash in it?
A. I don't know.
Q. Do you know that the next deposit, in point of time, after that, was June 16, 1927?

A. I do not.

Q. Do you know that that deposit did not have any cash in it?

A. I do not.

Q. What can you say about the treatment of cash that came into the Water Office, Mr. Redfield?

Mr. Carr: I object to that.

The Court: I think it should be limited to around the time of this transaction.

The Prosecutor: All right, sir.

By the Prosecutor:

Q. What was done with the cash payments which were made to the Water Office, in the neighborhood of November and December of 1926 and January of 1927?

Mr. Carr: I object to that, upon the ground that we are charged with having taken, on January 20, 1927, the sum of $1,000, to wit, a payment made by the Air Reduction Sales Company. We are not charged with anything else, and are not concerned with any other cash.

The Court: Overruled.

Mr. Carr: Exception.

The Court: Exception allowed.

The Witness: They eventually went to the bank.

By the Prosecutor:

Q. The cash did?
A. Eventually, yes.
Q. Nothing else happened to it?
A. Not as far as I would know.
Q. So, you deposited the checks, which you had to list on a deposit ticket, and had to stamp on the back with a rubber stamp of some kind, but you did not check the cash; is that right?
A. I would have the clerk, Mr. Baldwin, get out the bunch of checks which I did not want, because these people liked to have their checks deposited—persons like to have their checks deposited. I would get the clerk to list up or prepare the checks, and I would get them in the bank. Sometimes I would not have time to reach the cash, to count it, to get it up there.
Q. Was that so arduous a task, to count the cash and put it on the ticket, and take it to the bank?
A. It was, with so much confusion in my office, so many persons coming in and out there in my office.
Q. I presume your office was full of people all the time?
A. Not full.
Q. You were always engaged, annoyed with people being there?
A. Absolutely.
Q. You could not seem to get your banking done?
A. Not as I would like to have done it.
Q. Why didn't you get more help, then?

A. I tried to.

Q. How did you try?

A. Telling the governing body it was essential I have more help to do the work in a proper manner.

Q. They gave you some outside help, did they not?

A. No.

Q. Didn't Miss Kavanagh work on your water records?

A. Yes.

Q. And, Mrs. Mailly?

A. Yes.

Q. Did not you have Miss Kavanagh's sister in your own office?

A. Yes.

Q. Who comprised the personnel of the Water Office, besides yourself?

A. I was the only one engaged by any action of Council, connected with the Water Office. Miss Kavanagh came to me, as assistant, not in the Water Department; as assistant to me as City Clerk.

Q. There were two people in the office, then?

A. Yes.

Q. No more than that employed in the office?

A. Not at my office.

Q. Just you and Miss Kavanagh?

A. Yes.

Q. That is, Margaret Kavanagh?

A. Yes.

Q. Not the young lady who was on the stand, yesterday?

A. No.

Q. Look at this deposit ticket, State's Exhibit No.

2. Can you tell me whether there was any cash or not, in your office, which you did not deposit?

A. I cannot.

Q. If there was any on hand, you did not deposit it?

A. Not on this slip.

Q. On no other deposit you made was there any cash appearing on the deposit ticket. There might have been cash in your office at the time, but it wasn't then deposited; is that right?

A. That is right.

Q. Was any of that cash ever withdrawn, taken away from the water revenues?

Mr. Carr: What cash?

The Prosecutor: Any cash.

Mr. Carr: I think it should be limited to some period; he was there for many years. This indictment we are concerned with deals with some definite time.

The Court: The question should be restricted.

The Prosecutor: All right, sir.

By the Prosecutor:

Q. During the years 1926 and 1927, was there any cash brought into the Water Department which was abstracted, to your knowledge?

Mr. Carr: I should think it should be further restricted; I think it is too broad.

The Prosecutor: Does your Honor feel the same way?

The Court: I think I will allow it.

Mr. Carr: You will grant me an exception?

The Court: Exception allowed.

The Witness: Not to my knowledge.

By the Prosecutor:

Q. Are you sure of that?

A. I beg pardon.

Q. 1926-1927?

A. To my knowledge there was no cash abstracted at any time; I don't know of anyone abstracting cash.

Q. Then, the year does not make any difference. There was no cash disturbed, to your knowledge?

A. Not to my knowledge.

Q. Was there ever any cash taken away from the water revenues of Gloucester City, for any purpose?

Mr. Carr: That should be confined to 1926 and 1927.

The Prosecutor: He says time does not make any difference.

The Court: I think we should confine it to two years.

By the Prosecutor:

Q. In May, 1927, was there any cash revenue belonging to the Gloucester City Water Department that was abstracted, to your knowledge?

Mr. Carr: I certainly object to that; May, 1927, was months and months before this transaction. I object to the Prosecutor referring to an indictment that deals with an entirely—with another entirely different offense. It is absolutely unfair, here in the trial of this case, on this indictment, to try to bring in matters involved in another indictment.

(Argument and discussion here ensued, which was eliminated from the record.)

(Question withdrawn.)

By the Prosecutor:

Q. Mr. Redfield, you have identified this paper as the audit received by you, as City Clerk, for the year 1926?

A. Yes.

Q. When Mr. McCord's company made this audit for 1926, did he know that the Air Reduction Sales Company had paid $1146.24, and that you had deposited it in the Water Department's bank account?

A. I don't know.

Q. Is there anything in the audit which would indicate he knew it?

A. I don't know so, without looking it up.

Q. Did you ever tell him there was $1146.24 that the Air Reduction Sales Company paid, in your bank account that was not in your books, yet?

A. I did not.

Q. Will you pick out the cash book, please, of all your cash books, in which this Air Reduction Sales payment was posted?

A. I will have to look at them. This is it, here.

Q. This is the book in which the Air Reduction Sales payment was posted?

A. According to the dates.

Q. It was posted as $146.24?

A. $146.24 is down there.

Mr. Carr: What is down there?

The Witness: That is what is down there.

By the Prosecutor:

Q. I notice that you, or some one, has caused that particular item to be identified as a meter payment. Did you so identify all meter payments in the cash books?

A. I don't know.

Q. I wish you would turn to the pages of the 1927 cash book, and read out the meter payments that were made during that year. I don't believe there were many of them.

Mr. Carr: I don't believe that that is relevant, payments by other consumers.

The Prosecutor: I am now dealing with the 1927 audit of the Water Department, which shows that during the year only $1201.35 came in from meter rate collections.

Mr. Carr: How much?

The Prosecutor: $1201.35. I would like him to pick out, in his cash book, the items shown there as meter payments.

Mr. Carr: He did not make up this audit; he cannot be cross-examined as to Mr. McCord's work.

The Court: If the Prosecutor thinks that it is essential, I can't see that it will do any harm. I think I will permit the question.

Mr. Carr: May I have an exception?

The Court: Exception allowed.

By the Prosecutor:

Q. Will you read them, from the first to last. I will ask Mr. Dorsett to take them down.

A. Air Reduction Sales Corporation, $146.24; Air Reduction Sales Corporation, $64.46; Armstrong Cork Company, $71.08; Scott-Powell Dairies, $169.-27; Armstrong Cork Company, $201.55; Armstrong Cork Company, $108.65.

Mr. Carr: I think this examination is in reference to—I don't know how many, 150 pages of accounts here.

The Prosecutor: He is doing pretty well, Mr. Carr.

Mr. Carr: It covers a period remote from this transaction.

The Prosecutor: It is the very year this transaction is posted in.

Mr. Carr: It covers a year and a half.

The Court: It depends on the number of items.

The Prosecutor: There could not be many at that time.

The Court: It won't take very long.

The Prosecutor: Not for $1200 worth, at that rate.

The Witness: Forrest Bros., $44.55; Armstrong Cork Company, $82.04; Armstrong Cork Company, $18.64; Air Reduction Sales Company, $44.15; Pennsylvania Railroad Company, $118.93; Armstrong Cork Company, $69.11; Forrest Mercerizing Company, $23.30.

Q. You are still in 1927?
A. Yes, sir.

Q. That seems to be all of them?

A. Yes, sir.

Q. What you have read totals $1151.97, which is close to the $1201.35 that Mr. McCord apparently showed on this attached statement. Is that the book that Mr. McCord audited for the year 1927?

A. I assume it is.

Q. This is the book from which he prepared this report?

A. It seems so; I assume it was; I assume he did.

Q. So that when Mr. McCord made his audit, the facts presented him were that $146.24 had been paid by the Air Reduction Sales Company?

A. According to this book.

Q. That is the book he audited?

A. So far as I know.

Q. Did Mr. McCord know that the Air Reduction Sales Company had ever paid $1146.24?

Mr. Carr: I object; he can't tell what he knew.

The Court: Did you tell him? You will have to confine that.

By the Prosecutor:

Q. Did you tell him that the Air Reduction Sales Corporation paid $1146.24?

A. I did not.

Q. Did he have any other means of knowing that, to your knowledge?

A. Not to my knowledge; I am not familiar with how auditors go.

Q. If, in his report, he showed that you received

$1201.35 from meter collections, and if he had known that the Air Reduction Sales Company had paid $1000 more than that, he would have shown your meter revenues greater, would he not?

Mr. Carr: I think that that is argumentative. The witness is called upon to say what Mr. McCord would have done.

The Court: I think the question could be reframed, so that a proper answer could be given.

By the Prosecutor:

Q. Mr. Redfield, I assume that what Mr. McCord has put in his report, was taken from that cash book, is that right, as to the receipts of your department?

A. I assume so.

Q. Look at this statement of revenues of the Water Department for the year 1927; can you tell me what he placed down there as the meter income?

A. Meter rates, '27 collections, $1201.35.

Q. That is taken from the book from which you read the items?

A. I don't know.

Q. That is the only book he could take it from, to your knowledge?

Mr. Carr: That is objected to as argumentative.

The Court: I think that is all right.

The Witness: He didn't get any other books from me.

By the Prosecutor:

Q. Did he get the book with the ink stain?
A. I don't know.
Q. Mr. Redfield, in your direct examination, you testified that shortages were brought to your attention by Mr. McCord; is that correct?

Mr. Carr: He didn't testify to that, as I recall. The query was whether Mr. Dorsett brought to his attention any.

The Prosecutor: He said Mr. McCord never charged him with any shortages, and Mr. Dorsett?

Mr. Carr: I don't recall such a question about Mr. McCord. I asked about Mr. Dorsett.

The Prosecutor: I will now ask him on cross-examination.

By the Prosecutor:

Q. Did Mr. McCord ever charge you with shortages in the Water Department?

Mr. Carr: That is objected to as immaterial and irrelevant.

The Court: Mr. McCord made the audit; I think that is proper. I will allow the question.

Mr. Carr: Exception.

The Court: Exception allowed.

The Witness: I don't think you would call them "shortages"; carrying balances over.

Q. What did he call them, deficits?

A. I don't know just what he called them.

Q. I show you an item in what appears to be the State's Exhibit No. 8 for identification, which you said was your 1926 cash book, an item, May 29, "additional balance as per audit 1925, $751.61." Can you tell me who put that item in your book?

A. That is in my handwriting, I think.

Q. How did you come to put it there?

A. I don't know.

Q. Would you have put such figures in your cash book without some good reason?

Mr. Carr: I object. This item relates to an item in 1925; it has no relation to this whatever. The audit which is now the subject of criticism, is 1927—the audit of 1927; this is 1925.

The Prosecutor: This witness said Mr. McCord did not call his attention to any shortages.

The Witness: I didn't say that.

Q. What did you say, then?

A. I was not asked that question.

Q. I certainly remember asking it, but if I didn't, I will ask you now. Did Mr. McCord call your attention, as auditor of the records of your city, about any shortages in your accounts?

A. Not as shortages.

Q. Then, what were they?

A. He said there were balances that were carried over from one calendar year to the next.

Q. Is that what this is?

A. I don't know what it is, at this time.

Q. You also made the statement, in your direct examination, that you were not confronted by Mr. Dorsett with these matters, including the one on trial, prior to the criminal complaint, the first you knew about it was when the criminal complaint was made?

A. I was not advised or confronted by Mr. Dorsett in connection with this matter up there.

Q. You were not?

A. I was not.

Q. What were you confronted with?

Mr. Carr: I object to that.

The Prosecutor: I think this witness testified that the first he knew about this was when the criminal complaint was made. Perhaps we can clarify it.

By the Prosecutor:

Q. When did you know the criminal complaint was made, when you were arrested?

A. Are you referring to this particular matter?

Q. Yes.

A. I didn't know until after the indictment was read to me, about this particular matter.

Q. So, you never had that brought specifically to your attention?

A. I did not.

Q. Were there any such matters that were brought specifically to your attention?

Mr. Carr: I object; it is entirely outside of this issue.

The Court: I think we better confine ourselves to this issue, Mr. Baldwin.

By the Prosecutor:

Q. Did you at any time visit the office of Walter R. Darby, Commissioner of Municipal Accounts, at Trenton, with the idea of making restitution to the City of Gloucester, of any moneys?

Mr. Carr: I object to the form of the question. The assumption is that he went there to make restitution, and I object to the form of the question.

The Court: If he had some conversation with Mr. Darby that would repudiate his statement as to his knowledge of this affair until the indictment was read, I think it is quite proper; you might introduce that. If we confine ourselves to that fact, that he had some conversation with Mr. Darby which would indicate that he knew about this before the indictment, that would be proper rebuttal.

Mr. Carr: Referring to this matter, yes. I think the proper question is, what did he say to Mr. Dor-

sett, and what did Mr. Dorsett say. Then, we have something specific.

The Court: I know; but he had a conversation with Mr. Dorsett pertaining to this matter.

By the Prosecutor:

Q. Did you go to Mr. Dorsett's office concerning this matter?

A. I did not.

Q. You say the first knowledge you had of this particular item, was when the indictment was read to you?

A. Yes.

Q. Did Mr. Dorsett ever call that page 88, in the meter book, to your attention?

A. He did not.

Q. Did you have these photographs taken, Mr. Redfield?

A. I did.

Q. Why?

A. At the request of my counsel.

Q. Did he give you any reason for making the request?

A. No.

Q. You merely had the photographs taken because he asked you to; is that right?

A. Yes.

Q. Were these two photographs taken from opposite sides of a certain mounted railing or ——

A. They were taken from the same side.

Q. They both show a view of flat tables, in the background?

A. Yes.

Q. And, they both show the furnishings on the far side of the railing, on the opposite side of the railing from where the camera was placed?

A. Yes.

Q. There is a mounted railing down the middle of your office, is there?

A. It separates the spectators' part of the Council Chamber.

Q. This door that shows on the photographs, leads out into the main corridor?

A. Yes.

Q. That is where the water consumers would enter to pay their bills?

A. Come in this door.

Q. Where would you be, at the time when you would be collecting?

A. Well, when they were coming in during the water rent collecting, it would be quite heavy; it just kept us busy all the time along here (indicating) taking the money.

Q. Would you be outside of the railing from this (indicating)?

A. I had no railing whatever.

Q. There is no railing in the middle?

A. That is no part of my office whatever.

Q. What is that?

A. That is a railing for Council, separates the spectators from the Council part, newspaper reporters.

Q. Is there no railing which keeps you from that side of the room?

A. If I am here (indicating) on this side of the

railing, I would be away from all the facilities of my office.

Q. There is no door in the railing?

A. That little door.

Q. A swinging door?

A. Yes.

Q. You didn't show that?

A. Not if he didn't take it. We wanted to show our office.

Q. You didn't show anything on this side of the railing?

A. That is the other view there, for spectators.

Q. Is it your thought that the layout of your office had something to do with this case?

A. My thought is that the conditions which existed in my office, they would have a tendency, by reason of this crowding, to, that I would not know about.

Q. In other words, somebody would walk in and grab a thousand dollars?

A. Absolutely, yes.

Q. Did anybody ever do it, to your knowledge?

A. Not to my knowledge.

Q. It would have been possible, would it not, to have kept this door which you did show in your photographs closed during heavy collection periods, and have people enter into this side of the railing, and pay their money across the railing?

A. It might have been.

Q. There is another room, or another door?

A. No, not another room.

Q. This is the same room?

A. This is the same room. A door that opens down a dark corridor and into the Council Chamber;

that is behind the Council Chamber, not for spectators to come in. They come in this door (indicating) where persons come in to pay water rents.

Q. You didn't want water buyers to come in this door, and hand you money across the railing?

A. I wanted proper facilities ——

Q. Did you ever get them?

A. Yes, this year.

Q. Mr. Redfield, did you, at that time, make a written statement to me, over your signature?

A. I did.

Q. You prepared that, did you?

A. I did.

Q. In that statement did you say: "While not attempting excuses for dereliction, I believe that had the proper cooperation and help asked for from the governing body been given me, this matter could not have arisen.

A. If that is what is contained in this statement, that is what I said; I can't just remember.

By Mr. Carr:

Q. You say you did get better facilities this year?

A. Yes.

Q. How are they changed, Mr. Redfield?

A. They constructed a rail and counter combination, so that the persons coming into the office had to go up to this counter.

Q. How are you making these collections, now?

A. The collections, at the present time, are made through a window in the Treasurer's office.

Q. The City Treasurer's office?

A. Collecting water rents, in the Treasurer's office.

Q. How many persons are handling this same matter which was handled by you?

A. In connection with my duties as City Clerk and Water Clerk, there was myself and one other who assisted me. At the present time, five persons are doing the work.

Q. That you and Miss Kavanagh did?

A. Yes.

Q. When you called for extra help, like Miss Kavanagh's sister, was that paid for by the City?

A. I paid for that.

Q. You say five people are now doing the work you and Miss Kavanagh did?

A. It is distributed between five persons.

By the Prosecutor:

Q. Now, would you have us assume that this $1000 was taken, Miss Kavanagh took it?

A. Most assuredly not.

The Prosecutor: That is all.

Mr. Carr: That is all.

ROBERT MAYHUGH, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. 827 Middlesex St., Gloucester.
Q. How long have you lived there?
A. I should say, over 50 years.
Q. Do you hold any public office in the City of Gloucester?
A. City Council.
Q. How long have you been in City Council?
A. I am not quite sure whether 1909 or 1910 that I was elected.
Q. From that time, have you been a member, continuously?
A. All except one year.
Q. Are you President of Council?
A. I am.
Q. Do you know Mr. Redfield, here?
A. Yes, sir.
Q. How long have you known him?
A. Oh, I should judge 30 years.
Q. He has been City Clerk for a number of years?
A. Yes, sir.
Q. Clerk of the Water Department?
A. Yes, sir.
Q. Do you recognize these photographs marked Defendant's Exhibits Nos. 6 and 7, as photographs of the Clerk's and Council's office?

A. Yes; that is one of them; this one, also; yes, sir.

Q. Are you familiar with the conditions under which water consumers have been paying their bills there for years?

A. Well, I think so; yes, sir.

Q. Can you tell me if there is any partition between the water bill payers and clerk when bills were being paid?

A. I think they have come in the door opposite the Treasurer's office.

Q. Do you know whether that was the custom to come in that way?

A. Always.

Q. Always?

A. Always has been the custom.

Q. And, both Council, and the clerk, occupied this one room?

A. Yes, sir.

Q. And the desks of the nine Councilmen are there, are they not?

A. In the form of a horseshoe.

Q. Did the clerk ever complain to Council, or to you, of inadequate office facilities, and water record facilities?

The Prosecutor: I object; that is no issue in this case. It has no bearing on the case, whether he did or did not complain about his office facilities.

Mr. Carr: The Prosecutor asked whether he made a complaint, or why he didn't make any complaint, and I have a right to show that he did complain.

The Court: He said he made a complaint.

The Prosecutor: We will admit that.

The Court: It is admitted.

Mr. Carr: All right.

By Mr. Carr:

Q. Was any report or audit ever submitted to the Gloucester Council, by the auditor here, or Department of Municipal Accounts?

A. What year?

Q. For the five years preceding this year, to wit, beginning 1925 down to June 11, 1930?

A. Well, I would say—well, there has always been an audit submitted, except for 1929.

Q. Those audits, were the audits made by the New Jersey Audit Company, Mr. Sidney P. McCord?

A. Yes, sir.

Q. Did you ever receive any orders from the State Department of Municipal Accounts, or from Mr. Dorsett, or Mr. Darby?

A. No, sir.

Q. They never have made any report to City Council concerning the subject matter of this indictment, have they?

A. No, sir.

Q. Have they made any report of any alleged shortages or irregularities in Mr. Redfield's accounts?

A. Not to me.

Q. Have they ever made it to City Council?

A. Not as a body.

Q. Was there ever any written, formal, accounting or audit submitted by the State Department to the City of Gloucester?

A. No, sir.

Q. Has the City of Gloucester any report or information from the State Department, that there was any money due, or claimed to be due, from Mr. Redfield to the City of Gloucester?

A. No, sir.

Q. Did the City of Gloucester ever authorize any criminal complaint to be made in this matter?

The Prosecutor: That is objected to as immaterial.

The Court: Sustained; I cannot see that that is pertinent at all.

Mr. Carr: I will tell the Court the purpose of it. I intend to show that this was an individual enterprise of Mr. Dorsett's, instead of it being in the usual form of a report to the City authorities, so that they could act in a matter in which they would be greatly interested; that was done by someone with intent to incriminate—that indicates bias on the part of somebody.

The Court: It is your purpose to show that there was bias on the part of Mr. Dorsett, or of the Municipal Accountants?

Mr. Carr: Yes, Mr. Dorsett, the witness here.

The Court: I cannot see it that way. I will give you an exception.

By Mr. Carr:

Q. Do you know others that know Mr. Redfield, in his community, or in the neighborhood of Gloucester?

A. Others that know him?

Q. Others that know him?

A. Oh, I suppose he is known by the biggest majority of the people in the city.

Q. You, likewise, know a great many people down there who know him?

A. Yes, sir.

Q. What is his reputation, in the community, for honesty and integrity?

The Prosecutor: I object to that unless this witness first says he knows of the reputation he has for honesty and integrity.

By Mr. Carr:

Q. Do you know what his reputation is in the community for honesty and integrity?

A. I could not say I ever knew anything where he was dishonest.

The Prosecutor: That can be answered "yes" or "no".

By Mr. Carr:

Q. The answer would be "yes" or "no".
A. Well, I would say yes; I know his reputation.
Q. Is it good or bad?
A. It always has been good, so far as I know.

By the Prosecutor:

Q. As far as you know?
A. As far as I know, Mr. Baldwin.

Mr. Carr: All of these questions relate to a time prior to the institution of this criminal proceeding, you understand?

The Witness: Yes.

The Prosecutor: He was not asked that. His answer was—it has been given. I assume he means down to the present time. I ask the witness whether he has heard any reports or rumors in Gloucester affecting Mr. Redfield's honesty or integrity?

Mr. Carr: Since this, is it, or before?

The Prosecutor: At any time.

The Court: Gentlemen, I think the test is, what the man's reputation is in the community in which he resides, prior to the time of the matter at issue being aired.

The Prosecutor: That is so.

The Court: I will allow you to amend it accordingly.

Mr. Carr: My question was intended to be in the sense of what his reputation was prior to the institution of this criminal proceeding.

The Prosecutor: I don't think that is it; I think the date is, the commission of the offense.

Mr. Carr: Not the commission of the offense; nobody knows anything about it until it comes here.

The Prosecutor: At this point I move to strike out the answer to the previous question, that he has always had a good reputation, if I am not to be permitted to cross examine from that statement. If I am to be limited in cross-examination to that period of time that precedes either the commission of the offense, or the making of the charges, then I think that answer should not stand.

The Court: We will strike it out.

Mr. Carr: The question and answer were stricken out?

The Court: Yes.

By Mr. Carr:

Q. I am now asking you with regard to the reputation that the defendant, Mr. Redfield had, up to the time charged in the indictment, of the commission

of this offense, to wit, January 20, 1927. I now ask you whether his reputation was good or bad?

A. So far as I personally know, good.

Mr. Carr: Cross-examine.

The Prosecutor: No questions.

HARRY F. GREEN, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live, please?

A. 1300 Barnett Ave., Gloucester City, N. J.

Q. How long have you lived in Gloucester?

A. Over 30 years.

Q. Are you a member of the Gloucester City Council?

A. I am.

Q. Of the Water Committee?

A. I am.

Q. How long have you been a member of Gloucester Council?

A. Since November, 1928.

Q. How long have you been a member of the Water Committee?

A. Two years, part of this year.

Q. You know the defendant, Mr. Redfield, here?

A. Yes, sir.

Q. Do you know others that know him, in Gloucester?

A. Yes, sir.

Q. Do you know his reputation for honesty and integrity—the answer to that, I believe, is "yes" or "no"?

A. Yes.

Q. Will you say whether his reputation is good or bad?

The Prosecutor: I object; it should be limited to January 20, 1927.

By Mr. Carr:

Q. The time I am referring to is up until January 20, 1927?

A. Good.

Mr. Carr: Cross-examine.

Cross-examination.

By the Prosecutor:

Q. You were not a member of Council, then?

A. No, sir.

Q. How well do you know Mr. Redfield?

A. Very well, for close to 30 years.

Q. You have lived in the town during all that time?

A. Yes, sir; close to 30 years.

Q. Did you have any official contacts with him prior to January, of 1927?

A. No, sir.

HENRY H. WILSON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester.
Q. How long have you lived there?
A. 38 years.
Q. Are you a member of the City Council, of Gloucester?
A. I am.
Q. How long have you been?
A. Five years ago, January.
Q. Has there ever been submitted to City Council any audit or report by the State Department of Municipal Accounting?

The Prosecutor: I object. I don't see that it matters whether there was or whether there was not. The City of Gloucester has no authority to prosecute crimes; there is another branch of the Government which does.

The Court: Sustained.

Mr. Carr: Exception.

The Court: Exception allowed.

By Mr. Carr:

Q. Do you know others that know Mr. Redfield, in Gloucester?

A. I do.

Q. Do you know what his reputation for honesty and integrity, in the community is, speaking now as up to January 20, 1927, the date fixed in the indictment? The answer is "yes" or "no"?

A. Yes.

Q. What is his reputation in the Community, good or bad?

A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: I have no questions, but I prefer that the question be stated in the past tense.

Mr. Carr: I think the Prosecutor is right.

By Mr. Carr:

Q. Was his reputation good or bad?

A. Good.

The Prosecutor: No questions.

ROSCOE B. WEST, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester City.
Q. How long have you lived there?
A. 40 years.
Q. Are you a member of the Gloucester City Council?
A. I am.
Q. How long have you been a member?
A. Since January 1, 1929.
Q. Do you know Mr. Redfield, the defendant, here?
A. I do.
Q. Do you know others who know him in Gloucester ?
A. I do.
Q. Do you know what his reputation was up to January 20, 1927, the date fixed in the indictment?
A. Yes.
Q. Was his reputation for honesty and integrity, good or bad?
A. Good.

J. Emerson Jackson, having been duly sworn, was examined and testified as follows.

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester, N. J.
Q. How long have you lived there?
A. 40 years, past.
Q. Are you a member of City Council?
A. I am.
Q. How long have you been a member of Council?
A. Three years.
Q. Do you know Mr. Redfield, the defendant, here?
A. I do.
Q. Do you know others who know him in Gloucester?
A. I do.
Q. Do you know what his reputation was, up to January 20, 1927, the date fixed in the indictment?
A. I do.
Q. Was his reputation for honesty and integrity in the community, good or bad?
A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

CHARLES MAILLEY, having been duly sworn, was examined and testified as follows.

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester City.
Q. How long have you lived there?
A. 67 years; that is the truth.
Q. Are you a member of City Council?
A. I am.
Q. How long have you been a member?
A. Since 1928.
Q. I beg pardon; how long have you been a member of City Counciil?
A. Since 1928.
Q. You were elected in 1928?
A. Elected in 1927, and went in in 1928.
Q. Do you know Mr. Redfield, this gentleman, here?
A. I do.
Q. How long have you known him?
A. Since he was a small boy.
Q. You also know others who know him?
A. I do.
Q. Do you know what his reputation was for honesty and integrity, in the community, up to January 20, 1927, the date named in the indictment?
A. It was always good.

Mr. Carr: Cross-examine.

Cross-examination.

By the Prosecutor:

Q. How long have you lived in Gloucester?

A. I think I lived there long enough; that is where I was born and raised.

CHARLES H. EASTLACK, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?

A. 130 South Broadway, Gloucester City.

Q. How long have you lived there?

A. About 25 or 26 years.

Q. Are you a member of City Council?

A. Yes.

Q. For how long have you been a member of City Council?

A. Since 1927.

Q. Since the year 1927?

A. Yes; this will be four years.

Q. Do you know Mr. Redfield, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. 18 years.

Q. Do you know others who know him?
A. Yes.
Q. Do you know what his reputation was up to January 20, 1927, for honesty and integrity, in the community?
A. Yes.
Q. Was it good or bad?
A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

WILLIAM P. GILMORE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester City, N. J.
Q. How long have you lived there?
A. 43 years.
Q. Are you a member of City Council?
A. I am.
Q. How long have you been a member of City Council?
A. Close on to two years.
Q. Do you know Mr. Redfield?
A. I do.
Q. How long have you known him?

A. All my life.
Q. Do you know others that know him?
A. I do.
Q. Do you know what his reputation for honesty and integrity in the community was, up to January 20, 1927?
A. I do.
Q. Was it good or bad?
A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

PATRICK A. STEWART, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. 336 Monmouth Street, Gloucester.
Q. How long have you lived there?
A. 57 years.
Q. Pardon me?
A. 57 years.
Q. What is your business?
A. Builder.
Q. Where are you engaged in business?
A. My office is 4 North Broadway, Gloucester, New Jersey.

Q. Do you know Mr. Redfield, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. All his life.

Q. Do you know others that know him?

A. Yes, sir.

Q. Do you know what his reputation for honesty and integrity in the community was, up to January 20, 1927, the date fixed in the indictment?

A. Yes, sir.

Q. Was it good or bad?

A. Good.

Mr. Carr: Cross-examine.

Cross-examination.

By the Prosecutor:

Q. You are a member of City Council?

A. No, sir.

The Prosecutor: That is all.

Dr. John J. Haley, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?

A. 851 Monmouth Street, Gloucester, New Jersey.

Q. You are a medical doctor, I take it?

A. Yes.

Q. Are you also connected with the Gloucester Trust Company?

A. Yes, sir.

Q. In what capacity?

A. President.

Q. How long have you lived in Gloucester, Doctor?

A. About 48 years, next month.

Q. Do you know Mr. Redfield, the defendant, here?

A. Oh, yes.

Q. How long have you known him?

A. In the neighborhood of 30 years.

Q. Do you know others that know him?

A. Oh, yes.

Q. Do you know what his reputation for honesty and integrity was, up to January 20, 1927, the date fixed in the indictment?

A. Yes.

Q. Was it good or bad?

A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

JAMES W. THURSTON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. 318 Monmouth Street, Gloucester.
Q. How long have you lived there?
A. I came to Gloucester the first of July, 1901. I left Gloucester in late 1906, and came back the first day of January, 1916.
Q. Have you lived there ever since?
A. Yes, sir, directly opposite the City Hall is my home.
Q. What is your business?
A. Funeral director.
Q. Do you know Mr. Redfield?
A. I do.
Q. How long have you known Mr. Redfield?
A. I have known him—he was one of the first ones that I became acquainted with when I went to Gloucester, in July, 1901.
Q. Do you know others that know him?
A. I do.
Q. Up to January 20, 1927, the date fixed in the

indictment, do you know what his reputation was for honesty and integrity, in the community?

A. I do.

Q. What was it?

A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

VALENTINE H. WENDT, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Wendt, where do you live, please?

A. Gloucester, New Jersey.

Q. How long have you lived there?

A. 20 years.

Q. Do you know Mr. Redfield?

A. I do.

Q. Do you know others who know Mr. Redfield?

A. I do.

Q. What is your business?

A. Retired manufacturer.

Q. You say you know others that know Mr. Redfield?

A. I do.

Q. Up to January 20, 1927, the date fixed in the

indictment, do you know what his reputation for honesty and integrity was?

A. Yes, sir.

Q. What was it?

A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No questions.

J. GALLAGHER, having been duly sworn, was examined and testified as follows:

The Court: Perhaps it will be conceded by the State, that prior to this, his reputation was good.

The Prosecutor: I beg pardon?

The Court: That it be conceded by the State that prior to the commission of this offense, the man's reputation was good.

The Prosecutor: I am satisfied; the names of the witnesses brought here, their addresses, etc., may be written in the record, and stipulated that if they were called as a witness they would testify that he had a good reputation.

The Court: There are so many character witnesses, the State will concede that up to the commission of this offense, his reputation was good.

Mr. Carr: May we have the indulgence of the Court for one or two more witnesses?

JOHN J. GALLAGHER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. Gloucester City.
Q. How long have you lived there?
A. 38 years.
Q. Do you know Mr. Redfield?
A. I do.
Q. How long?
A. About 25 years.
Q. Do you know others that know him?
A. I do.
Q. Do you know what his reputation for honesty and integrity was in the community, up to January 20, 1927?
A. I do.
Q. What was it?
A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No cross-examination.

HARLAN S. MINER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

Q. Where do you live?
A. 915 Monmouth Street, Gloucester, New Jersey.
Q. How long have you lived there?
A. 42 years, past.
Q. Do you know Mr. Redfield?
A. Yes, sir.
Q. How long have you known him?
A. Upwards of 30 years, I should say.
Q. Do you know others who know him?
A. I do.
Q. Do you know what his reputation in the community was, for honesty and integrity, up to January 20, 1927?
A. I do.
Q. What was it?
A. Good.

Mr. Carr: Cross-examine.

The Prosecutor: No questions.

Mr. Carr: Now, Mr. Prosecutor, we have under subpoena the following additional witnesses: Mr. Charles Tyler, a member of Council; Dr. J. A. Beck ——

The Prosecutor: Where does the doctor live?

Mr. Carr: 10 North Broadway, Gloucester; William B. Hambleton, 2 North King Street, Gloucester; William H. McCormick, 503 Somerset Street; J. H. McLennan, 132 South Broadway; Amos Dotterer, c/o Long & Co., Gloucester.

The Prosecutor: Does Mr. Dotterer live in Gloucester City?

Mr. Carr: I will give you that in a moment.

The Prosecutor: I ask that that be stricken out.

Mr. Carr: We will come back to that. His business may take him there; I will find out. We will pass Mr. Dotterer for a moment. Walter D. Wendt, 937 Hudson Street; Townsend Stites, 830 Chambers Street; Fred Hutchinson, 100 Church Road, Merchantville—we will put him aside for a moment. J. McNally, Elks Club, Philadelphia.

The Prosecutor: I object to that.

Mr. Carr: We will put him aside. Frank B. Shearer, 6 North Broadway, Gloucester City, New Jersey.

I understand the State will admit, as to all of the parties whose names have been called, except Mr. Dotterer, Mr. Hutchinson and Mr. McNally, that these witnesses would testify, if called, as to the good reputation in the community, of Mr. Redfield, prior to January 20, 1927; am I correct in that?

The Prosecutor: That is right.

Mr. Carr: As to the other three gentlemen, the testimony is that they don't live in ——

The Prosecutor: In the community. They are not qualified to testify as character witnesses.

The Court: I think we have enough character witnesses, here. We have a large number of character witnesses; there should be a limit to it. We will adjourn until 1:30 P. M.

1:30 o'clock P. M.

TRIAL RESUMED.

PRESENT:
Parties as before noted.

RAYMOND B. WRIGHT, recalled.

Direct examination.

By the Prosecutor:

Q. Mr. Wright, will you produce, please, the deposit ticket of the Gloucester City Water Department, which preceded the deposit of December 17, 1926?

Mr Carr: That is not rebuttal. Rebuttal, as I understand it, contradicts something that the Defense has brought out. This came out in cross-examination by the State. The witness replied that he did not remember. This is not rebuttal; it should be part of the State's main case.

The Prosecutor: This defendant, on the stand, said that he did not remember whether or not there was any cash which formed part of these deposits. He would not deny, nor would he admit it. The

purpose of this is to make certain the fact that there was no cash deposited there.

The Court: I think we had that, also, in our direct testimony, if I recall it ——

The Prosecutor: There was an objection made to it at the time, and your Honor suggested that we reserve it until rebuttal.

The Court: With that information, I will allow it.

Mr. Carr: It is not rebuttal at all; it should be part of the State's main case.

The Court: I think I should permit it, Mr. Carr.

Mr. Carr: Your Honor will grant me an exception?

The Court: Exception allowed.

A. (Witness produces slip.)

By the Prosecutor:

Q. What was the date of that deposit?
A. September 16th is the date, and which is the correct date of the deposit.

Mr. Carr: I ask that the latter part be stricken out.

The Prosecutor: He said it is the correct date of the deposit ——

Mr. Carr: He added, "which is the correct date of the deposit."

The Court: If that memorandum was made by him ——

The Witness: The memorandum on the sheet, itself, is September 16th; but that is regardless of when the deposit slip was made out, as dated by the depositor.

By Mr. Carr:

Q. Was that record made by you?
A. No.
Q. You have no personal knowledge of it at all?
A. No.

The Prosecutor: It does not matter what shows on there. I offer this deposit ticket in evidence.

Mr. Carr: I object to it as immaterial, irrelevant, and not rebuttal, and as being of a time long anterior to the transaction charged in the indictment, the date here being September 16, 1926.

The Court: I will admit the paper.

Mr. Carr: Exception.

The Court: Exception allowed.

(Paper last above offered in evidence marked State's Exhibit No. 9.)

By the Prosecutor:

Q. Now, taking this exhibit, will you tell me whether it shows any cash as forming part of the deposit, and if so, how much?

A. There was cash to the amount of $350.

Q. Will you produce the deposit ticket of your trust company which first succeeded—the deposit of December 17th?

Mr. Carr: Have you any personal knowledge as to whether there were any other deposit slips in between?

The Witness: According to the record.

Mr. Carr: Personal knowledge?

The Witness: No.

Mr. Carr: You are depending upon the bank records, kept by someone else?

The Witness: That is true.

Mr. Carr: Do you have any personal knowledge as to whether there were any other deposit slips in between times?

The Witness: No.

Mr. Carr: I object to this going in as being the one preceding.

The Prosecutor: I think I can qualify still further.

By the Prosecutor:

Q. Did you, at the request of the Prosecutor's office, make a search for all of the deposit tickets of the Gloucester City Water Department?

A. I did.

Q. Did you find them?

A. Yes.

Q. Is that what you have with you today?

A. Yes.

Q. Did you arrange those deposit tickets in any chronological order?

A. According to the dates received.

Q. Is this the next succeeding deposit ticket, State's Exhibit No. 2, in point of time?

A. Yes.

The Prosecutor: I offer it.

By Mr. Carr:

Q. That was based upon your examination of the record, kept by someone else; isn't that true?

A. Yes.

Q. Of your own personal knowledge you don't know whether there were any intervening slips?

A. No.

Mr. Carr: I still object.

The Court: Do you have the party that had custody of these?

The Prosecutor: He is the party; he is the head ledger bookkeeper.

By Mr. Carr:

Q. Did you have custody of all these from the time they came into the bank?

A. They have been in the files of the bank during that time.

Q. Not in your custody?

A. No.

The Court: Under your supervision?

The Witness: Yes.

By Mr. Carr:

Q. Did you see them as they came in the bank?

A. No, I did not; that was the teller's work.

Q. And the teller filed them somewhere among the bank's records?

A. The bookkeepers, after they are through with them, they are filed.

Q. Did you personally handle these ——

A. No.

Q. After the bookkeeper makes the proper entries, they are filed?

A. According to the deposit.

Q. And you had nothing to do with the bookkeeping entry, nor with the filing of these?

A. No.

The Court: But you do know that these slips are the only ones covering that period of time in the file of the trust company?

The Witness: Yes.

Mr. Carr: Exception, if your Honor please.

The Court: Exception allowed.

By the Prosecutor:

Q. Look at this exhibit, and tell me whether any cash formed part of that deposit, or not; if so, how much cash?

A. No cash was entered on the deposit slips.

By Mr. Carr:

Q. I think you have said, Mr. Wright, that you are depending, for your information, upon the records of the bank, which records were kept by someone else; is that right?

A. That is true.

Q. And you are compelled to assume, in your examination by the Prosecutor, the correctness of the entries on the bank's records?

A. Yes.

Q. You believe them to be correct, but have no personal knowledge?

A. That is right.

Q. Those entries were made by several different persons?

A. Yes.

Q. From time to time?

The Prosecutor: I haven't offered that sheet in evidence, Mr. Carr.

Mr. Carr: But he used it for the purpose of reference. That is all, Mr. Wright.

The Prosecutor: May I have these two deposit tickets; they have been marked. The State rests.

Mr. Carr: The defendant rests. I think, if your Honor please, that these motions had better be made at side bar.

(At side bar.) If the Court please, I move for a directed verdict of not guilty in this case, upon all the grounds heretofore stated by me in my motion at the close of the State's case; and in addition thereto, that there is no legal evidence before the Court of the embezzlement or conversion to his own use by the defendant, of the moneys charged in the indictment.

The Court: Any other motion?

Mr. Carr: Just a moment, please. I rather think I included it in my previous grounds, but I

will state it now in case I did omit it. Also, on the ground that the indictment charged the defendant with the embezzlement with a sum of money; that money, within the meaning of this indictment, does not include a check or checks; that a check is an order for the payment of money, and that before the defendant can be convicted of the embezzlement of money, as charged in the indictment, it must be proved that the defendant embezzled money, or currency.

Also on the further ground that the testimony of Mr. Dorsett, the Municipal Accountant, called on behalf of the State, related to a period of more than five years, commencing January 1, 1925, and ending January 1, 1930, which included a period long anterior to the time charged in the indictment; and the difference between the amount charged against the defendant and amount with which he is credited, might well have included shortages or transactions prior to the date fixed in the indictment. In such case, the total amount charged the defendant would be affected, and its essential value thus destroyed. If the testimony of Mr. Dorsett were eliminated, there would be no proof whatever of any embezzlement or peculation.

(Argument by Mr. Carr, in support of his motions, was eliminated from the record.)

The Court: Well, as I see it, these motions are practically the same as were addressed to the Court at the end of the State's case.

It seems to be quite clear that the check which he received from this company, which was a prom-

ise to pay, was deposited in the bank, and the money represented on the face of the check was placed to the credit of this particular account; but the books of the company fail to disclose the payment, and the proof, so far in this case does not disclose that the particular sum of $1,000 has been credited to this company, or to any other account. So far as the proof goes, at the present time, this $1,000 has not been accounted for.

It is my view of the law that this case comes within the purview of the statute covering embezzlement. The various motions will, therefore, be denied and an exception will be granted.

Mr. Carr: Thank you.

CHARGE OF THE COURT.

SHAY, J.:

Ladies and gentlemen: You have heard the testimony in this case, and the argument of the State's counsel, as well as that of the defendant's counsel. It now becomes my duty, as the presiding Judge, to charge you as to the law in the case; and, I will first take up with you the indictment, reading it to you:

> "The Grand Inquest of the State of New Jersey, and for the County of Camden, upon their respective oaths, present that Allan W. Redfield, late of the City of Gloucester, in the County of Camden, on the twentieth day of January, 1927, at the city and county aforesaid, and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department, of Water Clerk, of the said City of Gloucester City, did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, 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."

That is the offense with which this defendant is charged by the Grand Jury.

You have heard the testimony. What are the facts from that testimony? They are, as I gather them—and, when I quote these facts, it is for the purpose of assisting you in reaching your verdict; not for the purpose of influencing you in arriving at it. If at any time, I refer to the facts erroneously, or by mistake, or distort them in any way, you should dismiss that from your minds, and you will remember the facts as they were presented by the evidence you have heard, and the documents offered in evidence; not my quotation of the facts.

It appears—and, it is not denied— that a check, which is an order on a bank to pay a certain sum of money, namely, $1,146.24, was received by Mr. Redfield, Water Clerk of the City of Gloucester City; that it was deposited in an account kept by the Water Clerk of the City of Gloucester City; or a sum of that amount of money was, later, turned over to another account, the Treasury Account of the City of Gloucester City. The amount of this check is not in dispute; the fact that it was received and deposited, is not in dispute; and, the order which was made by this company, on its bank, to pay, and that it was paid, is not in dispute. That that order was carried out, in accordance with the order of the check, is not denied. So that these funds got into that account kept by Mr. Redfield, and they were, later, turned over to, as I said, the Treasurer of the City of Gloucester City The State, however, in its examination, discloses to you that on the books of the Water Clerk, kept by Mr Redfield, or under his jurisdiction, there is no credit for that amount

of money, but the credit is for $146.24. Therefore, when an audit of these books is made—if that audit is confined solely to these books—by adding up the items disclosed by the books, it would show a total of $1,000 less than was actually received, provided the audit is correct, and that everybody who has paid, has been credited with payment.

The State Department has produced testimony, through the State Department of Municipal Accounts, that they have made an examination of the books kept by Mr. Redfield, and find that he is $1,203.10 short, providing the $1,000 he received from this company was actually credited to the company; but the books, themselves, without that credit, show a deficiency of $203.12. You are not to concern yourselves with that deficiency, because the defendant is not charged with it, at this time. The only amount you can concern yourselves with is the $1,000 which he has failed to credit to their account on these books. The Court charges you, as a matter of law, that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the Treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatsoever, and from whomsoever—was taken, in cash out of the till, by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it,—and it is not disputed it was paid—this man would be guilty of the crime of embezzlement, as charged. In other words, the act would be within the purview of the Criminal Statute covering this particular charge. That is what the

Court charges is the law. If the Court is mistaken as to the law, the defendant has the right of appeal, and the upper Court can pass upon that.

If this money was properly accounted for on the books that were audited by Mr. McCord,—if those books disclosed the correct amount that was paid, then, undoubtedly, Mr. McCord's audit would have shown that up; but his audit, if it was confined— and, there is no testimony to the effect that it was not so confined—solely to these books, all he could show was that everything that appeared there was properly accounted for; and, that was what his audit, as I understand it, did show.

As I said before, Mr. Redfield did not charge himself with the full sum, or, at least, he did not credit the account with the full sum he got; he credited the account with $146.24. If that was an error, then the $1,000 should show up somewhere. There are two or three ways it might show up. It might show up by a surplus, of the amount of $1,000, being on hand and belonging to someone to whom no credit was given. In other words, a surplus of cash to be held and later credited to the proper person, or persons. It is possible, in bookkeeping, that that $1,000 might be applied, in error, to some other person's account; but, there is no testimony here before you that it was credited to some other account where, perhaps, only $5.00 was paid, and credit given for $1005.00. There is no evidence, however, of that, here, and since there is no proof to this effect, you have a right to presume, have a right to draw the inference, that there was no such error.

Ladies and gentlemen, there is another element

that enters into this case, and that is one of intent. Of course, "intent" is something that you can only grasp from the facts surrounding the act. You cannot look into a man's mind to determine his intention; you must determine that from his actions and from his statements. You have a right to consider the different books kept, different records that were kept there by Mr. Redfield, or under his supervision, to try to enable you to determine whether or not there was an intention to take this money. If he changed the records that might have been altered, or if the records were changed, not by Mr. Redfield but by someone under his jurisdiction, and with his knowledge, should you find that to be the fact in this case, and that those records that were changed pertain to this particular payment, you have a right to infer a criminal intent on the part of the man who made them.

There is another way this $1,000 might be explained,—but there is no evidence to that effect—and that is, that it was received, deposited, and another $1,000.00 coming from someone else (in cash or in some other form) stolen. There is no evidence here, however, that that was the fact. He could not be charged with embezzlement, would not be a party to it, if there was no criminal intent and no criminal act on his part. There is no evidence that it was stolen by anyone; the most you have is inference; and, I must say, from the testimony, there is very meager proof, in my opinion, on which to base such a finding. Of course, it is your duty to pass upon the testimony; you don't take it from the Court. This defendant,—as do all defendants, of course,—comes to trial surrounded by the pre-

sumption of innocence, and it remains with him until the State has carried the burden of proof, of satisfying you beyond a reasonable doubt, that he is guilty as charged. So, it becomes your duty to pass upon this testimony, and to determine whether or not he is guilty, as charged. You must be satisfied, in order to convict him, beyond a reasonable doubt. That is to say, you must have an abiding conviction, to a moral certainty, of the truth of the charge, after weighing and considering all the evidence here; otherwise, it is your duty to acquit him. If you do have that abiding conviction, to a moral certainty, of the truth of the charge that this defendant took $1,000 that was paid to him, even though the exact specie which was the product or result of the deposit of this money was not stolen, but that another $1,000 was stolen, and that these entries, these credits, to the extent of $1,000 are incorrect,—and, there is evidence that they are incorrect—then he is guilty as charged.

You are the judges of the credibility of the witnesses, and have a right to take any reasonable inference you wish from the testimony. As I stated before, if I have in any way misquoted, or incorrectly quoted the testimony, do not allow it to influence you. It is only done to assist you in arriving at a verdict. This kind of a case is serious to the defendant, and to the taxpayers of the municipality in which it occurs. So, it is something that should be carefully weighed, considered, and compared by you. It is not to be taken lightly; it is to be taken seriously. The jury should make an earnest, conscientious effort to arrive at a just verdict; then you will have done your duty.

As to imposition of sentence, it becomes the duty of the Court, to pass upon that. That is no concern of yours. You only pass upon the facts as given you by the testimony, and under the rules of law given you by the Court.

I have been requested by counsel for the defendant to make certain charges to you.

Number 1, I refuse to charge, as I feel that I have already covered that. I might add, however, that all the material elements of this crime must be proved beyond a reasonable doubt.

The first request to charge, reads as follows:

> "The indictment charges that the defendant, Redfield, holding an office of trust and profit under the City of Gloucester City, said office being that of the Clerk of the Water Department or Water Clerk of the said City of Gloucester City, did on the twentieth day of January, 1927, embezzle the sum of $1,000 of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with the intent to defraud said City of Gloucester City."

The Court: The second, third, fourth, fifth and sixth requests to charge are refused.

The following are copies of the requests to charge, last above refused:

> "2. The defendant is not charged with making or concurring in the making of a false entry in his books of account, and, therefore, even though you find as a matter of fact from the evi-

dence, and beyond a reasonable doubt, that the defendant made or concurred in the making of the entry in the cash book under date of January 20, 1927, amount of $146.24, but that the defendant did not embezzle or convert to his own use any of the moneys of the City of Gloucester City committed to his keeping, then your verdict should be that of 'Not Guilty.' ''

"3. Before you can find a verdict of 'Guilty' in this case, you must find that the defendant embezzled and appropriated to his own use the moneys described in the indictment, to wit, the sum of $1,000 received from the Air Reduction Sales Company. He is not charged in this indictment with having embezzled any other moneys, and even though you should find from the evidence that moneys other than those received from the Air Reduction Sales Company amounting to the sum of $1000., whether paid by one or a number of water consumers of the City of Gloucester City to the defendant, had been embezzled, your verdict must still be that of 'Not Guilty.' ''

"4. The defendant upon this indictment can only be tried for the offense charged therein, to wit, the embezzlement on the twentieth of January, 1927, of certain moneys committed to his keeping by virtue of a certain payment of $1000. made by or on account of the Air Reduction Sales Company. The indictment charges no other offense, and even though you believe from the evidence that the moneys committed to his keeping by other persons were embezzled, it

would still be your duty to find a verdit of 'Not Guilty.' "

"5. The term 'money' does not include a check or checks. A check is an order for the payment of money, and before the defendant can be convicted of the embezzlement of money, as charged in the indictment, it must be proved to your satisfaction, and beyond a reasonable doubt, that the defendant embezzled money or currency."

"Section 50 of the Criminal Procedure Act, with reference to allegations as to money, provides as follows:

'In every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or state bank or any other bank, or any other postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note, treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury note or postal currency, as aforesaid, although the particular species of coin of which such amount was composed, or the particular nature of such other notes, shall not be proved.' "

"6. While the municipal accountant, Mr. Dorsett, a witness called on behalf of the State, testified as to moneys collected and received for a period of more than five years, and com-

mencing January 1, 1925, and ending on June 11, 1930, you cannot take this testimony into consideration because it included a period prior to the time charged in the indictment, and the difference between the amount charged against the defendant and the amount with which he is credited may well include shortages or transactions prior to the finding of the indictment, and in such case, of course, the total amount charged against the defendant would be affected, and its essential value thus destroyed.''

The Court: 7. I charge you, under this indictment it is necessary to prove to your satisfaction, and beyond a reasonable doubt, a fraudulent conversion on the part of the defendant of the moneys charged in the indictment as having been entrusted to his care, and a converson and attempt to defraud are essential ingredients of the crime charged, and evidence merely of neglect or delay to pay over such moneys will not justify a conviction.

8. I charge you that the gist of the crime of embezzlement is the fraudulent intent on the part of the defendant to convert another's property to his own use, and in this case to sustain a conviction there must be at least some evidence of an intent to illegally appropriate such property to his own use.

9. I charge you, where an action becomes criminal only by reason of the intent with which it is done, such intent must be proved.

10. I charge you, in the law, the defendant is pre-

sumed to be innocent until his guilt is proved by legal evidence beyond a reasonable doubt. It is the duty of the State to overcome this presumption by evidence which, in the minds of the jury, establishes the guilt of the defendant beyond such reasonable doubt, and it is proper for you to consider the evidence of the witnesses as to the good reputation of the defendant in his community, and this in itself may be sufficient to raise a reasonable doubt, and so lead to an acquittal.

With those instructions, you may retire. There is one other thing I might add, and that is, the possibility of an error in the audit; but there is no evidence of that. It is possible that an error was made in the audit of the State's representatives, but, as I say, there is no evidence before you that there is an error in that audit.

Mr. Carr: I desire to except to that part of your Honor's charge which, in substance, says that if the sum had gone into the Treasury, but that another sum of $1,000 was paid by any one person, or any number of persons, and taken, and that those accounts do not show a credit, this man would be guilty of embezzlement as charged. That is, in substance, what you said to the jury.

The Court: Exception allowed.

Mr. Carr: And, that part of your Honor's charge where you said, since there was no testimony to that effect, you can naturally presume, have a right to

presume, a right to draw the inference that there was no such error.

That portion of your Honor's charge which says, in substance, that if the records were intentionally altered, by or under the direction of the defendant, from that circumstance the jury have a right to draw the inference of fraudulent intent.

The Court: Exception allowed.

Mr. Carr: I also ask for an exception to that portion which deals with the statement that if the check was deposited and paid into the City Treasury, and another $1,000 was taken, that the defendant would be guilty as charged.

The Court: Haven't you covered that? Exception allowed.

Mr. Carr: I think, your Honor, that is all.

The Court: The clerk is instructed to take the verdict, and if one of Guilty, to release the defendant on his present bail.

The jury returned a verdict of Guilty.

STIPULATION.

(Filed January 7, 1931.)

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Sur Indictment. On Writ of Error. Stipulation.

It is hereby stipulated by and between Clifford A. Baldwin, Prosecutor of the Pleas in and for the County of Camden, and Harvey F. Carr, counsel for Allan W. Redfield, that the substance of the exhibits sufficiently appears in the printed record, and that the printing of the actual exhibits as a part of the State of the Case is hereby waived; provided, however, that as to Exhibit S5, being a book containing a carbon copy of bills rendered to industrial concerns in the City of Gloucester City, and containing a record of "Meter Consumption of Water," the original of this exhibit shall be presented to the Court by the Prosecutor of the Pleas upon the argument of the writ of error in this cause.

Dated, January 5, 1931.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas of Camden County, Attorney for Defendant-in-Error.

HARVEY F. CARR,
Attorney for Allan W. Redfield, Plaintiff-in-Error.

JOINDER-IN-ERROR.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,*	Sur Indictment.
v.	On Writ of Error.
ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Joinder-in-Error.

And thereupon, afterwards, to wit, on the 6th day of January, 1931, the said State of New Jersey, by Clifford A. Baldwin, Prosecutor of the Pleas of the County of Camden, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid and he prays that the Court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas of Camden County.

[ENDORSED]

Service of the within joinder-in-error is hereby acknowledged this 6th day of January, A. D. 1931.

Harvey F. Carr,
Attorney for Plaintiff-in-Error.

ASSIGNMENTS OF ERROR.
(Filed January 7, 1931.)

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Sur Indictment. On Writ of Error. Assignments of Error.

Afterwards, to wit, in the New Jersey Supreme Court, comes the said Allan W. Redfield, the said plaintiff-in-error, by his attorney, Harvey F. Carr, and says that the judgment herein should be reversed, because in the record and proceedings herein, and in the matters contained and noted in the several bills of exception herein, and also in the find-

ing of the verdict and the giving of judgment herein, there is manifest error to the great injury of the plaintiff-in-error whereby he was prejudiced in maintaining his defense upon the merits in the case, as well as in other respects, to wit:

1. That the defendant having moved to quash the indictment on the following grounds:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the Prosecutor of the Pleas to amend the indictment by striking out the numerals "1927" and inserting "nineteen hundred and twenty-seven."

2. That the Court of Quarter Sessions erroneously and illegally admitted into evidence upon the testimony of the State's witness, Raymond B. Wright, a ledger account of the Gloucester City Trust Company, purporting to show the ledger account with the Gloucester City Water Department from January 1, 1925, "down to date," where said ledger account was not kept by the witness, and represented a summary of transactions from other sources, and the entries were made by five or six different men, and said ledger sheet was not the book of original entries (Exhibit S3).

3. That the defendant having moved at the conclusion of the State's case for a directed verdict on the following grounds:

a. Upon all of the grounds stated on the motion to quash the indictment, including the ground that the Court was without power to order the amendment of the indictment, and upon the following additional grounds:

b. That there was no proof that the Clerk had any duty whatever with regard to the moneys of the Water Department of the City of Gloucester;

c. That the indictment did not charge that the moneys were received by defendant in his capacity as Water Clerk;

d. That there was no statement in the indictment of the ownership of the moneys charged in the indictment;

e. That the indictment charges the embezzlement of money, while the proofs relate to a check;

the Court of Quarter Sessions erroneously and illegally overruled the said motion.

4. That the Court of Quarter Sessions erroneously and illegally permitted the State's witness, Raymond B. Wright, to testify over objection that the next deposit slip preceding the deposit of December 17, 1926, was a deposit slip dated September 16, 1926, which deposit slip showed a deposit in cash of $350, where it clearly appeared that the testimony of the witness was hearsay.

5. That the Court of Quarter Sessions erroneously and illegally permitted the witness, Raymond B. Wright, to testify that "This (referring to a deposit slip produced to the witness) was the next succeeding deposit ticket to State's Exhibit S2 in point of time, and that no cash formed part of that deposit," where the records were kept by some one else, and the witness was dependent entirely upon the records of the bank kept by others.

6. That the defendant at the close of the entire case having moved for a directed verdict upon all of the grounds stated in the motion at the close of the State's case, to wit:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the prosecutor of the Pleas to amend the indictment by striking out the numerals "1927" and inserting "nineteen hundred and twenty-seven."

c. And in addition thereto, that there was no legal evidence before the Court of the embezzlement or conversion to his own use by the defendant of any moneys charged in the indictment;

d. And on the further ground that the indict-

ment charged the defendant with the embezzlement of a sum of money, and that money within the meaning of the indictment did not include a check or checks, and that before the defendant could be convicted of embezzlement, as charged in the indictment, it must be proved that the defendant embezzled money or currency;

e. And on the further ground that the testimony of Mr. Dorsett, Municipal Accountant, called on behalf of the State, related to a period of more than five years commencing January 1, 1925, and ending June 11, 1930, which included a period long anterior to the time charged in the indictment, and that the difference between the amount charged against the defendant and the amount with which he is credited might well have included shortages or transactions prior to the date fixed in the indictment. In such case the total amount charged against the defendant would be affected, and its essential value thus destroyed, and that if the testimony of Mr. Dorsett were eliminated there would be no proof of any embezzlement or peculation;

the Court erroneously and illegally overruled the motion for a directed verdict.

7. That the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

"The Court charges you, as a matter of law, that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the

Treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatever, and from whomsoever—was taken, in cash, out of the till, by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it—and it is not disputed it was paid—this man would be guilty of the crime of embezzlement, as charged. In other words, the act would be within the purview of the Criminal Statute covering this particular charge. That is what the Court charges is the law."

8. That the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

"It is possible, in bookkeeping, that the $1,000 might be applied, in error, to some other person's account; but, there is no testimony here before you that it was credited to some other account where, perhaps, only $5.00 was paid, and credit given for $1005.00. There is no evidence, however, of that, here, and since there is no proof to this effect, you have a right to presume, have a right to draw the inference, that there was no such error."

9. That the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 2, which reads as follows:

"2. The defendant is not charged with making or concurring in the making of a false entry in his books of account, and, therefore, even

though you find as a matter of fact from the evidence, and beyond a reasonable doubt, that the defendant made or concurred in the making of the entry in the cash book under date of January 20, 1927, amount $146.24, but that the defendant did not embezzle or convert to his own use any of the moneys of the City of Gloucester City committed to his keeping, then your verdict should be that of 'not guilty.' "

10. That the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 3, which reads as follows:

"3. Before you can find a verdict of 'guilty' in this case, you must find that the defendant embezzled and appropriated to his own use the moneys described in the indictment, to wit, the sum of $1,000 received from the Air Reduction Sales Company. He is not charged in this indictment with having embezzled any other moneys, and even though you should find from the evidence that moneys other than those received from the Air Reduction Sales Company amounting to the sum of $1000, whether paid by one or a number of water consumers of the City of Gloucester City to the defendant, had been embezzled, your verdict must still be that of 'not guilty.' "

11. That the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 4, which reads as follows:

"4. The defendant upon this indictment can

only be tried for the offense charged therein, to wit, the embezzlement on the twentieth of January, 1927, of certain moneys committed to his keeping by virtue of a certain payment of $1000 made by or on account of the Air Reduction Sales Company. The indictment charges no other offense, and even though you believe from the evidence that the moneys committed to his keeping by other persons were embezzled, it would still be your duty to find a verdict of 'not guilty.' "

12. That the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 5, which reads as follows:

"5. The term 'money' does not include a check or checks. A check is an order for the payment of money, and before the defendant can be convicted of the embezzlement of money, as charged in the indictment, it must be proved to your satisfaction, and beyond a reasonable doubt, that the defendant embezzled money or currency.

"Section 50 of the Criminal Procedure Act, with reference to allegations as to money, provides as follows:

'In every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or State bank or any other bank, or any postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note,

treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury note or postal currency, as aforesaid, although the particular species of coin of which such amount was composed, or the particular nature of such other notes, shall not be proved.' "

13. That the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 6, which reads as follows:

"6. While the municipal accountant, Mr. Dorsett, a witness called on behalf of the State, testified as to moneys collected and received for a period of more than five years, and commencing January 1, 1925, and ending on June 11, 1930, you cannot take this testimony into consideration because it included a period prior to the time charged in the indictment, and the difference between the amount charged against the defendant and the amount with which he is credited may well include shortages or transactions prior to the finding of the indictment, and in such case, of course, the total amount charged against the defendant would be affected, and its essential value thus destroyed."

HARVEY F. CARR,
Attorney for and Counsel with Plaintiff-in-Error.

[ENDORSED]

Service of the within assignments of error is hereby acknowledged this 6th day of January, 1931.

Clifford A. Baldwin,
Prosecutor of the Pleas of
Camden County, Atty.
for Defendant-in-Error.

SPECIFICATION OF CAUSES FOR REVERSAL.
(Filed January 7, 1931.)

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,*	Sur Indictment. On Writ of Error.
v.	Specification of
ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Causes for Reversal.

The plaintiff-in-error specifies the following causes in the record relied upon for reversal of this judgment:

1. Because the defendant having moved to quash the indictment on the following grounds:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the Prosecutor of the Pleas to amend the indictment by striking out the numerals "1927" and inserting "nineteen hundred and twenty-seven."

2. Because the Court of Quarter Sessions erroneously and illegally admitted into evidence upon the testimony of the State's witness, Raymond B. Wright, a ledger account of the Gloucester City Trust Company, purporting to show the ledger account with the Gloucester City Water Department from January 1, 1925, "down to date," where said ledger account was not kept by the witness, and represented a summary of transactions from other sources, and the entries were made by five or six different men, and said ledger sheet was not the book of original entries (Exhibit S3).

3. Because the defendant having moved at the conclusion of the State's case for a directed verdict on the following grounds:

a. Upon all of the grounds stated on the motion to quash the indictment, including the ground that the Court was without power to

order the amendment of the indictment, and upon the following additional grounds:

b. That there was no proof that the Clerk had any duty whatever with regard to the moneys of the Water Department of the City of Gloucester;

c. That the indictment did not charge that the moneys were received by defendant in his capacity as Water Clerk;

d. That there was no statement in the indictment of the ownership of the moneys charged in the indictment;

e. That the indictment charges the embezzlement of money, while the proofs relate to a check;

the Court of Quarter Sessions erroneously and illegally overruled the said motion.

4. Because the Court of Quarter Sessions erroneously and illegally permitted the State's witness, Raymond B. Wright, to testify over objection that the next deposit slip preceding the deposit of December 17, 1926, was a deposit slip dated September 16, 1926, which deposit slip showed a deposit in cash of $350, where it clearly appeared that the testimony of the witness was hearsay.

5. Because the Court of Quarter Sessions erroneously and illegally permitted the witness, Raymond B. Wright, to testify that "This (referring to a deposit slip produced to the witness) was the next succeeding deposit ticket to State's Exhibit S2 in point of time, and that no cash formed part of that

deposit,'' where the records were kept by some one else, and the witness was dependent entirely upon the records of the bank kept by others.

6. Because the defendant at the close of the entire case having moved for a directed verdict upon all of the grounds stated in the motion at the close of the State's case, to wit:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the Prosecutor of the Pleas to amend the indictment by striking out the numerals ''1927'' and inserting ''nineteen hundred and twenty-seven.''

c. And in addition thereto, that there was no legal evidence before the Court of the embezzlement or conversion to his own use by the defendant of any moneys charged in the indictment.

d. And on the further ground that the indictment charged the defendant with the embezzlement of a sum of money, and that money within the meaning of the indictment did not include a check or checks, and that before the defendant could be convicted of embezzlement, as charged in the indictment, it must be proved that the defendant embezzled money or currency;

e. And on the further ground that the testimony of Mr. Dorsett, Municipal Accountant, called on behalf of the State, related to a period of more than five years commencing January 1, 1925, and ending June 11, 1930, which included a period long anterior to the time charged in the indictment, and that the difference between the amount charged against the defendant and the amount with which he is credited might well have included shortages or transactions prior to the date fixed in the indictment. In such case the total amount charged against the defendant would be affected, and its essential value thus destroyed, and that if the testimony of Mr. Dorsett were eliminated there would be no proof of any embezzlement or peculation;

the Court erroneously and illegally overruled the motion for a directed verdict.

7. Because the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

"The Court charges you, as a matter of law, that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the Treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatever, and from whomsoever—was taken, in cash, out of the till, by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it—and it is not dis-

puted it was paid—this man would be guilty of the crime of embezzlement, as charged. In other words, the act would be within the purview of the Criminal Statute covering this particular charge. That is what the Court charges is the law."

8. Because the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

"It is possible, in bookkeeping, that the $1,000 might be applied, in error, to some other person's account; but, there is no testimony here before you that it was credited to some other account where, perhaps, only $5.00 was paid, and credit given for $1005.00. There is no evidence, however, of that, here, and since there is no proof to this effect, you have a right to presume, have a right to draw the inference, that there was no such error."

9. Because the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 2, which reads as follows:

"2. The defendant is not charged with making or concurring in the making of a false entry in his books of account, and, therefore, even though you find as a matter of fact, from the evidence, and beyond a reasonable doubt, that the defendant made or concurred in the making of the entry in the cash book under date of January 20, 1927, amount $146.24, but that the defendant did not embezzle or convert to his own use any of the moneys of the City of

Gloucester City committed to his keeping, then your verdict should be that of 'Not Guilty.' "

10. Because the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 3, which reads as follows:

"3. Before you can find a verdict of 'guilty' in this case, you must find that the defendant embezzled and appropriated to his own use the moneys described in the indictment, to wit, the sum of $1,000 received from the Air Reduction Sales Company. He is not charged in this indictment with having embezzled any other moneys, and even though you should find from the evidence that moneys other than those received from the Air Reduction Sales Company amounting to the sum of $1,000, whether paid by one or a number of water consumers of the City of Gloucester City to the defendant, had been embezzled, your verdict must still be that of 'Not Guilty.' "

11. Because the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 4, which reads as follows:

"4. The defendant, upon this indictment, can only be tried for the offense charged therein, to wit, the embezzlement on the twentieth day of January, 1927, of certain moneys committed to his keeping by virtue of a certain payment of $1,000 made by or on account of the Air Reduction Sales Company. The indictment charges no other offense, and even though you believe

from the evidence that the moneys committed to his keeping by other persons were embezzled, it would still be your duty to find a verdict of 'Not Guilty.' ''

12. Because the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 5, which reads as follows:

''5. The term 'money' does not include a check or checks. A check is an order for the payment of money, and before the defendant can be convicted of the embezzlement of money, as charged in the indictment, it must be proved to your satisfaction, and beyond a reasonable doubt, that the defendant embezzled money or currency.

Section 50 of the Criminal Procedure Act, with reference to allegations as to money, provides as follows:

'In every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or State bank or any other bank, or any postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note, treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury note or postal currency, as aforesaid, although the

particular species of coin of which such amount was composed, or the particular nature of such other notes, shall not be proved.' ''

13. Because the Court of Quarter Sessions erroneously and illegally refused to charge defendant's request to charge No. 6, which reads as follows:

''6. While the municipal accountant, Mr. Dorsett, a witness called on behalf of the State, testified as to moneys collected and received for a period of more than five years, and commencing January 1, 1925, and ending on June 11, 1930, you cannot take this testimony into consideration because it included a period prior to the time charged in the indictment, and the difference between the amount charged against the defendant and the amount with which he is credited may well include shortages or transactions prior to the finding of the indictment, and in such case, of course, the total amount charged against the defendant would be affected, and its essential value thus destroyed.''

14. Because under the uncontradicted proofs of this case ''the sum of $1,000 of the money committed to his (defendant's) keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the City of Gloucester, etc.,'' was made by a check dated November 22, 1926 (Exhibit S1), which check was deposited to the account of the Gloucester City Water Department, and all funds drawn from that

account were drawn only to the order of the Treasurer of the City of Gloucester, and there were no proofs whatever that any of the moneys committed to the defendant's keeping by virtue of any payment made by or on account of the Air Reduction Sales Company were embezzled, and the Court charged as a matter of law "that if those funds represented by that check (Exhibit S1) have been received by the proper authorities and gone into the proper channels, or into the treasury of the City of Gloucester City, but that another $1,000 that was paid —in any sums whatever, and from whomsoever— was taken, in cash, out of the till by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it—and it is not disputed it was paid—this man would be guilty of the crime of embezzlement as charged," by means of which charge the jury were permitted to convict the defendant of a crime or crimes with which he was not charged, and as to which he would never be able to plead *autrefois acquit* or *autrefois convict.*

HARVEY F. CARR,
Attorney for Plaintiff-in-Error.

[ENDORSED]

Service of the within Specification of Causes for Reversal is hereby acknowledged this 6th day of January, 1931.

Clifford A. Baldwin,
Prosecutor of the Pleas of Camden County, Attorney for Defendant-in-Error.

OPINION.

(Filed July 2, 1931.)

Argued January 21, 1931. Decided July 2, 1931.

On error to the Camden County Court of Quarter Sessions.

Before GUMMERE, Chief Justice, and Justices TRENCHARD and LLOYD.

For the plaintiff-in-error, HARVEY F. CARR.
For the defendant-in-error, CLIFFORD A. BALDWIN, Prosecutor of the Pleas.

Per Curiam:

The plaintiff-in-error, Allen W. Redfield, was convicted in the Camden County Court of Quarter Sessions upon an indictment charging that, on January 20, 1927, he, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of water clerk that city, did embezzle the sum of $1,000 of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the City, with intent to defraud the City.

After sentence, he sued out this writ of error, and assigns error on bills of exceptions and specifications of causes for reversal under Section 136 of the Criminal Procedure Act, he having elected to bring up the entire record of the trial.

The State's evidence reasonably tended to show the following matters of fact: The Air Reduction Sales Company, a customer of water in the City of Gloucester City, was sent a bill for $1,146.24 for water rent, which bill was paid by the company by means of its check sent to the defendant, who was the Clerk of the Water Department, drawn on the Central National Bank of Philadelphia to the order of the City of Gloucester City Bureau of Water,

which check was dated November 22, 1926. The check was deposited by the defendant in the bank account of the Gloucester City Water Department at the Gloucester City Trust Company on December 17, 1926. On that day defendant had in his employ to do some clerical work for him one Dorothy L. Kavanaugh, who was not in the employ or in the pay of the Water Department, and who was doing the work at her home. Under date of January 20, 1927, Miss Kananaugh wrote down and posted in the 1927 cash book an item of payment by the Air Reduction Sales Company in a column marked "total" and in another column marked "water rent" in an amount of only $146.24. She testified at the trial that she got this amount from a stub which was supplied to her by the defendant.

The handwriting expert called by the State testified concerning his examination of a pink sheet of paper marked with the number 88 which was contained in a book which had been turned over by the defendant to Norman D. Dorsett, an auditor of the State Department of Municipal Accounts, which was described by the defendant to the auditor as the record of all metered consumption. The handwriting expert testified that the pink sheet of paper disclosed that there had been erasures upon the sheet in the places occupied at the time of the trial by the numerals "584976" and "25" and "$146.24," and that book is an exhibit in the cause marked Exhibit S5. All of the writing upon this pink sheet of paper was a carbon paper reproduction of the original writing, with the exception of the following: "1-20-27, Allan W. Redfield" which was in original pencil writing; and the defendant himself

on cross-examination testified that it was his practice to so write on the carbon copy of bills sent out to customers when such bills were paid, and he admitted his signature in the original pencil writing upon such carbon copy of the bill as an indication that he knew such check had come in. The handwriting expert testified that the figures "584975" and "25" and "$146.24" were in the handwriting of "the same person" that filled up the body of this bill or receipt and who signed the name of A. W. Redfield on it, and who also made all the entries on page 168 of the cash book, Exhibit S6, which was in defendant's handwriting, the State auditor having seen the defendant write up page 168 of Exhibit S6. The handwriting expert made use of that page 168 as a sample of the handwriting of the defendant.

We think that this evidence justified the jury in inferring that the defendant, knowing that the check for $1,146.24 had come in from the Air Reduction Sales Company, indicated the fact of payment by a date and his signature on the pink carbon copy of the bill, but wrote down, through the instrumentality of a sheet of carbon paper the amount of the payment as being only $146.24, after erasing some figures which previously indicated the true amount of the charge, and some figures which indicated meter readings, unit price, etc., the handwriting expert having testified that the writing over the erasures had taken place after the original copy of the next succeeding bill had been made out and torn from the book.

Other evidence submitted by the State tended to show the real shortage of the $1,000 mentioned in

the indictment both in the accounts of the defendant and in the moneys turned over by him to the Water Department and tended to negative any contention that in spite of improper bookkeeping the City might actually have received the $1,000 not entered in the cash book as part of the Air Reduction Sales Company's payment. Upon the whole case we think that the proofs were amply sufficient to justify the jury in finding the guilt of the defendant and his intent to defraud the City of $1,000.

Defendant's first point is that the indictment was insufficient because (a) the date of the commission of the offense charged appeared in Arabic numerals, and (b) that in the indictment there was no averment of the ownership of the moneys referred to therein nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department.

The trial Court permitted an amendment of the Arabic numerals "1927" to read "Nineteen hundred and twenty-seven." That amendment was properly allowed by virtue of Section 44 of the Criminal Procedure Act as interpreted by State v. Kern, 51 N. J. L. 259; State v. Johnson, 91 N. J. L. 611, and State v. Mandell, 105 N. J. L. 270.

With respect to the averment as to the ownership of the moneys embezzled and their receipt by the defendant in his capacity as Clerk of the Water Department, we think that the indictment fairly apprised the defendant of the precise nature of the charge made against him, and that defendant was not thereby prejudiced in maintaining his defense upon the merits. The indictment was rested on Section 167 of the Crimes Act making it a high mis-

demeanor for any person holding an office of trust and profit under the authority of any public corporation existing under the laws of this State to embezzle any money, property or securities committed to his keeping, with intent to defraud any city or to fraudulently dispose of the same.

Embezzlement being a statutory offense the sufficiency of the indictment is to be tested by the requirement of the statute upon which it is bottomed. So tested, we think the indictment sufficient in respect to the averment as to the ownership of the money and that it was received in defendant's capacity as Clerk of the Water Department. State v. Bartholomew, 69 N. J. L. 160.

Defendant next argues that the Court erred in admitting in evidence the ledger account of the Gloucester City Trust Company with the Gloucester City Water Department. We think not. The general ledger bookkeeper testified that he was familiar with the records of the Trust Company, although entries might have been made by several men, some of whom were no longer with the bank and their whereabouts unknown. But if there was technical error here, it is not perceived how the defendant could have been prejudiced thereby, for the ledger account appared as only one of the foundations upon which the auditor established the comparison between the amounts with which defendant charged himself and the amount which he deposited with the Gloucester City Trust Company and later turned over to the City. And moreover the defendant in his testimony did not challenge any of the figures shown by the ledger account.

Defendant's next contention is that there was no

proof that "the clerk has any duty whatever with regard to the moneys of the Water Department of the City of Gloucester City" and "that the indictment charges an embezzlement of money while the proofs relate to a check."

The ordinance introduced in evidence provided that there should be a clerk of the Water Department and that he should receive an annual salary of $300. There was testimony that the annual salary of $300 was paid to the defendant over a term of years comprehending the period in question, and the further proof that the water revenues of the City for the same period passed to the custody of the City Treasurer by check from the defendant from four to eight times a year. That proof certainly tended to establish the defendant's *de facto* trusteeship over such water revenue.

We think that the evidence tended to show the embezzlement of the money as charged in the indictment. If, as the evidence tended to show, the Air Reduction Sales Company did pay to defendant $1,146.24, and if the City did get from him only $146.24, then clearly he did embezzle the other $1,000, and it matters not that the proofs incidentally involve the handling of a check. There was ample evidence tending to show that defendant did receive into his custody the sum of $1,000 committed to his keeping as a part of the $1,146.24 payment, and that the City has never received that $1,000, identified and earmarked as such, or any other $1,000 which might be it.

We believe that these observations in effect dispose of all points raised and argued requiring mention.

The judgment will be affirmed.

RULE OF AFFIRMANCE.

(Filed July 7, 1931.)

NEW JERSEY SUPREME COURT.

10

No. 3. January Term, 1931.

STATE OF NEW JERSEY, *Defendant-in-Error,* v. ALLAN W. REDFIELD, *Plaintiff-in-Error.*	On Writ of Error. Rule of Affirmance.

20

This matter being opened to the Court by Clifford A. Baldwin, Prosecutor of the Pleas in and for the County of Camden, and it appearing that the above-named plaintiff-in-error, Allan W. Redfield, was heretofore convicted in the Camden County Court
30 of Quarter Sessions upon an indictment charging him with the crime of embezzlement and it further appearing that from the judgment entered upon such conviction he, the said Allan W. Redfield, did sue out a writ of error to this Court, and the Court being of the opinion that the assignments of error and the specifications of causes for reversal ad-

vanced in this Court as grounds for the reversal of said judgment are without merit;

It is on this 7th day of July, 1931, on motion of Clifford A. Baldwin, Prosecutor as aforesaid, ordered that said judgment be and the same is hereby affirmed, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered July 7, 1931,

On motion of

CLIFFORD A. BALDWIN,
Prosecutor.

A true copy.

FRED L. BLOODGOOD,
Clerk.

ASSIGNMENT OF ERROR.

(Filed August 18, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* v. ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Sur Indictment. On Writ of Error. Assignment of Error.

Afterwards, to wit, in the New Jersey Court of Errors and Appeals comes the said Allan W. Redfield, the said plaintiff-in-error, by his counsel, Harvey F. Carr, and says the judgment herein should be reversed, because in the record and proceedings herein, and in the giving of judgment by the New Jersey Supreme Court herein, there is manifest error to the great injury of the plaintiff-in-error, whereby he is prejudiced in maintaining his defense upon the merits in the case, as well as in other respects, to wit:

1. That the Supreme Court erred in affirming the said judgment of the Court of Quarter Sessions of the County of Camden, whereas the said New Jersey

Supreme Court instead of affirming the said judgment should have reversed the same.

HARVEY F. CARR,
Counsel for Plaintiff-in-Error.

———

[ENDORSED]

Service of the within assignment of error is hereby acknowledged this 14 day of August, 1931.

Clifford A. Baldwin,
Counsel for Def't.-in-error.

JOINDER IN ERROR.

(Filed August 19, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* v. ALLAN W. REDFIELD, *Plaintiff-in-Error.*	Sur Indictment. On Writ of Error. Joinder in Error.

And hereupon, afterwards, to wit, on the day of August, 1931, the State of New Jersey, by Clifford A. Baldwin, Prosecutor of the Pleas in and for the County of Camden, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas of Camden County, and of Counsel with the Defendant-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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

v.

ALLAN W. REDFIELD,
Plaintiff-in-Error.

ON INDICTMENT AND CONVICTION FOR EMBEZZLEMENT.

ON WRIT OF ERROR.

BRIEF FOR DEFENDANT-IN-ERROR.

The writ of error in this matter brings to this Court for determination the propriety of the Supreme Court's affirmance of a judgment of conviction for embezzlement in the Camden Quarter Sessions. No new points are presented here, the only assignment of error being that the Supreme Court erred in affirming said judgment. The major por-

tion of the plaintiff-in-error's brief in this court is but a reprint of his brief in the Supreme Court. For that reason and in order that the substance of the issues may be presented identically as they were presented in the Supreme Court, the State, as defendant-in-error herein, will likewise submit to the Court a reprint of its brief in the Supreme Court after this short introduction.

The brief for the plaintiff-in-error assails the Supreme Court's opinion as to the admission in evidence of certain ledger sheets of the Gloucester City Trust Company showing the account maintained by that Trust Company with the Gloucester City Water Department. The plaintiff-in-error does not set forth, in his brief, the language adopted by the Supreme Court in that portion of the opinion which upheld the admission of the evidence. The Court said:

> "Defendant next argues that the Court erred in admitting in evidence the ledger account of the Gloucester City Trust Company with the Gloucester City Water Department. We think not. The general ledger bookkeeper testified that he was familiar with the records of the Trust Company, although entries might have been made by several men, some of whom were no longer with the bank and their whereabouts unknown."

It was only after this determination as to the proper admission of the evidence had been made that the Court, in order to still further strengthen its view concerning the ledger sheets, went on to say:

> "But if there was technical error here, it is not perceived how the defendant could have been prejudiced thereby, for the ledger account appeared as only one of the foundations upon which the auditor established the comparison between the amounts with which defendant charged himself and the amount which he deposited with the Gloucester City Trust Company and later turned over to the City. And moreover, the defendant in his testimony did not challenge any of the figures shown by the ledger account."

As to this whole matter of the ledger sheets, the Court will undoubtedly recognize the fact that they were the recorded evidence of day by day transactions which the defendant, Redfield, handled through his banking depositary and no attack whatever was made upon the truth of the entries in that bank account, although if they were untrue, the defendant could have challenged them and the Supreme Court calls attention to his failure to challenge them. Present day commercial and banking practices are such that a whole sequence of operations, passing through many hands in the banking institution, might precede the actual typewritten recording of a transaction on the ledger sheet, and, as was testified in this case, that recording of the entries might have been done by "five or six different men." The Trust Company, being merely passive and almost entirely mechanical in its handling of Redfield's bank account, could have no possible motive or desire to falsify its records either to help him or to hurt him and it is respectfully contended that the testimony

of the general ledger bookkeeper who produced and explained these ledger sheets made them competent as evidence.

The Supreme Court was entirely correct in holding that the ledger account appeared as only one of the foundations upon which the auditor established the comparison between the amounts with which defendant charged himself and the amount which he deposited with the Gloucester City Trust Company and later turned over to the City. In fact, the Court might easily have gone further and said that the ledger sheets and their actual production before the jury were not an essential element of the State's proofs. Mr. Dorsett, the expert accountant of the Department of Municipal Accounts, who testified for the state, could have given the same testimony against the defendant even without the ledger sheets being produced and marked in evidence. He was an expert and under well-recognized principles concerning expert testimony and opinion evidence, he could have described to the jury his audit and his analysis of the figures brought forth by that audit just as a chemist might explain the making of an experiment and the results of that experiment without bringing test tubes and reagents into the court room. In the course of his testimony concerning the audit, Mr. Dorsett told (Case, page 122) of his knowledge of the fact that all moneys which were deposited in the Water Department Bank Account were turned over by Redfield to the City of Gloucester except a small amount of eleven dollars charged against the account to balance a bad check previously deposited therein. In other words, the Supreme Court was not wrong when it held that the ledger sheets con-

stituted only one of the foundations upon which the expert testimony of the witness, Dorsett, was based. In the course of his audit he naturally knew how much money Redfield had turned over to the City and he also knew the amounts with which Redfield charged himself in his cash books. Therefore, with such knowledge and even independently of the component data exhibited by the ledger sheets he was able to testify and convincingly testify of the discrepancy between Redfield's receipts and his disbursements to the City during the period January 1, 1925, to June 11, 1930.

The remaining new discussion in the plaintiff-in-error's brief, preceding the reprint of his Supreme Court brief, deals with matters which are so fully dealt with in the Supreme Court brief of the defendant-in-error that they will not be discussed here but the Court is respectfully referred to the contents of said Supreme Court brief as it is hereinafter set forth.

It is respectfully submitted that the Supreme Court did not err in its full and fair determination of the disputed matters and that the Supreme Court's judgment should be affirmed.

NEW JERSEY SUPREME COURT.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT OF THE CASE.

The conviction of the plaintiff-in-error, Allan W. Redfield, is brought before this Court for review, as stated in the brief of the plaintiff-in-error, under Sections 136, 137 and 137a of the Criminal Procedure Act. The plaintiff-in-error writes down thirteen assignments of error, which are identical with the first thirteen causes for reversal specified by him, the fourteenth cause for reversal alleging an error in the Court's charge, practically similar to the alleged error set forth in the seventh assignment of error and specification of cause for reversal. Accordingly, under Section 136 of the Criminal Procedure Act, the matter sought to be brought up for review is whether any error was committed which may have prejudiced the defendant in maintaining his defense upon the merits, and not whether there might have been any imperfections, omissions, defects or lack of form which did not so prejudice the defendant.

THE FACTS.

The facts, so far as they have been stated in the brief for the plaintiff-in-error, are substantially as therein stated, but there are certain additional facts arising out of the testimony at the trial, which it is felt constituted strong indications of the defendant's guilt, and strongly persuaded the jury to find him guilty.

In brief, it may be said that the Air Reduction Sales Company, a consumer of water in the City of Gloucester City, was sent a bill for $1,146.24 for water rent (page 60), which bill was paid by the Air Reduction Sales Company by means of its check No. 8111, drawn on the Central National Bank of Philadelphia in the amount of $1,146.24 to the order of the City of Gloucester, Bureau of Water, and said check was dated November 22, 1926 (page 59). Said check was introduced in evidence, and marked Exhibit S1. Further testimony indicated that said check was deposited in the bank account of the Gloucester City Water Department, at the Gloucester City Trust Company, on December 17, 1926 (pages 67 and 68). Further testimony indicated that under date of January 20, in the 1927 cash book, a young lady by the name of Dorothy L. Kavanagh (who was engaged by the defendant, Redfield, to do some clerical work for him, without pay and without the said Dorothy L. Kavanagh being an employee of the Gloucester City Water Department at that time, she doing the work at her home), wrote down and posted an item of payment by the Air

Reduction Sales Company, in a column marked "total," and in another column marked "water rent" in an amount of only $146.24 (pages 81 and 82). The said Dorothy L. Kavanagh, as a witness for the State, testified that she got this amount from a stub (page 84), which was supplied to her by the defendant, Redfield (page 85).

Last, but not least, a handwriting expert, L. Webster Melcher, Jr., was called by the State (and his testimony is not mentioned at all in the statement of facts set down in the brief of the plaintiff-in-error), and said expert testified concerning his examination of a pink sheet of paper, marked with the number 88, which was contained in a book marked Exhibit S5 (pages 141 to 143). Said book, marked Exhibit S5, had been turned over by the defendant, Redfield, to Norman D. Dorsett, an auditor of the State Department of Municipal Accounts, and said book was described by the defendant, Redfield, to the said auditor, as the record of all metered consumption (pages 93 and 98). The witness, Melcher, testified that his examination of said pink sheet of paper, marked No. 88, disclosed that there had been erasures upon said pink sheet of paper under certain places occupied at the time of the trial by the numerals "584975" and "25" and "$146.24" (page 141). The said book, Exhibit S5, will be handed up to the members of the Court for personal inspection at the time of the argument of this cause, in accordance with the stipulation set forth on page 264 of the printed case. All of the writing upon this pink sheet of paper was a carbon paper reproduction of original writing, with the exception of the following: "1-20-27, Allan W. Red-

field," in original pencil writing (page 147), and the defendant, Redfield, himself, on cross-examination testified that it was the practice for him to so write upon the carbon copy of bills sent out to consumers, when such bills were paid, and he admitted his signature in original pencil writing upon such carbon copy of the bill as an indication that he knew that the check had come in (page 185). The handwriting expert testified that the figures "584-975," "25" and "$146.24" were in the handwriting of "the same person who filled up the body of this bill, or receipt, and who signed 'A. W. Redfield' on it, and who also made all the entries on this page 168 of this cash book" (page 143). The cash book in question was Exhibit S6, page 168 of which was in the defendant's, Redfield's, handwriting, the State auditor, Dorsett, having seen the defendant write up the said page 168 (page 115). The handwriting expert, Melcher, made use of said page 168 of Exhibit S6 as a sample of the standard handwriting of the person who wrote it (page 140).

This whole line of testimony made it possible for the jury to draw the very proper inference that the defendant, Redfield, himself, knowing that the check for $1,146.24 had come in from the Air Reduction Sales Company, indicated the fact of payment by a date and his signature on the pink carbon copy of the bill, but that he wrote down, through the instrumentality of a sheet of carbon paper, the amount of the payment as being only $146.24, after erasing some figures, which previously indicated the true amount of the charge and some figures which indicated meter readings, unit price, etc. The handwriting expert, Melcher, was also able to say that

the writing over the erasures had taken place after the original copy of the next succeeding bill had been made out and torn from the book, for there appeared upon the reverse side of Exhibit S5, which was the aforesaid pink sheet numbered 88, at the places where the erasures had been made, a transfer of certain carbon copy writing from the next succeeding carbon copy sheet in the book (page 142).

Certain other phases of the State's proofs were intended to show the real shortage of the $1,000 mentioned in this particular indictment, both in the accounts of the defendant Redfield and in the monies turned over by him to the Water Department (pages 113 to 115). This was intended to negative the thought that in spite of the improper bookkeeping, the City might actually have received the $1,000 not entered in the cash book as a part of the Air Reduction Sales Company's payment.

Undoubtedly, these facts and proofs were strong factors in the consideration which the jury must have given to the case, and were quite probably considered by the jurors as strong indicia of personal guilt on the part of the defendant, Redfield, and of his intent to defraud the City of Gloucester City of $1,000 of the amount which the Air Reduction Sales Company had, in fact, paid.

BRIEF OF ARGUMENT.

The State, in its brief, will deal with the various points set forth in the brief of the plaintiff-in-error, under the same numbers by which those points have

been referred to in the said brief of the plaintiff-in-error.

POINT ONE.

This point deals at length with an alleged erroneous refusal of a motion to quash the indictment, and an alleged error on the part of the Court in permitting the State to amend the indictment before the jury was sworn.

In the first place, the case of *State v. Harris,* 1 Misc. Rep. 526, is authority for the proposition that the refusal of a motion to quash cannot be reviewed on an assignment of error, since it is discretionary with the trial Court, nor can it be reviewed under the 136th Section, since it precedes the trial itself, and is not a part thereof.

However, in view of the fact that the alleged grounds for the quashing of the indictment are also reiterated under point 3, which deals with the motion made for a directed verdict at the conclusion of the State's case, and under point 6, which deals with the motion for a directed verdict at the close of the entire case, and said alleged grounds will be dealt with under point 1 of this brief, without it being conceded, however, that the refusal to quash the indictment is now open to review under Section 136 of the Criminal Procedure Act.

The said alleged grounds upon which it was moved to quash the indictment, are as follows: "(a) That the date of the commission of the offense charged appeared in Arabic numerals:" "(b) That in the indictment there was no averment of the ownership

of the moneys referred to therein nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department."

It is true that the indictment, as originally drawn, contained the Arabic numerals 1927, as a means of setting forth the year in which the offense was alleged to have been committed. There is no quarrel with the proposition of law set forth in the cases of *Berrian v. State,* 22 N. J. L. 9; *State v. Jay,* 34 N. J. L. 368, and *State v. Castle,* 75 N. J. L. 187, as those cases have been quoted and interpreted in the brief of the plaintiff-in-error. Even at the time of trial, the State freely admitted the principle contended for by the defense counsel (see p. 15, State of the Case), but there was a motion made for the amendment of the indictment, to the end that the Arabic numerals "1927" might be amended to read "nineteen hundred and twenty-seven," and this amendment was allowed (see p. 7, State of the Case), and the motion to quash the indictment on that ground was denied.

The Court was fully within its rights in permitting said amendment to be made. Section 44 of the Criminal Procedure Act provides as follows:

> "44. Every objection to any indictment, for any defect of form or substance apparent on the face thereof, shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any such defect, or before whom any person may be tried, may, if it be thought necessary, cause the indictment to be forthwith

> amended in any particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared, or be postponed at the discretion of such Court as hereinbefore provided in case of amendment for variance."

The case of *State v. Kern,* 51 N. J. L. 259, interpreted the power of amendment provided for in the then similar Section 53 of the Criminal Procedure Act to apply to "that class of cases where, on the face of the indictment, a specific criminal charge can be perceived, which fails to be effective only by means of an error, which, looking at the charges and averments of the indictment, the Court can clearly infer was a clerical error." This doctrine was reiterated in *State v. Johnson,* 91 N. J. L. 611.

In the case of *State v. Mandel,* 105 N. J. L. 270 (opinion by Chief Justice Gummere, 1928), there were rather free amendments back and forth as to the dates between which the offense in that case was alleged to have been committed. Said amendments were made, notwithstanding objection thereto on the part of counsel for the defendant, and a reversal of the conviction was sought on the ground that the trial Court had committed harmful error in permitting them to be made. The Court said:

> "But this contention is in entire disregard of Sections 33 and 34 of our Criminal Procedure Act, Comp. Stat., p. 1831, *et seq.* Section 33 provides that 'no indictment for any offense shall be held insufficient * * * for stating the offense to have been committted on a day subsequent to the finding of the indictment, or on

an impossible day, or on a day that never happened,' and Section 44 declares that, where objection is made to any formal defect apparent on the face of the indictment, the Court before which such objection is taken may forthwith cause the indictment to be so amended as to cure such defect. The defects contained in the present indictment were those specified in Section 33 of the statute. That they are merely formal has been declared by this Court in the case of Ketline v. State, 58 N. J. L. 462, where a similar question was presented for decision."

The right of amendment under Section 44 of the Criminal Procedure Act, so as to correct manifest clerical errors, was dealt with as recently as February, 1930, by the Court of Errors and Appeals, in the case of *State v. Donato, et al.,* 8 Adv. Rep. 41. Also, Section 33 of the Criminal Procedure Act saves an indictment, apparently without amendment, in cases where the time at which the offense was committed, is stated imperfectly, and the matter of Arabic numerals being used, instead of words at length, would seem to fall within such a classification.

In the case of *Ketline v. State,* 58 N. J. L. 462, an indictment was presented, which contained a blank space for the insertion of the date of the commission of the offense, which blank space, by an oversight, had not been filled up. The motion to quash the indictment on that ground was overruled, and the State was permitted to supply the omitted date by amendment. The Court held that the date was a mere form, in no wise incorporated with the crime

as a constituent part of it, and that the slip was cured through the liberal provisions of that section of the then Criminal Procedure Act similar to Section 33 of the present Act.

Next, dealing with the language of the indictment itself, and the charge that there were no averments therein of the ownership of the moneys embezzled, or that the moneys were received by the defendant in his capacity as Clerk of the Water Department, it is felt that a reading of the whole indictment would fairly apprise the defendant of the nature of the charge laid against him.

The language of Section 167 of the Crimes Act reads as follows:

> "167. Any person who, holding an office of trust and profit under the authority of this State, or under any public or private corporation existing under the laws thereof, who shall embezzle any of the money, property or securities committed to his keeping, with intent to defraud the State, or any county thereof, or any city, borough, township, body corporate, or person, or shall fraudulently dispose of the same, shall be guilty of a high misdemeanor."

The pertinent language of the indictment reads as follows:

> "that Allan W. Redfield, late of the City of Gloucester, in the County of Camden, on the twentieth day of January, 1927, at the city and county aforesaid, and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State

of New Jersey, said office being that of Clerk of the Water Department or Water Clerk of the said City of Gloucester City, did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City."

In 20 *Corpus Juris,* p. 458, it is said:

"Embezzlement being a statutory offense, the sufficiency of the indictment or information is to be tested, not by the rules of the common law, but by the requirements of the particular statute upon which it is bottomed. It is necessary to set forth all the constituent facts and circumstances necessary to bring accused within the statutory provisions with certainty and distinctness, and in such a manner as to apprise defendant of the precise nature of the charge made against him, and enable him to meet the facts expected to be proved. No technical words are necessary, as in charging common law offenses, and it is sufficient to describe the offense in ordinary and concise language. An indictment or information for embezzlement which charges the facts constituting the crime in the words of the statute, or in words of equivalent import or more extensive signification which necessarily include the words of the statute, is sufficient."

In the case of *State v. Bartholomew,* 69 N. J. L. 160, which is an embezzlement case also under Sec-

tion 167 of the Crimes Act, the point was raised that the indictments did not show from what source or for what purpose the officer received the money or how the borough became entitled to it. The Court said:

> "The answer to this is that the statute has defined the crime in question to be complete when such officer shall embezzle any of the money, &c., committed to his keeping, with intent to defraud the State, county, city, borough, &c. And the indictments in this respect follow the exact words of the statute. In an indictment for a statutory crime it is sufficient to charge it in the words of the statute, without a particular statement of the facts and circumstances, when the offense is thereby described without ambiguity and uncertainty. State v. Startup, 10 Vroom, 423; State v. Stimson, 4 Zab. 478; Commonwealth v. Welsh, 7 Gray, 324. Embezzlement is a distinct offense of a character well understood, the essential elements of which are not involved in uncertainty, so that the indictments under discussion are clearly within the rule stated. Goodhue v. People, 94 Ill. 37."

Later cases dealing with the charging of statutory offenses in statutory language are *State v. Caporale,* 85 N. J. L. 495; *State v. Morris,* 98 N. J. L. 621; *State v. Tilton,* 104 N. J. L. 268.

The case of *State v. Lyon,* 45 N. J. L. 272, so strongly relied upon in the brief of the plaintiff-in-error, was a case which brought up an indictment on certiorari, but in the pending case we are

dealing with a writ of error and the review thereunder provided for in Section 136 of the Criminal Procedure Act, which expressly provides that:

> "no judgment given upon any indictment shall be reversed for any imperfection, omission, defect in, or lack of form, or for any error, except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits."

POINT TWO.

This point deals with alleged error in the admission into evidence of the ledger account of the Gloucester City Trust Company with the Gloucester City Water Department. Under present commercial practices, such ledger accounts are well within the knowledge of a general ledger bookkeeper, such as the witness, Raymond B. Wright, declared himself to be (p. 66, State of the Case). The witness also testified (p. 72, State of the Case) that the entries might have been made by some five or six different men, some of whom were no longer with the bank, and that he did not know where these persons might be. The Court admitted the ledger sheets into evidence as Exhibit S3, and it is not perceived how the defendant might have suffered therefrom, for upon the whole case, the ledger account at the bank appeared as only one of the foundations upon which the State auditor, Dorsett, established the comparison between the amounts with which the defendant, Redfield, charged himself in his books of account, and the amounts which

he deposited with the Gloucester City Trust Company and later turned over to the City. The defendant, Redfield, in his testimony, did not challenge any of the figures shown by the ledger account. If it be conceded that it was incumbent upon the State to prove the ultimate shortage of the particular one thousand dollars mentioned in the indictment, there would seem to be no better way of doing it than to introduce the bank account maintained by the defendant, through which bank account he cleared his transactions as Clerk of the Water Department, and it is, therefore, respectfully submitted that the State established the bank account by the best evidence obtainable and that the admission of such evidence was proper.

POINT THREE.

It is felt that all of the questions raised under this point have been adequately dealt with under Point 1, with the exception of sub-division (b) and (e). There are "(b) That there was no proof that the Clerk had any duty whatever with regard to the moneys of the Water Department of the City of Gloucester." "(e) That the indictment charges the embezzlement of money, while the proofs relate to a check."

It is true that the ordinances introduced and read into evidence did not outline in words the duties of the Clerk of the Water Department. These ordinances of 1906 (p. 57, State of the Case) and 1912 (p. 55, State of the Case) were merely amendatory of Section 4 of an ordinance adopted in the year

1891, but the Acting City Clerk, Ernest M. Ritchie, of the City of Gloucester City, who produced the ordinance records of the City of Gloucester City which were in his custody as such Acting City Clerk, testified (p. 55, State of the Case) that he did not have in his custody the ordinance records of the City of Gloucester City for the year 1891, and that he had made a search for the same, and that he was unable to produce the original ordinance of 1891. However, even Section 4, as amended by the ordinances of 1906 and 1912 aforesaid, provided that there should be a Clerk of the Water Department, and that he should receive an annual salary of $300, thereby making the office of the Clerk of the Water Department an office of profit under the authority of the City of Gloucester City. The further testimony was to the effect that the annual compensation of $300 provided for in said amending ordinances was paid to the defendant, Redfield, continuously during the years 1926, 1927, 1928, 1929, and down to August of 1930, and the City Treasurer, Harris C. Powell, expressly testified (pp. 44 and 45, State of the Case) that the water revenues of the City of Gloucester City for the years 1926 and 1927, came into his custody by checks from Allan W. Redfield, from four to eight times a year, and, therefore, there was testimony in the State's case as to the nature of the defendant's *de facto* trusteeship over such water revenues, he being the Water Clerk, up to the times when he would turn them over to the City Treasurer.

Next, dealing with the question of "money," and the whole subject of the defendant's embezzlement, as it may be referred to under this Point No. 3,

or under any other point, it may be said that the word "money," as used in Section 167 of the Crimes Act and as used in the indictment in this case, is a generic term. Manifestly, under the provisions of Section 47 of the Criminal Procedure Act, the use of the word "money" is authorized as a descriptive and all-embracing word, and when such word "money" is used in an indictment in that authorized manner, "such allegation, so far as it regards the description of the property, shall be sustained if the defendant shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security, of which such amount was composed, shall not be proved." In other words, what the law clearly implies is that when the word "money" is used, it does not relate specifically to any particular kind of coin or currency, but to what otherwise might be spoken of as "money's value" or "money's worth."

The whole contention of the plaintiff-in-error seems to be that merely because the particular check by which the Air Reduction Sales Company paid its bill was put through the bank and collected in full and the resulting credit in the bank turned over to the City, along with other moneys, by means of a check of the defendant, Redfield, that then the defendant, Redfield, cannot be guilty of the crime alleged against him that he "did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City." Not so, for if the Air Reduction Sales Com-

pany did pay $1,146.24, and if the City of Gloucester did get from Redfield only $146.24, as the amount of money alleged by him in his bookkeeping accounts to have been received from the Air Reduction Sales Company, then clearly he did embezzle the other $1,000 of that Air Reduction Sales Company money, regardless of his method of doing so. Let us follow the argument of the plaintiff-in-error to its illogical conclusion. Let us assume that the check of $1,146.24 came in from the Air Reduction Sales Company, and that the defendant deposited it in the bank account and thereby collected from the bank of the Air Reduction Sales Company the sum of $1,146.24, and that after that money was collected it remained in his bank account, to be turned over to the City at some time of future accounting; but, let us assume, further, that instead of having $146.24 posted on the books of account as the amount with which he was charging himself by virtue of the payment made for water consumed by the Air Reduction Sales Company, he failed to have any amount posted in his books as a charge against himself, and as a result, when he later made a remittance to the City Treasurer, his books would indicate that no money had been received by him from the Air Reduction Sales Company and that he was not turning over to the City *any* money of this customer, the Air Reduction Sales Company. Then, how can it be said that he did not embezzle the whole sum of $1,146.24 committed to his keeping by virtue of the payment made by the Air Reduction Sales Company? Surely, what would be true if he embezzled the whole $1,146.24 is true as to his embezzlement of $1,000, constituting a part thereof.

Also, the argument is made in the brief of the plaintiff-in-error, under Point 14 thereof, that if Jones, Brown, Smith and 47 other persons had each paid $20, making a total sum of $1,000, and that if, through his manipulations, the defendant, Redfield, might have kept the $1,000 which they had paid, perhaps in cash, and that he might have used the credit of the additional $1,000 of the Air Reduction Sales Company payment, not posted in his book of account, as a means of remitting to the City for these 50 payments of $20 each, that then the defendant, Redfield, should properly be charged with the embezzlement of the Jones, Brown, Smith and other moneys, and not of the Air Reduction Sales Company money. This seems to be pure sophistry, for upon being confronted with any such charge as that, all that the defendant would have had to say would be, "Certainly, I did collect from Jones, Brown, Smith and the 47 other persons, but, also I have most certainly charged myself with those payments, and you will find from my accountings to the City that the amounts as shown on my books as having been paid by Jones, Brown, Smith and the 47 others, are included in that accounting, or those accountings." Such an explanation would seem to be a perfect defense to any allegation that he had embezzled the moneys committed to his keeping by virtue of the payments made by Jones, Brown, Smith and the 47 other persons, unless perhaps some witness had been standing by to see him transfer the currency paid by these 50 persons into his own pocket.

What clearly must remain undisputed is that the defendant, Redfield, did receive into his custody the

sum of $1,000 committed to his keeping as a part of the payment of $1,146.24 made by the Air Reduction Sales Company, and that up to the present time the City of Gloucester City has never reecived that $1,000, identified and earmarked as such, or any other $1,000 which might be it, because unapplied to any of the items chargeable to him in his books of account.

POINTS FOUR AND FIVE.

The arguments advanced under Point No. 2 are thought to be similarly dispositive of these points.

POINT SIX.

Point 6 deals with the motion made at the close of the entire case, and contains nothing that has not already been discussed, with the exception, perhaps, of the testimony of the State auditor, Dorsett, regarding his audit extending over a period of more than five years, whereby he arrived at a net shortage of $203.12 in the Redfield accounts, and his expert opinion that had the Air Reduction Sales Company transaction been properly posted in the books, the shortage would have been $1,203.12 (p. 115, State of the Case). This testimony was introduced by the State, not so much as a means of specifically proving thereby the guilt of the defendant, but as an item of proof whereby there might be negatived the thought that perhaps, in spite of the improper bookkeeping of the Air Reduction Sales Company pay-

ment, the defendant, Redfield, upon such an audit being made, might come forth with an excess amount of more than $1,000 in his final account, the source of which was unknown, but which he turned over to the City, even though its source was unknown, knowing it to be some part of the water revenues of the City. Manifestly, however, if he is short by $203.12 in his accounts, no such explanation, or defense, would be available to him, and that kind of a showing constituted the purpose of the State's proofs along that line. It was clearly not error for such testimony to be admitted, its weight being a matter for the jury to determine.

POINTS SEVEN, EIGHT, NINE, TEN, ELEVEN, TWELVE AND THIRTEEN.

These all deal with the charge of the Court and the refusal of the Court to charge certain requests, and it is respectfully submitted that, upon a whole reading of the Court's charge, it will be seen that the case was well outlined to the jury, and that there was left to the jury the full and fair question of determining the defendant's guilt or innocence, and that those requests to charge which were refused were quite properly refused, because erroneous in themselves.

POINT FOURTEEN.

This point deals with the question of whether or not the defendant embezzled any of the funds committed to his keeping by virtue of the payment made by the Air Reduction Sales Company, and

since the argument upon this point would so nearly resemble that under Point 3 of this brief, it will not be here repeated.

For all of the foregoing reasons, therefore, it is respectfully submitted that the defendant, Redfield, went to trial upon an indictment charging him with a statutory offense and couched in statutory language; that the amendment of that indictment, as made before the jury was sworn, was well within the power of the trial Court; that notwithstanding any technical defects of pleading, which might have been charged against the indictment, the refusal of the trial Court to quash it is not a proper subject for review under Section 136 of the Criminal Procedure Act; that the defendant was accorded a fair and full trial upon the merits of his case, and that the charge of the Court to the jury was in all respects a proper and correct exposition of the law, and that in no respect was any error committed which might have prejudiced the defendant in maintaining his defense upon the merits.

The defense seems to be nothing but a categorical denial of wrongdoing, mixed up with some kind of an explanation that the defendant's office facilities were in some way responsible for his failure to account for moneys received by him as Clerk of the Water Department, and it is, therefore, respectfully submitted that the judgment of the Camden County Court of Quarter Sessions should be affirmed.

CLIFFORD A. BALDWIN,
Prosecutor of the Pleas of Camden County,
Attorney for and of Counsel with Defendant-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

ALLAN W. REDFIELD,
Plaintiff-in-Error.

Sur Indictment.

On Writ of Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

This matter was brought before the Supreme Court on writ of error reviewing a conviction under Sections 136, 137 and 137A of the Criminal Procedure Act on 13 identical assignments of error and causes for reversal, and one additional cause for reversal. The conviction was for embezzlement by the defendant as clerk of the Water Department of

the City of Gloucester City of the sum of $1000 of money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, &c., and was based upon Section 167 of the Crimes Act.

The Supreme Court affirmed the conviction by a *per curiam* opinion, which passed over in silence a number of assignments and causes for reversal which counsel for the plaintiff-in-error considers of vital importance.

The undisputed proofs clearly show that the moneys referred to in the indictment were in the form of a check of the Air Reduction Sales Company drawn on the Central National Bank of Philadelphia to the order of the City of Gloucester, Bureau of Water, in the amount of $1146.24, and that this check was deposited by the defendant in the Gloucester City Trust Company to the credit of the Gloucester City Water Department, and that the amount of the check was paid by the Air Reduction Sales Company.

It is undisputed that all funds of the Water Department deposited by the defendant were checked out by checks drawn to the order of the City Treasurer of the City of Gloucester, and that no moneys were drawn from said account for the personal use of the defendant.

The case was tried both in the Quarter Sessions and in the Supreme Court upon the theory that even though every dollar of the moneys mentioned in the indictment were paid to the City of Gloucester, but if the defendant had embezzled other moneys from

one or a number of persons, aggregating the sum of $1000, and by means of a fictitious entry in the cash book had concealed such embezzlement of other moneys, then he might be convicted under the indictment above mentioned of embezzling a part of the moneys committed to his care by the Air Reduction Sales Company, even though the identity of such persons was not known or the particulars of such transactions proved. In other words, that the defendant might be indicted for one offense and convicted of another or others for which he was not indicted.

The Defendant Accounted for the Full Sum of $1146.24 by Depositing the Identical Check for that Amount to the Credit of the City of Gloucester City.

The opinion of the Supreme Court contains the following:

> "We think that the evidence tended to show the embezzlement of the money as charged in the indictment. If, as the evidence tended to show, the Air Reduction Sales Company did pay to defendant $1,146.24, and if the City did get from him only $146.24, then clearly he did embezzle the other $1,000, and it matters not that the proofs incidentally involve the handling of a check. There was ample evidence tending to show that defendant did receive into his custody the sum of $1,000 committed to his keeping as a part of the $1,146.24 payment, and that the

> City has never received that $1,000, identified and earmarked as such, or any other $1,000 which might be it."

This, of course, begs the question. The evidence is undisputed that the defendant received a check for $1146.24 from the Air Reduction Sales Company, and that the City of Gloucester City received precisely that amount from him by the deposit of said check, and, therefore, the whole sum of $1146.24 received by the defendant in the form of a check is absolutely identified by the deposit of said check in the account of the City of Gloucester City, and, therefore, the City of Gloucester City received every dollar of the $1146.24 "identified and earmarked as such."

Arabic Numerals.

The Supreme Court justifies the amendment of the Arabic numerals appearing in the indictment, and cites Section 44 of the Criminal Procedure Act in several cases in support thereof.

There is no doubt whatever that the trial Court has a right to permit an amendment for any defect of form, but cannot, however, amend for defects of substance, because in so doing the statute comes in collision with the Constitutional provision that no person shall be held to answer for a criminal offense unless on the presentment or indictment of the Grand Jury, and the legislative grant of the power to amend matters of substance is a broader grant than the Legislature has a right to make.

State v. Kern, 51 N. J. L. 259, 264.

The question presented, therefore, is whether such a defect is a question of form or of substance.

Such a defect was regarded as *fatal* in an indictment, by Chief Justice Green, in *Berrien v. The State,* 22 N. J. L. 9, 36, and approved by Chief Justice Beasley in *State v. Jay,* 34 N. J. L 368, 370. When two such distinguished Chief Justices concur in the view that an error is fatal it would seem to follow as a necessary corollary that if fatal such a defect is *incurable* by way of amendment.

It may be that these two distinguished Chief Justices were in error, but at least the opinion of the Supreme Court in this case does not point out the error, nor does it distinctly state that the error in the indictment was one of form and not of substance.

Ledger Sheets.

There was admitted in evidence over the objection of the defendant a loose-leaf ledger account of the Gloucester City Trust Company with the Gloucester City Water Department. This ledger account was not kept by the witness, and represented a summary of transactions from other sources, and the entries were made by five or six different men, and said ledger sheet was not a book of original entries. As to this the Supreme Court says:

> "But if there was technical error here, it is not perceived how the defendant could have been prejudiced thereby, for the ledger account appeared as only one of the foundations upon

> which the auditor established the comparison between the amounts with which defendant charged himself and the amount which he deposited with the Gloucester City Trust Company and later turned over to the City. And moreover the defendant in his testimony did not challenge any of the figures shown by the ledger account."

There is nothing in the testimony to indicate any other source of information used by the accountant to show the bank deposits. Indeed the proper way to have shown this would have been by the bank deposit book kept by the defendant or under his supervision.

The language of the opinion is tantamount to saying that the ledger sheets were merely cumulative, and that the defendant was not injured by the cumulative proofs. This is not the law.

> "Cumulative evidence means additional evidence to support the same point and of the same character as evidence already admitted. Upon a disputed fact cumulative evidence might be the controlling factor in deciding the point in favor of the party offering it, and, in such a case, if the cumulative testimony were illegal, it would be injurious."
>
> *State v. Murphy*, 87 N. J. L. 515, (E. & A. 1915).

In this case the defendant denied having embezzled any moneys whatever, and there was, therefore, a disputed fact.

> "Moreover the doctrine as to cumulative testimony applies properly to testimony of the same or lower grade than that already received, whereas the production of a document about which there has been some early testimony is evidence of a higher grade to which the term cumulative cannot properly be applied."
>
> *State v. Merkle*, 83 N. J. L. 677, 686.

In the last mentioned case the trial court refused to admit in evidence an official document, and such refusal was held error even though there was oral testimony in the case as to the same facts as those stated in such document.

The last sentence from the opinion in the case *sub judice* reads: "And moreover the defendant in his testimony did not challenge any of the figures shown by the ledger account." It would be difficult to perceive how the failure of the defendant to challenge such figures in any way increased the evidential value of the ledger sheets.

This review under Sections 136 and 137 of the Criminal Procedure Act is dual in nature, and the right of review is extended beyond error assigned on the record or upon bills of exception, and does not supersede the review of such matters upon the assignment of error, or require that the plaintiff-in-error shall relinquish any of the advantages of such a review. See *State v. Merkle*, 83 N. J. L. 677.

The validity of the objection is determined as of the time of the making thereof, and as the record then stood, and the defendant is not required to take the stand and challenge testimony illegally admitted on the pain of having the testimony declare

legal in case of the failure of the defendant to challenge the same. See *State v. Bacheller*, 89 N. J. L. 433, (N. J. Sup. Ct. 1916).

The Supreme Court says the ledger account appears as only one of the foundations, etc.

"Foundation" is defined in the Standard Dictionary as "That on which anything is founded by which it is supported or sustained." The synonyms are stated to be: "Base; basis; ground; groundwork; substratum."

It is difficult to perceive how anything which is a "foundation" can be regarded as non-essential, and, if the foundation be faulty or collapse, how the supported structure can stand.

Certainly no other specific "foundation" for the testimony of the accountant, Dorsett, as to the amount of money deposited in bank can be found in the record.

We do not wish the court to think that this objection is merely captious. The auditor, Mr. Dorsett, with three other men were working on the audit of the account from October, 1929, to October, 1930, a period of one year. Three or four men were working on this for about half of that period. (S. of C. pages 117 and 118.) No questions whatever were asked of the defendant; no alleged shortages were brought to his attention, in a matter involving some 17,500 accounts, and he was confronted by the conclusions of an auditor who worked aided by three assistants, in the court room for the first time and asked to explain the shortage for which he was convicted.

Under such circumstances no man could possibly exculpate himself without having had previous op-

portunity to check the claimed shortage with the records. We have, therefore, a right to call for strict and legal proof of the moneys deposited by the defendant in the Gloucester bank BECAUSE THIS IS MADE THE FOUNDATION, AND THE ONLY FOUNDATION, of the charge of embezzlement. In other words, the State says to the defendant, "You failed to deposit in the bank the sum of $1000., and proof thereof is made by taking the total amount of cash known to have been received by you, including a check of $1146.24, received from the Air Reduction Sales Company, and then by showing by the amounts deposited by you in bank that you deposited $1000 less than the sum so received." Hence, the bank account is the basic fundamental record used by the State for the purpose of proving the guilt of the defendant.

The most serious objection to the opinion of the Supreme Court is its total failure to discuss a number of assignments of error and causes for reversal, chief among which is that dealing with the Judge's charge and certain refusals to charge. The Court charged in part as follows: (See Assignments of Error and Causes for Reversal Nos. 7 and 8.)

> "7. The Court charges you, as a matter of law, that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the treasury of the City of Gloucester City, but that another $1000 that was paid—in any sums whatsoever, and from whomsoever—was taken, in cash, out of the till, by this defendant, even though that money was taken, if these accounts

do not show this money as having been credited to the company that paid it—and it is not disputed it was paid—this man would be guilty of the crime of embezzlement, as charged. In other words, the act would be within the purview of the criminal statute covering this particular charge. That is what the Court charges is the law."

8. The Court further charged:

"It is possible, in bookkeeping, that the $1000 might be applied, in error, to some other person's account; but, there is no testimony here before you that it was credited to some other account where, perhaps, only $5.00 was paid, and credit given for $1005.00. There is no evidence, however, of that here, and since there is no proof to this effect, you have a right to presume, have a right to draw the inference, that there was no such error."

This is clearly violative of Section 1, Articles 8, 9 and 10, of the New Jersey Constitution, and authorizes the jury to convict the defendant of the embezzlement of sums of money not charged in the indictment. In other words, justifies the conviction of the defendant upon an offense for which the defendant has not been indicted.

In order that the court may have precisely the brief and the questions presented to the Supreme Court, the following is the exact brief submitted to the Supreme Court.

It is desired to be understood, as indicated in

said brief presented to the Supreme Court, that the plaintiff-in-error distinctly disclaims any intention to waive any assignment of error or cause for reversal appearing in the record or in this brief, and any failure to argue the same orally is not intended as a waiver of any of such assignments or causes appearing in the brief.

NEW JERSEY SUPREME COURT.

BRIEF FOR PLAINTIFF-IN-ERROR.

STATEMENT OF THE CASE.

The indictment charged that the plaintiff-in-error on the twentieth day of January, *1927,* at the City and County of Camden "and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of Water Clerk of said City of Gloucester City, did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, contrary to the

form of the statute in such case made and provided," etc.

Upon this indictment the defendant (plaintiff-in-error) was convicted by a jury, and it was adjudged by the Court that the plaintiff-in-error be confined in the New Jersey State Prison for the term of five years.

The plaintiff-in-error thereupon brings said conviction before this Court for review under Sections 136, 137 and 137A of the Criminal Procedure Act on assignments of error and specification of causes for reversal.

INDICTMENT. MOTION TO QUASH.

The indictment is based on Section 167 of the Crimes Act, which reads as follows:

> "167. EMBEZZLEMENT BY STATE, MUNICIPAL OR CORPORATE OFFICERS. Any person who, holding an office of trust and profit under the authority of this State, or under any public or private corporation existing under the laws thereof, who shall embezzle any of the money, property or securities committed to his keeping, with intent to defraud the State, or any county thereof, or any city, borough, township, body corporate or person, or shall fraudulently dispose of the same, shall be guilty of a high misdemeanor."
>
> 2 N. J. C. S., p. 1795.

The indictment reads as follows:

"IN THE
COURT OF OYER & TERMINER
OF CAMDEN COUNTY.

APRIL TERM, A. D. 1930.

CAMDEN COUNTY to wit:

THE GRAND INQUEST of the State of New Jersey and for the County of Camden, upon their respective oath

PRESENT THAT Allan W. Redfield late of the City of Gloucester in the County of Camden, on the twentieth day of January, 1927, at the City and County aforesaid and within the jurisdiction of this Court, holding an office of trust and profit under the City of Gloucester City, a public corporation existing under the laws of the State of New Jersey, said office being that of Clerk of the Water Department of Water Clerk of the said City of Gloucester City did embezzle the sum of one thousand dollars of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the said City of Gloucester City, with intent to defraud the said City of Gloucester City, 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.

Clifford A. Baldwin,
Prosecutor of the Pleas."

Application having been made to the Court for leave to withdraw the plea of "Not Guilty," and such motion having been granted, application was made before the jury were sworn to quash the indictment on the following grounds:

(a) That the date "1927" appeared therein in Arabic numerals.

(b) That in the indictment there was no averment of the ownership of the moneys referred to in the indictment, nor was there any averment that the moneys were received by the Clerk in his capacity as Clerk.

At that juncture the Prosecutor moved for the amendment of the indictment, in that the Arabic numerals "1927" be amended to read "nineteen hundred and twenty-seven," and the Court denied the motion to quash, whereupon an exception was allowed the defendant (page 16).

This motion to quash was repeated at the close of the State's case, and was included, among other grounds, upon a motion for a directed verdict in favor of the defendant, which motion was overruled, and an exception allowed.

At the conclusion of the entire case, a motion was made for a directed verdict in favor of the defendant, which included the grounds advanced upon the motion to quash, which motion was overruled, and an exception allowed.

FACTS.

The undisputed facts are that the Air Reduction Sales Company forwarded its check (page 59) drawn on the Central National Bank of Philadelphia, dated November 22, 1926, to the order of the City of Gloucester, Bureau of Water, in the amount of $1146.24, to the defendant and that this check was deposited by the defendant in the Gloucester City Trust Company to the credit of the Gloucester City Water Department, and appeared upon a deposit ticket dated December 10, 1926, and actually deposited on December 17, 1926 (page 67), and that the amount of the said check was paid by the Air Reduction Sales Company (page 65).

This check was included in deposit slip dated December 10, 1926 (Exhibit S2), and, regardless of any bookkeeping whatever the Bureau of Water of the City of Gloucester City, received in its treasury the full sum of $1146.24 (Dorsett, page 121), and that all checks drawn against that account went to the credit of the City of Gloucester in the account of its City Treasurer, except one check that went out against the account for $11.00 on account of a bad check included in a prior deposit (Dorsett, page 122), and that no checks were drawn out of this account to the order of the defendant, Redfield (Dorsett, page 123).

That the above transaction, so far as the cash book of the Water Department was concerned, was entered in that book (Exhibit S4) by Dorothy L. Kavanaugh, which entry appears as follows: "Jan-

uary 20, Air Reduction Sales Corporation, $146.24, and $146.24 under the column 'total' and under the column 'Water Rent,' " and that the witness believes she wrote the same from stubs from which she posted the entries into the cash book (Kavanaugh, page 82).

The defendant was also City Clerk as well as Clerk of the Water Department. As Clerk of the latter department he handled annually between 3200 and 3500 accounts, and worked under crowded, inconvenient conditions, and without proper office facilities and with insufficient clerical force (pages 155, *et seq.*).

The defendant testified (page 162) that the check of the Air Reduction Sales Company was deposited by him in the Gloucester City Trust Company, where all the funds of the Water Department were deposited, and that all moneys that came into his keeping on account of the Water Department were deposited in that account, and that he never drew any moneys out of this account for his personal use, and that no moneys were drawn out of that account, except to the order of the City Treasurer of the City of Gloucester, and that every dollar he put in was checked out in that way, and that he never took "one dollar of the money of the City of Gloucester for any personal purpose whatever," and that he did not steal $1000 of the money handed to him by the Air Reduction Sales Company (page 163), and that his attention had never been called by any official of the City of Gloucester, or by the City Council of Gloucester to any shortage claimed to exist in his accounts prior to being indicted in this case, and that no one asked him to repay any

money, and that no one had claimed he was short in his accounts, not even including the auditor, Mr. Dorsett, who testified on behalf of the State (page 164), and that he did not make the entry in the cash book under date of January 20, 1927, crediting the Air Reduction Sales Company with the sum of $146.24 (State's Exhibit No. 4).

The State's witness, Dorsett, testified (page 113) that upon an audit of the accounts extending from January 1, 1925, to June 11, 1930, involving a total sum in excess of $187,000, the excess of receipts over the deposits during that period was the sum of $203.12, whereas if the sum of $1000 were added to this amount, this difference would have been the sum of $1203.12 (pages 113-115). From these facts a deduction was drawn by the State that a shortage of the last named amount existed, occurring within a period exceeding five years, and that from these facts a legal inference could be drawn that the defendant had embezzled $1000 of the moneys committed to his care by the Air Reduction Sales Company, as charged in the indictment.

It was the State's theory, as well as that of the trial Court, that even though the defendant had accounted for every dollar of the moneys committed to his care by the Air Reduction Sales Company, still if he had embezzled *other* moneys, from one or a number of other persons, aggregating the sum of $1000, and by means of a fictitious entry in the cash book had concealed such embezzlement, then he might be convicted under *this* indictment, of embezzling a part of the moneys committed to his care by the Air Reduction Sales Company, even

though the identity of such persons was not known, nor the particulars of such transactions proved.

This theory we believe to be wholly untenable, in that it would result in a conviction for the supposed embezzlement of other and unidentified moneys not included in the indictment, and as to which the defendant might be subject to many other trials upon allegation that he had embezzled specific funds committed to his care by various individuals, and in such case would be powerless to protect himself against double jeopardy by the plea of *autrefois convict* or *autrefois acquit.*

The judgment is further challenged upon the grounds that the proofs disclose the following:

1. (a) That payment by the Air Reduction Sales Company was made by its check in the sum of $1146.24, and was not paid in money.

(b) That this check was deposited in the Water Department account in the Gloucester City Trust Company.

(c) That no checks were drawn from this account except to the order of the City Treasurer (except a check for $11.00 which was in no way related to this transaction), and hence every dollar of the money paid by the Air Reduction Sales Company was accounted for as having been received by the City of Gloucester, and that there was no embezzlement of the moneys charged in the indictment.

2. That the State's theory and the Judge's charge was that even though every dollar of the moneys

committed to the care of the defendant by the Air Reduction Sales Company had been paid "into the Treasury of the City of Gloucester City, but that another $1000 that was paid in any sums whatever, and from whomsoever, was taken in cash out of the till, by the defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it, * * * this man (defendant) would be guilty of the crime of embezzlement, as charged."

3. That the indictment charges embezzlement of money, and that this cannot be sustained by proof of the embezzlement of a check, which is an order for the payment of money and not money in itself, in the absence of proof that the check was cashed and the money thereby obtained was embezzled by the defendant.

At the conclusion of the State's case the defendant moved for a directed verdict upon all of the grounds stated in the motion to quash the indictment, including the ground that the State was without power to order the amendment of the indictment, and upon the following additional grounds:

That there was no proof that the Clerk had any duty whatever to collect or receive the moneys of the Water Department of the City of Gloucester City.

That the indictment did not charge that the moneys were received by defendant in his capacity as Water Clerk.

That there was no statement in the indictment

of the ownership of the moneys charged in the indictment.

That the indictment charges the embezzlement of money, while the proofs relate to a check.

This motion was overruled, and the propriety thereof is challenged by the plaintiff-in-error.

BANK LEDGER SHEETS.

There was introduced into evidence, over objection, several loose-leaf ledger sheets of the Gloucester City Trust Company upon the testimony of Raymond B. Wright, the general ledger bookkeeper of the bank, who did not make the entries, and who had no personal knowledge of the transactions, the handwriting being that of some five or six different persons, and not in anywise authenticated.

Objection was made that a book of *original entries* is admissible only in civil suits to prove the sale of merchandise or the performance of labor and not to show the advances of cash even in such cases, and that proof must be made by the party making the entries that they were entered at or about the time of their respective dates and in the regular course of business, or where such party is dead or otherwise unavailable, by proof of his handwriting.

PROOF OF GENERAL SHORTAGE.

The indictment was not based upon an allegation of a general shortage, but was specific in its char-

acter, in that the defendant was charged with having on a certain day embezzled the sum of $1000 of the money committed to his care by virtue of cer tain payments made by or on account of the Air Reduction Sales Company, and that it was erroneous to permit proofs based upon a discrepancy or shortage disclosed by audit covering a period in excess of five years, two or three years of which were prior to the time charged in the indictment.

JUDGE'S CHARGE AND REFUSAL TO CHARGE DEFENDANT'S REQUESTS.

The Judge charged, in substance, as a matter of law, that even though the moneys represented by the check of the Air Reduction Sales Company had been received by the proper authorities, and paid into the Treasury of the City of Gloucester City, but that another $1000 was "taken in cash out of the till by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it * * * this man would be guilty of the crime of embezzlement as charged."

This, in substance, was an instruction to the jury, that even though the defendant had not embezzled any of the moneys charged in the indictment, but the jury concluded that he had embezzled other and unidentified moneys he could be convicted upon the indictment as charged.

All of the matters above set forth appear in the assignments of error and causes for reversal.

BRIEF OF ARGUMENT.

The plaintiff-in-error has filed thirteen assignments of error and fourteen specifications of causes for reversal. The assignments of error and the first thirteen specifications of causes for reversal are identical, and will be dealt with together and in the order in which they appear in the specifications of causes for reversal.

POINT ONE.

(*Assignment of Error and Cause for Reversal No.* 1.)

"That the defendant having moved to quash the indictment on the following grounds:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the Prosecutor of the Pleas to amend the indictment by striking out the numerals '1927' and inserting 'nineteen hundred and twenty-seven.' "

ASSIGNMENT 1 a.—ARABIC NUMERALS.

It is error in an indictment to express numbers or dates by Arabic figures or Roman numerals. This has been held in a number of New Jersey cases.

In the case of *Berrian v. The State*, 22 N. J. L. 9, the sixth syllabus reads as follows:

> "6. It is error in an indictment to express numbers or dates by Arabic figures or Roman numerals; they must be written in *words at length*, except when the indictment, as in forgery, professes to set forth the exact tenor or a *facsimile* of any instrument."

At page 31, the Court states:

> "It is objected that a part of the indictment is in figures, and not in words at length. By an inspection of the record, it appears that the day of the month and the year, in which the affidavit upon which the perjury is assigned, is therein recited to have been taken, and the day of the month and year upon which, in that affidavit, the larceny is charged to have been committed are in figures.
>
> It is laid down by Sir Matthew Hale, that figures to express numbers are not allowable in indictments, though sometimes literal numbers be allowable in returns; but in indictments, the numbers, whether cardinal or ordinal, must be expressed in Latin. 1 *Hale's P. C.* 170."

At page 33, the Court further states:

"The authorities which have been cited are all drawn from the period when the state of Edward remained in force. That statute, it will be recollected, simply required the proceedings of courts to be entered and recorded in Latin; and it has been suggested, as a ground for the distinction between the Roman numerals and the Arabic figures, that the former are Latin, which the latter are not. It will be recollected, however, that during this period legal proceedings were all entered in court hand, with numerous abbreviations, quite as unintelligible to the uninitiated as the Roman numerals themselves.

The statute 4 *Geo.* 2, *C.* 26, enacts, that from and after the 25th of March, 1733, all writs, pleadings, records, and proceedings in courts of justice shall be in the English tongue, and shall be written in a common legible hand and character, and not in court hand and in words at length, and not abbreviated.

The statute 6 *Geo.* 2, *C.* 14, enacts that all writs, pleadings, records, and proceedings in courts of justice may be written or printed in a common legible hand and character, and with the like way of writing or printing, and with the like manner of expressing numbers by figures, as have been heretofore, or are now commonly used in the said courts respectively, and with such abbreviations as are now commonly used in the English language." 6 *Statutes at Large* 65, 120.

At page 35, the Court further states:

"Process had previously been held good even when the year was erroneously stated, or altogether omitted in the notice. 1 *Taunt.* 424; 2 *Stran.* 1232; *Barns*, 425.

I have been led to this review of the authorities, from the fact that, in two or three recent American cases, it has been held that Arabic characters will not vitiate an indictment. *State v. Raiford*, 7 Porter 101; *State v. Hodgeden*, 3 Verm. 481; *Peck*, 165, cited in 2 *Hale's P. C.* (*Ed.* 1847) 170, *note* 2; 2 *Bouvier's Law Dict.*, '*Figures.*' In the *State v. Raiford*, the Court said, that it was more proper to write the day, year, &c., than to insert Arabic characters; but that the contrary practice has prevailed so long that it would be unwise to disturb it. The decision of the Court is based upon established practice. Such, doubtless, is the practice of the State where that decision was made, but I have been unable to ascertain the existence of any such practice in the courts at Westminster; and in this State both practice and authority are the other way.

Our statute respecting amendments and jeofails adopts the material provisions of the statutes of *Geo.* 2, in respect to civil suits, but provides that no part of the Act, except that which directs proceedings to be in English, shall extend to indictments or criminal proceedings." *Rev. Stat.* 991, §§ 17, 19.

At page 36:

"In criminal proceedings, and especially in in-

dictments, the objection to the use of figures is more obvious and cogent, and we believe they are universally (except where a *facsimile* is necessary) written in words at length. To this cause, and to the general judgment of the profession, that *the use of figures is fatal in an indictment*, may be attributed the entire absence of all judicial authority directly upon the point."

At page 38, Chief Justice Green says:

"By the seventeenth Section of the Act respecting amendments and jeofails, passed in 1794, all proceedings in every court of law and equity in this State are 'required to be in English tongue and language, and in no other tongue or language, and written or printed in good legible hand, and not abbreviated, except such abbreviations as are commonly used in the English language; *provided*, that it shall be lawful to express numbers by figures, in like manner as it hath been heretofore, and is now commonly used in said courts.'

This provision, by the nineteenth Section of the same Act, is expressly extended to indictments. The first inquiry then is, were figures commonly used to express numbers and dates in indictments before and at the time of the passing of this statute? Before the Revolution, and the adoption of our Constitution in 1776, the practice was to express dates and numbers in words at length, and not in figures, and this practice seems confirmed by numerous judicial decisions, whether by regulation of the common law, or by usage or custom, or statutory pro-

vision, is not essential now to determine. In *Hale's Pleas of the Crown*, 2 Vol., 170, it is asserted, 'that figures to express numbers are not allowable in indictments;' * * *."

In the year 1871, Chief Justice Beasley affirms the doctrine of the above case in the case of the *State v. Charles W. Jay*, 34 N. J. L. 368, at page 370, as follows:

"The rule, notwithstanding the relaxation above referred to, still is, that criminal proceedings must be written in words at length, as is manifest from the case of *The State v. Berrien*, 2 Zab. 9, where a judgment in a criminal case was reversed for the reason that a material date was expressed in the indictment in numerals, and not in words at length. This rule has not been observed on the present occasion, and I think that on this account, if no other defect existed, the verdict should be set aside."

The said rule was likewise recognized by the New Jersey Supreme Court in 1907, in the case of *State v. Castle*, 75 N. J. L. 187. At page 190, Justice Swayze says:

"An objection urged against the form of the indictment is that the street numbers of the houses of ill-fame and gaming-houses are designated in the indictment by Arabic numerals and not written out in words at length. *We recognize the general rule contended for and have no desire to relax its force*; but it is not applicable to this case. The street numbers of houses in our cities do not indicate the numerical order of the houses, but are mere arbitrary

> symbols which have indeed a convenient relation to numerical order but nothing more."

The same doctrine is expressed in *Newman's New Jersey Criminal Law and Procedure* (1916), at page 56, as follows:

> USE OF FIGURES—In the caption of the indictment the term of Court may be designated by figures (*Johnson*, 29 L. 453), but it is error to express numbers or dates by Arabic figures or Roman numerals in the body of the indictment, except in cases which profess to set forth the exact tenor or a facsimile of any instrument (*Berrian*, 22 L. 9). This latter rule does not apply to house numbers or where figures are the correct designation as in street numbers of a house (*Castle*, 66 A. 1059).

Section 17 of the Amendments Act, 1 C. S. of N. J. page 47, provides as follows:

> 17. JUDICIAL PROCEEDINGS TO BE IN ENGLISH LANGUAGE, ETC.—That all proceedings, whatsoever, in every court of law and equity in this State, shall be in the English tongue and language, and in no other tongue or language, and shall be written or printed in a good, strong, legible hand, or character, and in words at length, and not abbreviated, except such abbreviations as are commonly used in the English language; provided, nevertheless, that it shall and may be lawful to express numbers by figures, in like manner as hath been heretofore, or is now commonly used in the said

> Courts respectively, and to express the proper and known names of writs or other process, or technical words, in such language as hath been commonly used, so as the same be written or printed in a common legible hand or character. (Rev. 1877, p. 12.)

It is to be noted that this Section is practically identical with the same section and the same amendment cited in *Berrian v. State*, 22 N. J. L. 9, at page 38. In the note under Section 17 of the Amendments Act, *Berrian v. State* is cited.

It is to be further noted that Section 19 of the Amendments Act, 1 C. S. N. J. 48, provides as follows:

> 19. ACT NOT TO EXTEND TO INDICTMENTS, ETC.—That no part of this Act, except that which directs proceedings to be in the English language, shall extend to any indictment or presentment for any criminal matter, or on any popular or penal statute, nor to any outlawry, or process thereupon, or in order thereunto. (Rev. 1877, p. 12.)

and that this Section is practically identical with the Act respecting amendments and jeofails passed in 1794, and cited in *Berrian v. The State, supra.*

ASSIGNMENT 1-b.—OWNERSHIP OF THE MONEY REFERRED TO IN THE INDICTMENT.

> "Upon an indictment framed upon Section 148 of the Crimes Act, the ownership of the property, if known, must be stated."
>
> *State v. Lyon*, 45 N. J. L. 272, (N. J. Sup. Ct. 1883).

In the indictment in the above case the Grand Jury presented

> "that Aaron K. Lyon, late of * * * East Orange * * * at the township aforesaid, * * * and within the jurisdiction of this Court, then and there being clerk of school district number thirty-eight in the township of East Orange, in said county, being an office of profit and trust under the authority of this State, did unlawfully and knowingly embezzle certain money, property and securities *committed to his keeping as said clerk of said school district number thirty-eight* (italics are ours), in the township and county aforesaid, of the value of three thousand dollars, and did unlawfully and fraudulently dispose of the same, contrary to the form of the statute in such case made and provided, etc."

The Court, speaking by Justice Reed, held that this failed to disclose the ownership of the property alleged to be embezzled, and the indictment was, accordingly, quashed.

A comparison of this indictment with the indictment against Redfield will disclose that the indictment in the Lyon case was stronger than that in the Redfield case, in that there was an allegation that the moneys, etc., *were committed to his keeping as clerk of the school district.* In the Redfield indictment there is not only no allegation of the ownership of the moneys, but there is likewise no allegation that the moneys were committed to his care as such clerk.

> "The allegation in an indictment for larceny that A is the owner of the property alleged to have been stolen, is an essential requirement to render such indictment valid, and is a matter of substance, and not of form; therefore, an amendment allowed by the trial Court, substituting the name of B as owner, instead of A, was a violation of the constitutional right of the defendants to be tried upon the crime charged as found by the Grand Jury, and a conviction under such amended indictment will be reversed."
>
> *State v. Cohen,* 105 N. J. L. 529, (N. J. Sup. Ct. 1929).

THE COURT WAS WITHOUT POWER TO ORDER THE INDICTMENT AMENDED.

Application was made by the Prosecutor to amend the indictment by striking out the Arabic numerals "1927" and inserting in the place thereof the words "nineteen hundred and twenty-seven." No appli-

cation was made to amend the indictment in any other respect either at this time or at any other time during the course of the trial.

The statutory authority to amend indictments appears in Sections 33, 34, and 44 of the Criminal Procedure Act, but under the provisions of the New Jersey State Constitution, Article 1, Sections 8, 9 and 10, no amendment can be made in matters of substance.

Article 1 of the Constitution of the State of New Jersey contains the following provisions:

> "8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.
>
> "9. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, * * * "
>
> "The provision in Section 56 of the Criminal Procedure Act that upon the trial of an indictment for larceny, the jury may return a verdict of guilty of embezzlement, contravenes Article 1, Section 3 of the State Constitution providing that in all criminal prosecutions the accused shall have the right to be informed of the nature and cause of the accusation."
>
> *Howland v. State*, 58 N. J. L. 18, (N. J. Sup. Ct. 1895).

See also:

State v. Sing Lee, 94 N. J. L. 266, (E. & A. 1919).

State v. Cohen, 105 N. J. L. 529, (N. J. Sup. Ct. 1929).

If it be argued that the use of Arabic numerals deals with the form and not the substance of the indictment, and it is, therefore, susceptible of amendment, attention is called to the language of Chief Justice Green in *Berrian v. The State*, 22 N. J. L. at p. 36, as follows:

> "To this cause, and to the general judgment of the profession, that the use of figures is *fatal* (italics are ours) in an indictment, may be attributed the entire absence of all judicial authority directly upon the point."

If an indictment be fatally defective it is obvious that it is incurable by amendment.

POINT TWO.

(*Assignment of Error and Cause for Reversal No. 2.*)

> "That the Court of Quarter Sessions erroneously and illegally admitted into evidence upon the testimony of the State's witness, Raymond B. Wright, a ledger account of the Gloucester City Trust Company, purporting to show the ledger account with the Gloucester City Water

Department from January 1, 1925, 'down to date,' where said ledger account was not kept by the witness, and represented a summary of transactions from other sources, and the entries were made by five or six different men, and said ledger sheet was not the book of original entries. (Exhibit S3)."

LEDGER SHEETS.

"The general rule extends to no other entries than for goods and articles sold; work, labor and services performed by a man, his servants, and means, and materials found and provided. Beyond these limits, which take in all trades and professions, entries in the man's books never were, and never ought to be, evidence in his favor."

Wilson v. Wilson, 6 N. J. L. 95, 96.
Diamond v. Colloty, 66 N. J. L. 295.

"Loose leaf ledger sheets are not of themselves competent evidence of the facts therein contained, although they may be used by the witness *who actually made them* (italics are ours), for the purpose of refreshing his memory as to the details contained therein."

D. & L. Oil Station Co. v. Foltzer, 105 N. J. L. 391, (E. & A. 1928).

Even though the ledger sheets had been otherwise evidential, they were not proved or authenticated in any way by the persons who made the actual entries,

nor was it shown that they were made in the regular course of business at or about the time of the respective entries. These ledger sheets were used by the auditor, the State's witness, Mr. Dorsett, as the basis of his five-year audit, and formed the foundation thereof. The introduction of such ledger sheets deprived the defendant of his right of confrontation of the witnesses who made the entries, and also of his right of cross-examination.

POINT THREE.

(*Assignment of Error and Cause for Reversal No.* 3.)

"That the defendant having moved at the conclusion of the State's case for a directed verdict on the following grounds:

a. Upon all of the grounds stated on the motion to quash the indictment, including the ground that the Court was without power to order the amendment of the indictment, and upon the following additional grounds:

b. That there was no proof that the Clerk had any duty whatever with regard to the moneys of the Water Department of the City of Gloucester;

c. That the indictment did not charge that the moneys were received by defendant in his capacity as Water Clerk;

d. That there was no statement in the indictment of the ownership of the moneys charged in the indictment;

e. That the indictment charges the embezzlement of money, while the proofs relate to a check; the Court of Quarter Sessions erroneously and illegally overruled the said motion."

3a. Upon all of the grounds stated on the motion to quash the indictment, including the ground that the Court was without power to order the amendment of the indictment.

This is already discussed under Point One, to which, for purpose of brevity, reference is made, but the plaintiff-in-error distinctly disclaims any intention to waive this assignment by reason of not here repeating the argument advanced in support of Point One.

3b. That there was no proof that the Clerk had any duty whatever with regard to the moneys of the Water Department of the City of Gloucester.

The city ordinances introduced and read into evidence disclose no duty whatever on the part of the Clerk of the Water Department to receive and collect any moneys owing to the City, and derived from the operation of the Water Department. The defendant is charged in the indictment with having had committed to his care in his "official capacity" the sum of $1000. There is no proof whatever that it was a part of his official duty to receive such

money. This is an essential element of the proofs, and in the absence of such proof there could be no *legal conviction.*

3c. That the indictment did not charge that the moneys were received by defendant in his capacity as Water Clerk.

This is an essential element of the State's proof. If he did not receive the money in an official capacity he cannot be convicted under this indictment. See *State v. Lyon*, 45 N. J. L. 272.

3d. That there was no statement in the indictment of the ownership of the moneys charged in the indictment.

On the authority of *State v. Lyon*, 45 N. J. L. 272, this is an essential element of the State's charge, and in the absence of such a charge the indictment is defective under the case of *State v. Lyon, supra.*

3e. That the indictment charges the embezzlement of money, while the proofs relate to a check.

MONEY.

"'Money' means as a general proposition, what is legal tender and nothing else. The word may, perhaps, be pressed beyond this meaning

by the particular frame of the statute in which it occurs."

Bishop on Criminal Law, 2nd Ed., Vol. 2, Par. 357.

"In an indictment, an allegation of conversion of money does not cover conversion of a check."

Carr v. State, 104, Ala. 43, 16 So. 155. 8th Syl.

Bank notes are not goods and chattels. It was so held in 1849 in the case of the *State v. Calvin*, 22 N. J. L. 207, the syllabus of which reads as follows:

"Bank notes are not 'goods or chattels', and the receiver of stolen bank notes cannot be indicted under the statute making it a misdemeanor to receive stolen 'goods or chattels.'"

In the case of the *State v. Stimson*, 24 N. J. L. 9, the fourth, fifth, sixth, seventh and eighth syllabi read as follows:

"4. It is not sufficient to charge the defendant with converting to his own use $19,000 of money and $19,000 of bank bills, with intent, etc.

5. There should be some description, either of the number or denomination of the coins and of the notes, and, also, an averment of the value of the notes.

6. It is not necessary to aver the value of coins of the government; they have a value established by law, of which courts will take notice.

7. Embezzling or converting promissory

notes, or other commercial paper, is not an offense within the meaning of the said Act.

8. The embezzlement or conversion must either be of coin, or of bank bills or bank notes, to come within the operation of the statute."

Section 50 of the Criminal Procedure Act, with reference to allegations as to money, etc., provides as follows:

"In every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or state bank or any other bank, or any postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note, treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury note or postal currency, as aforesaid, although the particular species of coin of which such amount was composed, or the particular nature of such other notes, shall not be proved and in cases of embezzlement and obtaining money, treasury notes or postal currency aforesaid, or bank notes, by false pretenses, such allegation shall be sustained as aforesaid by proof that the offender embezzled or obtained any piece of coin, or by such treasury note or postal currency aforesaid, or any bank note, or any portion of the value thereof,

> although such piece of coin, treasury note, postal currency or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly." (P. L. 1898, p. 883.)

The reference to money does not include in its classification "checks", so that the law stands as stated in *State v. Stimson, supra*, except as modified by Section 50, which modification does not include checks.

DEFINITIONS OF MONEY.

In law the term has a technical meaning according to which it is to be interpreted, when used in statutes unless there is something in the context to show that a wider meaning is intended. When used in judicial proceedings, it is always to be taken in its technical sense. (40 C. J. p. 1489).

See *Pryor v. Com*, 2 Dana (Ky.) 298.

> "Money" as used in an indictment charging the betting of money does not include United States treasury notes, such notes not being money in the legal acceptation.
>
> *Williams v. State*, 20 Miss. 58, 63.

Comp. Statutes, C. 83, Art. 4, Section 2, provides that the State Treasurer shall account for the paying over of all moneys received by him to his suc-

cessor in office. *Held*, that the statutory duty can be complied with only by delivering the amount in actual cash, and the turning over of a certificate of deposit is not a compliance. "It is absurd to say that a promise to pay money is money." *State v. Hill*, 47 Neb. 456, 552, 66 N. W. 541; *Words and Phrases*, Vol. 5, page 4556.

The essential natural functions of money may be stated as including these three:

1. It is a commodity—having a value of its own.

2. It is a common measure of values.

3. It has a general exchangeability, and is hence, a general medium of exchange.

J. M. Gregory—"Political Economy"—Chap. 22, page 253.

Standard Dictionary of the English Language.

The proper form of an indictment for embezzlement committed by clerks, servants, etc., is to be found in *Archbold's Criminal Pleading & Evidence*, Ed. of 1846, at page 329, in which there is a specific charge that the clerk or servant, while so employed, did

> "receive and take into his possession certain money * * * to a large amount, to wit, to the amount of ten pounds, for and in the name and on the account of the said J. N., his master, and the said money then and there fraudulently and feloniously did embezzle; and so the jurors

aforesaid, upon their oath aforesaid, do say, that the said J. S. then and there, in manner aforesaid, the said money, *the property of the said J. N., his said master* (italics are ours), from the said J. N., feloniously did steal, take, and carry away; against the form of the statute in such case made and provided."

POINTS FOUR AND FIVE.

(*Assignments of Error and Causes for Reversal Nos. 4 and 5.*)

"4. That the Court of Quarter Sessions erroneously and illegally permitted the State's witness, Raymond B. Wright, to testify over objection that the next deposit slip preceding the deposit of December 17, 1926, was a deposit slip dated September 16, 1926, which deposit slip showed a deposit in cash of $350, where it clearly appeared that the testimony of the witness was hearsay.

5. That the Court of Quarter Sessions erroneously and illegally permitted the witness, Raymond B. Wright, to testify that 'This (referring to a deposit slip produced to the witness) was the next succeeding deposit ticket to State's Exhibit S2 in point of time, and that no cash formed part of that deposit,' where the records were kept by some one else, and the witness was dependent entirely upon the records of the bank kept by others."

The reasons in support of Points Four and Five are fully set forth in support of Point Two, and the authorities therein cited are relied upon in support of Points Four and Five. For purposes of brevity, the argument is not here repeated, but the plaintiff-in-error in no way waives these points by failure to discuss them, except by reference to Point Two.

POINT SIX.

"6. That the defendant at the close of the entire case having moved for a directed verdict upon all of the grounds stated in the motion at the close of the State's case, to wit:

a. That the date of the commission of the offense charged appeared in Arabic numerals;

b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were received by the defendant in his capacity as Clerk of the Water Department;

the Court of Quarter Sessions erroneously and illegally denied said motion, and erroneously and illegally permitted the Prosecutor of the Pleas to amend the indictment by striking out the numerals '1927' and inserting 'nineteen hundred and twenty-seven';

c. And in addition thereto, that there was no legal evidence before the Court of the embezzlement or conversion to his own use by the defendant of any moneys charged in the indictment;

d. And on the further ground that the indictment charged the defendant with the embezzle-

ment of a sum of money, and that money within the meaning of the indictment did not include a check or checks, and that before the defendant could be convicted of embezzlement, as charged in the indictment, it must be proved that the defendant embezzled money or currency.

e. And on the further ground that the testimony of Mr. Dorsett, Municipal Accountant, called on behalf of the State, related to a period of more than five years commencing January 1, 1925, and ending June 11, 1930, which included a period long anterior to the time charged in the indictment, and that the difference between the amount charged against the defendant and the amount with which he is credited might well have included shortages or transactions prior to the date fixed in the indictment. In such case the total amount charged the defendant would be affected, and its essential value thus destroyed, and that if the testimony of Mr. Dorsett were eliminated there would be no proof of any embezzlement or peculation;

the Court erroneously and illegally overruled the motion for a directed verdict."

6a. That the date of the commission of the offense charged appeared in Arabic numerals.

6b. That in the indictment there was no averment of the ownership of the moneys referred to therein, nor any averment that the moneys were re-

ceived by the defendant in his capacity as Clerk of the Water Department.

Points 6a and 6b are upon the same grounds as those relied upon for a directed verdict, and are previously discussed in this brief under Points 1a and 1b, and the authorities therein cited are herein relied upon. For purposes of brevity, this argument is not here repeated, but it is to be understood that the plaintiff-in-error does not waive Points 6a and 6b.

6c. That there was no legal evidence before the Court of the embezzlement or conversion to his own use by the defendant of any moneys charged in the indictment.

This was, in effect, a demurrer to the evidence. As already pointed out in this brief, the offense, with which the defendant below was charged in the indictment, was that he had embezzled the sum of $1000 of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, and the proofs were that the payment in question was by means of a check of that company to the order of the City of Gloucester, dated November 22, 1926, which check was deposited by the defendant in the Gloucester City Trust Company to the credit of the Gloucester City Water Department, and that all moneys deposited in that account were transferred by checks drawn thereon by the defendant to the order of the City Treasurer,

and every dollar of the moneys charged in the indictment were thus properly accounted for. The defendant was not by this indictment charged with any other offense, and the indictment could not be sustained by proof of a general shortage covering a five-year period, and upon the theory that other moneys, claimed to have been paid by persons whose identity was not known, were embezzled by the defendant.

6d. That the indictment charged the defendant with the embezzlement of a sum of money, and that money, within the meaning of the indictment did not include a check or checks, and that before the defendant could be convicted of embezzlement, as charged in the indictment, it must be proved that the defendant embezzled money or currency.

This is fully discussed under Point 3e, and the argument thereunder and cases there cited are relied upon in support of this Point, and, for purposes of brevity, are not here repeated. It is to be distinctly understood that this Point is not waived because of the non-repetition of the said argument.

6e. That the testimony of Mr. Dorsett, Municipal Accountant, called on behalf of the State, related to a period of more than five years commencing January 1, 1925, and ending June 11, 1930,

> **which included a period long anterior to the time charged in the indictment, and that the difference between the amount charged against the defendant and the amount with which he is credited might well have included shortages or transactions prior to the date fixed in the indictment. In such case the total amount charged the defendant would be affected, and its essential value thus destroyed, and that if the testimony of Mr. Dorsett were eliminated there would be no proof of any embezzlement or peculation.**

This involved an audit for a period of more than five years, commencing January 1, 1925, and ending June 11, 1930, and was intended to form the basis of an inference that there was a general shortage of the $1,000 charged in the indictment. The effect of such testimony was simply that, during a period exceeding five years, by taking the difference between the receipts and the bank deposits, there was a shortage of $203.12, and if to this there was added the sum of $1,000 as not being otherwise accounted for by the cash book, the receipts would have exceeded the money deposited in bank by the sum of $1,203.12. But this would in no way prove that the sum of $1,000 referred to in the indictment had been embezzled by the defendant. Indeed, if there was an actual shortage, as distinguished from the theoretical shortage, it might have occurred either during a period long anterior to the time charged in the indictment, or at a time subsequent thereto,

in which case it would be wholly irrelevant as to the matter charged in the indictment.

This would directly contravene all provisions of Article 1, Sections 8, 9 and 10 of the Constitution of New Jersey, providing, in substance, that the defendant in all criminal prosecutions shall have the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, and that he shall not be held to answer for a criminal offense unless on the presentment and indictment of a grand jury; nor shall he, after acquittal, be tried for the same offense.

POINTS SEVEN AND EIGHT.

(*Assignments of Error and Causes for Reversal Nos. 7 and 8.*)

"7. That the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

'The Court charges you, as a matter of law, that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the Treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatsoever, and from whomsoever—was taken, in cash, out of the till, by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it—and it is not disputed it was paid—

this man would be guilty of the crime of embezzlement, as charged. In other words, the act would be within the purview of the Criminal Statute covering this particular charge. That is what the Court charges is the law.'

8. That the Court of Quarter Sessions erroneously and illegally charged the jury as follows:

'It is possible, in bookkeeping, that the $1,000 might be applied, in error, to some other person's account; but, there is no testimony here before you that it was credited to some other account where, perhaps, only $5.00 was paid, and credit given for $1,005.00. There is no evidence, however, of that, here, and since there is no proof to this effect, you have a right to presume, have a right to draw the inference, that there was no such error.' ''

This portion of the Judge's charge, in effect, charges the jury that, as a matter of law, they may convict the defendant for embezzling funds other than those charged in the indictment, and, in substance, means that a man may be charged with one offense and tried for others where there has been no indictment or presentment by the Grand Jury. The proofs here have been that all of the moneys paid by the Air Reduction Sales Company had been accounted for and paid into the City Treasury, and that no part thereof had been embezzled or converted to his own use by the defendant. This is violative of Section 1, Articles 8, 9 and 10, of the New Jersey Constitution, and is condemned in the cases of *State*

v. Ham, 72 N. J. L., p. 4 (E. and A. 1905), and *State v. Cohen,* 105 N. J. L. 529.

POINTS NINE, TEN AND ELEVEN.

"9. That the Court of Quarter Sessions erroneously and illegally refused to charge Defendant's Request to Charge No. 2, which reads as follows:

'2. The defendant is not charged with making or concurring in the making of a false entry in his books of account, and, therefore, even though you find as a matter of fact, from the evidence, and beyond a reasonable doubt, that the defendant made or concurred in the making of the entry in the cash book under date of January 20, 1927, amount $146.24, but that the defendant did not embezzle or convert to his own use any of the moneys of the City of Gloucester City committed to his keeping, then your verdict should be that of "Not Guilty." '

10. That the Court of Quarter Sessions erroneously and illegally refused to charge Defendant's Request to Charge No. 3, which reads as follows:

'3. Before you can find a verdict of "Guilty" in this case, you must find that the defendant embezzled and appropriated to his own use the moneys described in the indictment, to wit, the sum of $1,000 received from the Air Reduction Sales Company. He is not charged in this indictment with having em-

bezzled any other moneys, and even though you should find from the evidence that moneys other than those reecived from the Air Reduction Sales Company amounting to the sum of $1,000, whether paid by one or a number of water consumers of the City of Gloucester City to the defendant, had been embezzled, your verdict must still be that of "Not Guilty." ' "

Court's Refusal to Charge Defendant's Requests 2, 3, and 4.

The refusal to charge as requested was an inevitable concomitant of the Judge's affirmative charge appearing in Points 7 and 8. As the Judge had previously and erroneously, as we believe, charged the exact opposite of these requests, logically he could do nothing but refuse. There was no other course for him to take than to refuse these requests. These requests, in substance, simply state, in formal language, the elementary principle that a defendant cannot be deprived of his constitutional rights, as set forth in Article 1, New Jersey State Constitution, Sections 8, 9, and 10. In other words, that a man cannot be charged with one offense and tried for another; that he can only be tried upon the presentment or indictment of a grand jury, and for the offense specifically charged therein.

POINT TWELVE.

(*Assignment of Error and Cause for Reversal No.* 12.)

"12. That the Court of Quarter Sessions erroneously and illegally refused to charge Defendant's Request to Charge No. 5, which reads as follows:

'5. The term "money" does not include a check or checks. A check is an order for the payment of money, and before the defendant can be convicted of the embezzlement of money, as charged in the indictment, it must be proved to your satisfaction, and beyond a reasonable doubt, that the defendant embezzled money or currency.'

Section 50 of the Criminal Procedure Act, with reference to allegations as to money, provides as follows:

'In every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or State bank or any other bank, or any postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note, treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury

note or postal currency, as aforesaid, although the particular species of coin of which such amount was composed, or the particular nature of such other notes, shall not be proved.' ''

Defendant's Request to Charge No. 5.

This request excluded from the term "money," as set forth in the indictment, a check or checks where the check had not been cashed by the defendant and the proceeds thereof converted to his own use, and correctly set forth the appropriate section of the Criminal Procedure Act with reference to allegations as to money (Section 50).

The term "money," as used in the indictment, is discussed under Point 3e. For purposes of brevity, this discussion will not be here repeated, except by reference thereto, and the authorities cited thereunder are now cited in support of this point. It is to be distinctly understood, however, that the plaintiff-in-error, by the non-repetition of such argument, does not intend to waive this point.

POINT THIRTEEN.

(*Assignment of Error and Cause for Reversal No.* 13.)

"13. That the Court of Quarter Sessions erroneously and illegally refused to charge De-

fendant's Request to Charge No. 6, which reads as follows:

> '6. While the municipal accountant, Mr. Dorsett, a witness called on behalf of the State, testified as to moneys collected and received for a period of more than five years, and commencing January 1, 1925, and ending on June 11, 1930, you cannot take this testimony into consideration because it included a period prior to the time charged in the indictment, and the difference between the amount charged against the defendant and the amount with which he is credited, may well include shortages or transactions prior to the finding of the indictment, and in such case, of course, the total amount charged against the defendant would be affected, and its essential value thus destroyed.' ''

Defendant's Request to Charge No. 13.

This request was based upon the theory that proof of a general shortage, covering a period of more than five years, was not proof of the embezzlement charged in the indictment and that under such proof there was nothing whatever to show whether the shortage occurred prior or subsequent to the time of the offense charged in the indictment, and that proof of a general shortage would not be proof of the offense charged in the indictment, viz., the embezzlement of the sum of $1,000 committed to the defendant's keeping by virtue of a payment made by the Air Reduction Sales Company, and

hence would be violative of the provisions of Article 1, Sections 8, 9 and 10, Constitution of the State of New Jersey.

The argument advanced under Point 6-3 is, for purposes of brevity, hereby repeated by reference thereto. It is to be distinctly understood, however, that the plaintiff-in-error, by the non-repetition of such argument, does not intend to waive this point.

POINT FOURTEEN.

(*Specification of Cause for Reversal No.* 14.)

"14. Because under the uncontradicted proofs of this case 'the sum of $1,000 of the money committed to his (defendant's) keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the City of Gloucester, ets.,' was made by a check dated November 22, 1926 (Exhibit S1), which check was deposited to the account of the Gloucester City Water Department, and all funds drawn from that account were drawn only to the order of the Treasurer of the City of Gloucester, and there were no proofs whatever that any of the moneys committed to the defendant's keeping by virtue of any payment made by or on account of the Air Reduction Sales Company were embezzled, and the Court charged as a matter of law 'that if those funds represented by that check (Exhibit S1) have been received by the proper authorities and gone into the proper channels,

> or into the treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatever, and from whomsoever—was taken, in cash, out of the till by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it—and it is not disputed it was paid—this man would be guilty of the crime of embezzlement as charged,' by means of which charge the jury were permitted to convict the defendant of a crime or crimes with which he was not charged, and as to which he would never be able to plead *autrefois acquit* or *autrefois convict.*''

The defendant was not in truth convicted of the offense charged in the indictment, that is, of having embezzled "the sum of $1,000 of the money committed to his keeping by virtue of a certain payment made by or on account of the Air Reduction Sales Company, a consumer of water of the City of Gloucester," but, under the charge of the Court, was convicted of the wholly suppositious embezzlement (using the language of the trial Judge), "that if those funds, represented by that check, have been received by the proper authorities and gone into the proper channels, or into the Treasury of the City of Gloucester City, but that another $1,000 that was paid—in any sums whatsoever, and from whomsoever—was taken, in cash, out of the till, by this defendant, even though that money was taken, if these accounts do not show this money as having been credited to the company that paid it, * * * this

man would be guilty of the crime of embezzlement as charged."

There was absolutely no proof that any sums aggregating $1,000 in money paid by any other person or persons had been embezzled, but even if such proofs had been made, or could have been made, then the defendant would have been guilty of a wholly different offense from that charged in the indictment. For instance, if Jones, Brown and Smith had each paid $20.00, and forty-seven other persons had each paid $20.00, there would have been fifty offenses—fifty separate acts of embezzlement of moneys respectively committed to the keeping of the defendant by Jones, Brown and Smith and forty-seven other persons, and even though convicted under this indictment he could be tried for fifty other offenses, on none of which he had been indicted. The mere statement of this proposition carries with it its own refutation. Such a procedure would be wholly violative of the provisions of Article 1, New Jersey State Constitution, Sections 8, 9 and 10.

It is respectfully submitted that for the reasons aforestated the judgment and conviction of the Camden County Court of Quarter Sessions should be reversed.

HARVEY F. CARR,
Attorney for and of Counsel with Plaintiff-in-Error.