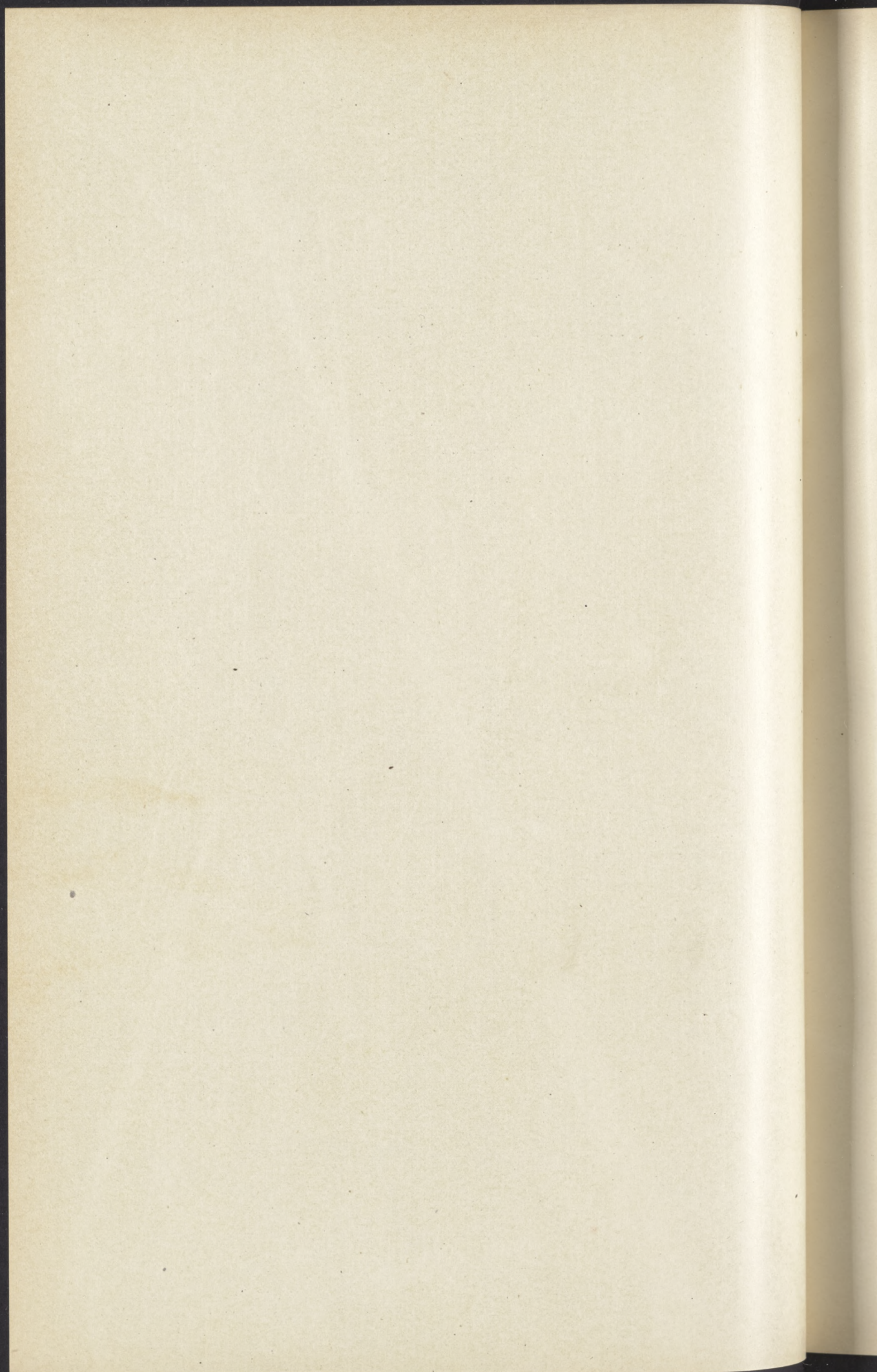


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New Jersey Supreme Court

THE STATE,
 Defendant in Error,
 vs.
EDWARD LANDECKER,
 Plaintiff in Error,

WRIT OF ERROR

(Filed November 15, 1923)

10

NEW JERSEY, to wit: The State of New Jersey to
Honorable Hyman Lazarus, Judge of the Court
[L. s.] of Common Pleas of the County of Hudson,
constituting the Court of Oyer and Terminer,
holden at Jersey City, in and for the County
of Hudson, of the September Term, 1923,

GREETING:

Because in the record and proceedings, and also in
giving of judgment upon a certain indictment against 20
Edward Landecker, of the City of New York, in the
State of New York, for bribery, whereof before you he
has been indicted, and is thereof convicted by a certain
jury of the county, taken between the State of New Jersey
and the said Edward Landecker, as it is said, manifest
error hath intervened to the great damage of said Edward
Landecker, as from his complaint we have received in-
formation; we, being willing in his behalf, to correct the
error in due manner, if any there shall be, and that speedy 30
justice be done to him, the said Edward Landecker, com-
mand you that if judgment be thereon given, then that
you distinctly and openly send, under your seal, the rec-
ord and proceedings aforesaid, also the entire record of
proceedings had upon the trial, with all things touching
the same, to our Justices of our Supreme Court of the
State of New Jersey, on the twenty-seventh day of Oc-
tober next, and this writ, that the record and proceedings
aforesaid being inspected, we may further cause to be

done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this eighth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

ALAN SIMPSON,
Attorney.

EDWARD J. KELLEHER,
Clerk.

10 The answer of Hyman Lazarus, Esquire, Judge of the Common Pleas Court, holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained, in a certain Schedule to this Writ annexed, as within I am commanded.

HYMAN LAZARUS,
Judge.

20

RETURN.

STATE OF NEW JERSEY, HUDSON COUNTY, to wit:

30 Be it remembered, that at a Court of Oyer and Terminer, holden at Jersey City, in and for the said County of Hudson, on the Third Tuesday of September in the year of our Lord one thousand nine hundred and twenty-two before Honorable Francis J. Swayze one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable James W. McCarthy, and Hon. John A. Blair, Hon. Hyman Lazarus, Judge of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, and by the oaths of

- 1 Harry F. O'Mealia, Foreman and
- 2 Frederick A. Lainhardt
- 3 William Baxter
- 4 Charles H. Conrad
- 5 Joseph DiSabato
- 6 Mrs. Martha Reich

- 7 William G. Roberts
- 8 James Anderson
- 9 Charles Katzenberger
- 10 Mrs. Mary McCormack
- 11 Thomas S. Brady
- 12 Robert Thompson
- 13 John Belby
- 14 Joseph Hildman
- 15 F. Cornelius J. Luehs, Jr.
- 16 Joseph Introcasso 10
- 17 Joseph D. Low
- 18 John De Martini
- 19 Henry Bishop
- 20 I. Walter Almy
- 21 Albert M. Dickman
- 22 Henry O. Barth
- 23 Frank Schlosser

good and lawful men of said County, duly empanelled, sworn and charges to inquire for the State in and for the 20 body of the County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true bills.

H. F. O'MEALIA,
Foreman.

And the foregoing being presented to the said Court on the Third day of October, in the year of our Lord One Thousand nine Hundred and twenty-two with Bills of Indictment Nos. 1 to 57, inclusive, it is ordered by said 30 Court that the said Bill of Indictment so as aforesaid included as Bill Number 25 for Offering gratuity to employee as charged upon Edward Landecker be handed to the Court of Quarter Sessions for trial and disposal according to law, and said Bill is in words as follows:

HUDSON OYER AND TERMINER.

September Term, A. D. 1922.

HUDSON COUNTY, To Wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath present, that Ed-

ward Landecker late of the City of Jersey City in the said County of Hudson, on the first day of June in the year of our Lord one thousand nine hundred and twenty-two, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did unlawfully, corruptly and with intent to defraud, offer and give to one Albert LaValle, he, the said Albert LaValle, being then and there the employe, servant and agent of Richards Chemical Works, Inc., a corporation of the State
 10 of New Jersey, as he, the Edward Landecker, then and there well knew, a gift and gratuity, to wit, the sum of one hundred dollars in money, without the knowledge and consent of said Richards Chemical Works, Inc., the principal, employer and master of said Albert LaValle, with intent thereby to influence the action of said Albert LaValle, employe, servant and agent aforesaid, in relation to the business of said Richards Chemical Works, Inc., the principal, employer and master aforesaid, to wit, with
 20 intent thereby to procure from said Albert LaValle certain secret formulae for products used, manufactured and sold by said Richards Chemical Works, Inc., the principal, employer and master aforesaid; 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.

PIERRE P. GARVEN,
Prosecutor of the Pleas.

Endorsed Bill No. 25, Hudson Oyer and Terminer,
 30 Term of September, 1922, the State vs. Edward Landecker, for offering gratuity to employe.

PIERRE P. GARVEN,
Prosecutor of the Pleas.

A True Bill.

H. F. O'MEALIE,
Foreman.

Presented
 October 3, 1922, and handed down
 to the Court of Quarter Sessions
 JOHN J. MCGOVERN,
Clerk.

And afterwards to wit: to wit on the third day of October in the year of our Lord One Thousand Nine Hundred and Twenty-two at a Session of the Court of Quarter Sessions of the County of Hudson, aforesaid being now of the Term of September, One Thousand Nine Hundred and Twenty-two, in the said year Before the Honorable Hyman Lazarus, Judge of the Court of Common Pleas, in and for the said County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson, here cometh the said Edward Landecker, under the custody of his bond (cash bail given), Anna Landecker, in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the bail aforesaid, to whom he had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he says he is not guilty thereof, and, therefore, for good and evil he puts himself upon the country, and John Milton, Prosecutor of the Pleas, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictment be continued until October 3, 1923, and let a jury come before the Honorable Hyman Lazarus, Judge of the Court of Common Pleas, in and for the County of Hudson, constituting and holding the Court of Quarter Sessions for said County, being now of the Term of September (1923), One Thousand Nine Hundred and Twenty-three, of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Edward Landecker, defendant, to recognize on their oath whether the said Edward Landecker be guilty of offering gratuity to employe as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said John Milton, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey in this behalf, as in the said indict-

ment, have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time, that is to say, on the Third day of October, in the year of our Lord, One Thousand Nine Hundred and Twenty-three, at Jersey City, aforesaid, in the County of Hudson, aforesaid, before the Honorable Hyman Lazarus, Judge as aforesaid constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said
10 John Milton, Prosecutor of the Pleas, aforesaid, who prosecutes as aforesaid as well the said defendant under the custody of his bail, aforesaid, and who being brought to the bar in his proper person by said bail and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose, chosen, empanelled and returned to wit: James Gratter, Henry Lehouse, Jacob Knapp, Herbert Trotter, Robert G. Duff, Ralph W. Sneath, Daniel
20 J. Griffin, James Fitzpatrick, John Brewer, Herman Lehpeld, Otto Aitner, Henry Lurz, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury and at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue, after a Charge from the Court, was submitted to the said Jury in charge of the said Officers of the Court, being duly sworn for that Purpose, were taken to a
30 private room to consider of their verdict, and afterwards, to wit: On October 3, 1923, the last aforesaid at the City of Jersey City, aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton, Esquire, Prosecutor of the Pleas, as aforesaid, and of the said defendant, do say that the said defendant is guilty of offering gratuity to employe.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the Law is and is by the Court here considered and ad-

judged, that the said defendant, Edward Landecker, be and is hereby sentenced to be confined in the Jail, County Farm, for a period of one (1) year and thence until costs of prosecution are paid.

Judgment entered and signed this Eleventh day of October, 1923.

HYMAN LAZARUS,
*Judge of the Court of Quarter Sessions,
in and for the County of Hudson.*

Attest:

JOHN J. MCGOVERN,
Clerk.

10

(L. S.)

STATE OF NEW JERSEY,
COUNTY OF HUDSON.
ss:

} Court of Quarter Sessions
holden in and for said
County.

THE STATE
vs.
EDWARD LANDECKER,

} On Sur Indictment No. 25,
Term of September, A.D.
1922, for offering Gratuity 20
to Employe.

Dec. 14, 1922 The Defendant being charged plead Not Guilty with privilege to withdraw and is Remanded for Trial.

Bail \$5,000

JUDGE LAZARUS.

Dec 15, 1922 The Defendant and his bail, Anna Landecker, enter into a Recognizance in the sum of five thousand (\$5,000) dollars cash bail in lieu of Real Estate Surety, conditioned that the Defendant appear from day to day for Trial.

JUDGE LAZARUS.

May 1, 1923 The Defendant being called for trial did not respond and on motion Assistant Lewis G. Hansen, bail was ordered forfeited.

Forfeiture opened without costs.

The Defendant and his bail, Anna Landecker, enter into a recognizance in the sum of five thousand (\$5,000) dollars cash

bail in lieu of Real Estate Surety conditioned that the Defendant appear from day to day for trial. The \$5,000 given on this bond is the same as the original bond.

JUDGE KINKEAD.

May 31, 1923 Case off JUDGE LAZARUS.

June 2, 1923 Case off JUDGE EGAN.

10 Oct. 3, 1923 The Defendant being tried by Jury is found guilty and continued on bail for sentence.

JUDGE LAZARUS.

Oct. 11, 1923 The Defendant being placed to the bar is sentenced to be confined in the Jail, County Farm, for a period of one (1) year and thence until costs of prosecution are paid.

JUDGE LAZARUS.

20 Oct. 11, 1923 The Defendant and his bail, Anna Landecker, enter into a recognizance in the sum of five thousand (\$5,000) dollars, each conditioned that the Defendant traverse with effect a certain Writ of Error issued out of the Supreme Court.

JUDGE LAZARUS.

30 NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

EDWARD LANDECKER,
Plaintiff in Error.

On Writ of Error.
ORDER.

Upon application of Alex. Simpson, Esq., attorney for the above named plaintiff in error.

It is on this 25th day of October, 1923, ordered, that the time for the return of the writ of error in the above cause

be and hereby is extended for twenty days from the 27th day of October, 1923, to wit, until the 16th day of November, 1923.

F. J. SWAYZE, J. S. C.

Hudson County Court of Common Pleas.

THE STATE

vs.

EDWARD LANDECKER.

Indictment No. 25,

September Term, 1922. 10

TESTIMONY

(Filed January 9, 1924)

Before Hon. Hyman Lazarus and a Jury.

Appearances—Eric Jentz, Esq., for the Prosecutor;
Alex. Simpson, Esq., for the Defendant.

Tried October 3, 1923.

Mr. Simpson—I want to make a formal motion, if the Court please, to have this indictment quashed, on the ground that the indictment does not follow the language of the statute. 20

The Court—That motion will be denied.

Albert LaValle (sworn).

Direct Examination, by Mr. Jentz.

Q. What is your name?

A. Albert Lavalle.

Q. On or about June 1, 1922, who were you employed by? 30

A. Richards Chemical Works, 190 Warren Street.

Q. You live in Brooklyn at the present time?

A. Yes, sir.

Q. Where did you live in June, 1922?

A. 171½ York Street, Jersey City.

Q. And where was the office of the Richards Chemical Works?

A. Well, the office is on Exchange Place, but the factory is over on 190 Warren Street.

Q. Did you work in the factory or in the office?

A. In the factory.

Q. In Jersey City?

A. Yes, sir.

Q. And what was your position? What work did you do?

A. Well, making all different kinds of formulas.

Q. What?

A. Making all different kinds of soap and other kinds of stuff that they use in the textile business.

10 Q. Well, what did you actually do, what was your work?

A. Well, mixing the stuff at that time.

Q. Did you have charge of mixing these different things together?

A. Yes, sir.

Q. And in mixing these things did you use any formula?

A. Yes, formulas they used to give me.

Q. And did you have knowledge of what different formulas were used in the mixing of these things?

A. Well, a little, yes.

20 Q. Well, in any of these things, you knew what you were mixing and how to mix it?

A. Yes, sir.

Q. Well, what were some of the things you made there?

A. Well, some of the things were called Gummafoam H and S.

Q. What is this Gummafoam, just explain what that is?

A. It is all different stuff mixed, I don't know just what they used it for.

30 Q. Well, who told you how to mix it? Where did you get the information as to how to mix it?

A. Well, they used to give me a written formula and I used to go according to the formula.

Q. You went according to this written formula?

A. Yes, sir.

Q. Who used to give you this written formula?

A. The foreman of the shop.

Q. And what is his name?

A. George, I don't know his last name—George Ellison.

Q. Now, prior to June 1, 1922, how long had you worked there?

A. About two and a half or three years.

Q. And all during the time you worked there you did this mixing you are speaking about?

A. Yes, sir.

Q. And you used this formula you speak about?

A. Yes, sir.

Q. How much did you make just prior to—

A. \$28 a week. 10

Q. And who paid you?

A. The boss himself, Mr. Bernholzer.

Q. Of the Richards Chemical Works?

A. Yes, sir.

Q. When did you first become acquainted with the defendant, Mr. Landecker?

A. About June 1st.

Q. June 1st of what year?

A. 1922.

Q. Now, just tell us on that day what took place between you and Edward Landecker? 20

Mr. Simpson—I object to that unless you fix a place where it took place. It might be a place without the State of New Jersey.

The Court—You might withdraw that.

Mr. Jentz—I withdraw it.

Q. Where did you meet Edward Landecker on that day?

A. Montgomery Street and Warren. 30

Q. Jersey City?

A. Yes, sir.

Q. And when you met him what did he say and what did you say?

A. If I am willing to make any money.

Q. Speak up a little louder so that we can all hear what you are talking about?

A. If I was willing to make any money.

Q. And what did you say to that?

A. I said, "How."

Q. Go ahead?

A. So he told me by giving him some of the formulas I was always looking at.

Q. What formulas did he say?

A. He said Gummafoam S and H, and W. G. S., that is what we used to call the formulas.

Q. Just tell us again now when he met you and what he said, if you can, everything he said and everything you said in reply.

10 A. If I was willing to make any money and I said, "How," and he said by giving him some of the formulas, so at first I was thinking I would. I finally said I would, all right.

Q. Well, what did he say he was going to do for you, for getting these for him?

A. Well, he was going to get work for me.

Q. Was there any amount spoken of?

A. Well, like for each formula I would give him he would give me like one hundred dollars, two hundred dol-
20 lars.

Q. Did he say that?

A. Yes, sir.

Q. And at the time were you paid any money by him?

A. Well, he gave me one hundred dollars.

Q. And how was that money paid to you, in cash, or what?

A. Cash.

Q. And as a result of getting that money, did you give
30 any of these formulas to him?

A. Yes, sir.

Q. When and where did you give him the formulas?

A. I gave him the first one in the same place.

Q. You mean Montgomery and Warren Streets, Jersey
City?

A. Yes, sir.

Q. And what were these formulas on, a printed paper, written, or what?

A. Well, I told it to him and he wrote it down himself.

Q. And how many formulas did you give him, and when did you give the formulas to him?

A. I gave him one formula there and I gave him the rest some other place.

Q. Well, all the rest at one other time?

A. No, like I used to meet him after that. I met him the following Saturday at Reilly's Cafe, 136th Street and 8th Avenue.

Q. Were you there on any other occasion outside of this one time?

A. Well, I must have given him a couple of other formulas in New Jersey, over in my own house. 10

Q. And where is your house?

A. 171½ York Street.

Q. And how many times did he pay you money?

A. About six or seven times.

Q. And what was the total amount of money he paid you?

A. First one hundred dollars, then fifty, and every time I used to meet him he gave me fifty or one hundred dollars until he gave me about— 20

Q. When this—

The Court—Until he gave you about what?

The Witness—Six hundred dollars.

Q. Just tell us again how many different formulas you gave him?

A. I guess six or seven and—

Q. And these formulas were all products which you were manufacturing in the Richards Chemical Company?

A. Yes, sir.

Q. And they were used by you in this mixing, the formulas? 30

A. Yes, sir.

Q. The same formulas given to you by your foreman?

A. Yes, sir.

Q. When did the company first find out that this was being done?

A. Must have been about a month after, I guess.

Q. How did they find it out, do you know?

A. Well, I guess they saw that these people were not buying as much.

Mr. Simpson—I object to his guessing.

Q. How do you know they found it out; did anybody speak to you or ask you?

A. Well, I was called up to the office and they kept questioning me.

Mr. Simpson—I object to that.

Q. You found out in a month or two somebody knew you were giving these formulas away, is that right?

A. I didn't know that—

10 Mr. Simpson—I object to that as leading, and secondly, it calls for a conclusion. What evidential value has it?

Mr. Jentz—I withdraw it. That is all.

Cross-Examination, by Mr. Simpson.

Q. You say you first met the defendant on the first of June at the corner of Warren and Montgomery Streets?

A. Yes, sir.

20 Q. What time of day was it?

A. After work.

Q. Well, what time?

A. About 5:30 to 6.

Q. And all that occurred between you two was he asked you if you wanted to make a little money?

A. Yes, sir.

Q. And you said yes, is that right?

A. Yes, sir.

Q. And then what was the next thing he said?

30 A. Well, he told me—instead of saying yes I said "How" and he told me by giving him some of the formulas.

Q. Well, now, then you had never seen him up to that time, had you? Up to that time had you ever seen Mr. Landecker before?

A. No, sir.

Q. So that right out of a clear sky, the first time you met him he said to you, "Do you want to make some money?" and you said "How," is that right?

A. Yes, sir.

Q. And he immediately said to you, "By giving up some of the formulas you have"?

A. Yes, sir.

Q. You had never had a talk about formulas with him before this time, had you?

A. No, sir.

Q. And as far as you knew you had not communicated to him that you had any formulas, had you—you had not told him?

A. That I had any formulas?

Q. You had not told him that you had any formulas, had you? 10

A. No, sir.

Q. So that right out of a clear sky, he meets you on the street and says, "Do you want to make some money?" and you say "How" and he said, "By giving me formulas," is that right?

A. Yes, sir.

Q. And you said yes?

A. Yes.

Q. And at the time you dictated to him the formula, did you? 20

A. Yes, sir.

Q. And he wrote it down?

A. Yes.

Q. Now, what was the formula you dictated to him?

A. Well, it was W. G. S.

Q. What is that?

A. Well, I don't know just how it is made because I am out of that place; it is over a year.

Q. Well, did you get W. G. S. in writing—did somebody give you that formula in writing? 30

A. No, I just knew how to make it without writing.

Q. Nobody told you how to make this stuff, W. G. S.?

A. Nobody told me, I taught myself by looking up the formula.

Q. You taught yourself to make W. G. S.?

A. Yes, sir.

Q. And having taught yourself, you knew the formula?

A. Yes, sir.

Q. And you dictated this to him and he gave you what?

A. One hundred dollars.

Q. That was the first of June?

A. Yes, sir.

Q. And you only saw him in New Jersey; never went to New York except that one time, to Reilly's Cafe?

A. I used to go to New York to see him after that.

Q. You went to his house and asked his wife where he was, one time?

A. Not at first, that is after when I used to go after
10 that.

Q. You went to his house in New York and asked his wife where he was, didn't you?

A. After I used to meet him, then I went up to his house, every—

Q. You went to his house—

The Court—Every what?

The Witness—Every once in a while, maybe every week.

20 Q. And the first time you saw him at his house didn't you tell him you wanted to go in business with your brother-in-law and that you owned certain formulas which you wanted to sell and you wanted six hundred dollars for them.

A. No, sir.

Q. Did you get six hundred dollars from him at one time?

A. Six hundred dollars—not at one time.

30 Q. At different times?

A. Yes, sir.

Q. How much of that did you get in New York?

A. About three or four hundred dollars I got.

Q. Did you give him any formulas in New York?

A. Yes, sir.

Q. How did you give him the formulas, by telling him what they were, and he wrote them down?

A. Yes, sir.

Q. And were these formulas the formulas you had learned, yourself.

A. Yes, sir.

Q. And every one of the formulas you gave him was the product of your own experience, what you had learned while working?

A. Yes, but I think once or twice I gave him—I wrote it down on a piece of paper and I gave him the paper.

Q. But everything you gave him was out of your own head; something you had learned?

A. Something I had learned while working in the factory.

10

Q. Can you tell how many formulas you gave him?

A. I cannot tell exactly; must have been about six or seven.

Q. Don't you know whether it is six or seven?

A. No, sir, it is over a year. Every time I met him I gave him one or two.

Q. And how long; over what period of time did your acquaintance extend with him?

A. Oh, about, almost a month, I guess.

20

Q. About a month?

A. Yes, sir.

Q. Then after that were you arrested?

A. No, sir.

Q. You never were arrested, were you?

A. No, sir.

Q. Did you leave this place?

A. I left this here place after—

Q. Did you leave it?

A. Yes, sir.

30

Q. When did you leave it?

A. Well, I think it was—must have been July or August, I guess.

Q. July or August, nineteen what?

A. 1922.

Q. Were you a laborer in the factory?

A. Yes, sir.

Q. And you mixed up these ingredients, didn't you?

A. Yes, sir.

Q. And all this you learned yourself while you worked in the factory, is that right?

A. Yes, sir.

Mr. Simpson—I think that is all.

Re-Direct Examination, by Mr. Jentz.

Q. You got the formulas from your foreman, you said before?

Mr. Simpson—I object.

A. I had the formulas from the foreman, that is how I learned it.

10 Mr. Simpson—And I ask to have the answer stricken out.

The Court—He is asking him if he said before.

Q. Did you say before, you got the formulas from your foreman?

A. I got them from the foreman, that is how I learned them, see, by mixing these up, all these formulas every day, see, and so finally I knew about it.

20 Q. And at first you got them in writing from your foreman?

A. Yes, I always got them in writing.

Mr. Jentz—That is all.

Recross-examination, By Mr. Simpson.

Q. Where are these writings, you have not got them, have you?

A. No, sir.

Q. Somebody gave you the writing?

30 A. The foreman gave me the writing and I used to mix it up.

Q. And you learned them, of course?

A. Yes, sir.

Q. And after you learned them, did you use your own judgment about the ingredients?

A. No, sir, I used to go the same way, the same as was written on the paper.

Q. And when you got through with the writing, what did you do with it, give it back to the foreman?

A. Yes, sir, gave it back to the foreman.

(Witness excused.)

Richard Van Oesen, sworn.

Direct examination, by Mr. Jentz:

Q. Where do you live, Mr. Van Oesen?

A. Brooklyn, No. 2, Aetna Street.

Q. And are you connected with the Richards Chemical Company?

A. I am the president of that company.

Q. And where is its factory?

10

A. 190 Warren Street, Jersey City.

Q. And was in that place on June 1, 1922?

A. Yes, sir.

Q. And were you an officer of the company at the time?

A. I was.

Q. In addition to being an officer did you have anything to do with the manufacturing end of the company?

A. In a supervisory capacity.

Q. Have you any trade or profession?

20

A. Yes, chemistry.

Q. And you use chemistry in the Richards Company?

A. Yes.

Q. What did the Richards Chemical Company manufacture down there?

A. They manufactured preparations which are used in the finishing of silks, in the laundering of silks, material that is put on last before the goods are sent out.

Q. And in manufacturing those substances do you have certain formulas?

30

A. We do.

Q. Which you go by?

A. Yes.

Q. And did you have such formulas on June 1, 1922?

A. Yes, sir.

Q. And who devised those formulas, if you know?

A. I did.

Q. Just give us the method of manufacture based on these formulas in your factory, that is, what did your employes do with regard to making this stuff from your formulas.

A. Why, the method usually followed is that we experiment on these materials—

Q. I mean, after the formulas have been determined upon and you make the stuff; what is that process?

A. Why, the formulas are made out by myself, given to the foreman, who in turn gives each individual laborer the individual part of the material he is to make. After they have been there for a number of years these men have been accustomed to mixing the material and usually
10 remember the things without having them written down, although the formula is given to them at times in entirety so that they can make the whole thing after they have been there a length of time and after they are expert men.

Q. Did you have in your employ a man named Lavallo?

A. Yes.

Q. And is that the man who just preceded you on the stand?

A. Yes, sir.

Q. In what capacity was he employed?
20

A. He was one of the laborers.

Q. And as such laborer did he have access to these formulas?

A. He did.

Q. And what formulas did he have access to, if you know?

A. He had access to probably a dozen.

Q. And what were the names of some of these formulas?

A. Sanitose Gum; Lyons Finish No. 22; Gummafoam
30 S; Gummafoam H; Fast Sell Group; Deceresene Paste; Deceresene Oil.

Q. And these formulas, manufactured in your place, were these formulas public formulas or secret formulas?

A. Secret formulas.

Q. And they were the product of your work and your abilities as a chemist?

A. Yes, sir.

Q. And were to be used by you and your company alone?

A. Yes, sir.

Q. When did you first find out that these formulas were being used or tampered with by someone outside of your employ?

Mr. Simpson—I object to that. That calls for a conclusion that he did find out.

Mr. Jentz—I will withdraw that.

Q. Did you at any time after June 1, 1922, find out in any way that these formulas were being used by some outside parties?

A. Through the slump of the business of the people who we knew had applied, or for whom Landecker had applied for the formulas from one of our other employes. 10

Mr. Simpson—I object to that as purely hearsay.

Q. Do you know Mr. Landecker, this defendant?

A. I had seen Landecker before he approached Lavelle for the formulas.

The Court—One moment, I want to rule on that objection. I sustain the objection.

Q. How many times had you seen Landecker around the place? 20

A. I had seen Landecker on one occasion or two occasions prior to his approaching Lavelle in Jersey City; once at Montgomery—wait a moment now—I had seen him once at Montgomery and Warren Street in company with one of our other employes whom he had attempted to bribe.

Mr. Simpson—I object to that and ask to have it struck out.

The Court—It may be struck out. 30

Q. When you saw Landecker on these different occasions what did you see him doing; where was he?

A. He was at the corner of Montgomery and Warren Street.

Q. Jersey City?

A. In Jersey City.

Q. And what did you see him doing?

A. I saw him in conversation with another man and I saw him—

Q. Who was this other man?

Mr. Simpson—I object to that unless it was Lavelle.

The Court—That objection will be sustained.

Q. Do you know what business Landecker was in on June 1, 1922?

A. He was working for the Lyons Piece Dye Works, in Paterson, N. J.

Q. And what sort of a concern is that?

A. One of our customers.

10 Q. And what is their business?

A. Their business is the dyeing and finishing of silks.

Q. And in their business they used your products?

A. They did.

Mr. Simpson—I object to that unless he knows of his own knowledge.

Q. Do you know whether or not the Lyons Dye Works used your products in their business?

A. They did use it.

20 Q. And in their business they used products which you manufactured as the result of the formulas of which you just spoke, is that right?

A. Yes, sir.

Mr. Jentz—That is all.

Cross-examination, by Mr. Simpson.

Q. How many formulas does your company have?

A. How many?

30 Q. Yes.

A. You mean how many that apply to this particular kind of work?

Q. I mean exactly what I say; how many formulas did they have?

A. I have never added them all up to find out.

Q. Hundreds?

A. No, I should judge there were less than one hundred altogether.

Q. And is your business incorporated?

A. Yes, sir.

Q. Where?

A. State of New Jersey.

Q. And are you the president of the company?

A. I am.

Q. Now, you have nothing to do with the mixing, you do not go down and give the laborers the formulas to mix this stuff?

A. At the present time I do not.

Q. Well, on July 1, 1922, or prior thereto for a period of six months, did you go down to the place where the formula was used by the laborers and give it to the 10 laborers?

A. I may have done so.

Q. Well, was it your custom? Was that part of your business?

A. Well, if the foreman was not there I would make it my business.

Q. Well, was it the foreman's business as a rule to do it?

A. As a rule the foreman did it, yes.

Q. You created these formulas by experiment and gave 20 them to your foreman, is that right?

A. Yes.

Q. And the foreman would give it to the laborer and the laborer would mix the materials?

A. Yes.

Q. And as a result of the laborer doing it over and over again he would memorize the formulas, is that right?

A. He may have, yes.

Q. And these formulas were all for what kind of mate- 30 rial—dye-stuff?

A. No, sir, not for dye-stuffs; for finishing materials.

Q. Finishing?

A. Yes, sir.

Q. Finishing what?

A. Finishing silk; materials that we used also in conjunction with dyes.

Q. Did you also do a dyeing business?

A. No, sir.

Q. You were manufacturing chemists, is that so?

A. Yes.

Q. And you say you have less than one hundred formulas?

A. I have been—I have no way of knowing at the present time.

Q. How long has your corporation been in business?

A. Since nineteen—this corporation under its present name has been in business since 1918.

Q. Well, was there one that preceded this that had some of these formulas?

10 A. There was.

Q. What was that corporation?

A. The Onyx Oil and Chemical Company.

Q. How long was that in existence?

A. Since 1910.

Q. And these formulas in both these companies, were they all invented by you or made by you?

A. They were, most of them.

Q. Well, were some of them purchased from the outside?

20 A. No.

Q. Well, how would you get those that were not made by your own chemist or yourself?

A. They were made by the chemist that we employed.

Q. What I am trying to find out is did you have any formulas that you used which you had gotten outside of your own place?

A. No, sir.

Mr. Jentz—That is objected to as being immaterial, whether he had or not.

30 The Court—I will allow it.

A. We did not purchase any formulas outside, if that is what you mean.

Q. Did you get any by purchase or gift?

A. No, sir, we did not.

Q. So that according to you, every formula you had was a formula which had been invented by somebody in your concern, is that right?

A. That is right.

Q. Now, where are they? Have you got them here today, these formulas?

A. I have not.

Q. Well, are they in writing?

A. Some of them are; most of them are.

Q. Are the formulas concerned in this case in writing?

A. Yes.

Q. They are in writing?

A. Yes, sir.

Q. And you have not got them here?

A. I have not got them with me.

Mr. Simpson—That is all.

10

Redirect examination, by Mr. Jentz.

Q. Can you write them out from memory? If you were called upon could you write some of them?

A. Why, I suppose I can, some of them.

Mr. Jentz—That is all.

(Witness excused.)

Mr. Simpson—I ask for a direction of a verdict in this case. There is nothing here to show a violation of this act. There is no proof in this case that this complainant was injured by this; they have not produced their books to show that they lost business; they have not produced anything to show a fact except the fact that secret formulas that they claim, which were in the possession of their laborer, which the laborer was not told or instructed to give away, was not instructed would be dangerous to be given away, was by the laborer given to somebody else. The State tries to extend this act and say this man was employed by this company, had these formulas and sold these formulas to this other man, but as I understand it, they have to go a step further and show that the selling was injurious to the company. There is no proof, I think, that it was an act injurious to the master. Now, what proof is there that the selling of these formulas in any way injured this chemical company? How is it shown that the Richards Chemical Company was injured in any way? This man at-

20
30

tempted to say he lost business but that was struck out on my motion. If they claim by the selling of these formulas they got into other hands and they can no longer supply these other people it is up to them to prove that. They have not proved that. As far as your Honor knows and this jury knows, the selling of these formulas has not made the slightest difference to their business.

The Court—That motion is denied.

10

Edward Landecker, sworn.

Direct examination, by Mr. Simpson.

Q. What is your business?

A. Well, I have been doing chemical work practically all my life.

Q. And where do you live now?

A. 414 East 16th Street, New York.

20 Q. And do you know this man Lavalley that was on the stand, this Italian?

A. Yes, sir.

Q. And where did you first see him?

A. I seen him one Saturday at 136th Street and 8th Avenue—rather, the third Friday in April.

Q. Third Friday in April, 1922?

A. Yes, sir.

Q. And where was it he saw you and did he come to see you or did you go to see him?

30 A. He came over to my house—to my wife's house, 421 East 16th Street and wanted to see me, and—

The Court—You were not there then?

The Witness—No, sir.

The Court—Then you will not be permitted to testify to that.

Mr. Simpson—We will connect that up afterwards.

Q. He saw you, you say, in New York, the second Friday in April?

A. The third Friday in April.

Q. Where did he see you?

A. 136th Street and 8th Avenue.

Q. What is there, a saloon, or what?

A. It was a saloon, yes, sir.

Q. What did he say when he found you?

A. When he found me, at the time, he asked me if I was interested in some silk finishers' formulas for silk finishes, and I told him yes, I was interested.

Q. And what did he say?

A. He told me he had some formulas and wanted to know if I could use them, and I told him at the time I believed I could use them if they were all right, and he asked me at the time for six hundred dollars.

Q. That was in the saloon?

A. Yes, sir.

Q. He did not give you any formulas or sell anything to you at the time?

A. No, sir.

Q. When did you next see him?

A. I seen him the next time, the latter part of May. 20

Q. Where did you see him then?

A. At my house.

Q. Where is that?

A. 414 East 16th Street.

Q. Did he come to your house?

A. Yes, sir.

Q. Did he get your address from you in this saloon?

A. Yes.

Q. Now, when he came to your house, what occurred between you? 30

A. Well, he asked me if I could not buy these formulas off him because he had been in some business with his brother-in-law and he needed the money for that and I asked him at the time whether the formulas were his and he stated they were.

Q. And what occurred in the way of purchase or sale of the formulas at your house?

A. Well, he wanted at the time six hundred dollars and I told him I could not see my way to give him six hundred dollars, that is, in cash, without knowing whether I could use the formulas, but I was willing to give him one

hundred and fifty dollars down and one hundred and fifty after I received the formulas, and I would then give him altogether one thousand dollars if the formulas proved successful.

Q. And what happened, did you pay him one hundred and fifty dollars?

A. I paid him one hundred and fifty dollars at that time, that is, not that night. We talked that over, but the following night he came over again and I paid him one
10 hundred and fifty dollars then.

Q. Was that one hundred and fifty dollars alone, or one hundred and fifty dollars in all?

A. No, I paid him three hundred dollars.

Q. Now, when did he give you the formulas?

A. He gave me the formulas in July.

Q. In July?

A. Yes, sir.

Q. Did he give it to you all at one time?

A. I am not sure about that July; it may be either June
20 or July; probably the latter part of June or the early part of July.

Q. And what were these formulas good for?

A. They were used in the finishing of silk, to give a gloss to silk, or to dull it, and to help add weight, et cetera.

Q. He says that you met him in Jersey City on the corner, never saw you before, and you said to him on the corner of some street in Jersey City "Do you want to make some money?" and he said, "How?" and you said,
30 "By selling formulas." Is that true?

A. No, sir.

Q. The first time you saw him was when he came in this saloon in New York?

A. Yes, sir.

Q. You had been doing business with his concern, had you?

A. Yes, sir.

Q. Had you been doing any business with his concern?

A. No, sir.

Q. You had not?

A. No, sir.

Q. Well, what was the next time you saw him after that?

A. The next time I saw him after that was—well, I seen him several times in July.

Q. He came over to New York to see you?

A. Yes, sir.

Q. And how much money altogether did you pay him for the formulas?

A. Nine hundred and fifty dollars. 10

Q. And was all that paid in New York?

A. Yes, sir.

Q. None of it was paid in New Jersey?

A. No, sir.

Q. And at the time, you believed him when he told you he owned these formulas?

A. Yes, sir.

Q. They were not copyrighted formulas, were they?

A. Not that I know of. 20

Mr. Jentz—I object, calling for a conclusion.

The Court—What difference does it make?

Mr. Simpson—If it was general information that anybody could have, certainly it is not an offense against any statute to sell it.

The Court—He has answered.

Q. Do you remember what they consisted of? Were they simply recitals as to ingredients, is that what they were? 30

A. Just practically mixtures of different gums.

Q. Mixtures of different gums?

A. Yes, sir.

Q. Did he write them down for you or simply tell you what they were?

A. Just told me what they were.

Q. And you wrote them down?

A. Yes, sir.

Q. And you say the whole thing was about ten formulas which he sold you, and for which you paid him \$950?

A. Yes, sir.

Q. Did he at any time tell you that he did not own these formulas or that they were secret formulas which he had learned by working for somebody else?

A. Not that I know of.

Mr. Simpson—That is all.

Cross-examination, by Mr. Jentz.

Q. When was it you first saw Lavelle?

10 A. I seen him the third Friday in April.

Q. Where?

A. 136th Street and 8th Avenue.

Q. In this saloon?

A. Yes, sir.

Q. Whose saloon was it?

A. Reilly's Cafe.

Q. Did you have an appointment with him there?

A. Yes, sir.

Q. Who made this appointment?

20 A. Well, he made the appointment himself with my wife to meet me uptown.

Q. And how far away was this saloon from your house?

A. One block.

Q. Why was the appointment made in a saloon, do you know?

A. It was near my home, that is all.

Q. Why didn't you meet him at your home?

A. Because I was living with my brother-in-law and never had company home.

30 Q. You did not call this man who was coming there company, did you?

A. I didn't know what he was coming to see me about.

Q. Did you think it was business that had to be transacted in a saloon?

A. Well, I didn't know.

Q. When you saw Lavelle you had never seen him before, had you?

A. No, sir.

Q. Well, how did you recognize him? How did he recognize you?

- A. He came in there and asked for me.
- Q. And was he there when you came in?
- A. I was there when he came in.
- Q. And he came in and asked for you, is that right?
- A. Yes.
- Q. And when he said that, you stood up and said, "I am Mr. Landecker" is that right?
- A. Yes, sir.
- Q. Well, did you have this talk right there? 10
- A. No, sir, in the back room.
- Q. In the back room?
- A. He walked into the back room to talk to me.
- Q. And you transacted all this business in the rear of a saloon?
- A. Well, it was open, partly open.
- Q. It was in the rear of this saloon though?
- A. It was the only place I could sit down.
- Q. No chairs in the outside bar? 20
- A. There were some chairs but there was a card game going on at the time.
- Q. Well, there was more than one set of chairs there?
- A. No, sir, just a seat in the corner.
- Q. And you went in the rear room?
- A. Yes, sir.
- Q. How long were you in there altogether?
- A. About, I should judge, a half hour.
- Q. How far was this away from your house? 30
- A. About a block.
- Q. What is it that Lavalley said?
- A. He asked me if I was interested in some formulas for sizing and finishes and I told him if they were any good yes, I would be interested.
- Q. And how did you know that this Lavalley was interested in this chemical business, did he tell you anything about where he was employed or who he was?
- A. Only told me he was with his brother-in-law.
- Q. Told you what?
- A. That he was with his brother-in-law.

Q. Did you make any inquiry to find out where he had gotten these formulas from, whether they were products of his mind or whether he got them someplace?

A. No, he did not, at the time.

Q. Did you ask him where he was employed?

A. I did and he told me he was working with his brother-in-law.

Q. Did he tell you where he got the formulas from?

A. He mentioned he had worked at one time for a
10 concern which used to make them, yes.

Q. Did he tell you what that concern was?

A. No, he did not.

Q. Now, after you got the formulas what did you do with them?

A. Well, I made inquiry from another concern whether they were interested in them and they said yes.

Q. What concern was this?

Mr. Simpson—I object to that as not proper cross-examination.

20 The Court—I will allow him to answer it.

Mr. Simpson—Exception.

Q. What concern did you go to?

A. J. H. and C. K. Eagle.

Q. After you got these formulas did you take them to Lyons, in Paterson?

A. No, sir.

Mr. Simpson—I object to that.

Mr. Jentz—I am trying to test this man's credibility.

30 The Court—I will permit it.

Q. You were employed by the Lyons Dye Company, were you?

A. What do you mean by "employed"?

The Court—Don't you understand that question?

A. Well, no, I was not really employed by them at that time.

Q. What was your relations with them at the time?

A. I had gone with them to sell fustic and dye.

Q. What is that?

A. A dye extract. Later on we became interested in

soap; I told them how to make soap, which we are making at the present time.

Q. Are you a chemist by trade?

A. I am a practical chemist. I have studied chemistry and I have worked at chemical work all my life.

Q. Were you associated with the Lyons Company at the time when you got the formulas from Lavallo?

A. Not in the way of employment, no sir.

Q. Were you associated in any way, as chemical advisor or any other capacity? 10

A. Well, I was.

Q. In what way were you associated with them?

A. I was showing them at the time how to make green olive oil soap.

Q. And how much were you being paid for that information?

A. Well, at the time I didn't receive any money off them; that was to be paid later.

Q. Were you under a contract?

A. No, sir. 20

Q. Isn't it a fact you had a written contract with the Lyons Company to do this work for them?

A. No, sir, no written contract.

Mr. Simpson—I object to that on the ground the contract is the best evidence; it speaks for itself.

The Court—I overrule the objection.

Mr. Simpson—Exception.

Q. Have you such a contract?

A. No, sir. 30

Q. Did you ever have such a contract?

A. No, sir.

Q. Do you know the Richards Chemical Company of Jersey City?

A. I have heard of them, yes, sir.

Q. Do you know where their factory is in Jersey City?

A. I believe it is on Warren Street.

Q. Do you know where the factory was on June 1, 1922, in Jersey City?

A. Yes, sir, I believe I do.

Q. Were you ever there?

A. No, sir.

Q. Never in your life?

A. Never—once I went to a barn to see them about selling them some soap.

Q. To where?

A. To a barn they had to sell them some soap.

Q. You mean a horse barn or a stable?

A. They had some kind of a barn; I went there to sell them some soap at one time.

Q. How long prior to June 1, 1922, was that?

10 A. That was about probably seven or eight months before that; more than that.

Q. Did they have their office in that place, in that barn?

A. They had an office there where I went.

Q. They did have an office there?

A. Yes.

Q. Do you remember who you saw there on this occasion?

A. Yes, sir.

Q. Who?

20 A. I believe I seen that gentleman over there.

Q. What is his name, do you know?

A. I don't know his name, I only saw him on the stand.

Q. Mr. Van Oesen? The man who was on the stand?

A. Yes, sir.

Q. How many times around June 1, 1922, were you in Jersey City?

A. Well, that is pretty hard to say because—

Q. Many times, or a few times, or what?

30 A. Well, I could not really say that. I must have been there two or three times.

Q. Where?

A. In Jersey City.

Q. And you say you were only to the Richards Company once?

A. Yes, sir.

Q. This barn?

A. Yes, sir.

Q. Do you know a man named Farley?

A. Yes, sir.

Q. Do you know who he is employed by?

A. Yes, sir.

Q. Who was he employed by?

Mr. Simpson—I object to this as not proper cross examination. There is no allegation about any Farley.

The Court—I think I will permit it. The prosecutor is entitled to test his credibility.

Mr. Simpson—Exception.

Q. Do you know a man named Farley?

A. Yes, sir.

10

Q. Do you know who he is employed by?

A. Yes, sir.

Q. Who?

A. The Richards Chemical Company.

Q. Did you ever meet him in Jersey City on any occasion?

A. Yes, sir.

Mr. Simpson—This is over my exception, of course.

Q. Where?

20

A. At Exchange Place and Warren Street. I believe it is Exchange Place and Warren Street.

Q. Didn't you meet him at the corner of Montgomery and Warren Street at any time?

A. That I could not say. I do not know much about the streets that come up from Exchange Place.

Q. You mean the intersection of Montgomery with Warren Street, do you?

A. I am not sure if that is Montgomery or Exchange Place. I believe Montgomery Street starts there.

30

Q. How many times did you meet Farley there?

A. I met him about twice I believe, to my knowledge.

Q. Did you ever meet Farley in the office or place of the Richards Chemical Company at any time?

A. No, sir.

Q. What was your purpose in meeting Farley?

Mr. Simpson—I object to that as not proper cross-examination.

The Court—I will allow it.

Mr. Simpson—Exception.

Q. What did you want to meet Farley for?

A. Well, I accidentally bumped into Farley. We got talking about business and I asked him where he worked and he told me.

Q. Did you talk about formulas at that time?

A. No, sir, not formulas at that time.

Q. At any time did you talk to Farley about formulas?

A. I asked him whether he could make up a certain formula, and he said—

10 Q. You knew at the time he was employed by the Richards Company?

A. Well, yes, I believe I did.

Q. Did you have any talk with him?

The Court—Please fix the time.

Q. When was this first meeting that you had with Farley?

A. I cannot remember that.

Q. Was it before the time you met Lavallo or after the time you met Lavallo?

20 A. Before I met Lavallo.

Q. How long before?

A. I should say about two weeks; three weeks.

Q. Didn't you ask Farley to get these formulas for you on those two occasions?

A. No, sir.

Q. And didn't Farley refuse to get them for you?

A. No, sir.

Q. And wasn't it then you got hold of Lavallo and got the formulas?

30 A. No, sir.

Q. What were you talking about with Farley on these two occasions?

A. The first time, I spoke to him, I asked him if he knew how to make certain oil.

Q. Did you know Farley prior to this?

A. No, sir.

Q. You mean to say you just stopped a man on the street and asked him what his name was and he said Farley, then you said to him, "Do you know how to make certain oil?" Is that what you mean?

A. No, that was not it. I was waiting for a car and I was going up to Bowers Street to see somebody and we got talking there.

Q. You saw a man, got talking with him, and the first thing you asked him was, "Do you know how to make a certain oil."

A. That was not the first thing I asked him.

Q. What else did you ask him besides that thing?

A. I don't remember.

Q. Are you sure you asked him anything else? 10

A. Yes, I am pretty sure we spoke about other things, but I don't remember.

Q. Well, if you are sure you remember that was not the first thing you asked him, what was it?

A. I don't remember.

Q. Now, isn't it a fact, Mr. Landecker, you were in that vicinity to get hold of the employes of the Richards Company and attempt to get these formulas?

A. No, sir.

Q. Where on Bowers Street were you going that day? 20

A. I was going to a party that lives two blocks off from where the car stops.

Q. What is the name of the party on Bowers Street?

A. Flatman.

Q. What number on Bowers Street do they live?

A. They do not live on Bowers Street exactly; they live off the corner of Hancock, so I believe. The only way I know, I have been over there several times and it is near a school.

Q. What car do you take from Montgomery and Warren to get to Bowers Street? 30

A. It has DeMott Street on it.

Q. And where do you get off?

A. Get off at Bowers Street.

Q. And which way do you walk after you get off at Bowers Street?

A. This way.

Q. What way?

The Court—Witness indicates right hand.

Q. Do you know what number these people live at?

A. No, sir, I do not.

Q. And you say you were never in the plant of the Richards Company, is that right, except this one time when you went to a barn there?

A. Yes, sir.

Mr. Jentz—That is all.

By the Court.

10 Q. I would like to clear up something. Do you say the first time this defendant came to New York he didn't see you but came to your wife's house?

A. Yes, sir.

Q. And was it after that that he saw you in the saloon?

A. Yes, sir, the following day.

Q. You said in answer to counsel's question that after you talked with him in the saloon you gave him your address, is that right?

A. Yes, sir.

20 Q. Why did you give him—

A. Well, he asked me.

Q. He had already been to your house?

A. Well, I was not living at 421 East 16th Street at the time; you see, I had taken an apartment at 414—

Q. I do not quite understand you. You said he had been to your house?

A. Not to my house, to my present wife's house.

Q. To your wife's house?

30 A. Yes, sir.

Q. Weren't you living with your wife at that time?

A. I was not married at the time, your honor.

Q. You mean to say he went to the house of a girl with whom you kept company at the time?

A. Yes, sir.

Q. And ascertained from her where he could find you?

A. Yes, sir.

Q. How did you get the information to him that you would be in a saloon?

A. Well, my wife called up, uptown, and I told her I would be uptown.

Q. But how did you get that information to this witness?

A. Lavalley was told.

Q. That you would be in a saloon instead of at that house where he first sought to find you?

A. My wife at the time told him where he would be able to find me the following night.

. Cross-Examination, by Mr. Jentz, resumed.

Q. What became of the formulas you got, Mr. Landecker? 10

A. J. H. and C. K. Eagle received them off me.

Q. Did you sell them to them?

A. I went into their employ. I was in their employ up to October.

Q. And the fact that you had these formulas was part of the reason you were employed there?

Mr. Simpson—I object to that, not proper cross-examination. 20

Mr. Jentz—I will not ask him any more along that line.

(Witness excused)

Anna Landecker, sworn.

Direct Examination, by Mr. Simpson.

Q. You are the wife of the defendant?

A. I am. 30

Q. And when were you married to him?

A. April 29th, 1922.

Q. Before you were married to him, did you ever see this witness Lavelle?

A. Yes, sir.

Q. Where did you see him?

A. He came to my home on a Friday afternoon and my father was there. He asked for Mr. Landecker. He came again in the afternoon, later, and asked again for Mr. Landecker.

Q. And what did you tell him?

A. I told him Mr. Landecker was away and I didn't know where he was, but I would try to get in touch with him.

Q. And when he came back the second time, had you gotten in touch with Mr. Landecker?

A. I could not locate him, I could not find him.

Q. What did you tell Lavallo about the likelihood of his finding him?

10 A. I told him, I asked him what he wanted and he said he wanted to see him. I asked him what about and he said, "I cannot tell you." I asked him if it was a personal matter and he said yes, and I said I would try and locate him, and I went to where Mr. Landecker lived and he was not at home.

Q. Well, go ahead and tell us what happened, how did Lavelle finally get up to the saloon when Mr. Landecker was there?

20 A. Mr. Landecker came down to the apartment we had rented before we were married and I waited for him over in my own home where I lived, and I saw Mr. Landecker and I told Mr. Landecker that gentleman had called by the name of Lavallo. He said he never heard of him, didn't know who he was. I said he wanted to see him, wanted to know when he could see him. He said to get in touch with him tomorrow, and I got in touch with Mr. Lavallo and told him to meet Mr. Landecker up at 136th Street and 8th Avenue.

30 Q. Did Lavallo leave his address with you?

A. No, sir, I met Lavallo; he said he wanted to meet him.

Q. Lavallo came to your house, according to you, twice, is that right?

A. Yes, sir, twice.

Q. And from you he got the information to meet Mr. Landecker, is that right?

A. He did, yes, sir.

Q. Well, where did you give him that information?

A. I don't remember.

Q. What did you tell him?

A. On Saturday afternoon, I told him where he could meet Mr. Landecker.

Q. Where, at your house?

A. No, sir.

Q. Well, where?

A. Oh, he told me after he met me at Jersey City he could not go to New York, he had to work—

Q. You finally told him where he could meet Landecker?

10

A. Yes, sir.

Q. This was in April—that was not the first of June?

A. No, sir, April—two weeks before the 28th.

Q. Well, then, in April you told him that Landecker would meet him in New York, is that right?

A. Yes, sir.

Q. What was the next thing you knew about it?

A. Well, I don't know very much about it outside of the fact that Lavalley came several times and wanted to see Mr. Landecker.

20

Q. Were you ever present at any interview, when Mr. Lavalley and Mr. Landecker were talking about buying or selling these formulas?

A. No, sir.

Q. You were not?

A. No, sir.

Q. Then you have no knowledge of that?

A. No, sir.

Q. All you know is, Lavalley came to your home looking for Landecker?

30

A. Yes, sir.

Q. And you could not locate Landecker for him and he told you it was important, but he could not come to New York; he wanted you to come to Jersey City and you came to Jersey City and talked to him, and that is all you know about it?

A. Yes, sir.

Q. You were not present when any money passed?

A. No, sir.

Mr. Simpson, That is all.

Cross-Examination, by Mr. Jentz.

Q. You say you came to Jersey City and told Lavallo that—

A. I did.

Q. And where did you come to Jersey City to tell Lavallo Landecker would meet him in this saloon?

A. What is that station? Exchange Place? I am not acquainted—

10 Q. Do you know where in Jersey City Lavallo lived?

A. No, sir.

Q. Well, how did you come to go to Jersey City to tell him?

A. He asked me how he could get in touch with Landecker, and I told him I would try to find Mr. Landecker and I asked him how he wanted to meet Mr. Landecker if he never seen or knew him and I told him if he would give me his address I would tell him where he could meet Mr. Landecker.

20 Q. And you were living where?

A. With my mother and father, 421 East 16th Street.

Q. And you had never seen this man before?

A. Never seen him before.

Q. You were not married to Landecker?

A. No, not at that time, I was not.

Q. Yet, in order to tell him where he could meet Landecker you went all the way over from 16th Street to Exchange Place?

30 A. That was the following day. Lavallo left me that night and said he wanted to meet Landecker, and when Landecker came home to the apartment which we were going to live in after we were married, I asked Landecker when he wanted to see Lavallo and he said Saturday. Lavallo said he could not come to New York on Saturday, would I meet him and tell him where he could meet Landecker.

Q. If you had never seen Lavallo before and didn't know what the business was about, what desire or interest caused you to go way over from New York to Exchange Place, Jersey City, to meet a man that

was a total stranger to you, to tell him he could meet Landecker at a certain place?

A. Simply to tell him where he could meet Mr. Landecker.

Q. Did you have an appointment with Lavallo to meet him at Exchange Place?

A. Yes, sir, he wanted to know where he could meet Landecker and I had to tell him where to meet him because I could not do it by 'phone.

Q. Did Landecker tell you to go and meet Lavallo and tell him where he could be located? 10

A. Yes, sir, he could not meet Lavallo, he didn't know him.

Q. Why not?

A. Because he didn't know him. I had seen him.

Q. And you, at his request, went all the way over to Jersey City to tell Lavallo where to go to meet Landecker, is that right?

A. Yes, sir. 20

Mr. Jentz—That is all.

(Witness excused)

Stephen Kubinec, sworn.

Direct Examination, by Mr. Simpson.

Q. Where do you live?

A. 320 East 71st Street, New York.

Q. New York City?

A. Yes, sir. 30

Q. You have known Mr. Landecker?

A. Yes, sir.

Q. Did you ever see this man Lavallo in New York?

A. Yes, sir.

Q. Where did you see him in New York?

A. 16th Street, once, at Mr. Landecker's house and once on the stoop of Mrs. Landecker's, now.

Q. You saw him at the time he called at the Landecker house—that is, at the house of the lady who is now Mrs. Landecker?

Mr. Jentz—I object to that as being leading.

Q. Just tell us what the date was, as near as you can remember, when you first saw him and who was present, if anybody?

A. I think it was in June.

Q. June?

A. June, at Mr. Landecker's house.

Q. And where was that house?

A. 414 East 16th Street.

10 Q. And was Landecker present at the time you saw him?

A. Yes, sir.

Q. Was that the first time you saw Lavallo or not?

A. That I had seen him?

A. No, before.

Q. When had you seen him before that time?

A. I have seen him on the stoop talking to Mrs. Lavallo.

The Court—When?

20 The Witness—421 East 14th Street.

The Court—When?

The Witness—I think that was in April.

Q. And you saw him next in June, at the Landecker house?

A. Yes, sir.

Q. On the first occasion did you hear any of the conversation?

A. No, sir.

Q. On the second occasion did you hear any of it?

30 A. Yes.

Q. Where were you the second time when Landecker and Lavallo were present in New York? Were you in the same room?

A. Yes, sir.

Q. What was the conversation you heard?

A. It was about some formulas.

Mr. Jentz—May I ask to have the time fixed for that second occasion?

Q. What time was it?—June I think he has already fixed it.

A. Yes, sir, it was in the evening.

Q. Well, what did you see? what did you hear?

A. Well, I just heard snatches of the conversation. They were talking about some formulas and Lavallo was saying something about his brother-in-law going in business with him and I lost interest. After that I picked up a paper and started reading.

Q. Did you hear any amount mentioned by Lavallo for the formulas he wanted to sell?

A. There was six hundred dollars mentioned.

Q. Did you hear anything besides that he wanted to go in business with his brother-in-law and wanted six hundred dollars for—

Mr. Jentz—Objected to as leading.

Q. Will you state whether or not you heard anything more than you have related, that Lavallo stated he wanted to go in business with his brother-in-law and wanted six hundred dollars for the formulas?

Mr. Jentz—Objected to as leading.

The Court—I do not think it is leading.

20

A. No, sir. I lost interest.

Mr. Simpson—Cross-examine.

Mr. Jentz—No questions.

Mr. Simpson—That is our case.

REBUTTAL

William Farley, sworn.

Direct Examination, by Mr. Jentz.

Q. Where do you live?

30

A. 193 Academy Street, Jersey City.

Q. And around June 1, 1922, who were you employed by?

A. Richards Chemical Company.

Q. And is that the same company that the previous witness, Lavallo, was employed by?

A. Yes, sir.

Q. And where was their place of business at the time?

A. 190 Warren Street.

Q. And is that the place where you were employed?

A. Yes.

Q. Do you know the defendant, Landecker, here?

A. Yes, sir.

Q. When did you first meet him?

A. April 10th.

Q. What year?

A. 1922.

Q. Where did you first meet him?

A. Warren Street and Montgomery, Jersey City.

10 Q. And how did you happen to meet him, just tell us in detail.

A. I was standing there waiting for a car, and I was standing right outside the hat store, and he touched me on the shoulder—

20 Mr. Simpson—I object to all this as not proper rebuttal. They have not interrogated Landecker on this matter, and this is collateral matter and not at all connected with his direct examination. They are bound by his answers. I submit this is improper rebuttal; first, they are bound by the testimony of the defendant, examining him as their own witness on new matter; second, it will tend to prove another offense under this statute for which he is not indicted and for which he has not been called upon to defend himself.

30 The Court—The defendant was questioned regarding the circumstances under which he met this man, after having first said he was in Jersey City but once, then to test his credibility he was asked regarding visits to the vicinity of this company and he mentioned that he met this man under certain circumstances. I think I will allow the question.

Mr. Simpson—Exception.

Q. What was it you and Landecker did on that day? First, how did he come to meet you and what happened?

A. He touched me on the shoulder and asked me did I work for the Richards Chemical Company, and I said I did. He had a little white card in his hand with four

formulas on it. He asked me if I knew how to make them up and I said I did.

Mr. Simpson—I object to all this. I want to be sure my objection is on the record. The State is bound by the answer of the defendant on collateral matter which tends to prove another offense for which he is not indicted.

The Court—It is not for the purpose of proving another offense, as I understand it. There has been a question on the credibility of the defendant as to his being or not being in that vicinity and when asked whether he met a certain individual he denied it. This individual is now on the stand and I think the State has a right to hear from this witness whether the story by the defendant is true or not, merely to test his credibility. 10

Mr. Simpson—Exception. 20

Q. What else did he say? 20

A. He showed me a card and asked if we made those formulas up and I said we did. Then he asked if I wanted to make some money and I said, "How?" We stood in a hallway three doors further, and he said, by giving him the formulas. He said he would give me five hundred dollars and a position at forty-five dollars a week with a silk concern in Paterson.

Q. Did he say what silk concern that was?

A. The Lyons Piece Dye Works. 30

Q. What else did you do?

A. I told him I was married, I had two children and I could not jump at no conclusion like that; I would have to have time to think. He said, "Meet me tomorrow night," and I said, "Tomorrow night would be too soon." I said I would meet him next week. He said next week would be too late, the boss of this concern is going to Europe in ten days, that is, the boss of the silk concern, and he wanted those formulas. I decided to meet him Wednesday night, so—

Q. Where did you meet him then?

A. At the same place, ten minutes after five, but Tuesday I went where I worked and met Mr. Van Oesen and explained everything to him.

Mr. Simpson—This is all over my objection.

Q. You told the man who was on the stand before, your boss?

A. Mr. Van Oesen. I explained how I was stopped—
The Court—That is objectionable.

A. I explained how I was stopped by Mr. Lan-
10 decker—

The Court—No, no, no.

Mr. Jentz—That is all. That is the State's case.

Mr. Simpson—Wait a minute, I want to cross-examine this witness.

Cross-Examination, by Mr. Simpson.

Q. Where do you live?

A. 193 Academy Street, Jersey City.

20 Q. And you worked for this concern who is prosecuting this man?

A. Yes, sir.

Q. Still work for them?

A. Yes, sir.

Q. What is your work and what did you do there?

A. I mix all the formulas; I am a laborer.

Q. What do you get a week?

A. Thirty dollars.

30 Q. Do you get any more now than at the time you say you met this man?

A. Not a penny.

Q. And what time of day was it you say you met him?

A. Ten minutes after five.

Q. And where were you standing, you say?

A. The corner of Montgomery and Warren Streets in front of the hat store.

Q. Where is the factory?

A. 190 Warren Street, four blocks away.

Q. How far from this hat store?

The Court—Four blocks.

Q. From the hat store?

A. Four blocks away.

Q. And he came up behind you, never having seen you before, so far as you know, saw you looking in the hat store—

A. I was not looking in the hat store.

Q. Touched you on the shoulder—

A. I was not looking in the hat store.

Q. What were you doing? 10

A. Waiting for a car on the corner.

Q. And he touched you on the shoulder and asked if you worked in a factory four blocks away?

A. Yes, sir.

Q. And you said you did?

A. Yes, sir.

Q. Then you say he showed you a card?

A. Yes, sir.

Q. What kind of a card? 20

A. A little white card; I didn't take notice to what the card was; he had the four formulas written on the back of it.

Q. Do you remember those formulas?

A. Yes, sir.

Q. What were they?

A. Gummafoam S, Gummafoam H., No. 22, and Arophile.

Q. Was the whole formula written out, or just the names? 30

A. Just the names.

Q. He showed you these names of formulas?

A. Yes, sir.

Q. And he asked you if you knew how to make them?

A. Yes.

Q. And you said you did know how to make them?

A. Yes, sir.

Q. And he said if you did know how to make them he would give you five hundred dollars and get you a job paying you forty-five dollars a week?

A. Yes, sir.

Q. And you said you didn't want to do it?

A. Yes, sir.

Mr. Simpson—That is all.

(Witness excused)

10 Mr. Simpson—I ask for a direction, on the ground that there is, first, no proof of any crime; second, no proof of any crime under this statute; third, if the story of Lavallo is true, he is an accomplice and under the law of this State the jury is always instructed it is unwise to convict on the uncorroborated testimony of an accomplice; fourth, on the ground that there is no competent proof that these formulas were really given by the man Lavallo or delivered by him to the defendant.

The Court—Your motion will be denied.

Mr. Simpson—Exception.

THE COURT'S CHARGE

20 Gentlemen of the Jury—The defendant in this case, Edward Landecker, stands charged with the crime of violating Chapter 145 of the laws of the State of New Jersey, enacted by the legislature in 1922, and that is, an Act to amend a supplement to an Act entitled An Act for the Punishment of Crimes, Revision of 1898.

30 The charge stands against him in the form of what is known as an indictment, and I assume, gentlemen of the jury, having served several days now, that you know that an indictment is a written document in and by which the State of New Jersey specifies just what violation of its criminal law the defendant is charged with committing, and it is this charge under this indictment and no other than the defendant is called upon here to answer. To this indictment the defendant has pleaded Not Guilty. He denies the truth of the charge, and it is for you to say, Gentlemen of the Jury, as the final thing in this issue, whether he is guilty or not, You will take the indictment with you in the jury room and read it.

In order that you may the more clearly understand the nature of the charge contained in the indictment

and the offense against our law which it imports, I will read to you the statute or the law of this State which defines or denounces the criminal offense in question. Whoever gives, offers or promises to an agent, employee or servant any gift or gratuity whatever without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who, without the knowl-10
edge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift, or to do an act beneficial to himself, under an agreement, or with an understanding that he shall act in any particular manner to his principal's, employ-
er's or master's business; or an agent, employee or servant who, being authorized to procure materials, supplies or other articles, either by purchase or con-
tract for his principal, employer or master, or to employ 20
service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor and any person who gives or offers such an agent, employee or servant such commission, discount or bonus, shall be guilty of a misdemeanor.

Now, in the course of this trial, Gentlemen of the 30
Jury, the State, in its effort to prove to your satisfaction that the defendant is guilty, has produced before you these witnesses. The defendant, in order to rebut or contravene the State's proof, has produced likewise certain witnesses of his own, that is, himself, his now wife, and, I believe, one other young man. These witnesses, those for the State and those for the defense, have given testimony, and this testimony is submitted to you by the respective sides as evidence of what the truth really is in this case, and out of all this testimony, and out of all the evidence in the case as it is sub-

mitted to you, it is your duty to find on your solemn oaths as jurors where the truth does lie in this matter. In other words, does the evidence in the case show that the defendant is guilty, or does it fail to prove that he is guilty? That is the question for you gentlemen to determine. You are the sole judges of the facts. You have nothing to do with the law except to take the law and deal with it and apply it to the facts as I have given it to you.

10 Now, in your deliberations on this case, gentlemen, and in your efforts to conclude under your oath whether you find the defendant to be guilty or not, you are at all times subject to certain rules which the law prescribes, and such of these rules as are here pertinent I shall state to you and you shall be governed by them throughout your deliberations.

The defendant in this case, as such defendant has certain rights with which the law of our land invests him. The one to which I would particularly call your attention
20 is this: that he is at all times presumed to be innocent. The burden of proving his innocence is not upon him. The burden of proof rests upon the State. It remains upon the State until you, by your verdict, conclude this trial. The nature of the burden of the State is that the defendant must be proved guilty beyond a reasonable doubt. In other words, if the State fails to satisfy your minds beyond a reasonable doubt that the defendant did the thing which the indictment says he did, then you are bound under your oaths to acquit him, but if on the other
30 hand, you find that the State has discharged its burden of proof, that is to say, that it has satisfied your minds beyond a reasonable doubt that the defendant did commit the crime charged against him in the indictment, then it is equally your duty to return a verdict of guilty against him.

I have used the term reasonable doubt. I have said it is the State's burden to prove the defendant guilty beyond such a doubt. Reasonable doubt does not mean any mere possible or capricious or fanciful doubt. You are not to give the defendant the benefit of such a doubt as that is.

It means very much what the words themselves import; a reasonable doubt—that is, such a doubt as the mind of a reasonable man may entertain. The definition which the law lays down to us is as follows: Reasonable doubt is not a mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. In other words, if, after you have made an entire comparison and consideration of all the evidence you are in that state of mind that you can not say you feel an abiding conviction to a moral certainty that the defendant here is guilty of the charge, you may then be said to have a reasonable doubt of the defendant's guilt and he is entitled to the benefit of that doubt and you are to acquit him. On the other hand, if, after you have made an entire comparison and consideration of all the evidence, you are in that state of mind that you can say you feel an abiding conviction to a moral certainty that the defendant is guilty, then your minds may be said to be free from any reasonable doubt of the defendant's guilt and it will be equally your duty in that event to courageously return a verdict of guilty.

I will not discuss, gentlemen of the jury, the evidence in the case. You have heard all the testimony. All the facts in this case are before you and so far as you are concerned there are no facts in this case except those which have been produced in evidence here in this trial. Whatever has been said by counsel or even suggested by the Court is not the evidence; it is what you have heard and what you believe to be the truth in this case that will guide you. No other evidence is to enter your minds in considering this case, only the evidence produced in this court. The solemn oath which you have taken as jurors obliges you to render a true verdict according to the evidence and I would stress to you the fact, gentlemen, that your verdict must be true and that it cannot be true unless it is according to the evidence as you see it.

Now, gentlemen, you have seen and heard all of these

witnesses. How did they, each and every of them impress you? You have a right to ask yourselves that question. You have a right to consider the deportment of these witnesses on the stand; their manner of testifying. You have a right to consider the credence, the belief which these persons have inspired or failed to inspire in you, as the case may be. You have also the right to consider the interest or the motive which the witnesses, those for the State, as well as those for the defense, may have in giving

10 their testimony. You may consider the extent to which any witness or witnesses have permitted bias or interest or other improper motive to influence or color their testimony. For example, in considering the testimony of the defendant himself, you may weigh the circumstance that he is the most interested person in all the world in the outcome of this trial. Has that interest been strong enough or sufficient to induce him to depart from the truth or to color his testimony? It is possible that it did

20 so induce him. It is possible that it did not, but it is a thing which you may consider. You need not, however, in this confine yourself to the testimony of the defendant only, or his witnesses: as to any witness, for the State or the defense, you may consider the workings of interest or bias as I have indicated it to you.

Gentlemen, all criminal cases are important, and it is important for all of you, each of you, to do and perform your solemn duty. You have all the facts in the case. You all understand your duty and the oath which binds

30 you to that duty in this service. You may retire and deliberate on your verdict.

Hudson County Court of Common Pleas.

THE STATE,	}	On Indictment.
<i>Defendant in Error.</i>		
<i>vs.</i>		
EDWARD LANDECKER,		
<i>Plaintiff in Error.</i>		

I, Hyman Lazarus, Judge of the Court of Quarter Session, in and for the County of Hudson, before whom the

above entitled indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the foregoing indictment of the above stated case.

HYMAN LAZARUS,
Judge.

Hudson County Court of Common Pleas.

THE STATE, <i>Defendant in Error.</i> <i>vs.</i> EDWARD LANDECKER, <i>Plaintiff in Error.</i>	}	Additional Certificate of Judge. On Indictment	10
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In addition to the foregoing transcript, on the 11th day of October, 1923, Alex. Simpson, Esq., counsel for the defendant, moved in open court for arrest of judgment on the ground that the record showed that the alleged offense had been committed at a time anterior to the pas- 20
sage of the Act under which sentence was imposed and concerning which the jury were instructed by the Court; and the said motion for arrest of judgement was overruled.

An exception was prayed to the refusal of the motion for arrest of judgment and the same was allowed, signed and sealed accordingly.

HYMAN LAZARUS,
Judge.

Jersey City, N. J. 30

I, the undersigned, do hereby certify that I was the stenographer who took the testimony and proceedings in the cause entitled, The State vs. Edward Landecker, before Hon. Hyman Lazarus, Judge, and a jury, on the 3d day of October, 1923, and that I transcribed the same and that the same is full, complete and correct.

JAMES A. McKEERER.

NEW JERSEY SUPREME COURT

THE STATE,
Defendant in Error,
vs.
 EDWARD LANDECKER,
Plaintiff in Error,

On Writ of Error

ASSIGNMENTS
 OF ERROR

10 And now comes the said EDWARD LANDECKER, by Alex. Simpson, his attorney, and says that in the record and proceedings and also in giving judgment aforesaid there is manifest error, and for error assigns the following causes:

1. Because the trial court refused to direct a verdict of acquittal on motion of counsel for plaintiff in error.

2. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. What concern was this?"

(S. C. p. 32.)

20 3. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. After you got these formulas did you take them to Lyons, in Paterson?"

(S. C. p. 32.)

4. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. Isn't it a fact you had a written contract with the Lyons Company to do this work for them?"

(S. C. p. 33.)

5. Because the trial court permitted the plaintiff in error to be asked the following question:

30 "Q. Who was he employed by?"

(S. C. p. 35.)

6. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. Did you ever meet him in Jersey City on any occasion?"

(S. C. p. 35.)

7. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. What was your purpose in meeting Farley?"

(S. C. p. 35.)

8. Because the trial court permitted the witness, William Farley, to be asked the following question:

"Q. And how did you happen to meet him, just tell us in detail."

(S. C. p. 46.)

9. Because the trial court permitted the witness, William Farley, to be asked the following question:

“Q. What was it you and Landecker did on that day? First, how did he come to meet you and what happened?”

(S. C. p. 46-47.)

10. Because the trial court refused to direct a verdict on motion of counsel for plaintiff in error.

(S. C. p. 50.)

11. Because the Court charged the jury that the plaintiff in error was on trial under the act of 1922. 10 that is, “An Act to amend a supplement to an Act entitled ‘An Act for the Punishment of Crimes’ (Revision of 1898), whereas the alleged acts were perpetrated prior to the passage of said act.

12. Because the trial court refused the motion for arrest of judgment made in open court, on the ground that the alleged offense had been committed anterior to the passage of the Act under which sentence was imposed.

ALEX. SIMPSON,

Attorney for Plaintiff in Error 20

NEW JERSEY SUPREME COURT

THE STATE,

Defendant in Error,

vs.

EDWARD LANDECKER,

Plaintiff in Error,

On Writ of Error

SPECIFICATION OF
CAUSES FOR
REVERSAL

30

And now comes the said EDWARD LANDECKER, by Alex. Simpson, his attorney, and says that in the record and proceedings and also in giving judgment aforesaid there is manifest error, and for error assigns the following causes:

1. Because the trial court refused to direct a verdict of acquittal on motion of counsel for plaintiff in error.

2. Because the trial court permitted the plaintiff in error to be asked the following question:

“Q. What concern was this?”

(S. C. p. 32.)

3. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. After you got these formulas did you take them to Lyons, in Paterson?"

(S. C. p. 32.)

4. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. Isn't it a fact you had a written contract with the Lyons Company to do this work for them?"

(S. C. p. 33.)

5. Because the trial court permitted the plaintiff in error to be asked the following question:

10 "Q. Who was he employed by?"

(S. C. p. 35.)

6. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. Did you ever meet him in Jersey City on any occasion?"

(S. C. p. 35.)

7. Because the trial court permitted the plaintiff in error to be asked the following question:

"Q. What was your purpose in meeting Farley?"

(S. C. p. 35.)

8. Because the trial court permitted the witness,

20 William Farley, to be asked the following question:

"Q. And how did you happen to meet him, just tell us in detail."

(S. C. p. 46.)

9. Because the trial court permitted the witness, William Farley, to be asked the following question:

"Q. What was it you and Landecker did on that day? First, how did he come to meet you and what happened?"

(S. C. p. 46-47.)

10. Because the trial court refused to direct a verdict on motion of counsel for plaintiff in error.

30 (S. C. p. 50.)

11. Because the Court charged the jury that the plaintiff in error was on trial under the act of 1922, that is, "An Act to amend a supplement to an Act entitled 'An Act for the Punishment of Crimes' (Revision of 1898), whereas the alleged acts were perpetrated prior to the passage of said act.

12. Because the trial court refused the motion for arrest of judgment made in open court, on the ground that the alleged offense had been committed anterior to the passage of the Act under which sentence was imposed.

ALEX. SIMPSON,

Attorney for Plaintiff in Error

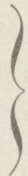
NEW JERSEY SUPREME COURT

May Term, 1924.

THE STATE

vs.

EDWARD LANDECKER.



10

OPINION.

(Filed October 20, 1924.)

Error to Hudson Oyer and Terminer.

Argued before Gummere, Chief Justice, and Justices Parker and Katzenbach.

For plaintiff in error, Alexander Simpson.

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For the State, John Milton, Prosecutor of the Pleas, and Aloysius McMahon, Assistant.

The opinion of the court was delivered by GUMMERE, C. J.

The indictment now before us charged the plaintiff in error with having on the 1st day of June, 1922, corruptly offered and paid to one LaValle, an employee of the Richards Chemical Works, Inc., the sum of \$100, with intent to procure from him secret formulæ used by his employer in the manufacturing of preparations used in the finishing of silk goods, in violation of the statute of the State which makes such act a misdemeanor. P. L. 1908, p. 587. The trial of the indictment resulted in the conviction of the plaintiff in error, and he now seeks to have that conviction reversed.

30

The first ground upon which we are asked to set the conviction aside is that the Trial Court should have

directed a verdict of acquittal at the close of the State's case. The ground upon which counsel rested his motion to direct was that there was no evidence in the case to show that the Richards Chemical Works, the employer of Landecker, was injured by the act of the defendant, in that, in order to justify a conviction, the burden rested upon the State to prove, not only the obtaining or attempting to obtain the secret formulæ, by the defendant, but that the selling of them by the man LaValle
10 was harmful to the company. The answer to this contention, as we see it, is that the Legislature has placed no such limitation upon the fact of criminality. The statute declares, under the caption "Corrupt influencing of agents, employees or servants," that "Whoever gives, offers or promises to an agent, employee or servant any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employec or servant, with intent to influence his
20 action in relation to his principal's, employer's or master's business" shall be guilty of a misdemeanor. The test is whether the person who gives, offers or promises the gift or gratuity does so with the intent denounced by the statute. Where that intent appears, it is quite immaterial whether its successful carrying out will be injurious to the business of the employer or not. The legislative purpose, as declared in the caption, is to punish attempts to corruptly influence agents, employees or servants with relation to the matters indicated in the body of the act, and proof that such attempt has been
30 made is proof that the statutory provision has been violated.

It is next argued that the Trial Court erred in permitting the defendant on his cross-examination to be asked whether, after he had obtained these formulæ from LaValle, a fact which he had admitted on his direct examination, he did not undertake to dispose of them to the Lyons Dye Company, a concern with which he was then associated and which was engaged in the

business of dyeing and finishing silks. We are told that the cross-examination was improper because the matter sought by the questions was incompetent, immaterial and irrelevant. We think the questions asked were not objectionable for any of these reasons; for, if they had been answered in the affirmative, such answers would have necessarily thrown light upon the motive which induced the defendant corruptly to seek to obtain the formulæ from LaValle; assuming, as the State claimed, that he was guilty of this corrupt act.

10

The next point argued is that the Court erroneously permitted the defendant to be asked questions tending to show that before he obtained these formulæ from LaValle he sought to obtain them from one Farley, another employee of the Richards Chemical Works. We are told that this was legally erroneous because the State by these questions attempted to prove the commission of an independent crime by the defendant. This is true, but the fact did not make the testimony incompetent. As was pointed out in *State v. Deliso*, 75 N. J. L. 816, 817, 20 where the prior crime evidences a state of mind shown to have carried forward and exhibited in the criminal act under investigation, and so nearly related in time, place and circumstances, that the mental state involved is practically continuous, such evidence is competent. Where a series of crimes are committed for the accomplishment of a single ultimate purpose, and that purpose is manifestly the sole inducing cause of the commission of each separate crime, the rule applied in the case just cited makes proof of these separate crimes, competent evidence.

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Next, it is contended that there was harmful error in the action of the Court permitting Farley, the employee just referred to, to testify as to the attempt of the defendant to induce him to sell to the former these secret formulæ. It is urged that this testimony was on a collateral matter, not brought out on the direct examination of the defendant, and that the State, having seen fit to cross-examine the defendant with relation to

his alleged attempt to corrupt Farley, and the defendant having denied the fact, was bound by his answer and could not offer in rebuttal testimony to impeach his credibility or to destroy the value of his evidence. If the purpose of Farley's cross-examination had been merely to impeach the credibility of the defendant, the contention would be sound. But there was a further purpose, and that was to prove by affirmative evidence an earlier corrupt attempt by the defendant to obtain
10 possession of these secret formulæ. For the latter purpose this testimony was competent, for the reason already indicated, notwithstanding that it was contradictory of the statement made by the defendant on his cross-examination. The fact that the State was permitted to put this evidence in after the defense had rested, instead of calling the witness in its opening case, was a matter entirely within the discretion of the Trial Court (*Hustis v. Bannister Co.*, 63 N. J. L. 467; *Foley v. Brunswick Traction Co.*, 69 N. J. L. 483); and there
20 is no contention on the part of counsel for the defendant that this discretion was abused or was harmful to his client, or that there should be a reversal for this reason.

Next, it is argued that the Trial Court specifically charged the jury that the defendant stood charged in the indictment with the crime of violating chapter 145 of the laws of the year 1922, which is a re-enactment of the statute of 1908, with certain additions thereto, whereas in fact the statute referred to did not become effective until the 4th of July following the commission of the offense charged in the indictment; and that, therefore, the verdict of the jury was based upon the violation of a statutory provision which was not in existence
30 at the time of the alleged criminal act. That the Trial Court so stated in its charge to the jury is conceded by the State, and it is also conceded that the statute referred to had not at the time of the commission of the alleged offense gone into effect. But, in our view, the erroneous statement of the Court was not harmful to the

defendant. The indictment itself contained no reference to the act of 1922. On the contrary, as has already been mentioned, it charged a violation of a statutory provision in existence at the time when the offence was committed; namely, the act of April 15, 1908 (P. L. 1908, p. 587). In elaborating upon the statutory provision upon which the indictment was founded, the Court recited to the jury the very words of the statute of 1908, so that the members of that body thoroughly understood that the provision of the law was as it existed at the time of the commission of the crime. Under these circumstances, the mere misstatement of the date of the enactment of the statute upon which the indictment was based will not justify a reversal. The case comes up under the broad review provided by the 136th Section of the Criminal Procedure Act, and we are not permitted, by the express limitation of that section, to reverse a conviction when so brought before us for review unless we are satisfied that the defendant has suffered manifest wrong or injury by the error of the Trial Judge.

The last ground upon which we are asked to reverse is that the Court improperly refused a motion in arrest of judgment, which counsel rested upon the assertion that the offense charged against the defendant had been committed "anterior to the passage of the act under which sentence was imposed." It is conceded by counsel that a motion to arrest judgment must be determined solely by the record; but he asserts before us that the record sent up in the present case exhibits upon its face the fundamental fact upon which this motion was rested. In this, however, he is in error. The term "record" using it in its proper sense, imports the history of only those proceedings which take place in the orderly progress of a cause, and which the law requires to be perpetuated. *State v. Crusius*, 57 N. J. L. 280. It does not include a history of the proceedings at the trial, except the general statement that a jury was impanelled; that evidence was submitted by both parties;

that thereafter the arguments of the respective counsel were heard; that the issue, after a charge by the Court, was submitted to the jury; that the jury rendered its verdict, either acquitting or convicting the defendant of the crime charged against him in the indictment; and that, in case of a verdict of guilty, the Court thereupon pronounced sentence. The record now before us is in the form above indicated, and there is nothing contained in it which even suggests that the charge upon
 10 which the defendant was convicted was based upon a statute not in effect at the time of the commission of the act which was the subject of the indictment; or that sentence was imposed under such an act.

The judgment under review will be affirmed.

NEW JERSEY SUPREME COURT.

20	THE STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	On Error.
	<i>vs.</i>		To Hudson Quar-
	EDWARD LANDECKER, <i>Plaintiff in Error.</i>		ter Sessions.

RULE ON AFFIRMANCE OF JUDGMENT
AND ORDER OF REMITTITUR.

30 (Filed, ..)

This cause having been duly argued before this Court at the May Term, A. D. 1924, by John Milton, Prosecutor of the Pleas of the County of Hudson, Counsel for the State of New Jersey, and Alexander Simpson, Counsel for the Plaintiff in Error, and the Court having considered the same and having examined the records and proceedings of the Hudson Quarter Sessions

in the said cause, and finding no error therein;

It is hereby Ordered and Adjudged that the judgment of the Hudson Quarter Sessions in the above-entitled cause be and the same is hereby affirmed with costs;

And, it is further ordered that the record in the said cause be forthwith remitted to the said Hudson Quarter Sessions there to be proceeded with according to law.

Entered October 29, 1924.

On motion of

10

JOHN MILTON,
Prosecutor of the Pleas,
Counsel for the State of New Jersey.

WRIT OF ERROR.

(Filed, ..)

THE STATE OF NEW JERSEY, to wit: The State of 20
New Jersey to the Chief Justice and Associate
[L. S.] Justices of our Supreme Court of Judicature
of the State of New Jersey,

GREETING:

Because in the record and proceedings and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Edward Landecker, plaintiff in error and The State, defendant in error, manifest error hath intervened to the damage of the said Edward Landecker, plaintiff in error, as is said, and we being willing in that behalf, that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the plaintiff in error, do command you, that you distinctly and openly send under your hand and seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of the Court of Errors and Appeals in the last resort 30

in all causes, at Trenton, on the 10th day of November next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done therein, for correcting that error, what of right and according to the laws of the State of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 23d day of October,
 10 1924.

THOMAS F. MARTIN,
Clerk.

ALEX. SIMPSON,
Attorney.

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
 20 State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs

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EDWARD LANDECKER,
Plaintiff in Error.

} On Writ of Error.

SPECIFICATION OF CAUSES FOR REVERSAL.

(Filed January 28, 1925.)

And now comes the said Edward Landecker, plaintiff in error, by Alex. Simpson, his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following cause: 10

1. The Supreme Court gave judgment affirming the conviction of the plaintiff in error and of the judgment thereon, whereas, it should have reversed the judgment of the Court of Quarter Sessions and set aside the conviction of that court.

ALEX. SIMPSON,
Attorney for Plaintiff in Error.

Service of the within is hereby acknowledged this 28th day of January, 1925.

JOHN MILTON, 20
Prosecutor.
A. M. McM.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error.

vs.

EDWARD LANDECKER,
Plaintiff in Error. } On Writ of Error. 30

ASSIGNMENTS OF ERROR.

(Filed January 28, 1925.)

And now comes the said Edward Landecker, plaintiff in error, by Alex. Simpson, his attorney, and says

that in the record and proceedings and also in giving judgment thereon, there is manifest error, and for error assigns the following cause:

1. The Supreme Court gave judgment affirming the conviction of the plaintiff in error and of the judgment thereon, whereas, it should have reversed the judgment of the Court of Quarter Sessions and set aside the conviction of that court.

ALEX. SIMPSON,

Attorney for Plaintiff in Error.

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Service of the within is hereby acknowledged this 28th day of January 1925.

JOHN MILTON,

Prosecutor.

A. M. McM.

New Jersey Court of Errors and Appeals

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THE STATE,
Defendant-in-Error,

vs.

EDWARD LANDECKER,
Plaintiff-in-Error.

In Error.

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BRIEF FOR PLAINTIFF-IN-ERROR.

The plaintiff-in-error was convicted in the Hudson County Court of Quarter Sessions on indictment charging him with offering and giving to an employee a gift or gratuity, &c., in violation of Chapter 145 of the laws of 1922, and was sentenced to be confined in the County Farm Jail for a period of one (1) year and thence until costs of prosecution are paid.

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To test the legality of this judgment a writ of error has been sued out, and specifications of causes for reversal under Section 136 of the Act concerning Criminal Procedure and assignments of error indicate the alleged infirmities in the proceedings below.

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POINT I.

The learned trial Judge refused to direct a verdict of acquittal on motion of counsel for plaintiff-in-error at the end of the State's case.

10 This motion is, of course, discretionary with the trial Court, but is reviewable on error under the Criminal Procedure Act, Section #136 (2 Comp. St., 1910, p. 1863). See State v. Contarino, 92 N. J. L., 381 (Ct. of Errors & Appeals). This motion should have been granted because the State's case failed to show any proof of any violation of the act under which the plaintiff-in-error was indicted. There was not a scintilla of evidence adduced by the State that La Valle, who
20 was at most an accomplice, had been warned, cautioned or instructed that the formulas which he was using in the performance of his duties were secret ones and that they should not be given away to anyone; that the giving away, or even the selling of them, would be detrimental to the company's best interest. As far as the Court and jury knew, these formulas may have been of general information, and surely there could not be an offense against any statute to sell them, for
30 no evidence was produced by the State that these formulas had been copyrighted and in the exclusive possession of the complainant Chemical Company, and that they were valuable.

POINT II.

The trial Court permitted the plaintiff-in-error to be asked the following questions over his objection:

“What concern was this?” (S. C., p. 32.)

“After you got these formulas did you take them to Lyons, in Paterson?” (S. C., p. 32.) 10

“Isn't it a fact you had a written contract with the Lyons Company to do this work for them?” (S. C., p. 33.)

These questions were incompetent, immaterial and irrelevant and not within the purview of the indictment. They were highly prejudicial to the plaintiff-in-error in that it had a tendency to create in the minds of the jurors an idea that the plaintiff-in-error was working in collusion with the Lyons Dye Co.; they engendered in the juror's minds that the accused did know that these formulas were the property of the Richards Chemical Co. and not that they belonged to La Valle, as he was led to believe and so informed by him, and as testified to by the plaintiff-in-error, on page 29 of the State of Case, line 15. There was a fight between the two employers, the Richards Chemical Co. and the Lyons Dye Co., and the State attempted to involve the Lyons Dye Co., in the case by these questions which were allowed by the trial Court. The atmosphere produced by this collateral matter was harmful to the plaintiff-in-error, in that it greatly militated against the presumption of innocence which every accused is clothed with, and gave the jury cause to speculate on his guilt. 20 30 40

Where incompetent evidence is received which might, by any possibility, be prejudicial to the prisoner, a judgment founded upon it must be reversed.

In the case of *State v. Sprague*, 64 N. J. L., Justice Lippincott on page 426, said:

10 “This evidence was highly prejudicial to the defendant. In fact, all that need be said in a case of this kind is that it MAY HAVE BEEN HARMFUL.”

POINT III.

20 The trial Court permitted the plaintiff-in-error to be asked questions regarding one Farley (S. C., pp. 35, 36 and 37).

30 This was error for the evidence here was merely for the purpose of establishing a tendency on the part of the accused to the commission of a similar offense. It is indeed elementary law that no evidence can be admitted which does not tend to prove the issue joined. The introduction of this extraneous matter calculated to do the accused manifest injustice by creating a prejudice against his general character.

POINT IV.

 The learned trial Judge permitted the testimony of William Farley for the State on rebuttal (S. C., pp. 45, 46 and 47).

40 The testimony of this witness was on collateral matter and not in the slightest connected with the

direct examination of the plaintiff-in-error. The State did cross-examine the accused on this extraneous matter, and since they examined him and made him their own witness on this new matter, they were bound by his answers, and, therefore, could not offer any rebuttal to impeach his credibility, or this evidence, which he gave on his cross-examination by the State.

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In the case of *State v. Sprague*, 64 N. J. L., 419, Point 5 of the syllabus holds:

“The cross-examination of the defendant who offers himself as a witness and testifies in his own behalf, on his trial upon a criminal indictment, MUST BE LIMITED TO THE SUBJECTS ORIGINATED IN HIS EXAMINATION-IN-CHIEF. He is subjected to the same liabilities and same privileges of any other witness. IF UPON CROSS EXAMINATION, HE TESTIFIES TO FACTS AND THINGS WHICH ARE COLLATERAL AND IMMATERIAL TO THE ISSUE, HE CANNOT BE CONTRADICTED AS TO THE ACTS AND THINGS BY EVIDENCE IN REBUTTAL.”

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Justice Kalisch, speaking for this Honorable Court in the case of *State v. Mor*, 85 N. J. L., on page 562, said:

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“The law is firmly settled that where a party has the right, for the purpose of impairing the credit of a witness as to collateral matters, to ask questions as to these collateral matters, but having asked and obtained answers, he must abide by the answers given;

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other witnesses cannot be called to prove such answers untrue. Citing case of Stokes v. People, 53 N. Y., 164.

See also Materka v. Erie R. R., 88 N. J. L., 373 (Court of Errors & Appeals).

10 In the case of Bullock v. State, 65 N. J. L., 557, Point 14 of syllabus (Court of Errors & Appeals): On the trial the accused was a witness and was asked if he had ever had any trouble with anyone, and answered that he never had. On cross examination he was asked if he did not have a dispute with one C., and draw a razor on him. Held, that this evidence was incompetent, but if at all competent on cross examination, being irrelevant and immaterial, the State was bound by the answer of the accused and could not contradict it.”

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- The trial Judge allowed this testimony for the sole purpose of impairing the credibility of the accused, and not for proving another offense as counsel for the accused complained (S. C., p. 47) although the prosecutor was silent as to the reason for putting this matter in rebuttal. Apparently, the learned trial Judge lost trace of the fact that the plaintiff-in-error had been made a witness for the State on cross examination on this immaterial and irrelevant matter.

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This evidence was also objectionable and prejudicial to the plaintiff-in-error, although not allowed in for this purpose by the Court, but only to impeach his credibility, in that it tended to prove another offense under this statute for which he was not indicted and for which he was not called upon to defend himself.

40

In the case of Leonard and Ansart v. State, 60 N. J. L., 8, the Court held that the State, for the purpose of showing that the defendant would be likely to commit the crime charged in the indictment, cannot offer testimony to prove that he committed other crimes, although of a like nature; citing case of Clark v. State, 47 N. J. L., 556 (Ct. of Errors & Appeals).

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The trial Judge did not perhaps realize that the admittance of this witness's testimony, although not allowed for that purpose, came within the inhibitions of Leonard v. Ansart, supra, but it did have only that result.

POINT V.

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The trial Court charged the jury that the plaintiff-in-error was on trial for violating Chapter 145 of the laws of 1922.

The learned trial Judge specifically charged the jury that the plaintiff-in-error stood charged with the crime of violating Chapter 145 of the laws of the State of New Jersey, enacted by the legislature in 1922, etc. (S. C., p. 50); and on page 51 of the state of case, the Court read to the jury the provision of this act. This act was approved on March 11th, 1922, and it did not specifically provide when it was to go into effect, so it became a law on July 4, 1922, as per section 13, Statutes, page 4973, Book 4 of the Compiled Statutes of New Jersey, which provides: "That from and after the passage of this act, all public acts which shall be hereafter passed shall not go into operation or be enforced until the 4th day of July next

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after the passage of any such act, unless otherwise specifically provided for in such act.”

10 The violation of this act, of which the plaintiff-in-error was accused, took place on June 1, 1922, and since the act did not go into effect until after the commission of the alleged crime there was no crime under this act for which he could be convicted. This was manifest error in that the trial Court took pains to state that Landecker was charged and being tried for violating this particular act, whose operation and enforcement was not in effect at the time of the commission of the act or acts alleged in the indictment. We have here the spectacle of the Court charging the jury that the prisoner could be convicted of a law which was not in effect at the time of its alleged violation, and as far as the accused was concerned at the time, this act could as well never been enacted.

20 This act or law, as far as Landecker was concerned, was an ex post facto law and in violation of the United State Constitution, for he was being tried, and the jury was being so charged, for the alleged violation of a law which was not in existence at the time he was supposed to have committed the said alleged act.

30 The State no doubt will answer by saying that this act of 1922, was only an amendment to the original act and that the plaintiff-in-error was being tried under the original act, but the fact remains that the Court emphatically and specifically stated to the jury that he was being tried under the act of 1922, and not under the original act.

POINT VI.

The trial Court refused the motion for arrest of judgment made in open court (S. C., p. 55).

The motion for arrest of judgment should have been granted because the record showed that the alleged offense had been committed at a time anterior to the passage of the act under which sentence was imposed and concerning which the jury was instructed by the Court. 10

In the case of *State v. Bove*, 116 Atl., 766, Justice Parker, speaking for this Court, said:

“ * * * the rule is, of course, fundamental that judgment will not be arrested for any error except one which is apparent on the face of the record, etc.” 20

The plaintiff-in-error was sentenced to imprisonment and deprived of his liberty under an act which was void, as far as he was concerned, and which was not in existence. Under the circumstances the learned trial Judge could just as well have sentenced the prisoner under any one of the hundreds of laws of this state as to have sentenced him for violating Chapter 145 of the laws of 1922, in that this act was not applicable to him, and therefore nugatory as far as he was concerned. 30

The Court below dismissed the objection of the admission of the evidence of the witness Farley in the following language:

“The fact that the State was permitted to put this evidence in after the defense had rested, instead of calling the witness in its opening case, was a matter entirely within the 40

discretion of the trial Court (Hustis v. Ban-
nister Co., 63 N. J. L., 467; Foley v. Bruns-
wick Traction Co., 69 N. J. L., 483), and there
is no contention on the part of counsel for the
defendant that this discretion was abused or
was harmful to his client, or that there should
be a reversal for this reason.”

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This is a dismissal of the objection that it was
incompetent to prove another offense, even if the
defendant had not been asked anything about it
on cross-examination, but as he had been, they
were bound by his answer.

20

For the reasons enumerated above it is respect-
fully insisted that the judgment below should be
reversed.

ALEX. R. DESEVO,
Attorney for Plaintiff-in-Error.

ALEX. SIMPSON,
of Counsel.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

EDWARD LANDECKER,
Plaintiff-in-Error.

On Error.

BRIEF FOR DEFENDANT-IN-ERROR.

The plaintiff-in-error was convicted in the Hudson County Court of Quarter Sessions on indictment charging him with offering and giving to an employee a gift or gratuity in violation of the statutes of the State of New Jersey and was sentenced to be confined in the County Farm for a period of one year and thence until costs of prosecution are paid.

This matter comes before the Court on Writ of Error which has been sued out by the defendant below, and specifications of causes for reversal under Section 136 of an Act concerning criminal procedure. The conviction was affirmed in the Supreme Court.

POINT I.

The learned trial judge properly refused to direct a verdict of acquittal on motion of counsel for the plaintiff-in-error at the close of the State's case.

The defendant below was charged in the indictment found against him with corruptly offering

to one Albert La Valle, then an employee of the Richards Chemical Works, Inc., the sum of One hundred (\$100) dollars in money, without the knowledge and consent of said Chemical Company, the principal and employer of said Albert La Valle, with intent thereby to procure from said Albert La Valle certain secret formulae for products used, manufactured and sold by said Richards Chemical Works, Inc., contrary to the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

The influencing of agents, employees or servants corruptly by offers of gratuities was made a misdemeanor by the Pamphlet Laws of 1908, page 587 (C. S., page 1810, Section 212 E).

The reason assigned for the granting of this motion was that there was no evidence that La Valle, the employee of the Richards Company, was cautioned or instructed that the formulas of the Richards Company, which he sold to the defendant below, were of any value or that the Richards Company, the employer of La Valle, suffered any damage by reason of such sale.

There is nothing in the Act just quoted which requires such proof to be made on the part of the State, the test being whether the agent or employee was corruptly influenced by means of a gratuity to disclose the secret formulae of his employer.

The witness La Valle (page 13, lines 10 to 30) testifies that the defendant below gave him upwards of Six hundred (\$600) dollars for six formulas which were all the products and property of the Richards Chemical Company. In view of this testimony, it is clearly apparent that the Court properly exercised its discretion in refusing a motion at the close of the State's case to direct a verdict.

See opinion of Justice Gummere in this case in the Supreme Court.

POINT II.

The trial court properly permitted the questions mentioned in Point II of the plaintiff-in-error's brief.

The defendant, Edward Landecker, the plaintiff-in-error, was at the time of the propounding of the objectionable questions, under cross-examination by the State and it is submitted that these questions were proper cross-examination for the purpose of testing his credibility and furthermore that as to two of the questions, the objection came too late, the questions having already been asked and answered before the objection was made by counsel.

POINT III.

The trial court properly permitted the plaintiff-in-error to be asked questions regarding one Farley on cross-examination (S. C., pages 35, 36 and 37).

There is not one objection made on the part of counsel for the plaintiff-in-error to the series of questions on pages 35, 36 and 37 of the printed case.

The trial judge was not apprised that the admission or rejection of these questions would be challenged on error and was not called upon to rule upon the propriety of the asking of such questions.

The apparent purpose of the propounding of the questions on pages 35, 36 and 37 of the printed

case was not to establish a tendency on the part of the accused to the commission of similar offenses but rather to test his credibility and surely no manifest wrong or injury could be suffered by the defendant because of the asking of such questions and the answers given by him.

State v. Deliso, 75 N. J. L. 816-817.

POINT IV.

The court properly permitted the testimony of William Farley for the State in rebuttal (S. C., pages 45, 46 and 47).

The plaintiff-in-error claims that the Court erred in permitting the State to submit evidence as to his transactions with one Farley. The plaintiff-in-error had been permitted to testify without objection as to his relations with Farley (S. C., pages 35, 36 and 37).

It is the State's contention that the questions asked him concerning Farley and Farley's testimony in rebuttal concerning his dealings with the plaintiff-in-error were material and competent in that they tended to show the plaintiff-in-error's motive and intent. It is further submitted that under the circumstances of this case, the cases cited by the plaintiff-in-error in his brief on this point do not apply.

It must be remembered that Farley testified to the fact that Landecker spoke to him and tried to get him to turn over the same formulas which he succeeded in getting from La Valle, thereby indicating that his course of conduct in dealing both with La Valle and Farley had a criminal intent and clearly showed what his motive was in dealing with La Valle.

Farley testified on this point as follows (S. C., page 49, lines 10 to 40):

“Q. And he touched you on the shoulder and asked if you worked in a factory four blocks away?

A. Yes, sir.

Q. And you said you did?

A. Yes, sir.

Q. Then you say he showed you a card?

A. Yes, sir.

Q. What kind of a card?

A. A little white card; I didn't take notice to what the card was; he had the four formulas written on the back of it.

Q. Do you remember those formulas?

A. Yes, sir.

Q. What were they?

A. Gummafoam S, Gummafoam H, No. 22, and Arophile.

Q. Was the whole formula written out, or just the names?

A. Just the names.

Q. He showed you these names of formulas?

A. Yes, sir.

Q. And he asked you if you knew how to make them?

A. Yes.

Q. And you said you did know how to make them?

A. Yes, sir.

Q. And he said if you did know how to make them, he would give you five hundred dollars and get you a job paying you forty-five dollars a week?

A. Yes, sir.”

These are two of the same formulas that he got from La Valle.

La Valle testified on this point as follows (S. C., page 12, lines 3 to 12):

“Q. What formulas did he say?

A. He said Gummafoam S and H, and W. G. S., that is what we used to call the formulas.

Q. Just tell us again now when he met you and what he said, if you can, everything he said and everything you said in reply.

A. If I was willing to make any money and I said, "How," and he said by giving him some of the formulas, so at first I was thinking I would. I finally said I would, all right."

The plaintiff-in-error was specifically charged with bribing one La Valle to obtain the formulas of the Richards Company. He denied the charge. It is the contention of the State that the Farley testimony was proper to connect the plaintiff-in-error with the crime in question and to show his motive in dealing with La Valle. In support of this contention, the following decisions are submitted:

"Under an indictment for transporting a girl through the State for the purposes of prostitution, it is admissible in order to prove that purpose, to prove that the defendant had transported other girls.

State vs. Jankowski, 82 N. J. L., 229, 83 N. J. L., 796.

It is admissible to prove an attempt to commit a similar crime at a date subsequent by a short time to the offense charged in the indictment.

Id.

On a trial for manslaughter in pushing one from a trolley car, evidence of disorderly conduct of defendant towards others before embarking of the deceased and of the act of the defendant was admissible to show his state of mind.

State vs. Flanagan, 84 N. J. L., 379, 84 N. J. L., 766.

In a prosecution for conspiracy to defraud a county board evidence tending to prove a distinct offense unrelated to the offense charged was not irrelevant as to motive and intent.

State vs. Taylor, 92 N. J. L., 135, 93 N. J. L., 159.”

This testimony was competent to prove an earlier attempt, corrupt attempt by the defendant to secure possession of these secret formulae.

State vs. Landecker, opinion of Gummere, J. in case below.

POINT V.

It was not harmful error for the court to charge the jury that the plaintiff-in-error was on trial for the violation of chapter 145 of the laws of 1922.

It is conceded that the trial judge charged the jury that the plaintiff-in-error was indicted for violating Chapter 145 of the Laws of 1922.

It is further conceded that at the time of the commission of this crime, to wit, June 1st, 1922, this Act was not yet in operation.

A perusal of the indictment will show that the defendant was not specifically charged with violating this Act but was charged with committing a certain misdemeanor in violation of the laws of the State of New Jersey. There was, however, in existence at the time in which this crime was committed an Act passed in 1908 and which may be found in the Pamphlet Laws of 1908, page 587, which in its provisions is exactly similar word for word to Chapter 145 of the Laws of 1922 in so far as it applies to the case in question. In his charge the judge correctly set forth this law

which was then the law of the State of New Jersey. If in error, he stated to the jury that it was Chapter 145 of the Laws of 1922 or some other law, although it may be error, is certainly not harmful error, because no matter what the judge may have called the law or from what book or paper he may have read it, it was still the law of the State of New Jersey under which the defendant was charged and for the violation of which he was indicted and tried. If the contention of the plaintiff-in-error is correct, he may go so far as to say that because the judge read the law from a black book when it was contained in a red book that this harmed the defendant. Whether the judge told the jury that he was reading from the Laws of 1922 or whether he was reading from the Laws of 1908 is immaterial, the two statutes being exactly similar in every respect and the judge having correctly charged the jury on the law as it stood at the time of the commission of this crime.

In order to be reversible error, error must be harmful to the rights of the defendant.

State vs. Sage, 1 N. J. Adv. Rep., 1323;
State vs. Landecker, opinion of Gum-
 mere below.

POINT VI.

The trial court properly refused the motion for arrest of judgment (S. C., page 55).

Prior to imposing sentence in this case, a motion in arrest of judgment was made by the attorney for the plaintiff-in-error on the ground that the defendant had been found guilty of an Act which at the time he committed it was not a crime.

It is submitted that this point is disposed of by the argument in Point #4 and if any error was committed by the judge in telling the jury that it was the Laws of 1922, instead of the Laws of 1908 for the violation of which the defendant was being tried, if error was certainly harmless to the defendant the judge having correctly charged as to the existing law.

A judgment will not be arrested for any error except one which was apparent on the face of the record.

State vs. Bove, 116 Atl., 766.

There was nothing on the face of the record in this case to show that the defendant had been improperly convicted. He was charged in the indictment with committing certain acts which were, at the time committed, a crime and the jury by their verdict found him guilty of offering a gratuity to an employee (page 6, line 7).

For the reasons above stated the State insists that there was no harmful error committed in the trial of Edward Landecker and that the judgment should be affirmed in every particular.

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