

New Jersey Court of Errors and Appeals

THE STATE,

Defendant in Error,

vs.

SAUEL STERN,

Plaintiff in Error.

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Error to
Bergen Co.
Quarter Sessions.

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BRIEF FOR PLAINTIFF IN ERROR

The plaintiff in Error was indicted for Larceny. It appears from the States' case that on June 25, 1903, at Palisades Park in Bergen County, a horse, runabout wagon, 2 sets of harness and 2 blankets were stolen from the barn of Chas. H. Lozier. June 25, 1903 fell on Thursday and the following Tuesday, Mr. Lozier discovered his horse hitched to a peddler's wagon, at Leonia, in the possession of Nathan Liebner. (p. 8) Liebner had purchased the horse from Abram Schwartz, (p. 22) and Schwartz had purchased it from William Lax, (p. 20) Lax had gotten it from the defendant Stern. (p. 11).

All of these transactions occurred at the City of New York. Stern claimed to have bought it from

a Polock named Jo, at the City of Newark. (pp. 11, 28.)

This was the extent of the State's case when it rested, except some testimony relating to the possession and production by Stern of some of the stolen blankets. (p. 12, 27) But, if guilty knowledge is to be inferred in this connection, it would be rather guilty knowledge in receiving stolen
10 property, than the guilt of stealing the property.

In the defense Stern gave the details of the purchase of the stolen property by him from the Polock Jo, in front of the Bull's Head Stable, and in the presence of Thomas Tuite, who fully corroborated Stern's testimony. (p. 30, 40).

The only rebutting testimony in the case was
20 that of Garret Lozier, a son of Chas. H. Lozier who testified that he was at the place indicated by Stern and did not see the horse sold. (p. 43).

In all the proof there is nothing to show that Stern was at Palisades Park on the occasion or about the time of the larceny and nothing to show that others had co-operated in the commission of the offence so that the conclusion of guilt must result from the possession of the stolen property.
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1. From the proof in the case, assuming the defendant's guilt, the only conclusion to be reached in the case as to the extent of his participation is that Stern himself stole the property. Yet the Court charged the jury as follows, "of course if the State has proved to your satisfaction beyond a reasonable doubt that the defendant stole the articles, *or that he aided or assisted somebody*
40 *else to steal them*, then it is your business to find

him *guilty*." It is insisted that the Court erred in charging the italicized words.

The error is reviewable both under exception taken at the trial and under Sec. 136 of the Criminal Procedure Act.

The offence with which Stern was charged is a high misdemeanor, Crimes Act, Sec. 158. At Common Law it was a felony, 2 Bish., New, C. L., Sec. 885, and all the learning as to principals and accessories became applicable and the parties concerned were principals or accessories according as they were present or absent when the act was committed, Clarks C. L. Sec. 44, (p. 82). But in misdemeanors there are no accessories, and all concerned whether instigators or perpetrators are principals, 1 Wharters C. L. Sec. 223. And all those who counsel or abet its commission, and who would be accessories before the fact, if the crime were a felony, are principals. While those who assist after the act, and who would be accessories after the fact in case of a felony are not punished at all for the particular misdemeanor, though they may be guilty of other substantive offences, Clarks C. L. p. 83.

Now it is the duty of the judge to charge the law as applicable to the case, and to charge it so that the jury may intelligently apply the law to the facts as given in evidence. The facts in this case as given in evidence if they tend to show the defendant's guilt, tend to fasten it upon him as the sole perpetrator of the crime. And the issue should have been directly submitted to the jury that to convict the defendant the jury must conclude beyond a reasonable doubt that Stern was at Palisades Park in Bergen County and stole the property.

But the learned judge who tried the case did not submit this specific issue to the jury, but expressly charged that Stern would be guilty, not only if he actually stole the property himself, but also if "*he aided or assisted somebody else to steal them.*" This clearly prejudiced the defendant; because the stolen property having been traced to the possession of the defendant, the jury in the absence of any instructions in the charge that receiving stolen property is a substantive offence, separate and apart from the offence of larceny and in the absence of any instruction as to what constitutes receiving stolen property, might have concluded that Stern did aid or assist somebody else to steal the property either as an accessory before or after the fact as those terms are understood by the common law.

- 10 11. It is elemental law that crime is local and that the prosecution must be had within the county in which the crime was committed. In this case, the alleged theft by Stern or his participation in the alleged theft must have taken place in Bergen County. There was no direct evidence in the case that Stern was ever in Bergen County, and the only proof from which his presence in Bergen County could have been intelligently deduced is
- 20 the possession of the stolen property. The defendant was entitled to have this legal principal clearly presented to the jury. It was his right to have it brought clearly to the jury's attention that they must declare whether the evidence warranted the conclusion that he was in Bergen County when he participated in the commission of the crime with which he was charged. And with this end in view counsel requested the Court to charge
- 30 40 " in order to convict the defendant under this in-

dictment, it is necessary for the State to prove the presence of the defendant *in this jurisdiction*, actual or constructive, "this jurisdiction" meaning Bergen County. (pp. 49, 50.)

This request the Court declined to charge, except as already charged, and an exception was duly noted. There is absolutely nothing in the charge bearing upon this point, and the Court's refusal to charge except as charged, was equal to an absolute refusal to charge the request. 10

This contention is met by the Supreme Court in its *per curiam* memorandum as follows: "It seems to us that this abstract proposition the defendant was not entitled to have charged. The Court had practically stated that, when it instructed the jury that if the State had proved to the satisfaction of the jury that the defendant stole the articles, or aided or assisted somebody else to steal them, he was guilty, otherwise not." But it is respectfully submitted that the request in this case was not an abstract proposition. The very object of it was to bring home to the jury the idea that the prosecution in Bergen County could not be maintained, unless there was presence in Bergen County, and what the trial judge stated elsewhere in his charge did not bring this idea before the jury. Hence, there is substantial error. 20 30

111. The Court further charged the jury (p. 48 1. 24 et seq.) "The defendant claims he purchased the rig from a man called Jo and he paid him for it, and of course if that is so, he is not guilty if you believe what he says, he is not chargeable with the crime set forth in this indictment, because if somebody else stole them, he cannot be 40

found guilty, *if he is an innocent purchaser of the goods.*"

The indictment contained only a single count, larceny.

The defendant had to be convicted of larceny or he had to be acquitted. It made no difference in this respect whether he was an innocent purchaser or whether he knew he was purchasing stolen property. The Court, in this respect, failed to distinguish between the thief and the receiver, and allowed the jury to receive the impression that his acquittal must depend upon the fact that he was an *innocent* purchaser of the goods.

Upon this point the Supreme Court says:— "The objection urged is to the words "if he is an innocent purchaser," leaving the jury to infer that his acquittal of larceny must depend upon the fact that he was an innocent purchaser. There was no count for receiving stolen goods and we do not think the words used by the court could have worked any prejudice to the defendant."

Now, it is submitted that this error in the trial judge's charge was more apt to prejudice because there is only the count of larceny, than if the indictment contained also a receiving count. For the jury were not told to distinguish between larceny and receiving, nor between the person who stole and him who received. On the contrary the jury was told that even if somebody else stole them the defendant can not be found guilty of larceny provided he was an *innocent purchaser* when he bought the goods. Under this decision the jury could very well have concluded that Stern did not actually steal the property, nor aided any other person in stealing it, but that he bought the

property, and did not buy it innocently. If the jury so concluded, then under this direction the jury could with reason have concluded that the line of distinction ran between the innocent purchaser and the purchaser who buys with guilty knowledge. This instruction therefore clearly prejudiced the defendant, and as the Supreme Court seems to concede that the instruction was erroneous, the judgment below should have been reversed. 10

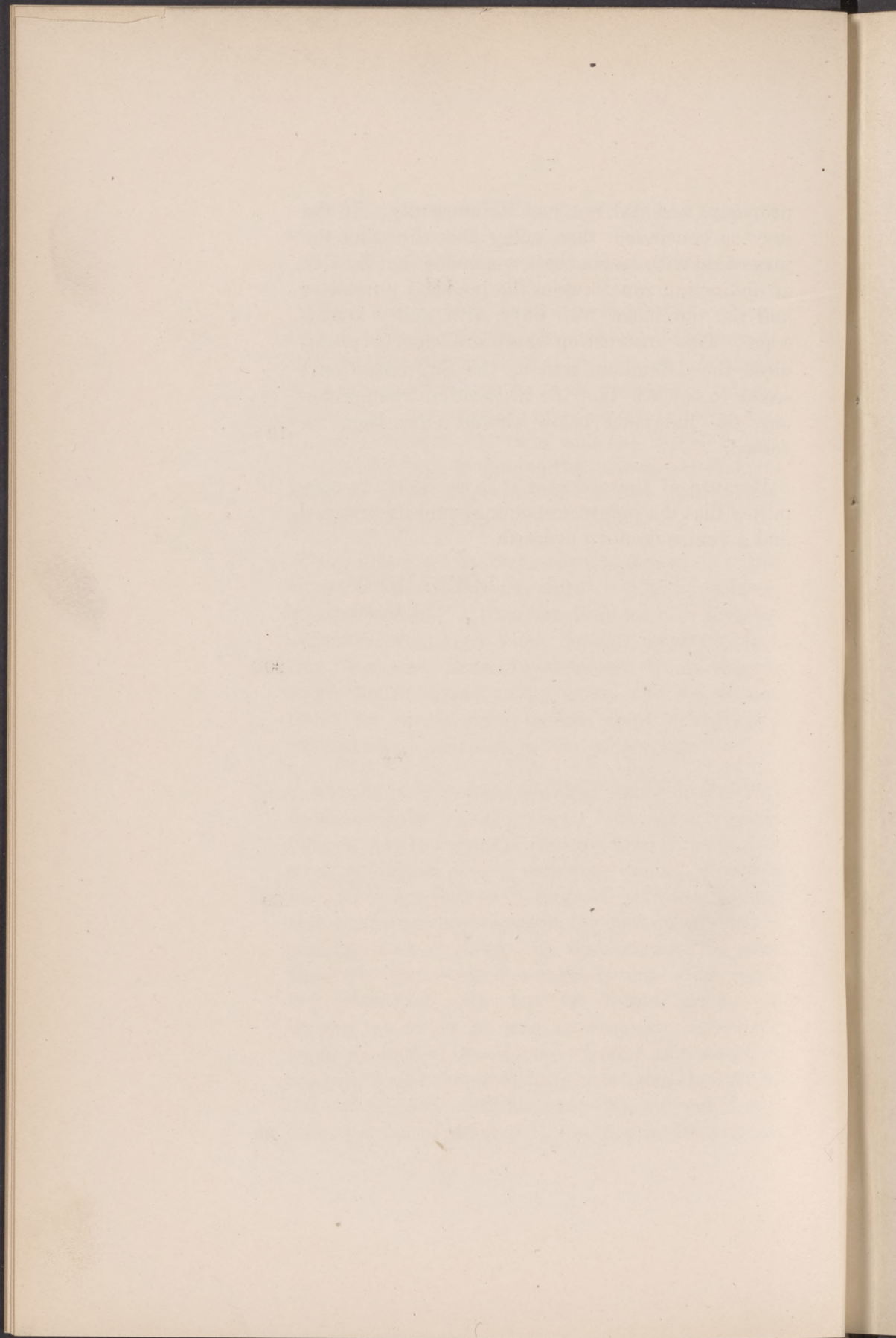
Because of these errors it is respectfully submitted that the judgment below should be reversed and a venire de novo ordered.

LOUIS HOOD,
of Counsel.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant in Error,

vs.

SAMUEL STERN,

Plaintiff in Error.

On Writ of

Error.

Brief of Defendant in Error.

The defendant was convicted of the larceny of a horse, wagon, two sets of harness and three blankets, the property of Charles H. Lozier, of Palisade Park, Bergen County, New Jersey, at the Bergen County Quarter Sessions, April Term, 1905.

HISTORY OF THE CASE.

On the night of the twenty-fifth of June, nineteen hundred and three, a horse and run-about wagon, two sets harness and three blankets, the property of Charles H. Lozier, were stolen from his premises at Palisade Park, Bergen County, New Jersey, and the following Tuesday he found the horse in the possession of one Nathan Liebner, a huckster from New York city, who was passing through Palisade Park at that time. Liebner, on being questioned by

Lozier, said that he had purchased the horse the twenty-ninth day of June from one Abram Schwartz, of New York city. Lozier, the owner, in company with the said Liebner, called upon Schwartz in New York city and was informed by Schwartz that he had purchased the horse from one William Lax. Lax informed the owner that he had received the horse from his cousin, Samuel Stern, this defendant, who resided in Newark, New Jersey. Stern was then called upon by the owner, in company with an officer, and Stern claimed that he had purchased the horse and wagon, harness and blankets from a stranger by the name of "Joe." Lax was arrested, charged with the crime. Stern is in the saloon business in Newark, and claims that he bought the horse for the purpose of driving; the same day, however, he found, according to his story, that the horse was too big for his barn; he then, the same evening, drove to New York city with the horse and wagon, and delivered them to his cousin, William Lax, with orders to sell them. He, however, retained the blankets, which he placed in a trunk upstairs over his saloon. Lax sold the horse next morning to Schwartz for \$70.00, and the wagon for \$4.00, and gave the money to the defendant.

ASSIGNMENTS 1 AND 2.

The case in question was one for the jury. The corpus delicti having been proven by the testimony of the owner, and a portion of the stolen property having been found in the pos-

session of the defendant (see page 12, Case Book, testimony of Charles H. Lozier) and the previous possession of the horse and wagon having been traced to the defendant, (see testimony of Charles H. Lozier, pages 7, 8, 9 and 10, also testimony of defendant, page 30), raised the presumption of guilt, and the explanation must be both reasonable and credible. The property in question was stolen on the twenty-fifth day of June, 1903, which was Thursday, and according to the testimony of the defendant on page 30, which was on Friday, he claims that he purchased the property in question in front of the auction room, corner of Washington and Broad streets, in the City of Newark, at the Bull's Head market, about one o'clock in the afternoon. By an examination of the testimony of Garret Lozier, on page 43, the son of the owner testifies that on Friday, June twenty-sixth, he went to the Bull's Head market in Newark, where Stern claims he bought the horse, and that he arrived there about 11.45 o'clock, and remained there until two o'clock, and says that the horse in question was not sold at that place between those hours, the time claimed by Stern, this defendant, and it is very evident that the jury disbelieved the explanation given by Stern, which they had a right to do, as it was entirely a question of fact.

ASSIGNMENT 3.

The Court practically charged what the request implied in the following language: "The

defendant claims he purchased the rig from a man called Joe and paid him for it, and of course, if that is so, he is not guilty; if you believe what he says, he is not chargeable with the crime set forth in this indictment, because if somebody else stole them, he cannot be found guilty if he is an innocent purchaser of the goods. Of course, he had possession of them, but that would not signify he is guilty of the charge."

The possession of stolen property raises a presumption of guilt, and this implies the presence of the accused, either actual or constructive.

"The recent possession of stolen property in another state raises the presumption of guilt as if the possession were in the state where the larceny is alleged to have been committed."

A. & E. Ency. of Law, Vol. 18,
page 486, and cases thereunder cited.

ASSIGNMENT 4.

The definition given by the Court, of larceny, is good law.

"It is incumbent on the judge to give to the jury an accurate definition of the crime, either in the language of the law, or in his own language."

State vs. Moore, 101 Mo., 316.

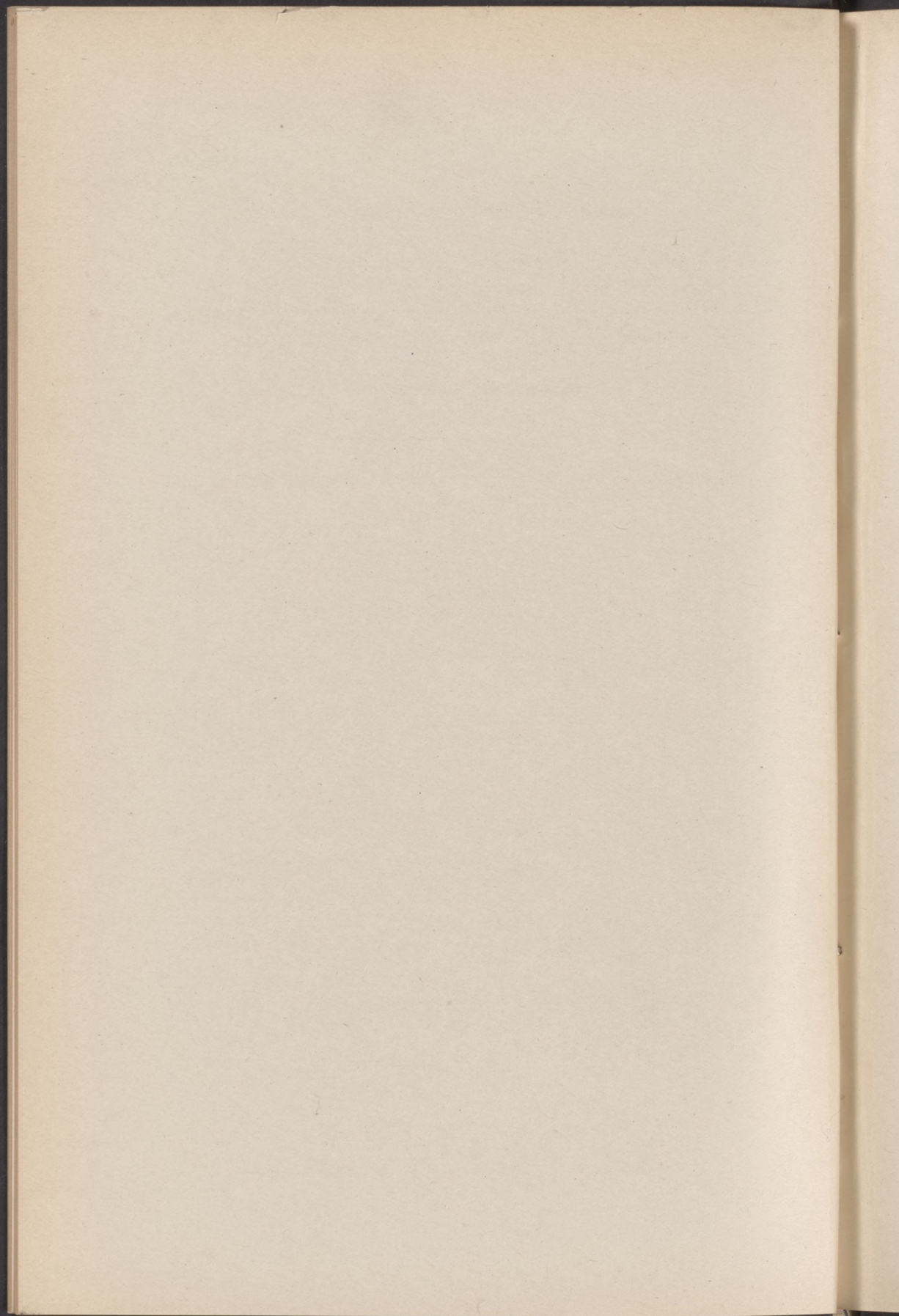
ASSIGNMENTS 5 AND 6.

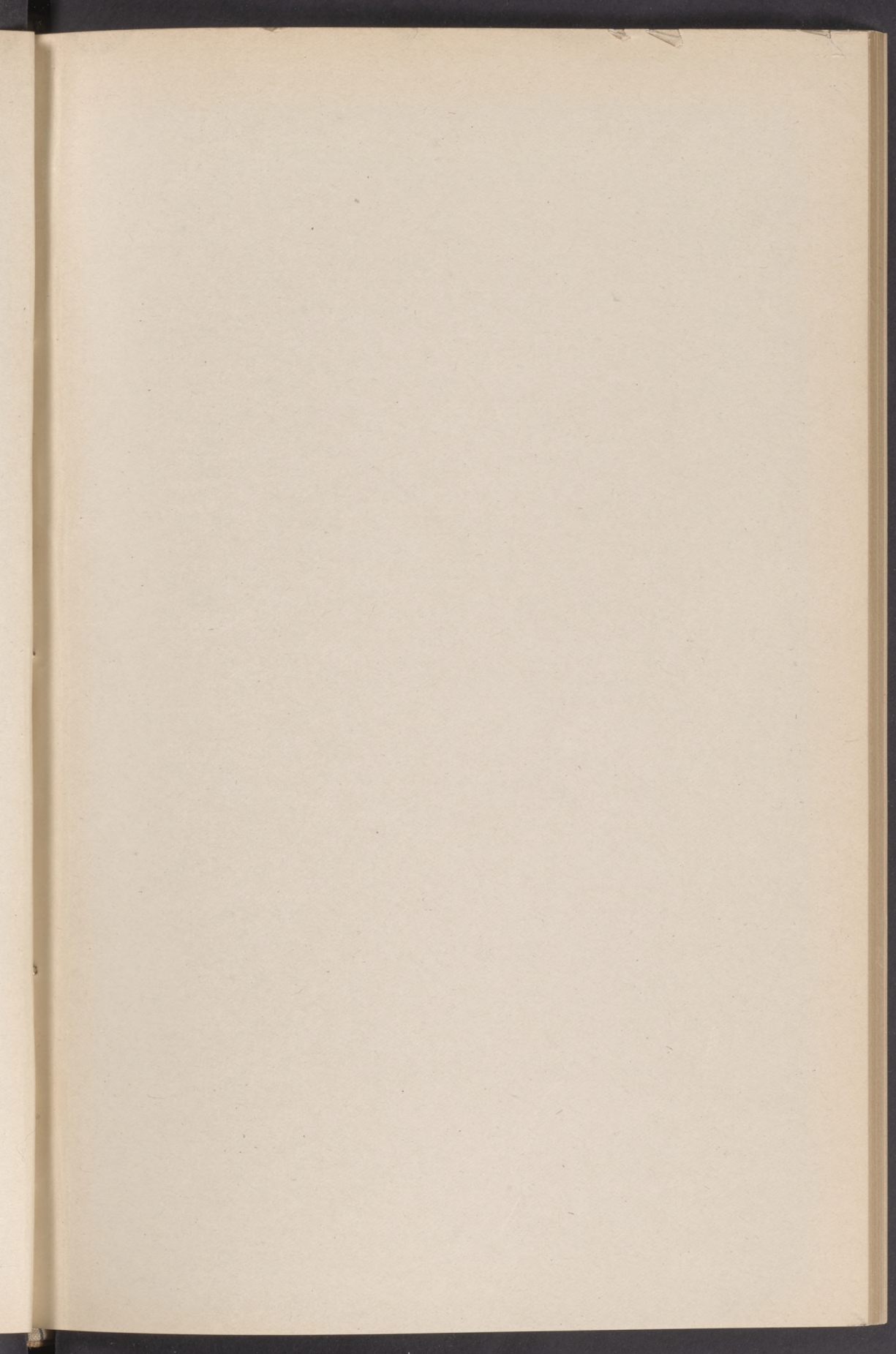
I am unable to discover anything in the charge of the Court, or in the conduct of the trial, any error harmful to this defendant, and believe that the judgment of conviction should stand.

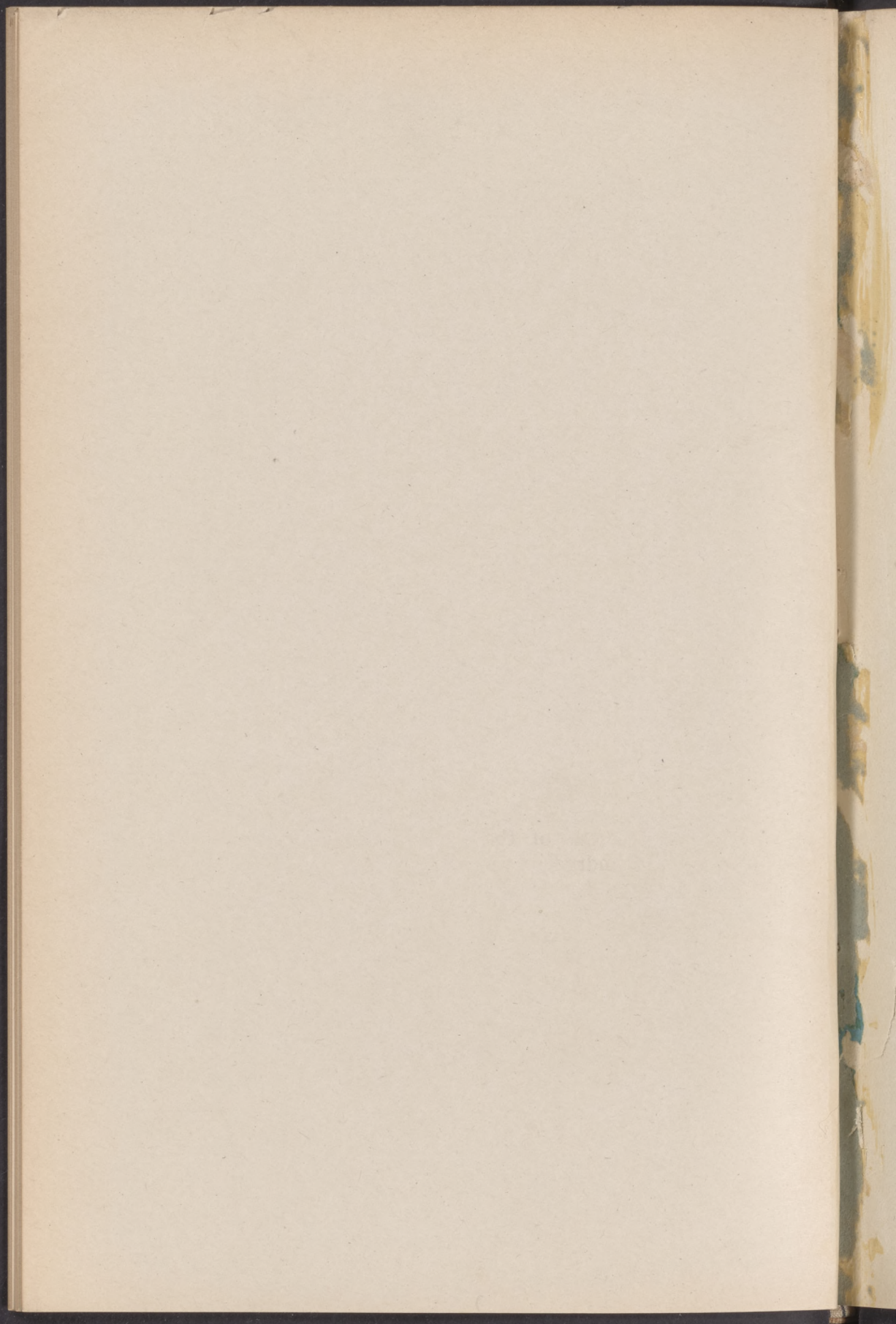
Respectfully submitted.

ERNEST KOESTER,

Attorney and of Counsel with Defendant in Error.







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New Jersey Supreme Court.

THE STATE OF NEW JERSEY,	}	On Writ	
Defendant in Error,		of Error to	
vs.		Bergen	10
SAMUEL STERN,		Quarter	
Plaintiff in Error.	)	Sessions.	

[L. s.] New Jersey, ss. The State of New Jersey to David D. Zabriskie, Esq., Judge of the Court of Common Pleas, of the County of Bergen, constituting the Court of General Quarter sessions of the Peace, holden at Hackensack, in and for the County of Bergen, for the term of April, in the year Nineteen Hundred and Five. 20

Because in the record and proceedings and also in the giving of judgment upon a certain indictment against Samuel Stern, late of the city of Hackensack, in the County of Bergen, for larceny *pro ut* the said indictment, whereof, before you he hath been indicted and is thereof convicted by a certain jury of the country taken between the State of New Jersey and the said Samuel Stern, as it is said, manifest error hath intervened to the great damage of the said Samuel Stern as and from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him the said Samuel Stern, command you that if judgment be given thereon, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court of Judicature, to be held at Trenton, on the seventh day of July, 40

Nineteen hundred and five, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton this fourteenth day of June, in the year Nineteen Hundred and five.

WILLIAM RIKER, JR.,
Clerk.

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Hood & Hood,
Attorneys.

Presented in open Court this fourteenth day of June, A. D. 1905.

Let it be filed, and the return thereon be made by the Clerk.

DAVID D. ZABRISKIE,
Judge.

Dated June 14, 1905.

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

Be it remembered, that at a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes in and for the County of Bergen, on the second Tuesday of September, in the year of our Lord one thousand nine hundred and three, before the Honorable Mahlon Pitney, Esquire, Associate Justice of the Supreme Court of the Judicature of the State of New Jersey, and David D. Zabriskie, Esquire, Judge of the Court of Common Pleas of the said County of Bergen, according to the form of the statute in such case made and provided, by the oath of Joseph A. Brohel, Edwin L. D. Hester, John R. Stevens, John A. Brandt, Charles H. Lozier, George Bayless, Ferdinand Brunner, Sr., Jacob Zahn, Frank L. Vrooman, Edward Mabie, Jacob A. Terhune, Harry Engel, William E. Parker, Charles Hoffman, Smith Chittenden, John M. Bogert, Harry B. Staggs, George W. Wheeler, John H. DeGraw, Jacob Vreeland, Abraham A. Ackerman, Richard E. Cochran, Nicholas B. Demarest, good and lawful men of the body of the County of Bergen aforesaid, duly summoned and returned, and then and there sworn and charged to enquire in behalf of the State of New Jersey, in and for the County of Bergen. It is presented in manner and form following:

“Bergen Oyer and Terminer,
 September Term, A. D., 1903.

BERGEN COUNTY, to wit.: The Grand Inquest of the State of New Jersey, in and for the body of the County of Bergen, upon their respective oaths PRESENT, that William Lax and Samuel Stern, late of the Borough of Palisades Park, in the said County of Bergen, on the twenty-fifth day of June, in the year of our Lord, one thousand nine hundred and three, with force and arms, at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one horse, one wagon, two sets of harness, three blankets, all of the value of two hundred dollars, of the money, goods and chattels of Charles H. Lozier, then and there being found, unlawfully did steal,

take and carry away, against 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."

The above Indictment was remitted to the Court of General Quarter Sessions for trial.

And that upon said Indictment the said defendant was heretofore convicted of larceny, and sentenced.

And that afterwards a Writ of Error was issued out of the Court of Errors and Appeals, to correct any error
10 that there might be in the said trial, record, judgment and proceedings aforesaid.

And that afterwards the said Writ of Error, after being duly returned in said Court, was argued, considered, and the said verdict and sentence was set aside by the said Court of Errors and Appeals, and a new trial granted to the defendant, and the record was remitted to this Court.

And afterwards, to wit, on Monday, the fifth day of June, in the year of our Lord one thousand nine hundred and five, at a session of the Court of General Quarter Sessions aforesaid, comes the defendant, and Ernest Koester,
20 Esquire, Prosecutor of the Pleas, who prosecutes, &c.

Therefore let a jury come here before our said Court of General Quarter Sessions, at New Barbadoes, in the County of Bergen aforesaid, on the fifth day of June, A. D. one thousand nine hundred and five, of twelve good and lawful men, each of whom shall be a citizen of this State and resident within the County of Bergen aforesaid, above the age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be
30 the better known, and who are not of kin to the said Samuel Stern, to recognize upon their oaths whether the said Samuel Stern be guilty of the larceny aforesaid specified, or not guilty, because as well the said Ernest Koester, Esquire, Prosecutor of the Pleas for the County of Bergen aforesaid, who prosecutes for the State of New Jersey aforesaid in this behalf, as the said Samuel Stern, have put themselves upon the said jury. And the same day is given to the parties aforesaid, at the same place. At which day, to wit, on Monday, the fifth day of June, in the year of
40 our Lord one thousand nine hundred and five (being as

yet in the Term of April, in the year of our Lord one thousand nine hundred and five), at the same session of the Court of General Quarter Sessions aforesaid, held at New Barbadoes, in the County of Bergen aforesaid, before the Honorable David D. Zabriskie, Esquire, Judge of the Court of Common Pleas in and for the County of Bergen aforesaid, here cometh as well the said Ernest Koester, Esquire, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as the said Samuel Stern, being brought to the bar here in his proper person. And the jurors of 10 the said jury, by the Sheriff of the County aforesaid for this purpose empanelled and returned, to wit.: August Heckel, Henry Johnson, Joseph Weston, Jesse Parsells, Charles Cumming, Paul Hoffman, Daniel Cook, Albert Van Nostrand, George S. Kincaid, Abram W. Ackerman, John Benson and Harvey Westervelt, being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises, upon their oaths say that the said Samuel Stern is guilty of the larceny aforesaid on him above charged, in the manner and form aforesaid, 20 as in and by said Indictment is above alleged against him.

And afterwards, to wit, on Wednesday, the fourteenth day of June, in the year of our Lord one thousand nine hundred and five, being as yet of the Term of April aforesaid, it was demanded of him, the said Samuel Stern, if he hath or knoweth anything to say wherefore the Court here ought not to proceed to pass judgment against him; who nothing further saith, unless as he hath before said.

Whereupon, all and singular the premises being seen, and by the Court here fully understood; it is considered 30 by the Court and the sentence of the law is, and the Court doth now order and adjudge that for the crime of larceny aforesaid, he the said Samuel Stern be imprisoned in the State Prison of this State for the term of two years, and from the expiration of said term until the costs of this prosecution be fully paid.

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

I, JOHN R. RAMSEY, Clerk of the County of Bergen, and also Clerk of the Court of General Quarter Sessions of the Peace in and for the said County, do hereby certify that the foregoing is a true copy of the Judgment Roll in the above case, as the same remains on file and of record in my office.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Hackensack in said County, this sixteenth day of June, A. D. one thousand nine hundred and five.

[SEAL.]

JOHN R. RAMSEY,
Clerk.

20 The Answer of the Court of General Quarter Sessions of the Peace in and for the County of Bergen within named:

The record and proceedings whereof mention is within made, with all things touching and concerning the same, to the Justices of the Supreme Court of the Judicature of the State of New Jersey, at Trenton, at the day and year within contained, is certified in a certain schedule to this writ annexed, as within I am commanded.

DAVID D. ZABRISKIE,
Judge.

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BERGEN COUNTY QUARTER SESSIONS.

THE STATE,
vs.
SAMUEL STERN,

Indictment
for
Larceny.

Transcript of the shorthand notes taken at the hearing 10
in the above stated cause, before Hon. David D. Zabriskie,
Judge, and a Jury, at the Court House, Hackensack, New
Jersey, June Fifth, nineteen hundred and five.

APPEARANCES:

ERNEST KOESTER, Prosecutor for the State.

CHARLES HOOD, for Defendant.

Prosecutor opens the case to the Jury and reads the 20
indictment which charges Samuel Stern and William Lax
with the larceny of a horse, wagon, harness and blankets,
on the twenty-fifth day of June, nineteen hundred and
three, the property of Charles H. Lozier.

Defendant's Counsel objects to the reading of the in-
dictment to the Jury which connects William Lax.

CHARLES H. LOZIER, sworn for the State.

DIRECT EXAMINATION BY PROSECUTOR KOESTOR:

Q. Mr. Lozier, where do you live?

A. At Palisade Park, Bergen County, N. J. 30

Q. Where were you living on the 25th of June, 1903?

A. Same place, Palisade Park.

Q. Did you lose a horse that summer?

A. Yes, sir.

Q. What else?

A. A horse, runabout wagon, two sets harness, and two
blankets.

Q. What was that horse worth?

A. \$200. 40

- Q. The wagon?
- A. About fifty dollars.
- Q. The harness?
- A. The wagon and harness about fifty dollars.
- Q. Where was that property?
- A. In the stable and carriage house about one hundred and fifty feet from the house.
- Q. Where were the blankets?
- A. In the stable.
- 10 Q. Where was that?
- A. In Palisade Park, in this County.
- Q. What time did you last see them on the twenty-fifth of June, nineteen hundred and three?
- A. I saw the horse about eight o'clock in the evening.
- Q. What was the color of that horse?
- A. It was a bay mare.
- Q. When did you miss them?
- A. In the morning, when my man called me.
- Q. What did you do?
- 20 A. I hooked up another horse and went to Ridgefield and telegraphed and telephoned around to different places.
- Q. Did you afterwards see that horse?
- A. Yes, on Grand Avenue, on the following Tuesday.
- Q. The horse was stolen on the twenty-fifth of June, 1903?
- A. Yes, sir.
- Q. In whose possession did you find the horse?
- A. In the possession of Nathan Liebner of No. 240 Rivington Street, New York City; he was in Palisade
- 3 Park with a load of fish.
- Q. Did you know this Mr. Liebner?
- A. I did not.
- Q. What did you do then?
- A. My son and I came up the road and I saw the horse standing there; I went up to him and spoke to him, and asked the man where he got him, and told him he was my horse. He said he had bought him from a man by the name of Schwartz.
- Q. In whose possession was he?
- 40 A. In Nathan Liebner's.

Q. What did you then do?

A. I unhitched the horse and he went home to his stable.

Q. What did you do after that?

A. Got another horse and hooked it to the fish wagon, and drove the load of fish to New York.

Q. The horse you found in Nathan Liebner's possession was your horse?

A. It was.

Q. When you got to New York, where did you go? 10

A. To No. 240 Rivington Street, where Mr. Liebner lived.

Q. Where did you go then?

A. To 353 Avenue D to a livery stable, kept by a man by the name of Grossman. I think he went to Schwartz's house. I am not positive.

Q. Who went with you?

A. I had detective Stevens and Liebner.

Q. You say you went to Grossman's livery stable?

A. Yes. Schwartz was there also. 20

Q. What did you find there of your property, if anything?

Objected to by Mr. Hood. Objection overruled.

A. The wagon and some of my harness.

Q. What part of the harness did you find?

A. A saddle, two dutch collars, and a pair of reins.

Q. Were they stolen also?

A. Yes, sir.

Q. Did you find your wagon there? 30

A. Yes, sir.

Q. The wagon was stolen the same time?

A. Yes, sir.

Q. What did you say to Schwartz?

A. I asked him where he got the horse.

Q. What did he say?

Objected to. Objection sustained.

Q. Then what did you do?

A. Got the wagon and the harness, and I went to 240 40

Rivington Street for my horse that had brought the load of fish down, and we hitched up and drove home, and came back the next day.

Q. Then where did you go?

A. We met William Lax there and—

Q. Where did Lax go?

Objected to by Mr. Hood. Objection sustained.

Q. What did you do next?

A. The next morning we met Lax in New York by
10 appointment. Mr. Westervelt met me there, and we went to Newark.

Mr. Hood objects to Lax's name being mentioned.

Exception asked for and allowed. Let it be sealed and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]

Judge.

Q. Whom did you meet in Newark?

A. We went to see Stern but he was not there; then
we went the next day.

20 Q. Who went with you and Mr. Westervelt to Newark?

A. William Lax.

Q. When you and Mr. Lax and Westervelt went to Newark, where did you go?

A. No. 2 Railroad Avenue.

Q. What is Stern's business?

A. He keeps a saloon.

Q. The day you succeeded in finding Stern, what was said to him by you or Westervelt, or by Lax in regard to this horse?

30 A. Our conversation was in regard to our losing the horse, and Lax said he had received the horse from Stern.

Q. Mr. Lozier, you attended a trial of this case before?

A. I did.

Q. Did you hear the testimony of Mr. Lax at that time?

A. I guess I did.

Q. Was Mr. Stern in Court at that time?

A. I think he was.

Q. Did not Mr. Lax at that time testify that—

Objected to. Question withdrawn.

40 Q. What did Stern say, if anything, about the horse?

A. He said he had bought it.

Q. Of whom?

A. A Polock.

Q. On the Wednesday morning when you and Mr. Westervelt and Lax and Stern met in Stern's saloon, what did you say first?

A. I think I said I was looking for my blankets and harness that was gone.

Q. Whom did you ask?

A. Stern, he said he bought the horse from Big Jo for 10 \$55.

Q. Did he say what he did with it?

A. He said he brought it to his shed, and the horse was too big for his shed, and he took it to New York and turned it over to Lax and told him to sell it.

Q. Did you ask him about the wagon?

A. I presume I did.

Q. Was anything said about the harness by you?

A. I think I said my bridle was gone; it was an open bridle and had rosettes on the sides. 20

Q. What did he say then; did you remain there all the time?

A. I cannot say how long we did remain there.

Q. Where did you go then?

A. I think he went down to Astor Place and Vanderpool Street looking for Jo.

Q. At whose instance?

A. I think one of the detectives said we would go and look for Jo, and Stern said he knew where he lived and would go along. 30

Q. Where did you go?

A. We went to Vanderpool Street and Astor Place, through some old barns and buildings, and we went to the house where Jo lived, and found that he had gone away a few days previous.

Q. From whom did you ascertain that?

A. From the woman he lived or boarded with.

Q. Do you know any such person as Jo?

A. I did not.

Q. All the information you had was what Stern told 40

you?

A. Yes, sir.

Q. When Stern talked to this woman you could not understand what he said?

A. No.

Q. You do not know what he said?

Q. Did you afterwards find a portion of your harness and blankets?

A. Yes, sir.

10 Q. Where.

A. In Stern's room up stairs.

Q. Whereabouts?

A. In his trunk.

Q. What portion?

A. The blankets and the bridle.

Q. They were part of the things taken with the horse?

A. Yes.

Q. Did you hear Stern say anything to Mr. Westervelt about them?

20 A. He said, "come up stairs, I have the blankets."

CROSS-EXAMINATION BY MR. HOOD:

Q. When you made your visit to Stern's saloon on that particular morning, when you got to Newark where did you first go?

A. I am not positive, but I think we went to the station house.

Q. Then you are in error in your direct testimony that you went first to Stern's saloon?

30 A. I won't be quite positive about that.

Q. You told Mr. Stern what you had lost?

A. Yes, sir.

Q. And he told you who he had bought the horse from?

A. Yes, sir.

Q. He suggested going to look for the Pollock?

A. Yes.

Q. In accordance with that suggestion you went with him to look for the Pole?

A. He was with us when we went to look for him.

40 Q. Who else went with you?

A. There were Westervelt, Lax and Stern and Joe Corden, the detective.

Q. As a matter of fact the conversation of going to look for Jo was held in the presence of the detective?

A. Probably.

Q. As a matter of fact you went to Detective Headquarters first?

A. I am not positive.

Q. And Mr. Stern suggested that you go and look for Jo?

10

A. He knew we were looking for blankets and did not say anything about it.

Q. When you came in you did not ask him anything about the blankets?

A. I think I did.

Q. You are not sure?

A. I do not want to be positive of it. It was so long ago.

Q. It was not blankets, it was to find Jo the man that Stern said he bought the horse from?

20

A. We wanted to find both, the man and the things.

Q. Now as a matter of fact at that particular time there was not anything said about blankets by you?

A. Before we went down they were spoken of.

Q. When you went into Stern's place you asked where Jo was, and he suggested that you go and find him, and that was the end of the conversation?

A. No.

Q. Sterns took you to the location where Jo lived?

A. Yes, sir.

Q. You searched the barns?

30

A. Yes, sir.

Q. Whom did you see there?

A. A woman and some children.

Q. Did Jo live there?

A. He had.

Q. How long had he been gone?

A. A few days.

Q. What was said when you got there?

A. The question was put to Stern to ask this woman

40

what Jo had taken away when he went away?

Q. You do not know what this woman answered?

A. I took Stern's word for it.

Q. Did he tell you?

A. He did, and Mr. Westervelt asked him to ask her whether he had taken any blankets with him.

Q. You were present?

A. Yes, sir.

Q. And all that had to be interpreted?

10 A. Yes, sir.

Q. Did you leave the house then?

A. Yes, sir.

Q. How long had you been there at Jo's house?

A. Five to ten minutes.

Q. Where did you go then?

A. We went up the avenue to get a car.

Q. Where did you go?

A. To Stern's place.

Q. And Stern said, "if it is blankets you are looking
20 for, I have them up stairs?"

A. Detective Joe and I were ahead of Mr. Westervelt and Mr. Stern, and Stern said to Mr. Westervelt that he had the blankets.

Q. You were not present?

A. No.

Q. Stern told you when you went back to come up stairs, that he had them up stairs?

A. Yes.

Q. He gave you the blankets and a bridle, and it was
30 your open bridle?

A. Yes.

Q. How did you recognize it?

A. It had rosettes on the sides.

Q. And Stern told you they were the blankets and the bridle that he got with the rig?

A. I think he did.

RE-DIRECT BY MR. KOESTER:

Q. Did he tell you how much he had got for the horse?

40 A. I think he said he got \$70 for the horse.

Q. Have you sold that horse since?

A. Yes, sir.

Q. Was the horse in as good condition when you got him back home as he was when he was stolen?

A. No, sir.

RE-CROSS BY MR. HOOD:

Q. How much did you get for that horse when you sold him?

A. Seventy dollars.

Q. You had her doctored?

10

A. Yes, sir; for a year.

Q. What was the matter when you got her back?

A. She was lame.

Q. She was away how long?

A. Four days.

Q. And she was lame when she got back?

A. Yes, sir.

Q. Did you not keep her for a year?

A. Yes, I turned her out to pasture.

BY MR. KOESTER:

20

Q. Did Mr. Stern tell you what relation Lax was to him?

A. Yes, cousin.

JOHN P. B. WESTERVELT, a witness on the part of the State, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

Q. You are an officer?

A. Yes, sir.

Q. And was an officer on the twenty-fifth of June, 1903?

A. Yes, sir.

Q. Do you remember going to New York with Mr. Lozier?

A. Yes, sir. I remember meeting him in New York.

Q. On what day?

A. On the first day of July, 1903, at Chambers Street Ferry, New York side.

Q. Did you meet anybody else?

A. Lax was there.

40

Q. This was a few days after the horse was stolen?

A. Yes, sir.

Q. How did you happen to go to New York?

A. Lozier sent for me about five o'clock in the morning.

Q. Where did you, Lozier and Lax then go?

A. To Newark Police Headquarters.

Q. Whom did you see?

A. We saw Chief Hopper, and told him what the trouble was and we got Detective Corden and we went to
10 Stern's place.

Q. Where did you go then?

A. We remained there a short time, and Stern was away, and we went from there to New York with Lax.

Q. What did you do there?

A. We hunted for a man said to be Jo Carlton.

Mr. Hood objects to previous answer. Objection sustained.

Q. Do you know where Lax is now?

Objected to. Objection sustained.

20 Q. Lax was here at the last trial?

A. Yes, sir.

Q. You knew Lax?

A. Yes, sir.

Q. Where did you go when you got to New York?

A. We went to find Carlton; we could not find him.

Q. When did you go to Newark again?

A. The next day.

Q. Who were with you?

A. Lozier, Lax and the detective Joe.

30 Q. Was that the first time you saw Stern?

A. Yes, sir.

Q. What conversation did you have?

A. Lax and Stern were both there and Lozier told them there were blankets and a head stall, and I think a whip missing, and we wanted to find them, but Stern made no reply at all, and we then asked Lax to go with us to the place where the alleged Jo lived. Lax said to Stern "you had better go," and Stern said, "I don't know," and finally between the two of them Stern did
40 go, and took us to a barn where this Jo was supposed to

keep his horse, and when we came there Lozier and Joe were hunting for the blankets and bridle. Stern stood off to one side and did not attempt to help at all to look for the blankets, and then we left the barn and went to the place where he was supposed to live.

Q. Who was supposed to live?

A. Jo Carlton.

Q. Who said he lived there?

A. Stern, and when we came there we found a woman and some children, and there was no Jo Carlton, and no other man; then the officer told Stern to ask the woman when Jo went away, and the reply that Stern gave us, was "two or three days ago." He then asked her whether he had taken anything with him, and the reply was, "I don't know."

Q. The reply was in Polish and translated?

A. Yes, sir. I then put the question whether he had taken any robes away, and she said "no," we then stayed a few minutes, and when we got on the street the officer and Lozier were ahead and Stern and I behind.

Q. Where were you going?

A. Toward the trolley to go to the depot, and I said, "if these things are to be found, I am going to find them." Stern then said, "if you are hunting for blankets I have them," and I called to the men ahead and told them Stern had them, and Stern took us back to the saloon up stairs, and he opened a trunk and took them out. Threw them out I might say.

Q. What did he throw out?

A. The blankets and head stall. When we got down stairs we put them in a bag and took them to headquarters.

Q. Did Stern tell where he got those things?

A. Said he bought them from Jo, the Polock.

Q. Did he say what he did with them?

A. He turned them over to Lax to sell.

Q. Did he say when he turned them over to Lax?

A. I cannot tell you that.

Q. Did you hear Stern testify at a former trial?

A. Yes, sir.

Q. Did he testify at that trial he turned them over the same day?

Objection to above question by Mr. Hood. Objection sustained.

CROSS-EXAMINATION BY MR. HOOD:

Q. Mr. Westervelt, who suggested going down to find the Polock when you came to Stern's saloon that morning that you recall?

10 A. I think the suggestion was made by detective Joe Cordena, to look for the blankets and headstall.

Q. Who suggested going to find Jo?

A. I do not know there was any suggestion made to find Jo.

Q. You heard what Mr. Lozier said; you were present with Mr. Lozier in Stern's saloon the morning you speak of?

A. On the second of July, yes.

20 Q. Who was it of that party in the saloon on the morning of the second of July, who suggested going to find Jo Carlton?

A. Charlie Lozier and Joe Cordena.

Q. Then when Mr. Lozier said the suggestion was made by Stern, he was mistaken?

A. Yes, I think so.

Q. This happened two years ago and you recollect all that happened?

A. Yes, sir.

Q. Then he is mistaken?

30 A. Yes, I stand by what I said, stand by my own statement.

Q. So it was Lozier who suggested it?

A. Lozier and the officer.

Q. Both at the same time?

A. Yes, it was at the same time.

Q. Who suggested where to go to find him?

A. That was suggested the day before.

Q. Who suggested that particular morning where to go to find Jo?

04 A. Lozier and the officer.

Q. And it was not Stern who suggested that either?

A. No, sir.

Q. And Lozier is mistaken in that also?

A. I think so.

Q. You are positive?

A. I am positive.

Q. Who led the way there?

A. One led the other.

BY THE COURT:

Q. Who?

10

A. Stern, Lozier, the officer and myself.

Q. You did not all lead?

A. We were all going along, no one in advance; Stern was very apt to be behind.

BY MR. HOOD:

Q. You did not know anything about the locality?

A. No, sir.

Q. How could you lead?

A. We led side by side.

20

Q. Lozier did not know the locality?

A. I think he did.

Q. And he led?

A. Sometimes.

Q. As a matter of fact, this matter did not impress itself on your mind, but still you are here two years after ready to tell who led?

A. I am.

RE-DIRECT BY MR. KOESTER:

Q. When Stern and Lax and you were there was anything said by Lax where he got the horse in Sam Stern's presence? 30

A. Stern said he bought the horse from a man by the name of Joe Carlton, and he paid \$55 for it.

Q. Did he buy the whole rig for \$55?

A. Yes, and he said when he got it to his stable, his stable was too small, and he told Lax to sell it and that Lax had taken it to New York.

Q. Did he say Lax had sold the horse?

A. Yes, sir.

Q. To whom?

A. A man by the name of Schwartz.

Q. Lax was there at the time?

A. Yes.

RE-CROSS EXAMINATION BY MR. HOOD:

Q. Are you working for a reward in this case?

A. Not a copper.

ABRAM SCHWARTZ, being duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. KOESTER:

Q. Where do you live, Mr. Schwartz?

Albert Marschner, sworn as interpreter.

Q. Where do you live?

A. No. 310 3rd Avenue, New York.

Q. Where did you live on the 25th of June, 1903?

A. On Third Street, New York.

Q. In the same place that you live now?

A. The same street.

Q. Did you know a man by the name of William Lax?

20 Objected to by Mr. Hood. Question allowed.

A. Yes, sir.

Q. Did you have any dealing with William Lax in June, 1903, in regard to the purchase of a horse?

Objected to by counsel for defendant. Question allowed.

Exception asked for and allowed. Let it be sealed, and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]
Judge.

30 A. I bought a horse of him.

Q. What else did you buy, if anything?

A. Nothing else, only a horse.

Q. Where did he have the horse when you bought it?

Objected to. Question allowed by the Court.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed. Let it be sealed, and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]
Judge.

40

A. The horse was hitched up in a buggy.

Q. Do you know what became of the buggy?

Objected to. Question allowed by the Court.

Defendant's counsel prays an exception to the ruling of the Court.

Exception allowed. Let it be sealed, and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]

Judge. 10

A. They found it in the livery stable.

Q. Do you know Mr. Liebner, Mr. Lozier and Mr. Westervelt?

A. Yes.

Q. What did you do with that horse after you bought it of Lax?

Objected to. Court allows question.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed. Let it be sealed, and it is sealed accordingly. 20

DAVID D. ZABRISKIE, [SEAL.]

Judge.

A. I sold it again.

Q. To whom?

A. To Mr. Liebner. (Mr. Liebner is asked to stand up.)

Q. Is that the man that you sold the horse to, and do you know his first name? 30

A. Yes, sir; his name is Nathan Liebner.

Q. Do you remember seeing Mr. Lozier and Mr. Westervelt (asks Mr. Lozier to stand up) on the first day of July or the last of June, 1903?

Objected to. Question allowed.

A. Yes, they were both in the house.

Q. Was anyone else with them?

A. Yes, a detective.

Q. Was Mr. Liebner there at that time?

A. Yes, sir. 40

Q. What did you do then?

A. When these people came I showed them a receipt for the horse.

Q. After you had shown the receipt did you go anywhere with these people?

Objected to. Not answered.

Q. After you had shown Westervelt, Lozier and the detective the receipt where did you then go?

10 A. I went with them to show them the man that I bought the horse of; I gave the receipt to the detective, and showed him where Lax lived.

Q. Did you go along to show them Lax's house?

A. We met them in a coffee saloon.

Q. That was the man from whom you bought the horse?

A. Yes, sir.

Q. How much did you pay for the horse?

A. Seventy-five dollars.

Q. Do you know Sam Sterns?

20 A. No.

NATHAN LIEBNER, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

Q. Mr. Liebner where were you living June 25th 1903?

A. No. 240 Rivington Street, New York City.

Q. What was your business at that time?

A. I was dealing in live fish.

Q. Do you peddle fish in New Jersey?

A. I buy my fish here fresh from the river.

30 Q. From whom did you buy a horse?

A. From Abram Schwartz.

Q. The previous witness on the stand?

A. Yes.

Q. How much did you pay for that horse?

A. One hundred and ten dollars.

Q. Did you buy anything else of him at that time?

A. Nothing but the horse.

Q. Do you remember meeting Charles Lozier?

40 A. I knew him once. I had the trouble taking the horse from the wagon.

Q. This horse you bought from Schwartz where did you have him the next day?

A. I bought the horse, and I paid the cash, and then I went to Fort Lee for fish, and I went through the main road in Leonia, and I got some fish, and I passed Mr. Lozier's house down to Leonia and back.

Q. Did you have any conversation with Mr. Lozier?

A. Not before.

Q. On that day?

A. When I was going back he stopped me, and said the 10 horse I was driving belonged to him.

Q. Where?

A. At his house.

Q. Then what did you do?

A. He gave me another horse and hooked me up, and brought me to New York.

Q. You say he gave you another horse?

A. Yes, he gave me another horse to bring my load to New York.

Q. The horse you had bought of Mr. Schwartz, what 20 became of that?

A. Mr. Lozier and the constable took it in their stable.

Q. Who went with you to New York?

A. Mr. Lozier.

Q. Did anyone meet you in New York?

A. Yes. The next day.

Q. Who?

A. Mr. Lozier and Mr. Westervelt. I met them at the ferry.

Q. Was anybody else with you?

A. A detective from New York.

30

Q. And you four went to Schwartz's house?

A. Yes, I showed them my receipt, and we went to Mr. Schwartz's house and found him home, and I said "here is the man I bought the horse from."

Q. Then where did you go?

A. The detective took Mr. Schwartz and we went around to see the man who he bought it of.

Q. Where?

A. To see the man who had sold the horse.

40

Q. Who?

A. William Lax.

Q. Did you go along?

A. Yes.

Q. Did you see Mr. Lax?

A. Yes.

Q. The horse was all you bought of Schwartz?

A. Yes, that is all.

CROSS EXAMINATION BY MR. HOOD:

10 Q. Do you know Mr. Stern, or have you seen him?

A. I have seen him here in Court.

Q. You do not know him?

A. No.

Q. Never had any business with him?

A. No.

WILLIAM A. STEVENS, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

Q. You are an officer in New York are you?

20 A. Yes, sir.

Q. What station are you connected with?

A. Fourteenth Precinct.

Q. Do you remember Lozier and Westervelt coming to you about a horse being stolen?

A. Yes, sir.

Q. On what day?

A. I think it was on a Tuesday.

Q. Where did you then go?

A. We went to Liebner's house in Rivington Street.

30 Q. What did you find there?

A. I found Mr. Liebner there.

Q. Where did you go from there?

A. From Mr. Liebner's house we went to Mr. Schwartz's house in Third Avenue.

Q. Where did you go from there?

A. We went to a cafe in Houston Street.

Q. Whom did you find there?

A. William Lax.

Q. Then you had some conversation with Lax?

40 A. Yes, sir.

Q. What was it about?

Objected to. Objection sustained.

Q. Where did you go then?

A. To a livery stable in 4th Street, kept by a Mr.

Grossman.

Q. What did you find there?

A. A wagon and some harness that Mr. Lozier identified as being his.

Q. Lax showed you where they were?

A. Yes, sir.

10

CROSS-EXAMINATION BY MR. HOOD:

Q. You do not know Mr. Stern?

A. I have seen him in Court once.

Q. You heard him testify before?

A. No, sir I left before he testified.

JOSEPH CORDANO, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

Q. Mr. Cordano, you are an officer in Newark, are you?

A. Yes, sir.

20

Q. Do you know Sam Stern?

A. Yes, sir.

Q. Do you recall a visit of Lozier and Westervelt to Police Headquarters in 1903?

A. Yes, sir.

Q. Did you go with them anywhere?

A. Yes, Mr. Lozier and Mr. Westervelt and William Lax were at Headquarters on the first day of July, to see Chief Hopper and he detailed Detective Jacobs and myself to go with them to investigate a horse stealing case, and we went to where Sam Stern lived, and he was not there, and we remained there, waiting for him; we were told he was in New York, and detective Jacobs, Lozier, and Lax went down to Vanderpool Street looking for the Pollock Jo, and we waited until they came back.

30

Q. Do you know anyone there by the name of Jo, a Pollock?

A. No.

Mr. Hood moves to strike out the last answer.

Court allows it to stand.

40

Q. What did you do then?

A. We remained a little while, and then went back to Headquarters.

Q. Did you see Stern at that time?

A. Not that day.

Q. Who were you with the next time?

A. Mr. Lozier and Marshall Westervelt.

Q. Where was Lax?

A. He was there that day.

10 Q. Did you have any conversation with Lax in Stern's presence?

A. We questioned him about this Polock Jo, and we told him we were going to Astor and Vanderpool Streets looking for him.

Q. Who suggested going down to look for him?

A. I don't remember.

Q. Who suggested where Jo lived?

A. I cannot say now, I know Lax and detective Jacobs went down the day before.

20 Q. Did you go down on the day in question?

A. Yes, sir.

Q. Then what did you do?

A. We went to a stable and searched for blankets and harness.

Q. Before you went down did you say anything about blankets and harness to Stern?

A. We told Stern we were going to the stable to look for blankets and harness.

30 Q. What did Stern say when you told him you were looking for blankets?

A. He said go and search the stable where the Polock used to put his horse, and then we went to a house about four blocks from the stable, and we saw a woman there, and we told Stern to ask this woman if there were any blankets there. This house was the place Jo was said to have lived and I talked to a little girl, and got her to interpret for me.

Q. Who asked the questions?

A. I asked some and Mr. Westervelt asked some.

40 Q. What questions did you ask?

A. I asked where Jo was, and asked if he had taken anything with him, and she said "I don't know."

Q. Do you understand Polish?

A. No.

Q. The questions and answers were given through Stern?

A. Yes, sir.

Q. And you took his interpretations?

A. Yes, sir.

Q. You really do not know what he did ask this woman?

A. No.

Q. Was the question put to him to ask her whether Jo had taken away any blankets?

A. Marshal Westervelt asked Stern to ask her if he had taken away any blankets, or robes.

Q. And what did Stern say her answer was?

A. She said "I don't know."

Q. What did you do then?

A. We started then to go to the car. 20

Q. Who was walking with Stern on the way back?

A. I think Mr. Westervelt was walking with him.

Q. Who were you walking with?

A. I was walking with Lozier ahead.

Q. How far ahead?

A. About one hundred feet.

Q. When did you first hear about those blankets being in Stern's possession?

A. On the way up the street Mr. Westervelt and Stern were walking together, and Westervelt said to us "Stern says he has some blankets." 30

Q. Was Stern present when he told you, and did he hear it?

A. Yes, Westervelt said "Stern says he has some blankets in the house, if that is what we are looking for," and we told him that was what we were after, and he said come back with me, and he said come up stairs, and he opened a box or trunk and threw them out.

Q. How many blankets did you find?

A. A robe and blanket and head stall. 40

Q. Did Stern tell you where he had got these blankets and harness?

A. He said he bought the whole business from Polock Jo.

Q. Did he say what he had done with them?

A. He had sold them.

Q. To whom?

A. He had given them to William Lax to take to New York and sell because his stable was too small.

10 Q. How long have you been an officer?

A. About fourteen years.

Q. In Newark?

A. Yes.

Q. Are you acquainted around Vanderpool Street and Astor Place?

A. I am very well acquainted around there.

Q. Did you ever know anyone by the name of Polock Jo?

A. No.

20 Q. Did you ever hear of him before this case was tried?

A. No.

Objected to. Not sustained.

CROSS EXAMINATION BY MR. HOOD:

Q. Were you present when Mr. Stern was asked about the stolen horse in his saloon?

A. Yes, sir.

Q. Did he give the information upon being asked about this horse?

30 A. Yes.

Q. He told you all about it?

A. Yes.

Q. Did he tell you he knew Polock Jo?

A. He said he did.

Q. He did not hold anything back about that?

A. Not about the horse or stable.

Q. Offered to go along?

A. Yes.

40 Q. He gave you all the assistance he could?

A. He acted that way.

Q. He took you up stairs and gave you the blankets and halter? In every way he could he gave you assistance to recover the property and find the man?

A. He went around a few times.

Q. You say you do not know Pollock Jo?

A. No, sir.

Q. Newark is a pretty big city, is it not?

A. Yes, sir.

Q. You do not know everybody in that city? 10

A. No, sir.

Q. You do not know everybody who is engaged in buying questionable horses?

A. No, sir.

Q. And you do not know Pollock Jo?

A. No.

BY THE COURT:

Q. Were Lax and Stern both there the day he (Stern) told about turning the horse over to Lax to sell?

A. Yes, sir. 20

Mr. Westervelt recalled and Mr. Koester asks the following:

Q. Was the man Lax in Newark the same Lax that was with you in New York with Mr. Schwartz and Liebner?

A. Yes, sir.

State rests.

SAMUEL STERN, the defendant, being sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HOOD:

30

Q. Where do you live?

A. No. 72 River Street.

Q. In what city?

A. Newark, N. J.

Q. How long have you lived in Newark?

A. Seven years.

Q. You are married and have a family?

A. Yes, sir.

Q. What business are you in?

A. The saloon business. 40

Q. How long have you been in the saloon business in Newark?

A. Seven years.

Q. Do you remember purchasing a horse the latter part of June two years ago?

A. Yes, sir.

Q. What did you buy?

A. I bought a horse, harness and buggy on the 25th of June, 1903.

10 Q. Where did you buy that?

A. In front of the auction room, at the corner of Washington and Broad Street, Bulls Head Stable.

Q. About what time of the day?

A. About one o'clock in the afternoon.

Q. Do you remember the day you bought it?

A. Yes, sir.

Q. What day of the week was it?

A. On a Friday.

Q. Do you know that that was the twenty-fifth of June?

A. Yes, sir.

Q. Did you buy any blankets?

A. Yes, sir.

Q. How did you buy those things?

A. I bought the whole rig together.

Q. Of whom did you buy it?

A. Of Joseph Shatteas.

Q. Tell us about this purchase; tell the jury about it?

A. I always keep a horse, and I sold my horse, and I
30 wanted a horse, and I went to the Auction to buy a horse, and I happened to meet Joseph Shatteas, and he asked me what I was doing there; I told him I wanted to buy a horse, and he said "I have one to sell" and I asked him what he wanted for it, and he said \$70 and I said that is too much, and I made a bargain with him for \$55.

Q. After you made the bargain with him, what did you do?

A. I went into a saloon, the Arlington Hotel, and we had a drink. and he gave me a receipt, and I took it home.

40 Q. Where is that saloon?

A. On Washington Street.

Q. Near the Public Library?

A. Right next door.

Q. And you paid him the \$55 in the saloon?

A. Yes.

Q. Was anybody present?

A. Yes, Thomas Tuite.

Q. When you paid him the \$55 was anything done?

A. We had a drink, and I paid him the \$55 and I took the horse home, and I had a stable in the back of the saloon, and when I got home I found the horse was too big for the stable, and I left him out there three or four hours, and afterwards I had some business in New York, and I hitched the horse up and drove him to New York. 10

Q. What did you do with him?

A. I put him in a stable.

Q. In whose charge?

A. In the livery stable I put him.

Q. Did you sell him?

A. No, I did not. 20

Q. Who did sell him

A. I left him over with Lax to sell.

Q. What is his name?

A. William Lax.

Q. Is he related to you?

A. His mother is a cousin of mine; he is a cousin.

Q. Had you ever been over to see him before?

A. Yes, sir.

Q. Had you ever driven over there before?

A. Yes, sir. 30

Q. Now you say you got a receipt; where is that receipt?

A. The last time I saw it it was in this Court.

Q. Have you had possession of it since?

A. No, sir.

Q. Mr. Stern have you ever been in Hackensack before to-day?

A. Yes, once.

Q. On what occasion?

A. On this same case. 40

Q. Do you mean to say you were here once?

A. I was here three times.

Q. In connection with this case?

A. All on account of this case.

Q. Have you ever been here on any other business?

A. No.

Q. Have you ever been in the County of Bergen other than on this case?

A. No, sir.

10 Q. Have you ever stolen a horse from Mr. Lozier?

A. No, sir.

Q. Ever had anything to do with the stealing of a horse?

A. No, sir.

Q. Or directed or caused anybody to steal a horse?

A. No, sir.

CROSS-EXAMINATION BY MR. KÖESTER:

Q. You say you bought this horse from this man Jo Shatteas?

20 A. Yes, sir.

Q. Where?

A. In Newark.

Q. Where in Newark?

A. In front of the Auction room stables, at Bulls Head.

Q. You paid \$55 for the horse, runabout wagon, harness and blankets?

A. Yes, sir.

Q. When did you sell the horse?

30 A. The next day.

Q. What did you do with the horse immediately after you bought it?

A. I took it home.

Q. What time of day?

A. About 2.30 or 3.00 o'clock.

Q. Where had you been standing with the horse before that?

A. At the stable.

Q. You bought the horse at one o'clock?

40 A. Yes, sir.

Q. Who took care of your saloon?

A. I had a bartender.

Q. What did you do with the horse?

A. I took him home and he was too big for the stable.

Q. You knew how large your stable was before you bought the horse?

A. I did not have the stable with me.

Q. You did not have the stable with you when you bought the horse, therefore you did not know how large it was? 10

A. No, sir.

Q. When you got the horse there you found the stable too small for the horse, and the horse too big for the stable?

A. Yes.

Q. Did you unhitch the horse?

A. Yes, sir.

Q. What did you do then?

A. I tried to take him into the stable.

Q. Then what?

A. I left him standing in the yard. 20

Q. How long did you leave him standing in the yard?

A. About an hour and a half.

Q. What did you do then?

A. I went in the saloon.

Q. You did not stay there long did you?

A. No, I went to New York.

Q. What did you go to New York with?

A. With the horse.

Q. What did you take? 30

A. I drove the horse and wagon over.

Q. Where did you put the blankets and harness?

A. I put them in the saloon, up stairs in a trunk.

Q. Why did you not leave them in the saloon down stairs; why did you put them in a trunk?

A. I did not want to hang them up in a saloon; I put the blankets and bridle in the trunk.

Q. And the collar?

A. No, sir.

Q. You drove to New York; what time did you get to 40

New York?

A. About seven o'clock.

Q. Where did you go?

A. I placed the horse first.

Q. Where did you go?

A. I went to Houston Street, Winter & Fast's livery stable.

Q. Did you put the horse in the livery stable then?

A. Yes.

10 Q. Wagon and harness?

A. Yes.

Q. Where did you go then?

A. To a friend of mine in Third Street.

Q. Where?

A. To the old man Lax's house.

Q. What is his name?

A. Louis Lax.

Q. Do you know William Lax?

A. Yes.

20 Q. Did you see William Lax after this?

A. Yes.

Q. Did you stay there all night?

A. Yes, sir.

Q. What did you tell William Lax about the horse?

A. I told him the horse was too big for my stable, and if he had a buyer I would sell him. He said I could leave the horse, and he would try and sell it.

Q. Did you leave the wagon there?

A. Yes.

30 Q. Why did you not leave the wagon in Newark?

A. I wanted to ride in it.

Q. William Lax is a cousin of yours?

A. Yes.

Q. Did you know where William Lax is now?

Objected to by Mr. Hood. Objection sustained.

Q. When did you see William last?

A. I don't remember.

Q. What did you tell William about this horse?

40 A. I told him he was too big, and I wanted to sell him

if I could get a buyer.

Q. What did you tell William to sell it for?

A. \$70 or \$75.

Q. How much did you tell him to sell the wagon for?

A. The wagon was not worth much.

Q. How much?

A. I told him to sell it for fifty cents, if he could not get any more.

Q. Do you mean to tell us that a rubber tired runabout wagon you drove to New York in you would sell for fifty cents? Did you tell him how much you bought it for? 10

A. I told him I bought the whole thing for \$55.

Q. Who was present when you bought this horse?

A. Thomas Tuite.

Q. Anybody else?

A. Tuite and John Ward.

Q. Is Mr. Tuite here?

A. Yes sir.

Q. Is Mr. Ward here? 20

A. No sir.

Q. Do you know where Ward is?

Objected to. Not answered.

Q. Do you know if anybody else was present at that time?

A. No.

Q. How long had you known this Joseph Carlton or Shatteas?

A. About six months.

Q. What is his business? 30

A. Peddler.

Q. Have you ever bought horses before?

A. Yes, for myself.

Q. From whom?

A. The auction stables.

Q. How many horses have you bought since you sold this one?

Objected to. Objection sustained.

Q. What nationality is this Jo?

A. A Polander. 40

Q. You talk Polish?

A. Yes.

Q. Is Jo a married man?

A. He was not at that time.

Q. Where did he live?

A. In Astor Street.

Q. What number?

A. I could not tell you exactly, I think 26½ or 26;
I could go there.

10 Q. What was he doing at this sale stable?

A. He was selling a horse.

Q. Was he auctioning the horse off?

A. No.

Q. How did he know you wanted to buy a horse?

A. I told him I wanted to buy a horse, and he told me
he had one to sell me.

Q. Where was the horse?

A. Across the street.

Q. Tied?

20 A. No.

Q. Nobody standing with the horse?

A. There were a lot of people standing around on sale
day.

Q. You were on one side of the street and the horse
was on the other side?

A. Yes, across the street.

Q. Was the horse standing there all alone?

A. All alone.

Q. Was the horse hitched up alone?

30 A. Yes, sir.

Q. To the same wagon that you bought?

A. Yes, sir.

Q. What was Jo doing across the street?

A. He was there.

Q. How did you happen to find Jo?

A. I went there to buy a horse.

Q. Did you look up Jo?

A. No, he said "what are you doing here?" and I told
him I wanted to buy a horse.

40 Q. What did you do?

A. I looked over the horse and asked him what he wanted for it.

Q. What do you know about a horse?

A. I have had horses.

Q. He was too big for your barn?

A. Yes.

Q. You gave him \$55 for the whole rig; pretty cheap, wasn't it?

A. Not so cheap.

Q. You sold him for \$70? 10

A. Yes, may be the man that bought him did not think he was cheap.

Q. Was anything the matter with the horse?

A. I don't know.

Q. Do you remember when the officer and Mr. Lozier came to your saloon?

A. I was not home the first day.

Q. When they came Lax was sitting in your saloon, and you knew the officers were coming?

A. Yes. 20

Q. What did they say to you?

A. They asked me who I had bought the horse from?

Q. And you told them Jo?

A. Yes.

Q. Do you know of anybody in Newark who knows Jo?

A. The woman where he boarded.

Q. Do you know anybody else who knows Jo?

A. The woman he was boarding with.

Q. Then you and the woman he boarded with are the only ones that know Jo? 30

A. I don't know about that; he might have had a lot of friends.

Q. Who introduced you to Jo?

A. Himself; he was a peddler.

Q. What did he sell?

A. Green stuff.

Q. How often did you buy of him?

A. Whenever I met him.

Q. Has he been to your saloon often?

A. Whenever he passed and I wanted anything, he 40

stopped.

Q. Did Jo have a license to sell?

Objected to. Not answered.

Q. What kind of a wagon did he have?

A. A peddler's wagon.

Q. How many horses?

A. One.

Q. Anybody drive with him?

10 A. Sometimes.

Q. Did he go by every day?

A. I did not see him every day; he might have gone by.

Q. Have you ever been convicted of a crime.

A. No, sir.

Objected to by Mr. Hood.

Q. When the officers went with you to see Jo, you did not find him at home?

A. No, sir.

20 Q. Whom did you find at home?

A. When we went down I asked them (Lozier, Westervelt and Corden) where they wanted to go first, to the stable or to the house, and we went to the stable first, and did not find anything, and then we went to the house, and saw a woman and some children.

Q. When you got there did the officer tell you to ask this woman if Jo had taken anything away with him?

A. I asked first if he was living there, and she said "yes."

30 Q. You knew he lived there?

A. Yes.

Q. You asked her in Polish?

A. Yes.

Q. And you gave the translation?

A. Yes.

Q. Anybody understand it but you?

A. No.

Q. None of the other people asked her any questions?

A. No, only through me.

40 Q. Did they ask about blankets?

A. They asked if he took away a trunk.

Q. When Lozier and Westervelt came in your saloon what did they say they were looking for?

A. They were looking for a horse that was stolen.

Q. Now when you knew that the horse, wagon, blankets and harness belonged to Lozier, why did you not tell Mr. Lozier and Mr. Westervelt at that time that you had the blankets in the trunk?

A. Because they did not ask me about it.

Q. Did it not occur that you had some of the property 10 in your house?

A. There were three talking to me, so I did not remember everything.

Q. They were not trying to coral you, they were looking for Jo?

A. Yes, and I went with them.

Q. And you never told them anything about the blankets?

A. When they asked about blankets I told them I had them upstairs, and I had a bridle, and told them it had 20 rosettes on.

Q. You never have seen this man Jo since?

A. No.

Q. Who has his peddling business now?

A. I don't know.

Q. Have you been to his house inquiring?

A. Yes.

Q. When were you there?

A. Lots of times.

Q. What for?

A. Looking for Jo. 30

Q. It was on Friday you bought this horse?

A. Yes.

That is all.

Thomas Tuite, a witness called on behalf of the defense, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOOD.

Q. Where do you live?

A. In the City. 40

- Q. What City?
 A. City of Newark.
 Q. How long have you lived in Newark?
 A. Thirty-eight years.
 Q. Do you work at anything?
 A. Yes, sir.
 Q. For whom?
 A. Mr. Cornell.
 Q. How long have you been working for Mr. Cornell?
 10 A. Going on two years.
 Q. Do you know Sam Stern?
 A. Yes, sir.
 Q. Were you present some time in the latter part of
 June, 1903, when Stern bought a horse and wagon?
 A. Yes, sir.
 Q. Where was it that he bought it?
 A. Washington and Broad Streets, opposite Bulls Head
 Market.
 Q. What did they sell at that market?
 20 A. Horses.
 Q. Do you know where the Public Library is?
 A. It is a couple of doors away.
 Q. What time of day did he buy it?
 A. Some time in the noon hours.
 Q. Where were you?
 A. I was coming from the Home Brewing Company on
 Actien Street.
 Q. What did you see when you got to where Bull's
 Head market is?
 3 A. Mr. Stern and another big man, and they were
 talking about selling a horse.
 Q. Did you stop?
 A. Yes.
 Q. What did Stern do, and what did the big man do?
 A. They went into the Hotel next to the Stable and
 called me in.
 Q. What did you see then?
 A. Stern said, "Let us have a drink first"—and he
 pulled out some money.
 40 Q. Whom did he give it to?

A. The man that was with him.

Q. Do you know what he paid him for?

A. No, sir.

Q. Were you told what he bought?

A. He said it was for the horse outside.

Q. After paying the money did the tall man give Stern anything?

A. He wrote on a piece of paper a receipt.

CROSS-EXAMINATION BY MR. KOESTER:

10

Q. Where was the horse?

A. On the street.

Q. How close to Bull's Head Market?

A. A few doors below.

Q. You examined the horse?

A. I just looked at him; I stayed a half a minute.

Q. When you first saw Stern and this big Pole, were they by the horse?

A. Yes, sir.

Q. How long did they stand there?

20

A. A couple of minutes.

Q. What time of day was it?

A. Between twelve and one o'clock.

Q. Did you know this man Jo?

A. By seeing him.

Q. Did you know him; did you ever speak to him?

A. No, I might have seen him before. I don't know for sure.

Q. You do not know anything about Jo?

A. I think I have seen him on a peddler's wagon a couple of years ago.

Q. Just describe him to us?

A. I should judge he was about six feet high, dark hair, and big dark moustache.

Q. What kind of a hat did he have on?

A. Alpine hat.

Q. What kind of a coat?

A. I could not say now.

Q. Did you stand right by him?

A. Yes.

40

Q. You had a drink with him?

A. Yes.

Q. Two drinks?

A. Only one.

Q. You had been drinking before you came down there?

A. Yes, I drank two glasses of beer.

Q. Have you been in Stern's saloon since that time?

A. Sometimes.

10 Q. Quite often?

A. Not so very often.

Q. Are you well acquainted around Bull's Head?

A. Yes, sir.

Q. What was the color of this horse that Stern bought?

A. It was bay.

Q. Was it a horse or a mare?

A. A mare.

Charles Hood being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

20

Mr. Hood makes the following statement:

I was the counsel for Mr. Sam Stern in the trial of this indictment in the first instance, and had possession of the receipt which he has testified to, and which was offered in evidence and marked as an exhibit at the first trial. I have looked thoroughly for that receipt through all my papers where I usually keep such papers, and the receipt in question was used by me in preparing my case, and I am unable to find it.

30 BY MR. KOESTER:

Q. What receipt do you refer to?

A. The receipt which Mr. Stern received from Joseph Shatteas.

The receipt read as follows:

"Received from Sam Stern fifty-five dollars
for bay mare, harness and buggy."

Q. That is all you know about it?

A. Yes, that is all I know about it.

40 Q. You do not know whether it was signed by such a

man, or whether it was forged, do you?

A. I know nothing about it except that.

Q. It was questioned at that time as to who wrote the receipt. All you know is that the receipt was handed to you by Mr. Stern; that was the first you knew of it?

A. Yes, sir.

DEFENSE RESTS.

MR. GARRET LOZIER called in re-buttal, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOESTER:

10

Q. You are the son of Charles Lozier, the owner of the horse in question?

A. Yes, sir.

Q. Do you remember Friday, June 25th, 1903, when the horse was stolen?

A. Yes, sir.

Q. Did you go to Newark the next morning?

A. I did.

Q. Did you go to Bull's Head Market where Stern 20 says he bought this horse?

A. Yes, sir.

Q. What time did you go there?

A. About half-past eleven; if I am not mistaken it was the 26th, the morning we discovered his loss.

Q. The horse was stolen about what time?

A. I put the horse in the stable about half-past ten or eleven o'clock on June 25th.

Q. You heard Mr. Stern testify that he bought the horse on Friday, June 26th?

30

A. Yes, sir.

Q. What time did you go to Bull's Head Market?

A. About eleven forty-five or twelve o'clock.

Q. How long did you remain there?

A. Until about two o'clock.

Q. Was this horse sold between twelve and two o'clock of that day, on that Friday?

A. No, sir, on the street he says he bought the horse there were a lot of rigs standing, but my horse was not there.

40

CROSS-EXAMINATION BY MR. HOOD:

Q. What is your name?

A. Garret S. Lozier.

Q. Were you present at the first trial of Mr. Stern?

A. I was; yes, sir.

Q. You heard his testimony?

A. I did.

Q. Why did you not go on the stand then and testify to what you have now?

10 A. Because I was not subpoenaed.

Q. How old are you?

A. Twenty-two years of age.

Q. And you are of the opinion that a man cannot testify in Court unless he is subpoenaed?

A. No, sir.

Q. Did you not say that the reason that you did not testify was because you did not have a subpoena?

A. I was not called, nor asked to testify.

Q. You were in Court?

20 A. I was.

Q. You heard Mr. Stern's testimony?

A. Yes, sir.

Q. And he testified to the identical thing, and still you did not go on the stand and testify?

A. No, sir.

Q. Did you tell your father this at that time?

A. Yes.

Q. Did you tell Mr. Koester?

A. I told him to-day.

30 Q. When?

A. This morning.

Q. About what time?

A. About ten-thirty.

Q. Now, Mr. Lozier, who told you to go to Bull's Head stables the following morning?

A. A man in New York at Van Tassell and Kearneys.

Q. When did you go to Van Tassell and Kearney's?

A. That morning about nine o'clock.

Q. Did he tell you to go to any other place?

40 A. Another place in Newark on Bridge Street.

- Q. Where is Van Tassell and Kearney's?
 A. Thirteenth Street, New York City.
 Q. Did you make any search in New York?
 A. I did, and I left a full description of the rig.
 Q. How long did you stay there?
 A. About half an hour.
 Q. Where did you go then?
 A. I went to Fiss, Door & Carrolls in Twenty-fourth Street.
 Q. How long did you stay there? 10
 A. About half an hour.
 Q. You stayed there half or three-quarters of an hour?
 A. Yes.
 Q. That brought you to about 10:15?
 A. Yes, sir.
 Q. Where did you go then?
 A. To Newark.
 Q. How did you go to Jersey City?
 A. I got on a Twenty-third Street Cross-Town car.
 Q. How long did it take you on the Cross-Town car 20
 from Fiss, Dorr & Carroll's to the Twenty-third Street
 Ferry?
 A. About eight minutes?
 Q. Have you ever done it since in that time?
 A. I have.
 Q. Have you ever done it in your life in eight minutes?
 A. Yes, sir.
 Q. Did you wait for a boat?
 A. I do not remember whether I did or not.
 Q. Did you take the Pennsylvania Road to Newark? 30
 A. No, I went on the Trolley.
 Q. When you got to Newark where did you go?
 A. I went to Baynes.
 Q. Did you go to Hoys stable?
 A. I did.
 Q. How long did you stay at Hoys?
 A. I was there about two minutes.
 Q. Did you go to Fox's?
 A. Yes.
 Q. The rest of the time you stayed at Fox's? 40

A. Yes.

Q. Why?

A. Because there was a sale going on?

Q. Were there no sales going on at the other stables?

A. I don't know.

Q. At Fox's there was a sale?

A. Yes.

Q. Were there a great many rigs tied at all these stables?

10 A. No.

Q. They were tied out only at Hoys'?

A. There is a street running along side, a dark street.

Q. How is Fox's?

A. Fox's is on Broad Street; it is within a block or two.

Q. There were no rigs tied up?

A. I could not say.

Q. It is a busy neighborhood?

A. Yes, I think so.

Q. How did you come to anchor yourself at Fox's?

20 A. Because there was a sale going on there.

Q. Where was the sale?

A. In the Alley.

Q. Is not that a long alley?

A. Yes.

Q. Is it not an absolute fact that standing in that alley attending the sale, it was an impossibility for you to see if there were any horses or carriages tied outside?

A. I was walking up and down the street and examining every horse around the stable.

30 Q. You were part of the time outside, and part of the time inside?

A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. KOESTER:

Q. I never spoke to you before to-day about this trial?

A. No, sir.

Q. You had no conversation with me before the last trial?

A. No, sir.

Counsel for Defendant moves for a direction
of the verdict on the ground that the State

has failed to prove the charge found in the indictment, and because it appears from the proof in the case that the Defendant is not guilty.

COURT denies motion.

Counsel for Defendant requests an exception.

Let it be sealed, and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]

CHARGE OF THE COURT TO THE JURY. 10

Gentlemen of the Jury—Samuel Stern is on trial before you under an indictment charging him with another, with Grand Larceny, said to have been committed on the twenty-fifth day of June, nineteen hundred and three. He is charged with stealing one horse, one wagon, two sets of harness and two blankets, the property of Charles H. Lozier of Palisade Park, in this County, said to be worth two hundred and fifty dollars.

Under the laws of this State there are two kinds of larceny, grand and petit larceny. The taking of goods 20 under the value of twenty dollars is petit larceny, and the taking of goods above the value of twenty is grand larceny. This indictment charges the taking of goods above the value of twenty dollars, hence this defendant is charged with Grand Larceny.

Larceny is the felonious taking of goods of another person, with intent to permanently deprive that person of the goods, without that person's consent, and all persons who take goods in that way, or who assist others in taking them, are guilty of larceny. 30

The State claims that this horse, wagon, harness and blankets, belonging to Mr. Lozier, were in his barn at Palisade Park, in this County, and during the night of June twenty-fifth, nineteen hundred and five, they disappeared and were subsequently found, part of them in New York, and part of them in Newark. The State claims that this defendant is guilty of the charge. The testimony is for you to believe or disbelieve; you are the sole judges as to what the witnesses have testified to on the stand. You have the right to believe the testimony of 40

some witnesses, and disbelieve the testimony of others. You are the sole judges as to whether the witnesses are telling the truth or not telling the truth, and you are to arrive at a verdict as to what you believe to be the truth in the case.

The horse and wagon disappeared, and subsequent to the time of the disappearance the horse was found in the possession of a Mr. Liebner. Mr. Liebner tells you he bought it from a Mr. Schwartz, and Mr. Schwartz tells you on
 10 the stand that he bought it from a man by the name of Lax. The defendant in this case says that he had the horse, wagon and harness in his possession, and took them to New York and gave them to Lax to sell; the defendant admits that he had in his possession the horse, wagon, harness, blankets and bridle.

Of course, if the State has proved to your satisfaction, beyond a reasonable doubt, that the defendant stole the articles, or that he aided and assisted somebody else to steal them, then it is your business to find him guilty. If
 20 the evidence as a whole both circumstantial and positive shows he is guilty, and you think the State has proved his guilt beyond a reasonable doubt, then it is possible to find the defendant guilty.

The defendant claims he purchased the rig from a man called Jo, and he paid him for it, and of course if that is so, he is not guilty if you believe what he says, he is not chargeable with the crime set forth in this indictment, because if somebody else stole them, he cannot be found guilty if he is an innocent purchaser of the goods. Of
 30 course he had possession of them, but that would not signify he is guilty of the charge.

The Courts have held that when the fact of the theft has been shown and the question is whether or not the defendant committed it, his possession of the stolen goods, either sole or joined with others, at a time not too long after the stealing, is a circumstance for the jury to consider and weigh in connection with the other evidence. In all cases the State must establish the guilt of the defendant beyond a reasonable doubt. The burden of proof is al-
 40 ways upon the State, and that burden never shifts. A man

must be found guilty, if he is found guilty, by the evidence furnished in the case, and unless the State proves his guilt beyond a reasonable doubt, then this defendant is entitled to an acquittal.

As to whether he comes from Newark or any other place, and is a non-resident, and his lawyer is a non-resident, is immaterial. You must decide the case from the evidence, and not from the residence of the defendant or his counsel.

Counsel for defendant requests the Court to charge as follows: 10

In order to convict this defendant under this indictment it is necessary for the State to prove the presence of the defendant in this jurisdiction, actual or constructive, before the defendant can be found guilty.

COURT refuses to so charge, except as I have already charged.

Counsel for Defendant asks for exception to above ruling.

Exception allowed. Let it be sealed, and it is sealed accordingly. 20

DAVID D. ZABRISKIE, [SEAL.]

Counsel for Defendant requests General Exception to the Charge of the Court.

General Exception allowed. Let it be sealed, and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL.]

Afterward, to wit, on the fourteenth day of June, nineteen hundred and five, upon notice to the Prosecutor of the Pleas for the County of Bergen, Counsel moved before the Court to set aside the conviction in the above cause on the following grounds: 30

- (1) That said verdict is against the weight of evidence.
- (2) That said verdict is contrary to law.
- (3) Upon the ground of newly discovered evidence.

Whereupon after argument being heard, the Court declined to set aside the verdict and sentenced the defendant.

New Jersey Supreme Court.

10	THE STATE, Defendant in Error, vs. SAMUEL STERN, Plaintiff in Error,	}	On Error to Ber- gen County General Quarter Sessions. Assignment of Error.
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Afterwards, that is to say, on the first Tuesday of
 20 November, Nineteen Hundred and five, in the Supreme
 Court of Judicature of the State of New Jersey, came the
 said Samuel Stern by Hood & Hood, his Attorneys, and
 says that in the record and proceedings aforesaid and
 also in the matters recited and contained in the said Bill
 of Exceptions, and also in the giving of the verdict and
 judgment aforesaid, there is manifest error in this, to wit:
 (1) That the judgment was given against the plaintiff
 in error; whereas under the law of the land the judgment
 should have been given and rendered in favor of the plain-
 30 tiff in error.

(2) Because the Court refused to direct a verdict of acquittal upon the whole case.

(3) Because the Court declined to charge, "In order to convict this defendant under this indictment it is necessary for the State to prove the presence of the defendant in this jurisdiction actual or constructive before the defendant can be found guilty."

(4) Because the Court erroneously charged the Jury:
 40 "Larceny is the felonious taking of goods of another per-

son with intent to permanently deprive that person of the goods, without that person's consent, AND ALL PERSONS WHO TAKE GOODS IN THAT WAY OR WHO ASSIST OTHERS IN TAKING THEM ARE GUILTY OF LARCENY."

(5) Because the Court erroneously charged: "Of course if the State has proved to your satisfaction beyond a reasonable doubt that the defendant stole the articles, OR THAT HE AIDED OR ASSISTED SOMEBODY ELSE TO STEAL THEM, THEN IT IS YOUR BUSINESS TO FIND HIM GUILTY." 10

(6) Because upon the entire record of the proceedings had upon the trial of this cause it appears that the plaintiff in error suffered manifest wrong and injury:

(a) In that the Court declined to charge the law relating to the presence of the defendant at the taking of the property.

(b) Because the charge of the Court is contrary to law.

(c) In the denial of matters of discretion in that the Court declined to direct a verdict at the end of the entire case and failed to open and vacate the judgment entered on the conviction. 20

(d) Because of divers other errors in the record and proceedings aforesaid and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

Wherefore the said Samuel Stern prays that the said sentence and judgment may be reversed and annulled and altogether held for nothing, and that he may be restored to all things that he has lost by occasion thereof. 30

Hood & Hood,
Attorneys of Plaintiff in Error.

10 New Jersey Supreme Court.

THE STATE, Defendant in Error, vs. SAMUEL STERN, Plaintiff in Error.	}	On Error to Bergen County Quarter Sessions. Joinder in Error.
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20 And hereupon afterwards, to wit, on the First Tuesday of November, nineteen hundred and five, the State of New Jersey, by Ernest Koester, Prosecutor in and for the County of Bergen, comes into Court and says that there is no error either in the record or proceedings aforesaid, or in giving judgment aforesaid, and he prays here that the Court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in
 30 manner aforesaid given, may in all things be affirmed &c.

ERNEST KOESTER,

Attorney for Defendant in Error.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

SAMUEL STERN,
Plaintiff in Error.

10

Before GUMMERE, Chief Justice, and
 Justices PITNEY and HENDRICK-
 SON.

For the Plaintiff in Error, LOUIS 20
 HOOD.

For the Defendant in Error, MR.
 ERNEST KOESTER, Prosecutor of
 the Pleas.

Per Curiam:

Stern was indicted and convicted of larceny, the charge being that at Palisade Park, in Bergen 30 County, he had stolen a horse, wagon, two sets of harness and two blankets, all of the value of \$200., from one Charles H. Lozier.

The first assignment of error argued is that the court improperly charged the jury that "if the state has proved to your satisfaction, beyond a reasonable doubt, that the defendant stole the articles, or that he aided or assisted somebody 40 else to steal them, you should find him guilty."

The objection is that it was improper to state that the prisoner was guilty if he aided or assisted somebody else to steal the articles. It seems to us that a person who aids or assists somebody else in committing a larceny is a principal, and equally guilty with the principal.

10 The next objection is that it was error for the court to refuse to charge the request of the defendant that "In order to convict under this indictment it is necessary for the state to prove the presence of the defendant in this jurisdiction, actual or constructive." The court declined to charge this except as already charged. It seems to us that this abstract proposition the defendant was not entitled to have charged.

20 The court had practically stated that, when it instructed the jury that if the state had proved to the satisfaction of the jury that the defendant stole the articles, or aided or assisted somebody else to steal them, he was guilty, otherwise not.

30 The next assignment of error is that the court charged the jury as follows: "The defendant claims he purchased the rig from a man called Joe, and paid him for it, and of course, if that is so he is not guilty. If you believe what he says, he is not chargeable with the crime set forth in this indictment, because if somebody else stole them he cannot be found guilty, if he is an innocent purchaser of the goods." The objection urged is to the words "if he is an innocent purchaser," leaving the jury to infer that his acquittal of larceny must depend upon the fact that he was an innocent purchaser. There was no count for receiving stolen goods and we do not think the words used by the court could have worked any prejudice to
40 the defendant. The conviction should be affirmed.

New Jersey Supreme Court.

February Term, 1906.

THE STATE,

Defendant in Error,

vs.

SAMUEL STERN,

Plaintiff in Error.

*In Error to Quar-
ter Sessions of
Bergen County.*

*Order on Affirm-
ance of Judg-
ment.*

10

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This cause having been duly argued at the November Term of this Court, by Hood & Hood, of counsel for the plaintiff in error, and Ernest Koester, of counsel for the defendant in error, and the court having considered the same, and finding no error in the record or proceedings in the Quarter Sessions Court of Bergen County:—

It is thereupon ordered and adjudged that the judgment of the Quarter Sessions Court of Ber-
gen County, removed by the writ of error in this
cause, be affirmed, and that the record be remitted
to the said Court of Quarter Sessions of Bergen
County, to be proceeded with in accordance with
said judgment.

30

Entered March 14, 1906.

On motion of ERNEST KOESTER,

Attorney of Defendant in Error.

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NEW JERSEY, ss: *The State of New Jersey to the
Chief Justice and other
Justices of Our Supreme
Court, Greeting:—*

Because in the record and proceedings and also
in the giving of judgment upon a certain indict-
ment heard and determined by the said Supreme
Court of the State of New Jersey, between the
10 State of New Jersey, Defendant in Error,
against Samuel Stern, Plaintiff in Error, mani-
fest error hath intervened to the great damage of
the said Samuel Stern, late of the Borough of Pali-
sades Park, in the County of Bergen, as from his
complaint we have received information; we being
willing in this behalf to correct the error in due
manner, if any there shall be, and that speedy jus-
tice be done to him, the said Samuel Stern, do com-
20 mand you that if judgment be thereupon given,
then that you distinctly and openly send under
your seal the record and proceedings aforesaid,
with all things touching the same, to our Court of
Errors and Appeals in the last resort in all
causes of law, to be held at Trenton on the
ninth day of April next, and this writ, that
the record and proceedings aforesaid being in-
spected we may further cause to be done there-
30 upon for correcting that error what of right and
according to the laws and customs of New Jersey
ought to be done.

Witness, William J. Magie, our Chancellor and
presiding Judge of our said Court of Errors and
Appeals, at Trenton, this twenty-second day of
March, Nineteen Hundred and six.

Clerk.

HOOD & HOOD,

Attorneys for Plaintiff in Error.

New Jersey Court of Errors and Appeals.

THE STATE, <i>Defendant in Error,</i> <i>vs.</i> SAMUEL STERN, <i>Plaintiff in Error.</i>	{ {	<i>On Error</i> 10 <i>Assignment of</i> <i>Errors.</i>
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Afterwards, to wit, on the first day of May Nineteen hundred and six, in this same term, before the Judges of the said Court of Errors and Appeals in the last resource in all causes, at Trenton, comes the said Samuel Stern in his proper person and says that in the record and proceedings aforesaid and also in the giving of the judgment aforesaid there was manifest error in this, to wit:—

1. Because the Supreme Court decided that there was no error in that the judgment was given against the plaintiff in error whereas under the law of the land the judgment should have been given and rendered in favor of the plaintiff in error. 30

2. Because the Supreme Court decided that there was no error because of the refusal of the Court to direct a verdict of acquittal upon the whole case.

3. Because the Supreme Court decided that there was no error because the Court declined to 40

charge "In order to convict this defendant under this indictment it is necessary for the State to prove the presence of the defendant in this jurisdiction actual or constructive before the defendant can be found guilty."

4. Because the Supreme Court decided that there was no error because the Quarter Sessions Court charged the jury "Larceny is the felonious
10 taking of goods of another person with intent to permanently deprive that person of the goods without that person's consent; and all persons who take goods in that way or who assist others in taking them are guilty of larceny."

5. Because the Supreme Court decided that there was no error because the Quarter Sessions Court charged "Of course if the State has proved
20 that the defendant stole the articles or that he aided or assisted somebody else to steal them, then it is your business to find him guilty."

6. Because the Supreme Court decided that it does not appear upon the entire record of the proceedings that the plaintiff in error suffered manifest wrong and injury.

A. In that the Court declined to charge the law
30 relating to the presence of the defendant at the taking of the property; or

B. Because the charge of the Court is contrary to law in the particulars above set forth and in that the Quarter Sessions Court charged as follows:—
"The defendant claims he purchased the rig from a man called Joe and he paid him for it, and of course if that is so, he is not guilty if you believe what he says, he is not chargeable with the crime set
40 forth in this indictment, because if somebody else

stole them, he cannot be found guilty, if he is an innocent purchaser of the goods.”

7. Because the Supreme Court decided that it does not appear upon the entire record of the proceedings that the plaintiff in error suffered manifest wrong or injury in the denial by the Quarter Sessions Court of matters of discretion in that:

A. The Court declined to direct a verdict of acquittal at the end of the State's case, or: 10

B. In that the Court declined to direct a verdict of acquittal at the end of the whole case, or:

C. Because the Court failed to open and vacate the judgment entered on the conviction.

8. Because the Supreme Court affirmed the judgment of the Court of Quarter Sessions, whereas the said judgment should have been reversed. 20

Wherefore and for other errors appearing in the record and proceedings aforesaid, the said Samuel Stern prays that the sentence and judgment aforesaid may be reversed and annulled and altogether held for nothing, and that he may be restored to all things that he has lost by occasion thereof.

HOOD & HOOD, 30

Attorneys for Plaintiff in Error.

LOUIS HOOD,

Of Counsel.

New Jersey Court of Errors and Appeals.

10 THE STATE,

Defendant in Error,

vs.

Joinder in Error.

I, David D. Zabriskie, Judge of the Court of General Quarter Sessions in and for the County of Bergen, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the indictment in the case of the State against Samuel Stern.

DAVID D. ZABRISKIE,

Judge.

ERNEST KOESTER,

*Prosecutor of the Pleas of
the State of New Jersey,
for the County of Bergen,
for the Defendant in
Error.*

THE HISTORY OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT TO THE PRESENT TIME

BY NATHANIEL BENTLEY

VOLUME I. FROM THE FIRST SETTLEMENT TO 1780

The first settlement of the city of Boston was made by a party of Englishmen, who, in the year 1630, sailed from England, and landed at the mouth of the Charles River. They were accompanied by a large number of women and children, and were joined by a party of Indians, who had been sent to meet them. The settlement was at first very small, but it grew rapidly, and in the year 1634, it was incorporated as a town. In the year 1639, it was again incorporated as a city, and in the year 1688, it was again incorporated as a city. The city of Boston has since that time continued to grow, and it is now one of the largest and most important cities in the United States.

