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Bill of Complaint.

(Filed March 28, 1945.)

In Chancery of New Jersey

148/399.

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

The complainant, William McGovern, of the City of Jersey City, in the County of Hudson, and State of New Jersey, respectfully shows that:

1. Complainant holds the office of Sheriff of the County of Hudson in the State of New Jersey.

2. On or about March 27, 1945, the Grand Inquest of the State of New Jersey in and for the body of the County of Hudson indicted complainant for the misdemeanor of having failed to cause persons named in said indictments to be fingerprinted and photographed. Said indictments after being handed up to the Court of Oyer and Terminer in and for the County of Hudson were by that court handed down or ordered to be delivered to the Court of Quarter Sessions for trial and complainant has been informed that he will be arrested and taken into custody upon a *capias* for the purpose of arraignment and pleading on said indictments.

3. Complainant intends, upon such arraignment and pleading before the Quarter Sessions at Jersey City, to enter a plea of not guilty to the said indictments, whereafter, conscious of his innocence, he is confident that he will be acquitted and discharged of the offenses of which he now stands accused.

4. Complainant, in addition to holding the office of Sheriff of Hudson County has for many years

held high appointive and elective office in the City of Jersey City and County of Hudson, including that of judge of a criminal court in Jersey City, and Commissioner of the City of Jersey City, and has always borne a good reputation as judge, public official and citizen of the State of New Jersey and of the United States of America. He is personally known to most of the law enforcement officials of New Jersey and to very many of such officials of the United States and also to those of the sister states of New Jersey. The complainant holds responsible office under the authority of this state. With his family, he resides within the said City of Jersey City and intends to continue so to reside, having no other thought but to remain within the jurisdiction of New Jersey and contest the charge made against him with all the vigor at his command.

5. Complainant says that as Sheriff of Hudson County the persons named in said indictments and for whose failure to fingerprint and photograph complainant was indicted, as aforesaid, were never arrested by complainant nor either of his undersheriffs, nor any of his deputies, nor were they ever in his custody either before or since their arraignment, nor were they committed to the County Jail for fingerprinting or photographing or for any other purpose, nor did complainant know, nor was he informed by the Prosecutor of the Pleas or of any other authority of the intention of the persons named in said indictment to appear for arraignment or otherwise. Nor were there any facts or circumstances known to complainant or presented to him by the Prosecutor of the Pleas of Hudson County, or anyone else, that the persons named in said indictments were wanted within the meaning of R. S. 53:1-15.

6. When complainant appears before the Quarter Sessions on the day ordered by the court for such arraignment and pleading, in obedience to the command of the Statutes (R. S. 53:1-15, 20) complainant himself, the State Police or chiefs of police will be required to take and forward to the superintendent of the State Police the fingerprints and rogues' gallery photographs of the complainant, when and if complainant is arrested.

7. Unless the complainant causes the same to be done, even by himself, he can again be indicted and convicted of a misdemeanor, fined and removed from office (R. S. 53:1-20). The State Police, again pursuant to statute (R. S. 53:1-19) will broadcast the said fingerprints and rogues' gallery photographs of complainant to other States, to the Federal Bureau of Investigation, to Scotland Yard abroad and to divers countries all over the civilized world. What the State Police omit in coverage, the Federal Bureau of Investigation will supply.

8. Such fingerprinting and photographing of complainant, in advance of conviction, will constitute an assault and battery upon complainant and a criminal libel against him, said libel being multiplied over and over again as his photographs are forwarded to the various rogues' galleries in New Jersey, in the sister States of the Union and in foreign countries. As a citizen of New Jersey and of The United States of America, your complainant possesses certain natural rights, particularly the right of personal liberty and the right of privacy, his right to be let alone. Under the 14th amendment to the Federal Constitution, your complainant cannot lawfully be deprived of such rights except after due process of law, and under

Article 1, paragraph 6 of the New Jersey Constitution of 1844, complainant possesses the right to be secure in his person, house, papers and effects against unreasonable searches and seizures. By virtue of Article 1, paragraph 1 of the said Constitution of New Jersey, your complainant is given certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness. In requiring the taking, disseminating and broadcasting of complainant's fingerprints and photographs in advance of conviction, the Statutes of New Jersey unconstitutionally exceed the police power of the State and violate not only Article 1, paragraphs 1 and 6 of the New Jersey Constitution, in that said Statutes robs your complainant of his personal liberty and his right of privacy and requires him to be assaulted and libelled in advance of conviction, but also violates the 14th Amendment to the Federal Constitution, in that the said Statutes deprives complainant of his natural right of liberty, without due process of law, under a legislative fiat which arbitrarily exceeds any reasonable need for identification and which gives no discretion to legislative agents who are compelled, under pain of criminal sanction, to violate the rights of complainant, to assault him and to libel him repeatedly at the very inception of criminal proceedings, although according to the law of the land, your complainant is presumed to be innocent until proven guilty to the satisfaction of a jury of his peers.

9. Complainant shows and charges that the statutes of New Jersey touching and concerning fingerprints and rouges' gallery photographs of

complainant, and their dissemination, broadcast over the United States and foreign countries, far exceed any necessity of making an adequate record of complainant as person under arrest, particularly where, as here, your complainant as Sheriff is known to most of the law enforcement officials of the State of New Jersey and to very many of such officials of the United States and also to those of the sister states of New Jersey, and in addition has never been accused of crime heretofore.

10. Complainant is without adequate remedy in the Courts of law and therefore prays:

1. That Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the said Walter D. Van Riper, as Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, as Superintendent of the State Police, their agents and servants, including undersheriffs, deputy sheriffs, wardens, court officers, constables, fingerprinting officials and photographers and any other persons acting for the said Attorney General, Acting Prosecutor of the Pleas of Hudson County, Superintendent of State Police, in concert with them or their agents and servants, or independently of them, including the coroners of the County of Hudson, may be enjoined from taking the fingerprints or photographs of the complainant upon his arrest for the misdemeanor for which he now stands charged,

and from forwarding the same to the superintendent of State Police of New Jersey or elsewhere unless and until he stands convicted thereof.

3. That in the meantime and until the further order of the Court in the premises the defendants, Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, and the other officials and peace officers described in the preceding paragraph herein may be likewise so enjoined.

4. That a writ of subpoena may issue, commanding the said Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

WILLIAM GEORGE,
Solicitor for and of Counsel
with Complainant.

Affidavit of William McGovern.

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

WILLIAM MCGOVERN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I hold the office of Sheriff of the County of Hudson in the State of New Jersey. I have read the bill of complaint, the factual allegations of

which are true to my knowledge, and the legal allegations of which I believe to be true upon the advice of my counsel.

2. On or about March 27, 1945, the Grand Inquest of the State of New Jersey in and for the body of the County of Hudson indicted me for the misdemeanor of having failed to cause persons named in said indictments to be fingerprinted and photographed. Said indictments after being handed up to the Court of Oyer and Terminer in and for the County of Hudson were by that court handed down or ordered to be delivered to the Court of Quarter Sessions for trial, and I have been informed that I will be arrested and taken into custody upon a *capias* for the purpose of arraignment and pleading on said indictments.

3. In intend, upon such arraignment and pleading before the Quarter Sessions at Jersey City, to enter a plea of not guilty to the said indictments, whereafter, conscious of my innocence, I am confident that I will be acquitted and discharged of the offenses of which I now stand accused.

4. In addition to holding the office of Sheriff of Hudson County I have for many years held high appointive and elective office in the City of Jersey City and County of Hudson, including that of a judge of a criminal court in Jersey City, and Commissioner of the City of Jersey City, and I have always borne a good reputation as judge, public official and citizen of the State of New Jersey and of the United States of America. I am personally known to most of the law enforcement officials of New Jersey and to very many of such officials of the United States and also to those of the sister states of New Jersey. I hold respon-

sible office under the authority of this state. I reside with my family in the said City of Jersey City and intend to continue to reside there, having no other thought but to remain within the jurisdiction of New Jersey and to contest the charges made against me.

5. I depose and say that as Sheriff of Hudson County the persons named in said indictments and for whose failure to fingerprint and photograph I was indicted, as aforesaid, were never arrested by me nor by either of my undersheriffs, nor any of my deputies, nor were they ever in my custody either before or since their arraignment, nor were they committed to the County Jail for fingerprinting or photographing or for any other purpose, nor did I know, nor was I informed by the Prosecutor of the Pleas or of any other authority of the intention of the persons named in said indictment to appear for arraignment or otherwise. Nor were there any facts or circumstances known to me or presented to me by the Prosecutor of the Pleas of Hudson County, or anyone else, that the persons named in said indictments were wanted.

6. When I appear before the Quarter Sessions on the day ordered by the court for such arraignment and pleading, in obedience to the command of the statutes, I, the State Police or chiefs of police, will be required to take and forward to the superintendent of the State Police my fingerprints and rogues' gallery photographs, when and if I am arrested.

7. Unless I cause the same to be done, even by myself, I can again be indicted and convicted of a misdemeanor, fined and removed from office. The State Police, again pursuant to statute will broad-

cast my said fingerprints and rogues' gallery photographs to other States, to the Federal Bureau of Investigation, to Scotland Yard abroad and to divers countries all over the civilized world. What the State Police omit in coverage, the Federal Bureau of Investigation will supply.

8. Such fingerprinting and photographing of me, in advance of conviction, will constitute an assault and battery upon me and a criminal libel against me, said libel being multiplied over and over again as my photographs are forwarded to the various rogues' galleries in New Jersey in the sister States of the Union and in foreign countries. As a citizen of New Jersey and of the United States of America, I possess certain natural rights, particularly the right of personal liberty and the right of privacy, my right to be let alone. Under the 14th amendment to the Federal Constitution, I cannot lawfully be deprived of such rights except after due process of law, and under Article 1, paragraph 6 of the New Jersey Constitution of 1844, I possess the right to be secure in my person, house, papers and effects against unreasonable searches and seizures. Under Article 1, paragraph 1 of the said Constitution of New Jersey, I am given certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness. In requiring the taking, disseminating and broadcasting of my fingerprints and photographs in advance of conviction, the Statutes of New Jersey unconstitutionally exceed the police power of the State and violate not only Article 1, paragraphs 1 and 6 of the New Jersey Constitution, in that said Statutes rob me of my personal liberty and my

right of privacy and requires me to be assaulted and libelled in advance of conviction, but also violate the 14th Amendment to the Federal Constitution, in that the said Statutes deprive me of my natural right of liberty, without due process of law, under a legislative fiat which arbitrarily exceeds any reasonable need for identification and which gives no discretion to legislative agents who are compelled, under pain of criminal sanction, to violate my rights, to assault me and to libel me repeatedly at the very inception of criminal proceedings, although according to the law of the land, I am presumed to be innocent until proven guilty to the satisfaction of a jury of my peers.

9. The Statutes of New Jersey touching and concerning fingerprints and rogues' gallery photographs and their dissemination and broadcast over the United States and foreign countries, far exceed any necessity of making an adequate record of me as person under arrest, particularly where, as here, in my capacity as sheriff, I am known to most of the law enforcement officials of the State of New Jersey and to very many of such officials of the United States and also to those of the sister states of New Jersey, and particularly since I have never been accused of crime heretofore.

WILLIAM J. McGOVERN.

Sworn to and subscribed before me
this 28th day of March, 1945.

BLANCHE LOGAN,
A Notary Public of New Jersey.

Order to Show Cause and Restraining Order.

(Filed March 28, 1945.)

IN CHANCERY OF NEW JERSEY.

148/399.

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill, &c.
Order to Show Cause and Restraining Order.

This matter being opened to the Court by William George, Solicitor for and of counsel with complainant, and the Court having read the bill of complaint in the above entitled cause and the affidavit thereunto annexed;

It is, on this 28th day of March, A.D. 1945, ORDERED that the defendants, Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, show cause before the Chancellor, at Chancery Chambers, No. 1 Exchange Place, Jersey City, New Jersey, on the 16th day of April next, at the hour of ten o'clock in the

forenoon (E.W.T.) or as soon thereafter as counsel can be heard, why the said defendants, Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, should not be restrained and enjoined according to the prayer of the bill. I find from the affidavit accompanying the bill that immediate, substantial and irreparable injury will probably be suffered by the complainant if this restraint is not granted.

It is Further Ordered that in the meantime and until the further order of the Court in the premises, the said defendants, Walter D. Van Riper, Attorney General of the State of New Jersey, and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, their agents and servants, including sheriffs, coroners, undersheriffs, deputy sheriffs, wardens, court officers, constables, fingerprinting officials and photographers and any other persons acting for the said Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, in concert with them or their agents and servants, or independently of them, and chiefs of police, members of the state police and any other law enforcement agencies and officers desist and refrain from taking the fingerprints and photographs of the complainant, upon his arrest for the misdemeanor with which he now stands charged, and desist and refrain from forwarding the same to the superintendent of State Police of New Jersey or to any other person or body.

It is Further Ordered that true but uncertified copies of said bill of complaint and the affidavit

annexed thereunto, and of this order, be served upon the said defendant, Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, or any of his deputy attorneys general assigned to the office of Prosecutor of the Pleas of Hudson County, and upon the said defendant, Charles H. Schoeffel, Superintendent of the State Police, or his deputies or agents, within two days from the date hereof, such true copies to be marked as such by the solicitor of the complainant.

And it is FURTHER ORDERED that either party may move to dissolve, enlarge or modify the restraint herein granted upon two days' notice.

Respectfully advised,

HENRY T. KAYS,
V.-C.

LUTHER A. CAMPBELL,
C.

Answering Affidavit of Anthony P. La Porta.

IN CHANCERY OF NEW JERSEY.

148/399.

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, *et al.*,
Defendants.

On Bill, &c.
Affidavit.

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

ANTHONY P. LA PORTA, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am a member of the Bar of the State of New Jersey, with my offices in the City of Hoboken, Hudson County, N. J.

2. On February 14, 1928, as Solicitor of Frank J. Bartletta, I caused to be filed in the Court of Chancery the bill of complaint mentioned in the opinion of Vice-Chancellor Bigelow in the case of *Frank J. Bartletta* vs. *Bernard N. McFeeley, et als.*, officially reported in 107 New Jersey Equity, page 141.

3. An appeal was thereafter taken to the New Jersey Court of Errors and Appeals from the Decree of said Court of Chancery on behalf of the said complainant, Frank J. Bartletta, which resulted in the affirmation of the Decree in the Court

of Chancery and which is officially reported in 109 N. J. Equity, page 241.

4. Thereafter I filed another Bill of Complaint in the said Court of Chancery on behalf of the said Frank J. Bartletta which, after issue was joined, came on to be heard before the said Vice-Chancellor Bigelow, which resulted in a Decree dismissing said Bill of Complaint and I thereafter caused an appeal to be taken on behalf of the complainant to the Court of Errors and Appeals which, after hearing and the submission of the proper briefs, resulted in the affirmation of Decree of the Court of Chancery, as officially reported in 113 New Jersey Equity, page 67.

5. Hon. Henry T. Kays, now a Vice-Chancellor of the Court of Chancery, was a member of the Court of Errors and Appeals at the both times this case was before said Court and voted, in both instances, to affirm the Decree in the Court of Chancery, and concurred with Mr. Justice Parker, 156A, 658, as more fully appears from the official reports thereon, as aforesaid.

6. Annexed hereto is a true copy of the aforesaid second bill of complaint; the answer of the defendants thereto; the replication; the original bill of complaint filed on behalf of the complainant and the replication thereto, together with a true copy of my brief on behalf of the complainant used in said cause, setting forth the points urged and the cases cited.

ANTHONY P. LA PORTA (L. S.)

Sworn to and subscribed before me this 27th day of April, 1945.

CHARLES DE FAZIO, JR.,
Master in Chancery of New Jersey.

Brief of Anthony P. La Porta, Annexed to Answering Affidavit of Anthony P. La Porta.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

FRANK J. BARTLETTA,
Complainant-Appellant,

and

BERNARD N. MCFEELEY, as Mayor; JOSEPH A. CLARK, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN (a Municipal Corporation of this State),
Defendants-Respondents.

Appeal from the Court of Chancery.

BRIEF OF ANTHONY P. LA PORTA, ESQ., IN BEHALF OF FRANK J. BARTLETTA, COMPLAINANT-APPELLANT.

INTRODUCTION.

This is an appeal by Frank J. Bartletta, complainant-appellant, from a Final Decree of Dismissal made by the Chancellor on the advice of

Brief of Anthony P. La Porta, Annexed to Answering Affidavit of Anthony P. La Porta.

Hon. John O. Bigelow, Vice Chancellor, on the 31st day of May, 1932, whereby his Bill of Complaint filed on the 30th day of October, 1931, was dismissed, and the relief prayed for was denied to him. The Bill contained the following prayers for relief (1) that the defendants remove from the Rogues' Gallery of the City of Hoboken and deliver and surrender unto complainant the photographs, negatives and photostatic copies thereof; and also deliver and surrender unto him the Bertillon measurements and fingerprints, photostatic copies, and all copies thereof, taken of him by the Police Department of the City of Hoboken on the 10th day of February, 1928; (2) that the defendants cause to be removed from the Rogues' Galleries of other cities copies of the photographs and fingerprints taken on the complainant as aforesaid, which the defendants mailed, or caused to be mailed, to William J. Lehey, Chief Inspector, Police Headquarters, New York City, New York; Bureau of Identification, Department of Corrections, Albany, New York; and to the Bureau of Investigation, Department of Justice, Washington, D. C., and deliver and surrender them to the complainant; (3) that the defendant expunge and remove the alias "Luke Adams" attached to the name of the complainant in the records of the Police Department of the City of Hoboken; (4) that such other and further relief as he may be equitably entitled to under the allegations of his Bill of Complaint to be granted to him.

Statement of Facts.

The above entitled case was submitted to the learned Vice Chancellor on the pleadings filed herein and also on the testimony hereinbefore

taken of the same parties in a previous proceeding under a stipulation dated May 4th, 1932, and without any additional evidence. (See case book for the Stipulation submitting the case on agreed statement of facts and briefs.)

This court in the previous suit of the parties hereto held that the action of the instant complainant-appellant was prematurely brought and hence affirmed the opinion of the court below, with a qualifying and explanatory opinion written by Mr. Justice KALISCH. (See *Bartletta* v. *McFeeley, et al.*, 107 N. J. Eq. 141; affirmed 109 N. J. Eq. 241.)

The case first made out by the complainant-appellant, as is evidenced by the testimony and record, shows that on the 10th day of February, 1928, he was arrested by the Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by the Recorder of the City, by reason of an alleged sworn complaint made by a Lieutenant of the Police of the City aforesaid, whereby the complainant was charged with the unlawful possession of lottery tickets; that on the day of his arrest, under his protest, he was booked by the Department of Police, photographed by the official photographer of the Police and was also fingerprinted, measured and pedigreed according to the Bertillon system; that he was thereafter incarcerated, then arraigned and placed under bail and finally released and held to await the action of the Grand Jury under bail in the sum of $15,000 which was then and there furnished.

The Grand Jury never indicted the complainant and each time the matter was presented to it by the Police Department of Hoboken, they found no bill against complainant. The complainant has always maintained his innocence

and the record shows that he was a law abiding citizen, was never tried or convicted for the alleged offense, or any other offense whatsoever; that at the time of his arrest he was a bonded Sinking Fund Commissioner of the said City of Hoboken appointed by Bernard N. McFeeley, one of the defendants-respondents herein and now Mayor of said City; that he was then a wealthy property owner, large tax payer of the City; prominent in the political and social affairs of the City and held in high esteem; that he was a friend of Bernard N. McFeeley, defendant-respondent aforesaid, for some time prior to the alleged arrest; he consorted with him and other officials of the Town and conducted various political campaigns in his behalf and for his interest; that at or about the time of the arrest the relations had broken owing to the fact that the complainant-appellant, who was then interested in the Terminal Printing & Publishing Company which published a weekly paper known as "The Newsette", had questioned the political policies of the Municipality. Then bitterness arose. Quarrels ensued and political attacks against the officials thru the medium of the "Newsette" became rampant.

On the day of complainant's arrest he was charged with the possession of lottery tickets. The alleged tickets, with printing paraphernalia, were said to have been found on the premises of the Terminal Printing and Publishing Company, a corporation of this State, of which Mr. Bartletta was then president and a large stock holder thereof. Mr. Bartletta contended that he did not have any knowledge, direct or indirect, as to the printing of the lottery tickets by the Terminal Print-

ing and Publishing Company; that his sole interest was a pecuniary one; that the managerial matter was in the hands of Mr. Bado and the editing of the Newsette was in the hands of Mr. Schwartz. Regardless as to what might be said against the complainant-appellant as to the surrounding suspicion, or facts tending to create a suspicion, nevertheless he has never been proven guilty, nor has anyone testified in any court or proceeding that he was guilty of printing or possessing lottery tickets constituting the offense. Lieutenant Scott who swore to the complaint of possession of lottery tickets by Mr. Bartletta did not testify that he possessed the lottery tickets either in the Police Court or in the Court of Chancery.

There was a man by the name of Robert Barr who is supposed to have conducted lottery games and who procured the printing of the lottery tickets which were alleged to have been found in the possession of the Terminal Printing and Publishing Company. This man was arrested and placed on bail. He never testified that Mr. Bartletta ever took any orders for printing his lottery tickets from him. He had an opportunity of so saying in the Police Court at the preliminary hearing, as well as Lieutenant Scott, yet neither of them said a word tending to show Mr. Bartletta's participation of crime, if any. The most that can be said of Mr. Bartletta is that he was a large stock holder of the Terminal Printing and Publishing Company, publisher of the weekly Newsette. It has been suggested that when Prohibition Agents locate a carload of liquor on the D. L. & W. Railroad, or any other railroad, that they never arrest the president, just because

he happens to be the president. Yet, they did so in the case *sub judice.*

Mr. Bartletta was well known, identified and well established in the City of Hoboken for 15 or more years prior to the time of his arrest. There was no occasion then for his identity as it was well known by the officials with whom he was socially and politically allied. There was then no occasion for the taking of his photographs and fingerprints for the Rogues' Gallery if he was neither a rogue nor a criminal and he has never been proved to be such to the present day. Yet, the defendants circulated the photographs of the complainant-appellant, as well as his fingerprints, to be placed and kept in the Rogues' Galleries of foreign cities, including Washington, D. C., and they kept and displayed the photographs of the complainant-appellant in its own Rogues' Gallery where complainant-appellant was exposed to the members of the Police Department and others that may happen to be looking for a rogue or a criminal, as a fit person to be watched and examined.

The complainant-appellant was also maliciously and wrongfully, and without any evidence whatsoever, booked by the Police Department with an alias "Luke Adams" attached to his name. There is not a scintilla of evidence tending to show that Mr. Frank J. Bartletta, the complainant-appellant, was ever known by that name. No such evidence was disclosed at the Police hearing nor at the Chancery hearing, although the defendants had ample opportunity to justify the attachment of this alias to the complainant-appellant's name.

At the argument of the Court below, before the learned Vice Chancellor, it was stated by the

Court to the defendants' solicitor that if the photographs were not removed from the Rogues' Gallery of this City and returned to the complainant, and if the Court found that they were unlawfully there, he would allow to complainant-appellant's counsel a substantial counsel fee and costs. He then suggested that the photographs be removed from the Rogues' Gallery and the fingerprints returned to him. This was done on the 31st day of May, 1932, but defendants refused to expunge the alias "Luke Adams" from the police blotter of the Police Department and also refused to recall the circulated photographs and fingerprints. The learned Vice Chancellor held that he had no jurisdiction to compel them to remove the alias "Luke Adams" from the police blotter and to compel them to make some effort to have the circulated photographs and fingerprints returned to the complainant-appellant. In this we claim the learned Vice Chancellor erred.

GROUNDS OF APPEAL.

1. The Court erred in dismissing the Bill of Complaint and denying the relief therein prayed for, whereas, it should have sustained the Bill and granted the relief therein prayed for.

2. The Court erred in finding that the acts of the defendants were done without malice to the complainant-appellant and for a justifiable cause, whereas, it should have found that the acts were done maliciously and without justifiable cause as reference to the record of the evidence will more fully appear.

Brief of Anthony P. La Porta, Annexed to Answering Affidavit of Anthony P. La Porta.

POINT ONE.

THE COURT SHOULD HAVE COMPELLED THE DEFENDANTS BY DECREE OF THE COURT TO EXPUNGE THE WORDS "ALIAS LUKE ADAMS" AFTER COMPLAINANT-APPELLANT'S NAME ON THE RECORDS OF THE POLICE DEPARTMENT OF HOBOKEN, WHICH WERE UNDER THEIR CONTROL AND WRONGFULLY MADE BY THEM.

There is no such thing as a wrong without a right, nor a right without a remedy, unless the Police Department is above the law clothed with the old feudal idea that the King cannot commit a wrong.

The complainant has testified that he was never known by the name of "Luke Adams"; that he was never addressed as such; that he never used the name; and that he first learned that the Police Department had booked him as alias "Luke Adams" on the following day through the medium of the Hudson Observer, a newspaper published in Hoboken, New Jersey, and his photograph taken by the Police for the Rogues' Gallery was also then published. There is not a single witness in the case who did say, or would say, that complainant-appellant was ever known by the name of "Luke Adams"; nor did any member of the Police Department attempt to justify the use of the alias "Luke Adams" added to Mr. Bartletta's name. This sounds like justice in Russia, and yet we are in a civilized country. If the Police Department of the City of Hoboken, or elsewhere, is allowed to pursue these tactics there is no saying as to where they will stop.

The complainant-appellant has been humiliated and financially ruined by the activities of the de-

fendants. He has been held up to hatred, contempt and ridicule; he has been held out as a rogue and a criminal and has been injured in his social standing. Just think of it, alias "Luke Adams" attached to the name of an innocent person and intermingled with a lot of rogues and criminals in the Rogues' Galleries of Hoboken, New York and Washington, D. C. We believe that the complainant-appellant is entitled to justice at the hands of this Honorable Court.

IT WAS HELD IN NEW JERSEY THAT A LEGISLATURE CANNOT SO LEGISLATE AS TO AUTHORIZE ONE TO COMMIT A LIBEL OR SLANDER.

The wrongful addition to complainant-appellant's name of Alias "Luke Adams" is a libel and tends to involve complainant-appellant into civil and criminal litigation by reason of a name which might be the real name of someone else.

In *Neafie* v. *Hoboken Printing and Publishing Co.,* 75 N. J. L. 564; 68 Atl. 146, at page 147 this Court said:

> "THE RIGHT OF A PERSON TO BE SECURE IN HIS REPUTATION AGAINST UNWARRANTED ATTACKS, SUCH AS SLANDERS AND LIBELS, IS A PART OF THE RIGHT OF ENJOYING LIFE AND PURSUING AND OBTAINING SAFETY AND HAPPINESS WHICH IS GUARANTEED BY OUR FUNDAMENTAL LAW. Const., Art. 1, Sec. 1. And the same instrument, in conferring upon every person the right to freely speak, write and publish his sentiments on all subjects, imposed at the same time a responsibility for the abuse of that right. In short, the

people of this state, who ordained the Constitution have not empowered the legislative body to authorize a newspaper publisher or any other citizen TO UNJUSTLY INJURE HIS NEIGHBOR'S REPUTATION WITHOUT MAKING COMPENSATION FOR THAT INJURY."

In *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910; 67 Atl. 97, this Court held that a putative father could compel the removal of a certificate of birth of a child, who was not the child of the complainant, from the public records of this State. At *page 919* the Court said:

"If it appeared in this case that only the complainant's status and personal rights were thus threatened or thus invaded by the action of the defendants and by the filing of the false certificate, we should hold, and without hesitation, that an individual has rights, other than property rights, which he can enforce in a court of equity and which a court of equity will enforce against invasion, and we should declare that the complainant was entitled to relief, and to a decree establishing the truth as to the paternity of the child, relieving the complainant of the intolerable burden prima facie put upon him by the false record and preventing the wife from perpetuating a fraud upon the husband. Pavesich v. New England Life Insurance Co., 122 Ga. 190, adopting the dissenting opinion of Justice Gray, and rejecting the doctrine laid down by the majority in Roberson v. Rochester Folding Box Co., 171 N. Y. 538, a case seldom cited but to be

disapproved, the force of which was subsequently removed by statute. Laws of N. Y. 1903, p. 308 Ch. 132."

At page 921 the Court said:

"Furthermore, this case comes within the well-settled rule that a court of equity will prevent the threatened invasion of property rights and protect a party from exposure to the risk of litigation and liability."

At page 923 the Court said:

"The absence of precedents or novelty in incident presents no obstacle to the exercise of the jurisdiction of a court of equity.

"The case presented is novel in incident, but not in principle; but it is no objection to the exercise of jurisdiction that in the ever-changing phases of social relations a new case is presented and new features of wrong are involved."

See also the case of *Edison* v. *Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136; 67 Atl. 392.

POINT TWO.

THE COURT SHOULD HAVE COMPELLED THE DEFENDANTS TO CAUSE TO BE REMOVED FROM THE ROGUES' GALLERY OF NEW YORK AND WASHINGTON, D. C., PHOTOGRAPHS AND FINGERPRINTS OF THE COMPLAINANT-APPELLANT CIRCULATED BY THEM.

It has been contended that the Police Departments, in order to ascertain whether or not a man is a second offender, that his photographs and

fingerprints are necessary to reach this conclusion. This, in our opinion, was not necessary in the case *sub judice* because a second offender by our crimes' law is punishable as such for offenses committed within the jurisdiction of this State and not for foreign offenses, so that the circulation of the photographs and fingerprints of the complainant-appellant was done without sanction of the law. It is provided by *Section 219, 2 C. S., page 1812,* as follows:

> "SECOND OFFENSES; PUNISHMENT. —Any offender who shall have been sentenced to imprisonment in the state prison *under the laws of this state,* and who shall be convicted of a second offense of the like nature, may be sentenced to imprisonment in the state prison for any period not exceeding double the time for which said offender might have been sentenced on the first offense. (P. L. 1898, p. 854.)"

If the complainant-appellant had escaped while under bail no complaint could have been made as to the circulation of his photographs and fingerprints to facilitate his recapture in order to be amenable to the jurisdiction of the Courts of this State. But this was not the case. Complainant-appellant never escaped and had no reason to escape for he was innocent of the offense charged against him.

The court may order the defendants to take proper measures to undo the wrong committed by them by compelling them to take mandatory action for the return of the photographs and fingerprints, for the arm of the Court of equity

is long, strong and far reaching. In *Kempson* v. *Kempson,* 61 N. J. Eq. 303, Vice Chancellor PITNEY ordered that proper measures be taken by the defendant to undo the contemptuous act committed by having his decree opened in a foreign court and set aside. This is merely evidence of the formidable strength and arm of the Court of equity. A mere letter by the Police Department of the City of Hoboken to the Police Departments of New York and Washington, D. C., would, in our opinion, suffice and cause the return of the photographs and fingerprints of the complainant-appellant. Even this the defendants have failed and refused to do.

We cannot imagine anything more slanderous than to put an innocent man's photograph into what is sometimes called "a thieves gallery" and "Rogues' Gallery" and for the purpose that the police may keep an eye on him and aid others in identifying him should he be suspected of crime. It is said that the pictures should be taken and exhibited to the public even though a man may be innocent. We cannot see what good can come to the public by keeping the photograph of an innocent man in the Rogues' Gallery when he is neither a rogue nor a criminal, and especially when the act is not sanctioned by law.

In *Downs* v. *Swann,* 73 Atl. 653 (Md.); 23 L. R. A. (N. S.) 739; 111 Md. 53, the court said that it would not countenance the placing in the Rogues' Gallery the photograph of any person not a criminal, who has been arrested but not convicted, or the publication under those circumstances of his Bertillon record.

To the same effect see *a Scottish case, Adamson* v. *Martin* (1916) 1 Scots Law Times, 53. Here the Court said:

> "I do not think that any law abiding citizen is bound to submit to being represented to successive members of the police force as being a person who is fittingly associated with notorious criminals in an album (Rogues' Gallery) in which their features are preserved for identification."

The complainant's right of privacy has been infringed. This right of privacy is a legal right of property. Its invasion may be restrained in equity by injunction or redressed in damages at law. This right of property includes the right to enjoy life and pursue happiness only subject to the rights of others, and a person may therefore adopt a life of seclusion with the right to remain undisturbed if he so desires. See *Munden* v. *Harris,* 153 Mo. App. 652. This follows the case of *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910.

THE "RIGHT OF PRIVACY" IS A PROPERTY RIGHT.

The right of privacy is not a myth in the law; it is a legal reality. RUMSEY, Judge in *Robertson* v. *Rochester Folding Box Co.,* 64 N. Y. App. Div. 33, said:

> "It is an established principle of the common law, that the person and property of every man is inviolate; that neither should be interfered with in any way, or to any, even the slightest, extent without his consent. * * * The theory evidently is that the right of protection to the person should be complete and perfect, and that no one should be allowed to do any act which interferes or threatens to interfere with the physical comfort or safety, or which attacks the reputa-

tion or character, of any person, and thereby affects injuriously his feelings or subject him to humiliation or disgrace."

And in *Corliss* v. *E. W. Walker Co.*, 64 Fed. Rep. 280, COLT, Judge made the following partial statement of this right:

"Independently of the question of contract, I believe the law to be that a private INDIVIDUAL HAS A RIGHT TO BE PROTECTED IN THE REPRESENTATION OF HIS PORTRAIT IN ANY FORM; THAT THIS IS A PROPERTY AS WELL AS A PERSONAL RIGHT; and that it belongs to the same class of rights which forbids the reproduction of a private manuscript or painting, or the publication of private letters, or of oral lectures delivered by a teacher to his class, or the revelation of the contents of a merchant's books by his clerk."

ONE HAS EXCLUSIVE RIGHT TO HIS PICTURE, WHICH IS A PROPERTY RIGHT.

In *Munden* v. *Harris*, 153 Mo. App. 652, at page 660; 134 S. W. 1076, at page 1079, where it was concluded:

"that one has an exclusive right to his picture on the score of its being a property right of material profit, also 'a property right of value, in that it is one of the modes of securing to a person the enjoyment of life and the exercise of liberty.' "

Brief of Anthony P. La Porta, Annexed to Answering Affidavit of Anthony P. La Porta.

A PERSON'S PICTURE IS HIS PROPERTY.

In *Edison* v. *Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136, Vice Chancellor STEVENS said:

> "If a man's name be his own property, as no less an authority than the U. S. Supreme Court says it is (Brown Chemical Co. v. Meyer, 139 U. S. 542) it is difficult to understand why a PECULIAR CAST OF ONE'S FEATURES IS NOT ALSO ONE'S PROPERTY and why its pecuniary value, if it has one does not belong to its owner, rather than to the person seeking to make an unauthorized use of it."

THE "RIGHT OF PRIVACY" EXISTS WITH OF WITHOUT LIBEL.

Professor Chapin in his article "On Torts" in *36 Cyc. 496,* speaking of the infringement of the right of privacy, says among other things:

> "It is assumed that the picture or the accompanying words are not defamatory for the solution of this problem does not in any sense require recourse to the law of libel."

FOR THE INVASION OF THE "RIGHT OF PRIVACY" AN INJUNCTION IS THE PROPER REMEDY FOR ITS PROTECTION.

This is especially so where malice is involved. So it is stated in *21 R. C. L. page 1201, Section 6:*

> "If the defendant's act is without justification and for selfish gain and purposes, and of such a character as is reasonably calculated to wound the feelings and to subject

> the plaintiff to ridicule or contempt of others, the preventive relief of equity will follow."

Citing Rogues' Gallery cases: POMEROY under "Privacy" Vol. 5, Section 2053 (2nd Ed.) deals with this subject and says:

> "If there is such a thing as right of privacy, injunction is certainly the proper remedy for its protection."

IN NEW JERSEY THE "RIGHT OF PRIVACY" has not only been recognized but injunctive relief has been granted especially where a photograph was involved. In *Edison* v. *Edison Polyform Mfg. Co.,* 73 N. J. Eq. 136; 67 Atl. 392, the Court in granting an injunction restraining the use of a photograph without the consent of the complainant recognized the doctrine of the "Right of Privacy" and also held that there was a right of property in the photograph.

In the *Edison* v. *Edison Polyform Mfg. Co., supra,* Vice Chancellor STEVENS said:

> "In Roberson v. Rochester Box Co., 171 N. Y. 538; 64 N. E. 442; 59 L. R. A. 478; 89 Am. St. Rep. 828, however, the suit was brought on behalf of a living person a young lady under age, to restrain a flour company from putting her likeness upon prints advertising its flour. The allegation admitted by the demurrer was that the company was printing, selling and circulating 25,000 of these likenesses, with the result of humiliating her and of causing mental distress and physical sickness. A bare majority of the Court of Appeals overruled the decision of the Appellate Division, and held that no

cause of action was set forth in the complaint. This case resembles the case in hand, in that the defendant is here seeking to make an unauthorized use of Mr. Edison's likeness. It differs from it in the fact that no attempt was made to induce the public to believe that the person depicted was recommending the flour. This case cannot be sustained on principle, and has been disapproved by the Supreme Court of Georgia in Pavesich v. New England Life Insurance Company, 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; 106 Am. St. Rep. 104, and by our own Court of Appeals in Vanderbilt v. Mitchell (not yet officially reported), 67 Atl. 97, 103. IF A MAN'S NAME BE HIS OWN PROPERTY, AS NO LESS AN AUTHORITY THAN THE UNITED STATES SUPREME COURT SAYS IT IS (Brown Chemical Co. v. Meyer, 139 U. S. 542; 11 Sup. Ct. 625; 35 L. Ed. 247), IT IS DIFFICULT TO UNDERSTAND WHY THE PECULIAR CAST OF ONE'S FEATURES IS NOT ALSO ONE'S PROPERTY, AND WHY ITS PECUNIARY VALUE, IF IT HAS ONE, DOES NOT BELONG TO ITS OWNER, RATHER THAN TO THE PERSON SEEKING TO MAKE AN UNAUTHORIZED USE OF IT. If the mere exhibition of one's face to one's friends and to others on the public streets be a publication for all purposes, then that line of cases which Pollard v. Photographic Company is an example was wrongfully decided, for there could be no implied contract of confidence to keep that private which was already public property.

"That the subject is attended with difficulty, and that the line between what the court will restrain and what it will not restrain is hard to draw with absolute precision, is undoubted. This is well illustrated by the case of libel. If you call a business man a thief, or a physician a quack, in a printed publication, you undoubtedly do that which tends, and very directly tends, to diminish his earnings; and yet all the authorities, up to this time at least, agree that, because libel is a crime and is actionable at law, equity will not interfere. Prudential Insurance Company v. Knott, L. R. 10 Ch. 142, is an illustration. There the defendant had published a pamphlet in which he charged the plaintiff company with reckless management and with being in a state of insolvency. On bill filed alleging the representation to be untrue, and further alleging that the company was in fact prosperous and solvent, and that the continued publication of the pamphlet would damage the company's business and diminish its profits, an injunction was refused by the Vice Chancellor, and by the Lords Justices on appeal. The decision was put upon the ground that the pamphlet, if its statements were untrue, was libelous and actionable at law; and yet Lord Cairns said, in giving judgment, *that there were publications which a court of equity would restrain, and that such publications would be restrained none the less because they happened also to be libelous.* He expressly dissented, however, from Vice Chancellor Malins' view that REPUTATION WAS PROPERTY

AND THAT IT MIGHT, ON THAT GROUND, BE PROTECTED BY INJUNCTION. It would seem that the right of the citizen to have his publication passed on by a jury is, to some extent at least, responsible for the rule. Liberty of speech and of the press are guaranteed by the Constitution, and the question of their abuse is committed to that body.

"THERE MUST BE LIMITS TO THE SO-CALLED RIGHT OF PRIVACY. It is certain that a man in public life may not claim the same immunity from publicity that a private citizen may. Corless v. Walker Co., 64 Fed. Rep. 280; 31 L. R. A. 283. And as far as my researches have extended I do not find that it has yet been decided that injury to property in some form is not an essential element to relief. It may, at times, have been a matter of doubt whether what was called 'property' was really such, and whether the injury thereto, actual or apprehended, was not so 'shadowy' as to be incapable of judicial cognizance; BUT STILL THE CRITERION WAS ALWAYS INJURY TO PROPERTY OR TO PROPERTY RIGHTS. IT IS TO BE NOTED, HOWEVER, THAT THE INSIGNIFICANCE OF THE RIGHT FROM A PECUNIARY STANDPOINT DOES NOT ALWAYS BAR RELIEF. Thus the REPORT of an association of dentists (N. J. State Dental Soc. v. Dentacura Co., 57 N. J. Eq. 594; 41 Atl. 672), THE EXHIBITION OF ONE'S PHOTOGRAPH (Pollard v. Photographic Co., 40 Ch. Div. 345), and the publication of a pri-

vate letter which, as a literary production may be worthless (Folsom v. March, 2 Story 100; Boosey v. Jeffreys, 6 Exch. 583), are accorded the same protection as the lectures of a professor (Abernethy v. Hutchinson, 3 L. T. Ch. 209), the catalogue of a prince's etching (Prince Albert v. Strange, 1 McN. & G. 25) and the currency of a foreign state (Emperor of Austria v. Day, 3 De G. & J. 217). I THINK THAT UNDER THE ABOVE AUTHORITIES THE COMPLAINANT IN THE PRESENT CASE IS CLEARLY ENTITLED TO AN INJUNCTION TO RESTRAIN THE UNAUTHORIZED USE OF HIS NAME, HIS PICTURE, AND HIS CERTIFICATE. The possibility of injury because of their use without apparent objection on Mr. Edison's part is quite as great as it would have been in the Times Case had Mr. Walter stood by and allowed the advertisement of the bicycle with what seemed to be a Times endorsement.

"I regard the case of Vanderbilt v. Mitchell, just decided by the Court of Appeals, as conclusive. That court as I have said, condemned Robertson v. Rochester Folding Box Co., and cited with approval Routh v. Webster, and Walter v. Ashton."

THE MERE USE OF ONE'S PHOTOGRAPH FOR ADVERTISING PURPOSES WITHOUT HIS CONSENT IS AN UNLAWFUL INVASION OF HIS RIGHTS OF PRIVACY FOR WHICH AN ACTION FOR DAMAGES OR AN INJUNCTION WILL LIE.

It has been held that the mere publication of a photograph of a person without his consent for advertising purposes is an unlawful invasion of his right of privacy for which an action for damages or an injunction will lie without proof of special damage. See *Pavesich* v. *New England Life Insurance Company,* 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; approving the dissenting judgment of GRAY, Judge, in *Roberson* v. *Rochester Folding Box Co.* (1902), 171 N. Y. 538.

This doctrine of the "Right of Privacy" was approved by the case of *Edison* v. *Edison Polyform Mfg. Co.,* 73 N. J. Eq. 136, and by the case of *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910, 67 Atl. 97. This court held in the case of *Vanderbilt* v. *Mitchell,* that a fraudulent birth certificate should be cancelled by a decree in Chancery because it tended to expose the putative father to litigation. The Court at page 100 said:

> "If it appeared in this case that only the complainant's status and personal rights were thus threatened or thus invaded by the action of the defendants and by the filing of the false certificate, we should hold, and without hesitation, that AN INDIVIDUAL HAS RIGHTS, OTHER THAN PROPERTY RIGHTS, which he can enforce in a court of equity and which a court of equity will enforce against invasion. Pavesich *v.* New England Life Insurance Co., 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; 106 Am. St. Rep. 104."

And the Court said at page 101:

> "Furthermore, this case comes within the WELL-SETTLED RULE THAT A COURT

OF EQUITY WILL PREVENT THE THREATENED INVASION OF PROPERTY RIGHTS AND PROTECT A PARTY FROM EXPOSURE TO THE RISK OF LITIGATION AND LIABILITY."

This court also emphatically declared that the term "Property Right" is not to be taken in any narrow sense and that the tendency of equity in cases of this description should be to extend, rather than to restrict, the jurisdiction. Judge DILL says:

"From time immemorial it has been the rule not to grant equitable relief where a party praying for it had an adequate remedy at law; but modern ideas of what are adequate remedies are changing and expanding, and it is gradually coming to be understood that a system of law which will not prevent the doing of a wrong, but only affords redress after the wrong is committed, is not a complete system, and is inadequate to the present needs of society."

AN INNOCENT PERSON MAY ENJOIN THE POLICE FROM PUTTING HIS PHOTO IN THE SO-CALLED "ROGUES' GALLERY."

"PICTURE IN ROGUES' GALLERY.—It has been held that an innocent person may enjoin the police from putting his picture in a so-called rogues' gallery; Itzkovitch v. Whitaker, 115 La. 479, 112 Am. St. Rep. 272; 1 L. R. A. (N. S.) 1147; 39 South 499. In general, as to right to put picture in rogues' gallery, see Schulman v. Whit-

aker, 117 La. 704, 8 Ann. Case 1174, 7 L. R. A. (N. S.) 274, 42 South 227."

In *Itzkovitch* v. *Whitaker,* 115 La. 479; 39 So. 499, 112 Am. St. Rep. 272, 1 L. R. A. (N. S.) 1147, the Court said:

> *"We think that the publication of an innocent man's photograph in the rogues' gallery gives rise to sufficient grounds to sustain an injunction.* There is a right in equity to protect a person from such an invasion of private rights. *Everyone who does not violate the law can insist upon being let alone (the right of privacy). In such a case the right of privacy is absolute.* It must be said that there is some limit to this right, which is not necessary to discuss in this case. A person may be arrested, imprisoned, and acquitted without right to damages. All of this is true, but it bears no application to the issue in hand. Where a person is not guilty, is honest (and that is the only light upon which to consider this case with the issues before us), he may obtain an injunction to prevent his photograph from being sent to the rogues' gallery. He has the personal right of restraining order, at least for the time being. The theory in opposition to this view is substantially that the picture should be taken and exhibited for the public good. There can be no public good subserved by taking the photograph of an honest man for the purpose before mentioned. The court had jurisdiction to issue the preliminary injunction, and to make it perpetual if the evidence justifies the decree."

In this case an injunction was granted and the negative of the photographs ordered returned it being held that no pictures should be taken before conviction except for identification or detection.

In *Schulman* v. *Whitaker,* 117 La. 704; 42 So. 227; 7 L. R. A. (N. S.) 274, it appeared that a pawn-broker was arrested for receiving stolen property. He had been arrested many times before, but apparently never convicted. His picture was taken; he was afterwards tried and discharged. The court held that the picture should be destroyed, the ground being that there was no necessity of taking it as the defendant was well-known and it was not needed for purposes of identification or to prevent escape. The court is careful to say:

> "Whilst expressing the foregoing views, we desire to have it well understood that we are decidedly of opinion that cases may arise justifying the officer in charge of the police department in ordering a picture to be taken; but the necessity must be evident. Convicts and hardened criminals may forfeit all rights to consideration; to such an extent, at any rate, that their pictures may be taken if necessary to their identification, and that without much delay."

DEPUTY POLICE CHIEF HELD ENTITLED TO ENJOIN PROSECUTOR FROM REQUIRING SUBMISSION TO HIM FOR EXAMINATION OF ALL BANK ACCOUNTS OF ALL MEMBERS OF POLICE DEPARTMENT TO ASSIST IN INVESTIGATION.

In *Brex* v. *Smith,* 146 Atl. 34 (N. J. Ch.), a Deputy Police Chief was held entitled to enjoin

prosecutor from requiring submission to him for examination of all bank accounts of all members of the police department to assist in investigation. Here the Court of Chancery held that the "right of privacy" was a property right.

> "without the enjoyment of this right (privacy) all other rights would lose half their value."

THE DEFENDANTS' ROGUES' GALLERY IS NOW SAID TO BE KEPT AND MAINTAINED PURSUANT TO CHAPTER 65, PAGE 279, PUBLIC LAWS 1930.

This act does not legalize or authorize the commission of a libel or slander, which would be the case if the photograph of an innocent person were permitted to be kept in the Rogues' Gallery and therein displayed at the will and caprice of the defendants.

As the legislature cannot authorize the commission of a libel or slander it is plain that the legislature cannot authorize the keeping of an innocent man's photograph in the Rogues' Gallery, or the circulation thereof at the will and caprice of the defendants. See *Neafie* v. *Hoboken Printing and Publishing Company,* 75 N. J. L. 564; 68 Atl. 146, where the legislature is said to be without power to so legislate as to authorize anyone to commit a libel or a slander.

Paragraph 2 of the P. L. 1930, Chapter 65, page 279, requires the State Bureau of Identification to procure and file for record photographs and fingerprints of all persons *convicted* of an indictable offense and also of all well *known and habitual criminals.*

Now the complainant-appellant herein was never convicted nor was he a criminal or a

habitual criminal, so that it is plain that even the legislature has refrained from aiding the police department from creating a Rogues' Gallery of innocent people. Besides this act does not apply to the case *sub judice* as it was passed a long time after the alleged commission of the crime of the complainant-appellant and cannot in any way affect his rights in this case, for it is a rule of construction that the courts will not construe the statute so as to give it a retroactive effect unless compelled to do so by the words of the statute.

POINT THREE.

THE COURT ERRED IN FAILING TO FIND THAT THE ACTS OF THE DEFENDANTS WERE DONE MALICIOUSLY AND WITHOUT JUSTIFIABLE CAUSE AND FOR THEIR SELFISH GAIN AND PURPOSES.

Of course, the evidence covers this situation amply well. From what has been aforestated it is plain that the only reason the defendants kept the photographs of the complainant-appellant in the Rogues' Gallery and circulated them was to humiliate the complainant-appellant. This is particularly evidenced by the fact that they even allowed the Hudson Observer, a newspaper published in the City of Hoboken, County of Hudson and State of New Jersey, to circulate complainant-appellant's photograph immediately following his arrest and they continued to keep his photograph until threatened by the learned Vice Chancellor with the payment of a large counsel fee and costs should he decide in favor of the complainant-appellant. The alias "Luke Adams" attached to the complainant-appellant's name is evidence of malice because there is no evidence

showing, or tending to show, that the complainant-appellant ever used such a name, was ever known by it or was ever addressed by it.

POINT FOUR.

THE COMPLAINANT IS NOT BARRED BY A DECREE IN A PREVIOUS SUIT DISMISSING HIS BILL OF COMPLAINT.

See *34 C. J. 808,* under the title "New or Additional Grounds of Recovery"; *15 R. C. L. 962, section 437; Smith* v. *Fischer Baking Co., et al.,* 105 N. J. L. 567, 147 Atl. 455; *Mershon* v. *Williams,* 63 N. J. L. 398; 44 Atl. 211; *Schilstra, et al.* v. *Van Den Heuvel,* 82 N. J. Eq. 155; 90 Atl. 1056; *Wm. J. Janouneau Co.* v. *Wetherill,* 98 N. J. L. 80; 118 Atl. 707; *Nagle* v. *Conrad,* 96 N. J. Eq. 61; 125 Atl. 20; *Meirick* v. *Wittemann Lewis Aircraft Co., Inc.,* 98 N. J. L. 531; 121 Atl. 670.

CONCLUSION.

In conclusion we wish to state that the entire relief prayed for should be granted and that the decree of the Court below should be reversed without costs or counsel fee to either party as this was stipulated by the parties to this proceeding. (See Stipulation in the State of Case.)

We believe that we have sufficiently covered the grounds under the various points of this Brief and we will, therefore, not repeat except to ask this Honorable Court for a reversal of the decree and for an order granting all of the relief prayed for from this court.

Respectfully submitted,

ANTHONY P. LA PORTA,
Solicitor for and of Counsel with
FRANK J. BARTLETTA,
Complainant-Appellant.

Bill of Complaint, Annexed to Answering Affidavit of Anthony P. La Porta.

(Filed 10/30/31.)

IN CHANCERY OF NEW JERSEY.

(87—175.)

To his Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey:

The Bill of Complaint of Frank J. Bartletta, of the City of Hoboken, County of Hudson and State of New Jersey, respectfully shows that:

(1) The complainant is married; 33 years of age; a native born American citizen of Italian parentage; and has been residing in the City of Hoboken, County of Hudson and State of New Jersey, for 17 years last past.

(2) On the 10th day of February, 1928, he was arrested by Lieutenant Christie of the Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by his Honor, Adolph C. Carsten, Recorder of the Hoboken Recorder's Court, by reason of an alleged sworn complaint made by Joseph R. Scott, Lieutenant of the Police of the same City, whereby the complainant was charged with the unlawful possession of tickets, slips, plates and advertisements of a certain lottery company known as the Tia Juana Beneficial Association; said complainant was also charged with the unlawful possession of tickets, slips, plates and advertisements of a certain lottery known as "Double Six", and also charged with the unlawful possession of tickets, slips, plates and advertisements of another certain lottery known as the "Italian Lottery."

Bill of Complaint, Annexed to Answering Affidavit of Anthony P. La Porta.

(3) That on the day of his arrest aforesaid complainant under protest, and over his protest, was booked by Lieutenant Wren in the Hoboken Police Station at the City Hall and searched by Lieutenant Christie and his money, keys, pocketbook, watch and other personal belongings were taken from him and placed with Lieutenant Wren in charge of the desk; that under protest, and over his protest, he was then and there obliged to submit to the taking of his fingerprints by Officer Sullivan, by whom he was also weighed, measured and pedigreed, and was also obliged to write his name on four fingerprint index cards. After this he was photographed, under protest, by Officer Magnus, official photographer of the Hoboken Police Department.

(4) Complainant further shows that on the day aforesaid, after he was arrested, fingerprinted, measured, weighed and photographed, he was then taken before his Honor, Adolph C. Carsten, Recorder aforesaid, who then and there released said complainant under $5,000 bail, which was then and there furnished by Dr. Joseph Matera, of Hoboken, New Jersey. Complainant's personal belongings were then returned to him by the police.

(5) Complainant was at the time of his arrest engaged in various commercial enterprises and was a Sinking Fund Commissioner for a term of three years, which term had not then expired, and he was under bond with the City of Hoboken by reason of said office. Complainant was also connected with the Terminal Printing and Publishing Company, being a large stockholder and President thereof, in which Company it was

claimed incriminating evidence of the crimes charged against him was found.

(6) Complainant further shows that he is innocent of the criminal charges for which he was arrested and that he has not been indicted, tried or convicted for those alleged offenses, or any offense or crime whatsoever, and that the two years Statute of Limitation has long since run and that he is now wholly immune to indictment for any crimes covered by the aforesaid complaints against him.

(7) Within a few days after complainant's arrest aforesaid, his photographs taken as aforesaid, were placed in the Rogues' Gallery of the City of Hoboken, where they have been ever since kept. This Rogues' Gallery is a room kept by the Police Department of the City aforesaid, in which a large collection of photographs of rogues and habitual criminals are kept and displayed—for the purpose of exhibiting them to victims of crime to enable them to identify, if possible, the one suspected of committing the crime upon him or her, as the case may be, and also used by the Police Department aforesaid in apprehending and running down criminals, such as fugitives from justice, etc.

(8) On February 11th, 1928, a copy of the fingerprints taken of the complainant and his photographs were mailed to William J. Lahey, Chief Inspector, Police Headquarters, City of New York, New York, and on February 13th, 1928, a copy of the fingerprints and photographs of the complainant were mailed one to the Bureau of Identification, Department of Corrections, Albany, New York, and one to the Bureau of In-

vestigation, Department of Justice, Washington, D. C. This was done without the consent of the complainant.

(9) Complainant further shows that he was booked as Frank J. Bartletta, alias "Luke Adams", which last appellation he never assumed or was ever known by; that his first knowledge that the alias was attached to his name by the Police Department came to him the following day thru the medium of the Jersey Observer, a newspaper, which published and printed an account of his arrest, together with a photograph of him with the fictitious name alias "Luke Adams" wrongfully attached to his name.

(10) Complainant further shows that he has suffered and will suffer, much mental anxiety, great disgrace, financial loss and irreparable injury to his business, character, reputation and social standing by reason of the defendants' conduct in wrongfully booking the complainant with the alias "Luke Adams," in taking his photographs and fingerprints and the circulation thereof; the placing of his photographs in the Rogues' Gallery of the City aforesaid, immediately following his arrest, and the keeping of the same therein ever since without any legal justification and without his consent; the circulating of same with the attachment alias "Luke Adams" to his name; and the wrongful publicity following his arrest.

(11) That the defendants' conduct as hereinbefore described is unlawful and reasonably calculated to wound the feelings of the complainant and has subjected him, and is still subjecting him to the ridicule and contempt of others; that their only purpose in keeping the photographs and

fingerprints of the complainant in the Rogues' Gallery of the City aforesaid, is for selfish political gains and purposes, in this: prior, at and since the arrest of the complainant aforesaid, he has been a political foe of the administration of the City of Hoboken as conducted by the present Mayor, a defendant herein, and besides the defendants have stated from time to time, especially the Mayor aforesaid, that as long as they are in control they will never remove the complainant's photographs from the Rogues' Gallery or do anything to relieve the complainant of the grievances herein complained.

(12) Complainant further shows that the alias "Luke Adams" should be expunged from the records of the Police Department of the City of Hoboken for the reason that it may wrongfully involve him into criminal and civil liability; and that the photographs should be removed from the Rogues' Gallery of the City of Hoboken, and from other Rogues' Galleries, to which they were sent, and returned to him because some feeble-minded person may mistakenly connect complainant from the picture shown to him in the Rogues' Galleries aforesaid, as the person who held him up or committed some crime upon him, or others; and the fingerprints should also be returned to him for the opinion of fingerprint experts may by mistake connect him with some crime which he never committed.

(13) The complainant by and through his attorney, Anthony P. La Porta, Esq., served a written demand upon each of the defendants, namely: Bernard N. McFeeley, as Mayor; Joseph A. Clark, as Director of Public Safety; both being

members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and The Mayor and Council of the City of Hoboken (a municipal corporation of this State), a copy of which is annexed hereto and made a part hereof.

(14) Notwithstanding the written demand served upon the defendants aforesaid, each of the defendants refused to comply with the same.

(15) Complainant is without adequate remedy in the courts of law and therefore prays:

1. That each of the above named defendants may answer this bill of complaint and each statement herein made.

2. That a decree may be made compelling the defendants to remove from the Rogues' Gallery of the City of Hoboken and deliver and surrender unto complainant the photographs, negatives and photostatic copies thereof; and also deliver and surrender unto him the Bertillon measurements and fingerprints, photostatic copies, and all copies thereof, taken of him by the Police Department of the City of Hoboken on the 10th day of February, 1928; and that the defendants cause to be removed from the Rogues' Galleries of other cities, copies of the photographs and fingerprints taken of the complainant as aforesaid, which the defendants mailed, or caused to be mailed, to William J. Lahey, Chief Inspector, Police Headquarters, New York City, New York; Bureau of Identification, Department of Corrections, Albany, New York; and to the Bureau of Investigation,

True Copy of Demand, Annexed to Answering Affidavit of Anthony P. La Porta.

Department of Justice, Washington, D. C., and deliver and surrender them unto the complainant.

3. And that a decree may be made compelling the defendants to expunge and remove the alias "Luke Adams" attached to the name of the complainant in the records of the Police Department of the City of Hoboken.

4. Complainant prays for such other and further relief as he may be equitably entitled to under the allegations of his bill of complaint.

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

And the complainant will ever pray, etc.

ANTHONY P. LA PORTA,
Solicitor for and of Counsel
with the Complainant.

True Copy of Demand, Annexed to Answering Affidavit of Anthony P. La Porta.

To Bernard N. McFeeley, as Mayor; Joseph A. Clark, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and The Mayor and Council of the City of Hoboken, a Municipal Corporation of this State:

PLEASE TAKE NOTICE, that I require of you that you remove from your Rogues' Gallery

True Copy of Demand, Annexed to Answering Affidavit of Anthony P. La Porta.

of the City of Hoboken, and deliver and surrender unto me, or my attorney, Anthony P. La Porta, Esq., forthwith, the photographs, negatives and photostatic copies thereof; and also deliver and surrender the Bertillon measurements and fingerprints, photostatic copies, and all copies thereof, taken of me by the Police Department of the City of Hoboken on the 10th day of February, 1928; and that you cause to be removed from the Rogue's Galleries of other Cities, the copies of photographs and fingerprints taken of me as aforesaid, and which you mailed, or caused to be mailed, to William J. Lahey, Chief Inspector, Police Headquarters, New York City, New York; to the Bureau of Identification, Department of Corrections, Albany, New York; and to the Bureau of Investigation, Department of Justice, Washington, D. C., and to deliver and surrender them unto me, or my attorney aforesaid.

TAKE NOTICE, that I also require you to expunge and remove the alias "Luke Adams" attached to my name in the Police Records of your Police Department following my arrest on February 10th, 1928, forthwith.

(Signed) FRANK J. BARTLETTA.

Dated, October 26th, 1931.

A true copy.

FERD GARRETSON,
Clerk.

Answer, Annexed to Answering Affidavit of Anthony P. La Porta.

(Filed 12/7/31.)

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,
Complainant,

and

BERNARD N. MCFEELEY, as Mayor and member of the Board of Commissioners of the City of Hoboken; JOSEPH A. CLARK, as Director of Public Safety and member of the Board of Commissioners of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the City of Hoboken, and THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN, a municipal corporation of the State of New Jersey,
Defendants.

On Bill, &c.
Answer.

The answer of the defendants Bernard N. McFeeley, as Mayor and member of the Board of Commissioners of the City of Hoboken, Joseph A. Clark, as Director of Public Safety and member of the Board of Commissioners of the City of Hoboken, Edward J. McFeeley, Chief of the Police Department of the City of Hoboken, and The Mayor and Council of the City of Hoboken, a municipal corporation of the State of New Jersey, to the bill of complaint exhibited against them by the above named complainant. These

Answer, Annexed to Answering Affidavit of Anthony P. La Porta.

defendants answering the bill of complaint say that:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. It is admitted that appropriate entries of complainant's case were made in the Book of Records kept at Police Headquarters wherein all arrests and the disposition of all cases are entered, and that the money, keys, pocketbook, watch and all other personal belongings found upon the complainant at the time of his arrest were taken from him but were returned to him upon his furnishing bail, and were receipted for by the complainant. It is admitted that Detective Sergeant Sullivan took the fingerprints of the complainant, weighed and measured him, and that Acting Detective Magnus photographed him. Defendants allege that said fingerprints and photograph of the complainant were not taken forcibly and that not the slightest force was used upon the complainant in order to obtain his fingerprints and photograph. That the complainant, after some discussion as to the necessity and custom of taking the fingerprints and photograph of all persons charged with important crimes, misdemeanors and high misdemeanors, voluntarily submitted to having his fingerprints and photograph taken, and voluntarily signed his signature upon the four cards and forms upon which his fingerprints were taken.

4. Paragraph 4 is admitted.

5. Defendants have no knowledge or information sufficient to form a belief as to the state-

ments in Paragraph 5, except that complainant was a Sinking Fund Commissioner of the City of Hoboken, which is admitted, and except his connection with the Terminal Printing and Publishing Company, as to which the defendants allege that the complainant has the controlling interest in said Terminal Printing and Publishing Company and they admit that he is the President and Treasurer thereof.

6. Paragraph 6 is denied, except that the complainant has not been indicted, tried or convicted for said alleged offenses and that the two years statute of limitation has since run against said complaints.

7. It is admitted that, after complainant's arrest, his photographs were placed in the Bureau of Identification maintained and kept by the Police Department of the City of Hoboken, and that said photographs have been, ever since and still are, kept in said Bureau. That said Bureau of Identification is now kept and maintained pursuant to Chapter 65 of the Laws of 1930, and that, for more than twenty (20) years last past, the Police Department of the City of Hoboken has been maintaining and conducting said Bureau of Identification, and that it has been customary to take the photographs and fingerprints of all persons arrested upon complaint in important crimes, misdemeanors and high misdemeanors. That this practice of photographing and fingerprinting persons so charged prevails in every large city of this Country, where proper police regulations are well established, and that when a prisoner is arrested, charged with a crime of the character and importance charged against the complainant, who may be released upon bail, it

is necessary, for the proper enforcement of police regulations, and the securing of the prisoner for trial, that his photograph and fingerprints be taken, in order that, should he forfeit his bail and undertake to become a fugitive from justice, the police department would be in possession of such information as would enable them to have him identified, wherever he may be found. That said Police Department is required, in the proper discharge of police duties, to run down and arrest offenders who may escape after having been released on bail and that if they are not permitted to provide efficient means of identification of persons charged with offenses, their efforts in that direction will become ineffectual and unavailing. That such fingerprinting and photographing is one of the usual means employed in the police service of the country, and it would be a matter of regret to have its uses unduly restricted upon any fanciful theory of constitutional privilege.

8. Paragraph 8 is admitted.

9. It is admitted that complainant was booked as Frank J. Bartletta, alias Luke Adams, by which alias complainant was known and which was used by complainant.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is admitted.

14. Paragraph 14 is admitted.

Defendants further answering say that on or about February 14, 1928, said complainant instituted a suit in the Court of Chancery of New

Jersey against the defendants herein. That in said suit complainant alleged and set forth his arrest on February 10, 1928, by Lieutenant William Christie of the Hoboken Police Department, upon a warrant issued on February 9, 1928 by Adolph C. Carsten, Recorder of the City of Hoboken, by reason of a sworn complaint made by Joseph R. Scott, Lieutenant of Police, charging the complainant with the unlawful possession of tickets, slips, plates and advertisements of a certain lottery known as the Tia Juana Beneficial Association. That he was booked in the Hoboken Police station and, without his consent, compelled to submit to the taking of his fingerprints by Officer Sullivan. That he was obliged to write his name on the fingerprint index cards and was thereafter photographed by Officer Magnus, official photographer of the Hoboken Police Department. That he was released upon bail and that the complainant made a written demand upon the defendants requiring them to deliver and surrender up to him said photographs and negatives; and the Bertillon measurements and fingerprints. That the complainant was booked under the alias of Luke Adams. That he was innocent of the charge for which he was arrested and that he had not been arraigned, tried or convicted. That by said suit, complainant sought a decree to compel the defendants to deliver up and surrender unto him said photographs and negatives, also the Bertillon measurements and fingerprints, and all copies thereof, taken of the complainant by the Police Department of the City of Hoboken, and that they be restrained and enjoined perpetually, by writ of injunction, or order or decree of this court, to keep from distributing

or circulating the complainant's fingerprints, measurements, photographs and negatives, and all copies thereof. That said complainant, in and by his bill of complaint in said cause, declared against the said defendants for the very identical supposed offenses as those named and set forth in the bill of complaint filed in this suit.

That, on March 19, 1928, said defendants filed their answer to said bill of complaint and said cause, was, on April 23, 1930, referred to Hon. J. O. Bigelow, one of the Vice-Chancellors of the Court of Chancery, to hear the same for the Chancellor, and to report thereon to him, and to advise what order or decree should be made therein.

That said cause duly came to be heard before said Vice-Chancellor on bill, answer and proofs, and it appearing to the Court that the complainant was not entitled to the relief and injunction sought and prayed for by him, in his bill of complaint and that his said bill of complaint should be dismissed, a final decree was entered in said cause on November 7, 1930, ordering that the complainant's bill be dismissed.

That, thereafter, and on November 25, 1930, complainant appealed from the order of the Chancellor dismissing said bill to the New Jersey Court of Errors and Appeals, and said appeal, having been duly heard at the February Term, 1931, of said Court, and the Court of Errors and Appeals having considered the same and finding no errors in the record or proceedings in the Court of Chancery, it was ordered and adjudged by said New Jersey Court of Errors and Appeals, that the same be affirmed and the record be re-

moved to the Court of Chancery to be proceeded with in accordance with said judgment, as by the record and proceedings thereof, still remaining in said Court of Chancery and New Jersey Court of Errors and Appeals, more fully appears, which said judgment and decree still remain in full force and effect and not in the least reversed or made void.

And the said defendants further say that the said complainant and the said defendants, named in this present bill of complaint filed in this court on October 30, 1931, are the same persons and that the said offenses in said bill of complaint are the same identical offenses as are mentioned and alleged to have been committed in the bill of complaint filed February 14, 1928, and not other or different.

That the complainant is estopped by said judgment of the Court of Chancery, as affirmed by the New Jersey Court of Errors and Appeals, and barred from any further suit upon this the same cause of action, between the same parties, and the complainant is precluded from any further litigation between the said parties of the point and question that was put in issue and has been decided.

And the defendant Bernard N. McFeeley, says that he is Mayor and the Director of the Department of Public Affairs of the City of Hoboken, and as such official is without jurisdiction, authority or power, under the law, to act upon or comply with or refuse the demands made by the complainant.

Defendants deny that complainant is entitled to any relief whatsoever or any part of the re-

lief in said bill of complaint demanded, and allege that complainant has no standing in this Court or in any Court of Equity.

And defendants pray in all things the same benefit and advantages of this, their answer, as if it had been pleaded or demurred to said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HORACE L. ALLEN,
Solicitor for and of Counsel with
the Defendants.

Replication with Pleadings of Previous Suit, Annexed to Answering Affidavit of Anthony P. La Porta.

(Filed 12/29/31.)

IN CHANCERY OF NEW JERSEY.
(87-175.)

Between

FRANK J. BARTLETTA,
Complainant,

and

BERNARD N. McFEELEY, as Mayor; JOSEPH A. CLARK, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. McFEELEY, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN (a Municipal Corporation of this State),
Defendants.

On Bill, &c. Replication.

In reply to the defenses stated in the defendants' answer following paragraph 14 of their answer, and not anticipated in the Bill of Complaint, complainant, by leave of court, says that:

(1) Annexed hereto and made a part hereof are the pleadings in the previous cause between the same parties to the present suit, which consist of, Bill of Complaint (Filed Feb. 14, 1928); Answer (Filed Mar. 19, 1928); Replication (Filed

Replication with Pleadings of Previous Suit, Annexed to Answering Affidavit of Anthony P. La Porta.

March 20, 1928); Order Amending Bill of Complaint, as to Parties (Filed October 30th, 1930); Final Decree (Filed November 7th, 1930); Petition of Appeal (Filed November 25, 1930); and Remittitur on affirmance of Decree (Filed October 27, 1931).

(2) The complainant admits all the allegations of the defendants in the instant cause insofar as they do not conflict with the pleadings aforementioned and made a part hereof.

(3) The complainant admits that the said complainant and the said defendants named in this present Bill of Complaint filed in this Court on October 30, 1931, are the same persons, but denies that the said offenses in said previous Bill of Complaint are the same identical offenses as are mentioned and alleged to have been committed in the Bill of Complaint filed February 14, 1928, and not other or different.

(4) Complainant denies that he is estopped by said judgment of the Court of Chancery, as affirmed by the New Jersey Court of Errors and Appeals, and denies that he is barred from any further suit upon the instant cause of action, between the same parties, and denies that he is precluded from any further litigation between the parties of the points and questions that are now put in issue.

(5) He denies that the defendant, Bernard N. McFeeley, is without jurisdiction, authority or power, under the law, to act upon or comply with or refuse the demands made by the complainant, as Mayor and Director of the Department of Public Affairs of the City of Hoboken.

Replication with Pleadings of Previous Suit, Annexed to Answering Affidavit of Anthony P. La Porta.

(6) Complainant admits that the defendants keep a Bureau of Identification, commonly known as the Rogues' Gallery, which is now kept and maintained pursuant to Chapter 65 of the Laws of 1930, but says, however, that this act is unconstitutional in this:

1.—It requires the Police Department of any City of this State, whether innocent or guilty, to keep and circulate photographs of persons committing crimes, or suspected of committing crimes, without regard of their guilt, and makes no provision for the return of their photographs and fingerprints, although innocent, even after acquittal.

2.—The Act authorizes the commission of a libel or slander of an innocent person and it infringes the right of a person to be secure in his reputation against unwarranted attacks, such as slanders and libels, which is a part of the right of enjoying life and pursuing and obtaining safety and happiness being guaranteed by our fundamental law. N. J. Constitution Article 1, Section 1.

3.—Said act is unconstitutional because it authorizes the taking of fingerprints and photographs of an innocent person and to circulate and retain the same without his consent, and therefore deprives him of his liberty and property without due process of law, in contravention to Article 5, and in contravention to the 5th Amendment of the United States Constitution, no provision having been made by said act for the return of the fingerprints and photographs even after his innocence has been established or the Grand Jury has refused to indict him.

Replication with Pleadings of Previous Suit, Annexed to Answering Affidavit of Anthony P. La Porta.

(7) Complainant joins issue upon the remainder of the answer.

ANTHONY P. LA PORTA,
Solicitor of Complainant.

Endorsement.

I hereby consent to the filing of the within Replication.

Dated, December 29th, 1931.

HORACE L. ALLEN,
Solicitor of Defendants.

IN CHANCERY OF NEW JERSEY.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The complaint of Frank J. Bartletta of the City of Hoboken, County of Hudson and State of New Jersey, respectfully shows that:

1. Complainant is 29 years of age; that he is a native born American citizen of Italian parentage and that he has resided in the City of Hoboken, County of Hudson and State of New Jersey, for 14 years last past.

2. On the 10th day of February, A. D., 1928, he was arrested by Lieutenant William Cristie of the Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by his Honor Adolph C. Carsten, Recorder of the Hoboken Recorder's Court by reason of an alleged complaint made by Joseph R. Scott, Lieu-

tenant of the Police of the City aforesaid, whereby the complainant was charged with the unlawful possession of tickets, slips, plates or advertisements of a certain lottery company known as the Tia Juana Beneficial Association.

3. That on the day of his arrest aforesaid, the complainant under protest was booked by Lieutenant Wren in the Hoboken Police Station at the City Hall and searched by Lieutenant Cristie and his money, keys, pocketbook, watch and other personal belongings were taken from him and placed with Lieutenant Wren in charge of the desk; and that under protest he was then and there forcibly and without his consent compelled to submit to the taking of his fingerprints by Officer Sullivan by whom he was also weighed, measured and pedigreed, and was also compelled to write his name on four fingerprint index cards; after this he was forcibly photographed under protest by Officer Magnus, the official photographer of the Hoboken Police Department, by whom he was then and there advised that his photograph so taken was for the Rogues' Gallery of the City of Hoboken and that copies thereof were to be circulated, distributed and placed in the Rogues' Gallery of other cities throughout the United States and Canada, together with his fingerprints taken as aforesaid.

4. Complainant further shows that on the day aforesaid after he was arrested, fingerprinted, measured, weighed and photographed, he was then taken before His Honor Adolph C. Carsten, Recorder aforesaid, who then and there released the said complainant under $5,000 bail, which

was then and there furnished by Dr. Joseph Matera of Hoboken, New Jersey.

5. That thereafter upon information and belief the complainant by his attorney, Anthony P. La Porta, served a written demand upon each of the defendants, to wit: Honorable Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken; and the Board of Commissioners of the Mayor and Council of the City of Hoboken, requiring them to deliver and surrender to his attorney aforesaid, forthwith the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken, on the 10th day of February, 1928. That notwithstanding the demand served upon them as aforesaid each of the defendants refused to comply with the same.

6. Complainant further shows that he is engaged in various commercial enterprises in this City, County and State, in New York State as builder of homes, as a real estate and insurance broker; and as a banker in Montreal, Canada, and is connected with the Steneck Trust Company of Hoboken, New Jersey, as a member of the Directors and Advisory Board; and is connected with the Hoboken Finance Company, being the President thereof; and is also connected with the Terminal Printing and Publishing Company, being the President thereof, and is also connected with the City of Hoboken, a municipality of this State, as a Sinking Fund Commissioner, and is

a large taxpayer of the City of Hoboken, holding considerable real estate; that in all his businesses and enterprises aforesaid he has thousands of dollars invested.

7. Complainant further shows upon information and belief that he was booked as Frank J. Bartletta alias "Luke Adams" which last appellation he never assumed or was ever known by, but was maliciously and wrongfully assigned to him by the Police Department of Hoboken on or about the day of his arrest; that he is innocent of the charge for which he was arrested and that he was not arraigned, tried or convicted of the crime charged aforesaid, and that he fears that by the placing of his fingerprints, measurements and photographs in the Rogues' Gallery of the City of Hoboken and in other places he will suffer great disgrace, financial loss and irreparable injury to his business, character and commercial and social enterprises, and damage is likely to follow.

8. The complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That each of the above named defendants may answer this Bill of Complaint and each statement herein made.

2. That a decree may be made compelling the defendants to deliver up and surrender unto the complainant the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken as aforesaid; or that they may be restrained and enjoined perpetually by a Writ of Injunction or

Replication with Pleadings of Previous Suit, Annexed to Answering Affidavit of Anthony P. La Porta.

Order or Decree of this Court from keeping, distributing or circulating the complainant's fingerprints, measurements and photographs and negatives and all copies thereof as aforesaid.

3. That a Writ of Subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by said decree as this Court may make in the premises. And the complainant will ever pray, &c.

ANTHONY P. LA PORTA,
Solicitor of and Counsel
with the Complainant.

To Hon. Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken; and the Board of Commissioners of the Mayor and Council of the City of Hoboken:

PLEASE TAKE NOTICE that I require of you that you deliver and surrender to my attorney, Anthony P. La Porta, forthwith, the photographs and negatives, also the Bertillon measurements and fingerprints, and all copies thereof, taken of me by the Police Department of the City of Hoboken, on the 10th day of February, 1928.

(Sgd.) FRANK J. BARTLETTA.

Dated, February 13, 1928.

Answer of Defendants, Annexed to Answering Affidavit of Anthony P. La Porta.

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,
Complainant,

and

BERNARD N. MCFEELEY, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken,
Defendants.

On Bill &c. Answer.

The answer of the defendants, Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken, to the Bill of Complaint exhibited against them by the above named complainant. These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefits and advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such

parts thereof as these defendants are advised that it is material or necessary for them to make answer unto, answering say:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted. In addition to the complaint set forth in paragraph 2 of the Bill of Complaint, said complainant was also charged with the unlawful possession of tickets, slips, plates and advertisements of a cerain lottery known as "Double Six", and also charged with the unlawful possession of tickets, slips, plates and advertisements of another certain lottery known as the "Italian Lottery."

3. It is admitted that appropriate entries of complainant's case were made in the Book of Records kept at Police Headquarters wherein all arrests and the disposition of all cases are entered, and that the money, keys, pocketbook, watch and all other personal belongings found upon the complainant at the time of his arrest were taken from him but were returned to him upon his furnishing bail, and were receipted for by the complainant. It is admitted that Detective Sergeant Sullivan took the fingerprints of the complainant, weighed and measured him, and that Acting Detective Magnus photographed him. Defendants allege that said fingerprints and photograph of the complainant were not taken forcibly and that not the slightest force was used upon the complainant in order to obtain his fingerprints and photograph. That the complainant, after some discussion as to the necessity and custom of taking the fingerprints and photographs of all persons charged with important crimes, misdemeanors and high misdemeanors, voluntarily

submitted to having his fingerprints and photograph taken, and voluntarily signed his signature upon the four cards and forms upon which his fingerprints were taken. It is denied that complainant was advised by Officer Magnus or anyone else connected with the Police Department of the City of Hoboken that copies of complainant's photograph were to be circulated, distributed and placed in the Rogues' Galleries of other cities throughout the United States and Canada, together with his fingerprints.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 6, except that complainant is a Sinking Fund Commissioner of the City of Hoboken, which is admitted, and except his connection with the Terminal Printing and Publishing Company, as to which the defendants allege that the complainant has the controlling interest in said Terminal Printing and Publishing Company and they admit that he is the President and Treasurer thereof.

7. Paragraph 7 is denied except that the complainant was booked under the alias of Luke Adams and that his photograph and fingerprints were taken upon his arrest and before trial and conviction.

8. Paragraph 8 is denied.

9. Defendants say that for more than twenty (20) years last past the Police Department of the City of Hoboken has been maintaining and conducting a Bureau of Identification, and that

it has been customary to take the photographs and fingerprints of all persons arrested upon complaint in important crimes, misdemeanors and high misdemeanors. That this practice of photographing and fingerprinting persons so charged prevails in every large city in this country, where proper police regulations are well established, and that when a prisoner is arrested, charged with a crime of the character and importance charged against the complainant, who may be released upon bail, it is necessary, to the proper enforcement of police regulations, and the securing of the prisoner for trial, that his photograph and fingerprints be taken, in order that should he forfeit his bail and undertake to become a fugitive from justice, the police department would be in possession of such information as would enable them to have him identified, wherever he may be found. That defendants are required, in the proper discharge of their duties, to run down and arrest offenders who may escape after having been released on bail and that if they are not permitted to provide efficient means of identification of persons charged with offenses, their efforts in that direction will become ineffectual and unavailing. That such fingerprinting and photographing is one of the usual means employed in the police service of the country, and it would be a matter of regret to have its uses unduly restricted upon any fanciful theory of constitutional privilege.

10. That it is not the practice of the Police Department of the City of Hoboken to publish the photograph of a prisoner and it is not their purpose or intention to apply the photograph and fingerprints of the complainant to any other

purpose than of identification if it becomes necessary in the criminal proceedings now pending, or which may hereafter be instituted against him. That it has been and is the practice of said Police Department to take the photograph of a person charged with as serious a crime as that with which the complainant was charged, together with four (4) sets of his fingerprints. That one copy of his photograph and one set of his fingerprints are kept in a private collection maintained for the use of the detective force of the City of Hoboken in the detection and identification of criminals and fugitives from justice. This collection is not open to the inspection of the public, but inspection thereof is only permitted where a serious offense has been committed, and it becomes proper, in the opinion of those in charge, to permit an inspection to be made by proper police officers, and proper persons. That it has been and is the practice of said police department to send one copy of said photograph and fingerprints so taken to the Central Bureau of Identification of New York State, at Albany, New York, and one to the Bureau of Identification, Department of Justice, Washington, D. C., and one copy of the fingerprints to the Bureau of Criminal Identification, Police Headquarters, New York City, N. Y., with a written request to return to the police authorities of Hoboken any record they may have of the subject in order to ascertain if the party in question had a criminal record.

11. That prior to the filing of the Bill of Complaint herein and in accordance with the practice of said Department, on February 11th, 1928, a copy of the fingerprints taken of the complainant

was mailed to William J. Lahey, Chief Inspector, Police Headquarters, New York City, N. Y., and on February 13, 1928, a copy of the fingerprints and photograph of the complainant were mailed one to the Bureau of Identification, Department of Corrections, Albany, N. Y., and one to the Bureau of Investigation, Department of Justice, Washington, D. C.

12. That when the complainant's fingerprints were taken by Detective Sergeant Sullivan and his photograph taken by Acting Detective Magnus, there was in the custody and possession of the police authorities a great quantity of advertisements, slips, papers and documents pertaining to the business of lotter-policy so-called, together with the forms and plates from which said lottery tickets, advertisements and papers pertaining to lotter-policy were printed, all of which had been theretofore found and taken by the police from the premises of the Terminal Printing and Publishing Company, of which Company the complainant is the President and Treasurer. Defendants charge and allege that said slips, advertisements, and tickets pertained to the business of lottery or lottery policy and that they were printed with the complainant's knowledge, at his instigation and direction, and at his special instance and request, by his agents and employees. That the complainant's photograph and fingerprints were taken without any malice or wanton disregard of the complainant's rights, but solely in the performance of a police duty based upon the evidence then in the hands of the police department, of the commission of a high misdemeanor by the complainant and a sworn complaint lodged against him therefor.

Answer of Defendants, Annexed to Answering Affidavit of Anthony P. La Porta.

13. That the lottery tickets of the "TIA JUANA" Mexican lottery printed by the complainant's company, the Terminal Printing and Publishing Company, announced cash prizes from ten dollars to twenty-five thousand dollars under the pretext or guise of a monthly dividend. That the slips and advertisements announced the winning numbers and cash prizes for the month of January, 1928. That the lottery tickets of the "DOUBLE SIX" lottery printed by the complainant's said company contained a number and spaces for the purchaser to insert his selection of numbers and combinations thereof and the slips announced weekly cash prizes of forty-five thousand dollars. That the slips and lists pertaining to the Italian Lottery contained the lucky and winning numbers for the weekly drawings of said lottery.

14. Defendants deny that complainant is entitled to any relief whatsoever or any part of the relief in said bill of complaint demanded, and allege that complainant has no standing in this Court or in any Court of Equity.

And defendants pray in all things the same benefit and advantages of this, their answer, as if it had been pleaded or demurred to said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HORACE L. ALLEN,
Solicitor for and of Counsel
with the Defendants.

Replication Annexed to Answering Affidavit of Anthony P. La Porta.

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,
Complainant,

and

BERNARD N. MCFEELEY, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken,
Defendants.

On Bill, &c. Replication.

The complainant joins issue on the answer of the defendants.

ANTHONY P. LA PORTA,
Solicitor for and of Counsel
with the Complainant.

Answering Affidavit of E. Paul Sjostrom.

IN CHANCERY OF NEW JERSEY.

148/399.

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, *et al.*,
Defendants.

On Bill, &c.
Affidavit.

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

E. PAUL SJOSTROM, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am the Acting Supervisor of the State Bureau of Identification of the State of New Jersey, created under an Act of the Legislature entitled:

> "An Act to create a State Bureau of Identification within the Department of State Police and requiring peace officers, persons in charge of certain state institutions and others to make reports respecting criminals to such bureau and to provide a penalty for violation of the provisions thereof"

being Chapter 65 of the Laws of New Jersey of 1930 and re-enacted and incorporated in the Revised Statutes of New Jersey, known as Title 53—"State Police"—Sections 1 to 20 and have been Assistant Supervisor from the creation of

said Bureau to September, 1940 and Acting Supervisor from September, 1940 to date.

3. As such Acting Supervisor of said State Bureau of Identification, I have either maintained, or there has been maintained under my supervision the records of all fingerprints, plates, photographs, pictures, descriptions, measurements or such other information as may be pertinent, relating to any person arrested for an indictable offense or any person believed to be wanted for an indictable offense or believed to be a habitual criminal, which have been taken by the Sheriffs, County of Police, members of the State Police and any other law enforcement agencies and officers within the State of New Jersey and forwarded to the State Bureau of Identification.

3. At the request of the office of the Attorney General of the State of New Jersey, I have made a search of the aforesaid records in the said State Bureau of Identification for the periods hereinafter indicated, for the fingerprints, plates, photographs, pictures, descriptions, measurements and such other information as may be pertinent, for the number of persons who have been fingerprinted, etc., sent me by the Hudson County Jail, and they are as follows:

From July 1, 1930 to April 17, 1945..	31,831
From November 7th, 1942 to April 17, 1945	4,705
From March 27, 1945 to April 26, 1945	183

4. Attached to this affidavit and made a part hereof is a true copy of the list of various persons who have been fingerprinted and photographed

by the Supervisor of the Bureau of Criminal Identification in the office of the Sheriff of Hudson County in the Hudson County Jail, the charges preferred against each of them and the disposition of the cases for the period from March 27th, 1945 to April 26th, 1945. Where the disposition of the cases is not indicated therein, this means that I or my Department have not been advised of the disposition, if any, that has been made thereof. Likewise attached hereto is a list of the persons fingerprinted by the Police Department of the City of Jersey City which has been forwarded to me by such Department for the period from March 27, 1945 to April 17, 1945. This list has been sent to me as the Acting Head of the State Bureau of Identification.

5. The said State Bureau of Identification has received from the Police Department of the *City of Union City* such fingerprints, etc. from July 1st, 1930 to April 17th, 1945 of 3,297 persons.

From March 6th to April 26th, 1945....50

Jersey City Police Department

From July 1, 1930 to April 17, 1945 22,345

Hoboken Police Department

July 1, 1930 to April 17, 1945..... 7,883

Bayonne Police Department

July 1, 1930 to April 17, 1945..... 2,861

The Total received is..... 68,217

6. The total number received throughout the State of New Jersey from July 1, 1930 to April 17, 1945 is 641,902. These fingerprints, photographs, measurements, etc. are secret and not ex-

posed to the public view and can only be referred to upon inquiry from proper police authorities sent to our Department to ascertain if a person has any record of conviction for any offense.

7. Herewith is a list of the names of persons received at the State Bureau of Identification of fingerprints, etc. of persons detained or held in the Hudson County Jail as material witnesses from the dates set opposite their respective names:

Names	Date Received
Mildred Austin	February 7, 1942
Sarah Cox	June 6, 1942
Ellen Carroll	June 10, 1942
	July 8, 1942
Florence Clader	February 7, 1942
Mary Doe	July 20, 1942
Helen De Werth	December 27, 1941
Beatrice Douglas	June 6, 1942
Mary Feeney	February 7, 1942
Gertrude Fetchko	February 7, 1942
Clara Gethera	June 9, 1942
Nettie Johnson	June 6, 1942
Lillian Kryscenko	December 27, 1941
Virginia Moseley	June 6, 1942
Mary Parisi	February 16, 1942
Mary Ruh	February 7, 1942
Marie Ruh	February 7, 1942
Clara Rada	February 7, 1942
Ethel Redd	June 6, 1942
Edaline Rivers	June 6, 1942
Angela Robinson	June 3, 1942
Clara Turner	June 6, 1942

Likewise since April 1st, 1945 similar fingerprints, etc. have been received from the said Hudson

County Jail of the following persons being detained there as material witnesses:

John Carroll
John Champy
Ernest Taylor
Daniel Gaston
George West
Raymond Kelly

with no other charge against them, as shown on said identification card so maintained by me. In addition to the foregoing, we have likewise received the same fingerprints, etc. of the following persons, whose identification cards show they were detained in the Hudson County Jail as material witnesses:

George Delap
David Bazinet.

E. Paul Sjostrom

Sworn to and subscribed
before me this 10th day
of May, 1945.

Stanley S. Petty
Notary Public of N. J.

(Seal)

Answering Affidavit of E. Paul Sjostrom.

Fingerprints Received from the Hudson County Jail from March 27th to April 26th, 1945, Including the Number, Name, Charge and Disposition Where Noted:

Number	Name	Charge	Disposition
14148	Anthony Squillante	Indecency	
15403	Peter Milne	Dis. Person	30 days
23281	Joseph B. Junek	Ind. Exposure	
24560	John J. Dundas	Brkg. & Entering	
25489	Alphonso Russell	Vio. Probation	
26733	Ruth E. Maynes	Vio. Probation	
26765	Michael J. O'Keefe	Brkg. & Entering	
28432	John H. Carroll	Material Witness	
28489	Paul Holup	Dis. Person	6 mos.
28490	Lin H. Chang	Vio. Custom Laws—Fed.	
28491	Sam Gold	Armed Robbery	
28492	Maxerine N. Scantlin	Venereal Dis. Act	60 days
28493	Victor H. Gurczynski	B. & E. by night	
28495	Margaret C. Looney	Open Lewdness	
28496	Joseph Sweeney	Dis. Person	30 days
28497	Daniel H. Gaston	Material Witness	
28498	Benjamin Klosner	Robbery	
28499	George G. Schulkes	Brkg. Ent. & Larc.	
28500	William A. Roth	Non-Support	
28501	Victoria C. Ontko	Aslt. & Battery	
18001	Byron W. Roseboro	Vio. Probation	
24510	Bernard A. Carney	Dis. Person	30 days
28494	Jesse P. Turner	Open Lewdness	
28502	Jesse C. Washington	Aslt. & Battery	
28503	Dawson Hazelton	Dis. Person	90 days
28504	Bruce B. Darling	Murder	
28505	Helen G. Jason	Dis. Person	6 mos.
28506	Anna M. Nadolny	Dis. Person	1 yr.
28507	Eddie Washington	Forgery	
28506	Mary Erwin	Dis. Person	30 days
28509	Sarah L. Davidson	Possn. Lot. Slips	
28510	Mary Miliski	Engag. in Lot.	
28511	Nye Covell	Engag. in Lot.	
28512	Harry E. Krug	Engag. in Lot.	

Answering Affidavit of E. Paul Sjostrom.

	Number	Name	Charge	Disposition
	28513	David W. Wetherell	Engag. in Lot.	
	28514	Joseph M. Shields	Engag. in Lot.	
	28515	Daniel Sachs	Conspiracy	
	10905	Samuel R. Grisson	Grand Larceny	
	14830	James Mack	Dis. Person	30 days
10	25137	Fred G. Miller	Non-Support	
	28516	Clarence E. Flanagan	Personating an Officer	
	28517	Clifford W. Ricker	Aslt. & Bat. (auto) (3) Manslaughter by auto	
	28518	Leroy H. Stewart	Desertion	
	28519	Madeline A. Blaszkiewitz	Embezzlement	
	28520	Stanley Friedenson	Aslt. & Battery	
	28521	Anna Sranek	Bigamy	
	28522	Charles Meloro	Conspiracy—Fed.	
	28523	William J. Hennessey	Vagrancy	10 days
	28524	Raymond Dinino	Brkg. Ent. & Larceny	
20	28525	Dominick DeCandio	Fug. from Justice	
	5116	Joseph G. Hogh	Burglary	
	8734	Dominick A. Laico	Dis. Person	30 days
	12202	John Dondero	Dis. Person	30 days
	23170	George G. Kroljic	Grand Larceny	
	24738	Edward J. Zielinski	Larc. Mot. Veh.	
	26581	George Christman	Larceny	
	26701	Frank J. Worthington	Dis. Person	30 days
	27361	Martha Subach	Dis. Person	10 days
	27649	Jason G. VanAmburgh	Larc. Mot. Veh. Fug. from Justice	
30	28512	Harry E. Krug	Engag. in Lot.	
	28526	Walter S. Lubin	Brkg. Ent. & Larceny	
	28527	James Smith	Att. Aslt. & Battery	
	28528	Ernest Taylor	Material Witness	
	28529	Eleanor L. Spiotta	Grand Larceny	
	28530	Julia Brown	Dis. Person	30 days
	28531	Nancy Brown	Dis. Person	30 days
	28532	Elizabeth Porter	Att. Aslt. & Battery	
	28533	Joseph R. Gwinnett	Issuing Worthless Checks	
	28534	George Steckler	Material Wit.—Indecency	
	28535	Zack Porter	Material Witness	
40	28536	John C. Thorburn	Indecent Assault	
	28537	William C. Dauber	Engag. in Lot.	

Answering Affidavit of E. Paul Sjostrom.

Number	Name	Charge	Disposition
28538	Phillip P. Krug	Engag. in Lot.	
28539	Ernest Hopkins	Att. Aslt. & Bat. Int. Kill	
28540	Morton Perry	Indecency	
28541	Leslie Elmore	Dis. Person	30 days
28542	Charles W. Maybin	Larc. Mot. Veh. Fug. from Justice	
28543	Zigmund Pniewski	Larc. Mot. Veh.	
28544	Michael Pukas	Larc. Mot. Veh.	
28545	Rose M. Brady	Dis. Person	90 days
28546	Henry Sobke	Rape	
28547	Michael Leskin	Gaming	
28548	Rudolf Bonen	Vio. Sel. Serv. Act	
16369	William P. Nolan	Utt. Bad Check	
19802	Ralph G. Tesauro	Dis. Person	30 days
28550	Joseph A. Zych	Desertion	
28551	John P. Ward	Dis. Person	30 days
28552	Edward Harmelin	In transit	
28553	Alfred Lepore	Dis. Person	30 days
28554	Ernest Natale	Dis. Person	30 days
28555	Mabel T. Gilbert	Dis. Person	30 days
28556	Wesley M. Jones	Dis. Person	10 days
28557	Collis Jackson	Vio. Sel. Serv. Act	
13305	John H. Zinner	Contempt of Court	10 days
28558	Josephine F. Resevuto	Dis. Person	5 days
28559	William H. Bessoir	Dis. Person	5 days
28560	Jesse B. Brown	Adultery	
28561	Raymond Kelly	Material Witness	
28562	Albert Hammond	Aslt. Int. Kill Carrying Dang. Weapon	
28563	David M. Moore	Aslt. Int. Kill Carrying Dang. Weapon	
28564	Harry B. Reid	Aslt. Int. Kill Carrying Dang. Weapon	
28565	Edward Jasones	False Swearing	
28566	George P. Nugaris	False Swearing	
28567	Stanley Wallace	False Swearing	
10998	Maurice W. Weisensee	Brkg. Ent. & Larceny	
28568	Matthew J. Grice	Dis. Person	10 days
28569	Henry Richardson	Dis. Person	10 days
28570	James T. Valentine	Material Witness	

Answering Affidavit of E. Paul Sjostrom.

	Number	Name	Charge	Disposition
	28571	William A. Shannon	Robbery	
	28572	Thomas S. Schelling	Robbery	
	28573	Charles T. Latko	In transit	
	28574	Harold Lester	Vio. Sel. Serv. Act	
	28575	Chan C. Lam	Vio. Custom Laws	
	23152	Fulton H. Wells	Dis. Person	10 days
10	28577	John V. Short	Larc. Mot. Veh.	
	28578	Thomas E. Whalen	Dis. Person	10 days
	28579	George Rust	Murder	
	28580	Joseph J. Leonard	Material Witness	
	28581	Thomas E. Donohue	Material Witness	
	28439	Joseph Mulvaney	Burglary Brkg. & Ent. by night Entering without breaking	
	28582	Frank G. Freader	Vio. Mot. Veh. Laws	
	28583	Dorothy E. Howard	Dis. Person	90 days
	28584	David Lissner	Lewdness	
20	28585	Rose M. Belmonte	Open Lewdness	
	28586	Thomas L. Dempsey	Open Lewdness	
	28587	Arthur J. McFarlane	Att. Suicide	
	23146	Joseph N. Lanna	Vio. Mot. Veh. Laws	1 day
	26493	Peter M. Giordano	Material Witness	
	7436	James J. Wells	Adultery	
	13934	Fred C. Hertel	Dis. Person	30 days
	15671	Frank Van Geldern	Material Witness Vio. Probation	
	25955	Thomas E. Gilson	Larc. from Person	
	26874	Charles E.	Att. Aslt. & Battery	
30	27801	Edwin C. Schlesler	Dis. Person	6 mos.
	27918	Raymond Lecara	Material Witness	
	28353	Edwin A. Ellermann	Aslt. & Battery	
	28589	John J. Multooney	Brkg. Ent. & Larceny	
	28590	Charles A. Dundorf	Bookmaking	
	28591	John J. Cerchio	Rec. Stln. Gds.	
	28592	Louis Damato	Rec. Stln. Gds.	
	28593	Louis J. Laffman	Bookmaking	
	28594	Howard C. Soden	Rec. Stln. Gds.	
	28595	Frank S. Cerbo	Rec. Stln. Gds.	
	28596	Joseph Civitano	Att. Aslt. & Battery	
40	28597	Edward Kuhle	Att. Aslt. & Battery	

Answering Affidavit of E. Paul Sjostrom.

Number	Name	Charge	Disposition
28598	Walter Klui	Serving Liquor to minor	
28599	Zigmund Witkowski	Att. Aslt. & Battery by auto	
28600	Joan Pica	Adultery	
28601	Louise B. Lafeminia	Bookmaking	
28602	John F. Arrindell	Att. Aslt. & Battery	
28603	Anthony G. Marino	Indecent Exposure	
28604	Ernest L. Warwick	Brkg. Ent. & Larceny	
28605	Samuel Gross	Impersonation	
28606	Fred Rubin	Bookmaking	
28607	Thomas P. Moran	Conspiracy	
28608	James Hill	Att. Aslt. & Battery	
28609	John J. McCue	Material Witness	
28610	William J. Turlip	Vio. Sel. Serv. Act	
28611	Nathan Goldstein	Bookmaking	
28612	Max Wittenberg	Bookmaking	
5484	Peter F. Naclerio	In transit	
6608	William H. Kappmeier	Material Witness	
6613	Andrew Dzamba	Dis. Person	6 mos.
10447	George T. Delap	Material Witness	
13017	John J. Lynch	Possn. Lot. Slips	
23171	Arthur D. Bransky	Desertion	
26989	John A. Champy	Material Witness	
28270	Joseph C. Borges	Forgery	
28588	Harry Conklin	Dis. Person	30 days
28613	Emil J. Macko	Illegally Wearing Uniform	
28614	Joseph J. Ardolino	In transit	
28615	Umberto Amatucci	In transit	
28616	Charles H. Waters	In transit	
28617	Richard Filippone	In transit	
28618	Charles G. Frank	Theft—Govt. Prop.	
28619	Michael Joyce	Possn. Lot. Slips	
28620	David Bazinet	Material Witness	
28621	Douglas H. Woods	Held for Fed. Auth.	
28623	Benjamin F. Creamer	Embezzlement	
28624	Oscar R. Moore	Aslt. Int. Kill	
28625	Bee Wood	Possn. Dangerous Weapons	
28626	Earl G. Burgess	Vio. Sel. Serv. Act	

Names and Numbers of Fingerprints Received from Jersey City Since March 27th, 1945 to April 17th, 1945.

JERSEY CITY

8721 John J. Dundas
9168 Elizabeth Porter
9169 Michael O'Keefe
9170 Carl Grandy
9171 Henry Taliaferro
9172 James Spears
9173 Walter Lubin
9174 Michael Pukas
9175 Frank Pepe
9176 Jose Espinoso
9177 James Smith
9178 Ernest Taylor
9179 Eleanor Spiotto
9180 Zack Porter
9181 Julio Brown
9182 Nancy Brown
9183 Jason Van Amburgh
9184 Charles Maybin
9185 Edward Zielinski
9186 Zygmunt Pniewski
9187 Lon Foon
9188 Elmer DeBlaker
9189 Frank Rifici
9190 Nicholas Piazza
6262 Dominick Laico
9191 Argentino Mazzucchelli
9192 Robert J. Moody
9193 Henry Sobke
9194 Michael Leskin
9195 Thomas Gray
9196 George Forsberg
9197 Mackey Aiken
9198 William Nolan
9199 John Evans
9200 William McElwain
9201 Alvin Vaughn, Jr.
9202 John S. Oliver
9203 John V. Short
9204 David M. Moore
9205 Albert Hammond
9206 Harry Reid
9207 John Mulrooney
9208 Rayford Gambrell
9209 Fred L. Williams
9210 Raymond Kelly
9211 Larry Kotkin
8753 William Tronco
9212 James Hill
9214 Marie Masciale
9213 Marie Walker
9216 Eva Hart
9217 George Walker
9218 James L. Graham
9219 Catherine Coleman
9220 Fulton Wells
4532 Anthony Ciambrone
9221 Charles G. Frank
9222 Francis McCarthy

Answering Affidavit of Joseph Corella.

IN CHANCERY OF NEW JERSEY

148/399

Between
WILLIAM McGOVERN,
Complainant,
and
WALTER D. VAN RIPER, *et. al.*,
Defendants.

On Bill, &c.
Affidavit.

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

JOSEPH CORELLA, of full age, being duly sworn, upon his oath according to law, deposes and says:

1. I was, and still am, employed in the Office of the Prosecutor of the Pleas as a County Investigator during all the times and dates mentioned in this Affidavit.

2. That between the dates of June 6, 1944 and April 20, 1945 in the course of my official duties I had occasion to make numerous raids on premises situate in the various municipalities of the County of Hudson. These raids were made under the direction of the Attorney General and Acting Prosecutor of the Pleas of Hudson County, Walter D. Van Riper, for alleged violations of the criminal laws of the State, and in particular, violations of the laws relating to Bookmaking, Keeping of Gaming Houses, Keeping of Disorderly Houses, Conspiracies to Make Book upon the event of horse-racing, lotteries and lottery-policies so-

called, and Gaming at Dice. That in the conducting of these raids I was accompanied by Samuel Mongiello, William Welch, William Penne, Domenick Andolora, County Investigators and members of the staff of investigators of the said Acting Prosecutor of the Pleas.

3. That between the dates of June 6, 1944 and April 20, 1945 I arrested, or caused to be arrested, and participated in the arrest and apprehension of the following named persons: William Maessner, Harry Aarons, John D'Antonio, Louis Sherogan, Morris Speicher, Fred W. Christman, James A. Dilworth, Jack Meyer, Michael Riccio, Stanley Dee (or Delenski), Herbert Schwartz, Samuel Shapiro, Joseph Shernov, Max Haber, James A. Callicchio, Samuel Katzman, Jacob Cabel, Salvatore A. Delisio, Joseph Brennan, Harold Tunik, Leonard J. Nigrelli, Chas. Schlatterer, Herman Prensky, Max Garfinkel, Louis Moll, Abraham Rudnick, Rudolph Meyer, Frank Neumann, Frank Marano, Walter L. Mullins, Vincent P. Halpin, Frank X. J. Marnell, Walter A. Lewis, Salvatore Urso, Anthony Montelione, Nicholas Basso, Jacob Bergman, Vincent A. Mangone, William Dove, Morris Becker, Dewey Levitch, Morris Schmeltzler, Harry C. Nobut, John B. Mohr, Herman Rosenthal, William Katz, Harold Zoeman, Max Levy, Robert T. Walter, Samuel Levinson, Simpson Hess, Arthur Elfenbein, Leon Furman, Harold L. Furman, John J. Cook, John M. Kramer, Walter Kothe, Ruth Hanna, Herman Wynne, Bert F. H. Savarese, Joseph F. McCabe, Jr., Charles Rudy, Michael Kaplan, William C. Cohen, Edward A. Burke, Anthony C. Pantaliano, Frank Wert, Harry Ratner, Frank Hanna, Elizabeth Ubertino, Anthony T. Graziano, John Hanna, Sam Zuccaro,

Answering Affidavit of Joseph Corella.

Joseph Silver, Carmen Priore, Aaron Bloom, George Yandel, Charles Nicolosi, Peter B. Bobinski, James Barrett, Hugh McKenna, William J. Sullivan, Edward J. Wohlfarth, Edward Taffe, Charles Yanowsky, Louis Luchessi, Samuel Singer, Jeremiah J. Kelly, Nicola Avagliano, Lulu Avagliano, Fiorante Starace, Nunzio Banzaca, Fiorante Starace, Izrael Solnick, Joseph Czapkkewicz, William Glazer, Pasquale Yacenda, William Pittschau, Christopher Doherty, Leo Kielp, William Leen, Anthony Cupo, Joseph Politowski, George Donoghue, Frank Chimowicz, Israel Mandel, George D'Orio, Domenick Spano, Thomas Caroutzos, David Wollner, John J. Lynch, Michael Joyce, George Delop, David Bazinet.

4. That upon the arrest of the above-named persons at the premises referred to, these defendants were immediately taken into custody and transported to the Hudson County Court House and there were immediately arraigned before the Judges of the Quarter Sessions for the County of Hudson on complaints made by me, Joseph Corella, or by Samuel Mongiello, William Welch, William Penne, Domenick Andolora, County Investigators and Members of the staff of investigators of the said Acting Prosecutor of the Pleas.

5. That immediately after arraignment the above-named defendants were taken from my custody into the custody of the Sheriff of the County of Hudson by his Deputies and Court Officers and were then and there committed from the Court Room in the Hudson County Court House to the custody of the Sheriff in the Hudson County Jail for the purposes of fingerprinting, photographing, and subsequent releasing on bail.

Answering Affidavit of Joseph Corella.

6. The above procedure was always followed by me and by the Sheriff of the County of Hudson in all cases where the defendants were arraigned before the hour of four o'clock in the afternoon.

7. That the procedure followed after the hour of four o'clock in the afternoon was as follows: That immediately after the arraignment of the above defendants I, Joseph Corella, or Samuel Mongiello, William Welch, William Penne, Domenick Andolora, County Investigators and Members of the staff of investigators of the said Acting Prosecutor of the Pleas, or all of us jointly, escorted the prisoners from the presence of the Court in the Hudson County Court House and delivered the said prisoners into the custody of the Sheriff of the County of Hudson, who thereupon took the said prisoners from out of our possession and into his own custody in the said Hudson County Jail, and thereupon he fingerprinted and photographed them in the usual manner.

8. This deponent is informed and verily believes that after he has arrested a person and made complaint against the said person for a violation of the criminal laws of this State, that after the arraignment of the said defendant before the Quarter Sessions Court upon the said complaint, that the custody and control of the said defendant passes to the Sheriff of the County of Hudson. From that time forward the custody of the said person and the responsibility for the detaining of the said defendant, upon the charge made, passes to the Sheriff of the County of Hudson. This deponent in every instance, after the making of said arrests, has delivered his prisoner to the custody and control of the Sheriff, and as-

sumes no further responsibility for the defendant's care and custody.

9. The following are but a few instances of the persons who have been fingerprinted and photographed in the Hudson County Jail, and who, up to the present time, are awaiting the action of the Grand Jury on indictable offenses: Jesse B. Turner, Bruce B. Darling, Nye Covell, Harry E. Krug, Victor Gurczynski, John Ciamifrone, Frank B. Condos, Ray Dinino, Anthony DeSomma, Eric Arromosa, and Lewis Fanwick.

10. The following are the ones against whom No Bill of Indictment were returned: Alfred E. Eddy and James M. Wright.

JOSEPH CORELLA

Sworn and subscribed to before me
this 28th day of April, 1945.

CYRIL J. GALVIN
Master in Chancery of New Jersey

Answering Affidavit of James T. Valentine.

IN CHANCERY OF NEW JERSEY

148/399

Between
WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, *et. al,*
Defendants.

On Bill &c.
Affidavit.

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

JAMES T. VALENTINE, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am forty-two years of age and reside with my wife at No. 479 Bergen Avenue, Jersey City, N. J. and have resided in said City for the past seventeen years. I have two stepsons, one of whom is married and lives in Jersey City and the other is overseas in the Army Air Corps in Italy.

2. I am a Marine Engineer and have been such for fifteen years.

3. On April 10, 1945 I was the Third Engineer on the S. S. VICTORY POLAND, operated by the Isthmian Steamship Company, which was to make its maiden trip to India with a war cargo and was due to leave Hoboken at 6:00 o'clock on April 10th.

Answering Affidavit of James T. Valentine.

4. I had said goodbye to Mrs. Valentine and left my home in Jersey City about 12:30 A. M. on April 10th and when I arrived in Hoboken I went to a restaurant on River Street and asked for a drink. The proprietor told me that it was past closing hour and gave me a cup of coffee. There were two men, strangers to me, present in the restaurant. They overheard the conversation and one of them said to me "we have a bottle up in our room, if you want a drink." I had been drinking but was not intoxicated. I accepted their offer and accompanied them to their room in a Hotel, which I believe was located on River Street and they took me to their room on the second floor. They took a bottle out from under the bed, which contained about three small drinks and the three of us drank that. One, whose name I later found to be William A. Shannon, said that he knew a place around the corner where we could get a bottle of whiskey and suggested that we go there. We thereupon started. When they came to a dark alley he suggested that we take that as it was a short cut to the place where we could procure the liquor. We had proceeded about half the distance of the alley when the other fellow stopped and said "give me your money or we will crack your skull for you". He had an instrument of some kind in his hand. I thereupon gave him the money I had in my right hand pocket, consisting of $6.00 and he demanded more and took my wallet out of my back pocket, which contained no money, and gave it back to me and said "you better get going before I crack your skull and you better keep quiet". I accordingly walked away from him and went to Police Headquarters and told the Officer at the desk of my experience. He detailed two officers and we returned to the Hotel,

where we eventually found the two men and I identified them. One was named Shannon, as I afterwards learned and the other was THOMAS A. SCHELLING, who admitted to the officers that he had held me up but the other insisted he had walked away. Schellings said he gave Shannon half the money.

5. We were immediately taken to Police Headquarters, where they were booked and I was locked up as the complaining witness and put in a reception room of Police Headquarters in the City Hall.

6. When they locked us up it was shortly after 2:00 A. M. and I protested at being locked up and said that my ship sailed at six o'clock in the morning and they said they would have to lock me up.

7. Later in the day one of the officers came in and took me down to the Fingerprint Room and stated they would have to fingerprint and photograph me. I protested on the ground that I was not charged with any offense but was the complaining witness, having been the one who was held up. They said that made no difference; that the law provided that they fingerprint and photograph witnesses also and I would have to stand for it. They thereupon took my fingerprints and seven photographs of me in different poses, wearing my uniform in the United States Maritime Service as a Third Engineer, with a number around my neck, they in the meantime having removed my overseas stripes. They compelled me to sign the paper on which they took my fingerprints, on which the word "Prisoner" appeared and I protested against that and the officer said it made no difference.

Answering Affidavit of James T. Valentine.

8. I remained in the Hoboken Jail until some time in the afternoon, when they transferred me to the Hudson County Jail in a patrol wagon. Upon arriving there they took away my uniform and gave me a pair of overalls and some kind of a jacket and took me upstairs to the top floor of the County Jail and again fingerprinted and photographed me. The person in charge had on civilian clothes and was one of the attendants or officers in the Jail. I again protested at being fingerprinted and photographed as I was the man who had been held up and robbed and was not the thief but was the complaining witness. This man said that made no difference; that it did look funny but that was the law and the Sheriff had just been indicted for not having taken fingerprints of some persons. They thereupon again took two different poses of photographs, with a number around my neck, and seven sets of fingerprints. I again had to sign the fingerprint records. I was then locked up in the witness room.

9. On one occasion I was taken over to the Court House by a court officer in uniform, through the tunnel leading from the jail to the court house and after waiting outside the door of a room which I believe to be the Grand Jury Room, I was told I was excused, whereupon I was taken back by the same officer to the County Jail. This is the only time I have been before any Court. I did not know that bail of $500.00 had been set for me.

10. Just before being assigned to the S. S. *Victory Poland* I had returned from a trip to the Marshall Islands, Carolina Islands, Panama, West Indies. I had left on the S. S. *Atlantic Coast,* carrying war cargo and changed at Panama to the S. S. *Celilo.* On our return trip we brought

back a number of United States Navy men from the Carolina Islands.

JAMES T. VALENTINE.

Sworn to and subscribed before me this 4th day of May, 1945.

WILLIAM G. McLAUGHLIN,
Attorney at Law
of New Jersey.

Answering Affidavit of Daniel H. Gaston.

IN CHANCERY OF NEW JERSEY.

148/399

Between
WILLIAM A. McGOVERN,
Complainant,
and
WALTER D. VAN RIPER *et al.*,
Defendants.

On Bill &c.
Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.

DANIEL H. GASTON, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am an American citizen, forty-four (44) years of age and reside at 1241 West 23d Street, Houston, Texas. When I am in New York I reside at the Seamen's Institute, 25 South Street, New York City, and when I am in New Jersey I reside at 245 Avenue E, Bayonne, N. J.

Answering Affidavit of Daniel H. Gaston.

2. I have been employed by the Standard Oil Company of New Jersey since 1928 as a utility man in the engine room of tankers and as such participated in the landings at North Africa on the Troopship *"Lou Gehrig"*, at Oran, Bizerte, Palermo, Sicily, Naples and Salerno, Italy, of equipment and troops. I also participated in the invasion at the Normandy beach-head in June, 1944.

3. In the month of March, 1945, I had just returned on the Liberty Ship *"George H. Pendleton"* from a trip to Russia and on March 22, 1945, while in the City of New York, I hired a taxicab to take me to the company office at 33 West 1st Street, Bayonne, N. J. The taxicab driver and I had several drinks. The taxicab stopped at a filling station of the Gulf Refining Company at Hudson County Boulevard and Van Nostrand Avenue and en route from New York City in the taxicab I was robbed of $1,000.00. While at this filling station at Van Nostrand Avenue and the Hudson County Boulevard, the driver hit me on the head with an instrument and then proceeded to take my $1,000.00.

4. I complained to the Police, who then arrested the taxi driver and I was taken to the Eighth Precinct Police Station in Jersey City and from there to the Medical Center, where they examined my head and leg, which had been injured in the scuffle with the taxi driver. From there I was taken in a police car to the Seventh Precinct Police Station on Montgomery Street, Jersey City, where the officer at the desk then took my name and address. They then took me to some room. I asked why they were taking me there. They told me they were going to take my finger-

prints and photographs. There were two police officers present. I told them I did not know why they were taking my fingerprints and photographs; that I had not robbed anybody; that I was the one who was robbed. One of the officers said that it was their routine and they thereupon took my fingerprints and photographs and then took me to a restaurant, where they permitted me to buy my own dinner. I was then returned to the Police Station and lodged in jail and stayed there for two days and was finally driven to the Hudson County Jail in a patrol wagon.

5. When I entered the Hudson County Jail the officer at the desk again took my name and address. I was then taken up to the top floor of the jail by "Pete Kelly" one of the attendants at said Hudson County Jail. I asked where I was being put now and he said "in jail". I said I was not the one who robbed anybody; that I was the man who was robbed. They then took me up to the fingerprint room and I said "I don't know why I should have my picture and fingerprints taken because I was not the robber and they said it was a routine affair and according to custom and it was their orders. So then I was again fingerprinted and photographed, with a number around my neck, by John A. Hannon. I asked how long I was going to have to stay there and they said until the case comes up for trial. I asked to see a lawyer and they told me I would positively not be allowed to call or see an attorney and I would have to stay there until the case came on for trial. I said I wanted to get out and they told me there was not a chance. I asked for permission to call Mr. Keane, my employer, at the Standard Oil Company and they said I could but then they locked

me up and I was not able to get to a telephone. I wrote Mr. Keane twice and told him of my predicament and asked him to come to the Jail to see me and get me out. He never received the letters. I also wrote to THOMAS RUDNICKI, who lives in Bayonne and he never received my letter. The result was I was confined in jail incommunicado for forty-three days, until May 3, 1945, when I was brought to the Prosecutor's Office and interviewed by the Attorney General's Office and I was released on May 4th.

6. While at the County Jail I endeavored to find out if they had fixed bail for me as they stated to me in the police station that my bail had been fixed at $1500.00 but I was never able to find out or communicate with anybody whatsoever.

7. I was therefore detained in the Hudson County Jail for forty-three days, although there was no charge of any kind against me and I was the complaining witness against the driver of the taxicab.

DANIEL H. GASTON.

Sworn to and subscribed before me this 11th day of May, 1945.

ABRAHAM SEPENUK,
An Atty. at Law of New Jersey.

Affidavit of George West.

IN CHANCERY OF NEW JERSEY.

148/399.

Between
WILLIAM McGOVERN,
Complainant,
and
WALTER D. VAN RIPER, *et al.*,
Defendants.

On Bill, &c.
Affidavit.

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

GEORGE WEST, being duly sworn upon his oath according to law, deposes and says:

1. I am nineteen (19) years of age and am a citizen of the Dominion of Canada, residing at Liverpool, Nova Scotia. I am a sailor employed on the Norwegian Line.

2. On March 13, 1945, I arrived at the Port of New York on the steamship S. S. THORSHOB, where I left and I was paid off by the Norwegian Consul, as the ship was going to enter the shipyard of the Bethlehem Steel Company, at Hoboken, New Jersey, to undergo repair.

3. I had left some of my personal belongings on the ship and was told by the Norwegian Consul that the S. S. THORSHOB would arrive at the dock in Hoboken, N. J. on March 16th.

4. I thereupon went to Hoboken about four p. m. to get my sea-bag and went to the gate of

the shipyard of the Bethlehem Steel Company but the ship had not yet arrived. I accordingly stopped in several taverns in the vicinity of the Bethlehem Steel Company and while in one of them I met with two men and get in conversation with them. I saw the insignia of "Canada" on the shoulder of one of them and that is why I joined them in drinking and conversation. I remained with the two men until around midnight. The three of us left the tavern together and we started to walk in the direction of the Bethlehem Steel Company shipyard. We entered the shipyard at the main gate and then turned left in the direction of the north end of the shipyard, where the railroad tracks are located. We were walking along there when all of a sudden one of them put his hands over my eyes and I was hit on the side of the head with a bottle. I fell to the ground and while lying there one of these men took my purse from my right rear trousers pocket. My purse contained about $160.00, together with my Coast Guard Passes and personal papers. I was then hit again on the head with a bottle.

5. I then went out on the street and met a United States Sailor and told him the story and he 'phoned for the police.

6. When they arrived they questioned me and I gave them the above information and then they had me point out the various places I was in and finally they took me to the Todd Shipyard in Hoboken and we located the Canadian steamship S. S. Silver Star Park. I accompanied these police officers aboard the ship and found these two men who had robbed me and I identified them. They gave their names to the police as Hector La Croix and Joseph Lapoine. As the

police were leading these two men from the ship they threw my money overboard. The result is I never got anything back.

7. We were all taken to the Hoboken Police Station and I was fingerprinted and photographed at the Hoboken Police Station by one of the police officers and was confined there until Monday afternoon, March 19th at four o'clock, when I was brought to the Hudson County Jail in the patrol wagon of the Hoboken Police Department.

8. At the Hudson County Jail I was taken to the top floor of the jail to the fingerprint room by one of the attendants, where they again fingerprinted me and photographed me.

9. I have since been there in jail in the witness room and altogether I was in jail forty-nine (49) days, notwithstanding the fact that I was the one who was beaten up and robbed, and no charge ever was made against me.

GEORGE WEST.

Sworn and subscribed to before me this 11th day of May, 1945.

EDWARD DE SEVO,
Counsellor at Law of N. J.

Answer.

IN CHANCERY OF NEW JERSEY

148/399.

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill, &c. Answer.

The answer of the Defendants, WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police to the Bill of Complaint exhibited against them by the above-named Complainant.

These Defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the Complainant's said Bill of Complaint contained, for answer thereunto, or unto so much or such parts thereof as these Defendants are advised that it is material or necessary for them to make answer unto, answering say:

1. Paragraph 1 is admitted.

Answer.

2. Answering paragraph 2 the Defendants admit that on or about March 27, 1945 the Grand Inquest of the State of New Jersey in and for the body of the County of Hudson, indicted the Complainant, but leaves Complainant to his proof as to the offense or offenses charged in said Indictment, to which for more certainty reference is hereby made. They admit that the Indictments after being handed up to the Court of Oyer and Terminer, were by that Court handed down or ordered to be delivered to the Court of Quarter Sessions for trial and Complainant will be or has been arraigned and called upon to plead to said indictments. They have no knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

3. These Defendants have no knowledge or information sufficient to form a belief as to the statements and allegations of paragraph 3.

Further answering, however, Defendants state that the Complainant, on April 16, 1945, was arraigned before the said Court of Oyer and Terminer and entered a plea of not guilty to said indictments, as by the record thereof will more fully appear.

4. These Defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 4.

5. These Defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 5 that the persons referred to therein were never arrested by the Complainant or either of his under-Sheriffs or any of his deputies but they admit that Robert A. O'Brien, William P. Black and James McLaughlin, the persons named in said Indictments or either of

them were not taken to the County Jail by the Complainant for fingerprinting or photographing or for any other purpose. They, however, deny that the said persons were not in the custody of the Complainant either before or since their arraignment.

They further deny that Complainant did not know of any facts or circumstances that the persons named in said indictments were wanted, within the meaning of Revised Statutes 53:1-15.

Further answering they admit that the Complainant did not take them to the County Jail for fingerprinting, photographing or for any other purpose, nor did he fingerprint or photograph them or either of them, as was his duty under said Act.

They further charge that when the Defendants appeared in the Court of Quarter Sessions to plead to said indictment, they became and were in the custody of said Complainant, as Sheriff of the County of Hudson, and remained in his custody until they were released on bail or paroled in the custody of their counsel.

6. Answering paragraph 6, the Defendants admit that under the Statute R. S. 53:1-15-20, when the Complainant appears before the Court of Quarter Sessions for arraignment and pleading to said Indictments, Complainant himself having been indicted as aforesaid for misdemeanors, the Wardens, Jailers or Keepers of the Hudson County Jail, who are the subordinates of the Complainant, will be required to fingerprint him and take his photographs—and forward same to the State Bureau of Identification—when he is in custody of the officers, employees and agents of the office of the Sheriff of the County of Hudson.

Defendants deny the remaining allegations of paragraph 6.

Answer.

7. Defendants deny the allegations of paragraph 7.

8. Answering paragraph 8, defendants deny that such fingerprinting and photographing of the Complainant will constitute an assault and battery upon complainant and a criminal libel against him and they deny the remaining allegations of paragraph 8.

9. Defendants deny the allegations of paragraph 9.

10. Further answering the Defendants say that for years prior to the Enactment of Title 53 of the Revised Statutes of New Jersey the Police Departments, at the expense of the various municipalities in the State of New Jersey and the Sheriff of the County of Hudson, at the expense of said County, have each been maintaining and conducting a Bureau of Identification, since which time it has been the practice and custom of the said police officials and of the Sheriff of the County of Hudson, to take fingerprints and photographs in their discretion of persons who came into their custody, charged with important crimes, misdemeanors and high misdemeanors; that it was the practice and custom of the Sheriff of the County of Hudson to take, in his discretion, the fingerprints and photographs of all persons before conviction who were arraigned before the Court of Quarter Sessions upon an indictment charging them with offenses, misdemeanors and high misdemeanors, whether the said persons consented or objected thereto and whether they were physically arrested or came in the custody of said Sheriff by voluntarily appearing before the said Court; that the fingerprints and photographs so taken, as aforesaid, by the police officials and by

the Sheriff of the County of Hudson, were kept in a filing system maintained by each of said officials and copies thereof forwarded to the various identification and police bureaus, including that of the United States, throughout the country; that this practice of fingerprinting and photographing persons so charged and before conviction prevailed in every large city and every large County in the country where proper police regulations were well established; whether such persons remained in custody or were released on bail, such practice and custom was and still is necessary to the proper enforcement of police regulations and the securing of the persons so charged for trial, that his photograph and fingerprints be taken in order that should he forfeit his bail and undertake to become a fugitive from justice, the Police Departments of the various municipalities and the Sheriffs of the various counties of the State of New Jersey would be in possession of such information as would enable them to have him identified in whatever jurisdiction he may be found and brought before the Court of proper jurisdiction to stand trial on the charges brought against him. These police officials and the Sheriffs were required, in the proper discharge of their duties, to run down and arrest offenders who might have escaped after having been released on bail and if they were not and are not permitted to provide means of efficiently identifying persons charged with offenses, their efforts were and will prove to be ineffectual and unavailing; that during said period of time such fingerprints and photographs had been one of the usual means employed in the police service of the country. The said State Police Act, so enacted in 1930, created a State Bureau of Identification and took

away the discretion of the aforesaid police officials and sheriffs as to the identity of the particular person they chose to so fingerprint and photograph and made it mandatory upon each of them to fingerprint and photograph each person so charged, in order that there might be an equal enforcement of the law and have it apply equally to friend or foe and thus it is within the reasonable police power of the State of New Jersey to enact and enforce such Statute.

11. Further answering the Defendants say that it has not been the practice to publish, nor does the Defendant, Charles H. Schoeffel, as Superintendent of the State Police, permit the publishing of photographs of such persons so fingerprinted and photographed or anyone to see them, or to apply them and such other information as may be forwarded the State Bureau of Identification under said State Police Act of 1930 (R.S. 53:1 to 20) to any other purpose than that of identification, if and when it becomes necessary in criminal proceedings that are pending against such a person or which may thereafter be instituted against him. These fingerprints so forwarded to the State Bureau of Identification by the Sheriff, Chiefs of Police, members of the State Police and any other law enforcement agencies and officers, are filed in cabinets maintained for that purpose and are not open to the inspection of the public but inspection thereof by a proper person is only permitted where it becomes proper in the opinion of those in charge of such records, to permit an inspection to be made by police officers and proper persons for the purposes of identification.

12. Further answering the Defendants say that it has been and is the practice of the said State

Bureau of Identification to send a copy of said photographs and fingerprints so filed with it to the Central Bureau of Identification New York State; the Bureau of Identification of the Department of Justice in Washington, D. C. and the Bureau of Criminal Identification, Police Headquarters, New York City with a written request to advise the State Bureau of Identification of any record they may have of the subject, in order to ascertain if the person in question has a criminal record; that where a person has been acquitted of the offense so charged or has been discharged from custody without the charges having been prosecuted or where the Grand Inquest of any County has failed to find an indictment, to return to said person, upon his request, and upon being presented with an Order by a Court of competent jurisdiction and provided the defendant has not had a previous criminal record, the fingerprints and photographs so filed with it and to procure the return of same from the various Bureaus to which the State Bureau of Identification has forwarded it as aforesaid.

13. Defendants further answering say that the rights claimed to be possessed by the Complainant, namely, certain natural rights, particularly the right of personal liberty; the right of privacy; his right to be left alone; the rights of enjoying life and liberty, acquiring, possessing and protecting property and pursuing and obtaining safety and happiness are not property rights and are subject to the rights of the State and the exercise by it of its Police Power in order to promote the order, safety, health, morals and general welfare of society, which this Act provides and the taking and filing, as aforesaid, of such finger-

prints and photographs are not a libel upon the complainant; and the right of the Sheriffs, Chiefs of Police, members of the State Police and other law enforcement agencies and officers to so fingerprint and photograph and file and distribute the same, as aforesaid, has been so adjudicated by the Court of last resort of this State, namely, the Court of Errors and Appeals, in the case of Bartletta *v.* McFeely et als., and such adjudication is binding upon this Honorable Court.

14. Defendants further answering say that in November, 1942, Complainant was candidate for and was elected Sheriff of the County of Hudson and has since been acting as such Sheriff of the County of Hudson with full knowledge of the existence of this State Police Act of 1930 and thereunder he is surcharged with the duty of complying with his oath of office and its provisions. As such Sheriff he has maintained, at the expense of the County of Hudson, under the provisions of Revised Statutes of New Jersey, 40:41-33, a Bureau of Criminal Identification under the supervision of one John Hannon, one of his Deputies, so appointed as such Supervisor by the said Complainant. He is therefore estopped, in this Honorable Court, from seeking the relief sought in the Bill of Complaint herein and from questioning the legality of the said State Police Act known as Title 53—1 to 20 of the Revised Statutes of New Jersey or any part thereof.

15. Defendants further say that since the said Complainant has been Sheriff of the County of Hudson and has so maintained the Bureau of Criminal Identification mentioned in paragraph 14, he has fingerprinted and photographed, as mentioned in paragraph 14 hereof, approximately

5,000 persons, in accordance with the provisions of said Act and has forwarded copies thereof to the Supervisor of the State Bureau of Identification, created under said Act; that approximately 4,000 of these persons had not been convicted of the offense with which they have been charged when they were so fingerprinted and photographed, and thereafter many of them had either been acquitted, were released on bail, had not been indicted by the Grand Inquest of the County of Hudson for any offense, including the one so charged, or the charges had been dismissed. Between July 1, 1943 and June 30, 1944, the Complainant had caused to be so fingerprinted and photographed and forwarded copies thereof to the State Bureau of Identification some 2,023 people and he is therefore estopped in this Honorable Court from seeking the relief sought and questioning the Constitutionality of the said Police Act of 1930.

16. Defendants further answering say that since the date of the filing of the Bill of Complaint in this cause and the date of the restraint herein ordered by the Chancellor, Complainant has caused to be taken and sent to the State Bureau of Identification the fingerprints and photographs of at least nineteen people who were believed to be wanted for an indictable offense or who had been arrested for an indictable offense, who had voluntarily appeared with their counsel in the Court of Quarter Sessions to plead to an indictment found against them and who were released on bail pending the trial of said Indictment. Among them were the following:

Jesse P. Turner
Bruce B. Darling

Nye Covell
Harry E. Krug
Raymond Dinino
Walter S. Lubin
George Steckler
Ernest Hopkins
Morton Perry
Philip B. Krug
Zigmund Pienewski
Michael Leskin
Raymond Kelly
Albert Hammond
Thomas Jasomes
George P. Nejaris
Stanley Wallace
Morris Weinsee
George Rust.

Complainant is therefore estopped in this Honorable Court from seeking the relief charged.

17. Defendants further answering say that all during the time complainant has been exercising the high office of Sheriff of the County of Hudson, it has been his practice and custom that when a person appeared before the Court of Quarter Sessions to plead to an indictment theretofore presented against him, the complainant had him taken into his custody and following his plea to the indictment and before bail was fixed, but pending the application for bail and the deposit of same with the Clerk of said Court, he caused such person to be transported to the Hudson County Jail, through a tunnel connecting the said Hudson County Jail with the Hudson County Court House and then and there caused such person to be fingerprinted and photographed and thereafter returned said person, while still in his custody,

to the said Court of Quarter Sessions or the Clerk of said Court, where bail was furnished and the person so charged was released on bail; that thereafter the Complainant caused copies of said fingerprints and photographs to be filed with the Bureau of Criminal Identification of the Hudson County Jail and forwarded copies thereof to the State Bureau of Identification, in accordance with the provisions of said Act. Complainant is therefore estopped in this Honorable Court from seeking the relief sought in the Bill of Complaint.

18. Defendants further answering say that since the Complainant has been exercising the high office of Sheriff of Hudson County, it has been his practice and custom not only to photograph and fingerprint prisoners or the persons mentioned in paragraphs 15 and 16 hereof but to fingerprint and photograph persons who were not charged with any offense whatsoever but were detained in the Hudson County Jail as material witnesses against persons so charged, notwithstanding that there was no provision in said Act for so fingerprinting and photographing persons detained in the Hudson County Jail as material witnesses. Among those who were so detained by the Complainant and so fingerprinted and photographed as material witesses in the Indictment presented by the Grand Inquest of the County of Hudson at the April 1942 term against James J. Donovan, Daniel J. Sweeney and Cornelius J. O'Neil in the month of June, 1942 were:

Mildred Austin
Sarah Cox
Ellen Carroll
Florence Clader
Mary Doe

Helen De Werth
Beatrice Douglas
Mary Feeney
Gertrude Fetchko
Clara Gethers
Nettie Johnson
Lillian Kryscenko
Virginia Moseley
Mary Parisi
Mary Ruh
Marie Ruh
Clara Rada
Ethel Redd
Idaline Rivers
Angela Robinson
Clara Turner

although these persons had not committed any offense. Complainant is therefore estopped in this Honorable Court from seeking the relief sought in the Bill of Complaint herein.

On or about March 19, 1945 one GEORGE WEST, nineteen years of age, who was a citizen of the Dominion of Canada, was a seaman employed on the S. S. THORSHOB, docked at Hoboken, N. J. He was held up, beaten and robbed of $160.00 in the City of Hoboken on March 16th and the persons accused thereof were subsequently arrested by the Police of the City of Hoboken and thereafter confined to the Hudson County Jail in the custody of said Complainant and against which persons the Grand Jury of the County of Hudson has recently returned an indictment of highway robbery. Notwithstanding the fact that the said GEORGE WEST was the person who was held up, beaten and robbed and had committed no offense, he has been detained in the Hudson County Jail

for forty-nine days and held incommunicado as the material and complaining witness and has been so fingerprinted and photographed, over his protest, and his fingerprints and photographs forwarded to the State Bureau of Identification by the Complainant, as Sheriff of Hudson County.

Complainant is therefore estopped in this Honorable Court from seeking the relief sought.

19. Defendants further answering say that since the date of the filing of the Bill of Complaint in this cause and the date of the restraint herein ordered by the Chancellor, either on April 9th or 10th, one JAMES T. VALENTINE, a citizen of the United States, residing in Jersey City, an Ensign in the Maritime Service of the United States and Third Engineer on the S. S. *Victory Poland,* was held up and robbed in the City of Hoboken and the persons accused of said robbery were arrested by the Police of the City of Hoboken and, ever since this time, have been confined in the custody of the Complainant in the Hudson County Jail and have since been indicted by the Grand Inquest of the County of Hudson at the April, 1945 term for said offense. The said JAMES T. VALENTINE has been detained by the said Complainant in the said Hudson County Jail and held incommunicado for twenty-three days and was fingerprinted and photographed, over his protest, by the Complainant or his deputies, which photographs had been taken with a number around his neck and his uniform in the United States Maritime Service had been removed from him, all over his protest, notwithstanding the fact that he was the person held up and robbed and notwithstanding the fact that there was no charge of any offense against him and notwithstanding the fact that there was no authority in law for

so doing. Copies of his fingerprints and photographs have been forwarded to the State Bureau of Identification by the Complainant or his Deputies and Complainant is therefore estopped in this Honorable Court from seeking the relief sought herein.

20. Defendants further answering say that the Complainant, as Administrative Officer of the County of Hudson charged with the enforcement of the provisions of the Police Act mentioned in the Complaint, is estopped from asserting that the said Act is void and unenforceable and contrary to the provisions of the Constitution of the State of New Jersey and of the United States.

21. Further answering defendants say that the Complainant, as Sheriff of the County of Hudson, by his conduct while in office, in enforcing the provisions of said Police Act as well as by his conduct in office as such Sheriff of the County of Hudson since the filing of the Bill of Complaint herein, is estopped from asserting that the said Act is void and unenforceable and contrary to the provisions of the Constitution of the State of New Jersey and of the United States.

22. Defendants further answering say that they deny that the complainant is entitled to any relief whatsoever or any part of the relief prayed for in said Bill of Complaint and charge the complainant has no standing in this Honorable Court to seek the relief prayed for and has an adequate remedy at law in the event that the said Police Act is unconstitutional, as charged by him.

23. Defendants further answering say that the said State Police Act is a penal statute and this Honorable Court has no jurisdiction to either

construe or interpret it or to interfere with or restrain its enforcement.

24. Further answering the Defendants say that the enactment of said State Police Act referred to in the Bill of Complaint and its enforcement is within the police powers of the State of New Jersey to promote the order, safety, health, morals and general welfare of society.

25. Further answering the Defendants deny that the Complainant is entitled to the relief sought herein and has no standing in this Honorable Court because he does not come into Court with clean hands.

26. And Defendants pray in all things the same benefit and advantages of this, their Answer, as if it had been pleaded or demurred to said Bill of Complaint and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MARK TOWNSEND.
Deputy Attorney General,
Solicitor for and of Counsel with Defendants.

Replication.

IN CHANCERY OF NEW JERSEY.

148/399

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill &c. Replication.

In reply to the Answer of the defendants and so much thereof as is not anticipated in the Bill of Complaint, complainant, by leave of court, says that:

1. As to the allegations contained in paragraph 10 of the Answer, complainant says that his Bill of Complaint was filed in this cause to restrain the defendants from fingerprinting and photographing complainant under the statute referred to in the Bill of Complaint and further says that the allegations contained in paragraph 10 of the Answer relating to common law practice is immaterial and irrelevant as a defense to the Bill of Complaint.

2. He denies paragraph 11 of the Answer.

3. He denies paragraph 12 of the Answer.

Replication.

4. Complainant denies that the decision of the Court of Errors and Appeals in the case of Bartletta *v.* McFeely, referred to in paragraph 13 of the Answer, constitutes an adjudication of the allegations and subject matter of the Bill of Complaint, but on the contrary says that the Court of Errors and Appeals held in the said Bartletta *v.* McFeely case that the validity of the statute requiring the fingerprinting and photographing of complainant or any other persons has not been considered by said court, and complainant further says that the said decision by the Court of Errors and Appeals does not establish the law as to fingerprinting and photographing.

5. Answering paragraphs 14, 15, 16 and 17 of the Answer, complainant admits that some persons were fingerprinted and photographed by one John Hannon, one of his deputies, since complainant became Sheriff of Hudson County, as alleged in paragraphs 14, 15, 16 and 17 of the Answer, but complainant says that any of the fingerprinting and photographing referred to by defendants in paragraphs 14, 15, 16 and 17 was done by or under the supervision of complainant in his official capacity as Sheriff of the County of Hudson and further that same was done under the mandate of the fingerprinting and photographing statute referred to and complained of in the Bill of Complaint. Complainant further denies that he is estopped from seeking the relief prayed for in the Bill of Complaint as is alleged by defendants in said paragraphs 14, 15, 16 and 17 of the Answer. He denies the remainder of the allegations contained in said paragraphs 14, 15, 16 and 17 of the Answer.

6. Complainant denies paragraphs 18, 19, 20, 21, 22, 23, 24 and 25 of the Answer.

7. Complainant joins issue upon the remainder of the Answer.

WILLIAM GEORGE,
Solicitor for and of Counsel
with Complainant.

Order of Reference.

(Filed June 19, 1945)

IN CHANCERY OF NEW JERSEY
148/399

Between
WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill &c. Order.

This matter being opened to the Court by MARK TOWNSEND, Deputy Attorney General, Solicitor for and of Counsel with the Defendants, and it appearing that due notice of this application has been given to WILLIAM GEORGE, Solicitor of the Complainant, and the cause now being at issue, it is, on this 19th day of June, 1945, on motion

of MARK TOWNSEND, Deputy Attorney General, Solicitor for and of counsel with the Defendants,

ORDERED, that the above cause be referred to HENRY T. KAYS one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and report thereon to him and advise what Order or Decree should be made therein.

LUTHER A. CAMPBELL
C.

Opinion of Kays, V. C.

IN CHANCERY OF NEW JERSEY.

148/399

Between
WILLIAM McGOVERN,
Complainant,
and
WALTER D. VAN RIPER, *et. al*,
Defendants.

On Bill &c.
Opinion.

Dated—July 18, 1945.

MR. WILLIAM GEORGE, solicitor for complainant.

MR. MARK TOWNSEND, Deputy Attorney General, solicitor for defendants.

KAYS, V. C.:

This matter came before me on the return of an order to show cause why a temporary restraint should not be continued pending final hearing.

The bill of complaint and affidavits annexed thereto allege that William McGovern is the Sheriff of Hudson County and that he has, for many years, held high elective and appointive offices in Jersey City and Hudson County; that he has always borne a good reputation both as a public officer and a private citizen; that he is officially known to most of the law enforcement officials of this and other states; that he resides in Jersey City with his family and intends to continue to reside there and has no intention of leaving the jurisdiction; that he has been indicted by the Hudson County Grand Jury, charged with having failed to cause certain persons to be fingerprinted and photographed after they pleaded to an indictment against them; and that he is about to be arrested and taken into custody for the purpose of arraignment and pleading to said indictment; that he intends to enter a plea of not guilty, being conscious of his innocence and confident that he will be acquitted of the offenses of which he stands accused.

The bill of complaint further alleged that complainant will be required, pursuant to the statutes of this state, to submit to the taking of his fingerprints and photograph, and that the same will then be forwarded to the superintendent of state police; to the rogues' galleries in other states; to the office of the Federal Bureau of Investigation; to Scotland Yard, England, and to the police departments of other countries; that such fingerprinting and photographing, and the distribution of copies thereof in advance of conviction, as required by our statute, will, among other things, violate his right of privacy, which right is said to be protected by the provisions of the constitution of this state and the constitution of the United States.

Complainant charges that he is without an adequate remedy at law and prays for an injunction against the Attorney-General, who is also the Acting Prosecutor of the Pleas of Hudson County, and against the Superintendent of State Police, their agents, etc., enjoining the taking of his fingerprints and photographs, and the forwarding of copies thereof, unless and until he be convicted.

The bill also asks for an ad interim restraint to the same effect. I advised an order to show cause with an ad interim restraint.

The bill of complaint also alleges that the sheriff is not guilty of the offense for which he was indicted. This allegation is immaterial to the issue here presented. It is not the province of this court to pass upon the sufficiency of the indictment.

One of the affidavits filed on behalf of the defendant is that of the solicitor of Frank J. Bartletta, the complainant in the Bartletta cases which are hereinafter referred to. This affidavit establishes nothing which is not already a matter of record in the said cases.

Another affidavit, made by the Acting Supervisor of the State Bureau of Identification, sets forth that "the Hudson County Jail" has furnished the state bureau with several thousand sets of criminal identification records consisting of fingerprints, photographs, etc., since July 1, 1930, and that among these are the fingerprints and photographs of persons not charged with crime and held merely as material witnesses; that certain local police departments in Hudson County have likewise transmitted many thousands of such records. The affidavit further sets forth that more than 640,000 criminal identification records appear in the files of the state bureau and that they are secret and not exposed to public view, etc. So

much of this affidavit as relates to law enforcement agencies, over which the sheriff has no control, is not material to the issue. It is neither averred in the affidavit that the state files contain only the records of persons who have been convicted nor is it denied that the records which reach the state bureau are distributed to law enforcement officers and agencies all over the globe.

Another affidavit filed on behalf of the defendant is made by an investigator on the staff of the Acting Prosecutor of Hudson County which sets forth his official duties, principally relating to violations of the statutes concerning gambling, and that when an arrest is made the person is then arraigned before a judge after which all future responsibilities are those of the sheriff. This affidavit is not responsive to the allegations of the bill of complaint and accompanying affidavit and serves no useful purpose in the determination of this matter.

Three other affidavits are filed by persons who were employed in the maritime service who were held in the county jail as material witnesses, and were there fingerprinted and photographed. Whether the sheriff may fingerprint such a witness is immaterial to the issue.

From the proofs before me the allegations of the bill of complaint and the supporting affidavit are uncontroverted by the answering affidavits as to the issues to be decided here. In other words, there is no dispute concerning the facts.

The defendants argue that this court has no jurisdiction to grant the relief sought for several reasons. First, it is urged that equity will not enjoin a threatened criminal prosecution and *Moresh* v. *O'Regan,* 122 N. J. Eq. 388 is cited in support of such contention. In the *O'Regan* case

this court issued an injunction restraining the Prosecutor of Hudson County from proceeding with the prosecution of a criminal complaint. If the relief sought here should be granted it would not prevent the Acting Prosecutor of Hudson County from bringing the complainant to trial upon the indictment. The court, in the *O'Regan* case, merely said "that the Court of Chancery, in the situation herein, was without jurisdiction to enjoin prosecution of the indictments".

The case before me is not to enjoin a criminal proceeding. There are certain circumstances under which this court may restrain prosecutions although that situation does not exist in the pending case. *Ex parte Young,* 209 U. S. 123. Another exception is suggested by Mr. Justice Donges in the *O'Regan* case at *page 395.*

It is also argued that equity will not restrain a libel or slander, citing the cases of *Mayer* v. *Journeymen Stone Cutters' Assn.,* 47 N. J. Eq. 519; *A. Hollander & Son, Inc.* v. *Jos. Hollander, Inc.,* 117 N. J. Eq. 578; *John R. Thompson Co., Inc.* v. *Delicatessen &c. Union,* 126 N. J. Eq. 119. The solicitor of the defendants might also have cited the case of *Weiss* v. *Levine,* 133 N. J. Eq. 441. The reasons assigned for the reluctance of equity to restrain a libel or slander are, that this court will not set itself up as a censor and thereby violate the constitutional guaranties of free press and of free speech, and, that the remedy at law for damages is usually adequate. The circulation of identification records of an accused is not necessarily a libel. He may be found guilty in which case he would not be libeled. However, if the premature dissemination of such data amounts to a libel, the rule would not prevent a

court of equity from acting. See *32 C. J., Injunctions, Sec. 432.*

Dean Pound, in *29 Harvard Law Rev. 640,* said:

> "So long as denial of relief * * * rests on no stronger basis than authority our courts are sure to find a way out."

"A way out" has been indicated by the Supreme Court of Missouri in *State ex rel. Reed* v. *Harris,* (1941) 153 S. W. (2d) 834. In that case the relators were the chief of police and superintendent of the bureau of criminal identification of Kansas City. They sought a writ of prohibition against the judge to prevent him from entertaining jurisdiction of a pending injunction suit filed by one Root, as plaintiff, against the relators, as defendants. The object of the suit was to enjoin the sending of police photographs and fingerprints of Root to various law enforcement agencies throughout the country. Root was charged with a violation of a municipal traffic ordinance. In that case the court took occasion to say:

> "We are satisfied that an action at law for damages would not be an adequate remedy. The damage, if any, flowing from the display of an innocent person's photograph in Rogues' galleries throughout the country, is or might be a continuing one, and not capable of any fair estimation or measurement by a money judgment. The remedy at law would be incomplete, less prompt and less efficient than resort to equitable relief, and hence, would not constitute a bar to the latter."

In the case of *Itzkovitz* v. *Whitaker,* 115 La. 479, 39 So. 499, 1 L. R. A. (NS) 1147, and in the case

of *Schulman* v. *Whitaker,* 115 La. 628, 39 So. 737, injunctions were granted against premature circulation of such data in advance of conviction.

I, therefore, conclude that this court has jurisdiction under the circumstances in this case. Such jurisdiction is consistent with the general principle that where the legal remedy by way of a suit for damages is inadequate the ends of justice require relief by prevention in the place of mere compensation. This is the same theory upon which equity supports injunctions to restrain trespasses. *4 Pomeroy, Eq. Jur.* (4th ed.), Sec. 1357.

Even the junior Pomeroy, in his *Equitable Remedies* (2nd ed.), Sec. 632, writing at a time (1919) when the existence of the right of property as an independent right had not yet gained general recognition, said:

> "If there is such a thing as a right of privacy, an injunction is certainly a proper remedy for its protection."

To the same effect see *54 C. J., Right of Privacy,* Sec. 14; *41 Am. Jur., Privacy,* Sec. 35; *Brex* v. *Smith,* 104 N. J. Eq. 386. The Court of Errors and Appeals in the case of *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910, at page 924, said:

> "* * * the jurisdiction of equity is constantly growing and expanding, and relief is now granted in cases where formerly the courts would not have thought for a moment of so doing. From time immemorial it has been the rule not to grant equitable relief where a party praying for it had an adequate remedy at law, but modern ideas of what are adequate remedies are changing and expanding, and it is gradually coming to be under-

stood that a system of law which will not prevent the doing of a wrong, but only affords redress after the wrong is committed, is not a complete system, and is inadequate to the present needs of society."

It is also argued by the defendant that the right of privacy is not a property right and that, therefore, equity has no jurisdiction to grant relief by way of injunction. *Odgers, Libel & Slander* (1st Am. ed.), *17, *18, said:

"Every man has a right to be protected from defamation, as much as from assault or bodily harm. 'His reputation is his property and if possible more valuable than other property;' * * * Every man has a right to his good name, a right which no one may violate. And such a right is a real right; all men are bound to forbear from all such imputations against him as would amount to injuries to his reputation."

The law in this state is well settled that equity will intervene to protect the right of privacy. See *Vanderbilt* v. *Mitchell, supra; Edison* v. *Edison Polyform and Mfg. Co.*, 73 N. J. Eq. 136; *Brex* v. *Smith, supra.*

This court, and most courts of other states, have judicially noticed from time to time that American municipal police departments have for years maintained records pertaining to persons charged with having violated criminal laws and that law enforcement agencies have developed a practice of exchanging such records by custom and by statute. See *Bartletta* v. *McFeeley*, 107 N. J. Eq. 141.

The term "fingerprints" appears for the first time in this state in *P. L. 1921, Chap. 102, Sec. 7.*

This act created the present state police and appears in the Revised Statutes of 1937 as *R. S. 53:1-21.*

The first act of the legislature which authorized the taking of fingerprints and photographs of persons "charged with or convicted of any crime or offense" appears in *P. L. 1929, Chap. 156, Sec. 2,* now *R. S. 2:199-3,* and gives probation officers the right to do so.

In 1930 the legislature enacted *P. L. 1930, Chap. 65,* now *R. S. 53:1-12* to *53:1-20.* This statute established a state bureau of identification as a part of the Department of State Police and requires the supervisor of that bureau to procure and file fingerprints "of all persons who have been or may hereafter be convicted of an indictable offense within the State and also of all well-known and habitual criminals wheresoever the same may be procured".

R. S. 53:1-15 provides that sheriffs, chiefs of police, etc., "shall immediately upon the arrest of any person for an indictable offense or of any person believed to be wanted for an indictable offense or believed to be an habitual criminal" take the fingerprints and photographs of such person and forward copies thereof "without delay" to the state bureau.

The supervisor of the state bureau is required by *R. S. 53:1-17* to cooperate with, instruct and assist such sheriffs, chiefs of police, etc. "in the establishment and operation of their local systems of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a complaint of an indictable offense". The supervisor under *R. S. 53:1-19* is under a duty to cooperate with the bureaus in other states and with the Federal Department of

Justice and to "carry on an interstate, national and international system of identification * * *".

The statute refers to seven distinct classes of persons whose fingerprints and photographs are to be collected and disseminated on a world-wide scale; to wit, (1) persons convicted of an indictable offense; (2) well known criminals; (3) habitual criminals; (4) persons arrested for an indictable offense; (5) persons believed to be wanted for an indictable offense; (6) persons believed to be habitual criminals; (7) persons confined in workhouses, jails, reformatories, penitentiaries and other penal institutions.

Under this statute a person who may be confined in jail on a charge of disorderly conduct would have his fingerprints and photographs taken and distributed to the four corners of the globe.

The right of privacy is the right of an individual to be free from unwarranted publicity, or, in other words, to be protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. *41 Am. Jur., Privacy,* Sec. 2; *54 C. J., Privacy,* Sec. 1.

The basic concepts underlying the right of privacy have their origin in the law of ancient Greece and Rome. Although the Anglo-American courts have long recognized the existence of the right, they based their relief upon the theory that property or contract rights were involved. For example, in our state that right has been protected under the guise of protecting an admittedly technical right of property. See *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910, at 919.

The first clear-cut recognition of the existence of the right of privacy as an independent right

is found in an article in *4 Harv. L. Rev. 193.* Prior to that, however, in *Cooley on Torts, 2nd Ed. 29,* it was said that every man enjoys the right "to be let alone".

The existence of the right of privacy was repudiated in *Roberson* v. *Rochester Folding Box Company,* 171 N. Y. 538, 64 N. E. 442, 95 L. R. A. 478. The court in rendering that decision was divided. Judge Gray filed a minority opinion which has since been adopted as the law in all but one of the jurisdictions which have considered the question; that is, that there is a right of privacy and that it will be protected by the courts.

The preponderance of authority tends to the view that the right of privacy exists as an independent right and that it is not merely an incident to some other long recognized rights such as those of property or contract. See *41 Am. Jur., Privacy,* Sec. 5; *Hinish* v. *Meier & Frank Co.,* 166 Or. 482, 113 P. (2d) 438, 138 A. L. R. 1.

The Court of Errors and Appeals of this state mentioned the existence of that right and the jurisdiction of this court to protect and preserve it in the case of *Vanderbilt* v. *Mitchell, supra.* The court rejected the majority decision in the *Roberson* case and referred to it as "a case seldom cited but to be disapproved". See also *Edison* v. *Edison Polyform and Mfg. Co., supra; Brex* v. *Smith, supra; Bednarik* v. *Bednarik,* 18 N. J. Misc. 633, 16 Atl. (2d) 80.

It is now well settled that the right of privacy having its origin in natural law, is immutable and absolute, and transcends the power of any authority to change or abolish it. See *Pavesich* v. *New England Life Ins. Co.,* 122 Ga. 190, 50 S. E. 68, 69 L. R. A. 101. It is one of the "natural and

inalienable rights" recognized in *Art. 1 Sec. 1* of the *Constitution* of this State. In the case of *Melvin* v. *Reid,* 112 Cal. App. 285, 297 P. 91, the court, referring to an identical provision of the constitution of that state, said:

> "We find * * * that the fundamental law of our state contains provisions which we believe permit us to recognize a right to pursue and obtain safety and happiness without improper infringement thereon by others. * * * The right to pursue and obtain happiness is guaranteed to all by the fundamental law of our state. This right, by its very nature, includes the right to live free from the unwarranted attack by others upon one's liberty, property and reputation. Any person living a life of rectitude has the right to happiness, which includes a freedom from unnecessary attacks upon his character, social standing or reputation."

I have, therefore, reached the conclusion that the right of privacy exists and that said right is protected by our state constitution for the reasons above mentioned. I deem it unnecessary to determine the question as to whether that right is protected by the Federal Constitution.

The use of fingerprints, photographs and other descriptions for criminal identification is said to have two main purposes: (1) the identification of the accused as the person who committed the crime for which he is being held; and, (2) the identification of the accused as the same person who has been previously charged with, or convicted of, other offenses against the criminal law. *14 Am. Jur., Criminal Law, Sec. 133.*

The cases dealing with the subject of fingerprinting and photographing as used in criminal identification systems are comparatively few. In New Jersey there are three cases: *Bartletta* v. *McFeeley,* 107 N. J. Eq. 141, affirmed 109 N. J. Eq. 241 (which I will hereafter refer to as the first *Bartletta* case); *Bartletta* v. *McFeeley,* 113 N. J. Eq. 67 (which I will hereafter refer to as the second *Bartletta* case); and *Fernicola* v. *Keenan,* 136 N. J. Eq. 9.

It appears from the first *Bartletta* case that the court's attention was called to only one case in which it was held that fingerprints of an accused before conviction was unlawful and that case was *Hawkins* v. *Kuhne,* 137 N. Y. S. 1090, affirmed 208 N. Y. 555. My examination of the reports discloses that in addition to the *Hawkins* case, the question was considered in at least four other earlier cases in New York. See *Owen* v. *Partridge,* 40 Misc. Rep. 415, 82 N. Y. S. 248; *Gow* v. *Bingham,* 57 Misc. Rep. 66, 107 N. Y. S. 1011; *People* v. *Hevern,* 127 Misc. Rep. 141, 215 N. Y. S. 412; *Bingham* v. *Gaynor,* 141 App. Div. 301, 126 N. Y. S. 353.

In the case of *Owen* v. *Partridge, supra,* the plaintiff sought an injunction to restrain the police commissioner from publishing plaintiff's photographs, measurements, etc. The injunction was refused on the ground that, under the law of New York, equity would not take jurisdiction. Plaintiff had been arrested in 1899 as a card sharper. He was photographed and afterward arraigned and discharged because the complaining witness did not appear. He requested the police to destroy the photograph and apparently received some assurances that it would be destroyed. He claimed that he believed the photo-

graph was destroyed until, in 1903, he was sought by the police on a charge of having swindled a passenger, and his photograph was then published. After publication of the photograph an application for an injunction and for the surrender, removal and destruction of the police file was made. The court in that case said that it did not

> "* * * deem it necessary to examine further the by no means clear question of the right to take, for police purposes, the photograph of a person merely suspected of crime * * *."

In *Gow* v. *Bingham, supra,* the court refused to grant a peremptory writ of mandamus to compel the police to destroy the relator's photographs, fingerprints, etc. on the ground that the plaintiff had mistaken his remedy. At the time there was no statute providing for the taking of fingerprints and the police attempted to justify their action by the provisions of the New York charter which made it the duty of the police to preserve the peace, prevent crime and detect and arrest offenders. The court disposed of this contention in the following language:

> "* * * To subject a citizen, never before accused, to such indignities, is certainly unnecessary in order to 'detect and arrest' him; for he must have been detected and arrested before he can be so dealt with. It is unnecessary to 'prevent crime', for the acts for which indictment has been found, if criminal, have already been committed. The 'public peace' cannot readily be disturbed by a man in the custody of the law, and his arrest will

be all sufficient to accomplish that end, without imposing upon him further attack upon the inviolability of his person."

The court also considered the question as to whether this practice could be justified under the provisions of the city charter which gave the police commissioner the right to make rules and regulations reasonably necessary to carry out the duties imposed on him by law, and said:

"But, if no power is conferred upon him by law in this regard, any rule which he may promulgate respecting the same is utterly void. The exercise of any such extreme police power as is here contended for is contrary to the spirit of Anglo-Saxon liberty. It is a principle of the common law which has been reinforced by statutory provisions * * *, that every person is presumed to be innocent until the contrary be proved beyond a reasonable doubt. That presumption survives the finding of an indictment, arrest, arraignment, and the impaneling of a petit jury for the trial of the issue. It continues during the introduction of evidence upon the trial, the summing up of counsel, the charge of the court, and until the jury by its verdict of 'guilty' has said that the presumption is overcome, or, by its verdict of 'not guilty', that the presumption has become an established fact. * * *"

The case of *Bingham* v. *Gaynor, supra,* was a libel suit. While it does not seem to be exactly in point it has, nevertheless, been cited by text writers in support of the statement that photographs and fingerprints may not be taken before

conviction. The defendant, Gaynor, a former mayor of New York, wrote a letter to the then Mayor, part of which was alleged to be libelous, and in that letter he made the following statement which was quoted in the opinion of the court:

> "* * * our Supreme Court here, * * * decided that the police officials have no authority to measure and photograph persons and put their pictures in the Rogues' Gallery, unless on conviction of crime and sentence to prison, as the statutes expressly provide. Laws 1896, c. 440; Laws 1889, c. 382, Sec. 40. The case is Gow *v.* Bingham, reported in 57 Miscellaneous Reports, at page 66."

The above interpretation by former Mayor Gaynor of the decision in *Gow* v. *Bingham, supra,* has been approved by text writers as the proper interpretation of that case.

In the case of *People* v. *Hevern, supra (1926),* the defendant was involved in an automobile accident, arrested and charged with "felonious assault". Bail was denied for the reason that the defendant refused to submit to the taking of his fingerprints. *Chapter 419, New York Laws 1926* contained a provision that a person charged with a felony could not be admitted to bail until his fingerprints were taken. In deciding the case, the court said:

> "Article 1, section 6, of the Constitution of the state of New York provides:
>
> > 'No person shall * * * be compelled, in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law.'

"The sentence first quoted is also a prohibition in precise words, in the Fourteenth Amendment of the United States Constitution, against the action of any state. Fingerprinting is an encroachment on liberty of person. It is justifiable, as is imprisonment, upon conviction for crime, in the exercise of the police powers of the state, for the purpose of facilitating future crime detection and punishment. What can be its justification when imposed before conviction?

"What constitutes 'due process of law' is ordinarily for the determination of the Legislature, but it may not act without limit. From the beginning of time it has been recognized that, notwithstanding the presumption of innocence and in order to make effective punishment for crime, it is not an improper invasion of personal liberty to arrest a defendant on a charge of crime and to keep him detained until trial. The purpose of the arrest is to insure the defendant's appearance and to prevent escape. Recent tendencies of our laws have been in the direction of lessening the rigor and hardship of imprisonment before conviction, and, wherever consistent with the orderly administration of justice, the summons has been substituted for the warrant. The present legislation is a step in the other direction, and adds burdens upon mere indictment for crime. This physical restraint is not imposed as an incident of punishment for crime after conviction, but while the presumption of innocence endures.

"It is urged in support of the law that the finger print is in use as a means of identification in various departments of government

unrelated to criminal law enforcement, such as license and permit bureaus and immigration agencies; that there is a growing movement to introduce it among our children in the public schools and elsewhere for better vital statistics; in fine, that finger printing is losing in the public mind its association with criminal guilt. Time may be when this system of identification becomes so universal that it is no longer connected in thought with crime. The mores of the people constantly change. But the innocuity of a practice must be tested in the light of its prevailing, and not possible future, significance. To charge that one's finger print records have been taken would ordinarily convey an imputation of crime, and very probably support a complaint of libel *per se*. In my judgment, compulsory fingerprinting before conviction is an unlawful encroachment upon person, in violation of the state and federal constitutions."

This decision has not been overruled, or even criticized, in any later case in New York and remains the law of that state.

In the case of *Hawkins* v. *Kuhne, supra,* decided in the year 1912, the plaintiff sued for damages; first, for assault, and, secondly, for false imprisonment. Plaintiff had left his employment as manager of a Porto Rican company and started for New York. The Governor of Porto Rico cabled the New York district attorney requesting the arrest and detention of the plaintiff charging him with embezzlement. Upon his arrival in New York, plaintiff was arrested and held. He was taken before the defendant, a captain of police, and his photograph and fingerprints taken against

his protest. It was held that this constituted a perfect cause of action on the first count of the complaint; that is, an assault. The court called attention to the following admission in appellant's brief:

> "We do not question that the taking of the plaintiff's picture before conviction was an illegal act,"

and then said:

> "This is in accord with a thorough examination and discussion of the law in the recent case of People ex rel. Gow *v.* Bingham, 57 Misc. Rep. 66, 107 N. Y. Supp. 1011."

In addition to the case of *Schulman* v. *Whitaker, supra,* there are three other cases in the State of Louisiana closely related thereto.

The first case of *Itzkovitch* v. *Whitaker, supra,* was decided in 1905, and it was there held on appeal that the court had jurisdiction to issue a preliminary injunction to prevent the plaintiff's picture from being sent to the rogues' gallery before conviction which injunction was continued until final hearing.

The second case is *Schulman* v. *Whitaker, supra,* decided the same year and to the same effect.

The next case is that of *Schulman* v. *Whitaker,* 117 La. 704, 42 So. 227, 7 L. R. A. (N. S.) 274. In that case plaintiff was a pawnbroker and was arrested for receiving stolen property. His photograph was taken by the police. He was later tried and discharged. The lower court granted an injunction against placing his photograph in the rogues' gallery and sending it to other states. This action of the court was affirmed on appeal.

The next case of *Itzkovitch* v. *Whitaker,* 117 La. 708, 42 So. 228, was similar to the facts in the *Schulman* case, last above cited, and the injunction was granted following the decision in that case.

It appears in the four Louisiana cases that the court enjoined the distribution of photographs to the rogues' gallery and other states prior to trial and conviction.

The case of *Downs* v. *Swann,* 111 Md. 53, 73 Atl. 653, 23 L. R. A. (N. S.) 739, is also referred to in the first *Bartletta* case. In the *Downs* case, the plaintiff was arrested charged with having embezzled city funds. He obtained an injunction restraining the Baltimore police from finger-printing and photographing him before trial. On application of the defendant the injunction was dissolved and in its opinion dissolving the injunction, the court said, referring to the bill of complaint:

> "* * * it does not allege the existence of a custom to put the photographs of unconvicted persons in the rogues' gallery, or charge the defendants with a purpose to put Downs' picture there, but only with an intention to preserve it for the use of the department."

The appellate court affirmed the order dissolving the injunction and said:

> "* * * the photographing and measuring in the manner and for the purposes mentioned, and the use of his photograph and the record of his measurement to the extent set forth in the answer by the police authorities of Baltimore city, would not constitute a violation

of the personal liberty secured to him by the Constitution of the United States or of this state."

The court then went on to say:

"* * * but we must not be understood by so doing to countenance the placing in the rogues' gallery of the photograph of any person, not a habitual criminal, who has been arrested, but not convicted, on a criminal charge, or the publication under those circumstances of his Bertillon record. Police officers have no right to needlessly or wantonly injure in any respect persons whom they are called upon in the course of their duty to arrest or detain, and for the infliction of any such injury they would be liable, to the injured person, in the same manner and to the same extent that private individuals would be."

The case of *State ex rel. Bruns* v. *Clausmeier,* 154 Ind. 599, 57 N. E. 541, 50 L. R. A. 73, is also cited in the first *Bartletta* case as authority for fingerprinting. This case contains *obiter dictum* to the effect that a sheriff has a right to adopt such measures as in his discretion "may appear to be necessary to the identification and recapture of persons in his custody if they escape". The decision, however, does not turn upon this point. In that case the relator sued the sheriff and his sureties on the sheriff's official bond seeking damages. Complainant charged that the sheriff had intended to ruin his reputation by publishing his photographs and causing them to be circulated to various police departments. The appellate court, in affirming the court below, said there

was no liability of the sheriff on his official bond because he was not performing an official duty and it was, therefore, unnecessary to determine whether or not the photographs and the words thereon were libelous when considered in connection with the other allegations of the complaint.

Another decision cited in the first *Bartletta* case is that of *Shaffer* v. *United States,* 24 App. D. C. 417. The question there was whether the accused's photographs could be used at the trial. Shaffer was charged with murder. The prosecutor offered in evidence his photograph, which had been taken for the purpose of identification at the time of his arrest. The objection to the admission of the photograph was that it violated the principle that a party cannot be required to testify against himself or to furnish evidence to be so used. The court held that in taking and using the photographic picture, there was no violation of any constitutional rights. The court, however, went on to say that the taking of photographs for identification of criminals was the usual means employed and that it would be a matter of regret to have its use unduly restricted upon any fanciful theory of constitutional privilege. This last statement is strictly *obiter dictum* (as the question of taking the photographs was not involved).

A review of the foregoing cases reveals that, at the time of the decision of the first *Bartletta* case, the courts of New York had condemned the taking of photographs and fingerprints in advance of conviction. *Gow* v. *Bingham, supra; People* v. *Hevern, supra,* and *Owen* v. *Partridge, supra.*

It is also apparent that the other cases cited as holding a contrary view in the first *Bartletta* case, go no further than to support the proposition that an accused may be photographed and finger-

printed in advance of conviction for the purpose of identification at the trial or to aid in his recapture if he becomes a fugitive from justice.

Defendants lay stress on the case of *United States* v. *Kelly,* 55 F. (2d) 67, 83 A. L. R. 122. In that case Kelly was arrested for violating the Prohibition laws in that he sold a quart of gin to an enforcement agent. He was informed that his fingerprints must be taken. He objected. He was told that force would be used if he did not submit and he, therefore, allowed the prints to be made. Thereafter he moved for an order requiring the return of the fingerprints and for an injunction restraining the use of them on the ground that the taking of the fingerprints violated the 5th Amendment to the Federal constitution. The district court judge directed the return of the fingerprints on the ground there was no right to take the same under the common law or under any federal or New York State statute and stated that the return of them would obviate the necessity of issuing an injunction. See *United States* v. *Kelly* (E. D. N. Y. 1931) 51 F. (2d) 263. This order was reversed by the circuit court of appeals. See 55 F. (2d) 67.

The opinion of reversal in *United States* v. *Kelly, supra,* cites the case of *Downs* v. *Swann, supra,* which denies that the right is unqualified, and the case of *State* v. *Clausmeier, supra,* which, at best, justifies the practice to a limited extent. It also cites the case of *O'Brien* v. *State,* 125 Ind. 38, 25 N. E. 137, 9 L. R. A. 323. This case is not in point as it merely holds that the forceful examination of the body of an accused to discover certain scars thereon was not a violation of the constitutional prohibition against self-incrimination. It also cites the case of *Mabry* v. *Kettering,* 89 Ark.

551, 117 S. W. 746. That case merely dissolved an injunction against the development and distribution of photographs on the ground that the officers disclaimed any intention to use them for any purpose other than the identification of the accused. It also cited the case of *Shaffer* v. *United States, supra,* which has been discussed above, and the first *Bartletta* case. The opinion also cited the case of *People* v. *Sallow,* 100 Misc. Rep. 447, 165 N. Y. S. 915. There the defendant was convicted of disorderly conduct. Defendant appealed on the ground that it was error to require that her fingerprints be taken and placed in evidence after she had been convicted. It appears that the magistrate, before sentencing her, directed that she be fingerprinted in order that he might determine her sentence as the statute provided longer terms in cases of frequent offenders. The comparison of her fingerprints so taken established the fact that she had been convicted of similar violations on four previous occasions. On appeal, the court held that under the circumstances the taking of the defendant's fingerprints and their introduction into evidence was not a violation of the constitutional prohibition of self-incrimination. The other case cited is *United States* v. *Cross,* 9 Mackey (20 D. C.) 382. The summary of that case indicates that it dealt with the use of photographs of an accused as a method of establishing identity at the trial and held that this was not a violation of the constitutional prohibition against self-incrimination.

A very significant statement is made in the opinion of the Circuit Court of Appeals in the case of *United States* v. *Kelly, supra,* which apparently had a bearing on the result reached by the court. At *page 70* the court said:

"It should be added that all United States attorneys and marshals are instructed by the Attorney General not to make public photographs, Bertillon measurements, or fingerprints prior to trial except when the prisoner becomes a fugitive from justice, and are required to destroy or to surrender to the defendant all such records after acquittal or when the prisoner is finally discharged without conviction. There is therefore as careful provision as may be made to prevent the misuse of the records and there is no proof of any threatened improper use in the present case."

Defendants refer to the case of *Shannon* v. *State* (1944), 182 S. W. (2d) 384, decided by the Arkansas Supreme Court. In that case the defendant was accused of murder, arrested and released on bail. The prosecutor petitioned the court for leave to take defendant's fingerprints for identification purposes stating that the sheriff had, through an oversight, failed to take the same. Defendant argued "that such an order would be an invasion of his constitutional rights not to be forced to give evidence against himself". This was another of the self-incrimination cases and the court held that the taking of the fingerprints for identification purposes was proper, citing *22 C. J. S., Criminal Law,* Sec. 616, page 937.

In the first *Bartletta* case the court said:

"Whether any certain prisoner is to be fingerprinted and photographed is an administrative question to be determined by the head of the police department making the arrest, or by those subordinates to whom he may delegate the decision."

Mr. Justice Parker, in his concurring opinion on the appeal of the first *Bartletta* case, 109 N. J. Eq. 241, said:

> "I agree that at that time and under those circumstances the photographing and fingerprinting were legally justified as a means of identification in case of need; and, that, on the case as presented by the bill, was all that the vice-chancellor was required to decide. I am not ready to agree that it was lawful to retain them under any and all conditions, and that issue was not presented by the bill."

In the second *Bartletta* case complainant had not been indicted and asked for the return of the fingerprints and photographs which were held by the officers and also those which had been sent out of the state. The local police who filed an answer denying complainant's right to relief, nevertheless voluntarily brought into court and surrendered the photographs, fingerprints and measurements of the complainant which were in the police department of Hoboken. The court held that the question of the fingerprints in the hands of the police department of Hoboken was, therefore, moot, and also held that the defendants had no control over the other officers to whom the photographs had been sent and, therefore, this court would not "attempt to compel defendants to exercise an authority which they do not possess". The second *Bartletta* case, therefore, is not even authority for the taking of photographs and fingerprints.

In the case of *Fernicola* v. *Keenan, supra,* this court for the first time was asked to decide the question of whether or not the arresting authority can be compelled to surrender fingerprints and

identification records held by them. In that case the court said:

> "* * * for the benefit of society * * * the police are justified in retaining such records, in certain cases. * * *"

The court, however, made this statement:

> "* * * when a man of good repute has a false charge made against him and is cleared of it, it seems to me that the police should destroy his fingerprints and photograph, or remove them from the rogues' gallery."

The court then went on to say that in the absence of a statute, discretion in the matter belongs to the police. While I do not agree with all of the reasons which led to the result reached in the opinion, it does lay down the rule that a person who has been accused of a crime, either justly or not, cannot have the aid of this court or any court to remove the stigma of an unproved criminal charge in the absence of a statutory remedy. I believe that the procedure followed in the federal system, where there is no statute covering the matter, expressed in the case of *United States* v. *Kelly, supra,* is more in keeping with our concept of the rights of free citizens under our form of government in which the individual is not deemed to exist merely at the sufferance of the state.

I have reached the conclusion, that, by the better weight of authority, there is no justification for the taking of fingerprints, photographs and other measurements in advance of conviction except where the sole purpose to be served is to identify the accused as the person charged with the offense for which he is taken into cus-

tody, or for the purpose of using them to facilitate the recapture of an accused who becomes a fugitive. The opinion of Mr. Justice Parker in the appeal of the first *Bartletta* case holds to this view.

R. S. 53:1-15 requires the arresting authority to take fingerprints but says nothing about taking photographs. This section, however, requires that photographs also be forwarded.

The Court of Errors and Appeals, in the first *Bartletta* case, 109 N. J. Eq. 241, held that this practice was justifiable "as a means of identification in case of need". For that purpose, therefore, the statute may be said to be a reasonable exercise of the reserved police power of the state.

R. S. 53:1-19 requires the supervisor of the state bureau of identification to "carry on an interstate, national and international system of identification". It also requires the arresting authority to forward copies of the fingerprints, etc. to the superintendent of state police. Therefore, those records are disseminated throughout the entire world. There is no provision in the statute for the protection of the right of privacy which is enjoyed by those who may be the victims of unfounded, unjust, false or malicious accusations. Is such a statutory mandate a proper and reasonable exercise of the reserved police power of the state? I think not.

The collection and dissemination of fingerprint records seem to be almost an obsession among modern American law enforcement agencies. In our state fingerprint files are maintained by local police, sheriffs, prosecutors, state police, and all institutions of detention. It sometimes happens that men who are completely innocent are indicted by partisan grand juries for the sole purpose of

serving the personal, private or political advantage of some hostile group which controls a grand jury. See *State* v. *Borg,* 9 N. J. Misc. 59, 152 Atl. 788. Under our statute, a person so persecuted would be fingerprinted and photographed and these records would be given widespread circulation. Upon his vindication, the injury to his reputation, by the circulation of such information, could not be undone. Second *Bartletta* case; *Fernicola* v. *Keenan, supra.*

As pointed out in *People* v. *Hevern, supra,* a charge that one's fingerprints have been taken would ordinarily "convey an imputation of crime" and it is there suggested that such a charge would probably be libelous *per se.*

It cannot be seriously denied that a person is defamed by the taking and widespread dissemination of his fingerprints and photographs for criminal identification purposes before conviction. After a person has been convicted and had the benefit of the constitutional protections of "due process", the injury is negligible. If the person is innocent the injury may be of great consequence.

It seems to me that an unnecessary and premature dissemination of such records is inconsistent with the fundamental principles of our criminal law. Even where a person is guilty, he has, under our system, the benefit of a presumption of innocence until that presumption is overcome by proof establishing his guilt beyond a reasonable doubt. See *State* v. *Burke,* 81 N. J. L. 93; *State* v. *Serlinsky,* 115 N. J. L. 560; *State* v. *Borg, supra.*

I am of the opinion that unless an accused becomes a fugitive from justice there exists no right to publish or disseminate his fingerprints, photographs, etc. in advance of conviction and that any

attempt to do so constitutes an unnecessary and unwarranted attack upon his character and reputation, and violates his natural right of privacy, since it serves no useful or necessary public need. See *Itzkovitch* v. *Whitaker,* 115 La. 479, 39 So. 499, 1 L. R. A. (NS) 1147; *Schulman* v. *Whitaker,* 115 La. 628, 39 So. 737; and, *Downs* v. *Swann, supra.* It is apparent that the ruling of the Department of Justice, to which reference is made in *United States* v. *Kelly, supra,* may fairly be assumed to be predicated upon the same consideration.

I have, therefore, reached the conclusion that so much of *R. S. 53:1-15* and *R. S. 53:1-19* as requires the premature dissemination of such records is an unreasonable, unnecessary and improper attempt to exercise the reserved police power of the state, and contravenes *Art. 1, Par. 1* of our state constitution.

The case of *Hodgeman* v. *Olson,* 86 Wash. 615, 150 P. 1122, L. R. A. 1916A 739, is not in point. In that case the court refused to compel the return of photographs, etc. of a person who had been convicted of grand larceny and served a portion of his sentence before being pardoned. The refusal was based upon the failure to allege or prove that the prison authorities intended to make further distribution of the records.

The defendants contend that the complainant, as an administrative officer charged with the duty of taking and forwarding fingerprints, etc. under the statute, is estopped from asserting the unconstitutionality of that statute; that he is estopped because he has caused and permitted fingerprints, etc. of many accused persons to be taken and forwarded before conviction; that he is estopped because he was indicted for failure to take the

fingerprints, etc. of certain indicted persons and that his indictment led to the filing of this bill; and, that he is estopped because he and his predecessors in office have, for many years, voluntarily taken fingerprints, etc. before the statute was enacted. The authorities cited, in support of the above contentions, are not apposite and I find no merit in the argument. What complainant may have done as sheriff is not pertinent to his right to protect his natural right of privacy as an individual. As I stated above, the question of whether or not complainant was under a duty to act may be a matter for determination in the criminal proceedings against the sheriff but this court is not here concerned with the sufficiency of the indictment, or the guilt or innocence of the sheriff. The mere fact that complainant and his predecessors in office voluntarily took photographs of accused persons and forwarded the same could not legalize a practice which was inherently wrong.

Defendants' brief alleges that the complainant, as sheriff, "* * * has fingerprinted every person who has been indicted and called upon to plead except those who were his friends or his political associates, * * *". The answering affidavits contain nothing which, even by inference, support such an accusation. I cannot give this contention any serious consideration.

I will, therefore, advise an order lifting the restraint against the taking of complainant's fingerprints and photographs or other criminal identification data but continuing the restraint against forwarding, disseminating or publishing the same in advance of conviction unless the complainant shall become a fugitive from justice.

Order Dissolving Restraint in Part.

(Filed August 6, 1945.)

IN CHANCERY OF NEW JERSEY.

148/399.

Between

WILLIAM J. McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill &c. Order.

The complainant having filed his verified bill of complaint on March 28, 1945 and the court having granted him an ad interim restraint against the fingerprinting and photographing of himself and dissemination thereof in advance of conviction for crime and having made a Rule upon the defendants returnable on April 16, 1945 and continued to June 4, 1945, to show cause why the defendants should not be restrained and enjoined according to the prayer of the bill;

And the matter coming on to be heard on June 4, 1945 and the court having read the bill and affidavits and heard the arguments of the respective solicitors for the complainant and defendants and having duly considered the matter and being now of the opinion that the restraint against the taking of complainant's

fingerprints and photographs or other criminal identification data should be dissolved but that the restraint against forwarding, disseminating or publishing the same in advance of conviction, unless the complainant shall become a fugitive from justice, should be continued until final hearing in order to prevent irreparable injury to the complainant;

It is on this 6th day of August A. D. 1945, in the presence of William George, solicitor of complainant, and of Mark Townsend, Deputy Attorney General of the State of New Jersey solicitor of defendants, Walter D. Van Riper and Charles H. Schoeffel, ORDERED that pending final hearing of this cause and until the further order of the court in the premises, the said defendants, Walter D. Van Riper, Attorney General of the State of New Jersey, and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, their agents and servants, including sheriffs, coroners, undersheriffs, deputy sheriffs, wardens, court officers, constables, fingerprinting officials and photographers and any other persons acting for the said Walter D. Van Riper, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County, and Charles H. Schoeffel, Superintendent of the State Police, in concert with them or their agents and servants, or independently of them, and chiefs of police, members of the state police and any other law enforcement agencies and officers desist and refrain from forwarding, disseminating or publishing in advance of conviction, the fingerprints and photographs of the complainant to any person or body whatever unless the complainant shall become a fugitive from justice.

Order Dissolving Restraint in Part.

Further ORDERED that the ad interim restraint heretofore granted against fingerprinting and photographing the complainant, upon his arrest for the misdemeanors with which he now stands charged, be and the same is hereby vacated and dissolved.

Further ORDERED that true copies of this order, certified as such by the solicitor of the complainant, be served upon the defendants within 2 days from the date hereof.

Respectfully advised:

HENRY T. KAYS,
V. C.

LUTHER A. CAMPBELL,
C.

Petition for Stay.

IN CHANCERY OF NEW JERSEY

148/399

Between

WILLIAM J. McGOVERN,
Complainant-Appellant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants-Appellees.

On Bill &c. Petition.

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

The petition of WILLIAM J. McGOVERN, sheriff, of the County of Hudson, respectfully shows that:

1. I am the complainant in this cause and have been apprised of the decision of Hon. Henry T. Kays, Vice Chancellor, in the cause rendered on July 18, 1945.

2. In the final paragraph of said opinion the court stated that there will be advised "an order lifting the restraint against the taking of complainant's fingerprints and photographs or other

criminal identification data but continuing the restraint against forwarding, disseminating or publishing the same in advance of conviction unless the complainant shall become a fugitive from justice."

3. I am taking immediate appeal from that part of the order dissolving the ad interim restraint against fingerprinting and photographing me. So that I can maintain my former state if successful on appeal, I respectfully petition the court to continue in force pending appeal the ad interim restraint against fingerprinting and photographing me granted on March 28, 1945. Unless this be done I must suffer irreparable damage and must lose the benefit of my appeal to the Court of Errors and Appeals, due to the fact that the very acts I am seeking to restrain will have been committed once I am fingerprinted and photographed and there will be nothing remaining to be preserved as the subject of appeal.

WILLIAM J. MCGOVERN
Complainant-Petitioner

Affidavit of William J. McGovern.

IN CHANCERY OF NEW JERSEY

148/399

Between

WILLIAM J. McGOVERN,
Complainant-Appellant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants-Appellees.

On Bill &c.
Affidavit.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss:

WILLIAM J. McGOVERN, of full age being duly sworn according to law on his oath deposes and says:

1. I am the complainant in this cause and have been apprised of the decision of Hon. Henry T. Kays, Vice Chancellor, in the cause rendered on July 18, 1945.

2. In the final paragraph of said opinion the court stated that there will be advised "an order lifting the restraint against the taking of com-

plainant's fingerprints and photographs or other criminal identification data but continuing the restraint against forwarding, disseminating or publishing the same in advance of conviction unless the complainant shall become a fugitive from justice."

3. I am taking immediate appeal from that part of the order dissolving the ad interim restraint against fingerprinting and photographing me. So that I can maintain my former state if successful on appeal, I respectfully petition the court to continue in force pending appeal the ad interim restraint against fingerprinting and photographing me granted on March 28, 1945. Unless this be done I must suffer irreparable damage and must lose the benefit of my appeal to the Court of Errors and Appeals, due to the fact that the very acts I am seeking to restrain will have been committed once I am fingerprinted and photographed and there will be nothing remaining to be preserved as the subject of appeal.

WILLIAM J. McGOVERN
Deponent.

Subscribed and sworn to before me this 30th day of July, 1945

HORACE G. DAVIS
A Master in Chancery of New Jersey

Order Continuing Restraint Pending Appeal.

(Filed August 6, 1945)

IN CHANCERY OF NEW JERSEY

148/399

Between

WILLIAM McGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill, &c.

Order Continuing Injunction in Force Pending Appeal.

This matter being opened to the court by William George, solicitor of the complainant William McGovern, in the presence of Mark Townsend, Deputy Attorney General, solicitor of the defendants Walter D. Van Riper and Charles H. Schoeffel, and it appearing that a petition has been filed herein by the said complainant alleging that he intends to appeal to the Court of Errors and Appeals from part of an interlocutory order made in this cause on the 6th day of Aug., 1945, and that unless the injunction and ad interim restraint heretofore allowed against fingerprinting and photographing of the complainant be continued in force pending the disposition of said

appeal by said court, it will be impossible to restore him to his former position;

And it further appearing that due notice of the said application has been given to the said defendants;

And the court having read the petition and affidavit of the said petitioner and having heard the arguments of counsel, and having duly considered the matter, and being of the opinion that good cause exists therefor, and that the said ad interim injunction and restraint should be continued pending the determination of said appeal by the Court of Errors and Appeals in order that the petitioner may be restored to his former position should the said court so direct;

It is, on this 6th day of Aug., A.D. 1945, pursuant to the statute in such case made and provided, ORDERED that pending the determination of the said appeal, the injunction and ad interim restraint granted to the complainant on the 28th day of March, A.D. 1945, on the filing of his bill of complaint, be continued in force and that until the further order of this court or of the Court of Errors and Appeals in the premises the said defendants, Walter D. Van Riper, Attorney General and Acting Prosecutor of the Pleas of Hudson County and Charles H. Schoeffel, Superintendent of State Police of the State of New Jersey, and their agents and servants, and all other persons mentioned in said ad interim restraint of March 28, 1945, desist and refrain from taking the fingerprints and photographs of the complainant William J. McGovern upon his arrest or apprehension for the misdemeanors with which the said complainant now stands charged.

It is further ORDERED that true copies of this order which may be certified as such by the solici-

tor of the complainant, be served upon the defendants Walter D. Van Riper and Charles H. Schoeffel within 5 days from the date hereof.

Respectfully advised:

HENRY T. KAYS,
V. C.

LUTHER A. CAMPBELL,
C.

Notice of Appeal (Dated August 6, 1945).

IN CHANCERY OF NEW JERSEY

148/399

Between

WILLIAM J. McGOVERN,
Complainant-Appellant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants-Appellees.

On Bill &c.
Notice of Appeal.

The complainant William J. McGovern hereby appeals to the Court of Errors and Appeals in the Last Resort in All Causes from so much of the interlocutory order made in the above entitled cause by the Chancellor, on the advice of Vice

Notice of Appeal (Dated August 6, 1945).

Chancellor Henry T. Kays, on August 6, 1945, as dissolves the ad interim restraint issued against the defendants, upon the filing of the Bill of Complaint in this cause, against taking the fingerprints and photographs of the complainant upon his arrest or apprehension for the misdemeanors with which he stands charged.

WILLIAM GEORGE
Solicitor for and of Counsel with
Defendant William J. McGovern

DATED: August 6, 1945

I conceive there is good cause for appeal in the above entitled cause.

WILLIAM GEORGE
Of Counsel with Defendant
William J. McGovern

Proof of Service.

IN CHANCERY OF NEW JERSEY

148/399

Between

WILLIAM MCGOVERN,
Complainant,

and

WALTER D. VAN RIPER, Attorney General of the State of New Jersey and Acting Prosecutor of the Pleas of Hudson County and CHARLES H. SCHOEFFEL, Superintendent of the State Police,
Defendants.

On Bill, &c.
On Appeal to Court of Errors and Appeals.
Proof of Service of Notice of Appeal.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

WILLIAM GEORGE, being of full age and being duly sworn upon his oath according to law deposes and says:

1. I am the solicitor and of counsel with complainant in the above entitled cause. I served a copy of Notice of Appeal, of which the annexed is the original, upon Thomas F. Doyle, Esq., acting as solicitor of the above named defendants, by handing the same to him, personally, at Chancery Chambers, Jersey City, New Jersey, on August 6, 1945.

WILLIAM GEORGE

Sworn and subscribed to before me this 6th day of Aug., 1945.

HORACE G. DAVIS
A Master in Chancery of New Jersey

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM MCGOVERN, Complainant-Appellant, *vs.* WALTER D. VAN RIPER and CHARLES H. SCHOEFFEL, Defendants-Appellees.	On Appeal from the Court of Chancery. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of William McGovern, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by an interlocutory order made in the Court of Chancery by the Honorable Luther A. Campbell, Chancellor of the State of New Jersey, bearing date 6 August, 1945, in a certain cause in said Court of Chancery wherein the petitioner was complainant and the said Walter D. Van Riper and Charles H. Schoeffel were defendants, in this respect, to wit, that the said order dissolves an ad interim restraint against fingerprinting and photographing the complainant-appellant in advance of conviction for crime.

2. And petitioner appeals from that part of the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that: such fingerprinting and photographing in advance of conviction for crime is violative of Art. 1, paragraphs 1 and 6 of the

Constitution of the State of New Jersey and of the Due Process Clause of the 14th Amendment to the Constitution of the United States of America as a deprivation of personal liberty and an assault and battery upon petitioner; the statute (R. S. 53:1-15 et seq.) enjoining such fingerprinting and the regulations requiring rogues' gallery photographs, all in advance of conviction, are violative of the foregoing constitutions of State and United States; the foregoing statute having been declared unconstitutional as to dissemination of fingerprints and photographs in advance of conviction, the entire statute must be declared unconstitutional; the dissolution of the ad interim restraint as to fingerprinting and photographing petitioner renders it impossible for the petitioner to be protected from infringement upon his rights in this respect by final decree after final hearing should he prevail on this point, and for such reason the ad interim restraint should have been continued until disposition of the entire cause by the Court of Chancery.

Petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

WILLIAM GEORGE,
Solicitor for and of Counsel
with Appellant.

Dated: August 14, 1945.

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Table of Cases.

New Jersey Court of Errors and Appeals

William McGovern, Complainant-Appellant, *vs.* Walter D. Van Riper and Charles H. Schoeffel, Defendants-Appellees.	On Appeal from the Court of Chancery. Sat below: Campbell, C. and Kays, V.-C.

BRIEF FOR APPELLANT.

[All italics ours unless otherwise noted.]

Statement.

William J. McGovern, appellant herein, is the Sheriff of Hudson County. His subordinates failed to fingerprint and photograph three persons indicted for crime, and because of such failure the Grand Jury of Hudson County indicted the Sheriff under the fingerprinting statute, R. S. 53:1-12 *et seq.* When and if convicted the Sheriff may be fined not more than $100 and may lose his office under R. S. 53:1-20, the statute not providing for imprisonment and authorizing only a fine.

In Hudson County the Attorney General is at present acting as Prosecutor of the Pleas. His office made it very clear that the Sheriff must be fingerprinted and photographed upon arraignment. Accordingly the Sheriff filed his verified bill of complaint seeking an injunction: (a), against fingerprinting and photographing him, and (b), against dissemination of his fingerprints and rogues' gallery photographs in advance of conviction, as an unlawful infringement upon his constitutional right to privacy and as an assault

upon his person together with libel upon his reputation.

Vice-Chancellor Kays allowed a temporary restraint. Upon the Sheriff's motion to continue such restraint until final hearing and the countermotion of the Attorney General and the Superintendent of State Police to dissolve, the Vice-Chancellor filed a formal opinion reported in 137 N. J. Eq. 24 and printed on pages 121-151 of the State of Case.

The opinion is to the effect that dissemination of prints and photographs in advance of conviction is unlawful as an invasion of the constitutional right to privacy, but that taking the same is not.

Based upon the reasoning of the opinion the Vice-Chancellor advised an order continuing the restraint as to dissemination until after final hearing and dissolving it as to taking fingerprints and photographs before conviction (S. C., pp. 152-154). The Sheriff now appeals from that part of the order which dissolves the restraint against fingerprinting and photographing in advance of conviction. There is no cross-appeal.

A complete statement of facts and of the scope of the bill of complaint is given in the opinion below (S. C., pp. 121-124).

Grounds of Appeal.

The petition of appeal (S. C., pp. 164-165) sets out the following grounds of appeal:

1. Such fingerprinting and photographing in advance of conviction for crime is violative of Art. 1, paragraphs 1 and 6 of the Constitution of the State of New Jersey, and of the Due Process Clause of the 14th Amendment to the Constitution of the United States of America, as a deprivation of personal liberty and an assault and battery upon appellant.

2. The statutes (R. S. 53:1-15, *et seq.*) enjoining such fingerprinting and the regulations requiring rogues' gallery photographs, all in advance of conviction, are violative of the foregoing constitutions of State and United States.

3. The foregoing statutes having been declared unconstitutional as to dissemination of fingerprints and photographs in advance of conviction, the entire statute must be declared unconstitutional.

4. The dissolution of the *ad interim* restraint as to fingerprinting and photographing renders it impossible for the appellant to be protected from infringement upon his rights in this respect by final decree after final hearing, should he prevail on this point, and for such reason the *ad interim* restraint should have been continued until disposition of the entire cause by the Court of Chancery.

Neither side having appealed from that part of the order continuing the restraint against dissemination until after final hearing, this brief does not discuss the same, except incidentally and in order to explain the points upon which the appeal is taken.

POINT 1.

Fingerprinting and photographing the appellant in advance of conviction violates State and Federal constitutions and the statute requiring it is unconstitutional.

The constitutionality of any statute must be tested in the light of its application to the protestant. The effect of the statute or action upon

another man is no criterion, for the question always must be: how does it affect the complainant?

The Sheriff had been indicted under R. S. 53:1-20 for the neglect of a subordinate. That statute permits imposition of no more than a $100 fine after conviction. No jail sentence is possible. His bill of complaint alleges that he is well known to law enforcement officers, lives with his family in Jersey City and intends to contest the charge with all the vigor at his command. This he is now doing in the Supreme Court under a writ of certiorari. There is no real need for fingerprinting or taking his rogues' gallery photographs, there being no risk of flight.

The reported precedents in New Jersey are few. In his opinion (S. C., p. 133) Vice Chancellor Kays sets them out: *Bartletta* v. *McFeeley,* 107 N. J. Eq. 141, *affirmed* 109 N. J. Eq. 241 (referred to as the first *Bartletta* case); *Bartletta* v. *McFeeley,* 113 N. J. Eq. 67 (referred to as the second *Bartletta* case); and *Fernicola* v. *Keenan,* 136 N. J. Eq. 9. Vice Chancellor Bigelow decided all three, the cases dealing with the inability of the complainant in each to have his prints and photos ordered returned to him.

The authority of the first *Bartletta* case is seriously shaken. In the Court of Errors and Appeals Mr. Justice Parker, joined by Mr. Justices Daly and Donges and Judge Kays, set down the advice these four judges must have tendered in the conference room to limit the affirmance to the peculiar facts of that case. Upon reflection Vice Chancellor Bigelow must have deemed the position taken by Mr. Justice Parker and his three associates to be sound, for in the second *Bartletta* case we learn that the police, for a reason unexplained in the opinion, politely returned fingerprints and rogues' gallery photographs at the hearing. Bartletta's counsel in his brief, reprinted here

among the affidavits of the defense (S. C., p. 21, l. 39; p. 22, l. 15), explains the return as due to the promise of Vice Chancellor Bigelow to allow Bartletta's solicitor a substantial counsel fee and costs if the photos were not removed from the Hoboken Rogues' Gallery and returned to Bartletta. It is then stated that the Vice Chancellor "then suggested that the photographs be removed from the Rogues' Gallery and the fingerprints returned to him. This was done * * *" (S. C., p. 22, ll. 11-14). Thus Bartletta, losing in this court, won a substantial victory on the same case when he returned to Chancery.

Further doubt has been expressed in the *Bednarik* case wherein Judge Herr observed:

> "Although the Court of Errors and Appeals affirmed Vice-Chancellor Bigelow in the Bartletta case, his opinion was confined by the concurring opinion of Justice Parker, joined in by Justices Daly and Donges and Judge Kays. Pending the trial of the Bartletta case, the so-called fingerprinting statute was passed, which has not as yet been considered by the Court of Errors and Appeals. In view of Justice Parker's concurring opinion, the New York cases of *Hawkins* v. *Kuhne,* 153 App. Div. 216, 137 N. Y. S. 1090; *Gow* v. *Bingham,* 57 Misc. 66, 107 N. Y. S. 1011, and *People* v. *Hevern,* 127 Misc. 141, 215 N. Y. S. 412, *require serious consideration.* And compare *United States* v. *Kelly,* 2 Cir., 55 F. 2d 67, 83 A. L. R. 122."
>
> *Bednarik* v. *Bednarik,* 18 N. J. Misc. R. 633.

The *Bartletta* case is no authority for compelling the Sheriff to be fingerprinted and photographed for the rouges' gallery in advance of conviction on a charge involving at most a fine of $100. Bartletta had been held on a criminal charge punishable by imprisonment in the State Prison and a

heavy fine and his bail had been fixed at $15,000. Concededly Bartletta could have been motivated to take flight (although in fact he did not), but in the present case the presumption is that the appellant will not leave home, public office and political future to avoid paying a $100 fine if he should be convicted.

We seriously doubt that there is in New Jersey a single responsible law enforcement officer bold enough to seek to fingerprint and photograph appellant on the strength of the *Bartletta* case, for there is no need of identification when no chance of flight exists. The supposed "duty" is rested upon the statute, R. S. 53: 1-12 *et seq.*, and we now turn thereto.

The statute was adopted in 1930, being found in P. L. 1930, ch. 65. Its scope and history are given by Vice-Chancellor Kays in the opinion filed herein (S. C., pp. 129, 130) and the jurist points out:

> "Under this statute a person who may be confined in jail on a charge of disorderly conduct would have his fingerprints and photographs taken and distributed to the four corners of the globe" (S. C., p. 130, ll. 17-21).

Disorderly conduct is not a crime; *State* v. *Block,* 119 N. J. L. 277, *affirmed* 121 N. J. L. 73. Yet one charged as a disorderly person and found in an institution is treated as a criminal by being fingerprinted and photographed and suffering dissemination thereof all over the globe! ! ! And for violation of the traffic laws, too! ! !

Vice-Chancellor Kays also stated:

> "The collection and dissemination of fingerprint records seem to be almost an *obsession* among modern American law enforcement agencies. In our state fingerprint files are maintained by local police, sheriffs, prosecutors, state police, and all institutions of detention. It sometimes happens that men who

> are completely innocent are indicted by partisan grand juries for the sole purpose of serving the personal, private or political advantage of some hostile group which controls a grand jury. See *State* v. *Borg,* 9 N. J. Misc. 59, 152 Atl. 788. Under our statute a person so persecuted would be fingerprinted and photographed and those records would be given widespread circulation. Upon his vindication, the injury to his reputation, by the circulation of such information, could not be undone. Second *Bartletta* case; *Fernicola* v. *Keenan, supra*" (S. C., p. 148, l. 33; p. 149, l. 13).

In his opinion the Vice-Chancellor ably and exhaustively examines into the authorities, beginning at S. C., p. 130. First, he found the right of privacy to exist (S. C., p. 130, l. 22; p. 132, l. 28) and that such right is protected by our state constitution (p. 132, ll. 25-28). Second, he discussed the fingerprinting and photographing cases (S. C., p. 132, l. 31; p. 149, l. 27).

Having sat in this court in the *Bartletta* case the Vice-Chancellor's comments ought to carry great weight. He had joined with Mr. Justice Parker, Mr. Justice Daly and Mr. Justice Donges in an effort to confine the affirmance to the peculiar facts of *Bartletta's* case and to await a proper case before attempting to settle the law. He points out (S. C., p. 133, ll. 14-27) that in the *Bartletta* case only one New York decision had been called to the attention of the court, whereas his present examination of the reports had uncovered at least four others. In the first *Bartletta* case, reported in 107 N. J. Eq. 141, 145, the lower court had relied heavily upon the apparent fact that only *Hawkins* v. *Kuhne* had denounced fingerprinting before conviction as unlawful, whereas four cases from other jurisdictions were to the contrary.

A reading of the Chancery opinion in the first *Bartletta* case gives the incorrect impression that

the great weight of authority was opposed by a *single* case in New York. Vice-Chancellor Kays now demonstrates that the fact is otherwise and Judge Herr, in *Bednarik* v. *Bednarik,* 18 N. J. Misc. R. 66, cites the New York cases and considers that they require serious consideration before reaching a decision on our fingerprinting statutes.

As the Vice-Chancellor states, the law of New York squarely condemns the practice (S. C., p. 142, ll. 31-36); *Gow* v. *Bingham,* 57 Misc. Rep. 66, 107 N. Y. Supp. 1011; *People* v. *Hevern,* 127 Misc. Rep. 141, 215 N. Y. Supp. 412; *Bingham* v. *Gaynor,* 141 App. Div. 301, 126 N. Y. Supp. 353; *Hawkins* v. *Kuhne,* 137 N. Y. Supp. 1090, *affirmed* 208 N. Y. 555. Unconstitutional and utterly indefensible, the New York courts hold the practice to be, amounting to assault and battery and libel. So clear is the law in the Empire State that in *Hawkins* v. *Kuhne* even the attorneys, who usually grasp at legal straws, conceded that the taking of a picture before conviction was an illegal act and the court agreed, stating: "This is in accord with a thorough examination and discussion of the law in the recent case of *People ex rel. Gow* v. *Bingham,* 57 Misc. Rep. 66, 107 N. Y. Supp. 1011."

Certain cases become legal landmarks. As Vice-Chancellor Kays points out, *Gow* v. *Bingham* has been interpreted by courts and textwriters as holding that police officials have no authority to photograph persons for the Rogues' Gallery in advance of conviction (S. C., p. 136, ll. 9-23). A similar interpretation was made by former Mayor Gaynor who (as an ex-supreme court justice of New York before assuming the mayoralty) was amply qualified to make it. And it requires only a careful reading of the case to see it as the classic precedent it is in roundly denouncing the practice, and holding that fingerprinting and photographing

before conviction are acts that "WERE NOT ONLY A GROSS OUTRAGE, NOT ONLY PERFECTLY LAWLESS, BUT THEY WERE CRIMINAL IN CHARACTER" and that "EVERY PERSON CONCERNED THEREIN IS NOT ONLY LIABLE TO A CIVIL ACTION FOR DAMAGES, BUT TO CRIMINAL PROSECUTION FOR ASSAULT * * * AND ALSO FOR CRIMINAL LIBEL." The case went further and held that even a statute authorizing the practice would not legalize it if examination of such statute showed it to be in violation of constitutional provisions and other than a legitimate exercise of the police power.

In *People* v. *Hevern,* 215 N. Y. Supp. 412, 83 A. L. R. 129, the Baumes Laws were held unconstitutional in requiring fingerprinting before trial, as a violation of federal and state constitutions. This case, although decided four years before the *Bartletta* case, is not even cited in the *Bartletta* Chancery opinion. Vice-Chancellor Kays points out (S. C., p. 138, ll. 25-28): "*This decision has not been overruled, or even criticized, in any later case in New York and remains the law of that state.*"

Legislation in violation of the constitutional guaranty of personal security is null and void; 16 C. J. S. 598, citing *Neafie* v. *Hoboken Printing Co.,* 75 N. J. L. 564, a case wherein this court declined to construe a statute in such manner as to legalize libel, holding that the right to be secure in reputation is a part of the right of enjoying life and pursuing and obtaining safety and happiness which is guaranteed by the New Jersey Constitution, Art. 1, para. 1.

Under the facts of the present case fingerprinting and photographing of appellant in advance of conviction is a deprivation of the foregoing constitutional right and also amounts to an unreasonable search and seizure under Art. 1, para. 6 of our state constitution. The right of per-

sonal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation, and has also been held to include the exemption of a person's private affairs, books and papers from the scrutiny of others; 16 C. J. S. 598.

From the bill of complaint (S. C., p. 1, l. 39; p. 2, l. 10) it appears that appellant has made politics his career. He is a public man, vitally dependent upon public confidence in him. His term of office will expire in November, 1945, and he must submit himself to the people at an election or elections in the future. *He will be crushingly handicapped if his opponents are enabled to inform the electorate that his picture had been taken for the Rogues' Gallery.* How can such threatened action be justified, even under the statute, when at most appellant can be fined $100, when and if convicted? The acts of his subordinates ordinarily cannot subject a man to criminal punishment and in all probability appellant will be acquitted. But the harm will have been done once his fingerprints and photographs have been taken.

Neither at common law under the *Bartletta* case, nor by virtue of the statute can the appellant be deprived of his constitutional rights on the transparent plea that his "identification" is required because he might take flight (*from a $100 fine*) or be later prosecuted as a second offender (*an utter impossibility under R. S. 2:103-7 as amended in 1940,* the statute applying only in cases of *high* misdemeanors, and the offense charged to appellant being merely a *misdemeanor*). The FACTS of this case show that the contemplated action would violate the New Jersey Constitution, Article 1, paragraphs 1 and 6, and the 1st section of the 14th Amendment to the United States Constitution which guarantees

against state deprivation of life, liberty and property without due process of law. After conviction appellant will have had due process, but not before; *People* v. *Hevern,* 127 Misc. Rep. 141, 215 N. Y. Supp. 412.

Whatever justification the appellees may urge here for their contemplated action or for fingerprinting and photographing murderers, thieves, lottery printers such as Bartletta was charged with being, and similar ilk, there can be no justification for such treatment of appellant who, known to practically all in police circles, faces at most a $100 fine and has no incentive to flee from justice.

In *Bartletta's* case the facts were different. He sought to obtain return of prints and photographs, whereas this appellant desires to halt the damage before it is done. Bartletta was charged with a serious state prison offense, but this appellant faces only a small fine. A study of the concurring opinion in the first *Bartletta* case leads to the thought that had Bartletta been subjected to fingerprinting and photographing while facing only a $100 fine, the decision should have gone the other way.

Vice-Chancellor Kays has critically examined the citations in the the first *Bartletta* case. This examination is set out in S. C., pp. 140-145, with these results: the Louisiana case, *Schulman* v. *Whitaker,* cited in 107 N. J. Eq. at p. 145, is no authority for the practice, for in that and four other Louisiana cases the court enjoined dissemination in advance of conviction and had prompt application been made conceivably could have prohibited the original action. The Maryland case of *Downs* v. *Swan* dealt with embezzlement and carefully restricted the scope of the decision so as to prevent Rogues' Gallery exhibition before conviction. The case is no authority here where there is no need for identification and no risk of flight.

The Indiana case of *State* v. *Clausmier* contains mere *obiter dictum* and turned on lack of liability under an official bond for an unofficial act. The last case cited, *Shaffer* v. *United States,* dealt only with a question of evidence at a murder trial. *People* v. *Hevern,* decided four years before, *is neither cited nor discussed although directly in point and embodying the law of the great State of New York.*

In the present case to fingerprint and photograph appellant in advance of conviction would be oppressive, unjust and unconstitutional, there being no justification therefor in the circumstances. To say, as is said in *Fernicola* v. *Keenan,* 136 N. J. Eq. 9, that appellant must suffer because it is "a humiliation to which he must submit for the benefit of society," is not good Anglo-Saxon law. The statement is akin to the creed of two European tyrants who are now out of business and out of this world and whose philosophy was that the individual exists merely at the sufferance of the state. Our traditions and laws are otherwise.

If the citizen must be fingerprinted and photographed "for the benefit of society" all of us ought to be treated alike and all printed and photographed for the benefit of society and the police departments. The state has no right under the reserved police power to fingerprint and photograph appellant for society's doubtful benefit, unless it also decrees that the entire population likewise submit for the "benefit" of themselves as members of society.

POINT 2.

The statute having been declared unconstitutional as to a material part of the legislative scheme, the entire statute must fall.

In the present cause Chancery has struck down as unconstitutional the basic part of the statute. The objectionable feature is so important to the legislative design as to warrant the opinion that the scheme would not have been authorized without it.

Basically the design of the legislation is to compel arresting officers *immediately* to take fingerprints and photographs of their prisoners and forthwith to forward prints and photos to the State Police. In turn the State Police "cooperate" with other states and the F. B. I. and "carry on an interstate, national and international system of identification."

Chancery now forbids this to be done in advance of conviction. Consequently the statute is so emasculated by declaration of constitutional invalidity that little is left of the legislation. The foundation being swept away, the remainder of the structure cannot stand.

For this Court it has been said:

> "A subsidiary question of vital importance to the appellant's contention is whether this provision, if found to be unconstitutional, may be exscinded from the statute, leaving its remaining provisions to stand.
>
> "We are clearly of opinion that this cannot be done. The occasion for the exercise of this delicate judicial function is carefully stated by Mr. Justice Depue in *Johnson* v. *State*, 59 N. J. L. 535, 539, in these words: 'The same statute may be in part constitutional and in part unconstitutional, and if the parts are

> wholly independent of each other, that which is constitutional may stand and that which is unconstitutional will be rejected; but if the different parts of the act are so intimately connected with and dependent upon each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not have passed the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent upon each other must fail.'
>
> "Stated more tersely, the same doctrine is laid down by Mr. Justice Dixon in *Albright* v. *Sussex County Lake Commission,* 71 N. J. L. 309, as follows: 'The general rule with regard to the validity of a statutory scheme, some feature of which proves to be unconstitutional, is that, if the objectionable feature be not so important to the legislative design as to warrant the opinion that the scheme would not have been authorized without it, then the residue of the scheme will be upheld; otherwise, the entire scheme will fail.' "
>
> *Daly* v. *Garven,* 90 N. J. L. 512, 514.

Tested by the criteria above the provision for dissemination of fingerprints and photographs immediately upon arrest, and in advance of conviction, is not wholly independent of the provisions of the statute, but on the contrary is the keystone of the legislative arch. The entire scheme of the act relates to dissemination immediately after arrest and before conviction, and is the only discernible reason for passage of the legislation. After excising this feature from the statute there is literally nothing left. The provision declared by Chancery to be unconstitutional is, therefore, not separable from the residue of the statute, the whole of which necessarily is invalid.

The entire statute thus falling, Chancery should have continued the restraint, at least until final

hearing. Outside the act there could be no justification for fingerprinting and photographing the Sheriff—the offense charged to him involved no more than a $100 fine and there could have been no likelihood of flight from justice, for even Quarter Sessions refused bail and paroled the appellant.

POINT 3.

The *ad interim* restraint should have been continued until final hearing in order to preserve the subject of the litigation.

The statute, wholly unconstitutional, could not warrant dissolution of the *ad interim* restraint pending final hearing. Independently of the statute there was no reasonable need for identification of the appellant by means of fingerprints and photographs—the offense may be punished by a fine of not more than $100 and no jail sentence may be imposed, the accused is a high officer and known to practically all persons in police circles, and a possible fine of $100 could not reasonably be expected to motivate him to take flight. In *Bartletta* v. *McFeeley,* 107 N. J. Eq. 141, *affirmed* 109 N. J. Eq. 241, the offense was a serious one punishable by a state prison sentence and heavy fine and bail had been fixed at $15,000. Whatever justification there may have been for printing and photographing Bartletta is not present here in a case in which no more than a $100 fine can be imposed and there can be no real need to anticipate a flight from justice.

So far as we have been able to learn this is the first case brought on the point. The reported precedents deal only with attempts to recover prints and photographs after the *damage* had been

done. The present cause seeks to prevent the doing of the wrong. We think that the Chancery declaration of unconstitutionality of the basic part of the statute *ipso facto* entitled appellant to continuance of the restraint until final hearing in order to preserve the subject of the litigation, but even were the point debatable Chancery should have refused to lift the restraint. Otherwise the very matter upon which adjudication was sought —wrongfulness of fingerprinting and photographing before conviction—could not be preserved until final hearing. Once the appellant has been printed and photographed he can never be restored to the *status quo*.

Chancery can and often does grant a preliminary injunction to preserve the subject of the litigation until after hearing. Chancellor Green, speaking of continuance of an injunction to prevent defeat of the object of the bill, said:

> "In many cases, the court will interfere and preserve property *in statu quo*, during the pendency of the suit in which the rights to it are to be decided, and that without expressing, and often without having the means of forming any opinion as to such rights. * * * It is not necessary, therefore, in order to continue the injunction, that it should be clear that the complainant will succeed at the hearing. It is sufficient if there is ground for supposing that relief may be given."
>
> *Huffman* v. *Hummer*, 17 N. J. Eq. 263, 268.

All the equities favored continuance of the restraint. The court had declared the basic part of the law unconstitutional, thereby striking down the entire statute because nothing else was left of the purpose of the legislation. There was no need for identification—not only was the Sheriff known

in police circles and among court officers, but the only criminal penalty imposable upon him could not exceed a fine of $100 and the Quarter Sessions had paroled him, waiving bail. Thus there was ground for supposing that relief could be given the Sheriff upon final hearing and continuance of the restraint would not only have been proper but required to preserve the subject of the litigation.

Lifting of the restraint before final hearing compelled this appeal. Its restoration by this court will permit the question to be litigated in an orderly fashion after the Sheriff has his day in Chancery Court on final hearing. The restraint should not have been lifted by Chancery under the peculiar circumstances of the case.

It was argued below, and will be argued here no doubt, that Chancery cannot enjoin a criminal prosecution, citing *Moresh* v. *O'Regan,* 122 N. J. Eq. 388. In his opinion Vice-Chancellor Kays gives a complete answer to such argument (S. C., p. 124, l. 35; p. 125, l. 20): the present proceeding can have no effect on the criminal prosecution, which may proceed without hindrance. *All that is enjoined has to do with fingerprinting and photographing appellant, and that is all.* And in a proper case the court would have power to restrain even a criminal prosecution; *Ex parte Young,* 209 U. S. 123; *Moresh* v. *O'Regan, supra,* at p. 395.

Conclusion.

For the foregoing reasons it is moved that the part of the Chancery order appealed from be reversed and the cause remitted to Chancery with instructions to grant an interlocutory injunction against fingerprinting and photographing appellant pending final hearing in the cause.

Respectfully submitted,

WILLIAM GEORGE,
Solicitor for and of counsel
with Appellant.

FRANK G. SCHLOSSER,
On the brief.

October Term, 1945.

New Jersey Court of Errors and Appeals

WILLIAM MCGOVERN, Complainant-Appellant, *vs.* WALTER D. VAN RIPER and CHARLES H. SCHOEFFEL, Defendants-Appellees.	On Appeal from the Court of Chancery.

REPLY BRIEF FOR APPELLANT.

Appellees' answering brief was not served until October 25—the day of argument—and pursuant to leave of court granted during argument we now reply.

The brief for appellees makes no attempt to answer the points previously urged by appellant, discussing matters material only on a cross-appeal although appellees have not taken an appeal. On pages 4-5 of their brief they state:

> "The appellees have refused to appeal at this time from the adverse part of this interlocutory order."

Only appellant's appeal is before this court and the single question for decision concerns the action of Chancery in dissolving the *ad interim* restraint in part.

The novel point is raised that Chancery, being a court of equity, is powerless to construe or interpret a penal statute. Of course no court of equity can *try* a criminal case, but appellees would have the Chancellor powerless to test the constitutionality of the statute in a civil cause.

No authority is cited for the proposition, for manifestly none exists. While appellant has been indicted the action of the Chancellor in restraining dissemination of his fingerprints and Rogues' Gallery photographs until after conviction can have no effect whatever upon *trial* of the case in the criminal courts, for the prosecution has not been restrained by Chancery. The relief sought by appellant in equity is civil and the fact that a statute regulating fingerprinting and photographing operates upon those arrested for crime does not foreclose the Chancellor from giving relief in such a civil proceeding, particularly where, as in this cause, the criminal trial is not restrained.

Appellees also urge that appellant is "estopped" from seeking relief because he, through his subordinates, fingerprinted and photographed others—as the statute says he must. This is equivalent to saying that a jailor, because the law has required him to imprison felons, is debarred from invoking the protection of our courts when his own liberties are endangered, an argument we have encountered here for the first time. The doctrine of *estoppel in pais* has been invoked in some very doubtful cases by litigants and now it is sought to apply it to an officer of the law for doing what the law says he must. What action of appellant caused appellees to change their position to their detriment is not pointed out, but appellees ought to know, if they do not know, that an estoppel will arise when the one who seeks to invoke the doctrine has changed position in reliance upon an action of the other party. Such a situation is entirely lacking here.

A further "point" made by appellees raises the "unclean hands" doctrine. How that doctrine can be applied to this cause we know not, for appellant has had no dealings with appellees

so as to be *in pari delicto* with them, and hence is not subject to such defense. Certainly the fact that appellant's subordinates printed and photographed others under the statute cannot be regarded as soiling the sheriff's hands and warranting a court of conscience in denying him his constitutional rights.

Appellees, in maintaining that equity cannot protect personal rights, elevate property rights to a height which few judges would do. The constitution speaks of "life, liberty and *property*" and puts property rights after personal right to life and liberty, but appellees would have it otherwise. Essentially a property right amounts to the personal right of the owner of property to enjoy it and when courts protect a right of property they do so in order that someone's personal right thereto may not be infringed. Equity has been protecting personal rights for centuries, for where else could they be protected in cases wherein the law, by reason of its universality, is deficient? The remedy at law being inadequate, equity alone is able to protect any right, be it personal or be it a property right, and this is done by courts of equity here and abroad constantly.

It is claimed by appellees—without any foundation for their claim—that appellant has failed to interpose *bona fide* defenses to injunction suits brought to restrain him from fingerprinting and photographing others. The charge is utterly baseless, but even were it true we cannot perceive what that fact could have to do with this appeal. Moreover, in each case the appellant sheriff through his counsel has filed answers to the suits, such answers setting up the provisions of the fingerprinting statutes and praying that he be advised as to his rights and obligations under the statute. Certainly that is a *bona fide* defense and it was

undertaken in the Union City police chief's case which antedated appellant's own indictment, and repeated in the cases which followed. A defense need not go so far as to insult a vice chancellor in order to demonstrate its *bona fides.*

The fine for violation of the statute is not $200.00, as stated on page 8 of appellees' brief. It is *$100,* as we have stated in our main brief. Nor did Mr. Justice Case deliver the opinion in the case of *Moresh* v. *O'Regan*—the report in 122 N. J. Eq. 388 ascribes authorship to Mr. Justice Donges. These are minor points, but their recital illustrates the inaccuracies with which appellees' brief abounds.

The brief filed for appellees is mainly devoted to a vicious attack on the equity judge who presided in the court below, the judge being accused, in effect, of intellectual dishonesty and lack of judicial integrity because he reached the decision he did reach. This is a proceeding in a court of justice, the court of last resort in all causes in New Jersey, which court is entitled to and must have the respect of all litigants. That absolutely indispensable respect is not present here when appellees—who represent a sovereign state in an honorable court of last resort—launch a vicious attack on the judge of the court below.

And remembering that appellees have deliberately decided not (at this time) to appeal the chancery decision, the tenor of their brief is all the more incomprehensible. Among other accusations the equity judge is charged as follows: (1) with assuming jurisdiction "in disregard of the opinion of Mr. Justice Case" (p. 8); (2) with "flouting" a syllabus; (3) with using "quotation taken out-of-text" to *mislead* (p. 11); (4) with making "the grave error of not disclosing, if he knew * * *" (p. 13); (5) with "usurpation of jurisdiction" (p. 13); (6) with "coincidentally" making an order designed to vitiate an indictment

(p. 18); (7) with citing "false authorities" (p. 25); (8) with employing "the climax of misleading quotations out-of-text" (p. 28). The foregoing are a few illustrations and the brief abounds with others.

If aggrieved by the decision below appellees might have appealed. They did not do so. If they believed that the judge had misapplied or overlooked principles and had reached an incorrect conclusion they might have brought their points to the attention of this court without impugning the integrity or motives of the equity judge in the fashion employed in the brief. No judge ought to be compellled to suffer a rough-and-tumble mauling in a brief filed here, or elsewhere, in any cause; and this is all the more true when the cause is one which the appellees have declined to appeal.

One last point deserves to be called to the attention of this court. Throughout appellees' brief certain alleged statistics are quoted and there is an Appendix on pages 33-34 purporting to contain a table of practices in the several states. No sources are quoted and no effort has been made by appellees to authenticate statistics or tables. Being entirely unauthenticated—they are not even part of the State of Case—they could not be checked for accuracy and for such reason cannot be regarded as reliable.

Respectfully submitted,

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with Appellant.

Frank G. Schlosser,
On the brief.

October 30, 1945.