
New Jersey Court of Errors and Appeals

The State of New Jersey,
Defendant-in-Error,

vs.

David Gratz,
Plaintiff-in-Error.

} Sur Indictment.
Assault and Battery.

ON ERROR TO SUPREME COURT.

BRIEF OF PLAINTIFF-IN-ERROR.

FACTS.

David Gratz was indicted and convicted at the September term (1913), Cumberland Quarter Sessions, for assault and battery on Bernard Bloom on August 29th, 1913. There was a strike between the manufacturers and a cloak and skirt maker's union at the time the assault and battery took place. Bloom, Blaustein and Joseph Barton conducted a garment factory at Vineland, N. J. Gratz was a member of the union and a striker. On August 29th, 1913, while going to their boarding house near

New Jersey State Library

West Avenue, a number of men rushed at Bloom and a member of the party assaulted and struck him with a blackjack, felling him to the ground. Gratz's evidence was that he had endeavored to obtain work at Bloom's factory the day the assault occurred and that at close of the day's work he had followed the three in order to speak to Cohen. When he arrived at the corner of West and Landis Avenue the assault took place and Gratz ran into a Mr. Sheldon's yard following Blaustein.

Testimony was offered to show that Gratz took a blackjack from his pocket and threw it down on the grass where it was picked up by Blaustein. Mr. Sheldon arrested Gratz and took him to the City Hall. A complaint was made charging Gratz with assault and battery before a Justice of the Peace. Another complaint was sworn out before the Mayor of the Borough of Vineland, charging Gratz with violation of Ordinance No. 4 of the Borough of Vineland. A copy of this complaint is found on page 82 of the State of the Case. This complaint sets forth the assault and battery in full and all of the salient facts on which the plaintiff-in-error was indicted and convicted. A trial was had before the Mayor and a jury of twelve men and the plaintiff-in-error was acquitted. See pages 82 to 89 State of Case for the proceedings before the Mayor. The plaintiff-in-error was afterwards indicted as above set forth and filed a plea of *autrefois acquit* to the indictment. The Prosecutor filed a demurrer and the same was argued instanter. The Court sustained the demurrer, the plaintiff-in-error pleaded "not guilty," was tried and convicted.

POINTS.

I.

The Judge erred in charging the jury as follows:

As to What is in Law a Reasonable Doubt.

II.

The Court Erred in Its Judgment That the Plea of Autrefoi Acquit Was Bad.

I.

The trial Judge erred in his charge to the jury as to what constitutes a reasonable doubt. The part of the charge on which error is assigned is as follows: "Reasonable doubt is not any doubt which you may entertain, but is such a doubt as reasoning men entertain after a consideration of the entire testimony in the case, both on the part of the State and on the part of the defendant." (Page 75, State of Case.) This is quite confusing when the former part of the sentence is compared with the latter part of the same. It could have but one effect on the jury's mind. If any reasonable doubt was entertained it precluded the plaintiff-in-error from receiving its benefit by the phrasing of the Judge's charge.

II.

**That the Judgment of the Demurrer to the Plea of
Autrefoi Acquit Should Not Have Been for
Defendant.**

The above point is argued on the first specification for cause of reversal.

The plea is found on page 13, State of Case, and the demurrer on page 15, State of Case. The Exhibit No. 2, page 88, State of Case, discloses the remarkable fact that the plaintiff-in-error had been acquitted by a jury of twelve men for the offence involving the same charge on which he was indicted and convicted. The constitution of the State of New Jersey provides in simple words the following: "No person shall, after acquittal, be tried for the same offence." Sec. 10, Const. Act.

A person can be convicted under the ordinance of a city for the illegal sale of liquor. *State vs. Terry* 43 *Vr.* page 377; also indicted for the same crime. Crimes Act, Comp. Stat., page . Quaere: Could a person be indicted and tried for the illegal sale of liquor after being acquitted of that charge in the City of Millville? The above is used for the purpose of illustration, because it will undoubtedly be urged that the plea can only be used where there has been an acquittal under an indictment. At one time two Justices of the Peace had the power and authority to try and convict for the crime of petit larceny. (Reb., page 273, par. 37-39.) A full treatise is found in Honeyman, Ed. 1893, page 549. The above act has been repealed, but it was in force under the present Constitution. Quaere: Could a

person acquitted (under the act referred to) have plead a former acquittal if afterwards indicted and brought to the bar for trial?

The judgment of the Quarter Sessions on the demurrer was premised on the theory that the proceedings before the Mayor of Vineland were, on their face, void. It is respectfully submitted that nothing in the record of the former acquittal indicates that those proceedings were a nullity. If the Borough Council was without power to pass Ordinance No. 4 and the borough court was without jurisdiction to try the offence prohibited by that ordinance, those matters might perhaps have been objected to by some appropriate replication on the part of the State. But, on their face, the proceedings before the Mayor were not void, and the demurrer to defendant's plea should have been overruled.

CONCLUSIONS.

This cause came before the Supreme Court on appeal at the February Term, 1914. The conviction for carrying concealed weapons was reversed and the conviction for assault and battery affirmed. The present appeal is for the purpose of reviewing the judgment of the Supreme Court in affirming the conviction as to assault and battery. The opinion of the Supreme Court appears on page 89 of the printed book.

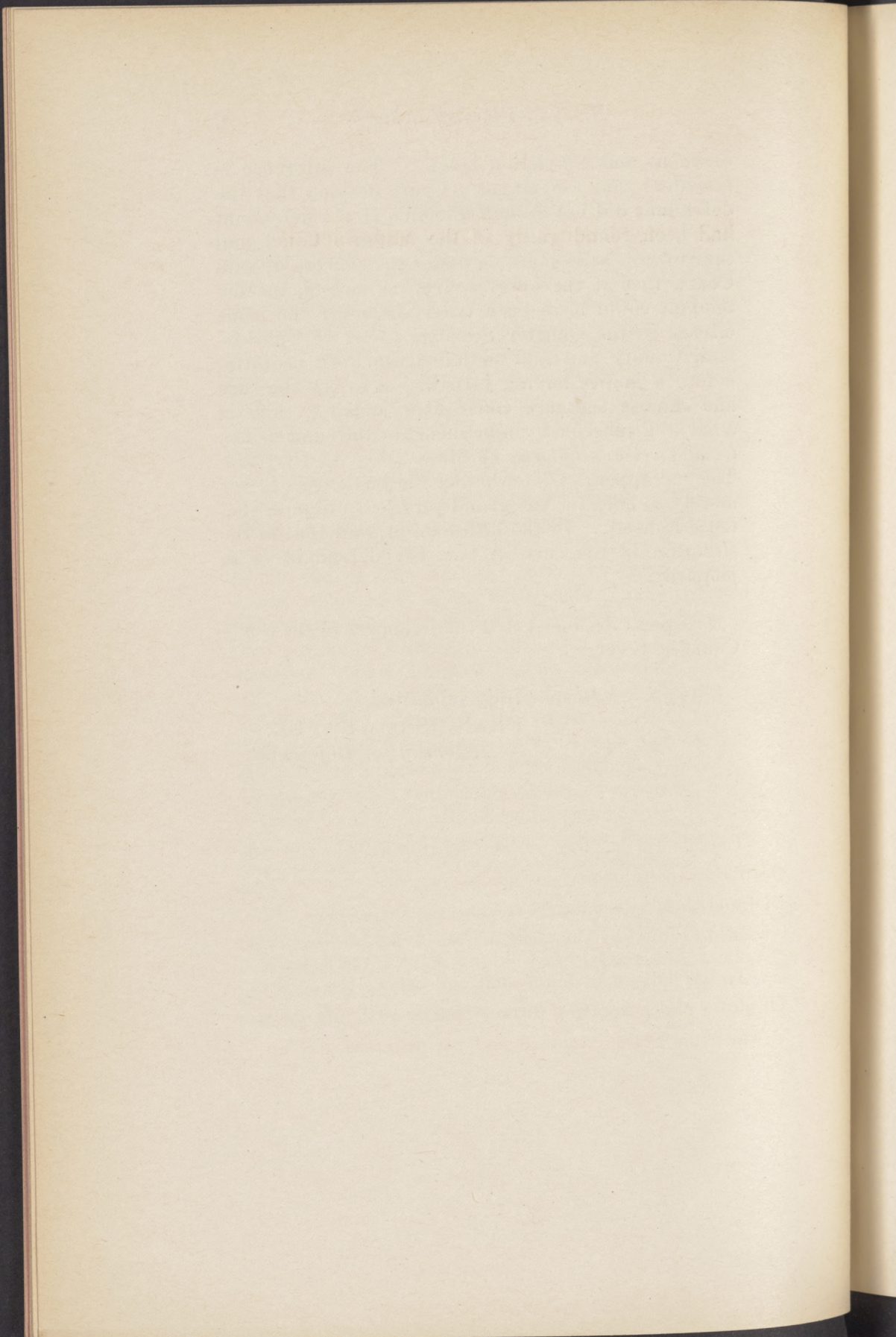
The charge of the trial Court as to reasonable doubt I feel to be error. The language is "Such a doubt as reasoning men entertain." This explanation means practically nothing. I believe the effect of the charge was that the jury must give the defendant the benefit of the doubt only if they reached the conclusion that he was not guilty. In a case of this nature, it is not only a belief in the defendant's innocence, which entitles him to the benefit of the rule as to reasonable doubt, but also the absence of belief in his guilt. "In the various mental conditions, ranging from that in which the jury thinks the accused innocent, to that in which they are convinced beyond a reasonable doubt of his guilt, he is entitled to the benefit of their uncertainty. This was not accorded the prisoner under the charge in the present case." *State vs. Raymond*, 53 N. J. L. 260.

The plea *autrefois acquit* filed by the defendant below should have been sustained. The defendant was tried before the Mayor of Vineland and a jury of twelve men for *assaulting* one Bloom. He was acquitted. This same assault was the basis of in-

dictment and conviction below. The inference is resistless that the Mayor's Court decided that the defendant did not assault Bloom. If the defendant had been found guilty in the Mayor's Court and sent to jail, as is possible under the powers of said Court, then if the lower courts be correct, the defendant could have been tried again for the same offense in the Quarter Sessions Court of Cumberland County and sent to jail again. An acquittal before a justice having jurisdiction to try the case and impose sentence constitutes jeopardy, and is a bar to a subsequent indictment for the same crime. *Com. vs. Cunningham*, 13 Mass. 245. 12 Cyc. 274. The test appears to be whether the justice has power merely to hold for the grand jury or to impose sentence himself. In the latter event, and that is the situation in the case at bar, the defendant is in jeopardy.

I respectfully insist that the judgment of the lower Court be reversed.

Respectfully submitted,
FRANCIS D. WEAVER,
Attorney for Defendant.



New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	SUR INDICTMENT
vs.		ON ERROR TO SUPREME
DAVID GRATZ, <i>Plaintiff in Error.</i>		COURT

No. 17
NOVEMBER TERM, 1915

BRIEF FOR DEFENDANT IN ERROR

FACTS

The plaintiff in error was convicted in the Cumberland Quarter Sessions upon two indictments, one charging assault and battery and the other charging the carrying of a concealed deadly weapon.

To the indictment for assault and battery the defendant filed a plea purporting to be a plea of *autrefois acquit*, to which the State demurred and the demurrer was sus-

tained by the trial court. Upon a further plea of not guilty, both indictments were tried together by consent of counsel.

The evidence produced by the state showed that in August, 1913, there was a strike of garment workers in Philadelphia, and that the defendant was a member of the General Picket Committee of the strikers' union. An effort was being made to extend the strike to the factories in the neighborhood of Vineland, Cumberland County, New Jersey, and the defendant came to Vineland from Philadelphia in pursuance of the campaign the strikers were making against the non-union factories operating there. Bernard Bloom, the complaining witness, with his partners, was at that time engaged in manufacturing cloaks at Vineland and running a non-union factory. On the night of August 29, 1913, as Bloom and his partners, together with a workman, were returning to their homes from the factory, they were assailed near the corner of West and Landis Avenues by a party of some ten or fifteen men led by the defendant who ran forward and struck Bloom on the head with a blackjack seriously injuring him. Gratz was afterward seen by several of the witnesses for the state to take the blackjack from his pocket and throw it in the grass.

The plaintiff in error elected to bring up the whole record, and in the Supreme Court filed assignments of error as well as specifications of causes for reversal. (pp. 76, 77, State of the Case.)

The present writ of error is directed to the conviction of the defendant upon the indictment charging him with assault and battery.

ARGUMENT

I.

THE FIRST POINT RAISED IN THE BRIEF FOR THE PLAINTIFF IN ERROR IS THAT THE TRIAL JUDGE ERRED IN CHARGING THE JURY AS FOLLOWS:

“Reasonable doubt is not any doubt which you may entertain, but is such a doubt as reasoning men entertain after a consideration of the entire testimony in the case, both on the part of the State and on the part of the defendant.” (p. 75).

This is criticised as “confusing”, but when taken in connection with that portion of the charge immediately preceding it (p. 75), counsel for the State fails to see in what particulars such instruction were erroneous or prejudicial to the plaintiff in error.

A reasonable doubt is such as reasonable ~~and~~ and prudent men ordinarily listen to.

State vs. Davis (Del.) 45 Atl., 394.

2.

THE REMAINING POINT URGED BY THE PLAINTIFF IN ERROR IS THAT THE COURT ERRED IN SUSTAINING THE DEMURRER OF THE STATE TO THE PLEA OF *autrefois acquit*.

The above point is raised in the first specification of causes for reversal. (p. 77)

The plea is found on p. 13 State of Case, and the demurrer on p. 15.

The plea is based upon the fact that the defendant had been acquitted of the violation of Section 1 of an ordinance of the Borough of Vineland. The ordinance in question (p. 79) is entitled:

“An Ordinance to prevent riots, disturbances, breaches of the peace and disorderly assemblages in the streets or in any house or place in the Borough and to preserve peace and good order.

Section 1 provides:

“Be it ordained and enacted by the Mayor and Council of the Borough of Vineland That if any person shall congregate or assemble in a riotous or disorderly manner in the street, public places or public halls, or if any person or persons shall at any time be found upon the street, sidewalks, steps or platforms of stores, groceries, saloons, public halls, churches or railroad stations, or within or around any building, dwelling house or public place within said Borough, behaving in a disorderly manner, by drunkenness, by using profane or indecent language, by making insulting remarks to or comments on others or unnecessarily congregating in groups upon the street, sidewalks, or other public places, to the obstruction thereof, or to the annoyance of passersby, or by unnecessarily doing or performing any other thing whatsoever that would disturb the peace and quiet of any family, neighborhood, or any of the inhabitants of the said Borough, he or they shall be liable to a fine of not exceeding twenty dollars, or imprisonment in the Borough lock-up or the county jail for a term not exceeding ninety days, in the discretion of the Mayor.”

The complaint (p. 82) charges that the defendant, with other persons, did, at the time and place specified therein "act and behave in a riotous and disorderly manner in the said street in the Borough of Vineland, without necessity and without just provocation or justification, by assaulting and attempting to kill this deponent and by using a black-jack and striking this deponent therewith on his head and face and thereby endangering the life of this deponent and then and there doing him great bodily injury and thereby disturbing the peace and quiet of the neighborhood and of the inhabitants of the said Borough of Vineland and thereby obstructing that portion of the said street in the said Borough of Vineland used as a sidewalk for the passage of pedestrians, to the great injury and annoyance not only of this deponent but of other passer-by, and this deponent avers that the said David Gratz has violated the provisions of Section No. 1 of Ordinance No. 4 of the said Borough of 'Vineland,' &c.

As the Supreme Court said (p. 91)

"The plea was properly adjudged insufficient. Whatever may be set up in the complaint with respect to the alleged assault with the black-jack, the mayor's court had in any case no broader jurisdiction than that conferred by the section of the ordinance that is invoked, and a reading of that section discloses plainly that it is aimed, not at criminal offenses for which the accused is entitled to the action of a grand jury, but to the trivial offense of disorderly conduct on the public streets. The only language that could embrace the offense of assault and battery is the general clause, 'or by

unnecessarily doing or performing any other thing whatsoever that would disturb the peace and quiet of any family, neighborhood, or any of the inhabitants of said borough.' But this is to be construed in conformity with the maxim 'noscitur a sociis,' and, so construed, the entire section is substantially identical with section 3 of the 'act concerning disorderly persons.' C. S. 1927; P. L. 1912, 161. The acquittal in the mayor's court, therefore, was not an acquittal of the misdemeanor of assault and battery, but of simple disorderly conduct."

Upon the reasoning of plaintiff in error in this case, it would follow that if the complaint under the ordinance had charged the plaintiff in error, among the other things charged, with causing the death of Bloom, his acquittal before the Mayor's court of the violation of the ordinance would preclude his indictment and trial in the Oyer and Terminer for murder.

Nowhere does it appear that the Mayor's court had jurisdiction to try the criminal offense of assault and battery. In fact, if the ordinance had been directed to the offense of assault and battery, it would have been unconstitutional.

Howe v. Plainfield, 37 N. J. Law, 145.

State vs. Anderson, 40 N. J. Law, 224.

Meyer v. State, 41 N. J. Law, 6.

Id., 42 N. J. Law, 145.

State v. Ziegler, 46 N. J. Law, 307.

State v. Terry, 72 N. J. Law, 375; 61 Atl. 148.

Id., 73 N. J. Law, 554; 64 Atl. 113.

Atlantic City v. Rollins, 76 N. J. Law, 254; 69 Atl. 964.

It also seems well settled that the same act may constitute an offense both against the State and against the municipality, and both may punish without the violation of any constitutional principle.

Howe v. Plainfield 37 N. J. Law, 145-149.

State vs. zeigler, 46 N. J. Law, 307-311.

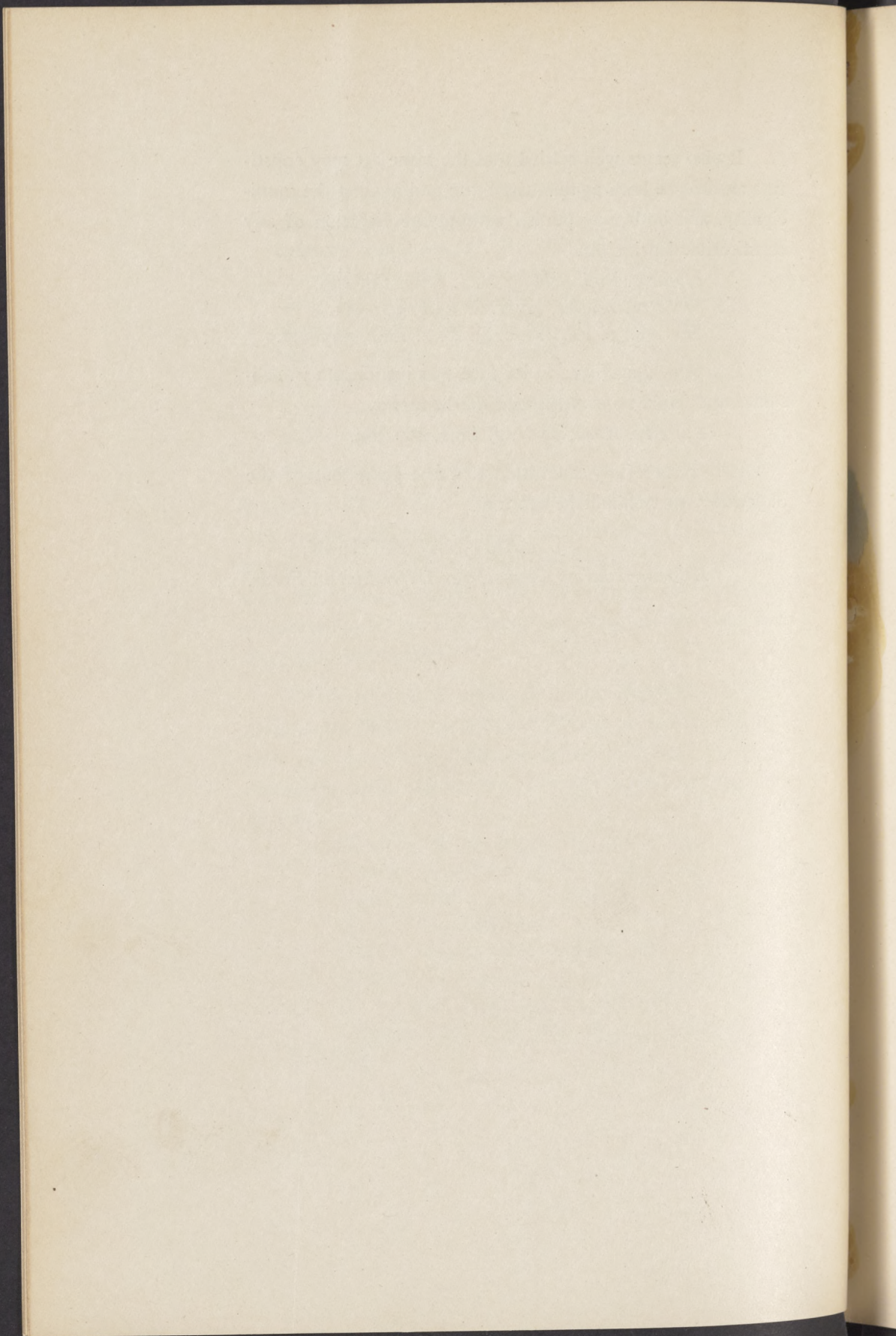
Sherman v. Patterson, 82 N. J. Law, 345-347.

The plea, therefore, on its face was insufficient in substance and could be so adjudged on demurrer.

State vs. Rosa, 72 N. J. Law, 462-464.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

J. HAMPTON FITHIAN,
Attorney and of Counsel for Defendant in Error.



WRIT OF ERROR.

NEW JERSEY, SS. :

THE STATE OF NEW JERSEY, to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting :

(SEAL.)

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between 10
The State, complainant, and David Gratz, defendant, upon indictment for assault and battery, manifest error hath intervened, to the great damage of the said defendant, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our 20
Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-fifth day of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the fifth day of May, one thousand nine hundred 30
and fifteen.

THOMAS F. MARTIN,
FRANCIS D. WEAVER, Clerk.
Attorney.

RETURN.

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

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WILLIAM S. GUMMERE,
Chief Justice.

WRIT OF ERROR.

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY, to the Honorable Royal P. Tuller, Judge of the Court
 20 (SEAL) of Common Pleas of the County of Cumberland, constituting the Court of Quarter Sessions, holden at Bridgeton, in and for the County of Cumberland, of the term of September, in the year of our Lord nineteen hundred and thirteen.

Because in the record and process and also in the giving of judgment, wherein it was presented, that David Gratz, of the City of Philadelphia, in the State of Pennsylvania, on the twenty-ninth day of August, in the year of our Lord nineteen hundred and thirteen, at the Borough
 30 of Vineland, in the County of Cumberland aforesaid, and within the jurisdiction of this court did with force and arms upon one Bernard Bloom in the peace of God and this State then and there being, an assault did make, and him, the said Bernard, then and there did beat, wound and ill treat and other wrongs to the said Bernard

then and there did to the great injury of the said Bernard contrary to the form of the statute in such case made and provided against the peace of the State the government and dignity of the same; *pro ut* the said indictment and the several counts therein; whereof before you, he, the said David Gratz, hath been indicted and is thereof convicted by a certain jury of the county between the State of New Jersey and the said David Gratz, as it is said manifest error hath intervened to the great damage of the said David Gratz, as from his complaint we have 10 received information; we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done him, the said David Gratz, command you that if judgment thereon be given, then that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same to the Supreme Court of the State of New Jersey, to be held at Trenton on Thursday, the thirtieth day of October next, and this writ, that the record and proceedings aforesaid, being inspected, we may further 20 cause to be done thereupon for correcting that error what of right according to the customs and laws of New Jersey ought to be done.

WITNESS, WILLIAM S. GUMMERE, our Chief Justice of our Supreme Court at Trenton this tenth day of October, nineteen hundred and thirteen.

WM. C. GEBHARDT,

Clerk.

EDWIN F. MILLER,

Attorney.

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RETURN.

The answer of Royal P. Tuller, Judge of the Court of Common Pleas of the County of Cumberland and Judge of the Court of Quarter Sessions holden in and for said county, within named.

The record and proceedings and all things touching and concerning the same whereof mention is within made, I hereby certify to the Supreme Court of the State of
 10 New Jersey at the day and place within named in a certain schedule to this writ annexed as I am within commanded; and I further certify that said schedule contains entire record of the proceedings had before the Court of Oyer and Terminer and Court of Quarter Sessions in and for the County of Cumberland in the trial of said cause.

ROYAL P. TULLER,
*Judge of the Courts of Common
 Pleas and Quarter Sessions
 for the County of Cumberland.*

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JUDGMENT RECORD.

CUMBERLAND COUNTY COURT OF OYER AND TERMINER
 of the Term of September, A. D. 1913, Convened
 at the Court House in Bridgeton on Tuesday, Sep-
 30 tember 23, A. D. 1913, at Ten O'clock in the Fore-
 noon.

PRESENT:

HON. SAMUEL KALISCH, Justice of the Supreme Court;
 HON. ROYAL P. TULLER, Judge of Common Pleas.

Court opened by Linwood Erickson, Crier.

The following persons were called and sworn as Grand Jurors for the September Term, 1913:

1. Warren C. Woodruff,
2. George B. Moore,
3. A. S. Allyn,
4. Ephraim H. Whiticar,
5. Robert Peacock,
6. S. T. Day, 10
7. George S. Dawson,
8. Charles Esibill,
9. John Rammel,
10. William I. Shoemaker,
11. Asa Bitters,
12. Frank M. Cobb,
13. Samuel L. Watson,
14. William S. Bacon,
15. Frank B. Ridgway,
16. U. Grant Nixon, 20
17. J. W. Bishoff,
18. Albert J. Fox,
19. S. A. Laning,
20. Samuel Westcott,
21. Frank N. Weber,
22. Jacob W. Ott,
23. John F. Keith.

S. A. Laning was selected by the Court as foreman. The Grand Jury having been duly sworn and charged by the Court they retired to the Grand Jury room, in the 30 custody of Robert Y. Bath and Joshua Clark, constables.

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

I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Oyer and Terminer, in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the minutes therein recited as taken from and compared with the record of same as found recorded in my office in said 10 minute book of said Court of Oyer and Terminer on page 186.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said (SEAL) county and court this 17th day of October, A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

20 CUMBERLAND COUNTY COURT OF QUARTER SESSIONS of the Term of September, A. D. 1913, Convened at the Court House in Bridgeton on Tuesday, September 23, A. D. 1913, at Ten O'clock in the Forenoon.

PRESENT :

HON. SAMUEL KALISCH, Justice of the Supreme Court;
 HON. ROYAL P. TULLER, Judge of Common Pleas.

Court opened by L. W. Erickson, Crier.

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The Grand Jury having finished their labors the 25th day of September, A. D. 1913, they returned to the Court of Quarter Sessions, the Hon. Royal P. Tuller presiding, the Hon. Samuel Kalisch, Justice of the Supreme Court, holding this circuit, and Judge of the Court of Oyer and

Terminer being then and there absent from the Court House, and make presentment to said Court of Quarter Sessions of thirty-one true bills of indictment and consent that the Court amend the same in form and false English without altering the substance thereof without their privity and consent, and were excused subject to recall by the Court.

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

I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the minutes therein recited as taken from and compared with the record of same as found recorded in my office in minute book of said Court of Quarter Sessions on page 20 245.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said county and court this 17th day of October, A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

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STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } *to wit:*

Be it remembered, that at a Court of Oyer and Terminer holden at Bridgeton, in and for the County of Cum-

berland on the fourth Tuesday of September in the year of our Lord one thousand nine hundred and thirteen, before the Honorable Samuel Kalisch, one of the Justices of the Supreme Court of Judicature of the said State, and Royal P. Tuller, Judge of the Court of Common Pleas, in and for said county, according to the form of the statute in such case made and provided by the oaths of

- 10 Warren C. Woodruff,
George B. Moore,
A. S. Allen,
Ephraim H. Whitaker,
Robert Peacock,
S. T. Day,
George S. Dawson,
Charles Esibill,
John Rammell,
William I. Shoemaker,
- 20 Asa Bitters,
Frank M. Cobb,
Samuel L. Watson,
William S. Bacon,
Frank B. Ridgway,
U. Grant Nixon,
J. W. Bishoff,
Albert J. Fox,
S. A. Laning (Foreman),
Samuel Westcott,
- 30 Frank N. Weber,
Jacob W. Ott,
John T. Keith,

good and lawful men of the said county, duly summoned and then and there sworn and charged to inquire for the

State of New Jersey in and for the body of the said County of Cumberland. It is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

S. A. LANING,
Foreman.

(ENDORSED)

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Filed Sep. 25, 1913.
Cumberland Quarter Sessions.
SAMUEL M. SHELDON,
Clerk.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } *ss.*

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I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Oyer and Terminer and Court of Quarter Session, in and for said county, the same being Courts of Record, do hereby certify the foregoing to be a true copy of the caption therein recited as taken from and compared with the original caption now on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
(SEAL) county and courts this 17th day of October
A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

CUMBERLAND COUNTY, *to wit*:

THE GRAND INQUEST, for the State of New Jersey, and for the body of the County of Cumberland, upon their respective oath present, that David Gratz, late of the Borough of Vineland, in the County of Cumberland, on the twenty-ninth day of August in the year of our Lord one thousand nine hundred and thirteen, at the Borough of Vineland in the County of Cumberland afore-
 10 said, and within the jurisdiction of this Court, with force and arms in and upon one Bernard N. Bloom in the peace of God, and this State then and there being, an assault did make, and him the said Bernard then and there did beat, wound and ill treat, and other wrongs to the said Bernard then and there did, to the great injury of the said Bernard contrary to the form of the statute in such case made and provided against the peace of this State, the government and dignity of the same.

20 J. HAMPTON FITHIAN,
*Prosecutor of the Pleas of the
 County of Cumberland.*

(ENDORSED)

Filed Sep. 25, 1913.
 Cumberland Quarter Sessions.
 SAMUEL M. SHELDON,
 30 *Clerk.*

I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions in

and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the indictment of David Gratz therein recited as taken from and compared with the original indictment now on file in my office, which said indictment I do certify was presented by the said Grand Jury and received by the Court of Quarter Sessions then and there holden by Honorable Royal P. Tuller, Judge of the Court of Common Pleas.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
(SEAL) county and courts this 17th day of October A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

COURT OF QUARTER SESSIONS OF THE PEACE OF CUMBERLAND COUNTY, NEW JERSEY, OF THE TERM OF SEPTEMBER, 1913.

The State of New Jersey, Plaintiff,
vs. David Gratz, Defendant. } Plea.

And for a plea in that behalf the said David Gratz hav- 30
ing heard the said indictment read, whereas, he is charged with assault and battery on one Bernard Bloom says that the State of New Jersey out not further to prosecute the said indictment against him, because he says that on August 30, 1912, the said Bernard M. Bloom entered a

complaint before Benjamin Stevens, Mayor of the Borough of Vineland, in the County of Cumberland and State of New Jersey, charging him, the said David Gratz, as follows:

“That on the twenty-ninth day of August, nineteen hundred and thirteen, one David Gratz, being then congregated or assembled with numerous other persons, whose names are unknown to this deponent, on Landis Avenue, to wit: in one of the streets of the Borough of
10 Vineland and within the limits of the Borough of Vineland, did then and there act and behave in a riotous and disorderly manner in the said street in the Borough of Vineland, without necessity and without just provocation or justification, by assaulting and attempting to kill this deponent and by using a blackjack and striking this deponent therewith on his head and face and thereby endangering the life of this deponent and then and there doing him great bodily injury and thereby disturbing the peace and quiet of the neighborhood and of the inhabit-
20 ants of the said Borough of Vineland and thereby obstructing that portion of the said street in the said Borough of Vineland used as a sidewalk for the passage of pedestrians, to the great injury and annoyance not only of this deponent but of other passers-by, and this deponent avers that the said David Gratz, has violated the provisions of Section No. 1 of Ordinance No. 4 of the said Borough of Vineland, and this deponent prays that the said David Gratz may be apprehended and held to answer said complaint and dealt with as law and justice
30 may require.”

And the said David Gratz further saith that on the said complaint a warrant was issued by the Mayor of the Borough of Vineland, in the County of Cumberland, and that the said David Gratz was apprehended and brought before the Mayor of the Borough of Vineland

on August 31, 1913, and being brought to the bar before the said Mayor, plead not guilty and asked for a venire for a trial by jury. Whereupon the said Mayor of the Borough of Vineland did issue his venire, empanel a jury and swear the same, who having heard the evidence on the part of the Borough of Vineland and on the part of the defendant, David Gratz, and the charge of the Court, Mayor Benjamin Stevens, with a constable duly sworn to attend them retired and after some time return and say, on their oaths, that the defendant, David Gratz, 10 is not guilty as by the record and proceeding thereof will more fully and at large appear.

And the said David Gratz further saith that the said Ordinance No. 4 of the Borough of Vineland, N. J., provides that if any person shall be guilty of the violation of section 1 before mentioned, he shall be liable to a fine not exceeding twenty dollars, or imprisonment in the Borough lock-up or the county jail for a term not exceeding ninety days in the discretion of the Mayor, as by the record thereof more fully and at large appears. 20

And the said David Gratz further saith that the said offense for which he now stands indicted, and to which this plea is interposed, is the same offense mentioned in the said former charge against him preferred before Mayor Benjamin Stevens, of the Borough of Vineland, in the County of Cumberland, by the said Bernard M. Bloom, upon which he was acquitted, and not any other, and this he is ready to verify. Wherefore he prays judgment and that by the Court he may be dismissed and discharged from the premises in the present indictment 30 specified.

DAVID GRATZ,
By EDWIN F. MILLER,
His Attorney.

(ENDORSED)

Filed Sep. 29, 1913.

SAMUEL M. SHELDON,
*County Clerk.*STATE OF NEW JERSEY, *ss.*
CUMBERLAND COUNTY,

10 I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions, holden in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the plea, therein recited as taken from and compared with the original plea, now on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
(SEAL) county and courts this 17th day of October
A. D. 1913.

20

SAMUEL M. SHELDON,
Clerk.

CUMBERLAND QUARTER SESSIONS.

State of New Jersey,

vs.

David Gratz.

} Sur Indictment.
Demurrer.

30

And J. Hampton Fithian, Prosecutor of the Pleas, who prosecutes for the State of New Jersey in this behalf as to the said plea of the said David Gratz by him above

pleaded, says that the same and the matters contained therein, in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude the said State of New Jersey from prosecuting the said indictment against him, the said David Gratz, and the said State of New Jersey is not bound to answer the same; and this the said J. Hampton Fithian, who prosecutes as aforesaid, is ready to verify. Wherefore for want of a sufficient plea in this behalf he, the said J. Hampton Fithian, for the said the State of New Jersey, 10 prays judgment that the said indictment may be adjudged good and the said David Gratz may further answer thereto.

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

(ENDORSED)

20

Filed Sep. 29, 1913.

SAMUEL M. SHELDON,
County Clerk.

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

30

I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions, holden in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the demurrer therein recited as taken from and com-

pared with the original demurrer now on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
(SEAL) county and courts this 17th day of October
A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

10

CUMBERLAND QUARTER SESSIONS.

State of New Jersey,

vs.

David Gratz.

} Sur Indictment for
Assault and Bat-
tery.
Joinder.

20 And the said David Gratz, by Edwin F. Miller, his attorney, say that his said plea and the matters therein contained, in manner and form as above stated and set forth, are sufficient in law to bar and preclude the said State of New Jersey from prosecuting the said indictment against him, and this the said defendant is ready to verify and prove the same as the Court here shall direct and award.

Wherefore the said David Gratz prays judgment and that he may be dismissed and discharged of the said indictment.

EDWIN F. MILLER,
Attorney of Defendant.

30

(ENDORSED)

Filed Sept. 29, 1913.

SAMUEL M. SHELDON,
County Clerk.

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

I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions, holden in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the joinder in demurrer therein recited, as taken from and compared with the original joinder in demurrer now on file in my office.

10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said (SEAL) county and courts this 17th day of October A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

State,

vs.

David Gratz,

Sur Indictment 20
for
Assault & Battery.
Judgment on Demurrer
to Plea.

Now, on this twenty-ninth day of September A. D. 1913, before Hon. Royal P. Tuller, Judge of the Court of Quarter Sessions, comes as well the said J. Hampton Fithian, Prosecutor of the Pleas, who prosecutes for the State of New Jersey in this behalf, and Edwin F. Miller and William A. Gray, attorneys of the defendant; whereupon all and singular the premises being seen and by the

30

Court now here fully understood and mature deliberation being thereon had, it appears to the said Court here that the said plea of the said defendant by him above pleaded and the matters and things therein contained are not sufficient to bar and preclude the said State of New Jersey from prosecuting the said indictment against him, the said defendant, David Gratz; therefore, it is considered that the said defendant further answer to the said indictment.

10 Rule entered September 29th, A. D. 1913, on motion of

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

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

20 I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions, holden in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the judgment therein recited, as taken from and compared with the record thereof, as found in my office in the minute book of said Court of Quarter Sessions, page 249.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
30 (SEAL) county and courts this 17th day of October
A. D. 1913.

SAMUEL M. SHELDON,
Clerk.

Pleas September 29, 1913.

State	}	Sur Indictment
vs.		for
David Gratz,		Assault & Battery.

Plea of former acquittal filed by Edwin F. Miller, attorney for defendant, demurrer thereto filed by Prosecutor of Pleas, joinder in demurrer, filed by E. F. Miller, attorney of defendant. Argument heard by Court and 10 demurrer sustained.

Defendant pleads not guilty.

State	}	Sur Indictment
vs.		for
David Gratz,		Carrying Deadly Weapon.

State	}	Sur Indictment	20
vs.		for	
David Gratz,		Assault & Battery.	

J. HAMPTON FITHIAN, Prosecutor for State;
EDWIN F. MILLER and WM. A. GRAY, Attorneys for
Defendant.

The above-named defendant having been indicted for unlawfully carrying a deadly weapon concealed in and about his clothes and person and also indicted for assault 30 and battery on one Bernard N. Bloom, by the Grand Jury then and there inquiring in and for the body of the County of Cumberland at the September Term, 1913, and having been placed before the Court on the 29th day of September, A. D. 1913, and charged with said indict-

ments, pleaded not guilty thereto, and afterwards, to wit, on the 8th day of October, A. D. 1913, on motion of the Prosecutor that trials come on and by agreement of the Prosecutor and counsel of defendant and with the consent of the Court, the two indictments being tried together the following persons were called and sworn as jurors to try the issue :

JURORS.

- 10
1. Thomas Cole,
 2. Elliot Payne,
 3. John Gosa,
 4. Lewis Hitchner,
 5. John Pike,
 6. Albert Davis,
 7. Robert Trucano,
 8. Frank L. Wallace,
 9. Charles Pike,
 - 20 10. Thomas Platt,
 11. Warren Filer,
 12. Edward Ayars.

The following persons were called and sworn as witnesses :

WITNESSES FOR STATE.

1. Dr. Edwin H. Van Deusen, s.
2. Bernard Bloom, s.
- 30 3. Mendel Blanstein, s.
4. Merville F. Sheldon, s.
5. Louis Cohen, s.
6. Joseph Barton, s.
7. Morris Nadler, s.
8. James Petway, s.

WITNESSES FOR DEFENDANT.

1. David Gratz, s.
2. Joseph Belchofsky, s.

The evidence being closed and counsel heard, court adjourned until October 9, 1913, at 10 o'clock A. M.

October 9, 1913, court convened. The Court having charged the jury they retired at 10.15 o'clock A. M. to a private room in the custody of Robert Y. Bath, a constable, sworn to attend them, and after and absence of about three-quarters of an hour they return to the court and being called all answer to their names and being asked if they have agreed upon verdicts say they have and by their foreman Thomas Cole say they find the defendant guilty on both indictments and so say they all.

And afterwards, to wit, on October, 10, 1913, on motion of the Prosecutor that the defendant be placed at the bar for sentence and he being accordingly set to the bar the Court doth order and adjudge and the judgment of the Court is that upon the indictment and conviction for carrying a concealed weapon the said defendant be confined in the State Prison at Trenton, N. J., at hard labor, for the maximum term of three years and the minimum term of one and one-half years, and from thence until costs of prosecution are paid, and on the indictment and conviction for assault and battery, that the defendant be confined in the State Prison at Trenton, N. J., at hard labor for the maximum term of three years and the minimum term of one and one-half years, and from thence until costs of prosecution are paid, to run successively to the sentence for carrying concealed weapon.

Rules entered October 10, 1913, on motion of

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

State,	}	Sur Indictment
vs.		for
David Gratz,		Assault & Battery.

10 Pursuant to the rule heretofore entered in the above stated cause it is ordered, adjudged and decreed that the defendant, David Gratz, do undergo an imprisonment in the State Prison at Trenton, N. J., at hard labor, for the maximum term of three years and the minimum term of one and one-half years and from thence until costs of prosecution are paid, to run successively to the sentence for carrying concealed weapon.

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

20 I, SAMUEL M. SHELDON, Clerk of the County of Cumberland, also Clerk of the Court of Quarter Sessions, in and for said county, the same being a Court of Record, do hereby certify the foregoing to be a true copy of the minutes therein recited as taken from and compared with the record thereof, as found recorded in minute book of said Court of Quarter Sessions on pages 249, 261, and 263.

30 (SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said county and courts this 17th day of October A. D. 1913.

SAMUEL M. SHELDON,
 Clerk.

CUMBERLAND COUNTY
COURT OF QUARTER SESSIONS.

STATE,	}	CARRYING CONCEALED DEAD-	
VS.		LY WEAPONS.	
DAVID GRATZ,		ASSAULT AND BATTERY.	10

BRIDGETON, N. J., October 8th, 1913.

TESTIMONY.

Before HON. R. P. TULLER, Judge, and Jury. 20

APPEARANCES:

For State: Prosecutor J. HAMPTON FITHIAN;
For Defendant: EDWIN F. MILLER, ESQ.; WILLIAM A.
GRAY, ESQ., of the Philadelphia Bar.

The Prosecutor: There are two indictments in this case and I understand we can try them together. Coun- 30
sel consents.

DR. EDWIN H. VAN DEUSEN, SWORN.

Direct examination.

By the Prosecutor :

Q. Doctor, you are a physician?

A. Yes, sir.

Q. Practicing where?

10 A. In Vineland.

Q. How long have you been practising there?

A. About six months.

Q. Do you know Bernard Bloom?

A. Yes, sir.

Q. Were you called upon to visit him professionally on the 29th of August, the time this alleged occurrence took place?

A. Yes, sir.

Q. Where did you find him?

20 A. Found him in the second or third house on the west side of West Avenue below Landis.

Q. At what time of the day or night?

A. Well, it was just after dark.

Q. Who called you?

A. I really don't know unless it was one of the marshals.

Q. Did you examine Mr. Bloom?

A. Yes, sir.

Q. What, if anything, did you find in the way of
30 marks upon him?

A. I found three injuries on the right side of his head, lumps, they were, contusions, evidently made by being struck forcefully by some blunt instrument.

Q. Do you know what we call a blackjack?

A. Yes, sir.

Q. Were they such marks as could have been made by the use of a blackjack?

A. I should think that would be almost the only instrument that would be able to make such a mark.

Q. What else did you find, what other marks?

A. He was bleeding from one side of the nose and he had a puncture wound of the lip. One tooth had been pushed through his lip, evidently the result of a blow which might have been made with some flat instrument like a hand, for instance.

10

Q. How about his eyes?

A. One of the contusions was near enough to the eye so that it was swelling and becoming discolored.

Q. From his condition as you found him would you say whether or not he had received blows that would have made him unconscious?

A. I should think it was quite possible.

Cross-examination.

20

By Mr. Gray:

Q. The blows might have been made by anything at all on the head, I suppose, Doctor?

A. Must have been made by some instrument that wasn't rough, not a board or a brick.

Q. You could name, if you started to think, about one hundred such instruments without much trouble?

A. I think not.

Q. You could only name one?

30

A. I don't think of anything except a blackjack.

Q. Your experience has been quite limited. Have you only been practising these six months?

A. Thirty-three years.

Q. You think when you see a man with three lumps

on the side of his head that they must have been caused by a blackjack?

A. Lumps without any sign of abrasion at all.

By the Prosecutor:

Q. How is a blackjack made? What does it consist of?

10 A. Blackjacks as I know them are made in two ways: one with a lump of lead enclosed in a leather sack, and the other with a bundle of shot enclosed in a leather sack.

By Mr. Gray:

Q. You don't happen to know that the technical name of the second one is a slung-shot, and not a blackjack?

20 A. Yes, sir, I do, but I didn't think when the question was being asked that that difference was being made.

BERNARD BLOOM, SWORN.

Direct examination.

By the Prosecutor:

30 Q. Mr. Bloom, where do you live?

A. Vineland.

Q. How long have you lived in Vineland?

A. Since about August twelfth.

Q. Since August twelfth?

A. Yes, sir.

Q. What business are you in there?

A. Cloaks. Ladies' suits and cloaks.

Q. Do you employ labor?

A. Yes, sir.

Q. Do you know David Gratz?

A. I know him.

Q. How long had you known him previous to the 29th day of August?

A. Just the same day he was up to my place. That case happened at night and he was there in the daytime asking me for a job. 10

Q. Did you give him employment?

A. No, I didn't.

Q. Now, where is your factory located?

A. On Wood and Sixth in Vineland.

Q. What time did you leave your factory that evening?

A. I think we left about five minutes of six.

Q. Who was with you?

A. My two partners and one employe. 20

Q. What were your partners' names?

A. Mendel Blaustein, Joe Barton and L. Cohen. The first two are partners.

Q. Where do you live?

A. Thirty-two West Avenue.

Q. Where did you go after you left your shop?

A. First we went to the Park House. There our employe was living in the Park House Hotel there, so we went to the hotel with them, and from there we went right home. 30

Q. What happened when you got to your house?

A. When we got there—we have to go to Landis Avenue straight road, and when we come to West Avenue, it is about half a mile away from the town, or a quarter of a mile, we have to turn in, so right from the

other side of the street there is bushes and when we come to the corner there run out from the other side about twelve or fifteen men and the first one was David Gratz with a blackjack, and it was so quick I was the first one come this way and they run so quick I didn't have the chance to turn away and he gave me a blow right in my head. The only good luck was that I wear a straw hat. It broke the straw hat through and through and he knocked me down senseless and in the other hand he had
10 a brick covered with a piece of paper, and he hit me with that right in my eye and my lips and I fell down unconscious, and in the corner there was a colored man and woman and they saw and the woman took me in the house and they washed me and sent me home and I live just around that street.

Q. When he ran across there did you see the blackjack?

A. Yes, sir.

Q. Where did he have it?

20 A. In his hand this way.

Q. When you were struck with it you say you became unconscious?

A. Yes, for about two or three seconds, I think.

Q. Do you know what he did with the blackjack afterwards?

A. No, sir, I don't; I didn't see anything.

Q. Where did these men come from?

A. Just from the other side of the street.

Q. Any trees or bushes there?

30 A. They are all bushes around there. We couldn't see him. We didn't see anybody and when we come right to the corner they was running from the other side of the street towards us and they run so fast that being I was the first one I didn't have time enough to turn away.

Q. What time was this?

A. Why, it must have been about fifteen minutes after six or twenty minutes.

Q. Was it dark at that time?

A. No, it was light. It was on Friday night.

Q. What sort of bushes are these?

A. There are some small ones and some larger trees there. There is plenty of room to hide.

Cross-examination.

10

By Mr. Gray:

Q. Mr. Bloom, where did you come from before you went to Vineland?

A. Philadelphia.

Q. Your people were on strike in Philadelphia?

A. Not my tailors, no, not one of them. Every tailor who worked for me in Philadelphia are working in Vineland.

Q. Why did you come to Vineland? 20

A. Because on account of the strike from some other people my operators were afraid to work there, but they told me if I would go to some other town they would go with me.

Q. When Gratz came in to see you during the daytime he wanted a job?

A. Yes, sir.

Q. You didn't give him one?

A. Yes, sir; I didn't.

Q. He didn't know where you lived, did he? 30

A. I suppose he did if he came. How did he come if he didn't know?

Q. What time was he in to see you during the day?

A. I think he must have been there in the daytime. I think after dinner. I don't know exactly. It must have

been two or three o'clock.

Q. You are testifying about it. Don't know exactly what time?

A. Impossible to testify what time a man comes in. I know it was daytime.

Q. Don't know whether it was morning or afternoon?

A. I think it was afternoon.

Q. Yet you are able to say it was five minutes of six when you left there?

10 A. We always close five minutes of six.

Q. There was with you who?

A. Mendel Blaustein, Joe Barton and L. Cohen.

Q. Blaustein and Barton are your partners?

A. Yes, sir.

Q. Do they live in the same part of the city that you do?

A. Yes, same house at that time.

Q. Did Cohen live there?

A. Cohen lived with me.

20 Q. You all lived together?

A. These four.

Q. You were all together when this thing happened?

A. Yes, sir.

Q. As you got up to the corner of your street, you saw Gratz and a number of others standing on the other side of the street?

A. No, sir.

Q. Where did you see them?

30 A. I didn't see them standing at all. When we came to the corner they all run up. We didn't see them at all.

Q. You didn't say that at the corner you saw twelve or fifteen men with Gratz in the lead?

A. I beg your pardon. I say when we came to the corner they were running out from the other side of the street so fast that even I didn't have any time to turn

around because I was the first one going, and the first one that came across to me was David Gratz.

Q. They were running across from the other side of the street?

A. Yes, sir.

Q. When you first saw Gratz, how close was he to you?

A. You can imagine how far one corner of the street is from the other.

Q. How close was he to you? 10

A. He must have been about ten feet.

Q. Was he as close to you as I am now?

A. I think so.

Q. You know. You were there.

A. So close as one corner from the other, but he was running.

Q. When you first saw him was he as close to you as I am now?

A. I think he was.

Q. You had never seen the man before except once 20 that day?

A. Never seen him before.

Q. You next saw him after he was arrested?

A. Yes, sir.

Q. Did he have a blackjack?

A. When he was running to me he had a blackjack in his hand.

Q. Which hand?

A. In his right hand, I think.

Q. Say anything as he came over? 30

A. Not a word.

Q. Was he facing you?

A. Facing me, face to face.

Q. These other three men were with you?

A. Yes, sir.

Q. Walking along?

A. Yes, sir.

Q. All four of you walking abreast?

A. Yes, sir; not abreast. I was the first one going and they were walking together, I think.

Q. Who was walking with you?

A. With me nobody. I was by myself and Joe Barton was going on the other side of the street and M. Blaustein and L. Cohen were walking side by side.

10 Q. What was he doing on the other side of the street?

A. He was going the other side.

Q. You all lived together?

A. Yes, sir, but he was walking that way.

Q. You were all going home together?

A. Yes, sir.

Q. For some reason or another you walked down one side, Barton on the other side and Blaustein and Cohen together?

A. I said that I, Blaustein and L. Cohen was walking
20 on one side of the pavement and Joe Barton was walking on the other side from the hotel.

Q. You said you were ahead of the other two men?

A. Yes, sir.

Q. Was there any particular reason why you went home in that style?

A. No reason at all.

Q. So that you were the first man that Gratz approached?

A. Yes, sir.

30 Q. And he hit you immediately over the head?

A. Over the head and face.

Q. Without saying one word?

A. Without saying one word.

Q. With what did he hit you?

A. With the blackjack.

Q. How many times?

A. I don't remember how many times. I fell down.

Q. Where else did he hit you?

A. In the eyes and lips.

Q. All with the blackjack?

A. No; this was done with the brick.

Q. Were you hit on the head with a brick, too?

A. Not in the head. In the head was with the blackjack.

Q. What were Mr. Cohen and Mr. Blaustein doing 10 during this time?

A. As soon as they saw the crowd run towards me they run away. They started to holler murder.

Q. Barton was on the other side of the street?

A. Yes.

Q. And when you first saw Gratz, he was coming from the other side of the street and there was a crowd of ten or twelve men and nobody else was arrested but Gratz?

A. Yes.

20

By the Prosecutor:

Q. Did you know any of the other men?

A. No, sir.

Q. You did recognize Gratz?

A. Positively.

By Mr. Gray:

30

Q. Did you testify just the same as you are testifying now at the time he was tried for this offense and acquitted in Vineland?

The Prosecutor: I object to that because the record

in this case introduced by the defendant shows that he was not tried for this offense and was not acquitted. I would suggest that we discuss this at side bar.

(Argument on the question was pursued at side bar, after which the Court said: "You can ask him anything you wish to affecting a sworn statement he made in some other trial involving the facts that you wish to bring out germane to this case.")

10

(In open court.)

Q. Have you testified the same today as you testified when this matter was tried in Vineland?

(Objected to.)

The Court: Say, "In this matter."

20 Q. When this man was arrested after the occurrence to which you have testified, he was given a hearing upon some charges in Vineland, wasn't he?

A. Yes, sir.

Q. And you testified?

A. Yes, sir.

Q. Have you testified today to the same effect as you did then?

A. I testified at that time and today nothing but the truth.

30 Q. Have you testified to the same effect?

A. I think I did.

MENDEL BLAUSTEIN, sworn.

Direct examination.

By the Prosecutor:

Q. Where do you live?

A. Now, I live in the Park House.

Q. In Vineland?

A. Yes, sir.

10

Q. Are you one of the partners, or were you, of Mr. Bloom?

A. Yes, sir.

Q. Were you with him on the night in August when this occurrence happened?

A. Yes, sir.

Q. State to the Court and jury what happened that night, please.

A. When we stopped working we had several people coming with us to work. They were new ones and we 20 took them over to the Park House and we wished to stop at 2 Second by a cousin of Mr. Bloom's, four of us, Mr. Bloom, Louis Cohen. After we placed them in there we went to our regular place, where we stop on 32 West Street, and when we came to Landis Avenue on this side of the street from the corner I seen a bunch of men run out from the other side and Gratz was the first one, and I saw Gratz run over to Bloom and hit him with a black and he fell and Gratz jumped over him and started to run after me. We didn't have anything to protect ourselves, 30 so I started to run and I run into Mr. Sheldon's house, the second house from the corner, and as soon as I went in he was right there and when Sheldon heard the noise he came out with a gun. At first he thought I was in there and he stopped me and then he stopped him. Then

Mrs. Sheldon came out and spoke a few words to Mr. Sheldon, but in the meantime he took out the black—

Q. Did what?

A. At the time Mrs. Sheldon came out to speak to Mr. Sheldon, Gratz got a chance at that time and took out that same blackjack, took it from his pocket and threw it in the grass. So I picked up that blackjack. I told Mr. Sheldon, I said, "Here is the blackjack," and I picked it right up and gave it to him.

10 Q. Did you see the man who struck Mr. Bloom?

A. Yes, sir.

Q. Is this the man?

A. That is the same young man.

Q. Had you seen him before?

A. I didn't see him before.

Q. When was he arrested, how soon afterwards?

A. Right after the trouble when Mr. Sheldon came out.

Q. Within how many minutes?

20 A. Couldn't tell you. It would be about twenty minutes.

Q. Did you know any of the other men who were with him?

A. I seen them going over in Vineland, some of them.

Q. Do you know their names?

A. I don't know.

Cross-examination.

30

By Mr. Gray:

Q. You belong in Philadelphia, too?

A. Yes, sir.

Q. How long have you been down in this section?

A. In Vineland?

Q. Yes.

A. I am in Vineland about nine or ten weeks, I don't know exactly.

Q. And when you saw Mr. Bloom assaulted, where were you, how close to him?

A. Well, a couple of feet away.

Q. Back of him?

A. In the back. He was just in front of me.

Q. Who was with you?

10

A. Louis Cohen.

Q. Cohen was one of your workmen?

A. Yes, sir.

Q. Where was Mr. Barton?

A. On the other side of the street?

Q. The other side of the street.

A. The other side of the pavement; on the right side, and we were on the left side.

Q. You say that when he was struck you ran away?

A. I seen him when he struck him, he fell and then 20 he started to run after me.

Q. You ran?

A. I did.

Q. How far did you run?

A. As far as Sheldon's house.

Q. How far is that?

A. The second house from the corner.

Q. Where did you go, in the yard?

A. Right in the front; not in the yard. There is a little porch there as you come up from the street.

30

Q. Did you go in the yard?

A. I wasn't in the yard; I was in the front by the door, by the front.

Q. I don't understand you.

A. I was in the front of the house.

- Q. Is there a yard there?
A. The yard is in the back.
Q. Is there any yard in front?
A. A little bit of a yard.
Q. Did you have to go inside of a gate?
A. There isn't any gate. I don't think there is a gate. Just a little way to go into the porch.
Q. Is there a railing there?
A. I couldn't tell you exactly.
- 10 Q. Well, as a matter of fact, you ran into a yard, did you not, through a gate?
A. Well, understand how his house is. It is right near the sidewalk, but there is a little way, about six or seven feet from the street to the porch, and it is a little way to go in, a little alley.
Q. You say Gratz went in the yard?
A. Right close after me.
Q. Who else?
A. When I came in?
- 20 Q. Yes, when you and Gratz went in.
A. When I went in he was right after me.
Q. Did anybody chase him in?
A. Nobody chased him.
Q. Did anybody follow him?
A. Nobody followed him, but they came over from the other side, my partner and Louis Cohen, and they have seen.
Q. Who do you mean by your partner?
A. Barton. They seen that Sheldon stopped me off
- 30 with him saying that no harm would be done to anybody, so they came over also.
Q. As a matter of fact, weren't they after Gratz?
A. They weren't after Gratz; he was after me.
Q. When he struck Bloom, according to your story, you saw the blackjack, of course?

A. I did.

Q. He kept it in his hand and ran after you?

A. Whether he kept it I couldn't see in the back, but I seen he had a blackjack in his hand when he struck him and started to run after me.

Q. Did he have the blackjack in his hand when he came in the yard?

A. In the pocket.

Q. Which pocket?

A. Coat pocket.

10

Q. Which coat pocket?

A. He has got two pockets. One of the pockets.

Q. You know; you can answer me. Which pocket was it in?

A. It was one pocket, I couldn't tell which one.

Q. You saw it?

A. I did.

Q. You don't know which pocket?

A. I don't recollect now.

Q. Was it this pocket up here?

20

A. It was the lower pocket.

Q. It was sticking out of the pocket?

A. He had his hand on it; he threw it away.

Q. Part of it was sticking out so you could see it?

A. When he took it out and threw it away.

Q. That is when you saw it?

A. Sure I did.

Q. How far did he throw it?

A. Just a couple of feet.

Q. You picked it up?

30

A. As soon as he threw it away I says to Mr. Sheldon, "Here is the blackjack," and I picked it up and gave it to him.

Q. Mr. Sheldon was there when it was thrown away?

A. Mr. Sheldon didn't see it. He was speaking to his wife.

Q. I asked you a question.

A. He was there.

Q. Was Mrs. Sheldon there?

A. Mrs. Sheldon was inside talking through the screen.

Q. You were talking through the screen?

A. Not I, but Mr. Sheldon was speaking to Mrs. 10 Sheldon through the screen.

Q. Mr. Sheldon was outside?

A. Yes.

Q. Mrs. Sheldon was at the screen?

A. Yes.

Q. They were both in that position when this man threw the blackjack away?

A. Who do you mean, both?

Q. Mrs. Sheldon was standing inside of the screen door and Mr. Sheldon outside the screen door talking at 20 the time he threw the black jack away?

A. The time he turned his head to speak to his wife he threw the blackjack away.

Q. How far away from the door was he when he threw the blackjack away?

A. I hadn't in my mind to measure that time. It is only a few feet.

Q. I know, but tell me as far as you know.

A. Only a few feet.

Q. Two or three feet?

30 A. That is all it is.

Q. There was nothing to obstruct the view of Mrs. Sheldon, who was facing outwards, of Mr. Gratz? She could see him?

A. There was grass over there. There wasn't no noise to be made if he throws away something.

Q. There was nothing to stop her seeing him, was there?

A. Why, she didn't look at him. He was in front of her. Mr. Sheldon was in front of her.

Q. I won't press the question if you will not answer it.

The Prosecutor: I do not think that is a fair comment.

10

Q. Were Mr. Barton and Mr. Cohen in the yard when he threw the blackjack away?

A. After we stood there and Mr. Sheldon was also there, they came in.

The Court: Answer the question yes or no.

Q. Were Mr. Barton and Mr. Cohen in the yard when you saw Gratz throw the blackjack away?

A. They were in the yard when I picked up the black- 20
jack.

Q. I would just as lief he would make a display before the jury as I would have him answer my questions. Were Mr. Barton and Mr. Cohen in the yard when you saw Gratz throw the blackjack away?

A. I couldn't tell you exactly whether they came in afterwards or not, but they were right there. They were also standing near there on the side.

Q. They were where they could see it?

A. They couldn't see it. They were on the side be- 30
hind him.

Q. There was no fence to prevent them, no wooden fence to stop them from seeing?

A. No, not no fence there.

Q. Now, as a matter of fact, didn't somebody else pick the blackjack up entirely and not you?

A. I did.

Q. You did?

A. I did.

Q. You had never seen that blackjack before that you produced?

A. I seen the blackjack when he hit Bloom.

Q. But never before that?

10 A. Never before that.

Q. It wasn't yours?

A. No; I never had a blackjack.

Q. Does your firm furnish to some of the men who work for them blackjacks?

A. No, sir.

Q. Did you ever?

A. Never furnished anything.

Q. Never furnished anything?

A. No, never furnished any weapons.

20

MERRILLE F. SHELDON, SWORN.

Direct examination.

By the Prosecutor.

Q. Mr. Sheldon, you live in Vineland?

30 A. Yes, sir.

Q. Where do you live?

A. One hundred and thirteen Landis Avenue.

Q. How far away from the corner of where this offence is alleged to have occurred?

A. About twenty-five to thirty yards, something of that kind.

Q. Do you remember the night?

A. Yes, sir.

Q. What were you doing when your attention was first directed to it?

A. I was in my bed room at the west windows, which faced on West Avenue across the other property arranging some fishing tackle, some sporting stuff that I had there. My attention was attracted by some cries, 10 loud noises which I thought came from some boys who were coming up, and paid no attention to it. The cries got louder and I heard the cries of "Murder" and "Help" repeated several times. That is why I knew something was going on.

Q. What did you do then?

A. I reached for a gun and went downstairs to the front door.

Q. Whom did you see?

A. Mr. Blaustein, I think his name is. 20

Q. The witness who was just on the stand?

A. Yes.

Q. What was he doing?

A. He was trying violently to get through my screen door.

Q. Trying to get into your house? Was he excited?

A. Very much.

Q. What did he say?

A. He was rather incoherent and in fact I couldn't get out of him just what the trouble was. 30

Q. Whom next did you see?

A. The next man I remember seeing was the defendant.

Q. This young man here?

A. Yes.

Q. What did he do?

A. He was coming up the street pretty lively and made a sort of an attempt to stop.

Q. Attempt to stop where?

A. At my place.

Q. Did he come in your place?

A. At my invitation.

Q. You extended him an invitation to come into your place?

10 A. Yes.

Q. Did you accompany that invitation by anything more than mere word of mouth?

A. Well, I had the gun there.

Q. Did you have the gun on him?

A. Just for a few seconds, that is all, just enough to let him know it was there.

Q. He stopped then, did he?

A. Instantly.

Q. Did he come into your yard before you asked him
20 in there, the defendant Gratz?

A. No, he hesitated at the walk, that is, my yard; the front walk leading to the front porch steps leads right down to the street; there is no fence, grass plots on each side and some shrubbery. He stopped there seeing that I was holding up Mr. Blaustein, and then walked on up the street unconcernedly, started to.

Q. Started up the street?

A. Yes.

Q. Then you invited him to come back?

30 A. Yes; Mr. Blaustein says, "This is the man who committed murder." That is the reason I called him.

Q. Did you see a blackjack?

A. I saw one just prior to its being picked up. I don't know where it came from.

Q. Is that before or after the defendant came there?

- A. That is after he got in the yard.
- Q. Where did you see it?
- A. Near the west corner of my porch.
- Q. Had the defendant been there where you saw it?
- A. Not right close to it.
- Q. Had he been within distance where he could have thrown it there?
- A. He could very easily have tossed it there.
- Q. Did you see it before it was picked up?
- A. Yes. 10
- Q. Did Mr. Blaustein pick it up?
- A. He did.
- Q. Who did he give it to?
- A. Handed it to me.
- Q. What did you do with the defendant after you invited him into your yard?
- A. I took him and all the rest of them who seemed implicated up to the City Hall. I didn't know which one was right and which was wrong.

20

Cross-examination.

By Mr. Gray:

- Q. How much time elapsed, Mr. Sheldon, between the time that Blaustein came in your yard and you saw him and the time you invited Gratz in? Was it about thirty seconds or possibly a minute or two minutes?
- A. Something of that kind.
- Q. There was an appreciable lapse of time? That 30 is to say, you did not immediately see Blaustein and then he immediately appear upon the scene?
- A. As I came out of the door and held up Blaustein he immediately turned around and said, "This man committed murder." At that time this man was right there.

Q. This man was then on the street?

A. On the sidewalk.

Q. This man did not chase Blaustein into your yard, did he?

A. Actually he did not.

Q. Where were the men Barton and Cohen when you practically put this man under arrest?

A. As I saw them they were moving quite rapidly east.

10 Q. After him?

A. No; away from him.

Q. That is, they had gone beyond your house?

A. Yes.

Q. Didn't they come into your yard?

A. They came back when they saw some one starting to handle things.

Q. And Mr. Blaustein could just as conveniently have placed that blackjack where it was as could Mr. Gratz?

A. Just as easily.

20 Q. And, as a matter of fact, Blaustein was up at your door, which is nearer the place where the blackjack was found, while this man only came in and up towards your door at your invitation?

A. No; you have the time mixed.

Q. You must recollect I don't know the grounds as they may appear; you are familiar with them.

A. We have a porch that is about seven foot wide, a lot of vines at one end. The steps were in the centre of the porch. I held up Mr. Blaustein and then invited him
30 down on the lawn where I could have a little more show in case of an argument, and then invited this gentleman in and corralled the rest of them nicely before they got milling around so I couldn't stand in one place.

Q. Blaustein had been on your porch?

A. Yes.

Q. This man had not been ?

A. Not been on the porch.

Q. You found the blackjack up on the porch?

A. No, on the ground at the corner of the porch.

Q. What did Gratz say when you got him?

A. After saying about this man accusing him of murdering another man, he said, or words to this effect, "Go on, you slugged him. Ah, go on," he says, "you slugged him."

Q. Gratz said that? 10

A. Yes.

Q. When you arrested Gratz what did he say?

A. Oh, he protested innocence and then said, "Go on, you slugged him," to Blaustein, "slugged him yourself," or words to that effect.

Q. That is, he said to Blaustein that Blaustein must have been the one who did the slugging?

A. Yes, he was accusing Blaustein of doing the hitting.

Q. They both had been running? 20

A. Blaustein had.

Q. And they both accused each other of being the one that assaulted Bloom?

A. Yes.

By the Prosecutor :

Q. When you came downstairs, you found Blaustein at your front door?

A. Right on the front door. 30

Q. Where was the defendant Gratz then?

A. He was a little bit west of my path moving pretty rapidly.

Q. Walking rapidly?

A. Yes.

Q. How many feet away from Blaustein?

A. The distance from the street to the porch; possibly ten feet, I am sure.

Q. About ten feet away?

A. I should say something like that.

LOUIS COHEN, sworn.

10

Direct examination.

By the Prosecutor:

Q. Mr. Cohen, do your work for Bloom?

A. Yes, sir.

Q. Were you with him on the night in question?

A. Yes, sir.

Q. Were you with them there at the corner of Landis
20 and what avenue is it?

A. West Avenue.

Q. You were walking down the street with them?

A. Yes, sir.

Q. What happened?

A. Why, it was about ten minutes after six. Five
minutes before six we stopped with some people and
they took them down to the Park House, and from there
we went, me and Blaustein and Barton and Bloom went
down to the place where we stopped in West Avenue.
30 As soon as we came to the corner we walked straight
down Landis Avenue and you turn into West Avenue,
there was a crowd there, about fifteen or twelve, I could-
n't tell you exactly, jumped out from the woods all of
a sudden and this gentleman says, "This one," and
knocked him down with a blackjack, right straight down,

and in the second hand he had a stone that he gave him right here and over here, and as soon as I saw that I started to run away and holler murder.

Q. See Gratz there?

A. He was the one.

Q. See what he did?

A. Yes.

Q. What did he do?

A. Why, he hit Bloom with the blackjack and knocked him down flat. 10

Q. Did you see Mr. Blaustein when he picked up the blackjack?

A. Yes.

Q. Did you see Mr. Gratz throw it away or didn't you see that?

A. Yes, I saw when Gratz throwed it away.

Cross-examination.

By Mr. Gray: 20

Q. You saw everything?

A. Yes, I saw everything.

Q. You saw this man with the blackjack in one hand and a stone in another?

A. Yes, that is what I did.

Q. Never saw him before in your life?

A. No.

Q. Saw him hit him two or three times over the head with a blackjack? 30

A. One time.

Q. And then saw him hit him with the stone in the face and then saw him run?

A. Yes.

Q. Did you get away quicker than he did?

- A. I run.
Q. Who got away first?
A. I did.
Q. You got past the house of Mr. Sheldon?
A. Yes.
Q. You saw him throw the blackjack?
A. Yes.
Q. You didn't have any weapon?
A. No.
10 Q. None of your people had any weapons at all?
A. No.
Q. Then you came back afterwards?
A. Yes, sir.
Q. And you work for these people?
A. Yes, sir.

By the Prosecutor:

- Q. Was it light or dark?
20 A. It was about twenty-five after six.
Q. It was in August?
A. Twenty-ninth it was, on Friday.

JOSEPH BARTON, sworn.

Direct examination.

30 By the Prosecutor:

- Q. Mr. Barton, you live in Vineland?
A. Yes, sir.
Q. Are you a partner of Mr. Bloom?
A. Yes, sir.

Q. They are in the clothing business?

A. Yes, sir.

Q. Were you with them on the night that this trouble occurred?

A. I was.

Q. Just tell us what happened after you left the Park House.

A. We left the Park House and walked down a little distance as soon as the street turned off, and those three fellows turned away and I walked on one side and they 10 walked on the other side of the street, so as soon as they walked up as far as West Avenue, as soon as they turned around, a gang came over from across the street and attacked them, and as soon as I saw that I crossed and started to run on the same side of the street they came up and started to holler murder, and that is all I know of it.

Q. Could you see who struck Bloom?

A. No.

Q. How about the defendant Gratz; could you tell 20 whether he was the one who struck the blow or not?

A. I couldn't tell you about the striking.

Q. How far away were you from them when they ran across?

A. As wide as the street is.

Q. You can't say who struck the blow?

A. No, I can't say that.

Q. Did you see Mr. Blaustein pick up the blackjack?

A. Yes, I did.

Q. What did Mr. Blaustein do after Bloom fell? 30

A. Well, Mr. Blaustein started to run and run to Mr. Sheldon's house.

Q. What did Mr. Gratz do when Blaustein started to run?

A. Run after Mr. Blaustein.

Q. Run after Mr. Blaustein?

A. Yes.

Q. Did you see Mr. Bloom's hat after this affair?

A. I did about seven o'clock.

Q. Was it broken or not?

A. Broken, yes, sir.

Cross-examination.

10 By Mr. Gray:

Q. You say this man ran after Blaustein?

A. I didn't say he followed Blaustein. Blaustein came ahead to Sheldon's house and Gratz came after.

Q. Where did Gratz come from?

A. I couldn't tell you.

Q. Did you see who did the striking?

A. No, sir.

Q. When did you first see Gratz?

20 A. I seen him in Mr. Sheldon's yard.

Q. Had you see him before that?

A. Well, I had seen Mr. Gratz before that in my place.

Q. I mean out there at this corner. You were on the other side of the street. You won't say Gratz hit him?

A. No.

Q. You saw somebody hit him?

A. Yes.

30 Q. Was it a bigger man than Gratz?

A. I didn't see anybody hit him. As soon as I saw the riot I crossed the street and ran away.

Q. You saw somebody hit Mr. Bloom?

A. I didn't see no hitting. I saw the riot and ran away.

- Q. The first thing you saw was a lot of running?
A. Yes.
Q. And Gratz was among those running?
A. Gratz I saw in Mr. Sheldon's yard.
Q. Did you see him throw the blackjack away?
A. No, sir; I saw Mr. Blaustein pick it up.
Q. Didn't you say when you testified once before that the blackjack was brought him by a colored man?
A. No, I didn't say that.
Q. Did you ever say anything like that? 10
A. No, sir.
Q. Did you mention a colored man in connection with the matter?
A. No, I haven't mentioned a colored man at all.
Q. Did you know a colored man in connection with the case?
A. No; only as a witness; that is all.
Q. Isn't he the witness who brought the blackjack over?
A. No, sir. 20
Q. Didn't you testify that he was?
A. No, sir.
Q. Nothing of that kind? You were with Cohen when you went into Sheldon's yard, weren't you?
A. No, sir; I ran first and Cohen ran after me.
Q. Cohen was later than you? That is all.

MORRIS NADLER, SWORN.

30

Direct examination.

By the Prosecutor:

Q. Mr. Nadler, where do you live?

- A. Thirty-two South West Avenue.
- Q. Vineland?
- A. Yes sir.
- Q. How long have you lived there?
- A. Well, about three months; going on four.
- Q. Are you related to Mr. Bloom?
- A. Yes, sir.
- Q. What relation?
- A. Second cousin.
- 10 Q. How close did you live to where he was stopping on Landis Avenue?
- A. About a hundred feet.
- Q. Do you remember the night that this fight occurred?
- A. Yes, sir.
- Q. Were you inside of your house or outside?
- A. Out side by the tree there.
- Q. What were you doing outside?
- A. I was fooling with the baby there.
- 20 Q. You had your baby out?
- A. Yes, sir.
- Q. Your brother or sister
- A. My sister.
- Q. What did you see
- A. Well, I only heard hollering murder, and I looked the wrong way, and just when I turned around I seen—I heard other cries with it so I went down to the corner as quick as I could go and I just seen Mr. Bloom getting off the ground, all dirty.
- 30 Q. Was there anybody else there
- A. Only the colored lady taking him in the house.
- Q. Did you see Mr. Barton or Mr. Blaustein or Mr. Cohen?
- A. No, I didn't see that part of it. The only thing I seen him do was drop the blackjack.

Q. Did you see Gratz there?

A. Yes, sir.

Q. Where was he when you saw him?

A. Right at the edge of the porch.

Q. Mr. Sheldon's house?

A. Yes, sir.

Q. How far away from where Mr. Bloom fell?

A. Couldn't say; about twenty-five yards or so.

Q. You say you saw him drop the blackjack?

A. Yes, sir.

10

Q. Where did he get the blackjack from when he dropped it, do you know?

A. I don't know. I just seen him when he dropped it.

Q. Did you see anybody pick it up?

A. Mr. Blaustein.

Cross-examination.

By Mr. Gray:

20

Q. Where were you when you were first attracted to this matter?

A. Standing by the tree in front of the house.

Q. Whose house?

A. Our house.

Q. Is that on the same street where Mr. Bloom lives?

A. Same house.

Q. You saw him knocked down, did you?

A. I didn't say I seen him knocked down.

30

Q. Did you see him on the ground?

A. Seen him on the ground.

Q. Did you see him when he was walking down the street before he was on the ground?

A. No, sir.

Q. When you first saw him, he was on the ground?

A. When I went down to the corner, that is when I first seen him, just getting off the ground.

Q. Did you see Mr. Gratz then?

A. No.

Q. Where did you go?

A. I heard another cry around the corner, so I went around to see because I knew there was four of them supposed to come and I went around to see about the 10 other three, and when I came around I seen this here man just as I came in throwing away the blackjack.

Q. Where was he when he threw it away?

A. Standing there at the corner of the porch.

Q. On the porch?

A. On the ground.

Q. Leaning against the porch?

A. No, sir, standing there.

Q. Standing against the porch?

A. No, sir.

20 Q. Close to the porch?

A. Yes; about half a foot away from there.

Q. You know what half a foot is, don't you? About that far away from the porch? What pocket did he take it out of?

A. I didn't see him take it out of no pocket. I just seen him when he had it in his hand, throwing it away.

Q. What hand did he have it in?

A. Right hand.

Q. Which is your right hand?

30 A. This one.

Q. You saw him throw it on the ground?

A. Yes.

Q. Of course, you immediately said, "There is a blackjack"?

A. No; I just winked over to Blaustein and he says, "I seen it."

Q. You said a moment ago you leaned over to Blaustein and told him you saw it. Did you or not?

A. When he dropped the blackjack I nodded to Blaustein and he says, "I saw it," and he went over and picked it up.

Q. You say you nodded and said you saw it?

A. No.

Q. Which did you do?

10

A. Mr. Blaustein said he saw it and then he turned around and said to Mr. Sheldon, "There is a blackjack," and went over and picked it up and gave it to Mr. Sheldon.

Q. He picked it up right away as soon as this man threw it away? It only took time enough for you to nod your head and him to say, "I saw it," and walk over and get it. It wasn't laying there?

A. Yes, it was laying there.

Q. How long?

20

A. A few seconds.

Q. Just long enough for the things to happen that you told us about?

A. Just long enough for me to nod and him to say he saw it and get it.

Q. Mr. Barton there when it happened?

A. At the corner of the yard, yes.

Q. And Mr. Cohen was there, too?

A. Yes.

30

JAMES PETWAY, SWORN.

Direct examination.

By the Prosecutor:

Q. Mr. Petway, where do you live?

A. Corner West and Landis Avenue, I did at the time of this occurrence.

10 Q. Were you home at the time this affair took place?

A. Yes, sir.

Q. What did you see of it, Mr. Petway?

A. I was in the rear of my house, which sits right on the corner, and I heard a noise and several persons hollering and I run right around the corner of the house and I seen Mr. Bloom in the act of falling and a man striking him.

Q. Saw somebody strike him?

A. Yes, sir.

20 Q. How far away from you were they at that time?

A. Probably thirty feet.

Q. Do you know this defendant here when you see him?

A. I do.

Q. Had you ever seen him before that night?

A. No, sir.

Q. Could you say whether or not he is the one who struck Mr. Bloom?

A. Couldn't say.

30 Q. What was the size of the man who struck Mr. Bloom?

A. Probably his size. There were two men there at that time and they both looked the same size.

Q. You say that the man that struck Bloom was about the size of Mr. Gratz? Can you say whether it

was Mr. Gratz or not?

A. Couldn't say.

Q. Then what did you see after that?

A. Mr. Bloom fell on the ground and the man leaned over his feet in the act of striking him again and I was very close to them by that time and probably frightened them and they ran, and Mr. Bloom got up then and staggered toward me and I just took hold of him and told him to go in the house.

Q. Do you know Mr. Blaustein when you see him? 10

A. Yes, sir.

Q. Mr. Barton?

A. Yes, sir.

Q. Mr. Cohen?

A. Yes, sir.

Q. Was it either of them that struck Mr. Bloom?

A. Neither one.

Q. You took Mr. Bloom in your house, you say?

A. I told him to go in the house, yes.

Q. Where did you go? 20

A. Went to the rear out the front.

Q. Why?

A. Because these men that I seen strike Mr. Bloom ran right around the corner and I presumed they had went up Landis Avenue, so I went to the front to see.

Q. Up what avenue?

A. Up Landis Avenue towards the town.

Q. You followed them that way?

A. I ran to the front and followed them, yes.

Q. Did you see where they went? 30

A. I did.

Q. Where?

A. In Mr. Sheldon's place next door to me.

Q. How many of them did you see go in there?

A. Two I seen go in there and shortly afterwards two more came.

Q. How many were there in there altogether when you got up there?

A. There was five there counting Mr. Sheldon.

Q. Did you see the blackjack there?

A. I did.

Q. See who picked it up?

A. Yes, sir.

10 Q. Who picked it up?

A. Mr. Blaustein.

Q. Did you see what he did with it?

A. Gave it to Mr. Sheldon.

Q. Could you see what this man struck Mr. Bloom with?

A. Yes, sir.

Q. What was it?

A. Blackjack.

20 Cross-examination.

By Mr. Gray:

Q. Strike him with anything else?

A. Well, I couldn't say whether he struck him with anything else or not.

Q. You saw nothing but the blackjack?

A. That is all I seen.

Q. You saw it from your house?

30 A. Yes, sir.

Q. You won't swear it was this man?

A. No.

Q. As a matter of fact, haven't you said it was a taller man than him?

A. No.

Q. Was it a taller man than him?

A. No; the men that were there were nearly his size.

Q. Is there any other way you can describe him?
Can you tell this jury anything peculiar about the man
you saw?

A. Nothing whatever.

Q. And you saw this man immediately afterwards
around in the yard?

A. At Mr. Sheldon's house. Saw him before even
got to the house. 10

Q. Couldn't say then that it was he, could you?

A. Couldn't say it was him that struck Mr. Bloom?

Q. Yes.

A. No, I couldn't say.

Q. When did you first see the blackjack?

A. Seen the blackjack laying on the ground shortly
after I got there.

Q. Some time before it was picked up?

A. Well, a second or so.

Q. Did you ever handle it? 20

A. I didn't only in court.

Q. What?

A. Only in the court. I put my hands on it in court.

STATE RESTS.

DEFENDANT'S TESTIMONY

DAVID GRATZ, sworn

Direct examination.

By Mr. Gray:

Q. You are the defendant in this case and you live in
10 Philadelphia?

A. Yes, sir.

Q. Whereabouts?

A. Twelve hundred and eleven South Fifth.

Q. You are a garment worker?

A. Yes, sir.

Q. How long have you been in that business?

A. About two years.

Q. You are on strike?

A. Yes, sir.

20 Q. What were you before you were a garment
worker?

A. Served in the army.

Q. How long did you serve in the army?

A. Full term, three years.

Q. Got an honorable discharge, didn't you?

A. Yes, sir.

Q. That was your discharge from the army, wasn't
it?

A. Yes, sir.

30 Q. What were you doing in Vineland?

A. I am a member of the General Picket Committee
and I was ordered to go to Vineland to find out some-
thing about that shop of Battleheim.

Q. Is that the shop where these people are partners?

A. Yes.

Q. What did you do when you went down there?

A. There was a strike at that time in Vineland at Sandusky's and when I got off the train I went to their headquarters and there I got some information, and they told me it was almost impossible——

Q. What did you do next?

A. I waited there until after dinner. I went up to the shop to try for a job with the intention of finding out whether it is impossible to speak to the men.

Q. You were going to take a job in this place if you 10 could get it?

A. Yes. One of the men of that shop told me that he knew——

Q. You can't tell what anybody told you. Just answer my questions. You went into that place to get a position. Whom did you see?

A. I seen Mr. Joe Barton.

Q. You didn't get your position?

A. No, I didn't.

Q. Then you left?

20

A. I left.

Q. Were you in the neighborhood of West and Landis Streets later on that day, and if so, what were you doing there and what happened?

A. Why, I don't remember exactly the time. Around the time when they stopped the work I seen them three contractors taking their men to the Parkside Hotel or whatever they call it.

Q. You saw the two contractors taking their men to this hotel?

30

A. I did.

Q. That is, taking the men who had been working for them away from their place of business to the hotel?

A. Yes, and afterwards I waited until they came out.

I seen Cohen come out only and I tried to approach him, and I——

Q. You saw Cohen come out with them and you saw Cohen go on with them and then you said something about some previous orders. Don't relate that, but you tried to approach Cohen?

A. I did.

Q. Where were you?

A. Near the railroad station.

10 Q. I don't know that that will help us any. Was that near the place where you were afterwards arrested?

A. No, it is quite a distance.

Q. What happened then?

A. Then I followed him clear to West Avenue.

Q. Were you alone?

A. I was all alone.

Q. Was there any crowd of twelve or fifteen with you?

A. No.

20 Q. Anybody else with you?

A. Nobody else.

Q. What happened when you got up there?

A. When I got up to the corner we started to cross, and first started to cross Joe, I don't remember his second name——

Q. You mean these people and you?

A. Yes. I started to cross and when we got between one side of them just about centre, a little more, I heard a noise of "Murder," and they all started to run and I

30 run with them.

Q. You said Barton started across?

A. Yes.

Q. You mean he went alone across the street?

A. Yes.

Q. You started to cross?

A. Yes.

Q. Where were the other men?

A. On the other side of the street.

Q. You were half way across when you heard this cry of "Murder"?

A. Yes.

Q. Then what?

A. They all started to run and I run with them in the direction back to the railroad, and I know it is in front of Mr. Sheldon's house I heard somebody holler, "Halt," 10 so I stopped.

Q. See a gun?

A. Seen two guns.

Q. So, of course, you stopped. Did you have a blackjack?

A. No, sir.

Q. Did you assault Mr. Bloom?

A. No, sir.

Q. Or anybody else?

A. No, sir. 20

Q. Did you have a stone, hit anybody with a stone?

A. No, sir.

Q. Were you with anybody that did it?

A. No, sir.

Q. Did you have a blackjack when you went into the yard of Mr. Sheldon's place?

A. No, sir.

Q. Did you throw one away there?

A. No, sir.

Q. Did you see it picked up? 30

A. I did.

Q. Who picked it up?

A. Mr. Blaustein.

Cross-examination.

By the Prosecutor:

Q. How long since you have been working?

A. About two years.

Q. What have you been doing in the meantime?

A. Why, I don't quite understand you. How long I had been on a strike or working?

10 Q. Yes, how long since you quit work?

A. About thirteen weeks.

Q. What were you doing down to Vineland?

A. Came down to get all the information I can about that shop.

Q. You came own to Vineland how long before, before thing thing happened?

A. Same day.

Q. You went to the factory?

A. I did.

20 Q. To get a job.

A. Yes.

Q. Did you want work there?

A. No, sir.

Q. What did you want a job there fore?

A. To find out if the work is done for Mr. Battleheim or just a shop outside of the strike.

Q. You simply wanted to find out who the work was being done for?

A. Yes, sir.

30 Q. That was the only reason?

A. Also to persuade the men.

Q. You wanted to get a job in there so you could persuade the other men to leave?

A. Yes, sir.

Q. Did you hang around there all day?

A. No, sir. Well, I wait there a few more hours and then I was arrested.

Q. There was nobody else around there from the strikers' headquarters?

A. There was a good many there.

Q. Were there any other strikers down in Vineland but you?

A. Not Philadelphia strikers. Strikers from the Sandusky shop.

Q. There was a strike on in Vineland at Sandusky's 10 shop?

A. Yes, sir.

Q. See any of them there that day?

A. Yes, sir.

Q. Talk with them?

A. Talked with them.

Q. See Samuel Greenberg there?

A. No, sir.

Q. You waited around until after six o'clock?

A. I don't remember exactly the time, whether it was 20 six or four or afterwards.

Q. You saw Mr. Cohen walk up the street with Mr. Bloom, Mr. Barton and Mr. Blaustein?

A. I did.

Q. How far did they go up the street?

A. From where? You mean from the hotel?

Q. Yes.

A. Clear down to West Avenue.

Q. How many squares?

A. I don't know that it was any squares. I passed 30 it today and didn't see any squares there at all.

Q. How far is it?

A. I imagine about two Philadelphia squares.

Q. Why did you follow along behind them?

A. I was waiting for a chance to take Mr. Cohen off on the side.

Q. You wanted a chance to take Mr. Cohen off on the side and talk to him privately?

A. Yes, sir.

Q. Why didn't you go up to him and talk to him?

A. It is impossible.

Q. Why?

A. I would get arrested before I had a chance to
10 speak to him.

Q. How far behind them did you keep?

A. About fifty feet, so Mr. Joe couldn't see me.

Q. When you got up to the corner, what happened?

A. When I got up to the corner we started to cross and Joe crossed first and I started in —

Q. Who crossed first?

A. Joe.

Q. Joe Barton?

A. Joe Barton.

20 Q. Why did you follow him across? You didn't want to see him?

A. No, sir, I didn't want that Mr. Blaustein should see me, either.

Q. You had kept on that side of the street all the way down?

A. Yes, sir.

Q. Mr. Barton was on the same as you?

A. Yes, sir.

Q. And he crossed over to the other side?

30 A. He did.

Q. Why did you cross?

A. Just simply go in and follow them and wait for a chance.

Q. Why didn't you keep on the same side of the street?

A. Then I would miss them.

Q. What happened when Mr. Barton started to cross the street?

A. Before we got to the corner there was a holler, "Murder," and a riot.

Q. See anybody up there?

A. Seen a big crowd up people, about a hundred or something like that. The street got black right away when we all run.

Q. How far ahead of you was Mr. Bloom? 10

A. Well, I gues—you know how much the distance from one corner of the street to another.

Q. Just across the street, you mean?

A. Just across the street.

Q. Did you see anybody strike him?

A. No, sir.

Q. Couldn't see it?

A. No, sir.

Q. You simply saw a great crowd of people and heard somebody holloa "Murder"? 20

A. I did.

Q. What did you do, run toward the crowd?

A. No, sir, I run away from the crowd.

Q. You ran the other way?

A. Yes, sir.

Q. Turned back and went the other way?

A. From the same direction I started.

Q. How was it Mr. Blaustein got ahead of you?

A. He was ahead of me.

Q. You both turned around and ran back the other 30 way?

A. I said I was in the same street that Joe Barton was, and Blaustein was on the other side and he was ahead of me a few feet.

Q. Did you go on and follow Mr. Cohen so as to

find out where he lived and get a chance to talk to him?

A. That was my intention.

Q. Did you do it?

A. I didn't succeed. I was arrested.

Q. You saw Mr. Cohen there at Mr. Sheldon's yard, didn't you?

A. I didn't have a chance to speak to him.

Q. Did you make any effort to talk to him there?

A. I did. I had an intention to speak to all of them.

10 Q. Did you talk to Mr. Cohen there?

A. No, sir. Mr. Cohen wouldn't speak to me.

Q. Been in Vineland ever since?

A. Yes, sir.

Q. What are you doing there?

A. I went two weeks ago when I was here to see witnesses, and I was there yesterday.

By Mr. Gray:

20 Q. You don't mean you have stayed in Vineland ever since that day? The District Attorney asked you whether or not you had been in Vineland ever since. Do you mean you have stayed there ever since that day?

A. No.

Q. You mean you have been there a couple of times since?

A. Twice.

Q. You went down to see about your witnesses?

A. Yes.

30

JOSEPH BELCHOFSKY, called.

By the Court:

Q. How long have you been in this country?

A. Two months.

Q. You understand me pretty well?

A. No.

By Mr. Gray:

Q. In this country two months?

A. No, in Vineland.

10

The Court: Swear him. He will understand English.

(Witness sworn.)

The Court: Understand what he said to you?

A. Yes.

By Mr. Gray:

20

Q. How old are you?

A. What you say?

Q. How old are you?

A. Fifteen years.

Q. What is your business? What work do you do?

A. I work by cloaks.

Q. You work at cloak making?

A. Yes, sir.

Q. And in Vineland?

A. Yes.

30

Q. Did you know this man?

A. No.

Q. Where do you live?

A. West Twenty-seventh.

Q. Is that anywhere near West and Landis Streets?

- A. West Landis Avenue.
Q. Do you know where Mr. Bloom lives?
A. No.
Q. Did you see Mr. Bloom the day he was hurt?
A. No.
Q. Did you see that man hurt?
A. No.
Q. See anybody hit him?
A. I don't understand.
10 Q. Did you see Mr. Bloom get hit?
A. No. I seen a man; no Bloom.
Q. You mean you don't know who he was?
A. Yes.
Q. Was it that man sitting down there?
A. I don't know Bloom.
Q. Did you see that man get hurt?
A. No. I see a man. I don't know him.

Mr. Gray: Will your Honor permit me to offer the
20 certificate of discharge of this man?

No cross -examination.

BOTH SIDES REST.

30 Recess taken to 9.30 A. M. Thursday, October 9, 1913.

BRIDGETON, N. J., October 9th, 1913.

Trial of the cause resumed at 9.30 A. M.

COURT'S CHARGE TO THE JURY.

Gentlemen of the Jury: The defendant, David Gratz, is indicted upon the charge of assaulting the person of 10 Bernard N. Bloom and committing a battery upon him. He is also indicted for carrying concealed weapons in the Borough of Vineland in this county.

These two charges were by agreement of the State and counsel for the defendant tried together. They are, however, to be separately considered by you in your examination of the testimony produced. The testimony in the one case is also the testimony in the other case; but you are to render separate verdicts as you may arrive at your conclusion.

20

The testimony tended to show, gentlemen, that Bernard N. Bloom, with certain other individuals, is conducting a clothing factory in the Borough of Vineland and was so conducting it upon the twenty-ninth day of August last, when these offenses were committed. It appears, and is admitted by the defendant, that he applied to Bloom for work at his factory some time during the afternoon of that day, and then at the close of the working day, at about six o'clock, he followed the complaining witness, Bloom, toward his residence at West Avenue 30 and Landis. The testimony of the State is to the effect that when Bloom and his partners and one workman by the name of Cohen had arrived at the corner of Landis Avenue and West Avenue, they saw upon the northwest corner, where there is some low growth of bushes, a

dozen or fifteen men, according to their testimony, as I recall it, among whom as the defendant, Gratz; that Gratz ran forward and struck Bloom over the head with a blackjack, felling him to the ground and striking him also in the face with some other instrument, testified to as a brick. The contusions were, I believe, three in number from the strokes of the blackjack, and two in number from the other instrument, one upon the face, the cheek bone, and the other upon the lip. It is also shown
10 that the blackjack was picked up in the yard of Mr. Sheldon, a resident in the neighborhood, and that these people ran towards Sheldon's house, and he, coming out with his gun, stopped them and arrested both of them and took them to the city authorities of Vineland. It appears also that the blackjack was picked up at the corner of Mr. Sheldon's veranda in the grass and was seen to be thrown there by the defendant, according to the testimony of at least one witness, the boy.

The defendant denies that he either committed the
20 assault or had in his possession the instrument or instruments with which it was committed. He denies having about his person any concealed deadly weapon, and he also denies that he struck Mr. Bloom, and states that he was in the rear of Joseph Barton on the other side of the street when this assault was committed, and did not know it until they commenced to run, and then he ran with them; that some other person was the one who committed the assault and the battery.

That is the state of the case on both sides, and it is a
30 question of fact for your determination. If the defendant did strike Bernard Bloom, of course, according to the evidence produced, he is guilty. If he did not strike Bernard Bloom, he is innocent. If he did have on his person the weapon alleged, he was carrying a weapon which the statute prohibits him from carrying without

permission, and, of course, would be guilty. If he did not, then he is not guilty. And it is for you to determine from the testimony adduced by the defendant whether you believe the testimony of the State or the testimony of the defendant. If the State has satisfied you beyond a reasonable doubt of the guilt of the defendant in both of these charges, of course, there is only one thing for you to do, and that is to find the defendant guilty upon both charges. If, however, the State has not satisfied you beyond a reasonable doubt, then the defend- 10
ant is entitled to any reasonable doubt which you may have in your minds, or a reasonable doubt which you may have in your minds, and to an acquittal. You may convict upon one charge and acquit upon the other, or you may convict upon both, or you may acquit upon both.

The questions of fact are for you. Questions of law are for the Court.

Reasonable doubt is not any doubt which you may entertain, but is such a doubt as reasoning men entertain after a consideration of the entire testimony in the case, 20
both on the part of the State and on the part of the defendant. If after consideration you still entertain that doubt, the law directs that you should give the defendant the benefit of it and acquit him. If, however, you have no such doubt and are convinced, it is your duty, under your obligation, to convict.

DEFENDANT'S EXCEPTION.

Mr. Miller: If your Honor please, I would like a general exception to the charge.

(Which exception is hereby allowed and sealed accordingly.)

ROYAL P. TULLER, (SEAL)
*Judge Cumberland County Court
of Quarter Sessions.*

10

ASSIGNMENTS OF ERROR.

NEW JERSEY SUPREME COURT.

20	THE STATE OF NEW JERSEY <i>Defendant-in-Error</i> vs. DAVID GRATZ, <i>Plaintiff-in-Error</i>	}	SUR INDICTMENT. ASSAULT AND BATTERY CARRYING CONCEALED DEADLY WEAPON.
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Afterwards, that is to say, on the thirty-first day of October, A. D. nineteen hundred and thirteen, comes the plaintiff-in-error in the above stated cause, before the Court of Quarter Sessions of the County of Cumberland, and in the giving of judgment therein in favor of the defendant-in-error in this:

I. That the trial Judge presiding, erroneously and unlawfully, and contrary to the objection of the plaintiff-in-error, in part charged the jury as follows: "If he did have on his person the weapon alleged, he was carry-

30

ing a weapon which the statute prohibits him from carrying without permission and of course would be guilty."

2. That the trial Judge unlawfully and contrary to the objection of the plaintiff-in-error, in part charged the jury as follows: "Reasonable doubt is not any doubt you may entertain, but is such doubt as reasoning men entertain after a consideration of the entire testimony in the cause, both on the part of the State and on the part of the defendant. If after consideration you still 10 entertain that doubt the law directs that you should give the defendant the benefit of it and acquit him. If, however, you have no such doubt and are convinced, it is your duty, under your obligation, to convict."

EDWIN F. MILLER,
Attorney Plaintiff-in-Error.

SPECIFICATIONS FOR CAUSES OF REVERSAL. 20

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY }
 Defendant-in-Error } SUR INDICTMENT.
 } ASSAULT AND BATTERY.
 } CARRYING CONCEALED
vs. } DEADLY WEAPON. 30
DAVID GRATZ, }
 Plaintiff-in-Error }

Afterwards, that is to say, on the thirty-first day of

October, A. D. nineteen hundred and thirteen, comes the plaintiff-in-error in the above stated cause, before the Court of Quarter Sessions of the County of Cumberland, and in the giving of judgment therein in favor of the defendant-in-error in this:

1. That the trial Judge, to the great injury and prejudice of the plaintiff-in-error, sustained the demurrer of the State to the plea of the plaintiff-in-error when by the law of the land judgment should have been entered
10 for the plaintiff-in-error; the Court erred in this:

(1) That the record and proceedings before the Mayor of the Borough of Vineland established the fact that the plaintiff-in-error had been acquitted of the charge of the assault and battery on Bloom and was the same charge on which the plaintiff-in-error was indicted.

(2) That the record and proceedings of the Mayor of the Borough of Vineland established the fact that the plaintiff-in-error had been acquitted of the offences for which he was indicted so that the plea of a former ac-
20 quittal should have been sustained and judgment entered accordingly.

(3) That the record of the Mayor of the Borough of Vineland established the fact that the plaintiff-in-error had been acquitted of the same offences as charged in the indictment which offences had been fully considered by a jury of twelve men who had acquitted the plaintiff-in-error.

(4) That the trial Judge, to the great injury and prejudice of the plaintiff-in-error, in part charged the
30 jury as follows: "If he did have on his person the weapon alleged, he was carrying a weapon which the statute prohibits him from carrying without permission, and of course would be guilty."

(5) That the trial Judge, to the great injury and prejudice of the plaintiff-in-error, in part charged the

jury as follows: "Reasonable doubt is not any doubt you may entertain, but is such a doubt as reasoning men entertain after a consideration of the entire testimony in the case, both on the part of the State and on the part of the defendant. If after consideration you still entertain that doubt, the law directs that you should give the defendant the benefit of it and acquit him. If, however, you have no such doubt and are convinced, it is your duty, under your obligation, to convict." The Court erred in such a charge, as it is inconsistent and ambiguous 10 and confused the jury's minds as to what the benefit of a reasonable doubt really is.

EDWIN F. MILLER,
Attorney Plaintiff-in-Error.

DEFENDANT'S EXHIBIT NO. 1.

ORDINANCE NO. 4 OF THE BOROUGH OF 20
VINELAND, N. J.

AN ORDINANCE TO PREVENT RIOTS, DISTURBANCES,
BREACHES OF THE PEACE AND DISORDERLY ASSEMBL-
BLAGES IN THE STREETS OR IN ANY HOUSE OR
PLACE IN THE BOROUGH, AND TO PRESERVE PEACE
AND GOOD ORDER.

Section 1. Be it ordained and enacted by the Mayor and Council of the Borough of Vineland; That if any person shall congregate or assemble in a riotous or dis- 30
orderly manner in the street, public places or public halls,
of if any person or persons shall at any time be found
upon the street, sidewalks, steps or platforms of stores,
groceries, saloons, public halls, churches or railroad sta-
tions, or within or around any building, dwelling house

or public place within said Borough, behaving in a disorderly manner, by drunkenness, by using profane or indecent language, by making insulting remarks to or comments on others or unnecessarily congregating in groups upon the street, sidewalks, or other public places, to the obstruction thereof, or to the annoyance of passers by, or by unnecessarily doing or performing any other thing whatsoever that would disturb the peace and quiet of any family, neighborhood, or any of the inhabitants of the

10 said Borough, he or they shall be liable to a fine of not exceeding twenty dollars, or imprisonment in the Borough lock-up or the county jail for a term not exceeding ninety days, in the discretion of the Mayor.

Section 2. And be it further ordained and enacted, that if any person or persons shall at any house of worship, public hall or other public place in said Borough, disturb any assembly convened for religious worship, or for any other purpose, by noisy, rude or indecent behavior, within or without such place of worship, hall or

20 other place, or shall hinder or annoy any such assembly or company by unnecessarily standing in or crowding upon the walks or passageways to and from such building or place as aforesaid, shall on conviction thereof forfeit and pay a fine not exceeding twenty dollars or be imprisoned in the Borough lock-up or county jail for a term not exceeding ninety days, in the discretion of the Mayor.

Section 3. And be it further ordained and enacted, that if any person or persons shall be found on the streets

30 or sidewalks, lot or lots of said Borough, playing at ball, marbles, or any other such game or games, to the obstruction thereof, or to the annoyance or disturbance of people residing in the vicinity, they shall upon conviction be deemed guilty of a breach of the peace, and shall be liable to a fine of not exceeding twenty dollars

or imprisonment in the Borough lock-up or the county jail not exceeding ninety days in the discretion of the Mayor.

Section 4. And be it further ordained and enacted, that this ordinance shall be known as Ordinance No. 4 and shall take effect on the 19th day of February, A. D. 1898.

Approved February 8th, 1898.

C. P. LORD,
Mayor. 10

W. MACGEORGE,
Clerk.

I, CRAWFORD VAN KUREN, Clerk of the Borough of Vineland, Cumberland County, New Jersey, do hereby certify that the above is a true copy of Ordinance No. 4 of the Borough of Vineland aforesaid.

WITNESS my hand and seal of the Borough of Vine- 20
land this twenty-seventh day of September, nineteen hun-
dred and thirteen.

(SEAL)

J. C. VAN KUREN,
Borough Clerk.

DEFENDANT'S EXHIBIT NO. 2.

CERTIFIED COPY OF THE PROCEEDINGS OF
THE CASE OF THE BOROUGH OF VINE-
LAND VERSUS DAVID GRATZ ON CHARGE
OF VIOLATION OF SECTION ONE OF OR-
DINANCE FOUR OF THE SAID BOROUGH.

COPY OF COMPLAINT.

10

STATE OF NEW JERSEY,
COUNTY OF CUMBERLAND,
BOROUGH OF VINELAND, } ss.

BERNARD M. BLOOM, being duly sworn according to Law, on his oath says "that on the twenty-ninth day of August, nineteen hundred and thirteen, one David Gratz, being then congregated or assembled with numerous other persons, whose names are unknown to this de-
20 ponent, on Landis Avenue, to wit:—in one of the streets of the Borough of Vineland and within the limits of the Borough of Vineland, did then and there act and behave in a riotous and disorderly manner in the said street in the Borough of Vineland, without necessity and without just provocation or justification, by assaulting and at-tempting to kill this deponent and by using a blackjack and striking this deponent therewith on his head and face and thereby endangering the life of this deponent and then and there doing him great bodily injury and thereby
30 disturbing the peace and quiet of the neighborhood and of the inhabitants of the said Borough of Vineland and thereby obstructing that portion of the said street in the said Borough of Vineland used as a sidewalk for the passage of pedestrians, to the great injury and annoyance not only of this deponent but of other passers-by,

and this deponent avers that the said David Gratz has violated the provisions of Section No. 1 of Ordinance No. 4 of the said Borough of Vineland and this deponent prays that the said David Gratz may be apprehended and held to answer said complaint and dealt with as law and justice may require."

BERNARD M. BLOOM,

Sworn to and subscribed before me August 30th, 1913.

(SEAL)

BENJAMIN STEVENS, 10
Mayor.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss.
BOROUGH OF VINELAND, }

To one of the Marshals of the Borough
(SEAL) of Vineland, or one of the constables of 20
the County of Cumberland:

WHEREAS, Bernard M. Bloom, hath this day made complaint to me, Benjamin Stevens, Mayor of the Borough of Vineland, Cumberland County, New Jersey, that on the Twenty-ninth day of August, nineteen hundred and thirteen, one David Gratz, being congregated or assembled with numerous other persons whose names are unknown to this deponent, on Landis Avenue, to wit, in one of the Streets of the Borough of Vineland, and within the limits of the Borough of Vineland, did then 30 and there act and behave in a riotous and disorderly manner in the said street in the Borough of Vineland, with necessity and without just provocation or justification, by assaulting and attempting to kill this deponent and by using a blackjack and striking this deponent

therewith on his head and face, and thereby endangering the life of this deponent and then and there doing him great bodily injury, and thereby disturbing the peace and quiet of the neighborhood and of the inhabitants of the said Borough of Vineland, and thereby obstructing that portion of the said Street in the said Borough of Vineland used as a sidewalk for the passage of pedestrians, to the great injury and annoyance, not only of this deponent, but of other passers-by, whereby deponent
10 charges and avers that the said David Gratz has violated the provisions of section No. one of Ordinance No. four of the said Borough of Vineland, and praying the apprehension of said Gratz and that he be held to answer the said complaint and be dealt with as law and justice may require.

These are therefore to authorize and require you to apprehend the said David Gratz, if to be found in your County, and him forthwith bring before me, the said Mayor, to answer the said complaint and be dealt with
20 as law and justice may require, and for so doing this shall be your sufficient warrant.

Given under my hand and seal this Thirtieth day of August, A. D. 1913.

(SEAL)

BENJAMIN STEVENS, *Mayor.*

COPY OF THE RETURN OF THE WARRANT.

30 August 30, 1913.

I return the within warrant with the defendant into Court this 30th day of August, 1913.

G. W. WEATHERBY,
(*Marshal.*)

(ENDORSED)

Dated Aug. 30th, 1913.
Filed August 30th, 1913.

DOCKET ENTRIES UP TO VENIRE.

August 30th, 1913. The following complaint was duly 10
filed.

(Recorded as set out on page one of this transcript)

Issued Warrant (in the form hereinbefore set out) and subpoenas to Mendel Blaustein, Joseph Bartman, Louis Cohen, James Petway, M. F. Sheldon, E. H. Vandusen, Lloyd Sigafos, Bernard M. Bloom, Louis Trommem and Morris Nadler. And handed the warrant and subpoenas to G. W. Weatherby, Marshal.

August 31st, 2 P. M. Proceeded to trial in the presence of Henry S. Alvord for the Borough and Edwin 20 F. Miller and Mr. Cogan of the Philadelphia Bar, representing the defendant.

Miller moved to quash the complaint on the plea of prior arrest for the same offense.

Motion denied.

Defendant pleaded not Guilty.

Cogan moved the same on grounds of merger of the smaller offense in the greater.

Motion Denied.

Defendant's Counsel asked for a venire and put up 30 Juror's Fees, same was issued and handed to G. W. Weatherby a Marshal, who empaneled the following Jurors:—

Eugene Brooks

D. D. Coners.

Harvey Shaw, Jr.,
 Harry Lilly
 Philip Pensa
 William McNally
 William Dorrington
 Delbert Cheesman
 George Fowler
 B. L. Ronchetti
 Wm. F. Donnell
 10 Joseph Sehl

COPY OF THE VENIRE.

Before BENJAMIN STEVENS, Mayor of the Borough
 of Vineland, N. J.

20	BOROUGH OF VINELAND <i>Plaintiff,</i> BERNARD M. BLOOM, <i>Complainant,</i> vs. DAVID GRATZ <i>Defendant.</i>	}	ON COMPLAINT & ETC. VENIRE.
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To Willard H. Nickerson, or any Constable of the
 County of Cumberland, New Jersey.

You are commanded to forthwith summon twelve im-
 30 partial Jurors, between the ages of twenty-one and sixty-
 five years to try the issue joined before the subscriber in
 the above cause on Sunday August thirty-first A. D.
 1913, at 3 P. M.

BENJAMIN STEVENS
Mayor.

COPY OF THE RETURN OF THE VENIRE.

I return the within Venire with the following Jurors into Court 31st Day of August, 1913.

Eugent Brooks

D. D. Conners

Harvey Shaw, Jr.,

Harry Lilly

Philip Pensa

William McNally

10

William Dorrington

Delbert Cheesman

George Fowler

B. L. Ronchetti

Wm. F. Donnell

Joseph Sehl

G. W. WEATHERBY

Marshal.

20

DOCKET ENTRIES AFTER VENIRE.

No Challenges, Jury Sworn.

Alvord opened and the following witnesses were Sworn.

Bernard M. Bloom, who testified that Gratz hit him with the Jack.

Mendel Blaustein testified that Gratz hit Bloom and chased deponent into Sheldon's yard with the Jack. 30

Joseph Bartman testified that he was there.

Louis Cohen testified that he was there.

James Petway lives near and saw part of row.

Dr. E. H. Vandusen testified as to the nature of the wounds.

Morris Nadler, age thirteen (qualified) saw the row.

Lloyd Sigafoo sold a Jack.

M. F. Sheldon lives near and arrested Gratz.

Miller opened for the defense, and the defendant was sworn and testified, and the following witnesses sworn.

Joseph Bekosky (by lady interpreter) who testified that some else hit the blow.

Louis Bernstein testified, saw a man with a Jack in the Afternoon.

10 Abraham Snyder (character witness).

At this point it was agreed, it be admitted by Counsel that the printed Ordinance book at hand contained the official Ordinance in question and that the same be admitted so to be as fully as if the original or a certified copy had been produced.

Alvord opened and Miller, Cogan and Alvord all made arguments.

Jury charged as to the Law.

20 Retired in charge of said Weatherby who was sworn to attend them.

Jury returned, were polled and the foreman announced the Verdict of Not Guilty.

BENJAMIN STEVENS,
Mayor.

30 I, Benjamin Stevens, Mayor of the Borough of Vineland, N. J., do hereby certify that the foregoing is a true and correct copy and transcript of the proceedings of the case of Borough of Vineland vs. David Gratz, as taken from my criminal docket and the original papers filed in my office in the said cause.

IN WITNESS WHEREOF, I have hereunto set my hand

and affixed the official seal of the said Borough this
Twenty-seventh day of September, A. D. 1913.

(SEAL)

BENJAMIN STEVENS,

Mayor.

OPINION.

PARKER, J. The plaintiff in error was convicted of 10
assault and battery, and brings this writ of error.

(1) The case is submitted on briefs, and the first
point made is that the trial judge erred in his charge on
reasonable doubt, which was as follows:

“Reasonable doubt is not any doubt which you may
entertain, but is such a doubt as reasoning men entertain
after a consideration of the entire testimony in the case,
both on the part of the state and on the part of the de-
fendant. If after consideration you still entertain that
doubt, the law directs that you should give the defendant 20
the benefit of it and acquit him. If, however, you have
no such doubt, and are convinced, it is your duty, under
your obligation, to convict.”

This is criticised as “confusing,” but to us it seems
reasonably plain, and no other objection is made to it.

(2) Next it is said that the court erred in sustaining
the state's demurrer to a plea autrefois acquit. The
practice is settled. *State v. Rosa*, 72 N. J. Law, 462, 62
Atl. 695. The plea set up that plaintiff in error had been
arraigned, tried before a jury of 12 men, and acquitted 30
upon a complaint made before the mayor of Vineland,
charging defendant with violating section 1 of an ordin-
ance of that borough, “to prevent riots, disturbances,
breaches of the peace, and disorderly assemblages in the
streets, or in any house or place in the borough, and to

preserve peace and good order." Section 1 reads as follows:

"That if any person shall congregate or assemble in a riotous or disorderly manner in the streets, public places, or public halls, or if any person or persons shall at any time be found upon the streets, sidewalks, steps or platforms of stores, groceries, saloons, public halls, churches or railroad stations, or within or around any building, dwelling house or public place within said borough, be-
10 having in a disorderly manner, by drunkenness, by using profane or indecent language, by making insulting remarks to or comments on others, or unnecessarily congregating in groups upon the streets, sidewalks, or other public places, to the obstruction thereof, or to the annoyance of passers-by, or by unnecessarily doing or performing any other thing whatsoever that would disturb the peace and quiet of any family, neighborhood, or any of the inhabitants of the said borough, he or they shall be liable to a fine of not exceeding twenty dollars, or im-
20 prisonment in the borough lockup or the county jail for a term not exceeding ninety days, in the discretion of the mayor."

The complaint was that the defendant, with other persons, did at the time and place specified therein—

"act and behave in a riotous and disorderly manner in the said street in the borough of Vineland, without necessity and without just provocation or justification, by assaulting and attempting to kill this deponent, and by using a black-jack and striking this deponent therewith
30 on his head and face, and thereby endangering the life of this deponent and then and there doing him great bodily injury, and thereby disturbing the peace and quiet of the neighborhood and of the inhabitants of the said borough of Vineland, and thereby obstructing that portion of the said street in the said borough of Vineland used as a

sidewalk for the passage of pedestrians, to the great injury and annoyance, not only of this deponent, but of other passers-by, and this deponent avers that the said David Gratz has violated the provisions of section No. 1 of Ordinance No. 4 of the said borough of Vineland," etc.

The plea was properly adjudged insufficient. Whatever may be set up in the complaint with respect to the alleged assault with the black-jack, the mayor's court had in any case no broader jurisdiction than that conferred 10 by the section of the ordinance that is invoked, and a reading of that section discloses plainly that it is aimed, not at criminal offenses for which the accused is entitled to the aciton of a grand jury, but to the trivial offense of disorderly conduct on the public streets. The only language that could embrace the offense of assault and battery is the general clause, "or by unnecessarily doing or performing any other thing whatsoever that would disturb the peace and quiet of any family, neighborhood, or any of the inhabitants of said borough." But this is 20 to be construed in conformity with the maxim "noscitur a sociis," and, so construed, the entire section is substantially identical with section 3 of the "act concerning disorderly persons." C. S. 1927; P. L. 1912, p. 161. The acquittal in the mayor's court, therefore, was not an acquittal of the misdemeanor of assault and battery, but of simple disorderly coduct.

This makes it unnecessary to consider the question whether, if the ordinance had been directed to the offense of assault and battery, it would have been constitutional. 30 The point has been considered in relation to other offenses. *Howe v. Plainfield*, 37 N. J. Law, 145; *State v. Anderson*, 40 N. J. Law, 224; *Meyer v. State*, 41 N. J. Law, 6; *Id.*, 42 N. J. Law, 145; *State v. Zeigler*, 46 N. J. Law, 307; *State v. Terry*, 72 N. J. Law, 375, 61 Atl.

148; *Id.*, 73 N. J. Law, 554; 64 Atl. 113; *Atlantic City v. Rollins*, 76 N. J. Law, 254, 69 Atl. 964. But in the case at bar it is not before us, and we express no opinion on it.

The judgment will be affirmed.

JUDGMENT.

10

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	IN ERROR
vs.		SUR INDICTMENT FOR ASSAULT AND BATTERY.
DAVID GRATZ, <i>Plaintiff in Error.</i>	}	AFFIRMANCE A N D REMITTITUR.

20 The Court having heard the arguments of counsel, inspected the judgment and proceedings removed by the writ in this cause and duly considered the causes assigned for error.

It is Ordered that the said judgment be affirmed and that said cause be remitted to the Cumberland County Quarter Sessions to be proceeded in according to law.

Entered January 7, 1915.

On motion of

J. HAMPTON FITHIAN,
Attorney of Defendant in Error.

30

A true copy,
WM. C. GEBHARDT,
Clerk.

ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, <i>Defendant in Error,</i> vs. DAVID GRATZ, <i>Plaintiff in Error.</i>	}	SUR INDICTMENT ASSAULT AND BATTERY. ASSIGNMENTS OF ERROR.	10
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And now at this day the Plaintiff in Error assigns the following causes of error.

First. Because the Supreme Court decided that the trial court did not misdirect the jury upon both law and fact.

Second. Because the Supreme Court decided that it did not appear that there was error in the record and proceedings aforesaid or in giving judgment and passing of sentence aforesaid by reason of which the said judgment and sentence should be reversed and set aside. 20

Third. Because the Supreme Court decided that there was no error in the Trial Court's refusal to direct a verdict in favor of the defendant upon request of defendant's counsel.

Fourth. Because the Supreme Court decided that judgment of the Trial Court be affirmed.

Fifth. Because the Supreme Court decided that the charge of the trial court was not erroneous in the following particulars: "reasonable doubt is not any doubt we 30 may entertain, but is such doubt as reasoning men entertain after a consideration of the entire testimony in the cause, both on the part of the State and on the part of the defendant. If after consideration you still entertain that doubt, the law directs that you give the defendant

the benefit of it and acquit him. If, however, you have no such doubt and are convinced, it is your duty, under your obligation, to convict."

Sixth. Because the Supreme Court decided that the sustaining of the demurrer, filed by the State in the trial court, by the trial court, was not erroneous.

Seventh. Because the Supreme Court should have ordered judgment for the defendant and plaintiff in error.

10

FRANCIS D. WEAVER,
*Attorney for and of Counsel with
Plaintiff in Error.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20	STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	SUR INDICTMENT AS-
	vs.		SAULT AND BAT-
30	DAVID GRATZ, <i>Plaintiff in Error.</i>		TERY, JOINDER IN ERROR.

And now, at this day, the said defendant in error comes into Court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed.

J. HAMPTON FITHIAN,
Of Counsel with and Attorney
for Defendant in Error.
