

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY,
Defendant in Error,

vs.

ISRAEL ALLGOR, Jr.
Plaintiff in Error.

} *On Writ of Error to
New Jersey Su-
preme Court.*

BRIEF OF PLAINTIFF IN ERROR.

Plaintiff in error was convicted of Robbery from the person of one George Winters, at Belmar, on Sept. 23, 1913, in the Monmouth Quarter Sessions; on May 28, 1914, was sentenced to State's Prison for a term of not more than fifteen, or less than five years; he sues out this writ of error to have the conviction reviewed

The evidence of the State substantially is: On September 23, 1913, Winters and plaintiff in error were walking up Sixteenth Avenue in Belmar, between twelve noon and one p. m. When near some woods a short distance from their starting point, he claims he was assaulted, not by defendant, but by an unknown man; this unknown man says he joined them near the place of assault; after he was struck, claiming to be in fear, and to avoid further trouble; he handed a pocketbook containing sixty-five dollars and sixty cents, or some such sum, to Allgor. He says he became unconscious, or did not know what was going on, and he subsequently found his empty pocketbook on the ground, and the money gone. He was unable to identify the other man, but the State contended (but never proved) that it was Samuel Orlando, who was jointly indicted with Allgor, but who secured a severance. As to the actual assault or robbery, Winters stands alone and uncorroborated.

At the trial the Judge pointed out there was no direct evidence corroborating Winters; the only attempt made in this direction was the evidence tending to show that Allgor was with Winters, and in a position with another person about that time where the assault could have been made if they desired to do so (Printed Case page 98, lines 20-30). This is practically all the evidence in the State's affirmative case, and is manifestly weak and doubtful. An incident, however, happened in the trial which legally had no place there, and defendant claims he was prejudiced thereby, and which was controlling. It would seem by a careful reading of the case that the strong probability is he would not have been condemned, had not this illegal evidence been admitted.

The State's evidence was met by a general and specific denial of defendant's participation in this crime. He admits he was in Winter's company; that he was very much intoxicated; that he accompanied complaining witness up Sixteenth Avenue on their way home to vote. Winters lived close by defendant some distance from where they started from. The course they took was a proper and natural one as admitted by all the witnesses. At a point where Winters says he was assaulted and robbed, Allgor left him to go back for more liquor; he says he procured this liquor at Belmar, then became very much intoxicated and decided to go to Spring Lake where his father, Allgor, Sr., had a blacksmith shop, and it is in evidence he arrived there about one p. m. Spring Lake is about a mile from Belmar, with railroad and trolley connections.

His testimony is corroborated by his father, Israel Allgor, Sr. He says his son arrived at Spring Lake, at the time he states; he was crazy drunk; he found part of a bottle of liquor in his pocket; his son remained with him all that afternoon until he was sober enough to be taken home; he had no money in his pocket; the next morning the father was at the office of Newman, Justice of the Peace, and Winters told Allgor, Sr., that his (Allgor's) son had nothing to do with the crime; he

said some he did not know came up behind him, struck and knocked him unconscious (Printed case, page 81, lines 10-20); that he, Winters, had made no complaint against the son (Printed case, page 81, lines 20-30), and he repeated this statement at the Spring Lake hospital afterwards, and at Fair Haven, New Jersey (Page 82, lines 1-10).

Florence Allgor, wife of defendant, said that on September 23, 1913, defendant came home with his father, and he was pretty drunk; that he had only twenty-five cents with him; that she talked with Winters at the Hospital, and he asked her where her husband was and she told him he was locked up; he asked what he was locked up for, and she told him, and Winters replied that he did not make any complaint against defendant, and that defendant did not do anything to him (pages 88-89).

It is in evidence (page 93, lines 1-11) that Winters was always considered half crazy by his employer, Mr. Low; also that he was untruthful and his word unreliable. He admits he had been drinking, and felt the effects of the liquor he drank on that day, viz:

"I wasn't exactly sober, I suppose" (page 22, lines 9-11). "I wasn't so drunk that I couldn't walk in there" (page 22, lines 18-20); "I wasn't as sober as I might be—a man that has got a little whiskey in him it is apt to affect him," &c. This was the condition which complaining witness admits he was in on that day.

Considering that he was the only alleged eye witness to the alleged robbery; his condition as to sobriety; his being regarded by his neighbors and employer as half crazy; his untruthfulness when in a normal condition makes his entire evidence at least very doubtful, and being unsupported very questionable. We may it be urged that had not the illegal evidence complained, been admitted, there would have been no conviction.

ADMISSION OF ILLEGAL EVIDENCE.

This case has been brought up under the 136 Section of the Criminal Procedure Act (Volume 2 Genl. Statutes, page 1863). The Trial Judge has signed a certificate that the printed case comprises the entire record. (Page 1 printed case) The plaintiff in error has fully pointed out in his assignment of errors, the causes relied on for reversal, including in full the objectionable evidence, which in legal effect is a certificate of causes for reversal, so that the Prosecutor is fully informed of such causes; therefore a review of the entire case is asked for, at the hands of the reviewing court, in justice to defendant.

ILLEGAL EVIDENCE ADMITTED.

The illegal evidence complained of, begins at page 83, printed case, and continues through pages 84, 85, and 86 and on page 88. As will be seen there was a dialogue between the Prosecutor and the Court, but the Court itself interrogated Allgor, Sr., regarding the alleged payment of money back to Winters, which questions were improper, and provoked, and required an answer from defendant's witness. There was no proof connecting defendant with such payment—that he had ever authorized it—no agency or direction to repay any money to Winters and even admitted conversations and transactions had between Allgor, Sr., and Winters in the absence of defendant; all this line of testimony is manifestly illegal, incompetent and highly prejudiced to the interests of the defendant. All this took place before the jury and resulted (as counsel firmly believe) in his conviction.

It may be said that the court afterwards observed the error, and sought to rectify it in his charge, but it was too late, because the effect was in the jury box and the defendant suffered condemnation.

We claim sincerely that it was more than a fairly

debatable question, whether, at the conclusion of the whole case, (with the objectionable testimony eliminated), a conviction could have been secured. There was no corroboration of the essential facts necessary to convict; two witnesses swore Winters had stated defendant had nothing to do with the assault or robbery and resting in that position, could the State have hoped to secure any conviction?

Perhaps it might be said that objection should have been made repeatedly to prevent this testimony creeping into the case; it was finally objected to, but the mischief had been accomplished; that dialogue between the Prosecutor and witness, Allgor, Sr., occupying two or three pages of the printed case; the court's interrogation and the resulting answers, the repeated attempts of the Prosecutor to inject this illegal testimony into the jury box; the recalling of Winters to ask these questions over again, all had a deadly effect against defendant.

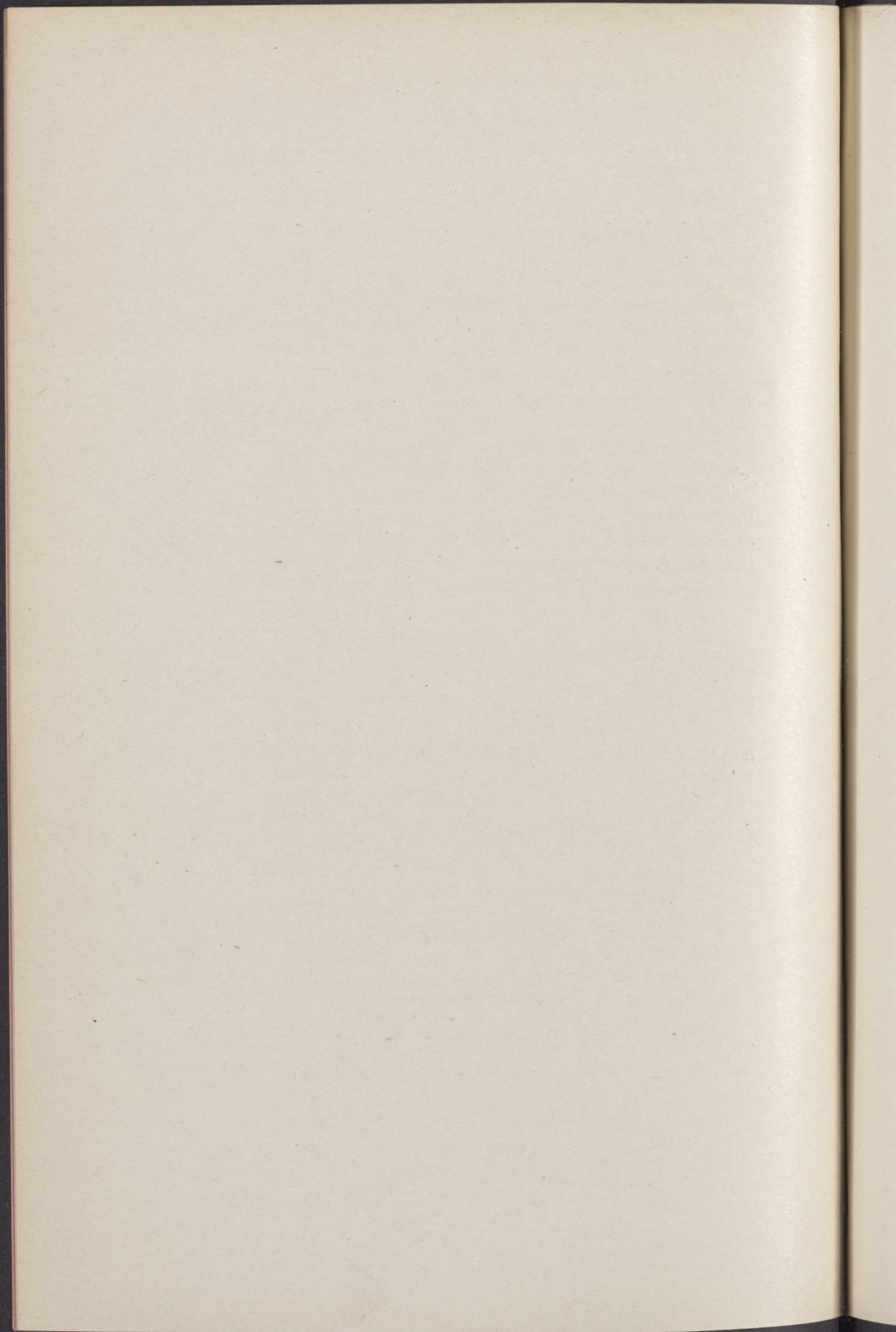
See Printed Case, page 94, &c.

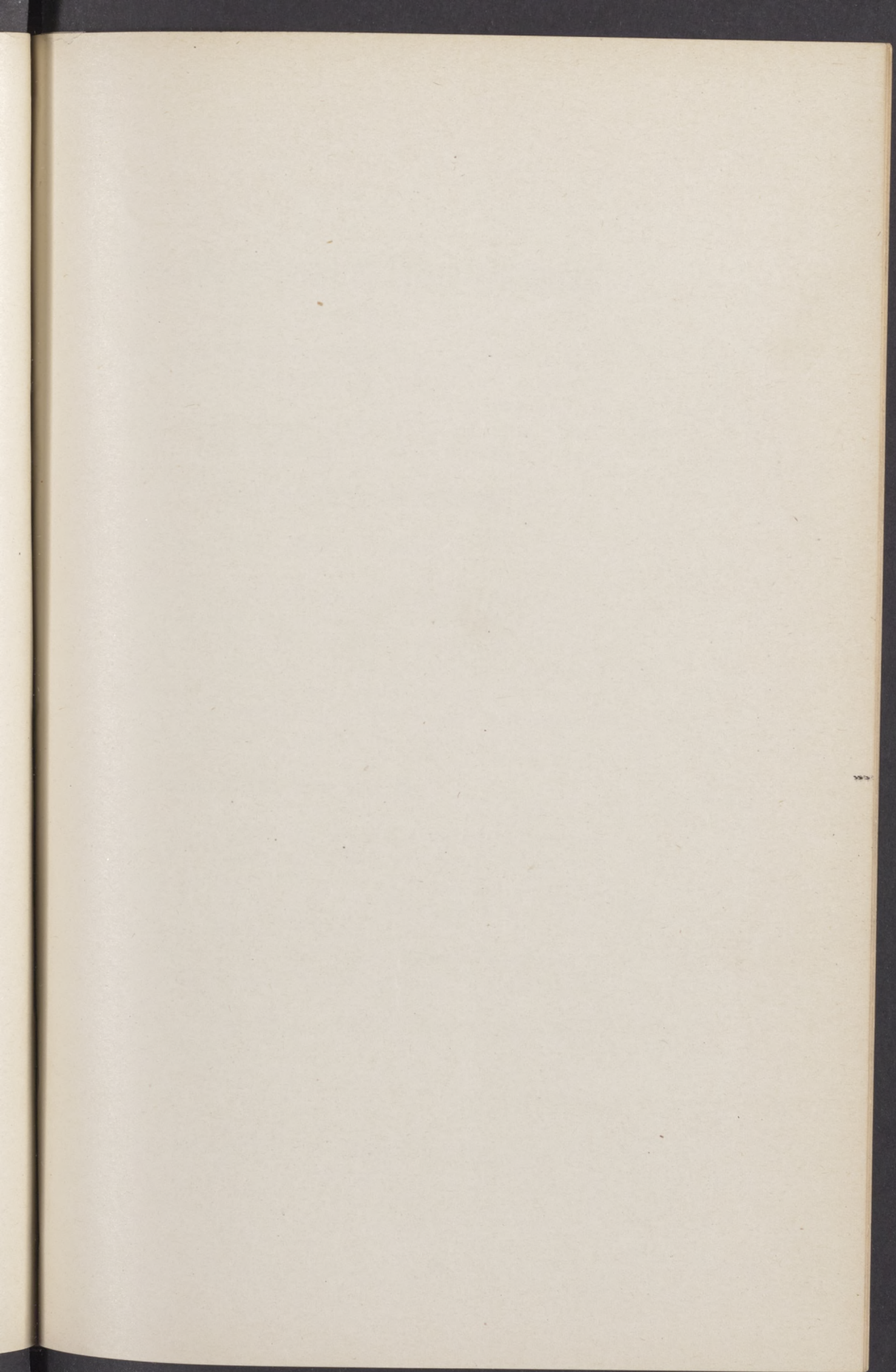
As the Court will review the whole case, we submit the question raised on motion at the trial, regarding the legality of the Grand Jury who found this indictment, and the drawing and empanelling of the jurors who tried the case, and their qualification to sit in judgment. Since this case was tried the Supreme Court has upheld the validity of the Chancellor Sheriff and Fielder acts, so called. We do not waive the question so raised.

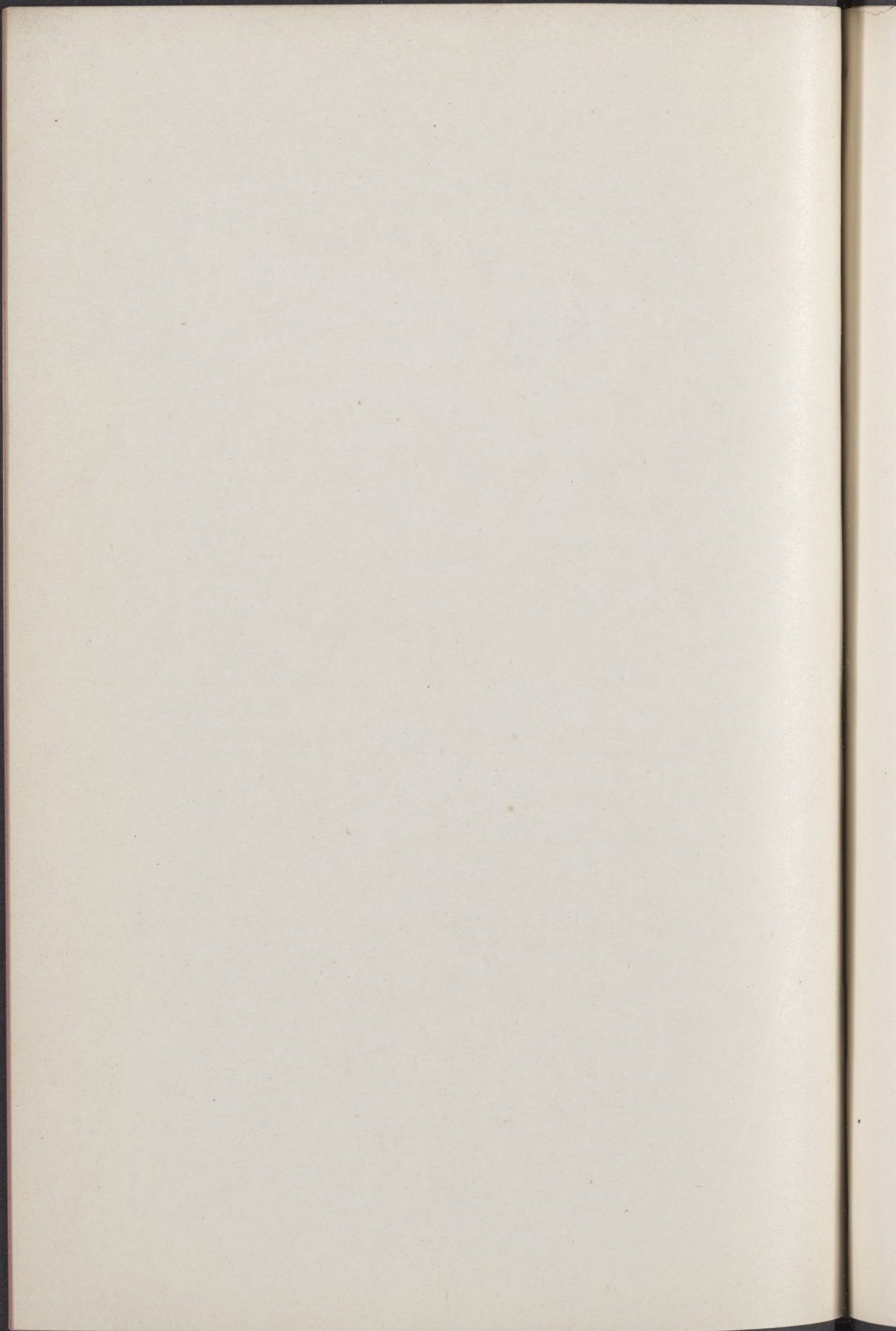
It is respectfully urged that the conviction be set aside, and a new trial granted.

R. TEN BROECK STOUT,
Atty. of Pltf. in Error.

CHARLES E. COOK,
Counsel.







New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, }
Defendant in Error, } On Error to
vs. } New Jersey
ISRAEL ALLGOR, JUNIOR, } Supreme Court. 10
Plaintiff in Error. } Brief of State
of New Jersey.

ASSIGNMENT OF ERROR.

One, Two, Three, Four and Five:

Are all vague and general in their character, and the most that can be said of them is that the verdict of the Jury is against the weight of evidence. This is so obviously incorrect that it is not deemed necessary to make any comments upon it, as but a casual perusal of the printed case will disclose ample evidence to justify the verdict of the Jury. 20

Six, Seven, Eight, Nine and Ten:

These Assignments are all directed to the fact that the Grand and Petit jurors were drawn and sworn under the Fielder Act instead of being drawn and sworn under the Chancellor Act. This question is Res Adjudicata: 30

State vs. New York, Susquehanna & Western Railroad, Supreme Court opinion, filed April 29, 1914.

State v. Toth, Court of Errors and Appeals, May Term, 1914.

Eleven:

This Assignment is directed to the fact that 40

three distinct counts were contained in the indictment.

The counts in the indictment are:

First: Robbery.

Second: Larceny from the person.

Third: Receiving stolen goods.

10 The correctness of the joinder of such counts in one indictment is so well established that no comment is deemed necessary on this point.

Twelve:

20 This Assignment is directed to the refusal of the trial court to compel the Prosecutor to elect upon which count he relied or intended to rely on such conviction.

30 "The granting or refusal of a motion to 'compel the prosecution to elect as to which 'of several counts it will proceed is within 'the sound discretion of the trial court, and 'the ruling thereon will not be reviewed, except in a clear case of abuse of such discretion * * * If from the inspection of 'the entire record it is apparent that no prejudice resulted to the accused, the refusal 'of an election which might properly have 'been granted is no ground for reversal."

22 Cyc, page 405.

40 The record in this case discloses no prejudice whatever resulting from the fact that the Court did not direct the Prosecutor to elect as to which count he would proceed upon at the beginning of the case.

At the close of the case the motion to have the Prosecutor elect was again made by the attorney for the defendant and the election was made by the Prosecutor that the count on which he would seek a verdict was that of robbery, and the Jury was so directed in the charge by the Court.

Thirteen and Fourteen:

Relate to testimony elicited from the witness Israel Allgor, Senior, on cross examination, which questions and answers are to be found on pages 83, 84 and 85 of the printed case, and are in reference to the payment by Israel Allgor, Senior, of the sum of Sixty-six dollars to one Leuppie; guardian of George Winters. All of which testimony was admitted **without exception being made thereto**, the purport of which testimony was that Israel Allgor, Senior, paid the sum of Sixty-six dollars admittedly without the knowledge or consent of the defendant, Israel Allgor, Junior. 10
20

The manner in which this testimony came out was that on cross examination of Israel Allgor, Senior, in order to show interest or bias on behalf of the witness he was asked if he had made any effort to urge the complaining witness to hold up on his son, to which he replied in substance that he had not (See page 82 of the printed case, lines 20 to 40). His attention was then called to the fact that his denial was incorrect because he had already gone so far as to pay to the guardian of complaining witness, George Winters, the sum of Sixty-six dollars, this payment the witness admitted having made, and it was only for the purpose of showing interest or bias that the evidence complained of was admitted. 30

That interest or bias of a witness may be shown on cross examination is elemental, and our evi- 40

dence act P. L. 1900, page 362, Sec. 3, expressly provides that the "Interest of a witness may be shown for the purpose of affecting his credit." See also Sec. 7 of the same Act.

10 So it was in this case, the witness had denied his interest in the matter and it was shown by the evidence complained of that he did have an interest and that he had gone so far as to pay Sixty-six dollars out of his own pocket. No attempt was made to show that this was defendant's money or that defendant knew that witness had paid the money for him and it was for no other reason than that as already stated, namely, that the witness was interested, the evidence was introduced.

20 That this testimony was taken and properly limited by the Court and so understood by the counsel for the defendant, as not to be binding on the defendant and admitted that the action of the witness was without the knowledge or acquiescence of the defendant (page 106 of the printed case, lines 14 to 30), and it was further urged that if any part of the testimony complained of was illegal or injurious to the defendant it was properly excluded by the Court both at the finish of the case and in the charge to the Jury.

30 Furthermore, the Court expressly charged in reference to this testimony, as follows:

40 "There is another feature which developed on cross examination in the course of the defense, and that is that the defendant's father, for the purpose of saving trouble, paid to Mr. Leuppie, who has been termed the guardian of the complaining witness, Winter, \$67, supposedly the amount that Winter says he lost in this robbery. It does not appear in the case

‘either that payment was made by Allgor,
‘Senior, with the knowledge or consent of
‘his son or with the son’s authority for the
‘purpose of settling this case or for any
‘other reason. That is merely a circum-
‘stance that developed on cross examination
‘and I do not see how the defendant can be
‘charged with any participation in any
‘such settlement or attempted settlement of
‘this matter by the conduct of his father in
‘that particular respect.’ 10

It is insisted, First: That this evidence is legal to contradict the statement of the witness Israel Allgor, Senior, that he would not interest himself in behalf of the defendant.

Second: That if the evidence was illegal or any part of it, it had been properly excluded by the Court and the charge of the Court sufficiently eliminated from the consideration of the Jury of objectionable evidence, should any exist. 20

“Where evidence which is illegal is received by the Court, in the progress of the trial it is competent for the Court subsequently to exclude such illegal testimony. In such a case no error could be assigned on the reception of the testimony.” 30

Bullock v. State, 47 Atl. page 62 at page 68.

‘The Court has, at any stage of the trial,
‘the discretionary power to exclude evi-
‘dence improperly admitted, or admitted
‘subject to exceptions. If its admissibility
‘depends upon outside or collateral facts,
‘there can be no reason why the Court
‘should not hear them without delay. It is 40

‘proper to exercise this power where incompetent evidence is admitted under a mistake of fact, which mistake is shown by subsequent evidence. This power may be exercised at any time before the cause is finally submitted to the Jury.’

Thompson on Trials, Vol. 1, page 581.

10 “Though the party against whom an incompetent witness has given evidence may have lost his right to object to his evidence, yet the Court may, on its own motion, if it appears that the evidence is opposed to the policy of the law and dangerous to the administration of justice, suppress it.”

20 Administrator of Mary Jane Montfort, deceased, v. George H. Rowland, et al, 36 N. J. Eq. 181.

30 “Where it clearly appears that testimony which was illegally admitted, on the trial of a criminal cause could not have injuriously affected the defendant, the admission of such illegal testimony does not constitute a ground for the reversal of the judgment.”

Genz v. State, 59 N. J. L. page 488.

40 “The admission of illegal testimony will not avoid a judgment on error, if it plainly appears that such testimony could not have injuriously affected the defendant on the merits of the case.”

40 State adv. Hunter, 40 N. J. L. page 495.

Fifteen:

This Assignment is directed to the colloquy which ensued between the Prosecutor and the Court relative to the question asked of witness George Winters. Objection was made by the counsel for defendant to the question asked of the witness George Winters and the objection was sustained. No illegal evidence was offered or admitted and the argument of the Prosecutor was directed to the admissibility of the contemplated evidence and the Court ruled it out and the defendant was not prejudiced thereby. As to the defendant being prejudiced by the colloquy between the Prosecutor and the Court we respectfully insist that quite the reverse is the fact, that the Court in this conversation very distinctly and emphatically apprised the parties in the presence of the Jury as to the admissibility of not only the evidence sought to be admitted but the evidence of Israel Allgor, Senior, which had been admitted in the morning session and which founds the basis of Assignment of Error Number Thirteen; and from the entire record, particularly as to Assignments of Error Numbers Thirteen and Fourteen, no prejudice whatever can be said to be raised in the minds of the Jury for they were distinctly apprised not only of the rulings of the Court during the progress of the trial but in the charge to the Jury as to the admissibility and sufficiency of the evidence complained about.

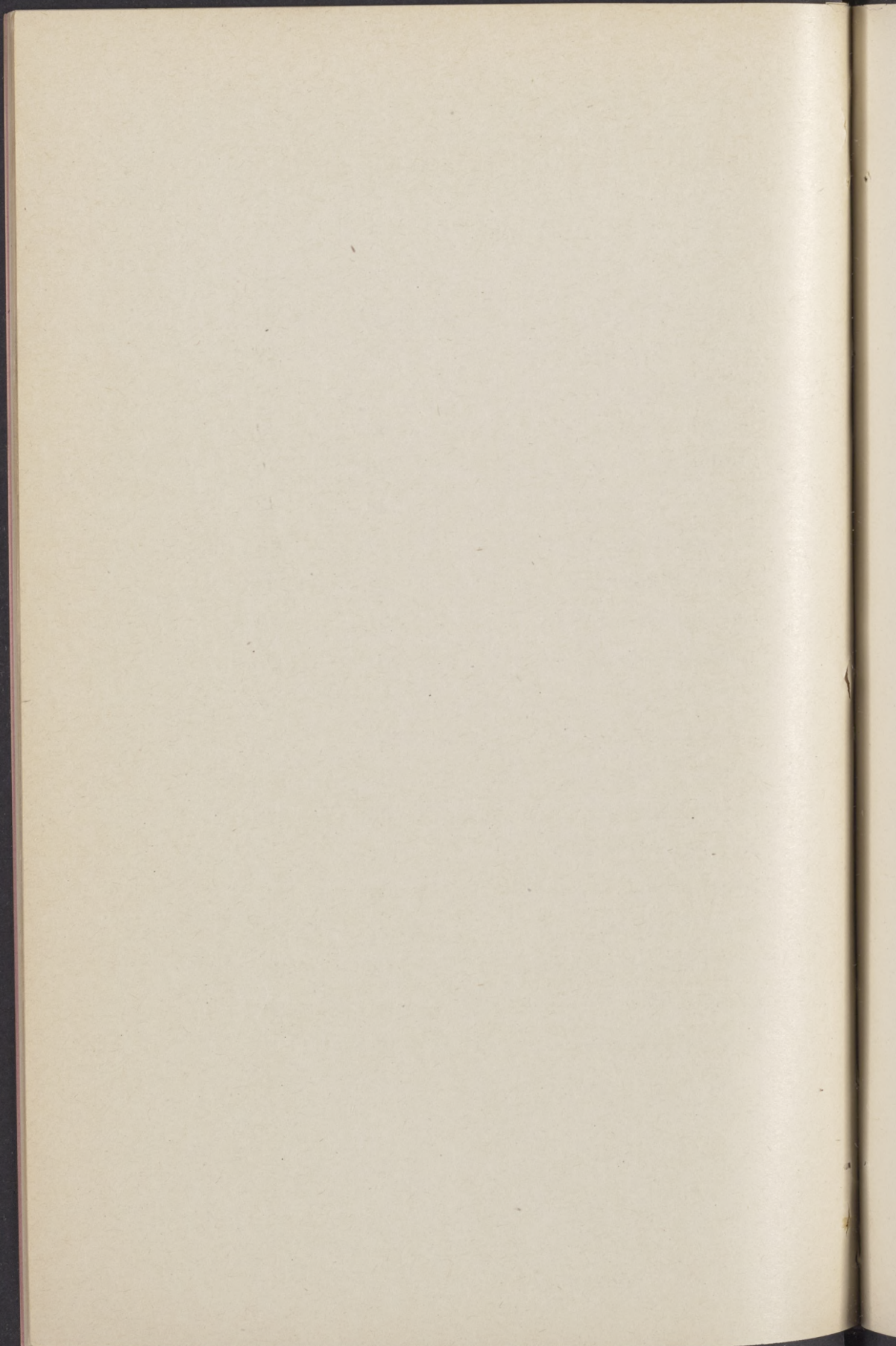
Respectfully submitted,

CHARLES F. SEXTON,

Prosecutor of the Pleas of the County
of Monmouth, New Jersey.

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NEW JERSEY COURT OF ERRORS AND APPEALS

NEW JERSEY, ss:

(L. S.) The State of New Jersey to William
S. Gummere, Chief Justice of the
Supreme Court of the State of New Jersey. 10

Because in the record and process and also in the giving of judgment upon a certain indictment against Israel Allgor, late of the Township of Wall in the County of Monmouth and State of New Jersey, for a certain misdemeanor whereby the said Israel Allgor is charged with the robbery of sixty-six dollars and seventy-five cents from one George Winters, which said indictment and the record thereof was removed into the Supreme Court of New Jersey by a Writ of Error from the Court of Quarter Sessions of the County of Monmouth and whereby in the rendering of a decision by the said Supreme Court, and whereon judgment has lately been entered manifest error has intervened to the great damage of the said Israel Allgor as from his complaint we have received information. 20

We being willing in this behalf to correct the error in due manner if any there shall be with speedy justice to be done to him, the said Israel Allgor, do command you that if judgment be thereon given that you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our Court of Errors and Appeals in the last resort in all causes to be held at Trenton on the 19th day of March, A. D. 1915, and this Writ that the record and proceedings aforesaid being inspected, we may cause to be done thereon what of right and according to the laws of New Jersey ought to be done. 30

Witness EDWIN ROBERT WALKER, President of our

Court of Errors and Appeals at Trenton, this Sixteenth day of March, A. D. Nineteen Hundred and Fifteen.

R. TEN BROECK STOUT,
Atty. of Plaintiff in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

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THE STATE,	}	<i>In Error.</i>
Defendant in Error,		
vs.		
ISRAEL ALLGOR, Jr.	}	<i>Joinder in Error.</i>
Plaintiff in Error.		

30 And thereupon, afterwards, to wit, on the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and fifteen, the said State of New Jersey, by Charles F. Sexton, Prosecutor of the Pleas of the County of Monmouth, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things affirmed, etc.

CHARLES F. SEXTON,
Prosecutor of the Pleas.

III

OPINION OF SUPREME COURT

NEW JERSEY SUPREME COURT
Nov. T., 1914.

THE STATE
vs.
ISRAEL ALLGOR

}

10

Error to Monmouth Quarter Sessions. Argued before Gummere, Chief Justice, and Justices Garrison and Minturn. For plaintiff in error, C. E. Cook. For the State, R. V. Lawrence, Prosecutor of the Pleas.

PER CURIAM :

20

The defendant was convicted of the crime of robbing from the person, the victim being one George Winters. This case comes up under the 136th section of the Criminal Procedure Act. But two grounds of reversal are relied upon by counsel for the plaintiff in error.

He first contends that illegal evidence was admitted. The father of the plaintiff in error was called as a witness on his behalf, and on his cross-examination he was asked whether he had not paid to Winters, the prosecuting witness, a sum of money, the equivalent of that which had been taken from his person, and admitted that he had; and the contention is that this testimony was illegal. We think it was competent for the purpose of showing the interest of the witness, and if the question was fairly before us we would so hold. But no objection was made to the questions asked by the prosecutor, or to the answer made by the witness; and, consequently, the validity of this evidence is not

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properly before us, even under the broad review provided by the section of the statute referred to. That section provides that if it appears from the records of the proceedings sent up with the writ that the plaintiff in error, on the trial below, suffered manifest wrong or injury, either in the admission or rejection of testimony, whether objection was made thereto, or not * * * the appellate court shall remedy such wrong or injury, and give judgment accordingly, and order a new trial. The language connotes judicial action with relation to testimony taken at the trial, i. e., a ruling by the trial court either admitting or rejecting it, and unless such ruling is made no error is committed upon which to base a reversal.

The only other ground of reversal is based upon the allegation that the Grand Jury was not properly drawn. The argument is that it should have been drawn under the "Chancellor-Sheriff" act, instead of under the "Fielder" act. Assuming the question to be properly raised the contention must be determined adversely to the claim of the plaintiff in error under the authority of *State vs. Toth, 90 Atl. 1125*, a decision of the Court of Errors and Appeals.

The judgment under review will be affirmed.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant in Error,

vs.

ISRAEL ALLGOR,
Plaintiff in Error.} *Order Affirming
Conviction and
Remittitur.*

This cause having been duly argued at the November Term last past of this Court by Charles E. Cook, of Counsel for the Plaintiff in Error, and Rulif V. Lawrence, Prosecutor of the Pleas, of Counsel for the Defendant in Error, and the Court having considered the reasons advanced against and for the affirmance of the conviction brought up by the record, and this Court being of the opinion that the same should be affirmed;

It is thereupon ordered, that the judgment entered in the above entitled cause and brought up by the Writ of Error taken in said cause be and the same is hereby affirmed and that the record and proceedings be remitted to the Court of Quarter Sessions of the County of Monmouth to be proceeded with in accordance with the judgment and practice of said Court.

Entered March 15, 1915, on motion of

RULIF V. LAWRENCE,

Of Counsel of Defendant in Error.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this eighteenth day of March, A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
 Defendant in Error)
 vs.)
 ISRAEL ALLGOR, JR.,
 Plaintiff in Error)

10

WRIT.

Filed Mar. 31, 1915.

DAVID S. CRATER, *Clerk.*

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

WM. S. GUMMERE,
 C. J. (L. S.)

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I, John E. Foster, Judge of the Court of Oyer and Terminer and General Jail Delivery of the County of Monmouth, and Judge of the Quarter Sessions of the Peace of said county, and being the Judge who presided at the trial of the within cause of The State of New Jersey against the within defendant, Israel Allgor, Jr., do hereby certify that the annexed manuscript (State of Case) comprises the entire record and proceeding of the trial above mentioned. 10

Witness my hand this sixteenth day of July, nineteen hundred and fourteen.

JOHN E. FOSTER, P. J.

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New Jersey Supreme Court.

STATE OF NEW JERSEY,
Defendant in Error.

vs.

ISRAEL ALLGOR,
Plaintiff in Error.

On Indictment
for Robbery
Writ of Error.

20

L. S.

The State of New Jersey to the Court
of Oyer and Terminer and General
Quarter Sessions of the Peace, in and
for the County of Monmouth,

GREETING:

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For as much as in the record and process and
also in the trial and the giving of judgment in a
certain indictment found by our court of Oyer and
Terminer holden in and for the County of Mon-
mouth against Israel Allgor for a certain misde-
meanor, whereby said Israel Allgor was charged
with committing robbery contrary to law, and
wherefore the said Israel Allgor by a certain jury
of the county of Monmouth aforesaid was there-
upon convicted of robbery and as it is said man-
ifest error hath intervened to the great damage of
said Israel Allgor as by their complaint we are in-
formed, we being willing that said errors if any
there be should be duly corrected and full and
speedy justice done to said Israel Allgor in this
40 thereupon, you send distinctly and openly under

your hand and seal the record and process aforesaid, with all things touching and concerning the same, with this our writ to our Supreme Court at Trenton on the fifteenth day of June, nineteen hundred and fourteen, in order that said record, process, proceeding, trial and judgment being inspected we may further cause to be done thereupon for correcting said error what of right and according to laws and custom ought to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice at Trenton aforesaid, the twenty-seventh day of May, in the year of our Lord, one thousand nine hundred and fourteen. 10

WILLIAM C. GEBHARDT,
Clerk.

CHARLES F. DITTMAR,
Attorney.

The answer of John E. Foster, Judge of the Court of Common Pleas, constituting the Court of General Quarter Sessions in and for the County of Monmouth, the record and proceedings whereof mention is within made, and all things touching and concerning the same, to the Supreme Court of New Jersey, at the day and place within named, I certify and send in the schedule annexed to this writ, as I am within commanded. 20

(Signed) JOHN E. FOSTER, P. J. 30

State of New Jersey)
)ss.
 County of Monmouth)

10 Be it remembered that at a Court of Oyer and
 Terminer held at Freehold in and for the said
 County of Monmouth on the first Tuesday in Jan-
 uary, One Thousand Nine Hundred and Fourteen,
 before Samuel Kalisch, Esquire, one of the Asso-
 ciate Justices of the Supreme Court of Judicature
 of the State of New Jersey and John E. Foster,
 Esquire, Presiding Judge of the Court of Common
 Pleas and of the General Quarter Sessions in and
 for the said County of Monmouth, according to
 the form of the statute in such case made and pro-
 vided by the oaths of

- 1 Holmes V. M. Dennis
- 2 Harry G. Borden
- 3 Charles A. Baird
- 20 4 Elsworth Jackson
- 5 Harold H. Throckmorton
- 6 Frank Wentz
- 7 Howard Lake
- 8 Wm. J. Tantum
- 9 Garrett D. Longstreet
- 10 Calvin C. Hurley
- 11 Frank Wycoff
- 12 Edgar C. White
- 13 Dr. Chas. J. Gremer
- 30 14 Holmes Wycoff
- 15 Howard D. Bunting
- 16 Frank P. Thorne
- 17 Melvin R. VanKeurin
- 18 Clark Clayton
- 19 Dr. A. L. Hammell
- 20 A. Eugene Thompson
- 21 Randolph Tallman
- 22 Wm. C. Hartshorne
- 23 Stephen H. Dey
- 40 good and lawful men of said County of Monmouth,

then and there duly summoned according to the form of the statute in such cases made and provided and then and there duly sworn and charged by the said Samuel Kalisch, Judge as aforesaid, presiding in said Court of Oyer and Terminer in and for said County of Monmouth to inquire in behalf of the State of New Jersey in and for said County of Monmouth. It is presented in the manner and form following, to wit:

In the Court of Oyer and Terminer of Monmouth County, January Term, in the year of our Lord one thousand nine hundred and fourteen. 10

Monmouth County, to wit:

The Grand Inquest of the State of New Jersey in and for the body of the County of Monmouth upon their respective oaths present that Israel Allgor and Samuel Orlander, late of the Township of Wall in the said County of Monmouth, on the twenty-third day of September in the year of our Lord one thousand nine hundred and thirteen, with force and arms, at the Township of Wall aforesaid, in the County of Monmouth, and within the jurisdiction of this Court, in and upon one George Winters there being forcibly and violently an assault did make, and him the said George Winters in fear, then and there did put, and Sixty-six Dollars and seventy-five cents of the moneys, goods and chattels of the said George Winters from the person and against the will of the said George Winters violently and forcibly, then and there did rob, seize, take and carry away contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same. 20 30

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that the said Israel Allgor and Samuel Orlander on the twenty-third day of September, in the year of our Lord one thousand nine hundred and thirteen in the Township of Wall aforesaid, in the County of 40

Monmouth aforesaid, unlawfully, wilfully and maliciously did steal, take and carry away, sixty-six dollars and seventy-five cents of the moneys, goods and chattels of the said George Winters from the person of the said George Winters privily and without his knowledge and consent, contrary to the form of the statute in such case made and provided, and against the peace of this state, the government and dignity of the same.

- 10 And the Grand Inquest aforesaid upon their oath aforesaid, do further present that the said Israel Allgor and Samuel Orlander on the twenty-third day of September in the year of our Lord one thousand nine hundred and thirteen, in the Township of Wall, aforesaid, in the County aforesaid, sixty-six dollars and seventy-five cents of the moneys, goods and chattels of the said George Winters before then unlawfully stolen, taken and carried away, unlawfully did receive and have the
- 20 said Israel Allgor and Samuel Orlander then and there well knowing the same to have been unlawfully stolen, taken and carried away, contrary to the form of the statute in such case made and provided, and against the peace of this state, the government and dignity of the same.

RULIF V. LAWRENCE,
Prosecutor of the Pleas.

- 30 And afterwards, to wit, on the nineteenth day of February, in the year of our Lord one thousand nine hundred and fourteen, at a session of the Court of Quarter Sessions, aforesaid, being as yet of the term of January aforesaid, before the Honorable John E. Foster, Esquire, Judge as aforesaid, at Freehold, aforesaid,

It is ordered that all the indictments be filed and retained in this court for trial or other disposition.

- 40 Whereupon on the twenty-fourth day of February, in the year of our Lord one thousand nine

hundred and fourteen at a court of General Quarter Sessions at Freehold aforesaid in the county of Monmouth aforesaid as yet of the term of January aforesaid, before John E. Foster, Presiding Judge of the Court of Common Pleas, here cometh the said Israel Allgor, Jr., who, being brought to the bar here in his proper person by Wilbert A. Beecroft, Esquire, Sheriff of the County of Monmouth to whom also he is here committed and having heard the indictment read and being commanded of and concerning the premises in the said indictment above specified and charged how he will acquit himself thereof says he is not guilty thereof and thereupon for good and evil he puts himself upon the country and Rulif V. Lawrence, Esquire, Prosecutor of the Pleas for said County, who prosecutes for the state of New Jersey doth the like,

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Therefore let the indictment be continued until the fifth day of March, in the year of our Lord one thousand nine hundred and fourteen. On the fifth day of March, a motion for a severance as to Samuel Orlando was granted and the trial as to Israel Allgor, Jr., was deferred until the first Thursday in April, nineteen hundred and fourteen; on April 2 the trial was deferred until the third Thursday in May. On May 21, nineteen hundred and fourteen, by permission of the court the plea of Not Guilty was withdrawn and a plea of guilty entered for the purpose of making a motion to quash the indictment. After arguments heard the Court denied the motion and the plea of guilty was withdrawn and the plea of not guilty renewed, and the jury thereupon here come before the Judge aforesaid at Freehold aforesaid in the County of Monmouth aforesaid on the twenty-first day of May, in the year of our Lord one thousand nine hundred and fourteen as yet of the term of January, twelve good and lawful men, each of whom shall be a citizen of this state and resident within the county and state aforesaid, above the

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- age of twenty-one years and under the age of sixty-five years, and by whom the truth of the matter may be better known and who are not of kin of the said Israel Allgor, Jr., to recognize upon their oaths whether the said Israel Allgor be guilty of robbery in the indictment above specified or not guilty, because as well the said Rulif V. Lawrence, Prosecutor of the Pleas for the said County of Monmouth aforesaid, who prosecutes for the said State of New Jersey in that behalf as the said Israel Allgor has put himself upon the said jury and the same day is given to the parties aforesaid and the same place at which time, that is to say on the twenty-first day of May in the year of our Lord one thousand nine hundred and fourteen as yet of the term of January aforesaid, before the Judge aforesaid, here cometh as well the said Rulif V. Lawrence, prosecutor of the pleas who prosecutes as aforesaid, as the said Israel Allgor being brought to bar here in his proper person by the said Sheriff of the county aforesaid and the jurors of said jury by the Sheriff of the county aforesaid for this purpose are impanelled and returned, that is to say:
- 1 Thomas Fransey
 - 2 Thomas Little
 - 3 Richard Petty
 - 4 Newall A. Atchley
 - 5 Rensler Brown
 - 30 6 Elias Black
 - 7 John S. Minke
 - 8 George R. Waters
 - 9 Frank H. Gerbrach
 - 10 Frederick Brown
 - 11 Thomas Brady
 - 12 John S. VanMater
- being called come who being chosen, tried and sworn to speak the truth of and concerning the premises, and thereupon the trial of said issue
- 40 commenced before the said court and jury and the

evidence being closed and counsel heard the said issue under a charge of the said court was submitted to the said jury, and the said jury in charge of the said officers in court duly sworn for that purpose were taken to a private room to consider of their verdict, and afterwards at Freehold aforesaid the jury returned into and before said court in charge of said officers sworn as aforesaid to keep them in charge, and then and there in the presence of said Rulif V. Lawrence, Prosecutor of the Pleas and of the said Israel Allgor do say upon being asked in due form that they have agreed upon their verdict and by their foreman further say that they find the defendant, Israel Allgor, guilty of robbery as he stands charged in the indictment, 10

Whereupon, it is ordered that the verdict and proceedings be entered and recorded and the defendant be remanded, and thereupon the said Israel Allgor on the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and fourteen, being produced in and before the court at Freehold, aforesaid, it is ordered and adjudged by the Court that the defendant be committed in State Prison for a term not more than fifteen years nor less than five years. 20

Judgment signed this twenty-eighth day of May, A. D. 1914.

JOHN E. FOSTER, P. J.

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MONMOUTH COUNTY QUARTER SESSIONS

The State of New Jersey)
 vs.) On Indictment
 Israel Allgor,) for Robbery.
 Defendant.)

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Freehold, N. J., May 21, 1914.

Mr. Cook: I have a motion to make before the jury is sworn. I desire to withdraw the plea of not guilty introduced in this case, for the purpose of making a motion to quash the indictment.

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The Court: What is the indictment for?

Mr. Lawrence: Atrocious assault and battery and robbery.

Mr. Cook: My first point is because the panel of grand jurors who found this indictment were illegally drawn and sworn under what is known as the Fielder Act, approved May 27, 1913, when such panel of jurors should have been drawn under the Chancellor Sheriff Act, approved May 29, 1913.

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The next motion to quash is on the ground that the indictment contains inconsistent counts, charging three different and separate crimes. The first count is for robbery, the second count is for larceny from the person, and the third count is for receiving. Now it seems to me that that is bad for charging several crimes in one indictment, at least the Prosecutor ought to be put to an election as to which count he intends to rely upon for a

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conviction. My motion is that the indictment contains several crimes in one indictment, several and distinct.

The Court: But not in the same count?

Mr. Cook: Not in the same count, separate counts; and it is rather confusing to know whether the Prosecutor intends to rely upon the count of robbery, or larceny from the person, or receiving. I ask that he be put to an election, may it please the Court, and I would like to have a ruling on it.

The Court: Not at this time I won't.

Mr. Lawrence: The Prosecutor would certainly decline to elect at this time.

The Court: The motion will be overruled and an exception allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly).

JOHN E. FOSTER,
Judge (Seal)

The Court: The plea of not guilty is renewed, I understand?

Mr. Cook: Yes.

Mr. Lawrence: I may say that the motion as to the jury is res adjudicata in the Supreme Court. The Chief Justice ruled on that and held that the Fielder juries were good as de facto bodies.

(The jury was drawn and sworn).

GEORGE WINTER, sworn for the State:

Direct examination by Mr. Lawrence:

Q. Mr. Winter, where do you live? A. I live up here at Freehold now.

Q. Where were you last September, on the 23rd day, primary meeting day? A. Belmar.

Q. At Belmar? A. Yes, sir.

Q. You were at Belmar on that day, were you?
A. That the accident happened?

Q. Yes. A. Why, yes, I was in Belmar.

Q. Do you remember what day of the month it was? A. Well, according to what I find out it was the 23rd of September.

Q. Where were you on that day? A. I was on F street, and going around town a little; started to go north there, and so I was held up by another man, 10

Q. Who was the man who held you up? A. Israel Allgor.

Q. This man sitting here at the table, is that the man? A. Yes, sir; that is the man.

Q. Now what time of day was it? A. I should judge it was near noon.

Q. Well, you say he held you. What did he say to you? A. He wanted to know if I didn't want to walk home with him. 20

Q. And did you go? A. Well, we started.

Q. Had you been drinking on that day? A. A little. He gave me a drink.

Q. He gave you a drink of what? A. Of some kind of whiskey, I think.

Q. And where were you when he gave you the drink? A. Where was I?

Q. Yes. A. We was on the road then home. 30

Q. Well, you agreed to go with him, did you, to his house?

Mr. Cook: I object to that as leading. He didn't say that.

The Court: He says they started.

Mr. Cook: Started home, yes.

Q. Did you go with him to his house? A. No, sir; and there was another man caught up to us— 40

Q. Who was the other man? A. I don't know. He said he was an Italian.

Q. Did anything happen to you after the other man caught up to you? A. I was talking to Israel and this other man slightly come up and hit me.

Q. Where did he hit you? A. Hit me in the jaw, I think.

Q. What did he hit you with? A. I don't know that, whether it was his fist or not. And then
10 Israel caught hold of me and carried me. We was along the edge of the road like, and Israel carried me to a mossy place there alongside the road, the longest way out, you know.

Q. What did he do to you? A. He went feeling around my pockets; and as we was going there was two more hits. I was hit twice as they were carrying me.

Q. Who hit you then? A. It must have been this Italian. Israel, he was carrying me.

Q. Where were you hit the second time? A.
20 Where was I?

Q. Where were you hit the second time? A. It seemed to be around the head or jaw.

Q. Go on and tell the rest of the story. What did they do to you after that? A. Why, I thought, I am in a great predicament here now.

Q. Now you say that somebody struck you twice after that? A. I can't hear.

Q. You say that somebody struck you twice,
30 did they? Struck you again, did they? A. What did I intend to do?

Q. You have said that some one struck you first in the face? A. Yes, sir.

Q. Now who was that that struck you in the face? A. It must have been this other man, because Israel and I were talking together.

Q. Now what happened after the man struck you in the face? A. Then I kind of staggered back a little there and Israel took hold of me.

Q. How did he take hold of you? A. Caught
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me in his arms and was carrying me on across the avenue, and there was another hit.

Q. And you were hit again while he was carrying you across the avenue, were you? A. Yes, sir.

Q. Did he say anything when he carried you across the avenue? A. Say anything?

Q. Yes. A. No, he was just taking me across there, I suppose.

Q. Did you have any money on your person?

A. Yes, sir; I had then.

10

Q. How much money did you have? A. \$66.

Q. And after he carried you across the avenue what did he do with you, if anything? A. Why, he laid me on the moss there and went to feeling around my pockets as though he was feeling for my money.

Q. Which one did that? A. Israel.

Q. Israel Allgor? A. Yes, sir.

Q. And what did they do after that? A. I was thinking, you know, there and I says, "If you won't injure me or do me any harm I will give you the money;" so I reached the money out to him.

20

Q. Where did you have the money? A. Where did I have it?

Q. Yes. A. In my trousers pocket.

Q. And you put your hand in your pocket and pulled out the money, did you? A. Yes, sir.

Q. What did you do with the money? A. I handed it to him.

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Q. To whom? A. To Israel Allgor.

Q. Did he take it? A. Yes, sir.

Q. And how much was there? A. \$66.

Q. You are sure of that, are you? A. That is what I—well, there was somewheres in that neighborhood. I did have \$67 and I spent a little.

Q. How much had you spent? A. I don't know how much it was.

Q. You say you don't know how much you

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spent? A. I bought just a piece of cheese and cake.

Q. Was it a dollar or less than a dollar you spent? A. Oh, it didn't come to a dollar.

Q. About how much had you spent, do you know? A. That I don't know, to a cent. I was thinking it ought to have been \$66.75 when he bothered me.

10 Q. Then you had spent 25 cents for this cheese and anything else that you had bought, had you? You say you had \$67. Now when you were with Allgor you say you had \$66.75. How much money did you have when Allgor grabbed you? A. About in that neighborhood.

Q. Well, how much? A. \$66.75.

Q. You know you had bills, do you, in money? The money was in bills, was it, the \$66? A. Yes, sir.

20 (Objected to as leading).

The Court: I don't see any harm in it.

Q. And the rest was in silver, was it? A. Yes, I charged them 75 cents for bothering me, you know.

Q. What did Allgor do after you gave him the money? After you gave Allgor the money what did he do with it? A. Oh, I don't know where he went then.

30 Q. Well, did they leave you? A. Yes, they left me there.

Q. And how long did you lie on this moss? A. Why, I wasn't there many minutes, I guess.

Q. Do you remember what happened after that? A. After I laid on the moss?

40 Q. Yes. A. Why the first thing I knowed I was raised up that way and I was looking around in the bushes, and thinks I they will be laying around to catch me when I get up. Then I went out to the road.

Q. Well, you went out to the road then, did you? A. Yes, sir.

Q. Whom did you see? A. Why, I saw a gentleman there. I don't know what his name was; lived in one of them houses, I think, close by there.

Q. Were you hurt? A. Yes, I was bleeding.

Q. Where were you bleeding? A. Bleeding from the mouth.

Q. Anywhere else? A. That was all the place, I guess. 10

Q. How old a man are you, Mr. Winters? A. I am sixty-seven years old.

Q. Where had you gotten this money that you had on your person? A. Where did I get it?

Q. Yes. A. Why, at different places where I had been working.

Q. What had you been working at? What kind of work had you been doing? A. That summer I had been helping an Irish gentleman, Mr. McConnell, there at New Bedford. 20

Q. How long have you known Israel Allgor? A. Known Israel Allgor?

Q. Yes. A. Why, about—I don't know exactly how long. I had seen him several times.

Q. On this day that he was with you how long had you known him then? A. It must have been some few years.

Q. Are you sure it was Israel Allgor that day that was with you? A. Yes, sir. 30

Q. And the other man you say you don't know? A. No, I don't know who it was.

Q. Do you know his name? A. Whose name?

Q. The other man? A. No, I don't know his name.

(A man was asked to stand and complied).

Q. Do you see that man standing there? A. Yes, sir.

Q. Did you ever see him before? A. Well, I don't know whether I did or not. It looks like 40

near being the man.

Q. The man that was there that day with Allgor? A. Yes, sir; a big hat and it was drawed down over his face.

Q. Now you think that was the man with Allgor there that day, do you? A. Yes, he looked so much like a ghost that day, but I can just—

Q. Did you tell me how old you were? How old did you say you were? A. Sixty-seven, if I live till the 24th. What day of the month is this?

Q. This is the 21st of May. A. The 24th of May, sixty-eight.

Q. Where did you come from to Belmar on the 23rd of September? A. On that day?

Q. Yes. A. Why, I was about leaving the place, my boss didn't want to be paying me wages. They had been paying me along and then he wanted me to work for my board in the winter time.

Q. Now where was your boss' place? Where was Mr. McConnell's place?

(Objected to as immaterial. Objection overruled).

A. Not far from Allgor's place.

Q. Not far from Allgor's place? A. No.

Q. And how long had you been working at McConnell's? A. I had been there some months.

Q. Well, then, on that day, the 23rd of September, did you leave McConnell's? A. Yes, sir; I was looking around, you know. He gave me notice. He didn't want to pay me wages any more.

Q. What time did you get into Belmar? A. I got in Belmar in the forenoon.

Q. About what time? A. About—oh, I suppose nine o'clock or something like that.

Q. And what time was it when Israel Allgor took you up in the woods? A. It was somewhere near noon, I should think.

Q. And did you have any talk with Israel All-

gor before he asked you to go home with him? A. Well, we had a little talk together.

Q. What had you said to him or he to you? A. Well, I told him I wanted to go down and settle up with Mr. Bergen, the liveryman.

Q. What had you to settle with Mr. Bergen, the liveryman? A. I had been staying a night or two and I wanted to settle up with him.

Q. You owed him for some board, did you? A. Yes, sir.

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Q. Did Allgor know that you had any money on your person? A. He asked me.

Q. He asked you? A. Yes.

Q. What did he say when he asked you? A. He asked me if McConnell had paid me.

Q. And what did you tell him? A. I told him yes.

Q. And did you tell him how much he had paid you? A. I don't think I told him just exactly how much.

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Q. When was it that Allgor asked you whether you had been paid or not; was that before you went to the woods with him?

Mr. Cook: I don't think Mr. Lawrence ought to lead now.

The Court. Well, I don't think it is leading. Considering the difficulty he is suffering under I do not think he is receiving suggestions.

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Q. You say that he asked you that along on F Street? A. Yes, sir.

Q. Was that before you went along the road with Allgor? A. No, we was in the road then; on the road on Fourteenth Avenue, I think, or Thirteenth Avenue.

Q. You say you were on the road then? A. Yes, sir; well, we was kind of a little outlandish way to go there, and if we wanted to go the direct way we ought to have went up Sixteenth Avenue.

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Q. Why was it you went that way instead of going up Sixteenth Avenue? A. I don't know. We both went that way.

Q. Was there any reason for you going the way you did? A. Well, we were on F Street, you know, and the next avenue would have been Fourteenth and the next Thirteenth, so I think we went up Thirteenth. I don't exactly remember about that, whether it was Thirteenth or Fourteenth.

10 Q. Well, did anybody ask you to go up Thirteenth? A. Then we went into Thirteenth again and they we was going up Thirteenth until we got in the woods.

Q. Until you got in the woods? A. Yes, and then I wanted to go out to River Avenue.

Q. Well, why didn't you go? A. I don't know. He said come this way.

Q. Who said come this way? A. Israel.

20 Q. You mean the defendant said that? A. There were some people out there, I believe, and I wanted to go out, you know, and get on the road there, public road, and then I thought I could do as I liked more.

Q. You thought you could do as you liked, why? A. Because there was a number of people there and they would see what was going on.

30 Q. Why didn't you go out then where the people were and you could see what was going on? A. Well, I thought—he kept smiling along to me and I thought he wouldn't hurt me, as much as to say—they say actions speaks louder than words.

Q. Then you didn't go out on the River Road because Israel asked you to go the other way; is that right? A. Yes, sir.

The Court: After he got out on the road he said he met a man. What became of him?

40 Q. Where were you and Israel when this other man met you? A. When the other man caught up?

Q. Yes. A. We were near out in the woods.

Q. Near out in the woods? And where were you when this man that caught up to you struck you? A. We were about to that place and near out in the woods, and Israel was there saying something to me, and this man was coming up and hitting me.

Q. What was it that Israel was saying to you at that time? A. What was it he hit me with?

Q. No, what was Israel saying to you when the man came up and hit you? A. I thought it was a strange introduction to a stranger. 10

Q. You don't understand the question. What was Israel saying to you when the man hit you, just at the time the man hit you? A. I forget. I think it was something about going home.

Q. Now to whose home were you going with him? A. Sir?

Q. Whose home were you going to? A. What is that? 20

Q. Whose home were you going to? A. I was going up around where I live, you know, and he was going to his own home, I suppose.

Q. Well, was that the way that you usually went home, to your own home? Is that the way you usually went to your own home? A. Sometimes I went one way and sometimes another. I know I went right up to Glendola sometimes.

Q. But you have already said that you went that way this day because Israel wanted you to go; is that right? A. Yes. Well, Israel gave me a drink, you know, and I thought I would walk along with him as far as he went. • 30

Q. Where was he when he gave you the drink? A. In the woods there just before we got up to this man.

Q. And what did he give you a drink of? A. Some kind of whiskey, I don't know. I thought it tasted pretty good for Michelson's. It come from there. 40

Q. You thought it tasted pretty good for Michelson's whiskey, did you? A. There is a good deal of Michelson's whiskey is something like river mud, seasoned up.

Q. What did you say about seasoning up? A. Why, I say a good deal of Michelson's whiskey is a good deal like mud seasoned up.

Q. Well, now, when this man struck you and Israel grabbed you, were you sober? A. I wasn't exactly sober, I suppose, no. He gave me a drink. I didn't take much.

Q. Did you know what you were doing? A. Well, I was thinking if he wanted to treat me he could do so and I wouldn't take much and I wouldn't be drunk and have a drink.

Q. No, I ask you whether you were drunk or not. You know when you are drunk, don't you? A. I wasn't so drunk that I couldn't walk in there. Some reckons one drop would make a man drunk, I guess.

Q. Were you so drunk that you didn't know what was going on around you? A. No.

Q. You did know what was going on? A. I did know what was going on. I knowed I was hit in the jaw.

Q. How long did you remain in the woods after they had left? A. I don't think I remained there long. I felt kind of fatigued and I laid there on the moss. I did give them my money, and thinks I, "I have done my share," and I don't know but what I sat a little bit, and the first thing I knowed I was looking around.

Q. Well, go on and tell us what you did after that. A. I couldn't see anything of them and I thought maybe they was looking around to watch me when I got out and catch me again. So I couldn't see them anywhere around so I went right for the River Road then.

Q. Can you tell us what you did after that? A. The road goes through the woods there to the

River Road and I took that and went right by the little barn right up to the River Road and then I met a man—

Q. Do you know that man that you met? A. No, sir.

Q. Don't remember who that was? A. No, but I think I would know him if he was to come up.

Q. You would know him if you saw him again, you mean? A. I think it is likely I would.

Q. Where did you go after you met that man? 10

A. I went down to see Dr. Kinmonth then, to see how bad I was hurt.

Q. And did you see Dr. Kinmonth? A. Yes, sir.

Q. And what became of you after that? A. Why, he gave me a paper to take over to Squire Crego, and the Squire, he wasn't home, he was down to the election; some kind of an election there, I believe. And so they couldn't attend to me, you know. I wanted to see whether I was going to bleed to death or not. 20

Q. Were you bleeding then? A. Yes, sir.

Q. Well, go on. What did you do after that?

A. He told me to go over there on Eighth Avenue, I think it is, to Mr. Hall's and wait over there till some of them could get down to see me. And I went there and waited a long time and washed me and the hostler came out and gave me a towel to dry with.

Q. Go on. Then what happened to you after that? A. I got tired of it and the boy came to see me from the avenue where my nephew lived, and he kept telling me I ought to go up there. I thought I wanted to be attended to. I didn't care, you know. I didn't know whether they thought much of me— 30

Q. Now you were taken care of afterwards, weren't you, by some doctor? A. Sir?

Q. Some doctor looked after you, didn't he?

A. Yes, he seemed to be a little huffy. He said he didn't know why it was that folks always came 40

to him first, or something like that.

Q. What doctor was that? A. Dr. Kinmonth.

Q. Did you have any other doctor to take care of you? A. Not yet. And I went there and I stayed all night at my nephew's and she seen I was bleeding and she gave me some old torn sheets and I laid there and bled on them till morning. In the morning my nephew came to me and says—

10 Q. Never mind what your nephew said. What did you do the next morning? A. I went over there. I was telling you the whole detail—over there to the lockup, his office, you know, Mr. Elwood Newman's.

Q. That was Spring Lake, wasn't it? A. No, Belmar. And I got into an automobile that was standing there idle. Thinks I, "Maybe they will take me over there." The doors was open and some kind of drawing doors or seats, or something like that, and I shut them up and a little boy there
20 that I know of winked to him to take me over to the hospital, and they did so.

Q. So you went to the hospital, did you? A. Yes, sir.

Q. That is the Ann May hospital, is it? A. Yes, sir.

Q. How long did you stay there? A. Oh, I stayed there weeks.

Q. Weeks? A. Several weeks.

30 Q. And you were treated there for your injuries, were you? A. Then the doctor he examined me and found out—

Q. What doctor was that? A. Well, the hospital doctor. He seen to me and then a doctor from Red Bank.

Q. How many weeks were you in the hospital? A. I didn't keep account of it.

Q. Well, was it more than one? A. Oh, yes.

Q. More than two? A. Oh, yes.

Q. Several, you said? A. Yes.

40 Q. Well, you got better after that, did you? A.

Yes, sir.

Q. Now did you ever get your money back? A. No.

Q. Never got it back, eh? A. No. Leuppie has sent to me, he has given me several dollars.

Q. Who is Leuppie? A. The preacher that used to be at Glendola.

Q. He was befriending you, was he? A. Yes, sir.

Q. You say he gave you two dollars? A. Yes, 10
sir.

Q. Did you ever get any of this \$66 back? A. No. Well, supposed to be; likely he had got it; he said he had got it and put it in the bank.

Q. Where had he gotten it?

(Objected to. Objection sustained).

Q. You are not permitted to tell that. You are not permitted to tell what Leuppie has done.

The Court: I suppose you can show it in some other way. 20

Q. At the time you gave the money to Israel what did he say to you, anything? A. No, he didn't say anything. He took hold of the pocketbook and turned it wrong side out.

Q. And you handed your pocketbook out, did you? A. Yes, sir.

Q. And the money was in that? A. Yes, sir.

Q. And you say he took it and turned it inside out? A. Yes, sir.

Q. Did you see him take the money out? A. 30
Yes, seen him take the money and I found after I had waked up and looked around I had some strings in my pocket and they laid there and the pocketbook laid there, and I put the pocketbook in my pocket again and I don't know what ever became of it.

Q. You don't know what became of the pocketbook? A. No, there was nothing in it.

Q. Now will you tell me how you went from F Street up to the point where they threw you on 40

the moss? A. How I went?

Q. Yes. A. I walked.

Q. Tell me the way you went, what street. Now can you tell me where you started from on F Street? A. I don't know exactly about that, where we went, as I told you before, whether we went up Fourteenth Avenue and then to Thirteenth again, how it was about that; but I think it is likely we went right up Thirteenth Street.

10 Q. Straight up Thirteenth to this place? A. We went there to where he fetched out a bottle for me to drink in the woods.

Q. Where was it that Israel fetched out a bottle and offered you a drink? A. Why, it was near where Bloom Bennett lives.

Q. Bloom Bennett? A. Yes, on Thirteenth Avenue.

Q. Now how far from the place that he offered you the drink was it to the place where the man struck you? A. It was several yards. We had to go into—Thirteenth Avenue ended there in the cross-road from the river, and then we went up here to the corner to Sixteenth. There is no Fourteenth Avenue, you know. And we went there to Sixteenth and then on up.

Q. How were you hurt? You said you bled at the mouth. A. I must have had my jaw cracked, for the next morning when I was going to swear out a warrant I believe I—

30 Q. What about your teeth, were they hurt? A. Yes, they did after I got to the hospital.

Q. No, I didn't ask you that. A. Well, that was from the effects of it.

Q. Where did you bleed? A. I bled as soon as I had been hit.

Q. I know; from where, what part of your face? A. It must have been out of the mouth.

Q. Did you bleed anywhere else about your head? A. Not as I know of.

40 Q. Now you say you were struck three times?

A. Yes, sir.

Q. And the first time where were you struck?

A. I was struck somewhere alongside of my head or in the jaw somewhere.

Q. And where were you struck the second time?

A. The same place, about.

Q. And the third time where were you struck?

A. Seemed to go right for my jaw, the third time he seemed to follow up the same place, as though he wanted to make a sure shot and break my jaw 10
likely.

Q. And which one was it that struck you? A. Why, it must have been this other man.

Q. Did Israel strike you? A. Why, no, Israel grabbed me.

Q. He grabbed you around the body, did he? A. Yes, sir.

Q. What did they do to your face in the hospital, do you remember? How did they take care of it? A. Why, examined me, you know, and they had a nurse there that used to be cleaning my throat out every— 20

Q. What else did they do to your face? A. What did they do to my face?

Q. Yes, anything, at the hospital? A. No, only to find out—oh, yes. The examining physician, you know, from Red Bank, he put in two kinds of things like, a good deal like a lady's knitting—what she mends stockings with, and they had two little wire handles, I believe, and they put one in each cheek, to press the cheek out, I suppose, in place. 30

CROSS EXAMINATION by Mr. Cook:

Q. Mr. Winter, how long have you known Mr. Allgor, Israel, the young man? Why, I haven't known him much only a few years, because he is a young man, you know, just growing up.

Q. Would you say about five years you have 40

known Israel? A. Sir?

Q. Have you known Israel Allgor five years?

A. No, not more than that, I guess.

Q. Now on this day in question you had been drinking, hadn't you? You were drinking on this day in September, last September, when you say you were with Allgor, you were drinking, were you not? You had been drinking pretty heavy? Do you understand me? A. No.

10 Q. Hadn't you been drinking on September 23rd? A. Why, I didn't start out for any drinking spree. I thought he had been drinking—

The Court: Ask him before he met Allgor.

Q. Before you met Allgor hadn't you been drinking on that day? A. No, sir.

Q. Didn't you have a drink? A. No.

Q. Not one drink? A. No.

Q. How many drinks did you have after you met him? A. Had one.

20 Q. Where did you have that drink? A. In the woods.

Q. Didn't you have a drink down in Belmar with Allgor? A. Belmar in the woods.

Q. I mean at a place in Belmar called Weinstein's. You know where Weinstein's place is in Belmar, don't you? A. I had no drink there.

Q. You had no drink there? A. No.

Q. You had nothing to drink that morning before Allgor gave you a drink? A. No.

30 Q. How many drinks did you have on the way over? A. Just one.

Q. You hadn't drank anything before that? A. No, not that day.

Q. Didn't you say a moment ago that you had been drinking on that day? A. That I had?

Q. Yes. A. No.

40 Q. Didn't you admit to the Prosecutor that you had been drinking or you were drunk, but not so drunk that you were not able to walk? A. There is a difference of opinions about that, you know.

Q. I am asking what you said about it. A. There is some that if they get four drinks they are just as bad in their eyes as forty barrels.

Q. Well, I want to know how this whiskey affected you that day. Did it make you drunk?

A. It didn't affect me much. I walked right along.

Q. Didn't you feel it? Didn't you feel the effects of it at all? A. Why, it kind of warmed me up, yes. 10

Q. And you admitted to the Prosecutor that you were drunk but not so drunk that you were not able to walk, didn't you?

(Objected to).

The Court: I don't think he has quoted it. He says, "I was not so drunk but what I knew what was going on, but what I could walk."

Mr. Cook: That is it. I want the point that he admitted he was drunk. 20

Q. You did admit you were drunk? A. No, I can't say I was drunk.

Q. Would you want to say that you were sober? A. That I am sober now?

Q. No, that you were sober then, that day. A. I wasn't as sober as I might be. A man that has got a little whiskey into him, it is apt to affect him. 30

Q. It affected you, didn't it? A. Yes, kind of warmed me up.

Q. What other effect did it have on you except warmed you up? Did it make you stagger? A. Made me feel kind of joky.

Q. Will you stagger along or walk straight? A. No.

Q. You walked straight? A. You didn't have to lead me along any, did you? (To defendant).

Q. Now, Mr. Winter, you know Israel Allgor's 40

wife, don't you? A. Why, I got acquainted with her.

Q. Do you remember her coming down to the Ann May hospital when you were down there? A. Yes, she came and brought a little girl with her, young girl.

Q. Now you told her then that Israel didn't strike you? A. I don't know as he did.

10 Q. And you don't claim that he did now; and did you also say to Mrs. Allgor on that day that Israel didn't take your money and you didn't know who took the money? Did you tell Mrs. Allgor that? A. I don't know what finally became of the money.

Q. Didn't you say to Mrs. Allgor upon that occasion that you didn't know who struck you or who was with you or who got your money? Did you not tell her that that day at the hospital when she called to see you? Didn't you say you didn't
20 know who was with you? A. No, I never did.

Q. Didn't know anything about it? A. Maybe she took it that way.

Q. Didn't you tell her so? A. No.

Q. Didn't you tell her so that she could take it that way? Wasn't that what you meant? A. No.

Q. Do you know whether Israel Allgor was with you that day? Do you know whether he was now? Do you know whether he was with you that day? A. Me?

30 Q. Yes. A. Of course.

Q. Do you know where Israel Allgor left you that day? A. Yes.

Q. Where did he leave you, whereabouts? A. On Sixteenth Avenue.

Q. Did you send him back to Belmar to get some more whiskey? Do you remember having a conversation with him—

40 Mr. Lawrence: He ought to answer. He shakes his head.

Q. Speak out loud when I ask you a question.

A. I didn't send you after any more whiskey, did I? (To defendant).

Q. Didn't you do it? Didn't you send him after more whiskey when you got up on Sixteenth Avenue? A. No, he had a bottle with him.

Q. Didn't you drink that all up and didn't he go back to get some more whiskey at your suggestion? A. I kind of—

Q. Now, yes or no. Didn't Allgor go back to Belmar to get more whiskey? Didn't you send him back to get more whiskey when you got in the woods there where you say you got hurt? A. No. 10

Q. You know Israel Allgor, the father, don't you, of this boy? A. Yes.

Q. Do you remember telling him some time ago that his son had nothing to do with striking you, taking your money, and you didn't know who struck you or who took your money? Did you tell that to old man Allgor? A. No, not in that kind of a light. 20

Q. What did you say to him? A. Why, he asked me one time, he says—twice, I guess—if Israel struck me, and he asked me who took the money and I told him he did.

Q. You told him Israel did? A. I told him his son took the money.

Q. And you have told that story right along to whoever might ask you about it, that Israel took this money; is that right? A. Yes, sir. 30

Q. And you deny that you made that statement to old man Allgor, that his son didn't strike you or didn't take your money? Did you tell that to him? A. He didn't strike me but the taking the money part, he took that.

Q. I am asking you if you didn't tell the father that the boy had nothing to do with striking you and taking the money.

(Witness laughs).

Q. No, answer the question. It may be funny.
 A. I guess he won't deny himself that he was there.

Q. You don't answer the question.

The Court: He has denied that he told him, so you have laid your foundation.

Q. How much money did you have that day?
 10 A. Why, is it particular to a cent?

Q. Yes. A. I will tell you, you know—

Q. No, yes or no. Tell me right out how much money did you have?

Mr. Lawrence: He can't do that, yes or no.

Mr. Cook: Well, I mean he can tell me right out what he had.

20 A. I had \$65, anyhow.

Q. Now what kind of money was it? A. Why, it was some ten dollar bills, some fives, some few ones.

Q. Where did you get the money? A. I got it at different places where I had worked.

Q. How long had you had this same money in your possession, \$65? A. How long had I had it?

30 Q. Yes, how long had you had it? A. I hadn't had it a great while, because I hadn't been getting my pay from where I was working last, and that was McConnell's.

Q. How long had you had this money, \$65? You can answer that, can't you, without going all around the barn? A. Well, say two or three weeks.

Q. Two or three weeks? A. He hadn't paid me over that.

40 Q. You had \$65 in your possession for two or three weeks; is that right? Is it right or not, yes or no? A. Wouldn't it have been right to charge

him a little for bothering me that day? I didn't want to be out from business and I come to the conclusion about \$66.75 would be right.

Q. What you had in your possession that day?

A. Yes.

Q. Did you get struck by an automobile or wagon that day? A. Had I been?

Q. Yes. A. No.

Q. You say you got struck on the face, that somebody's hand struck you; is that right? A. I don't know whether it was a hand or a brickbat or something like that. 10

Q. It wasn't a wagon or an automobile, was it?

A. No, I guess it couldn't have been that.

Q. Are you sure that you were not struck by an automobile or a wagon? A. There wasn't no automobile going by.

Q. You don't know what it was that struck you, do you? A. I know it was this man that was striking me. 20

Q. I say you don't know what struck you as a matter of fact, do you? A. I don't know, it might have been a little hammering around, I don't know nothing about that, because when I woke up again I kind of felt dazed and looked around—

Q. You don't know, repeating this question, you don't know what struck you, do you? Now be frank with me. You don't know what struck you that day? A. Well, it was this man right there to do it. 30

Q. Well, then, tell me so; don't dodge it. Now where did you find yourself when you came to, were you along the road? A. Laying on the moss there.

Q. Were you alongside the road or in the road, or what? A. Just outside of the main road.

Q. Just outside of the main road? A. Yes.

Q. How did you have this money, in a pocket-book? A. Yes.

Q. What became of the pocketbook? A. Wl.y, 40

they left that.

Q. Who left that? A. The ones that took the money out.

Q. Did you ever see the pocketbook again? A. Would I know it?

Q. Did you see it afterwards? A. It was left there and I picked it up and put it in my pocket.

Q. You have got it yet, I suppose, haven't you?
A. I don't know what has become of it. The
10 clothes was so bloody when I got to the hospital they burned them up, I believe.

Q. You didn't see this man that you claim struck you, did you? A. Somebody.

Q. Did you see the man that you claim struck you? Did you see him that day so that you would know him, the man that struck you? A. No, I couldn't swear who it was, you know.

Q. No, you can't swear now who it was, can you? A. No, not positive. That man is a resem-
20 blance of him.

Q. Now you say Israel took this money out of your pocket? A. No, I handed it to him.

Q. Why did you hand him this money? A. I thought that was the quickest and easiest way to do it, and I told him that was all I had. I didn't know whether he had been wrestling my pockets afterward or not, because I didn't take out any string, I don't think, and there was some string there and the pocketbook laid there.

30 Q. You handed this money right over to him? Now what had happened to you before that that caused you to hand this pocketbook over? A. They was keeping on striking, you know; the striking part was going on.

Q. What was Israel doing when this fellow was striking you? What was Israel Allgor doing? A. He was there holding on to me.

40 Q. In what way, what do you mean by holding on to you? A. He was holding me till I handed him the pocketbook, and then that stopped right

there, and then I thought, "They won't do anything to me now," and I laid still there and it was all still, you know, after I laid there a little while and raised up and then I woke up. It couldn't have been long, because the sun was up pretty high.

Q. Now, Mr. Winter, how did you come to hand this pocketbook to Allgor? A. How did I hand it?

Q. Yes. Did he threaten you? Did Allgor threaten that if you didn't hand him the pocketbook he would hurt you, or something? A. No, but this other one was going on, you know, and I cautioned one and the other, you know. I couldn't trust Israel. 10

Q. Well, you handed him the money, so you say? A. Yes, so I put my hand down in my pocket, you know, and just handed it to him.

Q. What did you say when you handed it to him? A. He took hold of it.

Q. What did you tell him to do when you handed him the money? A. Why, I knowed pretty near that would stop the row pretty quick. 20

Q. After the pocketbook was handed over to Israel did that stop the row? A. Yes, if they had any hearts at all.

Q. Well, did it stop the row or stop them from striking you? A. Yes.

Q. How many times have you told the story about the loss of this pocketbook since it occurred?

A. How many times have I told it? 30

Q. Yes. A. Several times now to different people.

Q. Did you ever tell anybody you didn't know how you got hurt, you had no recollection of what occurred that day, you only knew that you woke up and found yourself alongside the highway? Did you tell that to anybody? A. No, that is makeup.

Q. No, I am asking you whether you told that or not. 40

The Court: He says no, it is a makeup.

Q. Where are you now? Where do you live?

A. I live in Freehold now.

Q. Been living over in the jail, haven't you?

A. In jail?

Q. Yes. A. Well—

Q. Can't you answer that yes or no? A. Well, I suppose they wanted me handy, to have me for
10 the trial here.

Q. So they locked you up? A. So they put me in there awhile so I wouldn't be going around.

Q. So you wouldn't be running around? A. Yes.

RE-DIRECT EXAMINATION by Mr. Lawrence:

Q. How long have you been over here? A. How long have I been in the jail?
20

Q. Yes. A. Since Monday.

Q. And before that where were you? A. Sunday I came from Fair Haven.

Q. You had been living at Fair Haven? A. And to Belmar.

Q. And why did you leave Fair Haven? A. Why, the man that I was working for said he thought I wouldn't suit him.

Q. And did you walk from Fair Haven to Belmar? A. No.
30

Q. Who did you see when you got to Belmar? A. Why, I saw Mr. McCormick.

Q. And Mr. McCormick brought you to Freehold, didn't he? A. Yes, sir.

The Court: Has he any home now?

Mr. Lawrence: Has no home now, apparently.

The Court: Ask him.

40 Q. Have you any home now? Where is your

home? A. I don't know that I have got any home

Q. Haven't you any relatives where you can live? A. I have a few relatives, William White, my nephew.

The Court: Does he make his home where he works?

Q. Where do you usually make your home, where you work? A. Yes, sir.

Q. Have you talked with Israel's father? A. Why, yes, we had a little conversation. 10

Q. What did Israel's father say to you?

The Court: How is this competent?

Mr. Lawrence: I want to bring out—

The Court: You can do that on rebuttal.

ELWOOD NEWMAN, sworn for the State.

Direct examination by Mr. Lawrence: 20

Q. Mr. Newman, you are a Justice of the Peace, are you not? A. Yes, sir.

Q. Do you recall the circumstance of Winter being brought to your office? A. I do; yes, sir.

Q. When was it? A. On the 23rd of September.

Q. About what time? A. About nine o'clock, half-past nine in the evening.

Q. In the evening? A. Yes.

Q. Who brought him there? A. Mr. William C. White, officer. 30

Q. Who is Mr. White? A. He was a special township officer.

Q. And what was the condition of Winter when he was brought to your office? A. Well, he seemed to be in a weakened condition. He asked for a complaint against Mr. Allgor.

Q. That is, against the defendant here? A. Yes, he talked for a few words and then he would have to get up and walk to the door and spit. I supposed he was chewing tobacco. His face was 40

covered with beard so that I couldn't see anything of the injury. And finally I got an affidavit made out and he swore to it and signed his name.

Q. Well, was that complaint made against Allgor alone or some other person also? A. That complaint against Allgor alone.

Q. Did he make a second complaint against any one? A. He did not, no.

10 Q. As a matter of fact there was a complaint made against Orlando, wasn't there? A. Yes.

Q. Who made that? A. That was made by Dave Patterson.

Q. When was that made? A. The next morning.

Q. Did you observe how badly Winter was hurt? A. I did not.

Q. At that time? A. No.

20 Q. Where did he go from your office? A. I suppose he went home with William C. White; he told me he did.

Q. Now, Squire, are you familiar with the locality where it is said this thing happened? A. Well, fairly familiar; been over it.

Q. Are you familiar with the streets and general conditions there in the immediate neighborhood? A. Yes.

Q. How long have you been around this neighborhood? A. Oh, well, forty years.

30 Q. Did you ever see this before? (Referring to map). A. Yes.

The Court: Any objection to the map?

Mr. Cook: I don't think so. I think it truly represents the conditions.

Q. Did you make this map? A. I did, yes.

Q. When did you make that map, Mr. Newman? A. Oh, I guess five or six weeks ago.

40 Q. And will you kindly explain to the court and jury just what that map represents? A. Well, in the first place I want to state, to save any ques-

tions, there is no regularity, I didn't use no scale measurements, you know; just merely guess work, that part of it.

Q. However, it does correctly represent the streets and the blocks, does it? A. Oh, yes, it represents the streets and blocks. Here is Seventeenth Avenue, here is Sixteenth Avenue, and here is Thirteenth Avenue. Of course here is Fourteenth Avenue, goes up as far as the railroad.

By the Court:

10

Q. Fourteenth doesn't go through? A. No, it doesn't go through. Now here is Sixteenth Avenue. Now some things, if you want me to state, as far as obtaining these facts or any facts, the suggestion—

The Court: Well, go on. The Prosecutor will ask you what he wants you to tell.

By Mr. Lawrence:

Q. I will not ask you to explain any marks upon the map which relate to or which you say may relate to the points where any of these people were, only the streets and the woods and things of that sort. For example, I notice little marks here. A. Yes, sir.

Q. They indicate certain facts in reference to this case, don't they? A. Yes.

Q. Well, I am not going to ask you about that.

By the Court:

Q. Where are the woods?

30

The Witness: All you want to know then is the direction?

Mr. Lawrence: Yes.

A. I start from here, go down to Thirteenth and from Thirteenth to L Street and up to Sixteenth Avenue and up somewhere in this location, right about somewhere in there is where—

By Mr. Lawrence:

Q. Where this man was found? A. Where this man was found, yes, where he found himself

40

when he came to.

Q. What does this represent, this line? A. That is the river.

By the Court:

Q. River or River Road? A. That is the River Road; yes, sir.

By Mr. Lawrence:

10 Q. I notice you have in this block here what appear to be buildings. What are those buildings?

A. This building is the butcher shop on the corner of Sixteenth Avenue and F Street, and then there is a little house in there, barber shop, and this is Belfor's place. This is Belfor's place here.

Q. What is this curving line? A. This is John Bennett's hotel right here.

20 Mr. Cook: If your Honor please, I am obliged to object to this map. It has evidence of the State and detail on it. I could not allow it to go to the jury.

The Court: It has not been offered yet.

Mr. Cook: Yes, but such statements, they are positive and affirmative statements—

The Court: They will have to be cut out of it.

Mr. Lawrence: It is not offered for that purpose at all.

The Court: Are you going to offer the map at all?

30 Mr. Lawrence: No, excepting as it may be used by witnesses for illustration, to indicate where the witness was at a certain time.

The Court: Well, if Mr. Cook objects to the map all that legend will have to be taken out of there.

Mr. Lawrence: All right. I am willing to do that.

The Court: Suppose you do it now and that will remove the objection.

40 Mr. Cook: I think these ought to be elim-

inated, the arrows and numbers and locations.

The Court: They have no significance unless somebody testifies to them.

Mr. Lawrence: Here are some words here that I suppose tell something.

Mr. Cook: They tell a lot.

Mr. Lawrence: Well, we don't want them.

The Court: We will have the witnesses tell that.

(The written portion of the map was cut out by Mr. Lawrence). 10

NO CROSS EXAMINATION.

WILLIAM C. WHITE, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. White, where do you live? A. Seaside Park now. 20

Q. Do you know George Winter? A. Yes, sir.

Q. Did you see George Winter on or about the 23rd of September last? A. Yes, sir.

Q. Where did you see him? A. At my house.

Q. What time of day? A. I should say it was about half-past seven at night.

Q. And what were the circumstances of your finding him at your house? A. When I came home I came up on the front porch and I found him sitting there in a chair all bleeding very bad. 30

Q. Where was he bleeding, what part of the body? A. The mouth; and he seemed to be in very bad shape. And I asked him in the house and my wife washed his whiskers out the best she could. I asked him if he had been to the doctor's and he told me he had. I asked him what the doctor said was the matter with him and he said he didn't tell him; he said he just gave him a piece of paper and told him to go to Mr. Crego's. So we 40

fixed his face up and he sat down and had some supper, after which he tied a cloth around his face, saturated with witch hazel, and he went to bed early; well, I will say early, probably nine o'clock, or a little after, it might have been after, nine o'clock or a little after. It wasn't late. And he always when he went to bed locked the door, and of course during the night we couldn't get in to him. In the morning I went in and he had got up and he was sitting in a rocking chair and he was leaning back like this and apparently asleep, and he was very white, and the bed that he slept in—

Mr. Cook: I object at this point as immaterial, absolutely.

Q. Well, he was taken to the hospital, was he?

A. The next morning.

Q. The Ann May hospital? A. Yes.

20 Q. How long did he remain there? A. I couldn't tell you exactly. It was several weeks. I don't know just how long. I was in the bay working all the time.

Q. Were you at the Squire's office when the complaint was made? A. Yes, sir.

Q. That complaint was made against Allgor?

A. Yes, sir.

Q. Do you occupy any official position down there? A. Not now. I did then.

30 Q. What was it? A. Special police.

Q. You made the arrest of Allgor, did you? A. Yes, sir.

Q. Did you also make the arrest of Orlando?

A. No, sir.

Q. I didn't get your answer. You said he was in the hospital six weeks? A. No, several weeks, I don't know how long.

NO CROSS EXAMINATION.

JOHN I. NEWMAN, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Newman, where do you live? A. Belmar.

Q. Do you know Israel Allgor, Jr.? A. Yes, sir.

Q. Do you know George Winter? A. Yes, sir.

Q. How long have you known Winter? A. Thirty-five years. 10

Q. How long have you known young Allgor? A. Twenty-five.

Q. Do you recall the 23rd of September, 1913?

A. Yes, sir.

Q. Do you remember seeing Israel Allgor on that day? A. Yes, sir.

Q. Did you also see George Winter that day? A. Yes, sir.

Q. Did you see them together or separately? A. About half past twelve, between twelve and one o'clock. 20

Q. Were they together or separate? A. George Winter—I went up on the east side of F Street, to Sixteenth Avenue; I suppose I had got about twenty-five feet north when I saw Winter across on the other side. Israel ran across Sixteenth Avenue and caught up to George Winter.

Q. That is, the defendant sitting here? A. Yes, sir.

Q. Then what happened? A. Well, I heard Israel ask George if he was on the job yet, and I understood George to say that he had just got through today, today was the last day. I understood him to say that. 30

Q. What else did he ask him? A. And then he asked him if he was going home and George said something that I couldn't remember what he said; couldn't hear, but Israel said, "I am too, right now." 40

Q. Any further conversation between them?
A. No, just those words, that is all.

By the Court:

Q. Did they walk together then? A. Then I saw them walk up together.

By Mr. Lawrence:

Q. Now will you turn to that map and indicate where you first saw those two men? A. I am very
10 familiar with this map.

Q. You say you are very familiar or not? A. I am. Well, I don't say this, but the location. Right here. (Indicating).

By the Court:

Q. Where you first saw them? A. Yes, about twenty-five feet north of the corner of Sixteenth Avenue and F Street on the west side.

Q. Where did they go? A. They traveled on talking and went in there until they came to Thirteenth Avenue. They started here on the sidewalk
20 about twenty-five feet north from Sixteenth Avenue.

By Mr. Lawrence:

Q. Which side of F Street is that? A. The west side.

Q. On the west side? A. The west side of F Street.

Q. Go on now. A. Then they went on and I walked with them opposite till they got to Thirteenth Avenue, and they turned up Thirteenth
30 Avenue, both of them.

Q. Was there any other person with them at that time? A. No, sir.

Q. You actually saw them turn up Thirteenth Avenue, did you? A. Yes, sir.

Q. And was that the last that you saw of them? A. That was the last; yes, sir.

Q. What hour did you say it was? A. About twenty minutes to one then.

40 Q. Twenty minutes of one? A. Yes, about

half past twelve or twenty minutes to one.

Q. What was the condition of George Winter as to sobriety? A. He seemed all right as far as I—He worked for me a couple or three weeks and seemed at the time then just the same as ever when I saw him. My little boy that was with me says, "Pop, there goes Mr. Winter." I says, "I know it, sonny," as they walked along.

Q. Have you given us all the conversation you heard between Allgor and Winter? A. Yes, sir. 10

CROSS EXAMINATION by Mr. Cook:

Q. How far did you walk up with them, Mr. Newman? A. I walked up as far as Thirteenth Avenue and went on to the northward and they turned up Thirteenth.

Q. How far were they up Thirteenth when you last saw them? A. I couldn't say. Perhaps ten feet or so, just as they turned. 20

Q. What distance did you walk in view of them? A. About sixty feet.

Q. About how long? How many feet did you walk to Thirteenth? A. About five hundred and seventy-five feet perhaps.

Q. Had Allgor been drinking? A. No, didn't appear so.

Q. Or Winter? A. He seemed to be a little excited when he ran up to Winter.

Q. Nor Winter? A. No, sir; didn't seem to be, no. 30

RE-DIRECT EXAMINATION by Mr. Lawrence:

Q. You say that Allgor ran across the street to meet Winter? A. Ran across the street, partly ran across, to catch up to Winter.

Q. Where was he standing when you first saw Allgor? A. Winter?

Q. No, where was Allgor when you first saw 40

him? A. I saw him come from the south side of Sixteenth Avenue. I just saw him on the sidewalk when he ran across to meet Winter, caught up to him about twenty-five feet, maybe.

JORDAN NEWMAN, sworn for the State.

10 Direct examination by Mr. Lawrence:

Q. Where do you live, Mr. Newman? A. Belmar.

Q. You know Israel Allgor, don't you? A. Yes, sir.

Q. How long have you known him? A. Oh, for several years.

Q. Do you know George Winter? A. Yes.

Q. How long have you known him? A. Known him for several years.

20 Q. Do you recall primary day of last year? A. Yes, sir.

Q. The 23rd day of September? A. Yes, sir.

Q. Did you see Allgor, the defendant, and Winter on that day? A. Yes, sir.

Q. About what time did you see them? A. As near as I can tell, between—well, it was a little later than half-past twelve, between that and one o'clock.

30 Q. And where did you see them, Mr. Newman?
A. I was coming across the field, me and my son was going fishing down Shark River, and I was coming across the field and on the corner of Fourteenth Avenue George Winter, I met him right there, and he says, "Have you been fishing?" I says, "No, I am going."

Mr. Cook: I object unless the defendant was present.

40 A. Well, I was talking to them, to him and Israel; he come up to him, and both of them there

together. Then I walked ahead and didn't look behind me to see which way they went and went up across Fourteenth Avenue, across the field, and after I crossed and got to Thirteenth Avenue, across the railroad, I looked behind me and saw Israel and George Winter coming up Thirteenth Avenue.

Q. Can you indicate on the map where you saw those men? A. I saw them right here, saw Winter right here; met him right across F Street here; Winter, and then Israel, he was just crossing, and when I was talking to Winter he came across and they both stood there, and then me and my son went up Fourteenth Avenue. 10

Mr. Cook: We don't deny this.

The Court: Is there any dispute that these two men were together?

Mr. Cook: No, sir.

Mr. Lawrence: There was a dispute until this present moment. I think counsel on the other side has seen a light, that is all. 20

Mr. Cook: I ask to have that stricken out.

The Court: That is stricken out.

Q. I will ask you this question: Did you hear any conversation between Israel Allgor, Jr., and George Winter? A. No, sir; only just what they were talking there between themselves, but I didn't pay any attention when they come up.

Q. You say they were talking between themselves? A. Yes, sir. 30

Q. Did you hear any portion of that conversation? A. No, sir; I never stopped long enough. When Israel come up to George Winter—

Q. That is all.

NO CROSS EXAMINATION.

RICHARD B. BENNETT, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Bennett, where do you live? A. Belmar.

Q. Do you know Israel Allgor, Jr.? A. Yes, sir.

Q. How long have you known him? A. Oh, twenty years, I suppose.

Q. Do you know George Winter? A. Yes.

10 Q. How long have you known him? A. Over forty.

Q. Do you recall primary day of last year? A. I do.

Q. What date was that? A. The 23rd of September.

Q. Did you see Allgor, the defendant, and George Winter together on that day? A. I did.

Q. Where did you see them? A. After half-past twelve I should judge it was, a quarter to one, somewhere about there.

20 Q. And where were they? A. Opposite my bungalow on Thirteenth Avenue.

Q. Will you indicate on the map about where that is? A. Two hundred feet from this corner right here, four lots.

Q. Which side of the street were they on? A. They were in the middle of the street.

Q. Did you hear any conversation between them? A. I did.

30 Q. What was it? A. Israel said to Winter, "Let's go out this way," indicating south, towards Sixteenth Avenue.

Q. How would that be on the map? A. Here they were and Israel indicated "Let's go out this way," to Sixteenth.

Q. Going down what street would that be? A. This is L Street, the last street in the borough, and Winter was going this way and Israel said, "Let's go this way."

40 Q. Winter going in what direction? A. They

were both going in that direction.

Q. I know. But what way would Winter have gone if he carried out his intentions? A. I would presume have gone this way.

Q. Out to River Road? A. Out to River Road.

Q. What else did you hear them say? A. I heard Allgor say, "No, let's go out this way." That is all I heard them say.

Q. What was Mr. Winter's condition as to sobriety? A. He was as I have always known him, sober. 10

By the Court:

Q. Was Allgor also sober? A. He appeared sober, also.

By Mr. Lawrence:

Q. And that was the last you saw of them? A. That was the last. I watched until they came to this avenue and then I sat down. I went back to the room.

Q. Was anything said by the defendant by way of inducement to Winter to go to where he wanted him? A. The conversation must have been like this:— 20

(Objected to).

Q. No, not what it must have been. What was it? A. That is all Allgor said, "No, let's go out this way, up Sixteenth Avenue and up this way."

CROSS EXAMINATION by Mr. Cook: 30

Q. Do you know where Mr. Winter was living at that time? A. I learned afterwards. I didn't know at that time.

Q. Was it up in that direction? A. Yes, I found it was. I inquired.

Q. It would then have been the proper way to go to his home? A. Yes.

Q. Did Allgor live up that way, too? A. Yes.

Q. Was that then a proper course for both of 40

them to take to get to their homes? A. Yes.

By the Court:

Q. Would it have been the proper way to go out to the River Road? A. There are different ways. They could have went Fifteenth Avenue or Thirteenth.

By Mr. Lawrence:

Q. What was the short way? A. I should imagine if they were around Sixteenth Avenue they would have went direct.

Q. Without going down Thirteenth? A. Which is Sixteenth Avenue on this map?

Q. This is Sixteenth and this is Thirteenth. That would have been the direct way? A. That would have been the direct way from Sixteenth Avenue, where I learned they were.

By the Court:

Q. If they had started to go direct? A. Yes.

20

HOWARD HABERSTICK, sworn for the State.

Direct by Mr. Lawrence:

Q. Where do you live, Mr. Haberstick? A. Belmar.

Q. Did you live in Belmar on the 23rd of September last? A. Yes, sir.

30 Q. Do you remember seeing Israel Allgor that day? A. I think I did; yes, sir.

Q. Well, was there anything to fix it in your mind as to the day? On what day was it? A. Well, I only took notice of them walking by, that is all.

Q. Whom did you see walking by? A. Mr. Allgor and Mr. Winter.

Q. Did you see any other person with them?
40 A. No, sir.

Q. Did you see any other person join them?
A. No, sir.

Q. Do you know Orlando? A. No, sir; I don't.
(Orlando requested to stand and complies).

Q. Did you ever see that man before? A. Once or twice in the town, but I didn't know him. I have seen him once or twice in the town.

Q. You say you have seen him? A. A few times in the town; yes, sir.

Q. Did you see him on the 23rd of September last? A. I don't recollect ever seeing him on that day. 10

Q. That day that you saw Israel Allgor, Jr., and George Winter together did you see him? A. I don't remember ever seeing him.

Q. Did you see this man on Thirteenth Avenue on that day? A. I don't know as I ever seen him on Thirteenth Avenue.

Q. Now you are quite sure about that, are you?
A. Yes. 20

Q. Haven't you said that you saw Orlando join Allgor with Winter? A. No, sir.

Q. To no person? A. No, sir.

NO CROSS EXAMINATION.

ALBERT STUDERMAN, sworn for the State:

Direct examination by Mr. Lawrence: 30

Q. Where do you live, Mr. Studerman? A. Belmar.

Q. Do you know Samuel Orlando? A. Yes, sir.

Q. Did you see him on the 23rd of September last? A. Yes, sir.

Q. Do you know Israel Allgor, Jr.? A. Yes, sir.

Q. The defendant sitting here? A. Yes, sir.

Q. Do you know the old man, George Winter? 40

A. Yes, sir.

Q. How long have you known these parties?

A. I have knowed Israel Allgor and George Winter about three years and a half.

Q. How long have you known Orlando? A. About a year.

Q. Where did you see Orlando on the 23rd of September? A. I seen him at L Street, about there. (Indicating on map).

10 Q. What time of day was that, Mr. Studerman?

A. It was about half-past twelve or quarter to one.

Q. Between twelve and one o'clock? A. Yes, sir.

Q. Where were you going? A. Going towards the river.

Q. Going down L Street? A. Yes, sir.

Q. Where did you see Winter? A. Winter and Israel Allgor had walked on along the road.

20 Q. Will you point out on that map about where they were? A. Right along here. (Indicating).

Q. Where did you say Orlando was? A. He was walking on the sidewalk.

Q. Walking on the sidewalk? A. Yes, sir.

Q. The same side of the street? A. Yes, sir.

By the Court:

Q. Where were they, in the roadway then? A. Israel and George was in the roadway and Sam was in the sidewalk.

By Mr. Lawrence:

30 Q. Any other persons around there excepting you? A. No, sir.

By the Court:

Q. Were they together or was he behind, Orlando? A. Sam was behind them.

By Mr. Lawrence:

Q. How far behind them was he? A. About one hundred feet.

40 Q. Now how do you fix the circumstance in your mind that you saw them there that day? Did anything happen to you? A. No, sir.

Q. Was anything said by Orlando to you? A. Orlando asked me for a match and I gave him one.

Q. Anything else said by Orlando to you? A. No, sir.

Q. After you gave him the match what did he do? A. He went on.

Q. He ran? A. No, he walked.

Q. And where did he walk? A. I didn't notice. I went on, too.

Q. Well, did he go in the direction you did or did he go in the direction in which Allgor and Winter were going? A. He went the direction Allgor and Winter were going. 10

Q. And you didn't turn around to look at these men after that, eh? A. No, sir.

CROSS EXAMINATION by Mr. Cook:

Q. How long do you say you have known Orlando? A. About a year. 20

Q. What were you doing on the day in question? Where were you going? A. Going to work.

Q. Where? A. River Avenue.

Q. What were you working at? A. Mason.

Q. And this was about 12.30? A. Yes.

Q. In which direction were you going towards the river or from the river? A. Towards the river.

Q. So you met them about in the middle of the block there on L Street; is that right? A. Yes, sir. 30

Q. And they were walking in the opposite direction? A. Yes, sir.

Q. And you say that this man Orlando was walking on the sidewalk but not with Allgor and Winter? A. Yes, sir.

Q. And he stopped and asked you for a match? A. Yes, sir.

Q. Well, after they passed by you where did they go? A. I didn't notice. 40

CHARLES NEWMAN, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Newman, where do you live? A. Belmar.

Q. And what is your father's name? A. Jordan Newman.

Q. Was he the gentleman here a moment ago? A. Yes, sir.

10 Q. Were you with your father on the 23rd of September? A. Both together at the same time.

Q. And you saw— A. Just the same as he.

Q. And you saw Winter and Allgor going up? A. Yes, sir.

Q. What street? A. They were on F Street and Fourteenth Avenue.

Q. And where did you last see them? A. Just about one hundred yards past—

20 The Court: That is not disputed.

WILLIAM JOHNSON, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Johnson, where do you live? A. Bradley Beach.

Q. Do you know Allgor? A. Yes, sir.

Q. The defendant here? A. Yes, sir.

30 Q. And the old man, Winter? A. Yes, sir.

Q. Do you recall seeing them on the 23rd of September last? A. Yes, sir.

Q. Where did you see them? A. On L Street near Sixteenth Avenue first.

Q. Will you indicate on the map where you saw them? A. About there. (Indicating).

Q. First? A. Yes, sir.

40 Q. Now where did you see them after that? A. Saw them just turning up Sixteenth Avenue after that.

Q. You made no further observation? A. No, sir.

Q. What day was it? A. The 23rd of September.

Q. What makes you think it was the 23rd of September? A. I just remember it.

Q. Have you got anything else to fix it in your mind that it was the 23rd of September? A. No, sir.

By the Court:

10

Q. Did you hear of this trouble with Mr. Winter afterwards? A. Yes, sir.

By Mr. Lawrence:

Q. How soon afterwards was it you heard it? A. About a day.

Q. The next day? A. Yes, sir.

By Mr. Cook:

Q. And you recall it from that incident the next day? A. Yes, sir.

Q. That is how you fix it? A. Yes, sir.

20

Q. Who did you first tell the story to that you had observed Orlando and Winter and Allgor?

A. I told my father the first one.

Q. Told your father about it? A. Yes, sir.

Q. Told him right away? A. Yes, sir.

Q. How long afterwards? A. After I heard that Winter was hurt.

Q. Well, I mean within what space?

By the Court:

Q. A day or two, you mean? A. About a day.

30

Q. You are positive about Orlando? A. Yes, sir.

Q. You identify him here in court today? A. Yes, sir.

Q. You couldn't be mistaken about Orlando? A. No, sir.

By the Court:

Q. Were they sober? A. Yes, sir.

Q. What was the condition of these men? A. All seemed to be sober.

40

Q. What time of day was that? A. Why, I think ten minutes of one, probably; ten minutes or a quarter of one.

Q. What was it that attracted your attention to these parties, anything? A. Well, nothing in particular. I saw them coming up the street. I was driving a grocery wagon in Belmar, and I am gone all day and at noon I usually feed my horse, or have been feeding for some time on L Street
 10 just off Sixteenth Avenue, and this day I just hitched up my horse ready to start and looked up and saw them coming down the street.

The Court: What is the use of all this? It is not disputed that these men were together.

Mr. Lawrence: This is for another purpose.

Q. Was there any other person besides Allgor and Winter there? A. Not on L Street but on Sixteenth Avenue I saw another man join them.

20 Q. Join them? A. Yes.

Q. Who was that man? A. I don't know.

Q. Would you know him if you saw him again?
 A. No, sir.

Q. Have you any recollection of him at all?
 A. No, sir.

Q. As to the character of man? A. No, sir.

Q. Do you remember how he was dressed? A. No, sir; I couldn't say.

Q. You say there was a man joined them? A.
 30 Yes, sir.

By the Court:

Q. What is the character of the neighborhood there at Sixteenth Avenue after you went from L Street; is that woods? A. This is woods. (Indicating on map).

Q. All of that? A. Yes, sir; houses in back there.

Q. Back from the street? A. Yes, sir.

Q. Not on Sixteenth Avenue? A. Not on Six-
 40 tenth Avenue; no, sir.

Q. Was it a dense woods or is it woods cleared out? A. Well, there is quite some underbrush.

Q. Did this man join them while they were in front of the woods? A. Yes, sir, while I saw them. Now I started down Sixteenth Avenue. As I looked up—I came down this way—and I looked through the back of the wagon and saw the three of them on the corner.

By Mr. Lawrence:

Q. On the corner? A. Near the corner. 10

Q. What direction were they going then? A. Going west.

Q. Up Sixteenth Avenue? A. Up Sixteenth Avenue, west.

CROSS EXAMINATION by Mr. Cook:

Q. Where did you see the third man join them?

A. I saw the third man with them on the corner or near the corner of Sixteenth Avenue.

Q. Between the corner of Sixteenth and L Street? A. Yes, sir. 20

Q. Then they were together when you saw them? A. Yes, sir.

Q. And they turned the corner and went west?

A. No, not turned the corner.

The Court: They were on the corner, he says, when he saw them.

A. I only saw Winter and Allgor on L Street. They were on the corner when I seen them.

Q. Where did you see them on that map? A. Just around the corner. 30

Q. Going west? A. Yes, sir.

HARDY ACKER, sworn for the State.

Direct examination by Mr. Lawrence:

Q. You live in Belmar? A. Yes, sir; West Belmar.

Q. Do you know Israel Allgor, Jr., the defend- 40

ant here? A. I do.

Q. Do you remember the 23rd day of September last? A. Well, I think it was the 27th.

Q. Do you remember the circumstances of a man by the name of Winter being hurt? A. I heard about it; yes, sir.

Q. Now when did you hear that Mr. Winter was hurt? A. The next day.

10 Q. Did you see Allgor the day before? A. Yes, sir; he and I went to the beach about a quarter to seven in the morning, or seven o'clock, somewhere around there.

Q. Seven o'clock in the morning?

By the Court:

Q. The day before you heard Winter was hurt?

A. Yes, sir. There had been a storm and we went down to look for jewelry.

By Mr. Lawrence:

20 Q. Now you saw him at seven o'clock? A. Yes, sir.

Q. When did you next see him on that day? A. About half-past ten, somewhere around there, eleven o'clock.

Q. And where was he then? A. He came around where I was working.

By the Court:

Q. Where was that? A. Corner of Sixteenth and F Street, the barber shop.

By Mr. Lawrence:

30 Q. Did you see him after that? A. No, he went home, he started to go home, told me he was going home.

Q. That was ten o'clock in the morning? A. Well, it may have been eleven, but it was before noon when I saw him.

Q. Did you see him and Winter talking together that day? A. I saw Mr. Winter sitting on a—the same as this is the poolroom door—

By the Court:

40 Q. Did you see them together? He didn't ask

what they were doing. Did you see them together that day? A. Well, I didn't see them traveling together; seen them sitting together.

By Mr. Lawrence:

Q. Did you see Allgor talking to Winter that day? A. No, they were both reading.

Q. Both reading? A. Both reading.

By the Court:

Q. Where were they? A. On Mr. Belfor's porch, poolroom porch. 10

By Mr. Lawrence:

Q. Did you see Allgor in the afternoon of that day? A. No, sir; I didn't.

Q. Did you see him in the evening? A. No, I didn't. He promised to come back in the evening, but he didn't.

Q. Do you know Orlando? A. Yes, sir.

Q. Did you see him on that same day? A. yes, sir.

Q. When did you first see him? A. When I was working for the barber washing windows, he came in and got a shave and went out. 20

Q. You were working for some barber? A. Yes, sir.

Q. Did you shave him? A. No, I was washing windows. I am no barber.

Q. Did you look at this man? You saw him, didn't you? A. Yes, sir.

Q. Did you notice anything peculiar about his face? A. Well, he had a scratch on his face. 30

Q. When?

Mr. Cook: Who is this you are talking about?

Mr. Lawrence: Orlando.

Mr. Cook: I object to the testimony as to Orlando at this stage. I don't see how it is material.

The Court: I assume that it is going to be connected in some way with this case, otherwise it would not be at all material. 40

Mr. Lawrence: Yes.

Q. You say Orlando had a scratch on his face?

A. A little scratch, looked like a brier mark or something like that.

Q. What time of day was that? A. About the same time. It was just before I saw Mr. Allgor.

Q. Well, what time of day? A. Somewhere around eleven o'clock, between ten and eleven o'clock.

10 Q. Somewhere around eleven o'clock? A. Yes, sir.

Q. Was that the next day after this trouble?

A. No, that was the same day.

Q. You are sure about that, are you? A. Yes, sir. But Mr. Allgor, when we went to the beach in the morning, I had, you know, plenty of booze I got the night before, so I didn't know—

Q. You have been drinking this morning, too, haven't you? A. No, last night I have been.

20

FERDINAND STINE, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Stine, where do you live? A. Belmar.

Q. Do you know Weinstein's pool room? A. Yes, sir.

30 Q. Were you in Weinstein's pool room on the 23rd of September last? A. I don't remember being there; no, sir.

Q. You don't remember at that time? A. No, sir. I don't remember being in there on that day.

Q. Mr. Stine, you recall of hearing of the assault on Winter, do you not, this old man Winter? You heard about that? A. Yes, sir.

Q. And do you recall the day when that occurred? A. Well, only by what I heard. I didn't keep a—

40 Q. Do you know Israel Allgor, Jr.? A. Yes, sir.

Q. And do you know Orlando? A. No, sir.

Q. And do you know him when you see him?

A. No, I wouldn't know him only somebody pointed him out this morning, that is all I know. I wouldn't have known him if it hadn't been for that.

Q. You saw this man stand up here in the court room a moment ago? A. Yes, sir.

Q. You have seen that man before in Belmar, haven't you? A. I may have seen him but not to know him. 10

Q. Do you recall seeing the defendant and this man Orlando talking together in the rear of Weinstein's pool room? A. No, sir.

Q. You never saw that? A. Not that I know of.

Q. Did you never tell any one that you saw that? A. Not as I know of.

Q. What do you mean by that? Did you or didn't you? A. I don't remember ever saying it. 20

NO CROSS EXAMINATION.

ALBERT FOLLANSBEE, sworn for the State.

Direct examination by Mr. Lawrence:

Q. What is your business, Mr. Follansbee? A. Blacksmith.

Q. And for whom do you work? A. Mr. Allgor. 30

Q. That is the father of the defendant here?

A. Yes, sir.

Q. Do you know the defendant? A. Yes, sir.

Q. Know him very well, don't you? A. Yes, sir.

Q. Do you remember hearing of this trouble of Mr. Winter? A. I heard about it; yes, sir.

Q. Do you remember what day it was? A. On primary meeting day.

Q. Now on the afternoon of that day did you 40

see the defendant Allgor? A. Yes, sir.

Q. Where did you see him? A. He came to the shop.

Q. Does he work in the shop? A. No, sir.

Q. He is not a blacksmith? A. Yes, sir; he is.

Q. Was Mr. Allgor, Senior, there, the father, at that time? A. Yes, sir.

Q. Did you hear any conversation between the father and son? A. No, sir.

10 Q. Did you see whether the son gave the father anything on that afternoon? A. No, sir.

Q. Did you see whether the son had any money or not? A. No, sir.

Q. Did you not see the defendant take from a roll of bills and hand his father ten dollars for payment on a note due the 25th of the month? A. No, sir.

20 Mr. Cook: I object to that as leading, manifestly so.

The Court: No, it calls for a yes or no answer. It doesn't suggest the answer. He has answered it no. He was asked, "Did you not see so and so?" He says he didn't.

Q. Did you see the son on that afternoon of that day give the father any money at all? A. No, sir.

Q. You are still working for the father, are you? A. Yes, sir.

30 Q. Haven't you told certain persons that you saw the son give the father money? A. Not that I know of; no, sir.

Q. What do you mean by not that you know of? A. No, sir.

Q. Did you or didn't you? A. No, sir.

Q. You realize that you are under oath, don't you? A. Yes, sir.

NO CROSS EXAMINATION.

DAVID PATTERSON, sworn for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Patterson, you live in Wall Township?

A. Yes, sir.

Q. You know Israel Allgor, don't you? A. Yes, sir.

Q. Do you recall the circumstance of the injuries to the old man Winter? A. Well, I don't know much about it. 10

Q. Do you remember the 23rd day of September last? A. Yes, sir.

Q. It was primary meeting day, wasn't it? A. Yes, sir; on Tuesday.

Q. Did you see Israel Allgor on that day? A. I saw him in the morning about nine o'clock.

Q. Did you have any conversation with him? A. Yes, he asked me for a quarter and I gave it to him. 20

Q. What did he want a quarter for? A. I don't know. He asked me for it and I handed it to him; asked me would I loan him a quarter and I said I would.

CROSS EXAMINATION by Mr. Cook:

Q. Where did this happen? A. Corner of Sixteenth Avenue and F Street.

Q. Sure that is the morning? A. Yes, sir.

Q. Primary day morning? A. Yes, sir; I came down to vote. 30

Q. Wasn't it election day? A. No, it was primary meeting day.

Q. Was it what they call registration day? A. Primary meeting day.

Q. Didn't you hand Israel Allgor twenty-five cents to go get a half pint of whiskey for you? A. No.

Q. You were a witness on the trial that occurred here a few weeks ago against Weinstein for the alleged illegal sale of liquor? A. Yes, sir. 40

Q. Didn't you swear upon that trial that you gave Allgor twenty-five cents to go to Weinstein's place and buy some whiskey to be used as evidence? A. No.

Q. Are you sure you didn't? A. I am sure I didn't.

STATE RESTS.

10

Mr. Cook: I would like to ask Mr. Winter one question that was omitted.

GEORGE WINTER, recalled.

Further Cross Examination by Mr. Cook:

Q. Mr. Winter, when you were at the Ann May hospital at Spring Lake, do you remember when you were down there suffering from the injuries to your face at the hospital? You remember being down there? A. Yes, sir.

20 Q. And you say on your direct examination that Mrs. Allgor, the wife of this defendant, called to see you while you were there; that is correct, isn't it? A. Yes, sir.

Q. Now while she was at the hospital under these circumstances did you say to her that you didn't know that Israel had been arrested and that you never intended to make any complaint against him because he had done nothing against you? Did you say that or not, yes or no? A. No.

30 Q. Yes or no, did you say that to Mrs. Allgor? A. No.

Mr. Cook: I desire to make a formal application at this time for the direction of a verdict on the ground that I do not think the State has established any case against this defendant.

40 The Court: The motion is denied.

DEFENDANT'S TESTIMONY.

ISRAEL ALLGOR, sworn for defendant.

Direct examination by Mr. Cook:

Q. Mr. Allgor, where do you live? A. New Bedford.

Q. What is your business? A. Blacksmithing. 10

Q. Your father's name is Israel Allgor? A. Yes, sir.

Q. He is a blacksmith also, isn't he? A. Yes, sir.

Q. How long have you lived at New Bedford, all your life? A. Thirty-one years.

Q. How old are you now? A. Thirty-one.

Q. So you have been there all your life? A. Yes, sir.

Q. You do drink a little bit once in a while? A. 20
Yes, sir.

Q. And sometimes too much? A. Yes, sir.

Q. That is true, isn't it? A. Yes, sir.

Q. Now on the 23rd of September, where were you on the morning of that day? A. Down at Belmar.

Q. That was primary day, wasn't it? A. Yes, sir.

Q. Had you been drinking that day? A. A little; yes, sir, in the morning. 30

Q. Did you meet Mr. Winter that day? A. Met him along about eleven o'clock, twelve o'clock, somewheres along there.

Q. Now, Mr. Allgor, in your own way tell the jury just when you met Mr. Winter and where you went with him and where you left him, if you did, and all that you know concerning the matter. A. Well, I was over to Sixteenth Avenue there in the pool room and I was reading a paper and he came over and sat down in the chair alongside of me, 40

right across the door from where I was sitting. I had a paper and was looking at it and handed it over to him and started on down the street and I didn't notice him when he got up out of the chair when he left me, when I was sitting there, and I seen him down that way and I walked up a little bit and walked on down the street with him—I had always knowed him—and got down as far as Fourteenth Avenue and I asked him. “Where
 10 are you going; down town?” and he says, “I am going down to Bergen’s.” And I was going on down to Al Bennett’s and he asked me if I was going down that way and I says, “No, I am going home and I am going to the election and going to vote.” Of course he was pretty well loaded up then. I don’t remember much more after that. And I went up as far as that L Street, they call it, and I left him there.

Q. Show us on that map the course which you
 20 took with Mr. Winter. A. I don’t know which way this runs. The street up there by Bloom Bennett’s, L Street. I left him right there on this corner, went back after another bottle.

By the Court:

Q. L Street and Sixteenth Avenue, you mean?

A. Yes, sir.

By Mr. Cook:

Q. Left him on that corner? A. I went back
 30 after another bottle and I don’t know where he went.

Q. You went back after another bottle of whiskey? A. Yes, sir. He went on. I don’t know where he went after that.

Q. When did you see Mr. Winter again from that point? A. I didn’t see him at all.

Q. Well, you saw him this morning? A. That is the only time I did see him.

Q. Since the 23rd of September is this the first
 40 time you have seen the old gentleman? A. I seen him up in the court room once before when I was

out on bail.

Q. You heard the testimony of Mr. Winter given here today? A. Yes, sir.

Q. Did you ever strike him with your hands? A. No, sir.

Q. Or in any way whatsoever? A. No, sir; I wouldn't let nobody else either.

Q. Did you ever take any money from him? A. No, sir.

Q. Did you ever see anybody strike him? A. 10
No, sir; I never seen him have no money.

Q. Did Winter ever give you any money? A. No, sir; he didn't.

Q. Do you know anything about the occurrence on the 23rd of September that is testified to? A. Nothing more than they came and locked me up the next morning and said I done it.

Q. You didn't steal from him or rob him? A. No, sir; I didn't.

Q. Nor take any of his money? A. No, sir; 20
know nothing about him after that.

Q. Now after you left him I understand it was about half-past twelve o'clock, wasn't it, in the daytime? A. It was between twelve and one, somewheres along there. I don't know exactly what time it was.

Q. Who suggested going back to get some whiskey? A. I did. We drank up what we had and drank up one or two half pints we had—

Q. Was he going to wait there for you till you 30
came back? A. I don't remember about that. I couldn't say whether he was going to wait or whether he wasn't.

Q. You were on your way home, first off; that is where you started for? A. I started for home; yes, sir.

Q. He lived up that way, didn't he? A. He lived the next house above me.

Q. And that was the proper direction to go home? A. Yes, sir. 40

Q. What happened to you after that? Just tell us. A. Well, I went to Spring Lake, the next place I went.

Q. Went to Spring Lake, where to? A. To my father's shop.

Q. Your father's blacksmith shop at Spring Lake? A. Yes, sir.

Q. Do you know what time you reached Spring Lake? A. No, sir; I don't remember. He said it was around about one or quarter past one.

10 Q. Did you get that bottle of whiskey? A. Yes, sir.

Q. Did you have it with you when you struck Spring Lake? A. My father says I had a bottle. I don't remember much about that.

Q. Were you drunk? A. Pretty well lit up; yes, sir.

Q. You haven't a very clear recollection? A. No, sir; I don't remember much about that now.

20 Q. Mr. Allgor, you heard the testimony of David Patterson, the officer? A. Yes, sir.

Q. Where he said that you borrowed a quarter off of him? A. Yes, sir.

Q. On the morning of the 23rd? A. Yes, sir; he gave me a quarter to go buy a half a pint, without asking him.

Q. You didn't ask him for any loan? A. No, sir.

30 Q. What did he give you the quarter for? A. To go get a half pint with.

Q. You were present in court here a few weeks ago as a witness in the State vs. Weinstein for the illegal sale of liquor, were you not? A. Yes, sir.

Q. Do you remember at that time Patterson being on the witness stand? A. Yes, sir.

Did he in this court swear that he gave you this twenty-five cents to purchase whiskey this morning? A. Yes, sir; he said that before when he was here, on that trial.

40 Q. Did you have any money that day? A. Had

seven or eight dollars.

Q. Where did you get it? A. Worked for it; been working down to Al Bennett's. I was off a couple or three days, wasn't working.

Q. What Bennett? A. Al Bennett.

Q. You never had any talk with Mr. Winter after this occurrence, you say? A. No, sir; I never saw him only here.

10

RECESS TILL 1.30 P. M.

(Trial of the cause resumed at 1.30 P. M.)

ISRAEL ALLGOR, JR., resumed.

By Mr. Cook:

Q. You know Samuel Orlando? A. Yes, sir. 20

Q. Was he with you and Mr. Winter on the 23rd of September? A. No, sir.

Q. Did you see him that day? A. Saw him that morning.

Q. Where was he? A. In the barber shop.

Q. When you went back to get this whiskey did you get any whiskey? Do you recall getting any? A. Yes, sir; I got a half a pint.

Q. Did you have anything else to drink? A. I couldn't say about that. 30

Q. I mean when you got the liquor, when you went back after that half pint. A. I don't remember how much I got. I know I got a bottle and I had it when I got down to Spring Lake, had one or two bottles.

Q. You were intoxicated? A. Yes, sir.

CROSS EXAMINATION by Mr. Lawrence:

Q. Mr. Algor, you know Orlando? A. When I see him; yes, sir. 40

Q. How long have you known him? A. Well, I couldn't say. I suppose I had knowed him two or three weeks.

Q. He was a barber, was he not? A. Not to my knowledge; no, sir.

Q. Where did you first meet Orlando? A. Henry Vanbango's.

Q. That is a hotel? A. Saloon down there; yes, sir.

10 Q. How long before the 23rd of September? A. Oh, I suppose a couple weeks, I had known him about that long.

Q. How frequently had you met him prior to the 23rd of September? A. Well, I couldn't say about that. The only time ever I talked I happened to meet him on the street or met him in there two or three times.

Q. Did you ever drink with him? A. Well, three times that I had a drink with him; yes, sir.

20 Q. Where did you have drinks with him? A. Henry's.

Q. Henry Vanbango's A. Yes, sir.

Q. During the daytime or evening? A. I think once in the daytime, maybe, two or three times in the evening or afternoon.

Q. You say you are a blacksmith? A. Yes, sir.

Q. For whom were you working on the 23rd of September? A. I had been working for Al Bennett.

30 Q. Been laid off? A. Well not laid off; I kind of quit.

Q. When did you quit Bennett's place? A. Well, that was on Tuesday some time the week before.

Q. The week before? A. Yes, sir.

Q. So that a week prior to the 23rd— A. Well, I had worked for him that week, part of it.

40 Q. How many days had you been without work prior to the 23rd of September? A. Three or four days. Well, some weeks I would work three or

four days, maybe put in a whole week.

Q. Now immediately prior to the 23rd of September how many days had you been without work? A. In that same week, you mean?

Q. Well, there was only one day in that week, wasn't there? A. I worked three or four days. I can't say.

Q. The 23rd day of September was what day of the week? A. Tuesday, I think.

Q. It was primary day, wasn't it? A. Yes, sir. 10

Q. You hadn't worked on Monday? A. No, sir.

Q. How many days prior to that had you been without work? A. About three days.

Q. On the 23rd of September you had no money, had you? A. The 23rd?

Q. Yes. A. Had seven or eight dollars, I don't know just exactly how much.

Q. Have it in your pocket? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. You did get a quarter off of David Patterson that morning, didn't you? A. He gave me a quarter to go in and get a half pint with. 20

Q. Go in where? A. Well, anywheres I could get it; Weinstein's.

Q. Anywhere you could get it? A. Yes, he sent me in and got one half pint and sent me in for another.

Q. Did you get it? A. Yes, sir.

Q. Weinstein & Hoffman's? A. Yes, sir.

Q. You are quite sure that was the 23rd of September, are you? A. Yes, sir. 30

Q. Sure enough to swear to it? A. Yes, sir; but I couldn't swear whether I paid for it or not.

Q. You couldn't swear whether you paid for it or not? A. No, sir; I don't remember.

Q. How long had you known the old man Winter? A. Oh, several years.

Q. And met him frequently? A. Well; yes, sir. He lives right up by my house, the second or first house. 40

Q. He had worked for McConnell, had he not?
A. Yes, sir.

Q. Mr. McConnell owns a large farm, doesn't he?
A. Well, seven or eight acres, ten acres.

Q. However, you knew the old man was working for McConnell?
A. I didn't know whether he was working for him or staying there for his board.

Q. How long had he worked for McConnell?
A. I couldn't tell you that.

Q. Well, several months.
A. Well, I don't think he had been there very long. He had been there the biggest part of the summer, I think.

Q. You knew that?
A. Yes, I saw him up there.

Q. Now where did you first meet Winter on the morning of the 23rd?
A. Why, there at Belfor's place.

Q. What place?
A. Belfor's, on Sixteenth Avenue.

Q. What kind of a place is that, a saloon?
A. A pool room.

Q. A pool room?
A. Yes, sir.

Q. And the old fellow was sitting on the porch, you say?
A. Yes, sir.

Q. Did you have any conversation with him?
A. No, sir; I didn't say anything to him at all; just handed him the paper and asked him if he wanted to see it.

Q. What time was that you saw him sitting on the porch of Belfor's place?
A. I couldn't tell you. It was between ten and twelve o'clock, somewhere along there.

Q. You saw the old man get up out of his chair and go down the street, didn't you?
A. Yes, sir; I didn't see him when he went down the street.

Q. You saw him get out of his chair and go down the sidewalk, didn't you?
A. I saw him going down the street; yes, sir.

Q. You got up and followed him, didn't you?

A. Went down the same way he did. I didn't see him till I got down the street.

Q. At what point did you catch up with him on F Street? A. Just one block there, about, a little block.

Q. About a block below the Belfor place? A. No, it ain't a block, I don't think.

Q. He was walking ahead of you? A. He was ahead of me and I walked up alongside of him.

Q. What did you say to him? A. Well, I don't remember what I said to him exactly. I walked up and I asked him where he was going and he said he was going down to Bergen's. 10

Q. You also asked him whether he had left his job or not, didn't you? A. No, sir.

Q. You say you didn't ask him anything about that? A. No, sir.

Q. Did he tell you that he had left his job at McConnell's? A. No, sir; never a word mentioned. 20

Q. Did you ask him whether he had finished his work at McConnell's? A. No, sir.

Q. Quite sure about that, are you? A. Yes, sir; I am sure, positive.

Q. Now you walked along with the old man then? A. Yes, sir.

Q. To what point? A. Thirteenth Avenue or Fourteenth Avenue.

Q. That is, you went up Thirteenth Avenue, just as the witnesses have said? A. Fourteenth, I think it is. 30

Q. Up to Fourteenth? A. Yes, sir.

Q. Where on Fourteenth Avenue? Turn to the map and show me. A. Well, Sixteenth Avenue—there is the next street they call Fourteenth, but that don't run straight through. I don't know how this runs on this map.

Q. Now the street running along the bottom of the map is F Street. A. Is this F Street here?

Q. Yes. A. Where is Sixteenth? 40

Q. Well, that is marked, isn't it? A. Fourteenth only runs to the railroad. Up this street.

Q. Now you walked with the old man up Thirteenth then, did you? A. Yes, sir.

Q. How far up did you walk? A. Walked up as far as this corner, then we turned and came up to the westward.

Q. Then you went clear up to L Street? A. Yes, sir.

10 Q. Then you turned down L Street? A. Yes, sir; to Sixteenth.

Q. And Orlando met you about midway of L Street, didn't he? A. I hadn't seen Orlando at all.

Q. Quite sure about that? A. Yes, sir; I am positive.

Q. You realize you are under oath, of course? A. Yes, sir.

20 Q. You then walked to the junction of L Street and Sixteenth Avenue, did you? A. Yes, sir; there is where I left him.

Q. Do you remember seeing that man in the wagon? A. No, sir.

Q. Didn't see him? A. Don't remember it; no, sir.

Q. Do you remember the circumstance of a man walking down towards River Avenue? A. No, sir.

Q. Don't remember that? A. No, sir.

Q. How many drinks had you before you met Winter? A. I couldn't tell you that.

30 Q. I mean as far as you know now. A. I had had several but I don't know how many.

Q. Had you had more than one? A. Yes, I had a dozen, I guess, more than that.

Q. How old a man are you? A. Thirty-one.

Q. What do you weigh? A. About one hundred and eighty-five.

Q. You are a man of considerable strength, aren't you, physical strength? A. I don't know.

40 Q. You have said so time and again, haven't you? A. I don't know that I ever said so.

Q. You have rather boasted of your physical strength, haven't you?

(Objected to. Objection sustained.)

Q. Where did you say you left Winter? A. Left him on the corner of Sixteenth Avenue and that street, L Street.

Q. That would be about here, wouldn't it, right about there? (Indicating on map). A. Wherever it is; yes, sir. 10

Q. About there? A. If that is Sixteenth Street I left him right on this corner.

Q. You say you were drunk? A. Yes, sir; I was pretty drunk.

Q. Why did you leave him on the corner of Sixteenth Avenue and L Street? A. Well, I went after another bottle.

Q. Who told you to go after another bottle? A. Well, we drank up what I did have.

Q. Who drank up what you had in there? A. 20 Me and him together, me and Winter. I told him I would go up and get another bottle. He didn't say anything and went on up the street.

Q. Had you been in the habit of drinking with this old man? A. Not very often.

Q. Never before, had you? A. Oh, yes, I had a few drinks with him.

Q. You and he were not cronies, didn't meet him every day? A. No, sir.

Q. Simply a casual acquaintance, isn't that so? 30 A. Met him several times when he had been drinking.

Q. You never had walked with him before, had you? A. Never walked home with him; no, sir.

Q. How is it that you and the old man didn't go straight up Sixteenth Avenue? A. Well, I started to go down to Al Bennett's; and when I came to talk about the election I asked him if he had been up to vote yet and he said no. I says, "Come on, we will go up home;" and he said, "All 40

right." So instead of going back to Sixteenth Avenue we started right straight down the first street. We went right on the corner.

Q. That is Thirteenth Avenue? A. Fourteenth, I think.

Q. Where is Al Bennett's place? A. On the corner of Eleventh Avenue.

10 Q. How is it you stopped then and walked with the old man up Thirteenth Avenue instead of going down here to Eleventh Avenue, Al Bennett's? A. Well, as long as he hadn't voted I wanted him to go up to the polls and vote.

Q. Where was the voting place? A. New Bedford.

Q. Was that the direction to go to New Bedford, up Thirteenth Avenue? A. Yes, from where I was.

20 Q. How far is New Bedford from Belmar? A. I judge about two miles. That was his voting district.

Q. You are sure of that, are you? A. Yes, sir.

Q. What district do you call that? A. Wall Township, Second District, I think.

Q. You are quite sure about that? A. Well, I have forgotten now. I don't know whether the first or second.

Q. Did you vote at the same district? A. Yes, sir.

30 Q. Where was your home at that time? A. Right next to my father's.

Q. Did your father live at New Bedford? A. Yes, sir; lives next door to me.

Q. You were not working for your father at all as a blacksmith, were you? A. I had been that spring but I left down there, that job.

Q. You left a considerable time before this occurrence? A. Left about July or August, somewhere along there.

By the Court:

40 Q. Had you and this old gentleman ever had

any trouble? A. No, sir; never in the world.

Q. Have you any reason to suggest why he brings this serious charge against you? A. No, sir; I can't say.

Q. You mean you don't know why he did it?

A. No, sir; I can't say, only some of them down there have got it in for me.

By Mr. Lawrence:

Q. Why would anybody have it in for you in Wall Township? A. Well, some of those hotel fellows have got it in for me. 10

Q. If you are a perfectly innocent man why would anybody have it in for you? Can you give any good reason? A. Well, if there is anything happens down there, a fuss started, they always hold me up for it, they say I am to blame.

Q. Why is that? Why do they always select you for the cause of the trouble? A. Well, that report come in there and somebody come up and talked to me and they wanted to get this on me, that is all. Why they did it I don't know. 20

Q. Is that the only reason you can give? A. Yes, sir.

Q. You think you are singled out as the victim each time, as the fellow who caused the trouble, are you? A. I am satisfied of it.

Q. Have you had any trouble before this?
(Objected to. Objection sustained).

Q. You know David Patterson, do you? A. Yes, sir. 30

Q. You know John R. Newman? A. Yes, sir; I do.

Q. In fact, you know all of these witnesses that have been produced here by the State, don't you? A. Yes, sir. There is one or two there I don't know.

Q. You know Jordan Newman? A. Yes, sir; I know him.

Q. You know Howard Haberstick? A. Yes, sir. 40

Q. You know Charles Newman, do you? A. Yes, sir; I think I do.

Q. Now have John I. Newman or any of those men any reason for coming here and testifying against you?

(Objected to on the ground that they have not testified against him).

Mr. Lawrence: Well, the question is withdrawn.

10 The Court: I think the question had better be withdrawn.

Mr. Lawrence: All right.

Q. What time did you get to your home that day? A. I don't know. I went home with my father that night.

Q. When did you get to your own home? A. Well, it was after I went to the polls.

20 Q. Went where? A. Went up to the polls around quitting time, somewhere around there. I don't know exactly what time.

Q. Around quitting time? A. Well, working hours, somewhere around there. I don't know what time. It was three or four o'clock, I suppose.

Q. You went to your father's blacksmith shop, didn't you, that afternoon? A. Yes, sir.

Q. What time did you arrive there? A. I couldn't tell you.

Q. Can't fix the hour? A. Only what he said.

30 Q. Only what he said? A. Well, he said I was there about the time we started to go to work, one o'clock, or a little after.

Q. One o'clock? A. About one, he said.

Q. Did you not on that occasion hand your father ten dollars? A. No, sir; I didn't have ten dollars with me.

Q. Sure of that? A. Yes, sir.

40 Q. Well, if you were going with the old man to vote why was it that you stopped at L Street and Sixteenth Avenue and went back after another

bottle? A. Well, I wanted to get another bottle to take home with me; that is, my own part.

Q. Take home with you? A. Yes, sir.

Q. You say you were already drunk, do you?
A. Yes, sir.

Q. Did you stagger? A. I don't know whether I staggered or not.

Q. What? A. I don't know whether I did or not.

Q. The fact is you don't remember much about this day, do you? A. I don't remember much. I don't remember any more than going back to Sixteenth Avenue. 10

ISRAEL ALLGOR, SR., sworn for defendant.

Direct examination by Mr. Cook:

Q. You are the father of the defendant? A. I am. 20

Q. You are a Wall Township man? A. I am, sir.

Q. Lived there many years, haven't you? A. Yes, sir; always lived there mostly, the last forty-five years.

Q. You are a blacksmith, are you not? A. I am, sir.

Q. And your shop is where? A. Spring Lake. I have a shop at New Bedford, too. I have a shop at home there, but I work in Spring Lake. 30

Q. Now you remember the 23rd day of September? A. I do; yes, sir.

Q. Did you see your boy on that day? A. I seen him; yes, that afternoon.

Q. Do you know the time? A. Well, it was a little after one o'clock. We just began to work well; had our noon hour and was just going to work again.

Q. What was his condition when he arrived at 40

your place? A. I called him crazy drunk.

Q. Did he have any whiskey with him? A. He had.

Q. What was it? A. I didn't taste of it. It was some of that Michelson's lightning I guess, by the looks of it.

Q. How much did he have? A. He had one bottle with some into it and had another bottle full.

10 Q. So he had two bottles? A. I think he had had two bottles, maybe, but he didn't have but one. He had one full, I know.

Q. You say it was right after one o'clock, noon, of that day and he was drunk. What did you do with him? A. He laid down and when I went home that night I took him home with me.

Q. And he was with you all the time? A. From that time on he was.

20 Q. Do you know whether he had any money or not when he landed at your place? A. I do not.

Q. Do not? A. Don't know that he had any

Q. Do you know that he had any? A. I don't know that he had any.

Q. Did you ascertain or did you do anything to see whether he had any money or not? A. I did not.

30 Q. Did anything happen whereby you could have gained that information? A. Well, he asked me for a dollar that night to buy some meat to take home with him, after he sobered up a little.

Q. Where were you then when he asked you for the dollar? A. At the shop.

Q. Where were you? A. We were on the road home, for that matter, when he asked me that.

Q. You drove him home? A. He drove home in my wagon.

40 Q. Do you know this old gentleman Winter? A. I always knowed him since he was a little boy. We were brought up together.

Q. He has lived in Wall Township many years?

A. Yes sir; knowed him since he was five years old.

Q. You heard about the trouble, didn't you, that the old gentleman had on the 23rd of September? You heard he got hurt? A. I saw him the next morning.

Q. Where did you see him? A. I saw him down at the Squire's office, Spring Lake.

Q. Did he say anything to you regarding this occurrence? A. They had arested my son and I asked him how it was and he told me that my son didn't do anything to him. He told me that somebody came up behind him, he was walking up the road, and somebody came up behind him and struck him and knocked him unconscious, and he says, "Your son didn't hurt me at all." That is what he told me the next morning. 10

Q. That is down at the justice's office, down at Justice Newman's office? A. Yes, sir; outside, sitting out on the porch. 20

Q. What did he say, if anything, about the complaint that was sworn out against your son? A. He said he hadn't made any complaint.

Q. Made no complaint against your son? A. He told me so in the hospital, too, afterwards.

Q. Where was that, Ann May? A. Yes, sir.

Q. Spring Lake hospital? A. Yes, sir.

Q. He made the same statement to you? A. Yes, sir. 30

Q. And said that your son had nothing to do with it? A. Yes, sir.

Q. Did you have any other conversation with him in regard to that? A. All I ever asked him how it was. I was always interested in him, always thought pretty well of the old man.

Q. When did you talk to him last about this matter, can you recall? A. No, I couldn't recall the date.

Q. You have met him frequently since the acci- 40

dent, haven't you? A. No, not often.

Q. Those are the occasions when you did talk with him? A. I talked with him once down there at Fair Haven a short time ago.

Q. What year? A. Had a talk with him about five minutes down there at Fair Haven.

Q. What did he say then? A. Said pretty much the same thing.

10 Q. What was it? A. Well, he said that Israel never hurt him nor harmed him.

CROSS EXAMINATION by Mr. Lawrence:

Q. How many times have you seen the old man since the 23rd of September? A. I guess I have seen him three or four times while he was in the hospital, and I have seen him once or twice up here, once up here, seen him one day to a funeral. funeral.

Q. Where? A. At Belmar.

20 Q. And you went clear over to Fair Haven to see him, didn't you? A. Went over to Fair Haven to see a friend of mine.

Q. And you have been urging the old man to let up on your son, haven't you? A. I didn't say anything—

Q. Didn't you say on one occasion that if the old man swore to the truth in the matter your son would be sent to state prison? A. I didn't say anything of the kind.

30 Q. Haven't you asked him to be easy on your son? A. I don't think I did.

Q. Do you say whether you did or not? A. I told him if the boy didn't do it I didn't want him to lay it to him.

Q. As a matter of fact you have been very anxious about this case, haven't you, for your son? A. I don't like to see my son prosecuted for something that he hasn't done.

40 Q. And wherever you could get any one to let up on your son you have done it, haven't you; asked them to do it? A. I don't know why I

should.

Q. Now you say the old man said to you that your son didn't have anything to do with striking him? A. Yes, didn't hurt him.

Q. Did the old man ever say to you that your son didn't grab him or wasn't there on the scene of the crime? A. No, he didn't say that my son wasn't there but he said somebody struck him and knocked him unconscious.

Q. He never said your son wasn't there? A. 10
He said my son went up the road with him, walked up the road, and somebody came behind him and hit him.

Q. Didn't he also tell you that your son grabbed him? A. No, he didn't.

Q. As a matter of fact you took some money away from your son after this affair, didn't you?
A. I did not.

Q. You say that is so? A. Yes, sir; I say that is so. 20

Q. Haven't you refunded to the old man or Mr. Leuppie, his guardian, the sum of \$66? A. Haven't I refunded?

Q. Yes, haven't you paid to Mr. Leuppie, the guardian of this old man, the sum of \$66? A. I don't know that I did.

Q. You know whether you did or not.

By the Court:

Q. What do you mean that you don't know that you did? You either did or you didn't, one way or the other. A. The old man Leuppie has 30
been here today to answer for himself.

By Mr. Lawrence:

Q. Well, he is not here so we are asking you. What do you say about it? A. Well, the old man Leuppie, to tell you the truth about it, said the old man ought to have his money, he said he lost it; and I said, "I will give it to you."

Q. Did you pay it or not? A. I did.

Q. How much did you pay Leuppie? A. I 40

gave him \$67.

Q. The exact amount the old man claimed he lost? A. The sum old man Leuppie claimed he had lost.

Q. Now I will ask you under oath whether a whole or part of that money that you paid to Leuppie, as guardian of the old man, was not taken from your son's person by you. A. No, sir.

10 Q. Or given by your son to you? A. Not a penny of it.

Q. Whose money was it you gave to Leuppie? A. I gave him my own. I drew a check on the Spring Lake bank and went and gave it to the old man to pay it.

By the Court:

20 Q. Why did you pay the old man \$67? A. Old man Leuppie said if I would pay that it would square the whole thing, and he said it would be the easiest way out of it. I didn't know whether the boy took it or not, anything about it.

By Mr. Lawrence:

Q. You believed your son to be innocent, didn't you? A. I did; yes, sir.

Q. You do today, don't you? A. I don't think that he ever hurt the old man or wouldn't, any quicker than I would.

30 Q. Now believing your son to be innocent of any crime why did you pay that money to Leuppie? A. Well, as I told you, I thought all I had to do was to pay.

Q. That is the only reason you can give? A. That is the only reason I can give. Leuppie told me that would be all of it.

Q. You had a talk with your son about this matter the next day, didn't you? A. No, I didn't. They took him to Freehold early the next morning.

40 Q. Your son has told you that he was with the old man up there in the woods? A. He said he started to go up with him.

Q. Did he tell you that he went down to get another bottle of whiskey? A. Yes, sir.

Q. When did he tell you that? A. Told me that night. I don't know whether he told me that before they took him to jail or not.

Q. He didn't tell you the same day, did he?
A. I don't know that he did.

Q. What time did you say that he got to your blacksmith shop? A. A little after one.

Q. Quite sure about that? A. Yes, sir. 10

Q. You say that he was crazy drunk? A. Yes, sir.

Q. You are perfectly sure about that, are you?
A. I know it.

Q. What do you mean by his being crazy drunk? A. Well, he didn't know how to contain himself or anything else, didn't know what he was doing, for that matter.

Q. When did he remove the blood from his clothes? A. Who? 20

Q. Your son. A. I don't know that he had any on him.

Q. Didn't you see the blood on his clothes? A. Never seen a bit of blood on his clothes; never heard tell of it till you tell me now.

Q. How do you know it was one o'clock when he got to your place? A. Well, it was after one a little, because we just had our lunch and just began to work when he came up the road.

Q. Was he alone? A. He was alone. 30

By the Court:

Q. When was this payment of \$67 made by you to Leuppie? A. I don't know. Some time ago.

Q. What do you say, how long after the alleged occurrence? A. Well, it was before the case was brought before the grand jury.

Q. Before the case was brought before the grand jury? A. Yes, sir; he came to me and told me that if I would give him that money the thing would be all settled, get the old man's money back. 40

I said I didn't have the money and my son didn't have the money, but as long as they had made a charge against him the way the paper was saying, I says, "Here is your money." What he done with the money I don't know. And I says, "The old man shouldn't be without the money, because he is poor and I have always knowed him and we were children together," and I was sorry for the old man and I went and gave it to him.

10 Q. Is Mr. Leuppie here today? A. No, sir; I have had two men hunting for him.

Q. You asked for an adjournment on account of the absence of Leuppie, didn't you? A. Yes, I had two men looking for him.

Q. But he is not here today? A. No, sir.

Q. You know that Mr. Leuppie has returned from Europe? A. Yes, sir.

Q. And been home some time? A. Yes, I have been to his house five times and couldn't see him.

20 Q. How is it you went clear to Fair Haven to see old man Winter? A. I was right down there to see a friend of mine that worked right by him, Harvey Little's son-in-law there, and while I was up there talking to Harvey I went over and seen the old man Winter, or heard he was working there, and wanted to see what he had to say about it.

Q. You already knew what he had to say? A. Part of it; yes, sir.

30 Q. As a matter of fact you have seen this old man half a dozen times since this occurrence? A. No, sir.

Q. Seen him several times? A. No.

Q. And each time you have tried to induce him to let up on your son, haven't you? A. No, sir.

Q. As a matter of fact you saw him only three days ago, didn't you? A. No, sir.

40 Q. Had no talk with him? A. No, sir. It was a week or two ago I was at Fair Haven; it was two or three weeks ago, and I went right over and seen

him in the next yard to where I was seeing Mr. Little.

RE-DIRECT EXAMINATION by Mr. Cook:

Q. You didn't know this case was coming up today until when? A. Day before yesterday.

Q. And how did you find that out? A. I got a notice from the lawyer, Mr. Dittmar.

Q. By a letter? A. Yes, sir.

Q. You live back in a country district, New Bedford? A. Yes, sir. 10

Q. This case was supposed to come up next Thursday, was it not? A. Yes, sir.

Q. And that was your understanding of it when you left my office on Saturday? A. Yes, sir.

Q. Now when you paid this money to Mr. Leuppie, did your son know anything about it? A. Not a word.

Q. You didn't consult with him about paying the money? A. No, sir; nor he didn't know I paid it. 20

Q. And what did you say the reason was for giving this money? A. The old man Leuppie said if the old man got his money back there would be nothing more done with it, and I said, "If that will settle the thing here is the money."

Q. Did you stop to think whether this money was to be paid to him as a return or not? A. I supposed it was returning the money when I did, and I told him I had to be informed if he had that amount of money; I didn't know that he had any money, but he claimed that he had and I gave it to him. 30

Q. You didn't stop to reason whether your son was innocent or not, it was merely a matter of peace? A. It was merely a matter of peace.

Q. You did it without his knowledge? A. Yes, sir; I don't know as he knows it yet. I don't know whether I ever told him that I gave it to him. I don't think I did. 40

RE-CROSS EXAMINATION by Mr. Lawrence:

Q. How many times have you paid money for your son under such circumstances as these? A. Never paid none in such circumstances as these.

Q. As a matter of fact, Mr. Allgor, the only excuse you have ever made for your son was that he didn't actually do the striking; isn't that the only excuse that you have ever made?

10 (Objected to).

The Court: What difference does it make what excuse he made?

MRS. FLORENCE ALLGOR, sworn for defendant.

Direct examination by Mr. Cook:

20 Q. You are the wife of the defendant? A. Yes, sir.

Q. And live with your husband? A. Yes, sir.

Q. Do you remember the 23rd day of September last? A. Yes, sir.

Q. Did your husband come home that night? A. Yes, sir.

Q. How did he get home? A. Pretty drunk.

Q. Well, I say how did he come home? A. With his father.

30 Q. In what, walking or wagon? A. No, sir; in a wagon.

Q. Pretty drunk? A. Yes, sir.

Q. Do you know whether your husband had any money when he came home that night? A. Had about twenty cents.

Q. Had about twenty cents? A. Yes, sir.

Q. You know Mr. Winter? A. Yes, sir.

Q. Did you ever have a talk with him down at the Spring Lake hospital about his injuries? A. 40 I did.

Q. What did he say to you about your husband's part? A. He asked me where he was and I told him he was—

Mr. Lawrence: I object unless they fix the time.

The Court: At the Spring Lake hospital.

Mr. Lawrence: When?

The Court: While he was being treated for these injuries.

A. He asked me where he was and I told him he was locked up. He says, "I didn't know that. What is he locked up for?" and I told him. He says, "I didn't make any complaint against your husband." He said, "He didn't do anything to me."

Q. Did he make that statement more than once to you? A. Only that one time.

Q. That one time? A. Yes, sir.

CROSS EXAMINATION by Mr. Lawrence: 20

Q. Any one present when you were talking to the old man? A. My niece was with me.

Q. Who is your niece? A. Matilda Allgor.

Q. Any one else? A. No.

Q. No hospital doctors or nurses? A. No, sir.

Q. Where was the old man, in the general ward there with the other patients? A. Yes, sir.

Q. Or in a private room? A. He was in with other patients.

Q. So that there was no one present when this conversation took place excepting yourself and your niece and the old man; is that right? A. That is all. 30

Q. And when was this conversation? A. On Wednesday afternoon.

Q. Of what date? A. I don't know just what date it was.

Q. Well, with reference to his receiving his injuries, how long afterwards was it? A. Well, he had been in there about three weeks. 40

Q. What did you go there for? A. I went to see him.

Q. Who sent you? A. Nobody.

Q. Did you know the old man? A. I did.

Q. How long had you known him? A. About four months.

Q. You knew that he had made a complaint against your husband, didn't you? A. No, sir.

10 Q. Didn't even know it then? A. I didn't know it.

Q. Oh, yes, you must have known that because you told him that he had been arrested. A. Well, I didn't know that he had made no complaint.

Q. You knew that your husband had been arrested for these injuries? A. I knew that.

Q. And you thought that the old man had made the complaint, didn't you? A. I thought so, yes.

20 Q. And you asked him about it? A. No, I didn't.

Q. As a matter of fact your husband sent you down there to talk to the old man, didn't he? A. No, sir; he didn't.

Q. Is your husband a drinking man? A. Yes, he had been drinking then. He doesn't now.

Q. What time did you say your husband got home that night? A. About six o'clock.

Q. How near does he live to your father-in-law? A. About from here to the door.

30 Q. Where had he been between one o'clock and six o'clock? A. Over to his father's shop.

Q. Did you see him there? A. No, I was home.

Q. You heard your father-in-law say that he arrived at his place about one o'clock? A. I did.

Q. Do you mean to say that he stayed there until six o'clock before coming home? A. He was there sleeping.

Q. How do you know he was sleeping? A. Well, his father told me.

40 Q. All you know about that then is hearsay, of

course? A. Yes.

Q. Who brought him home? A. His father.

Q. Was he drunk when he brought him home?

A. He was.

Q. Was he crazy drunk? A. Yes.

Q. Sure about that? A. I certainly am.

Q. Well, he is rather a dangerous character when he is crazy drunk, isn't he?

(Objected to. Objection sustained).

Q. You never had any other conversation with the old man, did you? A. No. 10

Q. How did you know the old man was in the Spring Lake hospital? A. I was there when they took him.

By the Court:

Q. You were where? A. Squire Newman's office.

Q. What were you doing at Squire Newman's office? A. I went down there with my father-in-law in the morning. 20

Q. And the old man was there then? A. He was brought there.

Q. When did you first hear that the old man was hurt? A. That morning when Mr. White came after my husband.

Q. Was your husband arrested at the same time the old man was at the Squire's office? A. Yes.

Q. How many times have you visited the old man? A. Went there once with my father-in-law in the afternoon and one Wednesday. 30

CYRUS L. LOW, sworn for the defendant.

Direct examination by Mr. Cook:

Q. You live in Monmouth County? A. Yes, sir.

Q. You hold some official position, do you not, in the county, or did? A. I did, yes. 40

Q. What was it? A. Steward of the county house.

Q. That is the poor farm? A. Yes.

Q. You were there how many years, Mr. Low?
A. Twenty-two.

Q. And do you know George Winter? A. Yes, sir.

Q. How long have you known him? A. About thirty years.

10 Q. And you knew him in Wall Township? A. Yes, sir.

Q. How intimately did you know him? A. Well, he worked for me once.

Q. Did you meet him frequently? A. Well, about six or seven years ago.

Q. Now, Mr. Low, do you know the reputation of George Winter in the locality in which he lives for truth and veracity?

20 (Objected to).

The Court: Why?

Mr. Lawrence: On the ground that the proper foundation has not been laid.

The Court: What foundation is needed for that?

Mr. Lawrence: Well, my objection goes to the point that he does not say whether he knows it or not.

Mr. Cook: I asked him that.

30 Q. Do you know it, his general reputation?

The Court: Say yes or no to that question.

A. Well, no, I don't know as I do. He wasn't with me a great while.

Q. I say do you know his general reputation for truth and veracity, general reputation, what people say about him?

The Court: Yes or no, you can answer.

A. Well, yes.

40 Q. What is it, good or bad? A. Well, not very good.

Q. Not very good? A. No.

CROSS EXAMINATION by Mr. Lawrence:

Q. Who did you ever hear say that his reputation for telling the truth was not good? A. Well, he was always considered to be half crazy.

Q. That doesn't answer the question, Mr. Low. Whom did you ever hear say that the old man did not tell the truth? A. I never heard anybody say so.

10

By the Court:

Q. Then how do you know that he has that reputation? A. Well, when he was working for me he would tell me things that wasn't so.

Q. No, that is not reputation. Reputation is what people say about a man. Now the Prosecutor wants to know whom you heard. A. I never heard anybody.

Mr. Lawrence: I move that the testimony be stricken out.

20

The Court: Strike it out.

DEFENDANT RESTS.

30

40

STATE'S TESTIMONY IN REBUTTAL.

GEORGE WINTER, recalled for the State.

Direct examination by Mr. Lawrence:

Q. Mr. Winter, Israel's father has talked to you once or twice, hasn't he? Israel Allgor's father has talked to you, hasn't he? A. Yes, we spoke together.

10 Q. You have talked about this case, haven't you? A. A little, yes.

Q. Now what did Mr. Allgor come to see you for? What did he say to you? A. Well, he asked me—I thought by the talk, you know, that he wanted me to make it as light as I could.

The Court: Strike out what he thought.

20 Mr. Cook: I object to it for this reason: It is undisputed at this time that whatever Mr. Allgor, Senior, did in this matter was done without the knowledge or acquiescence of his son and consequently this testimony would not be relevant.

The Court: That is why I interrupted this morning. I do not see how this is competent unless you show agency, unless you show that Allgor, Senior, was sent by his son or something of that kind.

30 Mr. Lawrence: It is offered on the credibility of that witness. I ask whether he had not appealed to this old man to let up on his son. He denied that he did anything of the kind.

40 The Court: Even if he had the inference to be drawn from such conduct would be that the defendant was guilty and charging him with something that apparently he is not responsible for. Now unless you can show some agency between the defendant and his father, and thereby the father interviewed Mr. Winter, I can't see that the defendant would be

chargeable in any way with that the father said or did. If he is not chargeable then we should not bring it out, because it would be prejudicial to him.

Mr. Lawrence: It is offered simply to attack the credibility of that witness.

The Court: Yes, but now you are trying to charge the defendant here with the result of that conduct; namely, that his father understood that this man would not prosecute him. 10

Mr. Lawrence: Well, the most that I can do is to offer to prove the—

The Court: No, I don't think it is right.

Mr. Lawrence: Well, if your Honor then won't permit me to attack his credibility—

The Court: Well, you are entitled to attack his credibility.

Mr. Lawrence: I mean in this way.

The Court: Not in this way.

Mr. Lawrence: In other words, I have the right to ask this man what he actually did say to him. 20

The Court: You have the right to ask Allgor about it.

Mr. Lawrence: Well, I did ask him that. I thought I had laid the foundation for that.

The Court: You see the trouble is if Allgor, Senior, was on trial it would be all right.

Mr. Lawrence: I appreciate that is another question entirely, but I am not assuming to hold this man on this testimony excepting for the purpose of discrediting the testimony of Allgor, Senior. 30

The Court: It is too dangerous when these conditions exist.

Mr. Lawrence: Well, I make that offer on behalf of the State.

(Objected to).

The Court: That is all.

BOTH SIDES REST.

40

Mr. Cook: I think at this time I ought to ask the court to direct the jury that any evidence in regard to Orlando should be stricken out, as having no place in this charge against this defendant. There was evidence.

10 The Court: You ask to have stricken out the evidence of the complaining witness Winter that while he was taking a walk with the defendant in this case that a man whom he now thinks was Orlando came up and struck him and then the defendant took him by the arms and carried him or helped him into the woods and while that was being done he was again struck two blows? You want that stricken out?

Mr. Cook: No, I understand he did not identify Orlando. He said somebody hit him.

20 The Court: But he said he is the man. Of course the jury will attach such importance and weight to that testimony as they think it deserves, but I will not strike it out.

Mr. Cook: The Prosecutor ought to elect on which count he ought to rely and I think the second count is largely the first one, without his knowledge and consent.

The Court: The Prosecutor certainly does not ask for a conviction on that count.

Mr. Lawrence: No, it is the other two counts.

30 Mr. Cook: It is the robbery count that you ask for a conviction on included?

Mr. Lawrence: The robbery is the first count, larceny from the person the second, and receiving the third.

Mr. Cook: Those two counts are to be stricken out?

The Court: I think if he is guilty at all he is guilty of robbery.

CHARGE OF THE COURT.

Gentlemen of the Jury: The defendant and a man named Orlando were jointly indicted, charged with the crime of robbery. On the application of Orlando's counsel what has been called in law a severance was granted, so that Orlando was granted a separate trial from his co-defendant Allgor, and Allgor, therefore, is being tried alone on this joint indictment, and it is simply the question of Allgor's guilt or innocence of this charge you are now to determine on the evidence that has been submitted to you. 10

There are three counts or charges in this indictment. The Prosecutor, and I think very properly so, has elected to ask for the defendant's conviction on the first charge or count, namely, the one for robbery. 20

The State claims, gentlemen, in support of this charge that on the 23rd of September last, this defendant Allgor, together with the co-defendant Orlando, went with this man from a point on F Street and 16th Avenue up F Street; that is, Allgor and Winter, the complaining witness, went together up F Street and 13th Avenue to L Street, then along L Street to Sixteenth Avenue, where one of the State's witnesses said he saw Orlando on the sidewalk following them; and then the State contends that the grocer whose wagon was in the neighborhood saw the three men, Winter, Allgor and Orlando, on Sixteenth Avenue near the woods at the point where Winter claims he was assaulted. The State claims that as the result of that assault the complaining witness, this old man Winter, in fear and in order, as he stated upon the stand, to avoid any further harm and trouble after, as he claims Allgor had searched his pockets, or some of them, handed his pocketbook to 30 40

Allgor; that Allgor opened the pocketbook and took therefrom about \$65 or \$67 in money and threw the pocketbook down upon the ground. The old gentleman says that he became, he presumes, unconscious; at least he did not know what was going on, and when he woke up he found the empty pocketbook and in addition he found some strings by him which had been in his pocket and which he says he had not taken from his pocket at any time while Allgor and this other man were present. By that testimony he leaves the impression, if you believe it, that either before delivering the pocketbook to Allgor or after he delivered the pocketbook and after he had seen Allgor, as he says, abstract the money therefrom, that one or the other of these men went through his pockets and in doing so the string which he says was in his pocket and which was afterwards found alongside of him was taken from his pocket in the search which was made of his person.

There is no direct evidence corroborating the complaining witness in regard to this crime. The State has offered evidence to show that Allgor was with this man and was in a position with another person, and the evidence is not clear that that other person was this man Orlando, on Sixteenth Avenue, and was in a position where they could have assaulted the old man had they desired to do so, near the point of woods where he subsequently came to and found that his possessions had been taken from him.

This evidence on the part of the State, gentlemen, is met by a general denial by the defendant of any participation in the assault upon or the robbery of this old man. He admits that he was in the old man's company up until sometime between twelve and one o'clock that day; that he was very much intoxicated, although a number of witnesses for the State saw him and testify that both the witness and Allgor were sober, apparent-

ly sober. He says he was very much intoxicated, had been drinking, and that he left Mr. Winter on the corner of Sixteenth Avenue and L Street for the purpose of going back to the hotel and getting some more liquor to be consumed; that after he got the liquor he became, as his father described it, crazy drunk, and arrived at his father's place in Spring Lake, some miles away, at one o'clock; although I believe that most of the State's witnesses have testified that they saw him in the neighborhood of Thirteenth Avenue and F Street or L Street and Sixteenth Avenue, somewhere between half-past twelve and one. Some of them are precise enough to say fifteen or twenty minutes of one. It does not appear what the exact distance is from Sixteenth Avenue in Belmar to Spring Lake, but we are sufficiently familiar to know that they are some distance apart. 10

There is another feature which developed on cross-examination in the course of the defense, and that is that the defendant's father, for the purpose of saving trouble, paid to Mr. Leuppie, who has been termed the guardian of the complaining witness Winter, \$67, supposedly the amount that Winter says he lost in this robbery. It does not appear in the case either that that payment was made by Allgor, Senior, with the knowledge or consent of his son or with the son's authority for the purpose of settling this case or for any other reason. That is merely a circumstance that developed on cross-examination and I do not see how the defendant can be charged with any participation in any such settlement or attempted settlement of this matter by the conduct of his father in that particular respect. 20 30

I am requested to charge you by the defendant that mere presence at the scene of the perpetration of a crime does not render a person *particeps criminis*. To constitute him a party to a criminal act there must not only be presence upon the scene, 40

but an actual participation, an aiding and abetting in the crime committed.

I so charge you and if you believe, gentlemen, the testimony of the man Winter that this other man, whether he be Orlando or who he may be, actually struck him at that time while he and Allgor were together, and that then Allgor caught him by the arms and attempted to take him or did take him into the woods, and that while doing so that this man was again struck twice by this unknown person, and that then before losing consciousness he thought he could escape further injury by surrendering his money in his pocketbook to Allgor, that in my opinion would constitute sufficient participation in the crime to constitute Allgor guilty of robbery if he was there and did this that the complaining witness, Winter, says he did.

I am further requested to charge you that to constitute robbery there must be actual violence, or such a demonstration or threat as will create reasonable apprehension of bodily injury if the victim resists, and I so charge you. That is exactly the situation that the man Winter says presented itself to his mind, having been struck three times by this strange man, having been carried or dragged, or pulled, or assisted, into the woods by Allgor; then he says being in fear of further harm and injury he concluded the quickest way of terminating that possible violence which threatened him was to surrender the pocketbook and what it contained, that he did so to Allgor and that Allgor took his money.

I am further requested to charge you that the defendant's character is presumed to be good. I so charge you, but I do not see that it has any connection with the case. The presumption is, gentlemen, that this defendant, Allgor, who was a man thirty-one years of age and not a boy, as both counsel for the State and the defendant have re-

ferred to him, the presumption is that he is innocent of this charge and that presumption continues with him throughout the entire case until the State has satisfied you beyond any reasonable doubt that he is guilty.

If after you have considered all the evidence in the case you find any reasonable doubt of his guilt to exist, a doubt arising on the evidence or on the absence of evidence, and a doubt for which you can give yourselves a good and sufficient reason, you must resolve that doubt in his favor and acquit him. But unless you do find such a doubt to exist in the case, such a reasonable doubt as I have indicated, unless you do find such a doubt to exist in the case it is your duty to convict him. 10

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NEW JERSEY COURT OF ERRORS AND APPEALS

	STATE OF NEW JERSEY, Defendant in Error,	}	<i>On Error to New Jersey Supreme Court. Assignment of Error.</i>
10	vs.		
	ISRAEL ALLGOR, Plaintiff in Error.		

The said Israel Allgor, Plaintiff in Error, prays that the judgment below be reversed for the following reasons:

- 20 1. Because the judgment was given for the State against the said Israel Allgor when by the law and facts it should have been given for the said Israel Allgor.
2. Because the evidence adduced on the trial by the State was not sufficient to convict defendant of the crime alleged against him
3. Because the Court ruled out and excluded evidence offered on the part of the defendant, when such evidence in justice, should have been admitted.
- 30 4. Because the court admitted and permitted to go before the jury illegally, evidence against the defendant, which should have been excluded, and that such evidence was highly prejudicial to defendant, creating prejudice in the minds of the jury, resulting in the conviction of the defendant.
5. Because the proofs in the case did not show nor were they sufficient to show, that defendant was guilty of the charges against him in the indictment.
6. Because the court refused to quash the indictment on motion of defendant's counsel, for the reasons

presented to the court in that behalf.

7. Because the court refused to grant the motion of defendant's counsel to quash the indictment on the ground that the panel of grand jurors of Monmouth county, who found said indictment was illegally drawn, and swore and acted under a certain act of the Legislature of this State known as the "Fielder Act," approved May 27, 1913, when such panel should have been drawn and sworn under what is known as the Chancellor-Sheriff Act, approved May 29, 1913. 10

8. Because the jurors who tried and condemned this defendant were illegally drawn and sworn under the said "Fielder Act," instead of being drawn and sworn under the Chancellor-Sheriff Act, then in force in this State.

9. Because at the time of the finding of this indictment by the Grand Jury, and the trial of defendant thereunder, both grand and petit jurors were illegally acting as such respectively, and had no power either to indict this defendant, or to try and condemn him. 20

10. That defendant was deprived of his constitutional rights of due process of law in this behalf.

11. Because the indictment contained inconsistent counts, charging three different and separate crimes in the one indictment, and the court refused on motion to quash said indictment for the reasons timely presented.

12. Because the Court refused upon request of defendant's counsel to quash said indictment for the reasons above stated, and refused to compel the Prosecutor of the Pleas to elect upon which count he relied or intended to rely for a conviction. 30

13. Because the Court permitted the Prosecutor to ask Israel Allgor, Sr., a witness for defendant, incompetent, irrelevant, illegal and prejudicial questions concerning the defendant, the natural result of which was to prejudice the jury, prevent justice being done defendant and resulting in his conviction.

14. Because the Court permitted the Prosecutor to ask of the witness Israel Allgor, the following questions which compelled the following answers, which questions were incompetent, illegal, unjust and prejudicial to the defendant, resulting in his conviction thereby:

10 Q. "Haven't you refunded to the old man, (complaining witness) or Mr. Leuppie, his guardian, the sum of \$66?" A. "Haven't I refunded?"

Q. "Yes, haven't you paid to Mr. Leuppie, the guardian of this old man, the sum of \$66?" A. "I don't know that I did."

Q. "You know whether you did or not."

By the Court:

20 Q. What do you mean that you don't know that you did? You either did or didn't, one way or the other? A. The old man Leuppie has been here to-day to answer for himself.

By Mr. Lawrence:

Q. "Well, he is not here, so we are asking you. What do you say about it?" A. "Well, the old man Leuppie, to tell you the truth about it, said the old man (complaining witness) ought to have his money; he said he lost it, and I said, 'I will give it to you'."

Q. "Did you pay it or not?" A. "I did."

30 Q. "How much did you pay Leuppie?" A. "I gave him \$67."

Q. "That was the exact amount the old man claimed he lost?" A. "The sum old man Leuppie claimed he had lost."

Q. "Now I will ask you under oath whether a whole or part of that money that you paid to Leuppie, as guardian of the old man (complaining witness), was not taken from you son's person by you?" A. "No, sir."

Q. "Or given by your son to you?" A. "Not a penny of it"

Q. "Whose money was it you gave to Leuppie?"
 A. "I gave him my own. I drew a check on the Spring Lake bank and went and gave it to the old man to pay it."

By the Court:

Q. "Why did you pay the old man \$67?" A.
 "Old man Leuppie said if I would pay that it would square the whole thing and he said it would be the easiest way out of it. I didn't know whether the boy took it or not." 10

By Mr. Lawrence:

Q. "You believed your son innocent?" A. "I did."

Q. "Now believing your son innocent of any crime why did you pay that money to Leuppie?"

A. "Well, as I told you I thought all I had to do was to pay."

By the Court:

Q. "When was this payment of \$67 made by you to Leuppie?" A. "I don't know, sometime ago." 20

Q. "What do you say, how long after the alleged occurrence?" A. "Well, it was before the case was brought before the Grand Jury."

Q. "You did this without his knowledge.?" A.
 "Yes, sir; I don't know as he (my son) knows it yet. I don't know whether I ever told him that I gave it to him. I don't think I ever did." 30

By Mr. Lawrence:

Q. "How many times have you paid money for your son under such circumstances as these?" A.
 "Never paid none in such circumstances as these."

15. Because the Court permitted the Prosecutor to ask of the complaining witness, George Winter, the following questions, and compelled the following answers, relating to the conduct of Israel Allgor, Sr., a witness, regarding an alleged restitution of money which witness Winter claimed defendant Allgor, Jr.,

robbed him of, which payment and the connecting circumstances were outside the presence of the defendant with no proof that the defendant authorized such payment, no agency or direction from defendant to Allgor, Sr., and no knowledge, information or acquiescence on the part of defendant of the payment acts and conduct of Allgor, Sr., which testimony was entirely illegal, incompetent and prejudicial to defendant upon his trial, and prejudiced the minds of the jury against defendant and resulted in his conviction, as follows:

By Mr. Lawrence:

Q. "What did Mr. Allgor (Sr.) come to see you for; what did he say to you?"

Mr. Cook: I object to it for this reason: It is undisputed at this time that whatever Mr. Allgor, Senior, did in this matter was done without the knowledge or acquiescence of his son (the defendant), and consequently this testimony would be illegal and irrelevant.

The Court: That is why I interrupted this morning. I do not see how this is competent unless you show agency; unless you show that Allgor, Senior, was sent by his son (defendant) or something of that kind.

Mr. Lawrence: It is offered on the credibility of that witness. I ask whether he had not appealed to this old man to let up on his son. He denied that he did anything of the kind.

The Court: Even if he had the inference to be drawn from such conduct would be that the defendant was guilty and charging him with something that apparently he is not responsible for. Now unless you can show some agency between the defendant and his father, and thereby the father interviewed Mr. Winter, I can't see that the defendant would be chargeable in any way with what the father

said or did. If he is not chargeable then we should not bring it out, because it would be prejudicial to him.

Mr. Lawrence: It is offered simply to attack the credibility of that witness.

The Court: Yes, but now you are trying to charge the defendant here with the result of that conduct; namely, that his father understood that this man would not prosecute him.

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Which dialogue between the Prosecutor and the Court was prejudicial to the interest of the defendant, in the minds of the jury, and resulted in his conviction.

16. And for divers other good and sufficient reasons the defendant prays that the conviction may be set aside reversed, and for nothing holden.

R. TEN BROECK STOUT,

Atty. of Pltf. in Error.

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