

# HENRY DEUTSCH

[ August 28, 1874 • January 9, 1928 ]



Henry Deutsch, President of the Professional Men's Club

Date of photograph: June 24, 1924.

Source: Minneapolis Newspaper Photograph Collection,  
Hennepin County Library.

It is difficult, perhaps even irresponsible, for a writer of a biographical sketch of a lawyer or judge to point to one event or person or book or something else that may have changed that person's life. With those cautionary signals in mind, the professional lives of Henry Deutsch may have been forever changed by his work with Frank M. Nye in the trial and appeal of the conviction of "Doc" Ames in 1903.

Deutsch began practicing law in Minneapolis after his admission to the bar in 1895. In 1897 he began sharing offices with Frank Nye, who had just finished a term as Hennepin County Attorney. In 1900 the Nye & Deutsch firm was formed; it lasted until 1908 when Nye was elected to Congress.<sup>1</sup>

Deutsch lived and practiced law during the notoriously corrupt reign of Mayor "Doc" Ames, which culminated in three trials in 1903-1904. In the first, Ames, who was represented by Nye & Deutsch and Erwin & Mead, was convicted of accepting a bribe.<sup>2</sup> Deutsch most certainly assisted Nye in the trial as well as the subsequent appeal, which was successful.<sup>3</sup> He seems to have had a visceral reaction to the Ames case. Thereafter he concentrated his practice in commercial law, not criminal defense, and

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<sup>1</sup> The Minneapolis City Directory lists Deutsch as a sole practitioner in its 1897, 1898 and 1899 editions. Not by coincidence Frank Nye occupied the same office suite in each of these years: suite 826 Guaranty Building in 1897; suite 421 Guaranty Building in 1898, and suite 629 in the Guaranty Building in 1899. Obviously theirs was an office sharing arrangement.

In 1900 the firm of "Nye & Deutsch" was formed with offices at suite 629 Guaranty Building in Minneapolis. It was dissolved in 1908 when Nye was elected to Congress. Deutsch thereupon formed a new firm, Deutsch, Allen & Breiding, with offices in the Palace Building.

According to his biography in Hiram Stevens's *2 History of the Bench and Bar of Minnesota* 136-137 (1904), "In 1897 Mr. Deutsch became associated with Hon. Frank M. Nye, under the firm name of Nye & Deutsch, with offices in the New York Life building." This is inaccurate.

His profile in Henry Castle's *3 History of Minnesota* 1317 (1915) states "In 1907 he became associated with in practice with Hon. Frank M. Nye, and soon a partnership was formed under the name of Nye & Deutsch. In 1908 this alliance was dissolved, owing to the fact that Mr. Nye had been elected a member of United States Congress." This too is inaccurate. What is surprising about these inaccurate sketches is that Deutsch wrote them.

<sup>2</sup> For a famous "muckraking" article on the Ames years see Lincoln Steffens, "The Shame of Minneapolis, The Ruin and Redemption of a City that was Sold Out." (MLHP, 2011) (first published 1903).

Erik Rivenes, *Dirty Doc Ames and the Scandal that Shook Minneapolis* (Minnesota Historical Society Press, 2018), is a lengthy history of the Ames reign (reviewed by Elena Neuzil (MLHP, 2018)). It is woefully deficient in its accounts of Ames's three trials.

<sup>3</sup> *State v. Albert A. Ames*, 91 Minn. 365, 98 N.W. 190 (1904). It is posted in the Appendix, at 24-40. The two trials that followed ended in hung juries. See *St. Paul Globe*, May 15, 1904, at 1, and *Minneapolis Tribune*, October 22, 1904, at 1.

he became a life-long reformer both in law and municipal affairs, ever ready to serve the cause of civic betterment.

Deutsch subscribed to books of biographies published in 1904, 1907, 1908 and 1915. In each a short portrait was included, written or approved by him.<sup>4</sup> Thus they are short autobiographies, presenting him as he wished to be known at the time of publication. Unfortunately his most important contributions to bankruptcy law and to the city of Minneapolis occurred after the last profile was published in 1915.

Henry Deutsch died on January 9, 1928, at age 53. His death was reported on the first page of the *Minneapolis Evening Journal*, that day:

HENRY DEUTSCH  
LEADING LAWYER,  
DROPS DEAD HERE

Civic Leader Had Practiced  
Profession 32 Years in  
Minneapolis

End Comes After  
Slight Indisposition

Former School Board Member  
Was Active in Masonry and  
Christian Science

Henry Deutsch, prominent Minneapolis attorney, civic leader and outstanding figure in national legal causes, dropped dead at his home today. He had complained of a slight indisposition over the weekend. He was 53 years of age

Sudden death cut short at career which began 32 years ago when Mr. Deutsch was admitted to the Minnesota bar. He has

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<sup>4</sup> It was not customary for the subjects of these sketches to cite a court victory, and so it is not unusual that Deutsch did not mention the Supreme Court's decision in the *Ames* case but it is odd that he dated 1907 as the beginning of his partnership with Frank Nye whereas it really began in 1900. See note 1.

practiced law in Minneapolis continuously since that day. At the time of his death he was senior partner of the law firm of Deutsch, Loeffler and Amick

In his years of activity Mr. Deutsch served as chairman of important committees of the American Bar Association, was a member of the Minneapolis school board, was president of the Commercial Law League of America, president of the Minneapolis Professional Men's Club and was a leader in the Masonic and Christian Science organizations. At the time of his death Mr. Deutsch was president of the Association of Professional Men's Clubs of the United States.

#### Belonged to Pioneer Family

He has lived in Minneapolis all his life. He was a descendent of a pioneer Minneapolis family. His father was Jacob Deutsch. He was born here August 28, 1874, and received his early education in the public schools and at Central high school.

From the University of Minnesota he received a degree of Bachelor of Laws in 1894 and a year later he completed a post graduate course at Yale University which made him master of laws with the distinction of magna cum laude. He was admitted to the Minnesota bar in October, 1905.

#### Waged War on Frauds

Early in his career he formed a partnership with Albert J. Smith, former county attorney of Hennepin County. In 1907 he became associated with Frank M Nye, a partnership which was dissolved a year later, when Mr. Nye was elected to congress. Shortly after he became allied with Edward P. Allen and Alfred M. Breiding. In 1912 he began conducting an individual law practice

Mr. Deutsch was actively connected with the Hennepin County Bar Association, the Minnesota State Bar Association and the

American Bar Association. In 1923 he was appointed chairman of the American Bar Association committee on bankruptcy and for some time waged a warfare on bankruptcy fraud practices, condemning flagrant frauds in commercial law. His committee drew up a special report on bankruptcy which summarized abuses and proposed legal reforms.

In 1910 Mr. Deutsch was elected president of the Commercial Law League of America, an organization of the leading commercial lawyers in the United States and Canada.

#### Prominent in Public Affairs.

In Minneapolis civic affairs and organizations Mr. Deutsch has been exceedingly active. He was chairman of the public entertainment and convention committee of the old Minneapolis Commercial Club and was a member of the board of directors and second vice president in 1905. He was chairman of the entertainment committee of the club when it gave a reception to Theodore Roosevelt, then president of the United States. He was a member of the Minneapolis executive committee in charge of the national encampment of the Grand Army of the Republic here in 1906.

He served as a member of the board of education in the years between 1916 and 1919 and also served as a member of the board of trustees of the Minneapolis Public Library.

After serving as president of the Minneapolis Professional Men's Club, he was elected last September as the new head of the Association of Professional Men's Clubs.

## Formerly Church

Mr. Deutsch was a member of the Church of Christ, Scientist and was at one time a reader and lecturer in the church here. He served on the legal board which settled a national church policy at one time.

He was prominent in Masonic activities, was a member of the Shrine, a past master of Hennepin Lodge, and a past master of Rose Croix of Scottish Rite Masons. He was a member of the Athletic Club and Automobile Club.<sup>5</sup>

From the *Minneapolis Morning Tribune*, January 10, 1928:

### HENRY DEUTSCH PROMINENT AS LAWYER, DIES

Former Member of Board of Education  
Succumbs to Brief Illness

Was Active in Church and  
Fraternal Work in Minneapolis

Henry Deutsch, senior member of the law firm of Deutsch Loeffler & Amick, died suddenly at his home 3420 Bryant avenue south Monday. He was 54 years old.

Mr. Deutsch was at one time a member of the board of education and had a national reputation as a lawyer. Several years ago he was a member of the committee that settled the controversy between the Mother Church of Christ, Scientist and the Publications society over the disposition of the estate of the late Mrs. Mary Baker Eddy

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<sup>5</sup> Names of survivors omitted.

Born in Minneapolis in 1874, Mr. Deutsch received most of his education here. He attended Central high school and the University of Minnesota. His law degree was conferred by Yale University, and at the age of 21, he was admitted to the bar. His parents were pioneer settlers.

While he was a member of the school board, to which he was elected in 1915 and served to 1919, he inaugurated many reforms, and was active in procuring better accommodations, more playgrounds, and a betterment generally for children.

During the war he was a member of the draft board for a time, but resigned on October 14, 1917, because he could not agree with other members all of the board on the methods of carrying out the work.

Mr. Deutsch had many fraternal affiliations. He was a thirty-third degree Mason, member the Hennepin Lodge of which he was a past grand master; he was a charter member of the University lodge of Masonic order; past master of Rose Croix; a Shriner and Scottish Rite Mason; president of the National Association of Professional Men's Clubs; charter members of the Minneapolis Athletic Club; member of the Calhoun Beach Club, the Elks, and the Automobile Club. He also was a member of the American Bar Association, and of the Minneapolis and Hennepin County Bar Associations. He held a membership in the Second Church of Christ, Scientist of which he was a former first reader.<sup>6</sup>

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<sup>6</sup> List of survivors omitted.

Editorial in the *Minneapolis Morning Tribune*, January 10, 1928:

Henry Deutsch.

There are two really suggested reasons why the sudden death of Mr. Henry Deutsch shocks the thousands of Minneapolis residents who knew him well and were known by him. The reason of less importance is that Mr. Deutsch had the physical appearance of a man with the promise of many more years of active and achieving life. The greater reason is that Mr. Deutsch was a citizen devoted to and valuable to the community in which he was born and spent most of his 54 years.

Mr. Deutsch was a man of unusual charm of personality. His normal mood was one of smiling geniality. He had an eloquently friendly hand clasp. He could be serious or jovial as a occasion called for, and in either case there was no forcing of the mood, no affectation. To have his friendship, and everybody seemed to have it, was a privilege; to be in personal contact with him was to feel that you were in the presence of a sincere man, a sympathetic spirit, an interested friend, a loyal neighbor and a good citizen. All of these, Mr. Deutsch was, and the fact was even better attested by what he was and did than what he said or appeared.

In a very real and intimate way, Mr. Deutsch “grew up” with Minneapolis. He was born here in 1874 when the population was around 25,000. He was reared here and acquired much of his education here. In all his manhood years he took an active interest in the public and civic affairs of the city. He had ideas of his own, and the courage and force to visualize them, but he was tolerant and receptive of the view of others.

As a member of the board of education Mr. Deutsch made clear his conception of what he thought the school should be, and how the administrative and teaching corps should be

characterized in order that they might influence for the best the boys and girls of school age. He wished that education might concern itself with character, spirit and moral sense equally with mind, discipline and development. In this his position was not at all novel, but his enthusiasm for the idea was unusual. He wished for all the children that they might have and maintain throughout life the happy outlook which he himself seemed to have.

Mr. Deutsch's active interests were manifold. They embraced all phases of community progress, the church of which he was a conspicuous and devoted member, cultural affairs, the agencies designed to promote enjoyable social comradeship, and matters of special interest to the legal profession, of which he was a widely known and much esteemed representative. The death of Mr. Deutsch leaves a breach in our common life that will not readily be filled.

Editorial in the *Minneapolis Star*, January 10, 1928:

#### HENRY DEUTSCH

Henry Deutsch, who died Monday, was one of those necessary citizens that Minneapolis can ill afford to lose. The community is definitely the poorer for his passing. But this community is also definitely the richer for his having lived and worked here all his life.

Here was a man who recognized his obligations to society at every turn in his career. He contributed liberally of his time and energy for the advancement of the welfare of his fellow beings. In his mind, the good of society always came ahead of the personal needs and desires of Henry Deutsch.

This phase of his character was splendidly exemplified in his work for the betterment of the public schools, and his tireless campaign to stamp out fraudulent commercial

practices, and in any his leadership in religious and civic organizations.

When any man lives more than half a century in one city and leaves behind a record of such continuous effort in behalf of the common weal as Henry Deutsch has left, that City is bound to miss him, and sorely. Many men talk glibly of service. Henry Deutsch served.<sup>7</sup>

The editors of the *Journal of the Referees in Bankruptcy* took note of Deutsch's death:

The sudden death of Henry Deutsch, of Minneapolis, Minnesota, was a distinct shock to his many friends throughout the United States especially as he had the physical appearance of a man with the promise of many years of active life. He died in Minneapolis January 9, 1928 at the age of 54.

Born in Minneapolis in 1874, Mr. Deutsch received his early education there in the public schools and the University of Minnesota and a law degree was conferred by Yale University at the age of twenty-one. His parents were pioneer settlers.

Mr. Deutsch took an active part in the affairs of Minneapolis and for four years was a member of the board of education and was active in procuring better accommodations, more playgrounds and a betterment generally for the children. During the war he was a member of the draft board for a time. He was a 33rd degree Mason, president of the National Association of Business and Professional Men's Clubs and active in other organizations. Mr. Deutsch was engaged in the general practice of law and at the time of his death was a member of the law firm of Deutsch, Loeffler and Amick.

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<sup>7</sup> The evening *Star* reported Deutsch's death on page 2 of this edition ("Henry Deutsch Services Wait Son's Arrival").

Several years ago he was a member of the committee that settled the controversy between the Mother Church of Christ, Scientist, and the Publications society over the disposition of the estate of Mrs. Mary Baker Eddy.

Mr. Deutsch took an active part in the work of the American Bar Association and served as the first chairman of the Special Committee on Bankruptcy Practice appointed by that organization. The report of that committee was made at the Philadelphia convention in 1924. He acted as chairman of the conference of his committee, together with like committees from the Commercial Law League of America and the National Association of Credit Men, with the Federal Judiciary Council which met in Philadelphia January 15, 1924. He was president of the Commercial League of America for one year and ever active in its affairs and took a prominent part in the work of the Minnesota State Bar Association.

In speaking of Mr. Deutsch, the *Minneapolis Tribune* said editorially:

“Mr. Deutsch was a man of unusual charm of personality. His normal mood was one of smiling geniality. He had an eloquently friendly hand clasp. He could be serious or jovial as the occasion called for, and in either case there was no forcing of the mood, no affectation. To have his friendship, and everybody seemed to have it, was a privilege; to be in personal contact with him was to feel that you were in the presence of a sincere man, a sympathetic spirit, and an interest in friend, a loyal neighbor and a good citizen. All of these, Mr. Deutsch was, and the fact was even better attested by what he was and did than by what he said or appeared.

“Mr. Deutsch’s active interests were manifold. They embraced all phases of community progress, the church of which he was a conspicuous and devoted member, cultural affairs, the

agencies designed to promote enjoyable social comradeship, and matters of special interest to the legal profession, of which he was a widely known and much esteemed representative.”<sup>8</sup>

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## Appendix

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<sup>8</sup> 2 *Journal of the National Association of Referees in Bankruptcy* 136 (June 1928).



**HENRY DEUTSCH**  
**MINNEAPOLIS.**  
**NYE & DEUTSCH, LAWYERS.**

*Men of Minnesota (1902)*

Hiram F. Stevens, ed., *2 History of the  
Bench and Bar of Minnesota* (1904).

Henry Deutsch, of the Minneapolis bar, is a native Minnesotan, having been born in Minneapolis August 28, 1874. His parents are Jacob and Malchen A. (Valfer) Deutsch.

Mr. Deutsch was educated in the grade and high schools of his native city. He was graduated from the law department of the University of Minnesota in 1894, and also took a post-graduate course at Yale university law school, and was admitted to the Hennepin county bar in October, 1895. Mr. Deutsch appears in all state and United States courts, in both civil and criminal cases, and is regarded as an energetic, bright young lawyer and a good pleader. He is a member of several fraternal organizations, among which may be mentioned Hennepin Lodge, No. 4, A. F. & A. M.; the Scottish Rite bodies; Zuhrah Temple, A. A. O. N. M. S.; also the B. P. O. E., No. 44; Maccabees, Royal Arcanum, and Woodmen of the World. He is also prominently connected with the Commercial club as one of its directors and as chairman of the committee on conventions and public entertainments.

In 1897 Mr. Deutsch became associated with Hon. Frank M. Nye, under the firm name of Nye & Deutsch, with offices in the New York Life building. He is a member of the Hebrew Reformed church of Minneapolis, and in politics he affiliates with the republican party. May 2, 1898, Mr. Deutsch was married to Miss Grace A. Levi, of Philadelphia, to whom a son, Clarence S., has been born.<sup>9</sup>

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<sup>9</sup> Hiram F. Stevens, editor, *2 History of the Bench and Bar of Minnesota* 136-137 (1904).

*Little Sketches of Big Folks (1907)*

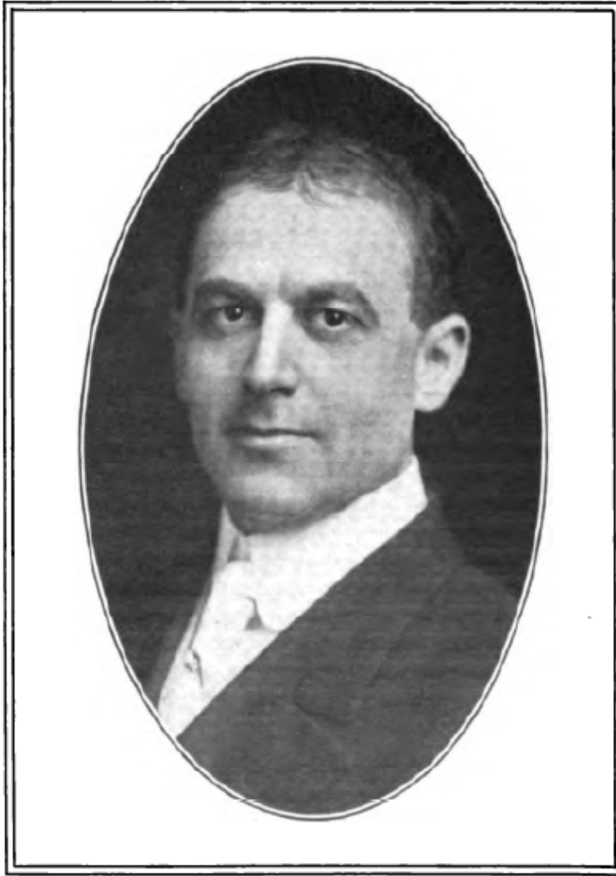
DEUTSCH, HENRY. Minneapolis. Res. 2705 Fremont Av. S. office 315 NY Life bldg. Lawyer. Born Aug 28, 1874; son of Jacob and Malchen Amelia (Valfer) Deutsch. Attended public and high schools in Minneapolis. Graduated from U of M law dept LL.B. 1891' Yale law dept LL.M. 1895. Has engaged in practice since and is member of the firm of Nye & Deutsch. Was delegate to the Universal Congress of Lawyer and Jurists St. Louis 1904. Member and v pres of Commercial Club; Commercial Law League and National Fraternal Congress.

Albert Marquis, ed.,  
*The Book of Minnesotans(1907).*

DEUTSCH, HENRY, lawyer; born at Minneapolis, Aug. 28, 1874; son of Jacob and Malchen Amelia (Valfer) Deutsch' graduate Law College, University of Minnesota, degree of LL.B., 1894; Law College, Yale University, degree of LL.M., magna cum laude, 1895. Was admitted to Minnesota bar, 1895. Republican. Christian Scientist. Delegate to the Universal Congress of Lawyers and Jurists, St. Louis, 1904; 3d vice president Commercial Law League of America; member American and Minnesota Bar associations. Mason (32), K. C. C. H., Scottish Rite Bodies, Shriner; member B. P. O. E., Royal Arcanum, W. O. W., Maccabees. Married at Philadelphia, 1898, to Miss Grace A. Levi. Club: Commercial (director), Office: New York Life Bldg. Residence 2705 Fremont Av., S. Minneapolis

4. Henry Hudson, ed.,  
*A Half-Century of Minneapolis* (1908).

DEUTSCH, Henry, was born in Minneapolis, August 28, 1874, son of Jacob and Malchen A. (Valfer) Deutsch. He received his



HENRY DEUTSCH.

early educational training in the public schools of Minneapolis, was graduated from the Central high school in 1891; was graduated LL. B. from the law department of the University of Minnesota in 1894-'94; took Yale University's LL. M. (Magna cum Laude) in 1895, and was admitted to the bar October, 1895, when he was associated with Al J. Smith (now county attorney) as partner; in 1907 he became associated in active practice with Frank M. Nye and soon became his partner

under the firm name of Nye & Deutsch. In 1908 Mr. Nye having been elected to congress, this partnership was dissolved and Mr. Deutsch with E. P. Allen and A. M. Breeding formed the law firm of Deutsch, Allen & Breeding. Mr. Deutsch is a member of the board of directors of the Minneapolis Commercial Club, of which he was second Vice president in 1905. He is a member of the American Bar Association, of the Commercial Law League of America (of which he is one of the vice presidents); of the Minnesota State Bar Association; and of the Hennepin County Bar Association. He is a member of the Six O'Clock Club and of the Garfield Club and is a prominent member of the Elks, the Maccabees and the Royal Arcanum. He is a Past

Master Hennepin Lodge No. 4, A. F. & A. M., has K. C. C. H. Degree, Scottish Rite bodies Masonic; and is Wise Master St. Vincent De Paul Chapter, Rose Croix No. 2; member of Zuhrah Temple Mystic Shrine and past president Minnesota Auxiliary Fraternal Congress. Mr. Deutsch is a member of the Second Church of Christ, Scientist, of Minneapolis. He was for two years chairman of the Public Entertainment and Convention Committee of the Minneapolis Commercial Club and was a member of the executive committee of the G. A. R. Encampment, in 1906. He was married May 2, 1898, to Miss Grace A. Levi and three children have been born to them, Clarence S. Maria Hope, and Henry Noel.<sup>10</sup>

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<sup>10</sup> Henry Hudson, editor, "Courts and Lawyers of Minneapolis" in *A Half Century of Minneapolis* 140-150 (1908). The entire chapter is posted in the "Hennepin County" Category in the Archives of the MLHP.



*Men of Minnesota (1915).*

### 3. Henry A. Castle, 3 *History of Minnesota: Its Story and Biography* (1915).

#### Henry Deutsch.

It has been given to Mr. Deutsch to gain distinctive prestige as one of the able members of the bar of his native city and state, and he controls our representative practice in Minneapolis, where he has his professional headquarters in Suite 805-810, Plymouth building. Further interest attaches to his career as a citizen and representative lawyer by reason of the fact that he is a scion of a well-known and esteemed pioneer family of Minnesota, and in this connection it should be noted that on other pages of this publication is given adequate review of the family history, in the sketch dedicated to his father, Jacob Deutsch.

Henry Deutsch was born in Minneapolis on 28th of August, 1874, and is a son of Jacob and Malchen A. (Valfer) Deutsch. He gained his early educational training in the public schools of his native city, where he was graduated in the old Central High School, as a member of the class of 1891. The youth had in the meantime formulated definite plans for his future career, and in harmony with his predilection he entered the law department of the University of Minnesota, in which he completed his prescribed course and was graduated as a member of the class of 1894; he received from this institution the degree a Bachelor of Laws. Further technical honors of a similar order were his work to be his ere the initiation of his professional career, for he completed, in 1895, a post-graduate course in the law department of the historic old Yale University, which gave to him the degree of Master of Laws, magna cum laude.

He was admitted to the Minnesota bar in October, 1895, shortly after attending his legal majority, and his professional novitiate of practical order was served in association with Hon. Stephen B. Howard, Minneapolis, who was at that time a member of the State Senate. Later he formed a partnership with Albert J. Smith, who afterward served as county attorney

of Hennepin County. Mr. Deutsch proved himself well fortified in his profession and in power of applying the same, so that he made rapid and substantial advancement and became known as one of the strong practitioners at the Minnesota bar. In 1907 he became associated with Hon. Frank M. Nye, and soon a partnership was formed under the firm name of Nye & Deutsch. In 1908 this alliance was dissolved, owing to the fact that Mr. Nye had been elected a member of the United States Congress, and shortly afterward Mr. Deutsch became allied with Edward P. Allen and Alfred M. Breeding in forming the law firm of Deutsch, Allen & Breeding. Since 1912 Mr. Deutsch has conducted an individual law business, and the same is one of broad scope and importance, in commercial, probate, corporation and trial departments of legal work.

Mr. Deutsch is actively identified with the American Bar Association, the Minnesota State Bar Association, the Hennepin County Bar Association, and the Minneapolis Bar Association. In 1910 he was president of the Commercial Law League of America, the representative organization of its kind in the United States and Canada and one that has on its membership rolls the leading commercial legists of two nations.

A stalwart advocate of the principles of republican party, Mr. Deutsch has given effective service in behalf of the cause, though he has not been imbued with ambition for political office. He was formerly a most active factor in the work of the Minneapolis Commercial Club, of whose public entertainment and convention committee he was chairman for two years, besides having served as a member of its board of directors and a second vice president in 1905. He was chairman of the entertainment committee of this organization at the time when it gave a distinctive ovation to Colonel Theodore Roosevelt, who was then president of the United States. Mr. Deutsch was a member of the Minneapolis Executive Committee in charge of the national encampment of the Grand Army of the Republic held in the city in 1906. He is at the present time an active and valued member of the

Minneapolis Civic and Commercial Association and is serving as a member of the board of education of Minneapolis, besides which she was formally a member of the Board of Trustees of the Minneapolis Public Library.

In the Masonic fraternity Mr. Deutsch has received the highest grade of the Scottish Rite, and he has been a most zealous and appreciative worker in the various Masonic bodies with which he is affiliated. He is past master of the Hennepin Lodge, No. 4, Free and Accepted Masons and also past master of St. Vincent de Paul Chapter, No. 2, Rose Croix, of the Ancient Accepted Scottish Rite, in which body he was elevated to the thirty-third and supreme degree, in the city of Washington in 1910. In his home city he holds membership in the adjunct Masonic organization, Zurah Temple of the Ancient Arabic Order Nobles of the Mystic Shrine, and here also he is affiliated with the lodge of the Benevolent & Protective Order of the Elks.

Mr. Deutsch and his wife are members of the Second Church of Christ, Scientist, in Minneapolis and he is president of the same at the time of this writing, in 1914. He was the first reader of this church for three years and for the past five years he has been Minnesota State Publication Committee of this religious denomination. He and his wife are popular in representative social activities of their home city, and their attractive residence is known for its hospitality.

On the second day of May, 1898, was solemnized the marriage of Mr. Deutsch to Miss Grace A. Levi, of Philadelphia, Pennsylvania, and they have three children: Clarence S., Maria N. Hope and Henry Noel.<sup>11</sup>

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<sup>11</sup> Cross reference to sketch of Jacob Deutsch omitted.



**Henry Deutsch.**  
**Date of photograph: August 11, 1921**  
**Source: Minneapolis Newspaper Photograph Collection.**  
**Hennepin County Library.**



**Henry Deutsch**  
**Date of photograph: September 16, 1927.**  
**Source: Minneapolis Newspaper Photograph Collection,**  
**Hennepin County Library.**

State of Minnesota vs. Albert A. Ames

# MINNESOTA REPORTS <sup>c</sup>

VOL. 91

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CASES ARGUED AND DETERMINED

IN THE

# SUPREME COURT

OF MINNESOTA

NOVEMBER 27, 1903—APRIL 8, 1904

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HENRY BURLEIGH WENZELL

REPORTER

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ST. PAUL  
FRANK P. DUFRESNE  
1904

JUSTICES  
OF  
THE SUPREME COURT  
OF MINNESOTA

DURING THE TIME OF THESE REPORTS

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Hon. CHARLES M. START, Chief Justice.  
Hon. LOREN W. COLLINS.  
Hon. CALVIN L. BROWN.  
Hon. JOHN A. LOVELY.  
Hon. CHARLES L. LEWIS.

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CARL A. PIDGEON, Esq., Clerk.

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ATTORNEY GENERAL:  
Hon. WALLACE B. DOUGLAS.

91 M.

(III)

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**STATE v. ALBERT A. AMES.<sup>1</sup>**

January 29, 1904.

Nos. 13,715—(22).

**Act Constitutional.**

Chapter 151, p. 154, Laws 1899, regulating the manner of drawing jurors in counties having a population of two hundred thousand, is a general law, and is constitutional, and not class legislation.

**Challenging Juror.**

Under section 7362, G. S. 1894, the court, for good cause, may permit a challenge to be taken after a juror is sworn, and before the jury is completed. The state, having come into possession of new evidence bearing upon the juror's suitability, moved for permission to re-examine a juror upon the question of actual bias. *Held*, the cause shown was sufficient, and there was no error in the ruling.

**Indictment.**

An indictment charged that on December 15, 1901, the defendant (mayor of the city) did feloniously receive from (naming certain parties, and others unknown, who were conducting houses of ill repute) the sum of \$600, upon the agreement and with the understanding that such persons would be protected from criminal prosecution for the month of December, 1901. *Held*, the indictment stated one offense; it being inferred that the money was a fund contributed by the persons named pursuant to a joint or common understanding that such contributors should be protected.

**Failure of Proof.**

The undisputed evidence is that detectives and police officers accepted money from the women specified in the indictment, and others, in amounts

<sup>1</sup> Reported in 98 N. W. 190.

ranging from \$15 to \$25, in consideration of which each person making payment was promised police protection; that the detectives and police officers who received the money were the agents of defendant, and not of those making payments; that there was no joint agreement or understanding between those paying the money; that the \$600 which was paid over to defendant by his agent in one sum, after it was paid to him by the women individually, was not a general fund, contributed with the understanding that those participating should be protected. *Held*, there was a failure of proof to sustain the offense charged.

Defendant was tried and convicted in the district court for Hennepin county before Elliott, J., and a jury on an indictment charging him with having received a bribe while exercising the office of mayor of the city of Minneapolis. From the judgment of conviction, whereby he was sentenced to confinement for a term of six years in the state prison, defendant appealed. Reversed.

*Nye & Deutsch and Erwin & Mead*, for appellant.

The court erred in overruling the defendant's motion to compel the state to elect upon which of the crimes charged in the indictment the state would rely to secure the conviction of defendant. *State v. Wood*, 13 Minn. 112 (121). The state cannot avoid the force of the rule which requires that a single felony only shall be charged in one count, by charging a single felony only and under that charge attempting to prove two. *Womack v. State*, 7 Cold. 508; *McElroy v. U. S.*, 164 U. S. 76, 80; *Lunn v. State*, 44 Tex. 85; *Williams v. State*, 77 Ala. 53; *Stockwell v. State*, 27 Oh. St. 563; *State v. Hurd*, 101 Iowa, 391.

The great and overwhelming weight of authority is to the effect that under circumstances such as exist in the present case, each collection and its corresponding agreement was a separate, distinct, substantive offense, and that if each one had been set out in full in the indictment, the indictment would have been bad for duplicity, and that, it having appeared upon the trial that the state expected to offer evidence on and prove each one of the separate collections and agreements, it should have been compelled to elect upon which particular collection and agreement it would seek to charge the defendant. *Wallace v. State*, 41 Fla. 547, and cases cited; *State v. Moore*, 86 Minn. 422.

*W. B. Douglas*, Attorney General, *F. H. Boardman*, County Attorney, and *C. S. Jelley*, Assistant County Attorney, for the state.

Evidence is admissible which tends to show motive, criminal intent, guilty knowledge and a scheme or plan embracing two or more crimes, so related to each other that proof of one tends to prove the other. *States v. Ames*, 90 Minn. 183; *U. S. v. Watson* (D. C.) 35 Fed. 358; *People v. Gray*, 66 Cal. 271; *Coleman v. People*, 58 N. Y. 555; *Com. v. White*, 145 Mass. 392; *Hall v. State*, 71 Tenn. 552; *Rafferty v. State*, 91 Tenn. 656; *Guthrie v. State*, 16 Neb. 667.

When averments in an indictment or information as to quantity, quality, kind, value, number, etc., are not descriptive of the identity of the subject matter they are immaterial, and need not be proved strictly as alleged, but it is sufficient if the allegation is substantially proven. 3 *Greenleaf*, Ev. § 12; *Bruguier v. U. S.*, 1 Dak. 5; *Alexander v. State*, 99 Ind. 450; *Klein v. State*, 76 Ind. 333; *Todd v. State*, 31 Ind. 514; *State v. Tisdale*, 54 Minn. 105; *State v. Andrews*, 28 Mo. 17. If it is a fact that the defendant received \$600 as a bribe, he was guilty, and he was equally guilty if, as a bribe, he received any less sum than that, his guilt being determined not by the amount he received, but by the fact that he received any amount. The precise sum of money was not essential, nor was the precise sum the essence of the offense. *Ferris v. Comstock*, 33 Conn. 513; *Sage v. Hawley*, 16 Conn. 106; *Bunting v. Allen*, 18 N. J. L. 299; *Jansen v. Ostrander*, 1 Cow. 670; 22 *Enc. Pl. & Pr.* 596; *McCorkle v. State*, 14 Ind. 39; *Parsons v. State*, 2 Ind. 499; *U. S. v. Fish*, 24 Fed. 585.

The indictment charges but one offense and is not bad for duplicity. *U. S. v. Scott*, 74 Fed. 213; *State v. Newton*, 42 Vt. 537; *Regina v. Bleasdale*, 2 Car. & K. 765; *Regina v. Giddins*, Car. & M. 634; *State v. Nelson*, 29 Me. 329; *Ben v. State*, 22 Ala. 9; *Rex v. Benfield*, 2 Burrow, 980; *Guthrie v. State*, *supra*; *Mooney v. State*, 8 Ala. 328; *State v. Morphin*, 37 Mo. 373; *Lorton v. State*, 7 Mo. 55; *Roberts v. State*, 14 Ga. 8; *State v. Hennessey*, 23 Oh. St. 339; *Com. v. Sullivan*, 104 Mass. 552; *Boyce v. Odell Com. Co.*, 107 Fed. 58.

But one offense is charged in the indictment, and but one was proved by the evidence. The conviction of the defendant is a complete bar to a prosecution for the receiving of a bribe from either of the women named in the indictment or from either of those who gave money to

Gardner for police protection for December, 1901. *Lorton v. State*, supra; *Jackson v. State*, 14 Ind. 327; *Roberts v. State*, supra; *Com. v. Sullivan*, supra; *Com. v. Andrews*, 2 Mass. 409; *State v. Thurston*, 2 McM. 382; *Hoiles v. U. S.*, 3 MacArthur, 370; 1 Chitty, Cr. L. 462-463; G. S. 1894, § 7311.

LEWIS, J.

Defendant was charged with, and convicted of, the crime of receiving a bribe. The charging part of the indictment is set out in full for the purpose of clearness:

"And said Albert A. Ames on the 15th day of December, 1901, at the city of Minneapolis, in the county of Hennepin, in the state of Minnesota, then and there being, and then and there executing and performing the duties and functions of the office of mayor of said city of Minneapolis, did willfully, unlawfully, wrongfully, knowingly, feloniously, corruptly, and contrary to his duty as such mayor of said city of Minneapolis, receive, have, and obtain from Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and others, whose names are to the grand jury unknown, a certain sum of money, to wit, the sum of six hundred dollars, genuine, lawful, and current money of the United States of America, of the value of six hundred dollars, from the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and others, whose true names are to the grand jury unknown, upon the agreement and understanding that his, the said Albert A. Ames' official action and duty as mayor of said city of Minneapolis should be influenced thereby, and upon the agreement and understanding that he, the said Albert A. Ames, as mayor of said city of Minneapolis, would omit to take certain action, and would neglect and violate his official duty as such mayor in the following manner, to wit: That on the said 15th day of December, 1901, and for several months prior thereto, at and within the limits of the city of Minneapolis, in said county of Hennepin, in the state of Minnesota, the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird and Ethel Ford, whose true names are to the grand jury unknown, then

and there being, each for herself, did willfully, unlawfully, and wrongfully keep a house of ill fame, to wit: Gladys Barr, that certain house known and designated as number 404 Second Avenue South, in said city of Minneapolis; Augusta Hayden, that certain house known and designated as number 241 Third Avenue North, in said city of Minneapolis; Millie Rosell, that certain house known and designated as 242 Hennepin avenue, in said city of Minneapolis; Bessie Ferris, that certain house known and designated as number 6 First Avenue South, in said city of Minneapolis; Sadie Bird, that certain house known and designated as number 404 Second Avenue South, in said city of Minneapolis; Ethel Ford, that certain house known and designated as number 126 Second Street South, in said city of Minneapolis; and divers other persons whose names are to the grand jury unknown, but which persons were then and there residing in said city of Minneapolis, and each and all of them were then and there engaged in the business of unlawfully keeping, each for herself, a house of ill fame in said city of Minneapolis, the exact location of such houses and the keeper thereof being to the grand jury unknown, and which houses, and all of those heretofore designated and described, were then and there resorted to for the purposes of prostitution, assignation, and fornication, contrary to the statutes of the state of Minnesota, all of which he, the said Albert A. Ames, on the fifteenth day of December, 1901, well knew; that the said Albert A. Ames, as such mayor of the city of Minneapolis as aforesaid, on the said fifteenth day of December, 1901, at said city of Minneapolis, then and there being, and then and there well knowing that the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons, whose names are to the grand jury unknown, were engaged, each and all, in the business of keeping houses of ill fame, as aforesaid, and then and there well knowing the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons whose names are to the grand jury unknown, were common prostitutes, did willfully, unlawfully, wrongfully, knowingly, feloniously, corruptly, and contrary to his duty as such mayor

of the city of Minneapolis, take and receive as a bribe a certain sum of money, to wit, the sum of six hundred dollars, genuine, lawful, and current money of the United States of America, of the value of six hundred dollars, from the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons whose names are to the grand jury unknown, the exact amount of money received from each of said persons being to the grand jury unknown, upon the agreement and understanding with the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons, whose names are to the grand jury unknown, that he, the said Albert A. Ames, as mayor of said city of Minneapolis, as aforesaid, would not arrest or cause the arrest of either of them for keeping a house of ill fame, as hereinbefore alleged, and upon the agreement and understanding that he, the said Albert A. Ames, as mayor of said city of Minneapolis, would then and there and at all times refrain from arresting and causing the arrest and prosecution of her, the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons, whose names are to the grand jury unknown, or either of them, for the crime of keeping a house of ill fame as aforesaid, and upon the agreement and understanding that he, the said Albert A. Ames, as mayor of the said city of Minneapolis, would use his influence with the police department of said city, then and there, and at all times, to protect her, the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and divers other persons, whose names are to the grand jury unknown, from arrests and prosecution upon the charge of keeping a house of ill fame at the place and places and in the manner hereinbefore alleged.

"And the grand jury aforesaid, upon their oaths aforesaid, do further say that under and pursuant to said agreement and understanding entered into by the said Albert A. Ames, as mayor of said city, with the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and others whose names are to the grand jury unknown, that the

said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and others whose names are to the grand jury unknown, did, at said city of Minneapolis, on the said fifteenth day of December, 1901, pay to the said Albert A. Ames, and the said Albert A. Ames, as mayor of said city, did then and there receive from the said Gladys Barr, Augusta Hayden, Millie Rosell, Bessie Ferris, Sadie Bird, Ethel Ford, and others, whose names are to the grand jury unknown, the sum of six hundred dollars, as and for a bribe, in the manner and form aforesaid, contrary to the statute in such cases made and provided, and against the peace and dignity of the state of Minnesota."

1. A motion to quash the indictment was entered by defendant upon the ground that chapter 151, p. 154, Laws 1899, under which the grand jury returning the indictment was drawn, was unconstitutional, as being class legislation. The act in question is entitled "An act regulating the manner of drawing jurors in counties having a population of over two hundred thousand," and provides that in such counties the judges of the district court, or a majority thereof, shall annually, on some day in the month of December, select from the qualified electors of the county two hundred persons properly qualified to serve as grand jurors, and two thousand properly qualified to serve as petit jurors, from which list the grand and petit jurors shall respectively be drawn at the time required for the transaction of business in the district court of the county. The grand jury in question was drawn from the list made up in accordance with this act.

The act is not subject to any of the objections urged against it. It is a general law, having application to all counties in the state which at the time of its enactment or at any future time might acquire a population of two hundred thousand. While the special acts which governed the selection of grand jurors in Hennepin county prior to its enactment were not specifically repealed, they are clearly so by implication, and the general law is the only act in force with reference to the selection of grand jurors in that county. The act does not come within the objections defined in *Murray v. Board of Co. Commrs. of Ramsey Co.*, 81 Minn. 359, 84 N. W. 103, for the classification is not

arbitrary, and is not based upon existing circumstances only, but has reference to a condition which, in the opinion of the legislators, exists in largely populated counties. The object to be attained was a method of selecting the best possible class of citizens to act in the capacity of jurors, and there is a reasonable foundation for the distinction made by the legislature in giving the selection of names from which the jurors should be taken to the judges of the court in counties of large population, as distinguished from the power vested in county commissioners in counties of less population. It may be reasonably asserted that, the larger the county, the greater the opportunity for unwholesome influence in the selection of the jury list. The classification is not within the rule as defined in *State v. Ritt*, 76 Minn. 531, 79 N. W. 535. The motion to quash was properly overruled.

2. During the selection of the jury at the trial, the third juror accepted was John E. Layne, who was not challenged by the defendant, and the state withdrew the challenge interposed for both implied and actual bias. Before the completion of the jury the state produced an affidavit in which it was averred that Layne had made a statement to the effect that, if he were on the jury, he would not vote for a conviction of defendant, and the state moved the court for leave to examine the juror upon the question of actual bias. Leave was granted, the challenge found true by the triers, and the juror was excused. Under G. S. 1894, § 7362, the court may, for good cause, permit a challenge to be taken after the juror is sworn, and before the jury is completed. The cause shown was sufficient, the state had come into possession of new evidence bearing upon the juror's suitability, the defendant was not prejudiced, and there was no error in the ruling.

3. Defendant demurred to the indictment upon the ground, among others, that more than one offense was charged therein, and that the indictment was not found in a case where it is allowed by the statute to charge two offenses. The demurrer having been overruled, the trial proceeded, and, upon the introduction of testimony by the state, defendant moved for an order of the court to compel the state to elect upon which of the offenses charged in the indictment it would rely, which motion was denied. The rulings of the court are assigned as error, and are directed to the sufficiency of the indictment, upon the ground that it charges more than one offense.

Section 6, article 1, of the Constitution, provides that in criminal prosecutions the accused shall be informed of the nature and cause of the accusation, and by section 7 the information is to be furnished by the presentment or indictment of the grand jury. Section 7241, G. S. 1894, requires that the indictment shall be direct and certain as regards the offense charged, and the particular circumstances of the offense, when necessary to constitute a complete offense. Section 7247 sets forth certain tests as to the sufficiency of an indictment, among which are: Sixth, that the act or omission charged as the offense is clearly and distinctly set forth, in ordinary and concise language, without repetition; and, seventh, that the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment, upon the conviction, according to the right of the case. In the case of *State v. Nelson*, 74 Minn. 409, 77 N. W. 223, it was stated that the fundamental principle of the constitutional provision is that the accusation, whether by indictment or information, must be sufficient and specific fairly to apprise the accused of the nature of the charge against him, that he may know what to answer, and be prepared to meet the exact charge against him, and that the record may show, as far as may be, for what he is put in jeopardy.

If the allegations of the indictment mean that the persons paying the money acted jointly in making an agreement with defendant, and in pursuance of such agreement the money was collected for the month of December and paid to defendant, then but one offense is set forth. On the other hand, if the natural inference to be drawn from the entire language of the bill is that the parties paying the money were not acting together, had no joint agreement or understanding as between themselves, and each one paid the amount for individual protection of herself, without regard to whether or not the others paid, and without reference to the amount of the total payment, then each specific payment of money by each particular person would constitute a separate and distinct transaction and offense. Giving defendant the benefit of the constitutional and statute requirements, and construing the language of the indictment liberally in his favor, we are of the opinion that the crime charged is one offense, viz., the receiving of a bribe of \$600, which amount was contributed by the various parties mentioned, and others unknown.

The substance of the charge is, as specified in the first part of the bill, that on December 15, 1901, defendant did feloniously receive from the parties named, and others unknown, the sum of \$600, upon the agreement and understanding that such parties would be protected from criminal prosecution for the month of December, 1901. It is not directly charged that the parties to be protected entered into a joint agreement between themselves, or that the money was a contribution to a fund, but such is the inference from the language used. All that is stated throughout the body of the bill as to the locality of each of the persons, the occupation carried on, and the statement that each was to be protected in such place, is not inconsistent with the general allegation already mentioned; nor is the statement that the exact amount of money received from each of the persons was to the grand jury unknown necessarily in conflict with the view that the money had been paid by each in pursuance of a joint agreement. These particulars are inserted to show the nature of the occupation of each person contributing to the fund, and emphasize the fact that each contributor was to be protected. The indictment is not rendered uncertain and indefinite from the fact that it states that part of the money was paid by persons to the grand jury unknown. It was certain and definite with reference to six persons specifically named, and if the crime charged is that the parties specifically named, and others whose names are unknown, entered into an agreement for their protection, and in pursuance thereof the money was paid, there is but one offense charged. The motion to quash and the motion to elect were properly overruled.

4. We now come to a more serious question, viz., does the evidence sustain the offense charged in the indictment?

The principal witness on behalf of the state was Erwin A. Gardner, who was, at the time the offense is alleged to have been committed, a student in defendant's medical office, and his testimony was to the effect that defendant came to him and proposed to gather what he termed "a campaign fund"; that he was directed to go to the various places of resort in the city, and make a monthly collection from each person according to her circumstances, in consideration of which payments the parties paying should be protected from arrest; that, in pursuance of this conversation, defendant detailed for Gardner's assist-

ance several detectives and police officers of the city, with whose help he was to locate the various parties. Christopher Norbeck, a city detective, gave substantial assistance in locating the women and in collecting the money. Defendant directed Norbeck and the other men to take their instructions from Gardner. Gardner received money from each woman independently—about one half of the amount from the first to the fifth, and the other half from the fifteenth to the twentieth, of the month. Several of the women were called by the state, and each testified to having paid Gardner a sum of money ranging from \$15 to \$25, with the understanding that she would be protected. After receiving the entire amount—about \$600—Gardner paid the same over in one sum to defendant.

The state has advanced two propositions in support of its claim that the offense charged in the indictment is supported by the evidence: First, that Gardner was acting as agent of the women, and represented them in receiving their contributions to the fund being collected for their benefit, and paying the amount thereof over to the defendant; second, that when Gardner handed defendant, at his office, the roll of bills of \$600, as testified to by him and the mayor's private secretary, Thomas Brown, a single and distinct offense was committed, in receiving a bribe of \$600, and that this act was the culmination of several acts of other people, but on defendant's part there was unity of action and unity of intent.

The undisputed evidence on the part of the state is that Gardner was delegated by defendant as his agent, with power to arrange with as many of the women as it was possible to get money from, and to agree, on the part of defendant, that, in consideration of the payment by each of the amount decided upon, such person would be unmolested for the month of December. If this evidence be true, the defendant constituted Gardner, the several detectives and police officers, his agents to represent him, so that the effect was the same as though he had individually gone to each of the parties and himself received the money. There is no evidence to the effect that any of the women acted jointly or in pursuance of a common understanding, or that a fund was made up by them, or on their behalf. There is no evidence to justify the inference that Gardner was constituted the agent of the women; that he was to take their money, having been contributed to a

fund for that purpose, and then, for them, deliver it to defendant, with the understanding that, in consideration thereof, the parties to the contribution should receive protection. Each person making a payment acted absolutely independently of every other. There was a separate and distinct agreement entered into with each person paying any money to the effect that such person would be protected by reason of the payment, regardless of whether any others similarly situated paid any money or were protected.

This is a complete answer to the second proposition, that acceptance by defendant of the roll of bills constituted the offense charged, and that it implied unity of action and unity of intent. If this were true, then guilt would depend upon the amount paid on each occasion by the agent to his principal; and, upon this theory, if Gardner had paid over \$50 every time he received that amount, then twelve separate offenses would have been committed. The amount paid over to his chief by Gardner at any one time was only an incident in the carrying out of the scheme of accepting bribes from the different individuals mentioned, and such payment into the hands of defendant was immaterial, under the evidence, except as it corroborated Gardner, to show that he was acting for his principal, and had carried out his instructions.

In *State v. Ames*, 90 Minn. 183, 96 N. W. 330, the chief of police was indicted and convicted for taking a bribe in February, 1902, from one of the women who paid money to Gardner in December. The state in that case treated each payment for protection as one offense, although perpetrated in pursuance of a general scheme to receive bribes from all women similarly situated. It does not follow that, because each transaction constituted a separate offense, the same evidence would justify a conviction for one offense, based upon the entire scheme, unless under an indictment for conspiracy. Defendant is not charged with conspiracy, and hence the mere devising of the scheme to collect money from different persons engaged in the same unlawful business does not constitute the act or transaction set forth in the indictment.

The distinction between the intent, purpose, or impulse constituting conspiracy, and the individual acts by means of which it is carried into effect, is pointed out in *Wallace v. State*, 41 Fla. 547, 26 South. 713. The evidence in the case before us no more establishes the commission of one offense than does the counterfeiting of several notes of

the same series, printed upon the same plate, constitute one offense, although perpetrated in pursuance of a general scheme to raise money by counterfeiting. *Bliss v. U. S.*, 105 Fed. 508, 44 C. C. A. 324. In contrast with the last case, see *State v. Moore*, 86 Minn. 422, 90 N. W. 787, where this court held that the uttering of a forged mortgage and forged note, which the mortgage purported to secure, at one time and to the same party, is a single act, and constitutes one offense. That case applies the general rule that where there is but one impulse, although carried into effect by different acts, the whole constitutes but one transaction and one offense. To the same effect, the receiving of money on deposit by an officer of an insolvent bank from one particular person is not a continuous offense, and a bar to a prosecution for receiving money thereafter from another individual at a different time. They are different transactions, and constitute distinct offenses, although carried into effect pursuant to a purpose of defrauding all depositors who placed money in the insolvent institution. *State v. Burlingame*, 146 Mo. 207, 48 S. W. 75. See also *State v. Jamison*, 110 Iowa, 337, 81 N. W. 595.

The state relies mainly upon the case of *U. S. v. Scott* (C. C.) 74 Fed. 213, where the indictment charged an internal revenue collector with being unlawfully concerned in soliciting a contribution of money (naming the amount, set forth in different counts) from divers persons who were officers of the United States government, to the grand jury unknown, contrary to the statute which prohibited any officer of the government from soliciting or receiving, or being in any manner concerned in the soliciting or receiving of, any assessment, subscription, or contribution for any political purpose from any officer, clerk, or employee of the government. Upon demurrer the indictment was sustained, and it was held that it charged only one offense. An examination of the authorities cited in the opinion discloses the fact that the court based its decision upon the principle that the offense charged involved but one transaction, although such act involved several similar violations of the law with respect to several different persons. In other words, that defendant was concerned in an assessment or fund which was contributed to by parties unknown. In the words of the court: "It is easy to imagine circumstances under which the defendant, by one act of reception, or by one act of solicitation, could have

received or solicited contributions from many persons. In such a case the foregoing authorities seem to establish the propriety of embracing in one count the single act of solicitation or reception in all the aspects which it presents with reference to the different persons whose contributions were solicited or received." Clearly, the indictment in that case stated but one offense. So here the indictment charges but one offense—the receiving of a bribe, which is one act or transaction—but there is a complete failure of proof of the particular act or transaction set forth constituting the offense charged. This disposes of the case, and it is unnecessary to notice the other assignments of error.

Judgment reversed.

BROWN and LOVELY, JJ. (concurring.)

We concur in the result reached in this case, but not for the reasons given in the opinion of the court.

It is the constitutional right of every person accused of crime to be furnished reasonably certain information of the charge upon which he is to be tried, to enable him to prepare for his defense or to avail himself of the plea of former jeopardy, and we are very clear that this indictment did not accord to the accused this guaranty of the organic law. The rule of criminal pleading that the charge must be laid positively, and not inferentially, by way of recital, merely, or argumentatively, is well settled in this state. *State v. Howard*, 66 Minn. 309, 68 N. W. 1096; *State v. Clements*, 82 Minn. 448, 85 N. W. 234. This constitutional right of the accused is not abrogated, but has been recognized by statute (*State v. Cody*, 65 Minn. 121, 67 N. W. 798), and is of little avail if the exigencies of any particular case stand in the way of its essential enforcement by the courts.

It seems to us quite apparent that this indictment charges that defendant solicited a number of bribes or "grafts" from several distinct women, some of them named, and others unknown and not named, for whom protection and immunity were to be given. It is not set forth in the indictment that these women were acting in concert, and the fundamental principle of law is that in criminal pleading nothing can be inferred, intended, or presumed that is necessary to be alleged as an essential element of a crime. If the abandoned women were seeking protection through Gardner, as their agent, and the bribes were to be

paid by them jointly, the situation presented would be very different from that of soliciting and receiving money of different persons at different times, each being an independent act, as here alleged. We are unable, by any fair or reasonable construction of this pleading, to reach the conclusion that such necessary co-operation or concert of action by these women is charged therein. To infer its existence would be, in effect, to create a new accusation for a different offense. If such an inference were permitted, it would be an infringement of what we regard as the plainest rules of criminal pleading.

If, as held by the court, the indictment charges but one offense, it is impossible to avoid the inevitable and logical result which follows from the proofs offered at the trial that Gardner was the agent of the women, and paid the money to Ames as their representative. At least, the evidence was sufficient to sustain the jury in so finding. We cannot avoid the view that the indictment charges what is plainly stated—the commission of many distinct and separate offenses, committed at different times, between the defendant and those persons from whom the bribes were received, as well as a number of unknown persons of the same character, whose names might be first made known at the trial, and thus subject the defendant to an inquisition which no necessity in criminal procedure can justify, since it strikes at fundamental safeguards, which it is our duty to recognize and uphold. The indictment should either have been set aside for uncertainty, or, upon the defendant's motion at the beginning of the trial, the state should have been required to elect upon which charge the prosecution would proceed.

To our minds, the vital question is not the sufficiency of evidence, but whether one of the plainest principles of the fundamental law, upon which the rights of all citizens depend, has been violated.

