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NEW JERSEY, *ss.*

(SEAL) *The State of New Jersey to our Justices of our Supreme Court,*
GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court before you, between the State of New Jersey, plaintiff and defendant in error therein, and Louis Levin, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (*Pro ut* the said indictment and the said counts therein), whereof he has been indicted and was thereof convicted by a certain jury of the County of Mercer taken between the State of New Jersey and the said Louis Levin, and the said indictment having been reversed by the Supreme Court of New Jersey, as it is said, manifest error hath intervened to the great damage of the said State of New Jersey, as from its complaint we have received information; we being willing, in its behalf, to correct the error in due manner, if any there shall be, and that full and speedy justice be done to it, the said State of New Jersey do command you that if judgment be thereupon given, that you distinctly and openly send, under your seal, the record and proceedings and plaint and judgment aforesaid, and also include the entire record of the proceedings had upon the trial of the said cause, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, aforesaid, on the third day of October next, together with this writ, that the record and proceedings and judgment aforesaid being inspected we may cause to be done thereupon for correcting that error what of right and according to law and custom of the State of New Jersey ought to be done.

Witness Honorable Edwin Robert Walker, our Chancellor, and presiding judge of our said Court of Errors and Appeals, at Trenton aforesaid, this fourteenth day of September, nineteen hundred and eighteen.

THOS. F. MARTIN,
Clerk.

A. DAYTON OLIPHANT,
Attorney.

MARTIN P. DEVLIN,
Associate Counsel.

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.

WILLIAM S. GUMMERE
C. J.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

New Jersey Supreme Court

STATE OF NEW JERSEY,
Defendant in Error,
vs.
LOUIS LEVIN,
Plaintiff in Error.

WRIT OF ERROR.

(*Filed June 14, 1917.*)

NEW JERSEY, *ss.*—The State of New Jersey to the Honorable Erwin E. Marshall, Judge
[L. S.] of the Court of Quarter Sessions in and for the County of Mercer, GREETING:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Louis Levin, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts, for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (pro ut the said indictment and the said counts therein), whereof before you he has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Louis Levin, as it is said, manifest error hath intervened to the great damage of the said Louis Levin, as from his complaint we have received information; we being willing, in his behalf, to correct the error in

due manner, if any there shall be, and that full and speedy justice be done to him, the said Louis Levin, do command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, and also including the entire record of the proceedings had upon the trial of said cause, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the fourteenth day of June next, and this writ, that the entire record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, at Trenton, this twenty-fifth day of May, nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

JOHN H. KAFES,
Attorney.

RETURN.

MERCER COUNTY, to wit:

Be It Remembered, That at a Court of Oyer and Terminer, holden at Trenton, in and for the said County of Mercer, on the third Tuesday of January, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Erwin E. Marshall, Judge of the Court of Common Pleas in and for the said county, according to the form of the statute in such case made and provided, by the oath of Archibald M. Maddock, Frederick Moore, William Zenzer, Frank C. Hartman, Roger Henry, Jr., Howard W. Larison, John Drechsler, A. Dayton Oli-

phant, Clarence S. Grover, William I. Leigh, Clark C. Dilatush, Disbrow Wilson, William Clayton, Asher Wilson, Thomas P. McKee, Joseph B. Margerum, Walter Firth, Sr., Calvin L. Hill, Charles R. Chamberlain, John J. Cleary, William J. Convery, Yaro Yago and Claudius P. Weeden, good and lawful men of the said County of Mercer, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Mercer.

Iti s presented in manner and form following, that is to say:

The bills herewith presented are true bills.

A. M. MADDOCK, *Foreman.*

MERCER OYER AND TERMINER.

January Term, A. D. 1917.

MERCER COUNTY, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath present, that Louis Levin and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the twelfth day of March, in the year of our Lord one thousand nine hundred and fifteen, and thence continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, did without permission, unlawfully tamper with and interfere with the water meter placed in the premises of the said Louis Levin, at number three hundred and nineteen North Warren street, in said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton for the purpose of measuring and registering the amount of water used therein, and did unlawfully and without permission, during the time aforesaid, alter and change the said water meter and did un-

lawfully and without permission, during the time aforesaid, remove the gears and other mechanical parts of the said water meter and substitute other parts therefor, and did unlawfully and without permission, during the time aforesaid, adjust and change the said water meter so that the same did not register all the water that passed through same and did allow more water to flow through the same, during the time aforesaid, than would be properly registered thereby, with intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton; 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.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Louis Levin, on the twelfth day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, without permission, to unlawfully tamper and interfere with the water meter placed in his said premises at number three hundred and nineteen North Warren street, in said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton, for the purpose of measuring and registering the amount of water to be used therein, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck to change the said water meter, without permission, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, during the time aforesaid, to remove the gears and other mechanical parts of the said water meter and to substitute other parts therefor, without permission, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck during the time aforesaid, to adjust the said water meter so

that the same did not register all the water that passed through same, and did allow more water to flow through same than would be properly registered thereby, without permission, without intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton; 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.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the Louis Levin and Charles H. Speck, on the thirteenth day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord nineteen hundred ad seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, certain stored filtered water, to wit, one hundred and ninety thousand two hundred cubic feet of stored filtered water of the value of one hundred and seventy-one dollars and ninety-eight cents, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, during the time aforesaid being found, unlawfully and feloniously did steal, 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.

MERCER OYER AND TERMINER.

January Term, A. D. 1917.

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath do further present that the said Louis Levin and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the first day of December, in the year of our Lord one thousand nine hundred and sixteen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and

within the jurisdiction of this Court, a certain quantity of stored filtered water, to wit, one hundred and ninety thousand two hundred cubic feet of stored filtered water, of the value of one hundred and seventy-one dollars and ninety-eight cents, being over the value of twenty dollars, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, then and there being found, unlawfully and feloniously did steal, 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.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

JUDGMENT.

And afterwards, to wit: On Tuesday, the thirtieth day of January, in the year of our Lord nineteen hundred and seventeen, at a session of the said Court of Oyer and Terminer as aforesaid being as yet of the term of January aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said county for trial according to the form of the statute in such case made and provided, and a rule to that effect then and there duly made and entered upon the record of each of the said courts respectively; and afterwards, to wit, on the sixteenth day of February, in the year of our Lord nineteen hundred and seventeen, at a session of the Court of Quarter Sessions in and for the said County of Mercer of the Term of January, of the year of our Lord nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions at Trenton, in the County of Mercer aforesaid, cometh the said Louis Levin in his proper person according to the condition of the recognizance by himself and his

pledges in that behalf heretofore made and now here touching the premises in the said indictment above specified and charged upon him being asked in what manner he will acquit himself thereof, he says that he is not guilty thereof, and of this puts himself upon the county, and Martin P. Devlin, Prosecutor of the Pleas of the said County of Mercer, who prosecutes for the State in this behalf, does likewise the same, therefore let the said indictment be continued until a jury thereupon come here before the said judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit, on Monday, the sixteenth day of April, in the year of our Lord nineteen hundred and seventeen, of the January Term, nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions in and for the said county, twelve good and lawful men of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Louis Levin, to recognize upon their oaths whether the said Louis Levin be guilty of the misdemeanor in the indictment aforesaid above specified or not guilty, because as well the said Martin P. Devlin, who prosecutes for the State in this behalf as the said Louis Levin, have put themselves upon the said jury, and the jurors of the said jury by J. Warren Fleming, Sheriff of the said County of Mercer, for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit, B. Frank Persing, William W. Belue, John Connor, Ernest Schnorbus, Lester Golden, Louis Johnson, Grover Tilton, Philip F. Mathes, John E. Barnes, Joseph H. Mellick, George H. E. Read and Walter V. Hutchinson, who having been elected, tried and sworn to speak the truth of and concerning the premises upon their oath, say that the said Louis Levin is guilty of the misdemeanor aforesaid on him above charged in the form aforesaid and as by the indictment afore-

said is above supposed against him, and thereupon the said Louis Levin was remanded for sentence until Friday, the twenty-fifth day of May, nineteen hundred and seventeen, at which last mentioned day the said Louis Levin, being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said Louis Levin if he hath or knoweth of anything to say wherefore the said judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment against him, who nothing further saith unless as he before had said, whereupon all and singular the premises being seen and by the said judge here fully understood it is considered and adjudged by the Court here that the said Louis Levin do pay a fine of five hundred dollars and the costs of this prosecution.

STATE OF NEW JERSEY, }
County of Mercer, } *ss.*

I, Fred R. Parker, Clerk of the Court of Oyer and Terminer and Clerk of the Court of Quarter Sessions, do hereby certify that the foregoing are the entire record and proceedings and judgment in the case of The State of New Jersey *vs.* Louis Levin, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and official seal of said courts this eighth day of June, A. D. 1917.

[L. S.]

FRED R. PARKER, *Clerk.*

The entire record and proceedings of the indictment, plea, trial, conviction and judgment, including the entire record of the proceedings had upon the trial of said cause, whereof mention is within made, with all things concerning the same, to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained, we certify in a certain schedule to this writ annexed as we are commanded.

ERWIN E. MARSHALL, *Judge.*

MacCrellish & Quigley Co., Printers, Trenton, N. J.

Mercer County Court of Quarter Sessions

THE STATE
vs.
LOUIS LAVINE AND
CHARLES H. SPECK.

(*Filed June 14, 1917*).

TRENTON, N. J., April 16th, 17th, 18th.

Before HONORABLE ERWIN E. MARSHALL, County Judge.

Transcript of shorthand notes of testimony taken in the above-stated cause at the Court House, Trenton, New Jersey, Monday, April 16th, 1917, before Honorable E. Marshall, county judge.

Martin Devlin, Esq. (Prosecutor of the Pleas), for the State.

John H. Kafes, Esq., Harry Heher, Esq., for the defendants.

Mr. Kafes—I desire at this time for the purpose of the record to withdraw the plea and make a motion. I withdraw the plea of not guilty entered in this case.

In this indictment there are four separate and distinct counts. The first count charges Louis Lavine and Charles H. Speck, &c., with unlawfully interfering with and tampering with a water meter.

That is in substances what that charge is. I desire to quash that first, on the ground that it is not in ac-

cordance with the nature of the statute—the first part—in that it fails to charge any criminal intent.

Your Honor, will observe, and I will make it clear to you, what I mean. It says "with force and arms, &c., in the City of Trenton, during the time aforesaid, without permission, unlawfully tampered with and interfered with the water meter placed in the premises, 36 Chestnut street, in the City of Trenton, for the purpose of measuring and registering the amount of water used."

That is the first part of count one. Your Honor will observe there is no criminal allegation or criminal intent in that part of the count. You will observe it does not include the language of the statute by showing intent to cheat and defraud.

Secondly, that the first count did not charge any offense either at common law or by virtue of any statute of New Jersey.

Third, that it does not inform the defendant of the nature of the charge against him.

Fourth, the first count is uncertain, implied and ambiguous. For these reasons I move to quash the first count in the indictment.

As to the second count, I move to quash that on the same grounds as I have named as the reasons for quashing the first.

In respect to the third and fourth counts, I move to quash them on the ground that neither the third nor the fourth counts in the indictment charges crime, either at common law or by statute. I move to quash the second, third and fourth counts upon the grounds that the facts and things set forth in the third and fourth counts do not constitute the crime of larceny as charged against this defendant.

For these reasons I move to quash the four separate counts in the indictment.

The Court—All these motions to quash these counts are overruled in each instance.

Defendant through his counsel, prays an exception to the above ruling of the Court. Let it be sealed and it is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

Edward W. Lee, sworn for the State.

Direct examination, by Mr. Devlin.

Q. You are a commissioner of the City of Trenton?

A. Yes, sir.

Q. And as such the Water Department of the City of Trenton is under your control and jurisdiction?

A. So far as the financial operations are concerned.

Q. Did you—or do you remember some time last November, 1916, having some difficulties with some water meters at that time?

A. Yes, sir.

Q. You and Mr. LaBarre had a conference about the matter?

A. We did.

Q. As a result of that conference, did you send for and have an interview with Mr. Speck.

A. Mr. LaBarre didn't have an interview with Mr. Speck. I did.

Q. Do you know Mr. Lavine?

A. I do.

Q. Do you know where his place of business was at that time?

A. I do; 319 Warren street.

Q. After you had a conference with Mr. LaBarre, did you send a messenger over to Mr. Levine, telling him to come to see you?

A. Mr. LaBarre did that, at my request.

Q. Do you know how he communicated with Mr. Lavine?

A. I do not.

Cross-examination, by Mr. Kafes.

Q. He appeared before you, did he?

A. Yes, sir.

Q. When was that?

A. Between two and three weeks prior to his arrest, the exact date I cannot tell you.

Q. Somewhere around the first of November?

A. Around the first of November, I think.

Q. Did you at any time thereafter meet Mr. Lavine and Mr. Speck together?

A. No, sir.

Q. What?

A. No, sir.

Q. Did you promise Mr. Lavine that you would arrange a meeting between them—that is between Lavine and Speck?

A. I asked Mr. Lavine if he would be willing to meet with Mr. Speck and renew his denial of the whole transaction in Mr. Speck's presence and he said he would.

Q. Did you promise that you would try and arrange such a meeting?

A. I believe I did.

Q. You never did, however?

A. No.

Redirect examination, by Mr. Devlin.

Q. Did he say he was willing to meet Speck?

A. He did.

David T. Wittenborn, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Wittenborn, you are the Treasurer of the Water Department?

A. Yes, sir.

Q. And supervise the accounts of the Water Department?

A. Yes, sir.

Q. Do you know Mr. Lavine has an account with you?

A. Yes, sir.
Q. He is a customer?
A. Yes, sir.
Q. Do you know where his place of business is?
A. Yes, sir.
Q. Where?
A. North Warren street.
Q. Do you know what kind of business he practices there?
A. Saloon business.
Q. Can you tell what the meter readings at Lavine's place were from the 12th day of March, 1915, to the end of 1916?
A. By referring to the records.

Mr. Kafes.
Q. I don't know what you mean by that.
A. The readings.

By Mr. Devlin.
Q. Your records?
A. Yes, sir.
Q. In this book (indicating)?
A. Yes, sir, and the cards. What was the date?
Q. From the 12th day of March, 1915, to the end of March, 1916. Can you tell what the readings were?
A. I can, yes, sir.

Mr. Kafes—I object to that. In the first place he is called to state what the readings of the meter were between that time. I understand that that is secondary evidence. It is not the best evidence. The man who made the readings is the only competent person to testify to what these readings were. It is illegal, irrelevant and immaterial in this case.

The Court—I will allow it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

Let it be sealed and it is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

Q. Can you answer that,—what is it?

A. 142,600 is the statement of the meter on the 12th day of March, 1915. What is the other date?

Q. Down to and including the 10th day of December, 1916. The reading of—

A. The next reading is on the 4th day of December, 222,000.

Q. Is that the total from that date to the other?

A. 142,600 on the 12th day of March and the state of the meter on the 4th day of December, 222,000,—the difference between these two is the total number of cubic feet.

Q. How often are bills sent out?

Mr. Kafes—I make a motion to strike out the testimony. He didn't read the meter nor has it been shown anyone read the meter or if they did that it was properly read. There is a missing link somewhere.

The Court—The State may later in the case connect the testimony. I deny your motion.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

Let it be sealed an dit is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

A. Quarterly.

Q. Were bills sent out and paid according to these readings?

A. Yes, sir.

Q. From these books—do your books show the payment of the bills?

A. Yes, sir.

Q. Do you, as an officer of the water department, receive any objections to bills that are made?

A. Yes, sir.

Q. Have you any record or knowledge of the bills you sent out in Lavine's case?

A. No, sir.

Q. Mr. Wittenborn, from the records you have

entered in that book of the number of cubic feet—the readings of meter records—where do you get those records from?

A. The meter reader's slip.

Q. When you say a meter reader's slip, is there such an employee?

A. The department has three.

Q. Three men?

A. Yes, sir.

Q. Are they furnished with slips similar to these?

A. These are the originals.

Q. They return to you these slips?

A. Return them to the man who has charge of the meter accounts.

Q. What is his name?

A. Mr. Rittenhouse.

Q. What does he do?

A. Enters it upon the card and subtracts the difference—

Q. Where is the card?

A. That is a duplicate and that is the original.

Q. He enters it on this card and then what happens?

A. He sends out a bill and if it is paid during the month of issue, he gets a discount.

Q. What part does your book play?

A. It is all on that card from a given date, and it continues from this book to that card.

Q. What does your book contain with reference to these—

A. Readings of the meters, the amount of payment, and the discount.

Q. Where do you get the reading of the meters from?

A. From the meter readers who go out and take them from the meters.

Q. This book commences at 1914 and continues on these cards?

A. Yes, sir.

Q. You have changed the method?

A. Yes, sir.

Q. You are the officer who receives payment of these bills?

A. There are others. I am in charge, or Mr. Hurley, or Mr. D'Arcy.

Cross-examination, by Mr. Kafes.

Q. Are these two cards the same?

A. Yes, in case one is lost.

Q. They are both the same?

A. Yes, sir.

Q. Will you show us where March, 1915, begins?

A. March, 1915, begins there. That is the reading.

Q. What is the amount of the bill?

A. 142,600, the difference between the two is 10,700 cubic feet, the amount of the bill is $9.63.

Q. March, 1915, the amount of the bill is $9.63?

A. $9.63, yes, sir.

Q. When is the next bill?

A. The reading is the 16th day of June, which is issued in July. $7.92 the amount of the bill.

Q. What is the next bill?

A. September.

Q. What is the amount?

A. $7.47.

Q. The next one?

A. December, $8.10.

Q. The next one?

A. March, $10.17.

Q. July bill, from June, $12.60.

A. October bill, in September, $10.80.

Mr. Kafes—Mr. Devlin, did you include in your question December, 1916, or down to that time?

Mr. Devlin—Down to December, 1916.

Q. Can you tell me what the bill of June 25th, 1914, was?

Mr. Devlin—I object to that. The bill as far back as 1914 is not included in the indictment. We are trying the case from the 12th day of March, 1915, to December, 1916.

Mr. Kafes—I will state what the purpose of this is. In the former case your Honor would not admit the bills after the alleged tampering or fixing of the meter, either for the purpose of showing they were or were not for a lesser amount, or for any other reason. Your Honor's reason for rejecting them was that the defendant, knowing if he did, that it was fixed, might have used a greater amount of water and therefore it could not be an equal comparison, unless it was shown the same amount of water was used as before. Your Honor will grasp that what I seek to interpose at this time is entirely different. I do not seek to get in bills after the meter was fixed, but I do seek to get in bills before it was fixed and when the State admits it was running true and properly.

The Court—The bills rendered by the department up to the time of the alleged fixing of the meter?

Mr. Kafes—Yes.

The Court—I will permit you to do that.

Mr. Devlin—Up to what time?

The Court—Up to the time of the alleged fixing of the meter.

Q. When was the meter put in Lavine's place?

A. July 11th, 1912.

Q. Have you the amount paid during that time down to March 3d, 1915?

A. Yes, sir.

Q. Where are the amounts?

A. This column and the other one (indicating).

Q. Book 500–1000 Trenton Water Works, page 541.

Therein is contained the account of Louis Lavine, 319 North Warren St.?

A. Yes, sir.

Q. You say the first bill was when?

A. Read September 30th, 1912.

Harry H. Rittenhouse sworn for the State.

Direct examination, by Mr. Devlin.

Q. You are an employee of the Water Department of the City of Trenton?

A. Yes, sir.

Q. In what capacity, what do you do?

A. I make a record of the water consumed by the inhabitants, and figure out the charges for the same. Credit all moneys received.

Q. Now, do you receive readings of the meters from the various men?

A. Yes, sir.

Q. You go out and read the meters?

A. Yes, sir.

Q. I show you a paper and ask you if that is a meter reading?

A. (Witness examines paper) Yes, sir.

Q. Of what place and person?

A. Lavine, 319 North Warren Street.

Q. When you received that reading, what did you do with it?

A. Posted it on the card.

Q. I show you a card and ask you if that is your work?

A. Yes, sir.

Q. After you post it on the card, what do you do?

A. Figure out the amount of water consumed during that quarter, and figure out the cost of the same.

Q. Then what do you do?

A. Then I enter it here and make out a bill and send it to the gentleman who has used the water.

Q. Yes, then the bill is sent out and he pays it and then what happens?

A. I receive the stub.

Q. From whom?

A. The gentleman that takes the money, cashier.

Q. Who is liable to take in the money?

A. Mr. Wittenborn, usually. He usually takes in the money.

Q. Or Mr. D'Arcy?

A. Yes, Junior.

Q. They always take in the money?

A. As a rule.

Q. When do they give the stub of the bill to you?

A. At the end of each day, and we post it.

Q. And enter it on this card?

A. Yes, sir.

Q. From this card handed to you to refresh your memory, I ask you if you sent out any bills to Lavine of North Warren Street between the dates of March 12th, 1915, and December, 1916?

A. Yes, sir.

Q. From your records are you able to tell if these bills were paid or not?

A. Yes, sir, they were.

Q. Are you the person to whom protests come in reference to bills?

Mr. Kafes—Objected to as irrelevant and incompetent.

The Court—I will allow it.

A. Yes, sir.

Mr. Kafes—Just a minute. I don't see how that can be material.

The Court—He has answered the question and I have ruled.

Defendant, through his counsel, prays an exception to the above ruling of the court.

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

ERWIN E. MARSHALL, *Judge.*

Q. You say they are?

A. Yes; they most always come to me.

Q. Complaints of the customers come to you?

A. Yes, sir.

Q. From the time I have said, March 12, 1915, to December, 1916, have you any recollection of any complaints from Mr. Lavine coming to you about the bills?

A. No, sir.

Q. From looking through your records there, is your memory refreshed about any complaints?

A. No, sir.

Q. Now, I show you another card and ask you if you have seen that before?

A. Yes, sir.

Q. Are you able to tell us the amount of water and its value for which Lavine received and paid bills from the twelfth day of March, 1915, up to December, 1916? You understand the question?

A. Yes, sir.

Q. The amount of water that the readings of the meters show he received and the amount of money he paid?

A. Yes, sir.

Q. Will you figure that out for us from those dates?

A. Do you want me to include December?

Q. Up till and including December, 1916?

A. Water consumed from 3–12–15, including the reading in December, 1916, is 78,000 cubic feet. The amount of the bill rendered at ninety cents a thousand is $70.20. I have made an error in figuring the time. I understand this meter was corrected in November, November 20th, 1916. It was corrected and placed back November 20th, 1916.

Q. Can you give me that reading from that day?

A. November 20th, 1916

Q. Yes.

A. I cannot give you any reading of November

20th; the reading I have here is September 6th and the next is 12–4–16.

By the Court.

Q. No reading was taken at that time?

A. No, sir.

Further direct examination, by Mr. Devlin.

Q. When was the last reading taken in 1916?

A. 12–4–16.

Q. That is the fourth day and twelfth month?

A. The twelfth month and the fourth day.

Mr. Kafes—I object to that. The meter was fixed on the 20th day of November, 1916.

The Court—I will restrict it to the 6th day of September, the date of the reading; the last reading before the meter was fixed.

Q. Then give me the figures from the 12th day of March, 1915, up to and including the October reading of 1916.

A. September, I cannot give you October. From March, 1915, to September, 1916, the amount of water was 63,400 cubic feet and amount paid was $57.06.

Q. Now, assuming that that meter was registering one foot for every four, I ask you, are you able to tell us how many feet passed through that was not registered?

Mr. Kafes—I object to that, it is immaterial, irrelevant and incompetent.

The Court—Your objection would be well taken if the State does not, before it concludes its case, show that this testimony is relevant. I think I will permit it at this time.

Defendant, through his counsel, prays an exception to the above ruling of the court.

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

ERWIN E. MARSHALL, *Judge.*

A. The amount of water which was not registered and should have been registered was 190,200 cubic feet.

Q. Do you know what the rate is for water?

A. Ninety cents a thousand cubic feet.

Q. Ninety cents a thousand cubic feet?

A. Yes, sir.

Cross-examination, by Mr. Kafes.

Mr. Kafes—I ask that this paper marked Trenton Water Works, Louis Lavine, 501 F. be marked for identification.

Mr. Devlin—I object to it going in evidence.

The Court—I think it is permissible.

(Paper last referred to marked D. 1 for identification.)

Q. I show you a slip of paper marked D. 1 for identification and ask you what it is.

A. That is the reading of the meter.

Q. Taken when, Mr. Rittenhouse?

A. December 17, 1914.

Q. In whose handwriting is that?

A. I do not have charge of the meter readers; I do not know.

Q. Did you get the amount of the number of cubic feet consumed by Lavine from that paper?

A. Yes, sir.

Q. You don't know who read the meter?

A. No, sir, I don't know.

Q. You don't know anything about it?

A. No, sir; I do not.

Q. Do you know who read the meter at that time?

A. No, sir.

Q. Do you know whose handwriting that is?

A. I do not.

Q. Do you know anything about the correctness of the reading?

A. I do not.

Q. You also have the readings of what other dates?
A. January 16, September 13, December 6, March 15, June 14, and September 6.
Q. I ask you, who made those figures?
A. I do not know.
Q. The only thing you know is that these figures were given you on this slip of paper?
A. Yes, sir.
Q. You accept them as being true?
A. Yes, sir.
Q. You don't know if they are correct or not?
A. No, sir.
Q. You don't know if the meter was read or not?
A. Of course, it is offered as a record to me. I don't see the man read the meter.
Q. You have no personal knowledge if it was read at all?
A. No, sir.
Q. You know absolutely nothing about the correctness of the reading, if the reading was made at all, do you?
A. No, sir.
Q. You simply accept the figures and don't go beyond that?
A. No, sir.

Re-direct examination, by Mr. Devlin.
Q. Do you know that the departmnet employs meter readers?
A. Yes, sir.
Q. Do you know that these slips are furnished to the meter readers?
A. Yes, sir.
Q. And they give you these figures?
A. Yes, sir.
Q. You enter them and charge bills on them?
A. Yes, sir.
Q. The bills, according to the dates, have been paid?

A. Yes, sir.

Q. As far as you know, no objections or protests have been made?

A. No, sir.

Re-cross examination, by Mr. Kafes.

Q. You do know this: That on a number of occasions meters have been overread or underread?

Mr. Devlin—I object to that. There is no evidence in this case about a meter being overread or underread. Cross-examination must be confined to this case and to this particular meter.

Mr. Kafes.—I will withdraw that part of the question.

Q. I ask you: Do you not know these readers have and do make mistakes?

Mr. Devlin—I object to that.

Mr. Kafes.—All right; I will withdraw that question.

(At this point Charles H. Speck plead guilty to the indictment.)

Charles H. Speck, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Speck, you are working for the Water Department?

A. Yes, sir.

Q. How many years?

A. About twelve years.

Q. Do you know Louis Lavine?

A. Yes, sir.

Q. Do you remember having a conversation with Haefael Cohan?

A. Yes, sir.

Q. Some time in 1914?

A. Yes, sir.

Q. At Haefael Cohan's place, 36 Chestnut Avenue?

A. Yes, sir.

Q. As a result of that conversation did you go to the place of business of Louis Lavine?

A. Yes, sir.

Q. On Warren Street?

A. Yes, sir.

Q. And when you got there did you see Lavine?

A. Yes, sir.

Q. And what business does Lavine run there?

A. Saloon and hotel.

Q. You saw Lavine; what did you say to Lavine, or Lavine say to you, and what did you do?

A. Well, I don't remember just what was said.

Q. Tell us the substance?

A. Lavine took me down in the cellar and I changed the gears on the meter, and after I changed the gears Lavine gave me ten dollars.

Q. Before these gears were changed, tell us what the substance of the talk was that passed between you and Lavine.

A. I told him that I changed the gears on the meter and it would run about seventy-five per cent. slower.

Q. I want the talk before you changed it. You went in the saloon and saw Lavine?

A. Yes, sir.

Q. Something was said by him to you and you to him; tell us the substance.

A. I told Lavine Cohan had sent me there, and he said: "All right;" and we went right down the cellar together and there was no conversation; he had nothing more to say.

Q. And was anything said by Lavine or by you what Cohan sent you there for?

A. I came up there to change the gears on the meter.

Q. Who said it?

A. I spoke to Lavine.

Q. You said that to him?

A. Yes; that Cohan had sent me up.

Q. Do you know that Cohan is related to him?

A. Sir?

Q. Is Cohan related to Lavine?

A. Yes, sir; I think he is a brother-in-law.

Q. You say when you fixed the meter you said to him the meter would run about seventy-five per cent. slow?

A. Yes, sir; he then handed me ten dollars and I went.

Q. Did you talk with him again during the year 1914?

A. No; I don't think I did.

Q. Do you know if he still continued in that place?

A. I think he has.

Q. Until November of 1916?

A. Did I see him then?

Q. No; do you know if he still occupied that place?

A. Yes, sir.

Q. Did he occupy it up until November, 1916?

A. Yes, sir.

Q. Between the time that you fixed the meter and received the ten dollars, did you have any talk with Lavine before November, 1916?

A. Yes; I spoke to him a couple of times.

Q. Where?

A. November 16, he was at the house.

Q. I mean before that time?

A. No.

Q. Was November 16, 1916, the first time you saw him or talked with him since you fixed the meter?

A. Yes; I saw him again on the twentieth.

Q. You say you fixed the meter; what did you do?

A. I fixed the gears.

Q. What kind of a meter?

A. Three-quarter Trident.

Q. Now, can you just tell what it was you did?

The Court—Does it appear that this is the same kind of a meter?

Q. Do you know what make of meter that is?

A. A Trident meter.

Q. Do you know the make of meter that was in Louis Lavine's saloon?

A. Yes; the same make and the same size.

Q. The same mechanism?

A. Yes, sir.

Q. Well, will you then just show us in this meter (indicating) just what you did?

A. I removed these gears (indicating), Mr. Devlin, took this gear from here, took this gear off here (indicating), and put on a 51 here and took that gear off there (indicating), and put on a 15 there. The meter would then run about seventy-five per cent. slow

Q. You put a large wheel on the clock?

A. Yes.

Q. And the slower one down there?

A. Yes, sir.

Q. Are you able to remember the size?

A. That I put on?

Q. Yes.

A. I put a 51 on the clock and a 15 down here

Q. I show you two gears and ask you if you can tell me the size of these two gears?

A. This is a 51 and that is a 15 (indicating)

Q. Are the gears you put on this size?

A. The same size gears you have in your hand

Q. I understand you put the smaller one on here?

A. Yes, sir.

Q. And you put the larger one on here (indicating)?

A. Yes, sir.

Q. Took these others off?

A. Yes, sir.

Q. The effect of that is the cause of slower running of the clock?

A. Yes, sir.

Q. These bottom parts run just the same, but this

clock does not record because of the large wheel and a smaller one down there?

A. Yes, sir.

Q. After you had fixed these meters, you had an interview with Mr. LaBarre?

A. Yes, sir.

Q. Do you remember when that was—what date, about?

A. The 16th day of November.

Q. About when?

A. The 16th day of November.

Q. How many days after that was it that you saw Mr. Lavine; did you see him before that talk?

A. No, sir; I saw him after.

Q. How many days?

A. Four days.

Q. The interview you had with Mr. Lee and with Mr. LaBarre was about the question of these meters, was it not?

A. Yes, sir.

Q. Where did you see Mr. Lavine?

A. He came to my house.

Q. Who was present?

A. With Mr. Lavine?

Q. Yes.

A. Mr. Bash; Max Bash.

Q. What is his business?

A. Saloon.

Q. Who was present besides Max Bash and himself and you?

A. No one.

Q. What time of day?

A. I should say about three o'clock in the afternoon.

Q. What was said by you, Max Bash, or Lavine, if anything?

A. Lavine asked me if I had been down before Commissioner Lee and had I told Mr. Lee the truth.

I said I did not want to talk about it because I had been sick. Then my wife walked in. She had been around to her daughter's house and the conversation stopped, because she didn't know anything about the trouble I was in.

Q. After your wife left the room was the conversation opened again?

A. No.

Q. Was that all that was said on that day?

A. Yes.

Q. Did you see Lavine again?

A. Yes, sir.

Q. Where?

A. I should say it was in December, December 17 or 18.

Q. Where was he then?

A. In my house.

Q. Who was present?

A. Max Bash and some other gentleman, I don't know. He said I had no right to go down there and tell Lee what I did—say the truth—if he had known that he would have told Lee the same thing I did.

Q. What did you say to that?

A. I told him I was in this trouble and was going to tell the truth from the beginning to the end. I said I was sick and didn't want to talk about it then, and walked out of the room.

Q. Did that Max Bash say anything?

A. I don't know; one of them passed a remark and said it was too bad there was not a Gentile.

Q. Did Lavine hear that remark?

A. I don't know.

Q. What size of a room was it?

A. Nine by twelve.

Q. Was your wife there?

A. Yes, sir.

Q. Was she there during all the conversation?

A. Yes, sir.

Q. That afternoon?

A. Yes, sir.

Q. Did she hear it all?

A. Yes, sir.

Q. Now, you say that Lavine said if he had known you were to tell the truth about it to Lee that he would have told the same?

A. Yes, he would have told the same.

Q. Did you refer to the talk that Lee, Fell and La-Barre had had with you on November 16th?

A. Yes, sir.

Q. Did that talk involve the fixing of this meter with others, or did it refer to this meter?

A. About Lavine's meter, yes, sir.

Q. Included this one and others?

A. Yes, sir.

A. And at that time, will you tell whether or not you had made a confession of this and other meters?

A. Yes, sir; I told him I had told the truth and was going to tell the truth.

Q. After December 18th, did you see Lavine again?

A. No, sir.

Q. You did not?

A. No, sir.

Cross-examination, by Mr. Kafes.

Q. Mr. Speck, you plead guilty to this indictment this morning, didn't you?

A. Yes, sir.

Q. You were arraigned on this indictment some time ago, weren't you, and plead not guilty?

A. Yes, sir.

Q. The other morning preceding the Cohan case you plead guilty in that case?

A. Yes, sir.

Q. You didn't plead guilty in this case?

A. No, sir.

Q. I ask you why didn't you offer to plead guilty before?

A. I waited to be called in.

Q. You wanted to come before this jury and plead guilty in this case? Who outlined any such program for you?

A. Nobody outlined any such program. I came to the conclusion to tell the truth all the way through.

Q. When did you come to that conclusion?

A. Since I was notified to come down here to court.

Q. When was that?

A. I don't know when was the trial of the other case. Then I decided to plead guilty to both cases.

Q. On February 16th, 1917, you concluded then to plead guilty?

A. I was only brought in on this charge this morning.

Q. Do you mean to say you plead not guilty February 16th, 1917?

A. Yes, sir.

Q. Then you had not concluded to tell the truth at that time?

Mr. Kafes—I will withdraw that and put it this way:

Q. On February 16th, 1917, you entered a plea of not guilty to both charges?

A. Yes, sir.

Q. At that time, when you entered this plea of not guilty, you had not decided that at that time you were guilty of this offense?

Mr. Devlin—I object to that.

The Court—I will sustain that objection.

Q. You were not willing at that time, February 16th, 1917, to come before this court and say you were guilty of this offense?

Mr. Devlin—I object to that. His pleas are entered. They are not a matter of cross-examination.

Mr. Kafes—It refers to his veracity.

The Court—I overrule it. I will not allow it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. You plead guilty to this offense this morning?

Mr. Devlin—I object.

A. I answered that. I plead guilty.

Q. All right. Who asked you to plead guilty this morning?

Mr. Devlin—I object to that. It is a matter of record. He plead guilty.

The Court—The jury saw what happened. If they want to draw any inference from it they may do so.

Q. Did you see Cohan sometime in 1914 when he told you to see Lavine?

A. Yes, sir.

Q. What time in 1914 was it?

A. I could not tell you the exact time; I don't remember that.

Q. You don't remember?

A. No, not just the time.

Q. You say in the spring?

A. No. I said I did not remember.

Q. Spring, summer, or during the latter part of the year?

A. I don't remember.

Q. You can't tell what season of the year it was?

A. No.

Q. It didn't make any impression upon your mind to sufficiently stamp that in your mind?

A. No, it did not.

Q. You had been an honest man before that, had you not?

Mr. Devlin—I object to that.

A. Yes, sir.

Q. And you suddenly turned to become dishonest—

Mr. Devlin—I object to that.

Q. —didn't you, in 1914?

The Court—The question may be answered.

Q. Is that so?

A. I suppose I did become dishonest.

Q. That is putting it as mildly as I can; you can put it in stronger terms yourself. And that didn't make any impression on your mind at all, eh?

A. Well, it did, but not the date, not the time it was done.

Q. Nor can you recall what part of the year it was?

A. I think it was in the latter part.

Q. Still, you cannot recall these sufficiently to testify to the conversation, can you?

A. Well, yes, I guess I can.

Q. All right. And you say in consequence of what Cohan said to you, you went up to Lavine's place?

A. Yes.

Q. Didn't you?

A. Yes.

Q. And can you say what time that was?

A. It was at night.

Q. What month?

A. I don't remember.

Q. Do you remember the day of the month?

A. I don't remember.

Q. When you entered Lavine's place on the occasion of your first visit, you fixed this meter, didn't you?

A. The first time in his place you mean? Well, I have been in his place a couple of times before that.

Q. The first time you went to his place after Cohan spoke to you?

A. Yes, sir.

Q. You fixed the meter?

A. Yes, sir.

Q. You then, after this conversation between you and Lavine—did you take these gears with you?

A. Yes, I had the gears.

Q. You took the gears with you for the purpose of fixing Lavine's meter before you had seen Lavine?

A. Yes.

Q. You had known Lavine for sometime before that, didn't you?

A. Well, I was acquainted with Lavine.

Q. You know you had met him at Max Bash's place several years before?

A. Yes, sir.

Q. You have met him in his place of business a number of times before you fixed the meter?

A. No, not a number of times.

Q. Several times?

A. One or two.

Q. Can you remember the last campaign of your father when he ran for excise commissioner?

A. Do I remember?

Q. Yes. And you became acquainted with Lavine during that campaign?

Mr. Devlin—I object to that as irrelevant, immaterial and incompetent.

The Court—I will permit the question to be answered.

A. No, I became acquainted long before that campaign.

Q. You had no intimate acquaintance with him, had you?

A. No intimate acquaintance; no.

Q. Didn't you, during the campaign, go to Lavine's place of business a number of times?

A. No, sir.

Q. During the year of 1914 you started to drink heavily, didn't you, Mr. Speck?

A. Who? Me?

Q. Yes.

Mr. Devlin—I object to that. It is immaterial.

The Court—I overrule it. The question will not be allowed.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Didn't you go around to a number of saloonkeepers during that time and ask them how they liked their meters and how they were getting along—

Mr. Devlin—I object to that.

Q. —during the year of 1914?

The Court—I think that is too broad; I will overrule it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Didn't you tell them that if they had any complaints to make to make them to you?

Mr. Devlin—I object to this question for the same reason.

The Court—I also overrule this question and any other question along this line will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you borrow any money from different saloonkeepers during the latter part of 1914?

Mr. Devlin—I object to that question. He wants to show this man discreditable. Let him do it in a legal manner.

The Court—The question will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. And among these other ones you borrowed money from was the defendant, Louis Lavine?

Mr. Devlin—I object to that as immaterial.

10 The Court—The question will be overruled, and I will not permit this line of questions.

Q. Did you, or did you not, in the latter part of 1914, borrow any money from Louis Lavine?

A. No, sir; he gave me ten dollars to fix the meter in the cellar that night.

Q. I am asking you: during the latter part of 1914, or any part, you borrowed money from Louis Lavine?

A. No, sir.

Q. When you started for Louis Lavine's place that

20 night. you had in your possession these gears?

A. Yes, sir.

Q. Where did you get these gears from?

A. There in the shop.

Q. Will you tell us what machines, what meters these gears are used on?

A. What meters?

Q. Yes, sir.

A. You mean the gears that I put on?

Q. Yes, sir.

30 A. They go on a one-half inch Trident meter.

Q. You mean where the pipes are—or the intake is three-quarters of an inch?

A. Yes; three-quarters of an inch.

Q. These gears were for a half-inch Trident meter?

A. Yes, sir.

Q. Do you know how these gears are figured?

A. No; we have a card that goes with it.

Q. Have you that card before you?

A. No, I have not.

Q. And a wide one-half or a two-inch Trident meter, what do you say; would it go in there?

A. I could not tell you.

Q. Can you refer to your table?

Mr. Devlin—There are no discussions concerning any other meters. We are not discussing one-inch meters or two-inch meters. That is not proper cross-examination.

The Court—Counsel asked this witness where he got these two gears, 15 and 51, and he said they came from a one-inch Trident meter and were the proper gears. Up to that point I think it was relevant, but the last question I think is irrelevant. I think I shall overrule that.

By the Court.

Q. Do I understand you to say you have a card with you?

A. No; up to the shop we have.

Q. Have you in Court?

A. No, sir; I have not.

By Mr. Kafes.

Q. You say you do not know what gears go on a two-inch Trident meter?

A. No, sir.

At this point a recess was taken until two o'clock in the afternoon.

AFTER RECESS.

Charles H. Speck resumes the stand.

Cross-examination continued, by Mr. Kafes.

Q. Have you got that chart with you now?

A. No; the chart is a great big square, thirty-four, thirty-two on the two-inch meters. That is the size of the gears.

Q. Thirty-four, thirty-two?

A. Yes, sir.

Q. Thirty-four on the clock and thirty-two on the gear?

A. Yes; on the two-inch Trident.

Q. Is that the standard?

A. Yes; it is supposed to be.

Q. You were mistaken when you said fifteen fifty-one?

A. I said that for the one-inch.

Q. This is a two-inch?

A. Yes.

Q. Fifteen, fifty-one on the one-inch?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. I show you these gears marked S. 1 for identification; you took these off the meter?

A. Yes, sir; the one-inch Trident meter.

Q. Are they the same now as they were when you took them off?

A. Yes, sir.

Q. With respect to the number of teeth on the gear?

A. Yes, sir.

Q. How long did it take you to make that change?

A. Oh, about ten minutes.

Q. How did you do it?

A. Well, I just removed this dial.

Q. And then what did you do?

A. I cannot tell you unless I have a screw-driver. You just remove this (indicating).

Q. You remove this?

A. Yes, sir.

Q. Did you have a light with you?

A. Yes; a candle.

Q. Who brought you that candle?

A. Mr. Lavine?

Q. Where did he get it from?

A. I don't know.

Q. Did he get it from the barroom?

A. I could not tell you that.

Q. You saw him bring it?

A. Yes; I did.

Q. Did you see him get it?

A. No; I didn't see him get the candle.

Q. You went down first?

A. No; we went down together.

Q. Were there any persons present in the barroom when you spoke to him?

A. Yes; there were three or four, but they didn't hear the conversation.

Q. What time of the night was it?

A. Oh, around eight o'clock.

Q. There were three or four people in the room at the time?

A. Yes, sir.

Q. When you went in did you speak to him first?

A. I don't remember that.

Q. What was the first thing said between you?

A. He spoke about going down and fixing the meter, and walked to the cellar door and took me down.

Q. Was that the first thing he said about the meter?

A. Yes, sir.

Q. Did you speak first, or he to you?

A. That I don't remember. He was standing in front of the bar, the far end of it. He was not attending at the bar.

Q. Was there a bartender there?

A. Yes, sir.

Q. Are you sure of that?

A. I know he was not behind the bar.

Q. As near as you can remember, what was the first thing said by either of you about fixing the meter?

A. Well, he just spoke about fixing the meter.

Q. Give me the words; that is, a conclusion.

A. About fixing the meter so it would run slow.

Q. He said that?

A. I don't remember if it was me or him. We didn't stand talking; only a minute or two, and then went down the cellar.

Q. You don't remember who spoke first, whether it was you or he?

A. No, I cannot say that.

Q. What was said?

A. Something said about fixing the meter to decrease the bill.

Q. Was that mentioned at that time?

A. Yes, sir.

Q. Was anything said about decreasing the bill?

A. So he could use plenty of water.

Q. Who said that?

A. I said that.

Q. What else was said?

A. I don't just remember every word; I remember telling him he should use plenty of water and not pay for it.

Q. Do you know what his previous bills have been?

A. No; that is all left in the office.

Q. Did you ask him to let you see his bills?

A. No, sir.

Q. Did he tell you?

A. No, sir.

Q. Did you have any idea?

A. No, not in the least.

Q. What did he say to this?

A. To what?

Q. Fixing the meter to decrease the bills?

A. Didn't say anything. When I got through he gave me ten dollars down the cellar.

Q. Did he say anything to you at all about fixing the meter to decrease the bills?

A. When I came in the saloon first.

Q. Did Lavine say anything to you about fixing the meter to decrease the bills?

A. No, because he know then what I was going to do.

Q. I want to know what was said?

A. I don't know.

Q. Did he say anything to you at all about fixing the meter?

A. Yes; that is what I went in there for.

Mr. Kafes—I ask the Court to direct the witness to answer the question.

The Court—Tell, if you can, what was said to you and you to him.

A. I told him that he could use all the water he wanted and he did not have to pay for it.

Q. When?

A. When I went in the door.

Q. Before you fixed the meter?

A. After.

The Court—Counsel has questioned you as to what you said before you went down the cellar.

The Witness—Only just that; said that I was going down to fix the meter; didn't speak anything about the bills.

Q. Now, I ask you, if they are the exact words you used: "I am going down to fix the meter"?

A. "So it will run slow."

Q. Did you say that to him?

A. Yes, sir.

Q. Do you remember whether you said that to him or are you guessing?

A. I ain't guessing; I know I said it would run slow. I told him to use plenty of water.

Q. You said on your direct examination you said to him Cohan sent you there to fix the meter so that it would run seventy-five per cent. slow?

A. Yes, sir.

Q. Tell us everything that was said before you went down the cellar.

A. I just told you.

Q. What?

A. I was going to fix the meter so it would run slow.

Q. You told Mr. Devlin: "I told Lavine, Cohan sent me here, and it would be all right; I said I would fix the meter so it will run about seventy-five per cent. slow. I said: 'I would fix the meter so it would run slow.'" The question is, did you tell Lavine that?

A. That is about the same thing I told him.

Q. Please answer the question.

A. I told Lavine I was sent there by Cohan.

Q. What else?

A. He could use plenty of water; that the meter would run slow.

Q. You told him that you fixed it, did you?

A. No; when we were going in the cellar.

Q. Before you went down the cellar did you have any conversation with Lavine?

A. Not that I remember; only a few words.

Q. What did you say downstairs?

A. I told him Cohan had sent me there.

Q. What else?

A. I was going to fix the meter so it would run slow. I also told him he could use plenty of water and he handed me ten dollars.

Q. Where and when?

A. While I was in the cellar.

Q. You had, previous to this tim,e fixed Cohan's meter, you say?

A. Yes, sir.

Q. With practically the same gears?

A. Yes, sir.

Q. Did Lavine say to you at any time, while you were in his place, that he was dissatisfied with his water bills?

A. That he was dissatisfied? I don't remember his saying anything.

Q. So that he wanted you to fix his meter so that it would not register all the water that he used?

A. That is what I was sent ther efor. Cohan sent me there to fix his meter.

Q. Did Lavine say that?

A. I don't remember his saying it.

Q. Did you install this meter in Lavine's place?

A. Yes, I think I did; Bibbins and I installed all the meters around the saloons at that time.

Q. I want a yes or no answer to this. Was Cohan's meter the first meter you ever fixed?

A. No, sir.

Q. When, in point of time, did you discover that you could fix meters so that they would not register properly?

Mr. Devlin—I object to that.

A. I have had eleven years' practice and handled meters all the time, and I discovered that gears from a two-inch meter would mash up on a three-quarter.

Q. I understood you to say that after you left Lavine's place that night you did not see him until the latter part of 1916?

A. I saw him on the street.

Q. Did you talk to him?

A. Yes; I saw him a couple of times, but never had any conversation with him until—

Q. Until when?

A. November.

Q. You were confined to your home ill?

A. Yes, sir.

Q. When was it Lavine came up to see you?

A. To see me?

Q. Yes, sir.

A. The twenty-first or the twenty-second; I would not say for sure.

Q. Of what?

A. November.

Q. You are sure it was in the month of November?

A. Yes, and I am sure it was in that week.

Q. What makes you recall it?

A. Because I had a grandchild born on the twenty-first.

Q. Was it the same day?

A. I would not say; it might have been the day before or the day after.

Q. In respect to that time, when had you been before the commissioners?

A. On the sixteenth day of November.

Q. Whom did you meet?

A. Whom did I meet?

Q. Yes.

A. Mr. Lee, Mr. Fell, and Mr. Bugbee.

Q. And did they send for you?

A. Yes, sir.

Q. Did you speak to any person or any commissioners between that time and the time Lavine saw you?

A. No, sir.

Q. What time of the day did you see Lavine; what time did he come to your place?

A. I should judge maybe it was two-thirty or three o'clock; somewhere around that time.

Q. Was your wife home at that time?

A. No, sir.

Q. Did you tell them it was a damn lie; you never said anything about Lavine?

A. I don't think the conversation lasted for over five minutes.

Q. Did you say that?

A. No.

Q. Did you tell them that someone must have been "kidding" them and at just about that moment or immediately following that conversation your 'phone bell rang and your wife came in?

A. I have not got a 'phone.

Q. Your door bell rang?

A. My wife came in.

Q. And then you said to them: "Please don't talk about this anymore; I don't want my wife to know anything about it"?

A. Yes, sir.

Q. Who was with Lavine, if anyone?

A. Max Bash.

Q. Who spoke first at that time?

A. Max Bash spoke to me.

Q. Lavine was there, too?

A. Yes, sir.

Q. Do you remember Max saying to you: "That someone is around saying that you accused Louis of fixing his meter"?

A. No, sir.

Q. To which you replied: "No, it is a damn lie. Somebody is 'kidding' you; I never made any such remark"?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. You didn't say that either to Lavine or Bash when both were present?

A. No, sir.

Q. Do you remember the time when Louis Lavine came to see you, accompanied by Squire Epstein and Max Bash?

A. Yes, sir.

Q. Do you remember Bash saying to you: "Speck, what have you been telling about Louis"?

A. No.

Q. "I understand you are accusing him of having his water meter fixed."

A. No, sir; there was no such conversation.

Q. Didn't Louis Lavine say to you: "Mr. Speck, did I ever ask you in my life to fix my water meter"?

A. I don't remember saying anything like that.

Q. Did he say to you: "For God's sake, Speck, tell the truth about it"?

A. I don't remember his saying anything at all like that to me.

Q. And do you remember what conversation there was?

A. No; I don't.

Q. Did he say to you: "For God's sake tell the truth about this matter"?

A. No, sir.

Q. And didn't he at the same time say to you: "Now, Mr. Speck, did I ever in my life ask you to fix a meter"?

A. I don't remember his saying that.

Q. Can you tell whether he did or not?

A. I cannot tell you the whole conversation.

Q. Didn't he ask you that?

A. No, sir.

Q. Didn't you say: "Well, I am trying to get everything dropped"?

A. No, I didn't.

Q. And after: "Everything is all right"?

A. No; I walked out of the room before we spoke three minutes.

Q. Didn't you say that?

A. No, sir.

Q. All right. Didn't Louis Lavine say to you: "I never asked you to fix my water meter"?

A. No, sir.

Q. He didn't?

A. No, sir; he was right in the cellar when I fixed it.

Q. Do you remember at any time during the year 1914, and I direct your attention to the time when you say you were at Louis Lavine's place, and when you say you fixed this meter that you were drinking heavily at that time?

A. No, sir; I have not taken anything in five years.

Q. You were not drinking heavily in 1914?

A. No, sir.

Q. In 1914?

A. No, sir; I was never a hard drinker in my life.

Q. Do you remember going to Louis Lavine's place and saying some things about your father?

A. In 1914?

Q. Yes, sir.

A. My father was dead in 1913.

Q. I know he was. Do you remember going there and asking him if your father had not always been a good friend of his, or words to that effect?

A. No, sir.

Mr. Devlin—I object to that.

Q. And did you ask him to do you a favor and that you were up against it—

A. No, sir.

Mr. Devlin—I object to that.

Q. And did you, at that time, or any time during the year 1914, request Lavine to make a loan—

Mr. Devlin—I object to that. That question has been answered.

The Court—Your objection will be sustained.

Mr. Kafes—He said he received ten dollars from Lavine. I direct his attention and ask him if Lavine didn't loan it to him.

The Court—Didn't he testify to that?

Mr. Kafes—I will direct his attention to that ten dollars and ask him whether or not he didn't obtain a loan of ten dollars from Louis Lavine in 1914.

The Court—This particular ten dollars?

Mr. Kafes—Yes, sir.

The Witness—No, sir.

Q. I think I asked you when Mr. Lavine and Mr. Bash came there, and your wife suddenly came to the door, and you said: "For God's sake, don't talk about this anymore; let's quit"?

A. I said: "Don't tell us about this; I don't want my wife to know the trouble I am in."

Q. When Lavine and Bash came in did you pull your curtains down?

A. I don't think I did.

Q. Or locked your door?

A. No; my wife walked in.

Q. You didn't go to the door to let her in?

A. No, sir.

Q. Is there any electric lights right near the meter?

A. I don't think there is. There is an electric light in the cellar.

Q. Did he turn his switch on?

A. The electric lights were lighted.

Q. Still, you used a candle?

A. I used a candle to get near the meter.

Q. And where is the meter?

A. In the right-hand corner of the cellar.

Q. In the front?

A. No; in the rear.

Q. All the way in the rear?

A. I think there is a cellar in the back part.

Q. Do you know who attended the bar for Lavine in 1914?

A. No, I do not.

Q. You are sure there was a bartender there that night?

A. I think he was not standing behind the bar.

Q. Do you say there was a bartender there that night?

A. I think he was standing in front of the bar.

Q. He was attending bar?

A. I could not tell you that.

Q. Did you see a bartender there?

A. I don't remember; we only stayed there about five seconds.

Q. Can you name any person in the barroom at the time?

A. No; I could not.

Mr. Kafes—That is all.

Re-direct examination, by Mr. Devlin.

Q. You say that you put that meter in?

A. Yes, sir.

Q. Are you able to say that meter was tested before it went in?

A. Yes, sir.

Q. And did the clerk show the meter to be correct or incorrect?

A. The meters are all tested.

Mr. Kafes—I object to that, and I ask it to be stricken out.

Q. I am asking you if tests were made of this meter before it went in—you and Bibbins put it in?

A. Yes, sir.

Q. Are you able to say that meter was correct or not?

A. Yes, sir.

Q. And now, is the meter sealed in any manner?

A. Yes, it is sealed.

Q. Where are the seals?

A. At the Water Department.

Q. They are locked up?

A. In the Water Department; yes, sir.

Q. Were they locked at the time you fixed the meter?

A. No; they were not locked up then.

Q. When you fixed the meter, or put in these other gears, do you remember the kind of gears you took out?

A. The kind of gears I took out?

Q. Yes, sir. And what were the gears?

A. Thirty-two thirty-four, standard gears for three-quarter-inch Trident meter.

Q. When you took out the gears and put the others in, was the meter resealed again?

A. I am mostly sure it was.

Q. Who brought the material out for resealing?

A. I think I had it with me.

Q. At the time you fixed this meter, did you have access to these seals?

A. Yes, sir.

Q. You took the gears that were on that meter off, and put other gears on, didn't you?

A. Yes, sir.

Q The gears that are now on, is that set for running slow?

A. Yes, sir.

Q. If you put the big gear here (indicating), and put the small one on the clock, it would go fast?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. How much experience have you had in repairing and fixing meters?

A. About ten years—nine years.

Q. In your experience in fixing meters, assuming that the standard gears are on the meter and it is set true, can that meter ever go fast?

A. No, sir.

Re-cross examination, by Mr. Kafes.

Q. Did you ever know them to go fast?

Mr. Devlin—I object to that question.

The Court—I think I will allow it.

A. No; not unless it has been tampered with.

Q. Did you know the meter of Mr. Israel Alberts ran fast?

Mr. Devlin—I object to it for two reasons. In the first place, Alberts' meter has nothing to do with this particular meter, and in the second place, it is not proper cross-examination.

The Court—I think I will allow it.

A. Yes; it ran fast.

Q. What caused it?

A. Someone had tampered with it.

Q. Who did that?
A. I don't know.
Q. Did you see the gears?
Mr. Devlin—I object to that. He has answered that the meter ran fast.
The Court—I will allow it.
A. Yes, sir; the gears were reversed.
Q. How do you know the gears were reversed?
A. It was tested by Bibbins.
Q. Did you see the gears?
A. After it was brought out to the shop and tested.
Q. You saw the gears on it?
A. Yes, sir.
Q. What were they?
A. I don't just remember that; these gears were reversed around.
Q. Was the seal broken?
A. Yes; the seal was broken.
Q. You saw the seal, did you?
A. On the meter?
Q. Yes.
A. Yes, sir.
Q. You didn't break the seal, did you?
A. No, sir.
Mr. Devlin—I object to that.
The Court—Your objection will be sustained.
Q. Did you ever know of any others?
Mr. Devlin—I object to that.
The Court—I will allow it.
A. Do I know of any others—
Q. Yes.
Mr. Devlin—I object to that question for this reason—
Q. That ran fast?
Mr. Devlin—I want to object right here—
The Court—I don't care to hear you. I permitted this line of questions to go far enough, and shall overrule this one.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Albert E. Bibbins, sworn for the State.

Direct examination, by Mr. Devlin.

Q. What is your occupation?

A. Meter repairer.

Q. Do you work in the Trenton Water Department?

A. Yes, sir.

Q. How many years?

A. I guess about eight or nine.

Q. In that period you have been a repairer?

A. Yes, sir.

Q. Besides repairing meters do you test meters?

A. Yes, sir.

Q. When you test a meter what point do you call correct?

A. One hundred per cent.

Q. Do you know that Louis Lavine, 319 Warren Street—do you know Mr. Lavine?

A. I do not.

Q. Do you remember a particular meter was sent to that place—that was installed in 1912?

A. I could not tell.

Q. Were you testing meters at that time?

A. I could not say exactly if I tested that one or not.

Q. Were you testing at that time?

A. Yes, sir.

Q. How long?

A. Ever since I have been there?

Q. Do you remember on November 20th a meter had been brought to the Water Department from the place of Louis Lavine?

A. Yes, sir.

Mr. Kafes—I object to that.

The Court—How can he know where it came from?

Mr. Devlin—I was going to ask him that.

Mr. Kafes—I object to it.

The Court—It doesn't seem to me that he knows where it came from.

Q. Do you remember that date some meter being brought to the department to be tested?

A. Yes, sir.

Q. Who was with you when these meters were tested?

A. Mr. Hyle.

Q. An employee of the Water Department?

A. Yes, sir.

Q. And did you make a test of a meter called a Trident three-quarter?

A. Yes, sir.

Q. State, while testing, if there was a meter there that Mr. Fell said came from Louis Lavine's place, 319 North Warren Street?

Mr. Kafes—I object to that as secondary evidence.

The Court—It seems to me, Mr. Devlin, the proper thing to do would be to put the man on the stand.

Mr. Kafes—I don't care if you complete your examination of this witness or not.

Mr. Devlin—All right. Step off the stand, please, Mr. Bibbins.

Clarence M. Hyle, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Hyle, you are connected with the Trenton Water Department?

A. Yes, sir.

Q. How long?

A. About seven years.

Q. Do you remember November 20th, 1916, being sent to Louis Lavine's saloon, 319 North Warren Street?

A. Yes, sir.

Q. Who went with you?

A. James Quinn.

Q. What did he do?

A. Asked permission of the bartender to remove the meter. He offered no objection, so we went in and took it out.

Q. Do you remember what the size of that meter was?

A. (Witness examines book.)

Mr. Kafes—Do you have to look at your book to tell that?

The Witness—Yes; I could not remember the numbers.

A. Nine hundred and three, four seventy-seven, three-quarter-inch Trident.

Q. Now, Mr. Hyle, you and Quinn removed that meter?

A. Yes, sir.

Q. Now, after removing that meter where did you bring it?

A. To the testing room.

Q. What was done with it?

A. Turned over to Bibbins and put on the testing table.

Q. Were you there at the time?

A. Yes, sir.

Q. You saw Bibbins test it?

A. Yes, sir.

Q. Do you know what the test of that meter showed?

A. It showed that the meter was running in the consumer's favor of one to four. For every four cubic feet the department got paid for one, and the consumer got four.

Q. After the meter was tested and found to be running slow, what was done to that meter, if you know?

A. After it was tested?

Q. Yes.

A. The gears were examined.

Q. Before the gears were examined it had to be opened, of course?

A. Yes, sir.

Q. Who did that?

A. Mr. Bibbins.

Q. When it was opened, did you see what was inside?

A. Yes, sir.

Q. What was the condition?

A. We found the gears were fifty-one, fifteen.

Q. What position were these gears in, if you can tell?

A. The big one here (indicating) and the little one here (indicating).

Q. After the test was made of the gears, after the meter was opened and the gears were found, what was the condition of the gears?

A. The big one was here and the other one there, as I said before.

Q. Did you see the meter tested?

A. Yes; it was tested and retested.

Q. What did you see?

A. One hundred per cent.

Q. Was that after the proper gears had been put in?

A. Yes, sir.

Q. Then what was done with the meter?

A. It was taken back and replaced.

Q. Who took it back and replaced it?

A. I think I did, with Mr. Quinn.

Cross-examination, by Mr. Kafes.

Q. What time of the day did you go there, Mr. Hyle?

A. In the afternoon.

By Mr. Devlin.

Q. Will you state whether or not you said to Bibbins where that meter came from?

A. Yes; I said from Louis Lavine's.

By Mr. Kafes.

Q. Tell me your record of the number of this meter?

A. 34 Trident, and 903,437.

Q. Where is that?

A. Here.

Q. Whose handwriting is that?

A. My handwriting.

Q. What record did you make?

A. There is the record.

Q. Read everything you have there.

A. 11-20, Louis Lavine, 319 North Warern Street, three-quarter Trident, 903,477, registered 217,344, found one to four.

Q. Then you removed the meter?

A. Yes, sir.

Q. Took it down to the shop?

A. Yes, sir.

Q. The examination was made?

A. Yes, sir.

Q. How many cubic feet of water did you run through the meter?

A. Five.

Q. How do you know it was five?

A. By the foot dial.

Q. What do you mean by foot dial?

A. Right here (indicating).

Q. There?

A. Yes.

Q. That was when the fifty-one fifteen gears were in?

A. Yes, sir.

Q. Is that the way Mr. Bibbins tested this meter?

A. Yes, sir.

Q. Do you know any other way of measuring the cubic foot of water other than the way you have given us?

Mr. Devlin—I object to that. It is not proper cross-examination.

The Court—It is not proper cross-examination, and will be overruled.

Q. How many tests were made?

A. Of the Lavine meter?

Q. Yes.

A. It was tested when it was received to find the correctness and tested after it was found to be incorrect after the gears were taken out and the proper gears were put in.

Q. How many gallons of water were put in?

A. Ten.

Q. Ten?

A. Yes, five when the gears were on, fifteen fifty-one, and five when the thirty-two thirty-four gears were on.

Q. The first test was with the fifteen fifty-one gears?

A. Yes, sir.

Q. Did you read that meter after the five cubic feet of water had passed through?

A. No.

Q. Didn't you read it?

A. No; it was not necessary.

Q. It was necessary for you to look at it—

Mr. Devlin—I object to that. That is not proper.

The Court—I understand him to say he did see the dial.

The Witness—No; it was not necessary to look at the dial. Five on here (indicating) registers one on there.

Q. Did you look at that?

A. Of course.

Q. Look at it all the time?

A. Yes, you have two when testing a meter.

Q. Then it took two men to do it?

A. Not necessarily.

Q. Did Bibbins test that dial or you?

A. We both looked.

Q. With five cubic feet going through there you say it would make—five revolutions here—

A. Yes; five revolutions here would indicate one there (indicating).

Q. How many times does this go around (indicating)?

A. Five times around here for five cubic feet.

Q. How many times did it go around for five cubic feet?

A. Five.

Q. Then it registered all the water that went through, didn't it?

A. It measured five feet of water according to that meter dial.

Q. I don't understand you yet. This register, this indicator here, registers every foot of water that goes through that meter, doesn't it?

A. Yes.

Q. Assuming that the water runs through, and registers one foot of water, how many revoultions?

A. One revolution.

Q. Now then, I am asking you how often, when you ran the five feet of water through you found on that indicator, how many times did it revolve?

A. This revolves five times.

Q. Then it registered five feet of water?

A. Apparently, but there was more than five feet of water ran through it.

Q. I will ask you if you didn't say you used five cubic feet of water, and on the second test you ran five feet through?

A. Yes.

Q. You ran five cubic feet of water through that machine on the first test?

A. Yes.

Q. I ask you then, why that didn't register five cubic feet of water?

A. Because the gears were not in position to register five cubic feet of water. It registered five feet here, but more than five cubic feet ran through it.

By the Court.

Q. How much water went through?

A. In the proportion of one to four.

By Mr. Kafes.

Q. I understand, but that does not answer the question. Five cubic feet of water was put through that machine to make that test?

Mr. Devlin—Why does that not explain. It is logic that five cubic feet went through there and that indicator registered one for every foot.

The Court—That is the way I understand the witness.

Mr. Kafes—I understand him to say five cubic feet of water were registered in this first test, and five cubic feet were used. I also understand him to say that dial revolved once for every foot of water that went into that meter, and it registered five times, therefore I contend that five cubic feet went through and it registered five feet and there was nothing the matter with it.

The Court—If it is not clear I will ask him to go down to the dial and explain it.

By Mr. Kafes.

Q. Before we do that I want to ask just this. How many feet went through that meter?

A. Five.

Q. According to the dial register?

A. Yes.

Q. Will you say actually there was more or less water than five cubic feet?

A. Actually more water passed through.

Q. How do you arrive at that conclusion?

A. The gears on there were not standard—fifteen fifty-one is not a standard.

Q. You are judging your results then by the number of teeth on the gear and not by your tests, aren't you?

A. I was explaining to you the action of the foot dial.

Q. Then I ask you how many cubic feet of water you sent through that meter to make your test?

A. When the meter was first received I answered that question and told you five cubic feet.

Q. Then I ask you, do you say that more than five cubic feet of water ran through this meter?

A. There must be more.

Q. How do you know that?

A. By weight.

Q. What was the weight of the water used in making your first test?

A. It is not necessary for me to answer that. I am not here for that purpose.

Mr. Kafes—State the amount. Give me the weight. Will the Court direct the witness to answer that question?

The Court—Can you answer that question?

The Witness—I am not able to answer it.

Q. Tell me actually how many cubic feet of water you ran through?

Mr. Devlin—I think that is not proper. The witness said he sat there while Bibbins made the test and looked on. He didn't run the water through. He says the meter shows four cubic feet of water ran through and one registered.

Q. I ask you whether or not more than five cubic feet of water were used in that first test?

A. I do not know.

Q. Did this little dial revolve five times?

A. Yes.

Q. Then what was wrong with it?

A. When the meter was taken apart the gears showed the ones in there were not the proper ones that belonged there.

Q. I understand you to say five cubic feet of water went through there, and I do not see how there was anything wrong with your test?

Mr. Devlin—He said the hand went around five times when it was supposed to go around once for every cubic foot that was registered.

Mr. Kafes—I object to the prosecutor testifying.

The Court—That statement by the prosecutor will be stricken out and the jury will disregard it entirely.

Q. I ask you whether or not you didn't say five cubic feet of water were sent through on your first test?

A. That dial went around five times.

By the Court.

Q. Can you make a distinction between what the dial said and the actual amount of water that passed through?

A. That was done after Bibbins discovered the gears were not right.

Q. How did you know that?

A. He weighed it.

Q. Did he weigh it on the testing scale?

A. Yes; he weighed the amount of water and the number of cubic feet.

Q. How many cubic feet went through when the test was completed for the first time, can you tell that?

A. No; I cannot tell that.

By Mr. Kafes.

Q. Then you don't know how many cubic feet of water passed through this meter on this first test?

A. I can simply say the dial revolved five times.

Q. Do I understand you to say this: that of these two dials the first dial registered one for every five times?

A. Yes.

Q. That is marked 100?

Q. No; isn't it ten. This one registers one for every ten times that goes around (indicating); that has to revolve ten times before it registers on here (indicating).

Q. That goes around ten times before it registers once on here?

A. Yes.

Q. You said five a moment ago, didn't you?

A. This revolves one for every ten feet.

Q. And then when this goes around ten times it registers one on the one hundred?

A. Yes.

Q. After you got through, Mr. Hyle, with your two or three tests, did you look at the dial or the dials of that meter?

A. No.

Q. Then you didn't know how many cubic feet of water actually registered on that meter, did you?

A. I only know just about the arrangement for testing the dial.

Q. Do you remember what the gears were?

A. I know the numbers.

Q. What were they?

A. 51 and 15.

Q. Anything like these two?

A. 51 and 15 they should be. This is the 51. No, this is 51.

Q. After these gears were taken off the meters do you know where they were placed?

A. In an envelope.

Q. Who got the envelope?

A. Bugbee.

Q. Did you write anything on that envelope?

A. Lavine's address, 319 North Warren Street.

Q. Is that your handwriting on the envelope?

A. No; it might be Bugbee's.

Q. You know who wrote that?

A. No, I don't.

Q. Did you give an envelope like that to Mr. Bugbee?

A. Yes, sir.

Q. The testing machine that you tested this on, it is a scale that shows the weight?

Mr. Devlin—I object to this form of question.

The Court—It will be allowed.

Q. Will you state whether or not this machine shows the cubic measurement of water?

A. It does.

Q. State whether or not it also shows the weight of water per cubic foot.

A. It does.

Q. Does it show the weight of water per gallon, avoirdupois?

A. Yes, it does.

Q. You say this machine measures the cubic measurements, the weight and the liquid measurements?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, when the proper gears were put in, the thirty-two thirty-four gears were put in, and that meter was put on, how many feet of water registered?

A. I observed that it went five times around. I held the opening clutch.

Q. You held the clutch that released?

A. Yes.

Q. Did you observe the clock—the register, I mean?

A. No, sir.

Q. Who did?

A. Mr. Bibbins.

Q. Did he call off any figures to you?

A. Yes, sir.

Q. These figures you entered on your book?

A. Yes, sir.

Q. I understand you to say that there were three ways in which you could observe the amount of water.

A. Yes.

Mr. Devlin—I object to it.

Mr. Kafes—He answered yes to it.

Q. I understood you to say there were three ways of ascertaining the amount of water. First, that the machine would tell the number of cubic feet of water; did you say that?

A. Yes, sir.

Q. Secondly, you said it would also show the avoirdupois weight of water?

A. Yes.

Q. And, thirdly, it would show the liquid measurements of the water, is that right?

A. The number of cubic feet of water.

Q. It would show the liquid measurements of the water?

A. Yes.

Q. Now, you say you didn't see anyone of the three that Bibbins called out to you?

A. I answered the amount on the foot dial.

Q. You didn't see the number of cubic feet of water that passed through?

A. I told you that my only work was the operation of the foot dial.

Q. You base your assertion on what Mr. Bibbins told you and not what you saw yourself; is that true?

A. He called them off.

Q. No, answer the question.

A. Yes, if that is what you want.

Q. That is true?

A. Yes.

By Mr. Devlin.

Q. You base it on what Mr. Bibbins told you, accompanied with what you saw that time?

A. Yes.

Mr. Kafes—I move to strike that testimony out.

The Court—I decline to take it out.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Albert Bibbins resumes the stand.

Direct examination continued, by Mr. Devlin.

Q. On this day in November when you, in company with Mr. Hyle, were testing meters, did you hear Hyle say a certain meter—where a certain meter came from?

Mr. Kafes—I object to that.

The Court—I will permit it to be answered yes or no.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. I did.

Q. Will you state whether or not there was any meter put on there coming from Louis Lavine, 319 North Warren Street?

Mr. Kafes—I object to that.

The Court—I will permit it.

Mr. Kafes—If he knows of his own knowledge.

A. There was.

Q. Did you make a test of that meter?

A. I did; yes, sir.

Q. What did the first test you made show?

Mr. Kafes—I object to that. He ought to state what he did.

The Court—He ought to state what he did; yes.

Q. What did you do?

A. Mr. Hyle brought it in and put in on the testing machine and said—he set the scale and ran the water—he ran five feet of water, and there was only one foot registered on it.

Q. Now, then, what did you do; did you take the meter off the scale?

A. No, sir.

Q. Who did?

A. I took this off (indicating), and looked at the gears.

Q. And what did you find?

A. I found 51, 15 gears.

Q. I show you a couple of gears, 51 and 15; will you tell us—I don't mean to put them on—

A. The large one on the dial, and the small one (indicating), on the spindle.

Q. Now, then; you took these off—when you took this (indicating) off, what did you put on?

A. 32-34.

Q. Why did you put on 34-32's?

A. In order that the meter would be true, 100 per cent.

Q. When you put these proper gears on, are you able to say whether or not for that size meter the gears are standard?

A. Three-quarter meter; yes, sir.

Q. State whether or not you put them on because they were standard gears for that size meter.

A. Yes.

Q. Is that the reason?

A. Yes, sir.

Q. After you put these on, did you make another test again?

A. Yes, sir.
Q. Did you make another test?
A. Yes, sir.
Q. What happened?
A. We ran five feet through there and it balanced 100 per cent.
Q. And now; what did you do with that meter?
A. Gave it to Mr. Hyle.
Q. Did you see what happened to the two gears—that is, the 51-15?
A. They were given to Mr. Bugbee.

Cross-examination, by Mr. Kafes.
Q. Did you take a record of Mr. Lavine's meter?
A. I gave it to Mr. Hyle.
Q. Gave the numbers to Mr. Hyle?
A. Yes; I called them off.
Q. You called them off to Hyde?
A. Yes, sir.
Q. Were you up to Lavine's first, when it was taken out?
A. No, sir.
Q. How do you know any certain meter was Lavine's meter, if you weren't there?
A. He told me it came from there.
Q. You are relying on what Mr. Hyle told you?
A. Yes, sir.
Q. Except for what Mr. Hyle told you you didn't know if it came from that place or not?
A. No, sir.
Q. You made two tests of this meter?
A. Yes, sir.
Q. One with the gears 15-51, and one with the gears 32-34?
A. Yes, sir.
Q. And then later you removed these gears and made a test with the 32-34's; is that right?
A. Yes, sir.

Q. In your first test with the gears 15-51, are you prepared to say how many feet of water you used?

A. Five.

Q. Will you state to the jury how you were able to ascertain that amount of water?

A. Put the meter on the scale, and set the scale at five feet. When the scale balanced there was only one foot registered on the meter.

Q. Did you look at the meter?

A. Yes, sir.

Q. Mr. Hyle was there for that purpose, to look at this dial; is that proper or not?

A. Yes; he was there.

Q. Was that his purpose; was that his part in the test?

A. No; it was up to me to do the testing.

Q. Did Mr. Hyle stand by and look on at that dial?

A. He was there.

Q. All the time?

A. Yes, sir.

Q. Can you say how many times that went around?

A. Yes, sir.

Q. Mr. Hyle says he looked at that and that it went around five times?

A. That is up to Mr. Hyle; it is not up to me.

Q. You say he is wrong, and you are right?

Mr. Devlin—I object to that.

The Court—He is testifying for himself, not for Mr. Hyle. The question will be overruled.

Q. You are sure in your first test you did not use any more than five feet of water?

A. No, sir.

Q. You relied upon your scale, you say?

A. Yes, sir.

Q. And when you say "scale," does your scale indicate the weight in pounds?

A. Yes, sir.

Q. How many pounds were indicated on the scale showing you that five feet of water had been used?

A. Three hundred and twelve and one-half.

Q. Do you remember testifying here in a former trial?

A. Yes, sir.

Q. I asked you at that time if you knew how many pounds there were in a cubic foot of water.

Mr. Devlin—I object to that for the reason that he is not bound by any testimony he gave in that case.

Mr. Kafes—I offer it for the purpose of contradiction.

The Court—The question will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you or not say in this courtroom —

The Court—If that is the same question it will be overruled.

Mr. Kafes—Can I not put my question?

The Court—If it is the same question, no; it will be overruled.

Mr. Kafes—I will ask him a different question.

Q. Did you or not say in this courtroom last Monday or Tuesday that in the test made that you did not look at the scale to see how many pounds of water passed through?

Mr. Devlin—I object to that for the same reason.

The Court—Your objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. When did you discover, or did you discover, or in any way find out how many pounds a cubic foot of water weighs, since April 19, 1917?

Mr. Devlin—I object to that for the same reason.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Has any person told you how many pounds a cubic foot of water contained since the trial of Haefel Cohan?

Mr. Devlin—That is objected to.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. How many pounds do you say there are in a cubic foot of water?

A. Sixty-two and a half.

Q. And you ran five feet through and it registered one foot on that clock; is that right?

A. Yes, sir.

Q. Then you made a second test and ran five more cubic feet and that registered five feet?

A. Yes, sir.

Q. You noticed the register on that meter, did you?

A. Yes, sir.

Q. You also weighed the water in the second test?

A. Yes, sir.

Q. Was any other person or persons present besides you and Mr. Hyle?

A. That I cannot exactly tell you.

Q. When you made this test, did you make any record of it?

A. Did I?

Q. Yes.

A. No, sir.

Q. Did you know the amount or the figures indicated on that dial,—I mean on this little clock or register, before you made any tests?

A. Yes, sir.

Q. What?

A. 217,344.

Q. Where did you get that from?

A. A piece of paper.

By the Court.

Q. Is that a memorandum?

A. Yes; one I made myself.

Mr. Kafes.—I ask that it be stricken out.

The Court—If he observed the dial before and after, I think it is competent for him to testify. It may be admitted.

By Mr. Kafes.

Q. What was the first number on that record?

A. 217,344.

Q. Did you look at it after you were there?

A. Did I look at it?

Q. Yes, after you were there?

A. No; I didn't take any statement of this.

Q. Why not?

A. Because it was not up to me. I found the meter, I tested it, and it was O. K.

Q. Who was it up to?

A. I saw it registered six feet.

Q. What was the number of the register after that?

A. 217,350.

Q. You didn't look at it?

A. No, but I know six feet went through, so it must be 350.

Q. You didn't look at it?

A. I looked at the dial and saw that six feet went through.

Q. You left the meter in that condition when you set it?

A. Yes, sir.

Q. Where did it go?

A. Hyle took it out of the shop.

Q. Do you know where he took it to?

A. Supposed to return it.

Q. Did you turn back the six feet?

A. I did not.

Q. How does this machine, Mr. Bibbins, that you say, weighed the water—will you indicate the process of its working; how does it work?

A. It has a beam that indicates the number of pounds.

Q. Where do you run any water through?

A. Through the pipes that go through the machine.

Q. And you run that through the tank?

A. After it goes through the meter.

Q. Then where does it go?

A. It drops in the tank.

Q. You save all the water that goes in there?

A. No, sir.

Q. How do you know when you have got five gallons?

A. You run it through there and see that it weighs three hundred and twelve and one-half pounds.

Q. Do you set your scale at five cubic feet?

A. Yes, sir.

Q. You rely entirely on the weight?

A. Weight and measurement.

Q. How do you make—how do you know the measurement?

A. It is marked on the beam there.

Q. How many meters did you test on this day?

Mr. Devlin—I object to that question.

By the Court.

Q. Can you tell how many you tested on that day?

A. I think we have a record up there.

Q. Do you know?

A. Not exactly, no.

By Mr. Kafes.

Q. Can you give us an idea how many meters you tested that day?

A. I do not know.

Albert W. Bugbee, sworn.

At this point the further taking of testimony was adjourned until Thursday, April 17th, 1917, at ten o'clock.

THURSDAY, April 17th, 1917.

Albert W. Bugbee, resumes the stand.

Direct examination, by Mr. Devlin.

Q. You are the superintendent of the Water Department of the City of Trenton?

A. Yes, sir.

Q. You have been for how many years?

A. Twelve years.

Q. Where is the water obtained from?

A. The Delaware River.

Q. What process is the water put through?

A. It is taken from the Delaware River and put through a filtration process and then stored in the reservoir.

Q. From the reservoir it is distributed over the tire city?

A. Yes, sir.

Q. And the users of the city water connected with these pipes?

A. They do.

Q. Now, I show you two wheels; I have opened them. Have you ever seen them before?

A. Yes, sir.

Q. Where did you obtain them?

A. I obtained those gears from Clarence Hyle.

Q. Do you superintend the testing of meters for the Water Department?

A. I recommend it.

Q. You test meters and examine the mechanism?

A. I never personally tested but one meter.

Q. The mechanism you examine and pass upon?

A. I do.

Q. How long have you been doing that?

A. For the last twelve years.

Q. And are you familiar with the mechanism of the meter known as the Trident meter, three-quarter?

A. I am; yes, sir.

Q. Assuming that a three-quarter inch Trident meter has the proper gears, the standard gears, on a test it is after it, is it possible for this meter to go fast?

A. It is not.

Q. If it changes in metering or measuring the way what way does it go?

A. It goes slow.

Q. Can you say why it goes slow?

A. Because if dirt had accumulated it would naturally make it run slow.

Q. Were you present on November 20th when the meter of Louis Lavine, of 319 North Warren Street, was tested?

A. I was not present.

Q. Do you use in the Water Department a testing machine?

A. Yes, sir.

Q. It is accurate?

A. Yes; it is accurate.

Q. Are you able to explain how a testing machine is operated?

A. Yes, sir.

Q. Go ahead.

Mr. Kafes—I object to that as irrelevant, incompetent and immaterial.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. The scale we have is of the Fairbank type, and has a tank at the bottom. There is a pipe at the bottom leading to the sewer. From the water main there is a pipe leading to the scale, letting the water run into the tank, and in that pipe there is an opening left for inserting the water. The meter to be tested is placed in this tank and the valve in the pipe that leads to the scale is opened and the water is run through and is weighed.

Q. So much of water indicates a certain cubic measurement, is that right?

A. It does.

Q. Besides a certain cubic measurement it indicates a certain liquid measurement?

A. That is right.

Q. What is it?

A. Sixty-two and one-half pounds equal seven and one-half gallons.

Q. Seven and one-half gallons is equal to sixty-two and one-half pounds?

A. That is right.

Q. Now, can you describe the method of testing a meter?

A. Yes, sir.

Mr. Kafes—That is objected to on the same ground.

The Court—The objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Proceed, please.

A. The meter is placed in its proper position on the testing machine and the valve right next to the meter is opened to allow the water to pass through the meter. This valve is opened allowing enough water to go through to be sure and fill the pipe between the meter and the tank, and then the valve is again shut off, and the water allowed to run off and clear the tank, and then the valve is opened again, and the test started. The man opening the valve watches the dial on the meter. For instance, if you are running through five cubic feet for a test he watches only the dial, and sees that five cubic feet of water go in. He then takes his weight on the scale and takes up the weight that weighs five cubic feet—it is marked five cubic feet—and puts it on the scale, and if the scale exactly balances the five cubic feet it is absolutely correct; if it does not absolutely balance there is a little beam with a percentage mark on it; he takes this little weight and puts it on his beam, on one, two, three, or four, and the percentage on there indicates the percentage that it is off. We usually find meters about two per cent. slow.

Q. Now, I ask you if you know the name of the testing machine?

A. Muhler.

Q. I show you a diagram issued by the Muhler Manufacturing Company of the testing machine, and the water meter connected with it, and ask you if—

Mr. Kafes—I object to the prosecutor showing the witness a picture. It is irrelevant, immaterial and illegal. It cannot be used for this purpose or for any other purpose in this suit.

Mr. Devlin—I won't offer it if Mr. Kafes will say the testing machine is all right.

Mr. Kafes—Supposing I did admit the testing machine was all right, I would not admit that the tester was correct, the man who did the testing.

Mr. Devlin—If you will admit this testing machine as a standard article, I am satisfied.

Mr. Kafes—I neither admit nor deny. I have no way of knowing if it is right or wrong.

Mr. Devlin—If you take that position I am satisfied not to go any furhter.

Q. Now, Mr. Bugbee, so I can get this method of testing. The meter is placed, there are two pipes in the testing machine; is that correct?

A. Yes, sir.

Q. On this side there is a lever that stops and starts the water; is that right?

A. Yes, sir.

Q. It starts the water and fills the pipe that leads into the tank?

A. Yes, sir.

Q. You shut the water off now?

A. Yes, sir.

Q. Clean the tank out of all the water and the pipe is filled?

A. Yes, sir.

Q. Then you go to the testing machine and set the beam to five cubic feet of water or five times sixty-two and a half pounds. You said the testing weight was—you set the testing weight to three hundred and twelve and a half pounds?

A. Correct.

Q. That is equal to twelve cubic feet of water; is that right?

A. Yes, sir.

Q. With this done, one man pulls the lever here and another man stands in front of the scale?

A. Yes, sir.

Q. When that beam evens up three hundred and twelve and a half pounds, the weight equal to five feet, the man here shuts the water off; is that right?

A. Yes, sir.

Q. You have got through this meter five cubic feet or three hundred and twelve and a half pounds of water; is that correct?

A. Yes, sir.

Q. And the man sees how many feet are registered?

A. Yes; that is right.

Q. If it does not indicate five feet the meter is slow?

A. Yes, sir.

Q. Then you go to the percentage scale to balance it and find what percentage the meter is slow?

A. Yes, sir.

Q. Before you put the meter on the testing machine you take off its correct reading, see the dial is closed before you put in any water, before you put it in the testing machine?

A. Yes, sir.

Q. So that you can tell from the correct reading, or by what the meter says, that the five gallons of water have gone through?

A. Yes, sir.

Q. The important thing in testing a meter is to watch this lever, because that is the sure way of telling when five cubic feet have gone through?

A. Yes, sir.

Q. Then you go to the meter to see if the clock has registered five cubic feet?

A. Yes, sir.

Q. If that clock does not show five cubic feet that meter has been slow?

A. Slow or fast.

Q. Supposing it doesn't weigh as much as five cubic feet?

A. Then it is slow.

Q. And lower than five cubic feet?

A. Fast.

Q. Then the next operation to be performed in testing your meter is to take off this clock, is that right, to find out what is the matter with your meter; take off the clock and look to see if the gears on the clock are all right?

A. Yes, sir.

Q. If the gears are not right, then you put in standard gears; is that right?

Mr. Kafes—I object to this line of examination.

The Court—Mr. Devlin is testifying himself.

Mr. Kafes—I did not want to object to a few of these questions—

The Court—Mr. Devlin's questions have been very leading. You will refrain from asking leading questions, Mr. Devlin.

Q. Now, if you find that you have not the proper gears, what do you do?

A. Put on the proper gears.

Q. Then after you put on the proper gears, what do you do to find out if your gears are right?

A. Retest it.

Q. By the same method you have described?

A. It is practically the same thing. We get the meter on the table and run through five cubic feet of water and see if the meter registers five cubic feet, and if it doesn't balance on the scale we balance it with the percentage beam, which is just a trifle different.

Q. I put the meter into the testing table?

A. Yes, sir.

Q. Throw the clock open, look at the reading, fill the pipe, clean out the tank, then again look at the reading of the meter, and then let the water run in and fill the tank five feet?

A. Correct.

Q. And then after that weigh the water?

A. Correct.

Q. Every sixty-two and a half pounds represents a cubic foot of water?

A. Yes, sir.

Q. Then, if it is more or less by the percentage scale, I can determine that fact?

A. You can, yes, sir.

Cross-examination, by Mr. Kafes.

Q. You are superintendent of the Trenton Water Department?

A. Yes, sir.

Q. How long have you held that appointment?

A. Twelve years.

Q. Do you get your water from the Delaware?

A. Yes, sir.

Q. By pumping it?

A. Yes, sir; that is one way.

Q. What is the next process?

A. It runs by gravity to the wells, then to the filtration plant, then to the water well, then to the reservoir.

Q. From the reservoir to the consumer?

A. Yes, sir.

Q. How do you say the water is conveyed to the consumer from the reservoir?

A. By gravity to pipes.

Q. Who is the owner of the pipes?

A. The City of Trenton.

Q. And the water is conveyed in that way to the consumer's home?

A. Yes, sir.

Q. Does the city own all the pipes used in that conveyance?

A. Except the service pipes.

Q. By service pipes you mean the pipes leading from the stream to the house?

A. Yes, sir.

Q. Who is the owner of those pipes?

A. The property owner.

Q. When the water leaves the main pipe from the street, goes in the service pipes, it is then in the pipe of the private individual?

A. Yes, it is.

Q. Where, with respect to the service pipes, are all of these meters fastened?

A. In some cases at the curb, and in some cases in the cellar.

Q. In the cellar?

A. Yes, sir.

Q. In the Lavine case, if you know, it was fastened in the cellar, was it not?

A. Yes, it was.

Q. Are you prepared to say how many meters there are—

Mr. Devlin—I object to that.

Mr. Kafes—All right; I withdraw it.

Q. Describing these tests that you have made, what you are to be certain about is to see how often the unit hand turns around, isn't it?

A. Yes, sir.

Q. In making this test, if the unit hand revolves five times, what would that indicate?

A. That five cubic feet have passed through.

Q. Suppose five feet, five cubic feet had been run through and the unit hand revolved five times, what would that indicate to you?

A. That the meter was correct.

Q. Could that register five times and yet not have five cubic feet of water run through it?

A. Yes.

Q. And that would be on account of the shifting or changing of gears to run fast necessarily, would it not?

A. Unless less than five feet ran through it.

Q. In other words, if any less amount than five cubic feet of water ran through that meter and regis-

tered five cubic feet, then you would say the meter was running fast?

A. Yes, sir.

Q. And correspondingly so, on the other hand, if you send more than five cubic feet and it registered only five, you would say the meter was running slow, would you not?

A. Yes, sir.

Q. And if five cubic feet in the test went through the meter and it registered five cubic feet, you would say everything was all right?

A. Yes, sir.

By Mr. Devlin.

Q. These two gears, or small cogwheels that have been found on the meter of Lavine, assuming that I put these smaller cogs on what is known as the train or water part of that meter, and I put the big cog on the top, or what is known as the clock part of that meter, from your experience, what is the effect; would that meter go fast or go slow?

A. In that case, it would run slow.

Q. As a mechanical proposition, are you able to say, if it's possible, with this meter fixed that way, for it to run either true or fast?

A. It could run neither true nor fast.

Q. If you reversed these gears and put the smaller gear on the clock and the big cog on the other gear, what is the mechanical effect as to the speed of that meter?

A. It would run fast.

Q. With the gears placed with the big cog on the clock and the smaller cog on the other gear, I understand it is impossible for the meter to go slow or true?

A. It is correct.

Q. Do you know what the standard gears are, for a meter that is new of that make?

A. Yes, sir.

Q. They are what?

A. 32, 34.

Q. Do you know what the gears are that I have exhibited to you as exhibits, and found it Lavine's meter?

A. Yes, sir.

Q. What are they?

A. 15, 51.

Q. The figures you mentioned, what do they indicate?

A. The number of teeth on the gears.

Further cross-examination, by Mr. Kafes.

Q. You say the standard gears on this machine, ¾ inch, is 32, 34?

Mr. Devlin—No; he said the standard gears on a machine of that make in new condition is 32 and 34.

Q. What is that?

A. The gears in a new condition is 32 and 34.

Q. What are they on a one-inch machine?

A. That I could not say.

Q. Do you know about a two-inch?

A. No, sir.

Q. Mechanically speaking, does proportion or ratio have anything to do with the operation of a meter?

A. Ratios do.

Q. Does that hold good in proportion of the icnh and a half meter, and so on?

A. Yes.

Q. Then, in an inch machine, the ratio, or proportion, would be one to one, would it not?

A. I could not say; I guess so.

Mr. Devlin—I object to guessing.

Q. You use inch meters in your department?

A. Yes, sir.

Q. You also use two-inch meters?

A. Yes, sir.

Q. You never made any study of an inch meter?

A. I have not memorized the size of the gears.
Q. You don't know anything about it, do you?
A. I didn't memorize it; no.
Q. Did you in this case?
A. Yes.
Q. Who told you to do that?
A. No one.
Q. Why did you do it?
A. I thought that question would be asked.
Q. You did it, eh? Just kind of read up a little?
A. On this size of gears, certainly.

Mr. Devlin—I offer these gears and this meter for the purpose of illustration.

The Court—The meter may be admitted, with the understanding that it is similar in every respect to the meter in question.

(Meter above referred to received in evidence and marked Exhibit No. 3 for the State.)

Clarence Hyle, recalled for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Hyle, you testified, yesterday, the clock of the machine went around five times in testing the meter of Lavine; is that right?

A. That is right.

Q. Do you desire to correct the testimony that you gave yesterday in regard to that clock?

A. I do desire to correct it.

Q. Will you state the correction you desire to make?

Mr. Kafes—I object to that.

The Court—I do not see any objection.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. I testified that the foot dial went around five

times; I then found out that the foot dial, in the final test, went five times. I might have stated that on both times it went five times, but I did not mean that; I did not mean it went around five times on both occasions.

Q. You stated it went around on the final test five times; state whether or not that was the test after you had put in the standard gears?

A. That was after the standard gears were put in.

Q. Now, I ask you how many times it went around in the first test?

A. I didn't notice, particularly.

Q. You discussed this thing with Mr. Bibbins and with myself in my office last night?

A. Yes.

Q. It was there you discovered the error?

A. Yes.

Q. That is why you come on the stand to correct it?

A. Yes.

Cross-examination by Mr. Kafes.

Q. You understood the question yesterday, didn't you, Mr. Hyle?

A. Surely.

Q. Why didn't you answer them correctly yesterday?

A. I answered as I thought was correct.

Q. And after that you discovered you had not answered them correctly?

A. After I had gone out yesterday from here.

Q. You were called in by the prosecutor?

A. No; I was talking to Mr. Bibbins.

Q. You went to the prosecutor's office?

A. Afterwards.

Q. At his notification?

A. Yes; at the prosecutor's notification.

Q. To rake over the coals, I suppose.

Mr. Devlin—I object to that.

I will put on the record that it was dis-

cussed between me and Bibbins and he told me where he made his mistake.

Q. Mr. Hyle, who told you you had made a mistake?

A. Mr. Bibbins.

Q. So far as you are concerned now you don't know if you are right or wrong?

A. I know that I am wrong.

Q. In other words, after you came here and testified, Mr. Bibbins told you really what you didn't know?

A. No, sir.

Q. Well, Bibbins is the man who told you?

A. He directed my attention to the fact that I had made an error in my testimony.

Q. Well, then I say, Bibbins told you what the tests showed rather than what you really knew?

A. Bibbins is the man who did the testing.

Q. He told you what the tests disclosed, rather than what you remember of it?

A. Not necessarily.

Q. That is what he told you?

A. Yes.

Q. Then your testimony to-day is dependent entirely on what Bibbins told you?

A. Yes; as to the correctness of the meter.

Mr. Kafes—I think this latter part of the testimony should be striken out on the ground that what he has now said discloses the fact that the testimony is purely hearsay.

The Court—I shall not strike out the testimony.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL. *Judge.*

By Mr. Devlin.

Q. When you spoke with Mr. Bibbins yesterday, state whether or not that it refreshed your memory?

Mr. Kafe—I object to that.

The Court—That has all been gone over.

Charles H. Speck, re-called for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Speck, you are married?

A. Yes, sir.

Q. At the present time is your wife well or ill?

Mr. Kafes—I object to that on the ground that it is irrelevant, immaterial and not proper.

The Court—The purpose of that is to show the reason for the absence of a witness?

Mr. Devlin—Yes.

Mr. Kafes—That is not the proper way to show it.

The Court—I will allow it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. My wife is ill.

By the Court.

Q. Confined to her home?

A. Yes; nervous breakdown.

Q. Under the care of a physician?

A. Yes; she has been.

Mr. Kafes—A doctor's certificate should be produced.

The State rests.

Mr. Kafes—I desire at this time to move for a direction of a verdict on the third and fourth counts of the indictment. In the third and fourth counts the defend-

ant is charged with the crime of larceny, and also with aiding and abetting Speck in committing the crime of grand larceny.

Mr. Devlin—If he makes that motion, of course it is necessary for him to rest his case.

Mr. Kafes—In every instance when I have made a motion, and I have made them many times for defendants, the Court would allow me to rest my case and if he denies my motion to open my case again.

The Court—There is no question the Court would do that if he denied the motion.

Mr. Kafes—In all cases of larceny, and all larceny trials, there must be the unlawful carrying away of the goods and chattels or something of value of another person with the intent to permanently deprive him of the ownership of the same, and I maintain that such is not shown by any evidence; it is not shown by any evidence in the case that the jury can refer to that the defendant is guilty, and the State must necessarily show that before they can convict on the crime of larceny.

In the first place, I contend that when the water left the pipes and went into the meter it is the private property of the defendant, and that when the water left the main in the center of the street it went into his pipes, and therefore it was in his possession and there was no larceny. It is admitted by the State that when the water left the mains of the city it ran into his private pipes.

The State may contend that there is a contract existing between the consumer and the City of Trenton wherein and whereby it is understood that the city should have the right to make use of that person's pipes for the purpose of conveying the water from its mains to his pipes; and I say to your Honor, it is a matter of proof; it must be established to the satisfaction of the jury that there is such a contract existing between the consumer and the inhabitants of the City of Trenton.

The State has failed to put in any evidence on that point so that the jury can say there is any express contract existing between the City of Trenton and the consumer.

On the second count, that whatever water is alleged to have been stolen passed beyond and through the meter, and when the water passed beyond the meter it likewise came into the possession of the defendant, and is a point of law, a matter of law, there could absolutely be no misappropriation or carrying away of the goods and chattels of another. I may say that other States of the Union have laws against tampering with meters, water meters and gas meters, but I have not been able to find any case in any State of the United States where any one has ever been convicted of larceny, stealing gas or water after the gas or water passed through the meter.

(Mr. Kafes proceeded to argue his case on the above two points and to cite cases to the Court in strength of his position.)

Mr. Kafes—That being so, I ask your Honor to direct a verdict on the two counts for larceny. I also move for a direction of a verdict in favor of the defendant under the third and fourth counts of the indictment on the ground that there could be no larceny after the water reaches the meter.

The Court—I decline to grant your motion on the ground that water is a subject of larceny.

Mr. Kafes—I do not make it on that point at all.

The Court—And the fact that the larceny did not take place until after it gets to the meter, in my judgment, does not control. The case will go to the jury on all four counts in the indictment.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Kafes—I also ask for the direction of a verdict

on the first and second counts on the ground that the evidence fails to show the commission by the defendant, Lavine, of either of the crimes charged in said counts. Further, the evidence shows the offenses charged in said two counts occurred more than two years before the finding of the indictment, and for that reason outlawed. As to the time of the commission of the offenses, there is a substantial variance between the allegations of the counts and the proofs. Also, for the reasons given on the motion to quash, no crime is charged. The evidence does not show the commission of a crime. Neither count charges a crime under the statute. There is no evidence of a tampering with the meter of a water company.

As to the third and fourth counts, there is no evidence of the larceny of stored filtered water. There is no evidence whatever of larceny. There is no legal proof of the quantity of water stolen.

The evidence fails to show the commission of a crime under any one of the counts contained in the indictment, and for the above reasons a verdict should be directed on each count and on the indictment as a whole.

The Court—The motion will be denied and exception allowed. Let it be sealed, and it is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

Haefel Cohan, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. You live where?

A. 36 Chestnut Avenue.

Q. You know Louis Lavine?

A. Yes, sir.

Q. Do you know Mr. Speck?

A. I don't know him personally; no, sir.

Q. Did you, at any time during the year of 1914, or any other time, tell him that your brother-in-law, Louis Lavine, wanted you to fix his meter?

Mr. Devlin—I object to that.

Mr. Kafes—I offer the testimony as the result of this conversation with this man?

The Court—I am going to permit it.

Q. Did you have any conversation at your place of business in 1914 or any other time with Speck wherein the name of Louis Lavine was mentioned?

A. No, sir.

Q. Did you, at any time in 1914, or any other year, ask him to go and see Louis Lavine?

A. No, sir.

Q. You never had any conversation wherein the name of Louis Lavine was mentioned?

A. No, sir.

Cross examination, by Mr. Devlin.

Q. You are a brother-in-law of Louis Lavine?

A. Yes, sir.

Q. How long have you been related to him?

A. Twelve years.

Q. You were in this term of court convicted of aiding and abetting the tampering of a meter?

A. Yes, sir.

Max Bash, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Mr. Bash, you are a brother-in-law of Louis Lavine?

A. Him and I married sisters.

Q. Do you remember November, 1916, going with Mr. Lavine to Mr. Speck's house?

A. Yes, sir.

Q. Do you remember what the time was?

A. I don't just remember what time; sometime in November; I am not just certain what day it was.

Q. Who went with you?

A. Louis Lavine.

Q. Daytime or night?

A. Afternoon.

Q. State to the Court and Jury what conversation took place between you and Lavine and Speck at that time.

Mr. Devlin—I object to that. This witness cannot say what Speck said at that time.

The Court—The objection will be sustained.

Q. Do you remember you and Mr. Lavine saying: "Dave Louis is around saying that you fixed Louis' meter"? Was that said by either of you?

A. Yes, sir, it was.

Mr. Devlin—I object to that.

The Court—He ought not to say: "Do you remember" so and so, "was it not said". "Do you remember" is a very leading question.

Q. Was it or was it not said, do you remember?

A. I remember, yes, we went there, to which he said: "It is a damn lie."

Q. "Someone is 'kidding' you; I never made any such remark."

A. He did.

Q. Did or did not Louis Lavine say to him at that time: "I want to know if you went and told the commissioners the truth about the matter?

A. No, sir.

Q. Did Louis Lavine either then or at any other time say to him: "If I knew you were going to tell the truth to the commissioners, I would have told them the same"?

A. No, sir.

Cross-examination, by Mr. Devlin.

Q. What is your business?

Mr. Kafes—That is objected to.

The Court—The question may be answered.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. How long have you been in that business?

Mr. Kafes—That is objected to as irrelevant and immaterial and not proper cross-examination. I called him for one purpose, that is, the conversation.

The Court—I will admit it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. How long have you been in that business?

A. Ten years the fourteenth day of August.

Q. Where, in the City of Trenton?

Mr. Kafes—I object to the entire line of examination.

The Court—You may have an exception, Mr. Kafes.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Wilbur Hampton, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. You are a brother-in-law of the defendant?

A. No, we both married sisters. His wife is my sister-in-law.

Q. Doesn't that make you, by marriage, a brother-in-law?

A. I don't think so.

Mr. Kafes—Well, never mind.

By Mr. Devlin.

Q. Don't you think so?

The Court—He has stated that the relation is that they married sisters.

Mr. Devlin—I am asking him if that doesn't make him a brother-in-law.

A. I don't think so.

Q. Have you any interest in Louis Lavine?

A. Surely.

Q. How long have you known him?

A. About fourteen or fifteen years.

Q. Did he invite you to go there that afternoon or did you go there of your own volition; didn't he invite you to go?

A. He did.

Q. What was the purpose of inviting you to go?

Mr. Kafes—That is objected to as irrelevant and immaterial and not proper cross-examination.

The Court—I sustain the objection.

Q. Was the purpose of your going to him to furnish evidence to be a witness in this suit?

A. No, sir.

Q. Had you been informed at that time that the City Commission was about to investigate Lavine?

A. No, sir.

Q. You didn't go there with that in view, of getting evidence that you might come to this court and testify?

A. Yes, sir.

Q. I don't want the conversation; but had you and Lavine spoken about this water trouble before you went to Speck's house?

A. We had.

Q. How many times had you spoken about it before you went to Speck's house?

A. That day.

Q. That is the only talk?

A. Going up there.

Q. Did you visit him or did he visit you?
A. We met at the bank.
Q. Did you meet for that purpose?
A. No, sir.
Q. It was there you got the information?
A. Yes, sir.
Q. And there that you decided to go?
A. Yes, sir.
Q. Did he ask you to go with him?
A. Yes, sir.
Q. Now, from that time until now, did you talk this matter over with Lavine?
A. Yes, sir.
Q. Often?
A. Yes, sir.
Q. Was the subject of your talk what you have testified to in this case?
A. No, not just that.
Q. You talked many times to Lavine since that?
A. Yes, sir.
Q. Have you in those conversations talked to Lavine what you and he would testify to on the witness stand?
A. No.
Q. Did you go up there more than once with Lavine?
A. Yes.
Q. The second time—when did you arrange the second visit with Lavine?
A. We were up to the club.
Q. How long after the first?
A. About a week or two.
Q. Where is the club?
A. Over the Trenton Theatre.
Q. Who spoke first?
A. Lavine.
Q. What was the object of your trip the second time?
A. He asked me to go up there with him.
Q. But I am asking you, do you know what was your object in going up there with him?

A. No object whatever.

Q. Can you give no reason for going then?

A. He asked me to go.

Q. That was all?

A. Yes, sir.

Q. Did you expect to be a witness to any statement made by Lavine to Speck, or by Speck to Lavine?

A. No, sir; never thought of that.

Q. How long have you lived in this county?

A. All my life.

Q. How long?

A. Thirty-three years.

Q. At this time you knew there was trouble about Speck?

A. I did.

Q. And Lavine?

A. Yes, sir.

Q. Did Lavine give you any reason why he wanted you to go?

A. No, sir.

Q. After you left the house the second time, did you then talk about what you were to testify to?

A. No, sir.

Q. Didn't talk about that at all?

A. No, sir.

Q. Did you talk about the possibility of a trial?

A. No, sir.

Q. Then can you explain why you and he went to Speck's house—what you and he went there to talk about?

A. To call Speck a liar.

Q. Where did Speck live?

A. Rutherford Avenue.

Q. And Lavine on North Warren Street?

A. Yes, sir.

Q. And you and Lavine went from North Warren Street to Rutherford Avenue to call the man a liar?

A. If someone said something about me I will, I suppose.

Q. Did you find it necessary to walk that long distance to call a man a liar?

A. Sometimes; it all depends what he calls you a liar for.

Q. You felt that you should accompany Lavine so that you would be a witness that he called him a liar?

A. No.

Q. Can you tell us about the first trip to Speck's house?

A. I cannot.

Q. Let me try and refresh your memory a little. Do you think it was around the sixteenth or seventeenth of November?

A. I cannot tell you that.

Q. Do you know how many days intervened between these two trips?

A. I should say a week or two.

Q. Do you know if Mr. Lavine had been requested to appear before the City Commission?

A. No; I don't think he was.

Q. Taking that as the time, were any of these trips made before, or were they made after Mr. Lavine appeared before the City Commission?

A. I think it was after; I don't know.

Q. How many trips before?

A. Just one.

Q. And then the other trip was made after Lavine had appeared before the Commission.

A. I think it was; I am not sure; I never thought I would be called into this at all.

Q. You think your first trip then was before he appeared before the Commissioners and the second trip after?

A. I think so.

Q. Fixing that in your mind, isn't it a fact that your purpose in going out to Speck with Mr. Lavine was to try to fix up the trouble?

A. No, sir.

Q. Isn't that true?

A. No; positively not.

Q. Mr. Lavine had been called before the city commissioners, and you and he went out post haste to try and fix the thing up?

A. No, sir.

Q. Then you were ready to swear to whatever statement you got or expected to get?

The Court—That is not a fair question to put to the witness.

Q. Did you go there for the purpose of supporting whatever Lavine might swear to in the trial?

A. No, sir.

Q. Who did you take with you besides Lavine on the first trip?

A. I didn't take anybody with me.

Q. Who on the second trip?

A. Myself, Mr. Lavine, Mr. Epstein.

Q. Do you know Mr. Epstein's occupation?

A. Yes, sir.

Q. What is it?

Mr. Kafes—That is objected to as immaterial and irrelevant.

The Court—I will admit it.

A. A justice of the peace.

Q. You knew he was a justice of the peace at that time?

A. Yes, sir.

Q. Who notified Epstein to go?

A. I don't know; I know he went along.

Q. Did you notify him?

A. No, sir.

Q. Do you know where it was first mentioned?

A. At the club.

Q. Who suggested the first trip to Speck's?

A. Mr. Lavine.

Q. Do you know who notified Epstein?

A. I do not.

Q. Did you hear anyone ask him to go?

A. I don't think so; he went along.

Q. Did he discuss the matter of going there with the two of you before you started?

A. I don't think so.

Q. He went in the house?

A. Yes, sir.

Q. Did you hear Lavine say the purpose of bringing Epstein?

A. No, sir.

Q. Did anyone say, in these words: "We will bring Epstein, the justice of the peace, so as to lay more weight to whatever is said here if it come to court?"

A. No, sir.

Q. When you got to Speck's, whom did you see?

A. Mr. Speck, I think one or two of the children, and his wife.

Q. How old were the children?

A. I don't know; just youngsters.

Q. Not old enough to testify?

A. I don't think so.

Q. You saw Mr. Speck and Mrs. Speck?

A. Yes, sir.

Q. Did you see any other adult person?

A. Yes, sir.

Q. Who?

A. Myself, Mr. Lavine—

Q. Besides you three, did you see anyone other than Mr. Speck, Mrs. Speck and the two babies?

A. No, sir.

Mr. Devlin—That is all.

By Mr. Kafes.

Q. I want to ask you this, whether or not Lavine, if you know, didn't go out to see Speck at the instigation of Mr. Joseph Buch?

Mr. Devlin—I object to that for the reason that I did not ask about Mr. Buch.

A. Mr. Lavine said Mr. Buch told him to go out there.

Mr. Devlin—I object to that absolutely. Mr. Kafes has a great method of getting in unfair questions.

The Court—I don't think that is an unfair question.

Mr. Devlin—I do.

The Court—You may have your views and I have mine.

Mr. Devlin—Yes, and I have mine.

Q. At the second conversation, I understand you to say, practically nothing was said?

A. They was talking to his wife about the children. I know the family well, too.

Q. He said he didn't want to talk about the children?

A. Yes.

Mr. Kafes—That is all.

Louis Lavine, sworn in his own behalf.

Direct examination, by Mr. Kafes.

(At this point a recess was taken until two o'clock in the afternoon.)

AFTER RECESS.

Louis Lavine resumes the stand.

Direct examination, by Mr. Kafes.

Q. Where do you live?

A. 219 North Warren Street.

Q. Are you engaged in the saloon business?

A. Yes, sir.

Q. How long?

A. The last sixteen years.

Q. In the City of Trenton?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. Do you remember when the City of Trenton installed a water meter in your place?

A. Yes, sir.

Q. When was that?

A. I should judge about 1912.

Q. Bills were submitted to you every three months?

A. Yes, sir.

Q. For which you paid the city?

A. Yes, sir.

Q. Is Haefael Cohan, who appeared here as a witness, your brother-in-law?

A. Yes, sir.

Q. Did you, at any time, ever ask, authorize or instruct him to say anything to one Speck about fixing your meter?

A. No, sir.

Q. Do you know Mr. Speck?

A. I do.

Q. How long have you known him?

A. Oh, for the last nine of ten years.

Q. Under what circumstances did you get acquainted with him?

A. The Max Bash's place when his father ran for excise board.

Q. Have you ever seen him in your place of business?

A. Yes, sir.

Q. When was the first time, if you can remember?

A. I cannot remember.

Q. Did he stop at your place now and then?

A. Yes, as a friend.

Q. When did he start stopping at your place?

A. Since his father has been commissioner.

Q. Do you remember his coming to your place at any time during the year 1914?

A. Yes, sir.

Q. What time of the year was it?

A. I don't know; I think it was sometime in the

fall of the year; I should judge sometime in the summer, anyway.

Q. You don't know exactly when?

A. No, sir.

Q. You remember he was in your place?

A. Yes, sir.

Q. What time in the evening did he come there?

A. In the early part of the evening, I should say.

Q. Can you tell the jury about what time?

A. About seven or seven thirty.

Q. Were you attending bar?

A. Yes, sir.

Q. Do you always attend bar at night?

A. Yes, sir.

Q. You have a bartender?

A. Yes, sir.

Q. What time does he come on?

A. About five-thirty or six in the morning.

Q. He goes on until what time?

A. Until about twelve o'clock, and gets his dinner about an hour and a half, and stays until six o'clock.

Q. In the evening?

A. Yes, sir.

Q. After that who attends bar?

A. I do, myself.

Q. Were you attending bar that night Speck came in?

A. I am almost sure I was behind the bar.

Q. State what he said to you and you to him?

A. Why, he came into my place and he was telling me about his father dying, and I said I read that in the paper, and I said, "I am very sorry; he was a very nice old man." I knew him personally; and then he was telling me a hard luck story and he asked me to lend him ten dollars, and I went in my pocket and gave it to him.

Q. Did he say anything about anyone sending him there?

A. No, sir.

Q. Did he mention the name of Haefael Cohan to you?

A. No, sir.

Q. Did he disclose to you any other purpose for coming to your place than to make a loan?

A. Didn't say anything to me; just came in and asked for a loan.

Q. Where were you?

A. I was waiting behind the bar.

Q. Do you remember how you handed the money to him?

A. I simply took the money out of my pocket and handed it to him.

Q. How do you know it was in 1914?

A. I have a book I used to keep account of my business in; this book shows I kept account of my business in 1914, and in this book is his name and other names.

Q. Did you make other loans?

A. Yes, sir.

Q. Before and after that time?

A. Yes, sir.

Q. After you made the loan to Speck?

A. Yes, sir.

Q. Where is it?

Mr. Devlin—I object to that.

The Court—What is the purpose?

Mr. Kafes—I am just asking him if he has the book.

Mr. Devlin—I object to his producing the book, it is not evidence.

The Court—That question, perhaps, is not objectionable.

Q. Will you turn to the record containing the name Speck?

Mr. Devlin—I object to that question. It is a preliminary question to his putting the book

in evidence. It is immaterial and irrelevant. It is not a proper question; it is a self-serving statement.

Mr. Kafes—I contend it is admissible the same as the books of any person would be, if they were used in an account where there was a book record kept. I have a perfect right to offer this book in evidence for the purpose of showing that the record was made.

The Court—No; I think I shall overrule that.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did he leave your place then?

A. Yes, sir.

Q. Has that money ever been returned to you?

A. No, sir.

Q. When, in point of time, was the first time you heard you were being accused by Speck of getting him to unlawfully tamper with your water meter?

A. The first time I heard about it was a fellow by the name of Dave Louis. I don't know just exactly the time I learned it from him.

Q. Following that what did you do?

A. The next day I went to the bank and met Max Bash and told him about it.

Q. You told your brother-in-law about it?

A. Yes, sir.

Q. What next did you do?

A. Max and I went for a walk.

Q. Did you see any other person after you saw Max Bash?

A. No, sir.

Q. And when you saw Max Bash you told him what Louis had said to you?

A. Yes, sir.

Q. Did you or did you not decide to do anything following this conversation with Max Bash?

A. Yes, sir.

Q. What did you do?

A. We went out to Speck's house.

Q. Who went with you?

A. Max Bash.

Q. Any other person?

A. No, sir.

Q. When you got there, who, if anyone, did you find?

A. We rang the doorbell and Mr. Speck came to the door, and we went in the house, and took a seat in the parlor, and I guess we shook hands; I had known him so long. I said: "Charlie, what have you been saying about me; I understand you to say you fixed my meter?" and he says to me: "It is a damn lie; somebody is just 'kidding' you," and a few more words were passed, I don't just recall, and someone rang the doorbell again and he went to the door, and he saw his wife at the door and he said: "Don't say anything boys; don't say a thing." He said: "My wife is at home." He opened the door and his wife walked in the house and nothing was said. Mr. Bash talked now and then about his wife and the children, and Mrs. Speck asked about his wife and children, and went away.

Q Then you left?

A. Yes, sir.

Q. Now, following this, do you remember appearing before the commissioners?

A. Yes, sir.

Q. What commissioner did you appear before?

A. Mr. LaBarre and Mr. Lee.

Q. Where at?

A. LaBarre's office.

Q. City Hall?

A. Yes, sir.

Q. Who were present?

A. LaBarre, Mr. Lee and myself.

Q. State what each and everyone of these commissioners said to you and what you said to them.

A. I said to Mr. Lee—

Mr. Devlin—I object to that. Mr. Kafes, in cross-examination asked Mr. Lee about it and he denied it.

The Court—I will sustain the objection.

Mr. Kafes—All right.

Q. You appeared before the commissioners?

A. Yes, sir.

Q. And you denied your guilt?

A. Yes, sir.

Q. And Mr. Lee said you offered to meet Mr. Speck?

A. Yes, sir.

Q. What was said if anything?

Mr. Devlin—I object to that.

The Court—I will permit the question.

Q. Yes or no?

A. Yes.

Mr. Devlin—I object to that.

The Court—Answer the question.

A. Why they asked me if Speck had fixed my meter, and I told them, I told Mr. Lee I had no reason to believe my meter had been fixed; I have no reason whatever for having my meter fixed; my bills were low, "Since 1912 I am always satisfied; I don't see why I should pay a man to fix my meter; my bills were low." And Mr. Lee admitted my bills were running about the same, and Mr. Lee or Mr. LaBarre, I don't know which one, asked me if I had loaned him any money to fix my meter, and I told him no; positively not.

Q. Was anything else said?

A. He asked me if the bartender paid him any money and I said no, it would be on record because he

kept account every day of what he paid out for me.

Q. Was anything said to you about being willing to face Speck?

A. Yes, I said I would at any time, and I would like to face him.

Q. What was said?

A. About the meter fixing?

Q. Who brought that up?

A. I asked him, I asked him if I was the one suspected; I suggested it. I said: "It is a damn lie and I would like to face Mr. Speck, and Mr. Lee said Speck was sick and he would face me after awhile, and I said all right, I would face him right there.

Q. Do you know the date of that meeting?

A. No, sir, I don't.

Q. Can you state when it was?

A. It was sometime in November.

Q. Can you state how long after this meeting it was when you were first under arrest?

A. I should judge about a week or two; probably ten days.

Q. Before?

A. No; after the meeting.

Q. This meeting was about ten days before you were placed under arrest?

A. Yes, sir.

Q. Following that did you appear before the commissioners again?

A. No, sir.

Q. After your arrest did you again go up to Speck's house?

A. Yes.

Q. Why?

A. I stopped at Mr. Buch's office—

Mr. Devlin—I object.

The Court—I will not permit anything Mr. Buch said. He may testify he had a conversation with Mr. Buch, but I don't think the

particulars of that conversation are admissible.

Mr. Kafes—I withdraw the question.

Q. Was it because of a conversation you had with any other person?

A. Yes.

Q. That is why you went up to Speck's house the second time?

A. Yes.

Q. Who was that person?

A. Buch.

Q. His name?

A. Joseph Buch.

Q. How long after your arrest was that you went out?

A. Three or four days.

Q. What person accompanied you on the second visit?

A. Max Bash and Samuel Epstein.

Q. Daytime or night?

A. A. In the evening, early in the evening, around seven o'clock.

Q. Whom did you find in Speck's house?

A. Mr. Speck, and his wife and children; they came in from the kitchen.

Q. State what kind of a conversation you had with Speck this time, if any.

A. We walked in the house and I said: "Mr. Speck," I said, "you put me in a nice predicament." I asked him whether: "Did I ever ask you to fix my meter?" I asked him three or ofur times; he simply would not answer, and then Max Bash and his wife got talking again, and that was about all; we went away.

Q. Without an answer?

A. Yes, sir.

Q. Did you either on the first or second occasion, the first or second visit, say to him, "If I had known

that you were going to go before the commissioners and tell the truth, I would have told the truth also?"

A. No, sir; I never did.

Q. Was there anything like that said?

A. No, sir.

Q. Did you ever see Speck after this occasion?

A. No, sir; seen him in the courtroom, but didn't speak to him.

Q. Did you, at any time in the month of November, 1914, either procure or secure Speck to change the gears in your water meter?

A. No, sir.

Q. Did you at any time in 1914, or any other time, change your gears, or did he, with your permission, or your consent, or with your knowledge, change the gears on your meter?

A. No, sir; I had no reason whatever, because my bills were low.

Q. And if, at any time during the year 1914, he did change the gears in your meter, did you ask him to do it?

A. I never did.

Q. Or did you know anything about it?

A. No, sir.

Q. Or did you, at any time in 1914, or any other time, pay him any money for tampering or interfering with your meter, so that it would not register the full amount of water?

A. No, sir.

Q. Or did you give him ten dollars in the month of November, or any other time, to change the gears in your meter?

A. No, sir.

Q. You say you know nothing about it?

A. No, sir.

Q. That it was either done with your knowledge or consent?

A. No, sir; I didn't know anything about it.

Q. Have you ever plead guilty to an offense in this Court?

A. I did. It is a good many years ago, when I was young—I didn't get anything out of it.

The Court—Never mind about that.

Cross-examination, by Mr. Devlin.

Q. How long have you been in this building, 319 North Warren street?

A. A little over six years.

Q. Does your saloon connect with your home?

A. Yes, sir.

Q. How many rooms have you downstairs?

A. Including bath?

Q. Yes.

A. Why, three rooms.

Q. Now, in the barroom, how many outlets of water have you?

A. Two rinse boxes.

Q. How many spickets?

A. One.

Q. What else?

A. I have a urinal place.

Q. Urinal?

A. Yes, sir.

Q. How many?

A. One.

Q. A toilet?

A. Yes, sir.

Q. That is four and a bath room?

A. Yes, sir.

Q. In the other rooms, have you any outlets?

A. In the back, I have a kitchen.

Q. Is there a spicket there?

A. Yes, two.

Q. Are those spickets all you have?

A. Yes, sir.

Q. Upstairs—have you any spickets in the yard?

A. No, sir.
Q. How many on the next floor?
A. Why, I have another kitchen and bath and toilet.
Q. Kitchen and bath and toilet?
A. Yes, sir.
Q. How many spickets in the kitchen?
A. Two, hot and cold water.
Q. How many spickets in the bath room?
A. Hot and cold.
Q. Bath tub?
A. Yes, sir.
Q. Wash basin?
A. No, sir.
Q. Toilet.
A. Yes, sir.
Q. Urinal?
A. No, sir.
Q. Any other outlets on the second floor?
A. No.
Q. None?
A. No, sir.
Q. Is there another story in this house?
A. Yes, sir.
Q. How many rooms are there?
A. Six.
Q. How many outlets on the top floor?
A. About the same as on the second floor.
Q. Name them for me?
A. Toilet and bath room.
Q. Bath tub?
A. Yes, sir. That is all.
Q. Hot and cold water?
A. No; we don't use hot water there.
Q. Have you no kitchen?
A. No, sir.
Q. No wash basin?
A. No, sir.
Q. That is occupied by your family?

A. No, sir.

Q. Who?

A. Once in a while a night lodger, a man stops there at night, sometimes.

Q. What part of this house does your family occupy?

A. I occupy the second floor and a part of the third floor.

Q. What part?

A. Why, two of the front rooms.

Q. Then do you keep these other rooms for boarders, or lodgers?

A. Once in a while a lodger.

Q. Do they have access to the bath rooms and the toilets?

A. Downstairs; I keep the other floor locked.

Q. You keep the toilet on the third floor locked?

A. Yes, sir.

Q. Do you have boarders frequently?

A. No, sir; we don't keep boarders.

Q. Lodgers, frequently?

A. Once in a while.

Q. How often?

A. Probably one night, sometimes two a week, none steady.

Q. How many in the family besides your wife?

A. Two boys.

Q. Young children or old?

A. Young.

Q. How old is the oldest?

A. Fourteen, and the youngest eight.

Q. Do you use any spickets for watering your yard?

A. I have no yard.

Q. Do you use any spickets for washing the street?

A. No, sir.

Q. You have a bartender?

A. Yes, sir.

Q. What are his hours?

A. He comes in between five-thirty and six in the morning and quits about twelve.

Q. Yes.

A. Takes about an hour and half for lunch, then he come back.

Q. Does he work at night?

A. No, sir.

Q. When he is there is anyone else in the barroom?

A. No, sir.

Q. Has he absolute control of the barroom?

A. Yes, sir.

Q. Where are you in the meantime?

A. Sometimes I am in the barroom, too. Sometimes I go out and attend to business outside.

Q. What time do you usually get up?

A. About eight or nine.

Q. You have your breakfast and clean up and attend to business outside?

A. I usually go out in the morning and get back at noon to relieve the bartender, and in the afternoon I go out.

Q. And then you return about six o'clock?

A. Yes, sir.

Q. At this time this money was passed you said, did you, Speck told you his father had just died?

A. He told me about his father's death.

Q. At that time?

A. Yes, sir.

Q. I think you said it was in the fall of 1914 that Speck saw you?

A. I don't just remember exactly the time.

Q. Speck's father was not in the office then, was he?

A. No, sir.

Q. Speck's father was out of office in 1911?

A. I don't know if he was out of office, he was President of the Excise Board in 1911.

Q. You knew Speck's father had died in 1913?

A. Yes, sir.

Q. Did you nkow Speck's father died August 20th, 1913, one year before you were talking about him?

A. I didn't know when he died.

Q. I am telling you Speck's father was dead one year before he talked with you about that.

A. I didn't know he was dead at the time he talked with me.

Q. He died August 20th, 1913, you say Speck told you this in 1914?

A. Yes, sir.

Q. Didn't you think it rather peculiar that Speck should talk about a death occurring in 1913—tell you about it in 1914?

A. He asked me, "Do you remember my father—when my father was living he always helped me out."

Q. He didn't talk to you about the death, he was not talking about his father's death?

A. He told me when his father was dead he could not help him out.

Q. Now, you say he asked you for the amount of the loan?

A. Yes, sir.

Q. You put your hand in your pocket—

A. Yes, sir.

Q. Did you go down the cellar to give him that ten dollars?

A. No, sir.

Q. You heard Speck testify, telling you what he came there for of the talk?

A. I heard him testify.

Q. And that he went down the cellar and you gave him ten dollars?

A. Yes, sir.

Q. You say that isn't true?

A. No, sir.

Q. Now, then, when Speck got that ten dollars did he tell you what it was for?

A. No, sir.

Q. He only asked you for a loan of ten dollars?
A. Yes, sir.
Q. Did he tell you what he would—what he wanted to do with that ten dollars?
A. No, sir.
Q. He didn't state the purpose that he wanted that for?
A. No, sir.
Q. Did you ask him what he wanted that ten dollars for?
A. No, sir.
Q. And he didn't tell you anything about it?
A. He said he was hard up and needed ten dollars.
Q. Did you ask him what the ten dollars was for?
A. If I thought anything of a man I would not ask him.

By the Court.
Q. Did you?
A. No, sir, I didn't ask him.

By Mr. Devlin.
Q. Did he tell you when he would pay you that ten dollars?
A. No, sir.
Q. He didn't tell you when you could expect him to pay that back?
A. "Soon you will have it."
Q. Did you ask him if he was out of work or anything?
A. No, sir.
Q. Did you ask him the cause of his needing the ten dollars?
A. No, sir; I didn't.
Q. Did you ask him when he thought he would have the ten dollars to pay you back?
A. No, sir; I didn't.
Q. Do you usually loan money to people without

asking them why they need it and when they think they will pay it back?

A. If I thought anything about a man—if I thought he was all right.

Q. If you thought a fellow was all right?

A. Yes, s.ri

Q. How long had you known Speck?

A. Since his father ran for office.

Q. How long is that since—

A. I should say nine or ten years ago.

Q. Between the time you first met Speck and the time he asked you for the ten dollars were you and he intimate friends?

A. Always, as far as I know.

Q. Did you meet him often?

A. No, not often.

Q. How many times do you think you met Speck in the three or four years before?

A. Not very often—met him in the saloons.

Q. You met him as you meet any man in a saloon, either he had a drink or you had one?

A. Yes, sir.

Q. You never associated with him as a friend, you never went around with him?

A. No, sir, I didn't.

Q. You didn't visit his home?

A. No, sir.

Q. Nor did he visit yours?

A. No, sir.

Q. You just saw him occasionally?

A. He used to visit my barroom.

Q. How often?

A. I could not say how many times.

Q. Did you lend him this money without finding out the reason why it was wanted or when it was likely to be paid?

A. Yes, sir.

Q. Now, you say you went to see Speck at his home?

A. Yes, sir.

Q. And Mr. Bash—

A. Yes, sir.

Q. You went to see Speck before you saw Commissioner Lee and LaBarre?

A. Right.

Q. Had you learned before that time that you had been accused of this offense?

A. Yes, sir.

Q. From whom did you learn?

A. Dave Lewis.

Q. What Dave Lewis do you mean, how do you identify the person?

A. He lives on Jackson Street.

Q. He is engaged in the saloon business?

A. Yes, sir.

Q. He is prominent politically?

A. Yes, sir.

Q. When Dave Lewis told you Speck had accused you, you knew you were innocent?

A. I didn't know anything about it.

Q. When Dave Lewis told you Speck had accused you of that crime you knew you were innocent?

A. Yes, sir.

Q. You were as sure then as you are sure now?

A. Yes, sir.

Q. Why did you visit Speck?

A. Because I met Mr. Bash, and when I talked it over to Mr. Bash he says, "Do you want to go over and see the man?"

Q. I want to know why you visited Speck?

A. Well, I wanted to find out why he talks about me.

Q. If you were innocent what did it matter what Speck said?

A. It does. I don't want to see anyone talk about me when I don't know anything about it.

Q. You and Mr. Bash visited Speck?

A. Yes, sir.

Q. You left Speck, didn't you?

A. Yes, sir.

Q. You went to your home?

A. Yes, sir, I went home; yes.

Q. How many days after, Mr. Lavine, were you called to visit Mr. LaBarre?

A. I don't remember, about a week or so.

Q. You remember the event?

A. Yes, sir.

Q. When you were called before Commissioner Lee and LaBarre?

A. Yes, sir.

Q. They said to you, didn't they—that they found that some of the water meters had been tampered with and that yours was one of them, is that right?

A. Something like that.

Q. And they asked you if you could give them any information about it?

A. I don't think they asked me that question, exactly.

Q. And you seemed very much surprised?

A. I was.

Q. You denied any knowledge of it?

A. I did.

Q. You denied paying Speck anything at any time?

A. For fixing the meter, yes, sir.

Q. Were you surprised that the City Commission should accuse your meter as being one of those tampered with?

A. I was.

Q. How could you have been surprised after you had already visited Speck?

A. How was I surprised?

Q. How were you surprised?

A. I was surprised because the Commission sent after me; I thought they were jollying me.

Q. But you had visited Speck a week before?

A. Yes, sir.

Q. In relation to this same question?

A. Yes, sir.

Q. Why should you be surprised that the Commissioner sent for you?

A. I didn't think about it as anything.

Q. You knew that the same thing the Commissioners had accused you of Speck had already told you.

A. He told the Commissioners.

Q. He told the Commissioners?

A. Yes, sir.

Q. Dave Lewis told you?

A. Yes, sir.

Q. You had your information from Dave Lewis?

A. That Speck had told the Commissioners—

Q. That Speck had told the Commissioners that he had treated your meter for the sum of ten dollars?

A. Yes, sir—no, he didn't say that.

Q. He told you that in effect?

A. That Speck had fixed my meter, but he didn't say how much, when and what.

Q. You knew Speck had said to the City Commissioners he had fixed your meter and had been paid for it?

A. Yes, sir.

Q. You said Dave Lewis told you that.

A. I don't know that Speck told that.

Q. Didn't you say that Dave Lewis had told you that Speck hal told the City Commissioners he had fixed your meter and you had paid him for it?

A. Yes, sir.

Q. You went to see Speck?

A. Yes, sir.

Q. Then you knew that Speck had accused you, didn't you?

A. Mr. Speck didn't accuse me of anything.

Q. You knew from Dave Lewis he accused you before the City Commission?

A. Yes, sir.

Q. Tell us why, then, you were surprised at being accused before the City Commission?

A. I thought he was only kidding Lewis.

Q. You thought Speck was kidding him?

A. Yes.

Q. You walked all that distance, and got a friend to go with you to find out if a man was kidding you?

A. What distance?

Q. You walked to Speck's—you met him at the bank and walked to Speck's home in Rutherford Avenue?

A. We went in a machine.

Q. You went there to find out if he had been kidding you?

A. Yes, sir.

Q. Now, at that meeting, didn't LaBarre and Lee both ask you if you had ever loaned Speck any money or given him any money in any way, and you said no?

A. I didn't give him any money for fixing the meter.

Mr. Devlin—That is a question which requires only yes or no.

Witness—No.

Q. You say you didn't?

A. No, sir.

Q. Do you deny you said to these men "No" to this question?

A. I said I never gave him or loaned him money to that effect, for fixing my meter.

Q. I presume you did, but after that, after you answered that, did they say to you "Did you ever loan him or give him any money"?

A. No, sir.

Q. You said no?

A. He didn't ask me that question.

Q. Then you were asked by LaBarre or Lee, or one of them, if Speck had fixed your meter, what you had to say about Speck saying he fixed your meter and you paid him for it, and you said Speck was a liar.

A. I did.

Q. You visited Speck after that meeting?
A. Yes, sir.
Q. Whom did you bring with you on that visit?
A. Max Bash.
Q. Your brother-in-law?
A. And Samuel Epstein.
Q. Is he related to you?
A. No, sir.
Q. Max Bash is a saloon keeper?
A. Yes, sir.
Q. When you got to Speck's house what did you say to Speck?
A. The first thing I said to Speck?
Q. Yes.
A. I walked in the house, and we sat down in the parlor, and he came in from the kitchen, and when he sat down I said to him, "Speck, did I ever ask you or pay you for fixing my meter?" and he would not answer yes or no. I asker him three or four times, but he would not say a word about it.
Q. Is that all the conversation?
A. And then Max Bash got talking to his wife about the children.
Q. To Speck?
A. I said no more.
Q. Is that all?
A. Yes; I asked him three or four times.
Q. Was that all that was said by Max Bash to Speck?
A. I said that to him.
Q. Was anything said by Max Bash?
A. No.
Q. At either of these interviews did you call Speck a liar?
A. Yes, sir.
Q. Did you hear Max Bash testify in this case?
A. Yes, sir.

Q. Did you hear him say he went up with you to call Speck a liar?

A. He said he was one.

Q. Did you hear him say that?

A. I don't remember what he said.

Q. Don't remember? Then you didn't call him a liar?

A. I didn't.

Q. You were still innocent?

A. I called him the first time, I said he was lying; he said "They are only kidding you."

Q. You didn't call him a liar?

A. No.

Q. Nor the second time?

A. No.

Q. You had been to the City Commission's office, you had met the men who controlled the water department, and you told them all you were innocent, that is right?

A. Yes, sir.

Q. Now, after you had told these men you were innocent, and you say you were innocent, why did you go to Speck's house again?

A. On the advice of my bondsman.

Q. Without telling what your bondsman said, I would like you to state the purpose?

A. I stopped in to see Mr. Buch.

Q. I want you to tell me the purpose you had in seeing Speck the second time.

A. I wanted to see if he would say the same thing as he did the first time.

Q. You had been before the City Commission and told them he was a liar and you were absolutely innocent of the charge made against you?

A. That is what I wanted to tell him.

Q. How could it affect you if you had said you were innocent?

A. I don't just exactly know how, on the advice of my bondsman I went there.

Q. The City Commission asked you if you would face Speck?

A. Yes, I said I would like to face him.

Q. You said you were?

A. Yes, sir.

Q. Why didn't you get someone other than your brother-in-law to go with you?

Mr. Kafes—Objected to as irrelevant.

The Court—He had someone beside his brother-in-law.

Q. Why did you get your brother-in-law to go—

Mr. Kafes—That is objected to.

The Court—The objection will be sustained.

Q. Why didn't you get someone besides your brother-in-law, the second time, and Epstein?

Mr. Kafes—That is objected to. It is purely immaterial and irrelevant.

The Court—I shall overrule that.

Q. When you give Speck that ten dollars did he offer or promise to do anything in return for the loan?

A. No, he never talked about it.

Q. You say you loaned that money in the fall of 1914?

A. I imagine so; I don't know.

Q. You can't remember?

A. No, sir.

Q. You were arrested in November, 1916?

A. Yes, sir.

Q. Did you ever make a demand on Speck for that money in two years?

A. No, sir.

Q. Had you seen Speck in two years?

A. I might have met him on the street.

Q. Had he ever been in your bar room?

A. I don't remember; not to my recollection.

Q. In all that time did you ever meet him and in any way request the ten dollars of him?

A. No, sir.

Q. How old are you?

A. How old am I?

Q. That is what I said.

A. Thirty-eight.

Q. How long have you had a license in the City of Trenton?

A. Fifteen or sixteen years.

Q. To sell liquor?

A. Yes, sir.

Q. You were convicted of receiving stolen goods in April, 1905; is that right?

A. I don't know what year.

Q. You don't dispute the year?

A. No, sir.

Q. You are thirty-eight years old?

A. About.

Q. You were twenty-six years old then?

A. About that.

Q. Have you ever been convicted of crime in any other State of the Union?

A. No, sir.

Q. You have applied for license for a good many years?

A. Yes, sir.

Q. Do you make a written application every year?

Mr. Kafes—I object to that.

The Court—I think I can perceive the purpose counsel has in introducing this testimony. I don't feel it is permissible and I shall overrule it.

Mr. Devlin—I don't think the Court sees it the same as I do.

The Court—We are trying this particular issue.

Mr. Devlin—That is what we try every day, "particular issue."

Q. How long have you lived in North Warren Street?

A. Six years or seven.

Q. How long have you lived in the one place, have you for seven years?

A. Yes, sir.

Q. You have had a water meter in for how long?

A. Since 1912, I should judge.

Q. You receive bills regularly?

A. Yes, sir.

Q. You pay these bills?

A. Yes, sir.

Q. At the rate of ninety cents a thousand gallons?

A. I don't know the rates.

Q. You don't dispute the rates?

A. No, sir.

Q. In some seasons of the year do you use more water than others?

A. Sometimes.

Q. What seasons?

A. Some bills I get is six and a half and some bills is ten.

Q. I am not asking about the bills, I am asking if you can tell me any particular season of the year you use more water than another?

A. I think the summer season.

Q. What months in the summer?

A. June, July and August.

Q. What reason have you for using more water?

A. In the summer you use more water.

Q. For family use?

A. Not exactly.

Q. What other uses?

A. I don't know.

Q. Washing clothes?

A. No, sir; that goes out to the laundry.

New Jersey State Library

Q. After you had been to see the Commissioners, and then you saw Speck after your arrest, didn't you visit Mr. LaBarre?

A. Yes, sir.

Q. When did you see Mr. LaBarre?

Mr. Kafes—I object to that. I asked one question about that and Mr. Devlin objected, and I said I would not pursue that examination.

The Court—Was it ruled out?

Mr. Devlin—No, I withdrew it.

The Court—The question will be admitted.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. What did you say to Mr. LaBarre?

A. I don't remember; I was very excied as Mr. LaBarre will tell you.

Q. How long was it since you had been arrested?

A. The next morning.

Q. The morning before?

A. The morning after.

Q. You were arrested the day before?

A. I was arrested at noon-time, and the next morning I went to see LaBarre.

Q. What time?

A. I guess about nine o'clock.

Q. You had been arrested sixteen hours before that then?

A. Yes, sir; something like that.

Q. When you visited Mr. LaBarre did you say that "The Billy Sunday crowd are after me," and Mr. LaBarre replied, "There is nothing to that whatever, we are only after people we are told are stealing water?

A. I don't remember what he answered, I guess it is true whatever he says, because I was excited at the time.

Q. Now Mr. Lavine, if you were innocent as you say you were, why, after the arrest, did you visit Mr. imposed. The jury should not convict upon the testiing your innocence?

Mr. Kafes—I object to that.

The Court—The objection will be sustained.

David T. Wittenborn, sworn for the defense.

Direct examination, by Dr. Kafes.

On your card here preceding December 12th, 1914, you have the amount $9.78?

Mr. Devlin—I object to that.

Mr. Kafes—That is what the Court already ruled on.

Mr. Devlin—Mr. Kafes is absolutely on the wrong track.

The Court—I think I will let that go in for the period of one year.

Q. You have the amount book there?

A. Yes, sir.

Q. What is it?

A. The net amount?

Q. Yes.

A. $11.64.

Q. And $5.94?

A. Yes, sir.

By the Court.

Q. What month were they?

A. October, November and December terms, $5.94.

Q. What year?

A. 1914.

By Mr. Kafes.

Q. And the January, February and March term?

A. $11.64.

Q. 1914?

A. Yes, sir.

Q. This is October, November and December (indicating)?

A. Yes, sir.

Q. Here is $6.25 (indicating); that would be June, July and August.

A. Yes, sir.

Q. Have you covered the term of January, February and March?

A. Yes, sir.

Q. What was the term before that?

A. 1914.

Q. Now, we get to "$5.94"; is that 1913?

A. October, November and December, $5.94, for the term October, November and December, 1913, paid in 1914.

Q. Let me see if I have that right; $5.94 is the term of November, October, November, December, 1913?

A. Yes, sir.

Q. January, February and March, 1914, was net $11.64?

A. Yes, sir.

Q. April, May and June of 1914 was $5.58 net?

A. Yes, sir.

Q. July, August and September of 1914, was $10.32 net; that completes the year?

A. Yes, sir.

Q. Now, I will ask you to read this over, down to the one designated 9-16-14, Exhibits D. 3 and D. 4.

Mr. Devlin—I object to that.

The Court—That is not in evidence.

Mr. Kafes—Yes, it is.

By Mr. Devlin.

Q. Will you check up for me and see if I have this right?

A. Yes, sir.

Q. You say the October bill, October to December, 1913, $5.94?

A. Yes, sir.
Q. The next bill is in 1914?
A. Yes, sir.
Q. $11.64?
A. Yes, sir.
Q. What month is that?
A. April, that includes to March 30th.
Q. $11.64?
A. Yes, sir.
Q. June?
A. $5.58 net, including April, May and June.
Q. June, that is the sixth month and the twenty-fifth day?
A. Yes, sir.
Q. You are taking it net?
A. Yes, sir.
Q. Discounts taken off?
A. These are net bills.
Q. September, 1914, was what?
A $10.32 net.
Q. Will you give me the charge without the discount?

Mr. Kafes—I object to that.

The Court—I think the best way would be to give only what the defendant has to say.

Q. The net amount is two-thirds of the actual amount?
A. Yes, sir.
Q. Will you give me the net amount of the bills for the first quarter of this year, 1917 (indicating)?

Mr. Kafes—I object to that. The Court has already overruled that.

(After argument.)

The Court—That bill will be allowed. I will admit that bill and allow an exception. Let it be sealed.

ERWIN E. MARSHALL, *Judge.*

Q. What is the date of that bill?

A. February 28.

Q. When was that meter read?

A. December 4.

Q. 1916?

A. Yes, sir.

Q. Up to February 28, 1917?

A. Yes, sir.

Q. What is the date?

Mr. Kafes—I object to that upon the ground that there is nothing in this case to show his meter was right to form a basis on which this man is computing.

Q. What is the amount of this bill, the net amount?

A. $16.74.

Q. So far as you know, Mr. Wittenborn, that was read February 28th?

A. It was posted February 28th from the meter reader's slip.

Q. Has any protest been made up to date?

A. No.

Q. Who read it?

A. No. 6.

Q. Who is No. 6?

A. Mr. Pervis.

Q. Are you able to say when that bill was mailed to Mr. Lavine?

A. The 1st or 2d of May.

Q. And sent out the 1st or 2d day of this month?

A. Yes.

Q. If they are paid before the end of the month thirty-three and a third per cent. is allowed?

A. Yes, sir.

Q. This bill is with the discount taken off?

A. Yes, sir.

Q. Without the discount it would be?

A. $45.11.

By Mr. Kafes.

Q. When was your last reading before this time?

A. December 4.

Q. When was this reading in this bill?

A. Twelve, four.

Q. When was this reading in this bill?

A. 2/28.

Q. February 28th?

A. Yes, sir. It is impossible to read meters the last day and send them out. It takes about four weeks to read them all.

Q. What period did that cover?

A. That is from nine six to twelve four.

Q. That is in 1916?

A. Yes, sir.

Mr. Devlin—I object to that. The Court ruled that out.

Mr. Kafes—I want to know when the meter was read.

The Court—He wants to fix the meter reading.

Q. When did you say it was?

A. Nine six to twelve four.

Q. Now, the two twenty-eight bill, that was for water consumed from when to when?

A. Nine six to twelve four.

Q. 1916?

A. Yes, sir.

Q. Three months all but two days?

A. And the other, for the reading, when?

Q. From the fourth of December to the twenty-eighth of February.

Mr. Devlin—Mr. Kafes, you are clumsy.

Mr. Kafes—Well, you are neat.

The Court—No personal remarks; we will proceed with this case and refrain from further comments.

Joseph Buch, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Do you remember Mr. Lavine being arrested?

A. Yes, sir.

Q. Did you go on his bond?

A. Yes, sir.

Q. Did you or did you not advise him to go and see Speck?

Mr. Devlin—I object to the question.

The Court—I will permit it.

Q. Yes or no.

A. I did.

Q. How long have you known Mr. Lavine?

A. I should judge six or seven years.

Q. You are the manager of the Trenton House?

A. Yes, sir.

Q. Do you or not know his general reputation in the community in which he resides for honesty and fair dealing?

A. I do.

Q. What is it?

A. Very good.

Cross-examination, by Mr. Devlin.

Q. Do you know where he resides?

A. Yes, sir.

Q. Where?

A. North Warren and Tucker Street.

Q. How long have you known him?

A. Six or seven years.

Q. Have you ever known him before that?

A. No, sir.

Q. Did you ever hear any person discuss his reputation?

A. No, sir.

Q. You testify to his good reputation because you have heard no one say anything against him?

A. Nothing more than to have business dealings with him for the past years.

Q. You are testifying here as to his good reputation in the community in which he lives, did you ever hear any person talk about his reputation in the circles in which he lives?

A. Yes, sir.

Q. Who discussed it?

A. Mr. Cruiser?

Q. Who else?

A. Mr. Cawfield.

Q. Who else?

A. Mr. Mueller, Trenton Rathskeller. Mr. Dierdon, of Olden avenue.

Q. Did you ever hear any of these people, while discussing his reputation, say he was convicted of receiving stolen goods?

Mr. Kafes—I object to that.

The Court—The question will be overruled.

Mr. Kafes—I ask the Court to instruct the Prosecutor not to ask any more questions along that line. It is very unfair—outrageous.

The Court—The Prosecutor will refrain from asking any further question along that line.

William S. Burke, sworn for the defense.

Direct examination by Mr. Kafes.

Q. Mr. Burke, where do you live?

A. 1622 Riverside avenue.

Q. Do you know Mr. Louis Lavine?

A. Yes, sir.

Q. How long have you known him?

A. Three years.

Q. When did you become acquainted with him?

A. When I came to Trenton.

Q. Your position is what?

A. Manager, Armour and Company, beef company, on North Warren street.

Q. Do you know, or not, Mr. Lavine's general reputation in the community in which he resides for honesty and fair dealing?

A. Not intimately.

Q. Do you know how others speak of him—what others says about him?

A. I have never heard anything—

Q. Did you ever, during your acquaintance with him, hear anyone say anything against his reputation for honesty and fair dealings?

Mr. Devlin—I object to that.

The Court—It may be answered.

Mr. Kafes—I will withdraw that temporarily.

Q. Where is his place of business?

A. North Warren street.

Q. Where is your place?

A. 317, adjacent to his place.

Q. Now then, I ask you if you, during your acquaintance with him, heard anyone say anything against his reputation for interest and fair dealings?

Mr. Devlin—I object.

The Court—It may be answered.

A. No.

Cross-examination, by Mr. Devlin.

Q. Where do you live?

A. 1622 Riverside avenue.

Q. Where do you work?

A. 317 North Warren street.

Q. You are manager of Armour and Company?

A. Yes, sir.

Q. Does your business confine you to the inside or the outside of the building?

A. Well, it depends upon the conditions, my time is mostly spent inside.

Q. What business do you have with Mr. Lavine?

Mr. Kafes—I object to that—

The Court—He may answer the question.

A. No business.

Q. You don't meet him socially?

A. No.

Q. Do you know where he lives?

A. Yes.

Q. Do you, socially, meet the people in the district in which Mr. Lavine has his home, as well as his business.

Mr. Kafes—I object to that.

The Court—What do you mean "socially"?

Mr. Devlin—Outside of business hours.

Mr. Kafes—I insist the community may mean the City of Trenton, and it does.

The Court—You may answer the question.

A. Well, I might meet a neighbor there, but in business hours only.

Q. Have you met him on business matters, or socially?

Mr. Kafes—Objected to as immaterial and irrelevant.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the court.

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

ERWIN E. MARSHALL, *Judge.*

A. It might be both, in connection with business and socially.

Q. You testified to his reputation. Do you know what is meant by counsel when he say "reputation?"

A. I know the definition of the word.

Q. What is your understanding of "reputation?"

A. How a man lives and conducts himself.

Q. That is what you are testifying to.

A. To my knowledge.

Q. You have given your personal contact with the defendant?

A. Yes, sir.

Q. You never asked anyone?

A. No, sir.

Q. You never inquired into his character?
A. No, sir.
Q. Never had any occasion to?
A. No, sir.
Q. You didn't go out of your way to find out?
A. No, sir.

Frank E. Weeden, sworn for the defense.
Direct examination, by Mr. Kafes.
Q. You reside where?
A. 265 Bellville avenue.
Q. Are you in business?
A. Yes, sir.
Q. Where?
A. 343 North Warren Street.
Q. Do you know Louis Lavine, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. Fifteen or sixteen years.
Q. Do you know where his place of business is?
A. Yes, sir.
Q. Have you been connected with him in any business enterprises?
A. No, sir.
Q. Do you know his general reputation in the community in which he resides for honesty and fair dealings?
A. I do, yes, sir.
Q. What is it?
A. Good.

Cross-examination, by Mr. Devlin.
Q. Do you know what counsel means by "reputation"?
A. Reputation, yes.
Q. What?

A. He means honesty in dealings and his word good in anything he agrees to do.

Q. Is that your understanding?

A. Yes, sir.

Q. What business are you in?

A. Hardware.

Q. How near is your business to his?

A. I imagine about five hundred feet.

Q. Have you had dealings with him?

A. Yes, sir.

Q. Much dealings?

A. Not to any great extent.

Q. Now, then, outside of business, do you associate with the same people that he associates with?

Mr. Kafes—I object to that as irrelevant, incompetent and immaterial.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Very little

Q. Then when you testified about Mr. Lavine's reputation you testified about personal knowledge only; is that right?

A. That is right.

Q. Have you ever made any inquiry as to his reputation?

A. No, sir.

Q. Did any person ever inquire to you about his reputation?

A. No, sir.

Q. No inquiry has been made?

A. No, sir.

Q. You have had no reason to examine or hunt up the reputation of Mr. Lavine?

A. To some extent, yes; he and I were interested in a baseball proposition.

Q. What interest was it?

A. He was financially interested and he obligated himself to meet certain demands. It was necessary for me to know what kind of a man he was.

Q. Did you make any inquiry?

A. No, I did not.

Q. How long have you known him?

A. Either fifteen or sixteen years.

Q. Do you remember when you first met him?

A. Yes, sir.

Q. It was before 1905?

A. Yes, sir.

Q. You say about fifteen years ago?

A. Yes, sir.

Q. 1902?

A. Somewhere around there I imagine.

Q. Did you know that in 1905 he was convicted of receiving stolen goods?

Mr. Kafes—That is objected to.

The Court—What a man's reputation was fifteen or twenty years ago has little to do with to-day. I shall overrule that as I did previously.

Arthur Bray, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Where do you reside?

A. 54 Washington Street.

Q. Do you know the defendant?

A. Yes, sir.

Q. How long have you known him?

A. About eight or nine years.

Q. Your employment is what?

A. Director of the Board of Freeholders of the county of Mercer.

Q. How long have you known him?

A. About eight or nine years.

Q. Do you know his general reputation in the community in which he resides for honesty and fair dealings?

A. As far as I know.

Q. Do you know his general reputation in the community in which he resides for honesty and fair dealings?

A. Yes.

Q. What is it?

A. Good.

Cross-examination, by Mr. Devlin.

Q. How well do you know him?

A. Quite an intimate acquaintance.

Q. How long?

A. Possibly eight or nine years, or a little more.

Q. Do you meet often?

Mr. Kafes—Objected to as immaterial.

The Court—You may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Do you meet often?

A. Not very.

Q. What kind of communications or connections do you have, will you tell me?

Mr. Kafes—Objected to as irrelevant and immaterial.

The Court—I think I will allow that question to be answered.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. I have been to his house.

Q. Often?

Mr. Kafes—I object to that as highly immaterial and irrelevant.

The Court—I will permit it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Not often. I might meet him on the street and go around with him.

Q. You met him on the street sometimes?

A. Yes, sir.

Q. You have visited his home?

A. Yes, sir.

Q. Often?

A. Not often.

Q. How many times, in nine years, have you visited his home or he yours?

Mr. Kafes—I object to that.

The Court—I don't see, Mr. Devlin, how that will throw any light on it. You have exhausted him pretty well, I think.

Q. Have you ever discussed with any person this man's reputation, or have you ever had reason to discuss this man's reputation with anybody for honesty?

Mr. Kafes—I object to that question.

The Court—You may ask the question whether he has ever heard it discussed.

Mr. Devlin—All right. I withdraw the question.

Q. Do you know where Mr. Lavine lives?

A. Yes, on Warren Street across from the Reading Railroad Station.

Q. Did you ever hear people talk about his reputation for honesty.

A. Do you mean Lavine's reputation for honesty?

Q. Yes, sir.
A. Yes, sir.
Q. Whom? Can you name any persons?
A. Well, yes, I can name quite a few.
Q. Let us have a few.
A. Louis Catur. He is a railroad man.
Q. Any more?
A. Compton, he is a railroad man.
Q. Anyone else?
A. Not that I can call to my recollection now.
Q. Are these men patrons of Lavine's place?

Mr. Kafes—I object to that.

The Court—I will sustain the objection.

Q. You testified here of your personal knowledge?
A. Yes, sir.
Q. You have never had any cause yourself to inquire about his reputation?
A. No, sir.

Mr. Kafes—I object to that.

The Court—I will let the answer stand. You may take an exception.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. You have known him for nine years?
A. Yes, sir.

John Whalen, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Do you know Mr. Lavine?
A. Yes, sir, I do.
Q. How long?
A. Ten or fifteen years.
Q. At any time did you secure a loan from him?

Mr. Devlin—I object to that.

The Court—That question is not admissible.

Mr. Kafes—I have another witness I would like to produce.

The Court—If his testimony is along the same lines, I will overrule it now.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Kafes—I expect to call Mr. Piper or his helper to-morrow morning.

George B. LaBarre, called in rebuttal for the State. Direct examination, by Mr. Devlin.

Q. Do you know Mr. Lavine, the defendant in this case?

A. I do.

Q. Do you remember the day that the City Commission had him charged with having tampered with his meter?

A. Yes, sir. I remember the day the summons were issued.

Q. Do you remember the day that Mr. Lavine came to your office?

Q. Did he say that "The Billy Sunday Crowd are after me," and you said in reply "There is nothing in that at all, we are only trying to find out who is stealing the city water?"

Mr. Kafes—Objected to.

The Court—That question was asked the defendant on the stand and he denied it.

Mr. Devlin—If Mr. LaBarre says it is so—

The Court—That is equivalent to an admission.

I will permit the question to be asked.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. That is substantially correct.

No cross-examination.

Mr. Kafes—If the Court will permit me at this time to proceed without resting my case, I will make certain motions.

The Court—That can be done, I see no objection.

Devlin—I should like to adjourn if there is no objection. There is a limit to human endurance, I have been here every day.

The Court—So have I. I have been here for four weeks, but I can endure it if necessary.

Devlin—I should like to adjourn now a few hours before I start again at seven o'clock. I want some rest.

The Court—Have yon any other witnesses?

Mr. Devlin—Not unless something develops.

The Court—All right, we will adjourn.

The further taking of testimony was then adjourned until Friday, April 18th, 1917, at ten o'clock.

FRIDAY, April 18th, 1917.

George B. Margerum, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Are you a plumber?

A. Yes, sir.

Q. Whom do you work for?

A. Piper Brothers.

Q. Do you remember doing any work for Louis Lavine during this month?

A. Yes, sir.

Q. When was it?

A. This month, the month of April.

Q. When?

A. Yesterday, week.

Q. What did you do?

A. Cleaned out the waste pipe and repaired the trap, and repaired the tank.

Q. That is three different things?

A. Yes, sir.

Q. What did you do?

A. Put a washer on the trap, and repaired the water closet tank.

Q. How did you repair it?

A. Put a plunger ball in it. The plunger ball would not set down, and the water ran continuously.

Q. Did that make a great wastage of water?

A. To a certain extent.

Q. To a considerable extent?

A. That I would not say because I did not take much notice at the time.

Q. You say the water would run continuously?

A. Yes, sir.

Q. That would be a great waste of water would it not?

Mr. Devlin—I object to that.

The Court—That is a conclusion .

Cross-examination, by Mr. Devlin.

Q. You say you blew out a pipe?

A. Yes, sir.

Q. That is a waste pipe in the basin.

A. Yes, sir.

Q. That is what you call a stop basin?

A. Yes, sir.

Q. What is the next thing you did?

A. Repaired the trap in that same basin.

Q. That is also part of the pipe that carried away the waste?

A. Yes, sir.

Q. When did you make those repairs?

A. Yesterday week.

Q. Do you know how long it had been running that way?

A. No.

Q. What I understand you did was to put a new plunger ball in?

A. Yes, sir.

Q. This plunger ball is the ball that when you pull the trap the ball goes up on top of the water, and as the water runs out it fills and closes the trap?

A. Yes, sir.

Q. Tell us what was the matter with the plunger ball?

A. It was old and out of shape.

Q. Old rubber?

A. Yes, sir.

Q. Old and swollen?

A. Yes, sir.

Q. All plunger balls that are made of rubber swell and don't fit the hole that lets the water out, is that right?

A. Not necessarily swell.

Q. It didn't come down true?

A. That is right.

Q. When the plunger ball is all right, that comes down true and the force of the water keeps it tight?

A. Yes, sir.

Q. Now, the whole thing is that the tank fills up just the same, but there is a little drippage?

A. No; it is more of a stream.

Q. You have been a plumber a good many years?

A. Since eighty-four.

Q. Did anyone tell you how long that condition existed in that closet?

A. No, sir.

Q. Did you examine the tank before you started to repair it?

A. Yes, sir.

Q. Then you saw the leakage that came from it?

A. Yes, sir.

Q. Have you any idea of how many gallons that would amount to in a month?

A. No, I didn't pay much attention to it.

Q. As a plumber, would you say that caused a waste of twelve gallons a month?

A. That I would not say.

Q. You would not say?

A. No.

Q. Do you think it would be more or less?

Mr. Kafes—I object to that. He said he could not say.

A. I didn't pay any attention to it.

Q. Did any noise come from it?

A. Yes, there would be a noise.

Q. Did you hear any noise?

A. Yes.

By Mr. Kafes.

Q. Have you the ball with you?

A. Yes, sir.

Q. Is that the ball you took out?

A. Yes, sir.

Q. Can you say of how long standing this leakage was?

A. I could not say, it would be impossible.

By Mr. Devlin.

Q. Do you think that would cause a leakage of 12 gallons in a month?

A. I don't think so.

By Mr. Kafes.

Q. You don't know whether it would in a month or three months?

A. I don't know.

Louis Lavine, recalled for the defense.

By Mr. Kafes.

Q. You heard the testimony of Mr. Margerum?

A. Yes, sir.

Q. How long did that condition exist before Mr. Margerum was called?

A. Well, I should judge about five or six weeks, anyway.

Q. When did you first notice it?

A. Well, I first noticed it about five or six weeks ago; I remember when I had the place ready to sell it.

Q. When was that?

A. The latter part of March.

Q. Can you give the exact date?

A. No, I cannot.

Q. Did you discover before that time—

Mr. Devlin—I submit we ought to fix the time.

The Court—You had better fix the time.

Q. When was it?

A. I don't remember when I sold the place, we had a—

Q. Did you discover this leak before that?

A. Yes.

Q. How long before?

A. I could not tell you; I know it was leaking before.

Q. You don't know how long?

A. No, sir.

Q. You didn't have it repaired?

A. No, sir.

Q. Left it just as it was?

A. Yes, sir.

Q. You sold it about six weeks ago, as near as you can judge?

A. Yes.

Mr. Devlin—The meter and gears are offered and marked Exhibit S. 1 and S. 2. I offer the bulb and ask that it be marked S. 3.

Bulb above referred to received in evidence and marked Exhibit S. 3.

Mr. Kafes—I want to renew my motion for a direction of a verdict on each of the four counts and on the entire indictment for the reasons I gave on the motion to direct a verdict at the close of the State's case.

The Court—Your motion will be denied.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

CHARGE.

MARSHALL, J.

Gentlemen of the Jury: This defendant, Louis Lavine, with Charles H. Speck, was jointly indicted at the January Term of this Court.

The indictment, which is now being tried, contains four counts. By the first count, Lavine and Charles H. Speck are charged jointly with unlawfully tampering and interfering with a water meter placed in the premises of Louis Lavine, 319 North Warren street, in the City of Trenton.

In the second count, Louis Lavine, individually, is charged with assisting, aiding and abetting Charles H. Speck to tamper and interfere with this same meter.

The third and fourth counts are both counts for larceny. Louis Lavine and Charles H. Speck are jointly charged in the third count with the larceny of 192,200 cubic feet of stored and filtered water, between the 13th day of March, 1915, and the first day of January, 1917. The fourth and last count charges the larceny of the same quantity of water on the first day of December, 1916.

As this indictment is drawn, the jury may, according

as the evidence warrants, find either a general verdict of guilty or not guilty as charged, or a verdict of guilty or not guilty, as to any separate count or counts.

This defendant, like every defendant in a criminal case, is presumed by law, to be innocent of the crime charged against him, until his guilt shall have been proven beyond a reasonable doubt. It is the duty of the State to assume this burden of establishing his guilt.

Reasonable doubt does not mean any possible doubt, no conjectural doubt, but it means, and has been defined in our courts to be that condition of the mind, when, after having weighed all the facts and testimony in the case the jurors' minds should then be unconvinced of guilt the defendant should then be entitled to that reasonable doubt.

In this case, of course, it is essential in order to convict of larceny, there should first be larceny established, and secondly, that this defendant is guilty of that larceny.

The particular allegation charged in this indictment is that the defendant, who conducts a saloon on North Warren street, in this city, where the City of Trenton has installed a water meter, had Speck to alter this meter so that, by removing certain mechanical parts, and substituting others, the meter would register less water than actually ran through it. The State charges that for the act of changing or altering this meter, which, it is alleged, took place in 1914, the defendant, Louis Lavine, paid Mr. Speck, an employee of the Water Department, the sum of $10.00, and that thereafter the meter continued to be in the condition in which Speck left it until some time in November, 1916, when the meter was taken out of Mr. Lavine's place, and taken to the shop of the Trenton Water Department, and there tested by two employees, of the City of Trenton, who testify on the stand that the result of the test showed that the meter was about seventy-five

per cent. slow—the meter was then taken apart and opened, and the witnesses, on the part of the State, testify that they found in the meter two gears of a different size than those which properly belonged on the meter. The two gears which these witnesses testify were found in the meter were: One, having fifty teeth, I think it is, or fifty-one, and the other gear, which was on the lower part of the meter, having only fifteen. These gears, and a meter which it is admitted is exactly the same as the meter which was in Mr. Lavine's place, have been offered in evidence and will be taken out by the jury when considering of your verdict.

Of course, gentlemen, if it be proved that Mr. Lavine induced or procured, or was present when Mr. Speck changed this meter, as Speck says he changed it, then the defendant should be convicted; but the defendant, however, denies absolutely that he had anything to do with the changing of the meter. In the first place he said he had no knowledge that the meter had ever been changed. He denies he was present with Mr. Speck at the time when Speck says both he and Speck went down the cellar of this house and Speck then and there changed the meter. He denies that he gave Speck $10.00 for the service of changing the meter, and I say to you, gentlemen, notwithstanding the fact that the meter was changed by somebody, if you find the meter was changed without Mr. Lavine's knowledge, without his consent, he can not be convicted under this indictment and there must be an acquittal. It must be established in this case that there was an evil intent on the part of the defendant before you would be justified in convicting him under this indictment.

You, as jurors, of course, are the sole judges of the weight to be given the testimony of the different witnesses. It is for you to say what credit you will attach to the testimony of the witnesses who appear before you. You will carefully consider all the evidence in the case, and if the State satisfies you beyond a rea-

sonable doubt that the defendant is guilty, then you may convict him; but if the States does not establish that, he should be acquitted.

I call your attention, also, gentlemen, to another fact which it is my duty to bring to your attention. It is the fact that Mr. Speck, on whose testimony the State relies to some extent to establish the case, has already been convicted of crime, and is an accomplice of the defendant, Lavine, in this very charge.

Under our law an accomplice is to be treated more rigorously than an ordinary witness. Anyone who is associated with another in the commission of crime is an accomplice, and each person concerned in the commission of crime may be an accomplice of another, whether he is the actual perpetrator of the deed or not. Such accomplice, notwithstanding his guilty connection with the crime charged, is a competent witness. His testimony, however, should be received by the jury with great caution, tarnished as it is with confessed criminality and testified to, it may be, in the hope of pardon or leniency in case sentence has not yet been LaBarre and tell the Sunday story instead of protestmony of an alleged accomplice unless corroborated by the testimony of some unsuspected witness or other circumstances in the case. It is not necessary, however, that his testimony should be corroborated on every material fact, for if that were required there would be no necessity for calling him as a witness. The evidence may be circumstantial, but if it tends to connect the person with the crime, it is sufficient. It is necessary, however, that the corroborating evidence should be on some part of the testimony which is material to the issue and should tend to connect the defendant with the crime charged in the indictment.

Another thing which I call your attention to is that it appeared in the evidence in this case that the defendant had previously been convicted of crime or pleaded guilty to a criminal offense in this court. Now, gentle-

men, that testimony was admitted solely for the purpose of affecting the defendant's credibility. It was not admitted for the purpose of intimating that this defendant might, because he had previously been convicted, commit another crime.

At the close of the Prosecutor's argument this morning, counsel for the defendant called the Court's attention to the statement of the testimony of Mr. Bash and Mr. Lavine regarding an interview which took place after Lavine had been arrested, and there was a difference of recollection between counsel for the State, the Prosecutor and the Court as to just what that testimony was. My recollection of that testimony was that both Mr. Bash and Mr. Lavine testified that when Mr. Epstein accompanied them that Speck was asked why he had told the City Commission that Lavine had altered the meter, but that he refused to make any reply. The testimony was, as the Court recalls it, that question was put to him two or three times, but he refused to reply. I call your attention to this for the purpose only of saying to you that wherever in summing up the case, either by the Prosecutor, counsel for the defendant, or the Court, any reference is made to the evidence in the case, if the recollection of the jury as to what the evidence is, differs from that of the Prosecutor, counsel for the defense, or from that of the Court, it is the duty and privilege of the jury to follow their own recollection of the testimony. In other words, you are the sole judges of the facts of the case.

The jury then retired.

Mr. Kafes—The defendant objects to that portion of the charge stating the jury may, according as the evidence warrants, find either a general verdict of guilty or not guilty as to one or more counts, and a verdict of guilty as to the remaining count or counts.

Also that portion of the charge in which the Court

recites certain facts which he said had been proven in the case, at the conclusion of which he said, "Of course, gentlemen, if it be proved that Mr. Lavine induced or procured, or was present when Mr. Speck changed this meter, as Speck says he changed it, then the defendant should be convicted."

Also that portion of the charge which says, "I say to you now, gentlemen, notwithstanding the fact that the meter was changed by somebody, if you find the meter was changed without Mr. Lavine's knowledge, without his consent, he could not be convicted under this indictment." And also that portion which follows "There must be established an evil intent in order to convict the defendant."

The defendant excepts to that portion of the charge which says, "If the State does satisfy you beyond reasonable doubt, he should be convicted."

We take a general exception to the charge.

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

ERWIN E. MARSHALL, *Judge.*

MERCER COUNTY COURT OF QUARTER SESSIONS.

THE STATE *v.* LOUIS LAVINE.

I, Erwin E. Marshall, Judge of the Court of Quarter Sessions of Mercer County, do hereby return the stenographic minutes taken at the trial of the above cause as part of the return to the writ of error, so that the same may be made up and included in the entire state of the case on appeal.

ERWIN E. MARSHALL,
Judge.

NEW JERSEY SUPREME COURT.

THE STATE,
Defendant in Error,
vs.
LOUIS LEVIN,
Plaintiff in Error.
} In Error.

ASSIGNMENT OF ERRORS.

(*Filed October 13, 1917.*)

Afterwards, to wit, on the fourteenth day of July, nineteen hundred and seventeen, before our Supreme Court of the State of New Jersey, comes Louis Levin, by John H. Kafes and Harry Heher, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the judgment aforesaid, there was manifest error in this, to wit:

1. Because the said Court overruled the motion of the plaintiff in error to quash the indictment made before the jury was impaneled, upon the several, separate and distinct grounds (a) that the first count did not charge any crime or any criminal intent; (b) that there was a misjoinder of counts; (c) that the third and fourth counts did not charge any crime, either at common law or under the statute.

2. Because the said Court erroneously overruled the objections of the plaintiff in error to the following questions propounded to the witness David H. Wittenborn:

> Q. "From the 12th day of March, 1915, to the end of March, 1916, can you tell what the readings were?
>
> A. "I can, yes, sir.
>
> Q. "Can you answer that?"

upon the grounds that said questions were illegal and called for secondary evidence, and not original.

3. Because the said Court erroneously refused to strike out the testimony given by this witness as to the readings of the meter, as follows:

Q. "Can you answer that—what is it?

A. "142,600 is the statement of the meter on the 12th day of March, 1915. What is the other date?

Q. "Down to and including the 10th day of December, 1916. The reading of—

A. "The next reading is on the 4th day of December, 222,000.

Q. "Is that the total from that date to the other?

A. "142,600 on the 12th day of March and the state of the meter on the 4th day of December, 222,000—the difference between these two is the total number of cubic feet."

on the grounds that the same is secondary evidence, and not original.

4. Because the said Court erroneously overruled the objection of the plaintiff in error to the following question:

"Now, assuming that that meter was registering one foot for every four, I ask you, are you able to tell us how many feet passed through that was not registered?"

said question being irrelevant and immaterial, and called for a conclusion of the witness upon facts which were not proved by any competent evidence.

5. Because said court erroneously refused to allow the following question to be propounded to the witness Speck:

"You were not willing at that time, February 16, 1917, to come before this Court and say you were guilty of this offense?"

6. Because said Court erroneously overruled the following question:

"Didn't you go around to a number of saloon keepers during that time and ask them how they liked their meters and how they were getting along, during the year 1914?"

on the grounds that the said question was material, and tended to prove the good faith of the plaintiff in error.

7. Because said Court erroneously overruled the following question:

"Didn't you tell them that if they had any complaints to make to make them to you?"

8. Because said Court erroneously refused to allow the following question to be propounded to the witness Speck:

"Did you ever know of any other meters that ran fast?"

9. Because said Court erroneously sustained the objections of the Prosecutor to the following questions propounded by the plaintiff in error to the witness, Albert E. Bibbins:

Q. "I asked you at that time if you knew how many pounds there were in a cubic foot of water?

Q. "Did you or not say in this courtroom last Monday or Tuesday that in the test made that you did not look at the scale to see how many pounds of water passed through?"

10. Because said Court erroneously refused to allow the following question to be answered by the witness, Albert Bibbins:

"When did you discover, or did you discover, or in any way find out how many pounds a cubic foot of water weighs since April 19, 1917?"

11. Because said Court erroneously refused to allow the following question to be answered by the witness, Charles H. Speck:

"Did you borrow any money from different saloonkeepers during the latter part of 1914?"

12. Because the said Court erroneously refused to strike out the testimony of the witness, Hyle, as to the workings of the meter taken from the property of the plaintiff in error, the same being mere hearsay.

13. Because the said Court erroneously allowed, against the objections of the plaintiff in error, the witness, Alvin W. Bugbee, to answer the following question:

> Q. "Are you able to explain how a testing machine is operated?"
>
> Q. "Go ahead."

14. Because the said Court erroneously allowed, against the objections of the plaintiff in error, the witness, Alvin W. Bugbee, to answer the following question:

> "Now, can you describe the method of testing a meter?"

15 Because the said Court erroneously refused to strike out the testimony of the witness, Hyle, as to the correctness of the condition of the meter, said testimony being based entirely upon hearsay and not upon his actual knowledge of the condition of the meter.

16. Because the said Court erroneously overruled the objections of the plaintiff in error to the following question propounded to George B. LaBarre:

> "Did he say that 'The Billy Sunday crowd are after me,' and you said in reply, 'There is nothing in that at all; we are only trying to find out who is stealing the city water?'"

the said question being incompetent and an illegal attempt to contradict the plaintiff in error on a collateral matter.

17. Because the said Court erroneously refused to allow the plaintiff in error to present any evidence of the record made in a book by the plaintiff in error of the loan of money which he alleged he had made to Speck.

18. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plain-

tiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

19. Because the said Court erroneously refused, at the close of the State's case, to direct a verdict on the the first and second counts, because the offenses charged occurred more than two years before the finding of the indictment; upon the grounds that the said counts did not charge any crime under the statute; upon the grounds that there was no evidence of tampering with the meter of a water company.

20. Because the said Court erroneously refused, at the close of the State's case, to direct a verdict of acquittal in favor of the defendant on the third and fourth counts of the indictment, on the distinct and separate grounds (a) that there was no asportation or unlawful taking; (b) that there was a misjoinder of counts; (c) that there was no evidence of the commission of the crimes charged therein; (d) because the proofs did not show that there hal been any larceny of stored filtered water, as charged in the said counts; (e) because there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny, and (f) because there was no legal proof that there had been any water stolen at all.

21. Because there was error in the refusal of the Court, at the close of the State's case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

22. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error upon the third and fourth counts, because there was no evidence of the larceny of water.

23. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plain-

tiff in error of not guilty of tampering with a water meter, because there was no evidence that the plaintiff in error had tampered with the meter of any water company.

24. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

25. Because the said Court erroneously refused, at the close of the whole case, to direct a verdict on the first and second counts, because the offenses charged occurred more than two years before the finding of the indictment; upon the grounds that the said counts did not charge any crime under the statute; and upon the grounds that there was no evidence of tampering with a meter of a water company.

26. Because the said Court erroneously refused, at the close of the whole case, to direct a verdict of acquittal in favor of the defendant on the third and fourth counts of the indictment, on the distinct and separate grounds (a) that there was no asportation or unlawful taking; (b) that there was a misjoinder of counts; (c) that there was no evidence of the commission of the crimes charged therein; (d) because the proofs did not show that there had been any larceny of stored filtered water, as charged in the said counts; (e) because there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny, and (f) because there was no legal proof that there had been any water stolen at all.

27. Because there was error in the refusal of the Court, at the close of the whole case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

28. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error upon the third and fourth counts, because there was no evidence of the larceny of water.

29. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error of not guilty of tampering with a water meter, because there was no evidence that the plaintiff in error had tampered with a meter of any water company.

30. Because the said Court erred in refusing, at the close of the whole case, to direct a verdict of not guilty on each count in the said indictment.

31. Because the said Court, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

32. Because the said Court erroneously allowed, against the objection of the plaintiff in error, the witness, David T. Wittenborn, to answer the following question:

> "Will you give me the net amount of the bills for the first quarter of this year, 1917?" (Indicating.)

33. Because the said Court erroneously charged the jury as follows:

> "As this indictment is drawn, the jury may, according as the evidence warrants, find either a general verdict of guilty or not guilty as charged."

34. Because the said Court erroneously charged the jury as follows:

> "If it be proved that Mr. Levin induced or procured or was present when Mr. Speck changed this meter, as Speck says he changed it, then the defendant should be convicted."

The said plaintiff in error, by reason of the errors

aforesaid, submits that the judgment below should be reversed and for nothing holden.

JOHN H. KAFES,
HARRY HEHER,
Attorneys of Plaintiff in Error.

Due and legal service of the within Assignments of Error is hereby acnowledged, and I do consent to the filing of the same as of time.

Dated October 11, 1917.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
LOUIS LEVIN,
Plaintiff in Error.

JOINDER IN ERROR.

(*Filed October 20, 1917.*)

And hereupon, afterwards, to wit, on the twentieth day of October, nineteen hundred and seventeen, the said Louis Levin, by John H. Kafes and Harry Heher, his attorneys, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here, that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned and specified for errors, and that the judgment aforesaid, in manner aforesaid, in all things be affirmed, etc.

MARTIN P. DEVLIN,
Attorney of Defendant in Error.

NEW JERSEY SUPREME COURT.

No. 3, February Term, 1918.

THE STATE
vs.
LOUIS LEVIN,

OPINION.

Error to Mercer Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Parker and Kalisch.

For Plaintiff in Error, Aaron V. Dawes. With him on the brief, John A. Montgomery.

For the State, Martin P. Devlin, Prosecutor of the Pleas.

The opinion of the Court was delivered by GUMMERE, C. *J.*

The indictment in the present case contained four counts. The averment of the first count was that Levin, the plaintiff in error, together with one Charles H. Speck, did unlawfully tamper with a water meter which had been installed by the water department of the City of Trenton in the premises of Levin, for the purpose of measuring and registering the amount of water used therein; and that this was done with the intent to defraud the municipality by causing the meter to register much less than the actual flow of water through it.

The second count charged that Levin unlawfully aided, assisted and abetted Speck in tampering with this meter, for the purpose of causing it to register much less than the actual flow of the water through it.

The third and fourth counts charged the defendants,

Levin and Speck, with unlawfully and feloniously stealing, taking and carrying away 640,400 cubic feet of stored filtered water of the value of $576.36 of the goods and chattels of the City of Trenton.

The trial of the indictment proceeded against Levin alone, and the jury returned the following verdict against him: "The said Louis Levin is guilty of the misdemeanor aforesaid of him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him."

Levin thereupon sued out the present writ of error to review the judgment entered upon that verdict.

The first assignment of error challenges the refusal of the trial court to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the ground that the offense alleged in each of these counts, if committed at all, had been committed more than two years before the finding of the indictment, and was therefore outlawed. The motion to direct was based upon section 152 of our Criminal Procedure Act (*Comp. Stat.*, *p.* 1870), which declares that no person shall be prosecuted, tried or punished for any offense not punishable with death unless the indictment shall be found within two years from the time of committing the offense.

The record shows that the indictment was presented at the January Term, A. D. 1917. The proof on the part of the State was that the illegal tampering with the water meter installed in Levin's premises occurred some time during the year 1914; and there was no evidence that it occurred at any subsequent date. The question, therefore, whether the refusal of the motion to direct a verdict upon the first and second counts of the indictment was proper or not depends upon the true construction of the statutory provision upon which these two counts were based. That provision is contained in section 164 of our Crimes Act (*Comp. Stat.*, *p.* 1794), and, so far as pertinent to the present case, is as follows: "Any person who shall without permission * * * connect or disconnect the meters of any * * * water company, or in any other manner, without such permission, tamper or interfere with such meters * * * for the purpose of obtaining * * * water with intent to

defraud such company, shall be guilty of a misdemeanor." The contention on the part of the plaintiff in error is that the crime declared in the statute is a specific one, and becomes complete when the work of tampering or interfering with the meter is entirely finished; while on the other hand it is argued by the State that the crime is not complete unless the purpose which was sought to be accomplished by the tampering with the meter has, in fact, been consummated; that is, unless water has been actually abstracted in excess of the quantity registered; and that, therefore, so long as the water continues to be unlawfully abstracted, the crime remains a continuing one. It is conceded that the abstraction of the water was persisted in until a period well within the two years' limitation, and so we are called upon to determine the soundness of the one contention or the other.

A careful reading of the statute leads us to the conclusion that the purpose of the Legislature as expressed therein is so plain as not to call for judicial interpretation. It declares that any person who shall without permission tamper or interefere with the meter of any water company, for the purpose of fraudulently obtaining water from such company, shall be guilty of a misdemeanor. There is nothing in the statute to suggest the idea that a person who has been guilty of such tampering, and whose intent was to defraud the water company, should escape punishment if his intent is prevented from being carried into execution by a prompt discovery of what he has done, or in any other way. The object of the Legislature was not the punishment of one who feloniously abstracts water which is the property of one of these companies—for that crime, like any other felonious taking, is dealt with in other provisions of the statute—but the protection of these companies against the fraudulent abstraction of water by methods so insidious and secret as not to be readily discoverable. And in order to effect that object the Legislature created an entirely separate and distinct offense which it made punishable without regard to whether the larcenous purpose which led to the tampering with the meter was accomplished or not.

We have not overlooked the contention of counsel for the State that the situation here presented is quite similar,

in its legal essence, to the criminal offense of obtaining moneys by false pretenses; and that the decisions upon that branch of the law should control us in the present case. We fail, however, to perceive the similarity. The wrong which is made criminal by the statute in the class of cases appealed to is not the making of the false pretense, but the wrongful obtaining of money by reason thereof. *State* v. *Crowley*, 39 *N. J. L.* 264.

Determining, as we do, that the crime struck at by the 164th section is complete when the work of tampering with the meter has been finished, we conclude that the motion to direct a verdict of acquittal on the first and second counts should have been granted, and that its refusal was error.

It is insisted on behalf of the State that this error should not result in a reversal of the conviction, for the reason that the verdict returned by the jury was a general one; and it is said to be the settled law of this State that where there are several counts in an indictment, each charging a distinct crime, a general verdict of guilty amounts to a conviction of each separate offense, and even if the verdict cannot be supported as to one or more of the crimes charged it will be upheld as to the offense described in a single good count. That this is the law of the State is not disputed. It was so declared by the Court of Errors and Appeals in the case of *State* v. *Huggins*, 84 *N. J. L.* 254. And so, if each of the several counts in the present indictment had charged a simple misdemeanor, the verdict rendered by the jury "guilty of the misdemeanor aforesaid, etc.," would include all the counts, and the rule in the Huggins case would be applicable. Upon examination, however, the contrary is clearly shown to be the fact. The first count charges a violation of the 164th section, and that section makes a person who shall be convicted under it "guilty of a misdemeanor." The second count, in its legal effect, charges the same offense. It charges Levin with aiding and abetting Speck in his tampering with the meter; and since the decision of *Engeman* v. *State*, 54 *N. J. L.* 247, it has been considered to be settled that in misdemeanors all who aid, abet or participate are principals, and all equally guilty. *State* v. *Hess*, 65 *N. J. L.* 544; *State* v. *Wilson*, 80

N. J. L. 467; *State* v. *Spence*, 81 *N. J. L.* 265. The third and fourth counts, however, each of them, charge the plaintiff in error with the crime of grand larceny, and this crime, by the 158 section of the Crimes Act (*Comp. Stat.*, 1793), is made a high misdemeanor. The great difference between the two grades of criminality is demonstrated by the punishment which each carries with it. A misdemeanor is punished by a fine not exceeding $1,000, or by imprisonment not exceeding three years, or both, while a high misdemeanor is punishable by a fine not exceeding $2,000, and by imprisonment not exceeding seven years, or both. See *Crimes Act, Sections* 217, 218 (*Comp. Stat., p.* 1812).

The verdict in the present case, therefore, is a specific and not a general one. It has declared the plaintiff in error to be guilty of the misdemeanor charged in the indictment; that is, of the crime set out in the first and second counts of that pleading, and carries with it a liability to the punishment declared against misdemeanors by the statute, viz., a fine, not exceeding $1,000, and imprisonment not exceeding three years, either or both. To transmute the finding of the jury into a declaration that plaintiff in error was guilty of the high misdemeanor charged in the indictment would be to impose upon him a liability to a fine not exceeding $2,000, and to imprisonment not exceeding seven years. The rule in the Huggins case, as we read the opinion, was not intended to, and does not, produce so unfortunate a result.

Looking at the whole case, therefore, the situation disclosed is this: The plaintiff in error having been charged in the same indictment with the commission of an ordinary misdemeanor, and also with the commission of a high misdemeanor, the jury convicted him of the lesser offense. That offense was outlawed at the time the indictment was presented, and, consequently, the verdict is without force. The jury, although the question was submitted to it, failed to pass upon his guilt or innocence of the crime charged in the third and fourth counts of the indictment. In this situation the trial court was without legal power to pass sentence upon the plaintiff in error, and consequently the judgment under review must be reversed.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
LOUIS LEVIN,
Plaintiff in Error.
} In Error.

RULE ON REVERSAL

This cause having been duly argued at the February Term, 1918, of this court; and the court having inspected the record, proceedings and judgment below, and considered the causes assigned for error;

It is thereupon, on this fifteenth day of August, nineteen hundred and eighteen, ordered that the judgment of the said Court of Quarter Sessions in and for the county of Mercer be in all things reversed, set aside, and for nothing holden.

Entered August 15, 1918,

On motion of
JOHN H. KAFES,
HARRY HEHER,
Attorneys of Plaintiff in Error.

I, Enoch L. Johnson, 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 nineteenth day of September, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
(L. S.) *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
LOUIS LEVIN,
Defendant and Defendant in Error.
} In Error.

10

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the third day of October, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, comes the said the State of New Jersey by A. Dayton Oliphant, Prosecutor of the Pleas of the County of Mercer, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest 20 error in this, to wit, that by the record aforesaid, it appears that the judgment in form aforesaid was given for the said Louis Levin against the said State of New Jersey, whereas, by the law of the land, judgment ought to have been given for the said State of New Jersey against the said Louis Levin.

2. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The crime alleged in the first and second counts of 30 the indictment had been committed more than two years before the finding of the indictment.

3. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below refused to direct a verdict in favor of the plaintiff, defendant in error, on the first and second counts of the indictment.

4. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The verdict in the cause is a specific and not a general one, and hence does not embrace the high misdemeanors. This question was not raised in the assignments of error by the plaintiff in error, defendant below.

5. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The reason given for reversal set out in assignment number three was not raised in the assignments and specifications of error or argued at the trial of the cause.

6. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following questions, propounded to the witness David H. Wittenborn:

Q. "From the 12th day of March, 1915, to the end of March, 1916, can you tell what the readings were?

A. "I can; yes, sir.

Q. "Can you answer that?"

upon the grounds that said questions were illegal and called for secondary evidence, and not original.

7. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to strike out the testimony given by this witness as to the readings of the meter, as follows:

Q. "Can you answer that—what is it?

A. "142,600 is the statement of the meter on the 12th day of March, 1915. What is the other date?

Q. "Down to and including the 10th day of December, 1916. the reading of—

A. "The next reading is on the 4th day of December, 222,000.

Q. "Is that the total from that date to the other?

A. "142,600 on the 12th day of March, and the state of the meter on the 4th day of December,

222,000—the difference between these two is the total number of cubic feet."

on the grounds that the same is secondary evidence, and not original.

8. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objection of the plaintiff in error to the following question:

"Now, assuming that that meter was registering one foot for every four, I ask you, are you able to tell us how many feet passed through that was not registered?"

said question being irrelevant and immaterial, and called for a conclusion of the witness upon facts which were not proved by any competent evidence.

9. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the following question to be propounded to the witness Speck:

"You were not willing at that time, February 16, 1917, to come before this Court and say you were guilty of this offense?"

10. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following question:

"Didn't you go around to a number of saloonkeepers during that time and ask them how they liked their meters and how they were getting along, during the year 1914?"

on the grounds that the said question was material, and tended to prove the good faith of the plaintiff in error.

11. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following question:

"Didn't you tell them that if they had any complaints to make to make them to you?"

12. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the following question to be propounded to the witness Speck:

"Did you ever know of any other meters that ran fast?"

13. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously sustained the objections of the Prosecutor to the following questions, propounded by the plaintiff in error to the witness Albert E. Bibbins:

Q. "I asked you at that time if you knew how many pounds there were in a cubic foot of water?

Q. "Did you or not say in this court room last Monday or Tuesday that in the test made that you did not look at the scale to see how many pounds of water passed through?"

14. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the following question to be answered by the witness Albert Bibbins:

"When did you discover, or did you discover, or in any way find out, how many pounds a cubic foot of water weights since April 19, 1917?"

15. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the following question to be answered by the witness Charles H. Speck:

"Did you borrow any money from different saloonkeepers during the latter part of 1914?"

16. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to strike out the testimony of the witness Hyle as to the workings of the meter taken from the property of the plaintiff in error, the same being mere hearsay.

17. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed, against the objections of the plaintiff in error, the witness Alvin W. Bugbee to answer the following question:

Q. "Are you able to explain how a testing machine is operated?"

Q. "Go ahead."

18. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed, against the objections of the plaintiff in error, the witness Alvin W. Bugbee to answer the following question:

"Now, can you describe the method of testing a meter?"

19. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to strike out the testimony of the witness Hyle as to the correctness of the condition of the meter, said testimony being based entirely upon hearsay and not upon his actual knowledge of the condition of the meter.

20. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question, propounded to George B. LaBarre:

"Did he say that 'The Billy Sunday crowd are after me,' and you said in reply, 'There is nothing in that at all; we are only trying to find out who is stealing the city water?' "

the said question being incompetent and an illegal attempt to contradict the plaintiff in error on a collateral matter.

21. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the plaintiff in error to present any evidence of the record made in a book by the plaintiff in error of the loan of money which he alleged he had made to Speck.

22. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

23. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused, at the close of the State's case, to direct a verdict on the first and second counts, because the offenses charged occurred more than two years before the finding of the indictment; upon the grounds that the said counts did not charge any crime under the statute; upon the grounds that there was no evidence of tampering with the meter of a water company.

24. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused, at the close of the State's case, to direct a verdict of acquittal in favor of the defendant on the third and fourth counts of the indictment, on the distinct and separate grounds (a) that there was no asportation or unlawful taking; (b) that there was a misjoinder of counts; (c) that there was no evidence of the commission of the crimes charged therein; (d) because the proofs did not show that there had been any larceny of stored filtered water, as charged in the said counts; (e) because there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny, and

(f) because there was no legal proof that there had been any water stolen at all.

25. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

26. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error upon the third and fourth counts, because there was no evidence of the larceny of water.

27. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error of not guilty of tampering with a water meter, because there was no evidence that the plaintiff in error had tampered with the meter of any water company.

28. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

29. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused, at the close of the whole case, to direct a verdict on the first and second counts, because the offenses charged occurred more than two years before the finding of the indictment; upon the grounds that the said counts did not charge any crime

under the statute; and upon the grounds that there was no evidence of tampering with a meter of a water company.

30. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused, at the close of the whole case, to direct a verdict of acquittal in favor of the defendant on the third and fourth counts of the indictment, on the distinct and separate grounds (a) that there was no asportation or unlawful taking; (b) that there was a misjoinder of counts; (c) that there was no evidence of the commission of the crimes charged therein; (d) because the proofs did not show that there had been any larceny of stored filtered water, as charged in the said counts; (e) because there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny, and (f) because there was no legal proof that there had been any water stolen at all.

31. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There was error in the refusal of the Court below, at the close of the whole case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

32. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error upon the third and fourth counts, because there was no evidence of the larceny of water.

33. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error of not guilty of tampering with a water meter, because

there was no evidence that the plaintiff in error had tampered with a meter of any water company.

34. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erred in refusing, at the close of the whole case, to direct a verdict of not guilty on each count in the said indictment.

35. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

36. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed, against the objection of the plaintiff in error, the witness David T. Wittenborn to answer the following question:

> "Will you give me the net amount of the bills for the first quarter of this year, 1917?" (Indicating.)

37. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously charged the jury as follows:

> "As this indictment is drawn, the jury may, according as the evidence warrants, find either a general verdict of guilty or not guilty as charged."

38. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously charged the jury as follows:

> "If it be proved that Mr. Levin induced or procured or was present when Mr. Speck changed this meter, as Speck says he changed it, then the defendant should be convicted."

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annuled and for nothing holden, and that the said State of New Jersey may be restored to all things that it has lost by occasion of the said judgment, etc.

A. DAYTON OLIPHANT,
Prosecutor of the Pleas of Mercer County, for the State.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Plaintiff in Error,
vs.
LOUIS LEVIN,
Defendant in Error.
} In Error.

JOINDER IN ERROR.

And thereupon, afterwards, to wit, on the 11th day of October, nineteen hundred and eighteen, the said Louis Levin, Defendant in Error, by John H. Kafes and Harry Heher, his atorneys, 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 aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid of the New Jersey Supreme Court, in manner aforesaid given, may in all things be affirmed, &c.

JOHN H. KAFES,
HARRY HEHER,
Attorneys for Defendant in Error.

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NEW JERSEY, ss.

The State of New Jersey to our Justices
(SEAL) *of our Supreme Court,*
GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court before you, between the State of New Jersey, plaintiff and defendant in error therein, and Haefel Cohn, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (*Pro ut* the said indictment and the said counts therein), whereof he has been indicted and was thereof convicted by a certain jury of the County of Mercer taken between the State of New Jersey and the said Haefel Cohn, and the said indictment having been reversed by the Supreme Court of New Jersey, as it is said, manifest error hath intervened to the great damage of the said State of New Jersey, as from its complaint we have received information; we being willing, in its behalf, to correct the error in due manner, if any there shall be, and that full and speedy justice be done to it, the said State of New Jersey do command you that if judgment be thereupon given, that you distinctly and openly send, under your seal, the record and proceedings and plaint and judgment aforesaid, and also include the entire record of the proceedings had upon the trial of the said cause, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, aforesaid, on the third day of October next, together with this writ, that the record and proceedings and judgment aforesaid being inspected we may cause to be done thereupon for correcting that error what of right and according to law and custom of the State of New Jersey ought to be done.

Witness Honorable Edwin Robert Walker, our Chancellor, and presiding judge of our said Court of Errors and Appeals, at Trenton aforesaid, this fourteenth day of September, nineteen hundred and eighteen.

THOS. F. MARTIN,
Clerk.

A. DAYTON OLIPHANT,
Attorney.

MARTIN P. DEVLIN,
Associate Counsel.

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.

WILLIAM S. GUMMERE
C. J.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

New Jersey Supreme Court.

STATE OF NEW JERSEY,
Defendant in Error,
vs.
HAEFEL COHEN,
Plaintiff in Error.

WRIT OF ERROR.

(*Filed June 14, 1917.*)

NEW JERSEY, *ss.*—The State of New Jersey to the Honorable Erwin E. Marshall, Judge [L. S.] of the Court of Quarter Sessions in and for the County of Mercer, GREETING:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Haefel Cohen, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts, for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (*pro ut* the said indictment and the said counts therein), whereof before you he hath indicted, and is thereof convicted of aiding, assisting and abetting another to tamper and interfere with a water meter, as charged in the second count of said indictment, by a certain jury of the county, taken between the State

of New Jersey and the said Haefel Cohen, as it is said, manifest error hath intervened to the great damage of the said Haefel Cohen, as from his complaint we have received information; we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that full and speedy justice be done to him, the said Haefel Cohen, do command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, and also include the entire record of the proceedings had upon the trial of said cause, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the fourteenth day of June next, and this writ, that the entire record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, at Trenton, this twenty-fifth day of May, nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

HARRY HEHER,
Attorney.

RETURN.

MERCER COUNTY, to wit:

Be It Remembered, That at a Court of Oyer and Terminer, holden at Trenton, in and for the said County of Mercer, on the third Tuesday of January, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Erwin E. Marshall, Judge of the Court of Common Pleas, in

and for the said county, according to the form of the statute in such case made and provided, by the oath of Archibald M. Maddock, Frederick Moore, William Zenzer, Frank C. Hartman, Roger Henry, Jr., Howard W. Larison, John Drechsler, A. Dayton Oliphant, Clarence S. Grover, William I. Leigh, Clark C. Dilatush, Disbrow Wilson, William Clayton, Asher Wilson, Thomas P. McKee, Joseph B. Margerum, Walter Firth, Sr., Calvin L. Hill, Charles R. Chamberlain, John J. Cleary, William J. Convery, Yaro Yago and Claudius P. Weeden, good and lawful men of the said County of Mercer, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Mercer.

It is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

A. M. Maddock,
Foreman.

Mercer Oyer and Terminer.

January Term, A. D. 1917.

Mercer County, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath present, that Haefel Cohn and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the eleventh day of March, in the year of our Lord one thousand nine hundred and fifteen, and thence continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this court, during the time aforesaid, did, without permission, unlawfully tamper with and interfere with the water meter placed in the premises of the said Haefel Cohn at number thirty-six

Chestnut Avenue, in said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton for the purpose of measuring and registering the amount of water used therein, and did unlawfully and without permission, during the time aforesaid, alter and change the said water meter and did unlawfully and without permission, during the time aforesaid, remove the gears and other mechanical parts of the said water meter and substitute other parts therefor, and did unlawfully and without permission, during the time aforesaid, adjust and change the said water meter so that the same did not register all the water that passed through same and did allow more water to flow through the same, during the time aforesaid, than would be properly registered thereby, with intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton; 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.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Haefel Cohn on the eleventh day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, without permission, to unlawfully tamper and interfere with the water meter placed in his said premises at number thirty-six Chestnut Avenue, in said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton for the purpose of measuring and registering the amount of water to be used therein and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck to

change the said water meter, without permission, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, during the time aforesaid, to remove the gears and other mechanical parts of the said water meter and to substitute other parts therefor, without permission, and did unlawfully aid, assist, procure, incite, and abet the said Charles H. Speck, during the time aforesaid, to adjust the said water meter so that the same did not register all the water that passed through same and did allow more water to flow through same than would be properly registered thereby, without permission, with intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton, 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.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Haefel Cohn and Charles H. Speck on the twelfth day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord nineteen hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, certain stored filtered water, to wit, two hundred and fifty thousand eight hundred cubic feet of stored filtered water of the value of two hundred and twenty-five dollars and seventy-two cents, being over the value of twenty dollars, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, during the time aforesaid being found, unlawfully and feloniously did steal, 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.

MERCER OYER AND TERMINER.

January Term, A. D. 1917.

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath do further present, that the said Haefel Cohn and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the first day of December, in the year of our Lord one thousand nine hundred and sixteen, with force and arms, at the City of Trenton aforesaid, in the County aforesaid, and within the jurisdiction of this Court, a certain quantity of stored filtered water, to wit, two hundred and fifty thousand eight hundred cubic feet of stored filtered water, of the value of two hundred and twenty-five dollars and seventy-two cents, being over the value of twenty dollars, of the goods and chattels of The Trenton Water Works and the Inhabitants of the City of Trenton, then and there being found, unlawfully and feloniously did steal, 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.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

JUDGMENT.

And afterwards, to wit, on Tuesday the thirtieth day of January, in the year of our Lord nineteen hundred and seventeen, at a session of the said Court of Oyer and Terminer as aforesaid, being as yet of the Term of January, aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said County for trial according to the form of the statute in such case made and provided and a rule to that effect then and there duly made and entered upon the record

of each of the said Courts respectively; and afterwards, to wit, on the sixteenth day of February, in the year of our Lord nineteen hundred and seventeen, at a session of the Court of Quarter Sessions in and for the said County of Mercer of the Term of January, of the year of our Lord nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions at Trenton, in the County of Mercer aforesaid, cometh the said Haefel Cohn in his proper person according to the condition of the recognizance by himself and his pledges in that behalf heretofore made and now here touching the premises in the said indictment above specified and charged upon him being asked in what manner he will acquit himself thereof he says that he is not guilty thereof, and of this he puts himself upon the County, and Martin P. Devlin, Prosecutor of the Pleas of the said County of Mercer, who prosecutes for the State in this behalf, does likewise the same, therefore let the said indictment be continued until a jury thereupon come here before the said Judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit, on Monday the ninth day of April, in the year of our Lord nineteen hundred and seventeen, of the January Term, nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions, in and for the said County, twelve good and lawful men of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Haefel Cohn to recognize upon their oaths whether the said Haefel Cohn be guilty of the misdemeanor in the indictment aforesaid above specified or not guilty, because as well the said Martin P. Devlin who prosecutes for the State in this behalf as the said Haefel Cohn have put themselves upon the said jury and the jurors of the said jury, by J. Warren Fleming, Sheriff of the said County of Mercer, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit:

Joseph A. Kelly, Richard J. Deutz, Bernard F. Trainor, J. Walter Pullen, John W. Rogers, Orin W. Decker, John Connor, Ernest Schnorbus, Samuel T. Cox, James Mayers, George B. Sharbaugh and James A. Lee, who having been elected, tried and sworn to speak the truth of and concerning the premises, upon their oath say that the said Haefel Cohn is guilty of the misdemeanor of aiding and abetting in tampering with water meter on him above charged in the form aforesaid and as by the indictment aforesaid is above supposed against him, and thereupon the said Haefel Cohn was remanded for sentence until Friday, the twenty-fifth day of May, nineteen hundred and seventeen, at which last mentioned day the said Haefel Cohn being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said Haefel Cohn if he hath or knoweth of anything to say wherefore the said Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment against him, who nothing further saith unless as he before has said whereupon all and singular the premises being seen and by the said Judge here fully understood it is considered and adjudged by the Court here that the said Haefel Cohn, do pay a fine of five hundred dollars and the costs of this prosecution.

STATE OF NEW JERSEY, }
County of Mercer, } *ss.*

I, Fred R. Parker, Clerk of the Court of Oyer and Terminer and Clerk of the Court of Quarter Sessions, do hereby certify that the foregoing are the entire record and proceedings and judgment in the case of The State of New Jersey *vs.* Haefel Cohn, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and official seal of said Courts this eighth day of June, A. D. 1917.

[L. S.]

FRED R. PARKER,
Clerk.

The entire record and proceedings of the indictment, plea, trial, conviction and judgment, including the entire record of the proceedings had upon the trial of said cause, whereof mention is within made, with all things concerning the same, to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained, we certify in a certain schedule to this writ annexed as we are commanded.

ERWIN E. MARSHALL, *Judge.*

MERCER COUNTY COURT OF QUARTER SESSIONS.

STATE
vs.
HAEFEL COHN AND
CHARLES H. SPECK.

Testimony taken before Hon. Erwin E. Marshall, on Monday, April 9th, 1917.

Appearances—Hon. Martin P. Devlin, for the State. John Kafes, Esq., and Harry Heher, Esq., for the Defendants.

Charles H. Speck, a witness, being duly sworn on behalf of the State, testified as follows:

Direct examination, by Mr. Devlin.

Q. Mr. Speck, were you working for the Water Department of the City of Trenton on the eleventh of March, 1915?

A. Yes, sir.

Q. And you had been working for sometime before?

A. Yes, sir.

Q. What was your position at that time?

A. Meter Inspector; charge of the Meter Department.

Q. What were your duties having charge of the Meter Department?

A. Installing meters and looking after meter complaints in the Meter Department.

Q. Do you know Haefel Cohn's place, 36 Chestnut Avenue?

A. Yes, sir.

Q. Are you able to tell who installed the meter in that place, the water meter?

A. Yes, sir; I installed it.

Q. You installed it. Are you able to tell what time you installed it?

A. I think it was in 1911.

Q. 1911?

A. Yes, sir.

Q. When you installed that meter, are you able to tell whether or not that meter was correct?

A. Yes, sir; it was correct.

Q. You say it was correct?

A. Yes, sir.

Q. Why do you say it was correct?

A. All meters are tested before they leave the shop.

Q. Do you know who tested that?

A. I don't know whether I tested it or whether Bibbins tested it.

Q. But you know one or the other of you did test it?

Mr. Heher—I object. I don't see if a man does not know who tested a meter how he does know anyone tested it.

The Witness—They are always marked.

(After argument.)

The Court—He said all the meters are marked, as I understand it.

The Witness—Yes; they are all marked "tested" before they leave the shop.

Mr. Heher—He is testifying about a practice; he is not testifying definitely.

The Court—Was this particular meter marked "tested"?

The Witness—They are all marked "tested."

The Court—Was this one?

The Witness—They are all marked.

The Court—That is not my question. Was this meter marked that way?

The Witness—Every meter that leaves the shop—that meter was marked.

Q. At that time, Mr. Speck, who did the testing?

A. It lay between Mr. Bibbins and I.

Q. That was your duty?

A. Yes.

Q. Bibbins and yourself?

A. Yes, sir.

Q. Did you place that meter in there?

A. In Cohn's place?

Q. Yes.

A. Yes, sir.

Q. When it was placed in was the meter working all right?

A. Yes, sir.

Q. Now, Mr. Speck, did you have anything more to do with that meter?

A. Did I have anything more to do with that meter?

Q. Yes.

A. Yes, sir.

Mr. Heher—I want to object to the question. I presume the answer is going to be about something that was done later. I think the question and the answer which will be given in response to the question are irrelevant, incompetent and immaterial and not binding upon the defendant in this cause.

The Court—The question has been answered and the answer may stand.

Q. When, Mr. Speck, did you touch that meter again?

Mr. Heher—I want to object. If the Court please, I was not objecting to that particular question before, but to this line of examination, and I want to have noted on the record that the defendant, Cohn, objects to this testimony on the ground that it is incompetent, irrelevant and immaterial.

The Court—I will overrule that motion at this time. Counsel may proceed.

Mr. Heher—Exception.

Exception allowed.

Q. When did you touch that meter again?

A. I think it was in 1914.

Q. What did you do to that meter then, Mr. Speck?

A. I was sent over there on a high bill. There was some complaint about a high bill.

Q. There was some complaint about a high bill?

A. Yes, sir.

Q. What month in 1914?

A. I couldn't tell you that.

Q. You had a complaint about a high bill?

A. Yes, sir.

Q. You were immediately sent over there?

A. Yes, sir.

Q. When you got there what did you do and find?

A. I found the meter and the reading was correct.

Mr. Heher—I object to this.

The Court—All right, your objection is noted.

Mr. Heher—I understand the Court has ruled on this testimony. I object to this line of examination.

The Court—Your objection will be overruled.

Mr. Heher—The record will state that my objection goes to the entire line of testimony.

Q. You say there was a complaint about a high bill?

A. Yes, sir.

Q. Who informed you about the complaint?

A. Mr. Wittenborn gave me the bill.

Q. When you got that bill did you go to 36 Chestnut avenue?

A. Yes, sir.

Q. When you went there, did you see any person?

A. Yes, sir.

Q. Who was it?

A. Cohn.

Q. What did he say to you, and you to him?

A. He asked me whether the reading was right. I said, yes, the reading was right and the meter was correct.

Mr. Heher—I want to have my objection on the record to these questions.

The Court—All right; your objection will be entered and the Court will overrule it.

Mr. Heher—Exception.

Exception allowed.

Q. Before you brought the bill to Cohn, that is, went to see Cohn, did you examine the meter?

A. It was after.

Q. Yes?

A. No, sir.

Q. When you went to see Cohn?

A. Yes, sir.

Q. What did he say to you or you to him?

A. He asked me—I went down and read the meter and his reading was correct, and I told him he could use the water the meter registered. He asked me if something couldn't be done to it to fix the meter.

Q. What did you say?

A. I told him yes, I thought there could.

Q. What did he say to that?

A. He said he would make it right if I would fix it.

Q. What did you say in reply to that?

A. I told him I would fix it.

Q. What did he say?

A. So I went around, I think two nights after; I

don't just remember, one or two nights after; it was at night; and changed the gears on the meter.

Q. When you say "changed the gears on the meter," will you make that a little clearer to us?

A. Cause the meter running about 50 to 60 per cent. slow.

Q. When you say "changing the gears," what do you do to change gears?

A. I had to put another set of gears on the meter.

Q. Where did you get the gears?

A. From the meter shop.

Q. Of the Water Department?

A. Yes, sir.

Q. What did you do with the gears that you took out?

A. Put them back in the shop again.

Q. Put them back in the shop?

A. Yes, sir.

Q. Now, when you did that, did you see Cohn?

A. Yes, sir.

Q. The night you changed the gears, did you see Cohn before you went downstairs?

A. Yes, sir.

Q. What did you say?

A. He went down cellar with me.

Q. What did he say?

A. He stood there while I was changing them, and after I changed them, handed me ten dollars.

Q. Handed you ten dollars?

A. Yes, sir.

Q. Was that the first said about money between you and Cohn?

A. That was; while he said he would make it right before when I went there with the bill.

Q. Was there anything said before that about how much money?

A. Nothing at all.

Q. He said he would make it right?

A. He said he would make it right; that was the words.

Q. When you went down the cellar and changed the gears, he gave you ten dollars?

A. Yes, sir.

Q. After the gears were changed, and you got the ten dollars, what did you say?

A. I didn't say anything.

Q. What did he say, anything at all?

A. Did Cohn say anything?

Q. Yes.

A. He spoke about another place where they wanted—

Q. Just what he said.

A. He said his brother-in-law wanted me to fix his meter.

Q. What was the name of his brother-in-law?

A. Lavine, Warren street.

Q. What did you say to that?

A. I said I would go up and see him.

Q. What else was said?

A. I went up and seen him.

The Court—Just what was said in your conversation with Cohn.

Q. I don't want you to tell anything that happened between you and anyone else. I want you to tell the talk between you and Cohn.

A. That was about all that was said.

Q. Was that all that was said at that meeting?

A. Yes, sir.

Q. Did you go back to Cohn's again?

A. No, sir.

Q. Did you see Cohn after that?

A. I never seen Cohn after that to have an interview with him until, I should judge, in 1915.

Q. 1915; where?

A. In—1916, I think.

Q. What month?

A. I can't recall.

Q. Can you tell us the season; was it spring, summer, fall, or winter?

A. In the spring.

Q. Was anything said at that meeting?

A. There was a complaint about a high bill then.

Q. A complaint about a high bill?

A. Yes.

Q. Are you sure that was in—would you say that was in the fall?

A. I can't remember.

Mr. Heher—One minute; I object to that question.

The Court—The witness may tell his best recollection.

The Witness—I can't remember whether it was the fall or spring, but there was a mistake in the reading at that time.

Q. Whom had the complaint come from?

A. Mr. Wittenborn.

Q. As a result of instructions from him you went out to see Cohn?

A. I went out.

Q. When you saw Cohn, what did you say to him, and what did he say to you?

A. I told him there was a mistake in the reading then, and there was a mistake.

Q. When you got to the house, did you go to the meter first thing?

A. No, I went inside to see Cohn.

Q. What did he say to you?

A. He said he had a high bill and couldn't understand why his bill was so high; so I said, "Well, I will go down and read the meter; maybe the reader of the meter has made a mistake." When I went down I seen there was actually a mistake in the reading of the meter. I come back and reported to Mr. Wittenborn.

Q. Did you say anything to him when you came up, after reading the meter?

A. No, sir.

Q. Did you see him after that?

A. No, sir.

Q. You have said he gave you ten dollars. May I ask you if he gave you any more money than that?

A. Not that I remember.

Q. Are you able to tell, by make or number, the gears that you put in?

A. Yes, sir.

Q. How would you name those gears?

A. They go by teeth; so many teeth in the gear.

Q. What teeth gear do you think you put in?

A. That I put in?

Q. Yes.

A. Well, I put in, I think, somewhere around 13 on the driver and 60 on the clock—50 on the clock.

Q. Did you see that meter lately?

A. Lately?

Q. Yes.

A. No, sir.

Q. You remember around last December, don't you, around December 5th, or last November?

A. Yes, sir.

Q. Did you see that meter around that time?

A. No, sir.

Q. Were you present when the Water Department officials took that meter out?

A. No, sir.

Q. You plead guilty this morning to this charge?

A. Yes, sir.

Cross-examination, by Mr. Heher.

Q. Mr. Speck, how long have you been working for the Trenton Water Department?

A. Twelve years.

Q. In what capacity?

A. Eight years in the Meter Department.

Q. Eight years last passed?

A. I should judge about eight years.

Q. In the Meter Department?

A. Yes, sir.

Q. What was the nature of your duties?

A. To look after installing and inspecting and high bills—all complaints.

Q. Installing, inspecting?

A. Installing meters.

Q. What else?

A. High bills, complaints.

Q. You were the man in the Water Department who was sent out to investigate complaints about large water bills?

A. Well, yes; general work all the way through.

Q. And have been doing that for eight years?

A. About seven or eight years, yes.

Q. Have meters been in properties in Trenton as long ago as eight years?

A. Oh, yes.

Q. You installed the meter in Cohn's residence, you say?

A. Yes, sir.

Q. Do you remember the time?

A. 1911; I don't know just the month.

Q. How do you know it was 1911?

A. Because I had a record of it.

Q. Where is your record?

A. I haven't got it here; I have a record of it; I think it was around June or July.

Q. When did you see the record last?

A. I saw the record Saturday.

Q. Last Saturday?

A. Yes.

Q. You were looking up records?

A. I was looking up when the meters were installed.

Q. You just looked that up?

A. All meters; not just that exactly.

Q. Did you go to the records on Saturday to find out when you installed Cohn's meter?

A. No; I know I installed Cohn's meter in 1911 because that is when the resolution was passed.

Q. You testified that on Saturday you looked at the record as to when you installed Cohn's meter.

A. I didn't say Cohn's meter; you misunderstood me.

Q. Let us see whether I did misunderstand you or not. You testified when I asked you when you installed this meter that you had a record of it, didn't you?

A. I have a record of all meters installed.

Q. I asked you when you looked at the record to find out when you installed it and you said last Saturday.

A. Not Cohn's.

Q. Whose record were you looking at last Saturday?

A. I wanted to see when we installed meters in saloons; I wanted to see what year it was, and it was 1911.

Q. You were looking up records on Saturday to see when you installed meters in saloons?

A. All the saloons, yes.

Q. Have you got a record as to when you installed Cohn's meter?

A. I don't know exactly the day of the month; no.

Q. Does your record show that?

A. I guess if I looked at it I could find it.

Q. You were looking at it Saturday.

A. I wasn't looking at Cohn's.

Q. You were afraid to look at Cohn's record?

A. No.

Q. You had the record there, why didn't you look to see when you installed it?

A. Because I know when I installed it; I know it was 1911.

Q. You didn't look for anything else on the record Saturday, did you?

A. No, nothing particular; just happened to be sitting there.

Q. Did you look for anything in general?

A. No, no general thing.

Q. Have you looked up any other records?

A. No.

Q. When did you get the direction to go out to Cohn's residence about the complaint he had made?

A. What do you mean, in 1914?

Q. You say you went out to investigate a complaint.

A. In 1914?

Q. Was it 1914? I don't know. When was it?

A. 1914.

Q. What month?

A. Couldn't tell you.

Q. Did you look up the record for that?

A. No.

Q. Have you got a record of it?

A. I don't think so.

Q. Don't you make records of your work?

A. The office does.

Q. Has the office a record?

A. I should judge so.

Q. You didn't look at the record?

A. No.

Q. You think it was 1914?

A. I know it was 1914.

Q. Do you know what month it was?

A. No.

Q. Did you ever say it was March 11th, 1915?

A. I wouldn't say whether it was March 11th or when it was; I know it was around the latter part of 1914.

Q. Did you ever say it was March 11th, 1915?

A. I don't remember ever saying it, no.

Q. Don't remember whether you did or not?

A. Don't remember ever saying it, no.

Q. Did you ever give any date during the year 1915?

A. 1915?

Q. Yes.

A. No, not that I know of.

Q. How can you determine when you went out there in response to that complaint?

A. What, in 1914?

Q. Whenever you went out.

A. It was in 1914.

Q. How do you know that?

A. Yes, I remember that.

Q. What month?

A. I don't remember what month it was.

Q. The Department has a record of it?

A. I should judge they have, yes.

Q. What was the practice of the inspectors that inspect meters about which complaints were made, to send in a report?

A. Yes.

Q. To whom?

A. Wittenborn.

Q. And that report contained what?

A. That the reading was correct.

Q. That the reading was correct?

A. Yes.

Q. Suppose it was incorrect?

A. Then I handed it back and told them and then they rectified it.

Q. Did that report contain the date of the investigation by the inspector?

A. I don't know whether they got that record or not; I don't know whether they kept it or not.

Q. Are these reports which you made about meters kept on the files of the Meter Department?

A. That I don't know.

Q. How do you know when you went out there?

A. I know it was 1914.

Q. How do you know that?

A. I know it.

Q. Did you go to any other places during 1914?

A. Yes, plenty of other places, yes.

Q. You went to other places during 1915 to investigate complaints about excessive charges?

A. Naturally we have complaints every day, different places to go.

Q. Every day?

A. Every day different places.

Q. How do you fix this as 1914?

A. There is no use asking that question. I remember well it was in 1914.

Q. Can you tell us how you remember?

A. Yes, I can remember it.

Q. Can you tell us how you can remember it, why you remember it? Is there anything which fixes 1914 in your mind?

A. Yes, because I have a memorandum of it.

Q. Where?

A. I have a memorandum home.

Q. Home?

A. Yes.

Q. It is not here?

A. No.

Q. When did you look at that memorandum the last time?

A. About three months or four months ago.

Q. You didn't look at that last Saturday?

A. No.

Q. Why did you look at it four months ago?

A. I happened to have the book there and was looking over it.

Q. Just happened to look over the book?

A. Yes.

Q. Anybody tell you to?

A. No.

Q. No reason why?

A. No.

Q. Was that before or after the time you were arrested?

A. After.

Q. After you were arrested?

A. Yes.

Q. You looked at the book?

A. Yes.

Q. With any purpose in view?

A. No, none at all.

Q. What book is that?

A. Small memorandum.

Q. It contains what?

A. Contains different things.

Q. Does it contain inspections made by you of meters?

A. Not of all.

Q. Of some?

A. Yes.

Q. Of what class was the memorandum made in this book?

A. Different class memorandum and readings in the book; all different readings.

Q. Readings of meter—the date you inspected Cohn's meter, is that right?

A. I don't know whether just the date is there; the month is there, though.

Q. What month?

A. I don't just remember. If I had the book here—but I know it was 1914.

Q. If you don't remember the month how do you remember the year?

A. Because I remember the year of the book; I kept a book each year from the Meter Department; this is the 1914 book. That is how I remember the year.

Q. You haven't got that book with you?

A. No.

Q. Will you bring that book?

A. I could get it, yes, if it is necessary.

Q. We want it. Is there any objection to bringing the book here?

A. No; there ain't no objection. I won't hand you the book; I will tell you the date I made the inspection.

Q. Why won't you allow the book to be examined?

A. Because it is unnecessary.

Mr. Devlin—I think that is a matter for the Court. He asks the man to have the book to refresh his memory; whether he wants to examine that book is another thing.

The Court—The Court will determine that that matter when the time comes.

Q. You will produce the book?

A. I will get the date when I made the inspections.

Q. You will bring the book here?

A. I will get the date when I made the inspections.

Q. You will not bring the book?

A. I will see what the Judge says about that.

The Court—If you have the record you may bring it when you return this afternoon, if it is asked for.

Q. When you went out there it was at the direction of Mr. Wittenborn to investigate this complaint of excessive charge?

A. Yes, sir.

Q. Did you know Mr. Cohn before that?

A. Well, no; I don't think I did, not personally; I know his brother-in-law.

Q. Who?

A. Max Basch.

Q. You didn't know Cohn?

A. Well, not well acquainted with him; I know him by sight.

Q. Do you know his bar tender?

A. I remember his bar tender. I don't know his name.

Q. Mr. Cornell?

A. I never knowed his name.

Q. You do know his bar tender?

A. The way I know him was this, he used to live near where I did on Walnut avenue, and used to be around the corners there, but I didn't know his name.

Q. You knew who he was?

A. I just knew him by his looks, that is, seeing him around the corner, but I never knowed his name.

Q. Whom did you first talk to when you went in Cohn's place this day?

A. Cohn.

Q. Was he there?

A. Yes.

Q. You recollect that it was Cohn?

A. Yes.

Q. You hadn't seen him before that?

A. No, sir.

Q. You have only seen him once since?

A. I might have seen him once or twice since, that is all.

Q. You saw him once when you went out to investigate the complaint which you have described?

A. Yes.

Q. You have not seen him at any other time?

A. Not to my knowledge.

Q. Was the bar tender there?

A. I don't think he was.

Q. What time of day was it?

A. I couldn't tell you that; I think it was around noon sometime.

Q. Anybody with you?

A. No.

Q. You had the bill with you?

A. Yes.

Q. Just tell us what he said to you?

A. He said it was a high bill. I went down and read the meter with him and told him the meter was correct.

Q. Was it a high bill?

A. I think it was, yes.

Q. How much was the bill?

A. I couldn't tell you that; I don't remember that.

Q. Did it look like a high bill before you looked at the meter?

A. That is a hard thing to tell, whether it is a high bill.

Q. The average cause—

A. I will finish the question. I saw Mr. Cohn and went down cellar with him and read the meter and told him the meter was correct and he asked me whether there was not any way of fixing the meter and I told him yes, there was. He said, "If you will fix it I will make it all right with you." I went around a couple of nights after that, maybe one or two nights after that. It was at night, and he took me down cellar and I changed the gears on the meter.

The Court—You testified to all that on direct examination. This is cross-examination and you must wait for questions.

Q. You went down with Mr. Cohn then?

A. Yes.

Q. You told him the meter was correct?

A. Yes, sir.

Q. But you said the bill looked like a high bill?

A. I don't remember what the bill was.

Q. Did you tell him there was any possibility that the meter was out of order?

A. No, sir.

Q. You don't know whether it was in order or not, do you?

A. When a meter gets out of order it does not register at all.

Q. While a meter is running it always runs correctly?

A. Well, it might be one or two per cent. out of the way, but nothing like—

Q. Hasn't it been known that meters have run 35 and 40 per cent. out of the way when the disc became clogged with mud or some substance?

A. No; the gears won't run at all.

Q. Haven't you had to repair meters by taking out the gears and putting in gears with a greater number of teeth?

A. Not on small meters; no.

Q. What do you call small meters?

A. From 5.8 up to inch and a half, two inch.

Q. What is the size of this meter?

A. Three-quarter.

Q. I will repeat the question. Isn't it the common thing, or hasn't it been done in the Water Department in correcting meters that are found to be incorrect, to take out the gears which are there and replace them with gears with greater or less teeth?

Mr. Devlin—Objected to as irrelevant and immaterial to this case.

(After argument.)

The Court—The Court will permit the question to be answered.

A. Well, once in a great while we might have a meter that has one, two or three per cent. out of the way, which we have changed, like 32 teeth we would put in 33, change the percentage of the meter.

Q. Is that done very often?

A. No; not very often.

Q. Isn't it a fact that there are so many complaints about incorrect meters that you and others have been devoting your time to investigating the complaints that come to the Water Department?

Mr. Devlin—Object to that.

The Court—Sustained.

Mr. Devlin—I object to that line of question. Of course this question is answered, but I object to that line of question.

Q. Then, Mr. Speck, when you examined this meter on this particular day, and read the meter, you were able to say that meter was running correctly?

A. Yes, sir.

Q. Absolutely correct?

A. Absolutely correct.

Q. By looking at the meter?

A. Yes, sir; and the gears on it.

Q. Did you look at the gears?

A. Yes, sir.

Q. How do you look at the gears?

A. Just by lifting the top.

Q. Did you remove the top on this day?

A. Yes, sir; with a screw driver.

Q. What information did you secure from an inspection of the gears?

A. Because you take the manufacturer of that meter they generally use one certain gear 32 and 34 teeth, that is just about what they run.

Q. 32 and 34?

A. About that.

Q. Is that in one gear 32 and 34 teeth?

A. 32 in one gear and 34 in the other.

Q. 32 in one gear and 34 in the other?

A. Yes, they run something like that.

Q. They run about that?

A. Yes.

Q. Do they run differently?

A. About one tooth they might run.

Q. What is the reason for the difference?

A. I don't know; the discs might be a little bit longer.

Q. That makes a difference in water registering?

A. We don't send meters out without giving the consumer the benefit of the doubt. About two, three, four

per cent. of meters tested that goes out really is slow, they are not fast; in fact, that is the way they come from the factory.

Q. This particular meter you found to be correct. You say it was correct when it was put in there?

A. Yes, sir.

Q. In 1911?

A. In 1911.

Q. You didn't inspect it from that day until the day you went down there?

A. I have been there, I think, and might have read it, maybe; I used to read meters, too.

Q. You testified on direct examination that you did not examine the meter after it was placed in there, didn't you?

A. That I didn't touch it.

Q. That you didn't examine or inspect this meter after it was placed in there?

A. Until 1914.

Q. Didn't you testify on direct examination that you did not examine it at that time to see it was read correctly?

A. I examined it in 1914 when I changed the gears. I said I hadn't touched the meter since 1914 only—

Q. When did you change the gears?

A. In 1914.

Q. How many days after you first went out and had this conversation with Mr. Cohn?

A. About two days after.

Q. You didn't examine the meter the first day you went there, did you?

A. Yes, I did, and took the reading of the meter, too.

Q. You read it and examined it?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. And found it to be correct?

A. And found it to be correct.

Q. You know it had been correct all the time it was there?

A. I know it was correct when it was installed, and the same gears were on it.

Q. You don't know whether it was or not?

A. I know the seal I put on in 1911 was still on the meter.

Q. Did you put the seal on?

10 A. Yes, sir.

Q. When you inspected the meter?

A. When I installed the meter I put the seal on.

Q. Did you inspect the meter before it was installed?

A. I don't remember whether I tested it or Bibbins.

Q. What does the seal mean?

A. It means you can't remove the top without breaking it.

Q. You don't remember what condition it was in then when it was installed?

20 A. It was a new meter, just come from the factory.

Q. You didn't examine it that you recall?

A. I don't remember whether I tested it or Bibbins tested it.

Q. You don't know what style of gears were there?

A. I think 32 and 34 on it.

Q. You think, but you don't know?

A. I don't remember whether Bibbins or I tested it; which ever tested, it was marked with a tag on "Tested, O. K."

30 Q. Now, Mr. Cohn asked you whether the meter could be fixed?

A. Yes, sir.

Q. You hadn't said anything to him before that about fixing it?

A. No, sir.

Q. He said, "Can it be fixed," and you said—

A. I said, "Yes, I can fix it."

Q. For money?

A. I didn't say money.
Q. You didn't say money?
A. No.
Q. You didn't talk about money?
A. No, I didn't.
Q. Who talked about money?
A. Nobody at that time; he said he would make it right.
Q. Wasn't anything said about it?
A. No.
Q. He said he would make it right; you didn't specify any amount?
A. No, sir.
Q. Anything else said that day?
A. That evening, you mean?
Q. Was that in the evening?
A. No, it was at night when he gave me the money.
Q. I am talking about the first day you went out, what time of day?
A. Somewheres around noon.
Q. Was there anything else said at that time besides what you have testified?
A. No.
Q. He is a man you had never met up to that time?
A. I don't know whether I ever had a conversation with him; I have seen him lots of times around.
Q. Did you know who he was?
A. Yes.
Q. Was there anybody else in the place?
A. At that time?
Q. Yes.
A. I don't remember; I don't think so.
Q. Was the bar tender there?
A. I don't think so; no.
Q. Did you tell him when you would be back, or what you would do?
A. I told him I would be around and fix it for him.
Q. When?

A. I went around two nights afterwards.

Q. What did you bring with you?

A. The gears.

Q. What kind of gears?

A. The gears for the clock and the spindle.

Q. What type of gears were in this meter?

A. You mean the ones I put on?

Q. The ones in there.

A. I think somewheres around 32, 31; somewheres around that.

Q. 32 and 31?

A. I think—I am not sure.

Q. What is the correct—

A. They run 31 and 32.

Q. On each gear?

A. On a three-quarter meter.

Q. On each gear?

A. Yes.

Q. 31 or 32?

A. Yes, somewheres around that.

Q. Aren't the gears different in size?

A. They run pretty near all the same on the three-quarter meter.

Q. How many gears are there, two?

A. Yes.

Q. Each of these two gears in that meter running correctly from the time you inspected it was 31 or 32?

A. Yes.

Q. Each one the same size?

A. Yes.

Q. What style meter is this?

A. It is a Neptune, three-quarter; some call it a Trident.

Q. What gears did you bring there?

A. Somewheres around 13 and 50.

Q. 13 and 50?

A. Yes.

Q. You mean 13 teeth in one?

A. Yes; and 50 on the clock.

Q. There are two gears below the clock?

A. There is one gear below the clock and one on the clock.

Q. And the one on the one below the clock has how many teeth?

A. I put 13 on it, or 12; somewheres around that.

Q. And 50 on the top?

A. Yes.

Q. Did you take a memorandum of that?

A. No; but I know what they run, them large gears.

Q. Where did you get those gears?

A. In the shop.

Q. Who made them?

A. They were there.

Q. I suppose they were there, or you wouldn't get them. Who made them?

A. They were taken from an inch meter.

Q. What kind of meter?

A. Same kind of meter. Each size meter has different size gears.

Q. A Neptune meter?

A. Yes.

Q. What was this other size meter used for?

A. That was an inch meter.

Q. What was it used for?

A. Factory purposes and different purposes; apartment houses.

Q. Is the rate different in factories than department houses?

A. I don't know nothing about the rates.

Q. Did you secure from that size meter these two gears and go out there two nights later?

A. Yes.

Q. What time of the night?

A. I should judge between half past seven and eight o'clock.

Q. Anyone know you were coming?

A. Not as I know of.

Q. You didn't tell Mr. Cohn you were coming?

A. I told Mr. Cohn the day I was out there I would be out some evening.

Q. You didn't tell him the evening?

A. Didn't specify.

Q. Who was there when you went out?

A. Don't remember; I think there was one or two in the bar; I couldn't say.

Q. Was the bar tender there?

A. I don't recall that.

Q. Did you go in the bar room?

A. Yes.

Q. And went down cellar?

A. Cohn took me down cellar.

Q. Did he go down with you?

A. Yes, sir.

Q. How long were you down there?

A. I should judge ten or fifteen minutes.

Q. You broke the seal?

A. Yes.

Q. You had done that two days before?

A. I put another one on.

Q. Two days before that?

A. What?

Q. Did you put another on two days before?

A. That was broken.

Q. Why did you say you broke the seal, after I asked you?

A. I broke it two days before.

Q. When you went down this night, the seal was broken?

A. Yes.

Q. You took the clock off?

A. Yes.

Q. And tested the gears?

A. Didn't test the gears, changed the gears.

Q. How long did it take, eight or ten minutes?

A. About ten minutes.

Q. What mechanical work did you have to do in order to effect that change?

A. Had to use a screw driver, take the bonnet off and the clock lifts right off.

Q. Mr. Cohn was there all the time?

A. Yes, sir.

Q. Did you tell him what difference that would make in his water bill?

A. Yes, sir.

Q. What difference does it make?

A. I should judge it would make about 60 per cent., between 50 and 60 per cent.

A recess was here taken until two o'clock.

AFTER RECESS.

Charles H. Speck resumes the stand.

Continuation of cross-examination, by Mr. Heher.

Q. Did you look for the book that you said you had?

A. Mr. Lee has got it; I happen to remember he sent up for it Saturday morning and got it then.

Q. Mr. Speck, you say that the standard of gears is 31 or 32?

A. Right close to that, 31, 32, some is 32–34.

Q. You mean one is 32–34?

A. Yes, sir.

Q. There must be some standard.

A. Take a meter that is manufactured, there is always a trifle percentage difference, one or two per cent., just out an extra tooth to bring it up.

Q. Then there is no standard?

A. There is a standard, yes, I think 32-31 is the standard.

Q. 32 and 31?

A. I think the standard is. I can tell you in a minute. 32-34 is the standard (referring to book).

Q. 32 and 34?

A. Yes.

Q. Passing that for a minute, will you please look at your book and tell us when you made this visit to Cohn's place of business?

A. I don't remember the date I made the change. You want the date?

Q. You said it was in the book?

A. The date the meter was installed is in the book.

Q. Give us that.

A. July 23, H. Cohn, 36 Chestnut Avenue, ¾ Trident.

Q. What is that?

A. That is the name of the meter.

Q. I thought you said it was the Neptune?

A. They go under the same name.

Q. Where is the year?

A. This book was all 1911.

Q. Is there any designation of the year?

A. No, it is 1911; they were all put out the same time.

Q. Where from your record can you tell it was 1911?

A. Only by the book, the record.

Q. What book?

A. This book gives 1911.

Q. Where is it?

A. It is when they were installed; I know in 1911.

The Court—Is there any dispute about the time when the meter was installed?

Mr. Heher—Yes, Mr. Wittenborn testified it was July 23, 1912. This witness insists it was 1911.

The Witness—I ain't sure 1911; I am not sure.

Q. You said half a dozen times you were sure.

A. I ain't sure whether it was 1911 or 1912; I can't remember that far back.

Q. You are not sure?

A. No, I am not sure; I don't know exactly.

Q. Where is the entry in your book showing the day you went out to investigate this complaint?

A. I have no record of that.

Q. Didn't you testify this morning you had a record of that?

A. No, the date it was installed, that is all. We keep no record of any investigation made.

Q. Didn't you testify this morning that you could tell from your book what month in the year 1914 you went out to Cohn's place to investigate the complaint about the meter?

A. I had reference to the time it was installed. I never kept a record of investigations made.

Q. Wasn't all our investigation this morning regarding the time you went to fix the meter?

A. 1914.

Q. When was it in 1914?

A. I can't tell exactly when; it was in 1914.

Q. How do you know it was 1914?

A. Because I am sure it was 1914.

Q. You were sure this was 1911, now you say you are not sure.

A. I am sure about this.

Q. What makes you sure it was 1914?

A. I am mostly sure it was 1914.

Q. Is there any reason for that assurance?

A. No.

Q. Have you any record fixing it as 1914?

A. No.

Q. Have you any record which would give you any idea as to what month it was?

A. I guess Mr. Wittenborn has all them records.

Q. You don't know yourself?

A. The office keeps all them records.

Q. You went out to the Cohn place in response to a direction from Mr. Wittenborn?

A. Yes, sir.

Q. After a complaint had been made about an excessive charge?

A. Yes, sir, a high bill; I went out about a high bill.

Q. You took the bill with you?

A. Yes, sir.

Q. And ascertained that the meter had been read correctly?

A. Yes, sir.

Q. Just what did you do with the meter?

A. I told him the meter reading was correct.

Q. You looked at the—

A. I took the gears off, the clock off,—it only takes a second,—and seen the right gears was on there within one per cent., and in conversation I told him the meter was correct and the bill was right, and he spoke to me about whether I couldn't fix it.

Q. You don't know when this was?

A. No, I don't remember.

Q. Did you make a report to Mr. Wittenborn of what you had done the day you read the meter?

A. That the bill was correct.

Q. Did you make a report to Mr. Wittenborn?

A. Marked the bill; marked on the bill "O. K."

Q. And left it?

A. We always do mark on the bill.

Q. You left it with whom?

A. With Cohn.

Q. Did you make any report to Mr. Wittenborn of what you had done that day?

A. I always made a report that I found the reading right and the bill was right, that is about all.

Q. You did make a report?

A. Not a written report.

Q. Now, Mr. Speck, when did you come to the conclusion this was in 1914 that you went out there; when did you come to that conclusion?

A. I know it was right after my father died; he died in 1913.

Q. What time in 1913?

A. Died the 20th of August; I know it was after that.

Q. How do you know it was after that?

A. Because I know it was after that; I remember that.

Q. What connection did your father's death have to do with this particular visit to Cohn's saloon?

A. Didn't have any particular—I know it was after that.

Q. You had been visiting places without number both before and after your father's death, had you not?

A. What?

Q. You had been visiting numerous places for the purpose of reading and inspecting meters?

A. Yes.

Q. How do you fix your visit to this place?

A. Because I know this place was the place I changed the gears on the meter.

Q. Did you change the gears on the meter in any other place?

A. Yes, two other places in the city.

Q. How many places all together?

A. Two other places; three all together.

Q. Did you change the gears or adjust the meter any other place?

A. No, sir.

Q. Was this the first one?

A. No, sir.

Q. This was not the first one?

A. No, sir.

Q. At the time you went to Mr. Cohn's place you had already started?

A. Only one beforehand.

Q. Changing gears on the meters?

A. Only one beforehand.

Q. You had changed one beforehand?

A. Yes.

Q. You say you didn't talk to Cohn about fixing his meter?

A. No, sir.

Q. Did you ask for any money?

A. No, sir.

Q. He was the one who spoke about it?

A. He was the one who spoke about it; he is the one that handed me the money.

Q. How long before this visit did you adjust or fix the other meter you speak of?

A. I should judge maybe it was maybe a month's difference, maybe three weeks; don't remember just exactly.

Q. This, you say, was after your father's death?

A. Yes, sir.

Q. How do you know that?

A. Because I know my father was Excise Commissioner in 1913; it was after that it happened.

Q. How long after that?

A. It was, it may have been five or six months after that.

Q. You don't know exactly?

A. No.

Q. Couldn't it have been a year after that?

A. No.

Q. Haven't you stated it was in March, 1915?

A. No—changing the gears?

Q. What you testified.

A. I said 1914.

Q. What?

A. In 1914.

Q. Did you fix the month?

A. I don't remember the month.

Q. Was it in the fall?

A. I don't remember that.

Q. Or the summer?

A. I don't remember that.

Q. It was at least six months after pour father's death?

A. I should judge it was somewheres around that; I don't just remember.

Q. This meter was installed in 1912?

A. Well, it might have been; I ain't so sure; I was under the impression it was 1911.

Q. Had you been out there to examine the meter for any purpose between the time it was installed and this visit you now speak of?

A. Do you mean from the time it was installed?

Q. Until the night in 1914 you went there and adjusted it.

A. No, I hadn't been there.

Q. You hadn't been there?

A. No.

Q. You hadn't seen Mr. Cohn in that time?

A. No.

Q. Hadn't talked to him?

A. No.

Q. Previous to this time?

A. Only the time I went there with the high bill.

Q. I mean between those times there was no discussion?

A. No.

Q. No proposition made to you by Mr. Cohn or anyone to go out there and fix that meter?

A. No.

Q. When you went out there with the bill in 1914 you went there with perfectly innocent intentions?

A. Yes.

Q. You didn't intend to do anything wrong?

A. No, I did not.

Q. Although you had prior to that time fixed and adjusted some other meter?

A. One besides that?

Q. At this time you told Mr. Cohn his meter was correct?

A. Yes, I told him his meter was correct and his bill was correct.

Q. Did you tell him you had fixed a meter any other place before that?

A. No, I did not.

Q Did he ask you whether you had?

A. No, he did not.

Q. On the subsequent second night when you went there, you went down cellar with Mr. Cohn?

A. Mr. Cohn took me down the cellar.

Q. He was there during the whole time you worked on the meter?

A. Yes, sir.

Q. There were people in the saloon?

A. I think there were a couple in there playing cards; I am not sure.

Q. You said it was half past seven and eight o'clock?

A. I should judge so.

Q. The bar tender was there?

A. I don't recall whether or not he was.

Q. Who tended bar when Mr. Cohn was down cellar?

A. There were a couple sitting at the table; there may have been one or two in the bar.

Q. You were down there eight or ten minutes?

A. I should judge maybe that long.

Q. It was then that you say Cohn suggested you go to his brother-in-law's?

A. Yes, sir.

Q. You didn't suggest that to him?

A. No, sir, I did not.

Q. Tell us the conversation about that; what did he say?

A. Who?

Q. Cohn.

A. He said his brother-in-law wanted to see me, Lavine.

Q. Said he wanted to see you?

A. Yes.

Q. Did you explain to him or tell him how you were fixing this meter, the difference it would make in his water bill?

A. To Cohn?

Q. Yes.

A. Yes.

Q. What did you tell him?

A. I told him he could use plenty of water.

Q. He was paying for some of it, wasn't he?

A. He wasn't going to run the urinal all the time like he could when he had the meter fixed.

Q. How much did you tell him he would pay for the water he used?

A. I told him he would pay for about half of what was being used.

Q. About half?

A. Yes.

Q. Did you explain to him the system of the gears and the changes you made in order to bring this about?

A. Told him I was going to change gears.

Q. Told him what you were going to do?

A. Just change gears.

Q. Tell him what difference it would make besides the fact that he could use just as much water?

A. Told him he could use plenty of water.

Q. You say the standard gear is 32-34?

A. Yes, they run about that, 32-34?

Q. The gears you put in were 50-13?

A. About 50-13, might have been 51.

Q. That is four to one?

A. About four to one.

Q. In other words, he would pay for 25 per cent. of the water which went through his meter?

A. I don't know how the meter tested out. I can't tell that. I didn't test the meter out.

Q. You are a meter man?

A. Yes.

Q. You know if you change the ratio four to one a man is going to get four times as much as he received before?

A. I didn't test the meter out; I know he could get—

Q. What do you mean by testing out?

A. When the meter was taken out I didn't have anything to do with testing meters.

Q. Tell what you told him.

A. He could use plenty of water and do plenty of running the urinal.

Q. Did you saiy to him at that time he would get 50 per cent. more water for the same money?

A. I don't think I said that.

Q. You just said that yourself?

A. I said he could use plenty of water.

Q. Didn't you use the term 50 per cent. a moment ago?

A. I don't think I did.

Q. You don't think you did?

A. No, not 50 per cent.

Q. You are conscious of what you are saying?

A. Sure.

Q. You don't recall saying that?

A. No, I don't remember saying that.

Q. Didn't you tell him that night how much more water he would get for the same money?

A. I told him he could go ahead and use plenty of water and do plenty of running the urinal.

Q. You said nothing else to him?

A. I don't remember.

Q. Was it then he spoke about his brother-in-law?

A. Yes, sir, that night.

Q. He gave you the ten dollars without anything being said about money?

A. Yes, gave me the ten dollars.

Q. Just handed you the ten dollars?

A. Yes.
Q. You took it?
A. Yes.
Q. It wasn't any bargain you made whereby he was to pay you money?
A. No.
Q. He asked you if you could fix it, and you said—
A. I could fix it.
Q. There was nothing said about money?
A. There was nothing. He said he would make it right with me.
Q. He said he would make it right?
A. Yes.
Q. What did you expect in the way of its being made right?
A. I didn't expect—I expected money, I suppose that is what he meant.
Q. You supposed that was what he meant?
A. Yes, I supposed that was what he meant.
Q. You expected to take just what he gave you?
A. I certainly did.
Q. Nothing else?
A. Yes.
Q. If he gave you fifty cents you would take it and say nothing?
A. I don't think he would do that.
Q. Did he have any idea then the difference which would result in his water bills?

Mr. Devlin—Object to that.

Q. From what you told him?

Mr. Devlin—Object to that also.

The Court—You may ask him what he told Cohn, but not what idea Cohn got from what he told him.

Q. Did you tell him that night, Mr. Speck, the difference which would result in his water bills under this arrangement?

A. The only remark I passed, he could use plenty of water and run the urinal, didn't have to be afraid.

Q. Didn't you use 50 or 60 per cent. a few minutes ago?

A. That is what it would amount to—I didn't tell him that; I told him he could use plenty of water.

Q. According to your testimony it would be 75 per cent., would it not?

A. No, it would register, I should judge, about 40 feet out of every hundred.

Q. Forty feet out of every hundred?

A. Yes.

Q. There would be 60 feet that would not be registered?

A. There would be 60 feet that would not be registered.

Q. Under this arrangement of gears, 50-13, wouldn't he get 75 per cent. of the water without being compelled to pay for it?

Mr. Devlin—Isn't that a fair argumentative question?

(After argument.)

The Court—He may have some knowledge of what these changes would result in. You may proceed.

Q. The water would run consequently according to standard if the gears were 32-34?

A. It would test out within maybe one per cent.; you might have to change the gear from 32 and make it 33, it would only be one per cent.

Q. In other words, meters are not exactly correct?

A. Well, a meter is correct—they give the consumer always the benefit of it. A meter turned out from the factory is always one or two per cent. slow, always.

Q. But they get faster, don't they?

A. No, they don't get faster.

Q. Do you know of any meter which went faster than it should?

A. If it had been tampered with, yes.

Q. Did you tamper with any to make them go faster than they should?

A. No, I did not.

Q. If the gears were arranged so they would be 50 and 13, it would go four times at least as fast as it did?

A. Slow, you mean.

Q. No, 32 and 34.

A. Slower?

Q. Yes.

A. I wouldn't say whether it was 13 or 15, and 51, but it—

Q. Don't you know what you put in there? You have testified it was 50 and 13; is that a fact or not?

A. It was large gears.

Q. Do you know what gear it was?

A. It was around 50.

Q. You don't know exactly?

A. Not just to the one tooth, no.

Q. Do you know how much the small one was?

A. It was 1913, I am pretty sure, or 15, I wouldn't say, but it was a small gear, either one or two.

Q. Did you take any record of this?

A. Of what?

Q. Of the gears which you put in that meter on that day?

A. No, but I know they were slow gears.

Q. You mean to say you went out there and changed this meter and put in gears without knowing exactly how much you were giving this man?

A. Within a couple of teeth; I know they were slow gears.

Q. And on this day, then, that you told him he could use all the water he wanted without telling him how much he was going to gain in the way of water

or reduction in his bills, he told you to go see his brother-in-law?

A. Yes, sir.

Q. Tell you who his brother-in-law was?

A. Yes, sir.

Q. Was there any other conversation that night?

A. Not that I recall, no.

Q. Did you see him again after that?

A. I don't think I saw him again until,—I don't know whether it was in 1915 or 1916, I don't remember. They have a record of it, another high bill.

Q. It was in 1916, was it not?

A. I don't remember; Mr. Wittenborn has all them records.

Q. Showing you that bill, Mr. Speck, did you ever see that bill before (handing bill to witness). That is a bill dated October 1st, 1916, running from July 1st to October 1st; amount, $7.92?

A. I don't remember.

Q. Do you remember whether that was the bill which you had when you said the meter was incorrectly read?

A. I don't remember whether that was the bill or not. Mr. Wittenborn at the office has a record of that.

Q. Have you any way of determining when you went out there in response to this second complaint?

A. This complaint here which you speak of?

Q. Yes.

A. No, I don't remember.

Q. Mr. Cohn went down to the office and complained to Mr. Wittenborn?

A. I don't know whether he did or not; Mr. Wittenborn gave me the bills.

Q. He gave you the bills to go out and investigate?

A. I don't know whether that was the bill or not. He gave me the bill.

Q. Did he give you a bill?

A. Yes.

Q. You went out and found the meter had been incorrectly read?

A. I found the meter had been incorrectly read at that time.

Q. That was a fact?

A. That was a fact, yes, sir.

Q. You made a report to the office?

A. Yes, sir.

Q. And the bill was changed?

A. The bill was rectified, yes; I think it was.

Q. Did you see Mr. Cohn this time?

A. Yes, I think I did.

Q. You think you did; do you know?

A. I am pretty sure I did.

Q. You were talking to his bar tender, were you not, at that time?

A. His bar tender was upstairs; he didn't come down.

Q. Weren't you talking to the bar tender?

A. I don't remember whether I was or not; I don't think I was, though.

Q. Didn't you go back two or three days later and ask for Mr. Cohn?

A. I don't remember whether I did or not.

Q. You remember that, don't you?

A. No. If I go to a party's house to look about a high bill, I have got to see the proprietor or owner of the place about it. What has the bar tender to do with a high bill?

Q. Would it be necessary to see the proprietor after you had read the meter and found out it had been incorrectly read?

A. Yes.

Q. Was it necessary to see the proprietor after you had seen the meter?

A. Yes, I notified him there was a mistake made.

Q. Why notify him?

A. I should think—he is the man that pays the bill.

Q. Why didn't you notify the office?

A. Yes, notified the office too.

Q. You say you saw Mr. Cohn on the first day after you went out there; when I asked you whether you went back two or three days later you said you didn't remember.

A. I don't remember going back; I remember going there once and seeing Mr. Cohn, that is all; it was around noon, sometime; don't remember what day it was.

Q. Every time you went out there it was around noon, except this night?

A. No.

Q. Do you mean to say you didn't go back to Cohn's place two or three days after you visited there and learned the meter had been incorrectly read?

A. No.

Q. You mean to say you did not?

A. I did not.

Q. You are sure of that?

A. Yes, I am sure of it.

Q. You saw Mr. Cohn on the first day?

A. I saw Mr. Cohn on the first day, and we both went down and looked in the meter together.

Q. Went where?

A. Down cellar together, Cohn and I.

Q. Cohn and you went down?

A. Yes.

Q. You told him the meter was incorrectly read?

A. Yes.

Q. Did you mark it on the bill?

A. I don't know whether I did or not.

Q. What did you do with the bill?

A. I think I left it with Mr. Cohn.

Q. You left it with Cohn?

A. I think I did.

Q. Isn't it your practice to take them back to the office?

A. No.

Q. You did make a report to the office?

A. Yes.

Q. You didn't go back after that?

A. No, I didn't.

Q. You are sure of that now?

A. Yes, I am sure of it.

Q. Did Mr. Cohn say anything to you then about the office?

A. No.

Q. Didn't talk to you at all about that?

A. Only said it was an awful bill.

Q. Did he say anything about the meter being adjusted?

A. No, not at that time.

Q. You didn't say anything to him?

A. He knowed it was adjusted.

Q. I suppose he did from what you say. I am asking you whether he said anything to you about that?

A. Not at that time, no.

Q. Did you say anything to him about it?

A. No.

Q. There wasn't a word said?

A. No, sir, there was not.

Q. Now, Mr. Cohn, when he wanted to complain about the meter didn't go to see you and complain about it, did he, at this time?

A. No, he went to Mr. Wittenborn.

Q. He went to the office and complained?

A. And wanted me sent there.

Q. Were you there?

A. Where?

Q. When he went to the office?

A. No, I met Mr. Cohn in front of the City Hall before then, and he wanted me to go over; he said he had made a complaint and wanted me to go over.

Q. Haven't you testified you didn't see Cohn from the time you installed the meter?

A. Not at his place of business.

Q. Until you went there and fixed it, and from then on until you went out with the bill to read the meter?

A. In front of the City Hall one day when I was getting in the car, he told me he had a high bill and had made a complaint and wanted me to go out there. I never seen him at his place of business.

Q. He had made a complaint in the office?

A. Yes.

Q. At the time he saw you he said he had made a complaint in the office?

A. Yes.

Q. Did you tell him you would go out?

A. Yes, sir.

Q. You have told us all he said to you?

A. Yes, that is all he said.

Q. But you didn't go out right away?

A. Not that day, no; it might have been a day after or a couple of days after.

Q. You went out when Mr. Wittenborn directed you to go there?

A. Yes, Mr. Wittenborn directed me to go; in fact, Mr. Wittenborn directed me a couple of days, but I was busy and didn't get out there.

Q. He told you a couple of days before Mr. Cohn spoke to you?

A. Yes, before Mr. Cohn spoke to me.

Q. You hadn't gone out there?

A. No, I had the complaint in my pocket at the time.

Q. You have nothing to do with the preparation of the bills?

A. No, sir.

Q. Or the reading of the meters?

A. No, sir.

Q. You didn't read his meter?

A. I verified the reading; I didn't read it the first time.

Q. What do you mean "the first time?"

A. They have meter readers.

Q. You mean from the time the meter was installed in 1912 until the present time, you have been the agent of the Water Works who read his meter?

A. No, sir.

Q. Somebody else did that?

A. Yes, sir.

Q. You had nothing at all to do with the preparation of the bills?

A. No, sir.

Q. You don't know the amount of his bills?

A. No, sir.

Q. Or anything about them?

A. No, sir.

Q. Did you see Mr. Cohn again, with the exception of that time in front of the City Hall and the time you went out to his place and found his meter was incorrectly read?

A. No, sir.

Q. Did you see him from that time until the present?

A. No, sir.

Q. Had no conversation with him?

A. No, sir.

Q. In this conversation in front of the City Hall and on your visit to his place, a day or two afterwards, there was no reference whatever made to what you had done to the meter before?

A. No, sir; he knowed it.

Q. There was no discussion about the change that this adjusting made in the meter?

A. No, sir.

Q. Did you ask him for any money?

A. No, sir.

Q. Are you still in the employ of the city, Mr. Speck?

A. Yes, sir.

Q. Have you been promised anything?

A. No, sir.

Q. For your testimony in this matter?

A. No, sir; I done wrong and made up my mind to tell the truth from the beginning to the end.

Q. Have you been promised that you would retain your position there?

A. No, sir; I have not.

Q. Have you been promised anything from any other—

A. No, sir; nothing.

Q. You plead not guilty when you were arraigned in court?

A. I was advised to do that.

Q. You plead guilty when you were arrested?

A. Yes, sir.

Q. During this period did you tamper with or fix any other meter other than the three which you have spoken about?

Mr. Devlin—I object to that question because I don't think it is material or relevant to this case.

After argument.

Mr. Heher—The main purpose of the question bears on his recollection, the accuracy of his recollection about this particular matter.

The Court—I don't think it is relevant for that purpose. I will overrule it.

Mr. Heher—Exception.

Exception allowed.

Q. Mr. Speck, will you look at these water bills of the Trenton Water Works in the name of Harry Cohn, that is, Haefel Cohn, here called Harry?

A. Yes.

Q. Will you look at the bills for 1914 and tell me which bill Mr. Cohn complained about when you went out there?

A. I don't remember at all anything about that.

Mr. Devlin—I think he ought to be asked if he can tell; this man has not anything to do with the bills.

A. No, I can't; I don't remember what bill it was; I can't remember what bill it was.

Q. January 1st, $8.28?

A. I couldn't tell you.

Q. April 1st, $6.93; July 1st, $7.56, and October 1st, 1914, $10.89; they are not high bills, are they?

Mr. Devlin—Object to that, it is irrelevant.

The Court—I will sustain that objection.

Mr. Heher—Exception.

Exception allowed.

Re-direct examination, by Mr. Devlin.

Q. I show you a water meter and ask you if you know anything about what make of meter that is, or if it is the same make exactly as was in Mr. Cohn's place?

A. Yes, sir; only a smaller size. A larger size was in Mr. Cohn's; a size larger than this was in Mr. Cohn's.

The Court—What size is this?

The Witness—Five-eighths; the next size is three-fourths.

Q. When these meters are put in, is what they call the clock held in any way?

A. Yes, two wires go through these screws here. The meter is sealed here (indicating). Some they are sealing at the couplings now.

Q. Then, I mean.

A. They were sealing them at that time right here (indicating).

Q. That sealing of the meter was supposed to prevent anyone taking off—

A. Taking the clock off.

Q. But the clock has to be taken off to change the adjustment?

A. To change the gears.

Q. When you made that change did you break the seal?

A. Yes, sir.

Q. And took the clock off?

A. I broke the seal two days before that on the high bill.

Q. On looking for the cause of a high bill?

A. To see whether the gears was all right.

Q. When you broke that seal did you put another seal on?

A. Yes, I carried seals.

Q. If I give you a screwdriver, can you show to the jury just what you did?

A. Yes, sir.

Mr. Heher—I object; this is not the meter which was in Mr. Cohn's place when Mr. Speck says he went out there. It is not the meter he tampered with; he says it is a larger one. This meter is an entirely different meter, and I insist most strenuously it is not a proper exhibit in this case. We should either have the meter —I think we should have the meter that was in Mr. Cohn's place.

After argument.

The Court—I would imagine the State will be able to produce either the original meter that was in Cohn's house or one exactly the same size. I think that had better be done before that demonstration is allowed.

MERCER COUNTY COURT OF QUARTER SESSIONS.

THE STATE
vs.
HAEFEL COHN AND CHARLES H. SPECK.
} On Indictment. Bill of Exceptions.

Martin P. Devlin, Prosecutor of the Pleas.
Harry Heher, Attorney for Defendant.

Be it remembered, that on the ninth, tenth and eleventh days of April, nineteen hundred and seventeen, at the trial of the indictment of the above-named Haefel Cohn in said Court of Quarter Sessions before Honorable Erwin E. Marshall, judge of said court, whereby the said Cohn was charged, in the first count, with tampering and interfering with a water meter, and in the second count with aiding and abetting the said Speck to tamper and interfere with the said meter, and in the third and fourth counts with the grand larceny or filtered water, and the trial of said indictment came on to be tried by a jury for that purpose duly impanelled; and thereupon, the said Martin P. Devlin, Prosecutor of the Pleas of said County of Mercer, to maintain the said issue on his part, offered the testimony of the said Charles H. Speck, the stenographic minutes of which is hereto attached.

The only testimony offered by the State as to the time of the alleged tampering with the meter by the defendant Cohn, as set forth in the first count of the indictment, and the time the said defendant Cohn was alleged to have aided and abetted the said Speck to tamper and interfere with the meter, as alleged in the second count of the indictment, was that of the witness Speck, a transcript of which is hereto annexed, and it was undisputed at the trial that the act of tampering with the meter, as alleged in the first count, and the act of aiding and abetting the tampering with

the meter, as alleged in the second count, occurred, if they occurred at all, sometime during the year 1914 and more than two years before the finding of the indictment by the Grand Jury.

There was no evidence of any act of tampering with the meter by the defendant Cohn, or anyone else, or that the said Cohn aided and abetted the said Speck, or anyone else, to tamper with the said meter, except the acts testified to by Speck as shown on the annexed transcript.

The State offered evidence to show that the meter continued in the alleged altered condition testified to by Speck from 1914 until October, 1916, and that during that time the Inhabitants of the City of Trenton conveyed water from its reservoir through its mains to the service pipe of the defendant Cohn, and from its mains through said service pipe and the said meter into the premises of the said Cohn, for which he paid rent in accordance with bills rendered by the city.

The defendant moved for the direction of a verdict in his favor, at the close of the State's case, for the same reasons advanced in support of his motion for the direction of a verdict at the close of the whole case, and hereinafter set forth.

Whereupon counsel for the defendant Cohn made exceptions to said ruling of said judge, and prayed that said judge would set his hand and seal to this bill of exceptions; and it is sealed accordingly

ERWIN E. MARSHALL, *Judge.*

The defendant, Cohn, was thereupon sworn and denied each of the charges contained in the said indictment, and the truth of the evidence adduced by the State in support of said indictment and each count thereof.

The defendant thereupon moved for the direction of a verdict in his favor on each of the counts in said indictment, separately, on the ground that the evidence

failed to show the commission by him of the crimes attempted to be charged in said counts. A motion was made on this ground as to each count separately, and denied separately.

The defendant moved for the direction of a verdict in his favor on the first and second counts, separately, on the grounds that the offenses alleged to have been committed in the first and second counts occurred more than two years before the finding of the indictment, which was in February, 1917, at the January Term, 1917, and for that reason were outlawed; on the ground also that there was a substantial variance between the allegations of the said counts and the proofs; on the further ground that no crime was charged by either the first or second counts of the indictment, and that the evidence in respect to said counts did not show the commission of a crime or crimes by the defendant; on the further grounds that the first and second counts each failed to charge a crime under the statute; that the said counts did not aver that the meter alleged to have been tampered with was a meter of a water company, or was owned by a water company; that neither count averred that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant Cohn through said meter; that the first count failed to allege that the tampering and interfering with said meter was done by the defendant Cohn for the purpose of obtaining water with intent to defraud a water company, and the second count failed to allege that the tampering and interfering with the said meter was done by the defendant Speck for the purpose of obtaining water with intent to defraud a water company; that the second count failed to allege that the defendant Cohn aided and abetted the said Speck in the commission of a crime under the statute; because the said count failed to allege that the defendant Cohn aided and abetted

Speck in the commission of a crime of which the said Speck had been convicted.

The said defendant moved for the direction of a verdict on the third and fourth counts, on the grounds that there was no evidence of the commission of the crimes attempted to be charged in said two counts, and that the evidence failed to show the larceny of stored filtered water, as charged in said counts.

He also moved for the direction of a verdict on the indictment as a whole, on the ground that there was a misjoinder in joining in the indictment three counts charging the defendant Cohn and the defendant Speck jointly with the commission of offenses therein alleged to have been committeed, with one count charging the defendant Cohn with aiding and abetting the commission of an alleged crime.

Whereupon, counsel for the defendant, Cohn, made exception to each of said rulings of the Judge, separately, and prayed that said Judge would set his hand and seal to this bill of exceptions, as to each exception to said rulings, separately; and it is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

The defendant, Cohn, thereupon made a motion that the State be compelled to elect on which count of the indictment the case should be submitted to the jury, which motion was denied.

Whereupon, counsel for the defendant, Cohn, made exception to said ruling of the Judge, and prayed that said Judge would set his hand and seal; and it is sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

CHARGE.

MARSHALL, *J.*

Gentlemen of the Jury—This defendant, Haefel Cohan and Charles H. Speck, were jointly indicted by the Mercer County Grand Jury at the January term,

on an indictment containing four counts. Each of these counts charged an offense.

The first count charges Cohan and Speck jointly with unlawfully tampering and interfering with the meter placed in the premises of Haefel Cohan at 36 Chestnut Avenue.

The second count charges Cohan with unlawfully aiding, assisting, procuring, inciting and abetting Charles H. Speck to unlawfully tamper with and interfere with the water meter.

And the third count charges grand larceny—alleges that the defendant on the twelfth day of March, 1915, and thence continually until the first day of January, 1917, with force and arms, and so forth, did feloniously steal certain quantities of water, stored and filtered, therein mentioned.

The last count is in similar form and charges grand larceny. The last count charges larceny on the first day of December, 1916.

Under this indictment, gentlemen, in case you find he is guilty of any offense, your verdict may be a general verdict as charged, or there may be a verdict of guilty as to one or more counts of the indictment and not guilty as to the others. This, of course, is assuming that the defendant is guilty at all, under any count.

It might be well to define the crime of larceny. This crime is the unlawful and fraudulent taking and carrying away of the goods of another person, without any claim or right thereto, and with the fraudulent intent of depriving the real owner permanently of the use of them. Grand larceny is where the value of the goods so taken and carried away is over and above twenty dollars. Where the value is below that amount the crime is petit larceny only.

This defendant, as all defendants in criminal proceedings, is presumed to be innocent until his guilt has been established beyond a reasonable doubt, and

it is the duty of the State to establish his guilt beyond a reasonable doubt.

Reasonable doubt, of course, is just what the term signifies. It does not mean any possible doubt, no conjectural doubt—but it means, and has been defined in our courts to be, that condition of the mind, when, after having weighed all the facts and testimony in the case the jurors' minds should be then unconvinced of guilt, the defendant should then be entitled to that reasonable doubt, for that is reasonable doubt.

In this case, of course, it is essential in order to convict of larceny, there shouuld first be larceny established, and, secondly, that this defendant is guilty of that larceny.

The testimony in this case, as the State has endeavored to present it by its witnesses, charges that the defendant unlawfully and corruptly used certain quantities of water belonging to the Inhabitants of the City of Trenton, in other words, that he took it. The Trenton Water Works, through its commissioners, operates a plant in this city for the storage and distribution of water to all the inhabitants of the city. They maintain a centrally located pumping station by means of which water is pumped from the Delaware River to a filtration plant, where it is filtered for the purpose of removing impurities and treated, I think, with some chemical and then pumped to the reservoir where it is stored for the purpose of distribution to people throughout the city by means of water mains and service pipes leading to the houses from the street. In certain classes of properties, in which saloons and hotels are included, the city has installed water meters for the purpose of measuring the quantity of water used by the consumer and for the purpose of determining the amount for which he is to pay.

A water meter was installed, according to the testimony in this case, in the property of the defendant at 34 Chestnut Avenue. The meter if properly regu-

lated and tested, it is stated, will show the actual quantity of water which passes through the meter and used by the consumer. In this case the State charges that the defendant procured or requested one Charles H. Speck, who is a joint defendant in this indictment, to alter this meter so that the meter would not register all the water which passed through it. The State charges that this meter was altered in the presence of this defendant, with his knowledge, consent and at his request. And that afterwards the defendant paid Speck the sum of ten dollars. The State further charges that after the alteration of the meter by removing certain gears and substituting certain gears, large quantities of water passed through the meter without the meter registering, and for which the defendant therefore received no bill from the City of Trenton.

I think the evidence of Speck discloses that this change was made some time in 1914. Up until 1916, there seems to have been no inspection of the meter, so far as the inspection of this meter discloses. Something at that time caused the city authorities to have this meter taken out and taken to the workroom or workshop of the Trenton Water Works and there placed on a machine for the purpose of testing its accuracy.

The State has called as witnesses Mr. Heil and Mr. Bibbins, who have described to you exactly what was done with that meter at that time. They disclosed the fact that it was placed upon this testing machine and that the meter would not register but about twenty-five per cent. of the water that was passing through it. The State charges that this inaccuracy on the part of the meter was due to the fact that the meter had been tampered with by Speck at the defendant's request, and with his knowledge and consent.

If, gentlemen, you find these facts to be true, I charge you then the defendant would be guilty of grand larceny, and might be convicted of that offense.

The defendant denies absolutely he had anything to do with the changing of this water meter, if it was changed. He denies the story of the witness, Speck, that Speck some time in October, 1914, came to his place and went down in the cellar with him and that he asked Speck if he could fix the meter. The defendant denies that. He further denies that Speck, two or three nights later, returned to his place and that he went down in the cellar with Speck while Speck changed or altered the meter so as to make it run slower. Of course, gentlemen, if you find from the evidence in this case that the defendant had no knowledge that the meter was changed, then the defendant will be entitled to an acquittal, notwithstanding the meter might have been changed by Speck or someone else. If it was done without the knowledge and without the consent of the defendant, of course, the defendant could not be held responsible. Another phase of this case. The defendant is entitled to the benefit of any reasonable doubt. You, as jurors, are the sole judges of the weight to be given the testimony of the different witnesses. It is for you to say what credit you will attach to the testimony of the witnesses who appeared before you. You have the right to take into consideration, gentlemen, the fact that Mr. Speck is an accomplice in this case and that he is, and stands before you as, a convicted thief.

Under our law an accomplice is to be treated more rigorougly than an ordinary witness. Anyone who is associated with another in the commission of crime is an accomplice, and each person concerned in the commission of crime may be an accomplice of another, whether he is the actual perpetrator of the deed or not. Such accomplice, notwithstanding his guilty connection with the crime charged, is a competent witness. His testimony, however, should be received by the jury with great caution, tarnished as it is with confessed criminality and testified to, it may be, in the hope of pardon or

leniency in case sentence has not yet been imposed. The jury should not convict upon the testimony of an alleged accomplice, unless corroborated by the testimony of some unsuspected witness or other circumstances in the case. It is not necessary, however, that his testimony should be corroborated on every material fact, for if that were required there would be no necessity for calling him as a witness. The evidence may be circumstantial, but if it tends to connect the person with the crime, it is sufficient. It is necessary, however, that the corroborating evidence should be on some part of the testimony which is material to the issue and should tend to connect the defendant with the crime charged in the indictment.

I have charged you on the subject of reasonable doubt.

There has been testimony offered on the part of the defendant in this case as to his good reputation. The defendant is entitled to have this evidence considered by you. It is not put in for the purpose of showing the defendant could not have committed this crime, because the person who testified to his good reputation knew nothing of this transaction. It is put in because they knew the man and spoke of his previous honesty and fair dealings. Of course, a man with that reputation might commit the crime. He might be the man who committed the crime notwithstanding the fact that in the community in which he resides he has a reputation for honesty and fair dealings. But his previous reputation is one to be taken into consideration by you.

There has been a request sent up by counsel for me to charge on the question of the caution to be given the testimony of an accomplice. I think the Court has already covered that in another part of the charge and I decline to charge other than I have already done.

The jury then retired.

Mr. Heher—I except to that part of the charge "Under this indictment, gentlemen, in case you find he is guilty, your verdict may be a general verdict as charged or there may be a verdict of guilty as to one or more of the indictments, one or more of the counts, and not guilty as to the others. This, of course, is assuming that you reach your conclusion that the defendant is guilty at all."

Also to that portion of the charge which recites that the testimony holds "That the defendant unlawfully and corruptly used certain quantities of water belonging to the Inhabitants of the City of Trenton."

Also that portion of the Court's charge "the meter, if properly regulated and tested, it is stated, will show the actual quantity of water which passes through the meter and is used by the consumer."

Also that portion of the Court's charge which detailed the allegations made by the State and the facts alleged to have been proved by the State and then concludes by saying "if you find these facts to be true, I charge you then the defendant is guilty of grand larceny and may be convicted of that offense."

Also that portion of the charge which states "If you find from the evidence that the meter was changed, then the defendant will be entitled to an acquittal notwithstanding the meter might have been changed by Speck or someone else. If it was done without the knowledge and without the consent of the defendant, of course the defendant could not be held responsible."

I take a general exception to the Court's entire charge.

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

ERWIN E. MARSHALL,
Judge.

STATE OF NEW JERSEY,

I, ERWIN E. MARSHALL, Judge of the Court of Quarter Session of the County of Mercer, do hereby return the stenographic minutes of the testimony of Charles

H. Speck taken at the trial of the above cause, and the bill of exceptions, as a part of the return to the writ of error, so that the same may be made up and included in the state of the case on appeal.

ERWIN E. MARSHALL,
Judge.

NEW JERSEY SUPREME COURT.

THE STATE,
Defendant in Error,
vs.
HAEFEL COHN,
Plaintiff in Error.
} In Error

ASSIGNMENT OF ERRORS.

(Filed October 22, 1917.)

Afterwards, to wit, on the fourteenth day of July, nineteen hundred and seventeen, before our Supreme Court of the State of New Jersey comes Haefel Cohn, by Harry Heher, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the judgment aforesaid, there was manifest error in this, to wit:

1. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

2. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the in-

dictment upon the grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

3. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that there was a substantial variance between the allegations of each of said counts and the proofs.

4. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts in the indictment on the ground that no crime was charged by either of said counts of the said indictment, and that the evidence in respect to said counts did not show the commission of a crime or crimes by the plaintiff in error.

5. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that each of said counts failed to charge a crime under the statute.

6. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the said counts each failed to aver that the meter alleged to have been tampered with was a meter of a water company, or was owned by a water company.

7. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that each count failed to aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant, Cohn, through said meter.

8. Because the said Court, at the close of the State's case, refused to direct a verdict on the first count of

the indictment upon the ground that the said count failed to allege that the tampering and interfering with the said meter was done by the defendant, Cohn, for the purpose of obtaining water with intent to defraud a water company.

9. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the second count of the indictment upon the grounds (a) that it failed to allege that the tampering and interfering with said meter was done by the defendant Speck for the purpose of obtaining water with intent to defraud a water company; and (b) that it failed to allege that the defendant, Cohn, aided and abetted the said Speck in the commission of a crime under the statute.

10. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment upon the grounds that there was a misjoinder in joining in the indictment three counts charging the defendant, Cohn, and the defendant, Speck, jointly with the commission of offenses alleged to have been committed, with one count charging the defendant, Cohn, with aiding and abetting the commission of an alleged crime.

11. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

12. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

13. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that there was a substantial variance between the allegations of each of said counts and the proofs.

14. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts in the indictment on the ground that no crime was charged by either of said counts of the said indictment, and that the evidence in respect to said counts did not show the commission of a crime or crimes by the plaintiff in error.

15. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that each of said counts failed to charge a crime under the statute.

16. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the said counts each failed to aver that the meter alleged to have been tampered with was a meter of a water company, or was owned by a water company.

17. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that each count failed to aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant, Cohn, through said meter.

18. Because the said Court, at the close of the whole case, refused to direct a verdict on the first count of the indictment upon the ground that the said count failed to allege that the tampering and interfering with the said meter was done by the defendant, Cohn, for

the purpose of obtaining water with intent to defraud a water company.

19. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the second count of the indictment upon the grounds (a) that it failed to allege that the tampering and interfering with said meter was done by the defendant, Speck, for the purpose of obtaining water with intent to defraud a water company; and (b) that it failed to allege that the defendant, Cohn, aided and abetted the said Speck in the commission of a crime under the statute.

20. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment upon the grounds that there was a misjoinder in joining in the indictment, three counts charging the defendant, Cohn, and the defendant, Speck, jointly with the commission of offenses alleged to have been committed, with one count charging the defendant, Cohn, with aiding and abetting the commission of an alleged crime.

21. Because the said Court, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

22. Because the said Court, at the close of the whole case, refused to direct a verdict of not guilty on each count in the said indictment.

23. Because the said Court erroneously charged the jury as follows:

> "Under this indictment, gentlemen, in case you find he is guilty of any offense, your verdict may be a general verdict as charged, or there may be a verdict of guilty as to one or more counts of the indictment and not guilty as to the others,"

the said charge being erroneous in this, that under the evidence in the case the plaintiff in error could not

have been convicted under either the first or second counts in the said indictment.

The said plaintiff in error, by reason of the errors aforesaid, submits that the judgment below should be reversed and for nothing holden.

HARRY HEHER,
Attorney of Plaintiff in Error.

Due and legal service of the within Assignments of Error is hereby acknowledged, and I hereby consent to the filing of the same as of time.

Dated October 11, 1917.

MARTIN P. DEVLIN,
Attorney of Defendant in Error.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
HAEFEL COHN,
Plaintiff in Error.
} In Error.

JOINDER.

(*Filed October 20, 1917.*)

And hereupon, afterwards, to wit, on the twentieth day of October, nineteen hundred and seventeen, the said Haefel Cohn, by Harry Heher, his attorney, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned and specified for errors, and that the judgment aforesaid, in manner aforesaid, in all things be affirmed, etc.

MARTIN P. DEVLIN,
Attorney of Defendant in Error.

NEW JERSEY SUPREME COURT.

No. 3, February Term, 1918.

THE STATE
vs.
HAEFEL COHN.

OPINION.

Error to Mercer Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Parker and Kalisch.

For Plaintiff in Error, Aaron V. Dawes. With him on the brief, John A. Montgomery.

For the State, Martin P. Devlin, Prosecutor of the Pleas.

The opinion of the Court was delivered by GUMMERE, *C. J.*

The indictment in the present case contained four counts. The averment of the first count was that Cohn, the plaintiff in error, together with one Charles H. Speck, did unlawfully tamper with a water meter which had been installed by the water department of the City of Trenton in the premises of Cohn, for the purpose of measuring and registering the amount of water used therein; and that this was done with the intent to defraud the municipality by causing the meter to register much less than the actual flow of water through it.

The second count charged that Cohn unlawfully aided, assisted and abetted Speck in tampering with this meter, for the purpose of causing it to register much less than the actual flow of the water through it.

The third and fourth counts charged the defendants,

Cohn and Speck, with unlawfully and feloniously stealing, taking and carrying away 640,400 cubic feet of stored filtered water of the value of $576.36 of the goods and chattels of the City of Trenton.

The trial of the indictment proceeded against Cohn alone, and the jury returned the following verdict against him: "The said Haefel Cohn is guilty of the misdemeanor aforesaid of him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him."

Cohn thereupon sued out the present writ of error to review the judgment entered upon that verdict.

The first assignment of error challenges the refusal of the trial court to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the ground that the offense alleged in each of these counts, if committed at all, had been committed more than two years before the finding of the indictment, and was therefore outlawed. The motion to direct was based upon section 152 of our Criminal Procedure Act (*Comp. Stat.*, *p.* 1870), which declares that no person shall be prosecuted, tried or punished for any offense not punishable with death unless the indictment shall be found within two years from the time of committing the offense.

The record shows that the indictment was presented at the January Term, A. D. 1917. The proof on the part of the State was that the illegal tampering with the water meter installed in Cohn's premises occurred some time during the year 1914; and there was no evidence that it occurred at any subsequent date. The question, therefore, whether the refusal of the motion to direct a verdict upon the first and second counts of the indictment was proper or not depends upon the true construction of the statutory provision upon which these two counts were based. That provision is contained in section 164 of our Crimes Act (*Comp. Stat.*, *p.* 1794), and, so far as pertinent to the present case, is as follows: "Any person who shall without permission * * * connect or disconnect the meters of any * * * water company, or in any other manner, without such permission, tamper or interfere with such meters * * * for the purpose of obtaining * * * water with intent to

defraud such company, shall be guilty of a misdemeanor." The contention on the part of the plaintiff in error is that the crime declared in the statute is a specific one, and becomes complete when the work of tampering or interfering with the meter is entirely finished; while on the other hand it is argued by the State that the crime is not complete unless the purpose which was sought to be accomplished by the tampering with the meter has, in fact, been consummated; that is, unless water has been actually abstracted in excess of the quantity registered; and that, therefore, so long as the water continues to be unlawfully abstracted, the crime remains a continuing one. It is conceded that the abstraction of the water was persisted in until a period well within the two years' limitation, and so we are called upon to determine the soundness of the one contention or the other.

A careful reading of the statute leads us to the conclusion that the purpose of the Legislature as expressed therein is so plain as not to call for judicial interpretation. It declares that any person who shall without permission tamper or interefere with the meter of any water company, for the purpose of fraudulently obtaining water from such company, shall be guilty of a misdemeanor. There is nothing in the statute to suggest the idea that a person who has been guilty of such tampering, and whose intent was to defraud the water company, should escape punishment if his intent is prevented from being carried into execution by a prompt discovery of what he has done, or in any other way. The object of the Legislature was not the punishment of one who feloniously abstracts water which is the property of one of these companies—for that crime, like any other felonious taking, is dealt with in other provisions of the statute—but the protection of these companies against the fraudulent abstraction of water by methods so insidious and secret as not to be readily discoverable. And in order to effect that object the Legislature created an entirely separate and distinct offense which it made punishable without regard to whether the larcenous purpose which led to the tampering with the meter was accomplished or not.

We have not overlooked the contention of counsel for the State that the situation here presented is quite similar,

in its legal essence, to the criminal offense of obtaining moneys by false pretenses; and that the decisions upon that branch of the law should control us in the present case. We fail, however, to perceive the similarity. The wrong which is made criminal by the statute in the class of cases appealed to is not the making of the false pretense, but the wrongful obtaining of money by reason thereof. *State* v. *Crowley*, 39 *N. J. L.* 264.

Determining, as we do, that the crime struck at by the 164th section is complete when the work of tampering with the meter has been finished, we conclude that the motion to direct a verdict of acquittal on the first and second counts should have been granted, and that its refusal was error.

It is insisted on behalf of the State that this error should not result in a reversal of the conviction, for the reason that the verdict returned by the jury was a general one; and it is said to be the settled law of this State that where there are several counts in an indictment, each charging a distinct crime, a general verdict of guilty amounts to a conviction of each separate offense, and even if the verdict cannot be supported as to one or more of the crimes charged it will be upheld as to the offense described in a single good count. That this is the law of the State is not disputed. It was so declared by the Court of Errors and Appeals in the case of *State* v. *Huggins*, 84 *N. J. L.* 254. And so, if each of the several counts in the present indictment had charged a simple misdemeanor, the verdict rendered by the jury "guilty of the misdemeanor aforesaid, etc.," would include all the counts, and the rule in the Huggins case would be applicable. Upon examination, however, the contrary is clearly shown to be the fact. The first count charges a violation of the 164th section, and that section makes a person who shall be convicted under it "guilty of a misdemeanor." The second count, in its legal effect, charges the same offense. It charges Cohn with aiding and abetting Speck in his tampering with the meter; and since the decision of *Engeman* v. *State*, 54 *N. J. L.* 247, it has been considered to be settled that in misdemeanors all who aid, abet or participate are principals, and all equally guilty. *State* v. *Hess*, 65 *N. J. L.* 544; *State* v. *Wilson*, 80

N. J. L. 467; *State* v. *Spence*, 81 *N. J. L.* 265. The third and fourth counts, however, each of them, charge the plaintiff in error with the crime of grand larceny, and this crime, by the 158 section of the Crimes Act (*Comp. Stat.*, 1793), is made a high misdemeanor. The great difference between the two grades of criminality is demonstrated by the punishment which each carries with it. A misdemeanor is punished by a fine not exceeding $1,000, or by imprisonment not exceeding three years, or both, while a high misdemeanor is punishable by a fine not exceeding $2,000, and by imprisonment not exceeding seven years, or both. See *Crimes Act, Sections* 217, 218 (*Comp. Stat., p.* 1812).

The verdict in the present case, therefore, is a specific and not a general one. It has declared the plaintiff in error to be guilty of the misdemeanor charged in the indictment; that is, of the crime set out in the first and second counts of that pleading, and carries with it a liability to the punishment declared against misdemeanors by the statute, viz., a fine, not exceeding $1,000, and imprisonment not exceeding three years, either or both. To transmute the finding of the jury into a declaration that plaintiff in error was guilty of the high misdemeanor charged in the indictment would be to impose upon him a liability to a fine not exceeding $2,000, and to imprisonment not exceeding seven years. The rule in the Huggins case, as we read the opinion, was not intended to, and does not, produce so unfortunate a result.

Looking at the whole case, therefore, the situation disclosed is this: The plaintiff in error having been charged in the same indictment with the commission of an ordinary misdemeanor, and also with the commission of a high misdemeanor, the jury convicted him of the lesser offense. That offense was outlawed at the time the indictment was presented, and, consequently, the verdict is without force. The jury, although the question was submitted to it, failed to pass upon his guilt or innocence of the crime charged in the third and fourth counts of the indictment. In this situation the trial court was without legal power to pass sentence upon the plaintiff in error, and consequently the judgment under review must be reversed.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
HAEFEL COHN,
Plaintiff in Error.
} In Error.

RULE ON REVERSAL

This cause having been duly argued at the February Term, 1918, of this court; and the court having inspected the rcord, proceedings and judgment below, and considered the causes assigned for error;

It is thereupon, on this fifteenth day of August, nineteen hundred and eighteen, ordered that the judgment of the said Court of Quarter Sessions in and for the county of Mercer be in all things reversed, set aside, and for nothing holden.

Entered August 15, 1918,

On motion of
HARRY HEHER,
Attorney of Plaintiff in Error.

I, Enoch L. Johnson, 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 nineteenth day of September, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
(L. S.) *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
HAEFEL COHN,
Defendant and Defendant in Error.
} In Error.

10

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the third day of October, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, comes the said the State of New Jersey by A. Dayton Oliphant, Prosecutor of the Pleas of the County of Mercer, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest 20 error in this, to wit, that by the record aforesaid, it appears that the judgment in form aforesaid was given for the said Haefel Cohn against the said State of New Jersey, whereas, by the law of the land, judgment ought to have been given for the said State of New Jersey against the said Haefel Cohn.

2. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The crime alleged in the first and second counts of 30 the indictment had been committed more than two years before the finding of the indictment.

3. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below refused to direct a verdict in favor of the plaintiff, defendant in error, on the first and second counts of the indictment.

4. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts in the indictment on the ground that no crime was charged by either of said counts of the said indictment, and that the evidence in respect to said counts did not show the commission of a crime or crimes by the plaintiff in error.

5. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that each of said counts failed to charge a crime under the statute.

6. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the said counts each failed to aver that the meter alleged to have been tampered with was a meter of a water company, or was owned by a water company.

7. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that each count failed to aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant Cohn through said meter.

8. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict on the first count of the indictment upon the ground that the said count failed to allege that the tampering and interfering with the said meter

was done by the defendant Cohn for the purpose of obtaining water with intent to defraud a water company.

9. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the second count of the indictment upon the grounds (a) that it failed to allege that the tampering and interfering with said meter was done by the defendant Speck for the purpose of obtaining water with intent to defraud a water company; and (b) that it failed to allege that the defendant Cohn aided and abetted the said Speck in the commission of a crime under the statute.

10. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment upon the grounds that there was a misjoinder in joining in the indictment three counts charging the defendant Cohn and the defendant Speck jointly with the commission of offenses alleged to have been committed, with one count charging the defendant Cohn with aiding and abetting the commission of an alleged crime.

11. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

12. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the

grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

13. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that there was a substantial variance between the allegations of each of said counts and the proofs.

14. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts in the indictment on the ground that no crime was charged by either of said counts of the said indictment, and that the evidence in respect to said counts did not show the commission of a crime or crimes by the plaintiff in error.

15. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment on the ground that each of said counts failed to charge a crime under the statute.

16. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the said counts each failed to aver that the meter alleged to have been tampered with was a meter of a water company, or was owned by a water company.

17. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that each count failed to aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant Cohn through said meter.

18. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict on the first count of the indictment upon the ground that the said count failed to allege that the tampering and interfering with the said meter was done by the defendant Cohn for the purpose of obtaining water with intent to defraud a water company.

19. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the second count of the indictment upon the grounds (a) that it failed to allege that the tampering and interfering with said meter was done by the defendant Speck for the purpose of obtaining water with intent to defraud a water company; and (b) that it failed to allege that the defendant Cohn aided and abetted the said Speck in the commission of a crime under the statute.

20. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment upon the grounds that there was a misjoinder in joining in the indictment three counts charging the defendant Cohn and the defendant Speck jointly with the commission of offenses alleged to have been committed, with one count charging the defendant Cohn with aiding and abetting the commission of an alleged crime.

21. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

22. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict of not guilty on each count in the said indictment.

23. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously charged the jury as follows:

> "Under this indictment, gentlemen, in case you find he is guilty of any offense, your verdict may be a general verdict of guilty as to one or more counts of the indictment and not guilty as to the others."

the said charge being erroneous in this, that under the evidence in the case the plaintiff in error could not have been convicted under either the first or second counts in the said indictment.

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annuled and for nothing holden, and that the said State of New Jersey may be restored to all things that it has lost by occasion of the said judgment, etc.

A. DAYTON OLIPHANT,
Prosecutor of the Pleas of Mercer County, for the State.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Plaintiff in Error,
vs.
HAEFEL COHN,
Defendant in Error.
} In Error.

JOINDER IN ERROR.

And thereupon, afterwards, to wit, on the eleventh day of October, nineteen hundred and eighteen, the said Haefel Cohn, Defendant in Error, by Harry Heher, his attorney, 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 aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid of the New Jersey Supreme Court, in manner aforesaid given, may in all things be affirmed, &c.

HARRY HEHER,
Attorney for Defendant in Error.

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NEW JERSEY, *ss.*

The State of New Jersey to our Justices
(SEAL) *of our Supreme Court,*
GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court before you, between the State of New Jersey, plaintiff and defendant in error therein, and Morris Rudner, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (*Pro ut* the said indictment and the said counts therein), whereof he has been indicted and was thereof convicted by a certain jury of the County of Mercer taken between the State of New Jersey and the said Morris Rudner, and the said indictment having been reversed by the Supreme Court of New Jersey, as it is said, manifest error hath intervened to the great damage of the said State of New Jersey, as from its complaint we have received information; we being willing, in its behalf, to correct the error in due manner, if any there shall be, and that full and speedy justice be done to it, the said State of New Jersey do command you that if judgment be thereupon given, that you distinctly and openly send, under your seal, the record and proceedings and plaint and judgment aforesaid, and also include the entire record of the proceedings had upon the trial of the said cause, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, aforesaid, on the third day of October next, together with this writ, that the record and proceedings and judgment aforesaid being inspected we may cause to be done thereupon for correcting that error what of right and according to law and custom of the State of New Jersey ought to be done.

Witness Honorable Edwin Robert Walker, our Chancellor, and presiding judge of our said Court of Errors and Appeals, at Trenton aforesaid, this fourteenth day of September, nineteen hundred and eighteen.

THOS. F. MARTIN,
Clerk.

A. DAYTON OLIPHANT,
Attorney.

MARTIN P. DEVLIN,
Associate Counsel.

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.

WILLIAM S. GUMMERE
C. J.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

New Jersey Supreme Court

STATE OF NEW JERSEY,
Defendant in Error,
vs.
MORRIS RUDNER,
Plaintiff in Error.

WRIT OF ERROR.

(*Filed June 14, 1917.*)

NEW JERSEY, ss.—The State of New Jersey to the Honorable Erwin E. Marshall, Judge [L. S.] of the Court of Quarter Sessions in and for the County of Mercer, GREETING:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Morris Rudner, of the City of Trenton, in the County of Mercer and State of New Jersey, containing four counts, for tampering and interfering with a water meter, aiding and abetting another to tamper and interfere with the same, and for grand larceny of filtered water (*pro ut* the said indictment and the said counts therein), whereof before you he has been indicted, and is thereof convicted by a certain jury of the county,

taken between the State of New Jersey and the said Morris Rudner, as it is said, manifest error hath intervened to the great damage of the said Morris Rudner, as from his complaint we have received information; we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that full and speedy justice be done to him, the said Morris Rudner, do command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, and also including the entire record of the proceedings had upon the trial of said cause, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the fourteenth day of June next, and this writ, that the entire record and proceedings aforesaid, being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, at Trenton, this twenty-fifth day of May, nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

HARRY HEHER,
JOHN H. KAFES,
Attorneys.

Return to the Writ of Error directed through the writ to the Hon. Erwin E. Marshall, from the Supreme Court to the Court of Quarter Sessions of County of Mercer.

ERWIN E. MARSHALL,
Judge.

MERCER COUNTY, to wit:

Be it Remembered, That at a Court of Oyer and Terminer, holden at Trenton, in and for the said

County of Mercer, on the third Tuesday of January, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Erwin E. Marshall, Judge of the Court of Common Pleas, in and for the said county, according to the form of the statute in such case made and provided, by the oath of Archibald M. Maddock, Frederick Moore, William Zenger, Frank C. Hartman, Roger Henry, Jr., Howard W. Larison, John Drechsler, A. Dayton Oliphant, Clarence S. Grover, William I. Leigh, Clark C. Dilatush, Disbrow Wilson, William Clayton, Asher Wilson, Thomas P. McKee, Joseph B. Margerum, Walter Firth, Sr., Calvin L. Hill, Charles R. Chamberlain, John J. Cleary, William J. Convery, Yaro Yago and Claudius P. Weeden, good and lawful men of the said County of Mercer, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for that body of the said County of Mercer.

It is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

A. M. Maddock, *Foreman.*

Mercer Oyer and Terminer.

January Term, A. D. 1917.

Mercer County, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath present, that Morris Rudner and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the sixteenth day of March, in the year of our Lord one thousand nine hundred and fifteen, and then continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City

of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, did without permission, unlawfully tamper with and interfere with the water meter placed in the premises of the said Morris Rudner at number eight hundred South Clinton avenue, in said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton, for the purpose of measuring and registering the amount of water used therein, and did unlawfully and without permission, during the time aforesaid, alter and change the said water meter and did unlawfully and without permission, during the time aforesaid, remove the gears and other mechanical parts of the said water meter and substitute other parts therefor, anl dil unlawfully anl without permission, luring the time aforesaid, adjust and change the said water meter so that the same did not register all the water that passed through same and did allow more water to flow through the same, during the time aforesaid, than would be properly registered thereby, with intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton; contrary to the form of the statute in such case made and provided, and aganst the peace of this State, the government and dignity of the same.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Morris Rudner, on the sixteenth day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court during the time aforesaid, did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, without permission, to unlawfully tamper and interfere with the water meter placed in his said premises at number eight hundred South Clinton avenue, in

said City of Trenton, by the Trenton Water Works and the Inhabitants of the City of Trenton, for the purpose of measuring and registering the amount of water to be used therein, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck to change the said water meter, without permission, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, during the time aforesaid, to remove the gears and other mechanical parts of the said water meter and to substitute other parts therefor, without permission, and did unlawfully aid, assist, procure, incite and abet the said Charles H. Speck, during the time aforesaid, to adjust the said water meter so that the same did not register all the water that passed through same and did allow more water to flow through same than would be properly registered thereby, without permission, with intent to defraud the Trenton Water Works and the Inhabitants of the City of Trenton; 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.

The Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Morris Rudner and Charles H. Speck, on the seventeenth day of March, in the year of our Lord nineteen hundred and fifteen, and thence continually until the first day of January, in the year of our Lord nineteen hundred and seventeen, with force and arms, at the City of Trenton aforesaid, in the county aforesaid, and within the jurisdiction of this Court, during the time aforesaid, certain stored filtered water, to wit, six hundred and forty thousand four hundred cubic feet of stored filtered water of the value of five hundred and seventy-six dollars and thirty-six cents, being over the value of twenty dollars, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, during the time aforesaid being found, unlawfully and feloniously did steal, 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.

MERCER OYER AND TERMINER.

January Term, A. D., 1917.

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath do further present, that the said Morris Rudner and Charles H. Speck, late of the City of Trenton, in the said County of Mercer, on the first day of December, in the year of our Lord one thousand nine hundred and sixteen, with force and arms, at the City of Trenton aforesaid, in the County aforesaid, and within the jurisdiction of this Court, a certain quantity of stored filtered water, to wit, six hundred and forty thousand four hundred cubic feet of stored filtered water, of the value of five hundred and seventy-six dollars and thirty-six cents, being over the value of twenty dollars, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton then and there being found, unlawfully and feloniously did steal, 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.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

JUDGMENT.

And afterwards, to wit: On Tuesday, the thirtieth day of January, in the year of our Lord nineteen hundred and seventeen, at a session of the said Court of Oyer and Terminer as aforesaid, being as yet of the term of January aforesaid, the said indictment was

by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said county for trial according to the form of the statute in such case made and provided and a rule to that effect then and there duly made and entered upon the record of each of the said Courts respectively; and afterwards, to wit: On the sixteenth day of February, in the year of our Lord nineteen hundred and seventeen, at a session of the Court of Quarter Sessions in and for the said County of Mercer, of the Term of January of the year of our Lord nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions at Trenton, in the County of Mercer aforesaid, cometh the said Morris Rudner in his proper person according to the condition of the recognizance by himself and his pledges in that behalf heretofore made and now here touching the premises in the said indictment above specified and charged uupon him being asked in what manner he will acquit himself thereof he says that he is not guilty thereof, and of this puts himself upon the county, and Martin P. Devlin, Prosecutor of the Pleas of the said County of Mercer, who prosecutes for the State in this behalf, does likewise the same therefore let, the said indictment be continued until a jury thereupon come here before the said Judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit: On Wednesday, the twenty-fifth day of April, in the year of our Lord nineteen hundred and sventeen, of the January Term, nineteen hundred and seventeen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions, in and for the said county, twelve good and lawful men of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Morris Rudner to recognize upon their oaths whether the said Morris Rudner be guilty of the misdemeanor in the indictment aforesaid above specified or

not guilty, because as well the said Martin P. Devlin, who prosecutes for the State in this behalf as the said Morris Rudner, have put themselves upon the said jury and the jurors of the said jury by J. Warren Fleming, Sheriff of said County of Mercer, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit: John H. Vandewater, Bernard F. Trainor, John W. Rogers, Thomas McGinty, John Dawson, Elmer Gulick, Howard A. Fackler, John R. Wert, Walter V. Hutchinson, Samuel T. Cox, Joseph H. Mellick and Arthur Kemble, who having been elected, tried and sworn to, speak the truth of and concerning the premises upon their oath, say that the said Morris Rudner is guilty of the misdemeanor aforesaid on him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him, and thereupon the said Morris Rudner was remanded for sentence until Friday, the twenty-fifth day of May, nineteen hundred and seventeen, at which last mentioned day the said Morris Rudner, being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said Morris Rudner, if he hath or knoweth of anything to say wherefore the said Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment against him, who nothing further saith unless as he before had said whereupon all and singular the premises being seen and by the said Judge here fully understood it is considered and adjudged by the Court here that the said Morris Rudner do pay a fine of five hundred dollars and the costs of this prosecution.

STATE OF NEW JERSEY, }
County of Mercer. } *ss.*

I, Fred R. Parker, Clerk of the Court of Oyer and Terminer and Clerk of the Court of Quarter Sessions, do hereby certify that the foregoing are the entire record and proceedings and judgment in the case of The

State of New Jersey *vs.* Morris Rudner, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and official seal of said Courts this
[L. S.] eighth day of June, A. D. 1917.

FRED R. PARKER, *Clerk.*

The entire record and proceedings of the indictment, plea, trial, conviction and judgment, including the entire record of the proceedings had upon the trial of said cause, whereof mention is within made with all things concerning the same to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained we certify in a certain schedule to this writ annexed as we are commanded.

ERWIN E. MARSHALL,
Judge.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

Mercer County Court of Quarter Sessions.

THE STATE
vs.
MORRIS RUDNER AND
CHARLES H. SPECK.

(*Filed June 14, 1917.*)

TRENTON, N. J., WEDNESDAY AND THURSDAY,
April 26th and 27th, 1917.

Before Honorable Erwin E. Marshall, County Judge.

Transcript of shorthand notes of testimony taken in the above-stated cause at the Court House, Trenton, New Jersey, Wednesday, April 25th, 1917, before Honorable Erwin E. Marshall, County Judge.

Martin Devlin, Esq., Prosecutor of the Pleas, for the State.

John H. Kafes, Esq., Harry Heher, Esq., John Montgomery, Esq., for the defendant, Morris Rudner.

Mr. Heher—I want to make a motion to quash the indictment for the following reasons:

First. Because there are four separate alleged crimes joined in the said indictment.

Second. Because the mode of proof in each of the offenses is of a different nature.

Third. Because the judgment in each of the offenses is of a different character.

Fourth. Because the judgment in the offenses charged in the first and second counts is of a character different than the judgment in each of the offenses charged in the third and fourth counts.

Fifth. Because the defendant is prejudiced by being placed on trial on the four offenses charged in the said indictment at the time before one jury.

Sixth. Because there is a misjoinder in joining in the indictment three counts charging the defendant Morris Rudner and the defendant Charles H. Speck jointly with the commission of offenses therein alleged to have been committed, with one count charging the defendant Morris Rudner with aiding and abetting the commission of an alleged crime.

Seventh. Because the first count in the said indictment fails to charge a crime under the statute in such case made and provided.

Eighth. Because the first count in the said indictment does not aver that the meter alleged to have been tampered with is the meter of a water company or was owned by a water company.

Ninth. Because the first count in the said indictment does not aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant Morris Rudner through the said meter.

Tenth. Because the first count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant Morris Rudner for the purpose of obtaining water with intent to defraud a water company.

Eleventh. Because the charge in the said first count is improperly laid with a continuendo.

Twelfth. Because the second count in the said indictment fails to charge a crime under the statute in such case made and provided.

Thirteenth. Because the second count in the said indictment does not aver that the meter alleged to have

been tampered with is the meter of a water company, or was owned by a water company.

Fourteenth. Because the second count in the said indictment does not aver that the Trenton Water Works or the Inhabitants of the City of Trenton furnished water to the said defendant Morris Rudner through the said meter.

Fifteenth. Because the second count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant Charles H. Speck for the purpose of obtaining water with intent to defraud a water company.

Sixteenth. Because the charge in the said second count is improperly laid with a continuendo.

Seventeenth. Because the second count in the said indictment fails to allege that the said defendant Morris Rudner aided and abetted the said Speck in the commission of a crime under the statute in such case made and provided.

Eighteenth. Because the second count in the said indictment fails to allege that the said defendant Morris Rudner aided and abetted the said Speck in the commission of a crime of which the said Speck has been convicted.

Nineteenth. Because the third count in the said indictment fails to charge a crime under the statute in such case made and provided.

Twentieth. Because the third count in said indictment alleges a larceny by the defendant Morris Rudner of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

Twenty-first. Because the fourth count in the said indictment fails to charge a crime under the statute in such case made and provided.

Twenty-second. Because the fourth count in the said indictment alleges a larceny by the defendant Morris Rudner of the goods and chattels of the Trenton Water

Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

Twenty-third. Because the said indictment contains four repugnant and inconsistent counts.

The Court—I will overrule this motion.

Mr. Heher—I pray an exception.

The defendant, through his counsel prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Edward W. Lee, sworn for the State.

Examined, by the Prosecutor.

Q. You are a Commissioner of the City of Trenton?

A. Yes, sir.

Q. What department do you specially cover?

A. Revenue and Finance.

Q. Do you know of the Water Department of the City of Trenton?

A. Yes, sir.

Q. Are the finances of that department controlled by you?

A. Yes, sir.

Q. The money of that department goes through your hands?

A. Yes, sir.

Q. And the receipts finally reach your office?

A. Reach the Treasurer's office in my department.

Q. The ownership of the filtration plant and the reservoir and the mains and the pipes leading therefrom and thereto is in whom?

Mr. Heher—I object to that, it has nothing to do with this case.

The Court—I will permit it.

A. Are owned jointly by the Trenton Water Works and the Inhabitants of the City of Trenton.

Q. You, as Commissioner of the City of Trenton, represent, of course, the inhabitants?

A. Yes, sir.

Q. Do you know where the water is obtained from that the City of Trenton uses?

A. Delaware River. It goes into the filtration plant and there treated chemically by filtration, conveyed to the reservoir and from the reservoir distributed to consumers through the mains.

Q. And as part of the city government of this town—you know it is controlled by the city government?

A. Yes, sir.

Cross-examination, by Mr. Heher.

Q. Commissioner, what sort of a body is the Trenton Water Works?

A. My understanding is that it is a corporation.

Q. You have been so informed?

A. Yes, sir.

Q. You say that the Trenton Water Works is the owner of the filtration plant and the reservoir?

A. Yes, sir.

Q. And the pumping station?

A. Yes, sir.

Q. The title is in the Trenton Water Works?

A. Yes, sir.

Q. That information you have gotten from hearsay, I presume?

A. Generally, from investigation of records from time to time.

Q. What records have you examined from which you came to that conclusion?

A. Searches, particularly.

Q. Searches?

A. Yes, sir.

Q. You mean searches made by some individual?

A. By the Real Estate Title Company.

Q. A searching company of the City of Trenton—against various parcels of land and holdings owned by the Trenton Water Works?

A. Yes, sir.

Q. Have you examined the title of these three parcels of land, the reservoir, the filtration plant and the pumping station?

A. Not recently.

Q. Are you certain you examined them all?

A. Yes, sir.

Q. Or is it your conclusion that the Trenton Water Works owns this property?

A. My recollection is from an examination made from time to time of the three tracts mentioned and that it all stands in the name of the Trenton Water Works.

Q. You don't remember when these tracts were purchased when the title was taken in the name of the company?

A. No, sir.

Q. Under what arrangement do you say the City of Trenton operates the Trenton Water Department?

A. The Commission Government Act under which we are operated as I have been informed—

Q. I don't want to interrupt you, but what I want to get at is the fact whether the Inhabitants of the City of Trenton or the Trenton Water Department actually operates the Water Department?

Mr. Devlin—I will produce the deed and the act of the Legislature. It is a private company organized in 1864. The Legislature authorized them to sell water.

Mr. Heher—Then I understand my objection to the testimony of Commissioner Lee will be subject to the produce.

Mr. Devlin—Yes.

Q. Commissioner, it is a fact that the Inhabitants of the City of Trenton—that the Water Department—is supplying to the inhabitants of the City of Trenton—the citizens—

A. Yes, sir.

Q. At certain rates, which money is paid—when so

paid is turned over to the municipal corporation and is distributed by it to its proper officers?

A. Yes, sir, that is correct.

Q. That is and has been the practice and custom for how long back?

A. The custom prevailing now has been in force since August, 1911.

Q. Of distribution or disbursing the money through the City Commission?

A. Yes, sir.

Q. Before that it was done through the Common Council?

A. Through the Board of Water Commissioners.

Q. The City of Trenton is supplying water to the citizens of Trenton, and the money received as rent for the use of the water has been received by the city officials?

A. No, it is not entirely correct.

Q. What modification do you desire to make?

A. Since August, 1911, the receipts have been under the direct control of the Board of City Commissioners.

Q. Then the Board of Water Commissioners is deputized to carry on the work of this department?

A. Yes, sir.

David T. Wittenborn, sworn for the State.

Examined, by the Prosecutor.

Q. Mr. Wittenborn, what is your business?

A. Secretary and Treasurer of the Water Department.

Q. As such are you able to say whether the City of Trenton sold water to Morris Rudner, 800 South Clinton Avenue?

A. Yes, sir.

Q. Are you able to state how long the City of Trenton has been selling water?

A. I can from the records.

Q. Have you the records with you?

A. Yes, sir. The meter was placed in this property May 7th, 1912.

Q. That is the date it was placed in that property?

A. Yes, sir.

By Mr. Kafes.

Q. Have you any of the cards of account?

A. Yes, sir.

Q. Let us look at one please.

(Witness hands cards to Mr. Kafes.)

By Mr. Devlin.

Q. Did it continue from that date until the first of January of this year?

A. Yes, sir.

Q. And I suppose still continues?

A. Yes, sir.

Q. Now, from your books are you able to tell me how much water, or what the readings of the meter of Morris Rudner was from the 16th day of March, 1915, to January 1st, 1917?

A. According to the records of the card, transferred from—

Q. Let me ask you about that. The card you have there. Mr. Wittenborn, did you make that card?

A. No, Mr. Rittenhouse did.

Q. That is handed to you by Mr. Rittenhouse?

A. Yes, sir.

Q. What is his official capacity?

A. Charge of the meter department.

Q. Do you issue the bills?

A. Mr. Rittenhouse makes the bills out, he issues the bills.

Q. To whom are the bills paid?

A. Trenton Water Department or the Treasurer.

Q. You are the Treasurer?

A. Yes, sir.

Q. You receive the bills?

A. Yes, sir.

Q. When they are paid?

A. Yes, sir.

Q. You make the entires on your books?

A. Yes, sir.

Q. The card you have there, do you know what that is made up from?

A. From records given to me by the meter readers.

Q. The meter readers are also in the employment of your department?

A. Yes, sir; they go out and read the meters and report to Mr. Conover and he reports to Mr. Rittenhouse.

Q. From your records are you able to tell if Morris Rudner paid the bills from the 16th day of March, 1915, until the first of January, 1917?

A. Yes, I can.

Cross-examination, by Mr. Heher.

Q. Your official capacity is that of Treasurer?

A. Yes, sir.

Q. How long have you been in the occupancy of that position?

A. About five years.

Q. Your duties consist of keeping the records of the water supplied to the various consumers of the city, that is the quantity of water supplied to them and used by them?

A. Yes, sir; through my men.

Q. In other words, you are the head of the book-keeping department?

A. Yes, sir.

Q. Now, the system employed in ascertaining the quantity of water consumed is that meter readers go about, take the statement of the meters and report back to the office the reading of the meters, is that correct?

A. Yes, sir.

Q. How many meter readers do you employ?

A. Sometimes three and sometimes six, according to the time of the year and conditions.

Q. Now, these reports are made in what manner; I understand they have books?

A. Yes, they have books, and they go out on the road and take the statement of the meters and put that down on the slips that they bring back to the office.

Q. One slip for each meter?

A. Yes, sir.

Q. How long has this present system been in practice, taking a slip for each meter?

A. They just started it. They send them out, about every three readings with a blank form.

Q. How long has that been in vogue?

A. Just started.

Q. When?

A. The last reading.

Q. That is a system devised to make certain there are no errors?

A. It does not give a meter reader a chance to average it up.

Q. What do you mean?

A. A meter reader might sit on a park bench and average up his whole route.

Q. You have frequently found they have not performed their duties?

A. No, sir.

Q. This system you have recently put in operation makes it impossible to read meters from park benches?

A. We wanted to make sure.

Q. Up to that time you had no means of making sure they were properly read or read at all.

A. Oh yes, we would speak to them about it, question them.

Q. But if a man gave you a report of reading such and such a meter, and you asked him if he had read it, he would say he did?

A. He would say so.

Q. And to avoid any mistake you devised this new system.

A. Not particularly for that purpose; it is a matter of precaution.

Q. Prior then to January there was no checking system. Simply had to take the word of the man that he had read the meter and gave you his report?

The Prosecutor—I object to that. I established these bills were paid. I showed the bills had been paid from the 15th of March until January 1st, 1917.

Mr. Heher—Testimony is not in evidence. The question was "Can you tell from these bills —from these records that these bills have been paid."

The Prosecutor—I didn't go into this and didn't intend to go into this, and the purpose was to block him from going to it. The bills were paid and that ends him.

The Court—I will permit the question to be answered.

A. I would take his reading as being correct, if not, the consumer would kick, then his meter would be reread.

Q. In other words, up to January of this year the only method you had of ascertaining whether the meters were correctly read was the complaints from consumers.

A. Yes, sir.

Q. You had no way of ascertaining or verifying or making certain that the readers of meters had read them correctly?

A. You would have to take the man's words for it.

Q. You devised a new system in January to prevent meter reading from park benches?

The Prosecutor—I object to that.

Mr. Heher—Mr. Devlin has called the witness to prove the records of the city which are based upon hearsay.

The Prosecutor—I did not.

Mr. Heher—I don't know what you call it then.

The Court—Your question will be overruled.

The defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Re-direct examination, by the Prosecutor.

Q. Are you able to say that Morris Rudner paid water bills rendered to him from the date of March 16th, 1915, to January 1st, 1917?

Mr. Heher—It is incompetent, immaterial and irrelevant to the issue in this case. I object to it.

The Court—I think the question has some bearing upon this question. I will permit the witness to answer it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

Exception allowed. Let it be sealed, and the same is signed and sealed accordingly.

ERWIN E. MARSHALL, *Judge.*

Q. Answer just yes or no.

A. Yes.

Q. Did he pay them?

A. Yes, sir.

By Mr. Heher.

Q. Without objection?

A. Yes, sir, without objection.

Q. Without objection to you?

A. Yes, sir.

Q. Did he pay them to you?

A. To me or my assistants at the window.

Q. You don't know if he objected or not- -

A. It would naturally come to me if he made any objections.

Q. Your answer to my question then—you mean by that he made no objection to you?

A. Yes, sir.

By Mr. Devlin.

Q. Who are the other men?

A. Mr. D'Arcy or Mr. Hurley.

Q. The custom is that these men would send them to you?

A. Yes, sir.

Q. You are the man that meets all troubles?

A. Yes, sir.

Harry H. Rittenhouse, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Rittenhouse, what is your position?

A. I have charge of the meter department.

Q. Will you explain to me what your duties are?

A. I make a record of the water used and the cost of the same and render bills and credit the account when paid.

Q. Do I understand you to say you receive a record of the water used and you place it on a card and then you render the result of your computation to Mr. Wittenborn and issue the bills, is that right?

A. Yes, sir.

Q Now, I show you a card and ask you what it expresses, have you ever seen that card before?

A. Yes, sir.

Q. Did you make it up?

A. Yes, sir.

Q. What does that card represent?

Mr. Heher—It speaks for itself.

The Court—He may explain what the card is intended for.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. That is a record of the amount of water used and the charge for the same, the dates paid and the amount paid by the man that used the water.

Mr. Heher—I move to strike that question out on the ground that in his testimony it is impossible to say if he has a record of the water used.

The Court—Your motion will be denied.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. In making up your card have you—do you receive any data from anyone?

A. Yes.

Q. What is that?

A. A reading of the meter by the meter reader.

Q. Did you ever see that before? (Handing witness report.)

A. Yes, sir.

Q. Are those the readings from which you make up that card?

A. Yes, sir.

Q. Are you able to tell me how much water was charged against that defendant from the 17th day of March, 1915, to the first day of January, 1917?

A. I can tell up to 12/6.

Q. What date in 1915?

A. 3/16/15 to 12/6.

Q. Compute, will you, and tell me how many cubic feet was charged on the meter from this date you mention—from the 16th day of March to the 6th of December.

Mr. Heher—I object to his question on the

ground that the witness, on his own testimony, cannot tell what was charged on the meter. The Prosecutor's question is not proper.

The Court—I will overrule the objection.

The defendant, through his counsel, prays an ception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. 186,700 cubic feet.

Q. That is the amount in cubic feet?

A. Yes, sir.

Q. That is the number of cubic feet from the 16th day of March, 1915, to the 16th day of December, 1916?

Mr. Heher—I object.

The Court—I will overrule your objection.

The defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Yes, sir.

Q. You issued bills to Morris Rudner?

A. Yes, sir.

Cross-examination, by Mr. Heher.

Q. Will you give me those figures again?

A. 186,700 cubic feet.

Q. That represents what?

A. That represents what the water meter registered, that is the amount of water used.

Q. Between what periods?

A. 3/16/15 to 12/6/16.

Q. Have you any knowledge of when the meter was taken out, or was the meter taken out?

Mr. Heher—I object to that; it is not cross-examination.

The Court—He may answer the question.

A. In the fall of 1916.

Q. In other words, was the meter in this place during the entire time which you have the meter readings?

A. According to my records the same meter was not there.

Q. The number of that meter was what?

A. Tridon two-inch 867,289.

The Court—Two inch?

Witness—Yes, sir.

Q. This card I now hand you, is this a report, a meter reader's report, or various meter readers?

Mr. Devlin—I object to this, this man cannot tell; he said from my records.

Q. Well, does this report cover the period from December 18, 1914, to the present time?

A. From 3/16/15 to 12/6/16.

Q. This report purports to cover the meter readings of Morris Rudner from December 18, 1914, down to the present time?

A. Yes, sir.

Q. And that is taken from a book covering all meters in that neighborhood or that locality?

A. Yes, sir.

Q. This sheet of paper is taken from the book of the meter reader's report?

A. Yes, sir.

Q. Of the various meter readers?

A. Yes, sir.

Q. This sheet is in the handwriting of some individual, is it not?

A. Yes, sir.

Q. It is not all of the same handwriting?

A. No, sir.

Q. You don't know whose handwriting it is?

A. No, sir.

Q. And it is from these reports that you have based

your testimony this morning about the reading of meters.

A. Yes, sir.

Q. During that period of time?

A. Yes, sir.

Q. Now, the figures of this report, from December 18, 1914, down to December 6, 1916, are all in pencil.

A. Yes, sir.

Q. The balance of the figures are in ink?

A. Yes, sir.

Q. I noticed from that you have the names of various people here, what does that represent, from January 29, 1917, down? The readings contain the names of various people.

A. That has nothing to do with him.

Q. Were these men meter readers?

Mr. Devlin—I object to that.

By the Court—It is not proper cross-examination.

Q. From January 20, 1917, then, you have each meter reader place his name opposite the reading which he made?

A. I have not.

Q. That is what it is for, is it not?

Mr. Devlin—I object to that question, it is 1917, we are not examining that at all.

The Court—I will allow it.

A. That is what it is for, yes, sir.

Q. These are the names of these meter readers who made these readings?

A. Yes, sir.

Q. They have signed their names there after January 20, 1917?

A. No, they have not signed their names.

Q. Someone else then has?

A. Their names are there.

Q. Was it not done for the purpose of correcting the

faulty system which the department had of having water meters read?

Mr. Devlin—I object to that.

The Court—Objection sustained.

Defendant, through his counsel, prays exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Then you have no other data or information from which you can give the amount of water consumed through this meter during that period of time as shown by the readings of the meter readers excepting that slip which you have?

A. That is all.

Mr. Heher—If the Court please, I ask that this slip be marked for identification in this case. The witness has testified to it and his testimony is based entirely on this slip, and I submit the testimony should either be stricken out, in fact I make a motion that the testimony be stricken out at this time on the ground that it is based entirely on hearsay, a record made up by people whom he does not know.

The Court—The objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Heher—I submit that slip should be marked in the case.

Mr. Devlin—I object, because the slip has not been proven and it is not necessary to put the slip in evidence because we have proved the bills were paid.

The Court—I will permit it to be marked, but not offered in evidence. It will be marked for identification only.

(Paper above referred to marked S-1 for identification, April 25, 1917, I.F.M.)

Re-direct examination, by Mr. Devlin.

Q. Will you give me the readings of the meter from March 16, 1915, to December 6, 1916?

A. Yes, sir.

Q. I asked a quarter more than I wanted, go back to the quarter before.

The Court—What period do you want to cover now?

Mr. Devlin—The quarter less at the end. It was taken out in November.

Mr. Heher—The witness cannot answer that, he says the same meter was not in there all the time.

A. September 7/16, 161,000 cubic feet.

Q. From March 16, 1916, to September 7, 1916?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. Heher—It is understood my objection goes to this question as well?

The Court—Yes.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Yes, sir.

Israel H. Albert, sworn for the State.

Direct examination, by Mr. Devlin.

Q. You live in the City of Trenton?

A. Yes, sir.

Q. What is your business?

A. Manufacturer of rubber goods and dealer in scrap rubber.

Q. Do you know Morris Rudner?

A. Yes, sir.

Q. How long have you known him?

A. Eight or ten years.

Q. Did you meet Rudner some time last October?

A. Yes, sir.

Q. What was your first connection with him in October?

A. I had a telephone message from him.

Q. Where were you when that telephone message came?

A. In my home.

Q. What day of the week was this?

A. On Sunday.

Q. Do you remember what he said to you over the phone?

A. Yes, sir.

Q. What did he say to you and you to him?

A. He called me up on the phone and said he wanted to see me.

Q. What did you say?

A. I told him I was making a train for Jersey City and could not see him that day, but I would be very glad to see him any other time he might suggest.

Q. What did he say?

A. He would meet me Monday morning at the Mechanics Bank.

Q. Do you remember the date?

A. Yes, sir.

Q. What was it?

A. October 16.

Q. On Monday morning did you go to Mechanics Bank?

A. Yes, sir, I did.

Q. Did you see Mr. Rudner there, or was he there when you got there?

A. He walked in the bank as I got there.

Q. Did the meeting take place inside the bank?

A. No, outside.

Q. What did he say to you and you to him?

A. Why, he told me that he understood that I had a large water bill.

Q. Yes. What did you say in reply?

A. I asked him where he got his information?

Q. What did he say?

A. He said, "Ask me no questions."

Q. What did you say?

A. Why, he said "I am going to help you out." He said, "I can arrange to get your water bill cut in two so that from now on you pay for water as you see fit, whatever you think you ought pay."

Q. What did you say?

A. I said, "How will you do this?" and he said, "I told you to ask me no questions." I said, "How will I go about it?" and he said, "See this man that took out your meter yesterday and he will arrange it for you."

Q. Do you know who took out your water meter?

A. He was there on Friday.

Q. No; do you know who he was?

A. Yes, sir.

Q. Who?

A. Speck.

Q. When he said to you "See this man," what did you say in reply?

A. Why, there was nothing more said of any kind that I recall.

Q. I don't want to know what you said, I want to know, after getting that information did you communicate with anybody?

A. Yes, Senator Leavitt.

Q. After telling the conversation to Senator Leavitt, did you communicate with any other person?

A. Yes, sir, Mr. Lee.

Q. City Commissioner, here?

A. Yes.

Cross-examination, by Mr. Heher.

Q. What business are you in?

A. Manufacturer of rubber goods and dealer in scrap rubber.

Q. How long have you been engaged in that business?

A. Scrap rubber, about fifteen or sixteen years.

Q. Where?

A. North Olden Avenue.

Q. How long have you been there?

A. About four or five years.

Q. How long have you had a water meter installed there?

A. About four or five years.

Q. It was removed by Speck the day before you had this conversation with Mr. Rudner?

Mr. Devlin—I object to that as not cross-examination.

The Court—He said part of the conversation was that the meter had been removed a day or two before. I think the question may be answered.

A. I think so.

Q. It was removed?

A. Yes, sir, it was removed.

Q. You think it was removed by Speck?

A. I was not there when it was removed.

Q. Why did you say it was Speck?

A. He was to see me on Friday, the day before, and he was to take it out, two days before.

Q. Before what?

A. Before Sunday.

Q. He was there on Friday?

A. Yes.

Q. When did you see Mr. Rudner?

A. On Monday.

Q. Speck didn't see you until the Friday before?

A. Yes, sir.

Q. In regard to taking out the meter?
A. To inspect the meter.
Q. You had made a complaint?
A. Yes, sir.
Q. Prior to that?
A. Yes, sir.
Q. He came out to inspect the meter?
A. Yes, sir.
Q. When was it taken out?
A. Supposed to be taken out on Sunday when I was not there.
Q. Was it taken out on Sunday?
A. Yes.
Q. It was the following day you had this conversation with Mr. Rudner?
A. Yes, sir.
Q. Now, your meter had been installed how long?

Mr. Devlin—I object to that.

The Court—It is not cross-examination.

Mr. Heher—I will withdraw it.

Q. Mr. Alberts, you have been refunded one-half of the money which you paid for water which is alleged to have passed through your meter?

Mr. Devlin—I object to that.

The Court—Objection sustained.

Mr. Heher—I submit that it is on the statement of the witness. In his conversation with Mr. Rudner I want to show this man was paying twice as much money as he should. I want to show the meter was fixed by somebody so that it was running twice as fast as it should, and that Mr. Alberts was therefore paying twice as much money as he should.

The Court—The only possible bearing that Mr. Alberts' testimony can have on this case is to show the knowledge of the defendant that Mr. Speck was fixing water meters. That is the only purpose of this testimony.

I will not permit this examination.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Devlin—I am going to suggest that when the Court rules that ends our objection. We will never get through with this case. I am willing when this Court says "You are ruled out" to stop and not open my mouth again, and after all is said and done the Court controls the conduct of the courtroom.

The Court—I am going to expedite this case in every way possible.

Q. At this time when you had the conversation, this Monday when you had the conversation with Rudner, Speck was not present?

A. No, sir.

Q. He met you at the Mechanics National Bank?

A. Yes, sir.

Q. You have given all the conversation which took place between you?

A. I have answered all the questions you asked me.

Q. You were asked in detail the conversation?

A. Yes, sir.

Q. You have given the conversation?

A. I have.

Q. He then left you?

Mr. Heher—I understand I wanted to ask him the question if the city didn't remit to him money for overcharges in water and the Court ruled that out, am I right?

The Court—Yes, sir.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Charles H. Speck, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Speck, you were employed by the Water Department, in 1912?

A. Yes, sir.

Q. In 1913 and 1914?

A. Yes, sir.

Q. Do you remember meeting Morris Rudner some time in 1914?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. Where at?

A. I don't remember just where it was.

Q. Do you know a property No. 800 S. Clinton avenue?

A. Yes, sir.

Q. You know the property there?

A. Yes, sir.

Q. Do you know who owns that property?

A. Yes, sir.

Q. Who?

A. Morris Rudner.

Mr. Heher—I object to that. It is most improper for him to attempt to prove the title of the property by the employee of the City Water Department.

The Court—So far as the legal title is concerned this witness may not be competent.

Reframe your question, Mr. Devlin.

Q. When you met Morris Rudner—do you know what time it was in 1914?

A. In the summer—April or May.

Q. Do you remember where you met him?

A. In his saloon.

Q. Where?

A. Just this side of Hudson street, on Clinton.

Q. Did you have any talk with him there?

A. Yes, I talked with him.

Q. What did you say to him?

A. In regards to the high bills?

Q. What property?

A. His apartment house.

Q. Where is it?

A. Hudson and Clinton.

Q. Known as 800 South Clinton street?

A. Yes, sir.

Q. What did you do as a result of that conversation?

A. Took the meter out.

Q. You took the meter out?

A. Yes, sir.

Q. What make meter was it?

A. I think it was a Lambert.

Q. When you took the meter out, did you put another meter in?

A. Yes, sir.

Q. What did he say to you about the bill?

A. He said the bill was too high and I went over to verify the reading and I found the reading correct, it corresponded with the bill and I told him about it. So then, I told him I would take the meter out and test it to satisfy him the meter was correct.

Q. Did you test it out?

A. Yes, sir; and found the meter correct.

Q. What did he say to that?

A. He didn't say anything, I think he paid the bill.

Q. Did you see him after that again?

A. In 1914?

Q. Yes, sir.

A. Yes, sir.

Q. When and where?

A. I think it was on a high bill again, six months, or maybe three months after, I am not sure.

Q. What did he say?

A. I went there again on the high bill.

Q. At the same place?
A. Yes, sir.
Q. Did you see him?
A. Yes, sir.
Q. What did he say?
A. He didn't see how he could use so much water, so I told him I would read the meter and verify the reading and I removed the meter.
Q. Did you remove it?
A. Yes, sir.
Q. Make a test?
A. Yes, sir.
Q. How did you find that meter?
A. Correct.
Q. Did you see him after you tested that meter?
A. Yes, sir.
Q. What did you say?
A. Told him it was correct.
Q. What did he say?
A. He asked me if there was any way of fixing the meter and I told him I would see, and he said he didn't see how it was his bills was so high, so I changed the gears on the meter.
Q. What was the name of the meter on which you changed the gears?
A. Neptune Tridon.
Q. What size?
A. Two-inch.
Q. You took them to the place, did you?
A. Yes, sir.
Q. He asked you if there was not some way of fixing the meter so that the bills would not be so high?
A. Yes, sir; and I said I would look it up.
Q. Did you?
A. Yes, sir.
Q. Did you see him again?
A. Yes, sir.
Q. After having changed the gears?

A. Yes, sir.

Q. Did you see him before you changed the gears?

A. Yes, sir.

Q. What did he say?

A. He would make it all right with me.

Q. Did you tell him you fixed it when you had?

A. Changed the gears on the meter.

Q. What change did you make?

A. Put on a fifteen, and I think it was fifty-four—fifty-three or fifty-four—I think fifty-four.

Q. What gears were on there?

A. Twenty-four, thirty-two.

Q. Do you know what the standard gears are for two-inch meters?

A. Yes, sir.

Q. What are they?

A. Twenty-four, thirty-two.

Q. They were on there?

A. Yes, sir.

Q. On this Tridon meter, whose gears you changed?

A. Yes, sir.

Q. Can you say whether or not that meter contained 24-32, the standard gears?

A. Yes, sir.

Q. Did you test it?

A. Yes, sir.

Q. What did you find it to be?

A. Twenty-four, thirty-two, correct.

Q. Correct meter?

A. Yes, sir.

Q. You took those gears out?

A. After the meter—after another meter had been installed.

Q. You took it out?

A. Yes, sir.

Q. Before you put in the standard gears did you make any test?

A. Yes, sir.

Q. What did you find it to be?
A. 24-32.
Q. Correct?
A. Yes, I changed the gears after that.
Q. Did you see Rudner after you changed the gears?
A. Yes, sir.
Q. What did you say to him and he to you?
A. I said he would have no more high bills, I had changed the gears.
Q. What was said by him and by you after that?
A. He gave me ten dollars.
Q. Did he say anything?
A. I told him he would have no more high bills.
Q. Are you able to remember what part of the year it was that you changed the gears and received ten dollars?
A. It was in 1914?
Q. Are you able to tell us whether it was the spring, summer, fall or winter?
A. I think it was in the fall of the year.
Q. After you received ten dollars did you see him again?
A. Yes, sir.
Q. When?
A. I met him on the street and he told me to stop in the place.
Q. How long after?
A. Maybe six months after.
Q. He told you to stop in the place?
A. Yes, sir.
Q. Where did you stop?
A. At his saloon.
Q. You stopped there to see him?
A. Yes, sir.
Q. What did he say?
A. He handed me five dollars.
Q. Did you say anything?
A. No, sir.

Q. Did he?
A. No, sir.
Q. Did you see him again after that?
A. Yes, sir.
Q. How long after?
A. I think it was in 1916?
Q. Where?
A. At his place there.
Q. In his saloon?
A. Yes, sir.
Q. How did you happen to come there?
A. I saw him on the Broad Street Bridge about two months before that.
Q. What did you say to him and he to you?
A. He asked me why I didn't come around.
Q. What did you say in reply to that?
A. I told him I would, and I went around in September.
Q. Did he say why?
A. No.
Q. Just told you to stop around?
A. Yes, sir.
Q. Where did you stop?
A. At his saloon.
Q. Did you see him there?
A. Yes, sir.
Q. What was said by him to you and you to him?
A. Nothing much, he handed me $5.
Q. Did you leave the saloon then?
A. Yes, sir.
Q. Did you see him again that September?
A. I think I saw him, yes, once after.
Q. Do you remember when that was?
A. No, I cannot.
Q. Do you remember where it was?
A. In 1916, on State Street.
Q. What was said by you and him?
A. Just a conversation about repairing meters.

Q. What was the conservation?

A. He asked me why I didn't stop around at his place. He spoke about Albert's having a high bill.

Q. What did he say?

A. He would see Albert.

Q. What did you say?

A. I didn't have anything more to say to him then.

Q. Did he say anything more?

A. No, sir.

Q. Did you see him after that?

A. No, sir.

Q. Have you seen him since that thing happened?

A. No, sir.

Q. I show you a meter there and ask you what make of meter that is?

A. Two-inch Tridon.

Q. Is that the same make of meter that was placed in this apartment house?

A. Yes, sir, absolutely.

Q. Will you open this and show us how you took out and put in the gears?

A. Yes, sir.

Q. Do you know what size gears these are on this meter?

A. 24–32. I took out this here 24 and put on a 15 on there (indicating), and put a 54 on there (indicating).

Q. A large one on the clock and a small one on the train?

A. Yes, sir.

Q. Are these gears marked so you can tell what they are?

A. Yes, sir.

Q. So that there are standard gears on that meter?

A. Yes, sir, 32–24.

Q. Let me show you a couple of gears here and see if you can tell me the size of these gears?

A. This is the 15; that is a 54.

Q. Is that the size of gears you put on?

A. Yes, sir.

Q. Where is the clock?

A. Right here.

Q. Do I understand you to say you put a large one on the clock?

A. Yes, sir.

Q. And the small one on the train?

A. Yes, sir.

Q. What is the effect of putting the gear of that size on the clock?

A. I should say—

Q. Wait a minute. What is the effect of putting the gear of that size on the clock, the large one, and the small gear on the train?

A. I should judge it would run about seventy-five per cent. slow.

Cross-examination, by Mr. Heher.

Q. Will you adjust these gears the way you say you adjusted them?

A. (Witness proceeds to adjust gears.)

Q. What difference would that make in the meter?

A. It would run about seventy-five per cent. slow.

Q. What do you mean, it would run about seventy-five per cent. slow?

A. Well, ten feet would be about eight feet slow.

Q. You mean by that a man would get three times as much water as registered on the meter?

A. About eight feet out of ten, I would not say for sure.

Q. Tell us the mechanism of that meter.

A. It is controlled by the disc—a measuring chamber. It is a standard chamber. There are so many revolutions in this chamber. Now then, the disc is controlled by what they call a trial gear. Now, that disc has got to turn so many revolutions—so many turns to the

cubic foot, and then the intermittent gear is controlled by a clock.

Q. Now then, when that disc gets out of order how does the meter run?

A. It doesn't register.

Q. Suppose it was partially clogged with sediment and dirt, would it run slow?

A. Would it run slow?

Q. That is my question.

A. Sure.

Q. Suppose the metal work of the gears—of the rods which connects them are corroded, rusty, it would run slow, would it not?

A. It would not register at all.

Q. Assuming that the meter was rusty or corroded, it would not run?

A. If the gears are worn they do not mash, it would not run.

Q. Is there any mechanism connected with the gears which, if it corrodes or rusts, will cause the meter to run slow?

A. No.

Q. Have you ever given it any test?

A. Yes, I have tested lots of meters.

Q. Do you know anything about the mechanical parts of the meter?

A. Yes, sir.

Q. Where did you get your experience?

A. I went to five different meter factories.

Q. How long ago?

A. 1910.

Q. Were you at the Neptune factory?

A. Yes, sir.

Q. Where is it?

A. Trenton, New Jersey.

Q. How long were you there?

A. Three or four days.

Q. How long at a time?

A. A day at a time.

Q. You were there three or four different times?

A. Yes, sir.

Q. You acquired all this knowledge purporting to gears connected with the Neptune meter and the manner it runs at the factory?

A. Yes, sir.

Q. And from that you would say that if the gears, the rods of the meter, became corroded or rusted, it would run slowly?

A. I have been at other factories—other meter factories—all meters are built the same. I was in the Hoizen (?) factory for a week.

Q. So that you would be familiar with the various types of meters?

A. Yes, sir.

Q. And you went around to pick out the best one for use in Trenton?

A. No, sir, I had nothing to do with the selection of the meters they buy.

Mr. Devlin—I object to this examination for the reason it is not cross-examination.

The Court—It is a little far afield.

Q. Now, what is the standard gears for the two-inch meter?

A. Twenty-four, thirty-two.

Q. Twenty-four, thirty-two?

A. Yes, twenty-four, thirty-two, is the standard gear.

Q. Where did you learn the standard gears of the meter?

A. From the chart.

Q. Where is the chart?

A. At the shop.

Q. When did you see it last?

A. I don't know, I don't remember; I may not have looked at it for a month.

Q. Did you ever have any other meters in a meter—two-inch meter—and have it running correctly?

A. We might change one or two teeth.

Q. Did you use the fifteen gear—

Mr. Devlin—I object to this. I don't see how it is relevant. I didn't qualify this man as an expert in meters.

The Court—He was called to testify what he did with this meter, it was put in for that purpose.

Mr. Heher—I move to strike out his testimony on the ground the witness is not qualified to testify.

The Court—I shall not strike it out.

Mr. Heher—Do you refuse the motion?

The Court—Yes.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. What gears did you insert in this meter?

A. 15 x 54.

Q. Are they manufactured by the Triden people?

A. Yes, sir.

Q. You secured this from the stock of the Triden meter—or rather the Trenton Water Department?

A. From the one-inch Triden meter.

Q. The fifty-four, too?

A. Yes, sir.

Q. That is used in the one-inch Triden?

A. Yes, sir.

Q. Now, you never found a meter with a fifty-four, fifteen, inch gear?

A. No, sir.

Q. Did you ever test any meters with those gears on it?

A. On the two-inch?

Q. Yes.

A. No.

Q. You don't know what effect it has on the two-inch?

A. I don't know right up to the percentage.

Q. What is the difference between two-inch and one-inch meters?

A. In the measuring chambers.

Q. You mean by that the place where the water enters?

A. There is a regular measuring chamber in each meter.

Q. How do you know it is a two-inch meter?

A. How do I know?

Q. Yes.

A. By the measuring chamber.

Q. How do you know?

A. Experience, by looking at it.

Q. You don't know what meter is inside that measuring chamber (indicating)?

A. I do.

Q. How do you know?

A. They don't make anything else.

Q. Would you say it would make a difference of 75 per cent.?

A. About 75 per cent., I guess.

Q. You are guessing?

A. Around that, I don't know exactly.

Q. It is a guess?

A. It might be a guess.

The Court—He has made it pretty clear. He does not know exactly. He says about 75 per cent.

Q. Now, in October, 1914, is when you had the first conversation with Mr. Rudner about meters?

A. No, I think it was in August. It was in the summer months.

Q. You had known Mr. Rudner before that?

A. Yes, sir.

Q. You were sent out there to look at the meter about which complaint had been made?

A. About a high bill.

Q. Where did you go?

A. To his place of business.

Q. To his saloon?

A. Yes, sir.

Q. Where is his place of business?

A. On Hudson Street.

Q. When you went to his place of business this day he told you what?

A. He complained about a high bill, then I went over and verified the reading of the meter and marked it "correct." That is the reading.

Q. What meter was that?

A. I think it was a Lambert.

Q. You don't know?

A. It was a Lambert or a Keystone.

Q. Did you test the meter?

A. Yes, sir.

Q. That day?

A. I think I went the next day.

Q. Did you find the meter had been read correctly?

A. Yes, sir.

Q. What did you do then?

A. I told him the reading was correct. I told him if he wanted me to I would take out the meter and have it tested.

Q. When did you take it out, that day or the next?

A. I don't know, I am not sure.

Q. You found it correct?

A. The reading was correct.

Q. What did you do then?

A. I took it out.

Q. Did you see Mr. Rudner?

A. I seen Rudner that day.

Q. What did he say to you and you to him?

A. I told him the meter was right.

Q. What did he say to that?

A. He didn't see how it could be and I said if you wish I will take the meter out and test it.

Q. And you did test it?

A. Yes, sir.

Q. Where?

A. The water department.

Q. Make any record of the test?

A. No, I don't think I did.

Q. How many days after that did you take it back?

A. I didn't take that same meter back.

Q. What meter did you take back?

A. A Keystone.

Q. You took a Keystone over there?

A. I think so.

Q. What day did you install the Keystone?

A. The same day I took out the Lambert.

Q. That was placed there the same day; how long did it remain there?

A. I think it might have been six months, it might have been seven months.

Q. Why didn't you take the same meter back?

A. We had to put another meter in, we couldn't leave an apartment house without a meter. We go take a meter out and we have another meter put in the place of it.

Q. Did you test the meter before it was put in?

A. Yes, sir.

Q. That day?

A. No, it was tested before that.

Q. How long before?

A. Three or four weeks.

Q. You don't know if it was tested at all?

A. There ain't no meters leave the place without being tested.

Q. When was it tested?

A. I suppose maybe two or three days before it was installed.

Q. What do you mean?

A. I had reference to the Lambert meter.

Q. I am talking about 1914. You took out a Lambert meter, what month in 1914?

A. I think it was in August.

Q. You took it out to test it?

A. Yes, sir.

Q. You put in a Keystone?

A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. When was that time?

A. It might have been six months or seven, after, I would not say for sure.

Q. After what?

A. After August it might have been three, it was shortly after.

A. Only told him the meter was correct.

Q. Is that the time he asked you to fix it?

A. No, sir.

Q. Nothing more said that day?

A. No, sir.

Q. You can't fix definitely the time this Keystone meter was placed there?

A. No, sir.

Q. You think it was 1914?

A. Yes, sir.

Q. What replaced the Keystone?

A. Tridon meter.

Q. Installed in 1914?

A. Yes.

Q. Tell the circumstances?

A. There was a complaint about a high bill. After the Keystone was installed about three months, or six, there was a complaint made about a high bill and I went out there and verified the reading.

Q. A second complaint of a high bill?

A. Yes, I told Rudner the meter was correct.

Q. What else was said?

A. I took it out and tested it.

Q. What did you place in there while testing the Keystone?

A. A Tridon meter.

Q. You took the Keystone out and put in a Tridon?

A. Yes, sir.

Q. The same day?

A. Yes, sir.

Q. Tested the Tridon before it was put in?

A. Yes, sir.

Q. Test it yourself?

A. Yes, sir.

Q. Did it have the O. K. slip on it?

A. No, only that I tested it myself.

Q. Did it have the O. K. on it when you took the Tridon meter to install it?

A. Yes, sir; I tested it myself.

Q. Did it have an O. K. on it the same day or prior to the day you tested it?

A. Yes, sir.

Q. That same day or prior?

A. The same day it was installed.

Q. Then it had not been tested before it was installed excepting by you?

A. It was a new meter, just come out of the store room.

Q. Where did you test it, in the water department?

A. Yes, sir.

Q. Take any records of the test?

A. No, sir.

Q. Tell us what you did?

A. Put it on the testing scale, balanced my scale and ran ten cubic feet of water through it; that is twenty-five pounds or seventy-five gallons. Tested it, O. K.

Q. What do you mean by O. K.?

A. There is a percentage beam on this scale. It is manufactured by the Muhler people, and is made for testing meters, nothing else.

Q. Tell us the process that you employed that day—who was with you?

A. I don't think anybody; there may have been some men in the shop at the time, some laborers around, I don't remember.

Q. Will you tell us the process?

A. Set the meter on the scale, then I let my water run through in about a two-inch stream for a couple of seconds. That filled my lines so there is no air. There is an adjustable valve.

Q. Now, show us the way which leads from meter to the scale tank?

A. That pipe must be filled before you begin so there there is no air.

Q. What is the next thing you do?

A. Balance your scale, put your weight on at ten feet. Put the balance weight on it; there is a weight there which is marked 25 pounds, 10 cubic feet. After the scale is balanced, you shut the outlet off, and you run 10 cubic feet, and you watch your meter. As soon as you have 10 cubic feet you shut your valve off and you balance your scale, and if it doesn't balance there is a percentage bar to tell you how much it is off. All meters you find gives the consumer two or three per cent.

Q. What gears were on that day?

A. Thirty-two, twenty-four, I am pretty sure.

Q. Now, Mr. Speck, did you place the meter in the premises of Morris Rudner, 800 South Clinton avenue?

A. Yes, sir.

Q. Did you see him that day?

A. Yes; he was there before I went to put the meter in. I told him I would take the Keystone out and test it for him.

Q. Was nothing else said at that time?

A. No, sir.

Q. When you went to put the meter in, was he there?

A. He was there. He asked me if I could not fix the meter somehow.

Q. While you were putting it in?

A. Just before.

Q. He didn't go down in the cellar with you?

A. No.

Q. Before you put it in he asked you if you could fix it to run slow?

A. Could I not fix it so the bills would not be so high.

Q. That was before you put in the Tridon?

A. While I was going there to do it.

Q. You took out the Keystone?

A. Yes, sir.

Q. At the time you went there to install the meter, you say, he made this statement to you?

A. He told me he had a high bill. He told me he had had high bills before; this was the second one. I went down to verify the reading.

Q. It was the day before?

A. Yes, sir.

Q. You told him you would take it out and test it?

A. Yes, sir.

Q. When did you do that?

A. The next day. He asked me if there was not some way to fix it so that his bills would not be so high.

Q. Was that conversation before or after you put in the Tridon?

A. Just before, five or ten minutes.

Q. After he made that statement you went ahead and put in the Tridon?

A. Yes, sir.

Q. He asked you if there was not some way of fixing the Tridon meter so that his bills would not be so high?

A. Yes, sir.

Q. You tested the Keystone after you took it out?

A. Yes, sir.

Q. Did you do it the same day or the next day?

A. I think the same day, the same night; I don't remember.

Q. Was there any discussion between you and Rudner about the difference this change would make?

A. I told him it would cut his bill way down.

Q. Did you tell him anything about the nature of the change, what you were going to do?

A. I said I would change the gears on it.

Q. Did he say anything else to you at that time?

A. Gave me ten dollars.

Q. How did he give it to you?

A. Out of the till.

Q. Cash register?

A. Yes, sir.

Q. What denomination?

A. Ten dollars.

Q. When did he say he would make it right with you?

A. The day I took out the Keystone and put in the Tridon.

Q. There was no further talk about the money?

A. No, sir.

Q. Did he ask you how much you wanted?

A. No, sir.

Q. Did you tell him?

A. No, sir.

Q. Did you have any conversation with him as to the difference the change in the meter would make, or otherwise?

A. No, sir.

Q. He said, "Fix my meter up so my bills won't be so high"?

A. Yes, sir.

Q. He then handed you ten dollars?

A. Yes, sir.

Q. Were you back to see him around that time?

A. No, sir; it was later. Oh, I think it was, it was in 1914.

Q. Do you remember the month?

A. No, I don't.

Q. Was it the fall or the summer?

A. I could not tell you.

Q. Are you sure it was 1914?

A. Yes, sir.

Q. Have you any record of it?

10 A. I have not.

Q. It was some time in 1914?

A. Yes, sir.

Q. Now, you had no further conversation with him until what time?

A. I think it was 1915.

Q. What time in 1915?

A. I could not tell you that, I don't remember.

Q. What were the circumstances?

A. I would not say for sure. He asked me why
20 didn't I come around, and I did not go and he handed me five dollars.

Q. Did he say anything to you?

A. No, sir.

Q. How many months after was it that he told you to stop over again?

A. 1916.

Q. What part?

A. Around the fall, I think.

Q. He again gave you five dollars?

30 A. Yes, sir.

Q. Anything more said?

A. No, sir.

Q. When did you have the first conversation with him about Alberts?

A. I think it was on Broad Street, I would not say.

Q. When?

A. I don't remember.

Q. Was it 1916?

A. Oh, yes; it was 1916.

Q. What part of 1916?

A. I should judge about four or five months ago.

Q. Will you tell us what that conversation was?

A. I got talking to him, I don't remember what the conversation was, I remember it drifted to Alberts. I said, "Alberts had a high bill," and he said, "I will see Isador Alberts."

Q. Did you tell him Alberts' meter was running quite as fast as it should.

A. No, sir.

Q. Did you make an inspection of Alberts' meter before this conversation?

Mr. Devlin—I object to that as not proper cross-examination.

The Court—You may answer the question.

A. I don't know.

Q. How did you learn?

A. The bill was given to me to go out and read the meter.

Q. Did you go?

A. Yes, sir.

Q. Before you had this conversation with Rudner?

A. Yes, sir.

Q. Reported the reading was correct?

Mr. Devlin—I do not think that is proper cross-examination. I object to it.

The Court—The objection will be sustained.

At this point a recess is taken until two o'clock in the afternoon.

AFTER RECESS.

Charles H. Speck, resumes the stand.

Cross-examination continued, by Mr. Heher.

Q. Now, Mr. Speck, at the time you had the conversation with Mr. Rudner in the fall of 1916, can you fix the time any better than that?

A. No, I cannot.

Q. Now, this conversation relating to Mr. Alberts?

A. Yes, sir.

Q. Can you tell us what he said to you, or did you open the conversation?

A. I opened the conversation.

Q. You told Mr. Alberts—you told Rudner that Alberts had a high bill?

A. Yes, sir.

Q. What did he say?

A. He said he would see Mr. Alberts.

Q. Is that all that was said?

A. Yes, sir.

Q. You have given his entire conversation?

A. Yes, sir.

Q. Did you have any further conversation with him with reference to Alberts?

A. I met him on Broad Street, on the Broad Street bridge, and he said he had seen Alberts.

Q. How many days after that?

A. I cannot tell you.

Q. Give us the conversation.

A. He had seen Alberts.

Q. What did you say?

A. Nothing.

Q. Did you make an inspection?

A. No, sir.

Q. Told him he had merely made a complaint?

A. Yes, sir.

Q. Did you have any further conversation with him excepting the one?

A. No, sir.

Q. Did you after make any inspection of the condition of Alberts' meter?

Mr. Devlin—I object to that. It is not cross-examination.

The Court—You may answer the question.

A. I went out there on a Sunday and took the meter out.

Q. How long was that after this conversation with Rudner?

A. I cannot tell you, maybe three or four days or five days after.

Q. After the second conversation on the Broad Street bridge?

A. Yes, sir.

Q. Did you test the meter when you took it out?

A. No, sir.

Q. Where was it taken?

A. To the shop.

Q. You did not participate in any way in the testing of that meter?

A. No, sir.

Q. You merely removed the meter?

A. Yes, sir.

Q. And took it to the shop?

A. Yes, sir.

Q. Who did the testing?

A. Mr. Bibbins.

Q. Did you install that meter?

Mr. Devlin—I object to that conversation. I cannot see how we can try a question of Albert's case here.

The Court—How can it be relevant?

Mr. Heher—I want to show by this witness that the Alberts' meter was in such a condition that it ran more than twice as fast as it should and Mr. Alberts was refunded more than one-half the amount of money he had paid.

The Court—I don't see how that can be material.

Mr. Heher—If for no other reason, the cause of the conversation Mr. Alberts testified he had with Mr. Rudner.

The Court—I shall overrule your question and allow you an exception.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you have any further conversation with Mr. Rudner excepting what you have already testified to?

A. That is all.

Q. And each of these payments of five dollars was made in cash and were made without anything more than simply handing you the money?

A. I ain't sure whether he gave me a check or a ten dollar bill. I know two payments were made in five dollar bills.

Q. Do you think he gave you a check?

A. I don't remmeber.

Q. Which time are you now speaking of?

A. The first time, the ten dollars.

Q. You don't remember if he gave you a check or not?

A. No, I don't. I think he did give me a check.

Q. You said this morning he gave you a ten-dollar bill from the cash register?

A. I am not sure about that.

Q. Are you sure about the other two?

A. Yes.

Q. Has anything happened since you were on the stand this morning to make you change your testimony?

A. No, sir.

Q. Are you sure these other payments were made in cash?

A. I am sure, but I think he gave me a check the first time.

Q. There was no agreement or understanding of any kind when he gave you this check, simply handed you ten dollars?

A. For changing the gears.

Q. Was anything said at this time?

A. I said his water bill would not be as big as before.

Q. That is what you said to him?

A. Yes, sir.

Q. Did you tell him why it would not be as high?

A. I told him I had fixed the meter, changed the gears.

Q. What did you say to him?

A. I told him his bills would not be as high because I had fixed the meter.

Q. That is what you said?

A. His bills would not be high, I had fixed the meter so it ran slow.

Q. That is what you said to him?

A. Yes, sir.

Q. You didn't testify to that this morning?

A. It is the same thing.

Mr. Devlin—I object to his arguing with the witness.

The Court—If the changes affect the case at all the jury will recollect these changes.

Q. You are sure now you have given his entire conversation at the time this check or ten-dollar bill was given to you?

A. Yes, sir.

Q. You told him you had fixed the meter and it would not be so high?

A. Fixed the meter so it would run slow.

Q. Was anything said about gears?

A. I don't remember whether I said "gears," I said it would run slow, that was the same thing.

Q. That was the same night you went out with the gears?

A. I think it was a couple of nights after.

Q. That you got the ten dollars?

A. Or a check, I am not sure.

Q. You installed the Tridon meter on one day, you said two or three days after you changed the gears?

A. Yes, sir.

Q. Did he know you were there that night?

A. No.

Q. When did you tell him the Keystone meter you had taken out was correct?

A. I think the same night.

Q. Was it the night you changed the meter or the night you got the ten dollars?

A. I don't remember.

Q. It was after you changed the gears?

A. Yes, sir.

Q. Before you changed the gears, Mr. Speck, did you tell Rudner?

A. I told him I would fix it so it would run slow.

Q. When did you tell him that?

A. At the time I installed the meter.

Q. Tridon meter?

A. Yes, sir.

Q. That was the time you took out the Keystone meter?

A. Yes, sir.

Q. It was then you told him you could fix it?

A. I would try and fix it.

Q. You didn't tell him how?

A. There was only one way you could change it.

Q. Did you tell him how you could fix it?

A. Change the gears.

Q. Did you explain to him what gears were?

A. No, sir.

Re-direct examination, by Mr. Devlin.

Q. You testified this morning, as I understand the testimony—if I am not correct say so—that Rudner asked you at the time you took out Keystone meter if the meter could be fixed in any way.

A. Fixed to run slow, cut his water bill down.

Q. Am I correct in saying you testified to that this morning?

A. Yes, sir.

Q. It was after that then you changed the gears for the money?

A. Yes, sir.

Clarence M. Hyle, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Hyle, you are connected with the water department of the city?

A. Yes, sir.

Q. Have been connected with it for a number of years?

A. Yes, sir.

Q. Prior to 1916?

A. Yes, sir.

Q. What do you do?

A. Install all service.

Q. Do you know the pipes of the Water Department running up to the property of 800 South Clinton avenue?

A. Yes, sir.

Q. Do you know that the distributing pipes run to that property?

A. Yes, sir.

Q. Did you have reason last fall, October or November, to visit the place of Morris Rudner?

A. Yes, sir.

Q. Who accompanied you?

A. James Quinn, the plumber.

Q. When you got there what did you do?

A. Got orders to remove the meter.

Q. What did you do?

A. Took the meter out.

Q. What kind did you find?

A. Two-inch Neptune, two-inch is the size.

Q. Is Tridon the name?

A. Neptune is the Tridon meter company. Tridon is the style.

Q. What date was that?

A. The 15th of November.

Q. When you and Mr. Quinn removed that meter, where did you take it?

A. To the meter shop.

Q. What did you see done with it?

A. It was tested by Mr. Bibbins.

Q. Were you there when Mr. Bibbins tested it?

A. Yes, sir.

Q. What did you do, if anything?

A. I only started the water through the quick opening and closing valve.

Q. What did you see done with the meter?

A. Put in the testing machine.

Q. You operated the valve that starts and stops the inflow of water to the meter?

A. Yes, sir.

Q. What else did you do there?

A. I only stood by and observed in the operation of this lever.

Q. That is, you operated the lever?

A. Yes, sir.

Q. Did you do anything else beside that?

A. Not at that particular time.

Q. What did you do after that?

A. After the meter was put in the testing machine, Mr. Bibbins went over to the 'phone to call up Mr. Bugbee to come to the shop.

Q. Was the meter in the testing machine.

A. Yes, sir.

Q. What was done after Mr. Bugbee arrived?

A. Mr. Bibbins explained it to him that the meter was decidedly wrong.

Mr. Heher—I object to that.

Q. I don't want what Mr. Bibbin's said; I want you tell us what was done.

A. Retested again by Mr. Bugbee.

Q. Did you take any part in the test?

A. Yes, sir.

Q. What part?

A. I operated the quick closing valve.

Q. Who called the order for you to close the valve?

A. Mr. Bugbee.

Q. Now, did you do anything else there besides starting and stopping the valves?

A. After the meter was examined by Mr. Bibbins, I secured it by locking it up over night.

Q. When the meter was tested, what was done with the meter?

A. It was taken out of the testing machine and locked up.

Q. Was the meter opened?

A. Yes, sir, and the gears examined.

Q. Were you there when the meter was opened?

A. Yes sir.

Q. What was done?

A. Mr. Bibbins removed the gear and Mr. Bugbee was there to see them.

Q. Did you see the size of the gears?

A. Yes, sir.

Q. What was the size?

A. Fifty-four, fifteen.

Q. When this meter was opened were the gears taken out by anyone?

A. Mr. Bibbins.

Q. Were other gears put in?

A. Yes, sir.

Q. What gears?

A. Twenty-four, thirty-three.

Q. After these gears were put in was the meter tested again?

A. Yes, sir.

Q. Were you there?

A. Yes, sir.

Q. What part did you do?

A. Operated and closed the quick opening valve.

Q. Who did the testing?

A. Mr. Bugbee.

Q. While that test was being made at any time in the first or second test, were any figures called off to you?

A. Yes, sir.

Q. Who called those figures off?

A. Mr. Bugbee.

Q. Did you take them down?

A. Yes, sir.

Q. Are you able to remember these figures by referring to your notes?

A. Yes, sir.

Q. Will you please tell us what the figures were that were called to you and the first test made by Mr. Bibbins?

Mr. Heher—I object to the question on the ground that it is incompetent, immaterial and irrelevant, and calls for an answer which is based on hearsay.

The Court—It will be admitted.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Ten cubic feet passed and two registered on the dial. Two and ten.

Q. I understand from that you mean that ten cubic feet of water passed through the meter and but two registered on the dial?

A. That is what he said.

Q. Now, when Mr. Bugbee came, did he call the figures to you?

A. Yes, he called the same amount of figures.

Q. When the gears were taken off, and the new gears put in—I forget the number of the gears you said?

A. Twenty-four and thirty-two.

Q. Was there a test made then?

A. Yes, sir.

Q. Did anyone call out the figures to you?

A. No figures called off then. He said the meter ran short.

Mr. Heher—I object to that.

The Court—The latter part of the answer will be stricken out.

Q. Did you see the test made when the gears, twenty-four and thirty-two, were on?

A. I operated the valve and watched the scale balance.

Q. What did that show?

Mr. Heher—I object, if the Court please.

The Court—I do not know what the purpose is. I will admit the question.

Mr. Heher—Does your Honor admit the question?

The Court—Yes. You may have an exception.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. It showed with a twenty-four, thirty-two gears that it was absolutely correct.

Q. Do you know how the testing machine is operated?

A. Yes, sir.

Q. You do know?

A. Yes, sir.

Q. You are qualified to read a testing machine?

A. Yes, sir.

Q. Now, I think you said the gears you saw taken out were fifteen and fifty-four?

A. Yes, sir.

Q. Do you know where these gears went after they were taken out?

A. Handed to Mr. Bugbee.

Q. By Bibbins?

A. Yes, sir.

Q. Did you see what Bugbee did to them?

A. He took them with him.

Q. I show you a couple of gears and ask you whether—just examine them—are size fifteen and fifty-four.

A. The number is not very distinct on the little one; the larger one is fifty-four.

Q. You can't see the little one so well, but you can see this is a fifty-four?

A. Yes.

Q. Fifty-four represents the number of teeth?

A. Yes, sir.

Cross-examination, by Mr. Heher.

Q. Mr. Hyle, you made no test yourself that day?

A. No, sir.

Q. You attended the test and jotted down numbers which Bugbee called off?

A. Both Bugbee and Mr. Bibbins called off.

Q. And you jotted them down?

A. That is correct.

Q. You were there present, but didn't make the test?

A. I didn't make the test.

Q. Did you watch the test in its entirety?

A. Yes, sir.

Q. You didn't verify these figures?

A. I was not there for that purpose.

Q. You merely took down what they called off, is that right?

A. Yes, sir.

Q. Mr. Hyle, as these numbers were called off were they explained to you by Bugbee or Bibbins, would they say what they were when they called them off? For instance, the number of gear teeth?

A. Oh, yes.

Q. What did they say to you?
A. The gears, fifty-four, fifteen.
Q. You didn't examine the gears?
A. I saw the gears.
Q. You didn't look at them?
A. Of course, I looked at them; we all looked at them.
Q. You could see the numbers?
A. I saw the fifty-four distinctly.
Q. Did you see the others?
A. The other fifteen was indistinct, but you could count the teeth.
Q. Did they count the teeth or say the number?
A. They did the calling off.
Q. You didn't observe distinctly what the numbers were?
A. No, sir.
Q. What became of that meter?
A. It was returned and placed back with the proper gears in it.
Q. In 800 South Clinton Avenue?
A. Yes, sir.
Q. By whom?
A. The plumber, called Quinn.
Q. When you examined the meter, did you discover anything besides the gears?
A. Nothing, except the seal was not there.
Q. What seal was that?
A. For the protection of the reading of meters.
Q. That was not there when you removed it?
A. That was examined when we took the meter from the premises in the cellar.
Q. This was missing at the time you took it?
A. Yes, sir.

By Mr. Devlin.
Q. That is the apartment house, is it?
A. Yes, sir.

Q. The seal is so arranged that the person would break it to take out the gears?

A. Yes, sir.

By Mr. Heher.

Q. What was the number of that meter?

A. 867,298, Neptune, two inch.

By Mr. Devlin.

Q. When did you bring the meter back?

A. The following morning.

Albert Bibbins, sworn for the State.

Direct examination, by Mr. Devlin.

Q. What is your business, Mr. Bibbins?

A. Utility man in the water shop of the city of Trenton.

Q. How long have you been there?

A. Eight years.

Q. Among other things, do you test meters when they are brought to you?

A. Yes.

Q. Do you remember on October 15th Mr. Hyle bringing to you a two-inch Tridon meter?

A. Yes, sir.

Q. And did you test that meter?

A. Yes, sir.

Q. Tell us what you did with it?

A. Put the meter on the testing scale, ran my main pipe full of water and set the scale at ten feet.

Q. Then what did you do?

A. Put it at ten feet and watched the balance.

Q. Ten feet of water, what does it show on the beam?

A. 625 pounds.

Q. You set the scale at 625 pounds?

A. Yes, sir.

Q. Do I understand that to be the weight of ten cubic feet?

A. Yes, sir.

Q. What did you do after you set the scales?

A. Why, I turned water on and let it go through the meter until the scale balanced.

Q. You set the scale, what did you do after you set the scale?

A. What did I do after? Why, Mr. Hyle stood there and shoved the lever on.

Q. And let through—

A. —the water.

Q. Until—

A. —the beam balanced.

Q. When the beam balanced what did you do about the water?

A. As soon as I hollered "Shut it off."

Q. Then what did you do?

A. Looked at the meter and it only registered two feet. I told Mr. Hyle there was something the matter with the meter.

Q. Now, after you saw the dial registered two feet, what was the next thing you did?

A. Why, told Hyle he better send for Bugbee.

Q. Did Bugbee arrive?

A. Not while I was there.

Q. Bugbee didn't arrive?

A. Not while I was there.

Q. Did you open the meter?

A. No, sir.

Q. Who did?

A. I don't know.

Q. Were you present when the meter was opened?

A. The following day.

Q. Did you do anything with the meter before Bugbee came?

A. I didn't touch it.

Q. Where did you leave the meter?

A. On the testing scale.

Q. When did you say he came again?

A. The following morning.

Q. Who was present?

A. Mr. Hyle.

Q. What did you do with the meter the following morning?

A. Took the top off and saw what seals were on there.

Q. What did you find there?

A. Fifteen and fifty-four.

Q. What did you do with those?

A. Mr. Bugbee stood in the areaway, and I gave them to him.

Q. After you took those seals off what next did you do with the meter?

A. Let the water off and put new wheels on there.

Q. Where?

A. Right here.

Q. Do you remember what wheels you put on?

A. Thirty-two, thirty-four.

Q. And you tested the meter again?

A. Yes, sir.

Q. What did you find?

A. 100 per cent. correct.

Q. Now, would you know fifteen, fifty-four gears if you saw them?

A. I think I would.

Q. I show you two wheels.

A. They look all right.

Q. What have you got to say about them?

A. It looks like the set all right.

Q. When you tested the meter the next day and put on thirty-two, twenty-four gears, state whether or not that is the standard gear for a two-inch meter?

A. Yes, it is.

Q. Two-inch meter?

A. Yes, sir.

Q. After you put the standard gears on and found the meter correct, what did you do with the meter that afternoon?

A. Mr. Hyle took it away.

Q. Are you familiar with meters?

A. Well, a little bit.

Q. Have you put in and taken out gears of meters?

A. Yes, sir.

Q. Do you understand the mechanism of the meter, the machinery inside?

A. Yes, sir.

Q. Assuming that a meter starts off with a standard gear and it tests out correct, can that meter go fast?

Mr. Heher—I object to that. It is immaterial, incompetent and irrelevant.

The Court—Objection overruled.

Defendant, through his counsel, prays an exception to the above rule of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. I never found one yet.

Q. Have you ever known them to run slow?

A. Yes, sir.

Q. Do you know what effect dirt or corrosion has on the machinery of a meter that is set with proper gears?

A. It makes it run slower.

Cross-examination, by Mr. Heher.

Q. How long, Mr. Bibbins, have you been testing meters?

A. About eight years.

Q. How long have you been connected with the water department?

A. Eight years.

Q. You are in the water department as a plumber?

A. Utility man.

Q. Are you a plumber?

A. No, sir.

Q. How long have you been connected with the water department?

A. About eight years.

Q. During that time your business has been what, with reference to meters?

A. I take them apart and repair them.

Q. Where did you get your knowledge?

A. In the meter shop, and I have been in two or three factories.

Q. For how long?

A. Two or three days at a time?

Q. Then practically all your experience has come from the work in the water department?

A. Yes, sir.

Q. What sort of repair work do you do?

A. Take it apart and clean them off, if anything is broken and repair them.

Q. Can you repair broken parts?

A. We get new parts for the broken ones.

Q. You have no expert or technical knowledge of meters or method of manufacturing?

Q. On this particular day the meter was brought to the shop by Mr. Hyle?

A. Yes, sir.

Q. And you tested it?

A. Yes, sir.

Q. Placing it on this machine?

A. Yes, sir.

Q. How long have you had that machine?

A. About two or three years. We had one before that.

Q. Of different construction?

A. Different make.

Q. Have you had any schooling in the use of this machine, for testing meters?

A. You don't need any, the weights are all there and graduated on the beam.

Q. The scale must be absolutely correct to test it?

A. Yes, sir.

Q. You place the machine between these two pipes and connect one end of it with the intake and the pipe from which the water comes through to the scale?

A. Yes, sir.

Q. And this water passes through the disc and revolves the disc, that is all?

A. Yes, sir.

Q. Is that the method?

A. Yes, sir.

Q. And the water passes out through the scale?

A. Yes, sir.

Q. At the time you placed this meter on the scale to test it did you do that yourself?

A. Yes, sir.

Q. Did you look at the dial to see what the reading was?

A. No, sir.

Q. You didn't know how many feet was registered on the dial at the time?

A. I did not; no, sir.

Q. After you had adjusted the one end to the pipe from which the water came, somebody turned on the valve?

A. Yes, sir.

Q. Mr. Hyle turned on that valve?

A. Yes, sir.

Q. What happened next?

A. Hyle turned on the valve and filled the pipe.

Q. After Hyle turned on the valve connecting the pipe on the other side of the meter the water came through the meter in the disc and revolved the disc and then entered this pipe?

A. Yes, sir.

Q. What happened next?

A. The pipe was filled and we let the water out of the tank and balanced the scale.

Q. How do you know when the pipe is filled?

A. There is a check valve.

Q. To hold the water from going back?

A. Yes, sir.

Q. How can you tell when the pipe is filled?

A. It is straight up to here (indicating), and then there is a little slack in it.

Q. You wait until the water goes out of this pipe into the scale?

A. Yes, sir.

Q. Then you shut off the valve?

A. Yes, sir.

Q. What is done next?

A. Shut the water off the tank and then balance the scale.

Q. How did the scale balance?

A. Took out the weights and then set the weight in the center of the beam, right in the center.

Q. What indicates the balance—that is what I want to know.

A. You have the balance—the tank is attached to the scale.

Q. Can you remove it?

A. I never tried.

Q. Why do you say it is necessary to balance the scale?

A. We always do.

Q. Balance it how?

A. To see your beam is in the center.

Q. Which beam?

A. Weighing beam.

Q. Is that the indicator you are talking about?

A. What do you mean, "indicator"?

Q. Tell us what you mean by balance.

A. Your weight.

Q. What indicates the weight, feet or gallons? Is there a scale there?

A. No, sir.

By the Court.

Q. Those marks are on the beam, are they not?

A. Yes, sir.

Q. Is it a beam scale?

A. Yes, sir.

By Mr. Heher.

Q. You emptied the scale, you say?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. What did you do after that?

A. Balanced the scale, then put ten cubic feet of water, which weighs six hundred and twenty-five pounds.

Q. Do you know that?

A. Yes, sir.

Q. When did you learn that?

A. It is marked right on the weights.

Q. Do you remember that it weighed that much at that time?

A. Yes, sir.

Q. You testified at the trial of Haefel Cohan here a couple of weeks ago that you didn't know the weight of water.

Mr. Devlin—I object to that. What difference would that make.

By the Court.

Q. There are certain weights you used on that scale to indicate ten feet of water?

A. Yes, sir.

The Court—I will overrule the objection—not allow it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you read the weights on the scale at that time?

A. Yes, sir.

Q. You have not learned them in the last two weeks?

A. No, sir.

Q. You read it that day?

A. Yes, sir.

Q. Did you mark it down?

A. No, sir.

Q. Called it off?

A. Yes, sir.

Q. To whom?

A. Clarence Hyle.

Q. What did you call off?

A. 625 pounds, ten cubic feet.

Q. What?

A. Six hundred and twenty-five pounds, ten cubic feet.

Q. You called that off to him?

A. Yes, sir.

Q. How did you know it was ten cubic feet of water?

A. That is what the scale showed.

Q. It showed six hundred and twenty-five pounds?

A. Yes, sir.

Q. You looked at that time?

A. Yes, sir.

Q. Before you made this test, did you examine the meter?

A. Before I made the test? No, sir.

Q. When a meter gets out of order they always, you think, run slow?

A. Yes, sir.

Q. Never run faster than it should?

A. Never found one.

Q. What are the causes for a meter running slow?

A. Gets corroded from dirt and wear.

Q. In what respect?

A. Dirt inside the disc.

Q. The disc?

A. Yes, sir.

Q. The disc gets clogged with sediment and dirt and the meter necessarily runs slow.

A. Yes, sir.

Q. And the slowness depends on the amount of sediment in the disc?

A. Yes, sir.

Q. Also if the gears become corroded and rust, it will run slow then?

A. The gears runs slow or break or stop.

Q. Now, how long do meters generally last?

A. Some longer than others.

Q. The average.

A. I should imagine five or six years.

Q. It is necessary to clean them every five or six months?

A. No, sir.

Q. From your testing meters and your experience, didn't you find that sediment and dirt collected from day to day?

A. Yes, sir.

Q. And this sediment necessarily causes the meter to run slow?

A. Yes, sir.

Q. And as the amount increases, the meter runs slower?

A. Yes, sir.

Q. At the end of a period of five or six months doesn't the meter run slow caused by the accumulation of this dirt and sediment?

A. I don't know.

Q. You say that the standard gears are twenty-four, thirty-two?

A. For a two-inch Tridon meter?

Q. Yes, sir.

A. Yes, sir.

Q. What number have you placed in two-inch Tridon meters?

A. That depends on the meters, we have to test the meter and find out.

Q. Meters about which complaints are made are brought in and tested, and if you find they are running slow with twenty-four, thirty-two gears, the standard gears, you changed the gears; is that correct?

A. Twenty-four, thirty-two, is supposed to be the standard.

Q. You always look to see if they have the standard gears?

A. We always look to see what gears they have on them.

Q. If you find the standard gears are running slow, what do you do?

A. Change the gears.

Q. What gears do you usually put on?

A. According to the percentage they are slow.

Q. Depends on how slowly it runs?

A. Yes, sir.

Q. The condition of the meter is always determined by a test which is made of it?

A. Always tested out.

Q. Now, on this day when you examined the Tridon meter—do you remember the day?

A. Yes, sir; November 15th.

Q. You tested it one day and laid it aside to the next?

A. Yes, sir.

Q. When it was opened by Mr. Bugbee?

A. I opened it.

Q. Who was in there when they tested it?

The Court—On the following morning.

A. Mr. Hyle and I were there.

Q. Were you present?

A. Yes, sir.

Q. Who was there yhen you made this test that you have testified to the first day?

A. Mr. Hyle and I.

Q. Did you do anything else but make the test?
A. No, sir.
Q. What did you do with the meter then?
A. Told Mr. Hyle to lock it up.
Q. Did Mr. Bugbee come the next morning?
A. No, sir.
Q. Did he come that night?
A. Yes, sir.
Q. Were you present the next morning?
A. Mr. Hyle was there and I put new gears on it.
Q. When you opened the meter what condition did you find it in?
A. When I opened it I found a fifteen, fifty-four—fifteen fifty-four gears on it.
Q. Did you examine the disc?
A. No, sir.
Q. Merely removed the top?
A. The bonnet there.
Q. That is this part here (indicating) show the jury.
A. I took this small wheel off here and the large one off this.
Q. Was it sealed at the time you first saw the meter?
A. No, sir.
Q. Was not sealed the next day?
A. No, sir.
Q. You don't know how much dirt or sediment was in the disc of the meter?
A. No, sir.
Q. What did you do with these two gears that you took off, after you opened it.
A. Walked over the door of the shop and gave them to Mr. Bugbee.
Q. What numbers did you say they were?
A. Fifteen and fifty-four.
Q. What did you do with the meter after this?
A. Mr. Hyle took it.
Q. Did you insert new gears in the meter?

A. Yes, sir.

Q. What gears did you place in there?

A. Twenty-four and thirty-two.

Q. Anything else done with the meter?

A. Not in my presence.

Q. State what became of the meter?

A. I don't know.

Q. Did you insert these twenty-four, thirty-two gears?

Q. Was the meter sealed then?

A. I think it was sealed.

Q. Did you see it?

A. Yes, sir.

Q. Anything else done excepting the insertion of the gears?

A. No, sir.

Q. What became of that, if you know?

A. I could not tell you.

By Mr. Devlin.

Q. When you changed the gears, twenty-four, thirty-two, that was the next day, was it not?

A. Yes, sir.

Q. The gears were not inserted in the meter until the following day?

A. No, sir.

Q. That was after Bugbee had seen it?

A. Yes, sir.

Frederick R. Parker, sworn for the State.

Direct examination, by Mr. Devlin.

Q. You are the clerk of Mercer County?

A. Yes, sir.

Q. This is one of the deed books in your office?

Mr. Devlin—I offer this deed book at page 44 in evidence.

Deed book last referred to received in evidence and marked Ex. S2.

Mr. Devlin reads from deed book.

Alvin Bugbee, sworn for the State.

Direct examination, by Mr. Devlin.

Q. You are the superintendent of the Water Department, and have been for how long?

A. Twelve years.

Q. Do you remember on the 15th day of November being called into the office, I mean the testing room of the Water Department, and having your attention called to a two-inch Neptune Tridon meter on the testing machine?

A. I do; yes, sir.

Q. Tell us what you saw and what you did?

A. We opened the valve on the testing machine and let ten cubic feet through the meter. Then we put the weight on the meter that indicated ten cubic feet and then saw that ten cubic feet had run through it. We looked at the dial of the meter and it registered two cubic feet.

Q. Before you ran the water through, state whether or not you looked at the dial on the meter?

A. Yes, sir; we did.

Q. State whether or not you took the number?

A. Yes, sir.

Q. Then, after that, you did what you said?

A. Yes, sir.

Q. What was it you found the meter to register, apparently?

A. The meter registered two feet.

Q. And the testing machine showed it weighed ten feet?

A. Yes, sir.

Q. Did you make an estimate of how slow that was?

Mr. Heher—The witness is not qualified to give an estimate. I object.

The Court—Is there a dial on that meter that showed the percentage?

Witness—Yes, but in that case it was not used. It was not necessary to use it.

Q. It was a case of four to one?

Mr. Heher—I object to that.

The Court—Ten feet of water ran through and two registered on the dial as I understand it.

The Witness—Yes, sir.

Q. Ten to two?

The Court——Let the jury figure that.

Q. Now, Mr. Bugbee, after you had made the test and found that two feet registered, what did you do next with the meter?

A. We removed the tank again and went right through the same operation.

Q. What was the result of your second investigation?

A. The same result.

Q. Then what did you do with the meter?

A. It was put under lock and key for the night.

Q. Now then, were you there the next day, when the meter was opened?

A. Yes, sir.

Q. The next day?

A. Yes, sir.

Q. What did you find?

A. We found the wrong gears in there. They were handed to me.

Q. Whom did you give the gears to?

A. I took the gears to the office and gave them to Mr. Wittenborn.

Q. Did you put these gears in that envelope?

A. No, sir.

Q. I show you an envelope and ask you if this is the envelope?

A. It is; yes, sir.

Q. Is that the envelope?

A. Yes, sir.

Q. Open that envelope, what have you got to say about the gears?

A. They are the same size as those taken out of the meter.

Q. They are?

A. Yes, sir.

Q. You see the handwriting on it?

A. Yes, sir.

Q. When these gears were taken off what did you next do with the meter?

A. The proper gears were then put on the meter, but that was after I left. I didn't see the meter tested.

Q. Now, Mr. Bugbee, in your work in the Water Department had you anything to do with the purchasnig of meters?

A. I have, yes, sir.

Q. In that capacity, do you have any knowledge of meters?

A. I have, yes, sir.

Q. How far does that knowledge extend?

A. In a general way I know the workings of the different meters. I am familiar with all meters in a general way.

Q. Now, assuming a meter has the proper standard gears in it, is it possible for that meter to go bad?

A. It is not.

Mr. Heher—I object, he has not qualified as an expert.

The Court—I will permit that.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Assuming a meter has the proper standard gears, and it is tested and found to be correct, if that meter changes can you state what way the change will take place?

Mr. Heher—I object to that for the same reason.

The Court—I will overrule the objection.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. If the meter has the proper gears in it and any change takes place it will run slow rather than fast.

Q. It will invariably run slow?

A. I have never known one to go fast.

Q. In your experience in the Water Department, have you ever know a water meter with standard gears, and correctly tested when put in, to go fast?

A. No, sir.

Q. Have you ever known one to go slow?

A. Yes, sir.

Cross-examination, by Mr. Heher.

Q. They frequently go slow, do they not?

A. Yes, sir.

Q. For what reasons?

A. For the reason that the working parts become clogged with dirt and the gears corroded.

Q. This disc here (indicating) is made of hard rubber?

A. Yes, sir.

Q. The disc frequently becomes clogged with dirt which causes it to run slow?

A. Hardly the disc, it is the chamber in which the disc is set.

Q. The chamber in which the disc revolves?

A. Yes, sir.

Q. If there is a great deal of sediment there it will go slower than if there is a small amount?

A. Yes, sir.

Q. It frequently happens that the rod connecting the gear connecting the rod and the disc and the gear itself becomes corroded; does it not?

A. That is proper.

Q. That will cause the gear to run slow?

A. Yes, sir.

Q. And the slowness of the meter will depend entirely on the amount of sediment or dirt, will it not?

A. Yes, sir.

Q. These meters, I suppose they become clogged with sediment and dirt from day to day?

A. Not as much now as formerly. Before the mains cleared we had a great deal of trouble.

Q. When were the mains cleaned?

A. About two years ago.

Q. The water still carries sediment and dirt?

A. There may be still some left in the mains, but not in the water.

Q. These meters should be cleaned how often to run properly?

A. Under the present circumstances there is not so much danger of accumulation, but formerly we had a great deal of trouble.

Q. Under old conditions, how often?

A. I should say they would be in better shape if cleaned every six months.

Q. Now, after the meter has been installed for a period of six months, it is taken out and tested and invariably runs slower?

A. It almost invariably runs slow. Sometimes we have to put in new gears.

Q. Sometimes you have to put in new gears?

A. Yes, sir.

Q. With a greater number of teeth on the driver?

A. Yes, sir.

Q. Now, as time goes on from six months on the slowness of the registration on the gears increases somewhat, does it not?

A. Yes, sir.

Q. Now, in October, or November, of 1916, when this meter was taken to the meter department, were you present at the first test?

A. No, sir.

Q. Did you make a record of the test?

A. No, I did not.

Q. Did you take a reading of the dial?

A. Yes, sir.

Q. What did it read?

A. The dial read one foot before we started it.

Q. You didn't make any record at that time?

A. No, sir.

Q. How many other meters did you examine at that time?

A. We did one at a time.

Q. You remember the reading of that dial?

A. I do not.

Q. Did you examine any other meters?

A. Yes, we did, one.

Q. Do you remember what that dial read?

A. I do not.

Q. I mean this other meter?

A. I do not.

Q. Why not?

A. Because I had no occasion to make any such a note of that.

Q. You had no occasion to make any mental note?

A. No, sir, because the meter was correct; that is about two per cent.

Q. Did you make a notation of the Lavine meter?

A. I did, yes, sir.

Q. Do you remember that?

A. Well, that meter was tested a little different; that meter was tested in a little different way.

Q. Did you watch that meter to see how many times it revolved?

A. Yes, sir.

Q. Did you test the Cohen meter?

A. I did, yes, sir.

Q. You don't remember anything about the other meter you examined at the time you examined this one?

A. The only meter I examined at this time was the meter which ran over two per cent. slow.

Q. You don't remember what the dial read?

A. No, sir.

Q. Do you watch the dial or the beam?

A. The beam, and look at the dial afterward.

Q. How can you tell the percentage of the discrepancy?

A. As shown by the scale.

Q. Did you examine the percentage beam?

A. The percentage beam will only show ten per cent., and this was greater, therefore you could not test it by the percentage beam.

Q. Who operated the valve in the making of this test?

A. Clarence Hyle.

Q. Who attended to the tank?

A. Clarence Hyle.

Q. And you merely stood by?

A. I did, yes, sir.

Q. Was any test made the next day?

A. Well, no, not while I was there.

Q. There was no seal on this meter?

A. No, sir.

Q. It was locked up for the night by somebody?

A. By Clarence Hyle, yes, sir.

Q. The next morning the only thing done was to remove the top and examine the gears. Was there any examination made of the meter otherwise?

A. No, sir.

Q. Mr. Bugbee, the water which passes through these meters is secured from where?

A. The Delaware river. I presume you mean its original source?

Q. Yes, sir.

A. The Delaware river.

Q. It then goes through the city mains?

A. Yes, sir.

Q. From mains to pipes which are connected with the meter?

A. Yes, sir.

Q. And located on the property of the private owner?

A. Yes, sir.

Q. These pipes are known as service pipes?

A. Yes, sir.

Q. Which are connected with the mains owned by the city in the center of the street?

A. Yes, sir.

Q. And from the curb to the property these belong to the private owner?

A. That is true.

Q. So that the service pipe which connected with this meter of Florence Rudner from the curb to the meter was owned by the owner of the building?

A. That is right.

Edward Lee, recalled for the State.

Direct examination, by Mr. Douglas.

Q. You know Mr. Gill, who is a meter reader in the department?

A. Yes, sir.

Q. You know where he is now?

A. The Second New Jersey Regiment of the United States Army.

Q. You know he is not at the present time in the employ of the Water Department?

A. I do.

Q. And has not been for a long time?

A. Not since the Second New Jersey Regiment was called.

Cross-examination, by Mr. Heher.

Q. He is a member of the Second Regiment of New Jersey?

A. Yes, sir.

Q. National Guards?
A. Yes, sir.
Q. Has he left the State?
A. Not to my knowledge.
Q. Has he left the county?
A. My information is he has.

Mr. Heher—I make a motion that his entire testimony be stricken from the record.

The Court—Motion will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

George P. Purvis, sworn for the State.

Direct examination, by Mr. Douglas.

Q. You are a meter reader of the Trenton Water Works?

A. I am.

Q. How long have you been such?

A. Four or five years.

Q. Do you know if you read the meter on the property of Morris Rudner, 800 Clinton avenue, Trenton, New Jersey?

A. I have.

Q. I show you paper here and ask you if you know what that paper is?

A. Yes, sir.

Q. Let me call your attention to the reading of that meter on June 7th.

A. Yes, sir.

Q. Can you see on that paper the reading of that meter?

A. I read it on September 7th for three months preceding that.

Q. Did you make that handwriting?

A. Yes, sir.

Q. Is that reading correct?
A. Yes, sir.

Cross-examination, by Mr. Heher.
Q. September 7th of what year?
A. 1916.
Q. Is that your handwriting?
A. Yes, sir.
Q. Any others there in your handwriting?
A. No others, on this sheet.
Q. That is the only one?
A. Yes, sir.
Q. Why do you think that is your handwriting?
A. I know my own handwriting.
Q. They are figures?
A. I read South Clinton Avenue at that time.
Q. You are depending on other information than this paper? Where did you get the information that you read South Clinton Avenue at that time?
A. Every day we read meters, and I always put down in the book what street I read and what date.
Q. Where did you get that, where is the book?
A. I have not got that book.
Q. Have you examined that recently?
A. No, it was destroyed recently. I know it is my handwriting. It was shown me several days ago.
Q. By whom?
A. Mr. Conover.
Q. Did he ask you if you wrote that?
A. Yes, sir.
Q. Did you examine it before you answered?
A. Yes, sir.
Q. How did you arrive at the conclusion?
A. Well, I can tell by those figures those are my figures. In the first place, I can also tell by information.
Q. From whom?
A. My book.

Q. Where is your book?

A. Home.

Q. Did you look at it since Mr. Conover talked to you?

A. No, sir.

Q. You cannot say from anything you learned that they are your figures?

A. Yes, I am positive.

Q. How do you know?

A. If you look close the ought is made backwards. It is the only one on the sheet.

Q. Do you make your oughts backwards?

A. Backwards.

Q. Did you have this sheet with you at the time you made the inspection of Mr. Rudner's property?

A. I did.

Q. Do you remember it?

A. Yes, sir.

Q. At this time?

A. Yes.

Harry A. Rittenhouse, sworn for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Rittenhouse, I show you two cards, did you write the handwriting on those cards in the course of your employment?

A. Yes, sir.

Q. You testified this morning here that the meter at 800 South Clinton Avenue the reading had been made and bill paid from March 6, 1915, to September 7th, 1916, the amount of which is 160,000 one hundred cubic feet of water?

A. Yes, sir.

Q. Assuming that figure to be correct, 160,000 one hundred. If that meter was putting through ten cubic feet of water and was registering two, are you able to tell the quantity of water that passed through between the dates of March 6, 1916, and September 7th, 1916?

Mr. Heher—I object to that. If he is called as an expert he should have qualified and not give conclusions. He is not competent to testify in this matter.

The Court—I will allow the question.

Mr. Heher—May we have an exception?

The Court—Yes.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Will you do this?

A. I understand you want to know the amount plus the amount of water that was not registered in the meter. Is that the idea?

Q. (Question repeated.)

A. Yes, sir. The meter should have registered 800,500 cubic feet.

Q. What is the difference between 160,100 cubic feet and 800,500 cubic feet? That is the amount not registered?

Mr. Heher—Objected to on the ground the witness cannot tell.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Cross-examination, by Mr. Heher.

Q. What period does this cover, Mr. Rittenhouse?

A. 3-6-15 to 9-7-16.

Q. Your statement that the meter registered 160,100 cubic feet of water during all this time is based entirely on reports purporting to have been made by somebody else?

A. Yes, sir.

Q. And the figures that it should have been 800,500 cubic feet during that same period is based on the report of a meter reader?

A. Yes, sir.

By Mr. Devlin.

Q. Do you know what the price of water was at this time?

Mr. Heher—That is not a proper question.

The Court—The question is, does he know. He may answer yes or no.

A. Yes.

Q. At that period, what was it?

Mr. Heher—I object, he has not been proved to know the value of water.

The Court—This man is connected with the water department. It seems to be that is entirely competent.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Ninety cents a thousand cubic feet.

Q. Can you tell me the computed value of 640,400 cubic feet at ninety cents a thousand?

Mr. Heher—I object to this.

The Court—The objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. $576.36.

By Mr. Heher.

Q. Is that price, ninety cents a thousand cubic feet, the prevailing price?

A. At that time.

Q. Has it always been the price?

A. At that time.

Q. Is it the price now?

A. Well, there are different rates, according to the kind of business.

Q. You charge people different prices for water?

A. It depends on what kind of business they are in.

Q. Tell us the different specifications?

Mr. Devlin—I object to that as not cross-examination.

The Court—I will allow it.

A. Well, saloons and factories have the ninety-cent rate and apartment houses and private homes a dollar thirty-five.

Q. In saloons it is ninety cents and in the apartment houses and private homes a dollar thirty-five?

A. Yes, sir

Q. At the present time?

A. Yes, sir.

Q. And these are the only two rates you have?

A. $1.35 and ninety cents.

Q. What were the rates between March 16th, 1915, and September 7th, 1916?

A. Ninety cents a thousand on this property.

Q. Ninety cents for apartment houses?

A. There used to be a saloon in that place at that time. There is not now.

Q. I don't understand you. You say there was a saloon in that property at that time?

A. At that time we had it at ninety cents.

Q. Don't you know there was never a saloon in that property?

A. No, sir; it is the Old People's Theatre.

Q. Don't you know there has not been a saloon in this property for seven years?

A. I do not know anything about it. We have always had the rating down as a saloon property until we found out different.

Q. What were the prevailing rates between March 16th, 1915, and September 7th, 1916?

A. Ninety cents a thousand.

Mr. Heher—I object to that.

The Court—He may answer the question.

A. Ninety cents a thousand is what we charged on this property.

Q. You have not told us yet how these rates were fixed, do you know?

A. I suppose they were fixed by the commission.

Q. You charged Mr. Rudner during this period of time ninety cents a thousand cubic feet?

A. Yes, sir.

Mr. Devlin—We offer that meter as an exhibit. We offer these gears as the gears found in the meter in evidence. The Court will take judicial notice of the Laws of 1859.

Meter above referred to offered in evidence and marked Ex. S-3.

Gears above referred to received in evidence and marked Ex. S-4.

Mr. Heher—I object to the offer of this meter unless it is taken apart so that the jury will have the opportunity of seeing the inside of the meter. It is not the meter in question.

The Court—It is a meter of the same size.

Mr. Douglas—Yes, sir.

The Court—I will permit the meter to be offered in evidence as being a meter of a similar type, but not the Rudner meter.

Mr. Douglas—It is not offered for any other purpose excepting to show the mechanism.

The Court—I see no objection to the meter being opened.

The State rests.

Adjourned to April 26, 1917.

The defendant, Morris Rudner, moves for a direction of a verdict in his favor, on each of the four counts contained in the indictment, on the ground that the evidence fails to show the commission by the defendant, Rudner, of either of the crimes attempted to be charged in the said four counts.

The evidence shows that the offenses alleged to have been committed in the first and secound counts occurred more than two years before the finding of the indictment, and for that reason are outlawed. As to the time of the commission of the offenses charged in the first and second counts, there is a substantial variance between the allegations of the counts and the proofs. This defendant again insists that for the reasons given on the motion to quash, no crime is charged in the first and second counts of the indictment, and that the evidence, in respect to these counts, does not show the commission of a crime or crimes by the defendant.

Neither of these counts charge a crime under the statute. On that point, I call your Honor's attention to the fact that, while each of these counts charge the tampering with a meter of the Trenton Water Works, the proofs show the fact to be otherwise, and that the Inhabitants of the City of Trenton, a municipal corporation, owned the meter and furnished the water which passed through the same, and that there was no tampering with the meter of a water company.

As to the third and fourth counts, there is no evidence of the commission of the crimes attempted to be charged in these two counts. The evidence does not show the larceny of stored filtered water, as charged in these two counts. In fact, there is no evidence whatever of larceny by the defendant Rudner. The water which is alleged by the State was the subject of larceny, was voluntarily sent through the mains of the Inhabitants of the City of Trenton, and from there through a pipe connected with the defendant's premises, and owned by him, and from the pipe to the meter in ques-

tion. There is no proof whatever of larceny. There is no legal proof of the quantity of water alleged to have been stolen; in fact, it is not, under the circumstances, the subject of proper legal proof. The evidence fails to establish the commission of a crime under the statute. Water is not a subject of larceny, and cannot be such under the circumstances shown by the evidence.

In support of this motion, the defendant, Rudner, also advances the same reasons given on the motion to quash this indictment and each count therein. We insist that the evidence fails to show the commission of a crime under any one of the counts contained in the indictment, and that for the above reasons a verdict should be directed for the defendant, Rudner, on each count of the indictment and on the indictment as a whole.

The Court—The motion will be denied.

Defendant, through his counsel, prays an exception to the above ruling of the Court, on each reason advanced, which was allowed as to each reason.

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

ERWIN E. MARSHALL, *Judge.*

TRENTON, NEW JERSEY,
THURSDAY, April 26, 1917.

Trial resumed pursuant to adjournment.

Morris Rudner, the defendant, sworn.
Direct examination, by Mr. Kafes.
Q. You are the defendant in this case?
A. Yes, sir.
Q. Where do you reside?
A. 750 South Clinton avenue, Trenton, New Jersey.
Q. How long have you lived in Trenton?
A. For the last fifteen years.

Q. You are a married man?

A. Yes, sir.

Q. Live with your wife and family?

A. Yes, sir.

Q. Are you engaged in any business?

A. Yes, sir; the saloon business.

Q. Where?

A. 714 South Clinton avenue, Trenton, New Jersey.

Q. You have been engaged in that business for how long?

A. All the time I have been in Trenton.

Q. Do you know the premises 800 South Clinton avenue?

A. Yes, sir.

Q. Will you describe to the jury what kind of a building that is?

A. Apartment house.

Q. Consisting of what?

A. Seventeen flats.

Q. How many rooms in each flat?

A. Some of them have four and some of them have five.

Q. This building is situated where?

A. 800 South Clinton avenue.

Q. With respect to street location, where?

A. Corner of Hudson and Clinton avenues.

Q. It is known as the Old People's Theatre Building?

A. Yes, sir.

Q. Are they mostly foreign people who live there?

A. Nearly all foreign people.

Q. How long have you owned that property, Mr. Rudnor?

A. Since 1911.

Q. You had a meter installed in that building?

A. Yes, sir.

Q. You have water supply for that building, have you not?

A. Yes, sir.

Q. From the city?

A. From the city.

Q. When, if at any time, did you say the city installed the meter in your apartment house?

A. That was in 1912—I believe it was in 1912.

Q. Do you receive water bills from the city?

A. Yes, sir, water bills from the city.

Q. Did you or did you not at any time after the installation of this meter in your apartment, 800 South Clinton Avenue, Trenton, New Jersey, ever have cause to complain to the City of Trenton because of the amount of water bills furnished you?

A. Yes, sir.

Q. How often did you complain?

Mr. Devlin—I object to that until the date is fixed.

The Court—You may answer the question.

A. Five or three times.

Q. When was the first time? Give me as near as you can the date?

A. I cannot tell you exactly. It have not got the bills with me. It was some time in 1914, I believe; I am not positive.

Q. 1914?

A. I am not positive of that.

Q. How often in 1914—do you remember how many times you went in 1914?

A. Two or three times, two—I am positive.

Q. State under what circumstances you went to see Mr. Wittenborn the first time?

A. I received a bill for $150 for that apartment for that apartment. I went to Mr. Wittenborn and said, "Mr. Wittenborn, this is highway robbery. This bill for $150 for three months." He says, "Rudner, there is something unusual. I can't understand it, and I believe—I tell you what I will do. I will send the inspector to inspect that meter and then we will know it."

Q. Did the inspector come out to your place?

A. No, sir, I did not see him. I do not know whether it was an inspector or not he sent out. The bill came back from the water department tested O. K.

Q. You don't know if he sent an inspector out or not?

A. I don't know if the gentleman—I don't know if he did, maybe he did.

Q. You didn't see the inspector?

A. No, sir.

Q. The bill was returned O. K.?

A. The bill came back to me marked "Water Department, tested O. K."

Q. You paid the bill?

A. I had to pay it.

Q. How did that bill for $150 compare with the bill immediately preceding it?

Mr. Devlin—I object to that. Bills tell nothing in this case.

The Court—I will admit the question.

Q. All before were much smaller?

A. Yes, sir.

Q. That is why you made the complaint?

A. Yes, sir.

Q. Why did you make the second complaint?

A. A high bill.

Q. When did you make the second complaint?

A. Why, two bills after that.

Q. That was the second bill rendered to you?

A. Yes, sir.

Q. Was that a high or low bill?

A. It was a high bill.

Q. Whom did you go to see this time?

A. Mr. Wittenborn, and I told him, "The best thing for you to do would be for me to give you a deed for that property. It is no use for me to pay interest upon $8,000 on that property and pay taxes $300 and pay your water bills, too, all this amount. That property didn't use it."

Q. What did he say to that?

A. He said, "Mr. Rudner, I will send out an inspector."

Q. Didn't he send an inspector?

A. I don't know.

Q. Did the inspector, assuming that one called at your place, 800 South Clinton Avenue, if he called to see you, was it before or after?

A. Well, the second time I believe that was the time I made the complaint when I told Mr. Wittenborn the best thing for me to do would be to give him a deed for that property and Mr. Wittenborn said he would send an inspector round. I didn't see the inspector.

Q. Later on an inspector did come?

A. Yes, sir.

Q. To your place of business?

A. Yes, sir.

Q. And who was that?

A. That was Speck.

Q. Do you know what time of the year that was?

A. That was, I believe, in November, 1914.

Q. Did you talk to the inspector about your premises, 800 South Clinton Avenue.

A. When he came in he told me, "Mr. Rudner, I inspected your meter, your meter is wrong. You are paying for water that you never used."

Q. That was the first time, as I understand you to say, you had ever met Sachs when you talked about meters in your premises?

A. That is the first time, and that is the first time I talked about the meter.

Q. When he told you you had been paying more money to the City of Trenton than what you had received water for, what, if anything, did you say to him?

A. I said, "What can I do? What can I do. I can't open that meter, I can't use that meter." Mr. Speck said, "I will fix that meter."

Q. He said he would fix the meter?

A. He said, "I will fix the meter so you don't have to pay for any more water than what you use.

Q. Do you know what kind of a meter was in your place at that time?

A. No, sir.

Q. Do you know whether the City cleaned the meter in your place on this second occasion or not?

A. I don't know anything about it.

Q. Do you know anything about a meter?

10 A. No, sir.

Q. Do you know anything about the mechanism or the working of a water meter?

A. No, sir.

Q. Speck said that he would fix the meter so that you would not have to pay for any more water than what you used?

A. Yes, sir.

Q. What, if anything, did you say?

A. I said, "Please do it."

20 Q. Do you know what date of the month that was?

A. I believe it was in November, the 25th or 26th, in 1914.

Q. Some time in the latter part of November?

A. Yes, sir.

Q. Is that all the conversation you had with Speck at that time?

A. That is all I had with Speck at that time.

Q. Did you see Speck there after?

A. Mr. Speck came to me two or three days after.

30 Q. Where did you see him?

A. 714 South Clinton Avenue, Trenton, New Jersey.

Q. Daytime or night?

A. Daytime.

Q. What part of the premises 714 South Clinton Avenue, did he see you?

A. Right in the saloon.

Q. You mean in the barroom?

A. Yes, that is all I got.

Q. Is that a large open barroom?

A. Yes, sir.

Q. You are in the vicinity of the rolling mills on South Clinton Avenue?

A. Yes, sir.

Q. State what time did you see him?

A. I couldn't tell you exactly the time.

Q. Well, about?

A. Well, about two or three o'clock in the afternoon?

Q. Is that a busy hour for you, two or three o'clock in the afternoon?

A. Saturday afternoon, that is a busy day. It is our busiest day.

Q. What were you doing in your place this day?

A. Attending bar.

Q. You have another bar attender?

A. Yes, one other bar attender.

Q. Assisting you?

A. Assisting me, yes, sir.

Q. You say Speck came into the barroom?

A. Yes, sir.

Q. Did he say something to you, yes or no?

A. Yes.

Q. Where were you standing when Speck came in, in back of the bar or in front?

A. In the back.

Q. Did he stand in front?

A. Yes, sir.

Q. Were there people all around?

A. Yes, sir.

Q. They could hear whatever transpired between you?

A. Yes, sir.

Q. What, if anything, did he say to you and you to him?

A. Mr. Speck told me, "Mr. Rudner, I fixed your meter. You will not have to pay for more water only that which you use."

Q. Did he say that?

A. Yes, sir.

Q. So those standing around could hear if they listened?

Q. What else, if anything, did he say at that time?

A. He said, "Mr. Rudner, I charge $10 for that job."

Q. What did you say to him?

A. I said, "All right," and I went over to my desk, wrote out a check and gave him a check for $10.

Q. Will you produce the check?

A. Yes, sir. (Witness produces check.)

Q. I show you a certain piece of paper and ask you what it is. Is that what you refer to?

A. Yes, sir.

Mr. Devlin—I offer that for identification.

Check above referred to marked D1 for identification.

Q. You say that check is made payable to Charles L. Speck?

A. Yes, sir.

Q. Whose handwriting is the body of this check in?

A. In my handwriting.

Q. You see the word "Morris Rudner," you signed that, did you?

A. Yes, sir.

Q. That check passed through the Merchants Trust Company?

A. Yes, sir.

Q. And was subsequently returned to you?

A. Yes, sir.

Q. Before you made out that check and he said the charges were $10, what, if anything, did you say to him before you wrote out that check?

A. I didn't say anything.

Q. When he said to you the chrages were $10, what did that convey to you?

A. That conveyed to me that the man was entitled to this $10 for the work.

Q. Did you know to whom this $10 was to go?

A. No, sir.

Q. Did you think it was to go to his employers?

A. I didn't know.

Q. Did you ask him any questions about it?

A. No, sir.

Q. That was Saturday afternoon?

A. Yes, sir.

Q. You were working at the time?

Mr. Devlin—I object to that as leading.

Q. And when he came—

Mr. Devlin—He is leading the witness. Let the witness testify.

The Court—Avoid leading questions.

Q. I understand you to say that this was during the busy hours?

A. Yes, sir.

Q. Between two and three o'clock on Saturday afternoon?

A. Yes, sir.

Q. State if, before on this Saturday afternoon, November 22d, 1914, or after you gave him the check, whether he said anything to you concerning that water meter other than you have already given us?

A. No, sir, never said anyhting to me about it?

Q. Did he say anything to you of and concerning the gears in that meter?

A. No, sir, he did not say anything to me about gears.

Q. Did he say to you that he had changed the gears in that meter and that it would now run slow, or words to that effect?

A. Yes, sir, if he told me anything about gears I would not know anything more about gears than I would about the war in Europe.

Q. Did he say anything—did he say to you, "Now, Rudner, you will have no more high bills. I have changed gears so that it will run slow?"

A. Never told me anything about gears.

Q. Did you say to him, or did you not, "All right, if I will have no more high bills here is $10"?

A. When he came to me—

Q. Answer yes or no?

A. I believe I did.

Q. Did you in that sense understand, Mr. Rudner, when he said, "I have fixed your meter. I have changed the gears and so forth," which you say he said, "and that from now on you will have no more high bills." Did you say, "Well, here is $10."

A. Oh, no; he never mentioned anything about gears at all. He mentioned to me about the meter.

Q. He never said anything to you about gears?

A. No, sir.

Q. He said, "Now, the meter is fixed, and it won't register any more water than you use, and the charge is $10?

A. Yes, sir.

Q. He also testified that he met you on the street one time, and you told him to stop in your place, you wanted to see him, and that he did stop in your saloon on South Clinton avenue, and you there handed him a $5 note. Is that true or untrue?

A. No, sir.

Q. Is that true?

A. No, sir.

Q. And that you saw him again some time thereafter on the Broad street bridge, about two months after this, and you said to him again, "Why don't you come around?" To which he said, "I will," and that he came around to your place in September, and that you again, in your saloon, gave him $5, is that true or not?

A. No, sir.

Q. Did you at the time you gave this check for $10 have any conversation with him either in your saloon on South Broad street or any other place in the City of Trenton?

A. Except the night he came to my place.

Q. When the $10 check was given?

A. It was about a month after.

Q. How long after that?

A. Two years after.

Q. Was it 1915?

A. 1915 is right.

Q. The latter part?

A. Yes, sir.

Q. What did you say to him then?

A. Starting in, he said, "Redner, give me a drink." I gave him a drink. He said, "Mr. Rudner, do you know a friend by the name of Alberts?" I said, "yes." He said, "His meter is no good. He pays for something he doesn't receive."

Q. Did he say how much?

A. Yes, he says double. He says I have got to go there to-morrow to fix his meter.

Q. You say that was in 1916?

A. 1916.

Q. He said Albert had a meter that was no good, and he was paying for double the amount of water he was getting?

A. Yes, sir.

Q. And that he had already received orders to go there the following Sunday?

A. Yes, sir.

Q. You know Isadore Alberts?

A. Yes, well.

Q. Where was he living at that time?

A. Chestnut street.

Q. This city?

A. Yes, sir.

Q. Did you call him up any time that day, Saturday?
A. Sunday.
Q. The next day?
A. Yes, sir.
Q. Did you get him on the 'phone?
A. I did.
Q. At his home?
A. Right in his home.
Q. What did you say to him?
A. I said, "Mr. Alberts?" "Yes." "Horris Rudner talking." "Yes." Mr. Alberts, I have something to tell you; will you come over to see me?" "No, sir."
Q. Did he tell you why?
A. "I have got to go away to Jersey City." "Yes." "I will meet you to-morrow morning in front of the Mechanics Bank."
Q. Did he say what time?
A. Around ten o'clock.
Q. Yes.
A. Yes.
Q. Was he a dealer in the Mechanics Bank?
A. Yes, sir.
Q. Were you?
A. No, sir.
Q. You have been?

Mr. Devlin—What does that matter? I object to that.

The Court—I don't see its materiality.

Q. Did you see him there?
A. Yes, sir.
Q. What did he say to you and you to him?
A. I said, "Albert"—

Mr. Devlin—I object to that; if he wants to contradict what Albert said, put it to him in question and answer. Albert is not a complaining witness.

The Court—Have you got a copy of the testimony?

Mr. Kafes—Yes.

The Court—I think you should ask him specifically. Ask him questions and answers.

Mr. Kafes—What do you do with my questions?

The Court—At the present I overrule it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you meet Alberts inside the bank or outside?

A. I just came out from the bank and he came into the bank.

Q. Did you say to him, "I understand you have been having large water bills?"

A. Yes, sir.

Q. Did he say to you, or not, " Yes, I have"?

A. Yes, sir.

Q. Did he say to you, or not, "Where do you get your information from, Mr. Rudner"?

A. He asked me, "Mr. Rudner—"

Q. Answer yes or no.

A. Yes, sir.

Q. Did you reply, "Ask no questions"?

A. That is what I told him.

Q. Did you or did you not say to him, "Well, I am going to help you out. I can arrange to get your water bill cut in two so that from now on you pay for water as you think fit, what you think you ought to pay." Did you say that or not?

A. Yes, sir.

Q. Now, I call your attention to the latter part of that question?

Mr. Devlin—I object. The question has been fairly and fully read and answered intelligently.

Mr. Kafes—I want to see if the witness fully understands the question.

Mr. Devlin—I ask the court that he read the full question. I want him to read the question without emphasis.

The Court—Give the witness an apportunity to answer it.

Q. You made this answer when he said (meaning you). This is what you said.

Mr. Devlin—I suggest that the stenographer read the question.

The Court—Mr. Kafes may ask the question.

Q. I am going to help you out; he said, "I can arrange to get your water bill cut in two so that from now on you pay for water as you see fit, whatever you think you ought to pay." Did you say it in those words?

A. I cannot say that, or—

Mr. Devlin—Yes or no?

The Witness—No, sir.

Q. Did you or did you not say to him, "I can help you out?

Mr. Devlin—I object to that as repetition.

The Court—That is part of the same question.

Mr. Kafes—I understand it is. I say this to the Court; I can first ask him whether or not he made the statement, and if he says no, I have a perfect right to ask him what he did say.

The Court—I will permit you to do that, but I will not permit you to put the question in that way.

Mr. Kafes—I have a perfect right to put the question to him.

The Court—I will permit you to ask Mr. Rudner what he did say.

Mr. Kafes—I will withdraw it.

Q. In that connection, what did you say to Mr. Alberts about cutting his bill in half?

Mr. Devlin—I object to that as leading.

The Court—It is leading.

Q. What did you say in that connection?

A. I said, "Albert, how is you water bill?" He said, "How do you know?" And I said, "I know about it." He says, "How do you know?" And I said, "I know." And he said, "How?" And I said, "You pay too much for your water, you don't use it." He says, "What can I do, I made complaints?" And I said, "See that man."

Q. Was anything more said at that time?

A. He asked me—

Mr. Devlin—I object to that.

The Court—I am going to permit the defendant to relate the entire conversation.

Q. Do you remember this being said?

Mr. Devlin—I object to that.

Q. Did Mr. Alberts say to you that time, "How will I do this," and you said, "I told you to ask me no questions;" and Albert said, "How will I go about it?" and you said, "See the man that took out your meter—see that man that took out your meter yesterday and he will arrange for it." Answer yes or no?

A. No, sir.

Q. Did you or didn't you, in that connection, tell him to see Speck?

A. That is what I told him.

Q. That is all?

A. That is all.

Mr. Devlin—I don't want to object, but that was very leading.

The Court—That was very leading.

Q. Did you see Speck after that?

A. No, sir.

Q. In telling Isadore Alberts what you did, what were your methods?

Mr. Devlin—I object to that. His methods ought to be judged by the jury, absolutely. That is a matter of final argument to the jury.

Mr. Kafes—I insist he has a perfect right to explain all his conduct. He has a perfect right to give the jury an explanation why he took this matter up with Mr. Alberts, a perfect right to do it. Then it is for the jury to say whether they accept his explanation.

The Court—He may answer the question.

A. Friendly.

Q. Friendly?

A. Yes, that is all.

Q. No other reason?

A. No other reason whatever.

Mr. Devlin—I object to that.

Q. Now, following this conversation with Mr. Alberts, did you or not go to the City Hall and see any commissioners?

A. No, sir; I was called up by Commissioner Lee.

Q. How long after your conversation with Mr. Alberts?

A. I imagine about two or three weeks, maybe less; I cannot mention the time.

Q. You were called on the 'phone?

A. Yes, I happened to be in Judge Montgomery's office. They called me up at the house, and I called up the house, and they told me Commissioner Lee wanted to see me.

Q. Do you know when that was?

A. I cannot tell you exactly.

Q. Did you go the same day and see Mr. Lee?

A. It didn't take me a quarter of an hour; I was in Mr. Lee's office.

Q. Whom did you meet there?

A. Met Mr. Lee, Mr. Fell and Mr. Bugbee.

Q. What, if anything, did Mr. Lee say to you at that time?

A. He said, Mr. Rudner—

Mr. Devlin—I object to that. There is no evidence in the case—

Mr. Kafes—I will withdraw the question.

Q. Mr. Rudner, where do you live?

A. 715 South Clinton avenue.

Q. You don't live in this apartment house?

A. No, sir; I don't.

Q. How many spickets, or connections, are there in your apartment house, if you know?

A. In my apartment house there are about thirty-six, I believe. I can't tell you exactly, without referring to memoranda. Abouty thirty-five or thirty-six connections.

Q. How many do you use?

A. Thirty-five or thirty-six.

Q. You said at the outset you didn't live there, and this was used by foreign families?

A. Yes, sir.

Q. You never use any of it?

A. No, sir.

Q. Nor do you know exactly what quantity of water they are using?

A. No; I don't.

Q. You have lived in Trenton fifteen years?

A. Yes, sir.

Q. Own property in the City of Trenton?

A. Yes, sir.

Q. I want to ask you one or two general questions. Did you ever, at any time, procure, or ask, or hire, or pay, Speck, the inspector, to unlawfully change the gears in your meter, your water meter, or tamper with it, so you could use water you didn't expect to pay for?

A. No, sir.

Q. Have you any such arrangement with him to do that for you?

A. No, sir.

Q. Did you ever, at any time, pay him any money to do anything in connection with this meter of an unlawful character, or with a view of cheating and defrauding the city of its water?

A. No, sir.

Q. Did you, at any time, with fradulent intent, take any of the water belonging to the City of Trenton; in other words, did you at any time steal any water from the City of Trenton?

A. Never did.

Q Can you tell us about these thirty-six spickets, what they are and what they are used for?

A. I got on the first floor a spicket in the sink and one one bath tub.

Q. No, two of them?

A. Second floor, a toilet and spicket and bath.

Q. Third floor?

A. I have a toilet and a bath. On 800 South Clinton avenue, which is the corner, I have on the first floor a toilet downstairs. On the second floor a toilet, bath and sink. On the third floor we have a toilet, a sink and a bath.

Q. Who collects the rent for this house?

A. They all come in my place.

Q. They come to your place?

A. Yes; right in my saloon.

Cross-examination by Mr. Devlin.

Q. Mr. Rudner, you know the premises 800 South Clinton avenue?

A. I do.

Q. You own that place?

A. I do.

Q. And you own the place 802, and 804 also?

A. Yes; I do.

Q. They are connected with the same water meter?

A. The same water meter.

Q. You rent this place to your tenants and pay the water rent?

A. According to the bills coming; yes, sir.

Q. Do you know how many outlets of water you have got on the first floor of 800?

A. On the first floor?

Q. Yes, sir.

A. I got on the first floor—which side do you mean?

Q. 800 South Clinton avenue.

A. Two on the first floor.

Q. Now, will you tell us how many families are on the first floor?

A. On the first floor?

Mr. Devlin— I withdraw that question.

Q. Were the number of spickets the same in your place in 1914 and 1913 and 1912 as they are to-day?

A. There were just as many spickets in 1912 as there are to-day, only four are not used.

Q. Go ahead.

A. I got a furniture man at 800 South Clinton avenue. He used two flats on the first floor and there is a toilet, sink and a bath. They are not used.

Q. How long have they been cut out?

A. Two years.

Q. Two years?

A. Yes, sir.

Q. Now, how many tenants on the first floor of 800 Clinton avenue?

A. On the first floor is two families, consisting of five people.

Q. On the Hudson street side there is a store, it has one closet, one sink and one bath. There is also another sink, closet and bath?

A. Yes, sir.

Q. On that side there are four sinks, four closets and four baths in one home, is that true?

A. No, sir.

Q. How many do you say?

A. There is none at all in those two houses. There is two flats on the Hudson street side, which are not connected.

Q. I am not speaking about whether they are connected or not. I say you have on the Hudson street side one house, four baths, four closets and four sinks.

A. Yes, sir

Q On the Hudson street side, next floor, have you got five families and sixteen people?

A. Next floor?

Q. Yes, sir.

A. Yes, sir.

Q. The third floor, Hudson street, you have five families, with nineteen people, on the third floor?

A. I have five families.

Q. And nineteen people?

A. I don't know how many.

Q. Have you got on that side five sinks, five closets and one bath.

A. Yes, sir.

Q. 802 and 804 South Clinton avenue?

A. Yes, sir.

Q. On the first floor have you got one family of four people?

A. I don't know how many people there are.

Q. You don't know?

A. No, sir.

Q. One sink and one closet?

A. Yes, sir.

Q. On the third floor one family of two people, one sink and one closet?

A. One sink and one closet.

Q. That is right?

A. Yes, sir.

Q. Do you know how many outlets you have got connected with this water meter you are speaking about?

A. How many outlets?

Q. Yes, sir.

A. I believe there are thirty-five or thirty-six.

Q. Do you know there are forty-one?

A. I do not.

Q. Do you deny it?

A. I do not see how.

Q. Do you deny it?

A. I say I do not know.

Q. You don't deny it?

Q. Have you been keeping track of how many people have been occupying these buildings?

A. I never did.

Q. Have you been keeping track of how much water these people have been using for the last two or three years?

A. No, sir.

Q. Well, will you tell how you can intelligently complain about your water bill?

A. I have more houses with more outlets and much less bills.

Q. That is the reason?

A. Yes, sir.

Q. Can you name any house that you own with forty-one outlets and fifteen families and fifty-one people that you have got?

A. Mr. Devlin—

Q. I am asking you?

A. I have a saloon, the property that belongs to the Trenton Brewery, I have been in it to-day—

The Court—Have you any other apartment houses?

Witness—No, sir.

Q. With fifteen families consisting of fifty-one people?

The Court—He said he had no other apartment house.

Q. Then you have no means of intelligently complaining about the water bills, the size of the water bills?

A. No other apartment, only I compared it with my saloon.

Q. You complained about the bill on general principles?

A. I complained the bill was too high.

Q. On general principles?

Mr. Kafes—I ask that that be stricken out.

The Court—The witness need not answer the question.

Q. Can you tell what bill you complained about?

A. The first bill I complained about was $115.

Q. The ninety-cent rate?

A. Yes, sir.

Q. When was that?

A. Sometime in 1914.

Q. It was $115?

A. Yes, less one-third.

Q. $57.04?

A. I could not tell you that.

Q. Were your places occupied the same as they are now?

A. No, sir. That place is never steady occupied.

Q. How many do you think there are there now?

A. I could not say, sir.

Q. Do you think there are fifty-one people?

A. I don't know.

Q. Do you think you have thirty-six people?

A. I would not say that either.

Q. You would not say?

A. No, sir.

Q. The amount you paid was $77?

A. Yes, sir, I paid it.

Q. Do you know that for fifty-one people the average is less than a dollar and a quarter a person for three months?

A. I don't know.

Q. Do you know when you made the second complaint?

A. I think about three months later.

Q. What?

A. I think about three months after the first, I cannot tell you.

Q. That would be June, 1914; do you know what the bill was at that time?

A. No, sir; if I had the bills I could tell you.

Q. I am asking you if you remember?

A. No, sir.

Q. Do you know the net bill was $44.70 on that date in question?

A. I don't remember.

Q. I am reading from the record?

A. I don't remember, Mr. Devlin.

Q. Do you remember when you made the next complaint?

A. Oh, three months or six months later.

Q. Six months?

A. Well, three or six months, I cannot say.

Q. You heard Mr. Speck testify, didn't you, that he fixed that meter in August, 1914?

A. I believe I did.

Q. You say you complained in the next bill. The next bill was October, 1914. Do you remember what that bill was you complained about?

A. No, I don't remember.

Q. Do you know it was $13.02?

A. I don't know how much the bill was.

Q. When was the next complaint you made?

A. I made two, or three, I do not know which.

Q. Do you think if I read you the amount of money you paid since you had a meter that you could identify the one you complained about?

A. Maybe so.

Q. I will begin in 1912?

A. Yes, sir.

Mr. Kafes—Is that in evidence, this paper?

Mr. Devlin—No, sir.

Mr. Kafes—He ought not to read from any paper that is not in evidence.

Mr. Devlin—I have asked the witness if he knew. Now, where is the objectionable point. Doesn't your client know when. He knows when he needs to object.

The Court—I do not think I will permit the bills to be read.

Q. The fact is, Mr. Rudner, you never had any information in the two or three years that you had this water meter in which you had water going through forty-one spickets, you never knew how much water was going through? Is that true?

A. Never knew, no, sir.

Q. You didn't know whether these fifteen families were outrageously and deliberately wasting your water, did you?

A. No, sir.

Q. Now, the time you complained of the water had you ever gone into the premises among the families to ascertain how the water was being used?

A. No, sir.

Q. You never did?

A. No, sir, I never did.

Q. And then you knew, are you aware of the fact you have a water meter in your premises?

A. When the property was remodeled by myself. That was in 1912.

Q. In 1912 the meter went in?

A. Yes, sir.

Q. Then you knew you had a meter in the property from 1912 to date? Is that true?

A. Yes, sir.

Q. And you knew that the meter would register if properly placed all the water passing through, is that right?

A. I believe so.

Q. And that your bill would be determined by what that meter registered if the meter is right?

A. Yes, sir.

Q. Assuming it is right?

A. Yes, sir.

Q. You know that if these spickets were permitted to run and waste water the meter would register and you would have to pay the bill?

A. When the bills came I would have to pay them.

Q. Now, since the meter has been adjusted and put back you have received a bill, haven't you?

Mr. Kafes—I object to that.

The Court—He may answer the question.

Q. Yes or no.

A. I did receive a bill.

Q. Do you know what that bill is?

Mr. Kafes—I object to that as absolutely irrelevant and immaterial.

The Court—No, I shall not permit that.

Q. Now, then, Mr. Speck went to your place, you say, that he said to you that the meter was wrong and that you were paying for water that you never received?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And you asked him why you were paying for water you never used?

A. No, sir.

Q. Why didn't you?

A. I said, "What can I do."

Q. And what did he say to that?

A. He said he thought it could be fixed.

Q. Did you ask him how it came to happen you were paying for water you were not using?

A. I did not ask him at all.

Q. You didn't know whether the water was used or not?

A. No, I didn't.

Q. Then you had no reason to inquire from Speck. He could not tell you if the water was used or not?

A. I did not inquire, Mr. Devlin, he told me.

Q. You had complained before?

A. Yes, sir.

Q. And then when he told you you were paying for water you didn't use why didn't you ask him how that came to be?

A. I did not ask him; I said, "What can I do?"

Q. He told you you were paying for water you didn't use?

A. Yes, sir.

Q. Didn't that lead you to understand there was something wrong with the meter?

A. Yes, sir, he said the meter is wrong.

Q. Why didn't you go to the city government and bring Speck with you and prove to them that you had been wronged by the meter?

A. Mr. Devlin—

Q. My question is why didn't you?

A. Mr. Devlin, I was by Mr. Wittenborn and explained to him that the meter was wrong because the bill is too high and it done just as much good as if I put a pin in the wall.

Q. But here is a man who understands meters who told you that the meter was robbing you. You had the evidence to bring to the city government, why didn't you go to the city government and bring Speck with you and prove it to them?

Mr. Kafes—I object to that, the question has been already answered.

The Court—He may answer that again.

A. Mr. Speck is an employee of the City of Trenton, in the water department he is employed, and he came out and told me and I believd him. He told me the truth.

Q. When you knew that he was telling you the truth and if you had the evidence to convict the city government your meter was robbing you, I ask you why didn't you get your evidence and go to the city government and have it returned?

Mr. Kafes—I object to that.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Why didn't you?
A. Why I didn't?
Q. Yes.
A. There is no reason for it.
Q. You paid him $10?
A. Yes, sir.
Q. That check is dated November 20th?
A. Yes, sir.
Q. Why did you pay him that money?
A. The fellow came to me and told me, "I fixed the meter," and I gave him a check for it.
Q. For what?
A. For fixing the meter.
Q. In what way?
A. Putting it in order.
Q. Putting in new gears?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. How long have you lived in this country?
A. I have lived in this country since 1893.
Q. How long have you lived in Trenton?
A. The last fifteen years.
Q. Where did you live before that?
A. Newark, New Jersey.
Q. Were you in business there as you are here?
A. Yes, sir.
Q. You have been in business most of that time?
A. Yes, sir.
Q. You are a voting citizen of this country?
A. Yes, sir.
Q. You have been of the city and State elections?
A. Yes, sir.
Q. How long have you been a taxpayer—are you a taxpayer?

A. Yes, sir.

Q. For how many years?

A. How many years have I paid taxes?

Q. Yes, to the City of Trenton or the City of Newark?

A. Since I am a voter.

Q. You paid taxes in Newark?

A. Yes, sir.

Q. To the City Government?

A. Yes, sir.

Q. Didn't you, as an intelligent citizen, know that Mr. Speck was paid by the City Government for doing his work and did not require to be paid by you?

A. I knew he got paid by the city.

Q. But didn't you know, as a citizen—

The Court—What were you going to say?

Witness—I thought that check will go to the city?

Q. You did?

A. That is what I thought, positively.

Q. Did you know well enough about the City Government, paid taxes long enough to know that bills of the city against you are issued by the city?

A. Yes, I do.

Q. Did you know, in that instance, you should not pay for having a correction made? In other words, you were paying for justice; did you think you had to pay for justice, that you had to buy justice?

Mr. Kafes—I object to that. There are four or five questions there.

Mr. Devlin—I withdraw that.

Q. You say you had your meter corrected, is that right?

A. What?

Q. You had your meter corrected?

A. Yes, sir.

Q. A meter you didn't do anything to to make it inaccurate?

A. Yes, sir.

Q. You knew the meter didn't belong to you, but to the City Government?

A. I didn't know anything about it.

Q. You knew you didn't own it, you didn't pay for it, you didn't buy it?

A. No, sir.

Q. You knew you didn't own it?

A. I did not, sir.

Q. You knew it was there for to record for the City Government the water that went through?

A. It was as much for the City Government as myself.

Q. That was expected to do justice between you and the City Government in the use of water?

A. I don't believe that meter ever gave me justice.

Q. Do you, as an intelligent man, want us to believe that you paid $10 for having justice done to you?

A. That is all I believe.

Q. You believe that it is necessary to buy just treatment in a matter of this kind?

Mr. Kafes—I object to that as absolutely irrelevant and immaterial.

The Court—I think he has answered the question.

Q. You stated you believed these checks went to the City Government?

A. No, sir, I knew it did not.

Q. You believed it did?

A. At the time I gave it to him?

Q. Yes.

A. Yes.

Q. You know it didn't go, don't you?

A. I know it didn't go, yes.

Q. When did you have the check returned among your vouchers?

A. Maybe two or three months.

Q. Suppose it was two months after. I suppose, like every business man, you check out your vouchers?

New Jersey State Library

A. Yes, sir.

Q. You put them on the stubs again, do you?

A. No, sir.

Q. You check them off?

A. Yes, sir.

Q. To see what checks have come in?

A. Yes, sir.

Q. Of course, when you got that check two months after, you realized that Speck indorsed it and the city never got it?

A. Mr. Devlin, when I check up the cash I don't look at the back of the vouchers.

Q. You learned it?

A. I see it now.

Q. You saw it before?

A. Maybe six months before.

Q. Six months ago you learned the city never got the money?

A. Yes, sir.

Q. Did you ever go to Speck and ask him about it?

A. No, sir.

Q. Did you ever go to the city government and tell them you had given a check that you believed they never received?

A. No, sir.

Q. Why didn't you?

A. I don't know why I didn't.

Q. Didn't you give him on two occasions $5?

A. No, sir.

Q. For the reduced bills that you were receiving from the city?

A. No, sir.

Q. I think that you said Speck entered your place sometime in 1916 to buy a drink or wanted to see you, and that you gave him a drink, is that right?

A. Yes, sir.

Q. What did Speck say to you at the time?

A. In 1916?

Q. Yes, sir.

A. Came in and said, "Rudner, give me a drink, do you know a fellow by the name of Israel Alberts?" and I told him—

Q. What did he have to drink?

A. What did I ask him?

Q. What did he drink?

A. Beer.

Q. More than one?

A. That is all.

Q. Just try to refresh your memory, are you sure he had beer?

A. I am positive.

Q. No doubt about it?

A. He had beer.

Q. No doubt about it?

A. Drank beer.

Q. You are sure about it?

A. Yes, sir.

Q. You said, I think, you were on friendly terms with Albert?

A. Well, as friendly as with any other man.

Q. Isn't it a fact that you are just associates and that is all?

A. No, we don't talk to each other.

Q. But before?

A. At the time he talked to me.

Q. That is as you passed by you said good evening, but you were not intimately associated?

A. No, sir.

Q. You had never been in business together?

A. No, sir.

Q. You told Albert to be at the Mechanics Bank, didn't you?

A. I told him.

Q. He could not come to see you, could he?

A. No, sir, he said he was going to Jersey City, and he said he will meet me at the Mechanics Bank next morning, Monday morning.

Q. You say the reason you wanted to see Albert was because you heard he was getting high bills?

A. Because as a friend I thought I will tell him.

Q. You thought he was getting high bills?

A. That is what Speck told me.

Q. Well, you said to him, "My understanding is that you have large water bills," and in reply he said, he asked you where you got the information?

A. Yes, sir.

Q. And you said, "Ask me no questions." Did you say that?

A. I didn't say ask me no questions.

Q. What did you say?

A. Maybe I told him so.

Q. You said so on direct examination to Mr. Kafes?

A. Maybe I said so.

Q. Why did you say that?

A. There was no meaning to it. Merely in a friendly conversation.

Q. Why should you be unwilling to tell the thing that happened between you and Speck?

A. I cannot tell.

Q. Why didn't you say, "Alberts, I have had trouble with the meter, the city government has been charging me for water which I have not received. I paid the city government $10 to have the meter fixed," why didn't you tell him that in an open manner?

A. I told Israel Alberts to see Speck.

Q. Yes, but why didn't you tell him the whole thing if there was nothing to conceal?

A. I didn't think there was any crime committed by me or by Speck.

Q. I am not accusing you of crime.

A. That is the way.

Q. Now, I am assuming—if I take you at your own word, you have said that you saw Alberts and that you had paid to have the meter fixed. That is right?

A. Yes, sir.

Q. Why didn't you go to Alberts and tell Alberts the whole thing instead of saying, "Ask me no questions"?

A. Mr. Devlin, I stayed with Mr. Alberts but a few minutes, I didn't have time.

Q. Then, why didn't you say, "I haven't got time," instead of saying, "As me no questions"?

A. I didn't have time, that is all.

Q. To your counsel I think you said Alberts asked you, "How will you do that?" And you said I told him to ask me no questions; did you say that?

A. I don't remember.

Q. Did Alberts say to you, "How will I go about it?" And you said, "See the man that took out the meter yesterday and he will arrange it for you," did you say that?

A. I don't remember.

Q. Do you say you didn't say it?

A. I don't remember.

Q. You answered your counsel that, didn't you?

A. Well, Mr. Prosecutor, I don't think my memory is going to work any more.

Q. Do you think your memory is working right as to the whole events since 1914?

A. I had the check.

Q. Why did you tell him to see Speck instead of going to see the city government, the people who had Speck employed?

A. Why, I didn't tell him; I went to the city government and didn't get any satisfaction, and I thought let him do it.

Q. You knew you say Speck gave you the proof that the city government was robbing you. You paid a check. You knew at that time that the city government did not get that check; why, then, didn't you tell Alberts to go to the city government?

A. Why didn't I tell Alberts to see the city government?

Q. Yes, sir.

A. I thought he would go himself.

Q. Isn't it a fact that you were trying to get Alberts to do the same thing you were charged with doing?

A. No, sir.

Q. Did you, since your meter was fixed by Speck, did you go to any other person and tell them to do the same thing?

A. No, sir.

Q. Did you visit Cohan, Haefael Cohan, tell him how to do it?

A. No, sir; I did not.

Q. Did you visit Lavine?

A. We are on bad terms with Lavine.

Q. You are on bad terms?

A. Yes, sir.

Q. When you spoke to Alberts was the meter question all your conversation?

A. That is all.

Q. Didn't speak of anything else?

A. He was asking me about a loan.

Q. It is true you met Alberts by appointment at the Mechanics Bank, isn't it?

A. Yes, sir.

Q. As a result of the appointment you made over the 'phone?

A. Yes, sir.

Q. You are sure?

A. Yes, sir.

Q. Did you know Speck long before this time?

A. Before what time?

Q. Before August, 1914?

A. Oh, I knew Speck when the old gentleman was on the Excise Commission.

Q. 1911?

A. Before that.

Q. A long while?

Q. Do you remember November 16th being called to the office of Mr. Lee, and in the presence of Mr. Bugbee and Mr. Fell?

A. Yes, I remember Mr. Lee calling me.

Q. And Mr. Fell and Mr. Bugbee were there?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. Did Mr. Lee say to you that they had knowledge or believed that you could give some information in regard to your meter being fixed?

Mr. Kafes—I object to that. It is absolutely improper.

Q. And in reply to this you stated you had no knowledge of such a thing?

Mr. Kafes—I object to that on the ground it is incompetent, immaterial, irrelevant and not proper cross-examination.

The Court—I will sustain the objection.

The Prosecutor then moved to reopen the State's case.

Defendant's counsel objected.

Motion granted.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Edward Lee, recalled for the State.

Direct examination, by Mr. Devlin.

Q. You have been sworn?

A. Yes, sir.

Q. Do you remember November 15th being in company with Mr. Fell and Mr. Bugbee in the City Hall?

A. Yes, sir.

Q. Do you remember meeting the defendant Morris Rudner?

A. Yes, sir.

Q. At that time, from information you had received, did you know something was wrong with the meter at 800 South Clinton avenue?

Mr. Kafes—I object to that as irrelevant and immaterial.

The Court—Objection overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Yes, sir.

Q. As a result of that information did you or did you not request Mr. Rudner to go to the City Hall?

A. I requested him.

Q. Well, will you tell us the conversation that took place between Mr. Rudner and you and Mr. Feli and Mr. Lee in the presence of Rudner?

A. Substantially is was this. I said to Mr. Rudner that we, from information, had reason to believe.

Mr. Kafes—Of course, this is all objected to.

The Court—Your objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. That some of our water meters were being tampered with and I found he could give us some information to assist us in an investigation we were making. He denied any knowledge of such a condition. After that he was told this meter at 800 South Clinton avenue had been removed, had been tested, and been recorded as being about eighty per cent slow, that is to say, failed to register eighty per cent. of the water

passing through. He denied any knowledge of that condition. He then was shown the gears by Mr. Bugbee that had been removed from the meter and he was told they had been removed from his meter, and he denied any knowledge of these improper gears. He was asked if he had paid to Mr. Speck or anyone in the department any money for fixing his meter so as to run slow, and he absolutely denied that. He was asked if he knew Mr. Speck, and he said that he had had a slight acquaintance with him. He had met him one or two times as he passed in and out of his saloon and that he had never given him anything except possibly a glass of beer as he went in and out. He was then asked if he had any knowledge as to the conditions that had been stated to him. Why he admitted he made an appointment on the telephone with Mr. Israel Alberts on November 15th. He denied admitting he made such an appointment. He was then asked why he admitted he made an appointment with Mr. Alberts at the Mechanics National Bank, November 16th, the following day—October, rather, I should have said, instead of November. He denied making that appointment with Mr. Alberts, but he did admit that he met Mr. Alberts at the Mechanics National Bank on November 16th, but he said the conversation between himself and Mr. Alberts was not in relation to any water meter or water bill. He said nothing whatever was said by him to Alberts concerning water meters or water bills, but that the conversations with Mr. Alberts was in relation to a loan that some of Mr. Alberts' relatives had made to Mr. Rudner previously. That is substantially the conversation.

Q. That is in substance what you remember?

A. Yes, sir.

Q. Did you see Mr. Rudner after that?

A. I did not.

Q. At the time you had this conversation with Mr. Rudner you had learned about the appointment with Mr. Alberts?

A. Yes, sir.

Mr. Kafes—I object to that and ask that it be stricken out.

The Court—I decline to strike it out.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. State whether or not it was from information imparted to you by Alberts that the water meter investigation was started?

Mr. Kafes—Objected to as being immaterial and incompetent. It is not binding upon the defendant and should not be admitted.

The Court—I will permit him to answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. It was.

At this point a recess was taken until one forty-five o'clock in the afternoon.

AFTER RECESS.

Edward Lee resumes the stand.

Cross-examination, by Mr. Kafes.

Q. Mr. Lee, you said Mr. Rudner—you said you told Mr. Rudner that some of your water meters had been tampered with?

A. We had information that led us to believe something had been done.

Q. How many did you have in mind at the time?

A. One.

Q. Still, you used the word meters?

A. Yes, sir.

Q. When you spoke to him he denied he had any knowledge there was anything wrong with his?

A. Yes, sir.

Q. Or with the gears in any way, shape, or form?

A. Yes, sir.

Q. He also told you he had not dealings with Speck of an unlawful nature?

A. He said he had no dealings with Speck.

Q. You were talking to him about his meter when you spoke to him?

A. Yes, sir.

Q. It was the subject matter of the conversation?

A. Yes, sir.

Q. You had already led him to believe there was something wrong with his meter?

A. No, sir, I had not.

Q. You have no doubt it was the impression you conveyed to him?

A. I did not at the outset intend to convey to him any impression that there was something wrong.

Q. Did you hear Mr. Bugbee say there was something wrong?

A. Yes, sir.

Q. Then he knew exactly what you were talking about?

A. He didn't know unless he had guilty knowledge at the time.

Mr. Kafes—I ask that that be stricken out.

The Court—It will be.

Witness—Mr. Bugbee didn't tell him, I told him myself and he denied the meter had been tampered with.

Q. Then you asked him about Mr. Alberts?

A. I asked him if he had admitted he made an appointment with Mr. Alberts on the 'phone on Sunday, November 15th. I asked him if he had made an appointment with Mr. Alberts to meet him on November 16th at the Mechanics National Bank.

Q. What did he say?

A. He denied it.

Q. Go on.

A. He admitted meeting Alberts at the bank on November 16th.

Q. Did you make any notes?

A. In substance.

Q. In handwriting?

A. Yes, sir.

Q. Where are they?

A. In the prosecutor's possession.

Q. You also wrote him out a statement which he was this morning shown?

A. Yes, sir.

Q. When did you write these things down?

A. Immediately after he left.

Q. In substance?

A. Yes.

Q. How long after he left?

A. I should say about the following day or two.

Q. Didn't Rudner tell you that he had an appointment with Mr. Alberts but had not fixed the time?

A. No, sir; he said he accidentally ran into him this Monday morning.

Q. What did he say to you and you to him about Alberts?

A. I asked him if he had made an appointment with Mr. Alberts to meet him at the bank, and he denied that, and I asked him if he had ever talked with Alberts at the bank about this meter or about water bills and he said no he had not admitted meeting Alberts at the bank and that the only subject of the conversation was a loan that some relatives of Alberts had made at some time to Mr. Rudner.

Q. Who was there?

A. Mr. J. R. Fell.

Q. And Alvin Bugbee?

A. When do you mean?
Q. The morning of November 16th, 1916?
A. Oh, yes.

J. R. Fell, sworn for the State.
Direct examination, by Mr. Devlin.

Mr. Kafes—I object to Mr. Fell being placed on the stand at this time for the reason I have already stated.

The Court—Your objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Mr. Fell, you are a commissioner of the City of Trenton?
A. Yes, sir.
Q. And among the departments under your control is the water department?
A. Yes, sir.
Q. Do you remember November 16th being in company with Mr. Lee and Mr. Bugbee and Mr. Rudner was in the room with the three of you?
A. Yes, sir; in Mr. Lee's office.
Q. Can you tell us what the conversation was that passed between Mr. Lee and Mr. Rudner or Mr. Bugbee and Mr. Rudner?
A. Most of the conversation was conducted between Mr. Lee and Mr. Rudner. That is to the best of my recollection. He asked Mr. Rudner if he knew that there was manipulation with the meter, and Mr. Rudner denied any such knowledge. He asked him if he was acquainted with Mr. Speck, a meter man of this city, and Mr. Rudner said he knew him by seeing him come in and out of his place of business, and Mr. Lee asked him if he had ever paid Mr. Speck any money for altering the meter, and he said no he had not. He

asked him is he had any knowledge that his meter had been changed and he said no. He asked him also if he had ever paid Mr Speck anything and he said no, he had probably given him a cigar or a drink coming in the saloon and looking after the meter. Mr. Rudner denied everything and said he hoped that God would strike him dead before he reached home if he made statements that were not true. That is the general purport of the interview as near as I can recall.

Q. Permit me to try to refresh your memory.

Mr. Kafes—I move that the testimony be stricken out on the ground it is not responsive and it does not contain any declaration against interest and therefore not admissible for any purpose in this case.

The Court—Your motion will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. State whether or not anything was said by Mr. Lee or any other person about Mr. Alberts?

A. Yes, sir.

Mr. Kafes—That is objected to as being very leading.

The Court—Your objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Mr. Lee asked Mr. Rudner if he had not met, by appointment, Mr. Alberts, at the Mechanics Bank. Mr. Rudner denied it being by appointment that he had met Mr. Alberts, I think, on the Monday morning following the alleged telephone conversation, and Mr. Lee asked him if the conversation was not in relation to

water meters or water service and he said no, that Mr. Alberts saw him about a loan which Alberts was negotiating. I don't remember who the loan was for.

Q. Is that all you remember to the best of your recollection?

A. Yes.

Q. Will you state whether or not anything was said by any person about an appointment by telephone with Mr. Alberts?

A. Well, Mr. Lee asked Mr. Rudner if he had made an appointment with Mr. Alberts, had met him there by appointment.

Q. Anything said about a telephone.

A. I do not remember.

Mr. Kafes—I have no cross-examination, but I ask that the testimony be striken out on the ground it is not responsive and it does not contain any declaration against interest.

The Court—Your motion will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Alvin Bugbee, recalled for the State.

Direct examination, by Mr. Devlin.

Q. Mr. Bugbee, do you remember a meeting on or about November 16th, in Mr. Lee's office, in company with Mr Fell and Mr. Lee, at which Mr. Rudner was present?

A. Yes, sir.

Q. Will you state to the best of your recolection what the substance of the conversation was that passed between you four men?

Mr. Kafes—That is objected to for the reason heretofore given.

The Court—Your motion will be denied.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. Mr. Lee was doing the questioning of Mr. Rudner and the first question that he asked Mr. Rudner was whether or not Mr. Rudner knew of anyone in the Water Department tampering with any meters, and Mr. Rudner said he did not know of any such person. He asked him then if he did not know that his meter had been tampered with and he said he did not know that his meter had been tampered with, and he asked him if he knew Mr. Speck and he said he had a slight acquaintance with him, not a very good acquaintance. He also asked him if he didn't 'phone to Mr. Alberts on Sunday, I think, with regard to meeting him in reference to a high bill the city had rendered, but he said he had 'phoned to Mr. Alberts but there was no conversation in regard to a high bill, but that he had 'phoned to Mr. Alberts relating to a loan—no, I will change that. He said he agreed to meet Mr. Alberts at the Mechanics Bank and that he met him at the Mechanics Bank and it was in reference to loan and not to a high water bill.

Q. What else was said?

A. Then he asked him again if he didn't give Mr. Speck anything for fixing the meter. He said he didn't give Mr. Speck any amount at any time and he hoped to drop dead if he knew anything about it.

Q. Was anything said by him?

A. I don't think so.

Q. Will you state what was said to the best of your recollection about Mr. Alberts and Mr. Rudner?

A. Why, he said that he had 'phoned to meet Mr. Alberts, or he had 'phoned and wanted him to come over on Sunday, and he was going out of town and he would meet him Monday morning, at the Mechanics Bank, and

he says "I met him Monday morning and talked to him about a loan."

Q. Was there anything said by Mr. Lee about the conversation relating to the meters?

A. Yes, he asked him if he didn't speak to Alberts in reference to a high bill and the way he could have it changed and he said no, he had no such conversation.

Q. Either over the 'phone, or at this time?

A. No, sir; he said he knew nothing about it. In other words, he said he know nothing about the conversation.

Mr. Kafes—I have no cross-examination, but I make a motion that the testimony will be stricken out on the ground it is not responsive and contains no declaration against interest.

The Court—Motion will be denied.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Montgomery—Are you sure that your main case is now in?

Mr. Devlin—I think I am.

The Court—Do you rest your case?

Mr. Devlin—Yes, I do.

Morris Rudner assumes the stand.

Cross-examination (continued), by Mr. Devlin.

Q. Do you remember the time when you paid the $10 to Speck?

A. Do I remember? Yes, sir; I do.

Q. It was in November, 1914?

A. Yes, sir.

Q. Mr. Rudner, at that time did you visit the water department to pay bills or any other business?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. How many times?

A. Every three months, or six months.

Q. And you paid your bills?

A. Yes, sir.

Q. From that time on did you ever complain about a bill to any member of the water department?

Mr. Kafes—I object to that on the ground it is irrelevant, immaterial and not proper cross-examination.

The Court—I don't see its relevancy at all.

Q. You have made complaints before?

Mr. Kafes—Objected to on the same grounds.

The Court—The witness may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. I had made complaints before.

Q. I think you said you made two or three?

Mr. Kafes—Objected to as already asked and answered.

The Court—It may be answered again.

A. Two or three times.

Q. Did you, after you paid the money to have the meter fixed, did you ever inform Mr. Wittenborn or any other person in the department to whom you paid money that you had paid Speck to fix the meter?

Mr. Kafes—Objected to as absolutely irrelevant and immaterial.

The Court—The witness testified he thought this money would be turned over to the city, as I recall it. He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. No, sir.

Q. Why didn't you?

Mr. Kafes—I object to that for the same reason.

The Court—Your objection will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. No reason.

Q. Well, you had been before the City Commission, or, rather, you had been before Messrs. Lee, Fell and Bugbee?

A. Mr. Lee called up, yes, sir, and I went over there.

Q. Why didn't you tell them about the payment of the check to Mr. Speck for the fixing of your meter?

Mr. Kafes—I object to that as irrelevant and immaterial.

The Court—He may answer the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. They didn't give me a chance to talk hardly.

Q. Why didn't you tell them that Mr. Speck had told you?

A. When I came in Mr. Lee asked me, "Mr. Rudner, you know Mr. Speck?" "Yes." "We want the truth about it." "Yes." He said, "We suspect Speck of being crooked, doing crooked deals," and, therefore, I was excited. I didn't know what it meant because it was like something struck me.

Q. Mr. Rudner, according to your statement up to this time, you didn't believe you had done anything wrong?

A. Nothing.

Q. Is that true?

A. Yes, sir.

Q. Why should you be excited when you thought you had not done anything wrong?

Mr. Kafes—I don't want to object to any particular question, but I want to object to the entire line of testimony. I think I have already stated my reasons, and I ask that the questions be overruled for the reason I have already given.

The Court—Your motion will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

A. If a person comes to me and tells me that I helped with a crook and tried to deal with him, that would upset any common man.

Q. Is that the best reason you can give?

Mr. Kafes—Objected to on the ground herein stated.

The Court—The objection will be sustained.

Q. Is that the only reason?

Mr. Kafes—That is objected to on the same ground.

The Court—He has given his reasons.

Mr. Kafes—That is objected to on the same grounds.

Mr. Devlin—I should know if there are any other reasons.

The Court—We will ask him if he has any other reasons.

Q. Have you any other reasons?

A. No.

Q. Did you pay your water bills by check, Mr. Rudner?

A. Yes, sir; always.

Q. Do you know the position Speck held in the water department?

A. I do not, sir.

Q. He didn't tell you?

A. No, sir.

Q. Did you—do you remember how you made your checks payable when you pay your water bills?

Mr. Kafes—That is objected to on the ground that it is immaterial and irrelevant.

The Court—They are in here.

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

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

ERWIN E. MARSHALL, *Judge.*

A. David T. Wittenborn, treasurer.

Q. When you paid this check of $10 did you believe the Water Department of the City of Trenton was rendering services to you?

Mr. Kafes—Objected to as already asked and answered.

The Court—He answered it.

Q. Believing as you did it was for services you were getting when you paid that $10, why did you make that check payable to Speck instead of making it payable to David Wittenborn, treasurer of the water department?

A. He said, "Make it to me."

Q. Surely, when you pay your water bills you get a receipt, don't you?

A. Yes, surely.

Q. Did you get a receipt for that $10?

A. No, to tell you the truth I was so busy I didn't ask for a receipt or anything.

Q. You didn't get any?

A. No, sir.

Q. The reason you gave is because you were busy?

A. That is the reason, I was busy.

Q. You were not afraid the water department would send you another bill?

A. If it did I would have to pay it.

Israel Alberts, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. You live in the City of Trenton?

A. Yes, sir.

Q. What is your business?

A. Manufacturer of rubber goods and dealer in rubber.

Q. Where is your place of business?

A. In North Olden Avenue.

Q. You have a water meter in your place?

A. Yes, sir.

Q. Did you have any difficulty with your bills?

Mr. Devlin—Objected to as irrelevant.

The Court—I will overrule the question.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Didn't the city refund to you over one-half the money you paid?

Mr. Devlin—I object to that on the ground that it is irrelevant and immaterial.

The Court—Objection will be sustained.

Defendant prays an exception.

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

ERWIN E. MARSHALL, *Judge.*

Edward Lee, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. You know Mr. Alberts, don't you, Mr. Lee?

A. I do.

Q. I ask you—you are one of the city commissioners, of course?

A. I am.

Q. Having charge of the finance?

A. Yes, sir, I have.

Q. During the last two years, at any time, has the city refunded any money to Mr. Alberts?

Mr. Devlin—I object to that on the ground it is immaterial and irrelevant.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Alvin Bugbee, sworn for the defense.

Direct examination, by Mr. Kafes.

Q. Do you know Mr. Israel Alberts?

A. Yes, sir.

Q. How long have you known him?

A. Oh, a couple of years.

Q. Was he a purchaser of water in the City of Trenton during the last two years?

A. Yes, sir, he was.

Q. Did he make any complaints?

Mr. Devlin—I object to that. It is irrelevant and immaterial.

Q. About getting poor treatment from the city?

Mr. Devlin—I object to it.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you or not, that is your department, make an inspection of his meter at any time in the latter part

of 1916 and find that that meter had been accurately registering the water passing through it?

Mr. Devlin—I object to that on the ground it is irrelevant and immaterial.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you take the water meter from the place of Mr. Israel Alberts where you found improper gears in his water meter?

Mr. Devlin—I object to this entire line of testimony.

The Court—I intend to limit this line of testimony, and it has reached its limit now. I will overrule all those questions.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

No cross-examination.

Mr. Devlin—The good reputation of the defendant, in the community in which he resides, for truth, honesty and fair dealings, is admitted up to the time of this charge.

Mr. Kafes—The indictment was found in January, 1917. We have a right to show down to that time.

The Court—I think you have.

Mr. Devlin—What time?

The Court—The time the crime was made public.

Mr. Kafes—I am prepared to show also from that time down to the present that his reputation for honesty and fair dealing was good.

The Court—No, I will not permit it.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Defendant rests.

Charles H. Speck, called in rebuttal for the State

Direct examination by Mr. Devlin.

Q. Did you say at any time to Morris Rudner, in his saloon, "Your meter is running fast. You are paying for water you never used?"

A. No, sir.

Q. Did you, in 1916, in the fall of 1916, stop at Morris Rudner's place and take a drink of beer and tell him to tell Alberts to see you?

A. No, sir.

Q. Do you drink any intoxicating liquors?

A. No, sir.

Q. How long since?

A. 1913.

Q. You have not drunk anything in three years.

A. No, sir; with the exception of one drink of whiskey.

Q. When was that?

A. Why, I think that was in January.

Q. Of this year?

A. Yes, sir.

Q. In the year of 1916 you took no intoxicating liquors at all?

A. No, sir.

Q. State if you ever drank of anything, beer, whiskey, or any other stuff in Rudner's place?

A. No, sir; I never did.

Cross-examination, by Mr. Kafes.

Q. Was that in November or December, 1916?

A. No, sir.

Q. In Rudner's place?

A. No, sir.

Q. You say not?

A. No, sir.

Q. You didn't tell him anything about Alberts' meter?

A. Nothing about Alberts' meter; no, sir.

Q. How did he know anything about it?

Mr. Devlin—I object to that. How can he tell.

The Court—He may answer the question.

A. Yes, I told him that he had a high bill, but it was not in his saloon.

Q. Did he say he was paying for twice as much water as he was using?

Mr. Devlin—That is not rebuttal.

The Court—I am going to permit the question to be answered.

A. No, sir.

Q. Did you say to him that Mr. Alberts' meter—

Mr. Devlin—I object to that as immaterial.

The Court—The objection will be sustained.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Q. Did you tell him that he was paying for more water than he was using?

Mr. Devlin—Objected to as immaterial.

The Court—I will permit it.

A. No, sir; said he had a high bill.

Q. What do you mean?

A. A high bill.

Q. Were you ever convicted of crime before this January term?

A. No, sir.

Q. Never?

A. No, sir; never in trouble.

Mr. Kafes—At the conclusion of our case Mr. Heher wants to renew his motion for a verdict.

Mr. Heher—I want at this time to make a motion that the State be compelled to elect on which count of this indictment this case is to be submitted to the jury.

The Court—Your motion will be overruled.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Mr. Heher—I want to make a motion to direct a verdict in favor of the defendant on the indictment in its entirety, and on each individual count; in other words, I make a general motion to the indictment as a whole. Then I desire to make a motion to direct a verdict in favor of the defendant on each individual count. The Court may direct a verdict on one or more of the counts. I make a motion in this connection for the reasons I have given on the motion to direct a verdict at the close of the State's case.

I wish to state further that the indictment in each count does not charge a crime under the statute—that the proofs that have been adduced by the State do not show the commission of crime and are not sufficient to sustain a charge under the indictment or any count thereof. In other words, that the proofs in each count fail to charge a crime and are not sufficient to sustain a conviction under the indictment.

The Court—The Court has given that consideration, and I will overrule your motion as to the indictment as a whole and to each individual indictment.

Defendant, through his counsel, prays an exception to the above ruling of the Court.

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

ERWIN E. MARSHALL, *Judge.*

Counsel then summed up.

CHARGE.

MARSHALL, J.

Gentlemen of the Jury: The defendant, Morris Rudner, who is now on trial, was indicted jointly with one Charles H. Speck at the January term of this court.

The indictment contains four counts. The first count charges Rudner and Speck jointly with unlawfully tampering with a water meter belonging to the City of Trenton.

I will not read the entire indictment to you, because you will have it before you when you go into the jury room.

The second count charges Rudner, individually, with having procured, aided and assisted Charles H. Speck to alter this water meter, and the third and fourth counts charge larceny.

Now, the third count jointly charges that Charles H. Speck and Morris Rudner, on the 17th day of March, 1915, and from thence continuously until the first day of January, 1917, did unlawfully and feloniously steal, take and carry away certain water, mentioned in the indictment, of the value of $565.36.

The fourth count is likewise a count for larceny, in which Rudner and Speck are jointly charged with the stealing of stored and filtered water, to the amount of 640,400 cubic feet.

Under this indictment, gentlemen, the jury may find a general verdict of not guilty, or if the facts indicate he is guilty, there may be a general verdict of guilty. On the other hand, you may find a verdict of either guilty or not guilty on any one or more of the individual counts.

A definition of larceny, perhaps, should be given at this time for the guidance of the jury. This crime is the unlawful and fraudulent taking and carrying away of the goods of another person without any claim of right thereto and with the fraudulent intent of depriving the real owner permanently of the possession or use of them. Where the value of the goods so taken and carried away is over $20, it is known as grand larceny; where the amount is less than $20, it is petit larceny.

As I have previously charged in the hearing of men who are sitting on this panel, the defendant in this, as in all criminal cases, is presumed by law to be innocent of the crime charged against him until his guilt has been established beyond reasonable doubt, and it is the duty of the State to assume the burden of establishing his guilt beyond reasonable doubt.

Reasonable doubt is just what that term signifies. It does not mean any possible doubt, but rather that condition of the mind when, after having weighed all the facts and circumstances of the case, the jurors' minds should then be unconvinced of guilt—that is reasonable doubt, and the benefit of such reasonable doubt should be given to the defendant.

Another point of law, which I feel I should bring to your attention, is the nature of the testimony of one of the witnesses produced by the State. Charles H. Speck, on whose testimony the State relies to some extent to establish its case, has already been convicted of crime—having pleaded guilty to this indictment. He stands, therefore, in the position of an accomplice in the commission of this crime.

Under our law he is a competent witness, notwithstanding his guilty connection with the crime charged. He should, however, be treated more rigorously than an ordinary witness. Any one who is implicated with another in the commission of crime is an accomplice, and each person concerned in the commission of crime

may be an accomplice of another, whether he is the actual perpetrator of the deed or not. His testimony, however, should be received by the jury with great caution, tarnished as it is with confessed criminality and testified to, it may be, in the hope of pardon or leniency in case sentence has not yet been imposed. The jury should not convict upon the testimony of the alleged accomplice, unless corroborated by the testimony of some unsuspected witness or other circumstances in the case. It is not necessary, however, that his testimony should be corroborated on every material fact, for if that were required there would be no necessity for calling him as a witness. The evidence may be circumstantial. What weight is to be given the testimony of the accomplice is, of course, for you, as jurors, to decide, you being the sole judges of the facts. It is unnecessary, however, that the corroborating evidence should be on some part of the testimony, which is material to the issue, and should tend to connect the person with the crime charged in the indictment.

I do not consider it necessary to refer to any great extent to the testimony in this case. The trial has now been under way for the last two days, and the evidence has been very ably placed before you both by the prosecutor and by counsel for the defendant, and I do not feel that it will aid you at this time for the Court to make any further reference to the evidence in the case. I shall leave the case with you without any further comment, reminding you, of course, that you, as jurors, are the sole judges of the facts in the case, and it is your duty and your province to determine the weight which should be given to the testimony of the different witnesses who appear before you. It is for you to say what credibility they are entitled to.

Certain requests to charge have been handed up, which I will dispose of at this time.

The first I refuse.

The second is as follows: To sustain a charge of

larceny, the defendant must be proved, beyond a reasonable doubt, to have taken, stolen and carried away goods and chattels of another.

I charge that request.

The third request is refused.

The fourth I charge: The State must prove, beyond a reasonable doubt, the guilt of the defendant. I have already charged that.

Fifth: Every person is supposed to be innocent until his guilt has been proved beyond a reasonable doubt. I have already charged that.

You may retire, gentlemen, taking with you the indictment and the various exhibits offered and admitted in this case.

The jury then retired.

REQUESTS TO CHARGE.

Counsel for the defense requests the Court to charge the jury as follows:

First: The offenses charged in the first and second counts of the indictment if committed at all, must have been committed within two years before the finding of the indictment, otherwise they are by the operation of law outlawed.

Second: To sustain a charge of larceny the defendant must be proved beyond a reasonable doubt to have taken, stolen and carried away goods and chattels of another.

Third: It must be proved that the meter was the property of a water company, otherwise the first and second charges cannot prevail. The meter used does not seem to have been the property of a water company as it has been proved to be that of the Inhabitants of the City of Trenton.

Fourth: The State must prove beyond a reasonable doubt the guilt of the defendant.

Fifth: Every person is supposed to be innocent until his guilt has been proved beyond a reasonable doubt.

Mr. Heher—The defendant objects to that portion of the charge, "Under this indictment, gentlemen, you may find a general verdict of not guilty, or if the facts indicate he is guilty, there may be a general verdict of guilty. On the other hand, you may find a verdict of either guilty or not guilty on any one or more of the individual counts," also the definition of larceny as given by the Court. We also take a general exception to the charge and also an exception to the refusal of the Court to charge the first and third requests.

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

ERWIN E. MARSHALL, *Judge.*

MERCER COUNTY COURT OF QUARTER SESSIONS.

STATE *vs.* MORRIS RUDNER.

I, Erwin E. Marshall, Judge of the Court of Quarter Sessions of Mercer County, do hereby return the stenographic minutes taken at the trial of the above cause as part of the return to the writ of error, so that the same may be made up and included in the entire state of the case on appeal.

ERWIN E. MARSHALL, *Judge.*

EXHIBIT P 1.

This indenture, made this seventh day of March, in the year of our Lord one thousand eight hundred and fifty-nine, between "The President and Directors of the Trenton Water Works," party of the first part, and "The Inhabitants of the City of Trenton," party of the second part: Whereas, in and by an act of the Legislature of the State of New Jersey entitled "An act to authorize the President and Directors of the Trenton Water Works to convey their works and franchises to the city of Trenton, and to provide for the management of the said works," after reciting that "Whereas, 'The Inhabitants of the City of Trenton' have purchased the whole of the capital stock of 'The President and Directors of the Trenton Water Works,' and have thus become the real owners of said works, but are compelled to manage and conduct the same pursuant to the provisions of the charter of said company, in whom the legal title to said works is still 'vested,' it was, among other things, enacted as follows, that is to say: 'Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for 'The President and Directors of the Trenton Water Works,' and they are hereby required, on or before the first day of May next, to convey unto 'The Inhabitants of the City of Trenton' all the real estate, works and property, and all the corporate rights, powers, franchises and privileges of said company; and that, upon the due execution of such conveyance, the legal title to said real estate, works and property, and all the corporate rights, powers, franchises and privileges of said company shall pass to and vest in 'The Inhabitants of the City of Trenton,' in as full and ample a manner as the same now are or heretofore have been held and enjoyed by the said company;" as in and

by the said act of the Legislature, reference being thereunto had, will more fully and at large appear.

Now this indenture witnesseth, that the said "The President and Directors of the Trenton Water Works," in consideration of the premises, and under and by virtue of the power and authority conferred upon them by the aforesaid act of the Legislature, have granted, bargained, sold, aliened, released, assigned, conveyed and confirmed, and by these presents do give, grant, bargain, sell, assign, alien, release, convey and confirm unto "The Inhabitants of the City of Trenton," their successors and assigns, all the lands, tenements, hereditaments and real estate, works and property, and all the corporate rights, powers, franchises and privileges of the said "The President and Directors of the Trenton Water Works,' 'together with all and singular the appurtenances to the same belonging or in anywise appertaining; and also all the estate, right, title, interest, use, possession, property, claim and demand of them, the said party of the first part, of, in and to the same; to have and to hold the said lands, tenements, hereditaments and real estate, works and property, and also all the corporate rights, powers, franchises and privileges hereby granted unto the said "The Inhabitants of the City of Trenton," their successors and assigns, to the only proper use, benefit and behoof of the said "Inhabitants of the City of Trenton," their successors and assigns, forever, according to the form, force and effect of the aforesaid act of the Legislature.

In witness whereof, "The President and Directors of the Trenton Water Works," have, by the hands of Charles Moore, their President, thereunto duly authorized by a resolution of the Directors of the said company, hereunto set their common seal, and the said President hath subscribed his name, the day and year first above written.

CHARLES MOORE, [SEAL.]
President.

The foregoing deed was signed, sealed and delivered, by order of the Board of Directors, on the day of the date thereof, in the presence of J. B. Quigley.

STATE OF NEW JERSEY, *ss.*:

Be it known, that on the seventh day of March, A. D. eighteen hundred and fifty-nine, before me, Caleb S. Green, a Master in Chancery of said State, personally appeared John B. Quigley, who, being duly sworn according to law, did depose and say that he knows the seal of "The President and Directors of the Trenton Water Works;" that the seal annexed to the foregoing deed is the common seal of "The President and Directors of the Trenton Water Works;" that Charles Moore, the President of the said corporation, did, by their order, sign, seal and deliver the said indenture as the voluntary act and deed of the said corporation, in the presence of said deponent; and that deponent did, at the execution thereof, subscribe his name as a witness thereto.

CALEB S. GREEN, *M. C. C.*

Recorded March 16th, 1859.

NEW JERSEY SUPREME COURT.

THE STATE,
Defendant in Error,
vs.
MORRIS RUDNER,
Plaintiff in Error.
} In Error.

ASSIGNMENT OF ERRORS.

(*Filed October 1, 1917.*)

Afterwards, to wit, on the fourteenth day of July, nineteen hundred and seventeen, before our Supreme Court of the State of New Jersey comes Morris Rudner, by John A. Montgomery, Harry Heher and John H. Kafes, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the judgment aforesaid, there was manifest error in this, to wit—

1. That the said Court before the jury was impanelled refused to quash the indictment for the following several and distinct and separate reasons:

First. Because there are four separate alleged crimes joined in the said indictment.

Second. Because the mode of proof in each of the offenses is of a different nature.

Third. Because the judgment in each of the offenses is of a different character.

Fourth. Because the judgment in the offenses charged in the first and second counts is of a character different than the judgment in each of the offenses charged in the third and fourth counts.

Fifth. Because the defendant is prejudiced by being placed on trial on the four offenses charged in the said indictment at the time before one jury.

Sixth. Because there is a misjoinder in joining in the indictment three counts charging the defendant, Morris Rudner, and the defendant, Charles H. Speck, jointly with the commission of offenses therein alleged to have been committed, with one count charging the defendant, Morris Rudner, with aiding and abetting the commission of an alleged crime.

Seventh. Because the first count in the said indictment fails to charge a crime under the statute in such case made and provided.

Eighth. Because the first count in the said indictment does not aver that the meter alleged to have been tampered with is the meter of a water company or was owned by a water company.

Ninth. Because the first count in the said indictment does not aver that the Trenton Water Works, or the Inhabitants of the City of Trenton, furnished water to the said defendant, Morris Rudner, through the said meter.

Tenth. Because the first count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant, Morris Rudner, for the purpose of obtaining water with attempt to defraud a water company.

Eleventh. Because the charge in the said first count is improperly laid with a continuendo.

Twelfth. Because the second count in the said indictment fails to charge a crime under the statute in such case made and provided.

Thirteenth. Because the second count in the said indictment does not aver that the meter alleged to have been tampered with is the meter of a water company, or was owned by a water company.

Fourteenth. Because the second count in the said indictment does not aver that the Trenton Water Works, or the Inhabitants of the City of Trenton, furnished water to the said defendant, Morris Rudner, through the said meter.

Fifteenth. Because the second count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant, Charles H. Speck, for the purpose of obtaining water with intent to defraud a water company.

Sixteenth. Because the charge in the said second count is improperly laid with a continuendo.

Seventeenth. Because the second count in the said indictment fails to allege that the said defendant, Morris Rudner, aided and abetted the said Speck in the commission of a crime under the statute in such case made and provided.

Eighteenth. Because the second count in the said indictment fails to allege that the said defendant, Morris Rudner, aided and abetted the said Speck in the commission of a crime of which the said Speck has been convicted.

Nineteenth. Because the third count in the said indictment fails to charge a crime under the statute in such case made and provided.

Twentieth. Because the third count in said indictment alleges a larceny by the defendant, Morris Rudner, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

Twenty-first. Because the fourth count in the said indictment fails to charge a crime under the statute in such case made and provided.

Twenty-second. Because the fourth count in the said indictment alleges a larceny by the defendant, Morris Rudner, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

Twenty-third. Because the said indictment contains four repugnant and inconsistent counts.

2. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the

said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

3. Because the said Court, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

4. Because there was error in the refusal of the Court, at the close of the State's case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

5. Because the said Court, at the close of the State's case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

6. Because the said Court erred in refusing to direct, at the close of the State's case, a verdict of acquittal on the third and fourth counts because (a) there was no evidence of the commission of the crimes charged therein; (b) because the proofs did not show that there had been any larceny of filtered water, as charged in the said counts; and because (c) there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny; and (d) because there was no legal proof that there had been any water stolen at all.

7. Because there was error in the refusal of the Court to grant the motion of the plaintiff in error, before the jury was impanelled, to quash the indictment because the said indictment contained four counts, three of which imputed an offense to the plaintiff in error and Charles H. Speck, and one to the plaintiff in error singly, whereby there was a misjoinder of counts.

8. Because there was error in this, that the said

Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment, because there was a misjoinder of offenses charged, and because the evidence failed to establish a case against the plaintiff in error on any count contained in the said indictment.

9. Because the said Court erred in refusing, at the close of the State's case, to direct a verdict of not guilty on each count in the said indictment.

10. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

11. Because the said Court, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

12. Because there was error in the refusal of the Court, at the close of the whole case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

13. Because the said Court, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

14. Because the said Court erred in refusing to direct, at the close of the whole case, a verdict of acquittal on the third and fourth counts because (a) there was no evidence of the commission of the crimes charged therein; (b) because the proofs did not show that there had been any larceny of filtered water, as charged in the said counts; and because (c) there was

no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny; and (d) because there was no legal proof that there had been any water stolen at all.

15. Because the said Court, at the close of the whole case, erred in refusing to direct a verdict of not guilty on each count in the said indictment.

16. Because the said Court erroneously charged the jury as follows:

> "Under this indictment, if the facts indicate he is guilty, there may be a general verdict of guilty."

the said charge being erroneous in this, that under the evidence in the case, the plaintiff in error could not have been convicted under the first or second counts in the said indictment.

17. Because there was error in this, that the said Court charged the jury as follows:

> "You many find a verdict of either guilty or not guilty on any one or more of the individual counts."

18. Because the said Court erroneously charged the jury as follows:

> "A definition of larceny should be given at this time for the guidance of the jury. This crime is the unlawful and fraudulent taking and carrying away of the goods of another person without any claim of right thereto and with the fraudlent intent of depriving the real owner permanently of the possession or use of them."

said intructions to the jury being misleading, and did not discriminate as to the offenses set forth in the several counts in the said indictment.

19. Because the said Court erroneously refused to charge the following request of the plaintiff in error:

> "The offenses charged in the first and second counts of the indictment, if committed at all, must have been committed within two years be-

fore the finding of the indictment; otherwise, they are by operation of law outlawed."

20. Because the said Court erroneously refused to charge the following request of the plaintiff in error:

"It must be proved that the meter was the property of a water company, otherwise the first and second charges cannot prevail. The meter used does not seem to have been the property of a water company, as it has been proved to be that of the Inhabitants of the City of Trenton."

21. Because the said Court erroneously overruled the following question propounded by the plaintiff in error to David T. Wittenborn:

"You devised a new system in January to prevent meter reading from park benches?"

which said question was material to the issue joined.

22. Because the said Court erroneously allowed the following question to be answered by the said witness, over the objections of the plaintiff in error, as follows:

"Are you able to say that Morris Rudner paid water bills rendered to him from the date of March 16th, 1915, to January 1st, 1917?"

on the grounds that said question is incompetent, irrelevant and immaterial to the issue in this cause, and was hearsay testimony.

23. Because said Court erroneously allowed the following question, propounded to Harry H. Rittenhouse, to be answered:

"What does that card represent?"

upon the grounds that the said card spoke for itself, and was not open to characterization or explanation by the witness.

24. Because the said Court erroneously refused to strike out the answer of the said witness to the question propounded in the next preceding exception, said

answer being hearsay testimony, and not within the knowledge of the witness:

> "That is a record of the amount of water used and the charge for the same, the dates paid and the amount paid by the man that used the water."

25. Because the said Court erroneously allowed the following question to be propounded to the said witness, Harry H. Rittenhouse:

> "Compute, will you, and tell me how many cubic feet was charged on the meter from this date you mention—from the 16th day of March to the 6th of December?"

upon the grounds that the said witness had no personal knowledge of the state of the meter.

26. Because the said Court erroneously allowed the following question to be answered by the said witness:

> "That is the number of cubic feet from the 16th day of March, 1915, to the 16th day of December, 1916?"

27. Because said Court erroneously refused to allow the following question, propounded by the plaintiff in error to the witness, Harry H. Rittenhouse, to be answered:

> "Was it not done for the purpose of correcting the faulty system which the Department had of having water meters read?"

Said question was pertinent and material upon the question whether there was any asportation of water, and as to the correctness of the meters of the Inhabitants of the City of Trenton.

28. Because the said Court erred in refusing to strike out the testimony of the witness, Harry H. Rittenhouse, as to the amount of water used from March 16th, 1915, to December 6th, 1916, on the grounds that the evidence given by the said witness was hearsay, and because he had no personal knowledge

of the verity of the contents of the record used by him in testifying.

29. Because the said Court erroneously allowed the following question to be propounded and answered by the witness, Harry H. Rittenhouse, said witness having no personal knowledge of the matter propounded to him:

> "Will you give me the readings of the meter from March 16th, 1916, to September 7th, 1916."

30. Because the said Court overruled the following question propounded to the witness Albert:

> "Mr. Albert, you have been refunded one-half of the money which you paid for water which is alleged to have passed through your meter?"

on the grounds that the said question was material.

31. Because the said Court erroneously overruled the following material question propounded to Charles H. Speck:

> "Did you install that meter?"

32. Because said Court erroneously allowed the following question to be propounded to the witness, Clarence M. Hyle:

> "Will you please tell us what the figures were that were called to you and the first test made by Mr. Bibbins?"

on the grounds that the said question was incompetent, irrelevant and immaterial, and called for mere hearsay testimony.

33. Because the said Court erroneously overruled the objections of the plaintiff in error to the following question propounded to Hyle:

> "Assuming that a meter starts off with a standard gear and it tests out correct, can that meter go fast?"

34. Because said Court erroneously overruled the

objections of the plaintiff in error to the following question propounded to Alvin Bugbee:

"Assuming a meter has the proper standard gears, and it is tested and found to be correct, if that meter changes, can you state what way the change will take place?"

because the said witness was not an expert and not qualified to answer the same, and the question was irrelevant and immaterial.

35. Because the said Court erroneously overruled the objections of the plaintiff in error to the following question:

"Assuming that figure to be correct, 160,000, if that meter was putting through ten cubic feet of water and was registering two, are you able to tell the quantity of water that passed through between the dates of March 6th, 1916, and September 7th, 1916?"

36. Because the said Court erroneously overruled the objections of the plaintiff in error to the following question:

"What is the difference between 160,100 cubic feet and 800,500 cubic feet?"

37. Because the said Court erroneously overruled the objections of the plaintiff in error to the following question propounded to the witness, Commissioner Lee:

"At that time, from information you had received, did you know something was wrong with the meter at 800 South Clinton avenue?"

Said question was irrelevant, immaterial and hearsay.

38. Because said Court erroneously overruled the objections of the plaintiff in error to the following question propounded to the witness, Commissioner Lee:

"State whether or not it was from information imparted to you by Alberts, that the water meter investigation was started."

39. Because said Court erroneously overruled the

following question propounded by the plaintiff in error to the witness, Israel Albert:

"Didn't the city refund to you over one-half of the money you paid?"

40. Because the said Court permitted the witness, Commissioner Lee, to testify to certain information which he had received concerning the tampering with meters.

41. Because the said Court allowed the State to re-
10 open the case after it had rested and while the defendant was giving testimony, and introduce further testimoney, the same being illegally permitted.

42. Because the said Court erroneously overruled the question propounded by the plaintiff in error to Israel Albert:

"Did you have any difficulty with your bills?"

the same being relevant, pertinent and material to the issue being tried.

43. Because the said Court erroneously overruled
20 the following pertinent, material and relevant question propounded to the witness, Edward Lee:

"During the last two years, at any time, has the city refunded any money to Mr. Alberts?"

44. Because the said Court erroneously overruled the following relevant, pertinent and material question propounded by the plaintiff in error to one Alvin Bugbee:

"Did he make any complaints about getting poor treatment from the city?"

30 45. Because said Court erroneously overruled the following pertinent question propounded to said witness, Alvin Bugbee:

"Did you take the water meter from the place of Mr. Israel Alberts, where you found improper gears in his water meter?"

The said plaintiff in error, by reason of the errors

aforesaid, submits that the judgment below should be reversed and for nothing holden.

JOHN A. MONTGOMERY,
HARRY HEHER,
JOHN H. KAFES,
Attorneys of Plaintiff in Error.

Due and legal service of the within Assignments of Error is hereby acknowledged, and I do consent to the filing of the same as of time.

Dated October 11, 1917.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
MORRIS RUDNER,
Plaintiff in Error.

JOINDER IN ERROR.

(*Filed October 20, 1917.*)

And hereupon, afterwards, to wit, on the twentieth day of October, nineteen hundred and seventeen, the said Morris Rudner, by John A. Montgomery and John H. Kafes, his attorneys, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here, that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned and specified for errors, and

that the judgment aforesaid, in manner aforesaid, in all things be affirmed, etc.

MARTIN P. DEVLIN,
Attorney of Defendant in Error.

NEW JERSEY SUPREME COURT.

No. 3, February Term, 1918.

THE STATE
vs.
MORRIS RUDNER.

OPINION.

Error to Mercer Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Parker and Kalisch.

For Plaintiff in Error, Aaron V. Dawes. With him on the brief, John A. Montgomery.

For the State, Martin P. Devlin, Prosecutor of the Pleas.

The opinion of the Court was delivered by GUMMERE, *C. J.*

The indictment in the present case contained four counts. The averment of the first count was that Rudner, the plaintiff in error, together with one Charles H. Speck, did unlawfully tamper with a water meter which had been installed by the water department of the City of Trenton in the premises of Rudner, for the purpose of measuring and registering the amount of water used therein; and that this was done with the intent to defraud the municipality by causing the meter to register much less than the actual flow of water through it.

The second count charged that Rudner unlawfully aided, assisted and abetted Speck in tampering with this meter, for the purpose of causing it to register much less than the actual flow of the water through it.

The third and fourth counts charged the defendants, Rudner and Speck, with unlawfully and feloniously stealing, taking and carrying away 640,400 cubic feet of stored filtered water of the value of $576.36 of the goods and chattels of the City of Trenton.

The trial of the indictment proceeded against Rudner alone, and the jury returned the following verdict against him: "The said Morris Rudner is guilty of the misdemeanor aforesaid of him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him."

Rudner thereupon sued out the present writ of error to review the judgment entered upon that verdict.

The first assignment of error challenges the refusal of the trial court to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the ground that the offense alleged in each of these counts, if committed at all, had been committed more than two years before the finding of the indictment, and was therefore outlawed. The motion to direct was based upon section 152 of our Criminal Procedure Act (*Comp. Stat.*, *p.* 1870), which declares that no person shall be prosecuted, tried or punished for any offense not punishable with death unless the indictment shall be found within two years from the time of committing the offense.

The record shows that the indictment was presented at the January Term, A. D. 1917. The proof on the part of the State was that the illegal tampering with the water meter installed in Rudner's premises occurred some time during the year 1914; and there was no evidence that it occurred at any subsequent date. The question, therefore, whether the refusal of the motion to direct a verdict upon the first and second counts of the indictment was proper or not depends upon the true construction of the statutory provision upon which these two counts were based. That provision is contained in section 164 of our Crimes Act (*Comp. Stat.*, *p.* 1794), and, so far as pertinent to the present case, is as follows: "Any person who shall without permission * * * connect or disconnect the meters of any * * * water company, or in any other manner, without such permis-

sion, tamper or interfere with such meters * * * for the purpose of obtaining * * * water with intent to defraud such company, shall be guilty of a misdemeanor." The contention on the part of the plaintiff in error is that the crime declared in the statute is a specific one, and becomes complete when the work of tampering or interfering with the meter is entirely finished; while on the other hand it is argued by the State that the crime is not complete unless the purpose which was sought to be accomplished by the tampering with the meter has, in fact, been consummated; that is, unless water has been actually abstracted in excess of the quantity registered; and that, therefore, so long as the water continues to be unlawfully abstracted, the crime remains a continuing one. It is conceded that the abstraction of the water was persisted in until a period well within the two years' limitation, and so we are called upon to determine the soundness of the one contention or the other.

A careful reading of the statute leads us to the conclusion that the purpose of the Legislature as expressed therein is so plain as not to call for judicial interpretation. It declares that any person who shall without permission tamper or interefere with the meter of any water company, for the purpose of fraudulently obtaining water from such company, shall be guilty of a misdemeanor. There is nothing in the statute to suggest the idea that a person who has been guilty of such tampering, and whose intent was to defraud the water company, should escape punishment if his intent is prevented from being carried into execution by a prompt discovery of what he has done, or in any other way. The object of the Legislature was not the punishment of one who feloniously abstracts water which is the property of one of these companies—for that crime, like any other felonious taking, is dealt with in other provisions of the statute—but the protection of these companies against the fraudulent abstraction of water by methods so insidious and secret as not to be readily discoverable. And in order to effect that object the Legislature created an entirely separate and distinct offense which it made punishable without regard to

whether the larcenous purpose which led to the tampering with the meter was accomplished or not.

We have not overlooked the contention of counsel for the State that the situation here presented is quite similar, in its legal essence, to the criminal offense of obtaining moneys by false pretenses; and that the decisions upon that branch of the law should control us in the present case. We fail, however, to perceive the similarity. The wrong which is made criminal by the statute in the class of cases appealed to is not the making of the false pretense, but the wrongful obtaining of money by reason thereof. *State* v. *Crowley*, 39 *N. J. L.* 264.

Determining, as we do, that the crime struck at by the 164th section is complete when the work of tampering with the meter has been finished, we conclude that the motion to direct a verdict of acquittal on the first and second counts should have been granted, and that its refusal was error.

It is insisted on behalf of the State that this error should not result in a reversal of the conviction, for the reason that the verdict returned by the jury was a general one; and it is said to be the settled law of this State that where there are several counts in an indictment, each charging a distinct crime, a general verdict of guilty amounts to a conviction of each separate offense, and even if the verdict cannot be supported as to one or more of the crimes charged it will be upheld as to the offense described in a single good count. That this is the law of the State is not disputed. It was so declared by the Court of Errors and Appeals in the case of *State* v. *Huggins*, 84 *N. J. L.* 254. And so, if each of the several counts in the present indictment had charged a simple misdemeanor, the verdict rendered by the jury "guilty of the misdemeanor aforesaid, etc.," would include all the counts, and the rule in the Huggins case would be applicable. Upon examination, however, the contrary is clearly shown to be the fact. The first count charges a violation of the 164th section, and that section makes a person who shall be convicted under it "guilty of a misdemeanor." The second count, in its legal effect, charges the same offense.

It charges Rudner with aiding and abetting Speck in his tampering with the meter; and since the decision of *Engeman* v. *State*, 54 *N. J. L.* 247, it has been considered to be settled that in misdemeanors all who aid, abet or participate are principals, and all equally guilty. *State* v. *Hess*, 65 *N. J. L.* 544; *State* v. *Wilson*, 80 *N. J. L.* 467; *State* v. *Spence*, 81 *N. J. L.* 265. The third and fourth counts, however, each of them, charge the plaintiff in error with the crime of grand larceny, and this crime, by the 158 section of the Crimes Act (*Comp. Stat.*, 1793), is made a high misdemeanor. The great difference between the two grades of criminality is demonstrated by the punishment which each carries with it. A misdemeanor is punished by a fine not exceeding $1,000, or by imprisonment not exceeding three years, or both, while a high misdemeanor is punishable by a fine not exceeding $2,000, and by imprisonment not exceeding seven years, or both. See *Crimes Act, Sections* 217, 218 (*Comp. Stat., p.* 1812).

The verdict in the present case, therefore, is a specific and not a general one. It has declared the plaintiff in error to be guilty of the misdemeanor charged in the indictment; that is, of the crime set out in the first and second counts of that pleading, and carries with it a liability to the punishment declared against misdemeanors by the statute, viz., a fine, not exceeding $1,000, and imprisonment not exceeding three years, either or both. To transmute the finding of the jury into a declaration that plaintiff in error was guilty of the high misdemeanor charged in the indictment would be to impose upon him a liability to a fine not exceeding $2,000, and to imprisonment not exceeding seven years. The rule in the Huggins case, as we read the opinion, was not intended to, and does not, produce so unfortunate a result.

Looking at the whole case, therefore, the situation disclosed is this: The plaintiff in error having been charged in the same indictment with the commission of an ordinary misdemeanor, and also with the commission of a high misdemeanor, the jury convicted him of the lesser offense. That offense was outlawed at the time the in-

dictment was presented, and, consequently, the verdict is without force. The jury, although the question was submitted to it, failed to pass upon his guilt or innocence of the crime charged in the third and fourth counts of the indictment. In this situation the trial court was without legal power to pass sentence upon the plaintiff in error, and consequently the judgment under review must be reversed.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
MORRIS RUDNER,
Plaintiff in Error.
} In Error.

RULE ON REVERSAL

This cause having been duly argued at the February Term, 1918, of this court; and that the court having inspected the rcord, proceedings and judgment below, and considered the causes assigned for error;

It is thereupon, on this fifteenth day of August, nineteen hundred and eighteen, ordered that the judgment of the said Court of Quarter Sessions in and for the county of Mercer be in all things reversed, set aside, and for nothing holden.

Entered August 15, 1918,

On motion of
JOHN H. KAFES,
JOHN A. MONTGOMERY, and
HARRY HEHER,
Attorneys of Plaintiff.

I, Enoch L. Johnson, 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 nineteenth day of September, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

(L. S.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
MORRIS RUDNER,
Defendant and Defendant in Error.
} In Error.

10

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the third day of October, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, comes the said the State of New Jersey by A. Dayton Oliphant, Prosecutor of the Pleas of the County of Mercer, and says that in the record and proceedings aforesaid, and
20 also in giving the judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment in form aforesaid was given for the said Morris Rudner against the said State of New Jersey, whereas, by the law of the land, judgment ought to have been given for the said State of New Jersey agains the said Morris Rudner.

2. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

30 The crime alleged in the first and second counts of the indictment had been committed more than two years before the finding of the indictment.

3. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below refused to direct a verdict in favor of the plaintiff, defendant in error, on the first and second counts of the indictment.

4. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The verdict in the cause is a specific and not a general one, and hence does not embrace the high misdemeanors. This question was not raised in the assignments of error by the plaintiff in error, defendant below.

5. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The reason given for reversal set out in assignment number four was not raised in the assignments and specifications of error or argued at the trial of the cause.

6. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There are four separate alleged crimes joined in the said indictment.

7. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The mode of proof in each of the offenses is of a different nature.

8. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The judgment in each of the offenses is of a different character.

9. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The judgment in the offenses charged in the first and second counts is of a character different than the judgment in each of the offenses charged in the third and fourth counts.

10. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The defendant is prejudiced by being placed on trial on the four offenses charged in the said indictment at the time before one jury.

11. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There is a misjoinder in joining in the indictment three counts charging the defendant, Morris Rudner, and the defendant, Charles H. Speck, jointly with the commission of offenses therein alleged to have been committed, with one count, charging the defendant, Morris Rudner, with aiding and abetting the commission of an alleged crime.

12. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The first count in the said indictment fails to charge a crime under the statute in such case made and provided.

13. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The first count in the said indictment does not aver that the meter alleged to have been tampered with is the meter of a water company or was owned by a water company.

14. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The first count in the said indictment does not aver that the Trenton Water Works, or the Inhabitants of the City of Trenton, furnished water to the said defendant, Morris Rudner, through the said meter.

15. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The first count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant, Morris Rudner, for the purpose of obtaining water with attempt to defraud a water company.

16. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The charge in the said first count is improperly laid with a continuendo.

17. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment fails to charge a crime under the statute in such case made and provided.

18. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment does not aver that the meter alleged to have been tampered with is the meter of a water company, or was owned by a water company.

19. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment does not aver that the Trenton Water Works, or the Inhabitants of the City of Trenton, furnished water to the said defendant, Morris Rudner, through the said meter.

20. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment fails to allege that the tampering and interfering with the said meter was done by the defendant, Charles H. Speck, for the purpose of obtaining water with intent to defraud a water company.

21. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The charge in the said second count is improperly laid with a continuendo.

22. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment fails to allege that the said defendant, Morris Rudner, aided and abetted the said Speck in the commission of a crime under the statute in such case made and provided.

23. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The second count in the said indictment fails to allege that the said defendant, Morris Rudner, aided and

abetted the said Speck in the commission of a crime of which the said Speck has been convicted.

24. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The third count in the said indictment fails to charge a crime under the statute in such case made and provided.

25. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The third count in the said indictment alleges a larceny by the defendant, Morris Rudner, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

26. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The fourth count in the said indictment fails to charge a crime under the statute in such case made and provided.

27. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The fourth count in the said indictment alleges a larceny by the defendant, Morris Rudner, of the goods and chattels of the Trenton Water Works and the Inhabitants of the City of Trenton, and therefore charges two separate and distinct offenses.

28. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The said indictment contains four repugnant and inconsistent counts.

29. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the

commission by the defendant of either or any of the crimes charged in the said indictment.

30. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the offense alleged in each of said counts, if committed at all, had been committed at all, had been committed more than two years before the finding of the indictment.

31. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There was error in the refusal of the Court below, at the close of the State's case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

32. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the State's case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

33. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erred in refusing to direct, at the close of the State's case, a verdict of acquittal on the third and fourth counts because (a) there was no evidence of the commission of the crimes charged therein; (b) because the proofs did not show that there had been any larceny of filtered water, as charged in the said counts; and because (c) there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny; and

(d) because there was no legal proof that there had been any water stolen at all.

34. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There was error in the refusal of the Court below to grant the motion of the plaintiff in error, before the jury was impanelled, to quash the indictment because the said indictment contained four counts, three of which imputed an offense to the plaintiff in error and Charles H. Speck, and one to the plaintiff in error singly, whereby there was a misjoinder of counts.

35. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There was error in this, that the said Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the four counts contained in the said indictment, because there was a misjoinder of offenses charged, and because the evidence failed to establish a case against the plaintiff in error on any count contained in the said indictment.

36. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erred in refusing, at the close of the State's case, to direct a verdict of not guilty on each count in the said indictment.

37. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on each of the four counts contained in the said indictment on the ground that the evidence failed to show the commission by the defendant of either or any of the crimes charged in the said indictment.

38. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, refused to direct a verdict in favor of the plaintiff in error on the first and second counts of the indictment upon the grounds that the offenses alleged in each of said counts, if committed at all, had been committed more than two years before the finding of the indictment.

39. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

There was error in the refusal of the Court below, at the close of the whole case, to direct a verdict on the first and second counts upon the ground that there was no crime charged in the first and second counts of the said indictment.

40. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, denied the motion of the plaintiff in error to compel the State to elect on which count of the indictment the case was to be submitted to the jury.

41. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erred in refusing to direct, at the close of the whole case, a verdict of acquitttal on the third and fourth counts because (a) there was no evidence of the commission of the crimes charged therein; (b) because the proofs did not show that there had been any larceny of filtered water, as charged in the said counts; and because (c) there was no legal proof of the quantity of water alleged to have been stolen, because the said water was not the subject of larceny; and (d) because there was no legal proof that there had been any water stolen at all.

42. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below, at the close of the whole case, erred in refusing to direct a verdict of not guilty on each count in the said indictment.

43. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously charged the jury as follows:

> "Under this indictment, if the facts indicate he is guilty, there may be a general verdict of guilty."

the said charge being erroneous in this, that under the evidence in the case, the plaintiff in error could not have been convicted under the first or second counts in the said indictment.

44. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below charged the jury as follows:

> "You may find a verdict of either guilty or not guilty on any one or more of the individual counts."

45. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously charged the jury as follows:

> "A definition of larceny should be given at this time for the guidance of the jury. This crime is the unlawful and fraudulent taking and carrying away of the goods of another person without any claim of right thereto and with the fraudulent intent of depriving the real owner permanently of the possession or use of them."

said instructions to the jury being misleading, and did not discriminate as to the offenses set forth in the several counts in the said indictment.

46. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that;

The Court below erroneously refused to charge the following request of the plaintiff in error:

> "The offenses charged in the first and second counts of the indictment, if committed at all,

must have been committed within two years before the finding of the indictment; otherwise, they are by operation of law outlawed."

47. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to charge the following request of the plaintiff in error:

"It must be proved that the meter was the property of a water company, otherwise the first and second charges cannot prevail. The meter used does not seem to have been the property of a water company, as it has been proved to be that of the Inhabitants of the City of Trenton."

48. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following question propounded by the plaintiff in error to David T. Wittenborn:

"You devised a new system in January to prevent meter reading from park benches?"

which said question was material to the issue joined.

49. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question to be answered by the said witness, over the objections of the plaintiff in error, as follows:

"Are you able to say that Morris Rudner paid water bills rendered to him from the date of March 16th, 1915, to January 1st, 1917?"

on the grounds that said question is incompetent, irrelevant and immaterial to the issue in this cause, and was hearsay testimony.

50. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question, propounded to Harry H. Rittenhouse, to be answered:

"What does that card represent?"

upon the grounds that the said card spoke for itself, and was not open to characterization or explanation by the witness.

51. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to strike out the answer of the said witness to the question propounded in the next preceding exception, said answer being hearsay testimony, and not within the knowledge of the witness:

"That is a record of the amount of water used and the charge for the same, the dates paid and the amount paid by the man that used the water."

52. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question to be propounded to the said witness, Harry. H. Rittenhouse:

"Compute, will you, and tell me how many cubic feet was charged on the meter from this date you mention—from the 16th day of March to the 6th of December?"

upon the grounds that the said witness had no personal knowledge of the state of the meter.

53. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question to be answered by the said witness:

"That is the number of cubic feet from the 16th day of March, 1915, to the 16th day of December, 1916?"

54. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously refused to allow the following question, propounded by the plaintiff in error to

the witness, Harry H. Rittenhouse, to be answered:

> "Was it not done for the purpose of correcting the faulty system which the Department had of having water meters read?"

said question was pertinent and material upon the question whether there was any asportation of water, and as to the correctness of the meters of the Inhabitants of the City of Trenton.

55. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erred in refusing to strike out the testimony of the witness, Harry H. Rittenhouse, as to the amount of water used from March 16th, 1915, to December 6th, 1916, on the grounds that the evidence given by the said witness was hearsay, and because he had no personal knowledge of the verity of the contents of the record used by him in testifying.

56. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question to be propounded and answered by the witness, Harry H. Rittenhouse, said witness having no personal knowledge of the matter propounded to him:

> "Will you give me the readings of the meter from March 16th, 1916, to September 7th, 1916?"

57. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below overruled the following question, propounded to the witness Albert:

> "Mr. Albert, you have been refunded one-half of the money which you paid for water which is alleged to have passed through your meter?"

on the grounds that the question was material.

58. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following material question, propounded to Charles H. Speck:

"Did you install that meter?"

59. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously allowed the following question to be propounded to the witness Clarence M. Hyle:

"Will you please tell us what the figures were that were called to you and the first test made by Mr. Bibbins?"

on the grounds that the said question was incompetent, irrelevant and immaterial, and called for mere hearsay testimony.

60. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question, propounded to Hyle:

"Assuming that a meter starts off with a standard gear and it tests out correct, can that meter go fast?"

61. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question, propounded to Alvin Bugbee:

"Assuming a meter has the proper standard gears, and it is tested and found to be correct, if that meter changes, can you state what way the change will take place?"

because the said witness was not an expert and not qualified to answer the same, and the question was irrelevant and immaterial.

62. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question:

"Assuming that figure to be correct, 160,000, if that meter was putting through ten cubic feet of water and was registering two, are you able to tell the quantity of water that passed through between the dates of March 6th, 1916, and September 7th, 1916?"

63. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question:

"What is the difference between 160,100 cubic feet and 800,500 cubic feet?"

64. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question, propounded to the witness Commissioner Lee:

"At that time, from information you had received, did you know something was wrong with the meter at 800 South Clinton Avenue?"

Said question was irrelevant, immaterial and hearsay.

65. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the objections of the plaintiff in error to the following question, propounded to the witness Commissioner Lee:

"State whether or not it was from information imparted to you by Alberts that the water meter investigation was started."

66. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following question, propounded by the plaintiff in error to the witness Israel Albert:

"Didn't the city refund to you over one-half of the money you paid?"

67. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below permitted the witness Commissioner Lee to testify to certain information which he had received concerning the tampering with meters.

68. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below allowed the State to reopen the case after it had rested and while the defendant was giving testimony, and introduce further testimony, the same being illegally permitted.

69. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the question propounded by the plaintiff in error to Israel Albert:

"Did you have any difficulty with your bill?"

the same being relevant, pertinent and material to the issue being tried.

70. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following pertinent, material and revelant question, propounded to the witness Edward Lee:

"During the last two years, at any time, has the city refunded any money to Mr. Alberts?

71. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following relevant, pertinent and material question, propounded by the plaintiff in error to one Alvin Bugbee:

"Did he make any complaints about getting poor treatment from the city?"

72. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that:

The Court below erroneously overruled the following pertinent question, propounded to said witness, Alvin Bugbee:

> "Did you take the water meter from the place of Mr. Isreal Alberts, where you found improper gears in his water meter?"

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annuled and for nothing holden, and that the said State of New Jersey may be restored to all things that it has lost by occasion of the said judgment, etc.

A. DAYTON OLIPHANT,
Prosecutor of the Pleas of Mercer County, for the State.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Plaintiff in Error,
vs.
MORRIS RUDNER,
Defendant in Error.
} In Error.

JOINDER IN ERROR.

And thereupon, afterwards, to wit, on the eleventh day of October, nineteen hundred and eighteen, the said Morris Rudner, Defendant in Error, by John H. Kafes, John A. Montgomery and Harry Heher, his attorneys, 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 aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid of the New Jersey Supreme Court, in manner aforesaid given, may in all things be affirmed, &c.

JOHN H. KAFES,
JOHN A. MONTGOMERY,
HARRY HEHER,
Attorneys of Defendant in Error.

TRENT PRESS, Printing, 14 North Warren Street, Trenton, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
HAEFEL COHN,
Defendant and Defendant in Error.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
LOUIS LEVIN,
Defendant and Defendant in Error.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
MORRIS RUDNER,
Defendant and Defendant in Error.

In Error.

BRIEF OF THE STATE.

PART I.

The three defendants were convicted in the Mercer Quarter Sessions. The Supreme Court reversed the conviction of the defendants for the reason that the first and second counts in the indictment of all three were outlawed and for the further reason that the conviction of Rudner and Levin was a specific verdict and not a general one

and that the verdict embraced only the misdemeanor and that according to the record the jury did not pass on the counts charging the high misdemeanors in the cases of the two last named defendants.

The facts of the case are, that each of the defendants, who were saloonkeepers in the city of Trenton and bought water from the city, which was measured by meters installed on their respective premises, made an arrangement with one Charles H. Speck, a co-defendant and an employee of the Water Devartment of the city of Trenton, that for a sum of money Speck took out of the water meter certain gears that registered correctly the amount of water passing through the meter and placed in the respective meters gears that registered about twenty-five per cent. of the amount of water that flowed through; thereby the three defendants obtained water from the city of Trenton that was not registered on the meters and for which they did not pay.

Each of the defendants were indicted under an indictment, the first count of which charged them with unlawfully tampering and interfering with a water meter for the purpose of obtaining water with intent to defraud the city. The first count in all the indictments charged the defendants with tampering with the respective water meters. The second count charged that the defendants aided and abetted Speck to tamper with the said meters. The third and fourth counts charged the defendants, in company with Speck, with the larceny of several thousand cubic feet of stored and filtered water.

The cases of the three defendants are so nearly alike, that the one brief can be applied to the three cases. The defendant, Haefel Cohn, was convicted on the one count of aiding and abetting Speck in tampering with the meter, and was acquitted on the other three counts. Morris Rudner and Louis Levin were each found "guilty of the misdemeanor on him above charged in the form aforesaid and as by the indictment aforesaid."

The first count, for tampering with the meter, is laid under *Section* 164, *Volume* 2, *Compiled Statutes, page* 1794, which reads as follows:

"Any person who shall, without permission,

> connect by wire or in any other manner with the wire or wires of any electric light or other electric company, or who shall, without permission, connect or disconnect the meters, pipes or conduits of any gas or water company, or in any other manner without such permission, tamper or interfere with such meters, pipes or conduits, or who shall, without such permission, connect with the meter, pipes or conduits of such company by pipes, conduits or other instrument, for the purpose of obtaining power or electric current or gas or water with intent to defraud such company or companies, shall be guilty of a misdemeanor."

It is urged that the plaintiff Cohn, who was convicted of aiding and abetting and tampering with the meter, was illegally convicted for the reason that the initial tampering of the meter took place more than two years next preceding the date of the indictment.

The statute says, among other things, that any person who, without permission, tampers with a water meter for the purpose of obtaining water with intent to defraud, etc., is guilty of a misdemeanor. The tampering in this case consisted of one act, which was changing the gears or cog-wheels in the interior of the meter for the purpose of having the meter register less water than actually passed through. The proofs of the case show that water had flowed continuously through and that meant up until the time of the discovery of the condition, some time preceding the date of the indictment.

The crime in this case does not lie in tampering with the meter, but tampering with it for the purpose of obtaining water. It makes no difference when the tampering took place, the crime is not complete until water is obtained and, as long as water is obtained, the tampering is of a continuous nature.

> "No matter how long a time an offense may take in its perpetration, it continues but one offense. An explosive package, for instance, may be sent from Maine to California, and may take weeks in the transit, but the transmission is a

single act. Difficult questions, indeed, may arise to be hereafter noticed when gas or liquor is tapped, by a pipe, through which there is a continuous passage for days, but whatever may be the conclusion as to such cases, it is settled that nuisances, when distinct impulses are given at intermittent successive times, may be the object of successive prosecution. The distinction is this: when the impulse is single, but one indictment lies no matter how long the impulse may continue. If successive impulses are separately given, even though all unite in swelling a common stream of action, separate indictments lie." *Wharton's Criminal Law, 11th Edition, volume one, paragraph* 34, *page* 48.

"When two or more articles are taken successively it is to be considered whether such taking is continuous so as to form part of one transaction, to be indictable as such. And the answer is, if the transaction is set in motion by a single impulse and operated upon by a single unintermittent force, it forms a continuous act and hence must be treated as one larceny, not susceptible of being broken up in a series of offenses no matter how long a time the act may occupy. So has it been decided in reference to gas feloniously drawn, during a long space of time from a main pipe by means of a fraudulent pipe, and so it is where a series of articles are removed a few minutes apart by one impulse in execution of a general fraudulent plan. And when a particular shaft of coal is fraudulently opened and quarried, in pursuance of a continuous design by a series of innocent agents for several years, the transaction, if there be one tapping or orifice of the vein, is single, and to be indicted as such. Such is also the rule of the modern Roman law with regard to the subtraction of wine from vats by a tube fraudulently applied. No matter how long the succession lasts, or how much wine is removed, the transaction is single as long as it

rests on the original attachment of the tube." *Wharton's Criminal Law, 11th edition, volume 2, paragraph 1169, page 1393.*

In the case of *Regina* v. *Firth, Volume 38, Law Journal Reports, Magistrates Cases,* the defendant, Firth, was indicted charged with stealing one thousand cubic feet of gas on a particular day. The evidence connected the prisoner with the abstraction for several years of gas from the prosecutors, but a pipe had been used for the purpose of obtaining the gas without its passing through the meter. It was held that the circumstances attending the abstraction of gas by that means, for the whole of that time, were rightly given in evidence and that the prosecutors were not called upon to proceed on one particular act of taking or on any three acts committed within the space of six months from the first to the last of such acts under the 24th and 25th Vict. c. 96, s. 6, for the whole of the acts constituted one continuous taking and did not show separate takings at different times.

The case of the *King* v. *Bleasdale, 2 Kav. & K.* 765, was a case where the lessee of a coal mine who, by the workings of his own colliery, abstracted, for some years, the coal of many adjoining proprietors. In this case it was held by Earle, Justice, that as long as the coal was gotten from one shaft it was one continuous taking, but the working was carried on by means of different levels and cuttings and into the lands of different people.

The reasoning of the above cases is, that the initial act, no matter when committed, remaining complete so as to permit the crime to continue, leaves the defendants in the position that, knowing the meter was tampered with, knowing that the tampering did obtain for them water for which they did not pay and knowing that the water was being obtained wholly by the initial unlawful act of tampering with the meter, making a continuous

act of tampering with the meter every day they obtained water as a result of the unlawful act.

In the case of *The State* v. *James Riley*, 65 *N. J. Law*, 192 (Supreme Court), it was held—

> "1. In the crime of obtaining money under false representations, the offense does not consist in the making of the false representations, but in the making of the false representations and the obtaining money or other thing of value by means thereof."
>
> "2. An indictment alleging the making of the false pretenses more than two years prior to the finding of the same, and which further alleges that money was obtained less than two years before the finding of the indictment, is not barred by section 130 of the Criminal Procedure Act. *Gen. Stat., p.* 1146."

The Court will notice, to constitute the crime of obtaining money under false pretenses requires two acts, the making of the false pretense and the obtaining of the money. Assuming, for the purpose of discussion, that the Legislature made the making of a false pretense for the purpose of obtaining money, a crime, and the false pretense was made more than two years previous to money being really obtained by the pretense. No doubt true, the defendant would be guilty of making a false pretense for the purpose of obtaining money. In the case above quoted, the Court unites the two acts, though one is outlawed and the other within the limitations and constitutes the complete crime.

Let us assume that tampering with the meter was not a crime in New Jersey, then there would be no offense of tampering with the meter. The crime of larceny would be there after the water was obtained as a result of the tampering with the meter by the defendant. The law has made this an offense to cover cases where the party who tampers with the meter does not receive the water. Cases can be easily imagined where a person would tamper with a meter for the purpose of obtaining water and yet the same person be not the party who receives the water or any benefit whatever from the tam-

pering with the meter, and while that tampering lasted and water was obtained, no matter by whom, the crime of tampering for the purpose of obtaining water is bound to continue.

In the case of the *State of New Jersey* v. *John Unsworth et al.*, 85 *N.J. Law* 237 (*C. of E. and A.*), it was held that "in an indictment for conspiracy, it is enough to warrant conviction if there is an overt act within two years prior to finding the indictment."

The facts in this case were that the conspiracy was entered into more than two years before the indictment was found, but the money that was criminally obtained was not paid over until quite some time after the conspiracy was entered into and within the two years of limitations. *State* v. *Gregory*, filed October 31, 1917.

It is true that the statute in our State, to constitute the crime of conspiracy, requires an overt act. This case is analogous to the case of tampering with the meter, because in the conspiracy case, and in the case at bar, there was an initial act, the fruits of which were criminal. So long as this act produced results that were criminal the act continues and follows with the results. To reason otherwise would mean that if "A" tampered the meter in his house so as to obtain water fraudulently, and left the house, and an innocent tenant occupied it for several years, the condition of the meter remaining the same and the water company loses its water, can it be said that "A" would not be guilty up until the last day that the meter remained in that tampered condition though he did not receive any water within two years last preceding the indictment?

To the same effect is the case of the *People* v. *Ochs*, 124 *Ill.* 399.

In this case the defendant, Ochs, was indicted for conspiracy to defraud the city of Chicago in the purchase of supplies. The indictment was found and tried after the expiration of the statutory period from the entering of the conspiracy, but some overt acts in pursuance of the conspiracy were committed within the statutory period, and the Court there held that "Limitations do not commence to run against the prosecution

for conspiring to obtain money by false pretenses until the commission of the last overt act in the furtherance of the conspiracy."

This disposes of the entire question raised in the case of Haefel Cohn, as the law of limitation is the only disputed question in his case. This question is also raised in the cases of Rudner and Levin, but in addition to this the following questions applicable only to their cases are also raised.

PART II.

The next point made by the defendants is that the Judge erroneously charged the jury, in the Levin case, as follows:

> "If it be proved that Levin induced, or procured, or was present when Speck changed this meter, as Speck says he changed it, then the defendant should be convicted, but the defendant denies that he had anything to do with the changing of the meter. * * * It must be established that there was an evil intent on the part of the defendant before you would be justified in convicting him under this indictment."

The second point raised by the defendant, Levin, is that there was error in the charge of the Court that this defendant could be convicted on any and all of the counts in the indictment.

The evidence of the case established that a meter was placed on the premises of Levin by the city of Trenton, that it was working properly and measuring the water passing through it accurately. That all the defendants, including Levin, were occupants of the premises to which the water was supplied, and that Levin, as well as the other defendants, paid Speck a sum of money to tamper with the respective meters.

It was further proved that as a result of the said tampering with the said meters, those defendants received four gallons of water to every one gallon registered, and that they paid for it in the same proportion.

These facts being established by the State, it neces-

sarily followed that the defendant, Levin, as well as the others, was guilty of the larceny of the water as well as the tampering with the meter, for the reason that the tampering with the meter and the taking of the water under the established facts are so connected that they could not be guilty of the one without necessarily being guilty of the other. The charge of the Court, of which the defendants complain, though brief, is an accurate application of the law to the facts of this case.

State v. *Engeman*, 54 *N. J.* 247, *p.* 255.

And in the Rudner case the Court charged as follows:

> "You may find a verdict of guilty or not guilty on any one or more of the individual counts. A definition of larceny should be given for the guidance of the jury."

We submit that there is no error in the law as the Court charged. There is no specific request made to the Court to charge the law in any particular method as to each particular count in the indictment. There being no request, nothing was denied. There is no duty on the Court to charge the law in a particular method so long as it does charge the law as applicable to the facts, and it is not here contended that there was an erroneous charge, but the claim is that the charge should have been particularly made, in a particular method, to each particular count. There is no authority compelling the Court to do any such thing or to pursue that method.

PART III.

The Supreme Court, in its opinion, holds the verdict is a specific and not a general one, in that the judgment declared the defendants to be guilty of a misdemeanor charged in the indictment, notwithstanding the indictment charged grand larceny and two other counts.

The Court reversed the convictions of Rudner and Levin because the judgment record made up by the clerk said the defendants were guilty of a misdemeanor charged in the indictment, and being that the indictment contained counts of misdemeanors and high misdemeanors, and that the misdemeanor was outlawed; that on this conviction it

could not be held that they were convicted of the high misdemeanors charged in the indictment.

This question was not raised in the reasons given by the defendants or argued in the case, for had it been steps would have been taken to have the record amended in the Rudner and Levin cases. For the fact that the verdict of the jury in each case was that the defendants were guilty as charged in the indictment.

The Supreme Court made this distinction and we submit to allow it to prevail is in effect permitting the Clerk of the Court of Quarter Sessions of Mercer to acquit two men that the jury in fact convicted.

The facts of the case show that Rudner and Cohn, not only tampered with the meters, but they were the proprietors and actual occupants of the premises and received the benefit of the tampered meters, and a jury could not convict those two men of tampering without at the same time convicting them of the count in the indictment.

The case of the *State* v. *Stevens*, 53 *Law*, *page* 245, is offered as authority to sustain this proposition. It will be found that in this case, quoted by the defendant, there is a total absence of any law imposing such a duty on the judge of the court, as claimed by the defendant, but the Stevens case holds as follows:

> "1. Two distinct misdemeanors may be charged in different counts of the indictment; they should be tried and passed upon by the jury and court as several offenses."
>
> "2. When the indictment contained a count charging embezzlement and another charging a larceny, and the jury found the defendant guilty 'of larceny and embezzlement as he stands charged in the indictment'—Held, the proceeding was regular."
>
> "3. Upon such a finding it is irregular in the court to pronounce a single indiscriminate sentence conjointly for the two offenses; but the judgment for that will not be reversed, it appearing that the punishment thus inflicted is not greater than the punishment provided for either of such misdemeanors."

"4. Nor will such judgment be reversed in consequence of the counts charging one of such misdemeanors being fatally defective; the intendment will be that the sentence was pronounced on the good count."

The case of the *State* v. *George D. Huggins*, 84 *Law*, *page* 254 (*C. of E. and A.*), holds as follows:

"1. Under an indictment charging a man in separate counts with rape and with carnal abuse, a general verdict of 'guilty in manner and form as he stands charged,' is to be supported on the count for carnal abuse, where the evidence showed him to be guilty of that offense but not of rape."

"2. Where a general verdict of guilty was rendered upon an indictment charging a man in separate counts with rape and with carnal abuse, which conviction is to be sustained as to carnal abuse, and he was given an indeterminate sentence, the maximum of which is the extreme penalty for rape and is in excess of the maximum sentence which may be imposed for carnal abuse, this court, having to reverse the judgment because of error in the sentence, has the power, under section 144 of the Criminal Procedure Act (Comp. Stat., p. 1867), to render such judgment as should have been rendered, that is, by amendment make the sentence such as might have been passed, or to remand the case for that purpose to the court before which the conviction was had."

"3. Where there are several counts in an indictment each charging a distinct crime, a general verdict of guilty amounts to a conviction of each separate offense, and, even if the verdict cannot be supported as to one or more of the crimes charged, it will be upheld as to the offense described in a single good count."

And in the case of the *State* v. *Matthew Jefferson*, 88 *Law*, *page* 447 (*Supreme Court*), it was held that:

"3. An error in imposing sentence is reviewable under section 144 of the Criminal Pro-

cedure Act (Comp. Stat., p. 1867), which provides that the reviewing court may render such judgment as should have been rendered, or remand the case for correction by the court below."

The lowest grade of offense charged in this indictment was the offense of tampering with the meter, which is a misdemeanor. Under this statute no specific penalty is named, but under section 218, volume 2, page 1812, Compiled Statutes,

> "Any person found guilty of any crime which by this, or any other statute, is declared to be a misdemeanor, shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment, with or without hard labor, as the court may direct, for any term not exceeding three years, or both."

The judgment records in the three cases show that the defendants were each fined five hundred dollars and costs of prosecution. Whether the verdict, in these cases, was specific or general, the defendants have been punished less than the highest penalty for the lowest grade of crime charged in the respective indictments.

The defendants contended that the State failed to show that water was a commodity and a subject of larceny. We submit, the facts established by the proofs were, that the water works of the city of Trenton was originally owned by a corporation which was a part of the city government; that later, by an act of the Legislature, the city of Trenton acquired the entire property of the corporation. (Ex. P.-1, Rudner case, page 147; Chapter 38, Laws of 1859.)

The city of Trenton erected a pumping staiton, filtering beds, combined with other accessories necessary for filtration, and a reservoir. That the water was pumped from the Delaware River into these filtering beds and, by chemicals and otherwise, it was put through a process of cleansing and purification, pumped into the reservoir and by mains directed through the city to the various citizens, who purchased it, and sold at a rate depending upon the uses to which it was applied by different citizens.

It is true that water, in a state of nature, is not a subject of larceny, but when water is taken from its natural state, subjected to a process of treatment, the effect of which is to purify it, and then stored for the purpose of sale, it is property because it has been subjected to labor that has value, the value of that labor being put into it has given it a higher value than it possessed in its natural state, and at common law is a subject of larceny.

In the case of *Ferens* v. *O'Brien*, 15 *Cox's* C. C. 332 (1883), defendant was charged with having feloniously stolen, taken and carried away two buckets of water, property of appellants, of the value of one penny, and it was proved that the appellants were the owners of the colliery which was supplied with water by a water company. A meter was placed and the water was carried by underground passages laid down by the appellants; that the water was then supplied to houses occupied by appellants' workmen by means of underground passages, to which taps were attached, the workmen being allowed to take water from the passages on payment of a fixed price, and the defendants were seen to take water without having agreed to pay for the same. Defendants pleaded not guilty, and the Court declined to convict on the ground that there was no property in the water. The upper court (Justices J. J. Fields and Matthews) were of the opinion that water, under the circumstances and in the condition described in this case, could be the subject of larceny under the common law and they directed the case to be remitted to the justices with a statement of this opinion.

It is contended by the defendant that there was no trespass in the taking of these waters. The facts of the case are, that the intention of the parties supplying the water was that no water should be supplied to any of them until it passed through the meter which was the property of the city of Trenton, for the purpose of being measured so they should pay for the same at the designated rate. If, by a trick or tampering with the meter or obtaining water by going round the meter, it is larceny because the intent of the seller of the water was that

none should be supplied until first measured, and is analogous to the case of *The King* v. *Tideswell*, 2 *King's Bench*, 273 (1905):

> "Defendant was in the habit of buying ashes from a manufacturing company. The company employed a man named Kaye as a general weigher, whose duty it was to weigh all waste and residuals and to keep a record of all such weights. This man Kaye weighed out and delivered to the railroad company 32 tons 13 cwt. of ashes, but charged the defendant with a ton and a half less. Kaye and the defendant were acting in ocllusion.
>
> "The Court held defendant to be guilty of larceny. The upper court confirmed the conviction upon the ground that it was expressly agreed by the parties that no property in the ashes should pass until they had been properly weighed and recorded. Furthermore, that the defendant had knowledge from the servants in authority that the servant was in fact defrauding his master and that the defendant was a party to the fraud.
>
> "The court distinctly said that if the property in the ashes had passed before the weighing and recording, there could be no larceny, but inasmuch as it was left to Kaye to arrange the sale then there was no contract of sale of the amount not properly weighed and recorded, and that therefore the defendant fraudulently obtained possession of that amount."

This case, the one of ashes, is directly in point as to the other facts and circumstances.

In the case of the *State* v. *Gardner*, 55 *N. J. Law*, *page* 17 (*Supreme Court*), the Court held:

> "The defendant bought a lot of jewelry at the store of S. Bros., to be delivered at her residence, to be paid for on delivery. The jewelry was delivered at defendant's residence by a messenger, in a covered box, with a C. O. D. bill. The box was handed to a servant, who opened the door; the defendant met the servant

in the hall and took the box and carried it upstairs. In a short time she returned with the box opened, and told the messenger there was no jewelry in it; that there was nothing in the box except a piece of lace trimming, which she exhibited. If the jewelry was in fact in the box, the defendant kept it and converted it to her own use. The bill for the jewelry was not paid, the defendant insisting that she had not received it. The Court charged the jury that, if the defendant received the jewelry from the agent of S. Bros., and by a trick or device removed the jewelry from the package in which it was delivered, and substituted other goods for the purpose of converting the jewelry to her own use and depriving S. Bros. of their property, the defendant was guilty of larceny. Held, that these instructions, as applied to the facts of the case, were correct, and that the refusal of the Court to incorporate in these instructions the words, 'with felonious intent,' was not error."

The reasoning of the above quoted cases is applicable and in line with the facts in the case at bar. It is contended that this is an embezzlement instead of a larceny. Embezzlement presumes a lawful taking and an unlawful conversion; larceny is an unlawful taking and an unlawful conversion. The case at bar shows no lawful taking at any stage of the facts, but on the contrary shows an unlawful taking and unlawful conversion.

PART IV.

In answer to the claim that the State failed to show that the water in this case had been a commodity and was a subject of larceny, we submit that the state of the case shows that those facts have been established and the cases to sustain the contention that water is not a commodity, in the plaintiff's brief in this case, viz.: *Arno* v. *Mundy*, 1 *Halstead*, *page* 71, *and McCarter* v. *Hudson County Water Company*, 4 *Robbins*, *page* 711, and the other cases there cited on this point, apply to

water when in its natural state, and do not apply to water as a subject of larceny in this case.

It is contended that the admission of the reports of the meter readers as evidence in this case was error.

The defendants use the case of *The City of Bayonne* v. *Standard Oil Company*, 81 *N. J.* 717, as an authority for the exclusion of the books and meter readings as evidence. The facts in that case were that there were two distinct sets of meters, one of the defendants and one of the plaintiffs, and also there was testimony in the case that all meters at times get out of order. The books in that case were not offered as evidence of a sale of water, but as a record of conclusions drawn on the reading of the various meters. The Court rejected this on the ground that there was no evidence that either set of meters measured accurately, and there was no evidence in the case that any tests had ever been made to determine the accuracy of either set of meters. For this reason the court held that the meter readings could not be received in evidence, when the suit was to recover the value of the water used.

> "6. In an action for water furnished defendant, notebooks of meter readers were properly excluded, where the persons who transcribed the readings into books were not called to identify them or to prove their accuracy."
>
> "7. Where, in a suit to recover for water furnished, one of plaintiff's witnesses testified that all meters got out of order at times, an offer of evidence that no change or repairs had been made to certain of the meters in question, at any time after their location, unaccompanied by evidence that the meters had been examined and found to be apparently in good order, was properly disallowed."

In the case of *Stout* v. *Edison Portland Cement Company*, 82 *N. J.* 133, evidence of a similar nature was properly stricken out by the Court as being purely hearsay testimony.

> "Where a witness testified from memory to the contents of the reports of the New Jersey

State Geological Survey, and such reports were not produced or offered in evidence—Held, that the striking out of the witness's testimony in that regard was proper."

In the case of *Lindenthal* v. *Hatch*, 61 *N. J.* 29, the Court held:

"2. Entries in diaries exhibiting the acts of a party may be used for the purpose of refreshing the recollection of a witness who had knowledge of the facts to which they relate, but are incompetent as testimony."

This syllabus exhibits the fact that these cases have no application to the case at bar.

The indictments in these cases charge the defendants among other things with the larceny of water. For the purpose of proving the larceny of water it was proved that the meters were installed in each of the specified places, properly adjusted to accurately measure the amount of water passing through them. This fact was not disputed by any of the defendants. (Rudner case, p. 27; Levin case, p. 41.) It was further established, by the State by evidence in the case, that these defendants paid Speck a certain sum of money to open the mechanism of the meter and change the meters so that the meter would register about one gallon of water for every four gallons of water that passed through. (Rudner case, p. 29; Levin case, p. 46.) This fact was made known to the Water Department; they sent a man to remove the meter and remove it to the Water Department, where it was tested on a machine, the accuracy of which was not disputed. (Rudner case, p. 52, 53, 54 and 55; Levin case, p. 46, 47, 48 and 49.) After the machine was tested it was opened, and the condition was as described on page 29 of the case.

The purpose of introducing the records of the Water Department was to show the number of cubic feet of water that had been paid for by each of the defendants from the date of the tampering with the meter down to the date of the discovery of the tampering. These bills were paid and never disputed by the defendants. The purpose of introducing the books was to show that

the bills, that these defendants paid, were for only about one-fourth of the water actually consumed. (Rudner case, p. 58; Levin case, pp. 8-9.)

This testimony was all evidential as to the quantity and value of the water taken to enable the jury to find that the defendants had taken sufficient water to constitute them guilty of grand larceny.

These books were not introduced for the purpose of recovering money, as in a civil case, and for that reason the legal principles applicable to civil suits is not applicable to the case at bar. The State was not collecting any money, but was establishing tangible facts as to the quantity and value to enable the jury to arrive at a verdict. This evidence was admissible because these entries were made in the usual course of business.

In the case of *Corkran* v. *Meloney* v. *Henry Rutter*, 76 *N. J. Law*, *page* 375 (*Supreme Court*), the Court held that "books of account, made up in the usual course of business in part from written reports of work done and materials used, are competent evidence, with or without the reports themselves, to prove claims for materials and labor. *Diament* v. *Colloty*, 37 *Vroom* 295, distinguished."

Defendant Levin says he is injured by Commissioner LaBarre's testimony that the defendant said to him "The Billy Sunday crowd are after me." This testimony was admitted because Levin denied his guilt at the trial, and when he was asked whether he visited Mr. LaBarre and made that statement he said he did not remember. Mr. LaBarre was put on the stand to prove the fact of this conversation with Levin the day before his arrest.

The defendant Levin claimed he was injured when the Court struck out an offer of the defendant to produce a book containing a record of ten dollars loaned to Speck —the facts were that Speck testified that he received ten dollars from Levin for fixing the meter to enable Levin to steal water. Levin did not deny that Speck had received ten dollars from him, but explained it on the ground that he had loaned Speck the ten dollars. Then he offered this small book to corroborate his statement. The offer of the book, at most, could only be cumulative

evidence of a collateral fact which could not possibly injure the defendant, because the question was not whether he gave Speck ten dollars, but whether he tampered with the meter and stole the water, and the matter of ten dollars being paid was the motive for Speck fixing the meter and his reason. Whether it was loaned or paid mattered but little; the fact was that the meter was fixed and the water stolen, and we submit that this was purely a collateral fact.

We submit that the judgment of the Supreme Court should be reversed and the conviction upheld.

Respectfully submitted,

A. DAYTON OLIPHANT,
Prosecutor of the Pleas.

MARTIN P. DEVLIN,
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NEW JERSEY

Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
HAEFEL COHN,
Defendant and Defendant in Error.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
LOUIS LEVIN,
Defendant and Defendant in Error.

THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
vs.
MORRIS RUDNER,
Defendant and Defendant in Error.

} In Error.

Brief for Defendants in Error.

These three defendants were indicted for similar offenses in separate indictments containing four counts. The first two counts in each indictment charged simple misdemeanors, alleging violations of the 164th section

of the Crimes Act (*Comp. Stat., p.* 1794). The third and fourth counts charged grand larceny of water, which charge is a high misdemeanor. The jury in the Rudner and Levin case returned similar verdicts of guilty "of the misdemeanor on him above charged." In the Cohn case, the verdict was guilty of the misdemeanor of aiding and abbetting in tampering with the water meter. Inasmuch as all are principals in misdemeanors, whether they themselves commit the act or procure others to do it or merely aid and abet the crime, the first and the second count in each of these indictments charge one misdemeanor. The facts of the case are similar. One Speck was a meter inspector of the City of Trenton, and in each case he testified that he altered the meter at the request of the accused so that it would run slow, and received from each of them $10.00. This meter tampering all occurred in the year 1914. In the Rudner case, Rudner testified that his bills, before 1914 and the latter part of 1913, ran up to $150.00 quarterly. "I went to Mr. Wittenborn and said 'Mr. Wittenborn, this is highway robbery; this bill for $150.00 for three months.' He says, 'Rudner, there is something unusual. I can't understand it. I will send the inspector to inspect the meter and then we will know.'" (Page 89, lines 32, &c.) "This bill for $150.00 was much larger than those which went before." (Page 90, line 21.) He then made a second complaint and said "The best thing for me to do would be to give you, Mr. Wittenborn, the deed for the property." Mr. Rudner further testified that the inspector came out and told him that the meter was wrong. He said "I will fix the meter for you so that you don't have to pay for any more water than you use." Later on, Speck went to the defendant's saloon and received his check for $10.00 for the service, Mr. Rudner testifying that he supposed it was up to him to pay that charge.

In the Levin case, Mr. Levin testified that he never made any complaint; that his bills were always low,

and that they were always running about the same. (Page 98, lines 25, &c.).

The Court, in each case, charged the jury that these defendants could be convicted on all the counts or on any one of them, or altogether acquitted. In each case, the Court was requested to charge that the offense charged in the first and second counts, if committed at all, must have been committed within two years before the finding of the indictment; otherwise, they are by operation of law outlawed. (Rudner case, page 145, line 20; Assignment of Error, 19, page 155, line 33.) (Levin case, page 82, line 4; also page 140, line 3, and Assignment of Error thereon.)

ERRORS OF THE COURT UNDER THE FIRST AND SECOND COUNTS:

In all these cases, the era of meter tampering was 1914, and the indictment was not returned until 1917, at the January term. There was no dispute, therefore, that more than two years had elapsed after the alleged act of tampering. The statutory offense is tampering with a water meter for the purpose of obtaining water with intent to defraud the water company. The offense is, therefore, complete, when one tampers with the meter to obtain water with intent to defraud. The intent to defraud and the act of tampering must be simultaneous. This case furnishes concretely a refutation of the prosecutor's argument. Speck has been indicted and pleaded guilty to the first and second counts, yet the evidence shows that he did not obtain any water. He, however, did, if the prosecutor is correct, tamper with the water meter with intent to defraud. The State confuses the results which flowed from the act of tampering with the act itself. The procuring of water was no part of the statutory offense. The fallacy of the prosecutor's argument is in confusing the results of the crime with the crime itself. He seeks to sustain himself by citing decisions in conspiracy. The

overt acts in conspiracy cases are simply evidence of the renewal or the continuance of the corrupt criminal compact. If the overt acts do not evidence the existence of the corrupt agreement within the period of two years, they are nugatory against the plea of outlawing. We, therefore, contend that the Court erred in not charging the jury as requested by the defendant. The verdicts in these cases are obviously special. The jury must pass upon each count in the indictment. There can be but one meaning attached to the jury's verdict, and that is that they convicted the defendants of tampering with the meter.

In the Levin case, the Court charged that "if it be proved that Mr. Levin induced or procured or was present when Speck changed this meter, as Speck says he changed it, then the defendant should be convicted." Under this charge, it is certainly plain of what the jury convicted Levin under the law of the case.

In *State* against *Huggins*, 84 *N. J. L.* 254, the Court examined the evidence under a general verdict of guilty to determine under which counts he had been convicted. The Court further charged (page 141, line 21) that the particular allegation in this indictment is that the defendant had Speck to alter the meter, so that it would register less than the amount of the water running through. The defendant excepted to this charge.

In the Rudner case, the Court defined larceny, saying, "The definition of larceny may, perhaps, be given for the guidance of the jury." He did not refer to any particular count, but he had told the jury that this defendant could be convicted on any count or on all of them, according as the jury should find.

It is well-settled law that in an indictment containing several counts, the failure to pass on each count of the indictment works an acquittal as to those counts on which there is not a special finding.

We submit that the reasoning of the Chief Justice in his opinions filed in these cases is sound. The conse-

quences to a person convicted of grand larceny are so serious that the humanity of the law requires that in cases of doubt the benefit of the doubt should be to the advantage of the defendant.

II.

Trial Errors were Committed Under the Larceny Counts.

In the Rudner Case, the State produced one Alberts, who testified that Speck had been to his place and examined the meter, and was coming on the following Monday to remove it. The defendant Rudner sent for Alberts and said to him that he understood that he was having a very high bill, excessively high, and that Speck would fix the meter so that he would only pay for as much as he was using. The similarity of the Rudner case and the Alberts case was that both had excessively high bills; both had made complaints about them to the city officials; Speck had been sent to inspect. Rudner said that Speck told him his meter was wrong and had been over-registering water. The defendant then offered to show, by cross-questioning of Mr. Alberts, that in his conversation with Mr. Rudner he, Alberts, had been paying twice as much money as he should; that the water meter was fixed by somebody so that it was running fast. The Court overruled this line of cross-examination. (See page 23, lines 21, &c.) (Page 136, line 5, Alberts called as witness for the defendant.) Mr. Bugby, an employee of the Water Department, was called for the purpose of showing that Alberts had made complaint about his water meter, and that there had been a refunding to him of one-half of what he had paid. Speck testified that meters never run fast unless tampered with. The overruling of these questions and the refusal to allow these facts to be shown were duly excepted to and are assigned as error. We claim that Speck was extorting from the customers

of the Water Department money by tampering with the water meters to make them run fast, and then under the pretense of fixing them, charging his fee of $10.00.

Alberts' testimony, in its deleted shape, was very damaging to the defendant, but if all the facts of Alberts' meter had been laid before the jury, the implications from them would probably have been the reverse of what they were.

"That a lie which is half the truth is ever the blackest of lies,
That a lie which is all a lie may be met and fought with outright,
But a lie which is part the truth is a harder matter to fight."

Speck was making a business of meter tampering, and his designs and conduct could be shown by his acts, similar to his treatment of Rudner. *Crosby* v. *Wells*, 73 *N. J. L.* 808, directly sanctions this position. "It becomes a sound rule, both in logic and in reason, that evidence of acts similar to the one immediately under investigation, may be offered for the purpose of showing the knowledge, intent or design of a fraudulent conduct."

See also *Wilkinson* v. *Dodd*, 42 *N. J. Eq.* 234; *Continental Match Co.* v. *Sweet*, 61 *N. J. L.* 457, 458.

The State failed to prove the taking of any water. In the Levin and the Rudner cases, the State called the attaches of the Water Department who had no knowledge save from the reports submitted to them of the readings of the meters, and permitted them to testify what the records show without offering in evidence the records themselves.

The defendant testified that early in 1914 he had complained as to the large water bills he had been receiving, as much as $150 per quarter; that Speck had told him that the bills were wrong and too high, and that he (Speck), who was an employee of the City of

Trenton, could make the meter right. He charged $10 for doing this service. He also testified that he had the conversation with Albert, because he had heard of the high water bills of Albert, and that Albert was no particular friend of his, and that his purpose in speaking to Albert was merely a neighborly one.

The Court charged the jury that the defendant might be convicted on any or all of the counts in the indictment. He gave a definition of larceny without applying it to any particualr count in the indictment, and the verdict of the jury was that the defendant was guilty of the misdemeanor charged in the indictment.

FIRST.

The motion to quash the first and second counts in the indictment, on the ground that no crime was charged therein against the defendant, should have been granted.

These were the counts as to tampering. The statute, section 164, page 1794, of Comp. Stat., provides that any person who shall, without permission, tamper or interfere with meters, pipes or conduits of any water company, with intent to defraud such company or companies, shall be guilty of a misdemeanor. The allegation in these counts was that these water meters belonged to the Trenton Water Works and The Inhabitants of the City of Trenton. These were mere municipal corporations. There was no allegation that they were water companies within the purview of the statute. This motion was denied and exception taken. (See page 2, the 8th, 9th and 10th reasons.) The exception was sealed thereto on page 4, and error assigned thereon—Assignments 8, 9 and 10, page 151.

SECOND.

David T. Wittenborn was Secretary and Treasurer of the Water Department. (See page 7.) He testified that he had the records of the City of Tren-

ton with him, and that from the records of the card handed to him by Mr. Rittenhouse, it appeared thereon how much water had been used by the defendant's tenants. And on page 12 he testified that Morris Rudner paid water bills from March 16th, 1915, to January 1st, 1917; that this record is made up from the reports of meter readers who go about and read the meters, and report on cards to the office (page 9, lines 33, etc.); and that the only way of verifying the report was by taking the meter readers' word for it. The Prosecutor objected to the testimony as to whether or not there was any checking system on these meter readers. (See page 11, line 10.) He objected to any testimony as to a system devised to prevent meter readings from the park benches (pages 11 and 12, lines 36, 37).

Harry H. Rittenhouse testified that he had a card with him which was a record of the amount of water used, and the charge for the same, the dates paid, and the amount paid by the man that used the water. The following question was propounded to him by the Prosecutor:

> "Compute, will you, and tell me how many cubic feet was charged on the meter from this date you mention—from the 16th day of March to the 6th day of December."

This question was objected to on the grounds that he had no personal knowledge of the matter interrogated about on the witness's own admissions. The Court overruled this objection, and exception is sealed (page 15). Also the following question propounded to the same witness:

> "That is the number of cubic feet from the 16th day of March, 1915, to the 16th day of December, 1916?"

This question was objected to, and the objection was overruled (page 15, line 15).

The assignments of error on these questions are found on pages 156, 157 and 158, and are numbered 21, 22, 23, 24, 25, 26, 27, 28 and 29.

This witness, on page 18, testified that he had no other data or information excepting from the slips which he had. The defendant submitted that the slip should be marked in the case (page 18, line 30). The Prosecutor objected thereto, saying that "it is not necessary to put the slip in evidence, because we have proved the bills were paid." The Court replied, "I will permit it to be marked, but not offered in evidence." On page 19, counsel for the defendant said, when the witness was giving the number of cubic feet: "It is understood that my objection goes to this question?" The Court answers "Yes." The defendant again excepted to this ruling.

On page 18, counsel for the defendant moved that the testimony be stricken out on the ground that it is based entirely on hearsay, a record made up by people whom the witness did not know.

And on pages 81 and 82, the witness Rittenhouse was shown two cards, and was asked if he wrote the handwriting on those cards in the course of his employment, and the following question was then put to him:

> "What is the difference between 160,100 cubic feet and 800,500 cubic feet?"

Objection was made on the grounds that the witness could not tell. The objection was overruled, and exception taken.

On page 109, the Prosecutor, in cross-examining the defendant upon the amount of money that he had paid for water, attempted to read, presumably from the card spoken of by the former witness. (See page 109, line 30.)

Mr. Kafes asked:

> "Is that in evidence?"
>
> Mr. Devlin—"No, sir."

Mr. Kafes said he ought not to read from any paper which is not in evidence. The Court (on page 110, at

top of the page) said: "I do not think I will permit the bills to be read."

This constituted the entire testimony as to the amount of water used by the defendant's tenants. We claim this this testimony was incompetent and mere hearsay. The witnesses could not testify to what the record contained, which was made without their personal knowledge, and which could not refresh the memory because they had no original knowledge of the matters contained in the record. This case was tried upon the theory that these records were not evidence, and that any inquiry into the methods of keeping them was irrelevant.

On page 11, the question was asked:

> "You devised a new system in January to prevent meter reading from park benches?"
>
> The Prosecutor—"I object to that."
>
> Mr. Heher—"Mr. Devlin has called the witness to prove the records of the city which are based upon hearsay."
>
> The Prosecutor—"I did not."

And on page 17 the following question was asked:

> "Was it not done (signing their names to the readings) for the purpose of correcting the faulty system which the department had of having water meters read?"

This question was objected to by the Prosecutor, and the objection was sustained (page 18). This evidence, without the books, was clearly incompetent.

> See *Stout* v. *Edison Cement Co.* 53 *Vr.* 133, *at p.* 137.

The testimony given by the witness in that case was stricken out, although he admittedly founded it upon facts said to have been gained alone from the State Geological reports, and hence, by inference, he was not possessed independently of those reports of any knowledge of the facts. In other words, the witness had failed to qualify as to knowledge of the flow of the

stream. The reports were not offered, nor were they in court. Their contents only were testified to by the witness, without their production, and, therefore, the argument made for the relevancy and admissibility of these documents is not pertinent.

In *Bayonne* v. *Standard Oil Co.*, 81 *N. J. L.* 717 (*at p.* 722), the Chief Justice said:

> "The trial court also refused to admit in evidence the notebooks of meter readers showing the results of their readings during the period covered by this litigation, or to permit Mr. Hickey, the water registrar, to read from them. The persons who transcribed the readings into these books were not called to identify them or to prove their accuracy. The theory of the plaintiff seems to be that they proved themselves. This theory we incline to think unsound. See *Lindenthal* v. *Hatch*, 32 *Vroom* 29."

In the latter case certain separate sheets of paper, called blotter sheets, were offered by the plaintiff and received in evidence, under objection by defendant's counsel. There were over a thousand of these sheets. The entries on these sheets were simple diary entries, exhibiting the acts of the parties. The Court held that they might be used for the purpose of refreshing the recollection of a witness who had knowledge of the facts to which they relate, but they were incompetent as testimony.

In *Myers* v. *Weger*, 62 *N. J. L.* 432 (at p. 441), it was held that a memorandum made by a witness at or near the time of the events recorded may be used not merely to refresh the memory by reviving faint impressions, but also to supplement the memory by preserving details that would otherwise be forgotten.

The case of *Hamilton* v. *Fusco Construction Company*, 87 *N. J. L.* 62, held that reports of employees of work done or materials furnished, which are never entered on a daybook or other similar record of original

entry, are not, standing alone, entitled to be admitted in evidence as books of original entry.

In *Jackson* v. *State*, 71 *Southern* 977 (an Alabama case), the question was, "Could you tell by your stock list if any meat had been missed, and, if so, how?" The defendant objected to the question on the ground that it called for illegal and incompetent testimony, as it was shown by the witness that he did not make out the stock list. The Court said:

> "The objection to the question was well taken. The stock list was not introduced in evidence, nor could it be without the correctness of the original entries being authenticated or verified by the clerk making them. The State's witness' testimony was based on the idea that a theft had occurred, because the stock on hand did not tally with an unauthenticated stock list which was not in evidence. Had the stock list been properly authenticated and introduced in evidence, it would have been within the province of the jury to say whether a case had been made out, but, manifestly, without it it was tantamount to permitting the witness to draw his own inference as to guilt, and moreover to prove the *corpus delicti* therein."

These records were upon vital points in the case, and they should have been competently proved and verified.

In the Levin and Rudner cases, we submit that the State failed to prove that water was a subject of larceny. The State proved that the water was pumped from the Delaware River into reservoirs and there distributed through pipes to the consumers of water. The City of Trenton is a mere agency of the State and it holds the water under precisely the same title as the State held it. The State's title is not that of proprietor, but holds them as sovereign for the benefit of individual consumers. The city is the instrumentality for the distribution of water to the inhabitants of this city who

are really the owners of the water. This is the fundamental notion of public ownership. (See *Arnold* v. *Mendy*, 1 *Hals.* 71; *McCarter* v. *Hudson County Water Company*, 4 *Robins*, 711; *Gear* v. *Connecticut*, 161 *U. S.* 529.)

We claim that the City of Trenton is operating its water plant under an act of the Legislature found in 1st Comp. Stats. 823. We call attention to Section 9, which provides that the governing body may establish ordinances, rules and regulations for the distribution, supply, use and protection of the water. We also call attention to Section 15, which provides penalties for the wilful diversions of the water or any portions thereof.

In *State* v. *Johnson*, 80 *Wash.*, 522 (*at page* 524), it is said: "We think that oysters, in common with other shell fish found on the lands belonging to the State are so far wild by nature that anyone finding them may, in the absence of a statute prohibiting the act, take them and convert them to his own use without violating any of the criminal statutes of this State; and we think also that the statutes creating the oyster reserve lands did not, by the mere act of declaring that such lands were reserve oyster lands, change the rule. * * * We find in the statutes creating and regulating the control of such lands provisions by which persons may be licensed to take oysters therefrom in limited quantities." (There was a criminal sanction, al., to this statute, and the Court proceeded to say:) "This statute, in our opinion, clearly makes the offense of taking oysters from the State's reserve oyster lands a penal offense at the times it is prohibited there. Since, however, the taking of oysters from such reserve lands is criminal only because the statute has declared it so, we think the only penalty that can be inflicted upon the offender is that prescribed by the statute."

In the Levin case, we submit the Court erred in overruling the following questions propounded to Speck (page 27, line 10):

Q. Didn't you go round to a number of saloonkeepers and ask them how they liked their meters, and how they were getting along, during the year 1914?

Q. Didn't you tell them if they had any complaint to make, to make them to you? (Page 27, line 21.)

Q. Did you borrow any money from different saloonkeepers during the latter part of 1914? (Page 27, line 32.)

Q. Did you ever know of any others that ran fast? (Page 43, line 30.)

Speck had testified (page 42, line 20) that "water meters can't go fast." This was elicited by the State. One Bugby (page 66, line 23) testified that "it is not possible for meters to go fast." Speck admitted that he knew that the Alberts' meter was running fast. Levin testified that he had never made any complaint about his water meter or high bills, and that the bills rendered were the same both before and after August. Levin was a saloonkeeper, and if Speck was engaged in practicing a fraud upon saloonkeepers by tampering with their meters, we had a right to show that. (*Crosby* v. *Wells*, 44 *Vroom* 808, approves our claim.) It was also an error to overrule the offer of Mr. Levin's book of account, showing the loans he had made to various people, among them one to Speck, his practice being to enter in this book small loans or advances which he made.

We, therefore, submit that the judgments of the Supreme Court should be sustained and these convictions set aside.

Respectfully submitted,

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JOHN A. MONTGOMERY,

Of Counsel with the Defendants in Error.