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OPINION OF SUPREME COURT 28



WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

CHARLES E. JOYCE,  
*Prosecutor,*

vs.

THE JUDGE OF THE COURT  
OF COMMON PLEAS OF  
BURLINGTON COUNTY,  
*Respondent.*

ON CERTIORARI.

10

WRIT.

*The State of New Jersey, to the Judge of the Court  
of Common Pleas in and for the County of  
Burlington, GREETING:*

20

We being willing for certain reasons, to  
(Seal) be certified of a certain judgment lately  
made and rendered, upon the question  
of the legality of a conviction brought to  
the said Court of Common Pleas from  
Benjamin O. Herbert, recorder of the township of  
Northampton, in the county aforesaid, wherein  
Charles E. Joyce was defendant and the state of  
New Jersey was complainant.

We do hereby command you, the said Court of  
Common Pleas of the county of Burlington, that you  
send under the hand of your President Judge and  
the seal of the Court, to our Justices of our Supreme  
Court of Judicature, at Trenton, on the twenty-  
sixth day of July, inst., as well the judgment afore-  
said as the judgment, order and proceedings made  
and given by the said Benjamin O. Herbert, re-

30

order as aforesaid, with all things touching and concerning the same, as fully and entirely as they remain in our said Court of Common Pleas, by whatsoever names the parties may be called therein, together with this, our writ, that we may further cause to be done thereupon what of right and according to the laws of this state should be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this sixth day of 10 July, in the year of our Lord, one thousand nine hundred and sixteen.

WILLIAM C. GEBHARDT,  
*Clerk.*

—  
[ENDORSED]

New Jersey Supreme Court.

20

Charles E. Joyce,  
Prosecutor,

vs.

The Judge of the Court of Common  
Pleas of Burlington County,  
Respondent.

—  
On Certiorari.  
Writ.

30

James Mercer Davis,  
Atty. of Prosecutor,  
301 Market Street,  
Camden, N. J.

I allow this writ. Let it be sealed.  
July 6, 1916.

Samuel Kalisch,  
J. S. C.

**RETURN.**

*To the Honorable, the Justices of the Supreme Court  
of Judicature of New Jersey:*

In obedience to the command of this writ, to me directed, I, William D. Lippincott, Judge of the Court of Common Pleas of the county of Burlington, within named, do send, under my seal, to you, the Honorable Justice of the Supreme Court of Judicature of New Jersey, the judgment lately made and rendered in our said Court of Common Pleas upon the question of the legality of a conviction brought to the said Court of Common Pleas from Benjamin O. Herbert, recorder of the township of Northampton, in the county aforesaid, wherein the state of New Jersey was complainant and Charles E. Joyce was defendant, and the judgment, order and proceedings made and given by the said Benjamin O. Herbert, Esquire, recorder of the township of Northampton in said county of Burlington, made and rendered by him in said cause, together with all things touching and concerning the same, as fully and entirely as they remain before us, as appears in the schedule hereto annexed, as I am commanded.

In Witness Whereof, I have hereunto set my hand and seal, in open court, this thirteenth day of July, A. D. 1916.

(Seal)

WM. D. LIPPINCOTT,  
*Judge of the Court of Common  
Pleas of the County of Bur-  
lington.*

30

## COMPLAINT.

RECORDER'S COURT.  
STATE OF NEW JERSEY, BURLINGTON COUNTY.

<u>10</u>	G. HOWARD CURTIS, <i>Prosecutor,</i> vs. CHARLES E. JOYCE, <i>Defendant.</i>	} COMPLAINT OPERAT- ING AN AUTOMOBILE WHILE UNDER THE INFLUENCE OF IN- TOXICATING LIQUORS.
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STATE OF NEW JERSEY, } ss.  
COUNTY OF BURLINGTON, }

20 Personally appeared before me the subscriber, Benj. O. Herbert, recorder, G. Howard Curtis, who being duly sworn according to law on his oath says, that he is a police officer of the township of Northampton and that on the fifth day of June, nineteen hundred and sixteen, between the hours of six and eight o'clock, one Charles E. Joyce did operate and drive an automobile on the highway of the street of Mount Holly known as High or Main Street while

30 under the influence of intoxicating liquors in violation of a supplement to an act entitled an act concerning disorderly persons, revision of 1898, section (I), approved March 12, 1913.

Therefore, the said G. Howard Curtis says that the said Charles E. Joyce has incurred the penalty prescribed by section one of the above-mentioned

act, and prays that the said Charles E. Joyce may be apprehended and dealt with according to law.

G. HOWARD CURTIS.

Sworn and subscribed before me this 5th day of June, A. D. 1916.

(Seal) B. O. HERBERT,  
*Recorder of Northampton Township.*

10

[ENDORSED]

Recorder Court,  
of Northampton Township,  
Burlington County.

The State,  
vs.  
Charles E. Joyce.

20

Complaint.

Dated June 5th, 1916.

Charge

Operate and drive an automobile while under the influence of intoxicating liquors.

Filed June 22, 1916.

30

Harry L. Knight,  
County Clerk.

## WARRANT.

BURLINGTON COUNTY, ss.

The state of New Jersey, to any constable of said county, or police officer of Northampton Township, in said county:

10           Whereas, it appears to the subscriber, recorder of Northampton Township, in said county of Burlington, on the complaint of G. Howard Curtis, that Charles E. Joyce is a disorderly person, within the intent and meaning of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), you are therefore commanded to apprehend  
20 him and forthwith bring him before me that he may be dealt with according to law.

Given under my hand and seal this fifth day of June, nineteen hundred and sixteen.

BENJ. O. HERBERT,

(Seal)

*Recorder of Northampton Township.*

30           Before Benjamin O. Herbert, recorder of Northampton Township, Burlington County, New Jersey.

\_\_\_\_\_  
The State,

vs.

Charles E. Joyce,  
Defendant.

Warrant.

I do herewith return this warrant with the body of Charles E. Joyce, the defendant, into court before Benjamin O. Herbert, recorder of Northampton Township, this fifth day of June, nineteen hundred and sixteen.

G. Howard Curtis,  
Police Officer of Northampton  
Township.

10

Filed June 22, 1916.

Harry L. Knight, clerk.

CONVICTION.

Before BENJAMIN O. HERBERT, recorder of Northampton Township, Burlington County, New Jersey. 20

THE STATE,  
vs.  
CHARLES E. JOYCE.

}

30

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

Be It Remembered, that on the fifth day of June, nineteen hundred and sixteen, at the township of Northampton, in said county of Burlington, G. How-

ard Curtis, a creditable witness of said township of Northampton, came before me, recorder of said township, and informed and made oath before me that Charles E. Joyce, of the township of Southampton, on the fifth day of June, nineteen hundred and sixteen, did operate and drive an automobile on High or Main Street, in Mount Holly, in said township of Northampton, while under the influence of intoxicating liquor, and was a disorderly person  
10 within the intent and meaning of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103); and upon the day first above mentioned, at the township aforesaid, in the county aforesaid, the said Charles E. Joyce having been previously apprehended by  
20 a police officer of Northampton Township, and being brought before me, and being then and there present before me in order that he might make his defense against the said charge, and having heard the same read to him did plead that he was not guilty of the offense aforesaid; and he being represented by his counsel, James M. Davis, who asked for an adjournment of the hearing on said complaint, I did adjourn the same until June 8th, 1916, at which time I did again adjourn the same until June 14, 1916, at 3  
30 o'clock P. M., and again adjourned until June 16, 1916, the defendant having given bail for his appearance upon all of these dates; and on the said sixteenth day of June, at ten o'clock A. M. of said day, the said case coming on for trial, and G. Howard Curtis, being a creditable witness, and being then and there present before me, the said recorder, on his oath, did depose and say that the said Charles E.

Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquors. And Henry G. Hall, Job Collins, George Heisler, Edward Burroughs, T. Harry Bowker, Herbert Smith, Harry Orcutt, all being creditable witnesses and being then and there present before me, the said recorder, on their respective oaths, did depose and say that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquor; and the said defendant together with other witnesses having testified that he was not under the influence of intoxicating liquor at the time aforesaid; and, I, having considered the testimony, the said Charles E. Joyce before me, the said recorder, according to the form of the statute aforesaid, is convicted and found guilty of the offense of having on the fifth day of June, nineteen hundred and sixteen, on High or Main Street, in the town of Mount Holly, township of Northampton, and county of Burlington, in the state of New Jersey, operated an automobile while under the influence of intoxicating liquor, in violation of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), and is by me adjudged to be a disorderly person, and that he be committed to the county jail of the county of Burlington, there to be kept for the term of thirty days from the date hereof.

IN WITNESS WHEREOF, I, the said recorder, to this record of conviction have set my hand and seal, this sixteenth day of June, nineteen hundred and sixteen.

(Seal) BENJAMIN O. HERBERT,  
*Recorder of Northampton Township.*

---

[ENDORSED]

10

Before Benjamin O. Herbert,  
Recorder of Northampton Township,  
Burlington County, New Jersey.

---

The State,

vs.

Charles E. Joyce,  
Defendant.

20

---

On Complaint of Disorderly Person.

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Conviction

---

Filed June 22, 1916.

Harry L. Knight,  
County Clerk.

30

PETITION.

BURLINGTON COUNTY COURT OF COMMON PLEAS.

STATE,  
vs.  
CHARLES E. JOYCE.

} ON CONVICTION AS A  
DISORDERLY PERSON. 10  
PETITION.

To the Honorable William B. Lippincott, Judge of the Court of Common Pleas of Burlington County:

The petition of Charles E. Joyce respectfully shows that he is a resident of the county of Burlington, and state of New Jersey; and that on June 16th, 1916, he was convicted before Benjamin O. Herbert, justice of the peace, of being a disorderly person in that he operated an automobile while under the influence of liquor and sentenced to thirty days in the county jail of said county. 20

Your petitioner prays that the legality of his conviction may be reviewed by this Court and that an order may be made directing the complaint, warrant, proceedings and record of conviction to be forthwith brought before this Court and that the sentence of the Court below be stayed pending such review, and upon the petitioner giving bond in such sum as the Court may think proper. 30

And your petitioner will ever pray.

CHARLES E. JOYCE,  
Petitioner.

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

JAMES MERCER DAVIS, of full age, being by me duly sworn according to law on his oath deposes and says that he is the attorney of Charles E. Joyce, and that the facts set forth in the foregoing petition are true.

JAMES MERCER DAVIS.

Sworn and subscribed to before me this 16th day  
 10 of June, 1916.

CLIFFORD R. POWELL,  
*Notary Public of N. J.*

[ENDORSED]

Burlington County Court of Common  
 Pleas.

20 State,  
 vs.  
 Charles E. Joyce.

On Conviction as a Disorderly Person.

Petition

30 James Mercer Davis,  
 Atty. of Defendant  
 301 Market St.,  
 Camden, N. J.

Filed June 16th, 1916.

Wm. D. Lippincott, Judge.

Filed Jun. 21, 1916.

Harry L. Knight, County Clerk.

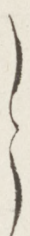
Mount Holly, N. J., June 22, 1916.

A session of the Court of Common Pleas was held on this date with his Honor William D. Lippincott, presiding:

THE STATE,

vs.

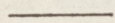
CHARLES E. JOYCE.



OPERATING AN AUTO-  
MOBILE WHILE UN-  
DER THE INFLUENCE  
OF LIQUORS.

10

ON REVIEW OF PRO-  
CEEDINGS.



A motion was made by James Mercer Davis, attorney for the defendant, that the Court hear the testimony in the matter before the recorder, which motion was denied.

A motion was made by James Mercer Davis, attorney for the defendant, that the conviction be set aside as illegal. 20

The Court after reviewing the proceedings and hearing the argument of the respective counsel, thereupon reserved its decision.

## CONCLUSIONS.

BURLINGTON COUNTY COURT OF COMMON  
PLEAS.

THE STATE, vs. CHARLES E. JOYCE.	}	ON PETITION FOR REVIEW. CONCLUSIONS.
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The defendant, Charles E. Joyce, was convicted on the sixteenth day of June, 1916, before Benjamin O. Herbert, recorder of the township of Northampton, in the county of Burlington, and state of New Jersey, of having on the fifth day of June, 1916, operated an automobile while under the influence of intoxicating liquors on High or Main Street, in the town of Mount Holly, township of Northampton, county of Burlington, in the state of New Jersey, in violation of section 1 of an act of the legislature of the state of New Jersey, entitled "Supplement to an act entitled, 'An act concerning disorderly persons (revision of 1898),' " approved March 12, 1913, and which provides that "Any person or persons who shall operate an automobile or motor or any other vehicle over any public street or highway while under the influence of intoxicating liquors shall be adjudged to be a disorderly person, and upon conviction thereof shall be punished by an imprisonment of not less than thirty days and not more than six months."

The defendant was thereupon adjudged by said recorder to be a disorderly person and was sen-

tenced by him to be confined in the county jail of the county of Burlington, for the term of thirty days.

The defendant has made application to me as Judge of the Court of Common Pleas of the county of Burlington, for the review of the proceedings and conviction, under the provisions of "An act to amend 'An act concerning disorderly persons (re-  
vision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight," which amendment was approved April 8, 1915, and the proceedings and conviction are now before me in order that their legality may be reviewed and determined by me under the provisions of the last-mentioned act. 10

The defendant contends that his conviction is illegal and should therefore be set aside for the following reasons:

1. That the recorder was disqualified to sit on the trial of this case. 20
2. That none of the proceedings set out an offense as defined in the above-named statute.
3. That the conviction does not contain sufficient of the evidence to show the legal propriety of the judgment founded upon it.
4. That the record does not set forth that the recorder finds the defendant guilty of the offense charged nor of any other offense. 30

In support of the first reason advanced by the defendant, the defendant offered to prove that the recorder had expressed his opinion as to the guilt of the defendant prior to his trial, and the defendant in-

sists that under the provisions of paragraphs 224 of Comp. St. of N. J., page 4121, P. L. 1903, page 595, the recorder was disqualified from sitting at the trial of the defendant.

The causes of disqualification alleged by the defendant, if there were any such causes, existed prior to the trial of the defendant, and under the provisions of section 225 of Comp. St., page 4122, the challenge or objection to the Judge sitting at the trial, should have been made previous to the trial of the defendant.

The record brought before me shows no challenge or objection to the Judge previous to the trial of the defendant.

Under the act of 1915 above cited, I am confined to the examination of the record brought before me, if the record brought before me is complete, in my review and determination as to the legality of the proceedings and conviction. I find no illegality in the conviction on account of the first reason advanced by the defendant.

In support of the second reason advanced by the defendant, it is contended that neither in the complaint nor in any other part of the record of these proceedings, does it appear that the defendant operated an automobile over a public street or highway.

The complaint filed by G. Howard Curtis, the police officer, set forth "that on the fifth day of June, nineteen hundred and sixteen, between the hours of six and eight o'clock, one Charles E. Joyce did operate and drive an automobile on the highway of the street of Mount Holly, known as High or Main Street, while under the influence of intoxicating liquors."

The conviction recites that at the trial on June 16th, 1916, said G. Howard Curtis, being a creditable

witness, did depose and say that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquors."

The conviction also recites that at said trial, Henry G. Hall, Job Collins, George Heisler, Edward Burroughs, T. Harry Bowker, Herbert Smith, Harry Orcutt, all being creditable witnesses, did depose and say "that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquor."

The objection is made by the defendant that in the complaint and in the proceedings and conviction, no statement is made that Main or High Street is a public street or highway and that the Court can not go outside the record and take judicial notice that Main or High Street is a public street or highway.

It was also argued orally before me that the use of the name "Mount Holly" in the proceedings, is not sufficient because there is no municipality known as Mount Holly.

The proceedings and conviction, state, however, that the defendant operated an automobile in the township of Northampton, in the county of Burlington, as well as in Mount Holly, and I am of the opinion that the statement in the complaint and in the proceedings that the automobile was operated in Mount Holly, is sufficiently definite.

I further find that the statements in the complaint and in the proceedings and conviction that the de-

defendant drove an automobile on High or Main Street in Mount Holly and in effect, statements that the defendant drove an automobile on a public street or highway, within the contemplation of the act, and that the proceedings do set out an offense as defined in the statute.

The third reason set up by the defendant for setting aside his conviction is that the conviction does not contain sufficient of the evidence to show the  
10 legal propriety of the judgment founded upon it.

The case of Pruesser vs. Cass, 54 N. J. L., page 532, may be said to be the leading case in New Jersey, deciding what is required to be shown in the conviction under the act concerning disorderly persons.

In this case it was held that "such a conviction should contain the substance of the complaint or information so as to show jurisdiction in the magistrate; the process whereby the alleged offender is  
20 brought before the magistrate, his appearance and defence or confession; and, if no confession is made, the evidence presented so that a reviewing Court may discover the grounds on which the adjudication of the magistrate was made, and lastly, the judgment."

This case has been cited with approval in a considerable number of subsequent cases.

The defendant contends that the statement of the evidence in this case as set forth in the conviction  
30 is neither a statement of the evidence nor the substance of the evidence upon which the recorder based his conviction, but that it is a statement of conclusion and not a statement of facts.

I am of the opinion, however, after a careful examination of the statement of the evidence as set forth in the conviction that it is sufficient to com-

ply with the requirements laid down by the Supreme Court in the case of Pruesser vs. Cass, above cited, and that the conviction in this case can not be set aside for failure to set forth the evidence produced before the recorder.

The last reason set up by the defendant for setting aside his conviction, is that the record does not set forth that the recorder finds the defendant guilty of the offense charged, nor of any other offense. The conviction, however, contains the following words: 10  
“I having considered the testimony, the said Charles E. Joyce, before me, the said recorder, according to the form of the statute aforesaid, is convicted and found guilty of the offense of having on the fifth day of June, nineteen hundred and sixteen, on High or Main Street, in the town of Mount Holly, township of Northampton and county of Burlington, in the state of New Jersey, operated an automobile while under the influence of intoxicating liquor, in violation of section one of act of the legislature of 20  
the state of New Jersey entitled ‘Supplement to an act entitled “An act concerning disorderly persons (revision of 1898),” ’ approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), and is by me adjudged to be a disorderly person.”

I am of the opinion that the recorder under this wording of the conviction, has found the defendant guilty of the offense charged under the statute.

I find no illegality in the proceedings and conviction brought before me, and they are therefore affirmed. 30

WM. D. LIPPINCOTT,  
*Judge of the Court of Common  
Pleas of the County of Bur-  
lington.*

[ENDORSED]

Burlington County Court of Common  
Pleas.

The State,  
vs.  
Charles E. Joyce.

10

On Petition for Review.

Conclusions.

Filed July 6, 1916.  
Harry L. Knight,  
County Clerk.

20

**ORDER.**

BURLINGTON COUNTY COURT OF COMMON  
PLEAS.

THE STATE,	}	ON CONVICTION AS A
vs.		DISORDERLY PERSON.
30 CHARLES E. JOYCE, <i>Defendant.</i>		ORDER.

Application having been made to this Court by Charles E. Joyce, the above-named defendant, to review the legality of the conviction of the above-

named defendant on the sixteenth day of June, nineteen hundred and sixteen, by Benjamin O. Herbert, recorder of Northampton Township, of being a disorderly person within the intent and meaning of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled, 'An act concerning disorderly persons (revision of 1898),'" approved June 4, 1898, and which supplement was approved March 19, 1913 (P. L. 1913, page 103), and an order having been made by this Court on the sixteenth day of June, nineteen hundred and sixteen, requiring the said recorder to forthwith produce before this Court the complaint, warrant, proceedings and record of conviction of the said defendant, Charles E. Joyce, in order that this Court might review the legality of said conviction; and the said complaint, warrant, proceedings and record of conviction of the said defendant having been produced before this Court on the twenty-second day of June, nineteen hundred and sixteen, and the Court having examined the same, and heard the arguments of respective counsel;

It is, on this sixth day of July, nineteen hundred and sixteen, ordered that the said proceedings and conviction be and the same are hereby affirmed.

WM. D. LIPPINCOTT,  
*Judge.*

[ENDORSED]

Burlington County Court of Common  
Pleas.

The State,  
vs.  
Charles E. Joyce.

30

On Conviction as a Disorderly Person.

Order.

V. C. Palmer, Atty.

Filed July 6, 1916.

Harry L. Knight,  
Clerk.

10

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

I, HARRY L. KNIGHT, clerk of the county of Burlington and of the Court of Common Pleas in and for said county and state do hereby certify that the foregoing is a true, full and complete copy of the judgment lately made and rendered in said Court of Common Pleas and the judgment, order and proceedings made and given by Benjamin O. Herbert, recorder, wherein the state of New Jersey is plaintiff and Charles E. Joyce is defendant, as the same remain on file and of record in my office.

WITNESS my hand and seal of said Court, at Mount Holly, this thirteenth day of July, A. D. 1916.

HARRY L. KNIGHT,  
Clerk.

30

## REASONS.

## NEW JERSEY SUPREME COURT.

CHARLES E. JOYCE, <i>Prosecutor,</i>	}	ON CERTIORARI.	10
VS.			
THE JUDGE OF THE COURT OF COMMON PLEAS OF BUR- LINGTON COUNTY, <i>Respondent.</i>			

The said prosecutor, Charles E. Joyce, by James Mercer Davis, his attorney, comes and prays that his conviction heretofore made by one Benjamin O. Herbert, recorder of the township of Northampton, in the county of Burlington, for the violation of a supplement to an act entitled, "An act concerning disorderly persons (revision of 1898)" 55 P. L. 1913, p. 103, which conviction was had on June 16, 1916, together with the order of affirmance made by Hon. William D. Lippincott, Judge of the Burlington County Court of Common Pleas, on July 6th, 1916, may be set aside, reversed and for nothing holden for the following

## REASONS.

30

1. Because the conviction does not follow the statute in showing that the offense complained of was committed upon the public street or highway.

2. Because the recorder was biased and prejudiced.

3. Because the recorder expressed his opinion and judgment before the trial of said case and before hearing the testimony.

4. Because the Court of review refused to allow the prosecutor to present evidence showing the bias and prejudice of the recorder and the fact that the recorder expressed his judgment and opinion prior to the trial and hearing.

10

5 Because the conviction does not contain sufficient of the evidence to show the legal propriety of the judgment founded upon it.

6. Because the record sets forth conclusions and not the facts upon which the conclusions were based.

7. Because the record fails to show a conviction of the defendant (prosecutor) by the Court of the offense charged or any other offense.

20

8. Because the act under which the conviction sought is unconstitutional in that it deprives a person sought to be convicted of his right to a trial by jury.

9. Because the penalty inflicted by said act is greater than the jurisdiction of the court in question in a summary proceeding.

30 10. That said conviction, together with the affirmation thereof is in divers other respects illegal, unjust and oppressive and to be set aside and for nothing holden.

Dated August 1st, 1916.

JAMES MERCER DAVIS,  
*Attorney of Prosecutor.*

ORDER.

NEW JERSEY SUPREME COURT.

CHARLES E. JOYCE,  
*Prosecutor,*

VS.

THE JUDGE OF THE COURT  
OF COMMON PLEAS OF BUR-  
LINGTON COUNTY,  
*Defendant.*

ON CERTIORARI.

10

ORDER.

The Court having inspected the transcript and proceedings of the Court of Common Pleas of the county of Burlington, returned with the certiorari in this cause, the reasons for reversing the judgment below, and having heard the argument of counsel therein, and having duly considered the same;

Do order that the judgment of William D. Lippincott, Esq., the said Judge of the Court of Common Pleas of the county of Burlington, be in all things affirmed with costs, and that the said record be remitted to the Court below to be proceeded with according to law.

30

On motion of,

V. CLAUDE PALMER,  
*Attorney of Defendant-in-Certiorari.*

**NOTICE.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	C. HOWARD CURTIS, <i>Complainant-Appellee,</i>	}	ON APPEAL.
	vs.		
	CHARLES E. JOYCE, <i>Defendant-Appellant.</i>		NOTICE.

To V. Claude Palmer,  
*Attorney of Complainant-Appellee:*

20 Take notice, that the defendant appeals from the whole of the judgment entered in this cause on the following grounds:

1. Because the conviction does not follow the statute in showing that the offense complained of was committed upon a public street or highway.
2. Because the recorder was biased and prejudiced.
- 30 3. Because the recorder expressed his opinion and judgment before the trial and before the hearing of the testimony.
4. Because the Court of Common Pleas refused to allow the prosecutor to present evidence of this bias and prejudice.

5. Because the conviction does not contain sufficient evidence to show the legal propriety of the judgment based upon it.

6. Because the record sets forth conclusions and not the facts upon which the conclusions were based.

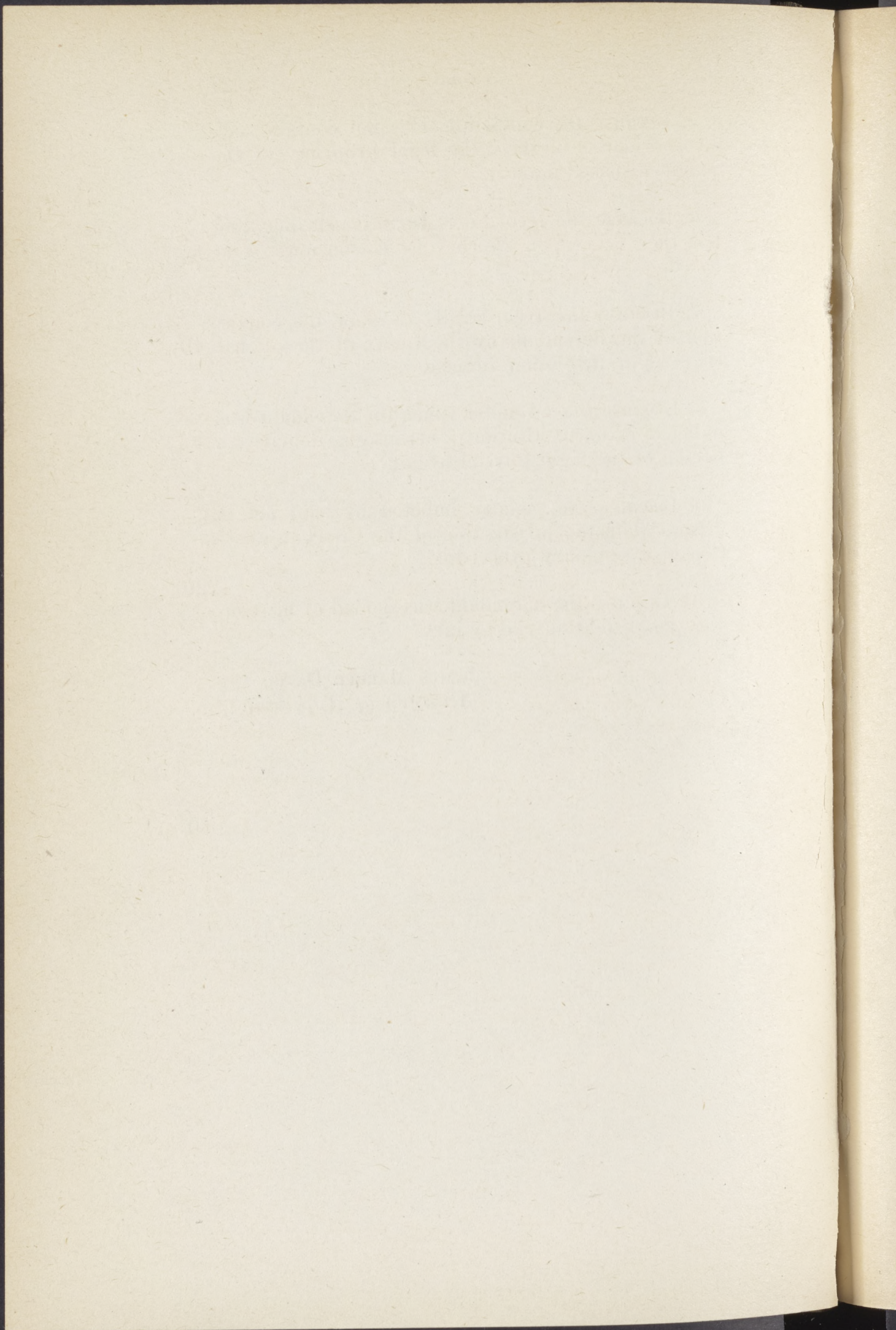
7. Because the record fails to show the conviction of the defendant by the Court of the offense 10 charged or any other offense.

8. Because the act under which the defendant was indicted is unconstitutional because it deprives a person of the right to trial by jury.

9. Because the penalty inflicted by said act is greater than the jurisdiction of the Court in question in a summary proceeding.

10. Because the defendant was denied of his constitutional right of trial by jury. 20

JAMES MERCER DAVIS,  
*Attorney of Appellant.*



## OPINION.

## NEW JERSEY SUPREME COURT.

<hr style="width: 10%; margin: 0 auto;"/> <p>C. HOWARD CURTIS, <i>Complainant-Appellee,</i></p> <p style="text-align: center;">VS.</p> <p>CHARLES E. JOYCE, <i>Defendant-Appellant.</i></p> <hr style="width: 10%; margin: 0 auto;"/>	<p style="font-size: 3em;">}</p>	<p>ON CERTIORARI. OPINION.</p>	<p>10</p>
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SWAYZE, J.:

Before dealing with the questions raised in this case, we think it advisable to call attention to the method of entitling the cause. It is entitled Charles E. Joyce vs. The Judge of the Court of Common Pleas of Burlington County. All that the Judge had to do with the case was to hear it on review of the proceedings had before the recorder. While the writ is directed to him, he is no party to the cause and should not be so treated. The case should be entitled under rule 15 as it was before the recorder, C. Howard Curtis vs. Charles E. Joyce. 20

No reasons are printed, but as the complainant, defendant in certiorari, makes no objection, we deal with the reasons set forth in the prosecutor's brief.

The proceeding is under the supplement of 1913 to the disorderly persons act. The complaint charges that Joyce operated and drove an automobile on the "highway of the street of Mt. Holly known as High or Main Street while under the influence of liquors." He was convicted of having operated an automobile on High or Main Street in the Town of Mt. Holly, Township of Northampton, County of Burlington, in 30

the State of New Jersey, while under the influence of intoxicating liquor. We think this is enough to show that the offense was committed upon the public street or highway. The complaint charges that it was on the highway of (evidently a misprint for "or") the street known as High or Main Street, and, although the conviction does not use the word "highway," we think there is a presumption that the High or Main Street of a town is a public street.

10 As to the alleged bias of the recorder, we agree with the Judge of the Common Pleas that the prosecutor should have challenged before the case was heard as provided by Section 225 of the Practice Act (C. S. p. 4122). Although this is a section of the Practice Act, it enacts a rule which should govern in all courts. It would be intolerable to allow a litigant to speculate on the result of a case, and raise a question of jurisdiction only after the decision. If the prosecutor did not know the alleged bias at the  
20 time, it may be his misfortune; but it is a misfortune arising out of a want of knowledge that it was his duty to acquire if he wanted to profit by it.

We think the conviction is sufficient in form. This disposes of the reasons argued. The eighth reason, if we may judge from the respondent's brief, raises the question that the prosecutor was deprived of his constitutional right to a trial by jury. This question is similiar to that discussed in the *Rodgers Case*, 99 Atl. 931, just decided, and it would be interesting to  
30 consider whether the same rule would apply to a case where the only proof was that the defendant drove an automobile on a public street while he was under the influence of intoxicating liquor. We are precluded from dealing with the question as the prosecutor has abandoned his eighth reason.

The judgment must be affirmed, with costs.

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WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

CHARLES E. JOYCE,  
*Prosecutor,*

vs.

THE JUDGE OF THE COURT  
OF COMMON PLEAS OF  
BURLINGTON COUNTY,  
*Respondent.*

ON CERTIORARI.

10

WRIT.

*The State of New Jersey, to the Judge of the Court  
of Common Pleas in and for the County of  
Burlington, GREETING:*

20

We being willing for certain reasons, to  
be certified of a certain judgment lately  
(Seal) made and rendered, upon the question  
of the legality of a conviction brought to  
the said Court of Common Pleas from  
Benjamin O. Herbert, recorder of the township of  
Northampton, in the county aforesaid, wherein  
Charles E. Joyce was defendant and the state of  
New Jersey was complainant.

We do hereby command you, the said Court of  
Common Pleas of the county of Burlington, that you  
send under the hand of your President Judge and  
the seal of the Court, to our Justices of our Supreme  
Court of Judicature, at Trenton, on the twenty-  
sixth day of July, inst., as well the judgment afore-  
said as the judgment, order and proceedings made  
and given by the said Benjamin O. Herbert, re-

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corder as aforesaid, with all things touching and concerning the same, as fully and entirely as they remain in our said Court of Common Pleas, by whatsoever names the parties may be called therein, together with this, our writ, that we may further cause to be done thereupon what of right and according to the laws of this state should be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this sixth day of  
10 July, in the year of our Lord, one thousand nine hundred and sixteen.

WILLIAM C. GEBHARDT,  
*Clerk.*

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[ENDORSED]

New Jersey Supreme Court.

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Charles E. Joyce,  
Prosecutor,

vs.

The Judge of the Court of Common  
Pleas of Burlington County,  
Respondent.

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On Certiorari.  
Writ.

30

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James Mercer Davis,  
Atty. of Prosecutor,  
301 Market Street,  
Camden, N. J.

I allow this writ. Let it be sealed.  
July 6, 1916.

Samuel Kalisch,  
J. S. C.

**RETURN.**

*To the Honorable, the Justices of the Supreme Court  
of Judicature of New Jersey:*

In obedience to the command of this writ, to me directed, I, William D. Lippincott, Judge of the Court of Common Pleas of the county of Burlington, within named, do send, under my seal, to you, the Honorable Justice of the Supreme Court of Judicature of New Jersey, the judgment lately made and rendered in our said Court of Common Pleas upon the question of the legality of a conviction brought to the said Court of Common Pleas from Benjamin O. Herbert, recorder of the township of Northampton, in the county aforesaid, wherein the state of New Jersey was complainant and Charles E. Joyce was defendant, and the judgment, order and proceedings made and given by the said Benjamin O. Herbert, Esquire, recorder of the township of Northampton in said county of Burlington, made and rendered by him in said cause, together with all things touching and concerning the same, as fully and entirely as they remain before us, as appears in the schedule hereto annexed, as I am commanded. 10

In Witness Whereof, I have hereunto set my hand and seal, in open court, this thirteenth day of July, A. D. 1916. 20

(Seal)

WM. D. LIPPINCOTT,  
*Judge of the Court of Common  
Pleas of the County of Bur-  
lington.*

30

## COMPLAINT.

RECORDER'S COURT.  
STATE OF NEW JERSEY, BURLINGTON COUNTY.

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<u>10</u>	G. HOWARD CURTIS, <i>Prosecutor,</i>  vs.  CHARLES E. JOYCE, <i>Defendant.</i>	} COMPLAINT OPERAT- ING AN AUTOMOBILE WHILE UNDER THE INFLUENCE OF IN- TOXICATING LIQUORS.
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STATE OF NEW JERSEY, } ss.  
COUNTY OF BURLINGTON,

20 Personally appeared before me the subscriber,  
Benj. O. Herbert, recorder, G. Howard Curtis, who  
being duly sworn according to law on his oath says,  
that he is a police officer of the township of North-  
ampton and that on the fifth day of June, nineteen  
hundred and sixteen, between the hours of six and  
eight o'clock, one Charles E. Joyce did operate and  
drive an automobile on the highway of the street  
of Mount Holly known as High or Main Street while  
30 under the influence of intoxicating liquors in viola-  
tion of a supplement to an act entitled an act con-  
cerning disorderly persons, revision of 1898, sec-  
tion (I), approved March 12, 1913.

Therefore, the said G. Howard Curtis says that  
the said Charles E. Joyce has incurred the penalty  
prescribed by section one of the above-mentioned

act, and prays that the said Charles E. Joyce may be apprehended and dealt with according to law.

G. HOWARD CURTIS.

Sworn and subscribed before me this 5th day of June, A. D. 1916.

B. O. HERBERT,

(Seal)

Recorder of Northampton Township.

10

[ENDORSED]

Recorder Court,  
of Northampton Township,  
Burlington County.

The State,

vs.

Charles E. Joyce.

20

Complaint.

Dated June 5th, 1916.

Charge

Operate and drive an automobile while under the influence of intoxicating liquors.

Filed June 22, 1916.

30

Harry L. Knight,  
County Clerk.

**WARRANT.**

BURLINGTON COUNTY, ss.

The state of New Jersey, to any constable of said county, or police officer of Northampton Township, in said county:

10                   Whereas, it appears to the subscriber, recorder of Northampton Township, in said county of Burlington, on the complaint of G. Howard Curtis, that Charles E. Joyce is a disorderly person, within the intent and meaning of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), you are therefore commanded to apprehend  
20 him and forthwith bring him before me that he may be dealt with according to law.

Given under my hand and seal this fifth day of June, nineteen hundred and sixteen.

BENJ. O. HERBERT,

(Seal)

*Recorder of Northampton Township.*

30                   Before Benjamin O. Herbert, recorder of Northampton Township, Burlington County, New Jersey.

—  
The State,

vs.

Charles E. Joyce,

Defendant.

Warrant.

I do herewith return this warrant with the body of Charles E. Joyce, the defendant, into court before Benjamin O. Herbert, recorder of Northampton Township, this fifth day of June, nineteen hundred and sixteen.

G. Howard Curtis,  
Police Officer of Northampton  
Township.

10

Filed June 22, 1916.

Harry L. Knight, clerk.

CONVICTION.

Before BENJAMIN O. HERBERT, recorder of Northampton Township, Burlington County, New Jersey. 20

THE STATE,  
vs.  
CHARLES E. JOYCE.

}

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

30

Be It Remembered, that on the fifth day of June, nineteen hundred and sixteen, at the township of Northampton, in said county of Burlington, G. How-

ard Curtis, a creditable witness of said township of Northampton, came before me, recorder of said township, and informed and made oath before me that Charles E. Joyce, of the township of Southampton, on the fifth day of June, nineteen hundred and sixteen, did operate and drive an automobile on High or Main Street, in Mount Holly, in said township of Northampton, while under the influence of intoxicating liquor, and was a disorderly person within the intent and meaning of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103); and upon the day first above mentioned, at the township aforesaid, in the county aforesaid, the said Charles E. Joyce having been previously apprehended by a police officer of Northampton Township, and being brought before me, and being then and there present before me in order that he might make his defense against the said charge, and having heard the same read to him did plead that he was not guilty of the offense aforesaid; and he being represented by his counsel, James M. Davis, who asked for an adjournment of the hearing on said complaint, I did adjourn the same until June 8th, 1916, at which time I did again adjourn the same until June 14, 1916, at 3 o'clock P. M., and again adjourned until June 16, 1916, the defendant having given bail for his appearance upon all of these dates; and on the said sixteenth day of June, at ten o'clock A. M. of said day, the said case coming on for trial, and G. Howard Curtis, being a creditable witness, and being then and there present before me, the said recorder, on his oath, did depose and say that the said Charles E.

Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquors. And Henry G. Hall, Job Collins, George Heisler, Edward Burroughs, T. Harry Bowker, Herbert Smith, Harry Orcutt, all being creditable witnesses and being then and there present before me, the said recorder, on their respective oaths, did depose and say that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquor; and the said defendant together with other witnesses having testified that he was not under the influence of intoxicating liquor at the time aforesaid; and, I, having considered the testimony, the said Charles E. Joyce before me, the said recorder, according to the form of the statute aforesaid, is convicted and found guilty of the offense of having on the fifth day of June, nineteen hundred and sixteen, on High or Main Street, in the town of Mount Holly, township of Northampton, and county of Burlington, in the state of New Jersey, operated an automobile while under the influence of intoxicating liquor, in violation of section one of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled 'An act concerning disorderly persons (revision of 1898),' " approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), and is by me adjudged to be a disorderly person, and that he be committed to the county jail of the county of Burlington, there to be kept for the term of thirty days from the date hereof.

IN WITNESS WHEREOF, I, the said recorder, to this record of conviction have set my hand and seal, this sixteenth day of June, nineteen hundred and sixteen.

BENJAMIN O. HERBERT,  
(Seal) *Recorder of Northampton Township.*

---

[ENDORSED]

10

Before Benjamin O. Herbert,  
Recorder of Northampton Township,  
Burlington County, New Jersey.

---

The State,

vs.

Charles E. Joyce,  
Defendant.

20

---

On Complaint of Disorderly Person.

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Conviction

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Filed June 22, 1916.

Harry L. Knight,  
County Clerk.

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**PETITION.**

BURLINGTON COUNTY COURT OF COMMON  
PLEAS.

<hr style="width: 10%; margin: 0 auto;"/> <p>STATE,                   vs. CHARLES E. JOYCE.</p>	}	<p>ON CONVICTION AS A DISORDERLY PERSON. 10 PETITION.</p> <hr style="width: 10%; margin: 0 auto;"/>
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*To the Honorable William B. Lippincott, Judge of  
the Court of Common Pleas of Burlington  
County:*

The petition of Charles E. Joyce respectfully shows that he is a resident of the county of Burlington, and state of New Jersey; and that on June 16th, 1916, he was convicted before Benjamin O. Herbert, justice of the peace, of being a disorderly person in that he operated an automobile while under the influence of liquor and sentenced to thirty days in the county jail of said county. 20

Your petitioner prays that the legality of his conviction may be reviewed by this Court and that an order may be made directing the complaint, warrant, proceedings and record of conviction to be forthwith brought before this Court and that the sentence of the Court below be stayed pending such review, and upon the petitioner giving bond in such sum as the Court may think proper. 30

And your petitioner will ever pray.

CHARLES E. JOYCE,  
*Petitioner.*

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

JAMES MERCER DAVIS, of full age, being by me duly sworn according to law on his oath deposes and says that he is the attorney of Charles E. Joyce, and that the facts set forth in the foregoing petition are true.

JAMES MERCER DAVIS.

Sworn and subscribed to before me this 16th day  
 10 of June, 1916.

CLIFFORD R. POWELL,  
*Notary Public of N. J.*

[ENDORSED]

Burlington County Court of Common  
 Pleas.

20

State,  
 vs.  
 Charles E. Joyce.

On Conviction as a Disorderly Person.

Petition

30

James Mercer Davis,  
 Atty. of Defendant  
 301 Market St.,  
 Camden, N. J.

Filed June 16th, 1916.

Wm. D. Lippincott, Judge.

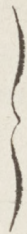
Filed Jun. 21, 1916.

Harry L. Knight, County Clerk.

Mount Holly, N. J., June 22, 1916.

A session of the Court of Common Pleas was held on this date with his Honor William D. Lippincott, presiding:

THE STATE,  
vs.  
CHARLES E. JOYCE.



OPERATING AN AUTO-  
MOBILE WHILE UN-  
DER THE INFLUENCE  
OF LIQUORS. 10  
ON REVIEW OF PRO-  
CEEDINGS.

A motion was made by James Mercer Davis, attorney for the defendant, that the Court hear the testimony in the matter before the recorder, which motion was denied.

A motion was made by James Mercer Davis, attorney for the defendant, that the conviction be set aside as illegal. 20

The Court after reviewing the proceedings and hearing the argument of the respective counsel, thereupon reserved its decision.

## CONCLUSIONS.

BURLINGTON COUNTY COURT OF COMMON  
PLEAS.

	THE STATE,	}	ON PETITION FOR
	vs.		REVIEW.
10	CHARLES E. JOYCE.		CONCLUSIONS.

The defendant, Charles E. Joyce, was convicted on the sixteenth day of June, 1916, before Benjamin O. Herbert, recorder of the township of Northampton, in the county of Burlington, and state of New Jersey, of having on the fifth day of June, 1916, operated an automobile while under the influence of intoxicating liquors on High or Main Street, in the town of Mount Holly, township of Northampton, county of Burlington, in the state of New Jersey, in violation of section 1 of an act of the legislature of the state of New Jersey, entitled "Supplement to an act entitled, 'An act concerning disorderly persons (revision of 1898),' " approved March 12, 1913, and which provides that "Any person or persons who shall operate an automobile or motor or any other vehicle over any public street or highway while under the influence of intoxicating liquors shall be adjudged to be a disorderly person, and upon conviction thereof shall be punished by an imprisonment of not less than thirty days and not more than six months."

The defendant was thereupon adjudged by said recorder to be a disorderly person and was sen-

tenced by him to be confined in the county jail of the county of Burlington, for the term of thirty days.

The defendant has made application to me as Judge of the Court of Common Pleas of the county of Burlington, for the review of the proceedings and conviction, under the provisions of "An act to amend 'An act concerning disorderly persons (revision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight," which amendment was approved April 8, 1915, and the proceedings and conviction are now before me in order that their legality may be reviewed and determined by me under the provisions of the last-mentioned act. 10

The defendant contends that his conviction is illegal and should therefore be set aside for the following reasons:

1. That the recorder was disqualified to sit on the trial of this case. 20
2. That none of the proceedings set out an offense as defined in the above-named statute.
3. That the conviction does not contain sufficient of the evidence to show the legal propriety of the judgment founded upon it.
4. That the record does not set forth that the recorder finds the defendant guilty of the offense charged nor of any other offense. 30

In support of the first reason advanced by the defendant, the defendant offered to prove that the recorder had expressed his opinion as to the guilt of the defendant prior to his trial, and the defendant in-

sists that under the provisions of paragraphs 224 of Comp. St. of N. J., page 4121, P. L. 1903, page 595, the recorder was disqualified from sitting at the trial of the defendant.

The causes of disqualification alleged by the defendant, if there were any such causes, existed prior to the trial of the defendant, and under the provisions of section 225 of Comp. St., page 4122, the challenge or objection to the Judge sitting at the trial, should have been made previous to the trial of the defendant.

The record brought before me shows no challenge or objection to the Judge previous to the trial of the defendant.

Under the act of 1915 above cited, I am confined to the examination of the record brought before me, if the record brought before me is complete, in my review and determination as to the legality of the proceedings and conviction. I find no illegality in the conviction on account of the first reason advanced by the defendant.

In support of the second reason advanced by the defendant, it is contended that neither in the complaint nor in any other part of the record of these proceedings, does it appear that the defendant operated an automobile over a public street or highway.

The complaint filed by G. Howard Curtis, the police officer, set forth "that on the fifth day of June, nineteen hundred and sixteen, between the hours of six and eight o'clock, one Charles E. Joyce did operate and drive an automobile on the highway of the street of Mount Holly, known as High or Main Street, while under the influence of intoxicating liquors."

The conviction recites that at the trial on June 16th, 1916, said G. Howard Curtis, being a creditable

witness, did depose and say that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquors."

The conviction also recites that at said trial, Henry G. Hall, Job Collins, George Heisler, Edward Burroughs, T. Harry Bowker, Herbert Smith, Harry Orcutt, all being creditable witnesses, did depose and say "that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquor."

The objection is made by the defendant that in the complaint and in the proceedings and conviction, no statement is made that Main or High Street is a public street or highway and that the Court can not go outside the record and take judicial notice that Main or High Street is a public street or highway.

It was also argued orally before me that the use of the name "Mount Holly" in the proceedings, is not sufficient because there is no municipality known as Mount Holly.

The proceedings and conviction, state, however, that the defendant operated an automobile in the township of Northampton, in the county of Burlington, as well as in Mount Holly, and I am of the opinion that the statement in the complaint and in the proceedings that the automobile was operated in Mount Holly, is sufficiently definite.

I further find that the statements in the complaint and in the proceedings and conviction that the de-

defendant drove an automobile on High or Main Street in Mount Holly and in effect, statements that the defendant drove an automobile on a public street or highway, within the contemplation of the act, and that the proceedings do set out an offense as defined in the statute.

The third reason set up by the defendant for setting aside his conviction is that the conviction does not contain sufficient of the evidence to show the  
10 legal propriety of the judgment founded upon it.

The case of Pruesser vs. Cass, 54 N. J. L., page 532, may be said to be the leading case in New Jersey, deciding what is required to be shown in the conviction under the act concerning disorderly persons.

In this case it was held that "such a conviction should contain the substance of the complaint or information so as to show jurisdiction in the magistrate; the process whereby the alleged offender is  
20 brought before the magistrate, his appearance and defence or confession; and, if no confession is made, the evidence presented so that a reviewing Court may discover the grounds on which the adjudication of the magistrate was made, and lastly, the judgment."

This case has been cited with approval in a considerable number of subsequent cases.

The defendant contends that the statement of the evidence in this case as set forth in the conviction  
30 is neither a statement of the evidence nor the substance of the evidence upon which the recorder based his conviction, but that it is a statement of conclusion and not a statement of facts.

I am of the opinion, however, after a careful examination of the statement of the evidence as set forth in the conviction that it is sufficient to com-

ply with the requirements laid down by the Supreme Court in the case of Pruesser vs. Cass, above cited, and that the conviction in this case can not be set aside for failure to set forth the evidence produced before the recorder.

The last reason set up by the defendant for setting aside his conviction, is that the record does not set forth that the recorder finds the defendant guilty of the offense charged, nor of any other offense. The conviction, however, contains the following words: 10  
“I having considered the testimony, the said Charles E. Joyce, before me, the said recorder, according to the form of the statute aforesaid, is convicted and found guilty of the offense of having on the fifth day of June, nineteen hundred and sixteen, on High or Main Street, in the town of Mount Holly, township of Northampton and county of Burlington, in the state of New Jersey, operated an automobile while under the influence of intoxicating liquor, in violation of section one of act of the legislature of 20  
the state of New Jersey entitled ‘Supplement to an act entitled “An act concerning disorderly persons (revision of 1898),” ’ approved June 14, 1898, and which supplement was approved March 12, 1913 (P. L. 1913, p. 103), and is by me adjudged to be a disorderly person.”

I am of the opinion that the recorder under this wording of the conviction, has found the defendant guilty of the offense charged under the statute.

I find no illegality in the proceedings and conviction brought before me, and they are therefore affirmed. 30

WM. D. LIPPINCOTT,  
*Judge of the Court of Common  
Pleas of the County of Bur-  
lington.*

[ENDORSED]

Burlington County Court of Common  
Pleas.

The State,

vs.

Charles E. Joyce.

10

On Petition for Review.

Conclusions.

Filed July 6, 1916.

Harry L. Knight,  
County Clerk.

20

**ORDER.**

BURLINGTON COUNTY COURT OF COMMON  
PLEAS.

THE STATE,

vs.

30 CHARLES E. JOYCE,

*Defendant.*

ON CONVICTION AS A

DISORDERLY PERSON.

ORDER.

Application having been made to this Court by  
Charles E. Joyce, the above-named defendant, to  
review the legality of the conviction of the above-

named defendant on the sixteenth day of June, nineteen hundred and sixteen, by Benjamin O. Herbert, recorder of Northampton Township, of being a disorderly person within the intent and meaning of an act of the legislature of the state of New Jersey, entitled, "Supplement to an act entitled, 'An act concerning disorderly persons (revision of 1898), ' " approved June 4, 1898, and which supplement was approved March 19, 1913 (P. L. 1913, page 103), and an order having been made by this Court on the sixteenth day of June, nineteen hundred and sixteen, requiring the said recorder to forthwith produce before this Court the complaint, warrant, proceedings and record of conviction of the said defendant, Charles E. Joyce, in order that this Court might review the legality of said conviction; and the said complaint, warrant, proceedings and record of conviction of the said defendant having been produced before this Court on the twenty-second day of June, nineteen hundred and sixteen, and the Court having examined the same, and heard the arguments of respective counsel;

It is, on this sixth day of July, nineteen hundred and sixteen, ordered that the said proceedings and conviction be and the same are hereby affirmed.

WM. D. LIPPINCOTT,  
*Judge.*

[ENDORSED]

Burlington County Court of Common  
Pleas.

The State,  
vs.  
Charles E. Joyce.

On Conviction as a Disorderly Person.

Order.

V. C. Palmer, Atty.  
 Filed July 6, 1916.  
 Harry L. Knight,  
 Clerk.

10

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

I, HARRY L. KNIGHT, clerk of the county of Burlington and of the Court of Common Pleas in and for said county and state do hereby certify that the foregoing is a true, full and complete copy of the judgment lately made and rendered in said Court of Common Pleas and the judgment, order and proceedings made and given by Benjamin O. Herbert, recorder, wherein the state of New Jersey is plaintiff and Charles E. Joyce is defendant, as the same remain on file and of record in my office.

WITNESS my hand and seal of said Court, at Mount Holly, this thirteenth (Seal) day of July, A. D. 1916.

HARRY L. KNIGHT,  
 Clerk.

30

## REASONS.

## NEW JERSEY SUPREME COURT.

CHARLES E. JOYCE,  
*Prosecutor,*

VS.

THE JUDGE OF THE COURT  
OF COMMON PLEAS OF BUR-  
LINGTON COUNTY,  
*Respondent.*

ON CERTIORARI.

10

REASONS.

The said prosecutor, Charles E. Joyce, by James Mercer Davis, his attorney, comes and prays that his conviction heretofore made by one Benjamin O. Herbert, recorder of the township of Northampton, in the county of Burlington, for the violation of a supplement to an act entitled, "An act concerning disorderly persons (revision of 1898)" 55 P. L. 1913, p. 103, which conviction was had on June 16, 1916, together with the order of affirmance made by Hon. William D. Lippincott, Judge of the Burlington County Court of Common Pleas, on July 6th, 1916, may be set aside, reversed and for nothing holden for the following

20

REASONS.

30

1. Because the conviction does not follow the statute in showing that the offense complained of was committed upon the public street or highway.

2. Because the recorder was biased and prejudiced.

3. Because the recorder expressed his opinion and judgment before the trial of said case and before hearing the testimony.

4. Because the Court of review refused to allow the prosecutor to present evidence showing the bias and prejudice of the recorder and the fact that the recorder expressed his judgment and opinion prior to the trial and hearing.

10

5. Because the conviction does not contain sufficient of the evidence to show the legal propriety of the judgment founded upon it.

6. Because the record sets forth conclusions and not the facts upon which the conclusions were based.

7. Because the record fails to show a conviction of the defendant (prosecutor) by the Court of the  
20 offense charged or any other offense.

8. Because the act under which the conviction sought is unconstitutional in that it deprives a person sought to be convicted of his right to a trial by jury.

9. Because the penalty inflicted by said act is greater than the jurisdiction of the court in question in a summary proceeding.

30 10. That said conviction, together with the affirmation thereof is in divers other respects illegal, unjust and oppressive and to be set aside and for nothing holden.

Dated August 1st, 1916.

JAMES MERCER DAVIS,  
*Attorney of Prosecutor.*

## ORDER.

## NEW JERSEY SUPREME COURT.

---

CHARLES E. JOYCE, <i>Prosecutor,</i>	}	ON CERTIORARI.	10
vs.			
THE JUDGE OF THE COURT OF COMMON PLEAS OF BUR- LINGTON COUNTY, <i>Defendant.</i>	}	ORDER.	

---

The Court having inspected the transcript and proceedings of the Court of Common Pleas of the county of Burlington, returned with the certiorari in this cause, the reasons for reversing the judgment below, and having heard the argument of counsel therein, and having duly considered the same; 20

Do order that the judgment of William D. Lippincott, Esq., the said Judge of the Court of Common Pleas of the county of Burlington, be in all things affirmed with costs, and that the said record be remitted to the Court below to be proceeded with according to law. 30

On motion of,

V. CLAUDE PALMER,  
*Attorney of Defendant-in-Certiorari.*

**NOTICE.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

	_____	
	C. HOWARD CURTIS,	} ON APPEAL.
	<i>Complainant-Appellee,</i>	
10	VS.	} NOTICE.
	CHARLES E. JOYCE,	
	<i>Defendant-Appellant.</i>	
	_____	

*To V. Claude Palmer,*  
*Attorney of Complainant-Appellee:*

20 Take notice, that the defendant appeals from the whole of the judgment entered in this cause on the following grounds:

1. Because the conviction does not follow the statute in showing that the offense complained of was committed upon a public street or highway.
2. Because the recorder was biased and prejudiced.
- 30 3. Because the recorder expressed his opinion and judgment before the trial and before the hearing of the testimony.
4. Because the Court of Common Pleas refused to allow the prosecutor to present evidence of this bias and prejudice.

5. Because the conviction does not contain sufficient evidence to show the legal propriety of the judgment based upon it.

6. Because the record sets forth conclusions and not the facts upon which the conclusions were based.

7. Because the record fails to show the conviction of the defendant by the Court of the offense 10 charged or any other offense.

8. Because the act under which the defendant was indicted is unconstitutional because it deprives a person of the right to trial by jury.

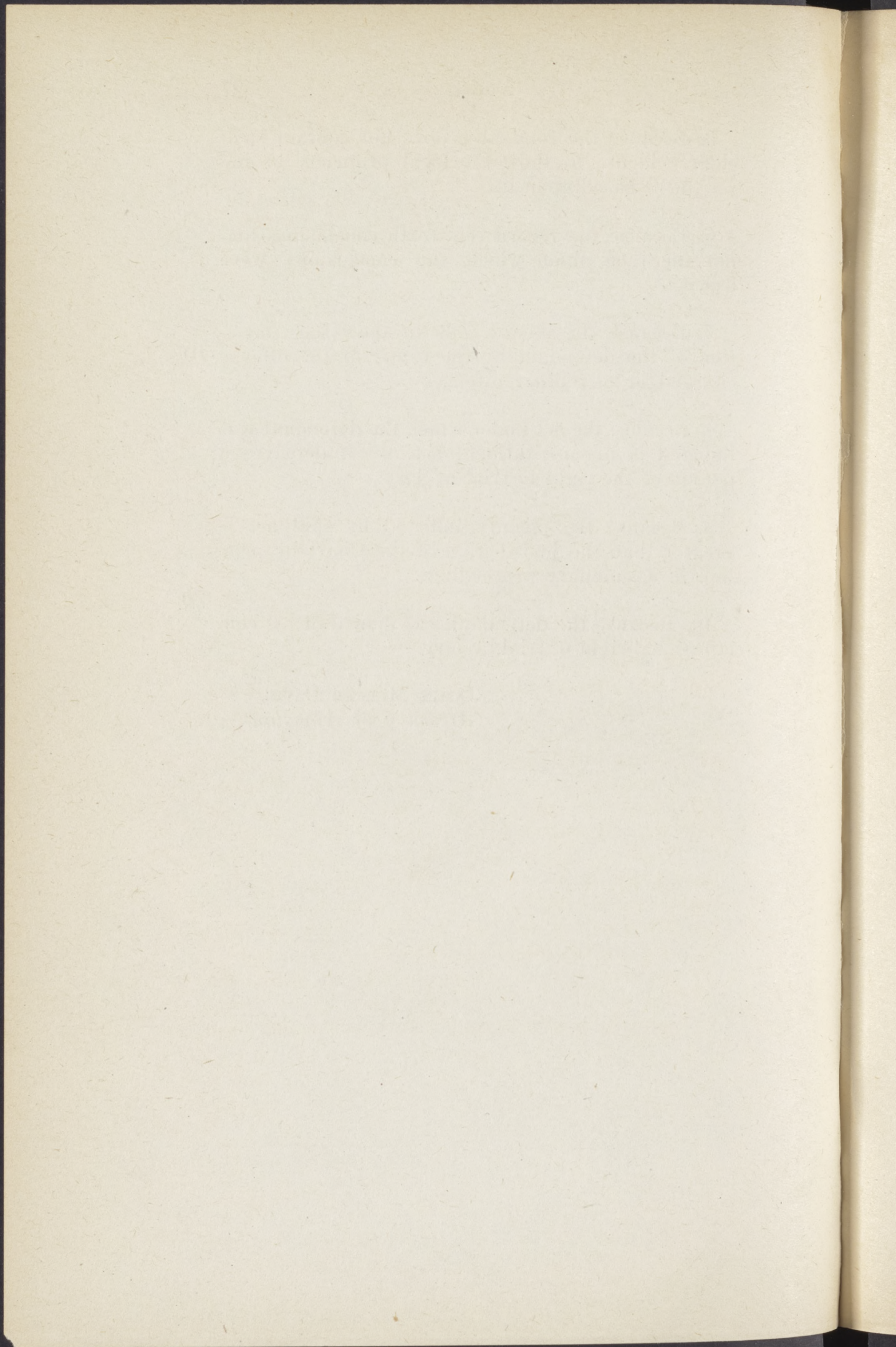
9. Because the penalty inflicted by said act is greater than the jurisdiction of the Court in question in a summary proceeding.

20

10. Because the defendant was denied of his constitutional right of trial by jury.

JAMES MERCER DAVIS,  
*Attorney of Appellant.*

30



## OPINION.

## NEW JERSEY SUPREME COURT.

C. HOWARD CURTIS,  
*Complainant-Appellee,*  
 vs.  
 CHARLES E. JOYCE,  
*Defendant-Appellant.*

ON CERTIORARI.  
 OPINION.

10

SWAYZE, J.:

Before dealing with the questions raised in this case, we think it advisable to call attention to the method of entitling the cause. It is entitled Charles E. Joyce vs. The Judge of the Court of Common Pleas of Burlington County. All that the Judge had to do with the case was to hear it on review of the proceedings had before the recorder. While the writ is directed to him, he is no party to the cause and should not be so treated. The case should be entitled under rule 15 as it was before the recorder, C. Howard Curtis vs. Charles E. Joyce. 20

No reasons are printed, but as the complainant, defendant in certiorari, makes no objection, we deal with the reasons set forth in the prosecutor's brief.

The proceeding is under the supplement of 1913 to the disorderly persons act. The complaint charges 30 that Joyce operated and drove an automobile on the "highway of the street of Mt. Holly known as High or Main Street while under the influence of liquors." He was convicted of having operated an automobile on High or Main Street in the Town of Mt. Holly, Township of Northampton, County of Burlington, in

the State of New Jersey, while under the influence of intoxicating liquor. We think this is enough to show that the offense was committed upon the public street or highway. The complaint charges that it was on the highway of (evidently a misprint for "or") the street known as High or Main Street, and, although the conviction does not use the word "highway," we think there is a presumption that the High or Main Street of a town is a public street.

10 As to the alleged bias of the recorder, we agree with the Judge of the Common Pleas that the prosecutor should have challenged before the case was heard as provided by Section 225 of the Practice Act (C. S. p. 4122). Although this is a section of the Practice Act, it enacts a rule which should govern in all courts. It would be intolerable to allow a litigant to speculate on the result of a case, and raise a question of jurisdiction only after the decision. If the prosecutor did not know the alleged bias at the time, it may be his misfortune; but it is a misfortune

20 arising out of a want of knowledge that it was his duty to acquire if he wanted to profit by it.

We think the conviction is sufficient in form. This disposes of the reasons argued. The eighth reason, if we may judge from the respondent's brief, raises the question that the prosecutor was deprived of his constitutional right to a trial by jury. This question is similiar to that discussed in the Rodgers Case, 99 Atl. 931, just decided, and it would be interesting to

30 consider whether the same rule would apply to a case where the only proof was that the defendant drove an automobile on a public street while he was under the influence of intoxicating liquor. We are precluded from dealing with the question as the prosecutor has abandoned his eighth reason.

The judgment must be affirmed, with costs.

NEW JERSEY COURT OF ERRORS  
AND APPEALS

---

G. HOWARD CURTIS, Complainant-Appellee	}	ON APPEAL.	10
<i>Vs.</i>		BRIEF FOR	
CHARLES E. JOYCE, Defendant-Appellant.		APPELLEE.	

---

1. Charles E. Joyce, the above named prosecutor, was convicted before Benjamin O. Herbert, recorder of the Township of Northampton, in the County of Burlington, of the violation of a supplement to an act entitled "An Act concerning disorderly persons (Revision 20 of 1898)." which supplement will be found in P. L. 1913, page 103. This conviction was reviewed by the Judge of the Court of Common Pleas and affirmed. The prosecutor now brings certiorari to set aside this conviction, and the first reason urged is

"Because the conviction does not follow the statute in showing that the offense complained of was committed upon a public street or highway." The provision of the statute under which this conviction was had, says 30  
"Any person who shall operate an automobile or motor or any other vehicle over any public street or highway while under the influence of intoxicating liquor shall be adjudged to be a disorderly person." The conviction and the complaint both state that the said Charles E. Joyce operated his automobile on Main or High Street

in the Town of Mount Holly, in the Township of Northampton and County of Burlington. I presume that the criticism is directed at the fact that there is no recital to the effect that Main or High Street is a public highway. This certainly cannot avail the defendant in these proceedings. The mere fact that it states that the offense was committed on Main or High Street, shows in itself that it was on a public street or highway. Nothing further is needed to comply with the language of  
10 the statute.

2. The second reason given is that the Recorder was biased and prejudiced.

3. The third reason given is that the Recorder expressed his opinion and judgment before the trial and before the hearing of the testimony.

4. The fourth reason given is that the Court of Common Pleas refused to allow the Prosecutor to present  
20 evidence of this bias and prejudice.

These three reasons may be conveniently argued together. There was no evidence whatsoever of prejudice or bias on behalf of the Recorder presented to him, or to the Court of Common Pleas, except as it was set forth in the petition of the prosecutor asking for the review of the proceedings by the Court of Common Pleas. The matter is entirely disposed of by sections 224 and 225 of  
30 the Practice Act, Comp. State 4121-4122. The statute provides a method of trying these questions before the trial.

With reference to the Court of Common Pleas refusing to hear testimony upon these points, it need only be said that the Court of Common Pleas in reviewing the

conviction is bound to consider only legal errors which appear upon the face of the papers. The Court of Common Pleas so viewed the situation, and that certainly is the correct view.

5. The fifth reason given is that the conviction does not contain sufficient evidence to show the legal propriety of the judgment based upon it.

6. The sixth reason given is that the record sets forth conclusions and not the facts upon which the conclusions were based. <sup>10</sup>

The cases in this State all hold that the conviction shall set forth the substance of the testimony before the Court, so that the reviewing Court in reading the conviction can tell whether or not such facts were proved as would bring the defendant within the terms of the offense as alleged in the statute. This is a universal rule. The reviewing Court should have the opportunity to say <sup>20</sup> whether or not the testimony before the Justice or Recorder justified his conclusion as to the guilt of the defendant. The conviction in this case sets forth in the language of the statute the testimony of some six or eight witnesses who were before the Recorder and testified. It is argued that this conviction shows only the conclusions of the witnesses and not their testimony. The offense charged has no name as a crime or as a disorderly act. It is stated and defined in the statute by stating things which, if true, make the defendant guilty. These <sup>30</sup> things are that he shall operate an automobile or other motor vehicle on the public highways while intoxicated. Every witness called at the trial stated that the defendant had done all these things. That they so stated appears in the conviction. Nothing further could have been put in

unless it was a complete record of the testimony taken by a stenographer. The cases never contemplated such a condition.

In the case of *Doughty v. Conover*, 42 L. 193, the record of the conviction did not show any evidence upon which the conviction was based. It merely stated that three witnesses were sworn and then stated that the State had proved that the defendant was fishing in the water with a net, and that the water and net were prohibited by statute. That case, of course, is no authority, because there is no reference whatsoever to the testimony of the witnesses.

In the case of *Hoeberg v. Newton*, 49 L. 617, the Court said that the record of the conviction did not set forth the evidence nor the facts which the evidence proved nor of what the defendant was deemed guilty. The conviction itself does not appear in the opinion, so that we have nothing to judge from except the conclusion of the Court and from that conclusion there is but one inference to be drawn, namely that the record showed nothing whatever.

In the case of *Hankinson v. Trenton*, 51 L. 496, there was a conviction for violation of an ordinance of the Excise Commission of the City of Trenton. The conviction was set aside because the ordinance was not offered in evidence.

In the case of *Handlin v. State*, 16 L. 96, proceedings were against three defendants jointly and three separate convictions were entered. This was made the basis of the reversal.

In the case of *Buck v. Danzenhower*, 37 L. 359, there was no record whatsoever of the evidence, so the conviction was set aside.

The case of *Lyons v. Spratford*, 43 L. 376, was another case where there was no record of any evidence be-

fore the Justice

An examination of all the preceding cases shows that there was a fatal defect in the record of conviction, none of which defects appear in the case now before the Court.

The case of *Preusser v. Cass*, 25 Vr. 532, deals with what should be shown in the record of a conviction under these kinds of statutes. In that particular case there was not a sufficient complaint to give jurisdiction to the Magistrate and the record of the conviction did not show that the defendant was ever brought before the Magistrate or afforded an opportunity to defend himself. Also the Magistrate in imposing a penalty imposed a fine, and in default of the payment of the fine a term of imprisonment. The act under which the conviction took place did not warrant such a finding, as the act was in the alternative either to imprison or fine, but not to fine and imprison in default of payment of the fine. 10

The case of *Preusser v. Cass* has been regarded as an authority for what a conviction must show, and it states that the conviction should contain the substance 20 of the complaint or information so as to show the jurisdiction of the Magistrate; the process whereby the alleged offender is brought before the Magistrate; the appearance and defense; the evidence presented, so that the reviewing Court may discover the grounds upon which the adjudication of the Magistrate was made; and lastly, the judgment.

All of these things clearly and unmistakably appear in the record of the conviction now before the Court. 30

7. The seventh reason given is that the record fails to show the conviction of the defendant by the Court of the offense charged or any other offense.

The offense charged has no specific name, but under the statute is made up by the proof of certain facts.

These facts are that a person who drives or operates an automobile on the public streets or highways of any municipality while intoxicated is guilty of being a disorderly person. The conviction in this case recites that certain persons testified to the facts which under the statute would make the defendant guilty. The conviction recites this testimony of these witnesses as to these facts, and then states that the Justice adjudged the defendant to be guilty and to be a disorderly person. That  
10 brings the conviction squarely within the rule of the cases as to what must be shown in the conviction to make it a good one under the statute.

8 The eighth reason given is that the act is unconstitutional because it deprives the defendant of the right to trial by jury.

In the discussion of this reason it may be said that the defendant is precluded from presenting this reason to this Court by virtue of the fact that it was not urged  
20 when this case was before the Supreme Court, and the Supreme Court in its opinion refuses to deal with this question for the reason that it had been abandoned in the argument.

The rule is that where the reason is not urged or argued in the Supreme Court, it cannot be presented to the Court of Errors and Appeals, as will be shown by the following cases:—

Marten v. Brown, 80 Atl. 476, 81 L. 599, (aff. 80 L. 143) holds (a) An assignment of error not referred to  
30 in the brief of counsel for plaintiff in error, will be considered abandoned; and (b) Alleged grounds of error, not presented to the Supreme Court on appeal to it from a district court, will not be reviewed on a writ of error in the Court of Errors and Appeals. The Court said, "The only question before this Court on this writ of error is

whether the Supreme Court was justified in refusing to disturb the judgment of the District Court for any of the reasons upon which it was there attacked. Consequently we decline to consider other grounds, mooted upon the argument before us, but not presented to the Supreme Court, upon which the judgment of the District Court is asserted to be erroneous."

The Supreme Court said, in the case now under consideration, 99 Atl. 932, "We are precluded from dealing with this question as the prosecutor has abandoned his eighth reason." 10

"Errors stated in the assignment of errors, but not included in the brief as points relied on, will be considered to have been abandoned and will not be noticed." 2 Cyc. 1014.

*Manda v. U. S. Express Co.*, 90 Atl. 269, decided Mar. 16, 1914, follows *Marten v. Brown*, above cited, and holds that grounds of appeal not argued by counsel for appellant in their brief must be regarded as having been either waived or abandoned by the appellant. The 20 same proposition was held in all the following cases: *Aschenberg v. Mundy*, 76 L. 352, 69 Atl. 954; *Hanson v. P. R. R. Co.*, 72 L. 407; *Sharp v. Sweeney*, 74 L. 428; *Lavin v. Public Service*, 77 L. 217, 71 Atl. 58; and *Aakjer v. Mair*, 87 Atl. 99, 84 L. 502. The same ruling was made by the Court of Errors and Appeals in *Loper v. Somers*, 71 L. 657.

In *Boro of Park Ridge v. Reynolds*, 74 L. 449, 65 Atl. 990, the Court of Errors and Appeals held that it could not consider grounds for reversal which had not been 30 presented in the Supreme Court. The constitutionality of an Act of the Legislature of this State was challenged in the Supreme Court upon a specific ground. Under the decision of the Court of Errors that ground was found ineffective to support the claim; and it was held that the

other objections to the act on the ground of unconstitutionality would not be considered.

In *Bakely, et al, v. Nowrey*, 68 L. 732, the Court of Errors held that it could not consider questions which had not been mooted in the Supreme Court.

10 *Travisano v. Stefanelli*, 87 Atl. 434, was a personal injury case where the Court of Errors held that defendant not having urged plaintiff's contributory negligence in the Court below or assigned it as a cause of reversal in the Supreme Court, that contention could not be raised for the first time in the Court of Errors.

In *Battschinger v. Robinson*, 85 Atl. 316, the Court of Errors held that an objection not urged in the Supreme Court upon review could not be considered in that Court by writ of error.

20 And in *Hubatka v. Maierhoffer*, 79 Atl. 346, the Court of Errors held that a contention not made in the trial court or made the subject of an assignment of error on review by the Supreme Court will not be considered by the Court of Errors.

However, assuming for the purpose of argument, that the matter is properly before this Court, then the question arises as to whether or not the defendant was entitled to a trial by jury before the Justice.

30 In the case of *State v. Rogers*, decided Feb. 21, 1917, 99 Atl. 931, the Supreme Court dealt with a conviction under this same statute and set the conviction aside. That opinion holds that there is a class of cases in which the defendant may be convicted by summary proceedings without a trial by jury, and another class of cases where such conviction cannot be had.

The Court then says, "The recognized line of distinction is between offenses indictable at common law and offenses created by statute. In the present case the statute is applicable to cases of both classes." The Court

then goes on to say that inasmuch as the statute is applicable to cases of both classes the particular case under consideration must be examined as to its facts, before determining as to which class it belongs. In the Rogers case the Court held that inasmuch as the proof showed that the defendant drove his automobile through the front window of a saloon, breaking the glass and the wooden framework of the window, and drove the front part of the car to the front end of the bar in the saloon, and that his car was a large automobile and that he seemed to be quite excited, and was good and drunk, brought the case within the rule that he had committed such an offense as could be indicted at the common law, therefore, he could not be convicted in summary proceedings. The Court went on to say, "A large automobile capable of doing what this one did is an engine of such power that when driven on the public streets by an intoxicated man endangers life and limb of the public in general and is well within the definition of a public nuisance."

Here the Court found by the facts that the act as actually committed by the defendant was a public nuisance. The Court in its opinion places the decision squarely upon the ground that the act actually committed or the things actually done by the defendant were of such character as to bring him within the definition of a public nuisance. They, therefore, set aside the conviction in the Rogers case.

In the present case, the Supreme Court in its opinion, 99 Alt. 932, referred to the Rogers case and said, "It would be interesting to consider whether the same rule applies to a case where the only proof was that the defendant drove an automobile on the public street while he was under the influence of intoxicating liquor." The conviction in this case was affirmed by the Supreme

Court as will be seen by its opinion above cited.

The Court distinguishes between the two cases as to the rule enunciated in the Rogers case with reference to whether or not the facts proved show an offense for which the defendant could have been indicted at the common law. Assuming, for the sake of argument, at the present time, that the Supreme Court rule as laid down in the case of *State v. Rogers*, is a correct rule, then the facts in this case should be examined to show whether  
10 or not the evidence as disclosed by the conviction showed the commission of such acts as would have made the defendant indictable at common law.

A portion of the opinion in the Rogers case would seem to indicate that where a person has the potential power of making himself a public nuisance, but does not actually do so, he may not be convicted in a summary proceeding. This, however, does not agree with the other portion of the opinion, which places the Rogers case squarely on the doctrine of the actual commission  
20 of acts which would make the defendant subject to indictment. The latter enunciation is the reason and basis for the decision in the Rogers case.

Now, it is true that an intoxicated man driving an automobile of any kind or description potentially has the power of doing considerable damage and making considerable trouble. That is what actually happened in the Rogers case. In the present case, however, the testimony does not disclose, and as a matter of fact there was nothing further done by the defendant than the commis-  
30 sion of such acts as are disclosed by the conviction.

The doing of the things that this defendant did would not have made him indictable as a public nuisance. Then if the doing of these things would not have made him subject to indictment his conviction in the summary proceeding is well within the rules and should be sustained.

To adopt the rule that because a defendant has potential power of doing things which would make him subject to indictment that he may not be convicted under summary proceedings would in itself make ineffective the greater portion of the provisions of the Disorderly Act.

"An Act concerning disorderly persons," (Revision of 1898) 2 Comp. Stat. 1926, provides a number of things which constitute persons as being disorderly.

Section 1 of said act, among other things, provides, "All persons who leave or threaten to leave their families to be maintained by the said Township or County, or to become chargeable thereto, or who, not having sufficient property or means for their subsistence or support shall live idly or not engage in some honest employment or not provide for themselves or families," may be convicted as disorderly persons. Now, a person who deserts his family or who leaves them to become chargeable upon the township certainly commits acts which are in their nature a public nuisance. He makes his family chargeable to the public; the public may have the family to support; so that such a defendant has the potential power of making himself and his family a public nuisance for which he might be indicted. 10 20

Section 2 of the Disorderly Act, provides, among other things, "Any person who shall be apprehended, having upon him or her any pick-lock, key, crow, jack, bit, or other implement with intent to break and enter into any building, or any person found in or near any dwelling house, warehouse, stable, barn, coach-house, smoke-house, or any place of public resort or assemblage for business, business, worship, amusement, or other lawful purposes with intent to steal any goods or chattels," may be convicted as a disorderly person. Clearly here the persons embraced within this class have within their power to commit acts which would be public nuisances, 30

or would be crimes for which they might be indicted. But it has never been suggested in any case of conviction of these sections of the statute that he is such a person merely because he possesses the potential power of committing acts which might be indictable, that he may not be convicted as a disorderly person.

Again Section 6 of said Act provides, "Any person who shall be arrested at any steamboat landing, railroad depot, church, banking institution, broker's office, place  
10 of amusement, auction room, store or crowded thoroughfare, or other place of public resort or assemblage for business, worship, amusement or other lawful purpose, in any city or county, of this State, and shall be proven to the satisfaction of the Magistrate before whom such person shall be brought to be a common thief, burglar or pickpocket, and to have been frequenting or attending such place or places for an unlawful purpose, shall be deemed and adjudged to be a disorderly person." Surely a thief, burglar or pickpocket has, when on his  
20 usual occupation, the means within his power to commit acts for which he could be indicted either at the common law or under the statute. But it has never been suggested that he may not also be convicted as a disorderly person under this section when he has not actually committed the acts which would make him subject to indictment.

So, that, if the rule in the Rogers case, is the correct rule, and for the purposes of argument of this case it may be cited as a correct rule, then, merely because the  
30 defendant, Joyce, might have made himself a public nuisance, it does not follow that he may not be convicted under the statute where he did not actually do the things which would constitute him a public nuisance.

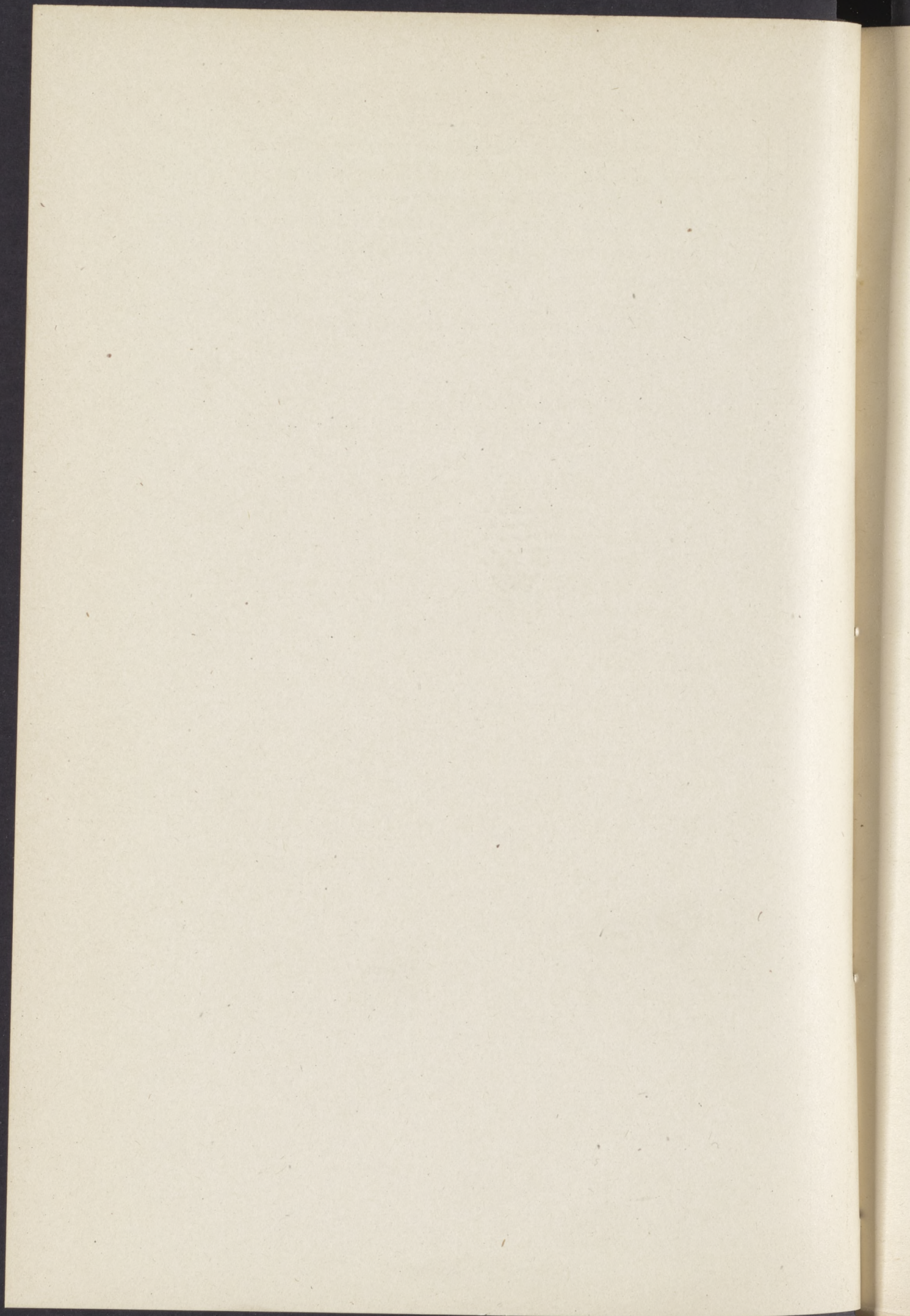
9. The ninth reason urged is that the penalty inflicted by said act is greater than the jurisdiction of the

Court in question in a summary proceeding. The answer to this is that the Court's jurisdiction is purely statutory, and the amount of punishment to be inflicted is determined by the statute. The sentence in this case was for thirty days imprisonment, which is well within the limits of the statute, which make the maximum imprisonment six months.

It is, therefore, respectfully submitted that the conviction should be affirmed.

10

V. CLAUDE PALMER,  
Attorney for complainant, appellee.



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

C. HOWARD CURTIS,  
*Complainant-Appellee,*

VS.

CHARLES E. JOYCE,  
*Defendant-Appellant.*

ON APPEAL.

---

BRIEF OF APPELLANT.

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The defendant and appellant, Charles E. Joyce, was convicted before the recorder of Northampton Township, Burlington County, on June 16, 1916, of being a disorderly person within the meaning of chapter 67 of the laws of 1913 and sentenced to the county jail for a term of thirty days.

The act under which Joyce was convicted deals with "Any person or persons who shall operate an automobile or motor of any other vehicle over any public street or highway while under the influence of intoxicating liquors shall be adjudged to be a disorderly person, etc."

The conviction before the recorder was reviewed by the Court of Common Pleas of Burlington County and affirmed; that affirmance was certioraried to the Supreme Court and judgment of the Pleas affirmed. From the judgment of the Supreme Court this appeal is taken.

**ARGUMENT.**

The grounds upon which reversal is sought are :

1. Because the conviction does not follow the statute in showing that the offense complained of was committed upon a public street or highway.
2. Because the recorder was biased and prejudiced.
3. Because the recorder expressed his opinion and judgment before the trial and before the hearing of the testimony.
4. Because the Court of Common Pleas refused to allow the defendant to present evidence of this bias and prejudice.
5. Because the conviction does not contain sufficient evidence to show the legal propriety of the judgment based upon it.
6. Because the record sets forth conclusions and not the facts upon which the conclusions were based.
7. Because the record fails to show the conviction of the defendant by the Court of the offense charged or any other offense.
8. Because the act under which the defendant was convicted is unconstitutional because it deprives a person of the right to a trial by jury.
9. Because the penalty inflicted by said act is greater than the jurisdiction of the Court in question in a summary proceeding.
10. Because the defendant was denied of his constitutional right of trial by jury.

I.

THE CONVICTION DOES NOT FOLLOW THE  
STATUTE.

In order to give the Court jurisdiction to convict under this amendment certain facts must appear and be determined by the Court to exist, namely;

That the defendant was actually engaged in the operation of an automobile or motor.

That it was over a public street or highway.

And at the time he was under the influence of intoxicating liquors. These facts must be determined before the Court can make any adjudication of the matter. When these facts are found to be true then the Court is empowered to adjudge the defendant guilty of being a disorderly person.

According to the conviction there is no determination by the Court that this defendant was guilty of the facts upon which the jurisdiction of the recorder is founded. The conviction set forth that "the said Charles E. Joyce before me, the said recorder, is convicted and found guilty of the offense of having on the fifth day of June, nineteen hundred and sixteen, on High or Main Street, in the town of Mount Holly, township of Northampton, \* \* \* operated an automobile while under the influence of intoxicating liquor."

The conviction absolutely fails to determine the essential facts which would constitute the defendant a disorderly person, and until there is an adjudication by the Court that such facts exist, the Court is without authority to convict the defendant of being a disorderly person.

Such an act as the one under consideration must be construed strictly and applying this rule to the conviction in this case, the conviction must fail.

## II.

## THE BIAS AND PREJUDICE OF THE RECORDER WARRANTS THE COURT IN SETTING ASIDE THE CONVICTION.

The second, third and fourth grounds of appeal will be considered under this head as they are of the same nature and can be considered together.

The defendant, before the Court of Common Pleas, offered proof that the recorder has expressed his opinion and judgment as to the case in question prior to the trial of the same. This was undoubtedly proper since it went to the legality of the conviction. In support of this contention the defendant cites par. 224, page 4121 of the Com. Stat. (P. L. 1903, page 595) which provides that no Judge of any court, who shall have given his opinion upon the matter in question, shall sit on the trial of any point in controversy in such action. It is contended that the testimony sought to be introduced would have shown that the bias complained of appeared after the hearing, so that the defendant was not in a position to challenge the Court.

The evidence sought to be introduced attacked the very legality of the conviction, namely, whether the recorder, being disqualified, had jurisdiction of this matter.

This question of prejudice is matter which a higher Court always has the right to consider regardless of any statutory remedy.

III.

BECAUSE THE CONVICTION DOES NOT CONTAIN SUFFICIENT EVIDENCE TO SHOW THE LEGAL PROPRIETY OF THE JUDGMENT BASED UPON IT.

The statute under which this conviction was made deals with a certain act committed "over any public street or highway." Neither in the complaint nor in any other part of the record of these proceedings does it appear that the act complained of was committed upon or over a "public street or highway." It appears from the record that the defendant operated an automobile on High or Main Street, in the town of Mount Holly. This constitutes no offense under the statute. The Court cannot go outside of the record and take judicial notice that High or Main Street is a public street or highway.

"Statutory penalties for not turning to the right are sometimes imposed, and in addition a misuse of the highway is in many cases a misdemeanor, and criminal liability for racing, reckless driving, or heavy hauling is often imposed. The complaint should plainly set forth the crime charged, its time and its place in the public highway."

37 *Cyc.*, page 284.

## IV.

BECAUSE THE RECORD SETS FORTH CONCLUSION AND NOT THE FACTS UPON WHICH THE CONCLUSIONS WERE BASED.

The record in this case does <sup>not</sup> set out the evidence on which the conviction was based. This point has been decided many times in this state and the Courts have held that the omission of such evidence in the record is fatal.

The only evidence which appears by the record to have been produced at the hearing is as follows: "and G. Howard Curtis, being a credible witness, did depose and say that the said Charles E. Joyce, on the fifth day of June, nineteen hundred and sixteen, in the township and county aforesaid, did operate an automobile on High or Main Street, Mount Holly, Burlington County, New Jersey, while under the influence of intoxicating liquors." The testimony of certain other witnesses is set out in exactly the same words. This is neither a statement of the evidence nor the substance of the evidence upon which the recorder based his conviction. It is the statement of the conclusions of the witnesses and not a statement of the facts.

In the case of *Doughty vs. Conover*, 42 N. J. L., page 193, which was a summary proceeding under a statute regulating fisheries, the hearing and judgment of the justice was recorded as follows:

"The state offered in evidence the map of Atlantic County. Daniel Conover, William Conover and Joseph H. Skirm sworn; the state proved that the defendant was fishing in the water with a net; said water and net prohib-

ited by the statute passed April 5th, 1878, the defendant offered no evidence, therefore, I rendered judgment in favor of the state in the sum of twenty dollars and three dollars and twenty-five cents costs, and stand committed until the fine and costs are paid.”

It was held that this conviction was insufficient. The Court said:

“The record must show the grounds of the conviction, so that the supervisory court, reviewing the proceedings, can see that the law has been strictly observed. In the present case all that the Justice states is, that certain witnesses were sworn, and his own interference that such testimony made out a case against the defendant. It is impossible to discover from such a statement whether the judgment was warranted upon legal principles. We have the word of the Justice for this and nothing else. So far as my observation extends, it has been uniformly decided that such a record is radically imperfect. This view has been repeatedly expressed in our courts. In the case of *Keeler vs. Milledge*, 4 Zab. 145, this doctrine is affirmed in express terms, for it is said ‘it should set out, not only the names of the witnesses examined, but at least the substance of the testimony, that the Court may judge of its sufficiency to convict.’ ”

For cases holding the same doctrine, see

- Hoeberg vs. Newton*, 49 N. J. L. 617;
- Hankinson vs. Trenton*, 51 N. J. L. 496;
- Handlin vs. State*, 1 Harr. 96;
- Buck vs. Danzenhower*, 37 N. J. L. 359;
- Preusser vs. Cass*, 25 Vroom, 532;
- Lyons vs. Spratford*, 43 N. J. L. 376.

## V.

## THE CONSTITUTIONALITY OF THE ACT.

Under this heading the eighth, ninth and tenth reasons for reversal will be considered.

The question of the constitutionality of this act was not pressed at the argument before the Supreme Court for the reason that the case of *Rogers vs. State* was argued on the day preceding the hearing of this matter. The argument was full and complete in the latter case.

The very nature of the thing sought to be controlled by the act under consideration precludes the idea that the conditions contemplated by the act of 1913 can be other than a nuisance. Under the *Rogers* case (99 Atl. 931) the test of the constitutionality of the act is whether or not the offense charged is a nuisance.

Automobiles at this day do not fall within the class suggested by the Court in that case of "so low a power and weight and operated at so slow a speed that it could not be properly found to be a nuisance." Such a situation as that was clearly never contemplated by the statute and would not be an offense of sufficient calibre to interest any one in making a complaint or any Court in entertaining the same.

The question on this phase is the intention of the legislature. Our courts have judicial knowledge that a large number of accidents are due to intoxicating liquors in conjunction with automobiles. This was the condition the legislature was dealing with. It is hard to imagine a situation like that suggested in the *Rogers* exception. Under the facts suggested

in that exception what harm could come to a pedestrian? He could escape the slow moving machine without danger. Passing vehicles would escape injury. If the power and weight were so low and the speed so low, then the vehicle would not fall within the recognized class of automobiles and the person sought to be convicted would not come within the act.

It is respectfully urged that for the reasons set forth in *State vs. Rogers, supra*, the conviction below should be set aside.

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