

79

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

CHARLES E. MORRIS,
Plaintiff-in-Error.

IN ERROR.

STATE OF THE CASE

ETHAN P. WESCOTT,
Prosecutor of the Pleas.

ALBERT E. BURLING,
Of Counsel for State.

ALBERT S. WOODRUFF,
*Attorney and Counsel for Plain-
tiff-in-Error.*

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

Service of three copies of the within
state of case is hereby acknowledged

Oct. 31, 1923.

Albert E. Burling
Of Counsel for State

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OPINION.

(Filed June 21, 1923.)

No. 10.

February Term, 1923.

10

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
 Defendant-in-Error, }
 v. }
CHARLES E. MORRIS,
 Plaintiff-in-Error. }

20

Argued February 20, 1923. Decided June, 1923.

SYLLABUS:

1. An indictment for a statutory crime is sufficient if the offense be charged in the language of the statute.

30

2. A motion to quash an indictment, although addressed to the discretion of the Court, since it precedes the plea of the defendant and the trial of the case, cannot be reviewed under Section 136 of the Criminal Procedure Act, because that section is confined to matters occurring at the trial.

3. When the course of the trial shows that the granting of a bill of particulars in a criminal case would not have aided the defense made to the charge, the denial of the motion will not justify a reversal.

10 4. The refusal of a demand for a bill of particulars on an indictment, made prior to the plea and the trial of the case, will not be reviewed under Section 136 of the Criminal Procedure Act, since that section is confined to matters occurring at the trial.

5. Under Section 137 of the Criminal Procedure Act, where the plaintiff-in-error elects to take up the entire record with his writ of error, he must specify the causes in the record relied upon for relief or reversal with sufficient precision to apprise the Court and counsel for the State of the injury of which he complains.

20 6. Under Section 123 of the Crimes Act (P. L. 1919, p. 257) the *corpus delicti* consists first in the burning of a house described, and secondly, in the fact that a criminal agency was the cause of the burning. Evidence, although circumstantial in character tending to show that the burning was wilful and malicious, and not the result of natural or accidental causes, is admissible.

30 7. Common observers, having special opportunity for observation, may testify to their opinions as conclusions of fact, although they are not experts, if the subject-matter to which their testimony relates cannot be reproduced or described to the jury precisely as it appeared to the witness at the time, and their opinions are such as men in general are capable of forming with reasonable correctness on the facts observed.

8. The question of the qualification of an expert witness is one for the determination of the trial Court, whose finding is not reviewable if there is any legal evidence to support it.

9. Under Section 123 of Crimes Act (P. L. 1919, p. 257), although there must be an actual burning to constitute the offense, it is not necessary that the building shall be wholly consumed or even seriously injured. If any part, however small, is consumed, 10 it is sufficient.

On writ of error to the Camden County Quarter Sessions Court.

Before Gummere, Chief Justice, and Justices Swayze and Trenchard.

For the plaintiff in error, Albert S. Woodruff.

For the State, Charles A. Wolverton, prosecutor of the pleas, and Albert E. Burling.

20

The opinion of the Court was delivered by
TRENCHARD, J.

The plaintiff-in-error was indicted for statutory arson, the indictment being founded on Section 123 of the Crimes Act as amended by the Act of 1919 (P. L. p. 257), which reads as follows:

“Any person who shall wilfully or maliciously burn, or cause to be burned, or aid, counsel, procure or consent to the burning of any dwelling house, whether it be his own or that of another, or any kitchen, shop, barn, stable, or other outhouse, that 30 is a parcel thereof, or belonging or adjoining thereto, or any other building, by means whereof a dwelling house shall be burnt, whether it be his own or that of another, shall be guilty of arson,” etc.

The indictment contained three counts. The first charged that the defendant, at the City of Camden,

on the 23rd day of July, 1922, "did wilfully and maliciously set fire to and burn a certain dwelling house and shop, situate at number 1203 Haddon Avenue, in the City and County of Camden," etc. The second count charged that the defendant, at the same time and place, "did wilfully and maliciously cause to be set fire and burned, a certain dwelling house and shop, situate at number 1203 Haddon Avenue, in the City and County of Camden," etc.

- 10 The third count charged that the defendant, at the same time and place, "did wilfully and maliciously aid, counsel, procure and consent to the setting fire and burning a certain dwelling house and shop situate at number 1203 Haddon Avenue, in the City and County of Camden," etc.

The defendant was convicted on the second count only, and sentence was imposed thereon. He now prosecutes this writ of error and specifies causes for reversal pursuant to Section 136 of the Criminal

- 20 Procedure Act.

The first reason specified for reversal is that the Court refused to quash the second and third counts of the indictment on motion for that purpose preceding the plea.

Since the defendant was acquitted upon the third count it is not perceived how he can now complain of the refusal to quash that count. But, however, that may be, it is clear that the motion addressed to both counts was properly denied.

- 30 The reason urged was to the effect that the counts were insufficient because indefinite. Not so. They each followed the language of the statute, and the rule is that an indictment for a statutory crime is sufficient if the offense be charged in the language of the statute. *State v. Caporale*, 85 N. J. L. 495; *State v. Brand*, 77 N. J. L. 486.

Moreover a motion to quash an indictment, al-

though addressed to the discretion of the Court, since it precedes the plea of the defendant and the trial of the case, cannot be reviewed under Section 136 of the Criminal Procedure Act, because that section is confined to matters occurring at the trial. *State v. Pisaniello*, 88 N. J. L. 262.

The next cause for reversal argued is that the defendant was refused a bill of particulars.

But the course of the trial showed that the granting of a bill of particulars would not have aided the defense made to the charge, and hence the denial of the motion will not justify a reversal. *State v. Hatfield*, 66 N. J. L. 443. 10

Moreover the refusal of a demand for a bill of particulars on an indictment, made (as here) prior to the plea of the defendant and the trial of the case, will not be reviewed under Section 136 of the Criminal Procedure Act, since that section, as we have pointed out, is confined to matters occurring at the trial.

The next cause for reversal specified and argued is "because, over objection on the part of the accused, the trial Court permitted the State to introduce testimony indicating incendiarism but unconnected with the accused." 20

As a cause for reversal this is insufficient. Under Section 137 of the Criminal Procedure Act, where, as here, the plaintiff-in-error elects to take up the entire record with his writ of error, he must specify the causes in the record relied upon for relief or reversal with sufficient precision to apprise the Court and counsel for the State of the injury of which he complains. *State v. Herron*, 77 N. J. L. 523. 30

But upon examination we find the contention without merit either in law or in fact. Under Section 123 of Crimes Act (P. L. 1919, p. 257) the *corpus delicti* consists first in the burning of a house de-

scribed, and secondly, in the fact that a criminal agency was the cause of the burning. Evidence, although circumstantial in character, tending to show that the burning was wilful and malicious, and not the result of natural or accidental causes, is admissible.

10 The next cause for reversal argued is likewise technically insufficient. It is "because the trial Court over objection, permitted unqualified witnesses for the State to give opinion evidence that articles were saturated with oil and that smoke was smoke from burning kerosene."

20 But upon examination it has no merit. It was apparently leveled at the testimony of firemen that certain stockings and rags, found by them on the premises immediately after the fire was subdued, were saturated with oil, and as to the character and odor of the smoke that prevailed in the premises while they were fighting the fire. We think the testimony competent. Common observers, having special opportunity for observation, may testify to their opinions as conclusions of fact, although they are not experts, if the subject-matter to which the testimony relates cannot be reproduced or described to the jury precisely as it appeared to the witness at the time, and their opinions are such as men in general are capable of forming with reasonable correctness on the facts observed. *Koccis v. State*, 56 N. J. L. 44; *State v. Laster*, 71 N. J. L. 586.

30 The next point argued is "because the trial Court, over objection, permitted the witness Philip Feurstein, although unqualified, to testify as an expert to the value of the stock in the premises where the fire occurred."

This point is not well founded either in law or in fact. The question of the qualification of an expert witness is one for the determination of the trial

Court, whose finding is not reviewable if there is any legal evidence to support it. *Leonard v. Standard Aero Corporation*, 95 N. J. L. 235. There was ample evidence justifying the finding of the Judge that the witness had such special knowledge or experience as to qualify him to give the opinion evidence in question. Moreover the testimony as finally adduced from this witness in no way prejudiced the plaintiff-in-error, for he admitted at the trial an adjustment with the insurance company on a replacement value equal to that given by the expert. 10

The next point requiring consideration is, "Because the trial Court refused to charge request number six: 'You must acquit the defendant on all three counts of the indictment the State having failed to prove that a dwelling house was burnt.' "

This request was incorrect in point of fact. There was abundant evidence from which the jury could and did find that the dwelling house was burnt. The testimony showed that it was a "hot fire," requiring twenty-five minutes to extinguish it. Photographs were admitted in evidence from which the jury could legally determine that the fire had taken hold of the building as distinguished from its contents. Under the statute in question, although there must be an actual burning to constitute the offense, it is not necessary that the building shall be wholly consumed or even seriously injured. If any part, however small, is consumed, it is sufficient. 20

We have examined all other causes for reversal argued and find no harmful error. 30

Other requests to charge were charged so far as they were proper.

The charge as given contained no injurious error.

The verdict cannot be said to be against the weight of the evidence.

We believe the foregoing observations in effect dispose of every question raised and argued.
The judgment will be affirmed.

REASONS FOR REVERSAL.

10 NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,	}	
<i>Defendant-in-Error,</i>		
v.		In Error.
CHARLES E. MORRIS,		Joinder in Error.
<i>Plaintiff-in-Error.</i>		

20

And now comes Charles E. Morris, by Albert S. Woodruff, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and the said Charles E. Morris says that the said judgment should be reversed, and assigns the following reasons or causes:

- 30 1. Because the Supreme Court affirmed the judgment of the Camden County Court of Quarter Sessions though that judgment should have been reversed.

Respectfully submitted,
ALBERT S. WOODRUFF,
Counsel for Plaintiff-in-Error.

(Service of a copy of the above reasons for reversal was duly acknowledged on October 6, 1923, by Ethan P. Wescott, prosecutor of the pleas of Camden County.)

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

STATE OF NEW JERSEY,	}	
<i>Defendant-in-Error,</i>		
v.		In Error.
CHARLES E. MORRIS,		Reasons for Reversal.
<i>Plaintiff-in-Error.</i>	)	

20

And thereupon, afterwards, to wit, on the 8th day of October, A. D. nineteen hundred and twenty-three, the said State of New Jersey, by Ethan P. Wescott, Esquire, Prosecutor of the Pleas of the County of Camden, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc. 30

ETHAN P. WESCOTT,
Prosecutor of the Pleas.

WRIT.

NEW JERSEY, ss.

*To the Honorable, the Justices of the
(Seal) Supreme Court, of the State of New Jersey:*

10 Because in the entire record and proceedings and entire record of the proceedings, and also in giving of judgment upon a certain indictment against Charles E. Morris, late of the City of Camden, in the County of Camden and State of New Jersey, aforesaid:

20 “For wilfully and maliciously causing to bet set fire and burned a certain dwelling house and shop, situate at No. 1203 Haddon Avenue, in the City and County of Camden, aforesaid, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.”

30 Pro ut the said indictment and the several counts therein whereof, before you, he hath been indicted, and is convicted upon the second count thereof (he having been acquitted as to the first and third counts thereof) by a certain jury of the county, taken between the State of New Jersey, and the said Charles E. Morris, as it is said, manifest error hath intervened to the great damage of the said Charles E. Morris, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Charles E. Morris, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid,

with all things touching the same to the New Jersey Court of Errors and Appeals on the 20th day of October, next and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, EDWIN ROBERT WALKER, Chancellor at Trenton, aforesaid, this 3rd day of October, A. D. nineteen hundred and twenty-three.

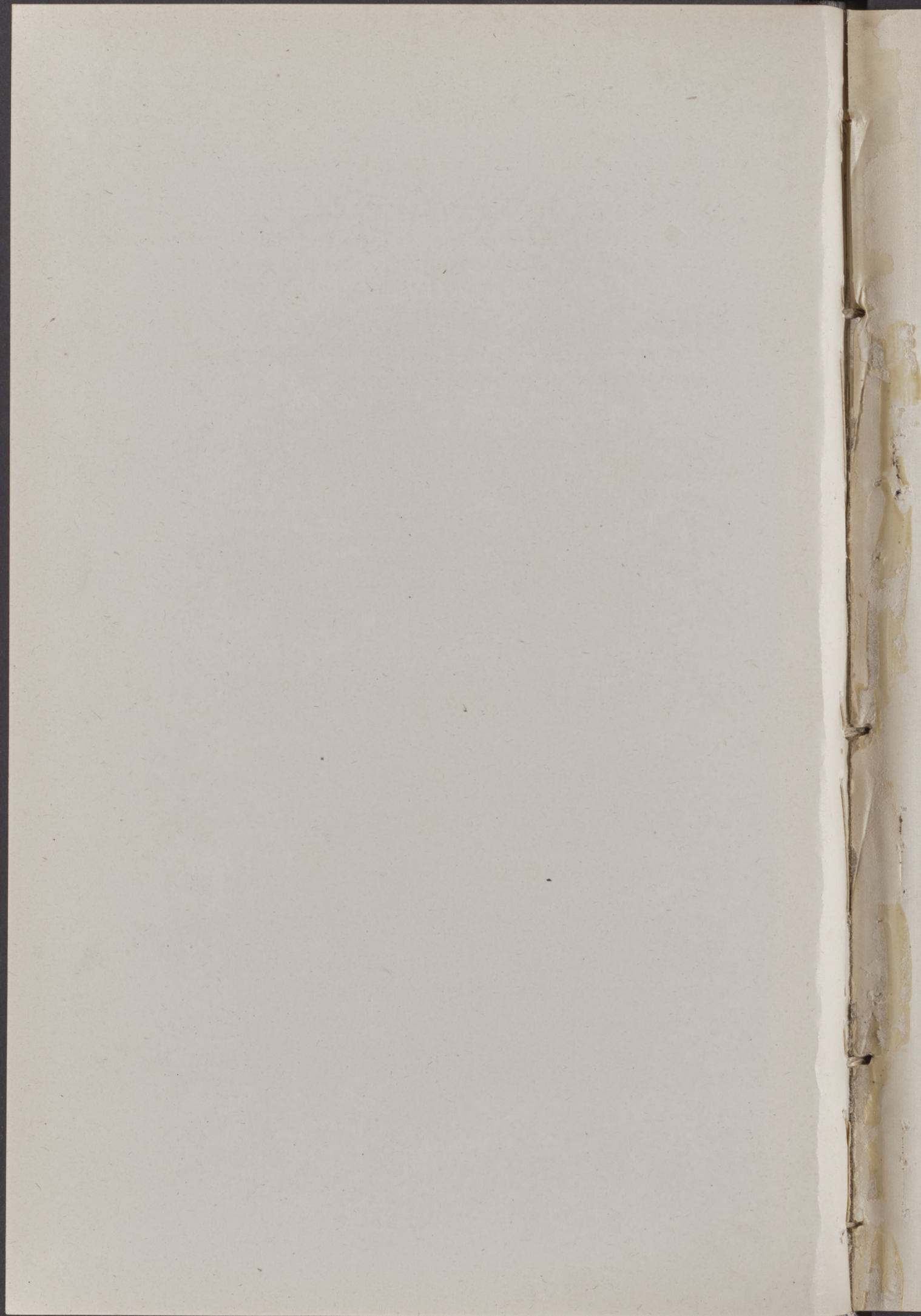
THOS. F. MARTIN,
Clerk.

ALBERT S. WOODRUFF,
Attorney.

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20

30



REASONS FOR RELIEF OR REVERSAL.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant-in-Error,
v.
CHARLES E. MORRIS,
Plaintiff-in-Error.

In Error.
Reasons for Relief or 10
Reversal.

And now comes Charles E. Morris, by Albert S. Woodruff, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and the said Charles E. Morris says that the said judgment should be reversed, and assigns the following reasons or causes: 20

1. Because the trial Court refused to quash count two of the indictment (p. 20).

2. Because the trial Court refused to quash count three of the indictment (p. 20).

3. Because the trial Court refused to compel the state to elect the count or counts on which it would try the accused (p. 15-20). 30

4. Because, after demand for bill of particulars, the trial Court refused to compel the state to answer particularizing and defining its position and the exact charge the accused was to meet (p. 20).

5. Because over objection on the part of the accused the trial Court permitted the state to introduce testimony indicating incendiarism but unconnected with the accused, and permitted the case to go to the jury thereon notwithstanding the failure of the state to fulfill its promise to connect him by competent evidence therewith (pp.25 and 26 to 24 and).

10 6. Because the trial Court, over objection, permitted unqualified witnesses for the state to give opinion evidence that articles were saturated with oil and that smoke was smoke from burning kerosene.—*Ibid.*

7. Because the trial Court, over objection, permitted the witness Philip Feurstein, although unqualified, to testify as an expert to the value of the stock in the premises where the fire occurred (p.69).

20

8. Because the trial Court charged the jury as follows:

“A reasonable doubt, as I perhaps have charged you in previous cases, is a doubt arising in the mind of a juror after a consideration of all the testimony, or if there is a very material part of the testimony which causes a reasonable doubt in your mind, when that is considered, together with the other testimony, of course you will find the defendant not guilty.

30

“Now, a reasonable doubt is not any doubt that might come into a person's mind, but it is the doubt that an ordinary, reasonable, prudent man will have after a consideration of the evidence in the case. It is not the doubt of a skeptic, it is not the kind of a doubt that a person of abnormal mind might have, but the doubt of a

reasonable man or woman. If you have such a doubt after a full consideration of all the evidence in the case that the defendant is guilty, of course, then your verdict will be not guilty, or for acquittal."

9. Because the trial Court refused to charge request number six (p.220): "You must acquit the defendant on all three counts of the indictment, the state having failed to prove that a dwelling house 10 was burnt."

10. Because the trial Court refused to charge request number seven (p.220): "And you cannot convict defendant under this indictment upon proof of a burning of merchandise, furnishings or other personal property; to warrant a conviction of the defendant the state must have proven beyond a reasonable doubt that a dwelling house was burnt."

20

11. Because the trial Court refused to charge request number twelve (p.220): "You must acquit defendant upon the second count of the indictment, the prosecution having failed to prove that charge."

12. Because the trial Court refused to charge request number thirteen (p.220): "You must acquit defendant upon the third count of the indictment, the prosecution having failed to prove that charge."

30

13. Because the trial Court charged the jury: "You can judge from the testimony in this case whether or not the shop itself was set on fire" (p.221).

14. Because the state failed to prove the *corpus delicti* (p.222).

15. Because the verdict was illogical, inconsistent and unintelligible and so void.

16. Because the jury acquitted accused of committing the crime himself or of having consented to or brought about its commission yet found him guilty of having caused it.

17. Because the trial Court sentenced the accused
10 for having caused a fire to be set which by verdict he was declared not to have set, or procured, counselled or aided to be set or consented to be set.

18. Because the judgment and sentence of the trial Court were given and passed against the accused, whereas upon the evidence adduced upon the trial he should have been acquitted.

19. Because it appears upon the whole record that
20 the plaintiff-in-error on the trial below suffered manifest wrong and injury which should be remedied in the admission of testimony, the charge made to the jury, the ruling of the trial Court against him and upon the evidence adduced.

Wherefore the said plaintiff-in-error, Charles E. Morris, prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed and for nothing holden.

30

Respectfully submitted,

ALBERT S. WOODRUFF,
Counsel for Plaintiff-in-Error.

JOINDER IN ERROR.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> v. CHARLES E. MORRIS, <i>Plaintiff-in-Error.</i>	}	In Error. Joinder in Error.
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10

And thereupon, afterwards, to wit: on the day of January, A. D. nineteen hundred and twenty-three, the said State of New Jersey, by Charles A. Wolverton, Esquire, Prosecutor of the Pleas of the County of Camden, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

30

CHARLES A. WOLVERTON,
 Prosecutor of the Pleas.

WRIT.

NEW JERSEY, to wit:

(SEAL) The State of New Jersey to Samuel M. Shay, Esquire, Judge of the Court of Quarter Sessions of the County of Camden, holden at Camden, in and for the
10 County of Camden, of the term of September, in the year of our Lord one thousand nine hundred and twenty-two.

Because in the record and proceedings, and also in giving of judgment upon the second count of a certain indictment against Charles E. Morris, of the City and County of Camden, viz: for wilfully and maliciously causing to be set fire and burned a certain dwelling house and shop, situate at No. 1203 Haddon Avenue, in the City and County of Camden,
20 aforesaid, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is convicted upon the second count thereof (he having been acquitted as to the first and third counts thereof) by a certain jury of the county, taken between the State of New Jersey and the said Charles E. Morris, as it is said, manifest error hath inter-
30 vened to the great damage of the said Charles E. Morris, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Charles E. Morris, command you that if judgment be thereon given, then that you distinctly and openly

send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the 17th day of November next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, our Chief Justice, at Trenton aforesaid, the twenty-
eighth day of October, nineteen hundred and twenty-
two. 10

ENOCH L. JOHNSON,
Clerk.

ALBERT S. WOODRUFF,
Attorney.

20

RETURN.

The record and proceedings of the plaint whereof mention is within made with all things concerning the same, including the entire record of the proceedings had upon the trial of the said defendant to the Supreme Court within specified, at the day and
place within contained I certify in a certain schedule
to the writ annexed as I am within commanded. 30

SAMUEL M. SHAY,
*Judge of the Court of Quar-
ter Sessions of the County
of Camden.*

INDICTMENT.

STATE OF NEW JERSEY,
CAMDEN COUNTY.

Court of Quarter Sessions, holden before SAMUEL M.
SHAY, Judge.

10

September Term, 1922.

THE STATE
v.
CHARLES E. MORRIS.

} Sur Indictment.
\$58.90.
Arson.

20

ALBERT S. WOODRUFF, Esq.
CHARLES A. WOLVERTOWN, Esq.
ALBERT E. BURLING, Esq.

CAMDEN COUNTY, to wit:

30 Be It Remembered, That at a Court of Quarter Sessions, holden at Camden, in and for the County of Camden, on the first Tuesday of April, in the year of our Lord one thousand nine hundred and twenty-two, before the Honorable Samuel M. Shay, Judge of the said court and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the court house, and the grand jury being desirous of making presentment of sundry bills of indictment, according to the form of the statute

in such case made and provided, by the oath of Howard Austermuhl, William Baird, Harry C. Bell, Elmer Bainbridge, John W. F. Bleakly, John A. Dwyer, Edgar Y. Dobbins, Henry H. Davis, Frederick Fries, William Grum, Frank G. Hitchner, Alfonse Irvin, Albert F. Meyer, E. Frank Pine, Richard Rilatt, Eugene H. Robinson, Harry A. Simpson, Charles Slough, Thomas Stephens, Wilfred W. Fry and by the solemn affirmation of Esther H. Elfreth having first alleged themselves to be conscientiously scrupulous of taking an oath, good and lawful men and women of the said County of Camden, duly summoned, and then and there sworn, affirmed and charged to inquire for the State of New Jersey, in and for the body of the said County of Camden. 10

It Is Presented, in manner and form following, that is to say:

The bills herewith presented are true bills. 20
Filed Sept. 11, 1922.

WM. D. BROWN,
County Clerk.

WILFRED W. FRY,
Foreman.

IN THE COURT OF OYER AND TERMINER OF
CAMDEN COUNTY.

30

April Term, A. D. 1922.

CAMDEN COUNTY, to wit:

The Grand Inquest of the State of New Jersey
and for the body of the County of Camden, upon

their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking oath, Present, that Charles E. Morris, late of the City of Camden, in the said County of Camden, on the twenty-third day of July, in the year of our Lord one thousand nine hundred and twenty-two, at the city aforesaid, in the county aforesaid and within the jurisdiction of this Court, did wilfully and maliciously set fire to
10 and burn a certain dwelling house and shop, situate at number 1203 Haddon Avenue, in the City and County of Camden, aforesaid, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation, as aforesaid, do Further Present, that the said Charles E. Morris, on the day and year aforesaid, at the city and in the
20 county aforesaid and within the jurisdiction of this Court, did wilfully and maliciously cause to be set fire and burned, a certain dwelling house and shop, situate at number 1203 Haddon Avenue, in the City and County of Camden, aforesaid, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation, as aforesaid, do Further Present, that the said Charles E. Morris, on the day and year aforesaid, at the city and in the
30 county aforesaid, and within the jurisdiction of this Court, did wilfully and maliciously aid, counsel, procure and consent to the setting fire and burning a certain dwelling house and shop situate at number 1203 Haddon Avenue, in the City and County of

Camden, aforesaid, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.

CHAS. A. WOLVERTON;
Prosecutor of the Pleas.

A true bill.
WILFRED W. FRY,
Foreman.
Filed Sept. 11, 1922.
WM. D. BROWN,
County Clerk.

10

Which said indictment with sundry other indictments, was to wit, on the eleventh day of September, in the year of our Lord one thousand nine hundred and twenty-two, at the Court of Oyer and Terminer, holden at Camden, in and for the County of Camden, aforesaid, before Samuel M. Shay, Judge of the Court of Common Pleas and Court of Quarter Sessions, of said county, in the absence of Frank S. Katzenbach, Jr., Justice of the Supreme Court, assigned to hold the Circuit Court of the County of Camden, holden at Camden, duly delivered here in court by the grand jurors aforesaid in and by said presentment, in due form to law to be determined, and afterwards, to wit: on the eleventh day of September, in the year of our Lord one thousand nine hundred and twenty-two, on motion of the prosecutor, the above indictment was ordered handed down by the Court of Oyer and Terminer for trial in the Court of Quarter Sessions.

20

30

Whereupon the nineteenth day of October, in the year of our lord one thousand nine hundred and

twenty-two, before the Court of Quarter Sessions aforesaid, the defendant, Charles E. Morris, was ordered to be placed at the bar to plead, and on being charged by the prosecutor plead not guilty, and trial of the cause was moved, whereupon the Court ordered the sheriff to return the *venire facias* to him directed and delivered in this case with the following panel of jurors, who being duly sworn took their seats in the box, to wit:

- 10 Mary L. Bovell, s. Martha Rockwell, s.
 Charles Anderson, s. Samuel Coles, s.
 Thos. C. Wright s. Joseph H. Hall, s.
 Charles D. Ledyard s. Clara Quinn, s.
 Andrew Vanzant s. Francis Parkinson, s.
 Sarah A. R. Weltman s. Jackson Maglathery, s.
 and having heard the testimony of Charles P. Hey, sworn, Edward S. Hyde, sworn, Charles Watkins, sworn, James Clay, sworn, Clarence Pursglove, sworn, Charles M. Gladney, sworn, William W. Pat-
 20 terson, sworn, John Hunt, sworn, Samuel Price, sworn, Peter B. Carter, sworn, Anna A. Tood, sworn, Norman B. Stinson, sworn, Eva V. Veidt, sworn, Henry H. Cherry, sworn, Arthur Collins, sworn, Israel E. Fridrich, sworn, Charles Whaland, sworn, in behalf of the State, and having heard the testimony of Charles E. Morris, sworn, Norman B. Stinson, recalled, August Pfeiderer, sworn, Camillas V. Apley, sworn, Annie Weinstein, sworn, Mary M. Weinstein, sworn, Israel Wiseman, sworn, Simon Roth-
 30 man, sworn, Lillian Nurock, sworn, Anna Morris, sworn, Samuel R. Franklin, sworn, J. Hartley Bowen, sworn, Max Sacks, sworn, William Ratener, sworn, Nathan Ostroff, sworn, Harry Munetz, sworn, Minnie Morris, sworn, Fannie Morris, sworn, in behalf of the defendant, and having heard the testimony of Charles Whaland, recalled in behalf of the State in rebuttal.

The evidence being closed and counsel having summed up the cause to the jury, the jury retired after being charged by the Court, with officers Evans and Miles, sworn to attend them, after an absence they return to the Court, and being called, all appear, and say they have agreed upon their verdict, and by their foreman, upon their oath do further say they find the defendant, Charles E. Morris, guilty of the second count only, and so say they all.

And afterwards, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, before the Court of Quarter Sessions, at Camden, aforesaid, cometh the said Charles E. Morris, and having been brought to the bar in his proper person to receive the judgment of the law, 10

Charles A. Wolverton, Esquire, the said Prosecutor of the Pleas, then moved for the judgment of the law.

Whereupon, on the said twenty-fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, at Camden, in the County of Camden, aforesaid, all and singular, the premises being seen by the Court here fully understood, it is considered and adjudged by the Court that the said defendant, Charles E. Morris be confined in the State Prison at Trenton, New Jersey, at hard labor for a term of not less than two years nor more than fifteen years and from thence until costs of prosecution are paid. 20

STATE OF NEW JERSEY.
COUNTY OF CAMDEN.

I, William D. Brown, clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of the records and proceedings with all touching the same in the case of

10 THE STATE,

v.

CHARLES E. MORRIS.

} Sur Indictment
Arson.

filed October 24th, 1922, and recorded in the clerk's office of the County of Camden, in book—5—of Quarter Sessions minutes, page 282.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at Camden, this twelfth day of December, A. D. 1922.

20 (Seal)

WM. D. BROWN,
Clerk.

TESTIMONY.

CAMDEN COUNTY COURT OF QUARTER
SESSIONS.

STATE

v.

CHARLES E. MORRIS.

}

On Indictment, etc. 10

October 19, 20, 1922.

APPEARANCES:

For the State, ALBERT E. BURLING, Esq.

For the Defendant, ALBERT S. WOODRUFF, Esq.

20

Before SHAY, J., and a Jury.

Mr. Woodruff: In this case, State v. Morris, there is an indictment which comprises three counts; the first count charges Mr. Morris directly with setting fire to a store and dwelling on a certain day, the day 30 of this fire; the second count alleges that he wilfully and maliciously caused to be set fire and burned a certain dwelling and shop, and so on, and the third count, he wilfully and maliciously counseled, procured and consented to the setting fire of a certain dwelling shop. My motion is, as to these two latter

counts, that they be quashed or dismissed, because there is no sufficient allegation there to put us upon our defense. There is no indication of any person with whom we are supposed to have counseled, no person with whom we are supposed to have conspired, no circumstances that indicate any conspiracy, and there is nothing in the nature of the two counts to warn this man, who is the defendant in this case, and who was absent from the city all of that day, of what it is he is to meet.

I have served in addition to that, in this case, a demand for a bill of particulars. The prosecutor did not see fit to give me a formal answer to that demand, but informally at his office he told me that he would give me no further particulars as to the first count, which alleges that Mr. Morris did on that day set fire to his building. As to that we are entitled to a greater definiteness in the charge, because both the prosecutor and myself know, it is an admitted fact in this case, that Mr. Morris and his family left the house at six o'clock in the morning on that day, and did not return until the following morning, the fire taking place at twelve o'clock at night. Now, if it is the idea of the State that the fire was of an incendiary origin, caused by a timing device, or some such thing, it seems to me we are entitled to have some indication of that fact. We are prepared to show an alibi, prepared to show that Mr. Morris was not on the premises from six o'clock of the morning of that day until the following morning, but if the prosecutor intends to prove anything else other than that he did it himself at the time the fire broke out, then it seems to me we are entitled, in view of the fact of the known absence of Mr. Morris from the place, of some indication of what we have to meet. That the prosecutor has refused

to give me as to count one. As to counts two and three, the prosecutor has answered me only that they have no information of any person, any known person, with whom the defendant conspired, of any known person who visited the place. That is the only information that the prosecutor would give me on that point, and it seems to me that is not a sufficient answer to the bill of particulars, and we are not sufficiently apprised as to what the State expects to prove as to any of these three counts to be put on our defense. If we go on the information furnished us, if this man were acquitted on the counts here, there would be nothing to prevent the State from putting him in jeopardy of his freedom again on a more definite count, on this, or some other section of the statute, and that is the very purpose of requiring definiteness in this indictment, so that a man will not have to go on trial for his liberty a number of times on any possible charge the prosecutor may see fit to draw from circumstances which may or may not be a crime. There isn't any question there was a fire, and we are entitled to know everything surrounding that fire which the State charges against this man, so that we can definitely meet whatever the State is bringing against this man, and that I maintain we have not in the three counts. 10 20

Mr. Burling: As I understand it, the motion of counsel for the defendant contains two phases. As regards the motion to quash the indictment with respect to counts Nos. 2 and 3, in the case of State v. Brandt, cited in the Court of Errors and Appeals, 1909, which was construing section 126, which contains the same type of phraseology, the only distinction being that that particular section adds to it the 30

clause with respect to prejudicing a corporation, and so forth, it was held that, "The common law requirement that an indictment against an accessory should allege with particularity the commission of the principal offense, naming the offender, was highly technical and troublesome in its operation, and never obtained except with respect to felonies. The offense of which these defendants were convicted is a statutory offense, and is made by the statute a misdemeanor, and not a felony." The act under
10 which the State is proceeding in this matter is the Act of 1919, page 257, which amended section 123 of our New Jersey Crimes Act. That is a statutory act, because to a certain extent it has amended the common law theory of arson. That being the fact, and within the purview of the decision of the Brand case, all that it is necessary for the State to allege, from the standpoint of the purposes of the indictment, is that in charging the statutory offense, it is
20 sufficient to lay the charge in the words of the act, without a particular statement of facts, which will bring the accused within its operation. As I understand, there is no allegation we have not charged within the terms of the statute, therefore my answer to the first phase is that it has no standing in law.

With regard to the bill of particulars notice was served on the State that a motion would be made to the Court for a bill of particulars, and to conserve
30 the time of the Court and counsel for the defendant, Mr. Woodruff and I met in that regard with an endeavor to try and come to a common ground, and to see if the information that he had in mind in noticing the State could be furnished without a formal appearance. The first count of the indictment alleges that the defendant himself set fire to and

burned a certain dwelling; it alleges a specific date, it alleges a specific time and place. Now, the purpose of a bill of particulars in this State, "is to limit the proof to matters specified in the bill of particulars and to enable the other party to meet his opponent's proof without danger of surprise." Surely when a defendant is advised that he is charged with setting fire to a certain dwelling on a certain day, in a certain city, he is fully apprised of what he is going to be charged with, and it is not 10 necessary for the State to set forth any items of evidence of the manner in which the premises may or may not have been set on fire. That is a matter of proof, and the State is not, in fairness to the defendant required to give to the defendant the evidence by which it would tend to corroborate or substantiate the charges in the indictment. I say as to the first count the defendant has been fully apprised. If his defense is that of not guilty in its origin, or an alibi during the entire day, he has the oppor- 20 tunity to present those facts, and he has been fully apprised. With respect to two and three, I have told Mr. Woodruff verbally that "it is not the intention of the State to produce any direct evidence of the presence of any third person in the premises in question, or to allege the identity or the immediate presence of a third party that may have set fire to the premises in question," it seems to me with that statement, not limiting the State to the fact that someone did do the act, but apprising the 30 defendant the State has not the direct evidence of the presence of a third person, known or unknown in identity, we have fairly given to the defendant facts upon which he can answer those charges on the merits, and I therefore respectfully contend with respect to the motion for quashing the indictment

it has no standing in law, and with respect to his informal application in the manner in which I have described for a bill of particulars, we have given the defendant the full information he is entitled to under the law, that he may go to trial without prejudice to himself.

10 The Court: (After argument.) The Court feels that the motion for quashing the second and third counts should be denied, because of the statement just made to the Court by the prosecutor. The Court realizes it is very difficult for the prosecutor's office to try a case such as the case before the Court, and at the same time give all the most important evidence in the prosecutor's possession to the defendant. The Court feels that since this action is based upon a statutory act that it is not necessary to furnish as much information to the defendant as would be required under a common law action, and will
20 therefore deny the motion to quash the second and third counts.

(Exception noted.)

Mr. Woodruff: As regards my first motion, your Honor denies my motion that we are entitled to more specific details as to the first count?

The Court: Yes.

30

(Exception noted.)

Mr. Burling: I might make a statement, that in order to conserve the time of the panel yesterday, by and with the consent of the defendant, a jury was drawn before Judge Porch yesterday, and the pres-

ent jury in the box is the result of the drafting in the regular and legal way.

The Court: I understand that.

Mr. Burling: I think it would be well to enter upon the record that the defendant consents to trial before this jury and your Honor?

Mr. Woodruff: Yes.

10

Mr. Burling: Will the defendant, Charles E. Morris arise? (Defendant complies.) You are charged with the crime of arson upon three counts; the first count is that you did wilfully and maliciously set fire to and burn a certain dwelling house and shop situate at number 1203 Haddon Avenue, Camden, New Jersey. The second count is that you wilfully and maliciously caused to be set on fire and burned the said premises, and also the third count 20 that you did wilfully and maliciously aid, counsel, procure and consent to the setting fire and burning of a certain dwelling house and shop. To this indictment I understand you enter a plea of not guilty.

The Defendant: Not guilty.

(Mr. Burling opens the case to the jury for the State.)

30

THE CASE FOR THE STATE.

CHARLES P. HEY, commercial photographer sworn, testified to taking four pictures of premises No. 1203 Haddon Ave., July 28, 1922. Photographs then offered and marked S1, 2, 3 and 4.

10

EDWARD S. HYDE, sworn.

By Mr. Burling:

Q. You are the Chief of Police of the City of Camden, are you?

A. Yes, sir.

Q. On the evening of July 23, 1922, did you go to premises No. 1203 Haddon Avenue, or the early morning of the 24th?

20 A. The early morning, I guess, between half-past twelve and one o'clock.

Q. When you got there what did you see?

A. There had been a fire there, and Chief Carter of the fire department called my attention to it and showed me a runner, a carpet, and a lot of stockings there all saturated with oil; one of the firemen went to a shelf on the south side of the store and pulled down some boxes that were filled with stockings, and the stockings in the box were all saturated, and

30

we went in the back room and there was a book opened there, which I looked at the pages and they were saturated with oil.

Q. You have before you some materials, do they constitute this runner and rags delivered to you by Chief Carter that night?

A. Yes, sir.

Cross-examination.

By Mr. Woodruff:

Q. Where did you see them first, Chief?

A. Right in the store on a chair.

Q. On a chair?

A. Yes, rolled up.

Q. Somebody had rolled them up and put them on a chair when you got there?

10

A. Yes, sir.

Q. They weren't out on the floor?

A. No, on the chair.

Q. And the rags rolled up on it?

A. No, we did that afterward.

Q. These rags are the same as when you got them?

A. Yes, sir.

Q. Just the same as when you got them?

A. We picked them off the floor.

20

Q. And they are the same?

A. Yes, sir.

Q. Were they soaked with water and chemicals?

A. Not much, no; of course, it had been wet some, the odor of the oil you could smell plainly, it was strong.

Q. Hadn't they been in there with the chemicals?

A. I suppose they had.

Q. Couldn't you have smelled chemicals?

A. I don't think chemicals smell like that.

30

Q. Couldn't you smell chemicals?

A. No.

Q. You don't know whether they had been in with the chemicals or not, do you?

A. No, the fire was out when I got there.

Q. Those rags you kept them as they are now?

A. Yes.

Q. Ever since?

A. Yes.

CAPTAIN CHARLES W. WATKINS, SWORN.

By Mr. Burling:

10 Q. You are a captain in the fire department of Camden City, are you?

A. Yes, sir.

Q. On July 23rd what house were you connected with?

A. No. 7.

Q. Where is that located?

A. 1115 Kaighn Avenue.

Q. Did you respond to a fire at 1203 Haddon Avenue on the evening of July 23rd?

20 A. Yes, sir.

Q. When you got there had any other fire companies reached there?

A. No, sir.

Q. What did you discover?

30 A. I discovered a bunch of smoke coming from the building, and I jumped off the wagon immediately, grabbed my chemical line, and I ordered one of my men to break the door—we couldn't get in the door—and after we broke the glass we found a show case jammed up against the door, and I tried to push it away, and I did to a certain extent, and when I pushed it away it went up against a stationary show case, so finally we busted the door in, and I got in and I fought the fire with a chemical line, but the fire was growing, and I had to order my men to lead a water line off, and after we got the fire out I went

around to see what caused the fire, and I found these here stockings saturated with coal oil in different parts of the store.

Mr. Woodruff: Your Honor has already ruled against me as to our being permitted to have any more definite information. The prosecutor is now interposing a line of testimony, statements by these witnesses they were saturated with coal oil; there isn't any indication in the prosecutor's opening or any indication in the witness' testimony to connect that up with the defendant. The prosecutor has seen fit to stand on the allegation that the defendant himself set fire to the place, and it seems to me in view of that, unless the prosecutor is going to say to your Honor now that he is going to connect that up with this defendant all of this testimony is inadmissible. I don't want to object continuously, but ———

10

20

Mr. Burling: If the Court please, probably a formal objection as to each witness as to this class of testimony will be sufficient. I will make this statement at this time: As I said in my opening, the defendant is the past person who was seen leaving the premises on the same day of the fire; it seems to me that all the facts that relate to the corpus of the allegation, namely, whether or not this fire was of an accidental or incendiary origin, are surely admissible before the Court. The contact of the defendant with the crime is a matter of proof, a matter of determination by the jury, but it has no bearing on the relevancy of the testimony at this time. The part the State has to prove is that the fire was of incendiary origin, and the contact of the defendant with that fire is a matter of afterproof when

30

the entire case has been closed. I respectfully submit that as a bearing to show the fire of an incendiary origin it is absolutely admissible.

- 10 Mr. Woodruff: The prosecutor has read from the cases that the purpose of a bill of particulars is to apprise the defendant what he must meet. We had no indication of any claim that the fire department was going to say they found anything saturated with oil. There isn't any appearance of oil, we have only the statements, and there is no suggestion by the prosecutor he is going to connect Mr. Morris up with the coal oil and with these rags. We have not had the opportunity for a chemical analysis, we have not had an opportunity to question about these rags, what happened to them, where they came from, and several other things, because the prosecutor had refused to give us any information, and by the cases which he has read the defendant is entitled to that.
- 20 Your Honor will allow me an exception to that line of testimony?

The Court: Yes.

(Exception noted.)

Q. Just continue your testimony.

A. I saw, after we discovered these oil soaked stockings and these rags —

- 30 Mr. Woodruff: I object; this witness said he discovered oil soaked stockings; there isn't any proof in the case —

The Court: Only his testimony.

The Witness: These are the ones I gathered up.

The Court: It is a conclusion that this man has drawn from the stockings he saw, they were oil-soaked; as a normal being I believe he has a right to draw such a conclusion.

(Exception noted.)

The Witness: I say, these goods here, right here, I gathered up, bundled up, and put on the chair, and the Chief of the Fire Department took care of them and turned them over to the Chief of Police, and they were taken to the City Hall. 10

Cross-examination.

By Mr. Woodruff:

Q. And they are in the same condition now as they were then?

A. Not now, they are dried out.

Q. Did you see the oil yourself?

A. I smelled it.

Q. Was it kerosene oil?

A. Yes.

Q. And you say that kerosene oil is all dried out?

A. I don't know whether you can smell it now or not.

Q. Are they in the same condition now as when you gathered them up?

A. They were in piles.

Q. After you gathered them up?

A. Yes.

Q. They weren't soaked any more than that?

A. Just soaked good.

Q. And you say the kerosene oil has dried out?

A. They have dried out to a certain extent, yes; 30

they are dry now, they were wet with kerosene when I picked them up.

Q. Did you bundle them up in that paper?

A. No, in the rug.

Q. Rolled them up in the rug and turned them over to the Chief that way?

A. Yes.

Q. Rolled up in the rug that way they dried up, that is your argument?

10 A. I haven't seen them after they left the fire.

Q. Are they soaked with kerosene now?

A. They are pretty well dried out.

Q. Would you say these stockings are soaked with kerosene?

A. Not now, but they were.

Q. And the kerosene has by natural processes dried out to that extent?

A. They are the goods right there.

Q. Was it gasoline on them?

20 A. No, kerosene.

Q. Gasoline that might evaporate?

A. No, it was kerosene.

JAMES CLAY, sworn.

By Mr. Burling:

30 Q. Mr. Clay, you are a sergeant of the police department of the City of Camden, are you?

A. Yes, sir.

Q. On the evening of July 23rd you were in the vicinity of 1203 Haddon Avenue?

A. I was.

Q. Was there anything at that time that attracted your attention to the property I have referred to?

A. I got off the car in the neighborhood of about eight minutes to twelve, and I was in the act of putting my key in the door and I heard an explosion, two very quick —

Q. Where is your door?

A. 1201, next door, on the corner; the direction sounded as though it was south on Haddon Avenue, and I looked and I seen the flames gush out at the same time on the back, right to our side of the house. I immediately ran across the street and pulled the 10
box to get the fire department there, and I ran in the house to get the Mrs. out of the house, she was in there, and I was coming out to get the Morris family out—I didn't know they were away—and the fire department got there about the time I got out of the house after calling the lady, and I said to the firemen, "Be careful, there is oil in that place," you could smell it, and the smoke coiled out from the doorway. I was there after the flames were sub-
dued, and I myself, had hold of the stockings and 20
this runner, and they were put in the patrol wagon and sent to headquarters by order of Chief Hyde. Everything in general seemed to be saturated with kerosene oil.

Cross-examination.

By Mr. Woodruff:

Q. You say, "it seemed to be," when did you ob- 30
serve it?

A. When we picked up anything; as soon as the flames went out.

Q. After the fire was out?

A. Chief Carter said, "Look at this."

Q. After the fire was out?

A. Yes.

Q. After the fire was out you went in?

A. Yes.

Q. How long was that after the first explosion, that they suppressed the flames?

A. I suppose the firemen were at least twenty to twenty-five minutes to half an hour before they got the flames subdued.

10 Q. What was going on during that half hour from the time you saw this flash of flame and the time you went in?

A. The firemen were in there.

Q. With chemicals and water?

A. Had a chemical line on the front and water on the back.

Q. And all that was pouring in?

A. It was not.

Q. Wasn't that all pouring in, chemicals and water pouring in?

20 A. Whatever time it took to put it out.

Q. How many water lines?

A. Three lines up the alley.

Q. A line of chemical in the front and a line of water, and three going in the rear?

A. Yes.

Q. And all of that for half an hour?

A. I didn't keep any accurate account of that.

Q. You have stated it to be half an hour?

30 A. I would say half an hour from the time the fire was out.

Q. Where was the scene of the fire when you first saw the flame?

A. Bursting in through the transom, and there was some on the side.

Q. Did you get a view inside to see where the focus was?

A. About center in the store I could see it before the fire department arrived there.

Q. Where were you looking in?

A. In the doorway, trying to look inside the door, and there is a case there and a little side entrance, and you could see the flames.

Q. You are a neighbor there?

A. Yes.

Q. How long have you been a neighbor of Mr. Morris?

10

A. Three years.

Q. Then you know it has been his habit all the time to have that case there?

A. No, I don't, never seen the case there before in my life.

Q. Did you ever look?

A. No, I had no occasion to look, so I don't know whether it was there or whether it was not.

Q. You never observed that case before?

A. No.

20

Q. How close do you live?

A. Right next door. If I seen that case I might have took it for a curtain over his glass window.

Q. A curtain between the case and the window?

A. I said if I noticed anything there with the light shining I would have taken it for a curtain.

Q. How near a neighbor are you?

A. Right next door.

Q. And when you went in did you help gather up anything?

30

A. No, I picked them up in my hand and smelled them, and they were saturated with oil and I laid them down.

Q. Did you find any container of oil?

A. I didn't myself, no.

Q. All you found is just these that are here?

A. A lot of stuff they didn't take, for instance, the telephone books, and it looked like rags setting over these seats the people sit on, the benches, seemed to be saturated.

Q. What did you pick up, I don't mean what seemed to be saturated?

A. Stockings.

Q. That is all you picked up?

A. That was enough.

10 Q. That is all you picked up yourself, wasn't it?

A. Yes.

Mr. Woodruff: I ask that this witness' testimony in regard to the other articles except the stockings be stricken out.

The Court: The testimony just given by the witness as to other things in this store being saturated, and didn't personally examine, shall be stricken
20 from the record.

CLARENCE PERSGLOVE, SWORN.

By Mr. Burling:

Q. You are a fireman of Camden City?

A. Yes.

30 Q. What house were you attached to on the 23rd of July?

A. No. 7.

Q. Did you respond to a fire at 1203 Haddon Avenue?

A. I did.

Q. Describe to the Court and jury what you discovered when you arrived there?

A. When I arrived there there was a show case up against the door and lots of black smoke coming out of the building, and I was ordered to break the door open —

Q. One moment please; will you say whether or not that represents the show case? (Showing witness picture.)

A. Yes, sir.

Q. That you refer to in your testimony?

A. Yes. So I was ordered to break the door open 10
by the captain, which I did, and then we shoved the show case over a little ways, and we couldn't get all the way in then, and then I takes the axe and breaks the door open right and we shoved the door back, and we upset the show case, which there was another stationary show case back of that which blocked the whole thing; so finally the captain got in there with his chemical line, and also me in back of them, and there was certainly some smoke coming 20
out of that place.

Q. From your experience as a fireman could you tell the character of the smoke?

A. I could swear it was oil.

Mr. Woodruff: I object; that calls for an answer yes or no.

The Court: Answer yes or no to that.

(Question repeated.)

30

A. Yes, sir.

Q. From your experience what character would you say was emanating from there?

Mr. Woodruff: I object; I don't think this witness is properly qualified.

Q. How long have you been a Camden City fireman?

A. Going on five years.

Q. During that time have you been continuously fighting fires?

A. Yes, sir.

Mr. Burling: It seems to me, if the Court please—

10 The Court: I think I should accept his testimony.

(Exception noted.)

Q. From your experience what would you say the character of that smoke was?

A. Well, I would say it was oil.

Q. What leads you to the conclusion it had its origin from oil?

20 A. Well, it was awful black smoke, and awful heavy smoke, and I certainly can tell the difference in smoke.

Q. Did it have any odor?

A. Yes, strong.

Q. Odor of what?

A. Coal oil.

Q. Now, after the fire was subdued were you still on the premises?

A. Yes, sir.

Q. Did you make an inspection of it?

30 A. Yes, sir.

Q. What did you see there that attracted your attention, if anything?

A. Well, I seen this runner on the floor saturated with oil. I was ordered to lift it off the floor and smell it by the Chief, which I did, and the oil, you could take it and wipe it off with your hands. I

picked that off the floor and turned it over, and as I did you could see the oil on there, you could take your hands that way and wipe the oil off the bottom of it.

Q. Was there anything else that attracted your attention in the room?

A. No, that is about all. No, these rags, some of those rags I saw the other firemen pick them up, which was saturated with oil.

10

Cross-examination.

By Mr. Woodruff:

Q. You were the first man, you and the captain?

A. The second man.

Q. You followed the captain?

A. Yes, sir.

Q. You went in there?

A. Yes.

20

Q. This show case that was up against the door is a metal show case on wheels, isn't it?

A. No, I don't think there was any wheels on it.

Q. You didn't observe that?

A. What?

Q. You didn't observe whether there were wheels or not?

A. No.

Q. The case that it got caught against where it had been pushed in between the door and the case—

30

A. We tried to push it back and there was a show case.

Q. That was stationary?

A. Yes.

Q. This movable show case had been pushed up against the door and it came in between the stationary case and the door?

A. Yes.

Q. Didn't you notice at that time you could take your hands and push that case away?

A. No.

Q. You couldn't push it back against the stationary case, but couldn't you push it sideways?

A. No, the fire and smoke was so great.

Q. It wasn't because it wasn't on wheels?

A. I couldn't say whether it was on wheels or not.

10 Q. And the fire and smoke were so bad you didn't have time to find out?

A. Yes.

Q. Weren't the windows broken out by that time?

A. One front window.

Q. This door, had the glass been broken by the explosion?

A. No, I broke that open.

Q. Were you there before Clay?

A. No.

20 Q. Wasn't the glass of the door broken by this explosion?

A. No.

Q. That wasn't broken when you got there?

A. No, sir.

Q. And Clay was there before you?

A. I didn't see him until after I was there for quite a while.

Q. Was there an explosion after you got there?

A. No, not after I got there.

30 Q. And you didn't see Clay after you got there for quite a while?

A. He must have been there, but I didn't see him.

Q. Did you see him?

A. No, not at that time.

Q. What line of hose did you play first?

A. The chemical line.

Q. How long did you keep that on?

A. Well, we no more than got in and the captain said, "We will have to get a water line," the fire was so great.

Q. How many lines of water did you put in?

A. One line of water in the front and one chemical.

Q. How many at the side?

A. I couldn't say.

Q. When you went in the store, you and the captain — 10

A. Yes.

Q. Where was the center of the flame?

A. Right at the back end of the store.

Q. Which corner?

A. On the right-hand corner.

Q. What was there after the fire had been subdued?

A. The window was open there.

Q. The window? 20

A. Wide open.

Q. Was it wide open, do you remember?

A. After the fire was out, after we got back, the window was open.

Q. Right where this had happened?

A. Right where the heaviest part of the fire was.

Q. By this open window?

A. Yes.

Q. Is that where the rags were, in that vicinity?

A. Some were found on the top of the show case. 30

Q. How far did that show case run back, to the open window?

A. In the back end of the store.

Q. There was a show case and counter then that ran all the way along?

A. Yes.

Q. What was back there?

A. A desk back in the corner, I am pretty sure.

Q. A sewing machine?

A. I couldn't say about that.

Q. You don't remember about that?

A. No.

Q. Were these rags pulled out of the case?

A. Some of them were picked up on the floor, and there were some of them picked out of the show
10 case.

Q. Those picked off the floor, were they right by the open window?

A. No, right at the front door.

Q. Where did this window open on?

A. That was the back end of the store on the right side.

Q. Back end of the store on the right side?

A. Yes, sir.

Q. And it opened on what?

20 A. An areaway there, I couldn't tell you whether it was a yard or what.

Q. That wasn't where the other lines of hose were?

A. I couldn't tell you about any other lines, only the two in the front.

Q. The others weren't playing where you were?

A. Some were.

Q. Weren't they coming from the side by the oil station?

30 A. I couldn't tell you.

Q. They weren't coming through that window?

A. I couldn't tell you that.

Q. Don't you know where the other lines of hose were playing?

A. They came up a back alley off Kaighn Avenue.

Q. That wasn't where the window was?

A. No, I don't think so.

Q. You didn't open the window?

A. No, sir.

Q. And as soon as you subdued the fire, where you found it to be the hottest, that is where you found the open window?

A. That is where the fire was the hottest, towards the open window.

10

CHARLES M. GLADNEY, SWORN.

By Mr. Burling:

Q. Mr. Gladney, you are a fireman of the City of Camden?

A. I am.

Q. On the 23rd of July what house were you stationed at?

20

A. Headquarters, Fifth and Arch.

Q. Did you respond to a fire at 1203 Haddon Avenue?

A. Yes.

Q. What did you discover?

A. When we first landed I heard them crash the glass in the front door, discovered a dense smoke coming out, I jumps out of my car, which I am the Deputy Chief's driver, gets my spotlight, and goes over, following Captain Watkins and one of his men, Mr. Persglove. There was a heavy odor of oil, and we gets inside and gets the fire knocked down, and Chief Carter says, "There is an oil substance here, get the water lines out as soon as you can" —

30

Mr. Woodruff: I object to what the Chief said.

The Court: Yes, it will be stricken out; what the Chief said will be stricken from the record.

The Witness: We looked around through the place after they got the fire down pretty well, and we discovered some stockings which was saturated with oil, which smelled of coal oil, and there was a runner lifted off the floor, and we smelled that, and when that was lefted from the water on the floor it
10 left an oil scum on the water that was on the floor. After that we made a tour through the building to the upstairs, and on the upstairs banisters we found rags hanging on the side of the rails.

Q. Can you say whether or not the runner before you is the runner you saw that night?

A. Yes.

Q. What about the rags in front of you?

A. The stockings were of brown, white and black.

20

Cross-examination.

By Mr. Woodruff:

Q. They are the stockings you picked up?

A. Yes, sir.

Q. You picked up this rug off the floor where you had been playing the hose for twenty-five minutes or half an hour, didn't you?

30 A. The hose was in that long, but I can't say how steady a stream was there because we have a shut-off on our lines and nobody on the outside can tell how much water is going through.

Q. It was a hot fire?

A. Yes.

Q. And you played all the necessary water in there?

A. We cut the heaviest fire down and we look for the sparks afterward; we don't keep a heavy line in for a few sparks.

Q. Everything was soaked?

A. In the rear end, yes.

Q. The floor?

A. A little water on the floor.

Q. Only a little water on the floor with all that hose playing in there?

A. Yes.

10

Q. It was played in the same place?

A. A floor of that kind isn't made level, it will run out as it is put in.

Q. That is where you had been playing it, where the runner was on the floor?

A. Yes.

Q. You say when you lifted it up it left a scum?

A. Yes.

Q. The scene of the fire was back where?

A. The northwest end of the building.

20

Q. Did you find the window open there?

A. I couldn't say nothing about the window; I don't know whether it was open or not.

Q. You didn't notice that?

A. No, sir.

Q. There is a gasoline station right next door?

A. An automobile accessory place that is.

Q. Where they sell gas, oil, and all that sort of thing?

A. Yes.

30

Q. Nobody around the place at all?

A. No one I know of of the property was around.

Q. Who was there when you got there?

A. No. 7 Engine Company, No. 2 Truck.

Q. They were all there when you got there?

A. Yes, sir.

DEPUTY CHIEF WILLIAM W. PATTERSON, SWORN.

By Mr. Burling:

Q. You are the Deputy Chief of the Fire Department of Camden City?

A. Yes, sir.

10 Q. Did you respond to a fire on the evening of July 23rd at premises No. 1203 Haddon Avenue?

A. I did.

Q. Will you describe to the Court and jury what you discovered when you got there?

20 A. When I got there No. 7, and No. 8, and No. 2 truck was there, so I ran over there, and the first thing some man told me there was a man in the second story and I got a ladder up there, and by that time they had the chemical there, and I told two men to go around back with the chemical and come in the back way, and they done it, and by the time I came around they got a water line in through the window.

Q. Which window?

A. The side window.

Q. Upstairs or down?

A. Downstairs.

Q. Did you open that window?

A. Yes, sir, the window upstairs was open to let the smoke out.

30 Q. I mean downstairs?

A. I couldn't say that, I think that was broke with the line?

Q. Now, from your experience as a fireman—you have been a fireman how long?

A. Twenty-nine years.

Q. You are experienced and know the type of flames and smokes, are you?

Mr. Woodruff: I object to the form of the question.

Q. Can you distinguish types of smoke with respect to their possible origin or beginning?

A. Well, as soon as I got in there I could detect coal oil.

Mr. Woodruff: I object.

Q. When you went in the premises did you detect anything by way of odor? 10

A. I smelled coal oil.

Q. What was the character of the smoke?

A. Very black.

Q. Dense or light?

A. Dark.

Q. Was it heavy?

A. Very heavy.

Q. Heavy in volume?

A. Well, yes, I should say it was. 20

Q. Would that be the type of smoke coming from the burning of kerosene?

Mr. Woodruff: I object.

The Court: On what grounds?

Mr. Woodruff: The form of it, it is extremely leading. 30

The Court: I agree with you.

Q. From the type of smoke that you discovered, and this odor, what in your opinion would have been its origin?

Mr. Woodruff: I object; I don't think proper qualifications have been shown.

Q. You have had experience in combatting fires how many years?

A. Twenty-nine years.

Q. And in that time you have come in contact with fires of different types, have you?

A. Yes.

10 Q. You have come in contact with smokes of different types?

A. Yes, sir.

Q. And from your experience in that respect are you able to judge the type of the smoke or its character?

Mr. Woodruff: That calls for an answer yes or no.

A. Yes, sir, I can.

20 Q. Then from your experience, and the odor and the type of smoke you saw, could it have come from a kerosene origin?

Mr. Woodruff: I object, because of its leading character, and also on the previous grounds.

The Court: I feel he is qualified, but I think you ought to reframe your question.

30 Q. Was there any evidence of kerosene smoke then?

Mr. Woodruff: I object, if the Court please.

A. We discovered—

The Court: I will allow the question.

(Exception noted.)

Mr. Burling: I have tried not to make the questions leading, and I am satisfied for the Court to ask the question if your Honor desires to. I have tried to get the information without leading.

The Court: I have allowed your question, Mr. Burling.

The Witness: When I arrived?

10

Q. Yes.

A. As soon as I got there we discovered—

Q. What?

A. —the smell and odor of kerosene oil.

Cross-examination.

By Mr. Woodruff:

20

Q. What was it that somebody told you about the second floor?

A. We put a ladder up to lower the window and let the smoke out, and one man said there was a man in the room.

Q. Somebody told you there was a man up there?

A. Yes.

Q. And you put the ladder up?

A. I ordered the men to put the ladder up, sure.

Q. Up to the window?

30

A. Yes.

Q. Did you see the man up there?

A. No, sir.

Q. Didn't see anybody at all?

A. We went through and didn't see nobody.

Q. You don't know who it was who told you?

A. It seemed to me, I think it was the sergeant, it sounded like his voice.

Q. You went upstairs, did you, after that?

A. I went upstairs and looked maybe ten minutes after that, I didn't go upstairs right away.

Q. That is where your men were putting the water?

A. There was no water went upstairs.

10 Q. Did your men put any water on the floors?

A. Yes, on the first floor.

Q. Where was your line of hose?

A. One in front and in the back, and one in the side, two chemicals and a water line.

Q. That is the same line of hose that has already been testified to?

A. They had the lines going there before I got there; they had the lines in there before I got there.

20 Q. How many more did you put in after you got in there?

A. I didn't order any, they went in there themselves.

Q. How many had you been running after you got there, how many additional lines?

A. Two lines of chemicals in there.

Q. Two lines of chemical?

A. Yes, sir.

Q. That was by your men?

A. Well, they were all my men, I guess.

30 Q. How many lines of chemical were there when you got there?

A. Two.

Q. How many lines of water hose were playing on this fire?

A. None.

Q. None when you got there?

A. Not at that time.

Q. But two lines of chemical were playing in this store, were they?

A. Yes.

Q. And after that—

A. I told one of the men, Captain No. 8, to take his line out and go in back and leave Captain Watson have the front end.

Q. You didn't have anything to do with putting the water on the fire?

A. No, I place the men where to go.

Q. With the water hose?

A. I didn't have nothing to do with the water hose, I didn't have that.

Q. So you can't tell us how many water lines were in there?

A. One line of water hose.

Q. Is that all?

A. Yes.

Q. Two lines of chemical and one of water, is that all they played in there at any time?

A. That is all.

Q. And two lines of chemical, one in front—

A. They did on the start, and one came out and went to the back.

Q. You pulled one out and that went to the back?

A. Yes, sir.

Q. Where was the other line, the water hose in there?

A. On the side, in the window back in off Kaighn Avenue.

Q. That came in from Kaighn Avenue, did it?

A. Yes.

Q. Who put the line of water hose that went in the front?

A. There wasn't none.

Q. I understood from the other fireman they had a line in the front.

A. Not to my knowledge.

Q. Was there, or don't you know about that?

A. I wouldn't swear to it, but I know the line came in the side.

Q. Now, where you led the hose in from Kaighn Avenue, that wasn't in the window?

A. Coming through the window.

10 Q. What window?

A. On the side.

Q. Which side, and where?

A. The side of the building where the fire was.

Q. Did you open the window?

A. No, sir.

Q. You didn't open any window?

A. No, sir.

Q. How did you get your line of hose in?

A. The line of hose was in there before I got there

20 I am telling you.

Q. After you got there you didn't place any line of hose?

A. No, only the one I took out and told to go back.

Q. You didn't open a window to do that?

A. No, sir.

Q. Did you have anything to do with this Captain and this man Persglove who went in the front and played on the thickest of the fire?

A. No, sir, I didn't disturb them.

30 Q. And you didn't go in there while they were fighting that fire?

A. I did after they took the line around back, I went in front.

JOHN HUNT, sworn.

By Mr. Burling:

Q. Mr. Hunt, you are a fireman of the city department?

A. Lieutenant, No. 8 Engine Company.

Q. Connected with what house?

A. No. 8 house.

Q. On the evening of July 23rd did you respond to a fire at 1203 Haddon Avenue?

A. Yes, sir.

Q. What time was it?

A. I imagine it was close to midnight.

Q. What did you discover when you got there?

A. I pulled in there, and No. 7 wagon was stopped in front of the door, and they had their chemical line in there, and I stopped ahead of them, and I took my chemical line and went in as far as you could get in—they had a space, I imagine, about eighteen inches to slide in, and they used a water line, and when they brought the water line I was in there trying to get over the top of a box, which I didn't see what it was until I got inside, and then I was there for a while, and after I imagine not over five minutes, I would say, at that time Chief Patterson told me to go in the back, and as I goes in the back on the south side of the building next door—we went in the alley and jumped a fence, and as I come in, two of my men, I told them to come with me, and the shed door, as I shoved the shed door in—first one of the fellows said to me, he said, "Lieutenant, it is bursted out, this window—"

Mr. Woodruff: I object; just what you saw, Lieutenant.

10 A. I had to take instructions from them so they could tell me. I shoved that door in and I went up the alley—there was an alley there, seemed to be back of the building on the north side, and the windows, I imagine, had been blowed out, because when I went there there was no glass in the windows at all, and I took the chemical line and I got in the window as far as I could, and there was a line that came over the fence from Kaighn Avenue, a water line, and that water line was handed to me, and I goes to work and puts the water line in there, and I takes the chemical line and hands it to one of my men and told them to bust the window, which there was a door they couldn't open, and I said, "Spray that room around," and I used the water line in the store. I got in as far as—I imagine six foot, anyhow, I was there, and it seemed all around me there was like counters, I imagine it was a counter, and some stuff piled there, and it was some hot and some smoke.

20 Q. When you entered the premises was there smoke in the room?

A. She certainly was.

Q. Was it dense or light in volume?

A. You couldn't see your hand in front of you.

Q. What color was it?

A. It was some black.

Q. Did it have any odor?

A. Coal oil.

30 Q. After the fire was out did you look around the building at all?

A. After the fire was out I went in there and I happened to see this runner, I seen that, and you could pick rags up there, and I was ordered to take up and and go home after I had seen this stuff. There was some rags in towards the back, just going in, and I happened to go down the cellar to look around,

I got down that far to see if probably there was anything down the cellar, which I could see no fire.

Q. Did you pick up any of the rags and smell them?

A. You couldn't help it.

Q. Was there any odor of kerosene?

Mr. Woodruff: If the Court please, the same objection.

10

By the Court:

Q. You picked up some of these rags?

A. Yes, sir.

Q. Did you smell them?

A. Yes, sir.

Q. What did they smell like?

A. Coal oil of the worst kind; well, you could ring the coal oil out of them, that is how bad they were.

20

Cross-examination.

By Mr. Woodruff:

Q. Are they the rags?

A. On these rags I am taking for the rags that were in back of the store, when I picked up the rags.

Q. Are these the rags, I am asking you?

A. I wouldn't say on these rags.

Q. Didn't you help pick them up and help put them in the car? 30

A. I had taken up and gone back when these rags were found, but the rags I picked up those I could swear were full of oil.

Q. They were near the window you didn't have to open, weren't they?

A. Yes.

Q. And that was the window that led out into the alley?

A. Yes.

Q. And they were near that, and that is where the center of the fire was?

A. I imagine it was.

Q. That was the hottest place in the store?

A. Yes, she was some hot.

Q. Right by the open window?

10 A. Yes.

Q. Was there anybody there around that window when you went there?

A. No. 7 gets in there first.

Q. I mean, when you went up the alley to this window?

A. No, sir.

Q. And when you went in there and looked through that window that is where the center of the fire seemed to be?

20 A. Yes, sir.

Q. Did you see anything inside in the way of fixtures?

A. Well, I imagine it was a desk, because when I got in I dropped down, and when I dropped down I couldn't go that way, I had to go that way, and I imagine it was a desk or counter, and when I got in I hollered to Captain Watkins I was in there with a water line.

30 Q. Did you observe a sewing machine in the corner?

A. There was some kind of a machine there, but what it was I couldn't say.

Q. What electric wires were in the corner that you noticed?

A. I didn't take much notice of that.

Q. Didn't you cut a loose line of cable there?

A. Not to my knowledge.

Q. Do you know who did?

A. No, sir.

Q. Didn't you see a long cable, fifty feet long, that led to a lamp on the sewing machine?

A. No.

Q. Do you know who did cut that?

A. No, sir, I do not.

Q. You don't know?

A. No, sir.

10

CAPTAIN SAMUEL PRICE, SWORN

By Mr. Burling:

Q. Captain, you are a fireman of the City of Camden?

A. Yes, sir.

20

Q. How long have you been a fireman?

A. Twenty-two years.

Q. Connected with what house?

A. No. 2 Truck House.

Q. On the evening of July 23rd did you respond to a fire at premises 1203 Haddon Avenue?

A. Yes.

Q. About what time?

A. 11.33.

Q. What did you discover when you got there?

30

A. When we got there they were trying to break in the front door, and smoke was issuing from the second floor and the first floor, and we placed a ladder up to the second floor on the front of the building, and I goes up the ladder, and I goes through the top floor, and saw nobody up there; the smoke was

heavy and dense and I stayed there as long as I could, went through the building and came out, and by that time they were hollering for a line in the back part and I helped with that, and helped Lieutenant Hunt over the fence and he played it into the window and went on in.

Q. What was the type of the smoke in there, was it dense or light?

A. Very heavy smoke.

10 Q. What color?

A. Dark, heavy smoke, like an oily smoke.

Q. Was there any odor to it?

A. Yes, some odor of coal oil.

Q. After the fire was out did you look around the building?

A. After the fire was down we went in and looked around, and the men discovered there was carpet, and rags, and things lying around.

Q. Did you examine them yourself?

20 A. I examined the carpet and smelled it, and it smelled like coal oil.

Cross-examination.

By Mr. Woodruff:

Q. Were you one of the first to get there, Captain?

A. No. 7 were first.

Q. They were ahead of you?

30 A. No. 7 and No. 8.

Q. When you got there they were still trying to break down the front door?

A. The front door.

Q. You weren't there when there was any explosion that blew out the windows?

A. Didn't see any.

Q. Did the door have to be broken in, or had it been broken?

A. They had already broke it in.

Q. It hadn't been broken loose by the explosion?

A. No.

Q. Did you see Officer Clay there?

A. I don't know him.

Q. Officer Clay of the police department, he is at the desk in police headquarters, don't you know him?

A. No.

10

Q. Did you see him on the stand?

A. Yes.

Q. Did you see him there?

A. I don't know as I did.

Q. How many lines of hose do you know that were played on that fire?

A. All I know of is one line in the back part.

Q. What was that, chemical or water?

A. Water.

Q. Who had that line?

20

A. We had taken it around there, my men and I, and handed it over a fence to Lieutenant Hunt.

Q. That was the one Hunt took up the areaway and put in this open window?

A. Yes.

Q. Was there anybody in the alley with you?

A. He has his men.

Q. Was there anybody in there?

A. He belongs to No. 8 and I belong to No. 2 truck.

Q. Was he there when you put the hose in the window?

30

A. Put it in the window?

Q. He didn't have to open the window, did he?

A. I couldn't tell you that.

Q. Didn't you observe the window was already open?

A. There was a fence between us and him.

Q. So you couldn't see?

A. No.

Q. You don't know anything about the other line of hose?

A. No.

Q. Do you know where the focus of the fire was, the hottest point?

A. It all seemed to be in the back part.

10 Q. Around this open window?

A. Yes.

Q. What was inside; did you see afterward?

A. After we got in there and looked around we found—as I told you, I seen different—

Q. I mean there in this corner?

A. I don't know about that.

Q. Do you know about this cable that led to the sewing machine in the corner?

A. No, sir.

20 Q. You don't know about that?

A. No.

CHIEF PETER CARTER, SWORN.

By Mr. Burling:

30 Q. You are Chief of the Fire Department of Camden City?

A. I am, yes, sir.

Q. On the evening of July 23rd did you respond to a fire at 1203 Haddon Avenue?

A. Yes.

Q. What time?

A. 12.53 P. M.

Q. What did you discover?

A. It is a rule for me to look over the situation and see how my apparatus and men are placed, and I saw No. 7 wagon at the front, and I immediately walked over to them, and they were trying to get in the door, and I told them to break it down, or otherwise get a rammer and ram it away—I knew there was some obstruction, but I didn't know what it was, and I quickly saw to the north a one-story building, there is an automobile accessory store there, and 10 direct to the rear of it there is a window that goes in the north side of this store, which was out, and the flames were shooting out, and I ordered a hose line off No. 7 engine which was hooked up at the hydrant at Charlie Kaufman's place on Kaighn Avenue, and I ordered Captain Price and his men up this alley off Kaighn Avenue to the rear of this building, and they came in the yard, and by that time Lieutenant Hunt, through the orders of Chief Pat- 20 terson had went to the south side of the delicatessen store, and they comes up the alley and over the fence, and Hunt had went to break the door in—the smoke was too thick for him in there, he said, and I told his men to go up the alley, it is a three feet alley, and I could stand and look over the fence, and by this time I had the line from Kaighn Avenue, and I ordered Captain Price to hand the line to Hunt, and I said, "Just flow a spray in there, not a full stream," and by that time I went out and around the front of the building, and Captain Watkins said, "We can't 30 hit the fire with the chemical," and I said, "Immediately a water line, but just a spray," I told him to shut his shut-off inside down, not to flood the place, which he did. After the fire was down I smelled coal oil, and smelled it very strongly, and I ordered an investigation by the officers of these com-

panies, and they went around. I picked up the rug myself, this runner off the floor, and I wanted every man to see it, and I said, "Roll this up," and I think it was Sergeant Clay, I said, "I want you to—"

Mr. Woodruff: We don't want you to say—

The Witness: I told him to get in connection with Chief Hyde—

10

Mr. Woodruff: I object.

The Court: That isn't material.

20

The Witness: I told him to get in connection with Chief Hyde and have him come there immediately, and Chief Hyde came and I turned the stuff over to Chief Hyde and I told him it was up to him for an investigation. There were stockings and this runner off the floor, and there were books, and there were rags that were burned so when you picked them up they would fall apart, and I smelled of these and they smelled of coal oil.

Q. What was the character of the smoke?

A. Very thick.

Q. Did it have an odor?

A. Very much so.

Q. Of what?

30

A. Coal oil, that was the reason I ordered the investigation.

Q. Now, were you present at the property three or four days after that when some photographs were made?

A. Yes, sir.

Q. Testified to by the photographer?

A. Yes, sir, but you didn't let me explain. I ordered the men at the second floor to ventilate, and we went to the second floor, Deputy Chief Patterson, his driver, and I, and when we were coming through the hall there was rags over the railing, all the way along on this banister, and we came down and ordered this investigation, got these things, and that is the last I saw of them.

Q. Did you pick up the rags on the banister?

A. No, I left them hanging there.

10

Q. You didn't touch them or smell them?

A. No, they were hanging there loosely over the banister, all along.

Q. You were present several days after, the 28th, when the photographer was on the stand and testified this morning he made photographs?

A. Yes, sir.

Q. I show you some photographs marked Exhibits 1, 2, 3 and 4—

A. This Exhibit 1, that is the front of the building on the outside; this is an awning that hangs down on the outside, the front of the window was covered over with a curtain, sort of a canvas extended up, and this door here is where the boys had so much trouble getting in, the show case was up against it.

Q. Does that represent the same conditions as existed the night of the fire?

A. Yes, sir, it does.

Q. I show you Exhibit No. 3—

A. That is the back interior of the store. This picture here you can see the shelves, it will show you, two-thirds way back of the store. This door here is the door that leads into the dining room, these are the back shelves that run across the east end of the store—that is where the bulk of the fire was, through here, and the north side of it was a window—

30

Q. Where?

A. The back end of this automobile accessory place, that is where the fire shot out, and it was my aim to put the water line and keep the flames from coming out the side window. Where you go inside of this window there was a sewing machine sat right up alongside the window.

Q. Now, if you can, Chief, please show us where you found the oily substance you refer to.

A. In this picture here, No. 3, there is a bench, a
10 regular shoe store bench you see in shoe stores, you can sit on either side, and on the north side was this runner, between that and the shelves, and that is the runner I picked up and smelled of it, and I got my men to take it for evidence, and these stockings and things, they went up to the shelves, and I told them to get all the evidence they could. That was the idea of getting the water out—I knew I had the evidence there, and my orders were not to wash the evidence out.

20

Mr. Woodruff: May I have that portion of his answer stricken out, "My orders," and so on?

The Court: Yes.

Q. I also show you Exhibit No. 2—

A. Exhibit No. 2.

Q. Can you say whether the case that is placed there against the window is the one you saw that
30 night?

A. That is the one the boys showed me they pushed away from the door. When I saw the case it was away from the door, and they showed it to me, and they showed me how it stood against the door.

Q. Describe the appearance there of the front bulk windows with respect—

A. These are the front doors—

The Court: One minute, Mr. Chief; please pay attention to Mr. Burling and Mr. Burling will ask you the questions, and you answer them.

Q. Describe to the jury, Chief, with respect to the bulk windows, with vision from the exterior to the interior.

A. These bulk windows are cased in from the inside. It shows very plainly the doors that open into the bulk windows when they dress the bulk windows; 10 they are wooden doors, and there is one on each side of the door, and this case is up against the door.

Q. I show you Exhibit No. 4.

A. Exhibit No. 4 is the interior of the dining-room which leads out from picture No. 3. The door leading from the rear of the store leads into this dining room, and there is one window, and the door had a window in it also, and Lieutenant Hunt had his men to break and shove this chemical line in this window in the door, because they couldn't get the 20 door open. There was a couch running crosswise from the door and prevented him from opening the door.

Q. In these two rooms had the fire taken contact and burned any part of it?

A. Yes, No. 3, yes, sir, in the rear of this room was a storeroom, that is where the fire had been, in the rear of this room.

Q. Is that true of the dining room there?

A. Yes; that is Exhibit No. 4, you see those walls 30 here indicate the wall paper, where the heat got the wall paper and hung it in strips from the ceiling and side walls.

Cross-examination.

By Mr. Woodruff:

Q. When had you made an inspection of this place before the fire?

A. When had I? I don't make an inspection.

Q. When had you had an inspection made?

A. An inspection of this place before the fire was in the spring.

10 Q. In the spring?

A. Twice a year.

Q. When in the spring?

A. I couldn't say the date, we have them twice a year, our inspections, that is, of business houses.

Q. Do you know there was?

A. Captain Todd at that time was captain.

Q. Do you know whether there was an inspection?

A. To the best of my knowledge, I couldn't swear to it.

20 Q. So there hadn't been an inspection for two or three months?

A. No, sir.

Q. You didn't know, and it hadn't been reported to you every night this case was pushed up against the door?

A. No, sir.

Q. You pushed it up for the photographer to take the picture?

A. I placed it back as the men told me it was there.

30 Q. The way it is in the picture is the way you put it there from what somebody told you?

A. Exactly.

Q. That is a metal case and movable?

A. Yes, it is on wheels.

Q. And it can be moved in any position in the store?

A. If a man is in a position to do it.

Q. Strong enough?

A. Not reaching through a glass window.

Q. It is a fixture you can move to any part of the store?

A. I didn't try to move it around the store.

Q. But if you wanted to you could move it?

A. Yes.

Q. You hadn't had any inspection to find out whether such a condition had existed for three months? 10

A. No, sir.

Q. No inspection to find out whether the rugs were carelessly laid around for three months?

A. Yes.

Q. Now, Chief, when you arrived there how many lines of hose were playing?

A. Two chemical lines.

Q. Were they both playing in the front?

A. One playing in the front and the other fellow was trying to get in back of him, and Chief Patterson ordered one back. 20

Q. How many additional water lines were in after that?

A. Two.

Q. Altogether there were two chemical lines and two water lines?

A. Yes.

Q. And they played on the fire for twenty-five or thirty minutes?

A. No, sir. 30

Q. How long did they play on it?

A. I don't know just the time, but very few minutes.

Q. Didn't it take twenty-five minutes to put it out?

A. No, they were playing chemical, and I had a

spray of water, a shut-off nozzle in the front and in the rear, a spray.

Q. What was burned in the store?

A. Shoes burned in the rear, some of the shelving was charred, and shoe boxes charred in the end. If we had put water in there we would have knocked all the shoes off the shelves, but the shoes were still on the shelving.

Q. Shoes were burned in the boxes?

10 A. Some very few shoes were burned.

Q. Where was the fire that burned enough to burn shoes?

A. In the rear of the building on the east end.

Q. That is the place where Hunt put his hose through the window?

A. Yes.

Q. And that is the side toward the automobile accessory place?

20 A. No, sir, the side is on the north toward the automobile accessory place he went in the window.

Q. I understood there was a low building runs there?

A. But it stops half-way.

Q. That is the place they have oils and gasoline?

A. Buried under the sidewalk and on the pavement.

Q. That is where they sell it?

A. They sell it, but the gasoline is kept in the front.

30 Q. These things gathered up there were gathered up in your presence?

A. Yes, sir.

Q. And the rags rolled up in this runner?

A. And turned over to Chief Hyde.

Q. And you say you gathered these things up so you could have them for evidence?

A. I gave them to the police department as evidence.

Q. You got the very best there, and some you left behind?

A. I didn't want to load the patrol wagon down.

Q. They are the rugs you testified were so oil soaked you could ring them out?

A. I didn't say that.

Q. Didn't you?

A. No.

10

Q. Could you or couldn't you?

A. I didn't try to; I had my men pick them up, and they tried; I smelled them.

Q. Was there enough kerosene on there to ring them out?

A. I don't know.

Q. You called their attention to that, didn't you?

A. I didn't tell them to ring it out.

Q. You told them to be particular because you thought you had the goods on somebody?

20

A. Yes.

Q. That is the reason you were saving them? Can't you tell us whether or not you could ring oil out of them?

A. No, sir, I didn't try it.

Q. You can't tell us?

A. No, sir, because I didn't try it.

Q. Who did you turned them over to?

A. Chief Hyde.

Q. The same condition they are in here today?

30

A. They didn't have the paper on.

Q. Except for the paper?

A. Yes.

By Mr. Burling:

Q. Chief, I want to call your attention to one

thing; you testified the hour you received the call in this case, what was that hour?

A. I said 12.53, but it is 11.53; that was on the 23rd, 12.53 would be the 24th.

Q. No doubt about that?

A. No, we have the records to prove that.

10 MRS. ANNA A. TODD, sworn.

Q. Where do you live, Mrs. Todd?

A. Sir?

Q. Where do you live?

A. 1509 Baird Avenue.

Q. Is that in the vicinity of 1203 Kaighn Avenue?

A. You will have to speak out.

Q. Is that near 1203 Haddon Avenue?

A. How near was I to it.

20 Q. Is that near Haddon Avenue and Kaighn Avenue?

A. Haddon Avenue and Kaighn Avenue, I can catch that.

Q. How far is that from Haddon Avenue and Kaighn Avenue?

A. I judge about three squares.

Q. On the evening of July 23rd were you in the vicinity of 1203 Haddon Avenue?

A. Yes, sir.

30 Q. About what time of the night?

A. I judge around twelve o'clock.

Q. Was there anything that attracted your attention there at that time?

A. Yes, sir, we parked on the right-hand side of Kaighn Avenue, facing Haddon Avenue, and it was dark, I didn't notice anything being around, except

this one store, and Mr. Todd stopped to make a purchase, and naturally, my attention was drawn that way to something, and I heard a sound, a bump, and I commenced to see the store all ablaze.

No cross-examination.

NORMAN B. STINSON, SWORN.

10

By Mr. Burling:

Q. You are the assistant secretary of the Camden Fire Insurance Association?

A. I am.

Q. Have you with you any records of your company relating to fire insurance that might affect premises 1203 Haddon Avenue?

A. I have.

20

Q. What do your records show in that respect in relation to the defendant, Charles Morris?

A. I have here a record of policy No. 261930, written in the amount of \$6,000, covering stock and merchandise consisting chiefly of boots, shoes and rubbers, written for the term of one year from the first day of April, 1922, and expiring the first day of April, 1923. I also have record of policy 261940, written in the amount of \$4500, \$4,000 of this amount to cover on merchandise generally, chiefly shoes, 30 boots and rubbers, and \$500 of this policy to cover on store fixtures and furniture of every description. This policy is written for a term of one year, dated April 7, 1922, and expiring the 7th day of April, 1923.

Q. Do I understand from the records of your company they show in force on July 23rd, policies of

insurance in the amount of \$10,000 on stock insured by the defendant, Charles V. Morris, contained in 1203 Haddon Avenue, Camden, New Jersey, and \$500 on fixtures?

A. That is right.

Q. They were in force at that time?

A. They were.

Q. Have you made any settlement of the losses under that policy?

10 A. Not to my knowledge.

Cross-examination.

By Mr. Woodruff:

Q. Do you know that they have agreed on it, to pay it?

A. I don't know anything about the loss end of it at all.

20 Q. You don't know that the Camden Fire Association has investigated the matter and agreed to settle this claim?

A. I do not.

Q. That \$500 covered not only the fixtures but the furniture, too?

A. Store furniture.

Q. Store furniture and store fixtures?

A. Yes, sir.

30 Q. Those policies were issued on the first of April, 1922?

A. One on the first and one on the seventh?

Q. And they were renewals of previously existing policies?

A. According to the records they were.

Q. How much insurance did he have before that time?

A. I couldn't say.

Q. Haven't you that in your record?

A. I have not.

Q. Don't you know he had more insurance, and voluntarily reduced it at that time?

A. I do not.

Q. Will you get those records and return, please?

A. I will.

Mr. Woodruff: For the time being I will waive my 10
cross-examination, if the Court please.

PHILIP FEURSTEIN, SWORN.

By Mr. Burling:

Q. What is your occupation, Mr. Feurstein?

A. I am an adjuster of fire losses.

20

Q. How long has been your experience in that respect?

A. Over twenty years.

Q. And in your experience has it comprised stocks relating to shoes?

A. Yes.

Mr. Burling: If your Honor desires any further testimony as to the competency of this witness as an expert—

30

Q. Have you qualified in other cases of this character in courts of the State?

A. I have.

Q. And been adjudged an expert in that respect?

Mr. Woodruff: I object, if the Court please.

The Court: He has been qualified in other courts, that is sufficient.

Mr. Woodruff: If the Court please, this is a shoe case; it may be the man has qualified as an expert in some other line, passed on by the Court as an expert, but that doesn't make him an expert in a shoe case.

10 Q. Have you qualified in the appraisalment of merchandise and stocks?

A. Yes.

Q. And in the appraisalment of shoe stocks?

A. I have.

Q. And how long have you been in this line of business?

A. Over twenty years.

20 Mr. Woodruff: I don't think that qualifies the witness, if the Court please, if he has qualified in some other court. We have no evidence here that he ever bought shoes or sold shoes, anything of that kind, and that is very essential in qualifying him as an expert.

Mr. Burling: The question of the competency of an expert is solely wherein the Court may be satisfied. If I have not covered the scope of the examination fully enough I am perfectly willing for the
30 Court to ask any such questions in that regard.

The Court: Mr. Burling, in order for the witness in this particular case to qualify, it would be necessary for him to show his knowledge of the quality of shoes, their value, and so forth, and if you are able to prove that this man has such knowledge as

to quality and value, I am willing to have his testimony.

Q. In the course of your experience as an appraiser have you had other occasions where you examined stocks of shoes?

A. I have.

Q. And are you familiar with their value and cost, and the relations that go to make up a just appraisal of the value of a shoe stock?

10

A. I am.

Q. You are familiar with the items that are ingredient to that class of property?

A. Yes.

By the Court:

Q. Do you know a good shoe from a poor shoe, a high grade shoe from a cheaper grade shoe?

A. Yes, I do.

20

Q. And the difference in value between a man's high grade shoe and a woman's high grade shoe?

A. Yes.

Q. Can you tell when you look at a woman's shoe whether it is a high grade or a low grade?

A. Yes.

Q. And if it is a poor shoe you would know it?

A. Yes.

Mr. Woodruff: If that is the only purpose, to show the quality of the shoes, I have no objection, but still we have no proof of his knowledge as to wholesale values or retail values.

30

The Court: I feel this man is qualified. What other things did he have in this store; was this solely a shoe store?

Mr. Burling: Yes, I think shoes, boots and the like.

The Court: I will accept his testimony.

(Exception noted.)

Q. Subsequent to the 23rd of July did you make an inspection of the premises No. 1203 Haddon Avenue, Camden?

10 A. I have.

Q. Have you a memorandum to refer to as to the time you made the inspection?

A. No, I have no memorandum as to the time, but I was there three times, on three different occasions.

Q. Did you make an inspection of the stock of merchandise there?

A. I have.

20 Q. After your inspection of that stock of merchandise was your judgment and opinion as to its fair value based upon the soundness of the stock had it not been injured by fire?

Mr. Woodruff: I renew my objection; he hasn't said one word about the value of shoes at that time.

Mr. Burling: If your Honor desires me I will withdraw the question then.

30 Q. Were you familiar with the value of the character of stock you examined at 1203 Haddon Avenue on and at the date and time you examined it?

A. Yes, at about that time.

Q. You were acquainted with the market value of the class of property that was there, were you?

A. Yes.

Q. You were familiar with the cost value of the goods at that time?

A. Yes.

Q. And if you placed a value then upon the merchandise that you saw in that place at that time, on what basis would you predicate your estimate?

A. On the replacement value of similar merchandise.

Q. And was it on that basis you made an appraisal?

A. On that basis.

Q. Then did you place such an estimate at that 10 time?

A. I did.

Q. What did you consider to be the replacement value of the goods at that particular time?

Mr. Woodruff: May I renew my objection, if the Court please? The mere statement by a man he knows values at such and such a time does not qualify him as an expert. He went there sometime after the fire and examined what was left, I suppose, of 20 the shoes, and he said he knew their replacement value at that time. Any person could possibly run in and say they knew value, and that is the extent of his qualification.

The Court: Just what do you think is necessary?

Mr. Woodruff: If the Court please, show whether they had bought and sold, whether they knew wholesale prices and retail values, what they could buy 30 the shoes for in the open market based upon their experience, based upon the fact they had gone into wholesale houses and bought shoes.

Mr. Burling: If the Court please, he has testified he has had twenty years' experience in dealing with fire adjustments, and adjustment of losses relating

to shoes, stocks of shoes, and in this particular period he was familiar with the market value, or the replacement value of the shoes of the character he examined in that particular place.

The Court: I think the witness can answer the question, and then the defense has a right, of course, to cross-examine, and see how far he actually does know.

10

(Exception noted.)

A. \$6925 is about the value of the stock on the premises.

Q. After you made that appraisalment, or the time you did make it, was the defendant present?

A. Yes; that is, he was present the last time I was there, he wasn't there the first time I was there.

20 Q. Did he make any statement with respect to his assent or dissent to the valuation you placed?

A. Well, he didn't speak about himself, but he had two men who were representing him, who were also appraisers, they were with me, and they acted for him.

Q. Was the defendant present?

A. Yes.

Q. I want to know what the defendant's statement was with respect to the appraisalment at the time?

30

Mr. Woodfuff: He hasn't testified to anything the defendant said.

The Court: Don't state what any deputy of his said, but what the defendant said.

Q. The Court says not to state what any deputy of his may have stated, but what the defendant said?

A. He didn't say anything.

Q. Did he submit in any way?

Mr. Woodruff: Now—

Q. Let me finish the question. Did he submit in writing at that time by the fixing of his signature to the amount you had fixed?

A. He did later on.

Q. In your presence?

10

A. Not in my presence.

Q. How do you know he did it?

A. By his representatives; they told me they represented him, the two appraisers.

Mr. Woodruff: I ask that be stricken out.

The Court: It will be stricken out.

Q. Did you advise the defendant at that time what amount you appraised the stock?

20

A. I did.

Q. Did he make any exclamation against the amount?

A. No; the man himself didn't speak, the other men spoke for him, in his presence, he didn't speak.

Cross-examination.

By Mr. Woodruff:

30

Q. Who were you representing?

A. I went there—the Camden Fire Insurance Association sent me a letter to go over the stock and tell them what the loss was, and the value.

Q. And on the \$10,000 policy you were willing to pay \$6925?

A. No.

Q. Wasn't that the figure you fixed?

A. No, this was the value we agreed upon; we agreed the value of the stock was \$6900, but the loss wasn't that much.

Q. Isn't that the amount that you fixed in your mind as the replacement of the stock?

A. That is what we agreed upon.

Q. I am asking you if that is what you fixed?

10 A. Yes.

Q. How much was the replacement value of the fixtures?

A. \$600.00.

Q. Who did you represent?

A. The Camden Fire Insurance Association, they sent me there.

Q. They sent you there to pass upon the value of that stock?

A. Yes.

20 Q. And that is the total in your opinion, \$7525, as the replacement value?

A. Yes.

Q. How many of the shoes were destroyed, do you know?

A. What do you mean, destroyed; destroyed out of sight.

Q. Had you ever seen the stock before the fire?

A. No, I had not.

Q. Never saw it before the fire?

30 A. No.

Q. You went there to pass on what you found remaining, is that right?

A. On what we saw, yes.

Q. What you saw when you went there?

A. Yes.

Q. Not what may have been burned up?

A. There wasn't anything burned up.

Q. You weren't there?

A. That is my business, to find out.

Q. Your figures are based on what was there when you got there?

A. What was there, including charred shoes and shoes partly burned.

Q. That was what value?

A. Replacement value.

Q. On what day?

10

A. The day of the fire.

Q. On the day of the fire?

A. Yes.

Q. Had you bought any shoes on the day of the fire?

A. I paid for them for insurance companies.

Q. You paid losses, you mean?

A. On losses.

Q. Had you bought any shoes at that time?

A. Not bought any.

20

Q. Had you attended any sales where shoes were purchased at wholesale at that time?

A. No, but I have examined into prices in order to determine the prices.

Q. Had you sold any shoes or attended any sales where shoes were being sold?

A. No.

Q. How long before that time had you ever attended sales where shoes were sold at wholesale?

30

A. I don't attend sales at all.

Q. Haven't before or since?

A. No.

Q. And you haven't sold before and you haven't sold since?

A. Haven't sold any.

Q. That figure you say was the figure agreed on, \$7525, as the total?

A. As the total.

Q. That was the figure agreed on as the total loss to be compensated for under these policies?

A. Not to be compensated, this was the value.

Q. Wasn't that what they went there for?

A. That wasn't all damaged, that is the total.

Q. Out of that there is salvage?

10 A. Yes.

Q. How much salvage?

A. We agreed on a loss of \$5000; we agreed on a value of \$7500 and a loss of \$5000.

Q. \$2525 would be the salvage, the value you could get from what was left in there in its charred state?

A. Yes.

At this point a recess was taken until 1.30 o'clock P. M.

20

Trial of the cause resumed at 1.30 o'clock P. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

MRS. EVA V. VEIGHT, SWORN.

30

By Mr. Burling:

Q. Mrs. Veight, where do you live?

A. 1201 Haddon Avenue.

Q. Did you live there on the 23rd day of July last?

A. Yes, sir.

Q. How long have you lived there?

A. A little over three years.

Q. Do you know the defendant Morris, Charles E. Morris?

A. Yes.

Q. Do you know any other members of his family?

A. Only his own personal family.

Q. What do you mean by that?

A. His wife and children.

Q. You are acquainted with his wife and children? 10

A. Yes, sir.

Q. On the 23rd day of July did you see the defendant or any of his family?

A. I saw them six o'clock in the morning.

Q. Where was that?

A. Standing on my corner, the corner of Kaighn and Haddon Avenue, and I talked to them from my bedroom window. I was getting up to open the store, and I asked her where she was going, and she said to Wildwood, and I asked, "How long will you be away?" and she said, "Two weeks," and her husband probably forgot something and he slipped away and went back to the house, and I opened the store, and by that time the car came. 20

Q. How long a period of time transpired from the time he went back to the house and came back?

A. Probably five to eight minutes, something like that.

Q. Did he go back alone?

A. They missed the first car, they got the next car. 30

Q. Was the first car out there when you first saw them?

A. I didn't see the car, but Mrs. Morris said, "Hurry, we have missed this car, hurry, or we won't get the next one," that is how I know.

Q. Do you know how long those cars run apart?

A. Eight, ten, twelve minutes, something like that.

Q. When the defendant went back did anybody go back with him?

A. No, I was talking to all the rest of them on the corner.

Cross-examination.

By Mr. Woodruff:

10

Q. Which property is it you live in?

A. The corner store, Haddon Avenue and Kaighn Avenue.

Q. The corner store?

A. Yes.

Q. Where Mr. Clay lives?

A. Yes.

Q. You were upstairs when you first saw them?

A. Yes.

20 Q. And where were they when you first saw them?

A. All standing on my corner, ready to leave with their suitcases, waiting for the car.

Q. Mr. Morris with them?

A. Yes, he was with them first.

Q. He evidently forgot something and went back?

A. That is what I thought; I know his wife called to him and told him to hurry.

Q. As he left to go back for whatever he went back for his wife told him to hurry so as not to miss

30 the car?

A. Yes.

Q. As I understand, you didn't see either car?

A. No.

Q. But what she did say was to tell him to hurry?

A. Yes.

Q. Was he hurrying?

A. Well, I really don't know, I left the window then and went downstairs to open the store.

Q. Didn't you see him when he started?

A. I saw him when he started back.

Q. Did he hurry when he started back?

A. Yes.

Q. Didn't you hear what it was she sent him back for?

A. No.

Q. You didn't hear anything about the watch? 10

A. No, didn't hear anything at all.

Q. Now, he hurried back and you left the window and started downstairs?

A. Yes.

Q. And when you got downstairs you opened the store?

A. Not right away, I usually put the coffee pot on first before I open the store.

Q. This particular morning?

A. Yes. 20

Q. I understood by your direct-examination you came downstairs and by that time the car came along and they went away?

A. Yes.

Q. You hadn't seen the car before?

A. I didn't see them get in the car.

Q. How long do these cars remain there at that end of Kaighn Avenue after they come up and before they go away again?

A. Not very long; long enough to pick up passengers waiting. 30

Q. They come from the Kaighn Avenue Ferry?

A. I couldn't tell you whether they took the Haddon Avenue or Kaighn Avenue.

Q. You didn't know they were going to Kaighn Avenue Ferry at all?

A. I only know they were going to Wildwood.

Q. You don't know anything about the car itself?

A. No, sir, I do not.

HENRY H. CHERRY, SWORN.

By Mr. Burling:

10

Q. Where do you live, Mr. Cherry?

A. 1247 Kaighn Avenue.

Q. How long have you lived there?

A. Thirty-two years.

Q. Do you know the defendant?

A. I do.

Q. Did you see him on Saturday, July 22nd?

A. I did.

Q. Where?

20 A. At his shoe store, I was purchasing a pair of shoes there between half-past ten and eleven o'clock.

Q. Night?

A. Yes, sir.

Q. What was the conversation with the defendant?

30 A. Well, I was purchasing a pair of shoes, and he asked me where I lived, and I told him, 1247 Kaighn Avenue, Camden, and he said, "How far is it down?" and I said, "One square below Haddon Avenue," and he asked me to do a favor, and I asked him what it was, and he said, "I have a dog I wish you would keep for me until the first thing Monday morning and I will get it off you," and I said, "All right," and he said, "For doing me that favor I will knock a dollar off"; the shoes were supposed to be \$5.00, and he knocked \$1.00 off.

Q. Was there any discussion as to why he wanted you to keep the dog?

A. Yes, sir; I asked him why didn't he give the dog a little something to eat and keep him there all day, and he told me it would be safer for me to keep it until he came home the first thing Monday morning and got it.

Cross-examination.

10

By Mr. Woodruff:

Q. What kind of a dog was it?

A. I don't know what kind, a little yellow dog.

Q. A little dog?

A. A pretty good little watch dog he was.

Q. Was it a watch dog, or a little kind of a dog the children have?

A. The kind the children have, but he is a good little watch dog.

20

Q. Didn't Mr. Morris speak to you about the dog, the children were so fond of it?

A. Yes.

Q. That is the reason he wanted it to be taken care of properly while he was away?

A. I guess so, yes.

Q. He told you he was going to Wildwood?

A. He was going to Wildwood and he would get the dog Monday morning.

Q. Did he tell you the family was going to stay 30 down?

A. For two weeks, but he was coming back and get the dog the first thing off me Monday morning.

Q. Of course, you did take the dog and took care of it?

A. Yes.

ARTHUR COLLINS, sworn.

By Mr. Burling:

Q. Where do you live, Mr. Collins?

A. 825 York Street, Camden.

Q. How long have you lived in Camden?

A. Fifteen years.

10 Q. The week preceding July 23rd, what was your occupation?

A. I was employed by the Camden Daily Courier as an advertising solicitor.

Q. Did you have any conversation with the defendant?

A. Mr. Morris?

Q. Yes.

A. I did.

Q. Preceding the 23rd of July?

20 A. Yes.

Q. What day?

A. Wednesday morning.

Q. What was the conversation?

30 A. The conversation was in regard to some advertising. I entered his place of business, the usual line, "Hello, Mr. Morris, how is business?" and he said business was very poor and he was in no position to do any advertising at that time. I again approached him later the same day in regards to a moonlight program, an ad for a moonlight program, but he didn't believe in that form of advertising, and Thursday morning I stopped in to see him, and he told me he was uncertain how long he intended to be in business; by that I mean, he said, "You know, sometimes fires come along and burn up your place."

The Court: Wait a minute. I don't want you to testify to anything other than what this defendant said; I don't want any conclusions of your own, or anything that you think, don't testify to anything except what you are positive this man said.

The Witness: He said, "Sometimes explosions come along and blow you out of house and home, and again fire come along and destroy your property." Of course, I went back to the Courier and the boss 10 naturally asks you what you have done with so and so, and this case ——

The Court: One minute ——

Cross-examination.

By Mr. Woodruff:

Q. Did you get the business?

20

A. No.

Q. Never did get that advertising?

A. Never.

Q. How many times did you go there?

A. Twice for the Courier and once for the moon-light ad.

Q. Twice for the Courier and once for the moon-light ad?

A. Yes.

Q. Did you get any business the three times?

30

A. None at all.

Q. Every time business was too poor to give you any?

A. Yes.

Q. He tried to get rid of you every time you went there?

A. He didn't want to spend any money, that is the case.

Q. And he talked all the time about getting you out of there, is that right?

A. I am not green or anything; I wasn't going to let him say nothing doing, you stick around and get something.

Q. You kept sticking around?

A. Yes.

10 Q. And he kept giving you arguments why you should get out and not bother him?

A. I wouldn't say that.

Q. He was trying to get rid of you?

A. Not necessarily.

Q. Did he like you sticking around?

A. You couldn't say he didn't like me.

Q. Did he invite you to sit down?

A. No, sir.

20 Q. Everything he said to you was his business wouldn't warrant advertising and he wanted you to get out?

A. He didn't necessarily want me to go out.

Q. What did he say the first time you went there?

A. He wasn't in a position at that time to do any advertsing.

Q. Is that all he said?

A. That is all.

Q. What did you go there for, the moonlight, or the other?

30 A. The moonlight, that is practically a hold-up game, moonlight advertising, if you are a friend of the man you get it.

Q. You didn't blame him for dodging that?

A. No.

Q. After that first trip as a hold-up man, how soon did you go back?

A. The following morning, Thursday morning.

Q. The first was on Wednesday, and the second trip was on Thursday?

A. Yes.

Q. The Thursday before the fire?

A. The Thursday before the fire, yes.

Q. And they are the only two times you were there?

A. Only two times, yes, sir.

Q. What time in the morning did you get there 10
Thursday?

A. Well, between eight and eleven, I don't know the exact time; of course, I have so many calls to make.

Q. What was Mr. Morris doing?

A. In the store, just the same as he would always do.

Q. That is the time he first told you he couldn't take any advertising because business was poor?

A. His business was poor yes.

Q. And after that he told you explosions come along and blow you out of house and home, and fires come along?

A. He said, "I might not be in business here much longer."

Q. Is that what he said?

A. I said, "Do you intend to move?" and he said, "No, sometimes fire come along and eats up your stock, and explosions happen."

Q. First he told you he didn't intend to be there 30
long?

A. He spoke in that attitude.

Q. What were his words?

A. "I might not always be here," is his exact words.

Q. Were you telling him how this advertising would be a help in the future?

A. Yes.

Q. And he told you he might not be here?

A. Yes, and I wanted to know where he was going to go.

Q. Did you want some more moonlight business?

A. No, if he wasn't on my district I wanted to get rid of him, he was dead.

Q. Your organization considered him a dead one?

A. Yes.

10 Q. Why was it, because he was always telling you to get out?

A. He wasn't progressive from their standpoint.

Q. Wasn't advertising?

A. That is it, yes.

Q. Wasn't spending money?

A. No.

Q. Won't you tell me exactly what his words were on the Thursday preceding the fire?

A. I gave you the exact words.

20 Q. Give me the exact words?

A. The exact words were the Thursday preceding the fire that he didn't always intend to be there at 1203 Kaighn Avenue.

Q. They were his exact words, were they?

A. Yes.

Q. How long did you stay there that time?

A. Well, about—anywhere from fifteen to twenty minutes; when you find out you can't do business you can't spend the whole day there.

30 Q. Did you go back between then and Sunday?

A. No.

Q. And the fire happened Sunday night?

A. Yes.

Q. And right away you told somebody what you knew?

A. I was dragged into this case.

Q. How did they find out?

A. I told the boss, and he told Morris, the Courier reporter, and he came to me.

Q. A Courier reporter looking for news?

A. He came to me and told me to go to the prosecutor's office.

Q. This was the Courier reporter writing about the fire, is that it?

A. What?

Q. The Courier reporter who had the assignment 10
to write up this fire?

Mr. Burling: I can't see the relevancy of this testimony, it has no reference to the matter under discussion.

The Witness: I don't see that it has, either.

The Court: The Court will pass upon the relevancy of it. Mr. Woodruff is going a little afield. 20

Q. How soon after the fire did you go?

A. The 28th.

Q. Went on the 28th?

A. Went, yes.

Q. Did you make a statement?

A. I did.

Q. What words did you tell the prosecutor's office he said?

A. Exactly what I told you. 30

Q. Was that put down in a statement?

A. Taken down by the court stenographer, yes.

Q. Were you furnished with that before you testified to read it over?

A. It wasn't necessary; my mind isn't that of a six year old child.

Q. I am asking you if you did?

A. If what?

Q. If you read it over today, or the last few days, that statement?

A. I don't think that has any bearing on the case.

Q. I am asking you whether you read that statement over?

A. No, I didn't read it over.

Q. Who read it to you?

A. Well, it was read to me.

10 Q. Where?

A. In Mr. Burling's office.

Q. Which do you remember, the words from the statement you had read to you to refresh your mind

A. My mind doesn't need refreshing, I wish you would get that out of your head.

Q. Why did you have that statement read to you?

A. When you are asked to go to court you can't very well get out of it, can you?

20 Q. Why did you have it read?

A. It wasn't my wishes.

Q. It was just read to you?

A. Because I happened to be there and Mr. Burling read it over to me.

Q. How did you happen to be there?

A. I just happened to be there.

Q. Just went there yourself?

A. I may have occasion to go there.

30 Q. No reason than you happened to be at the prosecutor's office and happened to get this read to you, is that right?

A. Isn't that right?

(Question repeated.)

A. No.

Q. Well, then, what did you go there for?

A. I was summoned down there.

Q. And when you were summoned there you had your statement read to you, did you?

A. Yes.

ISRAEL E. FREDERICK, SWORN.

By Mr. Burling:

10

Q. You own the premises 1203 Haddon Avenue?

A. Yes, sir.

Q. Were you the owner on the 23rd of July, last?

A. Yes, sir.

Q. Who was the lessee of the property on that date?

A. Who was the lessee?

Q. The party in possession on that date?

A. Mr. Morris.

20

Q. A tenant of yours?

A. Yes, sir.

Cross-examination.

By Mr. Woodruff:

Q. How long had Mr. Morris been your tenant?

A. The last six years; live there three years, and another property three years before.

30

Q. How long in this last place?

A. In this place three years.

Q. And all that time had he conducted a shoe store there?

A. Yes, sir.

Q. And rented from you all that time?

A. Yes.

Q. Were you frequently in and out of his place?

A. What?

Q. Were you in and out of his store often?

A. Every day, pretty near.

Q. You live in that neighborhood?

A. Yes, in that section.

Q. And before that three years he rented from you another place?

10 A. Yes, another.

Q. On Haddon Avenue?

A. On Haddon Avenue, also.

Q. What kind of a place did he have there?

A. A shoe store.

Mr. Burling: If the Court please, this isn't cross-examination. Only two questions were asked of this witness, what the relation was, and whether this defendant was there in possession.

20

The Court: That is true.

DETECTIVE CHARLES WHALAND, SWORN.

By Mr. Burling:

Q. You are a detective of the City of Camden, Mr.
30 Whaland?

A. Yes, sir.

Q. You assisted in the investigation of this case?

A. Yes, sir.

Q. Did you make an inspection of the premises
1203 Haddon Avenue subsequent to the fire?

A. I did.

Q. I show you two different pictures——

A. There are some more out there.

Q. I guess we have enough there?

A. They are right at the doorway.

Q. May I ask where you obtained these?

A. I found those in the cellar, in the back part, furthest from the store, and in the corner with a lot of packing boxes around them. I looked at the wrappings, and I found there July 21, 1922.

Q. 1922?

10

A. Yes, sir.

Q. And these are the papers they were contained in, too?

A. Yes.

Q. Containing those dates?

A. Yes, sir.

Q. And the fire occurred on the 23rd?

A. Yes, sir.

Mr. Burling: I will offer those in evidence. 20

(Said pictures were offered in evidence and marked Exhibit S5.)

Cross-examination.

By Mr. Woodruff:

Q. Mr. Whaland, they were wrapped up in newspaper?

A. Yes, like they are now. 30

Q. Newspaper wrapped around them to keep dirt and everything out?

A. Yes, sir.

Q. And they were down in the cellar?

A. Yes.

Q. Of the building that started to burn up?

A. In the rear part.

Q. But the building went back there?

A. Yes.

Q. And the fire had already, when they put it out, got back that far?

A. It hadn't got that far back.

Q. But there was still a building back there to go yet?

10 A. The dining room and kitchen.

Q. The cellar didn't go further than the building that was on fire?

A. No, sir.

Q. And you found them covered with newspapers and surrounded by wooden packing boxes?

A. Yes.

Q. They were sitting up on a rack, or box?

A. They were standing up.

Q. Up from the damp cellar floor on a box or rack?

20 A. Yes.

Q. And wood all around them?

A. Yes.

Q. They weren't in any fireproof safe, or anything like that?

A. No.

Q. There was no vault down there?

A. Just furthest away from the fire, that is all.

30

Mr. Burling: With the offer of the exhibits that were identified this morning—I have forgotten whether I offered the rags and other material—and the pictures already offered, the State will rest its case.

STATE RESTS.

THE CASE FOR THE DEFENDANT.

(Mr. Woodruff opens the case to the jury for the defendant.)

CHARLES E. MORRIS, SWORN.

By Mr. Woodruff:

10

Q. Mr. Morris, you are the defendant in this case?

A. Yes, sir.

Mr. Woodruff: Speak out loudly enough so the people can hear you, please.

Q. When did you come to this country?

A. '77, 1877.

Q. 1877?

20

A. Yes.

Q. How long have you been in the City of Camden?

A. City of Camden, there six years this August, last August.

Q. And where were you before that?

A. Why, in Philadelphia.

Q. You moved from Philadelphia to Camden?

A. Right from Philadelphia here to Camden, sir.

Q. And where did you live in Philadelphia, what section?

30

A. I live 926 Poplar Street.

Q. How long did you live in that neighborhood in Philadelphia?

A. Twenty-seven years.

- Q. In business there?
A. Yes.
Q. Raised your family there?
A. Yes, sir.
Q. You are married, aren't you?
A. Yes.
Q. How many children have you?
A. Three.
Q. How old are they?
10 A. One is eighteen, one of them is going on thirteen, and the other one is going on nine.
Q. All girls?
A. Yes, sir.
Q. Now, did you own property, real estate in Philadelphia?
A. Yes, sir.
Q. How many properties?
A. Why, I have five now.
Q. Now, you came from Philadelphia and came to
20 Camden and started in the shoe business, didn't you?
A. Yes.
Q. Six years ago, was it?
A. Six years last August.
Q. Where did you start?
A. 1311 Haddon Avenue.
Q. And how long did you have that place?
A. Three years.
Q. What kind of a place was it?
A. It was a shoe store, sir.
30 Q. The same sort of a store where this fire occurred?
A. Yes, sir.
Q. Who was your landlord there?
A. Mr. Frederick.
Q. And he was your landlord at the time of the fire, wasn't he?

- A. Yes, sir.
- Q. Now, after you had your store there three years you moved to this location, did you?
- A. Yes, sir.
- Q. And what kind of a store did you have there?
- A. A shoe store.
- Q. What else did you handle?
- A. I had some hosiery and shoes, rubbers and the like of that what belong to shoes.
- Q. Men's, women's and children? 10
- A. Men's, women's and children's shoes.
- Q. How big a store was it?
- A. How big; how deep it was?
- Q. About how big a room?
- A. It must have been about 26 feet deep to 27 feet deep, and it was about fifteen to sixteen feet wide.
- Q. The front had bulk windows, I understand, didn't it?
- A. Yes, sir.
- Q. Did you have a shoe case in there? 20
- A. I had a shoe case for what I use to keep anything, you know, like to show shoes in there, yes, sir.
- Q. Where did you have the rest of your shoes?
- A. In the shelves.
- Q. Where were the shelves?
- A. All around the room.
- Q. All around the room?
- A. Yes, sir.
- Q. At the time of the fire were all the shelves 30 filled?
- A. All were filled, and there was goods standing up on the side, and I didn't put them up on the shelves.
- Q. Goods standing up?
- A. Yes.

Q. Did you have them anywhere else?

A. I had some rubbers down in the cellar, I think; I don't think very much, because it was always brought in the store.

Q. Were you going on doing business there up to the time of the fire?

A. Doing business right along.

Q. Was business getting better or worse?

A. It wasn't any better or worse, according to the
10 way—I was better off than some of the other people, the people knew me and they patronized me.

Q. And that continued on up to the time of the fire?

A. What?

Q. And that continued on up to the time of the fire?

A. Right to the time, sir.

Q. When you moved there, Mr. Morris, did you immediately have this movable case that has been
20 talked about here?

A. That case was all the time, maybe, say three or four years when I received it from the rubber company as a present.

Q. They gave it to you as a sort of advertisement?

A. Advertisement.

Q. And you had that in your old store?

A. I couldn't say that, I wouldn't be sure, but I had it three years, anyway.

Q. Now, that was the case I understand you could
30 push around?

A. Yes, it was on four little wheels, sir.

Q. How long had you been in the habit of using that to block the door?

A. Right along.

Q. From when, when did you start?

A. I couldn't recollect, but, of course, you know the lock on the door was broke, it was only a little

bolt in there, what I use to bolt the door, and as soon as the lock was broke and wasn't fixed, so I used to put that case right alongside for protection.

Q. You mean the lock you work with a key you couldn't work?

A. No.

Q. You did have an inside bolt?

A. A little bolt, yes, sir.

Q. And besides that bolt you used this case?

A. Yes, sir.

10

Q. What did you do with the case?

A. Every night I used to roll it up, and in the morning roll it away.

Q. Push it up at night and push it away in the morning?

A. Yes, sir.

Q. Can you tell us how long that had been going on in months or weeks?

A. To say to be the truth it must have been maybe about two years.

20

Q. You had been doing that regularly?

A. Yes, sir.

Q. Mr. Morris, when did you make up your mind to go to Wildwood?

A. Made up our minds maybe a couple of months before, but we always used to go in the summer time for two or three weeks, that is, my family used to go.

Q. Had you been there the summer before?

A. The summer before we were in Atlantic City.

30

Q. And the summer before that?

A. In Atlantic City.

Q. And when had you been to Wildwood?

A. About seven years before.

Q. And then afterwards in Atlantic City in the summer?

A. Yes, sir.

Q. Every summer you went away that way, did you?

A. Every summer; I didn't go away, but my wife and family did, I used to go on Sunday.

Q. And this particular summer, had you been away for that kind of a trip before this fire took place?

A. The summer we was away, I believe we did
10 go for an excursion.

Q. I mean, had you had your summer vacation?

A. No, sir.

Q. What did you do the evening before the fire, what did your family do?

A. Why, that was Saturday, we were doing business, and then in the evening, why, my wife was getting ready to get things to take along, what she needed to stay a couple of weeks.

Q. How late were you up that night?

20 A. Up until maybe like one o'clock.

Q. What was your wife doing?

A. Sewing up things on the sewing machine, what you call the bathing suits, fix up for her, and making bathing suits.

Q. Working on those the night before?

A. Yes, sir.

Q. You got your things together in the evening, did you?

A. Yes, sir.

30 Q. What time did you get up in the morning?

A. It must have been—me and my wife got up half-past five, I believe, and then we begin to dress, and then we call our children, and the children dressed up, and after that, as soon as they were dressed we went outside to get the car.

Q. Did you have packages with you?

A. Why, we had satchels.

Q. Had your suitcases?

A. Yes, sir.

Q. You went out on the corner, did you?

A. Yes, sir.

Q. What happened when you got out there?

A. When I got out on the corner my wife said she left the watch on the bureau, something like bureau, some kind like—what you call that—bureau it would be in the dining room.

10

Q. Sideboard?

A. Sideboard, sir.

Q. She left her watch there?

A. She left her watch.

Q. Who went back after that?

A. I ran back for it.

Q. Did you get it?

A. Yes, sir.

Q. Did you take anything else with you?

A. Yes, sir.

20

Q. Did you take anything else with you?

A. Yes.

Q. What?

A. I saw a pair of bathing shoes on the line and I grabbed the bathing shoes with me and brought the bathing shoes with the watch.

Q. How did you go in?

A. Through the back, the same way I come out.

Q. How had the family gone out?

A. My wife and two children I let out through the front, and after I got them through the front I put the bolt back and put the case in the place of it and me and my oldest daughter went out through the back, and after that, of course, I ran back myself.

30

Q. You and your oldest daughter went out the back?

A. Yes, sir.

Q. And then you all went out on the street?

A. Yes, sir.

Q. When you went back then, as you said, you went back to get the watch, you went in the side door, the same way you came out?

A. Yes, sir.

Q. When you came out, where was your family?

A. Standing up alongside of the car, ready to
10 take the car.

Q. And did you hurry then?

A. Oh, yes, they told me; I had to hurry or lose the car.

Q. Who said that, your wife?

A. My wife.

Q. You went to the car?

A. Yes.

Q. And I understand you hurried?

A. I ran as fast as I could run.

20 Q. When you got to the car, did you get on the car?

A. Yes, sir.

Q. Did your family?

A. Yes, sir.

Q. Which car was it?

A. It was a Kaighn Avenue car.

Q. Goes to Kaighn Avenue——

A. Ferry.

Q. You were going to take the Reading train?

30 A. Yes.

Q. When you got on the car did the car wait any length of time?

A. They asked the conductor—I hurried back, and the same car that was standing there wasn't there when I got on the car with the family.

Q. Now, you went to the ferry and went to Wild-wood?

A. Yes.

Q. When you got to Wildwood where did you go?

A. Why, we went to look for a room, and when we got to the place where the rooms were, there wasn't any there, and the children recognized a hotel across the street, and my mother is always sick——

Q. First you went to look at furnished rooms?

A. Yes, sir.

Q. And you didn't take them?

A. No, sir.

10

Q. And your children recognized this hotel across the street?

A. Yes.

Q. And that is where you went?

A. Yes, sir.

Q. Who had that place?

A. That time I went there I didn't know who had it, but I found out it was a gentleman named Weinstein when I went in.

Q. Weinstein?

20

A. Yes.

Q. Did you register?

A. Yes.

Q. Do you know who it was at the desk?

A. I believe it was either the daughter or the wife, I can't say sure, but I believe the daughter was standing up there, and when I spoke to the daughter about the room she called the lady.

Q. Who did you have with you?

A. I had my wife and three children.

30

Q. The whole family, did you?

A. Yes, sir.

Q. Did you get accommodations there?

A. Yes, sir.

Q. How long did you yourself stay there?

A. I stayed until Monday morning, and I took—

she called me Monday morning, and I took the train a little after seven o'clock.

Q. What time had you gotten down there in the morning?

A. To Wildwood?

Q. Yes.

A. It must have been after seven.

Q. And you were there all the time, from that time in the morning until you left on the train on
10 Monday morning?

A. Yes.

Q. What did you do after you got stowed away in the hotel, you and your family?

A. We had breakfast and then we dressed to go bathing, and we bathed until half-past twelve—they told us dinner would be ready between twelve and one o'clock—and we returned, we dressed up and returned and come back, and we had our dinner, and I went upstairs in the room and laid down, laid
20 maybe half an hour or so, I couldn't be sure, and after that we dressed up and went for a walk, we walked around on the Boardwalk until it was time for supper time, and we had our dinner; of course, at the time we came back from the bathing, you know——

Q. What did you do in the evening?

A. We had supper, and we were sitting down for about an hour or two hours on the porch talking with one another, and then we went out for a walk,
30 and we come back about a little after nine o'clock, and we come back, and I was sitting there talking with the gentleman in the hotel, because the gentleman said he would like to sell the place, and I thought maybe I would be able to get him a buyer for the property.

Q. How late did you talk?

- A. About half-past eleven.
- Q. And after that did you go to bed?
- A. Went to bed.
- Q. And what time were you awakened?
- A. A little after six.
- Q. Who was it that awakened you?
- A. The lady herself.
- Q. Mrs. Weinstein?
- A. Yes, sir.
- Q. When did you first know a fire had occurred in 10
your place in Camden?
- A. Never knew it until I struck my own yard.
- Q. When you came to Camden you went to the
store?
- A. Yes, sir.
- Q. And when you got there you saw what it was?
- A. Yes.
- Q. Who came up with you that morning?
- A. My oldest girl.
- Q. Does she work in Camden, or did she at that 20
time?
- A. She worked at the five and ten on Kaighn Avenue. I left her at the store.
- Q. She got off the trolley car at the store where
she worked?
- A. We were going on a jitney.
- Q. And she got off at the store where she worked?
- A. Yes, sir.
- Q. And you went on to your store?
- A. Yes, sir. 30
- Q. How long was your family going to stay in
Atlantic City?
- A. Not less than two weeks.
- Q. When would you have returned?
- A. I was supposed to return on Sunday night, because me and my daughter took what you call an

excursion, and I was supposed to return Sunday night, and when we were talking—my daughter and, after we got supper, I believe the daughter from the hotel went out for a little walk, and I told my wife and the other two children, "Let's take a walk on the Boardwalk," and when we come back it was a little late to take the excursion, and I went home Monday morning.

10 Q. Mr. Morris, before this fire, before you went away, what preparation did you make about going away, what did you do around the house?

A. Closed up everything what it was to be closed up, all the doors—you see, the curtains in the front were always put in there every night, and I put them there because the sun used to come in there and strike the windows and it would destroy the shoes in the window, it was two curtains put outside around the windows to protect from the sun, and I put them around in the morning, and I used to take
20 them off when the sun was away, and, of course, we weren't home, and these curtains hung up there until I come home.

Q. You were on the west side, the side where the morning sun shone in your window?

A. Yes, sir.

Q. Now, you say you closed the place up completely?

A. Completely closed it up, sir.

Q. There has been some discussion of a window
30 found open by the firemen, was that closed?

A. It was closed, sir, when I went away.

Q. These pictures, Mr. Morris, what pictures are they?

A. They are two pictures, supposed to be one of myself and my wife, and one of them is my father, and a couple of pictures in there what we value so

much, because there is one of the daughter when she graduated, and the other one is where she plays on the violin, I believe that is in there, too, but I couldn't tell how many are in there.

Q. Family pictures?

A. Yes, sir.

Q. What did you do about these?

A. Tied them up and carried them down in the place where they stayed when my wife used to go away, to protect from flies, and I put them away in 10 the corner and put some boxes around.

Q. You had them there to protect them from flies?

A. With newspapers, and I really believe cloth on top, but I couldn't swear to it.

Q. Where did you put them in the cellar?

A. I put them in the cellar, way down in the corner, the corner was made a little place to raise it up, the water didn't reach it, because sometimes the water used to come in the cellar, and I made a little place to be protected from the water. 20

Q. A platform, like?

A. Yes.

Q. And is that where the wooden packing boxes were?

A. They were standing on the floor to protect it around, that is all.

Q. Where you spread them around, that is all?

A. Yes.

Q. And I understand the little dog you let this man take to take care of? 30

A. Yes, I did.

Q. Why was that?

A. I thought I will be away a whole day, and the children thought so much about that little dog, I was afraid she wouldn't get any water, or wouldn't get anything to eat, and when these people who were

in there and bought a pair of shoes, they saw my little girl was holding the dog, and petting it, and I say, or my wife expressed it, or I did, I couldn't say correctly she expressed it, you take care of that dog until I come back she would be very glad, and I believe the lady or man said he would take the dog, and I said, "If you take care of the dog until I come back I will give you the shoes a dollar less, if you will take care of it," and I give him a dollar.

10 Q. A dollar off on the shoes, not a dollar in cash?

A. No, a dollar off on the shoes, sir.

Q. Now, Mr. Morris, in this corner of the room where the window was, what furniture did you have in that part of the room?

A. Sewing machine.

Q. Was there a desk there?

20 A. The desk wasn't in that place, but it was—the sewing machine was in the corner, and then, you see, the shoes right that way in the corner, and that corner was the end of the shelves where the sewing machine was standing, and here right in the corner was a desk what I used to fold up my shoes, where I put them in paper when I sold some of them.

Q. Where were those stockings?

A. The stockings laid in the corner, just a place for the stockings in that place.

Q. Near the sewing machine?

A. Yes, sir.

30 Q. Along on the shelves, were they?

A. They were on shelves, yes, sir.

Q. Loose or in boxes?

A. In boxes, sir.

Q. What was loose around there?

A. It was there like all women like to do, they have a lot of rags what is left they try to save, and on this side of the sewing machine was a little place

about as big as that, maybe more, three shelves that was preserved for these pieces to put away, and that is where she had the rags; they weren't really rags, they were pieces left what she was sewing, she had all kinds of pieces in there.

Q. Left over from the cloth your wife was using, is that what you mean?

A. Yes.

Q. How is that corner lighted, where she was working?

A. By electric.

Q. How did you get it there?

A. It was right in the middle of the store three or four lights, I can't recollect, I believe it was four lights, three lights were burning in the store, and the fourth one I went and took and put in there; I had an electrician do it, I didn't do it, I had an electrician connect it to that light, and had a wire running to it. It was one of those lights about as high as that, a light you could carry.

Q. With a loose cable?

A. Yes.

Q. That is the way that was lighted?

A. Yes, sir.

Q. Where did the loose cable lay?

A. It was hanging on the corner where that window is; it was drove in and rolled up with a little piece of thread and hung up on that handle all the time.

Q. The window was closed, you are positive, when you went away?

A. Yes, sir.

Q. Did anybody else have any keys to this place except you?

A. No, sir.

Q. Nobody else at all?

A. No, sir.

Q. And this time, during all these years you have been in Camden, and twenty-two years in Philadelphia, have you ever been in any trouble of any kind?

A. No, sir.

Q. You had \$10,000 insurance on your stock?

A. Yes, sir.

Q. And \$500.00 additional on your store fixtures?

A. Yes.

10 Q. That insurance had been in force since April?

A. Yes, sir.

Q. What agent did you place that through?

A. Mr. Natal.

Q. He is down near you?

A. It is down Kaighn Avenue, a couple of doors away.

Q. You had some kind of insurance before?

A. I had with Mr. Natal, a year before I had \$12,000.

20 Q. The same insurance through the same agent?

A. Yes.

Q. How much was that then?

A. \$12,000.

Q. You reduced that, did you?

A. Yes, sir.

Q. Reduced that yourself?

A. Yes, sir.

Q. And saved the premium on that, I suppose?

A. Yes.

30 Q. Now, Mr. Morris, what stock did you have in your place?

A. I took stock about three weeks before, and I figured I had \$15,000 worth of stock.

Q. Did you take off for depreciation then?

A. That would bring it down to \$12,000.

Q. Discounting \$3,000 for depreciation?

A. Yes, sir.

Q. Were the boxes full in the place?

A. Every box was full.

Q. No empty boxes around?

A. Only what the business I done that Saturday, that is the only empty boxes around on the floor.

Q. Where you wrapped them up?

A. Sometimes people won't take the boxes and would leave them in the corner where the stockings were, we would leave them alongside of that place 10 in the corner, that is where we left the empty boxes.

Q. Where people would rather take them in a package?

A. Yes.

Q. Outside of that, I mean, on the shelves, were they full of shoes?

A. Yes, sir.

Q. Everywhere?

A. Everywhere.

Q. How long was it before the fire that Mr. Frank- 20 lin was in there?

A. It must have been three or four weeks.

Q. Before the fire?

A. Yes, sir.

Q. And from the time Mr. Franklin was in there up to the time of the fire, was there anything done with the shoes except in the ordinary business?

A. Only selling and replacing them.

Q. You were buying shoes, too, were you?

A. Yes, sir.

Q. How about buying? 30

A. Buying shoes then, I did, yes.

Q. I mean as to quantities?

A. Sometimes I would go every day, \$20.00, \$30.00, just according to what I saw I sold I would replace them with sizes.

Q. You would go to Philadelphia and get those?

A. Yes, sir.

Q. How recently before the fire had you replenished your stock?

A. I had it in Thursday, Friday.

Q. Two or three days before the fire?

A. Yes.

Q. Do you remember the quantity you took in yourself?

10 A. Yes, I put in sandal shoes I bought at one place, and I bought some other shoes, a couple of pair, I was a few sizes short; every day I needed them I went out and got them.

Q. And you put those in your stock as late as a day or two before the fire?

A. Yes, sir.

Q. Mr. Morris, was there any oil or kerosene, or anything of that kind in the house?

A. No, sir.

20 Q. What was the extent of the kerosene?

A. We never had any kerosene in the store, anything at all like it; the only thing I saw is my wife sent out, I saw it myself, she sent out Friday or Saturday, she sent my little girl to get five cents worth what you call kerosene, I believe they call it, to clean the tubs before she goes away.

Q. The bathroom?

A. The bath.

30 Q. I don't understand you; to clean what?

A. The bath.

Q. Was there any oil or kerosene in the house except the five cents worth?

A. Nothing at all.

Q. Did you have any kerosene lamps or anything of that kind?

A. Nothing to take it.

Q. Did you have gas or electric upstairs?

A. I had gas upstairs and electric downstairs.

Q. Had that been wired after the house had been built?

A. I found it that way.

Q. With electric downstairs and gas up?

A. Yes.

Q. Do you know whether there was any oil around about this machine?

A. Must have been a little can of oil, just what 10
you drop in for oil.

Q. Do you know of any other kerosene, gasoline or oil of any kind in the house?

A. No, sir.

Q. Where were these stockings when you left the place?

A. They must have been in the boxes.

Q. Did you take any of them out at all before you left?

A. Might be two or three pair, maybe what we 20
sold, something maybe we put them down on the benches where the people were sitting down, maybe there was a pair or two pairs, I don't know.

Q. But no other stockings lying around the place?

A. No, sir.

Q. Did you yourself or did you know of any person pouring any kerosene around on the rug or spreading any kerosene in the place, or any oil of any kind?

A. No, siree.

30

Q. At that time you owed some money?

A. Yes, sir.

Q. You owed money at your bank?

A. Yes, sir.

Q. And I suppose you owed some bills in your store, didn't you?

A. Yes, sir.

Q. What was the extent of your indebtedness?

A. I owed between eighteen and nineteen hundred dollars, I owed the creditors for shoes.

Q. Bills out among the trade?

A. Yes.

Q. And you had a note at the Parkside Trust, didn't you?

A. Yes.

10 Q. How much was that?

A. \$1400, and I reduced \$100.00 after the fire, I paid off \$100.00.

Q. Was that a note you had been reducing every time it came due?

A. It was reduced every time the note was due.

Q. Were any of the bills you owed your creditors, was there any attorney that had gotten judgment against you?

A. Not before the fire.

20 Q. Before the fire, nobody?

A. Not a one, sir.

Q. Was your bank after you to pay that note?

A. No, siree, the bank never pushed me; my standing credit was over \$1,500 on my own signature, and more, because I owed the bank more than \$1500, I owed \$1650, maybe six or eight months before that, and I reduced it.

Q. As you buy new shipments of shoes you get more money from the bank?

30 A. Anything I did need money I would go in and I would ask Mr. Bowen, and I was never refused.

Q. At the time that you went away to Wildwood, the time of this fire, the bank itself wasn't asking you to pay the loan?

A. No, sir.

Q. Did you have any other pressing obligations of any kind?

A. Nobody pressing me, for nobody never say——

Q. Your rent was paid up?

A. Yes, sir.

Cross-examination.

By Mr. Burling:

Q. How long had you had this stock on hand that was in the store?

10

A. It was always replacing; we had the stock when we moved the stock, some we moved from the other store, but it was salable, and then we bring in some more.

Q. You moved from the other store how long ago?

A. I stayed in this store and the other store three years.

Q. Three years?

A. Yes, sir.

Q. You had stock in the store you brought from the other place?

20

A. Yes.

Q. How long had you had the majority of the stock in the store?

A. The majority I buy right along.

Q. How often would you buy?

A. Pretty near every day.

Q. Who would you buy from?

A. Buy from a man named Holmes.

Q. What is the name?

30

A. W. F. Holmes.

Q. Who did he represent?

A. He represented himself.

Q. Who else did you buy from?

A. George J. West.

Q. Who else did you buy?

A. J. Minnie.

Q. Who else did you buy from?

A. Long ago I bought from Decue.

Q. How long?

A. I didn't buy from him maybe two years.

Q. Haven't bought anything from him for two years?

A. No.

Q. Who else, recently?

10 A. I bought from what you call it, I have forgot the name, a Baltimore firm it is, a Baltimore firm, I can't recollect just exactly the name just now to keep in my head, it is a Baltimore firm.

Q. When did you buy from them last?

A. Right along.

Q. When?

A. Maybe I bought from them maybe two or three weeks before.

Q. Maybe; did you buy from them?

20 A. Yes.

Q. When?

A. Maybe two or three weeks before.

Q. Not maybe, when did you buy from them?

A. I don't recollect the date, but I know I bought it in recently when I did need it.

Q. When did you buy before the fire off the Baltimore firm?

A. I couldn't exactly tell you when that was.

30 Q. You don't know then when you bought from them? Who else did you buy from?

A. I bought from Ackenstein.

Q. Where is that?

A. Hackettstown.

Q. When did you buy from them?

A. Two weeks before, maybe.

Q. How much did you buy?

A. I bought first, and they didn't send it in time, and I sent it back.

Q. Then you didn't get any?

A. Yes, I got some, but after that they sent me so much I sent it back to them.

Q. You haven't got your stuff then?

A. I have got lots of stuff of theirs.

Q. What did you send it back for?

A. They come too late; I ordered to come there before some time in June.

10

Q. And they wanted their money?

A. No, they don't want their money yet.

Q. You sent the goods back?

A. Yes, sir.

Q. Who else did you buy from?

A. I bought from Monroe Brothers.

Q. When?

A. Two weeks before.

Q. How much did you buy from them?

A. I couldn't say how much.

20

Q. How much?

A. Maybe \$20.00 or so.

Q. Who else did you buy from?

A. Why, from the firm of Fox.

Q. Where are they?

A. On Fourth Street, I believe.

Q. How much did you buy from them?

A. \$18.00 or \$20.00, or so.

Q. When?

A. The same week, before.

30

Q. Two weeks?

A. Yes, sir.

Q. Did you get the stuff?

A. Yes, sir.

Q. Who else did you buy from?

A. A man there on Third Street, on Third, I be-

lieve, No. 11; the man's name I can't recollect, the man's name I bought off of there.

Q. Who was that?

A. I couldn't recollect the name.

Q. Is that all?

A. Lots of places.

Q. Where?

A. All over; I bought any place I could get it.

Q. Paid cash for it, I suppose?

10 A. No, sir.

Q. Where did you buy?

A. Different places.

Q. Did you keep any record of it?

A. I had, yes.

Q. Did you have an inventory?

A. An inventory, what do you mean, an inventory?

Q. Did you keep books of account?

A. Of course I did.

20 Q. When you bought and sold?

A. Yes.

Q. Just what quantities you bought?

A. Yes, sir.

Q. Have you got your books here?

A. How could I have it, it burned up.

Q. It burned up?

A. Yes.

Q. Ever hear of Simon-Miller?

A. Yes, sir.

30 Q. Ever buy from them?

A. Yes, sir.

Q. When did you buy from them?

A. I bought in the spring.

Q. Did you owe them any money?

A. Yes.

Q. How much?

- A. \$400.00.
- Q. Did they want their money?
- A. No, sir.
- Q. They didn't want their money?
- A. I paid them when I had some.
- Q. You paid them when you had some?
- A. Yes, sir.
- Q. Were they asking for their money?
- A. No, sir.
- Q. Did you ever hear of H. B. Hanford? 10
- A. Yes, sir.
- Q. How much did you owe them?
- A. \$80.00.
- Q. Didn't you owe them \$784.00?
- A. What?
- Q. Did you owe them \$700.00?
- A. Not that I know of, I owed them \$84.00, I believe, \$84.00.
- Q. That is all you owed him, is it? 20
- A. Yes, sir.
- Q. Did you ever hear of the Brobb Shoe Company?
- A. Yes, sir.
- Q. Did you owe him anything?
- A. Yes, sir.
- Q. Did he ask for his money?
- A. After the fire he asked me to pay him the money.
- Q. Did you ever get any letters from his attorney asking for money? 30
- A. Not until after the fire.
- Q. Did you get any on June 21, 1922?
- A. I never had it.
- Q. Never had it?
- A. No, sir, I can't recollect anything like that.
- Q. Did you ever see that letter (showing witness letter)?

A. I can't recollect having that letter in my hand; it might be, but I don't recollect it.

Q. You won't say you didn't have it, will you?

A. I will not say I didn't have it, but I don't recollect.

Q. Did you owe him any money?

A. Yes, but they never asked me for any money, because as soon as I would sell I would pay them.

Q. This is dated June 21, 1922?

10 A. 1922.

Q. June 21st; did you owe them any money then?

A. Yes, I owed them still the money then.

Q. Did they want the money?

A. They didn't push me.

Q. You never saw this letter?

A. I don't recollect having it; I don't deny it.

Q. You don't deny it?

A. I don't recollect it.

Q. If it was in your place, would you say you saw
20 it or not?

A. If I had it to read I would recollect.

Q. Don't you attend to the mail relative to your business?

A. Yes.

Q. Don't you know who you owe and who you don't?

A. Yes.

Q. You attend to that, do you?

A. Yes, sir.

30 Q. Had the Holmes Company wanted their money?

A. If they wanted their money they would ask, but they wouldn't bother me; everybody wants money, but they never bother me, never bother me still.

Q. Did you ever see that letter?

A. Well, that is a letter any business man would write, a letter like that.

Q. You got that letter?

A. I don't say I did, but if I did any business would send a letter like that; he wanted a check, but he didn't say anything about me, because I don't owe him so much.

Q. Now, how long have you lived at this place on Haddon Avenue?

A. Three years.

Q. How long had the front door been out of repair? 10

A. Really, to bring my memory it was about maybe a year or two years.

Q. So every night for a year or two years you moved this cabinet, did you?

A. I always used to put it there.

Q. That is the cabinet, is it, is that it? (Showing witness picture.)

A. Yes, that is what it is, I suppose that is what it is.

Q. Look at it, isn't that it? 20

A. Yes.

Q. That is it?

A. Yes, sir.

Q. And every night for two years you moved that up to the door, did you?

A. Yes.

Q. For what purpose?

A. No lock on the door.

Q. Weren't there two bolts on the door?

A. A little bolt down below. 30

Q. Wasn't there a bolt on the bottom?

A. That was never bolted, it was no good.

Q. How many bolts were on the door?

A. One bolt, the little bolt down below was never good.

Q. Did you ever say anything to your landlord about having the locks fixed?

A. He wouldn't fix the locks on the doors.

Q. He wouldn't fix the locks on the doors?

A. No, sir.

Q. Were you compelled to fix them?

A. I done all the fixing.

Q. Are the owners supposed to fix it?

A. Yes.

Q. How much would it cost to have a door lock fixed?

10 A. I don't know, I didn't give no thought to it.

Q. You would rather every night when you went to bed go and put the bolts on the door and go to the trouble of pushing this big case you had there for show purposes up against the front door rather than spend the money to have a locksmith fix the door?

A. That wasn't any trouble at all.

Q. That wasn't any trouble?

A. No, sir.

20 Q. Every night you did that before you closed?

A. Yes, sir.

Q. You thought that was better protection from burglars than to have a locksmith come there and fix it properly?

A. Yes, sir.

Q. How many show cases were against the back door?

A. Only the one.

Q. You pushed one against the back door?

30 A. No.

Q. Why didn't you push one against the back door?

A. What; what back door?

Q. There was another door to get it?

A. It was locked.

Q. You had a key to that one?

A. Yes, sir.

Q. So everybody that went out the house at any time you had to stop and push the case up against the door and go out the back?

A. Yes.

Q. No matter who went out that is what you had to do?

A. Whenever I went out.

Q. Didn't you ever get tired of doing that?

A. No, sir.

10

Q. Did you push any show cases up against the window?

A. What window?

Q. How many windows did you have in the room?

A. Two.

Q. Are they in the store or dining room?

A. In the store.

Q. They open up in the alley?

A. No, that is a different window.

Q. How many windows open on the side?

20

A. On the side, one window.

Q. How many shoe cases did you push in front of that window?

A. I don't have to.

Q. Why didn't you?

A. They were locked.

Q. Did it have shutters on?

A. Yes, sir.

Q. Shutters?

A. Yes, sir.

30

Q. And you closed the shutters every night?

A. Yes.

Q. And locked the shutters?

A. Yes.

Q. Did you lock the shutters the day you went to Wildwood?

A. Yes.

Q. Locked them that morning?

A. Yes, sir.

Q. Before you went away?

A. Yes, sir.

Q. You didn't mention that on your direct examination, did you?

A. You didn't ask me.

Q. You locked the shutters on that window?

10 A. Everyone was locked.

Q. Was that locked securely?

A. About as good as any lock could be; it isn't a lock, it is a bolt.

Q. You put the bolt on that window before you went to Wildwood?

A. Yes, sir.

Q. And you locked that window up good and tight before you went away?

A. Yes, sir.

20 Q. That has two shutters?

A. Yes, sir.

Q. And that is the only window on that side of the house?

A. Yes, sir.

Q. You locked that up tight?

A. I don't know what about tight, the shutters weren't tight.

Q. What kind were they?

A. Wooden.

30 Q. Did you bother putting a show case up against that window?

A. No, sir.

Q. Why didn't you?

A. That didn't need it.

Q. You had a bolt on the front door that would keep the burglars out?

A. Yes, sir.

Q. Then why did you go to the trouble of putting this case up there?

A. Because I did.

Q. What for?

A. Protection.

Q. What kind of protection?

A. Because somebody might break in.

Q. Break into what?

A. Into the store.

10

Q. How would they get in?

A. Break it in.

Q. Is this case on wheels?

A. Yes.

Q. How is that going to keep burglars from getting in?

A. It would help to do it.

Q. You weren't in the house the night you went away?

A. I wasn't thinking about anybody breaking my 20 door.

Q. What did you put it there for then?

A. Protection.

Q. For what?

A. Protection for burglars; by putting it for protection against burglars you could hear the noise.

Q. When they would come there?

A. I put it for protection.

Q. Protection against what?

A. Burglars.

30

Q. On that day you put it there because you wanted to hear the noise?

A. I put it there in its place.

Q. You just put it there that morning because you always did?

A. Always did.

Q. What way did the family go out?

A. My wife and two children went out through the front door.

Q. The night before when you went to bed you had put the show case there?

A. I did.

Q. You got up in the morning and weren't going to do any business?

A. No.

10 Q. That was Sunday?

A. Yes.

Q. And the show case was against the door when you got up?

A. Yes, sir.

Q. Because you put it there when you went to bed the night before?

A. Yes, sir.

Q. Why couldn't you have all gone out the back door?

20 A. I didn't want to drag the children and wife through the back.

Q. They go in and out that way, don't they?

A. My wife and children, if I could help it, I always let them out through the front.

Q. You stand there, and whenever they want to go out you remove the obstruction?

A. Sir?

Q. You stand there, and whenever they want to go out you remove the obstruction?

30 A. Yes, sir.

Q. Were there any occasions they wanted to go out you weren't there to move the show case?

A. They could do it themselves.

Q. If they could move the show case, who would put it back?

A. I would put it back inside.

Q. Wasn't there any occasion they went out with-
out you being there?

A. Without me?

Q. Yes.

A. I was always home.

Q. You don't know that, do you?

A. I didn't say I don't know, but I was always
home.

Q. Who went out the first time the back way?

A. Me and my oldest girl.

10

Q. Your oldest girl?

A. Yes.

Q. Why do you distinguish in your family, your
wife and children, and the oldest girl?

A. She stayed to let the girls go out, and the
mother.

Q. Why didn't you let her go out?

A. She was big enough to go out if she wanted
to.

Q. Why didn't she go out the front?

20

A. I didn't ask her.

Q. You said you sent the children and wife out
the front way because you didn't want to bother
going around the back?

A. Yes, sir.

Q. Why didn't you treat the other daughter the
same way?

A. If she stayed I wasn't to push her out.

Q. So you let her go around the back way with
you?

30

A. Yes, sir.

Q. When you went back what way did you go in?

A. The same way.

Q. The back way?

A. Yes, sir.

Q. You used a key?

A. I was going to use it, only when I come in the yard I found it broken up.

Q. I mean when you came back from the street corner.

A. From the street corner I used the key.

Q. You went in the back way?

A. Yes, sir.

Q. And you went into what room?

A. I have to get to the kitchen, and why the next
10 door was that side door, and the dining room.

Q. Where else did you go?

A. Nowheres.

Q. What did you go back for?

A. To get the watch.

Q. Where did you get the watch?

A. On the sideboard.

Q. Where was it?

A. On the sideboard.

Q. Are you sure it was on the sideboard?

20 A. Yes, sir.

Q. It wasn't on the bureau?

A. I say the bureau, because I couldn't remember the word sideboard.

Q. When did you say that?

A. Now, when I was speaking, when I was talking with the lawyer what was in there, I said it was a bureau, which I couldn't remember the sideboard name.

Q. Don't you know the difference between a bur-
30 eau and a sideboard?

A. Yes, I do.

Q. Is the bureau upstairs or downstairs; where is the bureau, upstairs or downstairs?

A. The sideboard is in the dining room.

Q. Where is the bureau?

A. I haven't got a bureau.

Q. Where did you go to get the watch?

A. On the sideboard, sir.

Q. Is that where you went to get it?

A. Yes, sir.

Q. You have always said that, have you?

A. Always said it, yes, sir.

Q. You know the difference between a bureau and a sideboard, don't you?

A. I suppose I ought to, I am old enough.

Q. What else did you get, and what did you do? 10

A. I didn't do nothing.

Q. You remember making a statement, don't you, in the prosecutor's office?

A. Yes, sir.

Q. On the 25th day of July?

A. I suppose so, yes.

Q. When Detective Whaland was present, Chief Carter, and the prosecutor?

A. Yes.

Q. At that time didn't you say this: "Who was 20 the last one out of the house? A. I was"?

A. I was.

Q. "Had the others gone very long before you?

A. No, sir, they were right there on the corner waiting for the car, my wife forgot the silver watch she left on the bureau" —

A. She never had a silver watch.

Q. Didn't you say that?

A. She never had a silver watch. If I said that it was by mistake. 30

Q. "She left it in the bureau," did you say that?

A. I must have made a mistake the same way, I meant to say it was the sideboard.

Q. You didn't mean to say the bureau then?

A. I didn't mean it, if I did I said it by mistake.

Q. "And I returned to get the watch and run out." You say the two things you did say were a

mistake; it was a gold watch and you didn't mean to say it was in the bureau, but the sideboard?

A. She never owned a silver watch, sir, I couldn't say that.

Q. How long were you going to stay at Wildwood?

A. I was to come back Sunday night, sir.

Q. Why didn't you?

A. I went out, and we had a good time with my family, and I didn't know the time, and when I got
10 back it was too late.

Q. What kind of a ticket did you buy for Wildwood?

A. Ticket? I bought two tickets, return tickets, and bought one two weeks for my wife.

Q. What kind of a return ticket did you buy?

A. Excursion ticket.

Q. Excursion tickets?

A. Yes, sir.

Q. What does an excursion ticket mean?

20 A. To come back on Sunday night, the same day.

Q. Come back on the same day?

A. Yes, sir.

Q. You knew that when you went down?

A. Yes, sir.

Q. Why didn't you?

A. Because I went out and had a good time, and I forgot the time, and when I got back I thought I would have time to come back nine or half-past nine.

30 Q. Didn't you tell your lawyer a few minutes ago you were talking on the porch about business until half-past eleven?

A. That was after.

Q. After what?

A. From the Boardwalk.

Q. Who was coming back with you?

A. My big girl.

Q. Where was she?

A. Out with another girl.

Q. Were you with her?

A. No, sir.

Q. Where did you meet her that night?

A. I didn't meet her until after. It was just fun, she was having a good time, and she didn't come back there.

Q. It was just funny she was having a good time and she didn't come back there? 10

A. Not funny at all, she went out for a little walk, and the other girl asked her to go into a show, whatever it was, and the girl, she forgot.

Q. What time did the excursion train go?

A. Where?

Q. From Wildwood to Camden?

A. Quite a good many of them go.

Q. What time did you think it was going?

A. Half-past nine.

Q. So you missed it? 20

A. Yes.

Q. What time did you see your daughter?

A. I see when she come in; I didn't look what time it was, it was too late to go.

Q. Couldn't you inquire what time it was?

A. Inquire for who?

Q. Ask anybody?

A. I saw it was too late, they told me it was too late for the excursion.

Q. When did you find that out? 30

A. When I came back to the hotel.

Q. Well, you went out on the Boardwalk, and you didn't pay any attention to the time, yet you knew you had to take the excursion, you had to catch the nine o'clock train?

A. What could I lose, I could only lose the money what I paid for it, that is all I could lose.

- Q. You were willing to lose the money?
A. To have a good time with my family.
Q. Did you talk that over at supper time?
A. Supper time?
Q. Did you tell your daughter at supper time it would be all right?
A. No, sir.
Q. What did you expect her to do?
A. Come home with me the same time.
- 10 Q. You didn't care whether she missed the excursion train, it only meant another ticket?
A. As long as I had the tickets if she come before and I hadn't been so late we would have gone.
Q. You intended to come back?
A. Yes.
Q. You discussed all that at supper time?
A. At supper time.
Q. When did she leave you?
A. After supper time.
- 20 Q. You had supper together?
A. Yes.
Q. Do you mean to say you didn't discuss it at supper time?
A. We knew we had to go home.
Q. Where were you to meet her?
A. At the hotel.
Q. What time?
A. To take the train to go home.
Q. What time?
- 30 A. I couldn't tell you what it was.
Q. What time did you tell her to be back?
A. I expected her to be back in time.
Q. What time did you tell her to be back?
A. Maybe nine o'clock.
Q. Maybe; did you tell her to be back at any time?
A. She knew she had to be back.

Q. You knew she wouldn't be back?

A. I did not, sir.

Q. What did you want to get rid of the dog for?

A. The dog?

Q. Yes.

A. To get rid of it? My children is crying for it now.

Q. What did you want the man to take it for?

A. To keep it.

Q. You were only going to be away for a day? 10

A. I didn't want the dog to suffer.

Q. The excursion train gets back at nine o'clock?

A. Yes, sir.

Q. And you weren't leaving before six o'clock in the morning?

A. I wouldn't give him anything in the night time, and the dog would have to suffer a night and a whole day.

Q. Why couldn't you give him something in the morning? 20

A. I didn't think of it; as long as I could give the man a dollar and the dog should not suffer.

Q. Couldn't you have fed the dog that morning?

A. I didn't think about it as long as it would only take a dollar.

Q. You didn't want to think about it, that is the reason you gave the man the dog?

A. I paid him for it.

Q. It would have been an easy matter to leave food and water there over Sunday, wouldn't it? 30

A. My children think a good deal of the dog, and the dog should not suffer.

Q. Did you ever do that before?

A. Never had occasion.

Q. What did you do with the dog other times?

A. Never went away from the home before this.

Q. How long have you had the dog?

A. Maybe four months.

Q. Weren't you out on an excursion trip earlier in the year?

A. The children were home then.

Q. You never left the dog in the house any time before?

A. No, sir.

Q. What did you want to move the pictures down-
10 stairs for?

A. Because they shouldn't get any flies on them.

Q. You thought it would be better to put them in the back part of the cellar, and they would be less likely to get dust on them there than on the walls of the room?

A. They were covered.

Q. You were going to be home?

A. Yes.

Q. Your wife went down to the seashore, but you
20 weren't going to stay?

A. No, sir.

Q. Then what was the necessity of moving those pictures out of the house?

A. They were always moved there every season; every year before my wife went away she always moved those pictures and put them in the cellar.

Q. How could they get greater protection down in the dark part of a cellar than they could on the walls?

30 A. The flies would get to them.

Q. You took them down?

A. Yes, sir.

Q. If that was the reason why didn't you do it earlier in the year?

A. The flies ain't bad.

Q. You decided the 23rd of July was fly season?

A. We decided to go that day.

Q. The 23rd of July was fly season, that is the reason you decided?

A. I didn't decide; when we decided to go away my wife said she would like to put the pictures away.

Q. That is the first time you decided to do it?

A. When we decided to go away.

Q. You only put them down to keep them from getting dirty? 10

A. Only from flies.

Q. But you were going to be in the house, weren't you?

A. I wasn't going to keep driving the flies off.

Q. Is that what your wife does?

A. No, sir.

Q. How do you do it when she is home?

A. She puts them in the cellar.

Q. How did you keep the flies off them from May to the 23rd of July? 20

A. If you open them you may find some on them.

Q. What was the value of your stock?

A. More than \$15,000.

Q. How much was it?

A. How much; I am saying I couldn't tell you how much, it was a little over \$15,000, I think from fifteen to sixteen thousand.

Q. \$15,000 the value of your stock?

A. Yes, sir.

Q. How did you arrive at that value? 30

A. I figured that is what it cost me.

Q. When did it cost you that?

A. When I was buying it.

Q. When did you buy it?

A. Every week, every two weeks, I kept on buying it right along.

Q. And you had some if it for three years?

A. Yes, sir.

Q. Were prices higher then or lower?

A. Higher.

Q. Then prices had dropped and you had the stock in your possession?

A. Yes, sir.

Q. How much had it dropped?

A. I figured twenty per cent off.

10 Q. Twenty per cent off \$15,000?

A. Yes.

Q. Then you valued it what?

A. \$12,000.

Q. That was cost price, wasn't it?

A. Sir?

Q. That was what you paid for it?

A. Yes.

Q. Then it was worth more than that to you?

A. Yes.

20 Q. How much was it worth to you as a merchant-able article?

A. I could make maybe \$25,000 if I sold retail.

Q. \$25,000 if you sold it retail was the value of your stock?

A. Yes.

Q. Why didn't you sell it?

A. I kept selling as fast as I could.

Q. You didn't have much business at that time?

A. I had as good business as anybody else.

30 Q. You remember the man on the stand this morning; he wanted you to take an ad, didn't he?

A. I wouldn't give him any.

Q. Didn't you tell him business was poor?

A. I told him I wouldn't advertise.

Q. Told him you wouldn't advertise?

A. Not at that time in the season; I used to advertise in the Courier before, I used to advertise in

the Courier, but I told him in July and August I don't do no advertising.

Q. Didn't you tell him you didn't know how long you were going to be there and you didn't want to advertise?

A. No, sir.

Q. Didn't you mention to him anything about fires and explosions?

A. No, sir, I wouldn't tell a man like him anything about fires. 10

Q. How much was your stock worth?

A. Worth to me to sell it at retail I would make from \$20,000 to \$25,000, and the worth of it was \$15,000 to \$16,000.

Q. Is that your signature?

A. Yes, sir.

Q. You read that over before you signed it?

A. I don't know. "Charles Morris, 1203 Haddon Avenue" —

Q. Read it to yourself, no use reading it aloud. 20

A. Well, sir, what did you ask me about it?

Q. That is your signature?

A. Yes, sir.

Q. You signed it?

A. Yes, sir.

Q. Read it over and signed it?

A. Yes, sir.

Q. What does that say about the \$6924.00?

A. They took off one time the adjuster they found my stock was worth \$12,000, and after that the other 30
adjuster come from the company and he took it down different, he took it down and I never knew a thing, but the other adjuster when they sent for me, they say, "Mr. Morris, would you take that much?" and I say, "My stock is worth twice as much as that," and he said, "That is all the people offer you."

Q. This reads: "This memorandum is without admission of liability. The sound value of the property claimed to be insured and the loss thereon have been ascertained as shown below, without prejudice to any defenses and subject to all and singular the terms and conditions of the policies upon which claim is made. Stock, sound value \$6924.00; loss and damage, \$4671.00. Fixtures, sound value, \$625.00; loss and damage \$375.00." Now, if the sound value of your stock was \$6924 why do you testify before this Court you could sell your stock for \$25,000 to-day?

A. Everywhere where I sell it it was worth it; I didn't put the values on the shoes, they put the value.

Q. If you weren't satisfied with the value, why did you affix your signature?

A. I wasn't satisfied.

Q. Why did you put your signature there?

A. Because they told me to.

Q. That is a statement over your signature saying the sound value is approximately \$7,000?

A. They told me, the adjuster told me that is as much as we could get.

Q. If that wasn't the sound value of your stock why did you put it down there when you knew it was worth \$25,000?

A. \$25,000 was what it was worth to me, counting the profit on it.

30

Mr. Burling: I would like to offer that in evidence at this time, if the Court please.

(Said paper was offered in evidence and marked Exhibit S6.)

Q. What was your cash balance on hand the day of the fire?

A. I can't recollect, the bank will tell.

Q. How many days after the fire was a note due at the bank?

A. When I was locked up in there, I couldn't say when it was; they sent in the notice and my wife put \$100.00 on it.

Q. How much was the note?

A. I couldn't recollect; I believe it was a note— 10
I had four notes in there, and I —

Q. You knew a note was due three days after the fire, didn't you?

A. I did not.

Q. You mean to say to this Court and jury you didn't know on July 26th there was a note due at the bank?

A. I don't remember whether it was the 25th or 26th.

Q. You knew there was a note coming due that 20 week?

A. I don't remember what note.

Q. Didn't you know there was a note coming due the week after the fire?

A. I knew it was reduced \$100.

Q. You knew there was a note coming due the week after?

A. No, sir.

Q. I thought you kept the books of your business?

A. When I went home I would know.

Q. You kept the books of your business and you didn't know when notes were due?

A. I was never late when it was due.

By Mr. Woodruff:

Q. How many notes were there?

A. There were about four.

Q. And altogether they made how much?

A. Altogether made that time, the time of the fire, \$1400.

Q. And it was one of these that came due after the fire that \$100 was paid on?

A. Yes, sir.

Q. They came due at different times?

A. Yes, sir.

10 Q. And they were all notes you were reducing from time to time?

A. Yes, sir.

Q. Mr. Morris, I see on No. 4 what looks to me like a sideboard?

A. That is the sideboard.

Q. That is what you referred to when you spoke of a bureau in the dining room?

A. Yes, sir.

Q. That is where your wife's watch was?

20 A. Yes, sir, on top of it.

Q. Mr. Morris, the goods you had carried from the other store over, the goods you still had on hand, were they goods you had bought in the open market?

A. In the store on the open market.

Q. Regular goods you buy and sell to the trade?

A. Yes.

Q. And some of these you were still carrying along?

30 A. Most stores do, when you don't sell some sizes, you know.

Q. You say your books were burned up in the fire?

A. Yes, sir.

Q. Were there any memorandums you got out of there after you got back?

A. No, sir.

Q. How long did they keep you locked up?

A. Locked up somewhere around about three weeks; it would be three weeks Monday, and I was let out, I believe on Wednesday or Thursday.

Q. And when you got back you couldn't get any of your books back?

A. No, sir.

Q. You don't know what happened to them?

A. No, sir.

Q. How long was it that you were locked up before you were even permitted to see your wife, or anybody else? 10

A. I was locked up —

Mr. Burling: I object to that; I don't see that that has any relevancy to this situation. I haven't any objection, but I don't see its relevancy, it is only taking the time of the Court and jury.

Mr. Woodruff: The prosecutor has asked about 20 his books, and I am trying to show the man had absolutely no opportunity of getting them; I am showing they kept him from seeing his wife or anybody else until they got what they wanted.

The Court: For that purpose I will allow the question.

Q. How long was it before they permitted you to see your wife or anybody at all? 30

A. My wife was away three days.

Q. And during that time did they take you over to the prosecutor's office and tell you this story?

A. They had me twice, I believe it was twice—I know the first time they brought me up, the first time, that was on that Monday, they took me and they asked me, and then another time.

Q. Did you see your books there at the prosecutor's office?

A. I did not.

Q. Did you see them at all during that time?

A. No, sir.

Q. The statement you told them, is that the same as you told to-day?

A. What statement?

Q. This statement they have here?

10 A. Yes, I made a statement; everything is correct in there except in the statement the silver watch; she never owned a silver watch, and another thing in the statement is I made a mistake about the sideboard, you know, see, about the name, and maybe I say it was a bureau, and maybe it was a sideboard.

Q. Now, Mr. Morris, your attention has been called to a number of people you owe money to; are they part of the bills you told me amount to \$1800?

20 A. Yes.

Q. Those Mr. Burling has called your attention to are a part of the \$1800, or whatever it was?

A. A part, sure.

Q. That you already said you owed?

A. Yes.

Q. As you say, people wanted their money, and they wrote you letters?

A. Yes.

Q. Were any of those claims being pushed in suit
30 in court, anything of that kind?

A. No, sir.

Q. After the fire, I understand they did sue?

A. Some of them. He didn't ask me about Miller & Sons, those people I owe more than anyone, and they never asked for it, never pushed me, and they say they got a letter, maybe they did send a letter,

I won't say yes or no, but they never pushed me until to-day, they never asked me for the money.

Q. Mr. Feuerstein, who worked for the Camden Fire Insurance Association, fixed a figure, did he?

A. They fixed between themselves, I never knew anything about it.

Q. Now, after Mr. Feuerstein agreed on the figure they would give you, how did you get the paper which you signed?

A. I went to the adjuster and asked him for the statement they then decided, and that is the way I got it. 10

Q. Where was it you signed, over at Feuerstein's, or where?

A. No, sir, I haven't signed with Mr. Feuerstein, because I haven't saw Mr. Feuerstein; I signed where my adjuster took and adjusted the merchandise, there is where I must have sigend.

Q. This paper that had Mr. Feuerstein's signature on, is that where you signed it, at the adjuster's office? 20

A. I can't say that.

Q. When was that, do you remember?

A. Well, I will not be sure, it must be about three or four weeks ago after Mr. Feuerstein was there; Mr. Feuerstein could recollect the day, it was two or three days after that the adjuster sent for me to come down and see him, and I come down and see him, and they say that is as much the company decided to give you, that much, and I asked him how much it was, and he told me; he didn't read it for me the paper, of course, he knew I could read myself, and he said, "That is as much as are the damages," and he said, "You will give us the stock and we will fix it up and we will sell it and give you the money," that is the salvage stock. 30

Q. That was the total amount you were to get out of it?

A. How much is that?

Q. \$5000 was to the total you were to get out of your insurance?

A. No, sir.

Q. How much?

A. I was to get out \$1400 after the salvage, after it was to be sold.

10 Q. \$1400 of it was salvage, is that right?

A. Yes, sir.

Q. And cash, was that \$5000?

A. \$6000.

Q. That was to be the total you were to get?

A. Were to get beside the salvage.

Q. I understand, \$6000, approximately, cash, and then you were to have the salvage out of the old stock there of about \$1400?

A. Yes.

20 Q. That is what you were told by the adjusters?

A. Yes, sir.

By Mr. Burling:

Q. Doesn't this paper show the loss as \$4671, approximately \$5000 on the stock, and \$375.00 on the fixtures, that made a total of a little over \$5000?

A. The way I understood I was to get \$6000.

Q. And salvage, too?

30 A. That is what I understood.

Q. Get the salvage, too?

A. That is what I understood.

Q. You understood that, and yet you signed this paper?

A. I signed it, I couldn't deny it is my signature. It don't mention any salvage in there, does it?

Q. Loss \$5046.

A. That is besides the salvage, sir.

Q. Besides the salvage?

A. Yes, sir.

Q. Who was going to get the salvage?

A. I was.

NORMAN G. STINSON, recalled.

10

By Mr. Woodruff:

Q. Mr. Stinson, did you locate the records of any previous insurance?

A. I did locate some records of previous insurance.

Q. When was it reduced; what was the larger amount, and when was it reduced?

A. The record of policy written April 7, 1920, 20 which expired April 7, 1921, indicates that there was \$5500 insurance on the stock, and \$500 on the fixtures. Then there was another policy No. 245478, which indicated \$6000 insurance on the stock.

Q. Making a total prior to these last policies of what?

A. Making a total of \$11,500 on the stock and \$500 on the fixtures.

Q. That made a total of \$12,000 prior to the reduction in April?

30

A. The total was \$12,000.

Q. In April it was reduced to \$10,000?

A. April of this year, you mean?

Q. That wasn't by any action of the association was it, the insurance company?

A. I couldn't tell you about that.

Q. You don't know about that at all?

A. No.

Q. Don't you make examination of places such as this to see whether they are carrying too much insurance, don't you do that yourself?

A. Sometimes.

Q. Don't you know in this particular instance it wasn't on the suggestion of the company, but voluntarily on Mr. Morris' part the insurance was reduced?

10 A. I don't have anything to indicate here it was due to any initiative of mine the insurance was reduced.

No cross-examination.

AUGUST PFLEIDERER, SWORN.

20 By Mr. Woodruff:

Q. Mr. Pfleiderer, you are a police officer of the City of Camden?

A. I am.

Q. How long have you been on the force?

A. Three and a half months.

Q. Where is your beat?

A. Thirteenth, sixth and fifth wards.

Q. Prior to the fire?

30 A. From the 9th of July to the 15th of July I was pulling 242 box, which is Haddon Avenue and Kaighn Avenue, which takes in that territory.

Q. Before that were you in the same territory?

A. My beat the night of the fire was the same box, 242.

Q. How long before the fire, how long had you known ——

A. I have only been on since July 5th.

Q. From July 5th to the 23rd?

A. Yes, sir.

Q. When were you on, day or night during that period?

A. Seven to three P. M.

Q. Seven in the evening to three in the morning?

A. Yes, sir.

Q. And your beat took you past Mr. Morris' place of business?

A. Yes.

Q. What did you observe night after night as to the front of his building?

A. I always used to try the doors after midnight, I had a habit of trying the doors and flashing the light in places rather dark.

Q. As to Mr. Morris' door, how was that fastened, closed?

A. Both windows, bulk windows, the partition was in back so you can't look in.

Q. That was a premanent partition?

A. Yes.

Q. Through which the window dresser would step?

A. Yes.

Q. What did you find about the door?

A. Always found a case up against it.

Q. Was that regularly?

A. That was for that week, because I tried the door every evening.

Q. Not the night before the fire, but every night?

A. Every night from the 9th to the 15th.

Cross-examination.

By Mr. Burling:

Q. That was the 9th to the 15th of July, was it?

A. Yes, sir.

Q. Did you know it to be a case?

10 A. Yes, sir; I was speaking with the children there one evening just before they were going to bed —

Q. What you actually know, did you see it?

A. Before I walked away from that place I seen they actually pushed it right up against that door.

CAMILLUS APLEY, SWORN.

By Mr. Woodruff:

20

Q. You are a member of the police force, too?

A. I am.

Q. How long?

A. Over twenty years.

Q. Prior to the evening of this fire at Mr. Morris' place, had your beat been down in that neighborhood?

A. Yes, sir.

Q. Over how long a period of time prior to that?

30 A. I am out there most of the time at night time.

Q. Out there in the evenings and Sundays when places are closed up?

A. Yes, sir.

Q. As part of your duty does it require you to go along and see if places are closed?

A. We try all doors after they are closed.

Q. Before the fire what did you find on other evenings about Mr. Morris' place, how the door was closed or barricaded?

A. Always found a case up against the door.

Q. For how long a period of time had you known him to do that?

A. Six months or more.

Q. Over a period of six months before the fire?

A. Yes, sir.

10

Cross-examination.

By Mr. Burling:

Q. Did you see the case yourself, Appley?

A. Yes, sir, saw it through the glass door.

Q. How do you know it was a case?

A. I saw the case after the fire standing there and it looked like the same case to me.

Q. But you are not sure?

20

A. I am pretty positive.

Q. What makes you positive?

A. It had shoes in one end hanging out, and that is the reason I know.

Q. See it every night?

A. Every night I was on that beat.

Q. How long were you on that beat?

A. You shift around two weeks at a time.

Q. Were you there every night on your beat?

A. When I am on that beat I am around there. 30

By Mr. Woodruff:

Q. Do you see the case you are talking about in the picture?

A. That is similar to the one I saw through the door.

Q. Are those shoes, or keds the same kind you were talking about?

A. Yes, sir.

By Mr. Burling:

Q. Which way was the case turned, front or back?

A. It was turned with the back to the door.

Q. How could you see what was in the case?

10 A. The end of it, the shoe hung on one end.

Q. Was inside?

A. On the north end of the case.

Q. And it covered the whole door?

A. Very near.

Q. How could you see if it covered the glass door what it was?

A. I saw them hanging between the door and the case, these canvas shoes.

Q. How thick is the case?

20 A. I couldn't say how thick it was.

Q. You saw it after the fire?

A. I judge about that wide. (Indicating.)

Q. The opening was on the inside, facing away?

A. Yes.

Q. If it had any contents in that you could see, how could you see in the back?

A. There was some canvas hanging to one end on top, I noticed that.

30

ANNIE WEINSTEIN, SWORN.

By Mr. Woodruff:

Q. Mrs. Weinstein, you are the lady who had the hotel and boarding house at Wildwood?

A. Yes.

Q. Where do you live now?

A. 2436 S. 4th Street, Philadelphia.

Q. How long have you had that place in Wild-wood?

A. I had that place six years.

Q. Six different summers?

A. No, I just run it myself the second summer, but we bought it six years ago.

Q. But you ran it the past summer?

10

A. Last summer and this past summer.

Q. Did you know Mr. Morris and his family last summer?

A. No.

Q. When did they come to your place?

A. They come on a Sunday, half-past nine, I suppose it was the 23rd of July.

Q. Have you got the book here?

A. Yes, I have the register here.

Q. Who kept that the day they came?

20

A. We kept it.

Q. Which one of your family?

A. What do you mean?

Q. Which one of your family registered the Morris.

A. Always on the counter, and every new people register there.

Q. What time of the day did they come in?

A. Half-past nine.

Q. Who came?

30

A. The whole family, Mr. Morris, the children, and his wife.

Q. Did you see Mr. Morris himself in the morning?

A. Yes, they asked me information about the price of board and all that.

Q. And he talked to you at that time?

A. Yes.

Q. That is the same man that is here?

A. Yes.

Q. And you gave them accommodations?

A. Yes.

Q. How much of him did you see during the day, Mr. Morris himself?

10 A. I didn't watch Mr. Morris or the rest, because I had 100 people in the place, and the only thing I saw was by the meals three times a day they eat, and I used to walk around and see all my guests in the dining room.

Q. Mr. Morris was there all three meals during the day?

A. Yes.

Q. Did you see him during the evening?

A. Yes.

Q. Where was he?

20 A. Mr. Morris came and he paid me for the day, and he said to me he missed the train, it was too late to go home on the excursion, and he asked what time the train left in the morning, and I said, "The earliest train is 6.45 or 6.50, that is the first train for Camden, I suppose to Philadelphia, and it stops at Camden," and he asked me if I could knock on his door in the morning, and I said yes, because I usually have that job Monday morning, knocking at every door, because they all have to make a train.

30 Q. How late in the evening did you see Mr. Morris there?

A. Half-past eleven he was talking out on the porch, Mr. Weinstein and several other men, they were talking business, and all that.

Q. What time had you talked about waking him up?

A. That was in the evening when he paid me; I suppose it was after nine o'clock, after he missed the train.

Q. After that you saw him on the porch how late?

A. Eleven, half-past eleven, then I went to bed.

Q. Did you wake Mr. Morris?

A. Yes, I woke him, and I saw him go out with the daughter to make the train.

Q. What time did he go away Monday morning?

A. I think it was about twenty-five minutes after 10 six, half-past six Monday morning.

Q. Will you find in your entry where they registered, please?

(Witness complies.)

Q. Now, who assigned them to room 5-B?

A. I believe my daughter.

Q. Your daughter did the assigning?

A. Yes, she always done that.

Q. Who wrote this in the book, did Mr. Morris, or did your daughter write it? 20

A. I don't know exactly who wrote it; I don't think it is Mr. Morris' writing.

Cross-examination.

By Mr. Burling:

Q. You couldn't account truthfully for the whereabouts of Mr. Morris all day?

A. No, I couldn't say; I have 100 people in the 30 place and so busy myself I couldn't pay much attention to all my guests.

MARY WEINSTEIN, SWORN.

By Mr. Woodruff:

Q. Miss Weinstein, you are the daughter of the lady who was just on the stand?

A. Yes, sir.

Q. And were you at Wildwood last summer at the
10 house your mother kept?

A. Yes, sir.

Q. And the entry in the book there, is that familiar, do you know who made it?

A. Mr. Morris' oldest daughter.

Q. Mr. Morris' oldest daughter wrote it, did she?

A. Yes.

Q. Were you there at the time?

A. Yes.

Q. Who picked out 5-B for them?

20 A. My mother.

Q. Does that show where Miss Nurock—

A. She wasn't registered there.

Q. When did you first see them, when they first
came in in the morning?

A. Yes.

Q. What time was that?

A. Before breakfast time I think it was.

Q. How much did you see of the family during
the day?

30 A. I saw them all day, because I was in the office.

Q. You were in the office, taking care of the office?

A. Yes.

Q. Were they in and out of there different times
during the day?

A. Yes.

Q. In there for the three meals, all the family?

A. Yes.

Q. How late in the evening did you see Mr. Morris?

A. I went out about nine o'clock.

Q. Who did you go out with?

A. The oldest daughter.

Q. You two went out on the walk, did you?

A. Yes.

Q. What time did you get back?

A. After eleven.

10

Q. Was Mr. Morris still up?

A. I really couldn't tell you, I didn't notice.

Q. What was the last that you saw of Mr. Morris yourself?

A. Before I left, about nine.

Q. About nine o'clock was the last you saw of him?

A. Yes.

Q. Where had you seen him during the day?

A. In the hotel and on the porch.

Q. Were you there when they went out bathing?

20

A. I don't quite remember.

Cross-examination.

By Mr. Burling:

Q. You can't truthfully account for their presence in your sight except the hours at meal-time?

A. At meal-time, and in the morning after they arrived; at the time they arrived, and in the afternoon.

30

Q. What time did you start out with the daughter?

A. Eight-thirty to nine.

Q. She was a stranger to you?

A. Yes.

Q. Where were you going?

A. We went on the Boardwalk and we decided to take in the show.

Q. What was her name?

A. The daughter's?

Q. Yes.

A. Annie Morris.

Q. So you became acquainted with her that one day?

A. Yes.

10 Q. And you decided at night time to go down to the walk?

A. Yes.

Q. When did you decide to take in a show?

A. Well, we went up on the Boardwalk and then we decided to go into the vaudeville further up the walk.

Q. Which daughter was this?

A. The oldest.

Q. Had she registered to stay all night?

20 A. I don't know to stay all night, but she just registered for the whole family.

Q. You were the one who assigned them to the rooms?

A. My mother gave the rooms and I marked them down.

Q. Your mother testified you were the one that gave the rooms?

A. No, I wrote it down on the books.

Q. Did you have anything to do with the assigning of the rooms?

30 A. No, sir.

Q. Did you talk with her as to how long she was going to stay?

A. Why, she said that she was going in the evening.

Q. When did she tell you that?

A. When she came—after I got a little familiar with her during the day.

Q. You weren't out with her in the morning?

A. No.

Q. In the afternoon?

A. No.

Q. When did you first go out with her?

A. In the evening.

Q. When did you first become familiar?

A. After she arrived.

Q. You weren't with her?

10

A. She was in the office speaking to me.

Q. And she said then she was going back when?

A. In the evening.

Q. And you started from the hotel at nine o'clock or half-past eight?

A. Yes.

Q. Well, didn't it arouse your curiosity as to when she was going home when you started at half-past eight?

20

A. I didn't think about it at that time.

Q. Didn't think about it?

A. No.

Q. You knew how she had come down?

A. Yes.

Q. Did she tell you she came on the excursion train, and you knew what time the excursion train left?

A. Yes.

Q. What time?

A. Nine o'clock.

30

Q. And you started at half-past eight for the Boardwalk?

A. Yes.

Q. And nothing was said to her about when you were coming back and you went and took in a show?

A. She didn't mention about coming home at that time, and I forgot about it.

Q. You didn't say anything about it?

A. No.

Q. Yet you knew she intended to go home on the excursion?

A. It slipped my mind.

Q. She didn't say anything to you about it?

A. She said she intended to.

10 Q. When?

A. In the morning.

Q. What did she say at night?

A. We dropped the subject.

Q. She didn't say a word at night about going home?

A. No, just during the day.

Q. When you left at half-past eight, nothing was said about going home with her father?

A. No.

20

At this point a recess was taken until Friday, October 20, 1922, at 1.30 o'clock P. M.

Camden, N. J., Oct. 20, 1922.

Trial of the cause resumed on the above date, pursuant to adjournment, at 1.30 o'clock P. M., in the presence of the defendant, and counsel for the respective parties.

LILLIAN NUROCK, SWORN.

10

By Mr. Woodruff:

Q. Miss Nurock, where do you live?

A. 1318 Princess Avenue, Camden.

Q. Do you know Mr. Morris and his family?

A. Yes.

Q. Where you live is in Parkside where he had his store, in that same neighborhood?

A. Yes.

Q. Where were you on July 23rd?

20

A. Wildwood, N. J.

Q. And were you at this hotel kept by Weinstein?

A. Yes.

Q. What time did you get there that Sunday morning?

A. Well, about 10 A. M., I presume.

Q. Ten o'clock in the morning?

A. Yes.

Q. Did you see Mr. Morris and his family there?

30

A. Yes, I did.

Q. Where were they when you saw them?

A. When I saw them they were in the office.

Q. In and around the office?

A. Yes.

Q. Did you see them later in the day?

A. Yes.

Q. Where and at what time?

A. I saw them at breakfast, and then I saw them go in bathing, and I saw them at noon time for dinner, and later on in the evening.

Q. Now, how late were you there that evening, in and around the exchange of the hotel?

A. About 11.30.

Q. And did you see the Morrisises there during the
10 evening?

A. Yes, I did.

Q. Where was Mr. Morris?

A. Sitting on the porch when I came in.

Q. In the evening?

A. Yes.

Q. And how late did you see him there?

A. When I came in it was between eleven and eleven-thirty, and I went to bed.

20 Cross-examination.

By Mr. Burling:

Q. Did you bathe with them?

A. No.

Q. Then you didn't see them all the time?

A. I saw them at breakfast and getting ready to go in bathing.

Q. What time did they get their breakfast?

30 A. About eight o'clock.

Q. About eight o'clock?

A. I saw them after breakfast, when I came in they were having breakfast, I didn't have breakfast there.

Q. Weren't you boarding there?

A. I came in after breakfast, I came in that day.

Q. You didn't see them eat breakfast?

A. I went in the dining room and they were eating.

Q. What time was that?

A. Between eight and eight-thirty.

Q. What time did you leave them?

A. I went out in the dining room and I didn't take notice of the time.

Q. When did you next see them during the day?

A. After breakfast, on the porch. 10

Q. Well, what time?

A. I didn't take notice what time it was, it must have been eleven o'clock.

Q. You mean to say they sat on the porch from eight to eleven?

A. No, I saw them on the porch at 11.

Q. Where were you between eight and eleven?

A. Around the hotel.

Q. You didn't go away?

A. No. 20

Q. They didn't go away?

A. I don't know.

Q. You don't know whether they did or did not?

A. I don't know.

Q. Between eight-thirty and eleven you didn't see them?

A. No.

Q. How long did you see them from eleven-thirty?

A. I saw them at dinner time.

Q. What time was dinner? 30

A. Twelve o'clock.

Q. You saw them between eleven and twelve?

A. No.

Q. You don't know where they were between eleven and twelve?

A. No.

- Q. You saw them at dinner at twelve o'clock; they have dinner at the hotel at twelve?
- A. Yes.
- Q. Twelve or one?
- A. Between twelve and one.
- Q. What time did you eat?
- A. Twelve to one.
- Q. With them?
- A. That was the next table, same dining room.
- 10 Q. How long were you with them at noon?
- A. Dinner lasted until around two o'clock.
- Q. Two o'clock?
- A. Yes.
- Q. You ate from twelve to two?
- A. In the dining room, yes.
- Q. Two hours in the dining room?
- A. Around the office and dining room, dinner was served around that time.
- Q. Where did you go at two o'clock?
- 20 A. I stayed in the hotel.
- Q. Didn't leave the hotel?
- A. No.
- Q. Where were they?
- A. After dinner I saw the daughter getting ready to go in bathing, and she was waiting for the family.
- Q. What time did you last see them then?
- A. From when?
- Q. You say you saw them at two o'clock at dinner; when did you last see them after two o'clock?
- 30 A. That was at supper time.
- Q. And you didn't see them from two o'clock to supper time?
- A. No.
- Q. What time was supper time?
- A. Between six and seven, I think.
- Q. From two to seven you didn't see them?

A. No.

Q. Now, how long did you see them from seven o'clock?

A. Well, after seven I went on the Boardwalk and I didn't return until about eleven o'clock.

Q. And from seven to eleven you didn't see them, that is correct?

A. Yes.

Q. Were you out with the daughter?

A. No.

10

Q. Are you friendly with her?

A. No, just as acquaintances.

Q. A friend of the family?

A. No.

Q. And you didn't see any of them from seven o'clock to eleven?

A. No.

Q. Eleven o'clock, did you see the daughter at eleven?

A. I saw them all around that time.

20

Q. Not around that time, did you see them?

A. I didn't take notice the time I came into the hotel, I guess it was anywhere from quarter to twelve to eleven-thirty.

Q. You hadn't seen them between that time then?

A. No.

By Mr. Woodruff:

Q. That was the time you were out on the Board- 30
walk?

A. On the Boardwalk, yes.

ANNA MORRIS, SWORN.

By Mr. Woodruff:

Q. Anna, you are the daughter of Mr. Morris, the defendant here?

A. Yes, sir.

Q. How old are you?

10 A. I will be eighteen.

Q. You live home with your people?

A. Yes, sir.

Q. And you lived home with them on July 23rd, the day this fire took place?

A. Yes.

Q. Were you employed?

A. I was employed at Neisner Brothers, 427 Kaighn Avenue.

Q. What place is that?

20 A. Five and ten.

Q. On the Saturday evening before the Sunday you went away what did you do?

A. During the evening I was at work.

Q. And what time did you get home?

A. Eleven o'clock.

Q. And from eleven what did you do?

A. I stayed in the store and watch my mother fix her bathing suit, and until twelve o'clock we closed the store, and from then on she fixed the bathing

30 suit.

Q. Where?

A. At the machine.

Q. Is that in the store?

A. Yes.

Q. What part?

A. In the back on the right-hand side as soon as you come in from the store.

Q. And she was sewing the bathing suit on the machine?

A. Yes, sir.

Q. How late were you there?

A. One, after one.

Q. Was the rest of the store lighted?

A. All lit up.

Q. Business up to that time?

A. Yes.

Q. And how could she see to work?

10

A. She had a light on the machine, she has sort of a library lamp that some people use in the offices, it has a green shade so she won't hurt her eyes.

Q. How is that connected?

A. We have three lights in our store, we use two and one we don't, and we have a cord in that light, that is, about fifteen yards of cable, and we can carry that upstairs, or in the kitchen, and that reaches to the machine, and we have a nail in the wall and we twine around this cable on this nail.

20

Q. How do you turn that light out?

A. Right near the machine.

Q. At the base of the light?

A. Yes.

Q. After your mother had finished the bathing suit, did you retire?

A. Yes.

Q. What time did you get up in the morning?

A. I got up about six o'clock.

Q. Mother and father up, too?

30

A. Yes.

Q. What did you do then?

A. We got dressed and we all went out to get the car.

Q. Were your suitcases packed?

A. Yes, sir.

Q. Now, where were you going?

A. We were going to Wildwood.

Q. And how many of you were going to stay down there?

A. Three, and father and I were supposed to come home that night.

Q. Mother and the two children were supposed to stay?

A. Yes.

10 Q. How long did they expect to stay?

A. At least two weeks.

Q. And you had to come back to your employment?

A. Yes.

Q. What did you take yourself?

A. Just a few dresses.

Q. Just for the day?

A. Yes.

20 Q. Now, when you came down in the morning after you dressed, how did the family go out?

A. My mother and two children went out the front way, and I wasn't particular to go out the front or back, and I just stayed and went out the back with my father.

Q. How did you fasten the front door?

A. We have no key, we have one bolt, and we bolted that door, and then we shoved this case full of shoes in front of the door.

Q. That is a case that is on wheels?

30 A. Yes.

Q. That is what you did that morning?

A. Yes.

Q. How long had you been doing that?

A. Oh, for about six months.

Q. Always doing it every night?

A. Every night, yes, sir.

Q. Now, you and your father went out the side door?

A. Yes, sir.

Q. Did you do anything else inside?

A. No, sir.

Q. You went out the door?

A. Yes.

Q. And you joined the rest outside?

A. Yes, sir.

Q. Did your father fasten the side door? 10

A. Yes, sir.

Q. And then where did you go?

A. We went on the corner, and we expected to take the Kaighn Avenue car to go to the ferry to take the train, and while we were on the corner mother reminded herself she had forgot her gold watch, and the car was still standing there, and she told father to return back and get the watch.

Q. Did he?

A. He ran right in and came right out again. 20

Q. I understand your mother, or someone, spoke to a lady upstairs?

A. Yes, Mrs. Veight.

Q. Your father hurried back?

A. Yes.

Q. What did the rest do?

A. We waited until he came and went on the car together.

Q. What did he bring back with him when he came? 30

A. I think he had a pair of bathing shoes on the line, and he brought those along with the gold watch.

Q. And you got on that car and went to the ferry?

A. Yes, sir.

Q. And went to Wildwood?

A. Yes, sir.

Q. When your father came back was that same car standing there?

A. Yes, sir.

Q. Can you tell us how long it took him; I don't mean in minutes necessarily, but what happened?

A. It wasn't very long to know anything happened, he came right back, didn't take a minute, not even half a minute, went right in and came out again.

Q. Did you get on this car?

10 A. On the car.

Q. You got your train at the ferry at that time?

A. Yes.

Q. When you got to Wildwood, where did you go?

A. Mother expected to go to keep house for herself, because she isn't a very strong woman, and she can't eat everything other people make, and she expected to go cook for herself, and we went to a few places, and we got to a place right on Cedar Avenue, and right across the street was the hotel

20 we were there seven years ago—

Q. Stayed at this hotel seven years ago?

A. And we went to this rooming house, and mother didn't exactly like it, and the children started to talk to mother, "There is a hotel, maybe that will be reasonable," and we went over there, and the woman was reasonable, and we thought it was better to go in the hotel, because my mother wasn't strong enough to do any hard work.

Q. You went in and got accommodations?

30 A. Yes, sir.

Q. Did you register yourself?

A. I registered.

Q. Registered for the family?

A. Yes, sir.

Q. Were you shown the rooms then?

A. Yes, sir.

Q. Just tell us in your own way what you and the rest of the family did during that day?

A. After we were shown the room we came down and had breakfast, and after breakfast we sat on the porch, and we waited awhile, and then we went up and got dressed and went in bathing.

Q. The whole family?

A. Yes, sir.

Q. Your father, too?

A. Absolutely.

10

Q. All right.

A. And we came home and we undressed, and we had dinner, then we usually do take a nap—

Q. Who took a nap at this time?

A. The whole family, we all took a nap, and then we got dressed, had supper, then it was about—when we were all there it was about between eight and nine, and from that time until between eight and nine we sat there, in and out the office, and around, and between eight and nine the girl suggested we should take a walk, and I only knew the girl one day, and I thought she was a very fine girl, and we went out, and mother and father were enjoying themselves, and there were four men from the city, and they knew my sisters could play, and we asked the fellows to excuse us —

20

Q. Where did you leave them?

A. In the parlor.

Q. Still having amusement there?

A. Yes, and I understood we were supposed to come back and catch the train—well, I got on the Boardwalk, and I forgot all about it, and I didn't come home until after 11, and I went to bed.

30

Q. When you got back to the hotel, did you see your father?

A. Yes, when I got up to the bedroom.

Q. Did you all have the same room?

A. Yes.

Q. What time were you awakened in the morning?

A. Six o'clock in the morning.

Q. And the two of you left?

A. Father and I.

Q. Got on the train and came to Camden?

A. Yes.

Q. And how far did you go with him then?

10 A. I had to stop at Fourth and Kaighn Avenue, and go where I was employed, and I went in and father went ahead to open the store.

Cross-examination.

By Mr. Burling:

Q. When did you make up your mind to go to Wildwood?

20 A. It wasn't exactly made up, but every summer we usually go on a vacation.

Q. When did you first discuss it?

A. We discussed it in the spring.

Q. When did you first decide to go on this Sunday, July 23rd?

A. It was just picked out about a month ago.

Q. About a month ago?

A. We always—

30 Q. You decided to go to Wildwood a month before that Sunday, July 23rd?

A. If nothing happened.

Q. Did you write down for reservations?

A. No, sir.

Q. Your mother was going to stay how long?

A. Two weeks.

Q. And how many of the children were going to stay?

A. Two children.

Q. And you went on an excursion train intending to stay two weeks without making any reservations at all, is that correct?

A. Mother and the children.

Q. And she was going to stay two weeks, had made preparations to stay two weeks, and you made no preparations whatever?

A. No, sir.

Q. What kind of a ticket did you have? 10

A. I can't tell you, that was up to my father.

Q. What train did you go on?

A. The Kaighn Avenue.

Q. What train was that?

A. I think it was between six and seven.

Q. What was the train commonly called?

A. Excursion.

Q. You went down on an excursion train?

A. Yes, sir.

Q. Who bought the tickets? 20

A. My father.

Q. And you and your father were to come back the same day?

A. Yes, sir.

Q. What time did the excursion train return from Wildwood?

A. Half-past nine.

Q. Who told you that?

A. The girl in the office.

Q. What girl in the office told you that? 30

A. Miss Weinstein.

Q. Miss Weinstein told you it returned at half-past nine, did she?

A. Yes, sir.

Q. When did she tell you that?

A. Told us during the day.

Q. Often during the day?

A. Yes, sir.

Q. Then you discussed it often during the day, did you?

A. I asked her when talking about leaving that night.

Q. She knew you intended to go back that night?

A. She didn't exactly know, but we did.

Q. Didn't you discuss it with her?

10 A. We asked her when the last train to Philadelphia was.

Q. Did you ask her when the excursion train went up?

A. Nine-thirty.

Q. Did you ask her when the excursion train went back to Philadelphia?

A. I guess she knew.

Q. Did you ask her what time the excursion train went back to Philadelphia?

20 A. We asked her when the last train left.

Q. Who are "we?"

A. My father, mother and children.

Q. You knew you had to go back on the excursion train?

A. Yes.

Q. Didn't you ask her when the excursion train left?

A. We didn't say, "excursion."

Q. How were you going back if you had tickets for
30 the excursion train?

A. We expected to use the tickets.

Q. They weren't good for any train?

A. No.

Q. You had to go on the excursion train?

A. Yes.

Q. Didn't you ask her about the excursion train?

A. No, the last train.

Q. How did you know when the excursion train went back?

A. There is a time table.

Q. You looked at the time table?

A. Yes, and we asked her.

Q. What time did the time table say the excursion train went back?

A. 9.30.

Q. Where did you look at the time table, where 10 were you when you looked at the time table?

A. In the office.

Q. Of the hotel?

A. Yes, sir.

Q. And it showed you it went back at 9.30?

A. Yes, sir.

Q. After supper you went out with Miss Weinstein?

A. Not exactly after supper, we stayed in the parlor.

Q. Until what time?

A. Between eight and nine.

Q. And you knew you had to go back on the excursion train when you left?

A. Yes.

Q. Miss Weinstein knew that, too?

A. She didn't know.

Q. Why didn't she?

A. I didn't tell her.

Q. You talked to her during the day about you and 30 your father going back?

A. Yes.

Q. You and your father hadn't registered to stay at the hotel?

A. We put Mr. and Mrs. Morris.

Q. Did you tell the hotel people you were going to stay?

A. Yes.

Q. Before you answered no, and now you say you did tell?

A. When did I say that?

Q. Just a minute ago. Did you tell the hotel people your mother was going to stay?

A. Sure.

Q. Which did you tell?

A. The mother and daughter.

10 Q. Did the daughter know you weren't going to stay?

A. Yes.

Q. And you discussed about the excursion train with her?

A. Yes, sir.

Q. And she knew you had to go back on the excursion train?

A. Yes.

20 Q. And you have testified the excursion train went back at nine?

A. Half-past nine.

Q. Didn't you hear her testify it was nine o'clock?

A. Yes, sir.

Mr. Woodruff: That isn't a proper question to put to a witness, to get them to characterize the testimony of another witness.

Mr. Burling: I won't press it.

30

Q. When you went to the Boardwalk, where were you bound for?

A. Bound for a walk.

Q. Where did you go when you got down there?

A. To a vaudeville show.

Q. What time did you get down to the Boardwalk?

A. It is just about half a square.

Q. So you got down to the Boardwalk about nine o'clock?

A. Yes, sir.

Q. And you went in the show; did you go in the show?

A. Yes, sir.

Q. And how long did you stay in the show?

A. Until it ended.

Q. What time was that?

10

A. Until after eleven.

Q. Until after eleven o'clock; you stayed in the show until after eleven o'clock, knowing you were to leave at nine or nine-thirty, did you; so you stayed in the vaudeville show from nine o'clock to eleven, knowing you intended to go back on the nine or nine-thirty train?

A. Yes, sir.

Q. What for?

A. We went in the show, and we hardly thought 20 about the time, the time passed so quick.

Q. Didn't you think that was important, your father sitting there waiting for you?

A. Sure.

Q. You knew your father—

A. We didn't think of it we were so interested in the show.

Q. Did you discuss it with Miss Weinstein?

A. No, sir.

Q. Never mentioned it to her?

30

A. No, sir.

Q. You sat there very comfortably knowing your father was waiting for you to get back?

A. I didn't think of it, it was so interesting, the show, the time passed away quick.

Q. You were more interested in the show than

thinking of returning on the train you were supposed to?

A. Yes, sir.

Q. When did you next see your father?

A. When I came home to go to bed.

Q. What time was that?

A. After eleven.

Q. What did your father say to you then?

A. He said—

10 Q. Was he in bed?

A. Yes, sir.

Q. What did he say?

A. He was sleeping.

Q. When you got back to the hotel at eleven o'clock he was in bed sleeping?

A. Yes, sir.

Q. You didn't say anything to him then until the next morning?

A. No, sir.

20 Q. When you were awakened the next morning that was the first time you saw your father from the time you went to the beach?

A. Yes, sir.

Q. You had seen your father when you got back?

A. In bed.

Q. You saw he was sleeping?

A. Yes.

Q. But you didn't hold any conversation with him?

A. No.

30 Q. You remember making a statement on the 25th day of July, 1922, in the Prosecutor's office, don't you?

A. I guess so.

Q. You were there that afternoon, and Mr. Whaland, this gentleman alongside of me was present, and the stenographer, and Mr. Straw, is that right?

A. I suppose so.

Q. Do you remember that time?

A. Yes, sir.

Q. You made a statement that afternoon, did you?

A. Yes, sir.

Q. Did you say this that afternoon: "Q. When you got home what did your father say about being away? A. What did he say? He said enough. Q. What did he say? A. He said why didn't I come home in time, and I explained it to him, and he couldn't do nothing else. Q. Did he catch the train? A. No."

A. We couldn't when we missed it.

Q. Is it true or not true that you said what I read to you on that day?

A. I suppose so.

Q. As a matter of fact, you did talk to your father when you got back to the hotel?

A. I suppose so.

Q. That is the truth?

20

A. We had no conversation particularly, we expected to go home that night, and we missed the train.

Q. Which is true, you had a conversation, or didn't you have?

A. Very little.

Q. Now you say very little, then you did have a conversation with your father when you got back to the hotel?

A. Very little.

30

Q. You told me a minute ago your father was in bed sleeping?

A. He was in bed when I talked to him.

Q. A minute ago you said he was sleeping and you held no conversation with him until the next morning when you went to Camden?

A. I forgot.

Q. Then what you said before wasn't the truth?

A. It was partly the truth.

Q. It wasn't true, you did have a conversation with your father when you got back?

A. Very little, yes, sir.

Q. When you left the house that morning, which way did you go out?

A. You mean Sunday morning?

10 Q. Yes?

A. The back way.

Q. At that time did your father go with you or not?

A. Yes, sir.

Q. You went over then and met your folks on the corner?

A. Yes.

Q. What street?

A. Haddon Avenue and Kaighn Avenue.

20 Q. What trolley did you take?

A. The Kaighn Avenue car.

Q. When you got out of the house with your father was your mother and the other children on the corner?

A. Yes, sir.

Q. How far is that from your house?

A. Two doors.

Q. And you had to go to the opposite side of the street, across there where Kausel & Walsh's real estate office is?

30

A. Yes, sir.

Q. How far a distance is that from your house?

A. Just across the street.

Q. You can't tell how far it is?

A. No.

Q. Your store is south of Kaighn Avenue?

A. Yes.

Q. How many doors south of Kaighn Avenue?

A. Two doors.

Q. You had to come from your store, out the back, down to the front, out Kaighn Avenue, across the width of Kaighn Avenue, and wait for the trolley?

A. They were standing on the same street as our store at Haddon Avenue and Kaighn Avenue, in front of the cigar store.

Q. Was there a trolley there?

10

A. Yes, sir.

Q. A car on that corner?

A. Yes, sir.

Q. And then you had to go on the opposite side of Kaighn Avenue to get on the trolley?

A. Yes, sir.

Q. Weren't you on that side of the street?

A. After we got together.

Q. There was a car there when you came out with your father?

20

A. Yes.

Q. Did you go over to the corner of Kausel & Walsh's to get on the car?

A. Yes, sir.

Q. Who was it that thought about forgetting something?

A. Before we crossed the street my mother told my father to get the watch.

Q. The car was out there?

A. Yes.

30

Q. Where was the watch?

A. On the sideboard.

Q. Is that what she said?

A. She said, "Run back and get the watch on the sideboard."

Q. What room was that?

A. The dining room.

Q. Did he go back alone?

A. Yes, sir.

Q. And went into the house?

A. Yes, sir.

Q. Did he go in the front or back?

A. Back.

Q. Went in the back?

A. Yes, sir.

10 Q. You don't know how long he was in there?

A. He went in and right out.

Q. What do you mean, right out?

A. As fast as a person can run.

Q. Ran all the way?

A. Yes.

Q. And ran all the way out?

A. Yes, sir.

Q. How long a period of time was he in there?

A. I can't tell you.

20 Q. When he came out was the car still there?

A. Yes.

Q. You don't know how long he was in the house?

A. Very little time.

Q. What do you mean by very little time?

A. A half a minute, maybe, I think.

Q. Do you know how long a half a minute is?

A. Thirty seconds.

Q. It took him thirty seconds to go from the corner of Kausel & Walsh's into your house, get the
30 things you have described and come over and get on the car?

A. He just ran out and in.

SAMUEL R. FRANKLIN, SWORN.

By Mr. Woodruff:

Q. Mr. Franklin, where do you live?

A. 1441 Princess Avenue, Camden.

Q. How long have you lived in the City of Camden?

A. Thirty-five years.

10

Q. What is your business at the present time?

A. Traveling shoe salesman.

Q. Wholesale or retail?

A. Wholesale.

Q. You sell to the retail shoe merchants?

A. Yes.

Q. What shoe company?

A. Hagerstown Shoe & Legging Company of Maryland, and John M. Parker Company.

Q. How long have you been traveling in that particular line?

20

A. Fifteen months.

Q. Before that what was your business?

A. Retail shoes.

Q. How long were you in that business?

A. 30 years.

Q. In Camden?

A. Twenty of it in Camden.

Q. Were you familiar at or about July 23rd with the wholesale prices of shoes, the prices that retail merchants would have to pay for them?

30

A. I was.

Q. Were you in and out of Mr. Morris' store?

A. I have been, yes.

Q. Selling shoes?

A. I did.

Q. And other merchandise?

A. Nothing but shoes.

Q. How?

A. Nothing but shoes.

Q. How long had you been going in and out of his place?

A. On an average of possibly once a month, maybe oftener.

Q. Stopping in there to see if you could sell shoes?

A. That is all I stopped in for.

10 Q. Did you sell him shoes?

A. I did.

Q. And how recently before July 23rd had you sold him shoes?

A. How recently?

Q. How close up to July 23rd?

A. Just offhanded I can't tell you.

Q. Have you anything to tell you positively?

A. I might have; I can show you the last shipment made to him.

20 Q. That is what I want to know?

A. The last shipment was made July 17th.

Q. Was that shoes?

A. Merchandise, sandals.

Q. Were they the sandals, Mr. Franklin, that were sent back, or some of them?

A. That lot wasn't sent back.

Q. Was there some back of that?

A. Prior to that.

Q. How big a shipment was that?

30 A. July 17th shipment?

Q. Yes.

A. \$9.96.

Q. Children's sandals?

A. Barefoot sandals.

Q. How close up to the time of the fire, just before the fire, were you in there?

A. Well, I think about three or four weeks, I think it was about three or four weeks before that.

Q. Before the fire?

A. Yes.

Q. When is your custom of visiting these customers of yours so as to check up on their stock?

A. We have a blank form, if I go into a man's place to sell him merchandise, particularly if it is the first time, we are supposed—we will take his order, and use our intelligence to observe the stock, and make an observation of what we think the stock is worth, and before we send the order in we have a blank form to fill out, what kind of stock he carries, the condition of his store, the location of the store, the calibre of the man, and what his conditions are for credit. 10

Q. Did you check up on Mr. Morris?

A. I have a number of times.

Q. The last visit a few weeks before the fire, then did you check up? 20

A. From my general observation I did, yes.

Q. In and around the store?

A. Yes.

Q. What was the value of that stock at its replacement value, what it would cost Mr. Morris to replace it?

Mr. Burling: I object; this witness isn't qualified as an expert, in the first place, to give his opinion as to this. He hasn't made a detailed inventory, his opinion is going to be based on a general observation without attempting to take an inventory of the quantity of goods on hand, the quantity and type that were enclosed in boxes, and he is not qualified to give an opinion. 30

Mr. Woodruff: There is only one criticism that seems to be pertinent, and that is, whether the shoes

were in the boxes, and that has already been testified to, that the boxes were all filled with shoes. Mr. Franklin is familiar with the trade, he has been in business, he has been in the other end of the trade in Camden, he knew local conditions, outside conditions, and the prices of shoes, and it was part of his duty to check up on this man's stock. It has been testified that all of these boxes were filled with shoes, Mr. Morris testified the boxes were filled with shoes, 10 and there is no testimony otherwise, and I think he is certainly qualified to pass an opinion.

The Court: I don't feel, Mr. Woodruff, a salesman who goes in for the purpose of giving an estimate of the value of the shoes to his employer would go into great detail and make an inventory as accurate as would be required in testifying in a case of this kind.

Mr. Woodruff: If the Court please, I am not asking him as to the inventory; he says he went there 20 for the particular purpose of reporting and checking up on the shoes, the makes of shoes, so as to know who his rivals were, and the quantity of shoes, and for the very purpose of arriving at an estimate of what the man's stock was worth, so he could report it to his firm. The whole store was visible, he could see the entire stock of stuff there to check up and know the different varieties of shoes that there were there, and there can't be any question as to his qualification to pass an opinion if he did see the things in 30 front of him, and there isn't any indication that any of the boxes were empty, and I think he is qualified much more strongly than witnesses who have been permitted to testify in exactly the same situation.

The Court: As I recall his testimony, he said he went into the store to sell this man some goods, and

they generally carry some kind of a blank form which they fill out, and they look around the store while they are there and make an estimate of the value of the stock; I really don't feel that estimate is as accurate as it should be.

Mr. Woodruff: That, your Honor, is a matter of argument, but not a question as to the witness' qualification; that is a question for argument, a question for argument to the jury. 10

The Court: Putting it on that basis, that you can argue it to the jury, I am inclined to allow it to go in.

Q. Did you on this particular occasion, Mr. Franklin, check up to see whose goods were handled?

A. I did.

Q. And the quantity of goods in the store?

A. I asked Mr. Morris if all the boxes were filled, 20 and he told me there wasn't an empty box on the shelves.

Q. There isn't any question about that in this case.

Mr. Burling: Oh, yes.

Mr. Woodruff: Have you any criticism as to that?

Mr. Burling: I would rather take the witness' 30 knowledge, Mr. Woodruff, since the Court has ruled it is a jury question.

Q. Now, Mr. Franklin, assuming the boxes were filled with shoes, what at that time would it have cost Mr. Morris to replace that stock?

A. From fourteen to fifteen thousand dollars.

Q. Would it have cost him more than buying at previous times?

A. Yes, it would.

Q. What depreciation in the trade would be knocked off on \$14,000, or \$15,000 cost value?

A. If Mr. Morris was taking those shoes and offering them on the market to the auctioneer at that particular time they would bring approximately
10 \$8,000.

Q. To go and buy those if they were gone and he had to fill the shelves?

A. From \$14,000 to \$15,000 to replace the shoes.

Cross-examination.

By Mr. Burling:

Q. How often did you visit the store, Mr. Frank-
20 lin?

A. On an average, I would say, of once a month.

Q. Over what period of time?

A. For the last fifteen months.

Q. You had conversations with Mr. Morris about business, and so forth?

A. I did.

Q. And on this particular day, what was the occasion for the conversation?

A. On that particular day?

30 Q. Yes.

A. We were talking in general about business conditions, and I said to him, I said, "Morris, from the looks of your store you carry too much stock for this location."

Q. What did Morris say about business conditions?

A. At that particular time?

Q. Yes.

A. He was complaining, as all retailers are in July about business.

Q. What did he say, it was poor?

A. He said business wasn't good, but any retailer tells you that in July.

Q. What did he say?

A. He said business was quiet.

Q. What did he say on the previous times you 10
were in there?

A. Previous times, to be frank, in the early spring he said conditions were good, and gave me a nice order for sandals.

Q. How long ago was that?

A. I think it was around in April or May, something like that.

Q. When did you visit him after that?

A. I haven't the correct date.

Q. Did you visit him between April and July? 20

A. Yes, I visited him between April and July.

Q. Did he make any statement then about the condition of business?

A. No.

Q. Never complained about it?

A. Not to my knowledge.

Q. You didn't make any statement yesterday afternoon of that type, in the criminal court room, to any other individual?

A. About business being bad? 30

Q. About any statement being made about business being bad?

A. Not to my knowledge, but during the month of July we get that from every retailer; July and February are two of the worst months in the shoe business.

Q. Did you make that statement yesterday?

A. To no one, I wasn't talking to nobody as far as I know.

Q. Were you talking to counsel for the defendant yesterday afternoon?

A. I was.

Q. Did you make any statement of that character then?

A. I did not.

10 Q. Made no statement of that kind?

A. The only statement I made, I bawled him out for keeping me sitting here all afternoon.

Q. What else did you say?

A. That is all.

Q. You didn't say anything about the defendant having told you business was poor and complained to you?

A. I don't recall saying anything about business being poor.

20 Q. You don't recall that?

A. No.

Q. Didn't have any conversation of that type yesterday afternoon?

A. Not to my knowledge.

Q. You would know?

A. I should imagine I would know.

Q. Not imagine, did you or didn't you say that?

A. I can't recall.

Q. Did you or didn't you say that?

30 A. Isn't that plain enough?

Q. I want your answer, yes or no?

A. I don't recall making that statement.

Q. Then you mean no?

A. You can take it for what it is worth.

Q. Do you mean you don't remember, or don't know?

A. I don't recall.

Q. You mean you don't know whether you did or not?

A. Don't you understand English?

Q. No, I don't; not that type.

A. I don't recall making any such statement.

Q. But he complained in July about business being poor?

A. He complained in July about business being poor.

Q. And you had some shipments returned, didn't you?

A. From Mr. Morris?

Q. Yes.

A. Because he was complaining about the goods not coming in on time; on July 7th he has a credit of \$11.35, and July 20th he has a credit of \$9.70, making a total of merchandise returned of \$21.05.

Q. When was the previous order you had prior to that?

A. The previous order was June 7th.

Q. You hadn't shipped him anything from June?

A. June 7th.

Q. And that shipment you made in July was returned to you?

A. The shipment he got in July was returned. I might say here is the statement, this will prove it.

Q. Wasn't the shipment——

A. It doesn't say that particular shipment; there is a shipment here on July 17th of \$9.96, and he has got a credit for merchandise returned July 7th, \$11.35, and July 20th, \$9.70.

Q. What was the shipment in July?

A. I can't tell.

Q. You took the order?

A. I have taken the order.

Q. How much was it?

A. If you adjourn court until I go home and get the order and come back I will show it to you.

Q. You don't know what you shipped in July?

A. I can't recall every shipment.

Q. You don't recall what shipments you made to him in July?

A. According to this statement.

Q. But you can recall every specific thing you did
10 about the inventory, can't you?

A. The statement speaks for itself.

Q. On the inventory?

A. The statement of his account of merchandise shipped and merchandise returned.

Q. You can recall about the inventory, but you can't recall this other?

A. What other?

Q. The goods he bought from you in July?

A. I might go in his store and take an order——

20 Q. Tell me, did you take an order for shoes in July?

A. Every day in the week.

Q. From the same individual?

A. Not from the same individual.

Q. How often would you sell to Morris in July?

A. I can't say.

Q. Once a week?

A. No.

Q. Once in two weeks?

30 A. I might call.

Q. Did you?

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

Q. Did you get an order once in the month of July?

A. That I can't say.

Q. How many orders did you get from him in July?

A. I can't tell you.

Q. You don't know how many orders you got in July?

A. I can't recall every order.

Q. But you can recall the inventory very plainly you made?

A. That is my business, to recall that.

Q. How old was the stock the inventory was made on?

A. The inventory, I was taking it at the present 10 value, not what he paid.

Q. How old was the merchandise?

A. Well, some of it was two or three years old.

Q. How do you know that?

A. I know shoes.

Q. Did you take them down and look at them?

A. They are visible in the store.

Q. Did you take down the boxes?

A. It wasn't necessary.

Q. You didn't take any boxes down off the shelves 20 and look at them?

A. I think I did pull down a couple of boxes.

Q. How long did it take you to make the inventory?

A. How long?

Q. Yes.

A. If you were as familiar with the shoe business as I am, when you go in a store——

Mr. Burling: If the Court please, I object to that. 30

The Court: The witness should answer the questions as put by counsel.

The Witness: The way he asks questions nobody can answer them.

The Court: I think you can answer them all right.

Q. How long did it take you to make the inventory?

A. I can——

Q. How long did it take you to take this inventory?

A. It don't take ten minutes to look around the store and make an observation.

10 Q. It didn't take you ten minutes to take this inventory?

A. It did not.

Q. And yet you say you can tell the character of the stock, and what its value was in the market for the purpose of replacing it?

A. Within \$1,000 and \$2,000, yes.

By Mr. Woodruff:

20 Q. Mr. Franklin, you have there an account of your company?

A. I have.

Q. Was there something due on that at that time?

A. You mean——

Q. Due to your company?

A. Yes.

Q. And is there still something due?

A. There is.

30 Q. Was your company pressing him at all for payment of his account?

A. None whatever.

By Mr. Burling:

Q. How much was your account?

A. The account as it stands today, \$201.81.

J. HARTLEY BOWEN, SWORN.

By Mr. Woodruff:

Q. Mr. Bowen, you are the treasurer of the Park-side Trust Company?

A. Yes, sir.

Q. How close is your bank located to where Mr. Morris had his store? 10

A. Across the street, catercornered.

Q. How long had Mr. Morris been a depositor at your bank?

A. May 28, 1919.

Q. And still has an account with you, does he?

A. Yes.

Q. At the time of the fire what was the extent of his indebtedness?

A. \$1400.00.

Q. Was that all in one note or several notes? 20

A. Several notes.

Q. I understand there was one note that came due shortly after the fire, how much was that?

A. \$500.00, July 27th.

Q. And that was reduced again?

A. \$100.00 paid on account.

Q. How long had Mr. Morris been owing you money back and forth?

A. June 12, 1919.

Q. And from then on, back and forth, he had borrowed different sums of money, had he? 30

A. Yes.

Q. Did you ever at any time have any difficulty with his account?

A. Never did.

Q. Any checks that came back bad, anything of that sort?

A. Outside of one or two occasions.

Q. During all that period of time?

A. I called Mr. Morris and he brought his check book and showed me where there was an error made in subtraction in his check book.

Q. But never this scheme of sending out checks without money in the bank?

A. No.

Q. On the borrowed money, did you have any difficulty with that?

A. None whatever.

Q. At the time of July 23rd, when this \$500 note was coming due, shortly after that, was there any insistence that Mr. Morris liquidate his indebtedness?

A. No.

Cross-examination.

20 By Mr. Burling:

Q. What was his bank balance on July 23rd?

A. \$48.62.

Q. \$48.62?

A. That is right.

Q. What was it on the 1st of July?

A. \$130.87.

Q. What was it on the 1st of June?

A. \$99.86.

30 Q. Did you have any security for these loans?

A. No.

Q. Have you any security now?

A. We have.

Q. When did you acquire that?

A. After the fire.

By Mr. Woodruff:

Q. Mr. Bowen, did you ever check up on his stock before the fire, so you could give your report?

Mr. Burling: That would be a self-serving declaration.

Q. I will put it the other way. Why didn't you have security in advance of the fire? 10

A. We considered the value of the stock as enough equity to advance the loan.

Q. And after the fire you were given security voluntarily on Mr. Morris' part?

A. I made the request of Mr. Morris, and he agreed without any question.

Q. And still there has been no criticism of his account or anything in regards to his banking connection?

A. No. 20

Mr. Woodruff: I offer, if the Court please, the entire account.

(Said account was offered in evidence and marked Exhibit D1.)

By Mr. Burling:

Q. How soon after the fire did you demand security? 30

Mr. Woodruff: If the Court please, I don't object to this particularly, but it seems to me it is immaterial what happened after the fire.

The Court: I think it is, too.

Mr. Burling: I won't press it.

MINNIE MORRIS, SWORN.

By Mr. Woodruff:

Q. Mrs. Morris, you are Mr. Morris' wife, aren't you?

A. Yes, sir.

Q. How long have you lived here in Camden?

10 A. Six years.

Q. And before that you lived where?

A. In Philadelphia.

Q. You have how many children, you and Mr. Morris?

A. Three.

Q. The girl on the stand, too?

A. Yes, sir.

Q. And two other girls?

A. Past twelve and past eight.

20 Q. Where were they born?

A. In Philadelphia.

Q. How many years had you lived in Philadelphia before you came to Camden?

A. 27 years.

Q. How long had you been in business in Camden?

A. Six years we come.

Q. What kind of business?

A. Shoe business.

Q. Who ran the place, who did the work?

30 A. I just help in the store, Mr. Morris did the work.

Q. You didn't hire anybody from outside, just the family took care of the place?

A. Yes.

Q. Now, on the previous day before this day you went to Wildwood——

A. Yes.

Q. ———what had been your custom with regard to locking the front door other times?

A. All the time since we got the case we always move in the night time the case to the door.

Q. You had been doing that for some time?

A. Yes.

Q. What other lock did the door have?

A. A little bolt inside.

Q. Could you work the lock, turn it with a key? 10

A. You couldn't, no, sir.

Q. Now, the day before, a few days before this fire, you packed up some of your pictures?

A. The same day, Saturday.

Q. Where did you put those?

A. In the cellar, we always do that when we go away; I wrap them up and keep the pictures together, because I knew I am out, and we put it in the cellar, the same place we do last time.

Q. Had you done that the previous summer? 20

A. Last summer.

Q. And other summers?

A. Every summer I go for vacation every summer.

Q. And when you went on a vacation did you always wrap up the pictures that way?

A. Yes, sir.

Q. And put them away?

A. Yes, sir.

Q. You did that the day before you went away? 30

A. Yes, sir.

Q. Now, Mrs. Morris, on the evening before you went away on your trip to Wildwood, what were you doing?

A. I was in the store until twelve o'clock, I am out in the store, and after twelve I finish my bathing suit, I sat down by the sewing machine and I finish the suit at one o'clock.

- Q. You didn't do that during the day?
A. No, sir.
Q. That is Saturday and Jewish people don't do that?
A. Yes, sir.
Q. And you worked after sundown doing that work?
A. Yes.
Q. Up to how late?
10 A. To one o'clock I finished my 'suit.
Q. When did you get your things ready to go away?
A. After that I put——
Q. Speak louder.
A. After I get finished I put everything in the satchel and go to sleep.
Q. What time did you go to bed?
A. After one o'clock.
Q. What time did you get up in the morning?
20 A. Half-past five.
Q. Did your husband get up with you?
A. Yes, sir.
Q. What did you do in the morning?
A. I got dressed.
Q. When did you get the children up?
A. Six o'clock.
Q. Were you there with your husband all the time, and the children, too?
A. Yes, sir.
30 Q. How did you go out of the store?
A. I took my two little children and I go out the front door.
Q. And how did Mr. Morris and your daughter go out?
A. The back door.
Q. Do you know how he fastened the door?

A. Yes, he put a little lock that was inside, and after that he moved back the case.

Q. Is that the same way you always did when you went away?

A. Yes.

Q. Where did he join you again?

A. What say?

Q. Where did you get together again?

A. When we come to the car, I stand and wait by the car on the cigar store corner, and the lady 10 upstairs, she said, "Where you go?" and I say, "I am going to Wildwood," and she said, "How long you going to stay," and I said, "Two weeks," and after that she made joke, she said, "I like to go with you," she said, "I would like to go with you."

Q. Never mind what the lady talked about, what did your husband do?

A. He come out with my bigger girl.

Q. Did he go back?

A. When we come to car I remind myself I left 20 my gold watch in there on the sideboard, and I said, "Mr. Morris, if you please, go back for my little watch," and he said, "We will lose the car," and I said, "No," and he went across the street, through the alley, and bring me the watch and come back.

Q. He was afraid he would miss the car?

A. Yes.

Q. Was the car there?

A. Yes.

Q. Did he run back? 30

A. Run back, come back right away with the little watch; I hollered him to hurry, because the car go.

Q. What else did he have?

A. A pair of bathing shoes.

Q. Did you know you had forgotten those when you sent him back?

A. What?

Q. Did you know you had forgotten the bathing shoes?

A. No, my girl this Wednesday went to Clementon Park and she used the bathing shoes, and I put them out to dry, and I forgot to take them in, and I didn't notice I took them only he took them.

Q. He brought them back?

A. Yes.

10 Q. Did you get on that car?

A. Yes, sir.

Q. And you went to the ferry and on down to Wildwood?

A. Yes, sir.

Q. What time did you get to Wildwood?

A. After seven.

Q. Then what did you do down there?

A. I look for a room for myself, and there was a couple of places, and I didn't like one, and the children saw the hotel where we used to be seven years before, we were in the same hotel there, and the children say, "Maybe the people be reasonable——"

20 Q. And did you go across the street to that place?

A. Yes, sir.

Q. Is that the place Mr. and Mrs. Weinstein had?

A. Yes, sir.

Q. And you got accommodations there, did you?

A. Yes, sir.

Q. What did you do after you got in your room
30 and got out of your room again?

A. We come inside, in my room——

Q. After you got your room then you came downstairs?

A. We come down and we were to go and eat breakfast.

Q. After breakfast what did you do?

A. A little on the porch and we got dressed and went in bathing.

Q. Who went in bathing?

A. Mr. Morris and I and the three children.

Q. And did you wear the new bathing suit?

A. Yes, sir.

Q. What time did you come back?

A. Yes, dinner time; we asked the lady what time was dinner, and she said, "Between twelve and one is your dinner," and we have dinner.

10

Q. All come back again?

A. Yes.

Q. What did you do after dinner?

A. Upstairs for a little nap.

Q. And later in the afternoon you came down again?

A. Yes.

Q. And what then?

A. We take a walk on the Boardwalk and come back to supper.

20

Q. Did you have supper together?

A. Yes.

Q. After supper what did you do?

A. We sat a little bit on the porch, and after that children have enjoyment, singing, playing a little bit.

Q. Who did the playing?

A. What say?

Q. Who played?

A. My second girl she play violin, I got violin there, too.

30

Q. You took the violin?

A. Yes, sir.

Q. And she played the violin?

A. She played the violin, and the little one sing.

Q. Did you and Mr. Morris stay and enjoy it?

A. Yes.

Q. How long were you there?

A. Until after eight.

Q. And then what?

A. Go out on the Boardwalk and take a walk, and we come little later home, and we sit on the porch talking, Mr. and Mrs. Weinstein, and there was another man from the west, and we talk about business, and we talk to Mr. Weinstein about the business.

10 Q. How late did you stay there?

A. After eleven.

Q. Then you retired?

A. Yes.

Q. Was Mr. Morris with you all evening?

A. Yes, sir.

Q. And Anna had gone out?

A. She gone out with the girl, Miss Weinstein.

Q. Had she gotten back before the train left?

A. No, she come after the train left.

20 Q. And then what time did Mr. Morris and Anna get up in the morning?

A. Six o'clock; he asked Mrs. Weinstein when he pay for the day, he asked what time I go back to Philadelphia, and she said, "6.45," and he said to her, "If you please, call me at that time to take the train."

Q. Did she call him?

A. She called, and I got up same time with him.

Q. You got your husband and Anna off?

30 A. Yes, sir.

Q. When did you come up after that, Mrs. Morris, when did you first know there had been a fire?

A. I didn't know nothing until five o'clock Monday afternoon.

Q. You didn't know it during the day?

A. I enjoy it very nice, and I hope I could enjoy it again there.

Q. How did you get word at five o'clock?

A. My daughter called on the phone.

Q. Did you know then there was a fire?

A. She didn't say, she say to the madame, "Come home," and I said, "What is the matter?" and she said, "Come home, you find out."

Q. You didn't know until you actually got home?

A. I didn't know nothing.

Q. Did you close the house up before you left?

A. Mr. Morris always closed.

10

Q. Were you there when he closed up?

A. I was at that time at the machine.

Cross-examination.

By Mr. Burling:

Q. How many blots are there on the front door?

A. Two, only one don't work.

Q. It works, doesn't it?

20

A. No.

Q. Didn't work at all?

A. It didn't catch at all, always put one the top.

Q. What say?

A. The second one don't catch good on this, always lock the top one.

Q. Did you ever complain to Mr. Frederick about it?

A. I tell you the truth, we complain, but he don't want to fix it.

30

Q. You did complain?

A. We did complain, yes.

Q. You did complain to Mr. Frederick?

A. Yes, and have a talk about what for he don't fix it, and he said, "Fix it yourself."

Q. Who did that, you or your husband?

A. My husband.

Q. Your husband talked to Mr. Frederick about it, did he; what did he do?

A. He said, "I don't care, fix it yourself."

Q. Mr. Frederick said that?

A. Yes.

Q. Were you present at that conversation; you were there and heard this conversation?

A. No, I didn't hear it say.

10 Q. What say?

A. I didn't hear; I have a talk with Mr. Morris, "Was Mr. Frederick want to fix it?"

Q. I thought you said Mr. Frederick said, "Fix it yourself?"

A. Mr. Morris tell me that Mr. Frederick wouldn't fix it, no use to bother with it.

Q. How long was it out of order?

A. What?

Q. How long was the bolt out of order?

20 A. Long ago.

Q. How long?

A. Two years.

Q. Been out of order for two years?

A. Yes.

Q. How long did you put the packing case against it?

A. Since that lock was broke.

Q. For two years?

A. Yes.

30 Q. For two years, every night, you had been pushing that big box against the door?

A. Yes, sir.

Q. That big box had wheels on it?

A. What say?

Q. That big box had wheels on it?

A. Yes.

Q. You could push it away from the door?

A. Yes.

Q. What did you put it up there for?

A. Because to be fastened for the door a little more safe.

Q. How would that be any safer when you could push it away?

A. If somebody come in they could break the lock, too.

Q. They could break the lock, too?

10

A. Sure, the lock isn't good, if somebody want to come in they could.

Q. If anybody wanted to come in they could break the lock?

A. Yes, break the bolt, too.

Q. If they broke the lock, then all they had to do was to push the door in, this was on wheels?

A. Yes.

Q. What good was it then to protect against burglary?

20

A. We thought it was good.

Q. Why?

A. Because it is a little heavy to push with the door; maybe we could hear them knock down the things, and we could come down.

Q. You were all away at Wildwood this Sunday?

A. Yes, sir.

Q. Who would hear the noise while you were away?

A. It was for protection.

30

Q. What good would the packing box do on Sunday?

A. It was by the door.

Q. But what good was it going to do?

A. We thought it would be good for protection.

Q. Thought it to be good protection?

A. Yes.

Q. You thought it could be a protection so you could hear the things?

A. Yes.

Q. But if nobody was there to hear the noise, what good would it be?

A. If somebody want to break the shutters, and nobody is there, who could help it?

Q. You went out the front door?

10 A. Yes, sir.

Q. Who moved the packing box, who moved the box away from the door?

A. Mr. Morris, and me and my two little children—he pulled it away from the door, it was Sunday, because Saturday night we put it there, and he opened the door, and I and my two little children went out, and waited on the corner for the car there.

Q. And he had to put the box back again?

A. Yes.

20 Q. And nobody was left to hear the burglars if they did come?

A. Sometimes you get a good sleep and you can't hear.

Q. What?

A. If you go to sleep you can't hear anything.

Q. Why?

A. We made up our minds that is protection.

Q. Why didn't you go out the back door instead of moving the case?

30 A. We always used to do that.

Q. Why didn't your daughter go out the front way?

A. She went out the back.

Q. She went out the back?

A. Yes.

Q. Why did she go out the back way?

A. I didn't ask her that.

Q. Why did you want to go out the front way?

A. We were nearer to the corner.

Q. Now, you went on the corner of Kausel & Walsh's store?

A. After that when Mr. Morris come out.

Q. You went out first, you and the two girls?

A. No, by the cigar store.

Q. And Mr. Morris came out with your daughter?

A. Yes.

Q. And then you went across to Kausel & Walsh's corner? 10

A. Yes.

Q. Was the trolley there?

A. Yes.

Q. When you told your husband to go back and get the watch?

A. Yes.

Q. Where did you tell him your watch was?

A. On the sideboard in the dining room.

Q. You told him in the dining room? 20

A. Yes.

Q. And he went back alone, did he?

A. Yes.

Q. How long was he gone?

A. Didn't take long, maybe a second.

Q. How long is a second?

A. I didn't have the watch, I didn't see.

Q. How long is a second?

A. I didn't know, I say; I tell him run quick, because we miss the car. 30

Q. How long was he gone?

A. It didn't take long.

Q. About how long was it?

A. I didn't have the watch, I didn't see the watch.

Q. Can't you judge?

A. I'm not a judge, I am a poor woman.

Q. You knew the time?

A. Yes, but I don't do that.

Q. Do you understand what I am saying?

A. I have plenty in my head from the house.

Q. Was it one minute?

A. No, sir.

Q. Five minutes?

A. No, sir.

10 Q. Ten minutes?

A. No, sir.

Q. It wasn't one minute?

A. No, sir.

Q. He went from Kausel & Walsh's, over to your store, in the back way, opened the door, got the shoes and watch, and came back to where you were in less than a minute?

A. I didn't see the watch, I can't say, I just measure.

20 Q. You went down to Wildwood?

A. Yes, sir.

Q. Before you went away you put the pictures away, didn't you?

A. Yes, sir.

Q. Why did you put the pictures away?

A. When I am home I take care of them always, but when I am going away every summer I do that.

Q. Your husband was going to be home?

30 A. Didn't he have to tend the store, not the pictures.

Q. He was going to be home?

A. Yes.

Q. How long were you going to be away?

A. Two weeks.

Q. What was going to happen to the pictures?

A. A woman takes care of the house things, not a man.

Q. What did you think would happen to them?

A. I thought maybe the flies make dirt, and I don't want that.

Q. What was the matter with the back part of the cellar in the furthest part, what about the dirt back there?

A. It was covered.

Q. With what?

A. With newspaper.

Q. And you thought it would be——

10

A. Well, I am a woman, and maybe I don't do right, but I thought that.

Q. You thought it would be better to put the pictures in the back part of the cellar?

A. Yes.

Q. They would be better there than on the wall?

A. Yes, sir, because it was wrapped up.

Q. How many other years did you do that?

A. Every year.

Q. Did you find they were clean back there?

20

A. Yes.

Q. You found they were clean there?

A. Yes, supposed to be.

Q. If you were so afraid of the flies why didn't you put these pictures back there earlier in the year?

A. When I am home I can clean them.

Q. You were only going to be gone two weeks?

A. It could get dirty then.

Q. When you went down to Wildwood you went down on the excursion train, didn't you?

30

A. Yes, sir.

Q. And was your husband going to come back that night?

A. Yes, sir.

Q. When did you decide to go to Wildwood?

A. I think about the trip as soon as it gets warm, I always do.

Q. Had you made any arrangements for any hotel accommodations?

A. No, sir.

Q. Your husband was to come back that night?

A. He supposed to come.

Q. And your daughter?

A. Yes, supposed to.

10 Q. What do you mean by that?

A. He didn't come back.

Q. You expected him to come back?

A. Yes.

Q. He wasn't going to stay there?

A. No.

Q. And did he talk about coming back that same night?

A. Yes.

Q. He was coming back on the excursion train?

20 A. Yes.

Q. What time did the excursion train come back?

A. Half-past nine.

Q. Where did you find out half-past nine?

A. I can't read very good English, I heard the people talk about it.

Q. Who did you hear?

A. In the office.

Q. Who?

A. There was lots of people.

30 Q. Who?

A. It was Mr. Weinstein, Mrs. Weinstein and the daughter.

Q. She told you half-past nine?

A. Yes.

Q. Sure of that, are you?

A. Positive.

Q. Who told you half-past nine?

A. Everybody; Mr. Morris ask, we ask the last train.

Q. You asked what time the excursion train went back, did you?

A. Yes.

Q. Who did you ask that?

A. The whole crowd, Mr. and Mrs. Weinstein.

Q. Was your daughter there?

A. Yes, sir.

10

Q. You had supper together?

A. Yes.

Q. What time did your daughter go to the beach?

A. After eight.

Q. Where was your husband going to meet her?

A. He didn't go to meet her; we were in the hotel, and she went out, and after we took a little walk.

Q. You didn't walk with her?

A. With who?

Q. Your daughter.

20

A. No, sir.

Q. Who did your daughter walk with?

A. Miss Weinstein.

Q. Where was he going to meet her and come home?

A. At the hotel.

Q. Did he tell the daughter there?

A. Not at that time.

Q. He didn't tell the daughter?

A. No.

30

Q. How did she know it?

A. She knew.

Q. She went down to the Boardwalk without saying a word to your husband as to where she would meet him?

A. She didn't say nothing.

- Q. How long was your daughter gone?
A. She gone before us.
Q. How long was she down there?
A. After eleven o'clock.
Q. Eleven o'clock?
A. Yes.
Q. Did you go down and try to find her?
A. How could you find her on the Boardwalk;
we were there, but couldn't see her.
- 10 Q. Your husband had to get the train?
A. Yes.
Q. What were you doing about it?
A. We couldn't help it; suppose you couldn't get
her.
Q. You sat there and didn't do anything about it?
A. No.
Q. Did you go to bed before your daughter got
back?
A. No, I didn't go.
- 20 Q. Did your husband go to bed before your daugh-
ter got back?
A. Sitting on the porch.
Q. Sitting on the porch when your daughter got
back?
A. Yes.
Q. And you had a conversation on the porch with
your daughter?
A. I said, "What for you don't come?" and she
said, "I enjoy myself."
- 30 Q. You both had a conversation on the porch?
A. Yes.
Q. Did your husband?
A. "What for you didn't come at the time?" and
she said, "I enjoy myself and I forget everything."
Q. Forgot all about it?
A. She said that.

Q. And your husband was sleeping then, was he?

A. No, he wasn't sleeping.

Q. He wasn't up in bed then, was he?

A. No.

Q. Did you all go to bed together?

A. No, Mr. Morris and the two little children.

Q. What time?

A. After she come, it didn't take long.

10

FANNIE MORRIS, SWORN.

By Mr. Woodruff:

Q. Fannie, you went down to Wildwood with the rest of the family?

A. Yes, sir.

Q. You are a daughter of Mr. Morris, aren't you?

A. Yes, sir.

20

Q. Tell us in your own way, as quickly as you can, what you did on the morning you went away?

A. Got out of the store, and we waited for father to come around the back, and we went across the street to Kausel & Walsh's to get the car, and while on the corner mother thought of her watch, and he went back and he came back and we got on the car and we went away, and then we went to get the train, and we got to Wildwood, and then we were going to look for rooms, and we went to several 30 places, and mother didn't like it, and me and my little sister saw the hotel we were there seven years ago, and we asked mother to try and go there, maybe the prices would be reasonable, and we went there, and mother said the prices would be reasonable and we were going to stay there.

Q. You had breakfast there?

A. Yes, sir.

Q. The whole family?

A. Yes, sir.

Q. What did you do throughout the day?

A. After we had breakfast we went and got dressed to go bathing, and when we came back we had dinner, and then we took a nap, and after that we got up and we sat on the porch.

10 Q. Did you have supper together that evening?

A. Yes, sir.

Q. After supper what did you do?

A. We were sitting in the parlor, I was playing and my little sister was singing; there were four boys there, and we were singing and playing.

Q. You were playing the violin?

A. Yes, sir.

Q. Where were your father and mother during the day?

20 A. With us.

Q. Were they with you all day long?

A. Yes, sir.

Q. While you were playing your violin in the evening was your father and mother there with you?

A. Sitting there, yes, sir.

Q. How late were you up?

A. Half-past eleven.

Q. Father and mother with you all that time until you went to bed?

30 A. Yes, sir.

Q. Father stay there all night?

A. Yes, sir.

Q. Did you know when they got up in the morning to go away, were you awakened?

A. No, sir.

No cross-examination.

Mr. Woodruff: I would like to say to your Honor that because of the absence of the witness Mr. Frederick, who was here yesterday under subpoena, and there were four men——

Mr. Burling: If the Court please, I don't think that is a fair statement to make as to any witness, they should be in court.

10

The Court: I think not.

Mr. Woodruff: If the Court please, Mr. Burling knows Mr. Frederick was here yesterday, and he was put on the stand, and perhaps he thought he was dismissed.

The Court: I don't think the remarks are strictly in accordance with the rules of evidence.

20

Mr. Woodruff: I think I am entitled to state the reason why they are not here, to avoid the possible criticism by the state, that is my only reason. Mr. Weinstein was also here under subpoena, and that is my only reason, so that counsel won't argue against it in front of the jury.

Witnesses sworn, testified to previous good reputation of defendant: 30

Israel Weisman,
Simon Rotman,
Max Sacks,
William Ratner,
Nathan Ostroff,
Harry Muntez.

STATE'S REBUTTAL.

DETECTIVE CHARLES WHALAND, recalled.

By Mr. Burling:

Q. Mr. Whaland, I show you two papers, will you tell me whether you have seen those before?

10 A. Yes, sir.

Q. Where?

A. I got them in the store, Morris' store, in the store part, right in the corner.

Q. When?

A. A few days after the fire.

Mr. Burling: Mr. Woodruff, these are the papers on which I examined the defendant yesterday; I want to offer those in evidence.

20

Mr. Woodruff: No question about that.

Mr. Burling: I would like to have those marked as exhibits, Exhibits 7 and 8.

(Said papers were offered in evidence and marked Exhibits S7 and S8.)

BOTH SIDES REST.

30

DEFENDANT'S REQUESTS TO CHARGE
WHICH WERE REFUSED.

10

(6th, 7th, 12th & 13th.)

6. You must acquit the defendant on all three counts of the indictment, the state having failed to prove that a dwelling house was burnt.

7. You cannot convict defendant under this indictment upon proof of a burning of merchandise, furnishings or other personal property, to warrant a conviction of the defendant the state must have 20 proven beyond a reasonable doubt that a dwelling house was burnt.

12. You must acquit defendant upon the second count of the indictment, the prosecution having failed to prove that charge.

13. You must acquit defendant upon the third count of the indictment, the prosecution having failed to prove that charge.

30

CHARGE OF THE COURT.

SHAY, J.

Ladies and Gentlemen of the Jury: The defendant on trial is being tried for the crime known as statutory arson. The statute sets forth, "Any person who shall wilfully or maliciously burn, or cause
10 to be burned, or aid, counsel, procure or consent to the burning of any dwelling house, whether it be his own or that of another, or any kitchen, shop, barn, stable or other outhouse that is a parcel thereof, or belonging or adjoining thereto, or any other building, by means whereof a dwelling house shall be burnt, whether it be his own or that of another, shall be guilty of arson."

The defendant has been indicted on what we know in the law as three counts; one count charges him
20 with wilfully and maliciously setting fire and burning a certain dwelling house and shop; the second count charges him with wilfully and maliciously causing to be set on fire and burned a certain dwelling house and shop, and the third count charges him with being guilty of wilfully and maliciously aiding, counseling, procuring and consenting to the setting fire and burning of a certain dwelling house.

Now, in this case, as in all criminal cases, the burden of proof rests upon the state. In other words,
30 the state must carry the burden. In order for you to find a conviction you must be satisfied of the defendant's guilt under this indictment, under any or all counts of the indictment, beyond a reasonable doubt. A reasonable doubt, as I perhaps have charged you in previous cases, is a doubt arising in the mind of a juror after a consideration of all

the testimony, or if there is a very material part of the testimony which causes a reasonable doubt in your mind, when that is considered, together with the other testimony, of course you will find the defendant not guilty.

Now, a reasonable doubt is not any doubt that might come into a person's mind, but it is the doubt that an ordinary, reasonable, prudent man will have after a consideration of the evidence in the case. It is not the doubt of a skeptic, it is not the kind 10 of a doubt that a person of abnormal mind might have, but the doubt of a reasonable man and woman. If you have such a doubt after a full consideration of all the evidence in the case that the defendant is guilty, of course then your verdict will be not guilty, or for acquittal. If, on the other hand, you feel the state has carried the burden of proof, and you are satisfied beyond a reasonable doubt that the defendant is guilty under this indictment, then your verdict will be one of guilty. 20

Defendant's counsel has requested me to make certain charges to you. Charge one I will charge you. "The law requires a jury to presume the accused innocent until proven guilty beyond a reasonable doubt." Number two I will charge you. "And this defendant is entitled to be acquitted unless the proofs submitted satisfy you beyond all reasonable doubts of his guilt as to the specific violation of the law laid against him by the grand jury in this indictment." Number three I will charge you. "Reasonable doubt, 30 requiring you in the law to acquit this defendant, means every or any reasonable doubt which may enter the mind of a juror during the process of sifting and considering any item of evidence as well as any reasonable doubt still remaining in the mind of a jury after consideration of the evidence; in either

event if such doubt enter your mind you should acquit this defendant." Number four I will charge you. "And the state must not only prove one or several but every single material allegation of the specific offense here charged beyond all reasonable doubt before you can convict this defendant." Number five I will charge you. "If as to any one of the three charges against defendant any one material element has not been proven by the prosecution beyond all
10 reasonable doubt, you must acquit the defendant"—I will change that charge a bit—"on that particular count." Number seven I refuse to charge.

Mr. Woodruff: Number six.

The Court: Number six I refuse to charge. Number eight I charge you. "The law presumes that the fire was accidental, innocent and unconnected with the defendant until the state proves beyond
20 any reasonable doubt that the defendant was criminally responsible therefor." Number nine I charge you. "And it is not incumbent upon the defendant to prove that the fire was caused accidentally or otherwise than as alleged; the state must itself prove the fire to have been of wilful or malicious origin and prove the criminal connection of the defendant therewith beyond a reasonable doubt." Number ten I charge you. "If because of the testimony as to the defendant's past good reputation alone a reasonable
30 doubt is raised in your minds as to his guilt, he must, under the law, be acquitted." Number eleven I charge you. "Even if you should think defendant had placed an overvaluation on his stock through lack of judgment, that is not evidence of a criminal motive." Numbers twelve and thirteen I refuse to charge.

Now, while the act does not set forth very clearly—the act just mentions the term shop, I charge you that the personal property in a shop, the burning of the personal property in the shop, wilfully and maliciously would not be committing the crime of arson. You can judge from the testimony in this case whether or not the shop itself was set on fire. With those charges I leave the case in your hands for deliberation.

10

DEFENDANT'S EXCEPTIONS.

Mr. Woodruff: If your Honor please, I would like to except to your Honor's refusal to charge my typewritten requests Nos. 6, 7, 12 and 13, and also to that portion of your Honor's charge in which your Honor used these words, or nearly so, "If a very material part of the testimony causes a doubt in your mind," and so on. In other words, it is my contention, it does not have to be a material part, a very material part, but any part of the act during the sifting out process, instead of your Honor pointing out it must be a very material part. Your Honor also charged, "If a doubt remains, the doubt of a reasonably prudent man, after a full consideration of all the evidence in the case." Your Honor did afterward charge my request and cleared that up. Your Honor, in concluding your charge, said: "The malicious burning of the personal property in the shop would not make the crime of arson under this

20

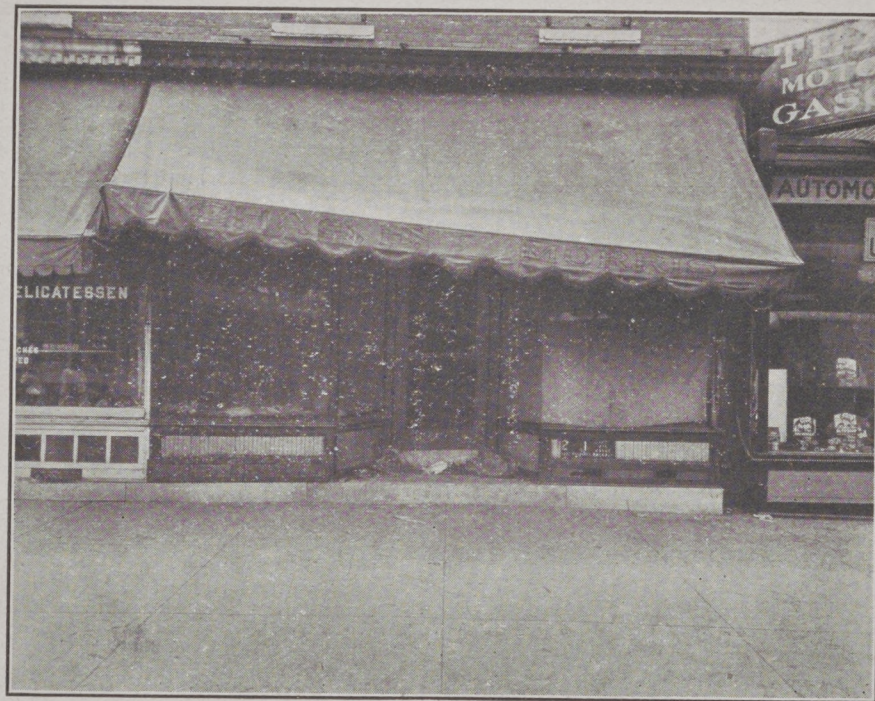
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indictment," but then your Honor said to the jury these words, "You can judge from the evidence whether the shop itself was set on fire or not." It is a peculiar thing about this case, but the only evidence we have in the whole case is that there was personal property burned. There is not a scintilla of evidence the state has produced to show the building was burned, and the cases are uniform in declaring unless there is a change of the wood pulp to
10 charcoal or carbon, a change in the building itself, it is not arson, and I ask your Honor for an exception to that.

(Exception noted.)

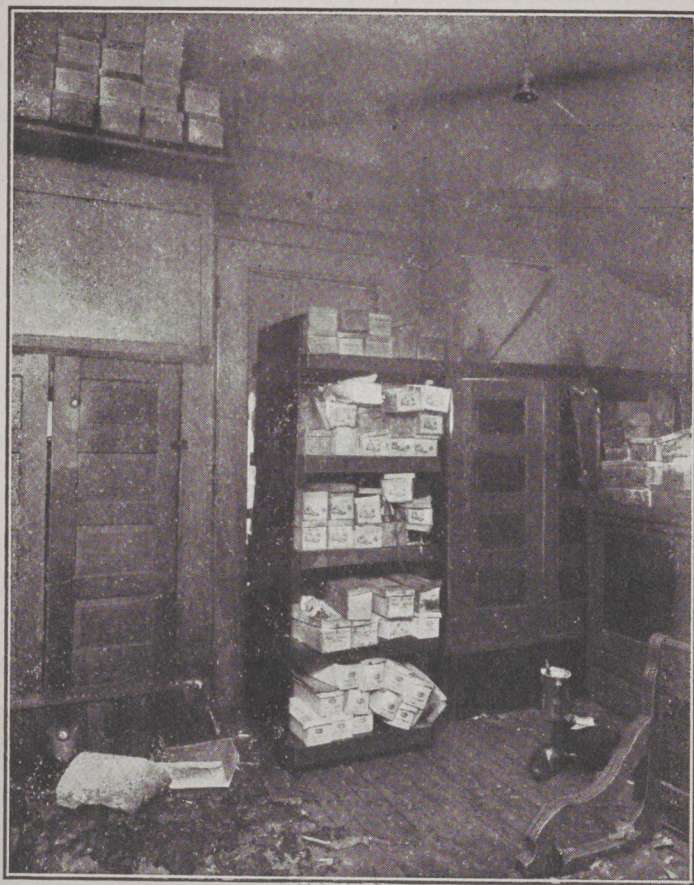
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No. 1





No. 2



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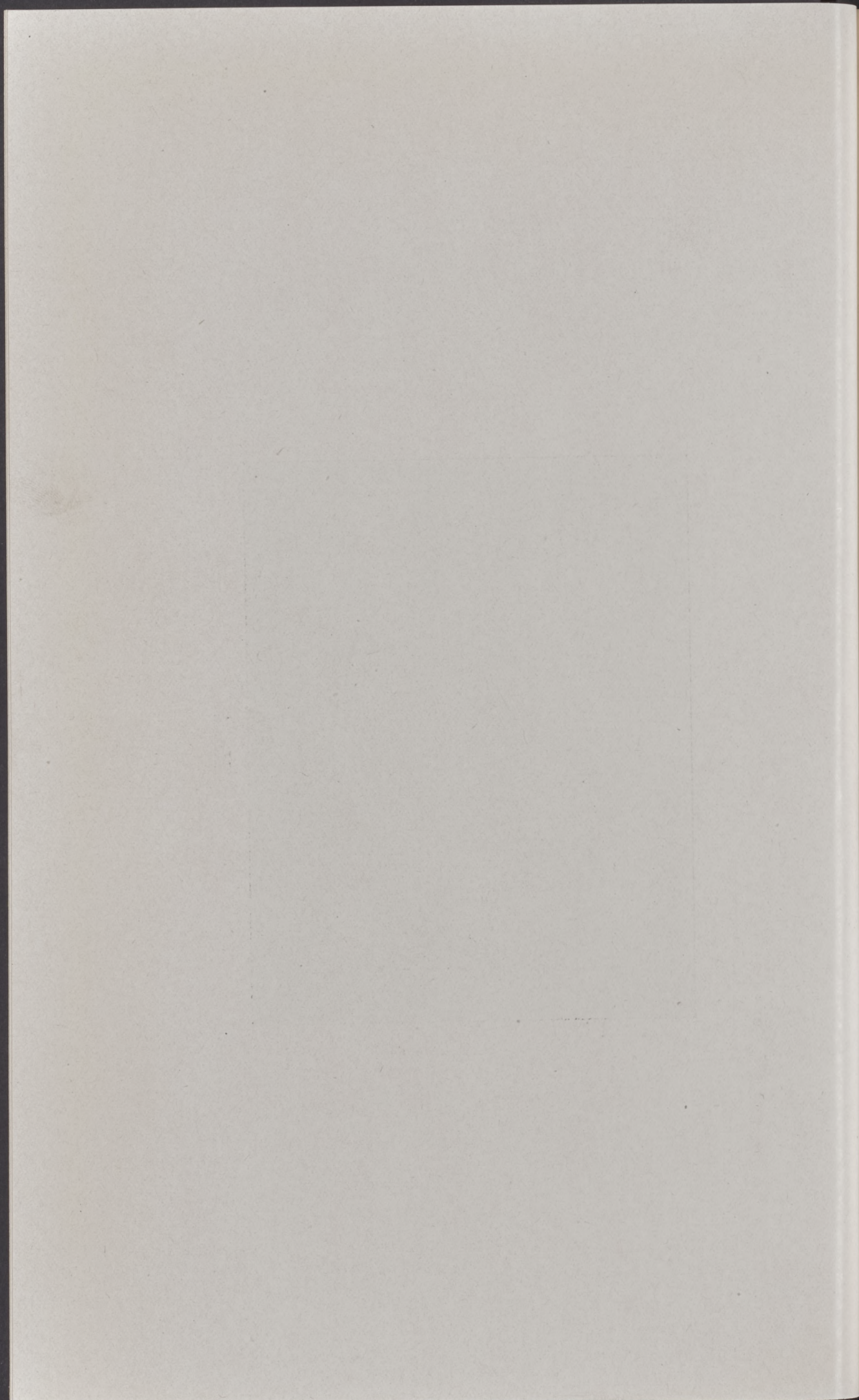


No. 3





No. 4



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

THE STATE OF NEW JERSEY,
Defendant-in-Error,
v.

CHARLES E. MORRIS,
Plaintiff-in-Error.

ON WRIT OF ERROR TO THE JUDGMENT OF THE SUPREME
COURT, SUSTAINING THE CAMDEN COUNTY
COURT OF QUARTER SESSIONS.

ON INDICTMENT AND CONVICTION FOR ARSON.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT OF THE CASE.

The plaintiff-in-error was indicted for the crime of statutory arson. The indictment was presented on the 11th day of September, 1922, in the April Term, 1922, and a trial by Court and jury was had in the Camden County Court of Quarter Sessions on the 19th of October, 1922. The trial was com-

pleted and the verdict was received by the court clerk in the absence of the Court on the 20th day of October, 1922, and by the verdict of the jury the plaintiff-in-error was found guilty of the second count contained in the indictment. No verdict was received or pronounced by the jury as to counts one and three of the indictment. Subsequently sentence was imposed by the Court, and a writ of error was taken by the plaintiff-in-error, bringing said conviction before the Supreme Court for review on specifications of causes for reversal and the entire record, pursuant to Sections 136 and 137 of the Act of 1898, relating to criminal procedure (Volume 2, Compiled Statutes, page 1863).

The case was argued at the February, 1923, Term and an opinion written by Justice Trenchard (page 1a) was handed down in June, 1923, affirming the judgment of the Quarter Sessions Court. To the judgment of the Supreme Court a writ of error was taken, thereby bringing said judgment and the conviction before this court for review.

THE FACTS.

The defendant-in-error's understanding of the facts is reviewed under the argument relating to cause for reversal No. 18 (this brief page 22).

BRIEF OF THE ARGUMENT.

The plaintiff-in-error in the Supreme Court specified nineteen causes for reversal, which will be dealt with in their order and as follows:

POINT ONE.

Refusal of motion to quash counts two and three of the indictment.

CAUSE FOR REVERSAL No. 1.

“Because the trial Court refused to quash count two of the indictment (p. 20).”

CAUSE FOR REVERSAL No. 2.

“Because the Court refused to quash count three of the indictment (p. 20).”

The indictment in this case is founded on Section 123 of the act relating to criminal law, Pamphlet Laws, 1898, page 825, Compiled Statutes, Volume 2, page 1785, as amended by the Act of 1919 (Chapter 106, page 257), which reads as follows:

“Any person who shall wilfully or maliciously burn, or cause to be burned, or aid, counsel, procure or consent to the burning of any dwelling house, whether it be his own or that of another, or any kitchen, shop, barn, stable or other

outhouse, that is a parcel thereof, or belonging or adjoining thereto, or any other building, by means whereof a dwelling house shall be burnt, whether it be his own or that of another, shall be guilty of arson, and punished by a fine not exceeding two thousand dollars, or by imprisonment at hard labor not exceeding fifteen years, or both."

The indictment in this case contained three counts (page 9). The first charged the plaintiff-in-error with having committed the offense in the City of Camden on the 23rd day of July, 1922, in that he did, "wilfully and maliciously set fire to and burn a certain dwelling house and shop situate at No. 1203 Haddon Avenue." Upon this count the jury pronounced no finding. The second count charges the defendant at the same time and place in the following language: "Did wilfully and maliciously cause to be set fire and burned a certain dwelling house and shop situate at No. 1203 Haddon Avenue." Upon this count the jury found a verdict of guilty. The third count charged the defendant at the same time and place in the following manner: "Did wilfully and maliciously aid, counsel, procure and consent to the setting fire and burning a certain dwelling house and shop situate at No. 1203 Haddon Avenue." Upon this count the jury pronounced no finding.

On the day of the trial in this case prior to the receipt of the plea of the plaintiff-in-error, his counsel made the following motion (page 15):

"My motion is as to these two latter counts, that they be quashed or dismissed, because there is no sufficient allegation there to put us upon our defense. There is no indication of any per-

son with whom we are supposed to have counseled, no person with whom we are supposed to have conspired with, no circumstances that indicate any conspiracy, and there is nothing in the nature of the two counts to warn this man, who is the defendant in this case, and who was absent from the city all of that day, of what it is he is to meet."

This motion to quash was denied by the Court (p. 20).

First: The defendant-in-error contends that it is fundamental that in framing an indictment charging a statutory crime it is only necessary to follow the language of the statute.

The defendant-in-error did this, and no allegation has been made by counsel for the plaintiff-in-error that such was not complied with by the defendant-in-error.

State v. Caporale, 85 N. J. L. 495, Sup. Ct. 1914, at page 496.

In the case of *State v. Brand*, 77 N. J. L. page 486 (C. of E. and A.), in 1909, in construing Section 126 of the Act of 1898, which is somewhat similar in content, except it contains the additional phraseology to prejudice, and so forth, insurance companies, the Court held:

"The general rule is well established that in charging a statutory offense it is sufficient to lay the charge in the words of the act, without a particular statement of facts, such as will bring the accused within its operation."

The crime charged in this section in question is no

doubt statutory law, as from its history it is an enlargement of the primary principles at common law of strict arson.

State v. Duelks, 116 Atl. Rep. Sup. Ct. 1922, p. 865, at p. 866 (not yet officially reported);

State v. Lentz, 92 N. J. L. Sup. Ct. 1918, p. 17;

State v. Fish, 23 N. J. L. 323 (S. C. 1859), at page 324.

Second: With respect to refusal to quash count three, since no verdict was returned to the jury the plaintiff-in-error cannot complain of the action of the Court, as he was not prejudiced thereby.

Third: The matter of quashing the indictment rested within the discretion of the trial Court, and since it preceded the plea of the plaintiff-in-error and the trial of the case, it cannot be reviewed under Section 136 providing for review of rulings at the trial resting in discretion.

State v. Pisaniello, 88 N. J. L. p. 262 (C. of E. 1915).

POINT TWO.

Refusal of trial Court to compel State to elect count in the indictment.

CAUSE OF REVERSAL No. 3.

“Because the trial Court refused to compel the State to elect the count or counts on which it would try the accused (pp. 15-20).”

The State has been unable to find in the record any application or motion of the plaintiff-in-error to this effect and it is not argued in his brief.

POINT THREE.

Refusal of Court to compel defendant-in-error to further particularize.

CAUSE FOR REVERSAL No. 4.

“Because, after demand for bill of particulars, the trial Court refused to compel the State to answer particularizing and defining its position and the exact charge the accused was to meet (page 20).”

The defendant-in-error's position in this respect was set forth at length (p. 18) at the trial by the assistant prosecutor in answer to the motion of the plaintiff-in-error:

“With regard to the bill of particulars, notice was served on the State that a motion would be made to the Court for a bill of particulars, and to conserve the time of the Court and counsel for the defendant, Mr. Woodruff and I met in that regard with an endeavor to try and come to a common ground, and to see if the information that he had in mind in noticing the State could be furnished without a formal appearance. The first count of the indictment alleges that the defendant himself set fire to and burned a certain dwelling; it alleges a specific date, it alleges a specific time and place. Now, the pur-

pose of a bill of particulars in this State, 'is to limit the proof to matters specified in the bill of particulars and to enable the other party to meet his opponent's proof without danger of surprise.' Surely when a defendant is advised that he is charged with setting fire to a certain dwelling on a certain day, in a certain city, he is fully apprised of what he is going to be charged with, and it is not necessary for the State to set forth any items of evidence of the manner in which the premises may or may not have been set on fire. That is a matter of proof, and the State is not, in fairness to the defendant required to give to the defendant the evidence by which it would tend to corroborate or substantiate the charges in the indictment. I say, as to the first count the defendant has been fully apprised. If his defense is that of not guilty in its origin, or an alibi during the entire day, he has the opportunity to present those facts, and he has been fully apprised. (Note: And counsel for plaintiff-in-error also stated the accused was prepared to present an alibi, page 16). With respect to two and three, I have told Mr. Woodruff verbally that it is not the intention of the State to produce any direct evidence of the presence of any third person in the premises in question, or to allege the identity or the immediate presence of a third party that may have set fire to the premises in question, it seems to me with that statement, not limiting the State to the fact that someone did do the act, but apprising the defendant the State has not the direct evidence of the presence of a third person, known or unknown in identity, we have fairly given to the defendant facts upon which he can answer those

charges on the merits, and I therefore respectfully contend with respect to the motion for quashing the indictment it has no standing in law, and with respect to his informal application in the manner in which I have described for a bill of particulars, we have given the defendant the full information he is entitled to under the law, that he may go to trial without prejudice to himself."

And as was said in the opinion of the Supreme Court in this case, the course of the trial showed that the granting of the bill of particulars would not have aided the defense made to the charge.

State v. Hatfield, 66 N. J. L. p. 443, Sup. Ct. 1901.

Moreover, the refusal of a demand for bill of particulars on an indictment made prior to plea of the defendant, therefore occurring not "at the trial" is not reviewable under Section 136 of the Criminal Procedure Act.

POINT FOUR.

Because the Court permitted the defendant-in-error to introduce testimony indicating incendiarism, but unconnected with the accused.

CAUSE FOR REVERSAL No. 5.

"Because over objection on the part of the accused the trial Court permitted the State to introduce testimony indicating incendiarism

but unconnected with the accused, and permitted the case to go to the jury thereon notwithstanding the failure of the State to fulfill its promise to connect him by competent evidence therewith (pp. 25 and 26 to 66)."

This cause is subject to attack by virtue of indefiniteness and failure to specify the particular testimony with preciseness.

State v. Herron, 77 N. J. L. 523 (C. of E. 1908);

State v. Hendrickson, 95 N. J. L. 10 (S. C. 1920) at p. 13.

But even so, it is unsound.

"The *corpus delicti* in an arson case consists first in the burning of a house described, and second, in the fact that a criminal agency was the cause of the burning."

5 *Corpus Juris*, p. 539.

"Arson at common law consists in wilfully and maliciously burning the house of another."

State v. Fish, 23 N. J. L. 323, Sup. Ct. 1859, at p. 324.

The burden was therefore upon the defendant-in-error to produce evidence that the act itself was done, in other words, that it was wilful and malicious, and not as the result of natural or accidental causes. When a house burns and nothing appears but that fact the law rather implies that the fire was the result of accident or of some providential cause rather than criminal design. This fact may be established, as in other cases, by circumstantial evi-

dence, and the defendant-in-error in this matter introduced a line of evidence to establish the fire was not of an accidental origin, but of incendiary character, by means of testimony of members of the Camden City Fire and Police Departments, who responded immediately after the fire was discovered by the public as to physical condition of premises upon their arrival (Hyde, page 22; Watkins, page 24; Clay, page 28; Persglove, page 32; Gladney, page 39; Patterson, page 42; Hunt, page 49; Price, page 53; Carter, page 56.

The matter of order of proof of the essential elements is in the discretion of the Court and not material nor reviewable.

State v. James, 96 N. J. L. 132 at 145 (C. of E. 1921).

POINT FIVE.

Admission of alleged opinion evidence.

CAUSE FOR REVERSAL No. 6.

“Because the trial Court, over objection, permitted unqualified witnesses for the State to give opinion evidence that articles were saturated with oil and that smoke was smoke from burning kerosene. *Ibid.*”

This cause was argued in the Supreme Court but is apparently abandoned in this court as it is not argued in the plaintiff-in-error's brief.

This cause is also subject to criticism by virtue of its vagueness.

State v. Herron, 77 N. J. L. 523.

81 The specific exception apparently was first to the testimony of a fireman by the name of Captain Watkins (p. 24), who was permitted to testify as to certain stockings and rags being saturated with oil found by him in the *locus in quo* immediately after the fire was subdued. The second reference is the apparently an exception to the testimony of Clarence Persglove (page 32) wherein he testified as to the character (odor and color) of the smoke that prevailed in the premises as he was fighting the fire, Charles M. Gladney, a fireman, at page 39, Deputy Chief Paterson, a fireman, at page 42, and John Hunt, fireman, page 49 to substantially the same effect. As the trial Court well said in ruling upon this class of testimony, it was not a case requiring the conclusions of an expert, but merely a statement of fact by a witness of a condition that he personally observed as a normal being, and that they had a right to give the jury the benefit of their observations.

State v. Koccis, 56 N. J. L. 44 (D. C.);

State v. Laster, 71 N. J. L. 586 (C. of E. 1904).

And even if their testimony might be classed as opinion evidence, the Court was satisfied as to their competency to so testify and where there is any evidence to support such a conclusion it is not reviewable.

State v. Wardville, 88 N. J. L. 418 (S. C. 1916);

Leonard v. Standard Aero Corporation, 95 N. J. L. 235 (C. of E. 1920), at page 239.

POINT SIX.

Admission of testimony of expert appraiser Feurstein.

CAUSE FOR REVERSAL No. 7.

“Because the trial Court, over objection, permitted the witness, Philip Feurstein, although unqualified, to testify as an expert to the value of the stock in the premises where the fire occurred (p. 69).”

This cause was argued in the Supreme Court but is apparently abandoned in this court as it is not argued in the plaintiff-in-error's brief.

However, the question of the qualification of an expert witness is one for the determination of the trial Court, whose finding is not reviewable if there is any legal evidence to support it.

Leonard v. Standard Aero Corporation, 95 N. J. L. p. 235, C. of E. 1920, at page 239, in which it was held:

“The question whether a witness has such special knowledge or experience as to justify him to give opinion evidence is a question for the determination of the trial Court, whose finding is not reviewable on appeal if there be any legal evidence to support it.”

In addition it is interesting to note in passing that the qualifications of this particular witness were passed upon by the Supreme Court in *State v.*

Duelks, Supreme Court, 1922, 116 Atl. 865, at page 866. There was testimony before the Court as to this witness' qualifications at pages 69 to 74 inclusive. Further, the testimony as finally adduced from this witness in no way prejudiced the plaintiff-in-error, for he admitted on cross-examination (page 138) an adjustment with the insurance company on a replacement value of \$7525.00.

POINT SEVEN.

Relates to the charge or refusal to charge by the Court as set forth in causes Nos. 8, 9, 10, 11, 12 and 13. A discussion of these will be *seriatim*.

Cause No. 8 relates to an exception as to the character of the following phraseology relating to reasonable doubt:

"A reasonable doubt, as I perhaps have charged you in previous cases, is a doubt arising in the mind of a juror after a consideration of all the testimony, or if there is a very material part of the testimony which causes a reasonable doubt in your mind, when that is considered, together with the other testimony, of course, you will find the defendant not guilty. Now a reasonable doubt is not any doubt that might come into a person's mind, but it is the doubt that an ordinary, reasonable, prudent man will have after a consideration of the evidence in the case. It is not the doubt of a skeptic, it is not the kind of a doubt that a person of abnormal mind might have, but the doubt of a reasonable man or woman. If you have such a doubt after a full consideration of all the evidence in the case that the defendant is guilty, of

course then your verdict will be not guilty, or for acquittal."

It is respectfully submitted that the charge of the Court relating to reasonable doubt is sound and within the rules laid down by the Court of Errors and Appeals in 1920, *State v. Linker*, 94 N. J. L. 411, when the charge is considered in its entirety. All the requests of the plaintiff-in-error respecting the burden of proof and reasonable doubt were charged by the Court, requests Nos. 1, 2, 3, 4, 5, 8, 9 and 10, and there can be no doubt that when the jury retired the measure of proof required to determine the guilt of the defendant had been fully defined to them.

CAUSE FOR REVERSAL No. 9.

"Because the trial Court refused to charge request number six (p. 220). 'You must acquit the defendant on all three counts of the indictment the State having failed to prove that a dwelling house was burnt.'"

It is respectfully submitted that the facts set forth in this request to charge were not correct in effect, and the refusal was therefore proper. The evidence in the case upon this point was positive and uncontradicted that the premises in question were burned.

There was no motion to direct a verdict made by the plaintiff-in-error due to any allegation that the defendant-in-error had failed to prove that a dwelling house was burnt. The Court had previously outlined to the jury the character of the charge and the elements in the three counts of the indictment, and in charging request No. 5, said:

"If as to any of the three charges against the defendant any one material element has not been proven by the prosecution beyond all reasonable doubt you must acquit the defendant on that particular count."

The indictment charged he set fire, etc., to a certain dwelling house and shop No. 1203 Haddon Avenue; the evidence in the case showed that No. 1203 Haddon Avenue, Camden, was a property with a store front first floor, and dwelling in the remaining part occupied by the plaintiff-in-error and his family. The act reads that the accused shall be guilty in the event of the burning, etc., "of any dwelling

house, whether it be his own or that of another, or any kitchen, shop, barn, stable or other outhouse, that is parcel thereof, or belonging or adjoining thereto, or any other building, by means whereof a dwelling house shall be burnt."

The testimony in this case showed that it was a hot fire (testimony of Hunt, p. 52) and that it required at least twenty-five minutes to extinguish it (testimony of Clay, p. 30) coupled with a dense smoke and required the services of two Camden City fire companies to subdue it (testimony of Price, p. 54). Photographs (Ex. 1-2-3-4) were admitted in evidence from which the jury could legally determine whether the fire had taken hold of the building as distinguished from its contents. The statute in question provides that the crime shall be complete if the burning is either of a dwelling house or a shop that is parcel thereof, and such was the allegation in the indictment in this case. In the testimony of James Clay, a sergeant connected with the police department, who was one of the first to arrive on the scene (page 29) is found the following:

"I seen the flames gush out at the same time on the back, right to our side of the house."

And on page 30:

"Q. Where was the scene of the fire when you first saw the flames?

A. Bursting in through transom, and there was some on the side."

And in the testimony of Persglove, a fireman (page 37):

"Q. Where was the center of the flame?

A. Right at the back end of the store.

Q. Which corner?

A. On the right-hand corner."

And in the testimony of Fire Chief Carter (page 59):

"This door here is the door that leads into the dining room"—referring to Exhibit 3—

"These are the back shelves that run across the east end of the store. That is where the bulk of the fire was."

And at page 61, he testified as follows:

"A. Exhibit No. 4 is the interior of the dining room which leads out from picture No. 3. The door leading from the rear of the store leads into this dining room, and there is one window, and the door had a window in it also, and Lieutenant Hunt had his men to break and shove this chemical line in this window in the door, because they couldn't get the door open. There was a couch running crosswise from the door and prevented him from opening the door.

Q. In these two rooms had the fire taken contact and burned any part of it?

A. *Yes, No. 3, yes, sir, in the rear of this room was a storeroom, that is where the fire had been, in the rear of this room.*

Q. *Is that true of the dining room there?*

A. *Yes; that is Exhibit No. 4, you see those walls here indicate the wall paper, where the heat got the wall paper and hung it in strips from the ceiling and side walls."*

At page 64 in the same testimony, we find the following:

"Q. *What was burned in the store?*

A. *Shoes burned in the rear, some of the shelving was charred and shoe boxes charred in the end, and if we had put water in there, we would have knocked all the shoes off the shelves, but the shoes were still on the shelving.*

Q. *Shoes were burned in the boxes?*

A. *Some very few shoes burned.*

Q. *Where was the fire that burned enough to burn shoes?*

A. *In the rear of the building, on the east end."*

In 5 *Corpus Juris*, at page 543, it was held:

"Yet if there is actual ignition of any part of the building the offense is committed, although there be no flame, or the fire immediately goes out of itself. Although there must be an actual burning to constitute the offense, it is not necessary that the building shall be wholly consumed or even materially injured. If any part, however small, is consumed, it is sufficient."

CAUSE FOR REVERSAL No. 10.

“Because the trial Court refused to charge request number seven (p. 220): ‘And you cannot convict defendant under this indictment upon proof of a burning of merchandise, furnishings or other personal property; to warrant a conviction of the defendant, the State must have proven beyond a reasonable doubt that a dwelling house was burnt.’ ”

CAUSE FOR REVERSAL No. 13.

“Because the trial Court charged the jury: ‘You can judge from the testimony in this case whether or not the shop itself was set on fire’ ” (p. 221).

The Court refused to charge this request, number seven, but did at the conclusion of its charge state the following: “I charge you that the personal property in a shop, the burning of the personal property in the shop wilfully and maliciously, would not be committing the crime of arson. You can judge from the testimony in this case whether or not the shop itself was set on fire.” At the commencement of the charge, the act was specifically read to the jury and the terms of the indictment thereunder, with the admonishment that the burden of proof to warrant a conviction under the indictment (beyond a reasonable doubt) rested with the State to establish the charge. Later in a specific request of the plaintiff-in-error this was also stated to apply to every material element. It seems therefore that the

defendant was not prejudiced or any manifest injury done to him by this refusal and phraseology, when the entire charge is considered.

CAUSE FOR REVERSAL No. 11.

“Because the trial Court refused to charge request number twelve (p. 220): ‘You must acquit defendant upon the second count of the indictment, the prosecution having failed to prove that charge.’ ”

There was no motion made by the defendants at the close of either the State’s case or the entire case for a direction of a verdict under this count. It is respectfully submitted there was evidence before the Court at the time of this request to warrant this refusal, and to entitle the jury to determine whether or not the defendant had wilfully and maliciously caused to be set on fire and burned the premises in question. A review of the testimony in this respect will not be made here in view of the discussion of this subject under cause No. 18, relating to the verdict being contrary to the weight of the evidence, as the jury found the defendant guilty under this count in the indictment.

CAUSE FOR REVERSAL No. 12.

“Because the trial Court refused to charge request number thirteen (p. 220): ‘You must acquit defendant upon the third count of the indictment, the prosecution having failed to prove that charge.’ ”

This cause is not argued and is apparently abandoned.

No request was made by the plaintiff-in-error for a direction of verdict at either the close of the defendant-in-error's case or the entire case in respect to the third count. It is respectfully submitted that the refusal of the Court to charge this request did not prejudice the plaintiff-in-error, in that the jury pronounced no finding with respect to this allegation, and it will not be argued further herein upon its merits.

POINT EIGHT.

CORPUS DELICTI.

CAUSE FOR REVERSAL No. 14.

"14. Because the State failed to prove the *corpus delicti*" (p. 222).

It is respectfully submitted that in an arson case, the *corpus delicti*, or body of the crime, constitutes a burning of a dwelling house, and that a criminal agency was the cause of the burning. The theory of this doctrine is based on the fact that the law will not permit a conviction of a defendant unless there is proof before the Court that an offense has been committed for which someone may be held responsible (5 *Corpus Juris*, 539).

Corpus delicti, embodies the body of the crime, the material substance, upon which a crime has been committed, that is the corpse of a murdered man, charred remains of a house burned down, in a de-

rivative sense, the foundation of a crime, the substantial fact that a crime has been committed.

Vol. 2, *Words & Phrases*, 1624;

3 *Wigmore on Evidence*, par. 2073;

Vol. 1, *Rapalje & Lawrence Dict.* 300.

In the present case, there was abundant evidence before the Court although partly circumstantial in character that there was a burning of the dwelling (refer to argument, cause for reversal No. 9, Brief, page ¹⁵18), and caused by criminal agency which required the submission and determination of this fact by the jury, the further details of which are hereinafter referred to in the argument relating to cause No. 18.

POINT NINE.

Verdict contrary of the weight of the evidence.

CAUSE FOR REVERSAL No. 18.

“18. Because the judgment and sentence of the trial Court were given and passed against the accused whereas upon the evidence adduced upon the trial he should have been acquitted.”

Apparently it is the intention of this cause for reversal to invoke the consideration of the Court under Chapter 249 of the Laws of 1921, to determine whether the verdict was against the weight of the evidence, although the particular phraseology of the statute, “may assign as error that the verdict was against the weight of the evidence,” is not used in this cause.

Under the recent adjudication of this chapter, this Court held in the case of *State v. Fischer*, 117 Atl. p. 519, that it does not require or empower the Court on finding that the verdict was not against the weight of evidence to go further and consider whether the evidence left a reasonable doubt of the defendant's guilt.

It is respectfully submitted that the evidence in this case warrants the conclusion that the verdict as determined by the jury was not against the weight of the evidence.

As heretofore stated, the jury found the defendant guilty on the second count of the indictment, which charged him as follows:

“did wilfully and maliciously cause to be set fire and burned a certain dwelling house and shop situate at No. 1203 Haddon Avenue.”

The proofs in the case (Brief, page 15), first have established that a dwelling house or shop that was parcel thereof was burned, and it is respectfully submitted through criminal agency for the following reasons:

It was established that the defendant with his family (uncontradicted) left the premises in question about six o'clock A. M. on the day in question (July 23, 1922), bound for Wildwood City to take the excursion train due to leave Kaighn's Point Ferry at seven or seven-thirty A. M. The fire was discovered by Clay, a sergeant of the fire department, about 11.52 P. M. on the same day (p. 29). On the arrival of the firemen (Persglove, p. 32; Watkins, p. 24; Gladney, p. 39; Patterson, p. 42; Hunt, p. 49; Price, p. 53; Carter, p. 56), an intense fire was in progress, affecting the front room on the first floor, being occupied by the plaintiff-in-error as a

retail shoe shop, and the dining room immediately to the rear thereof. When a forcible entrance was effected by these men, there was discovered a dense smoke with an oily smell, and it required over twenty-five minutes to subdue the fire. On inspection, it was discovered that laying throughout the store room, the stairway leading to the second floor, on the shoe service benches, and on the shelving were rags and stockings, which contained oily substances. The runners or floor coverings in the store were likewise oil soaked. Distinct noises were heard by persons in the neighborhood (Clay, p. 29, and Mrs. Todd, p. 66) at or about the time of the discovery of the fire.

With the *corpus delicti* established, it is respectfully submitted that under the law relating to this case direct proof that the fire was set by another is not essential.

(At the common law, conviction as an accessory before the fact required as a predicate the conviction of the principal offender only in cases of a felony. (State v. Wirady, 78 N. J. L. p. 687, Court of Errors, 1910, p. 691.)

Even though strict arson at the common law was a felony, still the provisions of Section 123 of the Crimes Act of 1898 as hereinbefore referred to and as amended, are an enlargement of the fundamental principals of arson at common law. Common law arson struck at the burning of a dwelling house in the possession of another. Our statutes have enlarged this so that a tenant in possession may be found guilty under this section. (*State v. Fish*, 23 N. J. L. 23 Supreme Court, 859, 1724; *State v. Lentz*, N. J. L. Supreme Court, 1918, p. 17; *State v. Duelks*, 115 Atl. Rep. Supreme Court 392, p. 865.) The criminal code of New Jersey ignores the distinction

between felonies and misdemeanors. (*State v. Jackson*, 20 Vroom, 252; *State v. Spence*, 81 N. J. L. 265.)

It is respectfully submitted that there was ample evidence in this case (the *corpus delicti* having been established), to warrant a conviction upon the allegation that the plaintiff-in-error caused the premises in question to be set fire, and in this respect it is called to the attention of the Court.

That when the accused left the premises in question they were securely locked at the front entrance. After the family had retired by means of the front door, the defendant returned from the street corner for a period of two to five minutes, entered by the rear door and then returned to the family, using as an exit the rear door of the premises, which required him to go through an alleyway to Haddon Avenue. The single entrance of the front door was blocked by the moving of a large show case (p. 101), Exhibit No. 2 (page 222), admittedly placed there by the accused, but with the explanation (p. 99) that it was done to prevent thieves, due to a poor lock on the front door, which had existed for some six or eight months without any attempt to repair it (p. 122). Tickets were purchased by the accused for the family outing to Wildwood City, for use on the excursion train (p. 130), the understanding being that he and the eldest daughter were to return that evening. They did not return, although having purchased tickets for this special train, that required their use on that particular day and by not later than nine o'clock. The explanation of the defendant and his family in this respect was that the daughter had forgotten the hour of the return of the train (p. 131), still she was admittedly required to be at her place of employment in Camden early on Monday morning. Inconsistencies (pp. 132-152-169-176-177-

212) of the family explanation over the failure of the daughter return to the hotel in time to take the train were apparent. In one instance, the mother stated that the daughter told her mother and father when she returned to the hotel was about 11.30, while the daughter's testimony was to the effect that the father and mother had gone to bed at the hotel that evening after the daughter had failed to return in time to take the train, and that the argument or reprimand was in the morning.

The contents of the store were insured for ten thousand dollars, business had been poor during the summer (p. 84), on an adjustment of the fire loss, the defendant admitted the sound value over his signature to be \$6924, the replacement value of the fixtures six hundred dollars, upon which the insurance companies would have been willing to have allowed a loss of five thousand dollars and salvage of \$2525 (Feurstein, p. 74). The defendant admitted that he had received "dunning" letters (p. 120) from some of his creditors and that he (p. 139) had a note due in the Parkside Trust Company the day after the fire.

On the night before the fire (p. 82), he had asked a stranger who had come into his store as a customer to take care of his dog, for the next day, until the first thing Monday morning, because it would be safer for him to keep the dog until he came home, yet according to the defendant's testimony, he would only have been absent from the house from seven o'clock in the morning until ten o'clock in the evening.

The family photographs (p. 92) were taken from the walls of the dining room and placed in the rear part of the cellar, wrapped in newspapers, which, unfortunately for the defendant, bore the date of the

day preceding the fire. The explanation (pp. 107 and 209) was that this was done to keep the flies off of the pictures. Though the cause of removal was care for the pictures, still they were moved to a dark inaccessible part of the cellar when they had heretofore been on the walls of the dining room, which was the room adjacent to the shop and in which the fire also occurred.

It is respectfully submitted that the utmost care and preparation was exercised by the defendant for this fire. The proofs indicated that he would profit by the turning of the slow-moving stock (p. 113) into cash by means of an adjustment of the fire loss. The way of the firemen was hampered and interfered with, vision of the interior of the premises was carefully obscured by the location of the show case, the awnings on the exterior and the band of canvas around the lower part of the window, precluding a view of the interior of the store from the exterior; oil-soaked stockings and substances were thrown about the store room, stairways leading to the second floor rooms to which the fire would readily and quickly spread, the family dog whose barking might attract attention was removed from the premises, the family photographs, which no doubt had a personal rather than an intrinsic value to the plaintiff-in-error, were removed to the most remote and probably safest part of the premises.

The jury was justified in finding from the evidence before them that the defendant was guilty under the second count of the indictment, in that he caused the premises in question to be set fire and burned.

POINT TEN.**FORM OF VERDICT.****CAUSES FOR REVERSAL NOS. 15, 16 AND 17.**

"15. Because the verdict was illogical, inconsistent and untelligible and so void."

"16. Because the jury acquitted accused of committing the crime himself or of having consented to or brought about its commission yet found him guilty of having caused it."

"17. Because the trial Court sentenced the accused for having caused a fire to be set which by verdict he was declared not to have set, or procured, counselled or aided to be set or consented to be set."

It is beyond dispute that the verdict was definite and certain and expressed the meaning and intention of the jury which is required for a valid verdict.

The Supreme Court in its opinion did not deem these causes substantial enough to discuss them. It may not be amiss to refer to the fact that it is stated by counsel for the plaintiff-in-error that the jury affirmatively acquitted the defendant on Counts 1 and 2 of the indictment. This is not correct in fact as they did not pronounce any verdict upon these counts. The verdict of the jury was "guilty of the second count only" (page 19). And even though it is deemed for the purpose of argument, that such a form of finding would be construed as an acquittal on Counts 1 and 2 of the indictment, nevertheless,

it in no way, impaired the verdict rendered on Count 2 because there was a valid allegation of a crime in each count, based upon the statute in question. The defendant surely cannot complain; such an alleged finding on Counts 1 and 3 was in his favor.

Weinecke v. State, 34 Nebraska, page 14
(51 Northwestern, page 307);
12 *Cyc.*, page 695.

Further the accused made no motion to arrest the judgment after the rendering of the verdict in this cause before the pronouncement of the sentence, due to the form thereof.

POINT ELEVEN.

CAUSE FOR REVERSAL No. 19.

“19. Because it appears upon the whole record that the plaintiff-in-error on the trial below suffered manifest wrong and injury which should be remedied in the admission of testimony, the charge made to the jury, the ruling of the trial Court against him and upon the evidence adduced.”

It is respectfully submitted that this is too general to require debate, on the part of the plaintiff-in-error.

State v. Hendrickson, 95 N. J. L. 95, at page 10.

CONCLUSION.

In the consideration of this case, the Court has no doubt, in its experience, been impressed with the fact that evidence of the crime of arson is usually circumstantial. It is only when the accused's plans "go wrong" that direct evidence of the commission of offences of this character are available. Arson is a serious crime in our category, and it is respectfully submitted that from an examination of the entire record, no errors have been committed which were prejudicial to the interests of the accused, and that he has suffered no manifest wrong or injury that would warrant a reversal of the judgment in this case, and that the judgment of conviction should be affirmed.

Respectfully submitted,

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

CHARLES E. MORRIS,
Plaintiff-in-Error.

SUR: INDICTMENT ARSON.

BRIEF OF PLAINTIFF-IN-ERROR.

THE FACTS.

At the close of this case the following facts were undisputed:

Defendant had a shoe store at 1203 Haddon Avenue, Camden, N. J. With his family he occupied adjoining rooms as a dwelling. At six o'clock in the morning of July 23, 1922, defendant and all his family took an excursion train to Wildwood, the family to remain some weeks on their summer vacation. Eighteen hours later at midnight fire was discovered near an open window toward the rear of the store. Stock and furnishings were afire. Fireman ex-

tinguished the blaze, confining it entirely to personal property. The dwelling adjoining was not touched by fire.

Defendant was not in the City of Camden at all that day or night. When he went away, eighteen hours before the fire, the alley window was closed. Fireman found it open. One fireman testified that an unidentified man was sighted on the second floor of the building as the fire broke out. There was the appearance and odor of oil on stock and furnishings at and near this window. The presence of oil, the unidentified man and the fact of the open window were in no wise connected by proof with defendant. There was absolutely neither proof nor suggestion of a delayed firing by timing device or other means.

Defendant was indicted under Section 123 of the Statutory Arson Act of 1919, Ch. 106, P. L. 257, viz:

“Any person who shall wilfully or maliciously *burn*, or cause to be *burned*, or aid, counsel, procure or consent to the *burning* of any *dwelling house*, whether it be his own or that of another, or any kitchen, shop, barn, stable or other outhouse, that is a parcel thereof, or belonging or adjoining thereto, or any other building, *by means whereof a dwelling house shall be burnt, &c.*”

• The highest crime arising from incendiarism and the severest penalty therefor is fixed by this section. The gravaman of the offense is the *burning, either directly or indirectly, of a dwelling*. To burn a store without thereby firing a dwelling is covered by Section 124, and the penalty is less. Even where unlawful, the burning of personal property is less serious as an offense and carries a less severe penalty. But the indictment here charged a burning of a

dwelling. The fire was in the store. No fire touched the adjoining dwelling; there was not even proof of a charring of any portion of the store building. Only personal property was burned.

The indictment as drawn and returned contained three counts, each a separate charge based upon an isolated phrase taken from this act, *i. e.*,

1. That defendant did "set fire to and burn a certain dwelling house and shop."

2. That he did "cause to be set fire and burned, a certain dwelling house and shop."

3. That he did "aid, counsel, procure and consent to the setting fire and burning a certain dwelling house and shop."

Defendant demanded a bill of particulars as to (2) the means by which he caused to be set fire and burned, (3) how and whom he aided, counselled and procured to set the fire and burn, and to whose act he consented.

The State replied:

A. It stood upon count one that defendant had himself set the fire and that he was "charged with setting fire to a certain dwelling."

B. "It is not the intention of the State to produce any direct evidence of the presence of any third person in the premises in question, or to allege the identity or the immediate presence of a third party that may have set fire to the premises in question."

C. Any further information was refused.

The Court overruled defendant's motion for a further particularization.

Defendant moved to quash counts two and three for indefiniteness and because the State had thus elected to stand squarely on the allegation of count one that defendant had himself set the fire.

The Court refused to quash these counts, "because of the statement just made to the Court by the Prosecutor." This statement is that above referred to, *i. e.*—that the State stood upon count one and would not allege the identity or presence of a third party—proof absolutely essential if it hoped to convict on counts two or three, it having answered that both referred to a firing by or through "a third person."

After exceptions taken to this illogical ruling the trial proceeded on the theory of a fire set by defendant. There was absolutely no proof of an accessory nor of any device to delay a firing for eighteen hours. Defendant's absence over that period was proven beyond possibility of dispute and no attempt was made to deny the fact. Only personal property within the store was burned and no fire was ever communicated to that building or to any portion of the dwelling adjoining.

Defendant requested a directed verdict because of failure of proof as to the second and third counts in their entirety and on the whole indictment because of absolute failure of proof of a "burning of any dwelling house."

The Court refused these requests, failed to point out that the crime was committed only when a "dwelling house" was "burned," and left it to the jury to convict the defendant on the proposition, "whether or not the shop itself was set on fire." This proposition was barren of proof to sup-

port it and immaterial under the statute here where fire never touched the "dwelling house."

With the absence of defendant not disputed, no means suggested whereby he could have set the fire and delayed its breaking out for eighteen hours, no proof of an accessory and no part of the "dwelling house" (or even shop building) having ignited; with the State standing upon its count that defendant set the fire, but, with this charge permitting a conviction for "burning" a "dwelling house" on an affirmative finding of a "shop itself set on fire," the jury:

1. Acquitted defendant entirely on count one and found as a fact that he did not "set fire to and burn a certain dwelling house and shop."

2. Acquitted him entirely on count three and found as a fact that he had not aided the setting on fire, had not counseled it, had not procured it to be done, and had not even consented to a fire being set.

3. But found him guilty "*on count two only.*"

If no "dwelling house" "burnt" there was no crime. The fire never touched this dwelling and no part of any building was ignited.

The State stood flatly on its charge that defendant had set a fire which burned a shop and dwelling house. The jury said he had not.

The jury convicted him of *causing* a fire to be set but acquitted him of *procuring* it to be set. They say he did not *set* the fire himself, did not *aid* in its setting, did not *counsel* it or *consent* that it occur, but nevertheless "*caused*" it.

INCONSISTENT VERDICT: VOID.

Reasons 15, 16 and 17 assigned below were:

15. Because the verdict was illogical, inconsistent and unintelligible and so void.

16. Because the jury acquitted accused of committing the crime himself or of having consented to or brought about its commission yet found him guilty of having caused it.

17. Because the trial Court sentenced the accused for having caused a fire to be set which by verdict he was declared not to have set, or procured, counselled or aided to be set or consented to be set.

These reasons all challenged the legality of the verdict because of its self evidenced inconsistency. The Supreme Court in its opinion did not discuss this, perhaps the most serious question in the case.

Where, as here, "the verdict is so indefinite and uncertain as to be unintelligible, it is invalid." 16 C. J. 1102, par. 2585, note 53.

As it is for inconsistency:

Walsh v. U. S., 174 Fed. 615, 98 C. C. A. 461 (certiorari 215 U. S. 609, 30 Sup. Ct. 409, 54 L. Ed. 348 Mem.);

Com. v. Haskins, 128 Mass. 60.

The gravamen of this statutory offense is the burning of a dwelling house. It may be by setting it on fire directly or by fire set to an adjoining building which communicates itself to and burns the dwelling.

The act was designed to reach the one relatively responsible as well as the principal actor. To effect this the legislature used these words: "Any person who shall * * * burn, or cause to be burned, or aid, counsel, procure or consent to the burning * * * shall be guilty of arson."

The use of both the word "burn" and the phrase "cause to be burned" is a prolixity. To distinguish a difference in significance is impossible. A human being cannot "burn" anything without using an outside instrumentality. And when such is of necessity employed he *causes* a burning. When another human agent cooperates to produce a fire the first may *aid, counsel, procure* or *consent*. If he *procures* he still *causes*.

Logically an indictment of two counts only could be framed based on this act. Count one—on the theory that defendant acted without human assistance and fired the building as one act or by setting in motion a series of happenings, would charge that he *burned* or *caused to be burned, &c.*; Count two—on the theory of another actor, would charge that he *aided, counselled, procured* or *consented* to the burning. If one did not *burn* a building or *procure* it to be burned he could not in logic be said to have *caused it to be burned*. An acquittal of having burned or procured to be burned necessarily embodies a finding that defendant had not "caused" the fire. That proposition is twice proven when it is found that he had not *aided, counselled* or *even consented* that a fire be set.

Defendant was acquitted of *setting* the fire or of *procuring* it to be set. He was convicted of *causing* that burning. Such a finding is inconsistent and unintelligible. The logic and force of this conclusion is further demonstrated when the words are defined:

Cause: "In the past tense, has been employed as synonymous with occasioned."

11 C. J. 39.

Procure: "To contrive, to bring about, to effect, to cause."

32 Cyc. 573.

Cause: "1. to be the cause or occasion of; produce; effect; bring to pass. 2. To lead, induce, make or compel (one to do something)."

Standard Dictionary.

Procure: "To bring about by effort or means; also, to be the means of effecting."

The difficulty arises because the person who drew the indictment attempted to separate words used by the legislature in one thought connection. The impossibility of a human being *burning* a building without the aid of chemical, mechanical or other instrumentality is recognized in wording the indictment. Count one does not literally follow the statute; if it did and the one word was to characterize the offensive act it would read:—"did, wilfully and maliciously *burn* a certain dwelling house," &c. The indictment attempts in count one to isolate the one word "burn" and make of it a separate charge; it says, however, "did, wilfully and maliciously, *set fire to* and burn." The same phraseology is used in each count; "cause to be *set fire* and burned," and "*setting fire* and burning."

Even less possible of distinguishment in significance than "burn," "cause to be burned," and "procure * * * the burning" are "set fire to and burn," "cause to be set fire to and burned" and "procure the setting fire and burning." Taking

either these words from the statute itself or their use with other words in the indictment a negative finding as to the first and last makes logically impossible a positive finding on the second.

All three counts were submitted to the jury. The verdict was special and in these words, "Guilty of the second count *only*." The choice and use of the word *only* is a clear and unmistakeable declaration of a negative finding on the other counts. As to such counts it is an acquittal: 16 C. J. 1107, par. 2595 (4) and note 32. And would bar further prosecution thereon, *Poe v. Dowling*, 84 N. Y. 478, Const. of N. J. Art. 1, par. 10.

The jury did not ignore counts one and three, they specifically negatived an affirmative finding thereon. Here was no general verdict of guilty on good and bad counts. The jury declares the defendant did not *set* the fire, he did not *procure* it to be set, or *aid*, *counsel* or even *consent* that it be set, yet that somehow inexplicably he *caused* it to be set.

CORPUS DELICTI NOT PROVEN.

Reason 14 assigned below was:

14. Because the State failed to prove the *corpus delicti* (p. 222).

The Supreme Court in its opinion did not specifically refer to this reason assigned.

The gravamen of this statutory offense is *the wilful or malicious burning of a dwelling house*. The house must burn. It may be set on fire directly or from the firing of a building, "a parcel thereof, or belonging or adjoining thereto, or any other building, *by means whereof a dwelling house shall*

be burned." But the building, the *house*, must *burn*.

Here a fire started in stock in a shoe and hosiery store. Personal property burned in that room. But even there the building was not burned. A dwelling house was connected with the store. There was absolutely no proof of even personal property burned there.

When the case was given to the jury by the trial Court over specific objection on this point (p. 217, charge 6 refused—p. 220, l. 16), the only proof even of damage to anything attached to the building was in these words of Fire Chief Carter: "You see those walls here indicate the wall paper, where the heat got the wall paper and hung it in strips from the ceiling and side walls" (p. 61, l. 30).

Personal property in the shop was burned. But if that was unlawful on a theory of defrauding an insurer another statute applied—*with a less severe penalty*.

That a *burning* of some part of the *house* must be proven to convict is beyond argument.

16 C. J. 771-774.

And "the setting fire to personal property in a building will not constitute a crime of arson if no part of the building is burned."

5 C. J. 547;

State v. Dinneen, 23 Del. 505, 76 Atl. 623.

"A mere scorching, smoking or discoloration of the building, without the fire being communicated thereto is not sufficient."

5 C. J. 543.

And see "Dwelling house," 14 Cyc. 1126;

"Burn," 6 Cyc. 259.

INCORRECT AND HARMFUL CHARGE.

Reasons 10 and 13 assigned below were:

10. Because the trial Court refused to charge request number seven (p. 220): "And you cannot convict defendant under this indictment upon proof of a burning of merchandise, furnishings or other personal property; to warrant a conviction of the defendant the State must have proven beyond a reasonable doubt that a dwelling house was burnt."

13. Because the trial Court charged the jury: "You can judge from the testimony in this case, whether or not the shop itself was set on fire" (p. 221).

The Supreme Court in its opinion did not discuss at all these most material points.

The trial Court charged—"You can judge from the testimony in this case whether or not the shop itself was set on fire" (p. 236).

The Court ignores the clear intent of this act aimed at the burning of a dwelling. No comment is made upon the words of the legislature, "burn any dwelling house" or "shop by means whereof a dwelling house shall be burnt." By statute the commission of the crime is made to depend upon a *burning* of a dwelling house, directly or indirectly.

Defendant had requested the Court to charge: "*You cannot convict defendant under this indictment upon proof of a burning of merchandise, furnishings or other personal property; to warrant a conviction of the defendant the State must have proven beyond a reasonable doubt that a dwelling*

house was burnt" (request 7, p. 217, refused, page 220, l. 12). This request correctly stated the law applicable and should have been charged. The refusal to charge was harmful error (*State v. Roe*, 45 L. 49; *State v. Drake*, 53 L. 23). And the substitution therefor of the proposition quoted above permitted a conviction for an offense for which he was not on trial.

But here guilt is predicated by the trial Court upon a possible finding that "the shop itself was set on fire." And the jury is permitted to judge of that fact. No evidence had been offered that any portion of the "shop itself" was ever burned. And there was not even an offer of proof that defendant ever attempted to fire this shop or connecting him in any way with the burning of the personal property therein.

On this charge, the case was submitted to the jury and defendant found guilty under this statute of *causing to be set fire to and burned * * * a dwelling house*. But the trial Judge said nothing of a dwelling house. And no dwelling house was burned. This was as erroneous as if the wrong section of the statute had been quoted (*State v. Zamofsky*, 105 Atl. 71).

REASONABLE DOUBT.

Reason 8, assigned below, was:

8. Because the trial Court charged the jury as follows:

"A reasonable doubt, as I perhaps have charged you in previous cases, is a doubt arising in the mind of a juror after a consideration of *all* the testimony, or if there is a *very ma-*

terial part of the testimony which causes a reasonable doubt in your mind, when that is considered, together with the other testimony, of course you will find the defendant not guilty (p. 218, l. 34).

“Now, a reasonable doubt is not any doubt that might come into a person’s mind, but it is the doubt that an ordinary, reasonable, prudent man will have after a consideration of the evidence in the case. It is not the doubt of a skeptic, it is not the kind of a doubt that a person of abnormal mind might have, but the doubt of a reasonable man and woman. If you have such a doubt after *a full consideration of all* the evidence in the case that the defendant is guilty, of course, then your verdict will be not guilty, or for acquittal” (p. 219, l. 6).

In using the words “all,” “a very material part of the testimony which causes a reasonable doubt” and “a full consideration of all the evidence,” the trial Court deprived the defendant of the benefit of our salutary rule that—reasonable doubt requiring an acquittal means every or any reasonable doubt entering the mind of a juror during the process of sifting and considering any item of evidence.

This erroneous instruction could not be cured by an inconsistent statement, even though correct. And this was a reversible error. *State v. Tachin*, 92 N. J. L. 269; 106 Atl. 145, affirmed; 108 Atl. 318; 93 N. J. L. 485, writ dismissed; 41 S. Ct. 61.

REFUSAL TO DIRECT VERDICT.

Reason 9, assigned below was:

9. Because the trial Court refused to charge re-

quest number six (p. 220): "You must acquit the defendant on all three counts of the indictment, the State having failed to prove that a dwelling house was burnt."

Because of the absolute absence of any proof of a burning of any portion of a "dwelling house," defendant requested a direction of acquittal (sixth request to charge, p. 217). The Court refused this request (p. 220, l. 16). Such refusal was harmful and error on which the conviction should be reversed.

The State had declared on demand for bill of particulars that counts two and three charged a firing by way of an accessory (p. 19, l. 22). It promised proof connecting defendant with such act of another. There was no such proof.

Reason 11, assigned below, was:

11. Because the trial Court refused to charge request number twelve (p. 220): "You must acquit defendant upon the second count of the indictment, the prosecution having failed to prove that charge."

This reason refers to request number twelve.

By that request (p. 217) defendant asked a directed verdict on count two for failure of proof. This request was denied (p. 220, l. 35) and defendant then convicted by the jury on this count "only." Defendant was entitled to the direction requested. Its refusal made possible his conviction. And the judgment in consequence should be reversed. 89 N. J. L. 433; *State v. Bacheller*, 98 Atl. 829; *State v. Rutberg*, 87 L. 5, 93 A. 97; *State v. Lieberman*, 80 L. 506; 79 Atl. 331, affirmed 82 L. 748; 82 A. 1134.

VERDICT ON SECOND COUNT ILLEGAL.

This was a special verdict and was specifically limited to "the second count only." As elsewhere in this brief argued, such a verdict was inconsistent and so void. Irrespective, however, of the negative finding on this identical charge which necessarily makes the verdict void, this count considered alone will not support the verdict under the state of the case and the proof.

In advance of trial the defense was confused by the form of the indictment. Count two attempted to charge either that defendant "*caused*" a burning by chemical, mechanical or other inanimate instrumentality or by a human agency. If the former, it was identical with the charge of count one, if the latter, synonymous with the charge of count three. If count two was intended to charge anything else then it was so ambiguous as to make impossible the preparation of a defense.

A bill of particulars was demanded. The State did not reply in writing but by agreement answered in open court and its answer necessarily became part of the record (p. 18, l. 27). Such a demand was proper and the answer of the State limited its proof to the allegation as so defined.

22 Cyc. pg. 371, par. U;

Graham v. Whitely, 26 N. J. L. 254, 8 Cyc. 671, par. 4;

State v. P. R. R. Co., 84 N. J. L. 550, 87 Atl. Rep. 86.

In answering the bill of particulars the State declared that by count one it intended charging defendant directly with setting the fire (p. 18, l. 27). In

distinguishing the charges in counts two and three from this charge of count one, it declared its intention of proving under the two latter that the fire was set by another at the instigation or with the assistance of the defendant. It interpreted the word *caused* as used in count two to mean by way of a "third person," thus linking and making this count identical with count three (p. 19, l. 22).

The State, quoting a rule of this Court that the purpose of the bill of particulars "is to limit the proof to matters specified * * and to enable the other party to meet his opponent's proof without danger of surprise," positively and absolutely limited itself to proof that defendant himself set the fire at the time fixed. It suggested no use of any agency to delay an igniting (and there was no proof thereof). The State stood on these words:

"The first count * * alleges that the defendant himself set fire to and burned a certain dwelling; it alleges a specific date, it alleges a specific time and place." "Surely when a defendant is advised that he is charged with setting fire to a certain dwelling on a certain day, in a certain city, he is fully appraised of what he is going to be charged with." It excluded proof of a causing by another: "It is not the intention of the State to produce any direct evidence of the presence of any third person in the premises in question, or to allege the identity or immediate presence of a third party that may have set fire to the premises in question."

Without proof of the identity, presence, or participation of a "third person" defendant could not be lawfully tried for causing a fire through or by a "third person." A motion to quash this count was made (page 20, l. 8) and the Court refused the motion "because of the statement" made by the State

referred to, *i. e.*—that “caused to be, &c.,” referred to the act of a “third person,” and that the State charged the defendant “himself” with the direct act and would not produce evidence of the identity or presence of another “that may have set fire to the premises.” It should have been eliminated or quashed. *State v. Schmidt*, N. J. L. 625; 31 Atl. 280.

The very reason assigned for the ruling demonstrates its fallibility. An exception was taken (p. 20, l. 23).

It was defendant’s constitutional right to be informed of the exact nature and form of the accusation he was to meet. *State v. Lehigh Valley R. R. Co.*, 90 N. J. L. 392, 103 Atl. 685.

But, after this limitation on its proof by the State, the Court permitted evidence to be offered, over objection, of facts indicating a firing by another without offer of proof as to the identity of such person and his connection with defendant, or a firing by defendant by delayed ignition. The objection was overruled and the evidence admitted. Again (page 25, l. 34) the State reiterated its position that it stood upon a charge that defendant himself set the fire—“The part the State has to prove is that the fire was of incendiary origin, and the contact of the defendant with that fire is a matter of after proof *when the entire case has been closed.*” It had no such proof, none was offered and the case was improperly permitted to go to the jury on this count. 5 C. J. 571.

The defendant stands acquitted of the only charge on which the State relied, i. e., count one, that he set the fire.

The State offered proof of facts indicative of incendiarism and the evidence was admitted upon promise to connect them with defendant.

To that line of testimony an exception was taken (page 26, l. 20), and when the proof was in, the defense requested the Court to direct a verdict of acquittal on this count (two).

Request "12. You must acquit defendant upon the second count of the indictment, the prosecution having failed to prove that charge." The Court: "Numbers twelve and thirteen I refuse to charge" (page 217).

Yet there was absolutely no proof of a burning of any part of the dwelling house or even shop, only personal property. This count and the State's explanation of it charged defendant with causing the burning by or through an accomplice. There had been no proof or suggestion of any such person and the State had frankly said it never intended proving it. Illegal and improper evidence had been permitted to be introduced upon promise to connect same with defendant. But there was absolute absence of such connective evidence.

Any possible legal conviction under count two was eliminated by the answer to the demand for bill of particulars. The only evidence to support it even in part was improperly admitted and unconnected with defendant. There was no proof of the burning of any part of the dwelling. And defendant was entitled to a withdrawal of this count or a direction of acquittal thereon. See 16 C. J. 1107.

A reversal is necessary where there was insufficient evidence to go to the jury, the trial Court refused to dismiss the indictment or direct a verdict of acquittal, and a verdict of guilty resulted.

State v. Ruttberg, 87 L. 5, 93 A. 97;

State v. Lieberman, 80 L. 506, 79 A. 330,
affirmed 82 L. 748—82 A. 1134.

On review of this special verdict of "guilty on the

second count only," nothing but legal evidence in the case proving that count can be considered.

16 C. J. 1107 and cases.

The verdict must contain a finding of every essential element. 16 C. J. 1108 and cases.

And proof of a possibility or probability is not enough to convict: 16 C. J. 766.

But each link of the chain must be proven: 16 C. J. 765.

The Supreme Court in its opinion below declared that there was evidence from which a jury could find that the dwelling house was burnt. It is true that the testimony showed that it was a "hot fire" but nowhere in the testimony is there a statement of a single witness that any part of the dwelling house was even charred. On the contrary all of the evidence points to the fact that there was a burning of personal property only.

In order to sustain a conviction based as here, on circumstantial evidence, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the defendant is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. 16 C. J. 763.

Measured by this rule the illegality of this verdict and judgment is clearly apparent. It is respectfully submitted that there must be a reversal.

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