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

NEW JERSEY
Court of Errors and Appeals

JOSEPH FERO,
Plaintiff in Error,
vs.
THE STATE,
Defendant in Error.

WRIT OF ERROR.

The State of New Jersey, to wit:

The State of New Jersey to the Chief
[SEAL] *Justice and Associate Justices of our Supreme Court of Judicature of the State of New Jersey,*

GREETING: Because in the record and proceedings and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Joseph Fero, plaintiff in error and The State, defendant in error, manifest error hath intervened to the damage of the said Joseph Fero, plaintiff in error, as is said, and we being willing in that behalf, that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the plaintiff in error, do command you, that you distinctly and openly send under your hand and seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 26th day of June next, together with this

writ, that the record and proceedings aforesaid being inspected, we may cause to be further done therein, for correcting that error, what of right and according to the laws of the State of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 7th day of June, nineteen hundred and twenty-six.

ALEX. SIMPSON,
Attorney.

THOMAS F. MARTIN,
Clerk.

NEW JERSEY SUPREME COURT.
No. 1, January Term, 1926.

THE STATE,
Defendant in Error,
vs.
JOSEPH FERO,
Plaintiff in Error.

OPINION SUPREME COURT.

(*Filed May 19, 1926.*)

Submitted January 29th, 1926. Decided May 4th. 1926.

On writ of error.

Before Justices Trenchard and Katzenbach.

For the plaintiff in error, Alex. R. De Sevo, Esq.; Alexander Simpson, Esq., of counsel.

For the defendant in error, Wilfred H. Jayne, Jr., Esq.

PER CURIAM:

This case is before us on a writ of error. The writ brings up a judgment of the Ocean County Quarter Ses-

sions. The plaintiff in error, Joseph Fero, was indicted by the Grand Jury at the April Term, 1925, of the Ocean County Oyer and Terminer for the keeping of a disorderly house at 429 Fourth street, in the township of Lakewood. The indictment contained five counts. The gravamen of the indictment was that the house was one to which persons resorted for betting upon the event of horse races and that the practice, commonly known as bookmaking, was conducted therein. The period covered by the indictment was from November 1st, 1924, to the date of taking the inquisition, April 21st, 1925. The State at the trial offered testimony that the sheriff and his deputies entered the premises in Lakewood on February 27th, 1925, and on April 13th, 1925. On the first occasion twenty-three men were found assembled in two rooms on the second floor of the house. In these rooms were installed four telephones with tables and chairs. Slot machines, poker chips, playing cards, and racing charts were taken by the sheriff. On the second occasion seven men were assembled in the premises. Three racing charts and a number of smaller slips of paper upon some of which appeared in writing names also appearing on one of the racing charts were taken. The charts set forth the names of horses entered in races at Bowie, Maryland; Miami, Florida, and Havana, West Indies.

Witnesses were produced by the State who testified to the making of bets on the premises. There was testimony to the effect that habitual gaming with dice was conducted on the premises. The evidence that it was a gaming house could not be questioned.

The defense of Fero was that he was not the proprietor of it. His contention was that one by the name of Lester Megill was the proprietor. A safe with the name of Joseph Fero marked upon it was found upon the premises. Some of the habitues of the establishment testified that they had seen Fero in the house. It is true that his visits were casual and short. Fero admitted that he had leased the premises and had paid

rent therefor. He denied that he had paid the rent for the period covered by the indictment. He contracted with the public service corporations for electric light and telephone service. His defense, as stated, was that although he had been previously connected with the establishment he was not conducting it during the period covered by the indictment. He admitted that he was upon the premises during this period; that he had seen Mr. Megill; and that he had disposed of the safe to Mr. Megill. The case was submitted to the jury. The jury returned a verdict of guilty.

The case is before this Court upon a strict writ of error and also upon specifications of causes for reversal under the 136th section of the Practice Act. The latter number 34 as do also the assignments of error. Most of these have not been argued by counsel for the plaintiff in error. Those unargued will therefore be considered abandoned. *State* v. *Sabato,* 91 *N. J. L.* 370.

The first point argued by the plaintiff in error is with reference to the admission in evidence of *Exhibit S 12*. This exhibit is a telephone bill of the New York Telephone Company. It is made out to J. Fero, 420 Fourth street, Lakewood, N. J. It was seized by the sheriff on the occasion of his first raid upon the premises. The contention of the plaintiff in error is that this bill is dated July 8th, 1924, and therefore was inadmissible because the dates alleged in the indictment were for maintaining a disorderly house between November 1st, 1924, and April 21st, 1925. This argument, however, fails because a photostat copy of the bill which is annexed to the State's brief shows that it is dated January 8th, 1925, and not July 8th, 1924. One of the items covers toll service between December 21st, and December 31st. The copy printed in the record is dated July 8th, 1924. It is incorrectly printed. The date of July 8th, 1924, is clearly erroneous. This is shown by the photostat copy. A bill dated July 8th, 1924, would not be likely to include an item for toll service from December 21st to December 31st. The bill, we think,

was rendered during the period covered by the indictment and was properly admitted in evidence.

The next point argued by the plaintiff in error is that the trial court refused to direct a verdict of acquittal on the motion of counsel for the defendant at the close of the State's case. In his brief counsel for the plaintiff in error reviews the testimony and contends that the witnesses failed to show that the defendant had control of the premises and that he permitted it to be used as a gambling house. The evidence has already been referred to. In *State* v. *Bindernagle,* 60 *N. J. L.* 307, it was held that error could not be assigned upon an exception taken to the mere refusal of the Court in the trial of a criminal indictment at the close of the evidence for the State or on the part of the defendant to instruct the jury to acquit. This case was similar to the case under consideration. The indictment in the Bindernagle case was for keeping a disorderly house, where betting on horses was conducted. This Court in that case held that the question was a jury question. The assignment of error in the present case affords no basis for the consideration of this point.

The plaintiff in error must therefore rely upon his specification of cause for reversal. In view of the testimony both as to the character of the place and as to the connection of the defendant with it, we fail to see where the defendant suffered manifest wrong or injury in the denial of the motion. The evidence submitted by the State made it clearly a case for the jury.

The next point raised is that the verdict is against the weight of the evidence. A reading of the evidence satisfies me that there is no merit in this contention. Weighed as presented to the jury, the evidence fully justified the verdict.

The judgment of conviction is affirmed.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOSEPH FERO,
Plaintiff in Error.
} On Error.

RULE AFFIRMING JUDGMENT.

This cause having been duly submitted at the January Term, 1926, of this Court by Wilfred H. Jayne, Jr., Esquire, attorney for defendant in error, and Alexander Simpson, Esquire, attorney for plaintiff in error, and the Court having considered the same and finding no error in the record and proceedings in the Ocean County Court of Quarter Sessions:

It is thereupon Ordered and Adjudged that the judgment of the Ocean County Court of Quarter Sessions removed by the writ of error in this cause be affirmed, with costs; and that the record be remitted to the Ocean County Court of Quarter Sessions to be proceeded with in accordance with the judgment and practice of said Court.

Entered June 4th, 1926, on motion of

WILFRED H. JAYNE, JR.,
Prosecutor of the Pleas,
For defendant in error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOSEPH FERO,
Plaintiff in Error.
} On Writ of Error.

ASSIGNMENT OF ERROR.

(*Filed July 1, 1926.*)

And now comes the said Joseph Fero, plaintiff in error, by Alex. Simpson, Esq., his attorney, and says that in the record and proceedings and also in giving judgment thereon, there is manifest error, and for error assigns the following cause:

1. The Supreme Court gave judgment affirming the conviction of the plaintiff in error and of the judgment thereon, whereas it should have reversed the judgment of the Ocean County Court of Quarter Sessions and set aside the conviction of that Court.

ALEX. SIMPSON.
Attorney for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOSEPH FERO,
Plaintiff in Error.
} On Writ of Error.

SPECIFICATION OF CAUSE FOR REVERSAL.

(*Filed July 1, 1926.*)

And now comes the said Joseph Fero, plaintiff in error, by Alex. Simpson, Esq., his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following cause:

The Supreme Court gave judgment affirming the conviction of the plaintiff in error and of the judgment thereon, whereas it should have reversed the judgment of the Ocean County Court of Quarter Sessions and set aside the conviction of that Court.

ALEX. SIMPSON.
Attorney for Plaintiff in Error.

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

New Jersey Supreme Court.

THE STATE,
Defendant in Error,

vs.

JOSEPH FERO,
Plaintiff in Error.

WRIT OF ERROR.

(*Filed July* 21, 1925.)

NEW JERSEY, to wit:

The State of New Jersey to Honorable Harry E. Newman, Judge of the Common Pleas of the County of Ocean, constituting the Court of Oyer and Terminer, holden at Toms River, in and for the County of Ocean, of the April Term, 1925:

[L. S.]

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Joseph Fero, late of the Township of Lakewood, in the County of Ocean, for keeping a disorderly house and bookmaking, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Joseph Fero, as it is said, manifest error hath intervened to the great damage of said Joseph Fero, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to

him, the said Joseph Fero, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, also the entire record of proceedings had upon the trial, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the first day of August 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 laws of New Jersey ought to be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 13th day of July, 1925.

ALEX. SIMPSON, *Attorney.* EDWARD KELLEHER, *Clerk.*

NEW JERSEY SUPREME COURT.

THE STATE, *Defendant in Error,*

vs.

JOSEPH FERO, *Plaintiff in Error.*

RETURN.

(*Filed August* 4, 1925.)

The Answer of Harry E. Newman, Esquire, Judge of the Court of Quarter Sessions in and for the County of Ocean and State of New Jersey within named:

The record and proceedings whereof mention is within made in the annexed writ with all things touching and concerning the same, including the record of the proceedings had upon the trial of the said defendant to the Supreme Court of New Jersey, as specified in the annexed

writ, I certify in a certain schedule annexed to said writ, as I am in said writ commanded.

HARRY E. NEWMAN,
Judge.

STATE OF NEW JERSEY, }
COUNTY OF OCEAN, } *ss.*

Be it Remembered, That at a Court of Oyer and Terminer held at Toms River, in and for said County of Ocean on the Second Tuesday of April, in the year of our Lord one thousand nine hundred and twenty-five, before Frank T. Lloyd, Esquire, one of the Associate Justices of the Supreme Court of Judicature of the State of New Jersey, and Harry E. Newman, Esquire, Presiding Judge of the Court of Common Pleas and of the general Quarter Sessions in and for said County of Ocean according to the form of the statute in such case made and provided by the oaths of

Henry H. Cross, Foreman;

Charles Costello,	Birdsall A. Newbury,
Augustus H. Tolbert,	Joseph P. Perinchief,
J. F. Stephenson,	Laura Luhrs,
Arthur Ellor,	John Laug,
Emma Bills,	Dorothy A. Jameson,
Ruth C. Kidd,	Lefferts D. Estelle,
Henry Eiseman,	Pennington Corson,
Charles M. Underhill,	Lawrenson Correll,
Robert W. Henderson,	Addison U. Moore,
Louis Carr,	Joseph Parker,
Mary L. Case,	Louise M. Fogarty,

good and lawful men and women of said County of Ocean then and there duly summoned and then and there duly sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Ocean, it is represented in manner and form following, to wit:

OCEAN OYER AND TERMINER.
April Term, A. D. 1925.

COUNTY OF OCEAN, *ss.*

The Grand Inquest of the State of New Jersey, in and for the body of the County of Ocean, upon their respective oaths, present that Joseph Fero, late of the Township of Lakewood, in the County of Ocean, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms at the township aforesaid, in the County of Ocean and within the jurisdiction of this Court, unlawfully did keep and maintain a certain common ill-governed and disorderly house, to wit, situate on the southerly side of Fourth Street, between Madison and Forest Avenues, in the Township of Lakewood aforesaid, county and State aforesaid, and in the said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of disorderly conversation, then and on the said other days and times there unlawfully and wilfully did cause and procure to frequent and come together, and the said men and women, in the said house of him, the said Joseph Fero, at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, fighting, quarreling, making a noise, cursing, swearing, gambling, gaming, whoring and misbehaving themselves, unlawfully and wilfully did permit and yet does permit to the great damage and common nuisance of all the citizens of the State of New Jersey, there inhabiting, being, residing and passing, to the evil example of all others in like case offending, 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 of the State of New Jersey, in and for the body of the County of Ocean, upon their respective oaths, do further present that the said Joseph

Fero late of the Township of Lakewood, in said County of Ocean, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the County of Ocean aforesaid, and within the jurisdiction of this Court, did unlawfully and habitually keep and maintain a certain common ill-governed and disorderly house, to wit, situate on the southerly side of Fourth Street, between Madison and Forest Avenues, in the Township of Lakewood, County and State aforesaid, to which house persons might resort for betting upon the event of horse races, without this State, 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 of the State of New Jersey, in and for the body of the County of Ocean, upon their respective oaths, do further present that the said Joseph Fero, late of the Township of Lakewood, in the said County of Ocean, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, in a certain house situate on the southerly side of Fourth Street, between Madison and Forest Avenues, in the Township of Lakewood aforesaid, County and State aforesaid, and within the jurisdiction of this Court, did unlawfully and habitually make what is commonly known as a book, upon the running, pacing and trotting, without this State, of certain horses, mares and geldings, 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 of the State of New Jersey, in and for the body of the County of Ocean, upon their respective oaths, do further present that the said Joseph Fero, late of the Township of Lakewood, in said County

of Ocean, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms at the township aforesaid, in the County of Ocean aforesaid, and within the jurisdiction of this Court, did unlawfully take what is commonly known as a book, upon the running, pacing and trotting, without this State, of certain horses, mares and geldings, 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 of the State of New Jersey, in and for the body of the County of Ocean, upon their respective oaths, do further present that the said Joseph Fero, late of the Township of Lakewood, in said County of Ocean, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the County of Ocean aforesaid, and within the jurisdiction of this Court, did unlawfully conduct the practice commonly known as bookmaking, 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.

WILFRED H. JAYNE, JR.,
Prosecutor of the Pleas.

And afterwards, to wit, on the fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five, at a session of the Court of General Quarter Sessions aforesaid, being as yet of the April term aforesaid, before the Honorable Harry E. Newman, judge as aforesaid, the said Joseph Fero was arraigned before the bar of the Court, the said indictment was read to him and he then and there entered the plea of not guilty to the charge.

And the said Court of Quarter Sessions did thereafter set the ninth day of July, in the year of our Lord one thousand nine hundred and twenty-five, as the day upon which the said defendant should be tried on said indictment.

Whereupon on the ninth day of July, in the year of our Lord one thousand nine hundred and twenty-five, at a Court of Quarter Sessions at Toms River aforesaid, before Harry E. Newman, Esquire, judge of the Court of Quarter Sessions of said County of Ocean then and there holding a Court of General Quarter Sessions here cometh the said Joseph Fero brought to the bar in his proper person by the Sheriff of the County of Ocean aforesaid. Whereupon, Wilfred H. Jayne, Jr., Esquire, Prosecutor of the Pleas of said County of Ocean, moved the trial of the said indictment against the said Joseph Fero.

Thereupon the said Joseph Fero having theretofore entered a plea of not guilty to said charge and having put himself upon the country and the Prosecutor of the Pleas of the County of Ocean, prosecuting for said State of New Jersey, having done the like; and the jurors of said jury by the Sheriff of the County of Ocean for that purpose empaneled and returned, to wit:

1. Earl Ivins,
2. Lillian Worth,
3. Norman Hankins,
4. J. Harry Burdge,
5. Charles A. Allen,
6. John Page,
7. George B. Dodd,
8. Emma Cameron,
9. Jacob Skidmore,
10. Martha Horner,
11. Harry Thomas,
12. Harry Worth,

being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury at Toms River aforesaid, and on July 10, 1925, said issue after a charge from said Court was submitted to said jury and the said jury, in charge of officers of said Court, duly sworn for that purpose, were taken to a private room to

consider on the verdict, and afterwards, to wit, that is to say, on the day aforesaid, at Toms River, the said jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Wilfred H. Jayne, Jr., Esquire, Prosecutor of the Pleas of the County of Ocean, and the said defendant, Joseph Fero, do say that they find the defendant, Joseph Fero, guilty as he stands charged in said indictment.

Whereupon, it was ordered that the verdict and proceedings be entered and recorded and that the defendant be and appear before the said Court on the fifteenth day of July, in the year of our Lord one thousand nine hundred and twenty-five, for the sentence of the Court.

Whereupon, on the fifteenth day of July, in the year of our Lord one thousand nine hundred and twenty-five, the said Joseph Fero being produced before the said Court of Quarter Sessions at Toms River aforesaid, in his proper person in the custody of the Sheriff of said county, whereupon, all and singular the premises being seen and by the Court here being fully understood; it is ordered and adjudged by the Court that the said Joseph Fero be sentenced to imprisonment in the New Jersey State Prison, at Trenton, New Jersey, for a term of not less than two years nor more than three years, at hard labor, and to pay a fine of one thousand dollars.

Judgment entered this fifteenth day of July, in the year of our Lord one thousand nine hundred and twenty-five.

HARRY E. NEWMAN,
Judge of the Court of Quarter Sessions, in and for the County of Ocean.

STATE OF NEW JERSEY, }
COUNTY OF OCEAN, } *ss.*

I, John A. Ernst, Clerk of the Court of Quarter Sessions, in and for the said County and State aforesaid, do hereby certify that the foregoing is a true, full and complete copy of the record and proceedings with all

things touching and concerning the same in the trial and conviction of Joseph Fero of the crime of disorderly house and bookmaking as the same are now on file in my office.

Witness my hand and the seal of said Court, this day of July, A. D. nineteen hundred and twenty-five.

JOHN A. ERNST,
Clerk.

OCEAN CITY QUARTER SESSIONS.

THE STATE OF NEW JERSEY,
Plaintiff,
vs.
JOSEPH J. FERO,
Defendant.
} On Indictment for Disorderly House.

Toms River, N. J., July 9, 1925.

Testimony before Hon. Harry E. Newman, Judge, and a Jury.

Appearances—For the State, Wilfred H. Jayne, Jr., Prosecutor; for the Defendant, Alexander Simpson, Esq.

John A. G. Grant, sworn.

Direct examination, by Mr. Jayne.

Q. You are the Sheriff of Ocean County?

A. I am.

Q. And have been Sheriff since—?

A. November, 1924.

Q. Did you have occasion to visit the premises known as 420 Fourth Street, Lakewood, New Jersey?

A. I did.

Q. When?

A. February 27th, 1924.

Q. Alone?

A. No, sir.

Q. Who accompanied you?

A. Buckwalter, Cornelius, Russell Voorhees, Roy Evernham, Bryce Evernham, and Lester Smith.

Q. What was the general character of the structure at 420 Fourth Street?

A. It is a frame building, supposedly a residence.

Q. Did you enter?

A. Yes.

Q. These other men, too?

A. Yes.

Q. Anyone in there?

A. There was.

Q. Who?

A. Charles McCue, Joseph Fero, Jr.,—I cannot recall all the names. There were twenty-three of them.

Q. Where in the building?

A. Upstairs. There are four rooms upstairs, and they were in the room on the west.

Q. Describe these rooms.

A. They had four or five tables, and each table had a telephone, and at the table a man receiving bets over the phone.

Q. What other furniture? I want to get a picture to the jury of the general surroundings.

A. There was a table with a telephone and a man sitting by it, four of these, or five, and men standing around the room.

Q. You are describing one room.

A. Yes, there were two, one right adjoining.

Q. And where were all these twenty-three men?

A. In the two rooms.

Q. You spoke of telephones—how many?

A. Four.

Q. And they were all in these two rooms?

A. In the east room there was only one; in the west room three.

Q. Were there any articles of furniture besides what you have mentioned—tables and telephones—in these rooms?

A. A pool table was in one room, and a little sort of a work room you could call it, with gambling machines.

Mr. Simpson—I object to his designating them "gambling machines."

The Court—Objection sustained.

A. Slot machines and parts of slot machines, playing card chips, receipt pads, receipt books, and a box of repair outfit for slot machines c. o. d.

Q. Did you see there in these rooms articles such as you would find in the average home—such as couch, dining room suite, bedroom suite?

A. No. For each operator of a phone there was a chair and table, and there were slips and pads.

Q. You made an investigation of the premises?

A. I did.

Q. And did you find other articles there?

A. I did.

Q. What did you find?

A. There were eight slot machines, five in working order apparently, three with the parts out.

Q. Where were they?

A. They were locked in the repair shop, one of the rooms.

Q. You took these in your possession?

A. I did.

Q. Have you one of those slot machines in court?

A. Yes.

Q. Has it been in your possession ever since that time?

A. It has.

Q. This is one of the slot machines, is it?

A. Yes, sir.

Mr. Jayne—I will offer it.

(Slot machine admitted in evidence and marked *S 1.*)

Q. You spoke of others—were they of the same type as the one now admitted in evidence?

A. Yes, sir.

Q. I understood you to say that some were in order to be operated?

A. This is.

Q. And others?

A. Others with parts out.

Q. You also took them?

A. Yes, sir.

Q. Have you one of those?

A. This one.

Mr. Jayne—I will offer that.

(Slot machine lacking cover admitted and marked *S 2.*)

Q. You have mentioned parts of machines?

A. There is a part of that one (indicating (*S 2*) right over there.

Mr. Jayne—I offer this part.

(Part of machine admitted and marked *S 3.*)

Q. In addition to that, having in mind the slot machines, you say you found other articles?

A. Repair parts and working parts for the machines and a box of c. o. d.

Q. You have now made reference to a box, did you find that in the premises 420 Fourth Street, on February 27th?

A. I did.

Q. What does that contain?

Mr. Simpson—I object to that unless it is offered. I object because the box itself is the best evidence of what it contains.

Mr. Jayne—I will offer the box and contents.

Mr. Simpson—I object to the box because it bears a name and there is no proof that it was put on there by the consent of the defendant or the connivance of the defendant.

The Court—You found the box in the premises in the same condition in which it now is?

A. I opened it.

The Court—I will admit it and allow you an exception. (Box marked *S 4.*)

Mr. Jayne—You spoke of opening the box —what were the contents?

A. It contains parts for repairing the slot machines.

Q. Did you find any other articles which have no reference to these slot machines?

A. There's a box there marked Campbell's Soup which contains repair parts.

Mr. Simpson—I object to that on the ground that it does not try to prove anything. Your Honor has admitted this box with Fero's name on it; I don't see why the box with Campbell's name on it should be admitted.

Mr. Jayne—I am offering the contents.

The Court—The contents of the Campbell's Beans box will be admitted. (Box marked *S 5.*)

Mr. Jayne—Anything further?

A. There was a large repair box, which is too heavy to carry in, with a complete outfit and keys, and these other machines ready to work and two others with the parts out.

Q. What other articles?

A. One box containing twenty or more boxes of poker chips.

Q. Is that in court?

A. Yes, sir.

Mr. Jayne—I offer the contents of that box.

The Court—If there is no objection it will be admitted. (Box marked *S 6.*)

Mr. Jayne—What else, Sheriff?

A. One box containing playing cards, receipt books and pads, and a check book, I think.

Q. You have them here?

A. Yes, sir.

Mr. Jayne—I offer the contents of this box to which he now refers.

The Court—Admitted if there is no objection. (Marked *S 7.*)

Mr. Simpson—I want to reserve my objection if there is any writing there.

Mr. Jayne—And all the articles contained in this box *S 7* you found on the premises February 27th?

A. Yes, sir.

Mr. Simpson—I object so far as any writings contained in the box are concerned. I object that they are not competent to be used to connect this defendant in any way with the case.

The Court—Is there any written memoranda?

Mr. Jayne—There appear to be slips having writing upon them.

Mr. Simpson—I can reserve my right to argue the admission of this memoranda later.

The Court—He is reserving his objection to any written matter contained in this box.

Mr. Jayne—What further did you find?

A. Three racing charts.

Mr. Simpson—I object unless they are produced.

Mr. Jayne—Have you the articles to which you referred here?

A. I have.

Q. Produce them. (Charts produced.)

Q. You are confining yourself to your search on the occasion of February 27th?

A. Yes, sir.

Q. You are now producing two sheets, two papers, that were found in the premises 420 Fourth Street, Lakewood?

A. They were.

Q. Where?

A. Upstairs in the rooms where the 'phones were.

The Court—Did you find them yourself in the premises on that occasion?

A. I saw them when they were gathered up.

Mr. Jayne—I offer these two sheets.

Mr. Simpson—Were these handed to you by one of your men, or did you pick them up?

A. They came from the tables, Mr. Buckwalter handed them to me.

Q. At the same time he picked them up?

A. Yes, right in the room.

Mr. Jayne—I will renew my offer.

(Admitted and marked *S 9* and *S 10.*)

Q. I notice that appended to this sheet known as *Exhibit S 10* are a number of slips; were they likewise found on the occasion of February 27th?

A. Yes, sir.

Q. In the same premises?

A. Yes, sir.

Q. In their present condition?

A. Yes, sir.

Mr. Jayne—I offer these.

Mr. Simpson—Were they annexed on this sheet when you got them?

A. I fastened them on.

Mr. Simpson—I object to their admission as fastened to this sheet.

The Court—They should be in the same condition as when found.

Mr. Jayne—I am making a separate offer.

Mr. Simpson—Did you find these slips?

A. They were picked up by Mr. Buckwalter, and given to me.

Q. Been in your possession ever since?

A. They have.

(Slips admitted and marked *S 11.*)

Mr. Jayne—I think, if Your Honor please, that these exhibits should be disclosed to the jury.

(*Exhibits S 9, S 10* and *S 11* shown to jury.)

Q. What, in addition, did you find?

A. Telephone bill dated July 8, 1925, Joseph Fero, 420 Fourth Street.

Q. Where was that found?

A. On the mantlepiece over the fireplace.

Mr. Jayne—I offer it.

Mr. Simpson—I object. It is incompetent and irrelevant.

The Court—It will be admitted and exception allowed.

(Bill marked *S 12.*)

Mr. Jayne—What other matters?

A. These racing tickets.

Mr. Simpson—Same objection.

(Admitted and exception allowed.)

Mr. Jayne—What further?

A. Gas Company bills.

Mr. Simpson—Same objection.

Mr. Jayne—I am offering bills from the Lakewood Gas Company and from the Electric Company for gas and electric service, Joseph Fero, 420 Fourth Street, Lakewood, N. J., dated 11—'24; February 2, 1925; January 1, 1925.

(Admitted and marked *S 14.*)

Mr. Jayne—What further?

A. Water and sewer bills addressed Joseph Fero, 420 Fourth Street, bearing date December 24, 1924; March 20, 1924; June 25, 1924.

Mr. Simpson—Same objection.

The Court—Objection overruled and exception allowed.

Mr. Simpson—I want to object on the further ground that these dates are previous to the finding of the indictment. In advance of that date no evidence would be material or competent because it was before the date alleged in the indictment. Even though Your Honor is correct in assuming that these are evidential to show our connection, they are still not material be-

cause they are six or seven months before the date of the indictment.

The Court—I will overrule your objection and allow you an exception.

Mr. Jayne—Anything further?

A. A letter from Callie Brothers, regarding Victory Vending and Slot Machines.

Mr. Simpson—Same objection. It is February 25th.

Mr. Jayne—I offer a communication bearing date February 25, 1925, from Callie Brothers, Detroit. This letter was found in the premises 420 Fourth Street on February 27th.

Mr. Simpson—Same objection.

The Court—Same ruling.

Mr. Jayne—What further?

Mr. Simpson—I object because that issue has been disposed of on a former trial. I object also because the possession of liquor is not an element in disorderly house. I object as incompetent and irrelevant.

The Court—I sustain the objection and order struck out any reference to the possession of liquor.

Mr. Jayne—Any other articles?

A. A safe labelled "Joseph J. Fero" in the repair shop, as I called it.

Q. What printed matter did it have on it?

A. Joseph J. Fero's name across the face.

Q. Anything further?

A. I don't recall anything.

Q. What happened on that occasion?

A. I arrested all the occupants, seized all the machines, liquors, papers, et cetera, and took them down to the town hall and had a hearing before the Recorder.

Q. Did you visit this same place later?

A. I did, on April 13th.

Q. Enter the building?

A. Yes.

Q. Who was with you?
A. Cornelius and Buckwalter.
Q. Did they go in with you?
A. Yes.
Q. What did you find on that occasion?
A. Racing sheets.

Mr. Simpson—I object to that and ask to have it stricken out unless the papers are produced.

(Sheriff produces papers.)

Mr. Jayne—You are producing three papers.

A. Three racing sheets.
Q. Where were these found?
A. Upstairs on the four tables. There were four.
Q. Where is the other one?
A. (Stricken out by order of the Court.)

Mr. Jayne—I offer these three sheets.

Mr. Simpson—Same objection.

(Racing sheets admitted and marked *S 17, S 18, S 19.*)

Mr. Jayne—There were some further papers which you had attached—I show you those.

A. They were picked up on the tables.

Mr. Jayne—I will offer these slips.

Mr. Simpson—Same objection.

The Court—Objection overruled, exception allowed.

(Slips admitted and marked *S 20.*)

Mr. Jayne—What further?

A. Telephone bills.

(Sheriff produces a bill from the New York Telephone Co.)

Mr. Simpson—Same objection.

Mr. Jayne—I will offer it.

The Court—It will be admitted and exception allowed.

Mr. Jayne—This is a bill from the New York Telephone Company addressed to J. Fero, 420 Fourth Street, Lakewood, under date of April

first, 1925, and containing a record of the toll calls.

(Bill marked *S 21.*)

Q. You produced an envelope that was found in the premises on April 13th?

A. I did.

Mr. Simpson—Same objection.

The Court—Same ruling. Exception.

Mr. Jayne—This is an envelope postmarked New York, April 9, 1925, addressed to Mr. Joseph Fero, 420 Fourth Street, Lakewood, N. J. I will offer it.

(Admitted and marked *S 22.*)

Q. Is that all the articles seized on that occasion?

A. Yes.

Q. What as to the general character of the premises on April thirteenth?

A. Same as on the previous visit.

Q. Were there persons there?

A. Yes, seven.

Q. Did you hear what was said by any of the persons present in this place on either of the occasions of your visit, as to what they were doing when you came in?

A. No. You could hear them answering the 'phone.

Mr. Simpson—I object to that in the absence of the defendant.

Mr. Jayne—Could you hear what any of them said?

A. No, I could not.

Cross-examination, by Mr. Simpson.

Q. On the thirteenth of April what time of day did you go there?

A. Three o'clock.

Q. Who was with you?

A. Cornelius and Buckwalter.

Q. Deputies of your office?

A. Yes, sir.

Q. How did you get admission?

A. The door was open and we walked in.

Q. Have a search warrant with you?

A. On the thirteenth of April—no, sir.

Q. And you went in and took these papers?

A. Yes, sir. In the room upstairs.

Mr. Simpson—I ask that these papers be suppressed as he had no right to enter and take papers without a search warrant. I ask that all his testimony of the April 13th in regard to papers be suppressed.

The Court—I think your application comes too late. I will deny your motion and allow an exception.

Mr. Simpson—How long were you there on the thirteenth of April?

A. About half an hour.

Q. What room did you go in first?

A. The hall.

Q. Encounter anybody in the hall?

A. No, sir.

Q. Then you went upstairs?

A. Yes.

Q. And when you went upstairs who was the first person you met?

A. Lester Megill.

Q. You didn't meet the defendant?

A. No, sir.

Q. How many people were there?

A. Seven.

Q. What were they doing?

A. Sitting and standing and walking around the tables.

Q. And talking among themselves?

A. I could not say.

Q. You went in, you went upstairs, you found certain papers which have been admitted,—where did you find them?

A. On the tables and over the mantelpiece.

Q. Did you bring away all the papers you found from the mantelpiece?

A. Yes, sir.

Q. How did it come you found these there? Were they there in February?

A. They were not.

Q. What did you do with these papers when you found them?

A. Buckwalter, Cornelius and I took the papers and I have had them in a cell in the jail ever since.

Q. That visit took a half hour, on the thirteenth of April?

A. We were not there half an hour.

Q. You found the papers, you found seven people, among whom was Mr. Megill?

A. Yes, sir.

Q. On the February occasion, what time did you get there?

A. Four-twenty in the afternoon.

Q. The door was open?

A. Yes, sir.

Q. And you walked in?

A. Yes, sir.

Q. Find anybody in the hall?

A. I didn't go in first. When I went in there was someone in the hall.

Q. Who was in ahead of you?

A. Mr. Buckwalter, Mr. Voorhees, Evernham, Lester Smith was in ahead of me.

Q. Who went in first?

A. Buckwalter.

Q. And you behind him?

A. No, sir.

Q. Remember who was directly ahead of you?

A. I don't remember.

Q. Were you the last man in?

A. I think so.

Q. How long had Buckwalter been upstairs when you went in?

A. A minute or two.

Q. Did you have guns drawn?

A. No, sir.

Q. What did you say?

A. I told them we had raided the place and that they were under arrest.

Q. Have your guns out?

A. No, sir.

Q. And you saw three men in one room with telephones in front of them receiving messages?

A. I do not know as they were.

Q. You saw the men sitting in front of telephones which were not in use when you got there?

A. Two were in use.

Q. Who was using them?

A. I cannot tell you.

Q. As soon as you got in you said "you are under arrest"?

A. Yes, sir.

Q. Did they keep on using the telephones?

A. No, sir.

Q. You didn't see anybody make a bet while you were in there?

A. No, sir.

Q. And you didn't hear any bet given or received over the telephone?

A. I did not.

Q. And you found these things that you bring in—playing cards?

A. Yes.

Q. And you found these poker chips?

A. Yes.

Q. You never played poker?

A. Never.

Q. At the time you went in February to this place, Fero was not there?

A. No, sir.

Q. So that on the occasion of both your raids on this place, at neither time did you find the defendant in this place?

A. No, sir.

Q. You said you found Mr. Megill?

A. Yes, sir.

Q. Did he seem to be running the place?

A. I could not say.

Q. Where was this safe?

A. In the room where the repair parts were.

Q. And did it have j-o-s-e-p-h-, Joseph, or how?

A. I think it was spelled out.

Q. Are you positive about that?

A. I am pretty sure it was "Joseph J. Fero."

Q. Did you have a photograph made of it?

A. No, sir.

Q. You simply came here with your recollection?

A. Yes, sir.

Q. What kind of safe was it?

A. A small safe.

Q. You don't know how long it had been there?

A. No, sir.

Q. These telephone bills that you found—where were they lying, and the gas bills?

A. On the shelf over the fireplace.

Q. How many rooms were in occupation?

A. Two.

Q. And how many people were there in February?

A. Twenty-three.

Q. Did you arrest them all?

A. Yes, sir.

Q. Are they all under subpœna now?

A. No, sir.

Q. Did you arrest them all and have them put under bail?

A. Yes, sir.

Q. You speak of repair parts to slot machines; have you had any experience in building slot machines?

A. No, sir.

Q. You are not an expert on the building or unbuilding of slot machines?

A. No, sir.

Q. Where did you get the knowledge that these parts are spare parts?

A. The parts in the old box and the parts in the box back of you are just the same. You would not have to fit them in to know they were identically the same as to build and construction.

Q. What is the office of this part?

A. I just told you I was not an expert. If you look at the part that this came from you can see it belongs to it; probably it fits in here.

Q. You do not pretend to be an expert; so far as you know this might be a carburetor of a Ford car.

A. It is not.

Q. What special experience have you had with slot machines; you don't have any in the sheriff's office?

A. Yes, forty-three.

Q. You have never had any experience in building them or using them.

A. No.

Q. You have forty-three in the Sheriff's office—where did you get them?

A. Various hotels in Lakewood and vicinity. Most of them came from Lakewood.

Q. From the big hotels or the small hotels?

A. Sixteen of them, I think, from the Laurel-in-the-Pines and the Laurel House—no, not the Laurel House.

Q. And from taking these machines out of these hotels you have gained whatever knowledge you have of these machines? You never served an apprenticeship to the building of slot machines?

A. No.

Q. When did you start collecting slot machines?

A. February second.

Q. How long after you were elected did you start collecting them?

A. I was elected in November and in February I started in gathering up machines?

Q. You have considerable personal interest in this case?

A. None whatever.

Q. You have a man in your office, or connected with you in any way, named Burdge?

A. Yes.

Q. Did you send him last night to one of the witnesses for the defense and instruct him to say that if that witness would swear in such a way as to tie Fero up, in that case the witness who is under indictment himself, would have no further trouble?

A. I did not.

Q. Is Burdge connected with your office?

A. Yes, sir, he is chief clerk.

Q. Did you send him last night to Lester Megill, who was arrested by your office and is under indictment, to get Megill to swear that Fero was connected with this place in order to tie him up—

A. I did not.

Q. Did you know he was going to see Megill?

A. I understood he was going to see Megill.

Q. Did you know Billy Mather was going with him?

A. Yes.

Q. And Billy Mather is a prominent man in the Ku Klux Klan?

A. I could not say.

Q. You are a prominent member of the Klan yourself, are you Sheriff?

A. I am not.

Q. You don't belong to it at all?

A. No.

Q. And never any connection with it?

A. No.

Q. You realize, Sheriff, that you are under oath?

A. Yes, I know I am under oath.

Q. Didn't you go around campaigning, saying you were a member of the Klan?

A. I did not.

Q. You say you didn't send this man and don't know anything about it?

A. No, sir.

Q. I understand that neither time did you find any money on these premises?

A. No, sir.

Q. But listen to this indictment (reads indictment) —did you see any of that going on?

A. No, sir.

Q. And you appeared before the Grand Jury to get this indictment?

A. Yes, sir.

Q. And you have been very active in the prosecution of this case?

A. Yes, sir.

Q. And at the last trial you gave the Prosecutor advice who to challenge and who to let on the jury?

A. I did not.

Q. You were there unannounced in February; that was a surprise visit?

A. I had a warrant.

Q. You didn't send them a telegram?

A. No.

Q. You went in unannounced and all you found was this junk and some men sitting besides telephones—no money passed, no bets passed, nobody using these machines?

A. There were racing sheets.

Q. Why do you say "racing sheets"; are you bound to get a conviction in this case on legal or illegal evidence?

A. No, sir.

Charlotte Searing, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. Lakewood, N. J.

Q. Are you employed?

A. Yes, sir.

Q. By whom?

A. Jersey Central Power and Light Co.

Q. What is your position?

A. Bookkeeper of the Lakewood Water and Gas.

Q. Are you familiar in the course of your duties with the accounts of the water service, electric service and gas service, furnished to the premises known as 420 Fourth Street, during the present winter from November, 1924, to April?

A. I am.

Q. Do you have in your position any agreement for that service?

A. I have.

Q. Will you produce it? (Paper produced.)

Q. This relates to what service?

A. Lakewood water service application.

Q. Have you any other agreement?

A. That is the only one I have.

Q. Have you accounts showing the water as well as electric and gas service supplied and furnished to 420 Fourth Street from November until April during the past winter?

A. Yes.

Q. Are these the original accounts?

A. Yes.

Q. Kept by you?

A. Yes.

Q. In whose name?

A. In the name of J. J. Fero.

Mr. Simpson—I object unless the papers are offered.

Cross-examination, by Mr. Simpson.

Q. What is your position with the company?

A. Bookkeeper.

Q. You are not an officer or director?

A. No.

Q. Are you the chief bookkeeper?

A. Yes.

Q. How long have you been chief bookkeeper?

A. Since July 1, 1924.

Q. Who is your superior?

A. A. W. Wenn.

Q. What is his position?

A. Office manager.

Q. Does he have control of these papers you have produced?

A. He has.

Q. Where did you get these papers?

A. Out of the ledger.

Q. Who put them in the ledger?

A. I did.

Q. Where did you get them?

A. They were blank stationery before I made the accounts.

Q. Where did you get the information you put in them?

A. From the meter reader books read by William Goble.

Q. Same man read the meter on all occasions?

A. Yes.

Q. Do these papers contain anything else besides these readings?

A. Subtraction of the readings and the billings and the cash payments. I make the subtractions and enter them—

Q. You do not read the meters?

A. No.

Q. Is there anything on these papers except what has come from the meter book?

A. The meter book reports the reading of the meter; there are substractions, actual readings, and payments.

Q. Where do you get these—from the cashier?

A. The bills are paid to her.

Q. She gives you the information and you use this in making up these accounts or statements—have you any personal contact with the customers who paid the bills?

A. No.

Q. This other paper you have produced—where did you get that?

A. At the window.

Q. You were there when it was made out?

A. No, at the cashier's window.

Q. Did you get these from the cashier's file?

A. Indirectly from my own.

Q. Directly?

A. From the cashier.

Q. You were not there when this paper was executed?

A. No.

Q. When did you get it?

A. Within a few minutes after the application was signed.

Q. Do you know the date of the application?

A. I do not.

Q. Know the day of the week?

A. No.

Q. Time of the day?

A. No.

Q. This paper came to you from the cashier and you put it in your files?

A. Yes, sir.

Mr. Simpson—I want to object to these papers on the ground that they are not properly proven. The papers are inadmissible unless the best evidence is produced.

Mr. Jayne—I will offer these.

(Accounts admitted and marked *S 23.*)

The Court—They will be admitted; I will allow you an exception.

Mr. Simpson—You know nothing about who paid these accounts?

A. I do not.

Q. You were the bookkeeper—in the regular course of business suppose I opened an account and then I sub-let, and the man who took the place from me did not change it, your books would show that the payments were made under the original name?

A. Yes.

Q. If he sub-let to me, and I went in, it would still read the name of John Smith?

A. It would.

Q. And you don't know who paid these bills?

A. No.

Jesse G. Webster, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. 1007 Fifth Avenue, Asbury Park.

Q. What is your business?

A. I am local commercial manager for the New York Telephone Company.

Q. Are you familiar with the accounts of the New York Telephone Company in the district of Lakewood, with respect to who orders and installs telephones, and to whom you bill telephone service rendered in Lakewood?

A. I am familiar with the records of the various accounts.

Q. We are interested in learning for whom telephone service was rendered at 420 Fourth Street, Lakewood, New Jersey, from November first, 1924, till April.

Mr. Simpson—I object to that unless the records are produced.

Mr. Jayne—Have you knowledge upon that subject?

A. According to our files—our records indicate that the service was rendered to Joseph J. Fero.

Mr. Simpson—Object to that.

Mr. Jayne—Have you a record of that?

A. I have here our office record.

Mr. Jayne—I will offer it.

Cros-examination, by Mr. Simpson.

Q. What is this paper called?

A. This is called our detail card.

Q. Who makes it up?

A. The person to whom the application was assigned.

Q. You are not that person?

A. No, sir.

Q. And that card is made up from an application made to some person other than yourself?

A. Yes, sir.

Q. Did you make this card up or any part of it?

A. No, sir.

Q. Have you any knowledge of its contents other than what it speaks for itself?

A. No.

Q. In other words it is a paper which you brought out of your office to-day, made up by some other person?

A. Yes.

Q. What do you call yourself?

A. Local commercial manager.

Q. Who is your superior there?

A. I am in charge of the office; my superior is at Newark.

Q. Where is this record kept?

A. At Asbury Park.

Q. Is it forwarded to Newark?

A. No, your application is signed and negotiated by the employees of our local office.

Q. If I asked for a telephone in Lakewood I would have to ask your employees, not you?

A. Yes.

Q. You have brought us a record prepared and kept in your office?

A. Yes.

Mr. Simpson—I object on the ground that it is not evidential. He cannot vouch for this paper, he simply brings it out of his files. I object to it as incompetent.

The Court—Are the records kept under your supervision?

A. Yes.

Q. Are you daily familiar with it?

A. I could not possibly come in personal contact with it.

Mr. Simpson—You are in charge of this office and you have a certain routine—if that routine runs right, the record is right, if it runs wrong, the record is wrong.

By Mr. Jayne—I am offering it.

The Court—I will sustain the objection.

James Jensen, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. River Avenue, Lakewood.

Q. How long have you lived there?

A. All my life.

Q. What do you do?

A. Drive a truck.

Q. How old are you?

A. Twenty.

Q. Do you know where 420 Fourth Street is?

A. I do.

Q. Ever been there?

A. Yes.

Q. Were you there last winter?

A. Yes.

Q. During the period from November first, 1924—

A. I was there from November till January, 1925.

Q. Been inside the premises?
A. Yes.
Q. Do you know Mr. Fero?
A. I do not know him.
Q. Know who he is?
A. I know him if I see him.
Q. Have you seen him at 420 Fourth Street?
A. I have not.
Q. What did you go there for?

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

The Court—Objection sustained.

Q. How frequently did you go there?
A. Every other day or so.
Q. Daytime or night?
A. About three o'clock in the afternoon.
Q. Every day?
A. About every other day.
Q. How long would you stay there?
A. About ten minutes.
Q. What would you do?
A. Just went in there and looked over the papers and went out.
Q. What kind of papers?

Mr. Simpson—I object unless the paper is produced.

The Court—Have you the papers?

A. No.
Q. Do you know what sort of papers they were?
A. Newspapers.

Mr. Jayne—Is that what you did?

A. Yes.
Q. What part of the paper?
A. Every part.
Q. Examine the racing entries?
A. I did.
Q. Then what did you do?

Mr. Simpson—I object; he might have walked right out.

The Court—Objection overruled.

A. Just went out after I looked at the paper.

Mr. Jayne—Ever do anything more than look at the paper?

Mr. Simpson—I object, that's leading.

The Court—I will admit the question.

Mr. Jayne—Never did anything else but look at the paper?

A. I have taken a bet up there, but I never played them myself.

Mr. Simpson—I object, that's calling for a conclusion.

The Court—Objection sustained.

Mr. Jayne—What did you do?

A. I took what they call a bet up there. It was a piece of paper, all sealed up, but I know it was a bet to go up there.

Mr. Simpson—I object to his statement. He said it was a sealed envelope. I object to his characterizing it as a bet.

The Court—Objection sustained.

Mr. Jayne—Where did you get this sealed envelope?

A. Where I was working.

Q. Where did you take it?

A. Up to 420 Fourth Street.

Q. What did you do with it?

A. I put it on the table.

Q. What was in the envelope?

A. Writing on a piece of paper.

Mr. Simpson—I object unless it is produced or accounted for.

Q. Have you the envelope?

A. No, it was left at 420 Fourth Street, Lakewood.

Q. Do you know what the envelope contained?

A. It contained a bet of some kind.

Mr. Simpson—I object, that's a conclusion of this witness.

The Court—Before ruling on this motion I will let the Prosecutor find out what he means by that.

Mr. Simpson—You took a sealed envelope up there and left it on the table?

A. Yes.

Q. It was sealed when it was given to you, and you didn't write the stuff in it, and you didn't read what was written in it before it was sealed?

A. I took a hundred envelopes up there.

Q. Did you read what was written inside this time that you have mentioned, when you took the envelope?

A. I have no certain time or one envelope in mind.

Q. Were they all sealed envelopes?

A. Yes.

Q. What hotel did you get them from?

A. Laurel House.

Q. Who gave them to you?

A. I refuse to answer.

Q. Were you working in the Laurel House?

A. Yes.

Q. Messenger boy?

A. Yes.

Q. Still working there?

A. No.

Q. You would go up with these sealed envelopes and leave them on the table and sit around and read the newspapers, and when you got tired you went away?

A. Yes, sir.

Q. You didn't write the stuff in the envelope?

A. I did not.

The Court—You sometimes read what was written on the paper?

A. Yes, sir.

Q. Did you read several of them?

A. Yes, sir.

Q. Know what they were?

A. In one way I did.

Q. What did some of them say?

A. You have some of the slips.

Q. See if you can find them.

(Witness looks through slips.)

Mr. Jayne—Are these what you refer to?

A. I think they are. If that's all you have you haven't any.

Q. What did they state upon them?

A. The same as these. They read all alike.

Q. There was writing on them?

A. Yes.

Q. What sort of writing?

A. In ink, written out the same as these—the same as these you have right here.

Q. Did you know what the transaction was about?

A. Yes, I did.

Mr. Simpson—I object. How did you know what these papers were? All the knowledge you have about the contents of the envelopes is what somebody told you.

A. I know what they were written out for.

Mr. Jayne—What were they written out for?

A. To place a bet of some kind.

Q. How did you know?

A. I read some of them.

Mr. Simpson—What did you read? What's your recollection?

A. It was about horses of different names.

Q. Give me one name.

A. I don't remember.

Q. As a matter of fact isn't it true that you were handed a sealed envelope, that you took that envelope without knowing the contents, left the envelope at this place and came home?

A. I read them when he wrote them out.

Q. Who?

A. I refuse to answer. A certain man in the hotel.

Q. Who was this "certain man"?

A. Doctor Stratton.

Q. You saw him write them out?
A. Yes.
Q. Is he a Lakewood man?
A. He is registered as a Lakewood man.
Q. Does he practice medicine in Lakewood?
A. No.
Q. Where did he live?
A. At the Laurel House last winter.
Q. Were those envelopes addressed?
A. No. He told me where to take them.
Q. Did you ever see the defendant there?
A. No, I saw him on the street.
Q. Did you see him at 420 Fourth Street?
A. Never.
Q. Never delivered any of those to him?
A. No, sir.

Edward Burdge, sworn.
Direct examination, by Mr. Jayne.
Q. Where do you live?
A. In Lakewood.
Q. How long have you lived there?
A. All my life.
Q. Do you know the defendant?
A. When I see him.
Q. Do you know where 420 Fourth Street is?
A. Yes.
Q. Are you employed now?
A. Yes.
Q. What was your employment during the last winter?
A. I was a Western Union messenger.
Q. Did you ever have occasion to go to 420 Fourth Street?
A. Yes. Frequently.
Q. How frequently?
A. I took telegrams there and bets.
Mr. Simpson—I object to that.
Mr. Jayne—What do you mean by bets?

A. Played money on horses. I took them and placed them for people in town. I have taken money there to play on horses.

Q. How frequently?

A. According to how often I felt like taking a bet up there or if I wanted to go and take a chance; that was last winter.

Q. In what months?

A. Every month.

Q. Have you taken money there yourself, your own money?

A. For my brother.

Q. What's his name?

A. Burdge. I just put Burdge on the slip. I went up there and looked at the papers and horse sheets.

Q. I show you *S 17-18-19-S 10-S 9*. Are these the sort of sheets you saw?

A. Yes.

Q. What did they have on them?

A. The name of the horse, the price, and the name of the jockey.

Q. Did you place money there yourself?

A. I did.

Q. On what?

A. The horses.

Q. Do that more than once?

A. I did.

Q. Know the defendant by sight?

A. Yes.

Q. Ever see him there?

A. I never placed any bets with him; I have seen him walk in and walk out.

Q. Frequently?

A. No, some days I would go there and he would not be in, and other times he would come in for a couple of minutes and go out.

Q. Did you talk to him?

A. No.

Q. Have any conversation with him concerning the placing of these bets?

Q. Did you ever deliver messages to him?

A. I have.

Q. At 420 Fourth Street?

A. Once I delivered a message to him for Charley McCue and he took care of it on the porch at 420. He was talking to some man.

Q. Have you seen Mr. Fero about the premises anywhere where he could have seen these sheets?

A. No; he just walked in and said "hello" and walked out.

Q. See him handling any of these sheets or using the telephone?

A. No.

Q. On these occasions when you visited the premises were there others there?

A. Yes.

Q. How many?

A. Quite a crowd.

Q. Know what they were doing?

A. Betting on the horse—

Mr. Simpson—I object. It is incompetent and immaterial unless he details what he saw and what he heard.

The Court—What do you mean by betting?

A. Taking money, writing out a slip, handing them to the man that takes care of the bets.

Q. Making a bet on a particular race?

A. Sure. Race, name of the horse, first, second, third, and hand it over to the men who are making the book.

Q. That's what you were doing?

A. I have taken bets up.

Q. You saw others there doing that same thing?

A. Yes.

The Court—All right, I will admit it and allow you an exception.

Mr. Jayne—Did you win sometimes?

A. Yes.

Q. Receive money?

A. Yes.

Cross-examination, by Mr. Simpson.

Q. You never gave a bet to this defendant, or handed him, or received from him, any money?

A. No, the only thing I saw him do was walk in and say "hello" and walk out.

Q. How many times did you see him do that?

A. I was up there quite a lot.

Q. When did you start to go up there?

A. It was somewheres around December.

Q. And when did you stop?

A. Two days before he was raided.

Q. How often had you been there in that period of time?

A. Four or five times a week.

Q. Did you take up slips, or money?

A. I would find out what horse the fellow wanted to play and get the money, and place it as he told me.

Q. Did you get a commission?

A. No; I was working for the Western Union.

Q. Who paid for it?

A. Nobody.

Q. You did it for pleasure?

A. Yes.

Q. You would get the name of the horse he wanted, take his money, and leave it there, and nobody got paid?

A. He gave me something for taking it up.

Q. Did you pick the horse?

A. That's according to who I was placing the money for.

Q. You were working for the Western Union all the time you went up there?

A. Yes.

Q. Who were the people you took bets up for?

A. John Burdge. My brother.

Q. Where does he live?

A. Lakewood.

Q. Where is he employed?
A. Sheriff's office.
Q. The sheriff doing a little betting?
A. No.
Q. Did Burdge do that from the sheriff's office?
A. No. He stopped when he got that job.
Q. When did he go in the sheriff's office?
A. November.
Q. Did your brother get his job in consideration of your going up there and betting?
A. I don't know nothing about his job.
Q. How often did he send you up?
A. I don't know.
Q. How big a bet would your brother make?
A. A dollar or two.
Q. Did he ever win?
A. I don't know.
Q. They didn't raid the place because he didn't win?
A. I don't know anything about that. The money was in my name.
Q. Have you been in consultation with the sheriff before you took the stand to-day?
A. No.
Q. Did you tell him that his chief deputy was helping to run a so-called gambling house?
A. No.
Q. Did you tell the sheriff that your brother was betting up there?
A. No.
Q. When was the last time you were up there?
A. Two days before they were raided.
Q. You say that at one time you took a telegram to Fero?
A. Yes, for Charley McCue.
Q. Does he live in Lakewood?
A. Yes.
Q. You took a telegram up there and you left it with Fero on the front step?
A. Yes.

Q. How long would Fero be in this place on these occasions?

A. Two or three minutes.

Q. So far as you know he never did anything in connection with the betting?

A. Not while I was there.

The Court—Who did you do business with?

A. With the men who were there.

Q. Who were they?

A. Gilly Griffin and Lester Megill.

Mr. Simpson—Did you take any bets for anybody besides your brother?

A. Yes, from a fellow in the Laurel in the Pines.

Q. When you won did your brother give you part?

A. I never got anything from him.

Q. How much did he win?

A. According to how the horses came in.

Q. What was the best he ever got?

A. He used to play for place.

Q. Remember how much money you took to your brother as winnings?

A. I guess it was around nine dollars. He never played over a dollar or two.

Q. Have you any idea how much he did get altogether? Do you suppose he would have made a hundred dollars?

A. I doubt if he would break even.

Fred Keppler, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. Lakewood.

Q. How long have you lived there?

A. Three and a half years.

Q. What do you do?

A. Automobile mechanic.

Q. Where are you employed?

A. Wallace Brothers.

Q. Been employed there during the past winter?
A. Yes. From the first of January.
Q. Did you live in Lakewood from November on?
A. Yes.
Q. Know the defendant?
A. Yes.
Q. Know the premises known as 420 Fourth Street?
A. Yes.
Q. Ever been there?
A. Often.
Q. How often?
A. On an average of four times a week.
Q. Go inside?
A. Yes.

Mr. Simpson—I object unless it is within the period covered by the indictment.

Mr. Jayne—You are referring to November and since?

A. Yes.
Q. What did you see in this place?
A. I seen upstairs, one flight up, a room, and in that room a pool table where they shot dice on.
Q. Did you see them?
A. Yes.
Q. Played yourself?
A. Yes.
Q. For money?
A. Yes.
Q. Did you know that the others were playing for money?
A. Yes.
Q. What else.
A. In the other room two or three tables with telephones on them and on these tables I have seen, spread out, racing charts.
Q. What do you mean?
A. I mean a large sheet of paper whereon are printed names of horses.

Mr. Simpson—I object to his characterization unless paper is produced.

Mr. Jayne—I show you *Exhibits S 17-18-19* and ask if these are papers which you call "racing charts"?

A. Absolutely.

Q. I show you *Exhibits S 9* and *S 10* and ask if these papers are what you call racing charts?

A. Yes, sir.

Q. There were papers of this character that you saw there?

A. Yes.

Q. What did you see or hear take place there with respect to these papers if anything?

A. I didn't hear much in regard to these sheets, but I have seen them up there, and I have not heard anything about them because I was generally in the other room.

Q. There were telephones there?

A. Yes.

Q. What was done with these telephones?

A. I could not tell you.

Q. Did you find others there?

A. Other men? Yes.

Q. Can you give an idea of the number?

A. Twenty at least.

Q. You mean on an average there would be that number?

A. Yes.

Q. What were they doing there?

A. Gambling.

The Court—What were they doing?

A. Buying chips for money to gamble on the table with.

Q. What do you mean "gamble on the table"?

A. Shooting crap.

Q. What did they actually do?

A. They laid their money on the table and bought chips to gamble with.

Mr. Simpson—Ask to have that stricken out.

The Court—Refuse to strike it out.

Mr. Jayne—What do you mean by that?

A. There are two dice in the game and as it goes around the table one after another throws them out for money, whatever he wants to play.

Q. What else did you see there?

A. I have seen slot machines in these rooms.

Q. Do you see such machines here?

A. Right in front of me.

Q. You said you knew the defendant, Joseph J. Fero—have you seen him there?

A. I have.

Q. Seen him there since last November?

(Answer stricken out by consent of Prosecutor.)

The Court—Confine your testimony to what occurred after November first.

Mr. Jayne—Did you see the defendant Fero at 420 Fourth Street in the part of the premises in which these games were taking place since November?

A. No, not that I remember.

Q. Can you relate any circumstances that you either heard or saw with respect to any control that the defendant Fero had over the premises 420 Fourth Street?

Mr. Simpson—I object. That is an informing question. I object to that as a leading question of an informing nature.

The Court—Objection sustained.

Mr. Jayne—Have you ever had any transactions with the defendant concerning any gambling at 420 Fourth Street?

Mr. Simpson—I object to that unless the question specifies time.

The Court—That is proper, that the time be limited. In all your answers limit the time to since the first of November.

A. No.

Cross-examination, by Mr. Simpson.

Q. Where do you live?

A. Lakewood.

Q. How long have you lived there?

A. A year and a half.

Q. Where did you live before?

A. Jersey City.

Q. How long?

A. All my life.

Q. Where's the last place you lived in Jersey City?

A. 49 Armstrong Avenue, between Ocean Avenue and Jackson.

Q. Is it an apartment house?

A. A four-family house.

Q. Which floor did you live on?

A. Top floor.

Q. With your family or alone?

A. With my father and sister.

Q. What was your business?

A. Iron worker in the ship yards in Kearny.

Q. Where did you work before you worked there?

A. Rider Coal Co.

Q. What's your name?

A. Fred Keppler.

Q. Do you live with anybody in Lakewood?

A. No.

Q. Where did you go to work when you came to Lakewood?

A. Naval Air Station.

Q. Working there now?

A. No.

Q. Fired?

A. No.

Q. When did you leave there?

A. Last December.

Q. Where did you to work then?

A. Wallace Brothers.

Q. What did you do?

A. Automobile mechanic.

Q. Where did you learn to be an automobile mechanic?

A. Wallace Brothers.

Q. You learned it since December?

A. December 30, 1924.

Q. Since then you became a thoroughly equipped automobile mechanic with a passion for crap shooting? Which do you do most—make your living by shooting crap or repairing automobiles?

A. Repairing automobiles.

Q. You learned crap shooting before you came to Lakewood?

A. No.

Q. You spoke of going to this place, all this stuff about a pool room and pool table, who was the first person you told you had been to this place so that you could appear to-day as a witness?

A. I don't remember.

Q. Did you tell the sheriff or the prosecutor what you knew about crap shooting?

A. No.

Q. How did you get here this morning? How did they know unless you told them?

A. They seen me up there.

Q. You were in the crowd arrested?

A. No, other fellows.

Q. And they told the sheriff?

A. I could not say.

Q. And you got a subpœna?

A. Yes.

Q. Describe this room.

A. Small ordinary room.

Q. Such as you find in any private house?

A. There was a pool table about 9x15.

Q. Any chairs?

A. No, the men stood up around the table.

Q. You say you have been there how many times?

A. Close on to a million.

Q. That's about as exact as anything else you have testified to.

A. Well, a good many times.

Q. You are under oath, and you swear that you had been there a million times. That wasn't true. Why didn't you regard your oath?

A. I meant to impress upon them that I had been there many times.

Q. Did you come to work for the Naval Air Station when you came to Lakewood?

A. I was not working.

Q. How long were you out of work?

A. Two or three weeks.

Q. Then where did you go?

A. Naval Air Station.

Q. Who got you a job?

A. I got it myself.

Q. Ever been convicted of crime?

A. No.

Q. You know you are testifying about 420 Fourth Street. When your attention was directed to dates do you mean to say that this crap shooting at this place was before last November?

A. No, after.

Q. You didn't shoot crap at any other place since the first of November?

A. No, it was at 420 Fourth Street.

Q. You are sure?

A. I am positive.

William T. Mather, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. 328 Laurel Avenue, Lakewood.

Q. You are in business in Lakewood?

A. Yes, gents' furnishing.

Q. You have lived in Lakewood some time?

A. Approximately six years.

Q. You are acquainted with the defendant, Joseph Fero?

A. Unfortunately.

Q. How long have you been acquainted with him?

A. Possibly four years.

Q. Under what circumstances did you become acquainted with him?

A. I was handed a card.

Mr. Simpson—I object, unless the defendant handed him a card.

The Court—What did you do?

A. I went to 115 Clifton Avenue, to a gambling establishment—

Mr. Simpson—I object.

The Court—Objection sustained.

A. That's where I met him.

Mr. Jayne—Where did you meet him?

A. 115 Clifton Avenue.

Q. Were others present?

A. Yes, sir.

Q. Many?

A. The usual twenty or twenty-five, I imagine.

Mr. Simpson—I object to anything that occurred in some other place.

The Court—Objection sustained.

Mr. Jayne—Did you meet him after that?

The Court—The indictment charges an offense which occurred on or after November first, 1924, at 420 Fourth Street. Any other testimony may not be competent.

Mr. Jayne—Do you know the location of 420 Fourth Street?

A. I do.

Q. Have you visited that place since November, 1924?

A. I have.

Q. When?

A. The latter part of February.

Q. Go in the building?

A. I did.

Q. What did you see?

A. Conditions the same as for practically two years.

Mr. Simpson—I object and ask to have it stricken out.

Mr. Jayne—What did you see?

A. I entered a door, saw a flight of stairs, ascended the flight of stairs, turned to my right, proceeded down a hall about twenty-five feet, turned to my right again and entered a room wherein are installed three 'phones on three tables. Just to the right of that room is another room, with, I believe, one other 'phone in it. On the tables you will find bookmaking and racing charts.

Mr. Simpson—I object.

The Court—Objection sustained.

Mr. Jayne—Referring to *S 9* and *10, Exhibits 71-18-19* in this case, are these papers what you call "racing charts"?

A. They are; yes, sir.

Q. When you say you saw on an occasion papers there, you are referring to these papers or papers of a similar sort?

A. Yes, sir.

Q. What else did you see?

A. Then I turn to what I know to be the repair room for machines—slot machines, machines that you put in nickels, or dimes, or quarters with the hope of getting back more. I would call the machine one of chance.

Mr. Simpson—I object to this lecture.

Mr. Jayne—Referring to that machine marked *Exhibit S 1?*

A. That is correct. Several of those there.

Q. What else?

A. Spare parts, tools, a safe, with "J. J. Fero" or "Joseph J. Fero" printed on the face and which according to the general routine of the place held two watches of mine.

Mr. Simpson—I object to that statement.

A. I know that two watches of mine were put in that safe in exchange for ten and twenty-five dollars, respectively, and they have never been returned to me.

Mr. Simpson—I object.

The Court—Is that since the first of November?

A. No, sir.

Mr. Jayne—What else did you see?

A. That's about all of the gambling paraphernalia I remember seeing.

Q. Did you see chips or cards?

A. I do not recall.

Q. A number of people there?

A. Quite a number.

Q. Ever had any conversation with the defendant since that occasion?

A. I have.

Q. When?

A. On Wednesday morning at his house on Central Avenue; last Tuesday or Wednesday. I desired to redeem my watches. I had been informed—

Mr. Simpson—I object to his information.

The Court—You cannot tell us what you had been informed unless the defendant informed you.

A. The defendant was at his home on Central Avenue; I approached him and told him I desired to redeem my watches, that I had been sent there by Chubby Megill. Mr. Fero was a trifle provoked. He said Megill knew better than to tell me that, that he didn't have charge of that part of the business, but that he would see, and if my watches had not been destroyed he would see what he could do. Inasmuch as he was the one that authorized the ten-dollar loan on the watch when they would only let me have five I thought he probably could do something. Mr. Fero said he would endeavor to get my watches for me.

Cross-examination, by Mr. Simpson.

Q. The watches you are now testifying about you gave up about three years ago?

A. I was testifying about a conversation on Wednesday.

Q. You parted with them a long time ago?

A. About a year and a half.

Q. Yet the conversation that you are testifying to over watches that you lost a year and a half ago took place last Wednesday. You knew this case was on for trial and you went there to get some admission from this man as to his connection with 420 Fourth Street?

A. No.

Q. Didn't you say to him that Chubby Megill told you he was the boss at 420? You were hoping he would say "yes."

A. It was immaterial to me what he said.

Q. Why did you develop such a sudden desire to have your watches?

A. I wanted to bring them here as evidence.

Q. You could get them with a subpœna.

A. I lacked that legal knowledge.

Q. How long have you lived in Lakewood?

A. Six years.

Q. Where did you live prior to that?

A. U. S. Navy.

Q. Are you a native of New Jersey?

A. No.

Q. What State are you a native of?

A. Connecticut.

Q. Are you still connected with the navy?

A. No.

Q. Is it a fact that you were court martialed and dismissed from the Navy?

A. No.

Q. You left voluntarily?

A. No. I was not court martialed and discharged. I preferred charges against officers who were violating Navy regulations; I attempted to correct these violations,

and during the procedure one of the officers guilty of these violations preferred a charge of insubordination against me. A court of inquiry was held into the charges I made against the officers. The charge of insubordination was sustained by the Navy Department and I was dismissed for insubordination to an officer.

Q. You hold a pretty exalted office in the Klan?

A. I have that honor?

Q. You have that honor! And you are pretty much interested in this case?

A. I am interested in upholding the right.

Q. This time you went there in February—was that the time of the raid?

A. Yes.

Q. Did you go with the sheriff?

A. Yes.

Q. You saw what the sheriff testified to?

A. The sheriff forgot to note that the phones rang continually while we were there, and finally we removed the receivers. They were very annoying and made a loud buzz.

Q. How long were you there?

A. Twenty minutes or half an hour.

Q. You were not there the second time—in April?

A. No.

Q. February is the only time you were there since November first?

A. Yes, sir.

John L. Burdge, sworn.

Direct examination, by Mr. Jayne.

Q. Where do you live?

A. River Avenue, Lakewood.

Q. You have lived in Lakewood a great many years?

A. Sixteen years, with the exception of the time I was on the road for the Western Union. I was traveling manager.

Q. What has been your business?

A. From the time I was eleven till the time I was twenty-four I was employed by the Western Union.

Q. Are you a telegrapher?

A. Yes.

Q. Were you located at Lakewood at any time?

Mr. Simpson—I object. The thing is whether he knows what happened in this place since the first of November.

Mr. Jayne—What is your present employment?

A. I am employed as chief clerk in the Sheriff's office and also as a newspaper man.

Q. How long have you been in the Sheriff's office?

A. Since November of last year.

Q. Do you know 420 Fourth Street, Lakewood, N. J.?

A. Yes.

Q. Do you know the defendant in this case?

A. Yes, sir.

Q. Had any experience in placing bets on the horse races?

A. Yes. From the time I was fourteen until the time I was married, which was four years ago.

Q. It was testified to here yesterday that you placed some bets there since November.

A. Well, that was in order to—

Mr. Simpson—I object; it is immaterial what his motives were.

A. Yes, in January and February of this year.

Mr. Jayne—And with whom were these bets made?

Mr. Simpson—I object, unless he did it himself.

A. I gave the money to my brother.

Mr. Simpson—I object to that.

Mr. Jayne—Your brother is Edward Burdge, who testified here yesterday?

A. He is.

Q. Have you had any experience with such papers as *S 8, 9, 17, 18,* and *19*?

A. Yes, sir.

Q. What are those?

A. Those are commonly known as racing charts.

Q. Can you explain for the edification of the jury what this printing on here represents?

Mr. Simpson—I would like to have a chance to examine him as to his expert knowledge.

Q. Where did you get your experience with racing?

A. At Long Branch, Asbury Park—

Q. Were you a telegraph operator at Long Branch pool room?

A. No.

Q. Ever a telegraph operator in a pool room?

A. Yes.

Q. Did you transfer racing bets as an operator?

A. A considerable number of times.

Q. And your knowledge is based upon your experience in pool rooms?

A. Yes, sir, in numerous places.

Q. In Jersey City?

A. Never.

Q. Did you study these charts?

A. I have, much to my sorrow.

Mr. Jayne—Explain to the jury. On the top of *Exhibit S10* is the word "Miami."

A. That means Miami track, and 27 means, apparently, the 27th of February, on which the place was raided. It is a date, and I checked it with racing sheets in the paper. That designates a date, the 27th of some month. Here's a column marked five and one-half furlongs, first race, Miami track,—that's the distance, five and one-half furlongs,—then there's a list of names and numbers.

Q. What are those?

A. That is the horse's name, "Corto."

Q. There's a figure after that.

A. That's the weight of the jockey and the weight the horses carry. And the same is true of each of these columns.

Q. What do these numbers designate?

A. They are for the purpose of working over the telephone; you call a number instead of the horse's name. You would call up a New York establishment, and he would tell you a number, not the horse's name.

Q. What do these columns represent?

A. Different races.

Q. I notice on this particular sheet it has been marked off on the side in pencil,—15–6–30,—what do those figures mean?

A. The figure on the outside is the price on the horse just prior to race time. Number one in this list would be quoted at 15 to 1.

Q. What does that mean?

A. For betting purposes that's the odds.

Q. And these figures have relation to the odds of betting on the respective horses?

A. They have.

Q. What you have said concerning this *Exhibit S 10* applies equally to *S 18* and *19*?

A. Yes. In *Exhibit S 9* they have not got the track price,—that is the price just prior to the time of the race,—they have the early price. The price fluctuates throughout the day up to race time.

Q. Looking at *Exhibit S 9*,—that says "Havana."

A. That means Havana track.

Q. I notice the lines are drawn through some names.

A. The horse has been entered by his owner and withdrawn from the race.

Q. Here I notice a rig is drawn, in pencil, around this name in the first column.

A. Winner.

Q. And number two is here.

A. Place. He ran second.

Q. And number three is marked.

A. He ran third, which is commonly known as show.

Cross-examination, by Mr. Simpson.

Q. I show you a copy of this morning's "World,"—is that a racing chart?

A. Yes. It gives the finish of the races; that race was held yesterday.

Q. Do they publish in the morning what is going to be the next day?

A. Yes, in the "Telegraph" but not in the "World."

Q. Edward Burdge, who testified here, is your younger brother?

A. Yes.

Q. When Edward Burdge was on the stand, at the time I asked him a question, did you put two fingers up so that he should take a look at you with two fingers up and answer "twice"?

A. No.

Q. You just liked those two fingers better than the other two?

A. I was just sitting on the arm of the chair, like that. (Illustrating.)

DEFENDANT'S CASE.

Mr. Simpson—I ask for direction of verdict on the ground that there has been no proof of control by the defendant of this place. There is no proof of the control which is spoken of by the Court of Errors and Appeals. 60 *Law, page* 307; 87 *Law, State* v. *Harrington.*

The Court—At the time of the adjournment there was a motion pending for direction of verdict. That motion will be refused.

Mr. Simpson—I ask for an exception.

The Court—It is granted.

Joseph J. Fero, sworn.

By Mr. Simpson.

Q. Where do you live?

A. 9 Central Avenue, Lakewood, N. J.

Q. You are charged in the indictment with being in control between November first and April twenty-first of these premises.

A. I was not.

Q. Did you pay any of these bills which are put in here for electric light or water?

A. Not a dollar.

Q. Did you pay any telephone bills?

A. No.

Q. Did you pay any rent?

A. No.

Q. Did you have any connection with 420 Fourth Street?

A. I had nothing to do with it.

Q. Did you derive any profit from it?

A. No.

Q. There has been testimony here in regard to a safe. Did you own such a safe on that date?

A. No; previously.

Q. Was it your property?

A. Not at that time.

Q. At any time from the raid up to the first of November?

A. No, sir.

Q. Did you have any financial interest in 420 Fourth Street?

A. No, sir.

Q. You were in court when this boy testified about going to the premises?

A. Yes.

Q. Were you here when I asked him how many times he bet in the place?

A. Yes, sir.

Q. What did his brother do when I asked him on the stand how many times?

A. He went like this (indicating raising two fingers to the face). You said, "How many times did you bet for your brother" and he put up two fingers.

Q. Did you at any time on the date mentioned, run this house, have any control of these machines, chips, cards, or racing charts?

A. I had nothing to do with those, whatever.

Cross-examination, by Mr. Jayne.

Q. You know the premises at 420 Fourth Street?

A. I sure do.

Q. What sort of place is that?

Mr. Simpson—I object.

Mr. Jayne—You have been in the premises since November?

A. Yes, but I was not interested in it. I was there possibly two or three times; went in and said "hello" to the boys and walked right out.

Q. Between November and April you were there two or three times?

A. Possibly more.

Q. How many and who were there?

A. I cannot recollect.

Q. Why did you go there?

A. Because I knew everybody there. There is no harm in going in there.

Q. Why would you go there three or four times?

A. Show me what harm is in it.

Q. No, I don't want to show you—why did you go?

A. No particular reason.

Q. Did you see Mr. Megill there?

A. Yes.

Q. How long have you known him?

A. Six years.

Q. Did you see him there on every occasion when you went there last winter?

A. I am not positive.

Q. You say this safe formerly belonged to you—to whom did you dispose of it?

A. Yes—to Lester Megill.

Q. Did you get money for it?

A. Not yet.

Q. Did you keep your property in it during last winter?

A. No.

Q. Have you had any relations with Megill with respect to his conduct of the place known as 420 Fourth Street since last November? In other words have you had any connection with him with respect to his conduct of 420 this last winter?

A. No, sir.

Q. Have you employed him at different times?

A. Yes, up to a year and a half ago—over a year ago. When I went down shore I did.

Q. So that he was not in your employ during the past winter?

A. No.

Q. Do you know who was conducting the premises at 420 during the past winter?

A. I guess Lester Megill was running it.

Q. So far as you observed he was the proprietor.

A. To the best of my knowledge.

Q. Do you know who paid the telephone and water bills?

A. Lester Megill.

Q. How do you know?

A. My counsellor has checks for it.

Q. How do you happen to have them?

A. I made up my mind when I got into this I would find out all about it. He has checks for Rube McKelvey, the landlord, and the water and gas.

Q. You knew the water and gas service was in your name?

A. Yes.

Q. Why didn't you have it changed?

A. Well when you own property in Lakewood you don't have to put up a deposit. I have another house that I rent and the telephone and electric light bills come to me and I give them to my daughter and she takes them over there. The company wants a hundred dollars deposit or else you cannot install a telephone.

Q. What explanation have you about there bills at 420?

A. They come there in my name, but Lester Megill pays them.

Q. Did you know that they were charged to you?

A. Yes. But Lester takes care of them.

Q. Did you know what the business was that was being transacted there?

A. It was none of my business.

Q. Did you ever see any gambling going on when you visited 420 Fourth Street during the past winter?

A. There never was, whether I was there or anybody else.

Q. How do you know?

A. I know there was not. I know everybody in Lakewood; they would naturally tell me. One fellow got on the stand and said he shot crap a million times; if he lived in Lakewood thirty years he could not do that.

Q. These exhibits here are racing sheets?

A. I never ordered or paid for those.

Q. I notice on top of these sheets marked *Exhibit S 9* and *S 10* for example, the name of a firm: Waldron, Price, Inc., 803 Sixth Avenue, New York. Did you ever do any business with that company?

A. Not within a year and a half.

Q. I just want to inquire upon that subject, if you will examine this and tell me whether or not this is your checkbook?

A. I never wrote one of those in my life.

Q. Is that your checkbook?

A. I know I never wrote any of these.

Q. Did this contain checks on your account or somebody elses?

A. It cannot be my checkbook.

Mr. Simpson—What is the date?

A. June, 1924.

Mr. Jayne—You never paid for these slips marked *S 9 and S 10* during the period from November to April?

A. I never saw these till I got here.

Q. How do you account for the box marked *S 4* being dispatched to you at 420 Fourth Street?

Mr. Simpson—That box has not been identified as being received in the premises between the first of November and to-day. I object to that question because there is not any proof as to when the box came there.

The Court—I will allow the question.

Mr. Jayne—What explanation have you of that?

A. I have none.

Q. Did you order the contents of that box?

A. I do not know anything about it.

Q. Did you order some parts for slot machines, directing that they be delivered to you at 420 Fourth Street—since November last?

A. No, sir.

Q. Did you ever see this box before you saw it as an exhibit in court?

A. No.

Q. Did you have slot machines stored there?

A. No, sir.

Q. They were not yours?

A. No; not that I know of.

Q. How about those cards?

A. If I buy a deck of cards I do not put my name on it.

Q. Who opened these accounts with the water company, gas company and electric light company?

A. I did.

Q. Was Lester Megill employed by you at that time?

A. Yes.

Q. Who paid them at that time?

A. I did.

Q. Who leased the house originally?

A. I did.

Q. And it has been occupied by you continuously up to the present time—by you and Megill?

A. I know I have not used it in over a year.

Q. Megill was with you up to the time you say he took charge of it, and he has been there continuously?

A. Yes.

Q. Any change in the lease?

A. I have not paid rent in the last year.

Q. When was any change made?

A. I could not answer.

Q. In what capacity did you employ Megill?

Mr. Simpson—I object unless the time is fixed. It is not competent or material.

The Court—I think it is proper to test his credibility.

Mr. Simpson—Ask for an exception.

The Court—Granted. Objection overruled.

Mr. Jayne—At the time you employed Megill did you employ him to have charge of 420 Fourth Street?

A. He worked for me there.

Re-direct examination, by Mr. Simpson.

Q. You stopped any connection you had with the place over eighteen months ago?

A. Yes, sir.

Q. And you have since that time had nothing to do with it?

A. No, sir.

Mr. Simpson—I want to offer in evidence an indictment against Megill.

(Indictment received and marked *D 2.*)

I also want to offer my copy of the "World" containing a racing chart.

(Newspaper received and marked *D 1.*)

Mr. Simpson—I renew my motion on the ground that the unexplained position of these bills made a presumption, and that presumption has now been destroyed by the denial of the defendant.

The Court—I will deny your motion.
Mr. Simpson—Ask for an exception.
The Court—Granted.

CHARGE OF THE COURT.

Members of the Jury:

The case at bar which you are called upon to determine to-day is the case of State of New Jersey *v.* Joseph Fero. The trial is on an indictment containing five counts. The first count charges the defendant with maintaining of what is known in law as a disorderly house, at the premises known as 420 Fourth Street, Lakewood, New Jersey, on the first day of November, 1924, and divers other days and times between that date and April 21st of this year.

The indictment itself acquaints you, perhaps, with the elements therein as well as any other way it could be stated by the Court. The indictment states that the defendant "unlawfully did keep and maintain a certain common, ill-governed and disorderly house, to wit, situate on the southerly side of Fourth Street, between Madison and Forest Avenues, in the Township of Lakewood aforesaid, County and State aforesaid, and in the said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of disorderly conversation, then and on the said other days and times there unlawfully and wilfully did cause and procure to frequent and come together, and the said men and women, in the said house of him, the said Joseph Fero, at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, fighting, quarreling, making a noise, cursing, swearing, gambling, gaming, whoring and misbehaving themselves, unlawfully and wilfully did permit and yet does permit to the great damage and common nuisance of all the citizens of the State of New Jersey." That is what is known, in ordinary language, as charging the defendant with maintain-

ing a disorderly house, which is a crime at common law in the State of New Jersey. The State has not attempted to prove any of these elements except that of gambling and gaming and the fact that persons congregated there frequently in some numbers.

To find the defendant guilty on this count it would be your duty to find that it was a common practice of the defendant to conduct, manage, operate or permit unlawful acts to be habitually done at his place. For instance, if one unlawful act was done at that place, there would probably be a remedy for it, but it would not be met by charging the defendant with maintaining a disorderly house. One of the essential elements necessary for the State to prove is that the practice was habitual, not once or twice—yet once or twice in connection with other circumstances might be sufficient. Three, or four, or more times, some unlawful offense occurred at that place, and was permitted by the defendant to be done there, he being in charge and having the authority to stop it if he desired, or he being in charge and inviting the thing to be done—if that were all proved to you, to your satisfaction, beyond a reasonable doubt, then in that case it would be your duty to convict the defendant by your verdict of guilty.

In the particular case here to-day I believe I will be safe in saying that the defense has made no serious effort to deny that the offenses, habitually recurring, necessary to constitute a disorderly house in these premises, did in fact occur, as shown by the witnesses produced before you in this case. It is denied, however, that the defendant was the owner, in control, managing and directing or permitting, or that he aided or assisted in conducting this place, or was associated with the person doing it. That is, of course, an essential element in the case. It is just as necessary to find the defendant controlled, managed, conducted, or permitted, having the power to prevent if he so desired—it is just as necessary that you find that element of the case; it is just as necessary that you find that the State has established

these facts as it is to find that disorders actually occurred there. By disorders I mean habitually conducted illegal acts.

My recollection of the case, which I always advise, and do now advise, is not to be taken as absolutely true—It is your recollection of the evidence which you must rely upon in arriving at a verdict, and not mine—my recollection is that one witness stated he saw the defendant on the porch of these premises upon one occasion. The defendant himself has stated he was there a number of times. He did not admit that he had anything to do with the management, in fact, he denied having anything to do with the management, conduct, or control of the premises during the time alleged in the indictment.

In addition to this testimony of these witnesses whom I have just mentioned, there has been offered in evidence here a record of the Lakewood Water Company, or whatever it may be named, which serves water, gas and sewers to the premises 420 Fourth Street, and they have offered in evidence a record of to whom that service was made during the period covered by the indictment. I think the young lady who testified has produced records as they have been handed to her from others, stating that she had no personal knowledge of who established the services, not who, in fact, paid the money for the services. The defendant upon the stand denies that he ever paid any of these bills which have been offered in evidence and to which I have just referred.

In addition to these elements of the evidence a safe was found in the premises on which the name of J. J. Fero, or Joseph J. Fero, was written. The defendant has gone on the stand and stated that though the safe once belonged to him, he had sold it to one Megill some time prior to the finding of this indictment. There were some other papers, letters, and bills found in the premises, all of which have been offered in evidence and are before you for your consideration.

It is necessary to prove, and it is an element in the case that the defendant actually conducted the place or was associated with those conducting it, and you must find that beyond a reasonable doubt from the evidence offered here in this case. The State has asserted and has endeavored to prove that the defendant was in charge of this place and had the authority to stop these unlawful acts if he so desired; the State must establish that beyond a reasonable doubt, and if you have a doubt arising from any of the testimony that has been offered or from the absence of any testimony, it would be your duty to resolve such doubt in favor of the defendant and acquit him.

The second count of the indictment is founded on the statute, section sixty-five of the Crimes Act of this State, wherein it is charged that any person that shall habitually or otherwise keep a place to which persons may resort for engaging in the practice of what is commonly known as making a pool or book upon "the running, pacing and trotting," either within or without this State, "of certain horses, mares and geldings, 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 same."

There has been evidence from a number of witnesses that they visited these premises, 420 Fourth Street, Lakewood, New Jersey, for the purpose of placing bets or making wagers on the events of horse races. There have been slips offered in evidence here, known as racing sheets. They have been explained. You may take those and examine them, they are before you as legal evidence for the purpose of considering this second count or other parts of the case to which they may properly refer. But I have no recollection, and you are the sole judges of the facts, of any of these witnesses testifying that they had any recollection that the defendant had been there on these occasions. I think they all testified they did their business with some other person or persons. That's a question of fact for the jury. The ele-

ments would be, was this place maintained there for the purpose of making wagers, books, and so forth on the horse races. If you find that is a fact beyond a reasonable doubt, if you find this place was kept and maintained by the defendant, and these bets permitted to be made by him, it would be your duty to convict the defendant on the second count. If from the absence of evidence or any other reason in the evidence offered you are not satisfied beyond a reasonable doubt that the defendant maintained, had, or was the person actually conducting this business, then it would be your duty to acquit as to the second count.

The evidence as to whether or not the defendant was or was not the person in charge of the place I have reviewed, and will not mention again. That will apply to both counts in the indictment.

As to the third count in the indictment, "did unlawfully and habitually make what is commonly known as a book, upon the running, pacing and trotting, without this State, of certain horses, mares and geldings"—I have learned all I know about the making of books from the testimony in this particular case, and I am afraid I cannot assist the jury to any appreciable extent, because you have the same evidence before you. Papers and records have been offered in evidence and explained. If it consists in having sheets and papers such as have been offered here, if that is what is commonly known as bookmaking, if you again find that this defendant was the owner, conducting this business, if you find this beyond a reasonable doubt, then it would be your duty to convict on the third count. If you have a reasonable doubt it will be your duty to acquit.

The fourth count charges the defendant "did unlawfully take what is commonly known as a book, upon the running, pacing and trotting, without this State, of certain horses, mares and geldings," and so forth, and seems to distinguish between the making and taking of a book. The taking or making of what is commonly known as a book are both described in the statute, and

it is made a misdemeanor for anyone to do that in this State.

The fifth count in the indictment charges the defendant, on the same dates and in the same place, "did unlawfully conduct the practice commonly known as bookmaking, contrary to the form of the statute." The same evidence to which I have referred would apply to this count, and the same essentials would be necessary before you would be justified in finding the defendant guilty. Now, I have covered the five counts in the indictment. It is your duty to consider each of these counts separately. A general verdict of guilty would be tantamount to finding defendant guilty on all five counts of the indictment. If you find the defendant as a matter of fact to be guilty of some of the counts in the indictment and not guilty of others you should so specify in your verdict.

I have some requests to charge, from defendant's counsel. The first is that the telephone bills cannot be used to prove the connection of the defendant. There was some evidence attempted to be offered here to prove that the defendant had made a contract with the telephone company to connect these premises; that testimony was not permitted to go in and should not be considered by you. In addition to that there were some telephone bills found in the premises by the sheriff upon the occasion of the raid. They have been marked in evidence and you may consider those bills for the purpose of showing the connection of the defendant with these premises. That might be entirely innocent. They might be in his name and he not have charge of the premises, and even if he did have charge of the premises, it would not be established that he had authority over habitual unlawful acts there perpetrated. It is for you to consider, from the evidence offered here, whether or not he was the owner, or was managing, conducting, and operating this place or permitting it to be done.

The defendant at bar in this case, as in all other cases, is presumed to be innocent. The burden of proof

is cast by the law upon the State to prove each and all of the essential elements of the particular crime charged against him by evidence which clearly establishes his guilt beyond a reasonable doubt. This burden rests upon the State throughout the entire case and is never shifted. You should not find the defendant guilty until you are convinced of his guilt beyond a reasonable doubt.

Our law aims to be just and humane, and whenever a person charged with crime is upon trial, it interposes a shield by presuming innocence until guilt is established beyond a reasonable doubt. This shield continually remains with and protects the accused throughout the entire case and is not penetrated, removed or destroyed until each and every essential element of the particular crime charged against him is established beyond a reasonable doubt.

"Reasonable doubt" is a term often used probably pretty well understood, but not easily defined. Reasonable doubt is not a mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully and entirely compared and considered all the evidence in the case, your mind is left in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, then you have what the law calls a reasonable doubt, and it is your duty to give the benefit of such doubt to the defendant and acquit him. But you are not bound to give, nor should you give, to him the benefit of anything except such a reasonable doubt.

I might say, in conclusion, and because of certain statements that have been made, that this defendant is before you in exactly the same position that any other defendant would be before you. He is presumed to be innocent, and that presumption remains with him until the conclusion of the case and you have said by your

verdict otherwise. There should be no prejudice. It is your sworn duty, and I have no doubt you will do it, to consider this defendant in the same light you would any other person who came before you. If you find that the state has established his guilt beyond a reasonable doubt, it is your duty to say so. If you find that the State has failed to establish any essential elements on any count, or all counts, you should likewise fearlessly state that by finding the defendant not guilty.

Senator Simpson—I ask for a general exception to the charge of the Court.

The Court—It is granted.

The Court—I understand the jury has asked for instructions.

Juryman—May we ask if you have any papers, or if you can tell us when the property was conveyed to Mr. Megill from the defendant? Is there any evidence as to that?

The Court—The only source of that information would be from the testimony of the defendant. My recollection is that the defendant himself testified that a period of about eighteen months or more than a year ago he turned the place over to Megill. Will the stenographer please read the defendant's testimony?

(Testimony of J. J. Fero read by stenographer.)

Juryman—Do you have any papers that the property was conveyed or assigned from the defendant to Mr. Megill.

The Court—I think the only testimony regarding a lease was to the effect that the defendant had not paid rent in the past year.

Verdict—Guilty as charged in the indictment.

STATE OF NEW JERSEY, }
COUNTY OF OCEAN. }

Mary Elverson, being duly sworn according to law, upon her oath deposes and says:

I am the official stenographer who took the testimony in the case of State *v.* Joseph Fero et al., before Hon. Harry Newman and a jury, on the 9th day of July, 1925; that I transcribed same and the aforegoing is a complete and correct transcript of the testimony and proceedings in said cause.

MARY ELVERSON.

Sworn and subscribed to before me, this 5th day of September, 1925.

ELSIE M. FABY,
Notary Public of N. J.

[SEAL.]

My commission expires May 25, 1930.

OCEAN COUNTY QUARTER SESSIONS.

THE STATE,
Defendant in Error,
vs.
JOSEPH J. FERO,
Plaintiff in Error.

On Indictment (Disorderly House).
Certificate of Judge.

I, Harry E. Newman, Judge of the Court of Quarter Session, in and for the County of Ocean, before whom the above entitled indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the foregoing indictment of the above stated case.

HARRY E. NEWMAN,
Judge.

NEW JERSEY SUPREME COURT.

THE STATE,
Defendant in Error,
vs.
JOSEPH J. FERO,
Plaintiff in Error.
} On Writ of Error (Disorderly House).

ASSIGNMENTS OF ERROR.

(*Filed September* 30, 1925.)

And now comes the said Joseph J. Fero, by Alex. Simpson, Esq., his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following causes:

1. Because the trial court, over the objection of the defendant, admitted a certain box marked S-4. (S. C., p. 13.)

2. Because the trial court, over the objection of the defendant, admitted a certain box marked S-5. (S. C., p. 13.)

3. Because the trial court, over the objection of the defendant, admitted a certain telephone bill marked S-12. (S. C., p. 16.)

4. Because the trial court, over the objection of the defendant, admitted certain racing tickets. (S. C., p. 18.)

5. Because the trial court, over the objection of the defendant, admitted certain gas, water and sewer bills. (S. C., p. 16.)

6. Because the trial court, over the objection of the defendant, admitted a letter from Callie Bros., regarding Victory vending and slot machines. (S. C., p. 17.)

7. Because the trial court, over the objection of the defendant, admitted certain racing sheets, marked S-17, S-18 and S-19. (S. C., p. 18.)

8. Because the trial court, over the objection of the defendant, admitted certain slip marked S-20. (S. C., p. 18.)

9. Because the trial court, over the objection of the defendant, admitted a certain telephone bill marked S-21. (S. C., p. 19.)

10. Because the trial court, over the objection of the defendant, admitted a certain envelope marked S-22. (S. C., p. 19.)

11. Because the trial court, refused to suppress the testimony of John A. G. Grant, of April 13th, in regard to papers. (S. C., p. 20.)

12. Because the trial court permitted Charlotte Searing, a witness for the State, to be asked the following question: "In whose name?" (S. C., p. 27.)

13. Because the trial court, over the objection of the defendant, admitted certain accounts marked S-23. (S. C., p. 29.)

14. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Then what did you do?" (S. C., p. 33.)

15. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Ever do anything more than look at the paper?" (S. C., p. 34.)

16. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "What was in the envelope?" (S. C., p. 34.)

17. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Did you know what the transaction was about?" (S. C., p. 36.)

18. Because the trial court permitted Edward Burdge, a witness for the State, to be asked the following question: "Know what they were doing?" (S. C., p. 39.)

19. Because the trial court permitted Fred Keppler, a witness for the State, to be asked the following question: "What did they actually do?" (S. C., p. 44.)

20. Because the trial court permitted John L. Burdge, a witness for the State, to be asked the following question: "And with whom were these bets made?" (S. C., p. 54.)

21. Because the trial court refused to direct a verdict on motion of counsel for defendant. (S. C., p. 57.)

22. Because the trial court allowed the defendant, Joseph J. Fero, to be asked the following question: "How do you account for the box marked S-4 being despatched to you at 420 Fourth Street?" (S. C., p. 62.)

23. Because the trial court allowed the defendant, Joseph J. Fero, to be asked the following question: "In what capacity did you employ Megill?" (S. C., p. 63.)

24. Because the trial court refused the motion to direct a verdict on the ground that the bills made a presumption and that presumption was destroyed by the denial of the defendant. (S. C., pp. 63-64.)

25. Because the trial court charged the jury as follows: "In addition to that there were some telephone bills found in the premises by the sheriff upon the occasion of the raid. They have been marked in evidence and you may consider those bills for the purpose of showing the connection of the defendant with these premises." (S. C., p. 69.)

26. Because the trial court charged the jury as follows: "In the particular case here to-day I believe I will be safe in saying that the defense has made no serious effort to deny that the offenses, habitually recurring, necessary to constitute a disorderly house in these premises, did in fact occur, as shown by the witnesses produced before you in this case." (S. C., p. 65.)

27. Because the trial court charged the jury as follows: "In addition to this testimony of these witnesses whom I have just mentioned, there has been offered in evidence here a record of the Lakewood Water Company, or whatever it may be named, which serves water, gas and sewers to the premises 420 Fourth Street, and they have offered in evidence a record of to whom that

service was made during the period covered by the indictment. I think the young lady who testified has produced records as they have been handed to her from others, stating that she had no personal knowledge of who established the services, not who, in fact, paid the money for the services. The defendant upon the stand denies that he ever paid any of these bills which have been offered in evidence and to which I have just referred." (S. C., p. 66.)

28. Because the trial court charged the jury as follows: "In addition to these elements of the evidence, a safe was found in the premises on which the name of J. J. Fero, or Joseph J. Fero, was written. The defendant has gone on the stand and stated that though the safe once belonged to him, he had sold it to one Megill some time prior to the finding of this indictment. There were some other papers, letters, and bills found in the premises, all of which have been offered in evidence and are before you for your consideration." (S. C., p. 66.)

29. Because the trial court charged the jury as follows: "There have been slips offered in evidence here, known as racing sheets. They have been explained. You may take those and examine them, they are before you as legal evidence for the purpose of considering this second count or other parts of the case to which they may properly refer." (S. C., p. 67.)

30. Because the trial court charged the jury as follows: "If you find that is a fact beyond a reasonable doubt, if you find this place was kept and maintained by the defendant, and these bets permitted to be made by him, it would be your duty to convict the defendant on the second count." (S. C., p. 68.)

31. Because the trial court charged the jury as follows: "I have learned all I know about the making of books from the testimony in this particular case, and I am afraid I cannot assist the jury to any appreciable extent, because you have the same evidence before you. Papers and records have been offered in evidence and

explained. If it consists in having sheets and papers such as have been offered here, if that is what is commonly known as bookmaking, if you again find that this defendant was the owner, conducting this business, if you find this beyond a reasonable doubt, then it would be your duty to convict on the third count." (S. C., p. 68.)

32. Because the trial court charged the jury as follows: "The fifth count in the indictment charges the defendant on the same dates and in the same place 'did unlawfully conduct the practice commonly known as book making, contrary to the form of the statute.' The same evidence to which I have referred would apply to this count." (S. C., p. 69.)

33. Because the trial court charged the jury as follows: " 'Reasonable doubt' is a term often used probably pretty well understood, but not easily defined. Reasonable doubt is not a mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully and entirely compared and considered all the evidence in the case, your mind is left in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, then you have what the law calls a reasonable doubt, and it is your duty to give the benefit of such doubt to the defendant and acquit him. But you are not bound to give, nor should you give, to him the benefit of anything except such a reasonable doubt." (S. C., p. 70.)

34. Because the verdict is against the weight of the evidence. The jury should have found defendant not guilty instead of guilty.

ALEX. SIMPSON,
Attorney for Plaintiff in Error.

Service of within Assignments of Error is hereby acknowledged as in time.

September 26, 1925.

WILFRED H. JAYNE, JR.,
Prosecutor of the Pleas for State.

NEW JERSEY SUPREME COURT.

THE STATE,
Defendant in Error,
vs.
JOSEPH J. FERO,
Plaintiff in Error.
On Writ of Error
(Disorderly House).

SPECIFICATION OF CAUSES FOR REVERSAL.

(*Filed September* 30, 1925.)

And now comes the said Joseph J. Fero, by Alex. Simpson, Esq., his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following reasons:

1. Because the trial court, over the objection of the defendant, admitted a certain box marked S-4. (S. C., p. 13.)

2. Because the trial court, over the objection of the defendant, admitted a certain box marked S-5. (S. C., p. 13.)

3. Because the trial court, over the objection of the defendant, admitted a certain telephone bill marked S-12. (S. C., p. 16.)

4. Because the trial court, over the objection of the defendant, admitted certain racing tickets. (S. C., p. 18.)

5. Because the trial court, over the objection of the defendant, admitted certain gas, water and sewer bills. (S. C., p. 16.)

6. Because the trial court, over the objection of the defendant, admitted a letter from Callie Bros., regarding Victory vending and slot machines. (S. C., p. 17.)

7. Because the trial court, over the objection of the defendant, admitted certain racing sheets, marked S-17, S-18 and S-19. (S. C., p. 18.)

8. Because the trial court, over the objection of the defendant, admitted certain slip marked S-20. (S. C., p. 18.)

9. Because the trial court, over the objection of the defendant, admitted a certain telephone bill marked S-21. (S. C., p. 19.)

10. Because the trial court, over the objection of the defendant, admitted a certain envelope marked S-22. (S. C., p. 19.)

11. Because the trial court, refused to suppress the testimony of John A. G. Grant, of April 13th, in regard to papers. (S. C., p. 20.)

12. Because the trial court permitted Charlotte Searing, a witness for the State, to be asked the following question: "In whose name?" (S. C., p. 27.)

13. Because the trial court, over the objection of the defendant, admitted certain accounts marked S-23. (S. C., p. 29.)

14. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Then what did you do?" (S. C., p. 33.)

15. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Ever do anything more than look at the paper?" (S. C., p. 34.)

16. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "What was in the envelope?" (S. C., p. 34.)

17. Because the trial court permitted James Jensen, a witness for the State, to be asked the following question: "Did you know what the transaction was about?" (S. C., p. 36.)

18. Because the trial court permitted Edward Burdge, a witness for the State, to be asked the following question: "Know what they were doing?" (S. C., p. 39.)

19. Because the trial court permitted Fred Keppler, a witness for the State, to be asked the following question: "What did they actually do?" (S. C., p. 44.)

20. Because the trial court permitted John L. Burdge, a witness for the State, to be asked the following question: "And with whom were these bets made?" (S. C., p. 54.)

21. Because the trial court refused to direct a verdict on motion of counsel for defendant. (S. C., p. 57.)

22. Because the trial court allowed the defendant, Joseph J. Fero, to be asked the following question: "How do you account for the box marked S-4 being despatched to you at 420 Fourth Street?" (S. C., p. 62.)

23. Because the trial court allowed the defendant, Joseph J. Fero, to be asked the following question: "In what capacity did you employ Megill?" (S. C., p. 63.)

24. Because the trial court refused the motion to direct a verdict on the ground that the bills made a presumption and that presumption was destroyed by the denial of the defendant. (S. C., pp. 63-64.)

25. Because the trial court charged the jury as follows: "In addition to that there were some telephone bills found in the premises by the sheriff upon the occasion of the raid. They have been marked in evidence and you may consider those bills for the purpose of showing the connection of the defendant with these premises." (S. C., p. 69.)

26. Because the trial court charged the jury as follows: "In the particular case here to-day I believe I will be safe in saying that the defense has made no serious effort to deny that the offenses, habitually recurring, necessary to constitute a disorderly house in these premises, did in fact occur, as shown by the witnesses produced before you in this case." (S. C., p. 65.)

27. Because the trial court charged the jury as follows: "In addition to this testimony of these witnesses whom I have just mentioned, there has been offered in evidence here a record of the Lakewood Water Company, or whatever it may be named, which serves water, gas and sewers to the premises 420 Fourth Street, and they have offered in evidence a record of to whom that service was made during the period covered by the indictment. I think the young lady who testified has produced records as they have been handed to her from others, stating that she had no personal knowledge of who established the services, not who, in fact, paid the money for the services. The defendant upon the stand denies that he ever paid any of these bills which have been offered in evidence and to which I have just referred." (S. C., p. 66.)

28. Because the trial court charged the jury as follows: "In addition to these elements of the evidence, a safe was found in the premises on which the name of J. J. Fero, or Joseph J. Fero, was written. The defendant has gone on the stand and stated that though the safe once belonged to him, he had sold it to one Megill some time prior to the finding of this indictment. There were some other papers, letters, and bills found in the premises, all of which have been offered in evidence and are before you for your consideration." (S. C., p. 66.)

29. Because the trial court charged the jury as follows: "There have been slips offered in evidence here, known as racing sheets. They have been explained. You may take those and examine them, they are before you as legal evidence for the purpose of considering this second count or other parts of the case to which they may properly refer." (S. C., p. 67.)

30. Because the trial court charged the jury as follows: "If you find that is a fact beyond a reasonable doubt, if you find this place was kept and maintained by the defendant, and these bets permitted to be made by

him, it would be your duty to convict the defendant on the second count." (S. C., p. 68.)

31. Because the trial court charged the jury as follows: "I have learned all I know about the making of books from the testimony in this particular case, and I am afraid I cannot assist the jury to any appreciable extent, because you have the same evidence before you. Papers and records have been offered in evidence and explained. If it consists in having sheets and papers such as have been offered here, if that is what is commonly known as bookmaking, if you again find that this defendant was the owner, conducting this business, if you find this beyond a reasonable doubt, then it would be your duty to convict on the third count." (S. C., p. 68.)

32. Because the trial court charged the jury as follows: "The fifth count in the indictment charges the defendant on the same dates and in the same place 'did unlawfully conduct the practice commonly known as book making, contrary to the form of the statute.' The same evidence to which I have referred would apply to this count." (S. C., p. 69.)

33. Because the trial court charged the jury as follows: " 'Reasonable doubt' is a term often used probably pretty well understood, but not easily defined. Reasonable doubt is not a mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully and entirely compared and considered all the evidence in the case, your mind is left in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, then you have what the law calls a reasonable doubt, and it is your duty to give the benefit of such doubt to the defendant and acquit him. But you are not bound to give, nor should

you give, to him the benefit of anything except such a reasonable doubt." (S. C., p. 70.)

34. Because the verdict is against the weight of the evidence. The jury should have found defendant not guilty instead of guilty.

ALEX. SIMPSON,
Attorney for Plaintiff in Error.

Service of within Specification of Causes is hereby acknowledged as in time.
September 26, 1925.

WILFRED H. JAYNE, JR.,
Prosecutor of the Pleas for State.

EXHIBIT S-12

To NEW YORK TELEPHONE COMPANY, Dr.

Payable at July 8, 1924.

S. Lake 364.

J. Fero
420 - 4 St.
Lakewood, N. J.

Bill Rendered	67.50
Toll Service per Statement herewith 12/21-12/31	65.35
Local messages from To	
Proportion of Local messages contracted for same period	
Less Number charged on Bills To	
Addition local messages at cents each	
.....	
	132.85

Local Messages
Credit 1 .....
Sent in
Credit 1 .....
.....
Subscriber's record
Paid By
Check No. .....
Bank .....
Date .....

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

NEW JERSEY
Court of Errors and Appeals.

THE STATE,
Defendant-in-Error,
v.
JOSEPH FERO,
Plaintiff-in-Error.

On Writ of Error. (Indictment for Disorderly Conduct.)

BRIEF FOR PLAINTIFF-IN-ERROR.

The plaintiff-in-error is appealing from a judgment in the Supreme Court, which affirmed a judgment against him in the Ocean Court of Quarter Sessions, wherein he was convicted of keeping a disorderly house. The conviction was reviewed both upon bill of exceptions and specification of causes. One of the main, if not the most important, points relied upon by the plaintiff in the Supreme Court was the utter absence of any proof to show that he had any control over the place which it was alleged was a disorderly house. The testimony consisted of fifty-four and a half printed pages. Yet, the Supreme Court dismissed the contention of the plaintiff-in-error in two lines saying "As to the connection of the defendant with it, we fail to see where the defendant suffered manifest wrong or injury in the denial of the motion to dismiss." The evidence submitted by the State made it clearly a case for the jury. There was no evidence submitted by the State which connected the defendant with the place or showed his control in it.

or participation in its management. The State relied for this proof upon telephone bills found in the place, and the fact that a safe in the place bore his name. But so far as his act of participation in the place or his control of it, there was no evidence whatever, and the defendant took the stand and denied that he had any connection with it, and explained the telephone bills by the fact that he at one time had a lease on the place, and that the telephone was in his name at that time, and he testified that the safe which bore his name at one time had been owned by him, but was then owned by a man named Megill, who was the owner and the operator of the place. Proof in the case showed that the premises in question were leased by a man named Megill, and that the defendant had no connection whatever with the place. Under these circumstances, there was an obsolute lack of proof, even by inference, to connect the plaintiff-in-error with the place or to show his control of it or management of it.

In the case of *State* v. *King,* 132 *Atl.* 313, the Supreme Court said, approving a refusal to direct a verdict of "not guilty," "there was ample testimony of the position of the defendant therein—that is in the house—to warrant its submission to the jury. It is true the testimony principally came from detectives, yet nevertheless it was evidence, and it was for the jury to determine the weight of the testimony." Clearly showing that in that case there was evidence of the position of the defendant. In this case the defendant, the plaintiff-in-error, had no position in the house in question, and manifestly was not in control of it, or connected in any way with it, and there is a clear distinction between the King case where the conviction was affirmed, and the instant case.

In the case of *State* v. *Lyons* in this court, reported in 99 *L.* 301, there a conviction was affirmed, but in a *per curiam* opinion the Supreme Court, which opinion was adopted in the Court of Errors and Appeals, said "Prior to the raid the place had been visited by detectives, who saw Lyons on these occasions in different rooms of the premises. He was observed paying off debts which had been made. The defendant offered no

testimony and the case was submitted to the jury without any explanation from him or other witnesses as to his presence in the building and as to the matters which the State claimed connected Lyons with the management of the house." So that *State* v. *Lyons* cannot be taken as an authority for the proposition that it is proper to submit to the jury a case when there is no evidence whatever connecting the defendant with the operation or management of the place; and the Supreme Court in its opinion does not point out what is the name of the witness or what the character of the testimony is, which is sufficient to convince any reasonable man that the defendant was in control of the place.

POINT II.

The first witness, Sheriff Grant, testified that he visited, rather raided, the premises twice and on both occasions he did not see or find the defendant in the place (S. C., page 23, lines 1-4).

The next witness was Charlotte Searing, who was a bookkeeper of the Jersey Central Power & Light Company, and kept an account of the water and electric service to the premises. She did not know who paid for the services or who paid the bills (S. C., page 30, line 3). She testified that if the property had been sublet or sold to another person and the person who became the new owner did not change the name under which the service was rendered, the books of the company would show that the payments were made under the original name (S. C., page 30, lines 5-11). Her testimony, like the Sheriff's, did not in any way show that the defendant had any connection whatsoever with the running of this disorderly house.

The next witness produced by the State was Jesse Webster and his testimony was an attempt to prove that the defendant had made the contract with the telephone company, but his testimony was not allowed (S. C., page 32, line 19).

James Jensen, the State's next witness, testified that he visited the premises from November, 1924, until January, 1925 (S. C., page 32, line 38), every other day for about ten months (S. C., page 33, lines 14-19, and yet he never saw him at the premises although he knew who he was if he saw him (S. C., page 33, lines 3-8). This witness used to take bets to this place but he never delivered any to the defendant nor did he ever see him there (S. C., page 37, lines 11-16).

The next State witness was Edward Burdge, a brother of the Sheriff's chief assistant, who testified that he brought bets to the premises innumerable times, but never placed a bet with the defendant. During all the times that he went to the place, which was very frequently (S. C., page 37, line 35), he only saw the defendant once or twice there, when he would come in and walk right out again. To quote this witness' own words (S. C., page 39, line 11): "No; he just walked in and said 'hello' and walked out." As far as this witness knew, although he brought many bets there, the defendant had no connection whatsoever with the betting or management of this place (S. C., page 40, lines 4-6).

The State's next witness was Fred Keppler, who testified that between November, 1924, and April, 1925, the period set forth in the indictment, he visited the premises on the average of four times a week (S. C., page 43, lines 9-12), in fact, he said a million times (S. C., page 47, lines 39-40). While he was there he saw men place bets and he himself also placed bets. During all of his innumerable visits he never saw the defendant there (S. C., page 45, line 23). He also testified that during this period he never had any transactions nor did he see any transactions with the defendant concerning gambling on these premises (S. C., page 45, lines 31-40).

The next witness for the State was William Mather, one of the leading figures of the Ku Klux Klan. He testified that he went there only once and that was in February, 1925, and at that time the defendant was not there.

The last witness for the State was John Burdge, who testified that he was the chief clerk of the sheriff and

his testimony only related to some so-called expert testimony on racing charts. He said nothing which in any way connected the defendant with the premises raided.

Not one of the eight witnesses produced by the State testified he ever saw the defendant at the premises except Edward Burdge, who said he saw him once or twice, when the defendant would walk in, say "hello," and walk right out again, notwithstanding that some of the witnesses very frequently visited the premises, Keppler stating that he had been there a "million" times. He wasn't there, not even when the two raids took place, which undoubtedly were timed and well prepared. If this defendant had any connection with, or managed or controlled, the premises, which the State must prove and which it utterly failed, is it not probable that he would have at least frequented the premises even though he did not accept any bets? If he had any connection whatsoever with the maintenance or control of the premises, surely the State could have obtained a witness who could have shown this fact, especially since they had so many Ku Klux Klan like Mather, who was "interested in upholding the right" (S. C., page 53, line 11). There wasn't a scintilla of evidence produced by the State, through its witnesses, which in any shape, manner or form showed that the defendant kept, maintained or controlled or had the power to control the premises, or permitted it to be so kept and maintained, having the power to prevent it. The defendant cannot be convicted unless he had control of the premises or participated in its management, which the State did not and could not prove. The State did not offer any evidence whatsoever that the defendant had in any way supervision over the premises.

In the case of *State* v. *Bindernagle*, 60 *N. J. L.*, 307, this Court laid down the rule that:

> "Before he can be convicted of such an offense (the maintenance of a disorderly house) evidence sufficient to establish his connection, man-

agement or control of such a place must be adduced."

In the case of *State* v. *Harrington*, 87 *N. J. L.*, 713, the Court of Errors and Appeals said:

"That the defendant, in order to justify his conviction, must be in control of the premises, and also, must permit it to be used for unlawful purposes."

See also:

State v. *Littman & Weinfeld*, 86 *N. J. L.*, 457.

The State utterly failed, through its witnesses, to show that the defendant had control of the premises and that he permitted it to be used as a gambling place. That there was no evidence, whatsoever, which connected the defendant with the premises or with the house, to which those in charge put it, is manifest from a mere glance of the State's case.

It was error to admit the telephone bill in the case, and the different papers admitted (p. 16 of S. C.) were erroneously admitted, because there was no proof whatever except that somebody had typewritten the defendant's name thereon, and they do not meet the test laid down by this court in the case of *State* v. *Lyons*, for this court said, "It is not contended that it was properly proven (this is the language of the opinion which is evidently in error because the opinion probably meant to say it is not contended that it was not properly proven). If this objection had been made at the trial we would consider that it had some merit, as it was not proven that the bill had been sent the defendant or that the statement had been receipted by the vendors of the iron work and therefore might not be usable as evidence of the truthfulness of the statements contained therein." These documents now questioned and admitted (p. 16 of S. C.) were not proven in any way except that they had been found there bearing the name of the defendant, yet that they were admitted to show the connection of the defendant with the place is apparent from the charge of the Court. The defendant had no opportunity to cross-

examine the bills, or to show that his name was improperly thereon. He, of course, had the right and did deny that the bills were ever in his possession, or that he contracted at the time of the alleged indictment for these materials. If this court holds as a matter of law that the mere name of a person on a gas bill indicates that he is present in a place or owns the place or is conducting the place, and not only is admissible but is evidence as against the denial of the defendant, this is a contradiction of the opinion of the Court in the case of *State* v. *Lyons*.

POINT III.

The trial Court erred in admitting into evidence, over the objection of the defendant, a certain telephone bill dated July 8, 1924 (S. C., page 16).

The introduction into evidence of this telephone bill was incompetent, immaterial and irrelevant, because it was previous to the finding of the indictment. The date or dates alleged in the indictment were November 1, 1924, and April 21, 1925, and manifestly no evidence, and therefore this telephone bill was not material or competent to show any connection whatsoever that the defendant had or may have with the operation of the alleged disorderly house. Its introduction was highly prejudicial to the defendant, in that it had a tendency to create in the minds of the jurors that the defendant did have something to do with the management or control of such a place. The atmosphere produced by the introduction of this telephone bill was harmful to the defendant in that it greatly militated against the presumption of innocence which every accused is clothed with, and gave the jury cause to speculate on his guilt. How could, by even a stretch of the imagination, this telephone bill in any way show that this house was disorderly, especially since it antedated the finding of the indictment by four or five months, and what is more important, show that the defendant had any control

over the running of this disorderly house? It did not show that the defendant paid for the services rendered. It is common knowledge that telephone bills, water bills, tax bills, etc., are sent out under the name originally given by the first applicant, notwithstanding that this particular person may have died in the meantime and have no connection whatsoever with the premises where said services were rendered.

Where incompetent evidence is received, which might, by any possibility, be prejudical to the prisoner, a judgment founded upon it must be reversed. In the case of *State* v. *Sprague,* 64 *N. J. L.,* Justice Lippincott, on page 426, said:

> "This evidence was highly prejudicial to the defendant. In fact, all that need be said in a case of this kind is that it may have been harmful."

POINT IV.

The learned trial Judge refused to direct a verdict of acquittal on motion of counsel for defendant at the end of the entire case.

There might have been some doubt in the learned trial Judge's mind about directing a verdict of acquittal at the end of the State's case, inasmuch as certain bills introduced into evidence, such as the telephone bill, and a safe with the defendant's name on it, which was not produced in court, nor a photograph of it produced (S. C., page 23, lines 15-16) unexplained, raised a presumption of control and management. But this was entirely destroyed and wiped out when the defendant took the stand in his own behalf and testified that he had not paid any bill whatsoever in connection with the disorderly house. He explained that the safe belonged to him once, but that he sold it to one Lester Megill (S. C., page 59, lines 35-36). The mere fact that these bills, rendered by the respective companies, under the name of the defendant, did not in any way show or indicate that the defendant had any control or manage-

ment, in any way, of the disorderly premises. This Court no doubt will take judicial notice that it is common knowledge that tax bills, water bills and even telephone bills are rendered under a certain name notwithstanding that that person may have died and has left no one who in any way has any connection with the premises where the services are rendered. In my experience in searching property I have found that water bills have been rendered to certain premises under a certain name notwithstanding that the party had long before died and his heirs had disposed of the property some time prior to my search. But in the case *sub judice* the defendant emphatically testified that he had paid none of these bills and that he stopped all connections whatsoever with the premises some eighteen months prior to the time when the case was tried, or almost a year before the date set forth in the indictment. There was no debatable question or facts upon which the jury could have passed. The trial Judge should have directed a verdict of acquittal at the end of the case, inasmuch as whatever presumption the bills might have raised, which bills were incompetent, immaterial and irrelevant, and in no way showed that the defendant had any connection spoken of in the *Bindernagle case, supra,* was destroyed by the defendant's denial.

CHARGE OF THE COURT.

The Court charged in Point 25 that it was proper for the jury to find the defendant connected with the place from these telephone bills and gas bills, and there having been absolute failure to meet the test laid down in the case of *State* v. *Lyons* this was erroneous and harmed the defendant, this is found in assignment 25. The defendant requested the Court to charge that the telephone bills could not be used to prove the connection of the defendant with the place, which the Court refused to charge, there being an entire absence of proof as laid down in *State* v. *Lyons* to show that the bills had

been received by the defendant or that he had taken some action or was connected with them, the Court should have charged that they could not be used to connect the defendant with the operation of the place.

WEIGHT OF EVIDENCE.

The verdict is against the weight of the evidence. If this Court declares that the telephone bills was some evidence of the defendant's control of the place, then they were clearly overcome by his sworn denial. In the case of *State* v. *Lyons* the defendant did not take the stand in an attempt to explain his conduct in the place, which the Court considered. In this case the defendant did take the stand and denied that he owned the safe; admitted that he owned it at one time, and denied that he had ever contracted for telephones, gas or water, for the premises during the time covered by the bills. In these circumstances there was an absolute positive weight of evidence in his favor, and the jury in disregarding his testimony and relying entirely upon the bills and the safe were finally against the weight of evidence, and for this reason without repeating the evidence which has been given in the forepart of this brief, all the evidence of the State was valueless without the bills and the safe to establish the defendant's connection, and the jury's finding him guilty was against the clear weight of the evidence, and it should be set aside.

Verdict should have been directed, because of insufficiency of evidence.

In the following cases evidence of control or connection held insufficient, although more facts present as to defendant than here:

State v. *Anderson*, 82 *Conn.* 111, 72 *Atl.* 648;

People v. *Drum*, 127 *App. Div.* 241, 110 *N. Y. S.* 1096;

Layton v. *State*, 61 *Tex. Cr.* 307, 135 *S. W.* 557;

Humphreys v. *State* (*Tex. Cr.*), 68 *S. W.* 681;

Cook v. *State,* 42 *Tex. Cr.* 539, 61 *S. W.* 307;

Nelson v. *Terr.,* 5 *Okla.* 512, 49 *P.* 920;

Rabb v. *State* (*Tex. A*), 13 *S. W.* 1000;

Oligschlager v. *Terr.,* 146 *Fed.* 131, 76 *C. C. A.* 557, *rev.* 15 *Akl.* 141, 79 *Pac.* 913.

That the defendant is the keeper of the house must be shown, not necessarily by direct evidence; it may be circumstantial. And he may rebut a *prima facie* case when made against him.

Bishop's Criminal Law and Procedure, vol. 3, *p.* 1395, *sec.* 278.

The amount of evidence necessary to connect the defendant with the house seems to be pointed out in *State* v. *Frank,* 90 *N. J. L.* 86, where the Court says, "Several witnesses testified to the acts and conduct upon the part of the defendant, tending to show that he was occupying the house and using it as his own, and exercising the same control over it as men usually have over their own houses. And that was sufficient to authorize the jury to find that he kept a house." No such evidence was present in the instant case. The Court below states that because a photostatic copy of a telephone bill is annexed to the State's brief it will disregard the record in the case. The language of the court is, "This exhibit is a telephone bill to the New York Telephone Company. It is made out to J. Fero, 429 Fourth Street, Lakewood, N. J., $4.20." It was seized by the sheriff on the occasion of his first raid. The contention of the plaintiff in error is that this bill is dated July 8, 1924, and, therefore, was inadmissible because the dates selected in the indictment were for maintaining a disorderly house between November 1, 1924, and April 1, 1925. The argument, however, fails because a photostatic copy of the bill which is annexed to the State's brief shows that it is dated January 8, 1925, and not July 8, 1924. How can the Court below

go outside of the record in the case which shows that the bill objected to was dated the 8th of July, 1924, and appeal to something annexed to the brief of the State which had nothing to do with the record in the case?

The name on the safe simply made a *prima facie* case which was met by the testimony of the defendant.

Edgewater v. *Wood,* 58 *N. J. L.* 463.

The Court of Appeals in *Mahan* v. *Walker,* 97 *N. J. L.* 304, said, "Proof of ownership, without more, of an automobile which was being driven upon a public highway raises a presumption of fact that the automobile was in the possession of the owner, if not personally, then through his servant, the driver." Both or either of these presumptions may be entirely wiped out by uncontradicted proof to the satisfaction of the Court to the contrary, in which case the matter is a Court and not a jury question. Citing *Doran* v. *Thompson,* 76 *N. J. L.* 754. That was the situation in this case. The name on the door may have raised a presumption that the defendant was in the operation of the place, but his uncontradicted evidence to the contrary wiped out that presumption and made it a Court question, not a jury question.

See also:

Crowell v. *Padolsky,* 98 *N. J. L.* 552;
Dennery v. *Great Atlantic,* 82 *N. J. L.* 517;
Missell v. *Hayes,* 86 *N. J. L.* 348.

All these cases are authority for the proposition that the name upon an article raises a presumption which makes it a *prima facie* case, but the uncontradicted testimony, as in the case heretofore cited, makes it a Court and not a jury question and, therefore, in this case the defendant having explained his name upon the safe, there was no evidence that he was in the operation and ownership of the place and the case clearly falls within the case of *Bindernagel* v. *State,* heretofore cited.

These are all civil cases, but the doctrine is stronger in a criminal case, for in a civil case the duty of the

possessor of the affirmative would simply establish the burden of proof, whereas in a criminal case the duty was to establish a fact beyond a reasonable doubt. If the name on the same and the name on the telephone bill are all that the State has, this makes merely a *prima facie* case, and, in a civil case, to be met as a court question by uncontradicted proof to the contrary. How much more should this be the rule in a criminal case where the burden is on the State to prove a fact beyond a reasonable doubt?

It is respectfully insisted that the judgment below should be reversed.

ALEX. SIMPSON,
Attorney for Plaintiff-in-Error.

Lakewood Citizen, Printers, Lakewood, N. J.

New Jersey
Court of Errors and Appeals

THE STATE, Defendant in Error, vs. JOSEPH FERO, Plaintiff in Error.	On Indictment and Conviction for Keeping a Disorderly House, etc.

BRIEF FOR DEFENDANT IN ERROR

PREFATORY STATEMENT

The Plaintiff in Error, Joseph Fero, was convicted in the Court of Quarter Sessions of the County of Ocean as charged in the indictment there presented against him and the judgment of his conviction was affirmed by the Supreme Court.

The allegations of this indictment, composed of five counts, may be briefly summarized as follows:

That the defendant, Joseph Fero, at the Township of Lakewood, in the County of Ocean and State of New Jersey, on November 1, 1924, and on divers other days and times between that day and the day of the taking of the inquisition (First Count) did keep and maintain a disorderly house; (Second Count) did keep and maintain a disorderly house to which persons might resort for betting upon the event of horse racing; (Third Count) did unlawfully and habitually **make** what is commonly known as a book, upon the running, pacing

and troting of horses, etc.; (Fourth Count) did unlawfully **take** what is commonly known as a book, upon the running, pacing and trotting of horses, etc.; (Fifth Count) did unlawfully conduct the practice commonly known as book making.

Such counts may be joined in the same indictment.

State v. Moore 75 L. 619

The crimes alleged in the indictment, in addition to the common law offense of keeping a disorderly house are defined in Section 65 of our Crimes Act, 2 Comp. Stat. page 1766, and the following citations may be said to be representative of the cases making reference to this statute that have come under judicial observation and review:

State v. Lovell 39 L. 463
State v. McClean 49 L. 471
State v. Haring 51 L. 386
State v. Engeman 54 L. 386
State v. Linden Park Assoc. 55 L. 557
State v. Ackerman 62 L. 456
State v. Moore 75 L. 619
State v. Griffin 85 L. 613
State v. Ford 86 L. 73
State v. Kirby 90 L. 78
State v. Terry 91 L. 539

It will be observed that the First Count of the indictment is in common law form alleging the indictable offense of keeping a disorderly house. One who kept a place where the practices mentioned in the Second, Third, Fourth and Fifth Counts of the indictment were habitually carried on would be guilty of the crime alleged in the First Count of this indictment (State v. Williams, 30 L 102), and notwithstanding the Legislature by the enactment of the 65th Section of our Crimes Act may have specfically made criminal the practices mentioned in these latter Counts and provided a particular penalty for the commission of such acts.

State v. Meyer 41 L. 6
State v. McClean 49 L. 471
State v. Haring 51 L. 386
State v. Parker 61 L. 308

Any place of public resort in which illegal practices are habitually carried on is a disorderly house.

State v. Williams 30 L. 102

And practices which are prohibited by statute are illegal practices within the meaning of the foregoing definition.

State v. Hall 32 L. 158
State v. Meyer 42 L. 145

The jury rendered a verdict finding "the defendant, Joseph Fero, guilty as he stands charged in said indictment." (Case P. 8 L. 8.)

If any of the Counts are free from objections, it will be sufficient to support the judgment.

State v. Hunter 40 L. 495

I.

Assignments Of Error And Causes For Reversal Which Are Not Argued Will Be Considered Abandoned.

It may be well at the outset to draw attention to the scope of the review now sought by the Plaintiff in Error. The brief of the Plaintiff in Error touches only upon the Third, Twenty-first, Twenty- fourth and Thirty-fourth Assignments of Error and Causes for Reversal.

It has been uniformly held that Assignments of Error and Specfications of Causes for Reversal which are not argued by the Plaintiff in Error, either orally or in the brief, will be considered abandoned.

State v. Sabato 91 L. 370
State v. Marriner 93 L. 273
State v. Napolitano 95 L. 546
State v. Rosenberg 97 L. 430
State v. Lewis 98 L. 618

The review desired by the Plaintiff in Error may therefore be said to embrace only (1) the ruling of the trial court in admitting in evidence the telephone bill identified as Exhibit S 12; (2) The denial of the motion to direct a verdict; (3) The contention that the verdict of the jury is against the weight of the evidence.

II.

There Was No Error In The Denial Of The Motions To Direct A Verdict Of Acquittal.

These motions were addressed to the discretion of the trial court. The rulings of the trial court upon these motions are not reviewable on error. It must therefore be insisted that the defendant suffered manifest wrong or injury in the denial of the motions.

> "The provisions for review of a denial of a motion to discharge or to direct a verdict of not guilty, which is addressed to the discretion of the court, brings into review only the question whether, upon the evidence as it stood when the motion was made, there was a case for the jury."
>
> State v. Jaggers 71 L. 281, 283

The consideration of this question makes a concise exposition of the testimony appropriate.

The testimony submitted on the part of the State disclosed that the Sheriff accompanied by Special Deputies invaded the premises known as No. 420 Fourth street at Lakewood, Ocean County, New Jersey, on February 27, 1925, and again on April 13, 1925. The structure known as No. 420 Fourth street is in its form and architecture a residence. On the occasion of February 27, 1925, the Sheriff found twenty-three men assembled in two rooms on the second floor of the house. Four telephones were installed in one of these rooms and the room was otherwise furnished with four or five tables

and several chairs. A pool table occupied the other room. The Sheriff on this occasion seized such articles as he deemed evidential of the practices carried on in the premises. These articles may be here inventoried:

Eight slot machines, five in working order and three partly dismantled;

A box containing parts for the repair of slot machines;

A large box containing playing cards, receipt books and pads;

A large box containing twenty or more smaller boxes of poker chips;

Two sheets of paper known as Racing Charts;

A number of smaller slips of paper upon some of which appeared in writing a name or names also appearing upon one of the Racing Charts;

On the occasion of April 13, 1925, the Sheriff found seven men assembled in the same premises and on this occasion took possession of three Racing Charts and a number of smaller slips of paper upon some of which appeared in writing a name or names also appearing on one of the Racing Charts.

It was further developed by the testimony at the trial that the charts set forth the names of the horses entered in the races to be conducted at Bowie in Maryland, Miami in Florida and Havana in Cuba on the respective dates and upon the charts appeared in pencil markings the odds established for the betting.

The witnesses, James Jensen (Case p. 34 L. 9) and Edward Burdge (Case p. 37 L. 20) testified to the making of bets at the premises upon the event of horse races.

Additionally, the witness, Fred Keppler (Case p. 42 L. 30) testified to the habitual gaming with dice at the premises, the presence of the slot machines and the Racing Charts at the premises and makes further mention of the practice of large numbers of persons resorting to the premises for unlawful purposes.

Indeed the disorderly character of the premises

was at no time seriously disputed during the progress of the trial.

> "Such evidence tended to support the charge of the indictment that the illegal practice of betting upon the racing of horses was carred on, even though there was no more definite proof that the races had been actually run."
>
> State v. Frank 90 L. 78

Touching upon the knowledge had by the defendant of the illegal practices carried on in the premises, it is well to here draw attention to the testimony of Edward Burdge (Case p. 38 L. 30) to the effect that he had seen the defendant visit the premises and on one occasion he delivered a telegram to him on the porch of the premises. This element of proof at the close of the testimony was substantially enlarged by the testimony of the defendant himself who admitted that he had been in the premises himself more than two or three times during the period mentioned in the indictment (Case p. 59 L. 16).

Counsel for Plaintiff in Error aims his shaft of criticism particularly at the alleged absence of any competent proof evidencing either the participation of the defendant in the conduct of the premises for the unlawful purposes or his power of control of the premises.

It is not necessary to prove that the defendant personally received the bets and personally engaged directly with the patrons of the premises in the gambling practices.

State v. Bindernagle 60 L. 307
State v. Harrington 87 L. 713

In fairness it must be said that the evidence adduced by the State tending to prove the defendant's control of the premises consisted primarily in the articles bearing the name of the defendant which were found in the premises and seized by the Sheriff. These articles may be here enumerated:

(a) Bills from respective Utility Companies for telephone, gas, water and electric service furnished the premises during the

period covered by the indictment;

(b) A safe upon which was painted the name of the defendant;

(c) A letter addressed to the defendant purporting to have been written by Callie Bros.;

(d) An envelope addressed to the defendant at No. 420 Fourth Street, Lakewood, New Jersey.

The admission of these bills for the telephone, gas, water and electric service furnished to the premises during the period of time mentioned in the indictment can not now in any event be said to have injuriously affected the Plaintiff in Error on the merit because he himself, when upon the witnesses stand, testified without objection as follows:

Q. Who leased the house originally?

A. I did.

(Case p. 62 L. 36).

Q. Who opened these accounts with the Water Company, Gas Company, and Electric Light Company?

A. I did.

(Case p. 62 L. 29).

Q. You knew the water and gas services were in your name?

A. Yes.

(Case p. 60 L. 30)

Q. Did you know that they were charged to you?

A. Yes.

(Case p. 61 L. 5)

It may be illuminating to explain that it was the contention of the State at the trial that the defendant was in truth the person conducting the premises for the unlawful practices mentioned and was in fact the person having the power of control over the unlawful uses of the premises. It was contended that the defendant designedly remained away from the premises and permitted one Megill to apparently and notoriously assume

the management of the premises in order that he, the defendant, might thus escape arrest and prosecution.

Attention is respectfully invited to the following excerpts taken from the testimony of the defendant:

Q. Was Lester Megill employed by you at that time? (when service accounts originally opened).

A. Yes.

(Case p. 62 L. 32)

Q. Megill was with you up to the time you say he took charge of it and he has been there continuously?

A. Yes.

Q. Any change in the lease?

A. I have not paid rent in the last year.

Q. At the time you employed Megill, did you employ him to have charge of 420 Fourth Street?

A. He worked for me there.

(Case p. 63 L. 2 et seq)

Q. When was any change made?

A. I could not answer.

(Case p. 63 L. 7)

Acts and conduct on the part of the defendant tending to show that the defendant exercised the same management, supervision and control over the premises as are usually assumed by owners, tenants or occupants of premises generally, are highly evidential.

The record in the case now under review discloses that the defendant rented the premises originally and contracted with the public utility companies for the respective services to be supplied to the premises; that he employed Megill to work for him there; that by virtue of his contracts with the public utility companies, the defendant caused bills for the respective services furnished the premises to be rendered to him and in his name; that such bills were being currently rendered to him and in his name for the respective services rendered the premises during the period embraced by the indictment; that the defendant had knowledge

that the respective services were being furnished currently on his account and in his name and that the bills for such services were found in the premises and there seized by the Sheriff.

Such documents and articles have been held to be admissible in evidence as tending to show that the defendant conducted the place in question.

State v. Lyons 99 L. 301

State v. Matarazza 93 L. 47

The record, in summary, discloses that the defendant leased the premises and contracted with the public utility companies to furnish their respective services to the premises for him and on his account. This conduct on the part of the defendant evidences his original assumption of the control of the premises. He knowingly continued to have the respective services supplied to the premises on his account during the period covered by the indictment. This circumstance evidences a continuance of his control over the premises. The telephones were instruments employed in the unlawful practice of betting upon the event of horse races without the State as alleged in the indictment. The bills for the use of these instruments were found on the premises and were addressed to the defendant as the debtor.

A safe was there discovered upon which appeared the name of the defendant as well as a box and a letter addressed to the defendant at 420 Fourth Street, the disorderly premises.

> "Whether the acts are illegal and constitute a disorderly house is a question of law for the court; the question of control or permission as affecting the guilt of the person charged is a question for the jury."

State v. Bindernagle, supra.

The evidence might lead to one of two conclusions, namely, that the defendant was in fact conducting the illegal practices at the premises through the agency of Megill, or that being in control of the premises, he suf-

fered and permitted the premises to be used for the illegal practices by Megill.

State v. Williams 30 L. 102

III.

The Argument Relating To The Admission In Evidence Of The Telephone Bill Marked Exhibit S-12 Rests Upon An Erroneous Assumption Of Facts

Counsel for Plaintiff in Error represents to the Court that a telephone bill dated July 8, 1924, was offered and admitted in evidence and confines the criticism of the ruling of the trial court in this particular to the alleged circumstances that this bill was dated antecedent to the time embraced by the allegations of the indictment.

This telephone bill was designated at the trial as Exhibit S-12 but a copy of this Exhibit is not included in the State of the Case. Had this Exhibit in its incorrect form been included in the State of the Case, objection might have been made thereto under Rule 155 (c). The fact is that the telephone bill designated as Exhibit S-12 bears date January 8, 1925. A more particular examination of the bill itself will disclose the period for which the current charges are made. This period appears to be from December 21st to December 31st, which conforms to the date of January 8, 1925. The inaccuracy exists in the misstatement of the date of the telephone bill. Counsel is doubtless misguided with respect to the true date of this bill by the record of the testimony of Sheriff John A. G. Grant (Case p. 16) wherein he referred to the bill as dated July 8, 1925. It may be that the record correctly reports the testimony of the Sheriff in this particular, but the Sheriff obviously in his testimony misrepresented the date of the bill. He testified that he seized this bill at the premises on the occasion of February 27, 1925 and it will be further noticed that the case was being tried on July 9, 1925.

The argument, therefore, that takes as its premise the erroneous assumption that a telephone bill relating to telephone service furnished to the disorderly premises at a time anterior to that mentioned in the indictment was admitted in evidence, must fail.

IV.

A Reversal Of The Conviction Upon The Ground That The Verdict Is Against The Weight Of The Evidence Is Not Justified.

Under this Assignment or Cause for Reversal the competency of the evidence is not to be considered.

> "The evidence is not to be weighed after eliminating such testimony as the court upon review may feel was improperly admitted, but to be weighed as it was presented to the jury in its totality."
>
> State v. Morehouse 97 L. 285
>
> "Appellate courts should be cautious in setting aside a verdict of a jury upon the ground that the verdict is contrary to the weight of the evidence. It should only be done when it is clear that the verdict is the result of mistake, passion, prejudice or partiality."
>
> State v. Karpowitz 98 L. 546

Tested under the influence of this rule of circumscribed review, the conviction of the defendant ought not to be disturbed.

It is respectfully submitted that judgment of conviction should be affirmed.

WILFRED H. JAYNE, JR.,
Prosecutor of the Pleas.

LIST OF EXHIBITS

Exhibits for State

Exhibit S 1 (Case, p. 11), Slot machine;
Exhibit S 2 (Case, p. 12), Slot machine, partly dismantled;
Exhibit S 3 (Case, p. 12), Part of slot machine;
Exhibit S 4 (Case, p. 13), Box containing parts for repair of slot machines;
Exhibit S 5 (Case, p. 13), Box containing parts for repair of slot machines;
Exhibit S 6 (Case, p. 13), Large box containing 20 boxes of poker chips;
Exhibit S 7 (Case. p. 13), Box containing playing cards, receipt books and pads;
Exhibits S 9 and S 10 (Case, p. 15), Racing Charts;
Exhibit S 11 (Case, p. 15), Number of smaller slips of paper;
Exhibit S 12 (Case, p. 16), Telephone bill dated January 8, 1925;
Exhibit S 14 (Case, p. 16), Bills for gas and electric service;
Exhibit S. 15 (Case, p. 16). Water and sewer bills;
Exhibit S 16 (Case, p. 17), Letter from Callie Bros., addressed to defendant;
Exhibits S 17, S 18 and S 19 (Case, p. 18), Racing Charts;
Exhibit S 20 (Case, p. 18), Smaller slips of paper;
Exhibit S 21 (Case, p. 18), Telephone bill dated April 1, 1925;
Exhibit S 22 (Case, p. 19), Envelope addressed to defendant at 420 Fourth Street, Lakewood, N. J.

Defendant's Exhibits

Exhibit D 1 (Case, p. 63), Copy of New York World;
Exhibit D 2 (Case, p. 63), Indictment against one Lester Megill.