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**Notice of Appeal.**

(Filed 11/25/30.)

**IN CHANCERY OF NEW JERSEY.**

67-236.

Between

FRANK J. BARTLETTA,  
Complainant,

and

BERNARD N. MCFEELEY, as  
Mayor; JOSEPH A. CLARK, as  
Director of Public Safety; both  
being members of the Board of  
Commissioners of the Mayor  
and Council of the City of  
Hoboken; EDWARD J. MC-  
FEELEY, Chief of the Police De-  
partment of the Mayor and  
Council of the City of Ho-  
boken; and the Mayor and  
Council of the City of Hoboken  
(a Municipal corporation of  
this State),

Defendants.

10

On Bill for  
Injunction.

20

The complainant, Frank J. Bartletta, hereby  
appeals from an order, whereby the complainant's  
bill of complaint was dismissed, made in the above  
entitled cause on the 7th day of November, 1930,  
by the Chancellor on the advice of Vice Chancellor  
John O. Bigelow, Esq., and from the whole and  
every part thereof to the Court of Errors and  
Appeals in the last resort in all causes.

30

Dated, November 25th, 1930.

ANTHONY P. LA PORTA,

Solicitor for and of Counsel

with the Complainant.

40

*Petition of Appeal.*

I conceive there is good cause for appeal in the above stated cause.

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel  
with the Complainant.

10

**Petition of Appeal.**

(Filed 11/25/30.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

20

FRANK J. BARTLETTA,  
Complainant,  
and

30

BERNARD N. MCFEELEY, as Mayor; JOSEPH A. CLARK, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and the Mayor and Council of the City of Hoboken (a Municipal corporation of this State),  
Defendants.

On Appeal  
from the  
Court of  
Chancery.

To the Honorable Court of Errors and Appeals in the Last Resort in all Causes:

40

The petition of Frank J. Bartletta, appellant in the above entitled cause respectfully says that:

*Petition of Appeal.*

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Your petitioner finds himself aggrieved by an order made in the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice Chancellor John O. Bigelow, Esq., being dated the 7th day of November, 1930, in a certain cause wherein Frank J. Bartletta was complainant and Bernard N. McFeeley, as Mayor; Joseph A. Clark, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and the Mayor and Council of the City of Hoboken (a municipal corporation of this State), were defendants, and the whole and every part thereof; 10

And the petitioner appeals from the whole and every part of said order of the Chancellor upon the ground that the same is erroneous in that it denies the relief prayed for in the bill of complaint and dismisses the bill of complaint with costs, when it should have granted the relief therein prayed for and sustained the bill; and the court erred in finding that the acts of the defendants were done without malice towards the complainant and for a justifiable cause, whereas it should have found that the acts of the defendants were done maliciously and without justifiable cause as by the evidence of the record will more fully appear. 20 30

Petitioner therefore prays that the said order of the said Chancellor may be wholly reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel  
with Complainant-Appellant. 40

*Notice of Hearing.*

I conceive there is good cause for appeal in the above stated cause.

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel  
with Complainant-Appellant.

10

**Notice of Hearing.**

(Filed 11/26/30.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

20

FRANK J. BARTLETTA,  
Complainant-Appellant,

and

BERNARD N. MCFEELEY, as  
Mayor; JOSEPH A. CLARK, as  
Director of Public Safety; both  
being members of the Board of  
Commissioners of the Mayor  
and Council of the City of  
Hoboken; EDWARD J. MC-  
FEELEY, Chief of the Police De-  
partment of the Mayor and  
Council of the City of Ho-  
boken; and the Mayor and  
Council of the City of Hoboken  
(a Municipal corporation of  
this State),

30

Defendants-Respondents.

On Appeal  
from Court  
of Chancery.

To Horace L. Allen, Esq., Solicitor for the above  
named Defendants-Respondents:

40

*Bill of Complaint.*

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Sir :

TAKE NOTICE, that the argument of the appeal in the above entitled cause will be brought on at the next term of the Court of Errors and Appeals at the State House, at Trenton, New Jersey, on the 3rd day of February, 1931, at the hour of eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard. 10

Dated, November 26th, 1930.

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel  
with the Complainant-Appellant.

---

**Bill of Complaint.**

(Filed 2/14/28.)

IN CHANCERY OF NEW JERSEY.

To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey :

The complaint of Frank J. Bartletta of the City of Hoboken, County of Hudson and State of New Jersey, respectfully shows that: 30

1. Complainant is 29 years of age; that he is a native born American citizen of Italian parentage and that he has resided in the City of Hoboken, County of Hudson and State of New Jersey for 14 years last past.

2. On the 10th day of February, A. D., 1928, he was arrested by Lieutenant William Cristie of the 40

*Bill of Complaint.*

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Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by his Honor Adolph C. Carsten, Recorder of the Hoboken Recorder's Court by reason of an alleged complaint made by Joseph R. Scott, Lieutenant of the Police of the City aforesaid, whereby the complaint was  
10 charged with the unlawful possession of tickets, slips, plates or advertisements of a certain lottery company known as the Tia Juana Beneficial Association.

3. That on the day of his arrest aforesaid, the complainant under protest was booked by Lieutenant Wren in the Hoboken Police Station at the City Hall and searched by Lieutenant Cristie and his money, keys, pocketbook, watch and other personal belongings were taken from him and placed  
20 with Lieutenant Wren in charge of the desk; and that under protest he was then and there forcibly and without his consent compelled to submit to the taking of his fingerprints by Officer Sullivan by whom he was also weighed, measured and pedigreed, and was also compelled to write his name on four finger print index cards; after this he was forcibly photographed under protest by Officer  
30 Magnus, the official photographer of the Hoboken Police Department, by whom he was then and there advised that his photograph so taken was for the Rogues Gallery of the City of Hoboken and that copies thereof were to be circulated, distributed and placed in the Rogues Galleries of other cities throughout the United States and Canada, together with his finger prints taken as aforesaid.

4. Complainant further shows that on the day aforesaid after he was arrested, fingerprinted, measured, weighed and photographed, he was then  
40 taken before his Honor Adolph C. Carsten, Rec-

*Bill of Complaint.*

---

order aforesaid, who then and there released the said complainant under \$5,000 bail, which was then and there furnished by Dr. Joseph Matera of Hoboken, New Jersey.

5. That thereafter upon information and belief the complainant by his attorney, Anthony P. La Porta, served a written demand upon each of the defendants, to wit: Honorable Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken; and the Board of Commissioners of the Mayor and Council of the City of Hoboken, requiring them to deliver and surrender to his attorney aforesaid, forthwith the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken on the 10th day of February, 1928. That notwithstanding the demand served upon them as aforesaid each of the defendants refused to comply with the same.

6. Complainant further shows that he is engaged in various commercial enterprises in this city, county and State, in New York State as builder of homes, as a real estate and insurance broker; and as a banker in Montreal, Canada, and is connected with the Steneck Trust Company of Hoboken, New Jersey, as a member of the Directors and Advisory Board; and is connected with the Hoboken Finance Company, being the President thereof; and is also connected with the Terminal Printing and Publishing Company, being the President thereof; and is also connected with the City of

*Bill of Complaint.*

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Hoboken, a municipality of this State, as a Sinking Fund Commissioner, and is a large taxpayer of the City of Hoboken, holding considerable real estate; that in all his businesses and enterprises aforesaid he has thousands of dollars invested.

- 10     7. Complainant further shows upon information and belief that he was booked as Frank J. Bartletta, alias Luke Adams, which last appellation he never assumed or was ever known by, but was maliciously and wrongfully assigned to him by the Police Department of Hoboken on or about the day of his arrest; that he is innocent of the charge for which he was arrested and that he was not arraigned, tried or convicted of the crime charged aforesaid, and that he fears that by the placing of
- 20     his fingerprints, measurements and photographs in the Rogues Gallery of the City of Hoboken and in other places he will suffer great disgrace, financial loss and irreparable injury to his business, character and commercial and social enterprises, and damage is likely to follow.

8. The complainant is without adequate remedy in the courts of law and therefore prays:

- 30     1. That each of the above named defendants may answer this bill of complaint and each statement therein made.

2. That a decree may be made compelling the defendants to deliver up and surrender unto the complainant the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken as aforesaid; or that they may be restrained and enjoined
- 40     perpetually by a writ of injunction or order or

*Bill of Complaint.*

decree of this Court from keeping, distributing or circulating the complainant's fingerprints, measurements and photographs and negatives and all copies thereof as aforesaid.

3. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by said decree as this court may make in the premises. And the complainant will ever pray, etc. 10

ANTHONY P. LA PORTA,  
Solicitor of and Counsel  
with the Complainant.

State of New Jersey, }  
County of Hudson, } ss. : 20

Frank J. Bartletta, the complainant named in the foregoing complaint, being duly sworn according to law upon his oath deposes and says that:

1. He is 29 years of age; that he is a native born American citizen of Italian parentage and that he has resided in the City of Hoboken, County of Hudson and State of New Jersey for 14 years last past. 30

2. That on the 10th day of February, A. D., 1928, he was arrested by Lieutenant William Cristie of the Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by his Honor Adolph C. Carsten, Recorder of the Hoboken Recorder's Court by reason of an alleged complaint made by Joseph R. Scott, Lieutenant of the Police of the City aforesaid, whereby the complainant was charged with the unlawful possession 40

*Bill of Complaint.*

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of tickets, slips, plates or advertisements of a certain lottery company known as the Tia Juana Beneficial Association.

10 3. That on the day of his arrest aforesaid, the complainant under protest was booked by Lieutenant Wren in the Hoboken Police Station at the City Hall and searched by Lieutenant Cristie, and his money, keys, pocketbook, watch and other personal belongings were taken from him and placed with Lieutenant Wren in charge of the desk; and that under protest he was then and there forcibly and without his consent compelled to submit to the taking of his fingerprints by Officer Sullivan by whom he was also weighed, measured and pedigreed, and was also compelled to write his name  
20 on four fingerprint index cards; after this he was forcibly photographed under protest by Officer Magnus, the official photographer of the Hoboken Police Department, by whom he was then and there advised that his photograph so taken was for the Rogues Gallery of the City of Hoboken and that copies thereof were to be circulated, distributed and placed in the Rogues Gallery of other cities throughout the United States and Canada, together with his fingerprints taken as aforesaid.

30 4. That on the day aforesaid after he was arrested, fingerprinted, measured, weighed and photographed, he was then taken before his Honor Adolph C. Carsten, Recorder aforesaid, who then and there released the said complainant under \$5,000 bail, which was then and there furnished by Dr. Joseph Matera of Hoboken, New Jersey.

40 5. That thereafter upon information and belief the complainant by his attorney, Anthony P. La Porta, served a written demand upon each of

*Bill of Complaint.*

the defendants, to wit: Honorable Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken; and the Board of Commissioners of the Mayor and Council of the City of Hoboken, requiring them to deliver and surrender to his attorney aforesaid, forthwith, the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken on the 10th day of February, 1928. That notwithstanding the demand served upon them as aforesaid each of the defendants refused to comply with the same. 10

6. That he is engaged in various commercial enterprises in this City, County and State, in New York State, as builder of homes, as a real estate and insurance broker; and as a banker in Montreal, Canada, and is connected with the Steneck Trust Company of Hoboken, New Jersey, as a member of the Directors and Advisory Board; and is connected with the Hoboken Finance Company, being the President thereof; and is also connected with the Terminal Printing and Publishing Company, being the President thereof, and is also connected with the City of Hoboken, a municipality of this State, as a Sinking Fund Commissioner and is a large taxpayer of the City of Hoboken, holding considerable real estate; that in all his businesses and enterprises aforesaid he has thousands of dollars invested. 20 30

7. He further shows upon information and belief that he was booked as Frank J. Bartletta alias Luke Adams, which last appellation he never as- 40

*Bill of Complaint.*

sumed or was ever known by, but was maliciously and wrongfully assigned to him by the Police Department of Hoboken on or about the day of his arrest; that he is innocent of the charge for which he was arrested and that he was not arraigned, tried or convicted of the crime charged aforesaid; and that he fears that by the placing of his fingerprints, measurements and photographs in the Rogues Gallery of the City of Hoboken and in other places he will suffer great disgrace, financial loss and irreparable injury to his business, character and commercial and social enterprises, and damage is likely to follow.

FRANK J. BARTLETTA.

Sworn and subscribed to before me,  
this 14th day of February, 1928.

GAUDENCE C. FAURE,  
Attorney at Law  
of New Jersey.

State of New Jersey, }  
County of Hudson, } ss. :

Anthony P. La Porta, being duly sworn according to law, upon his oath deposes and says that he served a copy of the annexed demand on the 13th day of February, 1928, upon Edward J. McFeeley, Chief of the Police Department of the City of Hoboken, and the Mayor and Council of the City of Hoboken, through its clerk Daniel A. Haggerty, and on the 14th day of February, 1928, he served a copy thereof upon Honorable Bernard N. McFeeley, Commissioner of Public Safety of the

Copy of Demand for Return of Photographs, etc.

City of Hoboken, to whom compliance thereto was refused.

ANTHONY P. LA PORTA.

Sworn and subscribed to before me,  
this 14th day of February, 1928.

10

GAUDENCE C. FAURE,  
Attorney at Law  
of New Jersey.

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**Copy of Demand for Return of  
Photographs, etc.**

To Hon. Bernard N. McFeeley, as Commissioner  
of Public Safety of the Board of Commis-  
sioners of the Mayor and Council of the City  
of Hoboken; Edward J. McFeeley, Chief of  
the Police Department of the City of Hobo-  
ken; and the Board of Commissioners of the  
Mayor and Council of the City of Hoboken:

20

Please Take Notice, that I require of you that  
you deliver and surrender to my attorney, Anthony  
P. La Porta, forthwith, the photographs and nega-  
tives, also the Bertillon measurements and finger-  
prints, and all copies thereof, taken of me by the  
Police Department of the City of Hoboken, on the  
10th day of February, 1928.

30

(Signed) FRANK J. BARTLETTA.

Dated, February 13, 1928.

40

**Order Amending Bill of Complaint, as to Parties.**

(Filed 10/30/30.)

IN CHANCERY OF NEW JERSEY.

67-236.

10

Between

FRANK J. BARTLETTA,  
Complainant,  
andBERNARD N. MCFEELEY, *et als.*,  
Defendants.

On Bill, etc.

20 The above entitled cause having come on to be heard on the 22nd day of October, 1930, in the presence of Anthony P. La Porta, Esq., solicitor of the complainant, and Horace L. Allen and William A. Kavanaugh, Esqs., solicitors of the defendants, and it appearing that the complainant made a motion in open court to amend his bill of complaint, and it further appearing that the solicitors of the defendants consented that the bill of complaint be amended so as to make the party defendants in this cause as follows: "Bernard N. 30 McFeeley, as Mayor; Joseph A. Clark, as Director of Public Safety; both being members of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the Mayor and Council of the City of Hoboken; and the Mayor and Council of the City of Hoboken (a municipal corporation of this State), defendants";

40 It is thereupon ORDERED by the court on this 30th day of October, 1930, upon motion of Anthony

*Subpoena.*

P. La Porta, Esq., solicitor of the complainant aforesaid, that the bill of complaint be and the same is hereby amended so as to make and include the foregoing persons and municipality as defendants in the bill of complaint filed in the above stated cause.

E. R. WALKER,  
C.

10

Respectfully advised,

J. O. BIGELOW,  
V. C.

**Subpoena.**

NEW JERSEY, to wit: The State of New Jersey to

20

Hon. Bernard N. McFeely, as Commissioner of Public Safety of the Board of Commissioners of The Mayor and Council of the City of Hoboken; Edward J. McFeely, Chief of the Police Department of the City of Hoboken; and the Board of Commissioners of The Mayor and Council of the City of Hoboken.

30

GREETING: WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by FRANK J. BARTLETTA, to be relieved touching the matters therein contained.

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 3rd day of March, 1928, and in

40

*Answer.*

default thereof such order or decree will be made against you as the Court shall think equitable and just.

10 WITNESS, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the 17th day of February, in the year of our Lord one thousand nine hundred and twenty-eight.

THOMAS BARBER,  
Clerk.

ANTHONY P. LA PORTA, Solicitor.

**Answer.**

(Filed March 19, 1928.)

20

## IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,  
Complainant,  
and

30 BERNARD N. MCFEELY, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELY, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken,  
Defendants.

On Bill, &amp;c.

Answer.

40 The answer of the defendants, Bernard N. McFeely, as Commissioner of Public Safety of the

Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeely, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken, to the Bill of Complaint exhibited against them by the above-named complainant. These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefits and advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised that it is material or necessary for them to make answer unto, answering, say: 10

1. Paragraph 1 is admitted. 20

2. Paragraph 2 is admitted. In addition to the complaint set forth in Paragraph 2 of the Bill of Complaint, said complainant was also charged with the unlawful possession of tickets, slips, plates and advertisements of a certain lottery known as "Double Six", and also charged with the unlawful possession of tickets, slips, plates and advertisements of another certain lottery known as the "Italian Lottery." 30

3. It is admitted that appropriate entries of complainant's case were made in the Book of Records kept at Police Headquarters wherein all arrests and the disposition of all cases are entered, and that the money, keys, pocketbook, watch and all other personal belongings found upon the complainant at the time of his arrest were taken from him but were returned to him upon his furnishing bail, and were receipted for by the complainant. 40

10 It is admitted that Detective Sergeant Sullivan took the finger prints of the complainant, weighed and measured him, and that Acting Detective Magnus photographed him. Defendants allege that said finger prints and photograph of the complainant were not taken forcibly and that not the slightest force was used upon the complainant in order to obtain his finger prints and photograph. That the complainant, after some discussion as to the necessity and custom of taking the finger prints and photograph of all persons charged with important crimes, misdemeanors and high misdemeanors, voluntarily submitted to having his finger prints and photograph taken, and voluntarily signed his signature upon the four cards and forms upon which his finger prints were taken. It is denied that complainant was advised by Officer Magnus or anyone else connected with the Police Department of the City of Hoboken that copies of complainant's photograph were to be circulated, distributed and placed in the Rogues' Galleries of other cities throughout the United States and Canada, together with his finger prints.

4. Paragraph 4 is admitted.

30 5. Paragraph 5 is admitted.

6. Defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraph 6, except that complainant is a Sinking Fund Commissioner of the City of Hoboken, which is admitted, and except his connection with the Terminal Printing and Publishing Company, as to which the defendants allege that the complainant has the controlling interest in said Terminal Printing and Publishing Company and they

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admit that he is the President and Treasurer thereof.

7. Paragraph 7 is denied except that the complainant was booked under the alias of Luke Adams and that his photograph and finger prints were taken upon his arrest and before trial and conviction. 10

8. Paragraph 8 is denied.

9. Defendants say that for more than twenty (20) years last past the Police Department of the City of Hoboken has been maintaining and conducting a Bureau of Identification and that it has been customary to take the photographs and finger prints of all persons arrested upon complaint in important crimes, misdemeanors and high misdemeanors. That this practice of photographing and finger printing persons so charged prevails in every large city of this Country, where proper police regulations are well established, and that when a prisoner is arrested, charged with a crime of the character and importance charged against the complainant, who may be released upon bail, it is necessary, to the proper enforcement of police regulations, and the securing of the prisoner for trial, that his photograph and finger prints be taken, in order that should he forfeit his bail and undertake to become a fugitive from justice, the police department would be in possession of such information as would enable them to have him identified, wherever he may be found. That defendants are required, in the proper discharge of their duties, to run down and arrest offenders who may escape after having been released on bail, and that if they are not permitted to provide efficient means of identification of persons charged with offenses, 20  
30  
40

their efforts in that direction will become ineffectual and unavailing. That such finger printing and photographing is one of the usual means employed in the police service of the country, and it would be a matter of regret to have its uses unduly restricted upon any fanciful theory of constitutional privilege.

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30  
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10. That it is not the practice of the police department of the City of Hoboken to publish the photograph of a prisoner and it is not their purpose or intention to apply the photograph and finger prints taken of the complainant to any other purpose than that of identification if it becomes necessary in the criminal proceedings now pending, or which may hereafter be instituted against him. That it has been and is the practice of said Police Department to take the photograph of a person charged with as serious a crime as that with which the complainant was charged, together with four (4) sets of his finger prints. That one copy of his photograph and one set of his finger prints are kept in a private collection maintained for the use of the detective force of the City of Hoboken in the detection and identification of criminals and fugitives from justice. This collection is not open to the inspection of the public, but inspection thereof is only permitted where a serious offense has been committed, and it becomes proper, in the opinion of those in charge, to permit an inspection to be made by proper police officers and proper persons. That it has been and is the practice of said police department to send one copy of said photograph and finger prints so taken to the Central Bureau of Identification of New York State, at Albany, New York, and one to the Bureau of Identification, Department of Justice, Washington,

D. C., and one copy of the finger prints to the Bureau of Criminal Identification, Police Headquarters, New York City, N. Y., with a written request to return to the police authorities of Hoboken any record they may have of the subject in order to ascertain if the party in question had a criminal record.

10

11. That prior to the filing of the Bill of Complaint herein and in accordance with the practice of said Department, on February 11, 1928, a copy of the finger prints taken of the complainant was mailed to William J. Lahey, Chief Inspector, Police Headquarters, New York City, N. Y., and on February 13, 1928, a copy of the finger prints and photograph of the complainant were mailed, one to the Bureau of Identification, Department of Corrections, Albany, N. Y., and one to the Bureau of Investigation, Department of Justice, Washington, D. C.

20

12. That when the complainant's finger prints were taken by Detective Sergeant Sullivan and his photograph taken by Acting Detective Magnus, there was in the custody and possession of the police authorities a great quantity of advertisements, slips, papers and documents pertaining to the business of lotter-policy so called, together with the forms and plates from which said lottery tickets, advertisements and papers pertaining to lotter-policy were printed, all of which had been theretofore found and taken by the Police from the premises of the Terminal Printing and Publishing Company, of which Company the complainant is the President and Treasurer. Defendants charge and allege that said slips, advertisements, and tickets pertained to the business of lottery or lottery pol-

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40

10 icy and that they were printed with the complainant's knowledge, at his instigation and direction, and at his special instance and request, by his agents and employees. That the complainant's photograph and finger prints were taken without any malice or wanton disregard of the complainant's rights, but solely in the performance of a police duty based upon the evidence then in the hands of the police department, of the commission of a high misdemeanor by the complainant and a sworn complaint lodged against him therefor.

20 13. That the lottery tickets of the "Tia Juana" Mexican lottery printed by the complainant's company, the Terminal Printing and Publishing Company, announced cash prizes from ten dollars to twenty-five thousand dollars under the pretext or guise of a monthly dividend. That the slips and advertisements announced the winning numbers and cash prizes for the month of January, 1928. That the lottery tickets of the "Double Six" lottery printed by the complainant's said Company contained a number and spaces for the purchaser to insert his selection of numbers and combinations thereof and the slips announced weekly cash prizes of forty-five thousand dollars. That the slips and lists pertaining to the Italian lottery contained 30 the lucky and winning numbers for the weekly drawings of said lottery.

14. Defendants deny that complainant is entitled to any relief whatsoever or any part of the relief in said bill of complaint demanded, and allege that complainant has no standing in this Court or in any Court of Equity.

40 And defendants pray in all things the same benefit and advantages of this, their answer, as if it

*Replication.*

had been pleaded or demurred to said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HORACE L. ALLEN,  
Solicitor for and of Counsel  
with the Defendants. 10

**Replication.**

(Filed March 20, 1928)

## IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,  
Complainant,  
and

BERNARD N. MCFEELEY, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken,  
Defendants.

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Replication.  
On Bill, etc.

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The Complainant joins issue on the answer of the Defendants.

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel  
with the Complainant. 40

**Order to Show Cause.**

(Filed February 14, 1928)

## IN CHANCERY OF NEW JERSEY.

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Between

FRANK J. BARTLETTA,  
Complainant,  
and

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BERNARD N. MCFEELEY, as Com-  
missioner of Public Safety of  
the Board of Commissioners of  
the Mayor and Council of the  
City of Hoboken; EDWARD J.  
MCFEELEY, Chief of the Police  
Department of the City of Ho-  
boken and the Board of Com-  
missioners of the Mayor and  
Council of the City of Hoboken,  
Defendants.On Bill, etc.  
Order to Show  
Cause.

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This matter being presented to the Court by Anthony P. La Porta, solicitor for the above named complainant, and upon reading and filing the Bill of Complaint therein and the affidavits thereto annexed; it is on this 14th day of February, A. D. 1928, on motion of Anthony P. La Porta, solicitor for the complainant, ORDERED that the defendants, Bernard N. McFeeley, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; Edward J. McFeeley, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken show cause before the Chancellor at Chancery Chambers in the City of Jersey City on the 20th day of February, 1928, at ten o'clock in

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*Order to Show Cause.*

the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue compelling the defendants to deliver up and surrender unto the complainant the photographs and negatives, also the Bertillon measurements and fingerprints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken on or about the 10th day of February, 1928, or why they should not be restrained and enjoined by a Writ of Injunction or Order or Decree of this Court from keeping, distributing and circulating the complainant's fingerprints, measurements, photographs and negatives and all copies thereof;

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And it is further ORDERED that in the meantime and until further order of this Court that the said defendants and their or its agents and attorneys be restrained and enjoined from distributing and circulating the complainant's fingerprints, measurements, photographs and negatives and all copies thereof;

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And it is further ORDERED that a copy of the Bill of Complaint and the affidavits thereto annexed and this Order to show Cause be served upon the defendants within one day from the date hereof, which copies may be certified by the Solicitor of the Complainant.

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E. R. WALKER,  
C.

Respectfully advised.

JOHN BENTLEY,  
V. C.

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**Order Permitting Use of Affidavits on Order to  
Show Cause.**

(Filed February 29, 1928)

IN CHANCERY OF NEW JERSEY.

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Between

FRANK J. BARTLETTA,  
Complainant,  
and

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BERNARD N. MCFEELEY, as Com-  
missioner of Public Safety of  
the Board of Commissioners of  
the Mayor and Council of the  
City of Hoboken; EDWARD J.  
MCFEELEY, Chief of the Police  
Department of the City of Ho-  
boken and the Board of Com-  
missioners of the Mayor and  
Council of the City of Hoboken,  
Defendants.

On Bill, etc.

Order permit-  
ting the use of  
the annexed  
Affidavits on  
the Argument  
of the Rule to  
show Cause.

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Upon motion of Anthony P. La Porta, Solicitor  
for the Complainant in the above entitled matter  
it is ORDERED on this 29th day of February,  
1928, that leave be and the same is hereby granted  
to the complainant to use and read the annexed  
affidavits on the argument of the Rule to show  
Cause heretofore issued in the above entitled mat-  
ter.

It is further ORDERED that a copy of this Or-  
der together with a copy of the annexed Affidavits  
be served within one day from the date hereof upon  
the Solicitor for the defendants personally or by  
leaving the same at his office.

E. R. WALKER,

C.

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Respectfully advised.

JOHN BENTLEY,  
V. C.

*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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State of New Jersey, }  
County of Hudson, } ss.:

I, Frank J. Bartletta, of full age, being duly sworn upon my oath according to law depose and say:

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1. That on the 10th day of February, 1928, I learned that there was a warrant out for my arrest, issued by Recorder Carsten of Hoboken, New Jersey. I thereupon got into touch with my Attorney, Anthony P. La Porta, and also with my bondsman, Doctor Joseph Matera. Just as my bondsman had arranged to have Judge Carsten at the Police station ready there in time to accept my bail, I had Richard J. Conners drive me up to the Police station. Just as I got there around 7 o'clock in the evening, I was placed under arrest by Lieutenant Christie, who in the presence of my Counsel, Anthony P. La Porta and bondsman, Doctor Joseph Matera, read the warrant of arrest to me. Just as he had finished reading the warrant and as he was about to search me, I said to him, "This is entirely unnecessary, my bondsman is here and the Judge is in the back room, take me to him." Then Mr. La Porta joined in and said "Officer you just got through reading the warrant that you are to bring him before the Recorder, it is your duty to comply with the warrant, it is a false imprisonment for you to do otherwise." With that the officer replied "That he was under the orders from Commissioner McFeeley, that while he did not care to do it, he was obliged to do it. Then Mr. La Porta said "Consent to nothing, anything that you submit to, submit only under protest." Then Lieutenant Christie started to search me and

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*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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deprive me of my personal belongings, took my money, watch, fountain pen and other personal belongings and handed them over to Lieutenant Wren, who was in charge of the desk of the police station at the time.

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2. After Lieutenant Christie was through searching me I said "Take me before the Judge", he said "Oh, no, not yet, we got to fingerprint you." Then Lieutenant Christie and Detective Sergeant Beatty took me into Officer Sullivan's fingerprinting room and I called out to my counsel, Mr. La Porta, to come to my aid, as I did not think it was necessary or legal to take my fingerprints. Then Mr. La Porta and Doctor Matera walked to the door of Officer Sullivan's fingerprinting room and I said "I will not be fingerprinted only under protest." Then Officer Sullivan stated to Mr. La Porta and Doctor Matera that they should not have been allowed to be in the corridor of his fingerprinting room and he told them to get out slamming the door in their faces. I still protested and Officer Sullivan said to me "There never was a man in my office yet that refused to be fingerprinted and you are not going to be the exception" and he walked towards me as if to hit me and Detective Sergeant Beatty was standing next to me. Then I said, "All right, I will let you take my fingerprints under one condition only, under protest." He said, "All right just let us take them, then afterwards you can go to the higher courts and do what you please, we don't care." Then he took my fingerprints.

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3. I left Officer Sullivan's fingerprinting room with Detective Sergeant Beatty on one side of me, and Officer Magnus and Lieutenant Christie on the

*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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other side of me and I said "Take me before the Judge, he is waiting to accept my bail." They said, "Oh no, not yet." They took me by the arm and took me to the elevator. We went upstairs to Officer Magnus's photographing room where I told Officer Magnus "You don't have to take my photograph, every newspaper in Hudson County has my picture." He said, "These are my orders from Commissioner McFeeley," and they made me sit down on a stool and I said "You can take my photograph only under protest and Officer Magnus said "That's all right, there are higher courts, you can go where you please." So I sat down and they took my photograph sideways and frontways, and he said "All right all we want them for is to send them to the Rogues' Galleries with the rest of the criminals all over the United States and Canada so in case you get lost we can find you." I said "You won't do that because I will take it to the higher courts." He said "We don't care what you do."

4. They then took me in the elevator again and I said "Take me before the Judge," he said "Just one more thing." They took me into Detective Sergeant Fullam's office and asked me if I wished to make a statement and said you don't have to make it if you don't want to, so I said "If I don't have to make it, I won't make it and therefore I don't have to sign it." Then Detective Sergeant Fullam asked me my name, where I lived, age and other questions. Then I was immediately brought before Judge Carsten who held me in \$5,000 bail for arraignment and preliminary hearing on Wednesday, February 15th, 1928. Then Doctor Matera bailed me out.

*Order Permitting Use of Affidavits on Order to Show Cause.*

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5. Then I was taken by Lieutenant Christie before the desk and Lieutenant Wren gave me the stuff that was taken from me and Commissioner McFeeley was standing behind the desk and sort of looked at me with an air of contentment and satisfaction.

6. I might add that after Officer Sullivan fingerprinted me, he weighed and measured me.

7. In the month of December 1926, Commissioner Bernard N. McFeeley phoned my office, asking me to come to his office as he wished to see me. I thereupon went to his office, arriving at his office, he said "Frank, for what you have done for me and the Democratic Organization I am going to make you a Sinking Fund Commissioner, it is an honorary job with no salary but it will show the people of Hoboken whom I recognize as the leader down there in your section, and sooner or later there will be something better along and I will be only too glad to give it to you." Then I answered him that I did not want any salaried position, and he said "All right" and I said, "If you have anything to give I would like you to give it to some fellow who has been with us in our societies and clubs and been working in your organization," and he said "All right, Frank, when we come to it then we will talk about it." As a result of that conference I was appointed Sinking Fund Commissioner by the Mayor of Hoboken with the unanimous consent of the Board of Commissioners, including Commissioner Bernard N. McFeeley, for the term of 3 years commencing with the 1st day of January, 1927. Upon taking my oath of office as Sinking Fund Commissioner for the City of Hoboken, I was

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bonded by the City of Hoboken in the sum of \$5,000 to \$10,000 for the honest and faithful performance of my duties.

8. I am well known in the City of Hoboken, in fact throughout the State of New Jersey and elsewhere, I am particularly known by Commissioner Bernard N. McFeeley, by all of the officials of the City of Hoboken, including the members of the Police Department and Chief McFeeley. 10

9. I have dined, wined and been in the company of the Commissioners and the Chief and other officials of the City of Hoboken, in restaurants and other public places, in parties, and accompanied them on their speaking tour during their last several elections held in the City of Hoboken and have been constantly a servant of the Democratic Party and working for Commissioner Bernard N. McFeeley, the recognized political boss of the City of Hoboken. I have known Commissioner McFeeley and his brother, Chief McFeeley intimately for the past 6 years, so that I am well identified not only with the Democratic Party but also with the entire population of the City of Hoboken, including the Commissioner and the Chief. 20 30

10. Just prior to my arrest I had several political quarrels with Commissioner McFeeley, which resulted in the arrest of the President of my Association and several other friends and adherents of mine.

11. On or about the 10th day of February, 1928, with the political fight in full bloom I was suddenly arrested and charged with the unlawful possession of lottery tickets alleged to have been 40

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found in the printing plant of the Terminal Printing and Publishing Company, a corporation of this State, of which I am President with no salary. This charge is false and malicious and made to injure me in my good name and reputation and  
10 thereby deprive me of my political and legal rights together with my social standing and injure me in my business.

12. I pay approximately \$15,000 a year in taxes on the real estate in which I am interested in the City of Hoboken alone, and I can see no reason why they should photograph me for the rogues' galleries of other places including Canada and Hoboken.

20 13. The Rogues' Gallery is a room kept by the Detective and Police Departments of different cities in the various States of the United States, Canada and elsewhere, wherein the photographs of habitual criminals are kept for the purpose of identification and detection of crimes and for the facilitation of their return to the prisons should they escape. This is the treatment that I am receiving under the Police Department of the City of  
30 Hoboken, of which Commissioner Bernard N. McFeeley is the Director of.

FRANK J. BARTLETTA.

Sworn and subscribed to before me,  
this 29th day of February, 1928.

FREDERICK GALIONE,  
Notary Public,  
Hudson County, N. J.

*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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State of New Jersey, }  
County of Hudson, } ss.:

I, Doctor Joseph Matera of full age being duly sworn according to law upon my oath depose and say:

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1. That I am a licensed practicing physician of the State of New Jersey for 8 years last past and practice my profession as such in the City of Hoboken, County of Hudson and State aforesaid, having my office and residence at No. 506 Garden Street, Hoboken, aforesaid.

2. That on or about the 10th day of February, 1928, I was informed by Mr. Frank J. Bartletta that there was a warrant out for his arrest and that he was going to the police station at Hoboken that night to find out what the warrant was all about; at the same time he requested me to be ready and wait for him at the police station with Counselor Anthony P. La Porta ready to bail him out should he be arrested.

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3. I thereupon consented; and at or about the hour of 7 P. M. that night in company with Counselor Anthony P. La. Porta went to the police station at Hoboken and waited with Mr. La Porta until Mr. Bartletta appeared with one Mr. Richard Connors. Immediately upon his appearance he was seized by Lieutenant William Christie of the Hoboken Police Department and placed under arrest; I then saw Lieutenant Christie pull out a sheet of paper from his coat pocket which he said was the warrant for Mr. Bartletta's arrest and he read it aloud to him.

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*Order Permitting Use of Affidavits on Order to  
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4. Just as Lieutenant Christie finished reading the warrant to Mr. Bartletta, Mr. La Porta said, "Officer you just read that the warrant requires you to bring Mr. Bartletta before the Magistrate who issued the warrant, the Judge is in the next  
10 room waiting to fix bail for Mr. Bartletta and it is your duty to bring him before him under the law and we demand that right." Lieutenant Christie then replied "These are my orders from Commissioner McFeeley and I must obey" and as he said this he proceeded to search Mr. Bartletta to which Mr. Bartletta said "You don't have to search me, you can bring me before the Judge who is ready to fix bail," but Lieutenant Christie nevertheless went  
20 on with his searching of Mr. Bartletta and took out his watch, wallet, keys and other personal belongings and handed them over to Lieutenant Wren, who was in charge of the police desk at the time

5. Then Lieutenant Christie with Detective Sergeant Beatty seized Mr. Bartletta by the arm and ushered him into Officer Sullivan's fingerprinting room; at the same time Mr. Bartletta shouted "La Porta, come here." I and Mr. La Porta followed and stayed by the entrance of the fingerprinting room. Then, in my presence and in the  
30 presence of Mr. La Porta and others Mr. Bartletta said: "I object and protest I won't stand for this fingerprinting, I won't stand to be photographed." Officer Sullivan upon seeing me and Mr. La Porta intimated that we should never have been by that door looking in and ordered Mr. La Porta out of the room, and then Mr. La Porta shouted "If you submit, don't submit except under protest"; with that Mr. Bartletta said "Yes, I will submit but under protest." Then Officer Sullivan slammed  
40 the door in Mr. La Porta's face.

*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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6. After Officer Sullivan got through with Mr. Bartletta he turned him over to Officer Magnus, Official Photographer for the Police Department of Hoboken, who seized Mr. Bartletta by the arm accompanied by Lieutenant Christie and Detective Sergeant Beatty, and within my presence Mr. Bartletta said Officer Magnus "I refuse to have you photograph me." Officer Magnus replied "Those are my orders." Notwithstanding that Officer Magnus with the other officers grabbed a hold of him and pulled him out of our sight. 10

7. I didn't see Mr. Bartletta again until he returned after Officer Magnus, the photographer, got through with him. He was then led by Lieutenant Christie and Detective Sergeant Beatty to Inspector Kiely's room where he was questioned and asked to sign a statement by Detective Sergeant Fullam, and under advice of counsel Mr. Bartletta said "As long as I don't have to make any statement, I will not make any nor will I sign any." 20

8. Then Mr. Bartletta was ushered into Inspector Kiely's private office where Judge Carsten fixed bail in the sum of \$5,000.00, which was furnished by me for his appearance Wednesday, February 15th, 1928. 30

9. After Mr. Bartletta was released under my bail by Judge Carsten and just as Lieutenant Christie took Mr. Bartletta to the desk to return his personal belongings to him Commissioner Bernard N. McFeeley suddenly appeared behind the desk and standing over the threshold leading to the Police desk at which Lieutenant Wren was in charge, glanced at Mr. Bartletta with a countenance of full satisfaction. 40

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10 I know Mr. Bartletta intimately for at least 5 years. I know him to be honest, honorable and just, and his reputation for honesty and decency is excellent. I believe in his innocence of the charge against him because I know that he is strictly businesslike.

11. Everybody that I know of that has discussed the criminal charge of lottery against Mr. Bartletta says that it is not true and that it is a political affair. This seems to be a matter of common rumor and discussion.

DR. JOSEPH MATERA.

20 Sworn and subscribed to before me,  
this 29th day of February, 1928.

FREDERICK GALIONE,  
Notary Public,  
Hudson County, N. J.

30 State of New Jersey, }  
County of Hudson, } ss.:

Anthony P. La Porta, of full age being duly sworn according to law upon his oath deposes and says:

40 1. That he was present with Doctor Matera when Mr. Frank J. Bartletta, the complainant in the above matter was placed under arrest by Lieutenant Christie under a warrant, which the said Lieutenant Christie read aloud to Mr. Bartletta in deponent's presence.

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2. That deponent demanded of Lieutenant Christie to comply with the mandate of the warrant to bring Mr. Frank J. Bartletta before the Recorder who was then waiting to receive Mr. Bartletta for bail but Lieutenant Christie refused. Thereupon Lieutenant Christie informed deponent that he was under orders and that Mr. Bartletta would have to submit to the searching, fingerprinting, etc. 10

3. Deponent further says that Mr. Bartletta protested to the actions of the Police Department in the fingerprinting and photographing and that it was only under Mr. Bartletta's protest and without his consent that the searching, fingerprinting, etc. was done. 20

4. Deponent further says that what Mr. Frank J. Bartletta and Doctor Joseph Matera say in their affidavits is substantially what took place on the incident referred to.

ANTHONY P. LA PORTA.

Sworn and subscribed to before me,  
this 29th day of February, 1928. 30

FREDERICK GALIONE,  
Notary Public,  
Hudson County, N. J.

*Order Permitting Use of Affidavits on Order to  
Show Cause.*

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State of New Jersey, }  
County of Hudson, } ss.:

10 I, Richard J. Conners, of full age being duly sworn according to law upon my oath depose and say:

1. That on or about the 10th day of February, 1928, I accompanied Mr. Bartletta to the Police station at Hoboken, New Jersey, at or about the hour of 7 P. M. where he was arrested by Lieutenant Christie. Just as he was about to be searched Counselor Anthony P. La Porta asked me to make sure that the Judge would stay long enough to receive bail for Mr. Bartletta, so I did not observe what was going on after the searching of Mr. Bartletta.

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2. Mr. Bartletta had Counselor La Porta and Doctor Matera waiting for him at the police station when I and Mr. Bartletta arrived there.

RICHARD J. CONNERS.

30 Sworn and subscribed to before me,  
this 29th day of February, 1928.

FREDERICK GALIONE,  
Notary Public,  
Hudson County, N. J.

**Affidavits in Reply to Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,  
Complainant,  
and

BERNARD N. MCFEELEY, as Com-  
missioner of Public Safety of  
the Board of Commissioners of  
the Mayor and Council of the  
City of Hoboken; EDWARD J.  
MCFEELEY, Chief of the Police  
Department of the City of Ho-  
boken and the Board of Com-  
missioners of the Mayor and  
Council of the City of Hoboken,  
Defendants.

On Bill, etc.

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State of New Jersey, }  
County of Hudson, } ss.:

John J. Sullivan, being duly sworn according to law upon his oath deposes and says:

1. I am a detective-sergeant of the Police Department of the City of Hoboken, assigned to the Bureau of Criminal Identification. For the past four (4) years, I have been connected with said Bureau, personally taking finger prints and mailing them to the various bureaus of identification required by the rules of the Police Department. I also personally make up the records required by the Prosecutor of the Pleas of Hudson County for his assistance in the presentation of charges before the Grand Jury and the preparation before trial upon indictment. I also make up said crim-

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*Affidavits in Reply to Order to Show Cause.*

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inal records at the order of the Chief of Police or the Inspector where the same are required by the Police authorities of different municipalities throughout the United States.

10 2. The Police Department of the City of Hoboken has been conducting said Bureau of Identification for more than the past twenty (20) years, and during all that period of time, it has been customary to take the photographs and finger prints of all persons arrested upon complaint of important crimes, misdemeanors and high misdemeanors, together with data as to tatoo marks, scars and other means of identification when existing.

20 3. In the making of the aforesaid finger prints, there is supplied for my use by the Police Department of the City of Hoboken, finger print filing cards, a true copy of which is hereto annexed and made a part hereof and marked Exhibit D-1. There is also supplied me by the Department of Justice at Washington D. C., for the making of said finger prints, a finger print card, a true copy of which is hereto annexed, made a part hereof and marked Exhibit D-2. There is likewise furnished me by  
30 the Police Department of the City of Hoboken, a finger print blank, a true copy of which is hereto annexed, made a part hereof and marked Exhibit D-3.

4. In the taking of said finger prints of all persons arrested upon complaint charging them with important crimes, misdemeanors and high misdemeanors, it is customary for me to take at least four sets of their finger prints, using the finger print cards marked Exhibits D-1, D-2 and D-3. The  
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*Affidavits in Reply to Order to Show Cause.*

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finger prints of the thumb, index, middle, ring and little fingers of the right and left hands are placed by me in the appropriate spaces respectively designated therefor. This requires my placing the side of the thumbs and fingers at one side of the respective space and then rolling the thumbs and fingers over the entire front part thereof and around to the opposite side of the nail, so that the roll of the finger covers from one side of the nail to the opposite side of the nail. In this manner only am I able to get the pattern and full characteristics of each finger in the print for the purpose of classification and identification. 10

5. Before the making of said finger prints I have the prisoner make his signature upon the aforesaid blanks, if able to write. The forms Exhibit D-1, D-2 and D-3 having had the finger prints made thereon, I then enter in the appropriate space, by whom the impression was made, the date, classification and any memorandum together with other identifications, scars, tatoos marks, lameness and other means of identification. One copy of Exhibit D-1 is kept for the files of the Bureau of Criminal Identification operated and maintained by the Police Department of the City of Hoboken. Another copy of Exhibit D-1 is immediately mailed to the Central Bureau of Identification of New York State, at Albany, N. Y. A copy of Exhibit D-2 is likewise immediately mailed to the Bureau of Investigation, Department of Justice, Washington, D. C., Identification Division, in an envelope furnished the Police Department of the City of Hoboken by the United States Government, a true copy of which envelope is hereto annexed, made a part hereof and marked Exhibit D-4. The United States Government likewise furnishes the Police 20 30 40

*Affidavits in Reply to Order to Show Cause.*

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Department of the City of Hoboken with the cards marked Exhibit D-2. The form, Exhibit D-3, is either mailed or delivered to the Bureau of Criminal Identification, Police Headquarters, New York City.

- 10     6. On Friday night, February 10, 1928, at about 7 P. M., Francis J. Bartletta was brought into my office, Police Headquarters, Hoboken, by Lieut. William Christie and Detective-Sergeant John Beatty, and I asked him to take off his overcoat and sack coat. Having done this, I informed him that I was about to take his finger prints and I offered him my fountain pen, requesting him to sign his signature upon the blanks upon which I intended to take his finger prints. He thereupon
- 20     put both hands in his trouser pockets and said to me, "I refuse to be finger printed. If you want to take my finger prints, you must use force." We then had a discussion and I told him that I had never used force and did not intend to do it in this case, but that I was obliged in the performance of my duty to take his finger prints. After some further discussion, Francis J. Bartletta then said, "All right, go ahead." He removed both his hands from his trouser pockets and told me to go ahead.
- 30     I interrogated him as to his age and birthplace and he having voluntarily given me the desired information, I made the proper entries as to his age, date of birth, color, complexion, color of eyes, hair, etc., as found on the back of Exhibits D-1, D-2 and D-3, and at the top thereof. In order to get his weight and height, I asked him to step up on the scales in my office, which he did voluntarily. He thereupon, at my request, voluntarily extended his right hand to me first and I inked each finger to
- 40     which he submitted voluntarily. Having inked them,

*Affidavits in Reply to Order to Show Cause.*

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I thereupon finger printed them. Having finished with the right hand he extended his left hand to me voluntarily, I inked that and then took the finger prints of his left hand. Then I took the flat impression of the four fingers of each hand, placing the same upon the bottom of Exhibit D-1, D-2 and D-3. All of this was done upon the forms, Exhibits D-1, D-2 and D-3. Having finished taking his finger prints, I then furnished him with some gasoline to clean the ink from his hands and gave him a piece of cloth to dry his hands and then invited him into my inner office and furnished him with soap and clean towel for thoroughly cleaning his hands. When he finished cleaning his hands, I then asked him if he would sign his signature upon the finger prints and he said, "No", and asked me what was the next move. I informed him that he was to be photographed. He said, "Let's go to it." He left my room in charge of Detective Sergeant Beatty, Lieutenant Christie, and Acting Detective Magnus who does the photographic work for the Police Department of the City of Hoboken, and after his photograph had been taken, he came back into my office and said to me, "I will sign those finger prints for you." I then handed him a pen and he signed each one of the four finger prints. In the taking of said finger prints and obtaining said signatures thereto, not the slightest amount of physical force upon Francis J. Bartletta was used by me or anyone else. At no time did I say, "All right just let us take them, you can go to the higher courts and do what you please, we don't care."

7. On Saturday morning, February 11, 1928, I mailed the finger prints taken by me of Francis J. Bartletta on the form Exhibit D-3 to William

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*Affidavits in Reply to Order to Show Cause.*

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10 J. Lahey, Chief Inspector, Police Headquarters,  
240 Centre Street, New York City, for him to file  
the same with the Bureau of Criminal Identifica-  
tion at Police Headquarters, New York City, N. Y.  
On Monday, February 13, 1928, having received  
from Acting Detective Magnus, the official pho-  
tographer of the Police Department of the City  
of Hoboken, the photographs which he had taken  
of Francis J. Bartletta, I personally mailed a true  
copy of the form Exhibit D-1, containing the pho-  
tograph and finger prints of Francis J. Bartletta,  
to the Bureau of Identification, Department of  
Corrections, Albany, N. Y., and a true copy of  
Exhibit D-2, containing said photograph and finger  
prints of Francis J. Bartletta, to the Bureau of  
Investigation, Department of Justice, Washing-  
20 ton, D. C.

8. That the only distribution of the photographs  
and finger prints taken of Francis J. Bartletta was  
the sending of the same to the aforesaid three Bu-  
reaus of Identification, to wit: to New York City,  
to Albany, N. Y., and to Washington, D. C., all  
of which is past and was done prior to the order  
made by his Honor, Vice-Chancellor Bentley, in  
the above entitled cause.

30 9. That the photographs and finger prints taken  
of said Francis J. Bartletta kept by the Police  
Department of the City of Hoboken are kept at  
police headquarters in a private collection main-  
tained for the use of the detective force in the de-  
tection and identification of criminals and fugi-  
tives from justice. That the same is not open to  
the public, but, that when a person appears at  
police headquarters complaining that he has been  
40 robbed or that a serious offense has been committed

*Affidavits in Reply to Order to Show Cause.*

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and makes out a prima facie case to justify his inspection of the photographs in said collection, he is permitted, in the exercise of the best judgment of those in charge thereof, to make an examination to determine whether the photograph of the individual charged is in said collection. An inspection is likewise permitted to police officers and proper authorities for the purpose of the discovery and identification of criminals and fugitives from justice. 10

10. In the taking of said finger prints and photographing said Bartletta and forwarding the same to the Bureaus of Identification which I did, I acted solely in the performance of my duty, in accordance with my daily practice in similar cases and was not actuated by any malice or wanton disregard of Bartletta's rights. At the time of such taking of his photograph and finger prints, I knew that a sworn complaint had been lodged against him charging him with the commission of a high misdemeanor, to wit: having in his possession advertisements, slips, papers and documents pertaining to a certain lottery company known as the "Tia Juana Beneficial Disbursement Association," in violation of Section 58 of the Crimes Act of 1898, and the supplements and amendments thereto; a true copy of which complaint is hereto annexed, made a part hereof and marked Exhibit D-5; that another sworn complaint had been lodged against him charging him with the commission of a high misdemeanor, to wit: having in his possession advertisements, slips, papers and documents pertaining to a certain lottery company known as the "Double Six"; and that another sworn complaint had been lodged against him charging him with the commission of a high misdemeanor, to wit: having 20 30 40

*Affidavits in Reply to Order to Show Cause.*

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in his possession advertisements, slips, papers and documents pertaining to a certain lottery company known as the "Italian Lottery Policy"; that a warrant for his arrest had been lawfully issued, a true copy of which warrant is hereto annexed, made a part hereof and marked Exhibit D-6. I had further knowledge, that, at about noon on February 10, 1928, there had been found and seized by the police, in the premises of the Terminal Printing and Publishing Company, a corporation controlled by said Francis J. Bartletta, and of which he is the president and treasurer, copper forms and plates for the printing of the advertisements, slips, papers and documents pertaining to the certain lottery companies known as the "Tia Juana Beneficial Disbursement Association," "Double Six" and the "Italian Lottery Policy," so that in addition to the fact that a sworn complaint had been lodged against said Francis J. Bartletta charging him with a high misdemeanor, I had the further knowledge that there was then in the custody of the Police Department of the City of Hoboken, a great quantity of lottery tickets, advertisements, slips, papers and documents appertaining to the various lottery companies and the forms from which they were printed, all of which had been found and seized in the premises of the Terminal Printing and Publishing Company of which Francis J. Bartletta is the controlling interest and president.

At the time of such taking of Bartletta's photograph and finger prints I also knew that federal indictments had been previously found against him with one Kleinberg and one Goldberg, charging them with conspiring to violate the National Prohibition Act to transport 300 cases of liquor from Savannah, Georgia to Hoboken, New Jersey, and that Bartletta had succeeded in resisting his re-

*Affidavits in Reply to Order to Show Cause.*

removal from Hoboken to Georgia by court proceedings.

11. That annexed hereto and made a part hereof is one of the said Tia Juana Beneficial Disbursement Association lottery tickets, advertisements and slips found by the police in the premises of the Terminal Printing and Publishing Company, which is marked Exhibit D-8. 10

12. That annexed hereto and made a part hereof is one of the said Double Six lottery tickets, advertisements and slips found by the police in the premises of the Terminal Printing and Publishing Company, which is marked Exhibit D-9.

13. That annexed hereto and made a part hereof is one of the said Italian Lottery Policy tickets, advertisements and slips found by the police in the premises of the Terminal Printing and Publishing Company, which is marked Exhibit D-10. 20

14. That annexed hereto and made a part hereof is a copy of the annual report of the Terminal Printing and Publishing Company, a corporation of the State of New Jersey, duly certified by the Secretary of State of the State of New Jersey, as a true copy of said report as the same is taken from and compared with the original filed in the office of the Secretary of State and which is marked Exhibit D-11, wherefrom and whereby it appears that said complainant, Francis J. Bartletta, is the president and the treasurer of the Terminal Printing and Publishing Company. 30

JOHN J. SULLIVAN.

Sworn and subscribed to before me  
this 15th day of March, 1928.

MORTEN R. MORTENSEN,  
Notary Public of New Jersey. 40

*Affidavits in Reply to Order to Show Cause.***Defendants' Exhibit D-1.**

IN CHANCERY OF NEW JERSEY

10	Between FRANK J. BARTLETTA, Complt., and BERNARD N. McFEELY, et als., Defts.	}	On Bill, &c.
----	---	---	--------------

BUREAU OF POLICE,  
HOBOKEN, N. J.

20	Age 29 years	Hair Black
	Date Born	Beard
	Descent	Eyes Brown
	Color W	Nose Rect.
	Compl Dark	Ear Rd. Sep.
	Height 5 ft. 8 $\frac{1}{4}$	Chin Rd.
	Weight 162	Occupation Real Estate
	Build Med.	Crim. Specialty
	Pecul.	Birthplace Arlington, Vermont.

30

BERTILLION MEASUREMENTS

(Balance of Form Blank)

40



*Affidavits in Reply to Order to Show Cause.*

Four Fingers Taken Simultaneously

Left Hand

L. Thumb      R. Thumb

Four Fingers Taken Simultaneously

10

Right Hand

DEPARTMENT OF JUSTICE,  
BUREAU OF INVESTIGATION

Identification Division, Washington, D. C.

Record from: Dept. of Police (Address) Hoboken,  
N. J.

20

Date of arrest Feb. 10-28.

Charge Possession of Lottery Tickets.

Disposition of case Bail for Grand Jury.

Residence 913 Hudson St., Hoboken, N. J.

Place of birth Arlington, Vermont.

Nationality

Criminal specialty

Age 29. Build Med. Height 5-8¼. Comp. Dark.

Hair Black. Weight 162. Eyes Brown.

Scars and marks

30

## CRIMINAL HISTORY

(Blank)

40

*Affidavits in Reply to Order to Show Cause.*

**Defendants' Exhibit D-3.**

**IN CHANCERY OF NEW JERSEY.**

Between

FRANK J. BARTLETTA,  
Complt.

and

BERNARD N. MCFEELY, et als.,  
Defts.

On Bill &c.

10

DEPARTMENT OF POLICE,  
HOBOKEN, N. J.

MALE 20

F. No. .... B. No. ....  
Name .....  
Aliases .....  
Classification No. ....

**RIGHT HAND**

- 1—Right Thumb 30
- 2—R. Fore Finger
- 3—R. Middle Finger
- 4—R. Ring Finger
- 5—R. Little Finger

Impressions to be so taken that the flexure of the last joint shall be immediately above the black line marked (Fold). If the impression of any digit be defective a second print may be taken in the vacant space above it.

40

Affidavits in Reply to Order to Show Cause.

When a finger is missing or so injured that the impression can not be obtained, or is deformed and yields a bad print, the fact should be noted under *Remarks*.

## LEFT HAND.

- 10      6—L. Thumb  
          7—L. Fore Finger  
          8—L. Middle Finger  
          9—L. Ring Finger  
          10—L. Little Finger

## LEFT HAND.

Plain impressions of the four fingers  
*taken simultaneously*

## RIGHT HAND.

- 20      Plain impressions of the four fingers  
          *taken simultaneously*

Impressions taken by ..... at  
 Bureau of Identification Department of Police,  
 Hoboken, N. J., on ..... 191...

Remarks .....

Name FRANK J. BARTLETTA

Alias LUKE ADAMS

- 30      Residence 913 Hudson St., Hoboken, N. J.

Crime Possession of Lottery Tickets.

Color White

Age 29 Height 5 ft. 8 $\frac{1}{4}$  in.

Weight 162 Build Med.

Hair Black Eyes Brown

Complexion Dark Moustache

Born Arlington, Vermont

Occupation Real Estate

Date of Arrest Feb. 10, 28

- 40      Officer Lieut. Christie & Det. Sgt. Beatty

D. B. Precinct



**Defendants' Exhibit D-5.**

IN CHANCERY OF NEW JERSEY.

10	Between FRANK J. BARTLETTA, Complt., and BERNARD N. McFEELY, et als., Defts.	}	On Bill, &c.
----	---	---	--------------

HOBOKEN RECORDER'S COURT, CITY OF  
HOBOKEN.

20	THE STATE v. FRANK J. BARTLETTA JOHN A. BADO PHILIP SCHWARTZ ROBERT BARR	}	COMPLAINT—For possession of Lottery Tickets, etc.
----	---	---	---

30	CITY OF HOBOKEN, COUNTY OF HUDSON, STATE OF NEW JERSEY,	}	ss. :
----	---	---	-------

40 JOSEPH R. SCOTT, a Lieutenant of Police of the Hoboken Police Department, being duly sworn, complains that on the ninth day of February, A. D., One Thousand Nine Hundred and Twenty-eight, at four o'clock P. M., or thereabouts at Numbers 510, 512 and 514 Fourth Street, in the City of Hoboken, aforesaid, FRANK J. BARTLETTA, JOHN A.

*Affidavits in Reply to Order to Show Cause.*

BADO and PHILIP SCHWARTZ, also ROBERT BARR, did wilfully have in their possession, advertisements, slips, papers and documents pertaining to a certain Lottery Company, known as the Tia Juana Beneficial Disbursement Association, in violation of Section 58, of the Crimes Act of 1898, the supplements and amendments thereto. 10

THEREFORE, this complainant prays that the said offenders may be dealt with according to law.

JOSEPH R. SCOTT  
Complainant.

ADOLPH C. CARSTEN  
Recorder.

(SEAL)

20

ATTEST:

Subscribed and sworn to before  
me this ninth day of February,  
A. D., 1928.

JAMES J. HAW  
Clerk.

30

40

*Affidavits in Reply to Order to Show Cause.*

**Defendants' Exhibit D-6.**

**IN CHANCERY OF NEW JERSEY.**

10

Between

FRANK J. BARTLETTA,

Complt.,

and

BERNARD N. MCFEELY, et als.,

Defts.

On Bill, &c.

**HOBOKEN RECORDER'S COURT, CITY OF  
HOBOKEN.**

20

THE STATE

v.

FRANK J. BARTLETTA

JOHN A. BADO

PHILIP SCHWARTZ

ROBERT BARR

Warrant for Possession  
of Lottery Tickets, etc.

30

CITY OF HOBOKEN,  
COUNTY OF HUDSON,  
STATE OF NEW JERSEY,

ss.:

To any Policeman of said City or Constable of  
said County,

WHEREAS, JOSEPH R. SCOTT, a Lieutenant of  
Police of the Hoboken Police Department, has this  
40 day made complaint upon oath before me, ADOLPH

*Affidavits in Reply to Order to Show Cause.*

C. CARSTEN, Recorder, of the City of Hoboken that on the ninth day of February, A. D., Nineteen Hundred and Twenty-eight, at the City of Hoboken, aforesaid at Numbers 510, 512 and 514 Fourth Street, FRANK J. BARTLETTA, JOHN A. BADO, PHILIP SCHWARTZ and ROBERT BARR, did wilfully have in their possession advertisements, slips, papers and documents pertaining to a certain Lottery Company, known as the Tia Juana Beneficial Disbursement Association, in violation of Section 58 of the Crimes Act of 1898, the supplements and amendments thereto. 10

THESE ARE THEREFORE, in the name of the State of New Jersey, to authorize and command you forthwith to apprehend the said FRANK J. BARTLETTA, JOHN A. BADO, PHILIP SCHWARTZ and ROBERT BARR, if they may be found in your bailiwick, and them forthwith bring or cause to come before the Recorder's Court of the City of Hoboken, to answer said complaint and be further dealt with as the law directs. 20

WITNESS, ADOLPH C. CARSTEN, Esq., Recorder of the City of Hoboken, County of Hudson, State of New Jersey, this ninth day of February, One Thousand Nine Hundred and Twenty-eight. 30

ADOLPH C. CARSTEN  
Recorder.

(SEAL)

ATTEST: JAMES J. HAW  
Clerk of Hoboken Recorder's Court.



Affidavits in Reply to Order to Show Cause.

THIRD. The character of the business is Printing and Publishing.

FOURTH. The amount of the authorized capital stock is \$100,000.00. The amount actually issued and outstanding is \$25,000.00.

10

FIFTH. The name and addresses of all the Directors and Officers, and the term when the office of each expires, are as follows:

NAMES OF DIRECTORS	ADDRESS	EXPIRATION OF TERM	
Francis J. Bartletta	913 Hudson St., Hoboken, N. J.	May 14, 1926	
Francis P. Jones	726 Park Ave., Hoboken, N. J.	" " "	
John A. Bado	888 Park Ave., Woodcliff, N. J.	" " "	20
Joseph Bartletta	628 Park Ave., Hoboken, N. J.	" " "	

## OFFICERS:

President, Francis J. Bartletta	" " "	
Vice-President, John A. Bado	" " "	
2d Vice-President, Joseph Bartletta	" " "	
Treasurer, Francis J. Bartletta	" " "	
Secretary, Francis P. Jones	" " "	30

SIXTH. The next annual meeting of the stockholders for election of Directors is appointed to be held on May 14, 1926.

SEVENTH. The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer-book, in which the transfers of stock are made,

40

Affidavits in Reply to Order to Show Cause.

and a stock book, containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

10 WITNESS our hands the ninth day of July,  
A. D. 1925.

FRANCIS J. BARTLETTA  
President.

FRANCIS P. JONES  
Secretary.

ENDORSED :

"FILED JUL 13, 1925

THOMAS J. MARTIN  
SECRETARY OF STATE."

20

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STATE OF NEW JERSEY

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DEPARTMENT OF STATE

30 I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of Annual Report of Officers and Directors of the Terminal Printing and Publishing Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Thirteenth day of July, A. D., 1925, and now remaining on file therein.

(SEAL) IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed my  
Official Seal at Trenton, this Six-  
teenth day of February, A. D.,  
1928.

40

JOSEPH F. S. FITZPATRICK  
Secretary of State.

Affidavits in Reply to Order to Show Cause.

State of New Jersey, }  
 County of Hudson, } ss.:

WILLIAM CHRISTIE, of full age, being duly sworn upon his oath according to law, deposes and says:

I am a lieutenant of police of the Hoboken Police Department and was present at Police Headquarters in the City of Hoboken on Friday evening, February 10, 1928, at about 7 o'clock in the evening, when Frank Bartletta came into the Police Station House. His attorney, Mr. Anthony La Porta, had preceded him by a few minutes. 10

When Bartletta entered he said to me, "I hear there is a warrant out for me." I replied, "Yes." I went back to my desk to obtain the warrant and then read the same to Bartletta and told him that he was now under arrest. 20

Lieutenant Wren, who was then doing desk duty, made the various entries upon the police blotter, a true copy of which is hereto annexed, made a part hereof and marked Exhibit D-7. Under directions of Lieutenant Wren, I then, as is customary in all similar cases, searched said Bartletta and took from him \$56.00 in bills, a watch and chain, a bunch of keys, a fountain pen and a pen knife, all of which property of Bartletta I turned over to Lieutenant Wren in charge of the desk. 30

I did not say that "I was under orders from Commissioner McFeely and that while I did not care to do it, I was obliged to," and made no remark of a similar or like effect. There was no occasion for my apologizing or explaining my actions to Bartletta as I was performing my customary police duties.

I next took Bartletta into the room where the 40

*Affidavits in Reply to Order to Show Cause.*

finger prints are taken. Detective Sergeant Sullivan was there present and he requested Mr. Bartletta to remove his coat and roll up his sleeves. This Bartletta did. Detective Sergeant Sullivan then offered Bartletta his fountain pen and requested him to sign the blanks upon which the  
10 finger prints were to be taken. Bartletta thereupon placed both his hands in his trouser pockets and announced that he refused to be finger printed. His attorney, Mr. La Porta, came into the room and said to Bartletta, "Go ahead, Frank, you are only delaying matters." Bartletta then consented to have his finger prints taken. After his finger prints were taken he refused to sign the finger print blanks.

20 Detective Sergeant Beatty, Acting Detective Magnus and I then escorted Bartletta to the police photographic gallery on the second floor in the City Hall. In entering the elevator to go up to the photographic gallery, Bartletta turned to his lawyer, Mr. La Porta, and said, "I don't intend to let these men take my picture," and his lawyer replied, "Go ahead, Frank, you are only delaying matters. There are lots of your pictures around this city."

30 We then went upstairs in the elevator to the photographic gallery where Bartletta sat down and his pictures were taken.

At no time while Bartletta's picture was being taken did Acting Detective Magnus say to Bartletta that he was acting under orders from Commissioner McFeely. Nor did he say, "That's all right, there are higher courts, you can go where you please." Nor did he or anyone else say, "All right, all we want them for is to send them to the Rogues' galleries with the rest of the criminals all  
40 over the United States and Canada so that in case

*Affidavits in Reply to Order to Show Cause.*

you get lost we can find you." Nor did he or anyone else say, "We don't care what you do." No remarks of this nature were made by any police officer to Bartletta on this occasion.

We next brought Bartletta to the room of Detective Sergeant Fullam for the purpose of procuring his statement if possible. This is in accordance with police rules and orders from the prosecutor of the pleas. 10

Detective Sergeant Fullam advised Bartletta to his rights, that his statement must be a voluntary one and would be used against him at his trial. Bartletta refused to make any statement. Bartletta then gave bail for a hearing before the Recorder and having received his personal property that had been left with Lieutenant Wren, he was allowed to go. 20

At no time while Bartletta was at Police Headquarters surrendering himself, being photographed, his finger prints taken, and an attempt made to procure a statement from him, did any one mention Commissioner McFeely's name. The steps taken with Bartletta were those taken in all cases where a party was in the custody of the police upon a warrant charging the commission of a misdemeanor or a high misdemeanor. It is all routine police work for which we do not have to make explanations. 30

WILLIAM CHRISTIE.

Sworn and subscribed to before  
me this 15th day of March, 1928.

MORTEN R. MORTENSEN,  
Notary Public of New Jersey.



*Affidavits in Reply to Order to Show Cause.*

Real Estate Bond. Amount \$5,000.00

Taken by Adolph C. Carsten.

Bondsman Joseph Matera.

Address 506 Garden St.

Arraigned before Recorder Carsten Date Feb. 15/28.

Disposition of Case \$5,000 Grand Jury. Date Feb. 15/28. 10

Statement taken Yes. Date Feb. 10/28. By whom Det. Fullam.

Statement of Case. Above prisoner is arrested on a warrant that he with Philip Schwartz, Robert F. Barr, and John A. Bado did have in their possession Lottery Tickets, known as the Tia Juana Beneficial Disbursement Association in violation of section 58 of the Crimes Act of 1898, see arrest on preceding page. 20

State of New Jersey, } ss.:  
County of Hudson, }

Rudolph Magnus, being duly sworn according to law upon his oath deposes and says:

1. I am an Acting Detective and the official photographer of the Police Department of the City of Hoboken. On February 10, 1928, shortly after 7 P. M., Francis J. Bartletta was brought by Lieutenant William Christie and Detective Sergeant John Beatty to my photographic gallery, on the second floor, in the City Hall, Corner of Newark and Washington Streets, Hoboken, N. J., for the purpose of having me take his photograph for the use of the Police Department of the City of Hoboken. I asked said Francis J. Bartletta to sit down in the chair in front of my camera, which I 40 30

*Affidavits in Reply to Order to Show Cause.*

---

- 10 have for that purpose, and to look directly in the camera. Bartletta sat down in the chair and said to me, "I hope you'll take a good picture." I replied that, "I'll do that." Having taken an exposure of a front view of Bartletta, I requested him to turn about and look at a mark on the left side of the wall in order to get a profile photograph. Bartletta did as I requested and then I took an exposure of his profile. Then I asked him to turn around and face the camera again and to put his glasses on. He took his eye glasses from his pocket and placed them on himself and I took a front exposure of his full face with his eye glasses on. No force whatsoever was used in taking Bartletta's photograph and I never said to Bartletta, "these are my orders from Commissioner McFeely."
- 20 "That's all right there are higher courts, you can go where you please," and I did not say, "All right all we want them for is to send them to the Rogues' Galleries with the rest of the criminals all over the United States and Canada so in case you get lost we can find you." No remark of a similar purport or meaning was made by me or anyone else.

RUDOLPH MAGNUS.

- 30 Sworn and subscribed to before me  
this 15th day of March, 1928.

MORTEN R. MORTENSEN,  
Notary Public of New Jersey.

**Order of Reference.**

(Filed 4/23/30.)

**IN CHANCERY OF NEW JERSEY.**

Between

FRANK J. BARTLETTA,  
Complainant,  
and

BERNARD N. MCFEELEY, as Commissioner of Public Safety of the Board of Commissioners of the Mayor and Council of the City of Hoboken; EDWARD J. MCFEELEY, Chief of the Police Department of the City of Hoboken and the Board of Commissioners of the Mayor and Council of the City of Hoboken,  
Defendants.

10

67-236

On Bill, etc.

20

This matter being opened to the Court by Anthony P. La Porta, Solicitor of the Complainant, and it appearing that Horace L. Allen, Solicitor of the defendants has consented hereto :

It is on this 23rd day of April, 1930, on motion of Anthony P. La Porta, solicitor of the complainant, ORDERED that the above entitled cause be referred to Hon. J. O. Bigelow one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

30

E. R. WALKER,

C.

40

*Final Decree.*

I hereby consent to the making of the foregoing Order.

HORACE L. ALLEN,  
Solicitor of Defendants.

A true copy.

10 FERD GARRETSON,  
Clerk.

**Final Decree.**

(Filed 11/7/30.)

IN CHANCERY OF NEW JERSEY.

20	Between FRANK J. BARTLETTA, Complainant, and BERNARD N. McFEELY, as Com- missioner of Public Safety, and others, Defendants.	}	On Bill, &c.
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30 This cause coming on to be heard on bill, answer and proofs, in the presence of Anthony P. La Porta, of counsel with the complainant, and Horace L. Allen, of counsel with the defendants, and the Court having considered the pleadings, proofs and argument of counsel, and it appearing to the Court that the complainant is not entitled to the relief and injunctions sought and prayed for by him in his bill of complaint, and that said bill of complaint should be dismissed.

40 It is on this seventh day of November, 1930, on motion of Horace L. Allen, of counsel with the defendants, ORDERED that the complainant's bill

*Frank J. Bartletta—Direct Examination.*

be and the same is hereby dismissed with costs to the defendants.

E. R. WALKER,  
C.

Respectfully advised

J. O. BIGELOW,  
V. C.

10

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**Testimony.**

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. BARTLETTA,  
Complainant,  
and

BERNARD M. McFEELY, et als.,  
Defendants.

On Bill, &c., 20  
67-236.  
Transcript.

APPEARANCES:

ANTHONY P. LA PORTA, for the Complainant.  
HORACE L. ALLEN, for the Defendant.

30

FRANK J. BARTLETTA, sworn in his own behalf.

Direct Examination by Mr. La Porta:

Q. You are the complainant in this case? A. Yes, sir.

Q. Are you a married man? A. Yes, sir. 40

*Frank J. Bartletta--Direct Examination.*

- Q. How long have you been married? A. Ten years.
- Q. Living with your wife, how long? A. Ten years.
- Q. Still living with her? A. Yes, sir.
- Q. How long have you been living in Hoboken?  
10 A. Sixteen years.
- Q. Are you a citizen of the United States of America? A. Yes, sir.
- Q. On the tenth of February, 1928, were you a sinking fund commissioner of Hoboken? A. Yes, sir.
- Q. For how long a term? A. Three years.
- Q. Did your term expire then? A. No.
- Q. Still a Sinking Fund Commissioner? A. At that time.
- 20 Q. Were you a property owner at that time? A. Yes, sir.
- Q. How much did you own and where? A. Approximately \$200,000 in Hoboken.
- Q. How much taxes did you pay to Hoboken? A. \$15,000 a year.
- Q. Tell what your interests are? A. Bergen Land Development—
- Q. Building? A. Building and construction.
- Q. How much invested there? A. \$100,000.
- 30 Q. Any other? A. Italia Trust Company of Canada.
- Q. How much invested? A. \$151,000.
- Q. Any other? A. Hoboken Finance Company.
- Q. How much there? A. \$23,000.
- Q. Terminal Printing and Publishing Company?  
A. Yes, sir.
- Q. How much there? A. \$16,000.
- Q. Were you an officer of the Terminal Printing and Publishing Company on the 10th of February?  
40 A. I was president of the company.

Q. You were also connected with the Steneck Trust Company? A. Yes, sir.

Q. In what capacity? A. Director.

Q. On the 10th of February, 1928, were you an officer in the Terminal Printing and Publishing Company? A. Its president.

Q. Is that a corporation of this state? A. Yes, 10  
sir.

Q. What was the nature of the business of that company? A. Printing and publishing.

Q. Was the company, at that time, publishing a newspaper, The Newsette? A. Yes, sir.

Q. At that time, was it in revolt with the Democratic machine of Hoboken? A. Yes, sir.

Mr. Allen: I object.

The Court: Do you allege malice? 20

Mr. La Porta: It is, I believe.

The Court: Where is the allegation of malice?

(Argument off record.)

Q. Was the Newsette in revolt against the Democratic machine of Hoboken?

Mr. Allen: I object.

The Court: I think it is proper. 30

A. Yes, sir.

Q. Were you friendly or unfriendly with Mc-Feely? A. Unfriendly.

Q. At the time of the arrest, you were charged with what, Mr. Bartletta? A. The company was charged.

Q. What were you charged with? A. The warrant called for the possession of lottery tickets.

Q. Did you have any knowledge, any personal knowledge of the fact that the Terminal Printing 40

and Publishing Company, of which you were then president were printing and possessed lottery tickets of which you were charged?

Mr. Allen: I object, it is irrelevant.

The Court: I will allow it.

10

A. None whatsoever.

Q. Who had charge of the printing work for the Terminal Printing and Publishing Company?

A. Mr. John Bado.

Q. What position did he occupy? A. General Manager and had full charge of the entire plant.

Q. Who was the editor of the Newsette? A. Mr. Philip Schwartz.

20 Q. Did you have any active part in the taking of orders for printing at that time? A. No.

Q. At any other time? A. No.

Q. What interest did you have? A. I furnished the money to start the company and that is all.

Q. On the 10th of February, 1928, you were arrested by Lieut. Christie on a warrant, were you not? A. Yes, sir.

Q. Will you relate to the court, was the warrant read to you? A. Yes, sir.

30 Q. Relate to the court what transpired while the warrant was read to you and from the time you were arrested and until the time you were released under bail? A. That morning I went to Bergen County to look over some work and two officers went to my home and pushed my wife aside and searched the house from cellar to roof to see if I was hiding any place. I came back from Bergen County and heard there was a warrant for my arrest. I called my counsel and he was in Trenton. At 7 o'clock, he called me that he was  
40 back and I made arrangements with my counsel

and Dr. Matera and we went to the police station and told them that I heard there was a warrant for my arrest and Lieut. Christie said, "Yes", and he read the warrant and my counsel told him that it said to bring me before the magistrate and he said, "The magistrate is inside and if you do otherwise, it is false arrest" and he said, "Those are my orders from Commissioner McFeely, and I am going to carry them out." He took my personal belongings and gave them to Lieut. Wren. Lieut. Christie took me with Sergeant Beatty to Officer Sullivan's finger printing room and as I was being led to the room I asked for my counsel and the counsel was stopped from coming into the room and he said, "Submit to nothing unless under protest", and I said I didn't want to have my finger prints taken and he said, "I have never yet had anybody refuse and you are not going to be the first one." My lawyer had said if you do, then do it under protest and I said, "If you do take them, it is under protest." He said, "All right, let me take them." He said, "You don't want me to lose my job, do you?" After he was through finger printing, weighing me, measuring and putting me through the usual criminal procedure for criminals, Lieut. Christie and Magnus and Sergeant Beatty took me by the arm and led me upstairs to the photograph room and when I got to the photograph room and he said to sit on the stool and I said, "Dont take my photograph, there is no need of identification as far as I am concerned", and he said, "We have to take them to put them in the rogues' gallery" and he inferred it was his orders and he made me sit one way, then the other. He took my photograph and I went downstairs and led me into the room where Sergeant Fullam was and asked if I wanted to

make a statement and I said, "No" and he said, "All right", and after being through with Fullam, they took me out and asked Dr. Matera bail of \$5,000 and I was led back to the desk and I signed for my personal belongings and Commissioner Mc-Feely stood there with an air of satisfaction.

10 Q. You appeared before the magistrate after this was done? A. Yes, sir.

Q. In what bail? A. \$5,000?

Q. At the final hearing, it was what? A. \$15,000 each.

The Court: Was there more than one?

Mr. La Porta: Three fellows were arrested.

20 Q. Did they accept your bondsman? A. They didn't accept him because they said they wouldn't accept bail from one crook to another.

Q. After you were finger printed and your photograph taken, what happened to them? A. They placed them in the rogues' gallery, sent them to Washington, D. C., Albany, New York.

Q. Where else? A. Gave them to the newspapers.

Q. Gave to what paper? A. Jersey Observer.

30 Q. When was your photograph published by the Jersey Observer? A. Next edition.

Mr. Allen: I object.

The Court: I don't see on what grounds you base your objection.

40 Q. I show you a copy of the Jersey Observer, dated the same evening, February 11, 1928, entitled "Bartletta alias Luke Adams" and ask you if these are the photographs, John A. Bado, Philip

*Frank J. Bartletta—Direct Examination.*

Schwartz and Robert Barr, that were taken? A.  
Yes, sir.

Mr. Allen: Same objection.

Mr. La Porta: I offer the newspaper in  
evidence to show the photographs.

Mr. Allen: I object.

10

The Court: Sustain the objection.

Mr. La Porta: I offer it in evidence to  
show malice. It was not taken for the pur-  
pose of criminal identification.

The Court: You have proven it is in the  
paper, whether the print is red or green, it  
makes no difference.

Q. Were you ever known as "Luke Adams"? A.  
No, sir.

Q. Never known as "Luke Adams" in your life? 20

A. No, sir.

Q. Did you ever have that name? A. No, sir.

Q. Were you ever addressed as Luke Adams?

A. Never.

Q. Were you ever tried or convicted for the  
offense for which you were arrested? A. No, sir.

Q. Were you ever indicted? A. Never.

Q. How well did you know the commissioners of  
Hoboken at the time of your arrest and the mem-  
bers of the Police Department? 30

Mr. Allen: I object.

The Court: I will allow it.

A. Very well. For several years. I helped them  
in several campaigns.

Mr. Allen: I object to assisting in cam-  
paigns.

The Court: I refuse to strike the testi- 40  
mony.

*Frank J. Bartletta—Cross Examination.*

A. I helped them in several campaigns, worked under his personal instructions.

Q. Whose? A. Commissioner McFeely, in getting the Italian—

The Court: Strike that out.

10

Q. One Barr, Robert Barr, was arrested with you in connection with this lottery? A. Yes, sir.

Q. What was his bail? A. \$1,000.

Cross Examination by Mr. Allen:

Q. Did I understand you to say that you had not been indicted? A. No, sir.

Q. Positive of this? A. There was a charge in Georgia.

20

Q. Has there ever been a Federal indictment against you for violating a National Prohibition Act in Georgia? A. That was previous to my being made Sinking Fund Commissioner.

Q. You resisted extradition? A. Yes, sir, absolutely.

Q. Successfully? A. Yes, sir.

Q. You have not been tried on that indictment? A. No, sir.

30

Q. This corporation that was engaged in printing these lottery tickets was raided? A. The Terminal Printing and Publishing Company, they were charged with it.

Q. You held the controlling interest? A. That is right.

Q. At the time of your arrest? A. Yes, sir.

Q. Still hold it? A. Negotiating for the sale of it.

Q. You still have control of it? A. Yes, sir.

Q. It is your corporation? A. Yes, sir.

40

Q. How many stockholders are there? A. My brother, myself and Mr. Bado.

Q. How many shares each? A. Eight and I have sixteen.

Q. You are president? A. Yes, sir.

Q. And were at the time of this complaint? A. Yes, sir.

Q. Was a complaint lodged against you for having in your possession a number of lottery tickets known as the Tia Juana Beneficial Association? 10  
A. I was charged with something, Mr. Allen, but I don't know what it was about.

Q. The warrant was for printing of lottery tickets? A. Possession.

Q. A number was taken at your place? A. They said they were, I didn't see them since or before.

Q. In the place where the tickets were made? A. I didn't see it.

Q. Didn't you go to the Terminal Printing Company? A. Probably once in six months or a year. 20

Q. You remained away? A. I had other business.

Q. You claim you didn't have any knowledge of these lottery tickets or money made by printing them? A. None whatsoever.

Q. Who took in the money? A. Mr. Bado had complete charge.

Q. What was he? A. He was everything, anything pertaining to the printing company. 30

Q. Didn't he make a report to you? A. Yes, sir.

Q. To show where the money came from? A. No, sir.

Q. He didn't show that? A. Any details, no.

Q. Or money gained from the printing of lottery tickets? A. No.

Q. That wasn't in the report? A. The reports are not made that way.

Q. Nothing in detail? A. So much expense this month. 40

Q. And where this came from? A. I only went to the shop once every six months or a year.

Q. After the arrest, did you make inquiry? A. I did.

Q. And found Mr. Bado held also? A. They were charged with it.

10 Q. Did you talk it over with Bado? A. I did.

Q. Did you tell him about the complaint made against you? A. Yes, sir.

Q. And they had the tickets at headquarters? A. Yes, sir.

Mr. La Porta: That is immaterial what they found at the time of the arrest.

The Court: I don't see what Bado said about the charge is proper cross examination.

20

Q. Didn't you ascertain if the company of which you were president and the controlling stockholder had been printing lottery tickets?

Mr. La Porta: I again object. It isn't what he ascertained after the arrest.

Mr. Allen: If he could ascertain it after, he knew it before.

30

The Court: You say it goes to his credibility.

Mr. Allen: To his credibility.

The Court: I sustain the objection.

Q. You have described in detail the only force that was used in the taking of the photographs and fingerprints? A. From common knowledge.

Q. I don't want common knowledge.

40

The Court: Did anybody hit you over the head?

A. They may have.

The Court: Did they?

A. No.

Q. You really submitted in obedience to the order? A. Only under protest.

10

Q. Nobody used force? A. They acted as though they were about to, I know their methods, they started to when I submitted and if I didn't they would.

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JOSEPH MATERA, sworn for complainant.

Direct Examination by Mr. La Porta:

Q. You are a practising physician of this State? 20

A. Yes, sir.

Q. You live where? A. Hoboken.

Q. Live there how long? A. Ten years.

Q. Do you know the defendant and complainant Mr. Bartletta? A. Yes, sir.

Q. On the 10th day of February, 1928, did you bail Mr. Frank J. Bartletta out? A. Yes.

Q. Were you present when the warrant was read to him? A. Yes, sir.

Q. Tell what transpired from the reading of the warrant and bailing him out? A. I saw the warrant being read as I got in the room. They started to search him, they took out his watch and you said—

30

Q. Who? A. I heard Counsel La Porta say, "Why don't you bring him in before the Judge according to the warrant and Lieut. Christie said, "Those are my orders from Commissioner McFeely and we have to obey them." He wanted to show that those were his orders and he had to do them; 40

after the search was made, he was led into the fingerprinting room and they were about to take his fingerprints.

The Court: Did you go in?

10 A. Yes, I saw him. Mr. Bartletta objected to finger printing. He called for Counsel La Porta and he said he didn't want to be fingerprinted and he said if you must do it, do it under protest and Frank said, "If you have to fingerprint me, it will be under protest." While this was going on the officer in charge—

20 Q. Officer Sullivan? A. Office Sullivan complained why should we be near the door and we went out of the door and went back into the police station and while there I saw Frank Bartletta being led out and going towards the elevator and then, I believe, he was going—

The Court: Never mind that.

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PHILIP SCHWARTZ, sworn for complainant.

Direct Examination by Mr. La Porta:

30 Q. Where do you live? A. 2801 Boulevard, Jersey City.

Q. How long have you lived in Hudson County, New Jersey? A. Six years.

Q. On the 10th of February, 1928, were you connected with the Terminal Printing and Publishing Company of Hoboken, New Jersey? A. Yes, sir, as an employee.

Q. What capacity? A. Editor of the Newsette.

40 Q. Were you arrested on that day? A. Yes, sir.

Q. What connection did Mr. Bartletta have with the company? A. He was president.

Q. From whom did you take orders? A. Mr. Bado.

Q. What was Mr. Bado with the corporation?  
A. General manager.

Q. What did Mr. Bartletta have to do with the printing company, the job printing or publishing of the Newsette? A. As far as the job printing was concerned, only from a supervisory standpoint. As far as the newspaper, just the policy of it. 10

Q. You say you were raided also with Bado?  
A. Yes, sir.

Q. Did your photograph appear in the Jersey Observer? A. Yes, sir.

Q. Was that photograph taken by the police? A. Yes, sir. 20

Q. Do you know of any lottery being printed by the Terminal Printing and Publishing Company? A. No, sir.

Q. Do you know if Mr. Bado did? A. I don't know.

Q. How much did you see Mr. Bartletta in the plant? A. Rarely.

Q. Prior to the arrest? A. In the plant, I don't think more than three times.

Q. Did you know Mr. Barr? A. I know him by sight. 30

Cross Examination by Mr. Allen:

Q. You mentioned Mr. Barr, is he here today?  
A. Barr.

Q. Bado? A. Yes.

The Court: Is there a Barr and a Bado?  
Mr. La Porta: Barr was supposed to be 40

the man who was alleged to be printing the lottery tickets.

The Court: And Bado?

Mr. La Porta: Bado was the manager.

10 Q. Is the man responsible for the printing of these lottery tickets here? A. I don't get the question.

Q. Whatever his name is? A. Mr. Bado is here.

Q. Barr isn't?

Q. Is there a Barr connected with the Terminal Printing and Publishing Company? A. No, Bado.

Q. Did you have anything to do with the printing of these lottery tickets? A. No, sir.

Q. Did you know it afterwards? A. Yes, sir.

20 Q. Did you see the tickets down there? A. At the police station.

Q. Didn't see any at the place? A. Not until they were put in the box by the police.

Q. Were you present when the lottery tickets were found in your printing plant and placed in the box? A. I was there.

Q. Where were these lottery tickets? A. The first time I saw them, they were in the box, after collecting by the police.

Q. Who was there? A. No one in the office.

30 Q. You were the only one connected with the printing company when the lottery tickets were placed in the box? A. Yes, sir.

Q. Was there a printing form from which the tickets were made? A. I saw it in the police station.

Q. That came from the printing plant? A. Yes, sir, I believe so.

40 Q. Did you recognize it as a plate belonging to your company? A. I didn't recognize it as any plate. I didn't see it until I got to the police station.

*Philip Schwartz—Re-direct Examination.*

Q. Where were these lottery tickets collected from before being put in the box? A. In the job department.

Q. Who has charge of the job department? A. Mr. Bado.

Re-direct Examination by Mr. La Porta: 10

Q. Mr. Schwartz, do you know anything about a lottery, did you know that they were lottery tickets prior to your arrest? A. No, sir.

Q. Did you ever see these lottery tickets before? A. I have seen them outside in the possession of the men.

Q. Did you know they were lottery tickets until arrested? A. No, sir.

Q. Did you see Mr. McFeely at the time of photographing? A. At the time I came into the fingerprint room he came in with one of the commissioners. 20

Q. What did he demonstrate?

Mr. Allen: I object.

The Court: I will permit it.

A. Being finger printed, Mr. McFeely and Gilfert came in the room. Of course I was protesting that my finger prints were being taken and I knew the commissioner and I said to Commissioner Gilfert, "Can I speak to you", and as he started Commissioner McFeely said, "Don't talk to him", and Commissioner Gilfert walked back. 30

Q. Where next did you see Commissioner McFeely? A. In the photographing room.

Q. Did he follow you up there? A. He came there while I was there.

Q. How did he act then? 40

Mr. Allen: Same objection.

The Court: Overrule the objection.

Q. How did he appear?

Mr. Allen: Object to that.

10

The Court: What do you mean by that?  
I sustain the objection.

Mr. La Porta: I understand it was an  
air of satisfaction.

---

SAMUEL CARUSO, sworn for complainant.

Direct Examination by Mr. La Porta:

20

Q. Where do you live? A. Hoboken.

Q. How long have you lived in Hoboken? A.  
All my life.

Q. Do you know Frank Bartletta? A. Yes, sir.

Q. How long have you known him? A. Seven  
or eight years.

Q. How long have you known Commissioner Mc-  
Feely? A. About thirty years.

30

Mr. Allen: I object.

The Court: Overruled.

Q. How long? A. Twenty or thirty years.

Q. Did you have a conversation with Mr. Mc-  
Feely, or did he have one with you with respect  
to Mr. Bartletta, after the arrest, did you have a  
conversation with Mr. McFeely?

Mr. Allen: I object.

The Court: Overruled.

40

A. Yes.

- Q. He sent for you? A. Yes, sir.
- Q. What did he say to you? A. I was asked by the spokesman.
- Q. What did you tell him? A. I was asked to get a permit to run a dance in Bartletta's hall and he said he would never give a permit to run a dance as long as Frank Bartletta's name was on the window. 10

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THE DEFENSE.

JOHN A. BADO, sworn on behalf of the defendant.

Direct Examination by Mr. Allen:

- Q. In the month of February, 1928, were you Manager of the Terminal Printing and Publishing Company? A. Yes, sir. 20
- Q. In charge of the plant? A. Yes, sir.
- Q. I show you a bundle of tickets, did you have anything to do with the printing of those? A. Yes, sir.
- Q. What are they, are they lottery tickets? A. I am not a judge of lottery tickets.
- Q. Not a judge? A. Never handled one or bought one in my life. 30
- Q. Don't they call for the drawing of a prize, the award of a cash prize? A. That I don't know.
- Q. Didn't you ever read them? A. Never did.
- Q. You printed them? A. We did.
- Q. You? A. The Terminal Printing and Publishing Company.
- Q. You did? A. The men in the shop.
- Q. Who printed them? A. The men in the shop.
- Q. Under whose orders? A. Mine. 40

10 Q. From where did you get the job? A. Mr. Barr. Mr. Barr come in, as we had been doing business for two years, when he had approximately five thousand of these. I took the orders and made up the regular job and sent it throught the shop and the composing room and to the press room and to the binding room and out.

Q. All this was done in the course of business of the Terminal Printing and Publishing Company? A. Absolutely.

Q. What did you call the plate from which you did it? A. A plate.

Q. Is this a photograph from which these tickets were taken? A. Yes, sir.

20 Q. These are on the photograph? A. Not on that plate (indicating), that is the photograph of this plate (indicating), this has no connection with that.

Q. There were two sets of tickets? A. There were four or five different jobs, I don't know whether they are lottery tickets or not.

Q. They are jobs that came in the course of day or month?

30 Mr. Allen: I offer this photograph of the plate from which the Tia Juana tickets were made.

Mr. La Porta: I object, this evidence is not binding on the defendant.

The Court: Overrule the objection.

(Photograph is admitted in evidence and marked Exhibit "D-1".)

Q. I show you a photograph of plates? A. This is type.

40 Q. This is a picture of set up of type? A. Yes, sir.

Mr. Allen: I offer this in evidence.

Mr. La Porta: I object to it on the same ground.

The Court: Overrule the objection.

(Photograph is admitted in evidence and marked "D-2.")

10

Q. I show you another photograph, was that taken of a set-up of type? A. What type.

Q. That is a photograph of the plate from which, or was that another one? A. There were five or six jobs.

Q. Is that the printing of one of the Italian lotteries? A. It is the printing, of course, if it is an Italian lottery or not.

Q. You don't see any tickets of that one?

Mr. Allen: I offer that in evidence.

20

Mr. La Porta: I have the same objection.

The Court: I will consider on your objection on all.

(Photograph admitted and marked "D-3" in evidence.)

Q. What is this, a set-up of print? A. A set-up of type.

Q. By your company or what? A. Just as you see those figures.

30

Q. What are these figures, can you tell us what they are? A. Some man came in and wanted them printed.

Cross Examination by Mr. La Porta:

Q. Mr. Bado, what did Mr. Bartletta have to do with the printing or publishing? A. Not a thing.

Q. Previous to the arrest in question, how long had you seen Mr. Bartletta around the plant, if any? A. You mean to work.

40

Q. How recent? A. I used to see Mr. Bartletta once or twice at his office and as far as in the plant, I believe he came there once or twice a month, if then, if passing, he would come in if he wanted anything.

10 Q. Was this printing which has been offered to you, given to you by Mr. Barr in person? A. Barr gave it to me. Prior to that Barr had been brought to me by a friend of mine and said he wanted this printing and I was doing some for him for two or three years. This is not only Barr, there are four or five different customers.

Q. Did Mr. Bartletta have any knowledge of this kind of printing that was going on? A. No, sir. The only knowledge, at the end of the month he got a statement.

20 The Court: Did you run a union shop?

A. Yes, sir.

Q. Did you put on the union label? A. The customer did not want it. It is discretionary with the customer.

Q. You were arrested, too? A. Yes, sir.

Q. Did your photograph appear in the newspaper? A. Yes, sir.

30 Q. Is that the photograph taken by the police?  
A. Yes, sir.

Q. Was the Newsette owned and operated by the Terminal Printing and Publishing Company and is that a corporation of this state? A. Yes, sir.

Q. At the time of the arrest was the Newsette conducting a campaign against the administration in Hoboken?

Mr. Allen: I object to that.

The Court: I will allow it.

40 A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. What was the nature of the revolt, if any?

The Court: You mean the method of attack.

Mr. La Porta: Yes.

Mr. Allen: Same objection.

The Court: I will allow it.

10

A. Conditions existed that warranted the policy of the paper—the gambling machines going on, houses of assignation.

Q. At the time of your arrest, was Commissioner McFeely present? A. While Magnus was taking—

Mr. Allen: I object.

Re-direct Examination by Mr. Allen:

20

Q. On the Tia Juana disbursement certificate, there is a perforation that separates the stub from the ticket? A. Yes, sir.

Q. There is a number on each ticket which corresponds with the number on the stub? A. Yes.

Q. And each one of these tickets has a different number. A. Yes, I did see that.

Q. The numbers are printed in red? A. Yes, sir.

30

Q. Didn't that necessitate the printing of a different color in red, how is that done. A. As to this, the job comes into the office—

The Court: You have a numbering machine that does it and each one of these tickets is given a different number?

A. Absolutely.

Q. These produced here bear the date October 15, 1927? A. Yes, sir.

40

Q. You had them on other dates, didn't you?

A. Yes, sir, that job used to come in every month.

Q. You had been printing these tickets for how many months prior to September, 1927? A. Off hand I can't tell you, I would say—

10 Q. For at least? A. We had been doing this printing—

Q. This one? A. I can't give you anything definite, I would say five, six or eight months.

Q. Prior to October? A. Prior to the arrest, that would bring in October.

Q. You saw the police remove some? A. No, I wasn't there. I was at the City Hall.

Q. You weren't there? A. No, sir.

20 Q. Did you also have in your printing plant stubs that had already been separated from the tickets? A. I can't say whether they were in the plant or not. It is customary for us to place tables there that customers work on. It is quite possible Barr came down there and was there an hour or two waiting for the stubs, possibly Barr came in and set them there.

Q. How about stubs being separated? A. If they were in the plant, they were not the property of the Terminal Printing and Publishing Company.

30 Q. How did your printing company get them? A. As I understand, in order to clarify it, that morning, the morning of the raid, Mr. Barr came in the place and took two or three thousand of them and went out, prior to my going out. He came back at one o'clock and when I came back there were detectives there. These stubs were not our property.

40 The Court: Did you ever see anybody tear them off in your place?

A. No.

The Court: Did you ever have any stubs in your place that were detached?

A. No.

The Court: Four or five thousand? 10

A. The only time I would see them was when this fellow Barr came in and had packages of them on the table, that he would put there

The Court: You never saw anyone tear them off when Barr was there, who put them on the table?

A. Not when Barr was there. I would see Barr with stubs in his hand. These stubs would be brought in. No one in our organization ever took them off. 20

Q. But your organization had stubs that had been removed? A. The stubs found there were books Barr probably put down and got a package.

Q. The police got these stubs detached and got a number that were not? A. That I don't know.

Q. You know that stubs that were removed were in your plant? A. No, sir. 30

Q. Left there? A. I have seen them in the plant.

Q. Removed from the tickets? A. Yes.

Q. Where were they? A. Sometimes on the table, on desks and in other words if the Terminal Printing and Publishing Company were doing this job for you and you took this job out and you had stubs and put them out, pulled them out of your pocket, probably working on them, that is how he got them. 40

Q. The stubs that were left, they were on the desk, on the table, what did you do with them?

A. Left them there.

Q. Didn't you clean up at night? A. No, sir.

10 Q. How long did they remain there until the police came? A. The man who owned them would leave them there for a few hours and then carry them away.

Q. The stubs you saw there? A. I saw stubs off and on for months.

The Court: If you never cleaned up, didn't it become deep?

20 A. The situation is, you are a customer of ours and you order printing and you probably come in two or three times a week. The printing is delivered to you.

The Court: I know all that. If I came back a year later, they would be there?

Q. As far as remaining in the plant, they would only remain a couple of hours, while the man was there.

Q. Would remain over night?

30 The Court: What would you do with them?

A. The customer would take them. After he would go he would take his stubs.

Q. I show you this paper, Tia Juana disbursement, this one for 25,000 and one for 26, did you print that? A. Yes, sir.

Q. Your company did print this? A. Yes, sir.

40 Q. What does this purport to be, an announcement of the prizes for the winning number? A. Common knowledge, yes.

Q. If I bought one of those tickets and I put my name and the agent put his name, and 16 and 26, I would get 25,000? A. I suppose so.

The Court: If you want me to understand what is on that put it in evidence.

Mr. Allen: I offer this amount announcement of the Tia Juana ticket under date of October 15, 1930. 10

Mr. La Porta: It is not binding to my client.

The Court: I will allow it.

(Announcement is admitted in evidence and marked "D-3", "D-4", "D-5".)

Cross Examination by Mr. La Porta:

Q. As far as you know those slips were taken from Mr. Barr the day he was arrested, he had a whole lot? A. Yes, sir. 20

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WILLIAM CHRISTE, sworn in behalf of defendant.

Direct Examination by Mr. Allen:

Q. You are a Lieutenant of Police of Hoboken? A. I am. 30

Q. When this complaint was made, did you have anything to do with the issuing of the warrant? A. I did.

Q. What? A. I placed Mr. Frank Bartletta under arrest on February 10, 1928, at 7:05 P. M. at police headquarters in Hoboken.

Q. Did you go to the premises of the Terminal Printing and Publishing Company? A. I did. 40

Q. When? A. February 10, 1928, around noon, along with other officers connected with the police department and we spoke to Mr. Schwartz and we asked him if—

Mr. La Porta: If your Honor—

10

Q. You went there? A. We went there.

Q. Did you see Mr. Bartletta? A. No, sir.

Q. Did you see Schwartz? A. Yes, sir.

Q. Did you see Bartletta? A. No, sir.

Q. What did you find there? A. After showing the warrant to Mr. Schwartz, we let him read it over and we found those tickets known as lottery tickets.

Q. When you say you found these lottery tickets, do you refer to the Tia Juana?

20

Mr. La Porta: Your Honor, it is in evidence. The Court has just proven that they were found at the plant.

Mr. Allen: It is admitted that this collection of tickets were found by the police at the Terminal Printing plant on the day the arrest was made?

Mr. La Porta: Yes, sir.

Mr. Allen: I offer them in evidence.

30

Mr. La Porta: I object, it is immaterial. The Court: Objection overruled.

(Tickets admitted in evidence and marked "D-6".)

Q. Did you find any of the stubs that have been separated? A. Several hundred.

Q. Where are they? A. In Hoboken. There were one thousand or more in a box.

Q. Where are they? A. At police headquarters.

40

Q. In addition to these you found several thou-

sand similar, they are at police headquarters? A. Yes, sir, and several thousand with the names of the buyers.

Mr. Allen (to Mr. La Porta): Shall I produce those, or will you admit they were found there, will you agree to that?

Mr. La Porta: I admit everything that Mr. Bado said.

Mr. Allen: I will try to produce the stubs.

Q. On the several hundred stubs, they have been traced up and located the names and addresses of the several parties? A. I investigated and also made material witnesses out of the buyers.

Q. You traced afterwards the names of the buyers? A. Yes, sir.

Q. Those names that appear on the front? A. Yes, sir.

Q. Where did you find the collection? A. On the shelves at the Terminal Printing and Publishing Company.

Q. On one of the shelves? A. All the data on printing material, that is where I got the several hundred stubs.

Q. Where did you find the type? A. In the plate rack.

Q. Where was that? A. It was in a bin for the plates.

Q. Were these found prior to the warrant or the arrest of Bartletta? A. No, sir,—oh, they were found around noon. Mr. Bartletta was found at seven o'clock.

Q. You spoke about a warrant, was that for his arrest? A. His arrest.

Q. You went to search the premises? A. I went down on—

Q. Had there been a warrant for a search? A.  
A warrant for search—

The Court: As I understand it, you got a  
warrant for the search and then a warrant  
for Mr. Bartletta, is that correct?

10

A. Yes, sir.

Q. Were you present when Mr. Bartletta ap-  
peared that evening in response to the warrant?

A. I was.

Q. What took place? A. I came in and he said  
"I hear there is a warrant out for me?" and I said,  
"Yes, there is", and he went before the desk and I  
read the warrant and copy of the complaint and I  
turned him over to Lieut. Wren and Lieut. Wren  
asked me to search him and we did. He was then  
taken into Sergeant Sullivan's room, that is the  
fingerprinting, Sergeant Sullivan was ready to take  
the print and he said, "You are not going to take  
my fingerprints," and some words went on with  
Sullivan and Counsel came in and said, "Frank,  
you are only delaying matters, let him take them."  
After the print was taken and he walked out, no  
one took hold of him. He went to Detective Mag-  
nus; photograph department, where the photo-  
graphs were taken and he said he wouldn't do it  
and again Counsel La Porta said "you are only de-  
laying matters", and on the way down he said, "I  
will go down and sign the prints," and he was taken  
back into the detective bureau, where Detective  
Fullam is and was then bailed out for a hearing  
before the judge. I think the next day.

20

30

Cross Examination by Mr. La Porta:

40 Q. When you read the warrant, didn't I say that  
inasmuch as the warrant said to take him before the

magistrate that he should be taken before the magistrate? A. Yes, sir.

Q. Didn't I, also, say to Mr. Bartletta not to do anything only under protest? A. No, sir.

Q. Then I didn't say that? A. No, sir.

Q. Mr. Bartletta had refused? A. Yes, sir.

Q. You said what? A. I said nothing, you said, 10  
"Go ahead and have them taken".

Q. Under protest? A. He didn't mention the word protest.

Q. You didn't hear the word protest from me? A. No, sir.

Q. You were there all the time? A. I was.

Q. Didn't you say that the orders from Commissioner McFeely were to take them? A. No, sir.

Q. When did you receive orders to lock up Mr. Bartletta? A. Yes, sir. 20

Q. When? A. Early that day.

Q. Was the warrant issued before the raid? A. Positively.

Q. You have in Hoboken a rogues' gallery? A. We have.

Q. How long have you had it? A. I am in the police department eleven years and it was there when I entered.

Q. How many photographs are in that rogues' gallery? A. To the best of my knowledge, 1,500. 30

Q. Is Mr. Bartletta's there? A. Yes, sir.

Q. Those are the photographs taken at the time with Schwartz and Bado? A. It was.

Q. Right after his arrest? A. Yes, sir.

Q. These were the photographs circulated to the Jersey Observer? A. I don't know.

Q. What is the custom of the Hoboken Police Department in the taking of finger prints, do you take them of everybody, or habitual criminals? A. We take them in many cases of suspicious characters. 40

Q. Police regulations?

The Court: You certainly have more than 1,500 arrests in the last eleven years, how do you decide which to take?

10 A. That is for the inspector to answer, we arrest a man for suspicion.

The Court: The inspector ordered the plates to be taken in this particular case?

A. Yes, sir.

Q. Do you take them in all cases? A. As I explained.

Q. Whether a man has a criminal record or not, do you take them in all cases? A. Yes, sir.

20 Q. Who gives you those orders? A. Inspector Kiely.

Q. Did you have orders on those days? A. I did.

Q. What were the orders? A. For him to be fingerprinted and pictured.

Q. You carried it out? A. Yes, sir.

Q. For him to be finger printed and pictured?  
A. For Mr. Bartletta to be finger printed and  
30 pictured.

Q. And it was your intention to take them, whether Mr. Bartletta refused or not? A. Yes, sir.

Re-direct Examination by Mr. Allen:

Q. You say the orders came from Inspector Kiely? A. Yes, sir.

The Court: Was Mr. La Porta in the  
40 room when the finger printing was done or the time that Mr. Bartletta was in the room?

*John J. Sullivan—Direct Examination.*

A. He was.

The Court: He didn't step out at any time, the door was not slammed?

A. No, sir.

Q. You haven't any knowledge of your own of the exact number of pictures? A. To the best of my knowledge, 1540. 10

Q. You are not in charge? A. No, sir.

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JOHN J. SULLIVAN, sworn in behalf of the defendant.

Direct Examination by Mr. Allen:

20

Q. You are Detective Sergeant of the Police Department of the City of Hoboken? A. Yes, sir.

Q. Are you assigned to the Bureau of Criminal Identification? A. Yes, sir.

Q. For how many years past prior to the date of this arrest in 1928 had you been in charge? A. Three or four years.

Q. Were you present in this bureau when Mr. Bartletta was brought there? A. Yes, I was.

Q. You have a room for that purpose? A. Yes, sir. 30

Q. That room is located where, at Police Headquarters? A. It is in the corner of the building on Newark Street and Washington Street.

Q. You reach that where? A. From the desk into a doorway.

Q. In front of the desk there is a lane? A. Yes, sir.

Q. You have to go through a gate? A. Yes, sir. 40

There, is another door and the door is marked "Private."

Q. Did you have anything to do with the finger printing of Mr. Bartletta and the other parties arrested? A. Yes, sir.

10 Q. Who was present when you attended to that? A. Lieut. Cristie.

Q. And who was present? A. Counsel La Porta.

Q. Was Mr. La Porta present at that time? A. Yes, sir, he went out for a second or two. He advised him to be finger printed, not to delay matters.

20 Q. What did you do? A. When he was brought in by the two officers, I asked him to remove his coat, he did. I took the finger print plates out and laid the blanks out and laid my pad there and I said, "Frank, you are going to be printed" and he said, "No, I won't be finger printed unless by force, I will not sign the print or be finger printed except by force", and he put both of his hands in his pockets.

Q. Then what? A. I said, "Frank, we will use no force, you are going to be finger printed", and there was no force used, either direct or indirect on Mr. Bartletta by anybody in that arrest and I handled the four of them.

30 Q. What then? A. His counsel told him to go ahead. "Don't delay matters, Frank, go ahead."

Q. His hands had been in his pockets? A. He took them out. I started to ink the thumb and fingers.

Q. You finger printed him? A. Before that I took his description on the blank.

Q. Have you one of the blanks you use? A. Something similar, here are two of them.

40 Mr. La Porta: I have no objection as to this. It is admitted that the blank used

by officer Sullivan, copies of those are annexed to the answering affidavit on file.

Q. After you completed finger printing Mr. Bartletta were the other parties finger printed?

A. They were finger printed prior to his arrest.

Q. When? A. He was arrested about seven o'clock. 10

Q. The other defendants? A. They had been finger printed and got measured prior to his arrest.

Q. This Bureau of Identification, what is it known as? A. Bureau of Records.

Q. How long has that been maintained? A. Since 1904.

Q. Having completed the finger printing of these various defendants, including Mr. Bartletta, what then? A. I asked them when I was finished,—I gave him some gasoline, some soap and water and towel, and said, "Frank, will you sign the print", and he said, "I will not", I said, "Very well" and they took him out to Officer Magnus. 20

Q. Were you present? A. When they took him out.

Q. You didn't see him after that? A. No, sir.

Q. The next day, what was done with the print? A. If you will allow me, ten minutes after he came back and said, "Sullivan, I will sign those prints", and I said, "Very well", and he signed each one. 30

Q. That was after he gave a record? A. After being photographed.

Q. After being photographed? A. Yes, sir. His counsel was with him.

Q. After you finished, what was done with the finger prints? A. The New York print was sent to New York City.

Q. What do you mean? A. There is one that went to New York Police Department. 40

Q. What did you do next day, if anything? A. That was mailed to New York City, but on the 13th of February, Monday, the balance of the prints with the photographs were brought to me by the photographer, Detective Magnus, those I mailed away.

10 Q. You mailed one to whom? A. One to the Department of Investigation at Washington, D. C.

Q. You said you mailed one to Washington, D. C., what do you mean? A. Finger print and photograph of Mr. Bartletta.

Q. This was sent when? A. On Monday, February 13, 1928.

Q. What else was done? A. One also mailed to Albany, New York, on the same day.

Q. Mailed what? A. Finger prints.

20 Q. Photographs? A. Yes, sir, same description.

Q. You sent one to Washington and one to Albany? A. Yes, sir, one was on file at New York and one in our file, four in all.

Q. At present, you have in your Bureau of Identification, one of the photographs that were taken of Mr. Bartletta and the other defendants? A. Yes, sir.

Q. And one copy of the finger prints? A. Yes, sir.

30 Q. Approximately, how many photographs have you in the Bureau of Identification, that you have there? A. At the present time, over 3,000.

Q. Are these taken pursuant to orders of Inspector Keily? A. Yes, sir.

Q. Are they taken of persons when they are arrested? A. Yes, sir, when they are booked.

Q. That is prior to their trial or indictment? A. Yes, sir.

40 Q. What is the purpose of sending the prints and photographs to the bureaus at Washington

and Albany? A. For the purpose of locating any record they may have against the defendant.

Q. Is this Bureau of Identification open to the public inspection? A. No, sir, only when a complaint has been made by some person.

Q. A person could not inspect unless accompanied by an officer of the department? A. Yes, sir, an officer of the department. 10

Q. When you took this photograph, you knew there was a warrant and complaint? A. Yes, sir.

Q. Charging a high misdemeanor, possession of lottery tickets? A. Yes, sir.

Q. At that time, did you have knowledge of Mr. Bartletta being indicted in the United States Court? A. Yes, sir. Some case which had to do with extradition between New Jersey and Georgia, I don't know the city in Georgia. 20

Q. Did you have any ill feeling or malice towards Mr. Bartletta? A. No, sir, haven't any at the present time either.

Q. You were carrying out the instructions of your superiors? A. Yes, sir.

The Court: Who did you get them from?

A. Inspector Kiely.

The Court: When did he give them? 30

A. That day. I left there at 5 o'clock and he said, "Will you be home", and that evening I was sent for around 7 o'clock.

The Court: When you got there, you had your orders?

A. I already had them. We had the other three already done. 40

Q. Did you see the lottery tickets and stubs?

A. I saw the tickets.

Cross Examination by Mr. La Porta:

Q. How long have you known these defendants?

10 A. Seven or eight years.

Q. You knew at the time he was Sinking Fund Commissioner of Hoboken? A. Yes, sir, he had some position there.

Q. How long did Mr. Bartletta delay before he finally submitted to the finger printing? A. May be ten minutes.

20 Q. Don't you recall slamming the door at me and saying, "I never allow counsel here, I don't know how you come here"? A. I said, "I don't know what right you have, I will let you in, you are his counsel."

Q. Don't you remember slamming the door? A. I closed it.

Q. Don't you remember me saying to Mr. Bartletta to consent but under protest? A. Nothing about protest.

Q. What did I say? A. To go ahead, it was only delaying matters.

Q. And yet you were delayed. A. Ten minutes.

30 Q. You finger printed him right away? A. Yes, sir.

Q. And those were your orders? A. Yes, sir.

Q. And you did finger printing notwithstanding his protest? A. No, I didn't.

Q. Isn't it a fact that you carried out orders? A. Yes, sir.

Q. Didn't you say, "Consent or I will lose my job." A. No.

40 Q. Did you release the photographs and hand them over to the New Jersey Observer? A. No, sir.

*Rudolph Magnus—Direct Examination.*

Q. Who did? A. I don't know anything about that.

Q. Who told you to release the finger prints?  
A. That is the general procedure of the police department in all cases.

Q. Didn't have any instructions in this case? A. Every subject that comes in that is done with it. 10

Q. You take pictures of suspicious characters you take in? A. Yes, sir.

Q. You show the pictures to anybody that wants to find a certain party? A. Not public, anybody who has a complaint, where they want to identify a person, they are shown the pictures there, that is the purpose of them.

Q. Don't you take pictures of girls who are arrested and brought in for disorderly conduct? A. Many police departments do the same thing. 20

Q. As a matter of fact there was no question of Mr. Bartletta, as to his identification? A. No, sir.

Q. What was the reason that you finger printed him?

The Court: He already testified he was ordered to.

Re-direct Examination by Mr. Allen:

Q. And if Mr. Bartletta or any of the defendants escaped and the photographs sent for use of identification, wouldn't that help? A. Yes, sir. 30

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RUDOLPH MAGNUS, sworn in behalf of the defendant.

Direct Examination by Mr. Allen:

Q. You are the official photographer of the City of Hoboken? A. Yes, sir. 40

Q. You were such on February 10, 1928? A. Yes, sir.

Q. You have been for how long? A. Yes, sir, I have been doing official work since 1915.

Q. Did you take photographs of Bartletta and the other defendants? A. I did.

10 Q. When they were arrested and brought to the station house? A. Yes, sir.

Q. Who was present when you actually took the photographs? A. Detective Sergeant Beatty and Lieut. Christie were up with Frank Bartletta and in the afternoon when the others were photographed, I can't recall who was present.

Q. And in the evening? A. Lieut. Christie and Sergeant Beatty.

20 Q. This gallery, where you take them, separate and apart in a room? A. Yes, sir.

Q. Who came in that room? A. Officer Christie and Frank Bartletta.

Q. What took place? A. We told him to lay his coat down and he says, "Be sure and get a good picture."

Q. Who said that? A. Frank Bartletta. I said, "All right, I will get that."

Q. After that, what then? A. Absolutely nothing. No conversation took place in that room.

30 Q. In the taking, were there different views? A. Front and side.

Q. Did he have his glasses on? A. At first he had his glasses on, then he took them off and then I asked him to put them on and he did.

Q. Was any force used? A. No, never have occasion.

Q. You were carrying out your instructions? A. I was.

40 Q. After the photographs are taken and prints, what becomes of them? A. I mount them on the

*Rudolph Magnus—Cross Examination.*

cards and send them to the finger print room and there is a small card that is filed in the gallery.

Q. Are you in charge of the gallery? A. I put them in.

Cross Examination by Mr. La Porta:

Q. You are the official photographer? A. Yes, sir. 10

Q. How long have you known Mr. Bartletta? A. Seven or eight years.

Q. You were a friend of his? A. Yes, sir, he is today.

Q. There is no question of identification in your mind? A. That question was not asked me.

Q. I am asking you now? He was Sinking Fund Commissioner and you went out with him, too? A. Yes, sir, and the counsel did also. 20

Q. Who gave the orders to take the photographs? A. They came from the inspector, Kiely.

Q. And the orders in this case were from Inspector Kiely? A. Yes, sir.

Q. Did you have anything to do with the releasing of these photographs to the paper? A. No, sir.

The Court: Were they released.

30

A. I don't know.

The Court: Could you tell from looking at the pictures whether it was the same?

(Witness looks at file containing newspaper clippings.)

A. Bado, yes; Schwartz, yes; Bartletta, no.

Q. What did you do with his picture? A. It is in the gallery, but it is not in that book. 40

Q. Didn't Mr. Bartletta say, "I will submit but only under protest"? A. Not in my room. He was very nice and he was jovial and he said, "Take a good picture."

Q. Has anybody refused to have them taken?  
A. Yes, sir.

10 Q. For instance? A. I can tell you a number, where a fellow says, "Can you wait until my counsel straightens it out."

Q. But you kept him in jail? A. No, sir.

Q. Did you know Bartletta by the name of Luke Adams? A. No, sir.

Q. Did you ever hear the name of Luke Adams?  
A. No, sir. I heard a party in a crowd call him Luke. The counsel himself called him Luke, while in the Roma Grotto talking.

20

Mr. Allen: I offer the minutes of the meeting of the Board of Commissioners of December 31, 1929, when the resignation of Bernard McFeely, Commissioner of Public Safety was accepted.

Mr. La Porta: No objection.

30 Mr. Allen: And the resolution passed at that meeting appointing Joseph A. Clark, Director of Public Safety, effective immediately, you have no objection to his being a party?

The Court: No objection.

Mr. La Porta: That is also agreed to.

Mr. Allen: Yes, I will stipulate that.

40 Mr. La Porta: I move to amend the bill of complaint setting forth the City of Hoboken, defendant, the Chief and present Commissioner of Public Safety, as party defendants, including, however, Bernard McFeely.

Mr. Allen: He wants the Mayor, and Council and the Municipality.

The Court: He wants the present Director of Public Safety, Mr. McFeely, to remain.

Mr. Allen: Edward J. McFeely and Bernard McFeely are two different persons. 10

Mr. La Porta: I want the director as well as the chief.

Mr. Allen: I will answer so that the defendants will be Bernard N. McFeely, who was the Commissioner of Public Safety at the time of the filing of the bill and who is now Mayor and not the Director of Public Safety and that Edward J. McFeely, the Chief of Police, remain as a defendant and that there be included the Mayor and Council of the City of Hoboken, and that there be added Joseph Clark, who is now Director of the Department of Public Safety. 20

Mr. La Porta: Unfortunately, I was present at the arrest.

The Court: You will not be permitted to testify.

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FRANK BARTLETTA, recalled in his own behalf. 30

Re-direct Examination by Mr. La Porta:

Q. You heard what Mr. Magnus said that you didn't protest to the photographing? A. I did protest and he knows it.

Q. You heard him also say that you were addressed as Luke? A. Yes, sir. It is the most contemptible lie I ever heard a police officer make. 40

10 Q. You heard Officer Sullivan? A. Also Sullivan knows I stayed there ten minutes before I would take my hands out to be printed. You had said, "If you do it, do it under protest." You said, "I want you to take him before the magistrate under the direction of the warrant or else it is false arrest."

Q. You heard me speak to the finger printing man? A. Yes, sir, you said, "Only take them under protest."

Q. Did you hear the door slam? A. Yes, sir.

Q. Who slammed it? A. The officer.

Q. What then? A. He said, "I don't allow anyone in the room," and you and the doctor walked out in front to the desk.

20 Cross Examination by Mr. Allen :

Q. You say that you own considerable real estate? A. Yes, sir.

Q. None in the name of Luke Adams? A. No, sir.

Q. None of the places you pay taxes on? A. No, sir.

Q. None in the name of Luke Adams? A. No, sir.

30 Re-direct Examination by Mr. La Porta :

Q. You never had any in the name of Luke Adams? A. No, sir.

(Case closed.)

**Opinion.**

(Filed Oct. 30/30.)

Reported 107 N. J. Eq. 141.

IN CHANCERY OF NEW JERSEY.

Between  FRANK J. BARTLETTA, Complainant, and BERNARD N. MCFEELEY, as Com- missioner of Public Safety, and others,  Defendants.	}	10           On Bill, etc. 67/236
--	---	---

October 29, 1930. 20

1. A person under arrest charged with crime may lawfully be finger printed, measured and photographed by the police without his consent.

2. Whether any certain prisoner should be finger printed, measured and photographed, is an administrative question to be determined by the police.

ANTHONY P. LA PORTA, Esq., Solicitor for the Complainant. 30  
 HORACE L. ALLEN, Esq., Solicitor for the Defendants.

OPINION.

BIGELOW, V.-C.:

This bill was filed against the Commissioner of Public Safety, the Chief of Police and the Board of 40

Commissioners of the City of Hoboken, to compel them to surrender to the complainant the photographs, Bertillon measurements and finger prints of the complainant which had been made by the police of Hoboken.

- 10 Complainant has been a resident of Hoboken for many years, prominent in business and political affairs of that municipality. Among other activities, he was the president and principal stockholder of the Terminal Printing & Publishing Company. On February 10, 1928, police officers of Hoboken, armed with a search warrant, went to the plant of the Printing Company and there found and seized several thousand lottery tickets and other printed matter relating to lotteries, as well as the plates with which the printing was done.
- 20 Immediately after the seizure, Lieutenant Scott of the police department, swore to a complaint charging Mr. Bartletta and three others with possessing papers, documents, etc., pertaining to a lottery in violation of Section 58 of the Crimes Act of 1898. A warrant was issued upon this complaint by the Recorder of the city. That same evening, Mr. Bartletta, hearing of the raid and of the issuance of the warrant, went to police headquarters accompanied by his lawyer. There he was arrested and
- 30 was immediately taken to the room in which prisoners were customarily finger printed. He thrust his hands into his pockets and declared that the prints of his fingers should not be taken. After some discussion, he submitted, under protest and upon the advice of his counsel, and the officer in charge made the fingerprints. He was next photographed over his protest. Mr. Bartletta was then taken before the Recorder and released in bail to await the action of the Grand Jury. Four days
- 40 after his arrest, he filed his bill of complaint in this suit.

One other factor in the case should be mentioned, although it is not alleged in the bill. The complainant and the defendant, Bernard M. McFeeley, had been political allies in Hoboken but they had quarreled and had been opposing each other with great bitterness for some months before the arrest of Mr. Bartletta. Mr. McFeeley at the time of the arrest, was Commissioner of Public Safety and had charge of the police department. He was present at Police Headquarters, part of the time at least, while Mr. Bartletta was being finger printed and photographed and seemed well satisfied with the plight of his enemy. It does not appear, however, that he caused the complaint to be made against Mr. Bartletta or caused him to be photographed and finger printed. The officers who took the photographs and made the prints testified that they acted pursuant to the instructions of an inspector of the department, from whom they usually received orders in such matters.

Counsel for the complainant contends that it is unlawful for the police in any case to photograph of finger print an accused person before trial and conviction except with the consent of the prisoner. I am convinced that this is not the law. The police are charged with the duty of preventing crime, apprehending criminals and gathering evidence upon which they may be brought to trial. In the performance of this duty, they may use any apt and reasonable means which do not invade the rights of the accused or of other persons. Fanciful rights of accused persons cannot be allowed to prevent the functioning of the police and so to jeopardize the safety of the public. Let me assume a not infrequent case: Finger prints are found at the scene of a burglary; a suspect is captured and placed on trial. If the police are prohibited from

taking his finger prints, they will be unable to present to the jury evidence as to whether or not he is the person who made the prints in the house where the burglary was committed. Again, let me suppose the trial of a defendant charged with receiving stolen goods; prior convictions of similar offenses are admissible in evidence. Unless the police are allowed to finger print the accused before trial, they may be unable to show that he is the same person who was convicted on former occasions and whose finger prints are already in the possession of the public authorities. Again, a prisoner escapes from jail before trial or, having been released on recognizance, fails to appear when called. His recapture will be much facilitated if the police have taken the precaution to finger print and photograph him. Such police measures are a strong protection for the innocent defendant; they may prove that he was not the person present at the time of the burglary and that he is not the person who has been previously convicted under the same name.

The right of the police to finger print and photograph is powerfully supported by the argument from convenience and from the public interest in permitting the courts to learn the truth of the questions at issue. This right is also upheld by custom. The police in the large cities of this state and throughout the country for half a century, have measured, photographed, or finger printed prisoners before trial; and their authority to do so has been seldom questioned and, so far as I can learn, only once denied by the judgment of a court.

There is a close analogy between searching the person of a prisoner and finger printing him. Both acts have for their purpose, the obtaining of evidence against him; in both is his person subjected

to some handling beyond what is required for preventing escape. The right to search a prisoner is generally upheld. 8 R. C. L. 197, Sec. 193.

In *State v. MacQueen*, 69 N. J. L. 522, 55 A. 1006, Mr. Justice Pitney said: "And it would seem that after arrest made, the person of the accused may properly be examined without a search warrant in order to find evidence of his guilt and that such an examination would not be deemed an unreasonable search." In *State v. Mausert*, 88 N. J. L. 286, 95 A. 991, the Court of Errors and Appeals held that the police upon making an arrest, might seize proofs of guilt found within the control of the accused. 10

If the police have no right to finger print and photograph a person before conviction, they would seem to be equally without such right after conviction. By conviction for crime, the convict becomes liable only to those penalties which are prescribed by law. No statute and no rule of the common law imposes as part of the penalty that the convict must submit to be photographed and finger printed. 20

There is a suggestion in *State v. Cerciello*, 86 N. J. L. 309, 90 A. 1112, that the police cannot lawfully finger print an accused person against his will. Mr. Justice Minturn, writing the opinion, said that *State v. Miller*, 71 N. J. L. 528, "is also authority for the proposition, generally conceded by the trend of judicial authority, that the condition upon which such testimony is received is that, so far as the defendant is concerned, he shall not have involuntarily contributed to its production so as to cause him, in legal effect, to serve as a witness against his will, to furnish testimony to convict himself under the rule adopted in this state as part of the common law. *State v. Zdanowicz*, 40

69 N. J. L. 619, 55 A. 743. We do not find from an inspection of the testimony here that this legal safeguard was contravened in the case of this defendant." The question before the court in the Cerciello case was whether the trial court had erred in permitting testimony of the similarity of  
10 finger prints found upon a hatchet with which a murder had been committed and the finger prints of the defendant made after his arrest. The Court of Errors and Appeals ascertained that the finger prints of the defendant were voluntarily made by him and hence there was no occasion for the court to consider whether the evidence would have been admissible if the prints had been forcibly obtained or whether the police were justified in forcibly  
20 taking the prints. The passage quoted above does not establish the law as to finger printing. Neither the Miller case nor the Zdanowicz case is authority for the proposition that finger print evidence forcibly obtained is inadmissible.

Only one case has been called to my attention in which it is definitely held that the finger printing of an accused person before conviction is unlawful. *Hawkins v. Kuhne*, 137 N. Y. S. 1090, affd. without opinion 101 N. E. 1104. On the other hand, *Schulman v. Whitaker* (La.), 42 South, 227, 7 L. R. A. N. S. 274; *Downs v. Swann* (Md.), 73 A. 653, 23  
30 L. R. A. N. S. 739; *Bruns v. Clausmier* (Ind.), 57 N. E. 541, 50 L. R. A. 73, and *Shaffer v. United States*, 24 App. D. C. 417, hold to the contrary.

The next question is this: In what cases can the police photograph and finger print a prisoner? The principle involved is the same, if the question is: What prisoners may they search? Whether any certain prisoner is to be finger printed and photographed is an administrative question to be  
40 determined by the head of the police department

making the arrest, or by those subordinates to whom he may delegate the decision. The police department have the responsibility of the safety of the people and they must be given the necessary discretion to enable them successfully to assume this responsibility. When an arrest is made, the police frequently are unfamiliar with the record of their prisoner and one of the purposes of circulating his description among other police departments is to learn whether or not he is a first offender. No rule can be laid down to guide the police so that they may know whether or not the prisoner in their hands is one whom they had best watch carefully in the future or is one who is liable to escape before trial. No distinction can be made by the court between prisoners charged with high misdemeanors and those charged with misdemeanors. The finger printing of the latter is frequently as important as the finger printing of the former. Of course, in these as in other matters, the police must not be actuated by malice.

The complainant urges that the police in his case acted maliciously. The presumption in favor of proper motives is strong. If it were not for the enmity which existed between Mr. Bartletta and Mr. McFeeley at the time of the former's arrest, the propriety of the action of the police would seem clear. The Printing Company, of which Mr. Bartletta was president, was a small concern with \$16,000 capital and a dozen or so employees. It had been printing lottery tickets for about two years. The innocence of Mr. Bartletta arose from the unusual circumstances that he went to the Printing Company only a couple of times a month and while there, did not look over the work being done and did not inquire into the sources of the revenue of the company and so did not know of

the possession of the lottery tickets. The manager of the plant, Mr. Bado, gave to Mr. Bartletta periodically, reports of the business done but did not specify the kind of work from which the income arose. The making of the charge against Mr. Bartletta was fully justified by the facts in the possession of the police. The crime of which he was accused is a high misdemeanor for which he might have been sentenced upon conviction to not more than seven years at hard labor in the State Prison. If he had known himself to be guilty and feared that the police had proof of his guilt, the temptation for him to forfeit whatever bail he might be released on, would have been great.

The enmity which Mr. McFeeley bore Mr. Bartletta must, of course, be considered. As noted above, however, there is no evidence that he ordered the finger printing or photographing, although he was present and could have stopped it if he so desired. His responsibility for this action of the police must be assumed. But if the action of the police was proper and reasonable, as I find it to be, it is not made unlawful by the added factor that it gave personal satisfaction to Mr. McFeeley. I find that the finger printing, measuring and photographing of complainant was not actuated by malice and was lawful.

The bill of complaint should be dismissed.



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1873

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Б 54	30	10	08	1
М 20	14	0	1	13
Е 11	12	01	82	15
В 12	48	34	25	21
И 22	34	40	10	08

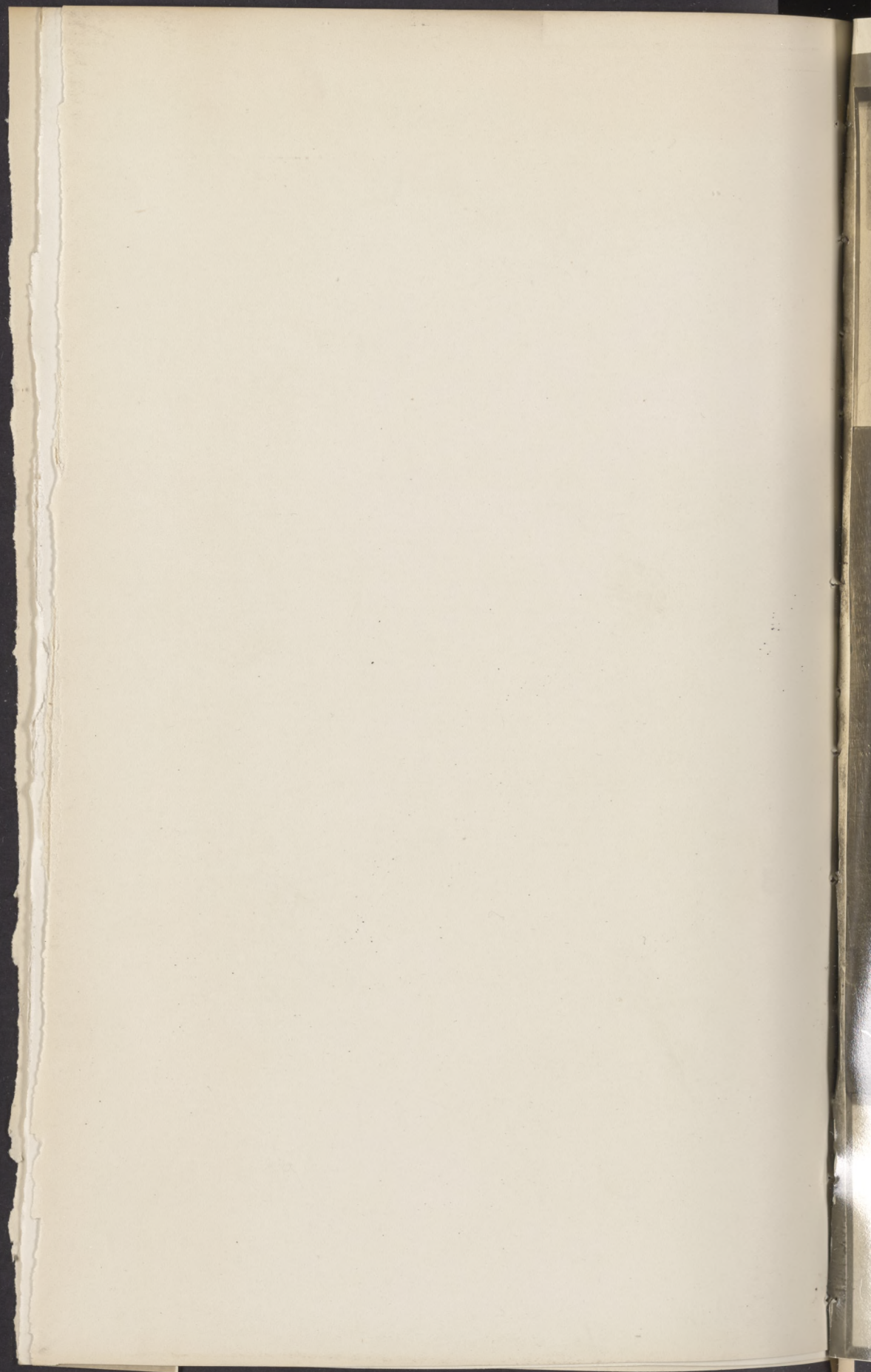
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М 20	14	0	1	13
Е 11	12	01	82	15
В 12	48	34	25	21
И 22	34	40	10	08

КРЕМЛЕНА ОБОЗНАЧЕНИЕ

★





MAR 15th 1928

TIA JIANA

WILLIAM D. C.

TIA JUANA

MAR. 15th, 1928.

NAME

AGENT

No.

MEXICAN

TIA JUANA

DISBURSEMENT CERTIFICATE

MEMBERSHIP

\$ 1.00

TIA JUANA

ONE DOLLAR

MEXICO

\$ 1.00

DIVIDENDS

MARCH 1928

\$ 73.350 00

CAPITAL \$ 500.000 00

The purchaser who has signed both certificate and stub of this TIA JUANA DISBURSEMENT CERTIFICATE is hereby declared to be a member in good standing for the month above shown of the Tia Juana Beneficial Disbursement Association and is entitled to participate in Tia Juana Disbursements in accordance with the conditions printed on the reverse side of this Certificate of Membership.

No.

(Sign here)

REDEEMABLE ONLY UPON PRESENTATION WITHIN THIRTY DAYS.

THE AMOUNT OF THE DIVIDEND AND THE BENEFICIARY IS TO BE  
DECIDED BY THE TIA JUANA DIRECTORATE

PAYMENT OF DIVIDENDS GUARANTEED WITHIN TWENTY-FOUR  
HOURS AFTER SURRENDER OF CERTIFICATE FOR REDEMPTION.

\$73,350.<sup>00</sup>

**DIVIDENDS**

\$73,350.<sup>00</sup>

1 CAPITAL DIVIDEND.....	\$ 25,000. <sup>00</sup>
1 DIVIDEND.....	15,000. <sup>00</sup>
1 DIVIDEND.....	10,000. <sup>00</sup>
1 DIVIDEND.....	5,000. <sup>00</sup>
1 DIVIDEND.....	2,500. <sup>00</sup>
1 DIVIDEND.....	1,000. <sup>00</sup>
5 DIVIDENDS EACH.....	500. <sup>00</sup>
10 DIVIDENDS EACH.....	200. <sup>00</sup>
20 DIVIDENDS EACH.....	100. <sup>00</sup>
40 DIVIDENDS EACH.....	50. <sup>00</sup>
40 DIVIDENDS EACH.....	25. <sup>00</sup>
50 DIVIDENDS EACH.....	20. <sup>00</sup>
50 DIVIDENDS EACH.....	15. <sup>00</sup>
300 DIVIDENDS EACH.....	10. <sup>00</sup>

AND,

APPROXIMATION DIVIDEND FOR FIFTEEN NEXT NUMBERS ON  
EITHER SIDE OF THE CAPITAL DIVIDEND, EACH.....\$ 20.<sup>00</sup>

\$200.00

No. 87	No. 65056	No. 77708
No. 20637	No. 69374	No. 90961
No. 46885	No. 73529	No. 112136
	No. 119452	

\$100.00

No. 37	No. 40520	No. 69043	No. 102951
No. 381	No. 40752	No. 74224	No. 107684
No. 2274	No. 51382	No. 87169	No. 123897
No. 6912	No. 54917	No. 87746	No. 136435
No. 37695	No. 65828	No. 95308	No. 140512

\$50.00

106	18608	38476	61832	102466
2700	20982	40928	68514	104379
5279	23071	43816	74627	107693
7354	26155	50729	79394	119692
12558	28732	52081	89471	120694
14893	31359	54656	90286	129112
15626	34228	57273	92734	136947
17053	37380	59607	95839	147291

**TIA JUANA**

*Disbursements*

JANUARY 15, 1928

CAPITAL DIVIDEND

\$25,000.00

No. 127527

\$15,000.00

No. 60394

\$5,000.00

No. 104372

\$2,500.00

No. 97066

\$500.00

No. 721

\$500.00

No. 19278

\$500.00

No. 85974

\$10,000.00

No. 31418

\$1,000.00

No. 1040

\$500.00

No. 29813

\$500.00

No. 122638

Next distribution Tia Juana, February 15, 1928.

Membership now obtainable for the February 15th disbursement; sale positively stops at 12:00 p. m. Friday, February 10th, 1928; membership \$1.00.

Dividends payable at the rate of one hundred cents to the dollar, free of all discount or exchange. Agents will see that stub is plainly filled in (member's name to be printed if possible) and returned to District Agent on time. Certificates in any way mutilated or altered are non-redeemable.

DON PEDRO RODRIGUEZ,

Secretary of Finances

\$25.00

1931	25669	42682	67096	106737
6721	27306	44274	70148	109514
9516	30637	51497	72206	112033
13084	32143	55576	77018	114759
17792	34516	56926	80384	124565
19540	36128	57745	87540	129439
22363	37905	60928	91847	132089
24447	39661	65285	99088	145584

\$20.00

654	30972	57339	80167	110906
3863	33704	59464	87052	112465
8405	37037	61473	89699	113184
13347	38854	64707	90675	115080
16817	40397	67360	94123	121375
18176	42051	72068	99660	124719
20250	43149	73814	102952	126921
23114	51814	74746	103821	130642
25971	53133	76242	107000	134351
26484	56091	79781	109048	142838

\$15.00

1612	26248	44735	72915	106185
5942	29520	50970	73391	110537
15410	30061	52326	74393	113841
18431	31890	55201	79140	117318
20728	32485	56582	80738	123293
21595	36792	59158	80916	126038
21809	37519	59813	89203	129387
22636	38243	64149	89825	130874
24893	40760	65651	90431	142209
25017	42303	70681	93908	145367

ONLY A FEW CENTS A DAY ENABLES YOU TO PURCHASE A MEMBERSHIP

EXHIBIT D-8

HALF CERTIFICATES REDEEMABLE PROPORTIONATELY

881

\$10.00				\$10.00				\$10.00			
5	10818	23392	39718	63527	78096	86966	97673	111975	121387	138091	145785
472	10852	24274	40044	64001	78431	88002	98540	111996	125424	141116	145837
1070	11362	24716	40096	64214	78467	88020	98564	115005	125431	141129	145992
1838	11841	25088	40874	64675	79076	88071	98595	115016	125455	141137	146111
2194	12173	25527	40952	65863	79148	89208	99014	115035	125479	142020	146196
2246	13904	26384	41709	66119	79570	90362	99736	115081	125490	142605	146371
2554	13977	26878	41764	66140	79595	90528	99984	115093	128619	142790	146508
3701	14005	27427	41796	67294	80519	90743	101603	115316	128659	143201	146626
4066	14068	27443	43813	67563	80853	91109	101625	115492	128663	143291	146803
4185	14090	28523	45912	68338	81247	91145	101646	115768	128673	143297	146848
4329	15183	28539	47085	68517	81390	91198	101694	116110	131717	143591	146893
4774	15549	29467	47395	69071	81476	93200	103553	116150	131738	143682	147174
4982	15592	29831	49940	69387	81610	93227	104636	116168	131746	144058	147529
5168	16155	30535	50212	69412	81638	93286	104829	117003	133811	144209	147740
5533	16188	30863	55874	70586	81683	93524	105700	117486	133836	144581	147837
5621	16909	31436	55889	71220	81916	93658	105738	117609	133865	144612	147921
6392	16947	31614	58817	71259	82080	94330	105761	118202	133881	144678	148183
6786	17381	32596	58834	71605	82741	94399	105799	118246	133888	145007	148474
7074	17659	35622	60520	71891	82794	94717	108817	118266	135903	145283	148505
7392	17915	35678	60872	75343	83167	95391	108864	118278	135922	145470	148736
7886	18147	36235	62436	75397	83529	95672	108888	118290	135931	145514	148759
8053	19200	36750	62917	75399	84832	96445	108897	121315	136752	145554	149082
8397	19234	37449	62932	75609	84868	96462	111909	121323	138063	145583	149360
8701	23336	38736	63073	75750	86911	96883	111923	121330	138071	145662	149427
8793	23354	39657	63095	76676	86928	97208	111954	121362	138087	145667	149688

APPROXIMATION DIVIDENDS

\$20.00 each

127512 127513 127514 127515 127516 127517 127518 127519 127520 127521 127522 127523 127524 127525 127526 127528  
 127529 127530 127531 127532 127533 127534 127535 127536 127537 127538 127539 127540 127541 127542

SINCE 1917 AND NEVER A DEFAULT ON A DIVIDEND

DUPLICATE

EXHIBIT D-9

“DOUBLE SIX”

No 57594

BASE BALL & STOCK ASSOCIATION  
SINCE 1912

DON'T ERASE

WRITE PLAINLY

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NAME



FILL IN BELOW SAME DATE  
AS STAMPED ON COVER

CITY

GT. NO.

DATE

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NAME \_\_\_\_\_

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DEWITT LEE

DOUBLE SIX

ASSOCIATION

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BALL & STOCK ASSOCIATION  
SINCE 1912

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# “DOUBLE SIX”

## \$ FORTYFIVE THOUSAND DOLLARS WEEKLY \$ PLUS CONSOLATION PRIZES

Select any six numbers from 1 to 24 inclusive, but the same number cannot be used more than once.

Play is good for six days, Mon., Tues., Wed., Thurs., Fri. and Sat.

Winning combinations must be written in order, thus: The highest scoring number must be written first, the second highest scoring number next, and so on.

Daily prize for holiday, or for any reason that the Exchange is closed, will be added following day excepting when holiday or a closing day occurs on Sat. and in that event will be added to Fri. For determining the weekly prizes the score for the holiday will be following day's score excepting Sat. when Fri.'s score will be Sat.'s score as well.

Scores are figured by getting a total of the individual figures in the “last sale” column, for example:

	last sale
NO. 13. NATIONAL BISCUIT	125-7/8—23 points

When no sale takes place the score is ZERO.

Twenty-four fluctuating common stocks will make up the list.

Shares are only fifty cents per week, and the management reserve the right to reject all tickets which are not received in first class condition—indistinct figures or mutilated figures make a ticket void.

PRIZES: Daily High, \$5,000.00, excluding Mon., but Mon.'s score counts for weekly awards, first high for the week \$10,000.00, second high for the week \$5,000.00, third high for the week \$3,000.00, fourth high for the week \$2,000.00, or a total of \$45,000.00 in capital prizes.

New York Evening “Sun”. Wall Street Edition, is official scoring paper.

This pool is operated open and above board, is nicely supported by its many, many players and that it honestly and satisfactorily serves its followers is amply substantiated by each seasons' success.

Pick your stocks in the open, study the market's actions, use your judgment and be returned a winner.

If exact top-high is not written the highest written combination turned in WINS.

CONSOLATION PRIZES: Note that this pool is the only “write-your-own” offering consolation prizes. Ten dollars is paid for five numbers, five dollars is paid for four numbers, and one dollar for three numbers agreeing with the five, four and three numbers of the ticket winning the capital prize; for instance: the winning combination was written on ticket serial number 656285 then all tickets showing 285 as the three right hand figures receive one dollar each, tickets showing the four right hand figures, 6285, receive five dollars each, and all tickets showing five right hand figures 56285 receive ten dollars each. Should ties render this system of consolation prizes impracticable the prizes making up the serial number of the ticket written for the second capital prize will be used. In the event that ties show up on all combinations, both weekly and daily, use the figures obtained by placing side by side the total points scored by the first and second weekly combinations, i. e., 128+119 (128119) thus 28119, 8119, 119 are consolation award numbers.

JAN. 23-28, 1928

No.	NAME	M	T	W	T	F
	(Common Stocks Only)					
1.	U. S. Steel	14	28	16	24	15
2.	INTER PAPER CO.	13	24	20	10	10
3.	MAY DEPT. STORES	12	12	18	12	16
4.	ELECTRIC STGE BATTERY	8	17	18	8	9
5.	STANDARD OIL N. J.	19	19	12	17	23
6.	TEXAS GULF SULPHUR	24	16	12	19	25
7.	STUDEBAKER	20	16	16	16	14
8.	RADIO CORP.	10	2	17	1	16
9.	SEARS-ROEBUCK	19	23	12	19	23
10.	MACK TRUCK	4	4	5	5	4
11.	JEWEL TEA	16	12	20	0	23
12.	GREENE COPPER	15	27	9	23	11
13.	PACKARD MOTOR	27	6	14	23	21
14.	GENERAL ASPHALT	18	7	16	19	17
15.	NATIONAL BISCUIT	12	13	20	20	24
16.	WOOLWORTH	13	23	29	15	23
17.	GENERAL ELECTRIC	17	7	20	18	17
18.	FLEISCHMANN	15	20	22	15	11
19.	CHRYSLER	26	27	12	27	8
20.	CERRO DE PASCO	12	13	18	17	18
21.	U. S. IND. ALCOHOL	15	12	18	16	18
22.	CONSOLIDATED GAS N. Y.	22	20	23	12	11
23.	WESTERN MARYLAND	16	25	10	19	21
24.	NASH MOTORS	18	18	23	29	18

WEEKLY POINTS

1st	13-1-16-24-6-8*	165	Loehes, Newburg; I. Gantz, Pittsburgh R. Mandel, Reading; A. Benett, N. Y. C S. Chambers, Brooklyn, Ties
2nd	13-1-16-24-6-21	160	J. Paulson, Paterson
3rd	13-1-16-24-6-23	158	H. Richards, Syracuse; R. Oldham, Monro Taylor, Warsaw; Olsen, Gen Falls, Ties
4th	13-1-16-24-6-9	155	Moe, N. Y. C.; Al. Crandall, Rochester, Tie

DAILY HIGH

Tue.	1-12-19-23-2-18*	151	Murray, Easton; Jack Conroy, Troy; Taxi bill, Rye; Ties
Wed.	16-22-24-18-11-15	137	P. Lowden, Harrisburg
Thur.	24-19-1-12-13-14*	145	Ethel, Brooklyn; G. Ross, Freeport; Ties
Fri.	6-15-5-9-11-23*	139	T. Amato, Johnson City
Sat.	11-8-3-1-21-6*	140	Gilbert, Toms River; H. Randell, Chester Ties

\*Top high not written, paid to next highest.

Paulson's ticket was numbered 116339.

All tickets ending 16339 10.00 each

All tickets ending 6339 5.00 each

All tickets ending 339 1.00 each

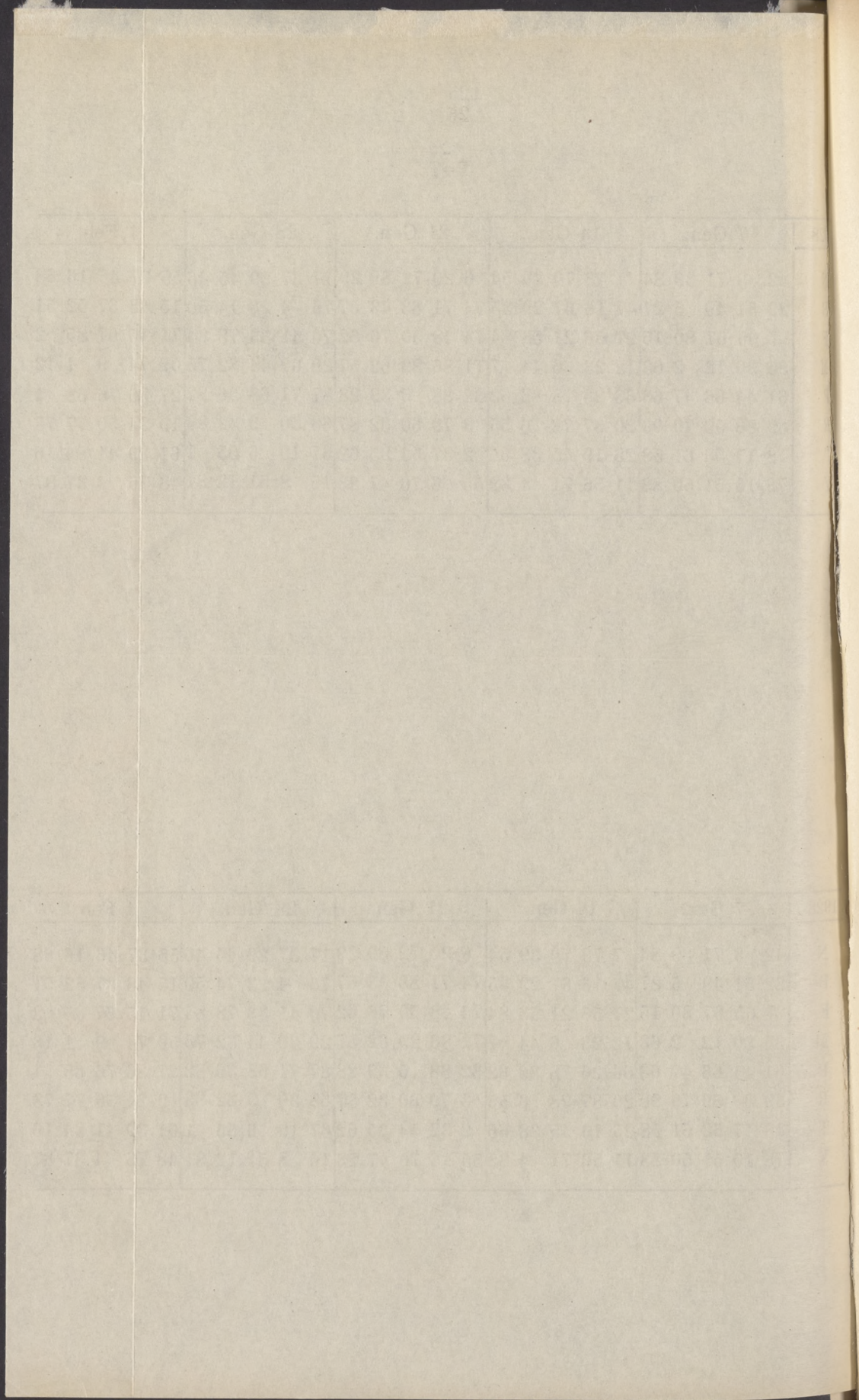
EXHIBIT D-10

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	7 Gen.	14 Gen.	21 Gen.	28 Gen.	4 Feb.
	42 3 71 39 84	7 73 70 39 54	6 20 72 89 29	17 37 29 45 46	55 37 46 16 68
	22 51 49 5 27	47 16 67 29 35	74 71 83 43 57	76 4 23 74 50	15 48 37 52 51
	7 65 67 80 15	27 56 21 53 84	74 48 50 76 62	70 41 33 78 84	71 15 67 85 2
	35 30 12 2 63	12 23 6 44 7	71 86 29 62 57	29 30 44 32 75	59 74 9 1 13
	61 44 66 47 63	66 26 78 86 62	32 88 5 39 28	87 71 68 36 82	27 36 76 68 1
	39 80 59 79 90	20 87 78 6 55	3 79 60 32 87	68 30 9 32 83	19 24 50 77 78
	18 17 53 61 58	25 19 45 38 66	2 37 54 35 62	67 19 6 55 1	61 39 41 84 16
	78 10 51 50 83	11 56 71 4 32	55 6 70 47 23	16 8 51 12 81	48 76 4 37 87

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	7 Gen.	14 Gen.	21 Gen.	28 Gen.	4 Feb.
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8	35 30 12 2 63	12 23 6 44 7	71 86 29 62 57	29 30 44 32 75	59 74 9 1 13
Ties	61 44 66 47 63	66 26 78 86 62	32 88 5 39 28	87 71 68 36 82	27 36 76 68 1
Ches	39 80 59 79 90	20 87 78 6 55	3 79 60 32 87	68 30 9 32 83	19 24 50 77 78
M	18 17 53 61 58	25 19 45 38 66	2 37 54 35 62	67 19 6 55 1	61 39 41 84 16
P	78 10 51 50 83	11 56 71 4 32	55 6 70 47 23	16 8 51 12 81	48 76 4 37 87
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39 MAY. 7 1931

## New Jersey Court of Errors and Appeals

Between

FRANK J. BARTLETTA,  
Complainant-Appellant,  
and

BERNARD N. MCFEELEY, as  
Mayor; JOSEPH A. CLARK, as  
Director of Public Safety; both  
being members of the Board of  
Commissioners of the Mayor  
and Council of the City of Ho-  
boken; EDWARD J. MCFEELEY,  
Chief of the Police Department  
of the Mayor and Council of  
the City of Hoboken; and THE  
MAYOR AND COUNCIL OF THE  
CITY OF HOBOKEN (a Municip-  
al Corporation of this State),  
Defendants-Respondents.

Appeal  
from the  
Court of  
Chancery.

**BRIEF OF ANTHONY P. LA PORTA, ESQ.,  
IN BEHALF OF FRANK J. BARTLETTA,  
COMPLAINANT-APPELLANT.**

### Introduction.

This is an appeal by Frank J. Bartletta from an order made by the Chancellor on the advice of Hon. John Bigelow, Esq., Vice Chancellor, on the 7th day of November, 1930, whereby his Bill of

Complaint for Injunction filed on the 14th day of February, 1928, was dismissed on the pleadings and oral proofs taken in open court.

The Bill of Complaint sought to prevent the defendants from placing complainant's photographs in defendants' "ROGUES' GALLERY" and from circulating them together with his finger prints, taken of him while under arrest and under his protest by the Police Department of the City of Hoboken, before hearing in the police court.

He was arrested on the 10th day of February, 1928, on a police complaint charging him with possessing lottery tickets; and has never been indicted therefore, tried or convicted, although three years have since elapsed. Yet, his photographs are kept by the defendants in the "ROGUES' GALLERY OF HOBOKEN" and have been circulated as well as his finger prints.

Vice Chancellor Bigelow held in dismissing the Bill of Complaint, that a person under arrest charged with crime may lawfully be finger printed, measured and photographed by the police without his consent; and that whether any certain prisoner should be finger printed, measured and photographed is an administrative question to be determined by the police; and also that the defendants had a right to retain the complainant's photograph, although it was placed in the "ROGUES' GALLERY" of the Police Department of the City of Hoboken and was also circulated to other police departments.

### **Statement of Facts.**

Complainant, Frank J. Bartletta, on the 14th day of February, 1928, filed his Bill of Complaint in the Court of Chancery and prayed for the following relief:

“That a decree may be made compelling the defendants to deliver up and surrender unto the complainant the photographs and negatives, also the Bertillon measurements and finger prints and all copies thereof taken of the complainant by the Police Department of the City of Hoboken; or that they may be restrained and enjoined perpetually by a writ of injunction or order or decree of this Court from keeping, distributing or circulating the complainant’s finger prints, measurements, and photographs and negatives and all copies thereof” (see p. 8, Bill of Complaint).

The complainant on the 10th day of February, 1928, was arrested by Lieutenant William Christie of the Hoboken Police Department under a warrant issued on the 9th day of February, 1928, by the Recorder of the City of Hoboken, by reason of an alleged sworn complaint made by Joseph R. Scott, Lieutenant of the Police of the City aforesaid, whereby the complainant was charged with the unlawful possession of lottery tickets, slips, plates or advertisements of a certain lottery company known as the Tia Juana Beneficial Association. This much is admitted by the defendants. (For the Complaint of Lieutenant Scott against the complainant see Exhibit D-5, p. 54; and for the Warrant see Exhibit D-6, p. 56.)

On the day of his said arrest, the complainant under protest, was booked by Lieutenant Wren in the Hoboken Police Station at City Hall, and searched by Lieutenant Christie and his money, keys, pocket-book, watch and other personal belongings were taken from him and placed with Lieutenant Wren in charge of the desk; and that under protest he was then and there without his consent

obliged to submit to the taking of his finger prints by Officer Sullivan, by whom he was also measured, weighed and pedigreed and was also compelled to write his name on four finger print index cards; and after this he was photographed under protest by Officer Magnus, the official photographer of the Hoboken Police Department, by whom he was then and there advised that his photograph so taken was for the "ROGUES' GALLERY" of the City of Hoboken, and that copies thereof were to be circulated, distributed and placed in the "ROGUES' GALLERIES" of other cities throughout the United States and Canada, together with his finger prints taken as aforesaid. The defendants deny that the finger printing and photographing were taken without the consent of the complainant herein, but there should be no further question of the fact that they were so taken in view of the Court's finding below. Vice Chancellor Bigelow in his official opinion said at page 1 (State of Case, p. 111) :

"A warrant was issued upon this complaint by the Recorder of the City. That same evening Mr. Bartletta hearing of the raid and of the issuance of the warrant went to the Police Headquarters accompanied by his lawyer. There he was arrested and was immediately taken to the room in which prisoners were customarily finger printed. He thrust his hands into his pockets and declared that the prints of his fingers should not be taken. After some discussion, he submitted, under protest and upon the advice of his counsel and the officer in charge made the finger prints. He was next photographed over his protest" (p. 112).

The alleged statement of the official photographer, Mr. Magnus, was denied by him. However, the

testimony in this case seems to corroborate the complainant to this extent,—the photographs of the complainant were actually placed in the “ROGUES’ GALLERY” of the City of Hoboken, which Mr. Magnus admitted under oath (see p. 107). Lieutenant Christie (at p. 97), testified to the same effect, he said that Hoboken has a “ROGUES’ GALLERY” and that the photograph of Mr. Bartletta, the complainant, herein, is exposed therein; and Officer Sullivan, in whose charge the “ROGUES’ GALLERY” of the City of Hoboken is entrusted, said likewise (see p. 102). He also said that he circulated, in accordance with the usual police practice, the photographs and finger prints of the complainant immediately after they were taken to the Department of Investigation at Washington, D. C., to New York City and to Albany, New York (see p. 102).

That on the day aforesaid after he was arrested, finger printed, measured, weighed and photographed he was taken before Recorder Carsten, who then and there released the complainant under \$5,000 bail for a preliminary hearing. At the final hearing the bail was raised from \$5,000 to \$15,000. They refused to accept his bondsman because they said they would not accept bail from one crook to another (see pp. 73-74).

It is important here to add that the complainant, Frank J. Bartletta, was booked as “FRANK J. BARTLETTA ALIAS LUKE ADAMS.” This much is alleged in paragraph 7 of the Bill of Complaint (p. 8), and is admitted in paragraph 7 of the answer of the defendants (see p. 19). The complainant charged that the “ALIAS LUKE ADAMS” appellation he never assumed or was ever known by, but was maliciously and wrongfully assigned to him by the Police Department of Hobo-

ken, and at the hearing in the Court below he again emphasized the fact that this alias name was maliciously and wrongfully attached to him without any foundation whatsoever. Complainant says he was never known as "LUKE ADAMS" all his life, he never had that name, never addressed by that name (see pp. 75-76).

A written demand for the return of the complainant's finger prints and photographs taken by the Police Department on the 10th day of February, 1928, was made upon defendants (see pp. 10-13). This much is admitted by the defendants.

On the day of his arrest, to wit: February 10th, 1928, the complainant was 29 years of age; a married man living with his family; a native born American Citizen; and was then residing in the City of Hoboken and had been so residing for the past 14 years, and is still a resident of this municipality. He was engaged in politics in the City of Hoboken and was then a BONDED THREE YEAR SINKING FUND COMMISSIONER OF THE CITY OF HOBOKEN. This much is admitted (see paragraph 6 of the defendants' answer, p. 18). He also busied himself with various social and commercial enterprises. As a SINKING FUND COMMISSIONER he knew all the officials of the City of Hoboken, even the members of the Police Department; he consorted with them and conducted political campaigns under the immediate supervision of Commissioner Bernard N. McFeeley, the then Commissioner of Public Safety and defendant herein.

Up to the time of his arrest Mr. Bartletta owned approximately \$200,000 worth of real estate in Hoboken; paid taxes to the City of Hoboken in the sum of \$15,000 a year. He had invested \$100,000 in the Bergen Land Development, a building and

construction company; \$151,000 in the Italia Trust Company; \$23,000 in the Hoboken Finance Company; and \$16,000 in the Terminal Printing & Publishing Company; and was also a director of the Steneck Trust Company of Hoboken, New Jersey. THE TERMINAL PRINTING AND PUBLISHING COMPANY was a corporation of the State of New Jersey and published a newspaper known as "THE NEWSLETTE"; he, Mr. Bartletta, was the President and controlling stockholder of this Company. Mr. John Bado had charge of the printing work for the Terminal Printing & Publishing Company, he was the general manager and had full charge of the entire plant. Mr. Bartletta had no active part in the taking of orders at that time nor at any other time; he furnished the money to start the company and that was all. He had no interest therein. Mr. Phillip Schwartz was the editor of "THE NEWSLETTE." The policy of the paper was controlled by Mr. Bartletta. For some weeks prior to the arrest of Mr. Bartletta this newspaper, "THE NEWSLETTE" had revolted against Bernard N. McFeeley, the leader of the Democratic Machine of Hoboken, and Director of Public Safety (see pp. 69-72) and hostilities arose.

It is now three years, in February, since Mr. Bartletta was accused and arrested on the 10th day of February, 1928, and he has never been indicted for the alleged offense of possessing lottery tickets, nor has he been tried or convicted for this or any other offense. As a matter of fact the Police Department of the City of Hoboken has made no effort whatsoever to substantiate the criminal charge against Mr. Bartletta in the Chancery Court. Mr. Joseph R. Scott, the accuser of Mr. Bartletta, who signed the sworn complaint under which the warrant was issued for Mr. Bartletta's arrest did not dare to attempt to prove that Mr. Bartletta was

ever in possession of lottery tickets; in fact he didn't even appear at the hearing below; and there was no evidence at all submitted in any Court by the defendants that Mr. Bartletta ever possessed lottery tickets; and yet, the defendants have compelled the complainant to annex to the "State of Case" photographs tending to show that the Terminal Printing & Publishing Company, the printers of "THE NEWSETTE," of which Mr. Bartletta was its President, was illegally printing lottery tickets. But, does that in and of itself connect Mr. Bartletta with the commission of any offense? When a car load of liquor is found in the yards of the D. L. & W. Railroad Company, or any other railroad company, do they arrest the President of the Railroad Company? I never heard of it. Yet, they have arrested the complainant, the President of the Terminal Printing & Publishing Company, not because Mr. Bartletta actually possessed and printed lottery tickets but because he controlled "THE NEWSETTE" which was in revolt against Commissioner Bernard N. McFeeley, the leader of the Democratic machine in Hoboken.

It would seem, therefore, that it is material at this time to point out to this Court that Frank J. Bartletta, the complainant, was innocent of the offense with which he was charged, particularly in view of the fact that the defendants have annexed to the "State of Case" criminal evidence of the photographs of the Terminal Printing & Publishing Company and have attempted to charge him constructively with the offense because he was President of the Company. Now let us see what Mr. Bartlett's connection was with this printing and publishing company. Mr. Bartletta testified at pages 71-72 as follows:

“Q. On the 10th day of February, 1928, were you an officer in the Terminal Printing and Publishing Company? A. Its president.

Q. Is that a corporation of this State? A. Yes, sir.

Q. What was the nature of the business of that company? A. Printing and publishing.

Q. Was the company, at that time, publishing a newspaper, The Newsette? A. Yes, sir.

Q. At that time, was it in revolt with the Democratic machine of Hoboken? A. Yes, sir.

Q. Were you friendly or unfriendly with McFeeley? A. Unfriendly.

Q. At the time of your arrest you were charged with what, Mr. Bartletta? A. The company was charged.

Q. What were you charged with? A. The warrant called for the possession of lottery tickets.

Q. Did you have any knowledge, any personal knowledge of the fact that the Terminal Printing and Publishing Company, of which you were then president were printing and possessed lottery tickets of which you were charged?

Mr. Allen: I object, it is irrelevant.

The Court: I will allow it.

A. None whatsoever.

Q. Who had charge of the printing work for the Terminal Printing and Publishing Company? A. Mr. John Bado.

Q. What position did he occupy? A. General Manager and had full charge of the plant.

Q. Who was the Editor of The Newsette? A. Mr. Phillip Schwartz.

Q. Did you have any active part in the taking of orders for printing at that time? A. No.

Q. At any other time? A. No.

Q. What interest did you have? A. I furnished the money to start the company and that is all."

That Mr. Bartletta was innocent of the offense charged, or of any offense, is shown by the testimony of John Bado, the Manager of the printing plant, who testified that Mr. Bartletta had nothing whatsoever to do with the taking of orders for the printing. He particularly laid stress upon the fact that he took this illegal job for printing from one, Barr, and that the men in the printing plant under his orders printed the alleged lottery tickets for Mr. Barr (see pp. 85-86). At pages 87-89 on cross examination Mr. Bado testified as follows:

"Q. Previous to the arrest in question, how long had you seen Mr. Bartletta around the plant, if any? A. You mean to work.

Q. How recent? A. I used to see Mr. Bartletta once or twice at his office and as far as in the plant, I believe he came there once or twice a month, if then, if passing, he would come in if he wanted anything.

Q. Was this printing which has been offered to you, given to you by Mr. Barr in person? A. Barr gave it to me. Prior to that Barr had been brought to me by a friend of mine and said he wanted this printing and I was doing some for him two or three years. This is not only Barr, there are four or five different customers.

Q. Did Mr. Bartletta have any knowledge of this kind of printing that was going on? A. No, sir, the only knowledge, at the end of the month he got a statement.

The Court: Did you run a Union shop?

A. Yes, sir.

Q. Did you put on the union label? A. The customer did not want it. It is discretionary with the customer.

Q. You were arrested too? A. Yes, sir.

Q. Did your photograph appear in the newspaper? A. Yes, sir.

Q. Is that the photograph taken by the police? A. Yes, sir.

Q. Was the Newsette owned and operated by the Terminal Printing and Publishing Company and is that a corporation of this State? A. Yes, sir.

Q. At the time of the arrest was the Newsette conducting a campaign against the administration in Hoboken?

Mr. Allen: I object to that.

The Court: I will allow it.

A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. What was the nature of the revolt, if any?

The Court: You mean the method of attack?

Mr. La Porta: Yes.

Mr. Allen: Same objection.

The Court: I will allow it.

A. Conditions existed that warranted the policy of the paper—the gambling machines going on, houses of assignation.”

Mr. Schwartz, the Editor of the Newsette, also corroborates Mr. Bado that Mr. Bartletta, the complainant herein, had nothing to do with the printing or possession of lottery tickets (see pp. 80-81). He testified as follows:

“Q. On the 10th day of February, 1928, you were connected with the Terminal Printing

and Publishing Company of Hoboken, New Jersey? A. Yes, sir, as an employee.

Q. What capacity? A. Editor of the Newsette.

Q. Were you arrested on that day? A. Yes, sir.

Q. What connection did Mr. Bartletta have with the company? A. He was president.

Q. From whom did you take orders? A. Mr. Bado.

Q. What was Mr. Bado with the corporation? A. General Manager.

Q. What did Mr. Bartletta have to do with the printing company, the job printing or publishing of the Newsette? A. As far as the job printing was concerned, only from a supervisory standpoint. As far as the newspaper, just the policy of it.

Q. You say you were raided also with Bado? A. Yes, sir.

Q. Did your photograph appear in the Jersey Observer? A. Yes, sir.

Q. Was that photograph taken by the police? A. Yes, sir.

Q. Do you know of any lottery being printed by the Terminal Printing and Publishing Company? A. No, sir.

Q. Do you know if Mr. Bado did? A. I don't know.

Q. How much did you see Bartletta in the plant? A. Rarely.

Q. Prior to the arrest? A. In the plant, I don't think more than three times.

We might add that Mr. Barr, the customer of the printing plant for whom the lottery tickets were printed, was also arrested on the complaint of

Lieutenant Scott and under the warrant issued by the Recorder. He was held also for the Grand Jury by the Recorder at the final hearing under bail in the sum of merely \$1,000, while the bail of Frank J. Bartletta, the complainant herein, his Manager, John Bado, and his Editor, Phillip Schwartz, was \$15,000 each. It is well also to note that the defendants not only failed to produce Lieutenant Scott to substantiate his complaint in the Court of Chancery but they also failed to produce Robert Barr. If anyone was ever in a position to know whether or not Mr. Bartletta was personally engaged in possessing and printing lottery tickets surely Mr. Barr, the customer of the printing plant, would know. Yet, Mr. Barr was not produced by the defendants altho he was under bail and could be easily produced. But it does seem strange that the defendants insist upon presenting the photographs of illegal printing to this court under all the circumstances of the case when they could have easily proved Mr. Bartletta guilty, if he was ever guilty, by Lieutenant Scott and by Mr. Barr, the customer of the printing plant. This they have miserably failed to do.

Mr. Bartletta's contention is that he is innocent of any wrongdoing and there is nothing in the criminal records, or in the records of this appeal, which show or tends to show anything to the contrary. The Court is therefore dealing with the case of an innocent man whose photographs and finger prints have been taken and kept in the "ROGUES' GALLERY" altho he is neither a rogue nor a criminal, and altho some three years have elapsed since his arrest and he has not been indicted, tried or convicted for that offense or any offense.

The photographs and finger prints of the complainant were taken by the defendants for the pur-

pose of humiliating him and discrediting his attacks thru the medium of "THE NEWSETTE" against Commissioner Bernard N. McFeeley, the then Commissioner of Public Safety. This is evidenced by the undisputed evidence that the complainant's photographs and finger prints were immediately placed in the "ROGUES' GALLERY" of the City of Hoboken, and circulated to other Rogues' Galleries, and the photographs of the complainant together with that of his Manager John Bado and his Editor Phillip Schwartz were immediately released to the "JERSEY OBSERVER" a newspaper of Hudson County, New Jersey, and the photographs were printed and published in its first issue on the day following and the complainant was described as "BARTLETTA ALIAS LUKE ADAMS." The evidence discloses that Commissioner McFeeley delighted in the plight in which Mr. Bartletta was placed in. He was present at the finger printing and photographing of the complainant and the other defendants, and demonstrated an air of satisfaction over the procedure. This is further evidenced by the fact that he refused to return to the complainant his photographs and finger prints and by the further fact that when one of Mr. Bartletta's emissaries went to Commissioner McFeeley for a dancing permit to conduct a dance at the Bartletta Hall, he said to the witness Caruso, that he would never give a permit to run a dance as long as Frank Bartletta's name was on the window (see pp. 84-85); and besides Mr. Bartletta was at the time a SINKING FUND COMMISSIONER and was appointed such by Commissioner McFeeley himself. Mr. Bartletta's affidavit for preliminary injunction so stated and Commissioner McFeeley did not deny the same nor his relations with Mr. Bartletta, as a matter of fact, he did not testify nor enter an appearance at

the trial in the Court below (see Affidavit of Frank J. Bartletta, p. 30, paragraph 7).

We therefore, claim that the finger printing and photographing of the complainant was done without justification; that the acts of the defendants were malicious and for selfish gain and purposes and of such a character as were reasonably calculated to wound the feelings and to subject the complainant to the ridicule or contempt of others, and were intended to discredit him in his attacks thru the medium of "THE NEWSETTE" against the administration of the defendants, particularly that of the Commissioner of Public Safety and to discredit him in his past as well as future possible attacks upon his part. The reading of the entire record, which is very short, will conclusively demonstrate this inference.

#### **Grounds of Appeal.**

1. The Court erred in dismissing the Bill of Complaint and denying the relief therein prayed for, whereas, it should have sustained the Bill and granted the relief therein prayed for.
2. The Court erred in finding that the acts of the defendants were done without malice to the complainant and for a justifiable cause, whereas, it should have found that the acts of the defendants were done maliciously and without justifiable cause as reference to the record of the evidence will more fully appear.

**POINT ONE.**

**The court erred in dismissing the bill of complaint and denying the relief therein prayed for, whereas, it should have sustained the bill of complaint and granted the relief therein prayed for.**

The defendants had no right before conviction to place the complainant's photograph in the "ROGUES' GALLERY OF HOBOKEN" and to circulate them together with his finger prints to other Rogues' Galleries of distant places. The complainant's "right of privacy" was and is infringed thereby for which an action for damages or injunction lies. The learned Vice Chancellor in the Court below held that it was not only lawful for the defendants to take the finger prints, measurements and photograph of the complainant, but also to retain them although some three years have elapsed since the complainant's arrest and he has not been indicted, tried or convicted and although he is innocent of any offense or crime. In other words he had denied the complainant not only a right in equity for injunction but also a right at law for damages. In this, there is manifest error.

In *Munden v. Harris*, 153 Mo. App. 652, the court held that the "*right of privacy*" is a *legal right of property*, the principle of which has been recognized and is entitled to protection at the hands of the courts. ITS INVASION MAY BE RESTRAINED IN EQUITY BY INJUNCTION. The Court further held that THE PUBLISHING OF THE PICTURE OF ANOTHER WITHOUT HIS CONSENT IS AN INVASION TO HIS "RIGHTS OF PRIVACY" AND A VIOLATION OF HIS RIGHT OF PROPERTY WHICH MAY BE RESTRAINED BY INJUNCTION OR REDRESSED

IN DAMAGES; and also that the "right of privacy" includes the right to enjoy life and pursue happiness subject only to the rights of others, and that a PERSON MAY THEREFORE ADOPT A LIFE OF SECLUSION with a right to remain undisturbed if he so desires.

In the *Munden v. Harris case, supra*, at pages 658 to 661, the Court said:

"PROPERTY IS NOT NECESSARILY A TAXABLE THING ANY MORE THAN IT IS ALWAYS A TANGIBLE THING. It may consist of things incorporeal, and things incorporeal may consist of rights common in every man. One is not compelled to show that he used, or intended to use, any right which he has in order to determine whether it is a valuable right of which he cannot be deprived and in which the law will protect him. The privilege and capacity to exercise a right, though unexercised, is a thing of value—is property—of which one cannot be dispoiled. IF A MAN HAS A RIGHT TO HIS OWN IMAGE AS MADE TO APPEAR BY HIS PICTURE, IT CANNOT BE APPROPRIATED BY ANOTHER AGAINST HIS CONSENT. IT MUST STRIKE THE MOST OBTUSE THAT A CLAIM OF EXCLUSIVE RIGHT TO ONE'S PICTURE IS A JUST CLAIM. Judge Gray, in his dissenting opinion in *Roberson v. Rochester Folding Box Co., supra*, said at page 563 of the report, that: "The proposition is, to me, an inconceivable one that these defendants may, unauthorizedly, use the likeness of this young woman upon their advertisement, as a method of attracting widespread public attention to their wares, and

that she must submit to the mortifying notoriety, without right to invoke the exercise of the preventive power of a court of equity.'

"One may have peculiarity of appearance, and if it is to be made a matter of merchandise, why should it not be for his benefit? It is a right which he may wish to exercise for his own profit and why may he not restrain another who is using it for gain? If there is value in it sufficient to excite the cupidity of another, why is it not the property of him who gives it the value and from whom the value springs?

"It may be admitted that the right of privacy is an intangible right; but so are numerous others which no one would think of denying to be legal rights which would be protected by the courts. It is spoken of as a new right, when, in fact, it is an old right with a new name. Life, liberty and the pursuit of happiness are rights of all men. The right of life includes the pursuit of happiness, for it is well said that the right of life includes the right to enjoy life. Every one has the privilege of following that mode of life, if it will not interfere with others, which will bring him the most contentment and happiness. He may adopt that of privacy, or, if he likes, of entire seclusion. The face of the majority opinion in *Roberson v. Rochester Folding Box Co.*, *supra*, while denominating the right of privacy as 'a phrase' and 'a so-called right,' yet, concedes that it is a something which to disturb is an 'impertinence'. The court recognizes the right, but, as has been already said, not considering it a property right, refused it the protection of the restraining power of a court of equity; and thereby confined the beneficent power of equity

within too narrow bounds—bounds so limited as will permit the doing of acts which shock the moral sense.

“WE THEREFORE CONCLUDE THAT ONE HAS AN EXCLUSIVE RIGHT TO HIS PICTURE, ON THE SCORE OF ITS BEING A PROPERTY RIGHT OF MATERIAL PROFIT. WE ALSO CONSIDER IT TO BE A PROPERTY RIGHT OF VALUE IN THAT IT IS ONE OF THE MODES OF SECURING A PERSON THE ENJOYMENT OF LIFE AND THE EXERCISE OF LIBERTY; AND THAT NOVELTY OF THE CLAIM IS NO OBJECTION TO RELIEF. IF THIS RIGHT IS, IN EITHER RESPECT, INVADED, HE MAY HAVE HIS REMEDY, EITHER BY RESTRAINT IN EQUITY, OR DAMAGES IN AN ACTION AT LAW. \* \* \*

\* \* \* \* \*

“The foregoing views find ample support in thoroughly considered cases decided in recent years (*Pavesich v. New Eng. Life Ins. Co.*, 122 Ga. 190; *Vanderbilt v. Mitchell*, 71 N. J. Eq. 632; *Edison v. Edison Mfg. Co.*, 73 N. J. Eq. 136; *Foster-Milburn Co. v. Chinn*, 134 Ky. 424). These cases are supported by the dissenting opinion of Judge Gray, writing for the minority of the court, in *Roberson v. Rochester Folding Box Co.*, *supra*. And we think the principle they announce is practically conceded in *Schuyler v. Curtis*, 147 N. Y. 434, hereinbefore cited. Several of these cases make acknowledgment to a very able article in *4 Harvard Law Review*, 193.

“In the *Schuyler case* a near relative of the deceased, Mrs. Schuyler, sought to enjoin ad-

mirers of her many virtues and good deeds from placing her statue in a public place. It was held that relief could not be had on the ground that the deceased's right of privacy, as that right necessarily died with her. And that so long as no aspersion was intended to be cast upon the dead; so long as the dead were intended to be honored in appropriate manner and not slurred or defamed in such was as to outrage the feelings and sensibilities of surviving relatives, there could be no cause of complaint by them. That the alleged injury, in that case, to the sensibility of relatives was fanciful rather than real, and it was therefore not a subject for interference by the courts."

#### THE "RIGHT OF PRIVACY" IS A PROPERTY RIGHT.

The right of privacy is not a myth in the law; it is a legal reality. Rumsy, Judge in *Robertson v. Rochester Folding Box Co.*, 64 N. Y. App. Div. 33, said:

"It is an established principle of the common law, that the person and property of every man is inviolate; that neither should be interfered with in any way, or to any, even the slightest, extent without his consent \* \* \*. The theory evidently is that the right of protection to the person should be complete and perfect, and that no one should be allowed to do any act which interferes or threatens to interfere with the physical comfort or safety, or which attacks the reputation or character, of any person, and thereby affects injuriously

his feelings or subjects him to humiliation or disgrace.”

And in *Corliss v. E. W. Walker Co.*, 64 Fed. Rep. 280, Colt, Judge made the following partial statement of this right:

“Independently of the question of contract, I believe the law to be that a private INDIVIDUAL HAS A RIGHT TO BE PROTECTED IN THE REPRESENTATION OF HIS PORTRAIT IN ANY FORM; THAT THIS IS A PROPERTY AS WELL AS A PERSONAL RIGHT; and that it belongs to the same class of rights which forbids the reproduction of a private manuscript or painting, or the publication of private letters, or of oral lectures delivered by a teacher to his class, or the revelation of the contents of a merchant’s books by his clerk.”

ONE HAS EXCLUSIVE RIGHT TO HIS PICTURE, WHICH IS A PROPERTY RIGHT.

In *Munden v. Harris*, 153 Mo. App. 652, at page 660; 134 S. W. 1076, at page 1079, where it was concluded

“that one has an exclusive right to his picture on the score of its being a property right of material profit, also, ‘a property right of value, in that it is one of the modes of securing to a person the enjoyment of life and the exercise of liberty.’”

A PERSON’S PICTURE IS HIS PROPERTY.

In *Edison v. Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136, V. C. Stevens said:

“If a man’s name be his own property, as no less an authority than the U. S. Supreme Court says it is (*Brown Chemical Co. v. Meyer*, 139 U. S. 542) it is difficult to understand why a PECULIAR CAST OF ONE’S FEATURES IS NOT ALSO ONE’S PROPERTY and why its pecuniary value, if it has one does not belong to its owner, rather than to the person seeking to make an unauthorized use of it.”

THE “RIGHT OF PRIVACY” EXISTS WITH OR WITHOUT LIBEL.

Professor Chapin in his article “On Torts” in *36 Cyc.* 496, speaking of the infringement of the right of privacy, says among other things:

“It is assumed that the picture or the accompanying words are not defamatory for the solution of this problem does not in any sense require recourse to the law of libel.”

FOR THE INVASION OF THE “RIGHT OF PRIVACY” AN INJUNCTION IS THE PROPER REMEDY FOR ITS PROTECTION.

This is especially so where malice is involved. So it is stated in *21 R. C. L.* page 1201, Section 6:

“If the defendant’s act is without justification and for selfish gain and purposes, and of such a character as is reasonably calculated to wound the feelings and to subject the plaintiff to the ridicule or contempt of others, the preventive relief of equity will follow.”

Citing Rogues’ Gallery cases; *Pomeroy under “Privacy”* Vol. 5, Section 2053 (2nd Ed.) deals with this subject and says:

"If there is such a thing as right of privacy, injunction is certainly the proper remedy for its protection."

IN NEW JERSEY THE "RIGHT OF PRIVACY" has not only been recognized but injunctive relief has been granted especially where a photograph was involved. In *Edison v. Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136; 67 Atl. 392, the Court in granting an injunction restraining the use of a photograph without the consent of the complainant recognized the doctrine of the "Right of Privacy" and also held that there was a right of property in the photograph.

In the *Edison v. Edison Polyform Mfg. Co.*, *supra*, Vice Chancellor Stevens said:

"In *Roberson v. Rochester Box Co.*, 171 N. Y. 538; 64 N. E. 442; 59 L. R. A. 478; 89 Am. St. Rep. 828, however, the suit was brought on behalf of a living person a young lady under age, to restrain a flour company from putting her likeness upon prints advertising its flour. The allegation admitted by the demurrer was that the company was printing, selling and circulating 25,000 of these likenesses, with the result of humiliating her and of causing mental distress and physical sickness. A bare majority of the Court of Appeals overruled the decision of the Appellate Division, and held that no cause of action was set forth in the complaint. This case resembles the case in hand, in that the defendant is here seeking to make an unauthorized use of Mr. Edison's likeness. It differs from it in the fact that no attempt was made to induce the public to believe that the person depicted was recom-

mending the flour. This case cannot be sustained on principle, and has been disapproved by the Supreme Court of Georgia in *Pavesich v. New England Life Insurance Company*, 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; 106 Am. St. Rep. 104, and by our own Court of Appeals in *Vanderbilt v. Mitchell* (not yet officially reported), 67 Atl. 97, 103. IF A MAN'S NAME BE HIS OWN PROPERTY, AS NO LESS AN AUTHORITY THAN THE UNITED STATES SUPREME COURT SAYS IT IS (*Brown Chemical Co. v. Meyer*, 139 U. S. 542; 11 Sup. Ct. 625; 35 L. Ed. 247). IT IS DIFFICULT TO UNDERSTAND WHY THE PECULIAR CAST OF ONE'S FEATURES IS NOT ALSO ONE'S PROPERTY, AND WHY ITS PECUNIARY VALUE, IF IT HAS ONE, DOES NOT BELONG TO ITS OWNER, RATHER THAN TO THE PERSON SEEKING TO MAKE AN UNAUTHORIZED USE OF IT. If the mere exhibition of one's face to one's friends and to others on the public streets be a publication for all purposes, then that line of cases of which *Pollard v. Photographic Company* is an example was wrongfully decided, for there could be no implied contract or confidence to keep that private which was already public property.

"That the subject is attended with difficulty, and that the line between what the court will restrain and what it will not restrain is hard to draw with absolute precision, is undoubted. This is well illustrated by the case of libel. If you call a business man a thief, or a physician a quack, in a printed publication, you undoubtedly do that which tends, and very directly tends, to diminish his earnings; and yet

all the authorities, up to this time at least, agree that, because libel is a crime and is actionable at law, equity will not interfere. *Prudential Insurance Company v. Knott*, L. R. 10 Ch. 142, is an illustration. There the defendant had published a pamphlet in which he charged the plaintiff company with reckless management and with being in a state of insolvency. On bill filed alleging the representation to be untrue, and further alleging that the company was in fact prosperous and solvent, and that the continued publication of the pamphlet would damage the company's business and diminish its profits, an injunction was refused by the Vice Chancellor, and by the Lords Justices on appeal. The decision was put upon the ground that the pamphlet, if its statements were untrue, was libelous and actionable at law; and yet Lord Cairns said, in giving judgment, that there were publications which a court of equity would restrain, and that such publications would be restrained none the less because they happened also to be libelous. He expressly dissented, however, from Vice Chancellor Malins' view that REPUTATION WAS PROPERTY AND THAT IT MIGHT, ON THAT GROUND, BE PROTECTED BY INJUNCTION. It would seem that the right of the citizen to have his publication passed on by a jury is, to some extent at least, responsible for the rule. Liberty of speech and of the press are guaranteed by the Constitution, and the question of their abuse is committed to that body.

"THERE MUST BE LIMITS TO THE SO-CALLED RIGHT OF PRIVACY. It is certain that a man in public life may not claim the

same immunity from publicity that a private citizen may. *Corless v. Walker Co.*, 64 Fed. 280; 31 L. R. A. 283. And as far as my researches have extended I do not find that it has yet been decided that injury to property in some form is not an essential element to relief. It may, at times, have been a matter of doubt whether what was called 'property' was really such, and whether the injury there-to, actual or apprehended, was not so 'shadowy' as to be incapable of judicial cognizance; BUT STILL THE CRITERION WAS ALWAYS INJURY TO PROPERTY OR TO PROPERTY RIGHTS. IT IS TO BE NOTED, HOWEVER, THAT THE INSIGNIFICANCE OF THE RIGHT FROM A PECUNIARY STANDPOINT DOES NOT ALWAYS BAR RELIEF. Thus the REPORT of an association of dentists (*N. J. State Dental Soc. v. Dentacura Co.*, 57 N. J. Eq. 594; 41 Atl. 672), THE EXHIBITION OF ONE'S PHOTOGRAPH (*Pollard v. Photographic Co.*, 40 Ch. Div. 345), and the publication of a private letter which, as a literary production may be worthless (*Folsom v. March*, 2 Story 100; *Boosey v. Jeffreys*, 6 Exch. 583), are accorded the same protection as the lectures of a professor (*Abernethy v. Hutchinson*, 3 L. T. Ch. 209), the catalogue of a prince's etchings (*Prince Albert v. Strange*, 1 McN. & G. 25) and the currency of a foreign state (*Emperor of Austria v. Day*, 3 De G. & J. 217). I THINK THAT UNDER THE ABOVE AUTHORITIES THE COMPLAINANT IN THE PRESENT CASE IS CLEARLY ENTITLED TO AN INJUNCTION TO RESTRAIN THE UNAUTHOR-

IZED USE OF HIS NAME, HIS PICTURE, AND HIS CERTIFICATE. The possibility of injury because of their use without apparent objection on Mr. Edison's part is quite as great as it would have been in the Times Case had Mr. Walter stood by and allowed the advertisement of the bicycle with what seemed to be a Times indorsement.

"I regard the case of *Vanderbilt v. Mitchell*, just decided by the Court of Appeals, as conclusive. That court, as I have said, condemned *Robertson v. Rochester Folding Box Co.*, and cited with approval *Routh v. Webster*, and *Walter v. Ashton*."

THE MERE USE OF ONE'S PHOTOGRAPH FOR ADVERTISING PURPOSES WITHOUT HIS CONSENT IS AN UNLAWFUL INVASION OF HIS RIGHT OF PRIVACY FOR WHICH AN ACTION FOR DAMAGES OR AN INJUNCTION WILL LIE.

It has been held that the mere publication of a photograph of a person without his consent for advertising purposes is an unlawful invasion of his right of privacy for which an action for damages or an injunction will lie without proof of special damage. See *Pavesich v. New England Life Insurance Company*, 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; approving the dissenting judgment of Gray, Judge, in *Roberson v. Rochester Folding Box Co.* (1902), 171 N. Y. 538.

This doctrine of the "Right of Privacy" was approved by the case of *Edison v. Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136, and by the case of *Vanderbilt v. Mitchell*, 72 N. J. Eq., 910, 67 Atl. 97. This court held in the case of *Vanderbilt v. Mit-*

*chell*, that a fraudulent birth certificate should be cancelled by decree in Chancery because it tended to expose the putative father to litigation. The Court at page 100 said:

“If it appeared in this case that only the complainant’s status and personal rights were thus threatened or thus invaded by the action of the defendants and by the filing of the false certificate, we should hold, and without hesitation, that AN INDIVIDUAL HAS RIGHTS, OTHER THAN PROPERTY RIGHTS, which he can enforce in a court of equity and which a court of equity will enforce against invasion. *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190; 50 S. E. 68; 69 L. R. A. 101; 106 Am. St. Rep. 104.”

And the Court said at page 101:

“Furthermore, this case comes within the WELL-SETTLED RULE THAT A COURT OF EQUITY WILL PREVENT THE THREATENED INVASION OF PROPERTY RIGHTS AND PROTECT A PARTY FROM EXPOSURE TO THE RISK OF LITIGATION AND LIABILITY.”

This court also emphatically declared that the term “Property Right” is not to be taken in any narrow sense and that the tendency of equity in cases of this description should be to extend, rather than to restrict, the jurisdiction. Judge Dill says:

“From time immemorial it has been the rule not to grant equitable relief where a party praying for it had an adequate remedy at law;

but modern ideas of what are adequate remedies are changing and expanding, and it is gradually coming to be understood that a system of law which will not prevent the doing of a wrong, but only affords redress after the wrong is committed, is not a complete system, and is inadequate to the present needs of society."

AN INNOCENT PERSON MAY ENJOIN THE POLICE FROM PUTTING HIS PHOTO IN THE SO-CALLED "ROGUES' GALLERY."

"PICTURE IN ROGUES' GALLERY.—It has been held that an innocent person may enjoin the police from putting his picture in a so-called rogues' gallery; *Itzkovitch v. Whitaker*, 115 La. 479, 112 Am. St. Rep. 272; 1 L. R. A. (N. S.) 1147; 39 South 499. In general, as to right to put picture in rogues' gallery, see *Schulman v. Whitaker*, 117 La. 704, 8 Ann. Case 1174, 7 L. R. A. (N. S.) 274, 42 South 227."

In *Itzkovitch v. Whitaker*, 115 La. 479; 39 So. 499; 112 Am. St. Rep. 272, 1 L. R. A. (N. S.) 1147, the Court said:

*"We think that the publication of an innocent man's photograph in the rogues' gallery gives rise to sufficient grounds to sustain an injunction. There is a right in equity to protect a person from such an invasion of private rights. Everyone who does not violate the law can insist upon being let alone (the right of privacy). In such a case the right of privacy is absolute. It must be said that there*

is some limit to this right, which it is not necessary to discuss in this case. A person may be arrested, imprisoned, and acquitted without right to damages. All of this is true, but it bears no application to the issue in hand. Where a person is not guilty, is honest (and that is the only light upon which to consider this case with the issues before us), he may obtain an injunction to prevent his photograph from being sent to the rogues' gallery. He has the personal right to the restraining order, at least for the time being. The theory in opposition to this view is substantially that the picture should be taken and exhibited for the public good. There can be no public good subserved by taking the photograph of an honest man for the purpose before mentioned. The court had jurisdiction to issue the preliminary injunction, and to make it perpetual if the evidence justifies the decree."

In this case an injunction was granted and the negative of the photographs ordered returned it being held that no pictures should be taken before conviction except for identification or detection.

In *Schulman v. Whitaker*, 117 La. 704; 42 So. 227; 7 L. R. A. (N. S.) 274, it appeared that a pawn-broker was arrested for receiving stolen property. He had been arrested many times before, but apparently never convicted. His picture was taken; he was afterwards tried and discharged. *The court held that the picture should be destroyed, the ground being that there was no necessity of taking it as the defendant was well-known and it was not needed for purposes of identification or to prevent escape.* The court, however, is careful to say:

“Whilst expressing the foregoing views, we desire to have it well understood that we are decidedly of opinion that cases may arise justifying the officer in charge of the police department in ordering a picture to be taken; but the necessity must be evident. Convicts and hardened criminals may forfeit all rights to consideration; to such an extent, at any rate, that their pictures may be taken if necessary to their identification, and that without much delay.”

THE STATE OF MARYLAND RECOGNIZES THE RIGHT OF THE POLICE DEPARTMENT TO PHOTOGRAPH AN ACCUSED UNDER ARREST AND BEFORE TRIAL OR CONVICTION ONLY FOR THE PURPOSE OF IDENTIFICATION BUT DOES NOT PERMIT THE PLACING OF THE ACCUSED'S PHOTOGRAPH IN THE "ROGUES' GALLERY" UNLESS HE IS CONVICTED.

The Court said in *Downs v. Swann*, 73 Atl. 653 (Md.); 23 L. R. A. (N. S.) 739; 111 Md. 53; charge embezzlement (felony):

“The precise question there presented for our determination is whether the police authorities of Baltimore City may lawfully provide themselves, for the use of their department of the city government, with the means of identification of a person arrested by them upon a charge of felony, but not yet tried or convicted, by photographing and measuring him under the Bertillon system. IT IS NOT DIRECTLY CHARGED IN THE BILL THAT THE POLICE INTEND TO PUT HIS PHOTOGRAPH IN THE ROGUES' GAL-

LERY OR DISTRIBUTE COPIES OF IT TO THE POLICE AUTHORITIES OF OTHER CITIES, UNLESS HE IS CONVICTED OR BECOMES A FUGITIVE FROM JUSTICE, or that they propose to apply his Bertillon record to any other uses than those of their own department of Baltimore city. FURTHERMORE, THE ANSWER DENIES THE EXISTENCE OF ANY PURPOSE TO APPLY THE PHOTOGRAPH OR RECORD OF THE APPELLANT TO ANY OTHER PURPOSE THAN THAT OF HIS IDENTIFICATION. If it becomes necessary in criminal proceedings now pending or hereafter to be instituted against him, unless he is convicted or becomes a fugitive from justice."

The Court then said :

"In our opinion the photographing and measuring of the appellant in the manner and for the purposes mentioned, and the use of his photograph and the record of his measurements to the extent set forth in the answer by the police authorities of Baltimore City, would not constitute a violation of the personal liberty secured to him by the Constitution of the United States or of this State."

Then the Court in the last paragraph of its opinion said :

"For the reasons mentioned in this opinion we will affirm the order appealed from, BUT WE MUST NOT BE UNDERSTOOD BY SO DOING TO COUNTENANCE THE PLACING IN THE ROGUES' GALLERY OF THE PHOTOGRAPH OF ANY PERSON NOT AN

HABITUAL CRIMINAL, WHO HAS BEEN ARRESTED, BUT NOT CONVICTED ON A CRIMINAL CHARGE, OR THE PUBLICATION UNDER THOSE CIRCUMSTANCES OF HIS BERTILLON RECORD. POLICE OFFICERS HAVE NO RIGHT TO NEEDLESSLY OR WANTONLY INJURE IN ANY RESPECT PERSONS WHOM THEY ARE CALLED UPON IN THE COURSE OF THEIR DUTY TO ARREST OR DETAIN, AND FOR THE INFLECTION OF ANY SUCH INJURY THEY WOULD BE LIABLE TO THE INJURED PERSON, IN THE SAME MANNER AND TO THE SAME EXTENT THAT PRIVATE INDIVIDUALS WOULD BE."

IT IS HELD TO BE AN ASSAULT AND BATTERY TO TAKE THE FINGER PRINTS, MEASUREMENTS AND PHOTOGRAPH OF AN ACCUSED WITHOUT HIS CONSENT BEFORE CONVICTION AND A LIBEL IF PLACED IN "THE ROGUES' GALLERY."

In *Gow v. Bingham*, 57 Misc. Rep. 66; 107 N. Y. Supp. 1011; the defendant was arrested charged with grand larceny and forgery. Never before, apparently, had he been accused or suspected of crime. While waiting bail his photograph, measurements and imprints were taken. The prisoner was afterwards discharged and he brought a writ of mandate to compel the destruction of the photograph, records and imprints. The court held that he had mistaken his remedy, and Mr. Justice Burr referring to the impropriety of the photographing and measuring procedure of the Police Department of one not yet convicted of any crime or offense said as follows:

*"No statute has been found in express terms, which authorizes any member of the police force of this city to deprive any person of his liberty of action or invade his right of personal immunity to the extent of requiring him to submit to having his photograph taken, and measurements and impressions of his body made, for the purpose of preserving them in the criminal records of that department, simply because that person has been indicted, charged with a criminal offense \* \* \*.*

*\* \* \* \* \**

*\* \* \* Inasmuch as, even under the rule of the department, only such suspected persons are photographed and measured as the officials of the department determine shall be so treated, the act of determining what conduct on the part of a citizen justifies such infringement upon his natural rights is AN ACT JUDICIAL IN CHARACTER. TO SUSTAIN A MERE RULE OF THE POLICE DEPARTMENT UNDER SUCH CIRCUMSTANCES WOULD BE TO CONFER UPON THE OFFICIALS OF THAT DEPARTMENT, NOT ONLY EXECUTIVE, BUT LEGISLATIVE AND JUDICIAL POWERS. The founders of our Government were exceedingly careful to distribute the sovereign power of the State among the executive, legislative and judicial branches thereof, and to provide that neither should trespass upon the domain of the other. The time has not yet come when the entire sovereign power of the people of the State, executive, legislative and judicial, is united in a member of the police force. The acts of the police department here criticised were not only a gross outrage, not only per-*

fectly lawless, but they were criminal in character. Every person concerned therein is not only liable to a civil action for damages, but to criminal prosecution for assault (Penal Code, Sec. 219), and also for criminal libel."

AN ACTION FOR ASSAULT AND BATTERY LIES AGAINST THE OFFICERS OF THE POLICE DEPARTMENT WHO, BEFORE TRIAL AND CONVICTION OF AN ACCUSED, PHOTOGRAPHED AND MEASURED HIM FOR THE "ROGUES' GALLERY" UNDER PROTEST.

In *Hawkins v. Kuhne*, 153 App. Div. 216; 137 N. Y. Supp. 1090, aff. unanimously without opinion in 208 N. Y. 555; 101 N. E. 1104; the Court in an action to recover damages for assault and battery unhesitatingly held that although it was the custom and rule of the Police Department to photograph prisoners upon arrest, that it was unlawful to photograph and finger print them without their consent; and approved the comment as to the unlawful photographing, etc., as was stated in *Gow v. Bingham*, cited *supra*. The Court said in the *Hawkins* case as follows:

"There is no complaint, however, because of this arrest or detention. On the following morning, April 28th, the plaintiff was taken before the defendant then acting police captain, at police headquarters, as were also other persons under arrest for other causes. The defendant having questioned such prisoners concerning the charges against them, including the plaintiff (who declined to make any explanation of the alleged embezzlement), ordered the police officers in charge of the prisoners to 'take them out,' meaning thereby that

those accused of minor offenses should be taken before a magistrate, and that those accused of felonies should be photographed and measured, as was the *custom and rule of the police department*. The plaintiff was accordingly taken into another room, apart from the defendant, where he was photographed and measured, and prints of his thumbs and fingers were taken for use and preservation in the 'ROGUES' GALLERY', pursuant to that rule or custom, and AGAINST THE PLAINTIFF'S PROTEST AND CLAIM, without avail, that he should be taken before a court and allowed to communicate with counsel. This order of the defendant, together with the taking of such photographs, measurements, and imprints, constitute the first cause of action; and there is no dispute whatever as to the facts out of which the cause arises."

Counsel for appellant say in their brief:

"We do not question that the taking of the plaintiff's picture before conviction was an illegal act \* \* \* We do not question that an assault was committed on the plaintiff." This is in accord with a thorough examination and discussion of the law in the recent case of *People ex rel. Gow v. Bingham*, 57 Misc. Rep. 66; 107 N. Y. Supp., 1011."

IN THE ABSENCE OF A STATUTE, AN ACCUSED CANNOT BE COMPELLED TO SIT FOR A PHOTOGRAPH TO BE USED FOR THE "ROGUES' GALLERY."

*Tiedman*, in his work on *State and Federal Control of Persons and Property*, Vol. 1, p. 157, says, on this subject:

“Another phase of police supervision is that of photographing alleged criminals and sending copies of the photographs to all detective bureaus. If this be directed by the law as punishment for a crime of which the criminal stands convicted, or if the man is in fact a criminal and the photograph is obtained without force or compulsion, there can be no constitutional or legal objection to the act, for no right has been violated. But the practice is not confined to the convicted criminals. It is very often employed against persons who are only under suspicion. In such a case, if the suspicion is not well founded, and the suspected person is in fact innocent, such use of his photograph would be a libel, for which everyone could be held responsible who was concerned in its publication. AND IT WOULD BE AN ACTIONABLE TRESPASS AGAINST THE RIGHT OF PERSONAL SECURITY, WHETHER ONE IS A CRIMINAL OR NOT, TO BE COMPELLED INVOLUNTARILY TO SIT FOR A PHOTOGRAPH TO BE USED FOR SUCH PURPOSE, UNLESS IT WAS IMPOSED BY THE STATUTE AS A PUNISHMENT FOR THE CRIME OF WHICH HE HAS BEEN CONVICTED.”

And in the *Molineaux v. Collins* case, 177 N. Y. 395; 65 L. R. A. 104; 69 N. E. 727, affirming 41 Misc. 154; 83 N. Y. Supp. 943, the Court said that the photograph, description and measurements which an act of the legislature required the superintendent to secure and preserve, were a part of the public records, which the superintendent had no power to remove or destroy, even though the

prisoner's sentence had been reversed and he had been acquitted of the charge against him, and that there was no relief for this apparent injustice to one acquitted of the charge against him, except through the legislature. However, this suit was by a writ of mandamus and was not a suit in equity for injunction.

In *Hodgeman v. Olsen*, 86 Wash. 615; 150 P. 1122; L. R. A. 1916, p. 739; injunction does not lie to compel the destruction of pictures of an inmate of the state reformatory taken by the superintendent thereof in the absence of an allegation that the defendant is presently threatening to make any use thereof. Here, however, the complainant was a convict and pardoned after conviction of crime. He sought to enjoin the distribution of photographs and other data for identification which became part of his record as a convict among the police officials and penal institutions of the state. The case *sub judice* is therefore distinguishable from this case in that Mr. Bartletta was never convicted.

And in *Mabry v. Kettering*, 92 Ark. 81; 122 S. W. 115, it was held that the police officers had the right to take the photograph of a person in jail accused of crime for the purposes of identification. As to the allegation that the photographs were to be placed in the "ROGUES' GALLERY" the court said:

"It is true that it is alleged in the complaint that the photographs were taken by the defendants 'for the avowed purpose of developing said plates into photographs, as these plaintiffs believe and allege, for the purpose of having said photographs placed in what is known as the rogues' gallery; but they fail to state what the rogues' gallery consists of, and we cannot take

judicial cognizance thereof. For ought we know to the contrary, it may be some legitimate method of identification of criminals or those charged with crime; and we have held that the photographs of accused persons may be used for such purpose."

This is a rather astonishing assertion of judicial ignorance on the part of the court. However, in the case *sub judice*, Mr. Bartletta in addition to the fact that he alleged that his photographs were to be placed in the "ROGUES' GALLERY" and circulated, at the trial, proof thereof was submitted and the substance and meaning of the "ROGUES' GALLERY" was described.

The *Mabry v. Kettering case, supra*, is simply authority for the doctrine in some cases that officers of the law are entitled to take and use photographs of persons in jail, charged with crime, for purposes of identification; that the persons photographed cannot maintain injunction to prevent the use of the photographs as evidence without showing specifically that they are to be used improperly.

**THERE IS AUTHORITY FOR THE RULE THAT THE SHERIFF MAY PHOTOGRAPH AN ACCUSED WHO HAS NOT YET BEEN TRIED OR CONVICTED, BUT HAS BEEN "COMMITTED" TO HIS CUSTODY FOR SAFE KEEPING.**

This is the case of *Bruns v. Clausmeier*, 154 Ind. 599, 50 L. R. A. 73, 72 Am. St. Rep. 511; 57 N. E. 541, cited in the notes 7 L. R. A. (N. S.) 275 (forgery case).

This case, however, is distinguishable from the case *sub judice* in this:—Mr. Bartletta while he was arrested under a warrant, he was not committed by

a Magistrate to the Sheriff's custody, in fact immediately after he was searched, measured, finger printed and photographed, and questioned, he was brought before Recorder Adolph C. Carsten and was then and there at once admitted to bail in the sum of \$5,000 to appear for a preliminary hearing and was released accordingly; besides the complaint in the case *supra* did not charge that any physical force was used to induce the accused to have his picture taken or to furnish the Sheriff with such information that was not obtainable by observation. The Court in the *Bruns v. Clausmeier* case *supra* held:

“that, since it was the duty of a sheriff to confine in jail and safely keep all persons in his custody awaiting trial on a charge of crime, until lawfully discharged, and if they escape, to pursue and recapture them, he had the right, provided he used no physical force, to take the photograph of a prisoner, if he considered that such action would enable him to secure the prisoner's safe keeping or would enable him to retake the prisoner more readily if the latter should escape.”

But the photograph was not taken for the purpose of placing the same in the “ROGUES' GALLERY.”

There is another case which holds that officers of the law are entitled to take and use for the purpose of identification photographs of persons confined in jail on a criminal charge, which case however does not go to the extent of permitting the municipal authorities to place the photographs of the accused in the “ROGUES' GALLERY” or distribute the same to other cities for their “ROGUES' GALLERIES.” See *Mabry v. Kettering*, *supra*.

MY OPPONENT'S PROBABLE CONTENTION WILL BE THAT THE NEW YORK "ROGUES' GALLERY" CASE OF *OWEN v. PARTRIDGE*, 40 Misc. 415; 82 N. Y. Supp. 248, WHICH IS NOT CONSONANT WITH REASON OR JUSTICE, CONTROLS THE CASE *SUB JUDICE*.

The *Owen v. Partridge* case, *supra*, was also a "ROGUES' GALLERY" case and the court there refused to grant the injunctive relief prayed for, because

FIRST: It was held on the authority of *Roberson v. Rochester Folding Box Co*, 171 N. Y. 538; 64 N. E. 422, that "right of privacy" has no existence in law in New York and is not enforceable in equity. The doctrine of this case, as I have pointed out, was repudiated by our New Jersey case of *Edison v. Edison Polyform Mfg. Co.*, 73 N. J. Eq. 136, 142; 67 Atl. 392; and also by the case of *Vanderbilt v. Mitchell*, 72 N. J. Eq. 910; 67 Atl. 97.

SECOND: This case recognizes the right of a municipality to photograph an accused. The doctrine of this right was denied and repudiated in the case of *Gow v. Bingham*, 57 Misc. Rep. 66; 107 N. Y. Supp. 1011, which case was followed in *Hawkins v. Kuhne*, 137 N. Y. Supp. 1090, affirmed unanimously without opinion in 208 N. Y. 555. This case held that it was an assault and battery to photograph and finger print one without his consent and under his protest.

DEPUTY POLICE CHIEF HELD ENTITLED TO ENJOIN PROSECUTOR FROM REQUIRING SUBMISSION TO HIM FOR EXAMINA-

TION OF ALL BANK ACCOUNTS OF ALL MEMBERS OF POLICE DEPARTMENT TO ASSIST IN INVESTIGATION.

In *Brex v. Smith*, 146 Atl. 34 (N. J. Ch.), a Deputy Police Chief was held entitled to enjoin prosecutor from requiring submission to him for examination of all bank accounts of all members of the police department to assist in investigation. Here the Court of Chancery held that the "right of privacy" was a property right.

"without the enjoyment of this right (privacy) all other rights would lose half their value."

THE ACCUSED RIGHT TO A PUBLIC TRIAL DOES NOT ENTITLE PRESS OR PUBLIC TO PHOTOGRAPH HIM THEREAT.

In *Ex parte Sturm*, 152 Md. 114; 136 Atl. 312; 51 A. L. R. 356, while a prisoner was being taken to his cell a newspaper photographer photographed him. The court here adjudged the photographer in contempt of court and ordered the return of the photograph. The court said at page 314:

"The picture of Whittemore taken at the lockup in the courthouse shows that he tried to shield his face from exposure to the camera. It was evidently against his will that he was photographed in such a situation. The ordeal of his approaching trial was one to which he was required to submit. But it was not essential that his humiliation should be intensified by his compulsory submission to a photographic portrayal, for publicity purposes, of his appearance as he was brought within the precincts of the court to stand trial for his

life. As he was then under the court's control, it was natural and just that the court should have a sense of responsibility for his protection against unauthorized invasions of his personal rights."

STATUTE REQUIRING PRISONER TO SUBMIT TO PHOTOGRAPHING BEFORE BAIL IS UNCONSTITUTIONAL.

In *People v. Havern*, 127 Misc. 141; 215 N. Y. S. 412; the court held that an act requiring the accused to submit to photographing and finger printing before he could be released to bail was held to be unconstitutional because it required him to give evidence against himself. This case was followed in *People v. Dennis*, 226 N. Y. S. 689; 63 A. L. R. 1326N.

IT WAS HELD IN NEW JERSEY THAT A LEGISLATURE CANNOT SO LEGISLATE AS TO AUTHORIZE ONE TO COMMIT A LIBEL OR SLANDER.

In *Neafie v. Hoboken Printing and Publishing Co.*, 75 N. J. L. 564; 68 Atl. 146, at page 147 the court said:

"THE RIGHT OF A PERSON TO BE SECURE IN HIS REPUTATION AGAINST UNWARRANTED ATTACKS, SUCH AS SLANDERS AND LIBELS, IS A PART OF THE RIGHT OF ENJOYING LIFE AND PURSUING AND OBTAINING SAFETY AND HAPPINESS WHICH IS GUARANTEED BY OUR FUNDAMENTAL LAW. Const., Atr. 1, Sec. 1. And the same instrument, in conferring upon every person the

right to freely speak, write, and publish his sentiments on all subjects, imposes at the same time a responsibility for the abuse of that right. In short, the people of this state, who ordained the Constitution have not empowered the legislative body to authorize a newspaper publisher or any other citizen TO UNJUSTLY INJURE HIS NEIGHBOR'S REPUTATION WITHOUT MAKING COMPENSATION FOR THAT INJURY."

So it is plain that no act of the Legislature can authorize the department of the police to keep the photograph of an innocent man in its "ROGUES' GALLERY" where the photographs of rouses and habitual criminals are usually exposed, for to do so would be authorizing a libel and a slander. This applies especially to the circulation of the photographs of an innocent person.

THE MISCHIEF OF THE "ROGUES' GALLERY" (Slanderous Character).

In a Scottish case, *Adamson v. Martin* (1916), 1 *Scots Law Times*, 53, a boy was arrested for the theft of a bicycle. He had committed some other trifling offense when he was twelve years old. After his arrest his measurements and photograph were taken; he was later acquitted of the charge and brought this action for damages for false arrest and slander. The plaintiff prevailed. The court at page 59 said:

"It is true that the album (rogues' gallery) is not open for inspection by the public but it may be inspected from time to time by members of the police force in the course of their duty, and I cannot conceive any form of publication

of a defamatory statement which would be more injurious to the person defamed. To be conscious that by all members of the police force he is known as a person who requires to be watched, as being likely to commit crime, must be not merely peculiarly distressing to the feelings of an innocent person, but may involve him in serious trouble if he happens to be in proximity to a place where the police believe an offense has been committed. Publication is not the less real because it is confined to a limited number of persons; more especially as I cannot see that a policeman would commit an offense if he told others of the information he had received from the register of criminals. Even if that could be treated as a breach of duty on the footing that the information was obtained confidentially, there is nothing to prevent it being done except the discretion of the individual constable, and nothing to prevent his disclosing a fact of this nature after he had ceased to be in the force. But, apart from this, I DO NOT THINK THAT ANY LAW ABIDING CITIZEN IS BOUND TO SUBMIT TO BEING REPRESENTED TO SUCCESSIVE MEMBERS OF THE POLICE FORCE AS BEING A PERSON WHO IS FITTINGLY ASSOCIATED WITH NOTORIOUS CRIMINALS IN AN ALBUM (ROGUES' GALLERY) IN WHICH THEIR FEATURES ARE PRESERVED FOR IDENTIFICATION.

“The conclusion for damages is based mainly on the view that it constituted a slander to put the pursuer's photograph into an album (rogues' gallery) kept for police purposes and to take his finger-tip impressions for the pur-

pose of being sent to London in connection with the Register of Habitual Criminals. I do not doubt that it does. I can imagine nothing more slanderous than to put a man's photograph into what I understand is called 'The Thieves' Gallery', and for the purpose that the police may keep an eye upon him and aid others in identifying him should he be suspected of crime."

### POINT TWO.

**The court erred in finding that the acts of the defendants were done without malice towards the complainant.**

The court erred in finding that the acts of the defendants were done without malice towards the complainant and for a justifiable cause, whereas it should have found that the acts of the defendants were done maliciously and without justifiable cause as reference to the record of the evidence will more fully appear.

There is not a scintilla of evidence in this record which shows, or tends to show, that Mr. Bartletta committed any offense except the fact that he was connected with the TERMINAL PRINTING AND PUBLISHING COMPANY which had printed lottery tickets for one Robert Barr. There is nothing to show that he knew this was being done. The evidence, on the contrary, shows that he busied himself with too many other business and social enterprises at the time and that the management of the printing plant was completely in the hands of his Manager, Mr. John Bado. But it does appear that Mr. Bartletta was a political enemy of Commissioner McFeeley, the then Commissioner of

Public Safety, and that prior and up to the time of his arrest thru the medium of "THE NEWS-ETTE," published by his company, the policy of which Mr. Bartletta controlled, the Commissioner's administration was charged with permitting gambling in the city and houses of ill-fame; that Commissioner McFeeley was very hostile to Mr. Bartletta, by reason thereof, so much so that he even attended the photographing and finger printing and rejoiced at the plight of Mr. Bartletta; that when one of Mr. Bartletta's emissaries sought to secure a dancing permit to conduct a dance at Mr. Bartletta's hall, Mr. McFeeley replied that he would never grant a license as long as Frank Bartletta's name was on the window of the club.

It also appears that the photographs were circulated and given out to the press immediately upon the complainant's arrest, and yet none of the witnesses for the defense knew how this came to pass, altho the evidence strongly indicates that it was done by the command of the Commissioner.

The "ALIAS LUKE ADAMS" attached to Mr. Bartletta's name is another indication of malice. No explanation or justification was offered by the defendants, or their witnesses, for this vicious act.

Then too, we have the fact that they allowed this complaint to die a natural death after the Magistrate's hearing and the fact that they placed the complainant's photograph in the "ROGUES' GALLERY," which tend to show that the conduct of the defendants, particularly that of Commissioner McFeeley, was malicious and done for selfish gain and purposes,—to so humiliate and injure the feelings of the complainant so that the public would not place any confidence in the attacks of "THE NEWS-ETTE," the complainant's newspaper.

Why should the defendants seek to secure Mr. Bartletta's photograph, which could not be for

identification purposes as the evidence shows that he wined and dined with the Commissioner, consorted with the officials of the town and helped them in their campaigns and was even then a BONDED SINKING FUND COMMISSIONER of their City, and was then a resident of their City for 14 years; a large property owner and a taxpayer; yet they contend that they have a lawful right to continue to humiliate this complainant by keeping his photograph in the "ROGUES' GALLERY" altho more than three years have since elapsed and he has not been indicted for the alleged offense, or tried or convicted therefor.

We therefore contend that the learned Vice Chancellor erred in holding that the photographing of the complainant and the keeping and placing of his photographs in the "ROGUES' GALLERY," together with their circulation, was not done maliciously.

### Conclusion.

In conclusion we wish to respectfully urge that the relief prayed for should be granted compelling the defendants to surrender unto the complainant his photographs and negatives, finger prints, etc., which were wrongfully taken of him under protest and the "ALIAS LUKE ADAMS" expunged from the police court records.

1. Because there was no question for identification or detection of crime involved in the matter; complainant being a resident of the City of Hoboken for 14 years last past, a political office holder of the City, to wit: SINKING FUND COMMISSIONER UNDER BOND, a big property owner and taxpayer of the same municipality.

2. Because he was innocent of the offense for which he was charged; more than three years have elapsed since the time of his arrest and he has not been indicted for the supposed offense, and he cannot even be indicted at this time for the alleged offense because of the Statute of Limitations operating as a bar.

3. Because the defendants under no circumstances had a right to oblige the accused to submit to the taking of the photographs and finger prints and measurements aforesaid. (The act constitutes an assault and battery and an invasion of his "right of privacy," a property right of the complaint, for which injunction has been shown to be a proper remedy.)

4. Because, assuming that the photographing and finger printing was proper under the circumstances, yet, never-the-less, before conviction (and because there was no conviction), defendants had no legal right to place the same in the "ROGUES' GALLERY" or to distribute them. (The same constitutes a slander and a libel and an infringement of his "right of privacy," a property right of the complainant.)

5. Because the circulation of his photographs with his finger prints for the "ROGUES' GALLERY" of the City of Hoboken to other distant municipalities of other States, will probably cause irreparable damage to the complainant which cannot be estimated by reason of his social and business connections and for which a remedy at law is inadequate (and the court below said we have no remedy).

6. Because the keeping of his photograph, as well as the "ALIAS LUKE ADAMS" attached to

his name in the record of the police department, is likely to involve him into litigation both criminal and civil. (Some fool may identify Mr. Bartletta from the picture shown to him in the "ROGUES' GALLERY" as the person who held him up.) This is not at all impossible. And the "ALIAS LUKE ADAMS" has a tendency to involve him into litigation too.

We wish therefore to emphasize the fact that whether this court holds that it was lawful or unlawful to finger print, measure and photograph the complainant before conviction, is immaterial to the solution of the question involved, as the question squarely before the court is,—Can the Police Department retain the photograph of a person who is innocent of a crime in the "ROGUES' GALLERY" with an "ALIAS LUKE ADAMS" wrongfully attached to his name and to the record of his case, when he is neither a rogue nor a criminal; and can they continue to circulate the photographs and finger prints of the complainant if they so desire.

We respectfully submit that as the complainant is presumed to be innocent, and is in fact innocent, and has not been proven by a scintilla of evidence that he is guilty of any crime, that the mere suspicion that he might have committed one is not sufficient to retain and keep his photograph in the defendants' "ROGUES' GALLERY."

We wish to stress another point. The Court of Errors and Appeals in *Neafie v. Hoboken Printing and Publishing Company*, cited in this brief, held that the Legislature of New Jersey cannot authorize a newspaper or any person to commit a libel or a slander; to do so would be unconstitutional. Then how can the learned Vice Chancellor in the

Court below, as is evidenced by his opinion, authorize the defendants to keep the complainant's photograph in the "ROGUES' GALLERY" when that has been held to be a slander and a libel? (See *Adamson v. Martin*, which is cited in this brief under the title of "THE MISCHIEF OF THE ROGUES' GALLERY," and the other authorities under POINT ONE of this brief.)

This is manifestly wrong in view of the case of *Neafie v. Hoboken Printing & Publishing Company*, cited *supra*.

The reading of the complainant's Bill of Complaint will show that he filed it four days after his arrest for the purpose of preventing the placing of his photograph in the "ROGUES' GALLERY" before his trial or conviction. There has been no case anywhere reported which holds that the Police Department of any City or State have a right to keep the photograph of an innocent man on exhibition in the "ROGUES' GALLERY." This observation was also made by the Court in *Gow v. Bingham*, cited in this brief under POINT ONE.

WHEREFORE, the decree or order of dismissal of Vice Chancellor Bigelow should be reversed and the relief prayed for should be granted, at least to the extent of compelling the defendants to remove the complainant's photograph from the "ROGUES' GALLERY" OF THE CITY OF HOBOKEN.

Respectfully submitted,

ANTHONY P. LA PORTA,  
Solicitor for and of Counsel with  
FRANK J. BARTLETTA,  
Complainant-Appellant.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

[6612]

# New Jersey Court of Errors and Appeals

Between

FRANK J. BARTLETTA,  
*Complainant-Appellant,*

and

BERNARD N. MCFEELY, *et al.*,  
*Defendants-Respondents.*

On Appeal.

## BRIEF FOR RESPONDENTS.

### Statement of the Case.

So much of the statement of the case, presented by the appellant, as relates to what he designates as the "Rogues Gallery" needs correction and addition:

Detective Sergeant Sullivan, of the Hoboken Police Department, was assigned to the Bureau of Criminal Identification and in charge at the time appellant was arrested (p. 99, ll. 21-30).

This Bureau of Identification is known as the Bureau of Records (p. 101, l. 14). It has been maintained in the City of Hoboken ever since 1904 (p. 101, l. 16). The photographs taken of appellant by Officer Magnus, official photographer of the City of Hoboken, were brought to the Bureau of Records (p. 102, ll. 1-10). Appellant's photograph and fingerprints were mailed, on February 13th, to the Department of Investigation at Washington, D. C. His fingerprints and photograph were also mailed to Albany, New York, on the same day,

and one to New York. At the present time there are in said Bureau of Identification approximately 3,000 photographs, all taken pursuant to the orders of Inspector Kiely. These photographs were taken prior to trial and indictment (p. 102, ll. 10-40).

The Bureau of Identification is not open to public inspection and only when a complaint has been made by some person. The person could not inspect the photographs unless accompanied by an officer of the department. When the appellant's photograph was taken, Detective Sergeant Sullivan knew that appellant was charged with a high misdemeanor, the possession of lottery tickets. He also had knowledge that he had been indicted in the United States Court. He had no ill feeling or malice toward him, but was carrying out the instructions of his superior, Inspector Kiely (p. 103, ll. 1-30).

The bill of complaint does not allege malice in taking the fingerprints, photographs, etc. When appellant attempted to introduce evidence showing malice defendants objected (p. 71, l. 19). Vice-Chancellor BIGELOW asked the appellant, "If he alleged malice" (p. 71, l. 26).

Defendants were not called upon by the pleading and were not prepared to deny or disprove malice. It had nothing to do with the case. Whether the appellant was innocent or guilty of the charge alleged against him was to be determined later on in a law court, before a jury, and not in these proceedings.

The answer denied that the fingerprints and photographs were taken forcibly. That after discussion with the appellant as to the necessity and custom of taking the fingerprints and photographs of persons charged with important crimes, appellant submitted to having his fingerprints and photograph taken, and voluntarily signed his signature

upon the four cards and forms upon which his fingerprints had been taken.

The answer alleges that for more than twenty years last past the Police Department of the City of Hoboken maintained a Bureau of Identification. That it was customary to take the photograph and fingerprints of all persons arrested upon complaint of important crimes, misdemeanors and high misdemeanors. That this practice of photographing and fingerprinting of persons so charged prevails in every large city where proper police regulations have been established. That it is necessary to the proper enforcement of police regulations and the securing of the prisoner for trial that his photograph and fingerprints be taken. That should he forfeit his bail and become a fugitive from justice the Police Department can be in possession of such information as will enable them to have him identified wherever he may be found. That defendants are required, in the discharge of their duties, to run down and arrest offenders who may escape after being released on bail. If not permitted to provide efficient means of identification of persons charged with offenses their efforts could become ineffectual.

That such fingerprinting and photographing is one of the usual means employed in the police service of this country. That it has been the practice of the Police Department to take the photograph of a person charged with a serious crime together with four sets of fingerprints.

One copy of his photograph and one set of his fingerprints are kept in a private collection maintained for the use of the detective force of the City of Hoboken in the detection and identification of criminals and fugitives from justice. This collection is not open to the inspection of the public, but inspection thereof is only permitted where a

serious offense has been committed and it becomes proper, in the opinion of those in charge, to permit an inspection to be made by proper police officers and proper persons. That it has been the practice of the Police Department to send one copy of the photograph and fingerprints to the Central Bureau of Identification of New York State, at Albany, N. Y., one to the Bureau of Identification, Department of Justice, Washington, D. C., and one copy of the fingerprints to the Bureau of Criminal Identification, Police Headquarters, New York City, N. Y., with the written request to return to the police authorities of Hoboken any record they may have on the subject in order to ascertain if the party in question had a criminal record.

Prior to the filing of the bill, in accordance with the practice of the Police Department, a copy of the fingerprints was mailed, on February 11, 1928, to Chief Inspector of the Police Department, Police Headquarters, at New York City, N. Y. On February 13, 1928, a copy of the fingerprints and photograph were mailed to the Bureau of Identification of New York State, and one to the Bureau of Identification, Department of Justice, Washington, D. C.

That when the fingerprints and photographs were taken, the police authorities had in their custody and possession a great quantity of advertisements, slips, papers and documents pertaining to the business of lottery policy, together with the forms and plates from which the lottery tickets, advertisements and papers, pertaining to lottery policy, were printed, all of which had been found and taken by the police from the premises of the Terminal Printing and Publishing Company, of which company appellant was the President and Treasurer.

That the photographs and fingerprints were taken without any malice or wanton disregard of the appellant's rights, but solely in the perform-

ance of a police duty based upon the evidence then in the hands of the Police Department, of the commission of a high misdemeanor by the appellant and a sworn complaint lodged against him therefor.

That the lottery tickets printed by the appellant's company, the Terminal Printing and Publishing Company, announced cash prizes from \$10.00 to \$25,000, under the pretext or guise of a monthly dividend. That the advertisements announced the winning numbers and cash prizes for the month of January, 1928.

The answer of the respondents denied that the appellant was entitled to any relief whatsoever, and alleged that he had no standing in the Court of Chancery, and prayed for a dismissal of his bill.

Although there was no allegation in the bill of complaint alleging malice or alleging that the respondents were actuated by improper motives, over the objection of counsel for the respondents, the Vice-Chancellor did permit the appellant to introduce in the record evidence of unfriendly relation toward the appellant on the part of the defendant, Bernard N. McFeely. Over the objection of counsel for the respondents the appellant was permitted to testify to these unfriendly relations.

Appellant had a controlling interest in the corporation known as the Terminal Printing and Publishing Company at the time of his arrest. It was his corporation and of which he was the President (p. 76, ll. 30-40; p. 77, ll. 1-5).

The company was composed of three stockholders, appellant, his brother and one Bado.

Appellant has previously been indicted by the Federal Grand Jury in the State of Georgia for violating the National Prohibition Act. He had successfully resisted extradition and had never been tried on that indictment (p. 76, ll. 20-30).

On February 10, 1928, the police officers of Hoboken, under a search warrant, found and seized, in the place of business of the Terminal Printing and Publishing Company, several thousand lottery tickets, which were offered in evidence. Appellant admitted that the lottery tickets were found by the police at the Terminal Printing plant (p. 94, ll. 20-40; p. 95). The type and plates from which the tickets and advertisements were printed were likewise found and seized on the premises (p. 95). Photographs of the type and plates set up for printing the lottery tickets and advertisements of the lottery company and samples of the lottery ticket with stub and advertisements of the winning prizes, successful numbers and amounts are to be found in the back of the State of the Case.

The offense charged was that of a high misdemeanor. *Section 58 of the Crimes Act*. While appellant escaped indictment and consequently was never tried for the offense alleged, it is not even disputed that, at the time the search was made by the police of the premises of the appellant's company of which he was the President and which he controlled, the great mass of lottery policy, slips, tickets and stubs of the character mentioned in the statute were discovered and taken from the said premises. It was admitted that these tickets, slips and advertisements of the lottery were printed upon the premises and the very type and plates, by means of which they were printed, were likewise discovered upon the premises and taken therefrom by the police. Under the evidence contained in this record, any jury would have a right to conclude knowledge on the part of the appellant of the character of the lottery policy, slips and papers found in the possession of the Terminal Printing plant, of which he was the President and which company he controlled.

## POINT I.

Defendants, in the discharge of their duties as police officers, had an absolute right to photograph, fingerprint and measure the appellant, who had been arrested for a high misdemeanor, there being, in the mass of lottery tickets found on appellant's premises, reasonable grounds to believe that he was guilty of the charge upon which he had been arrested.

*Downs v. Swann* (Md. Court of Appeals),  
73 Atlantic, 653; 23 L. R. A. N. S. 739;  
*Bruns v. Clausmeier*, 154 Indiana 599; 50  
L. R. A. 73;  
*Shaffer v. U. S.*, 24 App. D. C. 417; 1 Teide-  
man 157-158.

Notwithstanding the appellant escaped indictment there was a sufficient legal basis in fact to warrant the complaint made against him and his arrest. There was nothing vague or shadowy upon which the complaint was made, nor was it made on a mere suspicion, or by reason of any malice, wantonness or a reckless disregard of humanity. The printing company, which he controlled and of which he was President, was engaged in printing lottery tickets, a large quantity of which, together with the plates or forms by which the tickets and announcement of the prizes and winning numbers were printed, were found and taken from the company's premises by the police prior to the arrest.

The opinion delivered by Justice MONKS, for the Indiana Supreme Court, in the case of *Bruns v. Clausmeier*, *supra*, contains the following:

"It would seem, therefore, if, in the discretion of the sheriff, he should deem it necessary

to the safe-keeping of a prisoner and to prevent his escape, or to enable him the more readily to retake the prisoner if he should escape, to take his photograph, and a measurement of height, and ascertain his weight, name, residence, place of birth, occupation, and the color of his eyes, hair and beard, as was done in this case, *he could lawfully do so.*"

In the case of *Shaffer v. United States, supra*, Chief Judge ALVEY, speaking for the Court of Appeals of the District of Columbia, said:

"We understand the main point of this objection to be that \* \* \* the government had no right to photograph the accused while holding him in custody, for the purpose of using that photograph to have him identified at the trial. This objection is founded upon the theory that the use of the photograph so obtained is in violation of the principle that a party cannot be required to testify against himself, or to furnish evidence to be so used. But we think there is no foundation for this objection. *In taking and using the photographic picture there was no violation of any constitutional right.* \* \* \* We know that it is the daily practice of the police officers and detectives of crime to use photographic pictures for the discovery and identification of criminals, and that without such means many criminals would escape detection or identification. \* \* \* It is one of the usual means employed in the police service of the country, and it would be a matter of regret to have its use unduly restricted upon any fanciful theory of constitutional privilege." "It could as well be contended that a prisoner could lawfully refuse to allow himself to be seen while in prison by a witness brought to identify him, or that he could rightfully refuse to uncover himself, or to remove a mask in court, to enable witnesses to identify him as the party accused, as that he could rightfully refuse to allow an officer in whose custody he remained

to set an instrument and take his likeness for the purposes of proof and identification.”

In *9 Federal Reporter*, 2nd Series, page 963, is to be found the following:

Appellant, Frank Bartletta, presented to the United States District Court, through his present attorney, Anthony P. La Porta, of Hoboken, a petition for his discharge from arrest. Bartletta had been arrested by virtue of an indictment returned by the Federal Grand Jury of the Southern District of Georgia, taken before the United States Commissioner in Hoboken, and held under bail to appear before the District Court, on an application for his removal to the Southern Georgia District. There were two Georgia indictments, both being for conspiracy in violation of the National Prohibition Act, both naming Bartletta. They were alike in details naming as conspirators Bartletta, one Kleinberg and one Goldberg, one indictment alleging the conspiracy as being to transport liquors from Savannah to New York, while the other named Hoboken as the objective point. In each indictment the 20th day of July, 1922, was named as the day when Goldberg packed 300 cases of liquor in a freight car for shipment, for the purpose of being possessed by Goldberg, Kleinberg and the said Bartletta, in violation of the National Prohibition Act.

By RUNYON, District Judge:

“By the testimony of the witnesses Morris Winokur and Joseph Berner, the only connection that Bartletta had with the liquor in question began after the completion of the transportation from Savannah to New York, and the consequent completion of the conspiracy alleged, and then only because the party with whom Berner had made arrangements to sell the liquor defaulted, and Harry Winokur, to

whom Berner related his plight, *took him over to Hoboken, where he met Bartletta and Kleinberg and they bought the carload. If this story be true, and it is the story of the government's own witnesses, Bartletta is clearly guilty of having violated the National Prohibition Act; but his offense belongs to the district of New Jersey to try, and not to the Southern District of Georgia.*

"Upon all the proceedings and evidence before me, I find the defendant Bartletta to have been held without just warrant, and am constrained to discharge him from further custody, so far as the same is based upon the indictments issued out of the Southern District of Georgia."

It is not unreasonable to assume that should a man be indicted for a high misdemeanor (printing and having lottery tickets in his possession) although he may hold a municipal office (sinking fund commissioner), one enjoying the financial means claimed by the appellant, who, however, was under indictment by a Federal Grand Jury in the State of Georgia for conspiracy in violating the National Prohibition Act in buying and transporting 300 cases of liquor from Savannah to Hoboken, such a man might deem it to his best interests to depart this State.

The duty of the police would then be to apprehend him wherever he might flee to, and cause him to be brought back. Then the fingerprints and photograph in question would be used for the purpose of identification and the proper administration of the criminal law. The duty of the police is, at all times of the day and night, to preserve the public peace, prevent crime and to detect and arrest offenders.

It seems needless to argue that this custom, existing in the police departments throughout the United States, and maintained by the Department

of Justice of the United States Government for a considerable period of time, can be destroyed by writ of injunction.

Appellant's contention that a person may adopt a life of seclusion, remain undisturbed, and not be photographed, is correct in a limited way. To accomplish this, he must, however, keep out of public life, and not do what appellant did.

It is the common practice for the newspapers and magazines to make use of the photographs of everybody concerned with the affairs, business and happenings of the day. During the War the Government caused photographs to be taken of all officers, of soldiers and many others.

Vice-Chancellor STEVENS, in *Edison v. Edison Polyform and Mfg. Co.*, 73 Eq. 142, said:

"There must be limits to the so-called right of privacy. It is certain that a man in public life may not claim the same immunity from publicity that a private citizen may."

Neither the case of *Edison v. Edison Polyform and Mfg. Co.*, nor the case of *Roberson v. Rochester Box Co.*, are applicable to the situation in question.

In both of these cases the injunction was sought to restrain the unauthorized use of one's name and likeness for advertising a commercial enterprise.

In the pending case the defendants are not circulating appellant's photograph for advertising or any other improper purpose. They are public officials performing the duties required of them by law, and for the benefit of that well organized society of which we form a part, and to which we surrender many of the so-called rights of privacy.

## POINT II.

**Appellant has mistaken his remedy in seeking an injunction to compel the authorities to deliver up and surrender to him the photographs, measurements and fingerprints taken by the Police Department.**

*Owen v. Partridge*, 82 N. Y. Supp. 248;  
*People ex rel. Gow v. Bingham*, 57 Misc. 66, 107 N. Y. Supp. 10-11;  
*People ex rel. Joyce v. York*, 27 Misc. 658, and 59 N. Y. Supp. 418;  
*Molineux v. Collins*, 177 N. Y. 395, 65 L. R. A. 104, 69 N. E. 727, confirming 41 Misc. 154, 83 N. Y. Supp. 943.

In the case of *Owen v. Partridge*, 82 N. Y. Supp. 248, an application had been made for an injunction *pendente lite*, to restrain defendant from in anywise publishing the photograph and certain memorandum concerning the appearance or measurements of the plaintiff and for a mandatory direction that the negative of such likeness, together with all copies and reproductions of it, and the memorandum be destroyed or surrendered to the plaintiff. The material facts were as follows:

Plaintiff was arrested as he arrived at the pier of an incoming trans-Atlantic steamship. He was arrested without warrant or other written authority, merely "*on suspicion*" of being implicated in the larceny of \$1,200.00 from a passenger. He was taken to Police Headquarters, searched and a note for \$1,200.00 made by the passenger was found on his person. Then he was photographed and certain measurements of his person and his weight were taken for preservation in what is known as the Bertillon Bureau of the Police Department.

The following morning he was arraigned before a Police Magistrate and discharged, the officer being unable to produce the passenger to make the complaint, and there being no evidence to submit to the Magistrate that the prisoner had committed a crime. Upon being liberated he went to Police Headquarters and demanded of the then head of the Detective Bureau, the destruction of the photographs and the measurements.

Several affidavits were submitted as to the plaintiff's reputation. The detective officer who made the arrest, swore that he knew the relator for five or six years theretofore, and alleged of his knowledge that his associates were of the worst sort, thieves, gamblers and disreputable people of both sexes, and was informed and invariably believes that he has no occupation and that he is known as a cheap, cheating gambler on the steamers. Another detective officer made affidavit that Owen is constantly going to England and the Continent with no object in view save that of playing cards with fellow passengers and cheating them.

Plaintiff denied these allegations and averred that he is of good moral character. That he has never been convicted and never arrested with the exception of the one instance. Plaintiff also averred that the so-called rogues' gallery contains only the pictures of persons who have been convicted of crimes and who have been considered dangerous criminals. That the picture and measurements are bound in book form and widely circulated in this country and in Europe.

It appears, however, from the affidavit of one of the officers that it contains also the pictures of persons who have been charged with crime and who bear bad reputations in the community and that the gallery is a private collection for the use of the Detective Force attached to Police Head-

quarters and maintained by them in the detection and identification of criminals. That it is not open to the public, but, that whenever a person presents himself at Police Headquarters complaining that he had been robbed or assaulted and makes a *prima facie* case, giving a description of the person who robbed or assaulted him, he is permitted, in the exercise of the best judgment of those in charge of the rogues' gallery to make an examination to determine whether the photograph of the individual charged is in the rogues' gallery, and it is alleged that the instances are many where criminals have been thus discovered.

"By the Court:

"The question then becomes, can the plaintiff on the facts disclosed, secure even partial or limited relief by way of injunction, or, more particularly stated, can the plaintiff, in the event of proving his facts on the trial, have, as a matter of law, any injunctive relief whatsoever, whether mandatory or preventative?

"The first point to be considered is, have the plaintiff's rights been invaded? The acts of the defendant's predecessor in office, so far as the plaintiff is concerned and the defendant's continuance of them by preserving, exhibiting or circulating the photograph and measurements, are obviously justified only as an exercise of the police power. *The duty of the police always existing* and reaffirmed by the charter: 'To preserve the public peace, prevent crime, detect and arrest offenders,' *gives them necessarily a wide range of powers to accomplish the mandate of the statute.*

"The existence of the so-called rogues' gallery and the taking of photographs, weights and measurements finds its authority, if anywhere, in this provision or *in the accepted pre-existing principles of which it is the expression.* So far as habitual criminals are concerned, their supervision and control, no

serious question could well be raised as to the propriety or legal character of the acts involved. One of the phases of police supervision, says Professor Teideman, in his *State and Federal Control of Persons and Property*, is that of photographing alleged criminals, and sending copies of the photograph to all the detective bureaus. 'If this is directed by the law as a punishment for crime of which the criminal stands convicted, or if the man is in fact a criminal, and the photograph is obtained without force or compulsion, there can be no constitutional or legal objection to the act, for no right has been violated.'

"The taking of photographs in such cases has authority to support it. *People ex rel. Joyce v. York*, 27 Misc. Rep. 658, 59 N. Y. Supp. 418; *State ex rel. Bruns v. Clausmeier*, 154 Ind. 599.

"It is a well known fact, however, and admitted by the defendant, that the rogues' gallery contains, as well, the photographs of persons merely suspected of crime. How far this may be justified as a police measure, may be a question not easy of solution.

"Professor Teideman intimates *that where the suspicion is well founded, the right exists*. 1 Teideman, *State and Federal Control of Persons and Property*, 157, 158.

"But, what is a well founded suspicion? Where the person photographed is not a habitual criminal or has never been convicted of crime so that preventative measures might be justified, or *where the suspicion, directed to a particular case, has no sufficient legal basis in fact* to warrant some criminal proceeding, the definition of a 'suspicious person' becomes vague and shadowy, varying with the circumstances of each case, and measures like those under consideration may approach dangerously near an arbitrary interference with personal rights.

"In this case, the arrest has nothing *but suspicion to support it*. And were it necessary to inquire into the foundation of the suspicion,

it would, on the facts disclosed, be found to rest on hearsay merely. The sworn statements of several detectives that plaintiff was known to them for years as a common cheat and gambler and has associated with criminals, without the disclosure of any fact showing the source of such knowledge could hardly be deemed sufficient. In the view that I take of this application, however, I do not deem it necessary to examine further the by no means clear question of the right to take, for police purposes, the photograph of a person merely suspected of crime. Considering, but not in anywise deciding, that there is no such right, and considering, further, again without deciding, that, even if there is such a right, the defendant fails to bring himself within the facts permitting its exercise. I am of the opinion that *the plaintiff has mistaken his remedy.*"

In the *Molineux* case, *supra*, he had been photographed and measured according to the Bertillon system. The negative, photograph and measurements had been forwarded to the Superintendent of State Prisons at Albany, in whose office they have ever since remained as part of a collection, which embraces similar data relating to criminals who had been lawfully convicted. His conviction was afterwards reversed and he applied for a peremptory writ of mandamus compelling the Superintendent of State Prisons "to remove the plates, photographs and measurements from the records of his office, and deliver the same to him." The motion was denied. The Appellate Division unanimously affirmed the order denying the writ. On appeal to the New York Court of Appeals the order denying the writ was affirmed.

In the opinion of the New York Court of Appeals is to be found the following pertinent expression:

"An innocent man accused of crime is sometimes compelled to make sacrifice and undergo

suffering for the benefit of society. Like payment of taxes and service upon juries, it is part of the price paid for the privilege of living in a country governed by Law. One, for the good of all, may be required to submit to imprisonment, incur expense, and endure mental distress, because the state cannot exist without the preservation of order, and order cannot be preserved without the punishment of the guilty, which necessarily involves, sometimes, the trial of the innocent. There is no relief for this apparent injustice except through the legislature, and to that body alone the appellant should look for relief from the annoyance of which he now complains."

Over defendants' objection, appellant attempted, in the Court of Chancery, to prove his innocence in his proceedings for an injunction. He placed all responsibility for the printing of the lottery tickets (which had been going on for two years), and having the great mass of lottery tickets and the plates from which they were printed found in his printing plant by the police, upon his employee. Defendants did not attempt to rebut that effort. The Court of Chancery should not have heard that question.

Whether a person accused of a crime be guilty or innocent is to be determined in a common law court by a jury, and the people, as well as the accused, have the right to have it thus determined.

*Davis v. American Society for Prevention of Cruelty to Animals*, 75 N. Y. 362.

This was a suit to restrain the Society from interfering with plaintiff's business (slaughtering hogs).

A part of this decision that is pertinent is as follows:

"An innocent person, upon an accusation of crime, may be arrested and ruined in his character and property and the damages he thus

sustains is *damnum absque injuria*, unless the case is such that he could maintain an action for malicious prosecution or false imprisonment. He is exposed to the risks of such damage by being a member of an organized society and his compensation for such risks may be found in the general welfare which society is organized to promote."

Injunction was denied.

In *Vanderbilt v. Mitchell*, 72 Eq. 910, it was alleged that the records of birth in the Bureau of Vital Statistics were based on false statements as to the paternity of the child. This decision was not only based upon fraud, but also upon complainant's property rights being seriously menaced by unlawful and unwarranted use of his name as the father of the child in the recorded birth certificate.

Chapter 65, Laws of 1930, page 279, establishes a State Bureau of Identification within the Department of State Police. By Section 3 it is made the duty of Sheriffs, Chiefs of Police, members of the State Police and other law enforcement agencies and offices, immediately upon the arrest of any person for an indictable offense \* \* \*, to take his fingerprints \* \* \*, and to forward without delay two copies of the same together with photographs \* \* \* to the State Bureau of Identification.

**I therefore submit that the final decree of the Court of Chancery be affirmed, with costs.**

HORACE L. ALLEN,  
*Solicitor for and of Counsel*  
*with Respondents.*

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HORACE L. ALLEN,  
Solicitor for and of Counsel  
with Responsibility.