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THE PEOPLE'S TESTIMONY:

J A M E S T. B R A D Y, of the Fifth Inspection District, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAGEE:

Q Are you a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q How long have you been such? A Going on nine years.

Q Now, where do you live? A 834 Eighth Avenue, New York.

Q Now, do you know the premises 787 Second Avenue, in the City and County of New York? A Yes, sir.

Q Do you know this defendant, Thomas Bonaros? A I do.

Q Where did you first meet him? A In the rear room of premises 787 Second Avenue.

Q Do you know what those premises are used for? A There is a pool parlor and restaurant.

Q Where is the restaurant? In the front or rear of the premises? A In the front.

Q Are these premises situated at the intersection of any two streets? A It's between 42nd and 43rd Streets, on the west side of the avenue. It is a tenement house.

Q You say there is a restaurant facing the street, through which you enter from the street? A Yes, sir. There is also pool tables in the room, the rear room.

Q And you say there is a room in the rear of the restaurant?

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A Yes, sir.

Q And can you gain access to that rear room from the street?

A Yes, sir.

Q How do you get in there, into this rear room? A From the street.

Q Will you kindly describe how you can do that? A You can go through the front store door of the premises of 787 Second Avenue, and walk back about forty feet to this back room, and there is pool tables and other tables setting around.

Q Did you ever have occasion to go to those premises? A Yes.

Q Please state when and with whom and what occurred there. Did you visit the said premises on or about the 1st day of June, 1917? A I did.

Q Kindly state what took place there, and if anyone was with you and if you saw the defendant there. A In company with patrolman Robert E. Morris, of the Fifth Inspection District, about 11:45 P. M., on May 31st, 1917, we went to the rear of the premises 787 Second Avenue.

I observed the defendant standing at table where there were fifteen men playing cards. I observed him until 12:05 A. M., June 1st.

Q 1917? A 1917. I observed these fifteen men dealing cards at the table, and, after three dealings of the cards, I observed this defendant extract a coin from the center of the table where these men that were playing cards had previously thrown

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coins on the table.

Q Do you know what the denomination of the coin was that he extracted? A I do not.

Q Could you tell whether it was a silver coin or a gold coin?
A It was a silver coin.

Q And were these men all playing around one table? A They were. There was two tables put together.

Q Were they using cards? A Yes, sir.

Q And did you see money on the table? A Yes, sir.

Q Now, do you know how much money was on the table? A There was \$14.15.

Q How do you know? A I confiscated the money.

Q You confiscated the money? A Yes, sir.

Q How do you know that they were using cards? A I also taken cards from the premises, from the table.

Q I show you paper, silver and nickel money, and ask you if you have ever seen that money before? A I have.

Q Where? A On the table in the premises 787 Second Avenue, where those men were playing cards.

Q And did you take that money into your possession? A I did.

Q And have you had it in your possession ever since? A No, sir; it has been in the Property Clerk's office since.

Q Did you turn it over to the Property Clerk at Headquarters?
A Yes, sir.

Q And how did it come into your possession -- and have you

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since obtained that money from the Property Clerk? A Yes, sir.

Q When? A This morning.

MR. MAGEE: I offer the money in evidence.

MR. ROSENTHAL: I object to it on the ground that it is not binding on the defendant.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

(It is admitted in evidence and marked People's Exhibit 1)

Q I show you a pack of playing cards and ask you if you have ever seen them before. A Yes, I did.

Q Where? A On the table in the premises at 787 Second Avenue.

Q Was the defendant present when you saw these cards? A Yes, sir.

Q And did you take these cards into your possession? A I did.

MR. MAGEE: I will offer them in evidence.

MR. ROSENTHAL: Objected to, as not binding on the defendant.

THE COURT: Objection overruled. They are received.

MR. ROSENTHAL: Exception.

(They are marked People's Exhibit 2 in evidence.)

Q I understand you to say that you entered through the restaurant on this occasion? A No, through the rear of the building.

Q Then you didn't go through the restaurant? A No, sir.

Q Why didn't you go through the restaurant?

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MR. ROSENTHAL: Objected to as argumentative. The defendant is certainly not responsible for what he didn't do.

THE COURT: Objection sustained.

BY MR. MAGEE:

Q Will you kindly state just how you got into the back room, or rear room, where you say these men were playing cards? A Officer Morris and I had left the District office, and we came down to Second Avenue through 43rd Street.

We sneaked along the building line until we got next to the premises 787 Second Avenue, and we sneaked in the hall and up to the roof, and went down to the yard in the rear of these premises, and saw these men through a window.

Q You say you went down to the yard of these premises?

A Yes, sir.

Q And you saw into this back room? A Yes, sir.

Q Were there windows looking out into the yard? A Yes, sir.

Q Did you look through these windows? A Yes, sir.

MR. ROSENTHAL: One moment. I object to the District Attorney telling him what he did and what he saw.

THE COURT: You object to the leading of the witness?

MR. ROSENTHAL: Yes, sir; certainly. Let him tell what he saw.

THE COURT: Objection sustained.

BY MR. MAGEE:

Q Now, what did you do then? Was there anything on these

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windows to obscure your vision? A Just a lace curtain.

Q Any bars on the windows? A There was bars on the windows, too.

Q What kind of bars? A Iron bars, separated about that far apart (illustrating).

Q And could you see through the lace curtain on the window?
A Yes, sir.

Q The bars were about ten inches apart, you say? A Yes, sir.

Q And did they extend from the sill of the window to the top of the window? A Yes, sir.

Q And how long did you look into that room through the window?
A From 11:45 P. M. of May 31st, until about 12:05 June 1st.

BY THE COURT:

Q Was the window closed or open? A The window was down from bottom up, sir.

BY MR. MAGEE:

Q Where was officer Morris while you were looking into the window? A Standing beside me.

Q And then what did you do? A We went into the rear room of the house, and went into the room where the defendant was and standing/the men were playing cards.

Q Did this rear door lead directly to the room where the men were playing? A No, sir; into an adjoining room at the rear.

Q Well, was this door open? A Well, the door was --

Q Just a moment. Let us get this clear. You went through

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a door into an adjoining room? A Yes, sir.

Q And what did you do when you entered the adjoining room?

A I entered through another door into the room where the defendant and the men were.

Q And was that door open, by which you entered the room where the defendant and the other men were? A There was no door on that doorway, as I recollect it now.

Q So that you didn't have to open any door? A No, sir.

Q Now, was the first room that you entered light or dark?

A It was lit, lighted up.

Q Now, what took place then? What was officer Morris doing, if you know? A He came into the room with me.

Q Oh, he came into the room with you? A Yes, sir.

Q And what did you do then? Did you enter this room where the men were playing cards? A Yes, sir.

Q And will you kindly state exactly what took place, and what was said there, in the presence of the defendant? A I asked the defendant who owned the place, and he said he was one of two owners.

I asked the men that were playing cards, seated at the table that were in the room and got up from the table then, what they were playing, and they said they were playing quarter limit poker.

Q Was the defendant present on that occasion? A It was in the defendant's presence.

Q Was this spoken in the English language? A In the English

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language.

Q Do you know whether or not the door leading to the restaurant was open or not? A No, that door was closed.

Q How do you know it was closed? A Because I looked out there, after I spoke to the defendant.

Q What did you see when I looked out? A When I came down to the premises, there was a man standing in the door leading from the street to the restaurant.

Q Did you look into the restaurant, before you went to the rear of the premises? A No, sir.

Q Well, how do you know that there was a man standing there at the door leading from the restaurant into the rear room? A No. I saw a man at the front door. What I mean by the front door is standing by the street door of the restaurant.

MR. ROSENTHAL: I object to that, if your Honor please, and move to strike that out.

THE COURT: I will let it stand.

MR. ROSENTHAL: Exception.

BY MR. MAGEE:

Q So that you saw a man at the street door on Second Avenue?

A Yes.

Q How long did you have him under observation?

MR. ROSENTHAL: I object to that as immaterial, irrelevant and incompetent, and not binding on the defendant.

That was a man standing on the street, about one hundred feet,

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perhaps, from where the defendant was.

(Overruled. Exception.)

Q How long did you have him under observation? A I saw this man standing there. I had him no time under observation. I saw him as I went down along the wall to the rear of the premises 787 Second Avenue.

Q I show you a bell. Have you ever seen that before? A Yes.

Q Where? A On the wall over the door of the rear room where the defendant was, and the other men were playing cards.

Q And did you take that bell into your possession at that time? A Yes, sir.

MR. MAGEE: I offer this bell in evidence.

MR. ROSENTHAL: That is objected to. I don't see any relevancy here.

(Overruled. Exception:)

Q Now, did you see the door opening from the street into the restaurant? A Yes.

Q And what did you find there, if anything, at that door?

A I found a push button.

Q And where was it, with reference to the man that you saw standing in the street there, of the restaurant?

MR. ROSENTHAL: I object to that, if your Honor please.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

A It was at the southwest side of the door -- on the north

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side of the door, I mean.

Q And where was the man standing? A He was standing right on that side of the door.

Q Near this push button? A Yes, sir.

Q Now, did you have any conversation with the defendant in reference to the playing of cards there, and the money that you saw lying on the table? A I did.

Q What did he say in reference to that?

MR. ROSENTHAL: Objected to, unless he testifies that he advised the defendant of his rights, before he had any conversation with him.

(Overruled. Exception.)

A He told me that he was extracting coins from the table to buy eats.

Q Now, you say that you had this place under observation from 11:45 P. M. until 12:05 A. M., a period of twenty minutes?

A Yes, sir.

Q Now, in that period did you see or hear any order for food given, or any person enter that room with any food or refreshments of any character? A No, sir.

Q Did you see any cigars or tobacco furnished to the players? A No, sir.

Q What did the defendant do with the money that he extracted from the pile on the table? A He put it in his pocket.

Q Did he see him at any time there present a bill or a

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check to any of the players? A No, sir.

Q Did you see any bills or checks on the table, showing the purchase of food or refreshments of any kind or character by any of these players through the defendant? A No, sir.

Q How many hands or dealings of the cards did you actually witness take place, while this game was under your observation? A About three.

Q Three games? A Three dealings.

Q And how many times did you see the defendant extract a coin from the pile of money on the table? A After each dealing, I saw him extract a coin.

Q After each dealing you saw him extract a coin? A Yes, sir.

Q You don't know the denomination of the coin? A No, sir.

MR. MAGEE: He is your witness.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Do you know whether it was a nickel, or a quarter or half a dollar? A I do not.

Q You say you observed what was going on in the room; you say you were in a position to observe all that was going on in the room? A Yes.

Q And you don't know whether he took a nickel or half a dollar from the kitty, as you call it? A I do not, no, sir.

Q What inscription did you see hanging on the wall, when you came into that place? A I don't just remember of seeing anything in the room when I came in.

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Q You have the charter of that club, haven't you? A No, sir I sent it to the Property Clerk's office.

Q Have you it with you today? A No, sir.

Q You brought the money to the court, from the Property Clerk's office. Why didn't you bring along with you the charter of that club that you found there on the wall? A Because I didn't think it was necessary.

Q Will you bring that charter here at two o'clock, if his Honor tells you to? A Certainly.

Q Now, did you look over the charter? A I did.

Q Now, what was the name on it? A I don't remember that.

Q Was it the Aetna Social Club? A I believe that was the name. I don't recollect exactly.

Q And it was a Greek social club, was it not?

MR. MAGEE: I object. The charter is the best evidence, at least if it exists.

THE COURT: Where is the charter? Why haven't you produced it?

MR. MAGEE: I would have produced it with pleasure, if my learned opponent had asked for it in time.

THE COURT: Well, but you took it from him.

MR. MAGEE: No, sir; I didn't take it from him personally.

THE COURT: Well, your witness did.

MR. MAGEE: Well, I will stipulate, on the statement of

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the officer that, at the time he made this arrest --

Q Did you make an arrest immediately? A Yes.

MR. MAGEE: I will stipulate that he took into his possession a certificate of incorporation of a social club.

MR. ROSENTHAL: The Aetna Social Club?

MR. MAGEE: I don't know whether the name is correct or not.

THE COURT: Does that satisfy you, counsel?

MR. ROSENTHAL: I would rather have the certificate itself produced. I think the proper way is to produce the certificate, between the adjourned time and recess. The officer should have brought it.

MR. MAGEE: Well, I will stipulate that the officer says he took such a certificate.

THE COURT: Go ahead.

BY MR. ROSENTHAL:

Q Who sent you there? How did you come to go there? A Well, we received complaints about these premises.

Q Well, who sent you there? A Acting under orders.

Q Who sent you there? A Inspector Morris.

Q That's where you originally come from, from that district; is that right? A Yes, that's right.

Q And Inspector Morris told you, "Go to that place and make an arrest"? A Inspector Morris gives the orders to the Lieutenant.

Q And the Lieutenant told you to go to that number, the number

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in question here, and make an arrest? A If there is a violation of law. He told me to go and observe these premises.

Q Did he say to go and make an arrest? A No, sir.

Q A violation of what? A Of the law.

Q Then you should make an arrest? A If I observed any violation of the law.

Q And you arrested seventeen men altogether? A Yes, I think so.

Q And sixteen were discharged in the Magistrates' Court?

A Yes.

Q And you never talked about a coin, about seeing the defendant taking a coin, until the last defendant was discharged; you didn't mention anything about that coin being taken?

MR. MAGEE: I object to that, as not an intelligible question.

MR. ROSENTHAL: Question withdrawn.

Q Sixteen men were discharged that were arrested? A Yes, several men were discharged. I don't recollect just how many.

Q And when it comes to this seventeenth man, this defendant, your testimony was to be that you saw him take coins out of the kitty; is that right?

MR. MAGEE: I object to that question, if your Honor please.

(Sustained. Exception.)

Q Now then, why didn't you go through that front door when

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you came in, on that night, acting under the instructions of Inspector Morris; why did you sneak into the rear yard, and then as you say, sneak into the rear room where these men were playing? A That was the only way we had of observing what was being done in those premises.

Q The front door wasn't locked? A No, sir.

Q And you could have gone through the front door, and reached the premises that you reached by sneaking in, you say, through the rear? A The game would have stopped by that time.

Q It was stopped? A No. I say, if I had entered through the front door, by the time I had got to the rear room, I would only find men sitting there.

Q I see. You expected that they would stop the game if you went in through the front door? A Yes, because they had a man there to give them the buzzer.

Q And you say you saw fifteen men playing at the table?

A About that, yes.

Q And you say they were playing poker? A Yes.

Q And did you see an ante? A No, sir.

Q Then how do you know that they were playing poker? A By the statement, the admission of the people that were playing.

MR. ROSENTHAL: I move to strike that out.

Q By whose admission do you say they were playing poker?

A The men who were in the game.

Q And they are not here? A No, sir; not to my knowledge.

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Q And that's all you know as to what was being played?

A Yes.

Q Now, when you asked this man why he was taking money out of the kitty, as you term it, which is right, he said to you to get some eats? A Yes.

Q He didn't tell you that he was taking it out because he is the boss of the place, did he? A He did not.

Q But you did testify that he said later he was one of the two bosses of the place, didn't you? A Yes.

Q And did you ask him as to who the other boss was, the other partner? A He didn't tell me.

Q I didn't ask you that. Did you ask him? A I did.

Q And now, I suppose, your answer will be that he didn't tell you? A Yes, that's right.

Q He told you that he was one but he wouldn't tell you who the other partner was, is that right? A Yes, sir.

Q And was the other officer with you when all this took place? A He was in the room.

Q No, was he near you? Could he have heard this conversation? A Yes.

Q All of it? A Yes.

Q He was close by, was he? A Well, he was in the room there.

Q Well, do you say there were pool tables there? A There were.

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Q Have you ever been in a club before, outside of these premises? A Several.

Q Several? A Yes.

Q Did you see pool tables there? A Yes.

Q Then, outside of the pool tables, there were tables where they sell meals; aren't there? A In those premises?

Q Yes? A Yes.

Q And did you ever see tables in other clubs where they serve meals, or take coffee? A Yes.

Q And you have seen cards in other clubs? A Yes.

Q And you saw cards played in clubs, didn't you? A Yes.

Q How many men did you see deal? A Three.

Q Three? A Yes.

Q Now, you say that there were curtains over that window; is that right? A Yes, lace curtains.

Q Now, that you don't want to create the impression that the curtains were put there in order to prevent a view of what was going on in that room, do you? A No, sir.

Q It wasn't put there for that purpose, was it?

MR. MAGEE: I object to the question as calling for a conclusion.

MR. ROSENTHAL: Well, then, let me change the question.

Q You testified that there were curtains and bars on the windows? A Yes.

Q And that particular room that you have described was

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facing where? The alleyway, wasn't it? A No, sir; it was not.

Q What was it facing? A The yard.

Q And you observed that all the houses in that yard -- the windows, I mean -- had iron bars, didn't you? A I didn't take notice to that.

Q Now, you say that there were curtains upon those windows?

A Upon this one window through which I looked.

Q Now, you don't mean to say that they were put there for the purpose of obstructing the view of that room, did you? A I don't know for what purpose they were placed there.

Q But you could look through it? A Yes, sir.

Q Through that curtain? A Yes.

MR. ROSENTHAL: That's all. Now, another question.

Q How many decks of cards did you get there? A Oh, I got a box of cards.

Q One deck? A No, there were other cards there, too.

Q But you brought away only one deck, did you? A Well, the deck of cards that I found on the table was mixed up with other cards. There were two decks of cards on the table, two games.

Q How many games were played there? A There were three deals.

Q And you were there for twenty minutes? A Yes, sir.

Q And during that time you were doing nothing but looking into that room, were you not? A Yes, sir.

Q And how many hands were played in that game? A Three.

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Q How many hands? A There was fifteen men at the table altogether.

Q At one table? A There were two tables together.

Q And you say that at each table they used a deck of cards.

A The tables were close together.

Q Did you ever play poker? A No, sir.

Q Did you ever play an eight handed game of poker? A No, sir.

Q Or a seven handed game of poker? A I know they play seven handed poker.

Q Now, as a matter of fact, isn't it true that the only reason why you made this arrest was because you were told to make an arrest in that place? A I made this arrest because there was a violation of law there.

MR. ROSENTHAL: I move to strike that out as being a conclusion.

THE COURT: Motion granted.

BY MR. ROSENTHAL:

Q That is for his Honor and the jury to determine. Is it not a fact that you made the arrest in this particular place, where the man, you say, told you he was the boss, although you had the charter of the club, because you were ordered to do so by the inspector of the police? A No, sir.

MR. ROSENTHAL: That's all.

THE COURT: Upon what count of the indictment do you depend in this case, Mr. Magee?

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MR. MAGEE: I request the Court to submit the case to the jury on the first count of the indictment.

THE COURT: Very well.

ROBERT E. MORRIS, of the Fifth Inspection District, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAGEE:

Q Are you a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q For how long have you been such? A About five years and ten months.

Q Do you know the premises 787 Second Avenue in the City and County of New York? A Yes, sir.

Q Do you know the defendant? A I do.

Q Thomas Bonaros? A Yes, sir.

Q Did you ever have occasion to visit those premises? A Yes.

Q Will you kindly state when, and with whom you went there?

A On May 31st, 1917, at about 11:50 P. M., in company with patrolman James T. Brady, I went to the rear yard of 787 Second Avenue.

Q In the City and County of New York? A Yes, sir.

Q Proceed. A And observed about fifteen men in a rear room with this defendant.

These men were playing cards, and they had money before them;

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and, after three dealings, after three men would deal the cards, this defendant would extract a coin from the money in the center of the table, and put the coin in his pocket.

Q Proceed. A About 12:05 A. M. on June 1st, 1917, we entered the room where this defendant was with the other fifteen men. And officer Brady questioned this defendant, and also some of the men that were playing cards.

They told him they were playing quarter limit poker, and officer Brady asked this defendant who the owner was of the place, and he said he was one of the owners; there was two owners and he was one of them.

Q Did you have any conversation with the players? A Yes, officer Brady had with some of them.

Q In the presence of the defendant? A Yes, sir.

Q And what was said?

(Objected to. Sustained.)

BY THE COURT:

Q Do you know anyone who was talked with there, Morris?

A The name?

Q Yes. A No, I don't remember the name.

BY MR. MAGEE:

Q Did you see any cards there? A I did, yes.

Q Did you see officer Brady take any cards? A Yes, sir.

Q And did he take any money? A Yes.

Q From where did he take it? A From the table.

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Q And do you know how that money came to be on the table?

A Yes, sir.

Q How? A These men put the money before him, on the table.

Q Now, did you see the men around the table put the money on the table? A Yes, sir.

Q And that was the same money that officer Brady took?

A Yes, sir.

Q And did you see a bell there? A Yes, sir; there was a bell in the room where these men were playing cards.

Q Did you see officer Brady take that bell? A Yes, sir.

Q Now, did you go to the front part of these premises before you went to the rear, before you looked into the room? A No, sir; we went to the rear first.

Q Did you see any food being served there while you had these men under observation? A No, sir.

Q Did you see any food in this back room at all where they were? A No, sir.

Q Did you see any bills or checks around there being presented to the players by the defendant? A No, sir.

Q Did you see any cigars being served to the players by the defendant? A No.

Q Did you see a certified copy of a certificate of incorporation on the wall? A No, sir.

Q Did you see Officer Brady take into his possession a certified copy of a certificate of incorporation of a social club?

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A No, sir.

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

Q But do you know whether he did so? A Not to my knowledge, no, sir.

Q Did you arrest the defendant? A Officer Brady did, yes.

Q Did you arrest anyone else? A Fifteen other, about fifteen others.

Q Fifteen others? A Yes, sir.

Q Did you have any conversation with the defendant in reference to this game? A Well, Officer Brady did. He questioned

Q Did you hear the conversation? A Yes, sir.

Q What was said by Officer Brady? A Why, he asked him who the owner of the place was, and this defendant said, "There is two owners, and I am one of them".

Was there anything else said? What other words or language were used by the defendant or Officer Brady in that conversation? A That's the only language I remember being used, outside of the people that were telling Officer Brady --

THE COURT: No, you must not say anything after you have answered the question. Just answer the question.

CROSS EXAMINATION BY MR. ROSENTHAL.

Q You see that money there officer, that Officer Brady brought here, do you not (indicating People's Exhibit 1.)?

A Yes, sir.

Q Now, will you testify that this money was taken off the

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table where the people were playing? A Yes.

Q Those five dollar bills and the other money that is there? A The money that is here, fourteen dollars and fifteen cents, was taken from the table by Officer Brady.

Q How much of that money did you take out of the pockets of the men that were there? A Not a cent. It was all taken from the table.

Q And you didn't go through their pockets, and take whatever money that had? A No, sir.

Q And didn't you take a five dollar bill from one man, and the other change from other men's pockets? A No, sir.

Q Now, you say that you saw this defendant take money from the table? A Yes.

Eh? A Yes.

Q Where were you standing at that time? A In the rear; there is a window in the rear of this room.

Q Can't you speak a little louder, as a police officer?

A There is a window in the rear of this room.

Q And how many times did you see him take money out of the money on the table? A Three different times.

Q When did you last speak to your partner, Officer Brady, about this testimony that you were to give, this morning? A We were talking about the case, this morning.

Q You were? A Yes.

Q And comparing notes? A No. I didn't have any notes to compare.

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Q Haven't you got a little book where you put all that down? A No. I haven't got my book with me.

Q But you have a book, haven't you? A Yes.

Q And Officer Brady has one, hasn't he? A Possibly he has a book, but we never compared the books.

Q And you went over this case, this morning, without your books? A Yes, sir.

Q Was it he that reminded you, or you that reminded him, that this defendant took coins three times of the table? A Officer Brady never reminded me, or I never reminded him. I looked over the affidavits, and that refreshed my memory.

Q You didn't touch that question with Officer Brady at all? A We wrote it in the affidavit.

Q And that's why you testify now that it was three times, because the affidavit says so? A It refreshed my memory.

Q Oh, it did refresh your memory? A Yes.

Q And what did he say when you asked him -- or did you ask him as to why he was taking the money out of that money on the table? A No, I didn't ask him.

Q Did your partner ask him, Officer Brady? A He probably did ask him, but I don't recollect him asking him.

Q You were together, weren't you? A Yes.

Q Very close together you were standing with Brady? A At times, we were standing right next together, right side by side.

Q And you don't know whether he asked him or not why he took the money off the table? A I don't remember him asking

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that question.

Q Now, see if you can't refresh your memory from the testimony. Brady said he asked the defendant, "Why did you take that money?" and he said, "To buy some eats." Did you hear that?

A He might have said it, but I don't remember this man saying that or Officer Brady asking this question of this man.

Q Now, how many men were playing there when you looked through the window? A About fifteen men.

Q About fifteen, or exactly fifteen? You brought them all to the Magistrate's Court, and they were all discharged there, weren't they? A Yes.

Q What were they playing? Do you know? A They were playing quarter limit poker.

Q Quarter limit poker? A Yes, sir.

Q How do you know it was quarter limit poker? A Why, the men that were playing in the game told me so, in the presence of the defendant, and Officer Brady.

MR. ROSENTHAL: I object to that, and move to strike it out.

THE COURT: No. You asked him how he knew.

BY MR. ROSENTHAL:

Q And that's the only way you knew? A Yes; and from what I saw myself through the window.

BY THE COURT:

Q You don't know much about poker yourself, do you, Mr.

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Morris? A I know a little bit about it, your Honor.

BY MR. ROSENTHAL:

Q And did you see the money being put in the front of the table? A Yes, sir; coins.

Q Did you see the denomination of the coins? A No, sir; but I knew that they were coins.

Q You did know that? A Yes.

Q How do you know that they were not metal chips? A Well, here they are here (indicating People's Exhibit 1.)

Q But that's what you know now. But I want to know what you saw through the window? A Well, this is what I saw through the window. (Indicating People's Exhibit 1.)

Q And that makes you believe it is quarter limit poker? A No, sir.

Q Then what? A What I said before; these men told me so, in the presence of the defendant.

Q Now, what kind of premises were those premises? A Why, the ground floor was occupied by this defendant as a restaurant, and the upper floors are used for dwelling purposes. It is a tenement house.

Q Now, what did you find in the premises, when you came in, on the wall? Did you find an inscription, or framed article of any kind? A I didn't find anything on the wall.

Q You didn't? A No, sir.

Q Well, did you find anything elsewhere? A No, sir.

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Q What, besides the money that you have brought here, have you with the property clerk, that you removed from the premises where you found the defendant? A Poker chips and cards.

Q And what else? A That's all.

Q Are you sure about that? A Yes.

Q Positive? A Well, to my knowledge, that's all; the money, the cards and the poker chips.

Q Your knowledge is chiefly the knowledge of Brady; isn't it? You were together? A Yes.

Q And Brady says that the charter of the Aetna Social Club was found at the place where you brought this money and these cards from? A I don't know anything about the charter. I never saw it before.

Q And that's why you said the first floor of the premises is conducted as a restaurant by the defendant? A No, he told me that himself. He told Brady and myself. Brady asked him, and we were standing alongside at the time, and I heard him also.

Q Well, he didn't tell it to you; he told it to Brady? A Well, Officer Brady questioned him.

Q And you heard him say that to Brady? A Yes, sir.

Q Now, then, what did he say outside of that fact that he conducts that place? Did he mention anybody else? A No, sir.

Q He didn't say that he had got a partner? A He said that there were two of them, and that he was one of the owners.

Q Two were conducting that place? A Yes.

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Q Did you ask him who the other man was? A No, I didn't.

Q Why didn't you ask him? Did you ask him whether one of the men gambling at that table, was the other partner?

A No, sir.

Q And you were sent with Brady by Inspector Morris to that particular place, weren't you? A Yes.

Q And told to make an arrest? A Not to make an arrest, no.

Q They instruct you not to say that, don't they? A No, sir; we get no instructions about testifying in Court. We testify to what we see.

Q Now, you have been in clubs before, haven't you? A Yes, sir.

Q You saw pool tables in other clubs, didn't you? A Yes, I have.

Q And so it didn't seem to be anything extraordinary to see two pool tables there? A In that kind of place it was.

Q Why was it extraordinary in this place? A Because we always received complaint about this place, and had it under observation.

Q But you didn't see the charter? A No, sir; I didn't.

Q And, up to this minute, you didn't know that Brady removed this charter from that place; did you? A No, sir; I didn't.

Q And Brady never told you, who was with him on that particular raid, that these premises had a club charter; did he?

MR. MACEF: I object to that. I did not stipulate that

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the place had a club's charter. I object to the form of the question.

MR. ROSENTHAL: I am asking him whether Brady ever mentioned to him that these premises were chartered, and that he found a charter there.

THE COURT: You may answer that question.

A No.

BY MR. ROSENTHAL:

Q And that's the reason why you are under the impression that it was a restaurant, and poolroom, and gambling house? A No.

BY THE SECOND JUROR:

Q I would like to know the appearance of that room, whether it looked like a gambling den, or a club room. A club is fixed up as a club, as I understand it, with lounging chairs around them, and everything of that of that sort? A As you entered the place, there were tables there, and two pool tables, and the large room was about thirty feet deep, and in the rear of the large room, there were two small rooms, and one of these small rooms, where the men were playing is about eight by twelve, and there was two small tables together, and there was nothing in the room besides the two tables, the two pool tables, and the other tables, and some chairs.

Q Well, it wasn't much of a club room was it? A No, sir; it was summer time, and they were all smoking in there, and talking, and we heard the noise outside.

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Q Were you in uniform on that night? A No, sir; in plain clothes.

MR. ROSENTHAL: That's all.

REDIRECT EXAMINATION BY MR. MAGEE:

Q Did you say that you heard conversation or noise while you were standing in the rear of the premises? A Yes, sir. I even heard loud noises coming from this place before I entered the rear yard. Even on the street, I heard the noise.

Q Now, when you went into the rear yard, did you hear any noise which emanated from this room? A Yes, sir.

Q What did you hear? A Loud talking, I couldn't understand what they were saying.

Q Was it in the English language? A No, sir.

Q What is the character of this neighborhood there?

MR. ROSENTHAL: I object to this if your Honor please, as immaterial.

Q Do you know?

MR. ROSENTHAL: I object. Poor people have as much right to have a club as the rich.

(Allowed. Exception.)

A It is a tenement house district.

MR. MAGEE: Your Honor, I will request that the case be submitted to the jury on the first and eighth counts of the indictment.

THE COURT: I will send the case to the jury on one count, and you must direct your proff^{er} to one or the

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other count.

MR. MAGEE: Very well, sir; then I will select the first count. That is the People's case, if your Honor please.

MR. ROSENTHAL: I move to dismiss the indictment, if your Honor please, and for the discharge of the defendant, upon the ground that the People have failed to make out a case.

The District Attorney selected the first count on which to try this man, charging him with maintaining a gambling house, and I submit to your Honor that they have absolutely failed to produce any proof before your Honor, as to the fact that this defendant maintained a gambling house, that he was conducting a gambling house on the premises. In fact, the whole testimony is to the contrary. One officer said he didn't know that it was a club, and that he took money from there, from the table, but that he said he took it for "eats" and there is no proof that any gambling game was ever played. The officers know nothing about that, what game was being played.

THE COURT: I will hear you, Mr. Magee.

MR. MAGEE: If your Honor please, I think that the People have made out a strong case against this defendant. There is nothing more that the law calls upon us to prove than we have proven by the testimony of these officers, one, corroborating the other.

Not only that, but the probability and the details of

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the arrangement of these premises, strongly corroborate, as mute witnesses, the testimony of the two officers. Probably the whole truth of the issues is to determine more or less upon those physical conditions that existed there as mute testimony of what was taking place.

We have fifteen men playing cards in a small room, bare of all furniture and decorations, excepting that which they were using for the purpose of playing.

We have this defendant standing there, collecting tributes from the table, upon which was spread the money used by these men in gambling.

That they were gambling there is no question, absolutely none, because any reasonable man will readily conclude, and be satisfied from the evidence that the State has presented, that gambling was taking place in that room.

Not only that, but the presence of this bell, this buzzer, unexplained, would leave any reasonable man to conclude that it was used for the purpose of warning the men of the approach of any person who was not a patron, or habitue of this place.

The fact that a man was stationed in front of the premises for the purpose of giving warning, is a very strong fact to show that illegal acts were being perpetrated there, in those premises.

THE COURT: You say stationed, but the evidence is that he

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was standing there. You must bring that home to the defendant before you can say that he was stationed there by anyone.

MR. MAGEE: Well, standing there, then.

THE COURT: Assuming that this was a chartered club, chartered under the laws of the State, would that alter the status of the matter?

MR. MAGEE: No, I submit, if your Honor please.

THE COURT: Wouldn't they have then, the same right, practically, that people would have in the home.

MR. MAGEE: Now, we are going into the speculative side of this matter.

THE COURT: I am asking you a question, because I am going to pass upon this question.

MR. MAGEE: It would not, if your Honor please, if the State shows in rebuttal, or still or es examination, that this charter, or this incorporation, this membership incorporation, was simply used as a substitute for the illegal occupation and pursuits of this defendant. Then he would not come within the --

THE COURT: Well, have you shown that by the proofs here?

MR. MAGEE: We have not shown, and it is not the duty of the People of the State to show, that this is an incorporated club. That rests solely upon the defendant.

THE COURT: But have you some evidence in your case that there was a charter, granted by the proper legal authorities,

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and that it was taken in possession by you or one of the officers, and not produced here and your concession upon the record as to it?

MR. VAGFF: I have stipulated, only, on the statement of the officer, that he removed from the premises a certain certificate of incorporation, and the law, I submit, has, so far, not legalized gambling by general corporation law. The corporation membership law was enacted for the purpose of permitting men to associate for the purpose of social intercourse and for other laudable purposes.

THE COURT: But would they be gamblers, if they were playing poker in the home, although playing perhaps in a money way? If they played in the home would they be gamblers in law.

MR. VAGFF: No, sir.

THE COURT: Well, would they be in a club?

MR. VAGFF: It would depend upon the specific case. Each case must rest, as I take it, upon its own bottom. Where a club is primarily incorporated for the purpose of social intercourse, or any other laudable purpose, and the members meet there and have libraries, and dining rooms, and meeting rooms, or all the usual accessories --

THE COURT: Do you think then that the size of the place would make a difference? Then do you make a distinction between the rich and the poor club?

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MR. MAGRE: No, sir; but we have to resort to the charter of the premises to determine the specific use.

Now, if, from all the evidence that you can determine that this certificate of incorporation was used as a substitute for the purpose of shielding, as far as it is possible, these men in their illegal operations, then they are not entitled to protection.

THE COURT: Don't you think that you come here with a bad foot forward, when you admit in your case that you have taken this charter, and have not produced it?

MR. MAGRE: No, if your Honor please, I do not.

THE COURT: You do not? Then let me ask you another question. What evidence have you of the defendant's keeping this room for the use of gambling?

MR. MAGRE: The evidence which we have produced is direct, and practically conclusive. The officers testify that they saw this man engaged in the operation of taking the money from the table, and that he was not a player, nor did he participate in the games, but that he exercised supervision over the game, and did those acts which the law has in mind when it characterizes a person as a keeper.

THE COURT: Well, has he not explained that, to one of your witnesses, that he took this money for the purpose of getting something to eat for the men?

MR. MAGRE: Well, that's an old excuse.

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THE COURT: Have you any proof to contradict him?

MR. MAGEE: Well, the proof that we have to contradict him is that it was not a fact, was not true, because the officers saw nothing in the way of refreshment served in the long period they had him under observation.

THE COURT: No, they did not have him under observation for a long period. Something like twenty minutes. And you lay in this indictment that this defendant kept this room for the purposes of gambling on the 1st of June, and continuously until the date of inquisition, and you have only the evidence of these two witnesses, who made observations of this character for about twenty minutes.

Now, I am not to say whether this was or was not a gambling house, or whether the defendant kept a room at 727 Second Avenue for the purposes and uses of gambling. But I am here to pass upon the weight of this evidence, you laying the indictment and making the charge, and you must establish by good enough proof to satisfy the jury beyond a reasonable doubt. But you have not any evidence, except upon this one occasion, although you lay in your indictment that it was a continuous thing.

Now, I do not think that the case was very well prepared from the side of the prosecution upon the subject of the indictment, and the defendant must be given the benefit of this lack of proof.

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I am not here to aid or assist, but to pass upon the question of law, and the question of law is presented to me as whether sufficient evidence has been presented here on behalf of the State to justify me in denying that motion; and I am satisfied in my own mind that the case falls far short of sufficient to establish a prima facie case.

There cannot be any short cuts to jail. You must have good and sufficient evidence, before you can ask for the penalties of the law; and, because of these continuations, I must grant this motion, and advise the jury that the evidence is not sufficient, in the state that it is now in, to justify the jury in finding the defendant guilty, beyond a reasonable doubt.

I grant the motion.

(The jury found the defendant not guilty.)

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