

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF
THE WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, Plaintiff, vs JOHN LAZIA, Defendant.

No. 12028 No. 12287.

BILL OF EXCEPTIONS IN CONDENSED AND NARRATIVE FORM.

APPEARANCES:

For the plaintiff: Mr. William L. Vandeventer and Mr. A. B. Lovan.

For the defendant: Mr. Frank P. Walsh, Mr. Jerome Walsh, and Mr. Paul Dillon.

BILL OF EXCEPTIONS IN CONDENSED AND NARRATIVE FORM

Be it remembered, that commencing upon February 5, 1934, at a term of the District Court of the United States, in and for the Western Division of the Western District, of Missouri, at Kansas City, Missouri, before the Honorable Merrill E. Otis, one of the judges of said court, the following proceedings were had, to-wit:

During the voir dire examination of the jury panel, the Court propounded the following questions to the panel, and received the following answers:

"Q Is there any member of the panel who is personally acquainted with the defendant, Mr. Lazia, or with any member of his immediate family - - I do not know of what his family consists."

"Let the record show that each juror on the panel answers that question in the negative.

"Q Has any member of the panel formed or expressed an opinion concerning the merits of this case? Of course, the object, as I said a moment ago, is to obtain a jury of men whose verdict will be based on the evidence and the law in the case and who do not go into the jury box with a preconceived notion as to the guilt or innocence of the accused. All of these questions are important. Is there any member of the panel who has formed or expressed an opinion touching the guilt of the defendant and who would go into the jury box with that preconceived notion in his mind?"

WHEREUPON veniremen Weeks, English, Kaster, indicated that they had formed and expressed an opinion, and after irrelevant colloquy between the Court and the veniremen, the following question was propounded to the panel:

"THE COURT: Now, let me ask this general question, which includes everything I have

asked already, and includes more, also: Is there any member of this panel of Twenty-eight who, if selected as a juror in this case, would be influenced by any consideration whatsoever excepting the law of the case as it shall be declared to the jury by the Court, and the facts as they shall be declared by the evidence, in arriving at his verdict?

"Let me ask that question once more: Is there any member of this panel who, if selected as a juror in this case, would be influenced in arriving at his verdict in the case, his part in the verdict, by any consideration whatsoever, other than the law and the evidence in the case?"

"Let the record show that the answer of each juror to that question is in the negative. Whereupon, the Special Assistant Attorney General of the United States, proceeded to his opening statement, and among other things the following was said and took place:

"The evidence will show that the gross income from this dog track, at least twenty percent of which was at the time owned by this defendant, was in a period of about six months \$136,000.00." and

"In addition to the income that was derived from those admitted into the place, Mr. Lazia and his associates got twelve and one-half percent of all the money that was wagered upon the outcome of those dogs:" and

"Our evidence will show that from the Cuban Gardens in the year 1929 Mr. Lazia received as income \$28,500.00. Our evidence will show that for the year 1930 Mr. Lazia received from Cuban Gardens \$11,000.00." and

"The evidence will show, gentlemen, that it was quite an institution, quite a money making institution, during all these years and as I have told you, that Mr. Lazia received from it as an income during 1929 the sum of \$28,500.00 and during 1930 the sum of \$11,000.00" and

"These items that the government contends it will specifically prove total in the sum of \$51,467.41. But, that, gentlemen is not all the income we contend Mr. Lazia had during the years 1929 and 1930. The bank records will show that in addition to these items amounting to \$51,467.00 and some cents that there went through his bank account down here in the Merchants Bank, in addition to that sum, the further sum of \$105,449.35."

"MR. WALSH: If your Honor, please, I want to object to that unless the government claims that that is income. We say it is charging every accommodation check, every purchase and everything else.

"THE COURT: Unless you do claim it is income the objection is sustained.

"MR. VANDEVENTER: The government contends that is income.

"THE COURT: All right, overruled.

"MR. VANDEVENTER: But it may occur, in the progress of this trial, after the defendant's evidence, that some of it was not income. If some of it was not income - -

"MR. WALSH: I object to that, anticipating the evidence on the part of the defendant."

"THE COURT: Objection overruled.

"MR. WALSH: I want to save an exception.

"THE COURT: The objection is overruled for the reason that counsel for the government was justified in making that explanation in the view of the objection of counsel for defendant.

(To which ruling and action of the Court the Defendant at the time then and there duly excepted and still excepts.)

"MR. VANDEVENTER: After you have heard all the evidence, gentlemen of the jury, we will leave it to you whether or not this vast, unexplained amount of money is or is not income of this defendant.

"MR. WALSH: I object to that, if your Honor please, because that is exactly what the law forbids: they have got to show, if they can show, that any money that went into that account came from income, and that alone.

"THE COURT: Of course, the burden is upon the government to prove that the defendant had income in excess of the statutory amount.

"MR. WALSH: And for the further reason that these sums of money that he is talking about are not listed in the Bill of Particulars.

"THE COURT: Well, if they are not, then the objection is sustained. I do not know as to that; I will consider that when the matter is offered in testimony.

"MR. WALSH: Very good, your Honor."

WHEREUPON the testimony and evidence on the part of the government was as follows:

DAN M.NEE, a witness for the government, testified as follows:

DIRECT EXAMINATION

That he was Collector of Internal Revenue for the 6th District of Missouri, with his office located in the Post Office Building, at Kansas City, Missouri. Kansas City was in the 6th Internal Revenue Collection District. After a search in his office he was unable to find any record of income tax returns made by John Lazia for the years 1939 and 1930.

There was no cross examination.

DAVID NOLAN, a witness on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he was a resident of Kansas City, Missouri, and was special agent in charge of the Intelligence Unit of the Internal Revenue Service, and had occupied such position for fourteen years; that he had been located at Kansas City for a period of ten years; that his territory comprised the 8th Collection District of Illinois, the states of Missouri, Iowa, Kansas, Oklahoma, Nebraska, Colorado and Wyoming; was acquainted with the defendant. Upon March 9, 1933, in Room 1100 Grand Avenue Temple Building, in Kansas City, in conjunction with Mr. Charles T. Russell, at that time Internal Revenue Agent in Charge; Internal Revenue Agent H. D. Beach; Special Agents Robert L. Sharp and Harry T. Riley, Mr. Lazia and his attorney, Mr. Isadore Rich; he had a conference with Mr. Lazia touching his income tax accounts for the years 1929 and 1930. Mr. Lazia was asked whether or not he had filed income tax returns for 1929 and 1930 and stated that he had not. He was asked why he had not; he said he did not believe he had had any taxable income; he believed that his losses had exceeded his income; he said that he had been playing the races and had lost considerable money to various bookmakers within the city and during the interview inquiry was made as to the source of his funds to pay the losses. He said his father had died and left him a considerable amount of money. He said that his father had left him approximately \$150,000.00, and that he had been spending it. Said his living expenses ranged from six to seven hundred dollars a month. The source of his income for 1929 and 1930 was from an interest he had in a dog racing track in North Kansas City; that he also had an interest in Cuban Gardens and an interest in the Duke Motor Company, as well as an interest in the Glendale Beverage Company. That he had disposed of his interest in the dog track for twelve or fifteen

thousand dollars.

"Q Was it the dog track that he said he had made the money on? A Yes, sir.

"THE COURT: I haven't heard the witness say that Mr. Lazia said he had made any money. What are you talking about?

"MR.VANDEVENTER: I asked Mr. Nolan if he told him the sources of his income.

"THE COURT: Yes, but he did not testify as to any definite amount, that I recall.

"Q Did he state any definite amount that he had made, either on Cuban Gardens or the dog track? A He said he disposed of his interest in the dog track for something like twelve or fifteen thousand dollars.

"Q Did you ask him about the Duke Motor Company stock at that time? A That was discussed, yes, sir."

CROSS EXAMINATION

The witness testified that he was making the investigation to determine whether or not an investigation by his branch of the serviced appeared to be warranted; that he did not ask the questions; that they were not taken down by a stenographer; that Mr. Lazia appeared there voluntarily at the request of the Internal Revenue Agent in charge. He said in effect the reason that he had made no income tax return was that his total income did not exceed the sum of \$5,000.00; at that conference he said that he advanced some money that went into the construction of Cuban Gardens, and that he had an interest therein. He did not recall that Mr. Lazia said that his interest in Cuban Gardens was prior to 1929. He stated that he had sold his interest in the dog track prior to 1929. He also said that he had associates and partners in Cuban Gardens. He said that a man named McNamee originally had an interest with him in Cuban Gardens. He did not say that he, Mr. Lazia, had advanced the operating capital for Cuban Gardens. The conversation lasted an hour. He believed Mr. Lazia said that he had only remained in Cuban Gardens from September 15 until December 15, 1929. Witness did not recall that when he retired from Cuban Gardens, the other owners of it paid him back what he put into it. Witness said he would not say that that matter had not been discussed. Said Mr. Lazia had informed him and the others at the conference that he had sold his interest in the dog track late in 1929 or early in 1930; he believed, Mr. Lazia said he received \$12,000.00 or \$15,000.00. The witness did not recollect that Mr. Lazia said that he disposed of his

interest in the dog track prior to 1929 and that in 1929 there was an interest in that of four people and that after the track was sold out that all of his associates shared in the payments that were made for rent and there had been a payment of \$3,000.00 on account of rent made in 1929 and \$3,000.00 in 1930. Witness said that he did not recollect that Mr. Lazia went into such detail. He was asked for detail, but said he kept no record. Mr. Lazia stated that an injunction was issued against the dog track and that he had incurred some expense thereby. Said he did not recollect that Mr. Lazia said he had paid an attorney in an adjoining county \$2,000.00 as fee in it; he gave no figures on that at all. He said that he owed the bank some money but did not give the approximate amount of the money he owed the bank. The witness recollected that Mr. Lazia said that the money he was spending was inherited from his father.

ROBERT L. SHARP, a witness on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he was special agent of the Intelligence Unit of the Internal Revenue Service and occupied such position since October 1, 1924, located in Kansas City, Missouri. He met Mr. Lazia upon March 9, 1932, at the Internal Revenue Agents' office in Kansas City, and upon being asked the question:

"Q What was the object of that meeting?"

The following objection was made on behalf of the defendant:

"MR.WALSH: I would like to submit, if your Honor please, if I may, that I do not think that it is legal or fair to introduce so-called statements from these agents until it is shown that this defendant here failed to report income that he should have reported to the United States government."

"THE COURT: Overruled.

"MR.WALSH: Save an exception."

The purpose of the meeting was to determine whether or not Mr. Lazia owed a tax for the years 1929 and 1930. Witness did not ask any questions. Mr. Russell directed the conference in the main part.

"A Well, the conference last for quite a little while, about an hour. There was quite a bit said during the conference. He said that he had not filed returns, had never filed any income tax returns except possibly for a number of years previously. It seemed

like some years ago he had run a carnival known as the Mighty Doris - - "MR.

WALSH: I object to that as not bearing on this case now in issue before the Court.

"THE COURT: Sustained. State what he said concerning the years 1929 and 1930 with reference to the subject of income tax,

"A He said he had not filed returns for the years we were interested in, that in 1929 and 1930. He said the reason he had not was because he had had a lot of losses that year; he gambled extensively; I remember the question was asked, what his living expenses were; we thought maybe we would get some idea of his income from that. He said it cost him quite a bit. Well, we asked him to say how much and he was not very clear and explicit; he first gave one figure and then another but he said five to seven hundred dollars a month; well, he said possibly six to eight hundred dollars a month; he said that he was always in the red. We asked him why he had not filed returns; he said that was the reason and we asked him about his losses, how much they were and he could not estimate them; asked him if he had any books or records that would reflect anything, any cancelled checks and he said he had kept no records whatsoever; he got rid of the checks when he got through with them. There was quite a bit said; I don't know just what all was said during the hour we were there,

"Q Was Cuban Gardens mentioned? A It was.

"Q What did he say about that, if anything?

"A He said he had had an interest up there; ran for several months during the latter part of 1929; as I recall, that he sold it at the close of the year. He said he made a profit from the sale of Cuban Gardens, he said between twelve and fifteen thousand dollars.

"Q Did he say from whom he received this money?

"A He said he had sold it to a man named Arthur E. McNamee.

"Q Did he tell you how it was paid? A I don't recall that he went into that detail, he did say this, that it was not all cash, that there were some payments continued for a number of weeks."

That Mr. Russell was now the Deputy Commissioner of Internal Revenue at Washington, and that Mr. Isadore Rich, an attorney in Kansas City accompanied Mr. Lazia to the hearing. That he had met Mr. Lazia intermittently since March 9, 1932 and

their conversation was always concerning the topic of Mr. Lazia's income tax returns, Mr. Lazia appeared at his office upon another occasion towards the end of the investigation, which he recollected to be in July, 1932.

CROSS EXAMINATION

The meeting witness testified concerning was the same testified to by Mr. Nolan, the previous witness. He made a few notes during the course of the meeting; that there was no stenographer present; he did not believe Lazia gave the dates of his interest in Cuban Gardens, that he recollected that Mr. Lazia said he was interested in Cuban Gardens for a few months at the close of 1929. He said that Mr. McNamee had not repaid all that he had put into the place: that later on he had paid him in installments; he did not believe witness said that he got nothing more out of Cuban Gardens except the payments of \$500.00 per week until he had been paid back all that he had put into it. Witness recalled that Mr. Lazia was not clear as to the balance owing to him when he went out of Cuban Gardens in the latter part of December, 1929. Witness said that he found cancelled checks in the bank extending over a period of two or three months; that he had the dates showing the \$500.00 payments; witness said he found a check dated April 18, 1930 for \$500.00 that went through the bank, and that it was the last installment to have been made on the series of payments. Witness testified that Mr. Lazia said that he had been an easy man for the gamblers around town; he did not confine his gambling losses to any particular year.

Mr. Lazia said that during the years we were interested in he had gambled extensively and played the horses; he made no division of the years, either 1929 or 1930 in which he had gambled upon the horses; he said that Lazia had told him the result of his betting was a large loss to him; that he had had no gain from the betting of any kind. He (Lazia) said that he was in the "red" all the time. He said that in his investigation he had found checks both ways from bookmakers where money was either paid to Mr. Lazia or paid by Mr. Lazia, that he did not report anything about the losses, that he had just reported the gains and charged them against him on his incidental betting.

Witness testified he found a large number of checks from bookmakers — cashier's checks coming to him, and

"Q But you found a large number of checks from the bookmakers, cashiers checks coming towards him?

"A Yes, sir.

"Q, And then you found a large number from the same individuals at or about the same time, from him to the bookmakers? You knew the names, didn't you? A My recollection of the records is this, that these checks came to him apparently as winnings, for instance, and he would endorse them, though some of them he would deposit in the bank and some of them he would buy Certificates of Deposit, with, possibly. Some of them he would have other endorsers on. He may have loaned the money and got it back again. The burden is on the taxpayer to keep the records, and he did not show us that.

"Q You have no knowledge, then, of how many went out and how many came back?

A I do not know the total amount Of his income nor the total amount of his expenses.

"Q You do not know of your own knowledge that he had any income, not from those conversations; he told you that in both years his losses far exceeded his gains, did he not? "A That is what he said."

RE-DIRECT EXAMINATION

Witness was asked where he got so much money to pay his heavy living expenses and to pay his continued losses in the gambling and other enterprises; he said that his father had left him \$150,000.00 and during the past five years he had spent practically all of it.

Re-CROSS EXAMINATION

He found afterwards that Mr. Lazia's father died, according to the records, in 1931; the witness did not tell the agents when his father had died; that his father died and left him an inheritance, and that none of the agents at that meeting tried to determine when his father had died. And that the witness had asked him no questions personally.

RE-DIRECT EXAMINATION

At that conference Mr. Lazia did not inform the agents the name of his father.

HARRY B. BEACH, a witness for the government testified as follows:

DIRECT EXAMINATION'

That he was an Internal Revenue Agent and had been such for ten years, with

headquarters in St. Louis, Missouri, although during the year 1933 he was located in Kansas City, Missouri; that he was present at the March 9th, 1932 conference with Mr. Lazia, concerning the income tax of Mr. Lazia for 1929 and 1930; Mr. Lazia said in his opinion that he had insufficient income to make returns for those years. Mr. Lazia stated that he had a quarter interest in the dog track in North Kansas City at one time and had an interest in Cuban Gardens at one time, and had quite a few losses in gambling and other transactions; that he had an interest in Cuban Gardens in the latter part of 1929.

Whereupon, the witness refreshed his memory from notes made at the time; Mr. Lazia said he made a profit of approximately \$12,000.00 from his interest in Cuban Gardens, and he said nothing about the dog track except that he had a one-quarter interest in it with some other people. Mr. Lazia mentioned that his living expenses were around \$500.00 or \$700.00 per month, and that he lived at the Park Central Apartments, located in Armour Boulevard, in Kansas City; that he remarked that he had inherited some money from his father and mother. He said that he inherited approximately \$150,000.00. Mr. Lazia said that he was mixed up in a great many affairs and that he owned stock in the Duke Motor Company and also the Glendale Beverage Company, the latter stock, witness testified Mr. Lazia said, had not been fully paid for. He did not inquire as to his income from either of these investments.

CROSS EXAMINATION

Whereupon the witness submitted his notes to Mr. Walsh for examination at the direction of the Court, Witness testified that Lazia said he had an interest in the dog track; he owned a one- quarter interest in it and no mention was made as to his disposition of that interest; he did not recall that Mr. Lazia said that he had a partner in Cuban Gardens and his recollection was no specific dates were mentioned as to when Mr. Lazia went into Cuban Gardens, but he did recollect that he mentioned he went in the latter part of 1929; that he said he was only in a few months. He recalled that Mr. Lazia mentioned Mr. McNamee was interested with him in the dog track and that he did not recall him being interested in Cuban Gardens. According to his notes Mr. McNamee was Mr. Lazia's partner in the dog track, that he did not recall that Mr. McNamee was his partner in Cuban Gardens, and that when he terminated his interest in Cuban Gardens in the summer, Mr. McNamee bought him out and that he took \$500.00 in installments, per

week, until the money was paid.

Witness did not ask him what his income was, and that upon inquiry Mr. Lazia stated that he did not know what his income was from his various activities. Mr. Lazia stated that he had various losses from his activities,

"Q Didn't he tell you, now, as a matter of fact, that he had less on the 1st of January, 1930, by many thousands of dollars than he had on the 1st day of January, 1929, and had thousands of dollars less at the end of the calendar year 1930, than he had at the beginning; did he tell you that?

"A I said he said he had various losses; yes, sir.

"Q You say that he said he had gotten an inheritance from his father and mother. A Yes, sir.

"Q The way you heard that, or the way you claim you heard it was that he had gone through \$150,000.00 in five years; didn't he tell you that? A Yes, sir.

"Q That is what you remember? A Yes, sir.

"Q The others were sitting there when he said that, if he said it, weren't they? A I can clarify that a little further, if you want it.

"Q Do you think you can hurt me some more if I ask you some other questions? A No, sir.

"Q They were all sitting there when he said he went through \$150,000.00 in five years, were they? A That is my recollection.

"Q There is no mistake about him saying that; you wrote it down; is that right? A That is according to my notes."

RE-DIRECT EXAMINATION

The only thing Mr. Lazia said about his \$150,000.00 was that he inherited it from his father and mother, and that he had dissipated it.

RE-CROSS EXAMINATION

That according to the witness's notes, he went through \$150,000.00 in five years.

J. G. BRAECKLEIN, a witness produced on behalf of the government testified as follows:

DIRECT EXAMINATION

His father, Oscar Braecklein owned some land in North Kansas City, Missouri upon

which is now situated the dog track and Cuban Gardens; that he, his brothers John, Carl, Edward W. and his mother each inherited an equal part in that property; that it had been in that family since 1880. He had control of the property under their respective powers of attorney and that he sold Lot Number 1 to a Chicago man, whose name he did not recollect. Upon the production and examination of the deed to the property, the witness stated the property was deeded to George H. Parton;

Whereupon the government introduced into evidence Exhibits Nos, 1, 2, and 3, which in their effect and substance are as follows

Exhibit No. 1 is a Missouri Warranty Deed, executed on the 29th day of August, 1927, between Carl F. Braecklein and Ethel Irene Braecklein, his wife, of the City and County of Denver, State of Colorado, and John G. Braecklein and Clara Louise Braecklein, his wife of the County of Wyandotte, state of Kansas, parties of the first part, and George H. Partin of the County of Shelby, state of Tennessee party of the second part, wherein said parties of the first part in consideration of the sum of Three Thousand Dollars to them paid by the party of the second part do grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following described lots, tracts or parcels of land being situated in the County of Clay and State of Missouri, to-wit:

An undivided three-fourths (3/4) interest in and to Lot One (I) of Braecklein's Subdivision, being a Subdivision of the West One-Half (1/2) of the Southeast Quarter (1/4) of Section Eleven (11) Township Fifty (50), Range Thirty-Three (33) West, in Clay County, Missouri, except the South Thirty (30) feet thereof used for State Highway.

Said deed is on a standard Missouri Warranty Deed form, and is duly signed and executed by Carl F. Braecklein, Ethel Irene Braecklein, John G. Braecklein and Clara Louise Braecklein, filed of record September 16, 1927, Book 252, page 179, deed records, Clay County, Missouri.

Plaintiff's Exhibit No. 2 is a Warranty Deed executed on the 29th day of August, 1927, by and between Edward W. Braecklein and Idea Braecklein, his wife, of the County of Passaic, State of New Jersey, parties of the first part, and George H. Partin of the County of Shelby, State of Tennessee part of the second part, wherein said parties of the first part, in consideration of the sum of One Thousand Dollars to them paid by said party of the second part do by these presents, grant, bargain and sell, convey and confirm

unto the said party of the second part, his heirs and assigns, the following described lots, tracts or parcels of land lying, being and situate in the County of Clay and State of Missouri, to-wit:

An undivided one-fourth (1/4) interest in and to Lot One (1) of Braecklein's Subdivision, being a Subdivison of the West One- Half (1/2) of the Southeast Quarter (1/4) of Section Eleven (II) Township Fifty (50), Range Thirty-Three (33) West, in Clay County, Missouri, except the South Thirty (30) feet thereof used for State Highway.

Said deed is on a standard Missouri Warranty Deed form, and is duly signed and executed by Edward W. Braecklein and Ida Braecklein, and is filed for record September 16, 1927 in Book 252, page 180, deed records, Clay County, Missouri.

Plaintiff's Exhibit No. 3 is a warranty deed executed on the 29th day of August, 1927, by and between Carl F. Braecklein and Ethel Irene Braecklein, his wife, of the City and County of Denver, State of Colorado, and John G. Braecklein and Clara Louise Braecklein, of the County of Wyandotte, State of Kansas, parties of the first part, and George H. Partin, of the County of Shelby, State of Tennessee, party of the second part, wherein said parties of the first part, in consideration of the sum of Six Thousand Dollars to them paid by the said party of the second part do by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following described lots, tracts or parcels of land lying, being and situate in the County of Clay and State of Missouri, towit:

All of Lot Five (5) of Braecklein's Subdivision, being a subdivision of the West One-Half (1/2) of the Southeast Quarter (1/4) of Section Eleven (II), Township Fifty (50), Range Thirty- three (33) West, in Clay County, Missouri.

Said deed is on a standard Missouri Warranty Deed form and is duly signed and executed by Carl Braecklein, Ethel Irene Braecklein, John C. Braecklein and Clara Louise Braecklein, filed for record Sept. 16, 1927, Book 252, page 178, deed records, Clay Coutny, Mo.

There was no cross examination.

VIDAL OSTRANDER, a witness produced, on behalf of the government, testified as follows:

DIRECT EXAMINATION

She was formerly the manager of Park Central Apartments, in Kansas City, Missouri, and that she was located there in the years 1929 and 1930, and while Mr. John Lazia was a tenant in said apartment building. Upon being asked how much he paid for the apartment an objection was made by the defendant which was overruled and exception allowed.

Witness testified that defendant paid \$110.00 per month for his apartment.

At this point certain objections were made and colloquy ensued between Court and Counsel touching the relevancy of this testimony, which is as follows:

"THE COURT: It is not by itself, of course, any complete showing, out it is a fact which with other facts might constitute a showing.

"A At that time I think he paid \$110.00.

"Q Per month? A Yes, sir.

"MR. WASLH: I would like to renew my objection to that, if your Honor please, as being entirely immaterial and no proof of income in 1929 and 1930, and not being mentioned in the Bill of Particulars. That a man paid \$110.00 for his apartment in 1929 is no proof of income, and. it has not been included in the Bill of Particulars.

"THE COURT: As to the first part of the objection, I say what I said just now. By itself it does not constitute a showing or proof of income, but it is a fact which, with other facts and circumstances as they are offered, might constitute a showing. Now, as to the second part of the objection, it also is overruled and exception allowed.

"Q Was he a tenant at the Park Central during the entire years 1929 and 1930. A Yes, sir.

"Q Did he pay his rent? A Yes, sir."

CROSS EXAMINATION

Witness testified that she was testifying from memory about the rental Mr. Lazia paid and that her best recollection was that when he first moved into the building he was paying \$110.00 per month and it was afterwards reduced, to \$90.00.

"Q First he paid \$110.00 per month? A He just paid a moderate rental like everyone else that rented there. I have no recollection of just what it was only it was just what everyone else paid."

DEE MOSBY, a witness produced, on the part of the government testified as follows:

DIRECT EXAMINATION

It was admitted that Government's Exhibits 1, 2 and 3 had been duly recorded in the office of the Recorder of Deeds of Clay County, Missouri.

Thereupon the government introduced in evidence government's Exhibit No. 4, being a warranty deed from George H. Partin and Nettie B. Partin, his wife to Agnes Taylor, after an objection was made and overruled, that such Exhibit was no evidence of taxable income earned by the defendant in the years 1929 and 1930, to which an exception was saved.

Said exhibit 4 is in effect and substance as follows:

Exhibit No. 4 is a Missouri Warranty Deed executed on the 29th day of August, 1927, by and between George H. Partin and Nettie B. Partin, his wife, of the County of Shelby, State of Tennessee, parties of the first part, and Agnes Taylor, of the County of Jackson and State of Missouri, party of the second part, wherein said parties of the first part, in consideration of the sum of One Dollar to them paid by said party of the second part do by these presents grant, bargain and sell, convey and onfirm unto the said party of the second part, her heirs and assigns, the following described lots tracts or parcels of land lying, being and situate in the County of Clay and State of Missouri, to-wit:

All of Lots One (1) and Five (5) of Braecklein's Subdivision, being a subdivision of the west one-half (1/2) of the southeast quarter (1/4) of Section Eleven (11), Township Fifty (50), Range Thirty-three (33) West, in Clay County, Missouri, (except the south thirty (30) feet of said Lot One (1) used for State Highway.)

Said deed is on a standard Missouri Warranty Deed form and is duly signed and executed by George H. Partin and Nettie B. Partin, filed for record the 16th day of September, 1927, in Book 252 at page 181 of the Deed Records of Clay County, Missouri.

The witness testified that after examining the records Government's Exhibit 4 was the only deed to be found in the records from George H. and Nettie B. Partin touching the conveyance of the property mentioned in that said deed.

There was no cross examination.

DIRECT EXAMINATION

HAL R. LEBRECHT, a witness produced on the part of the government testified as

follows:

That he was the president of the Merchants Bank in Kansas City, Missouri; that he was familiar with plaintiff's Exhibit 4 and the grantee therein was an employee of the Merchants Bank. Exhibit at that time was part of the collateral held by the bank for the indebtedness of John Lazia in that institution. That the same was put up by Partin and others in the dog track, and that likewise government's Exhibits 1, 2 and 3 were held as collateral at the bank. That the amount of the indebtedness for which the deed was up for collateral was approximately \$10,000.00 and he suggested that the deed be taken in the name of his employee, Agnes Taylor. Miss Taylor is not the actual owner of the land and that he held a deed to the property from Agnes Taylor, which is being held by him simply in the nature of a mortgage; that they were not put up as collateral to a note of Mr. Lazia's; that

"A When these men bought this ground, I think we loaned them \$10,000.00, approximately \$10,000.00. Instead of making a real estate mortgage and recording it on the land the title was put under our control, which would be the same as a mortgage as we construed it."

CROSS EXAMINATION

Several parties were engaged in the transactions and he was present at most of the meetings where the transactions were effectuated. That Mr. Edlund, the cashier of the bank, had handled the whole transaction. The parties borrowed \$10,000.00 from the bank; there were three signatures to the note, Mr. Partin, Mr. Lazia and some other person, and that the note had been taken up and renewed and so forth for years, but that government's Exhibits 1, 2, 3 and 4 had followed the note right through.

"Q And the original indebtedness entered into was entered into by those who made that note and the note has never been paid and you are still holding this for security, just the same as though it were a mortgage? A I cannot testify from recollection whether or not that note has been liquidated in these years or not but the loan as originally made was made to Partin and Lazia and maybe somebody else; I am not sure about that.

"Q Mr. Edlund carried on the transaction and he will be able to tell the Court and jury all about it? A Yes, he will be able to tell those details better than I can."

At this point there was a stipulation that Mr. Joseph Lazia, the father of the defendant, died upon May 9, 1931.

GEORGE H. PARTIN, a witness produced on the part of the government, testified as follows:

DIRECT EXAMINATION

That he lived in Houston, Texas, since September, 1933, and at Kansas City, Missouri, at one time, coming here in August and remaining until October, 1937; that he had purchased property in North Kansas City and identified government's Exhibit 4; that he built a so-called dog track on the land acquired from the Braeckleins; that he was more or less of a trustee for "a bunch of Cleveland and Akron people and some local people here"; that he was acquainted with Mr. Lazia; that he met him about a week after he started the building in North Kansas City; that at that time Mr. Lazia and one Sol Weissmann called to see him, and there was a man by the name of Clark present at the time. That Mr. Lazia did not say much, that as a result of the conversation about a week later he made a deal for Mr. Weissman and Mr. Lazia to come into the dog track with him, said that in about 30 days all the arrangements were made and that they went to the bank where the money was borrowed to handle the deal. The money was borrowed to finish paying for the property and that probably the banker or Johnnie (John Lazia) or somebody suggested Miss Taylor be named as the grantee in the deed. That he did not sell out his interest in the dog track and that there were local people and Akron people interested and that the arrangements were that the matter was to be incorporated, but for some reason "we didn't" and he could not state why. That he represented the Cleveland syndicate; that Mr. Lazia, Solly Weissmann and Charlie "I don't know (there were several of those boys) I knew them mostly by their first names." Witness testified that he knew a man by the name of Chambers, and that he was interested with him and came to Kansas City two weeks later. The witness testified that he left Kansas City a few days after the 39th of August, 1927, and went to Havana, and was only in Kansas City one night after that time, that night being the night the track closed. He executed the deed for the purpose of borrowing the money to finish paying the purchase price on that property. The witness testified that he had a one- third interest; that he and Chambers were to do the operating; that he had put in about \$4,000.00 and "I do not know what Mr. Chambers put

in." That his interest in the enterprise was in the whole enterprise and was not merely in the operation but that his interest was in the company which was going to own the land.

There was no cross examination.

AGNES TAYLOR a witness produced on the part of the government testified as follows:

That she had been an employee of the Merchants Bank for nine years, and that she had no real interest in the property identified by government's Exhibit 4 in North Kansas City, Missouri, that she signed the deed for the convenience of the bank; that she did not know Mr. Partin, the grantor named in the deed and that Mr. Lebrecht asked her for the use of her name as grantee and that thereafter she executed a deed in blank covering the real estate mentioned in Exhibit 4.

There was no cross examination.

J. A. CHAMBERS a witness produced on the part of the government testified, as follows:

That he lived in Memphis, Tennessee most of the last seventeen years; he was in Kansas City in the fall of 1927, and was here approximately ninety days; he assisted in the operation of the dog track at North Kansas City; that he was associated with Mr. Partin, Mr. Lazia, Mr. Weissmann and maybe two or three others that he did not know personally; that he was not acquainted with probably five of the others who were supposed to have an interest in the track; that he knew five were interested. The dog track opened in September 1927, and it was all built and ready for operation when he came to Kansas City; that it had only remained open sixty or ninety days.

The witness had charge of handling the mutuel room - - the young I man from the bank, who was afterwards identified as Mr. Edlund, had charge of the finances.

Here an attempt was made to show the earnings and profits of the dog track for the years 1927 and 1928 and an objection to that line of inquiry was sustained.

CROSS EXAMINATION

Mr. Chambers testified that he operated the track; that it was not a profitable enterprise; that he lost the sum of \$3500.00 and left town. That Mr. Lazia shortly after the opening of the track met with an accident and he was sick in the hospital and that he saw him one time in the hospital and once in his home; that he was sick quite a long time; that

Mr. Lazia was sick when he left Kansas City.

JOHN A. WOODROW, a witness produced on the part of the government testified as follows:

DIRECT EXAMINATION

That he had been a resident of Chicago, Illinois for about twelve years; he helped in the operation of the dog track in North Kansas City in 1928 and 1929; that there was a group of men from Chicago and a group of men from Kansas City interested in the dog track; that the only members of the group that he ever contacted at Kansas City was Sol Weissmann, Ray Edlund, and John Lazia; he purchased an interest in the dog track in March, 1928; the witness testified he could not swear from whom he and his associates purchased the dog track; that he afterwards had correspondence with Mr. Lazia about the rental arrangement on the dog track. The rental under the lease signed by Agnes Taylor called for \$3000.00; that he paid the \$3,000.00 a year; that his correspondence touching the same was with the Merchants Bank; that he made payment upon the 1929 rent in the spring of 1929, and sometime in the spring or summer for the 1930 rent. That the payments totaled \$6,000.00. He made a payment upon the purchase of his interest in the dog track of \$20,000.00; he made first payment upon the rent by check or draft mailed to the Merchants Bank. Witness could not identify checks submitted for his identification because he did not purchase them.

He was interested in the Electric Holding Corporation and certain individuals purchased either a forty or sixty percent interest in the dog track to begin with, that is a group of individuals in Chicago who were interested in dog racing. It was his business to conduct the financial transactions of those gentlemen. He paid the sum of \$3,000.00 in 1930 as rent on the dog track by draft or check to the Merchants Bank through the mail, drawn upon the Citizens Trust and Savings Bank of Chicago. The witness testified that he was testifying from memory and that all of the records of the Electric Holding Corporation were not then in existence. At this point objection was sustained to testimony concerning one payment of \$20,000.00 and one payment of \$12,000.00 in connection with the dog track, as not showing any connection with the defendant.

The witness testified that another payment of \$3,000.00, aside from the rental payment, was made to Mr. Lazia to take up a note for money expended by Mr. Lazia and

Mr. Edlund in connection with the injunction proceedings which were instituted against the Missouri Kennel Club in one of the counties across the river in Missouri.

The Electric Holding Corporation owned the patent rights on the equipment and leased the same to the Missouri Kennel Club for a fee; the equipment was the electrical lure and starting boxes and the dog organization. The lure was the mechanical truck that carried the dummy rabbit which the dogs ran after.

That he had correspondence with the Merchants Bank and Mr. Lazia relative to the dog track. In 1929 he gave a note for \$3,000.00 in payment of the rent, which was due in the spring and the note was taken up by a check paid to the Electric Holding Corporation and mailed to the Merchants Bank. Witness states that his group first bought a forty percent interest; the interest they bought there was for equipment, which was not tied down to the property; that they bought no interest in the fee; that later, they bought an additional interest that made their total holdings either a sixty or it might have been an eighty per cent interest. The original payment for the forty percent interest was \$20,000.00 and there was an additional payment of \$12,000.00 for the balance.

Thereupon the government introduced its exhibits #5 and #6 which are in words and figures as follows, after identification by the witness:

Exhibit 5

"2-138 CITIZENS TRUST & SAVINGS BANK,
6 West 55th Street, Chicago. Sep. 18, 1928 No. 138253
Pay to the order of John Lazia, \$12,000.00
\$12000 and 00 cts.

To State Bank of Chicago, Chicago, Ill. R. F. Westchuk, Asst. Cashier.

2-18 7

Endorsed on reverse side: John Lazia.

Perforated "Paid 9-20-28 "

Exhibit 6

"2-138 CITIZENS TRUST & SAVINGS BANK,
6 West 55th Street, Chicago, Mar. 28, 1928
No. 133281.

Pay to the order of A. L. Spindler and J. H. Ellis, \$5000.00

\$5000 and no cts.

To State Bank of Chicago, 2-18 Chicago, Ill. R. F. Westchuk, Asst. Cashier.

Endorsed "Pay to the order of John Lazia,

A. L. Spindler and J. H. Ellis

John Lazia" Perforated 2-Paid-18 4-2-38

Then ensued the following colloquy between Court and counsel:

"The Court: May I inquire, Mr. Vandeventer, upon what theory you offer this exhibit?

MR. VANDEVENTER: To show, if your Honor please, that he purchased the operating right of this dog track from Mr. Lazia. I will later, if the Court will permit me, connect that up.

MR. WALSH: I think, if your Honor please, the connection ought to be made now if there is going to be any connection made. I ask him to state the connection.

THE COURT: How much of this exhibit are you offering? All of it?

MR. VANDENVETER: All of it except the endorsement of Mr. Lazia.

THE COURT: Objection overruled, if it is offered without that last endorsement.

MR. WALSH: Exception."

The witness identified government's Exhibit 7 as having been purchased by him, and that he mailed the same to the Merchants Bank of Kansas City, which exhibit was then offered in evidence over the objection and exception of the defendant, and is in words and figures as follows:

"CITIZENS TRUST & SAVINGS BANK,

6 West 55th Street, Chicago. Apr. 12, 1930. No. 156329

Pay to the order of Merchants Bank, Kansas City, Mo. \$3000.00 3000 and 00 cts.

Cashiers Check R. F. Westchuk, Asst. Cashier.

Endorsed: Pay to the order of any Bank or Banker, 18—34 Apr. 14, 1930 18-34

Previous Endorsements Guaranteed Merchants Bank, Kansas City, Mo.

Perforated: Paid 4-16-30 2-1-38 "

The witness delivered personally the \$12,000.00 draft or check to Ray Edlund; at time of delivery John Lazia, Meyer Goldberg and two or three other men whom he didn't know were present. The value of the property acquired at the time of the purchase was somewhere between six and ten thousand dollars, and that he was personally doing

business with the Chicago bank during 1929 and 1930, and that after acquiring the interest in the dog track, he and his associates operated under the name of the Missouri Kennel Club.

CROSS EXAMINATION

Mr. Edlund, Mr. Lazia and Mr. Goldberg were present when the \$13,000.00 was paid, as evidenced by Government Exhibit 7, and Mr. Goldberg was the attorney who was representing the witness and his associates at the time. He did not know any of the other persons present and was not acquainted with Mr. Weissmann. The witness had no recollection of the check being cashed in his presence. He was a trustee for the eastern group, as it was called, and he knew that Mr. Lazia acted as trustee for the western group. Mr. Lazia stated when he was urging that the various sums of money be paid, that the money had to be divided with the group which he represented. The witness believed the track was operated in 1929 for forty or fifty days and that it was stopped some time during that period by an injunction. He afterwards reimbursed Mr. Lazia \$3,000.00, which he had spent in connection with the suit; that no note was given for this \$3,000.00 indebtedness. That the payment on the \$3000.00 note was to pay the rent to the groups that had the interest in the fee. That no time from the opening of the track to the closing did it operate at a profit; that there was, in fact, a loss of something exceeding \$30,000.00 in the operation.

RE DIRECT EXAMINATION

Witness reiterated that the records of the Electric Holding Corporation had been destroyed. Then the witness identified the photostatic copies of paper labeled "Missouri Kennel Club, Daily Receipt and Disbursement Report", whereupon the government introduced in evidence government's Exhibit 8, over the objection and exception of the defendant, photostatic copy of said exhibit being attached hereto.

After offering Exhibit 8, the following objection and colloquy was made and ensued between the Court and counsel:

"MR. WALSH: I would like to object to that as entirely irrelevant because the testimony already shows that this defendant had nothing to do with the operation of that track whatsoever, that he has no knowledge of this document, and that it is in no way binding upon him.

THE COURT: If you wish to develop that suggestion by examination of the witness as to what knowledge he does have of this document, you may.

MR. WALSH: As to whose knowledge?

THE COURT: The witness's.

MR. WALSH: Did you have anything to do with the drawing of this document?

THE WITNESS: It was drawn under my supervision, yes.

MR. WALSH: Where?

THE WITNESS: Here at Kansas City.

MR. WALSH: That makes no difference with my objection, your Honor; my objection is that it is in no way binding upon the defendant.

THE COURT: I consider that it is competent by reason of the question asked the witness upon cross examination as to whether there were any profits of this enterprise; objection overruled and exception allowed. There is nothing for you to answer, Mr. Witness; no question has been asked you.

MR. WALSH: Let me see the date of that, please. I also wish to object to this for the reason that on its face it appears to be a record of one day, to wit: April 38th — from April to July, I guess it shows; a total net income of \$681.41 and in no way contradicts what the witness said upon cross examination. He is their witness anyway.

THE COURT: What is the year covered by that exhibit?

MR. WALSH: 1939.

THE COURT: Objection overruled.

MR. DILLON: It is 1938.

MR. WALSH: It is 1938, I object to it for that reason also.

THE COURT: If it concerns the year 1938 what is your purpose, Mr. Vandeventer, unless it is merely to further explain the witness's answer upon cross examination?

MR. VANDEVENTER: That is it exactly.

THE COURT: It will be received for that purpose. Overruled. Why don't you read it?

MR. WALSH: One minute, if your Honor please, I would like to object to that for another reason; if it is introduced to contradict a question that I asked this witness on cross examination as to whether they made any profit in 1939 or 1930 and he offers to contradict it by showing that in 1938, in an operation of three months they made

\$600.00, that certainly does not contradict it.

THE COURT: Your question was not as to whether any profit was made in 1939 or 1930. Your question was asked whether there was any profit from the beginning to the end of the enterprise and he said none, that they lost \$30,000.00. That is my recollection.

MR. WALSH: That does not contradict that, if your Honor please. MR.

VANDEVENTER: I just want to read the totals.

MR. WALSH: I object to that.

THE COURT: What will it mean to anybody?

MR. VANDEVENTER: All right, I will read it all. (reading):

Missouri Kennel Club, Daily Receipt and Disbursement Report, final race day
7-36-38, total income 43879, \$190.00 —'

MR. WALSH: If your Honor please, I thought you ruled out the body of that. The totals are given there at the bottom. I could not carry it and I do not see how a juror could carry it.

THE COURT: What I just now said was if you desire to offer the exhibit and want the jury to know what it contains, you will read the whole of the exhibit rather than letting each juror take the time to look over it.

MR. WALSH; I didn't understand, your Honor.

MR. VANDEVENTER: I think if your Honor please we can simplify it by just reading the totals.

THE COURT: You don't have to read it at all if you don't want to; you can use it in the argument of the case.

MR. VANDEVENTER: I will just not read it at this time. That is all, Mr. Woodrow."

IRWIN J. ZUEHLS, a witness produced on the part of the government, testified as follows:

DIRECT EXAMINATION

That he was a deputy receiver in charge of the affairs of the Citizens Trust & Savings Bank of Chicago, a defunct banking institution; that he had charge of all of the records and documents of that bank. Thereupon counsel stipulated that Government's exhibits 5, 6 and 7 were issued by, cleared through and were paid by the Citizens Trust & Savings

Bank of Chicago.

JOHN A. WOODROW, having theretofore testified in said cause was recalled for further cross examination:

He testified that he was mistaken when he said that the dog track had operated in the year 1929 and that the same had not operated in 1939 and 1930; that it was operated in 1938. No re-direct examination.

- o -

H. L. DUNCAN, a witness produced on the part of the government testified as follows:

DIRECT EXAMINATION

That he was an investigator in the Alcoholic Beverage Unit of the Internal Revenue Bureau and held that position and kindred positions with the government for over thirty—three years. That he is the acting investigator in charge of the Alcoholic Beverage Unit, that upon May 27, 1931, he was special agent in charge and had an interview with the defendant, Mr. Lazia; on that occasion he asked him what business he was in and he said the dog track business and finance business.

CROSS EXAMINATION

That the interview occurred in the Waltower Building, in Kansas City and he told him that he was engaged in that in 1931, that he didn't know the dog track ever ran.

The subject of the interview was not concerning the case then upon trial. A motion to strike all of the testimony of the witness was denied and an exception saved.

EDWARD D. ELLISON, a witness produced on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he had been a practicing attorney in Kansas City for forty years and acquainted with John Braecklein; that he represented him for about thirty years, and represented him in relation to the sale of the real estate in North Kansas City; he represented Edward Braecklein in the sale of some property to John Lazia, legally described as lot 2, Braecklein Subdivison in Clay County, Missouri; that he drew up the contract of sale for Edward W. Braecklein of Patterson, New Jersey, which he produced and the same was marked Government's Exhibit 9. Whereupon counsel for defendant objected because of the irrelevancy of the document and because the same was not mentioned in the Bill of

Particulars, which was overruled., Exception saved.

Witness testified that Mr. Lazia was there once in relation to the contract.

Whereupon Government's Exhibit 9 was introduced in evidence and is in words and figures as follows;

"REAL ESTATE CONTRACT

THIS CONTRACT, made and entered into this 25th day of September, 1929, by and between EDWARD W. BRAECKLEIN, the seller and John Lazia the buyer, Witnesseth: That seller has sold and agrees to convey as herein provided the following described real estate in Clay County Missouri, to-wit:

Lot Two (2) of Braecklein Sub-Division, except that part taken for a Highway for the price and sum of Five Thousand and Fifty-Seven - - 50/100 Dollars, to be paid by the buyer as follows: Five Hundred- - -00/100 Dollars at the signing of this contract, the receipt whereof is hereby acknowledged by the seller and which is deposited with E. D. Ellison at Kansas City, Missouri as part of the consideration of the sale, the balance whereof is to be paid in the following manner, to-wit: \$2057,50 cash on delivery of deed as herein provided and note for Twenty-Five Hundred Dollars (\$2500.00) signed by buyer and wife, if married, due/three years after date, deed of trust also to be signed b buyer and wife, if married.

All deferred payments to be represented by notes secured by deed of trust on above described property containing usual provisions, drawing interest from date of deed at the rate of six percent per annum, payable semi-annually.

The seller to pay in full all State, County and Municipal taxes, general and special, and all assessments, which are a lien on said property, that can be paid at the date of this contract, but none other

The rental from said property shall go to the seller pro-rated to date of the deed and to the buyer thereafter.

The seller agrees to furnish to the buyer a policy of title insurance written by the Kansas City Title and Trust Company and the Missouri Abstract and Guaranty Company, on the property hereby sold, and agrees to make application forthwith for said policy and to deliver to the buyer the preliminary settlement certificate within twenty days from date hereof.

If the title be good, the seller shall deliver for the buyer at the office of said Missouri Abstract and Guaranty Company, Warranty Deed, properly executed and conveying said property free and clear from all liens and encumbrances whatsoever, except as herein provided; the buyer shall then and there pay the balance, if any, of said cash payment, and deliver to the seller the note and deed of trust, if any, hereinbefore provided for, and furnish the seller with insurance policy containing loss clause payable to the seller as his interest may appear; the buyer to accept assignment of insurance now in force, paying therefor the unearned value pro-rated at present current rate.

If the title is defective the buyer shall specify the objections in writing to be delivered to the seller at the office of Missouri Abstract and Guaranty Company within ten days after such delivery of the abstract; the seller shall have the defects rectified within thirty days from date of delivery of such objections, but in case such defects in the title cannot be rectified within that time, this contract shall be null and void, and the money deposited as aforesaid shall be returned to the buyer and the abstract returned to the seller.

If the seller has kept his part of this contract, by furnishing good title as herein provided, and the buyer fail to comply with the requirements within five days thereafter, then the money deposited as aforesaid is forfeited by the buyer and this contract may or may not be thereafter operative, as the option of the seller

Time is of the essence of this contract,

IN WITNESS WHEREOF, said parties hereunto subscribe their names.

Executed in duplicate. Edward W. Braecklein, E. D. Ellison, John Lazia.

This contract provides for both abstract of title and guaranty policy.

Deed to Virginia L. McCune , del 10/14. 29 to John Lazia ".

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A \$500.00 payment was made upon delivery of the contract by G. L. Samples a real estate agent of North Kansas City that he received the sum of \$4,557.50 and deposited that money in the Fidelity National Bank.

Government's Exhibit 10 was marked for identification, a cashier's check dated October 14, 1929, No. 200,536 on the Commerce Trust Company and corresponding with what was paid to him at the time, whereupon government's said Exhibit 10 was introduced in evident over the objection and exception of the defendant, and is in words and figures as

follows:

"COMMERCE TRUST COMPANY 18-1 Kansas City, Mo. Oct. 14, 1929 No. 200536

Pay to the order of J. Lazia, \$4557.50, \$4557.50 and 50 cts.

Cashier's check J. R. Hughes, V. P. Countersigned: Roy L. Cole.

Endorsed: Pay to E. D. Ellison, J. Lazia E. D. Ellison.

Perforated 18-Pd-I 10-15-29"

- o -

The witness then prepared the deed and forwarded the same to grantor in Patterson, New Jersey, for signature. Thereafter he delivered the same either to Mr. Lazia, or to Mr. Samples, who were in his office. The deed was originally prepared in the name of Hallie Chesser as grantee, but in closing the transaction the name of the grantee was changed to Virginia L. McCune, and instead of carrying out the contract and paying part cash and the balance on the note described in and secured by the deed of trust, the balace was paid in cash.

The witness was unable to identify either the grantee or Hallie Chesser.

Thereupon a motion was made by counsel for defendant moving to strike all of the testimony of the witness Ellison because of its incompetency, irrelevancy and immateriality, and because it did not tend to prove any issue in the case and was not set out in the Bill of Particulars, which motion was denied and exception allowed the defendant.

- o -

DEE MOSBY was recalled as a witness for the government, whereupon government's Exhibit 1 was shown to have been duly recorded in the office of the Recorder of Deeds in Clay County, Missouri, being warranty deed from Edward W. Braecklein and Ida Braecklein his wife, to Virginia L. McCune. Whereupon the pertinent page of the permanent record of Clay County, Missouri, was introduced in evidence and marked Government's Exhibit 11, and because it is admitted as such by counsel for the defendant, the verbatim statement of the exhibit is omitted.

OSCAR R. LEWEKE, being produced as a witness on the part of the government, testified as follows:

DIRECT EXAMINATION

That he was an employee of the Commerce Trust Company, in charge of the bookkeeping department; he identified government's exhibit 10 as having been issued by the Commerce Trust Company of Kansas city, Missouri. Two cashier's checks were issued at that time, one in the amount of \$1443.50 and another one in the amount of \$4557.50, issued in favor of J. Lazia. He testified the records showed the two cashier's checks were purchased by a C. D. on the Merchants Bank, There was an objection to this line of testimony which was overruled and an exception saved. The amount of the C.D. on the Merchants Bank was \$6,000.00, the same was dated October 14, 1929. Government's Exhibits 12 and 13 were marked for identification, and upon being introduced into evidence an objection was made to them for the reason that they constituted no proof of income, and further they were not specified in the Bill of Particulars, which objection was overruled and exception allowed. Exhibits 12 and 13 are in words and figures as follows:

Ex. 12 "COMMERCE TRUST COMPANY 18-1

Kansas City, Mo. Oct 14, 1929 No. 200535

Pay to the order of J. Lazia \$1442.50

1442 and 50 cts Dollars

Cashier's check

J. G. Hughes, V.P. Countersigned: Roy L. Cole.

Endorsed: J. Lazia Perforated: 18-Pd-I 10-15-39"

- o -

Ex, 13 "Kansas City, Mo. Oct. 9, 1929 \$6000.00

This certifies that J. Lazia has deposited with the MERCHANTS BANK of Kansas City, Mo. Six thousand no/100 Dollars, payable to the order of same, in current funds on the return of this certificate properly endorsed 3-6-9-12 months after date with interest at the rate of 3 per cent per annum. No interest after maturity.

Not subject to check No. 2640.

CERTIFICATE OF DEPOSIT, MERCHANTS BANK, KASASCITY MO.

R. A. Edlund, Cashier.

Endorsed: J. Lazia; Charles V. Carrollo; Merchants Bank by

R. A. Edlund, Cashier.

Perforated: Paid 10-15-29 18-76"

- o -

VIRGINIA L. MC CUNE, a witness on the part of the government, testified as follows:

DIRECT EXAMINATION

That her maiden name was Virginia Chesser and that the defendant was her son-in-law; that she remembered a real estate transaction she had in North Kansas City; that all she knows about it was that Mr. Lazia asked her if he might use her name in the transaction and she told him yes. She did not know whether or not the property had ever been deeded out of her name. Did not remember whether she ever saw the deed. Whereupon defendant moved that all the testimony of the witness, McCune, be stricken because of its incompetency, and its lack of bearing upon any issue in the case.

This objection was overruled, and exception saved.

- o -

TIM CRUMMETT, a witness produced on the part of the government testified as follows:

DIRECT EXAMINATION

That he resided in North Kansas City, Missouri, since 1912 and was acquainted with John Lazia. He likewise said that he was acquainted with Arthur M. Slavin, and with Arthur E. McNamee, that he first met Mr. Lazia in 1929 at the dog track in North Kansas City, Missouri; that the dog track is situated to the east of Cuban Gardens and about fifty feet from the dog track fence. He saw Mr. Lazia at Cuban Gardens, and he first met Mr. Slavin at that place. He saw Mr. Slavin there every evening during the time that Cuban Gardens operated. Cuban Gardens operated from the 15th of September, 1929, and ran some five or six months and then it was closed and it stayed closed until the following September of 1930 and it opened up some time between the 15th and 18th of September, 1930, and ran until New Year's morning. That he had a connection with the institution from which he received a percentage.

Counsel objected that answer was in no way binding on the defendant. It was overruled and defendant saved his exception. Upon being asked the percentage of what, there was an objection as not being binding on the defendant, which was overruled and exception saved. He was to receive twenty five per cent of the profits of the place after expenses. The "business that I transacted was the local, in the county over there where I

lived."

Whereupon the following proceedings occurred in connection with the testimony of the witness Crummett:

"Q I mean what business was transacted in Cuban Gardens from which they would derive a profit?

MR. WALSH: I object to that as incompetent, irrelevant and immaterial and a matter that might be prejudicial to this defendant, for the reason that there is no connection shown between him and anything that this man did.

THE COURT: Do you propose to show or may be you have offered evidence along that line already, that Mr. Lazia was a part owner of Cuban Gardens?

MR. VANDEVENTER: Yes, sir.

THE COURT: You are now asking what the nature of the business was that was conducted there?

MR. VANDEVENTER; Yes, sir.

THE COURT: The objection is overruled.

MR. WALSH: Exception."

The business conducted was what you could call a casino, gambling room on one side and dining room on the other side; dice, roulette and twenty-one were played there.

Twenty-one is a card game, and roulette is a wheel, a roulette wheel is all; I can't explain very much about it because I don't know very much about it.

He testified his duty was to take care of the local officers of "my county." That the dates he was testifying to were 1939, from September 15th for some five or six months. The witness was not positive about when the place closed.

"Q Was there any of the money taken in, in this institution, turned over to you? A Yes, sir.
Q How much?

MR. WALSH: I object to that if your Honor please, unless it is shown there was some connection between this witness and
Mr. Lazia.

THE COURT: Certainly. Do you intend to show some connection?

MR. VANDEVENTER: Yes, sir.

THE COURT: On that assurance the objection is overruled."

Mr. Donegan was the man who first talked to the witness about Cuban Gardens, and that varying sums of money were turned over to him. Some times he would cash a \$500.00 check or maybe a \$1,000.00 or maybe \$1500.00 check or two or three thousand dollars, and after Mr. Donegan's death he carried on his negotiations with Mr. McNamee. At this point the government had the witness Crummett step aside after a motion by the defendant that all the foregoing testimony be stricken, which motion was temporarily denied and exception saved.

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ARTHUR MCNAMEE, a witness produced on the part of the government, testified as follows:

DIRECT EXAMINATION

He had known Mr. Lazia for fifteen or eighteen years; that he resides at 5901 Grand Avenue, in Kansas City, and that his business was "speculation", that is gambling. That he knew the location of Cuban Gardens and where the dog track was located; that he had an investment of \$1500.00 in the dog track and that Cuban Gardens was open about six months the first time and that it had closed for the summer of 1930, but re-opened around the fall of 1929 and closed in the summer of 1930 for a few months, and opened up again in September, 1930, and operated until 1931. The place was a night club, "supper club". There was a casino on one side and a dining room on the other and dance floor. He described the casino as the gambling part. He first became interested in Cuban Gardens when "I propositioned Mr. Lazia to erect the building", in the summer of 1929. Mr. Lazia agreed to erect the building if he would operate it, and he did erect the building and Mr. McNamee operated it. Their agreement was as follows: "After all operating expenses were paid and the cost of the building and equipment, Mr. Lazia and I, he was to take fifty per cent and I was to take fifty percent." They had any number of employees, such as dealers who operated the gambling tables. The casino provided dice, cards and a roulette wheel. Mr. Slavin handled the money for the institution and Mr. Crummett was to take care of the local part of it. By the local parties he meant that Crummett was to see to it that we operated and were not molested in any way. He advanced money to Crummett from time to time, averaging around \$500.00 per week. He did business with the North Kansas City First National or Third National Bank. The building was all

completed before they moved in; that was in the fall of 1929, in September. He was associated with Mr. Lazia for about three months in the enterprise, or until about January, 1930, at the time Mr. Lazia sold out, he was still "in \$13,000.00, if I remember right", which represented a balance on his investment in the building and equipment. The \$13,000.00 did not include the real estate. It was a part of his agreement with Lazia that he was to pay \$1500.00 a year ground rental, and his agreement after Mr. Lazia sold out was that he could operate the enterprise as long as he paid the ground rental; just a verbal agreement; and they could have stayed there as long as they cared to.

The ground rental was raised from \$1500.00 the first year to \$3,000.00 the second year, in advance. Mr. Lazia sold out; it paid him \$6,000.00, and the balance at the rate of \$500.00 per week; that was upon the \$13,000.00 that we have mentioned heretofore. Then he finally paid him the entire amount of \$500.00 per week, and he obtained the money to pay him from "bank roll."

The witness did not pay him personally, but Slavin left the money at the Merchants Bank. The amounts paid hereby were by cash or cashier's checks.

"Q Was there any other expenditure on the property except the \$13,000.00? A Of course, that was what the balance was that Mr. Lazia had in the property at the time he sold out. Up to then we had paid out, of course, he had and we had reimbursed him all told around thirty or thirty-two thousand dollars if I remember right; at the time he sold out he still had \$13,000.00 coming and that would reimburse him for what he had in the property.

Q Do you remember how you paid the rent for 1929?

A Mr. Slavin paid it. As I say, it was advanced of course; it was either in cash or cashier's check or some cash and some cashier's check.

Q Did you have any written agreement with anyone in relation to this? A Everything was verbal.

Q Was any of the expenses of this institution paid out of the operating income of the business? A Well, as I said, from time to time if Mr. Lazia advanced it we reimbursed him. Up to the time that he sold out Mr. Lazia had had all of his advances returned but \$13,000.00. We either paid some of them or returned it to him if he had paid it; I cannot

recall which.

Q What I am trying to get at, were these payments made out of the income of the business? A Well, it would be paid out of the bankroll and the income - - there was no income; we were still operating at a loss, had not our original investment returned yet.

Q The original investment, you mean the purchase price of the building and the land? A Equipment.

MR. WALSH: He didn't say that.

Q The building.

THE COURT: Sustained.

Q What was the equipment that you talk about? A The equipment for the dining room; kitchen equipment and dining room equipment and furnishings and stuff like that."

The witness could not state the total value of the personal property. He did not know how much went into the investment; Mr. Lazia took care of that part of it, and "it was just a case of a gentleman's agreement; we just took each other's word for those things."

He never severed his connection with Cuban Gardens; he ceased operating this in January, 1931, and had not operated it since and so far as he knows the property is still standing on its original site.

CROSS EXAMINATION

He was an operator of gambling games at different casinos. At present he is operating in Florida; at the time of operation of Cuban Gardens, he operated the roulette wheel, card games, dice games and "I believe we had a chuck-a-luck", and a game they call a "hazard". There was a hallway in between the gambling portion of the building and the dining room, which also had facilities for an orchestra and dancing purposes, and that that portion of the building what is known as a night club, and floor show.

He understood Mr. Lazia controlled the property in the summer of 1929 and "propositioned" Mr. Lazia to build a night club; that was part of the property that the dog track stood on, that if he would, he would operate it and that when the expense of building the building was made and he reached the stage where there was any profit, he and Mr. Lazia would divided it half and half.

That the custom among gamblers and race track men was to use cashier's checks practically exclusively, and that they handle the checks and pass them just as currency is

passed, regardless of endorsements. Some times they are not endorsed at all and they pass like a \$5.00 bill or a \$100.00 bill, and practically all of the banks issue such cashier's checks, during the regular course of business. Mr. Lazia retired from any connections with him on or about the first day of January, 1930, which time he paid him \$6,000.00, "to the best of his knowledge." Mr. Slavin was there in the nature of a partner representing the witness and he had known Slavin theretofore, and Slavin had been an operator for a man by the name of Mr. Baughman. Baughman had been in the gambling business forty five years, and he knew Slavin was the man who represented Baughman; and all of the men who operated games of chance that he knew used cashier's checks instead of cash. After the payment of the \$6,000.00 to Mr. Lazia on the day of the termination of the partnership, he agreed to pay him the balance at the rate of \$500.00 per week. The balance was around \$7,000.00, and when he left he paid him in either cash or cashier's checks. The \$500.00 payments were finally completed and that ended Mr. Lazia's connection with Cuban Gardens entirely, as far as he was concerned. At the time he paid him off he paid him more than Mr. Lazia had invested in the property. The witness was not present when the building was going up and Mr. Lazia paid the labor and bills that had to be paid. They had an accounting afterwards, and he had all the checks paid for labor and material that went into the building, and

"Q. So he never got any profits out of it at any time?

"A. No, sir.

"Q He just had a return of what he put into it?

"A. That is true.

"Q. And the balance you paid was the balance that was owing on account of what he had paid in there for the building and equipment] A. That is right.

"Q. He had nothing to do with the operation of that place at all? A. No; I operated it.

"Q. He had nothing to do with playing the games or anything of that kind? A. No, sir.

"Q. Absolutely nothing? A. No, sir."

RE-DIRECT EXAMINATION.

The cost of the erection of the building and of the equipment to the best knowledge of the witness was \$30,000.00 to \$32,000.00. Prior to the payment of the \$13,000.00, Mr. Lazia had been reimbursed for the difference. The payments were made to him out of the bank

roll ; the bank roll would fluctuate - - that is, it might be winner tonight and tomorrow night it might be loser. The enterprise started with an original bank roll of \$5,000.00 and "Q It depended on the winnings of the house, is that right?

A Or the losses.

Q What percentage did the house get from the business?

A The house?

Q Yes, Cuban Gardens. Did you take out a percentage of the amount played? A No, I would get back my bank roll first before there would be any profits. The place hadn't paid off yet . It was still in the 'red' as you call it.

Q Explain the modus operandi of obtaining money on this investment? I don't understand it. A Why, it is a gambling proposition. I advanced a bank roll and if we quit the loser that night, I am the loser. We keep track on the books how I stand. If the roll is bigger because I am the winner,we

take so much out and pay those bills that had to be paid.

We advance it as we go along.

Q Did the business get a percentage of the amount of money gambled with there in the evening? A I don't understand what you mean.

Q Did you take a rake—off out of the pots? Do you understand that? A No.

Q You didn't get that? A No; there is no pots. You put up a bank roll and the public gambles against it. You leave it up there and you open tomorrow night the same way.

I don t seem to be making myself clear there.

Q Do you mean to tell the jury that you built a place over to gamble in and invited people in and just took a chance on gambling with them? A Of course.

Q You didn't get a percentage of the money played with?

A There is a percentage in gambling; yes. There is a percentage there, but you don't take it.

Q Explain to the jury what you mean by this percentage.

A I don't know how to explain it.

Q What do you mean by "percentage"? A Like in a dice game you put a bank roll up there and furnish shots. If no one else wants to fade, the bank roll fades, that is all.

THE COURT: Let me ask you a question. I am not going to inquire into the technicalities

of gambling; I know I would never be able to understand that. But I want to ask you about this matter: As I understand you, your agreement with Mr.

Lazia was that he would build the building and furnish the equipment and that then after you had repaid him the amount so invested for the building and equipment, he was to get fifty per cent of the profits?

A That is right.

THE COURT: Now, when you discontinued your relation with Mr. Lazia, as I understand you, you agreed to pay him \$13,000.00 which was to reimburse him for the balance still owing on his investment; is that right?

A That is true.

THE COURT: What was done, if anything, touching his interest in the profits of this business after his investment had been returned to him?

A There hadn't been any profits, up to this time.

THE COURT: He had a contract with you that he would in the future?

A He and I became unfriendly and he sold his half interest out to me.

THE COURT: Did he sacrifice entirely and for nothing that part of his agreement?

A Yes. He said 'Give me what I have in here and I will step out.

THE COURT: That clarifies it.

Q Did you verify that Mr. Lazia had \$13,000.00 coming to him, or did you just take his word for that? A I just took his word for it. He showed us bills from time to time and I was shown that the construction and equipment cost around \$30,000. to \$32,000. We kept track, and at the time he and I fell out there I understood he was in \$13,000. That is what he agreed to take.

TIM CRUMMETT, a witness for the government recalled.

RE DIRECT EXAMINATION

He testified that he took care of the local situation. One night when the place (Cuban Gardens) opened up in 1939, he heard Mr. Lazia say "This fix over here in this county is too high." He never said anything else that indicated that he had anything to do with the Gardens in so far as he knew. The "fix" meant "take care" of the sheriff and the prosecutor and the other officers that belong in that county, so that it was possible to gamble at that place.

RE CROSS EXAMINATION

Mr. Lazia was talking to Mr. McNamee when he said "I would like to get out of here; it is terrible to pay off \$500.00 a week."

ARTHUR M. SLAVIN, a witness produced on the part of the government, testified:

DIRECT EXAMINATION

I live in New Orleans, Louisiana and have been there close to three years. Our business is Club Room business, or night club; that is, I look after the business on the floor whatever might be in the building in the way of gambling, and in a general way, everything that might be connected with it. The witness was a resident of Kansas City for many years, probably thirty, and was here during the year 1939. During that time was connected with Cuban Gardens, known as a night club or supper club, located in North Kansas City. The establishment had a dance floor and dining room on one side and a casino on the other side for gambling. Dice games, card games, games pertaining to cards and dice in general were played at the casino. Mr. Crummett was a man who looked after taking care of the outside, "the fix", "it is termed in those words." McNamee and Mr. Donegan were the general bosses and he took his orders from them. Mr. Donegan died during the early operation of Cuban Gardens, The witness handled the money in the casino part of it as did Mr. McNamee. Mr. McNamee would come and ask him for money and he would give it to him. Mr. Donegan had charge of the restaurant side of the enterprise. Several other people worked there whose names he did not know. Witness was unable to recall how much money he had advanced Mr. Crummett, but that after different times he came and got money for him for what they call "the fix". The amount was \$500.00. Mr. Cummett would get the money once a week. Mr. Slavin did business with the Home Trust Company, Twelve Street, Merchants and Baltimore Banks, and he thought he had purchased some Liberty National Bank checks. He likewise did business with the North Kansas City Bank. The pay roll checks for the dining room were carried in his name and he looked after the dining room matter on one occasion, while Mr. Donegan was sick. The witness testified that when they opened up, if they had a profit "that is what you would call a gain" he would mark it down on a little sheet of paper which he kept in his pocket, and Mr. McNamee would check it over after the night's play. They converted all of the cash into cashier's checks, and if they

were in need of cash they would convert the cashier's checks into cash. They did not keep much money around the place; people in that business could not keep much currency. He thought the rent on the place was \$1500.00 but was not positive about it. "I kept no record of the number of cashier's checks purchased at the Merchants Bank." He would go to that bank practically every morning. He possibly bought more than one cashier's check at a time.

At this point in the witness's testimony, the Special Assistant Attorney General of the United States produced various exhibits, Nos. 14 to 73, which were marked for identification, and the witness was examined about them, but they were not introduced in evidence.

The witness identified exhibits marked for identification Nos. 18, 17, 15, 16, 52, 51, 53, 50, 54, 55, 56,57,58, 62, 64,67 73, 72 and 71 as being checks made payable to him, and as having been purchased and endorsed by him. Concerning exhibits marked for identification, and Nos. 14, 23, 24, 22, 21, 28, 25, 26,20, 27, 19, 29, 30, 31, 32, 33, 34, 49, 40, 39, 35, 36,37,38,42,41,44,45, 14, 48, 46, 53, 59,60, 61, 63, 65, 66, 68, 69 and 70, the witness testified that the exhibits or checks were made payable to him, and that certain of them made payable to others might have been purchased by him, but that none of the checks bore his endorsement.

During the identification of the aforesaid exhibits the following objection was made by defendant's counsel and the following colloquy ensued between Court and counsel: "MR. WALSH; Now, if your Honor please, I think at this point it might be well for me to make my objection so that we will not be going through and it will not be confusing, and so the checks will not be put in here that were not submitted in the Bill of Particulars, The only checks that we find referred to in the Bill of Particulars, of all these checks, are contained in the following items: Check No. 64956, Item 29 in the Bill of Particulars; Check 65743 for \$6,000.00 is Item 41 in the Bill of Particulars; Check No. 65644 for \$100.00 is Item 39 in the Bill of Particulars; Check 66091 for \$1000.00 is Item 44 in the Bill of Particulars; Check 67402 for \$2200.00 is Item 51 in the Bill of Particulars.

Now, the following are shown as deposits if your Honor please on these dates: Item 18, \$500.00; Item 19, \$500.00; Item 21, \$500.00; Item 24, \$500.00; Item 26 \$500.00; Item

62, \$1,000.00; Item 27, \$500.00; Item 64, \$1500.00.

Now we object to the further questioning of this witness on anything whatsoever as to any of the checks that are not mentioned. I was waiting until they closed a certain date here to make this objection and I move to strike from the record all reference to any checks except those that are mentioned in the Bill of Particulars as being chargeable to income.

THE COURT: I will hear what you have to say. You have made no offer concerning these checks as yet?

MR. WALSH: No, he hasn't, but here is what I say your Honor.

"Under the decided cases that we have given to your Honor, it not only would be very confusing to get at the result of this thing but it might be highly injurious to the defendant to introduce a great number of items and a great number of checks that have no reference to the question of income whatsoever.

THE COURT: There is merit in that objection. I do not know what you are trying to get at, Mr. Vandeventer.

MR. VANDEVENTER: I am identifying these. Now some of these the evidence will show were not deposited as this check; they would purchase a cashier's check with these, later deposit the cashier's check. I can't just offhand state and that is the reason I haven't asked to introduce them is because I cannot offhand say exactly what items these go into but I can assure your Honor that I am not intending to introduce anything that is not covered in the Bill of Particulars.

MR. WALSH: But the trouble is, if your Honor please, that the gentleman has. I have tried to keep these separate and to give your Honor an understanding about it without going into details. I have taken checks that are not in the Bill of Particulars at all that were given before this man had anything to do with Cuban Gardens, the witness on the stand. I have taken those checks and segregated them, that were paid prior to the opening of Cuban Gardens; the checks that were coming in or were handled as cash during the time that Cuban Gardens were being built; I then took the checks that were paid down to December 17, the time it is alleged that this arrangement ended and I have followed those along and checked them off, Mr. Walsh has, with the Bill of Particulars. Now we have those segregated. I think at this point any that are not properly in the Bill of

Particulars ought to be excluded; otherwise we will get out in an uncharted sea that nobody can follow.

THE COURT: It cannot be determined of course whether a given piece of evidence is connected with some one of the allegations in the Bill of Particulars, from the item of evidence alone. It may be connected hereafter with some item in the Bill of Particulars. I cannot tell whether that connection will be made. The objection is overruled for the present and may be renewed later.

MR. WALSH: Save an exception."

And towards the close of the direct examination the following occurred:

"MR. WALSH: I make the same objection to these as I did to the others.

THE COURT: The objection is overruled for the present, it may be renewed.

MR. WALSH: Save an exception."

Whereupon, Mr. Walsh reserved cross examination of the witness "Until I see if there is an effort made to use these checks."

ARTHUR E. MC NAMEE, was recalled as a witness on behalf of the government:

FURTHER DIRECT EXAMINATION.

He identified government's exhibit 74, being a cashier's check on the Liberty National Bank of Kansas City, payable to his order in the sum of \$800.00. He testified he purchased the check; that he endorsed it, and he said he remembered that particular item. He said he gave it to Mr. Lazia and Mr. Lazia endorsed his name on it. He said that a number of years before that he and Mr. Lazia had exchanged the right to endorse each other's name upon checks, Mr. Lazia did so in this particular instance, and the Liberty National Bank refused the endorsement on the check, and called McNamee, and had him come to the bank to endorse it. The bank told him that the institution now being a National bank, that they were much stricter than a trust company, that is why he remembered that particular item.

No cross examination.

WILLIAM B. DUKE, a witness produced on behalf of the government testified as follows:

DIRECT EXAMINATION

That he lived at 5430 Locust Street, in Kansas City and was the President of the Glendale Beverage Company. He was formerly president of the Duke Motor Company.

The paid up capital of the Duke Motor Company was \$99,500.00, the par value of each share being \$100.00.

Thereupon the government's Exhibits 75, 76, 77, 78, 79 and 80 were marked for identification.

Mr. Duke had the stock book of the Duke Motor Company and the cancelled checks showing the payments of dividends upon certain of the certificates of stock. The government had marked for identification, Government's Exhibits Nos. 81, 83, 83 and 84, and he testified that Government's Exhibits Nos. 81, 83, 83 and 84 were the dividend checks paid on certificates of stock Nos. 3, 7, 10 and 11 of the Duke Motor Company. Thereupon government's Exhibits 76 and 81 were introduced and received in evidence without objection, and are as follows:

Exhibit 76 is Stock certificate stub of stock book of Duke Motor Company, No. 7 for 35 shares issued to John Lazia, dated June 38, 1929.

Exhibit 81

"LIBERTY NATIONAL BANK 18-21-10 Check No. 4836

Kansas City, Mo.

Pay to order of John Lazia \$300.00 TWO HUNDRED DOLLARS

Kansas City, Mo. Aug. 6, 1930 In full payment of account as shown

below: DUKE MOTOR CO.

W. B. Duke Pres.

8% Dividend \$300.00

Endorsed: John Lazia By R. A. Edlund.

Perforated: "Pd. 18-9 8-12-30"

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There was no cross examination.

PERRY D. SIMS, a witness produced on behalf of the government testified as follows:

That he is related to Raymond Edlund, cashier of the Merchant's Bank. He never owned any stock in the Duke Motor Company; never purchased any stock, never had a stock certificate delivered to him; did not write the endorsement on the back of Government's Exhibit 84, nor did he receive \$200.00 on the check represented by Government's Exhibit 84.

There was no cross examination.

E. B. BRADBURY, a witness produced on behalf of the government testified as follows:

DIRECT EXAMINATION

That he was cashier of the Stockyards National Bank, Kansas City, Missouri; that Government's Exhibit 85 marked for identification was a cashier's check issued by his bank and paid by it; that Government's Exhibit 86 of the record was cashier's check issued and paid by the Stockyards National Bank, which bore a record to Government's Exhibit 85. The cashier's check register showed the check No. 120079 for \$1446.25 was issued on February 3, 1930 payable to A. R. Gizzo and that the same was purchased by A. G. Carter; and the same was cashed and paid upon February 4, 1930.

There was no cross examination.

J. G. HALL, a witness produced on behalf of the government, testified as follows:

That he was cashier of the Produce Exchange Bank in Kansas City, Missouri; he testified that Government's Exhibit 87 marked for identification was issued by his bank and paid by it upon January 20, 1930; Government's Exhibit 88 marked for identification is a leaf from the record of cashier's checks from the Produce Exchange Bank. It showed the Government's Exhibit 87, cashier's check No. 81426, issued to John Lazia for \$462. and the same was paid January 20, 1930.

The record likewise showed that said Government's Exhibit 87 was issued March 8, 1929. There was an objection that the said exhibit was no proof that the item of \$462.00 was an item of income.

There was no cross examination.

WALTER W. WALTON, a witness produced on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he was the Auditor of the Union National Bank of Kansas City, Missouri, and that that bank had absorbed the Liberty National Bank of Kansas City, Missouri, and that he was custodian of the records of the Liberty National Bank. He testified that Government's Exhibit 74 marked for identification, was a cancelled cashier's check of the Liberty National which was in his custody. He identified government's Exhibit 89, marked for identification, as the transfer record of cashier's checks of the Liberty National Bank.

From that record he testified that cashier's check No. 68576 was issued to A. E. McNamee on August 31, 1929.

There was no cross examination.

V. K. TUGGLE, a witness produced on behalf of the government testified as follows:

DIRECT EXAMINATION

That he was the cashier of the National Bank of North Kansas City, and had been for three years. He identified Government's Exhibit 90 marked for identification, as a cashier's check issued by his bank.

Thereupon the following objection and ruling was made:

"MR. WALSH: I object to that as immaterial and I object to it as irrelevant to anything in this case because it is not connected with the defendant in any way and in no way binding upon the defendant; I do not know what the check is.

MR. VAN DEVENTER: I am just identifying it, if the Court please.

THE COURT: Overruled.

MR. WALSH: Exception."

That said check was paid at his bank upon January 10, 1930.

Government's Exhibit 91, marked for identification, was a detailed record of cashier's checks. It showed that Government's Exhibit 90, a check in the sum of \$3,000. to the order of T. C. Crummett was purchased on January 8 and paid upon January 10, 1930.

There was no cross examination.

OSCAR H. HENTSCHEL, a witness produced on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he was inactive at the present time, but formerly was Treasurer of the Wellston Trust Company, Wellston, St. Louis, Missouri; occupied such position since 1938 up to the time of the closing of the bank. He had with him the draft register of the Wellston Trust Company.

Thereupon Government's Exhibits marked for identification Nos. 92, 93, 94, 95 and 96 were shown to have been issued by the Wellston Trust Company, and paid by that institution and as having been purchased by William Rutstein, and that on the day of purchase, a similar amount as represented by the aforesaid checks was charged against

the personal account of William V. Rutstein. Thereafter Government's exhibits marked for identification Nos. 97, 98, 99, 100 and 101 were submitted to the witness and he identified them as the personal ledger sheets of William V. Rutstein from September 1 to December 31, 1930, which contained a record of all deposits and withdrawals from Mr. Rutstein's account in the Wellston Trust Company.

Whereupon Government's Exhibits marked for identification Nos. 103, 104, 105 were identified by the witness as the ledger sheets showing deposits and withdrawals from September 1 to December 31, 1930, of the account of Kohn and Rutstein, which the witness identified as a partnership in operation upon those dates.

There was no cross examination.

BEN PORTMAN, a witness produced on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he had been a resident of Kansas City, Missouri, about forty years, and was living in said city in the year 1929. That he was the son of Louis Portman, who died about September 37, 1939; that he believed his father owned twenty shares of the stock of the Duke Motor Company. The witness did not have any personal knowledge of the transaction; that he was in Europe at the time of his father's death, and that upon his return was appointed administrator of his estate, but that after he returned and qualified he never found any of the aforementioned stock in his father's possession or estate.

There was no cross examination.

RAYMOND EDLUND, a witness produced on behalf of the government, testified as follows:

That he was and had been for five years the cashier of the Merchants Bank and prior to that was Assistant Cashier. He at one time held stock in the Duke Motor Company, having purchased it as accomodation and the funds used in the purchase came, half from Joseph Lazia and half from John Lazia. Two hundred shares of stock appeared in his name; a dividend of \$2160.00 was paid on August 13, 1930 by checks represented by government's exhibits marked for identification Nos. 81, 82, 83 and 84. After the receipt of the dividends, the entire amount then was credited to John Lazia's personal loan at the Merchants Bank in the sum of \$11,000.00. The stock in the Duke Motor Company held by P. D. Sims, the witnes's brother-in-law was placed in Mr. Sims' name

at Mr. Edlund's request. The two hundred and fifty shares of stock in the Duke Motor Company was equally divided between John Lazia and his father.

Thereupon the government introduced in evidence Exhibits 81, 83, 83 and 84 over the objection and exception of the defendant.

The objection was as follows:

"MR. WALSH: I desire to object to any but half of those checks, that is, the half that belonged to John Lazia.

THE COURT: Overruled.

MR. WALSH: Save an exception."

Government's Exhibits 81, 82, 83 and 84, are in words and figures as follows:

Exhibit 81, dividend check of Duke Motor Co, to John Lazia for \$200.00 is set out in testimony of W. B. Duke.

Exhibit 82.

"LIBERTY NATIONAL BANK 18-21-10 Check No. 4834

Kansas City, Mo.

Pay to order of Raymond A. Edlund, \$1600.00.

8% Dividend \$1600.00.

Kansas City, Mo. Aug. 6, 1930.

Duke Motor Co.

W. B. Duke, Pres.

Endorsed: Raymond A. Edlund Perforated: Pd. 18-9; 18-12-30"

Exhibit 83.

Dividend check as above payable to Louis Portman, \$160.00, dividend, Duke Motor Company.

Endorsed: Louis Portman by R. A. Edlund Perforated: Pd. 18-9; 8-12-30"

Exhibit 84.

Dividend check as above payable to Perry D. Sims, \$200.00, dividend, Duke Motor Company.

Endorsed: Perry D. Sims By R. A. Edlund Perforated 18-9; 8-12-30"

The witness credited the \$2160.00 to John Lazia's personal loan in response to a verbal contract made at the time of the making of the loan which was used in the purchase of

the stock. The Witness was interrogated as to whether or not he had not made a contradictory statement with reference to the stock at the time he had been examined by Revenue Agents Sharp and Riley, and before Bertha V. Miller, stenographer; the witness was indefinite, saying that he did not remember what he had said, and that he had never been accorded an opportunity to read such statement. The witness testified that cashier's check No. 71602 was issued to him and was purchased with two \$200.00 checks, one \$160.00 check and one \$1600.00 check. Witness identified the signature of John Lazia on the back of cashier's check No. 65745, the same being Government's Exhibit No. 29.

Mr. Edlund testified that he assisted Mr. Lazia in preparing a statement of his bank account for the year 1929. He was asked concerning Exhibit 29, and if Mr. Lazia had told him from whence the check was received. The witness replied as follows:

"A I do not recall if he did or not. When we were trying to answer these various questions, when we would come to a Slavins item we would put it down 'Slavin'. I don't know whether he said anything about what it was for or not."

The involved nature of the following portion of witness' testimony, for the purpose of clarity makes it necessary to quote it verbatim:

"Q I will refer you to Question 78 of that 'Explanation' and ask you what explanation Mr. Lazia gave as to this check?

A Question 78. Date, September 26, \$500.00, check deposited, cashier's check No. 65745 received from A. M. Slavin.

Q That is the check marked Government's Exhibit No. 29, is it not? A Yes, sir.

Q What statement did he make relative to Government's Exhibit No. 30, cashier's check No. 65746? A 'Question 79. Date September 26, \$500.00 check deposited, cashier's check No. 65746 received from A. M. Slavin'.

Q Referring to Government's Exhibit No. 31, which is a cashier's check for \$1,000.00, dated September 25, 1929, what explanation did Mr. Lazia make in relation to that one?

A 'Question 80, September 26, 1929, \$1,000.00, check deposited and cashier's check No. 65741 received from A. M. Slavin'

Q Does your record show to whose credit it was deposited?

A It doesn't show in this memorandum,

Q Does your record show it, Mr. Edlund? A Our records show there is a credit to Mr. Lazia's account September 26 of \$5,000.

Q Referring to Government's Exhibit 32, it being a cashier's check for \$1,000.00, N.. 65742, what did Mr. Lazia say relative to that? A 'Question 81. September 26, \$1,000. check deposited and cashier's check No. 65742 received from A. M. Slavin'.

Q Relating to Government's Exhibit 33, it being a cashier's check for \$1,000.00, dated September 25, 1929, No. 65743, what was his explanation of that? A 'Question 82. September 26, \$1,000. check deposited and cashier's check No. 65743 received from A. M. Slavin.'

Q Relating to Government's Exhibit No. 34, cashier's check for \$1,000. No. 65744, what does he say in relation to that?

A 'Question 83, September 26, \$1,000. check deposited, and cashiers check No. 65744 received from A. M. Slavin'.

Q What is the total of Exhibits 29 to 34 inclusive?

A \$5,000.00.

Q On the 26th of September, the day you stated these were paid, did he deposit in your bank \$5,000.00? A Yes, sir; his ledger page shows a deposit of \$5,000.00 on September 26.

Q Can you show by your records whether the deposit was these cashiers checks you have identified? A I imagine we can. I am not positive of that. Yes, we can naturally run them down.

Q Is that your judgment that it is, Mr. Edlund, that these checks are the deposit of \$5,000.00? A Yes, sir.

Q Was that credited to the account of Mr. Lazia? A Yes, sir.

MR. VANDEVENTER: We offer in evidence Exhibits 29 to 34 inclusive.

MR. WALSH: I would like to ask him a question or two, preliminary.

THE COURT; Yes, sir; you may.

MR. WALSH; There was a request made upon Mr. Lazia, you say, to explain certain items in his account; is that correct?

THE WITNESS: Yes, sir.

MR. WALSH: Where did you get the data to do that?

THE WITNESS: We got most of it in the Merchant's Bank.

MR. WALSH: How did you do it? Did you just take it off the book? THE WITNESS: We made what you call a general audit.

MR. WALSH: Do you not mean to say that as each of those checks came along you asked Mr. Lazia whether or not he got it from Slavin?

THE WITNESS: I do not recall asking him that.

MR. WALSH: As a matter of fact, there was a great mass of checks there?

THE WITNESS: Yes, sir.

MR. WALSH: Who did the dictating of this statement here?

THE WITNESS: I am unable to say at this time. Maybe I did it. I am not positive about that, about who did it.

MR. WALSH: It was made in the office of the Merchant's Bank?

THE WITNESS: Yes, sir,

MR. WALSH: And there was no interrogation of Mr. Lazia as to each one of these checks?

THE WITNESS: No, not necessarily.

MR. WALSH: As a matter of fact, you ran through your account down there and your returned checks, did you not?

THE WITNESS: Yes, sir.

MR. WALSH; And then to get the source of them, you either had a bookkeeper do it, or you did it yourself? THE WITNESS: Yes, sir,

MR. WALSH: And you took the name of A. M. Slavin off the back of them?

THE WITNESS: Yes, sir.

MR. WALSH: And put it down on that report?

THE WITNESS: Yes, sir.

MR. WALSH: Add it was understood, was it not it was assumed that there was going to be an examination of Mr. Lazia on it, was there not?

THE WITNESS: Yes, sir.

MR. WALSH: As a matter of fact Mr. Lazia did not tell you as you came to each one of these checks that the check came from A. M. Slavin?

THE WITNESS: I don't recall that he did.

MR. WALSH: You took it from the back of the check?

THE WITNESS: Yes, sir.

MR. WALSH: And from a reference to your books and a tracing of these checks?

THE WITNESS: Yes, sir.

MR, WALSH: How long a job was that when you were trying to get that ready for the government agents? How long did it take you?

THE WITNESS: I can answer this way, I helped the government as much as I could to trace these items and I helped Mr. Lazia to trace these items and it seems to me it was a period of over two years; I can't recall the date.

MR. WALSH: But you can't recall Mr. Lazia saying himself, at any time, that he received this personally from Slavin?

THE WITNESS: No, I don't believe I can.

MR. WALSH: I object to that if your Honor please as incompetent, irrelevant and immaterial, hearsay; no proper foundation being laid for it, not binding on the defendant.

THE COURT: Objection overruled and exception allowed,
(To which ruling and action of the Court the defendant at the time then and there duly excepted and still excepts).

MR. WALSH: I just want to ask another question. As a matter of fact - - I want to challenge your recollection on that a little - - as a matter of fact Mr. Lazia was not there at all when you went over there; you were there with a lawyer, weren't you?

THE WITNESS: At the start we were but on different occasions Mr. Lazia has been there.

MR. WALSH: Could you say Mr. Lazia was present at the time you went over these particular checks?

THE WITNESS: No, I couldn't say that.

MR. WALSH: As a matter of fact you did a great deal of work on this when he was not present at all.

THE WITNESS: That's right.

MR. WALSH: And on this last data you made for Mr. Lazia the greater part of the time there was nobody with you except his lawyer, was there?

THE WITNESS: That's right.

MR. WALSH: Young Mr. Walsh.

THE WITNESS: Yes, sir.

MR. WALSH: Was there an auditor named Mr. Loucks?

THE WITNESS: Yes.

MR. WALSH; And there were times when this data was gathered by Mr. Loucks and the attorney just from the records without you being there?

THE WITNESS; Yes, sir,

MR. WALSH; The auditor was Robert Wasson, not Loucks?

THE WITNESS: There were both, Mr. Loucks and Mr. Wasson.

MR. WALSH: And there were many times there was nobody there but the auditor and the attorney?

THE WITNESS: That is right.

MR. WALSH: I renew my objection.

THE COURT: Overruled.

The witness thought that Mr. Lazia had seen the statement before it was delivered to Mr. Vandeventer, but he could not say for sure that Mr. Lazia had examined it, that he imagine he did. He was examined concerning Government's Exhibit 49, a cashier's check for \$100.00, and stated that the answer on the statement of explanation of Mr. Lazia showed that such check was part of a cashier's check that it was not deposited to Mr. Lazia's account, but that it bore Mr. Lazia's signature, and that the check was paid at the Merchant's Bank.

Whereupon Government's Exhibit No. 49 was introduced in evidence, which Exhibit is in words and figures as follows:

"Merchants Bank, Kansas City, Mo. Sep. 30, 1939
No. 65644

Pay to the order of A. M. Slavins \$100.00.

Cashier's check.

Max Leopold, Jr. V. President.

B. Bernbaum, Teller

Endorsed: A. M. Slavin, John Lazia; Fred Manning; For Deposit, Riverside Jockey Club,

O. K. BB

Perforated: Paid 9-24-29. 18-76 "

Government's exhibit 49 was introduced in evidence over the objection and exception of the defendant.

The objection was as follows:

"MR. WALSH: That is objected to as incompetent, irrelevant and immaterial, not tending to prove any issue in this case and not being laid in the Bill of Particulars and shows on its face not to have gone to the account of become the property of Mr. Lazia. A man named Manning signed that, endorsed by "B.B.O.K'D.

"MR. LOVAN: It is Item 39 if the Court please, of the Bill of Particulars."

"THE COURT: On what theory is this exhibit offered?"

"MR. VANDEVENTER: It is included in Item 39 of the Bill of Particulars, as I understand it, and upon the theory it bears the endorsement of Mr. Lazia; on the theory that he got the cash on it; it was payable to him - - payable to Slavin, endorsed by Mr. Slavin and endorsed by Mr. Lazia.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"(To which ruling and action of the Court the Defendant at the time then and there duly excepted and still excepts.)

"MR. DILLON: If your Honor please, I would like to say one thing. There is nothing there that shows that is income at all; no source from which it is derived and I think in all this the government should be required to show an income, a definite source from which it came.

"THE COURT: All of that I have considered and I think there will be another time for its consideration. It does not affect the competency of a particular item of evidence that that item alone by itself proves that it is income or fails to prove that it was income,"

Mr. Edlund identified Government's Exhibit 13 as Certificate of Deposit, having been issued by the Merchants Bank in October 16, 1929 in the amount of \$6,000.00 payable to John Lazia, and that such Certificate of Deposit had been purchased with the following checks:

Government's Exhibit 35, a check in the sum of \$1,000.00; Government's Exhibit 32, a check in the sum of \$1,000.00; Government's Exhibit 37, a check in the sum of

\$1,000.00; Government's Exhibit 38, a check in the sum of \$500.00;

Government's Exhibit 39, a check in the sum of \$500.00;

Government's Exhibit 40, a check in the sum of \$500.00;

Total \$4,500.00

Thereupon Government's Exhibits 38, 39, 40, 37, 32, 35 and 13 were introduced in evidence, which said exhibits are in words and figures as follows:

Exhibit 38.

MERCHANTS BANK, KANSAS CITY, Mo. Oct. 7, 1929 No. 65941 Pay to the order of A. M. Slavin, \$500.00.

Cashier's Check R. A. Edlund, Cashier

C. E. Wilkey, Teller.

Endorsed: A. M. Slavin. Perforated: Paid 10-9-29; 18-76."

Exhibit 39.

Same Bank. Sept. 30, 1929 No. 65809.

Pay to the order of A. M. Slavin, \$500.00.

C. E. Wilkey, Teller R. A. Edlund, Cashier

Cashier's check.

Endorsed: A. M. Slavin. Perforated: Paid 10-9-29; 18-76

Exhibit 37

Same Bank Oct. 7, 1929 #65940.

Pay to the order of A. M. Slavin \$1000.00.

Cashier's check.

C. E. Wilkey, Teller. R. A. Edlund, Cashier

Endorsed: A. M. Slavin

Perforated: 10-9-29;18-76

Exhibit 40.

Same Bank Sept. 30, 1929 No. 65811

Pay to the order of A. M. Slavin, \$500.00,

C. E. Wilkey Teller, R. A. Edlund, Cashier

Cashier's Check.

Endorsed: A. M. Slavin. Perforated 10-9-29 18076"

Exhibit 32.

Same Bank Sep 25, 1929#65742

Pay to the order of A. M. Slavin, \$1000.00,

Cashier's check.

C. H. Wilkey, Cashier. Max Leopold, Jr. V. President.

Endorsed: A. M. Slavins; John Lazia. Perforated"Pa-9-26; 18-7"

Exhibit 35

Same Bank Oct 7, 1929 #65938

Pay to the order of A. M. Slavin \$1000.00 Cashier's Check

C. E. Wilkey, Teller, R. A. Edlund, Cashier.

Endorsed: A. M. Slavins. Perforated: P aid 10-9-29; 18-76.

Exhibit 13,

Certificate of Deposit for \$6000.00 to J. Lazia from Merchants Bank, set out in full in testimony of Oscar W. Leweke.

The witness identified Government's Exhibits 51 and 52 and the statement prepared for the government as "Slavins" checks, and at this point the following colloquy occurred:
THE COURT: Let that be clearer. You say what your record shows. He is not referring to any record,

MR. VANDEVENTER: I am referring to the statement that he got up for Mr. Lazia and was approved by Mr. Lazia.

THE COURT: Let us call it that way and it will not be confused with the bank record.

What did you say?

A In the statement that was gotten up for Mr. Vandeventer there appears Question 84, October 9, \$500.00. The answer said 'Check deposited, cashier's check Number 65961 received from A. M. Slavin'."

The said Exhibits 51 and 52 were then introduced in evidence over the objection and exception of the defendant, which exhibits are in the words and figures as follows:

Exhibit 51.

MERCHANTS BANK, Kansas City, Mo. Oct 8, 1929 No.65965 Pay to the order of A. M. Slavins , \$500.00.

Cashier's check

B. Bernbaum, Teller. Max Leopold, Jr.
Endorsed: A. M. Slavin. Perforated: 10-9-29; 18-76.
Exhibit 52.

Same Bank Oct 8, 1929 No. 65961.
Pay to the order of A, M. Slavins, \$500.00,
Cashier's check

B. Bernbaum, Teller. Max Leopold, Jr. V. President.
Endorsed: A. M. Slavin. Perforated: Paid 10-9-29; 18-76

The witness identified Government's Exhibit 43 as having been endorsed by Mr. Lazia.

Whereupon Government's Exhibit 43 was introduced in evidence over the objection and exception of the defendant, on the ground the same was incompetent, irrelevant and immaterial and that it was no proof of income, which exhibit is in words and figures as follows:

Exhibit 43.
MERCHANTS BANK. Kansas City, Mo. Oct. 8, 1929.
No. 65963.
Pay to the order of A. M. Slavins \$500.00.
Max Leopold, Jr. V. President.

B. Bernbaum, Teller.
Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 11-19-29
18-76"

Witness identified Government's Exhibit 41 as cashier's check dated October 15, 1929, payable to Mr. Lazia and bearing Mr. Lazia's endorsement. The same was offered in evidence over the objection and exception of the defendant, which is in words and figures as follows:

Exhibit 41 is cashier's check on Merchants Bank, Oct. 15, 1929,
No.66091
Pay to the order of J. Lazia \$1000.00.
Endorsed: J. Lazia. Perforated: Paid 10-34-29; 18-76

And that a deposit appeared upon the personal checking account of Mr. Lazia dated

October 24.

(At this point the evening adjournment occurred.)

ARTHUR M. SLAVIN, a witness on behalf of the government was recalled at the beginning of the morning session, February 7, 1934, for further cross examination in behalf of the defendant.

He testified that prior to the opening of the Cuban Gardens he was working for Booth Baughman, and for no other person, and that all of the cashier's checks heretofore mentioned in evidence and bearing his name were purchased by him, in behalf of Mr. Baughman, with money supplied by Mr. Baughman, and no part of them were purchased with his own funds, nor did he purchase any for his personal use. That during the time he was working at Cuban Gardens, he purchased all of the cashier's checks, which he purchased at the Merchants Bank, for Mr. McNamee, and with money which Mr. McNamee had given to get the cashier's checks with. He further testified he never bought any for himself or any other person during the time that he was in Cuban Gardens, and according to the custom when the establishment closed at night he (McNamee), would check up "bring me checks and some cash possibly, personal checks and stuff of that kind, and tell me to take it to the bank next day and either get money or cashier's checks for it, whichever he thought we would need." He testified that some times as a result of the Saturday and Sunday nights' business, the total volume of the business done would amount to several thousand dollars; he did not ever remember of giving Mr. Lazia a check personally, either while he was working for Mr. Baughman or Mr. McNamee.

RE DIRECT EXAMINATION.

His employment started at Cuban Gardens at the time of the opening of the gambling establishment, he would not remember exactly the highest amount taken in in any one day and on Saturday night the accumulation in the dining room and in the casino ran as high as maybe \$8000.00.

RAYMOND EDLUND recalled as a witness on behalf of the government, resumed his examination.

Government's Exhibit 106 was a cashier's check dated April 19, 1929 for \$3,000.00 and was issued by the Merchants Bank, April 19, 1929.

It was agreed by counsel that the records of the Merchants Bank were under the control of the witness, and under his supervision. Government's Exhibit 106 was purchased by the Electric Holding Company of Chicago, and that upon May 2, 1929, two checks in the amount of \$1,000.00 each was made payable to J. Lazia.

The witness testified that a credit of \$1,000.00 appeared upon Mr. Lazia's personal ledger sheet in the Merchants Bank upon May 2, 1929; that said Government's Exhibit 106 bore the endorsement of Mr. Lazia; that when he referred to Mr. Lazia or J. Lazia, he meant Mr. John Lazia, the defendant then upon trial. Said witness then identified the deposit slip of \$1,000.00 for "that" check.

Thereupon the government introduced in evidence Government's Exhibits 106 and 107, which are in words and figures as follows;

Exhibit 106.

MERCHANTS BANK, Kansas City, Mo. Apr. 19, 1929.

No. 63306

Pay to the order of J. Lazia, \$3000.00.

Cashier's Check. R. A. Edlund, Cashier; J. H. Donovan,
Teller.

Endorsed: J. Lazia; John Lazia.

Perforated: Paid 5-2-29; 18-76

Exhibit 107.

"Deposited with Merchants Bank, for account of John Lazia, Kansas City, Mo. 5-2-1929.

Currency \$1000.00

Gold

Silver

Checks as follows

After an objection on the ground that the transaction did not prove or have a tendency to prove any income, which objection was overruled, the witness testified that Mr. Lazia's personal loan register for August 10, 1929, at the Merchants Bank showed a credit thereon of \$3,000.00 in Mr. Lazia's favor.

At this point there was considerable discussion with reference to so-called explanation by Mr. Lazia in writing furnished to the Special Assistant Attorney General of

the United States.

The witness said that while he had some part in the preparation of a document, he knew nothing about the agreement concerning the furnishing of the same, nor anything about its delivery to the Special Assistant Attorney General.

Thereupon the government introduced in evidence that part of Item 53 on Government's Exhibit 108, which is in words and figures as follows:

"Question 53: August 10. \$3,000. paid on account of loan 54280. Loan 54280 was paid by the Electric Holding Corporation."

He identified Government's Exhibit 90, as a cashier's check of the National Bank of North Kansas City, Missouri, 13524, and it was handled by the Merchants Bank January 8, 1930, made payable to the Merchants Bank, but he could not identify who cashed the check, or to whose credit it went.

Witness identified Government's Exhibit 70, said it was paid to his bank December 2, 1930, was purchased by A. M. Slavin. That he testified further that Government's Exhibit 70 was used to purchase cashier's check No. 73886 at the Merchants Bank in the amount of \$1475.00 payable to John Lazia.

Thereupon over the objection and exception of the defendant because of the lack of tendency on the part of the exhibit to prove any of the charges laid in the Indictment, and as being no proof of income, the same was introduced in evidence, which is in words and figures as follows:

Exhibit 70. Cashier's Check.

MERCHANTS BANK, KANSAS CITY, Mo. Dec. 1, 1930 No. 73682.

Pay to the order of Ray Edlund, Tr. \$1500.00 O. R. Baker, Teller R. A. Edlund,
Cashier

Endorsed: Ray Edlund, Tr.

Perforated : Paid 12-2-30; 18-76.

Government's Exhibit 109 was identified by the witness as having been a cashier's check on his bank issued to John Lazia and paid December 3, 1930, and bearing the endorsement of Mr. Lazia, The exhibit was offered in evidence over the objection and exception of the defendant on the ground that it could not prove any of the charges laid in the Indictment and was no proof of income, which exhibit is in words and figures as

follows:

Exhibit 109.

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 2, 1930 No. 73686.

Pay to the order of John Lazia \$1,475.00

Endorsed: John Lazia: Perforated: Paid 12-2-30; 18-76."

Government's Exhibit 85 was a draft on the Stockyards National Bank for \$1446.25 and bore the Clearing House endorsement of the Merchants Bank of date February 4, 1930. Upon being interrogated as to whether Mr. Lazia's personal account as of February 3, 1930 showed a credit, the following occurred:

"MR. WALSH: I object to that as immaterial and irrelevant and not having any bearing on any issue in this case.

THE COURT: Let me see the draft. The objection is overruled. MR. WALSH: Exception.

A It shows a credit under date of February 3, 1930, of \$2875.

Q Now, will you produce the deposit slip for that day?

MR. WALSH: I object to that, if your Honor please, because there is no indication here that that refers to this check in any way.

THE COURT: There is not yet, and if there isn't some development of that it will be stricken out. The deposit slip may show.

(Plaintiff's Exhibit 110 marked for identification.)

Q I will hand you a deposit slip marked Government's Exhibit No. 110 and ask you if that is the deposit slip which refers to Government's Exhibit No, 85?

MR, WALSH: I object to that as calling for an improper conclusion of the witness.

THE COURT: Sustained. Is it the deposit slip concerning the deposit to which you have just testified?

MR. WALSH: I make the same objection to that, if your Honor please.

THE COURT: Sustained. What is it?

THE WITNESS: It is a deposit ticket to John Lazia's account, February 3, 1929, but I think the date is wrong.

MR. WALSH: I do not have any objection to that. That should be 1930. It is probably a mistake.

MR. VANDEVENTER: We offer in evidence Government's Exhibit No. no.

MR. WALSH: That is objected to as irrelevant and because there is no connection with it nor is it any proof, nor does it have any tendency to prove any of the issues in this case, nor any income as alleged in the Indictment and Bill of Particulars.

THE COURT: Overruled.

MR. WALSH: Exception.

Government's Exhibits 85 and 110 were offered in evidence, and are in words and figures as follows:

Exhibit 85.

STOCK YARDS NATIONAL BANK, Kansas City, Mo.

Feb. 3, 1930p No. 120079 Pay to the order of A. R. Gizzo, \$1446.25

Norris Broaddus, Pr.

Cashier's Check.

Endorsed: A. R. Gizzo; John Lazia. Perforated: Paid 2-4-30,

18-52"

Exhibit 110

Deposited with Merchants Bank for account of John Lazia, Kansas City, Mo. 3-3-1929.

Checks as follows: \$520

190

718.75

1446.25

\$2875.00"

A deposit was indicated to Mr. Lazia's personal account upon August 31, 1931, in the sum of \$1,000.00. Government's Exhibit 110 was identified as a deposit slip of Mr. Lazia for August 31, 1929. Government's Exhibit 74 was paid by the Merchants Bank on August 31, 1929 and bore the endorsement of Mr. Lazia.

Thereupon Government's Exhibits 74 and 111 were introduced in evidence which are in words and figures as follows:

Exhibit 74.

CASHIER'S CHECK. THE LIBERTY NATIONAL BANK,

Kansas City, Mo. Aug. 20, 1929 No. 68576.

Pay to the order of A. E. McNamee, \$800.00.

J. E. Stewart, Teller. J. G. Kennedy, Asst. Cashier

Endorsed: A. E. McNamee; John Lazia; A. E. McNamee Perforated: Paid 8-31-29;
18-21"

Exhibit 111

Deposited with Merchants Bank for account of John Lazia Kansas City, Mo. August 31,
1929.

Currency 200 Gold Silver

Checks as follows 800 1000

Said exhibits went into evidence over the objection and exception of the defendant.

The witness identified Government's Exhibit 87, as bearing the endorsement of Mr. Lazia, as having cleared through his bank; he said there were no deposits in Mr. Lazia's personal account the date of the clearance of the check, and that he had no record to indicate whether or not it had been cashed or deposited.

Thereupon over the objection and exception of the defendant, Government's Exhibit 87 was introduced in evidence and is in words and figures as follows:

Cashier's Check, Produce Exchange Bank, Kansas City, Mo.

Mar. 8, 1929 No. 81426.

Pay to the order of Jno. Lazia \$463.00

J. G. Hall, Cashier.

Endorsed: John Lazia: Perforated: Paid 1-20-30

The witness identified Government's Exhibit 113 as a credit ticket made at the time of the issuance by the Merchants Bank of Certificate of Deposit No. 3640, that said certificate was purchased by six \$500.00 checks and three \$1000.00 checks.

Thereupon Government's Exhibits 113, 71, 73 and 73 were introduced in evidence without objection and are in words and figures as follows:

Exhibit 113.

Credit C. D. 3640 J. Lazia 6000.00

Exhibit 71.

Cashier's Check, Twelve Street Bank, Oct. 9, 1939.

Kansas City, Mo. Oct. 3, 39 No. 31794.

Pay to the order of A. M. Slavin \$500.00

Endorsed: A. M. Slavin. Perforated 10-9-29

Exhibit 73.

Cashier's Check, Twelfth Street Bank Oct.9, 1939

Kansas City, Mo. Oct. 7-39 #31896.

Pay to the order of A. M. Slavin \$500.00.

Endorsed: A. M. Slavin. Perforated: Paid 10-9-39

Exhibit 73.

Cashier's Check, Twelfth Street Bank Oct 9, 1939 Kansas City, Mo. Oct. 2-27 No. 31792

Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavin. Perforated: Paid 10-9-29

Government's Exhibit 17 was a cashier's check issued by the witness' bank; was paid by it, and bore the endorsement of Mr.

Lazia.

Thereupon Government's Exhibit 17 was introduced in evidence and is in words and figures as follows:

Cashier's Check, Merchants Bank, Kansas City, Mo.

Aug. 10, 1929 No. 64957.

Pay to the order of A. M. Slavin, \$1000.00.

Endorsed: A. M. Slavin, John Lazia, R. Passantino.

Perforated: Paid 8-22-29 18-76.

Government's Exhibit 16 was a cashier's check drawn on Merchants Bank, paid by it and bore Mr. Lazia's endorsement and the same was introduced in evidence over the objection and exception of the defendant as being no evidence of income and the exhibit is in words and figures as follows:

Exhibit 16.

Cashier's Check, Merchants Bank, Kansas City, Mo.

Aug. 10, 1929, No. 64956.

Pay to the order of A. M. Slavin \$1000.00.

Endorsed: A. M. Slavin, John Lazia, R. Passantino.

Perforated: Paid 8-22-29; 18-76

"Q Was it paid and if so when? A It was paid August 26th.

MR. WALSH: I object to that for the same reason I objected to the last check. I want to make an objection to enough of these, your Honor, to get the point.

THE COURT: Overruled.

MR. WALSH: Save an exception."

After interrogation concerning government's Exhibit 18 the Special Assistant Attorney General failed to offer it in evidence.

The witness identified Government's Exhibits 19 and 30, as bearing the endorsement of Mr. Lazia, and the same were offered in evidence, and are in words and figures as follows:

Exhibit 19.

Caehier's Check, Merchants Bank, Kansas City, Mo.

Aug. 29, 1929 No. 65244 Pay to the order of A. M. Slavin, \$200.00.

Endorsed: A. M. Slavin, John Lazia. Perforated:

Paid 9-25-29; 18-76

Exhibit 20.

Cashier's Check, Merchants Bank, Kansas City, Mo.

Aug. 23, 1929 No. 65159.

Pay to the order of A. M. Slavin, \$1000.00.

Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 9-5-29;

18-76.

Mr, Edlund identified Government's Exhibits 21, 22, 23, 24, 25, 26, and 27 as being cashier's checks issued and paid by the Merchants Bank and bearing the endorsements of Mr. John Lazia.

The exhibits were offered in evidence without objection, and are in words and figures as follows:

Exhibit 21.

Cashier's Check, Merchants Bank, Kansas City, Mo. Jul 11, 1929

No. 64475.

Pay to the order of A. M. Slavens \$100.00.

Endorsed: A. M. Slavin, John Lazia, Henry LaBar Perforated: Paid 9-6-29; 18-76

Exhibit 22

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jul. 11, 1929 No. 64476.

Pay to the order of A. M. Slaving, \$100.00.

Endorsed: A. M. Slavins, John Lazia, Henry LaBar Perforated: Paid 9-6-29; 18-76

Exhibit 23

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jul. 11, 1929 No. 64477

Pay to the order of A. M. Slavins, \$100.00.

Endorsed: A. M. Slavins, John Lazia, Henry LaBar

Perforated: Paid 9-6-29; 18-76.

Exhibit 24.

Cashier's Check, Same Bank.

Jul 11, 1929 No. 64472.

Pay to the order of A. M. Slavins \$100.00.

Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 9-9-29

18-76.

Exhibit 25.

Cashier's Check, Same Bank. Aug. 17, 1929 No. 65063.

Pay to the order of A. M. Slavin, \$500.00?

Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 9-9-29;18-76

Exhibit 26

Cashier's Check. Same Bank Aug. 20, 1929 No. 65105 Pay to the order of A. M. Slavin, \$700.00.

Endorsed: A, M. Slavin, John Lazia. Perforated: Paid 9-9-29;18-76

Exhibit 27.

Cashier's Check. Same Bank. Aug. 27, 1929 No. 65204 Pay to the order of A. M. Slavin, \$700.00.

Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 9-9-29;18-76

Government's Exhibit 113 was identified as a deposit ticket of the Merchants Bank, was introduced in evidence and is in words and figures as follows:

"Deposited with Merchants Bank For John Lazia.

Kansas City, Mo. Sept. 11, 1929.

Ch. 1850.00 "

Government's Exhibit 28 was identified as cashier's check of the Merchants Bank that was paid September 14, 1929.

Government's Exhibit 114 was a deposit ticket, dated September 14, 1929, in the sum of \$500.00 and witness was unable to state that Exhibit 114 was related to Exhibit 28. No deposit to the Lazia account was shown in the sum of \$500.00 September 14, 1929.

Whereupon Government's Exhibits 28 and 114 were introduced in evidence and are in words and figures as follows:

Exhibit 28.

Cashier's Check, Merchants Bank, Kansas City, Mo.

Aug. 8, 1929 No. 64931.

Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavins, John Lazia. Perforated: Paid 9-14-29;18-76.

Exhibit 114.

Deposited with Merchants Bank, For Account of John Lazia. Kansas City, Mo. Sept. 14, 1929.

Checks as follows: 500.00

The witness identified government's Exhibits Nos. 29, 30, 31, 32 and 33 and 34 as being cashier's checks issued by the Merchants Bank and all bore the endorsement of John Lazia; said exhibits were introduced in evidence and are in words and figures as follows:

Exhibit 29

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sep. 25, 1929 No. 65745 Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavins, John Lazia. Perforated: Pa 9-26; 18-7.

Exhibit 30

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sept. 25, 1929 No. 65746 Pay to the order of A. M. Slavin, \$500.00 Endorsed: A. M. Slavins, John Lazia. Perforated: Pa 9-26; 18-7

Exhibit 31

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sept. 25, 1929 No. 65741 Pay to the order of A. M. Slavin, \$1000.00 Endorsed: A. M. Slavins, John Lazia. Perforated: Pa 9-26; 18-7

Exhibit 32

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sep. 25, 1929 No. 65742 Pay to the order of A. M. Slavin, \$1000.00 Endorsed: A. M. Slavins, John Lazia: Perforated: Pa 9-26; 18-7

Exhibit 33

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sept. 25, 1929 No. 65743 Pay to the order of A. M. Slavin, \$1000.00 Endorsed: A. M. Slavins, John Lazia. Perforated: Pa 9-26;18-7

EXHIBIT. 34

Cashier's Check, Merchants Bank, Kansas City, Mo.

Sep. 25, 1929 No. 65744

Pay to the order of A. M. Slavin, \$1000.00 Endorsed: A. M. Slavins, John Lazia. Perforated: Pa 9-26;18-7

Government's Exhibit 115 was identified as deposit ticket of the Merchants Bank and the witness said that government's exhibits 29 to 34 inclusive were listed on such deposit ticket.

Whereupon government's Exhibit 115 was introduced in evidence and is in words and figures as follows:

Exhibit 115.

Deposited with Merchants Bank, For Account of John Lazia, Kansas City, Mo. 9-26-1929.

Checks as follows: \$500.00; \$500.00; \$1000.00; \$1000.00; \$1000.00; \$1000.00; total \$5000.00.

Government's Exhibit 52 was identified by the witness as a cashier's check and paid

October 9, 1929; it was introduced in evidence and is in words and figures as follows: Cashier's check, Merchants Bank, Kansas City, Mo.

Oct. 8, 1929 No. 65961.

Pay to the order of A. M. Slavins \$500.00.

Endorsed: A. M. Slavin. Perforated: Paid 10-9-29; 18-76.

Government's Exhibit 51 was identified as having been issued by the Merchants Bank and paid October 10, 1929.

Thereupon the following occurred:

"Q I will ask you to refer to Government's Exhibit No. 108, Item 84, and state what the source of this check was?

"MR.WALSH: I object to that as calling for an improper conclusion of the witness.

"THE COURT: Sustained. If the witness knows the source of the check, he may say so.

Exhibit 108 is not in evidence, "MR.VANDEVENTER: I offer in evidence, then, Question 85

and the answer of Government's Exhibit No. 108, heretofore identified.

"MR.WALSH: I object to that as incompetent, irrelevant, and immaterial and not tending to prove any issue in this case, not connected in any way with the defendant; and I likewise object to the offer of the two lines by counsel in Questions 84 and 85 on the grounds that they are not admissions against the interest of the defendant, nor any admission whatever on behalf of the defendant, and there is no proper foundation laid for it.

THE COURT: Overruled.

MR. WALSH: Save an exception,

(To which ruling and action of the court the defendant at the time then and there duly excepted and still excepts.)

MR. WALSH: Will you just show that the Lazia endorsement is not on there?

MR. VANDENVENTER: Yes, Mr. Walsh, I will read the item we have offered:

"October 9, 1929, \$500.00. Check deposited, cashiers check No. 65965 received from A.M. Slavin."

"Q Do either of these cashiers checks bear the endorsement of Mr. Lazia? A They do not.

Thereupon government's exhibits 51 and 52 were introduced in evidence and are in words and figures as follows:

(Exhibits 51 and 52 were previously offered in evidence and are not here copied again.)

Government's Exhibits 43 and 116 were introduced in evidence and are in words and figures as follows:

(Exhibit 43 was previously offered in evidence and is not here copied again.)

Exhibit 116

Deposited with Merchants Bank, For Account of John Lazia.

Kansas City, Mo., Nov. 18, 1929 Checks as follows: \$500.00.

Government's Exhibit 44 was a cashier's check paid December 19, 1929 and dated December 2, 1929. Government's Exhibit 117 was a deposit ticket, dated December 18, 1929 in the sum of \$1,000.00 and the ledger sheets of Mr. Lazia's personal account showed he deposited an equal amount on that date.

Said exhibits were introduced in evidence and are in words and figures as follows:

Exhibit 44

Cashier's check, Merchants Bank, Kansas City, Mo.

Dec. 2, 1929 No. 66979 Pay to the order of A. M. Slavin, #1000.00 Endorsed: A. M. Slavin. Perforated: Paid 12-18-29; 18-76

Exhibit 117

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,

12-18-1929

Currency Gold \$1000.00 Silver

Checks as follows

Government's Exhibits 46, 45, 47 and 48 were introduced in evidence, after proper identification, and are in words and figures as follows:

Exhibit 46

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 20, 1929 Ho. 67402

Pay to the order of John Lazia, \$2200.00.

Endorsed: John Lazia. Perforated: Paid 1-21-30; 18-76

Exhibit 45

Cashier's check, Merchants Bank, Kansas City, Mo.

Dec. 5, 1929 No. 67081

Pay to the order of A. M. Slavin, \$2,000.00 Endorsed: A. M. Slavin. Perforated: Paid

12-21-29; 18-76

Exhibit 47

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 16, 1929 No. 67286 Pay to the order of A. M. Slavin, \$100.00 Endorsed: A. M. Slavin. Perforated: Paid 12-21-29; 18-76

Exhibit 48

Cashier's check, Merchants Bank, Kansas City, Mo.

Dec. 16, 1929 No. 67287 Pay to the order of A. M. Slavin, \$100.00 Endorsed: A. M. Slavin. Perforated: Paid 12-21-29; 18-76

Government's Exhibits 50 and 118; question and answer 102 of Government's Exhibit 108 were introduced in evidence over the objection and exception of the defendant, and are in words and figures as follows:

Exhibit 50

Cashier's check, Merchants Bank, Kansas City, Mo.

Dec. 5, 1939 No. 67080 Pay to the order of A. M. Slavin, \$2,000.00.
Endorsed: A. M. Slavin. Perforated: Paid 12-24-39; 18-76

Exhibit 118

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 12-24-29
Currency: \$2000.00.

Exhibit 108

Q. 102 Dec. 24 2000.00 Check deposited O.C. #67080 received from A. M. Slavin.

A. This represents deposit to John Lazia's checking account, being C.C. #67080, which was part of the Cuban Gardens transaction.

Government's Exhibit 119 was identified as a cashier's check of the Merchants Bank bearing the endorsement of John Lazia and was introduced in evidence over the objection and exception of the defendant on the ground that it was not identified or connected with any of the transactions set forth in the Bill of Particulars, and is in words and figures as follows:

Exhibit 119

Cashier's check, Merchants Bank, Kansas City, Mo,

Jan. 18, 1930 No. 67953 Pay to the order of W. H. Beldon, \$500.00.

Endorsed: W. H. Beldon, John Lazia. Perforated: Paid 1-26-30; 18-76

Government's Exhibit 120 was introduced in evidence and is in words and figures as follows:

Exhibit 120

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 18, 1930 No. 67954 Pay to the order of W. H. Beldon, \$500.00.

Endorsed: W. H. Beldon, John Lazia. Perforated: Paid 1-26-30; 18-76.

Government's Exhibits 54, 55, 56, 57 and 58 were all identified as cashier's checks issued by the Merchants Bank, paid by said bank and bearing the endorsements of Mr. John Lazia, and they are in words and figures as follows:

Exhibit 54

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 18, 1930 No. 67959 Pay to the order of A. M. Slavin, \$100.00.

Endorsed: A. M. Slavin, J. Lazie. Perforated: Paid 2-2-30; 18-76

Exhibit 55

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 21, 1930 No. 67991 Pay to the order of A. M. Slavin, \$100.00.

Endorsed: A. M. Slavin, John Lazia. Perforated: Paid 2-2-30; 18-76

Exhibit 56

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 25, 1930 No. 68059 Pay to the order of A. M. Slavin, \$100.00.

Endorsed: A. M. Slavin, J. Lazia. Perforated: 2-2-30; 18-76

Exhibit 57

Cashier's Check, Merchants Bank, Kansas City, Mo,

Jan. 25, 1930 No. 68060 Pay to the order of A. M. Slavin,\$100.00 Endorsed:

A.M.Slavin, J. Lazia. Perforated 2-2-30; 18-76

Exhibit 58

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 27, 1930 No. 68098 Pay to the order of A. M. Slavin, \$100.00 Endorsed:

A.M.Slavin, John Lazia, Perforated Paid 2-2-30; 18-76

W. H. MEYER produced as a witness on behalf of the government testified as follows:

DIRECT EXAMINATION

This witness testified that he was Chief Clerk of the Mercantile Home Trust Bank. He identified government's exhibits marked for identification Nos. 121 and 122 as cashier's checks issued by the Home Trust Company, and paid upon August 21, 1930 and September 17, 1930 respectively. He identified government's Exhibits Nos. 123 and 124 as the cashier check record of that bank showing the payment of the aforementioned checks.

There was no cross examination.

GEORGE E. POWELL a witness produced on the part of the government testified as follows:

DIRECT EXAMINATION

That he was the cashier in the Baltimore bank. He identified government's Exhibit marked for identification No. 125, as being issued by the Baltimore Bank and paid at that institution on May 3, 1930.

There was no cross examination.

RAYMOND EDLUND was recalled for further direct examination.

DIRECT EXAMINATION

He identified government's Exhibit No. 121 as cashier's check on the Home Trust Company, as having cleared through his bank upon August 21, 1930. He identified government's Exhibit No. 126 as deposit slip of John Lazia for August 20, 1930; he identified Mr.

Lazia's signature on government's Exhibit 121.

Over the objection and exception of the defendant, government's Exhibits 121 and 126 were introduced in evidence, and are in words and figures as follows:

Exhibit 121

Treasurer's Check, Home Trust Company, Kansas City, Mo,
Aug. 19, 1930 No. 97963

Pay to the order of E. E. Butterfield, \$1205.25 Endorsed: E. E. Butterfield, John Lazia. Perforated: Paid 821-30;18-47

Exhibit 126

Deposited with Merchants Bank, For John Lazia Kansas City, Mo., Aug. 20, 1930.
Checks as follows: \$1205.25.

Mr. Edlund identified government's Exhibit 122 as a treasurer's check of the Home Trust Company and as having cleared through the Merchants Bank on September 17, 1930, and as bearing the endorsement of Mr. Lazia.

Thereupon, over the objection and exception of defendant government's Exhibit 122 was introduced in evidence, and is in words and figures as follows:

Exhibit 122

Treasurer's Check, Home Trust Company, Kansas City, Mo,
Sept. 15, 1930, No. 98987

Pay to the order of Chas. Carolo, \$618.00.

Endorsed: Chas. V. Carollo, John Lazia. Perforated: Paid 9-17-30; 18-47

He identified government's exhibits Nos. 14 and 15 as being cashier's checks issued by his bank, paid upon August 21, 1929 and as having been endorsed by Mr. Lazia.

He identified government's Exhibit 127, which is deposit slip of Mr. Lazia's account dated August 21, 1929.

Thereupon government's Exhibits 14, 15 and 127 were introduced in evidence, and are in words and figures as follows:

Exhibit 14

Cashier's check, Merchants Bank, Kansas City, Mo.

Aug. 9, 1929 No. 64946 Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavin, J. Lazia. Perforated: Paid 8-21-29;18-76

Exhibit 15

Cashier's check, Merchants Bank, Kansas City, Mo.

Aug. 12, 1929 No. 64969 Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavin, J. Lazia. Perforated: Paid 8-21-29;18-76

Exhibit 127

Deposited with Merchants Bank, For Account of John Lazia, Kansas City, Mo., Aug. 21, 1929 Checks as follows: \$500.00, \$500.00 - total \$1000.00.

Witness identified government's Exhibit No. 128 as a cashier's check, but while the

name John Lazia was endorsed on said check, it was not in his hand writing. The check was paid upon February 10.

There was an objection and the following occurred:

"MR. WALSH: (interrupting) I want to make an objection to that. I do not object to that because it is a copy. I understand you could not find the original?

THE WITNESS: That is right.

MR. WALSH: I object to it because there is no proper connection with the defendant shown, nothing to show it is chargeable to income.

THE COURT: When it has been offered in evidence, I will pass upon that objection. We will hear all of the testimony concerning it first.

"Q. Does your cashier's check register show it was paid, and if so, when? A. February 10, 1930.

"Q. Will you produce a deposit slip for Mr. Lazia of 2-10-1930? (Deposit slip marked Plaintiff's Exhibit No. 129 marked for identification.)

"Q. Is this deposit slip, Government's Exhibit No. 129, the deposit slip to Mr. Lazia's account as of 2-10-1930?

"A. It is.

"MR. VANDENVENTER: We offer in evidence Government's Exhibits No. 129 and Exhibit 128,

"THE COURT: The objection to Exhibit No. 128 is overruled. "MR. WALSH: Exception."

He identified Government's Exhibit 128 as having been issued through the Merchants Bank and did not recognize the handwriting of the endorsement on the reverse side of said check. The check was paid February 17, 1930, He identified deposit slip to John Lazia's account February 17, 1930, He identified government's Exhibit 130 as being deposit slip of John Lazia's account.

Whereupon Government's Exhibits 59 and 130 were introduced in evidence and they are in words and figures as follows:

Exhibit 59

Cashier's Check, Merchants Bank, Kansas City, Mo,
Feb. 17, 1930 No. 68536

Pay to the order of A. M. Slavin, \$500,00 Endorsed: A. M. Slavin, John Lazia.

Perforated: Paid 2-17-30;18-76

Exhibit 130

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
3-17-1930 Cnecks as follows: \$500.00.

He identified government's Exhibits Nos. 60 and 131, and said exhibits were
introduced in evidence and are in words and figures as follows:

Exhibit 60

Cashier's check, Merchants Bank, Kansas City, Mo.

Feb. 24, 1930 No. 68636

Pay to the order of John Lazia, \$500.00 Endorsed: John Lazia. Perforated: Paid
2-24-30; 18-7 6

Exhibit 131

Deposited with Merchants Bank, For Account of John Lazia,
Kansas City, Mo., 2-24-1930 Checks as follows: \$500.00.

Reverse side: Slavin C.C. 68636.

Witness said that he endorsed John Lazia's name on government's Exhibit No. 60
and said he had done so several times; that he knew of no other person that endorsed
his name on checks.

He identified government's Exhibit No. 61 as a cashier's check and as having been
paid March 3, 1930; government's Exhibit 132 is deposit slip of John Lazia's account
March 3, 1930.

WHEREUPON said exhibits were introduced in evidence and are in words and
figures as follows:

Exhibit 61

Cashier's check, Merchants Bank, Kansas City, Mo.

Mar. 3, 1930 No. 68784 Pay to the order of John Lazia, \$500.00.

Endorsed: For Deposit to account John Lazia. Perforated Paid 2-3-30;18-76

Exhibit 132

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
3-3-1930 Currency)

Gold) \$500.00

Silver)

Checks as follows:

Government's Exhibit 63 was a cashier's check paid March 10, 1930, and Government's Exhibit 133 was a deposit slip of John Lazia's account to March 10, 1930; said exhibits were introduced in evidence and are in words and figures as follows:

Exhibit 63

Cashier's check, Merchants Bank, Kansas City, Mo.,

Mar. 10, 1930 No. 68940 Pay to the order of John Lazia, \$500.00.

Endorsed: For Deposit John Lazia. Perforated: Paid 3-11-30; 18-76

Exhibit 133

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
3-10-30 Checks as follows: \$500.00.

Government's Exhibit 64 was a cashier's check, dated March 17, 1930; the check was purchased by Slavin, payable to John Lazia. It was paid March 24, 1930. Government's Exhibit 134 was a deposit slip and Government's Exhibit 135 was a cashier's check. Government's Exhibit 135 was endorsed by the witness; Government's Exhibits 134 and 135 were introduced in evidence, and are in words and figures as follows:

Exhibit 134

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
3-17-1930 Checks as follows: \$500.00.

Exhibit 135

Cashier's check, Merchants Bank, Kansas City, Mo.

Mar. 17, 1930 No. 69095

Pay to the order of John Lazia, \$500,00.

Endorsed: John Lazia. Perforated: Paid 3-17-03: 18-76

Government's Exhibit 65 was a cashier's check, dated March 24, 1930 and bore the endorsement of John Lazia signed by the witness, and was purchased by Slavin, The witness testified that Lazia's personal ledger sheets showed a deposit for that day in the amount of the check. Whereupon Government's Exhibit 65 was introduced in evidence and is in words and figures as follows:

Government' s Exhibit 65 was issued by the bank, paid March 24 and bore Mr. Lazia's endorsement and was introduced in evidence and is in words and figures as follows:

Exhibit 65

Cashier's check, Merchants Bank, Kansas City, Mo.

Mar. 24, 1930 No. 69241 Pay to the order of John Lazia, \$500.00.

Endorsed: For Deposit John Lazia. Perforated: Paid 3-24-3 ;18-7

Government's Exhibit 66 was issued by the Merchants Bank, paid March 31, 1930, purchased by Mr. Slavin, and at this point the following occurred:

"Q. Now, I notice the record shows 'List Slavin'. What does that mean? A That means Mr.

Slavin would bring a number of checks over to the bank and leave them for collection and we would collect them and issue whatever checks he would ask for,

"MR. WALSH: He would do what? He would bring a list of checks to the Bank?

"THE WITNESS: Personal checks.

"MR. WALSH: And you would exchange those for one of these checks?

"THE WITNESS: No, he would leave them there for collection and when he would come over the next day he would tell us what to do and we would issue them in any denomination he wanted.

"MR. WALSH: That is, what to do with them with relation to giving a cashier's check?

"THE WITNESS: Yes."

Government's Exhibit 136 is a deposit slip of John Lazia's account. Government's Exhibit 66 and 136 were introduced in evidence and are in words and figures as follows:

Exhibit 66

Cashier's check, Merchants Bank, Kansas City, Mo.

Mar. 31, 1930 No. 69349 Pay to the order of John Lazia, \$500.00.

Endorsed: For Deposit to John Lazia. Perforated: Paid 3-31; 18-7

Exhibit 136

Deposited with Merchants Bank, For Account of John Lazia,

Kansas City, Mo., 3-31-1930 Checks as follows: \$500.00.

Government's Exhibit 68 was a cashier's check issued by the Merchant's Bank and paid March 14; Government's Exhibit 137 was a deposit ticket and said Exhibits 68 and

137 were introduced in evidence and were in words and figures as follows:

Exhibit 68

Cashier's check, Merchants Bank, Kansas City, Mo.

April 14, 1930 No. 69605

Pay to the order of John Lazia. \$500.00.

Endorsed: For Deposit to acct. of John Lazia. Perforated: Paid 4-14-30; 18-76

Exhibit 137

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
4-14-1930 Checks as follows: \$500.00.

Government's Exhibit 67 was a cashier's check issued by the Merchants Bank paid
April 18, 1930 and endorsed by John Lazia.

Said exhibit was introduced in evidence, and is in words and figures as follows:

Cashier's Check, Merchants Bank, Kansas City, Mo.

Apr. 4, 1930, #69471

Pay to the order of A. M. Slavin, \$500.00.

Endorsed: A. M. Slavin, John Lazia. Perforated: 4-18-30; 18-76.

Government's Exhibit 69 was a cashier's check paid Nov. 13, endorsed by John
Lazia. The same was offered in evidence over the objection and exception of the
defendant for the reason that "there was nothing to connect it with the defendant, nothing
that proves nor tends to prove that it was income", and is in words and figures as follows:

Cashier's Check, Merchants Bank, Kansas City, Mo.

Nov. 5, 1930 No. 73233

Pay to the order of John Lazia, \$1000.00.

Endorsed: John Lazia, J. Lazia, H. A. Tundall.

Perforated: Paid 11-13-30; 18-76

Thereupon Mr. Vandeventer withdrew from the evidence Government's Exhibit 109.

Government's Exhibit 138 was issued by the Merchants Bank and paid January 26,
1929.

Government's Exhibit 139 was deposit slip of Mr. Lazia's account of January 26, 1929.

Thereupon Government's Exhibits 138 and 139 were introduced in evidence and are in words and figures as follows:

Exhibit 138

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jan. 18, 1929 No. 62148.

Pay to the order of J. Lazia, \$1078.00.

Endorsed: For credit to Acct of J. Lazia. Perforated:

Paid 1-26-29; 18-76

Exhibit 139.

Deposited with Merchants Bank for account of J. Lazia,
Kansas City, Mo. 1/21/1927. \$1078.00

Government's Exhibit 140 was identified as a deposit slip and the deposit was currency. The exhibit was introduced in evidence and is in words and figures as follows:

Deposited with Merchants Bank for account of John Lazia, Kansas City, Mo. 3-13-1929.

Currency 400.00

Government's Exhibit 141 was a deposit evidence over the objection and exception of it has no connection with the defendant, not currency; it may have been anything; but is no proof of income", and is in words and figures as follows:

Exhibit 141.

Deposited with Merchants Bank for Account of John Lazia, Kansas City, Mo. 3-15-1929.

Currency 1,000.00.

Exhibit 142, a deposit slip, was introduced in evidence over the objection and exception of the defendant, on the ground it showed no connection with defendant, and was not income, and had no tendency to show that it was income, and is in words and figures as follows:

Exhibit 142.

Deposited with Merchants Bank for account of John Lazia, Kansas City, Mo. 3-38-1939

Currency

Gold

Silver

Checks as follows

Government's Exhibit 143 was a deposit covering the account of John Lazia. The exhibit was introduced in evidence over the objection and exception of the defendant for the reasons above described; said exhibit is in words and figures as follows:

Deposited with Merchants Bank for Account of John Lazia, Kansas City, Mo. 4-1-1939.

* Currency	100.00	
Checks	300.00	400.00

The amount indicated on Government's Exhibit 144 was deposited to Mr. Lazia s account and the same was introduced in evidence over the objection and exception of the defendant for the reasons above ascribed; and said exhibit is in words and figures as follows:

Deposited with Merchants Bank for account of John Lazia, Kansas City, Mo. 4-5-1929.

800.00

400.00

1200.00

ticket, introduced in defendant on the ground shown to be income; no proof of income",

Checks as follows

300

320 620

68

The amount indicated on Government's Exhibit 145 was deposited to the account of Mr. Lazia as shown on the deposit slip; the same was introduced in evidence and is in words and figures as follows:

Deposited with Merchants Bank for account of John Lazia,
Kansas City, Mo., May 14, 1939
\$600.00.

Government's Exhibit 146 was a cashier's check, issued by the Merchants Bank June 26, 1929, bore Mr. Lazia's name and was endorsed by the witness. The same was introduced in evidence over the objection and exception of the defendant for the reason that there was no foundation laid for the exhibit; that it was no proof or had no tendency

to prove income, and said exhibit is in the words and figures as follows:

Exhibit 146

Cashier's Check, Merchants Bank, Kansas City, Mo, Jun. 1, 1929 No. 63823

Pay to the order of J. Lazia \$1000.00.

Endorsed: J. Lazia. Perforated: Paid 6-26-29; 18-76.

Exhibit 147 was identified as a deposit slip and the amount indicated thereon was deposited to the account of Mr. Lazia. The exhibit was offered in evidence and is in words and figures as follows:

Exhibit 147

Deposited with Merchants Bank for account of John Lazia,
Kansas City, Mo., 6-17-1929.

Checks as follows: \$1350.00.

Government's Exhibit 148, after proper identification, was introduced in evidence and was a deposit to Mr. Lazia's account. An objection to the introduction of said exhibit for reason that the same was shown not to have been income, was sustained.

Government's Exhibit 149 was a cashier's check in the sum of \$1100.00, purchased by check of Angelina Sacamon in the sum of \$1,000.00 and \$100.00 in cash; the same was paid July 12, 1929, and bore the endorsement of Mr. Lazia. It was introduced in evidence and is in words and figures as follows:

Exhibit 149

Cashier's Check, Merchants Bank, Kansas City, Mo.

Jul. 10, 1929 No. 64436 Pay to the order of J. Lazia, \$1100.00 Endorsed: J. Lazia.

Perforated: Paid 7-12-29; 18-76

Government's Exhibit 150 was a cashier's check issued by the Merchants Bank, paid July 24, 1929 and endorsed by Mr. Lazia. It was offered in evidence over the objection and exception of the defendant on the ground that it did not tend to prove receipt by the defendant of taxable income, and is in words and figures as follows:

Exhibit 150

Cashier's Check, Merchants Bank, Kansas City, Mo,

Jul. 13, 1929 No. 64506 Pay to the order of J. Lazia, \$300.00.

Endorsed: J. Lazia.

Perforated: Paid 7-24-29; 18-76

Government's Exhibit 151 was a deposit slip indicating deposit of \$300.00 to Mr. Lazia's personal account. It was offered in evidence and is in words and figures as follows:

Exhibit 151

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., July 19, 1929.

Currency)	
Gold)	\$300.00
Silver)	

Checks as follows:)

Government's Exhibit 152 was a cashier's check issued by the Merchants Bank August 9, 1929 bearing Mr. Lazia's endorsement; Government's Exhibit 153, a deposit slip reflected a deposit to the account of Mr. Lazia, August 9, 1929, in the sum of \$1,000.00. Whereupon the following occurred, to-wit:

"MR. WALSH: Way do you say that?

"THE WITNESS: This check was paid on July 24th and this check was issued on July 24th although it shows at the close of the 23rd it would have gone into the 24-th business."

"MR. WALSH: Was there anything there to indicate it did not go into the larger check except part of it was a \$300.00 check?

"THE WITNESS: That is all it shows, that a part of it was \$300.00."

"MR. WALSH: If it did, that would be a duplication of \$300.00?"

"THE WITNESS: Yes, sir."

"MR. VANDEVENTER: We offer in evidence Government's Exhibits 152 and 153."

Government's Exhibits 152 and 153 were introduced in evidence and are in words and figures as follows:

Exhibit 152

Cashier's Check, Merchants Bank, Kansas City, Mo,
Jul. 23, 1929 No. 64702 Pay to the order of J. Lazia, \$1000.00.

Endorsed: J. Lazia.

Perforated: Paid 8-9-29; 18-76.

Exhibit 153

Deposited with Merchants Bank, For Account of J. Lazia,
Kansas City, Mo., 8-9-1929
\$1000.00

Government's Exhibit 154 was a deposit slip. It showed a deposit to Mr. Lazia's account on August 26, 1929, in the sum of \$1505.00, and is in words and figures as follows:

Exhibit 154

Deposited with Merchants Bank for John Lazia Kansas City, Mo., 8-26-1929

Checks as follows: \$750.00

755.00

1505.00

Government's Exhibit 155 was introduced in evidence over the objection and exception of the defendant for the reason that it was not shown to be connected with the defendant and there was nothing to show that it was any part of taxable income, and is in words and figures as follows:

Exhibit 155

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 9-12-1929
\$1000.00

Government's Exhibit 156 was a deposit slip indicating a deposit of \$2000.00 to Mr. Lazia's personal account, and is in words and figures as follows:

Exhibit 156

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 9-23-1929
\$2000.00

At this point the following occurred:

"MR.WALSH: We object to that for the same reason, if your Honor please, and wish to renew our objection at this time. That is, we had a Bill of Particulars granted here and we are entitled to some showing that this comes from income. The mere deposits do not constitute income and it is a violation, we think, of the defendant's rights to introduce a great number of alleged deposits of this kind without any explanation of whether they touch taxable income.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"THE COURT: My view, as I have expressed it in connection with motions that have been presented in this case, is that the mere deposit by an individual on a given date of a certain amount does not by itself alone constitute a proof of income but it is a circumstance that is proper to be proved as bearing upon whether he did have income or did not have income. It is competent on that question."

Government's Exhibit 157 indicated a deposit to Mr. Lazia's personal account in the sum of \$350.00. It is in words and figures as follows:

Exhibit 157

Deposited with Merchants Bank for John Lazia Kansas City, Mo., 10-29-1939
\$350.00.

WHEREUPON it was shown:

"MR. WALSH: Have you got the entry on this one?

"THE WITNESS: Yes, he was overdrawn \$181.51."

Government's Exhibit 159 was a cashier's check issued by the Merchants Bank and paid January 8, 1930 bearing the endorsement of Mr. Lazia. It is in words and figures as follows:

Exhibit 159

Cashier's check, Merchants Bank, Kansas City, Mo.

Nov. 30, 1939 No. 66968 Pay to the order of Marie Lazia, \$650.00.

Endorsed: Marie Lazia, John Lazia. Perforated: Paid 1-8-30; 18-76

Government's Exhibit 160 was introduced in evidence, over the objection and exception of the defendant for the reason that it constituted no evidence of taxable income, and is in words and figures as follows:

Exhibit 160

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 19, 1929 No. 67358 Pay to the order of J. Lazia, \$3000.00.

Endorsed: J. Lazia, John D. Stokes. Perforated: Paid 13-30-39; 18-76

WHEREUPON the following occurred:

"Q. Mr. Edlund, I will ask you to produce certificate of deposit Number 3694.

"Q Will you please consult your records relative to deposit slip mentioned, which is marked Government's Exhibit 161 and see who purchased it?

"A Certificate of deposit Number 2694 was purchased by J. Lazia who is Johnnie Lazia.

"MR. WALSH: We desire to object to that, if your Honor please, because there is no evidence shown that it was income and the evidence up to this date positively shows it was not income.

"THE COURT: Overruled.

"MR, WALSH: Exception."

"Q. I will ask you to examine it and see if it bears the endorsement of John Lazia? A It is not in his writing; it is my writing but it bears his endorsement,

"Q You endorsed it for him? A Yes, sir.

"MR. VANDEVENTER: We offer in evidence Exhibit 161.

"MR. WALSH: My objection was premature so I make that objection to it now, as it is offered.

"THE COURT: Overruled.

"MR. WALSH: Save an exception."

Government's Exhibit 161 is in words and figures as follows:

Exhibit 161

Certificate of Deposit No. 3694 Kansas City, Mo., Jan. 8, 1930 \$5000.00.

This certifies that J. Lazia has deposited with the Merchants Bank of Kansas City, Mo., Five Thousand no/100 Dollars payable to the order of same in current funds on the return of this certificate properly endorsed 3-6-9-12 months after date with interest at the rate of 3 per cent per annum. No interest after maturity.

(Signed) R. A. Edlund, Cashier Not subject to check.

Endorsed: J. Lazia: Perforated: Paid 1-29-30; 18-76

The witness testified that their records indicated that Government's Exhibit 161 was paid upon January 29, 1930.

The Court sustained the objection as to whether or not interest was paid upon the certificate of deposit for the reason that such interest, if any, was not mentioned in the Bill of Particulars.

Government's Exhibit 162 was a deposit slip, showing a deposit of \$500.00 credited

to Mr. Lazia's account, January 28, 1930. An objection was sustained at the introduction of the exhibit because the witness testified from documentary evidence that the item represented by the exhibit was the proceeds of a loan made on that date at the Merchants Bank.

Government's Exhibit 163 was a cashier's check issued by the Merchant's bank, paid February 15, 1930 and bore the endorsement of Mr. Lazia, and was in words and figures as follows:

Exhibit 163

Cashier's Check, Merchants Bank, Kansas City, Mo. Feb. 15, 1930 No. 68521

Pay to the order of John Lazia, \$3000.00 Endorsed: John Lazia, A.R.Gizzo.

Perforated: Paid 2-17-30;18-76

Government's Exhibit 164 was introduced in evidence over the [objection and exception of the defendant; it was a cashier's check issued by the Merchants Bank paid February 19, 1930, and purchased by John Lazia with cash. It is in words and figures as follows:

Exhibit 164

Cashier's Check, Merchants Bank, Kansas City, Mo.

Feb. 17, 1930 No. 68559

Pay to the order of A. A. Rayen, \$1350.00.

Endorsed: A. A. Rayen: Pay Home Trust Company, Kansas City, Mo. or order: Previous endorsements Guaranteed: For Deposit only - Turf Cigar Co. Perforated: Paid 2-19-30; 18-76

Mr. Walsh made the following objection:

"MR. WALSH: I renew my objection to that on the ground there is no connection of the defendant with it and no testimony in the case with reference to it to show that it is income.

"THE COURT: I understood the witness to say the defendant purchased it. Overruled.

"MR. WALSH: Exception."

to Mr. Lazia's

Exhibit 165

Deposited with Merchant Bank, Account of John Lazia Kansas City, Mo., 2-17-1930\

Government's Exhibits 165, 166 and 167 were all deposit slips properly identified and introduced in evidence and are in words and figures as follows:

Exhibit 165

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 2-17-1930
\$137.50

Exhibit 166

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., Feb. 21,
1930 \$300.00.

Exhibit 167

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 5-5-1930
\$750.00
\$91305
Less 163.05
750.00

Government's Exhibit 168 was a cashier's check paid September 30, 1930 and bearing the name of Mr. John Lazia, endorsed by the witness. The same was introduced in evidence over the objection and exception of the defendant because there was no proper foundation to show that it was income and that the exhibit had no tendency to prove it was income for the year 1929 or 1930, which exhibit is in words and figures as follows:

Exhibit 168

Cashier's check, Merchants Bank, Kansas City, Mo. May 6, 1930 No. 69997
Pay to the order of J. Lazia, \$1500.00 Endorsed: J. Lazia. Perforated: Paid,
9-30-30; 18—76

Government's Exhibit 169 was a cashier's check issued by the Merchants Bank paid August 8, 1930, bearing Mr. Lazia's endorsement and was introduced in evidence over the objection and exception of the defendant for the above reason and is in words and figures as follows:

Exhibit 169

Cashier's Check, Merchants Bank, Kansas City, Mo.
May 9, 1930 No. 70047

Pay to the order of J. Lazia, \$3500.00 Endorsed: J. Lazia. Perforated: Paid
8-8-30; 18-76

Government's Exhibit 170 was introduced in evidence over the objection and exception of defendant, the same being a deposit slip, and is in words and figures as follows:

Exhibit 170

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., May 16, 1930

Checks as follows: \$624.00.

WHEREUPON the following occurred:

"MR. WALSH: That is objected to for the same reason.

I do not know whether I have to make the same objection in full each time or not.

"THE COURT: I should not think so. If you care to do so you may object to all cashier's checks and all of the deposit slips at the one time.

"MR. WALSH: I do not want to do that. What I was going to suggest was that I object to that for the same reason as I did the other, and let the stenographer write that reason out in full and save an exception to each.

"THE COURT: He may do that.

"MR. WALSH: Very good. It will save a lot of time."

Government's Exhibit 171 was a cashier's check paid May 37, 1930 and endorsed by Mr. Lazia. There was the usual objection and exception and the exhibit is in words and figures as follows:

Exhibit 171

Cashier's Check, Merchants Bank, Kansas City, Mo. May 21, 1930 No. 70363

Pay to the order of J. Lazia, \$4500,00.

Endorsed: J. Lazia, A. R. Gizzo, check to A. R. Gizzo.

Perforated: Paid 5-37-30; 18-76

The seventh line of Government's Exhibit 173 was introduced in evidence over the objection and exception of the defendant on the ground that it was not a permanent record of the bank and not kept in the regular course of business, A photostatic copy of the same is attached hereto.

Government's Exhibit 174 was introduced in evidence being line 16 of said exhibit, over the objection and exception of the defendant; a photostatic copy of said exhibit is attached hereto

Lines 8 and 13 of Government's Exhibit 175 were introduced in evidence, over the objection and exception of defendant, which objection included that said lines 8 and 13 did not prove nor tend to prove the receipt of taxable income by the defendant, and because the witness had no independent recollection of the instrument. Copy of said exhibit is attached hereto.

THEREUPON the following occurred:

"MR. VANDEVENTER: I want to introduce at the head of each column the words 'cashed for', 'drawn on', and 'amount.'

"MR. WALSH: Objected to as not the best evidence.

"THE COURT: Overruled. I suppose that in offering these exhibits, while you are offering only certain lines, you are offering such notations appearing on the exhibits as have some bearing on the lines offered.

"MR. VANDEVENTER: Yes, sir.

"MR. WALSH: I object to that for the same reason as given in the other two objections.

"THE COURT: Overruled. Let me see that last exhibit.

I did not hear anything read which indicates whose check it was that was cashed or what check it was.

"MR. VANDEVENTER: It says 'C.A.S. C.H.'

"THE COURT: What does that mean, Mr. Witness? I do not think the fact that he may have cashed his own check at his bank would be any evidence of any kind.

If somebody else's check was cashed that might be some evidence, and I think is.

"MR. WALSH: If your Honor please, I wish to submit, if I understand what your Honor says, that these don't prove themselves.

"THE COURT: No, I don't think they prove themselves.

"MR. WALSH: I mean prove themselves to the extent of showing it was income.

"THE COURT: No, I understand that difference.

"A I am unable to say what that means; that is the teller's notation of some kind,

"TEH COURT: What does the 18-34 mean?

"THE WITNESS: 18-34 is the number of the Merchants Bank. 18 for Kansas City and 34 is our clearing house number so that indicates both of these checks were drawn on the Merchants Bank.

"THE COURT: No showing as to who was the maker of the check, who drew the check?

"THE WITNESS: No, it does not show anything like that.

"THE COURT: The objection to that exhibit is sustained.

"Q (Mr. Vandeventer): Now, I will ask you to refer to Mr. Lazia's personal ledger sheet as of October 22, 1930. Does his individual ledger sheet on that date reflect the cashing or charging against his account of a check of \$2,000.00 and one of three thousand dollars?

"A It does not.

"MR. VANDEVENTER: Now, we reoffer these.

"THE COURT: You may reoffer them and the objection is now overruled.

"MR. WALSH: Save an exception."

Government's Exhibit 176 was introduced in evidence over the objection and exception of the defendant; it was a cashier's check drawn on the Merchants Bank dated October 3, 1930, and bore the endorsement of Mr. Lazia. The exhibit is in words and figures as follows:

Exhibit 176

Cashier's Check, Merchants Bank, Kansas City, Mo. Sep. 17, 1930 No. 72196.

Pay to the order of J. Lazia, \$3000.00 Endorsed: J. Lazia, H. A. Tundell. Perforated: Paid 10-22-30;18-76.

Government's Exhibit 177 was a cashier's check dated September 17, 1930, bearing the endorsement of John Lazia.

THEREUPON the following occurred:

"MR. VANDEVENTER: We offer in evidence Government's Exhibit 176.

MR. WALSH: We object to that; not on ground it is a photostate but on the ground there is no proper connection with any of the taxable income of the defendant shown; there is no proper foundation laid; no evidence either proving or tending to prove that it had anything to do with income.

THE COURT: Overruled.

MR. WALSH; Exception.

MR. VANDEVENTER: 'Merchants Bank, Kansas City, Missouri, September 17, 1930.

Number 72196. Pay to the order of J. Lazia \$3,000.00, Merchants Bank, Three Thousand Dollars No cents. Cashier's check signed Hal R. Lebrecht, President,

O. R. Baker, Teller', Endorsed 'J. Lazia and H. A. Tundall.' (Cashier's check marked Plaintiff's Exhibit 177 for identification.)

Q Now I will hand you Government's Exhibit 177, being a photostat of cashier's check Number 72137 and ask you if that was issued by your bank? A It was.

Q Was it paid and if so when? A September 17, 1930.

Q Does it bear the endorsement of John Lazia?

A Yes, sir.

MR. VANDEVENTER: We offer in evidence Government's Exhibit 177.

MR. WALSH: I want to ask this witness a question or two.

We object to that for the same reason as given in the last objection.

THE COURT: Overruled.

MR. WALSH: Exception.

THE COURT: What is the number of that check?

MR. VANDEVENTER: Number 72137.

THE COURT: What item is it in the Bill of Particulars?

MR. JEROME WALSH: Item 41.

MR. WALSH: Let me ask him a question bearing on the admissibility of that check. Look at this check which I hand you. I want you to look at your records and see whether or not that cashier's check Number 72196 was purchased by the proceeds of cashier's check issued by the Merchants Bank, September 15, 1930, and payable to and endorsed by M. Lasalla, John Lazia being the last endorser?

"THE WITNESS: It was.

"MR. WALSH: We object to that as incompetent, irrelevant and immaterial and not tending to prove any income.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"MR. WALSH: I will ask one more question. That is really a charge of \$6,000.00, that, if it

was income would be made to income, is it not where there was only \$3,000.00 received?

"MR. LOVAN: If the Court please, I thought all such matters would be left to cross examination.

"MR. WALSH: This is purely on the admissibility. The Court has overruled my objection, Mr. Lovan, and I save my exception.

"MR. VANDEVENTER: Exhibit 177:

'Merchants Bank, Kansas City, Missouri, September 15, 1930. Number 72137. Pay to the order of M. Lasalla \$3,000.00, Merchants Bank Three Thousand Dollars and No Cents, cashier's check, signed Hal Lebrecht, President, O. R. Baker, Teller, endorsed M. Lasalla, John Lazia,

"MR. WALSH: That is objected to as irrelevant and immaterial and on the ground that it could not possibly have reference to any taxable income of the defendant, it being one check exchanged for another and each being in the sum of \$3,000, and each, if that is permitted to go in evidence, would be a charge, if it was income, of \$3,000.00.

"MR. VANDENVETER: If your Honor, please, I think I can explain this. In our Bill of Particulars we only charged this as \$3,000.00. We are just showing now it was procured.

"MR. WALSH: I think, your Honor, that the witness ought to be allowed to explain that if there is an explanation to it, so that the jury would see whether or not this was chargeable to anything of Mr. Lazia's. To state simply they want to show the course of business or how it was drawn out would be no reason for that. The jury might well gather the impression that this great drift of checks that was put in there, that that was an item of \$6,000.00 that should be charged to taxable income, if a taxable income on it was proven against the defendant.

"THE COURT: Overruled,

"MR. WALSH: Save an exception."

Government's Exhibit 178 was admitted over the objection and exception of the defendant, and is in words and figures as follows

Exhibit 178

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., 9-30-1930

\$500.00.

Government's Exhibit 179 was marked for identification and then the following occurred:

"Q Was it paid and if so, when? A October 22, 1930. "Q Does it bear the endorsement of John Lazia?

"A It does.

"MR. VANDEVENTER: We offer in evidence Government's Exhibit 179.

"MR. WALSH: I object to this first because the certificate of deposit is not made to the defendant; second, because there is nothing upon the face of the deposit or nothing in evidence to connect it with any taxable income of the defendant. It is no proof and has no tendency to prove the realization of any taxable income that should be charged against the defendant.

"THE COURT: Overruled.

"MR. WALSH: Exception."

The exhibit is in words and figures as follows:

Exhibit 179

Certificate of Deposit 2790

Kansas City, Mo., Sept. 30, 1930

\$5000.00.

This certifies that Joseph Lazia has deposited with the Merchants Bank of Kansas City, Mo., Five Thousand Dollars, payable to the order of same in current funds on the return of this certificate properly endorsed 3-6-9-12 months after date with interest at the rate of 3 per cent per annum. No interest after maturity,

(Signed) R. A. Edlund, Cashier

Not subject to check.

Endorsed: Joseph Lazia, John Lazia. Perforated: Paid 10—22-30;18-76

The witness testified that Mr. Joseph Lazia could not write and the endorsement on the exhibit was in the handwriting of John Lazia; Government's Exhibit 180 indicated a deposit to Mr. Lazia's personal account and was introduced in evidence over the objection and exception of the defendant and is in words and figures as follows:

Exhibit 180

Deposited with Merchants Bank, For Account of John Lazia, Kansas City, Mo.,

11-21-1930 \$700.00.

Government's Exhibit 181 was a cashier's check, paid December 12, 1930 and bore Mr. Lazia's endorsement. It is in words and figures as follows:

Exhibit 181

Cashier's Check, Merchants Bank, Kansas City, Mo.

Nov. 25, 1930 No. 73563 Pay to the order of Rosie Passantino, \$3000.00.

Endorsed: Rosie Passantino, John Lazia. Perforated: Paid 12-12-30 18-76

Government's Exhibit 182 was a notation on line 14 of said exhibit and a photostatic copy thereof is attached hereto: And in connection with which the following occurred:

"A It is a photostatic copy of a teller's memoranda of our bank under date of March 16, 1930.

"Q Do you recognize the writing on that? A Yes, sir.

"Q Of whom? A A C. L. Stickel.

"Q Was he a teller in your bank on that date? A He was.

"MR. VANDEVENTER: We offer in evidence the fourteenth line from the bottom of Government's Exhibit 182 with all printed notations at the top.

"MR. WALSH: It is not objected to on account of being a photostat but is objected to ----- I object to this or any part of it as being mere hearsay and not binding upon this defendant, and not coming within the rule that it is a permanent record of an account or of the bank. It being shown that there are on this slip some thirty or forty memorandums of the same individual. It is doubtful, in my opinion, if the individual could testify to it; certainly not somebody else.

"THE COURT: Overruled.

"MR. WALSH: Save an exception.

"MR. VANDEVENTER: 'Cash for John Lazia, drawn on 18-1 \$510.00'.

The witness then testified that upon December 16, 1930, Mr. Lazia purchased twenty-five fifty dollar (\$50.00) traveler's checks totaling \$1250.00. Numbered A-9148 to A-9172 inclusive and said that his account in the bank was not charged with a \$1250 item on that date.

Government's Exhibit 183 was a cashier's check dated December 16, 1930 and bore the endorsement of Mr. Lazia, It was introduced in evidence over the objection and

exception of the defendant and is in words and figures as follows:

Exhibit 183

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 16, 1930 No. 73954 Pay to the order of J. Lazia, \$1,000.00.

Endorsed: J. Lazia; Sutton & Gibson Jewelry, by R.E.Gibson.

Perforated: Paid 13-30-30; 18-76 -o-

Government's Exhibit 184 made December 16, 1930 bearing Mr. Lazia's endorsement was introduced in evidence over the objection and exception of the defendant for all of the reasons as to their competency, relevancy and materiality and exhibit is in words and figures as follows:

Exhibit 184

Cashier's Check, Merchants Bank, Kansas City, Mo.

Dec. 16, 1930 No. 73955 Pay to the order of J. Lazia, #1,000.00.

Endorsed: J. Lazia.

Perforated: 13-15-30; 18-76.

Government's Exhibit 185, a certificate of deposit, was introduced in evidence over the objection and exception of the defendant, paid at the Merchants Bank, December 16, 1930 and bearing the endorsement of the defendant, and is in words and figures as follows:

Exhibit 185

Certificate of Deposit 2788

Kansas City, Mo., Sept. 30, 1930

\$5000.00

This certifies that Joseph Lazia has deposited with the Merchants Bank of Kansas City, Mo., Five Thousand Dollars payable to the order of same in current funds on the return of this certificate properly endorsed 3-6-9-12 months after date with interest at the rate of 3 per cent per annum. No interest after maturity,

(Signed) R. A. Edlund, Cashier

Not subject to check.

Endorsed: Joseph Lazia, J. Lazia, Perforated: Paid 12-15-30; 18-76 John Lazia. -o-

Government's Exhibit 186 is a certificate of deposit paid March 27, 1929 and is in words and figures as follows:

Exhibit 186

Certificate of Deposit 2423 Kansas City, Mo., Mar. 6, 1928 \$5000.00

This certifies that John Lazia has deposited with the Merchants Bank of Kansas City, Mo., Five Thousand Dollars payable to the order of same in current funds on the return of this certificate properly endorsed 3-6-9-12 months after date with interest at the rate of 3 per cent per annum. No interest after maturity.

(Signed) Hal R. Lebrecht, Cashier

Not subject to check.

Endorsed: John Lazia.

Perforated: Paid 3-27-29; 18-76

Government's Exhibit 187 is a deposit ticket showing payment of interest to Mr. Lazia's account upon March 27, 1929 and is in words and figures as follows:

Exhibit 187

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo.,
3-29-1929 \$158.75
5000.00 5158.75

Objection was sustained to the introduction of the certificate of deposit but Government Exhibit 187 went into evidence.

THEREUPON Mr. Walsh made the following objection:

"MR. WALSH: I wish to include in my objection the interest that was earned in 1929 and 1930 with respect to the \$158.75. I said I admitted that was all part of the taxable income. I mean to say that all part of the \$158.75 earned in either 1939 or 1930, I concede as taxable income. That will have to be figured out later from the checks."

Government's Exhibit 188 was marked for identification, whereupon the following occurred:

"MR. WALSH: I object to the testimony as stated to me by my adversary here, what this interest is. I object to the introduction of the amount paid upon that for the reason that the certificate of deposit in question is not the property of John Lazia but of Joseph Lazia shown upon its face.

"THE COURT: Has the certificate of deposit been introduced in evidence?"

"MR. VANDEVENTER: No, sir,

"THE COURT: The objection is overruled.

"MR. WALSH: Save an exception.

"A. \$303.34 which is interest on C.D. Number 3418 of Joseph Lazia.

"MR. WALSH: I move that be stricken out.

"THE COURT: Stricken out until a further showing, if any, is made.

"Q. Were these items deposited to the account of John Lazia, to his checking account?

"MR. WALSH: I object to that as immaterial.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"A The amount of \$567.56 was deposited to John Lazia's account.

"Q Now, I will re-ask the question. What makes up those items of interest, what interest payments?

"MR. WALSH: I have no objection to the first, but putting those all together I have to make an objection. What is the first one?

"THE WITNESS: 3447.

"MR. WALSH: I have no objection to that. I object now to the introduction of any evidence as to what makes up the amount referred to by the other two certificates of deposit. What are the numbers of those?

"THE WITNESS: 2418, 2422.

"THE COURT: Sustained.

"Q I will ask you to examine the endorsements on certificate of deposits Numbers 2418, 2422 and 2447 and state whose writing that is?

"MR. WALSH: I object to that as mere repetition.

"THE COURT: I do not think he has testified to that.

"A It is in my handwriting.

"Q At whose instance did you make those endorsements?

"A I made two of them at the request of Mr. Joseph Lazia as he did not write, was not able to write and the other of Mr. John Lazia,

"Q What is the amount of interest on John Lazia's certificate of deposit? A \$165.47.

"MR. VANDEVENTER: I reoffer Government's Exhibit 188, the deposit slip.

'Deposited with Merchants Bank for John Lazia, Kansas City, Missouri, 6-26-1929, \$567.56.'

"Q I will ask you to produce certificate of deposit Number 2789. (Certificate of deposit marked Plaintiff's Exhibit 189 for identification.)

"Q Was that certificate issued by your bank? A It was.

Was it paid by your bank? A Yes, sir, December 16, 1930

"Q Do you recognize the endorsements on the back?

"A Yes.

"Q In whose handwriting? A Mr. John Lazia.

"Q Did John Lazia endorse his name on it? A Yes, sir.

"Q Now, I will ask you to refer to your records relating to cashier's checks Number 73935 and 73934 and state whether the record shows what went to purchase that? A It shows C.O. \$5000 (Cashier's checks marked Plaintiff's Exhibit 190 and 191 for identification.)

"Q I will hand you Government's Exhibit 190 which is cashier's check Number 73935 and ask you if that was issued by your bank?

"A It was.

"Q, Was it paid and if so when? A January 36, 1931.

"Q Does it bear the endorsement of John Lazia? A Yes, sir.

"Q Now I will hand you Government's Exhibit 191 which is cashier's check Number 73934 and ask you if that was issued by your bank.

"A It was.

"Q Was it paid and if so when? A June 29, 1931.

"MR. JEROME WALSH: What is the date of it?

"MR. VANDEVENTER: December 15, 1930.

"Q Does it bear Mr. Lazia's endorsement? A It does, in my handwriting.

"Q You endorsed it for him? A Yes, sir.

"THE COURT: What item in the Bill of Particulars are you now developing?

"MR. VANDEVENTER: Item 52.

"Q At the time Government's Exhibit 189 was paid, your certificate of deposit Number 2789, was interest paid on it?

"A From the records I have on hand I am unable to say for the reason that cashier's check register does not state if this is the C.D. used to buy these checks."

"Q Will you figure what the interest on C.D. Number 2789 dated September 30, 1930,

would be at the day it was cashed, at three percent? A It would figure right around \$30.00.

"Q Will you examine your records and see if any other certificates of deposit for \$5000.00 was paid on December 15, 1930? A I only have the record of John Lazia and Joseph Lazia and Marie Lazia on hand here.

"MR. VANDEVENTER: We offer in evidence Government's Exhibits 190, 191 and 189.

"MR. WALSH: Those are objected to as immaterial, not being connected in any way with the defendant so far as taxable income is concerned and because the transaction shows on its face what it was; the certificate of deposit being in favor of Joseph Lazia and the check being payable afterwards to John Lazia and no evidence of any income received.

"THE COURT: Overruled.

"MR. WALSH: Exception."

Exhibits 189, 190 and 191 are in words and figures as follows:

Exhibit 189

Certificate of Deposit 2789 Kansas City, Mo., Sept. 30, 1930 \$5000.00

This certifies that Joseph Lazia has deposited with the Merchants Bank of Kansas City, Mo., Five Thousand Dollars payable to the order of same in current funds on the return of this certificated properly endorsed 3-6-9-13 months after date with interest at the rate of 3 per cent per annum. No interest after maturity.

(Signed) R. A. Edlund, Cashier

Not subject to check.

Endorsed: Joseph Lazia, John Lazia; Perforated: Paid 13-15-30;18-76

Exhibit 190

Cashier's Check, Merchants Bank, Kansas City, Mo. Dec. 15, 1930 No. 73935

Pay to the order of J. Lazia, \$2,031.10 Endorsed: J. Lazia. Perforated: Paid

1-36-31;18-76

Exhibit 191

Cashier's Check, Merchants Bank, Kansas City, Mo. Dec. 15, 1930 No. 73934

Pay to the order of J. Lazia, \$3,000.00.

Endorsed: J. Lazia.

Perforated: Paid 6-39-31;18-34

Exhibits 193 and 193 were not introduced in evidence.

The Special Assistant Attorney General's Exhibit 194 was withdrawn from evidence because he did not believe it represented an item of income.

The witness testified as concerning Mr. Lazia's loan record as of August 31, 1929, as being credited with \$300.00; but his individual ledger sheet was not charged with \$300.00. That his loan register for January 30, 1930 was credited with \$350.00 and his personal ledger sheet was not charged with a similar amount; that his loan register for February 17, 1930 was credited with \$1,000.00 and that his individual ledger sheet was not charged with \$1,000.00; that his loan register of March 24, 1930 was credited with \$6,000.00 and upon September 22, 1930 it was credited with \$150.00. That loan No.56961 was credited with \$275.00 and that his personal ledger sheet of September 33, 1930 was not charged with the above item. The witness testified that the deeds covering the North Kansas City property, and the deeds of Agnes Taylor in blank to Lots 1 and 5 Braecklein's Addition, in North Kansas City, were not up as collateral to Mr. Lazia's note at the bank, but that H. R. Lebrecht (a witness for the government) had the same in his private box.)

The witness was acquainted with the defendant for a number of years, knew him in 1929 and 1930. He likewise was acquainted with Mr. Lazia's wife; that he thought, but was not positive, that they were living together in 1939 and 1930. He knew of no children of Mr. and Mrs. Lazia and that they lived in Kansas City in 1929 and 1930.

CROSS EXAMINATION

From and after the first two or three weeks of the operation of the dog track, he handled the entire deal for Mr. Lazia after Mr. Lazia suffered an accident crossing the bridge in North Kansas City. The result was that his eyes were affected off and on for a year, maybe two years; it made him very nervous; "he twitches" an awful lot. Mr. Goldberg was the attorney for the Electric Holding Corporation of Chicago; he handled most of the details for them. Mr. Goldberg was in the Court room and stood for identification. There upon the witness being asked to generally explain the dog track transactions, an objection was interposed that the same was without the scope of the examination in chief, which rule was in force. Concerning the travelers' checks

purchased by Mr. Lazia in the sum of \$1250.00, the witness testified that 17 were cashed in the State of Florida and 7 in Kansas City. Thereupon a group of photostatic copies of the travelers' checks were marked as Defendant's Exhibit 1 and introduced in evidence.

The witness testified that Plaintiff's Exhibit 171 was a check for \$4500.00 dated May 21, 1930; was used to purchase a check for \$4900.00 to A. R. Gizzo, which latter check was marked Defendant's Exhibit No. 3 for identification. The witness testified that two certificates of deposit, dated September 30, 1930 for \$5000.00 and made payable to Joseph Lazia, were purchased by Joseph Lazia from the witness in person and with cash, The witness testified that he had no personal interest in the Duke Motor Company and that he handled the transaction involving the purchase of the stock, which was for the consideration of \$2500.00. The stock was issued in his name so that he could have a stockholder's interest that would give him the right to examine the books at any time he cared to for the reason that his bank was making the loan and as the stock was not a listed one, he demanded the privilege of being able to inspect their books, at any time; he had certain of the stock placed in his brother-in-law's name (Sims) and "that was made for the same reason, I wanted control of the stock myself. In case I would get sick or something, I would have the privilege of examining the books."

A check dated June 25, 1929 for \$20,000.00 and a check bearing the same date for \$5,000.00 were marked for identification Defendant's Exhibits 4 and 5. The witness was asked whence came the money represented by the checks for the purchase of the Duke Motor stock and he testified as follows:

"I do not remember the numbers of the C.D.'s but \$10,000.00 came from John's father's, Joseph Lazia's C.D.'s, which made \$10,000.00; and the \$5000.00 C.D. of John Lazia, two cashier's checks, which made the \$17 ,000.00. At that time there was to be an equal division of the stock; so he borrowed \$8,000.00.

"Q Who was that? A John Lazia. It was understood by his father that there would have to be a loan made against this stock. There was \$5000.00 credited to John Lazia's personal account and \$3000.00 given to me, trying to make an equal division of \$12,5000.00 of stock. One of them was \$13,000.00. The way it stands now, there was \$5000.00 from John's personal account, \$5000.00 C.D. and \$2000.00 cashier's checks, and that made the \$12,000.00. In reality, John had about forty- eight per cent of the stock, and his father

fifty-two, but the intention at all times was to be a fifty-fifty basis."

"MR. WALSH: I offer these in evidence in connection with the cross examination. They are Defendant's Exhibits 4 and 5.

"Q You identified three checks here, I believe, Plaintiff's Exhibits 81, 82 and 83. Do you remember those?

"A Yes, sir.

"Q Those checks are dated on the same date, August 6, 1930 and I believe you testified that those checks represented dividends on this Duke stock? A Yes, sir.

"Q Now, I will ask you to state, if you did, how those dividends were distributed. I see they were all endorsed by you except one endorsed by Mr. Lazia? A There was a \$200.00 dividend made out to Mr. Lazia, he had twenty-five shares in his name. There was a \$1600.00 dividend made out to myself.

"Q How was that divided? A Two hundred shares.

"Q To whom did that money go? A It all went to the payment of this note, that is payment on this note.

"Q This note that you say was finally paid? A No, sir, the note is not finally paid.

"Q This note is not finally paid? A No. \$200.00 to Perry D. Sims, my brother-in-law, for twenty-five shares. This is Louis Portman for \$160.00. I don't exactly recall how many shares that covered.

Did he have some shares in it? A Yes, he had some shares.

"Q Now, you testified about the stock being put up in the hands of the bank? A Yes, sir.

"Q And the indebtedness was subsequently paid off? A No, sir, "Q Just describe that transaction. A At the start there was an \$8,000.00 note borrowed against this stock. At various times there have been other amounts borrowed against this stock. It is hard to tell without looking at the record. At this time there is still a balance that has as collateral this stock although the company is in liquidation and as they pay out they have hopes of the note being liquidated with the company's funds.

"Q Why did you credit those dividends that you say you did credit to John Lazia's account? A I said I credited it on the account, meaning the note.

You credited the same on the note of John Lazia. Did you have any conversation with

his father about that?

"A It was always understood that I credited the dividends.

"Q Did you have a conversation with him about it?

"A Yes.

"Q To what effect?

"MR. VANDEVENTER: We object to that as hearsay.

"Q I will make the record here. Did John Lazia's father tell you - -

"MR. VANDEVENTER: We object to that, if the Court please, in the presence of the jury.

"THE COURT: He can ask the question.

"Q Did John Lazia's father ask you to credit this amount, to let John use this as security for a loan? A Yes, sir; we understood that very distinctly at the start.

"Q From a conversation you had with Joseph Lazia? A Joseph Lazia, John's father.

"Q Now deceased? A Yes."

The witness testified that Government's Exhibit 106 represented rent received from the dog track from the Electric Holding Corporation. The witness was trustee over there and all this rent came to him and he turned it over to Mr. Lazia, who was "trustee for a group including Charlie Carolla, Charlie Carolla's father, and also Solly Wiessman had a group." The witness had heard that Solly Weissman had an attorney by the name of Buddy Middleton, but he did not appear in the transactions so far as the witness knew.

Government's Exhibit No. 7 was a check for rent received from the Electric Holding Corporation for the dog track for 1930. There was no other endorsement on Government's Exhibit 7, but that of the Merchants Bank, to whom it was drawn. With the check the witness purchased three \$1,000.00 cashier's checks in the name of John Lazia. The three checks were purchased April 22 and upon April 14, 1930, the date upon which the witness received the check, the witness made a check to the Merchants Bank to clear the item, and when the item cleared, he purchased three cashier's checks to J. Lazia.

The witness identified Government's Exhibit 70, made payable to him as trustee, in the sum of \$1500.00. He explained that it was half of the rent for Cuban Gardens. He said the check was cashed and he turned the funds over to Mr. Lazia, for Mr. Lazia's group and also for Solly Weissman's. "He was to make the distribution of it." The witness

identified Government's Exhibit 142 (a deposit slip recording a deposit to the account of John Lazia), which he identified as the proceeds from a sale of a barber shop located between Walnut and Grand on the south side of the street. The purchaser's name was Louis DeGrado. He (the witness) handled the whole deal. He talked Mr. Lazia into installing a barber shop. The transaction occurred some time between the latter part of 1927 and the first part of 1928. Mr. DeGrado paid \$1350.00 for the barber shop. Mr. DeGrado advanced \$800.00 and the bank loaned him \$400.00, all of which was deposited to Mr. Lazia's account as represented by Government's Exhibit 142. Mr. Lazia's original investment in the barber shop was \$2500.00 and

It is a return to that extent of an investment he made sometime before? A That is correct.

"Q How much was the original investment? A It was right around \$2500.00.

The witness then testified:

"Q Now, you identified a large number of checks signed A. M. Slavin and other persons. I do not want to go over them. Did you know A. M. Slavin? A I knew him as he came into the bank there.

When did you first become acquainted with him? A It is pretty hard for me to say at this time. I think it was right at the start of the Cuban Gardens.

"Q You identified a great many checks of your own bank and checks of other banks like the Produce Exchange Bank, the Baltimore Bank, the Bank of Commerce and a bank in Wellston, Missouri, and other checks, have you not, cashier's checks? A Yes, sir.

"Q Now, I will ask you if you know it to be a fact that those cashier's checks were issued to persons for gambling purposes? A I know that there has been a terrific lot of checks issued to different people's names like Slavin, which is sort of a trade name.

"Q Trade name for who? A For these different gamblers or gambling houses, whatever they want to call them. They use them must the same as cash. All the banks like to get them because it is just the same as putting a deposit in there.

"Q Do you charge them anything for that service? A No, sir, we don't.

"Q And you say it amounts to a good deal? A Yes.

"Q The profit that the bank makes off it is simply the profit on the large account which they carry along right straight through? A That is correct,

"Q You say you had no acquaintance with Slavin personally?

"A No, sir.

"Q Did you know him as coming into the bank, buying cashier's checks? A Yes, sir.

"Q I wish you would look at your record there and see what was the bank balance on the first day of January, 1929 of Mr. Lazia. A \$198.92.

WILLIAM V. RUTSTEIN, a witness produced on the part of the government testified as follows:

DIRECT EXAMINATION

That he was a resident of St. Louis, Missouri, and had been all of his life. That he was the operator of a cigar store and handbook business, commonly called cigar stores; his business was to take wagers upon horse races, prize fights and sporting events. He operated thirty-five stores in 1930 in the City of St. Louis.

Thereupon an effort was made to have the witness identify the Government's Exhibits 93, 94, 95, 96, 92; and after continual objections were sustained by the Court, the effort to prove the exhibits by the witness was abandoned.

HARRY T. RILEY, a witness produced on behalf of the government, testified as follows:

DIRECT EXAMINATION

That he was an Internal Revenue Agent, and had been employed as such since March 16, 1918; that he was an accountant and has been such for thirty years, and that his duties as an Internal Revenue Agent involved accounting. The witness had examined books and records of individuals and corporations, in all lines of business. He said that such work was his principal occupation and had been for years. The witness worked upon the case on trial from the 6th day of March 1932 until July 1932, and again after it was reopened in May, 1933. The witness had examined all of the records heretofore placed in evidence by the government, as

The witness testified, over the objection and exception of defendant, that \$55,930.90 was deposited to Mr. Lazia's bank account in 1929.

He testified that the total cash items received by the defendant for the year in the year 1929 and deposited to his bank account was in the sum of \$16,593.81.

There was an objection that the witness should not be permitted to summarize, and give totals unless the items going to make up the totals were embraced and mentioned in the Bill of Particulars, The objection was overruled and an exception saved.

The witness was asked;

"Q Can you state the total amount of checks received by Mr. Lazia in the year 1929 as shown by the books of the Merchants Bank?

"MR. WALSH: I object to this, if your Honor please, as calling for an improper conclusion of the witness, in the first place because it is being left to him to determine these matters, that is, as to what was contained in the Bill of Particulars; and for the further reason that they do not segregate in this amount (and he is the last witness) what they claim should be assessed as taxable income.

"THE COURT: Objection overruled.

"MR. WALSH: Exception. \$26,494.04.

"Q Can you state the total amount - -

"MR. WALSH: (interrupting) I do not want to look at that now, but I do claim the right, if Your Honor please; but he should indicate what he is reading there so that I shall have the opportunity to cross examine him from it.

"THE COURT: You will be given the opportunity to use this memorandum.

"MR. WALSH: Thank you, your Honor.

"Q Will you state the total amount as reflected by the books of the Merchants Bank that you have examined what went into Mr. Lazia's account in that bank during the year 1939?

"THE COURT: That is the same question you did ask him, about the deposits.

"MR. VANDEVENTER: No, I mean deposit and otherwise; for instance, where he would go and pay \$3,000.00 on a note. That is all in evidence.

"MR, WALSH: This witness was permitted to answer the question, as I understand it, confined to the Bill of Particulars.

"THE COURT: No, I do not think this examination is limited by the Bill of Particulars. The Bill of Particulars set out in full what constituted the items and alleged other income in an allegation of other income.

I do not think the examination of this witness is limited to the Bill of Particulars. He is not

being asked particularly concerning that allegation in the Indictment.

"MR. WALSH: He is speaking generally about this, and what is the office of the Bill of Particulars except to know what we have to meet? If the witness can be put on the witness stand and then asked about other items, I respectfully submit that the Bill of Particulars would serve no office.

"MR. VANDEVENTER: Let's have the question read.

(Question is shown as being read in the record.)

"MR. WALSH: We object to that for all of the reasons given and for the reason it is permitting alleged deposits to go into this case, which permission would be violating the rights of the defendant, would confuse the issues, and would be in contradiction of the Bill of Particulars.

"THE COURT: Overruled.

"MR. WALSH: Exception,

"Q Will you now answer that question? A \$83,753.60.

"Q Did you examine all these books you have referred to as to his account during the year 1930? A Yes, sir.

"Q Now, I will ask you to state the total amount passing through his account in the Merchants Bank as reflected by the books you examined, during the year 1930.

"MR. WALSH: I object to that, if your Honor please, for all of the reasons given in my last two objections, which are that he is speaking generally, in which case the Bill of Particulars would serve no office, and that it is permitting alleged deposits to go into this case, which permission would violate the rights of this defendant, would confuse the issues, and would be in contradiction of the Bill of Particulars.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"A \$97,941.56.

"Q How much do those same books show that he deposited in his account? A \$15,949.25.

"Q What do those same books show as to checks received and cashed by him, the total of checks received and cashed by him as reflected by these books, in the year 1930?

"A Do you mean cashed and deposited?

"Q, Just received. A The checks cashed weren't segregated from the other checks.

"Q, I will revise that question and leave out 'and cashed.' That will make it just 'checks received by him.'

"MR. WALSH: We object to that, if your Honor please. I do not like to be renewing these objections; still I would like to save them. I object to that question because many of these checks have not been shown to refer to income, but have been shown not to refer to income, and there have been duplications of checks.

"THE COURT: Overruled.

"MR. WALSH: I am not through, your Honor. I am objecting to this as calling for an improper conclusion of the witness and attempting to invade the province of the jury.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"Q. Will you answer the question? A The total of checks received during the year 1930 as \$54,824.46.

"Q What was the total cash received during the year 1930 as reflected by these books you have examined? A \$23,576.10. "Q Did you make an examination of the Slavin items, of what we might generally term the Slavin items? A Yes, sir."

That the Slavin checks for the year 1929 totaled \$29,950.00; they totaled \$11,600.00 for the year 1930. The sum of \$3,300.00 was credited to Mr. Lazia's loan account at the Merchants Bank in the year 1929, and the sum of \$7,350.00 for the year 1930.

WHEREUPON the following occurred:

"Q Did you figure the amount of interest paid on certificates of deposit and credited to Mr. Lazia's account in 1929?

"MR. WALSH: I object to that, if your Honor please, because the evidence is clear here that all those were not Mr. Lazia's certificates of deposit. They cannot contradict the testimony they put in.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"A Yes, sir.

"Q How much was that? A \$726.31, credited to his account,

"Q Did you figure the amount of interest received by Mr. Lazia in 1930? A Yes, sir.

"THE COURT: On what?

"MR. VANDEVENTER: On certificates of deposit.

"MR. WALSH: That is objected to for the same reason.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"A Yes, sir.

"Q How much was that? A \$81.10."

The witness examined the books of the Duke Motor Company and he found a credit of dividends in the sum of \$2160.00.

At this point the following occurred:

"Q All right. I will ask you to refer to Item 4. What do the books show relative to that item, Mr. Riley? A The cashier's check register of the Produce Exchange Bank disclosed that they issued a cashier's check Number 81426 on March 8, 1929, payable to John Lazia for \$462.00. The examination of the cashier's check disclosed it was endorsed John Lazia and cashed or paid at the Merchants Bank on January 20, 1930.

"MR. WALSH: I object to that, if your Honor please, and ask that what the witness said be stricken out. I object to it on this ground, that it is not enough to show that something is mentioned in the Bill of Particulars but that the proof has to be made that it comes from income; some place from income. If that is not so, of course, I stand on the right of this defendant to have them prove beyond a reasonable doubt what they charge in the indictment and Bill of Particulars.

"THE COURT: That particular objection is overruled but I do not understand, Mr. Vandeventer, what is the purpose of merely having this witness repeat what another witness has testified to. Exactly that was testified by another witness.

"MR. WALSH: That is, that it went into the account.

"THE COURT: I do not know whether the witness testified it went into the account.

"MR. WALSH: That is, that there was a deposit made of that amount.

"MR. VANDEVENTER: My purpose, if the Court please, is to show what the records of the bank reflect relative to these items in a way that is understandable. If I take the items of the books one at a time and just read in what the cashier's check register shows and then what the note register shows and then there is a deposit slip, it is practically

misunderstand- able. The whole theory of an accountant who is competent and qualified, and who has thoroughly gone into the records of the bank is for the purpose of clarification and that is the reason he can testify as to his summation of the examination of the records at this bank,

"THE COURT: That I understand, and the accountant can perform a real and valuable service in a case in that way but I

do not understand that this witness is being asked for any summation. He is being asked merely to repeat what already has been testified to by other witnesses; no summation or no explanation.

"MR. VANDEVENTER: There are some items where it will be necessary to explain.

"THE COURT: When you come to one of those let the accountant make such explanation as may be proper but this last testimony of his is just repetition of what Mr. Edlund testified.

"MR. VANDEVENTER: If I had two witnesses to the same fact, if the Court please, wouldn't that be permitted?

"THE COURT: Certainly it would be permitted but I do not think so in this situation. That is to say, you can put on an expert witness to perform the functions of an expert witness but what he is now doing is testifying to a fact without any explanation or summation, a fact already testified about; secondary evidence. Expert testimony, as to fact, I do not think is permissible. If any explanation is required, requiring the services of an expert very well, but I do not think this testimony is.

"MR. WALSH: If your Honor please, this may make an illustration, this very item as I remember it, of the point that I am making. Here is a check introduced for \$462.00. It is check Number 81426 issued by the Produce Exchange Bank of Kansas City. It is a check made to John Lazia for \$462.00 and endorsed by John Lazia and gone into his account. I say that that is not sufficient; that it has to show that it comes from income.

"THE COURT: Well, I understand that objection. I think you made that objection at the time of the original testimony touching this item.

"MR. WALSH: Yes, your Honor.

"THE COURT: It was overruled then and if that is the objection now it is overruled now but I do not see again the point of having this witness testify to the same thing another witness testified to,

"MR. WALSH: My point is that they have to make some connection, some place, with that check.

"THE COURT: Some connection with what?

"MR. WALSH: With that check of \$462.00; that it came from income. It is not enough merely to introduce a check for \$462.00, as I take it, and show that it went into his bank account, but it must go into his bank account from some source which would make it taxable income. He could have it cashed, he could get it for a present; anything; the burden is upon the government to show.

"THE COURT: Certainly. Before the evidence offered - - that is to say, for example, this particular evidence, if of any significance it must be believed by the jury to have been a part of the gross income of the defendant, Never- the less I think the evidence itself is competent to be considered with other evidence as bearing upon the ultimate issue.

"THE COURT: But they must have other evidence showing it came from income. The check alone is not enough.

"MR.VANDEVENTER: If the Court please, I will do my best to proceed along the lines mentioned by the Court but I will have to examine these items one at a time. It will perhaps be shorter that way anyway.

"THE COURT: Very well.

"MR. WALSH: Exception."

"Q (Mr.Vandeventer) Now, Mr. Riley, I will ask you to refer to Item 7 of the Bill of Particulars and ask you to explain what the record shows relative to that item?

"A Deposit ticket dated March 27, 1939 in the name of John Lazia showing a deposit of \$5158.75.

"Q I notice that the Bill of Particulars makes that as a charge of only \$158.75. Will you explain what the records show relative to that? A Certificate of deposit Number 3433 was paid at the Merchants Bank on that day and #158.75 represented interest on the certificate of deposit.

"Q I will ask you to refer to Item Number 11 of the Bill of Particulars and explain what the records show relative to that item? A The cashier's check register in the Merchants Bank shows on April 30, 1939, they issued cashier's check Number 63306 payable to

J. Lazia in the amount of \$3,000.00. The register further shows that this cashier's check was purchased by the Electric Holding Corporation, The register further shows that cashier's check No. 63306 that was issued for \$3,000.00 was paid on May 3, 1939, and two cashier's checks for \$1,000.00 each and \$1,000.00 was deposited in Mr. Lazia's account as shown by the deposit ticket.

"Q I will ask you to refer to Item Number 30 of the Bill of Particulars and explain what the records show relative to that item? A The records of the Merchants Bank show deposit ticket in the name of John Lazia crediting deposit to his account in the amount of \$567.56 on June 36, 1939.

On the same day certificates of deposits Number 2418, 2422 and 3477, each in the amount of \$5,000.00 were paid. Pencil notations on the said certificates of deposit—"

WHEREUPON the witness offered various explanations touching various deposit slips, cashier's checks, check registers, exchange checks, etc., in the same manner as set out immediately above, touching items 7, 11, 30, 31, 43 for the year 1939, and items 3, 9, 21, 23, 28, 31, 33, 52, 53 and 64 for the year 1930.

The witness allowed Mr. Lazia in the computation of his tax for the year 1939 a credit of \$1.88, and the sum of \$5.63 in the computation of his tax for 1933. The credits were allowed because it is referred to in the regulations as an earned income credit." t is based on representing 25% of the tax computed on earned income less the exemptions and credits for the defendant. In 1939 the tax rate was one half percent and in the year 1930 the rate was one and one half percent.

CROSS EXAMINATION

The witness produced a document from which he had been reading and said that hie summary computations were made from it. He was testifying solely from the examination of the records and made his report from them. He did not take into consideration any outside matters of explanation, he just took it from the books. His computations included income that came from capital or labor or both. He testified there was no reflection upon the books from which he was testifying that showed any return of capital on account of Mr. John Lazia. If any of the specific items contained in his computation, about which he testified, were the return of capital investment, the books he examined would not reflect it. The witness did not figure that the items he testified to as they appeared on the Bill of

Particulars.

The cross examination of the witness from this point on was very lengthy and involved and a proper understanding requires that the cross examination beginning at page 484 be set forth in totidem verbis so that a clear understanding of the theory of the cross examination may be had, in conformity with the order of the Hon. Merrill E. Otis made and entered April 26, 1934, and set out in the record proper.

Q I want to show now just what you have testified to that appears on the Bill of Particulars, what items, and what items that you have not testified to in this direct examination.

You understand that, do you, Mr. Riley?

MR. LOVAN: If the Court please, I believe it would be a quicker way to have the reporter call them off; the reporter has it.

MR. WALSH: I would like to ask the witness because I have certain questions to ask him as I go along.

Number 1, you did not testify to, that is out. A I believe I testified to that item.

Q Is that your recollection at this time, that you testified to Item Number 1? A I testified; I don't know whether it was overruled or not.

Q Well, that was out, as I understand it.

THE COURT: Yes; he was asked concerning it.

MR. WALSH: He was asked concerning it, but that was out.

Q Item Number 2. Did you testify to that, that is an item of \$500.00? A No, sir.

Q Did you testify to Item Number 3? A No, sir.

Q Did you testify to Item Number 4? A Yes, sir.

MR. WALSH: I wish you would give me cashier's check Number 81426; that is Item Number 4.

MR. VANDEVENTER: If you will tell us what you want we will get it for you.

MR. WALSH: I want every check. I could not possibly give you the numbers of them, which go to make up the statement that the witness has made upon the witness stand from certain records of books that he says he has examined.

MR. VANDEVENTER: Aren't they referred to in the Bill of Particulars by number.

MR. WALSH: Get them out if you will please. I want all the checks.

MR. VANDEVENTER: I might suggest we are just running one side of the case.

MR. WALSH: I know, but when you introduce a record and it is marked as an exhibit, and I understand all these are, they become a Court record and go into the hands of the clerk. They are so voluminous here that every time they are testified to on some particular point they are put back.

THE COURT: Let us see if we cannot simplify the situation. Did you keep a record of the Particular items in the Bill of Particulars of which you inquired of this witness?

MR. VANDEVENTER: No, I did not.

THE COURT: Miss Feltenstein has it, I suppose. There were not so many of them; ten or twelve or fifteen. Let us get those checks so Mr. Walsh can have them. Y/e will have to take a little recess while they are being selected out from the others. He is entitled to them.

Q I will ask you to look at your records and tell me if you made an examination of the record with reference to Item 3 of the Bill of Particulars dated March 7, 1929? A What records have you reference to?

Q Any record that you have. A I haven't the records here, no.

Q Where are the records? A Those were taken from the records of the Sun Lite House and Window Cleaning Company.

MR. VANDEVENTER: If the Court please, I never offered any evidence on that item, as I understand it, by this witness. MR. WALSH: Then I will withdraw it.

THE COURT: I excluded Items 2 and 3.

Q You did testify with reference to a check for \$462.00, Item 4 of the Bill of Particulars, dated March 7, 1929, did you not?

A Yes, sir.

Q This is the check represented by that transaction, is it not?

A Yes, sir.

Q Is there any reference on any record whatsoever as to that check except the record you have in your hand? I will withdraw that. Tell me what record there is upon that check from which you testified. A Cashier's check register of the Produce Exchange Bank.

Q Anything else? A And a stamp of the Merchants Bank.

Q Have you the summary that you testified from first, in which you stated how many

checks there were from a certain time and how many so-called Slavin checks there were? A Yes, sir.

Q These are not the total check items are they? A Total check items, yes.

Q Now the cash items. A Right here (indicating).

Q Are those the total Slavin checks that you are handing me headed "Year, 1929"? A These are the Slavin checks in that list.

Q Does this statement that you have here give the dates of these checks? A I can give the dates by referring to the item number there.

Q The item means the item on this paper here that you have handed me? A Yes; fully described on this document here.

Q Now, I will take Item Number 4 of the Bill of Particulars.

How was that check cashed? With cash or by check? Item Number 4 is a check for \$462.00 which I handed you. A Yes.

Q And you have testified to that all that you know about it, is that correct, that is, from your record? A I have testified what I know about it from records.

Q That is all you know about it from any source except as it would be hearsay, by talking to someone, isn't it?

A As to that item I believe you are right.

Q We will take Item Number 4 of the Bill of Particulars, that same check for \$462.00. I want to ask you another question about that. It is dated March 8, 1929. Now that check, does that indicate that it was purchased with cash?

A The check register of the Produce Exchange Bank indicates it was purchased with cash.

Q Does your record show the date of the issuance of that check? A Yes, sir.

Q What was the date of issuance of that check? A March 8, 1929.

Q Does your record show the date that check was cashed?

A January 20, 1930.

Q And have you stated all your record shows with reference to that check? A I have stated all that the bank records show in reference to that check.

Q Have you stated all the record? Is there any other record you have that has any notation with reference to the check for \$462.00? If so just tell me what it is so I may look

at it first and then I may ask you some questions about it.

A No book records, no.

Q That is what you are testifying from, isn't it, book records?

A Bank records which I have examined and which have been introduced in evidence.

Q Now, did you testify in this case while you are on the stand now, concerning Item Number 5 of March 13, 1929, amounting to \$400.00? A I was asked as to the item. I don't recall whether I answered that before it was objected to or not.

Q You can't recall whether you answered any questions about that check at all, is that correct? A As I recall, I testified that the deposit ticket showed the deposit of \$400.00 in cash.

Q Yes, and the deposit ticket of what date? A March 15, 1929.

Q, Is there any book record of any kind whatsoever as to that check except what you have given us? A It was not a check.

Q I mean that deposit; was it a cash deposit?

A It was a cash deposit; deposit ticket and ledger account in the Merchants Bank record.

Q And you have no other record about that? A No.

Q No knowledge about it other than your record? A No, sir.

Item 6: That is a deposit, I believe, of \$1,000.00. You testified with reference to that, did you not? A No, sir, I don't recall that I did.

Q You did not testify with reference to that one at all. Now, we will take Item Number 7, March 27, 1929 \$158.75, is that correct?

A Yes, sir.

Q That is the item represented on the books, a certificate of deposit that was at that time in the name of John Lazia, is it not? A Yes, sir.

Q And there was certain interest paid on it on March 27, 1929?

A Yes, sir.

Q And the interest amounted to \$158.75? A Yes, sir.

Q That is what that item is? A Yes, sir.

Q Now, we will take Item Number 8 dated March 29, 1929, and the sum represented by that item is \$1200.00. Did you testify about that? A No, sir.

MR. WALSH: The Court ruled that out, that is a mistake.

THE COURT: Were you not able to make a list of the items which the witness testified to?

MR. WALSH: If the Court please, I would like to make a list of those about which he did not testify because he has testified about them in a lump sum. As I understand, I may be wrong about it, they have a right to make a schedule, make an epitome of what they claim, but they are required to have the identical, items, it does not waive that, so we may cross examine him from them.

THE COURT: Certainly. I thought perhaps you were unable to tell which items he had testified about.

MR. WALSH: I am partially unable to and I also want to do it so this record will be clear about it. I do not want them to come in and testify to so many dollars. I want to show what he did not testify about.

Q You have Item 8 of March 29, 1929, have you not, on your account? A Yes, sir.

Q And is that included in the total of the checks which you gave to the jury? A Yes, sir.

Q If that was not clearly shown to be a taxable income matter, then you would have to take that off your list, your list would not be so much; is that correct? A If it was proven as not representing taxable income.

Q Then it would have to go off? A Yes, sir.

Q Item No. 8 is for the sum of \$1200.00, is it not?

A Yes, sir.

Q And it is represented according to your record by two checks in the sum of \$800.00 and \$400.00 respectively, is it not?

A Yes, sir.

Q I just want to identify this item. A Yes, sir.

Q And you have that charged against Mr. Lazia in the total which you made of the amount of checks which went through in all these deposits? A I have never seen —

Q (interrupting) You do not know about any loss?

A I never saw any evidence of any loss.

Q You are testifying from the books, as you say? A Yes.

Q Item No. 9, April 1, 1929, \$400.00. I wish you would turn to whatever you have on that. The record that you have there taken from the books shows that the proceeds of this

deposit covered \$100.00 cash and a check for \$300.00; is that right?

A Yes, sir.

Q Is that the check to which the name of Mary Antonello was endorsed? A The bank records do not show who signed the check for \$300.00.

Q That is not the item. As I recall it, you mentioned one with the name Mary Antonello on it? A I mentioned the name of Joe Antonello, but not Mary Antonello.

Q Does this item show anything upon your book save and except that it was in the amount of \$400.00 deposited, and that it consisted of \$100.00 in cash and a check for \$300.00?

A That is all the bank records show.

Q Have you any other records taken from any other books?

I mean with reference to this item? A Not from any books, no, sir.

Q Is that all that any record shows with respect to this item of \$400.00? A As far as I know.

Q Any record that you have been able to ascertain?

A Yes, sir.

Q Item No. 10 I believe you did not testify to; or did you testify to it? A I did not testify to it.

Q An item of \$620.00? A No, sir.

MR. WALSH: That item, I understand was excluded by the Court?

MR. VANDEVENTER: I do not understand so.

THE COURT: I do not recall.

Q Whether it was excluded or not, so far as your records show that sum of \$620.00 was represented by two checks in the sums of \$300.00 and \$300.00 respectively; is that correct?

A Two checks, one for \$300.00 and the other for \$320.00, making a total of \$620.00.

Q And that is included in the bulk sum that you testified to of the aggregate deposits of Mr. Lazia? A Yes, sir.

Q Is there any record that shows the source of those checks?

A I haven't seen any book records that would disclose the source of them.

Q Is there any record in existence that you have found, any bank that the checks may

have been drawn on that shows anything except the bare fact of the deposit of \$620.00?

A I haven't seen any record; no, sir.

Q I believe you testified that you have that included in the aggregate sura which you have given? A Yes, sir.

Q The next item is April 20, 1929, Item No. 11, and the amount is \$3000.00. Do you have that? A Yes, sir.

Q What does your record show with reference to that? Maybe I can lead you along and get it quicker. Cashiers check No. 63306 was issued by the Merchants Bank upon this item for April 20, 1929, was it not? A Yes, sir.

Q And it was paid on May 2, 1929? A Yes, sir.

Q And you have a record of by whom that was purchased, do you not?

A Yes, sir.

Q It was purchased with the check of the Electric Holding Corporation of Chicago, was it not? A Yes, sir.

Q Let me see, if I may, please, what you were looking at there?

A Yes, sir.

Q Does the record show the purpose for which, the account upon which that was paid, any book record? A What it was for, or why issued?

Q The purpose for which it was issued? A No, sir.

Q Nor does your record show the use to which it was put, upon what account it was paid out later? A The records of the bank show they issued two cashiers checks for \$1,000.00 each in lieu of the \$3,000.00 check, and deposited \$1,000.00 in the account of John Lazia.

Q Where was the other \$1000.00 deposited, if you have a record there, and to what account? A I would have to refer to the cashiers checks for the endorsements on them.

Q If they are here, you may refer to them, or call for them.

A Cashiers check No. 63467 and No. 63468.

Q Where are they? A They are not in here.

MR. VANDEVENTER: If you do not object, here are some photostat copies of them.

MR. WALSH: I do not object.

MR. LOVAN: Here are the originals.

Q The original check, you say, was for \$3000.00? A Yes.

Q There were two cashiers checks, as I understand, purchased with it on May 2, 1929; was that the date? A Yes, sir.

Q Does the other check for \$1000.00 appear there?

A One of them was deposited in his account on May 23, 1929.

Q One of these same checks was deposited to the account of Mr. Lazia later on in May?

A Yes, sir.

Q When the original check came, as I understand it, it was for the sum of \$3000.00?

A Yes, sir.

Q And that \$3000.00 you have charged in this amount you have already given to the jury as being the aggregate of the checks to Mr. Lazia's account, is that correct? A Yes, sir.

Q Do you know the final disposition of the three items of \$1,000.00 each? A \$1000.00 was deposited in his bank account on May 2; and one of the \$1000.00 cashiers checks was deposited on May 23, to Mr. Lazia's account. I would have to refer to the endorsement on that check —

Q (interrupting) The endorsement is "J. Lazia". Have you traced that to see whether or not at or about that time the two items of \$1000.00 were paid out of his account?

A It appears that one was cashed out at the Merchants Bank, this one (indicating).

Q And how about the next one? A This one was cashed, and this one was deposited (indicating).

Q What date was the one for \$1000.00 cashed? A June 26, 1929 it was cashed.

Q Would there be any way to trace upon your record when a corresponding check was drawn out if there was one, for the second \$1000.00? A His ledger sheet of his bank account at the Merchants Bank should show.

Q You could not tell what date it would show? A Not without examination of the account.

Q Have you examined the account to see? Is there anything on the books to identify this as what they call the "dog track" transaction? A Not on the bank records; no, sir.

Q Is there anything to point it out on any of the records which you have examined? A Nothing except the name, Electric Holding Corporation.

Q So you can tell from your record that these three \$1000.00 checks were based upon the Electric Holding Corporation check?

A The records show those two checks were issued in lieu of the \$3000.00 check received from the Electric Holding Corporation; yes, sir.

Q And \$1000.00 of it represented by a deposit to Mr. Lazia?

A In his bank account.

Q You know nothing of your own knowledge about the transaction?

Do you know whether or not Mr. Lazia had any associates in this transaction, and who they were, of your knowledge?

A Not from the examination of book records; no, sir.

Q That is all you are testifying to, from your own knowledge?

A Yes, sir.

Q That was April 29. Was the check for \$3000.00, the original, used in your computation of total? A Yes, sir.

Q And were the two checks of \$1000.00 each used in that computation of total? A No, sir.

Q What is the item number on your account here (indicating)?

A It is No. 11 in the Bill of Particulars.

Q Yes; but on your sheet? A Item No. 23.

Q Have you with you a list of the checks with their numbers and dates that go to make up this total that you gave the Jury?

A I have a list that I have here. The dates would have to be obtained from that file there (indicating).

Q Let me see the list you have, please, from which you are testifying? A Yes, sir.

Q Have you more than one of these? A No, sir.

Q I am going to hand you both of these lists, the one you have in your memoranda, and ask you to give the name and date of each one of those checks, the payee and the date of each one of those checks, and the number of each check, and you may take this to do it with.

A The first item is a check for \$1078.00 deposited in Mr. Lazia's bank account at the Merchants Bank.

Q That is Item what on your list? A It is item No. 1 in the Bill of Particulars.

Q What is the item number of it on the list from which you have testified, a copy of which I

have here? A It is No. 2 in that file. It is No. 1 in the Bill of Particulars.

Q What is the number of the check? A That I do not know.

It was a personal check deposited to Mr. Lazia's account. I have never seen the check. I do not know the maker of the check.

Q Is there anything on your record to show it? A The deposit ticket in the Merchants Bank shows that he deposited a check from some unknown source in that amount.

Q Now, Item No. 2? A The next check item in the Bill of Particulars is \$462.00.

Q You have an item there, the figure \$500.00, which you have charged in the total which has been ruled out? A Not as a check.

Q Have you a cash item of \$500.00 which you have charged in the total? A I have a charge in the cash items, but not in the check items.

Q For \$500.00? A Yes, sir.

Q You have not testified to that here because it has been ruled out? A That is correct.

Q Take Item No. 3, \$6500.00. Have you testified to that here? A No, sir.

MR. WALSH: I will get the items and the information whether you have testified to them or not.

Q Item No. 3 is what? A 1500.00 cash item.

Q It is of date March 7, 1929? A Yes, sir.

Q Item No. 4? A Cashiers check for \$462.00 issued by the Produce Exchange Bank March 8, 1929.

Q Item No. 5? A A cash item of \$400.00 deposited in the account of John Lazia at the Merchants Bank.

Q Item No. 6? A An item of \$1000.00 deposited to Mr. Lazia's account at the Merchants Bank March 15, 1929.

Q Item No. 7? A \$158.75 deposited in the account of John Lazia at the Merchants Bank with another item of \$5000.00 on March 27, 1929.

Q \$1200.00 is that? A \$5000.00.

Q But the item as I see it is \$1200.00. A You asked me in reference to Item No. 7.

Q Item No. 7 is \$158.75. A That is the item I just testified to; yes, sir.

Q That \$5000.00 certificate of deposit upon which you charge the defendant with \$375,

what was the date of that deposit?

A March 27, 1929.

Q What is the date it was cashed? A March 27, 1929.

Q The same date? A Yes, sir.

Q When was it purchased? Some time in 1928, wasn't it?

A I would have to refer to the certificate of deposit register in the Merchants Bank for that date.

Q If you have it here and can do it readily, please tell me whether or not it was issued in 1928 or 1929, or in what year?

A I would have to look at the certificate. We have not been permitted to testify to items of 1928.

Q Look at the certificate of deposit register which I hand you and state whether or not that shows that item was issued in 1928?

A Issued on March 7, 1928.

Q Did you have that on your memorandum you testified from?

A No, sir; it was of no interest.

Q Item Number 8 on the Bill of Particulars; that is represented by two checks in the sums of \$800.00 and \$400.00 respectively, deposited to the account of John Lazia? A Yes, sir.

Q Have you anything on there except the item of \$1200.00 as being received and deposited? Anything on your record? A The deposit ticket shows it was two checks, one for \$800.00 and one for \$400.00 deposited to the account of John Lazia in the Merchants Bank on March 29, 1929.

Q Have you any records from which you have testified other than your record of that deposit of \$1200.00. A From which I have testified?

Q Yes. You are testifying from some records there. I am not asking you to go to the books. Have you anything on your records save and except what you have testified to with reference to the deposit of \$1200.00 represented by \$800.00 and \$400.00 respectively?

A I am only testifying from what the bank records showed.

Q That is all you have? A Yes.

Q You have no records showing any other additional information about that? A There

was an exhibit, I believe, that was admitted by the tax payer and introduced here yesterday.

Q Have you any record of your own on it? A Except as taken from that memorandum.

Q Have you any memorandum of your own showing that was a transaction for the sale of a barber shop originally costing \$2500.00 to one DeGrado? A The first knowledge I had of that - -

Q I am just asking you anything that shows that, yes or no.

A Nothing except that other record that was introduced yesterday.

Q That is a record that is claimed to have been made by Mr. Lazia to the revenue officers when he was explaining his transactions?

A Yes, sir.

Q That is the only record there is of it? A Yes, sir.

Q However, that whole \$1200.00 is charged in this summary, epitome of all the checks, is it not? A Yes, sir.

Q We will take a check for \$400.00 deposited in the account of John Lazia in the Merchants Bank consisting of \$100.00 in currency and a check for \$300.00

A The bank records show there was \$100.00 in currency and a check for \$300.00 deposited in Mr. Lazia's account on April 1,

1929. The maker or the source of this check was not disclosed by the bank record.

Q Is there anything other than what you have testified to on the record about this transaction? A Not that I know of, no, sir.

Q You would know it of course; You have been through these records? A Yes, sir.

Q Now, we will take Item Number 10, \$620.00; that is represented by two checks of \$300.00 and \$300.00 respectively, is that correct? A Yes, sir.

Q Is there anything upon your records that shows anything except the bare fact that the checks for \$620.00 were deposited to the account of Mr. Lazia? A No other record.

Q Nothing that shows the source? A No, sir.

Q We will take Item Number 11, that is \$3000.00. I wish you would just give the jury everything you have on the record with reference to that. A The records of the Merchants Bank show

that on April 20, 1929, they issued their cashier's check Number 63306 payable to J.

Lazia. The cashier's check register of the Merchants Bank shows that cashier's check Number 63306 was purchased by the Electric Holding Corporation.

Q That was in the total sum of \$3000.00? A \$3,000.00.

Q I think maybe that is a check — if I am not, correct me — that you have already testified to as being afterwards split up into three checks? A I have testified to that twice this morning.

Q Item Number 12, that is in the amount of \$75.00. Is there anything on your record that shows anything except that \$75.00 was deposited by John Lazia on April 23, 1929? A The records in the Merchants Bank show that on April 23, 1929 --

Q If you can answer my question, if I am right about it we can hurry along. A Yes, sir.

Q There is nothing on the record except the bare fact that he deposited \$75.00 on that day? A I think there is other data.

Q Go ahead and give it. A The deposit ticket shows there was \$25.00 in currency and a check for \$50.00 deposited on on April 23, a total to \$75.00. The source, or maker of the check, was not disclosed by the bank record.

Q And you have no personal knowledge as to where it came from? A No, sir.

Q Or how it was expended afterwards? A No, sir.

Q Item Number 13, April 26, 1929 appears to be for \$60.00 and it is a deposit. Was that a cashier's check deposited or was it cash? A The deposit ticket in the Merchants Bank had a notation on it "C.C." standing for cashier's check, Produce Exchange Bank.

Q So that so far as your record shows Lazia on that date deposited a check for \$60.00. Does it show the source of the check except that it came from the Produce Exchange Bank?

A Not on the deposit ticket.

Q Is there any record that shows that you have, any bank record that you have taken?

A Produce Exchange Bank records did not show any cashier's checks for \$60.00 being issued.

Q Is that all the records you have, that you have testified to here? A Yes, sir.

Q So far as you are concerned and so far as any record shows, that may have been a check for \$60.00 of somebody's that was just cashed by the defendant? A It might be.

Q And you have that charge, that check charged in the general epitome which you nave

made of the checks deposited by Mr. Lazia?

A I have.

Q Now, we will take Item Number 14, that is a deposit for \$600.00. A It is currency.

Q Is there anything on your records that shows where that deposit of currency came from? A There is nothing on the records disclosing the source of the \$600.00 in cash.

Q Look at the record of May 2, 1929. Is there anything in your records that you have gotten from the bank that shows an account of Mr. Lazia or a transaction of Mr. Lazia with the United Bag Company? A I haven't examined any record showing any such transaction. Q You haven't seen any record of that kind? A No, sir.

Q That Item Number 14, May 24, 1939, an item of \$600.00. That is a deposit, I believe, in currency? A Yes, sir.

Q And there is nothing on the record that shows the source of it or the disposition of it, is that correct? A Nothing on the

record indicating the source of the currency or the disposition of it,

Q That is charged in your general epitome of the checks that went through the bank of Mr. Lazia's? A That is charged as cash, not a check.

Q Regarding Item 15, dated June 1, 1929, that is a cashier's check, Merchants Bank on that date in the sum of \$1,000.00 is it not? A Yes, sir.

Q I will ask you to look at your record and see whether or not under date of July 8, 1929, there was a withdrawal from the account of John Lazia of \$1,000.00? A What item have you reference to?

Q I am referring to Item 19, June 1, 1929, cashier's check for \$1,000.00. A I beg your pardon, you just asked me about Item 15.

Q This is Item 15, I mis-spoke myself. The date is June 1, 1929; it is a cashier's check for \$1,000.00 drawn on the Merchants Bank. Have you such an item there? A Yes, sir.

Q Is there anything in your records with respect to that item upon that date except the deposit? A I haven't any record of the check being deposited. The cashier's check register shows that a cashier's check was purchased on June 1, 1929, in the amount of \$1,000.00.

Q That is the source of the \$1,000.00. Have you anything on your record that shows to where that \$1,000.00 went?

A Nothing but the endorsement and stamp of the bank, showing that it was cashed or paid at the Merchants Bank on June 26, 1929 Q Any endorsement on it. A Yes, sir,

Q What is the endorsement on it? A I think the check will show that.

Q Does your record show that? A It was endorsed J.Lazia.

Q Your record does show the endorsement then, does it? A Yes.

Q Can you look at your record and say whether there was a withdrawal on July 8, 1929, by John Lazia of the sum of \$1,000.00?

A I would have to have his ledger sheet from the Merchants Bank. I haven't those in my possession.

Q I will have you look, please, Mr. Riley, at Item No. 19 on your list. I want to ask you a question of two about that. A Yes, sir.

Q This is a total of \$1768.89, is it not? A Yes, sir. It consists of checks deposited in the Merchants Bank to the credit of the defendant in the sums of \$666.36, \$666.38, \$882.00 and \$427.35; is that correct? A Yes, sir.

Q That was ruled out by the Court. Do you still have that in the list of the checks you have charged against the defendant? A Yes, sir.

Q Item No. 20, \$567.56? A Yes, sir.

Q Do the records which you have there show anything save and except that that was a deposit to the account of John Lazia at the Merchants Bank? A The records of the Merchants Bank show that Certificates of Deposit No. 2418, No. 2422, No. 2447 each for \$5000.00, were paid on the same date.

Q Do they show, do your bank records show anything except that?

A No, sir.

We will take No. 39. Look at your Item No. 39, June 21, 1929, \$93.75. Is that in the total which you have given to the jury as being checks drawn on the account or deposits made to the credit of John Lazia? A It is included in the total of checks; yes sir.

Q Well, you know that is out, do you not? A Yes, sir.

Q That it was not introduced in evidence? A Yes, sir.

Q Item No. 21. I am referring to the Bill of Particulars Item No. 21, which is that item — you have the Bill of Particulars numbers on there, also? A Yes, sir.

Q This was a check for \$2500.00 — that is wrong, it isn't a check; it is an item of \$2500.00? A Yes, sir.

Q Was that check or cash? A \$2000.00 check and \$500.00 of it was in cash.

Q And the date of that is July 8, 1929? A Yes, sir.

Q Have you any further record on that from the bank books?

A Except that the check of \$2000.00 and cash of \$500.00 were used in part purchase of a cashiers check.

Q Of a cashiers check for how much? A \$3500.00.

Q This amount, however, is \$2500.00? A Yes, sir.

Q And the cashiers check is No. 64400; is that correct? A Yes, sir.

Q Have you any other record of any kind whatsoever from the records which you have there as showing the source from whence the \$3500.00 came? A There was a \$1000.00 charge to John Lazia's account on that day, a check of \$2000.00 used; the maker and the source of the check is unknown from the bank records; and \$500.00 in currency.

Q I asked whether or not for any of that you have a source, that is, from the records from which you are testifying, the source from whence it came? A I just stated that the bank records do not show the maker.

Q Item No. 22, that is a cashiers check No. 64436 for \$1100.00.

A The bank records show that cashiers Check No. 64436 was purchased with \$100.00 cash and a check in the amount of \$1000.00 signed Angeline Sacimona.

Q That was made payable to Mr. Lazia? A Yes, sir.

Q Is that the only record you have on it? A Yes.

Q That the check was purchased by Mrs. Sacimona; is that correct?

A The register does not show that.

Q What does the register show? A The register showed that the cashiers check was purchased with \$100.00 in cash and a check of Angelina Sacimona; but it did not snow that she purchased the check.

Q But was it a check of hers or one of somebody else's that went into this? A The record showed a check of Angeline Sacimona's.

Q And that went into the purchase of the \$1100.00 cashiers check?

A Yes, sir.

Q That just left \$100.00 in cash? A Yes.

Q Have you that item charged in the total which you have given here?

A Yes, sir.

Q The next item is No. 23. \$300.00, July 13, 1929. That is represented by cashiers check No. 64506? A Yes, sir.

Q Purchased at the Merchants Bank and payable to J. Lazia, as it is on the check? A Yes, sir.

Q Is that the only item you have expressed in that record that you have, in any of the records you have? A The cashiers check register shows that cashiers check No. 64506 was purchased with three checks, one in the amount of \$134.04, one \$29.50, and one \$136.46, totaling \$300.00.

Q Have you any other record except what you have read to the jury on that check? A No, sir.

Q Have you there the list or have you handed me the list of all these checks to which you testified, of which you gave the aggregate? A Yes, sir.

Q Will you please let me see it? A Yes, sir.

Q Upon that same statement you have a record of the checks that you call "Slavin" checks? A Yes, sir.

Q Do you mean by that checks that came through the bank with the endorsement of A. M. Slavin? A The checks that were purchased by Mr. A. M. Slavin passing into the bank account of John Lazia.

Q Upon one side you have what you call the Slavin Checks and on the other side miscellaneous checks? A Yes, sir.

Q The dates of these checks are not given on this item which you have given me? A No, sir.

Q Would it be possible I want to save time in doing it when I come to these checks, if I haven't come to any of them already to say which are the Slavin checks and the numbers of them?

A I can give them to you by referring to that memorandum.

Q Have you already given me some of them that aren't itemized?

A I do not understand the question.

Q I have asked you for all of the information you have on a number of checks, by number and by items which you have. Have some of them that you have already given me been what we call the "Slavin" checks?

A No, sir.

Q You haven't reached a Slavin check yet? A No, sir.

Q When we do, will you be kind enough to indicate that it is a Slavin check? A Yes, sir.

Q Because I want to check it with this statement that you gave me and not have to go back over it? A Yes, sir.

Q Item 24. This is a cash item of \$300.00 representing a deposit on the 19th day of July, 1929, isn't it? A Yes, sir.

Q Have you anything of record, any bank record, any record in your possession showing the source or disposition of this check for \$300.00? A Nothing more than the deposit ticket showing that \$300.00 in cash was deposited to Mr. Lazia's account.

Q That is all it shows? A Yes, sir.

It may have been mere cash or a check at the counter or —

A (interrupting) It doesn't show.

Q I know, but it might have been the result of cashing a check?

A I am testifying from what the bank record shows.

Q You have stated all that the record shows? A Yes, sir.

Q Take Item No. 25. This is a check for \$1000.00, apparently dated July 23, 1929. I wish you would show us what the record shows about that, everything the record shows on it?

A Cashiers check register shows that cashiers check No. 64702 was purchased payable to J. Lazia in the amount of \$1000.00, July 23, 1929. Cashiers check register further shows that this check was purchased with \$300.00 in currency, and another check in the amount of \$700.00.

Q I will ask you if your record shows, going back to Item 23, that a check for \$300.00 used to make up this \$3000.00 was the same Check you have recorded under Item No. 23?

A Did you say \$3000.00?

Q No, \$300.00. This check we are talking about under Item 25, is for \$1000.00. A Yes, sir.

Q I am asking you if that does not include the item of \$300.00 to which you have testified under Item No. 23? A No, sir.

Q Is there anything on your record to show that?

A The record on Item 25, the \$1000.00 check, shows that was purchased with \$300.00 in currency and a check for \$700.00.

The other check you referred to under Item No. 23 is a check for \$300.00.

Q Is that all your record shows on it? A Yes, sir.

Q So, if it was a duplication it would not show upon that record?

A One is a \$700.00 check —

Q (interrupting) I understand; but there was a cash transaction of \$300.00 in there wasn't there? A Yes, sir.

Q And you have given the jury now all that your record shows and all that you can testify to about it? A I may add on that item 23. I thought you were through with it.

Q No; I just referred back to ask if anything on your record showed it was a duplicate, and you said nothing showed it a duplication.

A No, sir.

Q You have testified to all the record does show on it?

A Yes, sir.

Q Now, we will take Item 26, being for the sum of \$3000.00. I wish you would look over your record and tell us what information you have upon that. A The loan record at the Merchants Bank in the name of John Lazia shows that on August 10, 1928, Loan Number 54280 was credited with a payment of \$3,000.00.

Q Who was the maker of the note? A I never have seen the note.

Q Does your record show the maker of any note on this item?

A The loan sheet in the Merchants Bank shows that loan is charged under the name of John Lazia Loan Account.

Q Now, I will ask you this question with reference to that loan. That loan is out, as I

understand it; there has been no testimony offered on it. It is not included and it is an amount said to have been paid back by the Electric Corporation, this dog track electrical corporation for advancements made. I want to ask you whether or not you have charged this \$3,000.00 in the total list of checks which you charged against the defendant under the Bill of Particulars?

A It is included in the checks, yes, sir.

Q Item 27 under date of August 21, 1929, for the sum of \$300.00. Was that a cash or check item or was it a mere credit on a loan that Mr. Lazia made from the bank? A It was credited as a payment

on Loan Number 53457 in the name of John Lazia.

Q Does it give any other name as participating or being on that loan? A No, sir.

Q Is there any mention made of the Gateway Underwriters?

A I don't recall unless —

Q I mean just on the records you have now taken from the bank or wherever you have taken them? A No, sir.

Q You have given all that the record shows with respect to that, have you? A Yes, sir.

Q We will take August 21, 1929, Item 28 for the sum of \$1,000.

This was a deposit to the account of Mr. Lazia, was it?

A Yes, sir.

Q And it is of date August 21, 1929? A Yes, sir.

Q It consisted of two checks, did it not, for the sum of \$500.00. each? A Yes, sir.

Q The checks being Number 64969 and 64946, being checks which were endorsed by A. M. Slavin? A Yes, sir.

Q Now, is this item that I am calling your attention to, the first check about which you have testified or the first item about which you have testified on which the name of A. M. Slavin appears?

A Yes, sir.

Q I will ask you to look at six checks which I now hand you, on the first one being dated July 11, Exhibit 24, \$100.00; Exhibit 21, July 11, \$100.00; check of the same date, July 11th, Exhibit 22 for \$100.00; then the next check being July 11th, Exhibit 23 for \$100.09 the next check July 31, being Exhibit 18 for \$300.00 and the next check being August 8,

1929, being Plaintiff's Exhibit 28 for the sum of \$500.00, and ask you if those checks which I have enumerated there do not all bear the signature of A. M. Slavin/

A They all contain his name.

Q Do they all bear his signature as an endorsement? A Yes, sir.

Q The last one of those being August 8, 1929, is that correct?

A Issued August 8, 1929.

Q I will ask you about Item No. 29, being in the amount of \$2,000. that is represented, I believe, by cashier's check Number 64956 and 64957 each in the sum of \$1,000.00, is that correct? A Yes, sir.

Q Is there anything on there to show the source of those checks? Were they purchased by A. M. Slavin? A Yes, they were.

Q And they were endorsed to John Lazia? A Yes, sir.

Q Now, you investigated, did you not, all through the books of the bank what is known as the Cuban Gardens transaction?

A What books have you reference to?

Q These books you have been testifying about, the bank's books.

Did you not investigate every item that went into that transaction or that went into that transaction that came from A. M. Slavin or from a paper endorsed by A. M. Slavin? A Yes, sir.

Q Every one of them? A Yes, sir.

Q Is there anything on the record proper, on the bank records from which you have been testifying, to show what became of that \$2,000.00? I will ask you the direct question whether or not it shows that any of it was paid back to anyone?

A The records would not show it had been paid to anyone.

Q What does the record show with reference to its source? Weren't both of those checks purchased at the Merchants Bank by A. M. Slavin?

A Yes, sir.

Q Take Item 30 of August 26, 1929, being for the sum of \$300. I will get you to state to the jury whether or not your records show that that check was made payable to A. M. Slavin and endorsed by A. M. Slavin and paid to John Lazia?

A The records show the check was purchased by A. M. Slavin, payable to A. M. Slavin, endorsed A. M. Slavin and endorsed John Lazia.

Q That is just what I stated, wasn't it? Try to watch and if you can answer yes or no, and we will get along quicker. Now, we will take the next item there, Item 31, \$1505.00, August 26th. This \$1505.00 was deposited in the Merchants Bank, was it not, to the account of John Lazia? A Yes, sir.

Q And represented by two checks in the sum of \$755.00 and \$750.00 respectively, is that correct? A Yes, sir.

Q Can you tell who those checks were made by? A The records do not show the maker of the checks.

Q You cannot tell by the record? A No.

Q There is no record as to by whom they were made? A No, sir.

Q There is no record as to the source and no record as to the disposition, is that correct?

A The disposition of these two checks?

Q Yes. A Deposited to Mr. Lazia's account.

Q I understand that, but that is the only record there?

A Yes, sir.

Q And no record as to the source? A No, sir.

Q Take cashier's check Number 68576, that was drawn on the Liberty National Bank for \$800.00, was it not? A Yes, sir.

Q To whom was it made payable? A A. E. McNamee.

Q And what were the endorsements upon it? A A. E. McNamee, John Lazia.

Q And that was paid to Mr. John Lazia on what date? A Deposited in his account on August 31, 1929.

Q We call that paid to him. It was put in his account on August 31st; that is the same day on which the check was drawn to Mr. McNamee? A Eleven days after it was drawn.

Q What was the date? A It was issued by the Liberty National Bank on August 20, 1929, and deposited on August 31, 1929.

Q We will take Item 33. What is that item on your account?

A Item 33 in the Bill of Particulars.

Q Is it the same item on this list from which you are testifying?

A Items 64 and 65.

Q Now that consists of two cashier's checks, does it?

A Yes, sir.

Q Number 65159 and 65244, is that correct? A Yes, sir.

Q Both of those checks were purchased by and payable to A. M. Slavin, is that correct?

A Yes, sir.

Q Were they endorsed by Mr. Lazia? A Yes, sir.

Q It shows that he received them from Mr. Slavin or from the person that gave them to Mr. Slavin? A Yes, sir.

Q Item 34, that is an item of \$300.00, is it not? A Yes, sir.

Q What is that represented by, according to your record?

A Three cashier's checks issued by the Merchants Bank, Numbers 64475, 64476 and 64477, each in the amount of \$100.00 .

Q Those were all made payable to A. M. Slavin? A Yes, sir.

Q And endorsed by A. M. Slavin? A Yes, sir.

Q And John Lazia? A Yes, sir.

Q And the date of it is September 6, 1929? A Yes, sir.

Q Take Item 35; that is a deposit, is it not, in the sum of \$2,000.00? A Yes, sir.

Q That deposit is represented, is it not, by four checks in the following denominations: \$400.00, \$100.00, \$700.00 and \$700.00?

A No, sir.

Q There is a mistake on the Bill of Particulars. On your account they are as follows: All September 9, 1929, one for \$100.00, one for \$500.00 and two for \$700.00 each, is that correct? A Yes, sir.

Q Can you tell us whether or not those checks, that is from your record there, were endorsed by A. M. Slavin first and then by John Lazia? A Yes, sir.

Q So that is checked up to the Cuban Gardens transaction, is it?

A I beg your pardon?

Q Have you record on there showing anything except what you have testified to? A No, sir.

Q The next item is \$1850.00. I wish you would tell us what your record shows on that item. A The amount deposited in the Merchants Bank to the account of John Lazia on September 11, 1929, the deposit ticket shows the item of \$1850.00 as a check.

Q From the North Side Finance Company? A No, sir.

Q It simply shows a check? A Yes, sir.

Q Does that transaction, according to your books, show anything except a deposit of \$1850.00 by Mr. Lazia? A No, sir.

Q And the fact that it was a check; it shows that, does it not?

A Yes, sir.

Q And it does not show by whom the check was issued? A No, sir.

Q It shows no source whatever? A It does not show the source.

Q And you have that upon the list that you have testified to here containing the aggregate number of checks? A Yes, sir.

Q The next is an item of \$1,000.00 in cash according to your books. It is Item 37, your item Number 74. A The records show \$1,000.00 in currency deposited in the account of John Lazia on September 12, 1929.

Q And no source? A Source unknown.

Q Take Item 38, which is an item of \$500.00. The date of it is September 14, 1929. This was a deposit of Mr. Lazia's was it?

A Yes, sir.

Q Does it show that it was cash or check? A Check.

Q Does it show from whom the check came, the maker of the check?

A No, sir.

Q You cannot tell from whence that came? A Unless it shows on the deposit ticket I would not be positive of that, without seeing the ticket.

Q Does it give the endorsements on the check? A I just stated that the deposit ticket did not identify the check as I recall.

Q Then from going over your account do you recall the fact that this check was endorsed by A. M. Slavin, John Lazia and Riverside Jockey Club? Are you looking at your item

Number 76 and the Bill of Particulars Number 39? If not, what are you looking at?

A I have been referring to the notes I have been questioned about, Item 38.

Q That is a check for \$500.00, an item of \$500.00, is it not?

A Yes, sir.

Q And that was deposited by Mr. Lazia in the Merchants Bank?

A Yes, sir.

Q And it was represented by cashier's check Number 64931, was it not? A Yes, sir.

Q Does it show from whence it came? A Purchased and payable to A. M. Slavin.

Q That is September 14? A September 14, 1929.

Q We will take Item Number 39, your Item Number 76. That is a cashier's check, is it not, Number 65644? A Yes, sir.

Q Issued by the Merchants Bank September 20, 1929, and purchased and payable to A. M. Slavin, is that correct? A Yes, sir.

Q And deposited by John Lazia? A It was endorsed by John Lazia.

Q Endorsed by John Lazia but your record does not show it was deposited by him? A No, sir.

Q Does your record show the endorsements on the check?

A Yes, sir.

Q This check is endorsed first A. M. Slavin, endorsed John Lazia and finally Tom Manning, is that correct? A I would have to look at the check to verify that.

Q It is endorsed by Tom Manning, isn't it, that last name there?

A With the other endorsements, yes, sir.

Q I gave you the other endorsements, A. M. Slavin, John Lazia, Tom Manning and then "For deposit Riverside Jockey Club".

A Yes, sir.

Q You say that did not go into the account of Mr. Lazia?

A No, sir.

Q And is that check for \$100.00 contained in the total of checks you have given us? A Yes, sir.

Q As having been drawn? A Yes, sir.

Q That check was obviously cashed and went to the credit of Riverside Jockey Club, did

it not? A According to the endorsement it was deposited by the Riverside Jockey Club.

Q There is an endorsement on it after Mr. Lazia's, is there not, Tom Manning? A Yes, sir.

Q Item Number 40; that was a deposit to the account of John Lazia at the Merchants Bank, was it not? A Yes, sir.

Q And it is a deposit in currency? A The deposit ticket shows it was currency, \$2000.00.

Q And you have no reference in any account to the source?

A No, sir.

Q Nor any use to which it was put? A Except deposited in his account.

Q But just deposited? A Yes.

Q All you have on that in any event is just upon that day, September 23, 1929, Mr. Lazia had a deposit of \$2,000.00?

A In currency, yes.

Q That is all your record shows? A Yes, sir

Q Item Number 41, September 26, 1929, \$5000.00. Do you remember, or do you know or does your record shows the date of the opening of the Cuban Gardens? A Except from the testimony that has been previously given by other witnesses.

Q Your record does not show that. You have no record that shows by any check or any other documentary evidence the date of the opening of the Cuban Gardens? A No, sir.

Q This \$5,000.00, September 26, 1929, was represented by certain cashier's checks, was it not? A Yes, sir.

Q Check Number 65741 for \$1,000.00, 65742 for \$1,000.00, 65743 for \$1,000.00, 65744 for \$1,000.00 and 65745 and 65746 for \$500.00 each, is that correct? A Yes, sir.

Q I will get you to state whether or not those checks were endorsed by A. M. Slavin? A They were.

Q Item Number 42 which is October 9, 1929, that is represented by a certificate of deposit; that is the \$6,000.00 item, Number 2640?

A Yes.

Q And that was bought and issued by the Merchants Bank to John Lazia, was it not? A It was.

Q However, the checks are given there, are they not, that constituted that \$6,000.00? A

Yes, sir.

Q And they are as follows,- cashier's check Number 65809 for \$500.00 65811 for \$500.00, 65938 for \$1,000.00, 65939 for \$1,000.00, 65940 for \$1,000.00, 65941 for \$500.00. Now, that brings that up to \$4500.00 and I will get you to state whether or not all of these checks are checks that bear the endorsement of A. M. Slavin? A They were.

Q Were there three other cashier's checks for \$500.00? Do three other cashier's checks for \$500.00 appear there? A Yes, sir.

Q And are those also all Slavin checks? A Yes, sir.

Q We will take Item Number 43, October 9, 1929, \$1,000.00. Those are represented by two Merchants Bank cashier's checks, are they?

A Yes, sir.

Q And both of those checks contain the endorsement of A. M. Slavin?

A Yes.

Q The next were cashier's checks Number 65956, \$500.00 and cashier's check Number 65961 for \$500.00, that is Item 43. Now, the name of Mr. Lazia does not appear on either one of those checks, does it?

A No, sir.

Q Do those checks for \$1,000.00 of October 9, 1929, appear on the list of checks which you have epitomized as being the total of the checks drawn in favor of John Lazia? A Yes, sir.

Q Item Number 44, October 15, 1939, that is an item \$1,000.

What does your record show upon that? A Cashier's check Number 66091.

Q Purchased by Mr. Lazia, was it? A It was purchased with cashier's check Number 66035.

Q Is that Mr. Lazia's cashier's check? Was it a cashier's check that he put in to purchase it or was it more than one item?

A Cashier's check 66035 was A. M. Slavin's cashier's check.

Q Item 45, October 39, 1939, \$350.00. Was that a cash deposit?

A Currency deposit in John Lazia s bank account.

Q Cash deposit? A Yes, sir.

Q Did you examine critically, the bank account, closely, of John Lazia at the Merchants

Bank? A Yes, sir.

Q I will ask you if it is not a fact that that amount, \$350.00, was deposited in the bank to cover an overdraft? A I don't remember seeing anything on the books.

Q Will you please get the question so you can answer it.

A The deposit ticket would show what it was.

Q There is an item of \$350.00 cash and that is all that is shown on the deposit ticket. Is there a ledger account with John Lazia to show that he had an overdraft upon that date of a certain amount?

A His ledger account showed that on October 39 his account was overdrawn \$217.21.

Q At the time of the deposit of this currency?

A Prior to the deposit of the \$350.00.

Q This \$350.00 that we have here is a part of the statement which you made showing all the checks deposited by Mr. Lazia, is that correct, that is Item 45. Is that the item about which you testified that on the same day there was an overdraft in the bank account of John Lazia? A Yes, sir.

Q We will take November 14, 1929, the item there is \$500.00.

That is, is it not, a cash deposit by John Lazia? A A cash deposit of \$500.00 on November 14, 1939.

Q Does your record show there any place whether or not there was an overdraft in the bank upon that day that was met by John Lazia,- paid? A Prior to the deposit of \$500.00 his account was overdrawn \$181.51.

Q This \$500.00 appears in the list of checks charged against Mr. Lazia in the Bill of Particulars, does it? A It appears in the list of currency.

Q In the list of currency charged against Mr. Lazia? A Yes, sir.

Q We have Item 48 dated November 30, 1929, and it is for the sum of \$650.00. This is the item represented by cashier's check Number 63968 issued by the Merchants Bank and payable to Marie Lazia, is it not? A Yes, sir.

Q That was purchased with cash? A Yes, sir.

Q And endorsed by Marie Lazia and John Lazia? A Yes, sir.

Q Do you know of your own knowledge who Marie Lazia is?

A The name of John Lazia's wife.

Q Is there any other notation or any other record save what I have asked you of here, - if there is, just give it to the jury.

A That is all the records shown on the bank records.

Q There is nothing more than what I have asked you about, is there? A No.

Q Nothing as to the source? A No, sir.

Q Now, we will take Item 49 which was deposited to the account of Mr. Lazia and represented by a check. That was cashier's check Number 66979, was it not? A Yes, sir.

Q And whose check was it? A Purchased by and made payable to A. M. Slavin.

Q Item Number 50, December 19, 1929, the item there is \$500.00 That is represented by Check Number 67358 issued by the Merchants Bank, payable to John Lazia and endorsed by John Lazia and John D. Stokes. A Yes, sir.

Q Do you know from whence that came? A According to the bank records cashier's check 67358 was issued by the Merchants Bank on December 19, 1929, payable to J. Lazia in the sum of \$3000.00; the bank records show that the \$3000.00 check was purchased with another check but it did not identify what check was used to purchase this \$3000.00 check.

Q Was the \$3,000.00 paid to the bank on account of a loan to John Lazia? A Not that I know of, on the record.

Q Was this \$500.00 that you have spoken of here contained or is it contained in the list of checks you have charged against Mr. Lazia? A Yes, sir.

Q I will ask you to look at Item Number 51; that is an item of \$2200.00 dated December 19, 1929. That is represented, is it not, by cashier's check Number 67402? A Yes, sir.

Q That was purchased at Merchants Bank, was payable to John Lazia and endorsed by John Lazia and deposited in his account?

A Yes, sir.

Q Now I will ask you, did you charge that against the checks alleged to have been deposited by John Lazia, as a total?

A Charged it in that list of checks received by him, yes, sir.

Q I will ask you whether or not you had a cashiers check for \$2000.00, check No. 67801, and cashiers checks No. 67286, and No. 67287, for \$100.00 each which entered into this transaction?

A Are you speaking of Item 51?

Q I am speaking now of Item 51. A The bank records in reference to Item 51 show that cashiers check No. 67402 was purchased with a check in the amount of \$2000.00, and two checks in the amount of \$100.00 each; but the records do not show whose checks they were.

Q I will ask you to look at the three checks which I hand you, dated December 5, 1929, December 6, 1929, and December 16, 1929, for the amounts of \$2000.00 and \$100.00 and \$100.00, respectively, and I ask you whether or not your records show that those are the checks that went into the purchase of Check No. 67402, dated December 20, 1929, being Exhibit No. 46 of the Government introduced in evidence?

A The records do not show that these are the checks that went into Check No. 67402.

Q The three checks which I handed you last all bear the endorsement of A. M. Slavin, do they not? A Yes, sir.

Q Did you charge in the total list of checks charged in the Bill of Particulars against Mr. Lazia the \$2000.00 check and the two checks for \$100.00 each? A Yes, sir.

Q Did you charge also in that list Mr. Lazia with the \$2200.00 check? A I would have to look at that list (indicating).

Q I wish you would, please. A I do not understand your question. Q You do not understand it? A And the word "charged".

Q Well, we call it charged and you call it presented. I mean did you put those three, \$1000.00 checks in the list of checks that you claim were in the Bill of Particulars charged to Mr. Lazia, credited to him, or debited to him, or whatever you want to call it? You know what I mean.

A You just said three \$1000.00 checks.

Q I mean one \$2000.00 and two checks for \$100.00 each. Are they in there? A Those three are included in the Bill of Particulars.

Q Are they in this list you have given to the jury?

A Yes, sir.

Q Is the \$2200.00 check in that list? A Yes, sir.

Q That is also in that list? A Yes, sir.

Q I wish you would look on your record respecting Exhibit No. 46, the check for \$2200.00, and see if it shows of what that \$2200.00 consists? A It shows on the bank record that it was purchased with three checks, one in the amount of \$2000.00, and two in the amount of \$100.00 each.

Q Doesn't that show you that those are the three checks included in the \$2200.00? A Not from the bank records; no.

Q Do you know that to be a fact? A No, sir.

Q Do the bank records show the dates of these three checks, one for \$2000.00 and one for \$100.00 and one for \$100.00?

A The date they were issued?

Q Yes, A Yes, sir.

Q What was the date of issue? A I would have to refer to the bank record. I haven't that information.

Q I wish you would refer to it. Have you got it on your list?

A No, sir.

Q Haven't you the date there? A No.

Q I would like for you to look at the bank record on the list.

A The cashiers check register should show the date of those three items.

Q The date of the check is December 5 and the number is 67081, Exhibit No. 45. A Check No. 67081 was purchased on December 6, 1929.

Q Was it purchased on December 6th or paid on December 6th?

A According to the register it is dated December 6, 1929, the date it was purchased.

Q What was the date of the purchase of Check No. 67286, Exhibit No. 47? December, either the 6th or the 16th?

A No. 67286 was purchased on December 14, 1929.

Q What was the date of the purchase of Exhibit 48, it being No. 67287? A Purchased on December 14, 1929.

Q What was the date of purchase of the \$2200.00 check, it being No. 67402? A December 20, 1929.

Have you made any search or is there any record showing what checks were drawn to represent this \$2200.00, except that there were three checks, one for \$2000.00 and two for \$100.00 each?

A That is the only thing shown by the register.

Q No number, no date; just the three checks? A Yes, sir.

Q \$2000.00, \$100.00 and \$100.00? A Yes, sir.

I believe you have already stated that all of these checks are charged on this statement you made as checks received by Mr. Lazia, referred to in the Bill of Particulars?. A Yes, sir.

Q Did that not appear to you to be a duplication?

A No, sir.

Q And is it not a fact that that was held to be a duplication and eliminated by the Grand Jury in the lump sum that was finally charged in the Indictment? A I understood from evidence furnished to the Grand Jury —

Q (interrupting) Have you got it there on your list? Have you got a list of the checks that were presented to and received by the Grand Jury? A I did not present the checks to the Grand Jury.

Q Have you got it on your list? A I have three \$2000.00 checks on my list.

Q Are these the checks submitted to the Grand Jury, or taken by the Grand Jury? A Not by me; no, sir.

Q None of these particular items were made by you. You just took them from other records, didn't you? A Yes, sir.

Q As a matter of fact, this record shows only three checks, two for \$100.00 and one for \$2000.00? Isn't that right?

A And two more for —

Q (interrupting) Wait a minute. There is one other, of course, for \$2000.00. But you do not claim that is one of these checks, do you? Do you not know, as a matter of fact, that the Grand Jury eliminated that as a duplication? Answer that yes or no, please.

A Not as to that particular item.

Q Not as to the \$2200.00 item? Did not the Grand Jury consider the \$2200.00, the

\$2000.00 check and the two \$100.00 checks as duplications of the item of \$2200.00?

A Not to my knowledge.

Q Where did you get this report you are reading from?

A It is a list of checks I prepared from cashiers check registers and the checks.

Q Was this presented to the Grand Jury? A I did not present it to the Grand Jury.

Q Were you before the Grand Jury? A Yes, sir.

Q Did you go over a list of checks with the Grand Jury?

MR. VAHDEVEHTER: If the Court please, I do not think that is proper to ask him a question like that.

THE COURT: Overruled.

A I do not recall discussing these particular checks.

Q I will ask you this question: Do you say that \$2200.00 of that \$4400.00 was not eliminated by the Grand Jury?

A I understood there was \$2000.00 eliminated by the Grand Jury.

Q Was the \$2000.00 that was eliminated, that you say was eliminated in the list of checks you have charged in the Bill of Particulars?

A No, sir.

Q I will call your attention to Item of \$3000.00 dated January 8, 1930. Is there anything on your record — here is an item of \$3000.00 how was that represented? Was it in a check or in cash?

A What item are you referring to now?

Q I am referring to Item Ho. 1 of the 1930 series. There is an item there of \$3000.00? A Yes, sir.

Q Does that show where it came from? What does that represent?

A It was drawn on the National Bank of North Kansas City.

Q Is there anything on your record that shows what that represents

A Ho, sir.

Q What does the record show about that transaction? Is there anything on your record?

A The record shows cashiers check Ho. 13524 was issued by the National Bank of North Kansas City, Missouri, on January 8, 1930, in the amount of \$3000.00, payable to the Merchants Bank and endorsed by the Merchants Bank; and the record at the national

Bank at North Kansas City, Missouri, showed that the check had been purchased by Tim Crummett.

Q Was that a check for rent; do you know? A The bank records do not disclose that it was rental.

Q Have you any record that discloses that? A Not that has been introduced.

will take Item Ho. 2, January 8, 1930, being for the sum of \$2000.00, and I will ask you if your record shows by whom that check was purchased? A The records of the Merchants Bank show certificate of deposit Ho. 2694 issued on January 8, 1930, payable to John Lazia in the amount of \$5000.00.

Q That date is January 8th? A Yes, sir.

Q I wish you would see whether or not you have a record showing whence that came, what checks went into it to purchase that certificate of deposit? A The bank records do not show what funds went into that, were used to buy that certificate of deposit.

Q This item Ho. 2 of January 8, 1930. That shows on your record as a certificate of deposit Ho. 2694 and the amount paid is \$2000.00, and the certificate was issued by the Merchant's Bank, payable to John Lazia in the sum of \$5000.00, and it appears that cashiers check Ho. 13424 was used to purchase the certificate of deposit; is that correct? A Can I testify of my own knowledge, or from bank records?

Testify from the bank records. A The bank records do not show what was used to purchase Certificate of Deposit Ho. 2694.

Q I wish you would look at your records and see if you have the following items, four cashiers checks Ho. 67670, 67671, 67672, and 67673, for \$500.00 each? A With what items are those connected?

Q Those are connected with the \$2000.00, that you say went into the certificate of deposit for \$5000.00, the certificate of deposit being numbered 2694. A I do not remember saying those checks went into —

Q (interrupting) I did not ask you whether they went into it.

Have you got Certificate of deposit Ho. 2694?

A No, sir.

Q You do not have it?

MR. VANDEVENTER: It is here, Mr. Walsh.

Q I wish you would turn to your record and see what went into this certificate of deposit, if you can, please?

A I haven't any record of what went into this certificate of deposit.

Q You have already looked, have you? A Yes, sir.

Q And you have no record of the four checks of which I gave you the numbers? A Ho, sir,

Q Have you made a search for those checks? A I do not remember ever having them.

Q Did you make a search to ascertain how that \$5000.00 certificate of deposit was obtained, what was paid for it?

A Yes, sir; I did.

Q And you could not find anything that showed that?

A Ho, sir; no record.

Q You could not find any record of any cash drawn by Mr. Lazia to purchase it? A Ho, sir.

Q There is no record of that at all? A Not that I have been able to find during my examination.

Q Did you look for checks of those identical numbers that I have given you? A I had no occasion to use them unless they contained Mr. Lazia's endorsement.

Q, Will you please make a search for those checks after you leave the stand? If you will—

A (interrupting) I will if you will give me the numbers of them.

Q All right. They are Numbers 67670, 67671, 67672, and 67673.

If you find them, please return them here or notify us. Are those four checks to which I have referred on the list of checks charged as being endorsed by A. M. Slavin?

A No, sir.

Q Go back just for a moment to Item No. 1, that check on the National Bank of North Kansas City, for \$3000.00. It is a fact, is it not, that the name of John Lazia appears no place upon that check? A No, sir; it does not.

Q Is that one of the checks for \$3000.00 that you have in this list you have given the jury

as being checks received by John Lazia?

A Yes, sir.

Q Take the next item, it being Item No. 3, January 8, 1930, for \$3500.00. Have you on your records the source of that check or what it was made up of? A Unidentified funds used to purchase that certificate of deposit.

Q You do not know where the funds came from to purchase that?

A No, sir.

Q I will ask you if it is not a fact that on January 8th there were four cashiers checks represented in this transaction No. 67607, 67611, 67612, and 67613 in the sum of \$100.00 each?

A The bank records do not show they had any connection with this item.

Q There is no record whatever as to the source whence that \$350.00 came from? A No, sir.

Q Take Item No. 4, January 14, 1930. The item is \$500.00. I will get you to state the source of that check?

A That was a cashiers check purchased by A. M. Slavin, No. 67331, in the amount of \$500.00.

Q And credited to the account of John Lazia? A Yes, sir.

Q I haven't skipped any of the Slavin checks, have I?

A No, sir.

Q I have to go back to this Item No. 4, January 14, it being the item of \$500.00. That is Plaintiff's Exhibit No. 53, and the date of it is December 13, 1929. It is for \$500.00, is it not?

A Yes, sir.

Q And the endorsement that appears upon it is A. M. Slavin?

A His name; yes, sir.

Q Above it there seems to be another endorsement that is not quite clear to me, but it looks like A. M. Slavin? A. Yes.

Q He signed it A. M. Slavin in lead pencil and then A. M. Slavin in ink, probably? A I don't know who signed it.

Q I know you do not know who signed, but the signatures appear that way? A Yes, sir.

Q And it is endorsed to the Commerce Trust Company, is it not?

A Yes, sir.

Q And paid by the Commerce Trust Company? A Yes.

Q And the name of John Lazia does not appear on it any place?

A No, sir,

Q Is that one of the checks you have put in this list as giving the aggregate of what is claimed were the checks that went to the credit of Mr. Lazia? A Yes, sir.

MR. VANDEVENTER: If the Court please, my recollection is that that check I withdrew when I learned that Mr. Lazia's endorsement was not on it.

MR. WALSH; I am trying to draw this distinction, if I can; whether you put them in or not.

Q Item No. 5, that is an item of \$1000.00; is that right?

A Yes, sir.

Q And the source of that is what? Bought with checks or currency? It consisted of two cashiers checks, did it not?

A Yes, sir.

Q And they are both drawn to the order of W. H. Beldon?

A Yes, sir.

Q Do you know Mr. Beldon? A No, sir.

Q Tell me what you have on that record, please, with respect to that? Just what the books show.

A Cashier's checks No. 67953 and No. 67954, each in the amount of \$500.00, payable to W. H. Beldon, endorsed W. H. Beldon, endorsed John Lazia, and paid at the Merchants Bank January 27, 1930.

Q Is there anything else on the books other than what you have read to me? A Not that I know of.

Q Item Number 6, in the sum of \$500.00; this deposit was made in cash, was it not? A The deposit ticket shows it was a cash deposit.

Q I wish you would look at the loan account of Mr. Lazia with the bank and see whether or not there was a loan paid upon that day of \$500.00? Look at his individual ledger sheet at the Bank.

A I haven't got the loan record.

Q Look at the individual ledger sheet at the bank and see.

A There was a loan made to John Lazia by the Merchants Bank on January 28, 1930.

Q The number of the loan is 56007, is it not? A Yes, sir, in the amount of \$1000.00.

Q Now, refer to the individual ledger sheet and see if prior to making the loan of \$1000.00, there was a previously issued check on the same day in the sum of \$500.00?

A Charged to the account you mean?

Q Yes, of Mr. Lazia. A There was a \$500.00 check charged to his account on January 29, a day later.

Q Was this \$500.00 put into the charges you made as against the Bill of Particulars, as a check item chargeable to Mr. Lazia?

A No, sir.

Q, Was it put in as a cash item? A The \$500.00 deposited was put in as a cash item but the check issued was not put in.

Q Take Item 7, January 30, 1930, the amount of \$350.00. Do you have on your record there, the bank's record, any data with reference to that amount? A January 30, 1930, loan, under the loan

Number 55982, shown on the loan account register of John Lazia was credited with a payment of \$350.00.

Q Now, from your experience as an accountant and a banking accountant, is that how a loan would show previously made, that is repayment of a loan? A Yes, sir.

Q You have that charged as an item? A Yes, sir.

Q A check or cash? A Cash.

Q Cash item in the amount which you have charged, presented against Mr. Lazia in this long account which you epitomized?

A Not as a cash item but shown under the loan items, separated.

Q That was one of the loan items that was credited to him?

A Yes, sir.

Q Doesn't the record show there that that was the payment of the loan which he had endorsed for another man

A Not according to the loan record of the bank.

Q Is there any record there which shows that? A It does not show him as an endorser, no, sir.

Q It just shows it as a loan? A It shows on the loan record in the name of John Lazia, Loan No, 55982,

Q I have a copy of the loan record here and I will ask you if it does not show the following: January 24, Note Number 55982, other signers of the note — this is the note for \$350.00, date of the note being 1-24-30, and the date due 1-29-30, if it does not show that the other signer of that note, or endorser is Mr. B. C. Altman?

A It shows B. C. Attman as the other signer or endorser,

Q That is on the note for \$350.00? A Yes.

Q You have that item charged on your account, have you?

A I have the amount, \$350.00, that was paid to the bank in payment of that loan, source unknown.

Q Item Number 8, in the sum of , \$500.00, I will get you to look over your record and say what the record shows with respect to that, the date of that I believe is February 2, 1930?

A Cashier's checks Number 67959, 67991, 68059, 68060 and 68098 each in the amount of \$100.00 purchased by and payable to A. M. Slavin, endorsed A. M. Slavin, endorsed John Lazia, pay to the Merchants Bank on February 2, 1930.

Q We will take Item Number 9 \$2875.00. That is of date February 3. Is there anything upon your books there that show the source of that money, \$2375.00? A The deposit ticket shows four checks deposited in various amounts, totalling \$2875.00.

Q Item Number 10. A Cashier's check Number 68386 purchased at Merchants Bank by and payable to A. M. Slavin, endorsed A. M. Slavin, deposited to the account of John Lazia February 10, 1930.

Q Item 11, that is an item of \$3,000.00. A Cashier's check Number 68521 on the Merchants Bank payable to John Lazia.

Q Endorsed by John Lazia? A The register does not show who purchased the check; endorsed by John Lazia and A. R. Gizzo.

Q It was a check of the Merchants Bank, was it not? A Yes, sir.

Q Item Number 12. A The records show February 17, 1930, Merchants Bank issued that cashier's check Number 68559 payable to John Lazia in the

amount of \$1350.00; the check was purchased by John Lazia with cash, payable to A. A. Rayen.

Q, Was there a cashier's check represented in that transaction?

A Cashier's check I just mentioned, Number 68559.

Q The name of John Lazia does not appear any place on that check, does it? A Not on the check, no, sir.

Q Now, Item 13, being in the amount of \$500.00; I wish you would tell us what the bank records show on that? A The deposit ticket in the name of John Lazia shows a deposit of \$500.00 in cash on February 17, 1930.

Q Does it show the source? A No, sir, nothing more than cash.

Q Item Number 14, being a check for \$500.00. Will you please tell us what the bank records show on that? A February 17, 1930, deposit ticket in the name of John Lazia showing deposit of a check in the sum of \$500.00.

Q Does it show the source? A Not on the deposit ticket, no, sir.

Q Have you got cashier's check Number 68526 there? Doesn't that show it came from cashier's check Number 68526 payable to A. M.

Slavin? A Cashier's check purchased and payable to A. M. Slavin, Number 68526 in the amount of \$500.00 was paid on the Merchants Bank on the same day the deposit of \$500.00 was made in Mr. Lazia's account.

Q Is that all the record shows? A The deposit ticket does not show that that is the check, although that was deposited.

Q Item Number 15, February 17, 1930, for \$1,000.00.

A Loan record in the name of John Lazia shows that Loan Number 56007 was credited with \$1,000.00 on February 17, 1930.

Q Does that record show when the \$1,000.00 was borrowed?

A January 28, 1930.

Q And this was February 17, 1930? A Yes, sir.

Q What did Lazia owe the bank at that time? A Before that payment was made?

Q Yes. A A balance of \$9,990.00.

Q That is February 17, 1930? A Yes, sir.

Q Now, Item Number 16. A Amount deposited to the account of John Lazia, the deposit

ticket shows the item as currency, \$137.50.

Q Have you the source on that? A No, sir,

Q Item Number 17, in the sum of \$300.00. A The deposit ticket dated February 21, 1930, shows a deposit of cash in the amount of \$300.00 to his account.

Q And no source? A No, sir,

Q Item Number 18 of February 24, 1930? A Deposit ticket dated February 24, 1930, shows a deposit to the account of John Lazia in the amount of \$500.00; the deposit ticket shows that the item was a check.

Q And the check was drawn by whom, endorsed by whom?

A Cashier's check Number 68636 purchased at the Merchants Bank February 24, 1930, by A. M. Slavin, payable to John Lazia, endorsed John Lazia and contained the paid stamp of the Merchants Bank on the same day of the deposit.

Q March 3rd, Item Number 19. A The deposit ticket dated March 3, 1930, in the name of John Lazia showing a deposit of \$500.00 is a check.

Q To make it short, was that a Slavin check? A A Slavin check purchased by Slavin, payable to John Lazia.

Q We will call it a Slavin check when it is purchased by Slavin and has his endorsement on the back of it.

Q It was endorsed by John Lazia, yes, sir.

Q Item 20, March 10, 1930, the amount of that is \$500.00.

A The deposit ticket shows \$500.00 check deposited to John Lazia's account.

Q And that comes from a check, a Slavin check? A Payable to John Lazia, endorsed by him.

Q We will assume unless we say something to the contrary that it was paid to Lazia. I want to get over this and not have to repeat these numbers. Item 21, March 17, 1930, \$500.00 deposit. That was a check deposit, was it? A It was a cashier's check purchased by A. M. Slavin, payable to John Lazia., March 17, 1930.

Q Was it endorsed and went to the account of John Lazia?

A Deposited to the account of John Lazia.

Q Item 22, March 2, 1930, the amount being \$157.50. Is that a cash item? A The ledger account shows a deposit and credit to John Lazia's account.

Q Is it a cash item? Is it a deposit of cash? A The deposit ticket could not be located. It is impossible to say whether it was cash or a check.

Q You have not seen the deposit ticket? A No, sir.

Q Where did you get the item of \$157.00? A Shown by a credit on his ledger account in the name of John Lazia.

Q And it does not show the source or any other data except what you have given us here? A Thats all.

Item Number 23, March 24, 1930. This is an item of \$6,000. and I want to know whether that was a cash item or whether it was made up of checks? A The record does not indicate.

Q On that date did John Lazia have an overdraft in the Merchants Bank? A No, sir; he had a credit balance of \$1454.86.

Q What date did I give you there? A March 34.

Q I have got the wrong date here. Have you there on the loan register, Loan Number 56343 to John Lazia? A Yes, sir.

Q When was that loan made? A March 15, 1930.

Q Have you also a record of cashier's checks for the sum of \$2,000.00 represented by four cashier's checks made payable to A.M. Slavin? They are Number 68615, 68632, 69009 and 69094?

A I only have one check.

Q For how much? A \$500.00.

Q What is the number of that check? A 69094.

Q That is the last of the four that I have mentioned? A Yes,sir.

Q Did you make a search for the other checks? A I evidently saw those checks but they had no notations indicating they had any connection with Mr. Lazia and therefore they were not considered.

Q Was the check that you have mentioned a check issued to A. M. Slavin? A It was a check issued to John Lazia by A. M. Slavin and deposited on March 17th; Item 21 in the Bill of Particulars.

Q Give me the number of that, I want to keep track of that particular check? A 69094,

Q Now, you say you saw three other checks. For \$500.00 each were they? A I saw a lot

of checks.

Q I know, but did you say awhile ago that you saw three other checks but you did not see any connection with Mr. Lazia and therefore did not make a note of them? A I saw hundreds of checks of Slavin that I did not consider any connection with Mr. Lazia.

Q What I am trying to get at now is, if you saw three checks, I will give you the numbers, 68615, 68632, 69009, that is three checks of A. M. Slavin? A I could not state at this time whether I had those three particular checks or not.

Q Maybe I am mistaken; I thought you stated you had seen those checks? A I said I had seen a great number of Slavin's checks.

Q I know you said that since. Now, take the loan of \$4,000.00 that we have referred to as Loan 56343. See if you have any record showing how that loan was paid off? Cash or check and whose check.

A The only records in the possession of the bank show a credit of \$4,000.00 on that loan on March 24, 1930; no record as to whether it was currency or check.

Q At that time what did it leave his loan account, in what condition did it leave his loan account? A \$8525.00 balance.

Q And before this was paid how much was it before this \$4,000.00 was paid? Was it \$12,000.00 plus? A The balance of March 31st was \$15,765.00.

Q That was what he owed the bank on that date? A Yes, sir.

Q Was there an overdraft on the 29th of March? A Yes, sir.

Q In what amount \$427.94 overdrawn.

Q Take the 24th of March, Item 24, being in the sum of \$500.00.

That was a deposit, was it not, represented by a cashier's check of the Merchants Bank in the sum of \$500.00, a check that was purchased by Slavin,- one of the Slavin checks?

A Yes, sir.

Q Item Number 25 dated March 24, 1930, \$100.00; it is represented by cashier's check Number 68930, Merchants Bank, purchased March 10, 1930, and entered the account of Mr. Lazia and was endorsed by A. M. Slavin? A It was endorsed by Slavin, John Lazia, and paid at the Merchants Bank; it did not enter his account.

Q It went into the account of John Lazia at the Merchants Bank?

A Not into his checking account.

Q Paid in cash? A It was paid there; I don't know how it was paid.

Q What evidence of it being paid is there except it was credited to his account? Any? A Stamped on the back of the check it shows it was paid at the Merchants Bank on a certain day.

Q Does that indicate it went into his account, or was paid in cash?

A No, sir.

Q Does it indicate which way it was paid? A No, sir.

Q Item Number 25, March 24, 1930, the item of \$100.00. Is this right: "This check was purchased at the Merchants Bank March 10, 1930, and was made payable and endorsed by A. M. Slavin. Also endorsed by John Lazia and the proceeds paid to John Lazia at the Merchants Bank"? A That is the one I just testified to.

Q Item 26, March 31, 1930, \$500.00. This is the proceeds of a cashier's check, is it not, purchased by Slavin, payable to the order of Lazia, is that correct? A Yes, sir.

Q And the check is stamped paid by the bank? A Endorsed and deposited in his account.

Q And not stamped paid? A It contains the bank stamp.

Q Is it stamped paid? A Yes, sir.

Q Item Number 27, April 14, 1930, a check for \$500.00; this is the proceeds of cashier's check Number 69605 purchased by Slavin, pay to the order of Lazia? A Yes, sir.

Q The next item is Number 28, April 14, 1930. What was the last item? A The last item was cashier's check Number 69605 for \$500.00 deposited in John Lazia's account on April 14, 1930.

Q That was what item? A Item 28.

Q Item 27 is an item of \$500.00; it is a check deposited in the amount of \$500.00 to the account of John Lazia and it is the proceeds of cashier's check Number 69605 shown to have been purchased by A.M. Slavin? A That is the one I just testified to.

Q That is March 24th? A April 14.

Q The next item is April 14, Item 28. What was the condition of Mr. Lazia's account April 3rd? I am bringing you now to April 14th. Did he have a bank balance, or what was the condition?

A April 3rd his account was overdrawn \$16.94.

Q We will take this item of April 14, 1930, that is an amount of \$3,000.00. Does your record show where that \$3,000.00 came from?

A Cashier's check Number 69610 issued by the Merchants Bank, payable to the Merchants Bank in the amount of \$3,000.00, purchased by the Electric Holding Corporation; purchased by the Citizens Trust and Savings Bank, pardon me.

Q And endorsed by the Electric Holding Corporation,- drawn by the Electric Holding Corporation? A Cashier's check issued by the Merchants Bank was purchased by the Citizens Trust and Savings Bank.

Q Does the name of the Electric Holding Corporation appear in the transaction? A It appears on the cashier's check register of the Citizens Trust and Savings Bank in Chicago, Illinois.

Q And the Electric Holding Corporation is the one that operated the dog track; you know that, don't you? A Yes, sir.

Q Upon what date was that amount paid, that \$3,000.00?

A April 14, 1930.

Q Preceding that Mr. Lazia had an overdraft every day beginning with April 5th. You have already testified I believe about April 4th.

How much was his overdraft on April 5th? A \$24.44.

Q And on April 8th? A \$24.69.

Q, And on April 10th? A \$24.94.

Q And on April 11th? A \$25.19.

Q And on April 12th? A \$25.44.

Q This check was paid to him on April 14, 1930, was it?

A Yes, sir.

Q Did he have an overdraft or a balance or a deposit on April 15

A He had a credit balance on April 16 of \$451.56.

Q Was that the 16th or 15th? A 15th.

Q And on the 15th he had a balance of \$351.56? A \$451.56.

Q Wasn't it \$351.56? There are two there I see; the balance is given twice. A There are two balances on that day. Evidently the opening balance on April 15th was \$451.56 and there was a check charged against his account of \$100.00 leaving the closing balance

on that day of \$351.56.

Q That is the balance I was asking about; that is the second balance given on that day?

A Yes, sir.

Q Do you know what disposition was made of that \$3,000.00 by any record that you have from the bank? A The \$3,000.00 was used at the Merchants Bank to purchase three cashier's checks each in the amount of \$1,000.00.

Q Do you know where those cashier's checks went?

A Two of the cashier's checks for \$1,000.00 each were endorsed J. Lazia and Henry LaBoy. The other cashier's check for \$1,000.00 was endorsed J. Lazia and cashed and paid in the Merchants Bank on June 21, 1930.

Q Item 29, that is April 18 and the amount is \$500.00, cashier's check Number 64971. It is a fact, is it not, that there was a cashier's check on the Merchants Bank payable to and endorsed by A. M. Slavin and John Lazia and that the proceeds of the check went to John Lazia? A Yes, sir.

Q Item Number 30, the date of that is May 5th. I will ask you if you can tell from your record whether or not that is not the last Slavin check given to Mr. Lazia on Cuban Gardens, on whatever account it was? A No, sir, it is not.

Q Now, I will ask you whether or not you have segregated the checks that were paid by A. M. Slavin prior to and during the duration of the period from September 15 until the first of January and then a list of \$500.00 checks which I have been calling off to you that appeared after the first day of January, 1930?

A I have all the checks of Slavin's.

Q Did you separate the checks as showing which were paid during the building of the Cuban Gardens and, we will say, up until April 18, 1930? A I cannot tell of my own knowledge when the Cuban Gardens was constructed.

Q Did you ever know from your own knowledge when it was constructed?

A No, sir.

Q Do you recall, without going back to the record, that in April, 1929, there was a check paid for \$3,000.00? A Yes, sir.

Q On the dog track corporation? A Yes, sir.

Q Was that check likewise divided into three checks afterwards?

A Not that I recall; I can refer to my records.

Q Wasn't one of them credited to the account of John Lazia?

A Yes, sir.

Q And weren't there two cashier's checks issued for \$1,000.00 each?

A Yes, sir.

Q And the \$1,000.00 check issued to Lazia was deposited to his account, was it not? A

There were three \$1,000.00 checks issued to John Lazia.

Q I know, but one of them was deposited in his account. Will you please look at the record and see if he was not credited with \$1,000. on that day? A Pardon me. There was two cashier's checks for \$1,000.00 issued to John Lazia.

Q I know what was issued to John Lazia but I am asking you the specific question and I would like to get it clear of everything else.

That \$1,000.00 check that was issued to John Lazia was not credited to his account.

Can you answer that yes or no? A It was not.

Q Was it deposited in his account? A No, sir.

Q There was \$1,000*00 paid in cash, was there not, and two cashier's checks; that was divided up in that way? A Yes, sir.

Q The same procedure was had on the \$3,000.00 check of 1929 and also on the \$3,000.00 check of 1930 that came from the dog track corporation? A It was put up in the different cashier's checks.

Q Three each time? A Yes, sir. Two the first time.

Q Wasn't there \$1,000.00 in cash in that transaction? A Yes, sir.

Q Two checks for \$1,000.00 and cash \$1,000.00? A Yes, sir.

Q Is that the same thing that occurred in 1930 or were there just three checks in 1930? A Three checks in 1930.

Q Now the next item I see here is an item Number 30; the date is May 5, 1930 and the amount is \$913.05. Is that correct?

A Yes, sir.

Q What does the record show upon that check, the bank record?

A The deposit ticket dated May 5, 1930, in the name of John Lazia shows a check for \$913.05 less cash \$163.05, leaving a balance of \$750.00 credited to the account of John

Lazia.

Q Item Number 31, May 6, 1930, \$1500.00. What does the bank record show on that? A Cashier's check Number 69997 issued by the Merchants Bank on May 6, 1930, payable to J. Lazia in the sum of \$1500.00. The cashier's check register shows that the cashier's check for \$1500.00 was purchased with two other checks and cash.

Q Will you give the amount of the other checks?

A \$290.50, \$969.50 and cash \$237.00.

Q Take Item Number 32, May 9, 1930, the amount being \$3500.00 and state what that bank record shows on that?

A Cashier's check Number 70047 issued by the Merchants Bank on May 9, 1930, in the amount of \$3500.00. The register shows that the check was purchased with other checks, one in the amount of \$870.00; one in the amount of \$825.00, one in the amount of \$1056.50, one for \$500.00 and cash of \$248.50; total \$3500.00.

Q Item Number 33, May 16, 1930, \$624.00. Please state what the bank records show with reference to that? A Deposit ticket

dated May 16, 1930, in the name of John Lazia showing deposit to his account in the amount of \$624.00 representing a check.

Q On May 5, 1930, what was the state of Mr. Lazia's account?

A There are two amounts there. One I cannot read on this photostat; it is marked over.

Q Yes, it is marked over with lead pencil. The first one is what?

A \$585.87 overdraft.

Q That is May 5? A yes, sir.

Q I interrogated you I believe last night about a check for \$4500.00, did I not, this Item 34, May 21? A I don't recall.

Q I am going to leave that. I will call it back if I didn't.

It was in connection with the check for \$4900.00.

A No, I did not testify on that*

Q I would like you to look then, if you did not testify to it.

Take this check for \$4500.00; that is made to John Lazia, is it not?

A Yes, sir.

Q And it is endorsed by John Lazia and A. R. Gizzo, is that correct?

A Yes.

Q Have you a check there for \$4900.00? A No, sir.

Q What was this \$4500.00 made up of? A It was purchased at the Merchants Bank by Butterfield and Gizzo, payable to John Lazia, according to the bank records.

Q Did you have this check in consideration, it is marked Defendant's Exhibit 3 and dated May 27, 1930? A No, sir, I don't believe I have ever seen the check before.

Q Have you seen a record of that check? A No, sir.

Q Could you tell whether or not it is a fact that the \$4500.00 check which I show you, went in with \$400.00 more to make this check for \$4900.00? A I would have to look at the cashier's check register; that would be the only notation the bank would have on it.

Q I see this is marked Defendant's Exhibit 3. That was excluded from the evidence, was it?

MR. VANDEVENTER; It never was offered.

THE COURT: I have the impression that you offered in evidence those exhibits which you had identified, at least several of them.

Q Then we will take Item 35 in the sum of \$1089.00 and state what the record shows with reference to that? A Cashier's check register of the Twelfth Street Bank shows —

MR. WALSH: Let me make this clear to the Court. I offered that and it was excluded. It was Defendant's Exhibit 3.

THE COURT: I have no record as to the offer. I have the impression that I have not excluded any of your offers of exhibits.

MR. WALSH: I think you did because that is the exhibit marked on it.

Q Not, Item 35. A The cashier's check register of the Twelfth Street Bank shows that they issued a cashier's check Number 35041 on May 23, 1930, payable to John Lazia in the amount of \$1089.00.

The register further shows that the check was purchased by the Rex Billiard Hall.

Q That is for the sum of \$1089? A Yes, sir.

Q That is Plaintiff's Exhibit 125, is it not? I may have missed it but I didn't see anything about a billiard hall on there.

A I say the cashier's check register shows it.

Q The cashier's check register shows it was purchased by whom?

A Rex Billiard Hall.

Q This contains the endorsement of John Lazia? A Yes, sir.

But the last endorsement on it Charles Carollo?

A Yes, sir,

Q You have this charged on the account which you have made up of all of the checks, have you? A Yes, sir.

Q Item No. 36, dated August 12, 1930, for \$2160.00, is what is known in the record as the Duke Motor Company transaction, is it not?

A Yes, sir.

Q That amount is credited to the loan account of John Lazia at the Merchants Bank? A Yes, sir.

Q I notice that loan account is No. 67152. I would like to have you look at that loan account and see what the condition of his loans were at that time, on August 12, 1930, after the credit of \$2160.00 had been applied. A On August 12, 1930, after there had been a credit of \$2160.00 made to his account, the balance was \$9,365.00.

Q Item No. 37, August 15, 1930, the item being \$2000.00.

A A teller's slip at the Merchants Bank dated August 15, 1930, showed that the teller had cashed a check in the amount of \$2000.00 for John Lazia. The source of the check unknown.

Q I wish you would look, please, at the loan register under No. 67619 and tell the jury what that shows? A I have no loan register by that number,

Q Are you looking on the loan register of the Merchants Bank?

A I have photostat copies of certain sheets of that register. I have not the complete register.

Q Item No. 38, August 30, amount \$1205.25. Please tell us what the record shows on that? A Deposit ticket shows

\$1205.25 deposited in the account of John Lazia August 20, 1930.

Q Is that all it shows? A Cashier's check register of the

Home Trust Company shows they issued treasurer's check No. 97963 payable to C. E. Butterfield, said treasurer's check issued on the Home Trust Company contained the

endorsement of C. E. Butterfield and John Lazia.

Q Anything else on your record? A Paid on August 20, 1930 by the Merchants Bank.

Q Item No. 39, September 15, 1930, the amount being \$2000.00.

A A Memorandum of checks cashed at the Merchants Bank by the teller on September 15, showed they cashed a check in the amount of \$2000.00 for John Lazia on that day.

Q No other record at all? A That memorandum showed it was a check of C. E. Butterfield.

Q Item No. 40, September 16, 1930, amount \$816.00.

A Tellers memorandum at the Merchants Bank dated September 16, 1930, shows they cashed a check for John Lazia on that day in the amount of \$618.00, that the check was drawn on the Home Trust Company, Kansas City.

Q Is that all of the record you have? Is that all the record shows? A The record of the Home Trust Company showed that they issued Treasurer's check No. 98987 September 15, payable to Charles V. Carrolla, and the Treasurer's check disclosed the endorsement of Charles Carrolla and John Lazia, and it was paid at the Merchants Bank on September 16, 1930.

Q Item No. 41, September 17, 1930, amount \$3000.00.

A Cashiers check register of the Merchant s Bank showed they issued a check No. 72196, payable to J. Lazia in the amount of \$3000.00. The register showed this check was purchased with cashiers check No. 72137, issued on September 15, 1930, payable to M. LaSalle, and endorsed M. LaSalle and John Lazia.

Q Item No. 43? A Transit sheets of the Merchants Bank showed they handled a check on an out of town bank on September 22, 1930.

Q The amount of that was \$822.75? A Yes, sir. And that the check was drawn on the Republic National Bank of Dallas, Texas, and was payable to J. Lazia.

Q Item No. 50, dated September 30, 1930, and the amount of the item is \$1500.00. What does the bank record show about that?

A Item No. 50 is \$500.00. Deposit ticket in the name of John Lazia showing deposit to his account on September 30, 1930, in the amount of \$500.00 as currency.

Q Is there anything else on your record to show that this is a part of the proceeds of cashiers check No. 69997 which is referred to under Item No. 31, the check being finally

paid on September 30, 1930? A No, sir; I haven't any evidence that has any connection with that.

Q You haven't any record of that at all, if it exists?

A No, sir.

Q But this was charged as it is on the account you have given me in the total number of checks, was it not? A Yes, sir,

Q This is dated May 6, 1930, and I will ask you to look and see if that check was not cashed on the same day you have him charged with that \$500.00 item? A You would have to refer to the cashiers check register to determine the date of payment.

Q Will you please do that? A Yes, sir. The record shows that cashiers check No. 69997 was paid on September 30, 1930.

Q Then that same day you have a cash item charged of \$500.00?

A A cash item deposited in his bank account of \$500.00.

Q Item No. 51, a Certificate of Deposit in the sum of \$5000.00

A Certificate of Deposit register of the Merchants Bank shows a certificate of deposit No. 2788.

Q Made by whom? A Issued to the name of Joseph Lazia in the amount of \$5000.00. The funds used to purchase the certificate not being shown. The certificate contained the endorsement and the name of Joseph Lazia, J. Lazia, and John Lazia, and was paid at the Merchants Bank December 15, 1930.

Q I will get you to look at the three certificates which I now hand you, all dated September 3, 1930; One is Plaintiff's Exhibit No. 189, one is Plaintiff's Exhibit No. 179, and one is Plaintiff's Exhibit No. 85, being three certificates of deposit made to Joseph Lazia; and see which one of those is the \$5000.00 you have mentioned there?

A This one (indicating),

Q That is Plaintiff's Exhibit No. 185? A Yes, sir.

Q The next two are items of \$5000,00 apiece on the same day, each one of them being certificates issued to Joseph Lazia for the sum of \$5000.00; is that correct? A Yes, sir; three in all.

Q Just give the history of them from your bank record. Do you have any other record on them? A Three of them?

Q You have testified to one; the other two.

A No. 2789 was paid at the Merchants Bank on December 15, 1930.

There are —

Q (interrupting) There are two endorsements on it, the first one being Joseph Lazia the second one being John Lazia; that is true, isn't it? A Yes, sir.

Q The one you have just testified to? A Yes, sir. No. 2790 contains the endorsement of Joseph Lazia and John Lazia and was paid at the Merchants Bank on October 22, 1930.

Q Item 57, is an item of \$3000.00. Now, just tell us what the bank record is that you have on that? A Tellers memorandum of the Merchants Bank dated October 22, 1930, showing checks cashed, show that the teller cashed a check on that day in the amount of \$3,000.00 to John Lazia.

Q Item Number 58, October 33, in the sum of \$2,000.00. What does your record show on that? A Teller's memorandum of checks cashed on October 22nd, 1930, show that they cashed a check for John Lazia in the amount of \$2,000.00.

Q Item 62 is dated November 5, 1930 and is for the sum of \$1,000.00, is it not? A Yes, sir.

Q What is that represented by?

A According to the cashier's check register of Merchants Bank they issued Cashier's check Number 73233 payable to John Lazia in the amount of \$1,000.00 purchased by A. M. Slavin.

Q You stated when I asked you, when I came to the note of those \$500.00 checks that there were other checks later than that issued to M. Slavin? A Yes, sir.

Q Is there one more than that or any more than that?

A There is one more after this one.

Q What is the date of that? A December 1, Item 64, in the Bill of Particulars.

Q Does your record show that that is the rent for the current year of the Cuban Gardens?

A The bank records don't show it.

Have you got a record there that shows it? A The records in evidence do not show it.

Q I will ask you to look at Plaintiff's Exhibit 70 and state whether or not the record doesn't show that there was a cashier's check purchased to the credit of Ray Edlund, Trustee,

for the sum of \$1500.00 on December 1, 1930? A Cashier's check Number 73682 was purchased by A. M. Slavin payable to Ray Edlund Tr. in the amount of \$1500.00.

Q You know that is Ray Edlund, Trustee? A I do.

Q And you made an investigation and you do know, do you not, that that is for that year's rent, the following year's rent on Cuban Gardens? A I know it is rent, yes, sir.

Q Now it is a fact then that after that \$500.00 check which I showed you, which was a Slavin check in April, 1930, there were no other payments made by any check bearing the Slavin's signature except the rent checks, were there, after that one?

A Rent checks, yes, sir.

Q I mean that is all the records show? A Rent checks, yes.

Q Have you made any investigation as to how the trustee, Mr.

Edlund, divided that check? Have you any record of it? That check for \$1500.00 that came in for rent?

A There was no evidence or record of checks purchased by Mr.

Edlund showing that he had. distributed other than to another cashier's check issued to John Lazia.

Q You did not go into what became of that? When you were making that investigation did you find out who the persons were that he was trustee for? Did he give you the names of them?

A He was asked and he could not name them,

Q Did he not give you the names of a man named Weissman, of Johnnie Lazia, Lazia's father, Mr. Carollo and Mr. Carollo's father?

A No, sir, he did not.

Q I wish you would look on the loan register under date of December 16, 1930, and see if Mr. Lazia made a loan from the bank at that time.

A I haven't got a photostat of anything after August 30 on the loan register.

Q The loan register shows, does it not, that on December 16 there was a loan made to Mr. Lazia by the bank for \$5000.00?

A I don't believe it has been introduced. I don't know whether this is a loan register or not. Nobody has identified it.

Q Doesn't it look exactly like the others? I can identify it if you want me to but I am trying

to get through. If you have any doubt about it I will be glad to call somebody to identify it but let us assume it for the purpose of this question. Is the second item on it a loan to Mr. Lazia?

A December 16, 1930, loan in the amount of \$5000.00.

Q That is what I was asking you, is that correct?

A According to the record, yes, sir.

(Thereupon, Court stood at recess until Saturday, February 10, 1934 at 9:30 A.M.)

HARRY T. RILEY

resumed the stand and further testified:

CROSS EXAMINATION (Resumed)

By Mr. Walsh:

Q Mr. Riley, what was the last item I asked you about last night? A Item 64 in the Bill of Particulars.

Q Item 64 is dated December 1, 1930, and it is an amount of \$1500.00, is that correct? A Yes, sir.

Q The original cashier's check was in the sum of \$1500.00, was it not? A Yes, sir.

Q And it was made payable to Ray Edlund, Trustee?

A Yes, sir.

Q Now, did your investigation show that that \$1500.00 check was for rent for Cuban Gardens for the year 1930? A Yes, sir.

Q Did you put that check in this long list you have given here of checks received from A. M. Slavin? A Yes, sir.

Q You do not pretend to say what any of those checks were for, do you? A Not from examination of the bank records, no sir.

Q Is that the last check you have on any of your statements shown as endorsed by A. M. Slavin and paid to Mr. Lazia?

A Yes, sir.

Q, There is an item on there, Number 60, dated December 16, 1930, for \$510.00, is that correct; your item Number 74?

A Yes, sir.

Q Now, what does your bank record show on that check for \$510.00?

A The memorandum kept by the teller at the Merchants Bank discloses that on December 16, —

MR WALSH: Has that memorandum been introduced?

MR VANDEVENTER: I think so.

(Memorandum referred to is Plaintiff's Exhibit 183).

Q I see on one of these tellers' slips, as they are called, dated December 16 "John Lazia 18-1 \$510.00"?

A Yes, sir.

Q I wish you would tell us just what your bank record shows on that please. A According to that memorandum —

Q The memorandum shows for itself; I have read the memorandum. Tell us what else, if anything, you have on your records with reference to that? This part of it has been introduced in evidence:

"John Lazia 18-1, \$510.00". There is nothing else about it on there, is there? A No, sir.

Q Now, let's see what your bank records show, if anything.

A That is the only bank record in existence in reference to that item.

Q You don't know where it came from? A Except as shown on that list.

Q And you don't know where it went to except that it went into the account of Mr. Lazia, is that right? A Except that shows it was cashed by Mr. Lazia.

Q That is all you know about it? A Except what is shown on that list.

Q There is nothing in this record any place about that \$510.00 except what we see right on that slip, is that right?

A That and the testimony that has been given in reference to that slip.

Q There is nothing in your record as to that slip?

A No, sir.

Q Are you talking about some testimony that has been given elsewhere or that has been given before this jury, on that slip?

A I think there was some testimony given in reference to that exhibit.

Q As to its source? A I would not say to that; no, sir.

Q Have you ever seen the check representing that? A No, sir.

Q Have you ever seen a check drawn by any person to which that \$510.00 could be

attached? A No, sir.

Have you got that \$510.00 charged on this long account of checks under the heading of "Miscellaneous checks"? A Yes, sir.

Q Item Number 70 seems to be a cashier's check for \$1,000.00 dated December 10, 1930 - it was issued to John Lazia, the record shows and was purchased by cash, is that correct? A Yes, sir.

Q That is a check that has the endorsement, the second endorsement of Sutton and Gibson Jewelry Company by R. E. Gibson, is it not?

A Endorsed "J. Lazia, Sutton and Gibson Jewelry Company by R. E. Gibson."

Q That is dated December 16, is it not? A Yes, sir.

Q And the final endorsement on it is the First National Bank of Miami, Florida, isn't it, right down at the bottom?

A The First National Bank, Miami, Florida.

Q Have you any other record on that check, any other bank record to which you can refer except as you have already stated? A No, sir.

Q Take Item Number 74, October 29, 1929, an item of \$180.00?

Did you get up this Bill of Particulars? Did you give the items for this Bill of Particulars that was filed in this case?

A I didn't understand.

Q Did you furnish the items to the government, to the attorneys, for the Bill of Particulars that was filed in this case, the figures?

A I believe it was prepared from my records.

Q Did you prepare it? A No, sir.

Q Did you give the figures to go into the Bill of Particulars?

A Not directly, no, sir.

Q Were you in there when it was done? A No, sir.

Q Did you see the Bill of Particulars afterwards? A Yes, sir,

Q You have been testifying from it here. We have the same figures that you gave to somebody that went into the Bill of Particulars?

A Yes, sir.

Q The same items and the same amounts? A Yes, sir.

Q So you know, do you not, now, Mr. Riley, that you did furnish the figures that went into the Bill of Particulars?

A I did not sit with the attorney.

Q You did not sit with the attorney. What did you do with the figures? Who did you give them to? A Mr. Sharp had the figures, I believe.

Q Mr. Sharp is this gentleman that has been here all the time?

A Yes, sir.

Q And you gave Mr. Sharp the figures? A Yes, sir.

Q And they were your figures? A Yes, sir.

Q And they afterwards appeared in the Bill of Particulars?

A I think so.

Q Did you have an item of \$180.00 in your figures of date October 29, 1929? A There was such an item but I understood it had been eliminated.

Q Did you have it on your list? A At one time, yes, sir.

Q Is it on this present long list? A It is not on my records here, no, sir.

Q From whence did you make the records on your long list of checks from Slavin and miscellaneous checks? A I prepared that about a week ago from my records here.

Q You have here on this list "Paid on loans" a list entitled "Paid on loans. " You have a list, have you not, of loans of Mr. Lazia?

A I have a list that shows all credits made to his various loan accounts.

Q And you have testified to a number of loans which he has made from the bank? A Yes, sir.

Q You did not take into consideration any other loans which he had made, of any kind or character, did you? A Nothing except what the bank records showed.

Q Now, I wish you would get the loan account of Mr. Lazia's, about which you have been testifying. Where did you get those loans from, that are on this list, and the other items about which you have been testifying? A Off the bank records of the Merchants Bank.

Q You were given these records, were you not, the originals?

A I examined them.

Q You took photostatic copies of them, did you not? A Yes, sir.

Q Are these the ones you worked with? A Yes, sir.

Q Did you make an estimate to find out how much Mr. Lazia owed the bank on the first day of January, 1939? A I made no record of it; I was not interested in that item.

Q I did not ask you whether you were interested or not. I asked you if you made that estimate; you can answer that yes or no.

A No.

Q Did you find out what his loans were during the month of January, 1929, his loans from the bank? A That would show on the loan register.

Q What does it show? A January 3, 1929, \$2450.00 owed the bank.

Q Owing to the bank? A Yes, sir.

Q Now, what loans, if any, did he have in the month of January, 1929? A That would be very hard to answer unless time was taken to compute them because new loans would be made, loans would be renewed and payments would be made on loans.

Q Does this record show the individual loans? A Yes, sir.

Q Then give me the individual loans that were made in January.

A As I say, some of them might be renewals; it would take time to check them over to see what were renewals and which were new loans.

Q I will give you a chance to check them over and tell which were renewals and which were new loans; you have offered some as checks?

A I can give you the balance.

Q I would like to get the details of it.

MR. VANDEVENTER: I suggest the record is the best evidence,

MR. WALSH: I am cross examining him now because he offered some of these checks as original checks.

THE COURT: Proceed.

Q This is quite plain here to me. Maybe I am not right about it. Here is the month of January, 1929, and there is a heading here, it is called "Discount Department, Merchants Bank", and there is a heading here "Other signers or endorsers" and the date of the note, the date due and the amount. That is true, is it not? A Yes, sir.

Q What do you find on January 11? A January 11 was a loan made, charged to Mr.

Lazia's loan account in the amount of \$300. It shows the other signers or endorsers, E.

A. Swartz.

Q Was that a cash transaction or a check transaction? It was deposited to Mr. Lazia's account. Did he get a check or did he get cash? A I don't know, at this time.

Q Do you know whether that is an item that you afterwards took into consideration in his deposit slips and put in this long list of items you have made here? A No, sir; when he borrowed money I did not charge it to him,

Q Did you charge it up to him in the deposit slip when it was deposited in the bank? A No, sir.

Q Did you look to see whether it was a loan at the time you made it out? A Yes, sir.

Q Now, on January 14, I see there is an item here, Number 52630, six per cent interest, a loan of \$3,000.00. Is that correct?

A On January 14, 1939, several loans were renewed in the total sum of \$3,000.00.

Q You say several were renewed. Have you got the items that were renewed?

A One of them was a loan made on a renewal of a loan on December 10, 1938, in the amount of \$2200.00.

Q Is it shown here in the balances? A Yes, sir. It is not shown in the balances. That is a daily balance. As I said before, the new loans, renewals, and amounts paid off, it takes time to work them up and run them back to determine what are renewals or what are original loans. This item over here shows the daily balance of the account.

Q We may pick them out very shortly if you will assist me and get an epitome of them. There was no endorsement at all on that \$3,000. loan, was there? A No, sir.

Q That just show's a loan of \$3,000.00 for Lazia, is that right?

A Yes, sir.

Q Now, I will get you to look down here, March 13, 1939; there is a loan to Lazia of \$3,000.00, is there not? A Yes, sir.

Q Another \$3,000.00? A That is the renewal of the loan you were just talking about.

Q So that that \$3,000.00 was used to pay off this \$3,000.00, or used as a renewal on the \$3,000.00 that was borrowed on January 14, is that correct? A The loan on January 14th became due on March 1st and instead of paying it off he had it renewed by signing a new note.

Q So that that is really just one transaction? A Yes, sir,

Q, We will take the next, that is February 19, 1929, Number 59959, that is in the amount

of \$300.00, is it not? A Yes, sir.

Q And there is another endorser on that, Steno Spallo?

A Yes, sir, that is a renewal for a loan made in 1938.

Q The next one is March 19, 1939, and that is a loan of \$150.00 and that has another endorser, has it? A That is a renewal loan of a previous loan.

Q I am asking you first, I am going to ask you that, but I just asked you first if there was not another endorser, Steno Spallo?

A Steno Spallo, endorser.

Q And that was a renewal; you can tell that was a renewal of another note? A Yes, sir.

Q When was the other note made? A Some time in 1938.

Q Have you got an item of it there or did you guess at that?

A Well, that one on March 19 was a renewal of the loan on February 19 and the loan on February 19 is a renewal of a loan on November 28, 1938, and that is the renewal of a previous loan.

Q Look on there and see if you can get an item marked "Duke Motor Stock"? A On June 37, 1939, there is an item marked "Duke Motor Car Company as collateral."

Q What date is that? A June 37, 1939.

Q Is there an item on there on which Duke Motor stock is mentioned, on February 28, 1930? A Yes, sir.

Q That is a loan to whom? John Lazia, is it not?

A Charged to John Lazia's loan account.

Q Also charged on his loan account. This shows on February 28, Duke Motor stock, interest at the rate of six percent and the sum is \$3,000.00, is that correct? A Yes, sir.

Q Is that the original of that loan? A No, sir.

Q Is that a renewal of the loan? A Yes, sir.

Q What was the date of the original loan? A It appears to be June 27, 1929.

Q What is that loan? How much is that loan? A Loan made on June 27, 1929, in the amount of \$8000.00.

Q Is there any other item there of June 27, 1929, or is that the only loan for that amount?

A Yes, sir.

Q I will ask you to look at the item beginning February 28, 1930. That shows Duke Motor stock, one loan of \$3000.00, does it not?

A Yes, sir. The \$3000.00 loan is a renewal of the \$8000.00.

Q I am just asking you now for the amounts. March 15, 1930, there appears to be a loan of \$4000.00? A Yes, sir.

Q On March 24, 1930, there appears to be loan of \$8000.00, making \$15,000.00 altogether? A Yes, sir.

Q I wish you would go back and if the \$4000.00 note and the \$8000.00 note are renewals I wish you would show it to me. That shows on its face it is the Duke Motor stock? A The original loan of \$8000.00; yes, sir.

Q On February 28, 1930, the three loans that follow each other, February 28, March 15, and March 24 — that is correct?

A Yes.

Q, They were all at 6% interest. Is the \$4000.00 loan a loan on Duke Motor stock? A Not to my knowledge.

Q Is the \$8000.00 also a loan on the Duke Motor stock?

A The one on June 27th is.

Q I am asking you now about March 24, 1930. Is that loan of \$8000.00 on the Duke Motor stock. A I would have to take the loan record back and determine whether it was a renewal or a different loan.

Q That is only one item. I wish you would look back on the loan record to see that. A The \$8000.00 on March 24 is a renewal of the loan originally made on June 27, 1929.

Q So that fixes it, in addition to the \$3000.00 you say was a renewal, this \$8000.00 was also a renewal; is that right?

A The original \$3000.00.

Q There was an original loan of \$3000.00 I started out with. It is plainly marked "Duke Motor Stock." You say that was a renewal of another loan made in June of 1929, is that right?

A That is a new loan of \$3000.00 on February 28 with Duke Motor Company stock as collateral.

Q Then it is not a renewal? A That is not; no, sir, not that one.

Q We fix that as a Duke Motor Company transaction. I asked you about the \$8000.00 and you said you would have to go back through the record because this record does not show that is a Duke Motor transaction, does it? A No, sir.

Q The Duke Motor stock is opposite the first \$3000.00. Then there is a \$4000.00 and an \$8000.00 on different dates. You didn't take that, then, as being Duke Motor stock for all those three items?

A I don't know just what you have reference to, but all that record shows is that Duke Motor stock was held by the bank as collateral on all those loans.

Q It identifies it as Duke motor stock? A I wouldn't say so.

Q February 28, 1930, No. 56222, Duke Motor stock, amount of interest, date of note, date due, \$3000.00; is that it? A Yes, sir.

Q We come to the \$8000.00 which you say you can't tell. I will ask you to go back to June, 1929, and see if that is not a Duke Motor Company transaction also? A I can't state of my own knowledge,

Q Doesn't show on that one when you go back to June 8th, "Duke Motor Company stock"? Go back to where you found the \$3000.00 and see if you can find the \$8000.00 and what notation it has upon it.

A The \$8000.00 loan on March 24, 1930, is a renewal of the original loan made on June 27, 1929.

Q The question I asked you now is whether on the original loan when you came to that \$8000.00 it says "Duke Motor Comoany"? You can answer that yes or no. A It says "250 shares Duke Motor Company.

Q That is the \$8000.00. That is the \$3000.00 and the \$8000.00 They are marked that way. Here is a loan of \$4000.00, March 15, 1930, No. 56343, for \$4000.00. I will ask you whether or not that is an original loan or whether it is a renewal? A It is a new loan.

Q Is it Duke Motor stock? A It doesn't show any endorser or collateral on the loan.

Q I will take the first one, February 28, 1930, No. 56222,

Duke Motor stock, amount of interest, date of note, date due, \$3000.00. Is that correct? A Yes, sir.

Q The next item of \$4000.00, which you say is a new loan, March 15, 1930, No. 56343, interest, date, date due, \$4000.00; that is right under that, is it not? A Yes, sir; and fifteen days later.

Q Is there a renewal of a note for \$4000.00 — look back to June, 1929, and see if you also have an item of \$4000.00 right in connection with the \$3000.00 and the \$8000.00?

A No, sir.

Q You have looked for that, have you? A Yes, sir.

Q What is it that shows whether it is a new loan or a renewal?

A The daily balance of the total loans would increase \$4000.00 on that day.

Q When we come to the \$8000.00 right under that — you have traced that back to June and that is a Duke Motor stock notation there? A It shows Duke Motor stock as collateral.

Q On the \$8000.00 borrowed in 1929? A Yes, sir.

Q We have May 16, 1930, a loan for \$3000.00. Is that a renewal or original loan? A Renewal.

Q And the renewal is of what date? A It was renewed several times prior to that.

Q Maybe you can tell me without going through all these dates. Did this transaction appear that Mr. Lazia paid an item of expenditure or items of expenditure for \$3000.00 on behalf of the Electric Holding Corporation of Chicago, that they first gave their note, the note was renewed, and it was finally paid, and was stricken out in this trial — leave that last off - that it was stricken out.

A Not from the bank records.

MR. LOVAN: If the Court please, I do not know that it was stricken out.

THE COURT: Neither do I; but he has withdrawn that last part of the question.

Q Do your records show that? A No, sir.

Q Your investigation showed that that took place, that they gave him a check for \$3000.00? A The records show they gave him a check for \$3000.00; that is all I know about it.

Q You didn't investigate that item? Did you go over and find out, for instance, whether the costs were paid in Lafayette County?

A All I investigated was the fact that the \$3000.00 was paid to Mr. Lazia.

Q So you charged it to him? A There was no record shown in the bank of what disposition was made of it by Mr. Lazia.

Q Did you go over to any other county and find out that there had been litigation, the expenses of which were paid by Mr. Lazia?

A No, sir.

Q Did you go to inquire of Mr. Ristine whether he got a feet of \$1500.00? A I did not.

Q Is this the first time your attention was called to such an item?

A Of my own knowledge.

Q That is, you mean, you did not see the money or you did not see Mr. Ristine? A No, sir.

Q What do you mean when I ask you if this was the first time your attention was called to that item, when you say "Of my own knowledge"? Did you have any conversation with anyone at that time about it? A I have heard rumors about it.

Q Did you mean rumors going up the street, or something?

A Around the office.

Q Did you see an account in the office to that effect? A No, sir,

Q You just knew it by rumor? A That is all.

Q Take June 24, 1930. We have an item of \$11,000.00. Was that an original loan, or a renewal? A It was a renewal of several loans.

Q Give the particular loans? A It was a renewal of a loan for \$8000.00 and a loan of \$3,000.00.

Q Can you trace back to that? Give me the date of the \$8,000. loan that was a renewal of that, if you can? A It goes tack to loans which was covered by Duke Motor stock as collateral.

Q That is a renewal of one of the Duke loans? A On which Duke stock was collateral.

Q You know what I mean when I say the "Duke" loan, do you not?

A There is a difference in your question, as to just what you mean,

Q Didn't you understand when I said the "Duke Loan" that what I meant was a renewal of the Duke Loan?

A Whether you meant money loaned to the Duke Motor Company or money loaned on which Duke Motor stock was collateral,

Q So when I asked you if that did not refer back to the Duke loan, you didn't know what I meant? When I asked you if it referred to the Duke Motor matter you said, I believe, you did not know what I referred to. A It refers to the Duke Motor matter; yes, sir.

Q You knew it when I asked you, did you not? A Yes, sir.

Q This other \$3,000.00, what was that a renewal of? I think you said it was a renewal. A I stated the \$11,000.00 was a renewal of a \$3,000.00 and an \$8,000.00 loan.

Q The \$8,000.00 loan was one of the Duke motor loans? A Yes, sir.

Q What was the \$3,000.00 loan? A Duke Motor transaction.

Q That was June 24th. Can you put out there again, because it is difficult for me to do it, that Loan I was asking you about a while ago, about the \$3,000.00 loan other than the Duke Motor loan? Well, without referring to that, I asked you about an alleged \$3,000.00 check which was received by Mr. Lazia as reimbursement for certain monies paid out by him in litigation. I will ask you if you did not investigate that whole transaction very thoroughly?

A I did not,

Q I will ask you if you did not talk to the parties that were con-, nected with it? A The only conversation I had with anyone in connection with it that offered any explanation was with Mr. Edlund.

Q You see this gentleman sitting here that the Government has as a witness? Do you know him? A Yes, sir.

Q I will ask you if you did not verify that by asking Mr. Woodrow whether or not it was true, and if he did not tell you it was true?

A No, sir.

Q Did you ever talk to Mr. Woodrow about it? A No, sir.

Q Never spoke to him in your life about it? A No, sir.

Q Never had a conversation with him about it? A I had a general conversation concerning the dog track item.

Q How long did that conversation later? A Possibly four or five minutes.

Q Where did you meet him? A In the District Attorney's office.

Q In Kansas City, Missouri? A Yes, sir.

Q How long ago? A About last Monday.

Q You say you did not ask him about this \$3000.00 check at all?

A Not that I recall. I do not think that was discussed.

Q Whether it was discussed or not, didn't you say, didn't the \$3000.00 check matter come up when you were asking him about the whole transaction? A I asked him if he remembered a \$3000.00 check sent to the Merchants Bank.

Q Is that all you asked him? A Yes, sir.

Q Did you ask him whether or not his company gave a note at one time to the Electric Holding Corporation for deferred payments?

A I did not, no, sir.

Q Or for payments on account? A No, sir.

Q Have you stated all you said to Mr. Woodrow about the dog track transaction? A All the discussion I had with Mr. Woodrow was the checks that were paid to the Merchants Bank by Mr. Lazia in connection with the dog track.

Q Did you ask him about all the checks? A Nothing further than they were paid,

Q Did you ask him or did he volunteer the information whether one of those checks was for expenses incurred by Mr. Lazia and repaid by his company? A I did not, no, sir.

Q Did somebody else, in your presence? A As I recall it was a general discussion but I never paid any attention to it because I was not asking the questions.

Q What were you there for? Just calling, or something?

A My time was occupied in examining other records for some other data.

Q But I thought you said a while ago you did ask him about all the checks that he got or that he paid to Mr. Lazia; is that correct?

A I asked him about the various checks, yes, sir.

Q Now, you were not so occupied at that time that you did not pay attention to what he said? A That was before the other discussion was had.

Q Well, the discussion with Mr. Woodrow, of course, was all about the dog track, wasn't it? A All that I asked him about was the checks, and if they had been paid.

Q And did he tell you that he had given checks? A Yes, sir,

Q Did he tell you how many checks he had given? A I believe

he identified the checks that were shown to him,

Q Answer this question yes or no,- did he tell you how many checks were given or paid by his company to Mr. Lazia?

MR. VANDEVENTER: If the Court please, I believe that is hearsay. I object to it. Mr. Woodrow is here if they want to use him.

MR. WALSH: I am trying to get the admission of this witness and then we won't have to use him. This is your witness.

THE COURT: Overruled.

A Yes, sir.

Q How many did he say? Now, think. How many did he say?

A He stated there were four or five payments.

Q Did he say that they had given any notes for deferred payments?

A Yes, sir.

Q Did he say how many notes they had given, whether there was a renewal or not? A As I recall he said he was not clear on how many notes were given.

Q You asked him that, did you? A He said there was - - Q I am asking you if you asked him how many were given?

A Yes , sir.

Q And you had photostatic copies of the nights right in front of you when you asked him, didn't you? A No, sir.

Q You didn't have the photostats? Did you have photostatic copies of the checks right before you? A Had the originals of some checks.

Q Did you have either a photostatic copy or all of the checks that you were charging in this case or that you were presenting in this case, against Mr. Lazia? Did you have all the checks that you claimed, either originals or photostatic copies at the time you had this conversation with Mr. Woodrow? A No, sir.

Q Did you have any of them? A Some of the originals.

Q How many of the originals did you have? Original checks.

A There were three or four checks.

Q Do you remember whether it was three or four? A They have been offered in evidence; I don't recall.

Q I am asking you if you remember whether there were three or four? Please give me the dog track checks. What were you trying to find out in that conversation that you had with Mr. Woodrow, if anything? A The amount of money paid to Mr. Lazia in connection with the dog track during the years 1923, 1929 and 1930.

Q Is that all you wanted to find out? A Yes, sir.

Q Did you ask him anything else about the transaction that might show that even if Mr. Lazia got the check, that it was not a matter of income? You were looking into the income tax features of it, were you not? A Asked him for what purpose the money was paid.

Q Did you ask him for what purpose the money was paid on each check? A In a general way.

Q What distinction do you make? You were investigating this matter for the government and what distinction did you make on a matter of that kind, one specific check; did you talk to him in a general way or did you talk to him in a specific way? Did you ask him what that check was for? A Yes, sir,

Q I am going to show you a check dated September 18, 1928, that has been admitted in evidence here, showing the payment of \$12,000.00 to John Lazia. Did you show him that? A Yes, sir.

Q And did he tell you what that was for? A Yes, sir,

Q Did he tell you that it was for the sale to his company of an interest in it? A Yes, sir.

Q Did he tell you that that check, although made to Mr. Lazia, was paid to a man named Weissman? A No, sir.

Q Did he mention Mr. Weissman in the conversation?

A He mentioned Mr. Weissman's name.

Q Did he tell you he had an interest in the track? A No, sir.

Q Just mentioned his name, is that right? A Yes, sir.

Q Did you ask him anything about Mr. Weissman?

A Not that I recall.

Q He just voluntarily mentioned Mr. Weissman's name? A Yes, sir.

Q Is that all you remember about it? A Yes, sir.

Q Well, he must have said something else; he didn't just say

"Weissman" did he? A He said that he understood Mr. Weissman was interested in the track but he did not know of his own knowledge.

Q Did he tell you that this transaction was made, this sale of an interest was made by the attorney for the company?

A That it was made by several parties, his associates in the deal.

Q Did he mention that there were any attorneys present?

A I don't think he mentioned it to me in our conversation.

Q He told you he understood there were several in the transaction? A He understood there were several.

Q He understood there were several in the transaction. Did he tell you that thereafter he paid two installments of rent, two yearly rentals of \$3,000.00 each on the dog track?

A He told me that they made three payments of rent.

Q Did he tell you what dates they were? A For the years 1928, 1929 and 1930.

Q Did you state that he said anything at all about reimbursement for monies paid out for the company by Mr. Lazia; anything at all about that? A He stated that he paid the Merchants Bank or Mr. Lazia \$3,000.00, which Mr. Lazia claimed was coming to him for expenses in connection with the dog track.

Q So he did say then, definitely and clearly, that he paid \$3,000.00 to Mr. Lazia to reimburse him for certain expenses which he had paid; that is correct, isn't it? A Yes, sir.

Q Which Mr. Lazia told him he had paid? A Which Mr. Lazia told him he had paid.

Q Did you ask him anything further about it, to whom it was paid?

A He said he understood it was paid in connection with the law suit at Lexington.

Q Did he mention Mr. Carl L. Ristine of Lexington as having received a fee in the matter, of \$1500.00? A As I recall he said that the money was spent in connection with — Mr. Lazia said it was spent in connection with the litigation at Lexington.

Q Did he mention Mr. Ristine? A Not to my knowledge.

Q Did you go to Lexington? A No, sir.

Q You dropped the matter right there? A Yes, sir.

Q But he did tell you what the claim was about the \$3,000.00, made by Mr. Lazia at the time, is that correct?

A He stated what Mr. Lazia told him.

Q Then you did not undertake to find out the dates of the payment, or if there was a payment, or anything of that kind?

A That came to my knowledge just a few days ago.

Q Is that the first time you talked to Mr. Woodrow?

A Yes, sir.

Q Who else did you talk to about the dog track? Who was the first man you talked to about the dog track transaction? Did you talk to Mr. Edlund about it? A I talked to Mr. Edlund.

Q Did Mr. Edlund tell you about this reimbursement? A No, sir.

Q Did you get the checks from Mr. Edlund that were paid on the dog track transaction? A No, sir.

Q Where did you get them? A I don't quite understand your question.

Q I say, did you see the checks that were given on the dog track transaction, these checks for \$3,000.00 that have been introduced?

A Yes, sir.

Q Where did you first see those checks? A In the office of the County Prosecutor, in Chicago, Illinois, and the office of the Receiver for the Citizens Trust and Savings Bank in Chicago, Illinois.

Q And then did you come to Kansas City and interview Mr. Edlund?

A I had several interviews with Mr. Edlund.

Q When was the first interview you had with Mr. Edlund?

A With reference to the dog track?

Q With referencet to anything connected with this case.

A March 15, 1932.

Q And was the dog track transaction a subject of investigation at that time? A No, sir.

Q Had you been to Chicago? A No, sir.

Q Where did you first get track of the dog track transaction?

A An examination of the records in the Merchants Bank.

Q Who gave you the records? A Mr. Edlund produced some of them.

Q Did Mr. Edlund produce these? A Either him or the assistant cashier.

Q I asked you awhile ago if you did not get the first information about this from Mr.

Edlund and you said no. Now you say it was either Mr. Edlund or an assistant cashier.

A I got them for an examination of the records of the Merchants Bank.

Q And the records of the Merchants Bank were given to you by Mr. Edlund, weren't they? A Yes, sir.

Q What record did he have there of the dog track transaction?

A Cashier's check register showing checks purchased, payable to John Lazia and the Merchants Bank and purchased by draft drawn on a bank in Chicago.

Q When you first talked to Mr. Edlund, in the very first conversation, did you see these checks? A No, sir.

Q When was the first time you talked with Mr. Edlund about the dog track transaction? A About June or July, 1932.

Q Did he tell you who the parties to the transaction were?

A No, sir.

Q Are you the person who got the checks and deposit slips that were gotten from the bank? A What bank?

Q The Merchants Bank? A Yes, sir.

Q I will get you to look at this and see if you identify it, this is Plaintiff's Exhibit 142 and it is a deposit slip for \$1200.00. A Yes, sir.

Q Did you ask Mr. Edlund about that deposit slip? A No, sir.

Q Not a word about it? A No, sir.

Q Did you ask him about a transaction for the sale of a barber shop on Fifth Street? A He voluntarily offered some information.

Q Did you connect it with this certificate of deposit marked Plaintiff's Exhibit 142? A No, sir.

Q You say that he volunteered an explanation about it. Have you the data on hand here? Did you mark down the data of the amounts you received from Mr. Edlund at any time? A The explanation is covered in the document that was filed by Mr. Lazia or his attorney.

Q I am asking you if you made any memorandum of the time, what you accountants call working papers? Did you make those from time to time on these items? A Yes, sir.

Q Have you got your working papers covering that item of \$1200.00?

A I have it in my papers somewhere, yes, sir,

Q Please see if you can get it. I will ask you a few questions about this before you start to tell me what your examination showed. When did you examine the bank records on this?

A I examined the bank records in connection with that item subsequent to March 15, 1932.

Q How long after March 15, 1932 did you do it? A It was done between March 15, 1932, and July 30, 1932.

Q Did you talk to Mr. Lazia, the defendant in this case, about this item? A No, sir.

Q Did you make a personal investigation of it? A Yes, sir.

Q Did you talk to Mr. Degrado, a man that had that barber shop?

Where was the barber shop involved in this?

A According to the affidavit submitted —

Q No. Were you at the barber shop; do you know where it is?

A No, sir, never been in it.

Q Did you talk to Mr. Degrado? A Yes, sir.

Q Did you secure an affidavit from him? A I am not positive at this time.

Q I wish you would read this document which I show you and I will ask you whether you had that before you when you made this investigation. A I didn't have this during the investigation.

Q Did you get it subsequent to the investigation?

A Yes, sir.

Q Is this item of \$1200.00 included in the list of items that you have given here? A Yes, sir.

Q As a charge or a presentation in the Bill of Particulars of \$1200.00, supposed to have been received or received by Mr. Lazia?

A Yes, sir.

Q At that time did Mr. Degrado tell you that the \$800.00 was paid for the equipment of a barber shop? And that he paid him \$400.00 subsequently on the same account?

MR. VANDEVENTER: We object to that. THE COURT; Sustained.

Q What other investigation, if any, did you make? What other investigation, other than seeing Mr. Degrado? A You are referring to these items?

Q I am referring to the gentlemen you say you secured an affidavit from or had an affidavit from referring to that exhibit, I don't know its number, being a deposit slip of \$1200.00 of an amount deposited to the credit of Mr. Lazia. A No further investigation.

Q You made no further investigation of any kind? A No, sir.

Q After you got the affidavit from Mr. Degrado I will ask you if you were not instructed by the District Attorney to make a further investigation of that matter? A I was instructed by the District Attorney —

Q Did he instruct you to make a further investigation of the matter of that deposit of \$1200.00, yes or no? A Yes.

Q Now, I will call your attention at a loan of \$11,000.00, the date of the same being August 15, 1930, and the Note Number being 57619, and I would like to know whether that was a renewal or an original loan of Mr. Lazia's? A It was a renewal.

Q And does it give the notes? Have you got a record there of the notes that are the background of the renewal?

A It was a renewal of a loan in the same amount previously made.

Q When was it made? In March? If you have the date there give it. A I believe I stated before it was a renewal of two other loans, one in the amount of \$8,000.00 and one in the amount of \$3,000.00.

Q Was that renewed again on August 15, 1930? A Yes, sir.

Q I show you a loan of \$4,000.00 on August 30, 1930, the number being 57718, being for \$4,000.00. Is that an original loan or a renewal? A That is an original loan, August 30, 1930.

Q We have here a loan of \$15,000.00 dated December 1, 1930. Was that an original loan or a renewal or another loan or part of both?

A It is a renewal.

Q What notes does it take in, what other notes?

A It takes in the note of August 15, 1930, for \$11,000.00, a note of August 30, 1930, for \$4,000.00.

Q I see another loan on here for \$5,000.00; it is under the date of December 15, 1930. Was that an original loan or was it a renewal?

A It was a new loan.

Q Is there anything on this photostat from which you have been testifying or this original record which I have, which will show how many of those items were new loans and how many of them were renewals, that is, in amount?

A It can be worked out from those schedules by going back and following them back. Have you made any schedule of that? A I made one at one time; I don't recall where I could find it.

Q Please produce it if you can. A I would not know where to find it.

Q Is it among the other papers that you have here?

A It may be here.

Q Will you look there and see if you can find them.

(Recess taken for ten minutes.)

Q Did you find that schedule? A Yes, sir.

Q Who drew this up? A I did.

Q Is it in your handwriting? A Yes, sir.

Q And it shows the original loans and the renewals, does it not, by balances? A Yes, sir.

Q I wish you would look at this schedule here which I have, my schedule, so we will not have any confusion about it, and find out if that shows the same thing. If it does I will mark mine for identification and not take yours. I will ask from your schedule, what was the balance due on loans on the 30th day of December, 1939?

A I haven't got the balances on my schedule; that shows on the original register.

Q Have you the original register? A A photostat.

I will ask you if the balance due on loans on December 23, 1929, was not \$8965.00? A On the original record the balance is shown as December 19, 1929, \$8640.00.

Q What was the balance due on loans on the 31st of December, 1930.

A According to the Bank's loan record it shows December 16, 1930, balance of loans in John Lazia's loan account \$20,000.00.

Q \$20,000.00 even? A Yes, sir.

MR. WALSH: I would like to have these records marked as exhibits.

(Loan record marked Defendant's Exhibits 6, 7 and 8 for identification.)

MR. WALSH: I offer those in evidence as part of his cross examination.

(Photostatic copies of Defendant's Exhibits 6, 7 and 8 so offered in evidence are hereto

attached).

MR. WALSH: At this time I would like to have a paper marked "John Lazia's note payable to Merchants Bank, years 1929 and 1930", marked for identification. I do not offer it at this time because there is a difference of a few hundred dollars there. (Document referred to marked Defendant's Exhibit 9 for identification.)

Q Look at your Item Number 14, May 14, 1929. It is \$600.00 deposited to the account of John Lazia at the Merchants Bank. I will show you Plaintiff's Exhibit 145 being a deposit of \$600.00, cash deposit, and ask you whether or not that is in your list of Deposits charged in the Bill of Particulars?

A Yes, sir.

Q I will show you now a deposit slip for \$503.94 and ask you whether or not that is also in your itemized list of checks?

A Yes, sir.

MR. VANDEVENTER: What item is that in the Bill of Particulars? THE WITNESS: "19".

MR. WALSH: I want to show this, I hope there will be no question about it, that this one was excluded.

MR. VANDEVENTER: I think the last item on it was included.

MR. WALSH: I think the whole thing was included.

MR. WALSH: This one was not offered. There is no exhibit number on it. This, your Honor, has no exhibit Number on it. THE COURT: What item of the Bill of Particulars does it concern?

MR. WALSH: Item "19", June 21, 1929.

THE COURT: What is the question now that you have?

MR. WALSH: The question we have before us whether or not it was introduced in evidence. The question I am proposing is that it is in this itemized statement of checks charged to the defendant but is not in evidence here. I see Number 148 is the exhibit number.

THE REPORTER: It was offered in evidence and an objection sustained to Exhibit 148.

Q Look at your memorandum, Exhibit 148 and see what amount it has charged to Mr. Lazia in the Bill of Particulars, the total amount? A \$1768.89.

Q Look back at May 14. That would be Item No. 14 in the Bill of Particulars. Is that

charged in your statement of checks from the bank records of Mr. Lazia, paid to Mr. Lazia?

A It is charged in the cash items.

Q Is there anything to show on the book records what that represents? A No, sir.

Q Do you know of your own knowledge from your investigation that this \$500.00 represents a payment of loan made to the United Bag Company? A No, sir.

Q You do not know that of your own knowledge? A No, sir.

Q Did you make an investigation of it? A As far as the bank records would show, or any other records we have.

Q Did you go any further than the bank records? A No, sir.

Q Did. you or did you not hear that this represented a loan to the United Bag Company?

MR. VANDEVENTER: We object to that, if Your Honor please.

THE COURT: Sustained as to what he heard.

Q Did you make any investigation of an alleged loan made to the United Bag Company?

A No, sir.

Q Without asking what it was, I ask you if you ever heard of the United Bag Company account or item in which the United Bag Company was involved until I spoke of it to you this moment?

MR. VANDEVENTER: We object to that —

THE COURT: Overruled; it is preliminary.

A I heard the name mentioned; Yes, sir,

Q Just somebody said "United Bag Company", is that all?

A There was a statement made in a document that was filed with the Government in reference to it.

Q Were you asked by the attorneys of the Government, by the District Attorney, to investigate that further as to this \$500.00?

A Yes, sir.

Q Bid you talk to a Mr. Jacobs in regard to this matter? I mean the gentlemen who was president of the United Bag Company?

A I did not.

Q Did you hear his name mentioned? A I heard the name mentioned in connection with

it.

Q, Just mentioned? Somebody said "Jacobs"? A Yes, sir.

Q That is all you know about it? A Yes, sir.

Q That is true with respect to this item of \$1768.00 as well as the item of \$600.00? A Yes, sir.

Q Are you the gentleman who arrived at the figures that are laid in the indictment? A Yes, sir.

Q And also the figures laid in the Bill of Particulars?

A Yes, sir.

Q I wish you would get from the individual ledger account of Mr* Lazia — I wish you would get it for me. A You have it.

Q Have you a photostat of this individual ledger account?

A Yes, sir.

Q What was Mr. Lazia's balance in the bank on January 3, 1929?

A \$89.92.

Q On January 8, what was the state of his account?

A It was overdrawn.

Q How much? A \$326.63.

Q And on January 11th? A Overdrawn, \$543.36.

Q And On January 26th? A Overdrawn, \$431.76

Q There are two items on January 26, I see. Can you take your mind back, or do you take your mind back to a loan obtained on that date by Mr. Lazia? A Yes, sir.

Q What was the state of his account later on that same day? I would take it to be later since it started with an overdraft. How did it wind up? A A credit balance of \$646.24.

Q January 29, 1929? A A credit balance of \$421.24.

Q And on February 5, 1929? A An overdraft of \$90.46.

Q On February 6, 1929, there was an overdraft for \$352.70?

A Yes, sir.

Q And there was an overdraft on that account running down to February 28, was there not? A There was an overdraft from

February 5, 1929, to February 28, 1929.

Q I will have you look at the loan account and see whether or not there was a loan on February 28, 1929, and if so, how much?

A \$2000.00.

Q There was an overdraft on the 27th of how much? A \$528.25.

Q And February 28th there was a balance in his account of \$1461.75?

A Yes, sir.

Q Was it on February 28, that he borrowed the money on the note or deposited the note?

A Yes, sir.

Q March 7th, 1929, there was a balance of \$992.74?

A Yes, sir.

Q There is a balance beginning March 7 of \$492.74 with diminishing amounts, I will say, until March 15, 1929. And there we have a balance of \$1187.86? A Yes, sir.

Q I wish you would look back to the loan record and see whether or not he made a loan at the tank on March 1?

A On March 1, 1929, a loan of \$400.00, with Steno Sapallo as endorser.

Q When does the next loan appear there? Was there a loan on March 15?

A No, sir.

Q When was the last loan before March 15? A March 1.

Q Do you recall from your memory the deposit slip that was introduced for \$2000.00 as I recall it on March 14? Was there a deposit slip on that date? A There was none.

Q You cannot tell from this what increased that account from \$217.86 on March 14, to \$1187.86 on the 15th?

A A deposit on March 15th.

Q A deposit of what amount? A \$1000.00.

Q That account runs along until March 27, in amounts less than those of March 15th? A Yes, sir.

Q Until we reach March 27th? A Yes, sir.

Q And there the balance is what? A \$274.35.

Q And it runs to March 28 in diminishing amounts until we get to April 13, 1929, with a balance of \$402.49?

A Yes, sir.

Q There is an increase there to \$1402.49; is that correct?

A On April 15; yes, sir.

Q It runs along in diminishing amounts until April 24, the last amount in that period being \$517.49? A Yes, sir.

Q Beginning with April 29, there is a balance of \$177.49?

A Yes, sir.

Q And a balance of \$152.49 the next day? A Yes, sir.

Q And then an overdraft of \$447.51? A Yes, sir.

Q Now, then, the next item after that, on the following day, which is May 2, is a credit balance of \$502.49?

A Yes, sir.

Q And that runs along with diminishing amounts until it gets to May 13, when it is \$20.43? A The credit balance; yes, sir.

Q On May 14 there is a credit balance of \$502.88?

A Yes, sir.

Q Diminishing to May 16 when there is a credit balance of \$34.38?

A Yes, sir.

Q And on the next day? A An overdraft of \$0.48.

Q And on the next day there is an overdraft of \$75.48?

A Yes, sir.

Q And there are continuing and increasing overdrafts until May 23, 1929, when we have an overdraft of \$375.98?

A Yes, sir.

Q Upon that date there is a deposit of \$1000.00, is there not?

A Yes, sir.

Q And the credit balance on that day then is \$624.02?

A Yes, sir.

Q And on the 10th of June the credit balance is \$258.77?

A Yes, sir.

Q, And on June 17th we begin with \$1508.77? A Yes, sir.

Q At that point comes in the check for \$1350.00 that I believe had the endorsement of A.

M. Slavin. Do you recall that?

A No, sir.

Q On June 17th there is a balance of \$1508.77, and that is due to a deposit of \$1350, is it not? A Yes, sir.

Q After a deposit on June 21, we have a credit balance of \$2146.14. Isn't that the amount that was on this deposit slip, the balance of this deposit slip which we discussed here as being connected with the bag company, without going into detail?

A Yes, sir.

Q That raises it, then, to \$2146.14. A Yes, sir.

Q On the 26th of June there is an overdraft of \$2902.55?

A Yes, sir.

Q And on the 27th there is a deposit of \$5000.00? A Yes.

Q That is the four checks of \$1000.00 each and two checks of \$500.00 each bearing the endorsement of A. M. Slavin?

A No, sir.

Q What is that \$5000.00? Is it a certificate of Deposit?

A It was not brought out in the evidence what it was.

Q But there was a deposit of \$5000.00? A Yes, sir.

Q Have you got that deposit of \$5000.00 charged against him in this long list? A It is not in the Bill of Particulars; no, sir.

Q You did not charge that against him in the Bill of Particulars?

A No, sir.

Q That is June 27. That covers the overdraft and leaves a balance of \$2097.45? A Yes, sir.

Q There is a diminishing credit balance from that date until July 17, when it reaches the low of \$319.15 credit; is that correct?

A Yes, sir.

Q Now we have July 19 a deposit of \$300.00? A Yes, sir.

Q And that brings it to \$454.15? A Yes, sir.

Q Then there is a diminishing balance of varying amounts, \$351.00, \$180.00, \$155.00, \$144.00, \$119.00, \$118.00, until we get to August 9, 1929, is there not? A Yes, sir.

Q And on August 9, 1929, there is a deposit of \$1,000.00?

A That is correct.

Q Which leaves him then a credit balance of \$1093.36?

A Yes, sir.

Q Now, that credit balance endures, that is, there is a credit balance diminishing, \$698.00, \$694.00, \$669.00, \$69.86, \$44.86 until we get to the lowest period where there is a credit balance, which is August 19, 1929, of \$19.86, is that correct?

A Yes, sir.

Q On August 20, 1929, we have an overdraft of \$176.48?

A Yes, sir.

Q And on August 21st that is increased to \$179.23, is that correct?

A \$179.23 overdraft.

Q Then we have a deposit of \$1,000.00 which brings it to \$820.77, is that correct? A Credit balance, yes, sir.

Q On August 24, that is three days afterwards, we have an overdraft of \$254.23? A Yes, sir.

Q And on the same date an overdraft of \$333.23?

A Yes, sir.

Q On August 26 we have a deposit of \$1505.00, do we not?

A Yes, sir

Q And that makes the credit balance as shown on that date \$571.77, is that correct? A Yes, sir.

Q And that diminishes, without going into the particular items until it gets to August 29 when it is \$154.27? A Yes.

Q August 30th then we have an overdraft of \$309.43 and August 31 an overdraft of \$124.43, is that correct? A Yes, sir.

Q There having been deposited on the 31st \$1,000.00, is that correct? A Yes, sir.

Q Then we have a credit balance for the next day amounting to \$688.59, do we not? A Yes, sir.

Q And following that, September 25, we have an overdraft of \$10.91?

A Yes, sir.

Q And on September 26th an overdraft of \$110.91, is that correct?

A Yes, sir.

Q Then we have a \$5,000.00 deposit there, have we not?

A Yes, sir.

Q And that leaves a credit balance of \$4889.00, September 27th, is that correct? A Yes, sir.

Q And the credit endures until we get to October 10, in varying amounts, but being reduced, does it not? A Yes, sir.

Q Until we get to October 10, we get the lowest time which \$119.20 credit balance, is that right? A Yes.

Q Now, on October 11 we have an overdraft of \$259.71?

A Yes, sir.

Q And the following day a credit of \$182.79?

A Yes, sir.

Q Now, we begin on October 15 with an overdraft of \$9.71?

A Yes, sir.

Q And going along until October 22nd with a constant increase, the overdraft is \$330.86, is that correct? A Yes, sir.

Q Now, on that day there is a deposit of \$1,000.00?

A Yes, sir.

Q And we then have a credit balance of \$515.79? A Yes, sir.

Q And on October 1, \$15.79 and we then have an overdraft beginning with October 25 of \$23.22 and running to and including October 29, 1929 when it is \$217.21? A Yes, sir.

Q There is a deposit there of \$350.00, October 29th?

A Yes, sir.

Q And we have a credit balance of \$132.79 on that day, October 29?

A Yes, sir.

Q Which diminishes during the next few days until on November 2nd and we have an overdraft of \$5.51? A Yes, sir.

Q In increasing amount until it gets to \$181.51 on November 31st, we have an overdraft every day, is that correct? A Yes, sir.

Q There is \$500.00 deposited on November 14? A Yes, sir.

Q \$500.00 deposited on November 19th. A Yes, sir.

Q And we have a credit balance beginning on November 14th of \$318.49 and running along until the second deposit of \$500.00, then running along for a couple of days until the next low is \$310.74?

A Yes, sir.

Q Then there is that \$500.00 that I referred to deposited, which gives him a credit balance on November 19th of \$741.64, is that correct? A Yes, sir.

Q And that credit balance endures or diminishes day by day until it gets to the lowest point, November 26th, when the lowest credit balance is \$28.62, is that correct? A Yes, sir.

Q On November 29, 1929, we have a debit balance, an overdraft of \$25.97? A Yes, sir.

Q Now, that overdraft continues from that time in November until December 11th, when it reaches its highest point of overdraft which is \$97.64; that is correct, is it not?

A Yes, sir.

Q And then there is a deposit of \$1,000.00 and there is a credit balance beginning on December 18, 1929, of \$402.36 and running down to the lowest following credit balance being December 31, \$159.63, is that correct? A Yes, sir.

Q We then have on December 23 an overdraft of \$33.17?

A Yes, sir.

Q And then there is a deposit of \$2,000.00 December 24th?

A Yes, sir.

Q And then there is a credit on that day of \$1966.23?

A Yes, sir.

Q And that credit balance endures until December 31, 1929 at which time the credit is \$203.34? A Yes, sir.

Q That is the close of 1929? A Yes,

Q Now, on January 3, 1930, which is the first item in January, is it not, we have a credit balance of \$196.09, do we not?

A Yes, sir.

Q And that endures until we reach January 16, 1930, does it not?

A Yes, sir.

Q Which is the low; the credit is \$94.09? A Yes, sir.

Q On January 20, 1930, we have an overdraft of \$1905.91, have we not? A Yes, sir.

Q And there is a deposit of \$2200.00? A On January 21st.

Q We then have a credit balance of \$274.09 and continue to have a diminishing credit balance until January 27, 1930, the low, when it is \$10.64? A Yes, sir.

Q There is a deposit then of \$500.00?

A Yes, sir.

Q We will begin with January 28, and the high credit balance is \$510.64. A Yes.

Q That diminishes the next day until it is \$10.64?

A Yes, sir.

Q On January 30 then we have an overdraft of \$493.36?

A Yes, sir.

Q And on January 31st we likewise have an overdraft of \$493.61?

A Yes, sir.

Q And of \$673.41 on February 3, 1930? A Yes.

Q There is then a deposit of \$2875.00, is there not? A Yes, sir, on February 3rd.

Q We then have a credit balance beginning February 3rd of \$2201.39 and that endures as a credit balance, diminishing in amount until we get to February 6, 1930, when the credit is \$1312.39? A Yes, sir.

(Thereupon Court stood at recess until 1:30 P.M.)

Q Have you a schedule there, Mr. Riley, showing the amount of interest that Mr. Lazia paid on those notes we have been talking about, the total amount? A Yes, sir.

Q Has that been offered in evidence? A No, sir.

Q, Is this the only copy you have on it? A And notes on my photostat of loan record.

Q Did you deduct these from the charges you made against supposed income? A Yes, sir.

Q Show me where that is, please? A It shows in the Indictment as a deduction credit.

Q Does it show in the Bill of Particulars? A I do not believe the deductions were shown in the Bill of Particulars; just the other items, the receipts. —

Q Look at February 6, 1930, please. That commences with a credit of \$1682.39? A Yes,

sir; a credit balance.

Q February 10 shows a credit balance of \$1637.39?

A Yes, sir.

Q There is a credit balance that runs along, diminishing down to February 14, when it is \$126.04? A Yes, sir.

Q Then there are three entries, \$500.00, \$500.00, and \$137.50?

A Yes, sir; deposit entries.

Q Three on February 17, is it not? Two on February 17, and the other on February 18, the first two for \$500.00 and the third for \$137.50? A Yes, sir.

Q Beginning with the first one, February 17, we have a credit balance of \$626.04? A Yes, sir.

Q With a deposit of \$500.00? Then the credit balance is \$901.04. And then it diminishes until on February 20 it is \$389.61 and on February 21 there is a deposit of \$300.00?

A Yes, sir.

Q Then we have a credit balance of \$459.61? A Yes, sir.

Q On February 21, 1930 we have a deposit of \$300.00, and on February 24 a deposit of \$500.00? A Yes, sir.

Q So, beginning on February 21, the credit balances are as follows: \$459.61, \$959.61, \$655.61, and \$201.36; and on February 26, 1930 the credit balance is \$69.36, is it not?

A Yes, sir,

Q Now, we have credit balances, beginning with March 3rd, as follows: \$569.36, March 3, 1930, a deposit of \$500.00?

A Yes, sir.

Q We have a credit balance of that same date of \$569.36, have we not? A Yes, sir.

Q That credit balance is maintained, diminishing however, up to and including March 8, 1930? A Yes, sir.

Q And on March 8, 1930, it is \$235.36? A Yes, sir.

Q On March 10 we have a deposit of \$500.00? A Yes, sir.

Q With an increase in the credit balance to \$735.36?

A Yes, sir.

Q March 11, it was \$732.36? A Yes, sir.

Q March 17, \$802.36? A Yes, sir.

Q March 22, it was \$954.86? A Yes, sir; credit balance,

Q On March 24 we have a deposit of \$500.00 and on the same date a credit balance of \$1454.86? A Yes, sir.

Q And that is maintained for four days including March 24, from March 24 to March 26 inclusive, four items? A Yes, sir.

Q So we will begin with March 24, with a credit balance of \$1454.86; and on the same day a credit balance of \$205.53; and on March 26 a balance of \$71.06, and on March 29 we have an overdraft of \$427.94? A Yes, sir.

Q A deposit of \$500.00 on March 31? A Yes, sir.

Q And a credit balance of \$63.06? A Yes, sir.

Q Then, beginning with April 3, 1930, we have an overdraft of \$16.94? A Yes, sir.

Q And that overdraft is maintained, or there is an overdraft maintained until April 12, 1930, increasing a little from day to day; and on April 13, 1930, we have an overdraft of \$25.44?

A Yes, sir.

Q Beginning on April 14, 1930, when there is a deposit of \$500.00, we begin with a credit balance of \$463.56?

A Yes, sir.

Q And that credit balance is maintained in diminishing amount through all the dates down to and including April 30, 1930?

A Yes, sir.

Q April 30, the balance is \$76.73? A Yes, sir.

Q There are no other items here until May 5, on which date we have an overdraft of \$585.87? A Yes, sir.

Q There is a \$750.00 deposit on May 5, 1930? A Yes, sir.

Q On May 5, 1930, we have a credit balance of \$159.93?

A Yes, sir.

q On May 6, it is \$157.43; and then we have a credit balance running through the days of May, and through the month of June and part of July until we come to July 22, 1930, when that credit balance is reduced to \$86.82, is that right?

A Yes, sir.

Q There is no other item then until we come to July 24, 1930, is there? A No, sir.

Q On that day we have an overdraft of \$60.68; is that right?

A Yes, sir.

Q On July 26 an overdraft of \$60.93? A Yes, sir.

Q On July 28 an overdraft of \$74.43? A Yes, sir.

Q And that continues to August 4, increasing slightly; and on August 4, —that is, taking in July 28, 1930, and August 4, we have an overdraft of \$83.63? A Yes, sir.

Q On August 6, 1930, we begin with an overdraft of \$85.63?

A Yes, sir.

Q And there is an overdraft on August 7th, August 9, August 11, August 12, August 13, August 16, August 18, and August 19, is there not? A Yes, sir.

Q In an increasing amount? A Yes, sir.

Q On August 19, 1930, the overdraft is \$114.63?

A Yes, sir.

Q Beginning with August 20, we have a deposit of \$1205.25, and beginning with August 20 we have a credit balance of \$1090.62?

A Yes, sir.

Q And that credit balance is maintained through August, down through September, until we come to September 30, is it not?

A Yes, sir.

Q That is, the credit balance keeps diminishing. And on September 26 we have a credit balance of \$2.14? A That is right.

Q Following that, on September 30, we have an overdraft of \$3.86?

A Yes, sir.

Q There is a deposit of \$500.00, and on September 30th we have credit balance of \$496.14; is that correct?

A Yes, sir.

Q Beginning with October 1, and running through to October 20 there is a credit balance maintained, but diminishing in amount, until on October 20 the credit balance is \$82.38?

A Yes, sir.

Q Beginning October 21, 1930, we have a credit balance of \$76.13?

A Yes, sir.

Q And that continues with small diminutions down to and including November 10? A Yes, sir.

Q The item begins with \$76.13, and the low is reached on November 10, with \$8.63? A Yes, sir,

Q On November 13, 1930, there appears an overdraft of \$4.57; is that correct? A Yes, sir.

Q November 17, there is an overdraft of \$87.75? A Yes, sir.

Q November 18, an overdraft of \$232.17? A Yes, sir.

Q November 20, an overdraft of \$232.47; November 21, an overdraft of \$232.67; November 21, an overdraft of \$242.67. That brings us to November 30. There is a deposit of \$700.00 on that day?

A Yes, sir.

Q And also a credit balance on that day of \$457.33?

A Yes, sir.

Q And there is a credit balance maintained for each day from November 21, but in diminishing amounts, until we get down to December 18. And on that day the credit balance is \$28.32?

A Yes, sir.

Q On December 18 we have an overdraft of \$114.08, is that true?

A Yes, sir.

Q And we also have an overdraft on December 19 of \$114.33?

A Yes, sir.

Q And an overdraft on December 20 of \$114.58? A Yes, sir.

Q On December 22 there was an overdraft of \$114.83?

A Yes, sir.

Q And the overdraft on December 22, 1930, was \$115.08; and on December 24, 1930, which is the last item in 1930, we have an overdraft of \$115.33? A Yes, sir.

Q I will have you look at Plaintiff's Exhibit No. 187 and see if you can say from your memory if that is not the cashing of a \$5000.00 certificate of deposit in the name of John

Lazia, and the interest thereon? A Yes, sir; it is.

Q And the date of that is March 27, 1929? A Yes, sir.

MR. VANDEVENTER: What item is that in the Bill of Particulars? THE WITNESS: Item No. 7.

Q, And the interest which you have charged on that is \$158.75?

A Yes, sir.

Q Now, look at an item of April 29, 1929. There is an item there of \$3000.00? A I have no reference to any item under that date.

Q I want the item known as rent of dog track. Haven't you that there under date of April 29, 1929? A It is Item No. 11 in the Bill of Particulars, and dated April 20, 1929.

Q \$3000.00? A Yes, sir.

Q On June 26th, 1929, have you interest charged on certificates of deposit for the year 1929? A June 26; yes, sir; there is an interest charge.

Q On three certificates of deposit \$567.56? A Yes, sir.

Q On October 15, 1929 you have an item of \$1000.00?

A Yes, sir.

Q Does that appear as rental of Cuban Gardens, on the bank record?

A The bank record shows an A. M. Slavin check for \$1000.00.

Q That is \$1000.00 on October 15, 1929. Now, have you an item on November 18, 1929? I will ask you if you have an item of \$500.00 on that date? A The date of November 19 I have an item of \$1000.00, which is No. 47 in the Bill of Particulars.

Q That is an item of \$500.00 on November 19, 1929, the amount deposited in the Merchants Bank in the account of John Lazia; is that right? A Yes, sir.

Q And it is on a check upon which the endorsement of A. M. Slavin appears? A Yes, sir.

Q In 1930, we will take April 14, Have you an item there of \$3000.00? A Yes, sir.

Q That \$3000.00 is the proceeds of Draft No. 156329 issued by the Citizens Trust & Savings Bank of Chicago, purchased by John A. Woodrow, and made payable to the Merchants Bank of Kansas City, is it not? A Yes, sir,

MR. VANDEVENTER: What item in the Bill of Particulars?

THE WITNESS: Item No. 28.

Q What was the date of the payment of \$300.00 in 1929?

A April 20.

Q Go back to November 5, 1930. Do you have an item there of \$1000.00? A Yes, sir.

Q That is the proceeds of a check for \$1000.00 bearing the name of A. M. Slavin, purchased by him apparently; is that correct?

A An A. M. Slavin check endorsee by Slavin and by John Lazia.

Q December 1, 1930, is there an item of \$1500.00? A Yes.

Q I see on your working papers you have the following notation, "Item No. 69, December 1, 1930, \$1500.00 Agent's original" — what does that mean? A My original memorandum from the original examination.

Q (continuing) "Agent's original, rent received from A. M. Slavin". Is that correct? A That is not taken from the bank records,

Q I do not care where it is taken from. That is your memorandum?

A Yes, sir; but not obtained from the bank records.

MR. WALSH: I ask that be stricken out as not responsive.

THE COURT: Yes; it may be stricken.

Q That is your memorandum? A Yes, sir.

Q And it consisted of a check bearing the endorsement of A. M. Slavin, did it not? A Yes, sir.

Q I believe you say you got up both the figures that went into the Indictment and the figures that went into the Bill of Particulars?

A Yes, sir.

Q Did you or any other person to your knowledge make any demand upon Mr. Lazia for the payment of any income taxes for the year 1921, either before or after you made all of these investigations?

THE COURT: Do you mean 1921, Mr. Walsh?

MR. WALSH: No, sir; Your Honor, 1929 and 1930.

MR. VANDEVENTER: We object to that for the reason it is immaterial.

THE COURT: Overruled.

A I did not; no, sir.

Q Mr. Lazia and the bank gave you the data you called for?

A Yes, sir.

Q You got every check you asked the bank to account for?

A No, sir.

Q You were allowed to go through the bank records and get everything the bank had there? A Yes, sir.

Q Did you take into consideration in making the computation to which you have testified any contributions made by Mr. Lazia for the years 1929 and 1930? A I never found any records.

Q I asked you whether you made any allowances for any contributions, whether they were found or not? A No, sir.

Q Did you take into consideration any gifts received by Mr. Lazia during 1929 and 1930? A No, sir.

Q Did you determine whether or not he received the proceeds of any life insurance policies during 1929 and 1930? A No, sir.

Q Did you take into consideration in making the computation any return to capital assets that Mr. Lazia may have had? A Yes, sir.

Q Show me that, please? A I do not recall any.

Q Can you show me any? A Capital assets?

Q That is what I said. A No.

Q Then you haven't got it on anything? A No, sir.

Q Did you take into consideration any losses which Mr. Lazia may have had in any transaction entered into for profit during the years 1929 and 1930? A No, sir.

THE COURT: Let me ask you one question to clear up a matter I am not certain of. At the beginning of your testimony when you were being examined by Mr. Vandeventer you gave certain summaries as of the total amount passing through Mr. Lazia's bank account, and so on, and other summaries, both for the year 1929 and 1930. You have said you are familiar with the Bill of Particulars, and have been examined touching most, if not all, of the items in the Bill of Particulars. Let me ask you this question: Are the items making up the totals which you gave, in the several summaries which you gave, all set out in the Bill of Particulars, or not?

THE WITNESS: No, sir; they are not.

THE COURT: Are they all set out except in so far as they were classified by you under

the head of rents received, dividends received, and so on?

A Yes, sir.

Q (By Mr. Walsh) I believe you testified that you had made a summary of the Slavin checks? A Yes, sir.

Q Have you got the dates on those? A Not on this memorandum, no, sir; I can give them to you from other records.

Q I will have to ask you to do that, please Mr. Riley, and I am going to ask you to do it in this way, for the sake of epitomizing it and making it clearer. I am going to ask you first to begin with the first check upon which Slavin's name appears and give me the date of it. A August 21, 1929.

Q Have you a check there of date July 7, 1929, Number 64472?

A Yes, sir.

Q What is the date of it? A It is dated July 11, 1929.

Q And it is 64472? A Yes, sir.

Q Where does that appear on your memorandum? A Item 35 in the Bill of Particulars, September 9, 1929.

Q Then it is not the date of the check but the date of the payment you have on yours? A In most cases, yes.

Q Then there is a check for \$1,000.00. Is that the date of the check? A Date of issue.

Q I want to begin with the very first one. The very first one so far as date of issue is concerned is the 11th day of July, 1929, is it not? A Yes, sir.

Q How much is that check? A \$100.00.

Q Then that check was dated July 11 but not cashed until what time? A September 9, 1929.

Q I will just call off the dates because I do not want to go through the details of this. Have you another one dated the 11th of July, 1929, for \$100.00, Number 64476? I will tell you what I am driving at, it might help you. I want to show how many Slavin checks appear in this account prior to September 15, 1929, which is said to be the opening of Cuban Gardens. I have four \$100.00 checks all dated July 11, 1929. Have you four checks like that?

A Yes, I have those checks.

Q Were those all cashed on the same day? A No, sir.

Q When was the second one cashed? A September 6, 1929.

Q And the third one? A September 6, 1929.

Q And the fourth one? A September 6, 1929.

Q Have you the Slavin check there dated July 31, 1929 for \$300.00?

A Yes, sir.

Q Have you a check dated August 8, 1929, Number 69431 for \$500.00? That is Item 38.

A Item 38 is Check Number 69431 for \$500.00.

Q Take August 9, Check Number 64946, that is Item 28? A Yes, sir.

Q How much? A \$500.00.

Q Take check dated August 10, being \$1,000.00, Number 64957 and your item 29? A Yes, sir.

Q That is a check for \$1,000.00? A Yes, sir, dated August 10th.

Q When was that check cashed? A August 22, 1929.

Q Take check dated August 12, 1929, Number 64969 for \$500.00. Have you a check of that date for \$500.00? A Yes, sir.

Q What date was that cashed? A Cashed August 21, 1929.

Q We have a check for your Item 35, Number 65063 for \$500.00.

Have you that check dated August 17? A Yes, sir.

Q When was that check cashed? A September 9, 1929.

Q Your Item 35 which appears to be a check Number 65105 for \$700.00; have you got that check? A Yes, sir.

Q When was that check cashed? A September 9, 1929.

Q We have Item 33, Check Number 65159. Have you that item, \$1,000.00? A Yes, sir.

Q We have check Number 65204 of August 27, 1929, that is the one for \$700.00. You say you have that? A Yes, sir.

Q When was that cashed? A September 9, 1929.

Q And when was the \$1,000.00 check cashed which is Item 35, Check Number 65159? A September 5, 1929.

Q We have Item 33, Check Number 65244 for \$2,000.00. Have you that check? A I have

one for \$200.00.

Q I mean \$200.00. A Yes, sir.

Q When was that cashed? A September 5, 1929.

Q We have one, your Item 29, check Number 64956, August 10th for \$1,000.00. Have you that one, your Item 29? A Yes, sir.

Q Have you any check with a Slavin endorsement that I have not read off to you that was issued between the 11th day of July and the 8th day of August, 1929? A I do not believe there is but to be positive I would have to check them all back.

Q I will get you to look at this schedule which I hand you, which purports to have all the Slavin checks between the dates of July 11 and August 29, 1929, and see if you cannot check them right back against your working papers there. A (Witness checks).

Q Now, I ask you if there appears on this list which I have handed you, all the Slavin checks between the date of July 11, 1929, and August 29, 1929, issued between those dates?

A Checks that were dated as issued on those dates, yes, sir.

Q That is correct, is it not? A Yes, sir.

Q Are there any other Slavin checks in those dates that you have?

A Not that I know of.

Q The amount of checks, the sum total of checks which bear the endorsement of A. M. Slavin between the dates of July 11 and August 29, 1929, as date of issue, is the sum of \$7300.00, is it not?

A Yes, sir.

MR. WALSH: I would like to mark that as a defendant's exhibit and offer it as part of the cross examination of this witness.

MR. VANDEVENTER: No objection.

(Document marked Defendant's exhibit 10 for identification and is as follows:

7/11/29 64472 \$100.00

7/11/29 64475 \$100.00

7/11/29 64476 \$100.00

7/11/29 64477 \$100.00

7/31/29 64824 \$300.00

8/8/29 64931 \$500.00

8/9/29 64946 \$500.00 (Def. Ex. "10"

8/10/29 64956 \$1000.00 Slavin checks to

8/10/29 64957 \$1000.00 September 15,

8/12/29 64969 \$ 500.00 1929)"

8/17/29 65063 \$ 500.00

8/20/29 65105 \$ 700.00

8/23/29 65159 \$1000.00

8-27/29 65204 \$ 700.00 153

8/29/29 65244 \$200.00 \$7300.00

MR. WALSH: I might say this, I am going to have a copy of that made; we will have certain exhibits that we may wish to offer and I will try to get all of them up and I am going to try, if I have anything further than this to examine the witness with, to put it on a schedule and I will hand the schedule to them so if we agree on it it may just be offered in evidence without all of this effort.

Q I would like you to go through your account there and see whether there was any other Slavin check in this itemization you gave, any Slavin checks until one with date of issue September 20, 1939? A No, sir.

Q So there is a lapse there from August 39, no checks appear at all until September 20, is that correct? A Yes, sir.

Q, We have the exhibit numbers and the items on here and before I start to ask you about this, can you recall from memory and if not please look at the record and see what you testified to when you first went on this witness stand as to the total amount of the Slavin checks? A \$29,950.00 for the year 1939.

Q Did you divide them up into years? A I thought you gave one amount of all the Slavin checks that were issued?

A As I recall I gave them separate for each year in the Bill of Particulars.

Q Give it again. A \$29,950.00 for the year 1929; \$11,600.00 for the year 1930.

Q, I will get you to start out September 9, 1929. I have nothing on this schedule except the number of the check. Will that help you? 9-30-39 Number 65644 for \$100.00. I am

talking about Slavin checks beginning with September 20, 1929. I want to know whether or not in this list you have given us you have a check of that number and of that date for the sum of \$100.00. That is the reason I give you that with the item numbers on it so far as we can give them. This is a schedule perhaps the same as yours but it just gives numbers and I want to check this back and I want to have these designated dates. A Yes, sir, I have that check.

Q Where did you get that from? Did you get it from yours or from that data I gave you? Do you have them running in chronological order in your own memorandum? A No, sir.

Q I will ask you to look and see if you have a check for \$1000.00, Number 65741 dated September 30, 1929? A Yes, sir.

Q Can you tell whether there is anything in between the 20th and the 21st — have you got those in order so you can tell that and not have to go over them again? A It will be easier to tell from the checks themselves or the cashier's check register.

Q Have you a check Number 65741 dated September 25, 1939, for \$1,000.00? A Yes, sir.

Q Have you got that in this account that you have given of all the Slavin checks? A Yes, sir, I have.

Q We will take Check Number 65742 for \$1,000.00 dated September 25, 1929. Have you that in the Slavin checks? A I have.

Q Take Check Number 65743, September 25, 1939, for \$1,000.00.

Have you that in the Slavin checks? A Yes, sir.

I will just call these off to you and you can just answer yes, that it is a Slavin check, and if there is any there now that I do not read to you I wish you would call my attention to that.

Do you have a check there for \$1,000.00 dated September 25, Number 65744? A Yes, sir.

Q And one for \$500.00 September 25th, Number 65745? A Yes, sir.

Q And have you one (for \$500.00 again, September 25, Number 65746?

A Yes, sir.

Q Have you one dated September 30, 1929, Number 65809 for \$500.?

A Yes, sir.

Q Have you one for \$500.00 September 30, 1929, Number 65811?

A Yes, sir.

Q Have you one on October 7, 1929, Number 65938 for \$1,000.00?

A Yes, sir.

Q Have you one on the same date, October 7, 1929, Check Number 65939 for \$1,000.00? A Yes, sir.

Q Have you one on the same date, Number 65940 for \$1,000.00?

A Yes, sir.

Q Have you one on October 7, 1929, Number 65941 for \$500.00?

A Yes, sir.

Q Have you one on October 8, 1929, Number 65961 for \$500.00?

A Yes, sir.

Q Have you one dated October 8, 1929, Number 65965 for \$500.00?

A Yes, sir.

Q And one on the 8th, Number 65963 for \$500.00? A Yes, sir.

Q Have you one on October 14, 1929, Number 66035 for \$1,000.00?

A Yes, sir.

Q Have you one on December 2nd, Number 66979 for \$1,000.00?

A Yes, sir.

Q Are there any Slavin checks in that list you gave between October 14 and December 2nd, 1929, issued between those dates?

A No, sir.

Q Have you a check there, Number 67080, December 5, 1929, for \$2,000.00? A Yes, sir.

Q Have you a check dated December 5, 1929, Number 67081 for \$2,000.00? A Yes, sir.

Q That is the second check? A Yes, sir.

Q Have you one dated December 16, 1929, being Number 67386 for \$100.00? A Yes, sir.

Q Have you another check dated on the 16th, Number 67287 for \$100.00? A Yes, sir.

Q And one for \$500.00 on the 17th, Check Number 67331?

A Yes, sir.

Q Have you one December 15, 1929, Check Number 66091 for \$1,000.00? A The check does not appear to be here. I have a record of it.

Q It is a \$1,000.00 check, isn't it? A Yes, sir.

Q And you have it on the Slavin list, have you? A Yes, sir.

Q We will assume that then. December 20, 1929, Check Number 67402 for \$2200.00. A I have a record but I have not got the check.

Q Are there any other Slavin checks between the dates of September 20, 1929 and December 20, 1929, except those about which I have asked you? A No, sir.

Q Now, I wish you would see if that computation is right, please, as to the total between those dates. A Yes, sir, \$21,000.00.

MR. WALSH: I wish this narked as an Exhibit and I would like to offer it in evidence as part of the cross examination of the witness.

MR. VANDEVENTER: No objection.

(List marked Defendant's Exhibit 11 for identiciation and is as follows:

" 9/20/29 65644 \$ 100.00

9/25/29 65741 \$1000.00

9/25/29 65742 \$1000.00

9-25-29 65743 \$1000.00

9/25/29 65744 \$1000.00

9/25/29 65745 \$ 500.00

9/25/29 65746 \$ 500.00

9/30/29 65809 \$ 500.00

9/30/29 65811 \$ 500.00

10/7/29 65938 \$1000.00

10/7/29 65939 \$1000.00

10/7/29 65940 \$1000.00

10-7-29 65941 \$ 500.00

10/8/29 65961 \$ 500.00

10/8/29 65965 \$ 500.00

10/8/29 65963 \$ 500.00 Def's Ex. 11

10/14/29 66035 \$1000.00 Slavin Checks,

12/2/29 66979 \$1000.00 September 20, 1929

12/5/29 67080 \$2000.00 to January 8, 1930.

12/5/29 67081 \$2000.00
12/16/29 67286 \$ 100.00
12/16/29 67287 \$ 100.00
10/17/29 67331 \$ 500.00
12/15/29 66091 \$1000.00
12/20/29 67402 \$2200.00
\$21,000.00"

Q Is there any other Slavin check in your list up to the 18th day of January, 1930? A No, sir.

Q I wish you would give me by number all of the Slavin checks between the dates of January 18 and April 14, 1930, that you have in your list? Give me all in January. What I want to see is if we have the same checks. The first one I have is the 18th. Just call them off by numbers and tell us what ones you have put in this list that you now charge.

A Number 67959, issued January 18.

Q The next one. A 67991 issued — I can't read the date on the check, it is blurred.

Q I call it January 20th. Half of the zero is covered by the clearing house stamp.

THE COURT: I would say it is the 21st.

A Number 68059 issued January 25, 1930, \$100.00.

Q Next? A Number 68060 issued January 25, 1930, \$100.00.

Q Next? A Number 68098 issued January 27, 1930, \$100.00.

Q Next? A Number 68386 issued February 10, 1930, \$500.00.

Q Next? A Number 68526 issued February 17, 1930, in the amount of \$500.00.

Q Next ? A Number 68636 issued February 24 in the amount of \$500.00.

Q Next? A Number 68784 issued March 3, 1930, \$500.00.

Q Next? A Number 68940 issued March 10, 1930, \$500.00;

Number 69094 issued March 17, 1930, \$500.00. Number 69241 issued March 24, 1930, \$500.00. Number 68930 issued March 10, 1930, \$100.00. Number 69349 issued March 31, \$500.00. Number 69471 appears to be April 4, 1930, \$500.00. Number 69605 issued April 14, 1930, \$500.00.

Q Any more in April? A That is all in April.

Q I will ask you to calculate those, add. them up and see what they amount to; see if that

is the correct amount.

A Yes, \$5600.00.

Q \$5600.00 is the total. There are no other Slavin checks on your list, are there until you come down to the latter part of the year where you have some rent checks. Tell me where you find the next Slavin check, the date of the next Slavin check?

A Number 73233.

Q What date? A I would have to look at the check.

Q But that is all there is down to April 14, 1930? A Yes.

Q Until you get to this date you are now going to read?

A The check is not here.

MR. WALSH; I offer in evidence this document as part of the cross examination of the witness.

(Document marked Defendant's Exhibit 12 and is as follows:

1/18/30 67959 \$100.00

1/20/30 67991 \$100.

1/25/30 68059 \$100.

1/25/30 68060 \$100.

1/27/30 68098 \$100.

2/10/30 68386 \$500. Def. Ex. No. 12, Slavin

2/17/30 68526 \$500. checks after January 8, 1930.

2/24/30 68636 \$500.

3/8/30 68784 \$500.

3/10/30 68930 \$100.

3/19/30 68940 \$500.

3/17-30 69094 \$500.

3/24/30 69241 \$500.

3/31/30 69349 \$500.

4/4/30 69605 \$500.

Total \$5600.

Q Have you got a date on your list of the next check that bears the endorsement of

Slavin; the last one was April 14, 1930.

A Dated November 25, 1930.

Q For how much? A I haven't got the date it was issued, on that check.

Q What does that mean, November 5, 1930, \$1,000.00, Item Number 67? A I believe it is the date of the check; I would not be positive.

Q If it is not the date of the check, what is it? A It is the date that is entered into the item.

Q It is the date you put on it yourself? A Yes, sir.

Q And it is the only date that is there; it could not be anything else but the issuance of the check, could it, or the payment of the check? A There is another date, November 13th.

Q I am asking you about this item, this date?

A It is evidently the date it was issued, yes, sir.

Q It is the date it was issued? A Yes, sir.

Q What is that date? A November 5, 1930, Check Number 73233.

MR. WALSH: That is all, thank you. "

REDIRECT EXAMINATION

The witness took into consideration and made an examination of the loan record of Mr. Lazia at the Merchants Bank, but he did not take into consideration borrowed money from the Merchants Bank.

He did not list any item twice in his summary, and in making his investigation, he talked to Mr. Lazia at the Merchants Bank and discussed with him the Cuban Gardens transaction. Mr. Lazia gave him a list of checks representing money that went into the construction of Cuban Gardens — they total \$19,465.01.

The checks that he referred to as the Slavin checks, did not include all of the Cuban Gardens transaction. Other checks than those summarized by him included a \$1,000.00 check from Arthur McNamee; an item of \$1850.00 and a \$3,000.00 item, that had been introduced in evidence. It was the check of Tim Crummett purchased of the National Bank of North Kansas City on January 8, 1930.

It was stipulated and agreed by counsel that Guiseppe Lazia, the father of the defendant, died March 19, 1931 in Kansas City, Missouri; that he was a resident of Jackson County; that the files of the Probate Court of Jackson County, Missouri, did not reflect an administration of his estate. There was a similar stipulation for Francesca Lazia, the

mother of the defendant, who died November 3, 1925.

RAYMOND EDLUND recalled as a witness for further direct examination, testified as follows:

FURTHER DIRECT EXAMINATION

The total interest paid by Mr. Lazia to the Merchants Bank for the year 1939 was \$441.06, and that there were two notes of Mr. Lazia that matured February 19, 1931 and February 18, 1931.

He was not positive that the interest was paid at date or at maturity on them.

If the interest was paid at date, it would have amounted to \$869.70 for interest paid for 1930, and if the interest was paid at the date of maturity, or in 1931, it would have been \$571.88 as interest paid by Lazia for 1930.

The witness identified the endorsement of Mr. Lazia on Government's Exhibit 6.

Government's Exhibit 195 was a cashier's check issued by the Merchants Bank, Paid May 23, 1929, and bore the endorsement of Mr. Lazia.

Government's Exhibit 196 was a deposit slip, of date similar to that upon Exhibit 195 and the amount reflected thereon was deposited to the account of Mr. Lazia. The two exhibits were admitted into evidence over the objection and exception of the defendant for the reason that they did not show any connection with taxable income earned by the defendant and are in words and figures as follows:

Exhibit 195

Cashier s Check, Merchants Bank, Kansas City, Mo.

May 2, 1929 No. 63468 Pay to the order of J. Lazia, \$1000.00.

Endorsed: J. Lazia, Perforated: Paid 5-23; 18—76

Exhibit 196

Deposited with Merchants Bank, For Account of John Lazia Kansas City, Mo., May 23, 1929.

Checks as follows: \$1000.00.

At this point the Court refused to permit the Government to make any showing concerning whether or not defendant filed income tax returns for any years prior to 1929.

WHEREUPON the Government introduced into evidence Questions 55 and 56 and others of Government's Exhibit 108 and the following occurred:

"MR. WALSH: We object to that, if your Honor please, because as I say it is not fair, not is it legal, with the foundation that has been laid upon this thing to charge it to an admission against interest on the part of the defendant. There is an effort being made to compromise this matter, to make a showing and call the defendant in to do it. The defendant did not do it alone, but he did it with the banker and the lawyer sometimes there and sometimes not there. I say it would be going outside of the rules of evidence and be extremely unfair to pick out certain things in that or take all of it and use it as an admission against interest. If it is, I say it ought to be very definitely confined to the date and the statements of the defendant himself.

"THE COURT: Overruled.

"MR. WALSH: Exception.

"THE COURT: That is not one you have already read in evidence?

"MR. VANDEVENTER: No, sir. These questions pertain solely to the Cuban Gardens transactions.

"THE COURT: It will be admitted because my recollection of the testimony is that this statement, while several participated in preparing it, was made with the consent and agreement of the defendant, in fact, one witness used those words. "MR. WALSH: I would like to say this thing further about this, that this was made up in this way with the understanding that the defendant was to be given a further opportunity to explain it, and what he is reading now is just simply saying 'Received from A. M. Slavin.' They were endorsed by A.M.Slavin and I do not believe that is a binding statement upon the defendant.

"MR, WALSH: Save an exception.

"MR. VANDEVENTER: Question 55: 'August 21, \$500.00, CC 64946 received from A.M.Slavin deposited.' Question 56: 'August 21, \$500.00, CC 64969 received from A. M. Slavin deposited.' 'These were checks given by A. M. Slavin, part of the Cuban Gardens transactions.'

"MR. VANDEVENTER: Your Honor, is it necessary to make a formal offer on each of these questions?

"THE COURT: Offer all of them that you expect to offer and Mr. Walsh can make one

objection.

"MR. VANDEVENTER: I want to offer all of the references to the Cuban Gardens transactions.

"MR. WALSH: I object to them for all of the reasons given, and moreover that it is an attempt to impeach his own witness.

"THE COURT: Objection overruled.

"MR. WALSH: Save an exception.

"MR. VANDEVENTER: I will read these questions as follows: 'QUESTION 57, August 22, \$1000.00, CC 64956 received from A. M. Slavin.

'QUESTION 58: August 22, \$1000.00. CC 64957, received from A. M. Slavin.

"These checks were made payable to A. M. Slavin and endorsed by A, M. Slavin, John Lazia and R. Passantino. This represents money that was advanced by R. Passantino to be used by Cuban Gardens as operating capital and later returned to R.Passantino.

Merely an accommodation transaction,

'QUESTION 59: August 26, \$300.00. CC 64824, received from A. M. Slavin.

This represents CC made payable to A. M. Slavin in the amount of \$300.00 endorsed by A. M. Slavin and also bearing the name of John Lazia, evidently a Teller's notation.

'QUESTION 64: September 5, \$200.00. CC 65244 deposited, received from A. M. Slavin,

'QUESTION 65: September 5, \$1000.00. CC 65159, deposited, received from A. M. Slavin.

Cuban Gardens. See special memorandum.

'QUESTION 66: September 6, \$100.00. CC 64475 deposited, received from A. M. Slavin.

'QUESTION 67: September 6, \$100.00. CC 64476 deposited, received from A.M. Slavin.

'QUESTION 68: September 6, \$100.00. CC 64477 deposited, received from A. M. Slavin.

This represents money returned to Henry LaBoy from Cuban Gardens on money advanced by him. Purely an accommodation transaction,

'QUESTION 69: September 9, \$100.00. Check deposited CC 64472 received from A.M. Slavin,

'QUESTION 70: September 9, \$500.00. Check deposited CC 65063 received from A. M. Slavin.

'QUESTION 71: September 9, \$700.00. Check deposited CC 65105 received from A. M. Slavin,

'QUESTION 72: September 9, \$700.00. Check deposited CC 65204 received from A. M. Slavin.

Part of the Cuban Gardens transaction.

'QUESTION 73: September 11, \$1850.00. Check Deposited.

This represents deposit to John Lazia's checking account in the amount of \$1850.00, which is part of the Cuban Gardens transaction.

'QUESTION 75: September 14, \$500.00. Check deposited, CC 64931 received from A. M. Slavin.

Part of the Cuban Gardens transaction.

'QUESTION 78: September 36 - - '

"MR. WALSH: (interrupting) I want to object to this, if your Honor please, for the further reason that it would be a denial of the constitutional rights of this defendant to compel him to testify against himself, and entitle him to his discharge,

"THE COURT: Overruled.

"MR. WALSH: Exception.

"MR.VANDEVENTER: I would like in this connection to state that this interview was at the request of the defendant and not, as Mr. Walsh says, because he was summoned by the Government.

'QUESTION 78: September 36, \$500.00. Check deposited CC 65745 received from A. M. Slavin.

'QUESTION 79: September 36, \$500.00. Check deposited CC 65746 received from A, M. Slavin.

'QUESTION 80: September 36, \$1000.00. Check deposited CC 65741 received from A. M. Slavin.

'QUESTION 81: September 26, \$1000.00. Check deposited CC 65743 received from A.M.Slavin.

'QUESTION 83: September 36, \$1000.00. Check deposited CC 65743 received from A.

M. Slavin.

'QUESTION 83: September 26, \$1000.00. Check deposited CC 65744 received from A. M. Slavin.

This was part of the Cuban Gardens transaction.

'QUESTION 84: October 9, \$500.00. Check deposited CC 65961 received from A, M. Slavin.

'QUESTION 85: October 9, \$500.00. Check deposited CC 65965 received from A. M. Slavin.

This represents part of the Cuban Gardens transaction. 'QUESTION 86: October 9, \$6000.00. CD purchased with CC 65938 for \$1000.00; 65939 for \$1000.00; 65940 for \$1000.00; 65941 for \$500.00; 65809 for \$500.00; and 65811 for \$500.00. Part of the Cuban Gardens transaction.

'QUESTION 88: October 15, \$1000.00. Check deposited CC 66091 received from A. m. Slavin.

This check was purchased by A. m. Slavin, being part of the Cuban Gardens transaction.

'QUESTION 92: November 19, \$500.00. Check deposited CC 65963 received from A. M. Slavin. Part of the Cuban Gardens transaction.

•QUESTION 95: December 18, \$1000.00. Check deposited CC 66979 received from Slavin. Part of the Cuban Gardens transaction,

'QUESTION 98: December 20, \$2000.00.

'QUESTION 99: December 20, \$100.00.

'QUESTION 100: December 30, \$100.00. Checks were used to purchase CC 67403 for \$2200.00.

The following checks were used to purchase \$3300.00 CC:

67081 for \$2000.00; 67286 for \$100.00; and 67287 for \$100, being part of the Cuban Gardens transaction.

'QUESTION 102: December 24, \$2000,00. Check deposited CC 67080 received from A, M. Slavin.

This represents deposit to John Lazia's checking account, being CC 67080, which was part of the Cuban Gardens transaction.'

"MR. VANDEVENTER: Your Honor, the Government rests.

"MR. WALSH: We have a motion for a directed verdict and demurrer to each count of the indictment and to the Information which I offer in the record here, and I do not know exactly how to arrive at it but I think I already have in this record an objection to all these checks, that under no condition could be attached to income and I am going to make a motion at this time for the Court to strike out all of the checks that have been introduced in evidence in this case that are not confined to a source of taxable income.

"THE COURT: I will consider that motion together with a motion for a directed verdict and will pass on the motions Monday morning at 9:30.

(Thereupon at the close of the evidence the defendant offered in evidence the following demurrers and motions for a directed verdict.)

"At the close of the evidence offered by the government, the defendant demurs to such evidence for the reason that the proof does not constitute the offense attempted to be charged in Count 1 of the indictment, and because it is legally insufficient to justify the same or to support a conviction of the defendant,

"And because the proof relied upon to support the charge in Count 1 of the indictment, if any there be, is incompetent, irrelevant, and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

"At the close of the evidence offered by the government, the defendant demurs to such evidence for the reason that the proof does not constitute the offense attempted to be charged in Count II of the indictment, and because it is legally insufficient to justify the same or to support a conviction of the defendant.

"And because the proof relied upon to support the charge in Count II of the indictment, if any there be, is incompetent, irrelevant and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to the defendant of due process of law as guaranteed to him

in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

"At the close of the evidence offered by the government, the defendant demurs to such evidence for the reason that the proof does not constitute the offense attempted to be charged in Count III of the indictment, and because it is legally insufficient to justify the same or to support a conviction of the defendant,

"And because the proof relied upon to support the charges in Count III of the indictment, if any there be, is incompetent, irrelevant, and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

"At the close of the evidence offered by the government, the defendant demurs to such evidence for the reason that the proof does not constitute the offense attempted to be charged in the Information and because it is legally insufficient to justify the same or to support a conviction of the defendant.

"And because the proof relied upon to support the charge in the Information, if any there be, is incompetent, irrelevant, and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1939 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

"At the close of the evidence offered by the government against the defendant, the defendant moves the court for a directed verdict upon the charge attempted to be laid in Count 1 of the indictment, directing the jury to acquit and discharge the defendant because the proof offered in this cause in support of the said charge laid in the said Count 1 of the Indictment, is legally insufficient to justify the same or to support a conviction of the defendant on the charge contained in Count 1 of the indictment,

"And because the proof relied upon to support the charge in Count 1 of the indictment, if any there be, is incompetent, irrelevant and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1939 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth

Amendments to the Constitution of the United States of America,"

"At the close of the evidence offered by the government against the defendant, the defendant moves the court for a directed verdict upon the charge attempted to be laid in Count II of the indictment, directing the jury to acquit and discharge the defendant because the proof offered in this cause in support of the said charge laid in the said Count II of the indictment, is legally insufficient to justify the same or to support a conviction of the defendant on the charge contained in Count II of the indictment.

"And because the proof relied upon to support the charge in Count II of the indictment, if any there be, is incompetent, irrelevant and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the constitution of the United States of America."

"At the close of the evidence offered by the government against the defendant, the defendant moves the court for a directed verdict upon the charge attempted to be laid in Count III of the indictment, directing the jury to acquit and discharge the defendant because the proof offered in this cause in support of the said charge laid in the said Count III of the indictment, is legally insufficient to justify the same or to support a conviction of the defendant on the charge contained in Count III of the indictment.

"And because the proof relied upon to support the charge in Count III of the indictment, if any there be, is incompetent, irrelevant and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

"At the close of the evidence offered by the government against the defendant, the defendant moves the court for a directed verdict upon the charge attempted to be laid in the Information, directing the jury to acquit and discharge the defendant because the proof offered in this cause in support of the said charge laid in the Information is legally insufficient to justify or support a conviction of this defendant on the charge contained in the Information.

"And because the proof relied upon to support the charge in the Information, if any there be, is incompetent, irrelevant and immaterial, vague and indefinite, and in no way connected with or binding on defendant, or proving or tending to prove the receipt of gross or net income by defendant during the years 1929 and 1930, and is a denial to defendant of due process of law as guaranteed to him in the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

(Thereupon Court stood at recess until Monday, February 12, 1934, at 9:30 A.M.)

"Seventh Day, Monday, February 12, 1934.

(The jury was excused from the Court room and the following proceedings were had:)

"THE COURT: At the close of the government's case on last Saturday afternoon, the defendant filed written motions for a directed verdict of not guilty and presented oral motions of the same character. I have given consideration to those motions as far as I had time to give them consideration since they were submitted. Many other duties I have been called upon to discharge have prevented me from giving as full study as I should like to have given to the questions raised by the motions; nevertheless I have reached conclusions which I shall state presently. I shall file a written memorandum as soon as its preparation has been completed, more fully setting out these views that I have reached, together with citation of authorities I think are in point, and when that has been prepared, as it will be very soon, I think by tomorrow, it will be filed as of this date, I might content myself with saying that I would file such an opinion but I think that I ought to state orally, for the benefit of counsel, some of the conclusions which will be stated more fully in writing.

"The Information, in which is set out one of the four charges upon which the defendant is being tried, alleges that he had a gross income in 1929 of \$5,000.00 or more, and that he wilfully failed to make an income tax return for that year.

The burden is upon the government to prove beyond a reasonable doubt the offense charged in the Information, to prove beyond a reasonable doubt all the essential elements of that offense and the government is not entitled to go to the jury upon the Information unless it has at least made a prima facie case, which, if believed by the jury, proves beyond a reasonable doubt each of the essential elements of the offense. The essential elements of the offense charged in the Information are two. First, that the

defendant had, in 1929, a gross income of \$5,000.00, and second, that having had such a gross income he willfully failed to make an income tax return for that year. I suppose there would be little contention made by anyone that if the first of these essentials is proved or if there is evidence introduced which would support a conclusion that it had been proved, that then no other evidence would be required to justify the submission of the question as to whether the second essential was established beyond a reasonable doubt, to the jury. If the government has proved the defendant had a gross income of \$5,000. in 1929 it is then a jury question as to whether he willfully failed to make a return for that year. The important essential, of the two essentials, - that is to say, the more important from the present standpoint, is whether the defendant had a gross income of more than \$5,000.00 in the year 1929. Has the government introduced evidence in this case, which, if believed by the jury, and it must be believed as true by the Court now, whatever the Court may believe concerning it, - has the government introduced evidence which will support a finding of the ultimate fact, that is that the defendant did have a gross income in 1929 of \$5,000.00?

"The term 'gross income' has been defined by Congress and is defined in the statutes regarding the payment of income taxes. It is not everything that a man takes in in the form of money or money's worth in a year that is gross income. Gross income is made up of gains and profits and income; the three words are used together. They include that which one has received for his own use and benefit by the way of earnings and they exclude mere return of investment, replacement of capital, and the term gross income also excludes other matters specified in the statute as, for example, proceeds of a life insurance policy and so forth. It must be income in a true sense which makes up gross income. There are certain things concerning which there is no doubt that they are income - rents received, interest upon money loaned, salaries earned, profits obtained in any business enterprise, viewing the enterprise from the end of the taxable year, the calendar year, if that be the taxable year. All of these are undoubtedly properly included in the term 'gross income'.

"Now, what is the government's proof in this case so far as the Information is concerned? It has proved that the defendant deposited in his bank account in the year 1929, and it is concerning that year that the charge is laid in the Information, that he deposited in his

bank account in that years something more than \$55,000.00. It is very earnestly contended here by counsel for the defendant that that fact, if it be conceded to be a fact, does not constitute proof that the defendant had a gross income of more than \$5,000.00 in the year 1929. I have thought since this case was begun here - - I am referring now to earlier stages of the case as well as to the trial of the case - - that mere proof that an individual has deposited in his bank account in a given year a large sum of money, was not conclusive proof that he had a gross income of more than \$5,000.00 in that year. I have also thought that only was it not conclusive proof of that fact but that it was not alone sufficient to constitute prima facie proof of that fact. I am not certain now that that question may not be debatable. In several of the cases which have gone to the Courts of Appeals in which chargee similar to this were involved, it appears that proof of the total of bank deposits in the taxable year in question was received by the trial Courts and in none of the opinions of the Appellate Courts has that reception of this proof been questioned. In none of them has it been said that such proof alone was sufficient to establish gross income; in none of them, on the other hand, has the contrary been said. I am not certain that mere proof of bank deposits in a large amount does not constitute a prima facie showing of gross income exceeding \$5,000.00. The government is required to prove the defendant guilty beyond a reasonable doubt and to prove beyond a reasonable doubt each of the essential elements of the offense charged, but the government is never required to prove that the defendant is guilty beyond any doubt. The government is never required to prove that there is not a possibility of the innocence of the defendant. The government is never required to disprove every possibility of innocence nor every possibility that some one of the essentials of the offense may not actually be present in the case.

"If we suppose a case in which an individual has deposited in his bank account \$100,000.00 a month for every month in twelve months and the government has proved that fact in a case of this character, I think it is extremely doubtful if it would not be ruled that that constituted a prima facie showing that the accused had a gross income of at least 15,000.00. True, there are several possibilities which would destroy that conclusion if the possibilities were facts. He may have received the entire amount, \$1,300,000.00 as proceeds of a life insurance policy. If so, then he had no gross income.

He may have had \$1,200,000.00 in a safety deposit box, money that he acquired in the preceding year, and in the taxable year in question he may have taken out each month from that safety deposit box one hundred thousand dollars and put it in his bank account. If so, then he had no gross income.

The \$1,200,000.00 may have been derived by the sale of property for which in a preceding year he paid \$1,200,000.00 or more; a mere return of his investment or a part of it. If so, then he had no gross income. But when a man would deposit in his bank account so large a sum of money in a year, in the light of all experience and observations, it would so strongly indicate that at least \$5,000.00 of the total sum was money which was earned or derived from profits and gains during the year, that in the absence of any explanation or showing to the contrary I have little doubt that a jury would be justified, in the hypothetical case, in finding that he had a gross income of \$5,000.00. "The government is not required to prove beyond any possibility of doubt that he had a gross income but to prove it to that extent as that the jury, hearing the evidence, would be convinced to a moral certainty that he had the requisite minimum gross income. I should not think that the reasoning would be different where the deposits were \$55,000.00, still a large sum, still a sum much in excess of \$5,000.00, than where they are \$1,200,000.00. So, I am not prepared to say with certainty that the proof of bank deposits in the amount indicated by itself might not be the making of a prima facie case. But, more has been proved in this case than the total of bank deposits in the year 1929. Among other things which have been proven, that is to say concerning which evidence has been offered, — when I say things have been proved I am merely saying that there is evidence to support the conclusions the jury may believe it or not believe it, I may believe it or not believe it but I have no right now to question the evidence — among other things which have been proved are these: First, it has been proved and almost admitted, not formally, but almost admitted that in the year 1929 the defendant received some sums by way of rent; other sums by way of interest upon loans. There is no question of course that these items are properly included in gross income. The total of these items I do not know, so far as the year 1929 is concerned; I suppose we could make the calculation but I have not made it. they reduced the amount remaining to prove substantially from 15,000.00 to some lower sum. There has been positive testimony in

the case, it may be true, it may not be true, but there has been testimony in the case that the defendant himself said, when inquiry was made of him in a preliminary investigation, that he had had a certain interest, whatever the character of the interest was it is not necessary now to say, in two enterprises one called here in the trial the dog racing enterprise and the other called here in the trial the Cuban Gardens enterprise and that he said he had disposed of his interest, whatever was the character of that interest, late in 1929 at a profit to himself, as I recall the figures, from twelve to fifteen thousand dollars. I may not have those amounts exactly correct but substantially those were the amounts. "Now accepting the theory which defendant presents, as indicated by cross examination of witnesses, that his only interest in this enterprise was that arising from a sale by him of his interest in his real estate and personal property to others, accept that as the true figure, if in the sale of that interest he made a profit of from twelve to fifteen thousand dollars as it is said that he said he did, that is certainly proof of gross income, a gain, a profit, properly included within the term gross income for the year 1929 and since, as I recall the evidence, it disclosed that a part of this gain, a substantial profit was obtained by the defendant in 1930, I have little doubt, although I am not made absolutely certain as to that by re-reading my notes, that at least half of this profit, of this gain, was derived by the defendant in each of these two years. If so, that is enough, alone, to make a prima facie case for the consideration of the jury, The jury might conclude from the evidence in the case that the nature of the defendant's interest in these two enterprises in North Kansas City was that that I have just stated, a sale of his interest in the personal property and real estate and so forth but I am also convinced that if the jury believes all of the evidence which has been offered by the government, and if the jury drew from certain parts of that evidence such inferences as they might draw, if they believed the evidence, then the jury might conclude, with evidence supporting the conclusion, that the interest of the defendant in these enterprises in North Kansas City, especially the Cuban Gardens enterprise, was something more than the first theory would indicate, that actually he was a partner in the enterprise itself. If so, then there is evidence, if believed by the jury, which would support the conclusion that he derived in the year 1939, from that business, profits, if not exceeding \$5,000.00 certainly of an amount, which added to unquestioned. and unquestionable items of gross income would make the amount of

\$5,000.00. Still more might be said which would support the conclusion that I have reached, which is that there is here a prima facie showing that the defendant had in 1929 a gross income of more than \$5,000.00, making it a jury question but I shall not say more since I do not desire to consume too much time in this oral statement which is to be supplemented by written. What I have said as to the year 1929 is also true as to the year 1930, so far as the first count of the indictment is concerned and the third count of the indictment is concerned, in which it is charged there was an attempt to evade a payment of the income tax, of course the government must prove, in addition to gross income of \$5,000.00 that there was a net income. I think the government has introduced evidence, which if believed by the jury would support, and if unexplained would support the conclusion that there was some net income in each of these years. All that the government is required to prove in addition to proving gross income, in order to prove net income, is to prove that the deductions to which the defendant is entitled, when taken from the gross income, would leave some sum subject to taxation. There has not been much proof offered touching the deductions to which the defendant would be entitled but there has been some proof of relatively small amounts. I do not conceive it as the duty of the government to prove absolutely what deductions the defendant is entitled to have. An impossible burden is not imposed upon the government in any case. The government is required to prove, so far as it is possible to prove, what deductions the defendant is entitled to and it has done that. If the defendant is entitled to other deductions that may be shown by way of explanation or justification, the government is not required to prove more than it has proved in that connection.

"The motions, oral and written for a directed verdict, are overruled and exceptions allowed, and exceptions allowed to the overruling of the motions as to each count of the indictment and as to the Information and as to each motion whether oral or written.

"There was also submitted a motion to strike certain testimony touching certain checks and deposits which were payable to defendant or which went into the defendant's bank account or which were received in evidence in connection with the government's case against the defendant. I think that all of that testimony was competent testimony. Each item of it was objected to at the time it was offered and the objection was overruled except in one or two instances where it was sustained. The same questions are

presented by the motion as were presented by the objection. The motion to strike testimony is overruled and exceptions allowed.

"MR. WALSH: I would like to renew my motion, if your Honor please, for a directed verdict on the ground that the defendant is entitled to his discharge if there is a reasonable doubt as to the law governing the case.

"THE COURT: I think that is true but there is not in my mind any reasonable doubt as to the law. What I said, which no doubt prompted you to that statement, was that in one particular there was, in my mind, a doubt.

"MR. WALSH: I want to save that. I just have to gather it as quickly as it comes along orally and that is the impression that was made upon my mind.

(To which ruling and action of the Court in overruling said motions, the Defendant at the time then and there duly excepted and still excepts.)

"MR. JEROME WALSH: If your Honor please, on Saturday in filing these motions there was a duplicate for Count II of the indictment filed and none for the Information. We want to withdraw the duplicate on Count II and substitute a demurrer on the Information.

"THE COURT: Let the record show that has been done. That is what I thought was done anyhow. (Jury recalled.)"

ROBERT A. LOUCKS, a witness on behalf of the defendant testified as follows:

DIRECT EXAMINATION

He qualified as a public accountant. He identified the schedule marked Defendant's Exhibit 10, which embraced a series of checks made payable to A. M. Slavin and endorsed by A. M. Slavin, entitled "Slavin Checks" from July 11, 1929 to September 15, 1929, in the sum of \$7,300.00, which schedule was again introduced in evidence, and will be found fully set out in the cross examination of Witness Riley. Defendant's Exhibit 11, which was again introduced in evidence, was a summary of "Slavin Checks", dated from September 20, 1929 to January 8, 1930, totaling \$21,000.00. The witness said no "Slavin Checks" were paid Mr, Lazia, between December 20 and January 8, 1929.

Defendant's Exhibit 11 will be found fully set out in cross examination of Witness Riley,

The witness testified that from the month of April 1930 until the fall of that year, he made an investigation, but found no Slavin checks being paid to Mr. Lazia. He identified Defendant's Exhibit No, 12 as a summary of checks, which he had made, which showed that Mr. Lazia received checks from Mr. Slavin, beginning January 8, 1930 to and including April 14, 1930, in the total sum of \$5,600.00, and that with one exception, all of the checks were in the sum of \$500.00 each, the one exception being five \$100.00 checks. Defendant's Exhibit No. 12 will be found fully set out in cross examination of Witness Riley. The witness said that he had made a schedule of certain cancelled checks of the account of Mr. Lazia, the first checks being dated August 7th, 1939, and the last one, December 24, 1929, and that he headed the summary "John Lazia Personal Checks for Cuban Gardens", which total the sum of \$19,465.01. Thereupon Defendant's Exhibits Nos. 13 and 14 were introduced in evidence, and photostatic copies are hereto attached.

Witness testified that upon January 1, 1929 the defendant owed the Merchants Bank \$3,000.00. On June 27th, 1929 he owed the bank \$13,142.15. On December 31, 1929 the amount of his indebtedness was \$8,640.00. Upon January 1, 1930 his indebtedness to the Bank was the same as upon December 31, 1929; and upon December 31, 1930, his indebtedness to the bank was in the sum of \$20,000.00, "all of which were Mr. Lazia's notes and do not include any notes in which he was an endorser." Thereupon defendant's Exhibit No. 9 was introduced in evidence and photostatic copy is hereto attached,

Upon January 1, 1929, defendant had a bank balance of \$189.92; on January 8th there was an overdraft of \$26.63 which grew to \$543.36 on January 11. January 14 defendant had a credit balance of \$225.64, on January 22 an overdraft of \$21.76, which overdraft grew to \$431.76 on January 26. He had a credit balance on February 5 and then an overdraft of \$90.46. The overdraft became \$528.25 on February 27. February 28 his credit balance was \$1461.75. The defendant had a credit balance from May 13, 1929 which became overdrawn \$53.65. He likewise had an overdraft May 2, 1929 of \$447.51. He had a continuing credit balance till May 13 of \$53.65, and upon May 14 his credit balance grew to \$502.88 and that on May 17, he had an overdraft of \$.48 and the overdraft continued until May 23, when it amounted to \$378.91. On June 26, 1929

defendant's account was overdrawn \$2902.55, which was converted into a credit balance on June 27 of \$2097.45. He was overdrawn August 24 in the sum of \$333.23, and on August 26 had a credit balance of \$571.27. Defendant had an overdraft of \$309.43 on August 30. The overdraft grew to \$555.71 on September 5 on which date it was taken up. On September 7th his account was again overdrawn \$142.71 and the same grew to \$204.28 on September 9. then he had a credit balance of \$1795.72 and on September 10 an overdraft of \$50.17. His final balance for September 16, 1929 was \$2238.02.

He was overdrawn September 25 in the sum of \$10.91 which continued until September 26 in the sum of \$110.91. On September 27 he had a credit balance of \$4,889.09. October 11 he was overdrawn \$259.71, upon October 15 he had a credit balance of \$9.71. Another overdraft occurred October 22 in the sum of \$330.86. October 24 he had a balance of \$515.79, which was changed to an overdraft October 25 of \$23.21, and continued until the 29th of October in the sum of \$217.21. October 29, he had a credit balance of \$132.79 and an overdraft on November 2 of \$5.51 which grew to \$181.51 for November 3. He had a continuing credit balance of \$318.49 until November 9 when there was an overdraft of \$25.97, which overdraft on December 11 reached \$597.64. On December 18 he had a credit balance of

\$402.36 until December 33 when he was overdrawn \$33.17. He, on December 24 had a credit balance of \$1966.83 and upon December 31, 1929, he had a credit balance of \$303.34.

In 1930 he started with a credit balance of \$303.34 which was changed to an overdraft January 30 of \$1905.91. On the 21st of January he had a credit balance of \$274.09 and was overdrawn January 30 in the sum of \$493.36. He had a balance of \$3301.39 on February 3 which continued until March 39 when there was an overdraft of \$437.94. On March 31 there was a credit balance of \$64.06. On April 3 there was an overdraft of \$16.94 which continued to April 14 when he had a balance of \$463.56. He had a credit balance until July 34, when he was overdrawn \$60.68 (which continued until August 19, when it reached an amount of \$114.63.) On August 30 there was a credit balance of \$1090.63, which continued as a credit balance until September 30, when there was an

overdraft of \$3.86 He had a balance of \$496.14 from September 30 to November 13, when he was overdrawn \$4.57, which continued until November 21, in the amount of \$242.67. This balance continued until he had an overdraft of \$114.08, which continued until December 24, when he was overdrawn \$115.33. Upon December 31, 1930 he was overdrawn \$115.33. In other words, upon the first day of January 1930 defendant started with a credit balance of \$203.34 and on December 31, 1930 he had a debit balance of \$115.33.

CROSS EXAMINATION

The witness testified that Mr. Lazia had two certificates of deposit of \$5,000.00 each which he acquired in 1938 at the time he had the overdrafts mentioned in his direct examination; knew that the defendant had outstanding to his name both a certificate of deposit or cashier's checks, "You do know that, don't you?" The witness replied he did. The witness testified that all the Slavin checks were cashed prior to September 15; that none of them were cashed before August 21, 1929. The witness was asked if he could see anything on the face of the checks totaling \$19,455 that would show on their face that they were spent in the Cuban Gardens transaction. The witness said he found one for the Hoover Company for \$25.00, which was marked at the bottom of the check "Cuban Gardens"; one to E. C. Smith \$211.60 which said "Labor and material bill in full on Cuban Gardens"; one in the sum of \$100.00 for Duff & Repp's (a Kansas City furniture concern) marked "Cuban Gardens"; one for \$300.00 to A. p. Rader there was marked on the face of the check "In full for all services rendered on Cuban Gardens"; that he found no other checks upon which the words "Cuban Gardens" appeared.

RAYMOND A, EDLUND, a witness produced on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

The witness testified that he handled all of the dog track transactions, that he was present when the purchase of the property was made; that Mr. Lebrecht (one of the witnesses for the government) directed "how the title should be placed"; he testified that Mr. Partin and Chambers owned a third interest in the dog track, together with Mr. Weissman and his group of men who owned a third of it and Mr. Lazia and his group who owned a third of it. Each one of the named parties handled the matter for their respective

group.

At the inception of the deal the parties borrowed \$10,000.00 from the Merchants Bank, but the note was for \$11,000.00, the excess being to take care of the real estate commission on the loan, etc.

At the time, Mr. Lebrecht (President of the Merchants Bank) required that Mr. Partin deed the property to Miss Agnes Taylor, who was an employee of the bank, and Miss Taylor made a deed in blank which he held because "Mr. Lebrecht could not get all these parties with their wives to sign on this note, it was at his suggestion that we handled it that way." The arrangements were agreed to by everybody. The sum of \$10,000.00 covered the entire real estate transaction. The witness was representing the bank in the transaction. The dog track started to operate in 1937 and sometime about the middle of the operation Mr. Lazia met with an accident and injured his eye. It bothered him for considerable time and witness thought his condition lasted possibly two years off and on; Mr. Lazia was in and out of the hospital during that time. At the time of the injury he asked the witness to go to the dog track and look after the interest of himself and Mr. Weissman, which he did. Mr. Partin left town for the south and Mr. Chambers then became the operator. Mr. Partin and Mr. Chambers represented parties in Cleveland. None of the agreements touching the operation of the track were in writing, but that Mr. Weissman had asked him several times to draw up some kind of a trustee's agreement. Although the blank agreements were made up, they were never signed.

The track operated at a terrific loss in 1927, and Mr. Chambers and Mr. Partin retired. Mr. Weissman was still in the enterprise. Mr. Meyer Goldberg came to Kansas City representing the Electric Holding Corporation of Chicago. The witness met Mr. John Woodrow, who was the cashier of the Citizens Bank and Trust Company of Chicago and also Mr. Stovers who was the president of that bank and another bank. They came here to make a deal for the purchase of the track.

Details of the title to the land of the track was explained to them, and they were told that the land was not for sale and finally it worked out that the Chicago group purchased a forty percent interest in the track for \$20,000.00. This occurred either in the winter of 1927 or the early spring of 1928, at a time when the track was not running. The Electric

Holding Corporation had a dog track in Columbus, Ohio, one in Chicago, and one had been constructed in Cleveland, but never operated. The interest that they bought was the right to operate the dog track "over that real estate." The Chicago people took a lease for ten years that called for an annual rental of \$3,000.00 per year. The Weissman group was still in the enterprise, and Mr. Lazia and his group "As far as we are concerned about it down at the bank, and still consider, that the title stands partly in Mr. Partin and Chambers' names." The different interests owning the dog track was explained to the purchaser. The witness at least told Mr. Goldberg concerning the various interests in the dog track. He told Mr. Goldberg that Mr. Lazia's interest was held by his father (Mr. Lazia's father) and also Charlie Carollo and his father, which represented a third of the track; Mr. Partin and Chambers had a third of it. Some time later on there was an additional interest sold to the Electric Holding Corporation in the sum of \$12,000.00, during the year 1928. The interest sold was the operating interest of Solly Weissman, that thereafter they had no further interest except his interest in the real estate. The Electric Holding Corporation paid the \$3,000.00 rental in 1929 and 1930 and paid no more, except one other \$3,000.00 payment which was used to defray the expenses of attorneys' fees, etc., in the injunction trial at Lexington. The witness handled most of that transaction. A note was given for this expense money which was discounted by the Merchants Bank, and was renewed once or twice; was eventually paid by the Electric Holding Company, through the Citizens Bank and Trust Company of Chicago. Mr. Lazia was given the \$3,000.00. The track was not operated in either 1929 or 1930, and has not been since. Upon the payment of \$20,000.00 for the 40% operating interest in the track to the Chicago people, a note of \$11,000.00 at the bank was taken up and this left \$9,000.00 to be divided up among the groups. Mr. Weissman authorized the witness to turn the money over to Mr. Lazia on the dog track transaction. The witness dealt with all the parties as trustee in the matter. "It was always the understanding that this money was to be turned over to Mr. Lazia and he was — I guess you would say, I was a trustee for a trustee; I don't know what you would call it."

The witness had nothing to do with the financial transactions of Cuban Gardens. The Slavin checks that were paid in installments came through his bank, and he received them from Mr. Lazia and deposited them to his account. At the time the \$11,000.00 note

was signed at the bank Mr. Partin, Mr. Lazia, Mr. Lebrecht, Mr. Weissman and the witness were present.

The witness handled the Duke Motor stock transaction. The stock was purchased with two certificates of deposit of Joseph Lazia, which he had purchased from the bank; a certificate of deposit of John Lazia, two cashier's checks and an \$8,000.00 loan which was made at the Merchants Bank. The stock was divided as it was because "A This was a new corporation being formed; there was \$100,000.00 paid up capital, and we had no way to know the real value, although we had no reason to disbelieve that this \$100,000.00 was going into the corporation but it was not a listed stock so we could arrive at the value, so we wanted the control of the stock in making this loan; therefore I took 200 shares in my name and took 25 shares in my brother-in-law's name at my own request and at that time for the simple reason that we could have an entree into the business." Mr. Joseph Lazia authorized the witness to put the stock up as collateral for Mr. John Lazia's note.

The witness testified that Mr. Lazia advanced the money that went into the United Bag Company, a second-hand bag enterprise, in which Mr. Lazia's brother-in-law, Mr. Joseph Antonello, and a gentleman by the name of Mr. Jacobs were promoting. Mr. Lazia put in the proceeds of a \$2,000.00 loan, a check for \$600.00 and a \$1,000.00 check and several little checks. He said he put in the neighborhood of \$3,000 or \$4,000; the witness knew that \$2,000.00 had been paid back when the company went into liquidation; "he got something back on the trucks"; and a credit on his account of \$500.00. He identified Government's Exhibit 145 as being a reimbursement to Mr. Lazia for part of the money he put up upon the organization of the United Bag Company. Concerning the barber shop, which is located on Fifth Street between Grand and Walnut, Mr. Lazia backed a man by the name of Green, in the opening of that shop. It was a very modern, well equipped barber shop for that locality, and had four or five chairs. original investment was \$2500.00 and when he sold it to DeGrado, in 1929, he received the sum of \$1350.00 for it. The witness identified Government's Exhibit 142 as being the proceeds of the sale of the barber shop to DeGrado. DeGrado made a loan of \$400.00 at the bank and with \$800.00 which he had, purchased the barber shop, and subsequently paid off the loan to the bank.

CROSS EXAMINATION

The witness said Government's Exhibit 145 did not show upon its face that it had reference to the bag transaction. The witness said the dog track was a terrific loss in 1927. In 1928 a forty percent interest was sold for \$20,000.00. The purchase price was made up by two notes and two drafts. All was finally paid. The purchasers knew the track had operated at a loss in 1927. They owned no part of the buildings or land, but owned a sixty percent interest in the operation. The check for \$12,000.00 used in purchasing a subsequent interest in the track, did not bear the signature of Mr. Weissman, but did bear the signature of Mr. Lazia.

The witness knew nothing about the stock in the Duke Motor Company owned by Mr. Portman. All of the dividends on the Duke stock was credited to Mr. Lazia's loan. The witness testified that he didn't tell the internal revenue agent that Mr. Lazia owned the stock, and he testified that at the time of the interview, Mr. Joseph Lazia was dead and the stock did belong to John Lazia. He told the agents that he did not own any stock in the Duke Motor Company, but that some appeared in his name; upon being asked who the owner was he said John Lazia. The witness said no questions were asked him in 1930; at that time, Mr. John Lazia was the owner of the stock.

"Q I will ask you if this question was not asked you,

'Why did you deliver the proceeds to Mr. Lazia?' and your answer was 'It is my understanding that Mr. Lazia owned the stock'? A I still answer it the same way.

"Q I will ask you if this question wasn't asked you, 'Did he tell you he was the owner of this stock on which those dividends were paid'? And if you did not make this answer, 'I do not know whether he told me or not. At the time the stock was issued, he knew it was his stock. That is all. '

"A I do not recall having ever said anything like that.

"MR. VANDEVENTER: I think that is all.

RE-DIRECT EXAMINATION

Questions concerning the ownership of stock were asked by Mr. Robert L. Sharp, the government agent who was in the court room. He was never given a copy of the statement and he never saw or signed any such statement.

RE-CROSS EXAMINATION

The witness assisted the agents in the case from time to time. He wrote them a letter in which he said \$11,000.00 was loaned to the syndicate; John Lazia signed the note, Mr. Partin signed it; he was not positive whether Mr. Weissman signed it or not; but he was there; it was not John Lazia's note, but the group's note.

"Q I will ask you if in that letter you did not state this: 'Our records show that on September 17, 1937 we loaned John Lazia \$11,000.00 which we understand went into the North Kansas City loan known as the "Dog Track."

The title stands in the name of A. L. Taylor, who has given us a deed in blank which we still hold and have held ever since. We also hold as security on the \$10,000.00 loan stock in the Duke Motor Company.'

"A I can explain that very easily.

"Q Did you write that to Mr. Robert L. Sharp, the agent?

"A I did.

"MR.VANDEVENTER: I believe that is all."

RE-DIRECT EXAMINATION

"BY MR. WALSH:

"Q And that is what your record did show? A Yes, sir.

I took that right off the records.

"MR. WALSH: that is all.

"MR.VANDEVENTER: That is all."

PHILIP H. MC CRORY, a witness on behalf of defendant, testified as follows:

DIRECT EXAMINATION

That he lives at 837 West 63rd Street, Kansas City, Missouri and has resided in that community for fifty years. The witness was the Vice-president of Atlas Brewing Sales Company, Secretary of the Riverside Jockey Club, Secretary of the T.J.Pendergast Wholesale Liquor Company. He had been acquainted with one Booth Baughman for forty years; that they were associated together in the Atlas Brew Sales Company and the Riverside Jockey Club and were partners in real estate transactions, being the joint owners of the Atlantic and Pacific Tea Company warehous building, located at 19th and Cherry, Kansas City, Missouri; that building occupying about 85,000 square feet.

The liquor business was a corporation and suspended operation during prohibition. During the summer of 1929, he loaned Mr. Lazia the sum of \$12,000.00. It was paid in two installments of approximately \$6,000.00 each, only three weeks intervening between each payment.

The payments were made in about equal amounts of cash and cashier's checks. A. M. Slavin prior to July, 1929 was always the representative of Mr. Baughman in gambling houses and gambling transactions, several of which Mr. Baughman owned during his lifetime.

He knew that cashier's checks were "used to being made out by Slavin." During the last years of Mr. Baughman's life he handled all of his money in cashier's checks. Mr. Baughman carried his money in that form because of the fear of hold-ups. During the times in question, cashier's checks passed practically as currency.

"Q I will ask you this, did you observe, during your association with Mr. Baughman, that these cashier's checks were handled as currency, passed as currency in these gambling transactions, and frequently passed without endorsement?

"MR.VANDEVENTER: We object to that for the same reasons.

"THE COURT: Overruled,

"A They were commonly used without endorsement.

"Q In other words, in a gambling transaction a man might win money for which he would get a check signed by Slavin, and might again lose it in another transaction?

"MR.VANDEVENTER: We object to that question as leading and suggestive.

"THE COURT: Sustained.

"MR.WALSH: I want to get the custom. You developed it first here.

"Q Was it or was it not a custom during that time for these checks to pass as currency, and for a man, for instance, who made a winning, to again pay back the winning in the same check or a like check?

"MR.VANDEVENTER; We object to that, if the Court please.

He has not qualified as being familiar with these transactions.

"THE COURT: He has not, as yet.

"Q Are you familiar with these transactions? A I have seen it done.

"Q How frequently? A Regularly.

"Q Was it or not a custom at that time? A It was.

"Q Were you or were you not at the places of business of Mr. Booth Baughman for some years prior to his death? "A Yes, sir.

"Q I will now ask you whether or not it was the custom in 1929 and 1930 for these checks to pass as currency and for bets to be made with them and paid with them?

"A I have seen Mr. Baughman do that, even in Florida.

"Q 'Was it a common practice? A Yes, sir.

"MR. WALSH: That is all."

CROSS EXAMINATION

Mr. Lazia paid back the money which he borrowed from the witness.

RE-DIRECT EXAMINATION

"BY MR. WALSH:

"Q When did Mr. Lazia pay this money back? A Mr. Lazia paid it back part before the holidays and some after the first of the year, within the period to the last of April.

"MR.WALSH: That is all.

"MR.VANDEVENTER: That is all.

GEORGE WASSON, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

That he was qualified as a Certified Public Accountant and said that he had made an audit of a number of accounts of the Merchants Bank in which Mr. John Lazia was interested, during the years 1929 and 1930. He identified Government's Exhibit No. 108, (the statement of questions and answers.) He said that he made an accountant set-up of those items. Mr. John Lazia never told him that he personally received any of "those checks around which the rings were drawn" from A. M. Slavin. The witness dictated the working papers upon which the items were based.

"Q I note that these items all read in the following way:

I will begin with the first one: 'Question 55, August 21, \$500.00 CC 64946, Received from A. M. Slavin, deposited.'

Why did you set it up that way'Received from A.M.Slavin, deposited'?

"A It was a cashier's check made payable to A.M.Slavin.

"Q Was A. M. Slavin the payee in each one of these?

"A Yes, sir.

"Q Was his endorsement contained on the back of each one of those? A My recollection is that it was on all of them.

"Q So in setting it up you put on 'Received from A.M.

Slavin' for what reason? A It was a matter of identification for myself on the thing. The A.M.Slavin checks I had set aside as Cuban Gardens transactions.

"Q Beginning with that first check, I will ask you if it is true that this appears there 'These were checks given by A. m. Slavin, part of Cuban Gardens transaction'; is that correct?

"A Yes, sir,

"Q In several places where the writing is, they also contain the notation that it is a Cuban Gardens transaction, do they not? A Yes.

"Q Here is September 11, 'This represents deposit to John Lazia's checking account in the amount of \$1850.00, which is a part of the Cuban Gardens transaction.' Did you see that?

"A Yes, sir.

Then we come down to the very last two, being October 15 and November 19, and there is a notation on both of those, is there not, 'Received from A. M. Slavin,' and 'This check received from A. M. Slavin, being part of Cuban Gardens, transaction'? A Yes, sir.

You had no information, or did you have any information except what is on the face of the checks or the backs of them? A As to Cuban Gardens?

"Q No, I mean as to Slavin? A No.

"Q Why did you say this check was purchased by A.M.Slavin?

"A The cashier's check and also the register of the cashier's checks indicated that."

Mr. Lazia never told the witness that the cashier's checks in question were handed to him personally by Mr. Slavin. Mr. Lazia never said anything about the Slavin checks, and to the witness, Slavin and Cuban Gardens checks were synonymous. Mr. Lazia was to explain the Cuban Gardens transactions himself. Slavin and Cuban Gardens were one and the same thing; the set-up of the statement was his set-up as an accountant; that is, that is the way it would be set up in the ordinary course of his profession, if he had no

other information.

CROSS EXAMINATION

The witness remembered Mr. Vandeventer furnished a list of "unexplained bank items" and it was the understanding in Mr. Lazia's presence that a written explanation of each item was to be given.

"Q And when you got to these Slavin items you listed them as Cuban Gardens transactions? A As I say, to my understanding, all Slavin checks and Cuban Gardens checks to me were synonymous; there was no differentiation between them for me.

"A Where did you get that information?

"A Mr. Lazia was going to take care of the Cuban Gardens transaction; he said he would explain that himself. If I may say, this list, as you say, was made up for that purpose. I think we were to meet at your office at ten o'clock of a morning and go over it, and I think I dictated on that until about two o'clock that morning and to have it ready for that particular day that we were to go up there.

"Q To refresh your recollection, I will ask you if the first time you came up to my office if it wasn't your intention to make an oral explanation?

"A Well, the understanding, I believe, the first time I came up, was to just ask a question and it was to be answered.

Orally? A Yes,

"Q And it was at later interviews that you agreed to file a written explanation, wasn't it?

"A I believe that was the understanding.

"Q And Mr. Lazia was present there at that time? A Yes.

"Q And this is the written explanation that you made and that was filed, wasn't it? A Yes, sir, it was.

"Q And Mr. Lazia was present there at that time? A Yes.

"Q And this is the written explanation that you made and that was filed, wasn't it? A Yes, sir, it was."

A proper understanding of the matter requires the quotation of the brief Re-Direct Examination.

RE-DIRECT EXAMINATION

By Mr. Walsh:

"Q, Were you up there the very last time when these conferences broke up? A I don't know what you call the last conference.

"Q How many times did you go and appear before these gentlemen? A Twice.

"Q The first time there were to be oral answers to questions, is that right? A Yes.

"Q And then it was suggested that they be put in writing, is that correct? A Well, it was not quite that way. If I understand it, the first time we were to discuss them and then the next time there was a list given out on which we were to write an answer and then we were to go up there and as each question was asked it was to be answered and discussed. I believe that is the way it was.

"Q That is the list that you made out you say that night?

"A That's right.

"Q And did you go back there the very next day?

"A Yes, the next morning; it was set for ten o'clock. I don't mean to say that we didn't have that list longer than that there was some time elapsed, I think, before I got to it. I don't mean that we just had a few hours to do it, but I just was late getting around to it and I worked late.

"Q Do you know how much time intervened between the first interview and the last interview that you were in? A No, I don't.

"Q But you were at both of them, weren't you? A Yes.

"Q And the last interview you didn't get very far in it, did you?

"A Two or three questions.

"Q You didn't get to the point of Cuban Gardens at all?

"A No, sir.

"Q And there was a disagreement, was there not, between Mr, Lazia's counsel and Mr. Riley and another gentleman, that was there?

"A There was a disagreement about the situation, as to how it was to be handled.

"Q As to how it should be handled? A That's right.

"Q Did you hear a conversation at that time between Mr. Lazia's counsel and counsel for the government with respect to it?

"A I heard two or three conversations.

"Q I will ask you in the nearest language I can to it, if the result of that meeting was not

that Mr. Lazia's counsel stated that he believed Mr. Riley was acting unfair in the matter and that he was going to ask for a new and impartial agent or agents to take charge of this examination?

"A That's right.

"Q And at that time did you not hear Mr. Nolan, and also counsel that were present, say that they had no objection to that course being taken? A That's right.

"Q And that was the end of the interview, so far as you know?

"A Yes.

"MR. WALSH: That is all."

RE-CROSS EXAMINATION

By Mr. Vandeventer:

In that interview, Mr. Wasson, the understanding was that when this was submitted, when an explanation to each of these items was submitted, that I was to assign, or have some agents assigned to check over the taxpayer's statements and see if it was correct, wasn't it? A Yes.

"Q And Mr. Lazia wanted two other agents than the ones that had been working on it for a year and a half, is that right? A I don't know if it was two others but I know that it was.

"Q He wanted others. A Yes, that is correct.

"MR. VANDEVENTER: That is all.

CHARLES W. MIDDLETON, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

That he was an attorney and counselor-at-law in Kansas City and was attorney for Solomon Weissman in his lifetime. He represented Mr. Weissman's interest in the dog track in North Kansas City, and after referring to his record, testified that he collected \$1500,00 from Mr. John Lazia in April, 1929, in behalf of Mr. Weissman, a portion of which he retained for his attorney's fee and delivered the balance to Mr. Weissman. In the same year he collected \$750,00 from Mr. Lazia for Mr. Weissman and either paid it to him direct or to one of Mr. Weissman's representatives. He recalled that he turned some of the money over to a Mr. Wisemer, a barrister and solicitor-at-law in Canada; he turned some of the money over to Samuel Miller and on another occasion when Mr. Weissman was in Minneapolis he turned over some of the money that he had collected from Mr.

Lazia to Mr. Frank Coleman, all at Mr. Weissman's request. Altogether he turned \$1500.00 over to Mr. Weissman, which he received from Mr. Lazia on account of the dog track rental, April 19, 1929; and \$1500.00 upon May 2, 1930.

He turned the 1930 payment over to Cordon Wisemer of Canada. He made a collection October 16, 1930 of \$750.00 which was Cuban Gardens rental. The witness had a conversation with Mr. Weissman and Mr. Lazia with reference to the money prior to its collection. That upon October 16, 1929 he collected \$750.00 from Mr. Lazia and upon June 5, 1930 he received another payment of \$2000.00. \$1500.00 of that amount was Mr. Weissman's portion of the rental of Cuban Gardens and the balance of a \$500.00 loan from Mr. Lazia to Mr. Weissman. He made that collection acting for Mr. Weissman,

CROSS EXAMINATION

Some of the payments were made in cash and some in checks; he did not differentiate. He said that he sent Mr. Gordon Wisemer \$250.00, and thought that he sent the money to him either by Western Union or Postal, but could not be certain about it

MRS. MARIE LAZIA, a witness produced on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

She was wife of the defendant and lived with him at the Park Central Apartments; they lived there in 1929 and 1930; at the inception they were paying \$100.00 per month rent in the apartment add that it was reduced to \$90.00. She paid the rent by checks written upon their joint account, that she did her own work and made the purchases of food and other living items. Their household expenses for those years were about \$150.00 per month, which did not include their clothing. Mr. Lazia was garbed as he was on that occasion in the court room and never wore any expensive jewelry or anything of that kind. She made some savings from the money which Mr. Lazia gave her to run the household; the cashier's check dated November 30, 1929 she had Mr. Lazia purchase for her with \$650.00, that she had saved. That upon January 8, Mr. Lazia purchased a certificate of deposit for her in the sum of \$1,000.00.

The certificate was purchased with a cashier's check for \$650.00 and another one that she owned for \$350.00. She kept the certificate of deposit for nearly two years and cashed it just before Christmas time. She identified Defendant's Exhibit 16 as the certificate of deposit which was offered in evidence and is in words and figures as

follows:

Exhibit 16

Certificate of Deposit 2696

Kansas City, Mo., Jany. 8, 1930, \$1000.00.

This certifies that Marie Lazia has deposited with the Merchants Bank of Kansas City, Mo., One Thousand Dollars payable to the order of same in current funds on the return of this certificate properly endorsed 3-6-9-13 months after date with interest at the rate of 3 per cent per annum. No interest after maturity.

(Signed) R. A. Edlund, Cashier

Not subject to check.

Endorsed: Marie Lazia. Perforated: Paid 13-9-31; 18-34

That the witness had been married to Mr. Lazia for fifteen years the 17th day of February and testified that defendant received injuries in the latter part of 1937. "Well, for the time being, he nearly lost his eye; he was ill for a long time with it."

He had three operations on his eye. In 1939 there were two or three months that he was not up at all. Both of his eyes were affected. Treatment continued during 1939 and all during the year 1930.

"Q Did it or not affect his other eye? A Yes,

"Q, I am asking you about 1939 now. Did it extent over into 1939? A Yes.

"Q And part of 1930? A Yes.

"Q Down to the end of 1930 was he still being treated constantly by physicians? A Yes, he still has to have his eye treated from time to time.

"Q I am confining my question to that time, 1939 and 1930.

Did he still suffer that way during those years? A Yes, he did,

"Q And doctors attended him? A Yes.

"Q And did he or did he not appear to be in pain, both when he was confined to his house and to his bed, and at other times during those years? A He had glaucoma, which they say is the most painful thing there is.

"Q Could you tell from the expression of his face or any spontaneous expressions of pain, whether he was suffering pain during those years. A. Intensely so, yes, indeed.

"Q Could you give the names of the doctors that attended him during these periods down

to and including the years 1939 and 1930? A Dr. Curran.

"Q He is the eye doctor. A Yes, sir.

"Q Dr. Simpson? A Yes.

"Q Any other doctors that you recall? A They were the two main doctors.

"Q What doctors performed the operations upon him?

"A Dr. Simpson performed one, the first one, and Dr. Curran the others.

"Q You say there were three altogether? A I think there was three. I remember particularly two serious ones.

"Q Dr, Simpson performed one? A Yes.

"Q And after that he was taken care of by Dr. Curran, the eye specialist? A After a time, yes.

"Q Do you recall Dr. McKee treating him during that period?

"A Yes.

"Q Around 1939 or 1930? A Yes, he did, in the beginning.

"Q During those years was there any period, we will say as long as a month, that he did not suffer this pain?

"A There was not.

"Q He suffered right along? A Yes. "

JOHN LAZIA, a witness in his own behalf, testified as follows:

DIRECT EXAMINATION

I am thirty-seven years of age and live at the Park Central Apartments. I was convicted of a felony in 1916, when I was 17 years of age, and suffered a sentence therefor and was pardoned.

In the summer of 1929, Mr. McNamee interested me in the building of a night club in North Kansas City. McNamee said that it would take about \$15,000.00 to build the night club and the witness spoke to Mr. McCrory, with reference to obtaining a loan in the neighborhood of \$15,000.00.

Mr. Baughman was present at the time. Mr. McCrory told him the next day that he would let him have \$12,000.00. That he told Mr. McNamee he was interested in furnishing the sum of \$15,000.00 if he thought he could make some money out of it and he started to construct Cuban Gardens in July of that year. First Mr. McCrory gave him \$6,000.00 in

checks and a little cash. After the expiration of two or three weeks, he gave him an additional \$6,000.00 in checks and a little cash, which were made payable to A. M. Slavin. When they were about ready to open, they found they had to do a little remodeling and they didn't get started when they expected to. The enterprise required more money than Mr. Lazia' anticipated and he complained to Mr. McNamee about it, but they continued and finally completed the building and equipped it and opened it upon the 15th day of September 1929. McNamee was supposed to put up the operating capital, but he came to defendant and said that he had not been able to get the money that he had anticipated, and because of the faith that he had in Mr. McNamee, he advanced \$6,000.00 in cash, "So he could have the operating portion of the money." Never, at any time, did Mr. Lazia make any profit out of the enterprise. Mr, Lazia became angered when Mr. McNamee failed to go along with his bargain and finally told Mr. Me Namee to go ahead and operate the place and return him the money that he had invested in it. McNamee told him at that time that there had been no profit. He told him that up to that time he had paid him absolutely no profit. During the latter part of December, Lazia presented McNamee with the cancelled checks that went into the construction of the place, including the bills and receipts and they figured it and both determined that "I still had \$13,200.00 coming from my investment." The accounting occurred probably January 8, (1930); at that time they agreed that McNamee was to give him \$6,000.00 in cash and pay him the balance at the rate of \$500.00 per week. After he paid him the balance of \$6,000.00 he still owed him \$7,200.00. "A I cancelled all agreements and relinquished all rights I had to the enterprise, I completely walked out and left everything over there to him. And I just wanted the return of my money, and that was my understanding. "

The witness then identified numerous checks as having been used in the building and equipping of Cuban Gardens.

The witness never had anything to do with the operation of Cuban Gardens. Mr. Slavin never paid him any checks personally and the checks with Mr. Slavin's name upon them, that he received, were handed to him by Mr, Baughman. He knew Mr. Slavin's relationship with Mr. Baughman prior to the opening of Cuban Gardens. The checks that Mr.McNamee gave him when he started to return the investment, were checks made

payable to him endorsed by Mr. Slavin. The witness knew of the custom among gamblers to use cashier's checks and "I knew that, and I also knew that money belonged to McNamee, because McNamee told me Slavin didn't have any money in there." Slavin never gave him personally any of the checks. The money he got from Mr. McCrory was in the form of cashier's checks, "probably a couple of thousand dollars of it was cash." The witness generally recognized (Slavin) checks, as the checks which he got from McCrory.

He never had any transaction from which he got checks directly from Mr. Slavin. Every check the witness had anything to do with signed A. M. Slavin was a part of the Cuban Gardens transaction. The witness got no more from Cuban Gardens than he invested in it. The witness got out of the hospital during the month of December 1929 and wore a bandage over his right eye all during the year 1929. The affliction made him nervous, "and this morning my eye was inflamed."

The witness testified that he was unable in either 1928 or 1929 to pursue any continuous business.

In the spring of 1927 Mr. Weissman (Solomon Weissman) told the witness that a man by the name of Partin was constructing a dog track in North Kansas City and wanted some local people interested. The witness replied that he did not know anything about dog tracks but would talk to Mr. Partin. They made an agreement to divide the track into three groups, the Weissman group, Mr. Lazia's group and Mr. Partin's group. The Lazia group consisted of the witness, his father, Mr. Charles Carrollo and Carrollo's dad. The Weissman group raised \$20,000.00 and the Lazia group \$30,000.00 to complete the construction of the track, that was in the process of construction when they entered into the enterprise. Partin was the operator and head of the track. Mr. Lazia never, at any time, had anything to do with the operation.

That about that time Mr. Lazia became incapacitated and he requested Mr. Edlund to represent him at the track.

Partin had a lease upon the ground, and about that time Partin said that, "we could buy the ground" I instructed him to talk to Mr. Weissman with reference to raising the money to purchase the ground, and finally made arrangements with the bank for a loan on the

property. Partin handled the transaction with the Braecklein heirs and had a deed drawn in his name. Mr. Lebrecht suggested that the title be taken in the name of an employee of the bank which was done and the deed placed as collateral for the \$11,000.00 loan. The entire amount was borrowed from the bank. The witness at no time made any profit out of the dog track. The dog track was not open in 1939 or 1930; he received no profits from the dog track during those two years or in any other years.

Partin and Chambers still have an equity in the land, the heirs of Weissman still have an equity in the land, and he still had an equity in the land.

Finally some Chicago people purchased a 40 per cent operating interest in the dog track and before that time Mr. Edlund reported to them that the track had operated at a terrific loss. Mr. Lazia's understanding about the matter was that the individuals of the Electric Holding Corporation had an interest in a track at Cleveland; a track at New Orleans, a track in Florida; a track in Wheeling, West Virginia; in fact, they had an interest in several tracks.

They were the owners of the patent rights of the electrical devices that were used to operate dog tracks. That was the reason they wanted an interest in the track. After the first meeting in which the Chicago group had an operating interest, Weissman asked permission to sell his interest of the remaining operating portion to the Electric Holding Company. They finally came to terms and sold it to the Chicago people. Mr. Lazia did not sell any of his operating interest. The draft for the \$13,000.00 for the purchase of Weissman's interest was made in Mr. Lazia's name; the draft was cashed at the Merchants Bank in the presence of Mr. Edlund, Mr. Woodrow and Mr. Carrollo and Mr. Goldberg. Mr. Edlund handed the money to Mr. Weissman in the witness's presence. He did not receive one cent of the sum of \$13,000.00. They made an attempt to operate the track the latter part of 1938 and an injunction was sued out against it and it has since been closed. A change of venue was taken in the injunction suit to Lexington, Missouri, and at that time Mr. Lazia's interest in the track was in the real estate. The witness told the Chicago people that he would look after the lawsuit for them. His agreement was with Mr. Stovers and Mr. Woodrow, and they promised that they would reimburse him for any money spent in the defense of the case. These gentlemen knew that he was the representative of his group in the matter. They asked him to help them out, "because I

was here locally and they were out of the city," and he did so. He employed counsel; paid the expenses of the witnesses, and the expenses totaled \$3,000.00.

They had counsel in Kansas City, had an attorney in Excelsior Springs, Clay County, Missouri, employed counsel in LaFayette County after the change of venue. He made the arrangements for the employment of the attorneys, paid the fee by check. The attorney in Lexington was paid either \$1500.00 or \$2000.00. He thereafter made an accounting to the Electric Holding Corporation, and was reimbursed by them. They first gave a note to reimburse Mr. Lazia, which was eventually paid. Defendant's Exhibit 17 introduced in evidence was an envelope containing various checks heretofore referred to, paid by Mr. Lazia for labor and material in the construction of Cuban Gardens, totaling \$19,463.41, and for the purpose of brevity are not detailed.

The sum of \$1500.00 per year which was paid for the rental of Cuban Gardens was divided by paying 50 percent of it to Mr. Weissman through his attorney, Mr. Middleton, and 50 percent by giving \$750.00 to Mr. Carrollo and his father and the remainder, or \$750.00 was kept by Mr. Lazia for himself and his dad. Mr. Lazia's part of the payment was \$375.00.

"I just went over there (Cuban Gardens) a few times with my family, just like anyone else went over." Cuban Gardens was a place that was patronized by "The nicest people in Kansas City."

Mr. Lazia had only seen Mr. Crummett once or twice "in my life" and never sat at any table with him, or had any conversation with him. He never did tell Crummett that "the fix was too high" and that that was the reason he wanted to get out of Cuban Gardens, The witness was operated upon for his eyes in November or December of 1928. He had patches on his eyes at the opening of 1928 and couldn't see.

During that year and the following year, he did not attend to any business, and "off and on, I don't believe I had as much as three or four months out of the year to myself that I could really go out." At times he could not see enough to get around outside.

For a year his right eye was dilated and he could not see at all. During that year he suffered terrible torture. The witness paid \$150.00 per month and finally \$ 90.00 per month when the rent was reduced, for his apartment. His wife did the housekeeping and their total living expenses for himself and his wife including clothing approximated

\$250.00 per month. He never told the government's agents, Riley or the other agent that his living expenses ran \$500. to \$700. per month. The agents were insisting upon knowing the facts, "and I said, 'well, probably \$300. or \$400. per month'". That was his estimate at that time. He did not tell Mr. Sharp at the interview of March 9, 1932 he had made a profit of \$12,000 or \$13,000. out of Cuban Gardens. That he told Mr. Sharp exactly what he told the jury, "I had my money returned to me. I had no profit at no time; made no profit."

The witness did not tell the government agents that he had received an inheritance from his father. His father died in 1931, upon May 9. he interview which he had with the agents was in 1933. He did tell the agents that he had received a considerable amount of money from his father, but did not say he received an inheritance. Nothing was mentioned at all about the inheritance. He said that time after time he had borrowed money from his dad and it was the only conversation there was with reference to that matter.

The rent for Cuban Gardens was raised to \$3,000.00 in 1930.

The check he received for the rental was made payable to A.M. Slavin, and endorsed by him, and was left by Mr. Slavin at the Bank for Mr. Lazia. Of this \$3,000.00, he turned half of it over to Mr. Weissman, "I had advanced the money earlier for that, Mr. Walsh, and Mr. Weissman was still indebted to me \$500.00; the way we handled those things, I would turn over to him their portion, take Carrollo's half, \$750.00 for him and his dad, and I took \$750.00

for me and my dad." That his sole receipts from that check of \$3,000.00 was \$375.00.

With reference to the second purchase of land from the Braecklein heirs, Mr. Lazia testified:

"Q Where was that with reference to the original piece of land that you bought from the Braecklein family, when you started in on the transaction? A We did not know for a long time about this little portion of land that covered a portion of the dog track, When we discovered that, it seems that Partin had a lease on that portion of ground and at no time did we know about that portion until later. After we discovered this, it was called to our attention, I knew something had to be done to protect the other interest we had in the dog track and I talked to Mr. Carrollo, I said "Here, we have our money in this; nobody

seems to care about this investment, let's you and I buy this piece of ground here so we will protect the interest we have in the other."

The grandstand at the dog track was on the west end of the circle, which was an oval where the rabbit ran upon the track. It was a quarter of a mile track; seventy yards short of a quarter of a mile and on the southeast corner there was an acre of land we did not know anything about; that was the acre of land we purchased from the Braecklein estate. Just about 70 feet of it protruded into the circle of the dog track.

The witness thought they paid \$5100. for the land, the money for which was advanced by Mr. Carrollo.

"Q Where as the title taken? A The title was taken in the name of Virginia L. McCune, who is ray mother-in-law.

"Q, Your wife's mother? A Yes, sir.

"Q And it was done for the convenience of yourself and Mr. Carrollo. A Well, that was our property and there was an injunction lying against the other ground and we did not want to confuse it with that so we just decided — we talked it over and he suggested "We will put it in someone else' name" and he suggested putting it in my mother-in-law's name.

"Q And you selected Mrs, McCune's name as the one?

"A Yes.

"Q That is all the significance that has? A That is all.

There was no rent ever collected on that."

There was never any income derived from this subsequent purchase of land. He got Mrs. McCune's permission to put title to the land in her name. She understood that it was for his convenience, Mr. Duke interested him in raising enough money to obtain an agency in Kansas City for the sale of Buick cars. The witness told Mr. Duke he had no money, but that he would talk to his father; and he thought it was a good thing, and he tried to interest his father in purchasing some of the stock. That father had a lot of confidence in Mr. Edlund's bank, and Mr. Edlund handled the transaction by which he and his father bought \$25,000 worth of stock in the Duke Motor Company.

"At that time my dad gave Mr. Edlund two certificates of deposit in the sum of \$10,000.00 and I gave him one certificate of deposit and I believe two cashier's checks, and I did not have a sufficient amount of money to put up for my fifty percent so I arranged for a loan

at the Merchants Bank for the \$8,000.00 balance for the stock. At that time, I don't recall the exact incident, but I do know there was some difference between my dad and I and I turned over \$3,000.00 of this loan to Mr. Edlund who was handling the transaction.

"Q That was in cash? A No, from the loan. We made an \$8,000.00 loan and \$3,000.00 went to Mr. Edlund and \$5,000.00 was put in my own account.

"Q Was it paid in cash or merely credited?

"A Credited. Then Mr. Edlund suggested at the bank, that they had to have this stock as collateral, and wanted the stock put in whatever name they suggested. I think at that time they wanted the entire block put over in the bank and at my insistence, I thought I should have a little in my name and they agreed to that and let me have twenty- five shares in my name,

"Q What was your part of the interest in that?

"A I had fifty percent of it and my dad had fifty percent of the entire block.

"Q Anybody else in that transaction? A No, not at that time.

A little later Mr. Portman, who had purchased \$3,000.00 worth of stock from the Duke Motor Company, wanted to sell his stock and he and my dad were close friends and my dad, I think more to accommodate him, purchased his \$3,000.00 worth of stock and we put that \$2,000.00 up also as collateral."

Now, there was a dividend collected upon that, I believe, in 1939 or 1930?

"A 1930. Of course, my dad would do anything in the world for me. I was satisfied of that and I would for him, and he told Mr. Edlund at the bank that it was all right, that he could not handle these details, that anything I would do was all right, he never doubted me and he told Mr. Edlund that anything I would suggest or do from then on on his stock or anything it was all right and Mr. Edlund credited that at that time, it was his own idea. I really don't even know about the dividend when it was paid; Mr,Edlund credited that on his own,

"Q Did you adjust that afterwards with your father?

"A Yes, sir.

"Q, And pay him this amount? A Yes, sir.

"Q, How much of that dividend did you received yourself?

"A I think the dividend was \$3160,00 and I received fifty percent of it.

Do you know the approximate date of the payment of that dividend? A No, I don't but I think some time the latter part of 1930.

"MR.WALSH: Can we agree that that was August 13, 1930?

"MR.VANDEVENTER: Yes.

"Q, Now, when did you purchase the certificate of deposit which you say was cashed for this transaction, what? A 1938.

"Q, And did you or did you not collect any interest on that?

"A I did, sir.

"Q And do you recall the amount? A That entire transaction?

"Q No, the amount of interest that you collected on March 7, 1939. A I think it was \$158.00 or something in that neighborhood.

"Q \$158.75? A I think that is the figure, yes, sir.

"Q On the rent of the dog track that was paid, I see by check of April 30th you have already recited, have you not, as to the disposition of that matter? A Yes,

"Q What the agreement was about it? A Yes.

"Q And the amount that was paid? A Yes.

"Q And out of that, the net sum that you received was how much? A \$375.00, that is from the rent, the Electric Holding Corporation check, the \$3,000,00 check,

"Q You also collected October 15 and November 19 for yourself and associates \$1500.00 rental from Cuban Gardens, did you not? A Yes, sir,

"Q And now was that divided? A The same portion, mine being on fifty percent of \$350.00, I think it was \$187.50, if I am correct.

In 1939 you collected that \$158.75 in interest, is that correct? A Yes, sir.

"Q Now, on April 14, 1930, did you or did you not collect the rent on the dog track? A Yes.

"Q And your share in that was what? A \$375.00.

"Q And did you or not receive a dividend from the Duke stock? "A Fifty percent.

"Q The total collection was \$2160.00? A Yes, sir,

"Q And \$1080.00 belonged to you? A Yes, sir.

"Q And on November 5 I see that there was a collection of rent on Cuban Gardens, is

that correct? A Yes, sir.

"Q And on November 5th, \$1000.00? A Yes.

"Q And your share in that was how much? A The sum they paid was \$1,000.00; my share was \$375.00.

"Q Altogether? A Yes, sir."

At the conference with the internal revenue agents, March 9, 1933, Mr. Lazia told them the date upon which his father had passed away and that he had borrowed large sums of money from his father; he did not say in the presence of Mr. Nolan that he had disposed of his interest in the dog track for \$13,000.00 or \$15,000.00 in the year 1929; that he tried to give them a history of the dog track incident. He likewise gave the history of Cuban Gardens and said that he did not say that he had disposed of his interest in Cuban Gardens for a sum of \$13,000.00 or \$15,000.00 in the year 1929.

Mr. Wasson was the accountant that he had employed in his case.

(WHEREUPON the government agent, Sharp, produced a transcript of a statement made by Mr. Lazia to the government agents during the preparation of the case against him and the following part of it was admitted in evidence:)

"Q I will ask you whether or not this statement was made by you to these gentlemen: 'I have come up to this office willingly at the request of Mr. Sharp. I understand that this is due to a tax investigation on my part and I feel now and I have always felt that at no time did I owe the Federal Government any tax or any other money due to any income that I have had from any source during the period of years which I understand they are investigating me and here state that should these men who are investigating on behalf of the government, find that I do owe the Federal Government any money, that I am now ready and have been at all times ready to pay the Federal Government any money that I may justly owe them, along with any penalty that they should feel I should pay them, along with any interest that might accrue, due to any negligence possibly on my part; that my acts have always been and are now in good faith.'

"A I did.

"THE COURT: Any questions on cross examination, Mr. Vandeventer?

"MR. VANDEVENTER: No questions."

Thereupon the defendant introduced in evidence items 1, 2, 4,

6 and 7 of the stipulation covering the testimony of the Hon. Guy T. Helvering, Commissioner of Internal Revenue, were he present, his presence having been waived. Said items 1, 2, 4, 6 and 7 are as follows:

"1. That the name of John Lazia did not appear on the original assessment list or lists prepared by the Commissioner of Internal Revenue for the years 1929 and 1930 as certified to the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of Missouri in the Western Division of the Western District of Missouri,"

"2, That the name of John Lazia, did not appear, nor was such name certified to the Collector of Internal Revenue of the aforesaid district upon any monthly or special assessment list or lists for the years 1929 and 1930."

"4. That no formal notice, required by law, was ever forwarded to the defendant, John Lazia, notifying him to a deficiency of his income tax returns or accounts for the years 1929 and 1930, which said formal notice is commonly described as the Commissioner's 60 (sixty) day letter.

"6. That the defendant, John Lazia, has never waived in writing, for the years 1929 and 1930, nor has he filed with the commissioner of Internal Revenue any document waiving the restrictions provided in Section 1048, Title 26, U.S.C.A. (Internal Revenue).

"7. That no jeopardy assessment was made against the defendant, John Lazia, for the years 1929 and 1930, nor have any liens been filed against any of the property of the defendant or other proceeding at law initiated that had for its ultimate purpose the securing of any income taxes that may or might be due the United States Government from the defendant, John Lazia, for the years 1929 and 1930."

Defendant saved his exception to the ruling of the court, in excluding items 3, 5, and 8, of the stipulation, which are as follows:

"3. That there is no civil proceeding now pending in any 'Court of the United States seeking to determine that an income tax was owed by the defendant, John Lazia nor for the collection of such income taxes for the years 1929 and 1930.

"5, That there is not now pending nor has there ever been a proceeding in the United States Board of Tax Appeals, that had for its purpose the establishment of a deficiency in the income tax returns or accounts of the defendant for the years 1929 and 1930.

"8. That there has never been any determination by any legally constituted officer of the

government of the United States or any court or legally constituted tribunal of a civil liability of the defendant, John Lazia, to pay an income tax for the years 1929 and 1930."

CHARLES V. CARROLLO, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

I am resident of Kansas City, Missouri and am president of the North Side Finance Company. The sum of \$3,000.00 was collected as rental on the dog track for both the years of 1929 and 1930. The owners of the real estate upon which the dog track stood were Mr. Lazia and his dad, "me and my dad"; Solly Weissman had the other half of it. Mr. Edlund was the trustee of the interested Kansas City parties and handled the biggest part of it. The witness got \$375.00 of the rental in 1929 and his father got a similar amount. That was likewise true for 1930. The witness testified he had an interest in the ground upon which Cuban Gardens stood.

In 1929 they obtained a rental of \$1500.00 upon the Cuban Gardens grounds and he received as his share of the rental \$187.50 and in 1930 they raised the rental to \$3,000.00 so that he obtained \$375.00 for his share of the rental. For 1929 additional property was bought that was situated contiguous to the dog track and a little over \$5,000.00 was paid for it. Mr. Carrollo furnished all of the money for the purchase of the property. The witness and Mr. Lazia had an equal interest in that property. Mr. Lazia subsequently paid him \$2500.00 of the money he had advanced for the purchase of the property. The property was put in the name of Mrs. McCune at his suggestion, as there was an injunction against the track,

"and I figured if something happened they would not tie up that property."

CROSS EXAMINATION

The witness was confused as to whether or not he had been convicted of a felony in the United States District Court for the Western division and district. He said his understanding was that he had paid a fine and did not plead guilty to a felony. It was shown that the witness plead guilty to a charge of conspiracy to violate a Federal law.

The witness answered some questions propounded to him July 19, 1932 by the government agent concerning his own business and his relation with Cuban Gardens. The witness was asked if he ever had made any investment in Cuban Gardens and he

answered, no.

He said he had no operating interest in Cuban Gardens. He talked to Mr. Edlund "A lot of times" about the deal, the witness knew of Mr. Lazia's interest in Cuban Gardens, thereupon the following occurred:

"Q Did you ever have anything to do with the operation of Cuban Gardens? A I don't know anything a bout it; was only there two or three times in my life.

"Q As a visitor? A Yes.

"Q Do you know who was the owner of the business? A No, sir.

"Q Did you make those answers to those questions?

"A I don't remember him even asking that question."

RE-DIRECT EXAMINATION

The witness was present when Mr. Weissman sold his interest in the dog track to the Electric Holding Corporation; it was the day upon which the check on the Chicago bank was cashed. Mr. Weissman got the cash and thereafter had nothing to do with the dog track, although he still retained an interest in the ground.

ISADORE RICH, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

That he was a practicing attorney in Kansas City and had been for ten years; that he was acquainted with Mr. Lazia and accompanied him to the interview which he had with the government's agents, Russell, Nolan, Beach and Sharp. That Mr. Lazia did not say at that interview that he sold an interest in Cuban Gardens sometime in 1929 for \$12,000.00. The witness said that Mr. Lazia very carefully detailed the interest that he had sold in Cuban Gardens, and a t the time he had gotten out he had not been paid back all that he had invested in Cuban Gardens. He told them that after he got out they paid him \$6,000.00 of the \$13,000.00 which was still coming to him from the original investment, and that they paid the balance of \$500.00 installments each week upon the balance. That Mr. Lazia never told the agents he sold an interest in the dog track for \$13,000.00 or \$15,000.00. "The \$13,000.00 discussion was about Cuban Gardens; not about the dog track."

Early in the conversation he told them the date of his father's death; later that was some discussion about his father, and he told them that in 1930 he gambled extensively and

lost a great deal of money. Mr. Nolan asked where he got the money, and he told him he borrowed from a great many people, but particularly His father; he said that offhand his father was worth maybe \$50,000.00 to \$100,000.00. That Mr. Lazia told them of the interests of the other persons with him in the dog track, and he told them who they were. That he had told them that he had made no profit on Cuban Gardens.

All of the agents examined Mr. Lazia and Mr. Lazia told them that he would be glad to answer any questions that they wanted to ask. At no time was any mention made of any inheritance which Mr. Lazia got from his father.

CROSS EXAMINATION

The witness made no notes at the proceedings and was relying upon his memory. He went there as Mr. Lazia's attorney.

The Defendant rested.

REBUTTAL

Bertha Miller, a witness on behalf of the government, testified as follows:

DIRECT EXAMINATION

That she was a stenographer in the Internal Revenue Service and had been for over eight years. She sometimes took testimony for that service and took the testimony of R. A. Edlund, cashier of the Merchants Bank, upon two different occasions; upon the last of August, 1933, then again January, 1933.

Government's Exhibit No. 198 was pages 74 to 89 inclusive and is a correct transcript of the notes she took at that time.

Thereupon that part of Government's Exhibit No. 198 was introduced in evidence as follows:

"Q, Did you ever buy any stock in the Duke Motor Company?

"A No, sir.

"Q Did you ever own any stock in the Duke Motor Company?

"A No, sir.

"Q Do you know whether any stock of that company ever appeared in your name? A Yes, sir.

"Q, Who was the owner of that stock? A John Lazia.

"Q, Was he the owner of the stock on which those dividends were paid? A I assume he was.

Why did you deliver the proceeds to Mr. Lazia?

"A It is my understanding Mr. Lazia owned the stock."

Then that part of Government's Exhibit 201 was introduced in evidence, which is as follows:

"THE COURT: Questions and answers presented to Mr. Carrollo? "MR.

VANDEVENTER: Yes, your Honor.

"MR. WALSH: I object to that as being no impeachment of Mr. Carrollo.

"THE COURT: Overruled.

"MR. VANDEVENTER: I will read it:

"Q Did you ever have anything to do with the operation of Cuban Gardens? A I don't know anything about it.

I was only there two or three times in my life.

"Q As a visitor? A Yes.

"Q Do you know who was the owner of the business? A No."

There was no cross examination.

THERE WAS NO FURTHER TESTIMONY.

THEREUPON the defendant filed his motions for a directed verdict of acquittal, being Defendant's requested instructions Numbers 1, 2, 3 and 4, which were duly overruled by the Court, and an exception thereto allowed by the Court. The said requested instructions are in words and figures as follows:

"DEFENDANT'S REQUESTED INSTRUCTION NO. 1.

At the close of all the evidence, the Court charges the jury that the evidence offered by the Government against the defendant, John Lazia, is legally insufficient to justify or support a conviction of said defendant upon the charge contained in the Information and you must return a verdict acquitting and discharging the defendant upon such charge."

"DEFENDANT'S REQUESTED INSTRUCTION NO. 2.

At the close of all the evidence in this case, the Court charges the jury that the evidence offered by the government against the defendant, John Lazia, is legally insufficient to

justify or support a conviction of said defendant on the first count contained in the indictment, and you must return a verdict acquitting and discharging the defendant on said first count of said indictment."

"DEFENDANT'S REQUESTED INSTRUCTION No. 3.

At the close of all the evidence, the Court charges the jury that the evidence offered by the Government against the defendant, John Lazia, is legally insufficient to justify or support a conviction of said defendant on the second count contained in the indictment, and you must return a verdict acquitting and discharging the defendant on said second count of said indictment."

"DEFENDANT'S REQUESTED INSTRUCTION No. 4.

At the close of all the evidence, the Court charges the jury that the evidence offered by the Government against the defendant, John Lazia, is legally insufficient to justify or support a conviction of said defendant on the third count contained in the indictment, and you must return a verdict acquitting and discharging the defendant on said third count of said indictment."

THEREUPON counsel proceeded to the argument of the case.

COURT'S CHARGE

THE COURT: Gentlemen of the jury: The trial of this case has now come to its last stage. Soon it will be submitted to you for your consideration and decision. You have been here now for nine days, actually engaged in the trial of the case during eight days, but you have been away from your homes and your places of business for nine. In all sincerity I want, first of all, most earnestly to thank you, and each of you, for the fine way in which you have so far discharged your duties as jurors, for your patience and courtesy, for the most careful attention which each of you, as I have observed, has given to the testimony of the witnesses, to the exhibits which have been offered in evidence, and to the arguments of counsel. And I cannot refrain from thanking the attorneys in this case also most earnestly and sincerely for the splendid manner in which the case has been tried from the beginning. Here is a case in which, obviously, from the number of spectators who have been present in the court room, and who are present in the court room now, there is much interest; a case which has taken much longer to try than the usual case, but the attorneys have conducted themselves

throughout in the most respectful manner to the court and jury, and with the greatest courtesy toward each other. Too often in cases which are tried there is such conduct on the part of counsel toward each other as to give pain and anguish, almost, to the court and to the jury who must observe them. There has been nothing of that kind in this case. The greater a lawyer is, generally speaking, the more nearly does he conduct himself as these gentlemen have, in a lawyer-like and courteous manner, and I am grateful to them. When you were sworn as jurors, the oath which you took was that you would decide the case according to the law and the evidence in the case. I speak of that merely because it leads up to the necessity of this charge to the jury. The purpose of the charge to the jury is to advise the jury as to what the law is, for the jury cannot decide the case according to the law unless the law is given to them by the court.

It may be that you have served as jurors hitherto in this court, some of you in other Federal courts; it may be that you have served as jurors in our state courts. If your service has been only in the courts of the state then you are familiar only with the practice in those courts in which, as you know, the charge of the court is given to the jury in writing. The jury can there take the charge to the jury room with them and refresh their memories, and it may be that sometimes they do. Here the charge is oral; it is not in writing.

You must retain it in your memories, and on that account I ask you to do what I know, even without asking it, you would gladly do. I ask you to attend carefully to what is said to you in the charge.

The court and the jury in the trial and decision of any case have separate functions to perform. In a general way you know what those functions are without my stating them, but I think it will be helpful if I do state them. It is the function of the court to decide questions of law as they arise in the preliminary stages of the case when various motions may be presented concerning the case; to pass upon questions of evidence as they arise in the trial of the case to determine whether, under the law, certain preferred testimony is competent or otherwise; and at the conclusion of the case to charge the jury as to the law; that is to say, to advise them as to what law is applicable to the issues involved, and, if that is thought to be necessary by the Court, to advise the jury also as to the facts. One other function the Court has which may or may not be exercised.

In this respect also the Federal system is different from that in our state courts with which you may be more familiar. Some reference has been made already to this function in the course of the argument.

That further function is, in the event there is a verdict of guilty, to assess the punishment within the maximum and minimum punishment provided in the statutes. Such are the functions of the Court.

The functions of the jury are quite as important, and perhaps more important. The function of the jury is to hear the testimony of the witnesses and all the evidence, and when the case has been submitted to the jury, to pass upon the issues of fact which are involved in the case, to decide the issues of fact, and upon the decision made by the jury of the issues of fact, and under the law given to the jury by the Court, to determine the final and ultimate question in the case, whether the defendant is guilty or is not guilty of the charges upon which he has been tried.

As was said by one of counsel for the defendant in this case, perhaps also by one of counsel for the plaintiff, the duty which each of you is called upon to discharge is the most solemn and important duty that a citizen ever can be called upon to discharge, certainly in a time of peace. Your decision of the issues of fact, if that decision is based upon any evidence at all, is absolutely final and supreme. The Court may err in declarations of law. If so, that error may be reviewed by appellate courts, but there is no power, judicial or otherwise, that can review the decision of the jury, if it be supported by any evidence, of a question of fact. You are supreme in that field; independent, save as you are guided by the law, by your consciences and the obligations of your oath.

Now, gentlemen of the jury, there are certain general principles of law which I shall first state to you, general in the sense that they are applicable to every criminal case and are applicable, therefore, to this, - most important principles of law. You will keep them in mind when you come to deliberate upon the issues involved here. The first of these general principles of law is that the Information and the Indictment which have been preferred against the accused, the defendant, constitute no proof whatever of his guilt of the charges laid in them. Here in this case - - I say "this case" - really, it is two cases which have been consolidated by the order of the Court because that was possible and would make possible the disposition of the whole matter in one trial, rather than in two, -

in this case there is an Information. Reference has been made to it. It has been read to you, indeed. And an Indictment. The Information is a formal charge made against the defendant upon the oath of the United States Attorney without the action of a grand jury. The Indictment is a formal charge returned by a grand jury. Neither is any more than a mere charge, a formal charge. Neither is any evidence, whatever, of the defendant's guilt, nor any evidence of any character in the case, and neither will be considered by you as any evidence in the case. Any one can be charged in an Information or in an Indictment. The United States attorney who files an Information, the Grand Jury which returns an Indictment, has heard only one side of a case, and only a part of that, it may be. So it would be grossly unfair if either an Information or an Indictment should be considered as any proof. It is not; it is a mere formal charge.

The Indictment and Information, however, though no evidence of any kind or character, are important in the trial of the case. They are important in this sense : they state the charges upon which alone the defendant is tried. Whether he is convicted or is not convicted of those charges is for the jury, under the law and the evidence, but they are the only charges upon which he is tried and unless proved guilty of those charges beyond a reasonable doubt it is the duty of the jury to find him not guilty. Whatever else may have been suggested in the testimony, or otherwise, the Indictment and the Information limit the charges to those stated in them.

Another great principle of our law which is applicable in this and all cases is that every person who is accused of an offense against the law is presumed to be innocent of that offense. That is the law of every English speaking country in the world; of every country in the world into which the English law, the Common Law of England came, or has come, as the foundation of the present law. It is not true of the law of some countries. There are countries in the world in which men are presumed to be guilty when they are charged with an offense and they must prove their innocence. Not so with us here, and it is one of the great principles that we value, - every man who is charged with a crime is presumed to be innocent. This defendant is presumed to be innocent. That presumption goes with him from the beginning of the trial to the end of the trial; until it is overcome, if it is overcome, by the testimony in the case*

A third of these fundamental and elementary principles is this: the burden is upon the

government to prove the defendant guilty beyond a reasonable doubt. If the government has not proved him guilty beyond a reasonable doubt, it is your duty to find him not guilty. If the government, as to any one of the charges upon which he is being tried has proved him guilty beyond a reasonable doubt, it is your duty to find him guilty as to that charge. What is meant when it is said that the government must prove the defendant guilty beyond a reasonable doubt? That requires some little explanation if you are to understand it rightly. It does not mean that the government must prove the defendant guilty beyond any doubt whatever. There is nothing in the world concerning which there may not be some doubt. There is not one of us who can say that there is not some doubt that he will be living tomorrow. But, that is not a doubt which would actuate our activities today or our plans for tomorrow. When it is said that the government must prove an accused person guilty beyond a reasonable doubt, it does not mean that his guilt must be proved beyond any possibility of innocence. What is meant is that the government must prove the accused guilty beyond a doubt which is reasonable. That, I think, is almost the best definition of the somewhat vague phrase "reasonable doubt." Other definitions have been given which will assist you, perhaps, in understanding what is meant when it is said that the government must prove the defendant guilty beyond a reasonable doubt. Thus it has been said, and is true, that if a doubt is of such a nature that were a like doubt, a doubt of like quality, to arise in your own personal affairs concerning some decision you are called upon to make, that doubt would lead you to hesitate in your decision, that is a reasonable doubt, or, it has been said again, if when you have considered all of the testimony in the case you have an abiding conviction to a moral certainty that the defendant is guilty, then you do not have a reasonable doubt. If, when you have considered all of the testimony in the case you do not have an abiding conviction to a moral certainty that the defendant is guilty, then you do have a reasonable doubt.

Another fundamental and elementary principle that is applicable in this case, as it is in all cases where men are charged with a violation of the criminal laws of the government, and guilt must be proved, and where facts must be proved which support a conclusion of guilt before there can be a verdict of guilty, those facts must be proved by the testimony or by necessary inferences drawn from the testimony. Those facts cannot

be arrived at by guess work or speculation. If you can arrive at the conclusion that a certain thing was a fact only by guessing at it, only by saying "perhaps that was the fact", only by speculation, that fact has not been proved. No fact required to be found can be found otherwise than upon the evidence, the testimony of the witnesses and the exhibits, as a fact proved, not one arrived at merely by guess work or speculation.

Now, these general principles of law which are general, because they are applicable to all cases, I have stated to you; you will keep them in your minds and you will apply them in this case.

I come now to what I may properly speak of as the special law of this case because what I am now about to state to you would apply only in a case of this character, and not to all cases in which men were charged with offenses against the law. This defendant is being tried in two cases upon four charges. The first of these four charges - I say first because it is the first which was filed here, is contained in the Information, case No. 12028. Three of the four charges are contained in the Indictment, in case Number 12287. The Indictment is in three counts. Now, the charge which is contained in the Information is of a like offense with the charge which is set out in the second count of the Indictment, excepting that the Information applies to the year 1929 and the second count of the Indictment to the year 1930. The first count of the Indictment contains a charge which is like the charge contained in the third count of the Indictment excepting that the third count refers to 1930 and the first count to 1929. The Information and the second count of the Indictment may be classified together, therefore, and the first count of the Indictment and the third count of the Indictment may be classified together. They are alike except they refer to different years. Moreover, there is this further distinction and further basis for classification. The Information and the second count of the Indictment charge misdemeanors. The first and third counts of the Indictment charge felonies. It is not important except that I desire you to understand the significance of the terms. Perhaps you understand the significance of those terms anyhow. A misdemeanor is an offense which may not be punished by imprisonment in the penitentiary. A felony is an offense which may be punished by imprisonment in the penitentiary, although not necessarily so punished. That is the distinction between a misdemeanor and a felony. The Information and the second count of the Indictment charge misdemeanors. I shall

speak of them first, and I shall speak of the Information alone now and then when I have concluded the discussion of the law of the case as it bears upon the Information I shall simply say that the same law is applicable in connection with the second count of the Indictment, without repeating a statement of the law.

What is the offense which this Information charges against the defendant? Generally, it charges that the defendant wilfully failed to make an income tax return showing his gross income during the year 1929, being a person who was required under the law, as is alleged in the Information, to make such a return. Now, that Information is based upon a statute of the United States. So much of it as it is necessary to read that you may understand the law of this case is as follows:

"Any person required under this Title to make a return for the purpose of the computation, assessment or collection of any tax imposed by this Title, who wilfully fails to make such return at the time or times required by law shall be guilty of a misdemeanor".

It is upon that statute that the Information is based. Any person who wilfully fails to make a return which he is required by law to make.

Who is it that is required by the law to make a return? Well, for the answer to that question, and you must know the answer to that question, we are required to go to another statute of the United States wherein it is provided who shall be required to make returns, income tax returns. That statute, so far as it is necessary to read it, is as follows:

"The following individuals shall each make under oath a return, stating specifically the items of his gross income and the deductions and credits allowed under this Title".

Then several classes of persons are named and then this class:

"Every individual having a gross income for the taxable year of \$5,000.00 or over, regardless of the amount of his net income."

So we have it now that every person who has a gross income of \$5,000.00 a year or more is required to make a return setting out what his gross income is and what deductions and credits he may be allowed or may think he should be allowed, and we have it further that if he wilfully fails to do that, being a person whose duty it is to do it, that then he is guilty of a misdemeanor.

Now, this Information charges that this defendant was one who was under a duty to

make an income tax return for the year 1929, setting out his gross income and the deductions and credits he claimed, and it charges that being such a person, so required to make a return he wilfully omitted and failed to do it.

Such is the charge contained in the Information and such the statutes upon which it is based. Now, gentlemen of the jury, I charge you that if you find and believe from the evidence in this case beyond a reasonable doubt that the defendant, John Lazia, had a gross income in the year 1929 of \$5,000.00 or more, and that having had such a gross income or \$5,000.00 or more in that year he wilfully failed to file an income tax return setting out the items of his gross income and deductions and credits claimed by him, if you find that those facts have been proved beyond a reasonable doubt, if you find them beyond a reasonable doubt then, gentlemen, it is your duty to return a verdict of guilty against the defendant as to the charge contained in the Information. If those facts have not been proved to you beyond a reasonable doubt then it is your duty to find the defendant not guilty as charged in the Information.

There are two essentials of this offense. You have noticed that. Two essentials. One is that the defendant, the accused, did have a gross income of \$5,000.00 in the year in question, and second, that having had such an income he wilfully omitted and failed to file an income tax return setting up his gross income. Two essentials.

The government must prove each of them beyond a reasonable doubt. If the government has proved each of them beyond a reasonable doubt, it is your duty to find the defendant guilty. If the government has not proven either of them, beyond a reasonable doubt, it is your duty to find the defendant not guilty, that is to say, it is not sufficient to prove that the defendant had a gross income of \$5,000.00 in 1929. That is not enough. It must also have been proved that although he had such an income the defendant wilfully failed to file a return.

Now, these essentials of the case require some explanation if you are to understand them. You must understand what is meant by the phrase "gross income" as it is used here, otherwise you cannot find out or determine whether the defendant is guilty or not. You cannot pass on that issue, you cannot determine whether that phase of the government's case has been proved. You must know what is meant by gross income.

I now explain to you what is meant by gross income as it is used here. That phrase is

defined for us in the law, although it will be found that the definition must also be explained somewhat. This is the statutory definition of what is meant by gross income as it is used in this connection: "The term 'gross income' includes" — I read only so much as is necessary to read here in this case, not all of the statute, it would take a half hour to read it all — "The term 'gross income' includes gains, profits and income derived from professions, vocations, trades, businesses, commerce or sales or dealings in property, whether real or personal growing out of the ownership or use of or interest in such property. Also from interest, rents, dividends, securities or the transaction of any business carried on for gain or profit or gains or profits and income derived from any source whatever, the amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer" and then the term gross income does not include the following items — it is not necessary to refer to items which are not included in the gross income except perhaps to one "The value of property acquired by gift, bequest, devise or inheritance is not included in the term 'gross income' ". It is not necessary to refer to the other items which are not included because there is nothing in this case which in any way calls into the case any one of those several items which are not included in gross income. Let me read the salient and important words of this definition again. You must know what gross income is if you are to decide this case upon the law and the facts. "The term 'gross income' means gains, profits and income the three important words here are the words "gains, profits and income" and of the three I think the first two, "gains and profits", are most illuminating — "the term 'gross income' includes gains, profits and income derived from professions, vocations, trades, businesses, commerce or sales or dealings in property whether real or personal growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities or the transaction of any business carried on for gain or profit or gains or profits and income derived from any source whatever, the amount of all such items shall be included in the gross income for the taxable year".

Now, gentlemen, it is not necessary for us to consider in an all-inclusive and general way what is meant by gross income because we can confine the discussion of that subject here to matters which have been presented by the evidence in this case and we can limit the discussion of what is meant by gross income to the contentions which have

been made by the government in this case. It is unnecessary to discuss some phases of the law concerning which there is no contention whatever made by the government, unless of course there is some contention made by the defendant that would involve them.

Now, the government has contended in this case that the defendant had gross income in the year 1929 — we are talking about that year now and about the Information only, — has contended that he had gross income, the items of which the government contends were not more than four or five in number. One of those alleged items of gross income in that year as I recall it is rent. Now, if an individual owns property and he rents that property to another, leases it or otherwise rents it and receives from it in a given year rent, that rent is undoubtedly an item of gross income to the extent that it is received by him for his own use and benefit. If he is representing some other person as to a part of it, why that part of it that he receives for the use and benefit of another is not a part of his gross income, of course. That which he receives for his own use and benefit as rent, that is gross income. That is one of the items that the government contends the defendant received by way of gross income in 1929. You will have no trouble with that item, that is, to say whether it is gross income or not. Another item of gross income which it is contended by the government the defendant received in 1929 as I recall it — I may not recall it with absolute accuracy, I may confuse the two years, I trust I will not -- another item that the government contends the defendant received as gross income is interest upon investments. Now, there is no question whatever that if one has money loaned out, has a bond or a note which he has received for a loan or has a certificate of deposit or if he has money loaned to another person and receives interest upon that money in a given year, there is no question that that interest so received is an item of gross income. The statute says so in so many words as I read it to you. Another contention which is made by the government as to the year 1929 is that the defendant during that year received -- I may be mistaken in this particular instance — it may be that the year 1930 alone is involved here — if so you will confine it to that year, - another contention made by the government is that the defendant received dividends upon stock. Well, there is no question that if one owns stock in a corporation and receives dividends in a given year upon that stock the dividends so received unquestionably are items of gross income.

Now, concerning such items of gross income as these three items I have just mentioned there is no difficulty.

They are items of gross income. The government also contends, as I understand the contention of the government, gathering my understanding from the opening statement of counsel for the government and the closing arguments of counsel for the government as well as from the questions asked during the course of the testimony, the government contends that the defendant in 1929 also derived a further item of gross income in that, during that year, he realized a profit upon the sale of property or a business which he owned. Now, gentlemen, if one owns a piece of property or a business and he sells that property in a given year and he makes a gain by the sale, that gain so made is an item of gross income. To make that more clear by an illustration, if a man buys a house and lot in Kansas City for \$5,000.00 in 1928 and he sells it in 1929 for \$10,000.00, or at a profit of \$5,000.00, that \$5,000.00 represents gross income, an item of gross income. The government makes one further contention and that is, if I have understood counsel correctly, that the defendant during the year 1929 received another, a fifth item of gross income, and that is that he received during that year gains or profits, which mean the same thing, from a certain business enterprise. Now, these earlier items of gross income that I have spoken of are easily understood. There is no difficulty concerning them but this item requires a little explanation. Of course, if you do not believe from the evidence that the defendant had anything to do with the operation of this business enterprise referred to, and let us be plain about it, the enterprise called the Cuban Gardens, then you will of course not need to consider at all whether he had any income from the operation of that business, but if you believe that he was an operator of that business or was a participant in its operation, then you will have to consider this contention made by the government, whether it is proved beyond a reasonable doubt. If a man is engaged in carrying on a business enterprise of any kind of course he may make a profit or gain in carrying on that business. That is what he carries it on for, that is his purpose in carrying it on. Again, he may not make a profit or a gain. How is it to be determined in a given instance whether a person carrying on a business has made a profit or a gain which is to be included within the term "gross income". Well, the situation must be viewed from the end of the year, the calendar year, unless the income tax paying year is some other, and

there is no suggestion of that in this case. The situation must be viewed from the end of the year. If the individual carrying on the business has made gains at different times in the business and suffered losses at other times, to determine what his gross income from that business has been the several gains must be added together and the several losses and the total of the losses subtracted from the total of the gains and the difference is the gross income. You do not take into consideration in arriving at the gross income the expenses of conducting the business; not that. They are to be considered in another connection, but looking at it from the end of the year or if the business is terminated before the end of the year then from its termination you determine whether there has been over that whole period a gain, a profit, something more than a mere return of investment; a gain above and beyond the investment, a gain or a profit and if there has been in that business, then that is an item of gross income. If there has been no gain then nothing can be considered as an item of gross income arising from that business.

Now, gentlemen of the jury, I say it is unnecessary to discuss gross income in general. It is sufficient to have discussed it to the extent that I have discussed it for your purposes in this case. If it has been proved to you beyond a reasonable doubt that the defendant had, for the year 1929, considering all of the items concerning which I have spoken, a gross income of \$5,000.00 and more, a gross income of \$5,000.00, then the first essential of the government's case, so far as the Information is concerned, has been proved. If that item has not been proved beyond a reasonable doubt then that is the end of the case so far as the Information is concerned and your duty would be to return a verdict of not guilty as to that charge.

As I said to you, however, there are two essential elements in this charge contained in the Information. The first is that the defendant had a gross income of \$5,000.00 or more, and the second is that having had such a gross income he wilfully failed and omitted to make the return which it was his duty to make if he had such a gross income. Now, that is an element of the case that requires some discussion and explanation, if it is to be understood by you. The government must prove this second essential of the case.

In order to prove that the defendant wilfully failed to make a return, of course it must, first, have proved the first essential, that it was his duty to make a return. Then it must have proved that he intentionally failed to make the return and that he failed to make the

return from an evil design and purpose upon his part. "Omitting to do a thing wilfully", said the Supreme Court of the United States on one occasion "implies not only a knowledge of the thing but a determination with a bad intent to omit doing it". It is necessary in order to prove this second essential to prove that the defendant intentionally failed to make a return, and that cannot be proved, of course, without proving that he knew it was his duty to make a return. If he knew it was his duty to make a return and did not make it that would be evidence which would support a conclusion that he had intentionally failed to make a return. A man who does not do his duty when he knows what his duty is may well be found intentionally not to have done it. And then the government must prove that he not only intentionally did not do it but that he did not do it from an evil design and the only evil design in this connection could be to defraud the government or to withhold from the government money which was owing to the government.

Now, gentlemen, I say to you once more, having endeavored to explain the terms used, that if the government has proved beyond a reasonable doubt that the defendant had a gross income in 1929 of \$5,000.00 or more and that he wilfully failed to make a return setting out the items of that gross income and the amount claimed by him as deductions therefrom then you will find him guilty as charged in the Information. If those facts have not been proved, and all of them, beyond a reasonable doubt then as to the Information you will find the defendant not guilty as charged in the Information.

Now, the second count of the Indictment as I have said to you, charges exactly the same offense as does the Information excepting that it concerns the year 1930 instead of the year 1929. I shall not re-state the law as it concerns the second count of the Indictment. It is the same as that concerning the Information. If the government has proved beyond a reasonable doubt that the defendant had a gross income of \$5,000.00 or more in the year 1930 and that he wilfully failed to make an income tax return for that year setting up the items of his gross income and his deductions claimed therefrom, then you will find the defendant guilty as charged in the second count of the Indictment. If all those facts have not been proved beyond a reasonable doubt you will find the defendant not guilty as charged in the second count of the Indictment.

Now I come to a discussion of the first and third counts of the Indictment and I shall

confine the discussion for the present to the first count of the Indictment and then shall say that the same principles and rules are applicable in connection with the third count of the Indictment.

What is it that the first count of this Indictment charges? What offense? It charges that this defendant wilfully attempted to evade the payment of an income tax owing by him to the government for the year 1929; wilfully and knowingly attempted to defeat and evade a tax owing by him to the government for the year 1929. This charge contained in the first count of the Indictment is based upon a statute of the United States which reads as follows, so far as it is necessary to read it:

”Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this Title or the payment thereof shall be guilty of a felony”.

This first count of the Indictment charges that the defendant owed an Income tax to the government for the year 1929; that he wilfully attempted to evade the payment of it, to defeat and evade the payment of the tax and that the manner in which he attempted to defeat and evade the payment of that tax was by omitting to file an income tax return for the year 1929.

What are the elements of this offense? Well, there are three. In the other case there were two; in this case there are three.

There are three elements here, each of which is an essential element of the offense and each of which must be proved by the government beyond a reasonable doubt, a failure to prove any one of which makes it necessary for the jury to return, as to that first count of the Indictment, a verdict of not guilty. What are the three elements? First, that the defendant owed an income tax for the year 1929; second, that he wilfully and knowingly attempted to evade the payment of the tax which he owed and, third, that the manner in which he attempted to evade the payment of the tax and to defeat it was by failing to file an Income tax return for that year.

Now, gentlemen of the jury, if the government has proved to you beyond a reasonable doubt that the defendant did owe an income tax for the year 1929; that he wilfully and knowingly attempted to defeat and evade the payment of it, and that he attempted to evade the payment of it by failure to file an income tax return for that year, if the government has proved these three elements of this offense beyond a reasonable

doubt, then it is your duty to find the defendant guilty as charged in the first count of the Indictment. If the government has failed to prove any one of the three elements constituting the offense beyond a reasonable doubt it is your duty to find the defendant not guilty as charged in the first count of the Indictment. But, here also there must be some explanation if you are fully to understand the law of the case as it applies to this count.

I have said to you that the first element is that the defendant owed an income tax. Now, you have to find whether he owed one or did not owe one before you can go any further as far as this count is concerned. Now, who does owe an income tax? Again we must go to the statute for the answer to that question. The statute provides - - I do not now turn to the precise section, but the statute provides that any person who has a net income above certain credits which he is allowed and certain deductions which he is allowed, is liable to the government for a tax upon that net income. Well then, the next question is, what is net income? That is defined for us in the statute thus: "In the case of an individual the term 'net income' means gross income less certain deductions which are allowed by the statute. Now, what are the deductions which are allowed? We must know that and we must know what credits are allowed before we can determine whether there is a taxable net income. Well, the credit which such a citizen or individual as this defendant, under the evidence, is allowed is \$3500.00, because being a married man that credit is allowed; that is to say, if he has a net income of less than \$3500.00 he does not have to pay any tax at all. And the deductions which the taxpayer is allowed in determining whether there is a taxable net income are several. I consider it unnecessary to state what all of them are. That, too, would take thirty minutes, which is no reason why they should not be given if they ought to be given, but because there has been no evidence in this case concerning any of them excepting one, as I recall. There may have been some little other evidence. One of the deductions to which a person is entitled in arriving at his taxable net income is interest paid; all interest paid or accrued within the taxable year on indebtedness. Another deduction to which the taxpayer is entitled in arriving at the taxable net income, if any, are the expenses of conducting any business in which he may have been engaged for gain or profit. I consider it is unnecessary to make any reference to other deductions which might be claimed in a case in which the

facts present would justify them.

How then are you to determine whether this defendant owed an income tax return for the year 1929? In this way; if it has been proved to you that he had a gross income for the year 1929, and if when you have subtracted from that gross income, from the amount of the gross income which it has been proved he had in the year 1929, if it has been proved he had any, when you have subtracted from that the credit to which he is entitled as a married man, \$3500.00, and also from that gross income such deductions as he is entitled to, have deducted from gross income, any other deductions to which he is entitled, if there then remains any balance, then that is a taxable net income. If those facts have been proved in this case as to the year 1929, if it has been proved that the defendant did have, after the deductions to which I have made reference, and the deduction of the credit to which I made reference, a taxable income, then it was his duty to pay a tax for that year, an income tax; then he owed an in-

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come tax for that year. Then the government will have proved the first of the three essentials of the first count charged in the Indictment.

If the government then has proved that the defendant wilfully attempted to evade the payment of that income tax and the word "wilfully" as it is used has the same meaning as that which I have already given to you in connection with the Information, if the government has proved that he wilfully attempted to evade payment of the income tax, and if the government has further proved that the manner in which he wilfully attempted to evade the payment of that tax was by failing to file an income tax for that year, if the government has proved all those essentials beyond a reasonable doubt, then the government has proved the defendant guilty beyond a reasonable doubt as to the first count of the Indictment and it will be your duty to find him guilty as to that count. If the government has failed to prove any one of the three essentials that go to make up that first count, then your verdict will be a verdict of not guilty as to the charge contained in that count.

Now as I have said to you, the charge in the third count is identical except that that

count concerns the year 1930, instead of the year 1929. As to that count , it is sufficient to say the same law is applicable to it, and to summarize that law by saying that if you find and believe from the evidence beyond a reasonable doubt that the defendant owed an income tax for the year 1930, that he wilfully attempted to evade and defeat the payment of that tax, and that the manner In which he wilfully and knowingly attempted to defeat the payment of that income tax was by failure to file an income tax return for that year, if those facts have been proved to you beyond a reasonable doubt then the government has proved the defendant guilty, and it will be your duty to return a verdict of guilty as to that count. If any one of the essentials has not been proved beyond a reasonable doubt, then as to that count of the Indictment you will find the defendant not guilty.

Gentlemen, the testimony in this case has been splendidly reviewed I think by counsel on both sides. I consider there is no occasion in this case for a review of the testimony by the court or for the expression of any opinion by the Court touching the issues in the case. That is necessary sometimes when there has been an attempt to mislead the jury or to confuse the jury. I think there has been in this case no such attempt on the part of counsel on either side, and that I would not aid you by any review of the testimony or by expressing any opinion concerning the guilt or innocence of the defendant or concerning any of the issues involved here.

Let me read to you a few requests which have been submitted to me by counsel which although requested by counsel and read by the Court are just as much a part of the Court's charge as the Court's oral charge:

"The court instructs the jury that all items and all exhibits offered by the Government in support of the charges in the Information and Indictment, which do not tend, when taken in conjunction with some other evidence offered by the Government, if the jury finds any other evidence was so offered, to prove income on the part of the defendant, then the jury is instructed to disregard in their consideration all such exhibits."

"The court instructs the jury that if you find and believe from the evidence that defendant received any gifts of money or property from his father, then you are to disregard such gifts as income, and the jury in considering what defendant's income was, if

any, must not take into consideration the gifts given defendant by his father, if they find there were any given."

"The term 'gross income' does not include the value of property acquired by gift."

"The court instructs the jury that the mere depositing by defendant of money or checks in bank, or the withdrawal of moneys from bank, or the purchasing of cashier's checks or certificates of deposit from the bank, or the mere fact that defendant had in his possession sums of money, is and of itself alone no evidence of income, and can only be considered by the jury if other evidence showing a definite income in which these transactions were involved is offered."

Other instructions have been requested, which in large part I have given in my oral charge. I shall not read any others.

Gentlemen of the jury, you are the sole judges of the credibility of the witnesses and of the weight and value to be given to their testimony. In passing upon the credibility of any witness you have a right to take into consideration his conduct and demeanor upon the witness stand; his interest, if any, in the outcome of the case; the reasonableness or unreasonableness of his testimony; its probability or lack of probability; the opportunity the witness has had to observe the facts concerning which he has given testimony; the consistency of statements made upon the witness stand with others made at other times as shown in evidence in the case, if any others are shown in the evidence in the case. All of these things you will take into consideration in passing upon the credibility of any witness, and if, taking all of these things into consideration you believe that any witness has wilfully sworn falsely to any material fact in testimony then you are at liberty to disregard the whole or any part of that witness's testimony, and you will give to the testimony of each witness just that weight and value that you may believe it is entitled to receive.

Concerning certain of the witnesses who have testified there has been testimony that they have heretofore been found guilty or have entered pleas of guilty to charges of a felony in this court or other courts. That testimony is only to be considered by you insofar as it, in your judgment, bears upon the credibility of the witness concerning which there was such proof. It has no other purpose and will be given no other significance by the jury.

Now, gentlemen, I think I have said all that I should say to you unless I shall be requested by counsel on one side or the other to add to what I have said. There is only one other thing that I wish to say that occurs to me now and that is this. Your verdict in this case must be unanimous. That is true in all courts so far as I know when criminal cases are involved. Your verdict must be unanimous. You have taken an oath that you will decide the case according to the law and the evidence and one part of that obligation was that you would decide the case. That is your duty. It is your duty to decide the case and you will not have done your duty until you do decide it. I have no doubt that you will decide it without great difficulty. I ask you most earnestly to decide the case. The verdict of the jury must reflect the conscientious judgment of each juror, the conscience of each juror must concur in the verdict when it is reached. The verdict, I repeat, must reflect the conscientious judgment of each juror, but that means his final judgment, after he has listened to what his associates have to say concerning the case. He is a strange man indeed, who would believe that his first impression is always the right one and that no other who differs from him may be right. The reasonable man, that type of man who is capable of sitting upon a jury, is a man who knows that his first impression may not be the right one and who is anxious to hear the views of his associates and who is willing, if his judgment is convinced and his conscience satisfied, to agree with his associates. I am sure, gentlemen, that that is the attitude and the character of each of you. I have that confidence in you. If that is your attitude then you will not have difficulty, great difficulty, in deciding this case. Once more I say to you, as I have said several times, that the verdict must reflect the conscientious judgment of each juror but I certainly most earnestly ask you to decide the case. How you shall decide it, that is for you, but I trust certainly that it will be decided.

Does the government desire additional instructions?

MR. VANDEVENTER; I request the Court to instruct the jury that the government is not bound by the exact amount set out in the Information and the Indictment.

THE COURT: I so charge the jury.

MR. VANDEVENTER: I believe the Court ought to say something about the thirteenth juror.

THE COURT: I will take care of that before the jury is sent out. Besides, he is not the

thirteenth juror. He is an alternate juror.

The defendant has asked of the Court instructions from 1 to 33 inclusive, and to the extent that any one of them has not been given by the Court the defendant as to that instruction and to each of them is allowed an exception.

MR. WALSH: I am going to ask the Court to charge the jury in the following manner, that if they believe and find from the evidence that the defendant acted in good faith and upon his actual belief that he was not required under the law to file an income tax return for the years 1929 and 1930 or to pay an income tax for those years and if they further find and believe from the evidence that he had no specific wrongful intent in regard to these matters, that is, that he had no actual knowledge of the existence of an obligation to file an income tax return and if he had no wrongful intention in not filing return or intention to evade or defeat the payment of an income tax for those years, then it is the jury's duty to acquit the defendant.

THE COURT: I so charge the jury. I think I did in my general charge.

MR. WALSH: Also the defendant requests the Court to charge the jury that if the defendant had an honest and actual belief that he was under no duty to file an income tax return or pay taxes, then his conduct was not wilful and he should be acquitted on all counts.

THE COURT: I so charge the jury and have done so.

MR. WALSH: I ask the Court to charge the jury in the following manner: If the defendant received rents or dividends in 1929 as a trustee for others and in a fiduciary capacity, the receipt of that money should not be figured in his gross income.

THE COURT: I do so charge the jury and I have so charged the jury. He must have received it for his own use and benefit.

Anything further, gentlemen?

Gentlemen of the jury, you will take with you to the jury room the Indictment and the Information but simply as memoranda of the nature of the charges, and also two forms of verdict, one to be used in connection with Case Number 12028, which is the case based upon the Information, and the other in Case Number 12287, the case based upon the Indictment. They read as follows, these forms:

"We, the jury, find the defendant in the above-entitled case, John Lazia", and then there is a blank, "guilty as charged in the Information." And then there is a line on which to sign.

If you find the defendant guilty you will choose your own foreman, and your foreman will sign the verdict. If you find the defendant not guilty you will insert the word "not" in the blank space, and your foreman will sign.

The form which is to be used in connection with Case Number 12287 is of the same character, except it is three forms, one for each count, and you will fill out those forms in the same way in accordance with whether you find the defendant guilty or not guilty. If you find him guilty, for example, as to Count I, you will sign that form by your foreman, and if you find him not guilty you will insert the word "not" in the blank. The same is true as to the other counts in the Indictment.

Now, I do not know just what we are going to do with this alternate juror. Something might still happen to some member of the jury. The alternate juror, the Marshal will make some provision for him and he will not participate with the jury in the deliberations of the jury unless something should happen to some member of the jury. Then he will be here ready and prepared to take the place of such a juror, if there should be one who becomes ill or otherwise.

MR. WALSH: I may make this suggestion, if Your Honor please.

There is a new law here and the way I have seen it operated is that the jury retired to the room and the alternate juror sits right outside the door within call.

THE COURT: Can that be done without discommoding the juror?

A BAILIFF: Yes.

MR. WALSH; That seems to be the practice.

THE COURT; Very well. This is new to us. Gentlemen of the you will now retire to consider of your verdict in this case.

(Thereupon, the Jury retired.)

DEFENDANT'S REFUSED INSTRUCTIONS.

No. 9.

The court instructs the jury that by 'gross income' is meant gain derived from capital, from labor, or from both combined, provided it be further understood to include profit

gained through a sale or conversion of capital assets.

And the court further instructs the jury that if they believe that no income was derived by defendant as the result of his net operations for the year 1929, they must find the defendant not guilty.

No. 10 .

The court instructs the jury that all income taxes are fixed and determined for the taxable period, which under the information and the second count of the indictment in this case is the calendar year of 1929, commencing, to wit, January 1, 1929, and ending December 31, 1929, and that it makes no difference, so far as income is concerned, if on some financial transactions during said calendar period defendant made some profit or gain, if as a result of defendant's entire financial transactions through the taxable period of 1929, as above set forth, defendant sustained a net lose, and that as a result of all of his financial transactions, defendant's net worth was less at the end of the calendar year than it was at the beginning thereof, then you must find defendant not guilty.

No. 11.

The court instructs the jury that the net result of all of the defendant's yearly financial transactions determines whether or not he had an income; and if the jury believes that the net result of all of defendant's financial transactions carried on by him in the year 1930 resulted in a loss to him for the year of 1930, then you must find defendant not guilty.

No. 15.

The court instructs the jury that by 'gross income' is meant gain derived from capital, from labor, or from both combined, provided it be further understood to include profit gained through a sale or conversion of capital assets.

And the court further instructs the jury that if they believe that no income was derived by defendant as the result of his net operations for the year 1930, they must find the defendant not guilty.

No. 17.

The court instructs the jury that you cannot conjecture or guess as to the source from which plaintiff derived, any profit or gain that might have inured to him for the years mentioned in the indictment or information, if you find he did have any profit or gain

during those years; but that you must determine beyond a reasonable doubt from what investments or business enterprises or transactions the defendant engaged in during such year, the said gains or profits, if there were any gains or profits where derived from; and the jury must further find the amount of gain and profit that defendant derived from any particular business transaction or undertaking, if they do find that he had a gain from any particular business transaction or undertaking, and in conjunction with so finding they must determine and give defendant credit for all losses that defendant sustained in the years mentioned in the information and indictment, and if they find the losses so set up and determined, if there were any such losses, were greater than his gain, then they must find the defendant not guilty.

No. 18.

You are instructed that before you can convict the defendant under the charge laid in the information or upon Count I, II or III of the indictment you must believe beyond a reasonable doubt that his failure to file income tax returns or pay income taxes for the years of 1929 and 1930 were wilful.

By wilful is meant not merely "voluntarily" but it means knowing that he should have filed income tax returns and paid income taxes in 1929 and 1930, he did not do so with a bad purpose and with an evil intent and a purpose and determination to do wrong.

If you find and believe from the evidence that the defendant acted in good faith and upon his actual belief that he was not required under the law to file an income tax return for the years 1929 and 1930 or pay an income tax for those years, then the failure to file such returns or pay such taxes was not wilful and it is your duty to acquit the defendant if you so believe.

No. 20.

The court charges the jury that mere suspicions or probabilities even if plausible, as to the guilt of the defendant do not constitute evidence, and you must not allow any fact or circumstance in this case which may not be any more than suspicion or probability against the defendant, influence you in any particular, or to any extent, in judging the innocence or guilt of the defendant under the charges under which he is being tried.

No. 24.

The court instructs the jury that if you believe and find from the evidence that the

defendant acted in good faith and upon his actual belief that he was not required under the law to file an income tax return for the years 1929 and 1930, or to pay an income tax for those years; and if you further believe and find from the evidence that he had no specific wrongful intent in regard to those matters, that is, that he had no actual knowledge of the existence of an obligation, and if he had no wrongful intention in failing to file returns or an intention or attempt to evade or defeat the payment of income taxes for those years, then it is your duty to acquit the defendant, if you so believe.

No. 25.

The court instructs the jury that it makes no difference how much money was involved in a business proposition or how much money defendant handled in financing or promoting said proposition; there is no income derived from same, unless defendant was found to have made a profit or gain out of the money so invested or handled.

No. 29.

The court instructs the jury that the mere fact that defendant handled large sums of money in and of itself is no evidence that such sums of money so handled were income.

No. 30.

The court instructs the jury that an essential element to the commission of the offense charged in the information, and in each count of the indictment, is the wilful failure of defendant to make income tax returns, and the wilful attempt to evade and defeat the payment of income taxes for the years 1929 and 1930.

The terms "wilful" and "wilfully" imply on the part of the defendant a knowledge and a purpose to do wrong.

You are therefore instructed, that unless you find in the evidence beyond a reasonable doubt that the defendant failed to make income tax returns, as required by law, and that he attempted, to wilfully evade and defeat the payment of income taxes for the years 1929 and 1930, and that such failure and such attempt was with knowledge on the part of the defendant that he was required to make such returns and to pay such taxes, and that such failure to file the returns was with the intention to evade and defeat the government of the payment of income taxes, you will acquit the defendant, or if you have a reasonable doubt of the knowledge on the part of the defendant of his duty to make such return and the intention on the part of the defendant to evade and defeat the

payment of the taxes due, you will acquit the defendant.

(To which action and ruling of the Court in refusing to give said instructions, defendant at the time then and there duly excepted and still excepts.)

After the jury had retired to consider its verdict the Bailiff reported that the jury desired to propound certain questions to the court, and. the following occurred:

THE COURT: Mr. Foreman and Gentlemen, you desire to ask some questions of the court, I am advised.

THE FOREMAN: Yes, sir. (Handing paper to the Court.)

THE COURT: Have you written them out? If so, I will be glad to read them. The questions which you have asked me are these:

Is charge No. 1 of the Indictment a felony? A The answer is "Yes", and I will write it on here.

Is charge No. 2 of the Indictment a misdemeanor? A The answer is "Yes."

Is charge No. 3 of the Indictment a felony? "Yes".

The answer is

Is charge No. 1 of the Information a misdemeanor? There is only one count in the Information, and the Information charges a misdemeanor. The answer is "Yes."

The next question is, In this case, what is the minimum and maximum punishment for a felony? I had the brief of counsel here in which that was set out; but the minimum is a fine of \$1.00 and the maximum is what, Mr. Vandeventer?

MR. VANDEVENTER: Five years and \$10,000.00 on the felony; one year and \$10,000.00 on the misdemeanor.

THE COURT: The answer to the next question touching the punishment in a case of felony is that it ranges from a fine of \$1.00 up to an imprisonment of five years and a fine.

The last question is, What is the minimum and maximum punishment in the case of a misdemeanor? The answer is from a fine of \$1.00 up to a year in jail and \$10,000.00 fine, either or both, Mr. Vandeventer?

MR. VANDEVENTER: Either or both.

THE COURT: Gentlemen, I have been glad, to answer your question Of course, you are not concerned, with the matter of the punishment. That is for the Court. Are there any other questions you would lib to ask?

Mr. Reporter, you may note exceptions for the Defendant in the information which the Court has given to the jury.

Gentlemen, I very earnestly hope you will be able to reach a verdict. I am sure you will be able to. I am going to give you still another opportunity this evening. You may retire now, and you may take this paper with you. It contains the answers to your questions.

(The jury retired from the court room, when the following proceedings were had:)

MR. DILLON: If your Honor please, I think we ought to save exceptions to that.

THE COURT: I did it for you, Mr. Dillon.

MR. DILLON: I hated to ask it without Mr. Walsh being here. It is no business of the jury and it should not be used by them in determining the innocence or the guilt of the defendant, as to what the Judge will do independent of the jury.

THE COURT: That was the reason I told them the matter of punishment was for the Court.

MR. DILLON: It looked to me as though they are trying to compromise on something over which they should give no consideration in the jury room.

THE COURT: I have no doubt that such information as I gave them could not be prejudicial to the Defendant, and it might help them.

What I have just now said was said in the absence of the jury.

Thereafter, and upon Saturday, April 14, 1934, the following proceedings were had, and evidence heard on defendant's motion to overrule the order overruling the motion for a new trial and for an order allowing the filing of a supplemental motion for a new trial:

THE COURT: You may proceed with this motion, Mr. Walsh:

MR. JEROME WALSH: If your Honor please, the jurisdiction of this court at this time has been divested. However, if your Honor entertains a similar view I have prepared a motion that I think will reach the situation so that your Honor will have jurisdiction, and I think the matter for the purpose of safety can be effected if your Honor will sustain this

motion which provides that the order allowing the appeal be temporarily set aside, so that your Honor could have jurisdiction of the matter to pass upon the new evidence raised in the motion now before you, and I ask the right in this motion that should the ruling of the Court be adverse to my contention that I be given the right to renew and re-perfect the appeal immediately after the termination of this proceeding.

THE COURT: Let me see if I understand you, Mr. Walsh. You desire to have temporarily set aside the order allowing the appeal?

MR. WALSH: Yes.

THE COURT: So that this supplemental motion for a new trial may be heard? If the supplemental motion for a new trial should be sustained of course there would be no occasion for again making the order allowing the appeal. If the supplemental motion for a new trial should be overruled. then you desire to have the order for appeal reinstated?

MR. WALSH: That is right, if your Honor please.

THE COURT: And do you desire or do you consent that if it should be reinstated the time which has already run against you should still be held as having run against you?

MR. WALSH: Yes, if your Honor please. In other words, that means that I must perfect my appeal by May 15th.

MR. WALSH: Yes.

THE COURT: Well, with that understanding the order allowing the appeal is set aside for the purpose of enabling counsel to present this supplemental motion.

MR. WALSH; And also that I be permitted to file a supplemental assignment of errors which is also necessary.

THE COURT: Yes.

MR. JOHN LAZIA appeared as a witness in support of the motion and testified as follows:

DIRECT EXAMINATION

That he took no part in the investigation of the jury panel; that he took no unusual interest in the proceedings upon the day of the voir dire examination of the jury. He gave but casual attention to it. That he was not acquainted with the juror, Albert H. Greef.

He testified that he was convicted May 9, 1916, in the Circuit Court of Jackson County, Missouri. That upon that occasion he did not personally know either the

members of that jury or their names#

He had never seen nor heard of any of that jury from that day forward, and had not heard of, seen or known anything about Albert H. Greef since May 9, 1916. He did not remember that Albert H. Greef was a member of that Circuit Court Jury; that upon May 9, 1916, Mr. Lazia was 18 years of age.

CROSS EXAMINATION

He testified that he was in the court room during all of the time of the trial of the case of the United States against John Lazia; the jurors were in the box all that time; Mr. Greef was sitting as a member of that jury; and that he did not recognize him. He said that he did not remember how long it took to try the case in the State Court. He did not remember that Mr. Greef was the foreman of that jury. He was in the court room when the jury returned its verdict, and from that day until but a few days prior to April 14, 1934, he did not know Mr. Greef was a member of that jury, nor did he recognize him.

HARRY E. WHITNEY appeared as a witness in support of the motion, and testified as follows:

DIRECT EXAMINATION

I am a deputy Circuit Clerk of Jackson County, Missouri. I have the books of the Criminal Division of that court which reflect that upon the 32nd day of the April Term, May 9, 1916, case No. 11951, State of Missouri vs John Lazia, charge being robbery in the first degree, that the jurors among others were:"** Albert H. Greef **"; it was then shown that Albert H. Greef signed the verdict of that jury as its foreman.

CROSS EXAMINATION

The trial of that case lasted one day.

ALBERT H. GREEF appeared as a witness in opposition to the motion and testified as follows:

DIRECT EXAMINATION

That he was a member of the jury that tried the Lazia case: that he did not recall he was a member of the jury that convicted Mr. Lazia previously. It was called to his attention ten days prior to April 14, 1934; that that was the first time he ever associated the two defendants as being the same person. That did not enter into his

deliberations in the jury at all,

CROSS EXAMINATION

Witness served on four or five juries in his life time. That he served on a jury or two in Pittsburg, Kansas, but he don't recall the cases. He served two or three times since he came to Kansas City, one was an arson case. That case was tried about the time of the first trial of Mr. Lazia, couldn't say what year, bat along about that time.

The witness testified he was a regular reader of the daily newspapers. He read them religiously and was a subscriber of the Kansas City Star. He remembered he had read of Mr. Lazia in the newspapers a number of times prior to February 5, 1934, He probably had been reading of Mr. Lazia for the last three or four years, "he had been rather prominent in politices"; that he never recollected of reading that Mr. Lazia had served a short time in the Missouri State Penitentiary. He recollected of reading of Mr. Lazia's activities during the past year, especially concerning his income tax difficulties.

He did not recollect how many times he had read something in the Kansas City papers about him during the past year. He would not attempt to approximate the number of times that he had read about him. When asked if he had read of him once a month during the past year, he said "If you will put it since the primaries were held I could tell you about how often I have read about him." He remembered that there was a great volume of news about Mr. Lazia's income tax difficulties during the course of the past year. He remembered that the paper said that Mr. Lazia was a prominent member of the Democratic party in this community. He said he was prominent enough to be in the newspapers all of the time. He agreed that the newspapers have been playing Mr. Lazia up for three or four years.

"Q I want to charge your recollection just as firmly as I can, Mr. Greef. During those four years did you ever read once in the Kansas City newspapers, as I say for whatever purpose the newspapers might have had in stating it, that John Lazia was an ex-convict?

A I expect I saw that; I don't recall it but I expect that I did.

Q Now, at the time that you read that statement did it not occur to you that John Lazia was the same person who was the defendant in the case that you sat on in the Criminal Court in Jackson County on May 9, 1916? A No.

Q Mr. Greef, when did you first understand that you had served on both of these juries? A About ten days ago when you called my attention to it.

Q Now, prior to the time that I called your attention to it, discussed the matter with you, I will get you to state whether or not you ever had any discussions with anybody else in this community about that fact? A No, sir.

Q Did you talk to Mr. Harold S. Bradley about it?

A After I talked with you or about the same time.

Q Wasn't it prior to the time that you talked, to me, Mr. Greef?

A Well, I think it might have been a day or two before.

Q A day or two before. Now at that time did you tell Mr. Bradley that you had served on a prior Lazia jury? A No.

Q Did you have any discussion with him about the Lazia case?

A We talked it over.

Q And did you have any discussion with reference to whether or not you had served on both of Mr. Lazia's juries?

A I don't think so because I don't think I knew it until after I saw you. However, the talk that I had with Mr. Bradley was only about ten or twelve days ago, a couple of days before I talked to you.

Q A couple of days before you saw me? A Yes.

Q And didn't you tell him that it was your best recollection at that time that you had served on a prior Lazia jury?

A I don't think so.

Q How long have you lived in Kansas City, Mr. Greef?

A Since 1907.

Q And you have only served on three juries in Jackson County since then? A Two or three."

Mr. Greef could not remember who prosecuted Mr. Lazia, who defended him or the names of any other members of the jury.

"Q But you do remember that you had some discussion with Mr. Bradley a few days before I spoke to you; that is correct, isn't it?

A Yes.

Q And the fact that you had served on both juries was discussed between you, was it not? A We talked about the Lazia case, Mr. Walsh, but whether we discussed the fact or not I don't know. We discussed this Lazia case but whether the other was discussed or not I don't know.

Q Wasn't the proposition this, Mr. Greef, that Mr. Bradley had heard of this fact and that he was so positive that there was no other man by the name of Albert H. Greef that ever lived in Kansas City that he made a bet about it, didn't he? A Yes.

Q And he bet some friends of his that the thing could not have happened because you had not lived, in Kansas City long enough to have served on a jury in this county in 1916?

A That is right.

Q And he met you on the street and asked about whether or not he had won or lost his bet, didn't he? A Yes.

Q And you told him that you were afraid he had lost his bet?

A Yes.

Q So at that time you were conscious of the fact that you had served on both juries, weren't you? A Yes; he told me that one of the jury men told him that I had. I recall that now; a man that had served on the jury.

Q And that was two days prior to the time that I spoke to you?

A That is right."

The ruling of the court upon the motion may be found in the transcript of the record proper.

The foregoing Bill of Exceptions in Narrative and Condensed form is approved and agreed to Wm. L. Vandeventer, Special Assistant to the Attorney General of the United States for the Appellee.

Frank P. Walsh, Jerome Walsh, Attorneys for the Appellant.

Upon submission to me, I, the undersigned Judge of the United States District Court before whom this cause was tried, do find the foregoing to be a true Bill of Exceptions upon behalf of the defendant, John Lazia, containing all of the evidence, testimony, exhibits and matters of exception in proper condensed and narrative form save as a proper understanding of the question presented require that the same be set forth

otherwise, and the same is hereby signed, settled, sealed and ordered filed and made a part of the record in this cause.

Dated this 7 day of May, 1934.

Merrill E Otis, United States District Judge for the Western District of Missouri.

Filed in the United States District Court May 7, 1934

FILED MAY 7 1934

A. L. ARNOLD, Clerk,

By [MS. Illegible], Deputy