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Writ of Error.

WRIT OF ERROR.

New Jersey Court of Errors and Appeals

The State of New Jersey, to the Justices
(L. S.) of our Supreme Court of Judicature.

10

GREETING:

Because in the record and proceedings, and also in
the giving of the judgment, upon a certain indictment
which was in our said Supreme Court of Judicature, be-
fore you, between the State of New Jersey, defendant-in-
error, and Daniel J. Kelly, plaintiff-in-error, on a writ
of error issued out of our Supreme Court of Judicature to
the Judge, constituting and holding the Court of General
Quarter Sessions in and for the County of Essex, as is
said, manifest error hath intervened to the great damage
20 of him, the said Daniel J. Kelly, as from his complaint
we have received information, we being willing in this
behalf to correct the error in due manner, if any there
shall be, and that speedy justice be done to him, the said
Daniel J. Kelly, do command you, that if judgment be
thereupon given, then you send it distinctly and openly
under your seal the entire record, proceedings and in-
dictment aforesaid, with all things touching and concern-
ing the same, to our Court of Errors and Appeals, be-
fore the judges thereof, on the 2nd day of January next,
30 and this writ, that the records and proceedings aforesaid
being inspected we may cause to be further done there-
upon what right and according to law ought to be done.

WITNESS, Edwin Robert Walker, our Chancellor and
President of our said Court of Errors and Appeals, at
Trenton, aforesaid, the 17th day of December, A. D.
nineteen hundred and twenty-three.

THOMAS F. MARTIN,
Clerk.

40 MOTT & BERNHEIM,
Attorneys.

RETURN TO WRIT.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

NOTICE

THIS NOTICE IS TO ADVISE THAT THE
PROPERTY OF THE STATE OF CALIFORNIA
AND THE PROPERTY OF THE STATE OF TEXAS
AND THE PROPERTY OF THE STATE OF ARIZONA
AND THE PROPERTY OF THE STATE OF NEW MEXICO
AND THE PROPERTY OF THE STATE OF COLORADO
AND THE PROPERTY OF THE STATE OF UTAH
AND THE PROPERTY OF THE STATE OF WYOMING
AND THE PROPERTY OF THE STATE OF MONTANA
AND THE PROPERTY OF THE STATE OF NEBRASKA
AND THE PROPERTY OF THE STATE OF KANSAS
AND THE PROPERTY OF THE STATE OF MISSOURI
AND THE PROPERTY OF THE STATE OF ILLINOIS
AND THE PROPERTY OF THE STATE OF INDIANA
AND THE PROPERTY OF THE STATE OF OHIO
AND THE PROPERTY OF THE STATE OF PENNSYLVANIA
AND THE PROPERTY OF THE STATE OF MARYLAND
AND THE PROPERTY OF THE STATE OF DELAWARE
AND THE PROPERTY OF THE STATE OF VIRGINIA
AND THE PROPERTY OF THE STATE OF NORTH CAROLINA
AND THE PROPERTY OF THE STATE OF SOUTH CAROLINA
AND THE PROPERTY OF THE STATE OF GEORGIA
AND THE PROPERTY OF THE STATE OF ALABAMA
AND THE PROPERTY OF THE STATE OF MISSISSIPPI
AND THE PROPERTY OF THE STATE OF LOUISIANA
AND THE PROPERTY OF THE STATE OF ARKANSAS
AND THE PROPERTY OF THE STATE OF OKLAHOMA
AND THE PROPERTY OF THE STATE OF NEBRASKA
AND THE PROPERTY OF THE STATE OF KANSAS
AND THE PROPERTY OF THE STATE OF MISSOURI
AND THE PROPERTY OF THE STATE OF ILLINOIS
AND THE PROPERTY OF THE STATE OF INDIANA
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AND THE PROPERTY OF THE STATE OF MISSISSIPPI
AND THE PROPERTY OF THE STATE OF LOUISIANA
AND THE PROPERTY OF THE STATE OF ARKANSAS
AND THE PROPERTY OF THE STATE OF OKLAHOMA

Writ of Error.

WRIT OF ERROR.

New Jersey Supreme Court

NEW JERSEY, ss.

The State of New Jersey to the Judge of
the Court of Common Pleas of the County
(SEAL) of Essex, constituting the Court of Quarter
Sessions, holden at Newark, in and for the
County of Essex, of the term of April in
the year of our Lord one thousand nine hundred and
twenty-two. 10

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Daniel J. Kelly, late of the City of Newark and County of Essex, for keeping a disorderly house wherein the said Daniel J. Kelly was charged that he in the County of Essex aforesaid, on the first day of April in the year of our Lord one thousand nine hundred and twenty-one and on divers other days and times down to the time of the bringing in of said indictment, with force and arms at the City aforesaid, in the County aforesaid, a disorderly house was kept and maintained by the said Daniel J. Kelly. 20

Pro ut the said indictment, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Daniel J. Kelly, as it is said, manifest error hath intervened to the great damage of the said Daniel J. Kelly as from his complaint, we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Daniel J. Kelly, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same 30 40

Writ of Error.

to our Justices of our Supreme Court of the State of New Jersey, on the 28th day of July, 1922, and this writ, that the record and proceedings aforesaid, being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey, ought to be done.

10 Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, aforesaid, the 10th day of July, A. D. one thousand nine hundred and twenty-two.

ENOCH L. JOHNSON,
Clerk.

MOTT & BERNHEIM,
Attorneys,

WILBUR A. MOTT,
Of Counsel.

20

The within writ presented in open court this 10th day of July, 1922.

FRED G. STICKEL, JR.,
Judge, Court of Quarter Sessions.

Presented in open court this 10th day of July 1922.

FRED G. STICKEL, JR.,

30 Bail—\$2,500.

40

Indictment.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

I, Fred G. Stickel, Jr., Judge of the Court of Quarter Session, Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the indictment, judgment record and proceedings, together with the entire record of the proceedings had at the trial and all things touching and concerning the same as by the within writ to me directed I am commanded. 10

In witness whereof I have hereunto set my hand and the seal of said Court at
 (SEAL) Newark, N. J., this 4th day of October,
 A. D. 1922.

FRED G. STICKEL, JR.,
Judge of the Court of Quarter Sessions, 20
Essex County, New Jersey.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

Be it remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the first Tuesday of April, in the year of Our Lord one thousand nine hundred and twenty-two, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Frank V. Oakes, Clinton F. McCord, Henry L. Jones, Lawrence A. Norton, Joseph T. Walsh, John H. Banta, William Bal, George N. Thompson, Carl Merz, Robert C. Lockward, William J. Milner, Fred W. McCabe, Samuel E. Oplinger, George J. Gates, Thomas Potter, James H. Trainor, John H. Hubley, Thomas A. F. Bauderman, 30 40

Indictment.

Harry M. Jones, Walter C. Schryver, Henry M. Robinson, Eugene L. R. Cadmus, John J. Hill, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex Oyer and Terminer, April term, A. D. 1922, Essex County, to wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Essex, upon their respective oaths present, that Daniel Kelly, amended Daniel J. Kelly, late of the City of Newark, in the said County of Essex, on the first day of April, in the year of our Lord, one thousand nine hundred and twenty-one, and on all the other days since and up to the taking of this inquisition, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court unlawfully did keep and maintain a certain ill-governed and disorderly house; and in the said house, for his own lucre and gain, certain persons, as well men as women of evil name and fame, and of dishonest conversation, then and on the said days and times, there unlawfully and willingly did cause and procure to frequent and come together, and the said men and women, in the said house at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tipping, fighting, committing acts of open lewdness, whoring and misbehaving themselves, soliciting women and men for the purposes of sexual intercourse, and in the said house then and on the other said days and times the possessing and the sale and the exposing for sale for beverage purposes of certain spirituous, vinous, malt and intoxicating liquors (containing more than one-half of one percentum of alcohol per volume) unlawfully and wilfully did permit,

Plea.

and yet does permit, to the great damage and common nuisance of all the citizens of the State of New Jersey, there inhabiting, being, residing and passing, to the evil example of all others in the like case offending, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

10

J. O. BIGELOW,
Prosecutor of the Pleas.

On the seventh day of June, A. D. nineteen hundred and twenty-two, on which day the said indictment was presented by the grand jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

20

And afterwards, that is to say on the eighth day of June, A. D. nineteen hundred and twenty-two, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Fred G. Stickel, Jr., presiding Judge of the Court of Common Pleas, Daniel J. Kelly, in the custody of Samuel F. Wilson, sheriff of the County of Essex aforesaid, and the said Daniel J. Kelly being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is not guilty thereof, and therefore

30

40

Judgment Record.

for good and evil he puts himself upon the country, &c., and John O. Bigelow, Prosecutor of the Pleas of said County of Essex, in this behalf doth the like.

Therefore, let a jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for
 10 the County of Essex, on the twelfth day of June, A. D. nineteen hundred and twenty-two, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Daniel J. Kelly to recognize upon their oath whether the
 20 said Daniel J. Kelly is guilty of the premises in the said indictment specified or not guilty because the said John O. Bigelow, Esquire, prosecutor, &c. as the said Daniel J. Kelly puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say, the fourteenth day of June, A. D. nineteen hundred and twenty-two, to which day the trial of aforesaid indictment was postponed, at the same Court of Quarter Sessions, holden before the Honorable Fred G. Stickel, Jr., Judge of the Court of Common Pleas, comes the said John O. Bigelow, who
 30 prosecutes as aforesaid, and the said Daniel J. Kelly, and the jury of whom mention is before made and by Samuel F. Wilson, Sheriff of the County of Essex, for this purpose empanelled and returned to wit: after the following challenges were made by the State 7 by the defendant 7, Norwood A. Hall, Paul F. Jackson, Frederick J. Leiss, George Comstock, Clarence I. Mott, James G. Fernald, Harry Groedel, Howard G. Marcell, Edward C. Taylor, William R. Prettyman, Ignatz Weiss, John C. Berry, Jr., being called were sworn upon that jury who
 40

Judgment Record.

to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the fifteenth day of June, A. D. nineteen hundred and twenty-two, when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the prosecutor, defendant and Court do say upon their oath, they find the said defendant guilty in the manner and form as charged upon this indictment, and so they say all. 10

Judgment signed Whereupon all and singular, the July 10th, 1922. premises being seen and by the FRED G. STICKEL, JR., Court now here fully understood, Judge. it is, on this tenth day of July, A. D. nineteen hundred and twenty-two, ORDERED and ADJUDGED that defendant be committed to the State Prison of this State for a term of not less than two years and not more than three years at hard labor and pay a fine of one thousand dollars and the costs upon this conviction and stand committed until said fine and costs are paid, which said costs are taxed by the Clerk at the sum of two hundred forty-two dollars and sixty-two cents, and the defendant be in Mercy, etc. 20

30

40

Theodore W. Gommoll, direct.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Wednesday, June 14, 1922.

10	STATE OF NEW JERSEY, <i>vs.</i> DANIEL J. KELLY.	}	<i>Indictment No.</i> 368. <i>April Term,</i> 1922. <i>Disorderly</i> <i>House.</i>
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Before Hon. Fred G. Stickel, Jr., Judge, and a jury.

For the State appears John A. Bernhard, Esq., Assistant
Prosecutor of the Pleas.

20 For the defendant appears Harry A. Augenblick, Esq.,
and Wilbur A. Mott, Esq., of counsel.

Jury drawn and sworn.

(Mr. Bernhard opens for the State.)

THEODORE W. GOMMOLL, sworn in behalf of the
State.

Direct examination by Mr. Bernhard.

30 Q How old are you? A Nineteen.

Q Married or single? A Married.

Q What is your business? A Taxi driver.

Q And how long have you been a taxi driver? A
About three years.

Q Driving your own taxi or working for other people?
A Working for other people.

Q Of recent months where have been your stations? A
In front of the Pennsylvania Railroad.

Q Are you pretty familiar with the City of Newark?
40 A Yes.

Theodore W. Gommoll, direct.

Q Do you know where the Lincoln Highway Inn was located? A Yes.

Q Whereabouts? A 24 Lafayette street.

Q Let's see! That is on the right-hand side of Lafayette street as you walk toward Mulberry, is that correct? A Yes.

Q And as you go past the Essex Automobile place how many doors past that is it? A About two buildings. 10

Q What kind of a building does it occupy? A You mean the cafe?

Q What was the entire building; describe the entire building first; was it a three-story building as you recall it? A I don't just recall.

Q Was it brick or wood? A Wood.

Q And to the east of it towards Mulberry street what was there? A A door. 20

Q Was there a building immediately next to Lincoln Highway Inn? A Yes.

Q Do you know who ran that place? A Yes.

Q Who? A Mr. Kelly.

Q Can you identify him? A Yes.

Q Please do so. A There he is, right there.

Q Sits back of his counsel? A Yes.

Q Have you ever been there? A Yes.

Q Go back a year; have you been there within a year? A Yes. 30

Q When were you last there, Gommoll? A About April—no.

Q I beg your pardon! A About March.

Q What kind of a car did you drive? A A sedan.

Q Did it have a meter on it? A No, sir.

Q How frequently did you go there? A Well, I used to go—maybe three times a week, twice a week.

Q Where would your car be when you were there? A Our office was right next door to it in the garage. 40

Theodore W. Gommoll, direct.

Q Your office is right next door? A Yes, right in the parking station.

Q What office is that? A Frank Wolff's.

Q So frequently you were right next door to it and sometimes in it? A Yes.

10 Q Now, what was inside, when you walked in the door what did you walk into? A Do you mean the door going to the back room?

Q Won't you describe the bar and premises occupied by Kelly? A There is a door leads into the barroom and there is a partition which partitions the back room and the bar off.

Q What kind of a partition? A I think it is wood.

Q I know, is it away up to the ceiling? A Well, I could touch the top of it with my hands.

20 Q How large a barroom was it? Point out some place in the room the width of the barroom and the length of it. A Well, the barroom is about from that partition there to this table.

Q Is that the length or width? A Length.

Q And the width? A About the same.

Q Was there a bar in it? A Yes.

Q And a brass rail in front? A Yes.

30 Q Anything else in it? A There was a bartender there.

Q Any other furniture or anything else of that kind?

A No, sir.

Q Now, then, the back room? A The back room had about ten tables in it, twelve tables.

Q How did the size of the back room compare with the size of the barroom, larger or smaller? A Larger.

Q And how much larger? A Well, say half again as large.

40 Q And when was it your custom to go there day or night? A Night.

Theodore W. Gommoll, direct.

Q What hours? A Well, it was all hours of the night.

Q Well, what is the latest hours you went there? A One o'clock.

Q Did you ever see Mr. Kelly there? A Yes.

Q How frequently did you see him there? A Nearly every time I went in. 10

Q When did you first go in? A About September, about September.

Q And from September until March you went in there three times a week? A Maybe more or less.

Q And on those occasions did you see Mr. Kelly there? A Yes.

Q Did you ever have any talk with him? A Yes.

Q Tell us some of the talk you had with him?

Mr. Mott. I object. I think you ought to bring this out in some manner relating to the indictment. It is too general and I cannot anticipate what it is, and the question should inform me a little of the scope of the answer. 20

Q Well, I assumed, of course, that your answer would relate to the indictment which we are trying.

Mr. Mott. This witness has never seen this indictment; he does not know what it is. 30

Mr. Bernhard. I ask your Honor to rule on my question.

The Court. Do you want to include in it conversations he had as to the management of the place?

Mr. Bernhard. Certainly. If the conversation is not material, of course, it will be stricken out.

The Court. Suppose you add as to the management of the place. 40

Theodore W. Gommoll, direct.

Q Did you have any conversation with him as to his connection with the place? A I don't just quite understand what you mean.

Q How did you know he ran the place? A Well, I seen him always there and he gave orders.

10 Q Well, what did you hear him say or do? A Well, I heard him say these orders, "You want to make it more quicker going in there, the people in back want to get service."

Q Did you ever see him do anything? A I seen him in the back of the bar serving.

Q How many waiters did he have on an average from September to March? A Two.

Q Do you know the names? A I know Charlie.

Q What did Charlie do? A Waiter.

20 Q Anybody else behind the bar except Kelly? A Joe Malany.

Q You knew Joe? A Yes.

Q How long did Joe work there? A I could not say.

Q What did you do there? A Well, I would get a telephone call and I would go in and they would say taxi and I would take my people out.

Q How often did you do that? A Maybe sometimes three times a week or sometimes less or more.

30 Q Well, who would you take out? A Well, different people; I could not know their names.

Q Men or women? A Men and women.

Q How often would that happen? A About three times a week, four times.

Q While you were waiting for business were you ever in there? A No, sir; unless I went in for a soda.

Q Did you ever see Kelly as you went in and called out taxi and these people came out? A Yes.

40 Q You told us you saw him in the barroom; did you ever see him in the other room? A Well, walking back to the kitchen; he used to walk back to the kitchen.

Theodore W. Gommoll, direct.

Q How many tables did you say were there? A Ten or twelve.

Q Did you ever see any other people there? A Yes.

Q On the occasions which you went there you saw other people? A Yes.

Q What kind of people? A Men and women.

Q And what is the largest number you ever saw in the back room at one time? A About—I should judge about sixteen or eighteen people. 10

Q Was there any form of entertainment there? A Only a piano there, put a nickel in it and it would play.

Q Did you have any conversation with Kelly? A Yes.

Q With reference to the conduct of the place? A Yes.

Q And the actions of the people? A Yes. 20

Q Well, what—within the time you specified, September to March? A Well, I could not just say the month.

Q Well, about; I say within the time from September to March?

Q (*By the Court.*) This talk you had with him was sometime between September and March? A Yes.

Q All right, what was it? A Well, we were standing there one night about eleven o'clock and he was behind the bar himself and I went in for a soda and he said, "If you ever get anybody with a lot of jack bring them down, there is plenty of girls here." 30

Q Did you ever see him talk with anybody there? A I seen him talk with somebody out at the bar.

Q Did you ever see him talk to anybody in the back? A No, sir.

Q How were the waiters dressed? A He had a white apron on him.

Q And these people you saw sitting at the table who were they, men or women? A Men and women, girls 40

Theodore W. Gommoll, direct.

sitting alone and some fellows sitting at the tables alone.

Q Go on. A And the girls would nod to them to come over and they would come over.

Q How often would you see that happen? A Nearly every time I went in there.

10 Q Did you ever see anything else happen between the fellows and girls in there? A No, sir.

Q Where was the telephone in Kelly's place? A Well, it was right outside of the partition; well, there was a runway where you go in the men's toilet.

Q After these people went out, after they called taxi, do you know whether or not Kelly was in and about the place? A Well, sometimes he was there.

Q I am speaking now when you went out with your people? A Yes.

20 Q How often was he there and saw these people go out to your taxi? A Nearly every time I went in he was there.

Q What was the earliest time you have been there at night? A Seven o'clock, eight o'clock—seven o'clock.

Q For what purpose? A Taxi called.

Q Do you know whether or not you ever returned to that place more than one time at night? A Yes.

30 Q What is the largest number of times you went into Kelly's place for business in one night? A Well, I went in there one night three times.

Q And how many parties did you take out that night? A Three.

Q I beg your pardon! A One night—well, I took two out the first and I think it was a couple each time after.

Q And who were the couple, men or women? A Men and women.

Q The first time you took— A Two couple.

40 Q And the next time? A A single couple.

Theodore W. Gommoll, cross.

Q And the next time? A A single couple.

Q Where did you take them? A Delawanna.

Q How frequently did you have occasion to go there on Saturday nights; do you recall Saturday from any other night? A No, sir.

Q Do you recall going there on Saturdays? A Yes.

10

Cross examination by Mr. Augenblick.

Q About how long was that barroom? A I ain't a good judge what distance, how long.

Q Well, you indicated in your direct examination that the length of the room was from that partition to the end of this table? A Yes.

Q Well, you just examine the distance and tell us whether the barroom is that long? A Well, I am saying about; I ain't saying for sure.

20

Q Would you say that the barroom was the length from that partition there to the length of the other table? A The barroom was that big?

Q Yes. A It might be.

Q It might. As you go into the barroom you face the door leading to the back room, do you not? A Yes.

Q It is quite a wide door? A Yes.

Q And the people that stand up alongside of the bar can see the interior of the back room, can they not? A Yes.

30

Q There is no door there, is there? A No.

Q It is a wide open space? A Yes.

Q At the time you visited this place were there any people in the barroom? A Yes.

Q Men? A Men.

Q And these men could see right through the rear room, could they not? Through this door? A Yes.

Q This place had the tables in the rear room, had table cloths? A Yes.

40

Theodore W. Gommoll, cross.

Q Any signs up in the rear room? A I do not recall.

Q Do you recall seeing a sign with "No loud conversation?" Do you recall any signs reading "No dancing permitted?" A No dancing permitted on Sunday, I remember that sign.

10 Q You do remember a sign like that? A Yes.

Q Are you sure about that? A I think it is, "No dancing permitted on Sunday."

Q You only think so? A Yes.

Q There is no telephone booth in the place? A No, sir.

Q It is a small telephone box. A Hung up on the wall.

Q Sort of a slot machine, is it not? A Yes.

20 Q And it is right alongside of the bar, is it not? A In the barroom at the end of the bar.

Q At the end of the bar in the barroom? A Yes.

Q And any conversation had can be overhead by the people in the barroom, can it not? A Yes.

Q The telephone is not in a secret place in the barroom? A No, sir.

Q You had a little trouble with Kelly, did you not? A No, sir.

30 Q Well, do you recall the time that you were coming from the Central Cafe and you stood in front of the Lincoln Highway Cafe and Mrs. Kelly reprimanded you, do you remember that night? A I don't ever remember having no trouble with him.

Q Do you remember the night that you stood in front of the Lincoln Highway Cafe with Stella? A No, sir.

Q Did you ever meet Stella in front of the Lincoln Highway Cafe? A I saw her going in and out.

40 Q Didn't you try to get into the Lincoln Highway Cafe with Stella? A No, sir.

Theodore W. Gommoll, re-direct—re-cross.

Q You do not remember that night? A No, sir.

Q And when Mrs. Kelly was up in her apartment above the cafe and called you down, do you remember that? A I don't know what you mean by calling me down.

Q Told you that she would not permit you to go into the cafe with Stella? A. No, sir; I never heard her say that to me.

10

Q Were you welcome in Kelly's cafe? A I always used to go in and out; they never told me to stay out.

Q Never told you to stay out? A No, sir.

Q Didn't Mrs. Kelly tell you to keep away from the place? A I do not recall her telling me that.

Q You do not recall that? A No, sir.

Q And didn't you answer her that you had enough influence with Commissioner Brennan that you could go anywhere you wanted in the city? A No, sir.

20

Q You never answered her that? A No, sir.

Re-direct examination by Mr. Bernhard.

Q One question I overlooked and I ask permission to ask it. What place to Delawanna did you take them?

A St. Elmo and Homestead.

Q What kind of places were they? A Wooden, frame houses.

30

Q Do you ever recall taking any of the people back whom you took out on the same evening? A Sometimes I waited for them and brought them back.

Q Where did you wait at any time? A Right out in the yard at Delawanna.

Re-cross examination by Mr. Mott.

Q Did you know that Stella was barred from the Lincoln Highway Cafe? A No, sir.

Q You never knew that? A No, sir.

40

Albert Mell, direct.

ALBERT MELL, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q How old are you? A Thirty-seven.

Q Married or single? A Married.

Q Where does your wife live? A 63 Peshine avenue.

10 Q What is your business? A My business has been shipyard.

Q And after that? A After that taxi driver.

Q When did you start to work as a taxi driver? A The 1st of July.

Q What year? A 1921.

Q Driving for yourself or someone else? A Yes, for myself.

Q How long did you continue in the business of a taxi driver? A Until the 28th of November.

20 Q Of last year? A Yes.

Q Where did you have your stand? A At Broad and Central—at the Central Station there.

Q What kind of car did you have? A I had a limousine, Overland taxi.

Q When did you work, nights or days? A I worked nights.

Q What time did you start out as a rule? A Twelve o'clock at noon.

30 Q And what time did you usually finish? A Two o'clock, half-past two.

Q Did you have any telephone connections? A Yes.

Q Where? A In Mr. Kelly's place.

Q And where do you say Mr. Kelly's place is located?

Mr. Mott. "Did he have telephone connections?"
You mean he had a wire running into Mr. Kelly's place, is that what the witness means?

40 *The Court.* I suppose he used the telephone to get his calls.

Albert Mell, direct.

Q What you refer to is, you got your calls for the use of your taxi over Mr. Kelly's telephone? A Yes.

Q How often did you go there? A Why, I started to go there about the first of August.

Q How long did you continue to go there? A From the 1st of August up until the night I was arrested.

Q And how often did you go there? A From the 1st of August until the 28th of November, every night, all but Sundays. 10

Q And how often did you go to Kelly's? A Every night.

Q More than once a night? A I stayed there every night in front of the place.

Q Did you ever go away and come back the same night? A Yes.

Q That is what I am trying to find out? A Yes.

Q Were you ever in the place? A I was in there every night. 20

Q How many times do you suppose on an average you were in there nightly from August to November 28th? A I was there every night.

Q What doing? A Waiting for trade, waiting for people to ride to wherever they wanted to go.

Q Did you ever get any trade out of that place? A Yes.

Q How frequently did you get trade? A Sometimes three times a night and sometimes four and sometimes none. 30

Q Did you ever see Mr. Kelly there? A Yes.

Q How often? A Every night.

Q What did you see him doing, if anything? A Well, most of the time he was sitting right in front of the opening where you look into the dance hall, sitting on a chair there.

Q Did you ever have any conversation with him? A Yes. 40

Albert Mell, direct.

Q With reference to his connection with the place? A Yes.

Q And you are speaking of conversations that took place between August and November? A Yes.

10 Q What were those conversations? A Why, one night he didn't like the place because there were nothing but whores there, and he would like to sell the place for five thousand dollars and he could only get three thousand for it.

Q Did you have any other conversation with him? A Well, we talked pretty nearly every night about different things, because I asked him if I could stand in front of his place and he told me not in front of his store, I could stand in the lot.

Q What were the entrances? A They had three entrances.

20 Q What was the third one? A One was in the saloon, one was in the dance hall and one was in the dining room.

Q Where was the entrance to the dance hall? A On the side.

Q Which side, the Broad street side or Mulberry street? A Broad street.

Q What? A Broad street.

Q Where was the other entrance? A Lafayette street.

30 Q How many doors were on Lafayette street? A One door—or two doors.

Q One door leading in the saloon? A Yes, one in the saloon, and one upstairs in his apartment where he lived and one on the side in the dance hall and one in the dining room; that was four doors into the building.

Q Were all four doors leading in from Lafayette street? A No, sir; two from Lafayette street.

Q And where were the other two? A On the side.

Q On which side? A On the Broad street side.

Albert Mell, direct.

Q All right. So you had to go down an alley to get in those two? A Yes.

Q How far down the alley did you have to go? A About twenty-five feet, between twenty and twenty-five feet.

Q When you speak of getting trade out of that place, what do you mean, patrons to be carried in your car, people to be carried in your car? A Yes, there was girls down there that were looking for trade. 10

Mr. Mott. I object and move that be stricken out.

The Court. It will be stricken out.

Mr. Bernhard. So far as there were girls there, I object to it being stricken out.

The Court. He may testify there were girls there. 20

Mr. Mott. That is admitted, yes.

Mr. Bernhard. Now, as to looking for trade, I consent that that, at this time be stricken out.

Q How did you know there were girls there? A Because there were always about fifteen or eighteen girls there.

Q How about men? A Men, yes, the same amount of men; sometimes more; sometimes there were so many men there Mr. Kelly sent me upstairs to get more chairs out of the dining room. 30

Q Did you ever see anything that occurred between the men and women? A The only thing they run from one place to another; that is what they were there for that purpose.

Q Did you ever take any of the men and women out? A Yes.

Q How many times have you taken men and women from that place? A In the two months? 40

Albert Mell, direct.

Q Yes. A Any place.

Q Where would you take them? A Delawanna, St. Elmo, Moose, furnished room houses and I would sometimes wait and bring them back to the Lincoln Highway Inn.

10 Q And when you took them back do you know whether or not they went in? A Yes, they went in again; the girls generally went out Broad street and the fellow would go in the alley way and the girls would come in later.

Q Do you know any of the girls in there? A Yes.

Q Do you know whether or not Kelly was in the place at the time these men and women left to go out in your car? A Yes.

20 Q Do you know whether or not he was there when they returned? A Yes.

Q He had charge of the receipts, the cash? A Mr. Kelly.

Q How do you know? A That is at night time.

Q I am speaking of night? A When they closed up.

Q The actual receipt, to whom was it paid? A Why, the waiters would ring up the money and put it in the cash register and after closing time Mr. Kelly would take care of it.

30 Q How do you know? A Because I seen him do that every night.

Q What kind of a cash register? A There were two there.

Q Two? A Yes.

Q Did they have any names on? A That I do not recall.

Q What was served; what I mean by that is were there meals served there? A No, sir.

40 Q Were there any signs around advertising meals for sale? A There was one sign there, "Sandwiches, eggs," and there was another sign there, "Meats—"

Albert Mell, direct.

Q (*By the Court.*) Hamburger? A Hamburger.

Q Except for those two were there any other signs?

A Not in the saloon part.

Q Were there any in the back part? A In the dancing hall part there was one sign, "No dancing on Sunday;" that was all.

Q Do you know whether or not there were menu cards; do you know what I mean? A Yes. 10

Q Did he have any menu cards in the place, so far as you saw? A No, sir; I never saw them.

Q Who served whatever was served to the people in the place? A Well, the bartender served it to the waiter that was working in the back.

Q Did you ever see anybody served at the bar? A Yes.

Q How frequently did you see that happen? A Every night. 20

Q Did Mr. Kelly do anything about the place? A Absolutely.

Q What did you see him to do about the operation and management? A Well, sometimes he would wait on the trade when they were busy and sometimes he would wait in back in the dance hall and sometimes they would be so crowded he would put them in the dining room back of the dance hall.

Q Did you ever see him talk to anybody? A Yes. 30

Q To whom? A I seen him talking to those women and to men.

Q What is that? A I seen him talking to the women there; one night I seen him sitting with a party there.

Q Did you ever sit down at any of the tables? A Yes.

Q With whom? A Some of the men and women.

Q Those men with whom you sat did you ever take those men and women out? A Yes. 40

Albert Mell, cross.

Q Was Kelly there at the time? A Yes, they used to call me there.

Q Who used to call you there? A Some of those men would call me over and ask me to take them wherever they wanted to go.

Q Did Kelly ever call you over? A No.

10 Q Did Kelly ever sit down at a table in the back part?
A Yes.

Q Were you ever at the same table with Kelly? A No, sir.

Q What is the latest you have been there? A Two o'clock in the morning.

Q Do you know whether or not he was there at that time? A Mr. Kelly, yes.

Q He lived, as I understand, upstairs? A Upstairs.

20 Q You said you knew some of the people there? A Yes.

Q How did you happen to know them? A Why, they rode in my car—you mean the girls?

Q Yes, how did you happen to know them? A They rode in my car.

Q How often did you see them there? A Every night until two of them were put out.

30 Q Any other girls? A Yes, the same bunch hung out there altogether.

Cross examination by Mr. Mott.

Q The girl whom you saw put out, one of them was the girl Stella? A Yes, and her sister.

Q Who put them out? A Mr. Kelly.

Q Was there a policeman there? A With Isabelle there was; he sent to the police station because he sent up after her.

40 Q Mr. Kelly told you to send for a policeman? A He called up; I was there when he called up himself.

Albert Mell, cross.

Q And Mr. Kelly sent for a policeman himself who came and put Isabelle out? A Yes.

Q Was that before or after Mr. Kelly put the two girls out? A That was before he put the other one out.

Q He had a policeman put Isabelle out? A Yes, she took a fit there every night and he put her out.

Q And then later on he put Stella out? A Then 10
later on Stella got drunk there and hit a fellow with a beer bottle and he put her out, yes.

Q You said that when you would go back with these parties—these, whatever these are—that the men would go in one way; how did you say that? A When I used to go back the girl used to get off the corner of Broad and Lafayette street and the fellow used to ride back in the alley and get off in the alley and pay me what he owed me and go back in the saloon and the girl would come in later on to sit at the same table with him. 20

Q The girl would come back later on? A Yes.

Q About how long after the man got in the place would the girl come? A About five minutes; they would go in the toilet first.

Q You have been convicted of crime? A I have been, to my sorrow.

Q Well, you have been, never mind your sorrow? A Yes.

Q You have been convicted of the crime of procuring? 30
A Yes.

Mr. Bernhard. I object.

Mr. Mott. I will consent that the answer be stricken out. Now, I insist I may show the crime.

The Court. I think the defendant may show the crime.

Mr. Bernhard. The State may show it, the defendant may not show it.

Q You were convicted of procuring? A Yes. 40

Albert Mell, cross.

Q (*By the Court.*) Did you ever take girls out of there more than once? A Yes.

Q (*By the Court.*) The same girls? A Yes.

Q (*By the Court.*) I mean on the same night? A Yes.

10 Q (*By the Court.*) And each occasion when you took them out was Mr. Kelly there? A Yes.

Q (*By the Court.*) The same girl? A Yes.

Q (*By the Court.*) When you saw these girls in the back room what were they doing there? A Sitting there drinking and smoking.

Q (*By the Court.*) Anything else? A That is all I know, but running from one table to another.

Q (*By the Court.*) What do you mean by that? A Well, if two or three men come in they would go over and sit down with them or sometimes they would call
20 the men over and sit down with them.

Q (*By the Court.*) Did any of these girls ever hire your taxi cab? A Any of these girls?

Q (*By the Court.*) Yes. A Yes.

Q (*By the Court.*) Would they hire the cab in the saloon? A No, they would go outside.

Q (*By the Court.*) Did you ever have any conversation with Kelly about taking girls and men out of the place? A Yes.

30 Q What conversation did you have? A I told him one night it was a pretty rotten business.

Q (*By the Court.*) You told him what? A I told him one night it was a pretty rotten business.

Q (*By the Court.*) Well, what did he say to that? A Well, that is the night he told me that he wanted to get out of the place and he said there was nothing but whores anyhow and he wanted to sell the place for five thousand dollars.

40 Q (*By the Court.*) When was that? A That was in the middle of August, about.

Albert Mell, cross.

Q (*By the Court.*) And you continued to go there until the end of November? A I continued to go there until the 28th of November when the detectives got me.

Q Were the conditions worse then? A I have never been there since.

Q (*By the Court.*) After your conversation with Kelly since he made this statement you say he made did you continue to take girls out of there? A No, sir. 10

Q (*By the Court.*) You say you had a conversation with Kelly about the middle of August in which he said there was a lot of whores—A Yes.

Q (*By the Court.*) Did you take girls out after that? A No; that is the time I had an argument with these two girls and they got somebody to lick me and that is the time I said I would not do that stuff any more, that was the last night.

Q Did you see any girls there after? A Yes. 20

Q And were they still at the table in the back room? A Yes.

Q Do you know whether or not or don't you know it was against the rules for the girls to go around from one table to another and speak to the men? A That is the first I had been in the back room and I don't know.

Q Which was the first? A About the middle of August. The 1st of July I started in hacking up to the last of July and there was nothing doing nights and one of the taxi drivers told me to stand in front of the place there and I did, but before I went there I asked Mr. Kelly if I could stay there and he said yes in the alley. 30

Q Well, now, I am asking you whether or not you don't know whether it was against the rules for the girls to go to the table and speak to the men? A I didn't know.

Q Did you learn that later on? A Yes.

Q When did you learn that? A I learned that later on, knowing my own conscience. 40

Albert Mell, re-direct.

Q I asked you if that was the rule of Kelly? A I didn't know that.

Q I just asked you if you don't know it was the rule of the house? A I don't know, sir.

Q That the girls were not to go from one table to the other? A I don't know.

10 Q (*By the Court.*) Did you ever see them do it when Kelly was there? A Yes, Kelly was always there every night.

Re-direct examination by Mr. Bernhard.

Q You have been sentenced upon your conviction; just answer yes or no to that, you received a sentence? A Yes.

Mr. Mott. I object and ask to have the answer stricken out.

20 *The Court.* I will allow the question to stand.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

Judge.

30 Q I will ask you another question, but be sure not to answer until Mr. Mott has had an opportunity to object. What sentence did you receive?

Mr. Mott. I object. My objection to that, your Honor, is that the conviction of crime is shown just for the purpose of attacking the credibility of the witness. The particular crime of which he was convicted is competent, because one crime involves a good deal of moral turpitude and another may not. I don't think any of us would be very much ashamed if at sometime we had been convicted of

Albert Mell, re-direct.

slapping somebody in the face, while if a man has been convicted of rape it is a very serious matter and would affect his credibility, but the only thing that the statute allows is the fact of the conviction, and, therefore, I object to this question.

The Court. I will withhold decision upon that point until after recess. 10

Q One other question. Did you ever see drinks served there? Now, that word drinks means just exactly what it says, any liquid, any refreshment? A Yes.

Q Did you ever see any people order of the waiters? A Yes, I have served it myself.

Q What have you heard ordered by the patrons of that place and the waiters who were employed there within the time that you were there? A What drinks? 20

Q Yes. A Why, near beer, Philadelphia bottled brew, orangade and gin and ginger ale highballs.

Q Now, then, after those orders were given do you know whether or not they were served? A Yes, they were served.

Q Do you know whether or not at the time Kelly was in the place? A Yes, he served them himself sometimes.

Q Do you know whether or not those drinks were paid for? A Yes. 30

Q In your presence? A Yes.

Q Do you know whether or not anything was rung up on the cash register? A Yes.

Q (*By the Court.*) Did you ever see anybody drunk there? A Yes.

Q (*By the Court.*) More than one? A Yes.

Q (*By the Court.*) Men or women? A That I know personally, one girl and one man; they got paralyzed there, which I took out, both of them, which Mr. Kelly told me to take out. 40

Barclely Grey, direct.

Re-cross examination by Mr. Mott.

Q You say one girl, you mean Stella or Isabelle? A Well, I think both of them got drunk there, but I saw one man that got drunk and I took home, that lived in a certain place in Newark, that I had to carry out.

10 BARCLEY GREY, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q How long have you been connected with the police department? A Eleven years past.

Q To what duties have you been assigned more recently? A Vice squad.

Q How long have you been assigned on the vice squad? A Five years past.

20 Q Do you know where the Lincoln Highway Inn was located on Lafayette street? A Yes.

Q How long was it located there to your knowledge? A To my knowledge it has been located there from November, 1921.

Q What indicated that it was known as the Lincoln Highway Inn? A It was reported as a disorderly house.

Mr. Mott. I ask to have that stricken out.

30 *Mr. Bernhard.* I consent it be stricken out. It not was a reply to my question.

Q What indicated that it was known as the Lincoln Highway Inn, was there a sign there? A Yes.

Q Where was the sign? A In front of the place.

Q Whereabouts? A Right in front of the saloon.

Q Was it on the windows or was there a sign across the place? A No, sir; an electric red sign, Kelly's Cafe.

Q Were you ever there? A In the place?

40 Q Yes. A No; not in the place during his time.

Barcley Grey, direct.

Q During whose time? A During the time this man had it.

Q Were you ever there during the time Kelly operated it? A Not in the place.

Q Out in front? A Yes, I covered the place.

Q What do you mean by covering the place? A From the outside. 10

Q How often? A Well, from November 2nd, 1921, to about January 15 or 16, 1922.

Q How many times during that period of time did you cover the place on the outside? A About four or five different times.

Q Did you make a report of what you saw? A Yes.

Q A written report? Yes.

Q To whom did you submit your report? A Captain Sebold. 20

Q What did you see there? A Well, on the night of November, I think it is the second, if I ain't mistaken, on the report we were covering the place and one couple left the place by the side entrance and came to the taxi in the front of the place, the taxi number was 33157, New Jersey.

Q Who was the driver of that taxi, do you know? A Mell, I believe.

Q Where were you when you saw the people go into the taxi? A In the Central Railroad yards. 30

Q Across the street, isn't it? A Yes.

Q What time? A Between 8:30 and 12 midnight.

Q How long did you stay that night? A Well, it was between them hours, I don't just recall.

Q During the time you were there did the taxi return? A Yes.

Q Anything else that you noticed? A Well, another night, which I have dated on my report here Monday, eight couple left the same place. 40

Barclay Grey, direct.

Q Between what hours? A Between eight and twelve.

Q What do you mean by couples? A Men and women.

Q Where did they go?

Mr. Mott. Well, if you know.

10

A In the taxi.

Q In whose taxi did they go? A The same taxi I mentioned, 33157.

Q And upon any other occasion did you notice anything? A On the night of January 15th.

Q What about that? A We arrested a couple who left that place.

Q Who did the arresting? A Officer Van Docas and I.

20

Q What time did that couple leave there? A They left about eleven-thirty; a man came from the front door of the saloon and he waited in front of the place and about two or three minutes afterwards a girl came from a side entrance in the alley way, came through the alley way and met him on Lafayette street in front of the place; they walked east on Lafayette street to Mulberry street and south on Mulberry street to Cottage street and entered 12 Cottage street, a furnished room house.

30

Q What did you do? A Officer Van Docas and I covered the place for a matter of fifteen or twenty minutes until they came out.

Q And then what? A Placed them under arrest and took them to headquarters where they made a statement.

Q Now, then, between the time that you covered the place did you notice anything else? A Outside of that arrest?

Q Yes. Did you go there after that date? A After the 16th?

40

Q Yes. A I might have been there a couple of nights after.

Barclay Grey, cross.

Q Well, then, during the time you were making these observations did you see Mr. Kelly? A I would see him come from the barroom and stand in front of the—on the street in front of the place, because I never entered the place.

Cross examination by Mr. Mott.

10

Q I understand you to say that there is a sign, an electric sign in front of that place, or there was then, that read, "Kelly's place." A If I can recall it right there is a sign in front of the place at 24 Lafayette street.

Q Oh, now, officer, we are not here for some kind of a sign; you said there was a sign there— A Red electric.

Q Wait a minute. You said there was a sign there, "Kelly's Cafe;" is that true?

20

Mr. Bernhard. I object. He did not say that; he said sign or something like that.

Mr. Mott. I ask to have the record read. I may be mistaken; I don't think I am.

(Testimony read as follows:) Q The Lincoln Highway Inn, was there a sign there? A Yes.

Q Where was the sign? A In front of the place.

Q Whereabouts? A Right in front of the saloon.

30

Q Was it on the windows or was there a sign across the place? A No, sir; an electric red sign, "Kelly's Cafe."

Q Now, I ask you did you ever see an electric red sign with the words "Kelly's Cafe," yes or no?

Mr. Bernhard. You do not have to answer yes or no. If you know you can answer it yes or no.

A As far as I can recall there was a sign "Kelly's Cafe" in front of the place.

40

Barclay Grey, cross.

Q Are you guessing at that or is that your memory? A That is my memory.

Q Are you sure at all? I want you to commit yourself to something? A As far as I can recall there was a red sign there in front of the place.

Q Oh, yes, maybe there was a sign, but the words
10 I am interested in was the words "Kelly's Cafe." A If I ain't mistaken the words "Kelly's Cafe" was on the sign.

Q Well, I am asking you are you just guessing about that, officer, or does your memory itself so serve you? A I would not say I was guessing, but I am pretty sure it was there.

Q I just want to know how good your memory is; I am not questioning your memory at all. A Well, that is what I say was in front of the place, "Kelly's Cafe."

20 Q All right. You say that now, do you? A Yes.

Q Now, I understand that you say that on November 2nd you saw two couples leave the place. A That was on the 2nd or 3rd I saw a couple leave the place.

Q What was the date when you saw eight couples? A I think my report states the 7th or thereabouts.

Q About the 7th of November? A Yes.

Q And on the 15th you saw this couple leave the place that you subsequently arrested? A Yes, they left on
30 foot.

Q Now, they left on foot and how did you say they walked? A Why the man left the saloon first.

Q How long before the woman? A Well, I would say a matter of a minute or two.

Q Where did the man go, which way did he go? A He stood right about three or four feet below the street and waited on the pavement—the sidewalk.

Q And then where did they go? A Then the woman came from the side door, through the alley way, and met
40 him in front of the saloon on Lafayette street.

James Caffrey, direct.

Q He came out of the front door? A Yes.

Q And the woman came out of the side door? A Yes.

Q And walked around and met him in front? A Yes.

Q And walked through the streets you named? A Walked through to Mulberry street and down Mulberry street to Cottage street and went into number 12 Cottage street, a furnished room house. 10

JAMES CAFFREY, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q You are a member of the police department of the City of Newark? A Yes.

Q Assigned to what duties recently? A Patrolman now, at present. 20

Q The latter part of 1921 and the early part of 1922 what? A October 1st I was on suspension; October 30th I was reinstated and transferred to the Fourth Precinct.

Q Do you know where the Lincoln Highway Inn is located? A I do.

Q Were you ever there? A Yes.

Q When? A July, 1921.

Q How many times—was that the first time, Mr. Caffrey, you had been in that place? A Yes. 30

Q How many times, if at all, after that day, were you there? A All the time.

Q Were you alone or was someone with you on that day? A Officer Day.

Q What did you do? A Why, we were assigned to the vice squad to get evidence.

Mr. Mott. I object to what you were assigned to get evidence, the question was what did you do? 40

James Caffrey, direct.

Q (*By the Court.*) What did you do in the place? What did you do? A Why, I went in and asked for liquor.

Q Where did you go? A In the barroom.

Q What time? A I believe it was in the evening.

Q Whom did you ask? A The bartender.

10 Q Was Kelly present? A No, sir.

Q Where was the bartender? A Behind the bar.

Q Did you know him? A I did not.

Q For what did you ask? A For whiskey.

Q Was anything served to you after you asked for whiskey, was anything served? A Whiskey.

Q What did it cost you? A I cannot recall what it did cost me.

Q What did you do with it? A Put it in a bottle.

20 Q What did you do with the bottle? A Brought it to Captain Sebold's office, vice squad.

Q When? A The same night.

Q Did you mark it in any way so that you could identify it? A Yes.

Q Look at the bottle I show you and tell us whether or not you ever saw it before? A Yes.

Mr. Mott. Have we fixed the time?

The Court. July, 1921.

30 Q (*By Mr. Mott.*) When you brought this whiskey?
A Yes.

Q Is that the bottle? A Yes.

Q Was Day with you at the time? A Yes.

Q And that was the only time you were there? A Yes.

Q (*By the Court.*) Did Day buy any whiskey? A No, I bought the whiskey.

Q (*By the Court.*) Did Day have any whiskey? A No.

40

Cross examination waived.

John L. Day, direct.

JOHN L. DAY, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q You are a member of the police department how long? A About three years.

Q Were you with Mr. Caffrey on the day in July when he mentioned when he went to the Lincoln Highway Inn? A Yes. 10

Q Do you recall the time? A The time of the day?

Q Yes. A Well, it was in—well, I should judge about five o'clock.

Q Had you ever been there before? A No, sir.

Q Did you ever go after that time? A No, sir.

Q That was the only time you visited that place? A Yes.

Q Did Caffrey do anything? A Yes.

Q What did he do? 20

Mr. Mott. I want to object. I did not to the other officer. Mr. Bernhard, if this question is intended to draw out that he bought a drink, I want to object to it. I am assuming that this question is to draw from the witness the fact that he saw Caffrey buy a drink. I object on the ground that in July, 1921, there was no law in the State of New Jersey which made it unlawful so to do. I object to this testimony that in July, 1921, there was no law in New Jersey which made it unlawful for this man to buy a drink. 30

The Court. I will allow it for the purpose of showing the character of the place.

Mr. Mott. I want to object to that, because a lawful act cannot be offered for the purpose of showing that the place was disorderly.

Mr. Bernhard. It was unlawful at the time.

The Court. Well, furthermore, if I have to rule upon that particular point, I do not understand 40

John L. Day, direct.

that the Van Ness Act decision made it lawful to sell liquor, and certainly the Eighteenth Amendment and the National Prohibition Act did make it unlawful.

10 *Mr. Mott.* Whatever force there may have been in the federal statute it has not been pleaded in this indictment.

The Court. I will allow it.

Mr. Mott. Well, now, may I understand that this is the ruling, is it on the ground that this act was in violation of both the State law and the national law?

The Court. I will decline to specify the grounds and admit it.

20 *Mr. Mott.* Well, I object to this question, first on the ground that there was no law in the State of New Jersey which made it unlawful. I object to it for the second reason that the so-called Volstead Act is not pleaded in this indictment, and, therefore, evidence of its violation is improper.

The Court. I will overrule your objection.

Defendant's counsel prays an exception to this ruling of the Court.

30 Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRED G. STICKEL, JR.,

Judge.

Q (Question read.)

Mr. Mott. Perhaps I did not state the final objection that I should and that is that the so-called Volstead Act is not pleaded in this indictment.

Mr. Bernhard. You said that.

40 *The Court.* I overruled it and granted an exception.

Edsell T. Badgley, direct.

A We bought some whiskey.

Q What did he do? A We went in the place and called for whiskey and was served whiskey.

Q What did he do with the whiskey that was served to him? A Put it in a bottle.

Q How much did it cost? A Why, I believe it was— I had a cigar there and a soft drink and I think it cost us 10
\$1.00 or a \$1.10, something like that.

Q And that is the only time that you were there? A That is the only time.

Cross examination by Mr. Mott.

Q There was one drink of whiskey served, is that right? A Yes.

Q And you didn't have a drink? A No, I had a cigar and soda.

Q (*By the Court.*) What was done with the money? A 20
It was put in the cash register; the bartender rang it up.

Q The bartender rang it up on the cash register, did he? A Yes.

EDSELL T. BADGLEY, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q What is your business? A Police officer.

Q About eleven or twelve years? A Seven years; 30
maybe a little bit more.

Q Assigned to what work in the latter part of last year and the early part of this year? A Why, I believe it was December 17th, I am not sure of the date, on a Saturday night, I was detailed in uniform to watch the class of people that went into Kelly's cafe.

Q By whom were you detailed? A I was detailed by Captain McRell.

Q And in what precinct? A And Sergeant Widmar.

Q You were detailed by those two superiors? A 40
Yes.

Edsell T. Badgley, direct.

Q Then you were connected with the first precinct? A I was motorcycle officer and I was supposed to be working there.

Q Were you in uniform or not? A In uniform.

Q What position did you take there; I mean what position on the street? A Why, I went to the gasoline station there and there is a glass door facing the side entrance of Kelly's cafe; I stayed in the door there that night and I saw Gommell and saw several of the taxi men there.

Q Could you see inside of the place? A And I watched—

Q Could you see inside of the place? A No, sir.

Q From that position? A No, sir; you could see who went in.

Q All right. Go ahead. A And I stayed there and counted between thirty and forty women; of course, it might be different women or it might be the same women two or three times.

Q You don't know that? A I saw the one woman go in there and come out three or four times.

Q How many nights were you there? A This one night, Saturday night.

Q Is that the only time you were there? A With the exception of March 9th we raided the place.

Q Now, then, before we reach March 9th; during the time you were there at the station you have told us about did anybody speak to you; just yes or no? A Yes.

Q Did you see from what place that person came and spoke to you? A He was standing, I think, on a porch or little step like in front of Kelly's cafe.

Q Had you ever seen him before? A No.

Q Have you ever seen him since? A Never.

Q How long had you been there at the time this person spoke to you? A About three hours.

Edsell T. Badgley, direct.

Q Now, then, March, what happened then? A March 9th we went to the place with Federal Prohibition Agent Cooper.

Q Who? A Officer Gissel, Cawler and Gorman.

Q What did you do? A The Federal man inspected his bar and found a large glass containing whiskey.

Q Is this the big glass you speak about? A That is the glass. 10

Q Did you mark it? A Well, I cannot remember, but I poured the whiskey—yes, I marked it.

Q Look at it and see whether you did? A That is my signature.

Q Now, that is the glass? A Yes.

Q You say that contained whiskey? A That contained whiskey.

Q How much whiskey did that contain? A I believe it was about there (indicating on the glass). 20

Q It was about to the bottom of the broad label? A Yes, about that much I should say.

Q Where was it? A Sitting in back of the bar.

Q Was there anybody in back of the bar at the time you found this glass there? A The bartenders.

Q Did you see Kelly around? A No, sir.

Q Did you even know him? A Didn't know him.

Q Didn't know him? A No.

Q Did you find anything else? A No, I didn't find that, the prohibition man, I believe, found it. 30

Q But I understood it was found in your presence? A It was found in my presence.

Q Now, then, was anything else found in your presence? A We didn't look for anything more.

Q What did you do with the whiskey that was in the glass? A I poured it into a bottle.

Q Where did you get the bottle that you poured it into? A Why, there was a box, I believe, with some empty bottles sitting right near the end of the bar. 40

Edsell T. Badgley, cross.

Q Look at this bottle; it looks to me like a White Rock bottle; is that the bottle? A That is the bottle.

Q Did you mark that? A I did.

Q Is that your mark on the label? A Yes.

Q Well, now, what did you do with the glass first? A Well, I smelled of the glass.

10 Q Did you deliver it to anybody?

Mr. Mott. You may ask leading questions.

Q Did you turn it over to anybody? A I poured it into the bottle.

Q Did you turn the glass over to anybody? A I turned the glass over to Officer Cawler.

Q Who did you turn this over to? A The bottle also.

20 Q Do you know whether ultimately they reached the hands of Captain McRell? A They did.

Cross examination by Mr. Mott.

Q Did you ever stand in front of Achtel-Stetter's restaurant on Broad street for any length of time? A No, sir; I didn't; I didn't have occasion to do so.

Q No, I didn't ask you whether you had occasion; did you ever stand in front of the Washington restaurant? A No, sir.

30 Q For any length of time? A No, sir.

Q I understand you to say that prohibition enforcement agent Cooper first found this whiskey? A I believe he did; he handed it to me.

Q Well, you were there, weren't you? A He handed it to me.

Examined by the Court.

40 Q Were these women that you saw going in and out of the place with or without escorts? A Some went in without escorts and came out with escorts.

Edsell T. Badgley, cross.

Q Where did they go? A Some got in a taxi cab and some went around the corner and up towards Broad street and some went towards Mulberry street.

Q Did you see them coming alone? A I did.

Q And did you see them going out alone? A No, sir.

Cross examination (continued) by Mr. Mott.

Q Were you able to recognize these women then from the fact that you saw them come in? Just answer my question? A Yes. 10

Q You could recognize some of the women? A By their dress.

Q You mean to say that when you saw a woman go in you fixed her in your mind as to how she was dressed? A By her dress; by her dress; some had light cloaks on and a red hat, a girl with a light coat and a red hat entered that place three or four times that night, another one had a fur coat on, and a dark hat. 20

Q Well, was there only one girl or woman that had a fur coat or dark hat on? A Well, I only noticed the one with the fur coat and there were others who had brown coats and there were thirty or forty girls I counted that entered there.

Q Well, now, you feel a little better.

Mr. Mott. I will ask to have his answer stricken out. 30

The Court. I will decline so to do. I will allow the answer to stand.

Q I am asking you how you know a particular woman who went in without an escort came out with one? A Well, a light coat and a red hat.

Q Well, then, that is one? A That is one.

Q Any other? A Another one had a dark coat and a light hat.

Q That is two? A Another one came out with a fur coat, the only one I noticed around that place. 40

John C. Cooper, direct.

Q That is three? A And the rest of them I didn't pay particular attention to.

Q Then you saw three women go in there? A Frequently.

Q That night I am talking about. A That night.

Q And come out each with a man, is that right? A
10 Why—

Q Is that right? A Yes.

JOHN C. COOPER, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Q Are you the Mr. Cooper referred to who went into the Lincoln Highway Inn with Mr. Badgley? A Well, I am the man that went in there on the 9th of March.

Q Well, he was with you? A Yes.

20 Q Did you take anything out of that place? A I took some whiskey in a glass; I handed it to them; I found it.

Q Where did you find the glass? A Behind the bar.

Q And you handed it to whom? A One of the officers.

Q No, whom, was it Badgley? A Yes.

30 Cross examination waived.

ROBERT C. LAWRENCE, sworn in behalf of the State.

Direct examination by Mr. Bernhard.

Mr. Bernhard. I am trying to trace the bottle and the glass from the time that it left. The purpose of the examination of this witness is to trace the glass and bottle into the chemist's hands.

Mr. Mott. I am disposed to admit that because I do know they did that.

Albert E. Edel, direct—cross.

The Court. Then it is admitted for the purpose of the record that this whiskey which was found in this place got into the hands of the chemist.

Mr. Bernhard. And the State.

Mr. Mott. Yes.

ALBERT E. EDEL, sworn in behalf of the State. 10

Direct examination by Mr. Bernhard.

Mr. Mott. The qualifications are admitted.

Q Doctor, did a bottle which I show you with a label on, which contains No. 622, reach you? A It did.

Q When? A March 15th, 1922.

Q Did you examine its contents? A I did.

Q What did you find? A 45.47 per cent. of alcohol by volume.

Q Did another bottle reach you? A A little bottle. 20

Q Does this contain a number? A 306.

Q Did this bottle come to you? A It did.

Q When? A August 16, 1921.

Q Did you examine the contents? A I did.

Q What did you find? A 42.27 per cent. of absolute alcohol by volume.

Q It was not quite as strong as what was in the big bottle? A No, three per cent. difference.

Cross examination by Mr. Mott. 30

Q Was the contents of either of these bottles whiskey?

A Yes, whiskey.

Q Both of them whiskey? A Both.

RECESS.

Edsell T. Badgley, cross.

EDSELL T. BADGLEY, recalled for

Cross examination by Mr. Mott.

10 Q On the occasion when you saw thirty or forty women go in and come out of Kelly's place, as you have told us, where were you? A I was in the gasoline station that has a glass door in it, facing the side entrance of Kelly's cafe.

Q How far was that gasoline station from the side door or door of Kelly's place? A I should judge about twenty-five or thirty feet.

Q Isn't it considerably more than that? A To my knowledge, no.

Q You were inside looking through the glass? A Looking through the glass, yes.

20 Q That is a parking station, isn't it? A A parking station, yes.

Q Park cars on both sides of it? A There were no cars parked to my observation or you couldn't see who was going in or coming out.

Q No, I don't mean that, they do park cars on both sides of that station? A What do you mean on both sides?

Q Well, all around. A No, the gasoline station sticks out on the sidewalk side.

30 Q And there is a parking station between it and Kelly's; they park cars there between it and Kelly's saloon? A I don't believe they park down far enough to block that station.

Q I don't say there were any cars there the night you were looking; I am just saying there is a parking station between the gasoline station and Kelly's cafe? A Well, I believe that is about the center of the drive where the parking is; they park even with the station and to the back.

Stella Kwiatkowsky, direct.

Q (*By the Court.*) In other words, while there is a space there it is not a space for the parking? A That is not even with the parking.

Q I am not suggesting that there were any cars between you and Mr. Kelly the night you were looking out, but I am just asking if there isn't a parking place between the place where you were and Kelly's saloon and restaurant? A Well, that question I do not understand what you mean. 10

Q (*By Mr. Bernhard.*) How much room was there between the nearest wall of the gasoline station and the nearest wall of Kelly's place? Do you understand that question? A I should judge from the gasoline place, the shanty where I was in, is about twenty-five or thirty feet from Kelly's place.

STELLA KWIATKOWSKY, sworn in behalf of State. 20

Direct examination by Mr. Bernhard.

Q How old are you? A Twenty-two.

Q How long have you been in Newark, Stella? A I have been in Newark two years; I have been away for last summer's vacation and I came back August 15th.

Q August 15th what year? A 1921.

Q How long were you away on your vacation? A Three months. 30

Q So that you were in Newark about a year and a half before you were on your vacation, is that about right? A Yes.

Q Where did you come from to Newark? A South River, New Jersey.

Q With whom did you live there? A My mother.

Q When you came to Newark, where did you go? A I lived 48 Mulberry street.

Q Did you work? A Yes, housework. 40

Stella Kwiatkowsky, direct.

Q After you came back from your vacation in August, 1921, where did you then go to live? A I was living on Washington street.

Q Did you do any work? A Yes.

Q Where? A In the ice cream parlor; there was an ice cream parlor and little candy store.

10 Q Whereabouts? A On Washington street.

Q The same place you lived? A No, sir; I lived one block away from it; I lived one block away from it.

Q I heard you. Do you know where the Lincoln Highway Inn was located? A Yes.

Q Whereabouts? A 24 Lafayette street.

Q How do you know? A Because I have been there.

Q When did you first go there? A The first time I came back to Newark.

Q That would be in August? A Yes.

20 Q Do you happen to remember what part of August that was? A The fifteenth.

Q Where had you been on your vacation? A To Canada.

Q To Canada? A Yes.

Q When was the last time you were at the Lincoln Highway Inn? A I was about a week and a half before Thanksgiving.

30 Q And how often between the 15th of August and about the 20th of November were you in the Lincoln Highway Inn? A I dropped in nearly every night or every other night.

Q Did you go in with anybody? A I used to go with myself.

Q And what time would you go in as a rule? A Seven, eight, nine o'clock.

Q How long would you stay? A Twelve, one, two, sometimes.

40 Q What did you do while you were in there? A I would go in there and get acquainted with the girls and

Stella Kwiatkowsky, direct.

get one from one table and sit at the table and if there is any man walked in so as a taxi driver explained it to me about the soliciting in there.

Q What did you do in there? A So I went in there and got acquainted with people; there were quite a steady crowd of people.

Q What do you mean by steady crowd? A It seems 10
to me about the same crowd of girls and same crowd of men that used to go in and solicit girls, so I went in and solicited just the same as the others.

Q Did you solicit men? A Yes.

Q What did you do after you solicited them? A Well, I would go out in a taxi and go out and come right back in the same place.

Q Whose taxi would you go out in? A Al's.

Q Al who? A Al Mell's.

Q How many times had you been out in Mell's taxi? 20
A I couldn't exactly say; it happened once, twice or three times a week.

Q Did you ever go out in anybody else's taxi? A Yes, I had different taxies; if a man hired his own taxi, if he goes to Delawanna, he said that takes too much, five dollars to go up.

Q Who charged five dollars? A Al Mell.

Q Had you ever been to Delawanna? A Yes.

Mr. Mott. I object. 30

Q How many times had you left Kelly's place to go to Delawanna?

Mr. Mott. I object. I do not know anything about Delawanna, unless the prosecutor will tell me he is going to connect Mr. Kelly with that in some way.

The Court. I think the prosecutor can show where they went when they left the place. 40

Stella Kwiatkowsky, direct.

Mr. Mott. Well, I am pressing my objection, because it does not in any way bring home knowledge to Mr. Kelly.

Mr. Bernhard. Well, you have no right to take it that way.

10 *Mr. Mott.* Well, I asked you if you were going to bring it home and you gave me the reply which made me think you would not. Now, I object, because now the prosecutor claims he is going to bring it home to Mr. Kelly. I want to be fair in this case and I do not want evidence of this kind to come out and then have it stricken out again.

The Court. They did it all the morning. Mell testified that they took girls from this place to Delawanna.

20 *Mr. Mott.* Well, I am just objecting to this question of this witness.

(Question read.)

Q (*By the Court.*) Where did you go when you left Kelly's place with these men?

Mr. Mott. I object to that.

The Court. Do you object to the form?

Mr. Mott. No, sir; I do not object on that ground.

30 *The Court.* You do not object to the form of this question?

Mr. Mott. No.

The Court. I will allow it.

Defendant's counsel prays exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRED G. STICKEL, JR.,

Stella Kwiatkowsky, direct.

A I went to Delawanna or some furnished room house where a man might know where to go, or different places, or used the taxi several times, right in the taxi.

Q (*By the Court.*) How many times did you leave the Lincoln Highway Inn to go to Delawanna? A Six or eight times.

Q How many times did you actually go from Delawanna, from the Lincoln Highway Inn? A Well, every-time I went there I returned right back again. 10

Q To where? A Lincoln Highway Inn.

Q What place in Delawanna did you go? A Either one of the places; there is two and about a mile away there is another one.

Q Then your answer is to a hotel? A Yes.

Q Did you ever go to any other place? A No, sir.

Q From the Lincoln Highway Inn excepting the two places at Delawanna? A Well, sometimes I went to the Greely Hotel on Broad street. 20

Q When you went in there did you ever see Mr. Kelly? A Yes.

Q When you left to go to Delawanna on these other occasions do you know whether or not Mr. Kelly was there?

Mr. Mott. I object to that question, "when you left to go to Delawanna and these other places was Mr. Kelly there." I will not object if the question is when she went out of the place. 30

The Court. Well, when you left the place with the man or men, was Mr. Kelly there?

A Yes, he was generally over there; very seldom we missed him at night.

Q When you came back do you know whether Mr. Kelly was in the place or at the place which you had left?

A Yes, he always used to be in the back by the bathroom watching the girls to come in or out. 40

Stella Kwiatkowsky, direct.

Q When you left to go to these Delawanna places, which way did you go out? A The side door.

Q I understood from one of the questions there were two side doors? A No, sir; only one.

Q Side door to what? A To the back room, cabaret.

10 Q How did the men leave? A Well, sometimes the men walked down Broad street and then he would take me along and sometimes I would walk down the street a block or two blocks and Al would come there with the men and meet me.

Q How long would you be gone on those trips? A An hour and a half, two or three hours.

Q That is the largest time you left that place in one night and come back to it? A Well, every time I left that place I always returned until about eleven or twelve o'clock and would go home myself.

20 Q How many times have you been in and out of it the same night? A Sometimes it would be two or three times the same night.

Q What would you do when you were in there? A I would sit at the table and if any man come in and look at you and smile at you, the first girl that he winked at would go over and get acquainted with the men.

30 Q While this was going on was Mr. Kelly around? A He was always around watching it; he stood at the back of the door.

Q Did he ever talk to them? A No; he never said anything to us.

40 Q What else did you do? A Well, on Saturdays there was always a large crowd, especially nine o'clock, all the girls from the cabaret used to crowd in and a lot of men and sometimes there was a crowd of four, six and eight men and so Mr. Kelly used to give the back room and put chairs there and Mr. Kelly would come out and say, "Girls, there is men back there and you want to go in" and sometimes he would call me over.

Stella Kwiatkowsky, direct.

Q And when he called you over what would you do? A He would say the men want to see you and I went inside and had a talk with the men and if I agreed with them I say, if not, I walk out.

Q Agreed about what? A Going out with them.

Q About going out with them? A Well, the words they used to ask Mr. Kelly.

10

The Court. I will strike it out.

Mr. Mott. I ask to have is formally stricken out and ask the jury to disregard it.

The Court. Yes, I will strike it out and tell the jury to disregard it.

Q Tried to agree about what? A They asked Mr. Kelly—

Q Listen to my question. You said if you agreed with them, you went out. A Yes.

20

Q Agreed about what? A Going in a taxi and go out with them for a while and then return back again and agree with the price; if I did, all right; if I did not, all right.

Q How many times did that happen from the fifteenth of August to the twentieth of November? A Well, four or five times.

Q While you were in there sitting at the table, what were you doing? A Sitting, drinking beer just to pass the time away, or soda, to stand in front of us in case anybody walked in, any law walked in, they wouldn't get wise to us; that is when Mr. Kelly was in the back room when I was there and he used to say, "If the law walks in they don't get wise to us."

30

Q What did you drink? A Well, if we wanted to get whiskey we would not get service, but if any man walked in we were asked to order highballs or whiskey.

Q Did that happen? A Yes.

40

Stella Kwiatkowsky, direct.

Q When did that happen? A Well, any time a man had lots of money we used to order highballs.

Q How often? A Well, that used to happen almost every night; very seldom we met anybody that was in there.

10 Q Who served it? A Sometimes on Saturday, Mr. Kelly used to help serve and if there was a large crowd like a holiday, Mr. Kelly used to serve in back and help the waiter.

Q Have you ever ordered highballs in the back? A Yes.

Q Do you know whether Mr. Kelly has ever served highballs or whiskey in the back room? A Yes, he served it to me.

20 Q Did you ever talk with Mr. Kelly? A Mr. Kelly used to walk to a table with a friend of mine and say, "What do you say, are you going to treat us?" and he joined us at the table with us.

30 Q Did you ever have any trouble with Mr. Kelly? A Well, the time I left the place about twelve o'clock Saturday night and all the girls were out and Al was sitting at the table by him and there was another friend that walked in with me, and he said, "I want to see you before you go home," and we were sitting between a crowd of men and I said, "I am leaving here, it is twelve o'clock, I am going home" and the men I was sitting between said—I took him away—there was a remark passed they take all the roll you have, and so I said to that man, "You have been drinking the same as I have, so you better go home."

Q Had you been drinking? A Yes.

Q What had you been drinking? A Highballs.

Q Where did you get them? A Mr. Kelly served us.

Q How long had you been drinking highballs that night? A I had been there from eight to twelve.

40 Q Drinking highballs part of the time? A Yes.

Stella Kwiatkowsky, direct.

Q Served by Mr. Kelly? A Yes.

Q Drunk, were you? A Yes.

Q Couldn't get home? A My sister took me home.

Q And an argument started? A Yes.

Q What was the result of the argument? A Because I said to the fellow "you better go home while you are on the safe side" and a fellow started an argument with me because he said she wants a roll herself. 10

Q Where was Mr. Kelly? A In the barroom.

Q Did he come in to see what the trouble was? A Yes.

Q What happened when he come in? A He said, "what is the matter, Stella?" I said, "If you want a decent place—"

Q Did he use to call you Stella? A Yes.

Q How long had he been calling you Stella? A I don't know; he always called all the girls. I said, "If you had a decent place you wouldn't have these guys here" and Mr. Kelly said, "If you don't like it, then stay out." And I said, "I will," and so I walked out, and I was in front of a place and I was paralyzed. 20

Q Paralyzed drunk? A Yes. And my sister just come a pass and a few taxi drivers from the station tried to take me home, and I did not know the men, so she said, "I will take a taxi and take you home."

Q Now, then, before that night had you had any trouble in Kelly's place? A No, sir. 30

Q Had you had any discussion? A The only remark was passed by Kelly one time the law walked in and looked the back room and there were about ten girls sitting at the tables and they ordered the girls out and another girl and me were sitting at a table and drinking, probably, and we started dancing and Mr. Kelly said, "I must agree with the law and obey it," and he had no use for me because he said I was a squealer.

Q He said you were responsible for the raid? A Yes. 40

Stella Kwiatkowsky, cross.

Q How long had you been living this sort of life? A Since I come back to Newark from Canada.

Q You used a term "rolling a fellow?" A Yes.

Q What is that? A That means a fellow taking a man out and taking all the money they have got.

Cross examination by Mr. Mott.

10

Q You have a sister? A Yes.

Q What is her name? A Isabell.

Q Did she used to go to Kelly's place? A Yes.

Q You used to go there with her? A Yes.

Q Do you remember an occasion when Mr. Kelly sent for a police officer to come and put Isabell out of the place? A Yes. The reason was—

Q I asked you if you remember that? A I do.

Q Did the police officer come and put her out? A That is what I heard.

20

Q You were not there? A No, sir.

Q Do you know Gelb's Cabaret? A Yes.

Q Gelb's place? A Yes.

Q You went there very frequently? A I have.

Q Most every night? A No, sir.

Q How often did you go there? A Well, once in awhile I dropped in there.

Q Did you not testify in this court within the last month that you were at Mr. Gelb's place during the period covered by your testimony here most every night?

30

A In Gelb's place?

Q Yes. A I have been there—

Q Did you not testify in this court within a month that during the time covered by your testimony here you were in Mr. Gelb's place about every night? A Well, I dropped in there.

Q Pardon me. I am not asking you what the fact is. I just asked you if you did not say so. A Yes, I have.

Q Well, what did you do, go from one place to the other? A Why, sure. Mr. Gelb said there was nothing

40

George Birch, direct.

doing there, the bunch of girls said, "Let's go down to Mr. Gelb's" and jumped in the taxi and we go down there.

Q (*By the Court.*) Was this man you were with that night, was he drunk? A Yes, sir.

GEORGE BIRCH, sworn on behalf of State.

10

Direct examination by Mr. Bernhard.

Q Where do you live? A 753 South Orange avenue.

Q Are you married or single? A Single.

Q With whom do you live? A My mother.

Q Where do you work? A I work in the Free Public Library.

Q Up here by Military Park? A Yes, at the end of Washington street.

Q How long have you been working there? A Since the first of the year. 20

Q Do you know where the Lincoln Highway Inn was located? A Yes.

Q How do you know? A Well, I used to go around there.

Q When? A Well, I went around there about a year and a half, or two years ago, and then I was away from there awhile; I had a news stand down town and I did not bother going up there any more, so then after I got rid of the news stand, I went in there again for say about five times that I know. 30

Q When was that? A Well, from in between the third of December—say from October to the third of December that I could remember.

Q Anybody go in with you? A Sometimes.

Q What year? A 1921.

Q Did anybody go in with you upon any of these occasion. A Well, a couple of times I went in with fellows.

Q What did you do in there? A Well, we would go in, I knew some people up there. 40

George Birch, direct.

Q What do you mean by people? A I knew a couple of girls and we used to go in and sit in the back, and dance, and sometimes when I went up alone I went up there to see a fellow I knew.

10 Q What went on there while you were there? A Well, we would sit and dance—twice I went there—the back room was too crowded; we couldn't get in the back, it was too crowded and the bar room was crowded and we didn't stay; so another time I went there we went in the back and danced with girls and drank.

Q Drank what? A Well, I was drinking beer.

Q What were the other people drinking? A The two fellows I was with drank soda and the girls, they ordered ginger ale high.

Q Ginger ale high? A Ginger ale high, but one of the fellows picked up the glass and tasted it—

20 *Mr. Mott.* Wait a minute. That was his taste, not yours.

The Court. All right.

Q How long did you stay? A Well, I stay sometimes until eleven or twelve o'clock.

Q Was Kelly there? A He was there a couple of times that I seen.

30 Q What was the general conduct of the people in there; what did they do besides dancing? A Well, laughing and joking.

Q Sat there, did they, while you were there? A Well, some of them went out, a couple of parties went out.

Q Did Mr. Kelly ever sit at the table with you? A No, sir, but I seen Mr. Kelly one time there—it was pretty crowded at the bar and Mr. Kelly got a little mad and he said to the fellows at the bar, "Go inside and sit down;" there seemed to be more room in the sitting room than there was at the bar, so Mr. Kelly got some chairs and made them sit down in the back.

40

George Birch, cross.

Q Now, which back room was that; are there two back rooms there or one? A Well, there is really only one that was used for the saloon part of it; then the other back room belonged to Mr. Kelly's household.

Q How do you know? A Well, I was back there.

Q What were you doing back there? A Well, one night it was kind of crowded, we were sitting there. 10

Q Do you know anybody connected with the place? A Yes.

Q Who do you know? A Well, a fellow that worked there I went to school with, Joe Mulaney.

Q What did he do there? A He was tending bar.

Cross examination by Mr. Mott.

Q Now, how many times do you think you were there during the last period from October to December, 1921? A Well, around four or five times that I know of. 20

Q And on this occasion you say one occasion the bar-room was overcrowded with men and Kelly asked them to go and sit in the rear room? A Yes.

Q And he got some chairs? A Yes.

Q So they could sit there? A Yes.

Q That was because the barroom was so crowded? A Yes.

Q And about all you saw being done there was that they were laughing and joking? A Well, a couple of them called up a taxi and went out and then one time I heard a call—you know, outside call came in could they see such a girl— 30

Q Wait a minute.

Mr. Bernhard. No, you have asked the question.

The Court. You heard a telephone call and then what happened?

Q Did you answer that call? A No, I didn't answer it. 40

George Birch, cross.

Mr. Bernhard. I submit he asked him what happened and he is telling us what happened in his presence.

The Court. You heard a telephone call and then what happened?

10 *Mr. Mott.* Why, may it please your Honor, Mr. Bernhard's proposition is the most startling I have ever heard. He has this witness to testify to a fact not within his knowledge.

Mr. Bernhard. I ask this Court to let the witness testify to what is within his knowledge.

The Court. That is all the Court is asking.

Mr. Mott. But this young man does not pretend he went to the telephone.

20 *The Court.* Well, he does pretend to know what happened after the outside call came in.

Mr. Mott. I know, but I am not objecting to your ruling—

The Court. I have ruled.

30 A So the waiter he picked the phone up, and there is a little partition leads off between the back room and the barroom, a little round table there, and we were sitting there; I was reading a newspaper and the bartender answered the phone and Mr. Kelly was there at the time, and it seems to me that some fellow wanted to see a girl—

Mr. Mott. Wait a minute. I object.

Q (*By the Court.*) What did the waiter say?

Mr. Mott. I object.

The Court. In the presence of Mr. Kelly.

Mr. Mott. Yes.

40 *The Court.* Why?

George Birch, cross.

Mr. Mott. Why, they do not know what the telephone message was.

The Court. Well, he cannot tell anything about the acts of the parties unless we know what the waiter said or came in over the telephone.

Q (*By the Court.*) Mr. Kelly was there and heard what the waiter said? A Yes, sir. 10

Q (*By the Court.*) What did the waiter say? A So the waiter was pretty busy in the back and the waiter said to Mr. Kelly, "some fellow wants to see a girl on the phone," and Mr. Kelly said to the waiter, "You tell that fellow if he wants to see the girl on the phone, let him come down here and see her. We have not any time to be answering any phone."

The Court. Strike it out.

Q (*By the Court.*) You say you saw some of the girls leave the place; did they leave it alone? A No, they left it with fellows. 20

Q (*By the Court.*) And where would the men come from that they left with? A Well, some of the—they would come in there and meet the girl, sit at the table.

Q How do you know they would meet at the table? A Well, I see one fellow came in and he seemed to know the girl, because they knew each other's names, he called her over and they sat awhile and he went out with her. 30

Examined by the Court.

Q Well, on other occasions did you see girls leave there with men? A Yes.

Q Where did they get the men from? A Well, they would be there with the men maybe before I got there; sometimes a fellow would go over to the girl at the table; the girl maybe motioned to them to come over. 40

John C. Cooper, cross.

Q Well, did you see girls motion to men to go over? A Yes.

Q On more than one occasion? A A couple of times.

Q And then would the men and the girls leave? A Yes.

10 Q Did you ever see any taxi drivers around there? A Yes.

Q Do you know their names? A Well, I seen that Al.

Q Mell? A Al Mell.

Q Did you see him there more than once? A Yes, he would be in the back room and then he would be at the bar and then he would go outside and then he would be in the back room again.

20 Q Did you see Mell talking with these girls? A Yes.

Q Did you see any other taxi drivers talking to girls? A No; Mell was about the only taxi driver I seen.

JOHN C. COOPER, recalled.

Cross examination by Mr. Mott.

Q When you raided Mr. Kelly's or went there to Mr. Kelly's place, did you have a warrant? A Not the first time, no, sir.

30 Q Well, the time you raided it? A At the time I raided it I had a search warrant; I went the first time to make an inspection.

Q The night you went there with the police you had a Federal warrant? A No, sir; I did not. I went there to make an inspection the first time; I went there on March 9th.

Q When was the next time you went there? A The tenth, I think.

40 Q Well, was there any policemen with you? A No, not when I made the search.

Clara Corter, direct.

Q Well, when you executed the warrant, did you execute it alone? A No, I had two men with me from the Federal Department.

Q You were after liquor that was there? A Yes.

Q You were enforcing the Federal Liquor Law, were you not? A Yes.

10

CLARA CORTER, sworn in behalf of State.

Direct examination by Mr. Bernhard.

Q Where do you live? A 12 State street.

Q Newark? A Yes, sir.

Q With whom do you live? A Mrs. Leach.

Q Are you engaged in business, do you work? A I am working now, yes.

Q Do you know where the Lincoln Highway Inn is? A Yes.

20

Q Have you been there? A Yes.

Q How many times have you been there within the last year? A Been there about four or five times.

Q When was the last time you were there? A The sixteenth of January.

Q Of this year? A Yes.

Q What time did you leave there? A I guess it was around twelve o'clock at night, half-past twelve.

Q About what time? A Around twelve or half-past twelve.

30

Q Anybody with you? A Yes.

Q Where did you meet the person with whom you were? A I met him on the street and we went in there for a drink.

Q A drink of what? A I had a glass of milk.

Q What did he have, what did he ask for? A Whiskey.

Q Was his order served? A Yes.

Q What kind of a glass? A Just a small glass.

40

Clara Corter, direct.

Q What color liquid was in it? A It was like a brown.

Q About how much of a glass? A Well, just a little over half.

Q How long were you in there that night? A Well, I was in there the first part of the evening and then I went
10 out for a walk and went back there for a drink, and then we left there.

Q Well, anybody with you when you went in there the first time? A I was alone.

Q Well, you had been there three other times? A Yes.

Q Well, when were you in there the other three occasions; did anybody go in with you? A I went in alone.

Q What did you do there? A Just sat around
20 there.

Q Why? A Dancing and drinking.

Q Why? A Well, I got in with the other girls down there and done the same thing they done.

Q What is that? A Went out with men.

Q Where did you meet the men? A In Kelly's Cafe.

Q How did you meet them? A They flirted with us.

30 Q Met you by their flirting? A Well, they would flirt with us and we would flirt with them.

Q Where was Mr. Kelly? A By the bar.

Q Every occasion that you were there? A I seen him every time I was there, yes.

Q Where did you go the last time you were in there? A To a furnished room house.

Q Whereabouts? A Down in Mulberry street.

Q What did you do on the other three occasions you were there? A I went out with men to the same place.

40 Q The same men? A Not the same men, no, sir.

Clara Corter, cross.

Q These four different occasions, four different men?

A Yes.

Q And after you had been out with them on three previous occasions, where did you go after you left the furnished room house? A I went back to Kelly's.

Q Well, when you got back to Kelly's, do you know whether Mr. Kelly was there or not? A Yes, I seen him every time I came back. 10

Q What is your first name? A Clara.

Q Did you ever speak to Mr. Kelly? A Never had a conversation with him.

Q Did he ever speak to you? A Just walked in his back room to his kitchen and say, "Hello, girls."

Q Is that what he did? A Yes.

Q On how many occasions did he walk through as you now recollect, and say, "Hello, girls?" A I say about three nights in succession he walked into his kitchen. 20

Q What went on in there in what you call the cafe, the room back of the barroom while you were around? A Well, the girls sit around and solicit men and go out with them and come back.

Cross examination by Mr. Mott.

Q Did you ever meet the man before that you met on the street that you went in with? A Yes.

Q Where did you meet him, in there in Kelly's? A The first time I met him I met him in Kelly's. 30

Q How old are you? A Thirty.

Q How long have you been a prostitute? A Only a short while.

Q Well, what do you mean by that? A Well, about two or three months.

Q Well, you hardly mean that, do you; isn't it longer than that? A No, I don't think it is.

Q What girls did you know in Kelly's place? A Well, I knew pretty nearly all the girls, but not by name. 40

Philip M. Bauman, direct.

Q Well, how did you get acquainted with them before you went in there? A Well, I just went in and sat around.

Q No, but I thought the reason you went there was because you knew the girls.

10 Q (*By the Court.*) Did you know the girls before you went there the first time? A No, I didn't; I just went in there myself and got acquainted.

Q (*By the Court.*) Were you a prostitute before you went there the first time? A Just starting out.

Q Well, you had started? A Yes.

Q Well, how long had you been started? A Two or three months.

Q Two or three months before you went in Kelly's place? A No, all together.

20 Q Well, how long before you went to Kelly's place, had you been started? A About a month and a half.

Re-direct examination by Mr. Bernhard.

Q Are you married? A Yes.

Q And have a child? A Yes.

PHILIP M. BAUMAN, sworn in behalf of State.

Direct examination by Mr. Bernhard.

30 Q How long have you been a member of the Police Department of the City of Newark? A Twenty years.

Q Assigned to headquarters the greater part of the time? A Chief's office the last twelve years.

Q Do you know where the Lincoln Highway Inn was located? A Yes.

Q Ever go there? A Yes.

Q At whose directions?

Mr. Mott. I object. It is perfectly immaterial at whose direction he went there.

40 *The Court.* I will allow it.

Philip M. Bauman, direct.

Q At whose direction? A At Chief Long's.

Q When first? A What?

Q When first? A Oh, a few years ago.

Q When last? A Why, last, about two weeks ago.

Q Do you know Mr. Kelly, the defendant? A Yes.

Q Ever see him there? A Yes.

10

Q What did you ever do there within the last six or eight months, anything? A No, I was in there and looked things over.

Q Well, I am asking you how many times when you went in there, what did you do? A Well, one occasion I got in there with Officer Schroeder and myself, and there were four men playing poker and between five and six dollars I believe, was on the table.

Q Was that night or day? A Night time.

Q Well, now, did you ever go there any other night? A Yes.

20

Q How many nights all together, in order to get down to it quickly, from the fifteenth of August, last year, to the first of March, this year, have you and Schroeder been in there? A Well, maybe eight or ten times.

Q Always at night? A Yes.

Q Did you see any people in there? A Yes.

Q What kind of people? A Men and women.

Q And what have you to say from your observation, and you have had considerable observation of men and women during the time you have been in the Police Department? A Yes.

30

Q From your observation what were the ages of these women? A I did not quite get the ages.

Q Could you judge about the respective ages of the girls you saw in there? A The ages?

Q Yes. About; if anyone can tell the age of a girl, perhaps you can. A Well, young, middle-aged, about twenty.

40

Philip M. Bauman, cross.

Q Now, then, did you notice whether or not at any time you were in there any meals of any kind were being served? A Oh, I never seen any meals served.

Q Did you ever see any menus lying around, bill of fare? A No.

Q Chow? A No.

10 Q How did you go in? A Sometimes the front and sometimes the side.

Q And Mr. Schroeder usually with you? A Oh, yes.

Cross examination by Mr. Mott.

Q You say you have been going there for a few years past? A Yes.

Q Now, just fix as definite as you can as to time; what do you mean by a few? A Oh, maybe eight or ten years.

20 Q You have been going in that place? A Yes, Kelly did not have it all the time; different proprietors had it in my time I have been going there.

Q Yes, how long according to your recollection, has Mr. Kelly had it? A Oh, I could not say that; I could not put my time down on that.

Q Well, I don't expect you to be exact. Did you know Mrs. McKim had the place before Mr. Kelly? A Yes.

30 Q And she is now Mr. Kelly's wife? A Yes. I did not know that until the night I went there on January 15th, 1921, when this card game was in session and we arrested the four, and Mrs. Kelly, and I did not know it until then. And he said afterwards that Mrs. McKim was his wife because I called her Mrs. McKim, and he said, "that is my wife." That is the night I know it was his wife.

Q Well, ever since Mr. Kelly has had the place you have been going in there? A In and out.

40 Q How often have you been there? A Oh, maybe ten times; maybe less or maybe more; I never kept track of that.

Isabelle Kwiatkowsky, direct.

Q Did you see the last witness, Clara, that was on the witness stand? A The girl?

Q What? A The woman?

Q This woman that was on the stand? A No, I don't know her.

Q Clara Corter, will you please stand up? Do you see that girl down there? A Yes. 10

Q How old is she? A Oh, I believe twenty-eight or thirty.

Q Did you hear her testimony? A I was sitting away in the back and did not hear anything she said.

Q Well, now, you have spoken about a card game going on there one time and Mrs. Kelly was sitting in—it has nothing to do with this case, but Mr. Kelly was acquitted on that charge. A The complaint was dismissed.

Q Was the complaint dismissed? A The complaint was dismissed. 20

Q (*By the Court.*) What time of day were you there on these visits? A Oh, maybe around nine, between nine and twelve, sometimes one.

ISABELL KWIATKOWSKY, sworn in behalf of State.

Direct examination by Mr. Bernhard.

Q How old are you? A Twenty-one.

Q Stella is your sister? A Yes.

Q You lived at South River, too, didn't you? A Yes, sir. 30

Q When did you come to Newark? A I come to Newark in June.

Q Of what year? A In 1921.

Q Where did you go when you came here? A I lived at 248 Mulberry street.

Q What did you do? A I was working in a candy factory on Mulberry street.

Q How long did you live on Mulberry street? A I lived there for about two or three months. 40

Isabelle Kwiatkowsky, direct.

Q How long did you work in the candy factory? A About two months.

Q What did you do after that? A I worked in a union-suit factory on Academy street.

Q Then where did you move to? A Columbia street.

Q Did your sister live with you at any time? A She
10 lived at 248 with me.

Q When did you and your sister stop living together?
A I can't just remember when.

Q But later on you and she had separate rooms? A Yes.

Q Had you ever been to the Lincoln Highway Inn? A Yes.

Q When did you start going there? A About June 4,
1921.

Q How long after did you continue to go there? A I
20 went there until a month before I got arrested.

Q When was that? A About November 29th.

Q How often? A Every night; maybe every other
night.

Q Did you go to any other place, too? A Some
nights I went to Gelb's.

Q Who did you go with? A Well, I went in to the
Lincoln Highway Inn with a fellow I met.

Q You are speaking now of the first time? A The
30 first time.

Q After the first time? A After that I went all by
myself.

Q Did girls go there alone into the place? A Some-
times and sometimes they come in with a fellow.

Q What did you do there? A Well, sitting around
and drinking.

Q Drinking what? A Well, soda and ginger ale, gin,
also straight whiskey.

Q Do you drink straight whiskey? A Yes.
40

Isabelle Kwiatkowsky, direct.

Q How often did you do that? A About five or six times.

Q Where did you get it? A In the Lincoln Highway Inn.

Q From whom? A Well, Mr. Kelly had a fellow waiting there they called him "Whitey"; he had a fellow there Whitey; the first time I went in and afterwards Mr. Kelly's son was waiting in the back room. 10

Q From whom did you get the whiskey? A Well, the waiter brought it down to me and sometimes Mr. Kelly.

Q From whom did you get the gin? A Well, Mr. Kelly.

Q Have you ever had any trouble with Mr. Kelly? A Yes.

Q When? A Why, I was drunk in there and my sister gave him an argument, how he gave me drinks, and he said he didn't give it to me, and that was Saturday night and he was putting gin into seltzer so if any detective came in they would think I was drinking soda. 20

Q How did you know that? A Because I saw it.

Q You saw it? A Yes, he brought me the gin and seltzer in a glass.

Q You were drunk in there? A Yes.

Q Where did you get the stuff that made you drunk?

A In the Lincoln Highway Inn. 30

Q What was it? A Gin.

Q Got drunk on gin? A Yes.

Q How many times in there? A That I was drunk in there?

Q Yes. A About four or five times.

Q That was on gin? A Yes.

Q Did you get drunk on anything else? A Well, I used to drink ginger ale highballs.

Q Did you have some trouble other than the night in question that you have told us about, with Mr. Kelly? Is 40

Isabelle Kwiatkowsky, direct.

that question clear to you? Other than the night you have told us about, have you ever had any other trouble with Mr. Kelly? A No other trouble but that one time.

Q Now, then, you say you were arrested on the night of October twenty-ninth? A Yes.

10 Q When was it with reference to the night you were arrested, Isabell, that you had this trouble with Kelly? A About a month before I was arrested.

Q What other night then? A On the other night.

Q I thought you said, Isabell, that the last time you were in there was about October 29th. Did you say that? A No; I was arrested November 29th and before I was arrested, why, I had the trouble with Mr. Kelly.

Q How long before? A A month before I was arrested.

20 Q After you had the trouble with Mr. Kelly the month before you were arrested, did you ever go back to Mr. Kelly's place? A No, sir.

Q So it was prior to that you had been in there and was drunk four times? A Yes.

Q What did you do there besides drink? A Soliciting men.

Q What do you mean? A Going out with men in a taxi for certain purposes.

30 Q What did you do when you solicited them? A Why, I would go out and have intercourse with them.

Q How did you solicit them? A Well, sometimes I would sit at a table and Mell would come over and ask me if I wanted to go with them.

Q Did you ever see Kelly while this was going on? A Yes.

Q Are there any times that you recall that Kelly was not there? A Well, Kelly used to come home from work about half-past six and after that he would be at the
40 bar.

Isabelle Kwiatkowsky, direct.

Q How did you know Kelly? A From going in there.

Q Did you ever talk with him? A Yes.

Q Did he ever talk to you? A Yes.

Q What did he call you? A Isabell.

Q Did you ever hear him call anybody else by name?
A Yes.

10

Q What conversations did you have with him? A Well, he would sit at the table and drink and talk that it was pretty good business.

Q Would he sit right at the same table with you? A Many times he sat right at the same table with me.

Q Were there any other drinks ordered when he sat at the table with you? A Yes, he would sit there and tell the waiter to bring it and he would drink, too.

Cross examination waived.

Glass marked Exhibit S. 1.

20

Bottle marked Exhibit S. 2.

Bottle marked Exhibit S. 3.

Lease marked Exhibit S. 4.

Mr. Bernhard. Mr. Augenblick, what agreement did you have with reference to this lease?

Mr. Augenblick. It was agreed between Mr. Bernhard and myself that a certain lease made between the Victor Realty Company, a corporation of New Jersey, and Daniel J. Kelly and Philomena Kelly, dated April 8th, 1921, shall be submitted as proof, without actual proof—

30

Mr. Bernhard. That they thereupon became the occupants of that place on the twenty-first day of May, or on the first day of May.

Mr. Augenblick. I don't think the agreement went that far.

Mr. Bernhard. Mr. Augenblick represented to me that Mr. Leopold Meyer, an officer of the Realty

40

William H. McEnhill, direct.

Company that owned that place was unavailable—in ill health and asked me to relieve his attendance in court. I agreed to do so and did do so that there would be no dispute about the ownership of this place by Kelly during the time set out in the indictment.

10 *The Court.* Is there any dispute about it?

Mr. Augenblick. Why, we are going to show, your Honor, that as part of the defense in this case, that his wife owned the place and is still the owner of the place. I told Mr. Bernhard at the time that it would be unnecessary to call Mr. Meyer, that I would consent that the lease go into evidence without actual proof.

20 *The Court.* It is stipulated that this lease be introduced in evidence and that the persons named as lessees, went in as lessees and held possession during the period stated by the indictment.

Mr. Augenblick. Yes.

Mr. Mott opens for the defendant.

WILLIAM H. McENHILL, sworn in behalf of the defendant.

30 *Direct examination by Mr. Mott.*

Q Where do you live? A 53 Shipman street.

Q What is your occupation? A I have been connected with the Newark Academy for the last twenty-one years.

Q In what capacity? A Superintendent of buildings and grounds.

Q Do you know the defendant, Kelly? A I do.

40 Q How long have you known him? A Approximately ten years.

William H. McEnhill, direct.

Q And how well have you known him? A Well, may I state just how I came to know him in the first instance? Is that allowed?

The Court. I have no objection.

The Witness. (Continuing.) I was invited to a dinner at the Continental Hotel, at which the late Mayor Archibald was the speaker, and it was at that dinner I met Mr. Kelly the first time. 10

Q About ten years ago? A About ten years ago.

Q And since that time you have kept up your social intercourse with him? A Yes, I have met him throughout the city very frequently.

Q Do you know what his reputation for decency, morality, and being a law-abiding citizen in this community is; do you know— 20

Mr. Bernhard. Do you know?

A I know.

Mr. Bernhard. Do you know?

The Witness. Yes.

The Court. The question is, do you know his reputation?

The Witness. Yes. 30

Q What is it? A Why, his reputation among business men is good.

The Court. That is not an answer to the question.

Q What is his reputation in the community? A Good. The same answer.

Q For the things I asked you? A Yes. 40

William H. McEnhill, cross.

Cross examination by Mr. Bernhard.

Q How do you know? A I know because in all of the drives connected with the late World War, I took an important part—

Mr. Bernhard. Wait a minute.

10 *Mr. Mott.* Let him answer it.

The Court. If you have not finished, you may finish.

A (Continuing.) I have gone to Mr. Kelly on each one of those drives because of the fact that I have been told by those who knew him more intimately than I did, that he was always good on giving up on such things as that, anything connected up with patriotism or anything connected with the country, and I found that it is true.

20 Q Is that one of the reasons? A That is one of the reasons, yes.

Q Do you know anybody who didn't? A Yes.

Q Who was it? It ought to be made public. A Pardon me! but I do not want to specify names; during the drive I ran across dozens that would not do anything.

Q Do you mean that? A Yes.

30 Q That there were dozens whom you came in contact with during the World War that would not exhibit their patriotism in the manner suggested? A Yes, as far as my personal relation with them was concerned, yes.

Q Have you ever been down to Kelly's place? A Yes.

Q At night? A Yes.

Q When? A I have been there altogether, as far as my recollection goes, five times and on each instance in the evening and always on business.

Q Where did you see him? A Most of the time I had to send upstairs to get him.

40 Q Where did you see him when he came downstairs?
A In the barroom.

William H. McEnhill, cross.

Q What time were you there? A Usually around half-past eight or nine o'clock at night.

Q Never later? A Not on going; I found on one or two occasions he was out and had to wait until after ten o'clock to see him.

Q When was the last time you saw him down there? A Well, I saw him only a few days ago in connection with the fire that took place in back of his building; he was outside there; but prior to that I should judge it was some six or seven weeks ago. 10

Q When did you first see him there the five times you have seen him there altogether? A The first time I saw him in his place was when he sent an invitation to practically everyone who had been to this particular dinner I referred to to come to his place and take part in a chicken dinner.

Q When was that? A That, I should judge, was pretty nearly two years ago. 20

Q So you have been there five times in his place in two years? A Practically so.

Q Why, did he own the place two years ago? A That I don't know; he was at least there and I talked to him, too, and, in fact, he was the guest of the evening, or the host of the evening.

Examined by the Court.

Q Were you ever in his home? A No, not upstairs; I knew his family were there; I have been in the back of the place. 30

Q Are his friends your friends? A I beg your pardon.

Q Does he travel with the same circle of friends you do? A No, except as I have already stated; I met him in a business way, and when I first knew him he was in the building and loan and I am in the building and loan and he was in the extract business.

Q Where do you live? A Just back of the Academy. 40

George J. Durning, direct.

Q Your intercourse with him has been with him wholly from a business standpoint? A Largely.

Q Your intercourse has not been a social intercourse?
A No, not in the sense in which you put the question.

GEORGE J. DURNING, sworn in behalf of State.

10 *Direct examination by Mr. Mott.*

Q Where do you live? A 18 East Mechanic.

Q How long have you lived in Newark? A Forty-eight years.

Q What position, if any, do you hold? A At the present time clerk in the tax receiver's office.

Q How long have you been there? A Four years.

Q Do you know the defendant, Mr. Kelly? A I do.

20 Q How long have you known him? A Fifteen or more years.

Q Did you know his first wife? A I did.

Q How long did you know her? A Why, fifteen or more years, might be possibly eighteen, in that neighborhood.

Q How long did you know the first Mrs. Kelly? A Eighteen years ago they were neighbors of mine.

Q Did you ever have any social intercourse with him?
A In conversations.

30 Q No, socially, did you ever go to his home? A Yes.

Q Visiting him at his home? A Yes.

Q Are you married? A No, sir; I am not.

Q Do you know what his reputation in this community is for being a law-abiding, decent living, moral man; do you know? A From personal experience and observation.

Q Do you know?

40 *Mr. Bernhard. I object.*

William Nadel, direct.

A Yes.

Q What is it, good or bad? A Good.

Cross examination by Mr. Bernhard.

Q That is your personal view? A Personal view and experience.

Q What do you mean by your experience? A Why, 10
from frequenting his place on different occasions when his second wife had the place there some six years ago and prior to two years ago myself and others engaged in the different departments where I have been engaged altogether fifteen years—the counsel forgot—

Q Did counsel forget something? A Yes.

Q Tell us about it? A Well, he forgot I was em-
ployed ten years in the city clerk's department as as-
sistant city clerk, and at that time when Mrs. McKim had
a restaurant in the rear—there were three places right 20
near the Hall where persons from the department used to dine and, incidently, talk politics, but altogether up to two years ago when the restaurant was there we used to go there and dine frequently, but since then at noon or when we would get through in the afternoon we would go over for lunch and then some evenings, not very often, would I drop in there on my way down home from the theatre, occasionally drop in.

Q And were young girls and young boys sitting around
drinking? A I was not there for that purpose. 30

Q You saw young girls and young boys sitting around
drinking? A There were people sitting there.

Q Did you observe them closely enough to observe
their ages? A No, sir; I did not.

WILLIAM NADEL, sworn in behalf of the defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 89 Stuyvesant avenue,
Newark. 40

William Nadel, direct.

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

Q Do you know the defendant, Mr. Kelly? A Yes.

Q How long have you known him? A I have known him about ten years.

10 Q What is your business? A I am secretary of the Nadel Cigar Manufacturing Company.

Q And just what intercourse with him have you had, how have you known him? A Well, surely you could say first off purely business and afterwards we contemplated doing some things in our line and his line and I got to know him real well and I used to see him eight or nine times a week and through that we drifted into a very deep friendship.

20 Q And during the latter period after you became friendly have you associated with him and his friends? A Yes.

Q Do you know his wife? A Yes.

Q Have you ever been to their home? A I have been down to Lafayette street.

Examined by the Court.

30 Q That was not the question. Have you been to their home? A No, I have never been upstairs where they live.

Q You understood the question? A Well, not in that manner.

Direct examination (continued) by Mr. Mott.

Q Do you know what his reputation for being a law-abiding citizen and a decent living, moral man in this community is? A Yes.

40 Q What is it? A That I and a whole lot of people that know him consider him clean.

Carl Van Voorhis, direct.

Cross examination by Mr. Bernhard.

Q How far is Stuyvesant avenue from 24 Lafayette street; about six miles? A Well, I should judge about four.

Q Does his reputation extend up to Stuyvesant avenue; does it? A His reputation? 10

Q Yes. A Well, I don't know whether he knows anybody up there.

Q Well, that is what I am trying to find out; it does not extend up that far? A That is a question I could not answer.

Q Do you read the papers? A Well, I think I do quite often.

CARL VAN VOORHIS, sworn in behalf of defendant.

Direct examination by Mr. Mott. 20

Q Where do you live? A I live 1011 Grove street.

Q Well, that is in Newark or East Orange? A Irvington.

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

Q What is your business? A At present I have a gasoline fuel station alongside of the Lincoln Highway Cafe, parking station. 30

Q And how far is that—or, no, is there a little shanty there, a little covered room? A I have a little office there, yes.

Q And can you look through the windows of the door from that and see the Lincoln Highway Cafe? A Yes, I can.

Q How far is it from that station to the Lincoln Highway Cafe? A Next door.

Q Well, about what is the distance? A Why, fifty feet. 40

Carl Van Voorhis, cross.

Q Do you know the defendant, Mr. Kelly? A I do, yes.

Q How long have you known him? A Why, that is hard for me to say; I have known him personally since he was in that neighborhood; I was there before he was; two years.

10 Q (*By the Court.*) You mean you know him or he was there two years before you were there? A Well, I knew the gentleman when he used to sell lemon juice around the cabarets and syrups and soda for the last fifteen years, I should say.

Q Do you know what his reputation is in the community where he lives for being a law-abiding citizen, and a decent clean man; do you know? A Well, I cannot say that I know; I know what the papers say, but I have always found him a gentleman as far as my part is
20 concerned, as a neighbor.

Q We are not concerned with the papers. These questions should be limited up to the time of the charge.

The Court. We are not concerned with the papers or your personal opinion or your judgment as to his character. The question is what is his reputation in the community?

The Witness. All right; all right.

30 Q Well, by all right, what do you mean, good or bad?
A Good.

Cross examination by Mr. Bernhard.

Q Where did you have your place of business before you began the gasoline station? A Why, I had no business; I worked.

Q Whereabouts? A I worked as a bartender.

Q Were you usually on the job down at your gasoline station at night? A Not at night; no, sir; only through
40 the daytime.

William C. Bishop, direct.

Q Didn't you ever go down at night? A No, sir.

Q Then you don't know what went on next door except from hearsay? A No, sir; I do not.

WILLIAM C. BISHOP, sworn in behalf of the defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 496 Clinton avenue. 10

Q And what is your business? A Builder.

Q And have you any other business than builder? A Real estate operator.

Q And have you a partner or man associated with you? A I am secretary and treasurer of the D. J. Kelly-Bishop Company.

Q Who is the Kelly? A Mr. Kelly is the president of the corporation.

Q This defendant? A Yes. 20

Q And you say he is the president? A He is the president of the corporation, yes.

Q How long have you and he been associated together in that business? A Fourteen months.

Q And how long have you known Mr. Kelly? A Very nearly two years.

Q Did you know his wife, or do you know his wife? A I do, yes.

Q How long have you known her? A The same length of time; I met them both on the same day. 30

Q Do you know what Mr. Kelly's reputation in the community is for being a law-abiding man and a decent, clean living man? A Good.

Q Have you ever been to this cafe of his? A I have.

Q What time of day or at night? A Usually before nine o'clock in the evening.

Q And when have you been going there, during what period of time? A Since the 17th of March, 1921, up to the present time. 40

John Gaffney, direct.

Q And how frequently did you go there? A I possibly have been there a dozen times altogether.

Q Since the 17th of March when? A 1921.

Q And when you went there where did you go, into what room? A Mr. Kelly's kitchen.

10 Q And in the kitchen what view did you have of the interior? A We could see the public rooms, through to the barroom.

Q And on the occasions when you have been there to Mr. Kelly's what have you observed as to the conduct of the people there and the things that were being done?

A I have never seen many in the rooms at the times I have been there; they were usually sitting and drinking.

Q And did you ever see anything that attracted your attention in any way? A No.

Cross examination by Mr. Bernhard.

20 Q Did you look at those who were drinking pretty closely? A I did not; I was not interested at all.

JOHN GAFFNEY, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 26 Leo place.

Q What is your business? A Broom manufacturer.

30 Q And where is your place of business? A 82 Bruen street.

Q And do you know Mr. Kelly, the defendant? A I do.

Q How long have you known him? A About three and a half years.

Q Do you know what his business is outside of this cafe? A I do.

Q What is it? A Manufacturer of syrups and extracts.

40 Q Where is his place of business? A 82 Bruen street.

John Gaffney, cross.

Q Have you ever been to Mr. Kelly's home? A I have.

Q Has he ever been to your home? A No.

Q And you know his wife? A I do.

Q Do you know what Mr. Kelly's reputation in the community is for being a law-abiding man and a decent clean living man? A I do. 10

Q What is it? A All right.

Cross examination by Mr. Bernhard.

Q What do you mean by the community in which he lives? A Well, the City of Newark.

Q Have you talked to people about it up on Leo place? A I leave there in the morning—

Q Why don't you answer my question? Have you ever talked to people about Mr. Kelly's reputation, to people living on Leo place? A No. 20

Q On what street does any person live to whom you have talked about Mr. Kelly's reputation? A What do you mean by that question?

Q Just exactly what I say. You say you know Kelly's reputation, don't you? A I know his reputation from personal contact, with personal contact with the man for three and a half years.

Q Is that all? A And also with business men I come in contact with. 30

Q What business men? A Business men I meet in the place and business men he sells goods to.

Q Give us the name of one or two with whom you have talked? A Boice, the coal man.

Q What gave rise as to the discussion of Kelly's reputation with Boice, the coal man? A There was no discussion.

Q That is what I asked you; you said you had discussed it? A No, there was no discussion. 40

Julius Lehman, direct.

Q Well, then you have never discussed Kelly's reputation? A There was no occasion or reason for discussing his reputation.

Q Then you have never discussed his reputation with anybody? A Personally I have never had any reason to do so.

10 Q So, then, you have never discussed Kelly's reputation with anybody? A No.

Q So what you know about Kelly's reputation is what you personally think about it? A Yes.

Q That is all, isn't it? A Yes.

Q Personal opinion? A Yes.

Mr. Bernhard. I ask that the answer as to Kelly's reputation be stricken from the record.

20 *The Court.* I will leave it stand for what it is worth. The jury has heard the examination and cross examination.

JULIUS LEHMAN, sworn in behalf of the defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 217 Mulberry street.

Q What is your business? A Butcher.

30 Q How long have you been in business in Newark? A About sixteen years.

Q Do you know Mr. Kelly? A Yes.

Q How long have you known him? A Oh, about three or four years.

Q How did you come to meet him? A Well, I have only known him personally since he was married; before that I only knew him from different people talking to me.

40 Q How long ago was he married? A It is about two years; I should think, less than that; I am not really sure about that.

James Telfor, direct.

Q The 12th of July, 1920. During that time what relationship have you had with him? A I did business with Mr. Kelly, served him with meats.

Q Anything else besides that? A Nothing else.

Q Do you know what his reputation in the community is for being a law-abiding man and decent, clean living man? A Good.

10

The Court. Do you think that is permissible, his reputation is clearly from a business standpoint.

The Witness. It is not a question of business because I have had people tell me about Mr. Kelly's reputation in the neighborhood, in the community where we live, and he is known by a great many people around the neighborhood.

Q People that you know? A That come into my place of business that know Mr. Kelly; I have known them for years.

20

Q And you have heard them express their opinion? A Yes.

Cross examination by Mr. Bernhard.

Q You do business with him? A Yes.

JAMES TELFOR, sworn in behalf of defendant.

30

Direct examination by Mr. Mott.

Q Where do you live? A 2 Eighth avenue.

Q Where is your place of business with reference to Mr. Kelly's cafe? A Next door.

Q Do you know Mr. Kelly? A Yes.

Q How long have you known him? A About eighteen months.

Q And during that time what intercourse have you had with him; how did you come to know him? A Why,

40

James Telfor, cross.

I have done a little work for Mr. Kelly on two different occasions.

Q And is that all you know of him, is that— A That is all I know of Mr. Kelly.

Q Have you ever been in Mr. Kelly's place? A Yes.

10 Q How many times? A Well, that I don't know; I had occasion to go in and get change occasionally.

Q What time of the day did you go in? A Between the hours of eight and five-thirty P. M.

Q And have you ever had occasion to be in there at night? A At nighttime, once in a while, yes.

Q Well, about how many times during the last year or year and a half? A About three times or so.

Q That you have been in there at night? A About three or four times.

20 Q And when you have been in there have you seen anything that was going on? A Nothing unusual.

Q What room did you go to when you went in there? A The barroom.

Q And from the barroom where could you see? A Well, I didn't pay any particular attention; I was a man that looked after my own business and went out.

Cross examination by Mr. Bernhard.

30 Q What is your business? A Canvass goods manufacturer.

Q You don't keep your place open at night? A Well, occasionally we have to go down; we are working at the present time until nine o'clock.

Q Do you know Mell, the taxi driver? A Yes.

Q Ever been out in his cab?

Mr. Mott. I object, not cross examination.

The Court. I do not think it is cross examination unless you can contradict him in his statement that he observed nothing unusual there.

George F. Hyde, direct.

Q Did you ever see anybody in there? A I seen lots of people in there.

Q Ever go out with any of them? A No, sir.

Q Ever see any of them taken out? A No.

Q Ever go into Mell's taxi cab? A No.

Q How do you happen to know Mell? A Why, I borrowed a taxi from him. 10

Q Were you ever in Mell's taxi? A No, sir.

Q How often were you down there at night? A Well, I told you I could not tell you, say three or four times, that is in the barroom, and maybe down twenty or thirty times to my own place of business.

Examined by the Court.

Q Were you in the back room? A No, sir.

Q Did you look in the back room? A I could if I wanted to. 20

Q Why not? A I did not have any occasion to.

Q Do you know whether there was anybody in the back room at all? A There might have been, but I couldn't tell you how many were there.

Q Men and women in there? A I didn't see any.

Q Didn't see any? A I seen men in the barroom.

Q But no men or women in the back room? A I didn't see any; I could not tell you whether there were or not. 30

Q What did you go in there for? A A glass of beer.

GEORGE F. HYDE, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 51 Quitman street.

Q What is your business? A Jeweler.

Q Do you know Mr. Kelly? A Yes.

Q Did you formerly work for him? A Yes. 40

George F. Hyde, direct.

Q How long did you work for him? A About three months; probably three and a half or four.

Q During what period? A Last year, 1921.

Q Well, now, what part of 1921 was it? A January to about April, the latter part of January to about April.

10 Q The time you worked then was from the 1st of January to the 1st of April, 1921? A Oh, a little after the 1st of the year, about three months.

Q About three months, and that is the three months you covered? A About around there; I think that is it.

Q What did you work at there? A I beg your pardon.

Q What did you work at? A Mr. Kelly's place?

Q Yes. A Waiter.

20 Q Since you got through working for Mr. Kelly have you been around the place? A Well, I have occasionally, but very seldom, just occasionally I have been around.

Q What time of the day? A Why, I might drop in the place in the afternoon, I might drop in in the morning, run downtown and get a glass of beer and tend to my business.

Q But not at night? A I have been there at night, yes.

30 Q How many times since you left there? A Well, I went there three or four times, not over a half a dozen, to be positive.

Adjourned until tomorrow (Thursday), June 15, 1922, at 11 o'clock A. M.

Daniel J. Kelly, direct.

SECOND DAY.

Thursday, June 15, 1922.

Appearances as before stated.

DANIEL J. KELLY, defendant, sworn in his own behalf. 10

Direct examination by Mr. Mott.

Q Your name, please? A Daniel J. Kelly.

Mr. Bernhard. I move to amend the indictment.

The Court. Motion granted. The indictment will be amended to read Daniel J. Kelly instead of Daniel.

Q How long have you lived in Newark, Mr. Kelly?

A Well, about twenty years. 20

Q Are you married? A Yes.

Q And this is your second marriage, I believe? A Yes.

Q Your first wife died about how long ago, just approximately? A About five years ago.

Q And you married your present wife when, approximately? A Going on two years, the 12th of this July.

Q And what was her name previous to the marriage?

A Mrs. McKim. 30

Q At the time you married her was she engaged in any business? A Yes.

Q What? A In the saloon business.

Q Did she have this place that we are now talking about— A Yes.

Q —at the time you married her, and since that time generally, since your marriage to Mrs. McKim, generally, what has been your relation with that place? A Well, I went to my business every morning.

Q Well, what is your business? A Why, syrups and extracts. 40

Daniel J. Kelly, direct.

Q Where is your place of business? A 82 Bruen street.

Q How long have you been in that business? A I think it is 1908, if I ain't mistaken.

Q Are you alone in that business or have you a partner? A I am alone in it.

10 Q Where is that business conducted? A Newark.

Q How many help do you employ? A Well, we ain't got so many just now.

Q Well, ordinarily? A Six or seven.

Q And how has your time been divided between your business in Bruen street and the cafe? A Well, the only time I spent in the cafe was in the evening.

Q Yes. A And sometimes I was there until it closed up; sometimes I was not.

20 Q Now, what was the business at the cafe, just describe that generally. A In what way?

Q Well, the number of people that came, who they were and— A Well, we have had quite a number of people call there, done a very nice business there.

Q Well, doing what? A Why, in the evening it would start from nine o'clock and probably they stay to twelve; that is good, fair business.

Q Doing what? A Selling different things they called for.

30 Q Well, what? A Beer, soda water, seltzer, milk, eggs, anything they wanted to eat.

Q What was that last word? A Well, anything in the line of eating, eggs, sandwiches and sometimes we would have meat balls there.

Q Now, tell us how many people would come into your place of an evening on an average? A I can't answer that question; I never counted them.

40 Q Oh, no, but you can tell me whether it was a dozen or forty? A Oh, it might be a hundred or a hundred and fifty some nights.

Daniel J. Kelly, direct.

Q And who were they generally? A Well, I don't know them, very few I did know that came in there, an odd man I would know.

Q Well, were they all young people? A Well, there were all ages, that is, all fair ages, twenty years on up.

Q Did you have dancing there? A I didn't never allow it.

10

Q Did you have any rules regarding the operation of the place at all? A Yes.

Q What were they? A No profane language and no dancing.

Q No what? A No profane language; it is on the wall there through that last fire we had down there in that big storage house back of it, the water come in and destroyed the paper, and so forth, but it is right on that wall yet, the sign; there is one washed off but there is a couple more left.

20

Q It has been testified to here that girls, young women in there were in the habit of going from their table over to another table where men were? A Absolutely nothing doing; that is one strict order I always gave to my waiters, wouldn't allow it.

Q Didn't you ever see that done? A Well, we have caught them once or twice and we called them down for it.

Q Did you know the girl Isabelle—I mean have you seen her in your place? A I seen both of them in the place; I do not know which is Isabelle, unless I point out Isabelle.

30

Q Well, there they sit over there, which one do you call Isabelle? A I don't know; the thin one I got the officer to put out and the stout one I put out myself; I gave her a kick one night and knocked her hat off her head; she kept tantalizing me, attending the bar, and I lost my temper and had to do something.

Q What is the name of the one with the red hat?

Mr. Bernhard. That is Isabelle.

40

Daniel J. Kelly, direct.

Q The one with the red hat on is Isabelle? A Yes.

Q Did you ever see her in your place? A I have.

Q Did you ever have any trouble with her? A I have.

10 Q What was that? A Why, she would not stay out of the place and the waiter got orders from me that if he was caught serving her order I would not allow him to work in the grill room, and I was tired of putting her out.

Q What did you put her out for? A Oh, three or four different times.

Q What for? A For disorderly conduct; she came in afterwards and wanted to sit down at the table and we would not allow her to, and she would stay in spite of us.

20 Q Well, what did you finally do to get rid of her? A Well, the waiter come upstairs—what is her name, Isabelle?

30 Q Well, call her red hat? A Red hat—she sat there and she wouldn't move for me and I said people want to use that table and I cannot serve at that table until she moves and you will come down and if I am serving her—and I said, "Keep quiet," I said, "I ain't going down to have her scratch my face." And I went down to the precinct and I met three or four officers—the Captain was with them—and I tapped one of the officers on the shoulder and I said, "I want to see you," and I told him my trouble and he said he would be there in about ten minutes.

40 Q Do you know what his name was? A George Aschenfelder. He came over and I stood in the barroom and he said, "Show me her," and I took him back and showed him this one and he took her out in the driveway and told her to stay away from the place, and she said it was a public place and no one could stop her from going in there, and he said, "No such a thing, you must be disorderly or the man would not want to put you out

Daniel J. Kelly, direct.

of the place." And she said, "My sister comes here and you ought to keep her out, too," and the officer come in and told me you better keep the sister away and she will stay away, and I said, "All right," and I said, "This lady I never seen her do anything wrong up until then," and I said, "I don't think it is right, but I will do what you say," and I went back and whispered in her ear what the officer told me and I said, "Please stay away;" I said, "I have nothing against you, and have never done anything in this house that I know," and she slipped in—

Q Which one? A The stout one.

Q (*By the Court.*) Blue hat? A Blue hat. And she sneaked in one night and there was her and some gentleman sitting at the table and there was two other fellows up by the partition at another table as you go into the barroom, and there was two men in my place at the time looking the place over to buy it—there was a party sent there to buy this place—and in the meantime this one threw a glass at someone named Jack that told her something about some other fellow, to stay away from her, that she was sick—I found this out after—and she started to throw the other glass—there were two beer glasses—and so I put her out right away and I told the other fellow to stay out; I said I don't want you two fellows hanging around here at all, and she sneaked in afterwards and that is when I knocked off her hat, and she kept shoving the door and I said, "Go on now, keep out of here," and this is the first time I knew she was wrong, throwing a glass at a man, and at last I gave her a kick with the stub of my foot and off went her hat and she gave me some nasty words and I ran after her to the sidewalk.

Q And did they come to your place after that? A No, but they hung around the place out in front and directed people to other places.

Q Did what? A Directed people to other places.

Daniel J. Kelly, direct.

Q What do you mean by that? A Why, they would get talking to some man who was coming along and we would sit upstairs and would hear them say, "Well, I am going in here to have a drink," and she said, "Don't go in there, come on downtown," and we sat upstairs and heard this and let them go on down. The men did not
10 know they were barred from the place and they went on with them.

Q Did you ever see the woman Clara Corter that was in there who testified here? A No, I don't know; probably I have; I am not sure of it.

Q Do you know Mell? A I do.

Q Did he keep his taxi around or in front of your place? A Against my wishes.

Q Well, now, tell us about that; did you ever speak to him about it? A Well, Al is a man I have known only a short time. The first time I had ever seen him
20 and met him at my place, I think it was outside, and he got talking to me and he told me his troubles, that he was working down in the shipyard and got laid off and he could not get a job and he had a little car, a pleasure car, I think, if I ain't mistaken, it was a Dodge, or something like that, and he said, "The best I can do is to knock out a living until I can get a job to go in the taxi business." "Well," I said, "it is better than doing nothing to keep your head over water," I said.
30 "Do anything like that until you can get a job." And it went on and he used to keep that car by the Wilkinson-Gaddis Building at that time and as a young fellow floating around trying to make friends—he was a stranger around the neighborhood—and I would only see him evenings when I come home in the evening and, anyway, he got in the taxi business and he got so his car looked a little shabby and he commenced to find fault that he wasn't doing much, people would not ride in his car, so, anyway he comes back to me a few days or something like that afterwards and he said, "I made a deal
40

Daniel J. Kelly, direct.

with the automobile people to take my car in and I am going to get a new taxi that I can do some business with;" well, then, it went on all right until the taxi arrived at Newark, the new taxi; he was short \$125; he came to me and I said, "Al, why do you ask me, I am a stranger to you; I don't know why you pick me out;" well, he said, "I don't know who to ask;" I said, "What is the matter with your father, ain't your father got some money?" 10
 He said, "Yes, but he and I don't hitch, he won't do nothing for me," and I said, "You are just like I am," I said, "You go and see your father, he will help you out," and so he said nothing doing with his father and he was going to lose this deposit he had paid on this new car and he came to me and he asked me and I said, "Al, I cannot loan you that money, I have not got it to spare"; I said, "Mr. Bishop and I are building a few houses and we really have to borrow some money ourselves, our payroll is six or eight hundred dollars a week," and he kept after me and I said, "I will tell you what I will do to help you out, I will sign a note and I guess you can go to the bank and get the \$125," and I said, "You and your wife come down to the factory and give me a note, both signatures." They done so, the first time I ever met the wife, and Mr. Bishop was the man who filled out that note, which I have possession yet, and the note came due and he wanted to renew it and he got in this trouble— 20

Q What trouble? A Why, the taxi trouble, the time the officers arrested him for carting these women around and they wanted me to go his bail and I said I wouldn't mix myself in such a thing as that, the officers would get down on me, and his wife come to me and I said, "I don't think Al is that kind of a man, because he was always a fellow that was talking about his family and he would say he could not treat his family right, could not take his children to the moving pictures, and I gave him my note to get this \$125 to get his car out, and it seems to 30

Daniel J. Kelly, direct.

me it is a dream yet, that man fooled me, never thinking he was playing such a game as that; I didn't think he would stoop that low; well, the end came too—

Q Well, we don't care about that; it was finally settled, wasn't it? A Yes.

Q What did he say to you when you refused to go
10 his bail? A He was not there; his wife was there that time.

Q Well, did you ever have any conversation with him at all? A No, after he got out of jail he called to see me.

Q What? A After he got out of jail he called to see me.

Q Was anything said about the bail matter? A Well, about the note, the note coming due and he wanted to renew the note and I said, "You will have to pay some-
20 thing on it or pay it all."

Q Well, that was the mere financial matter of the payment of the note; I don't think that is important. He said that at one time he had a conversation with you about the sale of your place; did you have any conversation with him about that? A Well, I could not say whether I did or not; I often told different people I was trying to sell out.

Q He said that you told him that you wanted to sell
30 this place because they were all whores down there. A He deliberately lied; never in my life said that; I said I didn't like the business, I have got business of my own and I was tied up too much in two businesses.

Q It is in evidence that when the people were in the room that you would go in there and say, "Hello, girls," or words to that effect; did you ever do that? A Never used that word in my life, "Hello, girls."

Q Well, words or anything of that kind? A No, no.

Q Do you know Gommell, the other taxi driver? A
40 Teddy, yes, acquainted with him.

Daniel J. Kelly, direct.

Q He said that you said to him on one occasion, "If you ever get Jazz bring him down here—"

The Court. If you ever get a man with plenty of jack.

Q Well, Gommell says that you said to him if you ever get a man with plenty of jack, meaning money, bring him down here, there are plenty of girls here; did you ever say that? A Never in my life; he is a man I never talked to but very little and I never liked him; he was the most overbearing young man that ever come into the place, one of these fellows that you must do as he says or he would jump on you. 10

Q One of these girls has testified that you were in the habit of sitting at the table there with the girls and women and the men, is that true, or what about that? A I have probably sat three or five times since I have been in that place at the table with a few of my friends now and then. 20

Q Well, other than that did you do it? A No, sir.

Q Did you ever see a man or woman leave your place—or, after leaving your place getting in a taxi cab and going away? A Well, I have seen them going out.

Q Did you know who they were? A No.

Q Did you know where they were going? A No, sir.

Q Did you have any idea? A No, sir. 30

Q Did you ever know or observe that some man and woman would leave your place and be gone different lengths of time, and comparatively short and then come back again? A Not as I ever seen, no.

Q Did you have a telephone in your place? A Yes.

Q Who used that? A Why, anybody that wanted to use it.

Q What sort of a telephone was it? A Nickel, nickel 'phone. 40

Daniel J. Kelly, cross.

Q And where was that located? A Well, that is in the barroom, right as you enter the toilet, on the partition of the toilet.

Q It was a slot machine, was it? A Yes.

Q Do you know whether the taxi drivers used it? A Well, I suppose they called up the same as anybody else.

10 Q Did you ever receive yourself any messages over that telephone for the taxi cab drivers? A No, sir; that is something I would not allow.

Q Did you ever receive any messages from others for the taxi cab? A Now, let me get you again.

Q Did you ever receive any messages from anybody else saying they wanted a taxi cab? A Well, we have answered the 'phone and told them we had no taxi and hung the receiver up; I have done that.

20 Q It is in evidence that there was flirting in your place; I think one girl said she would look over and smile at a man and he would smile back and then one or the other would motion to the other to come over and sit with them; did you have any knowledge of anything of the kind going on? A Never in my life; if they done it they done it unbeknownst to me.

30 Q Did you ever know in any way or have any intimation of any time that men and women in your place were making appointments to go out and meet on the outside and then go away for improper purposes? A No, sir.

Q At any time? A No, sir.

Cross examination by Mr. Bernhard.

Q I think you said that on an average you had one hundred people there a night? A Oh, there might be one hundred or one hundred and fifty people there Saturday.

40 Q Sometimes you had an overflow meeting and then you used the front room? A Yes, we had to go upstairs.

Daniel J. Kelly, cross.

Q What was there to attract people to your place?

A Well, it is a handy place near Broad and Market streets; they come from the moving pictures going home.

Q Well, let's see; there are at least three drug stores within a block of the place? A Well, I didn't know drug stores sold beer.

Q Well, we don't always know what drug stores do sell. A That's right. 10

Q You think then the beer attracted them? A Yes.

Q Now, let's see; there is Achtel-Stetter's right near the corner, they sell beer, don't they? A Yes, sure they do.

Q There is the Greely down there, they sell beer? A Yes.

Q And there is Simonson's, they sell beer? A I suppose so.

Q Well, at any rate then, there are some places on Green street that sell beer? A Yes, around the block. 20

Q So within a very short distance of your place there are at least a half a dozen other places that sell beer? A Down further from us, yes.

Q And you think it was the beer that attracted them to your place? A Well, the location and it was so handy to come in from the side and go out.

Q What was there to the side entrance? A Well, there is a nice wide driveway and the door is very handy to come into the big grill room and sit down and have a drink and go on about their business. 30

Q Well, so the driveway or side entrance that you have attracted them? A No, the location of it.

Q Just the general location of the place? A Right.

Q Was it the men that liked the location or the women? A Both.

Q Was your barroom sometimes pretty well filled? A Yes.

Q I suppose it was the beer that attracted them to the barroom? A I suppose so. 40

Daniel J. Kelly, cross.

Q Milk and seltzer, perhaps? A Yes.

Q So beer, side entrance and milk and seltzer attracted from one hundred to one hundred and fifty people there every night to your place on the average? A Not every night; I did not say that.

10 Q On the average? A No, not one hundred and fifty people on the average.

Q Saturday nights? A Saturday nights.

Q How late, by the way, do you keep your place open? A Oh, one o'clock.

Q Crowd still hung on until one o'clock? A No, slacked off around twelve.

Q So they would come in there, these men and women, and sit in there until around twelve o'clock drinking beer and soda water and milk and seltzer? A Yes.

20 Q It was not the dancing that attracted? A There wasn't supposed to be any dancing there in the first place.

Q Well, was there? A Yes.

Q Was there dancing? A Yes.

Q I thought you said— A I didn't allow it.

Q Didn't you say in answer to Mr. Mott's question there was no dancing? A I didn't allow no dancing.

30 Q Didn't you say in answer to Mr. Mott's question that there was absolutely no dancing there? A I told Mr. Mott I did not allow no dancing.

Q Well, then, you may be entirely right—

The Court. He said, "Never allowed dancing there."

Q Well, was there dancing there? A Yes.

Q How often was there dancing? A I couldn't tell you, I went through there different times and seen them dancing.

40 Q Well, dancing there every time you were? A No, no.

Daniel J. Kelly, cross.

Q Well, you were there every night practically? A Yes.

Q You were downstairs keeping your eye on business? A Yes.

Q You could see what was going on? A Always tried to see what was going on, that was right.

Q And you saw that dancing was going on? A Yes, and I told them to sit down many a time. 10

Q Did they sit down? A Yes, they had to sit down.

Q And they started up again? A Oh, some guy would go over and put a nickel in the machine and he would get up and dance.

Q So they would dance to the music of a five-cent slot machine? A Yes.

Q Was there a space cleared for dancing? A No, just a walk, tables on both sides.

Q Well, were the tables separated to make a place for dancing? A No. 20

Q Well, between the aisles? A That is the only place.

Q You say there never was a place set aside for dancing? A No.

Q So they would come in and drop a nickel in the slot machine and sit around and drink soda and milk and beer and stay until twelve o'clock? A Well, I didn't say they would come in at seven and go out at twelve.

Q Well, did they? A Not as I know of.

Q Well, you were there? A Well, not as I know, one party stayed from seven to twelve. 30

Q Your trade was a transient trade? A Yes.

Q Very seldom saw in the place a face a second time? A Oh, yes, we have some people that come there right along.

Q Quite a lot of them made it a gathering place? A No such a thing as a gathering place.

Q Well, they come in and sat down? A Well, sat down and had a drink and went on about their business. 40

Daniel J. Kelly, cross.

Q Did you ever see any girls there on more than one occasion?

Mr. Mott. Do you mean young women?

Q Did you ever see any women there more than upon one occasion? A Yes, yes, yes, yes.

10 Q So that it was quite a custom for women to return from time to time? A Sometimes they would come in the same as I go into a place a dozen times a week, as far as that is concerned.

Q So you go into a place for business a dozen times a week? A Yes, if I feel like having a drink.

Q And I suppose you felt the same way about these people if they come a dozen times a week? A Sure, go where they please.

Q And the kind of business they please? A No, I don't know what you mean by that.

20 Q Haven't the slightest idea what I mean? A I don't know what you mean.

Q You say they were from twenty years up, don't you? A Yes.

Q Didn't it strike you that twenty years was a fairly young age for girls to be sitting around until twelve o'clock at night? A Well, they didn't come in at seven and sit there until twelve.

30 Q Did I say they did? I asked you if it didn't strike you as rather strange and unusual for girls twenty years to come in and sit around until twelve o'clock at night?

A Well, they come in and had their drink and went on about their business.

Q Just sat there a minute or two? A Some of them and some of them might sit longer.

Q Didn't that seem a bit strange? A Why so?

Q Do you want me to tell you? A That is up to you.

40 Q Because I think I can tell you. Did you ever see any of them come in alone? A Probably had.

Daniel J. Kelly, cross.

Q What do you mean by probably; have you or have you not? A Well, I wasn't keeping tabs on them.

Q Well, have you or have you not? A Probably they have.

Q Well, then, they have, is that your answer? A Yes.

Q Frequently? A No. 10

Q Did you permit girls to come in there alone? A Why, if they want something to drink or something to eat, I don't know why I should stop them.

Q Well, you didn't stop them? A I have stopped some.

Q And some you have not? A Yes.

Q So that it is true, then, that you permitted girls to come in alone and sit down for eating and drinking? A Yes, to get what they needed.

Q Get a sandwich? A Yes. 20

Q Or hamburger? A Yes.

Q Around eleven or twelve o'clock at night? A Yes.

Q Order whatever liquid refreshments they want, I suppose? A That is providing what kind of liquor it was.

Q Oh, I said liquid refreshments and you said liquor; you beat me to it; what do you mean by liquor? A Well, that is what I understood you to say.

Q Was that what was in your mind? A No. 30

Q Why did you say it then? A Well, I heard you say it and I thought you said it.

Q You didn't sell any liquor of any kind in your premises? A When?

Q Did you have some there on the night of March 13th, this year? A March 13th?

Q When the officers came in? I will make it easy for you? A No.

Q So far as you know no liquor of any kind was ever found in your place? A Not as I know of. 40

Daniel J. Kelly, cross.

Q Did you ever hear it had been found there? A I heard something about it.

Q Greatly surprised? A I was.

Q Stella ever intoxicated in your place? A She came in that way.

10 Q When was that? A Oh, just about the time we found out about the two of them that we kept out.

Q I know, but when was it? A Oh, I cannot tell you the date.

Q About the latter part of November or October, last year? A Well, probably so; I am not sure about the date.

Q Were you there when she came in drunk? A Yes, and she took a fit there one night.

20 Q She took a drunken fit there one night? A She came in there out of a taxi and she wanted to dance and I came in the back and seen the condition she was in and said she better get out of here and she went to the toilet and took a fit and we carried her out of the toilet and we took her in the dining-room and done everything to get her right.

Q She didn't get any of that liquor in your place? A No.

Q Absolutely? A Absolutely.

Q Anybody else there drunk besides Stella? A Yes, they always come there drunk.

30 Q It is strange that everybody who got drunk, particularly women, should come to your place? A Well, they seemed to do that.

Q It seemed so to you? A We had a lot of trouble with them to keep them out.

Q But they never got any in your place? A Not in that condition.

Q You mean they didn't get quite as drunk as these people you are talking about? A They never got so bad in my place.

40 Q Not quite so bad? A No.

Daniel J. Kelly, cross.

Q Were they ever drunk? A No.

Q (*By the Court.*) Could they get it if they were in that condition? A No.

Q Well, could they get it if they were not drunk? A One time there they could.

Q What objections had you, Mr. Kelly, to receiving telephone calls for Mell? A I never had and never allowed him. 10

Q That is what I thought you said? A I never wanted the taxi men around me at all.

Q You wanted Mell there? A Never.

Q Well, you helped him out so he could have a cab and stand in front of your place? A He took the privilege himself.

Q Just usurped the right, just over your objection? A I suppose you doubt my word; I never allowed him or anyone else to hang around my place. 20

Q What objection was there to having a legitimate taxi in front of your place? A I don't want them.

Q Why? A Because we had use for our front, people come there to jump off their automobiles to have a drink and I don't want no taxi in front of my place.

Q Didn't you want to make it comfortable for your patrons? A Certainly.

Q And if they wanted to go away in a taxi cab you would want to have one? A No, sir. 30

Q Rather have them wait? A Yes.

Q Is that the reason you had the telephone? A No, the telephone was there long before I went there.

Q Is that why you kept it there? A No.

Q But you seemed to have a chronic dislike to having a taxi in front of your place? A I never did want a taxi hanging out in front of my place.

Q Well, just because it is a taxi? A Well, the taxi drivers are a pretty bad crowd; I had a son go in the business and I made him quit it. 40

Daniel J. Kelly, cross.

Q Well, you had a general dislike without regard to the men? A Yes.

Q So acting upon that feeling you would not permit a taxi in front of your place? A No, sir.

Q Well, let the folks go out in the rain if they wanted to? A Well, if they wanted to 'phone for a taxi a taxi
10 could come right there without walking out in the rain.

Q What was Gommell's first name? A Teddy, I always called him Teddy.

Q Sure, your recollection is fine; you called him Teddy? A Yes.

Q I thought you said Teddy and you did not get along very well? A Never liked the man from the first day I saw him.

Q Well, you liked him enough to call him Teddy? A Well, you have to do that sometimes.

Q You permitted him to come into your place? A I
20 told him to stay out more than once.

Q But you did permit him to come in? A He came in on his own hook.

Q Against your wishes? A Yes.

Q Well, Al came in? A Yes.

Q You didn't like to have him around? A Well, Al was a different man altogether.

Q Different man for a taxi cab driver? A I always
30 thought Al was a gentleman.

Q A little exception to him? A Yes.

Q Didn't mind having him in the place? A Didn't allow him to.

Q But you made an exception with him? A Yes, to a certain extent.

Q But he did come in? A To help his family along.

Q But you permitted him to come in the place? A Yes.

Q Permitted him to do business in the place? A
40 No, sir.

Daniel J. Kelly, cross.

Q I thought you wanted to help him along? A Never in my place; I don't want him around the place.

Q Why? A Well, I don't want him to hang around.

Q Well, he was all right. A Well, I refused him the place; he said yesterday I allowed him in the driveway, and I never allowed him in the driveway and he took advantage of me at different times.

10

Q Well, you wanted him to get along, didn't you? A Oh, well, we always try to get along.

Q And we pass this way but once and let us do the best we can? A Oh, you cannot be too severe, but you simply try to keep a rule and fellows will overdo it at times.

Q A man may be down, but he's never out. A That's right.

Q Well, you had no—and you let Al come in because you liked to see him get along? A I like to see everybody get along.

20

Q And that is the reason you let Al come in? A Well, he come in and bought what he wanted at the bar.

Q And ever sit down at a table? A Yes.

Q With some of the patrons? A I suppose so.

Q Well, you saw it, didn't you? A Well, I seen him sit at the table.

Q You knew that Al got some trade out of your place? A There ain't no doubt everybody got trade out of my place.

30

Q And he did that for a number of months? A Well, I would not say that; he was not around there very long.

Q Well, a number of weeks? A Well, probably a number of weeks.

Q Men and women? A Yes, sure, men and women.

Q Rather young women? A Not real young, no.

Q Well, what do you call a young woman? A Well, around sixteen, seventeen or eighteen.

Q How do you think a girl of twenty would like that answer? A Well, twenty ain't so bad.

40

Daniel J. Kelly, re-direct.

Q Well, I know, but where did you suppose Al was taking these people? A I don't know.

Q Well, were not you interested? A No.

Q Didn't much care, did you? A None of my business.

Q You didn't much care where he took them? A Why would I ask a man where he took them?

Q You didn't much care where he took them? A I don't know as it is my business.

Q Did you care? A No, I didn't care where he took them.

Q Did you ever ask him? A No.

Q Didn't it ever occur to you that he might be taking these people out to furnished room houses of assignation? A Never in my life.

Q Never thought of it? A Never in my life.

Q No matter how often they come in there and how often they went out, you never thought of it, is that what you mean? A That is what I mean.

Examined by the Court.

Q You say you gave orders to your waiters not to permit flirting or solicitation, when did you give those orders? A Always, Judge, always; the first time I took hold of the place; never allowed it.

Q Who were those waiters? A Well, we had different ones there; I had discharged a couple catching them not quite having all they ought to have in the grill room, I went in one night—

Q No, I just want to know who they were? A Well, I really could not tell you their names; I heard one is down along the shore somewhere and I cannot find trace of him.

Re-direct examination by Mr. Mott.

Q What was this you said you discharged one of your waiters? A Why, not quite having order in the back room and there was some fellow trying to do a little

George Aschenfelder, direct.

shimmying and I said, "What do you allow him to do that for," and he didn't say nothing and he wrapped his apron up and we have never seen him since.

Q What about tickets? A Why, he has been after me and different other ones, getting cards to use my telephone and I would not have it, because one was jealous of the other, and he went one day and had a lot of tickets printed and he had the nerve to show to me—these cards— 10

Q What kind of tickets? A Cards with my telephone on.

Q Go on. A And I said, "If you don't destroy them and burn them up and you have any of them tacked up anywheres you get them down or I will have you over in headquarters right away" and said, "Get the hell out of my place"; those is the words I used, "You annoy me."

Re-cross examination by Mr. Bernhard. 20

Q Let me see, you were going to have a man arrested for having some cards printed with your telephone on, is that right? A Right.

GEORGE ASCHENFELDER, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q You are a member of the Newark Police Department? A Yes. 30

Q Do you remember an occasion when Mr. Kelly came to you and complained about the conduct of some women in his place? A Yes.

Q And did you have a talk with Mr. Kelly about the matter at that time; did he tell you what the trouble was? A Yes.

Q And then what did you do? A Why, we were told—

Q No, what did you do? A We went down to the Lincoln Highway Inn. 40

George Aschenfelder, cross.

Q And after you got to the Lincoln Highway Inn, what did you do? A Why, there was a couple of young ladies sitting there, Stella, I believe her name was, and another young lady, and he said, "Those are the ones we are complaining about," and I told them they would have to get out of here and stay out of here, but Mr. Kelly phoned previous to that up to the captain—

10

Mr. Mott. I move that be stricken out.

The Court. It will be stricken out.

Cross examination by Mr. Bernhard.

Q Had you had previous notice of that place? A Yes.

Mr. Mott. I object, not cross examination.

20

Mr. Bernhard. I ask your Honor to permit me to ask him that one question on direct examination, if necessary, but I submit that it is cross examination.

The Court. I think you better make him your own witness.

Mr. Bernhard. I ask your Honor to make him my witness.

The Court. All right.

30 Q Before that time had you been investigating that place? A Yes.

Q So that when Kelly came to you you had seen him upon a prior occasion, had you? A At the office of the first precinct.

Q And how long had you been investigating that place? A Oh, we had that place under surveillance for sometime; reports received there—

40

The Court. Only answer the questions directly; don't volunteer any information.

George Aschenfelder, re-direct—re-cross.

Re-direct examination by Mr. Mott.

Q You were investigating that place for sometime?
A Yes.

Q For how long a time? A Oh, approximately a year.

Q Did you make any arrests or cause any arrests to be made there? A I did not, sir. 10

Q Did you make any complaint against anybody there?
A I did not, sir.

Q So far as you know was any made as the result of your investigation? A As far as the reports—

Q Was there any arrest made or complaint? A There has been complaints come in to the captain.

Q Now, officer, you are not as dumb as you appear. I asked you whether as a result of your investigation covering a period of a year or more there was any complaint made in any court against this place or whether any arrest was made there? A There was no complaint made in any court, but complaints come to the captain. 20

Re-cross examination by Mr. Bernhard.

Q After you made your complaint, did you bear any message from the captain to Mr. Kelly? A Mr. Kelly was called before the captain; he was told to be up to see the captain in regard to the way this place was being conducted. 30

Q Was anything said about any women? A And he was told to keep these women out without escorts, that he would have to do that.

Re-direct examination by Mr. Mott.

Q When was this? A The time, I should judge was about five or six months ago.

Q And didn't the captain tell Mr. Kelly he must not allow dancing on Sundays? A Yes, he told him he had to stop his dancing down there and close that piano down, 40

Daniel J. Kelly, direct.

he had received complaints about that piano going until early hours of the morning.

Q And that was what the captain was talking to him about? A Oh, no, and he was saying you will have to keep them women out, going there without any fellow; Mr. Kelly said when they would come in that somebody
10 outside would come in and try to buy them drinks.

DANIEL J. KELLY, defendant, recalled in his own behalf.

Mr. Bernhard. Is this further direct?

Mr. Mott. Just in relation to this matter.

Q Did the captain ask you sometime ago, some months ago to go down to see him; did you receive a message?

A Yes, yes.
20

Q And did you go? A Yes.

Q And was officer Aschenfelder there? A Yes.

Q What was the subject of the conversation between you and the captain, what did the captain say? A Well, on Sunday the piano with the drum, you could hear it a little bit, and that was the cause of it.

Q Well, what did the captain say? A Well, the captain told me to cut the drum out; if we wanted a little music there was no harm in that, but cut the drum out
30 and there wouldn't be so much noise, so I done so.

Q Did the captain at that time say anything about women coming in without escorts? A No, only about the music.

Q And did he at any other time say anything to you about women coming in without escorts? A No.

Q Do you know or have you ever been informed that there is in the State of New Jersey no law which prevents a woman unescorted going into a public place? A I do
40 not.

Michael W. Boyle, direct.

Cross examination by Mr. Bernhard.

Q You are speaking now, I suppose now, of statute laws, laws passed by the legislature? A I don't know anything about the laws of New Jersey.

Q Do you know anything about the moral law? A Well, I know enough to behave myself and to run my place decent. 10

Q Now, let me ask you, you cut out the drum, did you? A Yes.

Q That all went with the nickel, did it? A Yes.

Re-direct examination by Mr. Mott.

Q Well, how could you do that? A Well, there is panels you can pull for the drum on the side.

Q (*By the Court.*) What captain was this that you talked to? A Why, the First Precinct captain, Fohs.

Q George Fohs? A Yes. 20

RECESS.

MICHAEL W. BOYLE, sworn in behalf of the defendant.

Direct examination by Mr. Mott.

Q Where do you live? A Bloomfield, New Jersey.

Q How long have you lived in this county? A Forty years. 30

Q What is your business? A My business is watch-maker and jeweler.

Q Do you know Daniel J. Kelly, the defendant? A I do.

Q How long have you known him? A About fourteen or fifteen years.

Q And what has been your relationship with him? A Well, as a companion; we have been very close together.

Q Have you been mutual friends? A Oh, yes.

Q Do you know what his reputation for being a law-abiding man, decent, clean-living man in this community 40

John W. Kelly, direct.

is? A I have never known him to be anything different.

Q Well, now, you don't answer my question. Do you know what his reputation for that is, whether it is good or bad? A While I have known him I have known him to be all right, a good man.

10 Q You don't answer my question? A Well, make it clearer for me.

Q Do you know what his reputation for the things I have mentioned is? A In general?

Q No, his reputation for being a law-abiding man and a clean living, decent living man; do you know what his reputation is, whether it is good or bad? A Good, good.

Q Yes or no. Answer me. Do you know whether it is good or bad? A Yes.

Q What is it? A Good.

20 Q Good or bad? A Good.

Cross examination waived.

JOHN W. KELLY, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 9 Myrtle avenue, Newark, New Jersey.

Q What is your business? A Real estate and insurance, 222 Market street, Newark, New Jersey.

30 Q How long have you lived in this county? A I have lived in Essex County about eighteen or twenty years.

Q Do you know Daniel J. Kelly, the defendant? A I do.

Q Is he any relation to you? A Not at all.

Q Do you know what his reputation in this community is for being a law-abiding citizen, decent, clean-living man? A Yes.

40 Q Do you know what his reputation is for those things, whether it is good or bad? A Yes.

Philomena Kelly, direct.

Q What is it? A Good.

Cross examination waived.

PHILOMENA KELLY, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Mrs. Kelly, you are the wife of the defendant, Daniel J. Kelly? A Yes. 10

Q You have been married nearly two years to him?

A Two years the 12th of July.

Q You were a widow at that time? A Yes.

Q And what was your name by your first husband?

A Mrs. McKim.

Q Your first husband was dead? A Yes.

Q At the time of your marriage did you own and were you conducting what is now the Lincoln Highway Inn? A Yes. 20

Q And since your marriage to Mr. Kelly have you continued to live there on the premises? A Yes.

Q How much have you seen of the premises—you live upstairs? A Yes.

Q How much have you been around in the premises below since your marriage? A Well, I have my kitchen and dining-room downstairs and am down there most of the time.

Q And from your kitchen how much of a view do you have of the rooms on the first floor? A Well, I can see from the kitchen into the barroom. 30

Q And how about the reception room or dining-room?

A You mean the grill room?

Q The cafe or grill room, can you see into that? A Yes.

Q Have you ever observed anything that was out of the way, unusual or improper there? A No, sir.

Q What? A No, sir.

Q Do you know the girls, Stella and Isabelle? A I have seen them, yes. 40

Daniel J. Kelly, direct—cross.

Q Have you seen them there? A Yes.

Q Do you know whether or not they were directed not to come to the place? A Yes.

Q Were they? A Mr. Kelly told them not to come.

Q Do you remember an occasion when one of them came back and wanted to get in? A Yes.

10 Q Was she alone or with some one? A She was standing out front and Mr. Gommell come there and asked her if she wanted to go in and he said, "Come on, I will clean house if Mr. Kelly don't serve you."

Q What did you do? A I ran downstairs; there was going to be trouble, and I would go back and see they couldn't get in and I told Mr. Gommell they couldn't get in and he said, "Why pick on me?" I said, "Well, I was sitting up at the window and I heard you say you would go in or clean the place up."

20 Q Did she go in? A No, sir; I told her if she come in I would have her locked up.

Q Do you know when that was? A I do not know the date; I think it was in October.

Cross examination by Mr. Bernhard.

Q Mrs. Kelly, did you say that you told Gommell that Stella could not go in? A Yes.

Q Those were the words that you used? A Yes.

30 DANIEL J. KELLY, defendant, recalled in his own behalf.

Direct examination by Mr. Mott.

Q Mr. Kelly, what kind of a sign, electric sign or otherwise, did you have over your place? A Lincoln Highway Cafe.

Q Did the name "Kelly" appear there? A Never.

Q Since you have been there? A Never.

Cross examination by Mr. Bernhard.

40 Q Are you pretty sure of that? A Yes.

Joseph Mullaney, direct—cross.

PHILOMENA KELLY, recalled in behalf of defendant.

Direct examination by Mr. Mott.

Q What kind of a sign was there over the door? A Lincoln Highway Inn.

Q Did the name "Kelly" appear there at all on it?

A No, sir.

10

JOSEPH MULLANEY, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Where do you live? A 131 Jefferson street, Newark.

Q What is your business? A It is now a salesman.

Q Did you formerly work for Mr. Kelly, the defendant? A Yes.

Q In what capacity? A Bartender.

Q Did you have anything to do with the grill room in anyway? A No, sir.

20

Q Did you ever receive from Mr. Kelly any instructions as to what should be done or what should not be done in the grill? A Not from the grill room.

Q Well, anywhere around there? A In the bar, yes.

Q Well, what were those instructions? A Well, that the ladies were not allowed to use the telephone and were not allowed in the barroom.

Q How long did you work for Mr. Kelly? A Nine months.

30

Q About when did that cease? A Almost five months.

Q (*By the Court.*) Five months ago? A Yes, sir.

Q And were there any instructions you received in regard to taxicabs? A Not to receive taxi 'phone calls.

Cross examination by Mr. Bernhard.

Q How long were you there? A How long did I work there?

Q Yes. A Around nine months.

40

Joseph Millaney, cross.

Q Do you remember when you stopped? A I cannot just say, about four or five months ago.

Q Some time this year? A Yes.

Q So then it probably started about June of last year? A Yes.

Q What were your hours? A From three to twelve, closing time.

10 Q Was it your business to serve the drinks which the waiters ordered? A Yes.

Q That is to say, you served them from the cafe to the waiters? A I served them to the waiters, yes.

Q And for people who came to the bar you served directly to them, is that right? A Yes.

Q The money that came in from the waiters, did it come in to you and then to the cash register, or did the waiters put the money into the cash registers directly?

20 A The money was paid through me for the drinks, like if the waiter wanted a beer, he would pay me for the beer and then I would ring it on the cash register.

Q How many waiters were there the latter part of last year? A There were about four that I know of.

Q All at one time? A No, sir.

Q I mean at one time how many were there at one time? A One.

Q Only one? A Yes.

Q And during that period of time you had four? A Yes.

30 Q Did you work Sundays? A Yes.

Q Were you there the night some agent from the Federal Prohibition Department came in there?

Mr. Mott. Your Honor, is that cross examination? I examined this witness only in regard to the instructions he received in regard to the running of the place.

The Court. Perhaps it is not technically cross examination, but why not let the jury have the benefit of it?

George Getz, direct.

Mr. Mott. I am willing if Mr. Bernhard will cease cross examination and make him his own witness.

The Court. I will sustain the objection.

Re-direct examination by Mr. Mott.

Q You were subpoenaed here by the State, were you not? A Yes. 10

Re-cross examination by Mr. Bernhard.

Q And you asked me yesterday to let you go and I told you I couldn't do it, didn't I? A Yes, you did.

GEORGE GETZ, sworn in behalf of defendant.

Direct examination by Mr. Mott.

Q Mr. Getz, where do you live? A 103 Manor avenue. 20

Q You formerly worked for Mr. Kelly? A No, sir.

Q You never worked for Mr. Kelly? A No, sir.

Q Do you know Mr. Kelly? A No, just go into his place.

Q How frequently have you been in his place? A Why, up to December 3rd I used to drop in there pretty nearly every night of last year.

Q What time of the day or night did you go there? A Why, never in the daytime; the majority of the time at evening. 30

Q And how long would you stay? A Why, probably ten, half-past ten, eleven o'clock.

Q How many people were there on the occasions you were there, approximately, I mean, on the average? A Oh, thirty or thirty-five.

Q Consisting of both men and women? A Why, it was not all the time I would go in the back room; probably once or twice that I got in the back room; I usually sit out by the bar. 40

George Getz, cross.

Q Well, when you went in the back room how many were there? A Well, about ten or twelve, maybe, couples.

Q Men and women? A Yes.

Cross examination by Mr. Bernhard.

10 Q Did you ever see dancing in there? A Yes.

Q Regular, wasn't it? A No, sir; not regular.

Q Well, every time you were there? A Why, not every time I was there.

Q You danced yourself? A Yes, I danced myself.

Q Were you in there generally for two or three hours? A Yes.

Q You could see what was going on? A No, sir; I never took notice; I generally sat at the little table that sat in back with a friend of mine, Tommy Bolin.

20 Q Did you always dance with the same person? A No, sir.

Q Danced with anybody that wanted to dance with you? A Yes.

Q How did you make the acquaintance? A Well, ask them to dance with me.

Q Whether you knew them or whether you didn't? A Yes, sir.

30 Q Well, that was the general practice in there as far as you know? A I couldn't say whether it was or not.

Q Could you see how girls met fellows in there? A No, sir.

Q Didn't see anything went on there at all? A No, sir; I never paid no attention to it.

Q Can't tell this jury anything about it? A No, sir; I didn't use to pay any attention to it; I used to dance and go on about my business.

Q You understand my question? A Yes.

40 Q You never saw anything going on in there? A Only the dancing.

George Getz, cross.

Q Never saw girls and fellows meet in there? A No, sir.

Q In the same manner in which you say you became acquainted with them? A No, sir.

Q Did you see anybody else meet any girls? A Not that I ever paid any attention to.

Examined by the Court.

10

Q Did you see Mell there? A Al Mell, yes.

Q Did you see Gommell there? A Yes.

Q Where? A Why, Gommell, I used to see him come in maybe once or twice.

Q What would he do when he come in? A Why, stand at the bar; I don't think I saw him there over twice and he had a soda.

Q (*By Mr. Mott.*) Had what? A A soda.

20

Q Did you see Mell in there? A Yes.

Q Where did you see Mell? A Why, he used to be in the barroom and walked in the back.

Q What would he do in the back? A Sometimes he would sit at the table and sometimes he would dance; and I seen him dance twice, I think.

Q Did you see Gommell and Mell ever come in there and shout taxi? A No, sir.

Q Did you ever see them take any people away from the place? A I saw Mell, but not Gommell.

30

Q You saw Mell? A Yes.

Q How many times did you see Mell? A Twice, I think.

Q Did you ever see Gommell do it? A No, sir.

Q Only saw Gommell in there drinking? A Yes.

Q How often were you in the backroom? A Well, probably once or twice a week.

Q While you were there you never saw any men or women beckon to another and go over to their tables?

A No, sir.

40

George P. Fohs, direct—cross.

Q Never saw it? A No, sir.

DEFENDANT RESTS.

GEORGE P. FOHS, sworn in behalf of the State in rebuttal.

10 *Direct examination by Mr. Bernhard.*

Q Do you recall a conversation held at your office at which Mr. Aschenfelder, one of your officers, and Mr. Kelly, the defendant, were there some months ago, or some weeks ago? A Yes; he come into my office on a Saturday morning. I think—I am not positive of that.

Q I don't ask you to remember the time, because I don't know whether you do or not. At that conversation did you or did you not tell him that he must keep unescorted girls out of his place? A He come there—

20 Q Won't you answer my question? A I advised him against permitting unescorted women frequenting the place, as it might make matters bad.

Q Did you have any other conversation? A Yes, about the piano playing. A complaint had been made about piano playing at a late hour and on a Sunday they had a cabaret there, I believe, in the rear and dancing going on.

Q But that was the other part of the conversation? A Yes.

30 Q And was it in the same conversation you mentioned about unescorted women? A Yes.

Cross examination by Mr. Mott.

Q How many cabarets are there in your precinct, approximately? A At the present time about three.

Q Well, how many were there at the time you had this conversation with Mr. Kelly? A Oh, there might have been eight.

40 Q Oh, you asked Mr. Kelly to come up and see you on this occasion on account of piano playing, did you not? A Yes.

George P. Fohs, re-direct—re-cross.

Q And while there you did as you say you did, you advised him about not allowing unescorted women there?

A Yes.

Q Do you remember an occasion when Mr. Kelly asked you to get some objectionable people that were hanging around his place away? A Yes; he complained that there were some young men loitering around in the vicinity of his place and the garage next door; he said that these men frequented the place and were—he was afraid there might be some trouble resulting from their coming in there, as they would butt in with the ladies and gentlemen in the place, as he termed it.

10

Q And he wanted you to do something to keep them away? A Wanted these men kept away; of course, they were the regular hangers-on, as you find in all saloons.

Q Well, did you do anything to carry out his request? A Yes.

Q What did you do? A I instructed the officers to keep them away from there or anybody that might make trouble.

20

Re-direct examination by Mr. Bernhard.

Q Before that time had that place been under observation? A Yes.

Re-cross examination by Mr. Mott.

Q But you did not make any complaint against it or make any arrest there? A No, there was not sufficient evidence.

30

Q But you did not do it? A No, sir.

Re-direct examination by Mr. Bernhard.

Q Because, as I understand you to say, there was not sufficient evidence? A Not sufficient evidence is right.

TESTIMONY CLOSED.

Mr. Mott sums up for defendant.

Mr. Bernhard sums up for the State.

40

*Court's Charge to Jury.***COURT'S CHARGE TO JURY.**

STICKEL, JR., J.

Gentlemen of the Jury: You have listened to this case very patiently and very carefully and now comes your part of the functions of the trial. Now it becomes
 10 your duty to determine the issues in this case. My function is to instruct you in reference to the principles of law governing the case and the law of the case you must take from the Court, not from Mr. Mott and not from Mr. Bernhard, but from the Court. You, however, are the sole judges of the facts, weight of the testimony, credibility of witnesses, inferences to be drawn from the evidence and the ultimate conclusions to be reached upon all the facts. The Court, in referring to the evidence, is not to be understood as deciding any fact, but merely as at-
 20 tempting to elucidate the evidence for the convenience or assistance of the jury, or to illustrate or explain the application of the principles of law, and so, if, according to your recollection the Court errs in its statement of any evidence, whether disputed or undisputed, or assumes or states the existence or presence in the case of evidence that is not actually before you, you should disregard the recollection of the Court and rely upon your own recollection. Again, if any part of the evidence is referred to, seemingly giving it particular emphasis, you are not to
 30 disregard other evidence which you may deem of equal or greater importance, for it is your duty to consider and weigh all the evidence bearing upon the questions involved in this matter before you, not only that which may be mentioned by the Court, but all that has been presented here before you.

The law presumes that the defendant is innocent and this presumption continues until overcome by proof establishing his guilt beyond a reasonable doubt, and the burden of proving, beyond a reasonable doubt, his guilt,
 40 is upon the State, represented by the prosecutor and that

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burden of proof remains upon the State, the prosecutor, throughout the whole case and never shifts.

The defendant is here presented upon an indictment found by the Grand Jury charging him with maintaining a disorderly house. There are a number of specifications of disorder set forth in the indictment, but the evidence adduced appears to have been directed to "whoring and misbehaving themselves, soliciting men and women for the purpose of sexual intercourse" and the specification with regard to the sale and possession of liquor. 10

And as the defendant has requested me to charge, "The words 'misbehaving themselves,' as used in this indictment do not charge the defendant with any offense for which he can be convicted under this indictment." "The words 'misbehaving themselves,' as used in this indictment, do not charge unlawful acts for the doing of which this defendant can be convicted under this indictment." 20

But you may consider misbehavior in the place, even though it does not amount to a crime, in connection with the charge of whoring, the charge in the indictment being "whoring and misbehaving themselves," and not "misbehaving themselves" alone.

The word wilfully is also used in the indictment, and the indictment says "and wilfully and unlawfully did permit the disorders charged." The defendant requests me to define legal meaning of this words "wilfully," as used in this indictment and I charge you it means intentionally. 30

To convict under this indictment, therefore, the State must prove to you, beyond a reasonable doubt, (1) that the house or place in question was disorderly, (2) that the defendant knew it, and (3) that he maintained, controlled or operated the disorderly house, or aided or abetted or participated in such maintenance, operation or control. 40

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There seems to me to be little or no dispute as to the third point, since it is admitted that the defendant entered under and occupied the place under the lease here offered and since there is ample evidence, which, if believed, indicates that the defendant if not an owner or co-owner, participated in the management of the place.

10 Was it a disorderly house? Under the law of this State any place of public resort, in which illegal practices are habitually carried on, or which becomes the habitual resort of thieves, drunkards, prostitutes, or other idle, vicious and disorderly persons, who gather together there for the purpose of gratifying their own depraved appetites is a public nuisance and therefore a disorderly house, or, to put it in somewhat different language, any place where the law is habitually violated or to which people promiscuously resort for purposes injurious to public morals or health or convenience or safety is a
20 nuisance and the keeper is liable to indictment for keeping a disorderly house.

Such places are unlawful and can have no other effect than to debauch and deprave the public morals. No one has a right to carry on a public business clearly injurious to and destructive of the public quiet, health or morals, and is indictable for so doing, because the injury is of a public character, to the public, and not merely private or to a single individual, and proof of two or more different days and occasions—different days and occasions
30 when illegal practices were carried on is sufficient to show habitual violation of the law.

Consequently, a place to which men and women promiscuously and habitually resort to solicit and make appointments, arrangements or engagements for sexual intercourse and in which place they do habitually so solicit and make arrangements for sexual intercourse, in which they drink intoxicating liquors and get drunk, such a place is a disorderly house, for such places are injurious
40 to public morals and, perhaps, to public health.

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And there is evidence before you which, if believed by you, shows or tends to show that men and women did frequent this place and in it women did solicit and make arrangements for sexual intercourse, that intoxicating liquor was sold and consumed there and that some did get drunk there.

But even though the place was disorderly, the defendant would not be responsible therefor unless he knowingly kept or maintained the place or participated in such management. 10

Did he have knowledge of the practices and conditions testified to?

He must have knowledge, mere negligence, while evidential of the fact of knowledge is not its legal equivalent. But the proof of knowledge need not go to the extent that the defendant admits or would admit on the stand. His knowledge may be inferred as a matter of fact from evidence showing a course of practice or frequent acts of which, in the natural order of things, he would have been cognizant and to which his assent would be as a matter of fact naturally implied. Where the practices are such that an ordinarily intelligent person would understand their meaning, if not to a moral certainty, the existence of knowledge may be found by the jury. 20

Would an ordinarily intelligent person, under the circumstances here testified to, have understood, even if not to a moral certainty, what Isabella and Stella and Clara Courter and the other women were coming to the place night after night for and what they were doing in the place? What would you think women in a saloon like this were there for if you saw them conducting themselves as Isabella, Stella and Clara say they were and as other girls there did and as Gommell and Mell said they saw others girls and men do. 30

These inquiries may be deemed by you worthy of consideration and others will occur to you. You may or may not consider them, as you wish. The place was not 40

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10 a large place, Kelly appears to have been there most of the time, keeping his eye on things, Gommell and Mell saw soliciting and took the men and women to hotels and so forth, Stella, Clara and Isabella say they and other girls did solicit, Officer Gray says he saw eight couples leave the place and get into taxis, and arrested one couple on one night who had gone to a furnished room house. Officer Badgley says he saw thirty or forty women going in and out while he watched. Do you think it probable Kelly did not know what was going on there or what it is claimed was going on?

20 Bear in mind that it is not necessary in order to sustain a conviction under this indictment that evidence be adduced tending to show that illicit sexual intercourse was permitted to be indulged in promiscuously and habitually on the premises. It is sufficient to sustain a conviction hereunder if evidence is adduced showing that the defendant knowingly permitted and encouraged men and women to frequent his house and there to solicit and make appointments, arrangements and engagements for sexual intercourse.

30 The State contends that the defendant ran this saloon; that he sold intoxicating liquor there; that either to increase his sales, or for some other reason, he invited, encouraged and permitted women to go down there so that they would attract men who would go there to make dates with them for sexual intercourse and that such dates were made in the place habitually, regularly; that large groups of people came there to drink and make such appointments; that taxicab drivers hung around the place or in the vicinity of it for business which they knew came from the place and which they secured from the place; that men and women made dates for such intercourse there and left the place to keep their engagements, went to Delawanna, furnished room houses and other places—sometimes merely went out in the taxicab

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to keep their engagements, and that Kelly knew of these conditions.

In support of this contention Gommell, the taxi driver, produced by the State, says he went in to the place three or four times a week to get patrons—went there all hours of the night; saw Kelly there on each occasion; men and women were at the tables in the back room, girls alone, men alone, girls nod and men come; saw this every time he went there; took men and women out each time he went there to Delawanna and, perhaps other places; that he returned to the place with his patrons more than once a night, one night three times; first time two couples, second and third time single couples each; took them to Delawanna, that you could look from the barroom to the back room, and Kelly once said to him, "If you get anybody with a lot of jack, there are plenty of girls here."

Mell, the other taxi driver, says he got his calls over Kelly's 'phone; started to go there August 1st and continued every night until November; in there every night waiting for trade; always fifteen or eighteen girls there and about the same number of men; took men and women out maybe fifty times to Delawanna, St. Elmo, furnished room houses, and so forth; I think he said to any hotel they might want to go to, sometimes took them back. I think there is some testimony that he took them out three and four times a night. Kelly was there when he left and when he returned; saw Kelly talking with the men and women, also drinking with them; Stella got drunk and so did Isabella and also a man there; saw intoxicating liquors served there and, I think he said that Kelly on one occasion told him he wanted to go out of business because there was nothing but a lot of whores down there; that he wanted five thousand dollars and could only get three thousand dollars for the place.

Officer Gray says that on November 2nd one couple left the place, got in Mell's cab and later returned;

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another night eight couples left the place; each time got into Mell's taxi, and on January 15, 1922, arrested a couple that left the place and entered 12 Cottage street, a rooming house, and stayed there awhile. Officer Badgley, detailed by Captain McRell to watch the class of people going into Kelly's, saw Gommell and several taxi
 10 men around the place and counted between thirty or forty women, although he says several were not necessarily different women—they may have been going in and out the place; saw one woman go out three or four times; saw some go in alone and come out with escorts; some went into taxis; some went around the corner. I think he was able, under Mr. Mott's cross examination, to identify three or perhaps four of the women that went in by their hats; furs or coats.

Stella says she went there regularly from August to two weeks before Thanksgiving; went in alone about
 20 seven, eight or nine o'clock; stayed until two or two-thirty o'clock; saw almost always the same crowd of men and girls; that she solicited men as the other girls did and took her catch with her into Mell's taxicab, once, twice or three times a week, six or eight times to Delawanna and then returned to Kelly's; sometimes she went to the Greeley Hotel; Kelly would be there when she would leave and when she would return. I think she said he watched the girls go to and fro, although it may be
 30 she said she watched them go to and fro; sometimes would leave the place with men two or three times a night, sat at the tables with girls, flirt with men, and the girl that the man wanted would go with him; Saturday was the big night; four or five occasions there were parties of four, six or eight men came in. Kelly took them in the back room and told the girls "there are men in there"; Kelly served whiskey and highballs to her, served in the back room. She also tells about an experience when she was paralyzed drunk, and when Kelly, as I
 40 recall it, put her out.

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Burch danced with girls there; girls ordered ginger ale highballs; Kelly was there when Burch came on each occasion; Burch saw girls beckon to men and men come over and, it is my recollection, that he said also he saw girls and men leave the place.

Clara Courter—Mrs. Courter, I think she said she was —says she was there four or five times; she saw whiskey served; she went there alone the first time and on each occasion left the place with men, men she met in Kelly's place; "flirted with the men and they with us," as she puts it; Kelly was there; went to furnished room house and returned to Kelly's; girls would solicit men, go out with them and then come back to Kelly's; Kelly said, "Hello, girls," on three nights in succession; had started out on her life of prostitution about one and a half months before going to Kelly's. 10

Isabella started in Kelly's in June, 1921; that is, that is the first time she went there, and continued until November; at least, that is her testimony; she went in with a man the first time; after that alone; would sit around, drinking soda, straight whiskey, gin, and got the gin and whiskey from Kelly; saw him put gin in my "seltzer"; was drunk in there four or five times; solicited men in there, went out with them, and, I think she said, she had intercourse in the taxis with them; saw Kelly there; called me Isabella; would sit at the table and drink and speak of business; he ordered drinks and was there when they were ordered. 20 30

The defendant contends that the place was not disorderly; that his regular business is that of syrups and extracts and he worked there at night at the cafe; that he sells beer—I do not know whether he said it was near beer or any other kind—I think he simply said beer, soda, milk and short lunches, hamburger steak, egg sandwiches and things like that; that the place was frequented by people of all ages, twenty years and up; never allowed dancing there or profane language; there was no solicit- 40

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ing there, as he puts it, "absolutely nothing doing"; he gave his orders to the waiters; caught them once or twice and called them down for it, and saw Isabella and Stella in the place; Isabella would not stay out of the place and he put her out three or four times for disorderly conduct and she would still come in and sit down and finally he got a policeman to put her out, and policeman
10 Aschenfelder told him to put Stella out and he whispered his orders to her and said he had nothing against her; Stella threw a glass at somebody in there and had a fight with her and put her out and she did not come in after that. He said he lost his temper and kicked her out, as I recall it, she hung around the place and dragged persons who wanted a drink to other places; that he did not know whether he saw Clara Courter in the place or not. Mell kept his taxi cab in front of the place against his wishes; he never told Mell he wanted to sell the business
20 because there were so many whores down there. He denies the statement of Clara Courter that he said, "Hello, girls." He says that he knows Teddy Gommell but he denies that he said, "If you get a man who has a lot of jack bring him down here, we have a lot of girls." He sat at table I think he said, drinking, but he never saw any soliciting; did not see the people come back to the place after they were absent for varying lengths of time; never received any messages for taxi cab drivers over the 'phone. He
30 says there might be one hundred or one hundred and fifty people going in and out of the place on Saturday night; kept the place open to one o'clock, slacked off about midnight; there was dancing there; he kept an eye on business, tried to watch what was going on; when they danced he told them to sit down; they danced between the aisles; saw women there on more than one occasion, had their drinks and went about their business; they have come in alone; permitted girls to come in alone; they have sold liquor on the premises; had no liquor when the Federal officers

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came; Stella came in the place intoxicated; did not get intoxicated there; always came in intoxicated when she was intoxicated; could not get any liquor there if you were drunk; at one time you could get it if you were not drunk and there is other testimony in the case bearing on his defense. In other words, the defendant's contention is that of a general denial, and the contention that the State has not proven its case beyond a reasonable doubt. 10

You have heard the testimony of Mrs. Kelly, his wife, and of the other witnesses for the defense. You have also heard the testimony of the character witnesses, and you may consider testimony of the character witnesses, taking into account the opportunity the people had for observing the defendant, for knowing his reputation in the community, and, if upon such consideration there exists reasonable doubt of the defendant's guilt, even though that doubt be engendered merely by his previous good repute, he is entitled to an acquittal, but if, from the entire evidence, including that relating to good character, the jury believes the defendant guilty beyond a reasonable doubt, he should be convicted and the evidence of good character should not alter the verdict. 20

Yours is the task now, as a part and a most important part of the judicial machinery of this court, to sift out the evidence and get at the truth.

It is for you to consider and weigh the evidence, to search the minds and consciences of these witnesses and to ascertain where the truth lies. You have the right to consider the manner and appearance of a witness on the stand, his or her means of observation, his or her accuracy of memory, his or her capacity to observe what is going on, and his or her power to state what he or she has seen, and all such other matters as may be helpful in determining the truthfulness, credibility or accuracy of the statement. One of the ways of ascertaining the truth of the statements of a witness on the witness stand is to ascertain the interest of the witness in the story 30 40

Court's Charge to Jury.

that he or she tells on the stand. Have any of these witnesses any interest or motive to tell you an untruthful story? Has Officer Badgley, Gray, Stella, Isabella or Mrs. Courter, Gommell, Kelly, Mrs. Kelly or any of the witnesses in the case? It has been suggested that these girls are prostitutes. You may take that into account in weighing and determining the weight you will give to their testimony. You may also consider whether they are not just the kind of girls that might know what was going on in this place. You may compare their testimony with that of the others, Gommell, Mell, Badgley and Gray, and see how it compares, see how it measures up, and there may be other ways—will be other ways which you will find to weigh and measure their testimony and the other testimony in the case. You have a right to apply this same test, the test of interest, to the story of the defendant, and to consider the fact of his interest in the verdict you may render in determining the importance and the weight which you will attach to his testimony. On the question of knowledge, the question of the character of the place, there is some testimony of Aschenfelder and Captain Fohs which may have some bearing on the case and which you may want to consider.

This is an important case, important to the defendant and important to the State, society. We are not trying the defendant for a sale of intoxicating liquor under the Van Ness Act, Volstead, or any similar act. We are trying the defendant for maintaining a disorderly house, and no right-thinking man, no matter how he may feel about prohibition or anti-prohibition laws, wants places like the one here described to exist in his city or county; no decent, respectable citizen wants to exist places of the kind which it is contended this place was, places which cannot help but be a menace to the morals of the young and of our community in general, and I feel certain that if you are satisfied, beyond a reasonable doubt, that this defendant ran or participated in the running of a place

Court's Charge to Jury.

such as the State contends this one was, that you, eliminating all sympathy or policy or similar consideration, will do your duty as you have sworn you would do and bring in a verdict of guilty. On the other hand, of course, if you are not so satisfied, it is equally your duty to acquit.

(Jury retires.)

10

Mr. Mott. I desire first a general exception to the charge.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRED G. STICKEL, JR.,
Judge.

Mr. Mott. I desire especially to except to what your Honor charged as regards what constitutes knowledge and responsibility. While I am inclined to think that your Honor charged the usual charge on that subject, I called your Honor's attention to the fact that the word wilfully is used in this indictment and probably it is the first time it was ever used in the history of the State of New Jersey in a disorderly house indictment, my insistent being that the use of the word wilfully changes the character of the word knowledge required and the other ingredients which go to make up this offense.

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(Jury returns into court.)

30

STICKEL, JR., *J.*:

I am sorry to have found it necessary to bring you back, but the defendant had requested me to charge a certain charge and I find I have overlooked charging it in my regular charge. The request of the defendant is as follows:

"If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of

40

Exceptions to Charge.

intoxicating liquor, the defendant cannot be convicted under this indictment and he is entitled to a verdict of not guilty.”

10 That is the end of the defendant's request, but I charge you that if in addition thereto it is shown that men and women were permitted to frequent the place and there drink such intoxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out.

(The jury retires.)

Mr. Mott. I now desire an exception to your Honor's failure to charge the request made.

The Court. Without the supplement, you mean?

20 *Mr. Mott.* My exception is to your Honor's failure to charge the request made.

The Court. I did charge it and then I added something thereto.

Mr. Mott. Well, I just desire that exception.

The Court. I think I am entitled to know your point. I want your point. If I am wrong now is the time to correct me.

30 *Mr. Mott.* I presented your Honor a request to charge a settled legal principle. I except to your Honor's failure to charge that and to your manner of charging it.

The Court. Well, the Court has charged your request and carefully indicated the point at which the request ended and then stated its own understanding of the law as to that particular principle that was involved, in order that the jury might not be misled.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRED G. STICKEL, JR.,
Judge.

*Motion in Arrest of Judgment.*ESSEX COUNTY COURT OF GENERAL QUARTER
SESSIONS.

Monday, July 12, 1922.

 THE STATE OF NEW JERSEY,
*vs.*DANIEL J. KELLY.

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Before Hon. Fred G. Stickel, Judge.

For the defendant appears Wilbur A. Mott, Esq.

Mr. Mott. May it please the Court, in the case of State *v.* Daniel J. Kelly, I move in arrest of judgment upon the following grounds:

1. Because the verdict was against the weight of the evidence. 20

2. Because the evidence does not show that any unlawful act charged in the indictment was committed on or about the said premises on that date.

3. Because the Court refused to charge the defendant's fourth request to charge—

The Court. You mean I did not say, "I so charge you?"

Mr. Mott. I mean that you did not charge it.

4. —because the possession and sale of the intoxicating liquor shown by the evidence in this case was previous to the 17th of March, 1922, and not in violation of any law of the State of New Jersey. 30

5. Because the evidence does not show that the defendant had any knowledge of any unlawful or disorderly act that may have been committed by persons visiting his place after leaving the same and off from and away from the said premises.

6. Because the evidence does not show that the defendant had any power to prevent any unlawful or dis- 40

Defendant's Requests to Charge.

orderly act that may have been committed by persons visiting his place after leaving the same and off from and away from his said premises.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court;

10 Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRED G. STICKEL, JR.,
Judge.

DEFENDANT'S REQUESTS TO CHARGE.

20 1. The defendant requests the Court to define and declare the legal meaning of the word "wilfully" as used in this indictment.

2. The words "misbehaving themselves" as used in this indictment do not charge the defendant with any offense for which he can be convicted under this indictment.

30 3. The words "misbehaving themselves" as used in this indictment do not charge unlawful acts for the doing of which this defendant can be convicted under this indictment.

4. If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of intoxicating liquor the defendant cannot be convicted under this indictment and he is entitled to a verdict of not guilty.

Certificate of Court Stenographer.

STENOGRAPHER'S CERTIFICATE.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY,

vs.

DANIEL J. KELLY.

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

I, HAROLD T. COOK, the official stenographer of the Essex County Court of General Quarter Sessions, Part I, do hereby certify that the proceedings and testimony taken by me at the trial of the case of State of New Jersey vs. Daniel J. Kelly, Disorderly House, which trial was held before the Honorable Fred G. Stickel, Jr., Presiding Judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on Wednesday, June 14, 1922, Thursday, June 15, 1922, and Monday, July 12, 1922, at Newark, New Jersey.

20

HAROLD T. COOK.

Dated July 15, 1922.

30

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Certificate of Judge.

JUDGE'S CERTIFICATE.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY,
 vs.
 10 DANIEL J. KELLY.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

I, FRED G. STICKEL, JR., Presiding Judge of Essex
 County Court of General Quarter Sessions and the Judge
 who presided over the aforesaid cause, certify that the
 foregoing constitutes the entire record of the proceedings
 had upon the trial of the said cause, and that the same
 20 is returned by the plaintiff in error therein with the writ
 of error bringing up the bill of exceptions signed and
 sealed in this cause.

FRED G. STICKEL, JR.,
*Presiding Judge of the Essex County
 Court of General Quarter Sessions.*

Dated

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Assignments of Error.

WHEREFORE, the plaintiff-in-error prays that the said verdict and judgment aforesaid be set aside and for nothing holden.

MOTT & BERNHEIM,
Attorneys for Plaintiff-in-Error.

10 WILBUR A. MOTT,
- *Of Counsel.*

Service of a copy of the within assignments of error acknowledged this ninth day of October, 1922.

J. O. BIGELOW.

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Specification of Causes for Reversal.

there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out."

Respectfully submitted,

MOTT & BERNHEIM,
Attorneys for Plaintiff-in-Error.

10 WILBUR A. MOTT,
Of Counsel.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

February Term, 1923.

THE STATE,

vs.

DANIEL J. KELLY.

10

Error to Essex Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Swayze and Trenchard.

For plaintiff-in-error, Wilbur A. Mott.

For the State, John O. Bigelow, Prosecutor of the Pleas. 20

Per Curiam:

The Grand Jury of Essex County presented an indictment against the defendant, charging him with the crime of keeping a disorderly house. The indictment was in the common law form, the averments being that the defendant caused and procured certain men and women of evil name and fame to habitually meet at a house kept by him in the City of Newark, and there remain, drinking, tippling, fighting, committing acts of open lewdness, whoring, etc., etc., and did then and there expose to sale to the frequenters of said premises intoxicating liquor, contrary to law. The trial resulted in the conviction of the defendant, and he now challenges the legality of that conviction. 30

The only ground upon which we are asked to reverse the conviction is directed at the charge to the jury. Both sides having rested, counsel for the defendant submitted to the Trial Court the following request to charge: "If the jury find that the only unlawful acts committed by 40

Opinion of Supreme Court.

the defendant consist wholly in the unlawful sale of intoxicating liquor, the defendant cannot be convicted under this indictment, and he is entitled to a verdict of not guilty." It is settled, so far as this Court is concerned, that, since the enactment of the statute of March 10, 1893 (74 of our Crimes Act), which prohibits the finding

10 of an indictment against a person for the offense of maintaining a common law nuisance or keeping a disorderly house, where the offense sought to be punished consists wholly in the unlawful sale of intoxicating liquor, a person who is indicted for the common law offense of keeping a disorderly house—*i. e.* for maintaining a place where men and women collect and indulge in drinking, tipping, fighting, committing acts of open lewdness, etc.—

20 is entitled to an acquittal where the only proof offered to support the charge against him relates to sales of intoxicating liquor, contrary to law. *State v. Goff*, 74 N. J. L. 247.

Counsel for defendant asserts that this request was not charged. On the other hand, the Prosecutor of the Pleas asserts with equal vigor that it was charged.

An examination of the record discloses the following situation. The request submitted not having been referred to in the charge of the jury, and the jury having retired, counsel for defendant called the attention of the Court to its failure to charge the request. The Court

30 thereupon sent for the jury. The jurors having returned into the jury-box, in compliance with the direction of the Court, the presiding judge addressed them as follows: "I am sorry to have found it necessary to bring you back, but the defendant had requested me to charge a certain charge, and I find I have overlooked charging it in my regular charge. The request of the defendant is as follows:" The Court then read the request *verbatim*, and, having done so, added this: "That is the end of the defendant's request, but I charge you that if, in addition

40 thereto, it is shown that men and women were permitted to frequent the place, and there drink such in-

Opinion of Supreme Court.

toxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out."

The argument on the part of counsel for the defendant is that, although the Court read the request, it did not charge it. The suggestion is that the Court should have said to the jury, after reading the request, "I so charge you;" or "I so instruct you;" or words to that effect. This seems to us to be hypercritical. If the Trial Judge did not ~~charge~~ to charge the request, no object can be perceived in his requiring the return of the jury. His opening statements to the jury on its return made it plain why he had sent for them; namely, that he had overlooked charging a request which had been submitted by the defendant. This statement, coupled with the reading of the request which he told the jury had had "overlooked charging" was, by necessary implication, an instruction that the legal principle embodied in the request must be observed by them.

It is further argued that, even if it be considered that the request was charged, the addendum to it laid down an erroneous legal principle, the claim being that it nullified the request by permitting the jury to convict, if they found that the frequenters of the place drank intoxicating liquor there; in other words, that the language used, "there drink intoxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there" describe isolated acts, any one of which would support a conviction on the indictment. We are not impressed with the soundness of the contention. We think that, in the absence of a disjunctive, such as or, the words used describe a series of acts, one following the other which together are the constituents of a common law disorderly house, where such acts habitually occur in a particular place, with the knowledge and consent of the owner of the place.

The judgment under review will be affirmed.

*Remittitur.***REMITTITUR.**

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> DANIEL J. KELLY, <i>Plaintiff-in-Error.</i>	}	<i>On writ of Error. Remittitur.</i>
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20 This cause having been submitted at the February, nineteen hundred and twenty-three Term of this Court by John O. Bigelow, Esquire, attorney for the defendant-in-error, and Wilbur A. Mott, Esquire, attorney for the plaintiff-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

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

Entered November 9, 1923, on motion of

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J. O. BIGELOW,
Prosecutor of the Pleas,
Attorney of Defendant-in-Error.

“A true copy.

EDWARD J. KELLEHER,
Clerk.”

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

DANIEL J. KELLY,

Plaintiff-in-Error.

*On Writ of
Error.*

BRIEF OF JOHN O. BIGELOW FOR THE STATE.

The only assignment urged for reversal is based on the alleged refusal to charge as follows:

“If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of intoxicating liquor, the defendant cannot be convicted under this indictment and he is entitled to a verdict of not guilty.”

After the jury retired the Court recalled them and further charged:

“I am sorry to have found it necessary to bring you back, but the defendant had requested me to charge a certain charge, and I find I have overlooked charging it in my regular charge. The request of the defendant is as follows:

“If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of intoxicating liquor the defendant cannot be convicted under this indictment, and he is entitled to a verdict of not guilty.”

“That is the end of the defendant’s request, but I charge you if in addition thereto, it is shown that men and women were permitted to frequent the place and there drink such intoxicating liquor, get drunk there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out.”

A.

The defendant's request was in fact charged.

There was no necessity of using the words "I so charge" or any other formula. It is enough if it were made clear to the jury that the Court was in fact charging the proposition.

In this case the jury was *brought back* to the court room because the Court had *overlooked* charging the request. The request was read to them and the Court charged a further proposition *in addition thereto*.

It is inconceivable that the jury did not understand that the Court was charging as requested.

B.

The request was erroneous, assuming that it was not charged.

The request is based on section 74 of the Criminal Procedure Act of 1898, which prohibits indictments for keeping a disorderly house "where the offense sought to be punished consists wholly in the unlawful sale of spirituous, vinous, malt or brewed liquors."

This section should be read as of the time it was enacted. At that time it was unlawful to sell intoxicating liquor without a license, or on Sundays, or to minors, and probably under certain other circumstances which it is unnecessary here to detail.

So the intent and meaning of this section was that no one should be indicted as a disorderly house keeper where his offense consisted wholly in the sale of liquor without a license, or on Sundays, or to minors, etc.

In other words, the term *unlawful* in section 74 means prohibited by law in force at the time of the adoption of that section. The *liquor* intended thereby is intoxicating liquor as defined by law then in force.

Such construction is in harmony with the canon that statutes are to be construed with reference to other existing acts. "In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject, and to have shaped its new enactment with reference thereto." Black, *Int. of Laws* 333.

The Legislature adopted this section because they considered it against public policy that acts then constituting the unlawful sale of liquor should be punished as a public nuisance. It would be a strained construction to say that they had in contemplation laws not then enacted and an amendment to the Federal Constitution, which thereafter came into operation without the consent of their successors.

Hence, section 74 does not prohibit conviction for maintaining a nuisance when the offense is habitually selling liquor containing more than one-half of one per cent. of alcohol by volume, in violation of the Eighteenth Amendment and the enforcement acts passed pursuant thereto.

C.

Furthermore, the Legislature intended by "the unlawful sale" of liquor a sale which was *indictable* under the law of New Jersey. Section 74 provides that "in such cases the indictment shall be in form for the sale of intoxicating liquors, contrary to law."

None of the sales of liquor given in evidence in this case appear to have been indictable under the laws of this State—as we contend—and therefore section 74 does not apply to them or prohibit their being the sole basis of a conviction of keeping a disorderly house.

These sales were not made on Sunday, or to minors, or under other criminal circumstances, unless they were criminal by virtue of section 66 of the Crimes Act of 1898, prohibiting the sale of liquor without a license.

But this section was repealed by section 89 of the Van Ness Act (P. L. 1921, p. 171).

State v. Lutwin, 117 Atl. 164.

Parts of this act have been found by this Court inoperative but not unconstitutional. Section 87 provides that if any provision of the act be held invalid, no other provision shall for that reason be invalidated.

Section 90 saves from the effect of the repealer offences committed prior to the date the act takes effect. This date was April 30, 1921. The period laid in the indictment was April 1, 1921, to June 7, 1922. But no sales during the month of April, 1921, were proved.

All the sales were made after the repealer was effective and so were not indictable.

Furthermore, section 66 was impliedly repealed by the Hobart Act (P. L. 1922, p. 615).

This act was passed March 17, 1922, and took effect immediately. This was before the finding of the indictment. Section 10 of this act forbade the sale of intoxicating liquor for beverage purposes, and section 33 fixed as a penalty for such illegal sale a one thousand dollar fine and imprisonment not exceeding six months. Sections 41 and 42 forbade the granting of licenses for the sale of liquor and made every such license theretofore or thereafter granted null and void. Section 44 repealed all acts and parts of acts inconsistent with any of the provisions thereof.

Section 66 of the Crimes Act was inconsistent with these provisions. It made it a misdemeanor to sell intoxicating liquor at retail without a license, the penalty therefor being (section 218) a fine of one thousand dollars or imprisonment not exceeding three years.

Although this implied repealer was after the date of the sales proved, it was before the finding of the indictment, and hence, at the time the indictment was found, these sales could not be punished under section 66.

16 C. J. 70, and cases there cited.

None of the sales proved was made after the passage of the Hobart Act or was indictable thereunder.

We contend, therefore, that such sales were not within the meaning of section 74 of the Criminal Procedure Act, and that they could properly be the basis of an indictment for keeping a disorderly house.

Such sales, although not indictable, were then unlawful. The Constitution of the United States, including the Prohibition Amendment, and the acts of Congress, including the Volstead Act, are the supreme law of this State.

It cannot require argument to demonstrate that a house in New Jersey, where the supreme law of the land is habitually violated, is a common nuisance and a disorderly house.

D.

The specification of cause for reversal is based on the following part of the charge. "I charge you if in addition thereto it is shown that men and women were permitted to frequent the place and there drink such intoxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out."

It is the contention of counsel for defendant that this sentence means that if any one of the elements therein stated, *e. g.*, "drink such intoxicating liquor," is shown, then the charge of keeping a disorderly house is made out.

Such a construction is contrary to the usage of the English language. In the absence of a disjunctive, such as *or*, a conjunction is implied.

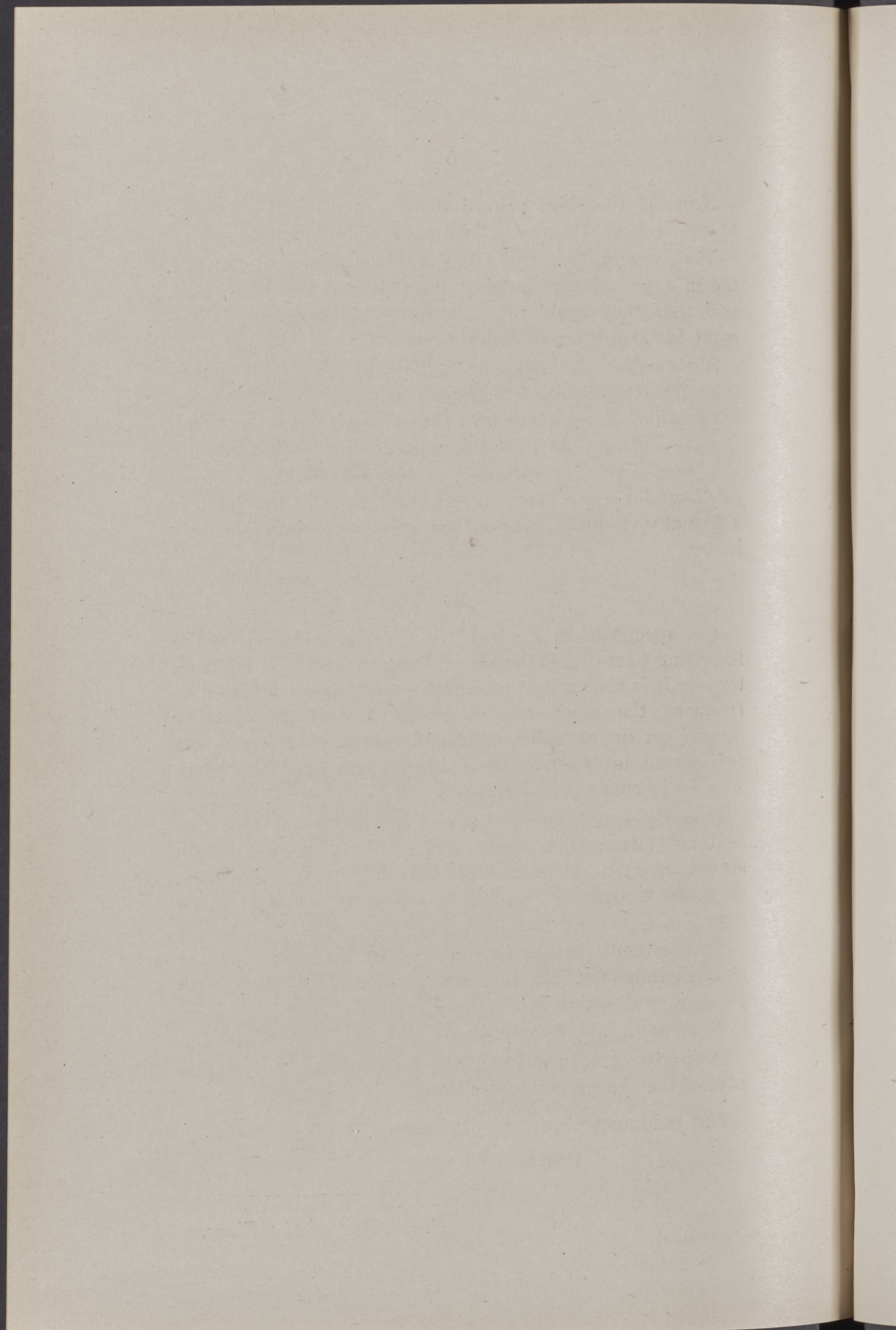
"I came, I saw, I conquered."

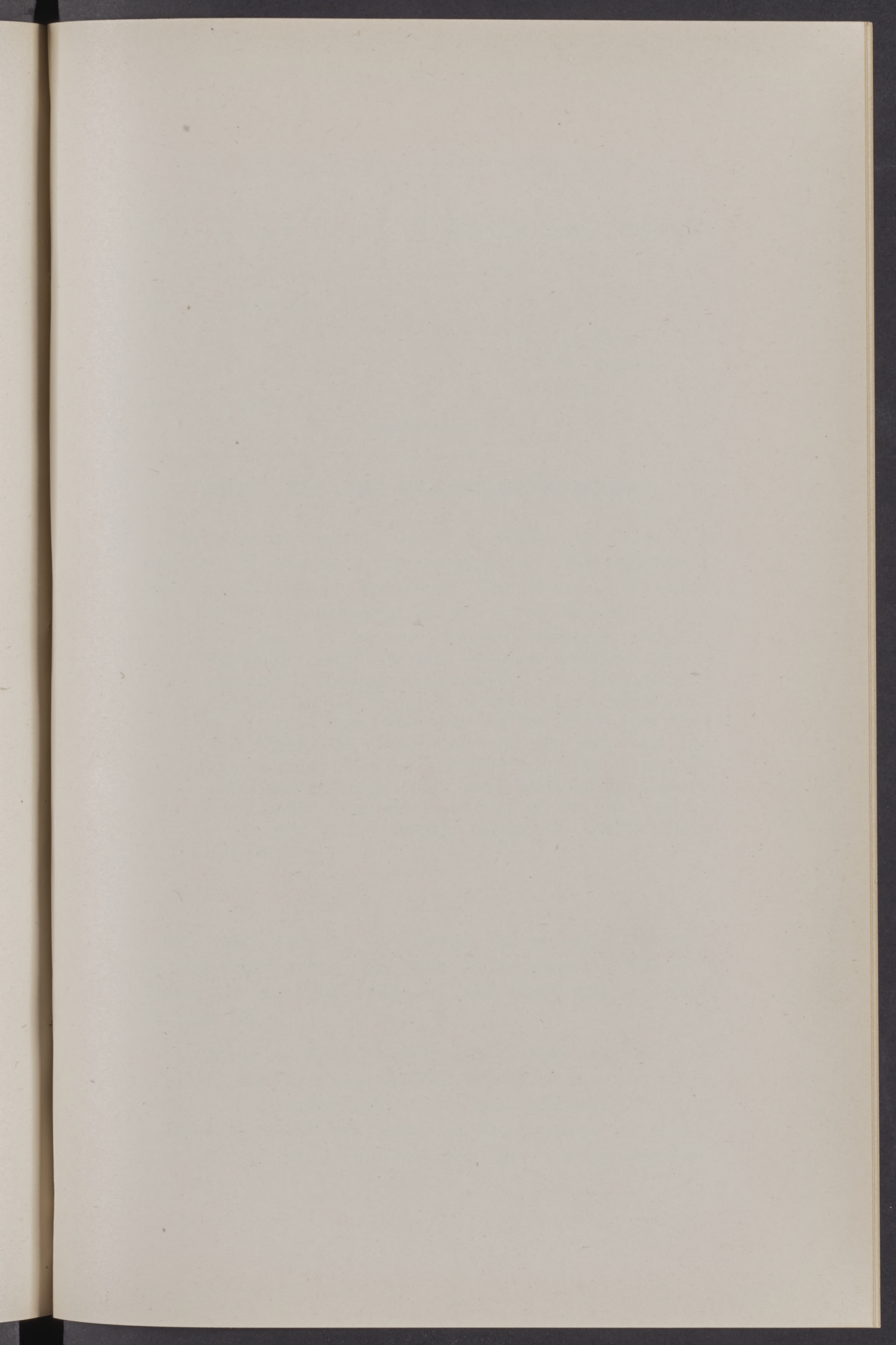
Properly construed according to common usage, this part of the charge is unobjectionable.

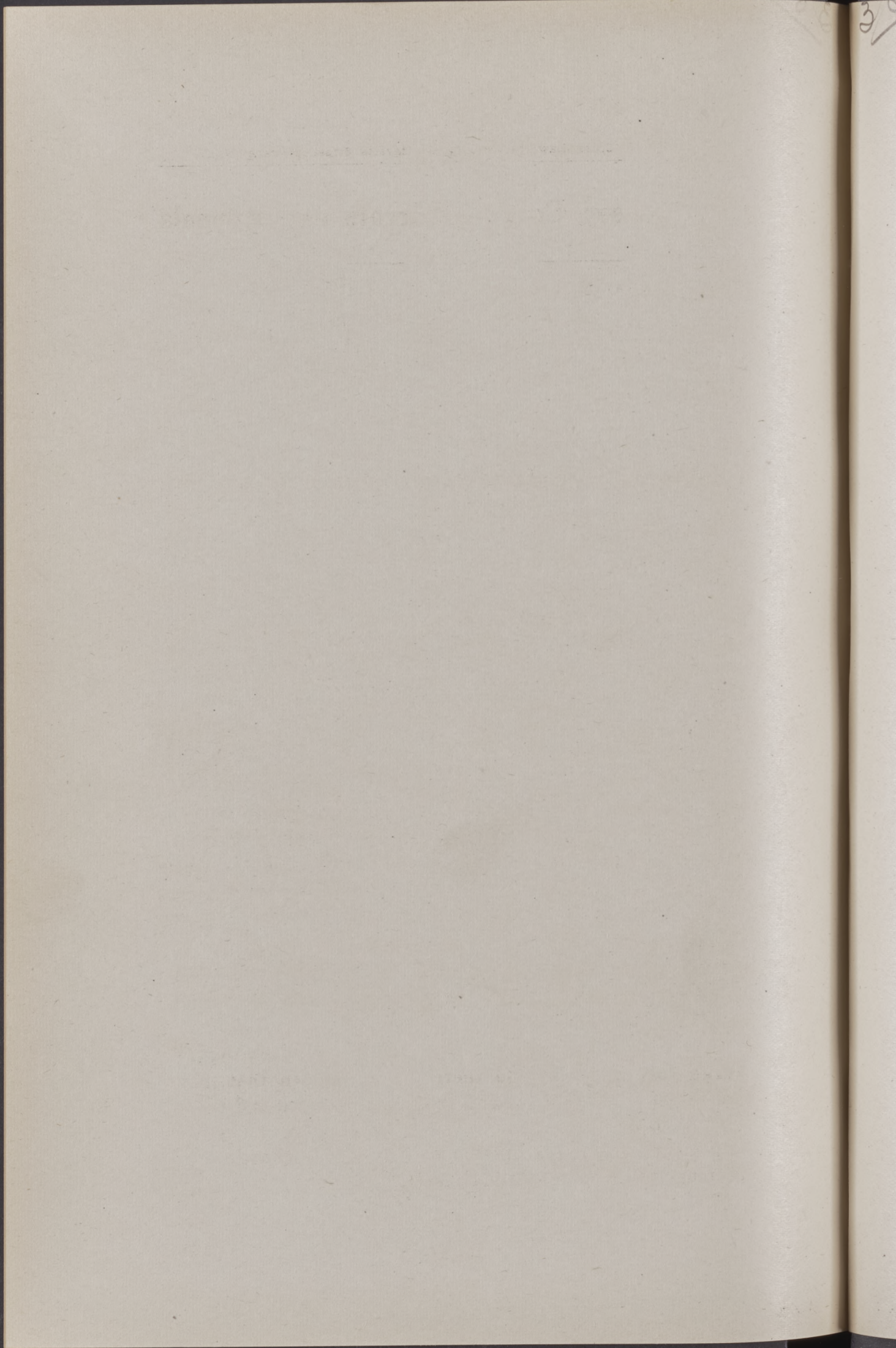
The judgment should be affirmed.

Respectfully submitted,

J. O. BIGELOW,
Prosecutor of the Pleas.







New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

DANIEL J. KELLY,

Plaintiff-in-Error.

*On Error to
the Supreme
Court.*

BRIEF FOR THE PLAINTIFF-IN-ERROR.

The plaintiff-in-error, Daniel J. Kelly, was tried and convicted of keeping a disorderly house. The indictment was in the common law form. The elements of order specified in the indictment (p. 4), are as follows:

“There to be and remain, drinking, tipping, fighting, committing acts of open lewdness, whoring and misbehaving themselves, soliciting women and men for the purposes of sexual intercourse, and in the said house then and on the other said days and times, the possessing and the sale and the exposing for sale for beverage purposes of certain spirituous, vinous, malt and intoxicating liquors (containing more than one-half of one per centum of alcohol per volume), unlawfully and wilfully did permit.”

I.

The case comes up on a strict bill of exceptions and on the entire record pursuant to the statute. The certificate of the Trial Judge to that effect will be found on page 142.

Examination of the record will disclose that the evidence in the case was confined wholly to two of the elements of disorder specified in the indictment, to wit: “Soliciting women and men for the purposes of sexual intercourse,” and, “the sale and the exposing for sale

for beverage purposes of certain spirituous, vinous, malt and intoxicating liquors (containing more than one-half of one per centum of alcohol per volume)."

II.

There is not in the whole case one scintilla of evidence that any act of open lewdness was committed on the premises, nor is there one scintilla of evidence that any lewd or vulgar word was uttered by any person on the premises, nor is there one scintilla of evidence that any act of "whoring and misbehaving themselves," was committed on or about the premises.

There is evidence of what the witnesses call "soliciting" and that men and women left the place, got in taxicabs, and went away.

THEODORE W. GOMMOLL and ALBERT MELL, witnesses called on behalf of the State, were taxicab drivers. Neither one of them testifies to any lewd or improper act being committed by any person either on or off of the premises. Gommoll says he took couples from Kelly's place to "Delawanna"—wherever that may be—(p. 15, l. 2), and in response to the question "What place in Delawanna did you take them," he replied, "St. Elmo or Homestead" and said that these were wooden frame houses (p. 17, l. 37).

ALBERT MELL TESTIFIES that he frequented Kelly's place. He says (pp. 21-22), that he took people out of there, and in reply to the question, "Where would you take them," answered, "Delawanna, St. Elmo, Moose, furnished room houses, and I would sometimes call and bring them back to the Lincoln Highway Inn."

MELL DOES NOT TESTIFY to a single act of lewdness or immorality committed by any person on or off the premises, nor to a single lewd or vulgar, or immoral word uttered by any person either on or off of the premises.

STELLA KWIATKOWSKY TESTIFIES to frequenting Kelly's place. She says, that she solicited men there, left the place with them and would take a taxi. On page 50, line 25, she was asked, "Where did you go when you left Kelly's place with these men?" she answered, "I went to Delawanna, or some furnished room house where men might know where to go, or different places, or used the taxi several times, right in the taxi."

Assuming that the witness meant by this that she had sexual intercourse in the taxi, we insist that this is the only direct evidence in the whole case that any immoral act was committed by any person who left Kelly's place.

CLARA CORTER (p. 63), and ISABELLA KWIATKOWSKY (p. 69), both say that they frequented Kelly's place, solicited men, and went out with them, *but neither one of them says that at any time did she commit any immoral act while away from Kelly's place.*

MELL TESTIFIES (p. 20), that sometime between August and November he had a conversation with Kelly, in which Kelly said, "Why one night he did not like the place because there were nothing but whores there, and he would like to sell the place for \$5,000, but he could only get \$3,000 for it."

GOMMOLL TESTIFIES (p. 13), that sometime between September and March, he had a conversation with Kelly in which Kelly said, "Well, we were standing there one night, about eleven o'clock, and he was behind the bar himself, and I went in for a soda, and he said, 'If you ever get anybody that has a lot of jack, bring them down, there is plenty of girls here.'"

Such, in brief, was the evidence against the defendant on the elements of open lewdness, whoring, misbehaving and soliciting. All of this evidence was specifically and categorically denied by Kelly. Mell had been convicted of crime, to wit: procuring (p. 25). Stella and Isabella

had been put out of the place by Kelly (p. 24). Kelly himself had called up the police station, and asked for an officer. The officer came and put Isabella out (p. 25, l. 1). Kelly himself put Stella out because she was drunk and struck a man with a beer bottle (p. 25, l. 10). Officer Aschenfelder was the officer who put Isabella out (p. 112).

The defendant strenuously attacked the credibility of Mell, Stella and Isabella. Mell had been convicted of the crime of procuring; Stella and Isabella bore a grudge against Kelly because he had put them out of his place. A large number of reputable witnesses testified to the good repute of Kelly for being a law abiding, moral man.

III.

The testimony on the other branch of the case, to wit: the illegal sale of liquor, was of a very different character.

OFFICER CAFFERY TESTIFIES (p. 36), that he went to Kelly's place, asked for whiskey, was served with whiskey, and put the whiskey in a bottle in July, 1921. This bottle with these contents was turned over to Captain Sebold, and subsequently turned over to Chemist Edell. Edell, made a chemical analysis of it, and found that its contents contained over forty-five per cent. of alcohol per volume.

OFFICER DAY TESTIFIES (p. 39), that he was present with Officer Caffery when he bought the whiskey, and saw him put it in the bottle. Day himself, took a cigar and a soft drink.

CLARA CORTER TESTIFIES (p. 63) to the sale of whiskey.

The defendant did not deny these sales (pp. 106-107). He says he had a good deal of trouble with women who came in his place drunk. He testifies as follows (pp. 106-107):

“Q But they never got any in your place? A Not in that condition.

Q You mean they didn't get quite as drunk as these people you are talking about? A They never got so bad in my place.

Q Not so bad? A No.

Q Were they ever drunk? A No.

Q Well, could they get it if they were not drunk? A *One time there they could.*"

Not only did reputable witnesses testify to the sale of whiskey, not only did the defendant not deny these sales, but in fact he frankly admitted it. The defendant was therefore in this position: Even if the jury were not satisfied beyond a reasonable doubt of the guilt of the defendant, on the first specification of disorder, in the indictment, to wit:—soliciting, whoring, etc., he was still liable to conviction on the second specification of disorder in the indictment, to wit: the illegal sale of liquor, unless he was protected by some principle of law, which under the form of this indictment applies to a defendant whose offense consists wholly in the illegal sale of liquor.

IV.

Section 74 of the Criminal Procedure Act of 1898, is as follows:

"74. It shall not be lawful hereafter to indict any person or persons for the offense of maintaining a common law nuisance or keeping a disorderly house, where the offense sought to be punished consists wholly in the unlawful sale of spirituous, vinous, malt and brewed liquors; but in all such cases the indictment shall be in form for the sale of intoxicating liquors contrary to law, and on conviction of such unlawful sale of said liquors the person or persons so convicted shall be liable to the same punishment as that provided by law for the offense of maintaining a common law nuisance or keeping a disorderly house." (Pamph. L. 1893, p. 193.)

In the case of the *State v. Goff*, the Supreme Court dealt with this statute. Chief Justice Gummere, speaking for the Court in the opinion, says:

“At the close of the case the plaintiff-in-error requested the Court to charge the jury that if they believed that he was guilty only of the illegal sale of intoxicants, there could be no conviction under the indictment. The Court refused to charge as requested; exception was taken to the refusal and error is now assigned upon it.” * * * “The purpose of this legislation cannot be mistaken. It is to prevent a person whose only offense is the selling of intoxicating liquor without having first obtained a license to make such sale, or who sells it on Sunday, from being subjected to the stigma of having it spread upon the public records of the Court that he has been guilty of keeping a disorderly house or resort for men and women of evil name and fame where gambling, fighting, whoring and other immoralities were habitually indulged in by the frequenters. The protection which the statute provides cannot be availed of by the defendant before trial, as he cannot know until the case of the State is in what are the illegal acts which it is intended to prove against him. The presentment of an indictment in the common law form raises the presumption that the proofs submitted to the grand jury disclosed habitual violations of the law other than unlawful sales of intoxicating liquors and that presumption remains until after the proofs are all in upon the trial of the indictment. The only way, therefore, in which a defendant can avail himself of the protection of the statute is, either to request the direction of a verdict at the close of the case, where the proofs fail to disclose any illegal acts except the unlawful sales of liquor, *or where other illegal acts have been attempted to be shown on the part of the State*, to submit such a request to charge as that which was made in the present case. The defendant was entitled to an acquittal under this indictment if the jury believed from the proofs that the violations of law of which he was guilty consisted wholly in the unlawful sale of intoxicating liquors.

For the failure of the Trial Court to so instruct the jury there must be a reversal.” State v. Goff, 74 L. 247.

V.

To meet this situation and to secure the protection afforded him by the statute, the plaintiff-in-error duly submitted to the Trial Court certain requests to charge. Page 140—the fourth request to charge was as follows:

“If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of intoxicating liquor, the defendant cannot be convicted under this indictment and he is entitled to a verdict of not guilty.”

VI.

The Court dealt with this request to charge, as follows (page 137):

“(Jury returns into Court.)

STICKEL, JR., J.:

I am sorry to have found it necessary to bring you back, but the defendant had requested me to charge a certain charge and I find I have overlooked charging it in my regular charge. The request of the defendant is as follows:

‘If the jury find that the only unlawful acts committed by the defendant consist wholly in the unlawful sale of intoxicating liquor, the defendant cannot be convicted under this indictment and he is entitled to a verdict of not guilty.’

That is the end of the defendant’s request, but I charge you that if in addition thereto it is shown that men and women were permitted to frequent the place and there drink such intoxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out.

(The jury retires.)”

An exception was taken and allowed to the Court's failure to charge the request and to the manner of charging it (page 138).

Error is duly assigned on the failure of the Court to charge the request by the third assignment of error (p. 143).

The point was raised on motion in arrest of judgment (p. 139).

The third ground for arrest of judgment was the failure of the Court to charge the fourth request to charge. It appears (p. 139), that when counsel for the plaintiff-in-error, was making his motion in arrest of judgment, as he was stating the third ground this occurred:

“3. Because the Court refused to charge the defendant's fourth request to charge—

The Court. You mean I did not say, ‘I so charge you?’

Mr. Mott. I mean, that you did not charge it.”

There is no set formula by which the Court is required to charge a principle of law. The Court may say, “I so charge you,” or “I so instruct you,” or “Such is the law,” or any equivalent expression which conveys to the jury the statement by the Court that the legal principle involved in the request is law, and is to control them in their decision of the case.

VII.

When the Judge on his own initiative interrupts counsel as he was stating the third ground for arrest of judgment by saying, “You mean I did not say, ‘I so charge you?’” it is perfectly apparent that *the Judge knew that he had not so stated, and had not charged the request.* Indeed, it would seem from the fact that the Court overruled the motion in arrest of judgment that the judge did not think it was necessary for him specifically to declare the principle involved in the request to be the law. When counsel replied, to the Judge, “I

mean that you did not charge it," he meant more than that the Judge did not use the words, "I so charge you." He meant that he had not used *those words or any of the other words* ordinarily used by a judge in charging a principle of law. Strictly speaking, the words, "I so instruct you" are probably more accurate than the words, "I so charge you." The words "Such is the law" are declared in *State v. Roe*, 45 L. 49, to be proper words to use when charging a request.

VIII.

The fact that the State had attempted to show illegal acts other than the illegal sale of intoxicating liquor did not affect the defendant's legal right to have his request charged.

In the case of *State v. Goff*, *supra*, the Court says:

"The only way, therefore, in which a defendant can avail himself of the protection of the statute is, either to request the direction of a verdict at the close of the case, where the proofs fail to disclose any illegal acts except the unlawful sale of liquor, or where other illegal acts have been attempted to be shown on the part of the State, to submit such a request to charge as that which was made in the present case."

It will be observed, page 137, that all the Court did was to read the defendant's request to charge without in any way indicating that the request was the law. In no way did the Court charge or instruct the jury that the principle of law stated in the request was the law.

IX.

In the case of *Olsof from v. N. J. St. Ry. Co.*, 79 Atl. 1039, the Court holds:

"The reading by the Court to the jury of a request to charge, without instructing the jury whether the request is charged or refused, is error."

In the case of *Roe v. State*, 45 L. 49, the Court holds:

“One of the most important duties of the Court is to declare the law applicable to a case to the jury when requested so to do. *This should be done in such a way as not to leave room for misapprehension or mistake.*”

In the case of *State v. DeGeralmo*, 83 L. 135, the Court holds:

“Where a request to charge calls for the application of a correct legal principle, is applicable to the testimony, and clearly material to the defendant’s case, *he is entitled to have it distinctly charged in such a way as not to leave room for misapprehension or mistake by the jury.*”

In the case of *Scott v. Mitchell*, 41 L. 346, the Court holds:

“It is error for the court to refuse to declare to the jury the legal rules necessary for the proper decision of the case upon the evidence.”

In the case of *Talmadge v. Davenport*, 31 L. 561 (2 Vr.), the Court holds:

“The point upon which the charge was asked was pertinent and material to the issue. It is one of the clearest and most important duties of a court to expound the law to the jury, for its guidance and instruction. *The faithful performance of this duty is absolutely essential to the value, if not to the very existence, of the trial by jury.*”

In the case of *Aldrich v. Peckham*, 74 L. 711, Mr. Justice Garrison, speaking for Court of Errors and Appeals, in the syllabus to the opinion, says:

“It is the right of a party, upon the timely presentation of a request to charge that correctly embodies the law applicable to the issue, to have such request charged by the trial court, and *a violation of judicial duty in this respect is reversible error if injury could have resulted therefrom, unless the matter of such request was correctly and substantially covered by the charge in language of the court’s own choosing.*”

X.

An examination of the charge of the Court will show that in no other part of the charge did the Court, in any manner or by any language of its own choosing, deal with, or directly or indirectly refer to, the matter or principle of law involved in the request to charge.

Throughout its charge, the Court lays great stress on the evidence showing, or tending to show, that the defendant sold intoxicating liquor.

XI.

The opinion in this case in the Supreme Court was *per curiam*. At page 149, line 4, the opinion reads:

“The argument on the part of counsel for the defendant is that, although the Court read the request, it did not charge it. The suggestion is that the Court should have said to the jury, after reading the request. ‘I so charge you’; or ‘I so instruct you’; or words to that effect. This seems to us to be hypercritical. If the Trial Judge did not *intend* to charge the request, no object can be perceived in his requiring the return of the jury. His opening statements to the jury on its return made it plain why he had sent for them; namely, that he had overlooked charging a request which had been submitted by the defendant. This statement, coupled with the reading of the request which he told the jury he had ‘overlooked charging’ was, *by necessary implication*, an instruction that the legal principle embodied in the request must be observed by them.”

We respectfully insist that in considering the question of whether there was error in the charge of the Court as given, we are in no way concerned with the question of what the Court *intended* to do. The intention of the Court may, or may not, have been to charge the request; our insistence is that the Court did not, as a matter of fact, “*distinctly charge the request in such a way as not to leave room for misapprehension or mistake by the jury.*”

XII.

“The province of instructions to juries may be said to be to state and apply the law to the facts in the particular case, so that it may readily be understood by the mind untrained in the law.”

Randall's Instructions to Juries, Volume 1, Page 1.

The opinion in the Supreme Court in this case, says on page 149, line 17:

“This statement, coupled with the reading of the request which he told the jury he had ‘overlooked charging’ was, by *necessary implication* an instruction that the legal principle embodied in the request *must be observed by them.*”

We earnestly insist that under our law, the defendant was entitled to have the principle of law stated in the request charged, not by way of “necessary implication,” but *directly, distinctly*, in such a way as not to leave room for misapprehension or mistake by the jury. It may be that minds trained in the law would gather from the record in this case, that the Judge *intended* to charge the request; but we earnestly insist that in minds untrained in the law, such an intention would not be readily understood. It may be that minds trained in the law would, by *necessary implication*, reach the conclusion that there was *in the mind of the judge* an intent to instruct the jury that the legal principle embodied in the request, *must be observed*, by them; but we urgently insist that the Judge did not, as a matter of fact, “state and apply the law to the facts in this case, so that it could be readily understood by the mind *untrained* in the law,” that is, the jury. *Intent* to do a thing is not, in fact, the equivalent of doing the thing intended.

Jalmar v Davenport, supra, at page 567

XIII.

We respectfully urge that there is error in the opinion below in this case in stating the principle involved in *State v. Goff, supra*. The opinion in that case is much broader than stated in the opinion below in this case. It deals *first* with the case where the proofs fail "to disclose any illegal acts, except the unlawful sale of liquor," and *second* with the case "where other illegal acts have been attempted to be shown on the part of the State."

In the first case, the defendant is entitled "to request the direction of a verdict at the close of the case." *In the second case*, the defendant is entitled to "submit such a request to charge as that which was made in the present case." The record in this case shows that there was an attempt on the part of the State to show illegal acts other than the illegal sale of liquor, and therefore, the defendant could not request the direction of a verdict at the close of the State's case, but was left wholly to his legal right to request that the Court charge the principle of law involved in the request submitted to the Court.

XIV.

The manner in which the Court dealt with the request emphasizes its failure to charge the request, and makes its failure so to do doubly harmful to the defendant.

The plaintiff-in-error was entitled, under the cases above cited, to have his request, "*distinctly charged in such a way as not to leave room for misapprehension or mistake by the jury.*"

Not only did the Court fail to instruct the jury that the principle of law involved in the request was the law, and that, under the circumstances named in the request, the defendant was entitled to an acquittal, but, the Court, having simply read the defendant's request to charge, without charging or refusing to charge it, proceeds to

enumerate certain circumstances under which it instructs the jury *that the charge against the defendant is made out*, as follows:

“That is the end of the defendant’s request, but I charge you if in addition thereto it is shown that men and women were permitted to frequent the place, and there drink such intoxicating liquor, get drunk there, solicit there, make arrangements for sexual intercourse there, the charge that the place was a disorderly house is made out.”

The enumeration of these four elements of disorder relate to, and constitute a part of the failure of the Court distinctly to charge the request. Instructing the jury as to the circumstances under which they *may convict*, is not distinctly instructing them as to the circumstances under which they *must acquit*. *The former is not the equivalent of, or a substitute for, the latter.*

The Court in this portion of the charge specifies four elements of disorder, which it charges, make out the charge that the place was a disorderly house:

1. Drinking “such intoxicating liquor,” that is, liquor illegally sold.
2. Getting drunk there.
3. Soliciting there.
4. Making arrangements for sexual intercourse there.

What does this portion of the charge mean? These four elements of disorder are not stated conjunctively or disjunctively. Must all four of these elements be found to be present to make out the charge, or is the charge made out if only one of these elements is found to be present? It would be absurd to say that all four of these elements must be found to be present to make out the charge, for that would mean that the jury could not convict no matter what the evidence was as to the third and fourth elements, if the evidence failed to show the presence of either the first or the second element. Therefore, as this portion of the charge cannot, and does not, mean that all four elements must be found to be present to make

out the charge that the place was a disorderly house, it must mean that the charge is made out *if any one of the four elements specified is found to be present*. But this is not sound in law.

When, and by what law, did *drinking* intoxicating liquor, illegally sold, become illegal and constitute an element of disorder, even when drunk on the premises where sold?

When, and by what law, did merely "getting drunk" on the premises where liquor is illegally sold without misbehavior become illegal and constitute an element of disorder? The mere act of drinking to excess, or getting drunk in a public place, without misbehavior, does not constitute disorderly conduct.

The legal error in this portion of the charge is that it instructs the jury that, if men and women were permitted to frequent the place, and there drink "such intoxicating liquor," that is liquor illegally sold; or if men and women got drunk there, without misbehavior of any kind, the charge that the place was a disorderly house was made out.

XV.

We earnestly insist:

First: That the Court did not charge the fourth request to charge in the manner required by law, under the cases above cited, and that its failure so to do was harmful to the defendant, and constitutes legal and reversible error.

Second: That the manner in which the Court dealt with the request to charge by enumerating the four alleged elements of disorder which, it charges, made out the charge that the place was a disorderly house, was harmful to the defendant, and constitutes legal and reversible error.

The Specification of Causes for Reversal (p. 145), made pursuant to Sections 136 and 137 of the Criminal Procedure Act of 1898, alleges that the plaintiff-in-error "suffered manifest wrong and injury in the charge of the Court"; and specifies by quoting the same, as cause for reversal, the portion of the charge with which we have been dealing under the Assignments of Error.

All the questions discussed under the Assignments of Error are again raised by and involved in the Specification of Causes for Reversal.

We respectfully urge this Court in the language of the statute, to "*remedy such wrong or injury, and give judgment accordingly, and order a new trial.*"

XVI.

We, therefore, respectfully insist that there is in the record, as above set forth, legal and reversible error, and the judgment below should be reversed.

Respectfully submitted,

MOTT & BERNHEIM,
Attorneys for Plaintiff-in-Error.

WILBUR A. MOTT,
Of Counsel.

March Term, 1924.

