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**NEW JERSEY COURT OF  
ERRORS AND APPEALS**

THE STATE OF NEW JERSEY,  
*Defendant in Error.* } ON WRIT OF ERROR.  
VS. } from Supreme Court.  
MAE MIDDLETON,  
*Plaintiff in Error.* }

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ROBERT PEACOCK,  
*Attorney for Plaintiff in Error.*

GEORGE M. HILLMAN,  
*Attorney for Defendant in Error.*

Sat Below :

Gummere, Chief Justice, and Justices Black and Lloyd.

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NEW JERSEY COURT OF ERRORS

AND APPEALS

THE STATE OF NEW JERSEY, <i>Defendant in Error.</i> vs. MAE MIDDLETON, <i>Plaintiff in Error.</i>	}	ON WRIT OF ERROR. from Supreme Court.
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ROBERT PEACOCK,  
*Attorney for Plaintiff in Error.*

GEORGE M. HILLMAN,  
*Attorney for Defendant in Error.*

Sat Below:

Gummere, Chief Justice, and Justices Black and Lloyd.

STATE OF NEW JERSEY, SS:

The State of New Jersey, to the Judge of the Supreme Court:

Because in the record and proceedings and also in the  
10 giving of Judgment upon a certain indictment against  
Mae Middleton, late of Mount Holly, in the County of  
Burlington and State of New Jersey for sale and posses-  
sion of intoxicating liquor.

Pro ut the said indictment and the several counts  
therein whereof before me they have been indicted and  
are thereof convicted by a certain jury of the County of  
Burlington taken between the State of New Jersey and  
the said Mae Middleton as is said, manifest error hath  
20 intervened to the great damage of the said Mae Middle-  
ton as from her 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  
therein given, then that you distinctly and openly send  
upon your seal the record and proceedings aforesaid with  
all things touching the same to the New Jersey Court of  
Errors and Appeals to be held at Trenton on the eight-  
eenth day of January, 1928,, and this writ, and that the  
record and proceedings aforesaid being inspected, we may  
30 further cause to be done whereupon for correcting that  
error what of right and according to the laws and cus-  
toms of New Jersey ought to be done.

WITNESS, EDWIN R. WALKER, Presiding Jus-  
tice of the Court of Errors and Appeals, this twenty-  
ninth day of December, A. D. 1927.

JOSEPH F. S. FITZPATRICK,  
Clerk.

ROBERT PEACOCK,  
Attorney.

A TRUE COPY 10

JOSEPH F. S. FITZPATRICK,  
Clerk.

20

30

OPINION OF SUPREME COURT

NEW JERSEY SUPREME COURT  
No. 4, May Term, 1927.

10 THE STATE OF NEW JERSEY,  
Defendant in Error,  
vs.  
MAE MIDDLETON,  
Plaintiff in Error. } ON WRIT OF ERROR

Submitted May Term, 1927. Decided November,  
1927.

20 For the Plaintiff-in-Error: Robert Peacock.

For the Defendant-in-Error: George M. Hillman.

Before Gummere, Chief Justice, and Justices Black  
and Lloyd.

30 Per Curiam:

Appellant was convicted in the Burlington County  
Court of Quarter Sessions of selling intoxicating liquor  
contrary to law. Appealing, six assignments of error are

filed, but three of which are now urged for reversal. The first is that the verdict was against the weight of the evidence, and the second that there was no corroboration of the state's witnesses. The testimony of these witnesses is criticised on the ground that they were paid operatives employed by the state. They were not necessarily to be disbelieved for that reason, nor was corroboration essential. That the jury was justified in crediting their testimony we have no doubt. These assignments are, therefore, without merit.

10

The remaining assignment is that the court erred in instructing the jury as to the law of reasonable doubt. The language used by the learned judge was substantially that approved by the Court of Errors and Appeals in the case of State vs. Linker, 94 N. J. L. 411, and numerous decision in this state prior thereto and since.

The judgment is affirmed.

20

Filed November 25, 1927.

EDWARD J. KELLEHER,  
Clerk.

30

NEW JERSEY COURT OF ERRORS  
AND APPEALS

STATE OF NEW JERSEY,  
*Defendant in Error,* } ON WRIT OF ERROR.  
 VS. } ASSIGNMENTS OF  
 MAE MIDDLETON, } ERROR.  
*Plaintiff in Error.* }

10

The plaintiff in error assigns as her reasons for reversal and specifications of error as follows:

1. Because the verdict was against the weight of the evidence.
2. Because there was no corroboration of the complainant, who was a paid detective for the State to procure evidence.
- 20 3. Because the Court allowed the Prosecutor to show that defendant had been convicted of a liquor violation prior to this case without alleging the same in the indictment.
4. Because the Court refused to allow counsel for the defendant on cross examination of Earl Gibbs, the complaining witness, that he had stolen articles from the defendant to show malice on the part of Gibbs.
- 30 5. Because the Court failed to direct a verdict of not guilty at the end of the case, on the uncorroborated testimony of officers who were paid by the County to obtain evidence.

ROBERT PEACOCK,  
 Attorney for and of Counsel with  
 Plaintiff in Error.

## NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY,  
*Defendant in Error.* } ON WRIT OF ERROR.  
 MAE MIDDLETON, }  
*Plaintiff in Error.* }

ROBERT PEACOCK, Attorney of Plaintiff in Error.

GEORGE M. HILLMAN, Attorney of Defendant in Error.

NEW JERSEY, SS.

The State of New Jersey, to the Judge of the Burlington County Court of Quarter Sessions:

GREETING: Because in the record and proceedings and also in the giving of judgment upon a certain indictment against Mae Middleton, late of Mount Holly, in the County of Burlington and State of New Jersey for

10

Pro ut the said indictment and the several counts therein whereof before me she has been indicted and is thereof convicted by a certain jury of the County of Burlington taken between the State of New Jersey and the said Mae Middleton as is said, manifest error hath intervened to the great damage of the said Mae Middleton, as from her 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 therein given, then, that you distinctly and openly send unto your seal the record and proceedings aforesaid with all things touching the same to the New Jersey Supreme Court, to be held at Trenton, on the \_\_\_\_\_ day of \_\_\_\_\_ 1927, and this writ, and 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.

30 WITNESS, William J. Gummere, Chief Justice of the Supreme Court, of New Jersey, at Trenton this \_\_\_\_\_ day of January, Nineteen hundred and Twenty-seven.

Edward J. Kelleher, Clerk.  
Robert Peacock, Attorney.

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY, }  
Defendant in Error. } ON WRIT OF ERROR.  
vs. } ASSIGNMENTS OF  
MAE MIDDLETON, } ERROR  
Plaintiff in Error. }

10

The plaintiff in error assigns as her reasons for reversal and specifications of error as follows:

1. Because the verdict was against the weight of the evidence.

2. Because there was no corroboration of the complainant who was a paid detective for the State to procure evidence.

3. Because the Court allowed the Prosecutor to show that defendant had been convicted of a liquor violation prior to this case without alleging the same in the indictment. 20

4. Because the Court refused to allow counsel for the defendant on cross examination of Earl Gibbs, the complaining witness, that he had stolen articles from the defendant.

5. Because the Court charged on the question of reasonable doubt as follows: "You cannot say you feel an abiding conviction to a moral certainty that she is guilty of this offense it is your duty to acquit, but on the other hand, if you are so satisfied, you shall convict," thus placing the burden on the defendant, of proving her innocence beyond a reasonable doubt instead of placing the burden upon the State of proving defendant guilty beyond a reasonable doubt. 30

6. Because the Court failed to direct a verdict of not guilty at the end of the case, on the uncorroborated testimony of officers who were paid by the County to obtain evidence.

.....  
Attorney for and of Counsel with  
Plaintiff in error.

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STATE OF NEW JERSEY,	}	SUR INDICTMENT FOR UNLAWFUL SALE, FUR- NISHING AND POSSES- SION OF LIQUOR.
<i>Prosecutor,</i>		
vs.		
20 MAE MIDDLETON,	}	SION OF LIQUOR.

The answer of William A. Slaughter, Esq., Judge of the Court of Quarter Sessions within named, the entire record of the proceedings had upon the trial of the plaint whereof mentioned is within made, with all things touching the same, I hereby certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, and as I am commanded.

30

William A. Slaughter, Judge.

STATE OF NEW JERSEY  
SS.  
BURLINGTON COUNTY

BE IT REMEMBERED, that at the Court of Oyer and Terminer holden at Mount Holly, in and for the said County of Burlington, on Tuesday, October 13, 1925, before the Honorable Frank T. Lloyd, one of the Justices of the Supreme Court of the State of New Jersey, and William A. Slaughter, Esquire, Judge for the Court of Common Pleas in the said County of Burlington, according to the form of the statute in such case made and provided by the oaths of Harold B. Wells, Foreman, Lester S. Fortnum, Frank P. Jones, Henry C. Perkins, Edwin K. Marter, Jr., Ethel N. Robbins, Thomas Lee, Henry B. Wright, J. Leclere Shedaker, Walter S. Marter, Henry B. Weaver, Israel W. Garwood, Charles H. Hillier, George T. Williams, William F. Reeves, Jacob F. Buist, Ellis R. Lippincott, George N. Wimer and Clarence H. Polhemus; and the affirmations of Emlin Stokes, William C. Coles, Harry L. Thomas and Rebecca Wills, alleging themselves to be conscientiously scrupulous of taking an oath, good and lawful men and women of the said County of Burlington, duly summoned, and then and there sworn and affirmed and charged to inquire for the State of New Jersey, in and for the body of the County of Burlington; it is presented in manner and form following, that is to say:

10

20

The bills of indictment herewith presented are true bills.

30

Harold B. Wells, Foreman.

39. THE STATE }  
 vs. } INDICTMENT FOR VIOLATION  
 MAE MIDDLETON } OF THE PROHIBITION EN-  
 } FORCEMENT ACT

BURLINGTON COUNTY, to wit:

10 THE GRAND INQUEST of the State of New  
 Jersey, in and for the body of the County of Burlington,  
 upon their respective oath and affirmation, PRESENT  
 THAT MAY MIDDLETON late of the Township of  
 Tabernacle, in the said County of Burlington, on the fifth  
 day of April, in the year of our Lord one thousand nine  
 hundred and twenty-five at the Township of Tabernacle  
 aforesaid, in the County aforesaid, and within the juris-  
 diction of this Court did sell intoxicating liquor used or  
 to be used for beverage purposes which said intoxicating  
 liquor contained 1/2 of 1% or more of alcohol of volume.  
 20 The said act of selling liquor as aforesaid, being then and  
 there prohibited and unlawful and being contrary to and  
 in violation of Section 10 of an Act of the Legislature  
 of the State of New Jersey, entitled, "An Act concerning  
 intoxicating liquor, used or to be used for beverage pur-  
 poses," passed March 17, 1922 (being Chapter 255 of the  
 laws of 1922) contrary to the form of the statute in such  
 case made and provided, and against the peace of this  
 State and the government and dignity of the same.

30 And the GRAND INQUEST of the State of New  
 Jersey, in and for the body of the County of Burlington,  
 upon their respective oath and affirmation, do further  
 PRESENT THAT MAY MIDDLETON late of the  
 Township of Tabernacle in the said County of Burlington  
 on the fifth day of April in the year of our Lord one thou-

sand nine hundred and twenty-five at the Township of  
 Tabernacle aforesaid, in the County aforesaid, and within  
 the jurisdiction of this Court did furnish intoxicating  
 liquor for beverage purposes which said intoxicating  
 liquor contained 1/2 of 1% or more of alcohol by volume.  
 The said act of so furnishing liquor as aforesaid, being  
 then and there prohibited as unlawful and being contrary  
 to and in violation of Section 10 of an Act of the Legisla-  
 ture of the State of New Jersey, entitled "An Act con-  
 cerning intoxicating liquor used or to be used for bev-  
 erage purposes," passed March 17, 1922 (being Chapter  
 255 of the laws of 1922) contrary to the form of the  
 Statute in such case made and provided and against the  
 peace of this State, the government and dignity of the  
 same.

And the GRAND INQUEST of the State of New  
 Jersey, in and for the body of the County of Burlington,  
 upon their respective oath and affirmation, do further  
 PRESENT THAT MAY MIDDLETON late of the  
 Township of Tabernacle in the said County of Burlington,  
 on the fifth day of April, in the year of our Lord one  
 thousand nine hundred and twenty-five at the Township  
 of Tabernacle aforesaid, in the County aforesaid, and  
 within the jurisdiction of this Court did possess intoxi-  
 cating liquor used or to be used for beverage purposes  
 which said intoxicating liquor contained 1/2 of 1% or  
 more of alcohol of volume, the said act of so possessing  
 liquor used or to be used for beverage purposes being  
 then and there prohibited as unlawful and being contrary  
 to and in violation of Section 10 of an Act of the Legis-  
 lature of the State of New Jersey, entitled "An Act con-  
 cerning intoxicating liquor, used or to be used for bev-  
 erage purposes," passed March 17, 1922 (being Chapter  
 255 of the laws of 1922), said defendant having been

previously convicted of the same offense, 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.

G. M. Hillman, Prosecutor of the Pleas.

10

BURLINGTON COURT OF OYER AND TERMINER

October Term, A. D. 1925.

INDICTMENT FOR

20

UNLAWFUL SALE OF LIQUOR  
UNLAWFUL FURNISHING OF LIQUOR  
UNLAWFUL POSSESSION OF LIQUOR

THE STATE

vs.

MAY MIDDLETON

30

George M. Hillman, Prosecutor of the Pleas.

A TRUE BILL

Harold B. Wells, Foreman.

Mount Holly, N. J.,  
November 5, 1925.

A session of the Court of Quarter Sessions was held on this date with his Honor William A. Slaughter, presiding.

The Grand Jury returned into Court and by their Foreman, Harold B. Wells, made a presentment of 173 indictments as follows, viz:

10

The State vs. the following

DEFENDANTS	}	CHARGE
MAY MIDDLETON		UNLAWFUL SALE, FURNISHING AND POSSESSION OF LIQUOR

20

Mount Holly, N. J.,  
November 12, 1925.

A session of the Court of Quarter Sessions was held on this date with his Honor William A. Slaughter, presiding.

THE STATE	}	3 INDICTMENTS FOR
vs.		UNLAWFUL SALE, FURNISHING AND POSSESSION OF LIQUOR
MAY MIDDLETON		

30

The prisoner on being placed at the bar to plead and being charged entered a plea of not guilty thereto on each charge, thereupon the Court continued the cases.

At a Court of Quarter Sessions Holden at Mount Holly, in and for the County of Burlington, of the October Term of said Court, in the year of our Lord one thousand nine hundred and twenty-five, on the twentieth day of November, 1925.

Present, William A. Slaughter, Judge.

10 The following proceedings were had:

THE STATE	}	SUR INDICTMENT, UNLAWFUL
vs.		SALE, FURNISHING AND POS-
MAY MIDDLETON		SION OF LIQUOR. (Three Indictments)

20 On motion of George M. Hillman, Esq., Prosecutor of the Pleas, and by consent of counsel the Court do order on the trial of these indictments, and the Sheriff having returned the panel of a jury, the following persons appeared and were duly sworn or affirmed as follows, viz:

30

- S. 1. Howard Poinsett
- S. 2. Harry Belopolsky
- S. 3. Francis P. Borden
- S. 4. Lawrence Parsons
- S. 5. Mayme Williams
- S. 6. Raymond R. Wells
- S. 7. Florence Cline
- S. 8. Harry J. Ziegler
- S. 9. Louis Taylor
- S. 10. Ethel Engle
- S. 11. Howard Emmons
- S. 12. Edward K. Simons

Witnesses for State

- S. 1. Arthur Mick
- S. 2. Sidney Scott
- S. 3. Clarence Garwood
- S. 4. Earl Gibbs
- S. 5. May Middleton
- 6. Earl Gibbs,  
recalled
- S. 7. Wilbur H. Engle 10

Witnesses for Defendant

- S. 1. Saddie Gaskill
- S. 2. Lloyd Gaskill
- S. 3. Edward Gaskill
- S. 4. William Feret
- 5. May Middleton  
recalled

On motion of the Prosecutor of the Pleas, the Court ordered that the indictments for alleged offenses on April 9th and 15th be nolle prossed. 20

The evidence and argument of counsel being closed, the Jury, after a charge from the Court, retire from the Bar to consider upon their verdict, John D. Smith and Elizabeth Burroughs, Constables being sworn to attend them. The Jury return into Court and say they have agreed upon their verdict. The Defendant also appeared, when the Jury, by their foreman, say they find the Defendant guilty in manner and form as she stands charged. 30  
And so say they all.

Mount Holly, N. J.,  
November 27, 1925.

A session of the Court of Quarter Sessions was held on this date with his Honor William A. Slaughter, presiding.

10 THE STATE } UNLAWFUL SALE, FURNISH-  
vs. } ING AND POSSESSION OF  
MAY MIDDLETON } LIQUOR ON APRIL 5, 1925.

The prisoner on being placed at the bar for sentence the Court thereupon sentenced her to be confined in the County Jail for a period of 90 days.

STATE OF NEW JERSEY  
20 BURLINGTON COUNTY SS.

I, WILLIAM H. REEVES, Clerk of the Court of Quarter Sessions in and for said County and State, do hereby certify that the foregoing is a true copy of the indictment and proceedings in the trial of May Middleton as the same are now on file and of record in my office.

30 (SEAL) IN WITNESS WHERE, I have hereunto set my hand and the seal of said Court this day of January in the year of our Lord one thousand nine hundred and twenty-seven.

William H. Reeves, Clerk.

TESTIMONY

Burlington County Quarter Session Court

THE STATE } ON INDICTMENT AND CON-  
vs. } VICTION FOR VIOLATION OF  
MAY MIDDLETON } THE PROHIBITION EN-  
FORCEMENT ACT 10

TESTIMONY

Before Hon. William A. Slaughter, Judge, and a Jury.  
Appearances: For the State, George M. Hillman, Esq.,  
Prosecutor.

For the Defendant, Robert Peacock, Esq. 20

BY THE COURT: May Middleton, charged with the Unlawful Sale and Possession of Liquor; and Keeping and Maintaining a House where liquor was sold, in the Township of Tabernacle, on the 9th day of April; also, indictment charging same offence, the same place, on the 5th of April; and another indictment, charging the same offence, the same place, on the 15th day of April, 1925, by consent of Counsel the three indictments are to be tried together. 30

## STATE'S OPENING TO THE JURY

BY MR. HILLMAN:

In submission to the Court, Ladies and Gentlemen of the Jury—three indictments are to be tried together and were found by the Grand Jury of the present Term of Court against May Middleton and charge her with the Unlawful Sale, Furnishing and Possession of liquor on the 5th day of April; on the 9th day of April; and on the 15th day of April. The indictments further charge that with regards to the Unlawful Possession of liquor, she had previously been convicted of the same offense.

ARTHUR MICK, Sworn for the State, testifies as follows:

20 DIRECT EXAMINATION BY MR. HILLMAN:

Q. Mr. Mick, where do you live? A. Medford.

Q. How long have you lived there? A. I lived this one place about (8) years.

Q. And you have been engaged, from time to time, by the County Detectives office of this County, to obtain evidence in various cases? A. Yes, sir.

Q. Do you know May Middleton? A. Yes, sir.

Q. The lady sitting here beside Mr. Peacock? A. 30 Yes, sir.

Q. Where does she live, or where did she live in April last? A. Peach farm.

Q. Where was that? A. The other side of Cross Keys.

Q. Tabernacle Township? A. Yes, sir.

Q. This County? A. Yes, sir.

Q. What does she have there, a store or dwelling? A. Just a private house.

Q. Did you go there on the 5th day of April? A. Yes, sir.

Q. What time did you go there? A. I imagine it was somewhere between 10 o'clock and noon.

Q. Sometime in the Forenoon? A. Yes, sir. 10

Q. Who did you see there? A. Why, Earl Gibbs was there.

Q. Did you see Mrs Middleton there? A. Yes, sir.

Q. Did you buy anything there? A. Yes, I bought a drink.

Q. Drink of what? A. Whiskey.

Q. From whom did you buy it? A. Well, I couldn't say who served it at that time.

Q. Who was present when you bought it? A. May 20 Middleton.

Q. Well, you say you couldn't say? A. I couldn't say who served it at that time.

Q. Were there other people there drinking? A. Oh, sure.

Q. Who did you tell you wanted whiskey—who did you order it from? A. Ordered drinks from May.

Q. May Middleton? A. Yes.

Q. How was it served to you? A. In glasses.

Q. How many drinks did you have? A. I can't re- 30 call that, I never drink a lot.

Q. More than one? A. Oh, yes, I had more than one drink.

Q. Pay for it? Q. Yes, sir.

Q. How much did you pay for it? A. Twenty-five cents (25c) at one time and some times different prices.

Q. I mean on the 5th day of April? A. Twenty-five cents (25).

Q. Now, just direct your testimony to the 5th of April, that was just before Easter? A. The Sunday before.

Q. This was on Sunday? Q. Yes.

10 Q. Mrs. Middleton was there when it was served you? A. Yes, sir.

Q. Do you know who it was that served it—can you describe the person? A. I couldn't say. Sometimes she or Polly.

Q. Who is Polly? A. Her daughter.

Q. And in was all done in her presence? A. Yes.

Q. Who did you pay? A. Paid her that day.

Q. Who do you mean by "her"? A. May Middleton.

20 Q. Were you there on the 9th of April, or the 15th of April? A. I couldn't say what dates it was.

Q. But you were there on the 5th? A. I was there several different times.

CROSS EXAMINATION BY MR. PEACOCK:

Q. The only time you remember being there, is April 5th? A. That was one date, yes.

Q. What day was that? A. On Sunday.

30 Q. Who was in there when you came in there? A. Who was in there?

Q. Yes. A. Earl Gibbs was in there.

Q. And you saw her daughter Polly there? A. Yes.

Q. Did you see Sadie Gaskill? A. Yes.

Q. Ed. Gaskill? A. Yes.

Q. Sid. Scott? A. Yes.

Q. On April 5th?? A. Yes.

Q. On April 5th, did you see Charles Wilson there?  
A. No sir.

Q. Jess Middleton? A. I wont say. I don't know whether I did or not.

Q. You are a paid officer of Mr. Parker's, aren't you? Paid by the County Detectives? A. I haven't  
10 drawn any pay on that.

Q. You are hired to do this work? A. Yes.

Q. Mrs. Middleton knew you were a hired man? A. No, not at that time.

Q. She knew you were working for the State Troopers? A. No, sir.

Q. She didn't? A. No, sir.

Q. Didn't you tell her so? A. No, sir.

Q. And didn't you tell her that you were working  
20 for the Troopers? A. No, sir.

Q. And didn't you say, "I came down to tip you off not to sell anything?" A. No, sir.

Q. Didn't you say, "If you will give me \$50.00, I will not say anything about you",? A. No, sir, Absolutely no.

Q. Do you know Ethel Lovett in Medford? A. Who?

Q. Elsie Lovett? A. Yes, sir.

Q. Married woman? A. No, sir, not married. 30

Q. Don't you know she is married? A. No, sir.

Q. That her husband lives in Medford? A. No, sir.

Q. You went down there with her, didn't you?

A. Where?

Q. Down to Mrs. Middleton's house? A. Yes.

Q. And you asked Mrs. Middleton to hire you a room? A. No, sir.

Q. Didn't? A. No, sir.

Q. And she told you to get out of there she didn't hire rooms? A. Absolutely no, sir. I have a room there, but didn't hire it.

Q. Didn't you say, "All right, you won't give me a room, I will get you"? A. No, sir, absolutely not.

10 Q. And then after she wouldn't give you a room, you went to Rancocas Park with Elsie Lovett that night?

A. No, sir, absolutely not.

Q. Stayed up there in a house with her? A. Absolutely not. No, sir.

Q. You have stayed with her?

BY MR. HILLMAN: I object to this testimony.

20 BY THE COURT: Objection sustained.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes, sir.

Q. Didn't you go down there one day with some chickens? A. No.

Q. Didn't? A. No, sir.

30 BY MR. HILLMAN: I object. There is no relevancy to that.

Q. Didn't you tell her these chickens were stolen and you would like her to buy them? A. No, sir, absolutely not.

Q. Do you know her? Q. Yes, sir.

Q. Didn't see her one day when you went there and said you had some stolen chickens and wanted Mrs. Middleton to take them? A. No, sir.

Q. How old are you? A. I will be 26 years old the 25th of July.

Q. How long have you been doing this kind of work? A. Probably three (3) or four (4) months.

Q. And how much do you get paid for it? A. How 10 much?

Q. Yes. A. I get paid for the place. I didn't get anything for this place.

Q. Just do this for fun? A. No, sir.

Q. Why didn't you get paid for this?

BY MR. HILLMAN: I object. The witness has testified that he is employed by the County Detective's office to procure evidence. We admit that.

Q. Were you drunk when you went there? A. No, 20 sir.

Q. Never get drunk? A. Yes, sir.

Q. Where were you on April 4th? A. April 4th?

Q. Yes. A. I couldn't say whether I was home or away.

Q. Where were you on April 6th? A. I couldn't say what dates I was home and away.

Q. You can't tell me where you were the day before April 5th, or where you were on April 6th, and yet you can remember that on April 5th you were at her house? 30

A. Yes. I might have been in the City or at home on the 4th and 6th of April.

Q. Do you keep a book of these places you go to? A. I mostly make out a bill for them, giving a list of where I was on the different dates.

Q. Do you keep an account of all those places you go or depend upon your memory? A. Keep a list of all the places I go for the County. I keep a list of them.

Q. And if Mr. Hillman hadn't asked you if it was April 5th, you wouldn't have known? A. Yes, sir.

Q. You would? A. Yes.

Q. And Mrs. Middleton didn't give you any whiskey that day? A. April 5th?

10 Q. Yes. A. Yes, sir.

Q. You told Mr. Hillman you didn't know? A. I got it in her presence.

Q. She didn't give you any? A. I couldn't swear who served it.

Q. You don't know who served it? A. I wouldn't undertake to swear.

Q. You don't know whether she was in the room when you drank it? A. Yes, sir.

20 Q. Where was she? A. She was sitting in the room, playing poker.

Q. And who was playing poker with her? A. Earl Gibbs and a fellow they called "Camphy."

Q. Mrs. Gaskill? A. No, sir.

Q. They were in the room when you got the liquor? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. You are sure you got liquor? A. I guess so.

Q. You are well acquainted with it? A. Oh, yes.

Q. How long have you been drinking liquor? A. How long?

30 Q. Yes. A. Well, I couldn't say. I have been drinking for quite a while.

Q. You don't work anywhere? A. Oh, yes. Work every day.

Q. Where? A. Thomas Sitgreaves.

Q. Then you have two jobs, a paid detective and work for Mr. Sitgreaves? A. Yes, sir.

Q. What kind of work do you do? A. Farm work.

Q. You deny, on this way, that you took this Lovett woman there to get a room? A. Yes, sir.

Q. That isn't true? A. No, sir.

Q. Have you ever been convicted of crime? A. No, sir.

10 SIDNEY SCOTT, Sworn for the State, testifies as follows:

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Where do you live, Mr. Scott? A. Tabernacle.

Q. In this County? A. Yes, sir.

Q. Do you know May Middleton? A. Yes, sir.

Q. The lady sitting here at the table? A. Yes, 20 sir.

Q. Where does she live? A. Mount Holly.

Q. Where did she live in April last? A. Peach farm, Tabernacle.

Q. Have you ever been to that place? A. Yes, sir.

Q. When were you there? A. I couldn't tell you.

Q. Do you remember being there the 5th of April, the Sunday before Easter? A. No, sir.

Q. You weren't there that day? A. Not that I know of.

Q. Any other day in April? A. I couldn't say.

Q. Were you ever there when Mr. Mick was there— 30 Arthur Mick? A. Saw him there once in my life.

Q. When was that? A. I couldn't say what date it was.

Q. Was it in April? A. I couldn't say.

Q. What did you see him do? A. Didn't see him do anything.

Q. See any liquor sold there that day? A. Didn't see any.

Q. Any furnished? A. I wasn't in the house.

Q. Were you there any time in April when liquor was sold? A. No, sir.

Q. Ever see any liquor there in April? A. No, sir.

10 CROSS-EXAMINATION BY MR. PEACOCK:

Q. Mr. Mick said you were there on April 5th, when he got a drink of liquor, is that true? A. No, sir.

Q. You saw no liquor bought by him, or sold by Mrs. Middleton? A. No, sir.

20 CLARENCE BRUSHWOOD, Sworn for the State, testifies as follows:

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Where do you live? A. Vincentown.

Q. Do you know May Middleton? A. Yes, sir.

Q. Where did she live in April last? A. Tabernacle.

Q. What place in Tabernacle Township? A. Peach farm.

30 Q. Ever been there? A. Yes, sir.

Q. On the 5th of April? A. I don't think so.

Q. There any time during April?

BY MR. PEACOCK: I object, unless it is the 9th or 15th, the dates alleged in the indictments.

Q. Were you there on the 9th or 15th of April? A. I don't think so.

Q. Ever there with Mr. Mick? A. No, sir.

Q. Never saw him there? A. No, sir.

Q. Can you say whether you were there any time during April?

BY MR. PEACOCK: I object, unless he states the dates specified in the indictments.

10

Q. Were you there any time in April? A. I can't say.

Q. You were there a number of times? A. Only twice.

Q. When? A. Once I went there after a puppy.

Q. When was that? A. That was in May.

Q. When was the other time? A. I can't say for sure when it was, now.

Q. You can't say it was in April? A. I don't think it was.

20

BY MR. HILLMAN: Will you admit this woman has been convicted before, or shall I produce the records?

BY MR. PEACOCK: You can't produce them unless she goes on the stand and denies it.

BY MR. HILLMAN: The indictment alleges and it is part of the State's case, that the said defendant has been previously convicted of the same offence. Under a decision or under the Prohibition Enforcement Act, a greater penalty is provided for a conviction in cases where the defendant has previously been convicted of the same offense. The Supreme Court has held, that in such cases, it is nec-

30

essary to allege that fact in the indictment and of course, being necessary to allege the fact in the indictment for that purpose, it is necessary also, to offer proof of it. So, if Counsel won't admit it, I will produce the records.

10 BY MR. PEACOCK: I would like to take an exception to the Prosecutor's remarks. You can't show the conviction of any defendant unless they take the stand and deny them.

BY THE COURT: What is the purpose of that exception?

BY MR. PEACOCK: To show the credibility of a witness, to show they have ever been convicted and to show the jury that it can't be done.

20 BY THE COURT: My recollection of that Statute or Decision, considerable aid can be found in a modern decision and reported in one of the Miscellaneous Reports, it requires the State to allege a prior conviction if they intend to bring it out as part of the State's case and it seems to me it is admissible. I will admit it and allow you an exception, if you wish it.

BY MR. PEACOCK: This woman pleaded guilty to Possession and was never convicted of any sale in this Court, and paid a fine.

30 BY MR. HILLMAN: That is what the indictment alleges.

BY MR. PEACOCK: I will admit that.

EARL GIBBS, Sworn for the State, testifies as follows:

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Your name is Earl Gibbs? A. Yes, sir.

Q. Where do you live? A. Medford.

Q. Do you know May Middleton? A. Yes, sir.

Q. The lady sitting here at the table? A. Yes.

Q. Do you know where she lived in April last? A. 10  
Yes, sir.

Q. Where did she live? A. What is known as the "peach farm."

Q. Where is that? A. Tabernacle Township.

Q. Were you there with Arthur Mick? A. Yes.

Q. And do you remember when it was? A. April 5th.

Q. And was May Middleton there? A. Yes.

Q. Did you see Arthur Mick buy anything there? A. 20  
Yes, sir.

Q. What did you buy? A. Whiskey.

Q. Did you buy some? A. Yes.

Q. Did you see Arthur Mick buy some? A. Yes.

Q. Did you see any other people there buy any? A. 20  
Yes.

Q. Did you pay for the whiskey you bought? A. 20  
Yes.

Q. Who was present when it was served to you? A. 20  
I don't know that.

Q. Did you see Mrs. Middleton there? A. Yes. 30

Q. She was there? A. Yes.

Q. Who did you pay for it? A. Her.

Q. You mean Mrs. Middleton? A. Yes.

Q. How much did you pay for it? A. Twenty-five cents (25c) a drink.

Q. And it was whiskey? A. Yes.

## CROSS-EXAMINATION BY MR. PEACOCK:

Q. Mrs. Middleton didn't serve you the liquor, did she? She didn't give you the liquor? A. Yes.

Q. Gave it to Mick too, didn't she? A. Yes.

Q. You are sure of that, aren't you? Mrs. Middleton gave it to Mick too? A. Yes.

Q. How many drinks did you get? A. I don't remember how many drinks.

10 Q. Mr. Scott was there that day, wasn't he? A. Yes.

Q. He saw you when you got it? A. Yes.

Q. Ed. Gaskill was there also that day? A. I don't remember whether Ed. Gaskill was or not.

Q. You know him, don't you? A. Yes.

Q. You know Mrs. Gaskill, too, don't you? A. Yes.

20 Q. You were there that day she was there? A. I think she was, but I don't know about him.

Q. Well, wasn't he? A. I don't remember.

Q. Was Mrs. Gaskill in the room with you? A. Yes.

Q. And who else was there? Did you see Lloyd Gaskill? A. Yes, Lloyd Gaskill was there.

Q. Ed. wasn't there? A. I couldn't say that. I don't remember about Ed being there.

Q. Charles Borey? A. I don't know him.

Q. Jess Middleton there that day? Did you see him there? A. No.

30 Q. See Charles Wilson there? A. No.

Q. See Dr. Brown there? You know Dr. Brown, don't you? A. No.

BY MR. PEACOCK TO DR. BROWN: Stand up, Doctor.

Q. See him? A. No.

Q. He caught you there one day, coming out of a window? A. No.

Q. You stole a storage battery from her, didn't you?

BY MR. HILLMAN: I object.

BY THE COURT: Objection sustained.

BY MR. PEACOCK: I want to show a motive. To im-<sup>10</sup>  
peach his testimony.

BY MR. HILLMAN: You can impeach his credibility by showing his conviction of crime.

BY THE COURT: You can show it by production of the records of his conviction of the crime. And you might show animosity on his part.

20 BY MR. PEACOCK: That is what I am showing.

BY THE COURT: The only way to show the conviction, is to ask him if he didn't and produce witnesses to contradict the witness.

BY MR. PEACOCK: I do not intend to call witnesses for the defense.

30 BY MR. HILLMAN: He cannot undertake to prove the offense as part of this man, by evidence here, because the man isn't under indictment. If he wants to show this woman has ill feeling, he can show she made an accusation against him.

BY MR. PEACOCK: I want to show that this man has stolen things from this woman.

BY MR. HILLMAN: You can't do it. You have no right to. I object.

BY THE COURT: Objection sustained.

10 BY MR. PEACOCK: I want to ask him if he didn't and then I have a right to prove it, to test his credibility and show his animosity toward this woman and why he was here and that is why I am asking the question.

BY MR. HILLMAN: But Counsel can prove, if he wants to and ask the witness whether this woman has made accusations against him, but not ask him if he didn't steal certain things from her.

20 BY THE COURT: I think that is the rule.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes.

Q. You lived at her house for a while? A. No, I never lived there.

Q. She made a Complaint against you for stealing a battery, didn't she? A. Yes, she made a Complaint.

30 Q. And complaint made against you for stealing tires too? A. Tires? No.

Q. Didn't you bring them there? A. Tires?

Q. Yes. A. No.

Q. And didn't you take Addison Thomas with you?

BY MR. HILLMAN: I object.

BY THE COURT: Objection sustained.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes, sir.

Q. Didn't you also break into her house and steal Fourteen Dollars (\$14.00)?

BY MR. HILLMAN: I object. 10

BY THE COURT: Objection sustained.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes.

Q. Didn't you also steal chickens from her?

BY MR. HILLMAN: I object. 20

BY THE COURT: Objection sustained.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes.

BY MR. HILLMAN: I don't see why it is worth while. He knows there is no accusation. 30

BY MR. PEACOCK: I want them on the record.

Q. How long have you been working, trying to buy liquor for Mr. Parker's office? A. About eight (8) months or nine (9).

Q. Paid by the County for doing it? A. Yes.

Q. And you went down to see her about this, didn't you? About the liquor proposition? A. No. I wasn't working for the County that time.

Q. But you went down and talked to her about buying liquor or selling liquor, didn't you? A. No.

Q. She knew you were working for the County? A. No, I wasn't at that time.

10 Q. Didn't you go there any time while you were working for the County and talk to her about it? A. No.

Q. Didn't you go there with a State Trooper? A. No. I was never there with a Trooper.

Q. Didn't you agree with her and tell her, that if you knew of any State Troopers coming there, that you would tip her off for \$50.00? A. No.

Q. You didn't? How much did you agree to do it for? A. I never spoke to her about it.

20 Q. And you say you have been working for eight (8) months as a paid officer? A. No, I was never paid for it.

Q. And you have been working for the State Troopers, haven't you? A. I helped them out at that time.

Q. Are you just working for the County? A. No.

Q. When did you stop working on this kind of work? A. About a month.

Q. You deny that you broke into her house and met Dr. Brown in the yard?

30 BY MR. HILLMAN: I object.

Q. And he saw you coming out of the window?

BY MR. HILLMAN: I object.

BY THE COURT: Objection sustained.

BY MR. PEACOCK: May I have an exception?

BY THE COURT: Yes, sir.

Q. Did you ever see Dr. Brown at that place? A. No, I never remember seeing him there.

BY MR. HILLMAN: We rest. I don't press the indictments of April 9th and 15th. 10

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DEFENSE

BY MR. PEACOCK: I ask for a direction of verdict on the April 9th and 15th indictments. There is no evidence of Sale, Possession or Maintaining a House on those two dates. 20

BY MR. HILLMAN: I said I don't press for conviction on those two (2).

BY THE COURT: A direction of verdict will be given on the two indictments alleging Sale and Possession on the 9th and 15th of April. That leaves the one on April 5th, as I understand it. 30

OPENING ADDRESS TO JURY BY DEFENSE  
COUNSEL:

BY MR. PEACOCK: Members of the jury, we will attempt to show you, that on April 5th, by people who were in the room, that at the time these two men were there, that there was no liquor sold, or she didn't have any in her  
10 possession, and she didn't sell any to these two men.

MRS. SADIE GASKILL, Sworn for Defendant, testifies as follows:

DIRECT EXAMINATION BY MR. PEACOCK:

Q. Where do you live, Mrs. Gaskill? A. At Kirby's Mill, Medford Township.  
20

Q. Do you know Earl Gibbs and Arthur Mick? A. I certainly do.

Q. On April 5th, you were at Mrs. Middleton's—the day they were there? A. I was there on Easter Sunday, but wouldn't say that I was there April 5th.

Q. Well, the day they were there?

BY MR. HILLMAN: I object, if your Honor please. This witness says she was not there on the 5th, that she was there on Easter Sunday.  
30

A. I said I wouldn't swear, because as to dates, I have no recollection.

Q. You were there in April, Easter Sunday.

BY MR. HILLMAN: Easter Sunday wasn't April 5th.

Q. You were in April? A. If it came in April, I was there.

Q. And the date those two men say you were there?

BY MR. HILLMAN: I object.

BY THE COURT: Objection sustained.

Q. Did you see Earl Gibbs there the Sunday you were at Mrs. Middleton's house?  
10

BY MR. HILLMAN: I object. There is nothing here. She says she wasn't there on April 5th, how can she testify as to what she saw.

BY MR. PEACOCK: Earl Gibbs was there on the same day and she has a right to testify, because they saw her there. I don't care if it was Easter Sunday or Monday.  
20

Q. Did you see Earl Gibbs and Arthur Mick at Middleton's house in April? A. Yes, sir.

Q. The day they say you were there?

BY MR. HILLMAN: I object.

Q. You know whether you were there or not? A. I won't swear I was there on April 5th.

Q. They also testified Sidney Scott and Ed. Gaskill were there. Do you remember seeing them there that day? A. I was there in April, on Easter Sunday.  
30

Q. Those people I have mentioned and Earl Gibbs and Arthur Mick were there? A. Yes, sir.

Q. How long were you there? A. Spent the day.

Q. And saw these two men in there? A. Yes, sir.

Q. Did they buy any liquor there, in your presence?

A. I didn't see them. Didn't even see liquor there.

Q. Did Mrs. Middleton serve any liquor? A. I didn't see her serve any.

Q. You were in the room wheer these men were? A. Around about the house most of the day, yes, sir.

Q. How long were they there? A. I can't say.

10 Q. Approximately how long were they at the Middleton house? A. I couldn't undertake to tell.

Q. How long did you stay there? A. I think I went home early in the evening—around 8.30 or 9 o'clock, something like that.

Q. Were you there in the forenoon that day? A. Yes.

Q. Did you see them when they got there? A. I remember seeing Arthur Mick come there and I think Earl Gibbs was already there.

20 Q. And how did they come there? A. Arthur Mick drove his own car.

Q. And who else was there at the house that day? A. I don't just remember outside of my own boys.

Q. Mrs. Middleton's daughter there that day? A. Yes, sir.

Q. She was home that day? A. Yes, sir.

CROSS-EXAMINATION BY MR. HILLMAN:

30 Q. How many times, during the month of April were you at Mrs. Middleton's house? A. I don't know.

Q. That was Easter Sunday? A. Yes, sir.

Q. You are positive it was Easter Sunday? A. Absolutely.

Q. You weren't there on the 5th of April A. I wouldn't say I was not. I said I wouldn't say it was the 5th.

Q. But you know it was Easter Sunday? A. Yes.

Q. And you went there at what time during the day? What time did you arrive? A. Early in the morning.

Q. And stayed all day? A. Yes, sir.

Q. Did you stay in one room all day? A. Certainly not.

Q. You went in different parts of the house? A. Absolutely.

Q. Were you in the same room with Arthur Mick, the whole time he was there? A. I don't know that I was. No. Arthur Mick was associated with the men. 10

Q. You weren't in the room with him? A. Certainly not.

Q. You weren't in the room with Earl Gibbs? A. Not all the time.

Q. You were somewhere else? A. Yes.

Q. You didn't serve them liquor, but they might have been without your knowledge, couldn't they? A. I don't know.

Q. It could have been? A. But I didn't see it. 20

BY MR. PEACOCK:

Q. April 5th was on a Sunday and do you know when Easter Sunday was? A. No, sir, I do not. I just know it came in April.

Q. April 5th comes on a Sunday and you were there on a Sunday? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. You don't know what date Easter was? A. No, 30 but I know I was there Easter Sunday.

Q. Were you there any other Sunday during the month of April? A. I don't know about that.

Q. But the Sunday you were there, these two men were there? A. Yes.

BY MR. HILLMAN :

Q. You don't know whether you were there any other Sunday? A. Not in that month.

Q. Will you say you weren't or you don't know? A. I can't say sure.

10 LLOYD GASKILL, Sworn for Defendant, testifies as follows :

DIRECT EXAMINATION BY MR. PEACOCK :

Q. Where do you live, Mr. Gaskill? A. Kirby's Mill.

Q. Do you know Mrs. Middleton? A. Yes, sir.

Q. Do you know Earl Gibbs?? A. Yes, sir.

20 Q. Do you know Arthur Mick? A. Yes, sir.

Q. Were you there on this Sunday in April they testified you were there? A. Yes.

Q. What time did you get there? A. About eight (8) o'clock.

Q. Did you see Earl Gibbs when he came there? A. No, sir.

Q. Did you Arthur Mick when he came there? A. No, sir.

Q. Who else was there? A. My brother, mother, Gibby and Mick.

30 Q. And Mr. Scott there that day? A. I don't think he was.

Q. Mrs. Middleton there? A. Yes, sir.

Q. Her family there? A. Yes, sir.

Q. Did you see Gibbs and Mick in the house? A. Yes, sir.

Q. How long did they stay there? A. I don't know exactly, how long they stayed.

Q. And, did Mrs. Middleton sell any liquor while you were there? A. No, sir.

Q. Did you see them buy any liquor from her? A. No.

Q. Did you see any liquor around the house while you were there? A. No, sir.

Q. Did you see any liquor around the house at all while these two men were there? A. No, sir. 10

Q. Were you close to these men, talking to them? A. Yes, I was talking to them.

Q. You don't know how long they stayed there? A. No, sir.

CROSS-EXAMINATION BY MR. HILLMAN :

Q. What time did you get there? A. About eight (8) o'clock. 20

Q. That is the time you got there? A. Yes.

Q. What time did Arthur Mick get there? A. I can't swear.

Q. You didn't see him when he came there? A. No, sir.

Q. Did you see Earl Gibbs when he got there? A. No, sir.

Q. Where were you during the day, in what part of the house? A. All around.

Q. When did you first see Arthur Mick? A. When I went in he was there. 30

Q. He was there when you got there? A. Yes.

Q. How long did he stay there?? A. I couldn't swear to that.

Q. Did he stay in the same room with you, all the time? A. No.

Q. You were not in the same room all the time? A. No.

Q. How about Earl Gibbs—were you and he in the same room all the time you were there? A. No.

Q. And then they could have purchased liquor without you seeing it? A. Yes, I suppose so.

16 EDWARD GASKILL, Sworn for Defendant, testifies as follows:

DIRECT EXAMINATION BY MR. PEACOCK:

Q. Mr. Gaskill, do you know Earl Gibbs? A. I do.

Q. You heard him testify this morning? A. I have.

Q. He testified he never lived at the Middleton home. Do you know whether he did? A. I do.

20 Q. How long did he live there? A. Three (3) months.

Q. You know he lived there three (3) months? A. Yes, sir.

Q. Were you there the Sunday he was at Middleton's? A. I was.

Q. Was Mick there? A. He was.

Q. Were you with these men that day? A. I was.

Q. Did you see them around the house? A. Yes, sir.

Q. Was Mrs. Middleton there? A. Yes.

30 Q. Did she have any liquor in her house that day? A. No, sir.

Q. Did she give these men any liquor? A. No, sir.

Q. Did you see them all the time they were there? A. Yes, sir.

Q. Did she serve or sell any at all that day? A. No, sir.

Q. Who else was there? A. Mother, brother, Sidney Scott stopped for a while. That is about all I can recall.

Q. Did you see her daughter there that day? A. Yes, she was there.

Q. And her children? A. Yes, little children there.

Q. Was Mrs. Middleton in the room where you were most of the time, where you could see her? A. Not most, but she was around the biggest part of the time. 10

Q. And were Gibbs and Mick in your presence, where you could see them? A. Yes.

Q. And if they purchased any liquor, you could have seen it? A. Surely could.

Q. Who got there first—Gibbs or Mick? A. I guess Mick was there.

Q. You got there what time? A. Eight (8) o'clock. 20

Q. What time did Gibbs get there? A. He was there, because he was living there at that time.

CROSS-EXAMINATION BY MR. HILLMAN:

Q. The first witness, Sadie Gaskill, who was on the stand, what relation is she to you? A. Mother.

Q. She was there the day you were there? A. She was there.

Q. And how many times during the month of April, were you at May Middleton's home? A. About twice that I can recall. 30

Q. What were those dates? A. I know the 5th was one, but I don't recall the other.

Q. Was that the date your mother was there? A. Yes, it was.

Q. That wasn't Easter? A. No, I was there the 5th and on Easter Sunday.

Q. When was Easter? A. I think it was about the last Sunday.

Q. Then, you were there on the 5th of April and you were there, not on Easter Sunday? A. On Easter Sunday.

Q. And then you were there on the 5th and Easter Sunday? A. Yes.

Q. And you don't know on what date Easter Sunday came? A. No.

Q. Didn't Easter Sunday come on the 12th, the week after the 5th? A. I don't recall.

Q. You said the time you were there, was the latter part of April? A. Yes, about the last Sunday in April.

Q. The 5th and the last Sunday in April? A. The 5th and the last Sunday in April, I was there.

Q. And your mother present on both occasions? A. Yes, sir, she was.

Q. And was Arthur Mick there too on both occasions? A. No.

Q. Was Earl Gibbs there on both occasions? A. Yes, sir.

Q. Now, directing your attention to the first Sunday you were there, how do you know it was April 5th? A. Because I do.

Q. How? A. Because I know the date.

Q. How? Did you make a memorandum? A. No. I have a head.

Q. Certainly you were. Where were you on the 12th of April? A. I don't just recall now. I don't know any dates except the last week and the 5th of April.

Q. You don't know where you were any other Sunday in April? A. No, I don't.

Q. You made no memorandum of being there on April 5th? A. I made no memorandum of nothing.

Q. On both Sundays, your mother was there? A. She was.

Q. And both Sundays you were there, Arthur Mick was there? A. No, sir, only the one Sunday.

Q. And both Sundays you were there, Earl Gibbs was there? A. He was.

Q. On the 5th of April, what time of the day was it you arrived? A. About eight (8) o'clock.

Q. Who went with you? A. Brother and I.

Q. Your brother's name is Lloyd? A. Yes.

Q. Your mother go? A. No.

Q. What time of the day, or was she there when you got there? A. Yes.

Q. You don't know how she got there? A. No.

Q. What time did you leave? A. About dark.

Q. Where did you stay all day? A. Different parts about the house.

Q. Were you in the presence of Arthur Mick the whole time he was there? A. The biggest, yes, sir.

Q. He was there when you got there? A. Yes, he was.

Q. Earl Gibbs was there when you got there? A. He was there all the time.

Q. Before you got there? A. Yes.

Q. You were around different parts of the house and different parts of the premises during that day? A. Yes, sir.

Q. You didn't confine yourself in one room and stay there all the time? A. No.

Q. And it was possible for Mr. Mick and Mr. Gibbs to have purchased or been served liquor without your knowledge? A. I don't know, because they were in the yard the most of the time. He was in the yard.

Q. Well, you weren't with them all the time? A. I was with them the biggest part of the day.

Q. You were with them all the time? A. No.

Q. How long did they stay? A. Earl Gibbs was staying there at that time.

Q. How long did Arthur Mick stay? A. He left before I did.

Q. What time did he leave? A. The middle of the  
10 afternoon.

Q. Do you know when, or imagine it? A. I know it.

Q. And during the time, from eight (8) o'clock, or before, until the middle of the afternoon, Earl Gibbs and Arthur Mick and you, were around the place and were in different parts? A. Yes.

Q. And it was possible for them to have obtained it without your seeing it, is that right? A. I suppose it would be.

20 Q. You say you didn't see any liquor there? A. I did not.

Q. What were the fellows hanging around there for?

BY MR. PEACOCK: Objected to.

Q. Were there for liquor? A. No.

Q. Do you drink? A. Occasionally.

Q. Didn't get any there? A. No, sir.

Q. How do you know Earl Gibbs lived there? A.  
30 Because he did.

Q. That is a woman's reason. Do you know whether he lived there or not? A. Yes, I know, because I was there two or three days at times and he was there.

Q. When were you there? A. I don't know the dates.

Q. You say he lived there, because you were there two or three times and you saw him? Still, he saw you two or three times, but you don't live there? A. No. Well, I know he was there.

Q. Because you saw him when you went there? A. Yes.

BY MR. PEACOCK:

Q. Your mother and Mrs. Middleton are friends? 10  
The family have been friends for some time? A. Yes, sir.

Q. How did your mother get down from your house that day? A. She went down with us.

Q. Didn't she go down with Mrs. Middleton that day? A. On the 5th?

Q. On the 5th? A. She didn't go with us on the 5th.

Q. Didn't you and your brother drive your own car? 20  
A. We did.

Q. And your mother drove down with Mrs. Middleton? A. Yes, sir.

BY THE COURT:

Q. Mr. Gaskill, how many were there beside you? A. I don't know outside of Gibbs, Mick, Mother, Brother and I and Sidney Scott.

Q. And you said you were out in the yard? A. Yes.

Q. What were you doing—working on the car or 30  
pitching quoits? A. No, sir.

LILLIAN FERET, Sworn for Defendant, testifies as follows:

DIRECT EXAMINATION BY MR. PEACOCK:

Q. Mrs. Feret, you are a daughter of Mrs. Middleton's? A. Yes, sir.

10 Q. Were you home on April 5th? A. Home there all the time.

Q. Been living there? A. Positively.

Q. And during April was Earl Gibbs living at your house? A. Yes, sir.

Q. How long had he been living there? A. Three (3) months.

Q. How did he come to live there? A. He said he hadn't any home and was down-and-out and my mother took pity on him and took him in.

20 Q. Did he work on the place? A. We had a machine and it was broken and we used his car occasionally.

Q. And you remember Earl Gibbs and Arthur Mick being there on April 5th? A. Earl Gibbs was there and Arthur Mick drove in.

Q. Were you there all day? A. Positively.

Q. See these men there? A. Yes.

Q. Did your mother sell any liquor to them on that day? A. No, sir.

Q. Did she have any? A. Not a drop on the place.

30 Q. Did she give any liquor, or sell, or furnish any liquor to these two men that day? A. No, sir, she did not.

Q. What time did Earl Gibbs come there? A. He stayed there.

Q. What time did Mick come there? A. Early in

the morning. He came there to see Earl. He and Earl are very good friends.

Q. Mrs. Gaskill and these two boys there that day?

A. Yes, sir.

CROSS-EXAMINATION BY MR. HILLMAN:

Q. When was Easter, do you know? A. No, I can't recall.

Q. Well, you don't know when Easter was? A. 10 No.

Q. You don't know whether April 5th was Easter or not? A. I can't recall.

Q. Has your mother any other daughters beside you? A. One more.

Q. What is her name? A. Mrs. Ada Watson.

Q. Was she at the house too? A. No, sir.

Q. You are the only daughter living there? A. Yes, the only one. 20

Q. And where did Mick and Gibbs spend their time when they were there on the 5th of April? A. Mick came and called Earl Gibbs out and they had a conversation outside and Mick stayed there not very long. I just couldn't say how long he did stay.

Q. What do you mean, "on the premises very long"? A. He was there in the morning, but I can't say how long.

Q. What time was it when he got there? A. I can't say.

Q. Seven (7) o'clock? A. No. 30

Q. Eight (8) o'clock? A. Probably it was after eight (8). It was after eight (8).

Q. Was it before of after eight (8)? A. After eight (8).

Q. Do you remember Lloyd Gaskill and his brother being there? A. Yes, sir.

Q. Who came there first, they or Arthur Mick? A. Gibbs was there.

Q. I asked you about Arthur Mick? A. He came there early in the morning to see Gibbs.

Q. What time do you call early? A. Eight (8) o'clock.

16 Q. Was he there before or after Lloyd and Edward Gaskill got there? A. He was there first.

Q. What time did they get there? A. I can't say. Early in the morning.

Q. What do you call "early"? A. I can't recall. Probably eight(8) or nine (9).

Q. Probably ten (10)? A. Yes.

Q. And Arthur Mick was there first, that is right? A. Yes, he was first.

20 Q. When did Mrs. Gaskill come there? A. She was there on Saturday night.

Q. She stayed all night? A. She did. She came up with us in the afternoon. Saturday afternoon.

Q. The afternoon before? A. Yes.

Q. She stayed all night? A. Yes, sir.

Q. And she was there when her sons arrived? A. Yes, sir.

Q. How many times during April, how many Sundays was Mrs. Gaskill there? A. Oh, she is a friend of the family. I don't know.

Q. More than one? A. Maybe two or three times.

30 Q. Well, do you know how many Sundays she was there? A. No.

Q. Do you know whether she was there any other Sunday other than April 5th? A. I can't answer that.

Q. And you don't know when Easter was? A. No.

Q. Nothing was said about this being Easter, the day she was there? Any remark about its being Easter? A. Yes, it was Easter Sunday.

Q. She was there Easter Sunday, you are sure of that? A. Positive.

Q. And was that the 5th of April? A. I can't recall the date.

Q. How do you know she was there Easter Sunday? A. Well, on a Saturday night we were talking about Easter and she came up and said, "I am going home tomorrow, May." 10

Q. Did she say anything about it's being Easter? A. Why, sure.

Q. Then she said, "It is Easter and I am going to stay all night"? A. I don't know, it was something about being Easter.

Q. Who said anything about its being Easter? A. Everybody.

Q. And so, you are certain it was Easter Sunday she was there? A. Yes, Easter Sunday she was there. 20

Q. Was she there the Sunday before Easter? A. No.

Q. You are positive of that, are you? A. Yes.

Q. Now, is April 5th when Arthur Mick and Earl Gibbs were there and were you with them all the time? A. I was about the house all the time.

Q. You served them liquor, didn't you? A. No, sir.

Q. Did you have any liquor there? A. No, sir.

Q. None at all? A. No, sir. Never had any on the place. 30

Q. Your mother never sold any at all, did she?

BY MR. PEACOCK: I object.

BY THE COURT: Yes, Mr. Hillman.

Q. How long did she live at the "peach farm"? A. I can't say. Probably a year.

Q. Doesn't live there now? A. No.

BY THE COURT:

10 Q. You say your mother never had any on the place, is that right? A. Yes, sir.

Q. What do you mean by the word "liquor"? A. Whiskey, intoxicating drinks.

Q. You mean by the word "liquor", you say, "whiskey"? A. Yes, sir.

Q. Now, would you say wine was liquor?

BY MR. PEACOCK: I object. This witness has testified they purchased liquor on April 5th.

20 BY THE COURT: I want to know what she means by the word "liquor."

A. I mean whiskey.

BY THE COURT: She has testified her mother never had liquor on the place, now, I asked her what she means by the word "liquor" and she said "whiskey" and I asked her would she consider wine, liquor?

30 BY MR. PEACOCK: I object. There is no testimony she had any whiskey, wine or beer, nothing intoxicating on her place.

BY THE COURT: She made the statement she never had any on her place.

BY MR. PEACOCK: I object, because there is no testimony she had wine, beer, or whiskey on that place.

BY THE COURT: These two men testified that they purchased whiskey. I want to know what they used.

BY MR. PEACOCK:

Q. Do you remember when Easter was? A. I do not. 10

Q. You know she was there two times? A. Yes.

Q. And one night she stayed over night? A. She did.

MRS. MAY MIDDLETON, Sworn for Defendant, testifies as follows:

20

DIRECT EXAMINATION BY MR. PEACOCK:

Q. You live in Tabernacle now? A. No.

Q. Where do you live now? A. Mount Holly.

Q. In April you lived there? A. I did.

Q. What kind of place was it? A. A farm. Chicken farm, 97 acres.

Q. You formerly lived in Mount Holly? A. Yes.

Q. And were living in Mount Holly when you pleaded guilty to possession of liquor? A. I did and paid for it.

Q. How much of a family have you? A. Five (5) children. 30

Q. And, is your husband living with you? A. No, sir, he is living with another woman.

Q. In Mount Holly? A. Yes, on the same street.

Q. When did you move back to Mount Holly? A. About four (4) months ago.

Q. Do you remember April 5th, when Earl Gibbs and Arthur Mick were there? A. Yes.

Q. Was Earl Gibbs living at your house? A. He certainly was.

Q. How long did he live there? A. From ten (10) to twelve (12) weeks, off and on.

10 Q. Mrs. Gaskill there on April 5th, the Sunday he was there? A. Yes.

Q. Did you sell him any liquor there? A. No, sir, never sold him any liquor in my life.

Q. Gibbs or Mick? A. No, sir.

Q. Ever have any liquor in your house after you went to Tabernacle? A. I did not, postively.

Q. You worked this place, you say? A. Yes. I had between four and five hundred chickens. They kept me busy.

20 Q. Was Mrs. Gaskill there more than once in April? A. She was there on two occasions.

Q. She was there on two occasions? A. Yes, she was there a couple or three times.

Q. And these men, neither one of them got liquor from your place? A. Didn't get any at all.

Q. And did the officers come to your place? A. Came twice.

Q. Find anything? A. Not a thing.

30 CROSS-EXAMINATION BY MR. HILLMAN:

Q. Do you know when Easter was? A. I am not sure as to the date.

Q. Was it Easter Sunday that Mrs. Gaskill was there? A. Yes, she was. I cooked dinner for them.

Q. What Sunday was it? A. Easter Sunday.

Q. And you know she was there Easter Sunday? A. Yes, helped me prepare the dinner.

Q. You don't know whether it was April 5th? A. I know it was Easter Sunday.

Q. Do you know she was there on April 5th? A. I wont say for sure, because I can't say as to the date.

Q. But you know she was there Easter Sunday? A. Yes, she spent it with me.

Q. Was she there the Sunday before Easter? I dont think so, no. 10

Q. Now, how did she get there this Sunday, on Easter Sunday when she was there? A. We brought her up the night before.

Q. Who do you mean by "we"? A. My son and I. We planned a little dinner for Easter. She and the boy came.

Q. And she came the night before and they the next morning? A. Absolutely. 20

Q. Who was there that day? A. My family. My three sons and my daughter, Mrs. Gaskill, her two sons, Earl Gibbs and Sidney Scott.

Q. Was Arthur Mick there to dinner? A. He brought two stolen chickens there for me to cook.

Q. Never mind that. Was he there to dinner? A. No, he was not.

Q. What time did he get there? A. Some time during the forenoon, pretty early.

Q. How long did he stay? A. A couple of hours. 30

Q. You don't know when he left? A. No.

Q. This was Easter Sunday? A. Yes.

Q. Was he there the Sunday before that? A. No.

Q. You don't know anything about what happened the Sunday before? A. I certainly do, I was there.

Q. Who else was there—anybody except the members of the family? A. That is all.

Q. And you didn't sell him any liquor that day? A. Never in my life.

Q. He didn't drink liquor there, in your presence? A. No, sir, never in his life.

Q. Earl Gibbs didn't drink any liquor? A. He came there drunk lots of times.

10 Q. Did anybody ever drink any liquor on your premises during the month of April? A. Anybody ever drink liquor on my premises? A. On the peach farm?

Q. Or any other place? A. I have nothing to say.

BY THE COURT:

Q. Mrs. Middleton, before you were on the peach farm, where did you live? A. Merchantville.

Q. Camden County? A. Yes.

20 Q. Were you ever convicted of any crime in Camden County? A. No, sir.

BY MR. HILLMAN:

Q. How many times have you previously been convicted for the Unlawful Sale or Possession of liquor?

A. Once.

Q. That was in this Court? A. Yes.

30 Q. That the only time? A. That is the only time in this Court, but I have been in both Courts.

Q. Then you were convicted in the United States Court too, or pleaded guilty there? A. Twice. I am wrong.

Q. You were convicted in this Court, twice? A. No, once here and once in Trenton.

BY MR. PEACOCK:

Q. The offense in Trenton covered the same offense here and you paid Twenty-five Dollars (\$25.00)? A. Yes, the same charge. Two courts on one charge.

COURT ADJOURNED UNTIL 1.30 P. M.

10

MRS. MAY MIDDLETON was recalled by the State, and testified as follows:

BY MR. HILLMAN:

Q. Mrs. Middleton, you said, when you were on the stand this morning, that you were fined both in this Court 20 and the United States Court, for the same offense; as a matter of fact, didn't you plead guilty to an indictment in this Court, charging you with the Unlawful Possession of liquor. at Hainesport? A. Yes, sir.

Q. And wasn't the charge against you in the Federal Court, for the Unlawful Possession of liquor in Mount Holly? A. I don't know whether there were two cases, or both one. I was in Court and fined.

Q. Wasn't that for possession of liquor in Mount Holly? A. I think it was.

30 Q. Then, these weren't the same offenses? They were two different offenses? A. Yes, but I won't be positive.

EARL GIBBS, recalled by the State, testifies as follows:

BY MR. HILLMAN:

Q. In the Spring of this year, by whom were you employed? A. By Wilbert Engle.

Q. Where did you live while you were employed by him? A. With him.

10 Q. When did you leave his employ? A. In April some time. I don't know the exact date.

Q. How long had you worked for him? A. I went there New Year's day, no, the day after Christmas.

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WILBERT H. ENGLE, called as a Rebuttal witness, by the State, being Sworn, testifies as follows:

20

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Mr. Engle, where do you live? A. In Medford Township, just outside of Medford.

Q. You are a farmer? A. Yes, sir.

Q. Do you know Earl Gibbs who was just on the stand? A. Yes, sir.

Q. Was he employed by you? A. Yes, sir.

30 Q. And when did he enter your employ? A. Well, he worked for me for seven (7) or eight (8) years, off and on.

Q. Was he employed by you during the present year? A. Worked for me from last Fall up until the 4th day of April, of this year.

Q. And while he worked for you, where did he live? A. Lived with me. That is, ate with me, and slept at my house.

CROSS-EXAMINATION BY MR. PEACOCK:

Q. Do you know where he lived in April of this year?

A. Don't know anything about him after he left my place.

Q. Lived at your house during February and March, 10 1925? A. Yes, sir.

Q. Do you know whether he lived at Mrs. Middleton's or not? A. He couldn't live in two places.

Q. Do you know whether he lived there during April and March? A. I know he lived with me during those months.

BY MR. PEACOCK: I move for a direction of verdict, on the uncorroborated testimony of officers. There is no 20 testimony to show there was any liquor sold, except the testimony of these two paid officers. There is no evidence for the jury to say they ever got liquor there and no evidence except their two words that liquor was purchased at this house.

BY THE COURT: My understanding of the law, on that respect, Mr. Peacock, if a man acts in the capacity of a private detective or paid officer, it is up to the jury to scrutinize the testimony and say whether or not the testi- 30 mony of a man acting in that capacity, is biased and whether or not it influenced him to effect his testimony.

BY MR. PEACOCK: I cited two cases before your honor, by the Court of Chancery of New Jersey and they were

cited in divorces and it said, "The uncorroborated testimony of detectives, paid spies and house servants, should be scrutinized carefully before given credence and would not be relied upon unless corroborated" Now, that same principle would apply in this case. There is no testimony, here, except of the paid spies or detectives. I am assuming it would apply in a criminal case.

10 BY THE COURT: My understanding as to the credibility of a witness and what weight should be given, should be for the determination of the jury. I will deny your motion.

BY MR. PEACOCK: Allow me an exception?

BY THE COURT: Yes, sir.

20

#### JUDGE'S CHARGE TO JURY:

Ladies and Gentlemen of the Jury, you have been sworn or affirmed to try an indictment found at the present term of Court, against May Middleton, wherein it is alleged, that she did Unlawfully Sell, furnish and possess intoxicating liquor on the 5th day of April, 1925. The Legislative Manual, shows that Easter Sunday of the present year, was on April 12th, and the Court will take knowledge of that fact and so instruct the jury.

30 Mr. Peacock has asked for a number of instructions in this case, and the first one asked, is for reasonable doubt. That the Defendant is presumed to be innocent until he is proven guilty and the burden of proof rests upon the State to satisfy you beyond reasonable doubt,

that the Defendant is guilty and after consideration of all the evidence, you cannot say you feel an abiding conviction to a moral certainty that she is guilty of this offense, it is your duty to acquit, but, on the other hand, if you are so satisfied, you shall convict.

Then, the question of credibility of witnesses and what weight should be given his testimony, is for your determination.

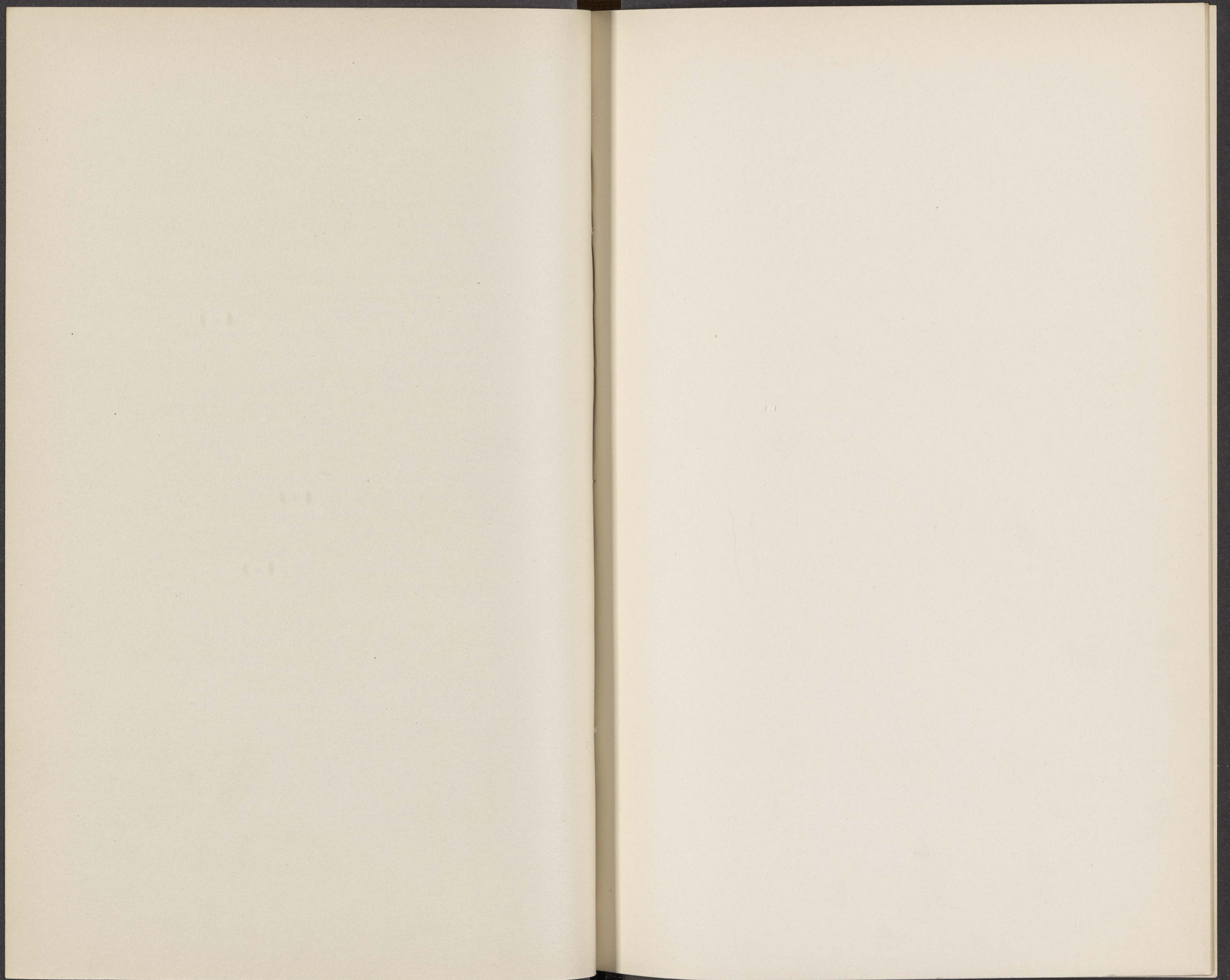
The Court instructs you, that, when one acts in the capacity of a private detective or public officer, it becomes the duty of the jury to scrutinize the testimony of that person so acting is biased, whether the interest he serves has influenced him to an extent that would reflect upon or affect his testimony. 10

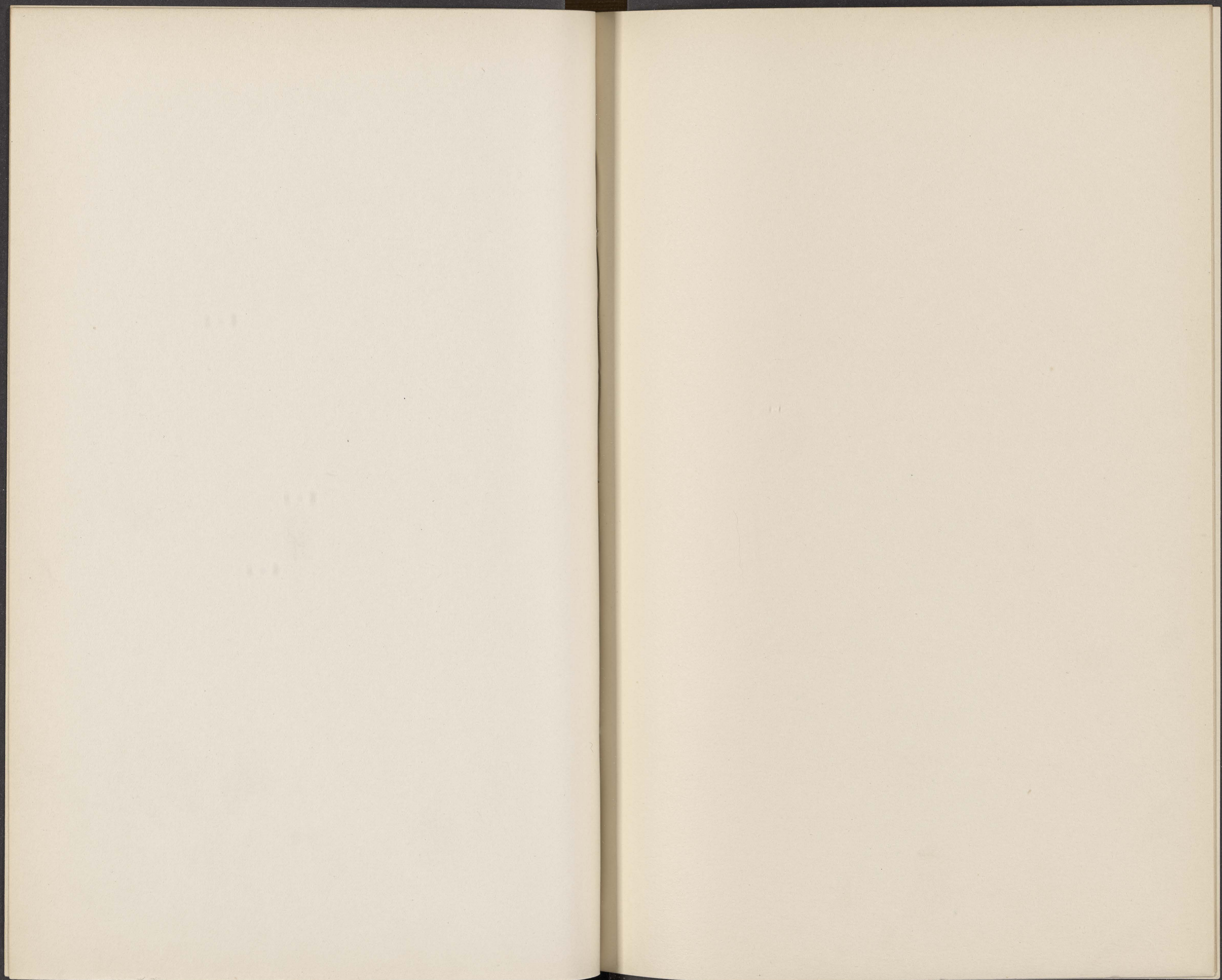
The fact that a witness may in times past have been convicted of a crime, does not make her an incompetent witness, but leaves her credibility to be determined by you, from all the facts and circumstances in evidence.

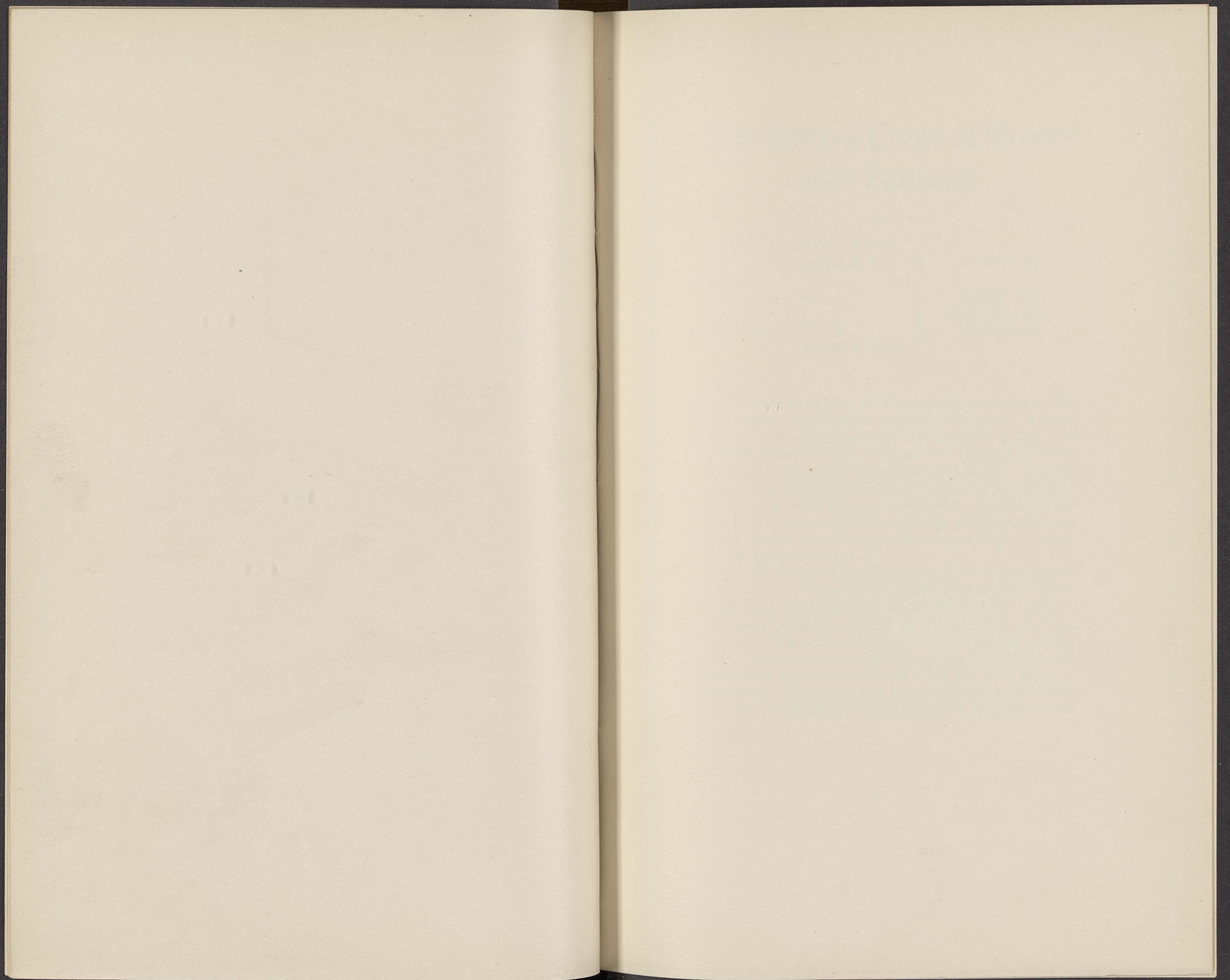
If you believe that a witness, knowingly and wilfully testified falsely to any material fact in this case, you may give such weight to his or her testimony on other points as you may think it entitled to, or you may disregard it altogether; false in one thing, false in all is not a mandatory rule of evidence, but is rather a permissible inference that the jury may or not draw when convinced that an attempt has been made to mislead them in some material respect. 20

I think that covers the five (5) points.

You may retire and consider your verdict. 30







25 MAY.T.1928

## New Jersey Court of Errors and Appeals

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STATE OF NEW JERSEY, Defendant in Error,	}	IN ERROR
vs.		BRIEF OF DEFENDANT
MAE MIDDLETON, Plaintiff in Error.		IN ERROR

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The defendant, Mae Middleton, was convicted in the Burlington County Court of Quarter Sessions on November 20, 1925. The conviction was affirmed by the New Jersey Supreme Court. Counsel for Plaintiff in Error has contented himself with submitting to this Court the same brief used in the Supreme Court and has not prepared, or at least has not submitted to counsel for the State any state of the case. Under the circumstances therefore, we merely repeat what was said in our brief in the Supreme Court.

The conviction of the Plaintiff in Error was had upon an indictment found by the Grand Jury at the October term, 1925, charging her with the unlawful sale, furnishing and possession of liquor on April 5, 1925, (S. of C. page 6.) Two other indictments were returned against the defendant charging violation of the Prohibition Enforcement Act on April 9 and April 15. The three indictments were by consent tried together but the Court directed a verdict of not guilty as to the indictments

charging offenses on April 9 and April 15. (S. of C. page 11). The conviction was only upon the indictment charging violation of the law on April 5, 1925.

The assignments of error are six in number.

The first is "Because the verdict was against the weight of the evidence."

This is not a proper assignment of error and in any event two witnesses testified positively to the guilt of the defendant. She herself denied it. Several other witnesses produced by her undertook to support her denial but their testimony was unsatisfactory and uncertain. The Jury had an opportunity of observing the appearance and demeanor of the witnesses upon the stand and had a right to determine the relative weight to be given their testimony.

The second assignment is "Because there was no corroboration of the complainant who was a paid detective for the State to procure evidence."

The two witnesses who testified on the part of the State as to the violation of the law by defendant were Arthur Mick and Earl Gibbs. Counsel for the defendant undertook to discredit their testimony upon the ground that they were employed by the State to procure evidence of violation of the law. The mere fact that they were paid detectives did not render their testimony inadmissible. It simply went to the question of the weight to be given such testimony by the Jury. Our courts have said that the testimony of paid detectives should be scrutinized with care but have never said that it was inadmissible. The Jury were aware of the fact that the witnesses Mick and Gibbs were employed by the State. They saw their demeanor upon the stand and observed the manner in which they gave their testimony. They also observed the action and demeanor of the defendant. She and some of her witnesses testified positively that

Earl Gibbs was boarding with her at the time of the alleged offense and had been boarding with her for some months prior thereto. This testimony was flatly contradicted, not only by the said Earl Gibbs but also by Wilbert H. Engle, an entirely disinterested witness (S. of C. pages 54 and 55). This had a natural tendency to discredit the general testimony of the defendant and certain of her witnesses.

The third assignment of error is "Because the Court allowed the Prosecutor to show that defendant had been convicted of a liquor violation prior to this case without alleging the same in the indictment."

A prior conviction was alleged in the indictment (S. of C. page 7, line 35; page 8, line 1). Counsel for the defendant on page 24 of the State of the Case, admitted the conviction of his client and so there was no evidence of the same offered by the Prosecutor.

The fourth assignment of error is "Because the Court refused to allow counsel for the defendant on cross examination of Earl Gibbs, the complaining witness, that he had stolen articles from the defendant."

What counsel probably meant by this assignment of error was that the court refused to allow him to ask the witness Earl Gibbs if he had not stolen certain articles from the defendant. The questions propounded by defendant's counsel upon cross examination are found on pages 26, 27, 28, 29, 30 and 31 of the State of the Case. Counsel for the defendant had a right to show any conviction of the defendant, Earl Gibbs, of a crime for the purpose of affecting his credibility. He did not undertake to do this. He had a right to show that there was ill-feeling between him and the defendant which might influence his testimony. It would have perhaps been proper for this purpose to show that he had had a controversy with the defendant and that she had accused him

of having stolen something from her. Counsel did not do this, however. He simply asked the witness Gibbs on cross-examination if he had not stolen certain articles from the defendant. This was not the proper method to show animus or bias and it was immaterial for any other purpose.

The fifth assignment of error is "Because the Court charged on the question of reasonable doubt as follows: 'You cannot say you feel an abiding conviction to a moral certainty that she is guilty of this offense it is your duty to acquit, but on the other hand, if you are so satisfied, you shall convict, thus placing the burden on the defendant, of proving her innocence beyond a reasonable doubt instead of placing the burden upon the State of proving defendant guilty beyond a reasonable doubt'."

The charge of the Court (S. of C. pages 56 and 57) on the question of reasonable doubt was proper. The language used was almost identical with that used in charges which had been sustained and approved by this court.

The sixth assignment of error is "Because the Court failed to direct a verdict of not guilty at the end of the case, on the uncorroborated testimony of officers who were paid by the county to obtain evidence."

The Jury had a right to consider the testimony of these two witnesses. They could decide how much credence should be given their testimony, but the defendant was not entitled to have the Jury instructed to reject entirely and disregard such testimony. It was entirely proper for the court to deny this motion. (State vs. Morehouse, 97 N. J. L., page 285.)

The judgment should be affirmed.

Respectfully submitted,  
G. M. HILLMAN,  
Attorney of Defendant in Error.

New Jersey Court of  
Errors and Appeals.

THE STATE OF NEW JERSEY,  
Defendant in Error. }  
vs. } Brief of Plaintiff  
MAE MIDDLETON, } in Error. 10  
Plaintiff in Error. } On Writ of Error.

The defendant in this case was indicted by the Grand Jury on a charge of violation of the Prohibition Act in that she was charged with unlawful sale, furnishing liquor, and possession of liquor at the Township of Tabernacle on the 5th of April, 1925, 20 and was found guilty as charged.

Under the first assignment of error we contend that the verdict was against the weight of the evidence, because the only testimony submitted by the State was the testimony of two paid operators of the State, Arthur Mick and Earl Gibbs, in which Mick testified that he purchased liquor from the home of Mae Middleton while she was present. And Mick admitted that he was hired to do this character of 30 work.

State of Case p. 17 L. 10.

The State's witness, Sidney Scott, testified that he was not there on April 5th, as Arthur Mick testified to in this case. State of Case p. 21 & 22.

Clarence Brushwood also testified that he was not there at the time the alleged liquor was purchased, on either the 9th or 15th of April, as testified to by Mick in this case. State of Case p. 22 & 23. So that the Prosecutor, on page 39 of State of Case, did not press the indictment of April 9th and 15th, which left only the indictment of April 5th. And the defendant shows that Mrs. Sadie Gaskill was at her home on the 5th of April, on the date that Mick and  
10 Gibbs claim they purchased the liquor, and she testified that there was no liquor purchased by these men. State of Case p. 34 L. 1 & 2.

Lloyd Gaskill was also at Mrs. Middleton's home and says that Mick and Gibbs did not purchase any liquor on April 5th, and that no liquor was sold by Mrs. Middleton.

State of Case p. 37 L. 3 & 4.

20

Edward Gaskill was also at Mrs. Middleton's house on April 5th, when Mick and Gibbs claim they bought liquor from the defendant, and that there was no liquor sold to these men.

State of Case p. 38 L. 30-34.

Lillian Feret was also present at Mrs. Middleton's house when Mick and Gibbs claim they purchased  
30 liquor from Mrs. Middleton and there was no liquor sold to these men.

State of Case p. 44 L. 22-29.

Mrs. Mae Middleton testified that no liquor was sold that day to either Mick or Gibbs, so that there was no other testimony against the defendant except the testimony of paid detectives for the State, and

the verdict was contrary to the weight of the evidence.

From this testimony of reputable witnesses it shows the verdict was contrary to the weight of the evidence, reputable witnesses against paid officers of the law, to obtain such evidence.

"Detectives' testimony is competent, but it is scrutinized carefully before given credence; while it is competent, and may be admitted, we do not rely on it unless it is corroborated, and the reason for  
10 that is obvious. There are some honest detectives, but very few, and the few must suffer for the misconduct of the many."

Slack vs. Slack, 108 Atl. 120.

This was a divorce case, but it shows what opinion the Court has of paid detectives' testimony.

DETECTIVES AND INFORMERS.—A detective  
20 who enters into communication with criminals without any felonious intent on his part, but for the purpose of discovering and making known their secret designs and crimes, and acts throughout with this original purpose, is not to be regarded as an accomplice, though his conduct must in some degree, impair his credibility. The fact that a detective employs falsehood, artifice and fraud to obtain a confession from a person suspected of crime, is not sufficient of itself to exclude his testimony, but it  
30 very seriously affects his credibility. Again a person who buys intoxicating liquor which is sold in violation of law is not an accomplice of the vendor; but if he buys it for the express purpose of prosecuting the vendor, the Court may well instruct the jury that his testimony ought to be received with great caution and distrust, though a less vigorous charge will meet the requirements of the law.

3. Com. vs Willard, 22 Pick. (Mass.) 476; People vs Smith, 28 Hun (N. Y.) 626; affirmed on the opinion of the general term, 92 N. Y. 665; State vs Hoxsie, 15 R. I. 1; 2 AM. St. Rep. 838. Compare Com. vs Baker, 155 Mass. 287.

4. Com. vs Downing, 4 Gray (Mass.) 29. See also People vs Rice (Mich. 1894), 61 N. W. Rep. 540; People vs Whitney (Mich. 1895), 63 N. W. Rep. 765.

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29 American and English Encyclopaedia of Law,  
Page 776-777

Under the second assignment of error there was no corroboration of the testimony of the two paid detectives for the State. The witnesses called by the State to corroborate the testimony of the paid officers say no sale took place as testified to by Officers Mick and Gibbs.

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Assignments of Error Nos. 3 and 4 are abandoned.

Assignment of Error No. 5. "If after consideration of all the evidence, you cannot say you feel an abiding conviction to a moral certainty, that she is guilty of this offense, it is your duty to acquit; but on the other hand, if you are satisfied, you shall convict."

We contend that this is not a correct definition of reasonable doubt, as it places the burden upon the defendant to prove her innocence.

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In the case of State vs. Linker, 94 L. p. 411, the Court gave the correct definition of reasonable doubt and reversed conviction, and the Court, in the present case before this Court, said, "If you are so satisfied you should convict," which left no room for the operation of the doctrine of reasonable doubt, which permitted the jury, on review of the evidence, without considering reasonable doubt, if they believed

the defendant guilty they should exclude reasonable doubt, while under the law the jury had no right to find the defendant guilty if they entertained a reasonable doubt as to her guilt. We contend that the Court did not properly charge on the question of reasonable doubt.

Assignment of Error No. 6 is abandoned.

In this case we attempted to show the interest 10 of Gibbs the complaining witness, that he stole a storage battery from defendant.

State of Case p. 27 L. 4

He stole tires from her.

State of Case p. 28 L. 30

That he stole fourteen dollars from her.

State of Case p. 29 L. 18

20

That he stole chickens from her.

State of Case p. 29 L. 19

That he broke into her house.

State of Case p. 30 L. 27

And the Court refused to allow this testimony to show malice, interest and prejudice on the part of Gibbs against the defendant. We have a right to 30 impeach a witness, but the Court refused to allow this as above.

The fact that a witness is directly interested in the event of the suit in which he is called to testify being a ground of incompetency is a circumstance which the jury may consider as affecting his credibility.

29 AM & English Enc. of Law p. 774.

Mick was certainly interested in the case.

Q. You are hired to do this work?

A. Yes.

State of Case p. 17.

Q. You are a paid officer of Mr. Parker's aren't you? Paid by the County Detectives?

A. I haven't drawn any pay on that.

State of Case p. 17 L. 10

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Q. Why didn't you get paid for this?

By Mr. Hillman:

I object. The witness has testified that he is employed by the County Detectives' office to procure evidence. We admit that.

State of Case p. 19 L. 15

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Gibbs also admitted that he was a paid officer of the County Detectives' office to buy liquor from people and make complaints against them.

Q. How long have you been working, trying to buy liquor for Mr. Parker's office.

A. About 8 or 9 months.

State of Case p. 29 L. 32

30 We contend that the verdict in this case was contrary to the weight of the evidence. That the testimony clearly shows by the testimony of disinterested witness on April 5th there was no sale of intoxicating liquor, and that is the only case before this Court, as the Prosecutor did not press the charges of April 9th and 15th.

ROBERT PEACOCK,  
Of Counsel with the Plaintiff in Error.

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