

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

MARGARET BIEBER,
Plaintiff in Error.

*On Writ of
Error.*

Brief of Plaintiff in Error.

The writ of error in this case brings up for review the conviction of the plaintiff in error had in the Essex Quarter Sessions Court, on an indictment charging her with the keeping and maintaining a disorderly house.

Having been found guilty, the plaintiff in error thereupon sued out a writ of error from the Supreme Court directed to the said Court of Quarter Sessions. Upon this writ of error the judgment of the Quarter Sessions Court was affirmed; and the present writ brings up for review the entire record and proceedings had in the trial court and in the Supreme Court, and comes within purview of section 136 of the Criminal Procedure Act of 1898 (P. L. 1898, page 915).

I.

THERE IS NO EVIDENCE TO SUSTAIN THE CHARGES IN THE INDICTMENT AND THAT THERE HAD BEEN AN HABITUAL VIOLATION OF THE LAW.

The defendant kept a furnished rooming house on 105 Mechanic street, in the City of Newark; Eva Ritter, a witness for the State, testified that

she had gone to the defendant's house about three or four times, she could not remember when it was, and that she was not there at the time of the raid. That Sophie Brown, another State witness, had accompanied her on these occasions. Sophie Brown testified under cross examination by Mr. Feldman who tried the case in the court below for the defendant, that on these occasions when she and Eva Ritter had gone to the defendant's house, they were alone and not with any men and no illegal acts were perpetrated. But that the only time that this witness had been there in company with a man was on the date of the raid.

The other witnesses in behalf of the State were James F. Brendell, Theodore Lehman, Agnes Napierska, Frances Ruby and Solomon Rosenberg. All of these people were at the defendant's house, but once, and at that time under circumstances of misrepresenting themselves as to who they were, they stating at the time that they were husband and wife.

Analyzing the testimony as a whole, there is no evidence that between the dates alleged in the indictment that there had been an habitual violation.

In order to constitute a disorderly house, the illegal acts must be habitual, and not one isolated act or several acts upon one occasion.

Justice Depue's charge to grand jury, July (1887), 10 N. J. L. J., 116.

State v. Brown, 49 N. J. L., 61.

II.

THERE WAS NO EVIDENCE THAT THE DEFENDANT HAD KNOWLEDGE OR POWER TO SUPPRESS THE ACTS CHARACTERIZED AS DISORDERLY.

The testimony discloses that on the date when the officers called at the defendant's house, Officer Bowman was allowed by defendant to enter and search the premises, this officer found two couples in the house neither one of them doing anything wrong; there is nothing in this witness's testimony which discloses knowledge on the part of the defendant. Mr. Kelly, a witness for the State, testified that he saw people going in and out of the house, but this discloses nothing.

Mr. Brendell testified that he was intoxicated at the time he called there and that he could not remember the woman with whom he called at defendant's house.

Sophie Brown, on cross examination, testified that she had called there with Eva Ritter three times but with no men, and that the only time this witness entered this house with a man named Sheridan was on the date of the raid; and she didn't know whether Sheridan posed as her husband or not. This man Sheridan is not produced by the State. Theodore Lehman testified that he called there with Agnes Napierska; and Frances Ruby testified that she was one of the party of four that called at defendant's rooming house, and that Theodore Lehman was the spokesman of the party, who stated at the time that he and Agnes Napierska were man and wife. The witness Agnes Napierska also testified that Lehman had stated to the defendant that she was his wife. Frances Ruby testified that she had never been with Solomon Rosenberg at the defendant's house, but that he merely took her to the house and left

her there, he Rosenberg going to the foot of the stairs and telling the defendant that the girl Frances Ruby had no place to sleep and told the defendant to give Frances a room, Rosenberg then leaving. But a party by the name of Rosenberg testified that he was in the defendant's house with Frances Ruby and had intercourse with her, but that he, this witness, was not with Theodore Lehman. Frances Ruby, however, testified that this man who gave testimony by the name of Rosenberg gave her his name as Shockett and that he was the man she was referring to in her testimony when she mentioned Shockett, and that the Rosenberg she knew was a different man. Theodore Lehman in his testimony insists that Shockett was one of the party of four that called at the defendant's house when he, Lehman, as spokesman of the party stated that he and the girl he was with were man and wife.

Can it be said that the defendant was careless in this instance in not ascertaining the truth of the statements of these persons?

Mere negligence in itself is not the legal equivalent of knowledge, and before a conviction for keeping a disorderly house can be maintained knowledge on the part of the defendant must be shown.

State v. Mausert, 89 Atl. (N. J.), 1011.

State v. Greger (not reported), Sup. Court N. J., June Term, 1914; filed Nov. 10, 1914.

Knowledge on the part of the defendant must be proven.

State v. McBannon, 66 N. J. L., 680.

Piers v. Hamore, 86 N. Y., 95 (or 99).

Stebbins v. Edwards, 12 Gray, 203 (Mass.)

A conviction cannot be had by proof that the defendant had suspicions. The proof must be that the defendant had knowledge.

State v. Goldman, 36 Vroom, 394.

III.

THE COURT ERRED IN ADMITTING HEARSAY EVIDENCE. SOLOMON ROSENBERG, A WITNESS FOR THE STATE, WAS PERMITTED TO TESTIFY TO CONVERSATIONS HAD WITH FRANCES RUBY NOT IN THE PRESENCE OF THE DEFENDANT.

Under this head are included the causes numbered 10 and 11, and assignment Nos. 1 and 2.

On page 47 of the printed case, the testimony of Solomon Rosenberg shows that he met the girls on the corner of Montgomery and Barclay streets, and that there were about twenty boys there at the time. That later on he met the girls corner of Belmont and Waverly avenues. When he was asked by the prosecutor:

“Q Then where did you go?

“A She said she had been in some house the night before and she said she didn't have any place to sleep. I said, 'See if you can get a place there for us.' I took her down; we walked down Clinton avenue and over Railroad avenue, and she said that she slept down this way the night before, or a couple of nights ago. I don't remember now. I said, 'Do you think she will give you a room tonight?' She said, 'I guess so.' I said, 'Go up there and I will pay for the room if she will let you sleep there.' ”

This conversation took place between the witness and Frances Ruby and not in the presence of the defendant. This witness had not as yet known the defendant, nor had he ever been in her house. This witness was an entire stranger to what took place between Frances Ruby and the defendant the night before.

The injury done in the admission of this testimony is, that inasmuch as Frances Ruby had been

at defendant's house the night before and had slept there the defendant was put upon notice when Frances Ruby came to the defendant's house again with the witness; as this witness testified that on this occasion when he came there with Frances Ruby he had intercourse with her in the defendant's house. The testimony complained of sought to show that the defendant cared not who the people were that came to her house, and for what purpose they came, it rather connoted consciousness on the part of the defendant in that knowledge was brought home to her, as a matter of fact, by evidence showing carelessness and gross negligence and frequent acts of which the defendant would have been cognizant and that her assent must naturally be implied.

Such evidence as admitted is unquestionably hearsay and illegal.

State v. Newman, 73 N. J. L., 202.

Stephens v. Vroman, 16 N. Y., 381.

Felka v. N. Y. Central R. R. Co., 152 N. Y., 339.

Farrell v. Wertz, 160 Mass., 288.

Wallace v. Story, 139 Mass., 115.

State v. Bennett, 53 Ct., 536-545.

State v. Gee, 92 N. C., 756.

Munshower v. State, 55 Md., 11.

Kelly v. State, 82 Ga., 441.

Greenfield v. People, 85 N. Y., 75.

This Court may say that no objection was made to the admission complained of by the attorneys who tried the case nor was any judicial action taken by the court below; but under section 136 of the Criminal Procedure Act of 1898 (P. L. 1898, page 915), inasmuch as this case comes within its purview, this Court shall consider the entire record and if it appears that the plaintiff in error suffered manifest wrong or injury either in the admission or rejection of testimony, WHETHER OBJEC-

TION WAS MADE THERETO OR NOT, THE APPELLATE COURT SHALL REMEDY SUCH WRONG OR INJURY AND GIVE JUDGMENT ACCORDINGLY AND ORDER A NEW TRIAL.

Therefore we invoke the aid of this act to remedy the injury complained of.

IV.

THE COURT ERRED IN ITS CHARGE TO THE JURY.

(a) "The keeping of a bawdy house or indeed a disorderly house of any kind is something that connotes consciousness of the character of the place. That such consciousness may be brought home to the accused party, as a matter of fact, by evidence showing a course of practice, or frequent acts 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, is perfectly clear. Where the practices are such that an ordinarily intelligent person would understand their meaning, the existence of the knowledge on the part of the defendant may be found by the jury." Assig. No. 4.

(b) "If an ordinarily intelligent person, under the circumstances, would have gathered, as stated, what they were doing then it is sufficient to infer knowledge on the part of the defendant." Assig. No. 5.

Knowledge cannot be inferred, it must be proved.

State v. Mausert, 89 Atl., 1011.

State v. McBannon, 66 N. J. L., 680.

State v. Goldman, 36 Vroom, 394.

Piers v. Hammor, 86 N. Y., 95 (or 99).

Stebbins v. Edwards, 12 Gray (Mass.), 203.

Mere negligence in itself is not the legal equivalent of knowledge.

State v. Mausert, supra.

State v. Greger, N. J. Supt. Court opinion, June Term, 1914; filed Nov. 10. 1910.

Respectfully submitted,

McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

FRANK M. McDERMIT,
Of Counsel.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

MARGARET BIEBER,
Plaintiff in Error.

*On Writ
of Error.*

Brief for Defendant in Error.

Margaret Bieber, the plaintiff in error, was tried and convicted of maintaining a disorderly house, that is, a bawdy house.

The defendant did not take the stand to testify in her own behalf.

At the trial there was but one exception to any ruling of the court, and this exception will be found on page 50, and is based on the refusal of the court to direct a verdict at the close of the case.

No exception was taken to the charge of the court, either specific or general.

The entire record of the proceedings had at the trial is returned with the writ of error.

Point I.

As stated in the brief of the plaintiff in error, this point is as follows:

“There is no evidence to sustain the charges in the indictment, and that there had been an habitual violation of the law.”

The testimony of Eva Ritter (page 18), and of Sophia Brown (page 29), shows that the violation of the law was repeated and habitual. To a like effect is the testimony of the other witnesses.

Point II.

As stated in the brief, this point is as follows:

“There was no evidence that the defendant had knowledge or power to suppress the acts characterized as disorderly.”

The evidence of every witness called on behalf of the State clearly shows that the defendant had personal knowledge of the facts. She personally admitted the people who came to her house, and in every instance the money for the rooms was paid to her personally. She was the tenant in possession of the premises and had full control of them, and hence had ample power to suppress these disorderly acts.

Point III.

This point, as stated in the brief, is as follows:

“The court erred in admitting hearsay evidence. Solomon Rosenberg, a witness for the State, was present to testify to conversations had with Frances Ruby, in the presence of the defendant.”

The testimony of Rosenberg to which this point refers will be found on page 47, line 30.

At the trial no objection to this testimony was made, no exception was taken, and no motion was made to strike it out. As there is no exception, the testimony cannot be reviewed under the bill of exceptions.

Specifications 9 and 10 of Causes for Reversal (page 69), are based on this testimony.

No judicial action of any nature was invoked regarding this testimony.

Assuming, in the language of the Hummer case, “that the legislative intention was to provide a scheme of spontaneous judicial interposition during

the reception of testimony at criminal trials, it must be held that the propriety of the exercise of such authority was in the first instance committed to the sound discretion of the judicial officers in whom such authority was reposed. * * * Upon this assumption an appellate court would be authorized, in the case of flagrant or oppressive abuse of this discretion, whether arising from the action or inaction of the trial court, to review such discretion, and grant the relief contemplated by the statute."

State vs. Hummer, 52 Vr., p. 430, at 433.

Surely the present case does not show a "flagrant or oppressive abuse of this discretion." The question which illicited the testimony objected to was, "Then where did you go?"

The recital by Rosenberg of what Frances Ruby told him in no way harmed the defendant, because she had already testified to the same things (page 41); and because what she told him did not impute to the defendant any guilty act, or show that any criminal act had been committed in her place.

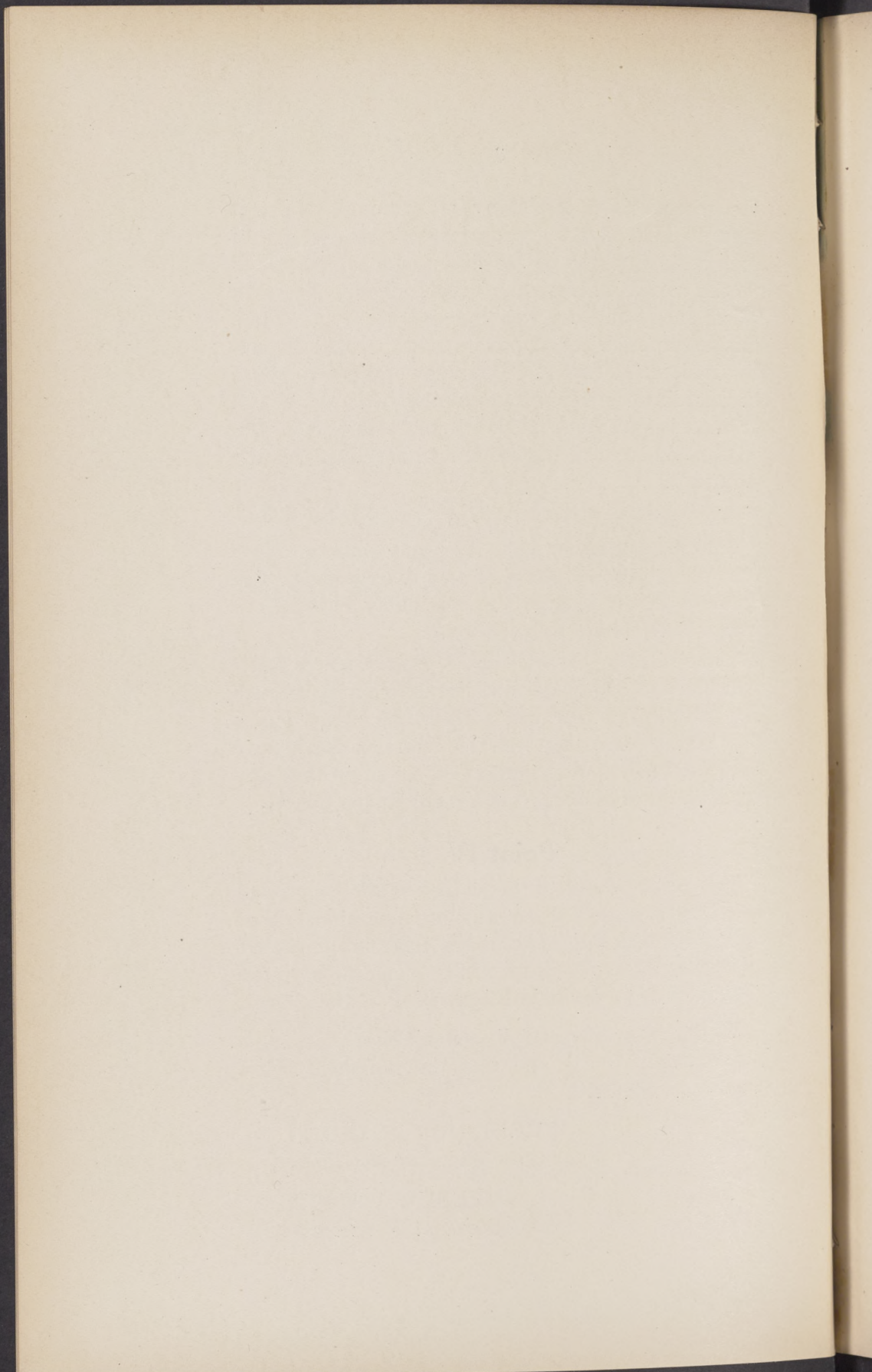
Point IV.

This point relates to the charge of the court, but, as already stated, there was no exception, either specific or general, taken at the trial to the charge of the court. We respectfully submit, however, that there is no error in this portion of the charge.

We therefore respectfully submit that there is no error in the record, and that the judgment below should be affirmed.

FREDERICK F. GUILD,
Prosecutor of the Pleas.

WILBUR A. MOTT,
Assistant Prosecutor.



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Writ of Error.

Writ of Error.

Filed December 15, 1915.

New Jersey Court of Errors and Appeals

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The State of New Jersey to our
(SEAL.) Justices of our Supreme Court,
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, before you between the State, defendant in
error, and Margaret Bieber, plaintiff in error, on
a writ of error issued out of our Supreme Court
to the judges constituting the Court of General
Quarter Sessions in and for the County of Essex,
as is said, manifest error hath intervened to the
great damage of the said Margaret Bieber 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 done to her, the said Margaret Bieber,
do command you, that if judgment be thereupon
given, then you send distinctly and openly, under
your seal the entire record, proceedings and in-
dictment aforesaid, with all things touching and
concerning the same, to our Court of Errors and
Appeals, before the Judges thereof, on the first day
of December next, and this writ and that the rec-
ords and proceedings aforesaid being inspected we
may cause to be further done thereupon what of
right and according to law ought to be done.

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Return.

Witness, EDWIN ROBERT WALKER, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 12th day of November, A. D., nineteen hundred and fifteen.

THOMAS F. MARTIN,
Clerk.

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McDERMIT & McDERMIT,
Attorneys.

Return.

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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.

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Writ of Error.

Writ of Error.

Filed March 5, 1915.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY

vs.

MARGARET BIEBER.

*On Indictment for
Maintaining
a Disorderly
House.*

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WRIT OF ERROR.

NEW JERSEY, ss. The State of New Jersey to William P. Martin, Esquire, Presiding Judge of the Essex County Court of Quarter Sessions, State of New Jersey, GREETING:

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(SEAL)

Because in the record and process, and also in the giving of judgment upon a certain indictment against Margaret Bieber, late of the City of Newark, in the County of Essex, for unlawfully maintaining a disorderly house, against the peace and order of the said State of New Jersey, whereof, before you, she has been indicted and is therefore convicted by a certain jury of the County taken between the State of New Jersey, and the said Margaret Bieber, as is said, manifest error hath intervened, to the great damage of the said Margaret Bieber, as from her complaint we have receive information, we, being willing in this behalf to correct the error in due manner, if any there shall be, that speedy justice be done to her, the said Margaret Bieber, command you that if judgment be thereon given, then that you distinctly

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Return.

and openly send, under your seal, the record and proceedings aforesaid, and all things touching the same, to us, the New Jersey Supreme Court to be holden at Trenton, on the twenty-fifth day of March, instant and the writ and the record and the proceedings aforesaid being inspected, we may
 10 therefore cause to be done thereupon for and correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Justice of the New Jersey Supreme Court, at Trenton, this fifth day of March, nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

20 Presented in open court this fifth day of March, A. D., 1915.

WILLIAM P. MARTIN,
J.

Bail fixed, \$5,000.

Return.

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

30 I, William P. Martin, Judge of the Court of Quarter Sessions in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the judgment record and proceedings together with all things touching and concerning the same as by the within writ to me directed, I am commanded together with the entire record.

In Witness Whereof, I have hereunto set my hand and the seal of said Court and County at Newark this day of March, A. D., 1915.

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WM. P. MARTIN,
Judge,

(SEAL)

Indictment.

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

Re it remembered, that a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the second Tuesday in December, in the year of our Lord, one thousand nine hundred and fourteen, by the Honorable William S. Gum-
 mere, 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 Edward M. Waldron, Charles S. Reid, Charles Trivett, Samuel P. Waldron, Edward Stirling, Nathan Drake, Edward A. McGuirk, Wainwright Ripley, Henry Sands, Albert Schurr, George F. Hewson, Henry J. F. Wallhauser, George P. Hoerner, John B. Woolston, Stacy Smith, Leslie A. Pollock, Joseph P. Norton, Charles T. Merrigan, Herbert Austin, Bernard Finneran, Thomas Igoe, William J. Duffy, and Theodore F. Keer, 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:

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ESSEX OYER AND TERMINER.

December Term, A. D., 1914.

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 Margaret Beavers, late of the City of Newark, in the said County of Essex, on the first day of September, in the year of our Lord, one thousand nine hundred and

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Indictment.

fourteen, 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 common ill-governed and disorderly house; and in the said

10 house, for her own lucre and gain, certain persons, as well men and women, of evil name and fame, and of dishonest conversion, then and on the said other 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, tippling, fighting, whoring and misbehaving themselves unlawfully did

20 permit, 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.

FREDERICK F. GUILD,
Prosecutor of Pleas.

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On the twenty-sixth day of January, A. D., nineteen hundred and fifteen, 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, in and for the said County of Essex, and then and there the said indictment was

40 duly delivered and duly filed by the clerk of said court and an entry of such order and delivery and

Judgment.

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.

And afterwards, that is to say, on the twenty-eighth day of January, A. D., nineteen hundred and fifteen, at the Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable William P. Martin, presiding judge of the Court of Common Pleas, Margaret Beavers (amended Margaret Bieber), in the custody of Ralph B. Schmidt, Sheriff of the County of Essex, aforesaid, and the said Margaret Beavers (amended Margaret Bieber), being brought before the bar in her own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon her, how she would acquit herself, says that she is not guilty thereof, and therefore for good and evil she puts herself upon the country, &c., and Frederick F. Guild, Prosecutor of the Pleas of said state, for 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 the County of Essex, on the twenty-fourth day of February, A. D., nineteen hundred and fifteen, 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 Margaret Beavers (amended Margaret Bieber) to recognize upon their oath whether the said Margaret Beavers (amended Margaret Bieber) is guilty of the premises in the said indictment specified or not guilty because the said

Judgment.

Frederick F. Guild, Esq., prosecutor, &c., as the said Margaret Beavers (amended Margaret Bieber) puts herself upon the jury and the same time is given to the parties aforesaid at the same place.

- And now, that is to say, on the date aforesaid, at the same Court of General Quarter Sessions
- 10 holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, comes the said Frederick F. Guild, who prosecutes as aforesaid, and the said Margaret Beavers (amended Margaret Bieber) and the jury of whom mention is before made, and the said Ralph B. Schmidt, Sheriff of the County of Essex, for this purpose empanelled and returned, to wit: Stephen Hickey, Henry E. Tobin, Joseph Estell, Ralph B. Meyer, Fred Kern, Henry E. Parritt, Joseph E. Allsopp,
- 20 Frank J. Birch, William H. Case, Gilbert Squire, William W. Gill and John Conlon, who, being called, were sworn upon that jury who to speak the truth of and concerning the premises, and thereupon the trial of said issue was commenced and continued until the twenty-sixth day of February, A. D., nineteen hundred and fifteen, 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
- 30 upon their oath they find the defendant Margaret Beavers (amended Margaret Bieber) Guilty, and so they say all.

Whereupon, all and singular, the premises being seen and by the Court now here fully understood, it is, on the fourth day of March, A. D., nineteen hundred and fifteen, ordered and adjudged that the said Margaret Beavers (amended Margaret Bieber) be committed to the County Penitentiary

Judgment.

for a period of eighteen months and pay a fine of One Thousand Dollars and stand committed until the fine and costs are paid, which said costs are taxed by the Clerk at the sum of Eighty-four Dollars and Four Cents.

WM. P. MARTIN,
J. 10

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Philip M. Baumann, direct.

Essex County Court of General Quarter Sessions.

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Thursday, February 25, 1915.

STATE,

vs.

MARGARET BEAVERS.

*Indictment
No. 323 for
Keeping
Disorderly
House.*

20 Before Hon. William P. Martin, Judge, and a jury.

For the State appears Wilbur A. Mott, Assistant Prosecutor of the Pleas.

For the defendant appear Julius Feldman, and Carl Abruzzese.

Mr. Mott opens for the State.

PHILIP M. BAUMANN, sworn in behalf of the State.

30 *Direct examination* by Mr. Mott.

Q You are an officer connected with the Newark police force? A Yes, sir.

Q Did you have anything to do with the arrest of this defendant? A Yes, sir.

Q When did you arrest her? A On January 2, about 12.30.

Q At midnight? A No, in the afternoon.

Q (*By the Court.*) What January? A 1915.

40 Q (*By Mr. Mott.*) Did you go to her place?
A Yes, sir.

Philip M. Baumann, direct.

Q Alone or in company with others? A With Officer Schaefer.

Q What did you do when you got to her place?
A Rang the bell. Mrs. Beavers opened the door. We asked her if she had anybody in the house. She said no. We asked her if we could go through? She said yes, and we went through.

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Q Where was her house? A 105 Mechanic street.

Q What did you do after that? A We went through. The first room we got to was locked. We knocked. They opened the door. There was a man and woman in there. The woman was in bed and the man was partly dressed; went to the next room; knocked; they opened it for us; we went in. The woman was partly dressed and the man was dressing himself. We went to the other rooms. There was nobody else in the other rooms.

20

Q What did you do with the people you found there? A Placed them under arrest.

Q Do you know what their names were, or the names they gave? A Sophie Brown, a man named Charles Sheridan was in the first room.

Q What? A Or Thomas Sheridan.

Q And in the other room? A In the other room was Mary Gartland, and I think his name was James Cardel, if I ain't mistaken.

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Mr. Mott. (Addressing some one in the audience.) Stand up, please.

Q Do you recognize this gentleman (indicating)?
A Yes, sir.

Q Who is that? A That is the man who was in the room with Mary Gartland.

Q (*By the Court.*) That is the man who you have called Cardel? A Yes, sir; the man who was in the room with Mary Gartland.

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Philip M. Baumann, cross.

Mr. Mott. (Addressing some one in the audience.) Stand up.

Q (*By Mr. Mott.*) Do you recognize that woman? A Yes, sir.

Q Who is that? A Sophie Brown.

10 Q She was in the room? A With Thomas Sheridan.

Q Do you know where Sheridan is now? A In the City Hospital.

Q Did you see the defendant after you made the arrest? A We took her along.

Q Did she say anything further to you about the people? A She didn't say anything. We asked if she knew them. She didn't tell us there was anybody in there in the first place.

20 *Cross examination by Mr. Feldman.*

Q How long have you known Miss Sophie Brown? A I don't know how long, about ten months.

Q How often have you seen Sophie Brown in the past ten months? A Off and on—I don't know how many times.

Q And you saw her before this arrest, didn't you? A Quite well, I guess before this arrest.

30 Q Did you see her just a day or two before this arrest? A No, sir.

Q Did you know any of the others? A The other girls?

Q Yes? A Yes.

Q Did you have any talk with them before you made this arrest? A No, sir.

Q Did you see them at any time before? A No, sir.

40 Q You went in there? You were allowed to go in this house? A Yes, sir.

Philip M. Baumann, cross.

Q There was no objection to your going in? A No, sir; we went in. We asked her, first, if there was anybody in there.

Q She said, yes, didn't she? A She said no.

Q Didn't she tell you you could go through the house without any objection? A Yes. She knew we would go through. 10

Q What time was the arrest made? A About 12.30; when we went through the house.

Q You knew what you were going there for when you went there? A Yes, sir.

Q You knew there was somebody in the house before you went there? A Yes.

Q Why did you ask this defendant whether there was anybody in there? A Only what we were told.

Q You were told this would be a good time for you to go there? A We wasn't told it would be a good time; our attention was called to it. 20

Q Your attention was called to it, and you knew there was somebody in there? A Yes, sir.

Q So the whole thing was arranged before hand? A Yes, sir.

Q You knew for what you were going there? A We didn't know that, only what this party told us.

Q What party told you? A A man who lives near by there. 30

Q But you have heard from him before that, haven't you? A No, sir.

Q Why did he tell you that time? A He is a neighbor.

Q When you went there you knew there was somebody in the house? A I presume so. I didn't think they would get as quick as that.

Q You didn't see anything wrong going on when you went in there, did you? A No, I seen a woman in bed. 40

Daniel G. Kelly, direct.

Q The man was dressed? A Partly dressed.

Q Did he have his pants on? A One man was putting on his pants.

Q You didn't see anything wrong there? A No, sir.

10 Q You saw this man Sheridan there, did you?
A Yes, sir.

Q What was he doing? A He opened the door for us?

Q When you came in he was bathing Miss Brown's cheek, wasn't he? A I didn't see that, no. When he opened the door for me he was standing there and Sophie was in bed.

Q Did you see Sophie Brown have a bruise on her cheek? A I saw she had a black eye.

20 Q And this man Sheridan was bathing it, wasn't he? A I didn't see that.

Mr. Mott. Stand up, please, Mr. Kelly.

(A man in the audience arises.)

By Mr. Mott.

Q Is that the gentleman who informed you (indicating)? A Yes, sir.

DANIEL G. KELLY, sworn in behalf of State.

30 *Direct examination by Mr. Mott.*

Q Where do you live, Mr. Kelly? A 111 Mechanic street.

Q Where do you live with reference to the home of the defendant? A About two doors.

Q On the same side of the street? A The same side.

Q What is your business, Mr. Kelly? A In the flavoring extract business.

40 Q How long have you been in that neighborhood? A About a year and a half.

Daniel G. Kelly, direct.

Q On or shortly previous to the 2d of January last, did you observe anything about the premises of the defendant? A I happened to meet two officers in front of my store and got talking about the raid—

Mr. Feldman. I object.

The Court. Strike that out. The jury will disregard that. 10

Q I asked you if you had observed anything about the place—seen anything? A Simply told them I thought—

The Court. No. What did you see? Not what you told somebody.

Q What had you seen? A I see nothing.

Q You had not seen anybody going in? A I saw people going in and out the doors different times. 20

Q Tell us about that. That is what I want you to tell us about? A I saw people going in and out at different times when I passed this place.

Q What kind of people, as to age and sex? A All kinds.

Q What kind of people did you see? Who were the people that you saw?

The Court. Little boys, children, babies, or what? 30

A Young girls, old women, men.

Q Did you see women going in there alone and men going in there alone? How did they go in? A I generally saw them going in together—

Mr. Feldman. I object to that as leading.

The Court. That is not leading

Mr. Feldman. It seems to me the witness should tell us what he saw and should not be directed. 40

Daniel G. Kelly, cross.

The Court. You can lead a witness to a reasonable and proper extent in the discretion of the court. Objection overruled.

Q What did you see going on there? A I saw young and old going at different times.

10 Q (*By the Court.*) Young and old what? A Men and women.

Q (*By Mr. Mott.*) Well, women going in there by themselves? A Sometimes.

Q Well, other times, what? A Well, I seen men and women going in.

Q What time of day? A Well, couldn't exactly say what time of day; different hours in the evening when I pass there.

20 *Cross examination by Mr. Feldman.*

Q What is your business Mr. Kelly? A Flavoring extracts.

Q Where is your office located? A 51 Worth street.

Q Is that near where you lived? A About a block.

Q What time did you go to work in the morning, Mr. Kelly? A I left the house about seven o'clock.

30 Q And you didn't come home until when— A Well, different hours.

Q Did you come home to lunch? A Sometimes.

Q When you say you saw people going in there do you mean that occasionally you saw people going in the house? A Well, different times I passed there, yes.

Q But every time you passed there you did not see them going in? A Not every time.

40 Q Once in a while, you mean, you saw people go in there? A Yes; quite often.

Daniel G. Kelly, cross.

Q Women, and sometimes a couple? A I have seen the stoop full.

Q Outside you mean? A Yes; waiting to get in.

Q Did that happen once in a while? A Generally every Saturday night.

Q Just on Saturday night. What Saturday night did you see that? A Well, different Saturday nights. 10

Q What Saturday night did you see it? A Well, I couldn't say.

Q Well, name a Saturday night that you saw that. Mention the date? A I couldn't say; I didn't keep track of them things. When I passed through there, going uptown, or going home.

Q You didn't pay attention to it? A Not to the date. 20

Q You cannot name any date? You cannot name any date, now, that you saw these people going in there? A I can name no date because I didn't keep track of such a thing.

Q You didn't think much of it, to keep track? A No, I did not.

Mr. Mott. I object.

By the Court.

Q During what time, beginning on what date and ending on what date, was it that these people went in and out that you have told us about? A Well, Judge, I can't tell you dates. I didn't keep track of that; probably Monday night or Saturday night. 30

Q Was it a period of a week, or two weeks, or a month, or a year, or what? A No; it was inside of a week.

Q All inside of the week of January, is that it? A Yes, about that. 40

Eva Retter, direct.

By Mr. Feldman.

Q What day was the 2d of January? A I don't know.

Q How do you know it was the 2d of January? How do you fix the time? A Well, I said a second ago I didn't keep track of the days or dates; but days during the week. I did this.

Q During one week? A Well, most near every week.

Q You don't know when it was? A The day they raided the house, I seen people trying to get in that day.

Q Did you have the house raided? A No, sir.

Q Did you notify the police? A No, sir; simply was talking to them over it.

Q You were talking to them about it? A Yes.

EVA RETTER, sworn in behalf of State.

Direct examination by Mr. Mott.

Q Do you know the defendant, Mrs. Beavers? A Yes, sir.

Q Were you ever at her house, 105 Mechanic street? A Yes, sir; I was.

Q Previous to the 2nd of January last were you in the habit of going to her house? A After the 2nd?

Q Before the 2nd. A Yes, sir; I was.

Q How long had you been going to her house before the 2nd of January last? A About three or four months.

Q Under what circumstances would you go to her house? A Used to go there with men, with different men.

Q How often would you go to her house with men? A Several times a week.

Eva Retter, direct.

Q Did you see her at that place? A Yes, sir; I always seen her when I went there.

Q You always saw her when you went there with different men? A Yes, sir.

Q What did she used to call you? A Eva.

Q Now, what would occur when you would go in there with a man? A The man would pay for the room. 10

Q Then what? A Then I would go upstairs.

Q Then what? Where did you go upstairs? (No response.)

Q Where would you go? A Upstairs.

Q Well, whereabouts? In the hall? A No, in the room.

Q And after you and the man got in the room what would you do? A What would I do? 20

Q What? A Go to bed.

Q You went to bed. You had sexual intercourse, did you? A Yes, sir.

Q And you had been doing that two or three times a week for two or three months previous to the 2nd of January? A Yes, sir. I went there two or three times a week.

Q How much did she charge for the room, if you know? A A dollar and \$1.50.

Q What was the difference in the price? A Some of the rooms—she charged more for some of the rooms. 30

Q Some rooms cost more than others. Where would you meet the men that you went there with? A Met them all over.

Q You mean on the outside somewhere? A Well, places I used to go in.

By the Court.

Q What time of the night or day did you go there? A Any hours. 40

Eva Retter, cross.

Q (*By Mr. Mott.*) How late in the night have you been there with a man and had a room? A Two, three or four o'clock in the morning—any hours.

Q What? A Two o'clock, three o'clock or four o'clock, any hours. As late as four o'clock.

10 Q What is that last? A As late as four o'clock.

Cross examination by Mr. Feldman.

Q How old are you? A Twenty-three.

Q Are you married? A Yes, sir.

Q Where is your husband? A He is in Long Island City.

Q How long have you been away from your husband? A Over a year.

20 Q When were you in this house first? A I don't remember when I was there first.

Q When were you there last? A Last summer.

Q When were you there last? A I was in there the night it was raided, and I was there alone that night.

Q You went there alone that night? A Yes. It was New Year's night. The next morning was the 2nd of January—New Year's morning—

30 Q When was it raided? A The 2nd of January I went there in the early morning.

Q (*By the Court.*) Was that when it was, the early morning of the 2nd of January? A Yes, sir.

Q (*By Mr. Feldman.*) You say it was early in the morning? A Yes.

Q What time in the morning? A About two or three, I guess. I don't know.

40 Q You say the place was raided on the 2nd of January at three in the morning? A When I went there about that time.

Eva Retter, cross.

Q What time was the place raided? A About twelve or half-past twelve.

Q And you went there all alone, you say? A I went there all alone that night.

Q Do you know Officer Bowman? A Yes, sir.

Q How long have you known him? A I know him about six or seven months or so. 10

Q You have seen him quite frequently, haven't you? A Well, I have seen him on the street, Market street, going up, like that.

Q You have talked to him frequently? A No.

Q Didn't you talk to him at the time that the place you were in was raided? A I went out in the morning; I wasn't in the raid.

Q You weren't raided? A No, I wasn't raided. 20

Q You went out in the morning, you say? A I went out in the morning.

Q What time? A About half an hour before.

Q You saw Officer Bowman then, didn't you? A I didn't see him.

Q Who did you see? A Nobody. I was downstairs in the front room.

Q Where did you go? A I went right down the street when I come out.

Q You went over to Green street, didn't you? A No. 30

Q Well, where did you go? A I went down Mechanic street.

Q Do you know Officer Quinn?

Mr. Feldman. Stand up, please.

(A man in the audience arises.)

Q This gentleman there. Do you know him?

A I have seen him.

Q You have talked to him? A No, I never talked to him. 40

Eva Retter, cross.

Q How do you know him then? A I was told it was Officer Quinn.

Q Who told you? A The girls.

Q Did Officer Bowman tell you that was Lieutenant Quinn? A No.

10 Q Do you know Officer Schaefer? A Yes, I know him.

Q You know Lieutenant Harris, too, don't you, the big tall man in the police department? A I don't know; maybe I have seen him; I don't know.

Q You have seen all of these detectives. You know them all, don't you? (No response.)

Q You have talked to them about this place, haven't you? A To who?

Q These detectives? A No.

20 Q You have talked with these detectives about this place, haven't you? A About this house? No, I used to go there myself.

Q They knew you were there, didn't they? A I guess they did; they was told.

Q Who told them? A I don't know.

Q How do you know they were told?

The Court. Now, she says "I guess." Fix the time.

30 Q When were they told? A I don't know when they were told.

Q Are you sure they were told? A I am not sure.

Q They knew you were going there on the 2nd of January? A They didn't know I was there.

Q Didn't they tell you to go there? A No; they didn't tell me to go there.

Q When did you see them before that? A A couple of weeks, or a month or so.

40 Q Now, when was it? A I couldn't tell you the correct time when I seen them.

Q What did they say to you? A Nothing.

James F. Brendell, direct.

Q You had a talk with them? A No, I didn't talk to them. I used to meet them on Market street and say, "How do you do" to them. That is all; I didn't talk to them.

Q Why not? A I had nothing to talk with them.

Q They said, "Good morning," is that it, 10
"Good evening?" A That was all.

Q On the 2nd of January you say you were there all alone? Now, were you? A Yes, I was there all alone.

JAMES F. BRENDELL, sworn in behalf of State.

Direct examination by Mr. Mott.

Q Do you know the defendant here, Mrs. Beavers? A I can't recognize her. 20

Q Were you at the house, 105 Mechanic street, on the 2nd of January last? A Yes, sir.

Q What time did you go there to that house? A I couldn't say. Between half-past eleven, maybe, and twelve. I couldn't give you the right—

Q Who did you go there with? A A woman. I don't know her name.

Q What did you do when you got in the house? A I went right in, gave a dollar to the woman and went right upstairs. 30

Q What kind of a looking woman was it you gave the dollar to? A I had a little beer in; I didn't give much of a glance at her; I couldn't tell you just what kind of a looking woman she was.

Q Where did you meet the woman? A The one I was with?

Q No; the woman you gave the dollar to? A At the foot of the stairs.

Q Who let you in? A The woman I was with, 40
as far as I know.

James F. Brendell, cross.

Q Then you went upstairs with this woman?

A Yes.

Q What did you do when you got upstairs?

A Went to the room.

Q Then did you have sexual intercourse with her? A Yes.

10 Q Where did you meet that woman you went there with? A In a saloon.

Q Had you ever been to this place before? A No, sir.

Q How did you come to go there that night?

A That time?

Q Yes. A I went with this other woman.

Q You were there at the time the officers came?

A Yes, sir.

Q And were in the raid? A Yes.

20 *Cross examination by Mr. Feldman.*

Q You don't know who the woman was you were with? A Not her name, I do not.

Q Did you ever see her before? A Only once before.

Q You knew the woman then? A Only by sight.

Q How old are you? A Fifty-two.

30 Q You don't know the woman you paid the dollar to? A No, sir, I couldn't recognize her, no.

Q You went in with a woman? Do you know what you said to this woman when you went upstairs, the woman who took the dollar from you? A I didn't say anything.

Q You wouldn't say that this was the woman who took the money from you? A I couldn't swear to it, no.

Q You don't know the woman who was with you? A Only seen her once before.

40

George W. Howard, direct.

GEORGE W. HOWARD, sworn for the State.

Direct examination by Mr. Mott.

Q You are a detective in the prosecutor's office, are you? A Yes, sir.

Q And after the raid on the 2nd of January last did you at any time see the defendant, Mrs. Beavers? A I did. 10

Q Where did you see her? A At her house, 105 Mechanic street.

Q When was it you saw her there? A Well, it isn't more than a week ago.

Q At that time did you have any conversation with her? A I did.

Q What was the conversation? A I went there to find out who was the owner of the premises. 20

Q I ask you what the conversation with her was, with Mrs. Beavers? A I said, "Mrs. Beavers, who owns this property?" She said, "Well, I can't just remember the name. I have got on a paper there." I said, "Where does she live?" She said, "She lives in New York." I said, "How long have you lived here?" She said, "I have lived here six years." I said, "Have you got receipts?" She said, "Yes." I said, "Is there anything on these receipts, where this woman lives?" She said, "I will show them to you," and she got her receipts. 30

Q What for? A For rent. She paid \$35. "Received from Mrs. Beavers \$35 for the month of" so and so.

Mr. Feldman. I object to what the receipt says.

The Court. Objection sustained.

Q She showed you these papers, did she? A She showed me these receipts, yes, sir. 40

George W. Howard, direct.

Mr. Feldman. I object. The receipts are the best evidence. The receipts ought to be produced.

10 *The Court.* I have already sustained your objection, and I direct your attention to the fact that you have not made a motion to strike out.

Mr. Feldman. I move to strike out this testimony.

The Court. What do you move to strike out?

Mr. Feldman. The testimony with respect to the receipts.

The Court. The testimony with respect to the contents of the receipts, is that it?

20 *Mr. Feldman.* Yes, sir.

The Court. Motion granted.

Q Did you take these receipts? A No, sir; I gave them back to her. I looked at them.

Mr. Mott. Is it not competent to show contents of a document which is shown to this witness as her receipt for rent and which is in her possession? They are not in our possession.

30 *The Court.* No; the instruments themselves are the best evidence.

Mr. Mott. How can I get them?

The Court. I do not know, but I do know that if the instruments are in existence they are the best evidence.

Mr. Mott. That is true, but provided they are in the possession of a person whom I cannot subpoena and cannot require to produce?

40 *The Court.* Well, Mr. Howard may state what he said and what this woman said to him,

George W. Howard, direct.

but he cannot state that he read the receipts and the receipts stated the total amount of the rent, or whatever the information was.

Q Well, will you tell us as fully as you can recollect? A I asked her how long she had lived there and she said she had lived there six years.

Q Go on. A I can't say anything about the receipts. 10

Q You can say what you said to her about the receipts. A She said to me, "I will show you the receipts," and so she showed me a number of receipts dated from 1910 on.

Mr. Feldman. I object. I move to strike out the testimony with respect to what was in the receipts. The officer is testifying now that the receipts were shown. 20

The Court. He may say that the papers were shown to him. He must not describe them. Motion granted.

Witness. I say she showed me these papers and told me she had been a tenant there the last five or six years.

Q Was anything said between you and her as to where the owner of the building lived? A Yes, sir. 30

Q What did she say about that? A She told me she lived in New York. She couldn't, at that time, give me the address; but she did come to the office the next morning with the address.

Q Well, she came to the prosecutor's office the next morning? A Yes, sir. I didn't see her. She left a note for me—

Mr. Mott. Never mind.

Mr. Feldman. I object.

The Court. Objection sustained. 40

George W. Howard, cross—re-direct.

Cross examination by Mr. Feldman.

Q Mrs. Beavers said she lived there six years?
A Yes, sir.

Q You went there for the purpose of working up this case? A I went there for the purpose of finding out who the owner of the property was.

10 Q For the purpose of working up the case against this defendant? A If that is what you call it.

The Court. He has already told you what he went there for.

Q You are an officer connected with the Prosecutor's office?

Mr. Mott. He has said so.

20 Q Did you warn Mrs. Beavers that what she might say might be used against her? A I did not. Mrs. Beavers had seen me a number of times before.

Q Did you tell her what her rights in the matter were? A I told her nothing at all.

The Court. That is a very indefinite proposition.

30 Q Did you tell her what she might say might be used against her at this trial? A I didn't expect to get anything—

Q (*By the Court.*) Just answer the question.
A I didn't tell her that, no.

Re-direct examination by Mr. Mott.

Q Did Mrs. Beavers know you at the time you were there? A Yes, sir.

Q Knew that you were an officer? A Yes, sir. I can tell the reasons why she knew—

40 *Mr. Feldman.* I object.

The Court. You object to what?

Sophie Brown, direct.

Mr. Feldman. To having the reasons given, that she knew the reasons.

The Court. Do you object to the statement that she knew he was an officer?

Mr. Feldman. I object to anything he might say as to how she knew he was an officer.

10

SOPHIE BROWN, sworn in behalf of State.

Direct examination by Mr. Mott.

Q You know Mrs. Beavers, the defendant? A Yes, sir.

Q Were you at her house, 105 Mechanic street, on the 2d of January last? A Yes, sir.

Q At the time the house was raided? A Yes, sir.

20

Q You say you were there then? A Yes, sir.

Q What time did you go there? A It was about three o'clock in the morning, New Year's morning.

Q Did you go there alone or in company with someone? A I come in there with a gentleman.

Q Was he your husband? A No, sir.

Q What did you do when you got there? A Went to bed; went in the room and went to bed.

Q Well, did you see her? A Yes, sir.

30

Q Who let you in? A Mrs. Beavers.

Q Mrs. Beavers let you in. Do you know whether anything was paid or not for the room?

A Yes, it was paid.

Q How much? A A dollar.

Q Who paid it? A This gentleman I was with.

Q And after the dollar was paid you went upstairs with him? A Yes, sir.

Q And went into the room? A Yes, sir.

40

Q Got in bed? A Yes, sir.

Sophie Brown, direct.

Q And did you have sexual intercourse with him? A Yes sir.

Q Now, had you been there to her house before that night? A Yes, sir, I had.

Q How frequently had you been there before that? A Different times.

10 Q For how long a period? A About a year or so.

Mr. Feldman. I object.

Witness. A year or nine months.

Mr. Feldman. I object unless the time is fixed after September 1st. She said about a year ago. This indictment charges the first day of September on subsequent days.

20 *The Court.* Well, she may say that she went there, but only for the purpose of identifying this defendant as being the one that she knew. The jury will disregard any evidence of any improprieties existing, or which may appear to have existed, in compliance with the request of defendant's counsel.

Q Between the 1st of September and the time of the raid how many times, as near as you can estimate it, had you gone to her place? A About four times.

30 Q (*By the Court.*) How many times were you there between the 1st of September and the 2d of January? A About four times.

Q (*By Mr. Mott.*) Alone or in company with someone? A Sometimes I was alone; sometimes I was with men.

Q How many times did you go there with men between the 1st of September and the night of the raid? A Four times.

40 Q Each time did you go upstairs with a man? A Yes.

Sophie Brown, cross.

Q And have connection with him? A Yes, sir.

Q Did you see Mrs. Beavers there each time?

A Yes, sir.

Q Was it the same man or different men? A Different.

Q Now, did Mrs. Beavers ever tell you how you would come to the house? A I would come in first, then the gentleman would come in after. 10

Q Who told you that? A Mrs. Beavers.

Q Mrs. Beavers told you to come in first, yourself, alone, then to have the man to come in afterwards? A Yes, sir.

Q When did Mrs. Beavers tell you that? A I don't know just what day.

Q I mean about, how long before the raid? A A couple of weeks before the raid. 20

Cross examination by Mr. Feldman.

Q When was the raid? A It was Saturday, I know, Saturday evening.

Q What date? A January 2d.

Q You say from September 1st until the time of the raid you went there four times? A Four times.

Q And you testified sometimes you were there alone and sometimes you were there with men during that period? 30

Mr. Mott. I object.

The Court. That is not what she said.

Q How many times were there with men from September 1st to the time of the raid? A Four times.

Q Who were you with four times? A Well, I don't know; I just don't remember the names.

Q Were you alone at any time during those four times? A Yes, sir. 40

Sophie Brown, cross.

Q Alone? A Yes, sir.

Q How many times were you alone then? A I would go in with another girl.

Q A girl? A Yes.

Q How many times did you go in alone? A Three times or so.

10 Q Three times alone? A Yes.

Q And the fourth time you came with a man? A Yes—four times I was there with men.

Q (*By Mr. Mott.*) What was that? A I mean altogether. I was there with a girl three times.

Q (*By Mr. Feldman.*) From September 1st to the time of the raid how many times were you there? A About four times.

20 Q Were you there alone during those four times? A I was not alone.

Q Who were you with? A Well, I would have men, and this Miss Eva Retter.

Q Who was with you? A Miss Eva Retter.

Q She was with you how many times? A Two or three times.

Q That was from September 1st up to the time of the raid, is that right? A Well, this was before the raid, yes.

30 Q Do you understand what I am asking you? Between September 1st and January 2d, you were there how many times? A About four times.

Q Who was with you those four times? A Well, I was there with gentlemen, then with Eva.

Q Was Eva with you alone at any time, you and Eva together? A Yes, sir; and sometimes we would have men with us.

Q How many times was Eva with you between September 1st and January 2d, alone? A Two or three times.

40 Q And the fourth time a man was with you? A Yes.

Sophie Brown, cross.

Q Is that right? A Yes.

Q Are you married? A Yes, sir.

Q Where is your husband? A I am not living with him.

Q How long is it you had not been living with him? A About four and a half years.

Q When was this raid? A The 2d of January. 10

Q What time? A Between twelve and one.

Q Who was with you at the time of the raid? A Tom Sheridan.

Q How long have you known Thomas Sheridan? A For the last eight or nine months.

Q And before that time? A Yes, sir.

Q Do you know Officer Bowman? A Yes, sir.

Q This gentleman (indicating) Mr. Bowman? A Yes, sir. 20

Q How long have you known Mr. Bowman? A About seven or eight months.

Q Seven or eight months? A Yes, sir.

Q Where did you first get acquainted with him? A I didn't get acquainted. I used to see him on the street.

Q Saw him on the street? A Yes, sir.

Q How did you know his name was Bowman? A Different people told me that it was Bowman, the officer. 30

Q You met him on Green street, too, didn't you? A No, sir; I didn't meet him on Green street.

Q Do you know Officer Quinn? A Yes, sir.

Q And Lieutenant Harris? A No.

Q Do you know Officer Schaefer? A Yes, sir.

Q You saw them the day of the raid? A I saw Mr. Bowman, and Mr. Schaefer I seen there.

Q Before the raid took place? A Yes.

Q And did you have a talk with them? A No; I didn't have no talk with them. 40

Sophie Brown, re-direct.

Q Where did you see them? A They came upstairs.

Q At the time of the raid, you mean? A Yes, sir.

Q You were fully dressed at that time, weren't you? A No, sir.

10 Q You had a bruise on your eye, didn't you?
A Yes, sir.

Q Who was with you? A Thomas Sheridan.

Q When the officer came in there he was bathing your eye, wasn't he? A Yes.

Q That was all? A That was all.

Q That was all that took place when the officer came there? A Yes.

Re-direct examination by Mr. Mott.

20 Q You say you were there between the 1st of September and the 2d of January, at the time of the raid, about four times, with men, is that what you say? A Yes, sir.

Q Besides that you were there on some other occasions with Eva Brown, is that right? A With Eva Retter, yes, sir.

By Mr. Feldman.

30 Q Didn't you say, when I asked you, that you were there between September 1st and January 2d four times? You said that? A Yes, sir.

Q Didn't you say you were there with Eva Retter on three occasions during that period? A Yes, sir. I was there before.

Q (*By the Court.*) Now, answer the question, how many times were you there altogether with or without Miss Retter? A About nine or ten times.

40 Q (*By Mr. Feldman.*) You were only there with Sheridan once, weren't you? A No, sir; I was there more than once.

Theodore S. Lehmann, direct.

Q He went there as your husband, didn't he?

A I don't know what Mr. Sheridan said to her.

Q You wouldn't say he didn't say it? A No, sir; I didn't say it.

By the Court.

Q Did you ever go there with any other man than Sheridan? A Yes, sir. 10

Q What did you do when you went there with Miss Eva Retter, or alone? A Alone?

Q Yes. When you and Miss Retter alone went there what did you do? A We would stay there. We would go there and sleep.

Q You lived there? A No, sir; I did not live there.

Q Did you do anything else besides sleep there? A Yes, sir. 20

Q What? A We went there with men.

Q I am speaking of the times that you went there without men, when you went in there with this Retter woman. Did you do anything then?

A No, sir.

By Mr. Mott.

Q When did you last see Sheridan? A Last?

Q Yes? A It was Wednesday, last Wednesday.

Q Where did you see him? A Up in the hospital. 30

THEODORE S. LEHMANN, sworn in behalf of the State.

Direct examination by Mr. Mott.

Q Lehmann, do you know the defendant, Mrs. Beavers? A Yes.

Q Between the 1st of September last and the 2d of January were you at her place at 105 Mechanic street? A Yes, sir. 40

Theodore S. Lehmann, direct.

Q Were you there alone or in company with some one? A No, sir; in company.

Q With whom were you in company? A With John Shockett and two young ladies.

Q Are they the girls who were in court? A Yes, sir.

10 Q Is Shockett here? A No, sir.

Q The girls are here? A Yes, sir.

Q About when was it you were there with Shockett and the girls? A About October 16th.

Q What occurred when you got down there? A Why, this Jack, he rang the bell, and this Mrs. Beavers opened the door, and we went in.

Q The four of you? A Yes, sir.

20 Q Then what? A And Mrs. Beavers said, "Go upstairs." The four of us went upstairs and they came upstairs after us.

Q Go on. A She looked at me and she says, "two dollars, please." I paid her the two dollars.

Q Had you ever been there before? A Never.

Q How long did you stay there? A About twenty minutes or so.

Q Did you have sexual intercourse while you were there with the girls? A Yes, sir.

Q Were you all in one room or separate rooms?

30 A No, sir; separate rooms.

Q Did you all go out together, or what? A No, sir.

Q Who came out first? A John and I.

Q You left the girls there? A Yes, sir.

Q Do you know of your own knowledge whether he paid her any money? A No, sir; I do not.

Mr. Mott. Stand up.

(A woman in the audience arises).

40 Q Is the girl standing up there the girl you were with? A Yes, sir.

Theodore S. Lehmann, cross.

The Court. What is her name?

Mr. Howard. Agnes Napierska.

Q Was the other girl standing up there, the other girl in the party? A Yes, sir.

Mr. Howard. Frances Ruby.

Cross examination by Mr. Feldman.

10

Q How long have you known this lady (indicating defendant)? A This is the first time I ever met her.

Q How did you know her name was Mrs. Beavers? A They told me at headquarters Mrs. Beavers.

Q Who told you at headquarters? A I don't know who told me. Four or five gentlemen who were around.

20

Q Did they tell you not to forget that the name was Mrs. Beavers? A No, sir.

Q How did it come about that they told you that? A They asked me if I was down to this house and I said, yes, sir. They said "105?" I said "yes sir, I was there."

Q How did you happen to go to headquarters?

The Court. What has that got to do with this issue?

Q When was it you were in this house? A About October 16th.

30

Q How do you fix the time as being October 16th? A Why, it was some day in October that I went down to a jewelers down there and bought a ring, and it was in October that I bought this ring. That is how I knew it was in October.

Q Is there any other way of fixing the time? A Not that I can say.

Q You were in there and went upstairs? A Yes, sir.

40

Theodore S. Lehmann, cross.

Q You didn't tell this defendant that you were going to stay twenty minutes, did you? A No, sir.

Q You simply didn't say anything to her, how long you were going to stay? A Didn't say a word.

10 Q Didn't you say you were going to stay all night? A No, sir.

Q You told her you had your wife with you, did you? A No, sir.

Q You didn't tell her it wasn't your wife? A I didn't say a word about it.

Q Do you remember what day it was? A I just couldn't say.

Q Was it the 16th of October? A About the 16th, yes, sir.

20 Q You don't know what day it was? A No, sir.

Q It might have been the 18th? A I couldn't say that.

Q Or the 20th? (No response.)

Q You don't know? A No, sir.

By the Court.

30 Q What time of the day or night was it that you went there? A It was about nine o'clock.

Q In the evening? A Yes, sir.

Q And did you or your friend, or any of the women, or either of them, have any package? A No, sir.

Q Or grip or valise, or dress suit case or anything like that? A No, sir.

By Mr. Feldman.

40 Q Did you have an overcoat with you on your arm? A At the time this happened? No, sir.

Agnes Napierska, direct.

AGNES NAPIERSKA, sworn in behalf of State.

Direct examination by Mr. Mott.

Q Agnes, where do you live? Where do your folks live? A 234 Tomler avenue.

Q Where? A Jersey City.

Q How old are you? A Fifteen. 10

Q When were you fifteen? A In October.

Q Last October? A Yes, sir.

Q Did you, in company with another girl come over to Newark from Jersey City some time last October? A Yes.

Q Who was the girl? What was her name? A Frances Ruby.

Q Did you meet Mr. Lehmann while you were here in Newark? A No, I met Shockett.

Q Did you see Lehmann at all? A No. 20

Q Did you go anywhere with him and Agnes? A No. The other fellows brought us to a furnished room.

Q No. Did you see Lehmann at the time, while you were over here? A No.

The Court. Let Lehmann stand up.

(A man in the audience arises.)

By the Court.

Q That man (indicating)? A I saw him only once. 30

Q (*By Mr. Mott.*) You saw him once? A Yes.

Q Did you go with him and Agnes, and the other man, to a house, 105 Mechanic street? A Yes.

Q Who were with you? A Lehmann.

Q What time of day was it when you and Lehmann went there? A It was in the night 40 time; eight o'clock in the night.

Agnes Napierska, cross.

Q And after you got there what did you do?

A He brought us in the house.

Q Then what did you do? A He rang the bell and told the lady we was husband and wife.

Q He told her that? A Yes, he told the lady.

10 Q Then what happened? A Then they brought us upstairs.

Q Did you have connection with him? A Yes, sir.

Q How long had you stayed there? A All night.

Q How long did Lehmann stay there? A He said he was coming back—

Q How long did Lehmann stay there? A I can't tell.

20 Q Well, about how long? A Until nine o'clock.

Cross examination by Mr. Feldman.

Q Were you and Lehmann in the house? You were with Lehmann? A Yes.

Q And you told the lady that? Lehmann told the lady you were his wife? A Yes.

Q When Lehmann told the lady that, she allowed you to go upstairs, did she? A Yes.

30 Q How long did you stay there with him? A He stayed until nine o'clock.

Q What time did you go in there? A Eight.

Q You stayed there an hour? A Yes.

Q It wasn't twenty minutes you stayed there? Lehmann said you stayed there twenty minutes? A No.

40 Q Did you come out before Lehmann did? A He went out and he said he would come back at half-past eleven. He left both of us in the room.

Frances Ruby, direct.

Q He stayed there about an hour and then went out? A Yes, sir.

Q You came out at nine o'clock? A No; we slept there all night.

Q What day was that, do you know? A It was on September 15th.

Q It was on September 15th? A Yes. 10

Q Are you sure it wasn't October 15th? A No; September 15th.

Q So Lehmann is mistaken about that, is he? A Yes.

Q You say it was September 16th or 15th? A Fifteenth.

Re-direct examination by Mr. Mott.

Q You were arrested, weren't you, on that trip to Newark? A Yes. 20

Q Now, what month was it you were arrested here? A September 19th.

Q Was it September or October? A September.

FRANCES RUBY, sworn in behalf of State.

Direct examination by Mr. Mott.

Q You live somewhere in Jersey City, don't you? A Yes, sir. 30

Q How old are you? A Fifteen.

Q Did you come over to Newark some time last fall, Agnes? A Yes, sir.

Q Do you remember what month it was in? A The 15th of September.

Q Did you go to Mrs. Beavers' house? A Yes, sir.

Q Who did you go there with? A With Shockett and Lehmann. 40

Q Did Agnes go there, too? A Yes, sir.

Frances Ruby, direct.

Q Which one of the boys were you with? A Shockett.

Q What time did you get to her house? A Eight o'clock.

Q After you got to her house what did you do?
 10 A We rang the bell and Mrs. Beaver come. One of them asked for a room. She said the only one she had for \$2. So he said he would take rooms, and went upstairs.

Q Did you go upstairs with Shockett? A Yes.

Q Did you go in the room with him? A Yes, sir.

Q And have connection with him? A Yes, sir.

Q How long did he stay there? A About
 20 twenty minutes.

Q He went away? A Yes, sir.

Q Did you stay there all night? A Yes, sir.

Q When were you fifteen? A Last March.

Q And did you go there again the next day or the day after? A About two days after.

Q Who did you go there with that time? A Rosenberg.

Q What time of day was it when you went there the second time? A About five o'clock in the evening.

30 Q What happened at the second time you were there with Rosenberg? A We asked for a room and she gave us a room.

Q That is, Mrs. Beavers gave you a room? A Yes, sir.

Q Was any money paid her? A I didn't see him pay anybody.

Q How long were you there with Rosenberg?
 40 A He just came in and put me in the room. He said he had to go to work and would be back at three o'clock.

Frances Ruby, cross.

Q Did he come? A Yes, sir. I met him on the corner.

Q Then what did you do? A I went to some show. Then he brought me to her house and go to work, and the detective come and got me and took me away.

Q Where did the detective take you from? 10
Where were you? A From Hunterdon street.

Q Did you go up in the room with Rosenberg?
A No; he didn't come up; he just come up to the foot of the stairs.

Q You didn't have connection with him there?
A No.

Cross examination by Mr. Feldman.

Q You just went in there and Rosenberg went 20
away, is that right? A Yes, sir.

Q You say this was the 15th of September you were there with Lehmann, the other girl and Shockett? A It was the 17th we came there—it was the 15th.

Q The 17th of September? A Yes.

Q Did you see this lady (indicating defendant)?
A Yes.

Q Did you hear anything said about being husband and wife? A No, sir; she didn't ask us; she 30
just said we should look out for the detective.

Q Did Lehmann say that you were married? A
He said that him and Agnes were married.

Q (*By Mr. Mott.*) Who said that? A Lehmann said that he was married to Agnes.

Q (*By Mr. Feldman.*) You stayed there all night, did you? A Yes, sir.

Q Do you know when you were born? A March 12th.

Q What year? A 1899. 40

Q Who lived in Hunterdon street where you

Frances Ruby, re-direct.

were arrested? A I don't know the name; I was going to wait there.

Q How did you happen to go there? A Rosenberg took me there.

Q To Hunterdon street? A Yes.

10 Q Do you know the name of the people you went to see while you waited? A No, sir.

Q How long did you wait there for him? A I was there all night—all day and all night.

Q Did Rosenberg stay with you that night? A No.

Q At Hunterdon street? A Yes, sir.

Q Did you see Rosenberg that night at Hunterdon street? A He only came up and played cards there and he went home when the lady and I were going to bed.

20 *Re-direct examination by Mr. Mott.*

Q Did you have connection with Rosenberg in the Mechanic street house? A No, sir.

Q Do you understand the question? A Yes, sir. He is tall, this fellow, the one I had connection with.

Mr. Mott. Stand up, Rosenberg.

(A man in the audience arises.)

Q Did you see him? A Yes, sir.

30 Q Is that the man you had connection with? A Yes, sir.

Q And you had connection with him in Mrs. Beavers' house? A Yes, sir.

Q And what kind of a day was that? A About five o'clock in the evening—twelve o'clock—between twelve and three o'clock in the afternoon.

Q In the afternoon? A Yes, sir.

Frances Ruby, re-cross.

By the Court.

Q What day was that? The day after you first went there with Shockett and Lehmann? A Yes, sir.

Q Shockett and Lehmann left you two girls there and you stayed over night, and until the next day? A Yes, sir. 10

Q Then you saw Rosenberg, is that it? A Yes, sir.

Re-cross examination by Mr. Feldman.

Q Didn't you say just a moment ago that all that Rosenberg did was put you in the hall and leave you there? A Yes, sir.

Q You said that? A Yes, sir.

Q The first night that you went there with Lehmann, this Napierska girl, she was with you, wasn't she? A Yes, sir. 20

Q Who was with you? A Shockett.

Q They took you in there and you stayed there all night? A Yes, sir.

Q Rosenberg wasn't there that night, was he? A No, sir.

Q Shockett was there with you that night. Then you saw Rosenberg a couple of days afterwards, didn't you? A The day after. 30

Q He brought you there, did he? A Yes.

Q And you went in the hallway and he left you there? A Yes.

Q He didn't have anything to do with you there? A No, sir.

Q Why did you say a moment ago that he did?

A That fellow over there (indicating) did.

Q Who was that fellow? A Shockett.

The Court. The man you just saw standing up here? 40

Solomon Rosenberg, direct.

Mr. Mott. (Addressing someone in the audience.) Come up here.

(A man in the audience comes to the witness stand.)

10 Q (*By the Court.*) Is this Shockett or Rosenberg? A Shockett.

Q (*By Mr. Mott.*) Is this the man you knew as Shockett? A Yes.

Q This is the man you had connection with, you say? A Yes.

Q (*By Mr. Feldman.*) Is this the man you had connection with the first time you were there? A Yes, sir.

The Court. Well, what is this man's name?

20 *Voice.* Solomon Rosenberg.

Q (*By the Court.*) Was he the man who was with you the first time you went there? A Yes, sir.

SOLOMON ROSENBERG, sworn in behalf of State.

Direct examination by Mr. Mott.

30 Q Rosenberg, how old are you? A Nineteen.

Q You are a Newark boy? A Yes, sir.

Q Do you know the girl, Frances Ruby, who was just on the witness stand? A I never knew her before.

Q When did you meet her? A I don't know the date, but I met her on Friday.

Q What month was it? A I think it was in October; I don't remember.

Q October or September? A I don't remember.

40 Q Do you know Lehmann? A I never knew him before this case.

Solomon Rosenberg, direct.

Q You saw him at the time, did you, Lehman?
A After we was arrested, that is the first time I ever saw Lehmann, when we was down at headquarters.

By the Court.

Q Well, now, Lehman did not meet these girls with you, did he? A I didn't hear the question. 10

Q The question is—you say that you met these two girls on some Friday. You cannot tell us exactly? A No, sir.

Q When you first met them was Lehmann with you? A No, sir.

By Mr. Mott.

Q Where did you meet these two girls? A On the corner of Montgomery and Barclay. 20

Q Who was with you, if anybody? Were you alone? A There was about twenty boys, was on the corner.

Q Where did you go with the girls, if anywhere? A I didn't go any place with them just then.

Q Well, did you later? A Yes; I met them that night.

Q Where did you meet them? A On the corner of Belmont avenue and Waverly.

Q Then where did you go? A She said she had been in some house the night before, and she said she didn't have any place to sleep. I said, "See if you can get a place there for us." I took her down—we walked down Clinton avenue and over Railroad avenue, and she said, that she slept down this way the night before, or a couple of nights ago—I don't remember, now. I said, "Do you think she will give you a room tonight?" She said, "I guess so." I said, "Go up there and I will pay for the room if she will let you sleep there." 30
40

Solomon Rosenberg, cross.

Q Did you see this woman, the defendant? A Yes, sir.

Q Did you go to her house? A The girl said she was there before.

Q And it was Mrs. Beavers house, was it? A Yes, sir.

10 Q Did you pay any money for the room? A \$1.

Q Who did you give the money to? A Mrs. Beavers.

Q Which girl did you have with you at that time? A Ruby Frances.

Q Ruby? A Frances Ruby.

Q What time of the day was it when you and Ruby got there? A About nine o'clock, I guess.

20 Q Did you get a room? A Yes, sir.

Q Did you have intercourse with Ruby there? A Yes, sir.

Q How long did you stay? A Until about 12 o'clock.

Cross examination by Mr. Feldman.

Q What is your name? A Solomon Rosenberg.

30 Q You didn't have intercourse with this girl at that house, did you? A Yes, sir.

Q Were you there when Lehman was there? A No, sir; I never knew that Lehman was there with them.

Q Miss Ruby said you simply took her there that night and left her there, that you didn't have intercourse with her? Is that so? A I did have intercourse there with her that night.

Q Then Miss Ruby isn't telling the truth about that?

Motion to direct verdict.

Mr. Mott. I object.

The Court. Objection sustained. He cannot characterize another witness's statement. He may tell the facts.

Q You say you did have intercourse with her?

A Yes, sir.

Q Didn't you tell Mrs. Beavers that you wanted this girl to have a place to sleep? A Yes, sir. 10

Q You didn't tell her that you were going upstairs there with them, did you? A Yes, sir, she seen me.

Q You didn't tell her the purpose? A No, sir; didn't tell.

Q Didn't you tell her this girl didn't have a place to sleep and that you wanted her to have a place to sleep? A Yes, sir. 20

Q That is all you told Mrs. Beavers? A Yes, sir.

Q When you told her that she was satisfied? A Yes, sir.

Q Did you tell Mrs. Beavers that it was your wife? A No, sir.

Q You didn't tell her that you and she—that she wasn't your wife? A No, sir; I didn't say anything about my—

Q You didn't say anything? A No, sir. 30

STATE RESTS.

DEFENDANT RESTS.

Mr. Abruzzi. I ask your Honor for the direction of a verdict on the ground that the State has failed to prove that it was within the power of this defendant to suppress the acts which are characterized as disorderly, and by which the State seeks to show that this house was a disorderly house. 40

Charge to Jury.

The Court. Motion denied.

Defendant's counsel prays an exception to the ruling of the court, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

10

Mr. Abruzze sums up for defendant.

Adjourned to Friday, February 26, 1915, at ten A. M.

SECOND DAY.

Friday, February 26, 1915.

20

Met pursuant to adjournment.

Present, counsel as before stated.

Mr. Mott sums up for the State.

The court charges the jury as follows:

MARTIN, J.

30

Gentlemen of the Jury. The function of the court is to instruct the jury in reference to the principles of law governing the case. The principles of law as charged should be accepted as a correct statement of law. The jury, however, are the sole judges of the facts, the weight of the testimony, the credibility of witnesses and the inferences to be drawn from the evidence, and the conclusions to be reached upon all the facts. The court, in referring to the evidence, is not to be understood as deciding any facts, but merely as attempting to illustrate or explain the application of principles of law. If the court errs in its statement of any of the evidence or assumes the existence of evidence which is not before the jury, the jury is to

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rely upon its recollection and not upon the recollection

Charge to Jury.

tion of the court. If any part of the evidence is referred to, seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all of the evidence and pertinent proof bearing upon the question of the guilt of this defendant, not only that which is mentioned by the court, but all of the facts which may appear by the testimony. The law presumes that the defendant is innocent. This presumption of innocence can be overcome only by showing beyond a reasonable doubt the guilt of the defendant. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and it does not shift from the State throughout the whole case. 10

“Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs, and depending in moral evidence, is open to some possible imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is taken to be proof *beyond* a reasonable doubt; because 20 30 40

Charge to Jury.

if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether."

10 This defendant is presented here upon a indictment found by the Grand Jury, which, in substance, charges that she did unlawfully keep and maintain a certain common, ill-governed and disorderly house, for her own lucre and gain, certain persons of evil name and fame, and of dishonest conversation, then and on the said other days and times, there unlawfully and willingly did cause and procure to frequent and come together in the said house at unlawful times, as well in the night as in the day, there to be and remain, drinking, tippling, fighting, whoring, and so forth, contrary to the form of the statute in such case made and provided, and against
20 the peace of this State, the government and dignity of the same.

The charge in substance is commonly known as that of keeping a disorderly house.

30 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 there for the purpose of gratifying their own depraved appetites, is a public nuisance, and therefore 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, for his own amusement or gain, 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.
40

It is sufficient to show, under the general allegations of this indictment, a house ill-governed and

Charge to Jury.

disorderly, in the sense stated, where prostitutes or other immoral, vicious and disorderly persons are habitually received and entertained, and where their illegal practices are carried on, to warrant a conviction.

After proof of the alleged misbehavior of the inmates and as to the person who controls and permits such disorderly conduct, it becomes a question of fact for the jury to determine whether satisfactory evidence has been produced to show that the defendant kept, maintained or controlled, or had the power to control, the place, or permitted and suffered it to be so kept and maintained, having power to prevent it.

The offense of keeping a disorderly house does not consist in the fact that the keeper commits any of these crimes himself, but that he permits his house to be made and become a nuisance by habitually permitting violations of law there, whether by himself or others.

In order to convict this defendant you must be satisfied, first, that the defendant was the proprietor or in control; second, that the house was disorderly; and, third, that the defendant knew it. The keeping of a bawdy house, or indeed a disorderly house of any kind is something that connotes consciousness of the character of the place. That such consciousness may be brought home to the accused party, as a matter of fact, by evidence showing a course of practice, or frequent facts 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, is perfectly clear. Where the practices are such that any ordinarily intelligent person would understand their meaning, the existence of the knowledge on the part of the defendant may be found by the jury.

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Charge to Jury.

In support of the charge laid in the indictment the State has presented the testimony of a considerable number of witnesses, both men and women. Two of these girls, under sixteen years of age, have testified to going to this place during the period mentioned in the indictment, from the 1st of September, I think it is, 1914, down to the time of the
10 arrest, on the 2nd day of January, as I recall it, 1915. They all testified to going there for the purpose of having illicit intercourse. Unlawful intercourse, fornication, is a crime under the laws of the State of New Jersey, and if it is carried on habitually in a place, the place becomes disorderly, if it is maintained for that purpose.

The principal point, as the court gathers the suggestions of counsel, reached for the consideration
20 of the jury, is that, while it may be true that these persons who testified here went to this place for the purpose of fornication and accomplished that purpose, yet there is not satisfactory proof to show that this defendant had knowledge of what they were doing. The court has just stated the law with respect to that, and if an ordinary intelligent person, under the circumstances, would have gathered, as stated, what they were doing, then it is sufficient
30 to infer knowledge on the part of the defendant. These persons went there quite frequently, some of them without any baggage; some of them late at night; some early in the morning. None of them ever stayed there long. Eva Retter, I think, with the other woman, went there on one or more occasions and the defendant addressed them by their first names. The State says and contends that a reasonably intelligent person would have gathered the fact that they were not there for a lawful purpose, that they were there for the purpose of fornication.
40

Charge to Jury.

It is for you to consider and weigh the testimony in this case and reach a conclusion as to what the truth is. The defendant in this case has failed to take the witness stand. The accused is a competent but not a compellable witness in her own behalf; but her failure to become a witness raises no presumption of her guilt. Where, however, there is direct evidence to connect the accused with the crime by her own testimony and she could have established an alibi or denied the allegation, her failure to do so may be considered by the jury as an inference against her. In this case, if it is clear from the testimony that there are some acts or matters within the knowledge of this defendant, which she could have denied if she had taken the stand, and she did not take the stand, then you may draw the inference against her.

Gentlemen of the jury, if upon the whole case, under the evidence and under the law as stated by the court, you find this defendant is guilty, your verdict should be guilty. Otherwise, of course, it must be not guilty.

The court has stated that the function of the jury is to decide the case upon the evidence, under the law. Sometimes it is thought perhaps by some persons that fornication is not a very great crime, or a crime at all. The jury may not carry a thought of that kind into the proper consideration of the verdict. The law is that fornication is a crime, and that a place maintained for the purpose of its being carried on is, with knowledge on the part of the person maintaining it, a disorderly house, regardless of personal views. If, under the evidence and the law as stated by the court, this defendant is guilty, the verdict should and ought to be guilty. Otherwise, of course, as the court has before stated, it must be not guilty.

(The jury retires.)

Certificate of Judge Martin.

NEW JERSEY SUPREME COURT.

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| 10 | THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> MARGARET BIEBER, <i>Plaintiff in Error.</i> | } | <i>In Error</i> <i>Certificate.</i> |
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20 I, William P. Martin, Presiding Judge of the Essex Court of General Quarter Sessions, and the judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same 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.

WM. P. MARTIN,
Presiding Judge of the Essex County
Court of Quarter Sessions.

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Assignment of Errors.**New Jersey Supreme Court.**

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
 MARGARET BEAVERS,
Plaintiff in Error.

10

*On Writ
of Error.**Assignment
of Errors.*

Afterwards, to wit, on the return day of said writ of error, before the justices of the Supreme Court of Judicature at Trenton, comes the said Margaret Beavers, by McDermit & McDermit, her attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

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1. In that the Court permitted Solomon Rosenberg, a witness for the State, to testify to statements and conversations had with another person, without evidence that the defendant was present at the time.

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2. In that the Court permitted Solomon Rosenberg, a witness for the State, to testify to hearsay evidence.

3. In that the Court refused to direct a verdict of not guilty on the ground that the State failed to show knowledge on the part of the defendant, and that it was within defendant's power to suppress the acts which were characterized as disorderly.

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Assignment of Errors.

4. In that the Court erroneously charged the jury as follows:

10 “The keeping of a bawdy house or indeed a disorderly house of any kind, is something that connotes consciousness of the character of the place. That such consciousness may be brought home to the accused party, as a matter of fact, by evidence showing a course of practice, or frequent acts, 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, is perfectly clear. Where the practices are such that an ordinarily intelligent person would understand their meaning, the existence of the knowledge on the part of the defendant may be found by the jury.”

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5. In that the Court erroneously charged the jury that:

 “If an ordinarily intelligent person, under the circumstances, would have gathered, as stated, what they were doing, then it is sufficient to infer knowledge on the part of the defendant.”

30 And the plaintiff in error, Margaret Beavers, prays that the judgment aforesaid be reversed and altogether held for nothing, and that she may be restored to all things she has lost by reason of said judgment, etc.

McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

*Specification of Causes.***Specification of Causes.**

NEW JERSEY SUPREME COURT.

 THE STATE OF NEW JERSEY,

Defendant in Error,
vs.

MARGARET BEAVERS,

Plaintiff in Error.

*On Writ
of Error.*

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*Specification
of Causes.*

Margaret Beavers, the plaintiff in error, by McDermit & McDermit, her attorneys, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

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1. Because there was no evidence whatever to sustain a verdict of guilty.

2. Because there was no evidence to sustain the crime charged in the indictment.

3. Because there was no evidence whatever that the defendant was guilty of the criminal acts charged in the indictment.

4. Because there was no evidence whatever of the particular kind of disorderly house described in the indictment.

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5. Because there was no evidence that the defendant maintained the particular kind of disorderly house described in the indictment.

6. Because there was no evidence whatever that on the premises, drinking, tippling, fighting and whoring were carried on, or either of them.

7. Because there was no evidence whatever that the defendant permitted certain persons there to

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Specification of Causes.

be and remain, drinking, tippling, fighting and whoring, or either of them.

10 8. Because the Court did not direct a verdict of not guilty on the ground that there was no evidence whatever that the defendant had knowledge, or had power to control and suppress the acts, characterized as disorderly.

9. Because the Court permitted Solomon Rosenberg, a witness for the State, to testify to statements and conversations had with another person without evidence that the defendant was present at the time.

10. Because the Court permitted Solomon Rosenberg, a witness for the State, to testify to hearsay evidence.

20 11. Because the Court erroneously charged the jury as follows:

30 “The keeping of a bawdy house or indeed a disorderly house of any kind is something that connotes consciousness of the character of the place. That such consciousness may be brought home to the accused party, as a matter of fact, by evidence showing a course of practice or frequent acts, 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, is perfectly clear. Where the practices are such that an ordinarily intelligent person would understand their meaning, the existence of the knowledge on the part of the defendant may be found by the jury.”

Specification of Causes.

12. Because the Court erroneously charged the jury as follows:

“If an ordinarily intelligent person, under the circumstances, would have gathered, as stated, what they were doing, then it is sufficient to infer knowledge on the part of the defendant.”

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McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

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*Opinion of Supreme Court.***Opinion of Supreme Court.**

Filed November 8, 1915.

NEW JERSEY SUPREME COURT.

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 THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
 MARGARET BEAVERS,
Plaintiff in Error.

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Argued June term 1915 before Chief Justice Gummere and Justices Swayze and Bergen.

Frederick F. Guild, Prosecutor of the Pleas.

Wilbur A. Mott, for defendant in error.

Frank M. McDermit, for plaintiff in error.

Per Curiam:

Defendant was convicted of keeping disorderly house and brings error, assigning following reasons:

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1. No evidence to sustain the charges.

This is not true, the evidence is ample.

2. No evidence that defendant had knowledge of or power to suppress the acts constituting the crime. The proof is that she was present taking the money for the illegal use of rooms.

3. That the witness Rosenberg was allowed to testify to a conversation with a girl he was taking to the defendant's house. To this there was no exception taken nor action by the court.

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Opinion of Supreme Court.

4. Error in charging jury that knowledge of disorderly place may be brought to the accused by evidence showing a cause of conduct from which it may be inferred. This is not error. The assignments are without merit.

Judgment will be affirmed.

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Remittitur.

NEW JERSEY SUPREME COURT.

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| 10 | <p style="text-align: center;">THE STATE OF NEW JERSEY, <i>Defendant in Error,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">MARGARET BIEBER, <i>Plaintiff in Error.</i></p> | } | <p><i>On Error.</i></p> <p><i>Remittitur.</i></p> |
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20 The above stated cause having been duly submitted on briefs at the June Term, nineteen hundred and fifteen, in the New Jersey Supreme Court, by Frederick F. Guild, and Wilbur A. Mott, attorneys for the defendant in error, and Frank M. McDermit, attorney for the plaintiff in error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex Quarter Sessions Court;

30 It is thereupon ordered and adjudged that the judgment of the Essex County Quarter Sessions Court, removed by the writ of error in this cause, be affirmed in all things with costs; and that the record be remitted to the Essex County Quarter Sessions Court to be proceeded with according to law and the practice of said Court.

Entered November 8, 1915.

On motion of

FREDERICK F. GUILD,
Prosecutor and Attorney for Defendant in Error.

Remittitur.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this
(L. S.) twentieth day of November, A. D., nineteen hundred and fifteen. 10

WM. C. GEBHARDT,
Clerk.

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*Assignment of Errors.***Assignment of Errors.****New Jersey Court of Errors and Appeals**

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| 10 | THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> MARGARET BEAVERS, <i>Plaintiff in Error.</i> | } | <i>On Writ of Error.</i> <i>Assignment of Errors.</i> |
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20 Afterwards, to, wit, etc., in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Margaret Beavers by McDermit & McDermit, her attorneys, and says that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in the giving of the verdict and judgment there is manifest error in this, to wit:

30 1. In that the Court permitted Solomon Rosenberg, a witness for the State, to testify to statements and conversations had with another person, without evidence that the defendant was present at the time.

2. In that the Court permitted Solomon Rosenberg, a witness for the State, to testify to hearsay evidence.

3. In that the Court refused to direct a verdict of not guilty.

4. In that the Court erroneously charges the jury, in that:

40 "The keeping of a bawdy house or indeed a disorderly house of any kind is something

Assignment of Errors.

that connotes consciousness of the character of the place. That such consciousness may be brought home to the accused party, as a matter of fact, by evidence showing a course of practice, or frequent acts, 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, is perfectly clear. Where the practices are such that an ordinarily intelligent person would understand their meaning, the existence of the knowledge on the part of the defendant may be found by the jury." 10

5. In that the Court erroneously charged the jury in that:

"If an ordinarily intelligent person, under the circumstances, would have gathered, as stated, what they were doing then it is sufficient to infer knowledge on the part of the defendant." 20

Wherefore, the plaintiff in error, Margaret Beavers, prays that the judgment aforesaid be reversed and altogether held for nothing, and that she may be restored to all things she lost by reason of said judgment, etc.

McDERMIT & McDERMIT, 30
Attorneys of Plaintiff in Error.

*Specification of Causes.***Specification of Causes.**NEW JERSEY COURT OF ERRORS AND
APPEALS.

| | | | |
|----|---|---|---|
| 10 | THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> MARGARET BEAVERS, <i>Plaintiff in Error.</i> | } | <i>On Writ of Error.</i> <i>Specification of Causes.</i> |
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20 Margaret Beavers, plaintiff in error, by McDermit & McDermit, her attorneys, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause, as follows:

1. Because there was no evidence to sustain a verdict of guilty.
2. Because there was no evidence to sustain the crime charged in the indictment.
3. Because there was no evidence that the defendant was guilty of the criminal acts charged in the indictment.
- 30 4. Because there was no evidence of the particular kind of disorderly house described in the indictment.
5. Because there was no evidence that the defendant maintained the particular kind of disorderly house described in the indictment.
6. Because there was no evidence that on the premises, drinking, tippling, fighting and whoring were carried on, or either of them.
- 40 7. Because there was no evidence that the defendant permitted certain persons there to be and

Specification of Causes.

remain, drinking, tippling, fighting and whoring, or either of them.

8. Because the Court refused to direct a verdict of not guilty.

9. Because the Court should have directed a verdict of not guilty on the ground that there was no evidence that the defendant had knowledge, or had power to control and suppress the acts, characterized as disorderly. 10

10. Because the Court permitted Solomon Rosenberg, one of the State's witnesses, to testify to statements and conversations had with another person, without evidence that the defendant was present at the time.

11. Because the Court permitted one of the State's witnesses, Solomon Rosenberg, to testify to hearsay evidence. 20

12. Because the Court instructed the jury, and made them understand, that mere negligence is sufficient to connote knowledge to the defendant as to the disorderly acts which would take place on her premises, and that the defendant in the keeping of a bawdy house, that of itself connotes knowledge, when as a matter of fact, the defendant did not keep and maintain a bawdy house, and the Court made the fact pointed that the defendant was the keeper of a bawdy house. 30

McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

