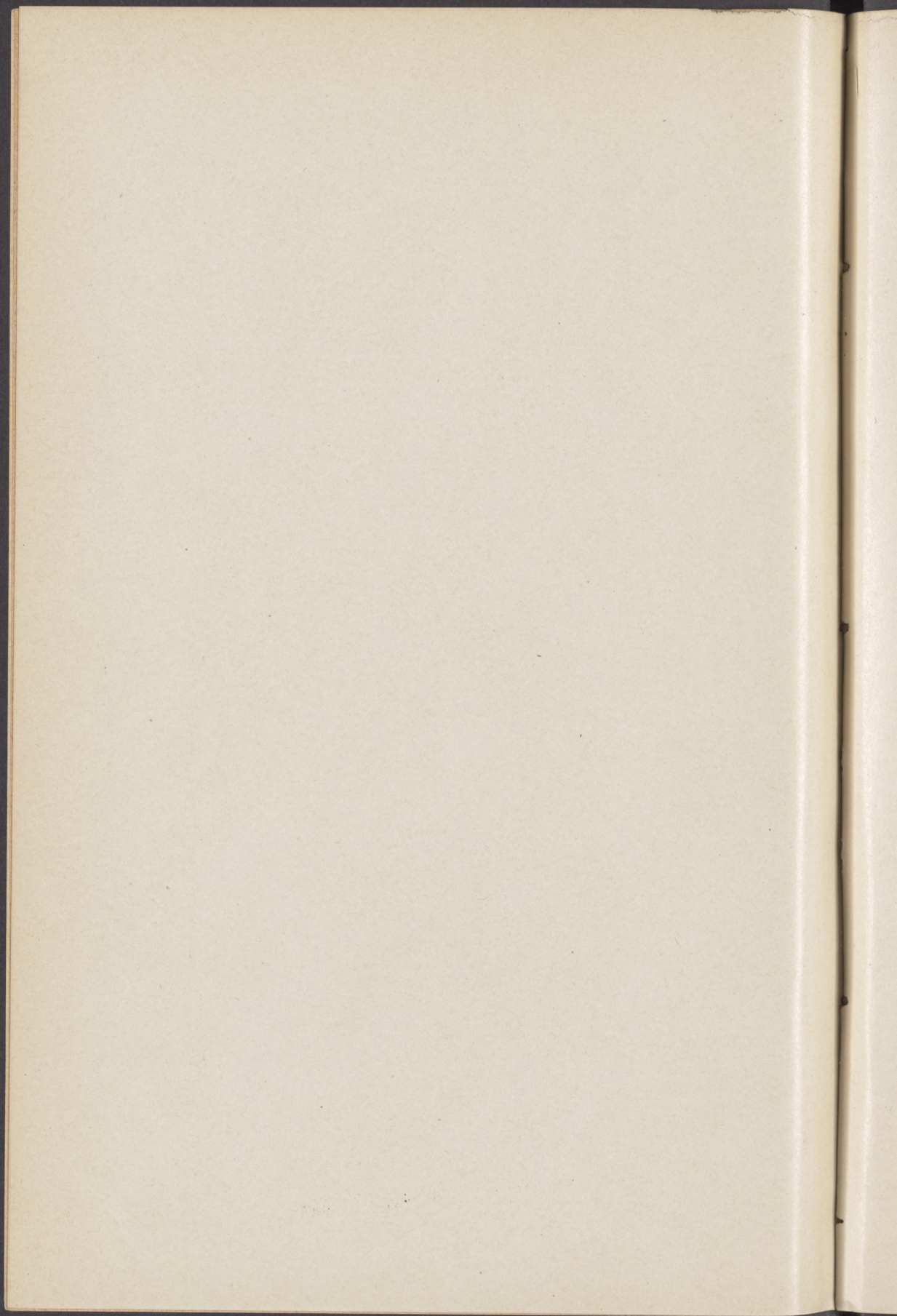


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APPEAL TO
NEW JERSEY
Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
 Plaintiff, }
 vs. }
PETER J. RODGERS,
 Defendant. }

NOTICE OF APPEAL.

(Filed April 7, 1917.)

To Messrs. Humphreys & Sumner, Attorneys of Defendant:

10

Take notice that the plaintiff, the State of New Jersey, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. The Supreme Court reversed the judgment of the Recorder of the City of Paterson when such judgment should have been affirmed.

2. The Supreme Court reversed the judgment of the Recorder of the City of Paterson upon the ground that the said Recorder of the City of Paterson was without jurisdiction to hear and determine the said cause.

20

3. The Supreme Court reversed the judgment of the Recorder of the City of Paterson upon the ground that the act entitled "Supplement to an act entitled 'An act

New Jersey State Library

concerning disorderly persons (Revision of 1898),'' approved March twelfth, one thousand nine hundred and thirteen, was unconstitutional because it provided for a summary trial of the charge made in the above cause, viz., the charge of driving an automobile while under the influence of intoxicating liquor.

4. The Supreme Court reversed the judgment of the Recorder of the City of Paterson upon the ground that the facts in the above cause show that the defendant
 10 was guilty of the Common Law offense of Public Nuisance, whereas said judgment should have been affirmed, the charge in the complaint in said cause not being a charge of public nuisance.

5. Because the judgment of the said Supreme Court was, in other respects, erroneous and illegal.

JOHN W. WESCOTT,
 Attorney-General of New Jersey,
Attorney of Plaintiff-Appellant.

20 Due and legal service of the within notice of appeal is hereby acknowledged this sixth day of April, A. D. nineteen hundred and seventeen.

HUMPHREYS & SUMNER,
Attorneys for Defendant.

REMITTITUR.

30 This cause having been duly argued at the November Term, 1916, of this court by Humphreys & Sumner, of Counsel for the Prosecutor, and Josiah Stryker, Esquire, and John W. Wescott, Esquire, Attorney-General, of Counsel for the Defendants, and the Court having inspected the record and the judgment below and considered the reasons assigned for error.

It is thereupon ordered that the judgment of the Recorder of the Recorder's Court of the City of Paterson,

committing the Defendant, Peter J. Rodgers, to the common jail of the County of Passaic for a period of thirty days, be in all things reversed, set aside and for nothing holden, and that the record and proceeding be remitted to the said Recorder of the Recorder's Court of the City of Paterson, to be proceeded with in accordance with this judgment and the practice of said Court.

Entered February 24, 1917.

On motion of

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HUMPHREYS & SUMNER,
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

PETER J. RODGERS,
Prosecutor,

vs.

WILLIAM H. YOUNG, RECORDER OF
THE CITY OF PATERSON, IN THE
COUNTY OF PASSAIC AND STATE
OF NEW JERSEY,

Defendant.

} In Certiorari.

20

REASONS:

(Filed July 17, 1916.)

The Prosecutor, by Humphreys & Sumner, his Attorneys, prays that the judgment of the said Recorder may be reversed for the reasons following, to wit:

I. Because the penalty imposed by the statute under which said judgment was had, viz., an act entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March 12, 1913, for operating a motor vehicle while under

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the influence of intoxicating liquors, is imprisonment for not less than thirty days and not more than six months, without any alternative of a fine, and yet the statute contains no provision for trial by jury.

10 2. Because the title of the act under which judgment of conviction was had, viz., the act of 1913, in the last preceding reason referred to, does not express one of the objects sought to be accomplished by it, viz., the repeal of an act entitled "A further supplement to an act entitled 'An act for the punishment of crimes' (Revision of 1898), approved June 14th, 1898," which further supplement was itself approved April 16th, 1909; which latter act made any person who should drive a motor vehicle while in an intoxicated condition guilty of a misdemeanor.

20 3. Because the act of 1913 under which said conviction was had, does not operate to repeal said act of 1909, making it a misdemeanor to drive a motor vehicle while in an intoxicated condition, and the Recorder was without jurisdiction to try the defendant for an offense amounting to a misdemeanor.

4. Because the act of 1913 is in violation of Paragraph 3 of Section 2 of Article III of the Constitution of the United States, which provides that the trial of all crimes, except in cases of impeachment, shall be by jury.

30 5. Because the act of 1913 is in violation of Article VI of the Amendment to the Constitution of the United States, which provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed.

6. Because the act of 1913 violates Section 7 of Article I of the Constitution of the State of New Jersey, as amended, which provides that the right of a trial by jury shall remain inviolate.

7. Because the act of 1913 violates Section 8 of Article I of the Constitution of the State of New Jer-

sey, as amended, which provides that in all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury.

8. Because the act of 1913 violates Section 9 of Article I of the Constitution of the State of New Jersey, as amended, which provides that no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy or in the militia when in actual service in time of war or public danger. 10

9. Because said judgment of conviction under said act of 1913 violates the various constitutional provisions above set forth.

10. Because the offense of which the prosecutor was convicted was not a petty offense of such a character that a justice of the peace would have had jurisdiction to try it without a jury before the adoption of the Constitution of New Jersey. 20

11. Because the offense of which the prosecutor was convicted was not a petty offense but a heinous offense, and without legal presentment or indictment the prosecutor could not be legally tried for such offense.

12. Because said proceedings in which said judgment of conviction was had were not proceedings of a kind in which a jury trial is not a matter of right.

13. Because the prosecutor did not in writing waive indictment and trial by jury.

14. Because said judgment of conviction violates the provision contained in Section 1 of an act entitled "An act to regulate and increase the powers of the police courts, recorder's courts and similar municipal courts, known by any other name, in cities of the second class having a population of over 50,000 and regulating the appointment of judges or recorders to preside over the same," approved April 1, 1910, which gives recorders in all cities of the second class having a popula- 30

tion of over 50,000 (such as the City of Paterson) jurisdiction over certain specified crimes, and also over all other criminal offenses, the penalty for which does not exceed a fine of \$100, or imprisonment for a term not exceeding six months, where any of the specified crimes are committed within the corporate limits of the municipality in which such criminal court is established, provided the person or persons charged with any such offense shall in writing waive indictment and
 10 trial by jury, and this prosecutor did not in writing, or otherwise, waive indictment or trial by jury, so as to confer jurisdiction upon the recorder to adjudge such conviction.

15. Because, upon the opening of the case, the recorder erred in refusing to dismiss the complaint on motion of counsel for the prosecutor, on the ground that the statute under which the complaint was made was unconstitutional.

16. Because the recorder erred in refusing, at the
 20 conclusion of the State's case, on motion of counsel for the prosecutor, to dismiss the complaint on the grounds already stated, and also upon the further ground that the evidence established, if it established anything, that the defendant was guilty of an offense which was a misdemeanor, while the complaint before the Court was for a violation of the disorderly persons act.

HUMPHREYS & SUMNER,
Attorneys for Prosecutor.

30 NEW JERSEY, ss.—The State of New Jersey to William H. Young, Esquire, Recorder of the City of Paterson, in the county of Passaic and State of New Jersey, Greeting:

We, being willing for certain reasons to be certified of and concerning a certain accusation in writing, plea, trial and judgment of conviction and order lately made, pleaded, had and rendered before you, and by you, against Peter J. Rodgers, for being a disorderly person

within the meaning of an act of the Legislature of New Jersey entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March 12th, 1913, as is said; do command you that the said accusation in writing, plea, trial, judgment of conviction and order aforesaid, with all things touching the same, together with this writ, by whatever name the defendant aforesaid may be called in the said proceedings, you do distinctly and openly send under your hand and seal to our Justices of our said Supreme Court of Judicature, at Trenton, on the twelfth day of July next, that our said Justices may cause to be done thereupon what of right and according to the laws and customs of the State of New Jersey may be well and fit to be done. 10

Witness William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this twenty-second day of June, nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk. 20

HUMPHREYS & SUMNER,
Attorneys.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

RETURN.

(Filed July 7, 1916.)

In obedience to the command of the within writ the accusation in writing, plea, trial, judgment of conviction and order against Peter J. Rodgers, whereof mention is made within, and all things touching and concerning the same to the Justices of the Supreme Court at 30

8 COMPLAINT UNDER DISORDERLY PERSONS' ACT.

Trenton, within specified, at the time and place within mentioned, I, William H. Young, Recorder of the City of Paterson, within mentioned, under my seal and hereunto annexed send as within I am commanded.

WILLIAM H. YOUNG,
Recorder of the Recorder's Court
(Seal, Recorder's Court of the City of Paterson.
Paterson, N. J.)

In testimony thereof, I, John F. Grossi, Clerk of the
10 Recorder's Court of the City of Paterson, have hereunto subscribed my name and annexed the seal of the said court this third day of July, A. D. nineteen hundred and sixteen.

JOHN F. GROSSI,
Clerk of the Paterson Recorder's Court.

COMPLAINT UNDER DISORDERLY PERSONS' ACT.

STATE OF NEW JERSEY }
vs. } Complaint.
20 PETER J. RODGERS. }

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

On this 27th day of May, A. D. nineteen hundred and sixteen, personally appeared before me Wm. G. Vey, Inspector of Motor Vehicles of N. J., who, upon his oath, complains that at the City of Paterson, in the County of Passaic, in the State of New Jersey, on the 27th day of May, 1916, one Peter J. Rodgers, between the hours of seven and eight A. M. of the said day, did
30 operate a certain automobile over and upon a public street, to wit: over and upon a public street of said City, known as Market Street, while he, the said Peter

J. Rodgers, was under the influence of intoxicating liquors, contrary to and in violation of the first section of an act of the Legislature of the State of New Jersey entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March twelfth, one thousand nine hundred and thirteen, and by reason thereof the said Peter J. Rodgers became a disorderly person.

The deponent, therefore, prays that the said Peter J. Rodgers may be apprehended and held to answer said complaint and to be further dealt with according to law. 10

WILLIAM G. VEY.

Sworn and subscribed to before me this 27th day of May, A. D. nineteen hundred and sixteen.

WILLIAM H. YOUNG,
Recorder.

STATE OF NEW JERSEY, { ss. 20
COUNTY OF PASSAIC. }

Be it remembered, that on the twenty-seventh day of May, nineteen hundred and sixteen, Peter J. Rodgers having been apprehended as a disorderly person was brought before me, William H. Young, Recorder of the Recorder's Court of the City of Paterson, and there charged by complaint under oath of one William G. Vey, one of the Inspectors of Motor Vehicles of the State of New Jersey, with the violation of an act entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March 12, 1913, said complaint as aforesaid charged that the said defendant on the said twenty-seventh day of May, nineteen hundred and sixteen, between the hours of seven and eight A. M., operated a certain automobile over and upon a public street of said City of Paterson, known as Market Street, while he, the said Peter J. Rodgers, was under the influence of intoxicating liquors, 30

contrary to and in violation of the first section of an act of the Legislature of the State of New Jersey entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March 12, 1913, and that by reason thereof the said Peter J. Rodgers became a disorderly person. Said Peter J. Rodgers upon being arraigned before me as Recorder as aforesaid pleaded not guilty, and furnished a recognizance in the sum of five hundred dollars con-
 10 ditioned for his appearance on the day of trial, the date of said trial being then and there fixed in open court for June first, at nine-thirty o'clock in the morning, and thereafter in open court on said first day of June, upon application of the defendant's counsel and in the presence of defendant, and upon the reading and filing of an affidavit, which said affidavit sets forth that a certain person by name Benjamin Mawhinney was a material witness and was out of the State, that the said defendant could not safely go to trial without him, the
 20 Court thereupon, in the presence of the said defendant and said counsel of said defendant and in the presence of the counsel for the State, adjourned the hearing until June 12th, at two-thirty o'clock in the afternoon, and the said defendant having been put upon his trial on said twelfth day of June upon said charge, and

It appearing by the testimony of Sergeant Howard Gall, a credible person, on behalf of the State, duly sworn as a witness in the case, that said Sergeant How-
 30 ard Gall was on Market Street on said twenty-seventh day of May, between 7:30 and 8 o'clock in the morning, that he saw the defendant on Market Street, that in his presence the defendant attempted to get into a certain automobile and attempted to run said automobile, that the said Howard Gall then said to defendant, "You are not in a condition to drive said automobile," that the defendant was then drunk and under the influence of intoxicating liquors, that the said Sergeant Howard Gall then and there arrested the said defendant, and

called the patrol wagon to take the said defendant to the station house in the City of Paterson,

It further appearing by the testimony of Sergeant Charles Sautter, a credible person, duly sworn as witness in the case, on behalf of the State, that he was in charge of the desk at the police station in the City of Paterson at the time the defendant was brought to the station house, between 7:30 and 8 o'clock on the morning of the said twenty-seventh day of May, that he took defendant's pedigree, that defendant's face was cut and bleeding, and that defendant was drunk, 10

It further appearing by the testimony of Sergeant Charles Robinson, a credible person, duly sworn as witness in the case, on behalf of the State, that said Charles Robinson was one of the desk officers on the morning of the said twenty-seventh day of May when defendant was brought to the station house, that defendant appeared to have been in some accident, and that he was drunk at said time,

It further appearing by the testimony of Patrolman Bullock, a credible person, duly sworn as witness in the case, on behalf of the State, that said Patrolman Bullock was one of the officers sent out on the patrol wagon on the said twenty-seventh day of May, at the time the defendant was arrested, that when he arrived at the Erie Station in the City of Paterson defendant was brought to said wagon, and that the condition of the defendant was that he was drunk. Said Patrolman Bullock further testified that the defendant, while in the wagon going from the Erie Station to the station house, talked all the way and acted and talked as a drunken man, 20 30

It further appearing by the testimony of Officer Peter Van Dam, a credible person, duly sworn as witness in the case, on behalf of the State, that said Officer Peter Van Dam was an officer sent out with the patrol wagon at the time defendant was arrested, that when they arrived at the Erie Station, and when the said defend-

ant was brought to the said wagon, he, the said officer, was compelled to use force to put him in said wagon, and that the defendant was then under the influence of intoxicating liquors. Said Van Dam further testified that the defendant staggered at the time he came to the wagon and talked all the way down to the lock-up in said wagon in the same manner that a man does who has been drinking,

- It further appearing by the testimony of Sergeant
- 10 John Riker, a credible person, duly sworn as witness in the case, on behalf of the State, that said Sergeant John Riker visited defendant in the cell on the twenty-seventh day of May shortly after his arrest, accompanied by Mr. William L. Dill, that defendant's condition was then that of a drunken man, that he was staggering around the cell, that defendant then said he had been there since two o'clock, although defendant had been arrested shortly before eight o'clock in the morning, and that there was an odor of liquor on defendant's breath,
- 20 It further appearing by the testimony of William L. Dill, Commissioner of Motor Vehicles of the State of New Jersey, a credible person, duly sworn as witness in the case, on behalf of the State, that said William L. Dill accompanied Sergeant Riker to the cell wherein defendant was confined, that defendant was then intoxicated and staggered around the cell, that his speech was incoherent, that defendant said to the said William L. Dill that he, the defendant, had driven the car on Market
- 30 Street at the time of the accident, that defendant when asked if he had a license to drive a car said that Thomas Paxton was driving the car, that defendant at said time had the appearance of a drunken man, that said William L. Dill subsequently returned to the cell where the defendant was confined a short time afterward and found defendant fast asleep, that he flashed a light on defendant, the defendant said, "Don't do that, it hurts," that defendant staggered, spoke incoherently and in a rambling manner, that his eyes were red, there was

saliva around his lips and he had a strong odor of intoxicating liquor, and that he was in an intoxicated condition,

It further appearing by the testimony of William G. Vey, Motor Vehicle Inspector, a credible person, duly sworn as witness in the case, on behalf of the State, that said William G. Vey visited the cell wherein defendant was confined on the morning of the twenty-seventh day of May with Mr. William L. Dill and noticed the defendant was intoxicated, that defendant was staggering
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around the cell, talking in an incoherent manner, defendant said he had been to Singac, that defendant said he had no driver's license, and that he did not drive the car,

It further appearing by the testimony of Dr. Joseph Williams, City Physician of the City of Paterson, a credible person, duly sworn as witness in the case, on behalf of the State, that said Doctor Williams testified that about eight-thirty A. M. on aforesaid day, accompanied by Officer Van Derhoff and William L. Dill,
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he visited the cell wherein the defendant was confined and found the defendant sleeping on the bench, that defendant had a strong alcoholic odor on his breath, that in the opinion of said Doctor Williams the defendant was then under the influence of intoxicating liquor,

It further appearing by the testimony of Mrs. Sobel, wife of the proprietor of saloon located at number three hundred twenty-four Market Street, in the City of Paterson, a credible person, duly sworn as witness in the case, on behalf of the State, that said Mrs. Sobel
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was in the saloon on the morning of the twenty-seventh day of May at about seven-thirty o'clock in the morning, that the defendant drove his automobile through the front window of said saloon, breaking the glass and the wooden framework of said window, and drove the front part of said car to the front end of the bar in said saloon, that defendant at said time was driving the car and was alone in the car, that he got out of said

automobile but fell down several times, that the defendant tried to get up, that he appeared to the said Mrs. Sobel to be intoxicated,

It further appearing by the testimony of Albert Hancock, a credible person, duly sworn as witness in the case, on behalf of the State, that said Albert Hancock saw the defendant on the said twenty-seventh day of May, about seven-thirty o'clock, on the corner of Madison and Morton Streets, driving his car, which was a
 10 large automobile, that he seemed to be quite excited, and that said defendant was "Good and drunk. No one else was in the machine,"

It further appearing by the testimony of Henry Van Derhoff, a credible person, duly sworn as witness in the case, on behalf of the State, that said Henry Van Derhoff, whose duty it is to take prisoners who are brought to the lock-up to the cell after they have been arraigned at the desk, while taking the said defendant to the cell he staggered all the way and was under the
 20 influence of liquor, and when the said Henry Van Derhoff accompanied Doctor Williams to the cell the said defendant was sleeping and "Had a pretty good jag on,"

It further appearing by the testimony of Mr. Badso, a credible person, duly sworn as witness in the case, on behalf of the State, that said Mr. Badso saw the defendant on the corner of Madison and Market Streets, about fifty feet from the saloon of Mrs. Sobel, that the defendant was sitting in the car at that time and "Was not much straight." The said Mr. Badso further
 30 showed how defendant walked at the time of the accident, which was in a staggering manner.

An the following witnesses having been duly sworn testified at said hearing in behalf of the said defendant,

Albin Federici	David S. Koggan
Thomas Paxton	Wm. Horton
Jack Behrman	Benjamin Mawhinney
Frank W. Furrey	A. Van Vooren
Henry W. Auer	John Hogan
Samuel Simpson	J. A. Maclay, M. D.

and no exhibits being offered by either party, and the evidence being closed for both sides in said case, the said matter was duly adjourned in the presence of the defendant and of his attorney and in the presence of the attorney for the State until the nineteenth day of June, nineteen hundred and sixteen, at ten o'clock in the forenoon of said day, pending the decision of said recorder.

I do therefore find the said defendant, Peter J. Rodgers, guilty of having, between the hours of seven and eight A. M. on the said twenty-seventh day of May, operated a certain automobile over and upon a public street of the City of Paterson, to wit: over and upon a public street of said city, known as Market Street, while he, the said Peter J. Rodgers, was under the influence of intoxicating liquors, contrary to and in violation of the first section of an act of the Legislature entitled "Supplement to an act entitled 'An act concerning disorderly persons' (Revision of 1898)," approved March 12, 1913, as charged in the complaint to which reference has above been made, and by reason thereof the said Peter J. Rodgers became a disorderly person.

I do therefore adjudge the said defendant, Peter J. Rodgers, to be a disorderly person within the intent and meaning of the aforesaid act,

And it is further adjudged that the said Peter J. Rodgers be committed to the common jail of the County of Passaic for a period of thirty days.

Given under my hand and seal the nineteenth day of June, A. D. nineteen hundred and sixteen.

WILLIAM H. YOUNG,
Recorder of the Recorder's Court
of the City of Paterson.

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NEW JERSEY SUPREME COURT.
NOVEMBER TERM, 1916.

THE STATE OF NEW JERSEY }
v. }
PETER J. RODGERS. }

(Filed February 21, 1917.)

Argued November 8th, 1916; Decided February
1917.

1. The Legislature cannot deprive a man of his right
10 to be indicted by a grand jury in case a charge of a
crime at common law is made against him by enacting
that this conduct shall make him a disorderly person,
punishable in a summary manner under the Disorderly
Persons' Act.
2. The question whether the offense with which a
man is charged is a crime at common law cannot be made
to depend on a mere matter of nomenclature. It de-
pends on the real case presented.
3. One who when "good and drunk" drives a large
20 automobile on a public street of a city, and through the
front window of a saloon, breaking the glass and frame-
work of the window, and driving the front of his car
to the front of the bar, is guilty of a public nuisance at
common law.

Certiorari.

Before Justices Swayze, Minturn and Kalisch.

William A. Sumner, for prosecutor.

Josiah Stryker, for defendant.

The opinion of the Court was delivered by
30 SWAYZE, J.

This case should not be entitled *Rodgers v. the Re-
corder of Paterson*. The writ is directed to the Re-
corder as custodian of the record only. The case should

be entitled Rule 15, as it was before the Recorder "*State of New Jersey v. Peter J. Rodgers.*"

Peter J. Rodgers was convicted by the Recorder of being a disorderly person under Chapter 67 of the Laws of 1913 (P. L. 103). The act provides that any person who operates an automobile, motor, or any other vehicle, over any public street or highway while under the influence of intoxicating liquors shall, upon conviction, be punished by an imprisonment of not less than thirty days and not more than six months. The act is one of an increasing class of acts whereby the Legislature seeks to punish offenses by summary proceedings, evidently with a design of avoiding trial by jury. That this can be accomplished in a certain class of cases is settled. *Howe v. Treasurer of Plainfield*, 37 N. J. Law 145; *Riley v. Trenton*, 51 N. J. Law 498. That it cannot be accomplished in another class of cases is also settled. *State v. Anderson*, 40 N. J. Law 224; *Atlantic City v. Rollins*, 76 N. J. Law 254. The recognized line of distinction is between offenses indictable at common law and offenses created by statute. In the present case the statute is applicable to cases of both classes. One who operates an automobile or motor vehicle while under the influence of intoxicating liquor is almost sure to be guilty of a public nuisance, although it is conceivable that the vehicle might be of so low a power and weight and operated at so slow a speed that it could not be properly found to be a nuisance. On the other hand, one who operates (to use the word of the statute) an ox-cart while under the influence of intoxicating liquors would be within the words of the statute, but could hardly be called guilty of a public nuisance. Since the statute applies to offenses that may not be a crime at common law, as well as offenses that may be, we must look to the facts of the case to determine whether the present proceeding is an attempt to convict Rodgers of a crime without an indictment by a grand jury, as required by the constitution, or whether it is an attempt to convict him merely of disorderly conduct,

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which may properly be done by summary proceedings before a magistrate. This question is not to be determined by the mere language of the statute. The Legislature cannot, for instance, deprive a man of the constitutional safeguard when he is charged with larceny by authorizing his prosecution and imprisonment under the disorderly act for a statutory conversion or a statutory stealing. *State v. Randall*, 53 *N. J. Law* 485. The question of a man's constitutional rights cannot be made to depend on a mere matter of nomenclature. We must look at the real case that is presented.

The proof in this case is that the defendant drove his automobile through the front window of a saloon, breaking the glass and the wooden framework of the window, and drove the front part of the car to the front end of the bar in the saloon, that he was driving his car, which was a large automobile, that he seemed to be quite excited and was "good and drunk." We think this shows a case of public nuisance indictable at common law.

20. A large automobile capable of doing what this one did is an engine of such power that when driven on the public street by an intoxicated man endangers life and limb of the public in general and is well within the definition of a public nuisance. The driver may be liable to conviction as well as for manslaughter. *State v. Campbell*, 82 *Conn.* 671, 17 *Ann. Cas.* 236; *People v. Darragh*, 126 *N. Y. Supp.* 522; or for reckless driving, *Commonwealth v. Horsfall*, 213 *Mass.* 232, 100 *N. E.* 362, *Ann. Cas.* 1914, A. 682; or for assault and battery, *State v. Shulte*, 87 *N. J. Law* 15; *affirmed*, 88 *N. J. Law* 396. Such conduct is quite as much a nuisance as the habitual sale of intoxicating liquor, as in *State v. Anderson* cited above, and habitual Sunday sales as in *Meyer v. State*, 41 *N. J. Law* 6. Where the offense to the public is so serious, the Legislature could not have intended to minimize it to mere disorderly conduct, and the attempt to so treat it deprives the defendant of his constitutional rights.

The judgment must be reversed.

