

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Plaintiff-Defendant in Error,</i> vs. GASTON CLIFFORD, <i>Defendant-Plaintiff in Error.</i>	}	<i>On Writ of Error to Supreme Court.</i>	10
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BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

HISTORY OF CASE. 20

The defendant is and always has been a farmer and was born and has always lived on the farm whereon he now resides, located in the mountainous part of Frankford township, near Culver Lake, in the County of Sussex, in this State.

At the September term, 1912, of the Court of Oyer and Terminer in and for the County of Sussex, he was indicted by the grand jury of said county for keeping a disorderly house (see indictment, page 4, state of the case). He was convicted by a jury on December 3rd, 1912, and was sentenced by the then Judge, Hon. Lewis J. Martin, on December 13th, 1912, to be confined in the State prison at hard labor for the maximum period of three years and for the minimum period of one year, and that he pay a fine of five hundred dollars, judgment being signed as of the date of conviction, December 3rd, 1912. The said proceedings and judgment were subsequently removed to 40

the Supreme Court by a writ of error, and the said conviction and judgment were reversed and the cause remitted to the Sussex Quarter Session.

On June 23rd, 1914, after a re-trial on the same indictment, the defendant was again convicted in said court, before the then Judge, Allen R. Shay, and on the 6th day of July, 1914, was sentenced to be committed to the State prison for a term not more than three years and not less than one year, and to pay a fine of five hundred dollars (see pages 8 and 9 of state of case).

The said proceedings and judgment were subsequently removed to the Supreme Court by a writ of error, and the same affirmed (see opinion of Supreme Court, pages 137 and 138 of printed state of case). The judgment of the Supreme Court was then removed by writ of error to the Court of Errors and Appeals (see assignments of error, pages 141-145 of state of case).

The defendant asks for a reversal of the judgment (affirmed by the Supreme Court) for the following reasons set forth in the assignments of error:

I.

Is the sale of cider in our State without license prohibited by statute? See Compiled Statutes of New Jersey (1910), Vol. 2, page 1767, Section 66. It provides as follows:

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“It shall not be lawful for any person, without license for that purpose first had or obtained, to sell or permit to be sold, any vinous, spirituous or malt liquors, wine, rum, gin, brandy, or other ardent spirits, or any composition of which any of the said liquors shall form the chief ingredient, except such as shall be compounded and intended to be used as medicine, by less measure than one quart, or any mixed liquors by less measure than five

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gallons; and any person so offending shall be guilty of a misdemeanor." (P. L. 1898, p. 812).

The foregoing constitutes a section of the act for the punishment of crimes (Revision of 1898). It is a criminal statute, and manifestly must be strictly construed.

If the article sold by the defendant, Clifford, was within the strict terms of the said section of said statute, strictly construed, together with the other acts of disorder specified in the indictment, then he was guilty of keeping a disorderly house. If he was not so guilty, he should have been acquitted. 10

If the cider sold by him comes within the words or terms of the quoted section of the crimes act, he was guilty, otherwise not. The proof is plain that the liquid sold by Clifford was cider. The question then arises, was it:

1. Vinous? 20
2. Was it spirituous or malt liquor?
3. Was it wine?
4. Was it rum?
5. Was it gin?
6. Was it brandy?
7. Was it other ardent spirits?
8. Was it any composition of which any of the said liquors formed the chief ingredient, and not compounded and intended to be used as medicine? 30
9. Was it sold by Clifford by less measure than one quart, or if it was a mixed liquor, was it sold by less measure than five gallons?

These questions were all answered by the evidence adduced in the trial of the case. Mr. Clifford testified as follows, as to the cider he sold, and his 40

testimony is not contradicted by the testimony of any other witness in the case.

See state of case, page 117, lines 13 to 16, direct examination:

“Q The cider which you sold to these people, what was it? A Apple cider.

10 Q You may state whether there was added to that any alcohol in any shape? A No, sir.”

Cross examination by prosecutor, see state of case, pages 121 and 122, lines 20 &c.:

“Q Now as to this cider, Mr. Clifford, you say that was apple cider? A Yes, sir.

Q No ingredients added to it? A No, sir.

Q When was this cider made? A What cider are you speaking of?

20 Q The cider that you sold in 1912, apple cider, when was it made? A In the fall.

Q What fall? A The fall previous.

Q 1911? A Yes, sir.

Q You added nothing to it of any sort? A No, sir.

Q What was done to the cider? A Put in my cellar.

Q In what way, casks or barrels? A Barrels.

30 Q How many barrels did you have there?”

Objection made by Mr. Huston and question allowed to be answered by the court.

“Q How many barrels did you have on April 1st, 1912? A I cannot tell.

Q Did you have ten barrels? A I had a lot of vinegar and I had some cider.

40 Q Did you have ten barrels of cider? A No, sir.

Q Did you have five barrels? A I think I had about three.

Q And that was the cider you sold to these men? A Yes, that I made the fall previous."

It is plain the liquid sold by the defendant, Clifford, was apple cider made by him in the fall of 1911, being the fall previous to the time it was sold.

It is respectfully submitted that this cider was not such a liquor as came within the terms of the criminal statute heretofore fully set forth and for the following reasons: 10

First: It was not a "vinous" liquor, because the term "*vinous*" is defined and generally accepted as "of or pertaining to wine," "the expressed juice of grapes when fermented." "A beverage or liquor prepared from grapes by squeezing out their juice and (usually) allowing it to ferment." (See decisions hereafter cited). 20

Second: The cider sold by the defendant did not come within the terms or classes of liquors designated in our statute. "Spirituous" means a distilled liquor; a liquor produced by distillation. Cider is not produced by distillation, nor by fermentation, and though liable to fermentation, there was no proof of such fact in reference to the cider sold by the defendant, Clifford. Cider is not within the spirit of the term "spirituous" as used in the statute. *The term cider should be construed according to its universal use and understanding.* 30
Those living in the cider producing counties of our State are familiar with the nature of the beverage so extensively made by our farmers.

Counsel deems it hardly necessary to argue that cider is not to be included in the other specified liquors mentioned in the statute, and the sale of which is thereby prohibited without a license. Counsel might add that cider cannot be included in the 40

statutory terms, "malt liquor," "wine," "rum," "gin," "brandy," or "ardent spirits" (which is a distilled liquor) nor was the cider sold a composition of any of said liquors. *The liquor sold by the defendant was cider, and that it was cider, and cider only, is not disputed. The evidence proves it was sold by the quart, and not by less measure than a quart.*

10 As to the nature of cider, see following cases:

Black in his extensive treatise on intoxicating liquors, page 18, section 18 says, regarding "Cider."

20 "It is agreed by the best authorities that cider is not properly included in either of the terms, "spirituous" or "vinous" liquors as used in the statutes. On this point it is very pertinently remarked: If the statute might include among the "vious" fluids those which come from the juice of fruits which grow on vines and bushes, and are named wine, we do not think it should be construed so liberally as to apply the term, "vinous" to the juice of fruits which grow on trees. And in common parlance, cider and beer are never called vinous liquors or wine." See *State vs. Oliver* 26 W. Va., p. 422. *Feldman vs. Morrison*, 1 Ill. App., p. 460.

30 Supreme Court of Vermont in case of the *State v. Spaulding*, 61 Vermont Rep., p. 505, said:

"Apple juice when it comes from the cider press is immediately and universally called cider by the people generally."

The Supreme Court of Ohio says in *Johnson v. State*, 23 Ohio Rep., p. 556 and 559:

40 "Making it an offence to keep a place of public resort where intoxicating liquors are

sold, 'intoxicating liquors' will not be held to include cider."

The Supreme Court of West Virginia said, in the case of *Oliver v. State*, 26 W. Va., pp. 422, 426:

"Cider is not included within the term 'spirituous liquor.' It is neither produced by distillation nor by fermentation and though liable to fermentation, and when subjected to distillation, it is capable of producing a spirituous liquor, yet the ultimate product is no more like cider than rum is like the juice of sugar cane from which it is manufactured."

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The Supreme Court of Illinois said, in the case of *Feldman v. City of Morrison*, 1st. Ill. App. (1 Bradw.), p. 460, 463:

"Cider is never called a vinous liquor or wine, and for some period of time after the juice is pressed from the apple has no intoxicating principle in it at all, and is not within the spirit of an act forbidding the sale of 'spirituous, vinous and malt liquors.'"

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The Supreme Court of Alabama said, in the case of *Allred v. State*, 89 Ala., 112:

"Fermented or hard cider, though an intoxicating liquor, is not a spirituous or malt liquor."

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The Supreme Court of Alabama said, in the case of *Brantley v. State*, 91 Ala., p. 47:

"Where an indictment charged defendant with selling spirituous, vinous or malt liquor, in violation of a local prohibitory law, it must be shown that he sold one or more of the kinds of liquor mentioned, and proof that the

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liquor sold was intoxicating is not sufficient without further proof that it was either spirituous, vinous or malt.’’

10 *There was no proof that the liquor sold by the defendant was one or more of the kinds of liquor mentioned in our statute and hereinbefore fully set forth. As to the cider sold being intoxicating, the evidence was generally against such being the case, but some proof was adduced from which such fact might be inferred, but the evidence of such intoxicating effect was very weak indeed. No skilled person having knowledge of the chemical composition of cider was examined, and there was no direct evidence adduced before the trial court, as to whether the cider sold was of any of the kinds of liquor specified by name in the statute. There was not even any direct evidence whether the cider sold by the defendant was fermented; the defendant was*
 20 *not guilty of selling the liquors specified and prohibited by the statute without a license.*

The indictment is for the common law offense of keeping a disorderly house. The indictment is drawn in the old common law form. The defendant is not charged by the indictment of selling any particular kind of liquor. It charges the defendant with “unlawfully keeping and maintaining a certain common, ill-governed and disorderly house, and in, about and near said house, for his own lucre and gain, certain persons, as well men as women of evil name and fame, and of dishonest conversations, then and on other said days and times, there unlawfully did cause and procure to frequent and come together, and the said men and women in, about and near the said house of him, the said Gaston Clifford, at unlawful times, as well in the night as in the day, then and there, then and on the said other days and times, there to remain, drinking, tippling, fighting, carousing, quarreling, swearing, using vulgar language, and making great noises

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and misbehaving themselves unlawfully and wilfully did permit and yet does permit, to the great damage and common nuisance, &c." (see page 4 of the printed case).

The indictment of the defendant does not directly charge him with selling cider or any kind of liquor, intoxicating or other liquor, but charges that persons visiting the house there remained *drinking, tippling, &c.* It contains no allegation of the unlawful sale of any kind of liquor by the defendant. 10

State v. Fox, et al., 16 N. J. L., p. 152.

The courts of New Jersey have never decided that cider was not lawfully sold without license, and the 66th section of the last revision of the Crimes act don't include it in the specified liquors requiring a license to sell. See proviso in Revisions of 1846 titled "Inns and Taverns," (pp. 585-6, sec. 37). Also Revisions 1874, title "Crimes" (p. 142, sec. 60). 20

"Provided, that nothing in this act shall be construed or taken to prohibit any person or persons from selling metheglin, currant wine or other wine or cider, made by him, her or them."

This proviso was carried in this section of the "Inns and Taverns" law until it was transferred to the "Crimes" act in Revision of 1874. It so appears for fifty-two years, viz from 1846 to 1898. If the construction given the sixtieth section of the Crimes act by the Court below is correct and the selling of cider without the usual license to sell the liquors named in the said section, then it is a criminal offense for a farmer to sell a quart of his home made cider or apple juice, or for his wife to sell her home made currant wine—either could be sent to the State prison or fined as provided in the said sixtieth section of the Crimes act. Did the legislature intend such a construction to be put upon the words of said 40

section of the Crimes act, particularly when for over fifty years it authorized such sale of cider and other fluids without license by the persons who make them?

Neither is cider included among the liquors defined as "intoxicating" in the 39th section of the "Act for the prevention of drunkenness." (See Vol. 2 C. S., p. 2800, sec. 39).

10 The Supreme Court in its decision in this case in the opinion delivered by Mr. Justice Swayze says:

20 "Under the charge of the (trial) court, it was necessary for the state to prove in addition to other facts, that the cider sold by the defendant was intoxicating. Having charged that, the judge was not required to charge (as requested by counsel for the defendant, page 131, line 30, of state of the case) the more general proposition that the sale of cider, although without a license for that purpose is not a criminal offense."

Again the opinion says:

30 "There was evidence from which a jury might infer that the cider in question was intoxicating, and since they convicted the defendant under a charge that made proof of that fact essential, *we must assume*, that they so found. The judge (trial judge) was careful to say that the illegal selling of intoxicating liquors only would not justify a conviction under the indictment."

40 The trial court (see page 128, lines 10 to 20) erred, when the judge charged the jury as follows: "If you believe from the evidence that the defendant was engaged in the business of selling *hard cider* at the time and place described in the indictment, and if you further believe from the

evidence that the *cider* he sold was intoxicating, then *I charge you that he was engaged in the sale of liquor illegally, because he had no license to sell intoxicating liquors.*" This, in the face of no allegation contained in the indictment of the defendant having sold liquor illegally, and contrary to law. This is contrary to law and the cases in this brief set forth, yet the defendant stands convicted of selling liquor illegally and contrary to the section of the crimes act heretofore fully quoted.

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Counsel for the defendant took a general exception to this charge of the trial judge as made, which was allowed and it was granted, and ordered and sealed accordingly.

See page 131 of the printed case.

There is no allegation or charge contained in the indictment on which the defendant was tried, of *any sale of hard cider or of any kind of liquor*, or the harboring of any persons, or the conduction of any business by the defendant on the Lord's day called Sunday, and the charge delivered to the jury by the trial judge was calculated to prejudice the case in the mind of the jurors against the defendant.

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Such acts as referred to in this charge of the trial judge would make the defendant liable under Section 68, page 1767 of the General Statutes. Under the charge to the jury of the trial court judge, it would appear the defendant was found guilty of offenses in violation of both sections of the crimes act of 1898, viz., 1st, selling liquor without a license; 2nd, selling liquor on Sunday, notwithstanding the indictment does not mention the word Sunday, or the unlawfully selling of cider or any other liquor thereon.

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Cider is not included in the State Statute prohibiting sale of liquors without a license. The Supreme Court refers to a decision of the Supreme Court of Pennsylvania in the case of:

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Commonwealth v. Reyburg, 16 Atl., 351.

Also see same case 2 L. R. Annotated, Vol. 2, p. 415.

Also see case of *State of Iowa v. Intoxicating Liquors*, Supreme Court of Iowa, L. R. Rep., Vol. 2, p. 408.

10 The question whether *cider* is a vinous or spirituous liquor was not submitted to the jury by the trial court judge and our statute does not include the general term "intoxicating liquors" nor is it to be included in the penal statute by inference or by assumption.

See Annotated Rep., Vol. 2, p. 415.

20 If more than one conclusion could be drawn from the evidence adduced, then it was for the jury to decide, but even conceding the competency of the evidence as to the intoxicating character of the cider (which is not conceded, for there was evidence for and against such fact), we submit under the settled rule of governing evidence in this court, it is very doubtful if there was sufficient testimony adduced upon which the verdict of the jury could rest regarding the intoxicating character of the liquid or "cider" sold by the defendant. The

30 term "cider" is not included among the specified liquors prohibited by our statute. Those liquors are specified as "vinous," "spirituous," or "other malt liquors," "wine," "rum," "gin," "brandy," "or other ardent spirits"; "cider" is simply the juice of apples. It is called *cider* universally by people generally; when distilled it becomes a spirituous liquor, viz., apple whiskey, or apple brandy, or apple jack, but without distillation it is only the juice of apples.

40 Now, Mr. Clifford testified that the cider he sold

was made in the fall previous to the period named in the indictment, which is April, 1912, and in September of that year—this fact is not denied—so the cider sold was made in the previous fall of 1911.

If the legislature had intended to include *cider* among the liquids prohibited to be sold without a license, it would certainly have so provided in the statute. Presumably no class of men understand the character of cider better than many of our legislators, because many of them are farmers, and many make cider, and those who do not do so, can hardly claim ignorance of so familiar a subject. If the statute had specified *all intoxicating liquors*, then it would have included *cider* if it was intoxicating, *but such is not the case*, and under the strict rules of interpretation of criminal or penal statute laid down by our courts, how can the *implication be lawfully made so as to include cider in the prohibited liquors specified in this penal statute?*

It is respectfully contended in behalf of the plaintiff in error that the Supreme Court erred in its conclusion of interpretation or construction of the prohibitory clause of the penal statute under consideration when it announced after reference to the said criminal statute (C. S. 1767, Section 66) (see page 138, lines 20 &c. of state of the case), "*the words seems to be meant by the legislature to include all kinds of intoxicating liquors,*" and then "perhaps the defendant might have raised the question whether *cider* even of an intoxicating character came under the language of the statute."

It is positively claimed by the plaintiff in error, that this question was raised. That it was raised by the first request to charge made of the trial court, and which the court refused to make as requested—see pages 131 and 130 of state of the case. That the question was again raised by the general exception taken to the charge of the trial judge—see page 131, line 20. That it was also raised by motion by counsel for the accused, when the state

rested its case, (see page 97) "*to strike out all evidence of the sale of cider by the defendant, Gaston Clifford, at any time during the time stated in the indictment,*" which motion was argued by counsel, and then denied by the trial judge, and exception taken by said counsel to said ruling of the court and allowed by the court (see page 97 of state of case, lines 30 to 34).

10 The words of the New Jersey statute prohibit the sale without a license of the following liquors, *vinous, spirituous, or malt liquors, wine, rum, gin, brandy, or other ardent spirits.*

State of Iowa v. Intoxicating Liquors, 2nd L. Rep. Annotated, p. 408.

State v. Forcite Powder Co., 50 N. J. L., p. 75.

State v. Fox, et al., 16 N. J. L., p. 152.

Townley v. State, 3 Harr., p. 311.

20 This is a penal statute and must be strictly construed.

In *State v. Rairoof*, 64 L., p. 413, the court says:

30 "The mere sale to minors and the fact that it is drank on the premises does not constitute the crime of keeping a disorderly house. It must appear that persons to whom liquor is so sold are permitted to remain drinking *upon the premises until they are intoxicated* or otherwise disorderly, or that they make the premises a place of common resort, where they are furnished with liquor and become intoxicated."

Rogers v. State, 58 L., p. 220.

State v. Farnum, 66 L., p. 397.

State v. Reily, 66 L., p. 399.

40 The charge of the trial court judge erroneously

instructed the jury to convict if they were satisfied from the evidence that the defendant sold *hard cider* and that it was intoxicating.

The trial judge charged, "If you believe from the evidence the defendant sold hard cider at the time and place described in the indictment, and if you believe from the evidence that the cider he sold was intoxicating then I charge you that he was engaged in the sale of liquor illegally, because he had no license to sell intoxicating liquors." 10

Under this quoted language of the trial judge the jury was instructed to convict the defendant if they believed he sold hard cider, and only hard cider, and they believed it was intoxicating. He did not mention the name of any one of the liquors specified in the statute not to be sold without a license, but mentioned a fluid or liquid *not specified* in the statute. He did not mention in his charge to the jury that said statute required such liquor should be sold by him in a quantity less than a quart or so as to come within the words of the said statute (of which fact there was no evidence) or if a mixed liquor, then it should have been sold in a quantity not less than five gallons. (See 60th section of Crimes Act and charge of trial judge.) So under the charge the jury was left free to convict without regard to the quantity in which the cider was sold. 20

"Penal statutes must be strictly construed, and not *extended by implication*." 30

Andrews v. U. S., 2 Story, p. 203.

Strinson v. Pond, 2 Curt. 502.

U. S. v. Ten Cases of Shawls, 2 Paine, 162.

Ferris v. Atwill, 1 Blatch C. C. R., 151.

"Where there is such an ambiguity as to leave reasonable doubts as to its meaning, the court will not inflict the penalty."

The Enterprise, 1 Paine, 32. 40

A penal law then shall not be extended, that is, things which do not come within the words, shall not be brought within it, by construction. The law of England does not allow of constructive offenses or of arbitrary punishment.

10 “In all cases under penal statutes, where there is a question of doubt, the party of whom the penalty is claimed is entitled to the benefit of the doubt.”

Chase v. N. Y. Cen. R. R. Co., 26 N. Y., 523.

The provisions of the 66th section of the crimes act being a penal statute, should be *strictly construed*. Its provisions impose a severe penalty upon the persons to whom it applies for its transgression.

20 Mr. Sutherland, in his great work on statutory construction says (Section 208), regarding construction of penal statutes:

30 “Such statutes are often treated as contradistinguished from remedial statutes. They are not, however, in full direct contrast. Penal statutes are those by which punishments are imposed for transgressions of the law. They are construed strictly, and more or less so according to the severity of the penalty. When the law imposes a punishment which acts upon the offender alone, and not as a reparation to the party injured, and when it is entirely within the discretion of the law-giver, it will not be presumed that it should extend further than is expressed, and humanity would require that it should be so limited in the construction.”

40 The statute does not include cider, *nor can it be included as embraced in any of the liquors it specifies*. It does not include any fermented liquors.

The indictment mentions no particular kind of liquor having been sold, but says the persons resorting to the house of defendant did “*remain, drinking, tippling.*” What is meant by “*drinking,*” “*tippling*” as used in the indictment? Do the words intend to include the consumption of intoxicating liquors? If so, then should it not state what kind of liquor was drank or used in “*drinking*” and “*tippling*”?

If the selling of cider without a license is not prohibited then it takes that important element out of this case. And the conviction of the defendant was not lawful. 10

II.

The conviction cannot stand because the court allowed proof of former convictions for the same offence over the objection of the defendant.

State of the case, pp. 118, 119. 20

An examination of the testimony shows that in his examination in chief, the defendant testified that he had been convicted of a misdemeanor at the September term in 1899 and in 1909. That was brought out by the attorney of the defendant, to forestall a cross examination by the prosecutor upon the same lines and having brought that out, under Section 1 of the statute on evidence, the prosecutor could not, upon cross examination, inquire into the nature of those convictions and the admission of that evidence was prejudicial to the defendant and absolutely illegal. 30

This question is passed upon in the case of *Leonard v. The State*, 60 Law, p. 8, where the court says:

“The state, for the purpose of showing that the defendant would be likely to commit a crime charged in the indictment, cannot offer 40

evidence to prove that he committed other crimes, although of a like nature.”

If, therefore, there is no other ground for reversal, this of itself is sufficient.

10 The prosecutor contends that this last assignment of error cannot be considered in this court because it was not raised in the Supreme Court, but this case is before this court on writ of error which brings up from the trial court and Supreme Court, the whole record in the case, and if the court cannot consider this particular assignment of error in the form in which it appears, nevertheless, it can be considered under the fifth assignment of error in the assignments filed in this court and also under the fifth assignment of error filed in the Supreme Court which is “because the whole record and proceedings and the charge of the trial court is in all other respects contrary to law.”

20 State of the case, pp. 134, 142.

In *Kohl v. The State*, 59 Law, p. 445, the court says:

“The defendant has brought the entire record of the proceedings upon the trial to this court under the act of May 9th, 1894.”

Gen. Stat., p. 1154.

30 “According to that statute, it is now our attitude to determine from the record whether the defendant has suffered manifest wrong or injury by rejection of testimony or in the charge made to the jury, or in the denial of any matter by the court, which was a matter of discretion, or upon the evidence adduced upon the trial, and is such wrong or injury appears, to order a new trial.”

40 The statute of 1898, Section 136, page 1863, of Compiled Statutes, provides that the entire record

of the proceedings had upon the trial of any criminal cause may be returned by the plaintiff in error therein with the writ of error and at the argument such entire record shall be considered and judged by the Appellate Court, and if it appear from such record that the plaintiff has suffered manifest wrong and injury either in the admission or rejection of testimony, whether objection was made thereto or not, or in the charge of the court or in the denial of any matter by the court, the Appellate Court shall remit such wrong or injury and give judgment accordingly, and order a new trial, which last mentioned statute greatly enlarges the powers of the Appellate Court to examine the whole record in the case whether exceptions were taken at the trial to the admission or rejection of evidence or not, and whether those questions were raised in the Supreme Court or not. 10

In the Kohn case, the court says: 20

“To warrant a conviction of crime, the testimony should prove the guilt of the accused beyond a reasonable doubt. If it fails to do this, that is, if it be of such a nature that when fully and fairly construed, it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused, then a conviction does manifest wrong according to our system of administering criminal law.” 30

It is submitted that, as before stated, an examination of the evidence in this case does not prove the guilt of the accused beyond a reasonable doubt, because of the fact that the evidence as before stated, discloses but one instance when disorder occurred, if it did occur, upon the premises of the defendant, and that upon this evidence, a conviction would not have followed, had there not been illegally introduced by the prosecutor, the evidence which showed 40

that the defendant had been convicted one or more times previously for a like offence, and therefore violated the principle of law which is laid down in the Leonard case above cited, and there was no relaxation of this principle simply because the prosecutor brought out the evidence upon cross examination as his rights under cross examination were not enlarged beyond those given him by Section 1 of the state on evidence, where he would have the right to ask the question of the defendant if he had been convicted of a crime before, and would have been obliged to stop there, but this question having been asked of the defendant by his own attorney, it was not necessary or required for the prosecutor to ask that question on cross examination, nor could he examine into the details of the former convictions brought out by the defendant's own counsel, and upon this point in the case, we submit that there was manifest wrong and injury suffered by the defendant and that for this, if for no other of the reasons alleged in the assignments of error, the conviction should be reversed, and a new trial granted.

Respectfully submitted,

HENRY C. HUNT,

Attorney of Plaintiff in Error.

E. L. PRICE,

Of Counsel with Plaintiff in Error.

Court of Errors and Appeals of New Jersey.

<p>THE STATE, DEFENDANT-IN-ERROR, <i>vs.</i> GASTON CLIFFORD, PLAINTIFF-IN-ERROR.</p>	}	<p><i>On Indictment, on Writ of Error to New Jersey Supreme Court</i></p>	10
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BRIEF OF WILLIAM. A DOLAN, 20
for Defendant-In-Error.

The defendant was indicted at the September Term, 1912, of the Sussex Oyer and Terminer for keeping a disorderly house in the Township of Frankford. On December 3, 1912, the defendant was convicted under that indictment. That conviction was removed to the Supreme Court by writ of error. The conviction was set aside for error in the charge. The defendant was again tried and convicted on June 23, 1914. The writ of error now pending brings up for the consideration of this court exceptions to the charge made at the second trial. 30

The only exceptions argued in defendant's brief are the first and thirteenth. The rule is well established in this State that assignments of 40

Error not presented in appellant's brief, or argued, will be deemed abandoned, and will not be reviewed by the appellant court.

Louis v. Louis, 66 N. J. L. (37 Vr) 251.

Commonwealth Roofing Co. v Palmer Leather Co. 67 N. J. L. (38 Vr) 566.

10 Loper v. Somers, 71 N. J. L. (42 Vr) 657.

Hanson v. Pennsylvania Railroad, 72 N. J. L. (43 Vr) 407.

These two assignments of error, therefore, (Nos. 1 and 13) will be the only ones considered in this brief.

I.

20 The major portion of appellant's brief is devoted to a discussion of the question as to whether the sale of cider is prohibited, by section 66 of the Crimes Act. See Compiled Statutes (1910) Vol. 2, page 1767.

In the opinion delivered in the Supreme Court when this case was considered there (State v. Clifford, 97, Atlantic Reporter 57) Justice Swayze, speaking for the court, expressly held that the illegal sale of any intoxicating liquor came within
30 the prohibition of the Section above referred to. Whether or not the liquor sold by Clifford at his resort in Frankford Township, in this County, was intoxicating, was purely a question of fact for the Jury.

Commonwealth v. Rayburg, 16 Atl., 351.

By their verdict the jury must of necessity have found that the liquor dispensed by Clifford, the defendant, was intoxicating.

There was sufficient evidence in the case to
40 warrant submitting it to the Jury to determine

whether the liquor sold by Clifford was intoxicating (see case, page 19, 22, 29, 31, 35, 41, 48, 51, 66, 68, 70).

The State urges, however, that a discussion of the question whether the liquor sold by Clifford was intoxicating is purely academic. Defendant was not being tried for the illegal sale of liquor. He could properly be convicted under the indictment and under the proof offered without any evidence of the illegal sale of intoxicating liquor. The indictment was a common law indictment for maintaining a public nuisance. 10

In a charge to the Grand Jury of this county, at the September Term, 1899, which returned an indictment against this same defendant for maintaining a disorderly house at Frankford Township, in this county, Justice Magie, in his charge to the Jury, laid down the rule applicable to such cases in the following language: 20

“So that if one incited a number of people to come together and sold, even lawfully, something that would intoxicate, and being intoxicated when thus gathered together they did then a thing that would be offensive to the public in the neighboring ground, the person who assembled the crowd, if he had reason to anticipate that that would be the result, would be liable for the disturbance of the public peace.” 30

So far as the question of selling cider was involved, in the case under consideration, it was fully and properly discussed by the court. (Case pp. 127, lines 3 to 40, inc. P. 128, lines 1 to 40 inc.) In each instance where the court characterized the sale of certain grades of cider as illegal, he also expressly charged that such sales would not, standing alone, justify a conviction under the in- 40

dictment; and expressly warned the jury that they must be satisfied that other illegal practices, in conjunction with such sales, had taken place, before the defendant could be convicted as charged. The other elements so incorporated were those expressly defined by this court in the case of the State v. Williams, 30 N. J. L. (1 Vr. 103), now generally accepted as one of the leading authorities in cases of this character.

II.

The other assignment of error discussed by the appellant in his brief deals with the cross examination of the defendant concerning his former convictions.

Aside from the fact that the manner in which this examination was conducted is not correctly set forth in defendant's brief, the State urges that the question raised cannot properly be considered in this proceeding. If any exception was taken by defendant's counsel it was not urged when the proceedings before the Sussex Quarter Sessions were reviewed in the Supreme Court, and under the rule referred to above, must be considered abandoned.

Assuming, however, that this question is properly before this court the State urges that there is nothing in the record for this court's consideration. The only question that could possibly be referred to by the appellant is that which appears on page 118 of the Case, line 36. As appears from the transcript the defendant was asked concerning his conviction in September, 1899, and this question was answered by him. The record shows that there was an objection then made by Mr. Huston. The question had already been answered, however, and there was no motion to strike out

either the question or the answer. Consequently, there could have been no error by the trial court, assuming that the question was illegal.

Even though properly before this court this assignment of error has no merit for two reasons:

1. The question objected to was not asked by virtue of the power conferred under that provision of the evidence act which permits the State, in a criminal case, to ask the defendant, on cross-examination, whether he has been convicted of crime. It was cross examination on a matter brought out on examination in chief by the counsel for defendant. 10

See Case, page 118, line 17, &c.

2. The question objected to is within the rule laid down in the case of the State v. Henson, 66 N. J. L., page 601.

In the case of the State v. Mount, 73 N. J. L., 20 582, where this rule was discussed, the court, at page 583, holds that such cross examination is proper where it goes no further than to inquire as to the nature of the crime for which the defendant was convicted, and the place where the crime was committed.

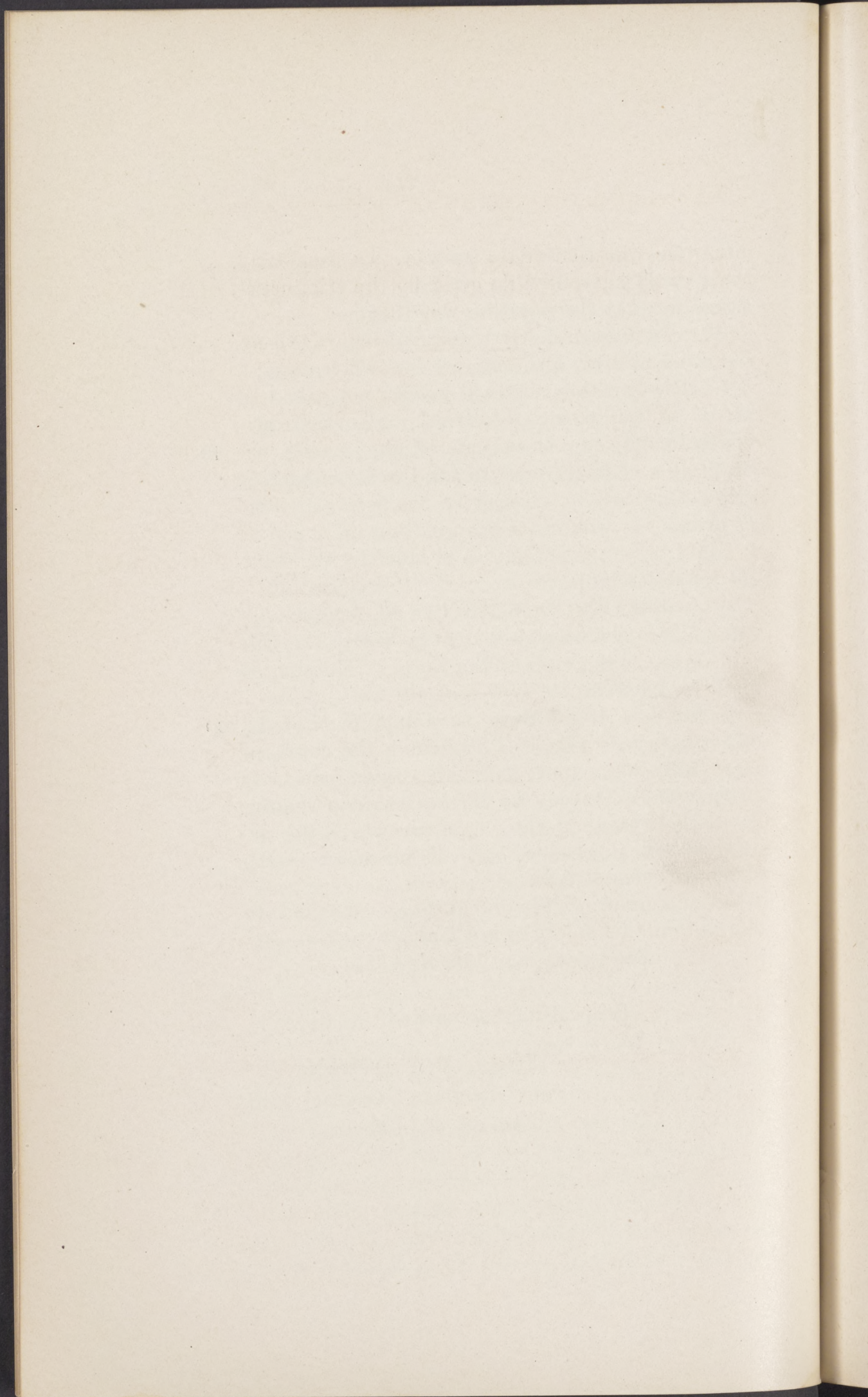
An examination of the question objected to shows that this rule was not transgressed.

See Case, page 118, line 36.

Respectfully submitted,

30

WILLIAM A. DOLAN,
Attorney for and of Counsel with
Defendant-In-Error.



NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,
PLAINTIFF—DEFENDANT IN ERROR,

vs.

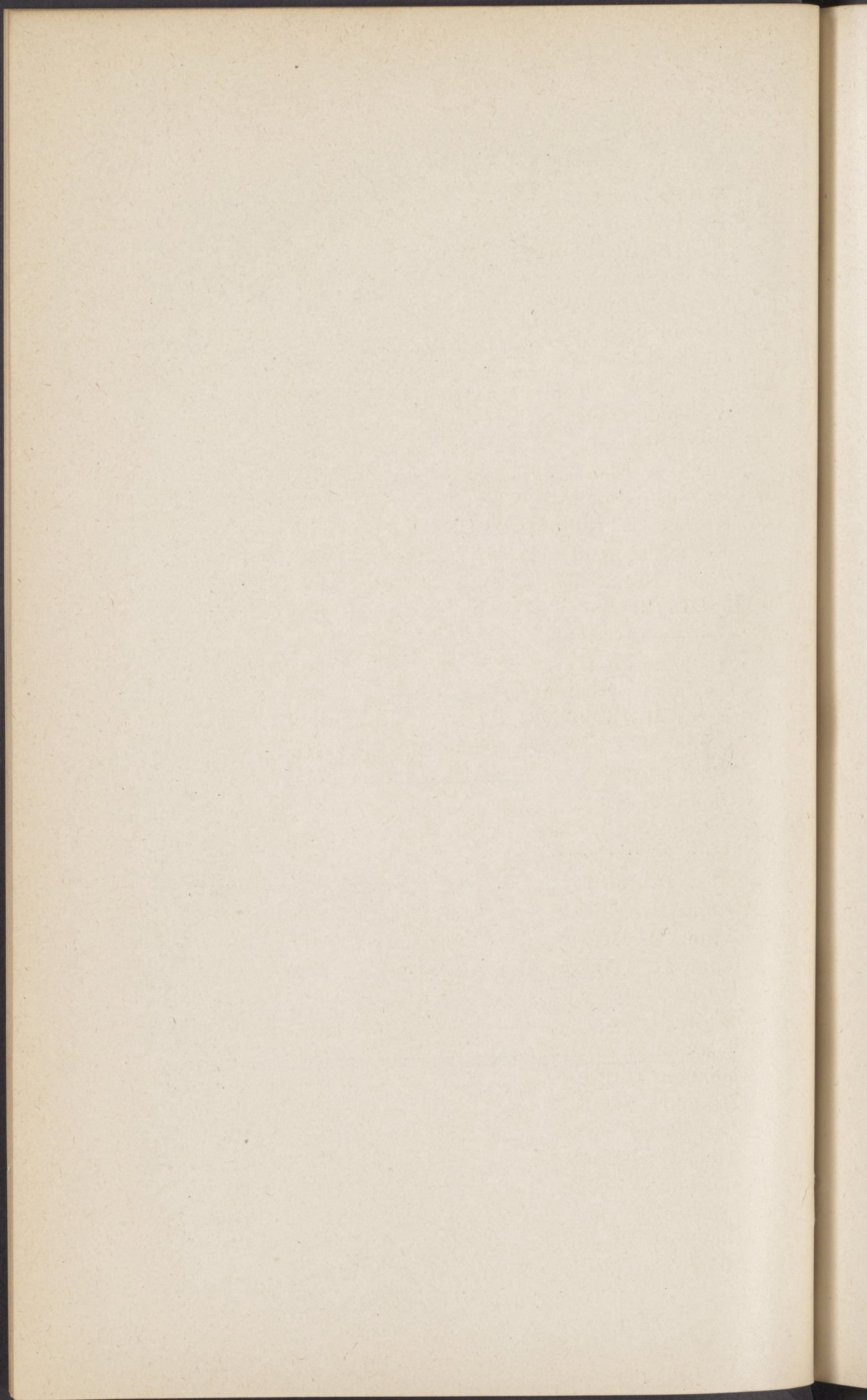
GASTON CLIFFORD,
DEFENDANT—PLAINTIFF IN ERROR,

*On Writ of
Error
to
Supreme
Court.*

STATE OF CASE

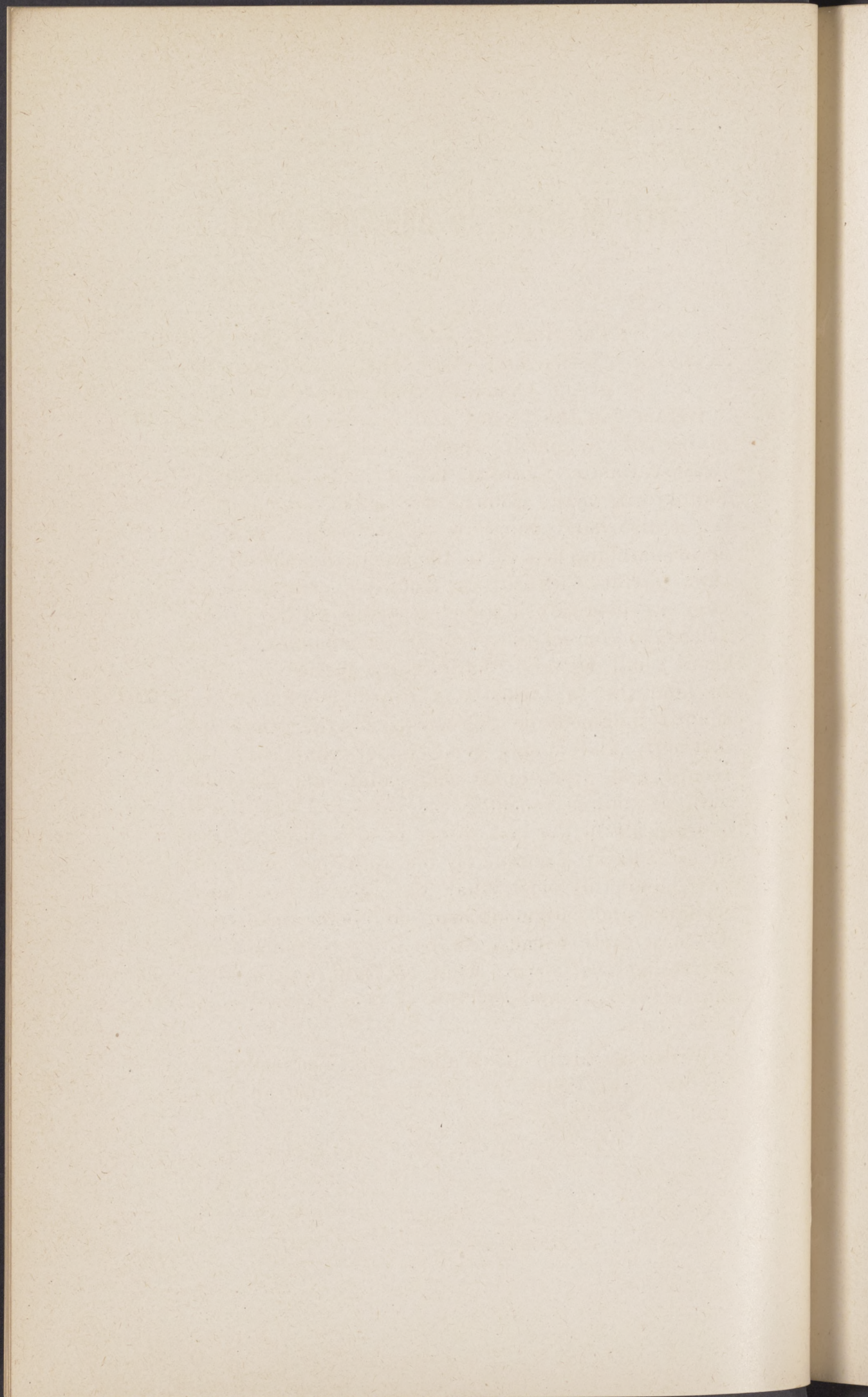
HENRY C. HUNT,
Attorney for Defendant—Plaintiff in Error.

WILLIAM A. DOLAN,
Prosecutor of the Pleas,
Attorney for Plaintiff—Defendant in Error.



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Writ of Error to Supreme Court.

NEW JERSEY, ss.:

The State of New Jersey, to the Chief
[L. s.] Justice and other Justices of our Supreme Court of Judicature, GREETING:

Because in the record and process, and also in giving of judgment upon a certain indictment against Gaston Clifford, late of the township of Frankford, in the County of Sussex, for maintaining a disorderly house in said township, manifest error hath intervened to the great damage of the said Gaston Clifford, as from his complaint we have received information, we being willing in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Gaston Clifford, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings and judgment aforesaid, with all things touching the same, to our Court of Appeals in the last resort in all causes of law, to be held at Trenton on the 15th day of April, next, and this writ, that the records and proceedings and judgment aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS, Edwin R. Walker, our Chancellor at Trenton, this 28th day of March, nineteen hundred and sixteen.

THOMAS F. MARTIN,

Clerk.

HENRY C. HUNT,

Attorney.

RETURN.

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.

10

W. S. GUMMERE,

[L. s.]

C. J.

20

30

40

WRIT OF ERROR

NEW JERSEY, ss.

{ L. S. }

The State of New Jersey to Honorable
 Quarter Sessions of the County of Sus- 10
 sex, holden at Newton, in and for said
 Allen R. Shay, Judge of the Court of
 County, of the Term of April, 1915. Be-
 cause of the record and process and also in the
 giving of judgment upon a certain indictment
 against Gaston Clifford, late of the Township of
 Frankford, in the County of Sussex and State of
 New Jersey, for keeping a disorderly house at
 said Township of Frankford, whereof, before you,
 he hath been indicted, and is thereof convicted by 20
 a certain jury of the County of Sussex, taken be-
 tween the State of New Jersey and the said Gaston
 Clifford, as is said, manifest error hath intervened
 to the great damage of the said Gaston Clifford,
 as from his complaint we have received informa-
 tion, we being willing, in his behalf, to correct the
 error in due manner, if any there shall be, and that
 speedy justice be done him, the said Gaston Clif-
 ford, command you, that if judgment be thereon
 given, then that you distinctly and openly send, 30
 under your seal, the entire records and proceed-
 ings aforesaid, with all things touching the same,
 to our Supreme Court of Judicature, to be held
 at Trenton, on the sixth day of July next, and
 this Writ, that the record and proceedings afore-
 said being inspected, we may further cause to be
 done thereupon, for correcting that error, what
 of right and according to the laws and customs
 of New Jersey ought to be done.

WITNESS, Honorable William S. Gummere, Chief 40

RETURN OF WRIT

SUSSEX COUNTY COURT OF QUARTER SESSIONS.

September Term, 1912.

10

STATE OF NEW JERSEY, }
County of Sussex, } ss.

Be it remembered, that at a Court of Oyer and Terminer, holden at Newton, in and for said County of Sussex, on the third Tuesday in September, nineteen hundred and twelve, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Lewis J. Martin, President Judge of the Court of Common Pleas in and for the said County of Sussex, according to the form of the statute in such case made and provided, by the oath of John W. Johnson, William M. Slater, George C. Valentine, Elton Morris, James W. Holton, Sanford J. Crown, James M. Banghart, Albert P. Shaw, Walter M. Boynton, Alonzo Emmans, Raymond Snyder, Loren T. Cole, Atwood B. Koyt, Whitfield Gray, John N. Calvin, Edward C. Meyer, Philip G. Huff, Linus B. Littell, Albert Drew, Nicholas Tillman, Seymour H. Lawrence, Charles E. Christie and Charles Coykendall, good and lawful men of the said County of Sussex, duly summoned, and then and there duly sworn, and charged to inquire in behalf of the State of New Jersey, in and for said County of Sussex, it is presented in manner and form following, to-wit:

20

30

Court of Oyer and Terminer in and for the

40

County of Sussex. September Term, A. D. Nineteen hundred and Twelve.

Court of Oyer and Terminer in and for the County of Sussex. September Term, A. D. Nineteen hundred and Twelve.

SUSSEX COUNTY, ss:

10 The Grand Jurors of the State of New Jersey, in and for the body of the County of Sussex, upon their oath present that Gaston Clifford, late of the Township of Frankford, in the County of Sussex aforesaid, on the first day of April, in the year of our Lord, one thousand nine hundred and twelve, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the Township aforesaid, in the county aforesaid, and within the jurisdiction of this Court, unlawfully did keep and main-
20 tain a certain common, ill-governed and disorderly house; and in, about and near said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest conversation, then and on the other said days and times, there unlawfully did cause and procure to frequent and come together, and the said men and women in, about and near the said house, of him the said Gaston Clifford, at unlawful times, as well in the night as in the day, then and there,
30 then and on the said other days and times, there to be and remain, drinking, tippling, fighting, carousing, quarreling, swearing, using vulgar language, making great noises and misbehaving themselves, unlawfully and willfully did 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
40 in such case made and provided, and against the

peace of this State, the government and dignity of the same.

WILLIAM A. DOLAN,
Prosecutor of the Pleas.

JOHN W. JOHNSON,
Foreman.

And afterwards, that is to say, at the same Court of Oyer and Terminer, holden at the Court House, in the Town of Newton, in and for the said County of Sussex, on the twenty-second day of October, being yet the term aforesaid, the said Court of Oyer and Terminer made an order directing the said indictment aforesaid and all proceeding thereon to be handed down to the Court of Quarter Sessions of said County of Sussex to be proceeded on therein according to the statute in such case made and provided. 10

And afterwards, that is to say, at the said Court of Quarter Sessions, holden at the Court House, in said County aforesaid, on the ninth day of November, nineteen hundred and twelve, being yet of the term aforesaid, before the Honorable Lewis J. Martin, Judge of the Court of Common Pleas in said County, constituting a Court of Quarter Sessions in and for said County of Sussex, according to the form of the statute in such case made and provided, cometh the said Gaston Clifford, in his own proper person, and having heard the indictment above specified read, and forthwith being demanded of and concerning the premises in said indictment, and charged upon him, how he will acquit himself thereof, the said Gaston Clifford, protesting that he is not guilty of the premises charged in said indictment, and of this he puts himself upon the country, and William A. Dolan, Prosecutor of the Pleas, of the County of Sussex, who prosecutes for the State, doth the like; 30

Whereupon, the trial of said indictment was set down to the eighteenth day of November then next 40

ensuing, at half past ten o'clock in the forenoon;

And afterwards, that is to say, on the eighteenth day of November last aforesaid, being yet the September term of said court, the trial of said indictment was further adjourned to Monday, the second day of December, nineteen hundred and twelve, at half past ten o'clock in the forenoon;

10 And afterwards, that is to say, on the second day of December, nineteen hundred and twelve, as yet of the term of September, of said year last aforesaid, at a Court of Quarter Sessions, holden at the Court House, in the Town of Newton, in said county aforesaid, before said Lewis J. Martin, said Judge aforesaid, constituting a Court of Quarter Sessions in and for said County of Sussex, cometh as well the said William A. Dolan, Prosecu-
 20 tor of the Pleas of said County, in this behalf, as the said Gaston Clifford; and the said William A. Dolan, said Prosecutor of the Pleas in and for said County, had leave to move the trial of the said indictment;

Wherefore, let a jury come, to wit, on Monday, the second day of December, nineteen hundred and twelve, and as yet of the term of September of the same year, before said Lewis J. Martin, said Judge aforesaid, constituting a Court of Quarter Sessions of said County of Sussex, of good and lawful men of said County, by whom the truth of the matter may be better known, to recognize upon
 30 their oaths whether the said Gaston Clifford be guilty of the premises aforesaid or not, because as well as the said William A. Dolan, said Prosecutor aforesaid, who prosecutes for the said State in this behalf, as the said Gaston Clifford, have put themselves upon the said jury, and the same day is given as well to the said Prosecutor aforesaid as to the said Gaston Clifford;

At which day, to wit, the second day of December aforesaid, at the said Court aforesaid and be-
 40 fore the said Judge aforesaid, cometh the said

Prosecutor of the Pleas, who prosecutes for the said State in this behalf, as the said Gaston Clifford; and the jurors of the said jury, by Edward C. Maines, Sheriff of said County aforesaid, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit: Edward Layton, Herbert C. Dodge, Frank Dunlap, Harry E. Wells, Arthur C. Tipton, Theodore F. Beemer, Henry F. Durling, Frank M. Kelleger, Charles A. Crane, Calvin F. Rose, George H. Courtright and Hiram V. Runion being called, also came, who being chosen, tried and sworn to speak the truth of and concerning the premises in said indictment; 10

And afterwards, to wit, on Tuesday, the third day of December, in the same year, being the second day of the trial of said indictment, and to which the said Court has been continued, the evidence on the part of the State having been heard, and no evidence having been offered on the part of the defendant, and the counsel for the defendant and the counsel for the State having proceeded with and concluded their respective arguments, said Lewis J. Martin, said Judge aforesaid, constituting said Court aforesaid, proceeded to charge the jury, and the jurors of the said jury retired to consider their verdict; 20

And on the same day, and in the afternoon thereof, before the said Court aforesaid cometh as well the said Gaston Clifford in his own proper person, as the said William A. Dolan, Prosecutor of the Pleas as aforesaid, and the jurors of the jury aforesaid being called, also came, and say upon their oath that the said Gaston Clifford is guilty in manner and form as he stands charged; whereupon the Court ordered that said Gaston Clifford appear before said Court for sentence on the thirteenth day of December then next ensuing; 30

And now upon this thirteenth day of December, nineteen hundred and twelve, as yet of the term of 40

September of the same year, before the said Court aforesaid, cometh the said William A. Dolan, Prosecutor of the Pleas as aforesaid, who prosecutes for the State as aforesaid in this behalf, and also the said Gaston Clifford in his own proper person, and the said Prosecutor aforesaid moved the Court that said Court proceed to judgment against him, the said Gaston Clifford; whereupon, all and singular the premises being seen and by
 10 the said Court as aforesaid fully understood, it is the judgment of the Court that the said Gaston Clifford be confined in the State Prison of this State at hard labor for the maximum period of three years and for the minimum period of one year and that he pay a fine of five hundred dollars.

Judgment signed this third day of December, nineteen hundred and twelve.

LEWIS J. MARTIN,
Judge.

20

It is stipulated and agreed by and between William A. Dolan, Attorney of the defendant in error, Prosecutor, and Henry C. Hunt, Attorney of plaintiff in error, that the above stated proceedings and the judgment rendered thereon, were removed to the Supreme Court by a writ of error, and that such proceedings were had thereon that the aforesaid conviction and judgment were reversed and the said cause was remitted to the Sussex Quarter
 30 Sessions, and that the proceedings hereinafter set out were had thereon.

WILLIAM A. DOLAN,
*Attorney of Defendant in
 Error, Prosecutor.*

HENRY C. HUNT,
Attorney of Plaintiff in Error.

And now, that is to say, on this twenty-second
 40 day of June, A. D. Nineteen Hundred and Four-

teen, at the same court of General Quarter Sessions in and for the County of Sussex, holden before the Honorable Allen R. Shay, Judge of the Court of Common Pleas, comes the said William A. Dolan, who prosecutes as aforesaid, and the said Gaston Clifford, and the jury by the said Sheriff of Sussex County, for this purpose empannelled and returned, to wit: Nicholas F. Strait, Blace Cole, Dorus Berry, Lewis R. Rude, Frederick VanOrden, Harry R. Lawrence, Albert Rose, John R. Stivers, Levi L. Clark, Clinton Bevans, Dennis J. Morris, John O. Grady, being called, were sworn upon that jury to speak the truth of and concerning the premises, and thereupon the trial of said issue was commenced and continued until the twenty-third day of June, A. D. Nineteen Hundred and Fourteen, when the jury returned into court in charge of the officer sworn to attend it, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath they find the said defendant Gaston Clifford guilty, and so they say all.

Judgment signed July 6, 1914.

ALLEN R. SHAY,
Judge.

Whereupon all and singular, the premises being seen and now by the Court here fully understood, it is, on this sixth day of July, A. D. Nineteen Hundred and Fourteen, ordered and adjudged that the said Gaston Clifford be committed to the State Prison for a term not more than three years and not less than one year, and to pay a fine of Five Hundred Dollars.

SUSSEX COUNTY QUARTER SESSION.

10 STATE OF NEW JERSEY,
 vs.
 GASTON CLIFFORD.

*On Indictment
 for keeping a
 disorderly
 house.*

Before Honorable Allen R. Shay, J., and a jury.

Appearances:

20 Wm. A. Dolan, Prosecutor.
 Henry Huston, counsel for defendant.

FRED STRUBLE, a witness on behalf of the State, being duly sworn, testifies as follows:

Direct by Prosecutor.

30 Q Where do you live? A At Branchville.
 Q Where have you lived for the past three or
 four years? A At Branchville.
 Q Do you know the defendant? A I do.
 Q Do you know where he lives? A I do.
 Q Where does he live? A Near Culver's
 Lake, a little this side of the boat house.
 Q In what township does he reside? A
 Frankford.
 40 Q Were you ever at Gaston Clifford's place,
 in the Township of Frankford, between April 1,

1912 and October 15, 1912? A I don't think so; no, sir.

Q That is two years ago this summer? A I haven't been there in two years, never stopped at his place in two years, two years last spring.

Q I want to refresh your recollection. Do you remember having been a witness before this court in December, 1912, on the trial of an indictment against Gaston Clifford? A I think that is right; yes, sir.

10

Q Do you still say you were not at Gaston Clifford's place between April 1st and October 15th, 1912? A Not to my memory; no, sir.

Q You say you remember having been a witness on the stand here in December, 1912? A Yes.

Q Do you remember what you testified to on that trial? A Yes, sir; I think I do.

Q You remember the trial at which you were a witness? A Yes, sir.

20

Q Do you recall having been at Gaston Clifford's during the summer of that trial? A The summer?

Q The trial was in the winter of 1912. I want to know whether you had been to Gaston Clifford's place before? A Early in the spring.

Q When in the spring were you there? A I think sometime in May.

Q How many times were you there? A About once I guess, I might have been there twice.

30

Q Do you recall having testified you were there several times that summer? A No, sir.

Q What day of the week did you go there, if you recall? A Different times. Once on Thursday, I went by there fishing that day.

Q Did you stop there? A Yes.

Q What did you do there? A Got a little drink of cider.

Q Where did you get it? A Got it in a vessel and took it out.

40

Objection to admission of testimony showing that any liquor was sold there on Thursday, because it can have no possible relevancy.

Q From whom did you get it? A From Mr. Clifford. I don't know as I got it myself, I think some of the other boys went and got it.

10 Q Who were the rest of the boys? A I think three of us went fishing that day. We got a jug of cider and took it up to the landing before we drank any of it.

Q Who was with you? A John Decker, Tracy Drake.

Q Which one of you got the cider, if you remember? A I don't remember.

Q Where did you get it? A At Mr. Clifford's.

Q Where was he when you got it from him?

20 A In the doorway.

Q You say you brought a jug, where did the jug come from? A We took one up with us, the last jug I ever got there.

Q Do you remember how much you paid for it? A Yes, sir.

Objected to because it is irrelevant and impertinent to the matter in hand, unless counsel can show that at that time there was a disturbance there.

30

By the Court.

If he fails to show there was a disturbance of the peace I will charge the jury there is no offense.

Q How much did you pay for it? A Forty cents.

Q How much did you get? A Four quarts.

Q What did you do with it after you got it?

40 A Drank it up.

Q You helped drink it up? A Yes.

Q Can you say what effect it had on you? A I can't say whether it was the whiskey or the cider, we had a pint of whiskey.

Q What effect did it have on you? A We felt pretty good, we fished all night.

Q How were you when you went there? A We had had a few drinks of whiskey before we went there.

Q How many? A Two or three. 10

Q What kind of cider was it, hard or sweet? A It tasted pretty good.

Q Can you answer the question whether it was hard or not? A It was very pleasant, we drank it and it tasted very good.

Q Do you recall whether you were there on any other occasion during that summer? A No, sir.

Q You said you thought you were there possibly twice, when was the other time? A It may have been some time in June, or along there. 20

Q What day of the week was that? A I don't know.

Q What time of the day did you go there that time? A About the middle of the forenoon.

Q Who went with you? A I don't know.

Q Can you give me the names of some of them? A I have forgotten who was along.

Q Who did you see there? A Mr. Clifford and his brother, his family and his housekeeper. That is all. 30

Q Did you see anyone else there that day? A Only the boys we met, I have forgotten who was along.

Q How many went there with you? A I think three of us.

Q When you got there where did you go first? A Stopped there.

Q The three of you? A Yes. 40

Q Do you mean you stopped at the house? A Yes, sir.

Q What did you do there? A We didn't do anything crooked.

Q What happened there at the house? A Nothing I know of, no more than we had a drink of cider.

Q Did you all have a drink? A Yes, sir.

Q Where did you get that? A He brought
10 it out to us.

Q Did you pay him for it? A Yes, sir.

Q How much? A Twenty cents.

Q For three drinks? A We got two quarts.

Q What did you get that in? A Two-quart
measure, and drank it out of a glass.

Q What did you do after you had your drinks
of cider? A Went on up to the lake.

Q You can't recall who was with you? A No,
20 sir. I have been there so often I have forgotten
who was along.

Q What effect did the cider have on you that
day? A Not a bit.

Q What kind of cider was it? A Pretty good.

Q New cider, sweet cider? A I could not
tell.

Q You could not tell whether this was hard
or sweet cider? A I could not tell, I don't know
how old it was.

Q What did you think about it? A It was
30 pretty good.

Q What do you mean by "pretty good"? A
It tasted good.

Q In what way? A It would taste good if
anyone was dry.

Q Did it make you feel good? A With the
rest we had to drink.

Q What other times, if any, were you there
during that summer? A No other time.

Q Do you recall testifying at the trial in De-
40 cember, 1912, you were there with four or five

and got a gallon of cider, and went back to a place near the barn and stayed there nearly all day? A No.

Q Do I understand you don't recall testifying about that? A No, sir; never behind the barn.

Q Anywhere? A I said ice house.

Q (*By the Court*) After you got this cider, what did you do? A Went down back of the ice house and drank it up.

10

Q Who was with you? A A dozen of us.

Q Can you give me the names of them? A John Decker is about all I can remember.

Q When was this, as near as you can recall? A Very near two years ago.

Q Do you remember what month it was in that year? A I can't recall the month.

Q Was it in the summer time? A Early in the spring.

Q Was that a week day or Sunday? A On Saturday.

20

Q What did you do down by the ice house? A Drank the cider and talked a little, and told some stories.

Q You say there were about a dozen? A Eight or ten.

Q Do you remember whether it was before or after April 1st? A I think before.

Q (*By the Court*) Were you there at any other time than this time you speak of about two years ago before the first of April. What do you mean by testifying that it was before April 1st. A It was.

30

Q That ten or twelve people were there? A I told you it was the last time I was down behind the ice house.

Q How do you fix it as before April 1st? A I was there.

40

Q Don't you remember testifying here in 1912 it was after April 1st? A I told you I was there in June.

Q You testified you were there in June by the icehouse with these men? A I said before April 1st, didn't I?

Q I ask you if you don't remember you said then it was after April 1st? A I told you I was there after April 1st.

10 Q Didn't you testify that after April 1st you were there on one Sunday with several men, whom you mentioned near the icehouse drinking cider?

Objected to by counsel for defendant.

Objection sustained.

Q You stated you were there, near the icehouse, with about a dozen others, about two years ago, is that right? A Yes, sir.

20 Q (*By the Court*) At the time you were there in June, was anyone with you? A Two fellows.

Q (*By the Court*) That is the time you testified you bought a gallon of cider and went fishing? A Yes, sir.

30 Q (*By the Court*) And the other time you have testified about there were ten or twelve people with you and you went down around the icehouse, that was before April 1st? A Yes, sir.

Q What kind of a day was that? A A nice day in April. We were not on Mr. Clifford's in April.

Q You say it was a nice day in April, are you sure about that? A I ought to know, I was there.

40 Q Who was with you on that day? A They were not altogether with me, but I met them over there.

Q You say you were there on some nice day in April about two years ago, and you were there in the morning. Do you remember what day of the week that was? A On Sunday.

Q What time did you get there that day? A About ten o'clock.

Q Did anyone go with you? A Yes, two fellows with me.

Q Who were they? A Herbert Decker was one.

10

Q Can you give me the name of the other
A I know there were three of us.

Q When you got there, where did you go first?
A To the house.

Q When you got there what did you do? A Got some cider and went back over back in the woods.

Q How much did you get? A A gallon.

Q From whom did you get it? A From Mr. Clifford, he brought it out to us.

20

Q What did he bring it out in? A A jug.

Q What did you do with it after you got it?
A Drank it up.

Q Where? A Down by the icehouse.

Q How far from the house? A About 200 yards.

Q Did you met any others there? A Yes, some other fellows.

Q Can you name some of them? A I met so many I can't tell you.

30

Q Mention some you remember? A I met Harvey Drake, Tracy Drake and different ones.

Q Don't you remember any others? A I saw Boyd Ely go through there.

Q Did he stop there? A He was looking for trouble.

Q Who else did you see there? A I saw quite a lot stop up there.

Q Who were the other boys over by the ice-

40

house? A Five, six or seven. I can't remember their names.

Q What were they doing? A Helping drink that gallon of cider.

Q How long did it take? A Five minutes.

Q Then what did you do? A Went on up to the lake.

Q How long did you stay there that day you were there with the dozen other fellows? A
10 From a half to three-quarters of a hour. We were down below the icehouse, we were not at Clifford's.

Q What became of the other boys? A One went up to Shay's store and got some cheese and crackers.

Q Then what did you do? A Went on up to the lake.

Q Did you come back to Clifford's that day? A No, sir.

Q Didn't you testify you did come back to Clifford's that day and remain there until along in the afternoon? A I didn't testify to that.

Q Do you remember testifying you were to Mr. Clifford's and remained all day? A Not at this time you have asked me about.

Q I want the days about two years ago. A I testified I went up there and got a jug of cider and went on fishing.

Q You testified about June, May and April? A Yes, sir.

Q And in April you went down by the icehouse? A Yes, sir.

Q Were the other boys there when you got there? A Yes, sir.

Q Did any remain after you went away? A We all went away together.

Q The dozen of you? A I should say eight or ten.

Q Did anyone else have cider when you got there? A No, sir.

Q After you drank this cider, you all went to Shay's? A And got some cheese, and I think some sardines.

Q Do you remember any other occasion that summer when you were at Gaston Clifford's? A No, sir.

Q You don't remember any? A No, sir.

Q What kind of cider did you get in April? A Pretty good cider.

Q What do you mean by "pretty good cider"? A Pretty near right. 10

Q A little tang to it? A A little like birch beer, but not the same effect.

Q Was it like birch beer? A The effect wasn't.

Q What effect did it have? A It didn't make me drunk.

Q Did it make any of the others drunk? A We had a little beer with us. It had a little effect by drinking that with whiskey. 20

Q It made you feel like what? A We didn't get helpless or anything like that.

Cross examination by Counsel for Defendant.

Q You say you went down back of the ice-house? A Yes, sir.

Q You may state whether you were on Clifford's premises or not? A I was not.

Q You testified that once on a Thursday you and two others went to Mr. Clifford's and got some cider in a jug, and went on up the pond? A On Tuesday. 30

Q You say you had three drinks of whiskey before you went? A Yes.

Q You had some whiskey with you after you had the cider? A Yes, a pint.

Q You say you were there other times, did you have any whiskey with you? A I don't think so. 40

Q This time down back of the icehouse you had some whiskey with you? A A quart.

Q You drank the whiskey with the cider? A Yes, sir.

Q Are you certain that was in April? A I think so, just before the first day of April.

Q What month comes before April? A March.

Q Was this in April or March? A In April.

10 Q You drank the cider among you, and then went on up to the lake? A Yes, sir.

Q That was all of it? A Yes, we didn't even cross his premises, we went up the macadam road

FRED SPANGENBURG, a witness on behalf of State, being duly sworn, testifies as follows:

Direct examination by Prosecutor.

20

Q Where do you live? A Branchville.

Q How long have you lived there? A About fourteen years.

Q Do you know Gaston Clifford? A Yes, sir.

Q Know where he lives? A Yes, sir.

Q Were you ever there between April 1st and October 15th, 1912? A Yes, sir.

30 Q How many times were you there during that period? A That was quite a while ago, since I have been there.

Q You say you recall having been there. What day of the week did you go there, if you recall? A I made a good many trips there.

Q What did you go there after? A Milk, butter and chickens.

Q Did you go there for anything else? A Nothing particular.

40 Q Did you ever get anything else? A Yes, sir.

Q What? A Cider.

Q How many times did you get cider there between April 1st and October 15th? A I could not tell you that.

Q More than once? A Yes, every time I went there and felt like having a drink I would get it.

Q Were you ever there on Sunday? A I would go there Sunday for milk the same as week days.

Q Have you ever been there on Sunday and got cider? A Yes, sir. 10

Q Have you ever seen anyone else there on Sunday? A No, sir; not on Sunday.

Q Any other days have you seen people there getting cider? A Yes, sir.

Q Who have you seen? A Abe Crawn, Simeon Crawn.

Q Who else? A Thomas Bowman.

Q Give us the names of all you remember having seen get cider there that summer? A That is a long time, as long as I can remember is about two weeks. 20

Q Who else have you seen there? A Herbert Decker and Fred Struble.

Q Who else? A I don't remember, it is so long ago.

Q Where did you get this cider? A I bought it from Mr. Clifford.

Q Where was he? A In the kitchen.

Q Did you see where he got it from? A No, sir. 30

Q How did you buy it, in what quantities? A I would get it in my milk pail, drink it up and wash the pail out.

Q How much would you get at a time? A half a gallon.

Q Who would help you drink it? A Charles Hannis.

Q Who else? A George Cohen. 40

Q What kind of cider was it? A I don't know anything about that, I supposed it was apple cider.

Q Was it sweet? A It wasn't so bad, but I could drink it all right.

Q Do you mean it was hard? A It didn't hurt me any. It always had more effect on me before I went.

10 Q You mean you had been drinking before you went there? A Yes.

Q Generally, when you went there, you were a little under the weather? A I went for a chaser.

Q What was your idea about drinking too much? A There wasn't much business about it.

Q Half a gallon would not effect you? A No, sir; I would not be afraid to drink half a gallon.

20 Q It would have some effect on you? A No, sir.

Q None at all? A Not for me; no, sir.

Q Where were these others you saw drinking cider? A Over across the new road, over back of the Owlie barn.

Q How many have you seen there at any one time? A Four or five.

Q What were they doing there? A Drinking cider.

Q Anything else? A No, sir.

30 Q Where is the Owlie barn? A It is burned down now.

Q How far from the house? A Ten minutes walk, if you travel pretty fast.

Q How many times have you seen men there drinking cider, during 1912? A Three or four times.

40 Q Who all have you seen there? A L. Sylcox, Shorty Sylcox, W. Crown, A. Crown. A number of them worked around the woods. It is quite a while ago.

Q Did you ever see Fred Struble? A Yes, sir.

Q Herbert Decker? A Yes, sir.

Q T. Campbell? A Yes, sir.

Q John Riker? A Not at that time, but I have seen him.

Q Jesse Spargo? A I haven't seen him in a good while.

Q George Heater? A No.

Q T. Drake? A Yes.

10

Cross examination by Counsel for Defendant.

Q You say you saw some of the people over along where the new macadam road is? A Yes.

Q On beyond across the road? A Yes, sir.

Q You don't remember just when that was?

A No, sir.

Q There are woods between that place and where Mr. Clifford lives? A Yes, sir.

Q At this time the woods were all in leaves? 20

A Yes, sir.

Q Could you see his house from where they were? A No, sir.

MRS. ANNIE SPANGENBURG, a witness on behalf of the State, testifies as follows:

Direct examination by Prosecutor.

30

Q Where do you live? A Branchville.

Q You are the wife of the man who was on the stand just before dinner, Fred Spangenburg?

A Yes, sir.

Q Do you know where Gaston Clifford's place is? A Yes, sir.

Q Were you ever there or by there, between April 1st, and October 20th, 1912? A Yes, two years ago.

40

Q How many times were you there that summer? A I can't remember, I have been there several times.

Q What days of the week did you go there particularly, if you know? A On Sunday the most.

Q Please tell this Court and Jury what you saw when you went there? A I went there for my husband.

10 Q Did you find him there? A Yes, sir.

Q Where did you find him? A I found him once in the cellar.

Q Was anyone else there? A Yes, several people there.

Q What were they doing, if you know? A I supposed drinking.

Q (*By the Court*) Did you observe what they were doing there? A Standing at the bar.

20 Q What did you notice, if anything, at the several times you were there? A I heard them cursing and swearing at different times.

Q About how many times, different times, did you notice that? A I can't remember.

Q Give us your best recollection? A I can't remember.

Q You say you went there after your husband. What was his condition? A He was drunk when he came from there.

30 *Cross examination by Counsel for Defendant.*

Q (*By the Court*) This was on Sunday you went there? A Yes.

Q (*By the Court*) Were you there after your husband more than once? A Yes.

40 Q (*By the Court*) What did you go there for the different times you have mentioned? A I generally went there to see Gaston's housekeeper, I knew her.

Q (*By the Court*) Were there any other men there on the occasions when you went there to see the housekeeper? A No.

Q (*By the Court*) Then the only time you saw men there standing at the bar was when you went after your husband? A Yes.

Q (*By the Prosecutor*) Did you ever see any men around there at any other places? A At the doorway.

10

Q What were they doing? A Standing there.

Q Who were they? A Sam Crown, John Decker and others.

Cross-examination by Counsel for Defendant.

Q You say you were there one time when you saw them in the cellar? A Yes.

Q What month was that? A I can't tell you, I can't remember.

Q What year was it? A Two years ago, in 20 the summertime.

Q Was it in June? A I can't remember.

Q Was it in July? A I don't remember.

Q Was it in August? A I don't remember.

Q You were a witness here on the trial of this case in December, 1912, were you not? A I can't remember what date I was here.

Q You were here at the trial against Mr. Clifford? A Yes, it was two years ago.

Q Didn't you testify then you went after your husband just before that trial? A Yes, I went after him. 30

Q And that was the time you went to the cellar? A Yes.

Q Was that just a short time before the trial here? A Yes, I guess it was.

Q Did you go into the house? A Yes.

Q I mean in the cellar where you saw these men? A I went to the cellar door, but not inside.

40

Q Did you get your husband? A Yes.

Q Is that the time you say he was intoxicated, when you took him away? A Yes.

Q Was that the only time you took him away intoxicated? A Yes, that is the only time I went after him.

Q That was just before you came down here to tell about it? A Yes.

10 Q Was that the time you saw Simeon Crawn and Harvey Decker on the lawn? A I saw them another time.

Q When was that? A I don't remember when it was, but I saw them when I went by.

Q You went along the road and Simeon Crawn and Harvey Decker were standing on the lawn there? A Yes.

Q Were they doing anything? A No.

Q You passed there frequently? A Yes.

20 Q Did you, at any other time, see any other disturbance? A No.

Q You say this time you were down there just before the other trial, you stepped in the cellar door, and these men were there in the cellar? A Yes.

Q Was that the time you say you heard some of them swearing? A Yes.

30 Q Which one of them swore? A I can't tell you which one. I didn't pay much attention, but I heard them swear.

Q Where was Fred, your husband? A He was outdoors.

Q He wasn't in the cellar? A No.

Q When you went there Fred was outdoors? A Yes.

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

40 Q When you saw your husband standing outside, how did you come to go down cellar? A That was another time.

Q When was the other time? A I don't remember.

Q When you went there after Fred and stepped to the cellar door, Fred wasn't there? A Yes.

Q Where was he? A At the bar.

Q You saw him there another time? A Yes.

Q Fred went there after milk, didn't he? A Yes.

Q Nearly every day? A Not every day.

Q Frequently? A Once in a while he would go there after milk. 10

Q How often? A I don't remember how often.

Q Once a week? A Twice a week.

Q Did you go after him every time he went? A No.

Q (*By the Court*) Can you recall whether it was warm or cold weather when you went after your husband that time? A Warm weather. 20

Q (*By Prosecutor*) How many men did you see standing around the bar that day? A About five or six.

Q (*By Prosecutor*) You said in answer to Judge Huston, that you only went down cellar for Fred once. Did you ever go after him when he wasn't down cellar? A Yes, I have been there, but not to the cellar door.

Q (*By Prosecutor*) How many other times did you go after your husband during the summer? A I don't remember how many times. 30

Q (*By the Prosecutor*) Give us the best recollection. More than once? A Yes.

Q (*By Prosecutor*) More than twice? A Yes.

Q (*By Prosecutor*) More than three times? A Yes. 40

Q (*By Prosecutor*) More than four times? A I guess that would be all I went for him.

Q When you were sworn here in court, didn't you testify the time you went there and looked into the cellar and saw those men there, that it was just before the trial here? A Yes.

10

CHARLES HANNA, a witness on behalf of State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A With Asher Snook.

Q Where is that? A Culver's Lake.

Q Do you know Gaston Clifford? A Yes, sir.

20 Q Do you know where he lives? A Yes, sir.

Q Were you ever there between April 1st and October 20th, 1912? A Yes, sir.

Q When? A I know it was before the trial over here, it was during that summer.

Q How many times did you go there? A I don't think over once.

30 Q Who went with you? A Lester Sylcox. I didn't go to the house, but over to the Owlie barn. I haven't been to the house in three or four years.

Q After you and Lester got to the barn, what did you do, if anything? A We sent and got a jug of cider.

Q Who got it? A I think Lester got the first jug.

Q What did you do with it? A Drank it up.

Q Where is this Owlie barn? A This side of the macadam.

40 Q How far from Clifford's house? A 200 yards, I think.

Q What day of the week was that? A On Sunday.

Q What time of the day did you go there? A I think about ten o'clock or eleven o'clock, somewhere around that time.

Q In the forenoon? A Yes.

Q You think Lester got the first jug? A Yes.

Q What happened after you got the first jug drank up? A Then we wanted a little more.

Q Did you get any more? A Yes.

Q Who got that? A I don't know, there were several of us there. 10

Q Who else was there? A Simeon Crawn, Abie Drake—

Q Did some one of the party go for the cider? A They must have, for we had three or four batches.

Q There all at one time? A We could not drink it all at one time.

Q What did you do after one was empty? A Got another. 20

Q What was your condition when you went there that day? A Fair, in pretty good shape.

Q Did this cider have any effect on you? A Quite a little.

Q What effect did it have? A I fell asleep.

Q Did it have any effect on you at all? A Cider will make you full if you drink enough of it.

Q Did this cider make you full? A Yes.

Cross examination by Counsel for Defendant. 30

Q You say you started out with Lester Sylcox? A Yes, sir.

Q From where? A Asher Snook's.

Q Did you have anything to drink before you went? A Nothing but water and tea for breakfast.

Q You and Lester went down to this Owlie barn? A Yes.

Q That is over on the other side of the ma- 40

cadam road? A On the left-hand side going up from Branchville.

Q When was this? A In the summer before the other trial.

Q How do you know it was that year? A Because I went down to Hopkin's to work with Lester.

Q Wasn't it during 1911? A No, sir.

Q Wasn't it during 1913? A No, sir.

10 Q How do you fix the date? A I went to Swartswood to crosscut.

Q Were you working for Lester then? A He came after me to help him.

Q Where did he live? A He had a shanty down at Swartswood station.

Q You and he started from Asher Snook's? A Yes, sir; I was going down to help Lester crosscut.

20 Q You started for Swartswood station? A Yes, sir.

Q Where is that? A Down below Branchville, toward Fredon.

Q You got down to the barn and stopped there? A Yes.

Q How did you come to stop there? A We wanted cider.

Q Who was there? A No one when we got there.

Q Lester went over and got the jug of cider?

30 A Yes.

Q Did you drink up that jug? A Yes, I think we drank that alone.

Q How long did it take you? A From three-quarters to an hour.

Q How much was in the jug? A Four quarts.

Q Then he went away somewhere and came back with another jug? A Not to my recollection.

Q I thought you said he got it? A I said we had three or four jugs.

40 Q Who got it? A I forget.

Q Who got the third jug? A I could not say.

Q Do you know there was a third jug? A I know by the money I used up.

Q Did you pay for them all? A I think I did.

Q How much did you start with? A Eight dollars.

Q How much did you have when you got through? A Five dollars.

Q Then you spent three dollars for cider? A I think I did. 10

Q Did you have anything else to drink besides cider? A No, sir.

Q Didn't some of the boys have some whiskey? A Not to my recollection.

Q You say you fell asleep? A Yes, sir.

Q It made you a little sleepy? A Yes.

Q Was it a warm day? A Yes.

Q Were you inside or outside of the barn? A When we drank it we were outside, but toward morning we got inside. 20

Q Did you drink cider from 10 o'clock in the forenoon until the next morning? A No, I slept.

Q When did you go to sleep? A I could not tell, I suppose I got pretty drunk and went to sleep.

Q How long after you got there did you remain awake? A You will drink cider right on until you go to sleep. 30

Q Wasn't this drunk left over from the night before? A I don't think so.

Q You had some drink the night before? A It is so long I forget.

Q You never went over a Saturday night without liquor? A I am not always drunk.

Q You do every Saturday night? A Not every Saturday night.

Q That Saturday night you were pretty drunk?

A Not to my recollection. 40

Q You are not sure? A No, sir.

Q You had no sleep the night before? A I generally go to sleep; I would sleep if I was full.

Q Do you know what time you got up that morning? A I could not say; I got up for breakfast.

Q You don't remember having breakfast? A Yes, I do.

Q What time? A About 7:30.

10 Q You don't remember the time? A I had no occasion to keep account of it.

Q Was Lester Sylcox there for breakfast? A No.

Q What time did he get there? A About 9 o'clock.

Q Don't you know? A I know when he got there, but I didn't keep the hour in my mind.

Q What time did you leave Asher's? A I don't know.

20 Q You don't remember what time it was at all; you don't remember going down to the barn? A Yes, I do.

Q What makes you remember that? A I don't think I would run into the barn and not see it.

Q Do you remember anything that happened that day? A Yes, sir.

30 Q What? A We walked over and stood under the maple tree. We said to each other, lets have a jug of cider. I said, you go and get it and I will pay for it.

Q That is the last you remember? A I know further than that, but I don't know who got the other jug of cider.

Q Who else was there? A No one but us.

Q Then after that you don't remember anything? A I remember Simeon Crown and Abbie Drake coming there.

Q When did they get there? A Afternoon.

40 Q How do you know it was after noon? A I could tell.

Q How long had you been there? A Probably two hours.

Q Don't you know? A I didn't keep any time.

Q You didn't have any watch? A Yes.

Q You didn't look at it? A Not every time I took a drink of cider.

Q You got drunk about every day? A They might say so.

Q You don't remember anything that happened that summer? A Yes. 10

Q Your memory is good? A Yes.

Q What happened the Sunday before that? A I don't remember.

Q I thought you could remember? A I don't have to remember everything.

Q What happened the second Sunday before that? A I can't tell.

Q What happened the next Sunday after that? A I helped kill a hog. 20

Q Where? A Down to Swartswood, Daddy Bales and I, it took about two hours.

Q What day was that? A Sunday.

Q Don't you remember what month? A I don't remember.

Q Don't you remember what month you went to Swartswood? A No, sir.

Q You don't remember whether it was August or September? A I never kept account of it. 30

Q It might have been October? A It wasn't as late as that.

Q Don't you remember we had some very warm day in October that year? A We had in December, too, I guess.

Q How long did you remain at Swartswood? A About three months.

Q What time did you leave Swartswood? A I could not tell.

Q Summer or winter? A I think in the fall. 40

Q Have you had anything to drink today? A
No.

Q Not a drop? A No, sir.

Q Pretty long day? A Yes.

Q (*By Prosecutor*) How long were you over at
the barn that day? A It must have been 2 o'clock
in the morning when we left.

10 Q (*By the Court*) Who remained there over
night with you? A Lester Sylcox.

Q (*By the Court*) How many men were there
that day at the barn? A A. Drake, A. Crown,
Simeon and myself.

Q (*By the Court*) How many trips for cider
were made that day? A I think three or four as
near as I can tell.

20 Q (*By Court*) Did you pay for them all? A
I think so.

Q That was what you called the Owlie barn?
A Yes.

Q It is on Frank Allen's land? A Yes.

Q You had not been at Mr. Clifford's for a
year or more before that? A No, sir.

LESTER SYLCOX, a witness on behalf of the
State, testified as follows:

30

Direct examination by Prosecutor.

Where do you reside? A About a mile and a
half above Branchville.

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

Q Do you know where he lives? A Yes, sir.

Q Were you ever there between April 1st and
October 20th, 1912? A Yes.

Q How many times? A Once.

40 Q When was that? A Either the last of

August or the first of September, somewhere around there.

Q What day of the week was that? A On Sunday.

Q Who went with you? A I went alone.

Q Who did you find there? A Gaston.

Q What time of day did you go there? A About 8:30.

Q What did you do after you got there? A Bought a jug of cider. 10

Q What did you do with that? A Took it to the Owlie barn.

Q What did you do with it there? A Charles Hanna and I drank it.

Q After you drank it up what happened? A I only remember three being there that day. One of them went and got a jug of cider. Fred Spangenburg and Fred Struble were there.

Q How much did you pay for this cider? A Forty cents per gallon. 20

Q Where did you get the jug from? A I brought it from Gaston's.

Q Did you go inside of the house that day? A I was inside of the cellar.

Q What is the arrangement down there? A There is nothing more than a table, or a long stand, and a bench or two.

Q Anything else down there? A I didn't see anything.

Q Did you see where he got the cider from? A I didn't. 30

Q Was it in the same room? A I didn't see him get it in the same room.

Q What was your condition when you went there? A I had drunk some the night before and didn't feel good. I was rather tired.

Q What effect did it have on you? A It revived me.

Q Were you there at any other time that summer? A No, sir. 40

Q How long did you stay there that day, at the barn? A Until some time in the night.

Q Who else did you say you saw there that day? A Fred Struble, Fred Spangenburg, Simeon Crawn. I also saw Abe Crawn in the morning, but not later.

Cross-examination by counsel for Defendant.

10 Q This was in what is called the Owlie barn?
A Yes, sir.

Q It is on the Allen land? A I believe he owns it.

Q You went down there with Charles Hanna?
A Yes.

Q From Asher Snook's? A Yes, sir.

Q How was Charles that morning? A I think he was all right.

Q Did he seem quite sober? A He seemed so.

20 Q He wasn't entirely sober? A I could not say about that, I thought he was pretty straight.

Q How long have you known Charles? A Eight or ten years.

Q You and Charles went down to the Owlie barn, and you went and got a jug of cider, and then came back to the barn, and you and Charley sat down and drank some of the cider? A Yes.

30 Q Did you and he drink it all? A I don't know whether anyone came before that jug was gone or not.

Q How long did it take you to drink that jug?
A Not over an hour, as dry as I was that morning.

Q You were a little under the influence that morning, and the cider brightened you up some?

A It did.

Q Had you seen Charley the night before? A Yes.

Q Where? A Asher Snook's barn.

40 Q What were you doing there? A I was wait-

ing for Charley to come back with me the next morning.

Q You stayed in the barn that night? A Yes.

Q You had a bottle of whiskey? A Yes.

Q Did he take a drink? A I think he took a drink or two.

Q How much did you have? A A pint.

Q Did you drink that outside of the barn or inside? A Outside.

Q After you drank the cider did you go inside or remain outside? A Outside. I think he laid on the grass. 10

Q Did he go to sleep? A I don't know.

Q Then some other people came? A Yes.

Q Did Abe Crawn come along? A I don't know when he came along. I didn't see him until we started home.

Q Did you see Fred Spangenburg? A Yes, sir.

Q Did Fred stay with you? A No. 20

Q Did anyone stay, except you and Charley? A We were the only ones who put up there.

Q Inside of the barn? A Yes.

Q Over night? A Yes.

Q What time did you go to bed? A I don't know.

Q Was there heat in there? A No.

Q You slept on the ground? A Seeds and stuff. 30

Q (*By Court*) Where did you get the jug from you got the cider in? A From Gaston.

Q Do you know whether he furnishes jugs or not? A No.

Q Did you pay him for it? A Forty cents.

Q For the cider and jug, too? A I think I asked him to borrow it.

Q Did you ever take it back? A I never did. 40

HERBERT DECKER, a witness for the State, being duly sworn, testifies as follows:

Direct examination by Prosecutor.

Q Where do you live? A An eighth of a mile out of the borough limits.

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

Q Were you ever there between April 1st and October 20th, 1912? A Yes, sir.

10 Q How many times? A I used to go by there when I was driving for Canfield, stop and get a drink of cider and go on and get my passengers.

Q Did you ever stop there during the summer of 1912? A I used to take dinner with him Sundays.

Q How many times? A About five or six times.

Q While you were there what did you do? A I ate my dinner and he gave me a little cider.

20 Q Have you ever bought any there? A Yes, sir. He always told me to take it away.

Q Have you ever drank it on his premises? A Down by the old ice house, whether that is on his farm I don't know.

Q How far from his house? A One hundred yards.

Q How many times were you there during the summer of 1912 drinking cider? A I don't think over twice.

30 Q Do you know who was there with you? A Fred Struble and Fred Spangenburg.

Q Do you remember what days of the week those were? A On Sundays.

Q Who else were there besides Struble and Spangenburg? A They were the only two.

Q How much did you have? A We had two gallons.

Q Who bought it? A I paid for two gallons.

40 Q How much did you pay for it? A Forty cents per gallon.

Q Bought it from whom? A One jug from Mr. Clifford, the other from his work girl.

Q Did this cider have any effect on you? A If we drank enough of it.

Q What effect would it have? A I have drank some pretty good cider. I never drank so much I could not get out of sight, or get home.

Q Did it have some effect? A Yes.

Q Can you give us the names of any other persons you saw there during the summer of 1912? A I can't remember. 10

Q Fred Struble and Fred Spangenburg were both there? A Yes.

Q (*By Court*) These two Sundays you speak of. On both of these occasions did you drink cider back of the ice house? A Yes, sir.

Q That is about one hundred yards from his premises? A Yes, sir; toward the new macadam road. 20

Q Did you have occasion to go back to the house to get cider? A No, sir; he refused us.

Q Did you take both gallons down with you? A No, sir; we had a jug each time.

Q Then you only drank up one jug each time, on each Sunday? A Yes, sir.

Q (*By Prosecutor*) How long were you there on these days? A Got there about nine o'clock and got back two, so I could get back to work in the morning. 30

Q Do you mean two o'clock in the afternoon? A Yes, sir.

Q (*By the Court*) Do you know the location of Mr. Clifford's premises? A Not thoroughly, for I haven't been over all parts of it.

Q Do you know whether this ice house was his? A I don't know. 40

Q You don't know whether it was located on his premises or not? A No, sir.

Cross examination by counsel for Defendant.

Q The Prosecutor asked you what effect this cider had on you. Did the cider you drank there put you in condition where you could not do business, so you could not transact any ordinary business? A No, sir; I knew what I was doing all the
10 time.

Q Physically, you were all right? A Yes, sir; I never had to have anyone take me home.

HOWARD V. DRAKE, a witness on behalf of the State being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Culver's Lake.

20 Q Do you know the defendant, Mr. Clifford? A Yes, sir.

Q Were you ever at his place between April 1st and October 20th, 1912? A I think I was.

Q Can you tell me how often? A I don't remember how often.

Q What days of the week, ordinarily, did you go there? A I have been there on a Sunday and on a week day.

30 Q What did you do after going there? A Sometimes I would go after milk, and sometimes after eggs, and sometimes I would get me trade and go home.

Q Did you ever get any cider there? A Yes, sir.

Q On how many different occasions? A I can't tell.

Q Where did you get it? A Mr. Clifford's.

Q In what part of the house? A Usually at the kitchen.

40 Q Were you ever at the cellar? A Yes, sir.

Q Did you ever get any cider there? A Yes, sir.

Q Was anyone else getting cider there? A Yes, sir. I saw people take it out by the jug. I can't recall any names.

Q Can you give me the names of any of the people you saw there? A I can't remember.

Q Have you seen other people drinking cider in the cellar? A Not during that time.

Q What kind of cider was this? A Sometimes 10
it was sweet, and sometimes harder.

Q Did it have any effect on you? A Yes.

Q What effect would it have? A It would make you drunk if you took enough. It took quite a lot to make you full.

Cross examination by counsel for Defendant.

Q The cider there. Did it put you in condition where you could not do business? A Not unless you mixed something with it. 20

Q Drinking cider alone, it never affected you so you could not do your business? A No, sir.

Q If you mix cider and whiskey together it makes you intoxicated? A Yes, the two together.

Q Only whiskey alone would? A Yes.

Q Cider and whiskey mixed makes stone-fence?
A Stone-wall or stone-fence.

Q (*By Court*) How many different Sundays did I understand you to say you had been there and bought cider? A I could not recall the number; I have been there different times. 30

Q On the occasions on Sunday, did you observe other people there? A Yes, at different times.

Q What was the most in numbers you saw there on any one Sunday? A Not over five or six at any one time together.

Q Where would you see them? A Sometimes by the house, and sometimes on down the road, between the road and brook. 40

Q What would they be doing? A Sitting talking. I have been there talking half the forenoon, and never saw anyone there.

Q And sometimes you saw five and six? A I saw men and women go there from the lake.

Q How many people did you observe buy cider there on a Sunday? A Two, three or four.

10 Q What was the practice, did they buy it and drink it in the house, or take it away? A Put it in a jug and carried it on down by the brook. I don't know whether that was on his land or not.

Q Did you observe whether these men got it and took it there or not? A I never watched them to see where they went.

Q You don't know whether this ice house belong to Mr. Clifford? A I think so, but he has never told me.

20 Q Have you ever seen anyone drinking at the ice house? A They always went below there.

Q How far are the trees below the Clifford ice house? A Twenty or thirty yards.

Q How far from the ice house to the house? A One hundred and fifty yards.

Q Those apple trees you spoke of, do you know who they belong to? A No, sir.

30 Q (*By Prosecutor*) You can't tell us the names of anyone you saw taking jugs down to the trees? A I have seen different ones, but paid no attention to them; I can't recall the names, day or date.

Q Those people you saw down by the brook, and down by the road, in the road and beside it? A Between the brook and the road.

Q You say you saw some along the road. Are there not a good many people traveling along that road in the summertime? A Yes, a lot of people travel the road.

40 Q Was that macadam road there in the summer of 1912? A Yes.

Q People walking from Branchville up to the lake would go across by Clifford's house because it is shorter? A Yes, a little.

Q This place down by the ice house, is that where they cross the stream from one road to another? A Yes.

Q That is frequently used? A Yes; I have walked across there myself.

Q Did you live above or below there? A Up above. 10

Q You have seen men buy cider there, and they would take the jugs away, and they would go away. You didn't observe where they went A I have seen them drinking there when I was passing, and I have stopped and drank with them.

Q That is between the two roads? A Yes.

Q (*By the Court*) Did you ever observe any one man come from the apple trees you speak of, get a jug of cider and then return, and after the same man come and get another jug of cider on the same day? A Not as I can remember. 20

Q (*By Prosecutor*) Where did they get these jugs from? A I can't tell.

Q (*By Prosecutor*) Did you ever buy a jug there? Sometimes I would take one from home, and other times I would borrow one from him.

Q (*By Prosecutor*) How about the other men you saw buying cider there, did they bring their jugs with them? A Sometimes. 30

Q (*By Prosecutor*) Did you ever see them bring a jug, and then take it away? A Yes.

Q (*By the Court*) Did you ever observe whether any of the people buying cider there were under the influence? A After they had bought it.

Q (*By Court*) Have you seen people under the 40

influence of liquor when they purchased the cider?
 A I never say any buying cider out of the way in any way.

Q (*By the Court*) Have you observed the people who purchased cider there afterward were under the influence of liquor the same day? A I can't tell. I have seen them under the influence, but could not tell what made it.

10 Q In the summer time can you see the Clifford house from the apple trees you were speaking about? No, sir.

Q (*By Prosecutor*) Can you see the ice house?
 A Yes.

SIMEON CRAWN, a witness on behalf of the State, being duly sworn, testifies as follows:

Direct examination by Prosecutor.

20 Q Where do you live? A Augusta.

Q Do you know Gaston Clifford? A Yes, sir.

Q Were you ever at his place between April 1st and October 20th, 1912? A Yes, sir, helping him at his hay.

Q Were you ever there outside of that time? A I have been there at different times.

Q About how many times? A I could not say.

Q What days of the week did you go there? A

30 All times.

Q Ever go there on Sunday? A Yes, sir.

Q How many times during that summer were you there on Sunday? A I never kept account of them.

Q More than once? A Yes.

Q Do you remember any particular Sunday you were there? A No.

Q Have you been there more than once? A I have been there two or three times.

40 Q More than three times? A Yes.

Q More than four times? A I don't think I have.

Q You have been there on three different Sundays you can remember? A Yes, sir; at his house.

Q About what time did you go there? A I have been there around nine o'clock, twelve o'clock and two o'clock.

Q Anyone go with you when you went there? A Yes, John Decker went up with me once. I can't say who all. 10

Q Give me the names of some others who went there with you. A My father went up with me once or twice. He never went to the house.

Q Can you give me the names of others you saw there on Sundays? A No, sir.

Q Did you ever see Fred Struble, Fred Spangenburg, or Lester Sylcox there on Sunday? A One Sunday.

Q Harvey Drake? A I saw him come over there once. 20

Q John Riker? A I don't think so.

Q H. Haggerty, Spargo, Skellinger or Wm. Mohair? A No.

Q E. Struble? A I think I saw him there once.

Q G. Heater? A No.

Q On these Sundays when you went there, take the first one, do you remember what time you got there that day? A I could not say. 30

Q Was that the Sunday you took your father with you? A No.

Q Who was with you on that first Sunday? A I think John Decker.

Q What did you do after you got there? A We went to the cellar and got some cider and went across the road and drank it.

Q Where did you get the jug from? A John had it hidden. 40

Q Who did you get the cider from? A From his work girl.

Q Did you see Mr. Clifford that day? A I don't think so.

Q Where did you go after getting the cider? A Over to Owlie barn.

Q To the ice house? A No, across from the ice house.

Q How much cider did you get that day? A
10 A gallon.

Q What did you do with it? A We got it to drink.

Q Did anyone help you drink it? A John Decker and I.

Q No one else? A No.

Q What did you do after that cider was gone? A Went home.

Q How long were you there that day? A Two
or three hours.

Q Did the cider have any effect on you? A A
20 little effect, and John had a bottle in his pocket.

Q What effect did the whiskey and cider have on you? A It made us feel pretty good, and made us feel as though we wanted to travel all over.

Q Did it make you drunk? A We were so we could travel around.

Q Take the next Sunday, who went with you that day? A My father.

Q What time did you go that day? A In the
30 afternoon.

Q What time in the afternoon? A About one o'clock.

Q What did you do after getting there? A I got half a gallon of cider in a pail and drank it up.

Q Where did the pail come from? A I got it from the girl.

Q What did you do with it after you got it? A Drank it up.

Q Where? A Over by the ice house.
40

Q What happened after you drank the half gallon of cider? A We went through the woods to where some other fellows had another jug, and we helped drink that up.

Q What happened after that? A We went away.

Q When did you go there? A About four o'clock.

Q The next time, who went with you that time?
A Jim Spargo. 10

Q What time did you get there that day? A Somewhere about three o'clock.

Q What did you do when you got there? A We bought a little cider and took it out and drank it.

Q How much did you get? A A jug.

Q Where did the jug come from? A We borrowed it.

Q From whom? A The girl.

Q What girl are you talking about? A The cook. 20

Q Whose cook? A Clifford's cook.

Q Where was she? A In the kitchen.

Q Did you see anyone else around there that day? A No, sir.

Q What did you do with it after you got it?
A We took it across to the Owlie barn and drank it up.

Q Anyone else around there? A No, sir. 30

Q Were you there the day Charles Hanna and Lester Sylcox were there? A Yes, sir.

Q Was that the Sunday you spoke of? A No, sir. I came up the macadam road and saw them over in there. I went over in there and they had a jug of cider, and I helped them drink it up.

Q You were not at Clifford's that day? A No, sir.

Q How long did you stay there this third Sunday? A Not over a couple of hours. 40

Q Did you have more than one jug of cider that day? A Two.

Q Who got the second jug? A I could not say.

Q Was it gotten after you got there, or was it there when you got there? A One was there when I got there.

Q When was the other gotten? A After I got there.

10 Q Were there not three jugs of cider there that day? A No, sir.

Q Didn't you take one with you? A Yes. You asked me if I saw Charles Hanna there, and I said I did.

Q You say that one time you were there and found some men there with a jug of cider? A Yes, sir.

Q And someone in the party went and got another jug? A No; not that time.

20 Q What time was it, when someone went and got another jug? A When we saw Hanna at the Owlie barn.

Q You don't remember who went after that other jug? A No, sir.

Q Did you ever drink any cider in the cellar? A No, sir.

Q Did you ever see anyone else drink in there? A Not as I know of.

30 *Cross examination* by counsel for Defendant.

Q (*By Court*) On any of the Sundays you were there, were any other men there at the same time, at the house? A Not as I saw.

Q You stated that at the time you thought it had some effect was because you had some whiskey along? A Yes, sir.

40 Q This cider you drank after that, did it intoxicate you? A I think it helped the other along.

Q After the whiskey, I mean? A It made you feel drowsy.

Q Did it effect you so you were unable to do business, the cider by itself? A No, sir.

Q (*By Court*) Did I understand you to say that on one Sunday you drank some of the cider near the ice house? A Yes, sir.

Q How close to the ice house? A Down by the apple trees. 10

Q Do you know to whom they belong? A No, sir.

Q Do you know to whom the ice house belongs?
A No, sir.

JESSE SPARGO, a witness on behalf of the State, testified as follows:

Direct examination by Prosecutor.

Q Did you know the defendant? A Yes, sir. 20

Q Know where he lives? A Yes, sir.

Q Were you there between April 1st and October 20th, 1912? A I was there just before I was down here before.

Q How many times? A Only once.

Q What did you do when you were there? A I went down there and wanted to get some cider.

Q Didn't you say you got a drink there? A Yes, I did.

Q Anyone around there? A No, sir. 30

Q Who sold you this drink? A The lady of the house.

Q Do you know how much you paid for it? A Yes, sir.

Q How much? A Five cents.

Cross examination by counsel for Defendant.

Q When was this? A Just before the trial was here before.

Q How long before the trial? A About a week.

JOHN A. RIKER, a witness on behalf of the State, testified as follows:

Direct examination by Prosecutor.

10 Q Where do you live? A About one mile this side of Tuttle's Corner.

Q Do you know Gaston Clifford? A Yes, sir.

Q Were you there between April 1st and October 20th, 1912? A Yes, sir.

Q About how many times? A Twice.

Q On what days of the week were you there? A Once during the week, and once on Sunday.

Q Anyone go with you when you went there on Sunday? A No, sir.

20 Q What time of day did you go there? A About ten o'clock.

Q What did you do after you got there? A Got half a gallon of cider in a jug and went fishing.

Q Did you take your jug with you? A Yes, sir.

Q What effect did this cider have on you, if any? A It didn't bother me any.

Q What kind of cider was it? A Middling sweet.

30 Q Did you see anyone else around there that day? A No, sir.

Q Who did you buy it from? A Mr. Clifford.

Q Do you remember how much you paid him? A Twenty cents.

Q When was the other time you were there? A On a week day, when I went over to Branchville, I stopped there to get a quart of cider, and drank it up.

Q Where were you? A In the cellar.

Q Anyone with you? A No, sir.

40 Q Anyone else around there? A No, sir.

Q Who sold you the cider that day? A I think it was the work girl.

Q Those were the only times you were there that summer? A Yes.

(No cross examination.)

HARRISON SKELLINGER, witness on behalf of the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

10

Q Where do you live? A Three miles above Branchville.

Q Do you know Gaston Clifford? A Yes, sir.

Q Were you ever there between April 1st and October 20th, 1912? A Yes, sir; I was there two years ago last April.

Q What day of the week was it? A Sunday.

Q Who went with you? A George Cole.

Q What did you do after you got there? A 20 Got a quart of cider.

Q What did you do with it? A Drank it up.

Q Where? A By the cellar door.

Q Anyone else around there that day? A Mr. Clifford.

Q What kind of cider was it? A Quite hard.

Q That is the only time you were there that summer? A Yes; only once.

Q Who sold it to you? A Gaston Clifford.

Q Do you remember what you paid for it? A 30 Ten cents, I guess.

(No cross examination.)

HERBERT E. RIDDELL, a witness for the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Are you a practicing physician? A Yes, sir.

Q Located where? A Branchville.

40

Q And have been for how long? A Since 1903, I think.

Q Do you remember an occasion in the summer or fall of 1912 when you were called to Gaston Clifford's? A I was called to Gaston Clifford's at that time, I remember.

Q Do you remember a call coming from Culver's Lake? A In that vicinity.

10 Q When was that? A September 15th, on Sunday.

Q During 1912? A Yes, sir.

Q Where did you go when you made that call? A I followed the macadam up, and went in and came down by the back road, and up the hill to where the gypsies used to camp.

Q What did you find when you got there? A A fellow lying on the ground hurt.

20 Q Did you know who it was? A Wm. Mohair.

Q What was his condition? A He was unconscious and had been in a fight. He had a lacerated wound of the brow.

Q Do you remember what they were doing, or who they were? A I can't say as I can remember.

Q The man was unconscious when you got there? A I am pretty sure he was.

Q This was on what is known as the old gypsie ground? A Where the gypsies used to camp.

30 Q How far from Gaston Clifford's house? A One hundred yards.

Q These wounds were a cut over the eye, and what other? A The eye was all puffed up from a blow or injury of some kind.

Cross examination by counsel for Defendant.

40 Q (*By the Court*) You went up the new macadam road until you struck the road leading down to the lake? A The road that cuts over to the boat house?

Q (*By the Court*) Then where did you go? A Back towards Clifford's house.

Q (*By the Court*) And came back the old road? A Yes.

Q (*By the Court*) On which side of the road, going from the lake towards the Clifford house, did you find these men? A On the right.

Q (*By the Court*) And about one hundred yards from Clifford's house? A Yes. 10

Q (*By the Court*) Those seven or eight people there, were they men or women? A I don't remember any women.

Q (*By the Court*) Do you recall any of the names. A No, sir.

Q (*By the Court*) You knew them? A I knew them all at the time. 20

Q (*By the Court*) Was Teets Campbell in that party? A I don't remember.

Q You don't know there was a fight? A I also put down in my record how the injury took place.

Q You say the place where you found these men was about half way from where you leave the macadam road and come around to Clifford's? A Yes, sir.

Q You say it is about one hundred yards from Clifford's? A Yes, sir. 30

Q How far would you say it is from Clifford's house to where the road comes around? A Fully a quarter of a mile.

Q Was it 220 yards from Clifford's house to where they were? A I didn't say that.

Q You said half way? A I said half way from where the road turns in to Frank Lyons'.

Q Do you know where the road goes in on the edge of the woods at the right hand side? A Yes. 40

Q Was it between that entrance of the road on the right and Clifford's, or below that? A I think just about across the road from that.

Q From where you found these men, could you see Clifford's house? A I think so, but would not say positively.

Q Don't you go over quite a little hill? A There are lots of things I don't notice on my trips.

Q It is more than one hundred yards from where the man was found to the Clifford house?
10 A I don't think so.

Q Isn't it two hundred yards? A I could not say positively.

Q Isn't it three hundred yards? A I should think not.

Q You say you found this man had a bruise across the eyebrow? A Yes.

Q (*By the Court*) Were you in Court when the different witnesses have testified? A Only
20 about five minutes.

Q (*By the Court*) You haven't observed the different witnesses testifying here to-day? A I haven't seen them all.

Q What time did you get there? A My recollection, it was between four and five o'clock; maybe later than that. It was late in the afternoon; it was a cloudy day if I remember.

30 Q What month was that? A September 15th.

Q Do you observe any men here in the courtroom who were present there that day? A I could not remember. It is a very hazy recollection.

TEETS CAMPBELL, a witness on behalf of the State, testified as follows:

Direct examination by Prosecutor.

40 Q Where do you live? A Branchville.

Q Do you know the defendant, Gaston Clifford?
A Yes, sir.

Q And where he lives? A Yes, sir.

Q Were you ever at his place between April 1st and October 20, 1912? A I could not say positively, but I think it was though.

Q You don't recollect, positively? A Not a certain date.

Q You remember a day when a man by the name of Mohair was hurt? A I do. 10

Q Were you there that day? A Yes, sir.

Q What time did you get there that day? A In the morning between seven and eight.

Q Anyone go with you? A No, sir.

Q Went there alone? A Yes, sir.

Q Where did you go when you first got there?
A I could not say, positively; I think I went in the house.

Q What did you do in there? A Nothing. 20

Q How long did you stay there? A Perhaps five or ten minutes.

Q Where did you go from there? A Down in the woods toward the macadam road.

Q Did you buy any cider while in the house?
A I don't remember whether I did or not.

Q Did anyone else buy any while you were there? A I don't recall.

Q Was anyone else in there? A Yes, sir.

Q Where? A In the basement. 30

Q Who else were in there at that time? A Niles Hendershott and others, but I don't know.

Q How many were there when you first got there? A I don't know.

Q You say you went from there down to the woods? A Yes, sir.

Q What woods? A Between Clifford's property and the macadam road.

Q Near the ice house? A Yes.

Q Did you find anyone down there? A Three. 40

Q Who? A Frank Struble, Ellsworth Struble and Wm. Mohair.

Q What were they doing? A Drinking cider.

Q How long did you stay in the woods? A I don't know.

Q How much cider was there when you got there? A A jub partly filled.

Q Did you get any more cider there that day?

A I didn't buy any.

10 Q Did anyone else buy any? A I don't know; they got cider.

Q Do you recall anyone leaving the party and going back for more cider? A Yes.

Q Who? A Ellsworth Struble.

Q How often did that happen? A I don't know.

Q How long did you stay there that day? A Until about two or three o'clock in the afternoon.

20 Q Do you remember what day of the week it was? A On Sunday.

Q Did anything happen while you were there that day? A Sort of a happening there.

Q What was it? A It started in a wrestle.

Q Who started it? A Mohair and I. He called it a fight, but I thought it was fooling.

Q Do you remember his getting hurt? A Yes, sir.

Q Was it at that time? A Shortly afterwards.

Q Do you remember Dr. Riddell coming there?

30 A Not while I was there.

Q What was Mohair's condition that day? A He was drunk when I saw him.

Q How were you? A About half drunk.

Q How were you after you had been there drinking cider? A A little worse.

Q Did you have anything else to drink there that day? A Yes, sir.

Q What? A I had a pint of whiskey with me.

40 Q Was anyone else mixed up in this fight but you and Mohair? A Not as I remember of.

Q What was his condition when you left? A Asleep or unconscious.

Q When was it this fight took place? A In the afternoon.

Q Where? A Between Clifford's property and the macadam road.

Q Was that this gypsy ground the doctor has spoken of? A No, sir, I don't think so; not if I understand the gypsy ground right.

Q How far is it from this gypsy ground? A 10
Probably three or four hundred yards.

Q Do you remember anyone else being there that day? A No one there as I know of.

Q Was your brother there? A He came shortly afterward.

Q What is his name? A Oliver.

Q Do you remember how many jugs of cider you had there that day? A No, I don't.

Q You say there was half a jug when you first got there? A Part of a jug. 20

Q And Ellsworth got one jug after you got there? A Yes, sir.

Q Do you remember anyone else coming there? A Not to my knowledge now.

Q Do you remember whether any more cider was brought there that day? A No.

Q (*By the Court*) Are the woods on the left-hand side of the road leading from Clifford's to the lake? A On both sides. 30

Q Where this fighting took place? A In going from Branchville to the lake?

Q Yes. A On the left-hand side.

Q Did it occur in the field or the woods? A In the field, sort of a grown-up field.

Q Do you know to whom that field belonged?

A I have heard it belonged to Crisman.

Q You don't know whether it does or not? A No, sir. 40

Q Can you recall distinctly whether there was a jug of cider obtained after you got there by anyone? A Ellsworth Struble.

Q Do you know where he went to get it? A No, sir.

Q In what direction did he go? A I didn't see him.

Q Did he take an empty jug with him? A He did.

10 *Cross examination by counsel for Defendant.*

Q You say you got there sometime between seven and eight o'clock? A To the best of my knowledge.

Q You went to Mr. Clifford's? A Yes, sir.

Q After sitting there a few minutes, then you went down toward the macadam road? A Yes, sir.

20 Q And over the macadam road there is an ice house? A Yes, sir.

Q You went on back of that from Clifford's to some trees? A Toward the lake, yes, sir.

Q And near the macadam road? A I don't understand that.

Q Where the trees are, that is near the macadam road? A There are trees all around there.

Q There is where you found the Strubles and Mohair? A Yes, sir; in the edge of the brush.

30 Q They had a jug partly filled with cider? A Yes, sir.

Q Did they have anything else there among themselves except the cider? A I don't know.

Q You had a pint of whiskey with you? A Yes, sir.

Q You drank some of the cider they had there? A Yes.

Q And some of the whiskey? A Yes.

40 Q Where was it you and Mohair had the trouble, right there? A No; up towards the lake from there.

Q You went from there up towards the lake?

A Yes.

Q How do you get up to the lake from there?

A Right up through a piece of woods.

Q Did you go up the macadam road? A No; up through the woods.

Q These are the woods along the old road from Clifford's past the pond? A Yes.

Q What time do you suppose it was you had this trouble? A I would think around about two 10 o'clock, between two and three.

Q You had no trouble? A No, sir.

Q You first started in wrestling? A No; he didn't hit me.

Q What did he do? A I don't remember how that part was.

Q How did he get his eye hurt? A He fell on a stone, or I pushed him.

Q You didn't hit him? A I don't remember hitting him.

Q That place was near the old road? A Yes, 20 sir; within twenty or thirty feet of the road. I was in the road when it started.

Q He started for you, and you were in the road? A Yes.

Q What did you do? A I pushed him.

Q And he fell down? A The last I saw of him he was laying there asleep.

Q When you pushed him, that was in the road?

A That was outside of the road.

Q Any fence there? A No, sir. 30

Q That place where he fell, can you see the Clifford house from there? A You can see the top part of it.

Q Through the trees? A Yes, sir; over the hill. You can't see the bottom of the house.

ELLSWORTH STRUBLE, a witness on behalf of the State, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Newton.

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

Q Know where he lives? A Yes, sir.

Q Were you ever there between April 1st and October 20th, 1912? A I am not positive as to the date, but I think I was there somewhere about that date.

Q During that summer, do you remember whether you were there? A I remember of being there, but I could not say as to the date.

10 Q Were you there in the summer of 1912, two years ago? A Yes, sir.

Q How many times? A Once is all I can think of.

Q When was that? A I could not say exactly.

Q Was that the time when Mohair was hurt? A Mohair was with me at the time.

Q What time did you get there that day? A Early in the morning.

20 Q Who went with you? A Mohair

Q Anyone else? A Fred Struble, my brother.

Q Anyone else? A No, sir.

Q When you got there, what did you do? A I got a jug of cider and went out toward the ice house.

Q From whom did you get the cider? A From Mr. Clifford.

Q Where did you get the jug? A From Mr. Clifford.

30 Q Who went with you? A I went alone.

Q Where were the others? A They went out ahead of me.

Q What did you do? A Sat down and drank the cider.

Q Were there any others there besides those you have named, besides Fred and Mohair? A Teets Campbell. There were several around there, but it has been so long I can't remember.

40 Q Were there half a dozen? A Probably eight or nine.

Q You say you got there about nine o'clock in the morning? A Yes, sir.

Q How long did you stay there that day? A Not very long, probably from an hour to an hour and a half.

Q Where was this? A Near the ice house.

Q Do you know who owns that ice house? A I don't.

Q Campbell says that after he got there you went and got a jug of cider? A I got the jug of cider in going over. 10

Q Did anyone else bring any? A Not as I know of.

Q Was that all you bought? A Yes, sir.

Q Where did you go from there? A About 200 yards up to where we call the Oak Tree.

Q How far from Clifford's house? A About two to three hundred yards.

Q Who else went up to this oak tree? A My brother Fred and Mohair. 20

Q Did Campbell go with you? A He followed us.

Q Anyone else? A No.

Q What did you do up at the oak tree? A Campbell picked up a little muss and we had a little fight.

Q Have anything more to drink up there? A No, sir.

Q You say Campbell picked up a muss? A Yes, sir. 30

Q Who with? A Mohair.

Q Was Mohair there? A Yes, sir.

Q Did anything happen to him? A He had a black eye.

Q Do you remember Dr. Riddell coming there? A Yes, sir.

Q How long after this trouble did he come? A I could not say. I telephoned to Dr. Riddell myself. I could not say how long it was. 40

Q Was it ten to fifteen minutes? A Half to three-quarters of a hour.

Q What was Mohair's condition when you went to telephone? A He acted unconscious, and his eye was all swollen up and black.

Q What was his position at that time? A Right on his back.

Q How near to the oak tree? A Probably ten to fifteen yards.

10 Q Was he still there when you went back? A In the same position.

Q Was he in the same position when Dr. Riddell got there? A Yes, sir.

Q What effect did this cider have on you that day? A That I could not say.

Q Did it have any? A I would not say about that.

20 Q (*By the Court*) When you got down near the ice house that Sunday were there any other men there? A Yes.

Q About how many? A Probably six or seven.

Q What were they doing? A Sitting there drinking cider out of a jug.

Q How close to the ice house? A Probably fifteen or twenty yards.

Cross examination by counsel for Defendant.

30 Q Did Mohair go with you up there? A Yes, sir.

Q From Branchville? A From Newton.

Q How did you go up? A Walked.

Q What time did you leave Newton? A About one o'clock. We left here on Saturday night at about one o'clock.

Q Did you have a bottle with you? A Yes, sir.

Q Whiskey in it? A Quart.

40 Q Take that along? A Yes, sir.

Q Drink from it during the night? A Yes, sir.

Q Take all night to walk up there? A No, sir.

Q Where did you go from Newton? A We laid down out along the road and slept it off.

Q What time did you get up in the morning?

A I could not say what time it was, but about daylight.

Q Drink some more rum that morning? A Yes, sir.

10

Q When you got there you and Mohair both were a little drunk, were you not? A Yes, sir.

Q And you drunk some cider and some whiskey through the day, and continued to be intoxicated?

A Yes, sir.

Q After you were at the ice house awhile you went up to this other place and Mohair and Campbell got in a wrangle? A Yes, sir.

Q Did Campbell hit Mohair? A I didn't see him.

20

Q You don't know how Mohair got hit? A I don't know.

Q (*By the Court*) Did you buy the cider yourself? A Yes, sir, I bought one.

Q Were you intoxicated when you bought the cider? A I was not intoxicated, but I had been drinking.

Q Was he with you when you bought the cider?

A Yes, sir.

30

FRED STRUBLE, recalled by State.

Q Do you remember this Sunday when Mohair was hurt? A I remember the Sunday.

Q Were you at Clifford's that day? A No, sir.

Q Where were you on that day if you remember? A About two hundred and fifty to three hundred yards away from his place.

40

Q Where were you that morning? A At home. I didn't get up until after ten o'clock.

Q Where did you go after getting up? A To the lake.

Q What part of the lake? A Two or three different parts of it.

Q Did you see your brother Ellsworth that morning? A Yes, sir.

10 Q Where did you see him first? A Back of the ice house, between the barn and the ice house.

Q Who was with you? A Mohair.

Q Anyone else? A Campbell was along.

Q Anyone else? A I can't recall new names.

Q How long did you stay there that day? A Mohair, Ellsworth and I went away.

Q How long did you stay there with them? A Three-quarters of an hour.

Q What were you doing there? A Had a little drink of cider.

20 Q Was anyone else around there but you four?
A I have forgotten about that.

Q Where did you go? A Up toward the lake.

Q How far did you go? A Up as far as the oak tree.

Q How far from where you were? A Two hundred and fifty yards.

Q How long did you stay there? A Half an hour.

Q What were you doing? A Talking.

30 Q Have anything to drink? A No, sir, I didn't.

Q What happened while you were there? A Not a thing that I saw.

Q You didn't see anything between Mohair and Campbell? A No, sir.

Q What was your condition at that time, were you sober or not? A Sure.

40 Q You were with them all the time, and didn't see what happened? A I wasn't with them all the time.

Q How do you know Mohair was hurt? A I was there when Dr. Riddell came up there.

Q Had you been away? A I had been up to the store.

Q How long had you been there before Dr. Riddell came? A Likely twenty minutes.

Q What was Mohair's condition when you came back? A He had a very black eye.

Q What was his position? A Lying down.

Q Was he conscious or unconscious? A The Doctor can tell you more than I can about that. 10

Q What was your observation, was he talking? A Yes.

Q To anyone else? A He laid there talking.

Q Was this one of the times you testified about this morning when you were on the stand? A No, sir.

Q Then the occasions you have testified were other than this one? A I beg your pardon. I said I was there two times, one in April and once in June. 20

Q You testified to one in May? A I don't think so.

Q The one you have just told us about is not one of those times? A No, sir.

Cross examination by counsel for Defendant.

Q You saw these people by the ice house. There was where you found them, and you went with them up to the old oak tree? A Yes, sir. 30

GEORGE N. COLE, a witness on behalf of the State, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Culver's Lake.

Q Do you know Gaston Clifford? A Yes, sir.

Q Were you ever at his place between April 1st and October 20th, 1912? A Yes, sir.

Q How often? A Once. 40

Q When was that? A On Sunday.

Q Do you remember what month that was? A
In April, I think.

Q Who went with you? A Harry Skellinger.

Q What did you do there? A Bought some
cider.

Q How much? A A Quart.

Q From whom did you buy it? A Gaston.

Q Where? A In the cellar.

10 Q What kind? A Hard cider.

Q Have any effect on you? A Only had two
glasses apiece.

HENRY C. HAGGERTY, a witness for State,
testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Near Culver's Lake.

20 Q Do you know Gaston Clifford? A Yes, sir.

Q Where he lives? A Yes, sir.

Q Were you ever at his place? A Yes, sir.

Q How often? A Twice.

Q On what days of the week were you there?

A I didn't pay any attention to that, I forgot
about that.

Q What time of day did you get there? A
In the afternoon and in the forenoon.

Q Anyone go with you? A I went up the
last time with Gaston.

30 Q What did you do after you got there? A
Nothing, only went home.

Q Did you get anything to drink on either
occasion? A No, sir.

Q Those were the only two occasions you were
there during the summer of 1912? A Yes, sir.

GEORGE H. HEATER, a witness for the State,
testified as follows:

40 *Direct by Prosecutor.*

Q Where do you live? A Branchville.

Q Do you know the defendant Gaston Clifford?

A Yes, sir.

Q Know where he lives? A Yes, sir.

Q Were you ever at his place between April 1st and October 20th, 1912? A Yes, sir.

Q How often? A Only once in that time, never from that time on. I have been there three times in the last fifteen years.

Q Were you ever there during the summer of 1912? A Once. 10

Q On what day of the week was it? A I wasn't to his house.

Q Do you know what day of the week it was? A Sunday.

Q What time did you get there? A About seven o'clock in the morning.

Q Anyone go there with you? A No, sir.

Q What did you do after you got there? A Nothing. 20

Q How long did you stay there? A We were not on his premises.

Q Who do you mean by "we?" A A friend of mine, I wasn't on the premises all day.

Q Who was your friend? A Harvey Snover.

Q Where did you go, Mr. Heater, that day. You say you started out and got there about seven o'clock? A Over back of the Owlie barn. He went to get the cider, and I remained back of the barn. 30

Q How much did he get? A Six quarts.

Q Anyone else there besides you? A Three of us.

Q Who was the other fellow? A Tracy Drake. Six quarts for the three of us.

Q How long did you stay there? A Until evening.

Q How many times did you get cider that day? A Three times.

Q Who got the cider? A Harvey and Tracy. 40

Q You didn't get any of it yourself? A No, sir, I wasn't over to the place.

Q You didn't go on the premises at all. A No, sir.

Q You remained at the Owlie barn all day? A We went up to Colie Shay's to get our lunch.

Q What effect did this cider have on you? A I was full in the morning, but I was straight when I left.

10 Q How was your friend Snover? A He wasn't full in the morning, only in the evening.

Q (*By the Court*) I understood you to say you bought six quarts of cider? A Yes, sir.

Q (*By the Court*) How many jugs? A We took the jug and went three times.

Q (*By the Court*) Who went after the cider? A I think Tracy went once, and Harvey went
20 once, and I don't know which one went in the forenoon.

Q (*By the Court*) Where was the drinking done? A At the Owlie barn.

Q (*By the Court*) You were not near his house? A No, sir.

Q (*By the Court*) Do you know where his farm or premises extends? A I was on the opposite side of the macadam road, and I know he
30 didn't own over there.

Q Are you acquainted with Mr. Clifford's premises, its location? A All I know about it is Mr. Crisman owns between where we were and his land. I don't know the lines or corners.

(No cross examination.)

40 TRACY M. DRAKE, a witness for the State, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A I have been with William Cooper.

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

Q Know where he lives? A Yes, sir.

Q Were you ever at his place between April 1st and October 20, 1912? A Yes, sir.

Q How often? A I could not say.

Q More than once? A Yes. 10

Q More than twice? A I have stopped there and talked with him several different times.

Q Have you ever spent any time there? A I have talked with him quite a little while.

Q Have you ever bought any cider there? A Yes, sir.

Q How many times during the summer of 1912? A A couple of times.

Q On what days of the week, if you recall? A I bought once when George Heater was there, half a gallon. 20

Q What day of the week was that? A Sunday.

Q What time of day did you get there? A Along about four o'clock in the afternoon.

Q Who did you find there when you got there? A No one there at Mr. Clifford's. I went to the kitchen door, and he went and got a half a gallon of cider in the jug. 30

Q Did you take the jug there? A Yes, sir.

Q Where did he get it from? A I don't know where Mr. Heater got the jug.

Q That is the first time you had been there that day, four o'clock in the afternoon? A Yes, sir.

Q When did you first see George Heater that day? A In the afternoon sometime.

Q Before or after you had been up to Mr. Clifford's for the cider? A Before I was over 40

there. I went up the macadam road from Branchville.

Q Where was George when you saw him first?

A At the Owlié barn.

Q Did you stop there? A Yes.

Q Who was there with him? A Harvey Snover.

Q Did they have a jug there? A They offered me a drink, and I about cleaned it up.

10 Q Then you got a jug? A Yes, and went back and drank that.

Q How long did you stay at the Owlie barn after you got the cider? A Until about five o'clock.

Q Then you were there about one hour after you got the cider? A Yes.

Q What kind of cider was it? A I have drank worse, and I have drank better.

20 Q Was it hard or sweet? A I judged it wasn't right hard cider.

Q Had it turned at all? A Yes, a little.

Q Did it have any effect on you? A No, I didn't drink enough of it.

Q If you drank enough of it, would it affect you? A I didn't take enough.

30 Q (*By the Court*) Can you give this jury any light as to whether that cider that day was intoxicating or not? A If a man drank enough of it it would affect him.

Cross examination by counsel for Defendant.

Q It didn't affect you any? A No, sir.

Q It didn't affect Heater any? A He seemed all right.

Q Did you have any liquor there among you? A I didn't, I don't know whether they did or not.

40 Q You didn't see any. A No, sir.

Q You drank your share of what you had? A There was some cider left there when I left.

DANIEL V. UTTER, a witness for the State, testified as follows:

Direct examination by Prosecutor.

Q Do you know the defendant, Gaston Clifford?

A Yes, sir.

Q Do you know where he lives? A Yes, sir. 10

Q Were you at his place at any time between April 1st and October 20th, 1912? A No, sir.

Q You were not? A No, sir.

(No cross examination.)

BOYD S. ELY, a witness for the State, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A In Frankford Township, about one mile above Branchville, on the road toward Culver's Lake. 20

Q What is your profession? A Attorney at law.

Q For how many years have you been practicing? A Since 1900.

Q Do you know the defendant? A I do.

Q Do you know where he lives? A Yes, sir.

Q Did you have occasion to go by his place between April 1st and October 20th, 1912? A Yes, sir, nearly every Sunday. 30

Q What did you observe, if anything, on the Sundays when you passed Mr. Clifford's property during that period? A I would notice a crowd of men sometimes around the house sometimes in the rear of the house toward what is termed the ice house. On one Sunday near the middle or last of September I was going up to the lake, it was about two o'clock in the afternoon, and passed the 40

Clifford house, and a little further on, and near what is called "the Oak Tree," on Mr. Clifford's property, I saw five or six men. I saw Ellsworth Struble and Fred Struble among the men. When I went by the boys none of them were drunk, they were simply talking.

Q How many were there? A About six. I went on up to the lake to my cottage, and from there I came on back to Frank Lyon's boat house, and after remaining there a little while went on
10 back home about five o'clock in the afternoon. I saw the five or six men lying in the field off the road, and one jug upright amongst them. They were all lying down, none sitting up. They appeared to be asleep. They laid in all positions on the ground. I went on home.

Q On whose property was this? A On Gaston Clifford's property.

Q Do you recall seeing William Mohair in the party that day? A I can't place anyone besides
20 Ellsworth and Fred Struble. I can't name the other fellows.

Q Can you name what Sunday that was? A Either the 15th or 22nd of September, I believe the 22nd, 1912.

Q Did you hear of any trouble occurring there? A Yes, I did.

Q By which Mr. Mohair was hurt? A I heard it several days after.

Q Can you tell us whether that was the Sunday
30 or not? A I can't tell.

Q Can you tell us of any other particular occurrences you noticed on the occasions you passed Mr. Clifford's place during 1912? A I didn't observe any fights. I have heard the boys yelling and swearing out in the field back of Mr. Clifford's house.

Q Did you notice where they were at that time? A I have seen them at times. I never saw the
40 boys down back of the ice house, excepting recently.

During 1912 I never saw them down below the ice house, they were between the ice house and Mr. Clifford's dwelling.

Q During that time how often did you see men there? A I saw them almost every Sunday.

Q How many men have you seen there at any one time? A Five or six that I would take notice of.

Q Can you give me the names of men you saw there on different times? A I have seen Harvey Decker, Fred Struble, Ellsworth Struble, T. Campbell, S. Crown, Abram Crown. Some of the fellows I didn't know personally. 10

Q Have you attended this trial since it begun? A Yes, sir.

Q You have recognized some of the men as they appeared on the stand? A Yes, sir.

Q How long have you been a resident of Frankford Township? A We moved there in 1881.

Q Are you acquainted with the reputation of Fred Struble, in that locality, as to sobriety during the year 1912? A It was not good. 20

Q Were you acquainted with the reputation of Fred Spangenburg, in that locality, as to sobriety during the year 1912? A Yes, sir.

Q What was that? A Not good.

Q Were you acquainted with the reputation of Lester Sylcox, in that locality, as to sobriety, during the year 1912? A No, sir, I was not acquainted with it. 30

Q Were you acquainted with the reputation of Herbert Decker in that locality, as to sobriety, during the year 1912? A I was.

Q What was that? A It was not good, a bad reputation.

Q Were you acquainted with the reputation of John Riker, in that locality, as to sobriety, during the year 1912? A I was.

Q What was it? A Not good.

Q Were you acquainted with the reputation of 40

Henry Haggerty in that locality, as to sobriety, during the year 1912? A I was.

Q What was it? A Not good.

Q Were you acquainted with the reputation of Ellsworth Struble, in that locality, as to sobriety, during the year 1912? A I was.

Q What was it? A Not good.

Q Were you acquainted with the reputation of Simeon Crown, in that locality, as to sobriety, during the year 1912? A I was.

Q What was it? A Not good.

Q Were you acquainted with the reputation of Abram Crown, in that locality, as to sobriety, during the year 1912? A I was.

Q What was it? A Not good.

Q (*By the Court*) Do you know the boundary lines of Mr. Clifford's land? A I do.

Q (*By the Court*) You have testified you saw five or six men on a certain occasion, on Sunday? A Yes, sir.

Q (*By the Court*) On Mr. Clifford's property. How do you know that? A I know the boundaries of Mr. Clifford's property.

Q (*By the Court*) From your knowledge of these boundaries, can you testify those five or six men were on his land? A His lands only run about fifty to seventy-five yards in that direction.

Q (*By the Court*) Do you know the location of the ice house? A Yes.

Q (*By the Court*) In whose possession is that ice house? A Mr. Clifford's.

Q (*By the Court*) Was it in his possession during the year 1912? A Yes, sir.

Q (*By the Court*) How far toward the macadam, or you know, where the clump of apple

trees have stood for fifteen or twenty years, do you know in whose possession those apple trees are? A There are apple trees all over that ground.

Q (*By the Court*) Do you know how far his possessions go beyond the ice house toward the new road? A His line is right along near the ice house.

Q (*By the Court*) Did you hear these witnesses testify as to whether they were on Clifford's land when they had the cider? A Yes. 10

Q (*By the Court*) Can you tell the jury whether where they were located is in Mr. Clifford's possession? A If they were where they said they were, they were not on Mr. Clifford's property.

Q Where you found these five or six men lying on the ground when you came back from Culver's Lake that Sunday, was that in the possession of Mr. Clifford? A It was. 20

Cross examination by counsel for Defendant.

Q You say a man's reputation is not good for sobriety. What do you mean by that? A He drinks occasionally, he drinks a good deal.

Q So he is incapacitated from doing his usual daily work? A Most of the time.

Q Take Harvey Decker. Is he incapacitated from doing his work most of the time? A He will go on a drunk for a month. 30

Q I am talking about 1912. Was he incapacitated from doing his daily work then? A A good part of his itme.

Q How much of his time? A I can't tell you how often he was drunk, I saw him drunk very often.

Q Once a week? A Some weeks I might not see him at all. 40

Q Is he a drunkard? A He would be a drunkard while he was drunk.

Q Why do you call him a drunkard? A I don't think he could go a week.

Q Some weeks you didn't see him at all? A I could take a pretty good guess.

Q Take a man who gets drunk on a Saturday night, and gets over it on Sunday, do you call him a drunkard? A No, sir, I think he has a right to get drunk occasionally.

10 Q Then to be a drunkard, you would want him to be drunk half the time? A No, I would not say that. You have to take into consideration that that question was propounded to me as to reputation.

Q How much of the time must a man be drunk for you to call him a drunkard? A There are different degrees, a man might be a habitual drinker, he might be only an occasional drinker.

20 Q How much must he be intoxicated for you to call him a drunkard? A A man who is unreliable and go off any minute from his work, and unable to get steady employment.

Q How much intoxicated must a man be to be called drunk? A I can't establish the degrees of drunkenness.

Q A man who takes a drink of whiskey, would you call him drunk? A It might not affect him.

30 Q Well, two or three? A I think it depends upon his constitution. I have known them to take one drink and be drunk.

Q Then he might be a drunkard? A I would call a man a drunkard who neglects his occupation and family and takes more to drink than he does to his work.

Q What you really mean, the men you have spoken of have a reputation for drink, not for being drunkards? A For being drunkards, too.

40 Q Did you ever hear it said that Harvey Decker was a drunkard? A I can't remember.

Q Name one? A I have heard lots of people say so. At the former trial I did name some people.

Q Name one man who, prior to the summer of 1912, called Harvey Decker a drunkard? A I can't recall persons by names, I know it is general talk.

Q You know reputation is what people say about a man? A I am telling you generally.

Q I am asking you specifically upon what you base your conclusion? A On what the people said. 10

Q Name some of them? A I have heard it over and over in the town for years.

Q Name one? A I would have to name fifty.

Q I am talking prior to 1912? A I will say his father.

Q You heard Harvey Decker's father say he was a drunkard? A Yes, sir, in 1911.

Q When a man drinks more than he ought, he is a drunkard? A On different occasions I have heard that remarked about them, going from one hotel to another, or to Clifford's. 20

Q They did go to hotels? A We have four in Branchville.

Q John A. Riker. Whom did you hear say, prior to 1912, he was a drunkard? A I heard he and his father in a quarrel call each other drunkards.

Q You have a club in Branchville? A No, sir. 30

Q You heard it discussed there in the club? A Not only there, but in stores and on the streets.

Q That is where they make reputations? A No, sir.

Q You heard it in the barber shop? A Yes, sir, in the stores and on the streets.

Q At night? A Not necessarily at night.

Q That is generally when they talk about their neighbors? A No. 40

Q You say you went by this place nearly every Sunday during the summer of 1912? A I did.

Q Once on Sunday you say you saw some people by the oak tree? A Yes, sir, on the old road.

Q That is right near where there is a road going in on the right? A Yes, sir.

Q How far is that from the house? A I should say about one hundred yards, as near as I can estimate.

10 Q Can you see from there to the house? A It is all open.

Q You can see the foundation and all? A You might not be able to see the foundation.

Q That was the day you say Mohair was hurt? A There was no fight when I went by.

Q You went by at two o'clock, and they were all sober apparently? A Yes, sir.

20 Q About five o'clock you went back and they were all paralyzed? A From observation. They were lying in all sorts of positions on the ground.

Q If you saw a man lying on the ground on a Sunday afternoon you would say he was paralyzed with drink? A I would not say so.

Q They appeared to be paralyzed? A Yes, sir.

Q You don't know whether they were drunk or not? A I didn't say so.

Q What did you want us to think? A I don't know what you are going to think about it.

30 Q From your testimony I would think all these men lying on the ground were drunk? A I said, they lay with a demijon standing between them.

Q Did it have straws around it? A It was twenty-five feet from me.

Q Was it a demijon? A It had that appearance.

Q Were those men drunk? A I don't know, I am not swearing they were.

40 Q You never saw fights when you went by there? A Yes, sir, I have.

Q That summer? A I won't, at this time, say it was that summer.

Q You have seen fights all the way up from Branchville up to your house, and on up towards Culver's Lake? A Not from my house down, but from my house up I have.

Q You didn't see any fighting there during the year 1912? A I say I can't say whether the fights I saw were in the summer of 1912.

Q Did you say you saw any fights along that road between April 1st and October 20th, 1912? 10
A I could not answer that.

Q You say you heard some men swearing back of the house, between the house and ice house? A Yes, sir.

Q When? A One Sunday when I came down the macadam road.

Q Did you see the men when you heard them swearing? A I am not positive whether I saw them or not, they were there in the bushes. 20

Q Another time you say you heard some men yell? A Yes.

Q How many? A One.

Q Had you ever heard anyone yell in that neighborhood before? A I heard some man yell, and some noise.

Q Did you ever hear any yells around your house in that neighborhood? A Not that kind.

Q How far was Mr. Clifford's house from your house? A You will follow the road—

Q Go straight across. What is the nearest house to him towards Branchville? A Our tenement house. 30

Q How far is that? A About three hundred yards.

Q Take your house. How far is your house from your tenement house? A Do you mean across the field?

Q Straight line. A About one hundred yards.

Q Only three times the distance from the tene- 40

ment house to Clifford's house as it is from your house to the tenement house? A I should say so.

Q Hadn't you better multiply that by three?
A I don't think so.

Q You have never been bothered at your house by any noises from Clifford's house? A I can't say, during the time between the months of April and October, we were disturbed.

Q You never heard anything from his house
10 during that summer? A I will say "no."

Q You say this line of Clifford's goes right along the ice house? A That is my understanding.

Q You say that ice house was in his possession during the year 1912? A I don't know who had possession of it.

Q You don't know whether that was in his possession or not during the year 1912? A I don't know whether it was or not.

Q We will go up to where that oak tree is.
20 Was there any fence along the road and that field during 1912? A No, sir.

Q Along the road on the left hand side after you go down that hill along the woods, whose land is that? A Mr. Gaston Clifford's land.

Q Whose land is it? A His land. He extends his lines every year and takes more land of his neighbors.

Q When did he extend his lines up there? A
30 That has always been his land.

Q How do you know that? A I have seen him moving, fixing the fences, fixing the roads, for years and years.

Q (*By the Court*) This swearing and yelling you spoke of back of Clifford's house in the fall, in whose possession was that land? A Mr. Clifford's.

40 Q You have testified once you heard some yell-

ing there but didn't see the men, and at another time you heard one man swear but didn't see them? A I have heard swearing over there lots of times.

Q I mean during the summer of 1912? A Yes, sir, I did.

Q Confine it to the season between April 1st, 1912, and October 20th, 1912, you have testified you heard them swear and yell once. That is true, is it? A Yes, sir.

10

CHOLA M. SHAY, a witness for the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Culver's Lake.

Q How long have you lived there? A Five years.

Q How near do you live to Mr. Clifford's? A Three or four hundred yards. 20

Q Do you recall the summer of 1912, between April 1st and October 20th? A Yes, sir.

Q Do you remember observing anything relative to his property at that time? A What do you mean?

Q I refer particularly to people who were there, or noise? A I have heard noises in that direction and sent people there.

Q What kind of noises? A Shouting, arguing and singing. 30

Q Can you locate these noises? A In the direction of his premises, but I never investigated it particularly, so I could not say it was on his premises.

Q Where were you when you heard these noises you have described? A Around my house.

Q What properties are there between your's and Mr. Clifford's? A I think the Riker home is between there, that is the only house. 40

Q How far is the Riker place from your house?
A About twenty to thirty yards.

Q Can you swear positively whether these noises came from the Riker place? A They didn't.

Q What is the next property adjoining the Riker property? A I think Mr. Crisman's.

Q No house between the Riker house and the Crisman house? A No, sir.

10 Q How far is it from your house to the Crisman's house? A Three or four hundred yards.

Above testimony of Chola M. Shay ruled out by Court upon application of counsel for defendant.

CHARLES H. CRISMAN, a witness for State, being duly sworn, testified as follows:

20 *Direct examination* by Prosecutor.

Q Where do you live? A Branchville.

Q And have for how many years? A Fifty-nine years.

Q Do you own any land in the vicinity of Gaston Clifford's property in the Township of Frankford? A I do.

Q Does that land adjoin the Clifford land? A Yes, sir.

30 Q At what point? A Point known as the ten-acre tract, Mt. Pisgah saw-mill.

Q Do you know where the ice house mentioned in this case is located? A Pretty near.

Q Do you know where your land is with reference to this ice house? A Not quite.

Q How close? A Within a few feet.

Q On which side of the ice house is it, nearer Clifford's house? A If the ice house is built where the old road house was it is on me.

40 Q (*By the Court*) Who had control and pos-

session of the ice house during 1912? A Cliffords, they built the ice house.

Q You bought the land immediately adjacent to that, between that and the macadam road, but had possession of that in 1912? A I have possession of some of it, and Cliffords have possession of some of it.

Q Extending back from the ice house towards the macadam road, how far does he have possession of? A The land runs down there like a V; I come in, Cooper comes in, and Clifford's come in. It is pretty hard to tell who owns it. 10

Q Had you done anything with that land you own up there prior to 1912? A I haven't leased any. We talked of it, but I don't think we leased any.

Q Did you make any arrangements with Mr. Clifford, by which he took possession of land in the vicinity of that ice house? A There is no possession up there. 20

Q What do you mean? A It is all open.

Q Had you made any arrangements concerning the possession of your property adjoining the ice house during the year 1912, I mean the land between the ice house and the macadam road. Do you own any land between the ice house and the macadam road? A You would have to survey it to find out.

Q Mr. Clifford was in possession of the ice house? A Yes, sir. 30

Q Do you know how close to the ice house your line runs? A No.

Q Do you know whether Mr. Clifford exercised any control or dominion, or had anything on that land, that would give him possession during the summer of 1912? A I don't think he did.

Q Mr. Crisman, were you familiar with the reputation of Fred Struble for sobriety during the year 1912? A No. 40

Q Of Fred Spangenburg, Sylvester Sylcox, Charles Hanna, Harvey Decker, Campbell, John Riker, Henry Haggerty, Ellsworth Struble, George Heater, Simeon Crown or Amzi Crown? A No.

Cross examination by counsel for Defendant.

Q Did you have any occasion during the summer of 1912, on Sundays, to go to Culver's Lake?

A No, sir.

10 Q Did you go? A I could not tell the year, but I went one Sunday.

Q But you can't tell when it was? A I went with Dr. Riddell. They sent down word there was a wreck up there and wanted a doctor, they told me to get any doctor.

Q You were not there at that time? A I went up with him. When we got up there we found a drunk instead of a wreck.

Q Who did you find? A Mohair.

20 Q Where was he when you got there? A About fifty feet from this oak tree.

Q Anyone else there? A Ellsworth Struble holding his head.

Q What was his condition when you got there? A I didn't know whether he was injured or drunk.

Q On whose land was he at that time? A Mr. Clifford's.

30 Q What is the character of this land around the ice house? A I don't believe there is any land there, nothing but stones.

Q Any fence there? A I don't think so.

Q (*By the Court*) How far is it from Clifford's house out to where you found these men?

A About four hundred yards.

JOHN A. McCARRICK, a witness for the State, being duly sworn, testified as follows:

Direct examination by the Prosecutor.

40 Q Where do you live? A At Branchville.

Q What is your business? A A newspaper correspondent.

Q Hold any official position in the Borough of Branchville? A Recorder of the Borough.

Q How long have you been such recorder? A Going on three years.

Q How long have you been a resident of Branchville? A Twenty years continuously.

Q Are you familiar with the reputation of Ellsworth Struble for sobriety in the Borough of Branchville generally during the year 1912? A Yes, it was poor. 10

Q Of Fred Spangenburg? A I can't say as to that.

Q Of Herbert Decker? A Yes, sir, poor.

Q Lester Sylcox? A I am not.

Q John A. Riker? A Yes, poor.

Q Henry Haggerty? A Yes, poor.

Q Ellsworth Struble? A Yes, poor.

Q Simeon Crawn? A I am not. 20

Q Abram Crawn? A Yes, poor.

Cross examination by counsel for Defendant.

Q (*By the Court*) During the summer of 1912 did you have any occasion to go to Culver's Lake, or across the macadam? A Every Sunday I went over to the lake.

Q Do you know where Mr. Clifford lives? A I do. 30

Q (*By the Court*) Did you, or did you not, see any gathering of men about Mr. Clifford's, or in the yard at any time when you went across the macadam? A I didn't see any men congregated at the house, because the view is screened by trees. I have seen a number of men congregated in the road, and coming down from there, but as to who they were I am unable to tell, it was a frequent occurrence. 40

Q (*By the Court*) Was there anything about their appearance that would attract your attention?
 A Staggering and talking loud.

Q (*By the Court*) Did you ever see any of these men you refer to near the house of Mr. Clifford not on the public road? A These men were not on the public road at the time, they would be coming from the brush.

10

Q (*By the Court*) How far from Mr. Clifford's house? A I could not say.

Q (*By the Court*) Were they on Mr. Clifford's premises? A No.

Q In going up the macadam road to Culver's Lake you have met men along the macadam road?
 A Yes.

20

Q Sometimes you have seen some of them stagger? A Yes.

Q And some of them a little noisy? A Yes.

Q Was that in Branchville? A Not on Sunday.

Q You are not home on Sundays, are you? A Yes.

Q You have seen them come in Branchville that way? A Yes.

Q When were you made Recorder? A Either
 30 in January or February, 1912.

Q You have been recorder ever since? A Yes.

Q You always go up to the lake by the macadam road? A Yes.

Q You say you are acquainted with the reputation of Lester Sylcox? A I didn't.

Q He had no reputation up there about drinking? A I am not familiar with it, if he has.

Q How do you get familiar with reputations?
 A What other people say.

40

Q You have had people come to you and tell

you these men have poor reputations for sobriety?

A Yes, sir.

Q Prior to 1912? A Yes, sir, and since.

Q You picked up some of this reputation business in the hotels? A No, special reference was made to the alleged fact they visited Clifford's.

Q That gave them the reputation in Branchville? A The hotels were legalized to sell liquor.

Q If a man went up towards Clifford's he got a bad reputation in Branchville for sobriety? A 10
No.

Q If they drank at the hotels their reputation was all right? A It was legalized. Special reference was made to the alleged fact they visited Clifford's, and more attention was made to the fact they came through the town staggering on Sundays.

Q Then that is what gave these men a black eye in Branchville, because they had been up above your town and came back intoxicated? A I think 20
they had it already.

D. L. B. SMITH, a witness on behalf of the State,
being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A At Branchville.

Q And have for how long? A Forty years.

Q What is your business? A Merchant.

Q In the Borough of Branchville? A Yes. 30

Q How long have you been engaged in that business? A Twenty-three years.

Q Are you familiar with the reputation of Fred Struble for sobriety in the Borough of Branchville, and the Township of Frankford, during the year 1912? A Yes.

Q What was that? A Bad.

Q Are you familiar with the reputation of Fred Spangenburg during that time? A No, sir.

Q Herbert Decker? A Yes, bad. 40

Q John A. Riker? A Yes, sir, Bad.

Q Henry Haggerty? A Yes, sir, bad.

Q Ellsworth Struble? A Yes; bad.

Q Simeon Crawn? A Yes, sir, bad.

Q Amzi Crawn? A Yes, sir, bad.

Cross examination by counsel for Defendant.

10 Q How many people did you ever hear say anything about the reputation of Harvey Decker? A I can't state.

Q Did you ever hear anything? A Yes, sir.

Q Mention one? A I can't mention one.

Q You haven't forgotten they said it, but you have forgotten the name of anyone saying it? A Yes, sir.

Q Is that the way a man's reputation is made in your neighborhood? A I answered your question.

20 Q Who ever talked about John A. Riker? A It is a general talk.

Q Where did you hear it? A In the store.

Q Is that where reputations are made, in your store at Branchville? A No, sir.

Q People come in your store and say something to some people, and that so far as you are concerned makes their reputation? A No.

30 Q Did you ever hear it anywhere outside of your store? A I can't state any specific place, but I have heard it.

Q It is one of these intangible things that fly in the air and you got hold of it? A I don't understand the question and can't answer it.

Q As I understand you, you can't tell the name of any single person who ever talked to you about the drinking habit of Mr. Harvey Decker or John Riker? A No, sir.

40 Q And yet you can tell what their reputations are? A Yes, sir.

Q Have you ever heard anything about it in your store? A I can't state positively.

Q Anybody say anything to you outside of the store? A I can't say positively.

Q Then no one said anything to you? A I said I could name no particular person, time or place when these things were talked over.

Q If you can't mention the name of any person, how can you make such a statement? A I will leave that to you.

10

JOHN H. NELDEN, a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A At Branchville.

Q How long have you lived there? A About eight years.

Q Have you held any official position in that Borough in that time? A Yes, sir.

20

Q What was that? A Mayor of the Borough, and Councilman.

Q For how long? A Five years.

Q Were you acquainted with the reputation of Fred Struble for sobriety in that locality during the year 1912? A I can't say I was, I can tell you what my idea are.

Q Were you acquainted with the reputation of Fred Spangenburg? A I can't say I am.

Q Herbert Decker? A Yes, bad.

30

Q John A. Riker? A No, I am not.

Q Henry Haggerty? A No, I am not.

Q Ellsworth Struble? A No, I am not.

Q Simeon Crawn? A Yes, sir, bad.

Q Abram Crawn? A Yes, sir, bad.

Cross examination by counsel for Defendant.

Q This was prior to 1912? A Their reputation has been for several years of that standing.

40

Q We will confine ourselves to 1912, and previous thereto. A Yes, sir.

Q You have heard people say they drank? A General conversation, and beyond denial.

Q You had not talked with anyone? A I could not tell you the particular person I heard say that. Different things would come up and the general conversation would be that certain persons would do so and so.

10 Q You never heard anyone say he was a drunk prior to 1912? A They came very close to it by intimations.

Q What is the reasonable line? A That would be pretty hard.

Q How frequently can a man get drunk in Branchville without having a reputation of being a drunkard? A If a man has neglected his business, and the liquor taste was stronger than his business, I would say he was inclined to be on
20 the edge of drunkenness.

JAMES W. HOLTEN, a witness for the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Branchville.

Q How long have you lived there? A Thirty years, most of my life.

30 Q What is your business? A Farming.

Q Are you acquainted with the general reputation of Fred Struble for sobriety in that locality during the year 1912, and previous? A Yes, not good.

Q With Fred Spangenburg? A Yes, sir, not good.

Q With Harvey Decker? A Yes, sir, not good.

Q John A. Riker? A Yes, sir, not good.

Q Henry Haggerty? A Yes, sir, not good.

40 Q Ellsworth Struble? A No.

Q Simeon Crawn? A Yes, sir, not good.

Q Abram Crawn? A Yes, sir, not good.

Cross examination by counsel for Defendant.

Q You have heard people say it was not good for sobriety? A Yes.

Q Where did you hear this talk? A I don't know where.

Q Do you belong to this club? A No, sir. 10

Q Whom did you hear say their reputation for sobriety was not good? A I can't say, it is general talk.

Q You don't believe general talk? A I do in that case.

Q Name anyone who ever discussed that matter with you prior to 1912? A I could not do it.

Q You don't know a single individual who spoke to you about it, or in your hearing? A No, sir.

Q The rest were the same way? A Yes. 20

NOAH H. HOPKINS, a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Branchville.

Q For how long? A Since 1886.

Q Have you lived there continuously since that time? A Yes. 30

Q Have you held any official position in the Borough of Branchville during that time? A Yes.

Q What? A Mayor.

Q For how long? A Two terms.

Q Any other position? A I don't think I have.

Q Are you acquainted with the reputation of Fred Struble, in that locality, as to sobriety, for the year 1912, and previous? A I have seen those fellows all full occasionally.

Q Are you acquainted with the reputation of 40

Fred Struble, in that locality, as to sobriety, for the year 1912, and previous? Kindly ask that question? A Yes, sir.

Q What was it? A Poor.

Q With Fred Spangenburg? A Yes, sir, bad.

Q With Harvey Decker's? A Yes, sir, poor.

Q With John A. Riker's? A Yes, sir, poor.

Q With Henry Haggerty's? A Yes, sir, poor.

Q With Ellsworth Struble's? A Yes, sir,
10 poor.

Q With Simeon Crawn? A Yes, sir, bad.

Q With Amzi Crawn's? A Yes, sir, poor.

Cross examination by counsel for Defendant.

Q You are giving your evidence on what you heard other people say, not from what you may know, because one man is not supposed to give another man a reputation. With whom did you
20 talk about Harvey Decker? A I could not remember.

Q How do you know what they think if they don't tell you? A I don't.

Q Who told you? A I can't remember those things, I have heard them talking.

Q You can't remember anything you have heard said about any one of these people? A When we saw people along the street we often talked about it.

Q Whom have you heard say anything about
30 it? A I have talked with different ones in Branchville, but I can't remember who they are, and they have talked with me.

Q Who are they? A I would have to name them all.

Q Well, name some of them? A I can't just remember.

IRVING ROE, a witness on behalf of the State,
40 being duly sworn, testified as follows:

Direct examination by Prosecutor.

Q Where do you live? A Near Branchville.

Q How long have you lived there? A All my life.

Q What is your business? A Farming just now.

Q Are you familiar with the general reputation of Fred Struble as to sobriety in that locality during the year 1912? A Yes, sir. 10

Q What was it? A Bad.

Q Ellsworth Struble? A Yes, sir, bad.

Q Fred Spangenburg? A Yes, sir, bad.

Q Harvey Decker? A Yes, sir, bad.

Q John A. Riker? A Yes, sir, bad.

Q Henry Haggerty? A Yes, sir, bad.

Q Simeon Crawn? A Yes, sir, bad.

Q Abram Crawn? A Yes, sir, bad.

Cross examination by counsel for Defendant.

Q You are like the rest. You are telling what you heard people say? A Their general conversation. 20

Q Do people in Branchville discuss reputations frequently? A Yes.

Q What people have you heard? A I can't name anyone personally.

Q You employed some of these people, and have right along? A Yes, sir.

Q Are they good workers? A No, sir.

Q That is the reason you employ them? A I was compelled to employ them sometimes. 30

Q You didn't care about their reputation so far as work was concerned? A I did, but I had to do the best I could.

June 23rd, 1914

WILLIAM J. MOHAIR.

Examined by Wm. A. Dolan, Pros.

Q Where do you live, Mr. Mohair? A New-
ton. 40

Q Do you know the defendant, Gaston Clifford?

A I have met him.

Q Do you know where he lives? A About.

Q Have you ever been to his place between April 1, 1912 and October 20, 1912? A No, sir, not at his house, I might have been on his land.

Q Do you recall the latter part of September, 1912, when you were in the vicinity of Culver's Lake on Sunday? A Yes, sir.

10 Q Where were you on that morning? A We were from here to Culver's Lake.

Q Who went with you? A Ellsworth Struble.

Q What time did you leave here? A I should think it was after 1 o'clock Sunday morning.

Q Do you know what time you arrived at Culver's Lake? A I don't believe we arrived at Culver's Lake.

Q Where did you go? A Some place in the woods or in the fields.

20 Q What did you do after you got there? A Sat down talking.

Q Any one else with you? A Ellsworth Struble and his brother with me, there were others afterwards.

Q Do you know who they were? A I knew one or two of them.

Q Tell us as nearly as you can where you were? A I could not tell you, I only went up that once in about 11 years, I do not know where it was, around the lake somewhere.

30 Q You were sitting down? A Yes.

Q Ellsworth Struble and Fred Struble and who else? A Afterwards we found it was a Campbell.

Q Do you know about what time you arrived there? A We arrived at Branchville about 7 o'clock and went up to Fred Struble's and got some fishing tackle and walked up towards the lake.

40

Q How long did you stay at this place? A Quite a while.

Q What were you doing there? A Some of the fellows were telling stories and some were singing, we had some cider, we were drinking.

Q How much cider did you have? A I only saw one jug at a time, there may have been others around.

Q You stayed there for about how long? A I stayed there until the afternoon. 10

Q Then what did you do? A I done about the same thing, what do you mean.

Q Did you leave that place? A We did after a while, after Campbell got fooling and I and Struble left there.

Q Where did you go then? A We went across the field and sat down.

Q What did you do there? A About the same thing—talking.

Q Any cider there? A I think there was, I do not think we brought any, but I think there was afterwards. 20

Q Did anything happen there? A Campbell got chewing the rag to me—

Court. State what happened.

A Campbell and I got in a sort of a fight.

Q Anything happen to you? A He hit me with his fist and knocked me down.

Q Were you hurt? A Yes, sir. 30

Q Where? A Hit in the eye and over here (witness points to places where he was hit).

Cross examination by Henry Huston.

Q You and Ellsworth left Newton about 1 o'clock in the morning? A Somewhere around there.

Q What did you have with you in the shape of victuals and drink? A We had a quart bottle of whiskey. 40

Q You had nothing to eat? A Nothing to eat with us.

Q How were you when you left Newton, in what condition? A We had been drinking some time during the evening, and this was the first supply, we were to use it the next day and the next night fishing.

Q You took that along for bait? (No answer.)

Q Drink any going toward Branchville? A
10 Yes, sir.

Q Where did you sleep that night? A Some where along the road, I could not tell you—along the road.

Q That is, you sat down on the grass and slept? A Yes, sir.

Q Some time in the morning you woke up and went to Branchville? A Yes, sir.

Q When you woke up you braced up with the liquor? A Yes, I believe we did.

Q There you got Fred Struble and went up
20 toward the lake? A Yes, sir.

Q Where you stopped up there, you don't know? A No, sir.

Q Have you any idea? A No, sir, I haven't much.

Q And there, you say Campbell after a while came—you do not know what time you got up there? A I do not—I did not see a watch that
30 morning.

Q You could tell by the sun? A It must have been around ten.

Q In the woods with the fellows you still had your quart of whiskey? A I do not know whether we had the quart then.

Q You had some of it? A We may have had.

Q As a matter of fact you didn't know anything that happened? A Yes, sir.

Q You sat around there and had some cider?
40 A Yes, sir.

Q You don't know where they got it? A No, sir.

Q You sat round there after dinner time? A Yes, sir.

Q You had no breakfast that morning? A No, sir.

Q Had any dinner? A We had some cheese and crackers.

Q Is that where you sat down first? A Yes, sir. 10

Q After dinner you went to the lake, do you know where you went? A I could not tell you.

Q You drank more or less whiskey that day? A As long as we had it I did.

Q You don't know when the whiskey gave out? A No, sir.

Q Then you went up there and you and Campbell got in a fight and he hit you? A Yes, sir.

Q You didn't know anything after that? A After we were on our way home I came out of it. 20

Q Then you were pretty drunk when you left Newton? A We were drinking, we were not sober.

Q You did not get sober all day? A No, sir.

STATE RESTS.

Motion made by Henry Huston, Esq., to strike out all evidence of the sale of cider by the defendant, Gaston Clifford, at any time during the time stated in the indictment. 30

After argument by counsel, court denies the motion.

Exception to the ruling of the Court by Judge Huston.

Exception allowed by Court. 40

WITNESSES FOR DEFENDANT.

DR. EDWARD A. AYERS.

Examined by Henry Huston, Esq., Attorney of Defendant.

Q Dr. where do you live? A Branchville.

Q You are a practicing physician? A Yes, sir.

Q Have been for some years? A Yes, sir.

10 Q Do you know the place where Gaston Clifford lives? A Yes, sir.

Q Did you know the mother of Gaston Clifford? A Yes, sir.

Q You may state whether you attended her during the year 1912 at any time? A I did.

Q From what period? A I can't tell the exact dates, but my recollection is it was through a number of weeks during her last illness.

20 Q You may state whether or not that began the first of April or not?

Mr. Dolan. Have you your records here?

A I have not.

Q You were the sole attending physician? A Yes, sir.

Q Do you know if you began about the first of April or before? A My recollection is about that time.

30 Q Up to when were these visits? A Up to the time of her death.

Q How frequently did you go there? A Several times a week.

Q At what time of day? A Varied between morning and afternoon.

Q Did these visits include Sundays? A Yes, sir.

Q What time were you there on Sundays? A I cannot recall any specified time, I was there any time, morning or afternoon.

40 Q You may state whether or not the patient

was seriously ill from the time you began going there?

Objection made by Mr. Dolan stating that the above question was not bearing on this case.

Court directs question to be answered.

A She was seriously ill.

Q In all the times that you visited her at that house, you may state what you observed as to whether there was any noise of any kind or disturbance in or about the house? A There was not, I do not recall seeing any one there, excepting the immediate members of the household. 10

Cross examination by W. A. Dolan.

Q You do not recall how many weeks that you attended her? A Not with much accuracy. I should say it ran over a month, and I had seen her at longer intervals previous to that. 20

Q This illness began about April 1st? A I could not say as I have not my memorandum, only she was sick a number of weeks gradually declining.

Q What was her trouble? A Acteno sceerous and valvular trouble of the heart.

Q You attended her for a period of over a month, was it over two months? A I could not say, I had attended her some months before that. 30

Q You attended her frequently for several months? A I should say it was at least six weeks.

Q Including Sundays? A Yes, sir.

Q Do you know how many Sundays you were there? A Possibly five or six it may have been.

Q At that time she was seriously ill? A Yes, sir.

Q What portion of the house did you go through 40

on these visits? A I went into the kitchen in the main hall, and upstairs to her bedroom.

Q Did you ever go into the cellar in what is called the bar-room? A No, sir.

Q Did you visit any portion of the premises except the house? A No, sir.

Q Did you go back to the house toward the ice house on any of these visits? A No, sir.

10 Q You saw no one on any of these visits excepting the housekeeper and the members of the family? A That is all.

Q How long were your visits? A Half an hour to three quarters.

By Mr. Huston.

Q You saw nothing and heard no noise of any question? A No, sir.

20 Q Was her condition such that it would require quietness? A No, sir, only weakness and general decline.

HARMON CLIFFORD.

Examined by Mr. Huston.

Q Where do you live? A Frankford Township near Culver's Lake.

Q What relation are you to Gaston Clifford? A Brother.

30 Q Do you live in the same house? A Yes.

Q You may state whether you lived there from the first day of April, 1912, to the 20th day of October, 1912? A Yes, sir.

Q Were you there every day? A Pretty much every day.

Q And Sundays, too? A Yes, and Sundays, too.

Q During that time can you state whether there was ever any fight occurred in or about the house?

40 A Was none whatever.

Q You may state whether at any time? A There has not been at any time.

Q At any time was there any loud talking or singing or swearing about the house? A No, sir; there was not.

Q What is the nearest house to that house in which people were living? A The widow Ryker's upon the roadside.

Q Near the lake? A Yes.

Q How far is it from your house to the Ryker house? A That I could not say—it is only a short distance; it is the first house above on the old road. 10

Q And you turn from your house down the road and down hill and across low ground before you come to her house? A Yes, sir.

Q What is the nearest house towards Branchville? A That is Mr. Ely's tenant house down under the hill on the Branchville road.

Q Is that the house that you go by to your place towards Branchville on the right hand side of the road? A Yes. 20

Q How far is it from that house to your house? A I could not say— $\frac{1}{4}$ of a mile, probably; I presume it is more.

Q Do you know Abram Crawn? A I do.

Q And what was his business in 1912? A I could not say.

Q Do you know what he did? A He works around as near as I can tell. 30

Q Works by the day? A I suppose so, as near as I can tell.

Cross examination by W. A. Dolan.

Q Been home every Sunday during the summer of 1912? A I think I was.

Q Do you remember seeing Fred Struble there at any time during that year? A No, sir.

Q Do you remember seeing Fred Spangenberg there that summer? A I may have seen him. 40

Q How many times? A I do not recollect.

Q Did you ever see him in the bar room? A No, sir; I never did.

Q Did you ever see Herbert Decker? A Yes, sir.

Q Did you ever see him drinking? A I may have seen him drinking a glass of cider.

Q Did you ever see John Ryker there? A Yes, sir; he works for us.

10 Q Did you ever see him drink? A I do not think I did.

Q Did you ever see him during that period taking any cider? A No, sir; I do not think I did.

Q Did you see Henry Haggerty there? A I may have.

Q Did you see Ellsworth Struble there that summer? A No, sir.

20 Q Did you see Simeon Crawn there that summer? A I do not remember, he worked for us; I do not remember if it was that summer or last.

Q Did you see Lester Sylcox there that summer? A No, sir.

Q Did you see Abram Crawn there that summer? A I seen him up the road; he never stopped at the place.

Q Did you see Mrs. Fred Spangenberg there? A Yes, sir; I saw her a few times.

Q What was she doing? A She used to call on the ladies in the house.

30 Q Did she ever come after her husband? A No, sir; she never took him away.

Q Did you see Teets Campbell there that summer? A He passed there, but did not stop at the house.

Q Did you ever see Tracy Drake there that summer? A Yes.

Q Did you ever see Charlie Hannah there that summer? A No, sir.

40 Q Where does your brother keep this cider?
(Objection by Mr. Huston.)

Q Did you ever see any cider sold that summer?
(Objection made by Mr. Huston overruled.)

Q Did you see any of the men whose names I have mentioned, Lester Sylcox, Abram Crawn, Fred Spangenberg, Teets Campbell, Tracy Drake, Charlie Hannah, buy cider there during that summer?

(Objection by Mr. Huston overruled.)

Q As I understand you during the summer of 1912 and October 1, 1912, you never heard any noise? A No noise around the place, I heard it on the road. 10

Q You never heard any noise round the ice house? A No, sir.

Q You never heard any noise coming from the bar-room? A No, sir.

Q You were not there the day they had the fight? A I do not know anything about it; I was home but did not see it, but I heard that they had some trouble. 20

Q You heard nothing about the fight itself? A No, sir; no noise.

Q You did not hear anything before that? A There was nothing before that.

Q Did you see these men around the icehouse that day? A No, sir, I could not see over the hill.

Q You did not see Ellsworth Struble, Fred Struble and William Mohair? A No, sir.

Q You can see the icehouse from the house? A Yes, but I did not see any people there. 30

Q You say during that entire summer you heard nothing unusual? A No, sir, there was nothing going on.

By Mr. Huston.

Q Do you know the old road runs up to Owlletown, as it is called? A Yes, sir.

Q Was there any connection between that old road and your house? A A footpath. 40

Q There starts a footpath from your house and out towards the macadam road out towards the Owlie barn? A Yes, sir, it has been there for years.

Q You may state if that footpath is used by the people who want to get across there? A Yes, it is used all the time.

Cross examination—W. A. Dolan.

10 Q Is it not used particularly by these several men who come to your brother's to buy cider? A No, sir.

Q Are they not the particular users of the path? A No, sir.

Q Name some other than those list of men who used that path during that period, other than those I called your attention to a few minutes before? A I used it myself, sometimes, and—

20 Q You cannot mention any other names? A I think Asher Snook used that.

(Objection made by Mr. Huston.)

Court. Proceed with cross examination.

Q Can you name any others besides yourself and Asher Snook who used that path? A Several used this path.

Mr. Huston.

30

Q And that path has been used for the last 40 or 50 years? A Yes.

Mr. Dolan.

Q And that path has been used by several people who want to buy cider there?

Objection made by Mr. Huston.

40

Over-ruled.

ASHER E. SNOOK.

Direct examination—Henry Huston.

Q Where do you live, Mr. Snook? A Near Culver's Lake.

Q Just above the lake on the road toward Tuttle's Corner? A Yes.

Q About how far from where Mr. Gaston Clifford lives? A About half a mile, it might be a little more. 10

Q You are acquainted with Gaston Clifford? A Yes.

Q Have been for some years? A Yes.

Q During the year 1912 from April 1st to October 20th, you may state whether or not you went to his house at different times? A I could not say, I go there frequently but not very often?

Q Do you know anything about the old road, sort of a crossroad from the macadam road towards the Clifford place? A You mean the old turnpike? 20

Q Yes. A There used to be a road there that was travelled.

Q Do you know whether there is a path used by people in the neighborhood from the new macadam road to the old turnpike by your house? A I could not tell you—I went through there a couple of times.

Q Do you know Abram Crawn? A I have seen him. 30

Q Did he ever work for you? A A little but not much.

Q Do you know whether he worked for you during 1912? A I could not tell now, he has worked some the last three or four years off and on.

Q A man who works by the day? A Yes.

Q John A. Ryker, did he work for you? A Yes; he has a few times, works by the day. 40

Q Bert Spangenberg, did he work for you? A He has worked for me quite a good deal.

Q Works by the day? A Yes.

Q Did he work for you during 1912? A I could not tell you now, but I think he did, he worked one summer, but I could not tell you now what year it was.

10 Q At the times you were at the house of Mr. Clifford, the summer of 1912, did you ever see any disturbance there or hear any noise of any kind? A I never did.

Cross examination—W. A. Dolan.

Q You mean you never heard any disturbance on any of your visits to the Clifford house? A I never did.

Q How often did you go there? A Probably two or three times a year, maybe more than that.

20 Q What days of the week did you go there? A I have been there on Sundays a few times, and some week days.

Q When you went there two or three times a year, was that on Sunday? A No.

Q How long did you stay? A I have been there to talk to Harmon until quite late, when the old lady was there.

Q What time did you go there? A After dark.

30 Q And then you spent the evening with the brother in the house? A Yes.

Q You never went there in the morning and spent the entire day on Sunday? A No, sir, not all day.

Q What do you mean, that Simon Crawn works by the day? A I presume there are day hands to work here and there where they can get a day's work.

40 Q Do they work every day? A I could not say. I have had Simon Crawn a few times to help

me load cars, but I have never had him as a steady hand.

Q Did you ever have him work for you steadily?

A Not any much of the time.

Q What have you to say as to his habits and sobriety?

(Objection made by Mr. Huston.)

Court rules out question, saying it is not material. 10

THEODORE F. RYKER.

Direct examination—Mr. Henry Huston.

Q Where do you live, Mr. Ryker? A I live at Culver's Lake.

Q Where were you living during the year 1912?

A Right there where I live now.

Q That is by Col. Price's barn. That is right adjoining the Culvermere Hotel? A It is. 20

Q Do you know Gaston Clifford? A I have known him ever since he was that high. I am older than he is.

Q During the year 1912, say from April 1st, do you recall whether you were at his premises at any time during that summer? A Yes, sir, I worked for him during that year in hay and harvest.

Q Outside of the time you were working for him, you may state whether you were there from time to time? A Yes, sir, I was. 30

Q Beginning with April 1st, 1912, and during the summer, were you at his house on any Sunday? A Yes, sir.

Q What time were you there on Sundays? A I was often there about 10 o'clock and stayed until 2 or 3 maybe, sometimes.

Q During the time that you worked there, and the time you were there in 1912, you may state whether you ever saw any disturbance at or about his premises? A I never did. 40

Q Or heard any loud singing or shouting? A No, sir.

Q Or swearing? A No, sir.

Q Did you know his mother? A I knew her well.

Q She was sick that year? A She was.

Q You were there during the time of her illness? A Well, yes, I was there on that time.

10 *Cross examination*—Mr. Dolan.

Q How many Sundays during the summer of 1912 were you at Gaston Clifford's? A About three or four.

Q When were they? A While the mother was sick, or after she died? A I was there while she was sick or after she died.

Q Were these Sundays, before she was sick? A Before she was sick and after she was sick.

20 Q When you went there on Sundays, you usually got there about 10 o'clock and stayed there until 2 or 3 o'clock? A Yes, sir.

Q Where did you go when you went there? A I sat outside of the house.

Q What were you doing? A Talking with Harmon.

Q Were you drinking cider? A No, sir.

Q Do you drink cider? A No, sir.

30 Q How many Sundays during the summer of 1912 did you go there at 10 o'clock in the morning and stay there until 2 or 3 o'clock. A I often went down there and stayed.

Q Did you do any work there those days? A No, sir, not on Sundays.

Q What was your object in going there? A Because they are neighbors.

Q Are you still working for Gaston Clifford? A Not now.

40 Q Did you during the past year? A Yes, I worked for him last summer.

Q Did you ever see Fred Spangenberg there?

A No, sir.

Q Abram Crawn? A No, sir.

Q Lester Spangenberg? A No, sir.

Q Teets Campbell? A No, sir.

Q Never saw any of these men there? A No, sir.

Q Did you ever see any men in the cellar drinking? A No, sir.

Q Ever see any cider go out of that house on Sunday? A I never did. 10

MRS. ANNA C. QUINN.

Direct examination—Mr. Huston.

Q Mrs. Quinn, where do you live? A In Newton.

Q Lived here for some time? A Yes.

Q Do you know where Culver's Lake is? A Very well. 20

Q Who is your grandmother? A Mrs. Ann O'Leary.

Q You may state whether she has a cottage there and has had for a number of years? A She has more than one—three.

Q You may state whether you have been up to the lake or have been during the year 1912? A I was there a short time.

Q What time of the year? A Both in July and August. 30

Q Do you know Gaston Clifford? A I do.

Q Do you know where his place is? A I do.

Q You may state when you were at your grandmother's cottage you had occasion to go to Gaston Clifford's home? A I have been there numerous times.

Q Week days and Sundays both? A Both.

Q In the house? A Yes.

Q You were acquainted with the whole family? A Very well. 40

Q For what purpose did you go there? A For milk or chickens.

Q Eggs, too? A Possibly, I do not recall that.

Q How frequently did you go there in the summer of 1912? A I went there while I was at the lake, probably once a day, sometimes twice a day.

Q Go alone? A Sometimes, and sometimes I had company with me.

Q Ladies? A Sometimes, and possibly gentlemen.
10

Q During the times that you were there during the summer of 1912, you may state whether or not you ever heard any noise about the house? A I never did.

Q Or ever see any disturbance? A Never.

Q Any loud singing or swearing? A No, sir.

Q Or any gathering of men about the house? A Not any gathering, I might have seen one or two men on several occasions.

Q But so far as noise was concerned? A None whatever.
20

Cross examination—Mr. Dolan.

Q Can you give me the names of the men who were there? A I really could not, the faces were familiar to me, but I could not tell the names of the men.

Q About what time did you go there? A In the morning around 10 o'clock and in the evening between 5 and 6.
30

WILLIAM W. RYKER.

Direct examination—Mr. Huston.

Q Where do you live, Mr. Ryker? A Culver's Lake.

Q How long have you lived at Culver's Lake? A Lived there for seven years since I came back.

Q Are you acquainted with Gaston Clifford?
40 A Yes, sir.

Q You know where he lives? A Yes, sir.

Q Where were you living during the summer of 1912? A Where I am now.

Q For whom were you working? A A. H. Pierson.

Q Where does Mr. Pierson live? A Lives around the lake.

Q What position do you hold so far as Mr. Pierson is concerned? A Work around there by the day.

10

Q His cottage is on the right hand side of the road as you go up? A Yes, sir.

Q During the year 1912 from April 1st to fall, did you have occasion to go to the house of Gaston Clifford? A Yes, sir.

Q How frequently? A Every morning.

Q Sundays as well as week days? A Yes, sir.

Q What time did you go there? A About 6.30 or quarter to 7.

20

Q Were you there any other time? A I used to go there about 5 or 6 o'clock at nights to get milk for myself.

Q You may state whether you had occasion to go by the property at any other time? A Yes, sir.

Q During that season when you went by there, did you ever see any disturbance there in the way of quarreling or fighting? A No, sir.

Q Did you ever hear any noise about the premises? A No, sir.

30

Q Anybody shouting or singing or yelling or cursing? A No, sir.

Q When you went there where did you get your milk? A In the cellar down in the basement.

Cross examination—Mr. Dolan.

Q Have you ever been convicted for selling 40

liquor illegally at Culver's Lake in this county? A I think so.

Q When? A I do not know about 5 or 6 years ago.

Q How many times did you say you were at Gaston Clifford's during the summer of 1912? A I was there every morning.

Q Not every evening? A No, sir.

Q What time did you go there? A In the morning about half past six or a quarter to 7.

10 Q Did you ever spend any time there? A No, sir.

Q How long were you there? A Long enough to get my milk.

Q You got away about 7 o'clock every morning? A Yes, sir.

Q Were you there after 7 o'clock on any Sunday during the summer of 1912? A Yes, I went there for milk for myself sometimes, I would go at 8 o'clock, and sometimes at 10.

20 Q How long did you stay there? A Long enough to get my milk.

Q Did you ever see Ellsworth Struble there? A No, sir.

Q Lester Spangenburg? A No, sir.

Q Abram Crawn? A No, sir.

Q Simeon Crawn? A No, sir.

Q Fred Spangenberg? A No, sir.

Q Teets Campbell? A No, sir.

30 MISS LAVINIA GLYNN

Direct examination—Mr. Huston.

Q Where do you live, Miss Glynn? A Mr. Clifford's place near Culver's Lake.

Q How long have you lived there? A Six years.

Q What do you do there? A Keep house for Mr. Clifford.

40 Q Were you there during the summer of 1912

from the first day of April until the middle of October? A Yes.

Q Were you there practically every day, Sundays and week days? A Yes.

Q You knew Mrs. Clifford, the mother of Harmon Clifford? A Yes.

Q You may state whether or not she was sick there part of that time and when did she die? A She died in June.

Q Had she been sick before that time? A 10
Since January off and on.

Q What doctor attended her? A Dr. Ayers.

Q From the first day of April that year up to October 20th, you may state whether at the house or about the house you ever heard or ever witnessed any disturbance in the way of a quarrel or fight among people? A No, sir.

Q Or any loud talking? A No, sir.

Q Or any swearing? A No, sir.

Q Or singing? A No, sir. 20

Q Was there ever any undue noise about the house or in the house during that time? A No, sir.

Q Do you know Mrs. Fred Spangenberg? A Yes, sir.

Q You may state whether or not she came to see you at times during that year? A She did.

Q And at any time while she was there, was there any noise or disturbance there? A No, sir.

Cross examination by Mr. Dolan.

Q Are you a married woman? Or a single woman? A Single woman. 30

Q Ever been married? A No, sir.

Q You say you act as Mr. Clifford's housekeeper? A Yes, sir.

Q And for how long? A Six years.

Q Who were the other members of the family?

A Mrs. Clifford who was then living, Gaston and Harmon.

Q No one else? A No, sir. 40

Q During that period before the first day of April and October 1912 you never heard any noise?

A No, sir.

Q On the premises or around the same? A No, sir.

Q No disturbance of any kind? A No, sir.

GASTON CLIFFORD.

Direct examination by Mr. Huston.

10

Q Where do you live, Mr. Clifford? A At Mount Pisgy near the outlet of Culver's Lake.

Q How long have you lived there? A Since 1872.

Q The house is on what is known as was formerly the direct road from Branchville to Culver's Lake? A Yes, on the old Turnpike.

Q The house is on the left hand side—the barn on the right? A Yes.

20 Q Were you living there from April 1st, 1912 to October 20th of that year? A Yes.

Q And you were generally home during that time? A Yes.

Q You may state whether from April 1st, 1912 to October 20th of that year there was ever at your home or about it or on your premises any noise or disturbance in the way of quarreling or fighting? A None whatever.

30 Q You heard it testified here that there was a quarrel between one Teets Campbell and William Mohair beyond your house toward the lake, did you hear that? A No, sir.

Q Or see it? A No, sir.

Q Or know anything about it at that time? A No, sir.

Q When did you first know of it? A I learned there was some trouble there the next day.

40 Q They described it as up toward the lake toward an oak tree, how far is it from your premises? A I would like to know what oak tree it is.

Q They describe it as going into the woods on the right hand side of the old road. A You mean the old road?

Q That road in the outlet of Pond Gate. A There is a large oak tree and several others.

Q How far is it from your house? A About 400 yards, I cannot be certain as I have not measured it.

Q Can you see the house from the road near that oak? A Only on top of the chimney. 10

Q Could you from your house see anybody up there at that oak tree? A Not from the foundations.

Q Can you on the first story? A I think not.

Q You have heard described here some parties meeting behind the ice house 20 or 30 yards in the direction from your house toward the new macadam road? A Yes.

Q What is there behind your house if anything, to obstruct the view? A In the summer time, there is brush and you could not see the ice house. 20

Q Could you see anything beyond that? A A piece of woods.

Q I think you stated that during that time, you never heard any disturbance or cursing or loud singing? A No, sir.

Q You have heard them speak of this Owlie barn? A Yes.

Q On which side of the macadam road is it from your house? A On the West Side. 30

Q You had to cross the macadam road to get to it? A Yes—where the barn formerly was it burned down.

Q Do you know Fred Spangenberg? A Yes, sir.

Q You may state whether or not he worked for you at any time during the year 1912? A I cannot say exactly, he has worked for me at intervals, but the exact year I cannot say. 40

Q What does Fred do? A He is a general laborer.

Q Lester Sylcox? A It is said he has been working for John Henry.

Q During that year? A I do not know.

Q Do you know whether he had been living in your neighborhood during 1912? A I don't know.

10 Q Herbert Decker, what is his business? A He is a laborer.

Q Was he at your house at different times that summer? A He would come there occasionally.

Q Do you know him for a good many years? A Yes.

Q John A. Riker, where did he live then? A I think he lived at the gap of the mountain.

Q What did he do? A He was a laborer, he worked some for me.

20 Q Simeon Crawn, what did he do? A He was a man who worked around, he worked some for me.

Q Worked some for you? A Yes.

Q A day laborer? A Yes.

Q A farm laborer?

(Objection made by Mr. W. A. Dolan.)

Argument between counsel, and Mr. Huston directed to proceed by the Court.

30 Q And Abram Crawn, do you know him? A The question is which Abram Crawn is meant, in this matter, there is two Abram Crawns in that neighborhood.

Q Simeon's father. A I think the gentleman at that time—it was said he was down at Hackettstown.

Q What was his business? A I do not know.

Q Do you know what he does for a living? A He is a mason or a carpenter, he is a day laborer.

40 Q You heard some of these people testify that

at different times in the year 1912, they came to your house and bought some cider of you? A Yes, sir.

Q Is that true? A Yes, sir.

Q And when they came there and got cider of you, just state simply what occurred? A They came there and got some cider and went on about their business and in an orderly manner.

Q And when any of these people purchased cider of you at any time, do you know where they went with the cider? A I do not, it is not my business. 10

Q The cider which you sold to these people, what was it? A Cider, apple cider.

Q You may state whether there was added to that any alcohol in any shape? A No, sir.

Q You heard the witnesses testify that on one occasion some of them were over beyond the ice house? A Yes.

Q Did you know that they went there? A I did not. 20

Q Did you know they were there? A No, sir.

Q Did you hear any noise from there? A No, sir, I did not.

Q That place where they described themselves to be, you may state whether or not that is a part of the premises occupied by you? A No, sir, it is not.

Q What they call the Owlie barn during this time, were these premises in your possession? A No, sir. 30

Q Something has been said about a path or walk from your house across toward the macadam road? A Yes.

Q Where does that path go? A It leads from my place to the macadam road.

Q Was that path there in 1912? A Yes, it was there when I first remembered—part of it was an old road leading from the Morris Turn- 40

pike to that time, was John Bell's Sawmill, long since burned down.

Q You may state whether or not that was used generally by people in 1912 and prior thereto? A Yes, I have seen people go by there a number of times more or less continuously, people came across there from one road to the other.

Q It has been testified, I think, that on one or two occasions, one or two of these men came to
10 your house and drank some cider in the house? A I do not think they had any cider in the house, if they had I do not remember.

Q And you say they came there and bought cider and took the cider away? A That was the general way with them, and not allowed there or collect there in any shape or manner.

Q Mr. Clifford, were you indicted and convicted of a misdemeanor at the September term in 1899? A I think so, but I am not positive
20 about the year.

Q There was one in 1909? A Yes, sir, twice, the exact years I cannot say without referring to my notes.

Cross examination by Mr. Dolan.

Q You were also convicted in 1912? A A question about that.

Objection made by Mr. Huston.

30 Question withdrawn by Mr. Dolan.

Q This first indictment and conviction, was that for maintaining a disorderly house?

Court allows question to be answered, but excludes the conviction of 1912.

Q This conviction in September 1899, was that for maintaining a disorderly house on the premises you now occupy? A Yes, I believe so.

40 Objection by Mr. Huston.

Q This conviction in 1910, was that for maintaining a disorderly house on the premises now occupied by you? A Was that in 1910?

Q The records show it to be in January, 1910.
A I cannot say the exact date, I am willing you shall show up all you have against me.

Q The conviction in 1910, was that for maintaining a disorderly house on the premises you now occupy in the Township of Frankford? A I think so, I suppose it is for selling the same cider. 10

Q Mr. Clifford, you have sworn that Fred Spangenberg is a good worker? A Yes.

Q What do you mean by that? A Is a good general worker, can plow, reap, cut timber.

Q Do you know anything about his reputation for sobriety?

Objection made by Mr. Huston.

Q Mr. Clifford, do you recall the day Lester Sylcox was at your premises on Sunday? A I cannot. 20

Q Do you recall his being at your premises?
A I cannot.

Q Do you recall selling him any cider? A No, sir.

Q Do you recall Ellsworth Struble at your place in 1912? A He may have been.

Q Do you recall the Sunday, Mohair was there?
A I heard tell of it. 30

Q Do you recall Ellsworth Struble being there that day? A No, sir.

Q Do you recall John Ryker being there in 1912? A Yes, sir.

Q Do you recall selling him any cider? A I cannot say.

Q Do you recall selling any cider to Fred Spangenberg? A Yes, sir.

Q On how many occasions? A I cannot say. 40

Q Do you know in what quantities? A I do not remember.

Q Do you know how long he remained at your premises? A A very few minutes, I sold him some milk.

Q Did he ever stay any longer than a few minutes? A No, sir.

Q Do you recall his wife ever being there that summer? A No, sir.

10 Q Do you know the reputation of Fred Spangenberg for sobriety during the summer of 1912?

Objection made by Mr. Huston.

Court allows question to be answered.

Exception taken by Mr. Huston and allowed by Court.

20 A I cannot say as to that, I did not hear anything about him as to his sobriety.

Q Do you know the reputation of Ellsworth Struble at that time? A I do not.

Q Fred Spangenberg? A No, sir.

Q Lester Sylcox? A No, sir.

Q Simeon Crawn? A No, sir.

Q Or Abram Crawn? A No, sir.

Q John Ryker? A No.

Q Henry Haggerty? A No, sir.

Q Herbert Decker? A No, sir.

30 Q Tracy Drake? A No, sir.

Q Or Charles Hannah? A No, sir, he has not been at my place in four years.

Q Do you recall the fact that Fred Spangenberg was sworn as a witness against you at the trial of 1910?

(Objection made by Mr. Huston.)

Court allows question to be answered.

40 Q Do you recall the fact that Tracy Drake was

sworn as a witness against you on that trial? A I cannot say as to that.

Q Do you recall the fact that John Ryker was sworn as a witness against you? A I cannot say as to that.

Q Charles Hanna? A I think so.

Q Abram Crawn? A I cannot say as to that.

(Judge Huston stated that he objected to all the above questions.)

Q Do you recall that Fred Spangenberg had been at your premises and had cider to drink? 10

Object made by Mr. Huston and question allowed by Court.

Exceptions taken by Mr. Huston, and allowed by Court.

Question withdrawn by Mr. Dolan.

Q Now as to this cider Mr. Clifford, you say that was apple cider? A Yes, sir. 20

Q No ingredients added to it? A No, sir.

Q When was this cider made? A What cider are you speaking of?

Q The cider that you sold in 1912, apple cider, when was it made? A In the fall.

Q What fall? A The fall previous.

Q 1911? A Yes, sir.

Q You added nothing to it of any sort? A No, sir.

Q What was done to the cider? A Put it in my cellar. 30

Q In what way, casks or barrels? A Barrels.

Q How many barrels did you have there?

Objection made by Mr. Huston and question allowed to be answered by Court.

Q How many barrels did you have on April 1st, 1912? A I cannot tell. 40

Q Did you have ten barrels? A I had a lot of vinegar and I had some cider.

Q Did you have ten barrels of cider? A No, sir.

Q Did you have five barrels? A I think I had about three.

Q And that was the cider you sold to these men? A Yes, that I made the fall previous.

10 Q As to this ice house, who built that? A My brother and I.

Q On whose land is that? A My brother's and mine.

Q Where is your line there? A That I cannot say exactly, I think it is a few feet in the rear.

Q How many feet? A Probably six feet.

Q Is there anything there to indicate where the line is? A An old fence.

20 Q Who uses this land? A The ice house?

Q The land surrounding it? A I used to use it as an ice house and afterwards as a hay barn and now have some lumber there.

Q Is it not true that you pasture your cattle there? A No, sir.

Q You say you do not pasture any cattle there? A No, sir.

Q Do you pasture them around your house? A No, sir, everything is open there, no fence at that point.

30 Q Do you know during the summer of 1912 that these men whom you sold cider to gathered together near the ice house? A No, sir.

Q Do you recall during the summer of 1912 having sold cider to any one who was under the influence of liquor? A No, sir.

Q You recall the testimony of Lester Syleox who on that Sunday was drunk? A I do not remember.

40 Q You recall the testimony of Ellsworth Stru-

ble that during the Sunday he went there, he was drunk?

Objection made by Mr. Huston.

Q Did you testify you do not recall seeing there Fred Spangenberg, or Ellsworth Struble on your premises during the summer of 1912? A I cannot say, they may have been around my premises.

10

Q Do you recall having sold any cider to either of them during that time? A No, sir.

Q Do you recall having sold cider in quantities to any individual during the summer of 1912 more than once on any one day? A I cannot say as to that, a person who came over and I was there and wanted a drink of cider, I gave it to them, and they went away, and any one who wanted a jug and then went away in an orderly manner.

Q Where did they get the jugs? A I cannot say.

20

Q Did you furnish any jugs? A I cannot say I sold or loaned them a jug.

Q Can you say during the year 1912 you loaned or sold any jugs? A I cannot say as to that two years ago.

Q You cannot recall one instance during 1912 you sold or loaned a jug to any one? A I cannot say.

Q You never heard any noise on the premises at that time? A No, sir.

30

Q You never saw any one around the ice house? A No, sir.

Q Or any gathering of men drinking cider? A No, sir.

Q You never saw any men around the Owlie barn in 1912? A No, sir, that is not my property.

Q You saw none of this trouble between Mohair and Campbell? A No, sir, never seen Mohair

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until a few years ago, Mohair to my knowledge has never been to my place.

HENRY CAMPBELL.

Examined by Mr. Huston.

Q Where do you live, Mr. Campbell? A Branchville.

Q How long have you lived in Branchville?

10 A Seven years I think.

Q Do you know this John A. Ryker? A Yes, I know him.

Q Prior to 1912 what did he do for a living?

A Worked around by the day.

Q Do you know that he worked round by the day yourself? A I think he did.

Court. Do you know that he worked round by the day? A No, I do not know.

20 Q Do you know Abram Crawn, father of Simon?

A Yes.

Q Did he work round by the day?

Objection by Mr. Dolan that Judge Huston should ask witness as to the reputation.

Court permits question to be answered.

30 Q What did Abram Crawn do for a living? A He worked round by the day, that is the only way he had to get a living.

Q You know that from your own knowledge that he worked for different people? A I have seen him work.

Q Simeon Crawn, what does he do for a living?

A He does the same.

Q Fred Spangenberg? What did he do? A I ain't going to say what Fred did.

Q Do you know Fred Spangenberg? A Yes.

Q What did he do? A He worked round.

40 Q Worked round by the day? A Yes.

Q Lester Sylcox? A I do not know much about Lester.

Q Herbert Decker, I am talking about prior to 1912, what did he do? A He came to be a carpenter.

Q Work at the carpenter trade? A Some, I think.

Cross examination by Mr. Dolan.

Q What did you have to say about Fred Spangenberg, how much does he work? A I could not tell how much he works. 10

Q Does he work steadily for any one? A No, sir, I do not think so.

Q What does he do, take 1912—what did Fred Spangenberg do that summer? A I do not know.

Q Did he work for any length of time? A I don't know.

Q What can you tell about Fred working during the year 1912? A I don't know that he worked at all that summer. 20

Q How about Simeon Crawn? A Works round by the day.

Q Did he work for anybody for any length of time? A He does not work for any one steadily.

Q How about Abram Crawn? A The same.

Q How about Herbert Decker? A I won't say, same run as the rest of them.

Q Does not work steadily for anybody? A No, sir. 30

CHARGE

SHAY, *J.*

10 This indictment charges the defendant with keeping and maintaining a common, ill-governed and disorderly house on April 1, 1912, and on divers other times and dates, between that day and the taking of the inquest, to wit, October 22, 1912, and charges specifically;

20 First, that the defendant for his own lucre and gain did unlawfully cause and procure to frequent and come together in, about and near his said house certain persons both men and women, of evil name and fame, and of dishonest conversation, and at unlawful times, as well in the night as in the day time; and also charges

Second, That these men and women of evil name and fame and of dishonest conversation did remain in, about and near said house, drinking, fighting, carousing, quarreling, swearing, using vulgar language, making great noises and misbehaving themselves; and charging

30 Third, That such conduct by such people was a great damage and a common nuisance to the people of the State of New Jersey, there inhabiting, being, residing and passing.

40 A disorderly house is defined by a former Chief Justice of our State in this way: Any place of public resort in which illegal practices are habitually carried on; or when it becomes the habitual resort of thieves, drunkards, prostitutes or other idle, vicious and disorderly persons, who gather together there for the purpose of gratifying their own depraved appetites, or to make it a rendezvous where plans may be concocted for deprivations

upon society, and to destroy either its peace or its right of property, is a public nuisance, and therefore a disorderly house. (Williams 30, L. 102.)

No private individual 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 I charge you that if you believe, from the evidence, that the defendant was engaged in the business of selling hard cider at the time and place described in the indictment, and if you believe from the evidence that the cider he sold was intoxicating, and that the business he conducted attracted to his place of business, drunkards and vicious, idle and disorderly persons who gathered there habitually for the purpose of gratifying their own depraved appetites for hard cider, and then and there bought cider of the defendant, and remained in about defendant's place of business drinking the cider, and while so remaining conducted themselves in such manner as to disturb the peace and quiet of the neighborhood, then, gentlemen of the jury, the defendant may be convicted as he stands charged.

I charge you further, that if you believe from the evidence that the defendant was engaged in the business of selling hard cider on Sundays at the place described in the indictment, and on other Sundays occurring during the time described in the indictment, and if you believe from the evidence that the cider he sold was intoxicating, and that the business he conducted attracted to his place of business on Sunday, men of evil name and fame, and of dishonest conversation, or drunkards, or idle, vicious and disorderly persons, who went to his place of business habitually on Sunday, for the purpose of buying the cider described, and drinking the same, and thereby gratifying their own depraved appetites, and there remained drinking either in or about the building in which his business was conducted, or on the lands and prem-

ises in the possession of or under the control of the defendant in the vicinity of his place of business, with the knowledge of the defendant or with such knowledge as should put the defendant on his inquiry, and then and there so conducted themselves as to profane the Lord's Day, or violate public order and decorum, or shock the religious sense or feeling of the neighborhood, then, gentlemen of the jury, you may find the defendant guilty
10 as he stands charged.

If you believe from the evidence that the defendant was engaged in the business of selling hard cider at the time and place described in the indictment, and if you further believe from the evidence that the cider he sold was intoxicating, then I charge you that he was engaged in the sale of liquor illegally, because he had no license to sell intoxicating liquors; but I charge you that where
20 the only proof offered to support the charge of keeping a disorderly house relates to sales of intoxicating liquors, illegally, such evidence is not sufficient, standing alone, to convict of keeping a disorderly house, but evidence of habitual illegal sales is admissible to prove the character of the disorderly house where such sales are in conjunction with other illegal practices, such as that the house was frequented by dissolute and disorderly persons and that the quiet of the neighborhood was disturbed by the noise and boisterous conduct
30 of those who frequented the house, or there is evidence that persons of ill repute were permitted to remain on the premises intoxicated, or that persons of ill repute were permitted to remain on the premises in the possession of and under the control of the defendant, in the vicinity of the alleged disorderly house, drinking, fighting, carousing, quarreling, using profane language, and disturbing the peace and quiet of the neighborhood, providing the defendant had knowledge of such occurrences
40 as to put him on his inquiry.

Whether an act is illegal and what constitutes a disorderly house is a question of law for the court, but it is for you to determine as a question of fact, whether the defendant is guilty of habitually permitting such act upon his premises as are declared by the court illegal.

You are the sole judges of the facts in this case and the credit to be given to the respective witnesses who have testified; and in passing on the credibility of the witnesses, you have a right to take into consideration not only their testimony itself, but their conduct, demeanor, and bearing while testifying on the witness stand, their objects, purposes and designs, if any, have been shown by the witnesses, in so testifying, their feelings of prejudice, if any, have been shown and their means of knowing the facts and circumstances in proof, if any, tending to expose the feelings or purposes of such witnesses and in determining the character of the persons who frequented this house you have a right to consider the evidence of the witnesses on the stand and the explanation they gave of how they came to go there and the condition they were in when they went there, and for what purpose they went there, and whether from own evidence they were such persons as I have described. I charge you further, so far as the admission of evidence concerning the previous conviction of the defendant that you have a right to take into consideration his conviction simply for the purpose of determining whether he was entitled to credibility or not, and simple as affecting his credibility as a witness.

The criminal law has extended its charity to the accused by accrediting to him the legal presumption of his innocence until the contrary is shown, and shown beyond a reasonable doubt. 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 on moral evidence, is open to some possible or 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 accused 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 satisfied the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

Take this case, give it your careful consideration, giving the defendant the benefit of every reasonable doubt, and try to do justice between the State of New Jersey and this defendant.

Certain requests have been made by counsel of the defendant that I should charge.

I refuse to charge request No. 1, except as I have charged it.

No. 2. That if the jury believes the defendant is guilty only of the illegal selling of intoxicating liquors there can be no conviction under the indictment. I so charge you.

No. 3. That the conduct of the purchasers of intoxicating liquors after leaving the premises where purchased is no evidence of guilt against the defendant under an indictment for keeping a disorderly house. I charge you that with this addition, providing "premises" includes the lands in his possession and control adjacent to the alleged disorderly house.

No. 4. I refuse to charge, except as I have charged.

No. 5. The proofs must show beyond a reasonable doubt that the cider sold was intoxicating; not that it might be, but that it actually was intoxicating. I so charge you, gentlemen.

No. 6. The claim that the liquor sold was intoxicating by reason of the addition thereto of some alcoholic liquor cannot be sustained without proof of the addition of such alcoholic liquor. I so charge you. 10

No. 7. What may have happened away from the house of the defendant cannot be used as evidence of the keeping of a disorderly house by the defendant unless it is shown that the defendant knew of such happenings. I charge you that with this addition, "or had such knowledge of the happenings as to put the defendant on inquiry."

Counsel for defendant takes a general exception to the charge as made, which is granted, let it be sealed, and it is sealed accordingly. 20

ALLEN R. SHAY,
Judge. { L. S. }

REQUESTS TO CHARGE BY DEFENDANT.

1. That under the laws of this State the sale of cider, although without a license for that purpose, is not a criminal offense. 30

2. That if the jury believe that the defendant is guilty only of the illegal selling of intoxicating liquors, there can be no conviction under the indictment.

3. That the conduct of purchasers of intoxicating liquors after leaving the premises where purchased, is no evidence of guilt against the defendant under an indictment for keeping a disorderly house. 40

4. The jury must be satisfied beyond a reasonable doubt from the evidence in the case that the people who visited the house of the defendant were drunkards, and that they came together there to gratify a depraved appetite, to warrant a conviction for keeping a disorderly house.

5. The proofs must show beyond a reasonable doubt that the cider sold was intoxicating, not that it might be, but that it actually was intoxicating.

10 6. The claim that the liquor sold was intoxicating by reason of the addition thereto of some alcoholic liquor cannot be sustained without proof of the addition of such alcoholic liquor.

7. What may have happened away from the house of the defendant cannot be used as evidence of the keeping of a disorderly house by the defendant, unless it is shown that the defendant knew of such happenings.

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NEW JERSEY SUPREME COURT

GASTON CLIFFORD,

Plaintiff in Error,

ads

THE STATE,

Defendant in Error.

*In Error.
Assignments
of Error.*

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Afterwards, to wit, on the sixth day of July, nineteen hundred and fifteen, before the court aforesaid, at Trenton aforesaid, comes the said Gaston Clifford in his proper person and says that in the record and proceedings aforesaid and in giving judgment aforesaid, there are manifest errors in these respects, to wit:

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1. Because the court refused to charge the jury as requested by the defendant, that under the laws of this State the sale of cider, although without a license for that purpose, is not a criminal offense.

30

2. Because the court refused to charge the jury, as requested by the defendant that the conduct of purchasers of intoxicating liquors after leaving the premises where purchased, is no evidence of guilt against the defendant under the indictment for keeping a disorderly house.

3. Because the court refused to charge the jury, as requested by the defendant, that the jury must be satisfied beyond a reasonable doubt from the

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evidence in the case, that the people who visited the house of the defendant were drunkards, and that they came together there to gratify a depraved appetite, to warrant a conviction for keeping a disorderly house.

10 4. Because the court refused to charge the jury, as requested by the defendant, that what may have happened away from the house of the defendant cannot be used as evidence of the keeping of a disorderly house by the defendant unless it is shown that the defendant knew of such happenings and assented thereto.

5. Because the whole record and proceedings and the charge of the court is in all other respects contrary to law.

20 Wherefore the said Gaston Clifford prays judgment, and that the judgment aforesaid for the errors aforesaid, and other errors found and being therein, may be reversed, annulled and altogether held for nothing, and that the said Gaston Clifford may be restored to all things that he has lost by occasion of said judgment, and that the court here may proceed to examine the said proceedings and judgment aforesaid.

HENRY C. HUNT,

*Attorney and of counsel
with plaintiff in error.*

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NEW JERSEY SUPREME COURT

THE STATE,

Defendant in Error,

vs.

GASTON CLIFFORD,

Plaintiff in Error.

*In Error.
Joinder In
Error.*

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And hereupon afterwards, to wit: on the sixteenth day of June, in the year of our Lord, one thousand nine hundred and fifteen, by William A. Dolan, who prosecuted for our said State in this behalf, it comes into court here and says that there is no error, either in the record and proceedings aforesaid, or in the judgment aforesaid, and it prays that the said Supreme Court of the State of New Jersey may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given, may be in all things affirmed, etc.

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WILLIAM A. DOLAN,

Prosecutor of Pleas of Sussex County;

Attorney of Defendant in Error.

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THE UNIVERSITY OF CHICAGO

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02

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1915.

STATE,

vs.

GASTON CLIFFORD.

10

Submitted November Term, 1915. Decided February, 1916.

A jury found that cider sold by defendant was intoxicating, upon evidence justifying such an inference. The defendant did not raise the question whether such a sale came within the language of Section 66 of the Crimes Act; HELD that the conviction must be affirmed. 20

ERROR TO SUSSEX QUARTER SESSIONS.

Before the Chief Justice and Justices Swayze and Bergen.

William A. Dolan, Esq., for the State. 30

Henry C. Hunt, Esq., for defendant, plaintiff in error.

The opinion of the Court was delivered by Swayze, *J.*

Under the charge of the Court, it was necessary for the State to prove in addition to other facts that the cider sold by the defendant was intoxicating. Having charged that, the judge was 40

not required to charge the more general proposition that the sale of cider although without a license for that purpose is not a criminal offense. There was evidence from which a jury might infer that the cider in question was intoxicating, and since they convicted the defendant under a charge that made proof of that fact essential, we must assume that they so found. The question then is whether such sales are illegal so that when accompanied by other acts of disorder specified in the indictment, a conviction of keeping a disorderly house is warranted. The judge was careful to say that the illegal selling of intoxicating liquors only would not justify a conviction under the indictment.

Our statute (C. S. 1767, sec. 66) forbids the sale without license of vinous, spirituous or malt liquors, wine, rum, gin, brandy, or other ardent spirits. The words seem to be meant by the Legislature to include all kinds of intoxicating liquors. Perhaps the defendant might have raised the question whether cider even of an intoxicating character came under the language of the statute. *Commonwealth v. Rayburg*, 16 Atl. 351. He did not do so. He seems to have assumed that the illegal sale of any intoxicating liquors came within the prohibition of the act. We think this assumption was justified. The judgment is affirmed.

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NEW JERSEY SUPREME COURT.

<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;">GASTON CLIFFORD, <i>Plaintiff in Error.</i></p>	}	<p style="text-align: center;"><i>On Error.</i></p> <p style="text-align: center;"><i>Remittitur.</i></p>	10
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The above stated cause having been duly submitted on brief at the November term, 1915, in the New Jersey Supreme Court by William A. Dolan, attorney for the defendant in error, and Henry C. Hunt, attorney for the plaintiff in error, and the Court having considered the matter and finding no error in the records of the case in the Sussex Quarter Sessions Court; 20

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

Entered, _____, 1916 on motion of William A. Dolan, Prosecutor of the Pleas and Attorney for the defendant.

REMITTITUR.

Filed, . . . , 1916.

NEW JERSEY SUPREME COURT.

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 THE STATE,
*Defendant in Error,**vs.*

GASTON CLIFFORD,

Plaintiff in Error.

*On Error.**Remittitur.*

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The above stated cause having been duly submitted on brief at the February, 1916, term in the New Jersey Supreme Court, by William A. Dolan, attorney for the defendant in error, and Henry C. Hunt, attorney of the plaintiff in error, and the Court having considered the matter and finding no error in the record and proceedings in the Sussex Quarter Sessions Court;

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

On motion of

WILLIAM A. DOLAN,

Prosecutor of the Pleas,

Attorney for the Defendant.

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New Jersey Court of Errors and Appeals.

THE STATE,

Defendant in Error,

vs.

GASTON CLIFFORD,

Plaintiff in Error.

*Assignments
of Error.*

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After which, to wit, on the 23rd day of April, before the Court aforesaid, at Trenton, aforesaid, comes the said Gaston Clifford, in his proper person, and says that in the record and proceedings aforesaid and in giving judgment aforesaid, there are manifest errors in these respects, to wit:

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1. Because the trial court refused to charge the jury as requested by the defendant, that under the laws of this State the sale of cider, although without a license for that purpose, is not a criminal offense.

2. Because the said Court refused to charge the jury, as requested by the defendant, that the conduct of purchasers of intoxicating liquors after leaving the premises where purchased, is no evidence of guilt against the defendant under the indictment for keep a disorderly house.

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3. Because the said Court refused to charge the jury, as requested by the defendant, that the jury must be satisfied beyond a reasonable doubt from the evidence in the case, that the people who visited the house of the defendant were drunkards, and that they came together there to gratify a de-

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praved appetite, to warrant a conviction for keeping a disorderly house.

10 4. Because the said Court refused to charge the jury, as requested by the defendant, that what may have happened away from the house of the defendant cannot be used as evidence of the keeping of a disorderly house by the defendant unless it is shown that the defendant knew of such happenings and assented thereto.

5. Because the whole record and proceedings and the charge of the trial court is in all other respects contrary to law.

20 6. Because the trial court charged the jury as follows: "If you believe from the evidence that the defendant was engaged in the business of selling hard cider at the time and place described in the indictment, and if you further believe from the evidence that the cider he sold was intoxicating, then I charge you that he was engaged in the sale of liquor illegally, because he had no license to sell intoxicating liquors."

30 7. Because the Supreme Court held that it was necessary for the State to prove in addition to other facts, that the cider sold by the defendant was intoxicating and that the jury having found that the cider was intoxicating, was justified in finding a verdict of guilty, and that cider is by implication, included among those liquors, the sale of which without license is prohibited by statute, said liquors being particularly specified as "vinous," "spirituous," or "malt liquors," "wine," "rum," "gin," "brandy," or "other ardent spirits."

8. Because the cider, even if intoxicating, is not within the prohibition of the statute.

40 9. Because it is not proven beyond a reason-

able doubt that the cider sold was in itself intoxicating.

10. Because the trial court refused to strike out the evidence relating to the sale of cider

11. Because the only proof given at the trial court to sustain the indictment was the sale of cider, and even if the cider was intoxicating, the defendant could not be convicted of keeping a disorderly house where the only proof was the sale of cider or any other intoxicant. 10

12. Because the proof shows only one instance of disorder, and one disorderly occurrence happening at a given place distant from the defendant's premises does not constitute the offense of maintaining a disorderly house.

13. Because the said court allowed the following testimony over the objection of the defendant: 20

“Q You were also convicted in 1912?”

“A A question about that.”

“Objection made by Mr. Huston; question withdrawn by Mr. Dolan.”

“Q This first indictment and conviction was that for maintaining a disorderly house?”

“The Court allows question to be answered but excludes the conviction of 1912.” 30

“Q This conviction in September, 1899, was that for maintaining a disorderly house on the premises you now occupy?”

“A Yes, I believe so.”

“Objection by Mr. Huston.”

“Q This conviction in 1910, was that for maintaining a disorderly house on the premises now occupied by you?”

“A Was that in 1910? 40

“Q The records show it to be in January, 1910.

“A I cannot say the exact date; I am willing you should show up all you have against me.

“Q The conviction in 1910, was that for maintaining a disorderly house on the premises you now occupy in the Township of Frankford?

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“A I think so; I suppose it is for selling the same cider.”

14. Because the said court allowed the following testimony over the objection of the defendant:

“Q Do you recall the fact that Fred Spangenberg was sworn as a witness against you at the trial of 1910.”

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“Objection made by Mr. Huston. The court allows question to be answered.”

“Q Do you recall the fact that Tracy Drake was sworn as a witness against you at that trial?

“A I cannot say as to that.

“Q Do you recall the fact that John Riker was sworn as a witness against you?

“A I cannot say as to that.

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“Q Charles Hanna?

“A I think so.

“Q Abram Crawn?

“A I cannot say as to that.”

“Objection made to all the above questions.”

Wherefore the said Gaston Clifford prays judgment, and that the judgment aforesaid for the errors aforesaid, and other errors found and being
40 therein, may be reversed, annulled and altogether

held for nothing, and that the said Gaston Clifford may be restored to all things that he has lost by occasion of said judgment, and that the Court here may proceed to examine the said proceedings and judgment aforesaid.

HENRY C. HUNT,
*Attorney and of Counsel with
Plaintiff in Error.*

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New Jersey Court of Errors and Appeals.

10	<p style="margin: 0;">THE STATE, <i>Defendant in Error,</i></p> <p style="margin: 0; text-align: center;"><i>vs.</i></p> <p style="margin: 0;">GASTON CLIFFORD, <i>Plaintiff in Error.</i></p>	<p style="margin: 0;"><i>In Error.</i></p> <p style="margin: 0;"><i>Joinder</i></p> <p style="margin: 0;"><i>in Error.</i></p>
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20 And hereupon afterwards, to wit: on the nine-
teenth day of May, in the year of our Lord, one
thousand nine hundred and sixteen, by William A.
Dolan, who prosecuted for our said State in this
behalf, it comes into court here and says that
there is no error, either in the record and pro-
ceedings aforesaid, or in the judgment aforesaid,
and it prays that the said Court of Errors and Ap-
peals of the State of New Jersey may proceed to
examine as well the record and proceedings afore-
said as the matters aforesaid above assigned for
error, and that the judgment aforesaid in form
30 aforesaid given, may be in all things affirmed, etc.

WILLIAM A. DOLAN,
Prosecutor of Pleas of Sussex County,
Attorney of Defendant in Error.

