
N. J. Court of Errors and Appeals

THE STATE OF NEW JERSEY

Defendant in Error

v.

LOUIS LINKER AND MAX SAPHIRO

Plaintiffs in Error

ON BRIEFS

STATE OF CASE.

HENRY BURT WARE,

Attorney for Plaintiffs in Error.

DANIEL V. SUMMERILL, JR.,

Atty. for Defendant in Error.

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(1a)

Writ of Error

NEW JERSEY, ss:

THE STATE OF NEW JERSEY to the
Chief Justice and other Justices of
the Supreme Court of Judicatures,
Greeting:

[SEAL]

Because in the record and proceedings, and also in the giving of judgment in our Supreme Court, affirming the judgment of our Court of Quarter Sessions in and for the County of Salem, upon a certain indictment against Louis Linker and Max Saphiro, late of the township of Upper Penn's Neck, in the County of Salem, on the first day of May, Nineteen hundred and eighteen, with force and arms at said township, and on divers other days and times between that day and the day of taking said Inquisition, at the township aforesaid, unlawfully did keep and maintain a certain common, ill-governed and disorderly house, and in the said house for their own lucre and gain, certain persons, as well men as women of evil name and fame, and of dishonest conversation, then and on the said other days and times, there unlawfully and wilfully did cause and procure to frequent and come together, and the said men and women in the house of them, the said Louis Linker and Max Saphiro at unlawful times as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, fighting, gambling, gaming, whoring, swearing, dancing and misbehaving themselves unlawfully and wilfully did permit, and yet does permit, to the great damage and common nuisance, etc. PRO UT the said indictment and the several counts therein, whereof they hath been indicted and are thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Louis Linker and Max Saphiro in said

indictment made, as it is said, manifest error hath intervened to the great damage of the said Louis Linker and Max Saphiro, as from their complaint, we have received information, we being willing in this behalf to correct the error in due manner, if any there be, and that speedy justice be done to them, the said Louis Linker and Max Saphiro, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, together with all things touching and concerning the same, to our Judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the thirty-first day of December, A. D. Nineteen hundred and nineteen, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS the Honorable Edwin Robert Walker, our Chancellor and President of our Court of Errors and Appeals, at Trenton, aforesaid, this twelfth day of December, A. D. Nineteen hundred and nineteen.

HENRY BURT WARE,
Attorney.

THOMAS F. MARTIN,
Clerk.

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 touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

(3a)

Write of Error

(ENDORSED)

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,

Defendant in Error

v

LOUIS LINKER and MAX SAPHIRO,

Plaintiffs in Error.

WRIT OF ERROR

HENRY BURT WARE,
Attorney.

Filed December 1919.

NEW JERSEY SUPREME COURT.

No. 18 June Term 1919.

THE STATE

Deft in Error

vs

LOUIS LINKER, ET AL.

Plff. in Error

Error to Salem Quarter Sessions.

Submitted June Term 1919, Decided November Term 1919.

Henry Burt Ware, For Plff in Error.

Daniel V. Summerill, Jr. for the State.

Aruged before the Chief Justice, Minturn and Black, J J.

Per Curiam:

The defendants were convicted of keeping a disorderly house. The indictment was in the common law form, charging that the defendants kept the house for their own profit and gain, and that certain persons, men and women of evil name and fame, collected there drinking, tippling, fighting, gambling and etc.

It is urged that the verdict should have been not guilty. This is a matter which cannot be considered on error, if there was any evidence to justify the submission of the case to the jury.

We think there was ample evidence of drunkenness and disorderly conduct.

It is argued that it was error for the court to permit proof of the sale of hard cider and wine by the defendants to frequenters of the house, because there was no charge in the indictment that liquors were sold contrary to law.

Our decisions, however, hold to the contrary. See *State vs Rairorf*, 64, L. 412; *State vs. Derby*, 60 L. 258.

It is also urged that there was error in the charge to the jury by reason of comments made by the court upon the testimony, particularly with relation to sales of hard cider and red wine. There was no misrecital of the evidence by the court, and reasonable comment on the evidence was within the province of the court.

It is contended that the court refused to charge the jury certain requests which were submitted, which substantially were that the jury could not convict the defendants of keeping a disorderly house upon the testimony as to the alleged sale of intoxicants, and that therefore, such testimony should be disregarded by the jury.

The court did charge that no conviction could be based upon the finding of the jury that intoxicants were habitually sold upon the place in violation of law; that if the sale of intoxicating liquors was the only fact in evidence by the State, it would be the duty of the jury to acquit, because the illegal sale of liquor alone under our statutes is not sufficient to constitute a disorderly house. That statement of the law was accurate and was all that the defendants were entitled to have charged. The sale of liquor was an element to be considered and could not be entirely disregarded in considering whether the locus in quo was or was not a disorderly house.

Finally, it is urged that the trial Judge's definition of reasonable doubt was erroneous and prejudicial to defendants rights. The language employed by the court was "From the evidence thus produced, you are to determine whether or not the two defendants are guilty. If they are guilty it must be beyond a reasonable doubt, which means nothing more nor less than that you as men sworn to conscientiously determine this case, are satisfied in your minds that the defendants did conduct a dis-

orderly house. If you are not so satisfied, you are to acquit. If you are so satisfied, you should convict."

This is practically the same language used in the charge in the case of *State vs. Contarino*, 91 L. 105, and sustained by this court, where we said that "The rule of reasonable doubt is not encompassed by any set formula. It is enough that its practical application to the facts of a given case be sufficiently stated to the jury, so as to avoid misconception."

The conviction will be affirmed.

(7a)

Opinion Supreme Court

(ENDORSED)

NEW JERSEY SUPREME COURT.

No. 18 June Term 1919.

THE STATE,

Deft in Error

vs.

LOUIS LINKER, ET AL.

Pltff. in Error.

PER CURIAM.

Filed Nov. 7, 1919.

ENOCH L. JOHNSON, Clerk.

NEW JERSEY SUPREME COURT

NEW JERSEY, ss

[SEAL]

THE STATE OF NEW JERSEY to
Edward C. Waddington, Esquire,
President Judge of the Inferior
Court of Common Pleas of the
County of Salem, constituting the
Court of Quarter Session, in and for 10
the County of Salem, of the term of
December, in the year of our Lord
one thousand nine hundred and eigh-
teen.

BECAUSE in the record and pro-
cess, and also in giving of judgment upon a certain indict-
ment against Louis Linker and Max Saphiro, late of the
township of Upper Penn's Neck, in the County of Salem,
on the first day of May, Nineteen hundred and eighteen, 20
with force and arms at said township, and on divers other
days and times between that day and the day of taking
this Inquisition; at the township aforesaid, unlawfully did
keep and maintain a certain common, ill-governed and
disorderly house; and in the said house for their own lucre
and gain, certain persons, as well men as women of evil
name and fame, and of dishonest conversation, then and
on the said other days and times, there unlawfully and
wilfully did cause and procure to frequent and come to-
gether, and the said men and women in the house of them,
the said Louis Linker and Max Saphiro at unlawful times 30
as well in the night as in the day, then and on the said
other days and times, there to be and remain, drinking,
tippling, fighting, gambling, gaming, whoring, swearing,
dancing and misbehaving themselves unlawfully and wil-
fully did permit, and yet does permit, to the great damage
and common nuisance, etc., PRO UT the said indictment

and the several counts therein, whereof before you they
 hath been indicted, and are thereof convicted by a certain
 jury of the county, taken between the State of New Jersey
 and the said Louis Linker and Max Saphiro in said indict-
 ment named, as it is said, manifest error hath intervened to
 the great damage of the said Louis Linker and Max Saphiro
 as from his complaint, we have received information, we
 being willing in their behalf, to correct the error in due
 manner if any there shall be, and that speedy justice be
 done to them the said Louis Linker and Max Saphiro, com-
 10 mand you that if judgment be thereupon given, then that
 you distinctly and openly send, under your seal, the record
 and proceedings aforesaid, including the entire record of
 the proceedings had upon the trial, with all things touching
 the same, to our Supreme Court of the State of New Jer-
 sey, to be held at Trenton, on the twenty-eighth day of
 January instant, and this writ, that the record and pro-
 ceedings 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 Jer-
 20 sey ought to be done.

WITNESS William S. Gummere, Esquire, Chief Justice
 of our Supreme Court, at Trenton, this eighth day of Jan-
 uary, in the year of our Lord, Nineteen hundred and nine-
 teen.

ENOCH L. JOHNSON,

HENRY BURT WARE,

Clerk.

Attorney of defendants.

The entire record and proceedings whereof mention is
 30 made, with all things touching the same, I certify to the
 Justices of our Supreme Court of the State of New Jer-
 sey at the day and year within contained in a certain
 schedule to this writ annexed, as I am commanded.

E. C. WADDINGTON,

[SEAL] President Judge of the Inferior Court of
 Common Pleas of the County of Salem.

State of New Jersey, }
 Salem Count, } ss:

Be it remembered that at the Court of Oyer and Terminer, held at Salem, in and for the County of Salem on the third Tuesday of September, in the year of our Lord one thousand nine hundred and eighteen, before Honorable Charles C. Black, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Edward C. Waddington, Judge of the Court of Common Pleas of the County of Salem, according to the form of the statute in such case made and provided, by the oaths of John W. Lynch, Andrew Harris, William M. Burk, Joseph Dunn, Joseph C. Andrews, Clifford Dare, Walter D. Lawrence, J. T. Heritage, Samuel Denny, Thomas R. English, Daniel R. Cruise, Samuel A. Ridgway, Joseph Layman, J. K. Dolbow, George C. Bowen, Alfred D. Mitchell, Clinton B. Harris, J. Howard Creamer, Joseph Plummer, S. Milton Carll, Samuel Borden, A. K. Brandiff and by the affirmation of Collins B. Allen, those who affirmed having severally alleged themselves to be conscientiously scrupulous of taking an oath, and were severally affirmed according to law, good and lawful men of said County of Salem, duly summoned then and there sworn or affirmed and charged to inquire in behalf of the State of New Jersey and for the body of the County of Salem:

It is presented in manner and form following, to-wit:
 Salem County, to wit: September Term, 1918.

The Grand Inquest for the State of New Jersey, and for the body of the County of Salem, upon their respective oath and affirmation, Present that Louis Linker and Max Saphiro, late of the Township of Upper Penns Neck, in the said County of Salem, on the first day of May, in the year of our Lord one thousand nine hundred and eighteen, with force and arms, at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, and on divers other days and times between that day and the day of taking this Inquisition; at the Township afore-

said, in the County aforesaid, and within the jurisdiction of this Court, unlawfully did keep and maintain a certain common, ill-governed and disorderly house, and in the said house for their own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest conversation, then and on the said other days and times, there unlawfully and wilfully did cause and procure to frequent and come together, and the said men and women in the house of them the said Louis Linker and Max Saphiro, at unlawful times as well in the night as in
10 the day, then and on the said other days and times there to be and remain drinking, tippling, fighting, gambling, gaming, whoring, swearing, dancing, and misbehaving themselves, unlawfully and wilfully 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 like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the
20 same.

And which said Indictment was, on motion of Daniel V. Summerill, Jr., Prosecutor of the Pleas of the County of Salem, handed down to the Court of Quarter Sessions of said County of Salem, for trial.

And afterwards, that is to say, on the Twentieth day of September, A. D. 1918, it still being of the September Term, A. D. 1918, at Salem aforesaid, in the County aforesaid, before the Hon. E. C. Waddington, President Judge of the Court of Common Pleas of the said County of Salem,
30 constituting the Court of Quarter Sessions in and for the County of Salem, cometh the said Louis Linker and Max Saphiro, in their proper persons, according to the conditions of the recognizance by themselves, and their pledges in that behalf heretofore made and now here, touching the premises in the said indictment above specified and charged upon them, being asked in what manner they will

acquit themselves thereof, they severally say that they are not guilty thereof, and of this they put themselves upon the country; and Daniel V. Summerill, Jr., Esq., who prosecutes for the State in this behalf, does likewise the same; wherefore, let a jury thereupon come, to wit, on the Second day of January, in the year of our Lord one thousand nine hundred and nineteen, of the Term of December, A. D. 1918 (the said cause having been continued from term to term) before the said Hon. E. C. Waddington, President Judge of the Court of Common Pleas of the said County of Salem, constituting the Court of Quarter Sessions in and for said County of Salem, of good and lawful men of the County aforesaid, by whom the truth of the matter may be then better known, and who are not of kin to the said Louis Linker or Max Saphiro, to recognize upon their oaths whether the said Louis Linker and Max Saphiro be guilty of the misdemeanor in the indictment aforesaid above specified, or not guilty, because as well the said Daniel V. Summerill, Jr., who prosecutes for the State in this behalf, as the said Louis Linker and Max Saphiro, have put themselves upon the said jury; and the jurors of the said jury, by William T. Mifflin, Sheriff of the said County of Salem, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit: Robert Klessel, Richard Hancock, Edward Moore, Jeremiah Watson, Elwood Flitcraft, C. R. Miller, Edgar Cassady, William Martin, Charles Cobb, John Cassidy, Joseph Bill and James Kernan who being elected, tried and sworn to speak the truth of and concerning the premises, upon their oaths say that the said Louis Linker and Max Saphiro are guilty of keeping a disorderly house, on them above charged, in the form aforesaid, and as by the indictment aforesaid is above supposed against them.

Whereupon, on the Tenth day of January, A. D. 1919, it is ordered, on motion of the aforesaid Prosecutor of the Pleas, that the prisoners be placed at the bar for sentence; and the prisoner, Louis Linker, being placed at the bar,

it is considered by the Court, and it doth order and adjudge that the prisoner, Louis Linker, pay a fine of Two hundred dollars and stand committed to the Common Jail of this County until said fine and the costs of this prosecution be paid; and the said prisoner, Max Saphiro, being placed at the bar, it is considered by the Court, and it doth order and adjudge that the prisoner, Max Saphiro, pay a fine of Two hundred dollars and stand committed to the Common Jail of this County until said fine and the costs of this prosecution be paid.

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SALEM COUNTY COURT OF QUARTER SESSIONS

THE STATE	}	On Indictment for Maintaining Disirderly House.
vs.		
LOUIS LINKER, and		
MAX SAPHIRO.		

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Salem, N. J., January 2, 1919.

TESTIMONY

before Hon. E. C. Waddington, Judge, and Jury.

APPEARANCES:

20

For the State: Daniel V. Summerill, Jr., Esq., Prosecutor
of the Pleas.

For the Defendant: Henry B. Ware, Esq., J. Hampton
Fithian, Esq.

THOMAS WADDINGTON, Sworn.

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BY THE PROSECUTOR:

Q. Where do you live, Mr. Waddington ?

A. Salem.

Q. And do you hold official position in the county of
Salem.

A. Constable.

Q. Constable of the city of Salem ?

A. Yes, sir.

Q. Do you know Max Saphiro ?

A. Yes, sir.

Q. Do you know Louis Linker ?

A. Only by sight. I have saw him once or twice or so.

Q. Do you know a place where Max Saphiro was running in Upper Neck ?

A. Yes, sir.

10 Q. And between the first of May and the 25th of September were you ever in that place ?

A. Yes, sir.

Q. When were you in that ?

A. I were in there on the Sunday, the 21st day of July.

Q. And was any one with you that day ?

A. Yes, sir.

Q. Who was with you ?

A. Ex-Sheriff, Deputy Sheriff Myers, and George Brown.

20 Q. And what was the condition inside when you went in there ?

A. They were a number of—I didn't count how many, but they was a number of men, probably thirty, forty, probably fifty that were in there, and they were drinking cider and wine. They were drunk, cursing, swearing, talking about fighting, and vomiting on the floor.

Q. How long were you in there, Mr. Waddington ?

A. I should judge about fifteen to twenty minutes, probably a little longer than that. We bought some cider and some wine.

30

MR. WARE: We object to this, and move all this talk be stricken out.

Q. Who did you buy the wine off of ?

MR. WARE: Just a moment; we object to that.

THE COURT: What is the ground of the objection ?

MR. FITHIAN: On the ground, if your Honor please, that the indictment does not specify the illegal sale of liquor, as one of the acts constituting the keeping of a disorderly house. The law seems to be very plain on that in this state, Linden Park Horse Association vs. State, 55 N. J. Law, 557. In that case the Court held that in that case the specific acts which are alleged to be unlawful and which the State intends to prove are unlawful, must be set out in the indictment. In that particular case the indictment charges the common law form, but fails to allege gambling as one of the constituent parts of the disorderly house, and the Court held the State could not prove gambling. In other words, the defendant has a right to be confronted in the indictment with the facts alleged to have been unlawfully committed by him. 10

THE PROSECTUOR: This indictment is, of course, under the common law proposition.

THE COURT: What would you say as to drinking being part as to why this testimony should not be admissible ? 20

MR. FITHIAN: I could quite see that testimony would be admissible, that these men were drinking, but the Prosecutor is attempting to prove by this witness the fact of a sale which is in no sense anywhere alleged in the indictment and which cannot be proven as part of the State's case.

THE COURT: The Court will allow the testimony to proceed. 30

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

(Question repeated)

A. I bought it off—

MR. FITHIAN: All these questions, if your Honor please, are objected to.

(Question repeated)

MR. FITHIAN: That is the question to which we now object, and your Honor grants us an exception ?

THE COURT: I do.

A. Off of Max.

Q. Max Saphiro ?

10 A. Saphiro—I don't know exactly what his last name is, and his boy that were in there.

Q. Who bought it ?

A. Mr. Myers on this first day, and I both bought it.

Q. How large quantities did you buy ?

MR. WARE: I object to that question.

(Objection overruled.)

20 (Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

A. By the glass.

Q. Less than a pint ?

A. Yes.

MR. WARE: Objected to. We object to everything in reference to any sales of any liquids, either cider or wine.

30 THE COURT: The Court overrules your objection, and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

Q. Did you, at that time, bring any of it out ?

A. No, sir. We notified Max—now, I can't tell you what his last name is, I can't remember. Mr. Myers and the Deputy Sheriff and I notified him for to stop keeping that kind of a place, that it was unlawful and to stop and having that unlawful crowd there, particularly on a Sunday, and to stop the selling that stuff to them.

Q. Now, when next did you visit the place, Mr. Waddington ?

A. The next I went there that week five times. I am pretty—I think I could give you the dates of this by going to a memorandum I made at the time. 10

Q. Get your memorandum and let's see what it was.

A. I wouldn't want to—

(Witness produces paper)

A. —I was there the night of the 22nd, 23rd.

Q. Do you know whether the 22nd was a Sunday or not ?

A. 21st was a Sunday, the day that I went in there and Mr. Myers and Mr. Brown was the 21st, that was a Sunday, the 21st of July. 20

Q. How about on the 22nd, anybody with you ?

A. No, I were alone, and this were at night. This were in the evening, and the 22nd and the 23rd.

Q. Now, what happened on the 22nd if you were there ?

A. They were just about as it had been. They were drinking, and a crowd came there and cursing and swearing, a disorderly crowd, they were there; they were swearing and talking loud, and made it, in my judgment, disorderly. 30

MR. WARE: I object to that.

THE COURT: Objection sustained.

Q. When next date ?

A. The next was the 23rd.

Q. Was anybody with you that time ?

A. No.

Q. And what did you do that time ?

A. Just as I did on the 22nd, I looked in there and looked over the crowd to see if there were any difference from what they had been.

Q. And about how many should you judge were in there ?

A. Well, there were twenty five to thirty; they would vary different times, but they was always a bunch of people in there. They were pool tables in there and they
10 were a big bunch of people in there.

Q. And what were the men doing on the 23rd in there ? What was the condition of the men in there ?

A. Well, they were—I couldn't see any difference. They were drinking and they were swearing and talking loud and hollering and fussing.

Q. Were any of them under intoxication, intoxicated ?

A. They certainly acted it.

Q. And when next did you go in there ?

A. The 24th.

20 Q. And what was the condition that day that you went in there ?

A. Just about the same.

Q. About how many would you imagine, how many were in there that day ?

A. I never counted them, but I imagine they were about the same along from twenty to forty people, would say anywhere along there, there might be more than that or they might be as many as twenty any time I was ever there.

30 Q. What were they, white or colored ?

A. Both.

Q. And what was the condition on the 24th.

A. Well, that were just about the same, I didn't see any difference in any one of those nights.

Q. Now, on the—what next date did you go ?

A. I went on the 26th, was the next.

- Q. Was any one with you that night ?
 A. No.
 Q. Were there men in there that night ?
 A. Yes, sir.
 Q. And what was the condition of the men in there that night ?
 A. Well, they were just the same practically as they were, as they had been the night before.
 Q. Did you see any sales of wine or hard cider that night ?

10

MR. FITHIAN: Objected to for the same reason.

(Objection overruled).

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

- A. I did on each one of these nights.
 Q. And who was doing the selling ?
 A. Max or his son, the boy there; they told me was his son.
 Q. Was Max there all the time ?
 A. I was there once when Max wasn't there; he was in the back part, the boy called him.
 Q. The rest of the times Max was always there ?
 A. Was there, yes, sir.
 Q. Now, how about on the 20th—the next date ?
 A. The 27th.
 Q. And were you alone that night ?
 A. I were.
 Q. Was it night or day ?
 A. Night.
 Q. And what was the condition inside that night ?
 A. Just about as it had been.
 Q. Men in there ?
 A. Yes. They were more in there that night and more

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people in there than there had been on the other nights that I had been there, but the conditions in there, they were buying and drinking beer and wine.

MR. WARE: What does he say ?

Q. You didn't see any beer sold ?

A. Not a regular beer, cider and wine and beer—what is it they call that ?

Q. Some kind of a near-beer ?

10 A. Some kind of—I have a bottle of it here. I don't know just what they call that.

Q. Now, when next were you in there ?

A. I was in there on the 28th, was on Sunday, again.

Q. Who was with you then, at that time ?

A. Sheriff Myers, Sheriff Myers was with me.

Q. And was it day time or night ?

A. Day time.

Q. And were there many men in there that day ?

A. They were.

20 Q. And what was the condition of the men in there ?

A. Just about as it were on the Sunday before.

Q. And what kind of language were they using in there ?

A. Just about like what they had been.

Q. Was anything sold that day ?

A. They were.

Q. Did you purchase anything ?

A. I did.

Q. What was it ?

A. Purchased cider and Mr. Myers wine.

30

MR. FITHIAN: Your Honor understands these questions and answers are all objected to.

THE COURT: Yes.

Q. Who did you buy it off of ?

A. Bought it off Max.

Q. Did you bring any out at that time ?

A. I did not.

Q. And were they in small quantities ?

A. They were by the glass.

Q. Less than a quart ?

A. Oh, yes.

Q. Were you in there after that ?

A. I were.

Q. When was that ?

A. On the 29th. 10

Q. And what was the condition in there that night ?
Was it night or day ?

A. It was a night. Well, it were just about night, as bad as it were on a Sunday. There wasn't as many people in there, nor not as many people as there were on Saturday night, but I should say twenty five or thirty people, like enough more than that were in there.

Q. And what were the people doing in there ?

A. Just the same. They were drinking, cursing and swearing. I have Mr. Myers with me and Walter Cline. 20

Q. That is the 29th ?

A. That was the 29th.

Q. And did you see anything sold that night ?

A. I did.

MR. FITHIAN: Same objection, please.

THE COURT: You may have it.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.) 30

E. C. WADDINGTON.
(Seal)

Q. Who sold it that night ?

A. Max.

Q. Who to ?

A. He sold it to people who were in there. I couldn't just name them.

Q. You don't know the people he sold to ?

A. A good many of them I didn't know.

Q. What was the nature of the stuff he was selling ?

A. That I have here.

Q. Did you get some that night ?

A. I did.

Q. What did you bring out that night ?

10 A. I brought out what was in this basket.

Q. Where has that basket been since you brought it out ?

A. In my possession.

Q. Continuously ?

A. It has.

Q. Now, what did you get that night and bring out from there ?

(Witness produces eight bottles)

20

MR. FITHIAN: Of course all this is objected to, if your Honor please, on the same ground as before.

THE COURT: Yes.

Q. Mr. Waddington, who labeled this (indicating bottle) ?

A. I did.

Q. This (indicating another bottle) ?

A. I did.

30 Q. Have they been on there ever since you put them on ?

A. They have.

Q. When did you put them on ?

A. Put them on that night.

Q. When ? After you had taken them out ?

A. Yes.

Q. Now, taking the bottle on the right-hand side, what is that (indicating) ?

A. Taken out of a barrel at Max's, July 29th, by Thomas Waddington. I drew that out of one barrel that were there.

Q. Was the barrel branded anything ?

A. It was.

Q. What was it branded ?

A. Hard cider.

Q. Take bottle No. 2.

A. Taken from Max's July 29, 1918, out of the keg on the bar, by Moses Myers, and Max helped him draw it. 10

Q. What was that marked ? What was the barrel marked ?

A. This was out of a keg they was selling it out of.

Q. Take the next bottle (indicating) ?

A. Taken July 29, 1918, out of barrel at Max's by Thomas Waddington.

Q. Do you know what they contained, what was in the barrel ? 20

A. I don't. That has been—I stopped it up, each bottle, as I took it out, and it has never been unstopped, it is just as it came out.

Q. Now, what next ?

A. Taken out of barrel July 29, 1918, at Max's, by Thomas Waddington (indicating bottle).

Q. What was in that barrel ? Do you know ?

A. It said cider.

Q. The barrel said cider ?

A. Yes, but— 30

Q. Now, the next bottle ?

A. Taken from Max's by Moses Myers, out of a large bottle in the ice box, July 29, 1918.

Q. What was it ? Do you know what it was ?

A. Wine, I should imagine.

Q. The next bottle ?

A. Taken July 29, 1918, out of a barrel at Max's, by Thomas Waddington.

Q. What was that ? Do you know what was it ? Did he say what it was—Max ?

A. I wouldn't say about that.

Q. Take the next bottle ?

A. July 29, 1918, taken out of a barrel at Max's, by Thomas Waddington. This was all taken out of different barrels, no two bottles were taken out of the same barrel or bottle.

10 Q. Were those taken from the barrels, from the same stuff they was selling to these men in there ?

A. That keg and the bottle, where this says "Bottle" and one says "Keg" and the keg is the same that was drawn out of that we tested all and that he was selling to other men. This it says come out of a bottle was taken out of the same bottle that he sold to us out of and was selling out of to others.

Q. And the one he sold out of a bottle, what was that sold to you as ?

20 A. Wine. The others were taken out of barrels that were in the back part of the place, back of the—not back of the bar but back in the room from the bar.

Q. Now, about that other bottle ?

A. This is Nulo. I don't know what it is.

Q. Nulo ?

A. I picked it up and brought it, "Taken out of the ice box at Max's, July 29, 1918, by Thomas Waddington, and that was just as it is. I didn't fill that, that were all filled.

30 Q. And he was selling that too, was he ?

A. Yes, sir.

Q. Now, did you recognize any of the men that were in the place any of the times you were in there ?

A. I did, one or—

Q. How many ?

A. Two or three of them, four of them, but I couldn't

tell just how many. I recognized some of them.

Q. Can you name any of them ?

A. One of them, I call him Happy, was a man we had out on a road camp, and another one of them is a colored man that we call Big Boy, Crutchfield.

Q. Did you see either one of these men under the influence of liquor there ?

A. Happy were very much.

Q. Did you ever have a talk with Linker in reference to who owned this building and was running it ?

A. I did. 10

Q. What did he say about who had—

A. He told me that he were running it for—did I ever have a talk with Linker or Max ?

Q. With Max ?

A. I had a talk with Max.

MR. FITHIAN: Not with Linker ?

THE WITNESS: Not with Linker ?

Q. Who did Max say was the owner of it ? 20

A. He said that Mr. Linker were.

MR. FITHIAN: That is objected to. It should not be used as testimony against Mr. Linker. I think perhaps I ought to be permitted to ask the witness whether Linker was present at the time that conversation occurred.

THE COURT: Yes. Was Linker present when you had this conversation with Max ?

THE WITNESS: He was not. 30

THE COURT: That testimony, then, can only be used against Max.

Q. Did you ever have a talk with Mr. Linker who was the owner of the place up there ?

MR. FITHIAN: That is objected to for two reasons.

First, the witness said he never did talk with Linker. Second, it is a conclusion that hasn't been proved that Linker was the owner of the place.

(Objection sustained.)

Q. Did you ever have a talk with Mr. Linker about this place ?

MR. WARE: Objected to, on the ground that the witness has already answered the question.

10

(Objection overruled.)

(Whereupon the defendants, by their counsel, pray bill of exceptions, which is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

A. I don't understand just what you mean by my having a talk with—I heard Mr. Linker say—

20

MR. WARE: Objection.

Q. Did you ever hear Mr. Linker say who was the owner of this place ?

MR. WARE: Objected to, objected to as clearly leading.

(Objection overruled.)

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

E. C. WADDINGTON, [Seal]

A. I did.

MR. WARE: Isn't that question leading ?

Q. Where and when was it ?

A. At 'Squire Smith's office.

Q. At the time of the hearing ?

A. At the time of the hearing.

Q. What did Mr. Linker say ?

A. He said that he, this man, were a relation to him, I think a brother-in-law, I am not sure about being a brother-in-law, but he were a relation to him and I think he said he were a brother-in-law, but anyway he said he owned this place and that this man were running it for him, that Max was running it for him, and that was when I arrested Mr. Linker . 10

Q. Had Linker been arrested before that ?

A. He had not.

THE PROSECTUOR: I would like to offer these in evidence (referring to bottles).

MR. WARE: I object to them.

THE COURT. On what ground ? 20

MR. WARE: They haven't been proved. It is not clear yet whether Mr. Waddington purchased these bottles or took them out. Certainly, if it is alleged these bottles were purchased there, whether wine or cider, whatever they may contain, it is a matter that has really absolutely nothing to do with the indictment as framed in this case. The indictment in this case disclaims any idea that the defendants or either of them kept a disorderly house in the sense they sold liquors which were prohibited by the statutes of New Jersey; and, secondly, if Mr. Waddington went into a man's place of business and took out samples of liquids contained in barrels, filled them in other bottles and separated them, how can it be alleged that they themselves constitute any part or feature of an indictment charging the defendants with keep a disorderly house ? They were not sold or given away or used what- 30

ever in the premises, merely samples taken out of there. Among other things, here is a brand new bottle apparently that has never been opened. How can it be alleged what this was, or whether it was put there for the use of the proprietor or a person working there ?

THE COURT: Apparently it isn't alleged for anything more than it is labeled.

10 MR. WARE: I know, but was it in the ice box for purposes of sale or only for the personal use of the proprietor or employees, and again, the witness disclaims any knowledge of the contents of what one or two of those bottles were.

THE COURT: I agreed with you that the witness does not know what was in those bottles. I agree with you that they probably are not evidence.

20 MR. WARE: Where are they evidence if they were never used as an article of sale, and the indictment, moreover, does not charge selling this drink.

THE COURT: It charges tipping and drinking and I anticipate the Prosecutor will have some further evidence in regard to these bottles, whether or not they will make people intoxicated, I don't know. My notion at present is—

30 MR. WARE: I assume the question of cider was brought up on the theory it was prohibited by the 66th Section of the Crimes Act, as an article known as an ardent spirit; that was made the subject of a special indictment where a man was indicted for the sale of cider under the 66th Section of the Act. We object to their admission at this time.

THE COURT: As to those two particular bottles, I think you are entitled to have them admitted. In regard to the others—

THE PROSECUTOR: If the bottle was the same brand they were selling to other people there, that he has testified to—I am not offering this as a conclusive proposition that he was selling this particular intoxicating drink; it is only one of a chain of the whole link constituting a disorderly house.

THE COURT: The Court will admit only the two bottles which the witness identified as being taken from the keg and from the bottles which they were drinking out of. Will you set those aside ?

10

MR. WARE: Will the Court at this time give us an opportunity of knowing on what theory they are admitted ? Are they admitted that they were articles that were unlawful to be sold at any time ? Is that the theory ?

(Witness indicates two bottles).

THE COURT: Are those the two that were—

THE WITNESS: Those are the two bottles that were taken. One of them was taken out of a bottle that we had bought stuff out of in bottles, and the other one was out of a keg that we had bought stuff out of.

20

(Said bottles marked respectively S1 and S2.)

CROSS EXAMINATION

30

BY MR. WARE:

Q. Mr. Waddington, you are an officer of the City of Salem or County of Salem, rather ?

A. Yes, sir.

Q. And you are a constable ?

A. Yes, sir.

Q. And at the time you visited the place of Mr.—or the place on the Shell Road, where you say you took those samples, you were an officer ?

A. Yes, sir.

Q. And a constable ?

A. Yes, sir.

10 Q. And Mr. Myers at that time was also an officer of the law ?

A. Yes, sir.

Q. And were you attired as an officer wearing uniform ?

A. Oh, no, oh, no.

Q. Did you ever wear a blue suit while up there ?

A. No, sir.

Q. Mr. Myers ?

A. That is, not while I was at his place.

20 Q. That is what I had reference to.

A. No, sir.

Q. Did Mr. Myers ?

A. No, sir.

Q. Did either one of you wear a badge ?

A. I had mine on.

Q. Did Mr. Myers ?

A. I don't know.

Q. This place is situated where ?

A. Opposite No. 2 Gate.

30 Q. And by No. 2 Gate you mean the plant of the Du Pont Powder Works known as Plant 2 ?

A. Yes, sir.

Q. Very large place, large place in area ?

A. I don't know what—

Q. It is quite a large place, isn't it ?

A. The store.

Q. No, the powder works.

A. Yes, that is a large place.

Q. And this is not an out of the way place where this building is ?

A. Right on the main road.

Q. Right on the main road there, buildings next to it ?

A. Yes, sir.

Q. The trolley track is right near the doorway ?

A. It is.

Q. And there is quite a lot of traffic along the road ?

A. Yes, sir, at that time there were a good bit.

Q. Dozens of people moving around there all that time ?

A. Yes, sir.

Q. And there are guards, police officers, patrolling that place ?

10

THE PROSECUTOR: I object to that, whether there are guards or police officers.

THE COURT: Repeat the question.

20

(Question repeated.)

THE COURT: Proceed.

THE PROSECUTOR: I don't think it is cross-examination of anything that he has testified to.

THE COURT: I will allow it.

Q. Will you answer that, Mr. —

30

A. I don't know just how to answer that. If you would let me, I could tell you what—

Q. Did you see any police officers along the road ?

A. No, sir; I saw guards there.

Q. Are they police officers ?

A. I imagine not.

Q. Do they wear the uniform of police ?

Q. They wear the powder works uniform.

Q. They wear an officer's badge, don't they ?

A. I never saw what was on it.

Q. Never saw a badge on them ?

A. I saw a badge on them but I don't know what the badge called for. I know they had to get a notice from Du Pont's 'phone to help you.

Q. Never saw what was on the badge, never saw it had Police Officer, Upper Penn's Neck Township ?

10 A. Never saw that; never knew.

Q. Saw a number of them at the same time ?

A. Yes.

Q. All parts of the road ?

A. Yes.

Q. Directly opposite this place ?

A. I always saw three or four over by the gate.

Q. And you saw them patrol on motorcycles ?

A. I saw one man going up and down there.

20 Q. And in order to take the trolley at Plant No. 2, it is absolutely necessary to board it right near the entrance to this man's place, isn't it ?

A. The trolley stops close there.

Q. You saw a large number of police officers boarding the trolley at that point ?

A. I seen them guards. I didn't know they were police officers.

Q. We will agree they are guards ?

A. Yes.

Q. But they arrest people, don't they ?

30 A. I never have saw them arrest anyone. I have had them to help me but I had to get an order from headquarters before they would leave the works with me.

Q. That is all true, but they have, as a matter of fact, arrested people and there are magistrate's courts in that community ?

A. I have heard Mr. Duffy has a court in back over there.

Q. You have been in Mr. Duffy's court ?

A. No, sir.

Q. You never have ? Were you in Mr. Duffy's court when I was there, shortly after they arrested Adam Johnson, when Mayor Grier and I were there ?

A. I have never been there when they held court, to the best of my knowledge. I was in the place once.

Q. You know they hold court there ?

A. I know there is a place where they tell me Mr. Duffy sits.

Q. And there are other magistrates in that township? 10

A. I suppose so.

Q. And constables in that township ?

A. Yes, sir.

Q. This is not an isolated place ?

A. No, sir; it is a public place.

Q. And buildings right alongside of it ?

A. Yes, sir.

Q. And the powder works work all the time, Sundays as well as week days ?

A. Yes, sir; they work all the time. 20

Q. How did you come to go up there on the first visit ?

A. I was sent there by the Prosecutor.

Q. Sent anywheres else ?

A. We do.

Q. Was it daytime or night when you went there ?

A. In daytime.

Q. And do you wear your usual garb, had your badge on ?

A. Had it underneath here (indicating).

Q. Did you see the fellow named Happy in there that day ? 30

A. I did.

Q. And the fellow known as Big Boy ?

A. Yes, I did.

Q. They knew who you were, knew you were an officer of the law ?

A. Oh, yes; Max knew who I was.

Q. And nobody stopped on account of your advent, I mean things went right along ?

A. It didn't look as if they were stopping.

Q. You didn't attempt to arrest any of these drunken men ?

A. Did not.

Q. And did Mr. Myers attempt to arrest anyone ?

A. Did not.

Q. And you were in there possibly how long ?

10 A. Twenty minutes to half hour.

Q. And you know, as a matter of fact, all these men you saw in there were employed in the Du Pont works or Mr. Newton's.

A. I don't know anything about except that the Du-Pont ones would come up to and talk to me.

Q. You knew they were working there ?

A. Some of them I knew because they told me. The rest I don't know where they were.

Q. Did you stop in any other places along there ?

20 A. No, sir.

Q. Didn't stop in the Plaza ?

A. No, sir.

Q. Did you stop in Kean's place ?

A. Don't know anyone by that name.

Q. Know the American House there ?

A. I know there is other buildings there.

Q. Didn't stop there that day ?

A. Did not.

Q. And this particular place you did visit, this Max's place, that is a large room, is it not ?

30 A. It is; yes, sir.

Q. Fitted us as a pool room ?

A. Yes, sir.

Q. And sale of soft drinks and tobacco ?

A. Yes, sir.

Q. Cigarettes ?

A. Yes, sir.

Q. Buy food there ?

A. Don't know about fruit; wouldn't say about that.

Q. You know it is also used as a lodging house ?

A. I have heard it were.

Q. And the building next door, that is used as a restaurant ?

A. I don't know.

Q. The American House ?

A. I don't know as it is.

Q. Did you see a large crowd of men in there eating ?

A. No. 10

Q. How long were you in there, Mr. Waddington ?

A. I judge from twenty minutes to half hour. I didn't time.

Q. And do you mean to say this argument, this swearing and quarreling, kept up the whole twenty minutes or thirty minutes ?

A. The disorder there may have all the time—the disorder kept up all the time. The same ones didn't talk all the time, all that long.

Q. Did you make an attempt to quiet it ? 20

A. I did.

Q. Didn't stop for you ?

A. No. I got right out of the way.

Q. Did the Under-Sheriff try to stop it ?

A. He notified Max to stop it. He notified Max to stop selling these men.

Q. Did they get out ?

A. No, sir.

Q. You knew this Big Boy ?

A. Yes. 30

Q. You knew Happy ?

A. Yes.

Q. Were they quarreling or swearing ?

A. No; they wanted to love me, shake my hands.

Q. They must have been disorderly for a man to come up and want to love you, you wouldn't call him a good,

law-abiding citizen ?

A. They knew me.

Q. And that is the reason why you didn't arrest them?

A. I didn't go there to arrest nobody, that wasn't the reason.

Q. The Sheriff was there, the representative of the Sheriff's office. He didn't proclaim order and peace and drive them out ?

A. No, he didn't drive them out. We didn't go there
10 to drive them out.

Q. You went the next day ?

A. Yes, sir.

Q. Did you go alone ?

A. Yes, sir.

Q. Why didn't you take Mr. Myers along ?

A. Well, I couldn't tell you now why I didn't take him. I went—

Q. Did you go there to abate that nuisance or did you go there to get evidence ?

A. I went there to get evidence. I went there to see
20 if this place are the things it was reported to me it was.

Q. In order to get evidence, it is necessary that the officer shall not disclose his identity when he goes in a place. You wouldn't suppose people would be disorderly if they knew you were an officer of the law, expect them to ? This man Max knew you ?

A. Yes, sir; I suppose he had a right to.

Q. And yet you say when you went there the second time they were the same as the day before ?

A. Practically, only they were not quite so many
30 there as on Sunday.

Q. Was it at night ?

A. Night the second time.

Q. Playing pool there ?

A. They wasn't on Sunday. They was this night.

Q. People came in and bought tobacco and cigarettes?

A. Yes.

Q. Doing harmless things, in your judgment ?

A. Some people in there I didn't see anything the way with and others I did.

Q. And you were in there how long ?

A. Oh, I couldn't just tell you. Long enough for to look over the situation and see what it was.

Q. I understand your testimony, you went in there every day, yet they—

A. Oh, one day that week, that is at night.

Q. That is at night ?

A. It was at night each time I went alone, each one 10
of the nights.

Q. Each one of the nights except the last ?

A. No. Each one of the nights I went alone.

Q. Well, that was a matter of seven nights, five or six or seven ?

A. I think it was five nights.

Q. I am not captious about that.

A. I think it was five nights I went alone.

Q. And every time you went in there, this man Max 20
would see you, speak to you ?

A. He would see me. I wouldn't particularly go up and speak to him.

Q. But he would see you ?

A. I suppose he would. I didn't know why he wouldn't.

Q. You were in there long enough for him to see you ?

A. Yes, but there were a big bunch of people in there. I didn't get up right to him for him to see me.

Q. What were you doing ?

A. Looking to see what was going on. 30

Q. They didn't stop ?

A. No, kept right on.

Q. Did you consider them disorderly enough to order them out ?

A. I did.

Q. Did you call the attention of Max to the fact these

people were disorderly ?

A. I did not.

Q. Yet you considered them disorderly ?

A. I did.

Q. If they had been anywhere else but there would they have been subject to arrest ?

A. Well, if I had been sent to get evidence any other place, I practically would have done the same I did do.

10 Q. Despite the fact the parties would know you, knew you were an officer of the law ?

A. Yes, everybody knows me.

Q. Did he know what you were there for ?

A. He should have knowed after I notified him if he kept running that place he would be arrested.

Q. You kept going right there every night ?

A. No, five time I think. I went there on the 21st, on Sunday, and went over on about one night and that was a Friday night, I am pretty sure Friday night, I was not there—

20 Q. Why didn't you take witnesses with you ?

A. I took my wife with me on Friday, when we drove over in our automobile.

Q. Why didn't you take some men with you on these other occasions ?

A. I wanted to satisfy myself what it was.

Q. Weren't you satisfied what it was ?

A. I was satisfied it was a disorderly place.

Q. If you were satisfied the first night, why did you go the other nights ?

30 A. I was told by the Proseutor not to stop until I got evidence enough to convict this man.

Q. At the last moment, you took Mr. Cline ?

A. Not the last moment.

Q. I ask you, according to your direct evidence, if you didn't take Mr. Cline ?

A. The last time I testified to but not the last time I was there.

Q. We are speaking about your direct examination. Did you take anyone else with you ?

A. Yes, sir.

Q. Mr. Cline ?

A. Yes, sir; and Mr. Myers.

Q. And you went there for what ?

A. To arrest the man.

Q. You had a warrant with you ?

A. Yes, sir.

Q. You were satisfied at that time ?

A. I was but the Prosecutor wasn't. 10

Q. You, as a matter of fact, had made a complaint ?

A. Yes, sir.

Q. And your purpose then was not to get evidence so much as to arrest him ?

A. Well, to get both.

Q. And while you were there, you went to work and took samples out of different barrels and receptacles ?

A. Yes, sir.

Q. Did you pay for any of them ?

A. Not these samples I took out of the barrels. 20

Q. Mr. Saphiro helped you ?

A. Yes, sir; he and Mr.—

Q. He gave you bottles ?

A. He and Mr. Myers drewed one bottle there together, he helped Mr. Myers get one. I got these myself.

Q. And he provided you bottles to put the stuff in ?

A. I got them.

Q. You took them out of the man's business ?

A. I got them right there.

Q. He didn't raise any objection, didn't attempt to hinder you ? 30

A. He didn't stop me.

Q. These are what are called soda water bottles, cream soda ?

A. I don't know. I suppose that is what they are used for. I found these empty bottles there and I found the

stoppers there where they take unstopped bottles and I put the stoppers on these bottles.

Q. Did you tell him what you wanted these for ?

A. Yes. He asked me what I was taking that out for.

Q. And you told him ?

A. I told him I was taking them out for evidence.

Q. Evidence against him ?

A. Yes.

Q. And still he raised no objection to your doing it ?

A. He did not.

10 THE COURT: Which one of these did you take out of the hard cider bottle ?

MR. WARE: I don't like to be captious particularly, but I would respectfully object to your designation of a barrel as the hard cider barrel in the sense that the barrel contained hard cider. I suppose Your Honor merely means to designate the barrel.

20 THE COURT: The witness testified he took one out of the hard cider barrel.

MR. WARE: But not as to its contents.

THE WITNESS: There was no more than one barrel marked hard cider and I don't know which one of the bottles come out of the barrel marked hard cider.

30 MR. FITHIAN: I would call Your Honor's attention to the fact that there is no testimony that the defendants were selling anything out of the barrels marked hard cider.

THE COURT: Under your theory of the case, that wouldn't make any difference.

MR. FITHIAN: Yes, but that would seem to agree with my theory of the case, Your Honor.

THE COURT: Were some of these taken out of barrels that were not called hard cider ?

THE WITNESS: I don't know what that come to particularly, I wouldn't want to say, I wouldn't want to say that they were, some of the barrels I know, some of the barrels I looked and I saw some of the barrels, and after I took them out I saw some of the barrels and I saw they said hard cider. I couldn't judge this is hard cider.

THE COURT: If there is any question about it, they 10
won't be admitted.

RE-DIRECT EXAMINATION.

BY THE PROSECUTOR:

Q. Mr. Waddington, after the arrest, did you continue to go to that place ? 20

A. I did.

Q. Before the September Term of the Grand Jury ?

A. I have it down here, on Sunday, September 15, 1918, George Brown and Edgar Rubart.

Q. What was the condition that day ?

A. I didn't go inside the place that day, I only looked in.

MR. WARE: Where is the indictment ?

30

Q. When was that ?

A. That was on—

MR. WARE: Just a minute. Has this indictment ever been filed ?

THE PROSECUTOR: Ask the clerk. I got it from him this morning.

MR. WARE: It isn't marked filed.

THE COURT: Any further objection, Mr. Ware ?

MR. WARE: No. No objection.

THE COURT: Proceed.

10

Q. What date was it ?

A. This was on Sunday, September 15, 1918.

Q. That was just before the Grand Jury met, wasn't it?

A. I don't remember what date the Grand Jury met but I think—

Q. Well, who do you say was with you that day ?

A. George Brown and Edgar Rubart.

Q. And what did you do ?

A. I didn't go in myself. I only looked into the place
20 and went on.

Q. What did you look in, the window or door ?

A. Door.

Q. What seemed to be the condition there then ?

A. Well, it was just about as I had seen it on the Sunday before, I didn't see any difference there, what little time I looked in there.

Q. And that was a Sunday ?

A. That was a Sunday.

30

MOSES MYERS, JR. sworn.

BY THE PROSECUTOR:

Q. Mr. Myers, are you Under-Sheriff of the County of Salem ?

A. Yes, sir.

Q. Mr. Myers, do you know this place on the Shell Road, run by Max, do you know Max Saphiro ?

A. Yes.

Q. Do you know Mr. Linker ?

A. Yes, sir.

Q. Do you know this place which it is alleged they were running on the Shell Road ?

A. Yes, sir.

Q. Were you ever in there ?

A. Yes, sir.

Q. Who were you with ?

10

A. Tom Waddington and George Brown on the 21st of July.

Q. What did you see when you went inside ?

A. Well, how I came to go in there, I saw this man called Big Boy standing drinking a bottle in the door and it looked like beer to me and I got out to see what he was drinking, and when I got up there it was one of these bottles of soft stuff, I think he called it Atco.

MR. FITHIAN: Soft stuff ?

20

THE WITNESS: Yes, sir; something like this bottle here (indicating) and we went inside and several were in there, making quite a racket, one man especially was intoxicated, and stood there drinking hard cider, at least that was what they said it was.

MR. FITHIAN: That is objected to.

THE COURT: Who said it was ?

THE WITNESS: Why, the people around there.

30

MR. FITHIAN: It is not evidential?

THE WITNESS: I got some and drank it and tasted it.

Q. Was it hard or soft ?

A. Yes.

MR. FITHIAN: I asked that the answer of the witness, where he said they said it was hard cider, be stricken out.

THE COURT: Strike it out.

Q. Did you drink some of it ?

A. Yes.

Q. Who did you get it off ?

A. Max.

10 Q. What did it taste like ?

A. It had a funny taste to me.

MR. WARE: I suppose the stenographer is putting down objections to all testimony relating to sales, violating the law.

THE COURT: That is on the record three or four times, it has reference to all sales.

20 Q. Did you taste enough of this to know whether it was intoxicating or not ?

A. No.

Q. Did you buy anything else in there ?

A. Bought some wine.

Q. Did you drink it ?

A. No, I don't drink any of that. I bought that for Waddington and Brown and they tasted it.

Q. That was a later date, wasn't it ?

A. That was what ?

30 Q. You bought wine the first day you were in ?

A. I bought wine both times I was in but I tasted cider and didn't taste the wine.

Q. Did you buy it for wine ?

A. That's what they call it.

MR. FITHIAN: That is objected to, what they call it.

THE WITNESS: I didn't know what it was, only what they said it was.

THE COURT: Who said it was ?

THE WITNESS: Waddington and Brown.

MR. FITHIAN: Then I ask that the testimony of this witness, insofar as the designation of what he bought as wine, be stricken out.

10

THE COURT: Strike it out.

Q. Did Max say what it was ?

A. Didn't hear him.

Q. Did you hear what they asked for ?

A. Asked for cider in the barrel and he said that was cider.

Q. What was the—did you hear what the others were asking for ?

A. He called that red wine, Max did.

Q. Called it red wine ?

20

A. Yes, sir; he did.

Q. You didn't drink any, though ?

A. No.

Q. And what did you see in reference to the men, what were they doing in there ?

A. Well, they were carrying on, that is, talking loud and cursing, and one playing on the piano. This was on a Sunday.

Q. What was their physical condition ?

A. Were just as I say, one was intoxicated there, an old gentleman, but the rest of them was felling good, they wasn't so much what you might say drunk. 30

Q. How long were you in there ?

A. Well, about—I should judge about twenty minutes.

Q. Did you say anything to Max about the way he was running his house ?

A. Told him the Sheriff sent me up there and told him he would have to stop selling cider and cut out so much noise there on a Sunday.

Q. What did he say ?

A. He didn't say anything, didn't say whether he would or not.

Q. When were you next there ?

A. On the 28th.

Q. Of the same month ?

A. Yes.

10 Q. And who were you with ?

A. Mr. Waddington.

Q. Did you go in the house, the place ?

A. Yes.

Q. What did you see when you went in there ?

A. Well, it wasn't quite as bad as it was before but it was noisy and the boys calling around there and drinking cider, putting it right out to them then.

Q. Who was selling it ?

A. Why, Mas was selling it, and two days, twice when
20 I was there Max was there and one day the boy was there.

Q. And what was the physical condition of the men who were in there ?

A. Well, they were quite noisy, as if they had been drinking.

Q. Were they under the influence of intoxicating liquor ?

A. Why, not bad, no.

Q. What kind of language were they using ?

A. Oh, the same as Mr. Waddington says, cursing.

Q. Was that continuously carried on while you were
30 in there ?

A. Yes; at least, they let up some when they saw who was in there ?

Q. You knew two or three who were in there, didn't you ?

A. I only knew Big Boy. He was the only one I knew by name.

- Q. And when next were you in there, if any ?
 A. On the 29th, the same month.
 Q. And that was a week day, wasn't it ?
 A. Yes, on a Monday.
 Q. And how long were you in there that night ?
 A. Well, we wasn't in there only long enough to fill these bottles.
 Q. And what was the condition going on there that night ?
 A. Well, about the same thing.
 Q. How many men do you suppose were in there that night ? 10
 A. About twenty-five or twenty every night, that many in there every time you go along.
 Q. And what were the men doing ? What were they doing ?
 A. Well, sitting around talking and standing up there drinking, some of them, and one of them was playing the piano.
 Q. Well, what kind of talk were they using ?
 A. Oh, some of them were swearing, talking there amongst themselves. 20
 Q. Was it loud or—
 A. Well—
 Q. Boisterous or not ?
 A. Yes, it was middling loud.
 Q. Did you buy anything on that night ?
 A. The last night we was there ?
 Q. Yes, on the 29th, 28th ?
 A. I don't think I bought anything that night; I ain't sure.
 Q. Did you buy anything on the second Sunday you were in there ? 30
 A. The second Sunday ? No.
 Q. Were you there after that ?
 A. No, not after the 29th.

CROSS-EXAMINATION.

BY MR. WARE:

Q. At that time you were Under-Sheriff of the County of Salem ?

A. Yes, sir.

10 Q. And had been for a considerable length of time ?
A. Yes, sir.

Q. Well known over the county, weren't you ?

A. Well, I don't know, Harry.

Q. How many times had you been up in that community, do you suppose, as Under-Sheriff ?

A. Oh, quite a few times. I don't know just how many.

Q. You knew Max Saphiro ?

A. Yes.

Q. He knew you ?

20 A. Yes, sir.

Q. Knew you were Under-Sheriff ?

A. Yes.

Q. Knew you were Under-Sheriff when you first went in there ?

A. Yes.

Q. You knew Big Boy ?

A. Yes.

Q. Knew Big Boy worked for Newton ?

A. Yes.

Q. Knew some of these other men by appearance ?

30 A. Well, I saw one or two of them around there before but didn't know them.

Q. You know they were employed in that vicinity ?

A. I suppose they all were.

Q. This is no hidden place ?

A. What ?

Q. No hidden place ?

- A. No.
- Q. Right along the main public road ?
- A. Yes, sir.
- Q. Practically opposite the entrance to Plant 2 ?
- A. Yes.
- Q. And there are thousands of people pass along the road every day, are there not ?
- A. Yes.
- Q. And you saw police officers of Upper Penn's Neck along the road ?
- A. I saw the Du Pont guards. 10
- Q. They are police officers in Upper Penn's Neck ?
- A. They are in the plant, not outside.
- Q. You have seen their badges ?
- A. Yes.
- Q. They read "Policeman, Upper Penn's Neck ?"
- A. As I understand it, they are not policemen outside the plant.
- Q. Don't they patrol that road ?
- A. Yes, they do.
- Q. You know Ira Kearns ?
- A. Yes. 20
- Q. Know Joseph Henry ?
- A. Yes.
- Q. Know Joseph patrols the road too ?
- A. Yes, seen him there once in a while.
- Q. And you have seen policemen on this road, right at this place ?
- A. I don't know that I seen any when I was there.
- Q. As far away from it as that wall (indicating) ?
- A. Yes.
- Q. And policemen have to come there to board the trolley ? 30
- A. Yes.
- Q. When you went in this place on the 21st of July, you saw a number of men in there, standing around, swearing, you say ?
- A. Yes.

- Q. Talking loud, were they not ?
A. Yes.
Q. And you knew some of these men ?
A. Only one of them is all I knew.
Q. And these men would swear wherever they were ?
A. I suppose they would.
Q. And talk loud ?
A. I suppose they would; yes.
Q. You know that class of men ?
A. Yes.
10 Q. And their noise was not out of the way, to your mind ?
A. Well, on a Sunday, well, I think they ought to keep it down a little up there.
Q. It wasn't so loud you could hear it from the road ?
A. Yes.
Q. Wasn't the fact that what attracted your attention was you saw Big Boy with the bottle ?
A. Yes.
Q. And to your idea that was beer and you wanted to
20 grab it ?
A. Yes.
Q. You thought you made a find ?
A. Yes.
Q. What was your errand up there that day ?
A. Prosecutor and Sheriff sent us up there.
Q. Up where ?
A. Up to that place.
Q. Any other place ?
A. Yes.
Q. Several other places didn't you go ?
30 A. Yes.
Q. That just happened to be one in your itinerary ?
A. Yes.
Q. And you wouldn't have stopped if you hadn't seen Big Boy ?
A. We had already stopped.
Q. Didn't see nothing out of the way, did you ?

A. Well, I thought that when I seen Big Boy I saw something out of the way, standing there in the door with a bottle in one hand.

Q. You found it practically harmless ?

A. Yes.

Q. You found it soft drink, so that your errand there had at that time been obviated by the discovery of what was in the bottle ?

A. We was there.

Q. You had already been there, you were not going to notify the men twice the same day ?

10

A. No, we hadn't been there before.

Q. Pardon me, my mistake, my fault. You stopped there for two errands and all you saw was some colored men noisy ?

A. Lots of them.

Q. And swearing ?

A. Yes.

Q. Not an unusual thing to see colored men noisy ?

A. No.

Q. And colored men have got to go some place as well as white men ?

20

A. Sure.

Q. Got to be some place for them to go ? And this place has been there for how long ?

A. Oh, I don't know; a good while.

Q. Been there ever since the plant started ?

A. I think it has.

Q. Still there ?

A. Yes.

Q. All the other buildings there and these men are still working around there. Now, the last time you went there, on the 29th, you didn't go there to get evidence, did you ?

30

A. Went there to get evidence and get him, to arrest him.

Q. You already had warrants ?

A. Yes.

Q. And warrants had been sworn out by Mr. Waddington ?

A. Yes.

Q. And you had them ?

A. Yes.

Q. You had them to serve ?

A. Yes.

Q. And when you went in there, what was the first thing you did ?

A. Looked around to see what we could see.

10 Q. He recognized you, Saphiro ?

A. Yes.

Q. Knew you were Under-Sheriff and knew Waddington was a police officer ? Have Mr. Brown with you as well ?

A. Yes.

Q. He is the gentleman who opens the way into the place where you abandon all hope. He also recognized him, didn't he ?

A. Yes.

20 Q. Did you tell him your errand ?

A. Told him we had a warrant for him.

Q. As soon as you got there ?

A. Yes.

Q. Told him he was then under arrest ?

A. Yes, sir.

Q. Then you proceeded to get evidence ?

A. Filled these bottles.

Q. And said you wanted samples of the stuff and he made no objection to your taking samples ?

A. Not a bit.

30 Q. Furnished the bottles ?

A. He filled the two bottles for me.

Q. He put the caps on them ?

A. I put the caps on them.

Q. Well, the caps were furnished by him as well as all of them and he went along with you ?

A. Yes.

GEORGE BROWN, sworn.

BY THE PROSECUTOR:

- Q. Where do you live, Mr. Brown ?
A. In Salem.
Q. You are turnkey ?
A. Yes, sir.
Q. And do you know this place alleged to be kept on Shell Road by Linker and Saphiro ?
A. Yes, sir. 10
Q. Were you ever in there ?
A. Yes, sir.
Q. When were you in there ?
A. 21st of July was the first time I was in there.
Q. Who were you with ?
A. Mr. Waddington and Mr. Myers.
Q. And what did you see after you went in there ?
A. Well, it was a crowd of men in there, drinking and talking loud swearing.
Q. Anything else that they were doing ?
A. Well, they were drinking, you know, swearing and piano going. 20
Q. And what was the physical condition of any of the men ?
A. Well, some of them was under the influence of whiskey, sir, or intoxicating drinks, I would say.
Q. Under the influence of some intoxicating drink ?
A. Yes, sir.
Q. Did you buy anything or drink anything in there ?
A. No, sir; I didn't buy it. I had a drink of cider and also tasted the wine. 30
Q. And who bought it ?
A. Mr. Waddington and Mr. Myers.
Q. Who did they buy it off of ?
A. Bought it off of Max.
Q. What was the nature of the cider ?
A. Well, it was a little sour.

Q. Was it fresh cider or strong cider ?

A. I should call it strong cider.

Q. Was it what they call hard cider or soft cider ?

A. Well, I should call it hard cider.

Q. Would you think it would be intoxicating ?

A. Well, I didn't drink enough for that, sir.

MR. WARE: I object unless the witness qualifies.

10 Q. Did you drink the wine ?

A. Yes, sir; I drank the wine.

Q. Was it wine ?

A. Tasted like wine.

Q. You have drank wine before, have you ?

A. Yes, sir.

Q. How long were you in there, Mr. Brown ?

A. I should say twenty minutes. I didn't look at my watch. Probably twenty or twenty-five minutes, something like that.

Q. When next did you go in there ?

20 A. Went there next on the 15th day of September.

Q. Were you there the 28th ?

A. No, sir; I wasn't with them then.

Q. And on the 15th of September, who were you with then ?

A. Rubart and another fellow. Mr. Waddington went up too but he didn't go in with us.

Q. And what was the condition in September ?

A. About the same thing as it was the—

Q. What do you mean by about the same thing ?

A. Well, there was a crowd of men in there, talking
30 loud and drinking and swearing, music going.

Q. Did you buy anything that night ?

A. Yes, I did.

Q. What was it ?

A. Bought two cider.

Q. What kind of cider was it ?

A. That was pretty hard, I didn't drink all that.

Q. Too hard to drink ?

A. A little too stiff for me.

Q. Who did you buy it off of ?

A. Bought it off a boy who was in there. Couldn't say who the boy was. He was running the place. He was waiting on the customers, anyway.

Q. You have at different times drank intoxicating liquors, haven't you ?

A. Yes, sir; some.

Q. Do you know the effect that alcohol would have on you ?

A. Yes, sir.

Q. The different kinds of drinks ?

A. Yes, sir.

Q. And do you think you are qualified to testify about cider, whether it was alcoholic or not ?

MR. FITHIAN: Of course, Your Honor understands the same objection is made to this line of testimony.

A. I could say it wasn't sweet cider. It was a little too hard. I didn't drink all my glass, and I like cider.

Q. And were they selling that right along there to these different men ?

A. Yes, sir; selling that right at the counter.

Q. Did they have other cider there ?

A. I couldn't say for that, because I didn't examine the place and see what they did but they had the cider right there and were selling it right along to the men coming in.

CROSS-EXAMINATION.

BY MR. WARE:

Q. Did you have your badge on at the time you went there on the 21st of July ?

- A. Yes, sir; had it under my coat.
- Q. You didn't wear an overcoat at that time of year ?
- A. No, sir; I didn't have on a uniform whatever.
- Q. Pretty hot day, was it ?
- A. Well, I don't remember now whether it was warm or not. I know I didn't have on any overcoat.
- Q. Did you know Saphiro ?
- A. Did I notice what ?
- Q. Did you know Max Saphiro ?
- A. I didn't know him until that day.
- 10 Q. You knew him that day ?
- A. That's what his name was pointed out to me.
- Q. Did you have a talk with him ?
- A. I didn't. Mr. Myers did and Mr. Waddington.
- Q. And it was a fact evident to you he knew who Mr. Waddington was and Mr. Myers was ?
- A. Well, Mr. Myers told him who he was.
- Q. Did he say Under-Sheriff ?
- A. Yes, sir.
- Q. And that he was a member of the party, and after
- 20 he told him that did you see any disorder there after that ?
- A. Well, it wasn't very quiet; talking loud.
- Q. What kind of people were in the place at the time ?
- A. Well, mostly working men, colored men and some white men.
- Q. Did they talk any louder than men of that stripe would talk in a place ?
- A. Well, they were ones they had something intoxicating to drink.
- Q. Haven't you ever been in a place where there has been a crowd ?
- 30 A. Yes, sir.
- Q. Of white men ?
- A. Yes, sir.
- Q. And colored men ?
- A. Yes, sir.
- Q. Who hadn't been drinking, and for dozens of them to engage in conversation at the same time ?

- A. Yes.
- Q. Makes considerable noise, all talking at once ?
- A. Yes, sir.
- Q. And you know about the habits of colored men ?
- A. Yes, sir.
- Q. Who come from the South ?
- A. Yes, sir.
- Q. They are not all quiet people when they talk ?
- A. No, sir; not always.
- Q. You know all these powder employes ?
- A. Yes, sir. 10
- Q. You know Big Boy ?
- A. Yes, sir; he was not there that day.
- Q. You know Big Boy's characteristics ?
- A. I know him when I see him. I have seen him around Salem for a couple of years.
- Q. You know people who have been up there for the past two years ?
- A. Do I know them ?
- Q. Yes.
- A. Some around the powder works. 20
- Q. You know this place has been there for two years ?
- A. I have been by the place but I haven't been in it.
- Q. Right along the public road ?
- A. Yes, sir.
- Q. You say you were there on the 15th of September ?
- A. Yes, sir.
- Q. Did you wear your badge that day ?
- A. Under by coat.
- Q. Who was Rubart ?
- A. Another fellow over there.
- Q. What particular position does he hold ? 30
- A. Special officer.
- Q. Did he show his badge ?
- A. I couldn't say; he had it on.
- Q. Don't you know as a matter of fact he is pretty strong on showing it at all times ?
- A. I didn't see him.

Q. Did Saphiro see you that day ?

A. He didn't wait on us.

Q. Wasn't he there ?

A. I didn't see him, nothing but this boy.

Q. The boy was waiting on how many in there that day ?

A. I should judge twenty-five people. I didn't count them.

Q. Recognize any of them ?

A. No, I don't think I did that day.

10 Q. Know who this boy was ?

A. No, I didn't know whose boy it was, didn't know his name.

Q. What was your errand that day ?

A. Sent there to get evidence.

Q. Who by ?

A. Mr. Waddington said he was sent by the Prosecutor and he got me to go with him.

20

RE-DIRECT EXAMINATION.

BY THE PROSECUTOR:

Q. Had you seen this young boy in there at any time before on any of your other trips ?

A. No, sir; I had never been there but once before, you see.

30

WALTER CLINE, sworn.

BY THE PROSECUTOR:

Q. Where do you live, Mr. Cline ?

- A. Salem.
- Q. Mr. Cline, do you know this place on the Shell Road, opposite Plant 2 ?
- A. Yes, sir; know where it is at.
- Q. Were you ever in there ?
- A. One night.
- Q. Do you know what night that was ?
- A. The 29th.
- Q. Was that on a Sunday or week night ?
- A. Week night.
- Q. And who was with you that night ? 10
- A. Sheriff Myers and Tom Waddington.
- Q. And what was the condition that night ?
- A. The condition ?
- Q. Inside, that you saw ?
- A. The condition ? There wasn't anything going on that night that I seen, not at all.
- Q. Did you see any men in there ?
- A. Yes, sir.
- Q. What were they doing ?
- A. One fellow, just one man there, was under the influence of something and he drank a glass of cider. 20
- Q. Did you hear anything from the men ?
- A. Not very much. They was all colored fellows playing pool.
- Q. Did you hear any cursing or swearing, anything like that ?
- A. A little of that, not much.
- Q. Was anything bought that night when you were there ?
- A. Yes, sir.
- Q. What was bought ? 30
- A. Mr. Waddington treated me to a glass of cider.
- Q. What kind of cider was it ?
- A. It was hard. I drank about four swallows of it.
- Q. Was it intoxicating ?
- A. I imagine it would be if you drank enough of it.
- Q. Too strong for you to drink ?

A. Yes, sir.

Q. Who did Mr. Waddington but it off of ?

A. The man he arrested.

MR. FITHIAN: Of course, Your Honor knows we object to all of this and Your Honor's ruling is the same.

THE COURT: Yes.

Q. That was the only time you were there ?

A. The only time.

10

CROSS-EXAMINATION.

BY MR. WARE:

Q. That was the time Saphiro was arrested ?

A. Yes, sir.

20 Q. And when you came in, Mr. Myers announced he had a warrant for him ?

A. Yes.

Q. Arrested him there ?

A. Arrested him that night.

Q. And he permitted the officer to take the samples and provided the bottles and stoppers ?

A. Yes, sir.

30 WILLIAM CRUTCHFIELD, sworn.

BY THE PROSECUTOR:

Q. What is your name ?

A. James Crutchfield is my name. They call me William.

Q. James, do you know the place on the Shell Road?
Do you know Max Saphiro ?

A. Yes, sir.

Q. Do you know also Linker ?

A. Yes, sir.

Q. And have you ever been in their place on the
Shell Road ?

A. Yes, sir.

Q. Ever see Linker there ?

A. Yes, sir.

Q. Ever see Linker attending to the place ?

10

A. Yes, sir.

Q. Selling stuff ?

A. Yes, sir.

Q. Since the first of May up until the middle—up to
the 15th, 16th of September, were you ever in his place,
in that place ?

A. Yes, sir.

Q. How many times do you suppose you have been
in there ?

A. I go there mostly every night. I goes up there 20
to eat at the restaurant next to it.

Q. And did you ever buy anything in there ?

A. Yes, sir; I bought near beer.

Q. What ?

A. Near beer.

Q. Anything else ?

A. Cider.

Q. Anything else ?

A. Cigarettes.

Q. Anything else ? Drinking stuff ?

A. No, sir.

30

Q. Did you ever get intoxicated in there ?

A. No, sir.

Q. Did you ever see anybody get intoxicated in there ?

A. No, sir.

Q. What ?

A. No, sir.

Q. What kind of cider was this he sold ?

A. Well, he sold sweet and some a little hard.

MR. FITHIAN: What was that answer ?

(Answer of witness repeated.)

Q. Ever sell wine ?

A. Well, he did have some wine but I didn't get none.

Q. Ever been in there on Sundays during the day ?

10 A. Yes, sir.

Q. Same condition exist on Sundays ?

A. Selling cider, yes, sir.

Q. Large quantities of men in there on Sundays ?

A. No, sir; not so awfully large.

Q. How many Sundays were you in there during that period ?

A. Well, I couldn't just say. I goes up there every night. See, I work there.

Q. Up there every night ?

20 A. Yes, sir.

Q. And Sunday nights the same ?

A. Sundays sometimes I go up there and sometimes I don't.

Q. More than twice have you been there ?

A. What ? Sundays ?

Q. Yes.

A. Yes, sir.

Q. Five or six Sundays from that time, from the first of May ?

A. Well, I couldn't say how many.

30 Q. From the first of May until the 15th of September ?

A. I don't know, sir.

Q. You were there the day Mr. Waddington was there ?

A. Yes, sir.

Q. Were you there both days he was there ?

A. Only the one.

NO CROSS-EXAMINATION.

EDGAR RUBART, sworn.

BY THE PROSECUTOR:

Q. Where do you live, Mr. Rubart ?

A. Salem.

Q. Mr. Rubart, have you ever—do you know Max Saphiro? 10

A. I never saw him before.

Q. Were you in his place one night ?

A. I was on a Sunday.

Q. Who with ?

A. Mr. Waddington, Mr. Brown. Mr. Waddington went up but didn't go in with us.

Q. You and Mr. Brown ?

A. Yes, sir.

Q. That was on a Sunday ?

A. Yes, sir. 20

Q. What did you do when you went in there ?

A. Well, we went in and looked around and Mr. Brown bought some cider.

Q. Did you have any cider ?

A. I did.

Q. What kind of cider was it ?

A. I should say it was hard.

Q. Was it intoxicating ?

A. It would be, I imagine, if you drank enough of it.

Q. Did you drink yourself ?

A. About a third of it was all I drank. 30

Q. Why didn't you drink the balance ?

A. It was too hard for me.

Q. Other people there that night ?

MR. FITHIAN: Same objection, if Your Honor, please, to all this.

A. Sunday afternoon.

Q. Were there many men in there ?

A. Well there was quite a crowd in there, not an awful large crowd, several men in there.

Q. What were they doing ?

A. One of them was playing the piano and some of them was back in the other room talking pretty loud.

Q. What kind of time were they having ?

A. Well, I heard considerable profane language in there that Sunday.

10 Q. Any of the men appear to be under the influence of liquor ? Didn't see any of that, did you ?

A. No, sir.

Q. Did you taste anything except the cider ?

A. I did not.

CROSS-EXAMINATION.

20

BY MR. WARE:

Q. You are a police officer ?

A. I am special officer.

Q. You were on this particular occasion ?

A. I was.

Q. Have your badge on ?

A. I did.

30

THE PROSECUTOR: The State rests. I understand these three bottles are offered.

THE COURT: No, only two.

MR. WARE: Are they offered ?

THE PROSECUTOR: Yes.

MR. WARE: We object.

THE COURT: The court admitted those two.

MR. FITHIAN: Admitted them over the objection at the time ?

10

THE COURT: Yes.

DEFENDANTS' TESTIMONY.

BLOOMFIELD H. MENSCH, sworn.

BY MR. FITHIAN:

20

Q. Mr. Mensch, you reside in Bridgeton ?

A. I do.

Q. You are at present connected with the Bridgeton National Bank ?

A. I am.

Q. In what capacity ?

A. Its vice-president and active manager.

Q. You were at one time senator from Cumberland County ?

A. A number of years ago.

30

Q. For nine years ?

A. Yes.

Q. Do you know Louis Linker ?

A. I do.

Q. How long has he lived in Cumberland county, so far as you can recollect ?

- A. About twenty-five or thirty years.
Q. How long have you known him ?
A. Since he was a boy.
Q. He now lives in the city of Bridgeton ?
A. Yes.
Q. You have had dealings with him, I suppose ?
A. For a good many years.
Q. Do you know other people who know him ?
A. Very well.
Q. Do you know his reputation in the community for
10 peace and quiet and as a law-abiding citizen ?
A. I think I do.
Q. What is it ?
A. Good.

CROSS-EXAMINATION.

20 BY THE PROSECUTOR:

Q. Do you know anything about the reputation of the place he runs in Upper Penn's Neck Township ?

MR. FITHIAN: Objected to as not proper cross-examination. I will withdraw the objection.

- A. What was the question ?
Q. Do you know the place that he runs in Upper
30 Penn's Neck Township ?
A. I do not.
Q. You know nothing about the condition up there ?
A. I do not.

JOHN SPENCER, sworn.

BY MR. FITHIAN:

- Q. Mr. Spencer, where do you live ?
A. Bridgeton.
Q. Are you connected with a bank or trust company in Bridgeton ?
A. Cumberland Trust Company.
Q. Senator Mensch is with the Bridgeton National Bank. You are with the Cumberland Trust Company ? 10
A. Yes, assistant secretary.
Q. How long have you been with the trust company ?
A. Twenty years.
Q. You are also superintendent of the M. E. Sunday School ?
A. Yes.
Q. Do you know Louis Linker ?
A. I do.
Q. How long have you known him ?
A. Approximately fifteen or eighteen years. 20
Q. Know other people who know him ?
A. Yes, quite a few.
Q. Do you know his reputation for peace and quiet in the community and as a law-abiding citizen ? Is it good or bad ?
A. Excellent, I should say.

CROSS-EXAMINATION.

30

BY THE PROSECUTOR:

- Q. Do you know anything about this place in Upper Penn's Neck Township that he runs ?
A. I do not.

C. J. T. CLARKE, sworn.

BY MR. WARE:

Q. Major, what place or position do you hold in this county ?

A. Superintendent of police at the Du Pont Powder Works, Carney's Point.

Q. Upper Penn's Neck Township ?

A. Upper Penn's Neck Township.

10 Q. About how long have you held that office ?

A. About three years and a half.

Q. Do you know the place operated by Mr. Linker and Mr. Saphiro ?

A. Very well.

Q. And where is that situated ?

A. Nearly opposite the Plant 2 entrance of the Du Pont Works.

Q. And how long has it been there ?

A. Ever since I have been there. It was there when
20 I came.

Q. And do you know Mr. Linker here ?

A. I know him, not particularly. I know who he is.

Q. How long have you known him ?

A. Ever since I have been here.

Q. And are you acquainted with his reputation as a peaceful, law-abiding citizen ?

A. Yes.

Q. Do you know other people who know him ?

A. I think I should say yes to that.

Q. And what is his reputation ?

30 A. Very good.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Major, you say you know this place ?

A. Yes, sir.

10

BY MR. WARE: Just a moment.

Q. Major, you know the place, you said ?

A. Know his place ? Yes. Right opposite the gate.

Q. How long have you known it ?

A. Ever since I have been here, nearly three years and a half.

Q. And what is the ostensible business carried on there ?

A. It is a billiard parlor and on sale soft drinks and 20 other things, cigarettes and cigars.

Q. And are you acquainted with the reputation of the place in your capacity as superintendent of police ?

A. Yes.

Q. And what is the reputation of the place ?

A. Good.

Q. What conditions have you found there ?

A. Conditions have been always good. I have been by it every day three or four times. I visited it once and have been inside only once and that was on the occasion of a fire, but I have always considered it a place of good 30 reputation.

Q. What class of men go to that place ?

A. Principally colored men, Newton's men and the men who work down at Deepwater.

Q. And when you say Newton's men, what do you mean ?

- A. I mean colored men, drivers.
 Q. Who is Mr. Newton ?
 A. Contractor for the Du Pont Company, teamster.
 Q. And is this class of labor known as a rough class ?
 A. Yes, they are noisy.
 Q. At their work ? Do they work every day ?
 A. They work all the time, and that was quite a—it was a hang-out for them, so-called.

10

 CROSS-EXAMINATION.

BY THE PROSECUTOR:

- Q. Now, Major, was this place kept open continuously on Sunday ?
 A. I don't remember that I ever saw it open on Sunday.
 20 Q. As a matter of fact, you don't know much about it ?
 A. Yes, I know a good deal about it.
 Q. You know—you say the reputation is good ?
 A. Yes.
 Q. Do you know Max Saphiro had pleaded guilty to keeping a disorderly house in this particular place ?
 A. No, I don't think I remember it.
 Q. Would that affect his reputation, Mr. Linker's ?
 A. No, not so far as I knew the way he ran the business.
 30 Q. You don't know what was going on inside ?
 A. I do.
 Q. From what ?
 A. Reports from my men.
 Q. Individually you know nothing about it ?
 A. From my own personal observation, nothing except what I tell you.

Q. And you have never been in the place except once?

A. I may have been in more than that but I can remember distinctly that one time I went in and that was the night of the fire and I went all through it.

Q. You don't know whether the place was run continuously or not, do you?

A. No, I don't. If I had any reports I would.

Q. I don't care anything about your reports. You yourself, individually, are testifying individually yourself, do you know?

A. Individually it isn't my business to go there. 10

Q. And individually you don't pay any attention to it?

A. Yes, I do as I go by, but you asked me about a Sunday.

Q. You were not interested in the place particularly?

A. Yes, I was, very much, like all those other places along there.

Q. And how are you interested in those?

A. How was I what?

Q. Interested in those.

A. Just the same as any other place. In case of any 20 trouble, my officers were there to take care of it.

Q. They were your officers?

A. Township officers.

Q. Du Pont police?

A. And township officers.

Q. Were they under the supervision of the township?

A. They were sworn as officers.

Q. For your particular purpose?

A. No, for the purpose of assisting the township in policing the township.

Q. Were they not sworn in at the request of the Du 30 Ponts to guard the powder plants?

A. No; they were Du Pont guards and in addition were sworn as township officers by the township committee of Upper Penn's Neck.

Q. They had to be sworn in that way in order to make an arrest?

A. Yes, and in order that they might assist in policing the township of Upper Penn's Neck.

Q. Well, did they police the township of Upper Penn's Neck ?

A. They do.

Q. Under your supervision ?

A. Yes, being the head of the department, I am a township officer the same as they are.

Q. Did the township have charge of these men ?

A. Whenever they wanted to use them.

10 Q. Did they have charge of them ?

A. Not directly, except when they wanted to use them.

Q. And they were paid by your people ?

A. Not for township work. Paid by the Du Pont people for Du Pont work.

Q. They were paid usually a salary working for the Du Ponts ?

A. Yes.

Q. And were hired by the Du Ponts ?

A. Yes.

20 Q. They were sworn in when the Du Ponts requested them to be sworn in ?

A. Yes, sir.

Q. And they were not put in any other way than when the Du Ponts requested them to be sworn in as officers ?

MR. WARE: If Your Honor please, I fail to see the amissibility of this cross-examination. It is no doubt an interesting question to establish the police officers but it is a matter of perfect immateriality who these men were working for or who they were paid by.

30

THE COURT: You are now objecting to the testimony ?

MR. WARE: Yes.

THE COURT: Objection sustained.

EPPA C. KERNS, sworn.

BY MR. WARE:

Q. Mr. Kerns, where do you live ?

A. Carney's Point Village.

Q. And what is your position ?

A. Traffic officer.

Q. Traffic officer ?

A. Traffic officer.

Q. For who ?

A. For the Du Pont Company and State and county
as well.

Q. How long have you occupied those positions ?

A. Going on three years, a little over two years.

Q. And you are also a deputy sheriff of the county of
Salem ?

A. Yes, sworn in.

Q. And you are well acquainted with conditions in
Upper Penn's Neck Township ?

A. Well, I guess a good many of them, yes.

Q. And do you know the place that Mr. Linker and
Mr. Saphiro conduct ?

A. I think I do.

Q. And that is where, sir ?

A. It is very near opposite No. 2 gate, the entrance
to Plant 2.

Q. And will you state whether or not that is a much
frequented road ?

A. Well, at times it is.

Q. And have you ever been in this place ?

A. Yes, I have been in there quite often.

Q. And do you know these men personally, Mr. Link-
er personally ?

A. Well, I never knew what the names were until just
a few days ago. I have known the faces for quite a while
but not the names.

Q. How long have you known the place ?

10

20

30

A. Well, practically a little over two years.

Q. Is that place patrolled by your fellow police officers ?

A. Yes.

Q. All the time ?

A. Well, most of the time. There are men on duty over there twenty-four hours.

Q. And are you acquainted with other persons who know the place ?

A. Yes, I think so.

10 Q. And are you acquainted with the reputation of the place ? Can you say as to whether or not it is a reputable place ?

A. Well, it has always seemed so to me sir.

CROSS-EXAMINATION.

20 BY THE PROSECUTOR:

Q. Do you know who keeps the place ?

A. Why, the owner of it ?

Q. Who keeps it ?

A. Well, the fellow in there with the little black moustach. I never knew what his name was.

MR. WARE: Mr. Saphiro, stand up.

THE WITNESS: That is the man, he is generally in there or the boy.

30 Q. And you say the reputation is good ?

A. So far as I know.

Q. Do you know Mr. Saphiro pleaded guilty at one time in this court for keeping a disorderly house at that place ?

A. No, sir, I don't know.

Q. That is one of the things the police don't know ?

A. Well, I didn't know it.

WALTER W. KILBORN, sworn.

BY MR. WARE:

- Q. What is your full name ?
A. Walter W. Kilborn.
Q. And where do you live? 10
A. Carney's Point.
Q. Upper Penn's Neck Township ?
A. Yes, sir.
Q. How long have you lived there ?
A. I just moved in Carney's Point. I lived at Pen-
ton's Beach until a few weeks ago.
Q. Same Township ?
A. Lower Penn's Neck.
Q. In that particular community, the Upper and
Lower township lay adjacent to each other ? How long 20
have you lived there ?
A. Almost three years.
Q. What do you do for a livelihood ?
A. Have charge of the lumber at Du Pont's deepwater.
Q. How long have you been employed there ?
A. Three years last November.
Q. Do you know Mr. Linker ?
A. I do.
Q. Know the place Mr. Linker operates ?
A. I do.
Q. Ever been in that place ? 30
A. I surely have.
Q. How long have you been in that place ?
A. I stayed there four months and a half before I
moved my family.
Q. You mean you roomed there ?
A. I did.

Q. And do you know other persons who know Mr. Linker ?

A. I do.

Q. Know other persons who know the place ?

A. I do.

Q. Is that a much frequented community ?

A. It surely is.

Q. And do you know the reputation of Mr. Linker as a peaceful, law-abiding citizen ?

10 A. Yes, sir.

Q. And do you know others who know it ?

A. Yes, sir.

Q. And what is the reputation ?

A. Good.

Q. Do you know the reputation of this house ?

A. Why, it is good.

Q. Good ?

A. Yes, sir.

Q. Never heard anything against it ?

A. I never had until this case came up.

20 Q. Did you ever have any personal communication with the place ?

A. With the place ?

Q. Yes.

A. Yes, sir.

Q. In what capacity ?

A. Well, when I went there I attended the place the same as though I were interested there.

Q. How did you do that ?

A. The man that run it, Mr. Linker and Mr. Colona,
30 were personal friends for twenty-five years.

Q. Where did you know them ?

A. Roseland.

Q. Cumberland County ?

A. Yes, sir.

Q. You took charge of the place in their absence ?

A. Yes, sir, when they were absent, and I did for four

months and a half evenings when I was there I attended just the same.

Q. That was during the time you made the place your residence ?

A. Yes, sir.

CROSS-EXAMINATION.

10

BY THE PROSECUTOR:

Q. When was that ?

A. Three years ago the 15th of November I went there.

Q. And stayed there four months ?

A. Four months and a half.

Q. And you are testifying to the character of this place at that time, not within the last year ?

20

A. All the time.

Q. All the time ?

A. Yes, sir.

Q. And were you acquainted with the fact that Max Saphiro had pleaded guilty to running this house as a disorderly house in this court ?

A. I don't know that I heard that in particular.

Q. Don't know anything about that ?

A. I knew a case came up here, that was all.

Q. Case before this one ?

A. No, this case.

30

Q. You never knew anything about any other case ?

A. No, sir.

Recess taken until 1.30 P. M.

Afternoon Session

Resumed at 1.30 o'clock P. M.

WALTER W. KILBORN, re-called for further cross-examination.

BY THE PROSECUTOR:

10 Q. Mr. Kilborn, did I understand you to say that when this place was first started up in Carney's Point it was run by Mr. Linker and a man named Colona ?

A. Yes, sir.

Q. And how long afterwards did Colona quit the business ?

A. I think it is a year ago last summer.

Q. And since then, Mr. Saphiro has been there ?

A. Well, he has been there part of that time, I don't know just how long.

Q. But Saphiro has been there for the last year ?

20 A. Yes, I think he has been there a year.

Q. You don't know whether he has been there any longer than that or not ?

A. I don't remember. Of course, I knew when he came there but I don't remember just the time that he did.

CORNELIUS W. MEADE, sworn.

BY MR. WARE:

30

Q. Mr. Meade, where do you live ?

A. In bachelor's quarters, Carney's Point.

Q. What is your position ?

A. Officer of Upper Penn's Neck Township.

Q. How long have you been an officer of Upper Penn's Neck Township ?

- A. Five months.
- Q. And where are you stationed as an officer ?
- A. Stationed in camp.
- Q. Do you know the place that is in controversy here to-day, conducted by Mr. Linker and Mr. Saphiro ?
- A. Yes, sir.
- Q. How long have you known them ?
- A. About three years and a half, three years last October, the 4th of October.
- Q. Do you patrol the district in which the place is located ?
- A. Yes, sir. 10
- Q. Do you know the reputation ?
- A. Yes, sir.
- Q. Of the place ?
- A. The reputation is good.
- Q. Do you know other persons who know it ?
- A. Yes, sir.
- Q. Do you know Mr. Linker ?
- A. Yes, sir.
- Q. How long have you known Mr. Linker ?
- A. I came in and for the last three years, sir. 20
- Q. Do you know his reputation as a peaceful and law-abiding citizen ?
- A. Yes, sir; it is good.
- Q. You know other people that know it ?
- A. Yes, sir.
- Q. And know it is good too ?
- A. Yes, sir.

CROSS-EXAMINATION.

30

BY THE PROSECUTOR:

- Q. What did you say your office was ?
- A. Upper Penn's Neck Township.

- Q. Working for the Du Ponts ?
 A. Working for the Du Ponts and township too.
 Q. Paid by the Du Ponts and township both ?
 A. Paid by the Du Ponts and township when I do work for them.
- Q. You live in bachelor's quarters ?
 A. Yes, sir.
 Q. You get your pay entirely from them ?
 A. Yes, sir.
- 10 Q. And unless somebody asks you to go out and do something for the township, you are not working for the township ?
 A. No, sir.
 Q. Guarding the powder works ?
 A. Yes, sir.
 Q. Been in this place on Sunday ?
 A. Yes, sir.
 Q. Been on Sunday ?
 A. Yes, sir.
- 20 Q. Large crowds of people there on Sundays ?
 A. I never seen very many there, just the men working around there is all.
 Q. Men drinking on Sunday ?
 A. No, sir; never seen anybody drinking in there. I have seen them come in and out drunk.
 Q. See them sell on Sunday ?
 A. No, sir.
 Q. See them in there on Sunday drunk ?
 A. No, not on Sundays drunk.
 Q. You were not particularly going in there to see
 30 what was going on, were you ?
 A. No, sir; I was in, just came in to buy some things, cigars, soda, something like that.
 Q. You were not watching to see what was going on ?
 A. No, sir.
 Q. Just went in to buy something and went out ?
 A. Yes, sir; that's all.

DANIEL KEEN, sworn.

BY MR. WARE:

Q. Where do you live, Mr. Keen ?

A. Sharpstown.

Q. How long have you lived there ?

A. Thirty-five years.

Q. Where are you employed ?

A. In the M. P. Newton, Carney's Point.

Q. At Carney's Point ?

10

A. Yes, sir.

Q. How long have you been employed there ?

A. Very near four year.

Q. And whom do you employ ?

A. Who ?

Q. Whom do you employ ?

A. Well, anybody we can get.

Q. What is the name of the position you hold ?

A. Team foreman, stable boss.

Q. Employ many men ?

20

A. Yes, sir.

Q. What particular kind of men, colored men and—

A. Both.

THE PROSECUTOR: I object to this. It has no bearing on this case what M. P. Newton hires.

THE COURT: What has this to do with this particular case ?

MR. WARE: I am going to show the class of men that frequent this place. Testimony has been given by the State that men who went there were of disorderly character. 30

THE COURT: Confine it to that.

Q. And do you know the place conducted by Louis

Linker and Max Saphiro ?

A. Yes, sir.

Q. How long have you known it ?

A. Ever since he has been there. I don't know how long he has been there.

Q. More than a year ?

A. Yes, sir.

Q. Were you in the habit of dropping in there ?

A. Yes, sir.

10 Q. These men that you spoke of being employed by Mr. Newton, will you state whether or not you have seen them in there ?

A. Some of them sleeps there.

Q. Some of them sleep there ?

A. Yes, sir.

Q. What kind of place is the place conducted by Mr. Linker ?

A. I never seen anything wrong there.

Q. What is the nature of the place, store or what ?

A. Soft drinks, tobacco, cigars, candy, pool table.

20 Q. How often have you been in there ?

A. I go in pretty near every night to get a cigar and tobacco and something. Generally get my tobacco there.

Q. Know other persons that go there ?

A. Yes.

Q. Do you know the reputation of the place ? Do you know the reputation of the particular place conducted by Mr. Linker ?

A. I always thought it was all right.

Q. And do you know Mr. Linker himself ?

30 A. Yes, since he has been down there, just since he has been there.

Q. That has been how long ?

A. About three year, I imagine, or more.

Q. Do you know other persons who know him ?

A. Yes, everybody around there knows him.

Q. What is his—do you know his reputation as a peaceful and law-abiding citizen ?

A. Always has been peaceful around there so far as I know.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Have you ever been in this place on Sunday ?

A. What say ?

10

Q. Have you ever been there on Sunday ?

A. Yes, sir.

Q. Many Sundays ?

A. No, sir.

Q. How many ?

A. I don't know. Whenever they called me in there, I would go in for help and if we were short on Sunday mornings I would go down and see if anyone was there.

Q. You didn't go in, then, to buy your tobacco on Sundays ?

A. Not particular.

20

Q. Go in there the same on Sunday as any other day ?

A. Yes.

Q. The place was run just the same on Sunday as any other day ?

A. There was no pool play on Sunday.

Q. Outside the pool playing it was run the same, men in there drinking ?

A. Never saw men in there drinking on Sunday.

Q. And you have seen other men in there besides Mr. Newton's men, haven't you ?

A. Yes, sir.

30

Q. Seen lots of men in there ?

A. Different men would be there, anybody that stopped in.

Q. And lots of men that were not employed by the Du Ponts ?

A. Yes, sir; they kept a pretty good place, kept a good line of things, such as tobacco and things like that.

Q. Tobacco and cigars are generally stock goods, you can buy it anywhere, the same kind of goods?

A. Yes, sir. I bought it off them because I thought it was the best place to go.

Q. You say you know the reputation of this place?

A. I didn't see anything wrong with it.

Q. Well, do you know?

A. First class, I should say.

10 Q. Do you know Max Saphiro, the man that was running it?

A. I didn't know what his name was. I knew the man was running it.

Q. Is Max Saphiro in court?

A. The man in there was running it, would wait on me. I never knew his name.

Q. Is that the man down there (indicating)?

A. Yes, sir.

20 Q. How long have you seen him in there running this place?

A. Oh, I couldn't tell you.

Q. Couple of years?

A. I couldn't say about that; a year anyhow.

Q. Did you know he had already pleaded guilty in this court to keeping a disorderly house in that place?

A. No, sir; didn't know nothing about it.

LEWIS PRICE, sworn.

30 BY MR. WARE:

Q. Where do you live, Mr. Price?

A. Upper Penn's Neck Township.

Q. What is your occupation, sir?

A. Farmer.

Q. How long have you been engaged in farming here ?

A. About 12 years there on that place.

Q. And how far do you live from the place operated by Mr. Linker ?

A. Oh, I don't know just about how far it is; just the lower end of the field that runs from the house.

Q. Are you in the vicinity of Linker's place often ?

A. Oh, once in a great while.

Q. And how long has Linker been there ?

A. Well, I don't know just how long, since the plant boom started there. 10

Q. How long have you know Mr. Linker ?

A. Well, a couple of year, I suppose.

Q. Are you acquainted with the reputation of the place ?

A. Well, so far as the reputation goes, it is all right, I guess.

Q. And do you know other people who know Mr. Linker ?

A. Yes. 20

Q. Do you know his reputation as a peaceful, law-abiding citizen ?

A. It has been all right ever since I have been around there.

CROSS-EXAMINATION.

30

BY THE PROSECUTOR:

Q. Have you visited this place on Sunday ?

A. How's that ?

Q. Ever visit this place on Sunday ?

A. Once in a great while, if I want tobacco or some-

thing like that and some of the other stores ain't got what I want I go right on down the line and get it.

Q. On Sundays ?

A. On Sunday.

Q. Was the place running while you were there ?

A. I got whatever I wanted.

Q. You wasn't watching to see what was going on ?

A. No.

Q. Didn't know what was going on in there ?

A. I don't know anything about what was going on.

10 Q. Were there men in there that time ?

A. Yes.

Q. Sundays ?

A. Yes.

Q. You didn't see what they were doing ?

A. No, didn't pay any attention to them at all.

JOHN K. DUFFY, sworn.

20 BY MR. WARE:

Q. You are a justice of the peace of Salem County ?

A. I am.

Q. Where are you stationed, Mr. Duffy ?

A. Pennsgrove, New Jersey.

Q. And you are also stationed at the powder works ?

A. Carney's Point.

Q. How often are you down there ?

A. 365 days in the year.

30 Q. Do you know the place conducted by Mr. Linker,
Louis Linker ?

A. Yes, I know the place.

Q. How long have you known the place ?

A. Four years.

Q. Are you acquainted with its reputation ?

A. Mr. Linker, I never knew Mr. Linker himself until

one day he came over to the guard house. That was about six months ago.

Q. Do you know other people that know him ?

A. Sam Rose.

Q. Anybody else ?

A. No.

Q. What is the reputation of the place as to quiet and peacefulness ?

A. Never had any complaint from it, only at one time, that I know, about a year and a half ago, it was called to my notice, that they were open on Sunday, and I sent an officer down, Harry Sandberg, down the line, to tell them to close, they were not allowed to stay open on Sunday.

10

Q. You did that to every place ?

A. Every place.

Q. What are the class of people that frequent that neighborhood ?

A. From what I have seen when I went in there, colored men, powder men, workmen around the plant.

20

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. You didn't watch to see whether your order was obeyed, did you ?

A. I asked the officer.

Q. You didn't watch yourself ?

A. No, I did not.

Q. And you don't as a rule go out and detect crime ?

A. I have enough to prosecute it without looking it up.

Q. After it is brought to you ?

A. I have.

30

LOUIS LINKER, defendant, sworn.

BY MR. WARE:

- Q. Where do you live, Mr. Linker ?
 A. Bridgeton, New Jersey.
 Q. How long have you lived in Bridgeton ?
 A. About three years.
 Q. Are you a property owner ?
 A. I am.
 10 Q. What is your business ?
 A. Buyer of produce and dealer in fertilizing.
 Q. State whether or not you ever conducted a farm.
 A. I have farmed all my life.
 Q. You have farmed all your life ?
 A. Yes, sir.
 Q. How long have you lived in the county ?
 A. Thirty years.
 Q. And what has been your business during those
 thirty years ?
 20 A. Mostly farming.
 Q. Ever held any official position ?
 A. I have.
 Q. What is it ?
 A. Justice of the peace.
 Q. How long did you hold it ?
 A. I still hold it.
 Q. Where ? What particular district ?
 A. In Cumberland County.
 Q. Any city ?
 A. Why, I was elected in Rosenham, Deerfield Town-
 30 ship.
 Q. Now, Mr. Linker, this place that is under contro-
 versy here, is that operated by you ?
 A. Owned by me ? It has been operated—
 Q. Do you own the land ?
 A. No, sir.
 Q. Who owns the land ?

A. William J. Summerill.

Q. You rent of him ?

A. I do.

Q. How long have you rented of him ?

A. Been three years last September.

Q. Three years ? How long did you conduct this place ?

A. Personally ?

Q. Yes.

A. About two year, a little over.

Q. And will you describe to the jury what it is, sort of building and the nature of the business and your method of conducting it ? Just tell these gentlemen. **10**

A. Well, it is considered a pool room and cigar store, selling soft drinks and candy, as far as conducting. I been raised and born in this vicinity and always held a good reputation and tried to do the best I could under the circumstances. I don't think it could be conducted any better.

Q. What kind of building is it as to rooms ?

A. Why, there is a small place, frontage of about fourteen feet, is rented to colored people. **20**

Q. Who by ?

A. Rented to colored people.

Q. By you ?

A. Yes, by me, and they have tables, and also have ten or twelve rooms upstairs where the drivers working for Newton live there.

Q. And who are these men that you rent to ?

A. Sir ?

Q. Who are these men that you rent to ?

A. Who are they ? **30**

Q. In respect to—

A. Colored people mostly.

Q. Where are they employed ?

A. By Newton.

Q. At the plant ?

A. Yes, sir.

Q. And the place proper you conduct is what as to its situation ?

A. I don't understand.

Q. What kind of room is it you say you have, a room where you sell soft drinks and tobacco and candy ? Will you describe the size of the room and what it contains ?

A. Why, the size of it is about—the whole building is fifty foot front and a little restaurant is fourteen, that would leave a thirty-six foot frontage by seventy-five foot long.

10 Q. What is there in the room by way of amusements, diversions ?

A. Well, there is six pool tables there. I also have a piano there.

Q. Will you state whether or not you have had any trouble there in the conduct of the place ?

A. I haven't had not even once in the time I was there or in the time Mr. Saphiro was there.

Q. Will you state are you there personally all the time ?

20 A. I haven't been there steady for the last fourteen months, I go there twice a week.

Q. And what are you doing the time you are not there ?

A. Well, I was home selling fertilizer and farm material.

Q. In Bridgeton ?

A. Buyer of tomatoes.

Q. Now, in the conduct of the place, have you ever had any trouble with your landlord ?

A. Never.

30 Q. Never remonstrated with you in the least ?

A. No, sir.

Q. Who do you pay your rent direct to ?

A. William J. Summerill.

Q. Has he called on you for that purpose ?

A. Until lately. He isn't feeling well, he is unwell.

Q. Is he unwell at this time ?

- A. At the present time, yes, he is in the house.
- Q. You say he has been to your place personally ?
- A. Oh, yes; several times.
- Q. And have you personally or intentionally allowed any disorder in your place ?
- A. No, sir.
- Q. Do you allow drunken men to congregate there ?
- A. I do not.
- Q. Or fight ?
- A. Never has been any fights to allow.
- Q. Do you allow people to curse and blaspheme there ? 10
- A. Well, I consider the kind of people there, the class of people talk loudly or say a word or two that may not be fit in church but would pass there all right. I take the circumstances and the kind of people.
- Q. Have you been personally remonstrated by anyone in the conduct of the place at the present time ?
- A. No, sir; no.
- Q. Will you state whether you have intentionally broken the law in the conduct of that place ? 20
- A. I have not.
- Q. What was your intention in operating the place ?
- A. Same as any other man, make a living.
- Q. Keep your doors wide open ?
- A. Yes, sir.
- Q. Do the police officers of the township stop in there ?
- A. Quite frequently.
- Q. Have you, at any time during the period for which you are recharged with violating the law in the indictment, or at any time, sold intoxicating liquors to anyone ?
- A. No, sir; I have not. 30
- Q. Or permitted it to be drunk on your premises ?
- A. I have not.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

- Q. Ever allow hard cider to be allowed there ?
 A. Not to my knowledge.
 Q. Then somebody else was selling it then if it was
 10 hard cider ?
 A. Not if I knew it wasn't sold not if I knew it.
 Q. Then if the barrels were branded hard cider—
 A. That dosen't necessarily mean hard cider was con-
 tained in it. We buy the barrels in Bridgeton and they
 fill it up there.
 Q. How about wine ?
 A. What do you mean by wine ?
 Q. Wine for sale, any wine there ?
 A. Never sold any wine to my knowledge.
 Q. You say you were a Justice of the Peace ?
 20 A. Yes, sir.
 Q. You say you were elected in what township ?
 A. Deerfield.
 Q. Where do you live now ?
 A. Bridgeton.
 Q. Is that a part of Deerfield Township ?
 A. No, sir.
 Q. Then you ceased to be a justice of the peace ?
 A. I am not actively.
 Q. You have moved out of the township in which you
 were elected ?
 30 A. I have.
 Q. Did you attend to this place on Sundays ?
 A. I have been to the place several times on Sundays.
 Q. During the time the indictment alleges ?
 A. Yes, sir.
 Q. Was the place open the same ?
 A. Yes, sir.

- Q. And soft drinks and cider sold just the same ?
 A. Yes, sir.
 Q. People came in and congregated the same as week days ?
 A. Not as much.
 Q. Came in and bought as much as they wanted ?
 A. No, sir.
 Q. Why ?
 A. I have seen people come in that wasn't fit and I wouldn't sell anything at all.
 Q. People who came in that were sober could buy as much as they wanted to ? 10
 A. I don't know as they could stay all day. A man would be a nuisance to hank around all day.
 Q. I mean on Sunday, the place of business was open all day ?
 A. Yes, sir.

 RE-DIRECT EXAMINATION.

20

BY MR. WARE :

- Q. Mr. Linker, this bottle that has been offered, containing this reddish liquid, do you know what that is ?
 (Examining counsel indicates bottle to witness.)
 A. I call it cider.
 Q. Why do you call it cider ?
 A. I bought it for cider.
 Q. Of whom ? 30
 A. Of the Pittsburg Cider and Vinegar Company.
 Q. What kind of cider, as to its intoxicating or non-intoxicating qualities ?
 A. Absolutely non-intoxicating.
 Q. Is that the way you bought it ?
 A. Yes, sir.

Q. You mean by that you wouldn't sell anything intoxicating ?

A. There has been several times the cider has been sent to me and I have tasted it and thought it intoxicating and wouldn't have it.

Q. As to the barrel marked "Hard Cider," what is the meaning of that name on the barrel ?

A. That doesn't mean anything. We have barrels now in there at the present time marked whiskey barrels.

10 Q. No whiskey in them ?

A. No, sir.

Q. You never knowingly had hard cider in the barrels ?

A. Cider will get hard by keeping it.

Q. What would you do with it when it would get hard ?

A. If it wasn't too hard, we would mix it with water and sweet cider, and there have been times when I have had it—

Q. You say the place was open on Sundays. What with respect to pool tables in the place ?

20 A. Not for the last 14 to 15 months, I am quite sure they haven't played, but at one time there, when Mr. Saphiro was away, he had a little boy there in charge, a little boy about ten years old. He got neglectful and of course permitted two or three of the colored people to play.

Q. When was that ?

A. That has been before Mr. Saphiro was arrested.

Q. That was the reason why he was arrested ?

A. Yes, sir.

Q. Is that the reason he plead guilty ?

30 A. I don't know as he knew he pleaded guilty.

Q. Was that what was alleged against him, playing pool tables on Sunday ?

A. Yes, sir.

Q. But not since the last of September, first of last September ?

A. Not to my knowledge; no, sir.

RE-CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. This charge against Mr. Saphiro was keeping a disorderly house, the same as the charge now, wasn't it ?

A. If you term it that way.

Q. And wasn't part of the alleged crime that he allowed gambling to go on in there ? 10

A. Well, I wasn't here at the time of the hearing, that is, at the time the case was heard.

Q. He plead guilty to keeping a disorderly house, the indictment or charge the same as this, didn't he ?

A. Well, I wasn't here at the time. The charge was that he permitted the boys to play pool on Sunday, that is to my knowledge.

Q. Do you know what the charge was ?

A. At least I think I know.

Q. Wasn't it a regular charge of keeping a disorderly house ? 20

A. Yes, it was termed that way.

Q. And wasn't part of the proof that he allowed gambling to go on there ?

MR. FITHIAN: Now, if your Honor please, it seems to me that is going too far.

THE COURT: The record can be produced.

MR. FITHIAN: My point is just this: the only evidential value the conviction of Mr. Saphiro can have is to impeach his own veracity so far as affecting the trial of this case is concerned. He is not being tried for that offense now. 30

THE COURT: The objection will be sustained.

MAX SHAPIRO, Defendant, Sworn.

BY. MR. WARE:

- Q. Where do you live
A. Roseland, New Jersey.
Q. And do you know Louis Linker ?
A. Yes, sir.
Q. You have been working for Louis Linker ?
A. Yes, sir.
10 Q. When did you begin to work for Louis Linker ?
A. About a year ago.
Q. And where ?
A. In Carney's Point.
Q. That building in that building that has been testified here to day ?
A. Yes, sir.
Q. What was your duties with respect to that ?
A. Attend the place.
Q. What kind of business was carried on there ?
20 A. Pool room, cigars, candy and soft drinks.
Q. Any liquor there ?
A. No, sir.
Q. Intoxicating liquor ?
A. No, sir.
Q. Did you at any time ever know any one to sell intoxicating liquor ?
A. No, sir.
Q. Now, who came to the place, who came to the place ?
30 A. All those men that been working in the plant.
Q. And did you have the place open on Sundays ?
A. Yes, sir.
Q. How often on Sunday ?
A. Well, same as every day, except pool.
Q. You wouldn't allow pool playing on Sunday ?
A. No, sir.

Q. Is it the habit of keeping places open on Sunday up there ?

A. Yes, on account of people living up there.

Q. Powder works work on Sunday ?

A. Yes, sir.

Q. Other business houses along there work ?

A. All of them.

Q. Now, it has been testified that sometime ago you plead guilty in this court to a charge of keeping a disorderly house there, is that right ?

10

A. Yes, sir; told me to plead guilty.

Q. And what was the charge ?

A. For playing pool.

Q. Playing pool when ?

A. On Sunday.

Q. Did you permit playing pool on Sunday ?

A. No, sir.

Q. How did it come about ?

A. I been sleeping that time and when I got up I saw one or two men down on the pool table playing pool, whatever they done there, and I hollered to my boy, "Today is Sunday, don't leave them play," and in the meantime I went to wash myself.

20

Q. You were fined \$75 for that.

A. I don't remember how much, \$50 or \$75.

Q. That is all you were charged with doing ?

A. That's all.

Q. And all that you plead guilty to ?

A. I told them I can't plead guilty but the lawyer says "You better plead guilty."

Q. Now, have you knowingly, at any time, from the first of May to the—from the first of May of the present year, allowed drunken men to congregate there ?

30

A. Well, all kind of men come in there.

Q. Did you bring them there ?

A. I do not. The door is open.

Q. Ever sell to drunken men ?

A. Sometimes ask for a bottle of soda water or near beer.

Q. Allow fighting in there knowingly ?

A. No fight.

Q. Did you encourage men to swear, curse, blaspheme in there ?

A. No, sir.

Q. How often was Mr. Linker there ?

A. Sometimes come down once a week, sometimes twice, sometimes later.

10 Q. Will you state whether or not you knowingly permitted or encouraged the keeping of a place that was disorderly to the neighborhood ?

A. Not as I know of.

Q. Ever sell intoxicating liquors at any time ?

A. Never had any in the place.

Q. Did you know these officers when they came in there ?

A. Well, I saw so many people coming in and out, I can't tell everybody.

20 Q. Did you know Mr. Myers, the Under-Sheriff ?

A. I knew him when he gave me the summons.

Q. You knew Mr. Waddington ?

A. You mean the big man ?

Q. Yes.

A. I only knew him afterwards.

Q. Know Mr. Rubart ?

A. No.

Q. Place was wide open ?

A. Yes, sir.

Q. You let them do everything they wanted to do ?

30 A. Yes, sir.

Q. Had nothing to conceal ?

A. No.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Did Mr. Waddington come in there on a Sunday ?

A. I don't know them until they give me a summons.

Q. Did Mr. Waddington tell you to stop running that place that way on Sunday ?

A. No, sir.

10

Q. Did Mr. Myers tell you anything about running it on Sunday ?

A. I don't know the names but one man took be down to Salem and on the way he asked me since when I saw Mr. Linker and I told him I don't think I saw him for two weeks and he said "I told him not to sell any cider," and I said "I will tell him when I see him."

Q. Have you been instructed by anybody else to take anything else out of that place that day illegally ?

A. There was one time there was a little cardboard there, there was an old gentleman I think was you.

20

MR. FITHIAN: That is objected to unless it is brought within the time specified in the indictment.

THE COURT: It is rather late for an objection.

Proceed.

Q. You did plead guilty to keeping a disorderly house ?

A. I was told to plead guilty.

Q. Well, you did ?

A. I did.

Q. And you were fined ?

A. Yes, sir.

30

Q. This is the same house ?

A. Same house.

MR. SUMMERILL: I would like to offer these bottles in evidence again, on the ground that they are taken out

of this place and the charge in the indictment that men remained in there tippling and this is something which they could use for tippling, not for the sale, but the same as if we made an arrest of a gambling house, we surely would have a right to offer in evidence the paraphernalia used in gaming, such as chips or roulette wheels or any other kind of gambling.

THE COURT: I know. You haven't offered any evidence that this was used in tippling.

10

THE PROSECUTOR: That was found in the place and was part of the stuff kept for sale there.

MR. WARE: There has been absolutely no evidence of a sale.

THE COURT: It is refused. Only the two bottles are in.

20

TESTIMONY CLOSED.

CHARGE OF THE COURT.

WADDINGTON, J.

30 Gentlemen of the Jury: The Grand Jury has indicted Louis and Max Shapiro, "that in the Township of Upper Penn's Neck, in the County of Salem, on the first day of May, 1918, with force and arms, at the said Township aforesaid, and in the county aforesaid, and within the jurisdiction of this Court, and on divers others days between that day and the day of the taking of this inquisi-

tion, at the Township aforesaid, in the County aforesaid, did unlawfully keep and maintain a certain common, ill governed and disorderly house, and in the said house, for their own lucre and gain, certain persons, as well men as women, of evil name and fame, and dishonest conversation, and then and there and on said other days and times, there, did unlawfully and willfully cause to procure and frequent, and come together, the said men and women, in the house of said Louis Linker and Max Shapiro, at unlawful times, in the day time as well as night,"—etc., "and misbehaving themselves and 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," etc. "to the evil example of all others in like case offending, contrary to the form of the Statute" etc. 10

The charge of a disorderly house consist of the coming together in a place of public resort in which illegal practices are habitually carried on or when it becomes the habitual resort of idle, vicious, disorderly persons, for the purpose of gratifying their own depraved appetite, and destroying the peace, and it becomes a nuisance, and therefore, a disorderly house. 20

Now, the State has alleged that the two defendants charged here kept a disorderly house in that they permitted and allowed to congregate there, men who drank, who were tippling, who were swearing, and carrying on in a disorderly way and misbehaving themselves.

Now, the State of New Jersey has provided that the sale of intoxicating liquors, when that is the only matter charged, shall not be what constitutes a disorderly house; therefore if the sale of intoxicating liquors should be the only thing proved in this case, it would be your duty to acquit these defendants. However, the State has produced evidence that there was the sale of hard cider, of wine, and that men did drink and swear and misbehave themselves on the premises kept by these men. Now, the State has shown to you by the witnesses produced that 30

sales of hard cider were made and of a substance called red wine was made, money paid and taken in by the defendant Max Shapiro. That goes to show that it was, under this indictment, for the gain of the two defendants. The State has produced witnesses who testified that swearing and disorderly conduct was going on on the premises; that there was tipping going on in the premises in that men were drinking there and becoming drunk and carousing generally. Now, that evidence has been produced by the witnesses of the State and there is sufficient evidence there

10 on which you could find these defendants guilty, if you believe the evidence.

As opposed to this evidence, the defendant comes forward and denies that a disorderly house was kept. He states that they did not sell any cider which was intoxicating or did not sell any wine; that there was sometimes swearing there, but not habitual swearing, and nothing more than was to be carried on by the ordinary kind of a crowd such as would congregate in a pool room.

20 The defendant, Linker, further states that he knew nothing of the kind of a house which was being conducted here. The State is bound to show to you that the defendant Linker did know the kind of a house which was being carried on here. The testimony is that he was there two or three times a week, and came there quite frequently. It is for you to say whether or not under those circumstances, he would know what kind of a place was being conducted.

The whole testimony is before you, and you are to take into consideration all of the testimony given to you. The

30 testimony of the witnesses, as to the character of the defendant Linker, is to be taken into consideration by you.

The testimony of the fact that Shapiro had pleaded guilty to the charge of a disorderly house is to be taken into consideration by you, only to the extent of affecting his credibility.

The whole circumstances surrounding the case, as testified to by the witnesses, is before you, and from the evidence thus produced, you are to determine whether or not the two defendants are guilty. If they are guilty it must be beyond a reasonable doubt, which means nothing more or less than that you, as the men sworn to conscientiously determine this case, are satisfied, in your minds, that the defendants did conduct a disorderly house. If you are not so satisfied, you should acquit; if you are so satisfied, you should convict.

The defendant has requested me to charge the Jury; That if the jury believe the defendants were guilty only of the illegal selling of intoxicants, there can be no conviction under the indictment. I will so charge you. 19

Further, no conviction of the defendants can be based upon the finding of the jury that intoxicants were habitually sold upon the place in violation of the law. I so charge you. That if intoxicating liquors is the only violation or only thing that was proved by the State in this case, it would be your duty to acquit, because it takes more than the illegal sale of liquor alone, under the Statutes of New Jersey, to make a disorderly house. You may retire. 20

MR. FITHIAN: If your Honor please, before the jury retires, what is your Honor's disposition of the other three requests to charge?

THE COURT: They are covered. I refuse the first three. 30

MR. FITHIAN: I would like to have an exception to your Honor's charge of reasonable doubt.

THE COURT: You may have it.

(Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

MR. FITHIAN: There is also an exception to the refusal of the Court to charge the first three requests.

(Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

10 MR. FITHIAN: There is also an exception to the charge of the Court in which the Court stated that the State had produced evidence of the sale of hard cider and red wine in connection with other illegal acts.

(Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

20 MR. WARE: Also that the State has proved the sale of hard cider and red wine and that the men were carousing.

(Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

MR. WARE: Also a general exception to the whole charge.

30 (Which exception is hereby allowed and sealed accordingly.)

E. C. WADDINGTON, [Seal]

DEFENDANTS' REQUESTS TO CHARGE.

1. The jury cannot convict the defendants of keeping a disorderly house upon the testimony as to alleged illegal sales of intoxicants.

2. Under the indictment in this case, the alleged illegal sales of intoxicants by defendants cannot be considered by the jury as illegal acts, the commission of which by defendants make them guilty of keeping a disorderly house. 10

3. The testimony of the witnesses to alleged illegal sales of intoxicants should be disregarded by the jury.

4. If the jury believe defendants were guilty only of the illegal selling of intoxicants, there can be no conviction under the indictment. 20

5. No conviction of defendants can be based upon a finding by the jury that intoxicants were habitually sold upon the place in violation of law.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant in Error, vs. LOUIS LINKER AND MAX SAPHIRO. 10 Plaintiffs in Error.	}	IN ERROR TO THE SALEM COURT OF QUARTER SESSIONS.
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And now, at this day, to-wit, on the twenty-fourth day of May, A. D., nineteen hundred and nineteen, before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, comes the said Louis Linker and Max Saphiro, by Henry Burt Ware, his attorney, and says, that in the record and proceedings aforesaid, and also in the matters recited and contained in the bills of exception, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to-wit:

20 First,—Because the entire record of the proceedings had upon the trial in the Court below, being returned by the plaintiffs in error with this writ, manifest wrong and injury has been to the said plaintiffs in error, and that upon the entire record the verdict should have been that of not guilty.

30 Second,—That the judgment was given against the plaintiff in error, whereas under the law of the land and upon the evidence, the judgment should have been given and rendered in favor of the plaintiffs in error, and in that there was manifest error.

Third,—Because the said judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following questions: "who did you buy

the wine off of?" after objection had been made by defendants counsel, in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

Fourth,—Because the said Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "How large a quantity did you buy" after objection had been made by defendants counsel, in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed. 10

Fifth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Less than a pint?" after objection had been made by the defendant's counsel, in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

Sixth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following questions: "Did you see any sales of wine or hard cider that night?" after objection had been made by the defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed. 20

Seventh,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Did you see anything sold that night?" after objection had been made by defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed. 30

Eighth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas

Waddington the following question: "Was anything sold that day?" after objection had been made by defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

Ninth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Did you purchase anything?" after objection had been made by defendant's counsel in which there was manifest error, and to which
10 ruling an exception was duly allowed, signed and sealed.

Tenth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Now, what did you get that night and bring out with you?" after objection had been made by defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

20 Eleventh,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Did you ever have a talk with Mr. Linker about this place?" after objection had been made by the defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

Twelfth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Thomas Waddington the following question: "Did you ever hear
30 Mr. Linker say who was the owner of this place?" after objection had been made by defendant's counsel in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

Thirteenth,—Because the Judge of the Court of Quarter Sessions permitted the State to ask the witness, Moses

Myers the following question: "What did it taste like?" after objection had been made by defendant's counsel in which there was manifest error and to which ruling an exception was duly allowed, signed and sealed.

Fourteenth,—Because the Court over objection by Counsel permitted the witness, Edgar Rubart to testify to the purchase of hard cider in the place of defendant.

Fifteenth,—Because the Judge of the Court of Quarter Sessions in charging the Jury instructed them as follows: "However the State has produced evidence that there was the sale of hard cider or wine and that men were drinking, swearing and misbehaving themselves on the premises kept by these men." 10

Sixteenth,—Because the Judge of the Court of Quarter Sessions in charging the Jury instructed them as follows: "Now, the State has shown to you by the witnesses produced that sales of hard cider were made and of a substance called red wine were made." To which charge of the Court an exception was duly allowed, signed and sealed. 20

Seventeenth,—Because the Judge of the Court of Quarter Sessions in charging the Jury instructed them as follows: "The State has produced witnesses that testified that swearing and disorder was going on on the premises; that there was tippling going on in the premises in that men were drinking there and becoming drunk and carousing generally." To which charge of the Court an exception was duly allowed, signed and sealed.

Eighteenth,—Because the Judge of the Court of Quarter Sessions in charging the Jury instructed them as follows: "Now, that evidence has been produced by the witnesses of the State, and there is sufficient evidence there on which you could find these defendants guilty, if you believe the evidence." To which charge of the Court an exception was duly allowed, signed and sealed. 30

Nineteenth,—Because the Judge of the Court of Quarter Sessions in charging the Jury instructed them as follows: “If they are guilty, it must be boynd a reasonable doubt, which means nothing more or less than that you, as the men sworn to conscientiously determine this case, are satisfied, in your minds, that the defendants did conduct a disorderly house. If you are not so satisfied, you should acquit, if you are so satisfied, you should convict.” To which charge of the Court an exception was duly allowed, signed and sealed.

10

Twentieth—Because the Judge of the Court of Quarter Sessions refused to charge the Jury as requested, “the jury cannot commit the defendants of keeping a disorderly house upon the testimony as to alleged illegal sale to witnesses,” to which charge of the Court an exception was duly allowed, signed and sealed.

20

Twenty-first,—Because the Judge of the Court of Quarter Sessions refused to charge the Jury as requested, “Under the indictment in this case, the alleged illegal sales of intoxicants by defendants cannot be considered by the jury as illegal the commission of which by defendants make them guilty of keeping a disorderly house.” In which refusal there was a manifest error, and to which an exception was duly allowed, signed and sealed.

30

Twenty-second,—Because the Judge of the Court of Quarter Sessions refused to charge the jury as requested, “The testimony of the witnesses to alleged illegal sales of intoxicants should be disregarded by the jury.” In which refusal there was a manifest error, and to which an exception was duly allowed, signed and sealed.

Twenty-third,—Because the Court over objection by counsel permitted the witnesses to testify to the purchase of liquors of defendants, which said liquors were alleged to have been intoxicating and introduced into the

evidence certain bottles of alleged intoxicating liquors claimed to have been purchased of defendants, in which there was manifest error.

Therefore, the said Louis Linker and Max Saphiro, pray that the judgment and conviction aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden, and that the said Louis Linker and Max Saphiro, may be restored to all things that they have lost on the occasion of the said judgment and conviction, and that the said State of New Jersey may re-join to said errors.

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Attorney for Plaintiffs in Error.

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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant in Error, vs. LOUIS LINKER ET AL., Plaintiffs in Error.	}	IN ERROR TO THE SALEM COURT OF QUARTER SESSIONS. JOINDER IN ERROR.
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Now comes the defendant in error, by its Prosecutor of the Pleas of the County of Salem, and says that it has inspected the errors assigned by the plaintiffs in error, and alleges that no errors have been committed, as fully appears by the record returned by the writ in this cause; therefore, it prays that the conviction and all things touching the same may be affirmed.

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DANIEL V. SUMMERILL, JR.,
 Prosecutor of the Pleas of the County
 of Salem, Atty. for Def't in Error.

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NEW JERSEY SUPREME COURT.

THE STATE,	}	On Writ to Error. Rule of Affirmance and Remittitur.
vs.		
LOUIS LINKER and		
MAX SAPHIRO,		

This cause having been duly argued at the June Term, 1919, by Henry Burt Ware, of counsel for plaintiff in error, and Daniel V. Summerill, Jr., of counsel for the defendant in error, and the court having considered the same, and finding no error in the record or proceedings in the Salem County Quarter Sessions.

It is thereupon Ordered and Adjudged that the judgment of the Salem County Quarter Sessions, removed by writ of error in this cause, be affirmed; and that the record be remitted to the Salem County Quarter Sessions to be proceeded with in accordance with the judgment and practice of said court.

Entered November 19, 1919.

On motion of,

DANIEL V. SUMMERILL, JR.,
Counsel of Defendant in Error.

A true copy,

ENOCH L. JOHNSON, Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,	}	IN ERROR TO THE SUPREME COURT.
Defendant in Error,		
v.	}	ASSIGNMENTS OF ERROR.
LOUIS LINKER AND MAX SAPHIRO,		
Plaintiffs in Error.		

Afterwards, that is to say, on this day, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Louis Linker and Max Saphiro, plaintiffs in error, by Henry Burt Ware, their attorney, and say that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid there was manifest error in this:

1. That the Supreme Court affirmed the judgment of the Court of Quarter Sessions in and for the County of Salem, and failed and refused to reverse the said judgment, whereas the said Supreme Court should have reversed the said judgment of the Court of Quarter Sessions in and for the County of Salem, for and because of the errors in the said record, proceedings and judgment assigned in the record of the said Supreme Court and for the causes relied upon for reversal of the said judgment as specified in the said record of the said Supreme Court, or for any one or all of the said errors or causes for reversal so specified.

2. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions held that there was no error committed in the trial of the indictment in the Salem Quarter Sessions, in permitting evi-

dence of the sales of hard cider and wine by the defendants, no charge that the same were sold contrary to law being set out in the indictment.

3. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions held that there was no error committed in the trial of the indictment in the Salem Quarter Sessions, in permitting evidence of the sales of hard cider and wine by the defendants, no charge that the same were sold contrary to law being set out in the indictment.

3. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions held that the trial court committed no error in commenting upon the sales of said liquors during the trial of said indictment.

4. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions affirmed the right of the trial court in refusing to charge certain requests submitted by the defendants to be charged at the trial of the said indictment.

5. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions held that the sale of liquor was an element that properly had a right to be considered by the jury in the trial had of said indictment.

6. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions held that there was evidence to justify the submission of the case to the jury in the trial had on said indictment.

7. Because the said Supreme Court in its opinion affirming the judgment of the Salem Quarter Sessions upheld

and sustained as legally correct, the trial Judge's definition of reasonable doubt as charged by him to the jury in the trial had on said indictment.

8. Because the entire record of the proceedings had upon the trial in the Salem Quarter Sessions, being returned by the plaintiffs in error with this writ, manifest wrong and injury has been done to the said plaintiffs in error, and that upon the entire record the verdict should have been that of not guilty.

9. Because the judgment was given against the plaintiffs in error, whereas under the law of the land and upon the evidence, the judgment should have been given and rendered in favor of the plaintiffs in error, and in that there was manifest error.

10. Because the said judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "who did you buy the wine off of?" after objection had been made by defendants' counsel, in which there was manifest error, and to which ruling an exception was duly allowed, signed and sealed.

11. Because the said judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "How large a quantity did you buy?" After objection had been made by defendants' counsel; in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

12. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "Less than a pint?" after objection had been made by the defendants' coun-

sel; in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

13. Because the Judge of the Salem Quarter Sessions, permitted the State to ask the witness, Thomas Waddington, the following question: "Did you see any sales of wine or hard cider that night?" after objection had been made by the defendants' counsel; in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

14. Because the Judge of the Salem Quarter Sessions, permitted the State to ask the witness, Thomas Waddington, the following question: "Did you see any sales of wine or hard cider that night?" after objection had been made by the defendants' counsel; in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

15. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "Was anything sold that day?" after objection had been made by defendants' counsel, in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

16. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following questions: "Did you purchase anything?" after objection had been made by defendants' counsel, in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

17. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following questions "Now, what did you get that night and bring out with you?" after objection had been made by defendants' counsel, in which there was

manifest error. And to which ruling an exception was duly allowed, signed and sealed.

18. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "Did you ever have a talk with Mr. Linker about this place?" to which question objection had been made by defendants' counsel, in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

19. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Thomas Waddington, the following question: "Did you ever hear Mr. Linker say who was the owner of this place?" after objection had been made by defendants' counsel, in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

20. Because the Judge of the Salem Quarter Sessions permitted the State to ask the witness, Moses Myers, the following question: "What did it taste like?" after objection had been made by defendant's counsel, and in which there was manifest error. And to which ruling an exception was duly allowed, signed and sealed.

21. Because the Judge of the Salem Quarter Sessions over objection by defendants' counsel, permitted the State to ask questions of the witness, Edgar Rubart, as to purchases by him of the defendants, of hard cider, and to testify to the same.

22. Because the Judge of the Salem Quarter Sessions in charging the jury instructed them as follows: "However the State has produced evidence that there was the sale of hard cider or wine and that men were drinking, swearing and misbehaving themselves on the premises kept by these men."

23. Because the Judge of the Salem Quarter Sessions in charging the jury instructed them as follows: "Now, the State has shown to you by the witnesses produced that sales of hard cider were made and of a substance called red wine was made." To which charge of the Court an exception was duly allowed, signed and sealed.

24. Because the Judge of the Salem Quarter Sessions in charging the jury instructed them as follows: The State has produced witnesses that testified that swearing and disorder was going on on the premises in that men were drinking there and becoming drunk and carousing generally." To which charge of the Court an exception was duly allowed, signed and sealed.

25. Because the Judge of the Salem Quarter Sessions in charging the jury instructed them as follows: "Now, that evidence has been produced by the witnesses of the State, and there is sufficient evidence there on which you could find these defendants guilty, if you believe the evidence." To which charge of the Court an exception was duly allowed, signed and sealed.

26. Because the Judge of the Salem Quarter Sessions in charging the jury instructed them as follows: "If they are guilty, it must be beyond a reasonable doubt, which means nothing more or less than that you, as the men sworn to conscientiously determine this case, are satisfied, in your minds, that the defendants did conduct a disorderly house. If you are not so satisfied you should acquit, if you are so satisfied, you should convict." To which charge of the Court an exception was duly allowed, signed and sealed.

28. Because the Judge of the Salem Quarter Sessions refused to charge the jury as requested by the de-

fendants, that "Under the indictment in this case, the alleged illegal sales of intoxicants by defendants cannot be considered by the jury as illegal acts, the commission of which by defendants make them guilty of keeping a disorderly house." In which refusal there was manifest error; and to which refusal an exception was duly allowed, signed and sealed.

29. Because the Judge of the Salem Quarter Sessions refused to charge the jury when duly requested by the defendants that "The testimony of the witnesses to alleged illegal sales of intoxicants should be disregarded by the jury." In which refusal there was manifest error; and to which refusal to charge an exception was duly allowed, signed and sealed.

30. Because the Judge of the Salem Quarter Sessions over objection by counsel for defendants, repeatedly permitted the witnesses for the State to testify to the purchase of liquors of defendants, which said liquors were alleged to have been of an intoxicating nature, in which there was manifest error.

31. Because the Judge of the Salem Quarter Sessions over objection by counsel of defendants, permitted the State to offer in evidence certain bottles alleged to contain intoxicating liquors, which certain witnesses testified they had purchased of defendants, in which there was manifest error.

32. Because the Judge of the Salem Quarter Sessions over objection by counsel of defendants, permitted the State to conduct and present its case against the defendants on the issue then being determined, viz: that of keeping a disorderly house, as though the case which the State was prosecuting against the defendants was that of the illegal sale of liquor.

Therefore the said plaintiffs in error pray that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and altogether for nothing holden, and that the said plaintiffs in error, may be restored to all things, which they have lost by reason of the said judgment, and that the said State of New Jersey may rejoin to said errors.

HENRY BURT WARE,
Attorney for

J. HAMPTON FITHIAN,
Of Counsel with Plaintiffs in Error.

Dated December 17th, 1919.

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY

Defendant in Error

v.

LOUIS LINKER AND MAX SAPHIRO

Plaintiffs in Error

IN ERROR TO THE SUPREME COURT
ASSIGNMENTS OF ERROR.

HENRY BURT WARE, Atty.

Due service of the within Assignments of Error is acknowledged this 18th day of December, 1919, by

DANIEL V. SUMMERILL, JR.,
Atty. for Defendant in Error.

Filed December 19, 1919.

THOS. F. MARTIN, Clk.

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,	}	IN ERROR TO	
Defendant in Error,			THE SUPREME
v.			COURT. JOIN-
LOUIS LINKER AND MAX SAPHIRO,			DER IN ERROR
Plaintiffs in Error.)		

And thereupon afterwards, to-wit, on this day, the said State of New Jersey by Daniel V. Summerill, Jr., the Prosecutor of the Pleas of the State in and for the County of Salem, attorney for the defendant in error, comes into court, and says there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the Court may proceed to examine as well the record and proceedings aforesaid, as the matters assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

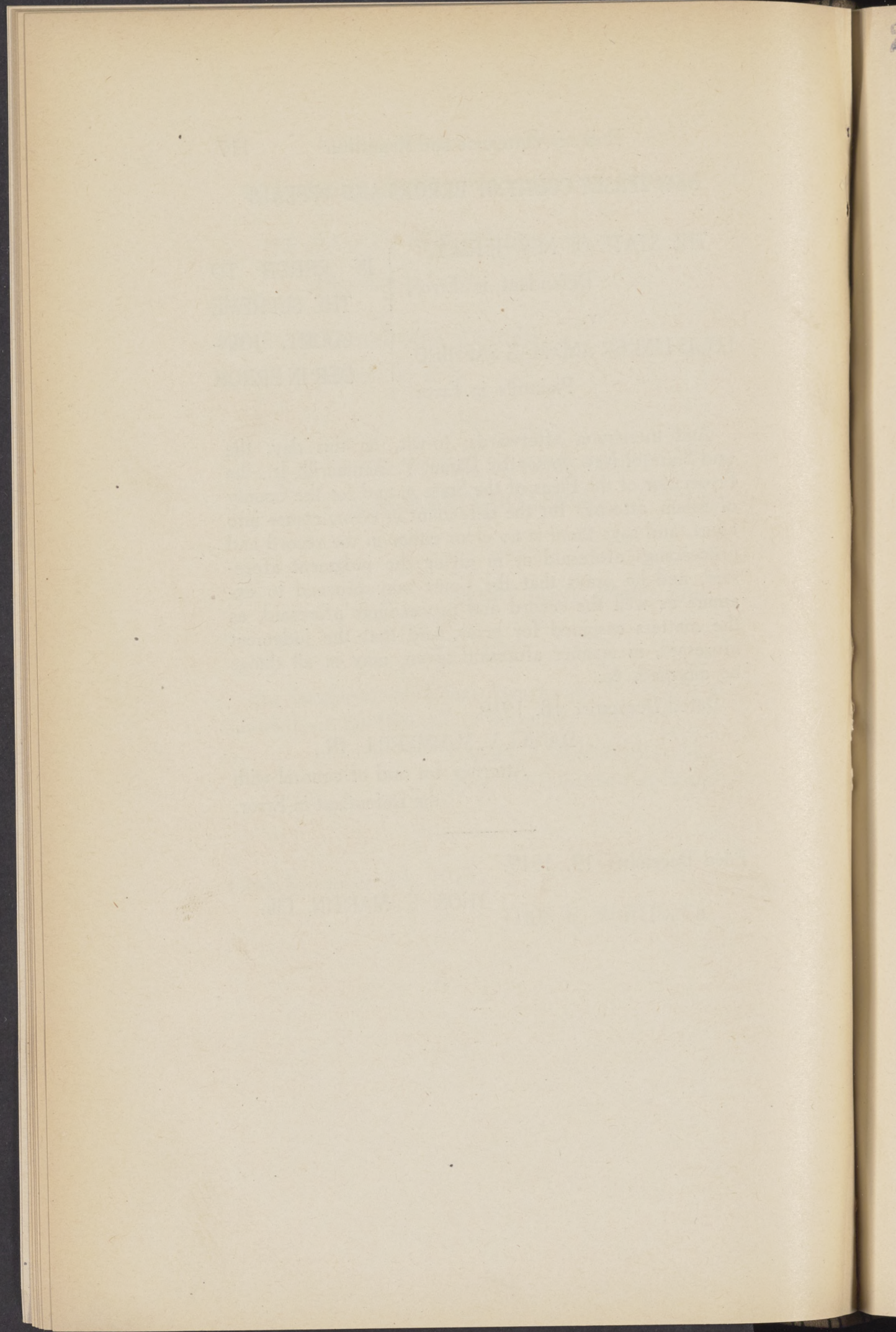
Dated December 18, 1919.

DANIEL V. SUMMERILL, JR.,

Attorney for and of counsel with
the Defendant in Error.

Filed December 19, 1919.

THOS. F. MARTIN, Clk.



1, 2, 8 and 9.

The entire record of the proceedings is returned with the writ of error in this case, and plaintiffs in error assert that an examination of the record must show that the verdict in this case should have been that of not guilty.

10 As already stated the testimony of the State's witnesses, was almost wholly to the effect that they bought and others bought of the defendant Saphiro, cider and red wine. That in the opinion of these witnesses the cider was hard cider. Also in two or three instances they heard men swearing in the place and saw men drinking. Without the evidence of the sales, what had the State to offer in proof of the habitual carrying on of the specific acts of misconduct mentioned in the indictment. It is not for one minute to be imagined that witnesses like the village Dogberry, Waddington and his paid crew, but would lay great stress on the fact that the patrons of the place *swore*. It is doubtful if the human mind can contemplate a situation of a lot of hard working toilers in a munition plant who are untainted with the vice of swearing. And therefore, if every workmen's restaurant is a disorderly house because the men swear and are boisterous and loud in their conduct and talk, it is quite likely that the wheels of industry would stop turning on account of this breach in ethics. And who pray, complains that it is a nuisance? The neighbors? Not at all. On the contrary the State of the case shows that all of the neighbors, the DuPont police department, in fact all persons who 20 knew, testified that the place was conducted strictly within the law. So, the case for the prosecution was that of the Dogberry's living ten miles away, who for a per diem allowance, went to defendants place of business, and report that the place did not meet with their approval. As to the charge that men were "drinking." This was a place of business, a store or restaurant carrying on a legitimate business. If men were seen in the place of business "drink-

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ing" that is not in itself an illegal act. What are known as soft drinks i. e. non-intoxicating beverages, were sold in this place as they are in cafes and drug stores, so if we accept this interpretation of the State's case, it would render every drug store open to the charge of keeping a disorderly house. This is absurd. Certainly by what is meant as drinking and tipping mean the consummation of intoxicating liquors to the extent of producing intoxication. *Portland v. Schmidt*, 13 Or, 17, 6 Pac. 221. In the present case the State made no effort to make proof of the intoxicating quality of the liquor. So, testimony that persons were drinking in a place, without some supplementary proof of the intoxicating qualities of liquor, fails to make a case under an indictment of this kind. 10

3.

This assignment of error brings up for review that portion of the opinion of the Supreme Court, wherein that Court upheld the rulings of the Salem Quarter Sessions in permitting the State to make proof of sale of intoxicating liquors although that charge was not embraced in the specification of the acts of misconduct which it was claimed constituted the keeping of the disorderly house in question. The authority given by the Supreme Court for its holding to this view are the cases of *States v. Raviorf* 64 L. 412 and *State v. Derby* 60 L. 258. (Case, 5 A. 1 & 2). 20

The opinion in the *Derby* case is not in point. In this case, there was offered evidence against *Derby* in addition to other acts of misconduct that he sold intoxicating liquors. The point was not raised, neither was it contended, that the act of illegal liquor selling was named as one of the acts of misconduct embraced in the indictment. It was objected to, and the point was raised in the Su- 30

preme Court, on error, that by the then Act of March 10, 1893, evidence of the habitual illegal sale of intoxicating liquors were not admissible, on the trial of an indictment for keeping a common law disorderly house. The act of 1893, *supra*, forbid the indictment of anyone for the keeping of a disorderly house where the offence consisted wholly in the illegal sale of liquor. The same act was embraced in the Revision of the Criminal Procedure Act of 1898, and is to be found in 2 C. S. p. 1844. The Appellate Court decided adversely to defendants contention, but the point raised in this case i. e. that this testimony was inadmissible for the reason that it did not constitute one of the specifications of misconduct in the indictment, was not raised in the Derby case.

Reading the opinion in *State v. Rairorf* 64 N. J. L. 412, we are at a loss to understand wherein that case can be used to sustain the Salem Quarter Sessions in the admission of the evidence complained of in the present case.

20 The *Rairorf* case also came up from the Salem Quarter Sessions to the Supreme Court in 1899. The indictment against *Rairorf* contained four counts of which three charged the illegal sale of liquor, and the remaining one, the keeping of a disorderly house. To the counts charging him with the illegal sale of liquor he plead guilty, and on the count charging him with the keeping of a disorderly house, he was found guilty by the jury. The error complained of in that case was in the trial judge, charging the jury that if the defendant permitted minors to frequent his place and drink spirituous liquor, he was guilty

30 of keeping a disorderly house. That part of the court's charge was founded on Section 100 of the Intoxicating Liquor Act, and applied, as the Supreme Court held, only to licensed dealers in cities and could not affect the defendant who was without license

Now, there is not the slightest analogy between the present case and the *Rairorf* case. The point we insist

on is that the illegal sale of liquor not being one of the specifications of misconduct set out in the indictment, the court erred therefore, in admitting such testimony, and further, in permitting the jury to consider such testimony. That it worked manifest error to the defendants, and unquestionably brought about the verdict in the case, would seem so obvious as not to require an argument.

Another vital point as to the admission of this testimony and permitting it to go to the jury. Under the rules of criminal pleading the charge against the defendants must be so framed as to definitely appraise the defendants of the nature of the charge they must meet with sufficient certainty in order to give them reasonable notice of the particular charge, they will be called upon to answer, and to enable them to prepare their defense. Clark's *Crim. Pro.* (3d Ed), 177, etc. This was the rule at common law, and has been in turn embraced in our Constitution. It is elaborately set out in that masterpiece of judicial reasoning in *State v. Linden Park*, 26 Vr. 557. Counsel for defendants in preparing the defense, had no reason to believe that the State would endeavor in order to procure a conviction, offer testimony that was not relevant, and would be limited in the prosecution of the case, &c., proof only of the commission of the specific acts of misconduct set out in the indictment. Such being the case, the defendants were given no opportunity to offer any defense to this evidence, or to have analytical chemical tests made of the intoxicating liquors alleged to have been sold.

If this decision is to stand it renders these principles of criminal law pleading, for the past two hundred years safeguarded by the common law, and subsequently by State Constitution, at an end.

If such is the case we fail to see how the leading case of *Linden Park Blood Horse Association v. State*, 26 Vr. 557, is to continue to be the criminal lawyers "vade me-

cum" as Justice Garrison terms it in *Braentigam v. State*, 34 Vr. 38.

10 Following the reasoning of the great Chief Justice in the Linden Park Case, and applying it to the present case, if the grand jury specified certain causes of criminal conduct which rendered defendants house a disorderly one, yet did not include that of selling liquor illegally, how could it be argued that the constitutional mandate was observed, on the conviction of this defendant, that it was the result of an accusation of the grand inquest. Moreover, if defendants should be subsequently indicted of the illegal sale of liquor, a plea of antrefois conirct could not be interposed, as the record of the proceedings had upon this indictment, would fail to disclose that it was for the offence charged in the later indictment.

20 This we take it is the law of the State on the point invoked by the defendants and was clearly defined since 1893 in the Linden Park Blood case, *supra*, and twice, subsequently, in 1910 in *State v. De Lorenzo*, 51 Vr. 500, and in 1918, in *State v. Goodman*, 105 Atl. 10. We therefore, respectfully submit that the Derby and Rairorf cases are not in point.

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30 This assignment brings up for review that portion of the opinion of the Supreme Court wherein that court sustains the charge of the Judge of the Salem Quarter Sessions on the question of reasonable doubt. The Supreme Court held that the portion of the charge in question was "*practically the same language used in the charge in the case of State v. Contarino 91 L. 105, and sustained by this court, where we said that the rule of reasonable doubt is not encompassed by any set formula. It is enough that*

its practical application to the facts of a given case be sufficiently stated to the jury, so as to avoid misconception." (Case 6a).

The Supreme Court in sustaining the Court's charge as to reasonable doubt in the present case based on its language upholding a similar charge in the Contarino case, *supra*, evidently failed to take notice that the Court of Errors and Appeals in the same case, i. e. Contarino, to which it had been appealed, did not agree with the Supreme Court. In the opinion written by Chancellor Walker in the Court of Errors and Appeals, 105 Atl. 198, the court significantly says "*while the trial court's instruction to the jury as to the law of reasonable doubt was thus approved by the Supreme Court, WE DO NOT WISH TO BE UNDERSTOOD AS GIVING OUR APPROVAL TO IT. We are not called upon to say whether it was adequate and correct or inadequate and erroneous.*" And then the opinion proceeds to give as its reason for not passing upon the question, in that the exception taken in the trial below was not specifically directed to the *incorrect proposition* of law which in the Contarino case was blended with another proposition which was sound in its law. It would seem that the Court of Errors and Appeals in the Contarino Case, while it refused to pass upon the question for the reason aforesaid, plainly indicates that the charge of reasonable doubt was erroneous, by saying that it does not wish to be understood as giving its *approval* to it, and by the language employed, i e, "*incorrect proposition of law*". Such being the case, no reason exists in the present case for this court to refrain from passing its disapproval upon a charge of reasonable doubt, which as the Supreme Court says was "*practically the same language used in the charge in the case of State v. Contarino 91 L. 105,*" and sustained by the Supreme Court. It is an incorrect proposition and it is not linked up with a sound proposition to save it as happened in the Contarino case.

This subject is fully covered under the 26th assignment of error.

4 and 5

10 These assignments bring up that portion of the opinion of the Supreme Court upholding the Salem Quarter Sessions in refusing to charge certain requests to charge, and holding that the sale of liquor was an element to be considered by the jury and could not be disregarded by them (Case P. 5a).

These requests to charge (Case P. 99 L. 1 to 15) requested the court to charge the jury that no conviction could be had on the testimony as to the sale of liquor, and that the jury should not consider but on the contrary, disregard the same.

20 The basis of these requests to charge is more fully set out in this brief under assignments 28 and 29 and the principles underlying the same, are fully discussed throughout the entire brief. We cannot but feel that the principles embodied in them were correct. Such being the case, it was the duty of the Court to charge the jury the same, when requested by counsel.

Mead v. State 53 N. J. L. 601.

State v. Hessenius, 165 Iowa, 415

Peo. v. Rahe, 92 Mich, 165

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10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 30.

These assignments bring up for review, a number of rulings of the court, in permitting, witnesses to testify that they bought cider and wine of the defendant Saphiro,

over the objections of defendant's counsel, and to which rulings exceptions were duly allowed and sealed. These assignments are based on the following questions, viz: "Who did you buy the wine of?" (Case, P. 8, C. 34; "How large quantities did you buy?" (Case P. 10 L. 14) "Less than a Pint?" (C. P. 10 L. 24) "Did you see any sales of wine or hard cider that night" (Case P. 13 L. 8 & 9) "Purchased cider and Mr. Myers wine" "Who did you buy it off of?" (Case P. 14 L. 29 & 34) "And did you see anything sold that night?" (Case P. 15 L. 23) "Now what did you get that night and bring out from there?" (Witness produces eight bottles) (Case P. 16 L. 16 to 20) "What did it taste like?" (Case P. 38 L. 38) "Did you buy anything else in there?" (Case P. 38 L. 23) Q. "What did you do when you went in here? A. "Well, went in and looked around and Mr. Brown bought some cider." (Case P. 57 L. 21 to 23) et seq. It is unnecessary to recite any further instances of this class of testimony which was objected to by defendant's Counsel, and which is the subject of these assignments of error. The testimony of the witnesses Waddington, Myers, Brown and Rubart consist nearly wholly of purchases of cider and wine by themselves and others alleged to have been intoxicating. Clearly this evidence was inadmissible to support the indictment in this case. THE CHARGE THAT DEFENDANTS SOLD CIDER AND WINE OF AN INTOXICATING NATURE IS NOT ONE OF THE SPECIFICATIONS OF MISCONDUCT ALLEGED IN THE INDICTMENT. If the cider was intoxicating or as the witnesses term it *hard*, there was nothing to prevent the State from indicting them under the 66th. section of the Crimes Act (2C S. P. 1767 Sec. 66), but as it elected to proceed against the defendants for this offence i. e. the sale of liquor, by indicting them for keeping a common law disorderly house, that element of misconduct should have been incorporated in the indictment.

Our State Constitution provides that "no person shall

be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury," Art. 1. Sec. 8.

10 That an indictment must state the offense with sufficient certainty to give the defendant reasonable notice of the particular charge he will be called upon to answer and to enable him to properly prepare his defense, is an elementary principal of criminal law pleading. From the time of Coke this doctrine has been fortified by an unbroken line of decisions in the English and American courts, and is the law of New Jersey to-day. Black, Crim. Pro. 2nd Ed. P. 177 &c.

In this case there was nothing in the indictment to appraise the defendant that he would be called upon to meet the charge of selling intoxicating liquor illegally, and therefore the admission of this evidence and the several bottles of liquor was a judicial error prejudicial to defendant's rights.

20 The LEADING CASE on this subject is that of the LINDEN PARK BLOOD HORSE ASSOCIATION v. STATE 26 VR. 557, decided by the Court of Errors and Appeal in 1893 the opinion being written by Chief Justice Beasley. In that case, the defendant was convicted of keeping a disorderly house, the only evidence being offered in support of the indictment was that of habitual gambling upon defendant's premises, the offense of gambling being not one of the specifications of misconduct set out in the indictment.

30 Says the Great Chief Justice: "The crucial test of the inquiry obviously is whether the specifications of the acts that constitute the house a disorderly one are necessary parts of the charge. That they are such is demonstrably clear — — — where, therefore, in the instance before us, the grand jury has specified certain causes of criminal conduct as those that have rendered the defendants house a common nuisance, and among such causes

has omitted the practice of gambling, it is not perceived how it can be said that the criminal offense of keeping a public gaming house, of which the defendant has been convicted, is founded as the constitution requires, upon an accusation of the grand inquest, nor would defendant, if such a conviction as has obtained in this case is to stand, be possessed of the second of the safeguards, that the rule requiring, according to Chitty, a certain description of the crime charged to be contained in the indictment. If he were indicted in the future for keeping a gaming house it is difficult to see how he could plead in answer to such an accusation his present conviction. Such a plea would be contradicted by the record before us, for it would show upon its fact that the second indictment was for an offence not charged in the first."

Similar conditions existed in the case of *State vs. De Lorenzo*, 51 Vr. 500, which was decided by the Court at the November term of 1910. In that case, the defendants were convicted on an indictment charging them with keeping a disorderly house, the gravamen of the State's case was the keeping of a house of illfame and the illegal sale of intoxicating liquors. Neither of these specifications of misconduct were alleged in the indictment to have made the house of defendants a disorderly one. The defendants at the trial in the Hudson Quarter Sessions requested the trial judge to charge the jury that no convicting could be had against the defendant upon a finding by them that the defendants kept a bawdy house, or upon a finding that the defendants had habitually sold intoxicating liquor upon the premises, which requests were refused. The refusal to charge these requests coming before this Court for review, this Court, citing the case of *Linden Park Blood Horse Association v. State supra* says "The cited case rules the present one upon the question now under consideration. The defendants were entitled to have the jury instructed in accordance with their requests, and the refusal of the trial court to do so vitiates their conviction."

Again, a similar situation is presented in the case of *State v. Goodman*, which was decided by this court at the November Term 1918, reported in 105 Atl. Rep 10. In the last mentioned case a conviction of the defendant was had on the charge of keeping a disorderly house in that the defendant habitually violated the Vice and Immorality Act 4 C. S. C. 5712-5724 Section 1 to 37, by carrying on secular business at his store on the Sabbath Day. These alleged acts of misconduct were not embraced in the specifications of misconduct by which the indictment charged their habitual violation constituted his house a disorderly one. The trial judge however, charged the jury that if they found from the evidence that defendant conducted his business on Sundays in the usual and ordinary way he did on week days they might convict. This court reviewing the Morris Quarter Sessions, based its reversal on the Linden Park Blood Horse Association and the De Lorenzo cases *supra*, holding that the conviction "is, or, at least, may be based upon matter of disorder which are not included in the specifications of the characteristics of the defendant's house in point of disorder which have been declared by the grand jury in its indictment."

The elements that make the house disorderly must, of course, in every case, be stated *Campbell v. State* 33 Vr. 403 citing Linden Park Association case, *supra*.

In *Braentigam v. State*, 34 Vr. 38, Justice Garrison said "It is earnestly suggested that in framing an indictment the defendant should be told in plain English what he is charged with. His constitutional right is to be "informed of the nature and cause of the accusation" against him. This calls for a succinct statement of the real charge, not for the employment of a vague formula, however ven-

erable, a notable illustration of this maladroit method of pleading is *Linden Park Association v. State* 26 Vr. 557, in which the indictment charged the defendant with almost every sort of conduct that could constitute a disorderly house except gambling, which was the only thing of which the defendant was accused. The opinion of Chief Justice Beasley in that case would be the criminal pleading *vade mecum*."

In an indictment for an offence, whether created by Statute or otherwise, the facts constitute such offence must be set out with clearness and certainty sufficient for identification, in order that the accused may meet the charge intelligently and may be able to plead a conviction or acquittal in bar of any subsequent proceedings, citing *Linden Park Blood Horse Association v. State supra*. Also see

State v. Spear et al, 34 Vr. 179

State v. Bartholomew, 38 Vr. 382

State v. Luxton, 36 Vr. 605

State v. Murphy, 39 Vr. 235

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22, 23, 24, 25.

These assignments bring up for review those parts of the charge dealing with the sales of cider and wine viz:

"However, the state has produced evidence that there was the sale of hard cider, of wine, and that men did drink and swear and misbehave themselves on the premises kept by these men," (Case P. 95, L. 32 to 35) Also, "Now, the State has shown to you by the witnesses produced that sales of hard cider were made and of a substance called red wine was sold, money paid and taken in by the defendant Max Shapiro. That goes to show that it was, under this indictment, for the gain of the two

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defendants," (Case 95 L. 35 & 36, P. 96 L. 1 to 4) Also
 "The State has produced witnesses who testified that
 swearing and disorderly conduct was going on on the
 premises; that there was tipping going on in the prem-
 ises, that men were drinking there and becoming drunk
 and carousing generally. Now, that evidence has been
 produced by the witnesses of the State and there is suffi-
 10 cient evidence there on which you could find these de-
 fendants guilty, if you believe the evidence," (Case P. 96
 L. 4 to 11).

These excerpts from the charge comprise nearly a
 paragraph and are composed of consecutive sentences,
 and for this reason they should be considered together.
 It will be noted that stress is laid on the proposition that
 evidence of sales of "*hard cider*" and "*wine*" were made
 for the gain of the defendants. The whole paragraph is
 a misstatement of fact and therefore prejudicial to de-
 fendants. There was no testimony whatever that men
 20 were "drinking" intoxicating liquors, and thereby "be-
 coming drunk and carousing generally."

While the right of the court to fairly comment upon
 the evidence and bringing out its relation to the issues of
 the case, cannot be denied, it has no right to comment on
 its weight, or to assume the existence of facts that are non-
 existant. And it would seem that what the Court did in
 this instance was not to comment upon the evidence so
 much as to express conclusion thereon.

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Black. Crim. Pro. (2nd Ed.) p. 547
 Com. v. McMahon, 145 Pa. 413
 Fowler v. State, 100 Ala. 96
 Scott v. Peo. 141 Ill. 195

This portion of the charge cannot be sustained for
 the reason that the court tells the jury that part of the
 case of the State is based on sales of "*hard cider*" and

"red wine", the money derived from the sale of which was "for the gain of the two defendants".

The word "cider" is defined in II Cor. Jur. 764, to mean, in a popular sense, the expressed juice of apples, either fermented or unfermented, and hence the terms sweet cider and hard cider are in popular use to distinguish between the juice of the apple before and after fermentation. Cider is largely used as a beverage. It contains from $5\frac{1}{4}$ to 10 per cent of alcohol and is intoxicating when drunk in large quantities. State v. Schaefer, 44 Kan. 90. It would seem that the words "hard cider" mean an intoxicating beverage prohibited by section 66 of the Crimes Act (2 C. S. p. 1767) State v. Clifford, 97 Atl. Rep. 47. 10

The court therefore by this charge allowed the jury to consider in its findings as to whether the defendants kept a disorderly house, the evidence of the illegal sale of intoxicating liquors, which was not one of the specifications of misconduct set out in the indictment, and in this respect the charge was erroneous. 20

Linden Park Blood Horse Association v. State
26 Vr. 557

State v. De Lorenzo, 51 Vr. 500

State v. Goodman, 105 Atl. Rep. 10

28, 29.

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The court refused to charge the jury although duly requested by the defendants, as follows:

(a) The jury cannot convict the defendants of keeping a disorderly house upon the testimony as to alleged sales of intoxicants.

(b) Under the indictment in this case, the alleged sales of intoxicants by defendants cannot be considered by the jury as illegal acts, the commission of which by defendants make them guilty of keeping a disorderly house.

(c) The testimony of the witnesses to alleged illegal sales of intoxicants should be disregarded by the jury.

10 The refusal of the court to so charge forms the basis of these three assignments of error. (Case p. 99 l. 1 to 15, & P. 98, l. 5 to 9).

20 As we have already said, the illegal sale of intoxicating liquors did not constitute one of the specifications of misconduct specified in the indictment, whereby the State could insist the habitual illegal sales would render the defendants' premises a disorderly house. While the court did charge that the defendants could not be convicted solely upon the evidence of the habitual sale of intoxicating liquors by the defendant, its duty when invoked by the defendants, was to charge these requests. It was the court's duty to distinctly and particularly charge that the evidence of the illegal sale of intoxicants should be wholly disregarded as though it had not been given in and formed part of the testimony. This the court not only refused to do but charged the jury that "the State had produced evidence that there was the sale of hard cider and wine," and that money was paid therefor, and that "that goes to show it was under this indictment for the *gain* of the two defendants." If this language meant
30 anything it was intended to bring about the effect on the jury that the sale of intoxicating liquor was part of the State's case on which it asked for a conviction under the indictment being tried, as the money derived from these sales proved that the house was maintained "for their" (i. e. defendants) "own lucre and *gain*". It is respectfully submitted that the refusal to charge as requested constituted judicial error.

Linden Park Blood Horse Association v. State,
supra
State v. De Lorenzo, supra
State v. Goodman, supra.

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It is insisted that the trial judge's definition of reasonable doubt was erroneous and prejudicial to defendants' rights. The language employed is this, "if they are guilty it must be beyond a reasonable doubt, which means nothing more or less than that you, as the men sworn to conscientiously determine this case, are satisfied in your minds, that the defendants did conduct a disorderly house. If you are not so satisfied you should acquit; if you are so satisfied, you should convict." (C. P. 97, l. 4 to 10).

We submit that the court's definition of reasonable doubt was prejudicial to defendants' rights, as it did not limit the scope of the jury's deliberations and inquiry by confining it strictly and wholly to the testimony in the case, but giving to it the right merely to satisfy themselves to the guilt or innocence of the defendants, provided they acted as conscientious men. This would permit the jury to consider anything or everything, that might be known to themselves outside of the case, what they might think or believe merely from the moral stigma that is associated by the nature of the charge itself, and wholly without regard to the evidence, the locus of defendants' premises, what prejudice might dictate, in fact their verdict might be based upon a mere whim. For instance in the deliberation upon the testimony of the case, if it was not clear and lacking in certain respects, under the law governing the doctrine of reasonable doubt, this would ordinarily create a doubt which must be resolved in favor of the defendants. But under the charge of the court,

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whether the testimony was obscure and lacking in proof, a verdict of guilty could be reached by the jury, becoming "satisfied" defendants were guilty. But it may be claimed this could not be so, for the reason that the court safeguarded the instruction by directing the jury to act conscientiously in the discharge of their duty. Even so this would not be the act of imposing upon one who had another's fate at his disposal, the injunction of extending
10 to the accused person, the benefit of every reasonable doubt engendered by the evidence in the case. For history tells us that many of the great crimes of history were committed by those whose motives were the loftiest and felt they were absolutely conscientious in all that they did.

Fortunately for the rights of others such a doctrine does not now prevail. The defendant is presumed to be innocent, and the burden is on the state to prove his guilt beyond a reasonable doubt. And a reasonable doubt, within the meaning of this rule, is not a mere imaginary,
20 captious, or possible doubt, but a fair doubt, based on reason and common sense, and growing out of the *testimony in the case*. It is such a doubt as will leave one's mind, after a careful examination of all the evidence, in such a condition that he cannot say that he has an abiding conviction to a moral certainty of the defendant's guilt.

Black's Crim. Pro. (2nd Ed.) 634.

It is that state of case, which, after the entire comparison and consideration of all the evidence, leaves the minds
30 of the jurors in that condition that they cannot say that 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 satisfies the

reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt.

Donnelly v. State 2 Dutch, 601.

In all criminal trials it is the right of the accused to have all the *relevant testimony, including that relating to his good* repute, considered by the jury, and if, on such consideration, there exists reasonable doubt of his guilt, even though that doubt be engendered merely by his good reputation, he is entitled to an acquital. 10

Baker v. State, 24 Vr. 45

Also, on the same subject see,

State v. Leo, 80 N. J. L. 21

State v. Coddington, 80 N. J. L. 496

State v. Gratz, 92 Atl. Rep. 87 20

In view of the foregoing rulings on the definition of reasonable doubt, the charge of the court in this respect, certainly does not harmonize with the quoted decisions of our courts. It did not require the jury to consider the testimony at all in determining the guilt or innocence of the defendants, to weigh the testimony, and from it or its insufficiency, to determine whether the defendants were guilty beyond a reasonable doubt. Such an instruction as given in this case imports that a full, careful and intelligent consideration of the testimony was not an essential requirement in reaching a conclusion, but that the ends of justice would be satisfied by a hasty and imperfect discharge of the functions of the jury, provided the jury believed the defendants conducted a disorderly house, which opened the door to prejudice, and excluded a consideration of the testimony. 30

Without regard to the other assignments of error, we

deem that for the reasons above set forth, the judgment of the Salem Quarter Sessions, should be in all things reversed, and a venire facias de novo awarded.

Respectfully submitted,

HENRY BURT WARE,

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Attorney for and

J. HAMPTON FITHIAN,

Of Counsel with plaintiffs in Error.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, Defendant in Error,	}	IN ERROR.
<i>vs.</i>		
LOUIS LINKER and MAX SAPHIRO,		
Plaintiffs in Error.		

BRIEF OF DEFENDANT IN ERROR.

The defendants were convicted of keeping a disorderly house, under an indictment in common law form, in the Township of Upper Penn's Neck, in the County of Salem and State of New Jersey, and being a writ of error to this Court assigning thirty-two assignments of error.

Assignments Nos. 1, 2, 3, 4, 5, 6, and 7, are merely objections to the opinion of Supreme Court decision.

Assignments Nos. 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 30 and 31, were exceptions to admissions of questions and answers in relation to sales of cider and red wine, and who sold it. The questions being asked to prove who was responsible for the place, and what was the drink that was making the patrons of the place drunk. The stuff that was drunk upon the place of the plaintiffs in error.

The sale of intoxicating liquors was properly admitted in evidence, in *State vs. Rairorf*, 64 N. J. L., 412, the court said: "The indictment may be for keeping a disorderly house where the vendor's premises becomes a place of common resort, where persons are furnished liquor and become intoxicated."

Upon a trial of a common law indictment for keeping a disorderly house, evidence of the habitual sales of intoxicating liquors is admissible.

State vs. Derby, 60 N. J. L. 258.

While evidence of the habitual sale of liquor without a license will not sustain a conviction for keeping a disorderly house, evidence, in addition thereto, that persons, some of whom were permitted to remain upon the premises and become intoxicated will do so.

State vs. Jannone, 45 *Atlantic*, 1032.

Assignments Nos. 18 and 19. Were questions asked Thomas Waddington, in reference to a talk with Mr. Linker about the place, or overhearing Mr. Linker declare who was the owner of the place. Mr. Linker admitted upon the stand that he was the owner of the place, page 82, line 31, to page 85, line 30.

Assignment No. 26. Takes exception to the court charge of reasonable doubt, page 97, line 33 &c.

Practically this was the same language used in charge in the case of *State vs. Contrino*, 91 *Law*, 105, and sustained by the Supreme Court, where it said that "The rule of reasonable doubt is not encompassed by any set formula. It is enough that its practical application to the facts of a given case be sufficiently stated to the jury, so as to avoid misconception."

What can be stronger than that the jury should be satisfied. If it is so satisfied there can be no reasonable doubt.

Assignment No. 28. The court charged, page 95, line 26, "Now, the State of New Jersey has proved that the sale of intoxicating liquors, when that is the only matter charged, shall not be what constitutes a disorderly house. Therefore, if the sale of intoxicating liquors should be the only thing proved in this case, it would be your duty to acquit these defendants." This clearly answers the exception in full.

Assignment No. 29. The illegal sale of intoxicants in disorderly houses can be considered with other illegal acts.

State vs. Rairorf, 64 N. J. L., page 412.

State vs. Engleman, 54 N. J. L., page 257.

Derby vs. State, 60 N. J. L., page 258.

Jannone vs. State, 45 Atlantic, page 1032, not in the New Jersey reports.

Assignment No. 32. The exception to the charge in which the court refused to charge in the following language: "The testimony of the witnesses to alleged il-

legal sales of intoxicants should be disregarded by the jury." The section 74 of the Criminal Procedure Act is only applicable where the illegal sale is the only violation of the law proved.

The plaintiffs in error relies upon the case of Linden Park Horse Association vs. State, 55 N. J. L., page 557. But in that case the only crime committed was gambling, and that was not charged in the indictment. The same case holds that specifications of the characteristics of the house in point of disorder, are matters of description, and a case must be proved to answer them or some of them. In this case the indictment charges drinking, tipping, fighting, gambling, gaming, whoring, swearing, dancing, and misbehaving themselves. And the proof shows that the patrons of the place remained drinking and tipping the intoxicating liquors sold by the defendants, and were swearing and misbehaving themselves, by being there drunk and noisy and swearing upon the premises, on the Sabbath day as well as on week days.

There was sufficient evidence of drunkenness and disorder, to be submitted to the jury.

Assignments Nos. 8 and 9. Allege that the verdict should have been for the plaintiffs in error.

There was sufficient evidence to convict the defendants below if believed by the jury.

Exceptions Nos. 22, 23, 24 and 25. Assign error in the charge to the jury by reason of comments made by the court upon the testimony, particularly with relation to sales of hard cider and red wine. There was no misrecital of the evidence by the court, and reasonable comment on the evidence was within the province of the court.

The verdict should be affirmed.

DANIEL V. SUMMERILL, JR.,

Counsel for Defendant in Error.

Southern Bond