

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

EMIL ENGSBERG,

Plaintiff-in-Error.

*On Writ of
Error.*

BRIEF OF PLAINTIFF-IN-ERROR.

Plaintiff-in-error Emil Engsberg was indicted for keeping a disorderly house; he was convicted of the said crime, and the present writ of error brings up for review the said conviction upon the entire record of proceedings had in the Trial Court. It comes within the purview of sections 136 and 137 of the Criminal Procedure Act of 1898.

Defendant owned and conducted a saloon in the City of Newark at the corner of Branford place and Washington street. The State sought to present evidence in support of the indictment concerning the harboring of certain alleged prostitutes there, soliciting and making assignations; no other evidence of a disorderly nature was presented. The evidence shows that a Mr. Porchester, a State witness, testified that on two occasions, separated for several weeks but within the period named in the indictment, he went there in the evening, sat down in a place in the saloon, and that a woman nodded to him, to which he responded by getting up and going over to her table and sat down, then following up by the buying of some drinks for both of them, and their conversation was over the fact of an arrangement to having sexual intercourse, and that he made an agreement then and there to do so, which conversation was in whispers, and that they left the place together. There was other evidence introduced by the State, but which was inimicable to the State's interest—that of Rose Kelleher and Mary Bernard—who made a different statement when arrested to what their testimony disclosed at the trial, and under the case of *State v. D'Adame*, 84 N. J. L., 386, their testimony is of no avail and is entirely effaced from the record and entitled to no consideration.

Therefore the contention is that there was no disorderly house conducted by the defendant, and that if acts occurred it was

beyond his control; therefore not being responsible, in that he was not remiss in his duty as a saloonkeeper, and that acts had occurred without his knowledge.

The assignment of errors are to be found on page 72 of the printed case and the specification of causes for reversal on page 73, which set out substantially the following points, viz:

1. That it was error for the Court to allow the witness Harry Van Ness to testify to a conversation had by him with one Cozzolino with reference to the character of the place of business and the persons as conducted by the defendant when the defendant was not present at said conversation.

2. That it was prejudicial error for the Court to permit the witness Harry Van Ness to testify to hearsay evidence, in that the said Harry Van Ness was permitted to testify in detail to a conversation he had, not in the presence of the defendant, but with one Cozzolino, with reference to women who frequented the place of business of the defendant and the manner of place the defendant was conducting, in order to show that the said Cozzolino had said that the defendant was maintaining an ill-governed place of business and a disorderly house.

3. That any conversation had by the witness Harry Van Ness as to the manner of the conduct of the place of business of the defendant was not binding upon the defendant because it was had with a third person when the defendant was not present, and to admit such evidence was therefore prejudicial error.

4. That there should have been a direction of a verdict of not guilty in favor of the defendant because of lack of evidence to sustain the allegation in the indictment and the failure of the proof to sustain the charge of keeping a disorderly house.

5. In that there is no evidence that the defendant kept and maintained his place of business as a house of assignation, or that the same had the reputation of being a disorderly house, and that the defendant had knowledge of any disorderly acts that took place or might have occurred in his place of business, and that he was in a position to have controlled the acts if any had taken place.

6. In that mere negligence is not enough to constitute knowledge by the defendant of disorderly acts that might have occurred in his place of business.

POINTS.

I.

There was no habitual violation of the law.

The only evidence in the whole record is that of Mr. Porchester, as heretofore stated, that he had gone there on two occasions and made an arrangement to have sexual intercourse with a woman who nodded to him from another table. There is no evidence that this was a common course of conduct which was allowed by the defendant, or a course of conduct which connoted knowledge to the defendant. The evidence of the two State witnesses, Rose Kelleher and Mary Bernard, under oath, deny any and all acts of assignation, contrary to any statement alleged to have been made by them to the police, which statements were introduced in evidence to neutralize the effect of their evidence. Naturally, their testimony is effaced from the record and the testimony of Porchester is all that comes before this Court for consideration, which alone does not fasten upon the defendant the crime of keeping a disorderly house.

Therefore, the motion for a direction of a verdict for the defendant should have been granted by the Court. Reviewable in this Court as present case is taken up under 136 Cri. Proc. Act 1898, page 1863 of 2 Comp. Statutes 1910. See *State v. Constarino*, 105 Atl. 197 (N. J.).

II.

Mere negligence is not enough to constitute knowledge.

By Porchester going into the defendant's place of business and speaking to a girl who nodded to him, holding their conversation in whispers, and then girls frequenting defendant's place of business for the purpose of having a drink, does not charge the defendant with knowledge of disorderly acts; mere negligence is not enough.

State v. Mausert, 89 Atl., 1011.

The Supreme Court, finding that Officer Ritt told defendant to keep the women out of his place, means nothing for the officer's testimony of page 33, bottom, shows that whenever he went there he found the girls sitting alone at the table. How can anyone conjecture that the women were soliciting men, when the officer testifies that the girls were sitting alone? The Supreme Court opinion is in error on this point.

III.

Conversations had with third persons not in the presence of defendant relative to the conduct and acts in his place of business is hearsay and illegal.

(Assignments, 1, 2 and 3. Causes, 1, 2 and 3.)

The testimony complained of is found on page 58 of the printed case, which is as follows as to the witness Harry Van Ness:

Q Now, what did Mr. Cozzolino say to you?

Mr. McDermitt. I object.

Mr. Mott. He stated some conversation he had at the City Hall when he went down and made his application for his license. I am just cross examining on part of his direct testimony.

Mr. McDermitt. I brought no such conversation out.

The Court. It came out. That is true. You let him tell what he did and said down there when he was trying to get a transfer.

Mr. Mott. He told us what Mr. Cozzolino told him about the people.

Mr. McDermitt. I object to the question.

The Court. Objection overruled.

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

WILLIAM P. MARTIN, (L. S.)
Judge.

Q Just what was it, now, Mr. Van Ness, that Mr. Cozzolino said to you? A Must I answer the conversation between myself and Cozzolino?

The Court. Yes.

Witness. He says, "Van Ness, you know Mr. Engsborg's license has been revoked—he had inquired about my reputation of the different officials I know and everything—" and he says "If you take hold of this place," he says, "I want it run right." I said, "Mr. Cozzolino, I will do it," which I told Mr. Ritt sitting there. "Any night or any time I should be absent from the place—that is, I couldn't stay there twelve or fourteen hours, all day long—if there is anything they seen wrong they should notify me." Mr. Ritt will verify to the same statement, the same as I told Mr. Cozzolino, that any of the men, inspectors, going through there, they should notify me and I would rectify it.

Q Cozzolino said something to you about women going in there, didn't he? A He said different charac-

ters visiting the place. He didn't mention any character in particular, and as I said to him; I said, "The characters you meet or see, let me know and I will rectify it." No particular characters were named there.

Q But did he refer to them generally? A General; yes, sir.

Q Didn't he say to you directly that prostitutes had been allowed to go in there? A Not prostitutes. He didn't use that word.

Q What word did he use? A He said general variety of different elements. He didn't use the word "prostitutes."

Q General variety of— A Of element. Well, of course, I can't just state it as I would like, but you understand what I mean.

Q Well, I don't want to guess at your meaning? A Bad element of the different people.

Q Undesirable element? A Yes, sir. Not only my place. He said, "That frequent the city throughout." He didn't mention Mr. Engsberg's place particularly. He said, "That frequents the city throughout," and he says, "As soon as you find out," he says, "why," he says, "keep them out."

Q Did he use the expression "undesirable elements"? A I didn't mean to say he said elements. That was the way he—I can't just place it.

Q Didn't he say something about the women from the street? A No, sir; he didn't mention no women, prostitutes or nothing.

Q Did you have any idea what he was talking about? A Well, I worked for Mr. Murray and I worked for the Athletic Club and everything, but what he told me and what I see day in and day out, I presume that was what he meant.

Q You mean women from the streets; that is it? A He didn't—

Q I know, but I say you presumed that is what he meant? A He said the elements that were bad for the places, that made the business throughout the city bad. He didn't mention prostitutes or anything like that in particular.

This testimony as complained of is injurious to the defendant, as it shows by hearsay that the character of the defendant's place of business was known to the police and city officials and to the public as being a house of assignation, run and conducted by the defendant in a loose manner, devoid of all rules and regulations and the law, connoting consciousness on the part of the defendant, in that knowledge was brought home to him; as a matter of fact, showing carelessness and gross negligence in the

conduct of his business, and frequent acts of which the defendant would have been cognizant, and that his assent must naturally be implied, because it is evidence which does not derive its value solely from the credit to be given to the witness himself, but rests in part on the veracity and competency of some other person.

Such evidence is unquestionably hearsay and illegal.

State v. Niesbbalski, 82 N. J. L., 177.

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

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

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

Farrell v. Wertz, 160 Mass., 288.

Wallace v. Story, 139 Mass., 115.

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

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

Munshower v. State, 55 Md., 11.

Kelly v. State, 82 Ga., 441.

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

See *State v. D'Adame*, 86 Atl., on page 417.

As stated by Mr. Justice Reed, in *State v. Sweet*, 81 Law 250, at p. 254, "the colloquy did not characterize or explain any alleged disorderly act then doing nor was the narration disorderly in itself."

Even upon the authority of *State v. Littman*, that conversations are admissible for the purpose of establishing the character of the house, was the evidence of Harry Van Ness admissible as the narration was not disorderly in itself and was clearly hearsay. The Supreme Court did not consider this point.

Respectfully submitted,

FRANK M. McDERMIT,
Of Counsel for Plaintiff-in-Error.



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Writ of Error to Supreme Court.

WRIT OF ERROR TO SUPREME COURT.

Filed December 10, 1919.

NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, ss.

10

The State of New Jersey, to our Justices of our Supreme Court of Judicature, GREETING:

(SEAL)

Because in the record and proceedings, and also in the giving of the judgment upon a certain indictment which was in our said Supreme Court of Judicature, before you, between the State of New Jersey, defendant-in-error, and Emil Engsborg, plaintiff-in-error, on a writ of error issued out of our Supreme Court of Judicature to the Judges holding the Court of Oyer and Terminer, constituting the Court of General Quarter Sessions in and for said County of Essex, as is said, manifest error hath intervened to the great damage of him, the said Emil Engsborg, as from his complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Emil Engsborg, do command you, that if judgment be thereupon given, then you send distinctly and openly, under your seal the entire record, proceedings and indictment aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof, on the 9th day of December, next, and this writ, that the records and proceedings aforesaid being inspected we may cause to be done thereupon what of right and according to law ought to be done.

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30

Witness, EDWIN ROBERT WALKER, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this 20th day of November, A. D. 1919.

THOMAS F. MARTIN,

Clerk.

McDERMIT & McDERMIT,

Attorneys.

40

Return to Writ.

RETURN.

10 The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. J. GUMMERE,
C. J.

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Writ of Error.

Filed.

NEW JERSEY, ss:

(SEAL) The State of New Jersey to our Judges of our Court
of Oyer and Terminer of the County of Essex, constitut-
ing the Court of General Quarter Sessions in and for
said County, GREETING:

Because in the record and proceedings and also in the giving of
judgment upon a certain indictment in the name of the State of New
Jersey against Emil Engsberg for Keeping a Disorderly House in
the City of Newark, in said County of Essex, found in our Court of
Oyer and Terminer, and in and for said County heard and deter-
mined, manifest error hath intervened to the great damage of him,
Emil Engsberg, as from his complaint we have received information,
we being willing in this behalf to correct the error in due manner if
any there shall be, and that speedy justice may be done to him, the
said Emil Engsberg, do command you, that if judgment be thereupon
given, that then you do send the record and proceedings aforesaid,
with all things touching and concerning the same, to us, under your
seal, distinctly and openly, and this writ, so that we may have them
before our Supreme Court of Judicature, at Trenton, on the 4th
day of November next, that inspecting the record and proceedings
aforesaid we may further do thereupon for correcting the error that
which of right and according to law shall be fit to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our said Supreme
Court, at Trenton, the 15th day of October, A. D. nineteen hundred
and eighteen.

ENOCH L. JOHNSON,
Clerk.

McDERMIT & McDERMIT,
Attorneys.

Presented and allowed in open Court this 15th day of October,
1918. Bail fixed at \$2,000.

WM. P. MARTIN,
P. J.

*Indictment.***Return.**

STATE OF NEW JERSEY,
COUNTY OF ESSEX, ss:

10 I, Wm. P. Martin, Judge of the Court of Quarter Sessions in and for Essex County, New Jersey, Do Hereby Certify and return to the Supreme Court of Judicature of the State of New Jersey the Judgment Record and Proceedings, together with all things touching and concerning the same, together with the entire record of the Proceedings had at the trial as by the within Writ directed, I am commanded,

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Newark, N. J., this 15th day of January, A. D. 1919.

20

WM. P. MARTIN,
P. J.

Indictment.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss:

30 BE IT REMEMBERED, that at a Court of Oyer & Terminer, holden at Newark, in and for the County of Essex on the second Tuesday in September, in the year of our Lord one thousand nine hundred and eighteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Elvord C. Chamberlain, Ralph M. Smith, Joseph Torrens, George J. Ferry, Jr.; William Provost, W. Nelson Knapp, J. Harry Connor, James B. Chalmers, James M. Beldon, Fred Strebing, Oscar J. Wirtz, William Tries, Jr.; Charles P. Schmidt, Frank J. Bock, Joseph Byrnes, Frederick W. Crempien,
40 Frank Pannick, Thomas B. Cryer, William M. Bayles, James S. Throckmorton, Daniel Cronin, George H. Vanderhoof, Dr. Frank A. Caruso, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to-wit:

ESSEX OYER AND TERMINER:

September Term A. D. 1918.

50 Essex County, to-wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Essex, upon their respective oaths, Presents, That Emil Engsborg, late of the City of Newark, in the said County of Essex, on the first day of February, in the year of our Lord one thousand nine hundred and eighteen, and on all the the other days since and up to the taking of this inquisi-

Plea.

tion, with force and arms, at the City aforesaid, in the County aforesaid and within the jurisdiction of this Court, unlawfully did keep and maintain a certain common ill-governed and disorderly house; and in the same house for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest conversation, then and on the said other days and times, there unlawfully and willingly cause and procure to frequent and come together, and the said men and women, in the said house at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, fighting, whoring, soliciting and making assignations for sexual intercourse, engaging in open lewdness and public indecencies and misbehaving themselves, unlawfully did permit, and yet does permit, to the great damage and common nuisance of all the citizens of the State of New Jersey, there inhabiting, being, residing and passing, to the evil example of all others in the like case offending, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

J. H. HARRISON,
Prosecutor of the Pleas.

On the twenty-fourth day of September A. D. nineteen hundred and eighteen, on which day the said indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was there and then made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

Plea.

And afterwards, that is to say, on the twenty-sixth day of September A. D. nineteen hundred and eighteen, at the Court of General Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable William P. Martin, presiding Judge of the Court of Common Pleas, Emil Engsberg, in the custody of John R. Flavell, Sheriff of the County of Essex aforesaid, and the said Emil Engsberg being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the country, &c., and J. Henry Harrison, Prosecutor of the Pleas of said State, for said County of Essex, in this behalf doth the like.

Judgment.

Therefore, let a Jury thereupon come before the Court of General Quarter Sessions to be holden at Newark, in and for the County of Essex, on the eighth day of October A. D. nineteen hundred and eighteen, then next ensuing, twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Emil Engsberg to recognize upon their oath whether the said Emil Engsberg is Guilty of the premises in the said indictment specified or Not Guilty, because the said J. Henry Harrison, Esq., Prosecutor, &c., as the said Emil Engsberg puts himself upon the Jury and the same time is given to the parties aforesaid at the same place.

And now, that is to say, the eighth day of October A. D. nineteen hundred and eighteen, at the same Court of General Quarter Sessions holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, comes the said J. Henry Harrison, who prosecutes as aforesaid, and the said Emil Engsberg and the Jury of whom mention is before made, and by the said John R. Flavell, Sheriff of the County of Essex, for this purpose empanelled and returned, to-wit: After the following number of challenges were exhausted, by the State 9, by the defendant 7. Edward P. Freeman, William M. Hubbard, Bernard K. Judge, William H. Straub, John McGowan, John F. Keys, Arthur J. Neu, Moran B. Snyder, Harry W. Oakley, C. Herbert Keyler, I. Halsey Budd, August Pfeiffer, who, being called, were sworn upon that jury, who, to speak the truth of and concerning the premises and thereupon the trial of said issue was commended and continued until the ninth day of October, A. D. nineteen hundred and eighteen, when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the prosecutor, defendant and Court do say upon their oath they find the said defendant Emil Engsberg Guilty with recommendation of leniency, and so they say all.

Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is on this fifteenth day of October, A. D. nineteen hundred and eighteen.

ORDERED and adjudged that the said Emil Engsberg be committed to the County Penitentiary for a period of nine months and pay a fine of one thousand dollars and stand committed until said fine and the costs of this conviction are paid, which costs are taxed by the clerk at the sum of fifty-eight dollars and six cents.

Judgment entered October 15, 1918.

WM. P. MARTIN,
Judge.

Attilio Cozzolino, direct—cross.

Essex County General Quarter Sessions Court

SEPTEMBER TERM, 1918.

October 9, 1918.

10

STATE

vs.

EMIL ENGSBERG.

Indictment No. 77.

Disorderly House.

Transcript of shorthand notes of testimony, and so forth, taken in the above entitled cause, before his Honor, William P. Martin, Judge, and a jury, at the Court House, in the City of Newark, New Jersey, in the presence of Wilbur A. Mott, Esq., Assistant Prosecutor of the Pleas, for the State, and Frank M. McDermit, Esq., for the defendant.

20

Mr. Mott opened for the State.

ATTILIO COZZOLINO, sworn in behalf of State.

Direct examination by Mr. Mott.

Q Where do you live? A 124 Ridgewood avenue.

30

Q Do you hold any public office? A Commissioner of Licenses.

Q Of the City of Newark? A Yes, sir.

Q And did you hold that office on the 1st of February last? A 1918, yes, sir.

Q As Commissioner of Licenses, you say? A Yes, sir.

Q What do you have, if anything, to do with the granting of licenses for saloons? A The receiving of the applications, the proper investigations and their approval prior to the Director of Public Safety granting and signing them.

40

Q And do you know the defendant? A Yes, sir.

Q Do you know whether or not on the 1st of February and for some time afterwards he held a license? A He did.

Q For what place? A 278 Washington street.

Q And where is 278 Washington street, practically? A Corner of Branford place and Washington street, southeastern corner.

Q And how long after the 1st of February did he continue to hold a license? A Until August 19th.

The Court. This year?

Witness. Yes, sir.

50

Cross examination by Mr. McDermit.

Q Your license, when issued in February 1st of the present year, was issued after proper investigation? A The license expired on

Attilio Cozzolino, re-direct.

the 1st of July. The license he was operating under was granted by the old Excise Board.

Q This place had been licensed for a number of years in the name of this defendant, had it not? A I have no knowledge except from November 23d when we took office.

10 Q Now, when this application came up it came up for renewal? A 1st of July.

Q And investigation was made and the license granted? A No, sir.

The Court. Do you know about that?

Mr. McDermitt. He says he made an investigation and the license was granted.

Witness. No, sir; it was not granted. I did not answer that question.

20 Q Did not answer the question. He continued from the time of the application in March of the present year down to the 23d of August, did he, without a license? A He continued until the 1st of July with the old license granted in 1917 by the old Excise Board.

Q And that license in point of fact expired when? A July 1, 1918.

Q Now, then, was there a new license issued on July 1st? A No, sir.

Q He continued in business, however? A Yes, sir.

30 Q Without any license? A Well, it is assumed that the licenses making application, and having to grant over 1,200 licenses that it cannot be done in one day—this is one of the licenses that was permitted to run until a certain time when the proper hearing was given.

Q So, then, while application was made for the renewal of this license at the corner of Branford place and Washington street, the license was issued tentatively and held until you finally refused it on the 23d, he did not get physical possession of his license? A Never had physical possession of his license.

40 Q He continued to do business with your assent—assent of the department—until the 23d day of August; is that right? A 19th day of August.

Q His deposits and everything else requisite for the license was up, was it? A Yes, sir.

Q Still up, isn't it? A Yes, sir.

Re-direct.

Q But, as a matter of fact, did you issue any license to him at all on his application for renewal from the 1st of July of this year? A No, sir.

50 *By the Court.*

Q Speaking of a license, you are speaking of the ordinary license to sell intoxicating liquors? A Yes, sir.

Q At so-called retail? A Yes, sir.

Rose Keleher, direct.

Q Less than one quart, to be drank upon the premises? A Yes, sir.

ROSE KELEHER, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Where do you live? A 27 Orange street. 10

Q In Newark? A Yes, sir.

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

Q Do you know where his saloon was on the corner of Washington street and Branford place? A Yes, sir.

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

Q From the 1st of February of this year down did you visit the place? A Yes, sir.

Q How frequently did you go there? A About twice or three times a week. 20

Q What did you do there? A I went in just to have a drink, pass away the evening.

Q Just tell then what you did do. A Sometimes I would have an appointment to meet some friend in there—

Q What is that? A Have an appointment to meet friend in there—meet some girls in there.

Q Yes, and what else did you do, with reference to men?

Mr. McDermitt. I object to it as leading.

Q What did you do? A With reference to men? 30

Mr. McDermitt. One minute. I object to it.

The Court. What is leading about it?

Mr. McDermitt. The reference as to men. She said nothing about men yet.

The Court. She said she went in there to get a drink two or three times a week and pass the evening away to meet some girls. Surely he has a right at this stage of the proceedings to ask as to whether she went in there with any purpose with reference to men. 40

Mr. McDermitt. I object to it because it is leading, and secondly because if it be leading up to any criminality as far as she is concerned as to committing crime that she should be warned first as to her right and she is not obliged to answer the question.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and it is signed and sealed accordingly. 50

WM. P. MARTIN, (L. S.)
Judge.

Q Answer the question. A Yes, sir.

Rose Keleher, direct.

Q What did you do there on these occasions with reference to men? A I haven't bothered with no men in there.

Q What? A I haven't bothered with no men in there.

Q You understand my question, do you? A Yes, sir.

10 Q Do you say you did not meet men there? A Well, sometimes I made an appointment to meet a fellow in there and I met him in there and I would go out with him.

Q And what did you meet him there for? A I don't know that I met him there for—I made an appointment to meet him there.

Q And did you meet any men there that you did not know? A Yes, sir.

Q Where would you go with the men that you met there by appointment? A I would go out to supper, go to the show.

Q And for what else?

20 *Mr. McDermit.* I object.

A For no other purpose.

Mr. McDermit. One minute. It is objected to.

The Court. Objection overruled.

Mr. McDermit. She says for no other purpose, but it doesn't make any difference; the question is improper.

The Court. You have objected and I overrule it and allow you an exception. The answer is, "for no other purpose."

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

WM. P. MARTIN, (L. S.)
Judge.

The Court. The question was "What else did you do?" You might not have had any purpose in mind, but you might have done something else.

Mr. McDermit. I object because it cannot be part of the operation in any point of terms.

40 *The Court.* Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

Q What else did you do with these men that you went out with?
A I didn't do nothing.

50 Q Is that your signature to this paper? A Yes, sir.

Q When did you write that? A I don't know the date it was.

Q Well, about when was it? A I just can't tell you the date; I don't remember.

Q Were you in the saloon the time that the officers came there and arrested the defendant or raided the place? A No, sir.

Rose Keleher, direct.

Q Well, where did you sign this paper—where were you when you signed it? A I was down in the First Precinct.

Q How did you come to sign this paper? A I come to sign it—I didn't know what I was doing when I signed it.

Q What do you mean by that? A Because I didn't know what I was signing. 10

Q Was it read to you? A I didn't understand it.

Q Was it read to you? A Yes, sir.

Q By whom? A The officer.

Q What officer? A Mr. Ritt.

Q The officer standing there? A Yes, sir.

Q Were you drunk or sober at the time he read that to you? A He had me all—

Q Were you drunk or sober? A I was sober.

Q Then, why didn't you understand it? A I was all excited when I signed it. I didn't know what I was signing. 20

Q Look at this paper which you signed. It is a statement you made to the police at the time you signed it, isn't it? A Yes, sir; but there is a lot on that paper that I didn't sign, too; there is four words there for the one word I said.

Q Do you know whose handwriting that paper is in?

Mr. McDermit. She challenges the accuracy of this statement.

Mr. Mott. She signed it.

Mr. McDermit. I am addressing my remarks to the Court. She challenges the accuracy of the statement. It is a statement but not the statement she made. I submit that he cannot bring out from this witness anything in that statement unless that statement was made in the presence of the defendant. She may have made a million different statements. His object now is for the purpose of trying to impeach her. She hasn't shown herself to be a hostile witness. On the contrary, she shows herself to be a willing and intelligent witness. She repudiates that statement. I object to the further cross examination about it because it is not a correct statement of what took place. 40

The Court. The situation is that the witness has been put on the stand apparently in good faith by the State to testify to certain things, amongst which are the fact that she went to this place for the purpose of making appointments and having intercourse with men.

Mr. McDermit. I beg your Honor's pardon.

The Court. That is the impression the Court gets from the examination.

Mr. McDermit. I beg your Honor's pardon. 50

The Court. I do not want any interruption. And she fails so to testify, and she may be confronted with a statement made by her elsewhere, not for the purpose of using that statement as evidence against the defendant but for the purpose of ef-

Rose Keleher, direct.

facing from the minds of the jurors the failure of this witness to testify along the lines for which she was put upon the stand by the State. That has been well settled by the case of the State *v.* D'Adame, in 86 or 87, Atlantic Reporter. Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

Q Now, will you please look at this statement which you say you signed and that was read to you by Officer Ritt before you signed it, and I ask you if in there you do not say that "I, Rose, have visited Engsberg's sitting-room at Washington street about thirty times in
20 the last six months."

Mr. McDermit. I object.

Q Did you say that there?

The Court. On what grounds?

Mr. McDermit. On the ground that he is reading from a statement made by her not in the presence of the defendant, she still repudiating that she made that statement. It is an incomplete statement.

30 The Court. That is the only ground of objection?

Mr. McDermit. Yes, sir.

The Court. She has no right finally to foreclose the State simply by merely saying, "Yes, that is my signature, and I heard it read and I signed it, but it is not true." If the State is going to be stopped at that stage, then any witness who has ever made any statement can always say, "It is not true," and that is the end of the matter. Therefore, your law on that point cannot be sound.

40 Mr. McDermit. She is entitled to the entire statement; not an isolated—

The Court. That is another ground. On that objection I will sustain you.

Q In this statement, which you say you signed and which was read to you, do you say "Statement made to Edward A. Ritt, a police officer. "I, Rose, have visited Engsberg's sitting-room at Washington street about thirty times in the last six months and on about ten different occasions I have picked up a John in Engsberg's sitting-room for the purpose of a good time and sexual intercourse. To my knowl-
50 edge there was the following girls who were picking up Johns in Engsberg's rear sitting-room these names were as following: Anna, Mary, Florence Brown, Mary Smith, Margaret William, alias May Brown; May Wilson and Veliese. Mr. Engsberg was aware that the girls were working from the rear room. There are a few pimps there

Rose Keleher, direct.

whose names are Louis Freeman, Reeney and another man named Jess who has women working from the rear room of Engsborg's. The money Veliese, who is Reeney's girl, makes she turns over to him, Reeney. If a girl tries to work from Engsborg's rear room without having a pimp the pimps has no use for them and would spit in your face. When those pimps see the cops coming they tip their own girls off but would never tip a girl who did not have a pimp and would pass the remark they would be only too glad to see us caught. Mr. Engsborg himself never had any objections of the women congregating in the rear room. In my presence Mr. Engsborg called Louis Freeman a pimp and Freeman's girl a common prostitute." Is that what this paper says. Look at it and see. A Yes, sir; that is what it says. 10

Q Then that is what you said to Mr. Ritt, is it? A Mr. Ritt knew all the girls' names. He put "pimp" down there. That is a word I don't use, "pimp." He called them pimps. I didn't say nothing about money. I didn't say nothing to a lot of stuff that is on that paper. 20

Q Well, you know what a pimp is, don't you? A I do not.

Q Will you look at this paper (showing witness another paper).

The Court. Have the first paper marked as Exhibit S. 1 for identification and the second one as Exhibit S. 2. for identification.

(Papers marked Exhibits S. 1 and S. 2, respectively, for identification.) 30

Q Look at this paper marked S. 2 for identification. Did you see that yesterday morning? Well, did you? A I signed the paper.

Q Did you see this paper yesterday morning (showing witness paper)? A Yes, sir.

Q Who showed it to you? A I don't know who it is.

Q Is this the man, Mr. Mason? A Yes, sir.

Q Where did he show it to you? A Right out in his office, I guess.

Q And did you say to Mr. Mason yesterday morning— 40

Mr. Mott. I will show your Honor that this is a typewritten copy of the other statement.

Q Did you say to Mr. Mason yesterday morning after reading this paper that the statements therein contained were true? Did you? Did you say to Mr. Mason when he showed you this paper yesterday morning that the statements in the paper were true? A I didn't say whether it was true or not, but I read it. I only said—

Q You say you did not say whether they were true or not? A No, sir. 50

Q You read the paper yesterday morning? A Yes, sir.

Q This one (indicating), and after you read it did Mr. Mason not ask you if you made that statement? A Yes, sir.

Q And did you not say yes? A I said yes.

Rose Keleher, cross.

Q And did he not then ask you if the things you said in the statement were true? A No, sir; he did not ask me that.

Q And did you then say they were true? A No, sir; he didn't ask me them questions.

10 *Cross examination by Mr. McDermit.*

Q They are not true, are they? A They ain't true. They are not true.

Q Never used the word "pimp"? A No, sir.

Q Never said anything about Mr. Engsberg knowing people were bad or indecent, did you? A No, sir.

Q Never made any statement that the police attributes to you about girls coming in there that were prostitutes, and so forth—didn't tell the police that these people were prostitutes or anything
20 of the kind, did you? A No, sir.

Q There is no back room to this place. It is all one room, is it? A Yes, sir.

Q One entrance from Branford street and then an entrance from Washington street? A Yes, sir.

Q It is L-shaped—there are no partitions whatever in there? Now, there is a restaurant—

The Court. She hasn't answered as to—

Witness. What did you say, Mr. McDermit?

30 *The Court.* There are no partitions whatever in there, are there?

Witness. No, sir; it is all one wide open room. You can see it plain from the bar.

The Court. Is there a place called a parlor there?

Witness. No, sir; just one drinking-room.

Q There is no private room there at all, is there? I mean for a sitting-room for men and women. It is all one room, isn't it? A The bar and room.

40 Q The tables all through there are restaurant tables, are they not? Meals served there—sandwiches served there? A I don't know; I never eat nothing in there.

Q Anyway, you can get into this place two ways, both Washington and Branford place? A There is an entrance to the bar and an entrance—

Q Yes; one large open room with two entrances, one from Branford place and one from Washington street. A Yes, sir.

Q There is no bedrooms there or sitting-rooms or side-rooms, are there? A No, sir.

50 Q The whole situation where you sit opens up the entire barroom and the entire place, doesn't it? A Yes, sir.

Mr. Mott. I offer in evidence the statement which the witness says was read to her and she then signed.

The Court. S. 1 for identification?

James F. Mason, direct.

New Jersey State Library

Mr. Mott. Yes, sir.

Mr. McDermitt. I object to either one of those statements offered in evidence. We cannot try the question of the witness's veracity in this issue, or would it be fair for the defendant in this case for the Court to rule on that question, as to whether the statements were made by this woman. That would be a material situation as to her credibility, the mere statement that she—

10

The Court. I do not want to argue it. I want you to make a sufficient statement on the record to protect your interests.

Mr. McDermitt. That these statements cannot be used for the purpose of contradicting her to the extent that she made a statement at another time when she now says on the witness stand that these statements are untrue and that she never made those statements; that the Court must charge the jury that it cannot discredit her statement in that respect.

20

The Court. That will be a matter for the Court to charge. You may request the Court on that subject at the proper time. At the present time the Court will admit this statement by striking out the words "for identification," on the authority of the State *v. D'Adame*, in the Court of Errors and Appeals. It is admitted, not as evidence against the defendant but to show that she did make the statement elsewhere, and if the jury believe that she did make that statement and sign it they may, if they desire, consider that the slate is wiped clean and efface from their minds anything by reason of the fact of the failure of the witness to testify against this defendant.

30

Paper marked Exhibit S. 1 for the State.

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

WM. P. MARTIN, (L. S.)
Judge.

40

JAMES F. MASON, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Mr. Mason, you are a county detective in the Prosecutor's office? A Yes, sir.

Q Did you see Rose Keleher, the last witness, yesterday morning? A Yes, sir.

Q Whereabouts? A Detective's room, Room 223.

Q I show you Exhibit S. 2 for identification and ask you whether at that time you had that paper? A I did.

50

Q And that paper is what? A It is a typewritten copy of the original statement made by Rose Keleher to Officer Ritt.

Q Yesterday morning what did you do with that paper with reference to Keleher? A I handed it to her and asked her to read it.

James F. Mason, cross.

Mr. McDermitt. I shall object to this testimony on the part of this witness with regard to any conversation had between her and him in the absence of this defendant as to this statement or any other conversation he may have had with her, on the ground that it would be prejudicial error to admit it.

10 *The Court.* You personally went over this same situation in the case of the State *v.* Bovino, who was charged with murder, and the Court of Errors and Appeals sustains the ruling in that case. Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

20 A I handed her this paper and asked her to read it. She looked at it for quite some time, and finally handed it back to me. I said, "Did you make that statement to the police"? She says, "I did." I says, "Is it a true statement"? She says, "It is."

Cross examination by Mr. McDermitt.

Q What did you want to show her the second statement for, Mr. Mason? A Sir?

30 Q What did you want to show her the second statement for, being the same statement? What was the object of that? A Show her the same statement?

Q Yes. It is the same statement as the first statement. A Yes, sir; it is a copy of the original statement.

Q Why was it necessary for you to make a copy of that first statement and submit it to her again yesterday? A I did not make a copy of it.

Q Who made the copy? A I don't know. Copies of the original statement was given to me by the police and the originals were in the police department up to ten o'clock yesterday morning.

40 Q You had in your possession the original statement of which this new statement or second statement is an exact copy? A No, sir; not at that time.

Q Do you say you did not have the original statement at that time? Where was it? A Officer Ritt or some one in the police headquarters.

Q Had you seen it? A No, sir.

Q Who gave you this statement? A This statement along with others came from Inspector Corbally's office at police headquarters, Newark.

50 Q Where was this statement at that time? A I don't know where it was.

The Court. By this you mean the original?

Q How do you know that it is true, if you had never seen this statement, that that is a copy of it? A Because I compared them since.

James F. Mason, cross.

Q When? A Yesterday afternoon and this morning both.

Q Yesterday afternoon and this morning? A Yes, sir.

Q So that you did get possession of this original statement yesterday, did you? A Yes, sir.

Q And you don't know who made the typewritten copy of the statement, No. 2—Exhibit No. 2 for the State, do you? A No, I do not; no, sir. 10

Q But you undertook to get her to sign that, didn't you? A No, sir; did not ask her to sign.

Q What was the object of getting her to sign a statement which she had already signed? A I didn't ask her to sign anything; I just asked her to read that over.

Q You know that was the statement taken from the original statement? A I knew it was a copy of the original statement.

Q And you knew she signed the original statement? A Yes, sir. 20

Q And still you asked her to sign that statement? A No, I didn't ask her to sign anything, counsellor.

Q How did she come to sign it, voluntarily? A She didn't sign it.

Q Didn't sign it? A No; she didn't sign this paper.

Q Did anybody sign it? A No.

Q You just read it to her, that is all? A No; I didn't read it to her.

Q You didn't read it to her? A No.

Q Then she didn't hear anything at all that was contained in that statement? A She took it and read it herself. 30

Q You don't know what she read. A I don't know what she read. I know what she said after she handed it back to me.

Q After you gave it to her to read you asked her if that was true and she said it was? A I didn't ask her that. I asked her if she made that statement to the officers.

Q She said what? A "Yes." I asked her if it was a true statement and she said yes.

Q Why didn't you read to her the original statement? A I didn't have it at the time.

Q How did you come to get this? A Went down to police headquarters and got it, five or six days ago. 40

Q So there is no signature to that, is there? A There is a typewritten signature, the same as the body of the statement is.

Mr. Mott. I offer in evidence Exhibit S. 2 for identification, for the purpose of the jury comparing it with the original statement to see what force and effect should be given to her statement to Mr. Mason that this paper—the statements made in this paper are true.

Mr. McDermit. That is objected to because it does not appear from any evidence here that in point of fact she did read the entire statement. You are attempting to have the witness prove the operation of her mind. The Prosecutor is attempting, in order to discredit this witness and in some way impeach her, to put mental processes in evidence. How can Mason tes- 50

William Porchester, direct.

tify as to whether she read it or not? A person may look at a statement and never read it or may read part of it only. It seems to me that that is a very wide latitude to allow the Prosecutor in a case of this kind, and I object.

The Court. Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

Paper marked Exhibit S. 2 by striking out the words "for identification."

WILLIAM PORCHESTER, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Where do you live? A 403 Chadwick avenue.

Q Do you know the defendant here? A Just by sight.

Q Did you ever visit his saloon on Washington street at Branford place? A Yes, sir.

Q When? A I couldn't state just when—that is the exact date—it would be at the end of the week—week end.

Q And in what month? A I couldn't refer to that, either.

Q About how long ago? A Well, I should say July would be one month.

Q Of this year, you mean? A Yes, sir.

Q And can you name another month? A Well, maybe February, it may be; I wouldn't swear to it.

Q Well, what happened in July when you were there? How many times were you there in July? A Once, I think.

Q What happened then? What did you do? A Walked in and had a glass of beer.

Q And what else? A Sat down on a table.

Q Well, what else? A And a young girl nodded to me to come over to her table.

Q What did you do? A Stopped over there—I went over to her table.

Q What happened? A We had a conversation.

Q What was the conversation? A Referring to sexual intercourse.

Mr. McDermit. I object unless it was in the presence of the defendant—conversation between him and her. Might charge this man with murder or any crime, or anything else. He can't be bound in any way with that, your Honor.

The Court. No. The jury has got to find that this defendant knew what was going on, but it may be shown as a disorderly act. You cannot prove it all at once.

William Porchester, direct.

Mr. McDermitt. It must be shown that he was present or knew about it.

The Court. I will admit it. If it is not connected it may be stricken out on motion of the defense. What was the conversation?

Witness. Referring to sexual intercourse. 10

Q Well, what did you do with her? What did you do after that? A Why, the agreement seemed to be all right to me and we went out of the place.

Q Where did you go? A We went down to Mechanic street, a furnished room place.

Q Did you have sexual intercourse with her? A Yes, sir.

Q Do you remember what this woman's name was? A No, sir.

Q Did you meet her again on any other time? A Did I meet her again? 20

Q Yes. A Yes.

Q Where? A At the Criminal Court.

Q Well, I mean in the saloon. A After that occasion?

Q What? A After that occasion you are referring to?

Q After the first occasion did you meet her again there? A Yes, sir.

Q How long after the first time did you meet her there? A Several weeks.

Q What? A Several weeks. 30

Q What occurred on the second occasion? A The same as the first.

Q You went out with her again? A I did.

Q Had intercourse? A I did.

Q Well, on the second occasion you went there where did you sit when you first went in? A Sat on a table off to the left of the bar.

Q Who was in there first, you or the woman? A She.

Q After you sat down at the table at the left of the bar what happened? A After I sat down at the table why I ordered a glass of beer.

Q And then what? A She nodded to me to come over to her table. 40

Q And you went? A I did.

Q Now, on the first time when you were in there how many people were there in there? A I didn't count them.

Q Well, approximately? A Six, seven, perhaps ten.

Q Males or females? A Both.

Q In number how did the males compare with the females? I mean about how many women were there and about how many men? A May have been three or four women, five women. 50

Q And on the second—what were those women doing? A They were sitting there drinking—some talking to gentlemen.

Q And on the second occasion that you were there how many were there there? A Why, I never stopped to count them at any time.

Q I don't expect you did. A Be about the same amount.

William Porchester, cross.

Q And what were the women doing on the second occasion? A Doing the same thing, sitting, drinking and talking.

Cross examination by Mr. McDermit.

10 Q Well, this is a whole wide open place, isn't it? No bedrooms there or private rooms in this place, is there? A There is no bedrooms, that is, that I know of.

Q You come in from Branford place and go out through Washington street, if you want to. The whole place is exposed there, isn't it?

A Yes, sir; you can see the whole place.

Q Now—

The Court. Let him answer. You asked him questions and presumably you want him to answer. Give him an opportunity to do so. Go on.

20 *Witness.* You can see what—you can see the back room, that is, full view of the room in the rear from three-quarters of the bar down.

Q This is in a sort of L-shaped; go in on Washington and go out the other way into Branford place—sort of an L saloon. Do you know what I mean by that? A Two rooms of about the same size.

Q And opening into one another? A Yes, sir.

Q Opening into one another? A There is no opening. It is all cut away.

30 Q Yes; it is all open, you mean? A Just a partition of about five feet on each side.

Q Yes, but the whole place is open there.

The Court. No, he says there is a partition of five feet.

Witness. There is a partition of about five feet on each side.

Q How wide is the opening from the saloon to this room—how many feet wide? A About seven or eight.

Q Seven or eight feet—no doors? A No, sir.

40 Q So that any person sitting in the front room of the bar can see right into the back room, isn't that right? A I don't understand your question.

Q You can see from the bar-room from the bar into the back room, can you not? A From the rear end of the bar.

Q Yes; and you can see from the room into the bar-room, can't you? A You can see the bar.

Q You made a date to go back there the second time, didn't you? A I did not.

50 Q How did you come to go back there the second time? Did you want to see this same girl again? A I didn't—I just thought, being downtown and having no other place to go, I happened to drop over.

Q You just dropped over—had no idea seeing her again? A No.

Q But when you did see her you concluded you would take another walk with her? A Yes, sir.

Q This was Saturday night, wasn't it? A Friday night.

William Porchester, re-direct—re-cross.

Q And you went down Mechanic street, the same place, did you?
A Yes, sir.

Q Had you ever been in Mechanic street, except those two occasions before? A No, sir.

Q Tell us the place in Mechanic street. A I don't know.

Q What number is it? A I don't know.

Q Whereabouts in Mechanic street is it? A I know it is always below Mulberry street, that is as near as I can come to it.

Q Below Lawrence? A Below Mulberry. That is as near as I can come to it.

Q What floor did you go on? A Second floor.

Q What did you pay for the room? A I didn't give the money—pay the money for the room.

Q Pay the woman anything? A I paid the woman I went in with.

Q Paid her both times? A I did.

Q And when you had the talk with her at the table up in this saloon, was there anybody else sitting by your table when you made this date to go out with her? A Not at the time I made the arrangement.

Q No. You didn't talk so anybody else could hear you in that bar-room, that you were going out to have sexual intercourse, did you? A No, sir.

Q Didn't want that known, did you? A No, sir.

Q No. So that when you made this date you did it privately, between you and her? A I did.

Q And you don't know where she is now, do you? A Can't say.

Q She isn't here, is she, as far as you know? A As far as I know—I don't know whether I would recognize her.

Q Didn't go around there after that again, eh? A Did not.

Q Haven't seen her since at all? A No.

Q Make any date with her the second time you met her down there to meet her again some time? A I never have made any arrangements with her whatever.

Q Young woman or old woman? A About my age.

Q How old is that? A Twenty-nine.

Re-direct.

Q Do you recall whether her name was Williams—whether she said her name was Williams? A I recall her saying that her name was Williams.

Q Margaret Williams? A Yes, sir.

Re-cross.

Q Did she say her name was Margaret Williams?

The Court. He says so.

Q Did you call her Margaret? A I did not.

Mary Bernard, direct.

MARY BERNARD, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Where do you live? A 182 Badger avenue.

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

10 Q Did you ever go to his saloon on the corner of Washington street and Branford place? A Yes, sir; I have been there a number of times.

Q Since the 1st of February of this year how many times were you there? A Only a few times since then.

Q Well, how many times? A Well, I don't know, maybe eight or ten times.

Q What did you do when you went there? A Well, I would drink and play the piano sometimes.

20 Q What else did you do? A Well, I got acquainted with a number of girls around there and we would talk and pass the time away.

Q And what else did you do there? A That is all.

Q Did you get acquainted with some men? A No, sir.

Q What? A No, sir.

Q Did you speak to any men in there? A No, sir. Mr. Engsberg wouldn't let me. Sometimes I had a gentleman friend, supposed to be married to him—he met me twice and Mr. Engsberg wouldn't serve us because we didn't go in together.

30 Q Gentleman friend you were supposed to be married to—were you married to him? A No.

Q Were you living with him? A No.

Q Then why do you say you were supposed to be married to him?

A Because we were going to be married.

Q Have you been married? A No; I haven't been married yet.

Mr. McDermitt. Common-law wife.

Mr. Mott. Then she is married.

Q Is that your signature to this paper that I show you? A Yes, sir.

40 Q When did you sign your name to that paper? A When?

Q Yes. A It is about two months ago, the best that I can remember.

Q Where were you when you signed that paper? A I was down at the police station, First Precinct.

(Paper marked Exhibit S. 3 for identification.)

50 Q This is a statement that you made to Officer Ritt, is it not, Exhibit S. 3. I show you the paper which you signed. (Stand up, Officer Ritt, please.) A I remember signing my name and giving my address down at the First Precinct station.

Q And do you remember what you signed? A Well, I know it was a paper. I don't know just what it was.

Q Was it read to you before you signed it? A Yes, sir.

Q By Officer Ritt? A Yes, sir.

Mary Bernard, direct.

Q In this paper which you signed at the police station which Officer Ritt read to you before you signed, do you say "On about fifty different times in the past three months I have visited Engsberg's cafe, Washington street, and on at least twenty times I have picked up a John from his sitting-room for the purpose of having sexual intercourse. Mr. Engsberg has, on a number of different times, stood by and seen men get up and go from one table to another one which would be occupied by a woman and never made any objection. To my knowledge the following girls whom I only know by their first names solicited men from Engsberg's sitting-room. Their names are as following: Anna, May, Rose, Florence Brown, Mary, May, May Wilson, Veleise. There are two of these girls which are tipped off by their pimps every time the cops are coming. These girls are Veleise and Florence Brown. They the pimps who are Louis Freeman who has a girl named Marie Allen working on the streets for him. Also a man who goes by the name of Reeney who has a girl by the name of Veleise who solicits men from Engsberg's back sitting-room and turns the money over to Reeney. Mr. Engsberg knows all about these pimps working from his sitting-room and never objects. These pimps would never tip the rest of the girls off because we would not engage them as our pimps and therefore making it miserable for all girls who were working from Engsberg's sitting-room without pimps, particularly a pimp whose name was Jess. This man Jess would call any girl who did not have a pimp a tightwad." Is that what you said to Mr. Ritt?

A Yes, I said that about Jess.

Q Well, the whole statement—did you make that whole statement?

A The whole statement? I told Mr. Ritt I heard girls say that. I was not positive; but Jess—I heard him say that myself.

Q You heard Jess say what? A That girls were tightwads.

Q Because they would not have a pimp? A Well, he didn't say just because they wouldn't have a pimp, because they wouldn't spend money free or something, just buy themselves a drink, or didn't give a tip or something like that. He called them tightwads.

Q How about the rest of this statement, did you make the rest of this statement to Mr. Ritt? A Mr. Ritt asked me what did I know about this place and I told him what a girl told me.

The Court. You were not asked that. You were asked if you made the rest of that statement to Ritt.

Witness. I told him what was told me.

The Court. Answer the question yes or no.

Witness. No, sir.

The Court. You did not say that to Ritt?

Witness. No, sir; not—

The Court. All right, now. That is the end of it.

Q What part of this did you tell Ritt you knew and what part didn't you say to him? A That about Jess, I said that.

Mary Bernard, direct.

Q Well, anything else? Did you tell him anything else besides that? A No, sir.

Q Did you tell Ritt, speaking of yourself, "I have picked up a John from his sitting-room for the purpose of having sexual intercourse?" A No, sir; I did not say that.

10 Q Well, you knew that that was there when you signed the paper, didn't you? A Well, I understand he put it just like I told him that someone else told me that.

Q Well, did somebody else tell you that you yourself had picked up a John and went out with him for the purpose of sexual intercourse? A No, sir; other girls told me what they had did, but they didn't say I did.

Q You say "I have." A He asked me about this place and I said what I heard about it. I didn't say I did it myself.

20 Q Did you tell him you heard that girls picked up men and went out from there? A Yes, sir; I said that.

Q What else did you tell him? A Well, that is about all.

Q Did you tell him that you had been there about fifty times in the past three months? A No, sir; I didn't say fifty times.

Q Look out now. A I said several times; I didn't say fifty times.

Q Why did you sign the statement there with that statement written in there? A Why, I don't know. He asked me to sign. He said, "Put your name and address here," and I did.

Q But you say he read it to you? A Yes, sir.

30 Q How many times have you been there in three months? A Well, as far as I can guess between eight and ten times.

The Court. Can you read and write?

Witness. Yes, sir.

Q Did you tell him "I have picked up a John from his sitting-room for the purpose of having sexual intercourse"? A No, sir.

Q Did you tell Mr. Ritt that? A No, sir.

40 Q Why did you sign the paper then with that statement written in there if you didn't tell that to Ritt? A Well, he laid the paper down and told me to put my name and address there and I did.

Q But you say he read it to you? A Well, I didn't say that.

Q Did you tell him that you had seen men get up from one table and go to another one occupied by a woman? A No, sir.

Q Did you know a girl by the name of Annie who went there? A Well, I know several girls; I know one by the name of Annie.

Q What? A Yes, sir.

Q And did you know one by the name of May? A Yes, sir.

50 Q And did you know a girl by the name of Florence Brown? A Yes, sir.

Q And did you know a girl by the name of Veleise? A Yes, sir; I know her when I see her.

Q I mean a girl you have seen there at Engsberg's? A Yes, sir.

Q And you know a girl by the name of May Wilson? A Yes, sir.

Mary Bernard, cross.

Q How many times have you seen May Wilson there? A I saw her there twice.

Q Is she the same woman who is known as Margaret Wilson? A I don't know. I always know her by May.

Q You always heard her by May. Do you know Lou Freeman? A Yes, sir. 10

Q Did you know Mary Allen? A Yes, sir.

Q Well, did you tell Ritt that Lou Freeman had a girl by the name of Mary Allen who was working for him on the street? A No, sir.

Q Didn't you tell him anything of that kind? A No, sir.

Q Why did you sign the paper then? The paper says so. Just read it. The paper says so, doesn't it? A Yes, sir; that paper says so.

Q Then why did you sign the paper if that was not true? A I don't remember anything about that. 20

Q What? A I don't remember anything about that.

Q Then you say all you said to Ritt was that you heard Jess say that a certain girl was a tightwad? A Yes, sir.

Q That is all you said. You mean that, do you? A Yes, sir.

Q Did you think it took that whole long written sheet to say those few words at the time you signed this paper? A No, sir; I didn't think it would take all that sheet to say those few words.

Q Why then did you sign the paper? A Well, I don't know why I signed it. He laid it there in front of me and told me to put my name and address, and I did it. 30

Cross examination by Mr. McDermitt.

Q Did you take any Johns out of there to any house? A No, sir.

Q Do you know anything against this house of your own knowledge?

Mr. Mott. I object.

Mr. McDermitt. Why isn't that proper? That is just exactly what we are trying.

Mr. Mott. In the first place, it involves this witness' moral standard as to what she knows, something against the house. 40

Mr. McDermitt. You brought out this statement and she denies she made the statement. You are trying to prove she did—trying to contradict her.

The Court. You do not have to argue. This witness has shown that these different individuals were there. She has testified to that, and the jury might draw the inference that these people or some of them were prostitutes. Now she is being cross-examined as to whether or not she knows anything against the house. I do not like the question very much. It is of rather dubious character, but it may be that it will tend to elicit some information. I think I will let her answer it. Do you know anything against this house of your own knowledge. That is the substance of the question. 50

Mary Bernard, cross.

Witness. No, sir, your Honor; not of my own knowledge, I don't.

10 Q As far as you personally know everything is conducted orderly there—in good shape? A As far as I know from personal knowledge I never saw anything wrong.

Q Nothing wrong there? A No, sir.

Q You took no men away from there for intercourse, did you? A No, sir; I did not.

Q You say you, in regard to the particular statement to which the prosecutor has called your attention, that if those things appear in that statement they are not of your own knowledge, isn't that right? A No.

20 Q And if you furnished that to the officer in any way it was upon the statement of someone else made to you? A That is it exactly.

Q Merely hearsay? A That is just it, exactly.

Q You told him nothing of your own knowledge from your different visits to the house of anything wrong there? A No.

Q You did nothing wrong? A No, sir.

Q And nobody else to your knowledge? A Nothing, not while I was there.

Q Gentlemen sat down at the table drinking—gentlemen and ladies did that from time to time in a genteel way? A Yes, sir.

30 Q And you heard no vile language or obscene language? A No; any one come in drunk and act rough Mr. Engsborg would ask them out.

Q Any nasty language used there—dirty language? A No, sir; there was none.

Q Or vile language? A No.

Q Or anything that would in any way create suspicion that anything was wrong there? A No, sir.

Q You don't know that any of these girls of your own knowledge that came in there were bad women, do you? A No, sir.

40 Q You had no knowledge that these women were prostitutes in any way? A Not as I know of.

Q You are not a prostitute? A No, sir.

The Court. You have a man that is taking care of you to whom you are supposed to be married.

Witness. I did have a friend.

The Court. You did then?

Witness. We weren't going together for any bad objects; we were only keeping company.

50 *The Court.* You said you were living with a man to whom you were supposed to be married.

Witness. No, I said I was going with him, keeping company with him.

The Court. Oh, you were only keeping company?

Witness. Yes, sir.

Mary Bernard, re-direct.

Re-direct examination.

Q You say you are not a prostitute? A No, sir.

Q Haven't you been arrested and fined in the police courts for prostitution? A A man that I had known for over three years in Cincinnati, and we were taken—Mr. Shrader shadowed us once and taken us. 10

Q What is that? A A man I had known for over three years.

Q What about him?

Mr. McDermit. If there is a conviction produce it.

The Court. This is to refresh her memory. She says she is not a prostitute. Now the Prosecutor says weren't you convicted. That may refresh her memory that she is one.

Mr. McDermit. Convicted of what?

The Court. Being a prostitute. 20

Mr. McDermit. Doesn't she say she was convicted of loitering?

Mr. Mott. No; she has not used the word loitering at all.

The Court. She has not said that yet.

Mr. McDermit. I object to this cross examination on the ground that it is not the best evidence and they must produce the record.

The Court. This is re-direct examination. You brought out that she was not a prostitute. Now the State has a right to reinstate her as a witness of the character for which she was put on the stand. 30

Q Isn't it true that you were convicted of prostitution in the police court and fined for it? A I was fined.

Q Answer yes or no. A No; I was fined for loitering.

Q Oh, you just got that from Mr. McDermit, didn't you? A No, sir; I remember what I was charged with.

Q Who was this man you were with at that time that you had known three years, you say? A I known him three years? 40

Q Yes. A Why, his name was Sammy.

Q Sammy, and how long had you lived with Sammy? A I never lived with him at all.

Q Then what were you convicted in the police court for? A Because we went to the house together and detectives followed us and come in and taken us out.

Q And where were you in the house when the detectives came in; you were in bed, weren't you, with him? A No, sir; we were not in bed.

Q What is there about loitering about that? What do you understand the word loitering means? 50

Mr. McDermit. I object to further cross examination. The record must be the best evidence and must show the conviction. He cannot retry the case.

Reeney Caruso, direct.

The Court. He can only refresh her memory as to whether or not she is a prostitute

Mr. McDermitt. The question as to whether she was in bed or not she is a prostitute.

10 Q You said you were convicted of loitering. What do you understand loitering to mean?

Mr. McDermitt. I object.

A That is what they told me in the First Precinct.

Q What? A They told me in the First Precinct, "You are charged with loitering."

Q Loitering with a man? A I don't know whether it said man or not; it just said loitering.

Q What did you think was meant? A Really I don't know what it meant.

20 Q Did you ever hear the word loitering before Mr. McDermitt spoke it here a few minutes ago? A Yes, sir.

Q What? A I heard it down in the First Precinct when I was on trial.

Q You were loitering in your room with this Sammy, were you? Is that it? Is that what you understood it to mean? A Yes, sir.

Re-cross.

Q What court was this in? A In the First Precinct.

Q And how long ago—before what judge? A I do not remember the judge's name.

Q How many years ago was this? A It was only a few months ago; about three months ago, I guess.

Q This year? A This year.

Q Where are you living now? A 182 Badger avenue.

Q And where were you living at that time? A At that time I was on Walnut street.

Q What number? A 102 Walnut street.

40 Exhibit S. 3 for identification offered in evidence and received by striking out the words "for identification."

REENEY CARUSO, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Mr. Caruso, where do you live? A 54 Warren street.

Q In this city? A Yes, sir.

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

Q Do you know where his saloon was? A Yes, sir.

Q On Washington and Branford place? A Yes, sir.

50 Q Ever been there? A Yes, sir.

Q How many times have you been there since the 1st of February last? A Oh, about—several times.

Q Well, how many times would you say? A I couldn't just about tell.

Q What? A I could just about name.

Reeney Caruso, cross.

Q Well, as many as—do you mean by “several”—do you mean four or five, ten or fifteen—which A Oh, about nine or ten times; something like that; maybe fifteen; I don’t know; something like that.

Q What time of the day would you go there? A Oh, the time I had a chance to get out of the theatre.

Q Well, that would be at night, would it? A No, sir, in the afternoon. 10

Q What would you do when you got in there? A I would have a beer.

Q And what else? A Sit there for a little while, maybe; stand at the bar-room.

Q Did you know any of the women that were in there? A Yes, sir, I did; just to see.

Q Did you know a woman by the name of Rose? A Exactly, I didn’t know who she was until the officer mentioned it to me, the name, and all that stuff. 20

Q Did you know a girl by the name of Mary? A No, sir, not until the officer mentioned her name.

Q Then did you know her? A I told him, “I think I do; I don’t know; I ain’t sure.”

Q Dorothy? A Dorothy? No, sir; I didn’t know her.

Q Did you know a girl by the name of May Wilson or Margaret Wilson? A I heard that name called, but I don’t know.

Q Well, now, what did you see these girls do while you were there? A Nothing while I was there; just sitting down and having a drink. 30

Q Well, you made a statement to the police, too, didn’t you? A I did.

Q And in that statement did you, as you recall it now, did you tell the truth? A I told what I knew, but I didn’t see what was on there.

Q Well, you signed this paper, didn’t you? A Yes, sir; I signed it.

Q That is your name? A Yes, sir.

Q And who wrote this paper? A Officer Ritt. 40

Q You saw him write it? A Yes, sir.

Q He wrote down what you said to him, didn’t he? A No, sir; he—I told him one or two words and he would make three or four lines out of it.

Q Did you read the paper before you signed it? A No, sir.

Q Did he read it to you? A No, sir.

Q Then you didn’t know what you signed at all? A Just said, “Put your name and address on here.”

Q Without knowing anything that was in there; is that right? A Yes, sir. 50

Cross examination by Mr. McDermitt.

Q You don’t know any of these women at all by the names that appear in this paper, do you? A No, sir.

Reeney Caruso, cross.

Q You don't know how Mr. Ritt got those names, either, do you?
A No, sir.

Q You saw nothing wrong there? A No, sir.

Q You made no date there? A No, sir.

Q Nobody picked you up? A I should say not.

10 Q And this statement you signed for the officer—what you told him—could go down in three or four lines, could it? You see the size of this statement, do you? A Yes, sir.

Q You heard the other statements read here this morning? A Yes, sir.

Q Did you tell Officer Ritt that on an average these girls picked up two and three men a night to your knowledge? A No, sir.

Q Never made any such statement? A No, sir.

Q And if that is contained in this statement it is not true? A Yes, sir.

20 Q That is a lie? A Yes, sir.

The Court. Did you ever tell this May Bernard that some girl was a tightwad because she would not keep a pimp?

Witness. No, sir.

The Court. You never said that?

Witness. No, sir.

The Court. You were the only fellow by the name of Reeney that you know that used to go to that place, weren't you?

30 *Witness.* No, sir; there were three or four by the name of Reeney.

The Court. Three or four Reeneys?

Witness. Yes sir; three or four brothers.

Q Did you tell this police officer or any of them that you saw three girls pick up eight men? A No, sir.

Q And bring them to the Lackawanna Hotel? A No, sir.

40 Q Did you tell the police officers in this language, "I have known for a fact that Engsberg himself has seen different women nod to men at the different tables and the men would leave the tables they were at and go over and join the one who nodded to him." Did you ever tell him that? A No, sir.

Q Did you hear the officers read these other statements about pimps and some names of girls? A Yes, sir.

Q Did you say that you had been hanging around Engsberg's for the last five months? A About three or four months.

Q Hanging around? Did you use the words "hanging around"? A No, sir, not hanging around; no, sir; after the show when I had a chance to get out.

50 Q Did you tell him you knew for a fact that the following women congregated in the rear room of Engsberg's shop? A No, sir.

Q Do you know what congregate meant? A Hanging around.

Q What is "congregate"? A Hanging around, ain't it?

Q Do you know any girl by the name of Rose? A I know her now; yes, sir.

Lewis Freeman, direct.

- Q Who is she? A She is sitting in the back there.
- Q Which one is it? A The little one.
- Q The stout girl? A No, sir; the other one.
- Q The one next to her? A Yes, sir.
- Q Do you know any one by the name of Mary? A I heard that name. 10
- Q Do you know her? A No, sir.
- Q Do you know any one by the name of Dorothy? A No, sir.
- Q Do you know any one by the name of Florence? A Florence; I heard the name.
- Q Do you know her? A No, sir.
- Q Do you know any one by the name of May Wilson? A May Wilson? No, sir.
- Q Do you know any one by the name of Margaret? A No, sir.
- Q Do you know any one by the name of May Brown? A May Brown—I would know her if I seen her. 20
- Q Well, do you know her? A Well, not to talk to; just by seeing.
- Q Do you know where any of these people live? A No, sir.
- Q Did you ever hear their names before the officer put those names in this statement? A I heard two or three names only.
- Q Did you know a woman by the name of Annie? A No, sir.

By the Court.

- Q What kind of business were you in from February to August, 1918, this year? A Show business.
- Q Well, in what way? A Usher, chief usher. 30
- Q Whereabouts? A Miner's Theatre.
- Q And you did not work in the mornings, and you only worked in the afternoons? A Worked mornings—started nine o'clock in the morning and don't get through until eleven, then go for lunch; go back at one, stay until five and go back half-past seven or seven o'clock.
- Q You would be over there between five o'clock and half-past seven? A Not every day. Get a drink and then run out.
- Q You didn't go to Miner's every day? A Every day I was working. 40
- Q None of the facts—none of the statements to which Mr. McDermit referred are true, that he read from that paper? A No, sir.
- Q None of those things are true? A No, sir.

LEWIS FREEMAN, sworn on the part of the State.

Direct examination by Mr. Mott.

- Q Freeman, where is your home? A 49 Fairview avenue, Newark.
- Q Where did you come from? A Pelham Bay Naval Training quarters. 50
- Q Are you in service there? A Yes, sir.
- Q Were you in Newark yesterday? A Yes, sir.
- Q As a witness in this case? A Yes, sir.

Lewis Freeman, direct.

Q You returned to Pelham Bay last night? A Yes, sir.

Q Came down this morning? A Yes, sir.

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

Q Did you ever visit his saloon on Washington street and Branford place? A Yes, sir.

10 Q Since the 1st of February how many times approximately have you been in there? A Well, about a hundred.

Q How frequently did you go there? A Well, every day pretty near in fact that I was around downtown.

Q Did you ever work for Engsberg? A Why, no, sir; not what you call work. I helped him out one night from eleven until one.

Q Doing what? A Why, behind the bar.

Q How long ago is that? A Oh, that is about—I am in service since August—it is about four or five months ago.

20 Q What time did you go in the service? A August 7th.

Q Since that time you haven't been in Newark but a little? A Very seldom.

Q What time of day did you generally go into Engsberg's place between the 1st of February and the time you left Newark? A Why, different times.

Q What times? A Sometimes day and sometimes at night.

Q At night when you went in there what did you observe? A The same as any other ordinary place.

Q Well, what did you see going on? A People standing at the bar drinking and a few sitting down in the back room having a drink.

30 Q Did you know any of the women that were there? A Know a few of them.

Q Do you know a girl by the name of Rose? A Yes, sir.

Q And one by the name of Mary? A Mary? I ain't sure of that Mary.

Q May? A May? I may know May.

Q Florence? A No, sir.

Q Valens or Veliese—some such name as that? A No.

Q Well, what did you observe these girls do while you have been there with reference to men? A Well, the only thing I ever saw—observe—was when I sit down—sitting with anybody—I always thought it was a friend of theirs. I never see anything wrong. Different times I could hear them call "Hello, Harry" or "Hello, Sam" or something like that. I was always under the impression they were friends of theirs; that is as far as I know any of their business.

Q Then what would you observe them do after that? A Why, they stood there for a while—I can't say how long—have some drinks and then go out.

50 Q Together or alone? A Together.

Q A man and a woman, you mean? A Yes, sir.

Q Do you know a woman by the name of Mrs. Apgar? A Yes, sir; my wife.

Q What is her other name? A Freeman.

Q Lillian? A No, sir, Helen.

Edward A. Ritt, direct.

Q Did she visit this place? A Why, yes, on different occasions.

Q Did you ever see her there? A Yes, sir.

Q What did you see her do? A Well, I can't say as I saw her do anything good.

Q Well, what did you see her do bad, if anything? A Well, at times I saw her there she had probably chased in from some other place and be under the influence of liquor and cause a disturbance for this man here, which I have seen two or three different times. 10

Mr. McDermit. You say that she is now your wife?

Witness. She has been since September, 1917.

The Court. He cannot testify against his wife, can he, Mr. Mott?

Mr. Mott. Yes, up to the point of charging her with crime. He hasn't charged her with any crime. 20

NOT CROSS EXAMINED.

EDWARD A. RITT, sworn for the State.

Direct examination by Mr. Mott.

Q You are a member of the Newark police department? A Yes, sir.

Q Assigned to any particular squad or duty? A Inspector Corbally's squad in the City Hall. 30

Q What is that? A Vice, gambling and excise of the City of Newark.

Q I show you Exhibit S. 1 and ask you if that is in your handwriting? A Yes, sir.

Q And you signed your name there to it? A Yes, sir.

Q And did you see Rose Kelleher sign her name? A Yes, sir.

Q Do you know whether that was read to Rose before she signed it? A It was.

Q By whom? A Me.

Q Did you read it to her correctly? A Yes, sir, and then she took it and read it herself. 40

Q What is that statement? A Statement with regard to the condition she seen existing in the cafe of Lewis—or Emil Engelsberg, 278 Washington street, and what she knew in regard to the place.

Q Did you write down exactly what she said? A Just as she told me it went down.

Q I show you Exhibit S. 3 and ask you if you saw Mary Bernard sign her name there? A Yes, sir.

Q What is that statement that you have there? A Statement which she give me with regard to the condition of the same place, 278 Washington street. 50

Q Did you write down exactly and fully what she said? A Each and every word that she made to me.

Q Did you write anything that she did not give you? A No, sir.

Edward A. Ritt, direct.

Q You signed your name as witness? A Signed my name and she signed hers. She wanted to know if she would have to face Mr. Engsberg after telling me that and I said yes, and she said, "Gee, them fellows will kill me."

10 *Mr. McDermit.* You did not put that in.

Witness. That was after the statement was signed, and after a statement is signed I don't put nothing in a statement.

Q Do you know Mr. Engsberg? A Yes, sir.

Q And you know where his place was on Washington street? A Yes, sir.

Q Did you have occasion to go around to this place since the 1st of February? A I have been visiting Mr. Engsberg's cafe some nights once—twice—ever since the latter part of January to the 1st of February.

20 Q Now, just confining your testimony to since the 1st of February, the date named in the indictment, tell us what you have done there and what you have observed and your conversation, if any, with Mr. Engsberg. A On different occasions when I went in I seen these women that congregated there, and to my mind own personal experience with them knew what they were there for. I told some of them to stay out of there. I told Mr. Engsberg on different occasions that they were not allowed to congregate there.

Q What did you know about the women of your own personal knowledge? A I know they were picking men up on Branford place between Halsey and Shipman street.

Q How do you know that? A I followed them time and time again to try to get them.

Q Go on. Give us your conversation with Engsberg. A Mr. Engsberg, every time I spoke to him with regard to keeping them out, said he would keep them out, and when I went back I would still see the same faces. On the 17th of May in particular I went there after a girl named May Callen or May Gillen. I entered the place at around 12:45 A. M. and the girl was sitting at a table with Mr. Engsberg and a man named Crickey who is now in Camp Dix and two other girls. I told the girl I wanted to see her and brought her outside. Seven minutes to one Mr. Engsberg opened the side door on Branford place and came out and asked me who the hell was running his place, him or the police department, and I told him—I said, "Mr. Engsberg, I went in and took this girl out the door to avoid confusion," and I said "Now if you want to create a disturbance I will give you three minutes to get back inside of your place of business and close down or I will have to back the wagon up and clean the place out," and this

40 Mr. Freeman, the sailor that testified before, went over and spoke to Mr. Engsberg and he went inside. And on different occasions since as I passed through I have seen these girls sitting there, and as soon as they see me go through the place they get up and go out of the neighborhood for awhile and then come back and then go in the rear room of Engsberg.

50

Edward A. Ritt, direct.

Q Well, taking these girls by—did you know the names? A I didn't know the names of the girls. I knew them by sight but didn't know their names until the girls that I picked up in regards to this case, being steady frequenters there, had told me what their names were.

Q How many times did you see these girls whom you say you have seen on the street soliciting in Engsberg's place? A Since last February I have seen the majority of them there—well, there is two that I have only seen there about seven or eight times. 10

Q Can you describe those two? A That was this May Brown and the girl named Veliese, but this Mary Bernard and Rose I have seen in there almost every night. Some part of the night I have seen them either in there when I went in or enter the place while I was covering it. Sometimes I have seen them enter as high as three or four times in one night. I have seen this Mary Bernard go in there and sit down awhile, and then come out and go up Branford place to Plane street, through Plane to Market and around Market to Washington and back Washington to Engsberg's cafe and me following her. 20

Q She being alone? A Alone. On other occasions I have seen her come in Engsberg's cafe in the rear room and come out about ten or fifteen minutes after with a John—gentleman. They call them Johns—go down Branford place and jump a jitney—and I had a new partner with me, and she knew me, and I put this man in the same jitney with her, unbeknown to her, and followed her to 18th avenue. 30

The Court. You are telling what the other man did?

Witness. I went there with him and I put him in the jitney.

The Court. You went in the jitney?

Witness. No; I followed in a car.

Q You followed the car? A I followed in the car so she wouldn't know me.

Q Where did the car go to? A I got off at the railroad at Clinton avenue.

Q So you don't know where it went to? A No; I don't know where it went to, but I met my partner. 40

Q And he told you. You must not tell us what he told you. Who is your partner? A Officer Leary.

Q Well, did you have other conversations with Engsberg than you have mentioned? A Only in regards to keeping them out, and he said he would.

Q Just tell us what he said? A I told him it was the inspector's orders to keep these women from the street or congregating in the back room. He said he didn't want them there. Every time I would go back they would be there, and I said, "I thought I told you about this before"? He would say, "All right; I will take care of it." 50

Q You got back how soon? A I got back maybe that night or maybe the next night.

Q And you would find— A Find the girls sitting alone there at the table.

Edward A. Ritt, cross.

Q The same girls you had spoken to him about? A The same girls.

Cross examination by Mr. McDermit.

10 Q You have testified in the police court examination of this defendant on this charge, did you not? A Yes, sir.

Q You testified that for six months you watched the girls that came out of the place along Branford place and pick men up but you could never get the evidence, isn't that true? A I said I couldn't follow them to their rooms.

Q Didn't you say that you never were able during your time of six months' watching this place to get the goods upon these girls about taking men to rooms in the city; didn't you say that? A I said I couldn't get the evidence on the girls.

20 Q Didn't you say that you had no evidence during that six months' investigation that would warrant you in making a complaint against the place and against the people? A No, sir; I did not.

Q What did you say? A I testified that I did not have evidence enough on the men and girls to accuse them of having sexual intercourse, but I did know to my own knowledge that the girls entered the place alone and came out with a man.

30 Q But you made no complaint at any time against any of these women as prostitutes or picking men up or taking them any place because you had no evidence of where they took them to? A I never make any complaint against anybody unless I got them right—got them right in the act of sexual intercourse.

Q So you did not know of your own knowledge—your own personal knowledge—that any of these women were prostitutes? A Yes, sir.

Q Did you have intercourse with them? A No, sir.

Q See any one else have intercourse with them? A No; I knew people that they—

Q Did you of your own knowledge have intercourse— A No, sir.

40 Q Did you see any person have intercourse with them? A No, sir; I did not.

Q Why did you say they were prostitutes? A Because some of them admitted to me themselves where they took the men and what amount they got from the men.

The Court. You asked him, why do you say you know. Now, go ahead and tell him.

50 *Witness.* The reason I know in this case, I went to these girls myself and told them to stay out of the place, and they admitted to me, some of them, that they did not like the life and they didn't know why they stuck into it. This Mary that is mentioned in that statement in particular told me that she had picked men up in Engsberg's that took her up to Delawanna, and gave her as high as \$10 to stay with her all night and bought her either a pair of silk stockings or a silk waist the next day when he was leaving there.

Edward A. Ritt, cross.

Q Why didn't you if she told you she got \$10 and a pair of silk stockings and skirt at the Delawanna Hotel? Why couldn't you arrest her? A In the first place, the crime was committed out of the city of Newark, and in the second place I considered if I make the arrest and no evidence to back it, why, her word would have been as good as mine. 10

Q Therefore you thought? A I haven't the other witness to go against her, and I had a chance to get her.

Q What is her name? A That is the one they call Irish Mary.

Q Where is she now? A I don't know where she is. She was in the city until Engsberg's place was taken that night, and then she was told to get out.

Q Did you tell her to get out? A No, sir; I didn't.

Q How do you know she was told to get out? A Because I was told so after. 20

Q From whom? A Parties hanging around there.

Q What is the name of the party? A Rose, sitting in the back now. I says, "Rose, where is Irish Mary"? And she says, "She beat it when Engsberg's was raided."

Q In the six months' time is there any other woman you interviewed you can give the name of that can be produced before this jury? A What is that?

Q Is there any other woman's name you can give us that can be produced here? A Yes, sir; this Rose admitted to me that she had taken men up to the Belleville or Bellevue—Bellevue, I believe it is, and— 30

Q You got that in the statement? A That was after the statement was read.

Q Or from the others? A That was after she come out and asked me if I was going to hold her from going out.

Q At this raid? A After the statement.

Q So she told you she had taken some one up to the Bellevue? A Yes, sir, and up to Delawanna, both.

Q Tell us the name of the man? A She didn't tell me.

Q Did you ask her? A Yes, sir. 40

Q Why didn't you arrest her? A I had her arrested as a material witness in the Engsberg case there.

Q Who else confessed to you that they were leading the easy life? A What is that?

Q Who else confessed to you that they were leading the easy life? A That is the only three, Mary—Irish Mary, and Rose and—

Q Irish Mary is missing. When was it Irish Mary told you that she went up to Delawanna Hotel and got the \$10 and the silk stockings from the John? A Sunday night, July 28th.

Q Did she show you the silk stockings? A No, sir; I didn't ask her. 50

Q Silk dress? A No, sir.

Q Or the ten-spot? A No, sir.

Q Tell you what kind of looking fellow he was? A No, sir.

Edward A. Ritt, cross.

Q Did you see them go out? A I see them leave there and get in an automobile and go away from the place.

Q What kind of a looking fellow was he, white or black? A I have seen her with several different ones.

10 Q This particular one, colored man or white? A No, white man; man about 5 feet 8, 160 pounds.

Q Never saw him before? A No, sir.

Q He was a stranger? A He was to me.

Q You don't know whether he was a John or not, do you? A What is that?

Q You don't know whether he was a John or not, do you? A That I couldn't say; there was so many going in and out there.

20 Q So the only thing upon which you have been able to get any information at all is the evidence given to you by this woman of the Delawanna Hotel, in Passaic County? A I never got any information from the woman of the hotel.

Q In the six months that you chased around this place day in and day out you never have been able to detect one single couple who hired a room in the city of Newark whereby you could procure evidence to charge them with crime. That is so? A Outside of the three. Why, we couldn't get in the place without seeing—the place being tipped off before we arrived.

Q All right. You did not get the evidence, did you? A Against some of them the evidence was got—

30 Q Six months you worked, and that is all you can tell this jury as to a disorderly house? A I got evidence enough against the house to convince me that the Johns were being picked up. I had no power to go out of town to make a raid or in a furnished house.

Q You had no other evidence other than the testimony that you give here today? A Yes, sir.

The Court. What is the purpose of this examination?

Mr. McDermitt. Cross examination.

The Court. What about?

Mr. McDermitt. His evidence—his opinion.

40 *The Court.* What difference does it make what his opinion is?

Mr. McDermitt. That is all.

By the Court.

Q Have you ever been in this place? A What is that?

Q Have you ever been inside of Engsberg's saloon between the 1st of February and the 19th of August? A Yes, sir, I have visited it very frequently.

50 Q Now, did the same physical conditions exist there as to the bar and the table and chairs, and so forth, go throughout that whole period? A No, sir, there has been a change made.

Q Now, towards the end, in July and August, just describe what kind of a place it was to us. It is on the southeast corner? A Southeast corner of Branford place and Washington street.

Patrick Quinless, direct.

Q Bar where? A You enter from the front door and there is a bar on your right as you go in. As you go down the center of that room you come to a door where there originally had been a swinging door the same as saloon-keepers use in the front in the summertime. Two of them doors had been swinging. On the left of that space there is a partition, I should say, about six or seven feet, with tables in behind it. 10

Q From the walls the partition is— A Yes, sir; from the wall out about six or seven feet, facing the bar, on the right-hand side outside of this door leading from the bar there is a space for the bartender to go into the rear room from behind the bar, and I should judge for about five feet from where his place stops to the wall on the south side of the building. There is room for about two or three tables there. Those tables cannot be seen unless you come to the rear end of the bar and put your head around this partition—partition which I should judge was about two inches wide or maybe a little more. 20

Further cross.

Q Could you see those tables if you walked in the door from Branford place that we are talking about? A From Branford place?

Q Yes. A You could from Branford place after you got in about four feet.

Q You never found the Branford place doors locked in all the interviews you made there? A No, sir.

Q They were always open? A Yes, sir. 30

Q So were the Washington street doors? A Yes, sir.

Q How many times do you think you went in this place altogether during the six months you were watching it? A During the six months? Well, I went in, safely say, on an average of eight to ten times a week.

Q Day time and night time? A Night time the most.

The Court. How long have you been a member of the police force?

Witness. Since the 26th day of May, 1911. 40

The Court. Seven years and a half?

Witness. Almost seven years and a half. It will be eight years the 26th day of May.

PATRICK QUINLESS, sworn on the part of the State.

Direct examination by Mr. Mott.

Q You are a member of the Newark Police Department? A Yes, sir.

Q I show you Exhibit S. 3—first, do you know who signed the name Mary Bernard to this paper? A Yes, sir; the stout woman there. 50

Q Do you know whether the paper was read to her before it was signed, or not? A Yes, sir; it was read to her.

Q By whom? A Officer Ritt.

Motion to Direct Verdict of Not Guilty.

Q You were present? A Yes, sir.

Q You signed your name as witness? A Yes, sir.

Q I show you Exhibit S. 1 and ask you if you know who signed the name Rose Kelleher there? A The woman sitting alongside of the stout woman.

10 Q Did you see her sign it? A Yes, sir.

Q Do you know whether the paper was read to her before she signed it, or not? A The paper was read to her, and then we had some conversation and I walked out of the room in the station house and Officer Ritt and her had some conversation. What it was I don't know.

Q Were you present when Officer Ritt wrote these two statements? A Well, I wasn't present all the way through it; I was through some of it.

20 Not cross examined.

STATE RESTS.

30 *Mr. McDermitt.* May it please the Court, the situation presented here on the evidence to my mind ought to prompt the State to abandon this prosecution. Certainly, the record fails to show any knowledge on the part of the defendant in this case as to the violation of any law. If I can read this record or remember this record right, it seems to me that no case is established whatever. I think under the circumstances I will move your Honor to direct a verdict of not guilty. Under the decisions the State must show habitual violation and knowledge on his part. A mere isolated case occurring on the premises without his knowledge cannot be sufficient. I think it is the duty of the Court on this record to direct a verdict, and I move the Court to direct a verdict of not guilty.

The Court. Your ground principally refers to want of proof of knowledge of the defendant. If it can be shown that these acts which may constitute this place a public nuisance—

40 *Mr. McDermitt.* They have not shown any illegal acts.

The Court. —have happened so frequently that he must have know or from which the jury can draw the inference that he did know, then knowledge is proven.

Mr. McDermitt. Are there such illegal acts shown in this case that would be binding in law?

50 *The Court.* Yes. A witness here by the name of—well, there is more or less evidence from these different women, this Rose Kelleher and Mary Bernard, that they went there. There is evidence from William Porchester that he went there on two different occasions and was solicited by a woman, and he made arrangements in the place.

Mr. McDermitt. She has not been produced.

The Court. Do not have to produce her. He testified to that fact. So, therefore, there were acts if believed by the

Emil Engsberg, direct.

jury to amount to a nuisance, and if they were done with the knowledge of the defendant or if he could have prevented the maintenance and conduct of that kind of a place, then there seems to me there is sufficient evidence in the case.

Mr. McDermitt. I will call your Honor's attention to the fact that he testified while he took her out he spoke in whispers so that nobody else heard it. 10

The Court. If a man goes into a restaurant or saloon and sits down at a table and a woman is sitting at another table and she nods to him, and he goes over and then after they have a few drinks they go out together, don't you think that is enough for the jury to draw the inference from that the woman was a prostitute and that they met there for the purpose of arranging for an—

Mr. McDermitt. I think he testified— 20

The Court. We will leave that question to the jury. That is their duty. They can say what they think of that kind of conduct.

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

WM. P. MARTIN, (L. S.)
Judge.

Mr. McDermitt opened for the defense. 30

EMIL ENGSBERG, sworn on the part of the defendant.

Direct examination by Mr. McDermitt.

Q Mr. Engsberg, you are a married man, are you? A Yes, sir.

Q Where is your household; where do you live—your home? A 452 Washington street.

Q And you have been in the saloon business, have you, for some time back? A About sixteen years.

Q And where have you conducted your saloon business for sixteen years? A One in West Hoboken, 183 Ferry street, Jersey City, for eight years and in this place for five. 40

Q Now, at Branford place—did you open that place after the street was cut through there or before? A What is it, you say?

Q Branford place—were you there before the street was cut through or after? A The street wasn't cut quite through yet—it wasn't in proper shape.

Q Now, you took out a license in your own name there, did you? A Yes, sir. 50

Q And what kind of a place is this? Just describe to the jury the dimensions of it. A Well, it is more or less for show girls and show people. These shows change every week at Miner's. Now, there is all kind of girls mixed in with them. I do not even know their names.

Emil Engsberg, direct.

Q You conduct a saloon there and you have tables and men and women come in there evenings from the shows? A Yes, sir.

Q And they get something to drink there and sit down there and go out? A Yes, sir.

10 *The Court.* This is your witness, Mr. McDermitt; do not lead him.

Q Just describe to the jury how your business is conducted there?

A I don't know anything wrong; I might have overlooked something.

Q Were you there upon the occasion when some man who testified here this morning took this girl away from your place? A I do not remember it.

Q Did you see anything of the kind of your own knowledge? A It might have been there while I wasn't there when it was overlooked.

20 Q Did you know anything about any men picking up any girls in your place? A No, sir.

Q Did you ever hear any conversation between men and women that come into your place about going out to any lodgings for sexual intercourse? A Unless they knew one another.

Q Now, did you know any girl that come there for the purpose of leading men to go out from your place to go to some house of prostitution? A Well, I caught one and I chased her out.

Q Who was that? A I don't remember; I don't remember her name.

30 Q When was that? A Oh, that is about eight or nine months ago.

Q Eight or nine months ago? Do you remember the sailor boy who was in here this morning, soldier or sailor boy? A Yes, sir.

Q And do you remember his wife coming in there on one occasion? A Yes, sir; we had to turn her away.

Q Is that the one you mean—is that the woman you mean? A I put her out occasionally.

Q Is that the woman you refer to that you put out of your place? A Yes, sir.

40 Q Why did you put her out? A I couldn't keep her out. I can't lay no hands on the women.

Q Why did you put her out? A I did put her out three times.

Q For what reason? A For being drunk; coming in drunk.

Q Did you sell her anything to drink? A No, sir.

Q She came there drunk, did she? A She came in there drunk to make trouble with her husband—to pick a fight.

The Court. They weren't married, then, were they?

Witness. That I don't know, your Honor.

50 *The Court.* You just testified under oath that she came there to make trouble with her husband. You want to be careful.

Witness. The sailor was just here and he testified himself it was his wife.

The Court. 4th of September, this year.

Emil Engsberg, direct.

Mr. McDermit. No, 1917.

The Court. Then I am mistaken.

Q Now, what time of day do you open your place there usually?
A We open on an average between half-past six and seven o'clock.

Q In the morning? A Yes, sir.

Q Then you go along, I suppose, until you close down—that is along about when? A Well—

Q One o'clock? A No. The bartender as a rule opens up and I used to go on about ten o'clock and took care of the other matters; then I went down to the bank for some change; then went home for dinner. Then I came on about six or seven o'clock, somewhere around that time, and I stood until closing time.

Q How many people by way of customers come into your place evenings there? A That I don't know, counsellor.

Q On an average. Can't you give the jury some idea the business you are doing there? A We run about two intermissions on an average before the show closes. Before the doors opened and then the intermission and then after the show and then run the same show over again.

Q Now, you are right there in the vicinity of how many theatres? How many theatres around your saloon or place? A One—two—three.

Q Have you always maintained these rooms were a lady and a gentleman to come in during the matinee or during intermission—come in and get something to drink and serve them there? A Yes, sir.

Q That obtains in the afternoon as well as in the evening? A Very seldom they come out during intermission in the afternoon.

Q How about evening? A In the evenings some of them come out, but the most of them keep their seats.

Q Do you have any music in your place there? A Why, certainly, we have.

Q Eh? A Sure. They come in to listen to the new program on the piano.

Q You give an entertainment there, do you? A Sure.

Q Tell the jury. The jury don't know anything about your place. What kind of entertainment did you give your patrons? A I have a piano about eight feet high and we change our programs pretty near every week. It means about thirty-five tunes all told.

Q How long does this piano play in the evening? What time does it start its playing? A We very seldom play it in the morning on account of the show girls sleeping upstairs working across the street.

Q You do not occupy any of the rooms upstairs yourself? A No, sir; that is Mrs. Brady.

Q Or any of the house? A No, sir.

Q Your residence is how many blocks away from where your place of business is? A Three-quarters of a mile.

Q You speak about "show girls." What do you mean by "show girls"? A I mean people on the stage in the burlesque.

Emil Engsberg, direct.

Q Burlesque? A Yes, sir.

Q Different variety performers there? A Yes, sir.

10 Q About how many people, for instance—say on Saturday night—about how many people do you suppose you accommodate there by selling them a little drink of some kind, ale, beer or highballs or whatever it may be? A Well, that is hard to tell.

Q Well, about—must be more than three or four, eh? A It is hard to tell.

Q Three or four hundred? A Oh, no. The place ain't that big; wouldn't hold that much.

Q You do not play this music for three or four people, do you? A It all depends. It is a nickle machine, and whoever wants to play it, let them go ahead.

20 *The Court.* He asks you how many people were there on Saturday night, as a rule?

Witness. That is hard to tell, your Honor.

The Court. Of course, it is hard to tell, but you are testifying. How many were there?

Q Give us some idea? A Well, sometimes twenty-five, sometimes thirty, sometimes forty.

30 Q You would know something about, I suppose, how many people were there from your cash receipts, wouldn't you? A About that, yes, sir.

Q The more people was there the more money in the drawer? A Surely.

Q Now, you were around there Saturday nights? A Yes, sir.

Q How many people assisting you there, working? A Two—three, including the porter.

Q How many tables do you think you have got in your place altogether there? A Fourteen tables.

Q Fourteen tables, and how many chairs do you suppose you got there? A About fifty-two.

40 Q About fifty-two chairs. Are these chairs sometimes all occupied? A Very seldom. On an average, about ten or twelve.

Q You know Sergeant Ritt here? A Yes, sir.

Q And he has frequently visited your place, has he? A Yes, sir.

Q And you have had sometimes talk with him, have you? A Mr. Ritt?

Q Yes. A Why, certainly.

50 Q And how often would Mr. Ritt come into your place around there during the last six months you were in business there? A Oh, well, I should say about pretty near, on an average, four times a week.

Q Four times a week. Now, did he buy anything to drink when he came in there? A No; just marched through.

Q Say anything to you? A Very seldom.

Q Did he talk to you at any time? A Very little.

Emil Engsberg, direct.

Q Make any complaint to you about anything going wrong there?
A Not that I remember.

Q Did he ever call your attention to any women or two women or anything in the place there? A Not that I remember.

Q Do you remember whether or not any of these people came into your place were prostitutes or not? A Not that I know of. 10

Q Did any one ever tell you that any of the women that came in there were prostitutes? A I don't remember that. Mr. Ritt might have told me that. It might have escaped my mind.

Q Do you remember when it was he might have told you that? You wanted to keep your license, of course, didn't you? A I tried to.

Q Yes. And you were running your business wide open there, were you? A Yes, sir.

Q You don't rent any rooms there, do you? A No, sir.

Q There are no private rooms attached to this saloon or cafe, are there? A No, sir. 20

Q Do you know any of these girls that were here this morning on the stand here? A I know them from coming in.

Q Saw some of those girls in your place, did you? A Every now and then; yes, sir.

Q Did you ever have any talk with any of these girls? A Very little.

Q Did any one ever tell you that any of these girls were prostitutes? A I do not remember; just as I said before, Mr. Ritt might have told me that, but it escaped my mind.

Q You had no knowledge that any one was coming there to make the arrangement to go cut—date themselves to go out to Mechanic street, the Lackawanna or Delawanna Hotels or any place where it was free and easy, did you? A No, sir. 30

Q How old are you? A I was born on July 1, 1872.

Q Who served the drinks to the people in the evening there to these tables? A Well, that is the bartender and Mr. Van Ness—sometimes myself.

Q Are you behind the bar sometimes? A I wouldn't have been in this trouble if I had took care of that room myself.

Q What do you mean by saying you wouldn't be in this trouble if you took care of that room yourself? A Because the Police Department and Mr. Cozzolino himself know that ninety per cent. of my trouble is due to my own son. 40

The Court. Son, did you say?

A Yes, sir.

The Court. Your own son?

Witness. It is very hard to knock your own son, your Honor, but I can't help but do it in this case, but he has got his drafting cards, so I thought I may not see him— 50

The Court. Just a minute.

Emil Engsberg, cross.

Cross examination by Mr. Mott.

Q I believe, Mr. Engsberg; I believe you said you had a place where the girls in the theatre came in, is that right? A According to the show.

10 Q Yes, from the various theatres around, is that right? A Yes, sir.

Q And you said there were all kinds of girls came in there? What did you mean by that? A I didn't get you there.

Q You said there were all kinds of girls from theatres coming in there. What did you mean by that? A I meant to say that it depends on the shows, what kind of shows that are familiar with the house. The principal comedienues I know personally, and then we generally get that trade.

20 Q What did you mean by saying there were all kinds of girls? A All kinds of girls?

Q That is what you said. A Well, I did say that—maybe I did.

Q Well, what do you mean by that? A All kinds of girls? We have a ladies' toilet. Everything is on one floor.

Q I didn't ask you about the ladies' toilet. I am asking you a direct question. What did you mean when you said there were all kinds of girls came in there? Now, please answer that one question.

A What I mean? I couldn't answer if I tried to.

30 Q Why? A Because I am not a lawyer and am not connected with the law. All kinds of girls; that means as far as I know respectable. If they were not respectable I would not allow them, and I have witnesses right in the jury room now.

Q Oh, I am not asking you about your witnesses, sir. You understand what the word "all" means, don't you? You know what the word "all" means, don't you? Well, now, don't you know what the word "all" means? A Well, all—put the question, Mr. Prosecutor.

Q You want to say that to the jury, do you? You want that to go that way? A Certainly.

40 Q All kinds. You know what the word "kinds" means, don't you? It is the word you used. You know what that means, don't you? A No, I can't figure up.

Q Then why did you use the word if you don't know what it meant? Answer my question. A I really don't—I couldn't answer it.

Q Why not? A I am puzzled because I don't know the meaning of this remark, if I did say that. Probably, of course, I must admit that I did say it; otherwise you wouldn't throw that up to me, Mr. Prosecutor.

50 Q No, I wouldn't. If there is any doubt about it we will appeal to the record. A There is twelve jurymen. They overheard the conversation.

(Testimony read.)

Q Now, I am asking you what you meant by that, that there is all kinds of girls mixed in with them; that is, the girls that came to

Emil Engsberg, cross.

your place? A I couldn't answer on that, Mr. Prosecutor, if you would hang me.

Q Well, there isn't enough for me to hang you. It is the jury that is going to deal with this question.

Mr. McDermit. What do you want him to answer? What is the trouble? 10

Mr. Mott. There isn't any trouble where he needs your assistance, I do not believe. I am asking him what he meant by the use of the three little plain words which he says he used, there was all kinds of girls mixed up with them.

A Well, it means when a certain show hit town others mix in with them—even my own wife and so forth. They greet them. We give them flower pieces every now and then. That is all I can say about it.

Q That is what you meant, is it? A That is just about what I meant. In other words, I should have said women instead of girls. Girls belong in school, at home, with mamma. 20

Q Then we will consider the word women in the place of girls. There were all kinds of women, then, you say you mean. What did you mean by that? A Well, just about the same thing.

Q That is the only explanation you want to give the jury, is it? A I couldn't give you any more, Mr. Prosecutor.

Q Now, Mr. Ritt came to see you, didn't he; the officer did, didn't he? A He certainly did.

Q How many times do you think he came there to see you about your place? A Oh, I should say about four or five, six times a week. Many times I wasn't there when he— 30

Q I am just asking when you were there. A Well, I should say about four or five times.

Q A week? A Yes, sir.

Q For how long a period? A About six months; six or seven months, probably eight.

Q What did he say to you when he would come in? A Well, one night, I must admit, Prosecutor, I was under the weather.

Q Take your hand down, please, and then we can hear you better. A And Mr. Ritt and I, we had a little argument. I said to Mr. Ritt, "Who is running this place"? Mr. Ritt was right on the witness-stand this morning. The way that he told that I gave him an argument, "Who is running this place, you or I," and he said the same remark that he made. It came back to me, "I am going to show you how to run the place." 40

Q You mean you were a little under the weather; you had been drinking some yourself. Is that what you mean? A Yes, sir.

Q Well, the argument grew out of—over a woman that was in your place, didn't it? A I don't remember. 50

Q What did you think he was talking about? A Why, he was—he must have been warning me of certain characters which I overlooked—didn't watch.

Q Well, now, on the other times that you had not been drinking what did Ritt say to you? A That I don't remember.

Emil Engsberg, cross.

Q Well, how does it happen you remember what he said when you were under the influence of liquor and can't remember what he said when you were sober? A I heard that this morning, what Mr. Ritt said himself. He swore to that, so that it must be pretty near true.

10 Q I am not asking you what you heard from Mr. Ritt; I am asking what occurred. Do you remember? A Very little.

Q Well, didn't he tell you that you had bad women in there and you must keep them out? A He did.

Q How many times did he tell you that? A I should judge about three or four times.

Q Didn't he tell you that every time he came in when you were there? A No, he did not.

20 Q Didn't he tell you that most every time you were there? A He shot through and he moved—he went his way, but he didn't tell me every time. They had been sneaking in on me and I couldn't watch them very closely.

Q Who had been sneaking in on you? A Those girls.

Q What girls? A Some of those girls what they called prostitutes. But what they call them, I really don't know. It is not my business to know what they do.

Q It isn't your business to know what the people do in your place; is that your idea? A I can't go up to a lady and say, "You are a prostitute."

30 Q Answer my question. You have just said it wasn't your business at all. I am asking you if it is your idea that it was not your business to know what was going on in your place? A It was my business to know; yes, sir.

Q And why didn't you find out? A Well, I can't be there twenty-four hours.

Q I am asking you at night when you were—only when you were there—why didn't you find out? A How can I trace them up?

Q Well, is that the only reason you want to give? A Now, listen, Prosecutor.

40 Q No, no. Is that the only reason you want to give? A That is about the only reason I can give.

Q Didn't Ritt point out to you certain girls and say, "See here, do you see that girl? She is a prostitute and you have got to keep her out of here"? A He put me wise—next to some; yes, sir. I said, "Stay out of here."

Q And then the next time he came in there the same girl was there, wasn't she? A That I can't remember. I wouldn't swear to that.

50 Q Didn't he, the next time he came in, point out the same girl and say, "Why, here is the girl I told you the other night to keep out of here." Didn't he do that? A I guess he did do that.

Q How long have you known Rose Kelleher? A I should say about four or five months.

Q And how often did she come to your place? A About three or four times a week, I should judge.

Emil Engsberg, cross.

Q Yes. I am not asking you to be exact. I do not expect you to be. How long have you known the other girl, Mary Bernard? A Which is that? I don't know them by name.

Q (Stand up, Mary Bernard.) That girl. A About three or four months.

Q How often did she come to your place? A About two—three or four times a week. 10

Q A week, you say? A Yes, sir.

Q What time would there girls come into your place? A Well, in the afternoon.

Q No, in the evening. A In the evening? Well, they used to come around every now and then in the evening.

Q Well, when they came to your place two or three times a week what time in the day did they come? A Partly afternoon and partly evening.

Q What time would they come in when they came in in the evening? A About seven or eight o'clock. 20

Q How long would they stay? A About half hour or hour; buy a glass of beer, use the toilet and walk out.

Q Which did you have the most customers, men or women, in the evening? A Men, all the time.

Q How many women did you generally have there in the evening? A Women? I don't know; they used to come and go.

Q Well, about how many of them, on the average, in the evening? A I don't know. Be about twenty sometimes; come in and just make use of the toilet and walk out again. Now, I can't refuse anybody from using the toilet. 30

Q How many of the women came in and sat down and had a drink during the evening and stop and talk? A Well, I can't figure that out.

Q Oh, I mean about how many. A dozen? A No.

Q Ten? A Sometimes when I didn't have any at all I had no trouble.

Q Ten? Answer my question. A No, sir.

Q How many would come? A All I know is the two over there, my own wife— 40

Q Won't you do as well to leave your wife out of this? A Certainly.

Q Well, then please do it. Who would come; how many of them? A I don't know; I couldn't answer that question.

Q Well, were there sometimes ten or a dozen of these women at night? A No, sir. They used to come and go with families—come with children, some without children.

Q Did May Bernard used to bring her children along with her? A May Bernard? I don't know her.

Q Yes, she just stood up. A Oh, is that her? Well, that goes to show how much I know about the girls—the women. 50

Q Didn't she bring her children with her? A Not that I know of.

Q Would the Kelleher woman bring her children with her? A Oh, no.

Emil Engsberg, cross.

Q Well, how long would Rose Kelleher stay when she came in to your place at night? A Figure that up; I don't—

Q I mean about. Would she stay five minutes or would she stay half an hour? A Sometimes ten minutes, sometimes twenty minutes; sometimes I used to sit down with them.

10 Q You used to do what? A Sit down with them.

Q You used to sit down with them? A Yes, sir.

Q Did you enjoy this company? A Why, absolutely.

Q Did you know the men that came in there? A No, hardly.

Q Knew some of them? A No.

Q Didn't know any of them? A Just as I said this morning, we run two intermissions; they come in streams; we don't know any of them.

20 Q I didn't ask you about intermissions. I asked you whether you knew the men that were in your place in the evening? A I don't know anybody by name, Prosecutor. Go down and tend bar yourself, and find out.

Q I have a better occupation than that, sir. A I am glad to hear it.

Q Did you see Rose Kelleher and May Bernard generally when they went out of your place? A Outside?

Q When they went out; when they left. A No, sir; never bothered me.

Q Now, Officer Ritt pointed out Rose Kelleher to you as the woman that he objected to being there, didn't he? A He did.

30 Q And May Bernard? A That I don't remember.

Q He told you that Rose Kelleher was a prostitute, didn't he? A Now it comes back to me that it was not Mr. Ritt that told me; it was Officer Baumann that told me.

Q Officer Baumann told you that both these women were prostitutes, didn't he? A One of them.

Q Which one? A Rose. He talked about Rose.

Q When did he tell you that? A Well, that is some time ago.

Q Well, as near as you can locate it, about how long was it? A I guess about a month ago.

40 Q When was your place closed up? A That is about a week ago.

Q What? A About a week ago.

Q Did Baumann ever tell you that more than once? A No, only once.

Q How often was Baumann at your place? A Oh, he been going and coming for the last five years.

Q Well, since the 1st of February last how often has he been to your place at night? A Well, I should say about twenty times.

50 Q What was it your son did that got you in this trouble? A I don't remember, Mr. Prosecutor, what he did, after hours. I couldn't control—

Q Wait a minute. I didn't ask you about the control, Mr. Engsberg. You told this jury this morning— A Yes, sir.

Q —that your trouble was caused by what your son did.

The Court. Ninety per cent. of his trouble.

Emil Engsberg, cross.

Q Ninety per cent. of your trouble was caused by what your son did. Now I am asking you to tell this jury what your son did that caused you ninety per cent. of this trouble? A Well, the only way to find that out is to get Mr. Ritt and Mr. Cozzolino on the stand, because he said right up there in the City Hall—whatever he did do that I don't know.

10

Mr. McDermitt. I don't see where this is material to the issue, the question of his son getting him into some trouble.

The Court. He used the expression this morning that ninety per cent. of the trouble then was caused by his son. It is perfectly proper to inquire what the cause was.

Mr. McDermitt. But now it develops into some difficulty at the City Hall with Mr. Ritt and Mr. Cozzolino.

The Court. You are taking your chances on the answer. You did not object when the question was asked and you are too late now.

20

Q You said you did not want to knock your son, didn't you? A That is what I said.

Q What did you mean by that?

Mr. McDermitt. I object.

The Court. Objection overruled.

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

30

WM. P. MARTIN, (L. S.)
Judge.

Q What did you mean by that? A I refuse to answer on that question.

The Court. On what ground? What ground did he state, Mr. Stenographer?

Witness. I object.

The Court. Why, Mr. Engsberg?

40

A Why, no use pulling my own flesh and blood in this deal.

The Court. That isn't any answer. I instruct you to answer.

Witness. What should I answer?

The Court. As to the facts.

A I have always been like everybody—boys—and that is all.

Q (Question read.)

The Court. Answer.

50

Witness. What should I answer? I don't know what to answer. If people don't know, who should know it?

The Court. Just a moment. You have been instructed by the Court to answer that question.

Emil Engsberg, cross.

Witness. What should I answer?

The Court. Well, answer it.

Witness. What should I answer?

10 *The Court.* I don't know what you should answer. I don't know what the fact is, but you answer the question; not by another question.

Witness. He has been travelling around with—around these chop suey houses and making all kinds of bad stuff for me and through that, of course, the place got a black eye. That is all I can say. I can't go any further.

Q How did your place get a black eye by anything your son did in a chop suey house?

20 *Mr. McDermitt.* I object.

The Court. Objection overruled.

Witness. Well, he is bearing my name, Prosecutor; he has got my name.

Q How does anything that your son did in a chop suey house reflect on your saloon on the corner of Washington street and Branford place? A Because my name is Emil Engsberg; that is all I can say.

Q Now, I ask you what was it your son did that caused you ninety per cent. of the trouble you were in?

30 *Mr. McDermitt.* I object.

The Court. Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

40 A I couldn't answer that question because very few children tell their folks what they are doing.

Q Mr. Engsberg, did you intend to speak a falsehood about your son this morning when you said that ninety per cent. of your trouble was due to him? Answer that question now.

Mr. McDermitt. I object.

The Court. Objection overruled.

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

50 WM. P. MARTIN, (L. S.)
Judge.

A I was told by the Police Department and Mr. Cozzolino that it was so. Whatever they said they know themselves, but I cannot tell.

Q Now, tell me what they said. A I am an ignorant father.

Emil Engsberg, cross.

Mr. McDermitt. I object to that.

Witness. I am an ignorant father and I don't know anything about that.

Mr. McDermitt. I respectfully submit that this line of examination now has exceeded the bounds of propriety; arraignmen by Cozzolino of this man's son has no bearing upon this case, even if he has testified that some of his burdens—

10

The Court. He is charged with keeping a disorderly house in that he has permitted or maintained a place where indecent, ill-governed and improper acts have been permitted and carried on. Now he says that ninety per cent. of his trouble is due to his son, and he is asked what that means. What did he say—what did his son do—what is he talking about? Now, if he brings in other things it is not the fault of the question. You cannot move to strike out the answer because it is not responsive.

20

Mr. McDermitt. I ask an exception to that line of reasoning and argument.

The Court. No; I will not allow you an exception to the line of reasoning or argument, but I will allow you an exception to the ruling of the Court.

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

WM. P. MARTIN, (L. S.)
Judge.

30

Q I ask you again, what did your son do that caused ninety per cent. of your trouble? A I could not go through that—I could not answer that question if I tried to. It was told to me by the Police Department—Mr. Cozzolino.

Q What did Mr. Cozzolino tell you? A He didn't tell me anything.

Mr. McDermitt. I object to the conversation between Cozzolino and this defendant about his son. We are going way beyond the latitude that ought to be allowed the Prosecutor on cross examination.

40

The Court. Isn't his defense that there were no prostitutes in his place with his knowledge or privilege?

Mr. McDermitt. He states the assumption that there were prostitutes.

The Court. If that is what he meant, then he can be cross examined on that. Overruled.

50

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

WM. P. MARTIN, (L. S.)
Judge.

Harry H. Van Ness, direct.

Q What did Cozzolino tell you? A I was not speaking to him—he was not speaking to me.

Q Who did speak to you? A My manager. It was brought back to me.

Q What is your manager's name? A Mr. Van Ness.

10 Q Then Cozzolino and the Police Department did not say anything to you about your son; is that it? A Not exactly.

Q Did they say it to you? A No, sir.

HARRY H. VAN NESS, sworn on the part of the defendant.

Direct examination by Mr. McDermitt.

Q Where do you live? A 165 Washington. My father lives at 468.

20 *The Court.* 165 Washington street, Newark, you live?
Witness. Yes, sir.

Q Where do you live? A 165 Washington street; father and sister live at 468; have been for twelve years.

Q Do you know Mr. Engsberg, the defendant in this case? A Yes, sir.

Q And were you connected by way of employment with this saloon at Branford place and Washington street? A At the time I went to make application; yes, sir.

30 Q How long were you connected with the place? A This past time?

Q No, entirely; the whole business? A Well, I have been frequently to Mr. Engsberg's place ever since father lived down there, and my father died five years ago and I moved to 165.

Q You have been in and about assisting him? A Yes, sir.

Q And sometimes acting as sort of manager for him? A Not until I made an application for the transfer.

Q That was recently here? A Yes, sir.

40 Q That hasn't anything to do with the matter we are trying here. That was a recent thing. A No, sir.

Q Were you in that place in July and early part of August? A I was working for the American District Telegraph Burglar Alarm & Fire Alarm system. I was practically in there day in and day out.

Q What was the conduct of this place there so far as you observed? A Nothing did I see out of the ordinary.

50 Q You can describe to the jury the premises as they are there. What kind of premises are they? Just explain. A There is a long bar as you go in from both doors on Washington street, one on the corner and one south of Branford place. The bar is all open. think a little piece of partition is up there now. Measured about—oh, I should judge about two and one-half or three feet.

Q Where is the telephone company from your place? A Right opposite.

Q That is the large big brick building, five or six stories high? A Yes, sir, all of that.

Harry H. Van Ness, direct.

Q Where are the theatres from your corner there? A Right opposite is Miner's, around the corner is Proctor's, down the next corner is Keeney's.

Q You did some business there by way of supplying these people with refreshments there? A In drinking, yes, sir.

Q You had tables. He says about fourteen tables; is that right? A I judge there are fourteen—twelve or fourteen. I wouldn't say which. 10

Q And a half hundred chairs; is that right? I think he said fifty-two approximately? A Forty-eight or fifty-two chairs, I guess, there was there.

Q Fifty-two chairs; something like that. Now, what would go on there during the afternoons and evenings when you were there. You say you were there continuously. A Nothing, only various people coming in and buying drinks, be on their way. 20

Q What kind of various people? A As I say, maybe a lady and gentleman would come in and maybe a lady, gentleman and lady and baby come in together, get a drink or two and be on their way; maybe a lady come in herself, have a drink and be on her way. 20

Q And how is this place located? How is it laid out? Tell the jury how it runs? A It runs right direct from—you go in either door from Washington street—there is two entrances there—bar on the right going in. The place is all open—the back room.

Q Are there any concealed corners there where people can hide from view? A There is only one small piece of partition there; I think it is about two and one-half to three feet wide. 30

Q Now, then, how many people come in there in the evening? A Well, that is hard to tell. It varies, the amounts that come in there.

Q There are what are called intermissions in these theatres? A Yes, sir.

Q When these intermissions come do you have any trade? A Afternoon and evening.

Q What would be the volume of trade there during intermission? A Some days bigger than the others.

Q About how many? Two people or what? A Be maybe ten or twelve—maybe a dozen and a half—something like that. 40

Q That would be intermission—come in to get something to drink between the acts, do they? A Yes, sir.

Q Now, in regard to your sitting-room there for ladies, generally how many people come in there in the evening? A Well, maybe a dozen, two dozen, three dozen; it varies.

Q Music there? A Automatic slot machine.

Q Automatic slot machine. And that could be set off by anybody, could it? A Yes, sir.

Q Now, you saw a couple of ladies that were called here today; one lady who describes herself as Rose Kelleher and the other one as May Bernard. You saw those ladies here. Did you at any time when you were there— A Why, they came in; yes, sir. 50

Q What was their conduct when they came in there? A I can't say nothing against their conduct, only I was told when I went down

Harry H. Van Ness, direct.

to make the application, me being a new comer there, which I expected the license to be granted—that if any of these elements should visit there that Mr. Ritt himself from the inspectors—from Mr. Corbally's office, and I didn't know them and they should tell me one after another.

10 Q That is what they told you when you made the application for the license? A No, sir, I told them that.

Q Now, you were about to open this place or take this saloon over? A Yes, sir.

Q When you went down to take the saloon over that is what these people told you down at the City Hall? A Yes, sir.

Q That is what you want to convey. That is not what I want to get. During the time that these different people visited the saloon in the evening or afternoon when you were there, what did you observe—what did you see these people do, if anything? A Nothing
20 that I can say. They come in and got their drink and was on about their business.

Q Now, did you ever see any men there make any appointment with girls to take them out to any house of assignation or other place—bed house, or anything? A No, sir.

Q Did you hear any conversation between any of these girls—these two girls—that they have mentioned—soliciting or asking them to go out to any such place? A No, sir; I did not.

Q Did you know either one of these girls were alleged to be prostitutes? A No, sir; I did not.
30

Q Do you know, in fact of fact, whether the actresses of these different shows had been there in the evening? A Yes, sir; they do. They came from upstairs, which is a boarding house conducted by Mrs. Brady—come buy their drink and be on their way, both afternoon and night.

Q Do you know how many rooms are upstairs kept by Mrs. Brady as a boarding house? A No, sir.

Q Or have you any idea? A I couldn't say.

Q Would these people come in there in the evening after the show? A Yes, sir.
40

Q Sit down and have a drink? A Yes, sir.

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

Q Would she come in there once in a while, too, and sit down? A Yes, sir.

Q And sometimes would there be as high as twenty-five or thirty couples? A Yes, sir.

Q Would that be more so on Saturday night? A Well, Saturday night, as a rule, the city throughout is pretty busy; on Friday and Saturday night.

Q You are on the first floor, there? A Yes, sir.
50

Q Right even with the street, or is there a step up, which? Is there a step up? A Couple of stone steps.

Q Yes; but your place is open there, is it, all the way around there? A Yes, sir.

Q You can see from the front bar into the rear? A Yes, sir.

Harry H. Van Ness, cross.

Q You can see from the rear into the front? A Yes, sir.

Q Is there any way you could secret yourself so you could not be seen? A Only they mentioned about this little piece of partition, that I should judge was about two and one-half or three feet—the other was all taken down.

Q That is the wing that took off the staircase going upstairs? A Right at the staircase. 10

Q So that the width of the staircase going from the front door or going to the street is built off by the partition? A Yes, sir.

Q No swinging door? A No.

Q Been no swinging door there all summer or all winter? A No, sir.

Q Nothing that looks like a swinging door or obstruction during your entire knowledge of it? A Swinging doors on the front.

Q Those were all the swinging doors? A Yes, sir. 20

Q They were there in July? A Yes, sir.

Q Didn't keep your glass doors closed? A No, sir.

Q Didn't keep your glass doors closed all last summer there? A No, sir.

Q Could see over the doors and under the doors? A Yes, sir.

Q What is those doors' width? A About two or two and one-half feet door.

Q So that no time when you were operating business would the real doors be closed so that people could not see in, was there? A No, sir.

Q And they were the ordinary doors. Would you just mind showing to the jury, assuming where you are now— A The door, the whole top is open and the whole bottom is open. 30

Q About a foot and a half open under each door? A About a door like that (indicating).

Q About two feet, would that be? A Yes, sir; from the street.

Q Was that just enough to hide the general view from the street? A Yes, sir.

Cross examination by Mr. Mott.

Q Where did you say you had been working since February? A Why, I was at the Postal Telegraph or the American District Telegraph, burglar alarm and fire alarm system, and the Packard service station. 40

Q You have been working constantly? A Yes, sir.

Q Since February? A Yes, sir.

Q How long did you work at the first place you spoke of? A Why, I guess I was with Mr. Kreijci about a year and a half.

Q Since the 1st of February? A Well, I was with the bus line people, too, on Halsey street, previous to them being sold out.

Q Where have you worked since the 1st of February? A Just to recall that, I couldn't give day or date. 50

Q Since the 1st of January, then, if that will help you, where have you worked; this year? A Mr. Kreijci burglar alarm fire system.

Q How long did you work for him? A I guess, this year, was three to four months of this year.

Harry H. Van Ness, cross.

Q Beginning when? A I guess around the first of the year.

Q First of the year? A Yes, sir.

Q You worked for him about three months? A Of this year.

Q And until January, February and March, perhaps? A Yes, sir.

Q Then whom did you work for? A Packard Service Station,
10 at Alpine and Sherman avenue.

Q How long did you work for the Packard Service Station? A Previous to the work of me taking the transfer.

Q What? A Previous to the week of me taking the transfer.

Q Previous to the week—you mean before you applied for the transfer you had worked for them a week? A No; I was with them up until a week before that.

Q And, then, since the 1st of January you have worked for those two places, have you? A Yes, sir.

Q Up to the week before you applied for this transfer? A Yes,
20 sir.

Q What time did you go to work in the morning? A In the morning? Seven o'clock.

Q How long did you work? A Why, I—sorry to say a long day, twelve hours.

Q Where was the office of the telephone company? A At 9-15 Clinton street.

Q Clinton street is on the other side of Broad street? A Yes, sir; just this side of Beaver between Broad and Beaver on Clinton.

Q Mutual Benefit Insurance Company is on one corner? A This
30 is in the Union Building, I think.

Q You were in the Union Building? A Yes, sir.

Q And you worked there twelve hours a day? A Yes, sir; day and night. I done the same at the Packard Service Station.

Q Beginning at seven o'clock in the morning? A Yes, sir. I come up during the daytime—I would come up for my lunch because my brother was working at the Newark Lunch, and when I would be up I would stop at Mr. Engsberg's on my way up and back.

Q During the daytime when you were in Engsberg's was while you were up for your lunch at noon? A Unless I had to come up—I
40 had charge of the machines and all down there. If there happened to be supplies I would need from Macknet & Doremus I would come up and get it myself. Sometimes of a day I may come up two or three times.

Q Yes, and those are only occasions during the daytime when you went into Engsberg's? A And when I got out of a night and go to the moving pictures.

Q I am not asking you night; I said explicitly daytime. A Daytime, yes; daytime.

Q Well, you didn't get through working until nine o'clock at
50 night? A No; I went in seven; I was through half-past six or quarter to seven. The man would come half-past six. I would be there the next morning to relieve him half-past six.

Q When you got through work where did you go ordinarily? A Uptown. Go to see my brother or brother-in-law, worked for the

Harry H. Van Ness, cross.

Newark Lunch. He was manager there. He was down Market street and then he was at the Broad street house.

Q Every night you would go to Engsberg's place? A Yes, sir; I would come around or go to the moving pictures.

Q I didn't ask you whether you would stop around or go to the moving pictures; I asked you if you went to Engsberg's place practically every night? A I wouldn't say every night. 10

Q Since the 1st of February. A I would say every night.

Q How often? A Four or five times a week.

Q What time would you get there? A I would be there various times.

Q Tell us. A Maybe before the show would take in or after the show was taken in.

Q Give us the hours. We are not as familiar with the shows as you seem to be. A Movies.

Q What time would you get there? A Sometimes half-past seven or eight or I come around after half-past ten at night. 20

Q When you got there at half-past seven or eight how long would you stay? A Possibly go to one of the shows. How long a time it would be I do not recall.

Q How long would you say? A Maybe half hour, three-quarters or maybe an hour.

Q When you got in later how long would you stay? A I may stay until midnight and maybe be after, and maybe I would go away before midnight.

Q You made application to the excise authorities for this license, you say? A Yes, sir. 30

Q When did you make that? A Why, I guess it was around first part of August, the first week of August.

Q You didn't get it, did you? A No, sir.

Q You say that you supplied refreshments to Mr. Engsberg? A Refreshments?

Q Liquid? A Yes, sir; liquids.

Q What liquids? A Beer, ginger ale, sarsaparilla—anything like that.

Q Where did you get it? A At that time—this last time? 40

Q Since February. A I didn't say I supplied it before. I said the six weeks I have been there.

Q Now, what six weeks were you there? A This last past six weeks.

Q You are not there now? A No, sir; I haven't been there for a week.

Mr. McDermitt. Nobody else is there.

Witness. The place has been closed.

Q Nobody has a license for it now? A No, sir. 50

Q Then you were there for about six weeks up to the time—to about a week ago? A Yes, sir; week ago today—yesterday.

Q Were you in charge of the place there at that time, during those six weeks? A Depending on the transfer of license; yes, sir.

Harry H. Van Ness, cross.

Q You took the place over, did you not, Mr. Van Ness? A Yes, sir.

Q Expecting or hoping to get the license? A Yes, sir.

Q And while you were there in charge of the place you bought your own material; is that what you mean? A Why, there is quite a lot of stuff I got receipts for that came in my own name, yes, sir; paid for it every day as it came in.

Q Yes; I do not doubt it. Before you took over this place about six or seven weeks ago did you supply anything to Mr. Engsborg? A No, sir.

Q When you went down to the City Hall to get this license you had a talk with some of the authorities down there, you say? A Yes, sir.

Q With whom? A Why, there was various number of men down there that knows me, Captain Connelly, Lieutenant Ebert and Mr.—

Q With whom did you have the conversations that you refer to? A Nobody but Mr. Cozzolino.

Q Now, what did Mr. Cozzolino say to you?

Mr. McDermitt. I object.

Mr. Mott. He stated some conversation he had at the City Hall when he went down and made his application for his license. I am just cross examining on part of his direct testimony.

Mr. McDermitt. I brought no such conversation out.

The Court. It came out. That is true. You let him tell what he did and said down there when he was trying to get a transfer.

Mr. Mott. He told us what Mr. Cozzolino told him about the people.

Mr. McDermitt. I object to the question.

The Court. Objection overruled.

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

WM. P. MARTIN, (L. S.)
Judge.

Q Just what was it, now, Mr. Van Ness, that Mr. Cozzolino said to you? A Must I answer the conversation between myself and Cozzolino?

The Court. Yes.

Witness. He says, "Van Ness, you know Mr. Engsborg's license has been revoked—he had inquired about my reputation of the different officials I know and everything—" and he says "If you take hold of this place," he says, "I want it run right." I said, "Mr. Cozzolino, I will do it," which I told Mr. Ritt sitting there. "Any night or any time I should be absent from the place—that is, I couldn't stay there twelve or four-

Harry H. Van Ness, cross.

teen hours, all day long—if there is anything they seen wrong they should notify me.” Mr. Ritt will verify to the same statement, the same as I told Mr. Cozzolino, that any of the men, inspectors, going through there, they should notify me and I would rectify it.

Q Cozzolino said something to you about women going in there, didn't he? A He said different characters visiting the place. He didn't mention any character in particular, and as I said to him; I said, “The characters you meet or see, let me know and I will rectify it.” No particular characters were named there. 10

Q But he did refer to them generally? A General, yes, sir.

Q Didn't he say to you directly that prostitutes had been allowed to go in there? A Not prcstitutes. He didn't use that word.

Q What word did he use? A He said general variety of different elements. He didn't use the word “prostitutes.” 20

Q General variety of— A Of element. Well, of course, I can't just state it as I would like, but you understand what I mean.

Q Well, I don't want to guess at your meaning? A Bad element of the different people.

Q Undesirable element? A Yes, sir. Not only my place. He said, “That frequent the city throughout.” He didn't mention Mr. Engsborg's place particularly. He said, “That frequents the city throughout,” and he says, “As soon as you find out,” he says, “Why,” he says “keep them out.”

Q Did he use the expression “undesirable elements”? A I didn't mean to say he said elements. That was the way he—I can't just place it. 30

Q Didn't he say something about the women from the street? A No, sir; he didn't mention no women, prostitutes or nothing.

Q Did you have any idea what he was talking about? A Well, I worked for Mr. Murray and I worked for the Athletic Club and everything, but what he told me and what I see day in and day out, I presumed that was what he meant.

Q You mean women from the streets; that it is? A He didn't—

Q I know, but I say you presumed that is what he meant? A He said the elements that were bad for the places, that made the business throughout the city bad. He didn't mention prostitutes or anything like that in particular. 40

Q You have been a bartender? A I worked for Mr. Murray some years ago some time and for the Newark Athletic Club when they had the building in Beaver street, and Mr. John Griffin, when the headquarters used to stand on Bank street.

Q You mean worked as bartender? A Serving drinks and everything. Before they put the Kinney building there I worked for Mr. Murray and the son Harry, now which has become of age within the last year. 50

Q In the Kinney building? A Where Mr. Murray's cafe used to be, next door.

Q It is gone now, though? A Yes, sir.

Harry H. Van Ness, re-direct.

Re-direct.

Q Now, let me see. You came there about four or five times a week in the evening, did you? A Sir?

10 Q You came to Engsberg's about four or five times a week in the evening, did you? A Yes, sir.

Q And you remained until ten, eleven or twelve o'clock some nights?

Mr. Mott. I object to it as leading.

The Court. Objection sustained.

Q During the visits that you made to this place during the times that you state was the defendant there in the evening? A Why, various times, yes, sir; not always.

20 Q During any of the numerous occasions that you went there was there any disorder of any kind there? A No, sir.

Q During the times you were there were any soliciting or attempts made by any of the women who came in there to take men out of the place? A Since I have been there?

Q Yes. A No, sir; because I wouldn't allow it done, because I was told that—

Q When you went there as a visitor—as a customer—working for the Packard people and other people—when you visited there in the evening were men taken away by women from that place?

30 A I can't say as I ever saw it.

Q You were there four or five times a week? A Yes, sir.

Q Every evening? A Yes, sir.

Q You virtually made that your headquarters in the evening? A Practically, yes, sir.

Q Is that right? A Yes, sir.

Q You are familiar with all that was going on? A Yes, sir.

40 Q During that period in January, February, March, down to and up to six weeks ago when you took possession of the place was there any disorder there at any time that you observed? A Not as I can recall.

Q Were there any women soliciting men or prostitutes acting disorderly in that place? A I can't say that there was; no, sir.

Q (Will you two ladies please stand up?) Did you ever see those women around the establishment? A Yes, sir.

Q And how frequently did you see them there? A Why, since I have been there—

Q No, before you— A I can't recall seeing the ladies before.

50 Q Never saw them? A No, sir.

Q Only since you started in on it? A Yes, sir.

Q Then they came in there? A Yes, sir.

Q Since you took hold of it? A Yes, sir.

Q Never saw them prior to that time, had you? A I cannot recall that I did; no, sir.

Harry H. Van Ness, re-cross.

Re-cross.

(Testimony read.)

Q What was your— A Why, the way that women not only visit that place particular, but various places in the city that they were being put out one after the other. 10

Q You mean bad women, don't you? A I couldn't say. That is what was told me. I can't say a woman is bad or anything when I didn't see her do nothing.

Q But you thought—that is what you were told? A That is what I was advised to watch out for.

Q Who advised you that? A Mr. Cozzolino himself; also by various men from headquarters and everything.

Q Now, in all the period of time you visited this place prior to the time you ran it yourself, at no time have you even seen those two girls there? A Since I have been there the six weeks? 20

Q No, before you took the management of the place. A I couldn't say that I did.

Q But since you took the management of the place this last six weeks those people came in there? A Buy their drink and was off about their business.

Q How often were they in there? A I don't think I have seen those ladies there more than three times since I have been there.

Q But in all the times you visited Mr. Engsberg's place prior to the time you took the place you never saw these ladies there? A No, sir, the little time I put in there, I did not. 30

Q Did you order these people out of your place? A Only as they came in one by one. I wouldn't take no chances on any of them, good, bad or indifferent, because I know nothing about the women that come in there, to insure myself, I told them each and every one.

Q You saw no acts about these people since you started to run the place that were— A No, sir, I did not.

Q The detective officers came there all the time, didn't they? A Yes, sir; Mr. Ritt. I used to keep my family there with me. 40

Mr. Mott. What?

Mr. McDermit. He says Ritt has been in there.

Q Mr. Ritt has seen these people in there? A Yes, sir.

Q How often has Officer Ritt visited the place since you have been running the place? A Mr. Ritt? I guess five nights out of the week he went through there.

Q How often did these girls come to your place during the six weeks you were running it? A I would see them maybe once a week—maybe twice a week. 50

Q During that period of time did you ever see anything wrong about these two girls?

Mr. Mott. I object to the question as having been answered three or four times.

Julia Engsberg, direct.

(Question read.)

Witness. No, sir.

The Court. I do not think the question is competent.

By the Court.

10 Q What do you mean by the expression that these women would come in there and get a drink and "go on about their business"? If their business was that of prostitution you did not mean that? A No; the same as I would say about myself; go into Murray's or Henegan's, get a drink and go off.

Q And go out? A Yes, sir.

Q Do they serve drinks to women without any food or anything? A It always has been done.

Q Down there? A Yes, sir.

20 Q No food? A No, sir.

Q And any woman—it was the practice ordinarily for a woman to go in there and buy a drink alone and walk out again? A Yes, sir. I have seen them come in there with babies and get their drink and be on their way.

Q I am not talking about a woman with a baby; I am talking about a woman alone. A Yes, sir; a woman alone.

Q She could go in there and buy a drink and go out again? A Yes, sir.

Q And it was not a restaurant so far as you know? A No, sir.

30 Q It was a saloon? A Yes, sir.

Further direct.

Q This room you call the backroom is the front room on Branford place? A Opens on Branford place.

Q So it is the front room on Branford place? A It is back of the bar.

Q There is only one bar in the room and that is on Washington street? A Runs parallel with Branford place. You pass the bar and then go into the back room.

40 Q Do you know May Gillen? A Mayor Gillen, yes, sir; I know of him to see him.

Q No, this woman, May Gillen? A No, sir.

JULIA ENGSBERG, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q You are the wife of the defendant in this suit? A Yes, sir.

Q How long have you been married? A Twenty-two years.

50 Q And how many in the family have you got? A I got three children.

Q And where is your residence, your own residence? A 278 Washington street—no, 152.

Q How far is that away from the saloon business? A About ten minutes' walk.

Julia Engsberg, direct.

Q Now, of course, you know where this saloon business is conducted? A Certainly do.

Q And you went there, did you? A Yes, sir.

Q Now, take the present year, commencing along, say in January, down to the time that Mr. Van Ness took possession of your husband's saloon, how often had you been there this year? A Well, I used to stop in sometimes when I go downtown shopping and sometimes I used to go there in the evening. 10

Q How often a week would you go into your husband's place there? A Probably two or three times.

Q When you went there in the evening how long would you remain there? A Well, sometimes I would stay an hour, sometimes longer; just the way—

Q Now, these ladies and gentlemen come in there? A Certainly.

Q Come in there to get something to drink? A Yes, sir. 20

Q Do you know some of these people yourself? A No, sir.

Q Did you know any of these actresses that came there? A I just seen them there. Sometimes they used to speak to me.

Q Did you sit down there in the place yourself? A I did.

Q And did you drink there yourself? A I did.

Q And your husband drink there with you? A Used to sit at the table with me, certainly.

Q Now, did you see those two girls back in the room there (stand up, young ladies, please). Rose and the other young lady? A I don't know. I don't remember. I didn't take much notice of it. 30

Q A good many people came there in the evening, didn't they? A Yes, sir.

Q A good many ladies and gentlemen? A Yes, sir.

Q Some people come from the showhouses, did they? A Yes, sir; stopped in for a drink and go out again.

Q Who lives upstairs over this saloon? A The Bradys.

Q What do they keep there? A A boarding house.

Q Boarding house for what? A For actresses, I suppose, and anybody that wants to board there.

Q Where is the theatre relative to the saloon? A Right across the street. 40

Q Where is the telephone building? A Right across the street.

Q Telephone people come in to your place there, too, did they? A I don't know.

Q You didn't know the customers that came in there. Were you ever in there on Saturday evening once in a while? A Very seldom.

Q Were you ever in there on Saturday evening? A I was; yes, sir.

Q Since last January? A I was. 50

Q Did you ever see anything wrong in there? A No, sir.

Q Did you ever see any girls take hold of men and tell them to come with them to go to some house of prostitution or something; or some bad place? A No, sir.

Q Did you ever see anything wrong in there? A No, sir.

George Sheidley, direct.

Q Ever hear any bad language in there? A No, sir.

Q Never see any women in there talking indecent? A I never heard anything wrong.

Q Were you ever there when anyone said there was a prostitute or wrong woman there? A No, sir.

10 Q Are there any secret rooms or side rooms, bedrooms there? A No; it is an open place.

Q You say you got three children? A Yes, sir.

Q What are they, boys or girls? A Boys.

Q How old are they? A Twenty-one, twenty and fifteen.

Q The place is closed there now, is it? A Yes, sir.

Q How long has your husband been in the saloon business? A I guess fifteen years.

20 Q Where was he in business before he started this place? A West Hoboken and Jersey City.

Q How long was he in West Hoboken? A About three years.

Q How long in Jersey City? A Eight.

Q How long has he been in business here in Newark? A I guess about five.

Cross examination by Mr. Mott.

Q When you would go in the saloon on Saturday night how long would you stay? A Probably an hour—sometimes I stood longer; just the way I felt.

30 Q What time would it be when you would go in—what time would you go there? A Generally eight o'clock.

Q What? A Eight o'clock.

Q How often did you say you were there Saturday night since the 1st of February? A Probably, maybe three or four times, maybe; I couldn't remember exactly.

Q I don't mean exactly, but you were there three or four times Saturday night? A Yes, sir.

Q Since the 1st of February? A Oh—then when I happened to go downtown I stopped in.

40 Q That is all? A Yes, sir.

Q And during the week how often would you get there? A When I went shopping I would always stop in the place.

Q That would be how often in the week? A Three or four times.

Q In the daytime or night? A In the daytime and in the evening; take a walk and stop in.

GEORGE SHEIDLEY, sworn on the part of the defendant.

50 *Direct examination by Mr. McDermit.*

Q Where do you live? A I live 19 Ridgewood avenue.

Q How long have you lived in Newark? A I have lived in Newark for six years.

Q And do you know this gentleman here; the defendant? A Yes, sir.

George Sheidley, cross.

Q Do you know where he kept his place of business? A Yes, sir.

Q Where did he keep it? A Corner of Branfoord place and Washington street.

Q What do you work at? A I am a janitor.

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Q Where are you janitor? A 374 Clinton avenue.

Q Did you go in his place during the present year from January down to about six weeks? A Yes, sir, about every week once.

Q How often did you go in there? A About once a week.

Q Afternoon or evening, or when? A Well, that just depends when I got off; sometimes in the afternoon and sometimes in the morning.

Q Now, when you were in there in the evening, for instance—how about the evening? A Never in the evening.

Q How about the afternoon; how often? A Well, it just may be one week in the afternoon and the other week in the morning.

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Q Take the afternoon when you would go there—in the afternoon how long would you stay there? A I only stayed to take a drink or two and walk off again.

Q Now, when you went in there did you see some ladies and gentlemen in there? A Well, if I see anybody in there it was only a couple, maybe—maybe two or three men standing on the bar; maybe a couple standing down, but I didn't know whether it was husband and wife or nothing of the kind.

Q Of course not, but you didn't see anything wrong about those people, did you? A No, sir.

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Q They were sitting down there taking a drink? A Yes, sir.

Q That was an everyday occurrence there? A Yes, sir; to me.

Q Everyday occurrence to you?

The Court. No; he says he only went there once a week.

Witness. Once a week; yes, sir.

The Court. It wasn't any everyday occurrence?

Witness. Not an every day; maybe once a week.

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Q It occurred weekly, then, did it? A Sir?

Q You went there once a week? A Once a week.

Cross examination by Mr. Mott.

Q At the time you were there there never were but one or two women there, was there? A One time I saw a lady there and her husband at the table.

Q You saw one woman and a man? A Yes, sir.

Q Is that the only time you ever saw a woman there? A Well, I saw more—we had an outing there one time and there was a whole crowd there.

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Q I mean your visits? A When I visit there was only a couple there sitting at the table.

Q In the morning and afternoon there weren't very many women there, were there? A No, sir.

Joseph Lohr, direct—cross.

Mr. McDermitt. I have served a subpoena to get the record from the police courts in regard to Mary Bernard and I would like to put that in, unless counsel will admit it.

10 *Mr. Mott.* I am willing to admit that the record of the police court will show that on some occasion—I can't say the date, Mary Bernard was convicted for loitering.

Mr. McDermitt. And there is no other conviction?

Mr. Mott. I have stated as far as I will admit.

The Court. Is that admission satisfactory?

Mr. McDermitt. Yes, sir; I think so.

JOSEPH LOHR, sworn on the part of the defendant.

Direct examination by Mr. McDermitt.

20 Q What is your business? A My business is bartender.

Q Who do you work for? A P. H. Miller Company.

Q Is that a tannery or distillery? A Wine cellar, Washington and Market.

Q Do you know where this gentleman's place is? A Yes, sir.

Q About a block from your place? A Yes, sir.

Q I suppose you walked over there once in a while? A Well, I came there.

Q Occasionally? A Yes, sir.

30 Q How often did you go over there from the 1st of January this year up to about the 1st of August? A Well, I come in there every week three or four times.

Q Three or four times a week. Go in there in the evening once in a while? A Yes, sir.

Q See any young ladies sitting around there once in a while? A Yes, sir.

Q And gentlemen? A Yes, sir; gentlemen and ladies.

40 Q What were they doing there, ladies and gentlemen? A Drinking beer.

Q Drink anything else? A I can't say; I was standing only at the bar.

Q Standing on the bar. Did you ever see anything wrong in there when you went in there? A I can't say anything wrong.

Q Any girl ever try to get hold of you to take you out some place? A No, sir.

Q No girl approached you to take you to Mechanic street or the Delaware or Delawanna Hotel or anything of the kind? A No, sir.

Q Everything went along at your place? A Yes, sir.

50 Q The same thing? A Yes, sir.

Q You conduct a wine place there? A Yes, sir.

Cross examination by Mr. Mott.

Q Do you conduct the wine place or do you work there? A I work there.

Charge to Jury.

Q Now, you went in to Mr. Engsberg's place what time in the evening you say? A In the evening.

Q How often would you go in there? A Well, three or four times a week.

Q What time of the evening? A Before I go to work.

Q What time of the evening? A Half-past six. 10

Q About half-past six. How long would you stay there? A Stay a couple of minutes, have a couple of glasses of beer.

Q And then you would go right out? A Go right out.

Q Did you ever sit down in the place? A Sometimes I was in the place—

Q Did you ever sit down? A Yes, sir, sometimes.

Q How many times did you sit down? A It was a year ago.

Q During the last year you hadn't sat down? A No.

Q You just went in, got a drink and went right out; is that it? 20
A Yes, sir.

DEFENDANT RESTS.

Defendant's counsel asks for an opening.

Mr. Mott opened for the State.

Counsel summed up.

Charge. 30

MARTIN, J.

Gentlemen of the jury, the duty of the Court is to instruct the jury in reference to the principles of law governing the case. The principles of law as charged should be accepted as a correct statement of law. The jury, however, are the sole judges of the facts, weight of testimony, credibility of witnesses, the inferences to be drawn from the evidence and the ultimate conclusions to be reached upon all the facts. The Court in referring to the evidence is not to be understood as deciding any of the facts, but merely as attempting to illustrate or explain the evidence for the convenience or the assistance of the jury. If the Court errs in its statement of the evidence or assumes the existence of evidence that is not actually before the jury, the jury must rely upon their recollection and not upon that of the Court. The evidence upon which you may base your verdict must be the evidence only which remains in the case. Any evidence that has been offered and subsequently stricken out or any evidence or any suggestion of any evidence that was offered and not received cannot be considered by you; and in that connection the Court desires specifically to call your attention to the testimony of certain witnesses, such as Mary Bernard and Rose Kelleher. They were put upon the witness-stand by the State, apparently, to testify to certain things as facts, which the State un-

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Charge to Jury.

derstood, and subsequently they refused so to testify, and testified here under oath that they did not see certain acts or any acts of a disorderly character, and so a statement was allowed to be put in which the witnesses had made elsewhere. Now, the statement which is put in is no evidence against this defendant, because it is a written statement made without the opportunity given to the defendant to cross examine the witness and not made under oath, and the only purpose for which it can be introduced is for the purpose of neutralizing or effacing from the case the failure of these witnesses to testify in the manner in which they were expected to testify. In other words, what it does, in your discretion, if you want to give it that weight, is merely to wipe the slate clean, so that it leaves it as if there was no testimony on that point by those witnesses. It can have no greater effect and no effect whatever as against this defendant.

A defendant in a criminal case is presumed to be innocent. This presumption of innocence can be overcome only by evidence showing beyond a reasonable doubt that the defendant is guilty. The burden of proving the guilt of the defendant beyond a reasonable doubt is on the State and does not shift from the State throughout the whole case.

“Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution, and if upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable or 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 a reasonable doubt, because if the law should go further than this and require absolute certainty it would exclude circumstantial evidence altogether.”

This defendant is presented here upon an indictment in which he is charged substantially that from the 1st day of February and up to the time of the presentation of this indictment, but which is limited under the evidence to the 19th of August, 1918, he did unlawfully keep and maintain a certain common ill-governed and disorderly house and in the said house, for his own lucre and gains, 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 willingly did cause and procure to frequent and come together, and then and there was whoring, soliciting and making assignations for sexual intercourse, engaging in open lewd-

Charge to Jury.

ness and public indecency. The only evidence that has been presented in support of this indictment is concerning the harboring of certain alleged prostitutes, there soliciting and making assignations, so that that will be the matter for your consideration. The charge is in substance that of keeping a disorderly house.

Under the law of this State any place of public resort in which illegal practices are habitually carried on, or which becomes the habitual resort of thieves, drunkards, prostitutes or other idle, vicious and disorderly persons who gather there for the purpose of gratifying their own depraved appetites is a public nuisance and therefore a disorderly house. Such places are unlawful and can have no other effect than to debauch and deprave the public morals. No one has a right for his own amusement or gain to carry on a public business clearly injurious or destructive to the public quiet, health or morals. After proof of the alleged misbehavior of the inmates and as to the person who controls and permits such disorderly conduct it becomes a question of fact for the jury to determine whether satisfactory evidence has been produced to show that the defendant owned, maintained, or controlled, or had the power to control the place or permitted it or suffered it to be so occupied and maintained, having the power to prevent it. So that it would seem necessary to find not that the law was merely violated once but that the law was habitually violated, and it is sufficient to show habitual violation by two or more illegal acts and that the violation was with the knowledge, the approval and consent of this defendant; either that he actively participated in affirmatively attempting to carry it on or that, having the power to prevent it, he did not attempt in the slightest degree to prevent the habitual violation of the law. Solicitation, a part of an arrangement for an assignation is an illegal act, and Mr. Porchester testified that on two occasions, separated for several weeks but within the period from the 1st of February to August 19th, he went in this place twice, that he was there in the evening, that he sat down in a prominent place in one of the so-called rooms, that a woman nodded her head to him and that he got up and went over and sat with her, that he bought her some drinks, they talked over having sexual intercourse and made an agreement then and there to do so and left the place together for that purpose and that the purpose was accomplished. In addition to that evidence there is the evidence of Ritt who states that he saw women approach or solicit men on the street and subsequently go into this place and that he told this defendant that those women were there, that they were prostitutes and that they were not proper customers and that they should not be allowed on the premises. Then there was some evidence—or rather I will put it this way—that in such little part of the evidence of Rose Kelleher and Mary Bernard as still remains in the case—there is something to show that they themselves were present eight or ten times or ten or fifteen times, or whatever they said about that, in this place. Then in addition to that there was the evidence of the defendant himself in which he said, according to his revised statement, as I under-

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Charge to Jury.

stand it, that there were all kinds of women who mixed in the crowd in his place.

10 From this evidence the State contends that you should infer that it was a place which was the resort of prostitutes; that while there they did solicit men; that therefore it was a place in which the law was habitually violated, a public nuisance to the community and a thing which was detrimental to the public morals of the community. And then the State contends also, that, while there is no direct evidence tending to show that this defendant in the slightest degree heard any of these conversations or absolutely knew, excepting as he was told by Ritt or as he might have observed himself by sitting down and holding conversation with one or more of these women, which I think he said he did on the witness-stand, that, he had the kind of knowledge which is required to be shown by the statute. 20 He says he was there from half-past six or seven o'clock until closing time. The State asks you to draw the inference that if he was there observing his business that a thing which habitually occurred must have come to his knowledge and it is therefore for you to state whether or not you find that he had knowledge of the habitual violation of the law and permitted it in the sense which the Court has already described that permission or affirmatively maintained it.

30 On the other hand, the defense is a denial. The defendant contends that while some one or more of the women who came in his place may have been prostitutes yet they came in there for refreshments which they secured, and they went out and that they did nothing of a disorderly or improper character in the place. He also contends that there is no direct evidence of any disorderly act excepting the testimony of Porchester, and finally his own evidence is in part corroborated to a greater or less extent by the testimony of Van Ness and the other witnesses whom he called, some of whom were there only in the morning, and some having very little opportunity for observation. Therefore the defense is a denial and the statement that at all events the State has failed to prove beyond a reasonable doubt that the defendant is guilty.

40 Gentlemen, it is for you carefully to consider the testimony that has been presented to you and arrive at a conclusion as to what the truth is. You have a right to consider the manner and the appearance of the witness on the stand and all such other things as may be helpful to you in determining the truthfulness of the statement of anybody. If you find beyond a reasonable doubt that this defendant is guilty then your verdict should be guilty. Otherwise, of course, your verdict must be not guilty.

50 Defendant's counsel prays a general exception to the charge of the Court, and it is signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Certificates of Stenographer and Judge.

ESSEX COUNTY GENERAL QUARTER SESSIONS COURT.

STATE

vs.

EMIL ENGSBERG.

10

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

I, F. L. Salmon, the official stenographer of the Essex County General Quarter Sessions Court, Part I, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey *v.* Emil Engsberg, Indictment No. 77, for keeping a disorderly house, which trial was held before the Hon. William P. Martin, presiding Judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on Wednesday, October 9, 1918, at Newark, New Jersey.

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F. L. SALMON.

ESSEX COUNTY GENERAL QUARTER SESSIONS COURT.

30

STATE

vs.

EMIL ENGSBERG.

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

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I, William P. Martin, Presiding Judge of the Essex County Court of General Quarter Sessions and Essex County Court of Oyer and Terminer, and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings held upon the trial of the said cause, and that the same is returned by the plaintiffs in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this case.

Dated January 15th, 1918.

50

WM. P. MARTIN,
*Presiding Judge of the Essex County Court of Oyer
and Terminer and General Quarter Sessions.*

*Assignment or Errors.***Assignment of Errors.**

Filed.

NEW JERSEY SUPREME COURT.

10

STATE OF NEW JERSEY,

*Defendant in Error,**On Writ of Error.**vs.*

EMIL ENGSBERG,

*Plaintiff in Error.**Assignment of
Errors.*

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Afterwards, to-wit, in the Supreme Court of Judicature comes the said Emil Engsborg, by his attorneys, McDermit & McDermit, and says that in the record and proceedings aforesaid and also in the giving of the verdict and judgment aforesaid there is manifest error in this, to-wit:

1. In that upon the trial of said cause the Trial Court erred in permitting the witness Harry H. Van Ness to answer the following question: "Q Now what did Mr. Cozzolino say to you?" against the objection of defendant's counsel.

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2. In that the Trial Court erred in permitting the witness Harry Van Ness to testify to a conversation had with one Cozzolino, which conversation took place when the defendant was not present.

3. In that the Trial Court erred in permitting the prosecutor to cross examine the witness Harry Van Ness as to a conversation had by the witness with one Cozzolino, which was hearsay evidence and prejudicial to the defendant, as he, the defendant, was not present when said alleged conversation took place.

4. In that the Trial Court erred in refusing to direct a verdict of not guilty in favor of the defendant.

5. In that there is no evidence that the defendant kept or maintained an ill-governed or disorderly house.

40

6. In that there is no evidence that the defendant kept and maintained the said place of business as a house of assignation or that the house had the reputation of being a disorderly house.

7. In that there is no evidence that the defendant had knowledge of disorderly acts that took place or might have occurred in his place of business, and in a position to have controlled the acts if they had taken place.

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

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

Service of a copy of the within specification of causes is hereby acknowledged this day of January, 1919.

Attorney for Defendant in Error.

*Specification of Causes for Reversal.***Specification of Causes.**

Filed.

NEW JERSEY SUPREME COURT.

10

STATE OF NEW JERSEY,

*Defendant in Error,**vs.*

EMIL ENGSBERG,

*Plaintiff in Error.**On Writ of Error.**Specification of
Causes for
Reversal.*

Emil Engsberg, the plaintiff in error, by McDermit & McDermit, his attorneys, hereby specify the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

20

1. That it was error for the Court to allow the witness Harry Van Ness to testify to a conversation had by him with one Cozzolino, with reference to the character of the place of business and the persons as conducted by the defendant when the defendant was not present at said conversation.

2. That it was prejudicial error for the Court to permit the witness Harry Van Ness to testify to hearsay evidence, in that the said Harry Van Ness was permitted to testify in detail to a conversation he had not in the presence of the defendant, but with one Cozzolino, with reference to women who frequented the place of business of the defendant and the manner of place the defendant was conducting, in order to show that the said Cozzolino had said that the defendant was maintaining an ill-governed place of business and a disorderly house.

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3. That any conversation had by the witness Harry Van Ness as to the manner of the conduct of the place of business of the defendant was not binding upon the defendant because it was had with a third person when the defendant was not present, and to admit such evidence was therefore prejudicial error.

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4. That there should have been a direction of a verdict of not guilty in favor of the defendant because of lack of evidence to sustain the allegation in the indictment and the failure of the proof to sustain the charge of keeping a disorderly house.

5. In that there is no evidence that the defendant kept and maintained his place of business as a house of assignation, or that the same had the reputation of being a disorderly house, and that the defendant had knowledge of any disorderly acts that took place or might have occurred in his place of business, and that he was in a position to have controlled the acts if any had taken place.

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Specification of Causes for Reversal.

6. In that mere negligence is not enough to constitute knowledge by the defendant of disorderly acts that might have occurred in his place of business.

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

Service of a copy of the within specification of causes is hereby acknowledged this day of January, 1919.

Attorney for Defendant in Error.

Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed November 7, 1919.

NEW JERSEY SUPREME COURT.

No. 9, June Term, 1919.

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THE STATE

vs.

EMIL ENGSBERG.

Submitted June Term, 1919. Decided November Term, 1919.

On error to Essex Quarter Sessions.

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J. Henry Harrison and Wilbur A. Mott, for the State.

McDermitt & McDermitt, for defendant.

Argued before the Chief Justice, Minturn and Black, *J. J.*

Per Curiam:

The defendant was indicted and convicted of keeping a disorderly house in Newark. There was ample proof of the disorderly character of the house.

The fact seemed to be notorious, at least to every person who had access to the place. From that fact it might seem to an intelligent jury that what was notorious to others, might at least have in some measure become patent to the proprietor. But, if there were doubt upon that point, it was supplied by the testimony of Officer Ritt of the police department, who at p. 33 of the record testifies that he told the defendant in conversation, that women of a disorderly type were frequenting his place, and that the defendant promised to keep them out, but upon various visits of the officer to the place he found the same women there alone at the tables.

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This fact, taken with the other testimony in the case, presents the *corpus delicti*, and also presents a sufficient basis for the conviction showing a continuous and obstinate violation of law by the defendant, who was fully conscious of the facts.

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The conviction will be affirmed.

*Remittitur.***REMITTITUR.**

NW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> EMIL ENGSBERG, <i>Plaintiff-in-Error.</i>	}	<i>On Error.</i> <i>Remittitur.</i>
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20 The above stated cause having been duly submitted at the November Term, nineteen hundred and nineteen, in the New Jersey Supreme Court, by J. H. Harrison, Esquire, attorney for the defendant-in-error, and Messrs. McDermit & McDermit, attorneys for the plaintiff-in-error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex Court of Quarter Sessions;

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

30 Entered November 14, 1919,

On motion of

J. H. HARRISON,
 Prosecutor,
Attorney of Defendant-in-Error.

40 I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

(SEAL) In testimony whereof I have set my hand and the seal of said Court at Trenton, this first day of December, A. D. nineteen hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

*Assignment of Errors.***ASSIGNMENT OF ERRORS.****NEW JERSEY COURT OF ERRORS AND APPEALS.**

STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*

EMIL ENGSBERG,

*Plaintiff-in-Error.**On Writ of Error.*

10

*Assignment of
Errors.*

Afterwards to wit, on the return day of said writ in the Court of Errors and Appeals of the State of New Jersey, in the last resort in all causes of the State of New Jersey comes the said Emil Engsborg, by his attorneys, McDermitt & McDermitt, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid there is manifest error in this, to wit:

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1. In that upon the trial of said cause the Trial Court erred in permitting the witness Harry H. Van Ness to answer the following question: "Q Now, what did Mr. Cozzolino say to you?" against the objection of defendant's counsel.

2. In that the Trial Court erred in permitting the witness Harry Van Ness to testify to a conversation had with one Cozzolino, which conversation took place when the defendant was not present.

30

3. In that the Trial Court erred in permitting the prosecutor to cross examine the witness Harry Van Ness as to a conversation had by the witness with one Cozzolino, which was hearsay evidence and prejudicial to the defendant, as he, the defendant, was not present when said alleged conversation took place.

4. In that the Trial Court erred in refusing to direct a verdict of not guilty in favor of the defendant.

40

5. In that there is no evidence that the defendant kept or maintained an ill-governed or disorderly house.

6. In that there is no evidence that the defendant kept and maintained the said place of business as a house of assignation or that the house had the reputation of being a disorderly house.

Specification of Causes.

7. In that there is no evidence that the defendant had knowledge of disorderly acts that took place or might have occurred in his place of business, and in a position to have controlled the acts if they had taken place.

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

McDERMIT & McDERMIT,
Attorneys for Plaintiff-in-Error.

Service of a copy of the within assignment of error is hereby acknowledged this 6th day of January, 1920.

20 J. H. HARRISON,
Attorney for Defendant-in-Error.

SPECIFICATION OF CAUSES FOR REVERSAL.

Emil Engsberg, the plaintiff-in-error, by McDermit & McDermit, his attorneys, hereby specify the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

30 1. That it was error for the Court to allow the witness Harry Van Ness to testify to a conversation had by him with one Cozzolino, with reference to the character of the place of business and the persons as conducted by the defendant when the defendant was not present at said conversation.

40 2. That it was prejudicial error for the Court to permit the witness Harry Van Ness to testify to hearsay evidence, in that the said Harry Van Ness was permitted to testify in detail to a conversation he had not in the presence of the defendant, but with one Cozzolino, with reference to women who frequented the place of business of the defendant and the manner of place the defendant was conducting, in order to show that the said Cozzolino had said that the defendant was maintaining an ill-governed place of business and a disorderly house.

3. That any conversation had by the witness Harry Van Ness as to the manner of the conduct of the place of business

Specification of Causes.

of the defendant was not binding upon the defendant because it was had with a third person when the defendant was not present, and to admit such evidence was therefore prejudicial error.

4. That there should have been a direction of a verdict of not guilty in favor of the defendant because of lack of evidence to sustain the allegation in the indictment and the failure of the proof to sustain the charge of keeping a disorderly house. 10

5. In that there is no evidence that the defendant kept and maintained his place of business as a house of assignation, or that the same had the reputation of being a disorderly house, and that the defendant had knowledge of any disorderly acts that took place or might have occurred in his place of business, and that he was in a position to have controlled the acts if any had taken place. 20

6. In that mere negligence is not enough to constitute knowledge by the defendant of disorderly acts that might have occurred in his place of business.

McDERMIT & McDERMIT,
Attorneys for Plaintiff-in-Error.

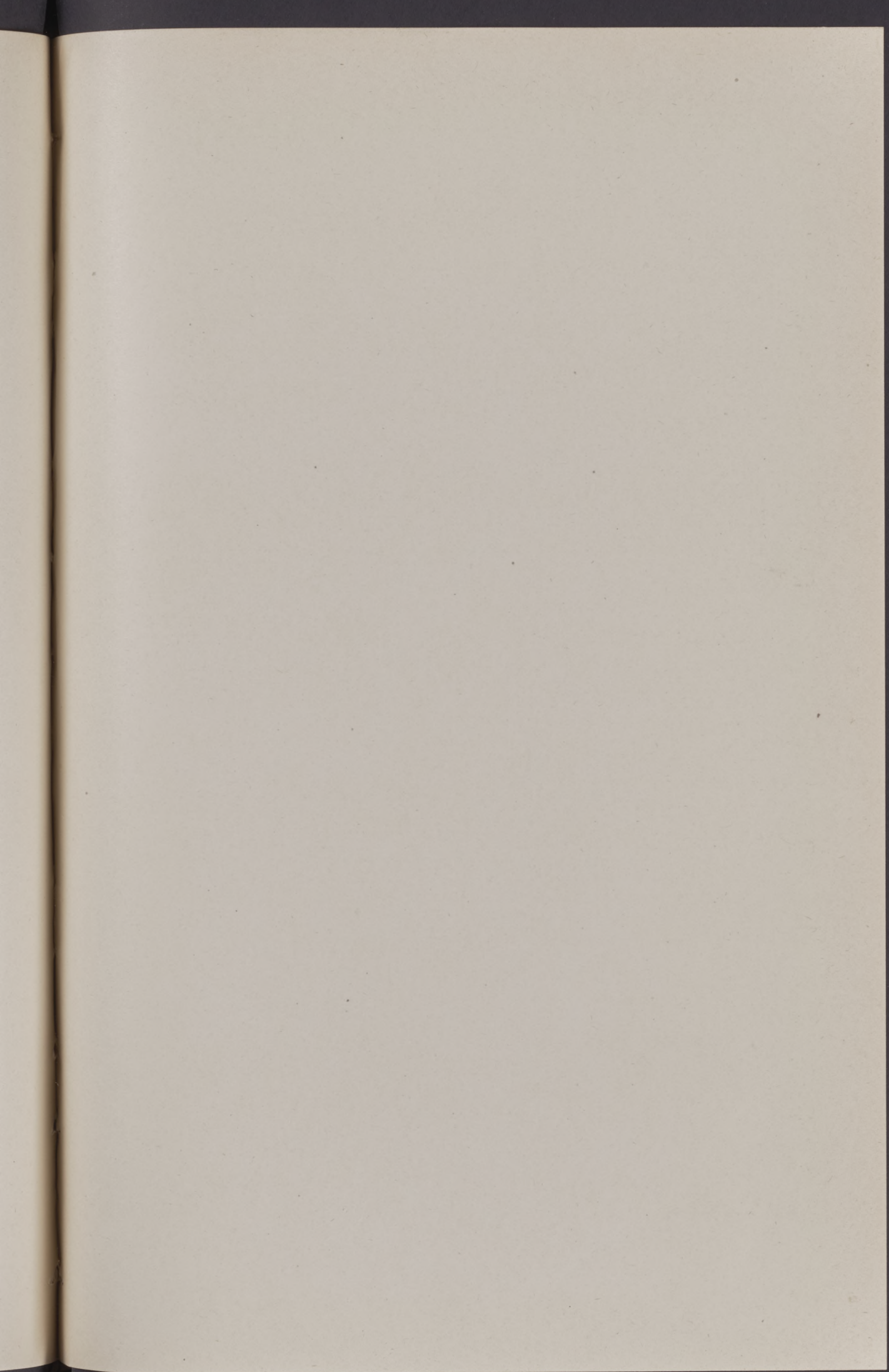
Service of a copy of the within specification of causes is hereby acknowledged this 6th day of January, 1920.

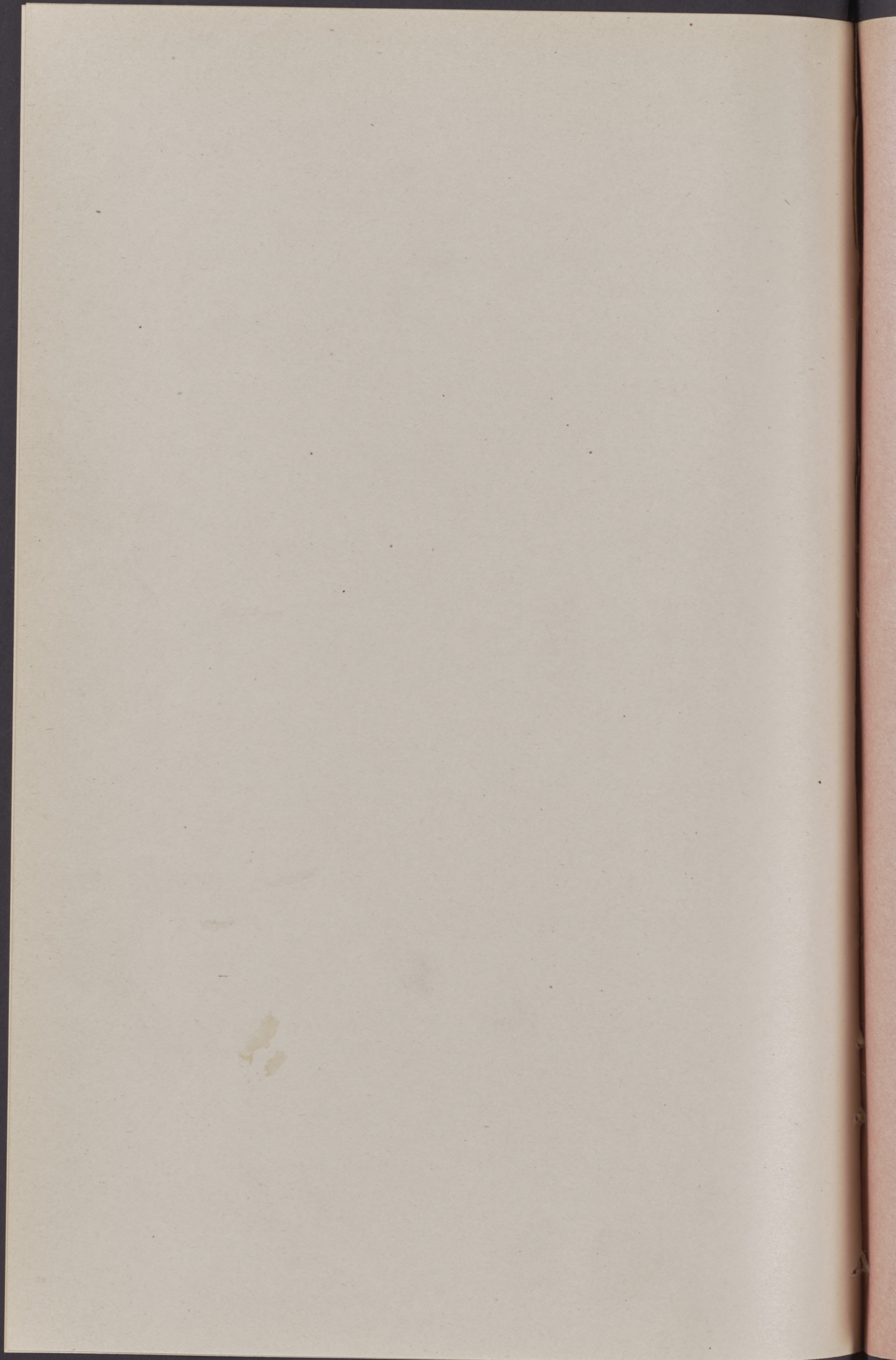
J. H. HARRISON, 30
Attorney for Defendant-in-Error.

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Southern B.

