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NEW JERSEY
Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY.

BETWEEN
HERBERT R. RUNDALL,
Complainant,
AND
MINNIE A. HILL AND
EDITH BELLWOOD,
Defendants.

On Bill for Injunction.

RULE TO SHOW CAUSE.

This matter being opened to the Court by Endicott & Endicott, solicitors for complainant, and the bill of complaint and affidavits having been considered and filed,

It is, on this seventh day of March, 1918, ordered that the defendants show cause before the Chancellor, at the Chancery Chambers in Camden, New Jersey, on the 18th day of March next, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the bill, or for such further relief as may be just.

And it is further ordered that the said defendants, their agents, etc., in the meantime, and until the further order of this Court in the premises, desist and refrain from directly or indirectly maintaining or permitting the nuisance complained of in said bill of complaint, to wit, "maintaining or permitting to be maintained a house or place of ill-fame and assignation and a place for the encouragement and practice of lewdness and prostitution, fornication and unlawful sexual intercourse, and other indecent and obscene acts and purposes," and from removing any furniture, furnishings, musical instruments or other personal property, except clothing from said building.

And it is further ordered that a copy of said bill and affidavits, and of this order (which need not be certified), be served on the said defendants, respectively, within three days from the date of this order.

Respectfully advised,

E. B. LEAMING, *V. C.*

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:

The complainant, Herbert R. Rundall, of Atlantic City, Atlantic County, New Jersey, respectfully shows:

1. That he is and has been a resident of Atlantic County for more than thirty years, and is a member of the Law Enforcement League of Atlantic City, an unincorporated association existing in Atlantic City, New Jersey.

2. That Minnie A. Hill is and has been since nineteen hundred and fourteen the record owner and owner in fee of the premises commonly known and designated as No. 131 North North Carolnia Avenue, Atlantic

City, New Jersey, more particularly described as follows:

Beginning at a point, the southeast corner of Baltic and North Carolina Avenues and running thence (1) eastwardly in the northerly line of Baltic Avenue, seventy feet; then (2) southwardly and parallel with North Carolina Avenue, seventy-five feet; then (3) westwardly and parallel with Baltic Avenue, seventy feet to the easterly line of North Carolina Avenue; thence (4) northwardly in the easterly line of North Carolina Avenue, seventy-five feet to the place of beginning.

3. That Edith Bellwood is in possession of the premises described at length in paragraph 2 of this bill, and was so in possession on the fifth and sixth day of January, 1918, and has ever since remained in possession of said premises.

4. That defendant, Edith Bellwood, on the fifth and sixth days of January, 1918, and continuously for some time prior thereto, did keep and maintain, and does now continue to keep and maintain, at the premises hereinbefore mentioned in paragraph 2 of this bill, a house of ill-fame and assignation, and a place for the encouragement and practice of lewdness and prostitution, fornication and unlawful sexual intercourse and other indecent and disorderly acts, and obscene purposes therein, and a place where such acts and practices were committed and are now being committed.

5. That in and upon said premises described in paragraph 2 of this bill of complaint, acts of lewdness, assignation and prostitution are, have been and will be conducted, practiced, committed, carried on and existed and exists, and that the said Minnie A. Hill has established, permitted, continued, maintained, owned and leased the said premises and building for such purposes and intends so to continue.

6. That said premises are contained in a section of Atlantic City commonly known and called the "Red

Light" or "Tenderloin" district, wherein are located numerous houses maintained for purposes of prostitution, lewdness and assignation, said section occupying the easterly and westerly sides of North Carolina Avenue between Arctic and Mediterranean Avenues.

7. That the practice of prostitution and other lewd and obscene acts has become so notorious and dangerous to the health and morals of the community that the Atlantic County Medical Society at its meetings on the fourteenth day of December, 1917, passed the following resolution:

> *"Resolved:* that the Mayor and Commissioners of Atlantic City be requested to declare by proper Resolution or Ordinance that Gonorrhea and Syphillis shall be classed as contagious disease and subject to the Sanitary Code as such.
>
> *Resolved:* that the Mayor and Department of Public Safety of Atlantic City be requested to immediately close the "Red Light District" as a sanitary war measure as well as for the protection of our own and visiting young men and that they re-enforce their good prohibitive work against "Street Walkers" as well as isolated or segregated houses of prostitution in Atlantic City.
>
> *Resolved:* that the members of The Atlantic County Medical Society stand to assist the Department of Public Health of Atlantic City in an advisory capacity or in the treatment of such indigent venereal cases as may be affected by the enforcement of these resolutions.
>
> *Resolved:* that a copy of these Resolutions be sent to the Mayor and City Commissioners of Atlantic City.
>
> Respectfully submitted by Committee on Public Health and Legislation of the Atlantic County Medical Society."

8. That said Edith Bellwood was indicted by the Grand Jury of Atlantic County during the May term,

1916, under the disorderly house act, for maintaining on the premises hereinbefore described a house for prostitution, and on the twentieth day of June, 1916, plead guilty to the charge, and was sentenced to pay a fine to the Probation Officer of Atlantic County.

Complainant is without adequate remedy in the courts of law, and, therefore, prays:

1. That Minnie A. Hill and Edith Bellwood, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That an injunction issuing out of and under the seal of this Honorable Court to be directed to the said Minnie A. Hill and Edith Bellwood perpetually enjoining them, their agents or lessees from directly or indirectly maintaining or permitting such nuisance, and likewise enjoining the removal of any furniture, furnishings, musical instruments or other personal property, used or capable of being used in the maintenance of or in aiding or abetting the said nuisance, except clothing from the said building or place contained upon the premises hereinbefore particularly described in paragraph No. 2, pending the final hearing of this cause and ultimately directing the removal from the said premises all furniture, furnishings, musical instruments and personal property except clothing, used or capable of being used in the maintenance of or in aiding or abetting the said nuisance, and directing the public sale thereof in the manner provided for the sale of chattels under execution, and the disposal of the proceeds thereof as is provided for by the act of the Legislature of New Jersey, declaring all buildings and places wherein acts of lewdness, assignation or prostitution are permitted or occur to be nuisance, and providing for the abatement thereof by the Court of Chancery, Laws of New Jersey 1916, page 315, etc. And further providing for the sale of the fee to the premises in question if there be not sufficient funds realized from the sale of the personal property for the payment of the costs, fees

and expenses as provided by the acts of the Legislature hereinbefore mentioned. And further directing the effectual closing and disuse of the building or place of the said nuisance for any purpose for the period of one year from the date of the said injunction, unless sooner released by order of the Court of Chancery.

3. That an order may be made directing the defendants herein named to show cause at an early day why an injunction should not issue in accordance with the prayer of the bill, with restraint of the nuisance complained of and the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place until the further order of the Court.

4. That a writ of subpœna may issue commanding said defendant to answer this bill of complaint and abide by such decree as this Court may make in the premises.

ENDICOTT & ENDICOTT,
Solicitors and of Counsel with Complainant.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

James A. Seaman, of full age, being duly sworn, on his oath deposes and says:

I am an investigator employed by the Law Enforcement League of Atlantic City;

That on the fifth and sixth days of January, 1918, Howard L. Trimble, another investigator, and I were in Atlantic City, New Jersey, and investigated conditions there in the so-called "Red Light" or "Tenderloin" district. The "district" is located on both sides of North Carolina Avenue between Arctic and Mediterranean Avenues.

That on Sunday night, January 6th, 1918, we stopped a police officer, No. 123, on duty in Atlantic City near North Carolina Avenue, and asked "where the 'Red Light' district was," and were directed to North Carolina Avenue, north of Arctic, and were told "any of

them along there." We stopped in a drug store the same night and asked the clerk behind the counter "Where is the 'Red Light' district?" and he replied, "Why, over on North Carolina Avenue."

That Howard L. Trimble and I were passing on the night of January 6th, 1918, along the east side of North Carolina Avenue. As we passed a large house at the southeast corner of Baltic and North Carolina Avenues we heard a rap on the window, and, looking up, saw a girl in the window beckoning us to come up. We went upstairs to the house, noting that the number was 131 North North Carolina Avenue. We were admitted by the girl, who said her name was Violet. A little later another girl, Helen, joined us. Both girls asked us and saught in many ways to induce us to have sexual intercourse with them, naming $10.00 as the price.

In this house the two girls offered to show us a circus, and on being paid $10.00, having stripped naked, gave an obscene exhibition of perverted sexual intercourse.

We left the house in spite of the entreaties of the girls to stay and have intercourse with them, telling them we had an engagement with another girl and might come back. The girls told us that Edith Bellwood was the proprietress.

JAMES A. SEAMAN.

Sworn and subscribed to before me this 27th day of February, A. D. 1918.

ANNA KAUFMAN,
Notary Public of New York County, etc.

[L. S.]

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

Howard L. Trimble, of full age, being duly sworn on his oath, deposes and says:

I am an investigator employed by the Law Enforcement League of Atlantic City.

That on the fifth and sixth days of January, 1918, James A. Seaman, another investigator, and I were in Atlantic City, New Jersey, and investigated conditions there in the so-called "Red Light" or "Tenderloin" district. The "district" is located on both sides of North Carolina Avenue between Arctic and Mediterranean Avenues.

That on Sunday night, January sixth, 1918, we stopped a police officer, No. 123, on duty in Atlantic City near North Carolina Avenue, and asked where the "Red Light" district was, and were directed to North Carolina Avenue north of Arctic, and were told "any of them along there." We stopped in a drug store the same night and asked the clerk behind the counter "Where is the 'Red Light' district?" and he replied, "Why over on North Carolina Avenue."

That on the night of January sixth, 1918, we entered the premises No. 131 North North Carolina Avenue, a house conducted by Edith Bellwood. We met Violet, a girl that had bekoned to us from the street, and Helen. They asked us to have sexual intercourse with them and wanted $10.00 therefor. We refused, and they then offered to show us what they called a "circus" if we gave them $10.00. We gave them the money and they took off their clothes and gave an exhibition of perverted practices.

HOWARD L. TRIMBLE.

Subscribed and sworn to before me this 4th day of March, A. D. 1918.

EDWARD B. SHOULE,
[L. S.] *Notary Public No. 171,*
New York County.

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

Allen B. Endicott, Jr., of full age, being duly sworn on his oath says: I have examined the original papers in the possession of Charles S. Moore, Prosecutor of

Atlantic County, and find that Edith Bellwood was indicted by a Grand Jury of Atlantic County for keeping a house for prostitution at No. 131 North North Carolina Avenue, Atlantic City, New Jersey; that on the twentieth day of June, 1916, she plead guilty to this indictment and was ordered to pay a fine to the probation officer of Atlantic County; that annexed hereto is a certified copy of said indictment and record.

That the resolution of the Atlantic County Medical Society contained in the original bill is made from a copy furnished on the twenty-ninth day of January, 1918, over the signature of Worth Clark, Secretary of said association, as the acts of that assoction on the fourteenth day of December, 1917.

That I have examined the records relating to titles to land and find that Minnie A. Hill is the record owner of the premises No. 131 North North Carolina Avenue, particularly described in paragraph 2 of the bill of complaint.

ALLEN B. ENDICOTT, JR.

Sworn and subscribed to before me this 28th day of February, A. D. 1918.

JENNIE F. YOUNG,
Notary Public of N. J.

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

Herbert R. Rundall, of full age, being duly sworn, on his oath says: I am and have been a resident of Atlantic County, New Jersey, for thirty years.

That there exists and has existed for a long time past in Atlantic City a district known as the "Red Light" or "Tenderloin" district; it lies on both sides of North Carolina Avenue between Arctic and Mediterranean Avenues; the houses in this district are maintained by professional prostitutes, and that unlawful sexual intercourse and other obscene practices are daily and nightly carried on in all of those houses.

The house known as No. 131 North North Carolina Avenue is reputed to be conducted by Edith Bellwood, and is within the district.

HERBERT R. RUNDALL.

Sworn and subscribed to before me this 4th day of March, A. D. 1918.

JENNIE F. YOUNG,
Notary Public of N. J.

ATLANTIC OYER AND TERMINER.

May Term, A. D. 1916.

ATLANTIC COUNTY, to wit:

The Grand Inquest of the State of New Jersey, and for the body of the County of Atlantic upon their respective oaths and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath.

Present, that Edith Bellwood, late of the City of Atlantic City, in the said County of Atlantic, on the first day of June, in the year of our Lord one thousand nine hundred and fifteen, and on divers others days and times, betwen that day and the day of taking this Inquisition with force and arms, at the city aforesaid, in the county aforesaid, and within the jurisdiction of this Court, unlawfully did keep and maintain a certain common, ill-governed and disorderly house; and in the said house, for her 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 did cause and procure to frequent and come together, and the said men and women, in the said house of her the said Edith Bellwood at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, fighting, gambling, whoring and misbehaving themselves, unlawfully and wilfully did permit and yet does permit, to the great

damage and common nuisance of all the citizens of the State of New Jersey, there inhabiting, being, residing and passing, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

CHARLES S. MOORE,
Prosecutor of the Pleas.

(Endorsed)
Charles S. Moore,
Prosecutor of the Pleas.

A True Bill,
Thomas C. Elvins,
Foreman.

Filed, entered and impounded 6/16, 1916
Edwin A. Parker, Clerk.
Plea of Guilty entered 6/20, 1916.
Edwin A. Parker, Clerk.

ATLANTIC QUARTER SESSIONS,
MAY TERM, 1916, June 20th.

3348
STATE
vs.
EDITH BELLWOOD

Hon. C. C. Shinn, presiding.
W. E. Brown for State.
Charge, Disorderly House.
Plea, Guilty.

The above named defendant being brought into Court, charged pleaded guilty of the crime as laid to her charge.

Whereupon it is on this 23d day of June A. D. 1916, ordered that the defendant be placed at the bar and she

being accordingly set at the bar the Court doth order and adjudge that the defendant Edith Bellwood pay the sum of $200.00 by Monday, June 26th, 1916, then pay the sum of $1.00 per week for a period of three years. Payable to Probation Officer.

(Quarter Sessions Judgment Book No. 8, page 368.)

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, }

I, Edwin A. Parker, Clerk of the County of Atlantic, and also Clerk of the Oyer and Terminer and Quarter Sessions Courts, holden therein, said court being a court of record, having a common seal, do hereby certify, that the foregoing is a true copy of a certain Indictment for Disorderly House—the State *vs.* Edith Bellwood—and Judgment Record, as the same are filed and entered in my said office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at May's Landing, (SEAL) N. J., this sixth day of February, A. D. 1918.

EDWIN A. PARKER,
Clerk.

In Chancery of New Jersey.
Between
Herbert R. Rundall,
Complainant,
and
Minnie A. Hill and
Edith Bellwood,
Defendants.
On Bill for Injunction.
Bill, Affidavits and Order.
Endicott & Endicott,
Solrs. for Compl't.

IN CHANCERY OF NEW JERSEY.

BETWEEN HERBERT R. RUNDALL, *Complainant,* AND MINNIE A. HILL AND EDITH BELLWOOD, *Defendants.*	On Bill for Injunction.

ORDER FOR TEMPORARY INJUNCTION.

(*Filed April 9, 1918.*)

The return of the rule to show cause in this matter coming on to be heard, and Endicott & Endicott appearing for the complainant, and U. G. Styron, Esquire, appearing for the defendants, and the bill and affidavits having been read on the part of the complainant, and the defendants having contested the jurisdiction of the Court, and the arguments of counsel having been heard and the Court being of the opinion that temporary injunction should issue pursuant to the prayer of the bill:

It is therefore, on this ninth day of April, nineteen hundred and eighteen, ordered that a temporary injunction issue pursuant to the prayer of the bill, directing the defendants, their lessees, agents and assigns, until the further order of this Court in the premises, to desist and refrain from directly and indirectly maintaining or permitting the nuisance complained of in said bill, to wit, maintaining or permit to be maintained a place or house of ill-fame and assignation and a place for the encouragement and practice of lewdness, prostitution, fornication and unlawful sexual intercourse and other indecent and disorderly acts, and obscene purposes, and from removing any furniture, furnishings, musical instruments or other personal property, except

clothing, from said house No. 131 North North Carolina Avenue, Atlantic City, New Jersey.

E. R. WALKER, *C.*

Respectfully advised,

BAYARD STOCKTON, *A. M.*

Consented to as to form,

U. G. STYRON,
Sol'r for def'ts.

IN CHANCERY OF NEW JERSEY.

BETWEEN HERBERT R. RUNDALL, *Complainant,* AND MINNIE A. HILL AND EDITH BELLWOOD, *Defendants.*	On Bill, &c.

NOTICE OF APPEAL.

(*Filed April 15, 1918.*)

The defendant, Minnie A. Hill, hereby appeals from an order made by his Honor, the Chancellor, in the above-entitled cause, on the ninth day of April, 1918, adjudging and ordering that a temporary injunction issue pursuant to the prayer of the bill, and from the whole and every part of said order to the Court of Errors and Appeals in the last resort in all causes.

U. G. STYRON,
Solicitor for and of Counsel with Defendant-Appellant.

Dated April 12, 1918.

I conceive there is good cause for appeal in the above-entitled cause.

C. C. SHINN,
Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
HERBERT R. RUNDALL,
Complainant-Respondent,
AND
MINNIE A. HILL AND
EDITH BELLWOOD,
Defendants-Appellants.

ACKNOWLEDGMENT OF SERVICE.

(*Filed June 20, 1918.*)

Service of a copy of the Notice of Appeal in the above-entitled cause is hereby acknowledged this sixteenth day of April, 1918.

ENDICOTT & ENDICOTT,
Solicitors of Respondent.

NEW JERSEY COURT OF ERRORS AN APPEALS.

BETWEEN
HERBERT R. RUNDALL,
Complainant-Respondent,
AND
MINNIE A. HILL AND EDITH BELLWOOD,
Defendants-Appellants.
} On Bill, etc.

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PETITION OF APPEAL.

(*Filed May 25, 1918.*)

To the Honorable the Court of Errors and Appeals of the State of New Jersey:

The petition of Minnie A. Hill and Edith Bellwood, the appellants in the above-entitled cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the ninth day of April, nineteen hundred and eighteen, in a cause wherein the said Herbert R. Rundall was complainant, and the said Minnie A. Hill and Edith Bellwood were defendants, in this respect, to wit: The Court of Chancery was without jurisdiction to make the order appealed from because there was no legal evidence before the Court of any fact which authorized the Court of Chancery to issue its injunction or make the order appealed from; the Court of Chancery was without jurisdiction to have the hearing upon which the order appealed from was made, or to make the said order, or to adjudicate upon, hear or make any order in the cause for the reason that no such power or jurisdiction is conferred by law upon the Court of Chancery or exists therein save as purports to be conferred and to exist under an act of the Legisla-

ture of the State of New Jersey entitled "An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted to occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March 17th, 1916, being Chapter 154 of said laws of 1916, which act so attempting to confer such jurisdiction upon said Court of Chancery is ineffective and invalid, being contrary to the Constitution of the State of New Jersey, and particularly to Article I, section 9 thereof; that by the said proceedings and the said order appealed from it is sought to deprive the appellants of their property without due process of law and prevent them from having the equal benefit and advantage of the laws, contrary to the Constitution of the United States of America, and particularly to the first paragraph of the XIV amendment thereto; that the said order is in divers other respects contrary to the law of the land and of the rights and privileges possessed by the appellants, and for these reasons they have appealed therefrom.

Your petitioners therefore pray that the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

U. G. STYRON,
Solicitor of Appellants.
C. C. SHINN,
Of Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
HERBERT R. RUNDALL,
Complainant-Respondent,
AND
MINNIE A. HILL AND EDITH BELLWOOD,
Defendants-Appellants.

ACKNOWLEDGMENT OF SERVICE.

(*Filed June 20, 1918.*)

Due and legal service of a copy of the petition of appeal in the above-entitled cause is hereby acknowledged.

ENDICOTT & ENDICOTT,
Solicitors of Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
HERBERT R. RUNDALL,
Complainant-Respondent,
AND
MINNIE A. HILL and EDITH BELLWOOD,
Defendants-Appellants.

ON BILL.

BRIEF OF ENDICOTT AND ENDICOTT, OF COUNSEL WITH RESPONDENT.

A bill was filed in Chancery, the defendants brought in by subpoena duly served and hearing was had upon a rule to show cause why an injunction should not issue in accordance with the prayer of the bill. This hearing was upon bill and affidavits filed by the complainant-respondent, no answer or affidavits having been filed by the defendants.

At the hearing the defendants were represented by counsel who challenged the jurisdiction of the court and the sufficiency of the affidavits.

An order for temporary injunction issued in conformity with paragraph six of the Act of 1916, page 316. This order directs "the defendants, their lessees, agents and assigns, until the further order of this court in the premises,

to desist and refrain from directly and indirectly maintaining or permitting the nuisance complained of in said bill, to wit, maintaining or permit to be maintained a place or house of ill-fame and assignation and a place for the encouragement and practice of lewdness, prostitution, fornication and unlawful sexual intercourse and other indecent and disorderly acts, and obscene purposes, and from removing any furniture, furnishings, musical instruments or other personal property, except clothing, from said house No. 131 North North Carolina Avenue, Atlantic City, New Jersey."

From this order an appeal was taken and the petition of the appeal alleges three reasons why the order should be set aside. The reasons are as follows:

1. That there was no legal evidence to authorize the order.

2. That the act approved March 17th, 1916, authorizing such proceedings is unconstitutional and contrary to Section 9 of Article 1 of the Constitution of New Jersey.

3. That the proceedings and order appealed from deprived the appellants of their property without due process of law contrary to paragraph one of the fourteenth amendment to the Constitution of the United States.

I. It is further alleged that the order advising the temporary injunction is invalid because signed by Bayard Stockton, Advisory Master, and not by Vice-Chancellor Leaming, who heard the rule to show cause and advised the temporary injunction.

This order is signed by the Chancellor and is "consented to as to form by U. G. Styron, solicitor for defendants."

We dismissed this objection with the assumption that if the Court finds that an order consented to by counsel and signed by the Chancellor is not valid unless formally signed by the Vice-Chancellor who heard the rule, opportunity will be given to supply such omission.

II. It is urged that the bill is not sufficiently verified.

The affidavit of complainant omits the usual formal statements but upon examination of the affidavits attached to the bill it will appear that every essential fact is specifically sworn to by the complainant or by those whose affidavits are annexed to the bill.

The affidavit of the complainant is meager because the material facts were not known to him. Each fact is, however, verified by the oath of some person who had knowledge of the same.

A bill may be sworn to by any person acquainted with the facts. *Youngblood vs. Schamp,* 15 Eq. 43. This was the finding of the Vice-Chancellor.

Special affidavits of the truth of all the material facts upon which the application is founded was annexed to the bill as required in the above-stated case and the well-established practice.

III. That the defendant Edith Bellwood conducted a bawdy-house, known as #131 North North Carolina Avenue fully appears from the affidavits:

(a) Howard L. Trimble swears, "this house was conducted by Edith Bellwood." Printed book, page 8, line 18.

(b) James A. Seaman swears, "the girls told us that Edith Bellwood was the proprietress." Printed book, page 7, lines 24 and 25.

(c) The complainant Herbert R. Rundall swears, "this house known as No. 131 North North Carolina Avenue is reputed to be conducted by Edith Bellwood." Printed book, page 10, lines 1 and 2.

(d) Attached to the bill is a copy of an indictment in the Atlantic Oyer and Terminer against the said Edith Bellwood for keeping a disorderly house at No. 131 North North Carolina Avenue, together with the court record of her plea of guilty, and the imposition of a fine of two hundred dollars to be paid on June 26th, 1916, to be followed by the payment of a further sum of one dollar per week to the probation officer, for a period of three years.

(e) No. 131 North North Carolina Avenue as appears from the affidavits attached to the bill is within the "Red Light" or "Tenderloin" district as it has existed in Atlantic City for many years. This district lies on both sides of North North Carolina Avenue between Arctic and Mediterranean Avenues. Printed Book, page 9, lines 31-40.

(f) This district is so well known that the Atlantic County Medical Society at its meeting on December 14th, 1917, passed a resolution calling upon the mayor and the commissioners of Atlantic City to close the "Red Light" district as a sanitary war measure, etc. Printed book, page 4, lines 17-20.

That the defendant Minnie A. Hill is the owner of No. 131 North North Carolina Avenue appears from the affidavit of Allen B. Endicott, Jr., who swears, "I have examined the records relating to titles to land and find that Minnie A. Hill is the record owner of premises #131 North North Carolina Avenue, particularly described in paragraph two of the bill of complaint."

Both of these defendants were served with process and appeared by counsel on the return of the rule to show cause; they filed no answer, neither did they submit any affidavits denying the allegations of the bill, but contented themselves with challenging the sufficiency of the affidavits and the jurisdiction of the Court. This fact was commented upon by the Vice-Chancellor in giving his conclusions, which are not found in the printed book. The allegations of the bill and the affidavits must be taken as true.

But the point is made that the defendant Minnie A. Hill is blameless because it does not appear that she knew that the house No. 131 North North Carolina Avenue owned by her was used for immoral purposes.

That such person cannot escape by the absence of affirmative proof of her knowledge is well established. The owner of property who leases it or puts another in possession of it owes to the public a certain degree of diligence, and proof of the general reputation of the place is sufficient to impute to him the knowledge. *State vs. Gilbert,* 126 Minn. 95, 147 N. W. 953. The knowledge required before conviction on a criminal indictment is quite another matter.

Paragraph seven of the Act of 1916, page 316, provides: "Evidence as to the general reputation of the buildings or place of the alleged nuisance, or the person or persons in occupation thereof, shall be received, as well as an admission or finding of guilt against any such person or persons, upon a charge involving prostitution, lewdness or assignation, for the purpose of proving the existence of the said nuisance."

IV. Is the act in question in conflict with the State Constitution or the Federal Constitution? These two questions may be considered together.

The claim is that under this act one may be held to answer for a criminal offense without the presentment or the indictment of a Grand Jury.

The places mentioned in the act are declared to be a nuisance which may be abated by injunction.

Under this act the defendant is not convicted and punished for a crime. The act rather belongs to that class of remedies which may properly be provided by statute to aid in the administration of preventive justice. It stays the arm of the wrongdoer. It does not seek to punish him for any past violations of the law. Its purpose is to prevent a public offense and suppress what the law declares to be a nuisance.

Counsel for defendants contend that because the nuisance complained of is a crime, it is entitled to favor and protection in a court of equity.

It has been decided in many cases that the fact that a nuisance is a crime and punishable as such, does not deprive equity of its jurisdiction to restrain and abate by injunction. *People vs. City of St. Louis*, 5 Tilman (Ill.) 351. *Attorney-General vs. N. J. Railroad & Transportation Co.*, 3 N. J. E. 136. *Littleton vs. Fritz*, 22 N. W. Rep. 641.

There is no right of trial by jury in equity proceedings.

An injunction against the unlawful use of a building as a nuisance is not beyond the jurisdiction of equity on the ground that it is in the nature of a punishment of a criminal offense.

A statute declaring the use of the building for either of several unlawful purposes to be a nuisance, abatable in equity, does not introduce an exceptional mode of trial or change the ordinary course of pro-

cedure on questions properly triable by jury. *State of New Hampshire, ex rel, Rhodes vs. Saunders,* 18 Lawyers' Rept. Annotated, 646.

That which is declared by a valid statute to be a nuisance is deemed in law to be a nuisance in fact, and should be dealt with as such.

The fact that a nuisance is a crime does not deprive a court of equity of the power to abate the nuisance. Such a statute is not invalid because it makes no provision for a trial by jury.

In Massachusetts the right to proceed in equity to abate public nuisances, in the exercise of the police power, where necessary for the protection of the public, has been fully recognized. *Carleton vs. Rugg,* 5 Lawyers' Rept. Annotated, 193.

In *Township of Hutchinson vs. Filk,* 44 Minn. 536, 47 N. W. 255, Mitchell, J., said: "It is now well settled that a court of equity may, in a proper case, take jurisdiction of public nuisances in civil actions for their abatement, and to enjoin their maintenance. This jurisdiction is grounded upon the greater efficacy and promptitude of the remedies administered in such action, enabling the court to restrain nuisances that are threatened or in progress, as well as to abate those already in existence, and effect their final suppression by injunction, which will often also prevent a multiplicity of suits. See also 35 AM. St. Rep. 674.

The purpose of the Act of 1916 is to suppress the evil by equitable attack upon the property of those engaged in or abetting it, and not by punishment of the offenders by infliction of personal penalties. This is entirely different from a criminal procedure.

State vs. Gilbert, N. W. Rept. Vol. 147, page 956, summarizes the authorities by quoting from *Carleton vs. Rugg,* as follows: "The fallacy of the argument

lies in part in disregarding the distinction between a proceeding to abate a nuisance, which looks only to the property that in the use made of it constitutes the nuisance, and a proceeding to punish an offender for the crime of maintaining a nuisance. These two proceedings are entirely unlike. The latter is conducted under the provisions of the criminal law, and deals only with the person who has violated the law. The former is governed by the rules which relate to property, and its only connection with persons is through property in which they may be interested."

It is claimed that by the Act of 1916 the defendants are deprived of the right of trial by jury. This claim again disregards the distinction between a proceeding to abate a nuisance, which relates simply to the property which in its use constitutes the nuisance, and a prosecution of the respondent for the crime of maintaining it. *State vs. Murphy,* 71 Vermont, 127, 136; 41 Atl. 1037. *Mugler vs. Kansas,* 123 U. S. 623, 671, 8 Sup. Ct. 273, 302, opinion by Justice Harlan. See also *State vs. Saunders,* 56 N. H. 39, 25 Atl. 588 and *State vs. Marshall,* 100 Miss. 626.

This act does not undertake to provide for a judgment enforcing and insuring abatement of the nuisance otherwise than as against persons who are properly joined as defendants in the action and brought in by proper process and afforded an opportunity to be heard, and thus the constitutional requirement of due process is fully complied with. *People vs. Casa Co., et als.,* 169 Pac. Rep. 456, and cases there cited.

In *People vs. Casa Co.,* it is declared to be well established that the State may confer the right to bring an action to abate a public nuisance upon a private individual in addition to his existing right to bring such actions where there is a special injury to him. *State vs. Fanning,* 96 Neb. 123, 169 Pac. Rep. 457, and *Littleton vs. Fritz,* 65 Iowa, 488, 22 N. W. 641.

V. The Act of 1916 is similar to acts passed in thirty of the States. The constitutional question raised in the brief of counsel for the appellants has been raised in many of these States where the courts have been called upon to consider said acts, and in every instance such legislation has been upheld.

The best considered cases on such legislation are:

State vs. Fanning, Supreme Court of Nebraska, N. W. Rep., June 5th, 1914, Vol. 147, pages 215-218;

State vs. Gilbert, Supreme Court of Minnesota, N. W. Rep., July 17th, 1914, Vol. 147, pages 953-958;

People vs. Barbieri, 166 Pac. Rep., Sept. 17th, 1917, pages 812-816;

People vs. Casa Co., 169 Pac. Rep., Jan. 28th, 1918, pages 454-457, Supreme Court of California;

Littleton vs. Fritz, 22 N. W. Rep., page 641;

State vs. Jerome, Supreme Court of Washington, 141 Pac. Rep., pages 753-757.

VI. The defendant Minnie A. Hill is not aggrieved by Section 10, page 317, of the Act of 1916, because no order has been or can be made for the sale of her property until after a final decree; besides the costs may be realized from the sale of the furniture, in which event there could be no proceeding against the real estate; and further, if she would avoid the possibility of such an occurrence, she may have the land and building released from liability, as provided in Section III of said act.

The appeal should be dismissed with costs.

ENDICOTT & ENDICOTT,
Solicitors of Complainant-Respondent.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

BETWEEN
HERBERT R. RUNDALL,
Complainant-Respondent,
AND
MINNIE A. HILL AND EDITH BELLWOOD,
Defendants-Appellants.

On Appeal from Chancery.

Brief of U. G. Styron, of Counsel with Appellants.

STATEMENT.

This is an appeal from an order made by the Chancellor on the advice of an Advisory Master. The bill of complaint was filed by Herbert R. Rundall, the respondent, against Minnie A. Hill and Edith Bellwood, the appellants, and is based upon the provisions of an act of the Legislature of New Jersey entitled "An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted to occur to be nuisances, and providing for the abatement therof by the Court of Chancery," approved March 17th, 1916, and being chapter 154, of the laws of that year. The bill alleges, amongst other things,

that the complainant is a resident of Atlantic County; that Minnie A. Hill is the owner of premises No. 131 North North Carolina Avenue, Atlantic City, and has been such owner since 1914; that Edith Bellwood was in possession of those premises on the 5th and 6th days of January, 1918, and continuously for some time prior thereto did keep, and does continue to keep, on the premises "a house of ill fame and assignation, and a place for the encouragement and practice of lewdness and prostitution, fornication and unlawful sexual intercourse * * * therein, and a place where such acts and practices were committed and are now being committed," and that Minnie A. Hill has "established, permitted, continued, maintained, owned and leased the said premises and building for such purposes." The bill further alleges that the complainant is without adequate remedy in the courts of law.

The bill of complaint, with certain affidavits annexed, was presented to his Honor, Vice-Chancellor Leaming, who on March 7th, 1918, advised an order to show cause, returnable on March 18th, 1918, at Camden, which order was served on the defendants, together with a copy of the bill and the affidavits annexed thereto. The order to show cause so made and served provided for the restraint directed by the act. The matter was brought on for hearing on the return day named in the order to show cause, before the Vice-Chancellor, who advised the order, in the presence of counsel for the parties, and counsel for the defendants conceiving that nothing in the case made by the proofs of the complainant called for explanation or denial by the defendants, no answer or answering affidavits were submitted on the part of the defendants, and the hearing proceeded upon the bill and affidavits of the complainant and the arguments upon defendants' challenge of the jurisdiction of the Court to make an order for a temporary injunction in the cause or to hear the cause. At the conclusion of the hearing the learned Vice-Chancellor

announced that his duty, as he conceived it, required him to treat the statute, upon which the proceeding before him was grounded, as valid and to give effect to it; that he was satisfied with the sufficiency of the proof submitted and would advise an order that a temporary injunction issue in accordance with the provisions of the statute. In point of fact, however, no order for a temporary injunction was actually advised by the learned Vice-Chancellor, before whom the hearing was had, either at the time of the hearing or at any time afterwards, and no order for that purpose was ever presented to him, but subsequently an order dated April 9th, 1918, was made and filed in said cause directing that a temporary injunction issue, which order was made upon the advisory certificate of one of the Advisory Masters of the Court, notwithstanding that said matter was not pending before said Master, that he had not heard the cause and that the parties defendant had not appeared before him. From this order so advised and made Hill and Bellwood, defendants below, appeal to this Court for the reasons set forth in their Petition of Appeal.

The Bill is found (Case, pp. 2 to 6, inclusive).

The Order to Show Cause (Case, pp 1, 2).

The affidavits to bill (Case, pp. 6 to 12, inclusive).

The Order for Temporary Injunction (Case, pp. 13, 14).

The Petition of Appeal (Case, pp. 16, 17).

ARGUMENT.

One who merely glances at the language of the quoted title of the statute referred to and to that of its first section is sufficiently informed that such language is descriptive of a bawdy-house. Such a house was at common law a nuisance, *per se,* and the keeper thereof was indictable as such. This common law offense has always been an indictable and punishable crime in New Jersey and still is, under our criminal statutes, an in-

dictable crime, in which all who participate knowingly are principals, punishable as a misdemeanor by fine and imprisonment, so that the statute of 1916 merely characterized as a nuisance certain acts and practices which then were and always have been thus characterized in law. All that the statute appears to accomplish is to confer jurisdiction upon the Court of Chancery to try in accordance with its practice as a court of equity and to punish by a forfeiture a crime, the trial of which heretofore has been committed exclusively to the criminal courts subject to the constitutional right of the accused to trial by jury after indictment.

The appellants contended in the court below and contend in this Court that the Court of Chancery was without jurisdiction to make the order appealed from, to adjudicate upon the facts sitting as a court of equity or to entertain the bill; that the matters alleged in the bill were not of an equitable nature nor cognizable by a court of equity; that the cause of action and the action belongs exclusively to a court of law; that the statute so far as it purports to confer such jurisdiction upon the Court of Chancery is in conflict with the Constitution of New Jersey and is utterly void, and that granting the validity of the statute there was not sufficient legal evidence to authorize an injunction.

I.

The Bill of Complaint is not Verified.

The statute purporting to authorize this proceeding requires that it be commenced by *verified* bill. The requirement is, therefore, jurisdictional. This bill is not verified. While it is true that annexed to the bill are four affidavits, yet none of them avers that any of the matters stated in the bill are true, nor does it appear by any of the affidavits or by the sworn statement of any affiant that he has read the bill or heard it read. Not the faintest allusion is made in any of the annexed affi-

davits to the bill of complaint or to any fact as stated therein. The complainant in his affidavit does not even state that he is complainant, or that he authorized the bill to be filed, or knew that a bill was to be filed. In fact, he makes no mention of the bill whatever. So far as appears by anything contained in any of the affidavits all may have been prepared and intended to be used for an entirely different purpose. The bill charges appellants with a crime indictable at common law and punishable as a misdemeanor, and the statute upon which it is framed prescribes a mode of trial in derogation of the common law right of one so charged to trial by jury. The act says that the bill which it substitutes for an indictment in the procedure heretofore used shall be verified. To verify is to confirm or substantiate by oath; to show to be true. *Black Law Dict.,* citing 3 *How. Prac.* 284. How can the mere annexing to the bill of affidavits which do not assert as true its statements of fact or even refer to the bill be said to verify it?

II.

The Proof Submitted is not Legally Sufficient to Authorize the Issuing of an Injunction.

The act provides (section 6) that upon the return of the said rule, if the Chancellor shall be satisfied of the sufficiency of the proof, he shall issue a temporary injunction, etc. The effect of the restraining order made on filing the bill is to place the land and building in the custody of the Court and subject the property of the owner to a lien and a possible sale for the satisfaction of that lien, if the guilt of the occupant be established; that custody and lien is continued by the temporary injunction, and a final decree directs the effectual closing and complete disuse of the building for any purpose for one year from the date of the permanent in-

junction. Such appears to be the necessary consequence under the act of a decree establishing the premises to be a nuisance whether the owner aided or sanctioned the unlawful acts or not, or whether he had knowledge of them or not. Irrespective of the guilt or innocence of the owner of premises which the Court shall determine to be a nuisance, the only decree the Court is authorized to make is one abating the nuisance, which decree necessarily involves the deprivation of the owner of the possession or use of his property for at least one year, and the forfeiture during the same period of the whole income therefrom.

The essential allegations of the bill, so far as they apply to the appellant Hill, are found in the second and fifth paragraphs. In the second paragraph she is alleged to be, and to have been since 1914, the record owner and owner in fee of the premises, and the fifth paragraph charges her with having "established, permitted, continued, maintained, owned and leased the said premises and building" for the unlawful purpose complained of. This charge stands wholly unsupported. No proof whatever that the owner rented the premises to be kept as a disorderly house, participated therein or even knew of the unlawful purpose for which the building is said to have been used was either submitted or attempted on the hearing. The only proof to be found in the whole case referring to appellant Hill is contained in the affidavit of *Allen B. Endicott, Jr.* (Case, page 9, lines 15-17), which, of course, is utterly incompetent and useless. Assuming the proof sufficient to establish the fact of ownership, still the appellant Hill cannot be held liable as landlord jointly with her tenant or otherwise for a nuisance created or maintained by the tenant in the absence of proof that she rented the building knowing it would be so used or aided in or sanctioned such use.

There is no such proof. The mere fact of her being landlord of a disorderly house and receiving the rent

of it earned by the keeper is not enough. Neither of these facts are proved, but if they were, her sanction could not be inferred from the mere fact of her non-interference with the conduct of her tenant, without some other act or declaration on her part giving a decided character to her sanction and consent. *State* v. *Williams*, 30 *N. J. L.* 102.

In the case cited Whelpley, C. J., said:

> "To justify the conviction of a landlord who rents to a tenant a place kept as a disorderly house, the evidence should clearly show that, at the time of the leasing, the landlord knew the purpose for which, or the mode in which, the house was to be kept."

In *Troutman* v. *State*, 49 *N. J. L.* 35, it was said:

> "In view of the criminal law all persons who assist, aid or contribute to the erection of a public nuisance are principals and may be prosecuted as such, and the principle underlying the numerous decisions is that when the owner contributes by his act to the production of the nuisance, as there are no accessories in misdemeanors, he thereby becomes a principal and may be indicted in that character."

The evidence must sufficiently connect the defendant with the keeping of the house.

> 14 *Cyc.* 507, citing *Bindernagle* v. *State*, 61. *N. J. L.* 259, 38 *Atl.* 973, 39 *Atl.* 360.

There is no relaxation of the rules of evidence with respect to affidavits annexed to injunction bills. *Camden, etc., R. Co.* v. *Stewart*, 21 *N. J. Eq.* 484. When an injunction is applied for, there should be a special affidavit of the truth of all the material facts upon which the application is founded. *Youngblood* v. *Schamp*, 15 *N. J. Eq.* 42. It is an established principle of the court in the matter of injunction, that all facts necessary to sustain the injunction must be verified by positive proof. *Haldredge* v. *Gwynne*, 18 *N. J. Eq.* 27,

32. *Thompson* v. *Ocean City R. Co.*, 37 *Atl.* 129, 130.

Since proof of ownership of the premises would not alone justify an injunction against the appellant Hill, the order appealed from, as to her, should be reversed.

III.

THERE IS NO LEGAL EVIDENCE THAT BELLWOOD KEPT OR OCCUPIED THE PREMISES OR THAT IT WAS KEPT IN SUCH MANNER AS TO CONSTITUTE IT A NUISANCE.

The bill charges appellant Bellwood as the keeper of a bawdy-house upon the premises above referred to. To establish the charge the affidavits of Seaman, Trumble, Endicott and Rundall, the complainant, are relied upon. Both *Seaman* and *Trumble* swear that they are paid detectives and are by their own confession both liars and criminals. Both swear that on the night of January 6, 1918, they entered by invitation the house No. 131 North North Carolina avenue. Seaman says that they were admitted by a girl who said her name was Violet, and were joined a little later by another girl, Helen, and he further says: "The girls told us that Edith Bellwood was the proprietress," *Case, pages 7–8.* *Trumble* states without qualification that "we entered the premises No. 131 North North Carolina avenue, a house conducted by Edith Bellwood. We met Violet, the girl that had beckoned to us from the street, and Helen." Rundall says: "The house known as No. 131 North North Carolina avenue is reputed to be conducted by Edith Bellwood," and *Endicott, Jr.*, swears, "I have examined the *original papers* in the possession of Charles S. Moore, Prosecutor of Atlantic county, and find that Edith Bellwood was indicted by the Grand Jury of Atlantic county for keeping a house of prostitution at No. 131 North North Carolina avenue, Atlantic City, New Jersey," and pleaded guilty.

This statute effects an important change in the character of evidence that may be introduced to prove the crime of keeping a bawdy-house. By the seventh section it directs that evidence of the general reputation of the building * * * or of the person * * * in occupation thereof, as well as an admission or finding of guilt against any such person upon any charge involving prostitution * * * shall be received for the purpose of proving the existence of the said nuisance. Prior to the enactment of this statute the law was otherwise. The Supreme Court in 1897, after reviewing on error a conviction in the Passaic Sessions for keeping a disorderly house, filed the following *per curiam* opinion (see *Heflin* v. *State,* 20 *N. J. L. J.* 151):

> "Evidence of general reputation of the house was, we think, plainly inadmissible. Such proof, so far as we know, has never been received in our courts. Almost all authority is opposed to its reception."

The opinion just quoted correctly expresses the law of this State as it stood at the time the opinion was delivered, and as it doubtless still stands, unless abrogated by the statute of 1916. However, giving to the statute that construction, we presume that the evidence of general reputation which the Court is to receive must still be legal evidence.

Complainant below sought to utilize this new provision and to that end the bill alleges (paragraph 7) that a medical society in Atlantic county passed a resolution requesting the municipal authorities to close the "Red Light District," following an allegation (paragraph 6) that the premises are contained in a section of Atlantic City commonly known and called the "Red Light" or "Tenderloin" district, wherein are located "numerous houses" maintained for purposes of prostitution, etc., and further (in paragraph 8), as the basis for introducing evidence of the general reputation of Bellwood as the keeper of the house alleges here in-

dictment in 1916 for maintaining a house of prostitution on the same premises, and her confession of guilt.

These allegations derive no support from the proof save as found in the affidavits of the two hired investigators, Endicott and the complainant. Those of *Seaman* and *Trumble* are identical in substance and nearly so in language and may be thus summarized: Together they sought information respecting a locality or section of the city which they term the "so-called" Red Light District. They first approached a police officer and asked him "where the Red Light District was" and were directed, presumably by him, to North Carolina avenue, above Arctic, and were *told* "any of them along there." They then entered a drug store, and addressing the same inquiry to some person behind the counter, *he replied:* "Why, over on North Carolina avenue." Later on that same night, upon the invitation of a girl, who said her name was Violet, they entered a house on North Carolina avenue, noting that the number was 131. A little later another girl, Helen, joined them. *The girls told us that Edith Bellwood was the proprietress.*

The affidavit of *Endicott, Jr.,* was doubtless intended as evidence of general reputation, both of the building and the occupant. It fails in both aspects. If the affidavit disclosed what papers were in the possession of Charles S. Moore, Prosecutor of Atlantic county, which the affiant terms "the original papers" and says he examined, and what those papers contained, the disclosure might be helpful in supporting the finding and conclusion of the affiant that Edith Bellwood was indicted and pleaded guilty of the offense of keeping a house of prostitution at No. 131 North North Carolina avenue. It is improbable that either the original bill of indictment returned by the Grand Jury, or the record of the judgment, would be found anywhere but in the County Clerk's office. The certified copy of the indictment and judgment record annexed to the affidavit, if

either is alluded to as the original papers examined, certainly gives no support to the sworn statement and falls far short of proving that Bellwood was indicted and pleaded guilty of keeping a house for prostitution at No. 131 North North Carolina avenue. All that the affidavit contains is the veriest hearsay and is completely worthless.

The affidavit of *Rundall* merely asserts that the house is "reputed" to be conducted by Bellwood, and is also without the least evidential value upon the question of general reputation.

It would seem that under common law principles evidence of the general reputation of a house would be inadmissible upon the issue of whether it is a bawdy-house, 14 *Cyc.* 503. The reason of that rule appears to be that the offense does not consist in keeping a house *reputed* to be a brothel or bawdy-house, but in keeping one that is actually such. *Henson* v. *State,* 62 *Md.* 231, 233, 50 *Am. Rep.* 204, and in *Boardman* v. *State,* 64 *Me.* 523, it was held that evidence of the reputation of the house is inadmissible because it is mere hearsay. "The house," says the Court, "must be proved to be a house of ill fame by facts and not by fame, for the terms 'house of ill fame' and 'badwy-house' are synonymous, 'ill fame' describing the *character* of the house, not its reputation, and the gist of the offense consists in the *use* of the house, not its reputation." *State* v. *Hand,* 7 *Iowa* 411, one was charged on an indictment with the offense of keeping a house of ill fame, resorted to for the purposes of prostitution or lewdness, and it was objected that the defendant could not be made liable as the keeper of such a house by evidence of "common reputation as to his character." The Court said: "This objection we believe to be well taken. The bad character of the defendant is immaterial in the first instance in determining whether he was the keeper of the house. And that he was the keeper must be shown in order to convict.

* * * But the jury may conclude that he was such keeper by proof that he acted as such, or so held himself out to the world. Common reputation as to his character, however, is quite a different thing and is not admissible to prove the crime here charged."

There is absolutely no proof that connects Bellwood as the keeper of a bawdy-house at No. 131 North North Carolina avenue aside from the affidavit of *Endicott, Jr.,* which the copy of the indictment annexed refutes, the affidavit of *Rundall* that she is "reputed" to be, and the affidavits of Seaman and Trumble that they were "told" by someone, not in her presence, that she was the proprietress. It is unnecessary to refer to the grave consequences, not only to the person charged with keeping such a house, but also to the owner, which would necessarily follow the acceptance of evidence of this character. The statute authorizes the Court of Chancery to try a criminal offense and to decree a penalty or forfeiture. The rule is that statutes which provide a punishment or penalty for maintaining a nuisance are construed as penal statutes. 29 *Cyc.* 1279.

The only evidence that Bellwood had anything to do with promoting social disorder upon the premises is the hearsay of the two men who went there with the avowed purpose of making evidence to be used by their employers. Neither of them saw or new Bellwood. There is no evidence that she rented or occupied or controlled the house, that she was in the house at the time or had ever been upon the premises. There was no proof that the general reputation of the house was that of ill fame or that Bellwood had such reputation as the keeper of such a house. If inquiry was made in the neighborhood concerning the reputation of either there is no proof of it. If general reputation were alone sufficient, and the evidence submitted were admissible to prove that fact, it would result in condemning as disorderly not a single house but a considerable portion of the city. Evil reputation is not

established by specific acts, *State* v. *Littman,* 88 *N. J. L.* 392, nor is a single offense, if proved, sufficient to justify a conviction of keeping a disorderly house. Bellwood could not be bound under such circumstances by what the girls told the detectives. *State* v. *Garring,* 75 *Me.* 591, see also *S. C.* 74, *Me.* 152.

The complainant's case rests wholly upon the proof of the acts of lewdness on the part of two girls which the detectives say they witnessed, and the complainant is in a court of equity upon a bill and affidavits which frankly state that two men were employed to investigate and secure evidence of suspected violations of the criminal laws, and in order to procure that evidence they visited a certain house where they met two women whom they induced by the payment of money to disrobe, and while in a nude state to engage in a lewd and disgusting performance of some sort which they witnessed and reported back. The men do not appear to have seen anyone on the premises other than the two women, and there is no evidence of any previous or subsequent act of lewdness or prostitution occurring on or about the premises. But for complainant's agents these specific acts of indecency would not have occurred. Upon this scandalous presentation of facts a court of conscience is asked to decree a forfeiture of the property of persons who it is not even pretended encouraged or even knew of the acts specified. These acts were at most individual conduct, and in no sense constitute a disorderly house within the statute. No one is shown to have visited the house but the detectives. The importance of showing that the building was "used for the purpose" of the prohibited acts, and that such acts were "permitted to occur," which means something of a common occurrence, was entirely overlooked. In *People* v. *Pinkerton,* 79 *Mich.* 110, 44 *N. W.* 180, a case identical with this case, the Court held that where a detective sent by officers of the law was the only person proved to have been to such a house for such

purpose, it was not sufficiently shown that the house was "resorted to for the purpose of prostitution." The Court also took occasion to remark: "It is scandalous to use means to persuade persons into crime, and, whether respondent (a woman in this case) is reprobate or not justice is not respected when it disregards its own safeguards against oppressive prosecution."

The was an utter lack of proof to justify an injunction as to appellant Bellwood, and the order should also be reversed as to her.

IV.

The Act of March 17th, 1916, is in Conflict with the State Constitution, and is Invalid on that Ground.

The keeping of a disorderly house is a crime indictable at common law, and in this State it is punishable by fine and imprisonment. The present crimes act styles offenses of this nature misdemeanors and renders the offender liable to a fine not exceeding $1,000 and imprisonment not exceeding three years. It is a crime punishable under our Constitution only by indictment. *State* v. *Anderson*, 40 *N. J. L.* 224. What constitutes a bawdy house is not to be found in any statute of this State. It is necessary, therefore, to look to the common law for the definition of it, and upon looking into the common law for this definition we also find that the term common or public nuisance embraces a variety of places such as disorderly inns, ale houses, bawdy houses, gaming houses, etc., which being conducted in such a manner as to render them a public nuisance and annoyance to all the King's subjects, may, upon indictment, be suppressed and the keepers thereof fined.

In *State* v. *Anderson, supra,* there was an indictment against the defendant for keeping a disorderly house. The offense was committed in the city of Paterson, in which city there was at the time in question an ordi-

nance forbidding the keeping of a disorderly house within the city, under a penalty of $25.

By an act approved March 26th, 1874, it was declared that where the ordinance of a city provided for the punishment of the offense of keeping a disorderly house it should not thereafter be lawful to prosecute by indictment any person accused of keeping a disorderly house in such city. On a case certified from the Passaic Quarter Sessions to the Supreme Court the question of the constitutionality of the above provision of the act of March 26th, 1874, was squarely presented for decision, and the decision was adverse to its validity. The opinion of the Court was delivered by Beasley, C. J., and was, in part, as follows:

> "The keeping of a disorderly house is a crime indictable at common law, and in this State is punishable by fine and imprisonment in the State prison. Therefore, it is clear that if this offense can, for the purpose of crimination, trial and punishment, be put into the hands of these municipal authorities, it follows that all common law offense of the same grade can be, in like manner, so deposited. This, I think, cannot be conceded. Such an arrangement would, in a very plain way, infringe an important provision of the Constitution of this State, Article I, section 9, of that instrument declares that 'No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace,' &c. The purpose of this clause was to prevent the bringing of any citizen under the reproach of being arranged for crime before the public, unless, by a previous examination taken in private, the grand inquest had certified that there had existed some solid ground for making the charge. It took from the law officer of the State,

> the attorney-general, one of the established prerogatives of his office, that if filing his information against supposed offenders, and thus putting them on trial of his own volition. The reputation of every man was thus put under the care of a single specified body. The language of the constitutional clause is very comprehensive, and the specified exceptions show conclusively that it was intended to cover the residue of the entire field of criminal accusation. In the presence of such a prohibition, how then is it permissible to put a man on trial before a city court, charged with this common law offense, without the preliminary sanction of a grand jury? If it be said the punishment is only a fine, the answer is, the restraining clause in question has nothing to do with the result or effect of the trial, its object being to save from the shame of being brought before the bar of a criminal court, except in the authorized method after an antecedent inquisition. I am clearly of opinion that a trial of a person for this offense before the municipal court would be an utterly void act."

In *Atlantic City* v. *Rollins*, 76 *N. J. L.* 254, on certiorari of her conviction before the Recorder of Atlantic City, the complaint was that the prosecutrix kept a disorderly house. It was said that her conviction of that offense was authorized by City ordinance, which ordinance was authorized by an act entitled "An act relating to, regulating and providing for the government of cities" (*P. L.* 1902, *p.* 284). Mr. Justice Garrison speaking for the court used this language:

> "If the statute cited or any other statute purports to authorize the prosecution and conviction of the offense of keeping a disorderly house otherwise than upon an indictment by the grand

> jury, such statute is invalid upon constitutional grounds. This is established in this State by the case of *State* v. *Anderson*, 40 *N. J. L.* 224."

It seems to be beyond question that if the Legislature is restrained by the constitutional provision referred to from requiring a person to "answer for a criminal offense" in one court without previous indictment by a grand jury, it is equally powerless to require him to do so in another court. The constitutional interdict concerns itself, not as to the name or dignity of the court or to its station in the judicial system, but with the object stated in the opinion of Chief Justice Beasley above quoted. The statute says that "whenever there is reason to believe that such a nuisance is kept, etc., the Prosecutor of the Pleas or any resident of the county shall have power and authority" to file a verified bill in the Court of Chancery to abate such nuisance. The bill thus authorized is analogous to the information of the attorney-general against supposed offenders referred to in the opinion of the Chief Justice. Is it to be susposed that the constitution has stripped the attorney-general of the important prerogative of filing his information against persons suspected of criminal offenses only to confer it upon his subordinate the Prosecutor of the Pleas or upon a private citizen of the county? If it was the purpose of the clause in question to prevent the bringing of a citizen under the reproach of being arraigned for crime before the public, without indictment as the opinion states, is the offense less criminal or the shame less public, if the trial be had in the Court of Chancery, than if it occur in a city court?

We submit that the Legislature was powerless, in view of the constitutional limitation, to enact the statute under consideration.

V.

THE LEGISLATURE, IN ATTEMPTING TO GIVE AN EQUITABLE FORM TO A CRIMINAL PROSECUTION TRANSCENDED ITS CONSTITUTIONAL POWERS.

It seems to us that there is such force in this point as to merit its consideration by the Court on this appeal. The question raised by it is one of grave importance and especially is it important to determine how far the Court of Chancery can constitutionally occupy the field heretofore occupied by the courts of criminal law, since the statute now includes, by amendment, another crime (*P. L.* 1918, *page* 739) and doubtless will hereafter, by further amendments, include others. In the event that the grounds of appeal as set forth in the petition of appeal be too general to include this ground, or be restricted to those specifically stated, leave is respectfully asked to amend the petition of appeal for the purpose of including Point V.

The constitutional powers of the Chancellor, it is said, are the powers possessed by the English Chancellor as a judge at the time of the Declaration of Independence, and the practice of the Court of Chancery in New Jersey was the same as that of the Court of Chancery in England. The ordinance of Lord Cornbury gave the governor and council power to hear such suits as should come before them in that Court, in such manner, or as near as might be according to the usage and custom of the Court of Chancery in England, and the ordinance of Governor Franklin gave to the Governor alone power to hear such causes in such manner as theretofore had been used and as nearly as might be according to the usage and custom of the Court of Chancery in England. The English practice was based upon the ordinances of Lord Bacon, and it has been held by Vice-Chancellor VanFleet that by the ordinances of Cornbury and Franklin these ordinances of Lord Bacon were made the law of the Court of Chancery of New Jersey.

Jones v. *Davenport,* 45 *N. J. Eq.* 72, 82.
Allen v. *Demarest,* 41 *N. J. Eq.* 162, 164.

The jurisdiction of courts of equity in England at the time of the adoption of our first Constitution was not precisely defined. Blackstone says they were instituted to detect latent frauds and concealments which the process of the ordinary courts of law are not adapted to reach; to enforce the execution of such matters of trust and confidence as are binding in conscience although not cognizable in a court of law; to deliver from such dangers as are owing to misfortune and oversight, and to give a relief more specific and better adapted to the circumstances of the case than can be obtained by the generality of the rules of the positive or common.

He also says that they are conversant only in matters of property, and differ from the courts of common law principally in their mode of proof, trial and relief. Such were the jurisdiction and practice of courts of equity as they existed in England prior to the Revolution, and which were adopted as part of the judicial system of this State. Neither the Court of Chancery of New Jersey nor its English prototype has exercised or deemed itself to possess the power of administering criminal law or in granting relief against a public nuisance other than to decree its abatement, and never has it under its general equity powers assumed jurisdiction in any case where the complaining litigant had no property right to assert or defend. The statute of 1916 purports to vest in the Court of Chancery a jurisdiction concurrent with the courts of criminal jurisdiction to prevent and punish the crime of keeping a bawdy house, and to aid that purpose the statute abrogates the rule requiring the complainant in a suit to enjoin a public nuisance to show some injury peculiar to himself. The practical effect of this legislation is to require the Court of Chancery to apply its distinctive practice and peculiar mode of trial to the adjudication of questions of mere criminal law, on the suggestion of a common informer

of his belief that a criminal offense is being committed. Such a method of trial, of course, ignores the constitutional guaranty of trial by jury whether the proceeding be classed as a civil or as a criminal proceeding.

The Legislature has no more authority to confer upon a court of equity the power to try one accused of the crime of keeping a bawdy house and to punish him if found guilty by a forfeiture of movables and the profits of land than it has to confer upon the Court of Oyer and Terminer jurisdiction to inquire into and determine the question of the existence of an implied trust, and if a trust be found to exist to imprison the trustee for a breach thereof.

If the offense were merely a statutory offense newly created there might exist some ground of validity of the statute based upon the argument that the State, having determined by statute in the exercise of its police powers that the described acts are injurious to the public health and morals and declared the commission of the acts described to be a crime and punishable as such, has the right to commit the trial and punishment thereof to whatsoever court it pleases, and such an argument would not be without force, but the right contended for and which this statute violates was a venerable institution when the Legislature came into existence and is perpetuated by two privisions of the State Constitution. It is a sufficient answer to that argument that the Legislature and the Court of Chancery both draw their authority from the same instrument, and neither can by a valid statute violate the Constitution.

A striking illustration of the principle here contended for is found in the important case of *North Pensylvania Coal Co.* v. *Snowden*, 42 *Pa. St.* 488, 82 *Am. Dec.* 530, where an act of the Legislature was declared to be invalid which purported to confer upon a court of equity the power to try "according to the course of the Court of Chancery" the rights of the parties claim-

ing certain mining rights where the existence of such right claimed by one as tenant in common was denied by his co-tenant.

An act of the Legislature had been passed April 22, 1856, providing that in addition to the rights granted to persons holding coal or iron mines, or minerals as tenants in common by the 24th section of a prior act of April 25, 1850 (a section which enabled such tenants in common to go into equity for an account) any person claiming to be a tenant in common, joint tenant in common, or otherwise interested in any coal or iron mines, etc., and which said tenancy, claim or right shall be denied or resisted by any other person claiming the same, it shall be lawful for such tenant in common, etc., to apply by bill or petition in equity to the Court of Common Pleas setting forth the right or interest he claims, and that the existence of such right or interest is denied by the person claiming, whereupon the said court shall proceed to examine, adjudicate and determine the rights of the several parties in the manner prescribed in the above-recited section (that is, as is expressly enacted according to the course of the Court of Chancery). Snowden filed such a bill in equity against the coal company, setting forth the facts necessary to bring the case within the provisions of the act of 1856. The court below sustained the bill, and on appeal to the Supreme Court of Pennsylvania the question was pointedly argued and considered whether the Legislature has the power to confer such jurisdiction upon a court of equity. The Appellate Court decided that such power does not exist and reversed the decree below and dismissed the bill.

From the opinion of the court, which was delivered by Mr. Justice Strong, I shall quote at some length. He says:

> "Then what is the bill more than an attempt to obtain through a decree of the Chancellor, the possession and enjoyment of certain min-

ing rights, from which he claims he has been deforced? * * * The bill seeks to secure precisely what would be obtained by the common-law action of ejectment. * * * It at most sets up a case for which there is, and always was, a complete remedy at law. Even the title, stated by the complainant to be in himself, is a strictly legal one, whether it be a corporeal or incorporeal hereditament, or an easement. It may be admitted that a bill will lie by one tenant in common to restrain the commission of waste by his co-tenant, or to procure partition; but even in such cases, confessedly within the jurisdiction of a court of equity, such a court will not interfere, if the complainant's title be denied, until he has vindicated it at law.

"It is true, the Court will sometimes retain the bill until the right has been tried at law. But here no tenancy in common is charged, and the bill itself, without awaiting the plea or answer of the defendants, alleges, as the *gravamen* of complaint, that the defendants deny the plaintiffs' title. Nor is this a case of partition. It has never been held that equity courts have jurisdiction of actions, founded on legal title, brought by one tenant in common against an alleged co-tenant to obtain possession or enjoyment of land. * * * When the complainant himself avers that his right is denied, and when that denial is the very ground of his complaint, it would be a novelty, indeed, for a court of equity to assume jurisdiction. Has it ever been supposed that one claiming a right of way over the land of another can file a bill in equity complaining that the right which he claims is denied, and that the enjoyment thereof is refused him and praying for an injunction against such denial and refusal of

enjoyment? Has any Chancellor ever sustained such a bill or considered that he had jurisdiction of such a complaint? If he has, then there is no longer any distinction between legal and equitable rights; then it would be hard to conceive of a case of which Chancery has not jurisdiction. That there is, however, and always has been, a class of cases which are exclusively cognizable in courts of law, and over which courts of equity have no jurisdiction, is not to be doubted, and we think the complainant's is one of them.

"The distinction between what are known as equity cases and those which are not, has always been recognized in this State, from its earliest existence as a commonwealth. If the complainant's case, then, is not saved by the act of Assembly of April 22d, 1856, his bill should have been dismissed because it presented no case of which the Court could assume jurisdiction in equity. * * * It is noticeable that this act changes not so much the tribunals in which the controversies of which it speaks may be tried, as it does the mode of trial. The controversies must be adjudicated in the manner prescribed in the act of 1850 and that expressly enacts that the Court shall proceed 'agreeably to the course of a Court of Chancery.' What that course is, is well known. The Chancellor adjudicates not only upon the equities of the case, but he determines the facts out of which the equities arise. He may, indeed, call in the aid of a jury, but their verdict is not binding upon him as it is upon a court of law; he may disregard it and decree in opposition to it. Trial, according to the course of a Court of Chancery, then is trial by a single judge. But if there is any right to which, more than all others, the people of Pennsylvania have clung with unrelaxing grasp, it is that of

trial by jury. They brought it with them from the land of their fathers. In every constitution which has been adopted they have taken care to secure it against infringement, and put it beyond the power of either the executive, the Legislature, or the courts to take it away from any individual. In that of 1776 the eleventh section of the declaration of rights was 'that in controversies respecting properties and in suits between man and man, the parties have a right to trial by jury,' which ought to be held sacred and the plan or frame of government while giving to the Supreme Court and the several Courts of Common Pleas the power of the Court of Chancery as to perpetuating testimony, obtaining evidence and the care of lunatics, and such other powers as future assemblies might give not inconsistent with that constitution, added immediately 'trial by jury shall be as heretofore?'

"The Constitution of 1790 and the amended one of 1838 contain substantially the same provisions, though if possible more emphatically stated. Their language is: 'Trial by jury shall be as heretofore and the right thereof remain inviolate.' What can this mean but that the right of having controverted questions of fact in common law cases decided by a jury should be beyond the reach of any department of the government whether it be the Legislature, executive or the judiciary? This was the right which had always been enjoyed before, and if the constitutional provisions were not intended to protect that in all its length and breadth they can mean nothing. It is true the Legislature are authorized to vest in the courts such powers (beyond those enumerated) to grant relief in equity as shall be found necessary (Art. V, sec. 6), but this must be understood as referring to

powers in equity cases in that class of cases of which Chancery had jurisdiction. Such an understanding is necessary to make the different parts of the Constitution consistent with each other and to give effect to all. It cannot mean that the Legislature may confer upon the Supreme Court and the Courts of Common Pleas the power of trying according to the course of Chancery any question which has always been triable according to the course of law by a jury. If it can, then an ejectment founded solely on a legal title, an action of debt on bond, or replevin, or an action of trespass may be sent into Chancery, all contested facts in it be decided by the judge and the intervention of a jury be unknown. Then what has become of the constitutional right of the citizen? Such a doctrine would startle the people of the commonwealth, and justly, for it would deprive them of one of their most valuable privileges. No power in our government can take from the litigant the right to have his case tried by a jury substantially in the mode and with the same effect as that which belonged to jury trials in similar cases when the Constitution of 1776 was adopted. What is law and what is equity is a judicial question. It belongs, therefore, exclusively to judiciary, but were it admitted that the Legislature could authoritively convert a legal right into an equity one, a court of equity could not as such enforce it. The judiciary no more than the Legislature can deny to any litigant the right of trial by jury in a case appropriate to such mode of trial. The act of 1856 then is applicable only to cases in which the rights of a complainant are equitable. It would conflict with the Constitution if it had a more extended application. The defendants in this case had a

> right to a trial according to the rules of law. Of this mode of trial they could not be deprived, and even the act of 1856 furnishes no sufficient warrant for denying it to them. It follows that this was not a case of which a court of equity had jurisdiction and the decree must therefore be reversed."

A court of equity is in no sense a court of criminal jurisdiction. Its primary province is the protection of property rights. Hence, an injunction will not be granted to restrain an act merely criminal where no property right is directly endangered thereby.

Thus an act morally wrong, such as gambling, will not be enjoined at the suit of an individual, nor will a violation of a Sunday law, nor a violation of a statute, where no property rights are involved. But where property rights are endangered the fact that the acts are criminal will not prevent the court from exercising the jurisdiction. Thus a party specially injured may enjoin the maintenance of a house of ill fame, although it be a crime to use property for such a purpose, but in interfering by injunction in such a case the Court is merely exercising its established jurisdiction as a court of equity in furtherance of justice and the violated rights of property. Where the Court attempts to exercise a statutory jurisdiction to abate a nuisance at the suit of a private individual who has suffered no special injury a different situation is presented. The learned author of *Pomeroy's Eq. Juris.* (*Equitable Remedies*), *Book* 5, *section* 478, cites a case in Iowa (*Littleton* v. *Fritz*, 65 *Iowa* 488, 54 *Am. Rep.* 19, 22 *N. W.* 641), as apparently opposed to the contention here made and to the prevailing rule. That case seems to hold that the enforcement of such a statute is not unconstitutional because its enforcement may create a multiplicity of suits. The cited case will be found upon examination to be clearly distinguishable from the present case. The offense prescribed was not an offense indictable at com-

mon law, nor did the statute authorize a forfeiture or penalty. See, also, *sections* 476, 478, 5 *Pom. Eq. Jurs.* (*Eq. Remedies*).

It is respectfully submitted that the Court of Chancery was without jurisdiction to make the order appealed from.

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