START

1771

CASE

Reduction Ratio Changes to 27

TO THE COURT OF GENERAL SESSIO THE PEACE IN AND FOR THE COUNTY OF NEW YORK:

The people, &c. on complaint of

WIILLIAM O. JONES

-against-

MARIA GARCIA

CHARGE: Vic. sec. 150, Ch

99 Laws 1909- Cons. Laws,

as amend by Ch 598 Laws

1913--prostitution in a Tenement House.

The undersigned City Magistrate herewith makes return to appeal allowed by Your Honorable Court on the 28th day of October, 1913, in the above entitled case.

The defendant, Maria Garcia, was arraigned before City Magistrate Samuel D. Levy at the Second District City Magistrates' Court on the 31st day of August, 1913, upon affidavit and complaint of William O. Jones, a police officer aggached to the Central Office Squad, who did make affidavit that on the 3th day of August, 1913, at about 11.40 o'clock p. m., in the City and County of New York, a person known to the deponent as Maria Garcia knowingly and willfully did demand from deponent the sum of Twenty Dollars as the price of sexual intercourse with a woman known to deponent as Evelyn Noe, whereupon this defendant took deponent and said Evelyn Noe to the door of a room in the premises No. 245 West 51st Street, 7th floor, West, said premises being in the Borough of Manhattan, City of New York, and then and there a tenement house within the meaning of the Tenement House Law, being a house or building, or portion thereof, occupied in whole or in part as the home or residence of three families or more, living independently of one another and doing their own cooking upon said premises. Deponent further stated that the is not related to the said defendant by blood or marriage. Wherefore deponent asked that the said defendant be adjudged a Vagrant, pursuant to article 8, section 150 of chapter 99 of the laws of 19096, Consolidated Laws, as amended by chapter 598 of the laws of 1913, and that she be dealt with accordingly.

Upon the arraignment of the defendant she was remanded to the Ninth District Night Court for trial, said trial being set for August 31st at 8 o'clock p. m. Upon the rearrangement of the defendant on August 31st the case was again postponed to September 2nd at 9 p. m. and again it was adjourned to September 4th at the request of the defendant, and at defendant's request it was again adjourned to September 29th at 8 o'clock p. m. at which time it came before the undersigned City Magistrate. The defendant's counsel interposed an objection to the jurisdiction of the court, which objection was over-ruled, and I did proceed to an examination and trial of the above entitled case.

Mrs. Tom Lewis, being duly sworn as a witness on behalf of the people testified that she resided at No. 245 West 51st Street in the Brought of Manhattan, City of New York; that the house was known as "Times-Court"; that she was living in the said premises on the 30th day of August, 1913, and that she occupied three rooms in said premises and that she did her own cooking on said premises; that she was married, and that her family consisted of herself and husband.

Mr. Thomas F. Manville, Jr. being duly sworn as a witness on behalf of the people, testified that he resided at No. 245 West 51st Street, Borough of Manhattan City of New York, and that he was living there on the 30th day of August, 1913; that he occupied an apartment of three rooms, and that he lived at said premises with his wife, and that they did their own cooking on said premises.

Fred Hickey, being duly sworn as a witness on behalf of the people, testified that he resided at No. 245 West 51st Street, Borough of Manhattan, City of New York;

that he lived on the ground floor of said premises in an apartment known as No. 21; that he lived there with his wife and children; that there were three in his family, and that he occupied three rooms, a living room, a bedroom and a kitchen; that they did their own cooking on said premises.

William O. Jones, the complaining officer, being duly sworn on behalf of the people, testified that he was a police officer of the Police Department of the City of New York, attached to the Fourth Inspection District, Central Office. That on the 30th day of August, 1913, he visited the premises known as No. 245 West 51st Street, in the Borough of Manhattan; City of New York; that he visited said premises at about 1.30 o'clock p.m. That he was accompanied by another person. The witness further testified that after he entered the premises he went the 7th floor; that the man who was with this witness rang the bell, and that the defendant opened the door and she said "Come in" and conducted them along a hall to a dining room, and the other man introduced this witness as Mr. Schumacker from Washington; the defendant said "have seats"; the defendant asked this witness if he spoke Spanish; witness answered that he did not speak Spanish, and the defendant asked him was it as warm in Washington as it is here, and he replied it was pretty warm there, "but you have a nice high apartment here, it is nice and cool"; defendant said "Yes", that she had been there ten months and it cost her Seventy-five dollars a month; she said "What kind of a girl do you prefer, a short girl or tall girl?", and the defendant went to the hall and said "I will telephone for the girls;they are upstairs". That she went to the hall, about

five feet from where this witness was sitting, and she had some conversation over the telephone, and that about five minutes after she telephone one girl came in, and she said to Mr. Candeau "This fellow is for you", and after a short conversation witness heard the defendant say "I will show you to the room."; that this first woman who entered was known as Marion Keeley, and Witness saw Marion Keeley and Mr. Candeau go into a bedroom; shortly afterwards the defendant brought in another girl, known to witness as Evelyn Noe, and said "This girl is for you"; that this witness had a short conversation with Evelyn Noe, in which she said she was in the moving pictures; that this witness said the moving picture business was dangerous, and Evelyn Noe said "No, it is not so dangerous because they use dummies sometimes", and Evelyn Noe said "Lets you and I go to a room", and this witness said "Very well" and they got up and the defendant accompanied them to a bedroom, to the door of a bedroom, and Evelyn Noe sat on the bed; that Evelyn Noe was dressed in a kimona as also was the defendant; that Evelyn Noe took off her stockings; the defendant said "The price for this girl will be twenty dollars"; witness said "That is too much money"; Evelyln Noe said "That is the price I always charge." The defendant said "didn't he tell you that the price would be twenty dollars?"; witness said "He didn't"; the defendant then walked along the hall and went into the bedroom where this witness saw Marion Keeler and Candeau go previously; that this witness want along to the same bedroom and there saw Marion Koeley lying in bed with nothing on but a little chemise, and this witness questioned Mr. Candeau in the presence of the defendant and Marion Keeley; that this witness then placed the defendant and Marion Keeley

and Evelyln Noe under arrest and called Officer Sutter to the apartment; that Officer Sutter was downstairs; this witness called out of the window and he came up, and after Officer Sutter got into the apartment Evelyln Noe said to this defendant "What do you mean by bringing me up to this place to get into trouble". The defendant said "I didn't know they were detectives, besides I was not going into bed with them. It was you who were going to bed with them", she said "You are worse, you are running the place".

The further hearing in the case was then adjourned to the 30th day of September, 1913.

After hearing the testimony of the defendant in her own behalf, and the testimony of the several witnesses called by her, I did find her guilty of a violation of the Tenement House Act, section 150, chapter 99, laws of 1909, and adjudged her a vagrant, and as provided by law I did commit her to the workhouse of the city of New York for a period of six months.

From all the evidence before me I was satisfied beyond a reasonable doubt,

First: That the premises known as No. 245 West 51st Street, Borough of Manhattan, City of New York, was a tenement house within the meaning of the Tenement House Law.

Second: That the defendant, Maria Garcia, did knowingly reside in a house of prostitution or assignation in a tenement house;

Third: That she kept and maintained a house of prostitution, assignation or ill-fame in a tenement house in violation of Chapter 598 of the Laws of 1913.

Copy of the affidavit and complaint, commitment,

formal examination of the defendant and minutes taken by the official stenographer, are here to attached and made part of this return.

All of which is respectfully submitted.

City Magistrate

Dated New York October 31st 1913.

CITY MAGISTRATES COURT, DISTRICT, FIRST DIVISION

CITY AND COUNTY OF NEW YORK,}SS:

----------being duly examined before the undersigned, according to law, on the annexed charge; and being informed that it is right to make a statement in relation to the charge against that the statement is designed to enable if he see fit to answer the charge and explain the facts alleged against ; the he is at liberty to waive making a statement, and that waiver cannot be used h on the trial.

Question: What is your name?

Answer:

Question: How old are you?

Answer:

Question: Where were you born?

Answer:

Question: Where do you live, and how long have you resided there?

Answer:

Question: What is your business or profession?

Answer:

Question: Give any explanation you may think proper of the circumstances appearing in the testimony against you, and facts which you think will tend to your exculpation.

Answer:

Date of arrival in United States?

How long in United States?

Arrived at (Port)

Arrived under name of

before me this

8

AFFIDAVIT - PROSTITUTION IN TENEMENT HOUSE

Art. 8, Sec. 150, Chap. 99. Laws of 1909, of the Consolidated

Laws. as amended by Chap. 598 of the Laws of 1913: Art. 1,

Sec. 2, Subds. 1 and 2, Tenement House Law.

First Division, City Magistrate's Court, District.

CITY OF NEW YORK,

COUNTY OF

aged years, occupation and

premises No. Street, in the Borough of in The City of New York, County of then and there a tenement house within the meaning of the Tenement House Law, being a house or building or portion thereof, occupied, in whole or in part, as the home or residence of three families or more, living independently of one another and doing their cooking upon the premises. Deponent further states that he is not related to the said defendant by blood or marriage.

WHEREFORE, deponent prays that the said defendant be adjudged a vagrant pursuant to Article 8, Section 150, Chapter 99, Laws of 1909, of the Consolidated Laws, as amended by Chapter 598 of the Laws of 1913, and that he be dealt with accordingly.

Sworn to before in this

day of

Fol. 1

COURT OF GENERAL SESSIONS OF THE PEACE,

IN AND FOR THE COUNTY OF NEW YORK.

THE PEOPLE ON THE COMPLAINT OF

WILLIAM O. JONES.

against

MARIE GARCIA,

Defendant-Appellant.

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of JAMES F. MACK, verified the 22nd day of October, 1913, a copy of the complaint, the stenographer's minutes, the marriage certificate of the defendant (Def't's Ex. B), a diagram of the apartment (Def't's Ex. A) and a letter dated "Boston, Mass. July 1913" from PeCro J. Cando to defendant, and all the proceedings here to ofore had herein, the undersigned will make application to the a ove-mentioned Court, in Part I thereof, to be held in the Criminal Courts Building, Borough of Manhattan, City and County of New York, on the 28th day of October, 1913, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an allowance of an appeal herein and pending the determination there of, the appellant be released on bail, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, October 23, 1913.

YOURS & C.,

JAMES F. MACK,

Attorney for Defendant-Appellant,

257 Broadway,

Borough of Manhattan,

New York City.

TO HON. CHARLRS S. WHITMAN,

District Attorney, New York County.

Fol. 1

COURT OF GENERAL SESSIONS OF THE PEACE,

IN AND FOR THE COUNTY OF NEW YORK.

THE PEOPLE ON THE COMPLAINT OF WILLIAM O. JONES,

against

MARIE GARCIA,

Defendant-Appellant.

STATE OF NEW YORK,}

CITY OF NEW YORK,} SS.:

COUNTY OF NEW YORK,}

JAMES F. MACK, being duly sworn, says that he is an attorney and counsellor at law, having his office at 257 Broadway, Borough of Manhattan, City of New York. That he is the attorney for the above-named Marie Garcia, defendant-appellant herein, and makes this affidavit in her behalf, under and in pursurance to Section 751 of the Code of Criminal procedure.

As appears form the copy of the complaint, here to annexed and marked "Exhibit 1", the above-named Maria Garcia, was arraigned before the Hon. Samuel D. Levy, a City Magistrate, presiding at the City Magistrates' Court, Second District, First Division, on the 31st day of August, 1913, on the complaint of the above-named William O. Jones, a police officer, charged with violating Article 8, Section 150, Chapter 99, Laws of 1909, of the Consolidated Laws, as amended by Chapter 598 of the Laws of 1913, in

"That on the 30th day of August, 1913, at 11:40 p.m., in the City of New York, in the County of New York, a person known to the deponent as Maria Garcia, knowingly and willfully did demand from deponent the sum of twenty dollars as the price for sexual inter-course

with a woman known to deponent as Evelyn Noe, Whereupon this defendant took deponent and the said Evelyn Noe to the door of a room in the premises No. 245 West 51st Street, 7th floor west, in the Borough of Manhattan, the City of New York."

That on said 31st day of August, 1913, Magistrate Levy remanded said defendant to the 9th District Magistrates Court (Women's Night Court) for trial and fixed defendant's bail at $500.00, which was furnished, and defendant was released on said August 31, 1913.

That thereafter and on the 2nd day of September, in said 9th District Magistrates' Court at 9 o'clock in the evening thereof, the trial of said charges began before Magistrate Campbell and three different witness were examined by Assistant District-Attorney Sullivan and cross examined by deponent, as attorney for defendant, at length.

That after the examination of said witnesses before Magistrate Campbell, the case was continued to September 4th, 1913; that on said September 4th, the said case was again adjourned by Magistrate Campbell to September 24, 1913, the reason for said adjournment as given on the back of the complaint being stated:

"Sept. 4 Req. of deft. and after consultation with Police, with approval of Chief City Magistrate & for public reasons, Sept. 24 at 9 p. m."

What these consultations related to or what public reasons existed for an adjournment of twenty days does not appears of record, nor did deponent participate in said consultations or know what the public reasons therefore were.

That one said 24th day of September, when said care came on for continuance of the trial, the Hon. Herry W. Herbert, City Magistrate, was sitting in said court.

Thereupon, when said case was called, deponent as the

attorney for defendant, stated to Magistrate Herbert that Magistrate Campbell had proceeded to try said case on September 2nd, and deponent asked that said case be referred to said Magistrate Campbell for conclusion. Whereupon, Magistrate Herbert adjourned the case to September 29th, and instructed deponent, as the attorney for defendant, to communicate with Magistrate Campbell and see if he wished to continue the trial of the case. Whereupon, deponent communicated with Magistrate Campbell on September 27th, by telephone to his office in the Borough of Manhattan; that said Magistrate Campbell stated he was busy with other matters, and although deponent urged him to continue that trial of said case on September 29th, he refused.

That when said case was called before Magistrate Herbert on September 29th, he stated after reciting the previous proceedings in the case:

"Judge Campbell in the meantime having

left his Court to sit in another Court,

in accordance with the rotation rules,

the case came up before me. I direct

that the case begin DE NOVO. (S.M.P.2).

Deponent was informed by Chief Clerk Bloch, of the Chief Magistrate's office, that Magistrate Campbell did not sit in any Court on September 29th or 30th, the dates when Magistrate Herbert assumed jurisdiction to displace him in the continuance of the trial of this case. Therefore, the grounds assigned by Magistrate Herbert were incorrect; but had they been correct they would have been insufficient to give him jurisdiction, as deponent shall presently show.

Deponent took two proper exceptions to Magistrate Herbert's proceeding with the case, upon two grounds, in

the following words:

First:

"Defendant's Counsel: I make a preliminary motion that there has been

two hearings before Magistrate Campbell

and we take the position under Section 73 of the Inferior Courts Act,

that your honor is without jurisdiction to act." (S.M.P.2).

Second:

"I take a further exception upon the ground that the defendant having been once placed in jeopardy and no reason-- no sufficient reason existing under Section 73 of the Inferior Courts Act, that Your Honor has no authority to try this case. That the defendant cannot be twice placed in jeopardy for the same offence. She has once had her trial. There is not sufficient reason existing under that section for Your Honor to go on with the case." (S.M.P.3).

Magistrate Herbert was without jurisdiction in the case in the face of defendant's objection as above set forth. The grounds stated by him are not embraced in said Section 73.

The only a authority a magistrate has to transfer a pending charge or complaint before him to another magistrate is found in Section 73 of Chap. 659 of the Laws of 1910, (known as the Inferior Criminal Courts Act); that section is in part as follows:

"No charge, complaint or person brought before one City Magistrate, except as provided in this section of this act, shall be sent before another magistrate, except for adequate cause, to be fully and at once entered upon the records kept by the respective clerks and signed by the Magistrate."

The only causes recited in said Section 73 as adequate for the transfer of pending charges or complaint from one magistrate to another, are:

"If a vacancy exists in the office of City Magistrate, or the illness, absence of

inability of any magistrate assigned to hold any City Magistrates Court in either division prevents his holding the same."

There is no adequate cause as contemplated and required by said Section 73 "fully and at once entered on the records," of this case "signed by the magistrate." Nothing appears upon the record said or signed by Magistrate Campbell, why he transferred this case, which was half tried, to Magistrate Herbert to be begun DE NOVO as required by said section, that deponent has been able to find.

True, Magistrate Herbert assigns a reason why he assumes jurisdiction over the case (S.M.P.2); but that reason is not one contemplated by said Section 73, and as before stated in this affidavit, the ground given by Magistrate Herbert did not exist in fact, for Magistrate Campbell did not sit in any Court September 29th and 30th, the dates on which the case was tried.

Moreover, said section 73 provides simply for transfer of pending" charges or complaints." It does not contemplate the transfer of a case which is half tried.

The second exception taken by defendant:

"That the defendant cannot be twice placed in jeopardy for the same offense. She has once had her trial" (S.M.P.3)

was good and defendant should have been discharged under the reasoning, in

People v ex rel. Stabile vs. Warden, 202 N. Y., 138.

For in the case at bar, as in the Stabile case, the judges right to terminate the trial and remand the prisoner for another trial was regulated by statute, and in that case, as in this, adequate grounds for the judge

action did not exist in the statute.

It was said in the Stabile case, SUPRA, page 150:

"If a person accused of crime is placed upon trial therefore upon an indictment duly found and sufficient in form and he pleads thereto, proceeds with the trial before a jury duly sworn to try the issues so joined, he is placed in jeopardy within the constitutional provisions."

Substitute the word "magistrate" for the word "jury" in the above quotation from the Stabile case, and the circumstances in case at bar are identical. In both cases the judges authority was limited by statute.

That at the trial before Magistrate Herbert on the 29th and 30th days of September, 1913, in said Ninth District Magistrates Court, the complaining officer, William O. Jones, was the only witness in behalf of the People, who testified as to the violation of Article 8, Section 150, Chapter 99, Laws of 1909, of the Consolidated Laws as amended by Chapter 598 of the Laws of 1913. (8.M.P.14-35).

The defendant testified in her own behalf (S.M.P. 37-74. Her character witnesses were her husband, Oresto Garcia (S.M.P.74), her brother, John Rabello (S.M.P.76), Ricardo R. Pardo (S.M.P.78), Emanuel Jamenez (S.M.P.80), Emily Steinacher (S.M.P.82), George Lloyd (S.M.P.83), Louis Boena (S.M.P.86) and James A. Turley, an attorney at law, who had acted for her in civil matters for about four years (S.M.P.87).

The magistrate after said trial, found defendant guilty of violating the said section under which she was arranged and tried, and sentenced the defendant to six months in the work-house (S.M.P.93-96).

During the trial, exceptions were taken by defendant, and at the conclusion of the people's

motion was made to dismiss the complaint upon the ground that there had not been shown any violation of Section 150 of the Tenement House Law, upon which the complaint was brought. This motion was denied and an exception duly taken, although the stenographer's minutes do not show said denial or exception (S.M.P.35-36).

A motion was again made by defendant, at the conclusion of defendant's case, renewing the motion made at the opening of the case (S.M.P.2-3) and the motion made at the end of the People's case (S.M.P.35) and a further motion to dismiss the complaint upon the ground that the People have failed to sustain their case. That there was no evidence to charge defendant with vagrancy under Section 150 of the Tenement House Law; that the People had not proved their case beyond a reasonable doubt, which motions were dened (S.M.P.91-93).

Deponent respectfully submits that in addition to the error committed by the Trial Court in denying the preliminary motions (S.M.P.2-3) as pointed out in the first part of this affidavit, other errors have been committed by the Trial Magistrate, in the trial of this defendant on the charge herein, and that for these reasons the appeal should be allowed and the judgment of conviction reversed.

Deponent desires briefly to call to the attention of this Court:

FIRST:

Appellant was tried, as already stated, charged with violating Section 150 of Article 8, Chapter 99, of the Laws of 1909, as amended by Laws of 1913, Chapter 598 which reads:

"VAGRANCY: A person who:

1. Solicits other to enter a house of

prostitution or room in a tenement house or any part thereof for the purpose of prostitution; or,

2. Indecently exposes the private person for the purpose of prostitution or other indecency; or,

3. Commits prostitution in a tenement house or any part thereof; or,

4. Knowingly resides in a house of prostitution, or assignation or ill-fame of any description in a tenement house; or

5 Keeps or maintains a house of prostitution, assignation or ill fame of any description in a tenement house, shall be deemed a vagrant, and upon conviction thereof shall be committed to the County Jail for a term not exceeding six months from the date of commitment. The procedure in such case shall be the same as that provided by law for other cases of vagrancy."

There is no means of ascertaining from the complaint or from the testimony which of the subdivisions of this section were claimed by the People to have been violated by the defendant herein. There can be no contention that the subdivisions 2, 3, 4 or 5 apply to this case; for (a) the defendant did not indecently expose the private person for the purpose of prostitution or other indecency; and (b) defendant did not commit prostitution in a tenement house or any part thereof; (c) the defendant did not knowingly reside in a house of prostitution or assignation or ill-fame of any description in a tenement house; and (d) the defendant did not keep or maintain a house of prostitution, or assignation or ill-fame of any description in a tenement house: and since no offence converging these particular subdivisions were charged or proven, they may be eliminated for the purpose of this argument.

From the complaint and form the evidence the only possible question that can arise in this case is "Did the defendant violate subdivisio 1 of Section 150 above

stated", which reads

"A person who:

1. Solicits another to enter a house of prostitution or room in a tenement house or any part thereof for the purpose of prostitution."

In this connection, deponent desires to call to the attention of this Court that the only testimony given on the part of the People was the testimony of the complaining witness, a policeman. A reading of the testimony of the complainant shows that no act of sexual intercourse was committed in the apartment; that nothing improper was said or done by this defendant during the entire time that complainant was in the apartment.

The policeman's only evidence on his direct examination to connect this defendant with a violation of said Section 150 is that while he was in the apartment of defendant one:

"Evelyn Noe said to me 'Lets you and I go to a be droom,' so I said very well and they got up and this defendant accompanied us to a bed room." (S.M.P.18).

He had no relations with her (S.M.P.32). Assuming the policeman's story was true, there was no soliciting here, under said section, upon defendant's part. But as usual with the evidence of policemen in concocting their story, he seked further to connect the defendant and testified:

"This defendant said 'the price for this girl will be twenty dollars'" (S.M.P.19).

He paid no money in the apartment (S.M.P.35).

The foregoing is the sum and substance of the policeman's evidence, so far as relevant and material, to connect the defendant with a violation of said Section 150 of the Tenement House Law.

His evidence if true was capable of corroboration, for he testified that he was brought to defendant's apartment and introduced by a Mr. Cando (S.M.P.23) whom he knew (S.M.P.22) as a gentleman from Washington (S.M.P.24).

Cando was in Court at the instance of the People different nights during the trial, but could not be found when deponent wished to put him on the stand (S.M.P.92). Why did they not put Cando on the stand?

To show that this same Cando held the defendant in respect and regard, deponent had her identify his signature on a letter which he had written her July, 1913, but a week or two before his betrayal of her. It was offered in evidence and excluded, but deponent had it marked "Def't's Ex. B, for identification, and is herewith submitted for the Court's consideration.

SECOND:

The evidence of defendant is straight forward and convincingly hones, and when taken with the surrounding circumstances connected with case, to wit: that the apartment consisted of but four rooms; a living room, kitchen and two bed rooms (def't's Ex. A, a diagram of the apartment), and that she lived there with her husband and brother, and the evidence of the seven business men, including a former lawyer, who testified to her good character, makes the conclusion almost irresistible that a great mistake has been made in the conviction of this defendant.

WHAT IS THAT EVIDENCE?

The defendant's apartment consisted of four rooms: a living room, kitchen and two bed rooms (S.M.P.41, Def't's Ex.A); defendant was married July 21, 1913, 1913 (Def't's Ex. B). She lived there with her husband (a Cuban who does not speak

English, S.M.P.74) and her brother (S.M.P.55, 49); her brother occupied on room and defendant and her husband the other (S.M.P.53). She was Spanish, and there was a circle of Spanish speaking people--ladies, gentlemen--who frequently met at her house (S.M.P.50). They knew her brother and her husband and each other (S.M.P.79, 81, 83, 84, 86, 88), among whom was Cando (the stool who took officer Jones to the house) who was introduced by the character witness (S.M.P.49) Prado, who knew defendant well, having worked for the same firm two years (S.M.P.49). Cando had been a frequent visitor to the home of defendant (S.M.P.49).

On August 30, 1913, Cando called defendant on the 'phone twice and stated that he had a friend from Washington who was connected with the same firm as himself, and that his friend was leaving for Washington at twelve o'clock. This was about ten o'clock, and he wanted to entertain him and wanted to know of defendant and some of the girls friends of defendant whom Cando had met at defendant's house, would go out and have supper and go to the Palace de Dance. Defendant stated to Cando that her husband and brother had gone to the theatre and that she was tire out; that a short time later Cando came to the apartment and 'phoned to the apartment of defendant that he and his friend were downstairs. They were admitted to defendant's apartment and Cando introduced the friend as Mr. Shoemaker, but who was in fact the policeman, complainant Jones. Defendant showed them to the living room, where Cando repeated the foregoing request to defendant, to come out and have supper, etc., but defendant refused. Defendant was alone. (S.M.P.24-25,38-39). Defendant states to Cande and complainant that if her husband came home

with them (S.M.P.44). Cando then asked defendant to call up Mrs. Keeley, whom he knew, to go out with him and his friend (the complainant). Whereupon, defendant called up Mrs. Kelley; she was in Miss Noe's apartment, upstairs in the same house (S.M.P.44,45,47). Defendant knew she used to visit Miss Noe there (S.M.P.69). Mrs. Keeley came to defendant's apartment fully dressed for the street (S.M.P.45), corroborated by complainant (S.M.P.27), where she met Cando and the complainant. Cando knew Mrs. Keeley (S.M.P.46). The defendant introduced the complainant to Mrs. Keeley (S.M.P.47). Mrs. Keeley went to defendant's telephone and called up Miss Noe to go out with them, and Miss Noe came to defendant's apartment wearing a rain coat (S.M.P.47). It will be noted here that both Mrs. Keeley and Miss Noe came to the apartment fully dressed for the street (S.M.P.45,47), although they lived, and came down stairs, in the same apartment house, to defendant's apartment. This directly contradicts the testimony of the complainant, that they came to the apartment for the purpose which he alleges. Why did they come dressed for the street? Because, as defendant testifies, they were to go from her apartment to dine and to the palace de Dance.

The complainant, Cando, Mrs. Keeley and Miss Noe were in her apartment a few minutes when the 'phone rang. Defendant left the living room and went to the end of the hall to answer it. Her husband was on the 'phone, and he was on his way home. He was at Times Square. When defendant returned, she found them out in the hall. She told them her husband would be home in a few minutes, and immediately complainant put defendant under arrest (S.M.P.48-49).

The foregoing is the evidence of defendant. It bears all the ear marks of truth and sincerity. If complainant and Cando went there for the purpose for which complainant alleges and testifies to, the announcement of defendant after answering the 'phone, that her husband would be home in a few minutes frustrated their purpose; and complainant not be foiled made the arrest then and there without justification.

The defendant lived in the apartment with her husband and brother, both of whom testified for the defense (S.M.P.74. 76), The defendant's good character was vouched for by six different witnesses, who were callers at her home, some of whom had known her a long time and had worked with her for firms down-town in this city (S.M.P.78,80,82,83,86,87); she was a stenographer then (S.M.P.60), including James A. Turley, who was her former lawyer in civil matters (S.M.P.87). Her mother had died two years previous to her marriage, July 21, 1913, and left her $2,000. (S.M.P.61).

Justice required and the magistrate erred in not construing the evidence, so the the benefit of the doubt should have been given to defendant. The overwhelming evidence and surrounding circumstances preponderate in favor of defendant and absolutely negatives the sole evidence of complainant, a policeman. The magistrate also erred in not taking into consideration the probabilities of the complainant's story, uncorroborated as it was in a single detail, the motives which would prompt a policeman to testify as did the complainant. He was detailed in plain clothes and his desire to hold that detail, etc. His evidence was capable of corroboration, for he entered

apartment with Cando. Cando was in Court every night, but was not put on the stand and was gone when defendant desired him (S.M.P.92).

Had any of the foregoing circumstances been taken into consideration by the magistrate, clearly sufficient doubt should have been created in his mind, and giving defendant the benefit of this doubt, the defendant should have been discharged.

Especially is this so, if the Court had taken into consideration the frank, open, sincere and positive statement made by defendant, her husband, brother and the six character witnesses who knew her well and, visited herself, husband and brother; the witnesses all substantial business men, including her former lawyer, had known her long and well. They all testified that she was of good character, but all this went for naught, no consideration given to it by a magistrate with whom the word of a policeman is gospel. Here at home, the most sacred place of earth, is desolated, by the word of a single policeman who entered it with falsehood on his lips, under false representations with a false friend, a husband and brother left to sit alone in grief and mental agony at the prospect of a wife and sister stamped as a prostitute, and case into a cell under conditions that are little better than death itself, to be forever loathed and shuned by decent people.

Surely, if the word of a single policeman thus suffices, the wreck of a home and its dearest possession -- a wife -- hangs by a slender thread, and our vaunted boast that a man's home is his castle, and empty and meaningless

THIRD:

The attitude of the

shown in the severity of the sentence. Although the evidence is uncontradicted that the defendant was never before under arrest (S.M.P.55), he inflicted the maximum sentence, six months.

A careful reading of the testimony in this case will clearly show that the judgment of conviction is contrary to law, is against the weight of evidence, and the commitment of the defendant to the workhouse for a period of six months was unduly harsh.

WHEREFORE, deponent respectfully requests that the appeal herein be allowed; that pending the determination thereof the appellant be released on bail; that on the argument herein the judgment of conviction be reversed and the appellant have such other and further relief as to this Court may seem jus and proper.

Sworn to before me this)

22nd day of October, 1913.)

AFFIDAVIT -PROSTITUTIOIN IN TENEMENT HOUSE

Art.8, Sec. 150, Chap 99. Laws of 1909, of the Consolidated

Laws, as amended by Chap. 598 of the Laws of 1913; Art 1

Sec. 2, Subd and 2. Tenement House Law.

First Division, City Magistrates' Court, 2 District.

CITY OF NEW YORK,

COUNTY OF

in The City of New York, County of then and there a tenement house within the meaning of the Tenement House Law, being a house or building or portion thereof; occupied, in whole or in part, as the home or residence of three families or more, living independently of one another and doing their cooking upon the premises. Deponent further states that he is not related to the said defendant by blood or marriage.

WHEREFORE, deponent prays that the said defendant be adjudged a vagrant pursuant to Article 8, Section 150, Chapter 99, Laws of 1909 of the Consolidated Laws, as amended by Chapter 598 of the Laws of 1913, and that he be dealt with accordingly.

Sworn to before me this

day of 1913

City Magistrate

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STATE OF NEW YORK. CITY AND COUNTY OF NEW YOUR. 18108

I, James J. Smith, an Alderman of the City of New York, DO HEREBY CERTIFY that on the 21st day of July, A. D. at The City Hall in the City of New York, I duly performed the MARRIAGE CEREMONOEY between Mr. Orestes Garcia of 245 West 51 St., and Mrs. Maria A. Rabell of 245 West 51 St. THAT the said parties were satisfactorily made known to me, and were of LAWFUL AGE, to contract Marriage, and that upon due inquiry by me made, there appeared no legal impediment to said Marriage.

I FURTHER CERTIFY, that the following persons, to wit:

Emilia Steinacker

Luis C. Baena

were present and became subscribing witnesses to said Marriage.

(Commissioner's Seal)

James Weldon,

Commissioner of Deeds,

New York City.

James J. Smith,

Alderman New York City.

Deft. Ex. B for Idnet.

Boston, Mass. July 1913.

Srta. M. Rabell,

245 West 51st Street,

New York City.

Dear friend:-

Just a line or two to advise that I am here in Boston for a few days. I have been on the point of going over when in New York, but have been extremely busy. I shall make an earnest effort to see you when I am home again. I expect to make a trip to Cuba soon and anything I can do for you out there, do not hesitate to call upon me to do so.

Mr. Pardo wishes to be remembered to you. From last advices, I believe he is now in Paris.

Yours very sincerely,

Pedro J. Cando.

Dict. by

PJCJr to Sten. MMN.

COURT OF GENERAL SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF NEW YORK.

The People of the State of New York

-against-

Marie Garcia.

OPINION.

CRAIN, J.- This is an appeal from a judgment of the City Magistrates Court convicting the defendant of a violation of Section 150 of Chapter 99 of the Laws of 1909 as amended by Chapter 598 of the Laws of 1913, commonly known as prostitution in a tenement house. A rading of the testimony leads to the conclusion that it supports the judgment.

The learned counsel for the defendant contends that there was former jeopardy in that the trial of the defendant was commenced before Magistrate Campbell but not completed owing to this magistrates absence and that thereupon the trial was commenced de novo and completed before another Magistrate, which resulted in the judgment of conviction appealed from.

His contention of former jeopardy is not sustainable.

To constitute former jeopardy there must be not merely identity in the charge but also in the alternative either a conviction or an acquittal or an unlawful termination of the trial which prevented a conviction or acquittal. In the case at bar there was identity in the charge but there was neither a conviction nor an acquittal nor, if Section 73 of the Inferior Courts Act applied, and unlawful termination of the trial. That act applies and there under the trial before Magistrate Campbell

was lawfully terminated and a new trial before Magistrate Herbert lawfully had.

The section in question (Section 73 of Chapter 659 of the Laws of 1910, commonly known as the "Inferior Courts Act") provides that "If the absence of any Magistrate assigned to hold any City Magistrates Court prevents his holding the same, any other City Magistrate may hold such court, and the fact of such ansence shall be adequate cause, without further entry upon the record for the transfer of all pending charges or complaints in said court, if the Magistrate appearing and holding such court shall elect to proceed therein."

This was not a preliminary examination but the trial of the defendant for an alleged offense triable in a Magistrates Court. The defendant had been complained against. The question of whether the complaint was well founded was undetermined. It was, therefore, within the language of Section 73 above set forth, a "pending complaint". The Magistrate before whom the trial had begun was absent and the Magistrate appearing and holding the court elected to proceed. The leaving of the matter undetermined and pending by Magistrate Campbell was not wrongful but was authorized by the statute referred to, and the Stabile case is therefore not in point as there what was done by the court was held to be beyond its statutory power.

As the Magistrate had jurisdiction and the evidence sustained the judgment of conviction it is affirmed.

Dated November 11t h 1913.

Judge of the Court of

General Sessions.