IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE, APRIL TERM, 1924.

State of Missouri ex rel. Cameron L. Orr, Prosecuting Attorney of Jackson County, Missouri, Respondent, v. Leannah Kearns, Alias Annie Chambers, Appellant, No. 24023.

APPEALED FROM THE JACKSON COUNTY CIRCUIT COURT AT KANSAS CITY.

HOI. ALLEN C SOUTHERN, JUDGE.

This proceeding was instituted on June 27, 1921, by the prosecuting attorney of Jackson County in the Circuit Court of that county, under the provisions of the Act approved March 28, 1921. (Laws of 1921, page 523). An injunction was granted perpetually restraining the defendant from maintaining a nuisance by conducting or keeping a bawdy house or house of assignation, upon certain premises owned by her, situated on West 3rd Street in Kansas City, and also directing the closing of the premises and keeping them closed from use for any purpose, for a period of two months; and from the judgment, the defendant has appealed.

A demurrer to the petition was overruled, and upon that it is urged here that the petition stated no cause of action in equity, in that, there was no allegation that irreparable loss to property rights would ensue if the alleged nuisance was not abated. It was not necessary that the petition should so state, State ex rel. v. Canty, 207 Mo. 439. The petition pleaded fully the facts showing the nature of the business carried on by the defendant, and the use of the premises, as constituting what was declared by the Act to be a nuisance, and charges the defendant with causing "large numbers of lewd, lascivious, immoral and dangerous men and women to frequent said premises and to congregate therein at all hours of the day and night for immoral purposes", which, it is alleged "renders said place and premises dangerous to the peace, safety, good morals and health of the public". In State ex rel. v. Woolfolk, 269 Mo. cited by appellant, it is said 1. c. 395: "The power of equity to enjoin the doing of acts threatening irreparable injury to property rights or which would constitute a public nuisance, is inherent and has been exercised, both in England and America by courts of chancery since their evolution as a distinct tribunal, nor can this power be devested because the performance of such acts may be a violation of the criminal law. On the other hand a court of equity is powerless to enjoin the commission of any crime not violative of property rights nor involving the creation of a public nuisance, for the reason that it has no jurisdiction to enforce the criminal law nor to prevent the performance of any act of a criminal nature which does not necessarily prejudice private or public rights subject to its jurisdiction and control". There is nothing said to the contrary in Harelson v. Tyler, 281 Mo. 383, which was a case involving private interests only, and which is also cited by defendant upon this point.

Objection is further made that while the petition stated that the plaintiff had no adequate remedy at law, the facts disclose that there was an adequate remedy at law, by prosecution under a criminal statute. This objection is made upon and in connection with the overruling of defendant's motion to require the petition to be made more definite and certain in respect of the reasons why the plaintiff had no adequate remedy at law. But, this is a case wherein the acts constituting the nuisance to be abated are defined by the law; the remedy is expressly authorized by the same law; and by the same law, the court is vested with jurisdiction to apply the remedy. The fact that the acts of defendant and her uses of the property as charged, constituted both a crime and a nuisance, did not divest the court of jurisdiction. State ex rel. v. Canty, 207 Mo. 459; State ex rel. v. Lamb, 237 Mo. 437. The acts charged constituted not

only a crime, but also a nuisance by express legislative enactment, and the facts charged were such as constituted a public nuisance under the common law. 14 Cyc 484; Clementine v. State, 14 Mo. 112. It is urged that there is no evidence in the record to support the finding of facts and the judgment rendered thereon.

The trial court made a finding of facts, which after reciting the ownership and possession by defendant on the day charged and long prior thereto of certain real estate particularly described, further found:

"That there was at all of said times located on said property a two story building, divided into rooms, used, occupied, furnished and equipped as bedrooms, dance halls, reception halls, dining room, as described in the first amended petition filed herein; that the defendant had on June 27th, 1921, and long prior thereto, unlawfully established, kept, permitted and maintained on said premises in Kansas City, Jackson County, Missouri, a bawdy, assignation house, and place of prostitution; that said defendant was on said date using said premises and property, furniture and equipment therein, for the purpose of keeping and harboring lewd, immoral and lascivious women therein, and permitting and requiring said women so harbored therein, to receive and entertain men in rooms in said house and building for the purpose of unlawful sexual intercourse, assignation and prostitution, and for immoral purposes and conduct; that said defendant was on said date, guilty of establishing, keeping permitting and maintaining a nuisance on said above described premises in Kansas City, Jackson County, Missouri, and that said buildings, erection, house and place of prostitution was established, kept, conducted, permitted, carried on, maintained and continued as
aforesaid are nuisances, and should be enjoined and abated, as prayed for in plaintiff's first amended petition".

The defendant testified: She had owned the property about 48 years. For about 40 years or until in the year of 1913, she had used the property in conducting a bawdy house. She denied that after 1913 she had done so. The evidence in the record as to the character of the house, its contents and furnishings, its inmates, and other circumstances was in the main given by certain police officials who entered the house on the afternoon of June 24, 1921. The house is described as a large one, having a somewhat fancy Japanese front, and having a chain on the front door to prevent forcible entrance. Next to the entrance, on the right, were two large parlors furnished with numerous heavily upholstered leather chairs. Back of these was a large ballroom with mirrors upon two sides extending from the floor to a height of seven or eight feet. In this room there was a painting of an almost nude woman with lights over the top of the frame, and there was a piano and also a victrola in the room. The dining room was large, and with a table capable of seating 20 or 25 persons. In the kitchen was an ice box about six or eight feet in height and width by four feet deep. In this was found several cases of dealcoholized Budweiser and dealcoholized Virginia Dare wine. In the defendant's room was found several whisky glasses, and a bottle containing a small quantity of whisky. There were several bed rooms on the first floor, and 12 or 15 bed rooms on the second floor, each containing a bed completely furnished. Each room had a wardrobe, but most of these contained no clothes. Upon the wall in each was an oscillating electric fan. Upon the wash stands in each of the rooms were found bottles containing perfume, or disinfectants, lysol or the like. The house was not in a residence district and did not have the appearance of an ordinary home. When the officers entered, about 3 o'clock in the afternoon, they found there besides the defendant, seven or

eight white women, one white man, one colored man and two colored women. Three girls were found in a telephone booth, the door of which was looked. A colored maid had the key. One girl was found under a bed. One was found out on the roof about half an hour after the entrance of the officers. She had escaped through the bath room window. She was the only one dressed in street clothes. All of the others wore kimonos, or silk robes highly colored and flowered, and all of these girls are described as being "all painted and powered up". One witness testified as follows:

"When you got upstairs what did you find up there?" Found several girls in the rooms with silk garments on and different colors." "Q. Bright?" "A. Bright colors, yes, and in one room we found a man and woman. This man was on the bed in his B. V. D's and this girl didn't have anything on but a teddy bear." Another witness testified: "I went in the rear room and there was a girl in there and a man by the name of Wright, I believe. The girl was all naked except-what do you call them-teddy bears."-- The man practically had his pants on when I got in there. He had a chance to dress".

The testimony of the first of these witnesses was that when he started to go into the room where the man and woman were found, the defendant took hold of him and attempted to prevent him from going into that room. The defendant denied this. There was testimony that several times while the officers were in the house, there were knocks at the front door, and each time the defendant called out, The officers are here". The defendant in her testimony explained the presence of the women in her house by saying that they were there at a card party given by a young woman who lived with her. She admitted that several of these women were women who had been inmates of her house at a former time, when, as she admitted, she was keeping an assignation house. She explained the presence of the man in the room by saying that he had been drinking, and the colored maid had put him to bed; and explained the presence of the woman in that room by saying that this woman had gone upstairs to remove her corset, and becoming frightened when the officers entered, ran into that room. Her explanation of the firght and scattering of the women upon the entrance of the officers was, "They thought there was a hold up gang there, because there was a party in there a short time before that with a gun in his hand and running around over the house". On the direct examination of defendant the following was given. "Q. Have you at any time during the year 1921 had any common women or known prostitutes or police characters or any dangerous men and women about that place at 201 West Third Street?" "A. Not that I know of." And, on her cross examination, the following: "Q. And you say that you haven't run a bawdy house in those premises in that time?" "A. I haven't to my knowledge." Not to your knowledge?" "A. Ho, sir."

The trial court received the testimony directly from the witnesses, and was in an advantageous position in that respect. It is enough to say that the testimony above referred to, and other circumstances as set forth in the record, is such as amply Justifies the finding of facts made. The court committed no error in refusing defendant's declarations of law in the nature of demurrers. The court admitted, over the defendant's objections, testimony as to the defendant's reputation covering a period of from thirty to forty years and continuing down to the time of the raid of the officers upon her premises, and the time when the suit was filed. This is assigned as error; and it is said that this testimony, in including a period prior to the date when the act became effective, gave retroactive effect to the Act, and made it ex post facto in operation, in violation of the state and federal constitutional provisions in that regard. Counsel

for defendant has cited upon this, Jamison v. Zansch, 227 Mo. 406; Bartlett v. Ball, 142 Mo. 28; Reed v. Swan, 133 Mo. 100; State ex rel. v. Wofford, 121 Mo. 61, and other like cases, decided by this court and the courts of other states. These cases are not in point. The defendant could acquire no vested right go violate the law. In this case the trial court was passing upon the admissibility of the evidence, and also upon its weight. The court very carefully excluded testimony as to reputation not extending continuously down to the date charged in the petition, the 27th day of June, 1921. Obviously, the court received this evidence for what it was worth, as tending to show the character of the defendant, and the character of the house kept by the defendant at the very time charged in the petition. In cases of this character, evidence of the reputation of the keeper and of the inmates and frequenters of the house has always been held admissible. Clementine v. State, 14 Mo. 112; 14 Cyc. 505; State v. Flick, 198 S. W. 1134. The fact that the defendant testified, and the character of her testimony has been sufficiently referred to. The nature of the proceeding brings ail of the evidence here for review. In that situation this court may disregard the testimony objected to as incompetent and hold, as we do, that the other and revelant testimony was such as to support the finding of facts made by the trial court. Bryant v. Shinnabarger, 285 Mo. 484; Rinkel v. Lubke 246 Mo. 1. c. 392. The Act in question is as follows:

Sec. l. "Shall be deemed guilty of a nuisance- who- when.- That any person or persons or corporation who shall directly or indirectly establish, keep, permit or maintain any bawdy house, assignation house, or place of prostitution in this state shall in addition to other penalties prescribed by the laws of the state of Missouri be deemed guilty of a nuisance, and all buildings, erections, rooms and places, and the ground itself in or upon which such bawdy house, assignation house, or place of prostitution is conducted, permitted, carried on, maintained or continued are also declared nuisances, and all such nuisances shall be enjoined and abated as herein provided."

Sec. 2. "Suit in equity to abate and enjoin- by whom instituted-circuit court to try and determine.- The attorney general or prosecuting attorney of any county in this state where any such nuisance as defined in section 1 of this act, exists, is kept, permitted or maintained may prosecute a suit in equity to abate and perpetually enjoin the same. All such suits shall be instituted in the name of the state of Missouri at the relation of the attorney general or prosecuting attorney of the county, as the case may be; provided, any individual may prosecute such suit at the relation of the state of Missouri to his use, but in cases so instituted by an individual or individuals, bonds or securities for costs may be required as in other cases. All persons, whether owners, lessees, officers, agents, inmates or employees, aiding, assisting or abetting in the commission of any such nuisance may be made parties defendants in any such cases. The circuit courts of this state are hereby authorized and empowered to try and determine all cases arising under this act and shall have power to enforce injunctions under this act by such measures and means as are now or may hereafter be provided for the enforcement of injunctions in this state, and in abating any such nuisance may order such house, structure, building or place closed for a reasonable length of time as it seems just and wise to the court."

The defendant insists that the Act is in violation of the Fifth Amendment of the Federal Constitution and also of Section 23 of Article 2 of the Constitution of Missouri, in that it subjects the defendant here and others in like circumstances to being twice tried and convicted for the

same offense; first, for violation of the criminal statute, and again for violation of the decree enjoining the offense. In Mugler v. Kansas, 123 U. S. 623, it was held that the state had power to make the manufacture and sale of intoxicating liquors a crime indictable, and at the same time to declare that the maintenance of a place for manufacture and sale of intoxicating liquors should be deemed a common nuisance, which may be abated by injunction at the suit of the state, such statute also making a violation of the injunction punishable; and the court held that these provisions did not violate the provisions of the Federal Constitution. The provision of the Federal Constitution upon the particular issue now considered, is, "nor shall any person he subject for the same offense to be twice put in jeopardy of life or limb"; and the state constitutional provision is, "not shall any person, after being once acquitted by a jury, be again, for the same offense put in jeopardy of life or liberty". These provisions are declaratory of a maxim of the common-law. State v. Snyder, 98 Mo. 554; 4 Blackstone Com. 336. But, under the common-law, and antedating the constitutional provisions, the fact that acts constituting a nuisance might also constitute a crime did not divests a court of equity of jurisdiction to abate the nuisance by injunction. State ex rel. v. Canty, 207 Mo.459; State ex rel. v. Lamb, 237 Mo. 437; Ex parte Laymaster, 260 Mo. 613. The power to abate by injunction carried with it the power to enforce, and to punish for violation of the injunction. This court could not have been unmindful of the possible violation of the injunction, and the result of that, in its consideration of the Canty and Lamb cases. We hold that the defendant has no constitutional right to violate the injunction, based upon her liability to criminal prosecution for the act or acts which would constitute a violation of the injunction.

It is objected also that the Act provides, a means by which the defendant and others similarly situated may be required to testify against themselves, in violation of the Constitution in criminal actions, in that, plaintiff in the injunction suit may take defendant's testimony and use the same in a criminal prosecution. The Act certainly attempts nothing of that nature in any express way; and, under the rulings of this court immunity from self incrimination is available "before any tribunal, in any proceeding". State v. Young, 119 Mo. 1. c. 520; State v. Blackburn, 273 Mo. 1. c. 482; State v. Naughton, 221 Mo. 398: Ex parte Gauss, 223 Mo. 277.

It is objected that the Act is violative of the Fourteenth Amendment of the Federal Constitution, in that, by its terms she can be deprived of her liberty without due process of law,- punished for violation of an injunction- without any charge being made against her and without trial by a jury. The Act confers jurisdiction upon the court in its character as a court of equity, over s subject,- the abatement of a nuisance,- a subject over which courts of equity have always had jurisdiction, and forming a class of cases wherein the right of trial by jury never obtained, and, no constitutional right of defendant was denied in failing to give to her a trial by jury, State ex rel. v. Canty, 207 Mo. 1. c. 461; Mugler v. Kansas, 123 U. S. 623, 673; St. Louis v. Stern, 3 Mo. App. 1. c. 52; Chase v. Revere House, 232 Mass. 88; Williams v. State, 150 G. 480. The provision in the Act providing for punishment for violation of the injunction was a declaration or giving of power of a kind which always existed, and has always been exercised by courts of equity in the abatement of nuisances. The legislature in the exercise of the police power of the state could declare the maintenance of a bawdy house to be a nuisance, whether it be held it was such at common- law, or not. State v. Tower, 185 Mo. 79; Littleton v; Fritz, 65 Ia. 488; State ex rel. v. Saunders, 66 H. H. 39; State v. Marshall, 100 Miss. 626; State ex rel. v. Gilbert 126 Minn. 95; Ridge v. State, 206 Ala. 349; People ex rel. v.Barbiere, 33 Cal. App. 770;

People ex rel. v. Smith, 275 Ill. 256; King v. Comm. ex rel. Smith, 194 Ky 143; Wind v. State, 102 Ohio St. 62. Under the foregoing authorities and many others the legislature could extend the jurisdiction of equity over nuisances so created or declared. There is nothing contrary to this said in Ex parte Laymaster, 260 Mo. 613, but, what is there said is entirely in harmony with the doctrine that it is competent for the legislature to declare the business of the defendant to be a nuisance, and abatable as such, in an equitable action.

Under the holding in Mugler v. Kansas, supra, and the other cases cited, the Act does not deny to the defendant the due process of law as required by the Federal and State Constitutions. Objection is made that the Act violates constitutional provisions in that it provides for punishment of crime by civil action, and for enforcement of the criminal law by injunctive process. The proceeding is primarily directed against the forbidden use of property. The distinction between enforcement of the criminal law by prosecution under indictment or information, and the abatement of the nuisance created by acts in relation to the property constituting a crime, is pointed, out in Mugler v. Kansas, 123 U. S. 1. c. 671: "The state having authority to prohibit the manufacture and sale of intoxicating liquors for other than medical, scientific, and mechanical purposes, we do not doubt her power to declare that any place, kept and maintained for the illegal manufacture and sale of such liquors, shall be deemed a common nuisance, and be abated, and, at the same time, to provide for the indictment and trial of the offender. One is a proceeding against the property used for the forbidden purposes, while the other is for the punishment of the offender".

Laws having the same purpose as this one, and similar in their main provisions, have been enacted in nearly all of the states of the Union, and many of them have been assailed in the courts, as violative of provisions of the Federal Constitution, or of State Constitutions similar to ours. laws of this character have been generally sustained by the courts. A reference to the statutory provisions on the subject may be seen as cited, in the opinion in Williams v. State, 150 Ga. 1. c. 483, and also citations of cases in many states wherein legislation providing for injunction, and abatement of this form of nuisance, and for closing the property from use has been upheld as violative of no constitutional provision. It is there said that the decision to the contrary, in Hedden v. Hand, 90 N. J. 2q. 583, is against the great weight of American authority. The principles foregoing are sustained by the Federal Courts in proceedings in equity under the Act of Congress of October 28, 1919, known as the "National Prohibition Act", (41 Stat. C. 85 p. 035, 314). Various phases of the subject are reviewed in United States v. Reisenweber, 288 Fed. 520 (C. C. A.).

But, it is further and especially urged that the Act can not be upheld nor the judgment sustained because the Act provides for a penalty, that the penalty so provided is wholly within the discretion of the court, and is not fixed within any prescribed limits by the legislature, and thereby a legislative power is wrongfully conferred upon the court, in violation of Article III of the Constitution of this state, and that thereby and in that respect also, the defendant is denied due process of law in violation of Sec. 30 of Article 11. Attention is called by counsel to the words in the first section of the act, "shall in addition to other penalties prescribed by the laws of the State".

The Act provides for civil action. It does not provide for the recovery of a penalty, but it does provide for a forfeiture or deprivation of the use for a time, and for any purpose, of property wherein and whereon the nuisance is maintained. The primary purpose of the

deprivation of use is the effectual abatement of the nuisance, and not punishment, but, the deprivation arises out of a finding that the property has bean and is used by the defendant for the forbidden purpose, and its result is a form of punishment, and in that sense the is penal.

The objection now under consideration arises upon the last sentence of Section 2 above quoted, and particularly under the closing provision that the court "in abating any such nuisance may order such house, structure, building or place closed for a reasonable length of time as it seems just and wise to the court". No question is raised as to whether this provision applies to power to make such an order in the first instance and upon granting an injunction, or applies to an order made in a proceeding for violation of an order of injunction previously made. The trial court took the former view, because the decree provides first for an injunction perpetually restraining the defendant from maintaining a bawdy house in, or upon the premises, their closure by the sheriff, and restraining the defendant from entering' thereon, or from "using them or any part thereof, or conducting any business thereon on therein of any kind or character whatsoever, from March 13, 1922 to May 13th 1922", giving permission, however, to a certain named person to go upon the premises to examine the same for the purpose of reasonable care thereof, and to show the same to prospective purchasers or lessees, but, for no other purpose whatsoever.

It is said, Cooley Constitutional limitations, page 163: "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority". But, a line of distinction in determining the nature of the powers delegated is pointed out in Lewis-Sutherland, Statutory Construction, End 3d. Sec. 88: "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objection can be made". Upon the same subject, and stating the like conclusion upon the same grounds the following is found: 6 R. C. L. (Constitutional law. Sec. 165) page 165: " Hence it is said that the rule that legislative powers cannot be delegated must be understood as being applicable only to cases where the discretion is essentially legislative". Cincinnati, W. & Z. R. Co. v. Clinton Co. Comners, 1 Ohio St. 88; Dowling v. Lancanshire Ins. Co. 92 Wis. 70. The last mentioned case is cited in Nally v. Insurance Co. 250 Mo. 452.

Upon the contention that there is a violation of the due process clause, and a forbidden delegation of legislative power, counsel for defendant cites and relies upon 3x parte Dusenbury, 97 Mo. 504, and Young v. Railroad, 227 Mo. 307; and especially upon what was said in the opinion in the latter, 1. c. 317.

"The governmental function of declaring an act a crime or other offense against the law, to which a penalty may be affixed, can be exercised only by the legislative department, it cannot be delegated; to that extent the appellant is correct in its position. And it is also correct to say that the prescribing of the punishment or penalty is a legislative function that cannot be delegated, for example, the General Assembly could not forbid the commission of a certain act and say that one convicted thereof should be deemed guilty of a felony or misdemeanor and suffer such punishment as the jury might see fit to impose. But when the General Assembly has declared an act either a crime or negligence deserving a penalty and has prescribed the punishment or penalty within limits, not less or more, it is not a delegation of legislative power

to leave to the jury fixing of the extent to the punishment or amount of the pecuniary penalty, within the prescribed limits, to be applied to the particular case. That has long been the course of criminal procedure in this State and even in states where it is not left to the jury it is left to the court to fix the penalty within the prescribed limits. Indeed the Legislature could not without inequality, and injustice, in most cases, prescribe a fixed penalty, because the circumstances under which a particular act is done usually distinguish it in degree of offense from another similar act forbidden by the same statute. It has been from time immemorial in England, from whom we inherited the common law, and in this country, for the legislative department of the government to prescribe the punishment or penalty, within limits except in certain cases, and leave it to the courts to fix the extent in each case".

That was said in a case where the suit was to recover the penalty prescribing by Section 2864, R. S. 1899, the penalty being not less than two thousand dollars and not exceeding ten thousand dollars, in the discretion of the jury. In that case the court was discussing the provision as to due process of law. In that case the discretion of the jury as to the penalty was exercised between a minimum and a maximum limit upon a matter completed, and in the application of a law to an accomplished fact. In the instant case the discretion is to be exercised primarily not in the infliction of a penalty, prescribed by the law for a past offense, but, rather in the working of a forfeiture for its required and prospective effect in assuring the abatement of the nuisance. But, the principle announced by Judge Yalliant in Young v. Railroad, is applicable in this case, upon the question now under consideration. The question is not whether the Legislature may authorize the closing of the premises for all purposes as a means of abatement. It is whether, in giving that authority it was imperative, under the Constitution, that some limit be fixed within which or upon which the discretion of the court might be exercised. In Nalley v. Home Ins. Co. 250 Ho. 425, it was held that so much of an Act as made the form of fire insurance policies as agreed upon by the companies and approved by the Insurance Commissioner, the only lawful form, was invalid, as an unwarranted delegation or legislative authority to the commissioner. This was upon the ground that the discretion of the commissioner when exercised upon that subject, if permissible, would have made the law. In this case, and under similar statutes the exercise of the discretion of the court that the premises shall be closed does not make the law that they may be closed. The Legislature has done that; and that far, the action of the court only executes the law. But, from the very nature of the action, a definite time must be fixed during which the order of closure shall operate. The fixing of some time is an essential and inseparable part of the order. It must then be an essential and inseparable part of the law that some limit or limits of time be fixed. If the court fixes the time, with no measure or standard fixed by the law, other than the opinion of the court as to what is a reasonable time, the court exercises a legislative discretion and makes the law in each case, so far as the essential element of time enters into the order.

There is another consideration persuasive that the fixin of some time is an essentially legislative function. In dealing with the subject of closure of premises used in the sale of intoxicating liquors, the Legislature (Sec. 6594B, Laws, 1921 p. 415) authorized closure "for such period as the court may determine, not exceeding one year". The National Prohibition Act, heretofore cited, fixes a period. We have examined the statutes of many other states, providing for the abatement of bawdy houses as nuisances, and providing for a closing of the premises from any use, and find that such statutes make provision as to the period of such closure. This is

persuasive in leading to the conclusion that Congress and the legislatures of other states, and the legislature of this state, in the Act concerning intoxicating liquors, deemed it essential that some measure or standard be fixed by the legislature authority within which or upon which the discretion of the court should be exercised, in the deprivation of a defendant from all use of property, which in, and of itself, was in no way harmful. The power as given the court, in the provision mentioned is a delegation of a power essentially legislative, and forbidden by Article III of the Constitution.

The conclusion reached does not destroy the whole Act nor result in a complete reversal of the judgment. Without the portion rejected there remains a complete law, within the legislative intent, which authorizes a perpetual injunction against the forbidden use, and its enforcement by punishment for violation. The separation of the valid from the invalid portions of the judgment is equally clear. So much of the judgment as constitutes a perpetual injunction upon the defendant against using the premises, in the maintenance of a bawdy house, should be affirmed; and so much of it as closes the premises against any use whatsoever should be reversed. The cause should be remanded that a judgment may be entered in accordance with these conclusions.

Small, C.,

James D. Lindsay, Commissioner.,

PER CURIAM:- The foregoing opinion of Lindsay, C is hereby adopted as the opinion of the court. All concur except James T. Blair, who thinks the judgement should be affirmed.

No. 24023

In the SUPREME COURT OF MISSOURI

DIVISION NUMBER ONE,

OCTOBER TERM, 1923.

State of Missouri ex rel. Cameron L. Orr, Prosecuting Attorney, Jackson County, Mo. vs. Resp. Leannah Kearns, Alias Annie Chambers, App.

OPINION

Affirmed in part Reversed in part.

FILED

JUL 31 1924

J. D. ALLEN,

Lindsay, Commissioner., Judge