

1940

Utah Liquor Control Commission v. James Mandeles, Mrs. James Mandeles, "Jim's Place", "Merry Moon Inn" et al : Appellant's Abstract of Record

Utah Supreme Court

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Black, Moffat & Lunt; Attorneys for Plaintiff and Appellant;

Recommended Citation

Abstract of Record, *Utah Liquor Control Commission v. Mandeles et al*, No. 6227 (Utah Supreme Court, 1940).
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In the Supreme Court of the State of Utah

UTAH LIQUOR CONTROL COMMIS-
SION,

Libelant,

vs.

JAMES MANDELES, MRS. JAMES
MANDELES, "JIM'S PLACE",
"MERRY MOON INN" and one
20 foot bar, one 20 foot back bar,
and others, etc.,

Libelees.

No. 6227

APPEAL FROM THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY

HON. ALLEN G. THURMAN, *Judge*

Appellant's Abstract of Record

BLACK, MOFFAT & LUNT
*Attorneys for Plaintiff
and Appellant.*

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In the Supreme Court of the State of Utah

UTAH LIQUOR CONTROL COMMISSION,

Libelant,

vs.

JAMES MANDELES, MRS. JAMES
MANDELES, "JIM'S PLACE",
"MERRY MOON INN" and one
20 foot bar, one 20 foot back bar,
and others, etc.,

Libelees.

No. 6227

LIBEL OF INFORMATION

1 The Utah Liquor Control Commission, by Parnell Black, D. Howe Moffat and George H. Lunt, attorneys for said Commission, bring this Libel of Information against the Libelees above named, and alleges:

1. That on or about the 11th day of June, 1939, at and within that certain bar room, operated by the Libelees and located in Magna, Salt Lake County, State of Utah, and within the jurisdiction of this Court, E. W. Stringfellow, Inspector for the Utah Liquor Control Commission, seized the

Tr. Page

following described goods, merchandise, articles,
objects and tangible personal property, to-wit:

- 1 20 ft. bar
- 1 20 ft. back bar
- 1 pint Crab Orchard Whiskey
- \$4.40 cash (in register)
- 1 National Cash Register, No. 1382466W
- 1 Cigarette vending machine, No. 4484
- 3 pin games
- 1 slot machine
- 1 nut vending machine
- 1 coin operated dice game
- 1 7 ft. cigar case
- 1 12 ft. display case
- 1 small ice refrigerator
- 1 G.E. Electric Refrigerator
- 2 small radios
- 2 bar sinks
- 1 mounted deer head
- 1 .22 rifle
- 1 electric clock
- 2 electric fans
- 15 cuspidors
- 17 chairs
- 5 tables
- 2 electric plates
- 120 assorted glasses
- 15 glass pitchers
- 4 cases 24-pint beer
- 2 cases soda water
- 10 1/2 gal. jugs beer
- 8 siphon bottles of soda water
- 3 novelty mirrors
- misc. dishes
- 2 cans pickles
- 7 tables

2

27 chairs**1 wooden bench****1 Wurlitzer Music Box, No. 657433****1 pin game****1 electric fan****1 cash register, No. 2002864****1 2 barrel beer cabinet****1 electric coffee maker****1 wall mirror****3 12 oz. Fruit Bowl mixer****8 12 oz. Budweiser Beer full****9 5c pkgs. Top Cigarette tobacco****4 cans pipe tobacco****1 pkg. Duke's Mixture****25 pkgs. Bull Durham tobacco****5 pkgs. Riz La Cigarette papers****4 pkgs. Wheat Straw Cigarette papers****7 plugs Brown Mule Chewing Tobacco****5 plugs Horse Shoe Chewing Tobacco****2 plugs Days Of Work Chewing Tobacco****10 plugs Honey Cut Chewing Tobacco****12 plugs Spark Plug Chewing Tobacco****6 cans Copenhagen Snuff****8 cans Scotch King Snuff****15 10c Cascara Bromide Quinine Tablets****12 5c Five a Lax****7 10c Bromo Seltzer****18 5c pkgs. gum****4 5c Sen Sen****10 10c Stay Awake****25 10c pkgs. razor blades****19 5c aspirin****18 5c candy bars****19 5c pkgs. O-Ke-Doke****9 boxes Assorted Fine Chocolates****8 5c pkgs. nuts****8 5c pkgs. potato chips****20 10 for 25c King Edward Cigars**

6 2 for 5c King Edward Cigars
 35 5 for 10c Sports Cigars
 16 5c Dry Climate Cigars
 22 3 for 10c Cremo Cigars
 45 5c Van Dyke Cigars
 15 5c Corina Lark Cigars
 43 5c White Owl Cigars
 9 decks playing cards
 9 cigarette holders
 9 cigar holders
 12 cans lighter fluid
 20 assorted pipes
 200 poker chips
 4 10c combs

2. That said Inspector E. W. Stringfellow has heretofore made return of said seizure to the above entitled Court, and a Warrant of Attachment has by said Court issued and is now on file in said Court.

2½ 3. That sales of intoxicating liquor were made on the following dates: May 14, 1939; June 4, 1939, June 10, 1939 and June 11, 1939.

4. That between the 14th day of May, 1939, and the 11th day of June, 1939, the Libelees, continuously and throughout the said period of time operated a common nuisance at "Jim's Place" and "Merry Moon Inn", located in Magna, Salt Lake County, State of Utah, and that the maintenance of said common nuisance was in violation of Section 195, Chapter 43, Laws of Utah 1935,

as amended by Chapter 49, Laws of Utah 1937, in that said Libelees at said premises, during the times above mentioned, did then and there, sell and keep for sale, whiskey, gin and other alcoholic liquors and did permit numerous persons to resort to said premises for the purpose of drinking alcoholic liquors in violation of Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937.

5. That by reason of the premises the said goods, merchandise, articles and objects and personal property described and listed in paragraph number one hereof has become and is subject to forfeiture and condemnation.

WHEREFORE, Libelant prays that a time and place be fixed for the trial and hearing of this Libel upon due notice to all persons concerned; and that upon said hearing said property be condemned and forfeited to the State of Utah and that the same may be sold or otherwise disposed of as provided by law.

PARNELL BLACK

D. HOWE MOFFAT

GEORGE H. LUNT

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RETURN OF INSPECTOR
E. W. STRINGFELLOW

(Title of Court and Cause)

STATE OF UTAH }
County of Salt Lake } ss.

E. W. STRINGFELLOW, being first duly sworn on oath deposes and says:

1. That he is a duly appointed and acting Inspector of the Utah Liquor Control Commission and was acting in such capacity during all of the 11th day of June, 1939.

2. That on the 11th day of June, 1939, affiant entered those premises commonly known of as "Jim's Place" and "Merry Moon Inn", Magna, Salt Lake County, State of Utah, which said place was then and there a common nuisance being operated by James Mandeles and Mrs. James Mandeles, and that said premises were then and there a common nuisance in that at said time and place and prior thereto said premises had been used as a place wherein whiskey and gin and other alcoholic liquors had been sold, kept for sale and that said premises had been used by said persons

as a place where persons resort for the purpose of drinking alcoholic liquors in violation of Section 195, Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937, and in addition thereto, on said date hereinabove mentioned, to-wit: June 11, 1939, James Mandeles sold drinks of whiskey, on said premises to Eugene Oaks and Ralph Reid.

3. That thereafter and forthwith said James
- 4 Mandeles was duly arrested and charged in the City Court of Salt Lake City, Salt Lake County, State of Utah, with maintaining a common nuisance in violation of Section 195, Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937.

4. That thereupon affiant took into his control the following described property, to-wit:

- 1 20 ft. bar
- 1 20 ft. back bar
- 1 pint Crab Orchard Whiskey
- \$4.40 cash (in register)
- 1 National Cash Register, No. 1382466W
- 1 Cigarette vending machine, No. 4484
- 3 pin games
- 1 slot machine
- 1 nut vending machine
- 1 coin operated dice game
- 1 7 ft. cigar case
- 1 12 ft. display case

1 small ice refrigerator
 1 G.E. Electric Refrigerator
 2 small radios
 2 bar sinks
 1 mounted deer head
 1 .22 rifle
 1 electric clock
 2 electric fans
 15 cuspidors
 17 chairs
 5 tables
 2 electric plates
 120 assorted glasses
 15 glass pitchers
 4 cases, 24-pint beer
 2 cases soda water
 10 ½ gal. jugs beer
 8 siphon bottles of soda water
 3 novelty mirrors
 misc. dishes
 2 cans pickles
 7 tables
 27 chairs
 1 wooden bench
 1 Wurlitzer Music Box, No. 657433
 1 pin game
 1 electric fan
 1 Cash Register, No. 2002864
 1 two barrel beer cabinet
 1 electric coffee maker
 1 wall mirror
 3 12 oz. fruit bowl mixer
 8 12 oz. Budweiser beer full
 9 5c pkgs. Top Cigarette Tobacco
 4 cans pipe tobacco
 1 pkg. Duke's Mixture
 25 pkgs. Bull Durham Tobacco

	5 pkgs. Riz La Cigarette papers
	4 pkgs. Wheat Straw
	7 plugs Brown Mule Chewing Tobacco
	5 plugs Horse Shoe
	2 plugs Days of Work Chewing Tobacco
	10 plugs Honey Cut Chewing Tobacco
	12 plugs Spark Plug Chewing Tobacco
	6 cans Copenhagen Snuff
5	8 cans Scotch King Snuff
	15 10c Cascara Bromide Quinine
	12 5c Five A Lax
	7 10c Bromo Seltzer
	18 5c pkgs. Gum
	4 5c Sen Sen
	10 10c Stay Awake
	25 10c pkgs. razor blades
	19 5c aspirin
	18 5c candy bars
	19 5c pkgs. O-Ke-Doke
	9 boxes Assorted Fine Chocolates
	8 5c pkgs. nuts
	8 5c pkgs. potato chips
	20 10 for 25c King Edward Cigars
	6 2 for 5c King Edward Cigars
	35 5 for 10c Sports Cigars
	16 5c Dry Climate Cigars
	22 3 for 10c Cremo Cigars
	45 5c Van Dyke Cigars
	15 5c Corina Larks Cigars
	43 5c White Owl Cigars
	9 decks playing cards
	9 cigarette holders
	9 cigar holders
	12 cans lighter fluid

20 assorted pipes
200 poker chips
4 10c combs

which property was located in "Jim's Place" and "Merry Moon Inn" in Magna, Salt Lake County, State of Utah.

5. That the above described property has been, and was, on the 11th day of June, 1939, used by James Mandeles and Mrs. James Mandeles in connection with the operation of the business conducted upon said premises hereinabove described, and that said property is all tangible personal property found upon said premises on the date of the seizure as herein alleged.

6. That one of the businesses conducted in the premises herein referred to and where the violation of the Liquor Control Act of Utah as hereinabove specified occurred, was the business of selling intoxicating liquors in violation of Chapter 43, Laws of Utah, 1935, as amended. And that upon the happening of said violation as hereinabove specified affiant seized all tangible personal property herein described, and affiant now has the same under control at said premises.

7. That this Return is made under and pursuant to Section 165 and Section 168 of Chapter

43, Laws of Utah, 1935, as amended by Chapter
49, Laws of Utah, 1937.

E. W. STRINGFELLOW

Subscribed and sworn to before me this 12th
day of June, 1939.
(SEAL)

GAYLE CASSITY

*Notary Public Residing in
Salt Lake City, Utah*

My Commission Expires :
August 31, 1941

7

ENTERED ORDER

(Title of Court and Cause)

Pursuant to the Libel of Information of E. W. Stringfellow, Inspector of the Utah Liquor Control Commission, and good cause appearing therefor, it is ordered that James Mandeles and Mrs. James Mandeles appear before this Court on June 20, 1939 at the hour of 2:00 P. M. and then and there Show Cause why the fixtures and merchandise seized at "Jim's Place" and "Merry Moon

Inn" in Magna, Salt Lake County, State of Utah on the 11th day of June 1939, should not be confiscated and forfeited.

Dated June 13, 1939.

ALLEN G. THURMAN, *Judge*

8 WARRANT OF ATTACHMENT

(Title of Court and Cause)

Upon filing of the duly sworn Return of Inspector Stringfellow, showing that the following is under his control:

- 1 20 ft. bar
- 1 20 ft. back bar
- 1 pint Crab Orchard Whiskey
- \$4.40 cash (in register)
- 1 National Cash Register, No. 1382466W
- 1 Cigarette vending machine, No. 4484
- 3 pin games
- 1 slot machine
- 1 nut vending machine
- 1 coin operated dice game
- 1 7 ft. cigar case
- 1 12 ft. display case
- 1 small ice refrigerator
- 1 G.E. Electric Refrigerator
- 2 small radios
- 2 bar sinks
- 1 mounted deer head
- 1 .22 rifle
- 1 electric clock

- 2 electric fans
- 15 cuspidors
- 17 chairs
- 5 tables
- 2 electric plates
- 120 assorted glasses
- 15 glass pitchers
- 4 cases 24-pint beer
- 2 cases ~~soda~~ water
- 10 1/2 gal. jugs beer
- 8 siphon bottles of soda water
- 3 novelty mirrors
- misc. dishes
- 2 cans pickles
- 7 tables
- 27 chairs
- 1 wooden bench
- 1 Wurlitzer Music Box, No. 657433
- 1 pin game
- 1 electric fan
- 1 cash register, No. 2002864
- 1 2 barrel beer cabinet
- 1 electric coffee maker
- 1 wall mirror
- 9 3 12 oz. fruit bowl mixer
- 8 12 oz. Budweiser beer full
- 9 5c pkgs. Top Cigarette Tobacco
- 4 cans pipe tobacco
- 1 pkg. Duke's Mixture
- 25 pkgs. Bull Durham tobacco
- 5 pkgs. Riz La Cigarette papers
- 4 pkgs. Wheat Straw
- 7 plugs Brown Mule Chewing Tobacco
- 5 plugs Horse Shoe
- 2 plugs Days Of Work Chewing Tobacco
- 10 plugs Honey Cut Chewing Tobacco
- 12 plugs Spark Plug Chewing Tobacco

6 cans Copenhagen Snuff
 8 cans Scotch King Snuff
 15 10c Cascara Bromide Quinine Tablets
 12 5c Five a Lax
 7 10c Bromo Seltzer
 18 5c pkgs. Gum
 4 5c Sen Sen
 10 10c Stay Awake
 25 10c pkgs. razor blades
 19 5c aspirin
 18 5c candy bars
 19 5c pkgs. O-Ke-Doke
 9 boxes Assorted Fine Chocolates
 8 5c pkgs. nuts
 8 5c pkgs. potato chips
 20 10 for 25c King Edward Cigars
 6 2 for 5c King Edward Cigars
 35 5 for 10c Sports Cigars
 16 5c Dry Climate Cigars
 22 3 for 10c Cremo Cigars
 45 5c Van Dyke Cigars
 15 5c Corina Lark Cigars
 43 5c White Owl Cigars
 9 decks playing cards
 9 cigarette holders
 9 cigar holders
 12 cans lighter fluid
 20 assorted pipes
 200 poker chips
 4 10c combs

and it appearing from said Return that the prop-
 erty above set out was used by James Mandeles
 and Mrs. James Mandeles in violation of the pro-
 visions of Chapter 43, Laws of Utah, 1935, as
 amended by the Laws of Utah, 1937, and good

cause appearing therefor.

NOW, THEREFORE, you, E. W. STRING-FELLOW, are hereby directed to hold safely the property above set forth; and that said property may be dealt with according to law, and you are not to relinquish your control of the said property until discharged by due process of law.

Done in Open Court this 12th day of June, 1939.

BY THE COURT,

ALLEN G. THURMAN, *Judge*

10

NOTICE OF SEIZURE

(Title of Court and Cause)

NOTICE IS HEREBY GIVEN, that the Libel of Information has been filed by the Libelant in the above entitled Court and Cause; and that there has been seized in Magna, Salt Lake County, State of Utah, commonly known of as "Jim's Place", "Merry Moon Inn", the following:

1 20 ft. bar
 1 20 ft. back bar
 1 pint Crab Orchard Whiskey
 \$4.40 cash (in register)

- 1 National Cash Register, No. 1382466W
- 1 Cigarette vending machine, No. 4484
- 3 pin games
- 1 slot machine
- 1 nut vending machine
- 1 coin operated dice game
- 1 7 ft. cigar case
- 1 12 ft. display case
- 1 small ice refrigerator
- 1 G.E. Electric Refrigerator
- 2 small radios
- 2 bar sinks
- 1 mounted deer head
- 1 .22 rifle
- 1 electric clock
- 2 electric fans
- 15 cuspidors
- 17 chairs
- 5 tables
- 2 electric plates
- 120 assorted glasses
- 15 glass pitchers
- 4 cases 24-pint beer
- 2 cases soda water
- 10 ½ gal. jugs beer
- 8 siphon bottles of soda water
- 3 novelty mirrors
- misc. dishes
- 2 cans pickles
- 7 tables
- 27 chairs
- 1 wooden bench
- 1 Wurlitzer Music Box, No. 657433
- 1 pin game
- 1 electric fan
- 1 cash register, No. 2002864
- 1 2 barrel beer cabinet
- 1 electric coffee maker

1 wall mirror
 3 12 oz. Fruit Bowl mixer
 8 12 oz. Budweiser beer full
 9 5c pkgs. Top Cigarette Tobacco
 4 cans pipe tobacco
 1 pkg. Duke's Mixture
 25 pkgs. Bull Durham tobacco
 5 pkgs. Riz La Cigarette Papers
 4 pkgs. Wheat Straw
 7 plugs Brown Mule Chewing Tobacco
 5 plugs Horse Shoe
 2 plugs Days Of Work Chewing Tobacco
 10 plugs Honey Cut Chewing Tobacco
 12 plugs Spark Plug Chewing Tobacco
 6 cans Copenhagen Snuff
 8 cans Scotch King Snuff
 15 10c Cascara Bromide Quinine Tablets
 12 5c Five a Lax
 7 10c Bromo Seltzer
 18 5c pkgs. Gum
 4 5c Sen Sen
 10 10c Stay Awake
 25 10c pkgs. O-Ke-Doke
 9 boxes Assorted Fine Chocolates
 8 5c pkgs. nuts
 8 5c pkgs. potato chips
 20 10 for 25c King Edward Cigars
 6 2 for 5c King Edward Cigars
 35 5 for 10c Sports Cigars
 16 5c Dry Climate Cigars
 22 3 for 10c Cremo Cigars
 45 5c Van Dyke Cigars
 15 5c Corina Lark Cigars
 43 5c White Owl Cigars
 9 decks playing cards
 9 cigarette holders
 9 cigar holders

12 cans lighter fluid
20 assorted pipes
200 poker chips
4 10c combs

which said property is held by E. W. Stringfellow an Inspector of the Utah Liquor Control Commission.

It is prayed in said Libel of Information that said property be condemned and forfeited to the State of Utah on the following grounds:

That on or about the 11th day of June, A. D. 1939, James Mandeles and Mrs. James Mandeles, at and within that certain soft drink parlor operated by the libelees and located in Magna, Salt Lake County, State of Utah, did then and there, wilfully, wrongfully and unlawfully have in their possession and custody and within their control, certain goods, wares and merchandise, to-wit: whiskey, a more particular description of which
12 is to your informant unknown, which said alcoholic beverages were then and there in the possession, custody and control of said Libelees for the purpose of being sold and in violation of the Utah Liquor Control Act, Chapter 43, Laws of Utah, 1935, as amended by the Laws of Utah, 1937, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Utah; and that said goods,

merchandise, articles, objects and personal property hereinbefore described at the time of and prior to the seizure hereof were in the place and building where said alcoholic beverages were kept and found and in the possession of and under the custody and control of said Libelees.

NOTICE IS FURTHER GIVEN that by order of Court, all persons having or claiming any interest in said articles seized or having anything to say why said articles so seized should not be condemned and forfeited, appear and file their respective answers and defenses to such information, setting forth their interest in or claim to said property libeled with the Clerk in the above named Court at Salt Lake City, Utah, on or before the 20th day of June, 1939, the same being the time and place hereby fixed for the return hereof.

Dated this 13th day of June, A. D. 1939.

WILLIAM J. KORTH

Clerk

D. THOMSEN

Deputy Clerk

13

RETURN ON NOTICE

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

SHERIFF'S OFFICE

I hereby certify and return that I received the within and hereto annexed NOTICE on the 14th day of June, 1939, and served the same upon James Mandeles, the within named Defendant, personally, by delivering to and leaving with said Defendant, in Magna, Salt Lake County, State of Utah, a true copy of said NOTICE on the 14th day of June, 1939. Together with a copy of Libel of Information. I posted copy of Notice at place of business known as Jim's Place in Magna.

Dated at Magna, Utah, this 16th day of June, 1939.

S. GRANT YOUNG

*Sheriff of Salt Lake County,
State of Utah.*

By N. F. PEHRSON,

Deputy Sheriff.

14

RETURN ON NOTICE

STATE OF UTAH
COUNTY OF SALT LAKE } SS.

SHERIFF'S OFFICE

I hereby certify and return that I received the within and hereto annexed NOTICE on the 14th day of June, 1939, and served the same upon Mrs. James Mandeles, the within named Defendant, personally, by delivering to and leaving with said Defendant, in Magna, Salt Lake County, State of Utah, a true copy of said NOTICE on the 14th day of June, 1939. Together with copy of Libel of Information. I posted copy of Notice at place of business known as Jim's Place in Magna.

Dated at Magna, Utah, this 16th day of June, 1939.

S. GRANT YOUNG,
Sheriff of Salt Lake County,
State of Utah.

BY N. F. PEHRSON,
Deputy Sheriff.

ORDER

(Title of Court and Cause)

Upon reading the Libel of Information, War-rant and Affidavit in the above entitled matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that James Mandeles and Mrs. James Mandeles, on the 20th day of June, A. D. 1939, at 2:00 o'clock P. M. or as soon thereafter as counsel may be heard, in the above entitled Court, show cause, if any they have, why the said

1 20 ft. bar
 1 20 ft. back bar
 1 pint Crab Orchard Whiskey
 \$4.40 cash (in register)
 1 National Cash register, No. 1382466W
 1 Cigarette Vending Machine, No. 4484
 3 pin games
 1 slot machine
 1 nut vending machine
 1 coin operated dice game
 1 7 ft. cigar case
 1 12 ft. display case
 1 small ice refrigerator
 1 G.E. Electric Refrigerator
 2 small radios
 2 bar sinks
 1 mounted deer head
 1 .22 rifle
 1 electric clock

	2 electric fans
	15 cuspidors
	17 chairs
	5 tables
	2 electric plates
	120 assorted glasses
	15 glass pitchers
	4 cases 24-pint beer
	2 cases soda water
	10 1/2 gal. jugs beer
	8 siphon bottles of soda water
	3 novelty mirrors
	misc. dishes
	2 cans pickles
	7 tables
	27 chairs
	1 wooden bench
	1 Wurlitzer Music Box, No. 657433
	1 pin game
	1 electric fan
16	1 cash register, No. 2002864
	1 2 barrel beer cabinet
	1 electric coffee maker
	1 wall mirror
	3 12 oz. Fruit Bowl Mixer
	8 12 oz. Budweiser Beer, full
	9 5c pkgs. Top Cigarette tobacco
	4 cans pipe tobacco
	1 pkg. Duke's Mixture
	25 pkgs. Bull Durham tobacco
	5 pkgs. Riz La Cigarette papers
	4 pkgs. Wheat Straw Cigarette papers
	7 plugs Brown Mule Chewing Tobacco
	5 plugs Horse Shoe Chewing Tobacco
	2 plugs Days Of Work Chewing Tobacco
	10 plugs Honey Cut Chewing Tobacco
	12 plugs Spark Plug Chewing Tobacco

6 cans Copenhagen Snuff
 8 cans Scotch King Snuff
 15 10c Cascara Bromide Quinine Tablets
 12 5c Five a Lax
 7 10c Bromo Seltzer
 18 5c pkgs. Gum
 4 5c Sen Sen
 10 10c Stay Awake
 25 10c pkgs. O-Ke-Doke
 9 boxes Assorted Fine Chocolates
 8 5c pkgs. nuts
 8 5c pkgs. potato chips
 20 10 for 25c King Edward Cigars
 6 2 for 5c King Edward Cigars
 35 5 for 10c Sports Cigars
 16 5c Dry Climate Cigars
 22 3 for 10c Cremo Cigars
 45 5c Van Dyke Cigars
 15 5c Corina Lark Cigars
 43 5c White Owl Cigars
 9 decks playing cards
 9 cigarette holders
 9 cigar holders
 12 cans lighter fluid
 20 assorted pipes
 200 poker chips
 4 10c Combs

should not be confiscated and forfeited. It appearing that the property herein described was seized at "Jim's Place", and "Merry Moon Inn", in Magna, Salt Lake County, State of Utah, on the 11th day of June, A. D. 1939, for the reason that the said property was owned and kept by the Libelees for the purpose of selling intoxicating

liquors in violation of the Liquor Control Act, Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937.

IT IS FURTHER ORDERED that notice of said hearing be left at the "Jim's Place", "Merry Moon Inn" in Magna, Utah, the place where the property was seized, said notice to be posted in a
 17 conspicuous place on or about said building. Said notice shall also be left at the last known and usual place of residence of James Mandeles and Mrs. James Mandeles.

Dated this 13th day of June, A. D. 1939.

BY THE COURT,

ALLEN G. THURMAN, *Judge*

18 RETURN ON ORDER

STATE OF UTAH
 COUNTY OF SALT LAKE } ss.

SHERIFF'S OFFICE

I hereby certify and return that I received the within and hereto annexed Order on the 14th day of June 1939, and served the same upon the within named Defendant, James Mandeles, by

showing the original and delivering to and leaving with said Defendant, personally, in Magna, Salt Lake County, State of Utah, a true copy of said Order on the 14th day of June, 1939.

Dated at Magna, Utah, June 16, 1939.

S. GRANT YOUNG,
Sheriff of Salt Lake County,
State of Utah.

BY N. F. PEHRSON,
Deputy Sheriff.

19

RETURN ON ORDER

STATE OF UTAH
COUNTY OF SALT LAKE } SS.

SHERIFF'S OFFICE

I hereby certify and return that I received the within and hereto annexed Order on the 14th day of June, 1939, and served the same upon the within named Defendant, Mrs. James Mandeles, by showing the original and delivering to and leaving with said Defendant, personally, in Magna, Salt Lake County, State of Utah, a true

copy of said Order on the 14th day of June, 1939.

Dated at Magna, Utah, June 16, 1939.

S. GRANT YOUNG,
*Sheriff of Salt Lake County,
State of Utah.*

By N. F. PEHRSON,
Deputy Sheriff.

20

ORDER

(Title of Court and Cause)

Upon motion of E. C. Jensen, counsel for the defendants, and upon oral stipulation of respective counsel for plaintiff and defendants herein, the Court orders the hearing on plaintiff's order to show cause be continued to June 27, 1939 at 2:00 P. M.

Dated June 20, 1939.

HERBERT M. SCHILLER, *Judge*

21

ORDER

(Title of Court and Cause)

Upon motion of George H. Lunt, of counsel

for plaintiff, and good cause appearing therefor, the Court orders the hearing on plaintiff's Order to Show Cause continued to July 5, 1939 at 2:00 o'clock P. M.

Dated June 27, 1939.

HERBERT M. SCHILLER, *Judge*

22

ORDER

(Title of Court and Cause)

This case comes now on before the Court for trial. On motion of Louis Callister, counsel for defendants, and good cause appearing therefor, it is ordered that above entitled case be and the same is continued till July 12, 1939.

Dated July 5, 1939.

CLARENCE E. BAKER, *Judge*

23

ANSWER AND CLAIM OF
UTAH NEON INCORPORATED

(Title of Court and Cause)

Eliminated because no appearance made at hearing.

CLAIM

(Title of Court and Cause)

Comes now James Giolas of Salt Lake City, Salt Lake County, Utah, and respectfully shows to the court:

1. That on, to-wit, July 12, 1938, the libelees James Mandeles and Mrs. James Mandeles became indebted to this claimant in the sum of \$500.00, which sum this claimant then advanced for and on behalf of said libelees, and on said day, in order to secure the repayment of the said sum said James Mandeles and Mrs. James Mandeles made, executed and delivered to this claimant a certain chattel mortgage upon all of the fixtures, equipment and utensils seized by the libelant herein as set forth in the libel of information filed; which chattel mortgage, by its terms, became due one year from the date thereof. That the articles so mortgaged were described in said chattel mortgage as

1 front bar; 1 back bar; all stools; card tables and chairs; 2 cash registers; floor linoleum; glasses; equipment for dispensing beer; all electric fixtures, cigar case, cooking utensils; lunch equipment, together with all fixtures of every kind and nature now in or belonging to what is known as "Jim's Place", located on the property described as Lot 20 and 21, Block

11, Chambers Park, unrecorded plat of
Magna, Utah.

2. That there is now owing from the said
libelees James G. Mandeles and Mrs. James Man-
deles the sum of \$500.00.

26 3. That the claimant had no interest what-
ever in the business operated at the said premises
known as the "Merry Moon Inn" and "Jim's
Place" and if said premises were operated and
maintained as a common nuisance as in said libel
of information alleged, it was without the knowl-
edge of this claimant, and claimant states that
such property so mortgaged was not kept or used
by claimant or at all in connection with the opera-
tion and maintenance of said common nuisance.

WHEREFORE, claimant prays that this
Court order that said property so mortgaged be
not sold or destroyed and that the same be deliver-
ed to this claimant.

JAMES A. GIOLAS, *Claimant*

EDGAR C. JENSEN
Attorney for Claimant
1311 Walker Bank Bldg.
SALT LAKE CITY, UTAH

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

JAMES GIOLAS, being first duly sworn, on oath, deposes and says: That he is the claimant above named; that he has read the foregoing claim, knows the contents thereof, and that the same is true.

JAMES A. GIOLAS

Subscribed and sworn to before me at Salt Lake City, Utah, this July 5th, 1939.

(SEAL)

EDGAR C. JENSEN

Notary Public, State of Utah
Residing at Salt Lake City.

Received copy this July 5, 1939.

PARNELL BLACK

One of Libellant's Attorneys.

27

CLAIM AND ANSWER OF CONSOLIDATED AMUSEMENTS

(Title of Court and Cause)

Comes now Alvin P. Holt, doing business under the firm and style of Consolidated Amuse-

ments, of Salt Lake City, Salt Lake County, State of Utah and respectfully claims and shows to the court:

1. That heretofore and prior to the 14th day of May, 1939 the said Alvin P. Holt, doing business under the firm and style of Consolidated Amusements, did, at the instance and request of the aforesaid libelee, James Mandeles, place on the property known as "Jim's Place", located at Magna, Salt Lake County, Utah, under a lease agreement with the said James Mandeles, the following personal property and chattels:

- 1 Hy Lea Amusement Game
- 1 1c Reel Dice Amusement Game
- 1 Fair Ground's Amusement Game
- 1 Preakness Amusement Game
- 1 Clock Time Amusement Game
- 1 Stop and Shop Nut Machine
- 3 No. 33 Junior Nut Machines
- 1 Wurlitzer Phonograph Model 500
- 1 Charlie McCarthy Radio

2. That the aforesaid property, described in paragraph 1 herein, was and is the property of the said Alvin P. Holt, doing business as the Consolidated Amusements.

3. That the said James Mandeles, under the aforesaid lease agreement with the said Alvin P. Holt, doing business as aforesaid, agreed to pay

to Alvin P. Holt for the use of the aforesaid chattels and personal property a rental based upon a percentage of the funds deposited in each of said chattels.

4. That the claimant herein had no interest whatsoever in the business operated at the said premises known as "Jim's Place", and "Merry Moon Inn", and if said premises were operated
28 and maintained as a common nuisance as in said libel of information alleged, it was without the knowledge of this claimant, and this claimant further states that the aforesaid property and chattels were not kept or used by this claimant or at all in connection with the operation and maintenance of said common nuisance.

WHEREFORE, claimant prays that this Court order that the aforesaid property, so owned by the said Alvin P. Holt, doing business as Consolidated Amusements, be not sold or destroyed and that the same be delivered to this claimant.

ALVIN P. HOLT

ALVIN P. HOLT

Doing Business as Consolidated Amusements.

LLEWELLYN O. THOMAS

Attorney for Claimant

411 Felt Building

SALT LAKE CITY, UTAH

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

Alvin P. Holt, being first duly sworn on oath,
deposes and says:

That he is the claimant above named, that he has read the foregoing Claim and Answer, knows and understands the contents thereof and that the same is true of his own knowledge except as to matters therein alleged upon information and belief and as to such matters he believes it to be true.

ALVIN P. HOLT

Subscribed and sworn to before me this 7th
day of July, 1939.

(SEAL)

LLEWELLYN O. THOMAS
*Notary Public Residing in
Salt Lake City, Utah.*

My commission expires March 13, 1941.

Received copy of the foregoing Claim and
Answer this 7th day of July, 1939.

GEORGE H. LUNT
*One of the Attorneys
for Libelant.*

29 LETTER FROM CLAUDE E. FICKES

Eliminated because no issue raised.

30 ORDER

(Title of Court and Cause)

Upon the stipulation of counsel for claimants and counsel for Utah Liquor Control Commission comes now on for hearing the claims of Alvin P. Holt doing business as Consolidated Amusement Company, Utah Neon Inc., Jim Giolas, D. Howe Moffat, attorney appearing in behalf of the plaintiff, Llewellyn Thomas attorney appearing in behalf of said Alvin P. Holt and E. C. Jensen attorney appearing in behalf of Jim Giolas, claimant Utah Neon Inc., not appearing nor being represented by counsel. The Matter is argued to the court by counsel. Documentary proof is received in evidence. The Court being fully advised in the premises the case is by the Court taken under advisement. Counsel for plaintiff and claimants given to August 14, 1939 to file their briefs.

Dated July 18, 1939.

ALLEN G. THURMAN, *Judge*

32 CLAIM AND ANSWER OF IRA BOSEN
(Title of Court and Cause)

Comes now Ira Bosen of Salt Lake City, Salt Lake County, Utah, and respectfully shows to the court:

1. That at the time of the seizure of the articles herein sought to be forfeited, there was then present upon the premises above set out, one 120 model cigarette vendor, serial No. 4484; which was and now is the property solely of this claimant.

2. That this claimant had no interest whatever in the business operated at the said premises known as the "Merry Moon Inn" and "Jim's Place", and if said premises were operated and maintained as a common nuisance as in said libel of information alleged, it was without the knowledge of this claimant.

3. Claimant further states that the property hereinabove set out was not kept or used at all in connection with the operation and maintenance of any illicit business or of any common nuisance at said premises.

4. Claimant further states that said cigarette vendor was and is a machine by which upon the

deposit of sufficient coins one could obtain cigarettes therefrom, and was used solely in connection with the sale of cigarettes at said premises.

WHEREFORE, claimant prays that this Court order that said property be not sold or destroyed and that the same be delivered and returned to this claimant.

EDGAR C. JENSEN
Claimant's Attorney.
 1311 Walker Bank Bldg.
 SALT LAKE CITY, UTAH

Received copy this July 25, 1939.

D. HOWE MOFFAT
One of Libelant's Attorneys.

STATE OF UTAH }
 COUNTY OF SALT LAKE } ss.

33 Ira Bosen, being first duly sworn, on oath, deposes and says: That he is the claimant above named; that he has read the foregoing claim and answer, knows the contents thereof, and that the same is true.

IRA BOSEN

Subscribed and sworn to before me at Salt Lake City, Utah, this July 25th, 1939.

(SEAL)

EDGAR C. JENSEN
*Notary Public Residing at
Salt Lake City.*

34

ORDER

(Title of Court and Cause)

Upon motion of E. C. Jensen, attorney for claimant Ira Bosen, it is ordered that said claimant may file his claim and answer herein, and that he may be made party defendant herein.

Dated July 25, 1939.

ALLEN G. THURMAN, *Dist. Judge*

35

ORDER

(Title of Court and Cause)

Upon motion of E. C. Jensen, Esq., attorney for claimant Ira Bosen, it is ORDERED that said claimant may file his claim and answer herein; that he be made a party defendant hereto along

with the other claimants herein; and further that his claim and answer be considered the same as if it were filed prior to the hearing herein.

Dated at Salt Lake City, Utah, July 25, 1939.

ALLEN G. THURMAN, *Judge*

36

MOTION BY CLAIMANTS
CONSOLIDATED AMUSEMENTS
AND JAMES GIOLAS,
TO REOPEN CASE

(Title of Court and Cause)

Come now the Consolidated Amusements and James Giolas by and through their respective attorneys, Llewellyn O. Thomas and E. C. Jensen, and respectfully move the above honorable court to reopen the above entitled case for the purpose of taking testimony and receiving evidence relative to the searching of the aforesaid premises described as "Jim's Place" and "Merry Moon Inn" and the seizing of property belonging to claimants located upon said premises by E. W. Stringfellow, an Inspector of the Utah Liquor Control Commission, said property being described in the Libel of Information heretofore filed by the attorneys for said Libelant.

This motion is based upon the files and records in said proceedings together with the affidavit of E. C. Jensen hereto attached and which is made a part hereof.

LLEWELLYN O. THOMAS,
*Attorney for Consolidated
Amusements.*

E. C. JENSEN,
Attorney for James Giolas.

Received copy of the foregoing Motion and Affidavit this 24th day of August, 1939.

D. HOWE MOFFAT,
Attorney for Libellant.

37

AFFIDAVIT

(Title of Court and Cause)

STATE OF UTAH, }
County of Salt Lake } SS.

E. C. JENSEN, being first duly sworn upon oath, deposes and says: That he is the attorney for the claimants James Giolas and Ira Bosen in the above entitled matter; that affiant is in-

formed and verily believes that at the time of the seizure of the articles and things set forth in the Libel of Information herein by E. W. Stringfellow the said E. W. Stringfellow of his own knowledge knew nothing about any violations of any statutes of the State of Utah and the premises known as "Jim's Place" or the "Merry Moon Inn," or had no personal knowledge that any intoxicating liquors had been sold at said premises in violation of the Utah Liquor Control Act, and that consequently, said seizure was unlawful and void and this court acquired no jurisdiction to forfeit the articles so seized.

E. C. JENSEN

Subscribed and sworn to before me this 24th day of August, 1939.

(SEAL)

K. F. HALL,
*Notary Public, Residing at
Salt Lake City, Utah.*

My commission expires :
October 1, 1940.

38

STIPULATION

(Title of Court and Cause)

It is hereby stipulated and agreed by and between the libelant and the claimants that claimants' motion for reopening may be submitted to the court without notice and without argument.

Dated at Salt Lake City, Utah, this August 29, 1939.

GEORGE H. LUNT,
Attorney for Libelant.

L. O. THOMAS,
E. C. JENSEN,
Attorneys for Claimants.

39

ORDER

(Title of Court and Cause)

Claimants' motion to reopen the within case for the purpose of taking additional testimony, comes now on for hearing, D. Howe Moffat attorney appearing in behalf of the plaintiff, E. C. Jensen, attorney appearing in behalf of the defendants. Said motion is stated to the Court by counsel, and is by the Court granted. E. W. Stringfellow is

sworn and testifies. Real and documentary proof is received in evidence. The matter of the seizure of the property belonging to claimants by E. W. Stringfellow, an Inspector of the plaintiff herein, is argued to the Court by respective counsel, and submitted and is by the Court taken under advisement.

Dated September 6, 1939.

ALLEN G. THURMAN, *Judge*.

41

ORDER

(Title of Court and Cause)

An order of this Court having heretofore issued requiring the within named defendants, James Mandeles and Mrs. James Mandeles and all others whom it may concern to appear and show cause why personal property seized by E. W. Stringfellow, Inspector of the within named plaintiff while in and taken from the possession of the said defendants on June 11, 1939, should not be confiscated and forfeited, and said defendants and others having appeared and having been heard by the Court and the Court having taken the matters of its decision under advisement, now orders that the libel of information filed herein be dismissed with prejudice as to

plaintiff and that the property seized by the said E. W. Stringfellow as inspector of the plaintiff and as set forth and enumerated in the Libel of Information herein be returned to defendants James Mandeles and Mrs. James Mandeles forthwith.

Dated Sept. 23, 1939.

ALLEN G. THURMAN, *Judge.*

42

NOTICE

(Title of Court and Cause)

TO JAMES MANDELES, MRS. JAMES MANDELES AND E. C. JENSEN AND LLEWELLYN O. THOMAS, THEIR ATTORNEYS:

You, and each of you, will please take notice that on October 26th, A. D. 1939, at 10 o'clock a.m., or as soon thereafter as counsel may be heard, there will be called up for argument and final disposition the Motion for New Trial of the Utah Liquor Control Commission, heretofore filed in the above entitled matter.

Dated this 19th day of October, A. D. 1939.

PARNELL BLACK
D. HOWE MOFFAT
GEORGE H. LUNT,

Copy of foregoing received this 21st day of
October, 1939.

E. C. JENSEN,
LLEWELLYN O. THOMAS

43

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

(Title of Court and Cause)

This matter having come on for hearing before the Court on the libel of information of the libelant and the order to show cause issued June 13, 1939, the libelants being represented by Parnell Black, Esq. and D. Howe Moffat, Esq., and the defendant being personally present and claimants being represented by E. C. Jensen, Esq. and Llewellyn O. Thomas, Esq., their attorneys, and the court having heard the evidence and the arguments of counsel, and being fully advised in the premises, does now make and enter the following:

FINDINGS OF FACT

1. That on June 11, 1939 at a place in Magna, Salt Lake County, Utah, known as "Jim's Place," one E. W. Stringfellow, then an inspector of the libelant herein, seized certain articles, goods, wares, merchandise, objects and tangible personal property, to-wit:

- 1 20 ft bar
- 1 20 ft. back bar
- 1 pint Crab Orchard Whiskey
- \$4.40 cash (in register)
- 1 National Cash Register, No. 1382466W
- 1 Cigarette vending machine, No. 4484
- 3 pin games
- 1 slot machine
- 1 nut vending machine
- 1 coin operated dice game
- 1 7 ft. cigar case
- 1 12 ft. display case
- 1 small ice refrigerator
- 1 G. E. Electric Refrigerator
- 2 small radios
- 2 bar sinks
- 1 mounted deer head
- 1 .22 rifle
- 1 electric clock
- 2 electric fans
- 15 cuspidors
- 17 chairs
- 5 tables
- 2 electric plates
- 120 assorted glasses
- 15 glass pitchers
- 4 cases 24/pint beer

2 cases soda water
10 ½ gal. jugs beer
8 siphon bottles of soda water
3 novelty mirrors
misc. dishes
2 cans pickles
7 tables
27 chairs
1 wooden bench
1 Wurlitzer Music Box, No. 657433
1 pin game
1 electric fan
1 cash register, No. 2002864
1 2 barrel beer cabinet
1 electric coffee maker
1 wall mirror
3 12 oz. Fruit Bowl mixer
8 12 oz. Budweiser Beer, full
9 5c pkgs. Top Cigarette tobacco
4 cans pipe tobacco
1 pkg. Duke's Mixture
25 pkgs. Bull Durham tobacco
5 pkgs. Riz La Cigarette papers
4 pkgs. Wheat Straw Cigarette papers
7 plugs Brown Mule Chewing Tobacco
5 plugs Horse Shoe Chewing Tobacco
2 plugs Days of Work Chewing Tobacco
10 plugs Honey Cut Chewing Tobacco
12 plugs Spark Plug Chewing Tobacco
6 cans Copenhagen Snuff
8 cans Scotch King Snuff
15 10c Cascara Bromide Quinine Tablets
12 5c Five a Lax
7 10c Bromo Seltzer
18 5c pkgs. Gum
4 5c Sen Sen
10 10c Stay Awake

25 10c pkgs. razor blades
 19 5c aspirin
 18 5c candy bars
 19 5c pkgs. O-Ke-Doke
 9 boxes Assorted Fine Chocolates
 8 5c pkgs. nuts
 8 5c pkgs. potato chips
 20 10 for 25c King Edward Cigars
 6 2 for 5c King Edward Cigars
 35 5 for 10c Sports Cigars
 16 5c Dry Climate Cigars
 22 3 for 10c Cremo Cigars
 45 5c Van Dyke Cigars
 15 5c Corina Lark Cigars
 43 5c White Owl Cigars
 9 decks playing cards
 9 cigarette holders
 9 cigar holders
 12 cans lighter fluid
 20 assorted pipes
 45 200 poker chips
 4 10c combs

2. That thereafter said E. W. Stringfellow made return to this court of said seizure.

3. That said E. W. Stringfellow seized the aforesaid articles, goods, etc., without a warrant for either the arrest of defendant or the search of the premises at which the said articles, goods, etc., were seized.

4. That said E. W. Stringfellow did not personally witness and had no personal knowledge of

any sale of any intoxicating liquor at the premises at which said articles, goods, etc., were seized, nor any personal knowledge of any violation of Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937.

Upon the foregoing findings of fact the court does now make the following

CONCLUSIONS OF LAW

1. The said goods so seized and heretofore listed are not subject to forfeiture and condemnation.

2. That said libel of information should be dismissed with prejudice as to the libelant, and that said goods should be returned forthwith to James Mandeles and Mrs. James Mandeles, the persons from whom seized.

Done in open court at Salt Lake City, Utah,
this 19th day of October, 1939.

BY THE COURT:

ALLEN G. THURMAN,
District Judge.

JUDGMENT

(Title of Court and Cause)

This matter having come on for hearing before the court on the libel of information of the libelant and the order to show cause issued June 13, 1939, the libelant being represented by Parnell Black, Esq. and D. Howe Moffat, Esq. and the defendants being personally present and claimants being represented by E. C. Jensen, Esq. and Llewellyn O. Thomas, Esq., their attorneys, and the court having heard the evidence and the arguments of counsel, and having made and entered its findings of fact and conclusions of law, and being now fully advised in the premises it is now

ORDERED, ADJUDGED and DECREED that the said libel of information be and the same hereby is dismissed with prejudice as against the libelant, Utah Liquor Control Commission, and it is further

ORDERED, ADJUDGED and DECREED that all of the articles listed in the libel of information and the order to show cause herein, which articles were seized by E. W. Stringfellow, an inspector of the libelant, be returned forthwith by the libelant and by said E. W. Stringfellow to the defendants, James Mandeles and Mrs. James Mandeles.

Done at Salt Lake City, Utah, this 19th day
of October, 1939.

BY THE COURT:

ALLEN G. THURMAN,
District Judge.

47

MOTION FOR NEW TRIAL

(Title of Court and Cause)

Comes now the Utah Liquor Control Commission, one of the parties to the above entitled cause, and moves the Honorable Court for a new trial upon the following grounds:

1. Insufficiency of the evidence to justify the Decision and the Decision is against the law.
2. Errors in law occurring at the trial and excepted to by this party.

PARNELL BLACK
D. HOWE MOFFAT
GEORGE H. LUNT

Copy of foregoing received this 21st day of
October, 1939.

E. C. JENSEN
LLEWELLYN THOMAS

ORDER

(Title of Court and Cause)

Plaintiff's motion for a New Trial of the within case comes now on for hearing. The plaintiff or the defendant not appearing herein or being represented by counsel, it is by the court ordered that plaintiff's motion for a new trial be and is hereby denied.

Dated October 26, 1939.

ALLEN G. THURMAN, *Judge.*

NOTICE OF APPEAL

(Title of Court and Cause)

Comes now the Libelant above named and hereby appeals from the Judgment and Decree entered in the above entitled Court, in favor of th Libelees and against the Libelant, entered in the above entitled Court on the 19th day of October, 1939, and from the denial of Libelant's Motion for New Trial, and the same was denied on the 26th day of October, 1939, to the Supreme Court of the State of Utah.

Dated this 10th day of January, A. D. 1940.

PARNELL BLACK,
D. HOWE MOFFAT,
G. HUNTER LUNT,
Attorneys for Libelant.

Copy of the foregoing Notice of Appeal received this 15th day of January, 1940.

LLEWELLYN O. THOMAS,
EDGAR C. JENSEN,
*Attorneys for Defendants and
Claimants.*

BILL OF EXCEPTIONS

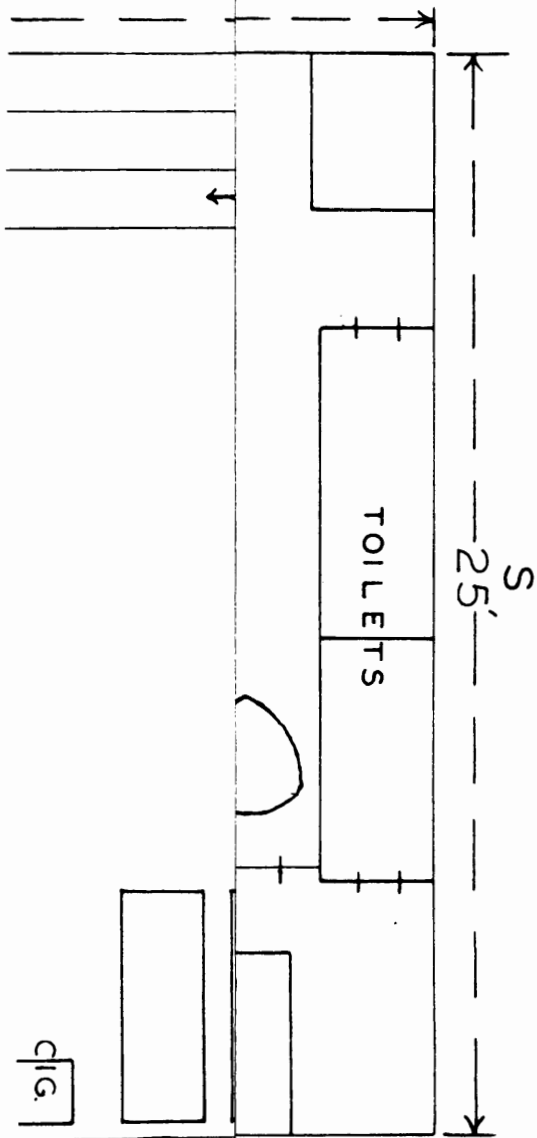
(Title of Court and Cause)

Note: The original hearing on this matter was heard on the 18th day of July A. D. 1939, and by stipulation it was conceded that grounds for seizure, of the property, existed and testimony is limited to the question as to whether or not any of the property in the premises was used in connection with the unlawful sale of liquor. Subsequently, the Court allowed the matter to be reopened at the request of claimants for the purpose of taking testimony on the question as to whether

or not legal grounds existed for the seizure of the property. This testimony was taken on September 6, 1939. Thereafter, for the purpose of making the record complete, other and additional evidence was submitted in the form of a Stipulation. For the purpose of continuity the proceedings of September 6, 1939 will be abstracted first, thereafter the stipulated testimony and finally the testimony of July 18, 1939.

67 BE IT REMEMBERED that on this, the 6th day of September, 1939, at the hour of two o'clock P. M., the above entitled cause came on duly for hearing before the Honorable Allen G. Thurman, one of the judges of the above named court for hearing on motion to reopen case for purpose of taking testimony.

70 E. W. STRINGFELLOW, a witness produced by the Libelees, and being first duly sworn,
71 testified as follows: My name is E. W. Stringfellow, that I am now, and have been for four years, an Inspector of the Utah Liquor Control Commission, that I know James Mandeles and have known him for two years. That Mr. Mandeles maintained a place of business at Magna, Utah, that consisted of a beer parlor upstairs with booths and dance hall and serving bar downstairs and it was known as Jim's Place. The entrance to the building was in the northwest corner of the



72 building which occupied the southeast corner of
the intersection. That in connection with my em-
ployment, I went to Jim's Place two years ago
and that prior to the arrest I visited the place
once or twice a week. (Exhibit A was marked
73 for identification.)

Exhibit A is a fair drawing of the main floor
of Jim Mandeles' place at Magna and that the
writings on it indicating "Front door," "Cigar
cases," "Bar," "Toilets," "Booths," "Side
Door," "Phone Booth," "Pin Games," "Refrig-
erator," etc., represent the approximate location
of the booths and properties on the premises. (Ex-
hibit A is offered in evidence and received with-
out objection.) I went to Jim Mandeles' on the
74 11th of June, 1939 with Inspectors Coulam, Jaynes
and Mayhue and some buyers. The buyers were
Ralph Reid and Eugene Oaks, who at that time
were employees of the Utah Liquor Control Com-
mission. Reid and Oaks were under my direction.
We had been to Manadeles' Place with Reid and
Oaks as my buyers prior to the 11th of June. I
don't recall how many times but for at least six
months we had worked this place twice a month
75 with these buyers. I talked with Oaks and Reid
before they went into the Mandeles place on
June 11th. That was about 5 o'clock P. M. or a
little after. We contacted them one or two streets
west and south of the Mandeles Place on the

public highway. They were in their automobile at the time. In addition to Reid, Oaks and myself there was Coulam, Jaynes and Mayhue. After
76 the conversation Reid and Oaks went to Mandeles' Place. After that we contacted them again because the set up was not just right. This was about 6 o'clock. After talking with the buyers we went on the street south of the Mandeles Place waiting for a signal from the buyers that they had purchased whiskey. We had an arrangement with the buyers that they were to give a signal if they were successful in buying whiskey in the
77 Mandeles Place. After the buyers went in at 5 o'clock P. M. they came out again in about 15 minutes and we had another conversation. Then
78 the buyers went back to Mandeles' Place and that was about 6 o'clock P. M. When the buyers entered we were on the street west of Mandeles' Place, a little south of his place of business. With me were Coulam, Jaynes and Mayhue. We received the signal from the buyers and entered Jim's Place. Mayhue and I entered the front and Jaynes and Coulam entered the west door. As
79 we entered there wasn't anybody back of the bar. Point 1 on Exhibit A marks the point where the swinging doors are. I walked from the front door to Point 1 and pushed open the door and I saw Inspector Coulam pick a glass of whiskey off the table where Reid and Oaks were sitting. Point 2 on Exhibit A indicates where Reid and Oaks were

- located. I could see Reid sitting in the booth and could see Oaks' arm, and could see Coulam standing in front of them. Point 3 on Exhibit A indicates where James Mandeles was standing. There were two men in the booth where James Mandeles was standing, I didn't know them. I saw Inspector Jaynes at the time I saw Inspector Coulam, he was close to Point 2. I saw Coulam pick up a glass of whiskey from the table where Reid and Oaks were sitting, there was a dark liquid in the glass. Inspector Coulam gave me a nod that they had the breaks. It was a glass commonly used for whiskey glasses, not a small glass but about 2 inches tall. I only saw Inspector
- 81 Coulam pick up one glass. Coulam was on the south side of the booth close to Reid and Oaks when he picked up the glass. After that I walked back through the swinging doors and walked to the south end of the bar. When Mandeles came back to the bar with two glasses in his hand he went to rinse them out and I asked him to give
- 82 them to me and he handed me the two glasses. I looked in them and there was a dark stain in them and I smelled it and it smelled like whiskey.
- 83 Of the four Inspectors with us at that time I was their superior officer and in charge of them and directed their activities and I directed them in making the case on Jim Mandeles' Place. I had an arrangement with the buyers and the
- 84 other Inspectors to give a signal that they had

made a purchase of whiskey. The buyers were to come out on the street and that would indicate that the whiskey was on the table. I had an arrangement with Coulam that if he picked up whiskey he was to give me a nod of the head and he did that. After I had gone back of the bar

85 I instructed Jim to open the drawer in the back bar which was locked. He unlocked the drawer and pulled the drawer out. Inspector Jaynes walked over and picked out of the drawer a full pint of Crab Orchard Whiskey. The drawer was locked and Mandeles unlocked it with a key.

CROSS EXAMINATION BY MR. JENSEN

86 The pint of Crab Orchard Whiskey was sealed. (The pint of whiskey was marked Exhibit B, offered and received in evidence.)

90

STIPULATION

(Title of Court and Cause)

It is hereby stipulated, by and between Libellant and Claimants, through their respective counsel, that the Stipulation entered into in Open Court, in the above entitled matter, as shown by page three of the Transcript of Testimony of the hearing of July 18, 1939, were as follows:

That Eugene Oaks would testify that between May 14th and June 11th, 1939, he was employed by the Utah Liquor Control Commission as a buyer, and in pursuance of his employment he went to the premises known of as "Jim's Place" on May 14, 1939 at 5:00 P. M. and went in via the west side door and sat in a booth with Ralph Reid and Bill Martin. Martin rang the buzzer on the wall for service and when Mandeles, the owner, came back Martin said "fix us up a shot." Mandeles said "OK" and went and brought back three 3 oz. glasses of whiskey and a bottle of mixer. I gave Mandeles a dollar and he gave me back a quarter. Later Ralph Reid ordered the second
91 round of drinks from Mandeles. Mandeles brought a pint of Mr. Boston Spot Bottle Whiskey back in his pocket and poured drinks in the three glasses, bringing another bottle of mixer. Ralph Reid paid 75c for these three drinks.

That on June 4, 1939 at 7:10 P. M. he was sitting in a booth at the rear with Ralph Reid and a girl friend in Jim's Place in Magna, and he ordered three drinks. Mandeles brought three glasses and a bottle of mixer. Mandeles took a bottle of Cream of Kentucky Whiskey from his pocket and poured out three drinks. At 7:20 P.M. he again ordered and Mandeles poured the glasses full from the bottle he had in his pocket. Ralph Reid poured a sample bottle full of straight whiskey

from the drinks they had bought while Mandeles was in front. He got another round of drinks at 7:35 P. M., making three rounds. Mandeles took all the money himself. We saw two rounds of drinks sold to two other fellows and saw Mandeles ring up 50c in the cash register. This was just before Mandeles brought the drinks we ordered.

That on June 10, 1939, about 1:30 A. M. Reid and myself went to Jim's Place. Mandeles had the front part closed and we went through the side door. Mandeles let us in when we knocked on the door. Mandeles mixed us up a round of drinks and said they were on him. When we finished these I started to play poker with four other fellows in the back, Reid was talking to Mandeles. At about 3:35 A. M. I walked out and Reid bought Mandeles, himself and me each a drink, paying Mandeles 75c for the three drinks. Mandeles mixed the drinks right in front of us. We talked for awhile and then left. Mandeles offered to buy us another drink but I said no.

92 Mandeles told us to come back Sunday and he would mix us up something special. Mandeles thanked us when we left.

That on June 11, 1939 at 6:05 P. M. in company with Ralph Reid and a girl friend, I went to Jim's Place and Mandeles gave us a round of drinks. Mandeles mixed them on the

bar and then brought them back to the booth where we were. Mandeles got a half pint of gin from a locked drawer in the back bar. At 6:15 P. M. I ordered another round of drinks from Mandeles. Mandeles brought us three mixed drinks that he had mixed before he brought them out and a straight whiskey for himself. I paid him a dollar for the four drinks. At 6:30 P. M. I witnessed Reid order a round of drinks. This was the last round we had before the Inspectors came in. I witnessed Reid pay Mandeles a dollar for the one mixed whiskey drink and three straight whiskey drinks. One of the straight whiskey drinks was for Mandeles.

That Ralph Reid would testify that between May 14th and June 11th, 1939, he was employed by the Utah Liquor Control Commission as a buyer. That in pursuance of his employment he went to the premises known of as "Jim's Place" in Magna on May 14, 1939 at 5:40 P. M. and witnessed Bill Martin order three straight whiskey drinks from Mandeles. Mandeles brought these drinks out already poured. Oaks paid Mandeles a dollar for these drinks and Mandeles gave him 25c in change. Mandeles gave them a bottle of mixer free. That at 5:45 P. M. I ordered three drinks of whiskey from Mandeles. Mandeles brought a bottle of Mr. Boston Spot Bottle Whiskey from his pocket and poured three drinks at our table.

That on June 4, 1939 at 7:10 P. M. I witnessed Oaks order three drinks. Mandeles brought the drinks and a bottle of Cherry mixer, Oaks paid for these drinks with a \$5.00 bill. I witnessed Oaks
93 order again at 7:20 P. M., this time two drinks were served by Mandeles. We saved them by pouring them in a sample bottle.

That on June 10, 1939, at 3:05 A. M. Mandeles and I each had a gin drink for which I paid Mandeles 50c. At 3:35 A. M. I purchased three more gin drinks, one for Oaks, Mandeles and myself, for which I paid Mandeles 75c. When leaving Mandeles invited us to come again and try his special whipped cream gin drinks.

That on June 11, 1939 at 6:05 P. M. Oaks and I were standing at the bar in Jim's Place and Mandeles asked us what we wanted. We asked Mandeles what he had and he said, "Well, maybe something better than beer." Mandeles then went to the drawer back of the bar and got a half pint of gin and mixed the drinks. Mandeles asked us to go in a booth to drink the drinks. The drinks were free. At 6:15 P. M. Oaks purchased four more drinks, one for Oaks, his girl friend, Mandeles and myself. Oaks paid Mandeles a silver dollar for the drinks. At 6:30 P. M. I purchased a round of drinks for the four of us. I paid Mandeles a silver dollar for the drinks.

That the testimony of said buyers as hereinabove set forth had been communicated to Inspector E. W. Stringfellow daily after the happening of the events herein narrated; and that said buyers at all times were subject to the direction, and working under the direction, of said Inspector E. W. Stringfellow.

That A. H. Jaynes would testify that on the 11th day of June, 1939, he was a duly appointed and acting Inspector of the Utah Liquor Control Commission. That on June 11, 1939, at 6:30 P. M. Inspector Coulam and I entered the side door of
94 Jim's Place which opens from the west. I saw Oaks and Reid sitting in the second booth to the north of the side entrance with whiskey drinks on their table. I witnessed Inspector Coulam pick up the drinks. I went into the bar room and back of the bar in a small locked drawer I found a full pint bottle of whiskey, labeled Crab Orchard. Inspector Coulam and I remained in charge until the next morning, June 12, 1939.

That Virgil Coulam would testify that on the 11th day of June, 1939, he was a duly appointed and acting Inspector of the Utah Liquor Control Commission. That on June 11, 1939, Inspector Jaynes and I entered Jim's Place at 6:30 P. M., through the side door. Oaks and Reid were in the booth just north of the door, they had drinks of

whiskey in front of them. Mandeles was about to serve whiskey to two men in the second booth when Mandeles saw me. Mandeles shoved the two whiskey glasses that were on the table in his pocket and ducked into the booth, apparently passing the bottle of whiskey to one of the customers. I searched Mandeles and found only two whiskey glasses. I took the drinks from the buyers, Reid and Oaks, and labeled them and retained them for evidence.

That Leon Mayhue would testify that on the 11th day of June, 1939, he was a duly appointed and acting Inspector of the Utah Liquor Control Commission. That on June 11, 1939, Inspector Stringfellow and I entered Jim's Place at 6:30 P. M. through the front door. I witnessed Mandeles unlock a drawer in the back bar and Inspector Jaynes take a full pint of whiskey, labeled Crab Orchard, from it. Inspector Stringfellow and I took Mandeles to the County Jail where he was booked at 8 P. M.

That E. W. Stringfellow would testify that on the 11th day of June, 1939, he was duly appointed and acting Inspector of the Utah Liquor
95 Control Commission. That on June 11, 1939, Inspector Mayhue and I entered Jim's Place at 6:30 P. M. through the front door. I entered the bar from the south end as Inspector Mayhue en-

tered from the north end. Mandeles came from the booth where Oaks and Reid were sitting and saw Inspector Mayhue and I back of the bar and returned immediately to the booths, but returned to where I was standing back of the bar. I asked Mandeles to open a locked drawer and Inspector Jaynes took from the drawer a pint bottle of whiskey. Inspector Mayhue and I booked Mandeles at the county jail at 8 P. M.

8 P. M.

PARNEL BLACK,
D. HOWE MOFFATT,
G. HUNTER LUNT,
Attorneys for Libelant.

L. O. THOMAS,
*Attorney for Consolidated
Amusements.*

E. C. JENSEN,
*Attorney for James Giolas, Ira
Bosen and defendant James
Mandeles.*

51

(Title of Court and Cause)

BE IT REMEMBERED that on this, the 18th
day of July, 1939, at the hour of two o'clock P. M.,

the above entitled cause came on duly for hearing before the Honorable Allen G. Thurman, one of the judges of the above named court.

- 53 It was stipulated between counsel that the material allegations of the Libel of Information were correct on behalf of counsel for Claimant James Giolas and counsel for Claimant Consolidated Amusements. It was further stipulated by counsel that James Giolas was the holder of a chattel mortgage which was marked Exhibit A and
- 54 received in evidence covering the following equipment:

1 Front Bar

1 Back Bar

All stools, card tables and chairs

2 cash registers

Floor linoleum, glasses, equipment for dispensing beer, all electric fixtures, cigar case, cooking utensils, lunch equipment, together with all fixtures of every kind and nature now in or belonging to what is known as "Jim's Place," located on the property described as Lot 20 and 21, Block 11, Chambers Park, Unrecorded Plat of Magna, Utah

which equipment was located in the place of business of James G. Mandeles. It is further stipulated that Giolas knew of no illegal operations being conducted on the premises.

55 It was further stipulated that the property listed in the claim of Alvin P. Holt, doing business as Consolidated Amusements, was the property of said Alvin P. Holt, and that Mandeles agreed to pay Holt a rental based upon the percentage of funds deposited in each of the chattels and that Holt had no interest in the business operated on the premises and had no knowledge of the illegality of the business being conducted there.

 It was further stipulated that Jim's Place and the Merry Moon Inn were one and the same.

56 The Series of twelve photographs were ad-
57 mitted in evidence, being marked as Exhibit B.

58 The amusement game claimed by Consolidated Amusements, called Hy Lea, is a marble game placed on the premises by Consolidated Amusements. Mr. Holt, the owner of Consolidated Amusements and the Claimant, services the machine periodically, takes out the money and divides it with Mandeles in accordance with a pre-arranged rental agreement. The same is true of the 1c Dice Amusement Game, Fair Ground Amusement Game, the Preekness Amusement Game and the Clock Time Amusement Game. The Stop and Shop Nut Machine is a coin operated
59 nut machine in which the patron puts in a coin and

receives nuts. The three No. 3 Junior Nut Machines are operated in the same manner. The Wurlitzer Phonograph is a phonograph played in the same manner. The patron puts in a coin and the phonograph plays a record. The Charlie McCarthy Radio is simply a prize given in connection with one of the games. The agreement covering the placing of these machines was oral, there being no written agreement.

60 It was stipulated between counsel for Giolas and the Libelant that some of the receipts for the sale of liquor were rung up in the cash register listed in the Libel of Information. It was also stipulated that the cigar case, display cabinet, electric fans, coffee maker, the wall mirror were not used in connection with the unlawful sale of liquor, but were used in the conduct of the business done at Jim's Place.

It was further stipulated that the front bar and back bar and big electric refrigerator, the whiskey glasses, the big cash register were used directly in connection with the illicit sale of liquor. Counsel for James Giolas claimed the following

61 items: 1 20 foot bar; 1 20 foot back bar; 1 National
 62 Cash Register, No. 1382466W; 1 7 ft. cigar case;
 1 12 foot display case; 1 small ice refrigerator;
 2 bar sinks; 1 G. E. electric refrigerator; 1 electric
 clock; 2 electric fans; 15 cuspidors; 17 chairs; 5

tables; 2 electric plates; 120 assorted glasses; 15 glass pitchers; 27 chairs; 1 wooden bench; 1 electric fan; 1 cash register, No. 2002864; 1 electric coffee maker; 1 wall mirror.

63 It was further stipulated between Attorney for Consolidated Amusements and Attorney for Libelant that the amusement devices claimed by Consolidated Amusements were located in the general bar room and were played by members of the public who frequented the same.

96 STIPULATION FOR SETTLEMENT
 OF BILL OF EXCEPTIONS

(Title of Court and Cause)

It is hereby stipulated by and between the parties hereto, and their respective counsel, that the above and foregoing Bill of Exceptions may be settled, allowed and signed as the Libelant's Bill of Exceptions in said action. That it is a true and correct transcript of all the testimony, evidence and proceedings taken at the trial of this case and includes all of the testimony taken thereat and all the evidence adduced at the trial thereof, together with the orders and rulings of the Court made subsequent to the trial of said case.

It is further stipulated that all exhibits,

whether introduced by Libelant or Libelees, or shown by the transcript to have been identified is by reference made a part of this Bill of Exceptions and may be transmitted to the Supreme Court with the transcript on appeal as a part thereof.

Dated this 10th day of January, 1940.

PARNELL BLACK,
D. HOWE MOFFAT,
G. HUNTER LUNT,
Attorneys for Libelant.

EDGAR JENSEN,
*Attorney for James Giolas, Ira
Bosen and Libelee James
Mandeles.*

LLEWELLYN O. THOMAS,
*Attorney for Consolidated
Amusements.*

On this 19th day of January, 1940, and within the time provided by law, the Libelees having returned the foregoing Bill of Exceptions and Libelant and Libelees having stipulated that said

Bill of Exceptions may be settled and signed as the Libelant's Bill of Exceptions herein, the Libelant hereby presents this Bill of Exceptions to the above entitled Court and prays that the same may be allowed, signed and settled by the Court as a true and correct Bill of Exceptions herein and as containing all of the evidence adduced in the trial of said cause, together with proceedings, orders and rulings of the Court made during the trial hereof.

Dated this 19th day of January, 1940.

PARNELL BLACK,
D. HOWE MOFFAT,
G. HUNTER LUNT,
Attorneys for Libelant.

98 ORDER SETTLING BILL OF EXCEPTIONS

(Title of Court and Cause)

It is hereby certified that the foregoing Bill of Exceptions in the above entitled case, consisting of pages 1 to 14 of the hearing of July 18, 1939 and pages 1 to 23 of the hearing of September 6, 1939 and pages 1 to 6 of the Stipulation, together with the exhibits introduced at the trial thereof, which are made a part hereof, contains a true and correct transcript of all the evidence

in this case, together with the proceedings, orders and rulings of the Court, and that the same is hereby allowed, signed and settled as a true and correct Bill of Exceptions in this case.

Dated this 19th day of January, 1940.

BY THE COURT,

ALLEN G. THURMAN, *Judge.*

(Title of Court and Cause)

ASSIGNMENTS OF ERROR

Comes now the Utah Liquor Control Commission, Libelant, and makes the following assignments of error upon which it will rely for modification and reversal of the Judgment rendered against Libelant in said cause.

1. That the Court erred in making and rendering its Findings of Fact, Conclusions of Law herein, in that the same were not supported by the evidence and are against the Law in this, to-wit:

(a) That in the Fourth Finding of Fact it is found that E. W. Stringfellow did not personally witness and had no personal knowledge of any sale of intoxicating liquor at the premises at which said articles, goods, etc., were seized or any personal knowledge of any violation of Chapter 43, Laws of Utah, 1935, as amended by Chapter 49, Laws of Utah, 1937, and that the said Finding of Fact is contrary to the evidence in that E. W. Stringfellow did personally have such knowledge.

(b) That in the First Conclusion of Law it is concluded that the property and goods were not subject to forfeiture and condemnation and that said Conclusion of Law is contrary to the law and in the Second Conclusion of Law it is con-

cluded that the Libel of Information should be dismissed and that the goods returned to James Mandeles and Mrs. James Mandeles and that such Conclusion is contrary to the law.

2. That the Court erred in making and entering its Judgment in that in said Judgment it is ordered that the Libel of Information be dismissed and that the articles be returned to James Mandeles and Mrs. James Mandeles and that in such respect the Judgment is not supported by the Findings of Fact or by the law.

3. That the Court erred in overruling Libelant's Motion for New Trial.

WHEREFORE, Libelant prays this Honorable Court to reverse the Judgment herein for the reasons herein assigned and for such other and further reasons as may be proper in the premises.

PARNELL BLACK

D. HOWE MOFFAT

GEORGE H. LUNT

Attorneys for Libelant.

Copy of foregoing Assignments of Error received this 16th day of February, 1940, and any defect in date of service is hereby waived and it is hereby consented that the Abstract heretofore served may be amended by having these Assignments of Error inserted therein.

E. C. JENSEN

*Attorney for James Giolas, Ira
Bosen and defendant James
Mandeles.*

LLEWELLYN O. THOMAS

*Attorney for Consolidated
Amusements.*