

## UNITED STATES V. BENNER.

[5 Cranch, C. C. 347.]<sup>1</sup>

Circuit Court, District of Columbia. Nov. Term, 1837.

## NUISANCE—BAR-ROOM—LICENSE.

If a person hires a bar-room and fixtures and occupies part of the house, and keeps his barroom open at all days and hours and on Sundays and other days for the sale of spirituous liquors to other persons than boarders and lodgers, and allows such liquors to be drank in the said barroom at such days and times; the keeping of such a bar-room and house is a nuisance, and will support an indictment for keeping a disorderly house. Quære?

Indictment charging that the defendant [Joseph Benner] kept a certain unlawful, disorderly, and ill-governed house as a common tavern, without license, and as a common tipling-house, and therein openly sold spirituous liquors to all persons calling for the same, and allowed the same to be drank by such persons in and about the said house, at all times, both at day and at night, and on all days, both Sundays and other days, and did permit certain idle and ill-disposed persons, to the jurors unknown, to assemble in his said house then and there to continue drinking and tipling, to the common nuisance of the good people of the United States, to the evil example of all others, the corruption of the public morals, and against the peace and government of the United States.

Upon the trial, Mr. Key, for the United States, moved the court to instruct the jury. That if they believe, from the evidence, that the traverser hired of the person who had kept the house before, the bar-room and fixtures, and that he occupied a part of the house, and kept the bar-room open at all days and hours, and on Sundays, as on other days, for the sale of spirituous liquors to other persons than boarders and lodgers, and allowed the said liquors to be drank

in the said barroom, at such days and times; then such keeping said bar-room and house is a nuisance, and the traverser, if the jury should be satisfied that he so kept said house and bar-room, is guilty under the indictment.

Mr. Morfit, contra, cited 6 Wheel. Abr. 9, tit. "Nuisance."

MORSELL, Circuit Judge, was of opinion that the instruction ought to be given.

CRANCH, Chief Judge, had strong doubts; but agreed to give it, and leave the defendant to move for a new trial if the verdict should be against him.

THE COURT therefore (THRUSTON, Circuit Judge, absent) gave the instruction as moved by Mr. Key.

Verdict, not guilty.

<sup>1</sup> [Reported by Hon. William Cranch. Chief Judge.]

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