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In the  
**United States Circuit Court  
of Appeals**  
For the Ninth Circuit

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No. 6523

NARCISSO LUCHESSI,

Appellant,

vs.

LUTHER WEEDIN, Commissioner of Immigration,  
Port of Seattle, Washington, Appellee.

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Upon Appeal From the United States District Court for  
the Western District of Washington, Northern Division  
HONORABLE JEREMIAH NETERER, JUDGE

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**Brief of Appellant**

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**Brief of Appellant**

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STATEMENT OF THE CASE

The appellant in this case, Narcisso Luchessi, is an Italian, born in Italy. He first came to the United States in 1906, being at that time of the age of eighteen years. With the exception of two trips back to Italy, he has resided continuously in the United States since he first entered the country. He was charged in a warrant of arrest issued by the Secretary of Labor, as follows:

“That he has been found managing a house of prostitution, or a musical dance hall or other place of amusement or resort habitually frequented by prostitutes; that he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute; that he has been found assisting a prostitute.”

That portion of the charge referring to the alien's having been found assisting a prostitute was dismissed by the Department of Labor at the original hearing.

The appellant was given a hearing before a United States Immigration Inspector, and held for deportation by the Immigration authorities.

Thereafter the appellant appealed to the Secretary of Labor from the decision of the inspector at Seattle, but the appeal was dismissed. The appellant then applied for a writ of habeas corpus before Jeremiah Neterer, Judge of the United States District Court, Western District, Washington, Northern Division, at Seattle, Washington, which was denied.

## ASSIGNMENTS OF ERROR

1. The Court erred in holding and deciding the writ of habeas corpus prayed for by the petitioner should be denied.

2. The Court erred in ordering the petitioner deported to Italy.

## ARGUMENT

The Government in this case relies on evidence produced by the following persons, who testified at the hearing: Immigration Inspectors C. C. Hall and William G. McNamara; one Phemie Novak and one Helen Gilbert, both admittedly prostitutes.

The facts relating to the conduct of the premises in which the appellant is alleged to have been found managing a house of prostitution, are as follows: On September 15, 1925, Mr. Luchessi married a woman by the name of Loie Tucker. The marriage in question took place at Everett, Washington. Prior to the marriage, of Mr. Luchessi and Loie Tucker, the latter had been operating a hotel in Tacoma, known as the Palmer Hotel, located at 1307½ Broadway. The appellant had been occupying a room in this hotel for some time prior to his marriage with Loie Tucker, the lessee of the premises. After their marriage he continued to occupy a room and live at the hotel but had nothing to do with the management of, care, or looking after the hotel at all. The appellant at that time was conducting a cigar stand at 5214 South Union Avenue, South Tacoma, Washington, a distance of at least four miles from the Palmer Hotel.

In the conduct of his cigar business, Mr. Luchessi was in the habit of leaving his hotel at about 8:15 or 8:30 o'clock in the morning, to go to his place of business in South Tacoma, where he would be occupied during the entire day and part of the night, as he kept his cigar stand operating as late as 12 o'clock midnight. This was the occupation of the appellant at the time that he was alleged to have violated the law which led up to the charges preferred by the Labor Department against him. At the particular time that the charges were preferred by the Secretary of Labor, Mr. Luchessi was actually confined to a hospital in Tacoma. That was in October, 1928. The only evidence in this case which allegedly connects the appellant directly as the owner or manager of the place in question is that found given by Inspector William G. McNamara, on page nine of the Immigration records in this case. The following is quoted from the record as the testimony of Mr. McNamara bearing on that point:

“Q. State whether on or about that date you had occasion to go to the place known as the Palmer Hotel, 1307½ Broadway, and if so, what occurred there?

“A. I went to that hotel accompanied by Inspector Yeager. Inspector Yeager represented to the girl he met that we were from Seattle, that he was a real estate dealer and that I wanted to see about buying the place. We saw the girl they call Phemie and then she called Mr. Luchessi. Her exact words were, ‘Here is a couple of guys from Seattle who want to

buy the place.' We talked to Mr. Luchessi, told him we understood the place was for sale. He said yes, that he was the owner and he would sell for \$2500. We asked if he had a lease. He said yes, he had. As I recall it he said the lease ran for three years, the rental during the first year was \$90 per month and a larger sum each succeeding year. Mr. Yeager asked him how many girls they had there. He said he didn't have any at the present time, but see his manager, Phemie. He called Phemie in. She showed us over the place and she mentioned that she didn't have any girls there at the present time.

"During the conversation, however, Inspector Yeager asked her what the girls got and she said \$2, but the loggers were all going to Seattle, they would have to cut the price, probably to a dollar and a half."

The evidence of Mr. Hall, Immigrant Inspector, follows, taken from the Immigration record:

"Q. What is your name?

"A. My name is Carl C. Hall, U. S. Immigrant Inspector.

"Q. Were you employed as immigrant inspector on or about October 4, 1928?

"A. I was.

"Q. State whether on or about that date you went to a place known as the Palmer Hotel, 1307½ Broadway, Tacoma, and if so, what occurred there?

"A. I made a visit to that house in Tacoma, the Palmer Hotel, on the evening of the 4th, about midnight, and was met there by a landlady who wanted to know what I wanted. I told her I wanted to see a girl. She said there was no girl—

"Attorney: I object.

"—present at that time, but to come back tomorrow. I asked her what she charged. She said she charged

\$2 a trick, so I left her then. I called her up the following day in the afternoon and asked for Luchessi, and she informed me that he met with an automobile accident some time previous and was then stopping at his brother's home. She gave me the address of the brother's home. I called up the home and a girl answered the phone, and while the receiver was down I heard some conversation.

"Attorney: I object to all this.

"I could hear voices conversing in Italian. I waited there a few moments at the end of the receiver. I called from the U. S. Immigration office in Tacoma with Inspector McNamara sitting at the desk when I had the phone call in, so I hung up the receiver before anybody was able to answer. Later on in the evening I made another call to the landlady and told her I hadn't succeeded in getting Luchessi on the phone and she repeated her former statement as to his meeting with an accident, and so forth. Later on in the evening I made a visit up to the house, the Palmer Hotel, around between nine and ten o'clock. The same landlady whom I had met the previous night met me at the door and I informed her what I wanted, I wanted to see a girl. She told me to come in. I entered the hallway there, intending to follow her in. She proceeded to what I took for a front parlor. I saw a man sitting there whom she conversed with and when I proceeded to follow her into the front parlor she said, 'You wait here and I will send a girl out,' and she sent a girl out, whose name later developed as Marian. She came out to the hallway and I engaged her in quite a lengthy conversation as to the prices for the trick and who the lady was that I met there and she informed me that that was the landlady, and also informed me that the price of a trick was \$2 and upon being questioned as to how much she received of that \$2, she told me she paid half of it over to the landlady. The conversation



apparently developed on too long to suit the landlady because she came out in the hallway.

“Attorney: I object.

“Q. You mean then that you were solicited in the Palmer Hotel on or about the night of October 4th or 5th, 1928, by a girl whom you know now as Marian?

“Attorney: I object.

“A. Yes.

“Q. Did this girl, Marian, solicit you to practice prostitution with you?

“A. She was sent out for that purpose because I asked the landlady specifically for that, for a girl to commit prostitution and she sent Marian out for that purpose. I made my purpose for coming there fully known to the landlady.

“Q. And you state that you inquired of this girl, Marian, what she would charge for an act of prostitution?

“A. Yes.

“Q. What did she say?

“A. \$2.

“Q. You testify then that you asked her as to what amount of that \$2 was to be hers and whether she divided it with anyone else?

“A. Yes, I did.

“Q. What did she say?

“A. She informed me that she paid half of it over to the landlady.”

The foregoing, together with evidence of Phemie Novak, who claimed to be the manager of this hotel, and the evidence of Helen Gilbert, a prostitute, constitutes the entire testimony introduced by the Gov-

ernment to sustain the charges against the appellant.

The evidence as shown by Exhibit "1," in this case, being the lease entered into by Loie Tucker, wife of the appellant, in September, 1926, would surely indicate that the property was leased by the woman and not by Mr. Luchessi. The receipts on file in this case known as Exhibit "2" show that Loie Tucker paid for the water, lights, telephone, etc., after September, 1926. Nowhere in the evidence does it appear that the appellant was in any manner directly or indirectly, interested in the management of the business of this hotel.

"Alien's Exhibit Nos. 1 and 2, show that said hotel was leased to LOIE TUCKER, in September, 1926, and that thereafter during 1926 rent, telephone, electric light and gas bills, etc., were paid by Loie Tucker." (Page "A," Summary of Inspector Joseph H. Gee. Immigration Records of this case.)

At the time of the activities of the Immigrant Inspectors, Mr. Luchessi was incapacitated and laid up in the hospital. It is quite evident that anything that might be going on there while he was confined to the hospital would not be under his personal supervision or with his knowledge. In as much as there was only one woman in the place and she was there visiting Phemie Novak, it does not seem that the Government made out a case from which it could be held the

hotel in question was a house of prostitution, within the meaning of the statute. There is no evidence of any kind or description which shows that the appellant in this case profited directly or indirectly by reason of any prostitution being practiced at this house.

A case almost in point with the case before us was decided in the Tenth Circuit, December 31, 1931, being the case of *Strench vs. Pedaris*, 55 F. (2nd) 597. This case was tried before Judges Cottrel and Phillips of the Circuit Court and Judge Pollock, of the District Court. The decision being rendered by Judge Pollock.

The defendant was tried for deportation on the ground that he had been found an inmate of a house of prostitution. As found on page 597, the evidence established that Francis Pedaris, wife of the defendant, practiced prostitution in a building owned by Pedaris, and a portion of which said building Pedaris conducted as a coffee shop. That Pedaris lived with his wife in this building as man and wife. There was no evidence found in the record that defendant acted as a pimp or in anywise aided his wife in any such practice, or that he in any manner profited from the practice of prostitution by his wife. The statute under which Pedaris was arrested was the Act of

February 20, 1917, c. 1134, 34 Stat. 898, which before amendment read as follows: "Any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this Act."

As amended by Act of March 26, 1910, 36 Stat. 263, the Act reads as follows: "Any alien who shall be found an inmate of a house of prostitution, or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, shall be deemed to be unlawfully within the United States."

The question presented to the Court was whether, under this act a man could be held guilty of being an inmate of a house of prostitution, as was the charge made against Pedaris in the warrant issued by the Assistant Secretary of Labor under which deportation was attempted. Quoting from page 598:

"While it is apparent that the act before amendment was limited by its terms to members of the female sex, yet it is entirely plain it was so amended as to include members of the male sex if they inhabited a house of prostitution, and took part in the immoral practice carried on therein, or participated in the profit derived from the practice. As has been

seen the evidence in this case fails to so show, and on this ground alone the judgment in the habeas corpus case appealed from would have to be affirmed.”

The evidence in the instant case fails to show that the defendant in this case took part in any immoral practice carried on on the premises, or participated in the profits derived from the practice. The Circuit Court held in the last mentioned case that inasmuch as the evidence failed to show that the defendant in that case took part in any immoral practice or participated in any profits, that the judgment thereupon rendered in favor of the defendant would necessarily have to be affirmed. Applying the rule in that case to the case before us, it would appear that the defendant in this case should have been granted a writ of habeas corpus as prayed for in the District Court.

As stated hereinabove, there is no competent evidence to show that Mr. Luchessi was the owner of the hotel, whereas there was positive evidence to show that his wife was the owner, or lessee. The only evidence at all that indicates that Luchessi might have been the owner of the hotel was the evidence of Phemie Novak, who had no personal knowledge of the fact, and the statements of the inspectors; the documentary testimony clearly shows that Loie Tucker was the owner.

“In the proceedings for the deportation of an alien on the ground that he is sharing in the earnings of a prostitute, proof of his ownership of such house can not be made by proof of general reputation.”

*Katz vs. Commissioner of Immigration*, 245 F., page 316.

It is held in the same case at page 319 as follows:

“We are aware of the holding of the Supreme Court that the question is for the Commissioner of Immigration, and that the Court is not permitted to look behind his findings, when it is a matter of weighing evidence; but where there is substantially no evidence competent to establish the charge preferred, it then becomes a question of law for the Court.”

The principle involved has been substantially determined by the case of *Backus vs. Owe Sam Goon*, 235 Federal, page 847.

In *Backus vs. Katz*, 245 Federal, page 320, it was held:

“In a proceeding where the deportation of an alien, evidence held insufficient to show that he had received or was receiving the earnings of a prostitute; deportation was improperly ordered.”

## CONCLUSION

We maintain the Government has failed herein for the following reasons:

I. There is no competent evidence before the court that the defendant was managing a house of prostitution or musical dance hall or other place of amusement or resort habitually frequented by prostitutes.

II. There is no competent evidence establishing the Palmer Hotel as a house of prostitution.

III. There is no competent evidence establishing this place as a musical dance hall, or other place of amusement.

IV. There is no competent evidence establishing that the Palmer House was habitually frequented by prostitutes.

V. That there is no competent evidence establishing that the defendant was found receiving anything of any value whatever from a prostitute.

VI. There is no competent evidence establishing that he shared in or derived any benefit whatever from the earnings of a prostitute.

In view of the fact that the above constitutes the various elements of the charges stated by the Secretary of Labor against the defendant and in view of the fact that the Government has failed to offer competent evidence sustaining any one of these points, we respectfully urge on this Court that the Government has failed to establish its case and that therefore the judgment of the District Court should be reversed.

Respectfully submitted,

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