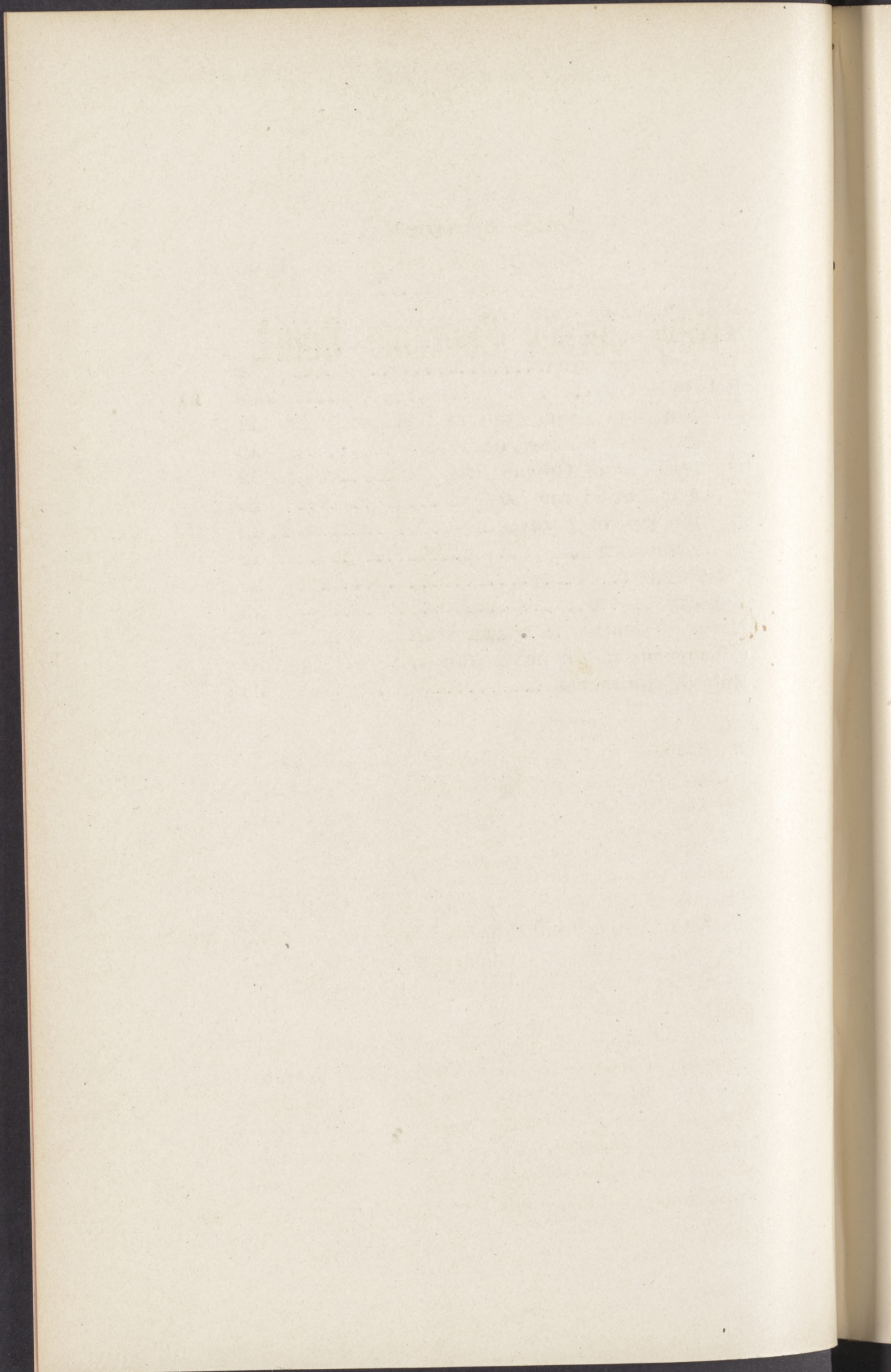


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Notice of Appeal.

Notice of Appeal.

Filed May 26, 1917.

New Jersey Supreme Court.

10

HOWARD S. DECK,
Prosecutor-Appellant.

vs.

GASTON BELL, JOHN J. SLATER,
Clerk of the Court of Com-
mon Pleas of the County of
Passaic,
Defendants-Respondents.

*Notice of
Appeal.*

20

*To William B. Gourley, Esq., Attorney of Defen-
dant, Gaston Bell, and John J. Slater, Clerk
of the Court of Common Pleas of the County
of Passaic.*

Take notice, that the prosecutor above named
appeals to the Court of Errors and Appeals in
the Last Resort in all causes in New Jersey, from
the whole judgment, dismissing the writ of cer-
tiorari in the above entitled cause, on the fol-
lowing grounds:

30

1. The order of the Court of Common Pleas
granting a license to Gaston H. Bell to keep an
inn and tavern in the Township of Wayne,
brought up for review by the said writ of cer-
tiorari, was illegal and void, because the number
of inn and tavern licenses, or licenses to sell
spirituous, vinous, malt or brewed liquors in

40

Notice of Appeal.

quantities less than one quart, already issued and outstanding in said township at the time the application for said license was made and said license was granted was in excess of the proportion of one to five hundred of population, and therefore the granting of said license, being
 10 a new license, was unlawful under what is popularly known as "The Leonard Act"—Laws of 1913, Chapter 280.

2. The order brought up for review by the writ of certiorari was void because, while it was argued that the license was granted under the exception in Chapter 280 of the Laws of 1913, which provides that the prohibition therein shall not apply "to a picnic or recreation ground comprising at least one acre," the premises sought
 20 to be licensed were not, nor were they held by the Court to be a picnic or recreation ground, and the application for said license was not made for, nor was the license granted for "a picnic or recreation ground comprising at least one acre" but was "to keep an inn and tavern * * * in the Township of Wayne," and was therefore unlawful and void.

3. The order brought up for review by the writ of certiorari was void because the li-
 30 cense granted was a license for a new place, never having been before licensed, and under the "Leonard Act" (P. L. 1913, Chap. 280) a new license to keep an inn and tavern, or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart could lawfully have been granted only after sealed bids had been advertised for and obtained, and no such bids were advertised for or received, and there-
 40 fore, even if said license could have been lawfully granted, the proper procedure to permit

Notice of Appeal.

the granting thereof was not followed, and hence said granting in any event was illegal and void.

Dated May 16, 1917.

G. ROWLAND MUNROE,
Attorney of Prosecutor-Appellant.

10

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }^{ss.}

Rose L. Fulcher, being duly sworn on her oath, according to law deposes and says that she served a copy of the attached Notice of Appeal in the above entitled matter this 17th day of May, nineteen seventeen, upon William B. Gourley, Esquire, attorney for the defendant-respondent, Gaston Bell, and a copy also upon the defendant-respondent, John J. Slater, clerk, etc., personally, in the city of Paterson, County of Passaic, State of New Jersey.

20

ROSE L. FULCHER.

Subscribed and sworn to before
me this 24th day of May, nine-
teen seventeen.

30

HARRY I. BARTON,
(SEAL) *Notary Public for N. J.*

40

Affidavit of Howard S. Deck.

Affidavit of Howard S. Deck.

Filed January 16, 1917.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }*ss.*

10 HOWARD S. DECK, of full age, being duly sworn on his oath according to law, deposes and says:

That he is a citizen, resident and taxpayer of the Township of Wayne, County of Passaic and State of New Jersey; that on the second day of January, inst., one Gaston Bell made an application to the Court of Common Pleas of Passaic County for a "license to keep an inn and tavern in the house where he now dwells in the Township of Wayne," adding to said application the words "attached thereto is a picnic and recreation ground of more than one acre;" that the
20 twelve freeholders recommending the said applicant for said license certified in form usual to an application for an inn and tavern license that the house had at least ten spare rooms, that the place "is well provided with fodder and provender, and that such an inn and tavern is necessary and will conduce to the public good;" that on the eleventh day of January, 1917, the
30 said Court granted a license to keep an inn and tavern to said Gaston Bell in the house where he now dwells in the said township, known as Bellwood Inn; and that said license was improperly and illegally granted, for the following reasons, among others:

40 First. That the population of Wayne Township aforesaid, as shown by the State census of 1915, was 2,625 people, and that the number of inn and tavern licenses, or licenses to sell spirituous, vinous, malt or brewed liquors in quan-

Affidavit of Howard S. Deck.

ties less than one quart, already issued and outstanding in said Wayne Township at the time said application was made and said license was granted was nine, a number in excess of the proportion of one to five hundred of said population, and that therefore the granting of said license, being a new license, was unlawful under the laws of 1913, Chapter 280, commonly known as "the Leonard Act." 10

Second: Deponent further says that he lives, and for years has lived, close to said Bellwood Inn, and is well acquainted with the grounds surrounding said inn and with said inn, and that there is no feature, development or equipment of said grounds constituting it "a picnic and recreation ground" different from his own yard and grounds, or different from those of many of the other neighbors, there being nothing beyond a large porch, some tables and chairs or benches which may be placed on the lawn, a hammock or two, and two or three lawn swings, in the way of equipment, while the grounds consist merely of the usual lawns, trees, kitchen and flower garden, etc. 20

Deponent further says that the said Gaston Bell and his wife have conducted Bellwood Inn as a first class restaurant, or inn, catering to a select class of patrons, almost exclusively automobile parties, coming from Paterson, Newark, Montclair, the Oranges, etc., the charges being in keeping with the meals furnished, some of which meals deponent has enjoyed; that they have been extremely desirous of obtaining a license, as they have repeatedly stated in deponent's hearing, that they may serve liquor to such patrons with their meals. 30

Affidavit of Howard S. Deck.

Deponent further says the grounds of Bellwood Inn have not been used as a "picnic and recreation" ground, though parties which have come to the inn for luncheon or dinner have, of course, wandered over the grounds, and been served upon the lawns, at times, though the
10 usual place of service in summer is upon the screened-in porch, which is commodious and attractive.

Deponent further says that an application similar to this one was made by the said Gaston Bell to said Court at the April term, last; that said application was at that time urged on the ground that the premises were capable of being used for picnic and recreation purposes, and evidence was received at length by said Court
20 as to the grounds, equipment, etc., as described above, and in refusing to grant said application Judge Klenart, who presided then as upon the present application, said: "I do not think the Court would have the right to grant this license on that application. In addition to that, I do not think that another license is necessary in that township; there are nine now, while under the law they would only be entitled to five. * * *
30 I think it is a splendid place, and if anyone else gave up I think I would be inclined to grant this one. The difficulty is that it makes just one more drinking place. That is what makes the trouble. That act was intended to cut down the number of drinking places, except as to picnic and recreation grounds. I cannot find anywheres in the evidence that this is such a place in contemplation of the statute. There is nothing which makes this a recreation ground. There is not a thing there which makes it a picnic
40 ground, as we understand picnic grounds—tennis

Affidavit of Howard S. Deck.

grounds, baseball grounds, golf grounds. There are other things that go with picnic grounds, as we understand picnic grounds. There is not a thing of that kind here. I will allow you to withdraw."

Deponent alleges most positively that there has been nothing further done since said Court last May refused in this language to grant said license, to make the inn or its grounds any more of a "picnic and recreation ground" than it then was, and in all other respects the situation remains as it then was. 10

Third. Deponent further says that this is a new place, never having been licensed, and that under the "Leonard Act" aforesaid a new license to keep an inn and tavern, or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart can lawfully be granted only after sealed bids have been advertised for and obtained, as provided in said Act, and that in this instance no such bids were advertised for or received, and that therefore even if said license could have been lawfully granted the proper procedure to permit the granting thereof was not followed, and hence said granting in any event was illegal and void. 20

Fourth: Deponent further says that the provisions of the Act relating to the granting of licenses for parks, picnic and pleasure grounds (P. L. 1899, p. 197) require that the "application shall describe, with certainty, the boundaries of said park, picnic and pleasure grounds, and shall state the number and location of the places where said * * * liquors are to be sold," and while said act relates to corporations more particularly it clearly defines these items of a proper 30 40

Affidavit of Howard S. Deck.

application for such a license and shows that the present application, if it were intended to be such an application, falls far short, as there is no description with particularity and no statement of the number or location of the places where said liquors are to be sold; thus again
 10 showing that said application is clearly not one that comes under the head of a license for a picnic or recreation ground, but rather one simply for an inn and tavern which is surrounded by more than one acre of land.

And deponent further prays that he may have a writ of certiorari allowed to him to have said order of the Court of Common Pleas of the County of Passaic, granting said license, set aside and reversed, and that pending the final
 20 determination of this matter said Gaston Bell be stayed in exercising any rights or privileges in the sale of intoxicating liquor under said license.

HOWARD S. DECK.

Subscribed and sworn to before
 me this 15th day of January,
 A. D. 1917.

30 G. R. MUNROE,
Master in Chancery of New Jersey.

Writ of Certiorari.

Writ of Certiorari.

Allowed January 16, 1917.

NEW JERSEY, ss.

(SEAL) THE STATE OF NEW JERSEY, to John
J. Slater, Clerk of the Court of Com-
mon Pleas of the County of Passaic,
and Gaston Bell, GREETING:

10

WE, being willing for certain reasons to be certified of the certain proceedings, order or determination had or made by the Court of Common Pleas of the County of Passaic in connection with the application of one Gaston Bell to keep an inn and tavern, in the premises known as the Bellwood Inn, in the Township of Wayne, County of Passaic and State of New Jersey, and the license granted thereon on or about the eleventh day of January, nineteen hundred and seventeen,

20

DO HEREBY COMMAND YOU that the said order or determination of the said Court of Common Pleas and the said license, together with the application for the said license, the notice and proof of publication of notice and the order of the said Court, together with the minutes of the court showing the hearing and the basis of the remonstrances filed in opposition to the granting of said licence, together with all other things touching and concerning the same, by whatever names the parties may therein be called, as fully and entirely as before you they may remain, to our Justices of the Supreme Court of Judicature at Trenton, on the first day of February next, YOU DO CERTIFY AND SEND, together with this writ, that therein may be done what of right and according to the laws of this state, should be done.

30

40

Writ of Certiorari.

And pending the return of the record as aforesaid and the hearing and determination thereon let no license certificate be issued to the said Gaston Bell, and let the said Gaston Bell refrain and be stayed from exercising any rights or privileges in the sale of intoxicating liquors under the order of the Court of Common Pleas of Passaic County granting said license.

10 WITNESS, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this sixteenth day of January, A. D. 1917.

WM. C. GEBHARDT, *Clerk.*

G. ROWLAND MUNROE,
Attorney.

20 I allow the within writ. Let it be sealed January 16, 1917.

JAMES F. MINTURN,
J. S. C.

Return.

11

Notice of Application for License.

Notice.

Filed December 27, 1916.

TO ALL WHOM IT MAY CONCERN, PUBLIC NOTICE is hereby given that on the 2nd day of January, nineteen hundred and seventeen, I will apply to the Court of Common Pleas of the County of Passaic, at the Court House, Paterson, for a license to keep an inn and tavern, in the house wherein I now dwell on the Newark and Pompton Turnpike Road, in the Township of Wayne, and that attached thereto is a picnic or recreation ground of more than one acre in extent. 10

Dec. 26th, 1916.

GASTON BELL,
Licensee. 20

TO WHOM IT MAY CONCERN, Public notice is hereby given that on the second day of January, nineteen hundred and seventeen, I will apply to the Court of Common Pleas of the County of Passaic, at the Court House, Paterson, for a license to keep an inn and tavern, in the house wherein I now dwell on the Newark and Pompton Turnpike Road, in the Township of Wayne, and that attached thereto is a picnic or recreation ground of more than one acre in extent. 30

GASTON BELL,
Licensee.

40

Affidavit of Gaston Bell.

STATE OF NEW JERSEY, }
 PASSAIC COUNTY. }*ss.*

10 Barbara Saal being by me duly sworn according to law, on *his* oath, saith, that the notice, of which the annexed is a copy, was published in the "Evening News," a newspaper printed and published at Paterson, in said county, on the 27th day of December, A. D. 1916.

BARBARA SAAL.

Sworn and subscribed this 2nd day of January, 1917, at Paterson, before me.

H. B. HAINES,
 (L. S.) *Notary Public of N. J.*

20 Filed January 2, 1917.

Affidavit.

Filed January 2, 1917.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. }*ss.*

30 GASTON BELL being duly sworn on his oath according to law says, that on the twenty-sixth day of December, 1916, he posted, in five conspicuous places in the Township of Wayne, notices that he intended to ask the Court of Common Pleas of Passaic County to grant him a license to keep an inn and tavern, and that attached thereto is a picnic or recreation ground

Affidavit of Gaston Bell.

of more than one acre in extent, of which the following is a true copy:

“TO ALL WHOM IT MAY CONCERN:

PUBLIC NOTICE is hereby given that on the second day of January, nineteen hundred and seventeen, I will apply to the Court of Common Pleas of the County of Passaic, at the Court House, Paterson, for a license to keep an inn and tavern, in the house wherein I now dwell on the Newark and Pompton Turnpike Road, in the Township of Wayne, and that attached thereto is a picnic or recreation ground of more than one acre in extent. 10

GASTON BELL,
Licensee.”

Deponent further says that the five places at which notices were posted are as follows: 20

At the Carleton Inn,

At Wilkies Race Track,

At Brown's Grocery Store on the Newark and Pompton Turnpike Road,

At Bellwood on the Newark and Pompton Turnpike Road,

On the Wayne Road leading to the Wayne station. 30

GASTON BELL.

Sworn and subscribed to before me this 27th day of December, 1916.

HARRY L. SCHOEN,
Master in Chancery of N. J.

Application.

Application.

Filed January 2, 1917.

*To the Judge of the Court of Common Pleas, of
the County of Passaic.*

10

The petition of Gaston Bell of the Township of Wayne, hereby requests the said judge to grant him a license to keep an inn and tavern, in the house wherein he now dwells, in the Township of Wayne, in said county: that attached thereto is a picnic or recreation ground of more than one acre in extent.

Dated Dec. 29th, 1916.

GASTON BELL,
Petitioner.

20

30

The subscribers, freeholders of the Township of Wayne, the County of Passaic and State of New Jersey, do hereby recommend Gaston Bell to be licensed to keep an inn and tavern, in the house where he now dwells in said township, and do certify that there is attached thereto a picnic or recreation ground of more than one acre.

And we do hereby certify that the said Gaston Bell is of good repute for honesty and temperance, and is known to each of us have at least ten spare rooms more than are necessary for his family use and is well provided with houseroom, stabling and provender; And, we further certify, that such an inn and tavern is necessary and will conduce to the public good, and this recommendation was signed within
40 thirty days next preceding the opening day of

Application.

the January term, 1917, of the Passaic County Courts.

Dated 191...

Name	Date of Signing	
1. Edwin Corning, by H. G. Hershfield, Agt.	Dec. 26, 1916	10
2. Robert E. McClelland,	Dec. 28, 1916	
3. Maud R. Balaban,	Dec. 28, 1916	
4. William J. Janicke,	Dec. 28, 1916	
5. Albert Payson Terhune,	Dec. 22, 1916	
6. Benj. F. Rogers,	Dec. 29, 1916	
7. Clifford Marshall,	Dec. 28, 1916	
8. H. E. Munford,	Dec. 26, 1916	
9. Dudley C. Hoffman,	Dec. 26, 1916	
10. P. J. Dandt,	Dec. 20, 1916	
11. Peter Bailey,	Dec. 29, 1916	
12. Helen J. Fay,	Dec. 22, 1916	20
13. Joseph H. McClelland,	Dec. 28th, 1916	
14. Walter N. Biddle,	Dec. 29th, 1916	
15. Karl Zeller,	Dec. 29, 1916	
Arthur S. Phillips,	Dec. 29, 1916	
Geo. A. Morgan,	Dec. 29, 1916	

30

40

Application.

STATE OF NEW JERSEY, }
 PASSAIC COUNTY. } ss.

10 Gaston Bell being duly sworn on his oath saith that he is a citizen of the United States, and that the above petition is signed by at least twelve reputable freeholders of the Township of Wayne who have not to the knowledge or belief of this deponent recommended any other application for license to keep an inn or tavern for one year last past to sell vinous or spirituous liquors, and that the foregoing recommendation was signed within thirty days next preceding the opening day of the January term, 1917, of the Passaic County Courts.

GASTON BELL.

20 Sworn and subscribed before me
 this 29th day of Dec. 1916.

HARRY L. SCHOEN,
Master in Chancery of N. J.

30 At a Court of Common Pleas, holden at Paterson, in and for the County of Passaic, of the term of January, A. D. nineteen hundred and seventeen, commencing Tuesday, the second day of January, A. D. nineteen hundred and seventeen, the following proceedings were had, to wit:

The Court met,

Present Hon. ABRAM KLENERT.

The application of Gaston Bell to keep an inn and tavern in the Township of Wayne, was laid over until January 11th, 1917.

Petition.

Petition.

Filed January 9, 1917.

To Judge Abram Klenert of Passaic Co., N. J.

10 We the undersigned, voters, citizens, property owners, residents, of Wayne Township, respectfully petition your Honor not to grant the application of Gaston Bell for a license to sell spiritous, vinous, malt or brewed liquors, at Wayne, N. J.

The reason— for this petition are as follows:

1st. The sale of liquors at this place is not necessary;

2nd. It will not conduce to the public good;

20 3d. There are already enough places to meet all reasonable requirements; and this license would tend to "encourage tippling, drunkenness and other vices," contrary to law.

4th. Under the Leonard Act, 1913, no new license can be granted by any court in any city, town, township, borough or village, unless the ratio of population in the municipality to the number of licenses shall be greater than 500 to 1.

30 Note.—The foregoing petition was signed with the names of 53 persons, whose residence was stated as "Wayne." A petition identical in form with the foregoing, signed by 37 names, marked "Filed January 11, 1917," was included in the Return, as well as a third petition identical in form with the foregoing, save that another paragraph was added, reading as follows:

40 "Fifth. The place of the said Gaston Bell is not a picnic or recreation ground, nor in any other respect an exception under the aforesaid Act." This third petition was signed by 31 names and was marked "Filed Jan. 9, 1917."

*Minutes of Proceedings.***Minutes of Proceedings.**

Thursday, January 11th, 1917.

The Court met.

Present, Hon. Abram Klenert.

10

Passaic Common Pleas.

In the matter of the application
of GASTON BELL for a li-
cense to keep an Inn and
Tavern in the Township of
Wayne.

20

Mr. Harry Schoen, attorney, appearing for
the applicant.

Mr. G. Rowland Munroe, attorney, appearing
for the remonstrants.

Opening by Mr. Harry Schoen, attorney, ask-
ing for granting of license.

Opening by Mr. G. Rowland Munroe, attor-
ney, asking that license be denied.

30

William E. Berdan sworn as stenographer.
Request by Mr. G. Rowland Munroe.

Evidence sworn on behalf of the applicant:

George Knight.

Case off until 2 P. M.

Evidence sworn on behalf of the applicant:

Gaston Bell

Henry G. Herschfield

John R. Morris

Henry Sisco

40

Minutes of Proceedings.

Frank P. Fay, Jr.
 Walter S. LeFevre
 Floyd McCracken
 Elsie Berry De Mott.

Applicant's case rested at suggestion of Court,
 who asks to hear remonstrants.

10 At this time Mr. G. Rowland Munroe, attorney for the remonstrants, renews motion to deny license. This motion is denied.

Evidence sworn on behalf of the remonstrants:

Howard S. Deck
 William N. Hetherington
 William A. Ryerson.

The evidence and argument of counsel being closed, the Court after mature deliberation thereon, grants the license.

20

Bond.

Filed January 11, 1917.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. } ss.

30 I, Gaston Bell, of the Township of Wayne, in the County of Passaic and State of New Jersey, acknowledge myself indebted to the State of New Jersey in the sum of one hundred dollars; and we, Henry L. Schoen of the City of Paterson and Patrick F. Cunningham of the City of Paterson in the County and State aforesaid, jointly and severally acknowledge ourselves indebted to the State of New Jersey in the sum of fifty dollars, to be levied on our several and respective goods and chattels, lands and tenements, if failure be made in the following

40

condition:

Minutes of Proceedings.

The condition of the recognizance is such that
 whereas the above bounder Gaston Bell is li-
 censed by the court to keep an inn and tavern
 in the house where he dwelleth, in the Town-
 ship of Wayne in the County of Passaic, for the
 space of one year next ensuing. If, therefore,
 the said Gaston Bell, during the continuance 10
 of said license shall not keep a disorderly inn
 or tavern, nor game, himself, nor suffer any
 person to game in his house for money or the
 value of money, nor violate the laws made con-
 cerning inns and taverns, but shall during the
 said term, in all things respecting him as an
 inn holder or tavern keeper, use and maintain
 good order and rule, and find and provide
 good, wholesome and sufficient lodging, diet and
 entertainment for man, and stabling and pro- 20
 vedner for horse, and observe the directions
 of the law relating to inns and taverns, then
 this recognizance to be void or else to remain
 in full force and virtue.

GASTON BELL, (SEAL)
 HARRY L. SCHOEN, (SEAL)
 P. F. CUNNINGHAM. (SEAL)

Taken and acknowledged before
 me this 11th day of January, 30
 A. D. 1917.

JNO. J. SLATER,
 (L. s.) Clerk.

Return.

Return.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. }^{ss.}

10 I, John J. Slater, Clerk of the County of Passaic, and also Clerk of the Court of Common Pleas, in and for said County, DO HEREBY CERTIFY, That the foregoing is a true copy of the Notice, filed December Twenty-seventh, A. D. Nineteen Hundred and Sixteen; proof of publication, filed January Second, A. D. Nineteen Hundred and Seventeen; Affidavit, filed January Second, A. D. Nineteen Hundred and Seventeen; Application of Gaston Bell of the Township of Wayne for License to keep a Inn and Tavern, accompanied by Map, filed January

20 Second, A. D. Nineteen Hundred and Seventeen; Minutes of the Court of Common Pleas, entered January Second, A. D. Nineteen Hundred and Seventeen; two Remonstrances, filed January Ninth, A. D. Nineteen Hundred and Seventeen; Remonstrances, filed January Eleventh, A. D. Nineteen Hundred and Seventeen; Minutes of the Court of Common Pleas, entered January Eleventh, A. D. Nineteen Hundred and Seventeen; and Bond, filed January Eleventh, A. D. Nineteen Hundred and Seventeen; In the Mat-

30 ter of the Application of Gaston Bell for a License to keep an Inn and Tavern in the Township of Wayne, Passaic County, New Jersey, as the same is taken from and compared with the record now remaining in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal
(L. s.) of the said Court and County, at Paterson, this Thirtieth day of January, A. D. Nineteen Hundred and Seven-

40 teen.

JNO. J. SLATER,
Clerk.

*Reasons.***Reasons.**

Filed.

New Jersey Supreme Court.

10

HOWARD S. DECK,

*Prosecutor,**vs.*GASTON BELL and JOHN J.
SLATER, Clerk of the Court
of Common Pleas of the
County of Passaic,
*Defendant.**On
Certiorari.**Reasons.*

20

The said prosecutor, Howard S. Deck, by G. Rowland Munroe, his attorney, comes and prays that the proceedings order or determination had or made by the Court of Common Pleas of the County of Passaic, on the application of the defendant, Gaston Bell, for a license to keep an Inn and Tavern in the Township of Wayne, County of Passaic, and the license granted thereon, on or about the eleventh day of January, Nineteen Hundred and Seventeen, may be set aside, reversed, and for nothing holden, for the following reasons:

30

1. That the population of Wayne Township aforesaid, as shown by the State census of 1915, was 2,625 people, and that the number of inn and tavern licenses, and licenses to sell spirituous, vinous, malt or brewed liquors in quanti-

40

Reasons.

ties less than one quart, already issued and outstanding in said Wayne Township at the time said application was made and said license was granted was nine, a number in excess of the proportion of one to five hundred of said population, and that therefore the granting of
 10 said license, being a new license, was unlawful under the laws of 1913, Chapter 280, commonly known as "the Leonard Act."

2. That, although it may be contended that said license was granted under the exception in said Chapter 280 of the Laws of 1913, which provides that the prohibition therein shall not apply
 20 "to a picnic or recreation ground comprising at least one acre," the application for said license was not made for, nor was the license granted for "a picnic or recreation ground comprising at least one acre" but was "to keep an inn and tavern, in the house wherein he" (the said Gaston Bell) "now dwells, in the Township of Wayne," and the words added thereto, "that attached thereto is a picnic or recreation ground of more than one acre in extent" did not in any manner change the character of the application, nor in any sense make of the license granted a license
 30 "to a picnic or recreation ground." The application for license, the notice of application posted, the records of the Court, the bond filed, the license granted, and all proceedings had on behalf of the said defendant, Gaston Bell, relate only to an inn and tavern license, which, under the law, could not be lawfully granted.

3. This license was for a new place, never having been before licensed, and under the "Leonard Act" aforesaid a new license to keep
 40 an inn and tavern, or to sell spirituous, vinous,

Reasons.

malt or brewed liquors in quantities less than one quart could lawfully have been granted only after sealed bids had been advertised for and obtained, as provided in said act, and that in this instance no such bids were advertised for or received, and that therefore even if said license could have been lawfully granted the proper procedure to permit the granting thereof was not followed, and hence said granting in any event was illegal and void. 10

4. That the provisions of the act relating to the granting of licenses for parks, picnic and pleasure grounds (P. L. 1899, p. 197) require that the "application shall describe, with certainty, the boundaries of said park, picnic and pleasure grounds, and shall state the number and location of the places where said * * * liquors are to be sold," and while said act relates to corporations more particularly it clearly defines these items of a proper application for such a license and shows that the present application, if it were intended to be such an application, falls far short, as there was no description with particularity and no statement of the number or location of the places where said liquors were to be sold; thus again, showing that said application is clearly not one that comes under the head of a license for a picnic or recreation ground, but rather one simply for an Inn and Tavern surrounded by more than one acre of land. 20 30

5. The said proceedings and order in connection with said application and license were in divers other respects illegal, unjust and oppressive, and should be set aside and be for nothing holden.

G. ROWLAND MUNROE, 40
Attorney for Prosecutor.

*Notice of Motion to Quash Writ.***Notice of Motion to Quash Writ.**

NEW JERSEY SUPREME COURT.

10	HOWARD S. DECK, <div style="text-align: right;"><i>Prosecutor,</i></div>	}	<i>On</i>
	<i>vs.</i>		<i>Certiorari.</i>
	GASTON BELL and JOHN J. SLATER, Clerk of the Court of Common Pleas of the County of Passaic, <div style="text-align: right;"><i>Defendant.</i></div>		<i>Notice.</i>

Sir:

20 Please to take notice, that on Saturday, the
 third day of February, 1917, at ten o'clock in
 the forenoon, or as soon thereafter as counsel
 may be heard, I shall apply to the Honorable
 James F. Minturn, Judge of the New Jersey
 Supreme Court at the Court House in the City
 of Paterson, for an order quashing the writ of
 certiorari heretofore issued in the above en-
 30 titled cause and to vacate the allocatur on the
 ground that the same was improvidently granted
 for the following reasons:

1. The affidavit upon which said writ was
 granted does not set forth any sufficient grounds
 to allow such writ.

2. The first reason contained in said affidavit
 is inapplicable because the said license was
 granted to keep an inn and tavern to which is
 attached a picnic and recreation ground of more
 than one acre in extent, as provided in the said
 40 act known as Chapter 280 of the Laws of 1913.

Notice of Motion to Quash Writ.

3. The second reason of said affidavit is inapplicable because the Court of Common Pleas found as a matter of fact that a picnic and recreation ground of more than one acre in extent was attached to said inn and tavern, and, therefore, such license came within the provisions of the exception to said act of 1913, which provides that said act should not affect the granting of licenses where such picnic and recreation ground exist. 10 01

4. The third reason contained in said affidavit is inapplicable because under the said act of 1913, referred to therein as the Leonard Act, does not require that any bids should be advertised for or received in case the license is to conduct an inn and tavern to which is attached such picnic and recreation ground. 20 02

5. The fourth reason contained in such affidavit is inapplicable because the act of 1899, page 197, referred to therein applies exclusively to corporations, and is neither a supplement nor amendment to the act under which the license in question was granted, nor has any relation thereto.

Dated January 31st, 1917.

WILLIAM B. GOURLEY, 30 03
Attorney of defendant, Gaston Bell.

To
G. R. MUNROE, Esq.,
Attorney of Prosecutor.

*Conclusions of Justice Minturn.***Conclusions of Justice Minturn.**

NEW JERSEY SUPREME COURT.

10 HOWARD S. DECK,

vs.

GASTON BELL *et al.*

Writ of Certiorari to vacate a license to keep an inn and tavern in the Township of Wayne, in the County of Passaic.

William Gourley, for the motion.

20 G. R. Munroe, *Contra.*

MINTURN, *J.*

A writ of certiorari was granted to review the proceedings of the Passaic Common Pleas, granting a license to keep an inn and tavern to Gaston Bell in the township of Wayne in the County of Passaic. The petition for the license was in the usual form, excepting a provision attached thereto reciting that the *locus in quo* is "a picnic or recreation ground of more than
30 one acre."

This addendum was intended to bring the applicant within the provisions of Chapter 280 of the Laws of 1913, which is intended to limit the granting of licenses for inns and taverns according to a basis of five hundred of population to one inn or tavern, excepting in certain specified instances among which is "a picnic or recreation ground comprising at least one
40 acre."

Conclusions of Justice McInturn.

No question is made as to the character of the applicant, or of the place, the sole contention of the remonstrances being that the Township at present is sufficiently supplied with inns and taverns, and that while the application is in effect for a license to keep a picnic or recreation place, under the exception contained in the act of 1913, the license granted by the Common Pleas was specifically for the keeping of an inn or tavern, and was therefore invalid. 10

The act is obviously a prohibitory act within defined limitations. Its plain intent was to restrict the granting of licenses to a basis of population in all municipalities, except in certain specified instances, among which is the picnic or recreation ground of at least one acre.

It will be observed that the act provides generically for the granting of a license for an inn and tavern, and for nothing else. "No license to keep an inn or tavern" is the mandatory language, limiting the granting of licenses to a status based upon population. "But," the act continues, "this prohibition shall not apply to any premises" and then follows a statement of the extended classes *inter alia*, the one in question. 20

It may well be as counsel for the remonstrants contends, that the license should be issued to one of the excepted classes, *eo nomine*. Such a procedure would certainly be consistent with the actual status presented for instance in the excepted class of a club or an association, which have never been accorded the designation of an inn or tavern. But the act seems to retain the common law generic designation for all licenses issued under its provisions, and therefore the 30 40

Conclusions of Justice Minturn.

validity of the license cannot be successfully challenged upon that ground.

It need only be added that support for this construction of the act is contained in the views expressed by Mr. Justice Kalisch, for this court, in *Fort v. Common Pleas*, 97 Atl. 499.

10 This act received its initial construction in this court, in *Tilton v. Common Pleas of Ocean*, 87 L. 47-92, Atl. 87, and it was there held that the advertising requirement of the act, based upon the population provision, was discretionary with the Court of Common Pleas, and that an order made thereunder was not reviewable here.

20 This construction is consistent with the views entertained by this court in the earlier cases, under the prior inn and tavern legislation. Thus in *Barneгат Beach Assn. v. Busby*, 15 Vr. 628, it was held that where the Common Pleas has jurisdiction to grant licenses, under the act concerning inns and taverns, this court will not on certiorari review such discretion, in granting or refusing licenses, or look into the facts upon which the discretion is exercised. To the same effect is *Smith v. Corbett*, 30 Vr. 584, and *Human v. Schuester*, 31 Vr. 132.

30 In the case *sub judice*, there was evidence from which the Common Pleas might properly conclude that the *locus in quo* contained a picnic or recreation ground of an acre in extent, so as to bring it within the contemplation of the legislative exception. Upon this hearing it must be assumed, under the adjudications, referred to that the trial court so found.

40 It is urged that the act of 1899, Chapter 77, is in *pari materia* with the act of 1913, and must be considered in defining the term "park" and "recreation grounds", as used in the latter act.

Conclusions of Justice Minturn.

The act of 1899 consists of a distinct title in no wise related to the subject of inns and taverns, with which the legislation *sub judice* is intended to deal. It applies entirely to corporations "managing parks, picnic and pleasure grounds", and apparently segregates such localities for licensing purposes when managed by a corporation from the common law category of an inn and tavern, as defined by law and utilized in practice by the individual, under the modern requirements and modifications of the ordinary existing excise legislation as derived from the common law, and the earlier statutory regulations of the subject. 10

Leeds v. Altrenter, 84 N. J. L. 782.

These conclusions lead to a dismissal of the writ, but without costs. 20

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Rule of Affirmance.

Affirmance.

Entered February 9, 1917.

NEW JERSEY SUPREME COURT.

10 HOWARD S. DECK,

Prosecutor,

vs.

GASTON BELL and JOHN J.
SLATER, Clerk of the Court
of Common Pleas of the
County of Passaic,

Defendants.

*On
Certiorari.*

*Rule
Affirming.*

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The court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Passaic returned with the certiorari in this cause, the reasons for reversing the order of said court granting the license to said Gaston Bell to keep an inn and tavern in the Township of Wayne, and heard the argument of counsel therein, and having duly considered the same do order that the said order of the Court of Common Pleas of the County of Passaic granting said license be in all things affirmed, and that the writ of certiorari issued in this cause be dismissed without costs.

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Entered February 9, 1917.

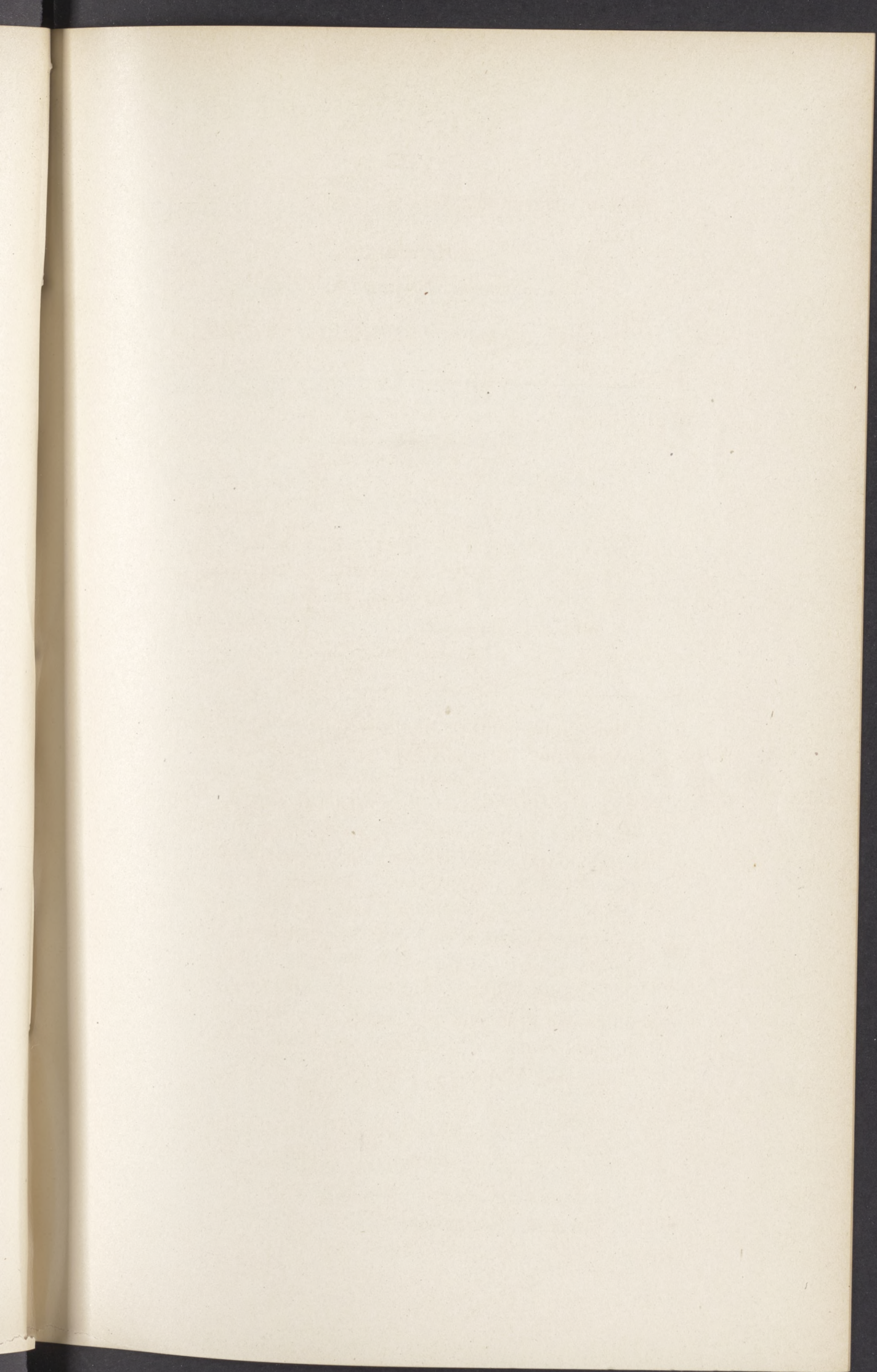
On motion of

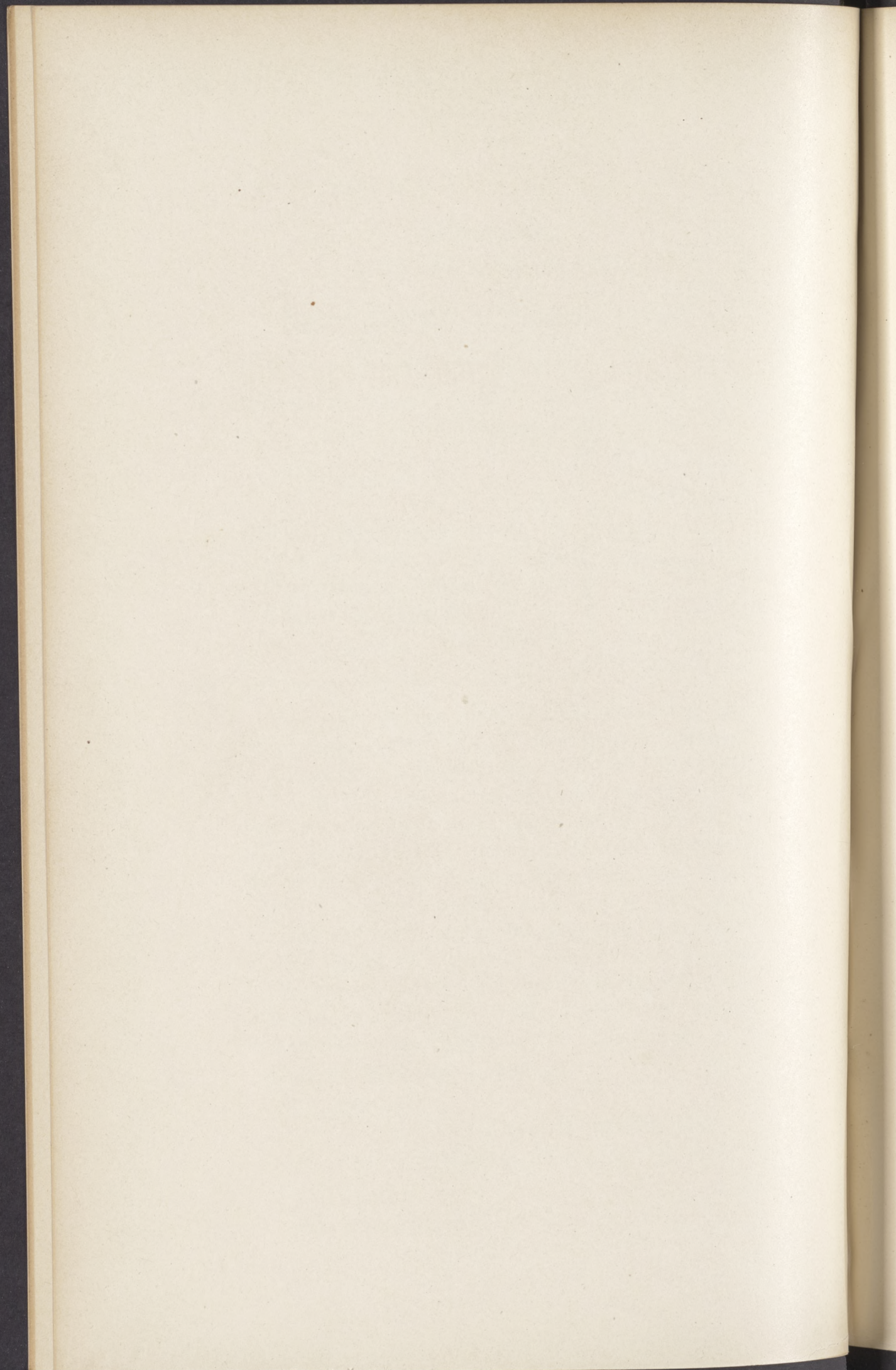
WILLIAM B. GOURLEY,
Attorney of Defendant, G. Bell.

A true copy.

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WM. C. GEBHARDT,
Clerk.





Return to Writ of Certiorari.

Return to Writ of Certiorari.

Filed June 18, 1917.

New Jersey Court of Errors and Appeals

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HOWARD S. DECK,
Prosecutor-Appellant,

vs.

GASTON BELL, *et al.*,
Defendants-Respondents.

On Appeal.

*Return to
Writ of Cer-
tiorari to
Supreme
Court.*

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.

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I, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, do hereby certify as by the within writ I am commanded, that on the third day of February, 1917, when the above cause was before the Supreme Court it was stipulated by the parties thereto in my presence in open court, that said cause then and there be brought on for argument before me sitting as a single Justice, and that my order and determination therein should be entered as the judgment of said Supreme Court; and it was then and there further stipulated, as aforesaid, that it was proved in the Court of Common Pleas for the County of Passaic, in the proceedings for the granting of the license referred to in the record in the above cause that the ratio of population in Wayne Township, Passaic County, to the number of licenses to

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Writ of Certiorari to Supreme Court.

keep an inn and tavern, or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart in said township was less than 500 to 1, and that said license was a new license.

10 Witness, my hand this eighteenth day of June, nineteen hundred and seventeen.

[SEAL]

JAMES F. MINTURN,

J. S. C.

Writ of Certiorari to Supreme Court.

NEW JERSEY, ss.

20 [L. s.] State of New Jersey to Hon. James F. Minturn, one of the Justices of our Supreme Court. GREETING:

30 We, being willing for certain reasons to be certified of a certain judgment of the New Jersey Supreme Court entered February 9, 1917, wherein Howard S. Deck was the prosecutor, and Gaston Bell, *et al.*, were defendants, by which judgment and order of the Court of Common Pleas of the County of Passaic granting to said Gaston Bell a license to keep an inn and tavern in the Township of Passaic, was affirmed;

40 AND WHEREAS, said prosecutor has appealed to our Court of Errors and Appeals from said judgment and has alleged diminution of the record in said cause in that said record fails to show that on the 3rd day of February, 1917, when said cause was before the Supreme Court, it was stipulated by the parties in the presence of Hon. James F. Minturn, Justice, that said

Writ of Certiorari to Supreme Court.

cause then and there be brought on for argument before said Justice, whose order and determination therein should be entered as the judgment of said Supreme Court; and it was then and there further stipulated in open court as aforesaid that it was proved in the Court of Common Pleas for the County of Passaic, in the proceeding for the granting of the license referred to in said record, that the ratio of population in Wayne Township, Passaic County, to the number of licenses to keep an inn and tavern or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart in said township, was less than five hundred to one; and that said license was a new license. 10

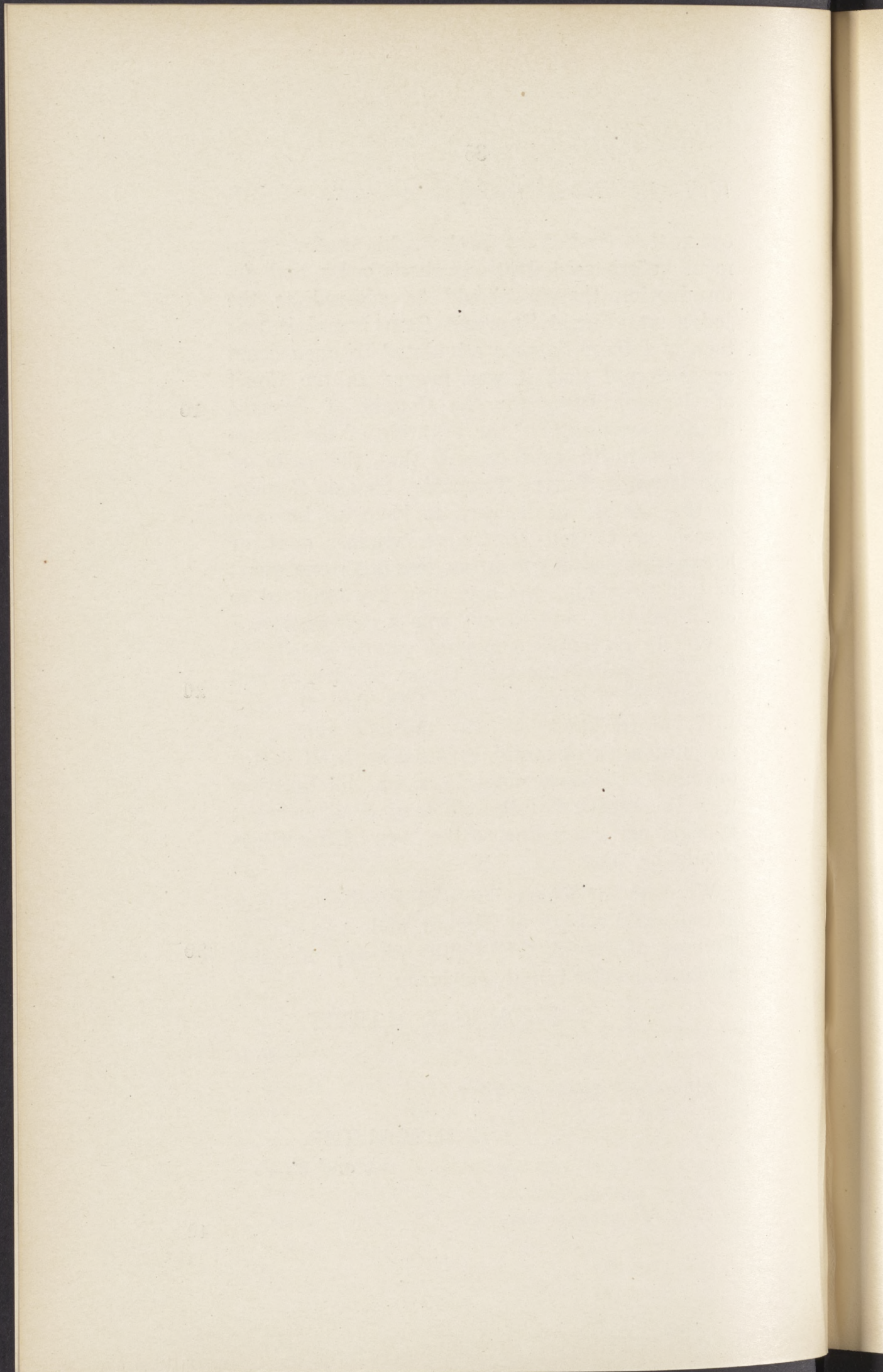
We do therefore command you to certify to our Justices of the said Court of Errors and Appeals at Trenton, on the 18th day of June, 1917, to the truth of the matters alleged in diminution as aforesaid, together with all things touching and concerning the same and together with this writ, that therein may be done what of right and according to the laws of this State should be done. 20

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this eighteenth day of June, nineteen hundred and seventeen. 30

THOMAS F. MARTIN,
Clerk.

Allocatur, June 18, 1917.

E. R. WALKER,
C. and P. J.



New Jersey Court of Errors and Appeals

Howard S. Deck,
Prosecutor-Appellant,

vs.

Gaston Bell and John J. Slater,
Clerk of the Court of
Common Pleas of the County
of Passaic,
Defendants-Respondents.

On Appeal.
from the
Supreme Court

BRIEF FOR DEFENDANT-RESPONDENT, GASTON BELL.

Statement.

This is an appeal from an order of the Supreme Court affirming a judgment of the Common Pleas of the County of Passaic, granting a license to Gaston Bell, one of the defendants-respondents, to keep an inn and tavern upon a tract of land laid out for a picnic or recreation ground and comprising more than an acre, in the Township of Wayne,

in said County of Passaic. After the Common Pleas had entered an order granting such license, a certiorari to review this order was obtained by the Prosecutor-Appellant. Counsel for Gaston Bell gave notice before Justice Minturn to quash the writ (p. 26).

Upon the argument, Justice Minturn suggested that if counsel were willing, the matter could be argued finally before him. Consent was given to this view and the argument proceeded.

Argument.

The testimony before the Court of Common Pleas has not been returned with the writ. It appears, however, from the state of the case, p. 19, that considerable testimony was taken in open court. Mr. William N. Berdan was sworn as stenographer at the request of the prosecutor-appellant. Nine witnesses were sworn for the applicant, when at the suggestion of the Court, his case was rested, in order to hear the remonstrants. Three witnesses only were sworn for the remonstrants. Counsel argued the cause before the Court of Common Pleas, and, in the language of the return "The Court, after mature deliberation thereon, grants the license."

The order entered in the minutes of the Supreme Court from which this appeal is taken is that "the said order of the Court of Common Pleas be in all things affirmed" (p. 32).

The matter under review is, therefore, not the form of the license, as counsel seems to think, but the order directing that the license be granted.

The facts before the Court of Common Pleas, according to the return to the writ, showed that the defendant-respondent, Gaston Bell, gave public notice, as required by the rules of the Passaic Common Pleas, pp. 11, 12, 13, of his intention to apply to the Court for a license to keep an inn and tavern in the house where he dwelt on the Newark and Pompton Turnpike Road, in the Township of Wayne, and that attached thereto was a picnic or recreation ground of more than one acre in extent. His petition, p. 14, to the Court stated the same facts. The freeholders in their recommendation stated that there was a picnic or recreation ground of more than one acre there (p. 14). The map annexed to the petition, a reduced copy of which is printed in the State of the Case (p. 17) apprised the court, in addition to the evidence taken, of the *character* of the place. Petitions were filed against the granting of the license sought. These petitions were all in the same language, except that one petition set forth in the fifth paragraph that the place of the said Gaston Bell was not a picnic or a recreation ground (p. 18). Thus, when the matter came on to be heard, the question at issue was whether the petitioner, Gaston Bell, was a proper person to have a license, whether his place came within the requirement of the act, and whether his building was sit-

and used upon the argument. Much of the testimony was taken upon a picnic or recreation ground of at least one acre in extent. An attorney appeared for the applicant, and the present counsel for the prosecutor-appellant appeared in opposition to the grant. The evidence was taken, as has been stated, stenographically, was written out, filed and the testimony was addressed to the fact whether there was a picnic or recreation ground of an acre in extent at the place in question. The present counsel for the Prosecutor-Appellant presented the same argument before Justice Minturn as he did before the Common Pleas and as he does in his brief now. The Court of Common Pleas considered it and ordered the issuing of the license.

The cause, as stated, was argued before Justice Minturn at Paterson. The typewritten testimony was used by both counsel in their argument before the Justice. The point was made then that as the Judge of the Common Pleas had gone at length into the question as to the recreation ground, the Supreme Court was bound by his conclusion on this question of fact.

“The Court of Common Pleas is a court of record having a general jurisdiction and not one of those special statutory tribunals whose determination of disputed questions of fact are made subject to review by that writ.”

Houman vs. Schulster, 31 Vr., 132.

“This being so, the sole province of the Supreme Court would be to examine the evidence offered in the Common Pleas and

decide whether on that evidence the court could lawfully determine that it had authority to grant the license."

Ibid, citing *Tewksbury vs. Branburg*, 15 Vr., 595.

The Court of Common Pleas was invested with discretion as to whether or not a license under the circumstances should be granted.

"In the appointment of surveyors of the highway the Court of Common Pleas have by the express terms of the road act, a discretion not to appoint any surveyor for any reason which they shall deem sufficient and that discretion will not be interfered with by this court" (the Supreme Court) "unless the Common Pleas should act capriciously in violation of certain principles of law and equity."

In the Court of Errors, in the case of *Parsell vs. Mann*, 1 Vr., 530, which was on writ of error, after the decision of the Common Pleas had been reviewed in the Supreme Court by a writ of certiorari, it was held that the Court of Common Pleas having exercised its discretion in a matter of appointment of surveyors of the highways and having so certified in their order, it was not the subject matter of review in the Supreme Court.

State v. Vanderveer, 1 *Dutcher*, 669.

Parsell v. State, 1 Vr., 530.

State, Clark et al pros. v. City of Elizabeth, 3 Vr., 357.

"This course, however, has not been taken and we are not at liberty to intend against the judgment anything that is not regularly made part of the record here by

the party who seeks to overthrow it.”

Lloyd v. Richman, 28 Vr., 385-388.

“Where a party removes a record into this court for the purpose of reversing a judgment rendered below in a civil cause, it must appear by the state of the case, by competent testimony or upon the face of the return that such judgment was rendered contrary to law. It is not enough to raise doubts, as all intendments will be taken in favor of the record.”

Demster v. Frech, 22 Vr., 501.

“The application for the license made out a *prima facie* case of authority in the Court of Common Pleas to grant it. That *prima facie* case was open to question before that court, and on such question being raised it was the duty of the court to inquire by evidence whether the facts existed without which the authority would fail.”

Houman v. Schulster, 31 Vr., 132.

Dufford v. Nolan, 17 Vr., 87.

Whether a license should be granted or refused is a question addressed to the sound discretion of the licensing body.

“The supplement of 1913, p. 574, relating to new licenses to sell intoxicating liquors in municipalities where there is less than one licensed place to each five hundred of the population, leaves wholly to the discretion of the licensing body the determination, in the first instance, of the question whether in localities where the statutory conditions are met, there should be any further places licensed.”

Tilton v. Court of Common Pleas of Ocean Co., 2 Gummere, 47.

The application was in proper form.

The only question now for discussion is whether the Court of Common Pleas could lawfully decide upon the papers and testimony before him, that a license should issue.

The counsel for the prosecutor-appellant makes three points:

Point I is: That the application should have been for picnic or recreation grounds;

Point II is: That the legal number of licenses had been reached;

Point III is: That the license was for a new place, and sealed bids should have been advertised for.

The notice and petition of the applicant recited that it was for a license to keep an inn and tavern in the house where I now dwell, on the Newark and Pompton Turnpike Road, in the Township of Wayne; that attached thereto is a picnic or recreation ground or more than one acre in extent. This was public notice of the facts upon which he relied. The remonstrants challenged the fact and failed to substantiate their charge. There is no notice for an application of a picnic or recreation grounds known. What other form of application would satisfy the statute? The tract of land is not licensed; it is the "house" (Inns and Taverns Act) or "place he now keeps" (Malt Liquors Act). There is not a word to indicate that the recreation ground is licensed. It is merely a qualification to grant a license to keep an inn and

tavern in his "house" etc., or if malt liquors "in the place he now keeps".

It was held in *Winants v. Bayonne*, 15 Vr., 114, that under the act regulating malt liquors in Bayonne, a license or permit to authorize the sale of such beverages at any other place than a regularly licensed beer saloon was unlawful. The third section of the Werts Act, P. L. 1889, p. 78, to which the act of 1913 is a supplement, requires the application to be in writing, stating the "Township, town, borough or city, and the building or place therein in which the sale of such liquor is to be carried on". The Supreme Court, in *Warren Street Chapel v. The Excise Commissioners*, 27 Vr., 411, held:

"This language clearly implies that there must be a building in existence for which the license to sell liquor is desired, and unless there is such building the applicant cannot comply with the requirement of the statute. License cannot be granted for a building to be erected in the future."

The universal practice is that followed in this case. Upon the argument before Justice Minturn, the Passaic County Clerk produced all the applications for similar places, that had ever been granted in the whole county since the adoption of the Act of 1913, and all were to the same effect. The names were Muller, McCall, Rosen and Lee.

The whole case of the prosecutor-appellant is put upon Chapter 280 of P. L., 1913. This act provides that:

“Hereafter no license to keep an inn or tavern or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart in any city, town, township, borough or village shall be granted by any court, * * * * * unless or until the ratio of population therein to the number of licenses issued shall be greater than five hundred to one, and then only pursuant to the provisions of this act; but this prohibition shall not apply to any premises in which the business of so selling said liquors was lawfully carried on at some time within one year immediately preceding the passage of this act, provided such business was not abandoned thereat during the said period, or to a hotel having at least fifty spare rooms and beds for the accommodation of boarders, transient or travellers, or to a picnic or recreation ground comprising at least one acre, or to a building entirely occupied by a regularly organized club or association”.

Counsel urges that the license in question should recite that it was for a picnic or recreation ground, and not at all for an inn and tavern. The license was not returned with the writ and is not before the court. The counsel did not deem it proper to have it brought up. By way of illustration only it may be asked: Should a license for premises in which the business of selling liquors was carried on at some time within one year immediately preceding the passage of the act, (April 18, 1913), also contain a clause to this effect? Should a license to a hotel having at least fifty spare rooms and beds for the accommodation

of boarders, transient or travelers, recite these facts? The answer is, of course, that these are requirements which must be met by the applicant, by evidence in support of his application, and which, when examined by the court must have sufficient probative force to convince the judgment that the facts fall within the exception. This is true, too, of the exception of the picnic or recreation ground comprising at least 1 acre. When the court is satisfied that this fact exists in addition to the other facts required, the license is to keep an inn and tavern, or to sell spirituous, malt or brewed liquors in quantities less than one quart, as the case may be. There is no license provided by statute to keep a hotel having at least fifty spare rooms and beds. There is no license to keep a picnic or recreation ground, comprising at least one acre. These are only exceptions to the number of licenses to be granted. They are not licenses of a new form.. The statutory license is to keep an inn and tavern, or to sell spirituous, vinous or malt liquors in quantities less than one quart. The qualifications required for such a license may be various. The qualifications for the keeper of an inn or tavern among others are: that twelve reputable freeholders shall vouch for his character and as to the capacity of his house and stabling, but not any of these things are set forth in the license, which is that the licensee is authorized "to keep an inn and tavern in the house wherein he dwells for one whole year from the day above said and no longer; so that the said

3 C St 2900
§51

A. B. shall use and exercise this license during the said term according to the tenor and true meaning of the laws in such case made and provided. 3 C. S., 2892, Sec. 8.

The fourth exception to the grant of a license independently of the population in said act is a building entirely occupied by a regularly organized club or association. Here it is manifest that such a private club or association can not maintain an inn and tavern, or can not sell to the public malt or brewed liquors in quantities less than one quart. There is an independent act relating to social clubs. 3 C. S. 2912. P. L. 1891, p. 203.

This act authorizes any social club duly incorporated, and having at least fifty members and no minor members, to sell liquor to its members, upon obtaining a *permit* from the court of common pleas.

These exceptions, therefore, prove that the license should be in general form as to all except the club license. The act declares that no license &c., shall be granted until the ratio of population to the number of licenses issued shall be greater than five hundred to one, but this prohibition shall not apply, etc., to a picnic or recreation ground comprising at least one acre. What is the prohibition? The only prohibition is the limitation on the number of licenses. Therefore, to cases coming within the exception the act does not apply, as to limitation on the number allowed.

Inquiry at the offices of the clerks of the Counties of Passaic, Essex and Bergen show that

there is no distinction in the form of the license for a fifty room hotel, picnic or recreation grounds from the statutory form. The application recites the facts; the court inquires into the matter, and decides accordingly. The counsel for the prosecutor-appellant is the attorney for the Anti-Saloon League of this State, and yet with such a wide familiarity with license matters in different counties of the State he was unable upon the argument before Justice Minturn to cite a single case where the license for such cases varied from the statutory form. Inquiry at the offices aforesaid show that the form of applications is in accordance with the form in the present case.

Counsel thinks that a license for the place in question should be for malt or brewed liquors, but the legislature has given no evidence of such an intention. He seeks to show that there are two classes of retail licenses, one for an inn and tavern and the other to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart. He states that Justice Minturn, (p. 7 of his brief) was in error in saying that "The act provides generically for the granting of a license for an inn and tavern and for nothing else." The Justice was speaking of the license then before the court, that is to say, that the license should be for an inn and tavern, and not for a recreation ground. The counsel is himself in error in imputing this construction to the language of the

Justice. Counsel further states that what he calls licenses of the second class would be appropriate for a picnic or recreation ground. (P. 7 of his brief.) There is nothing in the act to warrant this construction. The form of license as stated in both cases is statutory. One is for the house, etc., and the other for the "place he now keeps". As there must be a house upon the tract of land, how can it be said that such a place is more appropriate to have one form of license than another form? Does it not seem more reasonable that the accommodations to be had at an inn and tavern would be much more suitable for enjoyment than a shanty with a saloon license? Would not the character of Bellwood, which is the name of the premises licensed in this case, and which appears by the map returned with the writ, to cover several acres of ground, and which stands back from a broad public road, in the center of the tract fronting upon such highway, with wide spacious grounds, and which the testimony before the court below showed had been converted into ground for recreation purposes, appeal more powerfully to the Court as a suitable place to be licensed than a one story shed without accommodations of any character? Counsel seeks again to make a distinction the legislature has not made. If the application should be for a license for a picnic ground, one has merely to ask: What is the form of this license? The statute prescribes two forms. When, therefore, the act in question says, P. L. 1913, 574: "Hereafter no license to keep an inn

and tavern, or to sell spirituous, malt or brewed liquors, unless, in certain cases, to an applicant having a picnic or recreation grounds, the statute in effect says: Such person, if the court is satisfied, shall have a license to keep an inn and tavern, or to sell spirituous, vinous, malt or brewed liquors. These are the only licenses recognized by the statute. Hotels having at least fifty spare rooms and beds for the accommodation of transient and travelers were required to have only ordinary licenses for inns and taverns. *Fort vs. Common Pleas*, 89 N. J. L. 114., 97 Atl. Rep. 499. This was the construction placed upon the statute by the court of Common Pleas of the County of Monmouth, to which no exception was taken by Justice Kalisch in the opinion rendered in the above case. There the license to a fifty room hotel was simply an inn and tavern license. The language of the court is: "For the act provides that no license to keep an inn and tavern, etc., shall be granted by any court, etc., until the ratio of population, etc., except among others, picnic or recreation grounds comprising at least one acre."

The exceptions to the limitation of the grant of licenses would, in a case of pleading, require the applicant to show that he came within the exception. If it were a proviso he could leave the matter to be pleaded by his adversary.

Rodell v. Janvrin, ¹⁵¹ N. Y., 60, 67.

Clark Thread Co. v. Kearny Township,
26 Vr., 50, 53.

In the case in hand even this rule was observed. The applicant stated in his petition that he came within this exception, and proved it upon the hearing.

It should be said that in this case everybody bore witness to the high character of the applicant and to the suitability of the place for the license.

In view of what has been said it is not necessary in my judgment to discuss the third point made by counsel, that the act required sealed bids to be advertised for.

It is respectfully submitted that the order of the Supreme Court should be affirmed.

Respectfully submitted,

WILLIAM B. GOURLEY,

Counsel for Gaston Bell.

New Jersey Court of Errors and Appeals

HOWARD S. DECK,
Prosecutor-Appellant,

vs.

GASTON BELL and JOHN J.
SLATER, Clerk of the Court
of Common Pleas of the
County of Passaic,
Defendants-Respondents.

Brief for Prosecutor-Appellant.

Abstract of the Case.

The case at bar is an appeal from an order of the Supreme Court (Case, p. 32), dismissing a writ of certiorari (Case, p. 9), which had been obtained to review the granting by the Court of Common Pleas of Passaic County of a license to the defendant-respondent, Gaston Bell, to keep an Inn and Tavern in the Township of Wayne (Case: Court Minutes, pp. 19-20).

The matter came on to be heard unexpectedly and informally, on the argument of a motion by defendants' attorney to quash the writ (Case, pp. 26-27). At that time it was verbally agreed by the parties in open court that the whole matter be then and there submitted to Mr. Justice Minturn, who was sitting to hear the said motion, without formal notice on either side or the statutory setting down of the matter to be heard by one justice. It was also agreed in open court that the figures presented in the prosecutor's applying affidavit (Case, p. 4, l. 35—p. 5, l. 9), showing the ratio of licenses to population to be greater than 1 to 500, was in accord with the rec-

ords of the Court of Common Pleas for the county and the 1915 state census, and that it also appeared from said record that the license was a new license. The Supreme Court considered the matter, dismissed the writ and affirmed the granting of the license. (Case, pp. 28-31.)

Grounds of Appeal.

The appellant appeals from this decision (Case, pp. 1-3) on the ground that the license applied for and granted was an Inn and Tavern license; that under the so-called Leonard Act (P. L. 1913, p. 578) no new license of this class could be granted, the number of licenses being already in excess of the approved ratio; and, further, that even if such a license could have been lawfully granted the proper procedure was not had for the granting of such a license.

POINTS.

Point I.

The license applied for and granted was the ordinary and usual "Inn and Tavern License" and not a license "to a picnic or recreation ground comprising at least one acre."

This is plain on the face of the return to the writ.

The Notice of Application for License as published (Case, pp. 11-12) and also as posted (pp. 12-13) stated: "*I will apply to the Court of Common Pleas * * * for a license to keep an inn and tavern, in the house wherein I now dwell.*" The application for license (Case, p. 14) read: "The petition of Gaston Bell * * * hereby requests the said judge to grant him *a license to keep an inn and tavern, in the house wherein he now dwells.*" The recommendation of the

freeholders on said application (p. 14) read: "The subscribers, *freeholders * * ** do hereby recommend Gaston Bell to be licensed to keep an inn and tavern, in the house where he now dwells," and they certify "that the said Gaston Bell is of good repute for honesty and temperance, and is known to each of us to have at least ten spare rooms more than are necessary for his family use and is well provided with houseroom, stabling and provender: And we further certify, that such an inn and tavern is necessary and will conduce to the public good."

The affidavit (p. 16) attached to the application sets forth that the freeholders "*have not * * * recommended any other applicant for license to keep an inn and tavern,*" and the minutes of the Court of Common Pleas (Case, p. 16, ll. 33-36 and pp. 19-20) show that the license granted was "a license to keep an inn and tavern in the Township of Wayne."

The bond given by the said Bell, on which his attorney, Harry L. Schoen, Esq., who represented him in his application for the license was a surety. (Case, p. 21) recites: "*Whereas * * * Gaston Bell is licensed * * * to keep an inn and tavern * * * If * * * the said Gaston Bell * * * shall not keep a disorderly inn or tavern * * * nor violate the laws made concerning inn and taverns, but shall * * * in all things respecting him as an inn holder or tavern keeper * * * find and provide good, wholesome, and sufficient lodging, diet and entertainment for man, and stabling and provender for horse, and observe the directions of the law relating to inns and taverns, then this recognizance to be void,*" etc.; being in the form prescribed by the Inns and Taverns Act (G. S., Vol. 2, p. 1788, sect. 5); and the license being in the form prescribed by Sect. 8 of

the said act, provided, in the usual form, that Bell was licensed "*to keep an inn and tavern, in the house wherein he dwells * * * according to the tenor and true meaning of the laws in such cases made and provided.*"

The fact that the words "and that attached thereto is a picnic or recreation ground of more than one acre in extent" were added to the application for the license (p. 14) and to the freeholders' recommendation, and also to the notice as published and posted (pp. 11-13), did not change the character of the license applied for and granted. These words were mere surplusage, as attached to such an application. The license granted had no reference to any picnic or recreation ground, and the words in question had no effect on the license granted. It was simply the ordinary license to keep an Inn and Tavern.

Point II.

The granting of this Inn and Tavern License in Wayne Township was illegal, because the legal limit as to the number of such licenses had already been reached.

The population of Wayne Township, by the 1915 State Census, was 2,625, and the number of inn and tavern licenses, or licenses to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart, was nine. As stated above it was agreed by the parties in open court that these figures correctly state the facts, as shown by the census and the records of the Common Pleas, thus constituting part of the case as submitted to Judge Minturn (see paragraph two of this brief, *supra*). See also affidavit of appellant (Case, p. 4, l. 35), Reasons on Certiorari (p. 23, l. 35); taken as admitted in

Notice to Quash Writ (Case, p. 26, par. 1-2) and in decision of Minturn, *J.* (pp. 28-31).

The ratio of licenses to population was therefore greater than 1 to 500 at the time the license to respondent was granted

The "Leonard Act" (Laws 1913, p. 574) provides that: "Hereafter no license to keep an inn or tavern or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart, in any city, town, township, borough or village, shall be granted by any court, excise board or other board or authority having power by law to grant license unless or until the ratio of population therein to the number of licenses issued shall be greater than five hundred to one, and then only pursuant to the provisions of this act: but this prohibition shall not apply to any premises in which the business of so selling said liquors, was lawfully carried on at some time within one year immediately preceding the passage of this act, provided such business was not abandoned thereat during the said period, or to a hotel having at least fifty spare rooms and beds for the accommodation of boarders, transients and travelers, or to a picnic or recreation ground comprising at least one acre, or to a building entirely occupied by a regularly organized club or association."

The license being an inn and tavern license, and the number of licenses being in excess of 1 to 500 people, the granting of said license was illegal, and the Supreme Court's decision upholding the license should be reversed.

The basis of the respondent's contention on the notice to quash the Writ to review the Common Pleas order was that "the said license was granted to an inn and tavern to which is at-

tached a picnic or recreation ground of more than one acre in extent, as provided in the said act known as chapter 280 of the laws of 1913," (Case, p. 26, ll. 35-40), and the decision of Judge Minturn was made on the theory that this recital brought the application within the excepted class of a "picnic or recreation ground." It says (Case, p. 28) "A writ of certiorari was granted to review the * * * granting a license to keep an inn and tavern. * * * The petition for the license was in the usual form, excepting a provision attached thereto reciting that the *locus in quo* is 'a picnic or recreation ground of more than one acre.' This addedum was intended to bring the applicant within the provisions of Chapter 280 of the Laws of 1913, which is intended to limit the granting of licenses for inns and taverns according to a basis of five hundred of population to one inn or tavern, excepting in certain specified instances among which is 'a picnic or recreation ground comprising at least one acre.'"

The respondent said the alleged "picnic or recreation ground" was *attached* to the inn and tavern. Justice Minturn says the "*locus in quo* 'is a picnic or recreation ground.'" Throughout, the applicant spoke of the alleged picnic or recreation ground as "*attached*," nowhere claiming that the *locus in quo* was such a ground, and the court below misapprehended the applicant's own statements in suggesting that the place licensed was "a picnic or recreation ground." At most the applicant claimed there were grounds, more than an acre in extent, connected with, or "*attached*," to the plot on which the inn and tavern stood, which attached grounds were alleged to be a "picnic or recreation ground." The affidavit on the appli-

cation for the Writ of Certiorari recites the facts as to the truth of the alleged picnic or recreation grounds (Case, pp. 5-7, "Second") but be that as it may the applicant did not allege or claim that his inn and tavern constituted "a picnic or recreation ground," did not ask for a license for his alleged "picnic or recreation ground," but did ask for and did receive a license for his inn and tavern, to which he claimed was "*attached*" the "picnic or recreation ground."

A second error into which the court below fell was in assuming and stating (Case, p. 29, ll. 20-29) that "the act provides generically for the *granting of a license for an inn and tavern, and for nothing else.*" On the contrary the act plainly provides for two classes of licenses: (1) "No license to keep an inn or tavern or" (2) "to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart," but the Court says: "'No license to keep an inn or tavern' is the mandatory language," and stops there. The act, however, as we have seen, continues with the second class, "or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart."

Licenses of the first class, inn and tavern, provide for the entertainment for man and beast, for lodging, meals, beds, stabling and provender. Licenses of the second class, being merely to sell liquors in quantities less than one quart, carry no such obligation, and hence this latter class of license would be appropriate for a picnic or recreation ground, whereas the other class, carrying obligation for meals, lodgings, stabling and provender, would be absolutely inappropriate and ridiculous for "picnic or recreation ground" requirements.

Overlooking this plain second classification the court below says, further on in its decision, (Case, p. 29, l. 37, p. 30, l. 2): "But the act seems to retain the common law generic designation for all licenses issued under its provisions, and therefore the validity of the license cannot be successfully challenged upon that ground." It thus reaches the conclusion in effect, that since the act only provides generically for inn and tavern licenses and yet provides for a license for "a picnic and recreation ground," it must be proper to grant an inn and tavern license to an inn and tavern, despite the fact that the law distinctly says no such license shall be granted, if, perchance, the applicant for the inn and tavern license alleges that "attached thereto is a picnic or recreation ground." When it is recalled that the said application certified that the inn has "at least ten spare rooms," etc. (Case, p. 14, ll. 34-36) it is evidently ridiculous to license it under the fiction that it is "a picnic or recreation ground."

The proper form of application for a license for a picnic ground would evidently be for a license to sell spirituous, etc., liquor on, or at a picnic or recreation ground, describing it. To grant an inn and tavern license to a picnic ground because there was nothing but an inn and tavern form handy reminds one of the colored man who went to a colored justice for a marriage license and came back with a license to keep a dog saying that it was the only kind the judge had on hand.

The exceptions to the prohibition under this "Leonard Act" are four: (1) to existing places licensed at the time the act took effect and not abandoned, (2) a hotel having at least 50 spare rooms, (3) a picnic or recreation ground com-

prising at least one acre, (4) to a building entirely occupied by a regularly organized club. These exceptions are distinct, clear, clean-cut. The first an "old" place; second, an inn with over 50 spare rooms; third, a picnic or recreation ground; fourth, a club. For either of the last three, distinct kinds of license there would be, and must be, an appropriate application and a corresponding license. To get a club license, or a picnic ground license, should one ask for an inn and tavern license? To get a 50 room hotel license should one ask for an ordinary inn and tavern license? And if in any of these three cases an ordinary inn and tavern license is asked for and granted could it be justified on the ground that "the act seems to retain the common law generic designation for all licenses issued under its provisions"? Evidently the applicant in the case at bar asked for a wrong kind of license and got just what he asked for, and that without justification at law.

The term "picnic or recreation ground" is not obscure or difficult, though our courts have not officially ruled on what constitutes such a resort, and do not appear in the decisions to have passed on this part of this act. However, everyone, presumably, has visited picnic grounds or recreation grounds—places set apart and used for picnics, or recreation and amusement. The Standard Dictionary defines a picnic as: "An out-door pleasure-party, usually held in the woods, provided with its own means of entertainment, as eatables and amusements; a pleasure excursion." It defines recreation as: "The act of recreating, or the state of being recreated; refreshment of body or mind after toil; diversion; amusement."

A place is not a picnic ground because it might be so used but because it is so used. The same is true of a recreation ground. All through our state are "picnic grounds," public or semi-public, and recreation grounds and parks where the public are invited, free or for a fee. There are usually tables and benches or chairs provided and left on the grounds for picnics, and refreshments are often sold to supplement the lunch brought, and in this act a license is provided to permit liquors to be sold at such places.

Similarly at recreation parks or grounds, where there are often music, and swings, and "merry-go-rounds," often now motion pictures, often dancing pavilions, etc., etc.; there are usually booths here also to sell refreshments, and this act provides for a license to sell liquors in such places.

That our statutes recognize in other acts this class of grounds for public resort is abundantly evident from an examination of them.

Besides the Act providing for granting to a corporation a license to sell spirituous, vinous, malt and brewed liquors within the boundaries of any park, picnic and pleasure ground, to which Justice Minturn refers in his decision, pages 4138-4204 of our Compiled Statutes (Vol. 3) are devoted to a large number of Acts grouped under the heading, "Public Parks and Recreation Grounds" and they include acts relating to municipalities of all the various classes and covering public parks, recreation piers, pavilions, casinos, etc., and the words "recreation grounds" occur frequently.

One Act, for instance, (p. 1175, Sect. 2063 of an Act concerning Cities) provides that the City Council shall have power to enact ordi-

nances "for the hiring, leasing and farm letting of the public parks, public grounds, boardwalk, pavilions, casinos and piers of such city, or such parts thereof, as it may see fit, and for the granting of privileges therein and thereon, for the purpose of carrying on and conducting amusements, and to prescribe a method for the fixing of the compensation to be paid for the same." This Act of 1913 may well be deemed to fit into such acts as these and to have been intended to provide a means for applying for a license to sell liquors in connection with such recreation grounds, but certainly having no connection in anyone's thought with inns and taverns.

One of the cases referred to in the decision of the court below, viz: *Fort v. Common Pleas of Monmouth*, 87 L. 47 (Case, p. 30), makes very clear the fact that this Leonard Act provides, not as Justice Minturn suggests, "for the granting of a license for an inn and tavern, and for nothing else," but in six separate references Justice Kalisch, in the opinion in this *Fort* case, refers to two distinct classes of license, both of which are forbidden to be issued except in the four classes of exceptional cases designated. This opinion in part, omitting unnecessary words, holds (at p. 500): "The facts in this case are undisputed. It is stipulated between counsel that Spring Lake is a borough * * * having * * * a population of 853 inhabitants and * * * that three licenses to keep inns and taverns * * *, each of which contains upwards of 50 spare rooms and beds, were granted by the Court of Common Pleas of Monmouth County; that the license applied for and granted in the present case was for a new place, and not a hotel having at least 50 sleeping rooms, nor a

picnic or recreation place comprising at least one acre, nor was it a building entirely occupied by a regularly organized club or association:
* * *

It is obvious from a plain reading of the Act that in so far as inns and taverns are concerned, *or places where liquors are sold in quantities less than one quart*, it was the intention of the Legislature to regulate and fix the number of such places by a ratio of population * * *.

The Act then excepts from the operation of this provision: (1) premises in which the business of selling liquors was lawfully carried on at sometime within a year * * * (2) hotels having at least 50 spare rooms * * * (3) picnic or recreation grounds comprising at least one acre (4) a building entirely occupied by a regularly organized club * * *.

It is to be observed that the Act places no limitation on the number of licenses that may be granted to hotels of the designated number of rooms, or to picnic or recreation grounds of certain dimensions, or to regularly organized clubs * * *. It may very well be that in making these places exempt * * * the Legislature had in view the fact that * * * the use of the privilege would be of a temporary character. That it was the intention of the Legislature to put a check upon the increase in the number of inns and taverns of less than fifty spare rooms and beds and on saloons in cities is manifest. * * * The licensed premises or places, therefore, which the Legislature intended to limit were not fifty-room hotels, picnic grounds and clubs of the character above described, but inns and taverns of less than 50 spare rooms and beds and saloons.”

From this decision it is perfectly clear that the Supreme Court discerned in this Leonard Act, two, and not one class of license, forbidden: (1) An inn and tavern license, and (2) a second-class of retail license, which it several times refers to as "saloon" licenses; it also clearly rules out any sort of an inn and tavern license save those in the 50-room class. With this very lucid decision on the books, the points at issue in this case would seem to need no further discussion on these two points.

Before passing this point, however, it may not be out of place to consider that the intent of the law, viz: to prevent the increase of inn and tavern and other retail licenses, save those in the excepted classes, could be easily and extensively thwarted if every place having ten spare rooms and at least an acre of ground "attached" could apply for and receive an inn and tavern license. Scores of houses in rural communities, in every county, could easily qualify, and this restrictive provision of the Leonard Act would become an empty farce.

Point III.

The order brought up for review by the writ of certiorari was void because the license granted was a license for a new place, never having been before licensed, and under the "Leonard Act" (P. L. 1913, Chap. 280) a new license to keep an inn and tavern, or to sell spirituous, vinous, malt or brewed liquors in quantities less than one quart could lawfully have been granted only after sealed bids had been advertised for and obtained and no such bids were advertised for or received, and therefore, even if said license could have been lawfully granted, the proper procedure to permit the granting thereof was

not followed, and hence, said granting in any event was illegal and void.

The portion of the Act bearing on this matter reads as follows:

“* * * Whenever the ratio between the population of any city, town, township, borough or village, and the number of licensed premises situate therein for such sale of said liquors shall exceed the ratio of five hundred to one, additional licenses for sale of such liquors therein in quantities less than one quart may be issued, at the discretion of the licensing authority, but only in the manner following.

The court, excise board or other authority having power to issue licenses within such city, town, township, borough or village shall, upon the written request of any person who states that he desires to obtain a license to sell said liquors therein in quantities less than one quart give public notice that on a certain day named it will receive bids in writing, at the clerk's office, from all persons who desire to so sell said liquors, such bids to contain the name of the person who desires to procure a license, the location of the proposed premises and the amount that such person is willing to pay in order to obtain such license. Each bid shall be accompanied by an application, in due form, for such a license for the premises described, and the amount named in the bid, in the form of a certified check, which amount shall at least equal the license fee in such city, town, township, borough or village; and the bid, together with the application for the license, shall be enclosed in one envelope, securely sealed, and addressed to the licensing authority. Such notice shall be published at least five days before the day named for receiving bids in one newspaper published in the county in which such city, town, township, village or borough is situated, which shall be a newspaper published in such city, town, township, village or bor-

ough, if there be one, and such notice shall also be printed and posted in at least five public places in such city, town, township, village or borough, at least ten days before the day so appointed for receiving bids. On the day so appointed for receiving bids, the licensing authority shall receive all bids that may be submitted to it, as herein prescribed, and on the following day shall, at a time and place to be specified in the notice aforesaid, publicly open each and all of such bids submitted, and as soon thereafter as possible, prepare a list which shall contain the name of each person who submitted a valid bid, together with the amount thereof, which list shall be a public record. Licenses shall thereupon be issued, pursuant to the provisions of this act, to the persons acceptable to the licensing authority who made the highest bids therefor, and otherwise complied with the requirements of law, but only upon the basis of one license for each five hundred population in excess of the ratio herein prescribed, the issuance of such licenses to be made in order to the highest bidders therefor, who comply with all such requirements and are acceptable to the licensing authority.

The return herein shows that no bids were advertised for nor received but rather that the application herein was made, and all proceedings had, with absolute disregard of these provisions of the Leonard Act, which should have governed the granting of a new Inn and Tavern License, if such license could have been granted. Hence, if for any reason this Court should deem that the proof fails to show that the license granted as an inn and tavern license was forbidden, by reason of the legal limit being exceeded, this other consideration would still require the reversal of the proceedings hereto-

fore had by the courts below in the granting and sustaining of this license.

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